

GUIDE TO GEOGRAPHICAL INDICATIONS

LINKING PRODUCTS AND THEIR ORIGINS



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GUIDE TO
GEOGRAPHICAL
INDICATIONS

LINKING PRODUCTS
AND THEIR ORIGINS

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Study dealing with geographical indications (GIs), documenting best practices and drawing lessons from a number of case studies in this area – explores the development potential for countries wishing to use GIs; outlines the elements of a successful GI strategy, and examines the different mechanisms available for protecting and fostering new GI products and services; includes a glossary of related terms, and bibliographies.

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Acronyms and abbreviations

Unless otherwise specified, all references to dollars (\$) are to United States dollars, and all references to tons are to metric tons.

The following abbreviations are used:

AO	Appellation of Origin
AOC	Controlled Appellation of Origin (in several languages, i.e. Appellation d'origine contrôlée)
AVA	American Viticultural Areas
CAP	Common Agricultural Policy
CTM	Community Trademark (EU)
DO	Denomination of Origin (in several languages)
DOC	Controlled Denomination of Origin (EU)
DOCG	Controlled Denomination of Origin Guaranteed (EU)
DOP	Protected Denomination of Origin (EU)
DRAF	Direction régionale de l'agriculture et de la forêt de Franche-Comté
EU	European Union
EC	European Communities
ECJ	Court of Justice of the European Communities
FNC	National Federation of Coffee Growers of Colombia (Federación Nacional de Cafeteros de Colombia)
FOB	Free on board
GAP	Good Agricultural Practices (basic standard)
GATT	General Agreement on Tariffs and Trade
GI	Geographical Indication
IGP	Protected Geographical Indication (EU)
IGT	Typical Geographical Indication (EU)
INAO	Institut national des appellations d'origine (France)
IP or IPR	Intellectual Property (Rights)
ISO	International Organization for Standardization
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
PDO	Protected Designation of Origin (EU)
PGI	Protected Geographical Indication (EU)
TSG	Traditional Specialty Guaranteed (EU)
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TTAB	Trademark Trial and Appeal Board (USPTO, USA)
USPTO	United States Patent and Trademark Office
VQPRD	Wines of Quality Produced in Demarcated Regions
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

ha	hectare
in.	inch
km	kilometre
lb	pound
m	metre
oz	ounce

Glossary of terms

AO – Appellation of origin

Appellations of origin – as well as Geographical Indications – are not defined in the same way everywhere. Appellation of Origin was one of the earliest forms of GI recognition and was first mentioned nearly a century ago (Paris Convention). The 26 Parties to the Lisbon System (see chapter 3) were the first to agree formally to use the term Appellation of Origin as a form of GI by using one single registration procedure, effective among the signatories. Appellation of Origin is the geographical denomination that serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors. The later WTO TRIPS definition was derived from this. Variations of this term are still commonly used in countries that were early adopters such as France and parts of Europe.

Certification body or organization

For GIs, certification bodies are authorized to establish control procedures to ensure that producers follow the established codes of practice. Certification bodies thus help to regulate the GI market and are a requirement in most jurisdictions. Typically, qualified certification bodies are accredited to international standards and though some are government agencies, they are increasingly private organizations.

Certification mark

A certification mark is any word, name, symbol, or device that signals the registered certification of a product's quality characteristics, which may include geographic origin. It conforms to specifications laid out by the owner, which can apply to place of origin and/or methods of production. Use of the mark requires some verification by the owner that prescribed attributes have been met or are presented.

Unlike trademarks, certification marks are source-identifying in the sense that they identify the nature and quality of the goods and affirm that these goods have met certain defined standards. Certification marks differ from trademarks in three important ways. First, a certification mark is not used by its owner. Second, any entity that meets the standards set by the owner, and undergoes the certification process, is entitled to use the certification mark. Third, certification marks cannot be used for purposes other than to certify the product or service for which it is registered (except to advertise the certification programme services). So, for example, a Florida citrus certification mark cannot be used as a certification mark on clothing. However, a single United States certification mark can be tied to a variety of products, producers, and processors in a region, e.g. 'Pride of New York' for fresh fruits and vegetables.

Claw back

The rather descriptive term used in negotiations and proposals to restore GI rights in countries where they have been lost for various reasons. This most often references the EU's wish for certain original GIs to gain exclusive ownership of their names in other countries where existing trademarks or even claims of genericism have taken over their legal use.

Code of practice

The documented standards and specifications of production and list of practices to be implemented for a GI's products. These are usually agreed upon by the producers' association and/or managing

consortium if they are not part of existing laws. This code of practice can refer to the characteristics of the raw materials, the production conditions or process, product specifications or qualitative requirements, and under what circumstances specific exceptions are allowed (e.g. temporary lack of local raw materials). For the EU's "protected designation of origin" (PDO) or "protected geographical indication" (PGI), certain guidelines are legally required, i.e. the code of practice should contain the delimited area in which the production process must take place (in the case of a PDO), or in which certain phases of the production process must take place (in the case of the less stringent PGI). The code of practices for other GIs, i.e. marks, are typically self-determined and can be subsequently altered according to the legally accepted methods prescribed in each jurisdiction granting the mark.

Collective mark (United States)

Collective marks are used only by the members of a cooperative, association or other group to identify their goods or services as having a connection to the collective and its standards. The collective mark may or may not have a geographic identity, i.e. the California Raisin Board; and may advertise or promote goods produced by its members, i.e. the Sunkist co-op, but does not sell its own goods.

Collective (trade)mark (EU)

In the European Communities, collective marks are trademarks used by the members of a collective group to distinguish their offerings from those of non-members. A group that benefits from "protected designation of origin" (PDO) or "protected geographical indication" (PGI) may also apply for a collective trademark for their GI product's name or graphic representation. The PDO/PGI designation provides a protected indication of quality and origin relationship that is separate from other intellectual property rights. Therefore, trade-marking, i.e. a collective trademark, can confer additional intellectual property rights protection.

Common Law and Civil (or Roman) Law

The system known as Civil (or Roman) law gives precedence to written law and is used in many, though not all, European, African, Asian and Latin American countries, whereas Common Law systems that give precedence to prior case-law or precedent are used in a smaller group of nations, the most prominent of which are the United Kingdom and the United States. These systems also tend to have evolved different approaches to the protection of GIs

CTM – Community Trademark (EU)

The CTM is a trademark registered with the Office of Harmonization of the Internal Market, which grants an exclusive right in the Member States of the EU. Any item that can be represented graphically (words, shapes, designs, letters, numerals, the shape of goods or of their packaging) can be registered as a CTM so long as it can serve to distinguish the goods and services of one undertaking from those of other undertakings.

DO – Denomination of Origin

The legal term for protected GIs in many developing countries.

DOC – Controlled Denomination of Origin (EU)

GI notation for wine and spirits GIs in Europe (*Denominazione di Origine Controllata* in Italy). DOC is a quality assurance label in some regions that was the basic GI term for wine and food products produced within a specified region using defined methods and meeting defined quality standards. After 1992, DOC became compliant with Regulation 2081/92 that formalized PDO and PGI terms in the EU. It is not extensively covered in this document but see appendix III, for basic listing of wine and spirits GIs in Europe.

DOCG – Controlled Denomination of Origin Guaranteed (EU)

Sub-regions of DOC that are subject to more rigorous controls and quality testing. Not covered in this document but see appendix III for basic listing of wine and spirits GIs in Europe.

DOP – Protected Denomination of Origin (EU)

Translation of PDO used as common abbreviation for French, Spanish, Italian, Romanian and Portuguese. See Protected Denomination of Origin in this section and table 4.3 in chapter 4 for some other translations used in the EU.

EU, EC, and the European Commission

In order to avoid confusion, the abbreviations EU and EC are used in the text of the publication somewhat interchangeably. Many people confuse some of these terms that are distinct as far as law and protection are concerned. The European Union (EU) is a grouping and union of 27 independent States. It also encapsulates three entities including the European Communities (EC). The laws regulating the common market in the European Union are laws of the European Communities and are thus EC laws. All laws in relation to GIs in the European Union are European Community laws.

The European Commission (or sometimes the ‘EC Commission’ but not the letters EC alone because of the potential confusion with the European Communities, which are properly abbreviated as EC) is a special institution which administers the EC, has limited legislative powers (in relation to GIs it is the EC Commission which adopts the law giving GI status to a name and product) and exclusive right to propose legislation to the EC legislature.

EC Court

The EC Court or the ECJ refers to the Court of Justice of the European Communities. Direct actions by private parties against decisions of the EC Commission regulating GIs are heard before the Court of First Instance of the European Communities abbreviated as CFI.

Generic – A term or sign is considered “generic” when it is so widely used that consumers commonly view it as designating a class name or category of all of the goods/services of the same type, rather than as a geographic origin.

GI – Geographical Indication

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement defines Geographical Indications “as identifying 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”. It also requires that all WTO Member countries establish basic provisions (unspecified) for the protection of GIs (art. 22.1).

GI is an umbrella term whose overall purpose is to distinguish the identification of a product’s origin and its link with particular characteristics related to that origin. In some cases they are not formally or legally registered but operate commercially. When GIs are legally registered they take different forms such as AO, DO, PDO, PGI, and Marks. As such, they become more readily enforceable. In some systems (e.g. the United States), even unregistered GIs may be recognized as common law marks and thus be enforceable if they rise to the level of a “source identifier” (see Glossary definition) for the consumer. Sometimes several levels and types of IPR laws are combined for the protection of a GI product on the market.

Geographical sign

A graphic symbol, used with marks, that can indicate a GI.

IGP – Protected Geographical Indication (EU)

Translation of PGI, used as an abbreviation in French (Indication Géographique Protégée), Italian (Indicazione Geografica Protetta), Spanish, Romanian, and Portuguese. Please see Protected Geographical Indication in this section and table 4.3 in chapter 4 for some other translations used in the EU.

IGT – Typical Geographical Indication (EU)

See appendix III for wine and spirits GIs in Europe.

Indication of source

Any expression or sign used to indicate that a product or a service originates in a country, region or a specific place, without conveying any element of quality or reputation (Paris Convention 1883 and Madrid Agreement 1891 {Art.1.1}). “Made in Malaysia” is such a source indicator.

IP – Intellectual property

In law, intellectual property (IP) is an umbrella term for various legal entitlements which attach to certain writing (copyright), inventions (patents), processes (trade secrets) and names or identifiers (GIs or marks). The holders of these legal entitlements may exercise various exclusive rights in relation to the subject matter of the IP.

Intellectual property laws and their enforcement vary widely. The primary inter-governmental effort to harmonize them is the 1994 World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Other treaties also serve to establish a basis for protection and to facilitate registration in multiple jurisdictions.

Mark

The term ‘mark’ is used interchangeably between regular trademarks, collective and certification marks. Depending upon context, ‘mark’ can refer to a regular trademark, or to GI-related trademarks, collective or certification marks.

Multi-functionality

According to the Organisation for Economic Co-operation and Development (OECD 1998; 2001), multi-functionality refers to an economic activity that may have multiple outputs and impacts. The concept recognizes that beyond its primary function of supplying food and fibre, agricultural activity can also shape the landscape, provide environmental benefits such as land conservation, renewable natural resources management, and biodiversity preservation, and contribute to the cultural and socio-economic viability of many rural areas.

Origin product

Origin product is a general term that applies to any product whose origin is either (a) implicitly known by the consumer due to long-lasting association of the product with its place of origin, or (b) explicitly identified with that place via a label identifying a GI, regardless of whether the GI is protected. For more see <http://www.origin-food.org> or EU Dolphin and SENER-GI projects.

PDO – Protected Designation of Origin (EU)

The designation where the product must be produced AND processed within the defined geographic area, exhibiting qualities or characteristics essentially due to that area. A PDO is the name of a place or region used to describe an agricultural product or a foodstuff, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

See chapter 4, “The EU’s philosophy and approach”, for a more detailed discussion. Note that the acronym “DO” was also associated with Spanish and Italian Designations of Origin existing prior to the passage of regulation authorizing PDOs as a specific legal term in the EC (Regulation 2081/92 later replaced by 510/06).

PGI – Protected Geographical Indication (EU)

The GI where the product must be produced OR processed in the geographical area, or both. The PGI allows greater flexibility in the conditions so long as the product exhibits specific quality, reputation or other characteristics that are attributable to that area. Therefore, so long as some unique contribution is made in the defined geographical area, which can be the production and/or processing and/or preparation, the PGI need not include any of the aspects of human contributions and local know-how contained in the PDO. See chapter 4, “The EU’s philosophy and approach”, for a more detailed discussion.

Public Good

A public good can be used simultaneously by multiple actors without the diminution of its benefits or attributes. By definition, regardless of whether a public good is produced by the public or private sector, it is not possible to exclude any actor from benefiting from it. The key to sustaining a public good is its collective or democratic management. Geographical Indications as Intellectual Property Rights can in some cases be considered a public good for the respective residents and stakeholders of those GIs.

There may be limitations on some public goods and the use of the GI name on a product must be restricted to legitimate or qualified users and the product has to conform to certain publicly agreed characteristics. In such cases, it can best be considered a collective good where many but not necessarily all can benefit. The misuse or exclusionary capture of the GI by a very limited group threatens the reputation and value of that common resource.

Registered right holder

A registered right holder is the first to register that mark and enjoys exclusivity over any later users of the mark to ensure consumers are not confused by the two uses.

Source identifier

A trademark term meaning the capacity of a sign to clearly distinguish the goods or services of one enterprise (including a collective group of producers) from those of another enterprise.

Standards

Standards are set up by many different types of organizations to facilitate coordination between the actors in a particular field of activity and reduce uncertainty concerning the nature of a good or service. In global trade, standards set the ‘rules of the game’ between quality and safety to more current distinctions between process and characteristics and, since they are increasingly determined by the private sector, are being utilized as tools of product definition as well as differentiation.

Sui generis

A Latin expression, literally meaning unique in its characteristics or of its own kind. In intellectual property law this expression is mainly used to identify a legal classification that exists independently of other categorizations due to its uniqueness or the specific creation of an entitlement or obligation.

Terroir

A *terroir* is (1) a delimited geographic space, (2) where a human community, (3) has constructed over the course of history a collective intellectual or tacit production know-how, (4) based on a system of interactions between a physical and biological milieu, and a set of human factors, (5) in which the socio-technical trajectories put into play, (6) reveal an originality, (7) confer a typicality, (8) and can engender a reputation, (9) for a product that originates in that *terroir*. For more, see Barham (2003) and Casabianca et al. (2005.)

TSG – Traditional Specialty Guaranteed (EU)

A TSG in the EU means that a product must be traditional, or established by custom (for at least one generation or 25 years) and have characteristics that distinguish it clearly from other similar agri-food products. TSGs may have geographic affiliations but their production can take place anywhere in the world, subject to appropriate controls, so they are not treated as GIs here. Haggis, Mozzarella, Lambic, and Eiswein or Icewine are well-known examples.

Trademark (primarily United States)

In some countries, including the United States in certain cases, it is possible to protect geographical indications as trademarks. Geographic terms or signs are not able to be registered as trademarks if they are merely geographically descriptive of the origin of the goods. However, if a geographic sign is used in such a way as to identify the source of the goods or services and, over time, consumers recognize it as identifying a particular company or manufacturer or group of producers, the geographic sign no

longer describes only where the goods/services come from, it also describes the somewhat unique “source” of the goods/services. At that point, the sign has “secondary meaning” or “acquired distinctiveness” and can be trademarked.

The EU, of course, also uses trademarks, and although they can complement a GI, they are not typically used to protect GIs.

TRIPS

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was established in 1994 and is overseen by the World Trade Organization (WTO). The TRIPS Agreement does not determine national legislation, but in order to be TRIPS compliant, WTO Members’ domestic intellectual property law must establish the minimum level of protection for IPRs as laid out in the TRIPS Agreement’s 73 Articles.

VQPRD

An acronym used in the European Community meaning Wines of Quality Produced in Demarcated Regions. In Italian (Vini di Qualità Prodotti in Regione Determinata), Portuguese (Vinho de Qualidade Produzido em Região Demarcada) and French (Vin de Qualité Produit dans une Région Déterminée).

WIPO

World Intellectual Property Organization is the United Nations organization for global intellectual property issues whose mandate is to facilitate discussion and learning on Intellectual Property (IP). WIPO has cooperation agreements with the World Trade Organization (WTO) and administers 24 international treaties including most of those relevant to GIs (in particular the Madrid and Lisbon Agreements). It also keeps the International Register of Appellations of Origin. See chapter 3 for more details.

Executive summary

Basics of this work

There are currently more than 10,000 protected Geographical Indications or GIs in the world with an estimated trade value of more than US\$ 50 billion. Many are well-known names such as Darjeeling tea, Bordeaux wine, Parmigiano-Reggiano cheese, and Idaho potatoes. Yet many more are less known and often unprotected.

About 90% of GIs come from the 30 OECD* countries while in most of the more than 160 other countries, very few have been developed. GIs are now increasingly perceived as an opportunity in many countries that have unique physical and cultural attributes that can be translated into product differentiation. These physical and cultural assets form the basic value-giving characteristics upon which GIs are built.

A GI signals a link not only between a product and its specific place of origin but also with its unique production methods and distinguishing qualities. A certain market credibility and authenticity are therefore implicit in many GIs. It is not surprising then that they have considerable reputations in countries ranging from France and the United States to India and Mexico. Yet, we are just beginning to understand why some are successful and others are not.

This publication explains the pros and cons of GIs and how they work. We have distilled the lessons from the published literature, nearly 200 research papers, and the evidence from eight case studies. Best practices and lessons learned are documented in a concise and accessible manner so that anyone interested in GIs can understand them and the options available to develop them.

Pros and cons of GIs

Geographical Indications are not exclusively commercial or legal instruments, they are multi-functional. They exist in a broader context as an integral form of rural development that can powerfully advance commercial and economic interests while fostering local values such as environmental stewardship, culture and tradition. GIs are the embodiment of ‘glocalization’ i.e. products and services participating in *global* markets and at the same time supportive of *local* culture and economies.

On the development side, some GIs have generated increased and better quality rural employment. They can provide the structure to affirm and protect the unique intellectual or socio-cultural property embodied in indigenous knowledge or traditional and artisanal skills that are valued forms of expression for a particular community.

On the business side, GIs are market-oriented. They often align with emerging trade demands since they tend to have standards for quality, traceability and food safety. GIs possess many of the characteristics of an upmarket brand. They can have an impact on entire supply chains and even other products and services in a region and thereby foster business clustering and rural integration. GIs capture the distinctive aspects that emerge from a *terroir* and its associated

* The majority of the Organisation for Economic Co-operation and Development’s member countries are among the most industrialized in the world.

traditional methods of production and processing that are often difficult to duplicate in other regions or countries. This differentiation from commodities can offer a valuable competitive advantage that is difficult to erode.

But it is not all a rosy picture. GIs are not easy to establish. Success on a large scale is often measured in decades and requires patient application and sustained commitment. They can have considerable costs, not just for organizational and institutional structures but also for ongoing operational costs such as marketing and legal enforcement. In some cases, without proper planning and management, developing countries could squander limited resources investing to establish poorly chosen GIs.

GIs are not a viable option in many areas, particularly those whose output lacks distinguishing characteristics. Some studies have indicated that under certain conditions, GIs can even stifle commercial innovation. Some researchers note that using GIs as a means of differentiation can benefit high-quality producers but that low-quality or the poorest producers may not benefit. Indeed, when poorly structured, GIs can be detrimental to communities, traditions and the environment.

Protecting GIs can be daunting

The implications of different protection approaches - in terms of requirements, effectiveness and costs - are not clear-cut. The lack of a single or coherent international approach, or even a common registry of GIs, makes it difficult to secure protection in different overseas markets. This is exacerbated by often fragmented, overlapping, and unclear national protection systems. The 167 countries that actively protect GIs as a form of intellectual property fall into two main groups: 111 nations with specific or *sui generis* systems of GI laws and 56 that prefer to use their trademark systems.

The major markets for GI products, including those in the EU and the United States, appreciate the validity of GIs yet their marketing and protection systems have evolved to be very different. This publication offers a clear framework for sorting out the main differences, and the opportunities associated with GIs. It focuses primarily on agri-food products and does not explicitly cover wines and spirits or crafts though many of the lessons are quite similar and can certainly be extended to them.

Main lessons and conclusions

GIs are by no means a panacea for the difficulties of rural development. They can, however, be a unique and powerful tool when adequately managed. GIs can offer a comprehensive framework for rural development since they can positively encompass issues of economic competitiveness, stakeholder equity, environmental stewardship, and socio-cultural value.

GIs are a two-edged sword and not always appropriate. There are some potentially negative aspects associated with GIs, though these are largely the result of poor design or having inadequate governance structures. For example, badly managed GIs can be dominated by limited political interests or just a few enterprises. In some cases, GIs can exclude the poorest producers or even stimulate inappropriate outcomes such as the dissolution of traditional practices or the destruction of biodiversity.

Lessons from the case studies and the literature review suggest that, for a GI to be successful, four components are essential:

1. *Strong organizational and institutional structures* to maintain, market, and monitor the GI. The core processes of: (i) identifying and fairly demarcating a GI (ii) organizing existing practices and standards and (iii) establishing a plan to protect and market the GI all require building local institutions and management structures with a long-term commitment to participatory methods of cooperation.

2. *Equitable participation* among the producers and enterprises in a GI region. Equitable is here defined as the participating residents of a GI region sharing reasonably in not only costs and benefits but also in the control and decisions regarding their public assets.
3. *Strong market partners* committed to promote and commercialize over the long term. Many of the GI market successes are the result of mutually beneficial business relations via which consistent market positioning and effective commercialization have led to a long-term market presence.
4. *Effective legal protection* including a strong domestic GI system. Carefully chosen protection options will permit effective monitoring and enforcement in relevant markets to reduce the likelihood of fraud that can compromise not only the GI's reputation but also its legal validity.

While GIs do have some private characteristics, they are intrinsically a 'public good'. They broadly affect the people and the resources of a region so it is critical that GI governance and legal protection are both structured to serve the greatest number and avoid capture by a few elites. GIs can thus serve as useful frameworks to drive an integrated form of market-oriented rural development that can facilitate equitable participation among all of its stakeholders.

Introduction

Darjeeling tea, Parmigiano cheese, Bordeaux wine, Kobe beef, Idaho potatoes, Jamaica Blue Mountain coffee, and Tequila are just some of the more popular Geographical Indications (GIs). GIs are associated with unique products that embody rich cultures and history. They can also be lucrative billion-dollar businesses and as popular as any international brand names. Yet, until now, we've known very little about these unique forms of intellectual and cultural property and their potential to provide a sustainable means of competitiveness even for remote regions of developing countries.

A number of GIs, however, do not fulfill their potential and some may even do more harm than good. Therefore it is important to understand them. How are GIs effectively created? Who benefits? What are the negatives or costly trade-offs? How are they best protected from counterfeiting and misuse?

This publication starts from the fundamental premise that, given the body of experience gained from different parts of the world, Geographical Indications may represent an important opportunity for many regions to add value to their economies and societies, not only in terms of trade and income, but in the form of cultural and environmental benefits as well. This premise is based, in part, on the extraordinary success of GIs in regions and countries ranging from France, Italy and the United States, to Colombia, India and Jamaica.

Basis of this work

To better understand the complex permutations of GIs and to test the hypothesis that GIs typically provide a broad array of benefits, the authors

researched and reviewed most of the serious research on the topic – about 200 works altogether – in order to distil the lessons from these studies and to assess the current state of knowledge about GIs. Most of the existing publications have focused on European countries and so a series of eight Case Studies in other regions were also commissioned especially for this work. They feature GIs at different stages of development and a brief synopsis of them is found in table 0.1 below.

Box 0.1 *Quick GI facts*

- ❑ *More than 10,000 legally protected GIs exist globally*
- ❑ *Together, developing countries have about 10% of the total*
- ❑ *Many more are recognized but not adequately protected*

Examination of the existing evidence leads to the conclusion that GIs can indeed increase incomes and boost competitiveness, but do not necessarily do so. This is often conditioned upon, and related to, certain distinct circumstances. So, beyond the original hypothesis, the case studies address three further questions that are important:

- ❑ What are the institutional structures and conditions that really matter?
- ❑ What are the market requirements or conditions that make a difference?
- ❑ What are the factors that enable a broad and equitable distribution of value among the stakeholders of a GI?

Table 0.1 Summary of case studies	
GI	Core elements
Antigua Coffee, Guatemala	Example of a successful GI, featuring a planned multi-year effort initiated and managed by local producer/exporter association building on historic market recognition to create a unique brand. Quality standards are high as are the returns to producers who typically experience steady year-to-year demand, even during times of market saturation.
Darjeeling Tea, India	A long-standing and well-known premium origin battling domestic and global misuse of its name with the help of state-managed bodies. It raises issues beyond the law reflecting the need for solutions at the diplomatic level and along the whole supply chain to secure adequate protection, even though getting downstream actors in the chain to comply remains a problem. Despite strong brand recognition, the origin faces productivity and labour relations challenges that its legal protection as a GI can do little to address.
Gobi Desert Camel Wool, Mongolia	A very new non-food GI, in a country with little GI experience, illustrates the challenges of well-intended efforts to build on its recognition to create a viable marketing opportunity for a poor segment of the population. Difficulties in participatory organization have resulted in only a few stakeholders grasping the rights and obligations of the GI, including the essential need for proactive management and internal-external control measures. Accordingly, they are likely to experience a delay in fully benefiting from their legal recognition as a GI.
Blue Mountain Coffee, Jamaica	Renowned origin that has built its way back from notoriety as a low-quality producer to one of the most remunerative GIs with strong state support. As the origin becomes fully established, the controls have become more private-sector oriented with the government playing more of a regulatory than commercial role.
Kona Coffee, Hawaii	Kona demonstrates characteristics of a mature GI as its reputation boosts the local economy and creates new kinds of market challenges. While not in a developing country, this GI features mostly small farmers and does produce a crop that is otherwise only produced by developing nations. The ability to leverage tourism and to vertically integrate using modern low-cost technology (i.e. Internet sales) illustrates some of the potentials and some of the difficulties of success.
Mezcal, Mexico	A relatively new GI is spread across a number of states and faces considerable opportunities within its broad geo-cultural scope and some equally difficult challenges to maintain the environmental and social aspects that have made Mezcal's recent recognition possible and earned its unique market standing. The case illustrates the difficulties of adopting lessons from local big brother GI "Tequila" as stakeholders deal with the serious environmental consequences of ramping up production levels and producers struggle to maintain socio-cultural traditions in the face of modern business demands.
Café Nariño, Colombia	An emerging origin that is well aware of the social and economic challenges of creating a new GI and is actively applying lessons from other good practice cases. It uses participatory local decision-making to ensure social inclusion and appropriate market-oriented standards. It also employs innovative technology to ensure that the GI's prized flavours do exist in all parts of the proposed area so that it has true differentiation and continued credibility in the market.
Café Veracruz, Mexico	Although established with high hopes and strong local government support, this GI illustrates how difficult it is to develop the necessary reputation of a marginally well-known origin and to get the institutional structure right. The combination of difficult rules and lack of strong market demand for a differentiated product from this region have combined to nearly negate the benefits of its Denomination of Origin.

The main objective then is to answer whether or how GIs can indeed be a value proposition for the agri-food sectors in developing countries, and if so, what is necessary in order to have GIs provide the most broad-based and equitable developmental impact. The purpose of the publication is to document the lessons learned and best practices. It explores, step by step, the issues to consider when developing or improving GIs and answers many of the most common questions that arise on the topic. The reader is also offered a number of observations and practical insights into the dominant GI systems that operate today.

Box 0.2 Common GI themes emerging from our research

- **GIs are gaining in importance.** They are valuable assets, like brands, that can play a vital role in consumer marketing and competing for a greater share of global trade. Noting the successful use of GIs in some parts of the world, more countries have started to seek out and utilize similar tools to increase their competitiveness, stimulate rural development and improve the livelihoods of their producers.
- **GIs are unique.** Trust and authenticity are implicit in GIs, making them powerful instruments in today's markets. They differentiate themselves from commodities usually in terms of both quality and price. Most fulfil particular standards and thus comply easily with the basic supply chain requirements of the world's major retailers and distributors. GIs possess many of the characteristics of quality brands with intrinsic distinctiveness that sends a message to consumers that are seeking an alternative to increasingly industrialized and homogenized agri-food products.
- **GIs are local.** Via market mechanisms, GIs recognize and support the concept of 'local'. There is evidence that the potential long-term value is not only economic (jobs, greater income, tourism) but also social in terms of the recognition of customary and value-adding traditions that convey a very local sense of a people, their history and their relationship to a place.
- **GIs make culture tangible.** The distinctions of a GI allow recognition of a tangible "product-service-place" dynamic to be shared and even traded with other cultures. In this way a GI can coalesce a human-scale exchange that represents globalization at its best by simultaneously fostering trade and also acknowledgement for things that are intrinsically local in nature.
- **GIs are not for everyone.** They must have sufficient uniqueness to facilitate commercial promotion. They require years of investments, good management and structured legal protection to succeed. Even then, they may not benefit the poor very much.

Focus and target audience

This publication explores the development potential for countries wishing to use GIs, outlines the elements of a successful GI strategy, and examines the different mechanisms available for protecting and fostering new GI products and services. As such it will primarily appeal to audiences of policymakers, producer groups, and development agencies in a broad range of countries. It will also interest researchers and academics in the international development, legal, and trade fields, as well as non-governmental organizations (NGOs).

The primary focus here is on agri-food products. Wine and alcohol are, for the most part, beyond the scope of this document since the law and protection for these categories of GIs are somewhat different and their commercial structures often better developed than for agri-food products. However, the lessons and general approaches are quite similar. The scope of this book is focused more on developmental rather than strictly legal aspects, except to explain the legal systems operating for GIs. Wherever possible plain language is used to avoid legal jargon and technical language; there is a Glossary succinctly explaining all of the uncommon terms.

There already exists a considerable body of analysis on international agreements, legal systems, and a history of debate on the basis or rationale for GIs.¹ This publication delves into these areas but does not aspire to add to the theoretical body of work. Instead, it concentrates on discussing the practical aspects of GI development and GI impact in light of the evidence for and against them.

¹ See for example: Sylvander and Allaire 2007, Josling 2006 Barham 2003; OECD 2000.

The vast majority of the existing literature on the subject deals with the experiences of the more developed economies, particularly Europe. Very little explores the GI situation in developing parts of the world, indicative perhaps of the fact that only about 10% of the world's legally recognized GIs occur in developing economies.² Nevertheless, it should be of interest that a number of these (e.g. Tequila, Basmati rice, Colombian coffee) have achieved global recognition and very considerable market power. So, what lessons can we derive, particularly for developing economies, from the existing literature and our own case studies? What are the success factors? How long does it take? Who benefits? How was it done?

2 Notable exceptions include the work of Ranaboldo, Rangnekar, Bowen, van de Kop, Sautier, and Gerz.

Chapter 1

Geographical Indications (GIs) – definitions and overview

What is a GI?

Most of us know of many products that represent a GI and yet may not be aware of their ubiquitousness. They range from Champagne, Scotch whisky, and Port wine to Idaho potatoes, Roquefort cheese, and Kona coffee. All are registered Geographical Indications (GIs), sometimes called appellations, that represent a very successful form of differentiation and competitive advantage in today's markets. GIs are a unique expression of local agro-ecological and cultural characteristics that have come to be valued and protected in many countries throughout the world. Besides the well-known GIs from more developed regions, there are also a number from developing regions such as Darjeeling tea, Aranyik knives, Basmati rice, and Pisco liquor. However, not all GIs are popular or successful.

There is no universally accepted definition of a GI, but this description, derived from international agreements,³ best captures the universal spirit of the concept:

A Geographical Indication identifies a good as originating in a delimited territory or region where a noted quality, reputation or other characteristic of the good is essentially attributable to its geographical origin and/or the human or natural factors there.

In most cases, GIs have been formally used and accepted as such in trade and in legal records. They may be registered or protected in different forms; these can include formal *sui generis* systems, trademarks, certification marks, collective membership marks, and denominations of origin.⁴ Sometimes, they are not formally protected and may be recognized due to accepted common use. In many cases, certain GIs are protected in one country but not in another or the forms and scope of protection are often different from country to country. For example Feta and Champagne are protected in the European Union but not in the United States where the words can be used generically.

GIs are not exclusively commercial or legal instruments. They exist in a broader context as an integral form of rural development that offers a valuable framework for powerfully advancing commercial and economic interests while potentially integrating local needs that are anchored in cultural tradition, environment and broad levels of participation. GIs may be as close to a comprehensive, equitable and market-oriented rural development package as we have seen.

A GI is a unique and important form of collective intellectual and cultural property, with various rights. The right to the exclusive use of a name, which typically defines a specific geographic (or sometimes cultural) area, is given by

³ TRIPS and Lisbon Agreements.

⁴ Protection is sometimes also available via administrative rulings or even under generic laws on unfair competition, truth in labelling, or consumer protection.

the State to regional producers and processors of particular products for their use only in relation to those products. It is expected that there is a direct link between the distinguishing characteristics, cultural aspects or the quality of a product and the place of origin or geographic area. Hence, the GI is a device that signals a set of unique qualities or attributes to consumers.

The term “Geographical Indication” has been around for many decades, but it is really since the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) entered into force in the mid-1990s, that it has come into common use. The TRIPS Agreement, Article 22, paragraph 1 contains the following description:

Geographical indications are, for the purposes of this Agreement, 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 geographic origin.

For details of other definitions, agreements, and laws relating specifically to GIs in a number of countries see chapters 3 and 4.

Although there are many products that have long been distinguished by their geographic origins, a product or service may be described and designated as a GI only where specific aspects of that geography contribute to its uniqueness, often in the distinctive characteristics and processing associated with the local culture and tradition of its place of origin. Some GIs, such as Basmati (Indo-Pakistani rice) and Feta (cheese from Greece), may be from a particular place but do not use direct geographical names.

A simple geographical name merely noting the source of origin in order to comply with customs regulations, including labelling such as “Made in Indonesia” is not necessarily a GI that can be protected. Watches and chocolate from Switzerland are notable exceptions. They serve to illustrate that in order for an indication to function as a GI, it must communicate that the product from the noted region also has a particular quality or a particular reputation, thereby creating a link between some characteristic of the product and the particular region where it was produced.

According to the World Intellectual Property Organization (WIPO) an “indication of source” simply means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place, whereas “appellation of origin” (or GI) means the geographical name, “...which serves to designate a product originating therein, the characteristic qualities of which are due exclusively or essentially to the geographical environment ...”.⁵ Most source indications therefore do not constitute a GI. See box 1.1.

5 WIPO 1998, p. 115–116.

Box 1.1 **Untangling the terminology**

Two international agreements (*Paris Convention for the Protection of Industrial Property* and the *Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods*) use the term **indications of source**. Neither gives a formal definition, but the language used in the latter Agreement makes clear that an indication of source is more general and refers simply to a country, or location in that country, as being the place of origin, e.g. French wine or Thai rice. They are not GIs.

Put simply, a **geographical indication** is a sign used on goods which have a specific geographical origin and possess particular qualities or a reputation due to that place. The term was introduced in the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*.

Appellations of origin are also geographical indications and predate them. They are defined in the 1958 *Lisbon Agreement* as the geographical name of a country, region, or locality, which designates a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors. The term “appellation” is sometimes understood as narrower than “indication” but is used increasingly less as one of its key distinctions, the concept of “human factors”, becomes an accepted part of what is considered a GI.

Source: WIPO Magazine 2007: adapted with changes.

Why are GIs popular?

GIs are perceived to offer a wide range of opportunities that go beyond the economic and beyond the interests of their producers at origin. Like trade standards, GIs provide certain information and offer a guarantee. From a consumer’s point of view, GIs signal important characteristics that may not be obvious or evident by simply inspecting the product. For example, consumers cannot easily determine the qualities of a wine, or its production process, or whether a cheese is made according to a traditional method.⁶ A GI confirms a link not only between a product and a specific geographic region, but usually also with unique production methods, characteristics or qualities that are known to exist in the region.

Consumers clearly have an interest. A United States consumer survey in 2005 noted that for 72% of respondents the geographic characteristics such as soils do influence the taste and quality of foods.⁷ A large 1999 EU study of 20,000 consumers on the purchasing of GI products found that the primary purchase motivation for 37% of the respondents was the guarantee of origin, for 35% it was the expected quality, for 31% it was the particular place the product came from and the method of production, and for 16% it was tradition.⁸ Furthermore, 51% of the respondents (statistically equivalent to about 180 million people in the EU) were willing to pay between 10% and 20% more

6 Economists classify products as search, experience and credence goods. Search goods are those where consumers can determine selected quality characteristics prior to purchase (e.g. inspecting apples in the store). Experience goods are those where selected quality characteristics or attributes can only be determined upon consumption (e.g. wine or frozen peas). In the case of credence goods, certain quality characteristics or attributes cannot be determined even after the product has been consumed (e.g. whether a banana is organic or meat came from animals treated with hormones). If there is a credible link between a GI and quality characteristics or attributes, then experience or credence goods may become search goods. See Hobbs (1996) for an accessible discussion of search, experience and credence goods.

7 DeCarlo, Pirog and Franck 2005.

8 See Berenguer 2004 for a report on the study.

for a GI than for a similar non-GI product. The results of surveys on willingness to pay may not necessarily translate to consumers actually paying at the market so they should be interpreted with caution; but these do confirm general perceptions that consumers either prefer or do pay more for many GIs.

GIs can reduce the asymmetry of information between producer and consumer and thereby provide a public benefit by improving market transparency and reducing information costs.⁹ This also serves as part of the rationale for the legal protection of GIs (see section below: “Why protect Geographical Indications”).

For **producers**, GIs convey unique characteristics that allow them to distinguish their products and break out of the commodity trap of numerous similar and undifferentiated products trading primarily on price.¹⁰ GIs may also provide a measure of protection for the intellectual or cultural property of a particular group or place and, as such, can contribute to a unique and not easily assailable form of competitive advantage.

For **rural areas**, GIs can provide part of the physical and conceptual structure for affirming and valuing the unique socio-cultural and agro-ecological characteristics of a particular place. They also tend to have positive spillover effects in terms of improving the reputation of a region, influencing other products in the region, and fostering tourism. As markets and rural policy increasingly come to grips with local products and local values, GIs can sometimes provide the necessary framework for the discussion and management of such processes.¹¹

Certain **regions and countries** have been very successful in boosting the incomes of their farmers, processors and suppliers by capitalizing on the advantages they have of being associated with a particular geographic location. Such distinctive and world-famous products as Cognac, Parmigiano-Reggiano cheese, Jamaica Blue Mountain coffee, Scotch whisky, and Florida citrus bear the unmistakable stamp of their region or place of origin. They are identified in many consumer markets and in regulations as GIs.

These regions or places, and their participants, have benefited from significant economic development by increasing the returns gained from utilizing their natural resources and establishing a solid form of competitive advantage. Many GIs have come to be especially valued in the global marketplace. While a total of 167 countries are now protecting GIs as a form of intellectual property, and a substantial number have registration processes in place, such Intellectual Property (IP) systems are relatively new to many developing countries and may differ from one to another.

GIs can be the organizing principle or centrepiece of regional and local development initiatives. For example, in recent years, the European Union has made exploitation of the marketing potential of GIs an important element of its agriculture and rural development strategy; and has expanded the number of products that have a recognized GI status. Today about 6,000 GIs are recognized in the EU alone¹² and the European Commission claims that the strategy has met with considerable success.¹³

9 Josling 2006b, and Sylvander and Allaire 2007 offer a more thorough discussion of the public policy motivations.

10 See Gordon et al. 1999 for a more thorough discussion of commodities versus differentiated products.

11 See Giovannucci, Barham and Pirog 2009 for a more thorough discussion of local products and GIs in the United States.

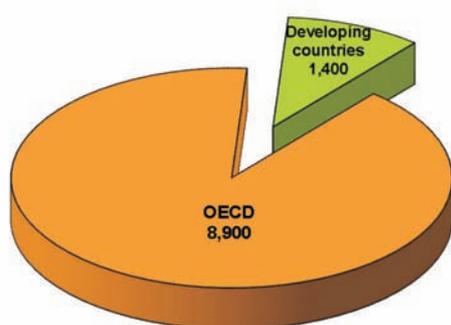
12 The EU leads other regions in this area of intellectual property protection. Wines and spirits are the most developed and account for about 85% of protected GIs there.

13 European Commission 2003.

A global overview of GIs today

While many thousands of products with the potential of being distinguished by a GI already exist, a recent study surveying the laws in 161 countries notes that only a small number of products actually are legally protected.¹⁴ Most of these are in OECD countries and the vast majority are wines and spirits. Although most of the protected GIs occur in the more developed regions, there are many in the developing parts of the world.

Figure 1.1: Relative number and distribution of Geographical Indications



Source: Author update of data from O'Connor and Kireeva.

The best-known products with a strong link to developing origins represent only the tip of a considerable number of potentially marketable GI products. They include Mexican Tequila, Darjeeling tea, Pampas beef, Tellicherry pepper, Café de Colombia, Basmati rice, Rooibos tea, Antigua coffee, and many more with formal protection. However, many lesser known origins are not formally demarcated or legally recognized and protected. Currently, only a modest number of these have significant economic value and their identification as potential GIs does not necessarily imply that they would enjoy market success, particularly in more developed markets. Figure 1.1 illustrates that most of the 10,300 GIs exist in the more industrialized nations of the OECD.

Economic value of GIs

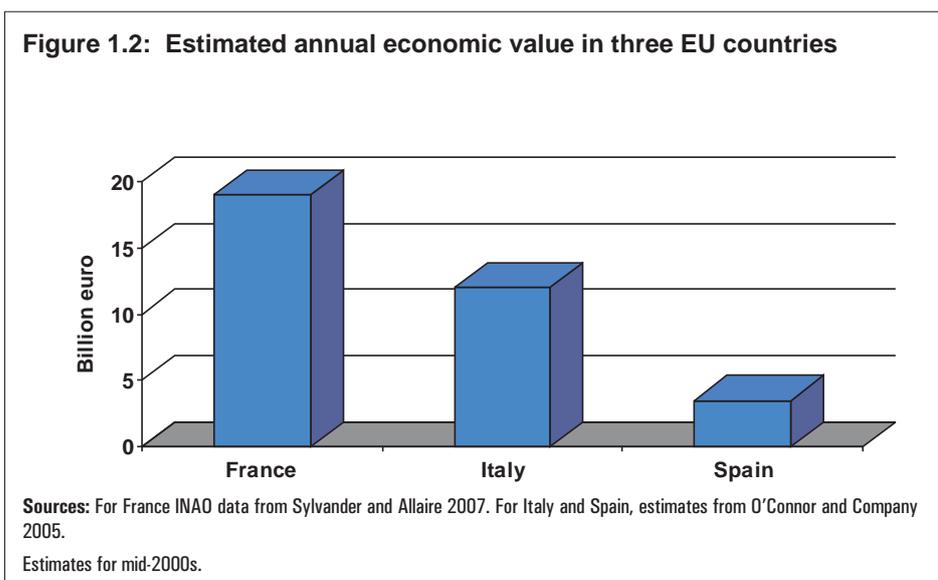
The market for GI products is significant, especially in the United States, Europe and the more affluent countries. The estimated value for sales of GI products worldwide is well over US\$ 50 billion. The majority of that is for wines and spirits. A number of countries, ranging from Scotland to Australia and China to Chile have GI exports in excess of US\$ 1 billion. Unfortunately, there are very few comprehensive estimates for the distinct origins but data for France suggest that the market value for their GI products is almost €19 billion, or close to 10% of the national food market's total value.¹⁵ Italy's 430 GIs generate a value of some €12 billion and employ about 300,000 persons, while Spain's 133 GIs generate approximately €3.5 billion.¹⁶ GIs in seven other EU countries generated added value of about €5.2 billion annually, or 10% of the Common Agriculture Policy (CAP) budget in 2004.¹⁷

¹⁴ See O'Connor and Kireeva 2007.

¹⁵ Sylvander and Allaire 2007.

¹⁶ O'Connor and Company 2005.

¹⁷ Rondot, Collion and Devautour 2004.



Economic data on developing countries is harder to obtain, but some estimates do exist. For example, Basmati rice exports in 2007 were about US\$ 1.5 billion from India alone and Pakistani exports in 2001 were US\$ 250 million.¹⁸ Tequila's export sales were estimated at US\$ 725 million in 2007¹⁹ and Blue Mountain green coffee earned US\$ 24 million for Jamaican exporters in 2008.²⁰ A number of coffee and tea origins using GIs add several billion dollars to the trade figures.

Distribution of protected GIs worldwide by country and by product category

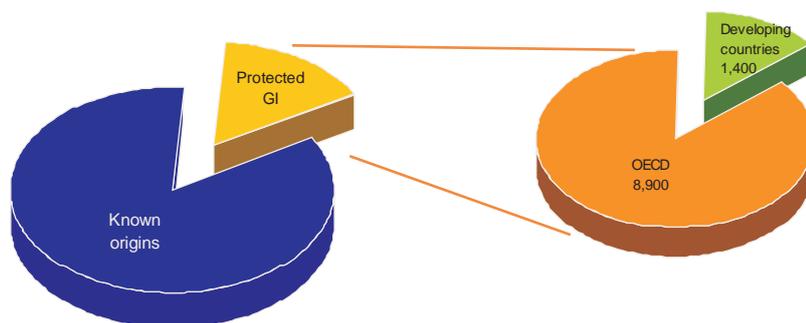
Given the strongly evolving consumer preferences that are simultaneously seeking diversity and the assurance of value and quality, considerable opportunities are likely to emerge for new GIs. For example, even though Cambodian Kampot pepper, Moroccan Argan oil, Nicaragua's Chontaleño cheese, and Rooibos tea from South Africa may not yet be formally protected in other countries, the market already recognizes and rewards them nonetheless. Figure 1.3 graphically illustrates the untapped opportunities that may exist with known product-origin combinations in relation to the number of currently recognized and protected GIs.

The EU has the greatest number of GIs of any region (see table 1.1). While most of these are for wines and spirits, an increasing number are being registered for food and agricultural products (see table 1.2 and figure 1.4). Currently there are several hundred agri-food applications pending in the EC. Most of these are PDOs and PGIs, but more than 30 applications are for Traditional Specialty Guaranteed (TSGs), mainly from the Slovak Republic, Poland and Slovenia. These do not technically have GI status, though many originate in specific regions, but they also serve to support local traditions.

18 Watal 2001 for Pakistan and for India: *Economic Times* on 7 January 2009: <http://economictimes.indiatimes.com/articleshow/msid-3944739,prtpage-1.cms>.

19 Mexico Ministry of Economy, 2008.

20 Personal communication from Christopher Gentles, Director General of the Coffee Industry Board to Daniele Giovannucci on 18 January 2009.

Figure 1.3: Possible GIs relative to those currently protected

Sources: Author update of O'Connor and Kireeva for OECD and developing countries and author estimates of known origins from diverse sources.

Table 1.1 Countries with the largest number of protected GIs

Nations	Total	Composition
European Union	6 021	5 200 wines-spirits, 821 foods
United States	910	730 wines, 100 spirits, 80 foods
Switzerland	682	660 wines-spirits, 22 foods
New Zealand	600	550 wines, 50 foods
Australia	427	Wines
China	403	Foods mostly, 23 wines-spirits and other products
Russian Federation	223	One-third foods, two-thirds other products
South Africa	174	169 wines, 5 spirits
Canada	109	59 wines-spirits, 50 agri-food products
Turkey	107	More than half are foods, the rest are wine-spirits and other products
Chile	82	80 wines-spirits, 2 foods
India	45	Foods and other products, no wines-spirits
Cambodia	36	Foods and other products
The former Yugoslav Republic of Macedonia	25	Wines
Cuba	19	Other products
Japan	16	9 foods, 5 wines-spirits, 2 other products
Morocco	16	All wines
Mexico	11	Foods, wines-spirits and other products
Thailand	10	Foods
Georgia	10	8 wines and 2 other products

Sources: O'Connor and Company; Irina Kireeva; Erik Thévenod-Mottet; Wang Xiaobing and various government sources.

The terms "other products" can include craft goods, mineral waters, textiles, tobacco products, and even industrial products such as porcelains.

Most data obtained from official sources (registers) for 2007–08. Some may not be fully updated and efforts have been made to clean data and eliminate duplications that appear in registers (multiple registries, foreign registrations, or separately registered translations).

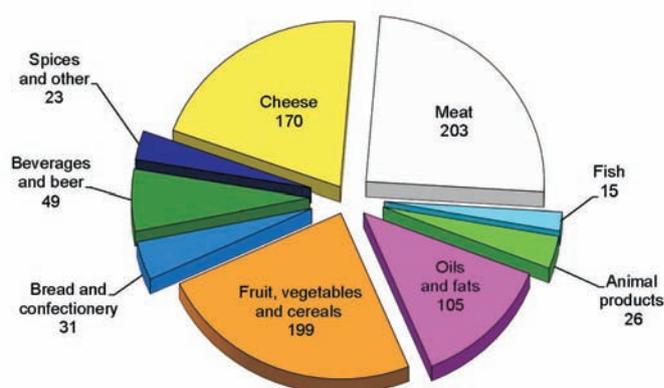
Because of the different methods of registration and the lack of a central registry, it is difficult to assess accurately the actual number of GIs in many countries. In some cases, such as in the United States, a number may be protected as trademarks and cannot be readily distinguished from marks that are merely source indications and therefore do not constitute a GI. In others, such as China or the EU, different systems overlap or coexist and totals are not easy to ascertain.²¹

Country	Number
Italy	174
France	162
Spain	119
Portugal	114
Greece	86
Germany	66
United Kingdom	30
Czech Republic	17
Austria	13
Belgium	7
Netherlands	6
Ireland	4
Luxembourg	4
Slovakia	4
Poland	4
Denmark	3
Sweden	2
Finland	2
Slovenia	1
Cyprus	1
Hungary	1
Colombia	1
TOTAL	821

Source: European Commission: K. Hyvonen, January 2009.

List includes all registrations under EC regulations and may not include some individual products recognized at the individual country level.

Figure 1.4: Categories of agri-food GIs in the EU



Source: European Commission: K. Hyvonen, January 2009.

²¹ Several EU countries have separate national recognition of certain GIs – particularly wines – along with their EC-wide systems.

While many GIs are marketed globally, the largest markets are the European Union and the United States. There are a number of conceptual differences between these two main markets. The EU views the GI as a sign of quality and a way of preserving traditional agricultural regions, and their raw materials and methods by fostering a “quality rather than quantity” trade orientation that helps consumers recognize and value the particular characteristics of their choice.²² This results in a multitude of smaller individual GIs with claims to unique characteristics or particular qualities. They coexist with many large-scale GIs in the EU.

The history of GIs in the United States shows a somewhat more product-oriented application, primarily as a marketing tool with which to recognize and reward producers and quality production. Many of the most popular agri-food GIs in the United States are wide-reaching and even state-wide in scope (e.g. Idaho potatoes) and serve as a market identity for what is often a large-scale level of production (e.g. Washington apples and Florida citrus). Notable exceptions include Kona coffee and, arguably, a number of wines from American Viticultural Areas (AVA).²³ There has been less focus on the development of diverse or distinct rural areas. However, recent interest in local foods has triggered a number of new and mostly small scale initiatives including the Missouri Regional Cuisines Project that promotes local cuisine and culture via GIs.²⁴

Why GIs need protection

As it becomes more popular, a GI takes on value just like any familiar brand. For producers, a GI helps to confer uniqueness or differentiation, and can be used to grant a measure of protection to what has essentially evolved to represent a brand name for their product. Besides the value of legal protection, GI status can ostensibly reduce the information problems faced by consumers when product characteristics are not readily evident.²⁵

While imitation may be flattering to some, for many GIs such fraud is costly in terms of their reputation and their income. Since there are often attempts to “free-ride” on their reputations by using the same or similar names, GIs require adequate means of protection. Yet, the implications, or the pros and cons, of different protection approaches are often unclear. Therefore, the requirements, effectiveness and costs must be properly assessed before determining the most appropriate course of protective action (see chapter 6 for more details).

Wines and spirits, the most common GIs, are reasonably well protected by special provisions in national systems and international accords, particularly the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement of the WTO (World Trade Organization). However, for food and other agricultural products, legal protection is less certain and less well understood. Some of the political and economic reasons for this are obvious but that discussion is beyond the scope of this work. Sorting out the main protection

22 See Goldberg 2001 and also Babcock and Clemens 2004.

23 In the United States, there are politically demarcated appellations of origin for wines that cover states, counties or regions, and there are more specifically defined regions that are characterized by actual growing conditions and known as American Viticultural Areas (AVAs). By mid-2007 there were 188 AVAs. More information is available at: <http://www.ttb.gov/appellation/>.

24 Giovannucci, Barham, Pirog 2009 and also Barham, Lind and Jett 2007.

25 Josling 2006b; Kerr 2006.

options is a key objective of this publication; it purposely focuses on the less well-protected agri-food sectors rather than explicitly covering wines and spirits, though many of the lessons learned are similar.

Fragmented, overlapping and nebulous systems of protection, combined with the lack of a single or common coherent international approach, or even a registry, make it difficult to secure protection in overseas markets. Securing legal protection in the major markets such as the United States and the EU typically requires using different regimes with diverse requirements. Similarly, a variety of different terms such as marks, certifications, denominations and appellations are used in intellectual property discussions. However, it is not always clear how to distinguish which of these terms is most relevant, and how to apply them appropriately, since some are used interchangeably and others only with certain products, or in certain parts of the world.

Of the 167 countries that protect GIs as a form of intellectual property, 111 (including the EU 27) have specific or *sui generis* systems of GI laws in place.²⁶ There are 56 countries using a trademark system, rather than or in addition to specific GI protection laws.²⁷ These countries utilize certification marks, collective marks or trademarks to protect GIs.

GI protection ideally keeps control within the region's public domain and protects the individuality of the GI. However, since protection systems vary from country to country, some of the choices available for GI protection can potentially put a public asset into the exclusive control of just a few private hands. Both of the largest markets for GI products, the EU and the United States, appreciate the validity and purpose of GIs. Yet protection systems have evolved quite differently in these regions, a process reflected in their differing approaches to protection. Publicly oriented or *sui generis* systems of GI protection can be bureaucratic but tend to conceive of GIs as a public good and thus cover many of the costs associated with securing and enforcing their protection. Privately oriented systems, such as those that rely primarily on trademark law for GI protection, can be more accessible and responsive but the responsibility and costs, especially for detection and enforcement, are borne by the GI itself.

The protection of GIs requires more than the legal protection of geographic names. For many, there is an interdependent association between the product, its place of origin and its quality. To be effective in the long term, evidence of this must be preserved throughout the supply chain. The issue of GIs must therefore be addressed holistically as complete systems operating together with the business, policy and regulatory regimes that support them.

Much of the effort behind the development of a GI is in the civil or private sector. Organization, structure, and the management of certification controls and marketing can be largely a private undertaking. The role of government is essentially to provide the legal framework to prevent fraud and deception so that the market for a GI can operate for the benefit of both consumers and the participants in the region of origin (producers, processors, traders, ancillary industries, related tourism, etc.). In some cases, more active government participation may be necessary and warranted if there is a 'public good' rationale.

²⁶ *Sui generis* is the Latin expression, literally meaning "of its own kind" or "unique in its characteristics". In Intellectual Property law this expression is mainly used to identify a legal classification that exists independently of other categorizations due to its uniqueness or the specific creation of an entitlement or obligation. In the EU, the system revolves around two protocols: Protected Designation of Origin (PDO), and Protected Geographical Indication (PGI).

²⁷ See appendix II for more details.

That justifiable rationale for government intervention may exist when a region is unable to develop or protect its unique assets as a public benefit.

One noted scholar, Stanford University's Tim Josling, states:

“So public authorities may need to do more than provide legal remedies for deception: they may need to establish a registry, define quality standards and take steps to protect the reputation inherent in the GI from devaluation. In either case “protection” of the GI is essentially a public policy, but the responsibility for quality maintenance can be assumed by the public authorities or left to the private sector.”²⁸

Legal status for a GI is not always granted easily. Importing countries have no obligation to accept, register, or offer legal protection to a GI if it does not meet their legal criteria. In theory, the acceptance of a GI should **meet consumer needs**, such as helping them make a better-informed choice, and **protect private interests** without compromising public ones. Many countries, particularly in the “New World”,²⁹ are also keen to protect domestic industries that have evolved using names of (previously unprotected) GIs from other regions. Such private rights have often been granted in the form of trademarks and are not easily rescinded.

Some food companies, particularly in countries with a considerable European immigrant population such as Australia, Canada, the United States, and parts of Latin America, would probably find a global system of Geographical Indications somewhat troubling.³⁰ In these regions, European place names were often borrowed to promote similar but locally-produced products. In the United States, as well as some other countries, a number of such place names have been treated as generic and/or have been trademarked, and would be adversely affected by a formal system of recognition of the initial origin.

When certain product or place names are protected in one country but are in free and common use in another, disputes invariably arise. Popular products such as Basmati rice, Feta cheese and Port wine are among those that face this issue – they are protected at home but not necessarily abroad.³¹ In such cases, some countries can claim these products have attained generic status in the marketplace and do not therefore belong exclusively to a specific geographic location or group of producers. One result is that the name “Feta” while it is protected in its home territory, the EU, as a particular Greek cheese, it can however be sold freely in the United States market from a variety of different non-Greek origins ranging from Denmark to Wisconsin. It is thus possible for the originators of the product to lose the rights to defend their name, product or process in other countries if it is not registered and consistently defended there. In fact, global debate on this very subject has reached something of an impasse, so far hindering the achievement of a stronger international agreement or a common registry for GIs.

Without strong and enforced property rights, GIs can lose their association with a geographic area in the minds of consumers. Not only do competitors outside the geographic area imitate products and then fraudulently sell them as authentic, even producers within the geographic area sometimes offer products (in some cases sub-standard) that can erode the quality association in the minds of consumers. This can be the case with Port, for example, in markets where the

28 Josling 2006b, p. 4.

29 The Americas and Australia.

30 Barham 2003.

31 The PDO Feta is recognized as Greek under EC law as a traditional place-related name even though there is no specific geographical place called “Feta” in Greece. For more information see O'Connor and Kireeva 2003. Basmati is protected in its Indian origin.

GI has not been given legal protection. In these markets, Port is often associated merely with a style of fortified wine rather than the Oporto area of Portugal to which the GI “Port” is attached.

One of the worst fates to befall a GI is for it to become a common or generic name in some markets.³² England’s cheese from Cheddar and Yemen’s Mocha coffee are good examples of where association with the original geographic location has been universally lost.³³ Other examples are India ink, Chinaware, Worcestershire sauce, Kiwi fruit, Gouda and Swiss cheeses³⁴. For a GI to be successful, the enforcement of legal protection is an absolute necessity, and this requires resources.

Furthermore, once a name becomes generic, any attempt to reclaim it by seeking the recognition of a legal GI, a process called ‘claw back’, is likely to be strongly resisted, given the vested interests of firms that routinely use such terms in their marketing to sell feta, china, cheddar, kiwi, etc. A measure of consumer utility could be argued for immigrants to have the right to use their ancestral names and words when they emigrate.³⁵

Some of the international tension that currently exists regarding GIs pertains to what product ‘claw backs’ can apply. Both the European and the United States courts recently upheld protection against usurpers using the name “Darjeeling” because of its clear association and ongoing protection efforts by the original owner (Tea Board of India). Similarly, though the designation of the origin “Swiss” is not protected for cheese in many countries, several countries, including the United States, protect it for chocolate, in part because of the ongoing protection efforts of the Swiss themselves. By contrast, when a name has not been actively defended or has become somewhat disassociated with a particular location, courts are less likely to uphold its protection.

The first step on the path to legal protection is usually taken in the country of origin. If there is not a sufficiently strong local rationale to warrant protection, it is difficult to secure in other countries. In some cases, the reasons put forward for protection might be particular measurable properties and characteristics or combinations relating to elements of the soil, water, altitude, temperatures, and even the amount of luminosity which are relatively unique to the geographic area and lead to the unique qualities of a product. The granting of legal status to Geographic Indications, however, is not limited to such aspects of physical geography. In some cases, reasons may be less tangible, such as reputation. Cultural geography can also lead to the association of unique or superior quality with a particular geographic area. This often relates to traditions or particular skills or talents possessed by certain residents in the area.

32 Vivas-Eugui and Spennemann 2006.

33 Kerr (2006) reports there are no major cheese producers in or around Cheddar, England – suggesting the geographic association now has no value that can be captured by locating in Cheddar. Giovannucci (2005) notes that Yemen lost its connection to the popular “Mocha” or “Moka” identifier that was popularized because its unique coffees were shipped from Yemen’s port of Al-Mokha. This occurred before international protection of the name was a viable legal proposition.

34 Although a number of “Swiss” cheeses are registered as GIs, these are recognized in Switzerland only, and there are PDOs for Noord-Hollandse Gouda and West Country farmhouse Cheddar cheese that are respectively neither in Gouda or Cheddar. See also Rangnekar 2004a.

35 Personal communication with Justin Hughes received 27 October 2007.

Given that ‘value’ is subjective by nature, a grey area exists where quality differences cannot be measured in any objective way. In terms of a GI, this means that it is not necessary to demonstrate an actual physically measurable difference in the product to have legal protection granted. For example, Article 22.1 of the WTO’s TRIPS Agreement, which is the primary multilateral instrument governing GIs, defines them 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 geographic origin (emphasis added).

The “*other characteristic*” can be one or more of such attributes as colour, texture and fragrance.³⁶ Reputations can come about through word-of-mouth based on the experiences of consumers, and they can also be created by skilful marketing. This suggests that even without any currently recognized premium being attached to a product from a particular geographic area, that extra value can be created in the minds of consumers – in the same way as brand names are promoted to add value to products. In the case of GIs, however, a valued reputation or at least a noted association would typically have to be evident before protection as a geographical name could be granted. The United States, for example, does require reputation to be proved for a certification mark to be registered.³⁷

Though a group of producers in a particular geographic area may think that having a GI would be a good marketing idea, it does not mean that their GI will be recognized in the marketplace. As far as reputation is concerned, there is no clear measure as to when sufficient reputation would exist for a GI to qualify for protection. In many cases, geographic areas and their associated products initially have local or national recognition but little, if any, outside recognition among consumers.³⁸

In recent years, there has been growing interest in whether GIs can be enlisted to preserve traditional or cultural knowledge. Locally unique farming techniques, food preservation methods, processing procedures, additives, packaging, etc. can all impart differentiation, to which consumers attach value. While technically not a GI, the less-used EC quality designation, Traditional Specialty Guaranteed (TSG), requires the product name to express specifically the character of the food or product, and it must be traditional or established by custom.³⁹ Historically, many of the strongest cases for a GI involve a product-altering interaction between physical and cultural geography. It is rare to find legal designations for such traditions or for local foods elsewhere. The United States, that is undergoing a visibly renewed interest in local foods and traditional production, does not yet have adequate systems that lend themselves to such use and consumers are left, as they are in most countries, on their own to ascertain the authenticity of such products or their origins.⁴⁰

³⁶ Vivas-Eugui and Spennemann 2006.

