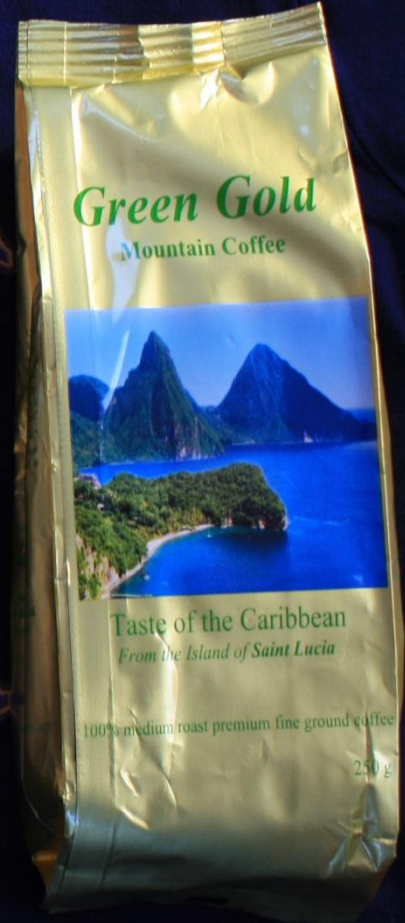


GEOGRAPHICAL INDICATIONS AND
AGRICULTURAL COMMUNITY DEVELOPMENT: IS
THE EUROPEAN MODEL APPROPRIATE FOR
DEVELOPING COUNTRIES?

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How to protect a geographical indication

Through specific (*sui generis*) geographical indications laws.

And/or

- appellation (or designation) of origin regime (Lisbon Agreement)
- trademark law, or in some countries influenced by English law under the common law tort of passing off – certification/collective
- indirectly through unfair competition law (Paris Convention).

Within statutory intellectual property law. ***Or in:***

- consumer protection rules relating to trade descriptions or food product labelling;
- cultural heritage regulations and policies; or
- rural development regulations and policies.

The European GI system for agricultural products and foodstuffs

- Council Regulation (EC) No 510/2006 of 20 March 2006 on the *protection of geographical indications and designations of origin for agricultural products and foodstuffs*.
- Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as *traditional specialities guaranteed*.

“The promotion of products having certain characteristics can be of considerable benefit to the rural economy, *particularly in less-favoured or remote areas*, by improving the incomes of farmers and by retaining the rural population in these areas.”

Preamble, Reg. 510/2006

A Protected Designation of Origin (PDO) is:

- the 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;

Parma Ham

Must be sliced and packaged in the region.

Consorzio del Prosciutto di Parma & Salumificio S. Rita SpA v.
Asda Stores Ltd & Hygrade Foods Ltd, ECJ, Case C-108/01, 20
May 2003

West Country Farmhouse Cheddar

A Protected Geographical Indication (PGI) is:

- the 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, and
- 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.

“Feta” cheese

The “Cornish pasty”

Traditional Specialities Guaranteed

A mark for products that used “on the Community market for a time period showing transmission between generations; this time period should be the one generally ascribed to one human generation, at least 25 years”.

Traditionally Farmed Gloucestershire Old Spots Pork

Applicant: Gloucestershire Old Spots Pig Breeders Club

Can be produced anywhere as long as in conformity with specifications.

Only authorised users can use the mark. *But* anyone can use the name of the product.

Advantages and disadvantages of
GIs and trademarks compared to
other IP rights

1. trust and reputation
2. acquiring the rights
3. group rights
4. strength in numbers
5. challenging misappropriation

1. Trust and reputation

Advantages

1. can help producers exploit trust & reputation that already exist among consumers
2. may also help to build trust & reputation in products hitherto not widely marketed or known

Challenges

1. not a panacea - attention must be given to other means of maintaining trust & high reputation, e.g. quality control, appropriate pricing, attractive packaging, marketing.

2. Acquiring the rights

Advantages

1. subject to performance of certain formalities necessary for registration e.g. submission of detailed product specification, acquisition can be relatively inexpensive compared to other IP rights.
2. acquiring and maintaining TMs may also be inexpensive.

Challenges

1. requires appropriate & 'user-friendly' national/regional legislation & administrative procedures.
2. may entail heavy government involvement & bureaucracy.
3. likely to entail establishment of a producers' association or government board.
4. need to know how to register GIs in overseas markets (no ACP applications in EU)
5. possibility for GIs to be acquired by 'wrong' producers.

3. Group rights

Advantages

Can protect group rights & interests for some types of product: rights potentially available for use by large number of individuals and small-scale producers, whether working together or in competition. This aspect of GIs/TMs is more culturally appropriate for many traditional communities, which regard TK and related biodiversity as their common heritage.

Challenges

Operating as a club may be extremely difficult, especially if the distribution of producers is widely dispersed.

