

INTERNATIONAL MECHANISMS FOR THE PROTECTION OF LOCAL AGRICULTURAL BRANDS IN CENTRAL AND EASTERN EUROPE

BY

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Summary

- Geographical Indications (GIs) are place or country names that identify the origin, quality, reputation or other characteristics of products. Appellations of Origin (AOs) are a type of Geographical Indication which are used to identify products whose quality is specifically linked to the environmental or ecological factors found in the place production. GIs and AOs can therefore be of great commercial value.
- The TRIPs Agreement requires that WTO Members provide the legal means to prevent the misleading use of GIs, including when the origin indicated on a product is other than its true place of origin, or when the use of a GI in some way constitutes an act of unfair competition.
- Countries meet these obligations either through existing intellectual property, consumer protection or competition laws or by enacting legislation dedicated to the specific protection of GIs and AOs.
- Two items on the agenda of negotiations in the Doha Round, of particular relevance to CEI countries relate to GIs. These are negotiations on a multilateral system for notification and registration of GIs, and negotiations on the expansion of additional GI protection beyond wines and spirits into all other products.

I. Introduction

Agriculture remains a major economic activity throughout Europe. The region produces many high quality agricultural products, ranging from meat and cheese, to wines, fruits and vegetables. Because of their good quality and reputation however, some of these products are subject to extensive counterfeiting. Their well known names are also being used illegally to market products of lesser quality. This remains a big problem, particularly in the cheese and wine industry. In scope, the problem is both local and international. It is therefore necessary to explore ways in which it may be solved, so that producers can reap the benefits of their high quality produce.

The names of products which are unique to a particular region and especially those that are produced in a unique cultural and ecological settings may be protected using *Geographical Indications* (GIs) or *Appellations of Origin* (AOs). I will explain in greater detail what these are, and how they differ from each other. Because they serve to distinguish a product from its competitors, both can be used as tools by local producers to protect their produce, and thereby guarantee continued consumer demand and market access opportunities. In this sense, Geographical Indications and Appellations of Origin can be valuable rural development and marketing tools. They are especially useful to small and medium size enterprises (SMEs) producing niche high quality products.

This paper focuses on the available international mechanisms for protecting agricultural brands. It explains the key international legal instruments that provide protection to GIs and AOs. In addition, it is worth remembering that international legal instruments often go hand in hand with national legislation. In this regard, the paper pays particular attention to relevant laws and regulations in individual countries in the region.

II. Geographical Indications, Appellations of Origin and Trademarks

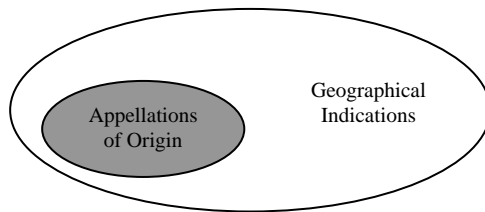
A Geographical Indication is a name or sign that is used to identify products from a specific geographical region and that have a reputation or certain qualities unique to that particular region. Good examples are “*Khvanchkara*” for wine produced in a region in Georgia,¹ “*Tuscany*” for olive oil produced in parts of Italy² or “*Rocquefort*” for cheese produced in France.³ On the other hand, an Appellation of Origin is a kind of Geographical Indication which is used to identify products whose quality is specifically linked to the environmental or ecological factors found in the place production. In a sense therefore, the concept of

¹ By Law on Geographical Indications and Appellations of Origin (adopted July 4 2002).

² By Law No. 169 of February 5, 1992.

³ Protected in the European Union by EC Regulation No. 2081/92 and in the United States by Certification Registration Mark No. 571.798.

Geographical Indications in international intellectual property law is wider and encompasses Appellations of Origin.



Trademarks, usually signs, are used by businesses to distinguish their products or services from those of other business enterprises. Trademarks are in the exclusive ownership of the businesses that have registered them. Hence, a major point of difference between trademarks, geographical indications and appellations of origin is that while trademarks are usually exclusively owned by individual natural or juridical persons, geographical indications and appellations of origin may be used by all producers that are in the designated geographical region and that meet certain production and quality standards.