³⁷ In the United States marks using geographic terms are required to prove “acquired distinctiveness”. A brand or trademark can be registered and granted legal protection before any reputation is created, though most governments will not grant private title to a public place name unless it forms part of that private entity’s identifying marks, such as “Yorkshire tea”.

³⁸ In India, for example, Rangnekar (2004) mentions Sambhalpuri cotton, Alphonso mangoes, Pochampalli silk, Feni, Wyanadan turmeric and Multani Sohan Halwa, among others.

³⁹ Authorized by EC Council Regulation 509/2006 of 20 March 2006 on agricultural products and foodstuffs as “Traditional Speciality Guaranteed”.

⁴⁰ Giovannucci, Barham and Pirog 2009.

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), goes to great lengths in its papers to describe how existing IP tools can be used to protect Traditional Knowledge⁴¹. O'Connor also offers an overview of this emerging area of intellectual property law,⁴² and according to Escudero, the most important "...category of intellectual property right that may be directly applied to the protection of traditional knowledge is that of geographical indication".⁴³

41 Sophia Twarog personal communication April 2007.

42 O'Connor 2003.

43 Escudero 2001, p. 34.

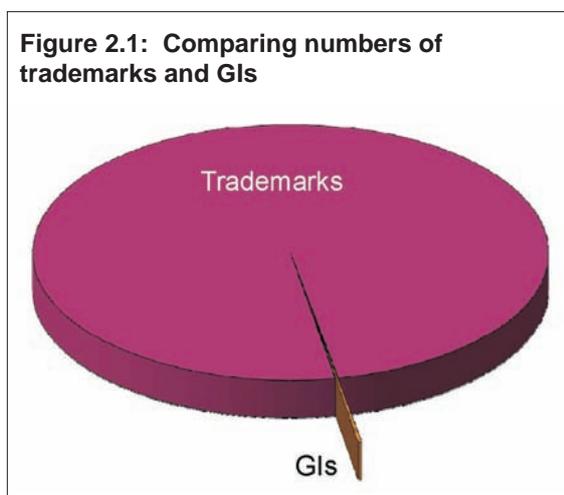
Chapter 2

Valuing GIs: their pros and cons

Are GIs worth pursuing?

The available evidence presented here, and in other papers reviewed but not cited for this book, indicates that GIs have clear and positive characteristics that can make them valuable assets for any country. Yet, they are not an easy achievement and in some situations, they simply are not feasible. If they are not at least a commercially viable proposition then producers will not be interested. Josling⁴⁴ and other experts caution that pursuing a GI strategy will not be the optimal answer in a number of cases.⁴⁵ In other words, resolving many business and rural development issues will require other, more basic, interventions ranging from institutional or organizational strengthening to quality or food safety practices. In some cases, the returns may not warrant the substantial investments required for a GI.

Figure 2.1: Comparing numbers of trademarks and GIs



Successful GIs, like any valuable brands, are limited in number and not easy to achieve. Like trademarks, only a small proportion of them has actually reached significant economic importance. Today's 10,000 GIs would represent less than 1% of the more than 6 million trademarks that are active worldwide.⁴⁶ GIs are clearly not an easy attainment. Creating and sustaining them is a long and resource-intensive undertaking, as noted by Kerr (2006), and confirmed by all of the Case Studies commissioned for this work.

Commercially successful GIs do not simply arise. There are some pre-conditions and they require a well-thought out strategy and resources to execute the strategy. There is no 'one-size-fits-all' approach. Protecting GIs is a vital element in this process of developing them but it is clearly not sufficient for ensuring their success. An enabling environment is also important, as Belletti and Marescotti report, the political, social, and competitive factors that can typically influence sectors will also have an impact on GIs.⁴⁷ Although protection of local names is part of a useful strategy, it may be more valuable to develop appropriate levels of quality, consistency of supply, and credible assurance systems such as those embodied in standards and traceability.⁴⁸ In the absence of the factors necessary for a successful GI (see chapter 6 for more on these), developing business or supply chain competitiveness and simply

44 2006b.

45 See Broude 2005 and also Rangnekar 2004.

46 Escudero 2001.

47 Belletti and Marescotti 2006.

48 Villalobos et al. 2008.

protecting their identity using collective marks or trademarks can be effective and even more flexible.⁴⁹ Sometimes, the scarce resources in many countries may be better targeted toward development strategies other than GIs.

GIs are not a magic potion, but they are certainly a powerful tool. As such, there are better ways, and worse ways, to approach and apply them. If poorly or carelessly applied, they can have negative impacts. However, if thoughtfully managed, they can deliver many benefits particularly to regions that may not otherwise easily realize the inherent potential in their latent geo-cultural assets. That, perhaps, is one of the finest features of GIs: that they are a mechanism by which a place and its people can come to realize and bring to fruition a unique and valuable asset that is already there.

Control of the GI by the owner creates value that is realized as consumer demand and preserved via certain rights.⁵⁰ GIs can manifest as private rights of an owner when protecting a specific product-place combination. However, they are also typically considered a public good because the resident persons and enterprises of a specific GI region garner multiple shared benefits – even if they are not direct producers – while consumers may also benefit from the distinction and protection of a GI. See table 2.1 for basic benefits or harm that trade partners can experience with a GI.

Table 2.1 How GIs can benefit or harm	
Consumer benefits	Owner benefits
Higher quality and unique products for consumers available and encouraged	Higher prices for producers
Conveys messages and minimizes “search costs”	Protection of local tradition and cultural practices
Producer or manufacturer liability more easily determined and secured (traceability)	Market for differentiation and exclusivity
Can provide a means by which universal values (cultural, traditional, environmental) may be preserved via market mechanisms	Positive local externalities including better employment, rural development, governance, etc.
Consumer harm	Owner harm
Exclusivity may elevate costs	Higher costs of production
May reduce innovation or improvement	May reduce innovation
Public GI systems increase public costs of governance	Likely to require greater local governance and institutional capacity and costs
May reduce competition and increase protectionism	If not state-run, will elevate costs of legal protection

Understanding the costs and benefits of GIs

Producer groups or governments must first consider several economic and socio-political issues in deciding whether to undertake a GI recognition process and then which particular GI mechanisms to use or pursue. The costs of developing a GI extend far beyond the direct costs of actually filing for registration; there are greater indirect costs to consider and to weigh against the benefits. Likewise, the benefits can be more than just receiving a higher price for

⁴⁹ Josling 2006b.

⁵⁰ Cotton 2008.

the product or service. Table 2.2 offers the key categories to consider. Of course, these may or may not apply in all cases and are only indicative of the known possibilities.

Table 2.2 Typical costs and benefits of a GI	
Costs	Benefits
1. Establishing domestic legal structure	1. Improved market access
2. Defining exact physical boundaries	2. Increased sales
3. Establishing the criteria and standards	3. Increased value/profitability
4. Local or domestic information-education	4. Assurance of qualities or characteristics and authenticity
5. Control and certification fees	5. Traceability
6. Marketing and promoting	6. Complementary effect on other products in region
7. Assessing and applying for protection overseas	7. Elevated land values
8. Infrastructure and production investments	8. Induced tourism
9. Adaptation to rules, methods, and specifications	9. Increased employment
10. Commercial or technology limitations	10. Increased differentiation or competitiveness as a “brand”
11. Vigilance and maintaining protection	11. Coalesced local governance
12. Administrative and bureaucratic costs	12. Socio-cultural valorization

The magnitude of the costs and benefits of pursuing a GI and seeking a designation, or registration, will vary from product to product. This will be most influenced by the make-up of the producer group (especially their number and capacity), their product mix, organizational level (group coordination, legal experience, coordinated supply chains, etc.), infrastructure, public support (government or NGOs), and strategies.⁵¹

In Italy, Belletti et al. note that there is a considerable variety in the range of costs and benefits for three distinct producer groups with GI designations: Chianina beef cattle PGI, Pecorino Toscano cheese PDO and Olivo Toscano (olive oil) PGI.⁵² Many of the cost and benefit categories, though not the actual costs themselves, would be similar for any group integrating a GI. Indirect costs include: investments for necessary infrastructure adjustments; procurement of required higher-quality raw materials; reorganization of production processes; bureaucratic costs and attitudinal or psychological costs. Under benefits they include: increased sales; increased price; access to new commercial channels; and incentives or subsidies.⁵³

51 Belletti et al. 2007c; Tregear et al. 2007.

52 Belletti et al. 2007b.

53 EU contributes funds that some states or regions provide as part of their “rural development plans” in order to cover the fixed costs for certification.

Whether it is the government introducing domestic laws, the act of defining GI boundaries, or a producer group wanting to register in another country, a sound strategy supported by specific cost-benefit analysis is imperative when determining whether to develop a GI, and which GI route to pursue. See chapter 6 for more details on such analyses.

General costs to establish and operate a GI

The costs associated with the development and adoption of a GI can be both direct and indirect, at both the individual and the collective level, and not always easy to quantify in advance.⁵⁴ Nonetheless, it is necessary to identify them in order to facilitate sound decision-making among stakeholders about whether and how to participate in a GI. This section briefly outlines all of the important categories.

Most countries have the **legal structure** to permit the domestic recognition of a GI. Yet many have very limited capacity to take advantage of GI protection.⁵⁵ This step need not be difficult but can take time. The most costly and time-consuming investments at this first stage are often in establishing the formal geographic demarcation and achieving agreement on product standards or parameters for a GI, if these are not established already.

Defining the exact boundaries of a GI can be politically and socially controversial. Some who currently participate as producers or processors may be excluded. “Free riders” may demand to be included. Producers within the same boundaries but who follow somewhat different methods may find themselves excluded. In fact, someone will always be excluded in the demarcation and this can obviously create difficulties that must be addressed (see the case study from Nariño, Colombia).

Establishing a well-defined GI can take several years of effort, in most cases. It is not uncommon for the early stage of defining the GI to be contentious. In the Mexican state of Oaxaca, for example, the actual parameters of the Pluma Hidalgo GI are still being debated after a decade. Guatemala, one of the most successful promoters of its GIs, has invested more than US\$ 1 million and nearly a decade to firmly defining and establishing its GIs (see the case study from Antigua, Guatemala).

Even the physical demarcation of an area presents a challenge, especially in the case of ecological analysis.⁵⁶ Some GIs have put considerable emphasis and investment in this. Colombia, for example, took about two years with the communities to establish the physical boundary for a distinct type of coffee and invested heavily in the science to clearly determine the specific area that met the expected quality parameters prior to formally proposing a GI. (See box 6.2 on Colombia’s Café Nariño.) When this process is inclusive and successful, it can result in a product that is emblematic and very much a part of the natural and socio-cultural dimensions of its territory.

Of course, most successful GIs have good links with commercial enterprises that **market the products**. There can be a cost in terms of establishing these linkages and perhaps in providing preferential access or terms, at least initially for weaker origins. Good supply chain partners can also benefit the GI by providing valuable marketing services that few origins could ever afford to buy.

54 Belletti et al. 2007a and 2007c.

55 Evans 2007.

56 According to Robert Bailey, a respected expert on ecoregional geography, the only State in the United States that has demarcated regions down to the scales comparable to GI definition is Missouri (see the Missouri Resource Assessment Partnership at <http://www.ecrc.usgs.gov/morap/>). Also, see Barham 2003 for more on this process.

Legal costs will also be incurred for most origins to **apply for protection** in relevant markets, whether domestic or abroad. In some cases, the government or producer group will need to spend a significant amount of time understanding and filling out the applications as well as compiling accurate descriptions of the methods of production and the links to geography etc. that may be necessary as part of the code of conduct, or the specifications for the application process.

Individual producers wishing to benefit from the GI designation may incur **additional costs to adapt their facilities, production methods, raw materials and overall organization** to the specified standard or code of conduct included in the designation application. Many GI regulations, including both EU designations and United States certification marks require individual producers to work with a common standard, and if necessary, to adapt their individual practices to meet that standard. The difference is a matter of timing in relation to the application. EU applicants will be required to adapt their operations prior to or shortly after making an application in order to meet European verification requirements. United States applicants have a longer period to adapt their operations, essentially until they actually sell the product in the United States, since an application in the United States can be based upon intent to conduct business, therefore possibly delaying such expenses to a later date.

Should a producer or firm wish to submit only part of their production to a GI designation, they will need to segregate their operations. This will require both separate traceability and **even investment in hard assets**, such as storage, to accommodate two production streams thus increasing the overall costs.

Reorganizing to meet a standard can be an expensive process. There is the example of Chianina beef PGI, where the code of conduct required exclusive transportation of livestock segregated from non-PGI-destined livestock being moved to slaughterhouses.⁵⁷ The need for exclusive transportation was exacerbated by the lack of high-capacity slaughterhouses, requiring livestock to be shipped to multiple locations in small numbers throughout the PGI region, thus significantly increasing transportation costs for producers.

Members of a GI group may also incur costs in adapting to **working collaboratively** as a GI group, with perhaps a new organizational logic and character, particularly given that producers are likely to be artisan-focused with small production runs and few market linkages. A change of mindset is likely to be required on the part of all the participants. Individuals may disagree on these forms of organization, leading to conflicts, particularly when the products require multi-sectoral cooperation.⁵⁸ There can also be a psychological effect where previously independent producers are now obliged to surrender some of their freedom in adopting a common production scheme, controls, and sometimes, common marketing. The combined costs and difficulties to generate and sustain collective action may not be warranted by the immediate economic benefit of doing so.⁵⁹ However, in some cases, joint effort can be positive and reduce the GI participants' costs of production, marketing or adaptation.

The cost of **raw materials** can also increase because producers are committed to using specific ingredients, which may or may not be readily available, or are more expensive than alternatives. For instance, the Pecorino Toscano PDO

57 Belletti et al. 2004.

58 Tregear et al. 2007.

59 Ramirez 2007.

must use sheep's milk from a registered breeding flock from Tuscany, Italy, rather than cheaper sheep's milk from other origins, and the milk cannot be frozen, a common practice for this form of cheese production.⁶⁰

Similarly, the cost structure of GI producers can be significantly higher than that of non-GI producers if their **production technology** is more expensive and does not enable them to take advantage of economies of scale. In the EU, a study was carried out in 2005 comparing the non-GI and the GI production technology of French brie cheese and noted a significant cost difference.⁶¹

In fact, two studies suggest that some European GIs have been found to stifle **commercial efficiency**.⁶² One of Mexico's few GIs has been rendered commercially unviable, reportedly due at least in part to onerous regulations required to use the GI (see the case study from Veracruz, Mexico). A preponderance of regulations pertaining to quality and origin can sometimes act as a hindrance to the activities of firms and producers by restricting their ability to innovate or experiment in the areas of technique or production.

Maintaining protection requires a measure of vigilance on the part of the GI's stakeholders to ensure that misuse of the GI name or fraud is not permitted to flourish. Many successful GI owners employ private firms as watchdogs in different markets where this risk is significant. Costs of such protection can range from a few thousand dollars to hundreds of thousands per annum, especially when the cost of monitoring is combined with the administrative and legal costs of pursuing the perpetrators in other nations. GIs that are protected by different types of trademarks must fully shoulder the burden of identifying and prosecuting any infringements of their marks. The Kona coffee GI (based in the United States State of Hawaii) has encountered considerable difficulties in defending its United States certification mark in the United States (see the case study from Kona, Hawaii). The Italian Parma-based GIs (ham, etc.) may be some of the most affected, with legal costs abroad reportedly amounting to more than US\$ 1 million per year.⁶³ The advent of technological advances using DNA samples and genetic fingerprinting are bringing the costs of testing for fraud down to several hundred euros, but tests are still not applicable to many products.

Finally, there will also be ongoing **administrative and bureaucratic costs** incurred to meet the requirements of many GI rules, especially an EU designation or a United States certification. Registers and records must be kept for possible audit while inspection activities or certification must be regularly undertaken. These and other common costs may sometimes be distributed along the supply chain to prevent excessive loading onto smaller producers if the organizing institution is willing and able to adopt such policies.⁶⁴

General benefits related to GIs

The popularity of GIs has increased in recent years and a host of benefits are attributed to GIs. Yet, many of these are conclusions based simply on observations and anecdotal information. Now, a growing body of research is more fully exploring the extent of these benefits.

60 Belletti et al. 2004.

61 Marette et al. (2007) note the study by Benitez (2005).

62 Ribaut, J.C., 2005. Peut-on encore garantir la qualité? *Le Monde*, June 17:23, and Zago and Pick (2004). Both noted in Marette et al. (2007).

63 Sebastiano Brancoli ('Prosciutto di Parma' consortium) conference presentation on "Protecting Local Uniqueness and Identity: Tools to Protect Product Distinctiveness in the Global Economy", 19 September, 2007: Washington, D.C.

64 Belletti et al. 2007.

For producer regions, GIs convey the unique characteristics that distinguish their products. The unique organoleptic properties that emerge from the *terroir*⁶⁵ and its traditional methods of production and processing may be difficult to duplicate in other regions or countries, and can thus be a valuable and lasting competitive advantage. This type of advantage is similar to that enjoyed by a successful brand in that it is not so dependent upon advantages gained from common factors of production such as labour, logistics and capital costs. The institutional structures or agreements inherent in many GIs can also contribute to competitiveness by improving collective action and reducing transaction costs along the supply chains.

“The enduring competitive advantages in a global economy lie increasingly in local things – knowledge, relationships, motivation – that distant rivals cannot match.”

Michael Porter (1998)

GIs are generally aligned to the emerging trend of more stringent **standards** in global trade. Standards now set the ‘rules of the game’ for quality and safety assurance, and they are becoming increasingly relevant as strategic tools for market penetration, product differentiation and value-chain coordination.⁶⁶ Standards are becoming determinants of who participates in trade with the most developed markets.⁶⁷ Even in some less developed markets, the fastest growing retail channels are often managed by supermarket chains and processors, that rely on higher-than-average standards for quality, traceability and food safety.⁶⁸ Most of the GIs reviewed typically:

- Apply some standards;
- Tend to be traceable;
- Often implement locally appropriate processing technology;
- Are renowned for their particular quality.

There is an increasing demand for products and services with unique characteristics. Consumers today are making more purchasing decisions based on less tangible, or at least less verifiable, product assets such as quality standards, environmental stewardship, reputation, and social responsibility.⁶⁹ At the same time, there is much more information now available on the sources and origins of products and the nature of production processes, with the emergence of markets for such certifications as Organic, Fair Trade, GLOBALGAP, etc.⁷⁰ In many cases, GIs align with these trends and seem to convey similar attributes of reliability, quality and food safety to the consumer.

GIs have notable **developmental characteristics**. Some have demonstrated that they can generate increased and better quality employment, as elaborated further in this chapter. Ramirez claims that GIs can link entire regions to markets.⁷¹ At least one analysis looking at the welfare associated with GIs notes that they contribute to the overall sustainability of a territory in several

GIs can be valuable mechanisms to promote local products and values.

⁶⁵ *Terroir* is a term (French) indicating a place where the combination of a particular agro-ecology and traditional know-how yield unique quality characteristics. A GI facilitates the recognition of these characteristics for a consumer and thus enables artisan producers to thrive even in very competitive markets.

⁶⁶ Giovannucci and Reardon 2000.

⁶⁷ Maertens and Swinnen 2007.

⁶⁸ See Reardon, Timmer and Berdegúe 2003 and also Busch et al. 2007.

⁶⁹ Busch et al. 2007; Giovannucci 2008.

⁷⁰ A key reference standard for Good Agricultural Practices; formerly known as EUREPGAP.

⁷¹ Ramirez 2007.

important and non-economic ways.⁷² For rural areas, GIs can provide part of the tangible structure for affirming and fostering the unique socio-cultural features of a particular place and the products or services it produces. The “Development” section below explores how communities benefit as GIs tend to reward the holders of indigenous knowledge or traditional and artisanal skills as valued forms of cultural expression. GIs may also provide a measure of protection for the intellectual or cultural property of a particular group or place.

Since GIs intrinsically **emphasize the local**, they value the land and its particular characteristics that are often the source of a product’s unique nature. There is now increasing debate about the inherent value of local products. The arguments range from the importance of fostering local communities and maintaining rural farm space to the merit of reduced transportation (that can impact global warming) and the desire to recover authenticity and our relation to a particular cultural and agro-ecological place.⁷³

More origin-labelled products are turning up in the conventional marketplace as market leading firms offer consumers increasingly more locally identified and less anonymous products.⁷⁴ In some cases popularity may be less about a specific product’s flavour or uniqueness and more about the fact that it is local. Perhaps paradoxically, for some a ‘local’ product even when associated with a distant place, may have more value than a more anonymous and undifferentiated product. Giovannucci, Barham and Pirog suggest that, aside from personal levels of trade with familiar entities such as farmers or NGOs, there are no more effective mechanisms for credibly identifying what is truly local, than GIs.⁷⁵

In these many ways, GIs can serve as useful conceptual frameworks to drive an integrated form of rural development that goes beyond pure economic considerations. As such, the institutional structures that are often part of successful GIs may serve to benefit local and regional governance. A large-scale EU survey in 2002 concluded that GI development had not only improved the reputation of a region as an attractive business location but also tended to enhance the **regional cooperation** between government authorities and commercial partners.⁷⁶ Together, this further facilitated the joint improvement of environmental quality and the utilization of common resources. These possible benefits are vital for the challenges many developing countries face.

There are few sound economic assessments or cost-benefit analyses available to accurately determine the financial benefit of GIs to developing regions, but the conclusions of those economic assessments that have been carried out tend to be positive overall. For many years, producers, traders and entire value chains have been able to benefit from the long-lived rents associated with a particular Geographical Indication. While it is difficult to determine direct causality between the formal GI structure and the economic benefits, the benefits do

72 See Zago and Pick 2002a.

73 Giovannucci, Barham and Pirog 2009.

74 One of the most successful supermarket chains (in terms of sales per square foot), Whole Foods, now actively promotes locally grown and manufactured foods in its United States and United Kingdom stores. Carrefour, one of the world’s largest retailers of foods promotes regional products in nearly 40 nations including those in developing areas. The United Kingdom’s largest supermarket chain, Tesco, offers an extensive range of local and regional products and intends to increase this area in both its United Kingdom and United States operations.

75 Giovannucci, Barham and Pirog 2009.

76 EC 2002.

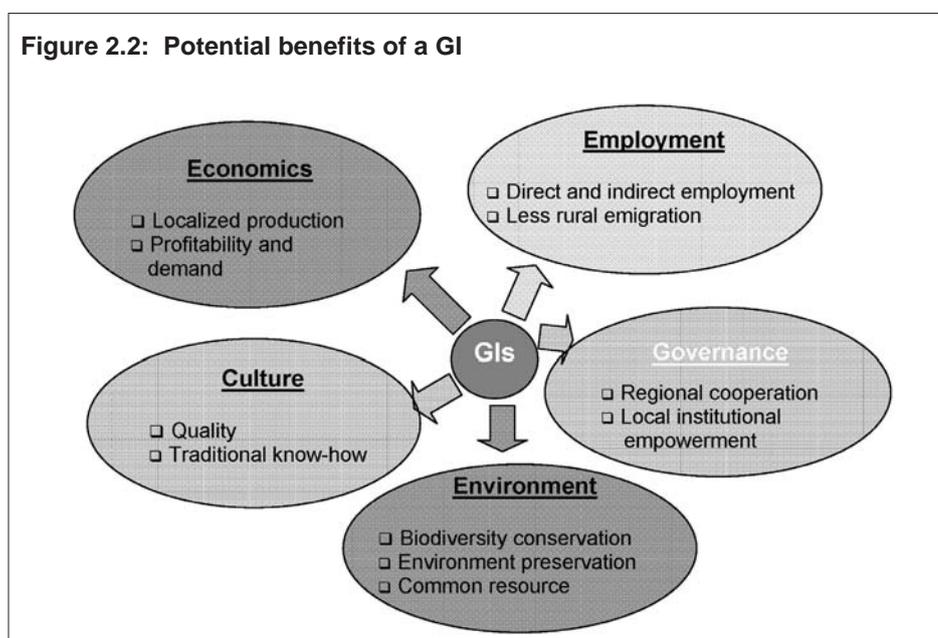
exist. It seems clear also that while GIs can offer benefits to consumers and high-quality producers alike, there is evidence that low-quality producers may be left out.⁷⁷

When GIs are high quality, artisan products they may also be **labour intensive** and rarely manage to achieve the size and economies of scale required to compete on a direct price basis with similar products from more industrialized processes. Nevertheless, the connection between unique quality characteristics and place (the noted *terroir* that encompasses both agro-ecology and local know-how) that GIs facilitate for a consumer, enables artisan producers to thrive even in very competitive markets. This is confirmed in the five cases studied by the team working with van de Kop, Sautier and Gerz⁷⁸ and several of the case studies covered in this publication. In the midst of the increasingly homogenized and industrial process that brings us our foods, new alternatives are emerging that reflect a desire to relate to the unique tastes and relationships embodied in local foods, and thus in many GIs.

A broad-based, multi-year research effort in the EU⁷⁹ has independently concluded that there are a number of valid reasons for undertaking the development of GIs, which include:

- ❑ Improving access to markets;
- ❑ Preserving biodiversity and preventing bio-piracy;
- ❑ Protecting traditional ‘know-how’;
- ❑ Supporting community or collective rural development initiatives;
- ❑ Reducing market price fluctuations;
- ❑ Improving market governance (labelling and fraud rules, standards, traceability).

Figure 2.2: Potential benefits of a GI



77 Barjolle and Sylvander 1999; Zago and Pick 2002b.

78 van de Kop, Sautier and Gerz 2006.

79 See Sylvander and Allaire 2007.

Improved prices and market access for GIs

Much of the literature on GIs focuses on the policy or legal issues of protection, while less attention has been given to the economic case for GIs. Overall, the economic assessments of the impact of GIs have tended to be positive.⁸⁰ However, while a relationship undoubtedly exists, there remains only limited evidence of a direct causal link between the registration of a GI and improved prices.

It is difficult to measure the exact amount of economic impact attributable directly to a GI or to such diverse factors as the subsidies and private investments that exist in many regions, and which have an influence on GI recognition and value. In many cases, the long-standing popularity of a product is more likely to be the reason for it commanding the price premium, while the formal GI recognition acts to solidify the credibility of the value message to consumers and also to prevent or deter fraudulent use.

There are two important and related market-oriented benefits that can be gained from defining and protecting a GI. The **first** is verification of authenticity and protection from misuse or fraudulent labelling by unauthorized third parties. The **second** is the improved access to markets or the potential premium gained by the GI designation, that confirms reputation or act as a form of assurance for a desirable attribute such as quality. It should also be remembered that price premiums alone do not automatically translate into increased profitability. They must be high enough to cover the additional costs of producing, certifying and marketing high quality products.

While there have been few formal cost-benefit analyses to determine the real financial benefits of GIs, there are a number that claim improved prices. There are also some useful studies of the associated welfare effects suggesting that GIs can also contribute to the overall sustainability of a territory in other important and non-economic ways.⁸¹

There may be other benefits with related economic impact as well, such as a greater overall quality orientation among producers or product spin-offs and product line extensions. A potential route for expansion is to apply the GI's name recognition to other relevant local products. For example, given the success of the PGI for Chianina beef, producers in that part of Italy could reasonably expand the product range into Chianina sausage or meat pies. The famous cheese related to Parma (Parmigiano-Reggiano) and environs has helped improve the recognition of Parma ham, a related GI product.

As the success of a GI grows, so too does its identity and marketability as a brand that in turn reinforces its good reputation and recognition by purchasers. The indication of credibility provided by some GIs can be used as a foundation to market other features and attributes of the product, such as its health benefits and originality.

In the case of Viet Nam's Phu Quoc – an island where Nuoc Mam, a traditional fermented fish sauce, is made – the GI likely does make a significant economic impact. It appears that the recent legal recognition of its GI may be contributing to greater foreign demand for legitimate Nuoc Mam by reducing the estimated 80% counterfeiting of its products in Japan and the EU.⁸² Domestic demand for Nuoc Mam takes more than 90% of production leaving only 500,000 litres for

⁸⁰ See, among others, Rangnekar 2004a; Bérard et al. 2005; van de Kop, Sautier and Gerz 2006.

⁸¹ Zago and Pick 2002a.

⁸² UNDP report cited in presentation by C. Berger, French Embassy Attaché in the United States.

export and the new foreign demand has reportedly pushed domestic prices up considerably from ca. €0.5 to €1.5 per litre since the advent of formal GI protection.

In China, the price of Xihu Longjing tea (recognized as a GI in 2001) increased by 10% more than other teas between 2000 and 2005, reaching 100 yuan/kg as compared to 23 yuan/kg for the average price of tea in 2005.⁸³ Similarly, The Beijing Administration for Industry and Commerce calculates that after the Pinggu Peach was registered as a GI its market value has risen from 1.5 to 4 yuan (US\$ 0.20–US\$ 0.50) per kg, although the registration was also accompanied by promotional campaigns. The 20% to 30% average price increase cited for the Zhangqui Scallions GI certainly helps farmers and may also be due to the quality aspects developed and promoted by The Zhangqui Scallion Science Research Institute in China.⁸⁴

The vast majority of existing studies focus on developed countries, and the EU in particular. For example, most likely as a result of legal protection obtained for

the Lentilles Vertes du Puy GI, the local production of lentils almost quadrupled between 1990 and 2002, providing a living to increasing numbers of producers and wholesalers in the region.⁸⁵ Similarly, positive demand effects from becoming a protected GI have been experienced in the cases of Galician veal⁸⁶, Parma ham, Brunello di Montalcino wine and Vidalia onions⁸⁷. In France, GI cheeses sell on average at a price approximately 30% higher than cheeses in general (see figure 2.3).

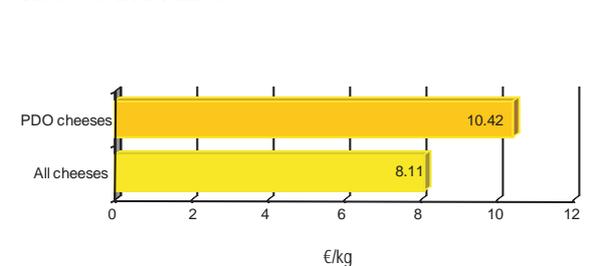
Tuscan olive oil receives a 20% premium over similar quality oil; the market price for Bresse poultry in France is four times that of non-GI poultry meat.⁸⁸ One comparison notes that, before its protection in 1993, the price for Comté

cheese was only 20% greater than that of contiguous Emmental while by 2003 this differential had risen to 46%⁸⁹ and in that period, production of Comté rose by about 3% per year on average while that of Emmental declined. Parma ham sells at prices up to 50% higher than other comparable hams, and the EC reports that cheese with designated GI status could typically claim a 30% price premium over its competitors.⁹⁰

On a national scale, French Government statistics show that over a four-year period the total revenue from GIs grew by 6.8% per annum, comparing extremely favourably with the 0.7% average growth for the farming sector overall, 3.7% for the food industry overall, and even the 4.2% annual growth in Gross National Product for the whole French economy (see figure 2.4).

A number of studies note that the use of the PDO/PGI logo in the EU is typically perceived as an indication of high quality, capable of increasing sales and improving pricing.⁹¹ Another study reveals that a GI for New Zealand lamb commands premiums of more than 20% in the EU and similarly Japan's Wagyu

Figure 2.3: Relative retail value of GI and non-GI cheeses in France



Sources: Data from MAAPAR, ONIVINS, CFCE, INAO, and Secodip from Berger 2007.

83 Wallet *et al.* 2007.

84 *WIPO Magazine* 4/2007.

85 O'Connor and Company 2005.

86 Loureiro and McCluskey 2000.

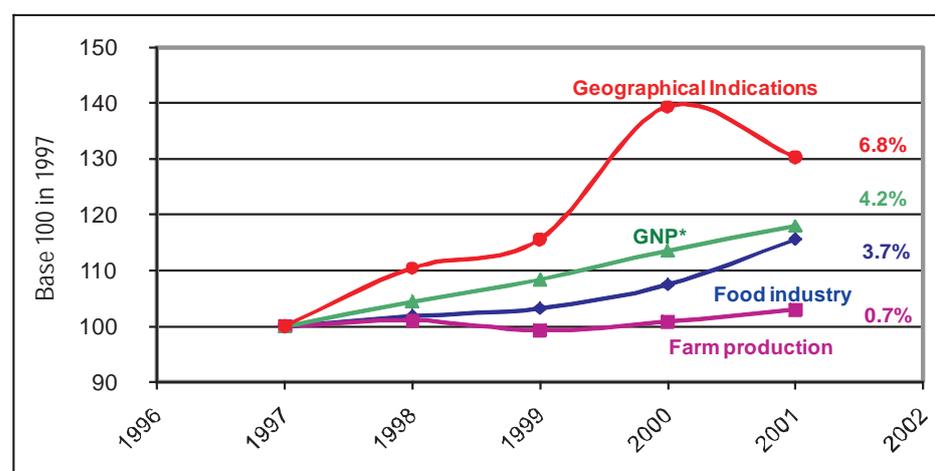
87 Hayes, Lence and Stoppa 2003.

88 European Commission 2003.

89 Agency for International Trade Information and Cooperation 2005.

90 Secodip 2002 data reported in EC 2007.

91 See, for example, Belletti and Marescotti 2006; Sylvander 2004; OECD 2000.

Figure 2.4: Economic growth rates of GIs relative to other sectors

Sources: INAO, CNAOL, ENITA Clermond-Ferrand, MAAPAR from Berger (2007).

* GNP = Gross national product.

beef gets 50% more.⁹² The median price paid to milk producers supplying five different French cheese GIs was between 5% and 90% higher than the national average.⁹³ Likewise, Nyons olive oils provide about 50% more income to their producers than other high-value trademarked non-GI oils. Such effects could apply in principle to developing country products as well, but a substantial investment in market development may first be required.

Research shows that Vidalia onions consistently command a considerable price premium over the onions of other growers.⁹⁴ The prices of recently protected agave-based beverages such as Mezcal have risen dramatically (see the case study from Mezcal, Mexico). Darjeeling tea also provides clear economic benefits that go beyond premium prices to improved market access due to the widespread recognition of the origin (see the case study from Darjeeling, India).

While there is an abundance of data supporting the case that GIs tend to command higher prices, there is very little data comparing total cost of production and marketing that are required in order to gain these higher prices. It is clear that the usually higher production and certification costs involved in many GIs are likely to erode at least some of the price benefits. Of course, a broader way of looking at this economic equation could suggest that while producer costs are higher, the local entities that provide inputs to the production process including raw materials, labour, certification and inspection services could experience positive remuneration effects. This greater distribution of income along the value chain could itself be a benefit and could feasibly contribute to improved quality and consistency.

Box 2.1 GIs can offer specific business development benefits

The literature suggests that they tend to:

- ❑ Impact beyond a single product focus and can serve to promote interrelated products and services in the GI region;
- ❑ Potentially foster clustering and rural integration because not only producers, but also traders, processors, exporters and supply chains, interact at the local or regional level;
- ❑ Use fewer external intermediaries and participate in various forms of downstream “partnership” with the private firms that drive the GI recognition at the consumer level;
- ❑ Offer improved market access and increased incomes when compared to similar non-GI products.

⁹² Babcock and Clemens 2004.

⁹³ Berger study (2007) citing data from INRA, INAO, Huile d’olive de Nyons.

⁹⁴ Boyhan and Torrance 2001.

GIs as a model for development

GIs offer a particularly interesting model for development because they have the potential to provide a range of different types of benefits to the region of origin. They also represent opportunities for several different segments of the population in addition to the producers. These benefits range from having new socio-cultural values for traditional and indigenous assets to the more straightforward economic gains resulting from increased employment, higher incomes and improved market access.

A holistic framework for development

It is important not to limit the idea of a GI to only its legal recognition or to only the economic development of a product. Perhaps the greatest advantage lies in the ability of a GI to offer a basket of possibilities.

There may even be indirect benefits such as improved local governance, more tourism stemming from heightened recognition of the name and place conveyed through the GI, as well as increased land values and possible complimentary offerings such as other regional products riding on a GI's reputation, e.g. mustard from Champagne or honey from the Jamaica Blue Mountain region. At the international level, benefits can translate into unique forms of differentiation and competitive advantage that are difficult to erode.⁹⁵

In these many ways, GIs can serve as conceptual frameworks to drive an **integrated form of multifunctional rural development**. GIs can go beyond a single product focus and facilitate progress that is multifunctional in character.⁹⁶

An EC evaluation⁹⁷ noted that GI development amplified:

- Regional cooperation between municipalities, authorities, commercial and social partners;
- The positive identity of the regions, especially referring to culture, landscape conservation and marketing;
- Improvements in the general infrastructure and rural services;
- Profiling of the region as an attractive business location;
- Improvements in environmental quality and linked utilization of resources.

Many GIs are for agricultural products and reference traditional or cultural knowledge. This puts them in a category of intellectual property that theoretically should favour agricultural economies and developing countries in particular. In practice, however, only a few developing countries have taken advantage of the opportunities available to them, and most have not benefited much at all.

The GI approach to development, which intrinsically tends to integrate different functions (i.e. production, processing, certification, governance, retail, wholesale and international trade) and different levels of action (i.e. local, regional, economic, socio-cultural and ecological) can potentially improve disconnected rural development policies. The institutional structures to manage the GI may even be beneficial to local and regional governance as

⁹⁵ See Kaplinsky 2006; Sylvander 2004; Lewin, Giovannucci and Varangis 2004.

⁹⁶ Sylvander and Allaire 2007.

⁹⁷ EC 2002.

mutually reinforcing approaches.⁹⁸ GIs can certainly be a stand-alone policy tool but are likely to be more effective when structured as part of a systemic approach to rural development.

Developmental characteristics: competitiveness and economics

GIs are a potentially unique form of competitive advantage, even for smallholders. They are not easy to erode because they depend less on common factors of competition such as cost of production. Instead, GIs build on unique local factors born of tradition, know-how, and special agro-ecological endowments. A viable GI essentially leverages these assets to develop its reputation and value in much the same manner as a brand.

Indeed there are entire countries that can be viewed as GIs and consequently as **brands**. Holt, Quelcht, and Taylor in their Harvard Business Review research note that perceptions about quality and value were long tied to the countries from which the products originated.⁹⁹ Some industries, such as Italian fashion design, Japanese electronics, French wine, and various “Made in the USA” products (i.e. cigarettes, soft drinks, software) have earned reputations for their countries. The considerable premiums that accompany those reputations have persisted sometimes for decades based on consumer perceptions (not necessarily the reality) of their superior quality. The value of such positive correlations, whether at the local or the national level, can be substantial.

GIs are conceptually in alignment with **emerging trade demands** for quality, traceability, and food safety. Most apply some determined (though not always codified) standards or quality assurance schemes and several types of GIs use third-party certification as a measure of assurance. Such GIs may more easily be able to meet other fast-growing process standards such as GLOBALGAP or Organics. Nevertheless, in many cases, GIs have production limits that are less likely to expose them to the volatile supply and demand responses of commodities.¹⁰⁰ GIs tend to have basic traceability. This may become even easier especially with the advent of low-cost DNA tracing and related technologies. Technology helped to expose a case of “Basmati” fraud in the United Kingdom wherein only half (54%) of the bags labelled “Basmati” actually contained pure Basmati rice.¹⁰¹ GIs are often the result of long-term efforts to develop a product with desirable characteristics. This implies that the methods are refined through experience and often implement appropriate processing technology that consistently delivers a measure of quality and adequate food safety.

GIs offer potentially broad **business development** benefits, since they can involve entire regions and have an impact on not only producers, but also traders, processors, exporters, etc., thereby fostering supply chain development and rural integration. The fame surrounding Kona for its sought-after coffee GI stimulates the sale of other agricultural products (e.g. beer, fruit, honey) and even bicycles that may benefit from such an association. Since GIs tend to go beyond a single product focus, and affect other products and chains in the region, they can promote clustering. Parma’s well-known dairy industry that includes Parmalat is a good example. The dairy industry helped foster Parma’s famous cheese-making industry that includes Parmigiano, the by-products of which are integrated into the supply chain for pigs and these, partly due to the quality of the feed, result in another well-known GI: Parma ham.

98 Gómez 2004.

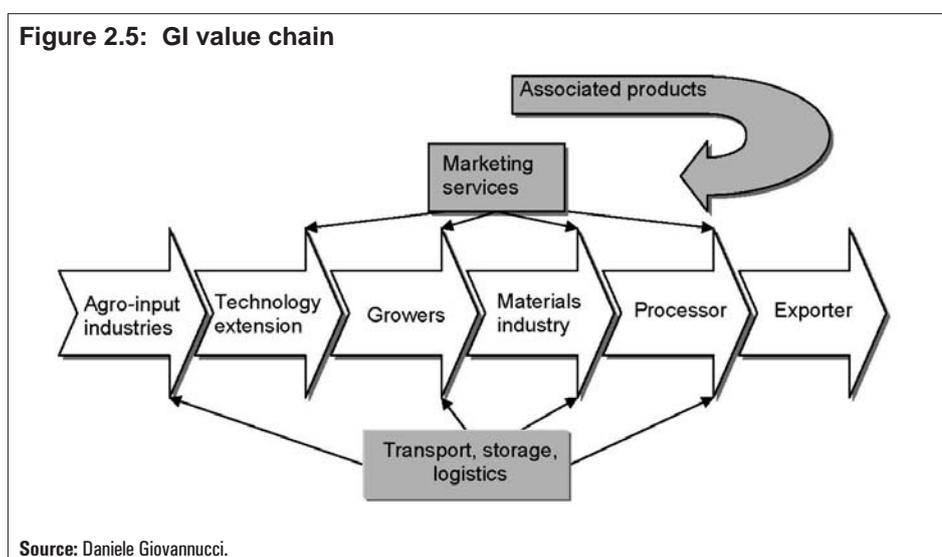
99 Holt, Quelcht and Taylor 2004.

100 Hayes, Lence and Stoppa 2003.

101 Ravilious 2006.

In many cases, GIs tend already to have at least a rudimentary form of **supply chain management**. In developing countries, many production and supply chains are small in scale and lack resources such as capital and know-how. This makes it difficult to achieve scale economies and may limit their market access because of their inability to comply with the increasingly ubiquitous public and private standards required by more developed markets. Most GI products are already produced by small and medium enterprises.¹⁰² GIs are at least somewhat dependent on the cooperation between producers and enterprises that may otherwise compete with each other and thus collective functions may, at least theoretically, induce new scale economies, reduce transaction costs, enhance products, and even facilitate chain governance. Related products, though not GIs, may benefit from the association with well-developed GI value chains particularly in terms of improved standards and even marketing efficiencies in the region.

Figure 2.5: GI value chain



There may be considerable returns in being able to tap into evolving consumer preferences in developed countries; preferences that simultaneously seek and recognize diversity and value the characteristic of quality assurance. A significant proportion of the economic rents from GIs may be retained locally (Kona, Darjeeling, Mongolia), although there is also evidence of GIs where multinational firms capture the majority of these rents (many alcoholic beverages and some wines – see the case study from Mezcal, Mexico). Many GI origins clearly command higher prices, although they may also incur higher costs due to investments in quality (equipment, sourcing, grading) and controls (standards development, certification, monitoring). In some cases, these costs are borne privately and in other cases they are public, with agencies managing at least some of the legal protection functions.

¹⁰² Barjolle and Sylvander 2000; van de Kop, Sautier and Gerz 2006 citing Barjolle et al. 2000.

Developmental characteristics: smallholders, employment, and rural enterprise

GIs offer a primary source of income for 138,000 (mostly smaller) farms in France and 300,000 Italian employees.¹⁰³ The French Government cites that 21% of French farmers are involved with the GI sector.¹⁰⁴ One United Kingdom analysis of origin food producers indicates that they interface tightly with the local economies and supply chains, both upstream and downstream.¹⁰⁵ On average, these producers source 61% of their product ingredients, 78% of their marketing services and 82% of their distribution services locally.

The Extension Service of the US State of Georgia estimates that 87% of Vidalia onions are produced on family owned and operated small farms (15 acres or less) with a farmgate value of US\$ 5,833/acre or US\$ 95 million overall (in 2000). Profitability is further enhanced by value-added products that trade on the reputation of the Vidalia onion GI including processed foods and tourism opportunities such as the annual Vidalia, Georgia Onion Festival that is an important source of revenue for the community.¹⁰⁶ In their review of United States marks for GIs, Babcock and Clemens note that certification marks are used to also promote the sale of other related agricultural products.¹⁰⁷

According to the EC evaluation conducted by the LEADER project on the measures employed in four German states between 1998 and 2001, GI efforts were estimated to have directly created and sustained 1,870 regular full-time jobs, 40% of which were for women.¹⁰⁸ This generated an additional permanent income in the local economies of about €48 million per year counting part-time and temporary work. The evaluation gave primary credit for the success to the use of participatory development programmes with the local communities.

A comparison made in 2004 between the non-GI cheese, Emmental, and the similar GI cheese Franche-Comté, found that the less intensive Comté producers provide as much as five times more employment per litre of milk collected.¹⁰⁹ While Comté focuses on local development, Emmental has pursued an industrialization strategy (with no GI recognition). This has led to a shift of production by Emmental to other more intensive dairy regions and an overall decline in sales for more than a decade. Comté, on the other hand, has enjoyed a steady increase since 1992, the year of its formal EU recognition (see figure 2.6). Rural migration away from the Comté PDO region is only half that of the Emmental.¹¹⁰ Part of the explanation may also lie in increased revenue from tourism on the “Routes du Comté”, with 2.2 million overnight stays in 2002. This generated considerable numbers of on-site purchases direct from the producers.

In Viet Nam’s Phu Quoc GI about 90 firms that are primarily SMEs produce 10 million litres of Nuoc Mam, a traditional fermented fish sauce, and employ several thousand persons. Smaller firms have dominated the output of the GI and Unilever has signed a ten-year contract with a local consortium and agreed to invest up to US\$ 1 million to upgrade production facilities as part of its deal to license the Phu Quoc appellation.¹¹¹

GIs are at the intersection of culture, commerce and geography.

¹⁰³ EC 2003a.

¹⁰⁴ Berger 2007.

¹⁰⁵ Elliot et al. 2005 cited in Belletti and Marescotti 2006.

¹⁰⁶ Boyhan and Torrance 2002.

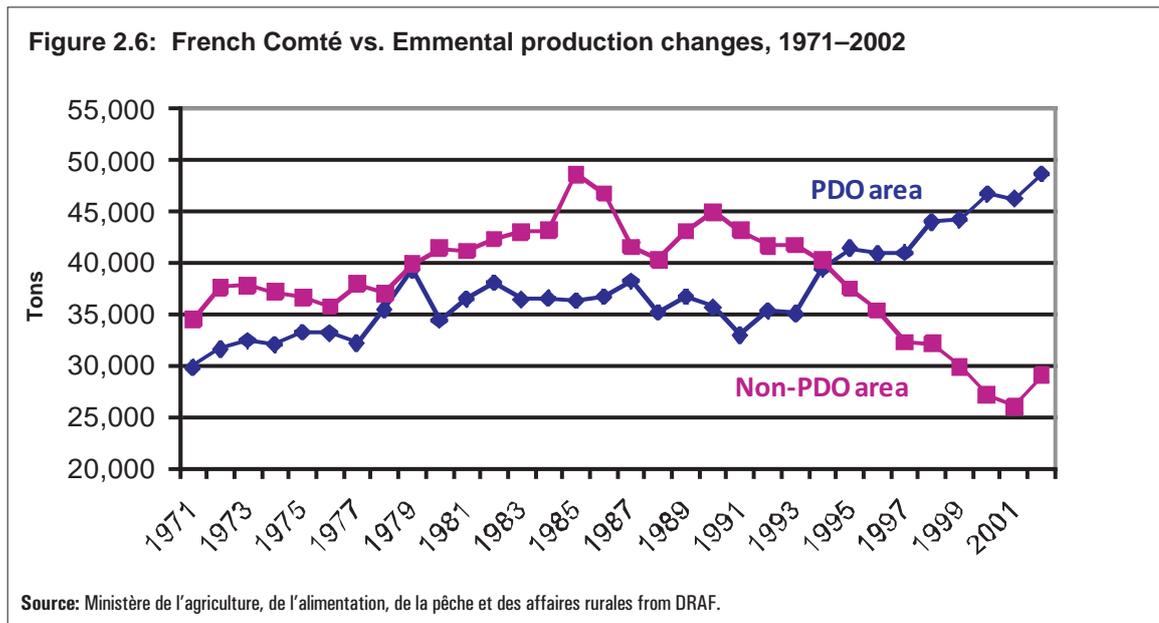
¹⁰⁷ 2004.

¹⁰⁸ EC 2002.

¹⁰⁹ Dupont 2004.

¹¹⁰ Gerz and Dupont 2004.

¹¹¹ Rangnekar 2004.



A number of countries leverage GIs to generate national and even international tourism. France, Germany, Italy and the United Kingdom all have popular gastronomy areas or trails that are prime tourism destinations. Even the well-known GI areas of South Africa (wines), Jamaica (Blue Mountain coffee), Brazil (wines), Mexico (Tequila), Chile (fruit and wines), and Argentina (Pampas beef and wines) are now an integral part of organized holiday tourism that generates employment, income, and local pride.

Developmental characteristics: society and culture

The potential long-term value is not only at the economic level (i.e. jobs, greater income, or ancillary development such as tourism) but also at a cultural level in terms of the recognition of customary and value-adding traditions that can convey a deep sense of a people, their culture, and of their long-standing relationship to a region. This esteem can be a springboard to the recognition of assets and diverse forms of local development that can be as valuable as increased income.

As a means to foster **culture and tradition**, GIs are indeed viable tools. They value the cultural aspects and traditional methods that are intrinsic to the production and processing of a product. They are market-based and therefore likely to be more sustainable so long as they do indeed provide such benefits. Rangnekar claims that GIs are at the intersection of culture and geography.¹¹² While they can offer a measure of protection for both the locus of cultural or indigenous knowledge and the forms of its commercial transmission, the GIs do not protect such knowledge *per se*. Other intellectual property instruments (i.e. patents) or forms of legal protection may therefore be needed to complement GIs.

Benefits accrue to traditional communities, as GIs tend to reward the holders of indigenous knowledge.¹¹³ For some countries, GIs are legally expected to be connected to traditional aspects. For example, Thévenod-Mottet notes that in France, the Appellations of Origin laws reference “local, fair and constant practices” and in Tunisia, the Designation of Origin law notes “methods of production must be rooted in local traditions being ancient, constant and

¹¹² Rangnekar 2004a.

¹¹³ Ranaboldo and Fonte 2007.

well-known”.¹¹⁴ The unique nature of GIs as a somewhat collective right includes the absence of a right to assign the GI and this makes it consistent with some traditional cultural rights; if GIs are protected as trademarks they may, in some cases, legally be assigned or transferred (see chapter 4 for discussion on this). GIs can particularly help to build social equity via self-esteem and can increase valuation of local products, services and land.¹¹⁵

Cultural recognition in the marketplace facilitates the transmission of traditional and artisanal skills that are valued forms of cultural communication. GIs are an effective way for rural development to promote cultural identity even in remote areas or when cultural identity is not embodied in just a product but rather encompasses shared assets such as history and architecture that can be valued via tourism and characteristic art and crafts.¹¹⁶ Such traditional and artisanal skills also imbue products with unique character that can elicit significant market premiums even for smaller producers.¹¹⁷ In fact, for many larger businesses, such diversity can represent an unacceptable level of inefficiency where their business models typically require more rather than less homogenization of standards.

There is an increasing interest in whether Geographical Indications can play an important role in the development strategies of rural communities in developing countries. Though evidence is still limited regarding the most sensible ways to approach them, regions with GIs do demonstrate improved development. More positive levels of endogenous development in GI locales (as measured by the number and intensity of relations, the quality of social capital, and collective action) have been documented in Argentina, Brazil, Italy, Latvia, Portugal, South Africa, and the United Kingdom.¹¹⁸ They emphasize the local but not in an insular manner since many GIs operate globally via market exchanges beyond their borders.

In many countries, there is evidence of some distinct preferences for local and traditional products that are domestically produced. This is increasingly evident even in developing countries. Beyond the international demand for such well-known products as Darjeeling tea and Basmati rice in South Asia, Peru’s Pisco, Nicaragua’s Chontaleño cheese and Egyptian cotton, all of them enjoy viable domestic markets. A study of Vietnamese urban consumers in 2005 found that they could identify up to 265 local or regional specialty foods and typically associate higher quality with the place of production.¹¹⁹ In another 2005 study, Costa Rica coffee consumers in both supermarkets and small shops ranked ‘place-of-origin’ first when determining their perception of the quality of a coffee.¹²⁰

Yet, fostering culture is not the same as protecting, and it is important to distinguish between what Broude calls “cultural protection and cultural protectionism”.¹²¹ When GIs are pulled into the service of the latter, they are likely to generate increased resistance at the international level and diminish their legitimate effectiveness. Since GIs are market-based mechanisms and are widely traded they have a vital interface with trade regimes and have been perceived by some observers as exclusionary or protectionist. Broude finds little solid evidence that GIs protect culture and more evidence that they shield it from the possibly salutary effects of change. He notes that “...markets are so

GIs are essentially a public or collective good.

114 2006.

115 Ranaboldo and Fonte 2007; Belletti and Marescotti 2006; Belletti et al. 2005.

116 Ranaboldo and Schejtman 2008.

117 Barjolle and Chappuis 2001; Villalobos et al. 2007.

118 Sylvander and Allaire 2007.

119 See Tran as cited in van de Kop, Sautier and Gerz 2006.

120 See Galland 2005.

121 2005.

pervasive that GIs cannot in and of themselves, as legal agents, prevent market influence on local culture, leading to degrees of cultural transformation and international cultural homogenization.”¹²²

This contrasts with the conclusions of several other case studies that GIs encourage cultural expression on a smaller community scale, and that these thrive under protection and would likely find it much more difficult to survive the challenges of large-scale commercial trade without such a mechanism for differentiation and organization.¹²³

In fact, cultural diversity is not always served by GIs when they are poorly structured or managed. Researchers, note that there can be deep-seated discord between the formal legal structure of a GI and the wide-ranging and less structured aspects of culture.¹²⁴ Nevertheless, the challenge remains of how to provide adequate voice and participation to the bearers of culture. These include marginalized communities and indigenous peoples who, in commercial relations, may face the misappropriation of their culture and resources.

Developmental characteristics: environment and ecology

GIs tend to value the land and its particular agro-ecological characteristics that impart unique organoleptic aspects that may be difficult to replicate in other regions or countries. The case for GIs promoting environmental value may be valid but is less certain. The scientific literature regarding the effects of GI systems on the environment is limited but the documented observations and case studies that do cover this aspect usually point to positive and mutually reinforcing relations between the two.¹²⁵ In South Africa, for example, fostering the sustainable cultivation and control of wild harvesting for the increasingly popular Rooibos and Honeybush teas is a central issue in the debate about adopting Geographical Indications for these regions.¹²⁶

Environmental resources, biodiversity and traditional knowledge are all areas that tend to struggle for protection under international accords. GIs are among the favoured methods used by several governments for the purpose of protecting these values.¹²⁷ There also seems to be some trend toward integrating environmental concerns into the GI codes of practice in recent years as evidenced by Brazil’s Pampas Beef and the efforts of China’s Agriculture Ministry.¹²⁸

There are assumptions that the intrinsic link to place would induce better levels of environmental stewardship and this may often be the case. However, some negative examples and contradictory cases have also emerged wherein the absence of controls and the urge for greater economic benefit can result in potentially negative environmental effects such as forest clearing to increase the planted area and the introduction of large-scale monocropping in place of diversified systems. In the Mezcal Case Study, the greater demand for natural raw materials required in the GI is contributing to reduced biodiversity as wild

When GIs are poorly structured or managed, they can have negative environmental effects.

¹²² See Broude 2005 p. 26. In the same tome, Broude offers an erudite rationale for the transience of culture that illustrates, via a tour of historic wine GIs, cases where wine origins have failed to maintain the original “recipes” for GIs or have invented new ones that bear little or no relation to unique characteristics of a region. However, the narrow sample and the host of reasons available for these changes limit a plausible claim for causality and thus make the argument less convincing to some.

¹²³ Ranaboldo and Fonte 2007 and van de Kop, Sautier and Gerz 2006.

¹²⁴ Ranaboldo and Schejtman 2008.

¹²⁵ Ranaboldo and Fonte 2007; Riccheri et al. 2006; Boisvert 2005; Bérard et al. 2005.

¹²⁶ Belletti and Marescotti 2006.

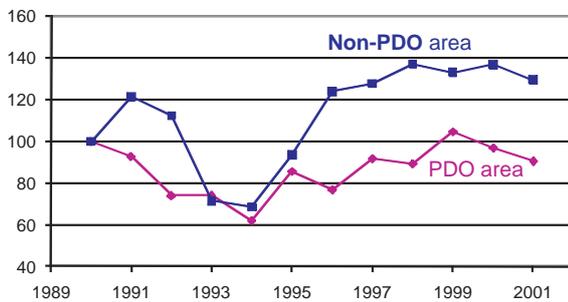
¹²⁷ Acampora and Fonte 2007 p. 208–211.

¹²⁸ Cerdan et al. 2007.

plants are over-harvested. This will likely lead to environmental degradation if fragile forests and semi-arid landscapes are further transformed into mono-crops of preferred varieties.

There is evidence that environment and ecology, which are recognized as integral components in the value proposition of many GI products, are typically respected and protected within some of the EU's GIs. According to Bérard and Marchenay, the French Government is stricter in its pursuit of compliance with environmental regulation in its GIs or Controlled Appellation of Origin (AOC) areas.¹²⁹ More specifically, non-GI farms near to the Comté PDO, for example, use 40–50% more herbicides and synthetic fertilizers per hectare than do similar PDO-registered farms (see figures 2.7 and 2.8).

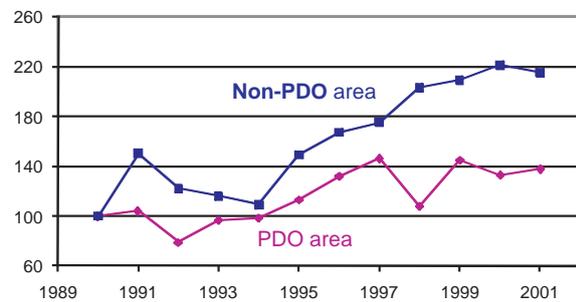
Figure 2.7: Fertilizer utilization in Franche-Comté (per hectare)



Source: Ministère de l'agriculture, de l'alimentation, de la pêche et des affaires rurales from DRAF Franche-Comté.

Base 100 in 1990.

Figure 2.8: Herbicide utilization in Franche-Comté (per hectare)



Source: Ministère de l'agriculture, de l'alimentation, de la pêche et des affaires rurales from DRAF Franche-Comté.

Base 100 in 1990.

¹²⁹ Barham (2003) cites Laurence Bérard and Philippe Marchenay, two noted experts in the French AOC system.

Chapter 3

Global overview of legal protection systems for GIs

The recognition and concept of internationally protecting a GI as property goes back as far as the late 19th century, but it is only in recent decades that more regulated and active forms of protection have been developed. The laws relating to GIs have tended to evolve not in one common direction, but in distinct ways. Consequently, at the beginning of the 21st century, different countries and regions have different systems for GI protection. Our international experience in this respect is therefore still not consistent and somewhat limited, especially in comparison with other intellectual property (IP) rights such as patents and copyrights.

As there is no universal method of protecting GIs, nor a common international commercial law, the granting of legal protection for GIs lies within the jurisdiction of separate domestic laws and the regulations of individual countries. Domestic mechanisms vary considerably, therefore different marks, appellations, or designations need to be registered in all relevant countries in order to protect the GI they represent.

When it comes to GI protection as a form of intellectual property, countries fall into three main categories:

- ❑ Those that do so by means of GI-specific laws or *sui generis* systems;
- ❑ Those that do so through a trademark system or other legal or administrative means;
- ❑ Those that do not formally recognize or protect GIs.

There are 110 countries, including the 27 Member States of the European Union (EU), with specific GI laws in place.¹³⁰ Outside the EU, only 22 of the other 83 countries have established registers and officially listed Geographical Indications.¹³¹ Some of these countries, such as Jordan, Mauritius, Singapore and Sri Lanka, do not require formal legal registration to protect GIs, but still protect them through specific laws. A number of others, including Cambodia, Iran (Islamic Republic of) and Kenya are currently in the process of adopting or implementing GI protection.

A 2001 WTO review of 37 developing countries notes that, outside formal GI protection, a number of different legal means are available to safeguard GIs. These include regulations that protect trade (from unfair competition,

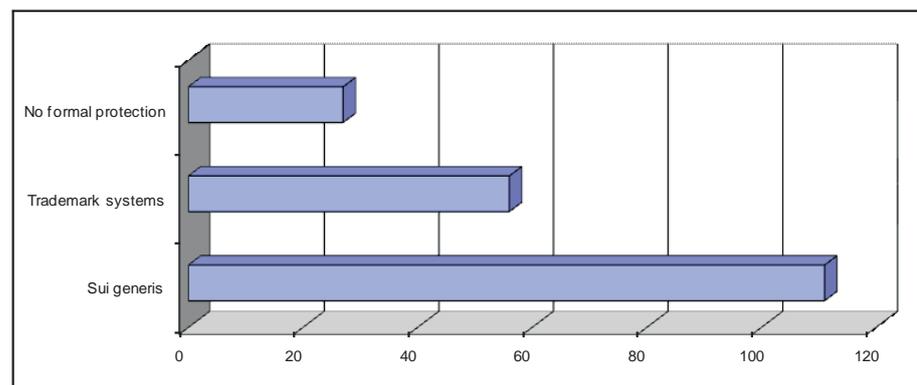
¹³⁰ See appendix II.

¹³¹ Algeria, Belarus, Brazil, China, Chile, Colombia, Cuba, Dominican Republic, Georgia, Guatemala, India, Israel, Mexico, Morocco, Peru, Republic of Korea, Russian Federation, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Tunisia and Turkey.

counterfeiting, etc.) and consumers from misrepresentation of goods and services (food safety, truth in advertising, fraud and labelling or “passing off” in Common Law jurisdictions).¹³²

There are 56 countries without specific GI protection laws, but which protect GIs through certification marks, collective marks or trademarks.¹³³ These include the Australia, Canada, Japan, United States, parts of Africa and a number of Arab countries. In fact, many countries with *sui generis* systems also have the option of some protection or additional forms of protection using their systems of trademarks.

Figure 3.1: Number of countries using distinct GI protection systems



Source: O'Connor and Kireeva 2007.

Note: Some countries have both specific GI systems and protect some GIs under trademark systems.

Broad international obligations such as the TRIPS Agreement aim to protect intellectual property, including GIs, but it is individual countries that set the actual specific rules and elect when and how to commit resources to enforcement. The TRIPS Agreement essentially provides for two levels of GI protection; a higher level for wines and spirits, and a lower level for all other goods.

