

# LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS

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Under the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), WTO members have a mandatory responsibility to recognize and protect GIs as intellectual property rights. This can be done in a variety of ways, and many countries have developed their own legal frameworks to enforce these rights, including through a registration process.

## Objectives

The motivation of local stakeholders in GI legal tools often goes beyond protection from the misuse of geographical names in national and international markets. Local stakeholders are also interested in the other effects of the registration process, notably official recognition of the GI and shared definition of the product's characteristics linked to geographical origin. Recognition serves not only to provide consumers with a kind of guarantee but also to reinforce the local identity and pride in the product and the community, particularly in rural areas.

*Sui generis*, from the Latin meaning "of its own kind", is a term used to identify a legal classification that exists independently of other categorizations because of its uniqueness or as a result of the specific creation of an entitlement or obligation. *Sui generis* methods of intellectual property protection may provide legal protection for signs and characteristics associated with a product, such as a logo or a specific shape, by including them in the related product specifications.

## Key concepts

Two main approaches can be distinguished at the national level:

- The public law approach: this is the case when public authorities enact legislation dedicated to the specific protection of GIs (a *sui generis* system); this approach generally consists of an official recognition of GIs by granting the status of a public seal of quality, often through a common official logo, where governments can protect the use of the GI *ex officio*.
- The private law approach: this entails the use of laws against unfair competition and usurpation, and trademark laws, where the protection is primarily based on private actions.

Registration is the most common legal tool to define the circle of legitimate users and ensure protection for GIs. This is anticipated both in specific GI legislation (*sui generis* systems) and in trademark law.

GIs may be protected through a registration under trademark law, in the form of a trademark, a certification mark or a collective mark, depending on the categories existing in the country. A trademark is a distinctive sign that is used by a company to identify itself and its products or services to consumers. It is a type of intellectual property involving a name, word, phrase, logo, symbol, design or image, or a combination of these elements. Trademarks do not refer to generic terms, nor do they refer exclusively to geographical terms. They do not protect against the use of terms such as "blend" and "type" in conjunction with a geographical origin. Two types of trademark may refer to a geographical name to indicate the specific qualities of goods: the certification mark and the collective mark.

## Process

Each legal mechanism to protect a GI has its own constraints, costs and advantages, which may differ from one national context to another. GI producers should explore and use all the available means to obtain protection, considering the location of markets for their product. The protection of GIs must first be established within the domestic market before it can be obtained in international markets.

In order to contribute to local development, the recognition of GIs as an intellectual property right requires establishment of the "rules of the game" by the competent public authorities. These rules must ensure the participation of all relevant stakeholders in the development and management of a GI system so as to avoid the exclusion of concerned stakeholders and ensure that both social and economic issues are addressed. This requires the integration of a whole range of policy aspects at the local, national, regional and international levels to ensure that the system is transparent, enforceable and efficient.

- A transparent registration procedure must clearly define the conditions for application without making the procedure too complicated. Indeed, small-scale producers are likely to be discouraged from applying for GI protection if it involves highly technical, bureaucratic or complex registration procedures. In these circumstances, large producers who may have more resources to devote to the process are likely to gain an unfair advantage in the GI market.
- The national legal framework must contain efficient rules for the management and control of GIs, complementing the role played by local stakeholders in ensuring adequate self-regulation and internal controls, for example through the establishment of a participatory guarantee system.
- The legal framework should be accompanied by an adequate provision of information on the objectives and characteristics of the regulatory framework, as well as capacity-building measures, both for public institutions and production system stakeholders.

## Summary

GI protection is linked to an international context and to national laws.

On the international level, the WTO Agreement on Intellectual Property Rights (TRIPs) defines geographical indications and provides a framework, but each member state of the WTO is responsible for implementing protection measures in its own territory.

Two approaches are recognized by these international agreements: a public approach with the registration of each GI by a separate procedure, and a private approach in which those interested must register the name of the product or its shape as a trademark.

The producers and the competent public authorities must analyse the advantages and disadvantages of these two alternatives so as to establish an optimal framework for each product concerned.