For consumers, GIs and AOs point to the *origin* of the product and its *quality*. Because of these, GIs and AOs have a direct correlation with the reputation (often good) of the identified products. These names or symbols are therefore attractive to other traders who may want to use them as marketing devices for products that may not be authentic. This is why it is necessary that they be protected. Their unauthorized use is not only detrimental to the legitimate producers but also to consumer welfare, confidence and even safety. Legitimate producers suffer from loss of income and in the long term, business opportunities. Consumers on the other hand are misled into buying lesser quality imitations.

III. Mechanisms for Protecting Geographical Indications and Appellations of Origin

A. National Laws

There are two main methods through which countries provide for the protection of GIs and AOs. First, they may do this using

concepts such as “unfair competition” or through existing intellectual property laws, competition laws or laws on consumer protection.⁴ Secondly, they may do so through legislation dedicated to the specific protection of GIs. A good illustration of this second approach is the European Union.

On 14 July 1992, the EU passed *Council Regulation (EEC) No. 2081/92* whose objective is to protect GIs and designations of origin for agricultural products other than wines and spirits. Article 2 of the regulation provides for two classes of GIs. The first, the “protected designation of origin” (PDO), for example “*Prosciutto di Parma*”, designates the name of a region, place, or country that is the origin of a product “whose quality is exclusively due to a particular geographic environment.”⁵ The second, “the protected geographical indication” (PGI), for example “*Scottish Lamb*”, designates a region, place, or country that is the origin of a product “which possesses a specific quality, reputation, or other characteristics attributable to the location or origin.” By article 13 of the regulation, both of these are protected from “any direct or indirect commercial use of the name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name.”

⁴ For example South Africa. See Section 10(2)(b) of the *Trade Marks Act* No. 194 of 1993; and Section 12(1) of the *Liquor Products Act* No. 60 of 1989.

⁵ According to recent judgment from the European Court of Justice regarding Greek “Feta” cheese, “...a PDO, a traditional name such as ‘feta’, which is not the name of a region, place or country, must refer to an agricultural product or a foodstuff from a defined geographical environment with specific natural and human factors which is capable of conferring on that product or foodstuff its specific characteristics. Moreover, the name cannot have become generic.” See *Germany and Denmark v. The Commission*, Case No. C-465/02 and C-466/02 (2005).

Table I: National Laws on GIs and AOs in Select CEI Countries

| Country | Law and Date of Enactment | Main Objectives Relating to GIs and AOC Protection | Comments |
|-----------------|--|---|---|
| Croatia | <i>Act on Geographical Indications and Designations of Origin of Products and Services</i> , Law No. NN173/2003 (in force from 1.1.2004) | The law regulates the manner of acquisition, the system of protection and the exercise of the right to use a geographical indication and a designation of origin of products and services. | This law is among the few that cover GIs and AOs in both goods and services. The definitions are very much in keeping with those found in TRIPs (Arts. 2 and 3). Protection is granted through a recognized system of registration (Art. 12). |
| Latvia | <i>Law on Trademarks and Geographical Indications</i> . This Law was adopted by the <i>Saeima</i> on 16 June 1999. | Sections 1 and 2 provide that the Law regulates trademark registration and use, and geographical indications in (Chapter IX). It also provides for collective marks (Chapter VII). | The law is basically a Trademarks law, most of the provisions in the law deal with trademarks. Regarding the protection of GIs, the law has its basis in unfair competition (Section 43). GIs do not require registration for them to gain protection (Section 40). |
| Slovakia | <i>Law Concerning the Protection of Appellations of Origin of Products</i> (No. 159/1973 Sb., of December 12, 1973) | Protection of AOs is based on registration by the “Office of Inventions and Discoveries.” (Art. 2). Protection of an AO is for an unlimited duration (Art. 9). | The law is designed solely for the protection of AOs (Art. 1). Art. 2 specifically singles out for mention “Agricultural and natural products, in addition to products of handicraft or industry” which it says are “considered to be products for the purposes of this Law.” |
| Slovenia | <i>Law on Industrial Property</i> . Entry into force (of the Law Amending and Supplementing the Law on Industrial Property) was June 13, 1993. See, <i>Uradni list Republike Slovenije</i> , No. 13/1992 of March 20, 1992 and 27/1993 of May 29, 1993 | The law regulates the grant and the protection of patents, model and design rights, trademarks and service marks, and appellations of origin (Art.1). It states that geographical names of products shall be registered and protected as AOs (Art. 2). Protection is done on the basis of filing and registration (Art. 4), through for instance a register of AOs (Art. 29). | Art. 27 specifically mentioned AOs over “natural produce, agricultural produce, industrial products and handicraft products.” Infringement of rights can result in a condemnation to pay damages. |
| Bulgaria | <i>Law on Marks and Geographical Indications</i> (Text published in State Gazette (SG) No. 81/1999, of September 14, 1999) | Art. 1 provides that the law “governs the conditions and procedures for the registration of marks and geographical indications, the rights arising therefrom and the protection of those rights.” The law provides for a state “Register of Geographical Indications” (Art.6). | According to Art. 53, there is no chance that registered geographical indications can become generic names as long as they enjoy are protected under the law. Registration carried out under the Lisbon Agreement are recognized in Bulgaria (Art. 71). |
| Albania | <i>Law on Industrial Property</i> No. 7819 of April 27, 1994. (The law entered into force July 8, 1994 except for Chapter 10, which entered into force on October 4, 1995.) | The law provides for a system of registration (with the Albania Patent Office) and protection of AOs (Chapter XXVI). | This is a comprehensive law that deals with all kinds of intellectual property. AO protection is available also to “natural agricultural products and industrial and handicraft products” (Art. 93). |