At present, except for generally providing that GIs are protected against consumers being misled, the **TRIPS Agreement** only provides for modest effective protection for non-wine and spirit products. It therefore serves primarily as a complaint mechanism for countries when other WTO Member countries are not complying with their multilateral obligations, i.e. are not enforcing their regulations or not putting in place the legislation and regulations to protect GIs. A number of countries wish to extend the higher level of existing TRIPS protection beyond wines and spirits to a broader group of products (see the next section for more on TRIPS and other international GI-related agreements).

¹³² Rangnekar 2004. Rangnekar also notes that, in common law jurisdictions GIs are protected on the basis of the reputation or goodwill that they enjoy, with or without any prior registration, citing court decisions, *Wineworths Group Ltd v. Comité Interprofessionnel du Vin de Champagne*, 2 NZLR 327 [1991]; *Bollinger (J) v. Costa Brava Wine Company Ltd* (1959) 3 All ER 800; *John Walker & Sons Ltd v. Henry Ost & Company Ltd* (1970) 2 All ER 106.

¹³³ See appendix II.

Over the years, several international agreements have tried to establish a common international registry as a one-stop method of recognizing and protecting GIs. **The Lisbon Agreement** is the most widely accepted international accord on GIs even though it has only a modest level of participation (26 countries). Many countries agree there would be benefits to having a common international registration system. For the present, however, they differ on how such a system would be structured.

International agreements on GIs

Apart from very general coverage in the General Agreement on Tariffs and Trade (GATT), 1947 and 1994, and a number of mostly bilateral trade agreements, only a few international agreements have offered any protection for Geographical Indications. These include the Paris Convention of 1883, now with 173 signatory States, the Madrid Agreement of 1891, now with 56 Contracting Parties (and 78 for the updated 1989 Madrid Protocol – 84 distinct Contracting Parties in total for the Madrid System), the Stressa Convention of 1951, and the Lisbon Agreement of 1958, now with 26 Member States and the current TRIPS Agreement. WIPO administers the Lisbon and Madrid treaties. The effect of international agreements on GIs has been somewhat limited, lacking sufficient participation and, as Kerr suggests, the teeth of a dispute settlement system.¹³⁴ After more than a century, GIs have now emerged from a relatively marginal position in international agreements to become something of a “lightning rod” in the current WTO negotiations.

In addition to such international agreements, countries frequently pursue regional or bilateral trade agreement to facilitate protection or preferential market access for their products. Specific intellectual property protection and GIs are now common components of many agreements. For example, the North American Free Trade Agreement (NAFTA, Article 313) tri-laterally protects the United States’ Bourbon whiskey, Canada’s whiskey and Mexico’s tequila.

TRIPS Agreement of the WTO

The WTO’s Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) provides the basic international regulatory framework for GIs. It serves not only to define GIs but also to align the standards of protection as well as providing access to an international dispute settlement mechanism. Three articles relating to GIs occur in Part II, Section 3:

1) Article 22 outlines the basic definition and general standards of protection for GIs relating to all products including those of agricultural origin.

¹³⁴ See Kerr 2006.

2) Article 23 denotes the specific and additional protection that is available for the wine and spirits categories, as these make up the majority of registered GIs. Their protection goes beyond Article 22's general coverage for unfair competition and consumer deception, and offers more outright protection to these GIs without requiring that either unfair competition or deception be demonstrated. To illustrate the difference, "Parmesan cheese made in the USA" is not considered a violation of the Parmigiano-Reggiano GI under the TRIPS Agreement (by a court), while "Cognac" produced outside the Cognac region is a violation of the TRIPS Agreement, even if the true origin of the product is indicated.

3) Article 24 notes some important exceptions and details for future negotiation.

As the TRIPS Agreement only provides very minimum standards of protection for non-alcohol GIs, it is likely that regional or bilateral agreements will remain important in this area since they can serve to more specifically protect GIs for broader categories of products.¹³⁵ Of course, national systems use TRIPS not only as a point of departure, but also to ensure basic compliance with WTO rules.

A majority of WTO Members (reportedly more than 100) now wish to extend the higher level of protection provided for by Article 23 of the TRIPS Agreement beyond the current scope of wine and spirits to all products. They also wish to establish an international register, characterized by voluntary notifications of GIs, to help establish the rights of GI owners in foreign jurisdictions. If such a multilateral Register were to be approved, WTO Members would have to provide that their domestic authorities consult and take into account the Register when making decisions regarding registration of GIs or trademarks in accordance with Members' own domestic regulations. However, little progress had been made to date. In the WTO forum, a coalition of countries led by the EU has been a major proponent of expanding the protection scope of GIs while the United States and another coalition of countries prefer protection to be limited to the current categories. Chapter 4, "GI protection – different policies and approaches around the world", elaborates further, as do Abbott (2008), O'Connor (2005 and 2003) Josling (2006), and Rangnekar (2002).

The full text of the TRIPS Agreement is available at:
http://www.wto.org/english/tratop_e/trips_e/t_agm3b_e.htm.

The Madrid System

The Madrid System provides for a central international registration of marks. It extends protection on a multination basis, so that rather than filing separate registrations in individual countries of interest, owners of marks can simply file one application directly with their national trademark or IP office and designate the countries of interest, provided that the country is a member of the System. Members of the Madrid System that are thus designated have the option to refuse protection within a specified period; otherwise the protection of the mark is the same as if it had been specifically registered by that country. Subsequent changes or renewals can also be accomplished in one procedure.

¹³⁵ Sylvander and Allaire 2007.

The Madrid system functions under two components, the Madrid Agreement of 1891 and the Madrid Protocol of 1989, and is administered by WIPO.¹³⁶ The Madrid Protocol took effect in 1996 (amended in 2006). The Madrid System has 84 Members, 78 of which are party to the Madrid Protocol including the United States and the EU.

The Madrid System discussed here focuses on the international registration of marks that may or may not constitute protection for a GI. A separate Madrid Agreement (also from 1891) concerns the repression of false and deceptive indications of the source, while the Lisbon Agreement (see below) covers appellations of origin. The Lisbon Agreement requires that for a product to qualify it must have particular qualities or characteristics that are due to the geographical environment, including the natural and human factors there.

For more detailed information about the Madrid System, Common Regulations, Administrative Instructions, Guide to International Registration of Marks, Madrid Express (online database), and schedule of fees, see the WIPO website at: <http://www.wipo.int/madrid/en/>.

The Lisbon System

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was established in 1958. It became operational in 1966, was revised in 1967 (Stockholm), and the Regulations under the Agreement were last amended in 2002. The Lisbon System, established under the Agreement, is the counterpart of Madrid and also administered by WIPO. It is used to help recognize and protect Appellations of Origin in countries other than their country of origin. It does so by using one single registration procedure for an Appellation, and by provisions of substantive law such as defining the content of the protection that Member States must undertake. Since 1966, 887 Appellations of Origin have been recorded in the International Register, and 813 are currently still in force.

To qualify for registration under the Lisbon Agreement an Appellation of Origin must be recognized and protected in the country of origin, and can be for agri-foods or any qualifying product. An Appellation of Origin is the geographical denomination of a country, region or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors (Article 2.1 of the Lisbon Agreement).

Lisbon currently has 26 Member countries, however, the United States, the majority of EU members, Japan and Canada are not signatories. Lisbon's effectiveness is limited by low participation. This means that existing GIs, though protected at home and registered in Lisbon are not widely protected globally. Nevertheless, countries find that once a GI is registered under Lisbon it may be more difficult later for the denomination to credibly be called generic. Though the Lisbon Membership is limited, there are about 70 countries that have legal definitions for Appellations of Origin, though these may differ somewhat from the Lisbon definition.

¹³⁶ By September 2008, for Members that are party to both the Agreement and the Protocol, the Madrid Protocol will apply rather than the Madrid Agreement.

Lisbon Members as of 2008 include: Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, Democratic People's Republic of Korea, France, Gabon, Georgia, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Moldova, Montenegro, Nicaragua, Peru, Portugal, Serbia, Slovakia, Togo, Tunisia.

Any State that is party to the Paris Convention (see below) may accede to the Lisbon Agreement. It must agree to protect the Appellation of Origin of products that are recognized and protected in their country of origin and registered in the WIPO International Bureau. In some situations, countries can refuse to offer protection. Partial refusals are possible and effectively establish the basis for coexistence of homonymous or conflicting Appellations of Origin. For example, Peru's Appellation of Origin "Pisco" has been subject to partial refusals from a number of Lisbon signatories, based on the protection already existing in their territory for Chile's homonymous "Pisco" Appellation. While the Peruvian Appellation is otherwise protected in these Lisbon countries, the sole exception is that it cannot be invoked to prevent the use of the Chilean Appellation "Pisco". Applications for registration can only be filed by the competent national authority of the country of origin. They do not require renewal so long as conditions remain the same, and the cost was only 500 Swiss Francs in 2007.

The Paris Convention

The Paris Convention for the Protection of Industrial Property (1883–84) was the first major international treaty designed to facilitate the protection of industrial property rights across national borders. The treaty refers to the widest sense of industrial property and thus also includes patents, marks, trade names, and geographical indications.

It has been revised several times (1925, 1934, 1958, and 1967) and is one of the earlier historic treaties to mention the international protection of GIs as "indications of source or appellations of origin". However, it does not really define indications of source or appellations of origin and is not explicit about the form of protection.

It concerns itself with the repression of unfair competition in these areas. Article 9 outlines the rights for industrial property, such as trademarks, and provides the right of seizure or containment of fraudulent products for injured parties (i.e. producer, association or business associated with the source or appellation) when that seizure option is part of a country's legal code.

Article 10 includes the obligation to protect "indications of source" "against direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer or trader". It does not explicitly note or include appellations of origin, though, since an appellation of origin is by definition an indication of source, typically it is acknowledged to apply to both. Article 10 states that any false indication of a product's source of origin is to be handled in the same manner prescribed for fraud and violation of other commercial laws for products such as trademark violations (Article 9). This prohibits fraudulent misrepresentation or use of geographical appellations of origin and source indications.

The World Intellectual Property Organization

The World Intellectual Property Organization (WIPO) was established in 1967 by the WIPO Convention and became a specialized agency of the United Nations in 1974. It is based in Geneva, Switzerland and has 184 Member States. WIPO is dedicated to developing, supporting and promoting the protection of international intellectual property (IP) systems.

The Organization now administers 24 international treaties, including most of those relevant to GIs, such as the Madrid Protocol and the Lisbon Agreement. WIPO's International Bureau keeps the International Register of Appellations of Origin and publishes a bulletin entitled "Appellations of Origin".

WIPO's strategic goals are to promote an IP culture with common international protection standards and to integrate IP into both national and international development policies and programmes. Through its secretariat and collaboration with its Member States, it seeks to:

- ❑ Harmonize national intellectual property legislation and procedures;
- ❑ Promote better understanding of IP through debate and exchange of intellectual property information;
- ❑ Encourage the use of IP for economic development and provide legal and technical assistance to members;
- ❑ Facilitate the resolution of private intellectual property disputes.

It is the international governmental body that is most involved with the issues of GIs. WIPO offers information and training on several aspects of GIs that have to do with law and trade.

Country	Definition	Source
African Intellectual Property Organization	GI: same wording as TRIPS.	Bangui Agreement, 1977, revised in 1999
Argentina	GI: same wording as TRIPS. Denomination of Origin: name of a region, a province, a department, a district, a place or an area within the national territory, which is registered in order to be used to designate a product originating from that place, and whose quality or characteristics must be exclusively or essentially attributable to the geographical environment including natural and human factors.	Law 25.380 on Geographical Indications and Denominations of Origin for agricultural products and foodstuffs
Chile	Denomination of Origin: identifies a product as originating from a country, or a region, or a locality of the national territory, when the quality, reputation or other characteristic of that product are essentially attributable to its geographical origin, considering in addition the natural and human factors, which influence the characteristics of the product. GI: identifies a product as originating from a country, or region, or a locality of the national territory, when the quality, reputation or other characteristic of that product are essentially attributable to its geographical origin. Viticultural Area and Denomination of Origin for wines and spirits: determined area in the national territory, in which climate conditions, soil, grape varieties, vine-growing and oenological practices are homogeneous.	Law on Industrial Property, 1991

Table 3.1 (cont'd)		
Country	Definition	Source
Costa Rica	<p>Denomination of Origin: geographical designation, expression, image or other sign related to a country, a region or a locality, used to designate a good as originating from the territory of a country, a region or a locality, and the quality or characteristics of which are exclusively attributable to the geographical environment, including natural and human factors.</p> <p>GI: geographical name of a country, a region or a locality, which is used to present a good in order to indicate its place of origin, processing, preparation, harvest or extraction.</p>	Law on Trademarks, 2000
Croatia	PDOS and PGIs: same wording as European Regulation.	Law on PDOS and PGIs, 2003
European Union	<p>Protected Designation of Origin: name of a region, a specific place, or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area.</p> <p>Protected Geographical Indication: name of a region, a specific place, or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.</p>	EC Regulation 2081/92 on PDOS and PGIs
France	Appellation of Origin: the name of a country, of a region or of a locality serving to designate a product which originates from there and the quality or character of which is due to the geographical location, comprising natural and man made factors. In accordance with the terms provided for hereinafter, these products may receive an <i>appellation d'origine contrôlée</i> if they have a duly established reputation and are the subject of approval procedures.	Consumer Code (1919, modified in 1966, and 1992)
Georgia	<p>Appellation of Origin: a modern or historical name of a geographical place, region, or, in exceptional cases, a name of a country (hereinafter "geographical area"), used to designate the goods: (a) originating within the given geographical area; (b) the specific quality and features of which are essentially or exclusively due to a particular geographical environment and human factors; (c) the production, processing and preparation of which take place within the geographical area. If a traditional geographical or non geographical name conveys an impression that goods originate from given geographical area, and the requirements above are fulfilled, said name may be considered as an Appellation of Origin of goods.</p> <p>By way of derogation from provisions above, an Appellation of Origin may be considered the name of a geographical area where raw materials of the goods come from the area larger than or different from said geographical area, if:</p> <ul style="list-style-type: none"> – the different boundaries of the geographical area and conditions for raw material production are determined; – there are inspection arrangements to ensure that those conditions are adhered to. <p>For the purposes of that derogation, only live animals, meat and milk may be considered as raw materials.</p> <p>Geographical indication: the name or any other sign, which indicates a geographical area and is used to designate the goods: (a) originating in that geographical area; (b) specific quality, reputation, or other characteristics of which are attributable to that geographical area; (c) production or processing or preparation of which takes place in the geographical area.</p>	Law on Appellations of Origin and Geographical Indications of Goods, 1999

Table 3.1 (cont'd)		
Country	Definition	Source
India	<p>GI: indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.</p> <p>For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be.</p>	GI Act, 1999
Latvia	GI: a geographic name or other indication or sign used to indicate, directly or indirectly, the geographical origin of goods or services, including indications of the characteristics or features thereof, which are attributable to this origin.	Law on Trademarks and Geographical Indications
Lebanon	Appellation of Origin: name of the region or place or area of production. A wine can be designated with an appellation of origin only when its characteristics are related to the origin of the grapes, the place of vinification and the recognized geographical region comprising the natural and human factors.	Wine Law, 2000
Mexico	Denomination of Origin: name of a geographical region of the country, used to designate a product originating from that region, and the quality or characteristics of which are exclusively attributable to the geographical environment, comprising the natural and human factors.	Industrial Property Law
Moldova	GI: TRIPS wording.	Law on Trademarks and Appellations of Origin of 1995
Norway	PDOs and PGIs: same wording as European Regulation.	Regulation n° 698 of July 2002
Poland	GI: word indications which in an explicit or implicit manner designate the name of a place, locality, region or country (territory), which identify a good as originating in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to the geographical origin of that good.	Industrial Property Law of 30 June 2000
Romania	GI: TRIPS wording.	Law n° 84/1998 on Marks and Geographical Indications
Switzerland	Indication of Source: any direct or indirect reference to the geographical origin of the products or services, including any reference to properties or quality which relate to geographical origin.	Federal Law on Trademarks and Indications of Source, 1994
	PDOs and PGIs: same wording as European Regulation.	Federal Ordinance on PDOs and PGIs, 1997
	PDO: can be used for wines originating from a geographically defined area such as a canton, a region, a community, a place, a château or a domaine, if the wines comply with the requirements of the first category of quality, and with the requirements defined by the canton regarding the delimitation of viticultural areas, the grape varieties, the methods of cultivation, the sugar content, the yield per ha, the methods of vinification and the organoleptic test.	Federal Ordinance on Wine, 1998

Table 3.1 (cont'd)		
Country	Definition	Source
Tunisia	<p>Appellation of origin: name of the country, natural region or parts of regions from which any product comes and which takes its value and particular features from its geographical environment consisting of natural and human elements.</p> <p>Generally the natural elements shall include the geographical environment from which the product comes with its particular features relating to the soil, water, vegetation and climate.</p> <p>The human elements shall include, in particular, the methods of production, manufacturing or processing and the specific techniques acquired by the producers or manufacturers in the region concerned. These production methods shall be based on long-standing local and well-known traditions.</p> <p>Indications of source shall designate the name of the country, a natural region or parts of regions from which the product takes its particular feature and its reputation and where it is produced, processed or manufactured.</p>	Law n° 99-57 on PDOs and geographical indications, 1999
Viet Nam	<p>GI: the product having the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication. The product having the geographical indication has reputation, quality or characteristics essentially attributable to the geographical conditions of the area, locality, territory or country corresponding to such geographical indication.</p>	Intellectual Property Law, 2005

Table credit: Thévenod-Mottet 2006.

Chapter 4

GI protection – different policies and approaches around the world

Selecting GI protection

GIs are protectable in several different ways. These include, certification marks, denominations of origin, collective membership marks, trademarks and formal *sui generis* systems, as well as administrative rulings, registers, or even, under laws on unfair competition, truth in labelling or consumer protection. Different types of protection are used in different countries and may even apply differently to certain products such as wine and spirits as opposed to foods or handicrafts. Multiple forms of protection may also apply in the same country, such as trademarks and a *sui generis* system, thereby presenting plenty of opportunities for confusion or conflict.¹³⁷

GI regulation reflects the wide diversity of histories, consumers and agri-food sectors across countries. However, there are some common issues that a GI deciding to apply for protection must consider. The EU and United States systems together are fairly representative of the diversity of approaches utilized by most countries active in this field today, and can therefore serve as useful examples or models. There are still certain distinctions that apply in specific countries that can be important, but to attempt to detail every system in every country would be going beyond the remit of this publication. (In addition to the countries covered in this chapter, see appendix II for more on other countries' systems.)

The focus of analysis in this chapter and the next is therefore primarily, but not exclusively, on the two established systems that govern the largest markets for GI products. Moreover, because costs can be high, most GIs first register for protection in countries that are either important markets for their product or in countries that are expected to produce 'like' goods with names that might infringe their own GI rights.¹³⁸

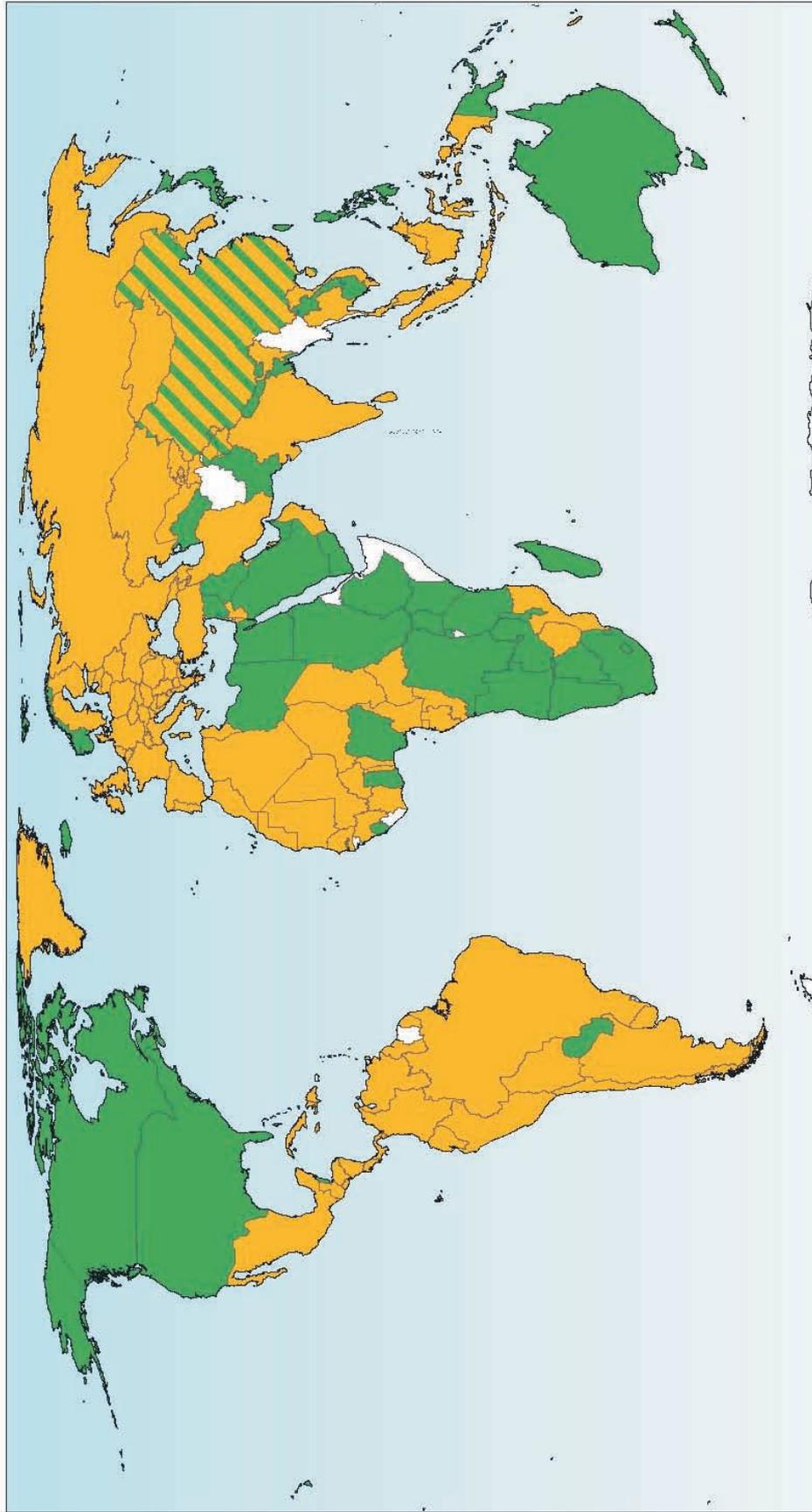
It is important to note that the regulation and registration of a GI protects only the indication or name and its relationship to the specific product, but not necessarily the product itself. The individual product (independent of its origin), or the actual ingredients and formulation of the product, may be protected with different IP tools such as patents.

Since there is no single or common mechanism to protect geographical indications, various approaches have evolved in different countries. These typically include combinations of laws, jurisprudence, regulations and administrative acts such as formal registration. They can be confusing even for those with legal training. Similarly, various terms such as marks, certifications, denominations and appellations are used in intellectual property law to

¹³⁷ Thévenod-Mottet 2006.

¹³⁸ INAC 1999.

Figure 4.1: Map of different GI protection systems around the world



GI protection for agri-food products

- Sui generis
- Trademark system or other administrative means
- No clear GI protection / insufficient data

O'Connor and Kireeva 2009.
 Design: Julien Frayssignes,
 Cartography: Atelier cartographie,
 Université de Toulouse-Le Mirail.
 The boundaries and names shown and
 the designations used on this map do not
 imply official endorsement or acceptance

distinguish protected product-origin relationships. However, because some apply only to certain classes of products, or only in certain parts of the world, and others are interchangeable, the terms are not always clear. For example, certain writers and researchers use the term “trademark” to mean the “trademark system” (which also includes certification marks and collective marks), while others use it to refer only to trademarks as distinct from certification and collective marks.

If a GI is protected domestically, it may also benefit from international protection in other countries. However, in many developing countries, the systems are often at an embryonic stage and governments have a very limited capacity either to facilitate their own GIs or protect foreign ones. In some cases, particularly in sub-Saharan Africa, systems exist, but are essentially not being utilized for reasons such as confusing regulations, costs, and inaccessible bureaucracy. In others, such as Argentina and Cuba, systems exist but apply to a limited range of products (i.e. wine, spirits, and tobacco). Some countries such as Chile, India and Turkey are taking advantage of the potential for GI development in a number of areas. China is among these as well, with many new registrations since 2005. Like certain other countries, China employs a dual system utilizing public GI protection as in the EU, as well as certification marks or trademarks similar to the United States approach.

Even within the EU, differing interpretations of laws that address GIs such as EC Regulation 2081/92 and then 510/06 have resulted in different systems of administration and enforcement in the Member States. This disparity is evident across the common market. For example, the French system is based on specialized national institutions (INAO), while Italy and Spain depend on regional public institutions, and much of northern Europe relies on independent certification bodies.¹³⁹ In the United States and other federations such as Brazil, different states appear to offer different levels of attention and protection to federally recognized GIs.

At an international level, **the majority of the world’s GIs are for wines or spirits**. For example, more than 85% of the GIs in the EU are for wines and spirits. For a number of countries, GI policy and legislation serves this product sector best. One of the results is an enhanced level of protection for wine and spirits in international treaties and accords, including the WTO’s TRIPS Agreement. Because food and other GI product types are not protected in the same manner, many acquire recognition and protection via national bilateral or multilateral accords with reciprocating countries or regions.

Regional or bilateral trade agreements are a useful, though sometimes cumbersome, way to achieve a reasonable measure of international recognition and protection that is not available with international accords. In some cases, countries draw up lists of specific GIs for which regional or bilateral partners agree to provide full legal protection. These agreements usually require reciprocity in protection, meaning that developing countries must put systems in place to protect foreign GIs. This is one viable approach for developing countries that may want to secure foreign recognition of their GIs.

Such one-to-one approaches, of course, require considerable resources to negotiate and may not appeal to many developing countries. Nevertheless, it is likely that regional or bilateral agreements will remain important in this area since they may facilitate more effective protection against such claims as names

139 Barjolle and Sylvander 2002.

considered as generic; trademark misappropriation; and unauthorized use of listed GIs.¹⁴⁰ In many regional agreements, it appears to be common practice for GIs to be included among the IP or Market Access provisions.

It is worth noting that such bilateral protection deals cannot be the only way that a country provides protection to foreign GIs, as that could be a national treatment violation against those whose governments do not protect GIs in the same manner as the bilateral partner. The country must also provide the same level of protection for foreign GIs it registers or accepts as it does for its domestic GIs. It is also possible to have a GI recognized in some foreign countries using those foreign countries' own domestic registration procedures.

For **protection at the national level**, policies are best considered in light of a preliminary assessment of the public and private benefits of a GI, and their likely costs. Decision frameworks for formulating thoughtful GI policy are elaborated in chapter 6 and have also been worked on by the teams working with the EU-financed SINER-GI project.¹⁴¹

Having a clear and adequate legal framework that protects GIs domestically is a useful early step. The bulk of the development work will occur, however, at ground level in the region where the GI is located. Therefore, in order to be most effective, GIs require decentralization of necessary power and resources to local management structures that include a balance of decision-making power vested in both public and private sector participants, and not just government. It is argued that domestic centralization of GI regulation ought to be avoided.¹⁴² Mexico's experience, for example, shows that local management and smaller scale can promote relatively flexible regulations that are more responsive to the evolving needs of the communities that participate in them, a view that is reflected in the Mezcal, Veracruz, and Antigua Guatemala Case Studies.

Policies would do well to mandate that the management of such a local or regional GI institution pursue **participatory methods** that first incorporate all key stakeholders equally, in order to initially develop the internal and external components of a strategic plan for pursuing a GI, and then manage the execution of that plan over the years required. This helps to ensure the reasonably equitable use of the GI and the long-term maintenance of its intrinsic value qualities. GI products nearly always are somewhat established prior to the legal or institutional management structures that are overlaid to support them. They have often evolved existing production organizations, quality regulations and even distribution channels. Therefore smart policy interventions would cautiously consider and build on the existing collective practices and institutions.¹⁴³

One of the first regional policy decisions is to help participants **determine the choice of standards** at the origin level in such a manner as to ensure that they balance the need to maintain the authenticity with the need to be both efficient and as inclusive of as many local participants as possible, avoiding the exclusion of smaller producers. The experience of Peru's Cajamarca cheese producers illustrates that organizing with participatory principles is the best way to

140 Sylvander and Allaire 2007.

141 SINER-GI, the Strengthening International Research on Geographical Indications consortium of research institutions have a multi-year, EU-funded workplan specifically focused on GIs. See for example Sylvander and Allaire 2007 for more on this.

142 Larson 2006.

143 Sautier and van de Kop 2004.

effectively marshal the use of local resources and minimize exclusion processes. Their success was due in part to the establishment of institutional platforms (APDL and CODELAC) for coordination and partnership.¹⁴⁴

The local GI institution may participate with input to the applicable policy and regulatory framework as needs emerge. Similarly, it can contribute to the selection of appropriate methods of protecting and promoting the GI. This goes beyond just the legal issues to also develop supportive policies and even incentives that ensure effective means of collaboration with private sector enterprises domestically and abroad, so as to ensure adequate promotion and to safeguard the reputation of the GI as a brand.

Public and private features of protection

Among the most important considerations of GI protection is the concept that laws are designed to protect individuals and to also provide for the greatest common good. A GI is certainly a business asset and can be considered in a market context. However, it is also more than a business asset; it is a public and sometimes a cultural asset. A GI intrinsically covers a group of people and product that is intimately related to a physical origin. As such, a GI tends to have impacts on those living in a region that can be economic, social, and even environmental. GI laws are ideal when they can best balance the private rights of an individual with the greater public good. There is considerable debate as to whether this can best be achieved by essentially private mechanisms or by more public methods. Both sides of the debate have distinct merits. The essence of a productive GI as a public good is that the majority of producers of the designated region are entitled to a certain voice and access to the equitable use of a registered GI if they meet the established criteria (ideally these are established in open fora).

Systems oriented toward private means of protection such as the trademark regimen may have some advantages. One occurs when the size and bureaucratic nature of governments could make them slow to respond in correcting misrepresentative or fraudulent use of a GI. Whereas, the owner of a mark can take immediate legal action, provided they have the capacity to do so. Also, in the absence of a real democratic process, a government may not be fairly responsive to the protection needs of a GI and can even become a liability if it uses these powers for political ends or to control the economy of a region. Private systems put the burden of costs directly on the owner of the mark. This can reduce public costs unless, as often happens, the government owns the mark.

Furthermore, government cannot be expected to efficiently take on many roles that are best handled in the private sector or within a collective organization. These include defining the production or operating standards, managing verification of compliance, or controlling output and other market functions. Too much control would not only be stifling but would also initiate a precedent of subsidizing the establishment and maintenance of private enterprise.

Since ownership is rarely fully representative of the stakeholders in a GI, there is a useful role for government to provide public oversight functions. Government may be the only entity that can ensure that the public good is not violated and that key stakeholders and the public interest (i.e. environment, culture, etc.) are not excluded in decisions that affect them. A GI is linked to a particular place and is untransferable and unassignable, though this may be

144 Gerz and Boucher 2006.

difficult to control in practice when a GI is protected as a trademark. Under the tenets of trademark law in some countries the owner of private property rights, including GIs, can sometimes secure broad rights over a GI even if that owner did not make the long-term investment in commercialization and in developing the reputation of a GI product or service. In some countries, public policy could be valid to dictate that “the law should reward that investment by providing the (exclusive) right to use that mark to the investor”.¹⁴⁵

For less affluent or small-scale producers, a more publicly controlled asset can be a valuable consideration. This can ensure a measure of equitable access to the benefits of a GI and prevent the private capture of these by larger firms or individuals to the detriment of the overall public good. Likewise, legal protection and dispute resolution can be costly, especially when conducted in other countries, and the public level (usually government) management of the asset may be more likely to undertake and afford these. Therefore, the selection of the organizational and protection structure has vital implications for the producers’ effort to effectively have a voice and control in their origin. There is no one correct method and to efficiently achieve the greatest overall benefit may require a balance of public and private aspects in the protection of a GI.

The common law approach of countries such as the United States and the United Kingdom, is comfortable with the trademark system as a way of protecting the intellectual property associated with an origin or place name.¹⁴⁶ However, there is also experience in Ireland and the United Kingdom is that a *sui generis* GI system actually complements and fits well with their existing trademark systems.¹⁴⁷

Some types of marks can be relatively public in scope (certification or collective marks) and can be owned or managed by a public or a private entity. Trademarks can belong to any legal entity (business, government, organization or individual), but by their nature as a private right without any necessary linkage to either group, place, or quality standard, are more readily subject to being controlled, bought or sold like any private asset. There are expectations that any mark, especially a trademark for a GI, should not violate the public trust and in some countries, such as the United States, there are limitations on the use of a trademark containing a geographic term if use of that trademark might be deceptive to the consumer. But for trademarked GIs there is little precedent and it is not clear what exactly would constitute such a violation in different jurisdictions. Of course, the monitoring of any such abuse and the pursuit of legal remedies is entirely up to the owner of the GI mark or any legitimate stakeholders that feel their rights have been violated.

The public-private difficulties of a trademarked GI are illustrated in a recent Chinese case. For the resident producers of the well-known GI, Jinhua huotui (a type of ham originally produced in Jinhua China), the granting of a trademark for that GI to a manufacturing firm resulted in the producers being barred from legal use of the name. The firm exercised its legal rights to exclusivity by successfully prosecuting the local original producers who wished to use their traditional place name in association with the product. The extent to which trademark law respects both private rights and first registration meant that the firm was able to keep its relative monopoly on this name even when it relocated away from the Jinhua region.

¹⁴⁵ See Cotton and Morfesi 2007. In the United States, trademark or collective law protection of a GI can only be acquired when there is evidence of long and exclusive use in United States commerce. A certification mark however can be acquired without prior use. Parties can theoretically challenge the validity of the mark if it is somewhat divorced from parts of its origin or its GI obligations or if the owner is not representative of the interests of parties to the GI by filing legitimate legal complaints against it.

¹⁴⁶ Barham 2003.

¹⁴⁷ Personal communication with B. O’Connor and I. Kireeva, EU attorneys 30 October 2007.

The *sui generis* approach, as used in EU countries regards GIs as belonging to a group in the region (often administered by a government or association), and as a public asset that cannot be bought, sold, transferred or controlled by an individual or corporation. GIs cannot be decoupled from their origin. In this case, the State is likely to be involved in the protection process.

The notion of trademarks is often more closely associated with the individual or corporate protection of goods and services, while collective marks or certification marks are more commonly associated with group efforts and GIs. **A certification mark differs from *sui generis* GI controls** in that: a) it is not required to meet any pre-defined public or private standard; b) it need not necessarily be confined to a specified geographic area; and c) the owner defines its own rules of participation that, for example, may or may not include quality parameters.

Unlike trademarks and collective marks, certification marks have some broader public character. If a qualified product meets the standards set by the owner of the certification mark, it must be permitted to use the mark fairly (there may be payments for licensing). The legal authority for Jamaica’s Blue Mountain coffee prefers certification marks because “they (can) certify quality and source (whereas a) trademark is a mere source identifier and can attach to any product”.¹⁴⁸ The owner of the mark must exercise legitimate control over the term or its use but may not discriminate against a producer who actually meets the standard, otherwise the mark may be subject to cancellation.

The sections that follow will discuss the distinct approaches that the EU and the United States have utilized in addressing GI protection and in their GI agendas for international agreements, as well as the implications for potential partners. Some general insights are also offered on protection regimes in important Asian markets, although these areas have been less well studied to date.

Feature	Trademarks	Geographical Indications
Ownership	Anyone. Typically individual entity or corporation, sometimes collective or government.	Producers or government.
Transferability	To anyone, anywhere.	Linked to origin. Cannot be de-localized.
Rights to origin name	First in time – first in rights.	Distinguishes legitimate rights to origin, not first to apply for name. Registration confers rights to all legitimate producers.
Protection	Private. Burden entirely on owner.	Public. Government responsible but some private burden to identify infringement.
Use	Trademark: typically private, can license. Collective mark: closed group. Certification mark: open according to set rules.	Collective, open to all producers that comply with rules.
Quality	Private. Usually not specified except sometimes for certification marks.	Disclosed in standards or specifications and obligatorily linked to origin.
Name or sign	May be created. May or may not have geographic linkage.	Must exist already and must link to <i>terroir</i> .

Source: Adapted from work of Marette, Clemens and Babcock 2007.

¹⁴⁸ Personal communication with Coffee Industry Board legal officer 28 December 2007.

Contrasting approaches of the world's two largest markets: marks and *sui generis*

The options to protect GIs are diverse and can be confusing, particularly since their application and interpretation varies in different jurisdictions. One element of a successful strategy is to understand the GI systems in the two largest developed country markets: the EU and the United States. While the United States experience of GIs is primarily that of a brand development or marketing tool, Europe has positioned GIs more as a community development tool that still includes a considerable emphasis on branding and marketing. Both offer valuable lessons.

Clearly, as evidenced in their Trade Agreements, the EU and the United States have divergent interests in their treatment of GIs. The EU is attempting to consolidate the international reputation of GIs and their increased public protection. The United States has been focusing on increasing open markets and has viewed the EU's GI efforts as somewhat protectionist. For developing countries interested in negotiating Trade Agreements with either the EU or the United States, these divergent approaches can pose distinct challenges to their own domestic GI and trademark efforts.

The United States and the EU both value GIs but protect them in fundamentally different ways.

Concerns about protectionist aspects of GI systems were fueled, in part, by a lack of foreign registrations in the EU *sui generis* PDO and PGI system, when compared to the United States system. For example, of the EC's 711 registered (non-wine and spirits) GIs in 2006, all originated from Member States (see table 4.2).¹⁴⁹ Since the EC began accepting foreign applications for GI registrations in April 2006, three non-EU registrations have been made: United States, Brazil, and Colombia.¹⁵⁰ By contrast, of the 137 United States certification marks for GIs granted since that date, 62 were to non-United States applicants, 25 of which were from the EU – thus leaving room for speculation regarding the EC's openness, at least until the recent past.

While the United States and the EU both value and protect GIs, they utilize fundamentally different philosophies and approaches to conferring, protecting and enforcing GIs. The EU uses a highly developed, stand-alone system of legislation and regulations specifically for GIs, while the United States incorporates GIs as a section of its existing intellectually property legislation: trademark law. For a developing country GI interested in pursuing protection in either the United States or the EU, a thorough understanding of the actual processes of each system is vital. The wider implications of the effectiveness, requirements and costs that these two divergent systems will have on an incumbent GI must also be assessed properly before an appropriate course of protection can be determined.

The registration of any sort of mark or protection does not necessarily prevent someone from using the registered geographic term to fairly describe the origin of their product. This may be considered fair use of a descriptive term, and it is acknowledged that the law does not intend to take geographic words entirely out of the public domain. The test is often a market-based assessment of whether the term is used in a way that confuses the average consumer as to the source of the product, or allows the consumer to confuse the product with the one that enjoys protection.

¹⁴⁹ Marette, Clemens and Babcock 2007.

¹⁵⁰ It should be noted that registrations with geographic names have occurred under the trademark systems of different EU Member nations and the EU's CTM.

Table 4.2 Registered EU GIs and United States certification marks used as GIs (not wine-spirits), 2006

Category	European Union	United States certification mark with geographical linkage		
	Registered Geographical Indication	Products of foreign origin		
		Total	EU	Other countries
Cheese	156	21	16	1
Fruit, vegetables, cereals	148	49	1	12
Fresh meat and offal	101	21	0	4
Oils and fats/olive oils	94	6	1	4
Meat-based products	76	4	4	0
Other drinks	39	4	0	1
Other animal origin	23	10	3	3
Beer	18	8	3	1
Bread, pastry, cakes, etc.	17	9	1	4
Table olives	16	0	0	0
Fresh fish and other	9	16	0	3
Non-food and other	9	4	0	3
Other products (spices, etc.)	5	5	0	5
TOTAL	711	157	29	41

Sources: USPTO 2006b, EC 2006a. Note that totals (different from original source) provided by author.

As a general rule, United States trademarks containing a geographical indication cannot be issued or protected if the use of such trademark would mislead the public as to the true origin of the product and it could be demonstrated that the true origin mattered to the public. Though the laws of a number of countries permit the inclusion of geographical names among the components of the trademark, many exclude common geographical terms from registration as a trademark, because a trademark must not be merely descriptive and must not infringe on the rights of others to use a public asset such as a place name.

Collective marks are distinguished primarily by the fact that only members of the collective group, and sometimes the mark's owner, may use the mark.

Certification marks are similar to collective marks except that owners typically do not also use them commercially. The owners of certification marks may not discriminately refuse to certify products that meet the established standards for certification. Certification marks can protect only the association of a particular product with its geographic origin thus leaving the place name in the public domain. It can also certify certain characteristics such as quality, if such characteristics are set in the application.

The rulemaking and verification of the certification mark instrument may be the closest parallel to the Appellations of Origin systems established in other countries.¹⁵¹ The certification mark in the United States system is the mechanism that comes closest to EU-style registered GIs and has been used

151 OECD 2000.

effectively. Darjeeling tea, Mosel wine, and Jamaica Blue Mountain coffee are among a number of well-known foreign GIs that have United States certification mark protection.

When French Roquefort cheese was registered in the United States as a certification mark, companies previously using the name “Roquefort” to describe their products had to switch to other terminology such as “blue cheese”. In another prominent case, the consortium owning the Parmigiano-Reggiano registered certification mark in the United States do not own the previously trademarked homonyms “parmesan” or “parmesano” that are used by a number of firms. These terms are viewed as generic for a type of cheese in the United States.¹⁵² Further, the consortium does not have the United States rights to just the term Parmigiano (without Reggiano) but do have the right separately to the place name Reggiano. Due to the long-term development and common acceptance of trademark laws in many countries around the world, **trademarks are relatively easier to protect than GI registrations.**¹⁵³

Compared to the EU system of PDO/PGI, with its requisite linkage between the quality of a product and its region of origin, the United States certification mark approach allows weaker ties between origin and quality. The United States approach is typically less restrictive than the EU-style system since the guidelines for standards at origin are set privately to whatever level preferred by the owner of the GI.

It can be more difficult, however, for consumers to recognize these private forms of GI as specific or objective market signals. Since each is different, it is not always clear to what extent a geographic term conveys anything beyond the mere identification of source or geographic origin. A certification mark does not consistently convey any particular characteristic, other than ownership (when registration uses the ® with the mark to indicate the term is proprietary).

A single United States certification mark can be tied to a variety of foods, producers and processors in a region (e.g. ‘Pride of New York’), thus the mark can be widely used, will have fewer controls and is more a general marketing tool than a device signaling quality. More than half of the individual United States states have and manage at least one certification mark for agricultural products. Improved market access or lower marketing costs may be the benefit since in such circumstances many agricultural products are not typically marketed at premium prices.¹⁵⁴

In some cases, where marks do little more than indicate origin, Marette, Clemens and Babcock suggest that they would be less likely to be classified as a GI under WTO definitions.¹⁵⁵ Some certification marks, particularly the well-known ones, such as Vidalia onions and Idaho potatoes, employ stricter controls of variety, supply, production and regional demarcation, and not only would clearly qualify as GIs but also are operationally somewhat similar to the EU’s GI system.

Sui generis systems such as the EU’s have a potential marketing advantage in that **the EU has a consistent logo for all registered names** (see figures 4.2 and 4.3). Consumers seeking a certain assurance, only have to look for one of these logos. Indeed, even though they may not be familiar with the product or the specific name, consumers may already recognize the logos themselves as

152 Italian Parmigiano-Reggiano consortium’s registered certification mark faces competitive hurdles in terms of distinguishing itself from those producers using similar or translated names that the United States courts have determined to be generic.

153 Trademarks require that both monitoring and protective action be initiated by the owners of the registered trademarks and at their expense.

154 Babcock and Clemens 2004.

155 Marette, Clemens and Babcock 2007.

indications of a certain set of qualities or characteristics. By contrast, the United States certification mark is unique to the applying organization. Thus, in the United States, each new mark is relatively unknown to the public.

The process of applying for GI protection via United States certification or collective marks appears to be a simpler process than the EU's PDO/PGI, as the requirements for inspection and verification in the former are set by the certification mark owner rather than the government. A United States application can be based on either actual use or intent to use. In other words, a third-country group interested in registering a certification or collective mark in the United States can file an application before the mark is actually in use (so long as no-one else has registered the mark previously, or has achieved rights to it under Common Law) or before they actually sell anything in the United States, so long as they use the mark in United States commerce prior to actual final registration. This allows GI applicants to file an application with the USPTO prior to actual commercialization in the United States market. The applicant must submit the future required standards. The substance of such standards however is at the discretion of the owner and not generally questioned by the USPTO examiners.¹⁵⁶

The EU's philosophy and approach

For years, the European Union has played a leading role in the development, recognition and protection of various GIs there. These are promulgated by the European Commission, whose system has replaced to a large degree the residual national systems in the EU. For wine and spirits, however, many national systems still operate alongside the separate EC systems (see appendix III). As such, different nomenclature persists throughout the Union. The Member States only retain competence in any GI matter to the extent that EC law does not apply.

In 1992, the EC created systems to bring together the many different rules for appellations and protected origins, and they were updated in March of 2006.¹⁵⁷ There is also protection for Lisbon registrations in seven EU Member States. The development of GIs has become part of the official agricultural policy as a territorial approach that includes recognition of traditional qualities and cultural know how in the context of specific geographic regions.¹⁵⁸

The current EC system is based on two main categories of protection for GIs: Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI). There are also other terms for GIs in the EU, particularly for a number of wine GIs, and these can sometimes be confusing in their number and application (see appendix III). Table 4.3 below specifically translates PDO and PGI for some of the main languages.

¹⁵⁶ The standards must be included in the file (available online) and may be challenged by interested third parties during and after the application process on the grounds, for example, that they are discriminatory.

¹⁵⁷ EC Regulation 510/2006.

¹⁵⁸ EC 2007.

Table 4.3 PDO and PGI abbreviations in some EC languages		
Country	Term	Symbol
Protected Designation of Origin		
Spain	Denominación de Origen Protegida	DOP
Germany	geschützte Ursprungsbezeichnung	g.U.
France	Appellation d'origine protégée	AOP
Italy	Denominazione d'Origine Protetta	DOP
Poland	Chroniona Nazwa Pochodzenia	CHNP
Sweden	Skyddad Ursprungsbeteckning	SUB
Protected Geographical Indication		
Spain	Indicación Geográfica Protegida	IGP
Germany	geschützte geografische Angabe	g.g.A.
France	Indication géographique protégée	IGP
Italy	Indicazione Geografica Protetta	IGP
Hungary	Oltalom alatt álló Földrajzi Jelzés	OFJ
Poland	Chronione Oznaczenie Geograficzne	CHOG
Sweden	Skyddad Geografisk Beteckning	SGB

The PDO and the PGI

There are two forms of registration for agri-food GIs in the EU:

- ❑ **Protected Designation of Origin (PDO).** Also commonly known as a Protected Denomination of Origin (DOP), it mandates that the product *must be produced AND processed in the geographical area*. This implies that the product exhibits qualities or characteristics that are essentially due to that geographical area.¹⁵⁹
- ❑ **Protected Geographical Indication (PGI).** For a PGI, the product *must be produced OR processed in the geographical area*, meaning the product exhibits specific quality, reputation or other characteristics attributable to that area. For a PGI, the registration allows greater flexibility based more on reputation and linked less concretely to the qualities of a geographic region.

Though the criteria or product specifications between PGI and PDO are different, they are the same in nearly every other respect. This includes application and recognition process, control systems, and consumer guarantees.

One exception, however, is that if a GI was not recognized as a PDO in the country of origin before May 2004, it can be protected only as a PGI, not as a PDO. Names to be used under a PDO or PGI cannot cause confusion with a plant variety or animal breed, and purely generic names cannot be used (EC Regulation 510/2006 Article 3.1), although it may be possible to register a name which is partly generic. Where there is doubt, it is necessary to prove that the name is specific and associated, in the minds of consumers, with the specific place.¹⁶⁰

¹⁵⁹ Of note, relatively unprocessed raw materials from other regions may occasionally be used under restricted circumstances such as temporary local unavailability.

¹⁶⁰ O'Connor and Kireeva 2003.

Box 4.1 Key differences between PDO and PGI

PDOs and PGIs are protected equally under Regulation 510/2006. The essential differences between the two are that:

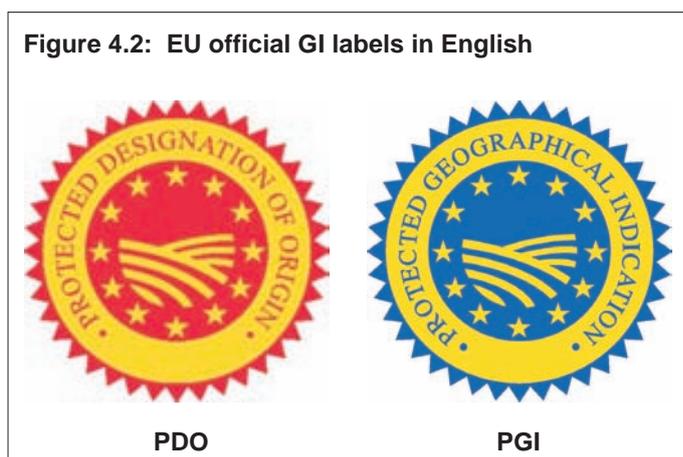
- ❑ *In order to qualify for a PDO, the raw materials must come from the defined geographical area; there is no such rule for a PGI.*
- ❑ *In the case of a PDO, the link between the territory and specific characteristics must be more objective, as explained by the Regulation “the quality or the characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors”.*
- ❑ *For a PGI, a link is necessary but is not essential or exclusive, as stated in the Regulation: “specific quality, reputation or other characteristics” must be merely “attributable to that geographical origin”.*
- ❑ *For a PGI, only one of the three stages - production, processing or preparation - of the product must take place in the defined geographical area, whereas for a PDO the production, processing and preparation of the product (all the stages from the production of raw materials until the preparation of the final product) must take place in the defined geographical area.*

GI names cannot be sold or otherwise delocalized¹⁶¹, and are accessible to any producer within the specified region of origin that meets the certification criteria. Individual companies are allowed to add their own criteria and develop sub-brands.¹⁶² These can be further protected using the independent trademark system. Qualifying users can take advantage of EU-wide labels to identify their GI products (see figure 4.2).

Official labels for PDOs and PGIs in Europe

The EU has exacting definitions of GIs that require the maintenance of direct linkages with established quality parameters. This provides consumers with a consistent and credible form of purchasing information about the product.

Figure 4.2: EU official GI labels in English



The EU also utilizes the GI as a means to promote rural development, and to generate income support for producers as part of its agricultural policy (see box 4.2).¹⁶³

Few other countries have specific labels identifying protected GIs. Within Europe, two non-EU Members have also adopted similar systems and created their own labels (see figure 4.3 below).

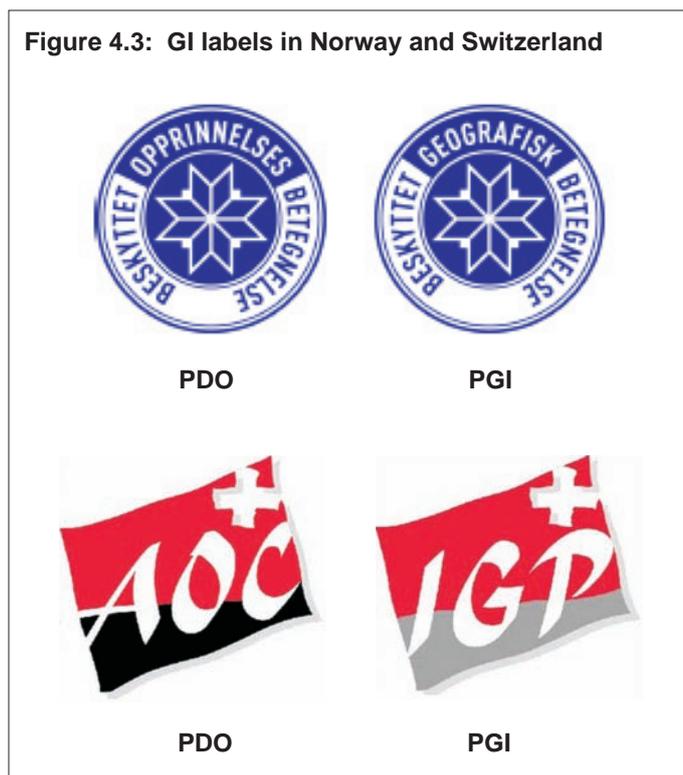
Switzerland’s label belongs to a trade association and is not a formal governmental label, though it serves the same purpose.

The update to the EC’s GI legislation (effective 2006) features new regulations pertaining to GIs, providing clearer definitions for third-country registrations of

¹⁶¹ “Newcastle Brown Ale”, a registered trademark, was also registered as a Protected Geographical Indication (PGI) and was brewed since 1927 in Newcastle upon Tyne, England. It was purchased by Scottish & Newcastle, and its Tyne production plant was closed in 2005. Pursuant to Article 7 of (EC) 510/2006, a procedure for cancellation of the PGI has been initiated, because it cannot be transferred to another geographic location.

¹⁶² Marette, Clemens and Babcock 2007.

¹⁶³ Kerr 2006.



GIs.¹⁶⁴ These are outlined below. They enable third-country producers to register for a PDO or a PGI. Thus far, only three non-EU countries have successfully applied for a PDO or PGI registration: wine from Brazil and the United States and Café de Colombia. There are currently more than a dozen new applications from third countries on the EU ‘List of applications for registrations of PDOs and PGIs’.¹⁶⁵

Café de Colombia is one of the first tests to determine how well the EU system copes with non wine and alcohol registrations from third countries, and producers are likely to learn from the process.¹⁶⁶ Because foreign applications are made directly to the EU, the opportunities for interest groups to influence the designation will probably be reduced. The process of objecting to an application is guided strictly by timelines and pre-set parameters.

Box 4.2 Quality and standards: Asiago cheese, a successful GI in the EU

As a GI is not owned by an individual or a company, a consortium or similar type of organization comprising producers and/or processors may typically sets standards for product quality and integrity, help ensure the appropriate use of GI identifiers and sub-brands, and promote the GI product. The specific product standards exist within the wider legal guidelines such as those set by law. The Consorzio Tutela Formaggio Asiago in Italy is an example of such an organization. Asiago cheese received PDO certification in 1996, and it was certified as a Controlled Designation of Origin in Italy two decades earlier.

The Consorzio’s regulatory board represents Asiago cheese makers and cheese workshops, and maintains a quality management system that also fulfils ISO 9001 requirements. As of November 2003, there were 55 companies within the PDO specified geographical region certified to produce Asiago cheese.

To ensure the status of the product, the Consorzio requires that each individual operation maintain detailed control records that include the origin and quality of the milk used to produce the cheese, production data, quantities, control procedures for the finished product, and full traceability. In addition to oversight by the consortium, EC regulations require that each PDO product be independently third-party certified by an authorized inspection body to verify production standards, milk origin, quality and hygiene, as well as adherence to traditional processes. In 2002, 22,000 metric tons of Asiago cheese were produced, valued at €900 million (Consorzio Tutela Formaggio Asiago 2003).

164 The EC does not, however, publish any fee schedule for a direct application from a third country.

165 As of December, 2008 using the DOOR database at: http://ec.europa.eu/agriculture/foodqual/protect/applications/index_en.htm

166 The application no. 0467 for a PDO of Café de Colombia, was dated June 2005. The EC has up to one year to review an application and, if approved, list it in the *Official Journal* for its six-month ‘published for objection’ phase. This happened in 2006 (see http://ec.europa.eu/agriculture/foodqual/protect/firstpub/index_en.htm). In September of 2007, after 27 months, the registration was accepted and formally registered.

EU policy objectives for GIs

The EU's foreign policy pertaining to GIs, particularly towards developing countries, has three main objectives:

- ❑ A simple, cost-effective system of world-wide registration for geographical indications such as a multilateral register;
- ❑ Extension of the TRIPS wine and spirits protection to other agricultural and cultural products; and
- ❑ To ensure market access for EU-based GI products, the EU is asking WTO Members to invalidate the trademarks granted for a selected group of products deemed to have usurped the names of EU-based GIs that were in use prior to the marks or that were deemed by some to have become generic.¹⁶⁷

The first two objectives are pursued at the multilateral level, while the third is a feature in a number of the EU's recent discussions and Trade Agreements.¹⁶⁸

EU Trade Agreements and GIs

The EU wants that some existing trademarks or generic uses in third countries be rescinded or 'clawed back' in order for the original GIs to regain exclusive ownership of their names. Included here are names such as Feta Cheese, Mortadella Sausage, Parmigiano-Reggiano Cheese and Prosciutto Ham. These names, or their homonyms, are commonly used as generic names in markets outside the EU but are considered to be protected GIs in Europe. A successful "claw back" would mean that these names could no longer be used by manufacturers, except those within the GI designation. This has led to several disputes and, at least according to the International Trademark Association, it is unlikely that many of the popular names already trademarked elsewhere will be clawed back.¹⁶⁹ The EU would also like to see the elimination of terms like "kind", "type", "style" and "imitation that imply similarity to registered GIs (for example: "Darjeeling-style" or "Feta type").

In several recent EU Trade Agreements (with Chile, Australia, South Africa, Mexico), specific sections containing "substantive protection of wine names and oenological practices" have been included.¹⁷⁰ In the EU-Chile Agreement, any trademark registration that is similar or identical to an existing EU GI must be refused, and any existing Chilean trademark that coincides with the EU's list of priority names must be cancelled within a certain period, regardless of whether they meet TRIPS obligations or not.¹⁷¹ These obligations may possibly contravene several aspects of the TRIPS agreement. The EU's support for GIs is sometimes considered contentious by some who view it as a protectionist tool that shelters product quality and traditional products from competition with similar products originating outside of the GI region.¹⁷²

Governments of developing countries wishing to pursue Trade Agreements with the EU may have to consider the potential trade-offs of such obligations. Several recent Trade Agreements with the EU have successfully removed prior trademarks and granted protection for EU GIs that were used previously or were deemed generic. While there are concerns that such policies could erode the partner country's TRIPS obligations, or place it in conflict with existing

¹⁶⁷ EC 2003b.

¹⁶⁸ Vivas-Eugui and Spennemann 2006.

¹⁶⁹ 2005.

¹⁷⁰ Vivas-Eugui and Spennemann 2006.

¹⁷¹ Vivas-Eugui and Spennemann 2006.

¹⁷² See Kerr 2006 and also Marette, Clemens and Babcock 2007.

obligations to third parties, creative solutions have also emerged. For instance, in Canada which recently signed a wine and spirits agreement with the EU, ‘port’ can no longer be used generically. A Canadian producer of what was called “port” is now successfully labelling and promoting the product as ‘Pipe’ (container used for Port wine storage). Similarly, South African producers have started renaming their products ‘Tawny’ and ‘Ruby’ (classifications sometimes used for Port wine) instead of ‘Port’.

One means of substantive protection in the EU’s Trade Agreements is the stipulation that *all users of protected GIs are protected by the laws where the GI originates*. In other words, each party essentially exports their particular laws on a specific GI to the bilateral partner who is then obligated to uphold that GI law in their country, and vice versa. This can lead to conflicts with potential domestic or third-country trademarks that use the newly protected EU GI. For instance, were Ecuador to pursue a Trade Agreement with the EU, and if there were an existing United States trademark (e.g. Smith’s Port Wine) registered in Ecuador that uses a priority EU GI in its name (Porto in this case), Ecuador is caught between its Trade Agreement obligations to the EU and its legal trademark obligations to United States firms.

Additionally, many EU Trade Agreements obligate the parties to offer “reciprocal” or “mutual protection” of particular GIs listed in attachments to the agreements. These terms mean that the parties must *accord automatic protection* to each other’s GIs without the discretion to examine it under the TRIPS parameters of GIs. This implies that the partners each accept that the other party’s domestic examinations are also sufficient for their domestic market.

There are additional restrictions on names associated with production methods in the EU Trade Agreements. These ‘traditional expressions’, despite not being necessarily associated with a geographic area, are also a priority for the EU. Eiswein, for example, is one such expression for which production standards must be met in order for the term to be used. Typically, traditional expressions have their origins in a determined geographic area but have often developed in other areas as well and may now lack the defining geographic relationships. Thus, they do not constitute GIs under the TRIPS definitions.

The United States philosophy and approach to GIs

The United States has nearly 1,000 registered certification marks that specifically cover geographical origin and could be termed GIs.¹⁷³ Most are for wines and spirits and a number of these are registrations of foreign origin. The United States system applies on an equal basis to any applicant, foreign or domestic, that can meet the legal requirements. The United States views GIs primarily as property rights, a tool to assist the competitiveness of firms and producer groups. Unlike Europe, there is considerably less emphasis on rural development or traditional systems. Among the most widely recognized United States GIs are Florida citrus, Washington State apples, Napa wines, Vidalia onions and Idaho potatoes.

Given its legal traditions and dominant economic theory, the United States is most comfortable and familiar supporting GIs via a private system of rights (i.e. trademarks and certification marks) that tends toward exclusive ownership of

¹⁷³ The exact number is uncertain because there is no register for GIs and some marks with geographic names would not be considered GIs.

assets, brands, and other identifiers.¹⁷⁴ These require private management and so mark owners need not wait for their government to address unauthorized use or take legal action against infringement. It does also put the responsibility on the owner of the mark to initiate and pay for any legal action for protection.

The TRIPS Agreement references “trademarks”, and mentions certification marks.¹⁷⁵ It also notes¹⁷⁶ that, “...any sign...capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark” and “Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks”. An interesting aspect mentioned in one clause is that, “Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use.” That “distinctiveness acquired through use” can be an important turning point for many GI applications.

United States trademark system

The United States and other countries class trademarks, certification marks and collective marks under the general heading of Trademark Law (specifically, Trademark and Unfair Competition Law in the United States). The United States Patent and Trademark Office (USPTO) views GIs as a subsection of Trademark Laws, observing that: “(GIs) serve the same functions as trademarks, because like trademarks they are: 1) source-identifiers, 2) guarantees of quality, and 3) valuable business interests”.¹⁷⁷

The United States does not have a register for GIs, so they can be found only by reviewing each registered mark for the presence of a Geographical Indication. This can be difficult because a number of marks use geographic names but would not qualify as GIs i.e. Philadelphia Brand cream cheese, Tabasco sauce, or the dozens that use ‘Kona’.

Like other countries, the United States does not protect geographic terms or signs that are deemed generic. A geographic term, or sign, is deemed “generic” when it is so widely used that consumers view it as designating a category of all of the goods or services of the same type, rather than as a geographic origin. “Swiss” for cheese or “Bermuda” for shorts, for instance, would be considered generic terms and would therefore not be protected.

Geographic terms that merely indicate the place of production are not adequate to identify a GI and cannot be protected by trademarks without acquired distinctiveness via “secondary meaning”. This simply means that a typical consumer associates the mark with a single source.¹⁷⁸ There are exceptions to the acquired distinctiveness requirement for certification marks.

