

Law and Economics Seminar
Law and Economics of Geographical
Indications – Josling on *Terroir*

Strasbourg, March 5th, 2013

Based on: Josling, Tim, *The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict*, Journal of Agricultural Economics, Vol. 57, No. 3, 2006, 337–363.

National policies w/respect to mechanisms of protection for geographical indications

- Divided world:
 - GI supporters: “old world”: Europe, Switzerland & those the EU successfully negotiated with (plus India, Sri Lanka)
 - GI opponents: US, Australia, Argentina, Canada, & those the US successfully negotiated with.

What are Geographical Indications?

Geographical indications (GIs) are signs (most usually proper names) *which identify a good as originating in the territory of a particular country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. It is a separate type of intellectual property.*

Source: http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_135088.pdf

Geographical indications 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 GI 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.

Source: <http://www.uspto.gov/ip/global/geographical/faq/index.jsp>

GI protection in the US (I)

- No special status, registered as trademarks, when
 - Not generic
 - Not geographically deceptively misdescriptive
 - Not geographically descriptive
 - Proof of secondary meaning may “save” the mark

Fanciful	Arbitrary	Suggestive	Descriptive	Geograph. descriptive	Geograph. Deceptively midsdescriptive	Generic
Meet distinctiveness criterion of US TM law			With secondary meaning may meet distinctiveness criterion of US TM law		Cannot be registered	

GI protection in the US (II)

- Under US TM law GI's usually protected as certification marks.
 - Certification mark: word, name, symbol or device used by someone other than the owner but conforming to the specification laid down by the owner
 - Collective marks:
 - Collective trade marks, service marks
 - Collective membership marks
- Special protection for wines – appellations of origin (registered and protected)
- Another option: Farmer Owned Brands (FOB)
- Common law protection (i.e. “cognac”)

GI protection in the EU

- Strongest, most elaborate (and most complex!) system of protection:
 - Regulation 510/2006: PDOs, PGIs,
 - Regulation 509/2006: TSGs: Traditional Recipes Guranteed
 - Regulation 110/2008: wine and spirits
 - Enforcement Directive 2004/EC
 - Directive 80/777/EEC on mineral water (as am by Reg 1882/2003)
 - And in addition national protection for wines:
 - France: VDQS & AOC
 - Italy: IGT, DOC, DOCG
 - Other national protection regimes
- Can (and are) also protected by trademarks (also collective marks)

GI protection in the EU

- Obtaining protection for PDOs, PGIs, TSGs by EU Member State:
 - Filing application at a national registration office
 - The scrutinizing office examines the application
 - If accepted, application forwarded to the European Commission, for final decision
- Obtaining protection for PDOs, PGIs, TSGs by third states:
 - Only if the geographical indication is protected in the country of origin
 - Submission directly to the European Commission

GI protection in the EU

- Requirements Art. 5 (1) Reg. 1151/2012 (ex Art. 2a Reg 510/2008):
 - Designations of origin
 - name
 - originating in that region, specific place or country
 - whose **quality or characteristics** are **essentially or exclusively due to a particular geographical environment with its inherent natural and human factors**, and
 - the production steps of which **all** take place in the defined geographical area;

GI protection in the EU

- Requirements Art. 5 (1) Reg. 1151/2012 (changed text (!) Art. 2b Reg 510/2008):
 - Geographical Indications
 - Name which identifies a product:
 - originating in a specific place, region or country;
 - whose quality, reputation or other characteristics is essentially **attributable to that geographical origin**, and
 - At least one of the production steps which take place in the defined geographical area.

GI protection in the EU

- Requirements (Art. 4 Reg 509/2008):
 - Traditional Specialties Guaranteed
 - an agricultural product or foodstuff shall either be produced using traditional raw materials or be characterised by a traditional composition or a mode of production and/or processing reflecting a traditional type of production and/or processing.
 - Registration shall not be permitted in the case of an agricultural product or foodstuff the specific character of which is due to its provenance or geographic origin. The use of geographic terms shall be authorised in a name without prejudice to Article 5(1).
 - (2). To be registered, the name shall:
 - (a) be specific in itself, or
 - (b) express the specific character of the agricultural product or foodstuff.
 - 3. A specific name as referred to in paragraph (2)(a) shall be traditional and comply with national provisions or be established by custom.