B. International Legal Instruments

There are a number of international legal instruments that provide for the protection of GIs. These include: the *Paris Convention for Protection of Industrial Property*, the *Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods*, the *Lisbon Agreement on the Protection of Appellations of Origin and their Registration*, the *Stresa International Convention for the Use of Appellations of Origin and Designations of Cheeses*, and the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs).

I. The 1967 Paris Convention for the Protection of Industrial Property

According to its Article 2(1), the convention applies to the widest range of industrial property, including “*indications of source and appellations of origin* and the repression of unfair competition.” ‘Industrial property’ is defined at Article 1(3) of the *Paris Convention* to include “all manufactured or natural products, for example, wine, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.” It was in the *Paris Convention* that the distinction between ‘indications of source’ and ‘appellations of origin’ was made for the first time. An ‘indication of source’ refers to the geographical place or country of origin of a product. Hence, a typical infringement of an ‘indication of source’ would be to produce it in a place other than what is stated in the name.⁶ Article 9 provides the remedies available in the event of infringement of marks and trade names. These remedies are seizure of all goods unlawfully bearing a trademark or trade name, or in the event that the law of a particular country does not allow seizure, then it shall be replaced by a prohibition of importation of the offending products. Article 10(1) provides that the remedies in Article 9 shall apply in “cases of direct or indirect use of a *false indication of the source of the goods or the identity of the producer, manufacturer, or merchant*.” Hence, the mischief that the provision seeks to address, that is the falsehood in the

source of the goods, relies on consumer perception.

The *Paris Convention* approaches the issue of GI protection from the angle that it constitutes unfair competition. According to Article 10*bis* unfair competition arises when acts done by a competitor create confusion, when a competitor uses false allegations in the course of trade so as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor or when indications or allegations mislead the public as regards the “nature, the manufacturing process, the *characteristics*, the suitability for their purpose, or the quantity, of the goods.” The use of the word ‘characteristics’ in Article 10*bis*, as opposed to the earlier proposed which was ‘the origin’ means that only the importation of products containing “false” indications of geographic origin are prohibited. Geographic names that are merely misleading are not disallowed. Consequently, the *Paris Convention* only offers very limited GIs protection. A finding of infringement relies heavily on the consumer’s perception of deception or deception. In addition, its limited impact on GIs protection may be discerned from the fact that despite its many signatories totalling 169 as at April 2005, the *Paris Convention* has to be implemented through national law, something which many of its signatories did not do.