The United States generally protects GIs by utilizing two sub-categories of trademark law: “**certification marks**” and sometimes “**collective marks**”. Similarly, other countries offer specific trademark options to cover GIs. The

174 Giovannucci, Barham and Pirog 2009.

175 Incorporation of Article 7bis of the Paris Convention by virtue of TRIPS Article 2.1 probably includes certification marks (noted by Mathias Geuze, WIPO).

176 Article 15.1.

177 USPTO, n.d.

178 Giovannucci, Barham and Pirog (2009) note that Section 2 of the Lanham Act clarifies the grounds on which trademark registration may be refused for geographical terms. 15 U.S.C. § 1052(e)(2). However, this can be overcome by evidence of “secondary meaning”. 15 U.S.C. 1052(f).

South African Trademarks Act states that, “Geographical names or other indications of geographical origin may be registered as collective trademarks”.¹⁷⁹

United States certification marks

The U.S. Trademark Act provides that “geographic names or signs – which otherwise would be considered primarily geographically descriptive and therefore unregistrable as trademarks or collective marks in the United States without showing acquired distinctiveness – can be registered as certification marks”.¹⁸⁰ To protect a GI in the United States, certification marks are the expected and most common mechanism, though recent precedents may indicate a greater acceptance of trademarks.

For a certification mark to serve as a GI, United States consumers must typically understand the proposed GI to refer only to those products or services produced in the region that is named in the mark (and not to those produced elsewhere) and the owner must control use of the geographic name and limit the mark’s use to those meeting the certifier’s established standards without discrimination. For certification marks to serve as GIs, these requirements will typically include specification of a particular product (or group of products such as citrus fruits), a specified geographic origin and explicit standards.

Certification marks work mostly by the same rules as trademarks but there are some distinct differences. A certification mark essentially conveys that the owner of the mark has verified or certified that the products or services meet the prescribed standards that they have established for that mark, including a designation of origin when used as a GI. Idaho Potatoes, Vidalia Onions and Florida Citrus are all United States certification marks that guarantee both the origin, and also some specific qualities or characteristics of those products. The certification mark can indicate that the products using it meet requisite characteristics or specific requirements that the owner has adopted for the certification.¹⁸¹ Although some of the required attributes can be stringent, the mark’s owner selects the attributes prescribed and can change them at any time.

Certification marks are used by someone *other than the owner of the mark*, the use of which conforms to requirements or specifications laid out by the owner, and which can include a place of origin and/or methods of production.¹⁸² The certification mark’s owners do not conduct commercial or industrial activity under the mark. These marks are usually owned by a government agency or producer association representing the producers of the noted geographic area. They may also belong to an individual entity such as a corporation though it is very uncommon for an individual to be granted the rights to a certification mark operating as a GI.

Certification marks differ from trademarks in that they do not distinguish the products or services of one producer from those of another so that any entity that meets the certifying standards and is certified, is entitled to use the certification mark without prejudice. Users can separately distinguish their products with additional forms of protection or labelling. Certification marks apply to specific products or services and therefore are unlike trademarks that can be used for any product or services as desired by the mark owner. These

¹⁷⁹ Thévenod-Mottet 2006, p. 29.

¹⁸⁰ A copy of the Act is available online at: <http://www.uspto.gov/web/offices/tac/tmlaw2.pdf>.

¹⁸¹ USPTO 2007.

¹⁸² The United States law (Section 15 USC §1127 of the Lanham Act) defines certification marks as: any word, symbol, or device intended for use in commerce with the owner’s permission by someone other than its owner, to certify geographic origin, mode of manufacture, quality, or other characteristics of someone’s goods or services.

rules and verification make this instrument the one that most resembles the appellations of origin established in many code law countries, i.e. most of Europe.¹⁸³

United States collective marks

Collective marks are another, though less common, way to protect GIs. Collective marks belong only to public or private groups, such as trade associations and are used by the members of a cooperative, association or other collective group to distinguish their offerings from those of non-members.¹⁸⁴ Use of a collective mark requires membership in the group owning the mark. An example of a collective organization could be a cooperative that promotes the goods and services of its members but typically does not sell its own goods (though it can). The owner of a collective mark, unlike the owner of a certification mark, can use the mark to produce and market its own goods and also promote its members' products.¹⁸⁵

Table 4.4 Distinctions between trademarks, collective marks and certification marks for GIs	
Trademarks and collective marks	Certification marks
Acquired distinctiveness required for geographic terms.	Acquired distinctiveness not necessarily required for geographic terms.
Anyone can own trademark but for GI usually a government body or producer group. Associations or cooperatives own collective marks.	Owner is usually a government body or association on behalf of producers in a geographic region.
Owner controls use. For collective marks, group membership is required.	Certifier may not discriminately refuse to certify any products that meet the standards.
Owners can license or use the mark.	Mark used by someone other than its owner.
The mark for the name can apply to any product.	Applies to a specified product (or group of products).
Rewards producers and collectives who have already commercialized a geographic term as a source identifier.	Can be applied prior to commercialization in the United States.

Source: Adapted from Cotton 2008.

Trade agreements and other approaches to protection

Beyond certification and collective marks, the United States system, like many others, affords other forms of general legal protection to GIs. These include common legal instruments such as unfair competition law and some regulatory norms pertaining to truth in advertisements and labelling. The EU offers similar protection via general legal instruments.

¹⁸³ OECD 2000.

¹⁸⁴ USPTO 2007.

¹⁸⁵ See J. Thomas McCarthy, 3 McCarthy on Trademarks and Unfair Competition § 19.101 (4th ed. 2007). Also, the “anti-use-by-owner rule” of §4 of the Trademark Act, 15 U.S.C. §1054, does not apply to collective marks. The Trademark Law Revision Act of 1988, amended §4 to indicate that the “anti-use-by-owner rule” in that section applies specifically to certification marks. Also see *Trademark Manual of Examining Procedure* (TMEP 5th Edition) 1303.01: http://tess2.uspto.gov/tmdb/tmep/1300.htm#_T1302.

The United States emphasizes GIs as a part of trademark law, with the two concepts increasingly converging in some of its recent Trade Agreements (Australia, Chile and Morocco). The United States is also transferring to its Trade Agreements the ‘first in time, first in right’ concept common to most trademark legislation.¹⁸⁶ This means that parties to the Agreements may not register GIs that contravene prior trademarks or where the application for a trademark is pending. Hence, GIs are equivalent to any other trademark in terms of asserting first rights in the application process.

Emergence of GI protection systems in Asia

Geographical Indications are growing fast in Asia. Yet, until very recently, there has been little analysis and information available on GI-related developments in the major countries of the region. In some, such as the People’s Republic of China, new systems are emerging. In several others, there is growing interest and emphasis on GIs for agri-food products, as evidenced by new government rulings and an increasing number of applications for registration. Since the development and regulation of GIs may well affect domestic markets and even some of the trade relations in the region, this is an area of considerable interest. With new laws and their still limited application in practice, it is sometimes difficult to determine clearly the real overall direction or impact of regulations. This is beginning to change, however, with the recent work of several legal experts in the field.¹⁸⁷

China’s approach to GIs

China maintains **two parallel and independent systems** for protecting Geographical Indications. The first is a trademark registration system and the second is the Special Label programme for the Protection of Geographical Indications or Marks of Origin. The Special Label system is conceptually similar to the EU’s *sui generis* PGI/PDO system in that it specifically deals with GIs and distinguishes them with a special label indicating a registered ‘geographic indication product’. The governing agencies administering China’s two GI systems are separate and operate independently of each other. A GI registered under the Special Label programme may subsequently also be registered as a certification or collective mark.¹⁸⁸ It appears that a number of producer groups are choosing to register their GI under both regimes. To add further to the complexity, a report indicates that the Ministry of Agriculture is preparing its own GI initiative, with the intention of emphasizing environmental protection and specific traditional agricultural production methods.¹⁸⁹

Asia is home to the majority of the world’s agricultural producers. China and India alone are home to half of all farmers.

¹⁸⁶ Vivas-Eugui and Spennemann 2006.

¹⁸⁷ See: Jain 2004, 2005, 2006; Kumar 2006; Wang 2006; Zhu 2006; Hirwade 2006; Wang and Kireeva 2007.

¹⁸⁸ Wang 2006.

¹⁸⁹ Wallet *et al.* 2007.

GI registration and protection under China's Trademark Law

Marks are administered by the Trademark Office of the State Administration for Industry and Commerce (SAIC) and include collective and certification marks.¹⁹⁰ Trademarks in China utilize a 'first to register' system of protection. Unlike common law countries, trademark rights in China cannot be obtained through use. Since China's Trademark Law came into effect in 1983, certain geographical names are allowed to be registered as ordinary trademarks. The Trademark Law of China was amended in October 2001, to introduce provisions on the protection of certification marks or collective marks that defined GIs and provided the possibility to protect GIs as certification and collective marks.¹⁹¹ Prior to the 1983 Trademark Law, some geographical names were registered as trademarks by private firms, technically removing the right of use of that geographical name from use by others. Since the 2001 Trademark Law, geographical names may be registered but by a producer group or association rather than a private corporation.¹⁹² There is potential for conflict between geographical names trademarked prior to 2001 and geographical names to be used in a GI post-2001. This issue is discussed in greater depth later in this section.

China's use of certification and collective marks is similar to their application in the common law system but there are some distinct differences as well. Under the Chinese Trademark Law, registration of GIs as certification marks or collective marks is subject to the requirement that they meet the definition: "identify a particular good as originating in a region, where a given quality, reputation or other characteristic of the goods is essentially attributable to its natural or human factors".¹⁹³ This resembles more a *sui generis* GI law, such as that applied in Europe, than the certification mark system as applied in the United States.

The law further states that certification marks identify characteristics of products or services, the owner of the mark must have control over the use of the mark, and the owner cannot use the mark. Certification marks are used to distinguish the intrinsic characteristics of otherwise similar products or services. Similarly, Chinese collective marks identify the affiliation of producers or suppliers to the registered owner of the mark. Thus, once registered, a collective mark is to be used by members of the group only. New members are permitted to use the mark, so long as they meet the registrant's membership requirements.

SAIC procedures for registering GIs as either certification or collective marks require that the applicant be a group, association or other organization applying to register a geographical indication, because a certification or collective mark must be composed of members from the relevant GI region. They are required to submit proof of the rules and standards that the registration must comply with, as well as proof of their qualifications and capacity to control the mark, and to manage and audit the required standards and quality of the GI product.

China's two parallel and independent GI protection systems present unique challenges.

¹⁹⁰ The Trademark Law of the People's Republic of China adopted on 23 August 1983, as amended on 27 October 2001 is available on the official website of the Trademark Office of the State Administration for Industry and Commerce (<http://www.chinaiprlaw.com/english/laws/laws11.htm>).

¹⁹¹ O'Connor 2005.

¹⁹² However, Wallet *et al.* (2007) report exceptions are allowed in the western regions.

¹⁹³ Stipulated in Article 16(2) of the Trademark Law.

China revised its intellectual property protection in order to meet obligations undertaken as part of its recent accession to the WTO. Given its relatively short experience with the WTO and modern intellectual property protection, irregularities in China's GI regime can be expected. China's treatment of collective marks to protect GIs is worth noting. Zhu's analysis of the Chinese GI system¹⁹⁴ illustrates several issues pertaining to collective marks:

- ❑ An incongruity between the governing Administration Methods and Implementation Rules of the Trademark Act creates anomalies in China's collective marks whereby the connection between members of the group using the registered mark and the geographic location and/or the producing area of the registered product to which the mark is applied is not clear. The legislation enables anyone qualified to be a member of the registrant group, regardless of place of production, hence the connection between the mark and producing area is diluted.
- ❑ That same incongruity in the Trademark Act also weakens control of the use of the collective mark. The Trademark Act's Administrative Methods state that a collective mark is to be used by members of the registrant group only, prohibiting use by non-members. However, the Trademark Act's Implementation Rules allow non-members of the registrant group also to use the collective mark, without the group's consent and the registrant group cannot prevent its use, thus circumventing provisions of the Administrative Methods demanding control of the use of the mark. This may be designed to prevent monopolization of a GI, and Zhu believes that the registrant group exists essentially to facilitate the registration of a GI through a collective mark, but not to control its use.
- ❑ Finally, in China, corporations can register and own collective marks, despite not being a group, association or collective. As a private entity, a corporation cannot easily admit new members, as it is not membership based, yet the Administrative Methods for GI collective marks states that the registrant group must admit new members that wish to use the mark. There is no apparent means by which entities wishing to use the corporate-owned collective mark may join the corporation in order to use the collective mark. However, Kireeva notes that there are specific Articles of the law (11 to 16) dealing with collective marks for GIs which seem to suggest that the GI collective mark cannot be held by a corporation.¹⁹⁵

As of August 2008, there are 393 geographical indications registered as certification or collective marks approved by SAIC; most of these are agri-food products, including foreign GIs such as Parma ham, Florida orange, Idaho potato, and Jamaica Blue Mountain coffee. Less than 10% are alcoholic beverages and craft or mined products such as carved stone, and porcelain.¹⁹⁶ A recent official news article indicates that the vast majority of GIs are certification marks and that over the decade from the mid 1990s to mid 2000s, 33 GI applications to SAIC or 4% of the total received were from foreign firms.¹⁹⁷

¹⁹⁴ Zhu 2006.

¹⁹⁵ Personal communication 30 October 2007.

¹⁹⁶ Includes pears, citrus, grapefruit, limes, peaches, raisins, grapes, mangoes, pomegranates, bananas, persimmons, melons, tea, onions, garlic, watercress, ginkgo, seeds, cabbage, small peppers, mustard, seasonings, red peppers, peanuts, processing of peanuts, chestnuts, dry dates, fresh dates, jujubes, tremella, taro, lilies, narcissus, bergamot, rice, radix angelica, ham, meat, chickens, rice wine, porcelain, stone handicrafts, among others. Found at: <http://sbj.saic.gov.cn/exHTML/dlml.html>, accessed 12 September 2007.

¹⁹⁷ Xinhua 2007.

China's 'Special Label' system

China's 'Special Label' system for protecting GIs is administered by the State Administration of Quality Supervision, Inspection and Quarantine (SAQSIQ),¹⁹⁸ which created this special Protection of (National) Geographical Indication Products (PGIP) in 2005.¹⁹⁹ It replaces the previous 1999 Regulations for Protection of Designations of Origin. However, this protection device remains at the "decree" level, and is therefore less valid legally than the Trademark Law of SAIC, although, according to one source, the SAQSIQ is currently working on a formal GI law that could be enacted by 2011.

A PGIP in China is defined as a product that uses raw materials originating from a specific region and that is produced in a specific geographical area using traditional techniques, the quality, special features and reputation of which are essentially determined by the geographical features of the region, and which is approved to be named after its place of origin according to the Regulations.

Zhu²⁰⁰ notes that included are products:

- ❑ Grown, raised or bred in the region the name of which is sought to be registered as a geographical indication, and
- ❑ Composed of raw materials derived from the proposed GI region (to qualify, the product can be partly composed of raw materials from other regions), and which have been produced, or processed with techniques unique to that region.

In order to successfully register a Special Label of Origin, the applicant must be an organization, association or enterprise designated by the relevant regional government at or above the county level. The applicant must supply: a government-recognized geographical demarcation of the region; a description of its physical appearance and its relationship to the natural and/or human factors of the origin; various forms of documentation including technical standards for the manufacture of the product, and safety and hygiene standards requirements; and the projected production and sales of the product.

For the Chinese PGIP, any manufacturer of the product, beyond the registrant, may use the special label so long as they meet the conditions of such use (slightly different from the EU's system where any manufacturer must be certified to meet the conditions of such use). Where a GI is registered as a certification mark, any natural person, legal person or other organization whose goods satisfy the conditions under which the geographical indication is used may request the use of the certification mark, and the organization in control of such certification mark shall permit the use.

Where a GI is registered as a collective mark, any natural person, legal person or other organization whose goods satisfy the conditions under which the geographical indication is granted, may request membership in the group that has the GI registered as a collective mark. The group is obliged to accept the membership in accordance with its articles of association. This system is similar to the European Commission's system of geographical indication protection. There were originally 20 products with designations of origin approved

¹⁹⁸ SAQSIQ evolved from the CIQ SA which was the State Administration for Entry-Exit Inspection and Quarantine of the People's Republic of China. As of October 2007, it appears that SAQSIQ is now evolving to GAQSIQ – the General Administration of Quality Supervision, Inspection and Quarantine.

¹⁹⁹ State Administration Provisions on Protection of GI Products of 7 June 2005 entered into force on 15 July 2005.

²⁰⁰ 2006.

pursuant to the 1999 Regulations, and 19 PGI products have been newly-approved for registration since the enactment of the 2005 Regulations for a total of 39 Special Labels being used by 351 entities.²⁰¹

Though now 380, by end of 2005, the number of registered GIs in China had reached 323, among them 104 GIs registered as certification or collective marks, 154 registered as geographical indication products and 137 GIs registered as marks of origin or Special Label of Origin products.²⁰² SAQSIQ intends eventually to extend GI protection to 1,500 products.²⁰³ Some of the GIs mentioned above were registered as certification marks and geographical indication products or marks of origin.²⁰⁴

Challenges for China

China's system of protecting GI's, with two parallel regimes, administered by different government agencies results in some unique issues. Each system has a seal and, since they are little used so far it is not clear whether this may cause confusion among consumers. In at least one significant case (JinHua Ham GI) the official labels are hardly used because the name is widely copied and no longer necessarily trusted.



Above right is a sample of the SAQSIQ Special Label Protection scheme for Longjing tea, the name of which appears under the map of China. The Chinese words on the upper part of the label translate to: "Product protected by a People's Republic of China Geographical Indication".²⁰⁵

There are potential conflicts between traditional trademarks and GIs in the form of certification marks and collective marks. Traditional trademarks registered prior to 1983 or 2001 were permitted to use generic geographic names. These existing trademarks were then 'grandfathered' into the new Trademark Law in 2001. Under the 'first-to-file' principle in China's trademark registration procedure, a mark identical or similar to a registered trademark

²⁰¹ Zhu 2006.

²⁰² Wang and Kireeva 2007.

²⁰³ Wallet *et al.* 2007.

²⁰⁴ Of these 25 were registered as certification marks and geographical indication products, 22 as certification marks and marks of origin, 15 as geographical indication products and marks of origin, and 5 GIs registered as certification marks, geographical indication products and marks of origin.

²⁰⁵ Zhu 2006.

used on similar goods, cannot be registered. Thus, there exist private trademarks containing a generic geographic name that will preclude the subsequent registration of a GI, whether by certification or collective mark.²⁰⁶

The case of Jinhua huotui (Jinhua is the name of a city and huotui a famous preserved ham traditionally produced there), illustrates this problem. A corporation not located in Jinhua trademarked the name “jinhua huotui” in 1982 and later brought trademark infringement proceedings against any Jinhua-based producers who used the name Jinhua huotui despite the producers’ centuries of production and their 2002 SAQSIQ registration.²⁰⁷ There is apparently some precedent to the effect that where a geographic term is used in a trademark, the owner does not have exclusive use of that term, and thus the Chinese Government may have several options for correcting this flaw.

As the SAIC and the SAQSIQ operate independently under different governing legislation, the relationship between Special Labels and certification/collective marks is ambiguous, and sometimes there is little precedent to gauge how rules are to be interpreted. Whether a Special Label GI registered under SAQSIQ can preclude a different product’s subsequent application for a GI certification or collective mark is not clear, as is whether an existing GI certification or collective mark can halt a subsequent Special Label application. The same issue applies to the registration and enforcement process. Though registration procedures include a step for objection, it is not clear whether a Special Label can object during a certification/collective mark’s application process, nor is it yet clear whether the Trademark Office can enforce the violation of a certification or collective mark by a Special Label (and vice versa).

India’s approach to GIs*

Like China, India too is in the early stages of fully developing and exercising its GI regime. Both are benefiting from lessons learned domestically as well as from other origins such as the United States and the EU. As their systems evolve, experience and further research will help them to implement necessary adjustments, to develop a more complete supporting framework of inspection, training and promotion for their GI-oriented legislation, and to ensure widespread benefits.

In 2003, *India’s Geographical Indication Registration and Protection Act 1999* became effective. The Act is administered by the Controller General of Patents, Design and Trademarks, who is also the Registrar of Geographical Indications. Goods that may qualify for GI registration and protection in India include natural, agricultural and manufactured goods (handicrafts, manufactured goods, foodstuffs) so long as the production, processing and/or preparation takes place in the territory stated in the registry. There is a provision in the Act for broadly extending a higher level of protection envisaged under Article 23.1 of the TRIPS Agreement, although as of 2008 no notification of such higher protection for any item has been issued by the Government.

* The section on India has benefited considerably from the additional research and input of Delphine Marie-Vivien (CIRAD).

206 Wang and Kireeva 2007.

207 Zhu 2006 and also Wallet et al. 2007.

In order to be protected under the Act, Geographical Indications must be registered. Registration affords legal protection, facilitates an action for infringement and gives exclusive right to use.²⁰⁸ Elements that qualify a product for GI registration in India include its given qualities as stated in the registration, its reputation and other listed characteristics attributable to its geographic origin. However, a GI in India does not necessarily include the name of a geographic location (Section 2.1.e) although, in practice, most do.²⁰⁹

Registered and new GIs in India

Since the effective implementation of India's GI Act in 2003, there has been a sharp increase in the number of applications, with most of the total registering since then. By 2006, two States accounted for more than 50% of the 27 registered GIs (Karnataka and Tamil Nadu), reflecting both the differing levels of local institutional capacity to mobilize the process and the considerable time needed to agree locally on the parameters of the proposed GI.²¹⁰ Lack of awareness and local institutional capacity could be a major challenge facing producers wishing to protect their product through GI registration.²¹¹ Some of this is changing, as a result of many more States participating in 2007 and 2008. Only 15 applications were filed by the end of 2004, but that number climbed to 26 in 2005, 31 in 2006 and 116 for 2007.

There is increasing interest in protecting the names of local agricultural products, as well as handicraft and even manufactured goods. By December 2007, the Indian Federal Government had successfully registered 45 of the 116 applications received for GIs.²¹² A further 63 had been examined and published for comment. Of these applications, 30 were for agricultural products, 35 for textiles and embroidery, and about 35 for various handicrafts, including wood, stone, leather, painting, soap and incense. There was just one foreign GI application from Chile, for Pisco, an alcoholic beverage.²¹³

Among the first registered GIs in India are such well-regarded names as: Darjeeling tea; Chanderi saree; Kotpad Handloom fabric; Kancheepuram silk; Mysore Agarbathi; Mysore silk; Kullu shawl; Kangra tea; Coorg orange; Mysore betel leaf; Nanjanagud banana; Mysore sandalwood oil; Mysore sandal soap; Bidriware; Channapatna toys and dolls; Mysore rosewood inlay; Kasuti embroidery; and Mysore traditional paintings.²¹⁴

Many other well-known GIs are recognized in India, yet remain unregistered. These include: Alphonso mangoes; Basmati rice; Bengal cotton; Hyderabad pearls; Jaipur silver jewellery; Kashmir carpets; Nendran bananas; and Nagpur oranges. Others, such as Malabar pepper, Monsooned Malabar for coffee, Allepey Green cardamom, Assam Tea and Kashmir Pashmina are going through the registration process at the time of this publication.

²⁰⁸ Although Section 20, paragraph 1 provides that no proceeding can be instituted to prevent, or to recover, damages for the infringement of an unregistered geographical indications, it declares in paragraph 2 that nothing in the Geographical Indication Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof. Therefore, unregistered geographical indications could be protected in the court on the basis of the passing-off action (as per Delphine Marie-Vivien).

²⁰⁹ The law provides that any name, even if it is not the name of a country, region or locality of that country, can be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality.

²¹⁰ Hirwade and Hirwade 2006.

²¹¹ Julaniya 2005 and 2006.

²¹² See Government of India *Geographical Indications Journal* 1 to 20.

²¹³ Dua 2007.

²¹⁴ Sanjay 2006.

Interestingly, some famous GIs such as Alphonso mangoes are still not in the pipeline, whereas applications were being processed in 2007 for some lesser-known GIs (Laxman Bhog, Himsagar, Fazli mangoes). Achieving the necessary agreements, particularly for GIs that have considerable economic potential such as Alphonso mangos, can be a lengthy process. Basmati rice, perhaps due to the unique challenge surrounding a potential common GI between India and Pakistan, is also not registered.

A number of lesser-known products with modest production and local markets (e.g. Mysore Jasmine and Pochampally Ikat) have quickly been granted protection, indicating interest in GI protection not only for exports, but for the domestic market as well. Policymakers believe that registering GIs for handicrafts and textiles could help the revival of traditional Indian crafts that are disappearing. Nevertheless, many are aware that GI registration alone will be insufficient and that these sectors need other complementary forms of development. In agriculture, GIs are perceived as one means to resuscitate traditional 'heirloom' varieties, such as Coorg Oranges, that had suffered declining interest.²¹⁵

Application and registration processes for GIs in India

An application to register a GI may be made by any legally established organization or association of persons, so long as the applicant can be shown to legitimately represent the interests of the GI region stakeholders. The GI is then available to producers of the product, who must apply in writing to become authorized users of the GI. The GI registration, once approved, is valid for a period of 10 years, and may be renewed indefinitely.

The actual Register for Geographical Indications is divided into two sections; Part A pertains to the GI product, while Part B lists the authorized users such as those producers, traders and dealers who were not included in the original application for registration. The initial registration fee for Part A is roughly US\$ 124 (5,000 rupees). The fee for an Authorized User under Part B is roughly US\$ 12 (500 rupees), while the renewal fee for Part B is US\$ 24 (1,000 rupees).²¹⁶

Legislation in India is very detailed as to the particular conditions for registration. The application may comprise a listing of all producers of the GI in question individually (e.g. the 87 tea estates producing Darjeeling Tea) or a collective reference to them (e.g. 3 million certified producers in the defined area for Assam Tea).²¹⁷ The actual filing of an application to register a GI in India must include at least the following:

- An authorized demarcation map of the territory;
- A description of the special quality, reputation or other characteristic unique to the environment, culture, or human skills, and of how the GI serves to designate the goods;
- An inspection structure to regulate the use of the GI, including details of the mechanism to ensure that the standards, quality, integrity and consistency of the noted characteristics are maintained;
- An affidavit that the applicant claims to represent the interest of all the producers.

215 Garcia et al. 2007.

216 All currency conversions using exchange rates as of 16 September 2007.

217 Julaniya 2005.

If the application is technically approved after examination, the proposed GI is then published for a period of objection before final approval. The process requires about 12 months to complete, if all goes well. Foreign applicants who wish to register their GI in India must follow a similar registration procedure, applying through an India-based representative, and providing an address for services in India. Protection for a GI is only granted after registration. Foreign and domestic GIs are granted the same rights.

As with most GI systems, the administration of the Indian GI system under the Geographical Protection and Registration Act presents some challenges. Several concerns relate in particular to producers within the GI. Sometimes, the majority of producers are not actively involved in the application and are unaware that a GI has been registered, leaving the local government the task of informing them of their rights and opportunities after the fact. Moreover, producers that are members of the group owning the registered GI do not automatically have the right to use the GI. They must be registered as an 'Authorized User', which entails a registration procedure, payment of applicable fees, and approval from the registered proprietor of the GI.

Lack of awareness, capacity or resources may preclude legitimate producers of the GI product from registering. Though the applicant for the GI is required to be legitimately representative of all the producers in the GI region, this may be difficult to prove in practice. That raises the issue of an aspect of the GI Act that resembles trademarks, as it is sometimes still understood that only the applicant becoming the registered proprietor can use the GI. Indeed, some oppositions are based on who should be the applicant rather than on the description of the product and the geographical area. In a related matter, the definition of the geographical area is most often administratively defined, thus may not adequately encompass the place of origin, and that would be necessary in order to determine rights with regard to infringement.

Clearly, a registered GI that is captured for monopoly purposes defeats the intention of GI legislation. In order to provide both fair access to the registered GI, as well as control or guarantee of the quality of the GI itself, a balance will have to be reached between easy access for qualified producers and the need for the registered proprietor of the GI to ensure authorized users have the requisite qualifications.

While the GI system in India is based upon quality, reputation and characteristics, there are no provisions within the Act to ensure that such traits, as described in the initial registration, are maintained post-registration. Even though this is mentioned in the application inspection structure, there are no provisions for managing inspections or validation after the registration has been approved. A number of GI applications have been registered without reference to an inspection body, but with only a mention such as "under preparation". There is a proviso that such lack of control can be grounds for the GI to be cancelled from the registry upon application to the Registrar by an interested party and investigation.²¹⁸

In India, there is considerable enthusiasm for GIs, and the pace of registration is increasing, because both the States and Central Government are active in the process. The GI registry office is organizing awareness-raising seminars for stakeholders on the benefits of GIs. It has been acknowledged that GIs can serve millions of producers and promote some of India's heritage in textiles and handicrafts as well as agri-food products.

218 As per Chapter V, 65–68 of the GI Rules, 2002.

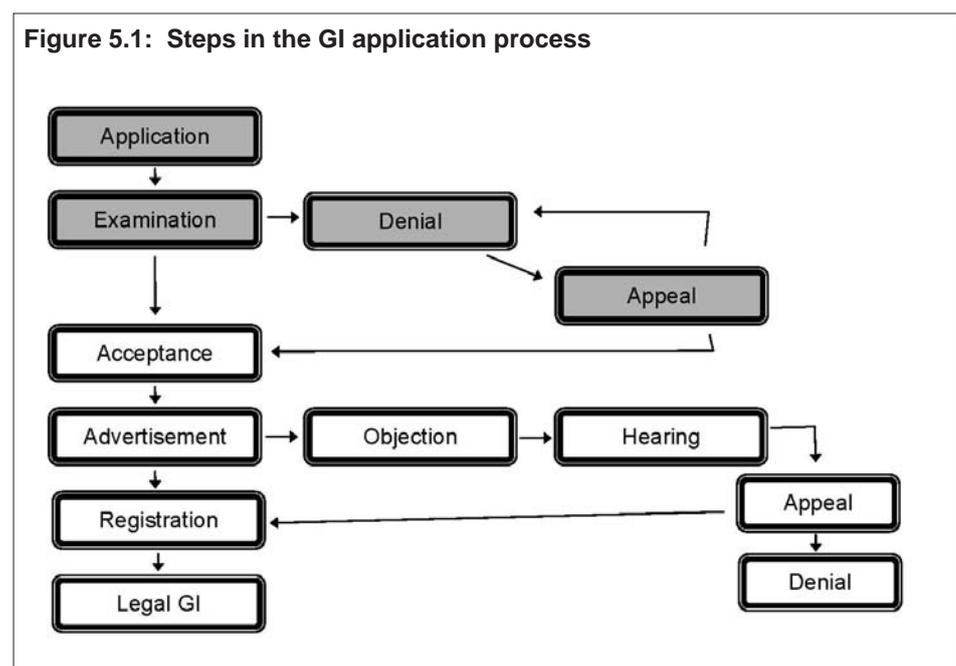
Chapter 5

Practical aspects – applying for GI protection²¹⁹

Common elements of the application process

In discussing the practical aspects of GI protection, this section will also offer insights into how a third-country applicant may be affected by each system. It addresses in particular the United States and EU approaches since these systems represent not only the largest markets for most GIs but also serve as general (though not complete) templates for the types of protection offered in other countries. Understanding these two systems therefore can serve as a foundation for understanding the premises of protection mechanisms in most other countries. The Common Law approach using trademark systems is embodied most prominently in the United States system, while the EU system is a good embodiment of the *sui generis* approach to protecting GIs. These two are not necessarily mutually exclusive but do represent a major divide in the conceptualization and execution of protection measures.

The application processes for GI protection have some shared features though variants are common. Typically there is an initial internal stage wherein the responsible government agency processes a request and either accepts or denies. In many cases this is open to appeal. If approved, the second stage allows for public dissemination of the proposed GI and can also be subject to objection and a hearing or appeals process. Figure 5.1 outlines typical steps.



²¹⁹ Wines and spirits, operating under different rules, are excluded from this discussion.

The United States application process

Applications for a certification or collective mark are made to the USPTO as a type of trademark application, either directly by the interested party or through the services of an attorney. Once the application is received, it will undergo a procedural and legal review to ensure compliance, and be subject to publication for review and oppositions prior to being registered.

For a **certification mark**, in addition to meeting the general requirements of a trademark,²²⁰ the USPTO requires the applicant to submit a copy of their certification standards²²¹ and means of enforcement, and retains these as part of the official record.²²² Similarly, an application for a **collective mark**, in addition to specifying and containing all elements necessary in a general trademark application, must define the relationship between the group and its members, and illustrate how the applicant (group or collective) exercises control over the use of the mark by its members.²²³

During the application process, the USPTO's examining attorneys will review the application for compliance with various regulatory requirements.²²⁴ The process includes an opposition system which allows interested third parties to object to an application before the USPTO's Trademark Trial and Appeal Board (TTAB). An opposition proceeding seeking the prevention of the mark's registration is filed with the TTAB on the basis that the opposing party believes it will be damaged by the registration of the mark.

The opposition may be filed only in response to the publication of the mark in the *Official Gazette*²²⁵ during the application process. A cancellation proceeding may be brought before the TTAB against a mark that has already been registered. Proceedings for opposition to, or cancellation of a mark with, the TTAB are similar to a civil action in a Federal district court. There are pleadings; a wide range of possible motions; discovery; and, briefs, followed by a decision on the case.²²⁶ The losing party at the TTAB level may appeal the TTAB's decision to the Court of Appeals for the Federal Circuit, and as a last resort the losing party may appeal to the United States Supreme Court.

Generally, the ownership duration of a mark in the United States is indefinite, provided the owner files periodic affidavits of use or excusable non-use and renewal notices with the USPTO, along with the requisite fees, and meets the general standards for maintaining a general trademark (i.e. diligent protection or control of the mark). Applying for a certification mark does not require prior commercialization of the geographic term as a source identifier.

Certification marks must meet additional standards in order to remain legally registered. Hughes states: "The holder must not allow it to be used for anything but the certification of the relevant products and must not discriminately refuse to certify.....goods or services..... (that) maintain the standards or conditions

220 The essential elements of which include name of applicant, contact information, depiction of the mark, the associated goods or services, specimen of use, filing fee and signature.

221 Certification standards are those that must be met by potential users in order to be eligible to use the certification mark.

222 Details of the certification mark application elements are found under Section 1306 of the *Trademark Manual of Examination Procedures (TMEP)*.

223 Details of the collective mark application elements are found under Section 1304 of the TMEP.

224 Elements of the substantive review for Geographic Significance can be found in Section 1210 and 1212 of the TMEP.

225 Details of trademark application elements are found in Section 800 of the TMEP.

226 Full details published in the *Trademark Trial and Appeal Board Manual of Procedure*.

which such mark certifies”.²²⁷ Failure to comply can result in a cancellation of the mark’s registration if a complaint is filed with the TTAB. It is noteworthy that, “As long as the certification standards are applied in a non-discriminatory fashion, the USPTO *does not care what the certification standards are*”.²²⁸ The standards can be as simple or as complex as the applicant wishes. Under United States law, the certification mark owner may be exposed to legal action – the consequences of which could include loss of the mark – by users or potential users if the certifier acts contrary to the statute, e.g. does not control the use of the mark, discriminates or refuses to certify or permits use of the mark for purposes other than those registered. Collective marks must also maintain controls but have fewer conditions to maintain registration and are treated more like regular trademarks subject to renewals.

The fees for filing a registration of a certification or collective mark, are relatively small ranging in early 2009 from US\$ 275 to US\$ 375. The USPTO publishes the fee schedule. However, other fees apply based upon activity and individual transactions, ranging from US\$ 50 to US\$ 400.²²⁹ The application process can take from a number of months after the initial filing to several years, depending upon the nature of the filings and legal issues that may arise in its examination or opposition. Although an entity may file for a registration directly, guidance or representation by licensed trademark attorneys is advisable given the possible complexity of a filing, particularly one from a developing country. Legal fees will vary depending on the nature and evolution of the filing as it proceeds.

Certification marks (and presumably collective marks) can also arise as a matter of common law without formal registration at the USPTO. If the mark is controlled locally in a foreign market, the product is marketed in the United States, and no one else is using that GI for that product, there are likely common law trademark rights available for that GI. As an example, one scholar notes that, “European producers can gain common law protection of their GI in the United States without regard to whether the GI is protected under an EU Member State’s trademark or GI law”.²³⁰ It is likely that this could also apply in some other jurisdictions. The use of ‘Cognac’ as a GI in the United States is one successful example, but there is little federal experience or legal precedent because cases and litigation for this type of situation are rare.

Finally, once any mark is registered, it must be protected *by the owner* or its licensees from third party use. Infringement of marks is addressed by private sector means (i.e. persuasion, arbitration or court proceedings). Monitoring of abuse or violations, and any proceedings are undertaken at the volition and expense of the mark’s owner; the government does not play this role. If unauthorized third-party use of the mark is suspected, it is generally advisable to seek promptly legal counsel specializing in trademark law since acceptance of prolonged use by others erodes the defensibility of the mark.²³¹

The United States is a party to the Madrid Protocol (but is not a signatory to a separate related treaty called the Madrid Agreement) where any mark owner may seek registration in any of the currently 74 signatory countries of the Protocol by filing a single application, called an “international application”. The International Bureau of WIPO, in Geneva administers the international registration system. For example, an applicant can submit an international application to the USPTO based on a registered United States mark or

227 2006.

228 Hughes 2006.

229 For 2009, available at:

http://www.uspto.gov/web/offices/ac/qs/ope/fee2009january01_2009jan12.htm.

230 Hughes 2006.

231 USPTO 2007.

application, to be then submitted to WIPO. This international registration is not the same as a registration in any individual or particular country. The applicant or registrant must be a resident or national of the United States or have a real industrial or commercial establishment there. The Madrid treaties are discussed in more detail in chapter 3.

The EU application process

The EU's GI programme is administered by the Directorate-General for Agriculture, as part of its food quality policy. Under this system, a registered agricultural product will be given protection against imitation throughout the EU. The registration process for a non-Community applicant parallels that for Members, but also includes some specific conditions.²³²

There are two forms of name registration for GIs in the EU: Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). The applications for these designations can be made by groups of producers who must define the product according to a "code of practices" containing precise specifications. These include the method of production, including the origin, nature and characteristics of the raw materials, labelling and packaging.²³³ Historical evidence linking the product or process to the geographical area, or to further substantiate the specific character or reputation of the product, may also be required. All GIs outside of the EU must provide proof of protection in their country of origin. A designation must be controlled by an inspection system designed to EU/ISO Standards for assuring compliance with the code of practices established for that particular designation.

An application is typically first filed with a Member State, then if the name meets the registration criteria it is sent to the European Commission. As of 2006, producers in third countries (non-EU) can apply for recognition and protection as a PGI or PDO directly with the European Commission. Application requirements are similar to those for EU applicants except for proof of protection in the country of origin. Should the European Commission find the application compliant with conditions for registration, it will publish the "single document" in the *Official Journal* of the EU, allowing objections to be made within six months from the date of publication. Objections to registrations may be raised and handled in each EU Member State, or sent directly to the European Commission by national authorities or individuals.²³⁴ According to the implementing rules of (EC) 1898/2006, an objection can be made on the basis that it demonstrates that:

- The product does not meet the conditions required; or
- The name is similar or confused with a plant variety or animal breed; or
- The name is wholly or partially homonymous (same spelling and pronunciation, different meaning and origin) with a registered name; or
- The name is registered under an existing trademark; or
- The name is generic and therefore not eligible for registration; or

²³² For details on this and other technical aspects covered in this section see various publications available at: http://ec.europa.eu/agriculture/foodqual/quali1_en.htm.

²³³ Applications may also include any supporting documentation, such as maps of specialized climate zones, particular production methods, specific human know-how.

²³⁴ EC 2006a.

- It is shown that registration of the name would jeopardize the existence of an entirely or partly identical name or mark, or the existence of products legally on the market for at least five years preceding the date of the publication provided.²³⁵

Should an objection be admissible, the European Commission will forward the statement of objection to the affected applicant or national authorities who are invited to engage in appropriate consultations with the objector and seek agreement within six months from the time the Commission forwarded the statement of objection. The Commission does not participate in this process. At the end of this period, the Commission must be notified of the results of the consultations as well as any changes to the application. The Commission may publish changes to the application in the *Official Journal* of the EU, and may open a second objection period. The Commission is empowered to make a decision, whether an agreement is reached or not. It is not common for registration processes to take more than one year although it sometimes can take considerably longer.²³⁶

Once the designation has been registered, the group must maintain compliance in accordance with the specifications filed with the application. A major component of the EU's GI scheme is inspection as a means to ensure compliance. Third countries must submit with their application at least one public authority designated by the third country and/or at least one product certification body that will verify that the product complies with its designated specifications, in accordance with EC standards.²³⁷ The registered party pays for this service and by 2010, the certification body must be fully accredited to the EU standard. Since a developing country may not necessarily have adequate domestic certification capacity, the applying group may need to utilize foreign certification bodies that will increase search and procedural costs.

The European Commission does not itself authorize inspections unless a serious violation is noted; Member States or third-country applicants are wholly responsible for this matter. So long as the specifications detailed in the application continue to be met, as confirmed by inspections, the designation is valid.

Registered names are legally protected throughout the EU against imitation and can be labelled with an EU logo indicating its status as a protected designation. It is notable that once a product is registered, any producer within the designated area, and certified as complying with the specification, is eligible to use the name. Thus the name is exclusive to the geographic area, but not to a specific producer or firm.

The EU relies on each Member State to implement the protection of GIs within its own territory and does not have a separate institutional structure to monitor or enforce this.²³⁸ Although each country has its own unique structures, most follow a common general framework when handling violations. Intra-national violations are handled typically within the country of origin, or where the violation occurred. International violations involving cross-border

²³⁵ EC Regulation 510/2006 Annex III Article 7.

²³⁶ If no objections are received, or if received objections are deemed inadmissible, the six-month period for filing objections will culminate with the approval of the registration. The name is then entered by the Commission in the register of protected designations of origin and protected geographical indications (EC 2006a).

²³⁷ General requirements for product certification systems are either European standard EN 45011 or ISO/IEC Guide 65.

²³⁸ Hughes (private communication 27 October 2007) notes that governments do not play a consistent role in enforcing GIs. In fact, this is the subject of a recent dispute in the European Court of Justice between the European Commission and Germany that was accused of not enforcing the GI protection of Parmigiano-Reggiano.

trade or infractions can be handled by individual countries but can also be brought before the European Commission, which has the power to mediate with the country where the offence originated and can also issue sanctions.

European Commission legislation allows Member States to charge a fee to recoup costs in examining applications for registration, statements of objection, applications for amendments and requests for cancellations. Fees vary across Member States. At least two, the United Kingdom and Ireland, do not charge its producers for the PDO/PGI application service. There are no fees for direct submission to the Commission by third-country applicants.

In the EU, GIs are regulated separately from its trademark system, publicly protecting them without utilizing private intellectual property laws. However, trademarks are used to fortify protection and some coexistence between trademarks and GIs occurs, even when the trademark belongs to a non-GI user.²³⁹ For additional legal protection, a trademark may be employed by GI users, where the same GI may appear as part of the figurative trademark, though this does not privatize or supersede the public GI rights. Most users of EU GIs have registered Community figurative trademarks.²⁴⁰ Roquefort cheese is one example, being a PDO as well as having figurative trademark protection for two private brands that include the designation.²⁴¹

The European Community Trademark (CTM)

The EU's CTM is a mark registered across the whole of the EU. Essentially, a mark (ordinary, figurative, certification or collective) registered and used in one Member State will qualify for a registration throughout the EU as a whole, following a separate, direct application to the Office of Harmonization in the Internal Market (OHIM), or via the national government agency that registered the initial mark. The CTM registration is enforceable across all Member States, and is unitary in the sense that its effects are Community-wide and applicable to existing and incoming Members.

For developing countries seeking protection of GIs in the EU, the CTM may or may not be an option. Generally, geographic origins cannot be included in the CTM.²⁴² However, if due to the use that has been made of it the geographic origin name has become distinctive in relation to the goods or services for which the registration is requested, then it may be deemed to have "acquired distinctiveness" and may be trademarked. The applicant must estimate the importance of GI to their product, their ability to illustrate acquired distinctiveness, and their ability to apply for either the CTM or PDO/PGI designation, and choose the option most suitable to their needs.²⁴³ The CTM application fee is €900 (€750 for electronic application) for up to three classes of goods. The registration fee is €850 and the renewal fee €1,500.²⁴⁴

²³⁹ Article 14(2) of Regulation 510/2006.

²⁴⁰ Personal communication from Irina Kireeva and Bernard O'Connor 31 October 2007.

²⁴¹ Marette, Clemens and Babcock 2007.

²⁴² Although a figurative mark including the name can be registered under the Madrid System, then the name itself under the Lisbon System.

²⁴³ For searches on EU trademarks and applications see:

http://oami.europa.eu/CTMOnline/RequestManager/de_SearchBasic?transition=start&source=Log-in.html&language=en&application=CTMOnline.

²⁴⁴ EC 2005.

The application process and governing procedures for a CTM are similar in concept to the United States and most other trademark systems. Some of the main features are summarized here:

- ❑ A Community collective mark is permitted if it is capable of distinguishing the goods or services of the owner from those of other undertakings. Associations of manufacturers, producers, suppliers of services or traders, as well as legal persons under public law, are entitled to register Community collective marks.
- ❑ The CTM gives the owner exclusive ownership of the mark, prohibiting unauthorized use by third parties where such use could cause confusion among consumers. CTMs with a geographical name do not preclude others from using the geographical name.
- ❑ The proprietor of an earlier mark registered in a Member State who applies for an identical trademark for registration as a Community mark may invoke the seniority of the earlier national mark.
- ❑ Registration can be refused if the sign is unsuitable, non-distinctive, generic (including for geographic terms),²⁴⁵ misleading or immoral. Opposition and appeals procedures are in place.
- ❑ The CTM is registered for 10 years from the date of filing of the application and is renewable.

GI protection systems compared

The following tables 5.1, 5.2, 5.3, and 5.4, summarize the essential areas of comparison between the main protection mechanisms:

Table 5.1 makes basic comparisons between the major concepts;

Table 5.2 covers the focal areas of each;

Table 5.3 compares the ownership and use of the respective concepts;

Table 5.4 compares their protection.

²⁴⁵ A term or sign is deemed “generic” when it is so widely used that consumers view it as designating a common or class name or category of all of the goods/services of the same type, rather than as a specific geographic origin.

Table 5.1 BASIC: Comparisons between Geographical Indications, designations and marks									
	Geographical Indication (GI) in general	Appellation of Origin (AO)	Protected Designation of Origin (PDO)	Protected Geographical Indication (PGI)	Trademark for GI	Collective mark for GI	Certification mark for GI	EU Community Trademark (CTM)	
Legislation or Agreement	Individual national legislation and TRIPS 1994 art 22, 23, 24.	Various countries' legislation and Lisbon Agreement.	EC 510/2006.	EC 510/2006.	National legislation.	National legislation.	National legislation.	Community Trademark Regulation (EC) No. 40/94.	
Basis	International interest as expressed in various multilateral treaties (Paris, Madrid, Lisbon) and TRIPS Agreement).	Agricultural Policy in EU and others and international protection of reputation (essentially public).	Agriculture and consumer policies (public).	Agriculture and consumer policies (public).	Property rights (private).	Property rights (private).	Property rights (private).	Supra-national private property rights.	
Purpose	Protection of the identification of product's origin indications that identify a good as originating in a specified territory and having some distinct characteristics related to that territory.	Public protection for geographical designations of a product whose characteristics are due to the geographical environment, including natural and human factors.	Specific public protection for geographical designations of agri-food whose essential character is due to its geographical environment, including natural and human factors.	Specific public protection for geographical designations of agri-food whose essential character has some relation to a geographical region.	Intellectual property rights tool to assist the competitiveness of individuals, private firms or groups, and as a means to inform consumers of ownership.	Intellectual property rights tool to assist the competitiveness of private collectives or groups, and as a means to inform consumers of ownership.	Intellectual property rights tool to assist the competitiveness of private firms or groups, and as a means to inform consumers of ownership.	Intellectual property protection across the EU. Assists the competitiveness of individuals, private firms or groups, and as a means to inform consumers of ownership.	
Structure	Varies according to national rules.	Varies according to national rules.	<i>Sui generis</i> or stand alone legislation, government policy tool.	<i>Sui generis</i> or stand alone legislation, government policy tool.	Intellectual property legislation.	Subset of intellectual property legislation.	Subset of intellectual property legislation.	Harmonized intellectual property protection across EU members.	
Identifier	Varies according to government regulations.	Varies according to government regulations.	PDO logo.	PGI logo.	® Registered trademark.	® Registered collective mark.	® Registered certification mark.	® Registered Trademark.	

Sources: Various publications; USPTO, EU and WIPO documents; Josling 2006 (p. 348); Rangnekar 2004 (Table 2); Sylvander and Allaire 2007 (p. 40).

Table 5.2 FOCAL AREAS: Comparisons between Geographical Indications, designations and marks									
	Geographical Indication (GI) in general	Appellation of Origin (AO)	Protected Designation of Origin (PDO)	Protected Geographical Indication (PGI)	Trademark for GI	Collective mark for GI	Certification mark for GI	EU Community Trademark (CTM)	
Intrinsic quality assurance to consumers*	General expectation that product provides the given characteristics of the good that are attributable to its geographical origin.	No specific quality assurance though some origin products do offer that assurance by virtue of their independent control systems.	Specific quality characteristics linked with origin are public, third party certified, and enforceable.	Specific quality characteristics linked with origin are public, third party certified, and enforceable.	Not necessarily any linkage with quality, and quality characteristics not enforceable.	Not necessarily any linkage with quality, and quality characteristics not enforceable except to the extent they are part of the application for the mark.	Not necessarily any linkage with quality, but likely to have standards as part of the application for the mark.	Not necessarily any linkage with quality, and quality characteristics not enforceable.	
Degree of link with the region	Varies by national rules.	Varies by specific national rules.	The production, processing and preparation of which take place in the defined geographical area.	The production and/or processing and/or preparation of which take place in the defined area.	Linkage can be established though is then not tied to place. Depends upon degree of acquired distinctiveness.	Linkage can be established by the collective or via identification with the owner of the collective mark though not tied to place.	Linkage can be established with some or all of the production or processing taking place in defined area based on specific standard established by owner of mark.	Linkage can be established. Depends upon degree of acquired distinctiveness.	

Sources: Various publications: USPTO, EU and WIPO documents; Josling 2006 (p348); Rangnekar 2004 (Table 2); Sylvander and Allaire 2007 (p. 40).

* Quality characteristics can be diverse and include unique aspects and do not necessarily refer to judgements of good or poor quality. Many products offer specific assurances or guarantees, however this category refers to the characteristics of the particular protection systems and not to the assurance that may be individually offered by a specific product or firm.

Table 5.3 OWNERSHIP AND USE: Comparisons between Geographical Indications, designations and marks									
	Geographical Indication (GI) in general	Appellation of Origin (AO)	Protected Designation of Origin (PDO)	Protected Geographical Indication (PGI)	Trademark for GI	Collective mark for GI	Certification mark for GI	EU Community Trademark (CTM)	
Ownership	Usually public property or collective good except possibly when controlled by a trademark.	State or parastatal on behalf of producers in the region.	Control by relevant association of producers in the region.	Control by relevant association of producers in the region.	Individual person or legal entity (i.e. firm).	A legal entity associated as a group of members.	An individual legal entity that typically cannot itself make use of the mark.	Individual person or legal entity.	
New entrants	Varies according to specific instrument.	Open to all. For Lisbon registration, must also be party to Paris Convention.	Open to any within the region who meet registered specifications.	Open to any within the region who meet registered specifications.	Only via grant of licence at the discretion of the owner.	Open to those that meet membership requirements of the collective.	Open to any that meet certification standards.	Only via grant of licence at the discretion of the owner.	
User	Any qualified party of the region that meets its requirements.	Any producer that meets the specific AO requirements.	Any user certified by designated body to meet the specific PDO requirements.	Any user certified by designated body to meet the specific PGI requirements.	The owner and licensees selected by owner.	Members of the collective group may use the mark.	Qualified user that meets requirements. The owner cannot be the user.	The owner and licensees selected by owner.	
Conditions for use	Varies according to specific instrument.	For Lisbon, requires recognition and protection at origin.	Compliance with the designated standards or code of practice.	Compliance with the designated standards or code of practice.	Free but must not be misleading.	Specific 'usage rules' granted by the owner.	Specific 'usage rules' granted by the owner.	Free but must not be misleading.	
Transferability	Typically considered a not transferable public property but depends on type of protection.	Inalienable, usually not transferable. Depends on the national law.	Inalienable, not transferable.	Inalienable, not transferable.	Transferable, licensable.	Transferable, licensable.	Transferable, licensable.	Transferable, licensable.	

Sources: Various publications; USPTO, EU and WIPO documents; Josling 2006 (p. 348); Rangnekar 2004 (Table 2); Sylwander and Allaire 2007 (p. 40).

Table 5.4 PROTECTION: Comparisons between Geographical Indications, designations and marks									
	Geographical Indication (GI) in general	Appellation of Origin (AO)	Protected Designation of Origin (PDO)	Protected Geographical Indication (PGI)	Trademark for GI	Collective mark for GI	Certification mark for GI	EU Community Trademark (CTM)	
Type of protection	IPR varies by nation.	IPR protection, usually established by state laws and for Lisbon parties also part of Agreement.	Collective IPR public protection, guaranteed by state and the European Commission.	Collective IPR public protection, guaranteed by state and the European Commission.	IPR + passing off (common law), burden of proof on plaintiff and some criminal protection (counterfeiting).	IPR + passing off (common law), burden of proof on plaintiff and some criminal protection (counterfeiting).	IPR + passing off (common law), burden of proof on plaintiff and some criminal protection (counterfeiting).	IPR + passing off (common law), burden of proof on plaintiff and some criminal protection (counterfeiting).	
Degree of protection	Under TRIPS, ex officio only for wines-spirits (art 23), other laws vary by country (i.e. passing off) for other products (art 22).	Legislative or administrative provisions vary by nation.	Ex officio.	Ex officio.	Legal recourse with exclusivity and priority over any later users of the same sign.	Legal recourse with exclusivity and priority over any later users of the same sign.	Legal recourse with exclusivity and priority over any later users of the same sign.	Legal recourse with exclusivity and priority over any later users of the same sign.	
Scope	Registered name is protected.	National protection according to laws and for Lisbon registrants some international protection against usurpation or imitation of the appellation of origin.	Registered name is protected from any direct or indirect use by unregistered producer, including similar expressions. No false indications of origin or quality.	Registered name is protected from any direct or indirect use by unregistered producer, including similar expressions. No false indications of origin or quality.	Provides mark owner with exclusive right to prevent use by unauthorized parties.	Provides the collective mark owner with the exclusive right to prevent its use by unauthorized parties not members of the collective.	Provides the certification mark owner with the exclusive right to prevent the use of the mark by unauthorized parties that do not meet certification standards.	Provides mark owner with exclusive right to prevent use by unauthorized parties throughout EU.	
Maintenance of protection	Varies according to specific instrument.	As determined by national laws where AO is applied. Lisbon registrations must be reasonably defended in country of origin to be valid elsewhere.	Required inspections by accredited third party agencies to ensure compliance with specifications.	Required inspections by accredited third party agencies to ensure compliance with specifications.	Can expire or be invalid without affidavits of use, filing of renewals. Active monitoring and enforcement.	Can expire or be invalid without affidavits of use, meeting of membership criteria and standards, and filing of renewals.	Can expire or be invalid without affidavits of use, meeting of certification standards, and filing of renewals.	Can expire if not renewed. Must be in genuine use. Active monitoring and enforcement.	
Duration of protection	Varies according to specific instrument	Renewal not needed as long as requirements continue to be met.	Indefinite so long as inspections are passed.	Indefinite so long as inspections are passed.	Permanent so long as renewed (10 years in the United States) and maintained.	Indefinite so long as renewed and conditions met.	Indefinite so long as renewed and conditions met.	Indefinitely, so long as renewed (10 yrs) and maintained.	

Table 5.4 (cont'd)									
	Geographical Indication (GI) in general	Appellation of Origin (AO)	Protected Designation of Origin (PDO)	Protected Geographical Indication (PGI)	Trademark for GI	Collective mark for GI	Certification mark for GI	EU Community Trademark (CTM)	
Enforcement means and mechanism	National systems with variance according to specific instrument.	National systems vary but Lisbon Members, can seek recourse in administrative and legal remedies.	Public authority or accredited third-party certification. Complaints to national government bodies or the European Commission.	Public authority or accredited third-party certification. Complaints to national government bodies or the European Commission.	Self-policing. Private action through judicial system.	Self-policing. Private action through judicial system.	Self-policing. Private action through judicial system.	Self-policing. Private action through judicial system.	
Revocation and cancellation	Varies according to specific instrument.	Cancelled by the competent authority of the country of origin. For Lisbon, the authority may revoke/renounce protection in some countries and Members can request revocation only during application period (generic or failure to protect).	At the request of a government or the EC. When compliance with specifications can no longer be ensured.	At the request of a government or the EC. When compliance with specifications can no longer be ensured.	Complaints for failure to use; it has become generic; or failure to file renewal documents.	Cancellation for failure to use: not meeting membership standards, filed by anyone who may be damaged and/or for failure to regularly file documents.	Cancellation for failure to use: not ensuring the compliance to certification standards, filed by anyone who may be damaged and/or for failure to regularly file documents.	Complaints to OHIM that not used within five years; it has become generic; it is misleading; owner doesn't meet the CTM requirements.	

Sources: Various publications: USPTO, EU and WIPO documents; Josting 2006 (p348); Rangnekar 2004 (Table 2), Sylvander and Allaire 2007 (p. 40).

Chapter 6

Deciding to undertake a GI – key points to consider

Market presence

A GI identifies a product as originating in a delimited territory, where one or more of its characteristics – its quality, reputation, or some other unique feature – is essentially attributable to its geographical origin and the particular human or natural factors found in that region.

GIs are a signaling device that not only confirms a link between a product and a specific place, but also quite often confirms unique production methods, distinctive characteristics, or measurable qualities.

GIs are much more than just a geographic name-noting system. They identify a product as originating in a delimited territory, where one or more of its characteristics – its quality, reputation, or some other unique feature – is essentially attributable to its geographical origin and the particular human or natural factors found in that region. GIs are a valued expression of the particular agro-ecological and cultural characteristics of a region and are thus unique in the global marketplace. While most countries now at least nominally protect GIs, such systems are still relatively new for many developing countries.

GIs have the potential to encapsulate and foster environmental, social and cultural assets, as well as to bring economic benefits to the region. In some countries, GIs are considered as part of the rural development agenda. While the community, societal and environmental benefits are important, producers will only be interested, and the GI will only be successful, if it is a commercially viable proposition. It is important that policy makers and others interested in rural development keep this in mind when contemplating a new GI.

In developing countries there are many well-known products with a strong link to their origins. The most popular include Tequila, Darjeeling Tea, Jamaica Blue Mountain and Colombian Coffee, Basmati Rice, Argan oil, Rooibos tea, and others. They represent only a small proportion of the considerable number of potentially marketable GI products. Yet, their commercial success has not come easily and has taken considerable time.

The total market for sales of GI products worldwide is valued today at over US\$ 50 billion, most of it from the wines and spirits industry. This includes such well-known products as Champagne, Parmigiano cheese, Bordeaux wine, Scotch whisky, Roquefort cheese, Port wine, Kona coffee, Feta cheese, Idaho potatoes, Napa wine, and Kentucky Bourbon. These regions have ensured significant economic development for their participants by increasing the returns on their resources and establishing a solid form of competitive advantage.

On the market side, a GI is a signaling device that not only confirms a link between a product and a specific place, but also quite often confirms the presence of unique production methods, distinctive characteristics, or measurable qualities related to the region. The processes required to establish such a link can often be difficult to achieve and then maintain. In at least some cases, GIs may also convey less tangible or less verifiable attributes such as environmental stewardship, reputation and social responsibility. In most cases, these attributes have required many years of effort and of community-oriented processes.

To be lastingly effective as a signal to buyers, a GI depends on the quality, transparency and control or enforcement of the underlying rules that govern it. At its best, a GI can reduce the asymmetry of credible information between

producer and consumer and thereby provide a public benefit by improving market transparency and reducing information costs. At its worst, it becomes merely a shallow marketing ploy with a tendency to be short-lived. Because it requires considerable effort to create and sustain, a poorly structured or managed GI can waste valuable resources and even be damaging to local stakeholders and the environment. A GI should not be undertaken lightly.

First steps towards a GI

Our research has demonstrated the opportunities offered by GIs. So why have some GIs experienced exceptional success while others have failed miserably? Some lessons have emerged clearly during the two-year research for this book that included discussions with GI stakeholders in a number of countries and a review of hundreds of published documents and case studies.

First, we should briefly define success. A successful GI provides measurable economic benefits to a wide portion of its stakeholders while enhancing, or at least not compromising, the social and environmental conditions there. As such, there are three conditions for a successful GI process to emerge. These three factors can also be viewed as pre-conditions to consider when assessing or undertaking a GI:

❑ **Existing rationale for a GI product that is truly origin-related and differentiated**

Many countries have a number of fledgling GIs, with interesting and unique products that are recognized but underdeveloped. They may present a considerable range of opportunities. Yet most popular GIs were not created as part of a marketing plan. The majority only gradually evolved to become popular products and have a long-standing experience and reputation. It is theoretically possible to create a GI intentionally from the start but there is only limited and mixed evidence of such efforts and their outcomes so far. Caution is recommended when considering any GI, unless there exists a unique characteristic or genuine flavour distinction.²⁴⁶

❑ **Clarity and organized consensus**

The failure to initially develop a clear definition and community consensus is likely to hinder all of the subsequent GI development processes. Evidence points to political and even social conflicts that have occurred due to the geo-physical or capacity-related exclusion of some producers from a GI. One case in Mexico illustrates how the lack of local consensus has resulted in no clear definition and has thus led to indiscriminate use of the GI term by both poor quality and high quality producers. The outcome is an erosion of the name's credibility and its desirability among buyers. Lack of early clarity about the consequences of the decision to allow the Kona GI name on blends having only 10% of the content from Kona has led to divisive struggles among producers.

❑ **Market access**

Understanding the likely access that a GI will have to the marketplace is vital in order to succeed. Which target markets may recognize the reputation or unique attributes such as quality or authenticity sufficiently to pay for them? Is there clear evidence of buyers already interested in paying

²⁴⁶ See Hayes, Lence and Stoppa's United States studies in 2003.

for the particular product? Does the product's identity as a GI confer its marketability or are there other intrinsic marketable attributes? What is the likely premium to be gained by the GI designation? The indication of credibility provided by a GI can sometimes be used as a foundation to market it but the indication itself may not be enough. Having marketable characteristics and targeting responsive markets will be necessary, as are viable commercial partners.