GI protection in the EU – Devil is in the Details

- Art. 5 (3) Reg 1151/2012
 - Certain names shall be treated as designations of origin even though the raw materials for the products concerned come from a geographical area larger than, or different from, the defined geographical area, provided that:
 - Production area of the raw materials is defined
 - Special conditions for the production of the raw materials exist.
- Art. 2 (3) Reg 510/2008 (old)
 - certain geographical designations shall be treated as designations of origin **where the raw materials for the products concerned come from a geographical area larger than, or different from,** the processing area
 - Cornish Pasties with beef from Wales? France? Argentina?
 - What is the definition of the “area”?

GI protection in the EU – Devil is in the Details

- Art. 6 (1) Reg 1151/2012
 - Generic terms shall not be registered as protected designations of origin or protected geographical indications.
- Art. 3 (1) Reg 510/2008
 - Names that have become generic may not be registered
 - But: ECJ in “Feta,” “Parmesan,” and “Bayerisches Bier”

Economic aspects of GIs

- Essential function: geographical place name indicates quality, taste or related attributes to the consumer
- *Terroir* – relationship between quality of agricultural products and their geographical provenance (Josling)
- Geographical indications – legal expression of *terroir* (Josling)
- GIs signal attributes of a good
- Benefits:
 - Explicitly inform about the geographical origin of the product
 - Help correct information asymmetries between the consumers and the producers

GIs – Producer's view (p. 342)

- Market power in exchange for gaining legal protection (which is rather easy to obtain in cases of GIs in the EU)
- Reward: additional rents that can be extracted
- Product differentiation converts farmers into active market participants (Josling p. 342) – consideration of consumer's desires and needs.
 - *Aren't farmers interested to do it without being helped by the state?*
- Improvement of bargaining position vis-à-vis other market players in the same supply chain: processors and sellers, especially supermarkets.
 - *Who pays for this?*

Economic aspects of GIs

- Essential function: geographical place name indicates quality, taste or related attributes to the consumer
 - If no link b/w GIs and quality/attributes – GIs useless for consumer
 - If link v. strong (plus cost/benefit test) – GIs may be welfare enhancing
 - Treatment of cases b/w these two extremes – causes of controversy
 - Merits of GIs – can really be established through empirical assessment (only)

GIs - Public policy considerations

- Reliability of the link b/w quality and location determines desirability of GIs as policy measures
 - Low reliability converts GIs into marketing advantage by restricting competition
 - High reliability encourages product differentiation through improvement of standards => tool in farm policy
 - Low reliability results in a rent to landowners – reduces competition by newcomers who face higher barriers to entry.
- Encourages or discourages
 - technical change (?)
 - favourable developments in marketing (?)

Government's involvement in GI protection

- Providing information that signals product quality is in interest of producer
- Consumers should be willing to pay for improved quality (signaled)
- Public action – limited to prevention of fraud and deception (as in TMs)
- However:
 - Greater government involvement may be justified due to:
 - Changed mechanism of establishing a link b/w quality and good.
 - Public authority does more: establishes registry, defines quality standards, protects reputation from devaluation.

What is the adequate level of protection?

- Josling's proposal:
 - Overprotection when the costs of providing the consumer with information, in form of GI, outweighs the consumer benefit.
 - Under-protection when consumer would benefit from more information about the geographical origin of the product in order to make an informed choice.

GIs and trade in food products (Josling pg.343)

- Impact on trade connected to level of protection
- Consumers not being provided reliable information about **domestic** food product's origin may lead to trade distortion.
- Domestic market – may face more imports
- Avoiding trade distortions possible with balanced (“optimal”) level of protection in the national market
 - > Focus on national public policy w/respect to GIs
- Trade-off between lowering transaction costs through intl. harmonization & tailoring natl. GIs to domestic considerations
- Extent to which global goods are created when multilateral coordination replaces national administration of GI regulations.