II. The 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Sources on Goods

The *Madrid Agreement* states its purpose in its title: the “repression of false or deceptive indications of sources on goods.” Despite the prominence of the phrase ‘indications of source’ in the agreement, this phrase is not defined. According to Article 1(i) of this agreement, “all goods bearing a false or deceptive indication by which one of the countries to which this agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries.” In the event that seizure is not possible under national law, the agreement provides that import prohibitions should be applied.

⁶ Owing to opposition to stronger wording during the Uruguay Round trade negotiations there is no absolute prohibition on the use of false indications of source in the current TRIPs framework.

Article 4 of the *Madrid Agreement* is most instructive in its categorical statement that geographical indications of wines shall not be used as generic terms. It states: "The courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement, *regional appellations concerning the source of products of the vine being, however, excluded from the reservation specified by this Article.*" This agreement is therefore stronger than the *Paris Agreement* regarding the extent of protection it gives to geographical indications on wines. In fact, its very existence arose from the dissatisfaction with the *Paris Agreement*. As of April 2005, the agreement had 34 contracting parties. It has also not attained a high degree of popularity partly owing to the perception that its provisions on GIs protection are too exacting.

III. The 1958 Lisbon Agreement on the Protection of Appellations of Origin and Their Registration

This agreement offers the strongest protection for GIs. It was negotiated in keeping with Article 19 of the *Paris Convention*. It is influenced to a large extent by the *French code de la consommation*, in the sense that it borrows the concept of "Appellations of Origin" as opposed to the concept of "geographical indications" used in the *TRIPs Agreement*. At Article L.115-1, the *Code de la consommation* defines the *Appellation d'origine contrôlée* as "the designation of a country, a region, or a locality that serves to indicate that a product originates from that place and owes its quality or characteristics to its geographical surroundings, including natural and human factors." It should be noted that the definition includes not only "human factors" but also "natural factors."

The idea is therefore that only those products manufactured according to local traditions by local people qualify for protection under the protection of geographical appellations of origin. According to Article 2 of the *Lisbon Agreement* "'appellation of origin' means the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and

characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors." Like in the *French code de la consommation*, this definition includes both the human and natural factors. According to its Article 3, the agreement ensures the protection of appellations of origin against usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind", "type", "make", "imitation".

The main objective of appellations of origin is to guarantee the authenticity and origin of the raw materials and the traditional practices of the communities involved. As opposed to TMs law, appellations of origin guarantee consistency in manufacturing practices and the other natural (including climatic conditions and soil quality) and human practices that go into the production process of the protected item. Another difference with TMs is that an appellation of origin can never go into public domain and the name or designation cannot be used for "any similar product or for any other product or service as long as such a use is capable of altering or weakening the distinctiveness of the appellation of origin."

According to the *Lisbon Agreement*, an appellation of origin must first be protected under national law, and then notified to the World Intellectual Property Organization (WIPO). It is then WIPO's duty to publish and notify this protection to all the other members of the *Lisbon Agreement*. All participating countries must oblige with their own protection of the appellation of origin upon notification unless they object within the period of one year. Article 6 is drastic in the extent of protection. It states that, "an appellation which has been granted protection in one of the countries ...cannot, in that country, be deemed to have become generic, as long as it is protected as an appellation of origin in the country of origin."

The agreement provides a two-year phase-out period for appellations of origin which conflict with TMs in cases where the TM was registered prior to the appellation of origin in violation of the "first in time first in right" rule. According to Article 5, "If an appellation which has been granted protection in a

given country pursuant to notification of its international registration has already been used by third parties in that country from a date prior to such notification, the competent office of the said country shall have the right to grant to such third parties a period not exceeding two years to terminate such use, on condition that it advises the International Bureau accordingly during the three months following the expiration of the period of one year.” In sum, the *Lisbon Agreement* gives the greatest protection to appellations of origin, and considers them superior to TMs. However, relatively few countries, 23 in total, are parties to the agreement.