Assessment and strategic plan

If these baseline conditions exist then there are two key stages to undertake when first considering the development of a GI: a thorough assessment and a clear strategic plan. Each stage is important and consists of some specific steps that can be undertaken by the governing authority with key stakeholders of the GI once these are determined.

Assessment

The process of determining whether it is indeed a viable and cost-effective opportunity to pursue a GI will often require:

- Mapping of stakeholders and their capacity to participate or possibly block the development of a GI;
- Participatory discussions to determine the interest, ideas and real capacity of the key stakeholders regarding a GI;
- Assessment of the resources available;
- Analysis of barriers to entry and the identification of the likely winners and losers (including communities and environment);
- Specific investigation to assess the actual marketability of the product;
- A preliminary delineation of the territory under consideration and its key features;
- At least a basic cost-benefit analysis to determine what will be required under the different scenarios that can be envisaged.

Some legal costs are likely to be incurred as part of the initial investigation to determine the legal standing of the region, the adequacy of protection options and the expected legal or regulatory needs. In addition to these main assessment areas, the careful consideration of some detailed criteria, based on observations of GI project development, is recommended. (See box 6.1.)

Strategic plan

The long-term process of developing a successful GI can be waylaid or derailed without a consistent focus and an explicit sequence of agreed steps. Developing a plan helps to determine the choice of structures and standards at the origin level. To be most effective, GIs require investment in local management structures and participatory methods in order to form a strategic plan. Components of the plan ought to include:

- Addressing both the domestic and international policy and regulatory framework covering the legal issues necessary to protect the GI (these may be affected by international agreements or treaties);
- A plan to manage the GI itself via a commission or other body that incorporates necessary controls;

- ❑ A marketing plan to protect and position it in the marketplace integrating the means of collaboration with private sector entities to ensure adequate promotion and to safeguard the reputation of the GI as a brand;
- ❑ Standards and quality control at different production stages and pro-active supply chain coordination considering which processes could best be jointly addressed by the origin members as a group;
- ❑ A means to effectively deal with change such as a large number of new producers or shortage of raw materials.

Box 6.1 Checklist of items to consider for a GI project

Product:

What are the important features of authenticity and identity that must be maintained?

What are the necessary standards to be met i.e. chemical-free, organic, etc.?

What are the necessary characteristics to include or feature i.e. traditional, historic, etc.

What specific resources are required in terms of expertise, finance, and raw materials?

Is there competition for necessary resources to produce a product or offer a service?

What similar product or service could be competitive in the marketplace?

Place:

What specific areas are inextricably linked to the product? Can or should they all be included?

What potential difficulties i.e. political, environmental, physical could arise to prevent the adequate provision of a product or service?

What conservation or protection measures may be necessary for the GI region?

Market:

What are the markets for the product or service?

What is the perception of the product (service)?

What is the current market demand (sensitivity analysis i.e. price change)?

How established and stable is the product or service?

What market structures exist for the GI i.e. supply chains, infrastructure?

On whom does marketing depend i.e. manufacturers, middlemen and distributors?

Stakeholders:

Who are the key stakeholders that would be affected?

Are there existing local organizations or institutions that could serve (or hinder) the GI?

What leaders are available to guide the process?

Policies and resources:

What is the position of government (both local and national) concerning the GI?

Are there external organizations (public or private) or institutions to serve the GI?

What legal or regulatory framework exists for the GI?

Which policies are supportive and which are problematic for a GI?

Are resources and capital available?

Are certain public standards required i.e. food safety, environmental impact, etc.?

Source: Daniele Giovannucci with inputs from Sautier and van de Kop (2004) and also Brunori (2006).

Main factors that influence the success of GIs

While assessing and developing a plan for a GI, it is important to understand the key success factors from other origins. As noted earlier, success is measurable as the largest portion of the GI stakeholders getting economic benefits while social and environmental conditions are enhanced, or at least not compromised. This would encompass not only improved levels of employment or earnings but also the strengthening of the local economy and fostering the socio-cultural and environmental qualities that contribute to the uniqueness of that GI. Distilling the findings of our case studies and the literature review on GIs yields four distinct and primary factors that appear to influence the outcome of GIs more than any others. These include:

- ❑ Strong organizational and institutional structures;
- ❑ Equitable participation;
- ❑ Strong market partners;
- ❑ Effective legal protection.

Organizational and institutional structures

The structures that develop, maintain, market and monitor the GI are key to its success. The complex process of identifying and demarcating a GI, organizing existing practices and standards, and establishing a plan to protect and market the products requires a long-term commitment to cooperation and institution building.

In order to establish and maintain the GI locally, the organizational and institutional structures must develop to ensure that the multi-year process of development moves forward and evolves in a participatory and equitable manner. Yet this is no easy matter. Such local institutions including producer associations, indigenous and peasant communities, cooperatives, women's groups, and NGOs are often not well enough equipped to face the challenges of such processes. Yet given that many GIs have a socio-cultural rationale beyond the purely economic, such local institutions must be involved. Sylvander and Allaire's analysis of GIs²⁴⁷ and the first stages of the Siner-GI work in the EU present this as a "coherence of collective action" necessary for establishing a public good and to secure public legitimacy from the negotiation to the management of the GI. A vital part of the future work in GIs will be to better understand the role of local institutions and how they can be best utilized and fostered.

The skills and costs for monitoring and enforcement of the GI can be considerable – to certify compliance and diminish fraud – even in the domestic market. There may often be other ongoing operational needs to consider, for example to ensure a coherent policy, serve as a mechanism for dealing effectively with change, and provide a basic measure of promotion. Collective or public structures with a commitment to preserving the GI's reputation can facilitate all of these. As such, local institutions will need not only transparency and democratic representation, but also a continuity of policies and processes. While this represents a certain decentralization or independence from government politics, it would be foolish not to have a working relationship with government. Likewise, if a GI is to be an equitable proposition for the majority

247 Sylvander and Allaire 2007; this work also builds on Barjolle and Sylvander 2002.

of its stakeholders, such institutions will also serve to facilitate the working relationships between local governance systems and the private sector to their mutual benefit.

Equitable participation

The quality of the cooperation among the producers and enterprises in a GI region is important. Equitable is defined here as the participating stakeholders of a GI justly sharing not only costs and benefits, but also the decisions about their public assets such as name ownership, rules, and marketing related to the GI. Issues of equitable participation among the producers, enterprises, and regulators in a GI region are critical to consider, and not easy to accomplish. It may require a mix of strategies including a mapping of stakeholders and analysis of barriers to entry, assessment of the availability of resources, and the identification of the likely winners and losers.

The potential overall benefits of GIs seem to be diminished when they are captured by a select few. If the GI process is captured for private gain, both the consumer and other producers may suffer.²⁴⁸ It is not surprising that SMEs, small producers, and indigenous peoples are likely to be the biggest losers. Inadequate participation may be the major barrier to equitable distribution but other than institutional strengthening, it is not altogether clear what are the conditions that make participation viable and even catalyze it. One likely factor is the influence of the legal framework of the GI registration process. In general, private-oriented approaches such as trademarks may not be able to take into consideration the diverse interests of different stakeholders.²⁴⁹

When the GIs are controlled by only one part of the chain, i.e. exporters, or the local elite, they may be more business-minded in furthering the GI's commercial success but they also may not offer much to producers, unless producers have a position of power, as they do, for example, in the Colombian case study. In some cases, capture by the elite can diminish the effectiveness²⁵⁰ and potentially put the original assets of the GI at risk. The Mezcal Case Study points out the potential threats to both the environment and cultural uniqueness of that GI, if only limited political and business interests make the rules.

Ownership of the legal designation is typically held by the government in trust for the stakeholders of the region and most successful GIs are managed by representative stakeholder associations. There are considerable risks when a GI is not controlled by its stakeholders or when it can be sold and made inaccessible to some producers within the specified region of origin or even delocalized. Important questions to ask are:

- ❑ What structure or agreement guarantees a measure of equity to the majority?
- ❑ In an era of privatization and trademark dominance, what would prevent the GI-name “owner” from restricting access or unfairly licensing the name?

Government participation does not guarantee an equitable stake for most of the region's farmers as noted in cases including Tequila where producers have little

248 Josling 2006b.

249 Galtier, Belletti and Marescotti 2008.

250 Tregaer et al. 2007.

market power.²⁵¹ As of 2008, the situation of whether or how producers have effective control of their GI is still unclear in Ethiopia, one of the newest GIs, where the government applied for trademark protection for the names of three noted regions.²⁵² It does seem clear from other cases that both the form of protection and its ownership are key factors, along with local institutional or organizational capacity, to ensure that the economic benefits of GI protection extend along the supply chain.

Strength of market partners

The strength of the market partners is key to the promotion and commercialization of the GI over the long term. While the presence of a GI is a concrete starting point, producers and firms must also utilize traditional marketing strategies to convey their unique factors and develop themselves as a brand. For a GI, the processes of launching products, penetrating markets, and segmentation are no different than those for other products. Success depends significantly on careful implementation of effective marketing strategies.²⁵³ These will often require close partnerships with private firms that can distribute the product and undertake its promotion.

The products of a GI will typically first emerge and develop in a local or national market. Sometimes that is adequate and further marketing may not be necessary or even advisable for some products. Viet Nam's Nuoc Mam fish sauce and Nicaragua's Chontaleño cheese are good examples. Nevertheless, overseas markets often provide greater income and a cachet that increases popularity. Regardless of whether local or export, having a sound marketing plan facilitates not only the targeting of markets but also the selection of possible commercial partners.

Many of the GI successes in overseas markets are the result of long-term and consistent commercialization by competent market partners. This is especially true of the successes from developing countries. Colombia may arguably be the exception for its coffee GI but its success is the result of extraordinary large-scale democratic institutional processes and considerable long-term marketing investments (millions of dollars per year) that are not easily replicable in most origins.

Effective legal protection

A strong domestic GI protection system is essential. Selecting the appropriate method of protection requires careful consideration. There are many factors to take into account, and the implications are not always self-evident, so seeking experienced counsel and developing a strategy are key early investments to make. A number of the more successful GIs report having spent hundreds of thousands of dollars each year to defend themselves. These expenses cover the ongoing monitoring, updating, and enforcement or conflict resolution in all relevant markets. That is in addition to the initial establishment costs. A viable protection strategy usually begins with a strong domestic GI system that reduces the likelihood of internal fraud (within the origin) that could compromise the reputation and, in some cases, the validity of legal protection overseas.

251 Bowen and Gerritsen 2007.

252 The Ethiopian Central Government initiated proceedings and holds the trademarks.

253 Rangnekar 2004.

Findings from Case Studies and experiences of existing GIs

To achieve the four main factors that contribute to the success of GIs, it is vital to develop and manage a strategic GI plan. While these four are the *sine qua non* of a successful GI, several other factors are worth understanding in some further detail since they can also be vital to building this process. These include the function of governance structures in achieving equity and success, awareness of the different costs, marketing issues, and the roles of quality and time.

Good governance

An intrinsic component of many successful GIs is local governance that benefits the GI stakeholders and sometimes the local community. Some studies note that the institutional structures were found to be beneficial to the region's commercial and political governance because they provide mutually reinforcing approaches.²⁵⁴ Barham notes that the nature of GIs makes them candidates for acting as “platforms for resource use negotiation,” that can facilitate collective forms of action and even the regulation of property.²⁵⁵ Using conventions theory can be a useful framework for analyzing the workings of such platforms, which take in actors at different levels and with quite different interests. Teams of researchers working with the Latin American Center for Rural Development (RIMISP) are exploring these relationships to better understand the emergence and nature of their interactions.

Local institutions of the GI can have a positive influence on social dynamics and may even facilitate the development of other products or related services similar to Porter's concept of clusters. Ramirez (2007) notes that GIs must facilitate collective action if communities are to benefit from their identities.

In Europe a sample of 21 PDO and PGI supply chains were studied in a 2001–02 survey to analyze the economic and institutional conditions for the success of Geographical Indications.²⁵⁶ It was notable that the supply chains were characterized by the presence of a variety of different types of firms managing together a single GI product. These firms typically range from small enterprises to large agricultural cooperatives and industrial firms but evolved processes to act in unison on common issues and could have broader governance effects.

The improved bilateral and multilateral relationships resulting from managing the GI can facilitate communications and strategic decisions along the supply chain. Local institutions in the ‘Mantecoso’ cheese GI chain in Peru, for example, are the catalyst for horizontal collaboration between producers and a vertical supply chain.²⁵⁷ At the local level, improved governance structures in the supply chains – even for artisan food products – serve to reduce transaction costs and enhance collective action in terms of marketing, R&D programmes and knowledge transfer.²⁵⁸

It is widely accepted that GIs can offer a public benefit to the stakeholders of a region. However, in the absence of effective governance structures, some GIs can serve to facilitate the consolidation of a public asset in a few private hands. Cases exist where larger firms capture the production or marketing of a GI

254 Gómez 2004 and Tregear et al. 2007 for Lari cherries.

255 Barham 2003 notes that the relation of GIs and community assets or common property are just beginning to be explored – for example with projects in Brazil, Chile, Mexico and Peru – and that there are fruitful parallels to be drawn. Also see the articles in the special issue of *Agriculture and Human Values* (16) 3 in 1999 devoted to multiple-use commons, collective action, and platforms for resource use negotiation.

256 Barjolle and Sylvander 2002.

257 Gerz and Boucher 2006.

258 Barjolle and Chappuis 2001.

product and develop it to serve as a more or less private brand.²⁵⁹ In such cases, the majority of stakeholders may have only modest benefits. The majority of the economic value thus stays in only a few hands (see section below: “Caveats on equity and distribution of benefits”).

Delineation of the GI territory

The act of determining the physical demarcation of a territory may appear to be one of the simpler aspects of establishing a formal GI, but sometimes it is the first major hurdle. The choices made in this area revolve around two sometimes thorny issues: who is excluded and market relevance. The unique characteristics of a GI may not concur within the political boundary of an area and may need to include either less or more territory. The ensuing discussions can be difficult especially when the name of the GI belongs to one political region and not to another, perhaps contiguous, region that also offers essentially the same item. In such demarcation cases, a participatory process is vital to ensure a satisfactory and sustainable outcome.

While some GIs take the easy route and nominate an entire political region as the territory, this can soon present some difficulties if the noted product is not available or is of a different quality in some parts of the GI. This can be the case when a product is very dependent on the unique characteristics of its *terroir*. In such a case, with unexpectedly different items coming to the market under the name of the GI, its reputation will be damaged and thus buyers may begin to reduce their demand. The Mexican state of Veracruz produces some unique coffees in distinct areas but a particular quality of coffee is not consistently produced everywhere in the state. The resulting GI encompassed the entire state and consequently has had little new market demand. Other regions, where similar products occur across a demarcated boundary, may create an incentive for smuggling or fraud if they are not included or somehow addressed. In Colombia’s southernmost coffee producing region, they faced all of these challenges and their experience is worth noting. (See box 6.2.)

Box 6.2 Colombia’s Café Nariño – a best-practice approach to GI demarcation

The challenges here are twofold: (1) that an agro-ecological zone for this flavour quality could possibly cross over the political boundaries of the nascent GI named “Nariño” into another province; and, (2) that a portion of Nariño may not in fact offer such characteristics. This could mean including less of the noted province and parts of a neighbouring province. There can be considerable political cost and great resistance to such a process, and in this case the Colombian Coffee Federation relied on two strategies.

(a) In order to ensure an equitable outcome that is supported by the region’s stakeholders, it has taken two years to facilitate local discussions among Nariño grower representatives and those of neighbouring provinces.

(b) In addition, the Federation has dedicated considerable resources to scientifically establishing that a particular product parameter, in this case a unique organoleptic quality, is indeed contained in the proposed GI area.

Both the novel technology used to establish the unique production area, and the steady support to achieve a reasonable consensus, will mean that the demarcation of this GI will cover fairly the whole area that produces what the marketplace has already recognized as “Café Nariño”, and not sacrifice the quality and future success of the GI with the inclusion of areas not offering the distinguishing characteristics (see the case study from Nariño, Colombia).

Relation of quality to the reputation and success of the origin

A question often raised in the context of origin or GI labelling is whether the value of the product is related more to its specific quality or to the reputation of the region (possibly, but not necessarily, due to accumulated quality perceptions). An analysis in 2007 of auction sales data for higher quality coffee origins in seven countries showed that a premium price was paid because of the reputation of the origin itself, independent of the quality attributes.²⁶⁰ Data was controlled for coffee variety and sensory quality differences using credibly rated ‘Cup of Excellence’²⁶¹ results from 2003–2007. This can be interpreted as a reputation effect, meaning that coffees of the same quality coming from different origins are sold at different prices. Traders buying noted origins such as Guatemala and Ethiopia note that the market familiarity or reputation of certain subregions is also translated into higher prices (though not necessarily for the farmer), and that this is at least somewhat independent of the quality. Put another way, a Guatemalan coffee will typically fetch a higher price than a Bolivian coffee of the same quality.

In some cases, GI products are necessarily limited in terms of the quantities that can be supplied, and may thus have achieved a certain exclusivity status. For some origins, the GI supply chains may be shorter with few middlemen required and, in many cases, producers and processors participate so that price premiums can benefit all groups.²⁶² However, whether a significant portion of the total market benefits accrue to producers themselves also depends on their supply chain power. Two cases in box 6.3 below illustrate the point that a combination of relative scarcity due to a limited production area, and close participation in the governance of the GI, provide extraordinary benefits to the participating producers, even the smaller ones. By contrast, the power dynamics of some GIs, such as the Tequila model – although it is not wholly fair to compare different products – illustrates that where GI producers have much less exclusivity, they earn proportionately less of the total value.²⁶³

The GI can be a valuable tool for export differentiation. As much as 85% of French wine exports use GIs on their labels, as do 80% of all spirits exported from the EU.²⁶⁴ GI labelling is not used, however, for Champagne and whisky marketed in North America and Japan, where GIs are less familiar and companies invest heavily in own-brand marketing.²⁶⁵ One unique example of improved market access for GIs is the markedly increased sales of Chianina PGI beef during the recent BSE meat safety crisis, because consumers perceived that the origin and quality were guaranteed.²⁶⁶

260 Teuber (2007) used econometric tools including hedonic pricing regressions to relate the observable market price to individual product characteristics such as sensory quality, origin, or brand.

261 A competition and auction whose international quality ratings are among the most respected in the industry. Countries sampled were: Bolivia, Brazil, Colombia, El Salvador, Guatemala, Honduras and Nicaragua.

262 Babcock and Clemens 2004.

263 Bowen and Gerritsen 2007.

264 EC 2003a.

265 Hughes 2006.

266 Belletti et al. 2007b and 2007c.

Box 6.3 Producer value in exclusive GIs – coffee as example

High profile GIs are often used as examples of what can be done in other countries and other sectors. This may be misleading because the comparisons are often superficial. Even when the situation is similar, there are many factors to account for including many years of exclusivity, marketing, and reputation building. These excerpts from two of our case studies illustrate the considerable success of these GIs and the unique factors that contribute to it.

Jamaica's Blue Mountain GI includes less than 8,000 farmers on just over 5,000 ha. and averages a very small 1,700 MT annual output or less than 0.1% of global coffee production. Blue Mountain coffee has long been lauded as one of the world's most expensive coffees. Its exclusivity results in retail prices of more than US\$ 60 per pound in Japan where 85% is sold. Producers have recently earned the equivalent of about US\$ 4/lb for their output. This is considerably more than the price received by most growers of high-quality arabica coffee and still less than 10% of retail value, a proportion not unlike that of other origins.

Hawaii's Kona coffee is another of the great origins with a little over 600 registered producers averaging approximately 2 ha. each. This limits the total supply substantially, to only about 1,200 MT per year. Most are relatively well educated, well capitalized and vertically integrated. They produce and process their own coffees using few intermediaries. Farmers recently received US\$ 5.75 (parchment equivalent) when retail market prices were over US\$ 30, which is a substantial portion of the retail price.

Can other coffee origins expect similar results? It depends. Their high pricing is a result of many years of promotion and considerable market power over a very scarce product. While it is estimated that, with such highly-prized GIs, some counterfeits also enter the market, the overall quantities are still relatively modest. It is unlikely that such coffees could maintain their high prices and high return to farmers if they were produced in large quantities and became, by definition, less exclusive.

Source: Schroeder for Jamaica and Giovannucci for Kona. See Case Studies section for more details.

The assurance of certain quality characteristics can also facilitate entry into new distribution channels (e.g. supermarkets), particularly those whose customers

Figure 6.1: The French region of Franche-Comté – site of Comté cheese PDO



Source: La Maison du Comté.

demand quality guarantees. In exporting, GI indications can be valuable by 'setting the bar' or becoming the standard reference for that product in its distribution chain. In certain instances, national and international retailers have made the designation a condition of their agreeing to carry the product. This was the case, for example, with olive oil, where Tuscan Oil became the standard, to the detriment of similar but non-PDI/PGO olive oils.²⁶⁷

The well-studied Comté PDO in Franche-Comté (figure 6.1), illustrates how concrete quality-oriented standards are applied at every stage of the process. At production levels, it requires that milk comes only from the Montbéliarde breed of cows that are allowed to graze on no less than 1 ha of grassland each. At the collection level, the milk may only be collected from within a limited 25 km area. At the processing levels, the milk must be processed within 24 hours of receipt and the cheeses must

then be aged for a minimum of four months on clean Spruce-wood shelves. The Comté association (CIGC) has specifically utilized the quality specifications not only to build a considerable reputation but also to preserve artisanal production methods, and thus maintain small producer participation and prevent large firms from dominating. Securing quality levels also helps local dairy farmers since the milk used to produce Franche-Comté cheese sells for 10% more than the non-GI average in the region.²⁶⁸

Costs of putting and keeping a GI on the market

Chapter 2 covers many of the costs to consider prior to embarking on a path toward a GI. It is worth highlighting though that many of the readily visible direct costs, such as legal registry, are not excessive for an organized group of farmers or a government. The majority of the costs however are not direct nor are they necessarily experienced at the beginning. The cost of marketing and legally maintaining the protection, particularly in the United States and other nations where governments do not provide this service, can be considerable. Some of the most successful GIs spend more than a few hundred thousand dollars annually.

The indirect costs to establish and operate a GI are by far the most costly and the most difficult because they involve not only financial expense but also considerable time and effort to adapt local operations and even forms of governance among organizations in order to attain and effectively manage a GI. Using participatory processes, agreeing on the area of demarcation, and establishing common codified standards are among the tasks required of any GI. These learning costs require considerable reliance on assets that can be more valuable than money: dedication and patience.

Market saturation

While there is little sign of it happening, outside of possibly the wine industry, a glut of GIs could dilute their individual effectiveness in the way that they convey unique characteristics or quality. If, at some point, quality logos or marks appear on a plethora of products, they may cease to differentiate products, or they might even become a basic market expectation.

There are some concerns emerging. For example, thousands of wine GIs in Europe (especially Germany, France and Italy) may be evidence of a segment facing saturation.²⁶⁹ In such a crowded situation, despite consumer confusion regarding differentiation of individual products, it appears that overall collective reputation for the product category is nevertheless increasing.²⁷⁰ The case of EU olive oils with many increasingly bearing the PDO designation, suggests that if most do so then there may be less basis for the consumer to differentiate one particular olive oil from another. However, the consumer may also perceive that the entire selection is of high quality and as such, a collective reputation is achieved. To date, there is no evidence of any agri-food product categories having reached a measure of GI saturation that would prevent producers from using this mechanism as an effective form of differentiation in the United States or EU markets.

Time required to mount a GI

Success has often been measured in decades with GIs taking many years to distinguish to consumers what they produce and only then begin to reap

²⁶⁸ European Commission 2003.

²⁶⁹ Broude 2005.

²⁷⁰ Marette *et al* 2007.

premium prices for the differentiation. A GI requires patient application and sustained commitment of resources. It is therefore not a simple marketing tool and will disappoint those that perceive it as such. One of the areas that we still know little about is what specific measurable indicators are necessary for us to understand the factors of such long-term success.

Caveats on equity and distribution of benefits

Groups or governments wishing to pursue a GI designation should keep in mind that the distribution and the magnitude of costs and benefits will depend upon the nature of the institutions established and the rules applying to the GI group itself.

Tregear et al. state that:

“....it is assumed that the most appropriate configuration of actors assembles itself around the...opportunity, and that a harmonious balance of private interests, civic concern and appropriate remuneration of effort ensues. Yet in practice, qualification processes may be dominated by one set of actors pursuing one set of interests, skewing the distribution of rent within the territory.”²⁷¹

There are a number of positive links between GI regulations and rural development.²⁷² Caution is warranted, however, since in some instances rigorous rules may actually serve to further marginalize remote and lower-quality producers.²⁷³ The Mezcal Case Study illustrates how strict modernized standards may indicate the failure of institutions to be representative of the smaller producers and enterprises. In this case, it presents a danger to the unique environmental and cultural characteristics that are perhaps the greatest asset of the GI (see details in the case studies).

Firms with superior bargaining power in the supply chain may appropriate much of the economic value generated from a GI. For example, although manufacturers of the cheese *Mozzarella di Bufala Campana* receive price premiums in comparison to similar but non-protected mozzarella, the milk producers that supply them with raw materials do not typically earn a premium.²⁷⁴ It is similar for smaller producers supplying the critical agave crop to the tequila industry.²⁷⁵

A GI, in most cases, is intended to benefit the producers and products of a region rather than only one or very few specific producers. GIs therefore have the character of a public good. If a GI is indeed a public good that offers benefits to its many users, then its legal protection should not permit the exclusive private capture or monopoly of those benefits by only one or a select few entities (see box 6.4). Since government often owns or shares the ultimate rights to the GI with the producers or residents of the region, it is incumbent upon it to enable viable civil management structures that guarantee broad and equitable public access as well as democratic self-control. Ideally, governments ought to use only minimal intervention and allow civil society to take the lead; acting only when necessary to ensure that legal rights and the public good are not violated.

271 Tregear et al. 2007, p. 3.

272 For example, see Zago and Pick's (2002b) discussion on such links.

273 Josling 2006b and the Mezcal case study offer examples.

274 de Rosa et al. 2000.

275 Bowen and Gerritsen 2007.

Box 6.4 A challenge of protecting a GI with a trademark

Selecting the most beneficial form of protection can be a difficult task. There are a number of options. The corporate trademark “Copper River Salmon Cordova” is an illustration of the distinction that can be made between a trademark and a typical GI, and suggests why a trademark may be in some cases an inappropriate form of GI protection. In their study, Babcock and Clemens (2004) note that the current trademark could be sold legally to another entity sourcing from the same or other locations, so that the salmon being produced would not necessarily originate from Copper River.

Furthermore, producers in other countries could be licensed to use the trademark and to market to consumers any salmon as Copper River Salmon Cordova. But the trademark cannot be used deceptively by the new owners, meaning that if it can be proven that consumers care that the salmon comes specifically from the Copper River, then use of the trademark on salmon not from the Copper River would deceive consumers and could therefore be invalidated. If someone is not willing to initiate legal proceedings (at their own cost) or if the case could not be credibly proven that the average consumer valued the product-place association of Salmon with Copper River, then it would be difficult to protect the integrity of the GI or the distinguishing characteristics (product quality) associated with salmon from the Copper River region.

Other commentaries questioning the use of GIs versus trademarks have emerged, including some on the impact of GIs on farmer development. One line of thought suggests that GIs are designed to defend intellectual property (IP) rights, not to develop economic value and are unnecessary to the extent that they are costly and will not necessarily result in a better farmer income. This argument has some merit in that GIs are likely to be costly and cannot, by virtue of protection alone, develop economic value. However, it may also create a false dichotomy since, in essence, many of the same arguments would hold for a producer having a trademark wherein it too would not have economic value since it must be created, just like with a GI.

Part of the argument notes that a trademark may indeed be easier to defend than a GI in many jurisdictions; this is likely true. But would a producer necessarily have better commercial control of his “brands” with a trademark? In fact, the producer rarely controls or even owns them, government usually does. With trademarks, there may be stricter control of the name or the commercial brand but no more control (and likely less) of the product’s provenance or its guarantee of particular quality characteristics to a consumer.

The choice of protection can have grave consequences for the stakeholders of a region as the Chinese case of *Jinhua huotui* (a type of ham) illustrates. It features a well-known GI name for which the trademark was acquired by a corporation. The firm then exercised its legal rights to exclusivity by successfully prosecuting the local original producers of the ham to prevent them from using the name. It secured market control of this name even though it is not located in the Jinhua region. Consequently, the sales of the local Jinhua producers’ have declined significantly in recent years.²⁷⁶

The experience of a number of GI origins in Guatemala, Jamaica, India, or Colombia suggests that protection, control, and commercial value can be achieved using certification marks.²⁷⁷ Despite disagreements on the optimal vehicle for protection, most agree that the most important underlying issue in terms of IPRs is the producers’ empowerment to control their own assets.

²⁷⁶ Wallet *et al.* 2007.

²⁷⁷ Independently of trademarks or in concert with trademarks.

Most of the governmental experience in managing GIs has occurred in reasonably stable societies such as the EU and in terms of granting and protecting the domestic rights of GI participants, relatively few problems have been encountered. How the process would work in countries with less democratically representative public institutions and less transparency remains to be seen. The cases studied for this publication indicate reasonably positive outcomes to date.

In Colombia, the GIs for coffee are managed by a public non-governmental institution with sufficient dedicated resources. For India's Darjeeling region, members of the managing Tea Board are nominated by the Government (as opposed to being democratically elected), thus it retains considerable control. Despite the differences, both origins have been able to impose strict standards to maintain reputation and have invested considerably in pursuing domestic and international protection for their GIs. In Guatemala, the Government owns the GI but it has been fostered and managed by the Antigua Coffee Growers Association and the National Coffee Association with excellent results in terms of the growers' share of the FOB selling price. The recent Ethiopia coffee case also contains some ideas for consideration (see box 6.5).

Box 6.5 Ethiopia coffee case – GI protection

In response to the increasing use of Ethiopian names for marketing purposes in other countries (i.e. Panama and the United States) and the widening gap between export and retail prices, the Government of Ethiopia undertook protection of its three most notable coffees with regional names. It elected to register 'Yirgacheffe', 'Harrar' and 'Sidamo' as trademarks in a number of countries, thereby claiming exclusive ownership rights to those GIs. The case attracted considerable international attention (the BBC, The Economist, the London Times) because part of the United States coffee industry objected to the chosen form of protection.

While some countries, including EU members, approved all three trademarks (pending final review by Member States), the United States Patent and Trademark Office (USPTO) initially denied registration for two of them on the basis that they were merely geographically descriptive and did not have a "secondary meaning" or "acquired distinctiveness". All were subsequently granted.

The EU primarily protects GIs using its PDO/PGI system and the United States prefers to do so using certification marks, thus leading to considerable debate about the approval of trademarks for GIs in both jurisdictions. GI and trademark protection are distinct and can be complementary in the EU. This case, without using the EU's primary GI system, demonstrates avenues for protection that could potentially involve less strenuous application procedures than the PGI/PDO option, though the protection implications are also different. It is therefore important to understand the distinction that, in this case, Ethiopia is protecting the use of the names rather than the particular coffees and their relationship with the named producing regions. The differing interpretations and possible options for protection can make the process confusing for applicants and stakeholders alike, and serve to indicate the need to fully understand each system – not an easy task.

Some observers have questioned why Ethiopia did not elect to apply for a PGI designation in Europe or certification marks in the United States, since these could have more directly involved Ethiopian coffee growers' cooperatives or associations in the management and control. Unlike trademarks, certification marks and PGIs are source-identifying in the sense that they identify the nature and quality of the goods and affirm that these goods have met certain defined standards. For Ethiopia's small-scale and widely dispersed coffee system, facilitated by tens of thousands of traders, it would be difficult to meet the inherent standards and control criteria of a PGI since this requires a managed system of controls and certification. It is more feasible that they could meet the less strict criteria for United States certification marks (where the standards are set and monitored by the applicant). Both PGIs and certification marks require assurances of origin that may not be so easily achievable in the current Ethiopian situation, with its highly atomized, small-scale supply channels.



Hence, one distinction between a trademark and a certification mark, or PGI, is that if someone can show a consistent or systemic failure to control the application of the certification mark, such that the coffee they bought as Harrar or Sidamo under a certification mark programme was in fact neither, Ethiopia's claim to the mark could be eroded. Trademarks do not require the trademark holder to meet any product criteria or controls over the product. Recognizing the benefits of some controls, and as a gesture of goodwill, the Government has offered to license these names to buyers at no cost. With such licensing agreements, Ethiopia has created a basis for new marketing partnerships and downstream investment in their marks.

In general, trademarks are assets that have a distinctly private rather than public character. While the Government has appointed a stakeholder committee and its intentions in this case are not in doubt, trademarks can be a contentious way to attempt protection of a GI. They can be used for different products (that may or may not enhance the value of the name), they can be licensed, sold or traded to come under the control of another private or public entity, and their use can be controlled so that preference is accorded to some and not to others. Therefore, the producers and inhabitants of a region with a trademarked name are presented with some serious control and equity issues.

Formulated with Professor Justin Hughes, Director, Intellectual Property Law Program at Cardozo School of Law, New York City.

But, GIs are not for everyone

While acknowledging the numerous potentials of GIs, their shortcomings must also be acknowledged. GIs may not necessarily help the poorest, unless they are very carefully structured. Some theoretical models replicating their effects on welfare levels have shown that using the GI approach as a means of differentiation can potentially benefit consumers and high-quality producers, but also that the low-quality or poorest producers are not likely to benefit.²⁷⁸ Furthermore, the welfare impact of GI regulation is likely to be negative in places where product differentiation is limited and the costs of application are high. In other words, there are cases where a GI simply does not make sense.

Box 6.6 Why GIs are not for everyone

- ❑ GIs require sustained multi-year investment of time and resources
- ❑ GIs are obliged to have unique characteristics
- ❑ GIs must have active commercial promotion
- ❑ GIs need legal protection
- ❑ GIs may not benefit the poorest due to a need for quality standards, market skills and organization

A review of United States marks for GIs in 2004 notes also that the economic benefits of certification marks are not necessarily spread out along the supply chain.²⁷⁹ Therefore, dominant parties may take a large share of the benefits if there is an imbalance of power or measures for equitable distribution are not in place. This may be so in the case, for example, of the Tequila GIs from Mexico²⁸⁰ or of Mozzarella di Bufala Campana cheese from Italy,²⁸¹ where the primary beneficiaries of protection have been the larger manufacturers and not the producers.

²⁷⁸ Zago and Pick 2004.

²⁷⁹ Babcock and Clemens 2004.

²⁸⁰ Bowen and Gerritsen 2007.

²⁸¹ de Rosa et al. 2000.

Kerr cautions that while there may well be benefits available from established Geographical Indications such as those in the EU, there is no certainty that similar benefits would accrue to producers in developing countries.²⁸² Investing the considerable resources and time to establish their GIs in the minds of consumers may therefore be a waste of “their limited resources chasing an illusive dream”. In most cases, it takes many years to develop a recognized link between a product and its geo-cultural origin.

Analysts have reported that even some European GIs are still unfamiliar to consumers and have not effectively conveyed their unique qualities.²⁸³ In fact, Broude notes that due to political expediency, nearly every wine growing area in France and Italy was granted GI protection (many would include Germany as well) regardless of whether or not there was a uniqueness or a characteristic relationship of product to place.²⁸⁴ If a GI name becomes so commonplace through generic use or relatively meaningless as a differentiator, its value is seriously diminished.

A different sort of example emerges from the high-end segments of the wine and spirits industry. In many cases *appellation d'origine contrôlée* (AOC) labelling that may be useful in the EU, is not featured for Champagne wines marketed in North America and Japan, and the same is true for Scotch whisky and Irish whiskey since geographical indications mean much less than the promoted image of the brand in some markets.²⁸⁵ Most successful GIs are the product of years of promotion and commercial alliances are usually at the heart of their success. There is considerable dependence on private-sector promotion and marketing methods.²⁸⁶

The traditional multi-year process of developing a GI is very different from the ways in which other intellectual property types such as patents, copyrights, trademarks and industrial designs have been created.²⁸⁷ Regions or countries that want to develop their GIs will need not only to protect them, but also to adopt the policies necessary to support their equitable development. The approach being taken now by many countries includes: (1) securing recognition and demarcation; (2) determining the quality or process standards; (3) supporting associative processes at the level of supply chain or producer and trade organizations; and, (4) development or promotional subsidies.²⁸⁸

Successful GIs could eventually face lower profits and tougher competition for scarce factors of production or critical resources within their demarcated areas of origin.²⁸⁹ This increased activity within the geographic area, caused especially by new entrants, can create excess production and may eventually create downward price pressure. In some developing regions, there is debate about whether the applicant group (or even the government) should have the right to limit production. Thus, for developing countries, GIs are not a simple panacea for resolving all of their many business and rural development problems.

282 Kerr 2006.

283 See Arfini 2000.

284 Broude 2005.

285 Hughes 2006.

286 Tregear et al. 1998.

287 Escudero 2001.

288 O'Connor personal communication 24 July 2007.

289 Kerr 2006.

The economic theories of GI protection have been well-covered by several noted researchers²⁹⁰ that have presented valid arguments to support the proposition that potentially negative impacts on consumer welfare (higher costs) and producer-level barriers to entry could result from the market power and even protectionist nature of some GI approaches. There is, however, little actual evidence of such competition distortion because few, if any, GIs have ever achieved the levels of market power or control to create that. Consumer welfare, in terms of price, may be affected but this is most likely at the high end of the consumer spectrum since many GIs are already classed as specialty items because of intrinsic characteristics such as quality, uniqueness, or scarcity and would thus be expected to command higher prices. The same authors, and others, also note consumer benefits such as better or more credible signals of certain distinguishing characteristics such as quality and authenticity.

²⁹⁰ See, among others: Sylvander and Allaire 2007; Josling 2006b; and Kerr 2006.

Chapter 7

Frequently asked questions (FAQs)

In the relatively new exploration of this field, a number of typical questions tend to arise. This chapter presents straightforward and simple responses to the most common of these. Though the answers are not designed to be exhaustively complete, they provide the most important aspects and point to resources for more information where appropriate. A number of other resources are also provided in appendix I.

1. What is a geographical indication or GI?
2. Are GIs just place names?
3. When I see “MADE IN CHINA” on a product, is that a GI?
4. How are GIs protected?
5. What is a trademark?
6. What is a service mark?
7. What is a certification mark?
8. What is a collective mark?
9. What is a PDO?
10. What is a PGI?
11. What are the differences between the two main EU quality systems?
12. What is a TSG?
13. What is the difference between DOC and DOP?
14. Where can I find a guide to the different language versions of the EU GIs?
15. What types of products can be GIs?
16. What are the most important first steps for those considering a GI?
17. What basic costs can a GI expect to incur?
18. How can a group or association create the necessary recognition for their GI to be successful?
19. Do I have to be a citizen to obtain a registration in a country?
20. How long does it take to get a legal registration?
21. What is the duration of an international registration for a mark?
22. Do I have to register a mark or designation for my GI to be protected?
23. If someone meets the standards of a GI that is registered as a certification mark, can they use the GI designation?
24. Why is it that a term that is geographically descriptive cannot be simply registered as a trademark?
25. Among GIs, what are generic names?
26. What GIs and GI product names are already registered?
27. Where can I learn more about GI regulations in the EU?
28. Where can I learn more about GI regulations in the United States?
29. Who are the national authorities responsible for GIs in the United States and the EU?
30. Where can I get more in-depth information on GI issues in the arena of international law and agreements?

1. What is a geographical indication or GI?

One description of a “geographical indication” may be found in the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). The TRIPS Agreement sets forth standards to regulate international intellectual property protection and enforcement and establishes international minimum standards for the protection of geographical indications.

Geographical indications (GIs) are defined 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 geographic origin.”

This means that a geographical indication is a sign used to indicate the regional origin of particular goods/services and that there must be a link between some characteristic of the good and the particular region where it was produced. For example, the Florida Sunshine Tree is a symbol known to consumers that links citrus products featuring the Sunshine Tree to Florida where the “distinctive-tasting” citrus is grown. See chapter 1.

2. Are GIs just place names?

A GI can be a geographic place name (e.g. “Bordeaux” but it may also be a symbol (e.g. a picture of the Eiffel Tower, woman with tea leaf, an orange tree) or the outline of a geographic area (e.g. the outline of the State of Florida or a map of the Dominican Republic), a colour, or anything else capable of identifying the source of a good or service.

3. When I see “MADE IN CHINA” on a product, is that a GI?

Probably not. For an indication to function as a GI there must be a link between some unique characteristic of the good and the particular region where it was produced. That link must inform consumers of some important characteristic of the product that is material in their decision to purchase the good.

Not every indication can rise to the level of a GI. In other words, a geographic name itself is not a GI. In order for a geographic name to function as a GI, it must indicate more than just origin; it must communicate that the product from this region has a particular quality or has a particular reputation connected with the place. The source-indicating capacity of a GI is key and highlights the distinction between a GI and a mere geographic term that does not function as source-identifier.

4. How are GIs protected?

Geographical indications are protected in a number of ways. The form of protection must be in accordance with signed accords and treaties such as the TRIPS Agreement or the Lisbon Agreement. At the national level, they are specifically protected by a variety of laws or instruments depending on the country. These can include:

- Specific or *sui generis* laws protecting GIs;
- Trademark laws, particularly, but not exclusively, in the form of certification marks or collective marks;
- Laws against unfair competition;
- Consumer fraud protection laws for example, those for truth in labelling;
- Occasionally with specific laws or decrees that recognize individual GIs.

5. What is a trademark?

In a number of countries, including the United States, it is possible to protect geographical indications as trademarks. Geographic terms or signs are not usually registerable as trademarks if they are merely geographically descriptive of the origin of the goods. There are a number of exceptions and trademarks can also be used as a corollary form of protection for

aspects of the GI. If a geographic name or sign is used in such a way as to identify the source of the product or service and consumers have come to recognize it as identifying a particular company or manufacturer or group of producers, the geographic sign no longer describes only where the product or service originates, it also identifies a somewhat unique source for the product or service. At that point, in the United States the sign has “secondary meaning” or “acquired distinctiveness” and can be trademarked.

The EU, of course, also uses trademarks including the Community Trademark (CTM) and although these can complement a GI they are not primarily used to protect GIs. The CTM is any trademark registered across the whole of the EU, part of a harmonized trademark system. A mark only needs to be used in one Member State of the EU to qualify for CTM application. Any mark that can be represented graphically in a unique and distinguishable way (words, shapes, designs, the shape of goods or packaging) can be registered.

6. What is a service mark?

Part of trademark law, a service mark is any word, name, symbol, device (or combination) used to indicate the source of the services and to identify and distinguish the services of one provider from those of others. It is not an active part of GI protection.

7. What is a certification mark?

A certification mark is any word, name, symbol, or device that conveys the certification of a particular pre-defined characteristic(s) of a product or service, which may include geographic origin. It is the most often used method in some countries such as the United States and China to protect a GI and it conforms to specifications laid out by the owner, which can apply to place of origin and/or methods of production. The mark requires some verification by a third party that prescribed attributes have been met or are presented.

Unlike trademarks, certification marks are source-identifying in the sense that they identify the nature and quality of the goods and affirm that these goods have met certain defined standards. Certification marks differ from trademarks in three important ways. First, a certification mark is not used by its owner. Second, any entity that meets the certifying standards set by the owner is entitled to use the certification mark. Third, in most cases, it applies only to the product or service for which it is registered; so a Florida citrus certification mark cannot be used as a certification mark for cotton shirts or radios. However, a single United States certification mark can be tied to a variety of products, producers, and processors in a region i.e. ‘Pride of New York’ for fresh fruits and vegetables.

8. What is a collective mark?

Collective marks are similar to trademarks and are used only by the members of a cooperative, association, or other collective group to identify their goods or services as having a connection to the collective and its standards. The collective group may have a geographic identity, i.e. the California Raisin Board, and may advertise or promote goods produced by its members. In the EU, a group that has a registered PDO or PGI may also apply for a collective trademark for their GI product’s name or graphic representation. The PDO/PGI designation provides a protected indication of quality and origin relationship that is separate from other intellectual property rights. Aspects of PDO/PGI can therefore be subsequently trademarked as a collective trademark, conferring additional protection via intellectual property rights.

9. What is a PDO?

The designation stands for “Protected Designation of Origin” in the EU. It indicates that the product must be both produced and processed within the defined geographic area, exhibiting qualities or characteristics essentially due to that area. A PDO is the name of a place or region used to describe an agricultural product or a foodstuff, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

10. What is a PGI?

The designation stands for “Protected Geographical Indication” in the EU. To attain this designation, the product must be produced or processed in the geographical area (either or both). The PGI allows greater flexibility than the PDO so long as the product exhibits specific quality, reputation or other characteristics that are attributable to that area. Therefore, so long as some unique contribution is made in the defined geographic area, which can be the production and/or processing and/or preparation the PGI need not include any of the other aspects such as local know-how that the PDO includes.

11. What are the differences between the two main EU quality systems?

PDOs and PGIs differ mainly in the extent of their link to a specific geographic region. In general terms a PDO product must not only derive its characteristics from the area (i.e. local raw materials, climate, soil quality or other local factors) it **MUST ALSO** be produced and processed in the defined GI region. PGIs only need to have at least one of the production or processing stages happen in the defined area. In nearly every other respect, including application, recognition process, control systems, and consumer guarantees, they are the same.

12. What is a TSG?

The designation stands for “Traditional Specialty Guaranteed” in the EU. It means that the product must be traditional, or established by custom (at least one generation or 25 years). A TSG can exist where the product’s name expresses the specific character of the foodstuff. TSGs may have geographic affiliations but their production can take place anywhere in the world, subject to appropriate controls, so they are not treated as GIs here. Haggis, Mozzarella, Lambic, and Eiswein or Icewine are popular TSGs.

13. What is the difference between DOC and DOP?

Both are commonly used terms in Europe. The DOP is synonymous with PDO or Protected Denomination of Origin, the EU’s most demanding level of protection for a GI. As DOP, it is the common abbreviation for French, Spanish, Italian, Romanian and Portuguese. The DOC is used primarily for wines and indicates a Controlled Denomination of Origin specifying the wine’s geographic locus of production and certain quality standards (grape variety, acidity, alcohol content, period of aging, etc.). In some regions, DOC was also the GI term for other food products (i.e. cheese, ham, etc.) prior to Regulation 2081/92 that formalized PDO and PGI terms in the EU in 1992.

14. Where can I find a guide to the different language versions of the EU GIs?

Variations of DOP exist in each country. For example, in German it is: g.U., in Polish it is: CHNP and in Finnish it is: SAN. All mean exactly the same. These and other abbreviations can be found in Annex V of EU Regulation 1898/2006.

15. What types of products can be GIs?

The list is rather long and the most popular are wines and spirits. Crafts can be GIs in some nations, i.e. India and Turkey, but are not included in the EU system yet. Here is a sampling of other products that are part of the regulations within the EU or United States.

Products covered by Council Regulation (EC) No. 510/2006 and Council Regulation (EC) No. 509/2006:

- Fresh meat and meat-based products (cooked, salted, smoked, etc.);
- Products of animal origin (cheeses, eggs, honey, cochineal, milk products, etc.);
- Oils and fats;
- Fruits and vegetables;
- Cereals, bread, pasta, pastry, cakes, confectionery, biscuits;

- Fish, molluscs, crustaceans;
- Spices;
- Beer and beverages made from plant extracts;
- Natural mineral waters and spring waters;
- Natural gums and resins;
- Essential oils;
- Cork;
- Wool.

In the United States, any food or agricultural product, including all of the above, will be considered.

16. What are the most important first steps for those considering a GI?

First, it must be determined whether a product has sufficient level of differentiation and whether the stakeholders are interested in the long-term commitment required in terms of both cooperation and resources. If the determination is positive, then a GI must be carefully considered and structured with broad participation, and leadership to permit optimal benefits to the diverse stakeholders of the region. Careful structuring will also reduce disharmony and ensuing difficulties as a GI grows. This includes conducting a feasibility analysis to determine likely marketability and the types of legal structures and protection that will be needed.

At the domestic level this means: securing recognition and demarcation; determining the quality or process standards that will apply; supporting associative processes at the level of supply chains and organizations; and securing development or promotional funds to meet basic costs that can add up to hundreds of thousands of dollars before any GI products are sold. See chapter 6.

17. What basic costs can a GI expect to incur?

The range is enormous with many factors, ranging from size to level of development, influencing the outcome so it is impossible to determine generically. From assessment to domestic protection can easily cost several hundred thousand dollars and considerable time.

One of the first sets of costs are for determining whether the GI is viable in terms of an interesting product, an interested market, and organized producers. The second stage requires investment in establishing the necessary domestic legal structures and defining the exact physical boundaries and definitions or standards for the GI. It is not uncommon for this to take several years to complete. To support the GI's development, local or domestic information and education are useful as are marketing efforts for the products.

As products become popular, it will be necessary to assess legal protection options and apply for them overseas. Maintaining vigilance and pursuing infractions for GIs marketed globally can be a considerable cost, particularly if litigation is necessary.

GIs may require further private infrastructure and production investments along with organizational adaptation to new conditions and requirements and sometimes higher costs due to the demand for better quality, safety, or simply the heavier demand of required raw materials if these are limited. See chapter 2.

18. How can a group or association create the necessary recognition for their GI to be successful?

Recognition often depends on marketing and there are various tools available, beginning with a marketing analysis and plan. In most cases, individual producers independently market and gain recognition but as this grows, they may find that associated efforts are more cost effective in new or larger markets. GIs can typically start with local or regional promotion and development to best establish what works in their systems of management,

production, packaging, and marketing. The most successful GIs have good links with commercial enterprises that have a long-term commitment to market the products. Since establishing such linkages can be difficult, weaker origins could consider providing preferential access or terms, at least initially for a suitable partner to invest in the marketing and distribution. Such supply chain partners provide valuable marketing services that many origins cannot afford.

19. Do I have to be a citizen to obtain a registration in a country?

Both the United States and the EU permit citizens of other nations to apply for any of their protection systems. This is a relatively recent option in the EU and it is not yet clear how simple the process will actually be. In the United States, a foreign applicant can file for GI registration if they meet any of the following criteria:

- Actual use of the mark, or good faith intention to use it, in United States domestic commerce or commerce between the United States and a foreign country;
- Ownership of a foreign registration (or current application) filed in a foreign country;
- Extending protection, under the Madrid Protocol, of a foreign registration to the United States.

20. How long does it take to get a legal registration?

This varies due to a number of factors. Generally speaking, in the EU, the process is expected to take at least one to two years from the date of application if there are no serious problems or objections but the experience with foreign applications has been very limited. Tracking the current status information on application and registration processes requires contacting the relevant authorities with whom it was filed. The United States can typically average at least a year or more. However, cases can easily take several years depending on circumstances. Tracking the process or status on applications and registrations can be done through the Trademark Applications and Registrations Retrieval (TARR) database at <http://tarr.uspto.gov/>.

21. What is the duration of an international registration for a mark?

Under the Madrid Protocol, an international registration lasts for 10 years from the date of registration and may be renewed for additional 10-year periods by paying a renewal fee to the International Bureau of the World Intellectual Property Organization. The 'international registration' option applies only to marks and not to *sui generis* systems and permits the owner of a mark to register it in any other signatory country of the Madrid Agreement Concerning the International Registration of Marks by filing a single application with WIPO.

22. Do I have to register a mark or designation for my GI to be protected?

Not necessarily, many countries provide some protection even for recognized GIs that are unregistered. Cognac is one notable example protected in the United States. However, it is advisable to have formal registration to publicly inform both competitors and potential users of the ownership claim on the GI and to facilitate possible protective actions with either judiciary or customs authorities.

23. If someone meets the standards of a GI that is registered as a certification mark, can they use the GI designation?

Yes, but only if the registered owner of the certification mark certifies that the product or service meets the standards. The mark owner – usually a government, public association or group of producers – must be able to control the use of the term, otherwise the certification mark is subject to cancellation. The owner must also permit its use to those that meet the published standards for it and discrimination against a compliant firm or producer subjects the mark to the threat of cancellation. The USPTO requires written and publicly available certification standards for each certification mark as part of the official record.

24. Why cannot a term that is geographically descriptive be registered as a trademark?

Geographic terms are not typically registerable as trademarks if they are merely geographically descriptive of the origin. Mere description may prevent other producers in that area from use of that term to fairly describe the origin of their goods or services.

A GI identifies not just a geographic area but a product linked to it. If over time consumers come to recognize a GI product identification as not merely geographically descriptive, but as also identifying a particular firm or group of producers, then the geographic term no longer describes only where the product comes from, it also describes the perhaps unique “source” of the products. This is a requirement in the United States.

Under trademark law the term has then acquired “distinctiveness” or “secondary meaning”. As such, the term may be protected even as a trademark. A geographic name may however be registered as a certification mark when attached to a particular product even though it may otherwise be primarily geographically descriptive since it permits others in that area to use the term.

25. Among GIs, what are generic names?

A generic name has lost an exclusive association to a place and become the commonly used name for a particular type of product. Though it relates to a place or region where such products were originally produced, that place name has come to designate not a specific source-related product but rather the category of products and these do not necessarily originate in the named region.

26. What GIs and GI product names are already registered?

In some countries, private search firms or attorneys specializing in Intellectual Property law will conduct GI and trademark searches. Such firms may be listed in telephone directories under the heading “Trademark Search Services”.

For the EU, search for PDO or PGI by general category:

http://ec.europa.eu/agriculture/qual/en/1bbaa_en.htm

Search for PDO or PGI by EU country:

http://ec.europa.eu/agriculture/qual/en/1bbab_en.htm

Search for TSG in the EU by category

http://ec.europa.eu/agriculture/qual/en/1bbb1_en.htm

In the United States:

Patent and Trademark Depository Libraries are located in many major cities. The main Trademark Public Search Library is located at Public Search Facility – Madison East, 1st Floor, 600 Dulany St., Alexandria, VA 22313. Use is free to the public. Search with the Trademark Electronic Search System (TESS) at:

http://tess2.uspto.gov/bin/gate.exe?f=login&p_lang=English&p_d=trmk.

27. Where can I learn more about GI regulations in the EU?

Council Regulation (EC) No 510/2006 of 20 March 2006 deals with the legal protection of geographical indications and designations of origin for food and agricultural products. General information and a summary of the legislation are found at: <http://europa.eu/scadplus/leg/en/lvb/l66044.htm>.

Detailed rules of implementation, i.e. Particulars of inspection structures, Council Regulation on the systems known as PDO (Protected Designation of Origin) and PGI (Protected Geographical Indication) are available from the Directorate-General for Agriculture and Rural Development at:

http://ec.europa.eu/agriculture/foodqual/quali1_en.htm

Find related legislation on the right-side column of the page:

List of applications (DOOR) for registration of Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI) and Traditional Specialties Guaranteed (TSG):

http://ec.europa.eu/agriculture/foodqual/protect/applications/index_en.htm

For further questions, contact the Directorate-General for Agriculture and Rural Development directly at:

http://ec.europa.eu/agriculture/contact/infoform_en.htm

28. Where can I learn more about GI regulations in the United States?

Basics of the United States GI system:

http://www.uspto.gov/web/offices/dcom/olia/globalip/pdf/gi_system.pdf

Links to other information on United States GI and related systems of protection:

<http://www.uspto.gov/web/offices/dcom/olia/globalip/geographicalindication.htm>

Access to Policy and notices on GIs and related issues:

<http://www.uspto.gov/main/policy.htm>

The Trademark Manual of Examining Procedure (TMEP) sets forth the guidelines and procedures followed by the examining attorneys at the USPTO:

<http://tess2.uspto.gov/tmdb/tmep/>

The Office of International Relations of the United States Patent and Trademark Office and the United States Trademark Assistance Center can also be contacted by phone for more information about United States protection for GIs that is not on the USPTO website.

29. Who are the national authorities responsible for GIs in the United States and the EU?

For the United States see: <http://www.uspto.gov>

For EU countries see:

<http://ec.europa.eu/agriculture/foodqual/protect/national/authorities.pdf>

30. Where can I get more in-depth information on GI issues in the arena of international law and agreements?

The following is a list of the main documents relating to GI issues from the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and the WTO.

SCT/1/2	Organizational Matters
SCT/3/6	Geographical Indications
SCT/5/3	Conflicts between Trademarks and GIs Conflicts between Homonymous GIs
SCT/8/4	Historical Background Nature of the Right Existing Systems of Protection Obtaining Protection in Other Countries
SCT/9/4	The Definition of GIs
SCT/9/5	GIs and the Territoriality Principle
SCT/10/4	Geographical Indications
IP/C/13 and Add.1	Checklist of Issues (Review of Article 24.2 TRIPS)
IP/C/W/253 and Rev.1	Summary of the Responses to Checklist of Issues

IP/C/W/85 and Add.1	Overview of Existing International Notification and Registration Systems for Geographical Indications
WT/MIN(01)/DEC/1	Ministerial Declaration on the Doha Development Agenda (see in particular paragraphs 12 and 18)
TN/IP/W/7 and Rev.1	Main Issues Raised and Points Made (TRIPS Council Special Session on Multilateral Register)
TN/IP/W/12+Add.1+Corr.1	Compilation of Points Raised and Views Expressed on the Proposals (TRIPS Council Special Session)
WT/GC/W/546 - TN/C/W/25	Secretariat's Compilation of Points Made and Issues On Extension
JOB(03)/12 and Add.1 and JOB(06)/190	EC Proposal for "Claw-back" (Committee on Agriculture, Special Session)
WT/DS-174/R and 290/R	Reports of the Panel dealing with the GI Disputes between Australia and the United States
World Trade Report 2004	Section 3 deals with some economic aspects of GIs

Chapter 8

Conclusions

GIs offer opportunities

The available evidence presented here indicates that GIs have clear and positive characteristics that can make them valuable assets. Yet, they are not a simple achievement and in some situations, they simply are not recommended as a strategy to undertake.

Though they are never an easy panacea, GIs are a powerful tool. As such, there are better ways, and worse ways, to apply them. If poorly or carelessly applied, they can have negative impacts. But if they are thoughtfully structured and managed, they can deliver many benefits to regions that realize the inherent potential in their latent geo-cultural assets. That, perhaps, is one of the finest features of GIs: that they are a mechanism by which a place and its people can come to recognize and to fulfil a unique and valuable asset that is already there inchoate.

The total market for sales of GI products worldwide is valued today at well over US\$ 50 billion. Yet, it is important to not limit the idea of a GI only to the economic development or value of a product. As a formidable development tool, GIs can and ought to go beyond just a particular product focus. A more comprehensive GI strategy will take advantage of a popular product as a fulcrum or catalyst for more far-reaching and more sustainable developmental impacts at a regional level. These can encompass several broad-ranging issues of governance, economy, culture, and environment. Perhaps the greatest possibilities lie in the ability of a GI to be inclusive and to serve as a framework that includes a basket of opportunities.²⁹¹

For producer regions, GIs convey unique characteristics that allow them to distinguish their products and escape the commodity trap of undifferentiated products trading primarily on price. GIs are, in the succinct words of Claudia Ranaboldo, “attractive rather than extractive”,²⁹² suggesting the power of marketing to evoke a consumer-oriented alternative to the selling of agricultural products as mere raw materials with no value added.

The unique organoleptic aspects that emerge from the *terroir* and the associated traditional methods of production and processing may be difficult to duplicate in other regions or countries. This can offer one valuable competitive advantage that is difficult to erode since it is not as dependent on common factors of production such as labour and capital.

²⁹¹ See chapter 2 and also Acampora and Fonte 2007 as well as Ramirez 2007.

²⁹² Personal communication to Daniele Giovannucci 10 October 2007.

The institutional structures or agreements inherent in many GIs can also contribute to competitiveness by reducing transaction costs among supply chains and improving collective action among producers, processors, and traders. The case studies and literature identify a number of potential benefits in the areas of business, trade, and development (see chapter 2).

GIs offer potential business development benefits since they tend to:

- Involve entire regions and impact not only producers but also traders, processors, exporters, etc. thereby fostering rural integration;
- Operate beyond a single product focus, having subsidiary effects for other products and chains and can promote clustering;
- Participate closely in various forms of partnership with private firms;
- Facilitate supply chain management or even shorten supply chains.

GIs are often in alignment with emerging trade demands for quality, consistency and food safety. They typically, though not always, reflect:

- Standards;
- Traceability;
- A certain above-average quality.

GIs have developmental characteristics. For rural areas, GIs can provide part of the tangible structure for affirming and fostering the unique socio-cultural features of a particular place and the products or services it produces. For example:

- Some GIs have demonstrated the generation of increased and better quality employment;
- Benefits may accrue to communities as GIs can reward the holders of indigenous knowledge or traditional and artisan skills as valued forms of cultural expression;
- GIs may also provide a measure of protection for the intellectual or cultural property of a particular group or place;
- Since GIs intrinsically emphasize the local, they can also serve to value the environment and its particular agro-ecological characteristics that are the source of a product's unique character.

Caution: GIs can be problematic

Research indicates that GIs can offer considerable opportunities for development. So why have some GIs experienced exceptional success while others have failed? We know that successful development with a GI goes beyond protecting this unique form of 'intellectual property'. Success for a GI can be measured in several important ways:

- Fostering culture and community traditions;
- Commercial success and broad-scale livelihood improvements;
- Better local governance and ecological stewardship.

The GI picture is certainly not all rosy. GIs are not a viable option in many areas whose output lacks distinguishing characteristics. Even when viable, some GIs

do not achieve the potential benefits that are available to the stakeholders. Some researchers note that using GIs as a means of differentiation may benefit consumers and high-quality producers, but that:

- ❑ The lower quality or poorest producers may not benefit;
- ❑ GIs can have considerable costs and are not easy to achieve;
- ❑ Some studies have even shown that under certain conditions, they can stifle commercial efficiency;
- ❑ Without proper planning and management, stakeholders could squander limited resources to establish GIs that are not appropriate.

Protection of a GI can be a large and sometimes difficult undertaking. The first step is at the domestic level and while many countries now have functioning systems to handle GIs they are not always easy to navigate. The efforts embodied in several international accords and the TRIPS Agreement offer only a loose framework for protection. In the absence of internationally accepted procedures or systems, a prospective GI must consider the type of protection to undertake in each country where it may be necessary. The learning process can be considerable. It requires careful balance of costs, effectiveness, and structures that will offer the most value to as many stakeholders as possible.

Some of the potentially negative aspects associated with GIs are not necessarily intrinsic to them. Instead, GI failures seem to be largely the result of unrealistic expectations, poor planning, and inadequate governance structures. Nevertheless, their negative impact can be substantial. Badly structured GIs can be dominated by limited political interests or just a few enterprises and can exclude a broad group of stakeholders, including the poor or those without a voice in the process. Poorly managed GIs can even stimulate inappropriate practices that destroy competition, traditional cultural practices or biodiversity. It is equally clear that most of these negatives might just as easily occur with business ventures in a region without a GI.