4. Strength in numbers: monitoring and enforcement

Advantages

1. local producers sharing rights use/ownership rights to indication/mark better able to protect their rights & interests than single producer operating alone
2. monitoring & policing of GI/TM can be performed by association owning the mark - government agency can also do this.

Challenges

1. contesting misappropriation – need access to legal services.

5. Challenging misappropriation

Advantages

can challenge misappropriation, misuse & imitation abroad - *as long as* registered in home country.

Challenges

what if GI is *not* registered in the home country?

Indian Geographical Indications of Goods (Registration and Protection) Act, 1999

153 indications registered: 41 for agricultural products, 97 for handicrafts, 12 for manufactured goods including beverages, and 3 for foodstuffs

5 rices from Kerala registered – but not basmati.

5 foreign Gis: Champagne, Napa Valley, Parma Ham, Peruvian Pisco, Scotch Whiskey.

Benefits of the system have been uneven – but recent review suggests there have been successes.

Brazil, Cuba, Mexico, Algeria and Tunisia have provided for the registration of GIs in the form of designations or appellations of origin. These are mostly wines, spirits, foodstuffs and agricultural products, and tobacco products.

Tequila

How many tequilas?

1. 100 % Blue Agave tequilas (only one variety allowable, no added sugars) –
Does this encourage monoculture?
2. Tequilas Mixtos (51% or more blue agave, sugars may come from cane)
Suits large firms – but does this dilute GI?
3. Five age categories: *joven, reposado, añejo* and *extra añejo*.

Who are the stakeholders?

1. Farmers
2. Distillers
3. Bottlers and distributors

Can these interests be aligned when most power is in the hands of large corporations?

Is it possible to counter the trend of GI specification towards uniformity, while also exploring new marketing possibilities by differentiating protected products within a given GI?

Pisco – Chilean or Peruvian?

Chile has protected 'Pisco' as early as 1943.

Yes Pisco is a city and province of the neighbouring country of Peru where the drink originates.

Chilean and Peruvian Pisco differ in terms of definition, grape type, alcoholic content, and (obviously) designated growing area, and this does not make cooperation between the two countries at all easy.

Who owns Pisco?

- Peru has registered 'Pisco' as an appellation of origin under the Lisbon Agreement – but some parties have refused mostly because of Chile's right to market "Pisco".
- In India, Peruvian government application to register 'Pisco' opposed by Chile. Registrar accepted the indication 'Peruvian Pisco'.
- In Thailand Peru registered 'Pisco' as GI.
- In Europe, the government of Peru registered "Pisco" under EU Regulation on spirits. According to the technical file submitted with application, three types differentiated by type of grape and fermentation level: *Pisco Puro*, *Pisco Acholado* and *Pisco Mosto Verde*. File claims 'all the stages of processing "Pisco", from growing the vine, processing the grape and bottling the final product, are carried out in the "Pisco-making area"'. Area far more expansive than the city or province of Pisco, covering numerous provinces and departments.

Chile has got some trade parties to accept the designations “Pisco” and “Chilean Pisco”, mostly through bilateral trade agreements.

While cooperation including sharing the indication would appear to be the obvious way forward, agreeing on common specifications and regulations may prove to be extremely difficult.

A sample of *potential* GI-protectable products from ACP countries identified

Agricultural products

- Onions from Dogon region, Mali
- Vanilla, Madagascar

Handicrafts, artworks, materials

- Bark fabric from mutubu tree, Uganda
- Cloth paintings from Korhogo, Côte d'Ivoire

Foods and beverages

- Jamaican Blue Mountain coffee (TM)
- Rooibos tea, South Africa
- Shea butter, Burkina Faso
- Tea, coffee & cocoa, various countries
- White honey, Cameroon

Spirits, tobacco products

- Caribbean rum, various countries (TM)
- Cigars, Cuba (AO)

What are the similarities and differences between these products? How much goodwill attaches to these products? Are there close substitutes? Do consumers care about origin? Can GIs attract consumer interest in origin? Are GIs most suitable for famous names?

Registration and protection: some practical issues

Definition - the specification

Defining the product and how its made

Establishing the link – any competing claims

Setting the boundaries – can it be done?

Integrity

Capturing the value chain – should all content be local? Should all processing be local?

Accommodating change - how far is acceptable?

Compliance

Product monitoring and quality control procedures

Monitoring the market

General observations

Some well-known developing country GIs include Darjeeling tea, Jamaica Blue Mountain coffee, Tequila, and coffees from Colombia and Guatemala have been quite successful.

But these are already prestigious products for which goodwill already existed and have been quite profitable exports over a lengthy time period

For small-scale and widely dispersed producers, *boundary-setting*, *standardisation* and *quality control* measures can be very difficult to put into place.

Assuring small scale producers get a fair share and sustainability considerations are properly accommodated are major challenges.