IV. The 1951 Stresa International Convention for the Use of Appellations of Origin and Designations of Cheeses

According to its Article 2.1, the *Stresa Convention* of 1951 is reserved for “fresh and matured products obtained by draining after the coagulation of milk, cream, skimmed or partially skimmed milk or a combination of these”, or by “products obtained by the partial concentration of whey, or of buttermilk, but excluding the addition of any fatty matter to milk.” It applies to all specifications which constitute false information as to the origin, variety, nature or specific qualities of cheeses, which are stated on products which might be confused with cheese.

Under Article 3 of this convention only “cheese manufactured or matured in traditional regions, by virtue of local, loyal and uninterrupted usages” may benefit from protection based on designations of origin governed by national legislation. For example, “Gorgonzola (Italy)” is listed as a designation of origin under the convention. By law, Gorgonzola is only produced in a defined area that includes the provinces of Bergamo, Brescia, Como, Cremona, Cuneo, Milan, Novara, Pavia, and Vercelli, as well as the zone of Casale Monferrato. Gorgonzola is one of only three Italian cheeses that qualify, under the Convention, to be classified as *Denominazione di origine controllata*. Article 1 of the convention prohibits the use of any names which conflict with protection granted under the convention.

V. The TRIPs Agreement

The *TRIPs Agreement*, which came into force in 1995, is the most comprehensive agreement on intellectual property rights (IPRs). It covers all major IPRs, including trademarks and GIs. At Article 22.1, it defines GIs as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin” (emphasis added). A number of issues are evident from this definition.

- First, the availability of GI protection is limited to *goods*. It does not extend to services.
- Second, “good” can mean any good, including all kinds of agricultural products and foodstuffs, despite the fact that Article 23 is focused on wines and spirits.
- Third, the provision also mentions certain criteria that should be considered as being either quality, reputation or other characteristics alone. This means that any of the three are sufficient for eligibility, whereby quality would refer to some positive attributes, reputation would refer to favourable impression by users or consumers, and ‘other characteristics’ could include physical attributes such as colour.
- And fourth, as a link between the product and its origin, the provision requires that the product should be “essentially attributable to its geographical origin.” This language seems to have some flexibility in it, in the sense that “*essentially* attributable” is not only based on geographical connection (for example because of *terroir*, or the quality a product derives from the soils or climatic conditions of an area) but perhaps also by reputation.

Article 22(2) outlines the basic standard for GIs protection. It also has some in-built interpretive flexibility. For example “the legal means” can refer to any number of methods

of protection. Legislation, regulations, administrative mechanisms or even principles of common law such as unfair competition or passing off, are all included within the scope of conceivable 'legal means' of protection. The phrase "misleads the public" is comparable to the TM law concept of "consumer confusion" and "likelihood of confusion" as found for example in Article 16 of the *TRIPs Agreement*. What "public" here means is open to various interpretations. It could mean for example the 'wider public' or the specific habitual consumers of a particular product.

Further, the circumstances in which a consumer will be confused as to the geographical origin of product in practice are also not easy to establish legally. In addition, Article 22.2(b) refers to "any use which constitutes an act of unfair competition within the meaning of Article 10bis of the *Paris Convention*." Article 10bis of the *Paris Convention* refers to the doctrine of 'unfair competition.' In this cross-reference, the *TRIPs Agreement* imports the common law and civil law causes of action for GIs. This is significant because it broadens the base for causes of action and therefore the degree of protection available for GIs.

Article 23 provides for a higher level of protection for GIs of wines and spirits, stating: "Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question...." "Legal means" in this provision also introduces flexibility as to the mechanisms for protection. Protection is accorded even in circumstances when use of a GI might not mislead the public or even if it is accompanied by expressions such as "kind", "type", "style" or "imitation". In sum, Article 23 increases the protection for GIs of wines and spirits beyond what is contained in Article 22.3 which does not prohibit incorrect GIs if they are not misleading to the public.

Article 24 spells out the exceptions to the rules, that is, situations when a WTO Member may decide not to protect GIs. It allows persons who have used a GI in a continuous manner with regard to the same or related goods or services in the territory

of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date, to continue doing so. Further, in case a GI is synonymous with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the *WTO Agreement*, that Member does not have to protect that GI. Hence, generic GIs are not protectable. A WTO Member can however waive this provision and grant protection to generic GIs anyway. In France for example, a GI can never be generic. According to Article 24.9, there is no obligation to protect GIs which are not protected or for which protection in the country of origin has ceased or which have fallen into disuse in that country.