Success factors that influence GIs

Success of a GI is often measured in years, if not decades, and requires patient participatory efforts and sustained commitment of resources. Good analysis and a strategic plan will greatly improve the likelihood of a successful GI (chapter 6). A good plan will engage all the stakeholders and help integrate the necessary aspects to succeed. Developing and managing such a plan will help ensure the achievement of four components that have emerged from the case studies and literature review as being essential considerations for those exploring the creation or improvement of a GI:

1. **Strong organizational and institutional structures** to maintain, market and monitor the GI. The complex process of identifying and fairly demarcating a GI, organizing existing practices and standards, and establishing a plan to protect and market the GI, requires building local institutions and management structures with a long-term commitment to collaborative participation.
2. **Equitable participation** among the producers and enterprises in a GI region. Equitable is here defined as the participating residents of a GI region sharing not only costs and benefits but also the decision making and control of their public assets. Without well-considered governance structures, the economic benefits of GIs are unlikely to be shared across the supply chain and among stakeholders. Since the potential benefits of GIs diminish when they are

captured by a few elites, issues of equitable participation among the producers, enterprises, and regulators in a GI region are critical to consider, though not easy to accomplish.

3. **Strong market partners** committed to commercialize the GI over the long term. Many of the market successes for GIs are the result of such long-term and consistent promotion and commercialization by market partners dedicated to developing the GI as a brand.

4. **Effective legal protection**, including a strong domestic GI system and an understanding of the pros and cons of different legal options in foreign markets. In addition to the initial establishment costs, many successful GIs report considerable expenses to defend them. These expenses cover the ongoing monitoring and enforcement in relevant markets to reduce the likelihood of fraud that compromises the reputation and, in some cases, even the validity of legal protection overseas.

Though much of the available evidence is positive, our review of the many published and unpublished studies on the topic makes clear that we still know relatively little of the global experiences with GIs, particularly in the more than 150 developing countries where the scope for their development is considerable. If indeed, developing countries are to avoid the difficulties and reap some of the many types of benefits already noted for existing GIs, then we certainly will need an even better understanding of how GIs work and do not work. We hope that this book serves as a contribution to that effort.

Appendix I

Useful websites and organizations

Websites and organizations

African Intellectual Property Organization (OAPI): <http://www.oapi.wipo.net/en/OAPI/index.htm>

The American University case studies highlighting the intersection between trade, culture, and environment: <http://www.american.edu/ted/giant/cgi-index.htm>

Anthropology of Food, a web journal online <http://aof.revues.org> with a special issue “From local food to localized food” <http://aof.revues.org/sommaire402.html>

Arab Society for Geographical Indications (ASGI) has been proposed as a means to harness the value of geographical indications for the Arab League’s 22 Member States. Intellectual Property Watch reports further at: <http://www.ip-watch.org/weblog/index.php?p=1289> (accessed 27 October 2008).

Brazil: Intellectual Property Law: <http://www.araripe.com.br/law9279eng.htm#titulo4>

Codex Alimentarius: <http://www.codexalimentarius.net/>

Development of Origin Labelled Products Humanity Innovation Sustainability (DOLPHINS) <http://www.origin-food.org/>

European Union:

<http://europa.eu.int/scadplus/leg/en/lvb/l21097.htm>

http://ec.europa.eu/agriculture/foodqual/quali1_en.htm

DOOR database: http://ec.europa.eu/agriculture/foodqual/protect/applications/index_en.htm

<http://ec.europa.eu/agriculture.htm>

European Commission DG Trade: <http://ec.europa.eu/trade.htm>

European Union in the United States: <http://ec.eurunion.org/index.htm>

European Patent Office: <http://www.european-patent-office.org/>

Marca de Calidad Territorial Europea: <http://www.aadel.org>

<http://www.calidadterritorial.com>

<http://www.valleumbraesibillini.com>

Office for Harmonization in the Internal Market:

http://oami.europa.eu/search/index/la/en_Index_Search.cfm

FAO: Agricultural Marketing: <http://www.fao.org/ag/ags/subjects/en/agmarket/agmarket.html>

France: Institut National des Appellations d’Origine:

<http://www.inao.gouv.fr/>

<http://www.inao.gouv.fr/public/home.php>

Italy:

I prodotti tipici in Italia: <http://www.prodottitipici.com>

Sito del Ministero italiano delle Politiche Agricole e Forestali:

<http://www.politicheagricole.it>

Sito dell'ISMEA (Istituto di Servizi per il mercato agricolo e alimentare):
<http://www.naturalmenteitaliano.it/>

Sito dell'Istituto Nazionale di Economia Agraria: <http://www.inea.it>

Sito della Fondazione Qualivita: <http://www.qualivita.it>

Sito dell'Agenzia Regionale per lo Sviluppo e l'Innovazione del settore Agricolo-forestale (ARSIA), della Toscana: <http://www.arsia.toscana.it>

Sito dell'ARSIA sui prodotti tipici della Toscana: <http://germoplasma.arsia.toscana.it/dopigp/>

Sito dell'ARSIA sui prodotti tradizionali della Toscana:
http://germoplasma.arsia.toscana.it/pn_protrad/

Sito del Consorzio dell'olio Toscano IGP: <http://www.consorzioliotoscano.it/>

Organisation for an International Geographical Indications Network:
<http://www.origin-gi.com/index.php>

Origin Labelled Products database: <http://www.origin-food.org/cadre/cadb.htm>

RIMISP, Centro Latinoamericano para el Desarrollo Rural: www.rimisp.org/territorioeidentidad2

RIMISP select GI bibliographies: <http://www.rimisp.cl/seccion.php?seccion=511>

SINER-GI (Strengthening International Research on Geographical Indications). EU-funded research project (2005–2008): <http://www.origin-food.org>

Slow Food: <http://www.slowfood.com/>

Switzerland: <http://www.aoc-igp.ch/>

Agriidea GI International Training Module: <http://www.srva.ch/scripts/ig.php>

TRIPS Agreement: Practical guide: <http://www.iprsonline.org/unctadictsd/ResourceBookIndex.htm>

United Kingdom:

Department for Environmental, Food and Rural Affairs: <http://www.defra.gov.uk/>

UK Food Standards Agency: <http://www.foodstandards.gov.uk/>

UK Patent Office: <http://www.patent.gov.uk/>

United States:

United States Patent and Trademark Office: <http://www.uspto.gov/>

United States Trade Representative: <http://www.ustr.gov/>

Missouri Regional Cuisines Project: <http://extension.missouri.edu/cuisines>

USDA Country of Origin Labeling: <http://www.ams.usda.gov/COOL/>

World Agricultural Information Centre: <http://www.fao.org/waicent>

World Trade Organization (WTO): Agriculture Negotiations on GIs:
http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd21_ph2geog_e.htm

World Intellectual Property Organization (WIPO): Geographical Indications:
<http://www.wipo.int/about-ip/en/index.html>

WIPO Magazine P.O. Box 18 CH-1211 Geneva 20, Switzerland
e-mail: publications.mail@wipo.int

Appendix II

Countries using marks and those using *sui generis* systems

This appendix gives an overview of how different countries protect GIs around the world. In addition to this overview, more detailed information on the laws and provisions in over 160 countries is also available.²⁹³

Introduction

The legal protection of geographical indications under national law has developed over time and varies significantly from country to country. There are two broad groups of countries: (1) those countries that protect GIs by means of special laws, and (2) those that do so primarily through the trademark system and common law.²⁹⁴

For those countries that have special (or *sui generis*) GI laws there is a further subdivision between those which require registration for protection (most countries) and those which do not.

It is not easy to give precise figures on how many GIs are protected around the world. Some countries with GI systems do not require registration. In those other countries which protect GIs as trademarks, determining what is and what is not a GI is difficult. Trademarks with geographical terms are not recorded as a separate type of trademark, moreover, not all trademarks with geographical terms can automatically be considered as GIs.

²⁹³ The information and statistics come from desk research carried out by Bernard O'Connor and Irina Kireeva in 2007. For more on this work: "Geographical Indications: An examination of how different countries protect GIs and an assessment of how many GIs are currently known". See the link to related work for the EU at: http://ec.europa.eu/trade/issues/sectoral/intell_property/gi_handbook_en.htm or contact O'Connor and Company.

²⁹⁴ It should be noted that some countries do not provide any protection to GIs due to the absence of legal framework for protection of intellectual property. For the purposes of this study that category of countries is not mentioned.

Protection of Geographical Indications as a separate type of intellectual property

There are at least 111 countries where GIs are recognized as a separate type of intellectual property and *sui generis* protection of GIs is in place.

Table 1 Countries with *sui generis* protection of GIs

1. Albania	30. European Community	59. Niger
2. Algeria	(27 countries)	60. Oman
3. Argentina	31. Gabon	61. Panama
4. Armenia	32. Georgia	62. Peru
5. Azerbaijan	33. Guatemala	63. Qatar
6. Bahrain	34. Guinea	64. Republic of Korea
7. Barbados	35. Guinea-Bissau	65. Russian Federation
8. Belarus	36. Guyana	66. Senegal
9. Benin	37. Haiti	67. Serbia
10. Bolivia	38. Honduras	68. Singapore
11. Bosnia and Herzegovina	39. India	69. Sri Lanka
12. Brazil	40. Indonesia	70. Saint Lucia
13. Burkina Faso	41. Iran (Islamic Republic of)	71. Saint Vincent and the Grenadines
14. Cameroon	42. Israel	72. Switzerland
15. Central African Republic	43. Jamaica	73. Tajikistan
16. Chad	44. Jordan	74. Thailand
17. Chile	45. Kazakhstan	75. The former Yugoslav Republic of Macedonia
18. China	46. Kuwait	76. Togo
19. Colombia	47. Kyrgyzstan	77. Trinidad and Tobago
20. Congo	48. Malaysia	78. Tunisia
21. Costa Rica	49. Mali	79. Turkey
22. Côte d'Ivoire	50. Mauritania	80. Ukraine
23. Croatia	51. Mauritius	81. Uruguay
24. Cuba	52. Mexico	82. Uzbekistan
25. Democratic People's Republic of Korea	53. Moldova	83. Venezuela (Bolivarian Republic of)
26. Dominican Republic	54. Mongolia	84. Viet Nam
27. Ecuador	55. Montenegro	85. Zimbabwe
28. El Salvador	56. Morocco	
29. Equatorial Guinea	57. Mozambique	
	58. Nicaragua	

Out of the 111 countries where *sui generis* system of protection exists, 79 protect Geographical Indications on the basis of registration. As of 2007, in addition to the European Union 27, only 22 others have established registers and have registered Geographical Indications.²⁹⁵ These are:

1. Algeria – 7 GIs for wines only;
2. Belarus – 1 for mineral water;
3. Brazil – 2 for wine and coffee;
4. China – 403 for various products;
5. Chile – 82 for wines and spirits;
6. Colombia – 1 for coffee;
7. Cuba – 19 for tobacco and cigars;
8. Dominican Republic – 6 for tobacco and bananas;

²⁹⁵ Most of the information is obtained from official data for the countries Parties to the Lisbon Agreement on Appellations of Origin as well as official websites of the Intellectual Property Offices of the countries.

9. Georgia – 2 for waters and 8 for wines;
10. Guatemala – 1 for coffee;
11. India – 45 for agricultural and industrial products;
12. Israel – 1 for foodstuff;
13. Mexico – 11 (2 coffees, 4 spirits, 1 mineral water, 3 industrial and 1 agricultural products);
14. Morocco – 16 for wines;
15. Peru – 1 for agricultural product and 1 for spirit;
16. Republic of Korea – 2 for agricultural products;
17. Russian Federation – 223 for agricultural products, foodstuffs and handicrafts;
18. Switzerland – with at least 682 for various products;
19. Thailand – 10 for various products;
20. The former Yugoslav Republic of Macedonia – 25 for wines;
21. Tunisia – 7 for wines and 1 for pottery;
22. Turkey – 107 for various products.

In total, in the aforementioned 22 countries, there are at least 1,661 registered GIs for various products, including agricultural products and foodstuffs, wines and spirits, mineral waters and minerals, handicrafts and industrial products.

Only 6 countries with *sui generis* system of protection of GIs do not have a compulsory registration or protect GIs as such without the need for a register. These countries are Jordan, Mauritius, Oman, Qatar, Singapore and Sri Lanka.

In Bahrain, Guyana, Jamaica, Kuwait, and Saint Vincent and the Grenadines *sui generis* laws have been adopted but have not yet entered into force or have not yet been implemented. In a number of countries a *sui generis* law is under consideration at the moment, among them are Botswana, Cambodia, Ethiopia, Kenya, Indonesia and the Lao People's Democratic Republic. Iran (Islamic Republic of) is already a party to the Lisbon Agreement, but at the moment the legal framework on protection of GIs is in the process of being adopted.

New Zealand with more than 550 protected geographical names of vineyards in 10 wine-growing areas belongs to the group of countries that provide *sui generis* protection of GIs only for certain wines and spirits. To that group of countries belong, among others, Australia with 427 registered geographical names for wines, Japan with specific law on protection of liquors and three specific geographical names for liquors protected under that law, South Africa with 174 protected GIs for wines and spirits and the United States with 830 protected GIs for wines and spirits. Geographical Indications for other products in these countries are protected as certification trademarks.

Geographical Indications protected as trademarks

There are 56 countries that do not have specific laws for the protection of geographical indications but protect them as certification trademarks, collective trademarks or just as ordinary trademarks. Among those countries are the United States, Canada, Australia, Japan, a large number of African countries and many Arab countries.

Table 2 Countries with trademark protection of GIs

1. Angola	20. Japan	39. Samoa
2. Australia	21. Kenya	40. San Marino
3. Bahamas	22. Lao People's Democratic Republic	41. Saudi Arabia
4. Bangladesh	23. Lebanon	42. Seychelles
5. Belize	24. Lesotho	43. Sierra Leone
6. Bhutan	25. Libyan Arab Jamahiriya	44. South Africa
7. Botswana	26. Madagascar	45. Sudan
8. Brunei Darussalam	27. Malawi	46. Swaziland
9. Burundi	28. Namibia	47. Syrian Arab Republic
10. Cambodia	29. Nepal	48. Chinese Taipei
11. Canada	30. New Zealand	49. Tonga
12. Democratic Republic of the Congo	31. Nigeria	50. Turkmenistan
13. Egypt	32. Norway	51. Uganda
14. Ethiopia	33. Pakistan	52. United Arab Emirates
15. Fiji	34. Papua New Guinea	53. United Republic of Tanzania
16. Gambia	35. Paraguay	54. United States of America
17. Ghana	36. Philippines	55. Yemen
18. Iceland	37. Rwanda	56. Zambia
19. Iraq	38. Saint Kitts and Nevis	

Of 56 countries with trademark protection for GIs there are 11 with registered and protected GIs. It is not possible to identify the exact number of registered marks which are GIs in those countries, since geographical names are protected as ordinary, individual or collective, certification of guarantee trademarks. Multiple trademarks are sometimes registered for singular geographical indications and each producer would have his own trademark with the geographical name. The difficulty with this category of countries is that in the registers of all marks it is impossible to separate GIs from others merely with geographical names. Therefore, the number of protected GIs could be much higher. There are at least 2,277 GIs registered as trademarks in 11 countries, as indicated below:

1. Australia – 427 GIs for wines;
2. Cambodia – 36 for various products;
3. Canada – at least 109 for various products;
4. Japan – at least 16 for various products;
5. New Zealand – at least 550 for wines and not less than 50 for other products;
6. Saudi Arabia – 1 for dates;
7. South Africa – 169 for wines and 5 for spirits;
8. United States – at least 830 for wines and spirits, 80 for other products;
9. United Arab Emirates – 1 for mineral water;
10. Yemen – 1 for honey and 1 for henna;
11. Zambia – 1 for handicrafts.

Appendix III

Wine classifications by EU country

GIs pertaining to old world wines

Since European wines are among the oldest and most widespread GIs, they are many people's first exposure to GI systems. The Geographical Indication shown on the label of wines must meet the requirements set out by specific production regulations as well as legislation. Many old world wine classification systems indicate the geographical location wine must be produced in, along with standards such as grape variety, acidity, alcohol content and ageing. Only wine adhering to these precise regulations can be labelled with the respective producing country's wine GIs.

This is not an exhaustive list but representative of the situation with the major producers.

Austria		
Prädikatswein	Wine with special attributes	Austria's wine laws are enforced by the Austrian Ministry of Agriculture, Forestry, Environment and Water Management.
Qualitätswein	Quality wine	
Tafelwein	Table wine	
France		
AOC	Vins d'appellation d'origine contrôlée (Controlled appellation of origin)	The AOC system is used to guarantee the origin of wine and foods in France. Other countries have modeled their wine regulation systems on France's AOC. Specifically for wine, AOC wines are known as the highest quality wines in France.
VDQS	Vin délimités de qualité supérieure (Wines of superior quality)	VDQS wines come from AOC regions, but fall slightly beneath the quality level of AOC wines.
Vins de pays	Country wine	
Vins de table	Table wine	
Germany		
QmP	Qualitätswein mit Prädikat (Quality wine with special attributes)	The highest quality wine in Germany based upon six levels of ripeness.
QbA	Qualitätswein bestimmter Anbaugebiete (Quality wine from specific appellations)	QbA wines are basic, inexpensive wines made from slightly ripe grapes grown in one of Germany's 13 official winegrowing regions.
Deutscher Landwein	Superior table wine	Landwein wines are table wines that are made from officially designated grape varieties and are named after one of Germany's 19 Landwein regions.
Deutscher Tafelwein	Simple table wine	Tafelwein wines are simple table wines made from officially designated grape varieties and are named after one of Germany's five broad Tafelwein regions.

Italy		
DOCG	Denominazione di Origine Controllata e Garantita (Controlled and Guaranteed Denomination of Origin)	The DOCG system includes 21 appellations known as historically producing the highest quality wines in Italy. In order to prevent later manipulation, DOCG wine bottles are sealed with a numbered governmental seal across the cap or cork. Not only does this wine meet the less strict DOC requirements but it is also subject to more stringent controls and compliance for cultivation and processing procedures in order to be "Guaranteed." Wines receiving the DOCG designation have been certified for region, the harvest year of the grapes, and have passed additional tests undertaken during ageing and bottling.
DOC	Denominazione di Origine Controllata (Controlled Denomination of Origin)	The second highest quality Italian wine designation which indicates the geographical location the wine must be produced in, standards of grape variety, colour, flavour, aroma, acidity, alcohol content, period of ageing and maximum yield that the producer must adhere to. Also used for food products.
IGT	Indicazione Geografica Tipica (Typical Geographical Indication)	This designation is a certification that an Italian wine has been produced within a broad designated geographical region using a specific grape varietal consistent with the requirements of the Italian rating system governed by IGT regulations. Wines that meet the requirements established by the associated production rules are typically table wines, a lower class than the Controlled Denomination of Origin (DOC) wines or the Controlled Denomination of Origin Guaranteed (DOCG) wines. The IGT designation was created to help distinguish regions making good wine that were not prestigious enough to fit into the DOC classifications. IGT wines are similar to the French Vins de Pays.
Vini di tavola	Table wines	Vini di tavola have very loose guidelines that they must follow.
Portugal		
DO	Denominação de Origem Controlada (Controlled Denomination of Origin)	There are currently 39 DO denominations. Each DO wine requires thorough testing and is given a certified test number which must be displayed on the bottle. DOs Porto and Madeira each have separate governing bodies and regulations. One important note is that when a grape variety is displayed on the wine label, the wine must be made from at least 85% of that grape variety.
Spain		
DOC	Denominación de Origen Calificada (Qualified Denomination of Origin)	DOC wines are considered to be of higher quality than DO wines. Rioja is currently the only DOC denomination.
DO	Denominación de Origen (Denomination of Origin)	There are currently 54 DO denominations. Each DO has a governing control board that enforces wine regulations and evaluates each wine to ensure that it is true to type.

Adapted from 'Wine Regulations: Old World Countries' found at <http://winegeeks.com/resources/106>.

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CASE STUDIES

Due to a relatively limited amount of up to date or accurate information about GIs in developing countries, it was deemed necessary to supplement our research with a number of original case studies in multiple origins. The following studies were conducted in eight rather distinct origins with different levels of GI development.

These were selected in part for their geo-cultural diversity and in part to portray a range of experiences, from the most successful to the barely functional. Four are already internationally prominent, two are rising stars, and two are quite new. Four are in Latin America, two in Asia, one in the Pacific and one in the Caribbean. Several deal with coffee since coffee GIs are not only among the most prominently successful, they also often have an established history and sound economic data. Nearly all of the case study authors are from the country being studied or have worked there extensively. The Case Studies published here are:

- Antigua Coffee, Guatemala – *Kira Schroeder and Andrés Guevara*
- Blue Mountain Coffee, Jamaica – *Kira Schroeder*
- Darjeeling Tea, India – *Dwijen Rangnekar*
- Gobi Desert Camel Wool, Mongolia – *Koen Oosterom and Frédéric Dévé*
- Kona Coffee, Hawaii – *Daniele Giovannucci and Virginia Easton Smith*
- Mezcal, Mexico – *Catarina Illsley Granich*
- Café Nariño, Colombia – *Daniele Giovannucci and Luis Fernando Samper*
- Café Veracruz, Mexico – *Ricardo Juarez*

Case Study Research Methodology

The collection of eight studies relied primarily on a straightforward methodology based on expert interviews using direct surveys of experts and desk research. In most cases this was supplemented with field visits. The surveys focused on three distinct areas of interest that were deemed as critical to the success of a GI:

- i) An understanding of the **institutional structures** and the various approaches they utilize to protect and foster GIs as well as their related costs and benefits.
- ii) An assessment of the basic **economic and marketing** issues, especially since getting the economics right is a vital part of the equation for any viable GI.
- iii) The understanding of the **control or ownership** of the GI, because the viability of many GIs, particularly in terms of regional development, is likely to be linked to participants' equity and 'voice' in the system. Furthermore, ownership and equity are critical if GIs are to fulfil their most important values as a public good and as a framework for cultural and environmental benefits.

Each of the case study syntheses follows a similar six-part structure. Though they vary in length, and even quality, based on information available and on the expertise of individual researchers, all include:

1. Background
2. Geographical Indication protection
3. Institutional structure
4. Economics and marketing
5. Consequences of a Geographical Indication
6. References and resources

The Case of Antigua Coffee, Guatemala

Kira Schroeder and Andrés Guevara¹

Background

Antigua is one of Guatemala's oldest and best-known coffee-growing areas. It is located in the central mountains of the country, shaping a fertile valley surrounded by three volcanoes, Fuego, Agua and Acatenango. Politically, Antigua belongs to the Department of Sacatepéquez, in conjunction with another important coffee region called Acatenango. Several factors combine in Antigua to confer special cup characteristics to its coffee: ample rainfall (800 mm–1,200 mm/year); deep volcanic soil; productive elevations reaching up to 5,600 feet high (1,700 m); and cool temperature (averaging 18° C–22° C with very chilly nights November to February).

Antigua's total coffee production area is only 7,321 ha and as the primary crop, represents 39% of the municipality's total 18,574 ha. This region includes **3,000 small producers and 100 medium and large farmers**.²

Historically, Jesuit priests first planted coffee in the middle of the 18th century. They brought a few coffee plants for their monastery,³ and it was dispersed steadily until it grew to become one of the most powerful economic drivers of the country. Antigua is one of the most recognized names in the world of fine coffee.

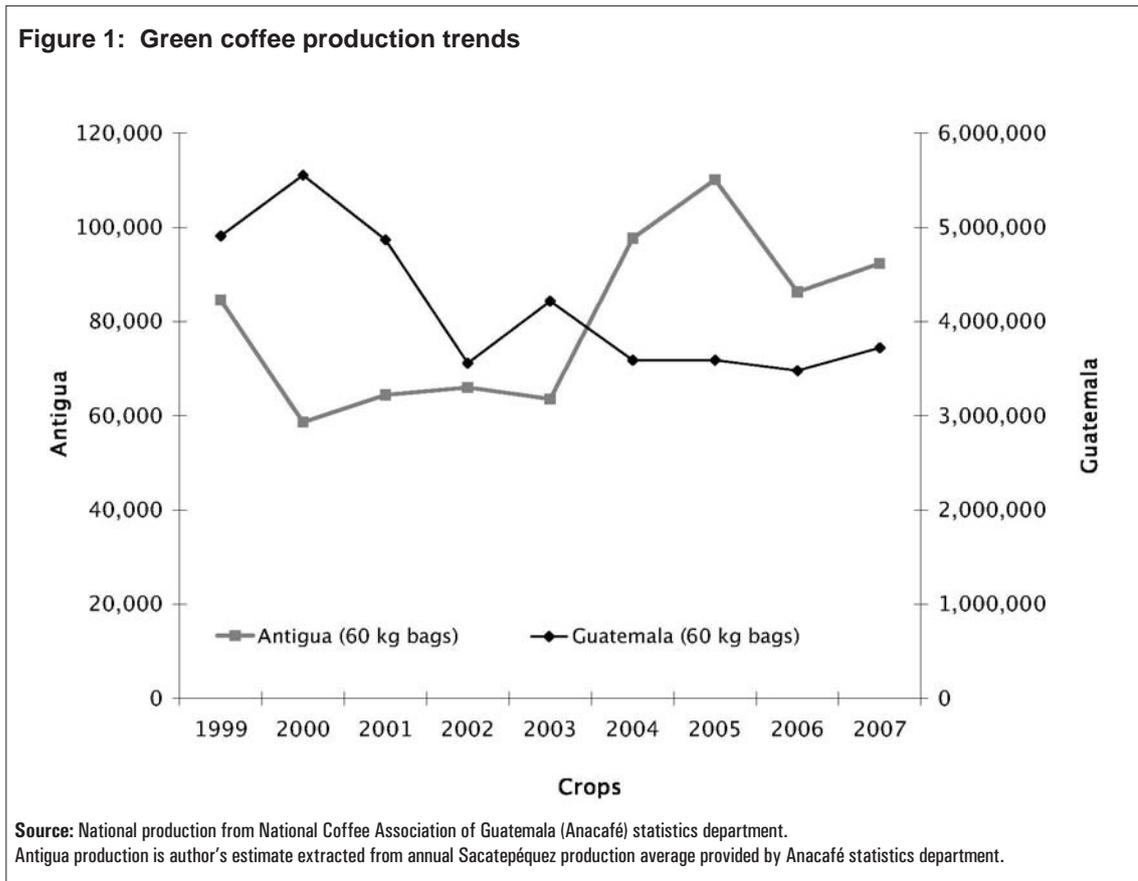
Bourbon, Caturra, and Catuai are the main varieties grown in Antigua. Under normal conditions, **annual average yield is 1,556 lb/ha which represents approximately 87,000 bags (60 kg) of green coffee**.⁴

Antigua's coffee production represents only 1%–2% of Guatemala's total production. However, in recent years, Antigua's yield has experienced growth, while the total country production has stabilized, as figure 1 indicates.

Yield fluctuations due to natural phenomenon tend to alter normal production patterns, however, there is a clear growth tendency in Antigua. This tendency can be explained as the response to recent improvements in husbandry and cultural technologies, mainly provided by training programmes directed to coffee farmers and organized by Antigua Coffee Producers' Association (APCA) with Anacafé⁵ support.

Antigua's coffee is typically shade-grown, using mainly local *Grevillea* and *Inga* trees. Foliage works as a shelter against sun radiation for coffee plants during the day, and at the same time, protects against night-time temperature decreases. Furthermore, these particular tree species provide a significant nitrogen supply to the soil, diminishing fertilization requirements.

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- ¹ Researchers at the Centro para la Investigacion de los Mercados Sostenibles (CIMS) Work is based on interviews and research conducted mid-2007.
 - ² Zelaya, L.P. 2007. President of Antigua Coffee Producer's Association. Personal Interview conducted on March and April 2007. According to ECLAC (2002), in Central America a small producer cultivates a farm between 3,5 ha and 14 ha, whereas medium and large producers range between 14 and 70 ha.
 - ³ National Coffee Association of Guatemala. 2007. El café y su historia.
 - ⁴ Author's estimate extracted from Sacatepéquez 2005–2006 yield average.
 - ⁵ Zelaya, L.P. 2007. President of APCA. Personal interview conducted in March and April 2007.



Coffee beans are handpicked, then traditionally wet-processed, and finally sun-dried on patios. The refinement of this traditional method is often associated with Antigua's excellent cup results throughout the years.

Significant premium prices are paid to Antigua's coffee farmers when compared to other Guatemalan coffee producing areas. There are **four important aspects that contribute to this valuation**. First, they have a constant and well-established quality standard based on the interaction of three main variables: *terroir*,⁶ coffee varieties, and controlled traditional processing methods. Second, the establishment of important and steady partnerships with large industry actors has built international recognition for Antigua coffee. Third, the foundation of the Antigua Coffee Producers' Association helps guarantee the authenticity of the products using the name and has provided an ongoing marketing effort. Finally, Antigua producers are beginning to build an image as environmentally and socially responsible farmers.

This current emphasis on social and environmental aspects could represent an important competitive component for Antigua. Producers note that recent experience there suggests that technological innovation in the company of social responsibility allows continuous improvement and improved profitability.

Geographical Indication protection

Antigua coffee began to be widely recognized in 1915, when a farmer won the first prize in a coffee exhibition in San Francisco. Later, in 1939, coffee was first registered under the name "Antigua" as a trademark, but it was associated with a single Antigua producer only, and not the entire region.

⁶ There is no direct English translation for *terroir*; basically it refers to a Gallicism that according to Hughes (2006) suggests an essential land/quality nexus.

In the year 2000, thirty-four Antigua coffee producers came together to create the Antigua Coffee Producer's Association, in an attempt to protect the authenticity, quality and reputation of Antigua coffee. By 2003, APCA had created a label registered domestically as a trademark, which is attached to every single bag that is exported as Genuine Antigua coffee. This label, together with a document specifying the farm, the exporter, and giving importer information, acts as a traceability tool, a guarantee of the origin, and a source of institutional support for Antigua coffee exports. The APCA label is considered the starting point for the initiative related to Geographical indications and the founding basis of GIs or denominations of origin (DO) in Guatemala.

At the same time, APCA initiated a complex definition process involving technical, legal, socio-political and cultural aspects to create a coffee profile for Antigua. **After five years of work, this profile was the basis for the official GI request** presented to the Guatemalan Registry of Intellectual Property. According to Guatemalan law, since the Government owns any GI, ownership of the GI has to be adjudicated from the Government to Antigua's producers. Once this process is completed, APCA producers, government representatives and intellectual property registry members will form part of an Administrative Organ in charge of controlling and regulating all issues related to the Antigua GI.

APCA's request is Guatemala's first GI initiative since the Law on Intellectual Property was passed in 2002.⁷ Antigua producers also feel that it is the first time that it is politically viable for a law to be implemented. It is therefore a learning process for all parties concerned and will probably take some time, significant cost, and collaborative efforts. Currently, APCA is awaiting the official response from the Guatemalan Government's Registry of Intellectual Property.

There is a significant quantity of coffee produced outside the region yet promoted and sold as Genuine Antigua. This is a common phenomenon that occurs with many renowned origins and is an indicator of the origin's popularity with buyers.⁸ **It has been estimated that between 100–125% more coffee bags are labelled and exported as 'Antigua' than those truly produced within the limits of the origin.**⁹ These include counterfeits from nearby regions and Antigua coffee mixed with other coffee. Industry experts claim that flavour profiles are maintained and there has been no notable negative consequence in terms of denying a consumer the expected flavour experience. Outside of Guatemala there is likely to be more coffee marketed as 'Antigua' by unscrupulous traders and one estimate puts this at as much as 4 to 8 times the actual production (Rangnekar 2004). If such estimates are correct, then it seems obvious why the producers would want to use the GI as a means to better protect their reputation.

Institutional structure

The specific structure of GI control for the Antigua DO is still not fully defined, until regulations are established, stipulated and officially written by the government. It is expected that only farms located within the region delimited by Anacafé as Antigua will have the right to use the name "Genuine Antigua" in the coffee market.

Currently, the GI is established through the use of the APCA label. In order to use the APCA label, Antigua farmers have to be an active Anacafé member, pay a \$265 APCA association fee and pay annual royalties to the association according to the farms' dimensions (rough estimation/ha).¹⁰

Certification occurs at the mill level. Every APCA producer has a maximum production limit depending on the farm's size in order to control coffee quantity, origin and quality. Given the case that a farmer surpasses this defined volume, APCA officials discuss the situation with the farmer and carry out field inspections to understand and control the source of the surplus.

Between 75%–80% of Antigua's coffee production is exported through APCA, consequently there is some domestic traceability of coffee labelled as "Genuine Antigua" up to the importer.

7 Reglamento de la Ley de Propiedad Industrial Guatemala, 18 de marzo de 2002.

8 Echeverría, P. 2003. Geographical indications around the world.

9 Echeverría, P. 2007; former President of ORIGIN and Antigua coffee producer. Personal interview conducted in June.

10 Zelaya, L.P. 2007. President of APCA. Personal interview conducted in March and April.

However, traceability has not been enforced beyond this point in the chain mainly because of the high cost that it represents; so there is no strict assurance of origin, increasing susceptibility to counterfeits and manipulation in consumer countries.

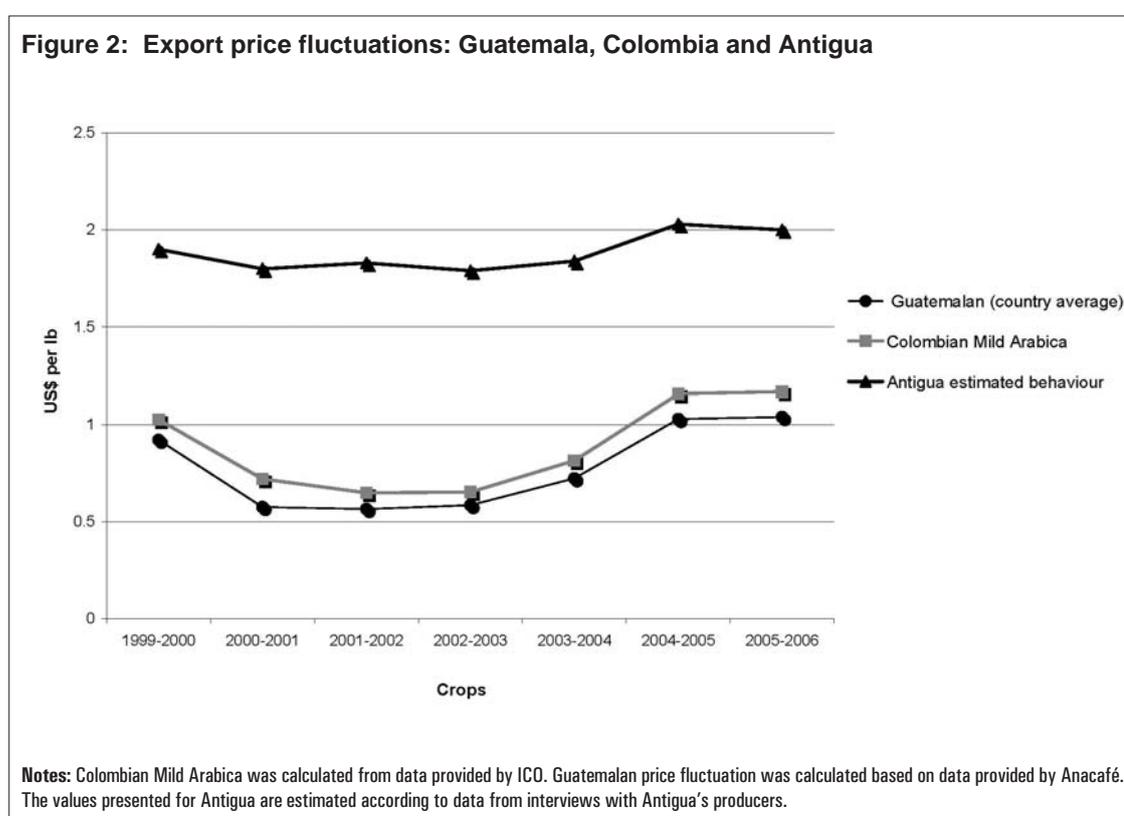
From 2000 to 2004, APCA's direct investment in aspects related to organization set up, development, legal fees and marketing of the GI was estimated at between US\$ 150,000 and US\$ 200,000. Many work hours were contributed by members on a *pro bono* basis to organize their local collaboration, interface with Anacafé and conduct interactions with government. Anacafé, with donor funding, provided further financial support for some of the issues related to GI establishment.¹¹ Marketing has been primarily limited to Antigua's promotion in the Specialty Coffee Association of America (SCAA) events and APCA's web page development.

Economics and marketing

Antigua's coffee reputation and cup quality have combined to garner consistently higher market prices. The average unit value for Guatemalan all green coffee exports in 2005 was approximately US\$ 1.04/lb¹² whereas an average Antigua producer received between US\$ 1.60 and US\$ 2.30/lb of green coffee.¹³ **In relative terms, Antigua green coffee prices were on average 87.5% higher than the rest of the country in 2005.**

At farm level (cherry coffee), premium prices are reflected to a lesser degree. For instance, when comparing Antigua with comparable areas such as Atilán and Acatenango, Antigua's cherries get a higher value, by 11% and 8% respectively.¹⁴

Figure 2 illustrates average FOB export price differences between Antigua's and Guatemala's overall coffee exports, and also the benchmark indicator for higher quality arabica coffees: Colombian Milds. The comparison is for the current decade and official data on Antigua's



11 Hempstead, W. 2007. Director of Anacafé. Interview conducted in April.

12 Based on data provided by International Coffee Organization (ICO).

13 Price range provided by Antigua's coffee producers.

14 Values are estimated based on price averages calculated according to Atilán and Acatenango producer interviews.

historic coffee prices does not exist therefore an estimation has been made based on producer interviews.¹⁵ The illustration shows how **Antigua's coffees, in addition to being substantially more remunerative, are somewhat less susceptible to price fluctuations.** Antigua's pricing generally still tracks the movement of the benchmark indicators which in turn closely correlate to the "C" commodity price, at the New York Board of Trade, since 2007 called the ICE Futures U.S. However, a notable difference has emerged: the reduced volatility when compared to the benchmarks is due in part to high demand and also to more long-term contracts between Antiguan producers and buyers.

Consequences of a Geographical Indication

Antigua has become a widely recognized name in the world of coffee. **A synergistic combination of *terroir*, coffee varieties, husbandry and traditional processing techniques produce a uniquely flavoured coffee that, thanks to long-term commercial promotion of the name in many countries, now has a solid and valuable market status.**

Antigua's high price has stimulated a significant use of the name for counterfeiting. Clearly, there is a limited capacity to control this situation out of the country boundaries; in fact, it currently depends on the honesty of importers and roasters. Inside Guatemala, neighbouring coffee regions have sold their coffee at better prices, partly because of Antigua's popularity, and there have also been cases of Antigua's producers buying nearby coffee, which is further sold under the Antigua name. However, in recent years, this situation has begun to diminish, mainly due to three factors: first, APCA's efforts to defend the name; second, Anacafé marketing initiatives to similarly differentiate other Guatemalan coffees, recognizing the unique characteristics of each region; and, third, the increasingly sophisticated consumer markets acting as selective agents that recognize and look for true Antigua coffee.

Efforts to develop Antigua's coffee positioning in the market have served as a model for other coffee regions. A clear example is represented by nearby Acatenango, which is the newest differentiated coffee region. Producers, cooperatives and associations have been developing technical and political efforts in order to be distinguished as a unique coffee region. These efforts include establishing the name "Acatenango" in key markets.

The price of land in Antigua has risen considerably, to the point that producers interested in increasing their farm size believe that investment in land purchasing is not justified even considering the high prices of Antigua coffee. On the other hand, tourism has shared in the substantial benefits, since coffee tours have enhanced the value of Antigua as a tourist destination.

Although a legal status for the GI Antigua is still in process, the early initiatives for origin protection have already produced results. Producers there acknowledge that there is a long path to travel towards improving organization, regulations and management, as well as protecting the GI outside of the country. However, it seems clear that the case of Antigua as a unique Guatemalan GI can set an example for other products and regions.

15 Antigua coffee producers, 2007. Personal interviews conducted in April and May.

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The Case of Darjeeling Tea, India

Dr. Dwijen Rangnekar¹⁶

Background

The tea plant is indigenous to China and India, while a particular variety, the *Camellia sinensis* var. *assamica*, originates in the Indian sub-continent. The plant is a broad-leaved perennial tree crop which flourishes in well-drained and slightly acidic soils. It requires humid air and rainfall that is spread out across the year. Broadly, there are three types of tea preparations – ‘green’, ‘black’ or ‘oolong’ – with further subdivisions based on methods of manufacture – usually ‘orthodox’ or CTC (cutting, tearing and curling). Darjeeling tea is predominantly a black orthodox tea with only small quantities of oolong and green teas produced. The Darjeeling tea plant is characterized by its relatively smaller leaves and comparatively lower yield (table 2). With no production in winter, the first flush in spring is highly prized (Pandey 1999).

Cultivation on the Indian subcontinent as a plantation crop is credited to the British colonists of the early 19th century. According to records, the first commercial tea plantations were planted in Darjeeling in 1852. The main production area for tea in India is in the Brahmaputra valley in the state of Assam and other parts of the North-East of India. However, the tea industry in India, now over 150 years old, has proliferated to Tamil Nadu and Kerala. There are smaller amounts of production in Karnataka, Tripura, Himachal Pradesh, Uttranchal, Andhra Pradesh, and Sikkim, among other states (Tea Board of India, n.d.).

	2000–01	2002	2003	2004	2005
China	245.9	254.9	262.7	279.5	286.6
India	196.8	201	173.7	197.7	187.6
Indonesia	101.8	100.2	90	97.7	102.3
Kenya	247.1	266.3	269.3	292.7	309.2
Sri Lanka	284.5	286	291.5	289.7	298.8
Tanzania, United Rep. of	22.4	22.6	20.4	24.2	23.2
Uganda	29.3	31.1	34.1	35	33.1
Viet Nam	66.2	74.8	60	95	89
WORLD	1 390.5	1 439.4	1 404	1 523.8	1 531.2

Source: FAOSTAT.

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Though without emblematic tea drinking ceremonies like in China or Japan, India is the largest producer and consumer of tea. Domestic consumption of teas has increased dramatically from roughly 30% of aggregate production in the 1950s to 80% in 2006; thus rising from under 80 million kilograms to over 750 million kilograms. India has continued to regularly rank amongst the top five tea-exporting countries (table 1). Somewhat unique to India is its diverse offerings which include CTC, Orthodox, and Green teas (Tea Board of India, *ibid.*). Stated differently, Indian tea exports include both the best teas (Darjeeling) and also the worst (generic CTC).

Darjeeling is a district in the north-eastern Indian State of West Bengal, which covers some 1,200 square miles. By 1870, the number of plantations (also called gardens) in Darjeeling had grown to 56 covering 4,400 ha and producing 71,000 kg of tea. Presently there are about 87 plantations that cover an area of 17,500 ha and produce around 10 million kilograms annually (Darjeeling Tea Association, n.d.). With 70% to 80% of production being exported, Darjeeling tea export value is about US\$ 30 million annually.

Apart from the particular variety of tea cultivated in Darjeeling, commentators emphasize two additional factors: the geographical environment and the processing of the tea (Das, 2003, p. 3–4; Nair and Kumar, 2005, p. 241–247). In terms of the environment, the uniqueness of Darjeeling tea is said to relate to the very high humidity of the plantation areas, the high rainfall in the area (minimum 50" to 60" per annum), the rich and loamy soil derived from the weathering of underlying rocks and organic matter, the temperature range (1.7° C to 11° C) and the steep drainage gradient of the plantations. As noted above, the processing of the tea is also remarkably different. The green leaves are almost exclusively harvested before sunrise by hand. Further, the leaves are exclusively processed using the Orthodox method. In addition to the leaf-grading noted above, there are a number of different categories for Darjeeling tea based on the harvesting season.

Unlike the other iconic plantation crops associated with colonialism, coffee, sugar, cotton, and rubber, tea requires regular pruning, plucking and quick movement to processing; thus its demands for labour is considerably greater. While teas differ considerably, it is estimated that 1 kg of tea requires 6 kg of fresh leaves, which is approximately 13,000 plucked shoots. The parameters for Darjeeling are even more labour-intensive as reported below. Tea-plucking is a skill that has direct consequences on the classification of the product: premium brands consist mainly of young bud whereas high-grade teas consist of the bud and the first two leaves. As one commentator succinctly states, “[T]ea production was founded on very cheap labour, and continues to rely on very cheap labour” (Moxam 2003, p. 215). The Darjeeling plantations employ 52,000 people on a permanent basis and an additional 15,000 during the plucking season; making it a sector with substantial socio-economic implications.¹⁷

Geographical Indication protection

Even though the tea industry is in the private sector, the industry is statutorily regulated and controlled by the Government through various enactments culminating in the Tea Act of 1953. The latter establishes the Tea Board of India that is endowed with the power to administer all stages of tea cultivation, processing and sale.

The Tea Board, mainly through a comprehensive certification scheme, sets a prerequisite for the domestic and international protection of Darjeeling Tea either as a CTM and/or a GI. Starting in the 1980s, the Board has sought to register its rights in Darjeeling. A logo for Darjeeling tea was developed in 1983 (box 1) and



¹⁷ This would have a multiplier effect through employment in other (formal and informal) industries that are directly and indirectly associated with tea, thus impacting the livelihood of a sizeable number of people. An estimate for the Sri Lanka tea industry indicated that with 600,000 directly employed in the industry there are an associated 1 million indirectly supported by the tea industry (Wagle 2003).

registered from 1986 onwards in a number of overseas jurisdictions. In 1998, a worldwide monitoring agency, Compumark, was appointed to monitor the conflicting use of Darjeeling word/mark at the global level. Information from this agency helped the Tea Board proceed with litigation in India and abroad. These and other efforts to protect Darjeeling are discussed here.

Domestic protection in India was sought by registering the logo under the Trade and Merchandise Marks Act, 1958 in 1986 (CTM No. 532240). Later, in 1998, the word 'Darjeeling' was also registered under the Trade and Merchandise Marks Act, 1958 (CTM No. 831599). The logo has also been registered as a copyrighted work of art under India's Copyright Act, 1957. Finally, with the enactment of the Geographical Indications of Goods (Registration and Protection) Act, 1999 and the associated Rules in 2002, it became possible to directly protect Geographical Indications in India. Darjeeling tea was registered as a GI in October 2004 as the first domestic GI. The specific legal definition for Darjeeling tea is reproduced here in box 2.

Box 2 *Defining Darjeeling tea*

Area: *Tea which has been cultivated, grown, produced, manufactured and processed in scheduled tea gardens in the hilly areas of Sardar Sub-division, only hilly areas of Kalimpong Sub-division comprising of Samabeong Tea Estate, Ambiook Tea Estate, Mission Hill Tea Estate and Kumai Tea Estate and Kurseong Sub-division excluding the areas in jurisdiction list 20, 21, 23, 24, 29, 31 and 33 comprising Subtiguri Sub-division of New Chumta Tea Estate, Simulbari and Marionbari Tea Estate of Kurseong Police Station in Kurseong Sub-division of the district of Darjeeling in the State of West Bengal, India.*

Production: *The GI application elaborates particular stages in the production of Darjeeling tea, which follows the 'orthodox' method for the Camellia sinensis cultivars. These steps include, among others, 'withering of the leaf' (slow drying over 14 to 16 hours to remove approx. 65% of moisture), rolling and twisting of the leaf, slow oxidization and fermentation and tea-leaf grading. The latter is based on leaf size and broadly follows three classifications: (a) whole leaf (Fine Tippy Golden Flowery Orange Pekoe), (b) Broken (Tippy Golden Broken Orange Pekoe), and (c) Fannings (Golden Orange Fannings). A panel of tea tasters from the Tea Board of India are involved in confirming the authenticity and quality of the tea.*

Source: *GI Application for Darjeeling Tea, Geographical Indications Journal, No. 1, July 2004.*

At present, 87 plantations have been licensed to produce Darjeeling tea – and these are listed in the GI application. As such, the licence to use these marks would be granted to anyone who applies and is qualified; naturally, the tea must meet the requirements laid down in the regulations and satisfy the certifying authorities (the Tea Board of India).

The Tea Board's compulsory certification scheme verifies the origin and authenticity of Darjeeling Tea (cf. Customs Notification of 25th June 2001). This works alongside the Tea (Marketing and Distribution) Control Order, 2000. Under these schemes, Certificates of Origin are issued for tea exports to ensure the integrity of consignments leaving Indian shores wherein Darjeeling tea has been formulated to mean tea that:

- Is cultivated, grown or produced in the 87 tea gardens in the defined geographical areas and which have been registered with the Tea Board;
- Has been processed and manufactured in a factory located in the defined geographical area and following the stipulated methods; and
- When tested by expert tea tasters, is determined to have the distinctive and naturally occurring organoleptic characteristics of taste, aroma and mouth feel typical of tea cultivated, grown and produced in the region of Darjeeling, India.

Signs, symbols and other distinguishing marks have been developed to differentiate products, thus, alleviating some of the informational asymmetries between consumers and producers. To the extent that they succeed in this endeavour, the marks can be said to also build reputation. However, to achieve these objectives, the sign must be distinguishable and the standards that are associated with the sign must be maintained. Not only does this require monitoring, but also success in eliminating counterfeit products. The Tea Board of India has a statutory obligation to institute certification regulations for Darjeeling tea and these have been constantly revised. For that matter, such certification schemes are a prerequisite for the domestic and international protection of Darjeeling Tea either as a CTM or as a GI.

With over 70% of Darjeeling tea production being exported, there is an imperative for overseas protection. From 1986 onwards, the name and logo have been protected in a number of overseas jurisdictions, such as Canada, Egypt, Japan, the United Kingdom, the United States, and a number of European countries, as a mark. A major development in this area is the registration of the Darjeeling word as a community collective mark in the European Union (Tea Board of India, 2006). Other jurisdictions where protection has been achieved include Lebanon and Switzerland (as a collective mark), and Japan and the Russian Federation (as a trademark). Annex D2 lists some of these registrations and their details.

Institutional structure

The Tea Board functions as a non-trading body and operates on a not-for-profit basis. It falls under the jurisdiction of the Ministry of Commerce and Industry and its members are nominated by the Government of India. Its membership is diverse and seeks to be representative of the industry: tea estate owners, workers, exporters, packers, internal traders and provincial governments, and three Members of Parliament. The Board's sector-wide remit also includes Darjeeling, though producers of Darjeeling tea have also established their own forum – the Darjeeling Planters' Association that has recently changed its name to the Darjeeling Tea Association and employed an advertising agency to re-brand them.¹⁸

Working closely with the Darjeeling Tea Association and the Government of India, the Tea Board of India has taken a number of steps to protect and promote Darjeeling Tea. These steps may be broadly grouped into two interrelated measures:

- Registration and enforcement of intellectual property rights with respect to 'Darjeeling';
- Establishment of administered steps to maintain the integrity of supply chains in Darjeeling tea production.

The compulsory certification schemes and market control orders cover all stages of tea production right through to exports. Importantly, there is a key duality here. At one level, the aim is to ensure that only genuine Darjeeling tea produced in the defined regions and to expressed standards carries the logo/mark. At another level, as all sellers of genuine Darjeeling tea are licensed and weekly invoicing of production data is required by all licensees, the Board is building up credible production data on the Darjeeling tea industry.

The certificate scheme with the GI registration assures that only 100% Darjeeling tea legally carries the logo/mark. In instances where Darjeeling tea is part of a blend then ratio and share of the different teas must be clearly indicated if the Darjeeling name is used. The Tea Board requires that the font, design and size of the name 'Darjeeling' and other sourced tea be in accordance with and reflective of the ingredients (Nair and Kumar 2005, p. 35). This effort at integrity and transparency in the supply chain is complemented by the Board's active fighting of infringement.

All 87 tea plantations in the (GI) area of Darjeeling are registered licensees of the Darjeeling logo and have been certified under these schemes. In addition, 171 companies dealing with Darjeeling tea have been registered and this includes producers and also traders and exporters.

18 The Darjeeling Tea Association can be found on the web at www.darjeelingtea.com. See Ghosal, 2005, 'Ace Adman Reads Tea Leaves', *The Telegraph*, 8 May, 2007: http://www.telegraphindia.com/1050509/asp/business/story_4715087.asp.

One study disaggregates the counterfeit tea in the following manner: tea produced and consumed in India, tea produced elsewhere and consumed in India, tea produced in India and consumed outside India, and tea produced and consumed outside India (Rao 2003). It is the latter category that will prove to be the most difficult for the stakeholders of this GI to detect and eliminate. In the next section, we examine what measures are being taken to deal with the latter issue.

Enforcing rights

The efforts to enforce IPRs in Darjeeling tea sector can broadly be put into two groups: (a) preventing trade in tea which is not drawn from the licensed 87 plantations or those teas which are blends of non-Darjeeling and Darjeeling teas from selling under the name and/or logo of 'Darjeeling' and, (b) action against registration or use of the term/logo 'Darjeeling' with respect to tea and/or any other product. Preventing the use of the protected word/logo on other products is integral to protecting the reputation accumulated by the GI. In 1998, the Tea Board hired an international watch agency (Compumark) to detect all uses of the word 'Darjeeling'. A leading United Kingdom law firm was also hired to advise on the administration of Darjeeling legal protection worldwide.

Fighting infringement suits in overseas and domestic jurisdictions has become an integral and costly part of the Tea Board's efforts to ensure integrity in the supply chain and protect the reputation of the Darjeeling name. In the last three or so years, several instances of misuse and attempted registrations have been found and challenged by the Tea Board by way of oppositions/invalidation/cancellation actions (22), legal notices (8), court actions (2) and domain name cancellations (2) against third party misuse of Darjeeling. These actions covered such countries as Bahrain, Bangladesh, Belarus, Canada, Estonia, France, Germany, Israel, Japan, Kuwait, Latvia, Lebanon, Lithuania, Norway, Oman, the Russian Federation, Sri Lanka, Chinese Taipei, the United Kingdom and the United States. In India itself, over 20 legal notices have been served and 15 oppositions have been filed. These efforts at enforcing rights do not come cheaply: in four years (1998–2002), the Tea Board spent US\$ 200,000 on registration and legal fees fighting infringement in overseas jurisdictions.¹⁹ This does not include the domestic actions and internal costs incurred within the Tea Board.

Srivastava (2005) has reviewed some of the case law and presents some illustrative examples. In Japan, the Tea Board of India has experienced mixed success. The Tea Board had already registered its logo in 1987 (cf. trademark registration No. 2153713, dated 31 July 1987). Yet, International Tea KK, a Japanese Company, was able to register the Darjeeling logo mark, namely, Darjeeling women 'serving tea/coffee/coca/soft drinks/fruit juice' in the Japanese Patent Office (JPO) on 29 November 1996 (registration No. 3221237). While here, and in other cases as well, the Tea Board has been successful in cancelling the registrations. However, a review of the cases demonstrates that the registrations have been largely cancelled on grounds of non-use of the marks and not on the primary basis of Darjeeling being a GI.

Different problems were faced in France. French law does not permit opposition to a trademark application if the product categories are dissimilar. On the other hand, the GI owner has the opportunity of taking action only after the application has acquired registration. Consequently, it has been found that the Darjeeling GI has been misappropriated as a trademark in goods like clothing, shoes and headgear. Srivastava (2005) observes that "The Examiner also held that even if the applicant has slavishly copied the Tea Board's Darjeeling logo (being the prior mark), the difference in the nature of the respective goods is sufficient to hold that the applicant's mark may be adopted without prejudicing the Tea Board's rights in the name 'Darjeeling'". In Switzerland, the perfume company BULGARI, agreed to withdraw the legend 'Darjeeling Tea fragrance for men' pursuant to legal notice and negotiations (Das 2003). Though the product is not tea, permitting use of the name can dilute its reputation and subsequent legal rights.

¹⁹ The funds come from government sources and the Darjeeling Planters' Association which has set up a dedicated 'Promotion and Protection Fund' (Rao, 2003).

Economics and marketing

The Darjeeling tea sector faces a number of problems. Perhaps foremost is the strikingly lower yield of Darjeeling tea bushes compared to others in the region (table 2).²⁰ This is reflective of its particular economic botany: fewer harvesting periods and generally lower agricultural productivity. However, beyond botany, the lower productivity in the Darjeeling sector is equally reflective of sluggish investments (Anon 2006; Rao 2003). While investment data is not available, an indication can be deduced from the replacement rate of tea bushes (table 3).

	2000	2001	2002	2003	2004	2005*
Darjeeling	539	564	526	545	574	650
Terai	2 107	2 323	2 345	2 603	2 934	2 927
Total, all India	1 679	1 675	1 625	1 690	1 713	1 774

Sources: Tea Board of India, various, average yields of tea in India.

* Estimated.

It is often suggested that tea bushes yield best between the ages of 30 and 50 years; thus, the rule-of-thumb that bushes are replaced after 50 years (Rao 2003). Rao (*ibid.*) reports that in 1998 the cost of replacing tea bushes was Rs. 150,000 per hectare.

	Under 5 years	5 to 10 years	11 to 20 years	21 to 30 years	31 to 40 years	41 to 50 years	Over 50 years
Darjeeling	815	1 326	443	510	614	883	8 562
%	6.20	10.08	3.37	3.88	4.67	6.71	65.10
All India	68 075	44 221	49 018	43 000	41 664	34 943	150 296
%	15.79	10.25	11.37	9.97	9.66	8.10	34.85

Source: Tea Board of India, Tea Statistics 2000–2001 for 1999.

Table 3 shows that over 65% of Darjeeling plantations feature bushes that are over 50 years of age. This is nearly double the all-India average. There has been a marginal improvement in recent decades as a 1970s study found that 79% of bushes were more than 50 years old (National Council for Applied Economic Research 1977). This is one of the factors in the region's low productivity.

Land and labour are two factors that substantially determine the costs of production. As noted earlier, tea plantations are tremendously labour-intensive: labour costs account for 50% to 60% of total production costs, and some 75% of this is accounted for by plucking costs alone (OXFAM, 2002). On average, tea plucking in Darjeeling is even more labour-intensive and less productive. A Darjeeling tea bush only yields approximately 100 grams of produced tea in a year or approximately 2,000 shoot-pluckings.

Some commentators are critical of the focus on low labour productivity (see Bhowmik 2005). Citing various studies, Bhowmik suggests that other costs have increased more than labour costs and that low wages are a problem. For instance, referring to a Tea Board study of

20 It is not clear from the Tea Board of India data tables used here and elsewhere in the chapter, whether data entered under Darjeeling corresponds accurately to 'Darjeeling' as defined in the GI application (box 2).

Darjeeling, he shows that plucking and cultivation costs account for less than 30% of total costs there. There are few thorough economic studies of the region in recent years and issues concerning labour costs remain shrouded in mystery. There are also reports of non-payment of wages and other dues for several months violating the Plantation Labour Act (see Asopa 2007). Due to adverse labour relations, the tea industry has experienced a number of strikes. For example, in July 2005, 300,000 tea workers went on general strike across West Bengal (Bhowmik, *ibid.*). Subsequently, about 14 tea plantations closed down and at least 17,000 workers have been made jobless (Asopa *ibid.*).

For some time, the global tea market has been characterized by oversupply. While there is no single indicative price for tea, the FAO composite international tea price has registered a decrease of over 20% since 1980 with a fall from 114 pence/lb to 105 pence/lb in the early 1990s (Intergovernmental Group on Tea 2006). Several interrelated factors explain the sluggish markets for high value Indian tea: growing exports of newer producers (Indonesia, Viet Nam, Kenya, etc.); changing consumption patterns represented by the move towards lower value teabags and instant tea; and, stagnating demand in some key markets such as the Russian Federation (Intergovernmental Group on Tea 2006).

Another concern is the accumulation of market/economic power at particular points of the supply chain. Brokers have a big influence on the tea trade with only a few controlling most of the trade. Two brokers, J. Thomas and Carrit Moran, are estimated to control about 35% and 25% respectively of all the auctioned tea in India. Further down the supply chain, blenders exercise a different form of economic power. Blending companies have built a portfolio of blends and brands that dominate the market. A World Bank study of the 1990s estimates that a mere seven transnational corporations control over 90% of the tea market in the West (cited in OXFAM 2002).

Much of the tea exported from India is as a commodity, though a substantial portion has the differentiation of origin (Assam, Darjeeling and Nilgiri), or of leaf and other gradings. In the case of Darjeeling, it is suggested that blends consisting of 75% *sinensis* and 25% *assamica* are generally used.²¹ Das (2003) notes that “the packer (blender) maintains a level of tasting consistency and price stability in his brand by mixing teas procured from different sources”. It is this balance between ‘price’ and ‘taste’ and the sourcing of teas from various destinations that forms a formidable barrier to increasing the returns to tea estates in Darjeeling. The fact that tea is primarily consumed as blends and sold under brand names rather than origins is reflective of the positioning of companies towards the retail end of the supply chain.

Unlike some examples from Sri Lanka, most Indian tea producers have failed to move down the supply chain by either engaging in blending or developing brands.²² As Das (2003, p. 7) comments: “Except for ‘single-estate’ teas, Darjeeling tea is sold under the brand name of the foreign blender/packer”. Indicative of this accumulation of economic power towards the retail end is how the price of tea is distributed across the supply chain. One estimate is that roughly 3% of the price returns to the labourer, while 15% goes to the plantation and local processing factory, and about 80% is absorbed by exporters, traders, blenders and retailers (OXFAM 2002).

Another way of looking at this is to compare the auction prices with high-street retail prices. Thus, Moxham (2003, p. 216) does the following calculations for commodity grade tea sales in the United Kingdom: auction prices of approximately 40 pence/lb with high-street retail prices between £1.80 to £2.70 per lb give a mark-up of 350%–575%. Theoretically speaking, a doubling of auction prices (a 100% increase) would only raise retail by 14%–22%.

Some of these problems are germane to the entire tea industry with others being more specific to the Darjeeling sector. However, with ‘Darjeeling’ being a premium brand there are some unique concerns. Trade journals and popular media note that almost 80% of the global trade in Darjeeling tea is counterfeit. While the statistic is strongly disputed by the Tea Board of India they agree that there is counterfeiting. Some within the Darjeeling sector note that common

21 This is prohibited by the GI registration for Darjeeling (box 2).

22 A significant exception in this respect is Tata Teas.

ownership of plantations in India and Nepal and the channels of informal trade between the two countries enables this counterfeiting. One study notes that almost all the 43 varieties of tea grown in Nepal are of Indian origin (Thapa 2003). With a high price margin and porous borders between the two countries, it is quite easy for teas from Nepal to enter the Darjeeling supply chain. Thapa (2003) finds that the Darjeeling tea prices are on average 50% higher (table 4) and reports that some 1,000 tons of leaf tea have been officially exported from Nepal to India. Naturally, all of these exports do not necessarily enter the Darjeeling supply chain.

	1998	2000	Average 1997–2003
Ilam (Nepal)	18.00	20.00	17.00
Darjeeling	30.40	35.20	25.40
	68.89%	76.00%	49.41%

Source: Thapa (2003).

Note: All figures in Nepali rupees per kilogram.

Consequences of a Geographical Indication

This case study of Darjeeling provides some useful insights. It is clear that the Tea Board of India has taken a number of relevant steps to protect the Darjeeling GI and IPRs. This includes developing a word/logo in the early 1980s, and then proceeding to protect this domestically and in overseas markets. They have acquired trademarks, certification trademarks, collective marks and GIs in many jurisdictions. Perhaps more importantly, the Tea Board has also instituted a compulsory system for inspecting and monitoring the supply chain that is a prerequisite for either CTMs or GIs to ensure the integrity of the GI. The GI has generated sufficient institutional development to enable its protection. Perhaps due to long historical precedent, no serious difficulty or social conflicts have occurred due to the demarcation of the GI and inevitable exclusion of some producers.

The compulsory certification scheme links actors covering all segments of the domestic supply chain with an elaborate system of inspecting and monitoring. While it is still too early to tell, there are good reasons to believe that the integrity of the supply chain will be enhanced up to the export level. Yet, getting external actors (especially large blending companies and retailers) to comply remains a problem. This is where bilateral diplomatic efforts with support from the government may be very useful to enhance its protection. Though the stakeholders of the Darjeeling GI garner a percentage higher than those of most other defined regions, it seems clear that without good protection, the value of the GI name will not manifest as significantly increased income to the stakeholders of the GI but rather accrue mostly to the downstream actors.

Fighting infringement suits in overseas and domestic jurisdictions has become an integral part of the Tea Board's efforts to protect the Darjeeling GI. This includes the misuse and registration of 'Darjeeling' with respect to tea and also its use on dissimilar products. One of the problems faced in enforcing the GIs, is that countries have different legal means. Another reason for these enforcement difficulties lies in the nature of the GI obligations in the TRIPS Agreement. The obligation is for providing the 'legal means' to protect GIs. However, unlike other areas in TRIPS, the Agreement does not specify the 'legal means' for protecting GIs. Thus, there is a proliferation of different legal means across jurisdictions, which includes administrative *sui generis* systems, trademark law, and laws on business practices. This causes considerable confusion and elevated costs of protection become the responsibility of the GI. Another aspect of this problem is the hierarchy in protection within TRIPS. Thus, a tea only gets the lower level of protection offered by Article 22 (wines and spirits have higher levels of protection) which allows the use of the GI name and the translated use of the GI on dissimilar products.

However, existing problems within the tea industry are entrenched and well beyond what a GI can be expected to resolve. The tendency for economic power to accumulate towards the retail end of the supply chain appears to capture most of the value in the tea trade and it is not clear to what extent Darjeeling's differentiation improves its position. The GI may improve the position of producers in the supply chain, relative to other origins at least. But it does not appear to provide significantly greater benefit to the many workers in the plantations who would be the largest group of beneficiaries of a GI. The socio-economic challenges of Darjeeling production pose their own unique situations: low productivity, labour problems and aging tea bushes that do not bode well for the industry. For Darjeeling it is still not clear to what extent the new levels of protection achieved in recent years may significantly stimulate new and successful investments in productivity and whether this will bring improvements in the incomes or conditions of Darjeeling's labourers and other stakeholders. The impact of additional benefits (i.e. tourism and other products from the region) has yet to be well assessed or quantified though they are believed to be substantial.

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Annex D1: Harvesting season categories for Darjeeling tea

Easter or first flush: during the months of March and April, this flush has leaves that are tender and very light green in appearance.

Spring flush: during the months of May and June, the leaves have a purplish hue and the liquor is mellow with an amber colour and a fruity flavour with a pronounced bouquet of the tea's famed Muscatel flavour.

Summer flush: during the months of July to September, this flush is marked by its darker and full-bodied flavour.

Autumn flush: during the months of October and November, the liquor tends to be more delicate and exhibits a light coppery tinge.

Annex D2: International registration of Darjeeling and Darjeeling logo

Country	Nature of registration	Registration number
Benelux countries	Collective mark	444511
Canada	Certification mark	0903697
Egypt	Trademark	103072
International registration	Collective mark	528696
India	Certification mark	532240 (Darjeeling logo) 831599 (Darjeeling word)
Japan	Trademark	2153713
United Kingdom	Certification mark	1307518 (Darjeeling logo) 2162741 (Darjeeling word)
United States	Certification mark	1632726 (Darjeeling logo)
	Certification trademark	2685923 (Darjeeling word)

Source: Das (2003).

The Case of Gobi Desert Camel Wool, Mongolia

Koen Oosterom and Frédéric Dévé

Background

Mongolia is characterized by relatively homogeneous though rather unique Geographical features, whose specific qualities contribute to distinctiveness in a number of its traditional products. Among these is Gobi Desert Camel Wool, a special product with origins and qualities that are tightly linked to the Gobi area and to its traditions. Though famed for millennia, it is one of the world's more recent Geographical Indications (GIs), gaining legal recognition in 2007. If its specific qualities are recognized via a GI, this currently undervalued origin could essentially become an important Mongolian export product.

The Bactrian camel from Gobi

The Bactrian camel is a rare animal species. There are approximately 800,000 two-humped or Bactrian camels in the world and nearly 30% of the population lives in Mongolia (Ministry of Food and Agriculture). While many are now bred as domestic animals, wild Bactrian camels still do exist in the remote areas of the Gobi. However, the number of Bactrian camels in Mongolia has been continuously decreasing. In the 1950s, around 900,000 Bactrian camels were estimated to exist in Mongolia. By the year 2000 this number was reduced by almost two-thirds but has now stabilized and is showing only a modest annual decrease (see table 1).

Table 1 Camel population in Mongolia in recent years				
2000	2003	2004	2005	2006
323 000	257 000	257 000	254 000	253 000

Source: Mongolian Statistical yearbook 2006.

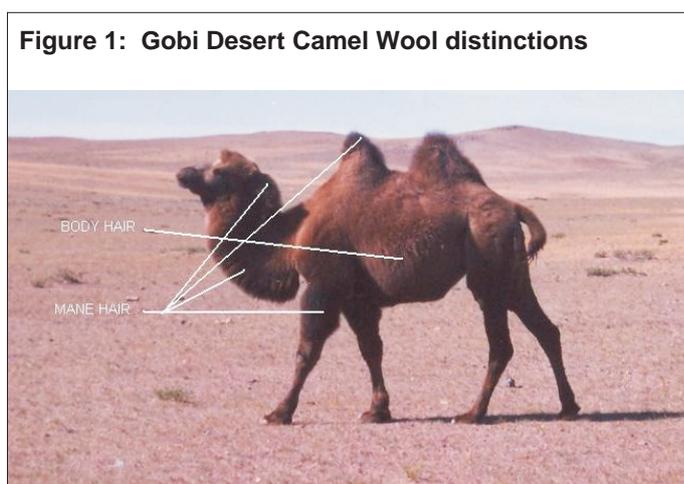
The camels are mostly concentrated in the Gobi area of Mongolia. The Gobi Desert is famed as one of the world's harshest climates, with rare water sources and scarce vegetation. Temperatures are extreme (as low as -55° C in winter and up to 45° C in summer). Camel herders live in yurts ("ghers", in Mongolian), and they follow a traditional Mongol nomadic lifestyle based on harmony with nature, and influenced by ancient central Asian shamanism and Tibetan Lamaism.

A Gobi camel can drink 120 litres of water at one time. For long travels, it can carry an additional load of up to 110 litres on each of its two humps. It can walk nine days without water, and 30 days without food. A camel lives on average for 30 years, and the nomadic population relies on it for many aspects of their lives and livelihoods. It is of course known as the 'ship of the desert', but is perhaps even more valuable for its meat, milk, wool, and a series of medicinal products such as the hormones extracted from the back of the male's neck, used for therapeutic applications. A Gobi camel typically produces about 2.6 kg–8.1 kg of wool each year. (Ministry of Food and Agriculture).

Camel wool characteristics

Textile researchers have established that camel wool is a valuable raw material, which comes second only to goat's cashmere in terms of quality and softness (McKenna 1999). In fact, camel wool has a lot of advantages over other animal fibres such as sheep's wool and even goat's cashmere. Gobi Desert Camel Wool is characterized as being a flexible fibre that does not stretch out of form and has a high heat retention capacity. In addition, Gobi Desert Camel Wool (in knitted clothes) is known as being resistant to pilling in the course of wear. All these features make the Gobi Desert Camel Wool a raw material that can easily gain consumer's confidence.

There are three different types of camel hair – “mane”, “body”, and “baby” – based on parts of the camel's body, gender and age. Only a proportion of this hair can be processed.



There are three natural colours – white (quite rare, about 1%), yellow (or light brown, about 25% of production) and reddish brown (‘chestnut’, about three-quarters of production). The colour of the camel wool does not affect the quality of the fibre. The different colours usually correspond to the different regions of the Gobi desert from which the camel originates.

The mane hair is the longest hair of the camel (see figure 1). Mane hair comes from three parts of the camel; the hump top, the head and neck, and the top of the forward legs. This fibre is very long, thick and coarse. In fact the Gobi camel's mane hair contains very little fine fibre, so is not

suitable for knitting or weaving activities. It is mainly used for filling mattresses and appreciated for its insulation properties.

Body hair is the main source of raw material. It has a very high proportion of fine fibre, locally called *noluur* (‘cashmere’), being of a similar thinness to that of goats' cashmere. It is used in garments, clothing and blankets. It even has some unique medical properties (e.g. is used as kidney bandages in internal surgery).

Baby camel hair is the best of the camel's wool. It is extremely soft and fine. It coarsens progressively as it ages, yet, according to tradition, the baby camel's hair is cut only after two years of life and never before. It is easy to process and very expensive. Baby camel hair is used mainly in clothing.

The high insulation properties of the Gobi camel fibre is one of its unique characteristics. This feature is due, in part, to the thinness of this remarkable natural product, which has been selected by man and nature over millennia for its resistance to one of most extreme climates on the planet. Recent processing experiments have shown it to have some physical characteristics very similar to those of goats' cashmere.²³

The Gobi Desert is a naturally designated area covering approximately 40% of the territory of Mongolia. Gobi, which in the Mongolian language means “an open, empty space” spreads across parts of northern China and southern and western Mongolia. The name “Gobi Desert” is considered to have marketing value, due to the evocative significance it has for consumers, especially in foreign markets.

23 The best quality camel wool had: diameter 16.6 microns; greasiness 0.18%; length 40 mm.



Geographical Indication protection

As a step towards the fulfilment of its obligations with respect to the WTO TRIPS Agreement, Mongolia enacted in 2003 a Law on Trademarks and Geographical Indications. A regulation for its implementation was issued by the Intellectual Property Office of Mongolia (IPOM), which enables third-country producers and national Mongolian producers to apply for registration. The existence of the law, however, was widely unknown among Mongolian producers and government officials. Consequently, there was not a single application for GI registration. There was thus a clear need to familiarize relevant stakeholders in Mongolia's public and private sector with the potential benefits of GIs, the legal framework that allows the use of GIs, and how to apply for GI protection.

Against this background, in November 2004, the Government of Mongolia requested technical assistance (implemented by the International Trade Centre) to first assess the feasibility and desirability of adopting a GI strategy, and then to facilitate the establishment of the most promising GIs. Following an ITC fact-finding mission in June 2005, camel wool was considered to have good potential for benefiting from a GI status, not only because of its excellent reputation but also because it possesses certain valuable qualities and characteristics that are entirely due to its geographical origin.

On the basis of the product specifications, on 8 December 2006, the Mongolian National Chamber of Commerce and Industry (MNCCI), which acted as IP agent on behalf of the Mongolian Wool and Cashmere Association (MWCA), filed an application for registration of Gobi Desert Camel Wool as a GI to the IPOM.

In April 2007, the IPOM issued a formal notification that Gobi Desert Camel Wool was officially registered as a GI. All producers that use 100% camel wool from the Mongolian Gobi territory, and that respect the product specifications, are now granted the exclusive right to use the GI sign and the 'Gobi' name for the product. Protection is granted for semi-finished (i.e. yarn) as well as finished goods (clothes). Following successful registration in Mongolia, the product specifications have been modified to fulfil the legal requirements of Council Regulation (EC) No 510/2006, allowing a future application for the camel wool GI to the EU.

The product specifications are relatively modest and purposely not too demanding. However, producers are advised to use only the finest baby camel wool as a marketing strategy, although this is not formally required. The strategy is to begin with basic standards that are "good enough" and as these are competently and consistently met, they can gradually make the specifications more demanding or introduce a second quality tier if the market warrants such segmentation.

Institutional structure

The role of the producers groups and associations is particularly important when pursuing a GI strategy. All over the world, where GIs have become prosperous, such institutions are at the centre and they are the engines of success of the most renowned GIs (Dévé 2005). They ensure the image of product excellence and serve to regulate the origin. For the Gobi Desert Camel Wool GI, the GI Commission is composed of the different actors that comprise the value chain, i.e. representatives of the camel wool producers, association, traders and herders. The Mongolia GI Commission for Gobi Desert Camel Wool is responsible for the following:

- Defending the interests of the producers;
- Representing producers to the various authorities: local (Aymag), national (IPOM), or international;
- Conducting technical support;
- Collaborating with private or professional groups, i.e. for commercial promotion of the GI products;
- Ensuring the control of origin, quality and certification including the fulfilment of technical specifications and requirements through internal control systems;
- Ensuring conciliation, and arbitration of disputes that might emerge in relation to the GI's use and management;
- Collecting fees and subventions.

The inspection and control structure

There are three layers of control and certification:

Producers	⇒	Self control
GI Commission (Defense and Management Body)	⇒	Internal control
Independent certification body	⇒	External control

The GI Commission must elaborate rules for the internal quality control, and also contract for external independent certification. This must be made on the basis of the standards used in the GI registration and of the territory defined as the origin of the raw material. Independent control and certification of a product's quality and origin is the cornerstone of any GI that seeks international recognition. For producers of GI products that aim to export to the EU, the certification body concerned has to fulfil the requirements of EN 4011 or ISO 65. This includes the preparation of an inspection manual, training of inspectors, the inspection itself and the issuance of certificates of conformity to successful companies.

For the camel wool GI, the project obtained a quotation from the "Société générale de surveillance" (SGS), an internationally renowned certification agency. Taking into account that the Mongolian Wool and Cashmere Association has limited financial means (dependent on contributions from member companies), the quotation²⁴ was considered too high a financial burden to sustain on a long-term basis, therefore it was deemed essential to identify a national solution that could be sustained in the long run. The Mongolian Agency for Standardization and Metrology (MASM) is the single Mongolian certification agency that has fulfilled the requirements of ISO 65, and is thus currently the only national agency that could qualify for providing certification services to associations of producers aiming at export. Consequently, a quotation was requested, which was considered easier to bear for the Mongolian wool companies, i.e. approximately US\$ 3,000 for the first year and US\$ 1,000 for the following years.

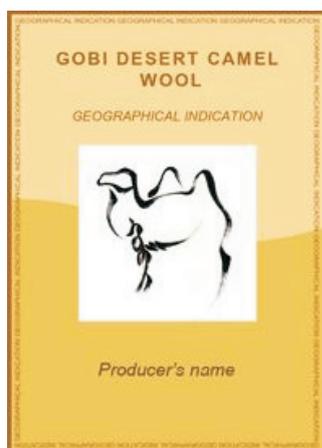
24 US\$ 18,000 for the first year and US\$ 10,000 for the years thereafter.

For controlling the source of the camel wool, different options are being considered in order to ensure that it indeed originates from the Gobi area, e.g. bags, seals, collection points, a billing system that provides proof that the camel wool is purchased from herders that reside in the Gobi area. This is a process of consultation among the stakeholders. For 2007, it was advised that a “GI billing system” be set up for the purchasing of camel wool, to allow factories to affix the GI logo right after registration. These bills should state the herder’s name, the location and date of transaction, the quantity and quality of wool purchased, etc. This billing system and its inspection by the independent GI certification body is most likely to be the system on which the future fully-fledged origin certification process will be built.

Economics and marketing

The camel and its wool play a very important role in the culture and traditions of the Mongolian people. The Gobi camel is more than a valuable resource and has long interacted with the nomadic peoples of the region. This is well illustrated by popular celebrations such as the ‘ten thousand camels’ holiday in the Gobi area. This festival takes place just before the lunar New Year (tsagaan Sar). The remarkable 2003 film “The Story of the Weeping Camel”, has brought

Figure 3: Logo for the Gobi Desert Camel Wool GI



worldwide fame to the relationship that nomadic Mongols maintain to this day with their camels.²⁵ It poignantly illustrates Mongolia’s millennial traditions and cultures of shamanism and music that are passed from generation to generation via the tale of human interaction with a baby camel from the Gobi desert.

There is potential for Mongolian products to have their culture recognized and appreciated as well as to command premium export prices if the specific qualities of their products are recognized. GIs could therefore be an effective tool in support of value-added exports for these products.

From a marketing point of view, a logo was an important tool in communicating the advantages of this GI as a public good for all producers – large and small. The use of the GI logo does not preclude producers from using their own trademarks. The logo of the Gobi Desert Camel Wool GI is a Mongolian calligraphy design integrated into a camel profile (see figure 3). All GI products, finished or semi-finished, will bear this tag. The textile products made with the protected wool will have to be

composed of 100% Gobi Desert Camel Wool, whether they are dyed and coloured or not. A joint marketing strategy will be developed by the parties concerned.

Focus on quality

GIs tend to be upper market segment, top-quality luxury products. The producers themselves have the challenge and responsibility jointly to develop this image. In this regard, it should be noted that the product specifications could be upgraded as time passes, after a few years of registration for example, so as to progressively lift the standards. Examples of GI producers that have taken this approach are Bordeaux wines, Pruneau d’Agen, Queso Manchego, Turrón de Jijona y Alicante.

Large research surveys have established²⁶ that 43% of EU consumers (approximately 159 million persons) are ready to pay an extra 10% for GI products; 8% of EU consumers (approximately 30 million) would pay an extra 20%; and 3% (approximately 11 million EU consumers) would pay up to 30% more for GI products, as compared to a similar product that does not exhibit such quality and origin signs.

25 The movie, directed by Byambasuren Davaa, was short-listed for the Academy Award’s Oscar for best foreign language film in 2004.

26 Source: Two opinion polls made in 1996 and 1999 by an independent consultant covering more than 16,000 EU consumers.

The camel wool GI product specifications include a number of minimum quality standards for processed semi-finished and finished products. These are related to the thickness of the fibre (i.e. the number of microns), the processing of the fibre (washing, spinning, knitting, etc.), packaging, preservation and transportation, etc.

Key to enhancing the quality of products is the selection and sorting at the herders' level. This practice, well known to them, has to be encouraged by market mechanisms, in particular those rewarding quality. Companies have much to gain, and herders too, if quality enhancement starts in the field and at the herder's family level. There is a need to inform, train and organize herders in order to encourage the most appropriate sorting by type and quality of raw material.

	2003	2004	2005	2006
Raw material exports (tons)	400	300	800	900
Blankets made of camel wool (pieces)	4 100	2 700	5 400	8 100

Source: Mongolian Statistical Yearbook 2006.

Consequences of a Geographical Indication

Stakeholders and members of Government believed that GIs could be an effective tool to support certain traditional products, including value-added exports for certain traditional finished products and thereby decrease Mongolia's dependence on more-volatile raw material prices. The goal would then be the legal protection for GIs and export promotion of typical Mongolian products aiming at their recognition for both product origin and quality. National rural development strategies could also interface with and benefit significantly from the creation of GIs for local products (Dévé 2007).

The adoption of a GI strategy is expected to enhance value-added exports of camel wool products (pullovers, scarves, etc.). As a result, this is expected to have a positive effect on the price that is paid to the herders for the raw wool, especially if the herders are persuaded to take a more active role by sorting the wool for colour and quality (known as 'softing'), and cleaning it (removing organic matter or small stones). Consequently, if the herders recognize that higher prices can be obtained, they may be more willing to improve their breeding and herding, which may ultimately stem the gradual decrease in Mongolia's camel population (Ministry of Food and Agriculture).

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The Case of Blue Mountain Coffee, Jamaica

Kira Schroeder²⁷

Background

The Blue Mountain coffee production region is located in three specific parishes of Jamaica: Portland, Saint Andrew and Saint Thomas. More than **7,700 farmers** produce this world famous coffee across only about 5,000 ha at between 2,000 and 5,000 feet above sea level. The region was with an average rainfall of 78 in. (1,900 mm) and an average daytime temperature of 81° F (27° C). Most farms cultivate the Typica variety and **97% of them are small** with a relatively low production output.

Blue Mountain coffee had its first exports to England in 1789. In 1943, while Jamaica was still under British rule, the industry practically collapsed due to the bad quality of its product. At that time its main market was Canada (another member of the Empire). The colonial government ordered an inquiry to investigate and recommend a course of action. As a result of that process, the Coffee Industry Board (CIB) was created to protect and restore confidence in the industry with a focus on developing quality and recognition. Ten years later, all the coffee produced was being exported. Since the late 1940s, **the Government has played an important role in the Jamaican coffee industry.**

In 1982, the Government of Jamaica decided on an export-oriented agriculture strategy. As a result, the CIB launched coffee development programmes²⁸ and the Coffee Industry Regulation Act was amended to include the definition and delimitation of the Blue Mountain Area. Already, it was coming to be recognized abroad as the island's best production area. The new Regulation empowered the CIB as the sole authority for granting the use of the 'Blue Mountain' name. The supply of Blue Mountain coffee has been increasing since the mid-1980s. Production grew from 405,000 lb in the 1981–1982 harvest to a high of 3,800,000 lb in the 2005–2006 crop and about 2 ½ million pounds in 2007.. Yields are considerably lower than in other high-value origins and production costs are higher. While Jamaica had an overall average yield of about 200 kg/ha in 2001 (somewhat higher in the Blue Mountain area), Costa Rica achieved 1,500 kg/ha and Guatemala 1,000 kg/ha²⁹ As productivity has fallen outside of the Blue Mountain area, figures for 2005–06 indicate a more than threefold difference (see table 1).

	Production (lb green)	Production area (ha)	Farmgate price (\$/lb cherry)	Producers	Yield (lb/ha)
Blue Mountain	3 800 000	5 260	\$0.94	7 725	727
Non Blue Mountain	719 000	3 340	\$0.41	4 000	215

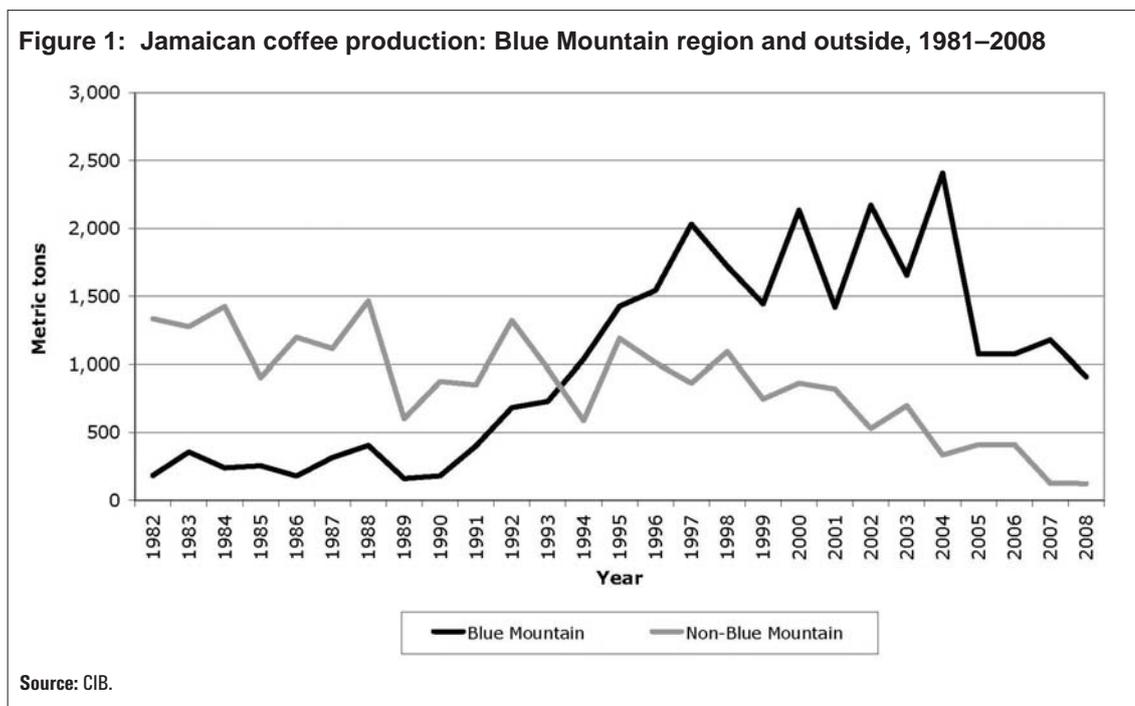
Source: CIB. Average price calculated by the author from interviews of producers based on 2006/07 crop. Yield calculated by the author based on data from CIB.

27 Based on interviews and research conducted by CIMS during the first half of 2007.

28 Providing loans, farm inputs, technical advice and nurseries.

29 Sources: CEPAL 2001; ICAFE 2002.

While production in the Blue Mountain region has been increasing continuously, non-Blue Mountain production has been decreasing, from 2,934,800 lb of green coffee in the 1981/82 crop to 719,400 lb for 2005/06. While the root cause of this attrition due to low profitability, the decline in production is also due to a number of factors, including: competition from other crops; bauxite mining; withdrawal of subsidies; ageing population; change of political focus from non-Blue Mountain to Blue Mountain region; decline of the cooperative movement in Jamaica; and high risk of adverse weather.³⁰



The CIB has plans to increase support of non-Blue Mountain coffee farmers in order to stem this decrease in production. The costs of production are similar, though prices received are different and the non-Blue Mountain coffee in lower altitudes is susceptible to pressure for other land uses and competition for labour from other crops.

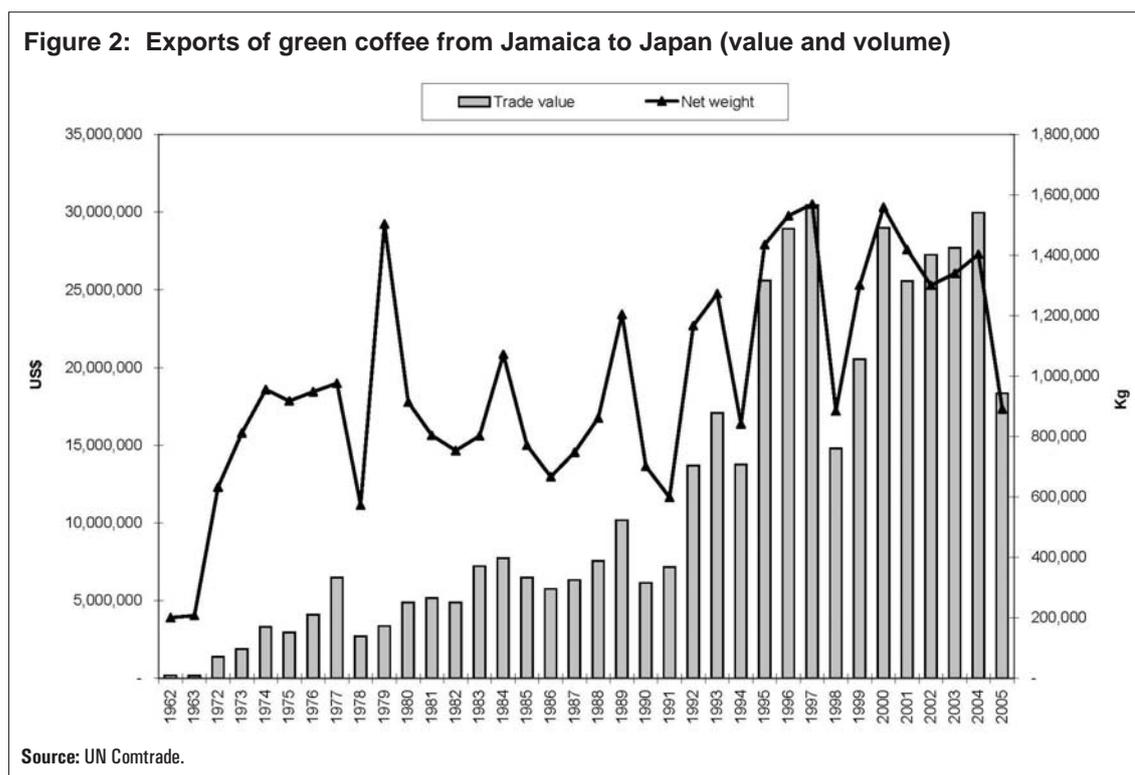
Most of the Blue Mountain coffee is sold to Japan. Japanese demand for Blue Mountain began to rise substantially in the mid-1970s but did not reach a steady average over 10,000 bags (1.3 million pounds) until the mid-1990s. The export price has grown steadily. However, there is no evidence of a notable price increase as a result of the legal demarcation and GI certification. Japanese firms have developed the Blue Mountain name and positioned it as a luxury item in their market. The current recognition of coffee grown in the Blue Mountain region is due mainly to the parallel factors of a reasonably high-quality supply and its consistent marketing as a luxury item.

According to WTO statistics, 83% of Jamaican coffee is exported to Japan. In 2005, although Jamaica ranked 9th in terms of volume of coffee imports to Japan, its value per pound was approximately 10 times higher than the value for coffee imported from comparable origins such as Colombia, Costa Rica, Ethiopia or Guatemala.³¹ Average Blue Mountain producers receive a smaller percentage – reportedly 50%–60% – of the FOB price.³²

³⁰ Source: CIB: March 2007. From an interview with Graham Dunkley, Director General.

³¹ 4 June 2007: <http://www.trademap.net>.

³² Based on interviews and research conducted by CIMS during the first half of 2007.



Geographical Indication protection

Development of the brand has been a long process. **Several decades of effort has gone into the Blue Mountain GI.** It began with an emphasis on achieving a consistent production of high quality coffee, then with development of a target market, legal demarcation of the region itself, and later supplemented with organized legal protection efforts.

The Blue Mountain origin is protected in Jamaican law through a certification mark,³³ managed by the CIB. The CIB certifies not only that the coffee was grown within the Blue Mountain area, but also the quality of the coffee's physical and cupping characteristics. According to the Board's legal officer, they "prefer certification marks because they certify quality and source. A trademark does not do this. A trademark... can attach to any product."³⁴

The delimitation of the Blue Mountain region came during the 1980s as the CIB's reaction to the fact that more Blue Mountain coffee was being sold than was being produced, since by then the region already commanded a high price in the market. The Board initiated parallel efforts to register the mark in other countries, starting with Japan, the United States and the United Kingdom. Today, the Blue Mountain coffee mark has been registered in approximately 51 countries, as a certification mark when the local law allows for it, and, if not, as a trademark. It incurs an ongoing and costly management effort.

In the 1980s, the most viable legal means to define and protect the origin domestically was through the Coffee Industry Regulation Act. Later, The New Trademarks Act of 1999 allowed for the use of a Certification Mark. In 2004, a more specific and appropriate instrument, The Protection of Geographical Indications Act was enacted, following quite closely the Articles 22

³³ A certification mark is a type of trademark according to Jamaican law. Source: JIPO – Jamaica Intellectual Property Office.

³⁴ Personal communication with Loreen Walker (June 2008).

through 24 of the TRIPS³⁵ Agreement. The Jamaica Intellectual Property Office is working in collaboration with interested parties such as the CIB to propose regulations for registration procedures and fees. These laws have been opening new legal tools for the CIB to better protect the origin.

Institutional structure

Until 2000 the CIB was both a regulator and a commercial actor within the industry, and one of the very few allowed to produce, buy, and export Blue Mountain Coffee. They have since legally separated the commercial operations to an independent company and are now solely focused on regulating the industry. As a result of internal competitive pressures, licensing to exploit the brand has been liberalized to include 20 coffee dealers and 18 coffee works or processors, who can buy coffee only from the 7,725 licensed Blue Mountain coffee producers. Some companies are now vertically integrated, to include all or some of the stages: production, milling, roasting, and exporting.

Liberalization has been a slow and careful progression where the Board today still licenses all processes from the nursery to the roaster, with the objective of quality control. As a result of the liberalization process private competition for cherry coffee has increased and new services to farmers have also emerged.

Blue Mountain Coffee is sampled and checked for quality before it can be exported. CIB regulation of all stages helps to ensure traceability. A certification document from the CIB will accompany true Blue Mountain green bean and roasted coffee exports and will assure a buyer the origin and the quality of the product, according to four classifications Blue Mountain No. 1, 2, and 3 and Blue Mountain Peaberry.

Costs for this origin and quality control are both high. The CIB used to be financed through their commercial operations and the CESS order, a tax on coffee production and sales. Since liberalization and independence from commercial activities the CIB is now more transparently operating on the basis of a fee for the use of the certification mark.

The annual cost of trademark protection is in the range of US\$ 250,000 to US\$ 400,000 depending on the level of activities carried out. This includes cost of registration in other countries, cost of hiring monitoring companies (these companies check the Internet, magazines, retail stores, etc. and will alert the CIB if they find someone using the Blue Mountain name fraudulently), cost of challenging entities if they are using the Blue Mountain name improperly, cost of legal action when necessary, and the salary of full time administrators and a legal officer.

Economics and marketing

The strong preference of the Japanese market for Blue Mountain coffee and the work of the Jamaican coffee sector's defence of its quality and origin, has translated into a strong commercial relationship between the two countries. As can be seen in figure 2, exports of green coffee from Jamaica to Japan have grown since the 1970s with fluctuations mainly due to climatic problems.³⁶ Trade value has also grown steadily, quadrupling in the last 2 decades, going from an annual average of US\$ 6 million in 1980–1985 to US\$ 26 million in 2000–2005.³⁷

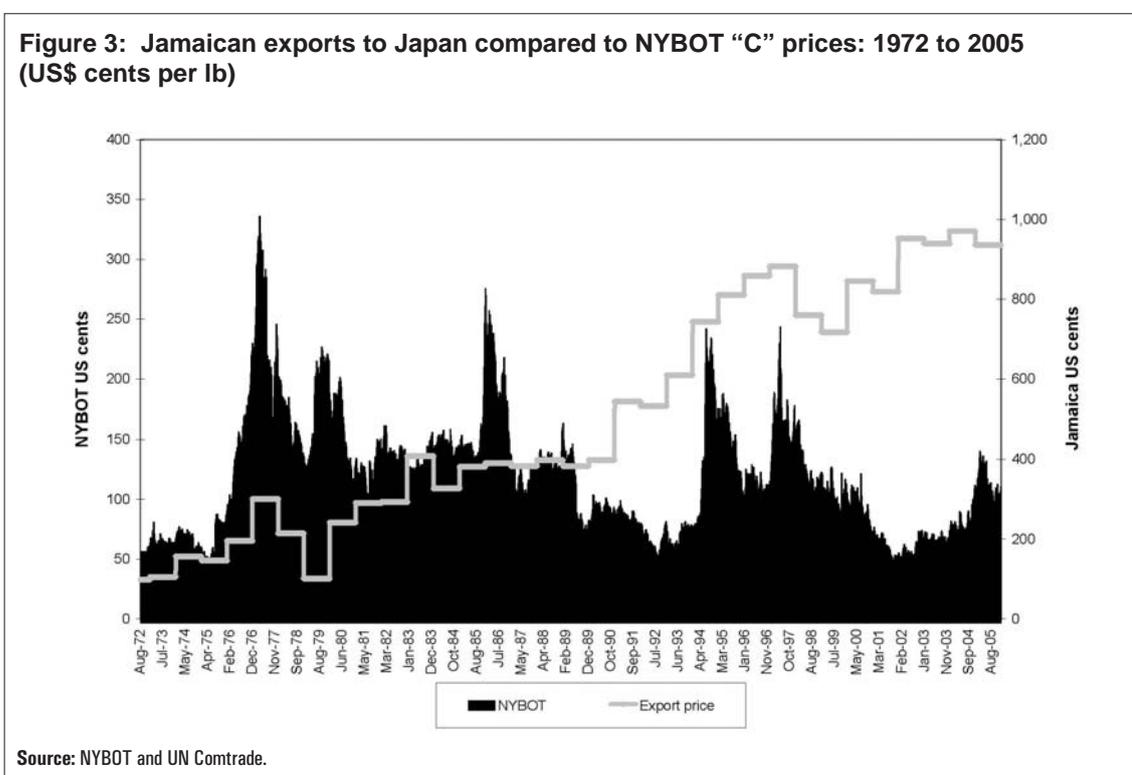
35 Agreement on Trade-Related Aspects of Intellectual Property Rights. The TRIPS Agreement is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994. **Source:** World Trade Organization.

36 Jamaica has been hit hard by hurricanes; Gilbert: 1988; Michelle: 2001; Ivan: 2004; Dennis, Emily, Wilma: 2005. **Source:** CIB.

37 Given price/volume comparisons and that the Japanese market sells little other Jamaican coffee (much less expensive) and is interested specifically in Blue Mountain coffee, it can be assumed that most of the exports to Japan are of Blue Mountain coffee.

Even though Jamaican Blue Mountain coffee exports are very dependent on the Japanese market, there appear to be other markets willing to recognize and pay for this particular origin. The three next largest importers of Jamaican coffee (United States 9%, United Kingdom 2% and Switzerland < 1%) have consistently paid prices similar to those paid by Japan.³⁸ Although the overall crop is quite limited, Jamaican exporters are looking to develop new markets and the CIB has thus worked toward GI legal recognition and protection worldwide in producing nations as well as consuming nations.

Figure 3 shows that green prices of Jamaican exports to Japan have constantly risen in comparison to the benchmark prices of coffee sold at the “C” market of The New York Board of Trade (NYBOT, since 2007 known as ICE Futures U.S.). The difference is particularly evident during low price periods such as those at the beginning of the 1990s and the years initiating the present decade. Blue Mountain’s market position and relative scarcity have enabled it to avoid both the worst lows as well as the considerable price volatility. Jamaica’s Blue Mountain Coffee has used its GI to both develop and protect its differentiation. The export price tendency portrays a clear differentiation from coffee sold as a commodity.

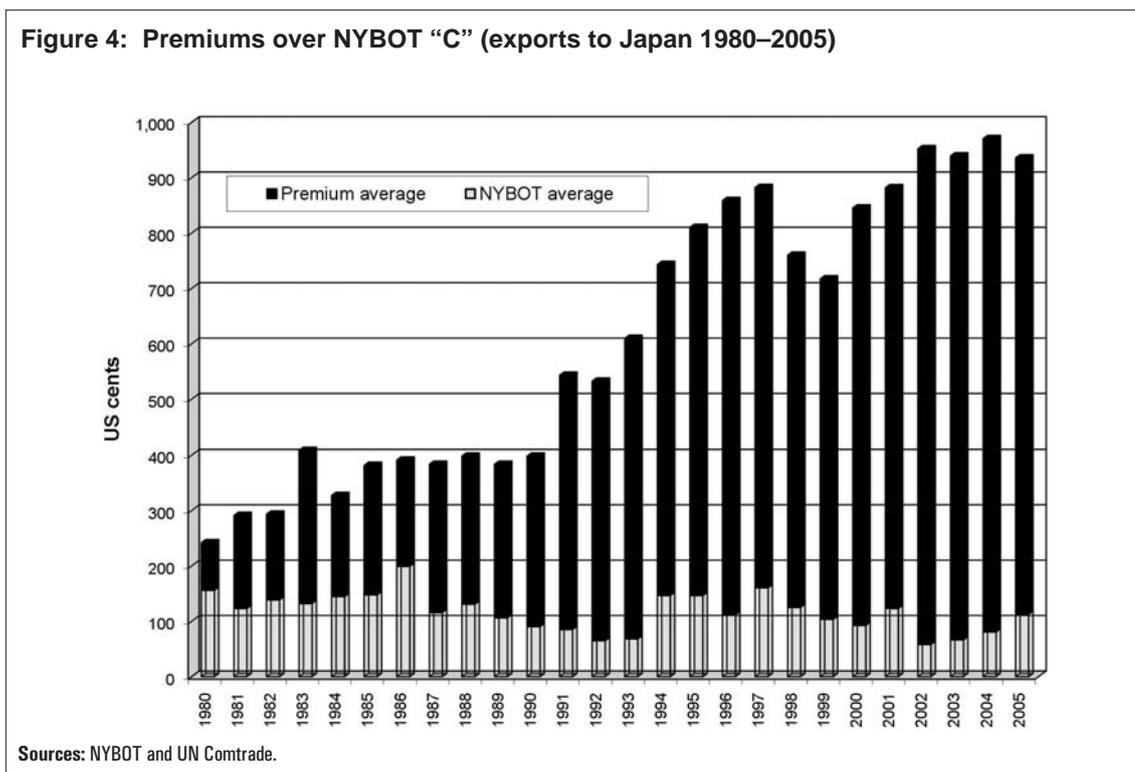


When compared to commodity coffee prices, Jamaican coffee has received significant premiums that have increased over time. However, it is vital to note that simply comparing Blue Mountain to other coffees can be misleading. This is especially true considering Jamaica’s extraordinary costs of production and very limited availability. Extensive cost of production reviews conducted in the late 1990s found Jamaican production costs to be the highest of 22 arabica producers surveyed.³⁹

38 UN Comtrade, Jamaican export data for 2004–2005.

39 Estimated establishment, maintenance, harvesting, hulling, grading, and variable costs for Jamaica as a whole and includes lower-cost production of other non-Blue Mountain coffees.

In 1980 prior to the legal and quality controls on the Blue Mountain production area, the average price received for all Jamaican coffee sold to Japan dipped to only 55% of the average NYBOT “C” price. Japan has imported Jamaican coffees other than Blue Mountain and these have seen a steady decline in the last quarter century. By 1990 Blue Mountain premiums in Japan had risen to 341% over the “C” price, and in the early 2000s, during one of the historic lows of the “C” market, those premiums were more than 800% of the average benchmark “C” coffee price (see figure 4).



When premiums received for Blue Mountain coffee in the market are translated to farmgate prices paid to producers, these are considerably lower. For the 2006/07 crop, Blue Mountain producers received approximately 370% more for their cherries than other well-known elite origins such as Tarrazú in Costa Rica or Antigua in Guatemala.⁴⁰ Coffee producers inside the delimited Blue Mountain region earn more than double for their cherry coffee than non-Blue Mountain producers but are required to invest in more careful quality-oriented cultivation methods and are subject to stricter grading. Although Jamaican coffee farmers may earn more overall than comparable nearby Central American producers, they also produce much lower volumes and face considerably higher costs of production.⁴¹

Consequences of a Geographical Indication

After more than 50 years of investment and development, Blue Mountain Coffee is at the pinnacle of its success. It benefits more farmers than ever and is enjoying new levels of economic success. This GI's prominence is based not only on its combination of quality and *terroir* but also on its consistency, its exclusivity, and its unique long-standing commercial relations, primarily

⁴⁰ Prices calculated from producer and organization interviews in the three countries.

⁴¹ Conditions of production like productivity, efficiency of the labour force, and the variety of coffee used differ from country to country, hence other conditions also have to be taken into consideration when analyzing prices at farmgate.

those in the lucrative Japanese market. The Jamaican coffee industry has thus created a unique situation and a value proposition that commands exceptional high prices and operates outside of the competitive pressures of mainstream commodity channels.⁴²

The extraordinary retail price for Jamaica Blue Mountain coffee can easily give observers the impression that producers enjoy great incomes and a measure of wealth. They may indeed be better off than average producers of most other crops on the island. It is critical to note in any assessment of this GI that its high prices must be seen in the context of its very high production costs and considerable climactic risks. This high value also comes with high management and protection costs for the GI. Strong and sustained governmental support initially permitted the Jamaican coffee industry to effectively deal with these two issues and in recent years the industry has increasingly taken on more of the costs.

There are few bright spots in Jamaica's agriculture sector and it has steadily declined in terms of its relative contribution to GDP. Blue Mountain GI is one of the success stories and it benefits even non-Blue Mountain coffee producers whose coffee is sought for related blends because of the reputation that Blue Mountain has earned.

Along with other popular cultural icons such as reggae music and Jamaican rum, Blue Mountain coffee is immediately recognized as made in Jamaica and both the agri-food industry and the nation seem to gain from the association. Blue Mountain coffee has been noted to both benefit from and contribute to the Jamaican tourism industry and its experience can perhaps influence other initiatives for recognition of high-quality Jamaican products.

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42 Hernández, G. 2007. Personal interview on Jamaican coffee industry. Former CEO of the Coffee Industry Board of Jamaica.

The Case of Kona Coffee, Hawaii

Daniele Giovannucci and Virginia Easton Smith⁴³

Background

Hawaii's Kona region, though world-famous, is remarkably small, stretching 15 miles along the south-western coast of the United States island of Hawaii and reaching approximately 2 miles up into the hills. It is a mostly rain-fed area whose approximately 630 producers most commonly cultivate a Kona Typica coffee of Guatemalan origin. Coffee was first planted in the first half of the 19th century and thrived sufficiently well to be remarked on by prominent visitors including Mark Twain but was not notably distinguished in the global market place until the latter part of the 20th century. **Production volumes for this prized product average just over 20,000 (60 kg) bags per year.**

Nearly all of Kona's farms are small. The average farm size remained stable at about 3 acres for decades (1975–1995) and more recently has expanded to approximately 5.4 acres. Only a handful of farms are larger than 50 acres. Its 1,355 ha of coffee trees (3,350 acres)⁴⁴ produced 2.5 million lb green coffee in 2006. Coffees are handpicked with production costs of just under US\$ 1.45 per pound of cherry; this is traditionally wet-processed, then dried on patios in the sun. Kona coffee green yields in 2006 averaged 14 bags or 1,845 lb/ha – slightly lower than the previous decade's average.

Hawaii production, 2006/07

	Number of farms	Planted/harvested acres	Production (million lb green coffee)	Value (US\$ million)
State of Hawaii	790	8 200/6 300	5.8	30.3
Kona district and environs *	745	3 800/3 000	2.8	20.1

* Nearly 90% of the county production is in Kona district. Thus it accounts for most of the total value and 630 of the 745 farms.

Its farmers struggled for many decades with the ups and downs of the global coffee market. The considerable price premiums that currently accrue to Kona farmers and the local industry have been the result of three factors. First, the adoption of a basic quality standard (prime or above) and steady improvements in technology and husbandry have resulted in more consistent and high-quality output from the region. Second, while a significant number of producers are, on a small scale, at least somewhat vertically integrated (growing, processing, roasting, retail sales), a considerable portion of Kona's **reputation was built through alliances with larger industry players** whose marketing and distribution networks brought Kona to a wide audience. Third, organized producers and industry have leveraged considerable **government participation to help control the quality and authenticity** of output at origin.

43 Based on interviews and research conducted in January and February 2007.

44 88% of Hawaii County total coffee acreage (USDA).

Geographical Indication protection

The origin is protected by both certification and trademarks and these apply to both the region and the specific quality standard that coffees must meet to use them. Yet, like many successful origins, considerable quantities of other coffees – estimated at between 300%–500% more than are actually produced in Kona – are quietly marketed as Kona in the United States and elsewhere by unscrupulous traders and roasters. Despite the registered Kona marks, policing these counterfeits is a difficult and costly task. Another concern has been the marketing of Kona blends using the name Kona prominently but without equally clear labelling noting the actual Kona content outside the state (the legal minimum is 10% for coffee sold within the state of Hawaii).⁴⁵ In this particular case, the use of the Kona mark, apart from any self-policing in the industry, is not regulated except by ‘truth in labelling’ laws.⁴⁶

The **decades-long process of defining and protecting the origin** began with a law for defining geographical origins such as Kona in 1955. Despite this formal geographical demarcation, these coffees continued to move in tandem with global commodity prices for the category of coffee (Colombian Milds) and even experienced a severe and prolonged decline during the 1970s. Consistent quality was not yet a universal hallmark of the district. The origin had nevertheless developed a modest measure of recognition and in the late 1980s a study (University of California, Davis and University of Hawaii) suggested further developing and protecting name. This political initiative was intended to ensure economic viability; primarily protection against misuse of the name resulting in poor quality and counterfeits being presented to consumers.

This process was only formalized in 1992 by the Kona Coffee Council, partly in response to a high-profile and large-scale counterfeiting scandal. It culminated in application for formal Federal legal protection in 1995 but met with objection of large roasters that were using the name. The Hawaii Coffee Association took over the process and Kona’s certification mark was approved in 1997. The Hawaii Coffee Association establishes and sets standards and is designated as the administrator. The State Government owns and controls the marks at the request of the industry and the State Department of Agriculture inspects and controls the use of the marks, permitting farmers and firms to use the marks for green coffee so long as the product meets the rules of origin (inspection, certification).

Institutional structure

Rules of participation have been very clear from the outset and mutually agreed among the producers and stakeholders (processors, roasters, exporters). Hawaiian coffees are graded based on size, colour, defects, and aroma into six different grades: Extra Fancy, Fancy, No.1, Select, Prime, and Hawaii No. 3. However, only beans that meet the geographical origin requirements and quality specifications for Prime or better are qualified for branding or labelling with the words: “Kona coffee”.

Most certification happens at mills prior to processing or exporting. Each property has a “tax map key” that serves to monitor sellers and volumes and is kept in a State Government database. Each bag is tagged with numeric and official stamp and traced with accompanying paperwork that matches the stamps/number on each tag. Inspection and certification are controlled by the State Department of Agriculture though at a significant cost and with modest direct cost recovery (fee for certification).⁴⁷ There is, therefore, quite good traceability for green coffee. The origin and quality of roasted coffee (a significant portion of the total Kona marketed) is not strictly controlled except by purity and fraud laws.

45 See next section “Structure of GI control” for more information.

46 Hodgson and Bruhn (1993) note that consumers perceive a larger percentage (50%) as more appropriate use of the term “Kona blend”.

47 Approximately US\$ 250,000–US\$ 300,000 are spent annually to inspect, control, and manage the Kona origin (covering less than 700 farmers and a dozen mills).

Even as a United States state, **enforcement of its legal certification marks has been difficult** and formal requests for due process made to the Attorneys General of other states where fraud is suspected do not always get a response.

Consensus within the industry is increasingly difficult as the economic stakes get higher. For example, currently there are heated discussions over the use of the term Kona for blends with existing regulations stipulating that the term “Kona blend” be used if there is less than 100% Kona coffee and at least 10% Kona. While many Kona coffee growers feel that the minimum percentage should be higher than 10% to use the Kona name at all, there is no agreement on what the minimum should be and how a change would affect farmers and the industry. The Hawaii Department of Agriculture has been directed by the legislature to conduct a market study to determine the economic effect of changing the minimum percentage required in a blend.

In the State of Hawaii, a 2002 clear labelling law, among other things, tightened the requirements on the identity statement wording, font size, and placement on the label. The identity statement must contain the per cent of coffee followed by the Geographical origin (such as Kona), and the term “coffee blend”, e.g. ‘25% Kona coffee blend’. All in the same size font as the word Kona. This state regulation does not apply for coffee sold elsewhere outside of the State.

The Hawaii coffee labelling regulations pertain to the identity statement on the package, not to the general use of the name or brand. In contrast, the United States regulation limits the use of an appellation of origin on a wine label only if it contains at least 75% grapes grown in that origin or 85% if a unique designated American Viticultural Area such as Napa Valley. This does not require a statement on the percentage of grapes contained in the wine and all use of the name assumes a percentage equal or greater than mandated.

The costs for managing this origin can be considerable. Estimates for legal and trademark fees cost at least US\$ 50,000 and the research, travel, and organizational coordination costs in the area easily added another US\$ 50,000 to US\$ 100,000 over the several years of the legal process. Today three inspectors work on coffee in Kona while administration and database management for the origin controls happens in the capital and costs the state approximately US\$ 250,000–US\$ 300,000.⁴⁸ In addition, the Department of Agriculture co-finances trade shows for coffee firms and the Hawaii Visitors Convention Bureau and the Department of Business, Economic Development and Tourism together spend approximately US\$ 100,000 for Kona promotion that includes coffee. However, by far most of the promotion is done by firms individually and by industry groups such as the Kona Coffee Council and the Hawaii Coffee Association.

Economics and marketing

Kona Coffee’s history and fame is reflected in its higher prices when compared to most other origins and even to other Hawaiian coffees. A recent survey comparing Kona, Kauai, Maui, and Molokai origins shows an average retail premium ranging from 43% to 203% more for Kona and a comparison with Kauai green (Hawaii’s large-scale plantation) showing Kona at 190% higher value.⁴⁹

While only about 10% of Kona’s green coffee is exported directly, considerable quantities of Kona Coffee are exported via the mainland and green prices have grown steadily from US\$ 3.25 per pound in 1978 when the industry began to rebound⁵⁰ to US\$ 6.98 per pound in 1989 to US\$ 16.17 per pound in 2007. While the higher prices appear to provide greater profits along the supply chain, producers also benefit from the reputation of their origin. The recent green bean price estimates (2004–2007) range from US\$ 11.45 to US\$ 16.17 and average at just over

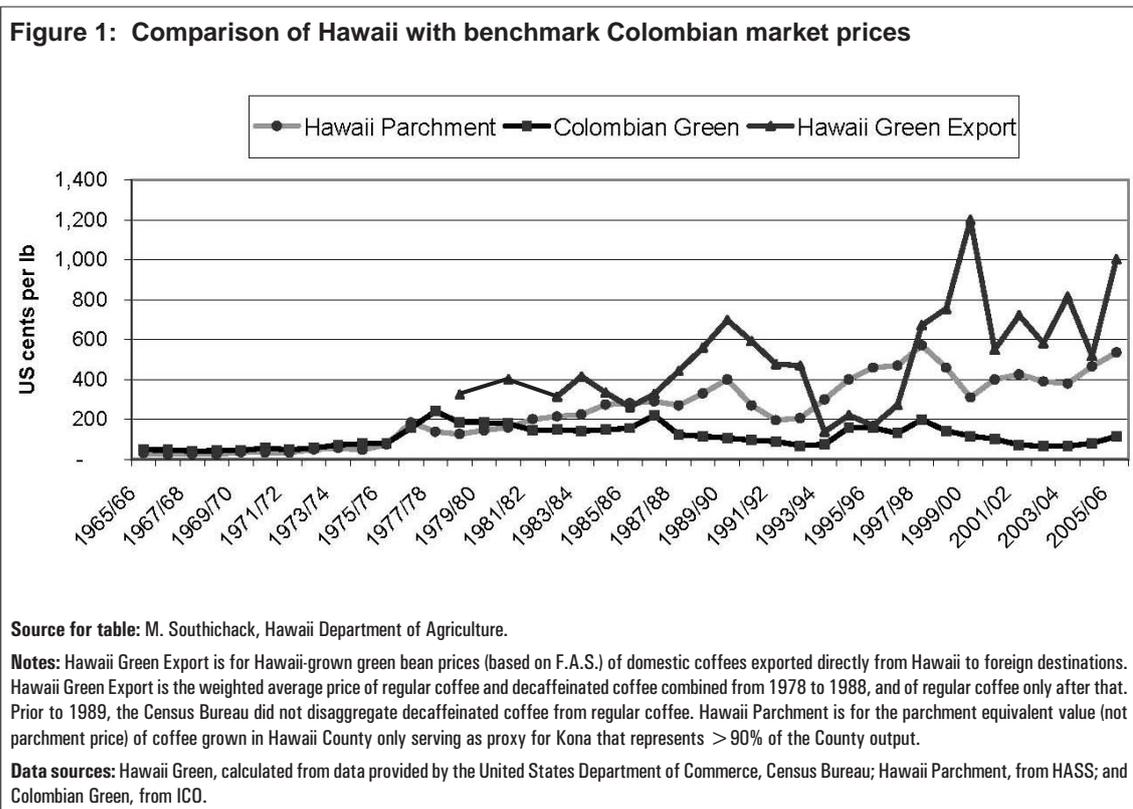
48 Author’s estimate of salaries, benefits, expenses, etc.

49 2004 survey of company websites and retail outlets in Hawaii by Southichack in 2006.

50 The earliest data available from the Census Bureau does not distinguish Kona from other regions but Kona then produced the majority of the state’s coffee and was the only one likely to be exported at high prices as noted in Southichack’s own research.

US\$ 13. The premiums that producers receive, when compared to other Hawaiian coffees, have ranged from 115% to 148% in the last decade. Most recently this translated to a premium of US\$ 9.67 per pound with the US\$ 16.17 per pound average Kona retail green price (for combination of relatively proportioned grades of green actually sold).⁵¹

In the three decades prior to the widespread recognition of this origin (1947 to the late 1970s) farmgate prices were relatively low and at the level of coffee commodity markets. Prices for Hawaiian coffee (then mostly from Kona) steadily tracked the commodities markets. As the origin's reputation grew, farmers in Kona did better. Price data indicate some freedom from commodity pressures for Kona's coffee industry after the late 1970s. Even when correlating to Colombian Milds (a group of origins similar to Hawaii), that are specialty-oriented and close in character to Kona, Southichack (2006) notes that there is no statistical evidence of a link between the two prices since the end of the 1970s. For example, in 1987, when Colombian Milds experienced a substantial 53% price collapse (from US\$ 2.20 to US\$ 1.03 per pound) Kona's price dropped only 7%. Even during periods of prolonged decline such as those in the late 1980s and late 1990s/early 2000s, when the price of Colombian Milds fell for several years consecutively, Kona did not fall or did so only somewhat, and in some years actually rose in price. Therefore, as figure 1 illustrates, the market price for Kona coffee is substantially independent of the commodity market price.



Regardless of the negative correlation to Colombian Milds averages and no obvious correlation of price to volume of production, there have been notable year to year fluctuations in farmgate prices – though not nearly at the levels of international commodity (NY “C” market) volatility. The most recent decade 1998–2007 ranged from US\$ 3.10 parchment equivalent farm price to US\$ 5.75.

51 Estimates are based on January 2007 retail prices, assuming a fully integrated farm (a good percentage of total Kona output comes from at least partly integrated farms). The average of all farms, including integrated and not, is a 130% premium for the 10 years from 1997–2006 (US\$ 4.51 for Kona and Hawaii County and US\$ 1.94 for other counties). 2006–2007 was 115% premium (represents parchment equivalent farm sales US\$ 5.75 Kona and US\$ 2.68 for rest of Hawaii).

Consequences of a Geographical Indication

Kona's original popularity has been due to its unique character and the reputation of its exotic *terroir*. Currently that prestige is maintained by above-average quality standards. Quantities produced have steadily increased over the last two decades and can be mostly credited to improved technologies and husbandry that are facilitated by such a remunerative crop. Although the extent to which such investments have increased the cost of production is unclear, estimates place the average cost of production in Kona at about US\$ 1.45/lb for cherry.

Kona's high price and the limited ability to control "Kona" coffees outside of the origin and in the marketplace have led to substantial cases of counterfeiting that were not only a significant cause for two-price crashes but also induced many farms to leave the Kona cooperative structure and become independent, thus marking a considerable change in the structure of the industry and the eventual demise or absorption of a number of farms. The local industry is vulnerable without adequate measures and enforcement to curtail counterfeiting. The industry itself appears to be most effective as a monitoring agent, while the Government ideally provides rapid and effective enforcement and strong criminal disincentives to minimize counterfeiting.

There is ongoing and heated debate to define proper use of the name Kona for roasted coffee and in blends. As in many regions, some growers are disgruntled being just outside of the famous region and getting lower prices for 'similar' coffee. Nevertheless, it appears that all of Hawaii has benefited from Kona's reputation. While there are other good coffees in Hawaii, many are not remarkable and yet still enjoy prices that are well above the "C" market range that they might otherwise get if they originated in another territory.

Besides greater tourism,⁵² increased land value,⁵³ and the "brand" recognition of Kona on other products,⁵⁴ Kona also stimulated the increased legal protection of local farms. As the fame of Hawaiian Kona grew and its farm price (domestic parchment) topped the \$4.00 range in 1990, the number of new coffee trademark and trade name registrations in Hawaii soared from the late 1980s intending to capitalize on Hawaiian coffees' growing reputation and value.⁵⁵ Southchack notes that nearly 200 Kona coffee name registrations have appeared since 1980 and that in 2004, no less than 67 active trademark and trade names include "Kona Coffee".⁵⁶

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- 52 For the Island of Hawaii, in excess of four times the number of visitor days were spent in the Kona area than the Hilo area, as recorded by the Hawaii Department of Business, Economic Development and Tourism (DBEDT). The Kona Coffee Cultural Festival celebrates 179 years of Kona coffee; and the Hawaii Tourism Authority recognizes it as a major state festival.
- 53 Although primarily an agricultural area, Kona property is now valued among the highest in the State. It sells for three times that of comparable coffee growing land in the bordering Ka'u district, and two times that in the Hilo district of the same island. South Kona home values were 29% higher than that of the island average value in 2006 and North Kona values were 54% higher than the island average (Hawaii Information Service). "As a share of the economy, agriculture remains more important for Hawaii County than for any other part of the state" (First Hawaiian Bank, 3 October 2007 report, www.fhb.com).
- 54 Kona Deep brand deep sea drinking water selling for more than \$2 per bottle, Kona Beer, Kona Kava, Hula Girl Kona Coffee flavoured Chocolate Chip Pancake and Waffle Mix, retailing at \$9.00 for a 1 lb package, Mauna Loa Kona Coffee Glazed Macadamia Nuts US\$ 4.00 for 5.5 oz.
- 55 These registrations for the Hawaii, Hawaiian, Kona, Maui, Molokai, Oahu, Honolulu, and Kauai names capitalize on Hawaii grown coffees' reputation and accounted for nearly all of the significant coffee processors and traders involved in that business.
- 56 There are many other registered uses of the name Kona, most not even in Kona: Kona Guitars; Kona Ironman; Kona Bikes (England); Konabay Fabrics (Honolulu); Kona Cigarettes (zimpex.com American quality cigs), Kona Kai Resort (San Diego); Kona Sports (in N.J.); Kona Kitchen (Seattle restaurant), Kona Windsurfing (exocet-original.com France), Kona Coast products (Napa, CA: mustard, sauces, etc. None of which are sourced or made in Kona).

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The Case of Mezcal, Mexico

Catarina Illsley Granich⁵⁷

Background

Mezcal, pulque and tequila have long been considered the national drinks and cultural symbols of Mexico (see box 1). Mezcal is a generic name for alcoholic spirits made from roasting, fermenting and distilling the centre of mature agave plants, after the leaves are cut off. More than 40 different indigenous species of agave are used to make at least as many mezcals in different cultural regions throughout almost all of Mexico (Colunga et al. 2007).⁵⁸ Each mezcal is different, not only because of the agave species it comes from, but because of the particular process involved (tools, materials, timing, temperature, etc.). Perhaps no other spirit in the world derives its distinctive flavours from such ample natural and cultural diversity.

Box 1 *Culture and tradition in beverages: Mezcal, Pulque, Tequila, Bacanora and Sotol*

Mezcal is crafted from agave according to traditional methods that vary considerably – as do the dozens of different species of agave themselves – in each micro region.

Pulque is a fermented beverage made from only the sap of certain *Agave* species that grow in the temperate forests of Mexico (*Agave mapisaga*, *A. salmiana*) and was of great economic importance until the middle of the 20th century. *Pulque* is often erroneously mentioned as the antecedent of mezcal, yet it is a completely different product and holds a history of its own, involving other plants, processes and cultures. Sporadically, *pulque* has been distilled in Central Mexico and in Chiapas, where *comiteco*, a mezcal distilled from *pulque*, is elaborated.