Table II: International Agreements and Opportunities for Protection of GIs and AOs

| International Agreement | Main Objectives Relating to GIs and AOC Protection | Remedies | Comments | Recommendations |
|---|---|---|--|--|
| The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958 (The <i>Lisbon Agreement</i>) | <ul style="list-style-type: none"> Adopts the narrow definition of “Appellation of Origin” (Article 2). Hence, it grants the highest protection. Protects against usurpation or imitation. For an AO to be protected under this agreement, the AO should be protected in its country of origin, and the AO should be registered in the WIPO International Register. WIPO notifies all members about registration of AO | <ul style="list-style-type: none"> Once WIPO notifies of the registration of an AO, every member is obliged to protect that AO. If AO protection is not granted or is refused, interested parties may resort, in the refusing country, to all judicial and administrative remedies available to nationals of that country. | <ul style="list-style-type: none"> The Lisbon Agreement establishes the only international register in force to date on appellations of origin. CEI countries that are not members of the agreement are not bound to protect AOs even if such AOs are in the international register. | <ul style="list-style-type: none"> As many CEI country AOs as possible should be sent for international registration. Bilateral agreements could be reached to protect specific GIs and AOs with other countries within or beyond the CEI region. The bilaterals must be notified to the WTO Council on TRIPs as is required by Article 4(d) thereof. |
| The Paris Convention for the Protection of Industrial Property, 1883 (the <i>Paris Convention</i>) | <ul style="list-style-type: none"> Starts from the broad concept of “Indications of Source or Appellations of Origin”* Article 10(2): no indication of source may be used if it refers to a geographical area from which the product in question does not originate. | <ul style="list-style-type: none"> Seizure of the product bearing a false indication of source upon importation (Article 10:2) Prohibition of Importation (Article 10:2) Obliges members to provide protection against unfair competition. (Article 11 <i>bis</i>) | <ul style="list-style-type: none"> The remedies of seizure and prohibition are applicable also and perhaps most useful to countries that are not WTO Members. | <ul style="list-style-type: none"> Enforcement lies most with the market countries, that is, the countries in which consumers purchase the products. Usually, sound enforcement in third countries involves diplomatic efforts. |
| The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891 (the <i>Madrid Agreement</i>) | <ul style="list-style-type: none"> Starts from the broad concept of “Indications of Source” Article 4: is a special provision by which courts of any country can decide what indications of source do not fall within the provisions of the agreement because of their generic character. However, regional appellations for wines are excluded. Hence, this is the basis for special sectoral GIs especially for wines. | <ul style="list-style-type: none"> All goods bearing false or deceptive indications shall be seized upon importation. Seizure shall be effected in the country where the false indication is applied or where goods are destined. | <ul style="list-style-type: none"> The agreement has 34 members as of October 15 2004. While the Paris Convention is broad, the Madrid Agreement provides specific rules for repression of false and deceptive indications of source. (Article 1(1)). | <ul style="list-style-type: none"> CEI countries should accede to this agreement as soon as possible. |
| The Agreement on Trade Related Aspects of Intellectual Property Rights, 1994 | <ul style="list-style-type: none"> The TRIPs definition of GIs (Article 22.1) is different from the concept of “Appellations of Origin” See Table 2 Article 22 requires that Members should provide minimum protection for all GIs. Article 23 is additional protection for wines and spirits, and additional only for wines at Articles 23.3 and 23.4. | <ul style="list-style-type: none"> Any designation which misleads the public as to the geographical area of the good is not allowed. Every member should provide legal means to protect GIs. Every member should provide means to prevent unfair competition. (Articles 22 of TRIPs and 10 <i>bis</i> of Paris Convention) | <ul style="list-style-type: none"> Many countries face significant problems in implementation, especially of the provisions on GIs. and, also on sound enforcement of legislation and international legal instruments that guarantee protection to GIs and AOs. | <ul style="list-style-type: none"> The key challenges, for which a common CEI approach may be necessary include: establishing a multilateral register of GIs with the possible extension of greater protection to a wider range of products, including food; the availability of independent advice to CEI countries and businesses on the most appropriate legislative instruments and how they may best serve them. |

* “Appellations of Origin” are linked to quality or some other characteristics belonging to similar geographical environment where the products originate while, “Indications of Source” simply refer to the source and nothing else and especially nothing about quality.