Tequila is technically another mezcal, made from the blue variety of *Agave tequilana*, though it has long ago dropped the use of the generic term *mezcal*, to go by the name of the town of Tequila, where it was first produced on a large scale. It has evolved into a popular global beverage using commercial methods to achieve a measure of overall homogeneity.

Bacanora is yet another mezcal, made from *Agave angustifolia* in the State of Sonora.

Sotol is made from plants of the genus *Dasyliirion*, which belongs to the *Nolinaceae* family, closer to *Yucca* plants than to *Agaves*. The process for baking, fermenting and distilling the spirit is quite similar to artisanal agave distillates. There is certain debate as to whether it should be considered another type of mezcal or something different.

There are currently four mezcal-related GIs in Mexico, in form of Denominations of Origin (DO): Tequila, Mezcal, Bacanora and Sotol. These GIs are based on an extraordinary uniqueness: agaves and mezcals are almost exclusive to Mexico. This uniqueness goes further than the land and raw materials; it is also attributed to the distinctive and diverse cultural processing methods.

While the GIs have attempted to protect this uniqueness, there are important lessons to be learned about the process since, paradoxically, the structure of the GIs may in fact possibly destroy the complex natural and cultural diversity due to the way they drive mezcal development.

Just a few decades ago, all mezcals were perceived as a harsh, poor-man's beverage. Tequila stepped out of that category with an unparalleled development during the latter part of the 20th century, creating its image partly based on the distance it established in relation to the other mezcals when dropping its generic name or term. The increasing popularity and media coverage of other mezcals after the various DO declarations now give them a measure

57 Based on 2006–2007 research and interviews by C. Illsley, Grupo de Estudios Ambientales (GEA, A.C.) with agave and mezcal producers, officials, retailers, and scientists.

58 Mezcals are produced in 26 of Mexico's 31 States. The most famous and explicitly recognized area is the Tequila region.

of prestige. While just five years ago there was barely any media attention for any mezcal other than tequila, now mezcal is increasingly present in major media. Mezcal bars (*mezcalerías*) have appeared over the last four years in the larger Mexican cities, and restaurants are beginning to include mezcals on their menus. Nevertheless, the size of mezcal industry is very modest compared to tequila: annual commercial production has not yet reached 10 million litres, while tequila reported over 280 million litres for the year 2007.

While tequila is globally well-established in formal markets, and much of it is exported, only a part of the mezcal production flows through commercial market channels and little is exported. Most of the best quality mezcal is still small-scale artisanal production from rustic installations in remote, poor communities and does not go beyond regional markets. Even though vertically integrated industrial mezcal enterprises are beginning to sprout in different parts of the country, following the tequila model, bottling and commercialization are still generally carried out by small to medium intermediaries who buy up and blend the local productions from the scattered distilleries of small producers. For many poor peasant families of the dry tropics agave and mezcal represent a very important, even if meager, source of income. Because mezcal complements their subsistence economy; *mezcaleros* are among the few members of the poor and extremely-poor communities who do not need to migrate in order to maintain their families.

There are no reliable statistics on the total number of families and extent of land involved in the production of mezcals at national level. Where statistics do exist, they usually consider only cultivated agaves and registered mezcal within the GI protected areas; this excludes a great number of producers and regions. Throughout the formally protected regions, it is estimated that 90,000 farming families are involved in the production. A field count of distilleries, most of them small, conducted in 2004 within the GI protected area (Denomination of Origin Mezcal, hereafter DOM, for its initials) found 130 marks and more than 600 operational distilleries which created over 5,000 jobs every year (SNMM 2006). The author's several years of field experience indicate this to be a very conservative estimate, and that the figures are actually much higher.

State	Distilleries*	Jobs/year	Bottling plants	Marks	Hectares Agave	Mezcal production (capacity litres/year)
Durango	50	500	10	15	3 941	360 000
Guerrero	180	900	3	10	9 008	800 000
Guanajuato	1	10	1	2	1 000	50 000
S. Luis Potosí	3	45	3	12	2 923	400 000
Zacatecas	8	80	6	9	16 890	1 500 000
Tamaulipas	3	45	2	2	1 018	120 000
Oaxaca	380	3 700	55	80	21 520	2 500 000
Total	631	5 270	80	130	56 300	5 730 000

Source: SNMM 2006.

*Only 47 of these are certified under the DOM (2007).

Technological differences mark a significant difference between tequila and other mezcals. The difference in volumes and production costs make it very hard for the products to compete in the same market niches.

Elements for differentiation of Mezcals are numerous and include:

- Geography
- Species used (single or combined)

- Cultural aspects of the producers (ethnicity and history)
- Agro-ecosystems or microclimates where the plants are produced
- Process of elaboration:
 - type of oven (pit ovens, steam ovens, autoclave)
 - instruments for crushing (axes, stone mills, mechanical mills)
 - fermenting (stone, wood trunks, animal hides, wood barrels, plastic or stainless steel tanks)
 - distilling (tree trunk, arab copper, modern stainless steel)
 - time and process for aging (ceramic, glass, wood recipients)
 - flavouring (insects, fruits, seeds, meats, artificial products)

Geographical Indication protection

Mexican Law for Industrial Property (LPI) recognizes a GI as a Denominación de Origen (DO) and defines it as “the name of a geographical region of the country used to designate an authentic product whose quality and characteristics are due exclusively to that natural and human environment”. The DO is the property of the government that grants its use for periods of 10 years, after which it can be renewed. Another legal form of intellectual property protection which can be linked to a territory and a product is a collective trademark. The applicable Mexican regulations recognizing the distilled agave and related spirits can be found as table A in the annex.

By law, DOs and other forms of Intellectual Property are declared by the Mexican Institute of Industrial Property, a decentralized agency of the Ministry of Economy. After the official Declaration there is a period for the conformation of a Regulatory Body and the establishment of an Official Norm, which sets the rules within the protected region. The State thus deposits the responsibility of enforcement of the standards and other laws and regulations applicable to the DOs onto a private enterprise, the Regulatory Council, which trains its own certifiers and establishes costs for complying with the Official Norm. The Council must be approved by the official Mexican Entity for Accreditation (EMA) and the rules have to comply with the official Sanitary and other related Norms.

In order to be certified to use the DO, any agave producer, distillery, bottling and commercializing enterprise must be registered and certified by its regulatory body and thereafter every certified batch of product must be overseen by a certifier. Every distillery must establish a small laboratory and implement a monitoring system to trace each batch until it is bottled and a limited number of certified laboratories in the country test the regulated parameters. If the mezcal meets all the requirements a label issued by the Regulating Council may be placed on the bottle. Under no circumstances may the words *tequila*, *mezcal*, *bacanora* or *sotol* be legally used otherwise.

Exclusion and legitimacy of the delimited area

One of the main objections to the DOM, stated repeatedly in the interviews, is confining the use of the term Mezcal to an inadequately defined region. Mezcals are produced in 26 States while only 7 are protected under this name; the Mezcal area does not correspond to a Geographical or cultural region; instead it includes many very varied regions, in some cases defined by political limits that exclude many traditional mezcal regions and include non-mezcal regions. Tequila, bacanora and sotol regions are much better defined yet paradoxically they cannot use their generic name. Producers in states with no sort of protection must decline the use of the term mezcal and refer to it as *agave distillate*, with clear commercial disadvantages.

A number of states have expressed their concern with the legitimacy of this exclusion; some have lobbied and two have been accepted. Eventually all excluded states could come under protection. Yet it seems an unnecessarily long and very costly route that could be avoided with a thorough revision of the declaration and especially with the development of a sound GI system, which could establish subregional DOs, maintaining the term *mezcal* as the generic umbrella to cover all, including tequila, bacanora and perhaps sotol (Larson 2007; Valenzuela et al. 2007).

Institutional structure

The DO *Mezcal* extends over a very large area. Even though there are regional offices in each State, the main office in Oaxaca centralizes many decisions and processes. Therefore regulatory costs are extremely high and COMERCAM is unlikely to have the physical capacity to respond either to the demand for certifying or to attending the problems that arise over such a widespread and diverse region (Larson 2007). Tequila also extends over a rather large region that covers various states. Also, the time frames for attending certification petitions have been reported as too long, affecting the business of distilleries. The difficulties to coordinate with other government agencies are limiting the effective capacity to control adulterated beverages from appearing on the market.

Costs: money and time

Certification with the regulation councils requires considerable paperwork and significant costs, including travel and food expenses of the certifiers and each certified process.⁵⁹ All of these can add up to 400% or more of the annual income of an average small-scale *mezcaleros*.⁶⁰ The costs for certification automatically exclude poor *mezcaleros* unless they are organized in cooperatives, and even small cooperatives cannot meet the costs without government subsidy. In an interview with a COMERCAM official, costs were singled out as the main problem for compliance to the DOM.

Compromise of quality standards

The institutions established to manage DO quality parameters tend to homogenize the product, based primarily on the scientific knowledge about the chemical properties of tequila. Hardly any research has been done on the chemical composition of other agave species and mezcals, which vary considerably, hence the difference in flavours and aromas from one species to the next. The result is that producers claim that it can be difficult for the different mezcals to meet the imposed standards. In some cases the only way to stay within the established parameters is by altering the process in several ways, such as diluting with water, resulting in a significant loss of product characteristics and diversity.

The parameters do guarantee basic sanitary requirements, but do not adequately address quality issues, in particular the sensorial aspects and thereby exclude some quality-oriented producers with possibly too-strict limitations on components such as methanol.⁶¹ The concepts of quality and good practices held by prestigious *mezcaleros* and connoisseurs can be very different from those set by COMERCAM (Pérez 2007). The newer DOs (bacanora and sotol) have adjusted some of their standards, as a result of empirical experience and further research with their species.

Basic standards for alcohol content (35–55 proof), methanol, acidity, other alcohols and dry extracts have been established by the various regulating councils. Tequila altered its quality standards in 1970 to allow the use of up to 49% non-agave sugars in the processing, thus facilitating less costly and larger commercial output of its product, especially for the less quality-conscious consumer. Some of the other mezcals appear to be following this tendency.

59 COMERCAM must be paid for each one of its services, which include: Registration of Plantations; Technical Compliance to Official Norm; NOM Certificate; Simultaneous Bottling Certificate; NOM Batch Certificate; Certificate for Export; Determination of factory viability; Permit for commercial transaction; Special Verifications; etc.

60 Interview with Moisés Calzada, producer of *Mezcal Sanzekan*.

61 Interview with Cuauhtémoc Jacques, *mezcal* technology researcher in Tamaulipas.

Product homogeneity and reduction of quality standards can be accepted by consumers in mass markets. This may not be as much of an asset in differentiated markets, where products need only meet a basic quality standard and any uniqueness can be a positive asset. Proposals to change current regulations to allow 49% non-agave sugars in DOM (Gaceta Parlamentaria 2007) and other additives (glycerin, caramel, wood extract, syrups), without mechanisms to distinguish differences in qualities can represent considerable commercial disadvantages for high-quality producers. These initiatives alter the original recipes for mezcal and have spurred heated discussions and divisions among *mezcaleros*, COMERCAM members, and even consumers.

There is a lack of “intermediate technology” research as increasing economic and human resources being dedicated to technological research, especially for tequila. Yet it is all large scale. Little if any is directed at improving the small and medium size industry. A great deal could be learned from the institutional and quality arrangements of other small but efficient and technified distillers of the world (i.e. Grappa, Schnapps, etc).

Economics and marketing

Even though brands of mezcal are increasing, there are still very few to be found in national supermarkets or liquor stores (2–5 compared to 20–50 tequilas on average in a recent survey). COMERCAM is actively supporting a series of events to promote mezcal in the domestic and global markets. Mezcal now has a presence in fairs, contests, and international gastronomic and beverage events and some private firms are also promoting it. The marketing costs are considerable and the time frame for success is expected to be a long one.

Box 2 *Production characteristics and costs*

There are three basic types of mezcal producers (SNMM 2004; Colunga et al. 2007):

1. **Rustic producers** use a wide array of agave species, wild or cultivated on very small scale; their process is very similar to that of 400 years ago, using rustic installations in the mountains, close to sources of water: baking takes place in pit ovens with firewood, stones and earth; trituration is done with axes or animal-drawn stone mills; fermentation in animal hides, cement or stone tubs or wooden vats and distillation in tree-trunk, clay, or cooper stills. They produce up to 1,000 litres per batch and between 5 and 10 batches per year, mostly during the dry season. They hire on average 6–10 people and their production costs are between 40 and 80 pesos/litre. They are probably the most numerous, and live in the western States of the country.
2. **Colonial Hacienda** installations are used in the northern States for processing wild and semi-cultivated agaves and steaming them in cement ovens; trituration uses animal force to pull big round stone mills; fermentation in wood or stone tanks and distillation in Arab copper stills. They can produce from 10,000 to 20,000 litres per month, if they work several turns per day. Production costs are reported to average at ca. 33 pesos/litre.
3. **Modern** production methods are relatively industrial processes that are the domain of larger enterprises whose methods differ primarily in their use of the most advanced technology. Larger mezcal producers are mostly located in the Tequila region, but are increasingly expanding into the central Valleys of Oaxaca. They depend on cultivated *A. tequilana* and *A. angustifolia* in medium and large monoculture fields, controlled with fertilizers, herbicides and pesticides. Agave is steamed in autoclaves and steam-pressed mechanical mills extract sugars. Fermentation occurs in stainless steel containers, using commercial yeasts and modern stills, with controls for temperature; artificial additives are often used for colour and flavour. Production is typically continuous and can be thousands of litres per month. The production costs for these methods are lowest of all as there is greater scale, more technological efficiency, and less human labour.

It is difficult to establish a clear correlation between mezcal price behaviour and the DO, due to other factors that are involved, such as a change in taxes and influence from the tequila industry. Most brands, however, continue to perceive themselves as the economic “poor cousin” of tequila. Yet there is considerable anecdotal evidence that quality mezcal has experienced substantial price increase after the DO. One exporter reports an increase of 30% and relates it directly to the DO and to the 100% agave quality. Prices for some bottles now reach over the US\$ 100 mark thereby rivaling elite types of tequila. In Guerrero quality artisan mezcal has doubled its price in the national market between 2002 and 2006.⁶² Bacanora and Sotol are geographically close to the United States, which is apparently giving them certain market advantages.

Table 2 Mezcal price fluctuations		
Price fluctuation of bottled Oaxaca <i>espadín</i> mezcal (standard 750 ml, mezcal joven, before taxes at factory)		
Year	Domestic price (US\$)	Export price (US\$)
1996	2.43	3.0
1998	2.14	4.0
2000	7.70	17.0
2002	7.44	n.a.
2004	6.96	n.a.

Sources: Chagoya, 2004. Anexo Estadístico del Sexto Informe de Gobierno de Diódoro Carrasco Altamirano (1998) y del Segundo Informe de Gobierno de José Murat Casab (2000).

Volume produced

Official statistics show an initial dramatic threefold increase in national production during the first six years of the DOM, from 2.8 million litres per year in 1994 to roughly 8.5 million litres in 2000. In that period, domestic consumption growth is more modest with increasing amounts going to exports. COMERCAM started formal certification in 2004, and at that point annual production shows an abrupt decrease to less than one million litres, falling back to 1994 levels; COMERCAM statistics state the figure even lower, to less than half a million litres for 2005 and 2006. This is likely due to two developments: first, a spike in demand from the tequila region causing an increase in the price of agave and much less availability (Chagoya 2004). Second, the low figures likely reflect the reduced official participation of producers since only certified DOM mezcal is measured and can now use this name. This is likely temporary, since statistics reflect the very slow process of certification, rather than real production.

In contrast, tequila (registered as DOT since 1977) production has grown steadily, from close to 40 million litres in 1995, to over 280 million litres in 2007 (official CRT web page). The official data for production of either sotol or bacanora is not available.

62 Albino Tlacotempa, mezcal Sanzekan, personal communication 2007.

Year	MEZCAL			TEQUILA		
	Production (million litres)	Exports (million litres)	Exports (US\$)	Production (million litres)	Exports (million litres)	Bulk exports (million litres)
1994	2.9	0.70	1 274 000			
1995	4.1	1.1	1 392 256	104.3	64.5	58
1996	5.9	1.9	5 580 000	134.7	75.2	66.3
1997	7.2	3.3	11 480 000	156.5	84.3	73.7
1998	8.5	4.0	16 000 000	169.8	86.5	73.6
1999	9.0	4.7	23 500 000	190.6	97.3	82.8
2000	8.4	4.7	79 900 000	181.6	98.8	81.3
2001	n.a.	n.a.	n.a.	146.6	75.6	56.4
2002	n.a.	n.a.	n.a.	141	88	66
2003	n.a.	n.a.	n.a.	140.3	101.6	72.1
2004	3.00	0.7	6 600 000	176	109	75.7
2005	3.1 (0.43)*	0.35	7 000 000	209.7	117	76.5
2006	3.1 (0.49)*	0.2	2 161 000	242.6	140	90.4
2007				284.2	135.1	78

Sources: Anexo Estadístico del Sexto Informe de Gobierno de Dióodoro Carrasco Altamirano (1998); Segundo Informe de Gobierno de José Murat Casab (2000); Informe de Gobierno Ulises Ruiz (2006).

* COMERCAM web page 2007; Consejo Regulador del Tequila web page 2007.

Distribution of benefits

There is no provision for benefit sharing along the chain. In the mezcal region of Oaxaca, as production and commercialization is concentrated in fewer and economically stronger hands, reverse leasing is growing and small agave producers are being pushed out and into migration (Angeles 2007). Small *mezcaleros*, unable to pay certification costs, are also leaving.⁶³

On the other hand, the funds available from the Federal budget for developing the maguey-mezcal chain are quickly being taken by the better-organized groups and entrepreneurs with the capacity to access these funds, even if they are newcomers to the industry.⁶⁴ There is concern that much of the funding is going to commercial interests and bottling enterprises that sometimes buy mezcal cheaply from the smaller producers that are unable to certify themselves and reap the profits. As their business grows, there is also the threat that these will eventually establish their own industrial stills and thereby push the original small producers out of business.

Labelling, consumer confusion and marketing

The similarities and differences between mezcal, tequila, bacanora, sotol, raicilla and agave distillate are not at all clear in the minds of consumers or even retailers and restaurant owners. GIs can benefit consumers in the sense of providing information that is regulated for accuracy,

⁶³ Testimonies from two persons interviewed.

⁶⁴ Reportedly because of access to information and contacts within the agencies assigned to distribute funds.

but in this case labels offer very little help. Consumer organizations are also beginning to demand labelling with precise information on the composition of the product, especially the non-agave sugar content.⁶⁵

Legal information required for the consumer is very scant; there is no obligation to label the ingredients used. For artisan 100% agave *mezcaleros* there is a commercial disadvantage in relation to producers who add other substances. The greatest loser is the consumer, who may spend time and money before finding or guessing the spirit he wants (Larson 2007) or be disappointed on the first attempt.

Scotch whisky has greatly benefited from marketing quality differentiation. It has been proposed that the complexity of mezcal could allow it to follow whisky into finer forms of differentiation, offering consumers very precise information through labelling (Larson et al. 2007; Larson 2007). This could become a special market niche opportunity. Elements for differentiation include: geography, species used (single or combined), cultural aspects of the producers, and process of elaboration. An example of this proposed parallelism is shown in the following table 4.

Scotch whisky reference	Mezcal	Description ⁶⁶
Pure malt whisky	100% Agave mezcal	Type I mezcal, 100% agave (NOM 070)
Scotch whisky	Mezcal	Type II mezcal, 80% agave (NOM 070)
Blended malts	Blended Mezcal	Mezcal from different agaves/ distilleries
Single malts	Single Mezcal	Single distillery/perhaps single batch
Origin single malt (i.e. Speyside)	Mezcal Papalote del Chilapan	Specific agave/distillery/batch/ region

Source: Adapted from Larson 2007.

Consequences of a Geographical Indication

The DO protection has brought a number of benefits. One of the reasons to protect the names was to avoid their unauthorized use in other parts of the world, whether for production or commercialization. One example, when a South African firm started production of “tequila”, the DOT facilitated international legal protection and led to the name in South Africa being changed to Agava.⁶⁷

The declaration of a formal DO appears to have increased both the domestic and the international interest in mezcals and is giving them prestige. Consumers claim to have more confidence that a certified mezcal will not be adulterated with dangerous substances. Their inclusion in the Denomination of Origin is allowing the national recognition of some mezcal regions that were previously ignored by the market.

⁶⁵ Interview with Director, *El Poder del Consumidor*, AC (Calvillo).

⁶⁶ Only the first two are considered in the DO. The others are being voluntarily implemented by some producers.

⁶⁷ See <http://www.agavedistillers.com/product/>.

Participation

The process for declaring this protection was born of political and commercial interests.⁶⁸ The actual legal procedures were carried out by the Ministry of Finance. A commercial formulation was the basis of the DOs and neither the smaller or rustic producers nor the environmental and cultural sectors were included in the formulation. The construction of DOT has resulted from a complex series of power struggles among political and economical groups (Rodríguez 2007). In the case of DOM, the demarcation is also politically-oriented as there is no known baseline study to support the declaration, indicating the absence of potentially important information about legitimate users, the taxonomy, distribution and natural history of the species, the delimitation of the region, the impacts on the various traditional socio-cultural methods behind mezcals and about the biodiversity and environmental impacts. Similarly, the process for adapting or changing regulations is also complicated and includes no strategy for broader stakeholder participation.

The state owns the DOs and the regulating council members control it. In theory, this represents a reasonable structure to ensure that the GI is controlled at the public level. Yet many of the social conflicts in the tequila protected area have resulted from the exclusion of the agave producers in the power structures of the CRT (Torres 1998; Luna Zamora 1991, 2007; Bowen and Valenzuela 2006). DOM seems to be following a very similar path, as in the actual structure and composition of COMERCAM there are no provisions for the participation of smaller producers who find it difficult due to costs, access to information, and cultural differences.

Without an effective means of participation, it is likely that some of the new benefits of GIs will not accrue to the many traditional farmers and mezcal makers who have mostly small artisanal operations and that new regulations may further marginalize them if only the bigger industry members dominate the discussions.

Traditional knowledge and cultural rights

Mezcal agaves, as they exist today, are the result of some 10,000 years of interaction of the plants and the human groups who have selected and improved them. At least 260 local names in 27 languages have been registered for the different species of agave in relation to mezcal in Mexico.⁶⁹ The names that have survived to this day are also related to knowledge on ways to manage and use the plants. Mezcals have been invented, maintained (even under prohibition) and developed mainly by the ethnic groups that name them. Some *mezcalero* families have inherited the trade for generations dating back hundreds of years.

Though it is not possible to find a complete inventory of the different mezcals, it is believed that over one hundred still exist.⁷⁰ Yet these names for agaves and their management practices as well as the diversity of mezcals are not recognized by official regulations. Colunga et al. 2007 and others note that the time and knowledge invested in improving the plants and creating the products has not been adequately recognized or assessed.

Biodiversity knowledge and conservation: sustainable resource use

Only five species of Agave are explicitly recognized in the DOM declaration. Thirty seven more mezcal Agave species have been identified, within and outside the DOM protected area (Colunga et al. 2007). Something similar occurs with the DO Tequila, as it has been built on the exclusive use not only of one species, but of one variety of *A. tequilana*, with active elimination of

68 The original initiative came from Oaxacan politicians who then invited industrial entrepreneurs from Zacatecas, Durango and San Luis Potosí and eventually Guerrero to participate. Guanajuato and Tamaulipas were later included under the pressure of politicians from those States. Filiberto Saldaña, personal communication.

69 Colunga et al. 2007 note Mexican languages that include common names for agaves in relation to distilled beverages: Chinanteco, Otomí, Chontal, Popoloca, Cochimi, Seri, Cora, Tarahumara, Cuicateco, Tarasco, Huasteco, Tepehuano, Maya, Tlaxcalteco, Mayo, Triqui, Mazahua, Tzeltal, Mazateco, Tzotzil, Mixe, Guarijío, Mixteco, Zapoteco, Náhuatl, Zoque and Spanish (Colunga et al. 2007).

70 Some of the different types of mezcal are: tequila, bacanora, sotol, San Carlos, tuch, raicilla, papalote, tobalá, arroqueño, raicilla, minero, comiteco, tonayá, sihuaquío, toch, de pchuga, tobasiche, cincoañero, arroqueño, huitzila, barranca, tuxca, quitupan, tepeztate, madrequishe, espadín, barril, torrecillas, chichihualco, petaquillas.

the others.⁷¹ This lack of consideration for the existing biological diversity – and the consequence of such exclusion – illustrate the shortcomings of not having a participatory process that includes all stakeholders (e.g. environmental and cultural) in the drafting of the DOs and their NOMs.

Only recently, CONABIO (National Council for Knowledge and Use of Biodiversity) started a project to identify the species used for mezcal production and to characterize and map the mezcal-regions of Mexico (Larson 2006, Ocaña et al. 2007).

Agave species used for mezcal may be collected from the wild or cultivated. Only two species are cultivated intensively: *Agave tequilana* and *A. angustifolia*. All others are collected from their natural habitats, as non-timber forest products, or are in incipient processes of domestication, grown on a small scale, sometimes in cornfields or in home gardens (Illsley et al. 2007).⁷²

As the industry grows, there are two main tendencies in regard to diversity: an expansion of the area covered by the most commercial (cloned or cultivated) species and the diminution, with a potential threat of extinction, of many of the endemic and micro endemic species, in particular those that reproduce only by seed. In Oaxaca, the state with the highest levels of biodiversity in the country, deforestation for agave plantations is already a serious concern for environmental authorities.⁷³ On the other hand, there are several plantations in the process of becoming organic and it is also becoming evident that wild agaves can be managed sustainably as non-timber forest products (Illsley et al. 2007).

Box 3 *Tequila development: great growth and great challenges*

Modern tequila history has been characterized by cycles of surplus and shortage of agave, as well as by tension and conflict between the agave growers and the tequila companies. After a period of strong increases in global markets (1970–1999) and ever tightening supplies, a dramatic decline due to the loss of close to one fourth of the production to diseases (1999–2002)⁷⁴ created a shortage of blue agave. In response, hundreds of tons of other agaves, different from the tequilana species, were brought in from other non DOT regions between 1999 and 2002. To meet the crisis, standards were also lowered to allow the addition of up to 49% non-agave sugars. Later the addition of flavours and other additives were also approved. During this time, acute social conflicts rose between farmers and distilling industries over agave prices, staging the so-called Agave war (Torres 1998).

Industry has consolidated a system of intermediaries (coyotes) to control the supply and price of raw material; they also began establishing new forms of contract, turning more and more to reverse-leasing of the land (Bowen & Valenzuela, 2006), thus excluding many farmers from any significant control in the productive chain. Transnational corporations have been steadily increasing their control over the domestic industry. In 2007 four firms: Cuervo (United Distillers and Vintners), Sauza (Fortune Brands), Herradura (Brown Forman Co.) and Cazadores (Bacardí) control approximately 70% of total tequila market (CNN 2007).

The United States has become the largest and most profitable market for tequila, and market segmentation toward premium brands has strengthened this. A recent controversy emerged regarding the selling of tequila in bulk to United States bottlers with concerns arising of both loss of control as well as re-distribution of value with producers increasingly becoming only raw material suppliers. A 2006 announcement settled the dispute in favour of the United States firms. Luna (2007) notes that it is paradoxical that a public State-protected good such as a GI, should continually succumb to changes in the locus of power from the majority of people and stakeholders of the DO (tequila in Mexico) to the greater benefit of a few transnational corporations.

71 The species *agave tequilana* includes several varieties. Some still exist: azul (blue), variegata, siguin, pes-mulae, gentry, subtilis, zopilote (Valenzuela and Nabhan 2003).

72 Biological differences are significant for agave production and conservation, especially reproduction traits: while some only reproduce by seed, others have asexual propagation methods. (Eguiarte 2007).

73 Interview Regional Head of the National Forest Commission CONAFOR (S. Anta).

74 Cloning has led to a minimum of genetic variation which has made blue agave very vulnerable and highly dependent on agrochemical input (Valenzuela and Nabhan 2004).

The long reproductive cycle of agave (5–12 years) can easily result in boom and bust cycles that damage the fragile economies of poor rural areas. A shortage in the tequila regions during the 1990s led to over planting in nearby states. It has been reported that in the period of 1999–2003 roughly 300,000 tons of espadín agave were trucked from Oaxaca to the tequila industries in Jalisco (Chagoya 2004). With the tequila shortage now over, Oaxaca's excess capacity has dramatically reduced the local prices paid to producers; Oaxaca expects to enter the boom-bust cycles Jalisco has known for decades (SNMM 2006).

Conclusions

Mezcal cannot be perceived and treated merely as merchandise. Tangibly and intangibly, they represent a very important and uniquely Mexican cultural patrimony. To conserve, develop and protect their diversity and complexity in globalized markets is a challenge that requires and deserves special attention from all the stakeholders and multiple sectors of society.

It is impossible to deny the economic success of the tequila model. However, there are important lessons to be learned, in particular regarding some of the environmental and socioeconomic issues. On the other hand, nearly every successful new spirit that has come onto the market in the last decade has done so as a highly differentiated and small-scale (at least in perception) product. This includes new whiskeys, bourbon, rye, premium vodkas, etc.

While Tequila has set a strong economic example, it may not be possible to follow that extraordinary pattern of growth. However, there is enormous potential to structure mezcal's growth to benefit the greatest number of people within the GI and to ensure its cultural and ecological sustainability as well. In visualizing the future, there are at present two contrasting tendencies:

1. One tendency is towards large-scale, more industrialized production, following the current tequila model. Fast, short-term growth and the possibility of lucrative exports are the most positive aspects of this tendency. The danger of monoculture dependency, loss of biodiversity, and the loss of diverse localized traditions, loss of local jobs and the concomitant possible increase in migration are among the risks of such an approach.
2. A growing minority believe there is a unique opportunity in a more differentiated high-value approach that would promote the natural and cultural diversity of mezcal and their regions under a revised GI scheme that responds better to the geography, the specific characteristics of the products, their tradition, authenticity, quality and reputation. The positive aspect of this tendency is a more likely conservation of biodiversity and cultural traits, acknowledgement and strengthening of traditional legitimate *mezcaleros*, supporting small to medium-scale production systems, and marketing to higher value channels with single region limited productions. Slower growth and reduced likelihood of large-scale market impact are among the risks of such an approach.

In Mezcal's features of diversity and complexity lie both its greatest potential and its greatest risk. Clearly the economic and rural development benefits of each approach are likely to be distinctly different. The first approach is likely to have higher cultural and environmental risks and is more likely to concentrate economic benefits among larger firms. The latter approach is more likely to provide more widespread benefit to a broader set of small, medium and large enterprises.

Annex

Table A. Distilled agave and related spirits in Mexican official regulation

Permitted name	Regulating instruments and declaration date	Permitted sources	Delineated region	Regulatory body
Tequila	DOT (1974); NOM (1994; 2005) Recognized by NAFTA (93), WIPO (95), EU (97)	<i>Agave tequilana</i> blue variety	181 municipalities of Jalisco, Nayarit, Michoacán, Guanajuato, and Tamaulipas. Region roughly coincides with natural species distribution and long established tequila production.	Consejo Regulador del Tequila, CRT (1993)
Mezcal	DOM (1994) NOM (1994; 2001; 2003) Recognized by NAFTA (1993) WIPO (1995) EU (1997)	<i>Agave angustifolia</i> , <i>A. asperrima</i> , <i>A. weberi</i> , <i>A. potatorum</i> , <i>A. salmiana</i> var. <i>crassispina</i> and others	6 districts of Oaxaca, all of Guerrero, Zacatecas, San Luis Potosi and Durango, one municipality of Guanajuato, and eleven of Tamaulipas. Vague. Covers large area; does not coincide with natural species distribution or mezcal regions, though it includes some, undifferentiated.	Consejo Mexicano Regulador de la Calidad del Mezcal, COMERCAM (2003)
Bacanora	DOB (2000) NOM (2004)	<i>Agave angustifolia</i>	35 municipalities of Sonora. Coincides with long established bacanora production.	Consejo Sonorense Promotor de la Regulación del Bacanora (2006)
Raicilla	Collective mark	Agave defined only by its common name: raicilla	7 municipalities of Jalisco. Coincides with raicilla process; species not well characterized.	Consejo Mexicano Promotor de la Raicilla
Sotol	DOS (2004) NOM (2004)	All Dasilyrion species except those under special conservation status	Chihuahua, Durango, Coahuila. Very roughly coincides with distribution of species and stool production.	Consejo Regulador del Sotol (2004)
Agave distillate	NOM (2006)	Any species of agave	Any region not under a DO. Large area that leaves many natural species distribution and mezcal regions unprotected. Includes elements of market disadvantages.	No regulatory body exists

Note: DO – Denomination of Origin NOM – Mexican Official Norm.

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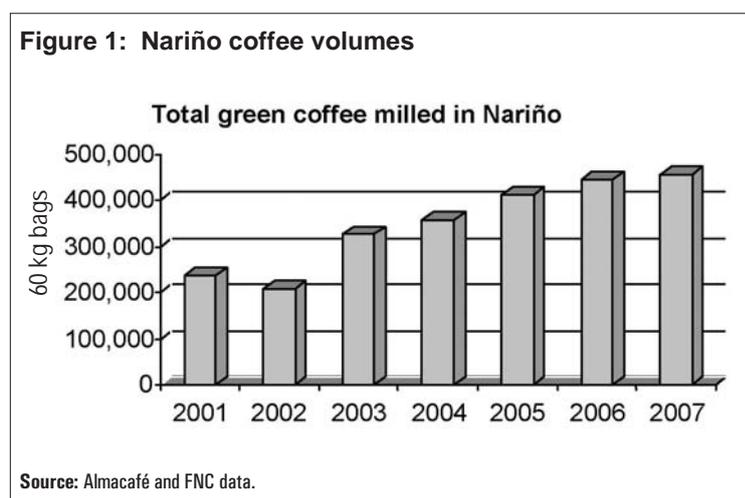
The Case of Café Nariño, Colombia

Daniele Giovannucci and Luis Fernando Samper⁷⁵

Background

The region of Nariño in southern Colombia is a relatively remote area in whose mountainous region approximately 40,000 farmers use very traditional methods of coffee production and primary processing. Though distant from markets and large urban centres, their output has a widely recognized and unique flavour that have distinguished it and provide a premium-priced product for one of the country's less developed rural regions. In 2007, coffee milled in Nariño

reached almost 450,000 bags (60 kg) of green coffee, almost twice the amount at the beginning of the decade and considerably more than 2,000 bags exported as Nariño in 1986.



Colombia is well known for its coffee in part due to its institutional pursuit of a high and consistent level of quality in its offerings. It is not, however, well known for the uniqueness of its regional geographical production. From the 1960s well into the 1990s the National Federation of Coffee Growers (FNC) fostered policies of homogeneity that served them well as they partnered with large commercial brands that preferred such reliability.

This was quite an achievement considering that Colombia does not have homogenous or large-scale production systems across its rather diverse coffee lands. Most Colombian growers produce very small quantities that have to be consolidated into commercial volumes. The consequent blending of qualities complies with the requirements of many international buyers for consistency. However, it can also serve to reduce the likelihood of coffees with unique characteristics to emerge.

By the mid 1990s several of the unique agro-ecological zones, such as Nariño and Cauca, were already well recognized and being sought for their particular flavour profiles. Recognizing the renewed interest among coffee roasters and the potential of distinct characteristics that result from the natural conditions of different coffee regions, Colombians in recent years have celebrated these differences and are supporting efforts to get unique regional Colombian coffees into the marketplace.⁷⁶

⁷⁵ Colombian Coffee Growers Federation, Director Intellectual Property Department and president of OriGIn, the international network for Geographical Indications.

⁷⁶ A more comprehensive discussion of the reasons behind this new approach can be found in "Juan Valdez, the Strategy Behind the Brand", published by Ediciones B in 2007.

Thus, the combination of natural conditions and traditional skills are giving recognition to the origins and are becoming one of the most important aspects of adding value, especially in some remote regions. The recognition and higher prices are incentives that not only help to ensure quality along the supply chain but also help distribute the benefits more equitably along the supply chain to producers.

Without adequate incentives, the coffee is a basic undifferentiated commodity and certain valuable origin characteristics can be lost in blends. In order to maintain its reputation, quality controls and traceability need to be in place to ensure consistency and to reduce the likelihood of fraud or the substitution of other lesser coffees. One of the stimuli for action was also the substantial increase of millings from Nariño as illustrated in figure 1. This suggested that more coffee was being described as coming from Nariño than actually produced in the region, and that the Nariño premiums had provided incentives to local traders and exporters to bring coffees from other regions.

Geographical Indication protection

To effect protection, the Federation has focused on a two-tier origin defence and implementation strategy: domestic and international. At the domestic level, it has secured a Denomination of Origin in Colombia for Colombian coffees. Regional efforts are also underway to help develop local capacity to identify their unique local characteristics wherever these are sufficiently present and they have a viable marketing potential. Although the international process to protect Colombian coffees is relatively advanced, a lot of work remains to be done at the domestic level.

At the international level, Colombia has been a leader among developing nations in ensuring its GI protection. It has obtained recognition for “Café de Colombia” as a Geographical Indication by registering it in different countries. This GI is registered as Certification Mark in the United States and Canada, as a Denomination of Origin in Ecuador and Peru, and as a Protected Geographical Indication in the EU. In fact, it is the first non-EU agri-food product to achieve such a registration.⁷⁷ Its Intellectual Property Department has also registered some of its unique logos or brands, i.e. Juan Valdez, as trademarks.

Institutional structures

To obtain legal GI status as a Denominations of Origin and protection for Nariño, a number of steps are required. First, the appropriate rules for using these denominations need to be drafted and approved by the stakeholders – mostly growers in this case – and then are presented to the Government’s Superintendencia de Industria y Comercio for its examination and approval. This includes demarcation of the territory and definition of the product and place of its production. The Federation, as the representative of the growers, not only prepares all the detailed legal requirements and documents, it also applies for delegation of the management responsibility and protection obligation. As such, the control of the Nariño designation, along with “Café de Colombia” and any other regional coffee name, comes under the Federation that will assure compliance with the rules that are drafted and approved.

The Federation has a key priority: the well-being of its producer members. Delivering a high-quality product to market and maintaining a consistent reputation that generates added value for producers is one of its most important tools to achieve its objective. This is a complex undertaking and the GI mechanism serves as one way to achieve this objective. The Federation has found that GIs serve to differentiate the coffee production and the market incentives i.e. greater demand and higher price, stimulate a higher quality of production in GI regions such as Nariño.

⁷⁷ PGI finalized in September 2007. Two other nations, Brazil and the United States, have already registered alcohol GIs (a more protected sector); this is the first in the agri-food category.

The Federation has an elaborate network and infrastructure to be able to implement and protect a coffee GI system. In addition to its representative bodies at the local level which include 353 municipal-level coffee committees and 15 regional coffee committees, it also has Cenicafé, its research and development branch. Cenicafé is a key component of this strategy, applying advanced science to demonstrate the differences between coffees coming from Nariño and those from other neighbouring provinces.

Using in-depth surveys and research Cenicafé has successfully identified 36 out of 1,050 chemical components that vary according to different growing environments. When plotted on a graph, it is easy to discern these specific components that are associated with a particular region and so a coffee can be readily differentiated, even beyond a professional taster's skills, and tested to see whether it meets the typical profile of that region (see figure 2). This technology, applied over the course of several harvests, can objectively isolate and identify coffees coming from neighbouring regions, which is a substantial advancement in both origin control and deterrence of potential infringers.

Laboratories, including those of FNC's Almacafé, contribute with a network of knowledgeable personnel to help ensuring that authorized GI producers fulfil their quality and traceability obligations.

Figure 2: Spatial graph differentiating flavour components of coffees from Cauca and Nariño

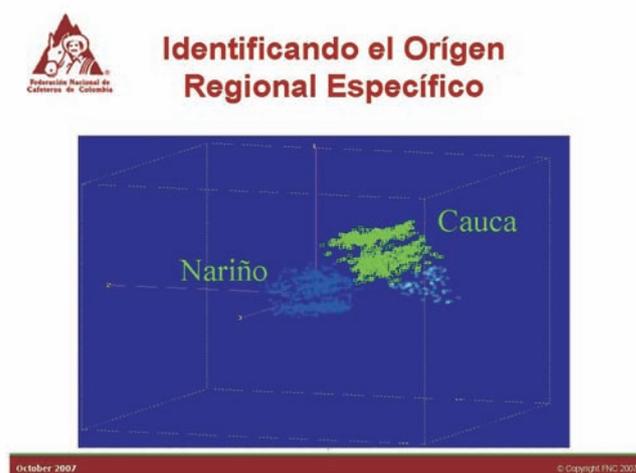
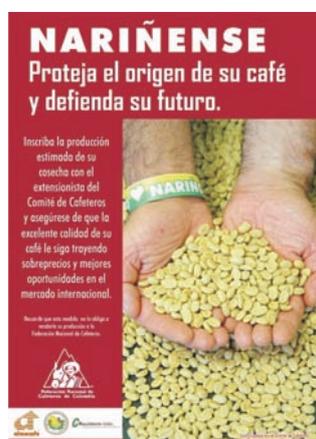


Figure 3: Promoting authenticity of the origin



Another key element to success in the implementation of the GI strategy is communicating to domestic millers, roasters, traders and exporters the importance of being truthful to clients, becoming long-term partners in the protection of an outstanding product. A communications campaign aimed at all industry members has already been launched. One feature is a poster that is widely distributed among the Nariño coffee region's coffee cooperatives (see figure 3).

Nariño's increased commercial popularity and discussions about its protection grew slowly since the late 1990s and in 2006 protection of the region took a more serious turn as the Federation began the process of helping it to define, demarcate and protect the origin. Even with the Federation's field organization systems in place, it has taken about two years to determine what the defined flavour profile and regulations will be so that they can be presented to local growers for their approval. Only after this considerable preliminary work can the registration procedures start. These are expected to take approximately half a year after which begins the process of applying for external recognition in other countries. The application to the EU for Café de Colombia took almost 30 months for final approval.

The costs can be considerable in terms of both time and money. Without any marketing, dissemination, or legal enforcement costs, it can take up to US\$ 100,000 to arrange the GI for one region,⁷⁸ not counting the time in the field of producers and other stakeholders in discussion. Significant resources are needed to further develop the participatory work with local stakeholders and for the implementation phases in individual areas of Nariño.

78 Includes technical work to substantiate differences, research and domestic legal fees. Ongoing costs for protection are not included.

The Federation has already determined that several other regions are sufficiently distinct to be individually marketed as GIs and will also require legal protection both at home and possibly abroad. In pursuit of these local distinctions, Colombia has been one of the pioneers in developing the technical work to scientifically distinguish their coffee flavour profiles and their corresponding geographical and cultural practices. This will enable the regions to have rational GI boundaries that transcend political boundaries in order to satisfy client expectations of a particular distinct flavour characteristics.

The Nariño GI faces an interesting dilemma in that its distinctive flavour profile is shared across the political boundary with parts of its neighbour state (Cauca) yet not shared with some areas of the State of Nariño itself. This raises the question of what are the requirements to be a Nariño coffee. The Federation has elected to test the theory that, to be successful, the GI must meet the expected flavour since that is the true source of value and not the name of the origin.

Therefore, they are working to define the Nariño GI primarily on the basis of its flavours and quality rather than on the basis of the politically demarcated region. This would require a distinct mapping that does not adhere to political boundaries and will require some difficult choices to accommodate those that are inevitably excluded. While certain categories or types of coffees will not be included and thus have a somewhat lower price, for others a maximum content could be permitted within the final preparation of what would constitute a Nariño coffee.

Having a local functional institutional system to facilitate cooperation and to help get agreement on rules and enforcement makes the difference between success and failure of the GI in terms of the important satisfaction and equitable treatment of its key stakeholders. This is why the final definition of the Nariño coffee growing zone requires an explicit approval from growers from the province, and even an accord with those of neighbour provinces such as Cauca.

These efforts also set the groundwork and facilitate the pursuit of the necessary legal steps for definition and protection of other regions. Clearly, the institutional structures to maintain the quality process and monitor or certify compliance are important but even more vital are the significant time, resources, and participatory political processes required to achieve the consensus that is needed so as to have effective definitions, regulations, and geographical delineations.

Economics and marketing

Nariño's differentiation as a unique origin became broadly evident in commercial terms around 1986–1988 when buyers began to seek the distinctive flavour profile available from the region. Pursuing protection as a GI stems primarily from a desire to distinguish uniqueness and market value and secondarily to defend the origin from potential abuse. However, original efforts to develop the GI were stimulated by the strong commercial interest of a large firm that was increasingly taking a dominant stake in the region's output. This natural market-based evolution is a rational and perhaps the most important driver for GI development.

The Federation recognizes that it can be very costly to broadly promote a GI directly to consumers (like it promotes "Café de Colombia") unless there are sufficient economies of scale, and acknowledges the need to work closely with the industry. Companies like Starbucks (see a list of such companies in the resources section) have demonstrated a vivid interest in coffees from this region, and their marketing efforts have contributed greatly to Nariño's name recognition in consumer markets. Roasters based in other markets have also become more interested in the Nariño name, thus further increasing levels of consumer recognition.

The economic benefits are clearly tied to the achievement of a particular high standard of quality. The formally defined standard to be met in order to be considered Nariño coffee – in addition to the boundaries of origin – is still in process of development and consensus and has not been formally established. Nevertheless, there is an informal buyer-driven understanding

that coffee has to be of high quality with the notable acidity that correlates with higher altitudes and soft, slightly sweet finish.

Farmers producing Nariño receive a significant premium that has ranged between 10% and 50% more for their coffee when compared with similar quality coffees from other areas. Once the rules for the Nariño origin are established, Nariño coffee growers will cease to face unfair competition from other growers, traders or roasters that incorrectly describe their coffees as “Nariño”. Thus, *bona fide* Nariño growers could feasibly get sustained higher premiums of 40% more than the average Colombian price, once these rules are established and implemented. Another economic advantage of this popular GI, is that most of its sales are via long-term contracts at a fixed price and so the volatility is considerably reduced. This consistent demand may be one of the more valuable contributions of a notable GI.

Consequences of a Geographical Indication

The formal recognition and the standards of the GI provide powerful support and consequently superior remuneration for Nariño coffees. These incentives not only help to ensure consistency and quality along the supply chain but also help distribute the benefits more equitably so that producers can benefit. In areas without quality incentives, it is easy for certain origins to be blended away or disappear and the product becomes once again a basic undifferentiated commodity. Standards and controls ensure consistent levels of quality and to reduce the likelihood of fraud or the substitution of other lesser coffees so as to maintain the reputation of the GI.

Even a formal legally recognized GI does not ensure or guarantee that benefits (i.e. increased income) will accrue to farmers or producers. This occurs mostly because of established democratic processes inside the producers’ own structure. The form of the legal protection is very important to help ensure a measure of equity for the producers. Since the GIs are held as public trusts (using certification marks and PGI in EU), there is no possibility of granting private exclusivity or selling the name as could be possible with a trademark.

Ensuring benefits for the producers means achieving a balance between market demands and local capacity. Some small-scale changes and investments have been made but most production is still conducted according to traditional methods. Defining the standard is a balancing act between the perceived needs of the industry and consumers abroad and the realistic capabilities of farmers and local organizations. The Federation and local firms have a number of basic controls in place to ensure a measure of traceability,⁷⁹ but more independent inspection and auditing may be required in the future to protect the integrity of the product and its name.

The indirect benefits of having the GI have been modest so far. The most important is a solid and long-term relationship with the primary buyer and there have also been some investments in small productive infrastructure to improve the coffees. Noticeable tourism or other new products that could benefit from the GI reputation are part of a longer term vision for the region. The Quindío coffee region further north has transformed its local coffee culture into one of the nation’s most popular rural tourist destinations with more than 500,000 visitors per year creating numerous economic opportunities. The considerable commercial success of the coffee crop has stimulated interest in GIs from other agri-food industries in Colombia, however preliminary discussions indicate more of a marketing interest and appear to not benefit from an understanding about the structures and steps necessary to ensure positive and equitable development in those other sectors.

79 Inventory of fincas and volume is then traceable (paper records) in warehouse.

References and resources

For Colombian Coffee and PGI – PDO information see www.cafedecolombia.com

For GIs general information and related documents see www.origin-gi.com

For commercial references to Nariño coffees see following links (as of April 2008)

Starbucks

<http://www.starbucksstore.com/products/shprodde.asp?SKU=639200>

Martinez Coffee

http://www.martinezfincoffees.com/coffees/specialty_coffees/colombian_narino.html

Holland Coffee Group

www.hollandcoffee.com/colombia.htm

Sweet Maria's

<http://www.sweetmarias.com>

The Coffee Bean & Tea Leaf

<http://coffeebean.com/search.aspx?keywords=nari%c3%b1o>

Gimme Coffee

http://gimmecoffee.typepad.com/gimme_coffee/

Terroir Coffee Company

<http://www.terroircoffee.com/>

Bucks County Coffee Co.

www.buckscountycoffee.com/home.html

Geisha Coffee Roaster

<http://www.geishacoffee.com/colombian-supremo-coffee-colombia-p-33.html>

Wilson's Coffee & Tea

www.wilsonscoffee.com/coffeelist.html

The Coffee Roaster

<http://www.thecoffeeroaster.net/menu.html>

The Case of Café Veracruz, Mexico

Ricardo Juarez⁸⁰

Background

Veracruz is the oldest coffee-producing state in Mexico. During the colonial era, all incoming goods from the Atlantic side travelled through Havana and entered Mexico through Veracruz. The first coffee to be planted in Mexico arrived from Cuba to the Coatepec area of Veracruz in 1780. During the late 19th century, coffee became an important crop. Initially, coffee was secondary for many large haciendas that were mainly interested in sugar cane, but they sold part of their lands to smaller farmers and the large plantations were further fragmented after the Mexican Revolution into today's small and mid-sized properties that dominate the region.

The region's climate and soil conditions are very suitable for the production of high quality coffee that eventually displaced other crops such as sugar cane, cattle, orange and tobacco. The historic reputation of Veracruz coffees peaked from the 1880s to 1946. For instance, in 1883, Café Veracruz was considered among the mildest in the world (D'Olwer 1974). In post-war United States, until 1946, coffee prices were fixed by the Government and the price for Veracruz' Coatepec coffee was just as high as top-priced Medellin Excelso from Colombia (Rochac 1977).

World War II brought a shift in the world coffee market toward more volume and lower cost to satisfy the wartime demand. This fuelled the emerging post-war mass consumption and altered the nature of demand toward a more commoditized product for nearly the remainder of the century. Several things changed in Veracruz too: the Mexican Government's creation of the Mexican Coffee Institute stimulated the introduction of coffee into new regions with a technological adoption package that focused on large yields rather than quality. Accordingly, without quality premiums in the marketplace, the quality produced in all the coffee regions steadily declined.

Veracruz remained Mexico's coffee capital and by the 1980s it produced over a million bags of mostly average quality green coffee (it is typically either the first or second largest producing state). The Mexican Coffee Institute headquarters were located in Veracruz along with many large-scale mills, decaffeination and soluble plants and industrial coffee equipment companies. Furthermore, a number of international research projects turned Veracruz into perhaps one of the world's most studied coffee-producing regions.⁸¹

The termination of the International Coffee Agreement's economic clauses in 1989 was catastrophic for the Veracruz coffee sector as most of the locally-owned exporting companies went bankrupt and, shortly later, the Mexican Coffee Institute also disappeared. Dropping prices led to producer income that was below the actual costs of production and traders racked up huge debts caused by the inventory devaluation.

⁸⁰ Former FAO researcher in Mexico.

⁸¹ A joint project between ORSTOM (France) and INIREB (National Institute for Research on Biotic Resources, Mexico) called LIDER (Regional Research and Development Laboratory) produced 8 research papers, 7 Ph.D. thesis and 27 presentations at international conferences between 1983 and 1987. This project triggered even more research by CIRAD (French Agricultural Research Centre for International Development, France).

In 1992, after visiting the Specialty Coffee Association of America conference, a group of producers from Coatepec realized that the new United States specialty coffee market was demanding high-quality coffee: just the kind of coffee the Coatepec region had been famous for. They came to the idea of fostering, certifying, and marketing high-quality coffee through a “Genuine Coatepec” Appellation of Origin.

After four years this effort to launch a “Genuine Coatepec Coffee” appellation was abandoned in 1996. The producer initiative failed for a number of reasons. The main two were: (a) a critical mass of producers and resources is needed in order to launch and to operate the project and (b) at least minimal support from the State or Federal Government is required for a GI project to be implemented. However, a new State Government picked up the idea in 1998 and decided to apply for a GI with the Mexican Federal Government. Mainly for political reasons, they registered a statewide Café Veracruz Denomination of Origin. Café Veracruz became a legal Denomination of Origin in 2001. The Regulatory Board was established and the accompanying Mexican Official Standard was published in the same year. Despite a process that usually takes up to 10 years or more, the Café Veracruz Regulatory Board, as the appointed certification body for Mexico’s first coffee Denomination of Origin, was the fastest ever to achieve accreditation status in Mexico in early 2004.

The Café Veracruz Denomination of Origin is a Geographical Indication (GI) that encompasses all the coffee producing regions within the State of Veracruz and is more inclusive than exclusive. However, to meet its basic quality orientation, qualifying producers must have farms at altitudes above 750 m and it must meet various Regulatory Board standards criteria. This includes nearly 50,000 producers, with approximately 85,000 ha (roughly two-thirds of the State total) and a production level of about a half-million 60 kg bags.

Production costs in Veracruz now average US\$ 0.77 cents per pound of green coffee at the farm level. At a market of US\$ 1.25 FOB, this leaves the average farmer with an average gain of US\$ 200/ha.⁸² The purpose of the Denomination of Origin is to increase the farmer’s income. However, this has not been the result to date as there has been very little interest in the GI.

Geographical Indication protection

Mexico is a signing country of the Lisbon Agreement for denominations of origin, which is administered by the World Intellectual Property Organization (WIPO) that provides a modest international registry. Two Mexican laws deal with the matter: the Industrial Property Act (LPI) and the Federal Act for Metrology and Standardization (LFMN). The Mexican Federal State is the ultimate holder of all its denominations of origin. Veracruz has fulfilled the following conditions that are required for a denomination of origin to be legally operational in Mexico:

- a. Protection of the denomination by the Mexican Institute of Industrial Property (IMPI);
- b. Publication by the Federal Standard Administration (DGN) of a Mexican Official Standard (NOM) for the denomination;
- c. Creation of a Regulatory Board in charge of the certification and verification of the standard;
- d. Accreditation of the Regulatory Board by the Mexican Accreditation Entity (EMA) against the Mexican Standards for – at least – Certification Bodies (NMX-EC-065-IMNC-2000) and Inspection Units (NMX-EC-17020-IMNC-2000);⁸³

82 **Source:** Center for Tropical Studies, University of Veracruz. These figures of production cost imply a yield of 10 bags/ha and several works throughout the year. Many indigenous areas within Veracruz have lower costs (around US\$ 0.62/lb of green coffee) but also much lower yields (around 2 bags/ha) and income (around US\$ 100/ha).

83 Equivalent to ISO/IEC Guide 65 and ISO/IEC 17020, respectively.

- e. Approval of the Certification Body and the Inspection Unit by the Federal Standard Administration (DGN);
- f. Certification of users;
- g. Denomination permits for users, granted by IMPI.

This is such a complex and costly legal process that a GI can take about a decade to complete.⁸⁴ Café Veracruz completed this process in five years and at a cost of about US\$ 300,000 in staff and legal fees that were paid by the Veracruz State Government. The Mexican Federal Government funded special projects and laboratory equipment with another US\$ 80,000 grant.

Café Veracruz has the distinction of being the only operational coffee denomination of origin in the world registered under the landmark Lisbon Agreement.⁸⁵ The modest acceptance of the Lisbon Agreement registrations (26 nations excluding most of the major coffee consumer nations) offers significant recognition but very limited protection. The Café Veracruz Regulatory Board is also the holder of a Certification Mark in the United States. The process of registration in the European Union has yet to begin.

Institutional structures

The Mexican law dealing with GIs helps to ensure that the rules of participation adopted by a GI are clear, and that the certification process is carried out by an independent and competent body. Mexican GI systems do not rely on private systems of standards verification and the Federal Metrology and Standardization Act ensures that the Mexican Official Standard for the denomination and its evaluation meet strict international accreditation criteria established by the ISO.

For green coffee to become certified to the Café Veracruz GI it must meet the Mexican Official Standard physical/sensory specifications and it must be traceable to farms registered and evaluated by the Regulatory Board. It is sampled, tested and then graded by the Regulatory Board according to a six-tier grading system.⁸⁶ Each bag is separately tagged by the Regulatory Board. Roasted coffee must be produced entirely from certified green coffee and does not include outside blends. Wet mills, dry mills and roasters' manufacturing practices are also audited by the Regulatory Board. All roasted coffee must bear a hologram label issued by the Regulatory Board. All tags and hologram numbers match the certification body paperwork.

While these thorough rules could provide a sound guarantee for consumers, their complexity appears to also make them challenging to comply with. At the regulatory level, they make the operational costs of the denomination quite high and the formal structure also makes it very difficult to respond swiftly to necessary changes. Although several notable functional problems have been identified by stakeholders, the Café Veracruz Standard has not been adjusted since it is so complicated to undertake the revision of a standard. Perhaps most importantly, the complexity of requirements makes it very hard for producers and mills to certify their coffee and consequently very few do.

The producer's farm certification costs are almost entirely subsidized by the Veracruz State Government, which also covers the entire budget of the Regulatory Board.⁸⁷ However, the certification body applies registration fees to mills and roasters, as well as certification fees per bag of green coffee or holograms for roasted coffee. Participants are so used to government aid and soft financing, that they find even these fees onerous.

84 The example of Mezcal, another Mexican denomination of origin that took nine years from its publication in 1994 to the first certificate in 2003.

85 "Café Chiapas", from Mexico, is the other denomination of origin registered under the Lisbon Agreement, but is not yet operational; "Café de Colombia" is an operational denomination of origin within the Andean Community of Nations but outside the Lisbon Agreement.

86 Basically, it can be graded as Prime Washed, Extra Prime Washed, High Grown, Extra High Grown, Premium Grade or Specialty Grade, depending on green coffee and cup attributes.

87 Around US\$ 150,000 yearly.

The protection of its GIs, both domestically and overseas, is the responsibility of the Federal Standards Administration. Detection of forgeries usually depends on either the Regulatory Board or the denomination users. Protecting the GI within Mexican territory is usually not problematic; however, overseas protection is much more complicated. The main market for Veracruz coffees is the United States, which has not signed the Lisbon Agreement. To overcome this problem, the Regulatory Board applied for and obtained a Certification Mark from the United States Patent and Trademark Office (USPTO). However, the Regulatory Board notes that detection of misuse in the American market could be difficult.

A “Café Veracruz” local brand exists in Spain and is recognized by Spanish consumers, although it contains no coffee from Veracruz. Spain and other important markets are also not signatories of the Lisbon Agreement. Mexico may therefore find it more difficult to have its GI recognized. Since European Union regulations now allow GIs from third countries to be directly protected in Europe, this is a priority task for Café Veracruz.

Economics and marketing

On one hand a certified Café Veracruz is winning gold medals repeatedly in Paris and London.⁸⁸ However, on the other hand, it seems that there is very little market demand for Café Veracruz. Though consumer interest in Café Veracruz may be minimal so far, the interest shown by the producers themselves in their denomination of origin is proving to be even smaller. As a result of indifference from the producers’ side, very little Café Veracruz has been certified so far. Both producers and mills are unwilling to undertake the efforts, costs, and quality controls to apply for the GI label and claim they are not worth the modest premium a few curious buyers appear willing to offer. Despite, Government efforts, only a symbolic amount of coffee – less than 250 bags (60 kg) since the denomination was granted nearly three years ago – has actually been certified and sold so far.

To better understand Café Veracruz it is important to understand the distinction between the concepts of a protected GI versus a de facto GI. In theory, legal demarcation and recognition of GIs is created in order to protect an already renowned origin – a de facto GI. Kona coffee, for example, became more strictly protected by the State of Hawaii after scandalous counterfeits were discovered. Those counterfeits existed because Kona was receiving high price premiums due to its recognition in the marketplace. Similarly Tequila saw the need to protect its well-known name from unauthorized copies in both Mexico and abroad. This logical development of first recognition, then premiums and then either protection or counterfeiting is common to many GIs. Indeed, the emergence of counterfeits could even be regarded as a sign of a healthy GI and as an indicator to proceed to its legal protection.

Some of Veracruz’s coffees, most notably Coatepec and even Córdoba or Huatusco coffees have received high premiums in the past and have even been subject to counterfeits. However, Veracruz as an origin was created as a GI without first having any significant recognition in the marketplace. The intent behind its creation was that Veracruz GI would benefit from the reputation of Coatepec, Córdoba or Huatusco coffees and that the denomination would serve to foster quality and earn premiums for many more producers.

While it is possible that these objectives can still be achieved in the medium or long term, there has been little or no recognition of this GI in the marketplace so far. Who will market Café de Veracruz and what will the marketing cost be? A large promotional project was designed for Café Veracruz but its execution has been problematic. The State Government includes the promotion of Café Veracruz in its general programmes of promotion for agricultural product. This has not been effective, since these campaigns are not consistent, have not followed the strategy designed for Café Veracruz, and have not been targeted to the key markets.

88 Four gold medals and a special *savoir-faire* prize in food shows held in Paris and London in 2005, 2006 and 2007. All of them won by Finca Jocutla, Pacho Viejo, Veracruz.

Not only has the formal demarcation and registration of a GI been demonstrated to be costly, its promotion and future legal protection are clearly an integral part of the necessary ongoing investment. Some observers in the region have suggested that without a huge marketing budgets or willing commercial partners, the available investment budget might be better directed toward raising the coffee quality where that potential already exists and thereby creating the market reputation that greatly facilitates the development of a GI.

Consequences of a Geographical Indication

When attempting to evaluate the results of Café Veracruz, it seems easy to look at the high administration costs involved in the GI, compare them to the almost non-existent price premium earned by the producers, and dismiss the whole project as unviable. However, if one is to be truly objective, then the subtle, less tangible changes stimulated by the denomination should also be taken into account. Stakeholders note that other useful consequences of the denomination are:

- a. Along with a clear technical definition of the Café Veracruz flavour profile the farms and mills now have access to the technology package to achieve that potential and a world-class sensory evaluation laboratory;
- b. The accompanying educational process and options for recognition have resulted in several cases of coffee quality improving from standard levels to award winning levels;
- c. Better understanding among producers about controls, documentation and traceability;
- d. A transparent and reliable certification system, including procedures for testing, inspecting and certifying that can also be applied to crops other than coffee;
- e. A somewhat higher degree of awareness among the national and international green coffee buyers about coffee from the Veracruz region.

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