C. WTO Negotiations on Geographical Indications

As part of the built-in agenda for further negotiations on GIs in the WTO, three provisions in the TRIPs Agreement lay a basis for the on-going negotiations. According to Article 23.4 WTO Members agreed that negotiations would be undertaken in the TRIPs Council "...concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system."

Further, in Article 24.1, WTO Members agreed "...to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23." Lastly, in Article 24.2 it is required that the "Council for TRIPs shall keep under review the application of the provisions of this Section", with the reference here meaning section 3 which addresses GIs in its entirety. Hence, in addition to the general review foreseen in Article 24.2, there are two items on the negotiations agenda specific to GIs. These are, negotiations on a multilateral system for notification and registration of GIs, and negotiations on the expansion of GI protection.⁷

Many proposals have been submitted on the issue of the multilateral register. The main ones, presented in a recent document by the WTO Secretariat are those by Hong-Kong China,⁸ by the European Communities⁹ and a joint proposal by 14 WTO Members.¹⁰ Some Members would prefer a system built as a database to report GIs granted protection under national legislation. Others will take such information into consideration when granting their own protection. Another group of proposals includes obligations, subject to certain conditions, for Members to protect the names listed in the register. Some WTO Members have proposed extending higher protection beyond wines and spirits to other products, such as handicrafts, agricultural products and other

beverages. In preparing the Doha Ministerial Declaration, the discussions have considered whether there should be negotiations on this subject at all, or whether further study is needed before deciding to negotiate. In the *General Council Decision*¹¹ of 1 August 2004 ('July Package') the Council requested "the Director-General to continue with his consultative process on ... issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPs Agreement to products other than wines and spirits..."

The consultations by the Director General seek to clarify what the scope of negotiations foreseen in Article 24.1 should be. In other words, the controversy revolves around the question whether the negotiations should extend the coverage of GI protection to products other than wines and spirits. In a 1999 submission by Turkey,¹² it was proposed that GIs protection should go beyond wines and spirits. This proposal was endorsed by the African Group. According to the African Group, GIs protection should be extended "to other products recognizable by their geographical origins (for example handicrafts and agro-food products)."¹³

D. Challenges

There is potential to use GIs to protect traditional products such as certain types of liquors, sauces and teas. The link between GIs and the debate on traditional knowledge needs to be explored further. The extent to which GIs can enhance the marketability of a good quality product is clear. GIs can give an edge, especially to small and medium scale businesses, for promoting exports and rural development. However, the exact economic benefits of extending GIs protection to products beyond wines and spirits are yet to be determined. An economic quantification of such benefits would be a useful contribution particularly to CEI countries that may unsure as to what they stand to gain or lose by either sides of the debate on the extension of GIs protection. The key challenges, for which a common approach may be necessary include: establishing a multilateral register of GIs with the possible extension of greater protection to a wider range of products,

⁷ The *Doha Ministerial Declaration* of 14 November 2001 recognized both of these items in para.12.

⁸ TN/IP/W/8.

⁹ TN/IP/W/11.

¹⁰ TN/IP/W/10. The proposal was made by Argentina, Australia, Canada, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Mexico, New Zealand, Chinese Taipei, and the United States.

¹¹ WTO Doc. No. WT/L/579 (2 August 2004).

¹² WTO Doc. No. WT/GC/W/249 (13 July 1999).

¹³ WTO Doc. No. WT/GC/W/302 (6 August 1999).

including food; the availability of independent advice to CEI countries and businesses on the most appropriate legislative instruments and how they may

best serve them; and, proper enforcement of legislation and international legal instruments that guarantee protection to GIs and AOs.