Conflict over GIs at the international level

- One of the unresolved issues of the Doha Agenda
- One of the few reasons for US & EU to meet in the WTO Dispute Settlement Body
- More significantly for L&E:
 - “transplantation” of the regimes to developing countries (!)

Additional considerations

- Over 800 GIs in Europe but most of them registered by 4 countries: France, Italy, Spain & Portugal – imbalance in the use of the system (Italy: 248 France: 193 Poland: 35, Lithuania: 2)
- Empirical studies on the use of geographical names in trade do not refer correctly to legal sui generis protection under the EU GI regime
- Rather they address the issue of protecting names of localities for developmental, agricultural and business purposes. Especially awareness is dealt with.
- Claw back of generic terms – especially problematic.

Strengths and weaknesses of the article – what do you think?

- Strengths:
 - Despite a dramatic title, article is balanced, not taking sides but rather presenting the advantages and disadvantages and addressing the optimal solution
 - Brief but adequate overview of available legal protection mechanisms
 - Analytical work – comparative tables

Strengths and weaknesses of the article – what do you think?

- Weaknesses:
 - No clear structure
 - No clear proposition
 - Discussion on differences b/w US and EU not linked to previous discussion of GIs functions
 - Discussion of private mechanism vs. public policy not conclusive
 - Differentiation between functions of trademarks and GIs – weak for trademarks
 - “overview article”

Bigger picture – how does this article fit into L&E?

- Gl's are a great field for law and economic inquiry, especially that not a lot of economic literature has been published
- A lot of potential for empirical work (see Teuber)
- The link with agricultural policy and development provides good potential for interdisciplinary research between law, economics, and political sciences.

What are GIs?

- Protectionist measure to support farmers, food producers
- Alternative measure of agricultural policy to support quality development through product differentiation in the agricultural sector
- Measure to establish and protect geographical and cultural identity in food products
- Obstacle to free food trade
- Indicator of quality to consumer
- Way of extracting higher rents

Can they be fully replaced by trademarks?

Additional resources

- RICOLFI, Marco, Geographical Symbols in Intellectual Property Law: the Policy Options, in Festschrift für Ulrich Loewenheim zum 75. Geburtstag, Schutz von Kreativität und Wettbewerb, Verlag Beck, Munich, 2009, 231-249.
- Regulation No 110/2008 of the European Parliament and of the Council of January 15, 2008 on the Definition, Description, Presentation, Labelling and the Protection of Geographical Indications of Spirit Drinks and Repealing Council Regulation (EEC) No 1576/89
- Council Regulation No 510/2006/EC of March 20, 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs , 2006 (O.J L93).
- PDO/PGI/TSG database (w/out wines):
<http://ec.europa.eu/agriculture/quality/door/list.html>

Announcements

SAVE THE DATE

May 2, 2013 at 17:30

Inauguration of the Invited Speaker Series in Law and Economics of IP
with

Prof. Dan Burk

(University of California at Irvine)

(location to be announced)

Next workshop

- **April 9th, 12:45 – 14:15** – at PEGE (61, avenue de la Forêt Noire)

Announcements

CEIPI-BETA Law and Economics Project is online:

<http://www.ceipi.edu/index.php?id=13737>

Materials for the future and past workshops can be found here:

<http://www.ceipi.edu/index.php?id=13763&L=2>

Next workshops

- **April 9th, 12:45 – 14:15** – at PEGE (61, avenue de la Forêt Noire)
– Salle EHUD, no. 104.
- **May 14th**, 12:00 – 14:00 – location tbd
- **June 11th**, 12:00 – 14:00 – location tbd.

Contact: kupzok@unistra.fr or agnieszka.kupzok@ceipi.edu

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- Fotopoulos, Christos, Krystallis, Athanasios, *Quality labels as a marketing advantage: The case of the “PDO Zagora” apples in the Greek market*, *European Journal of Marketing*, Vol. 37, No.10, 2003, 1350 – 1374.
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- Teuber, Ramona, *Geographical Indications of Origin as a Tool of Product Differentiation: The Case of Coffee*, Contributed Paper, 105th EAAE Seminar ‘International Marketing and International Trade of Quality Food Products’, Bologna, Italy, March 8-10, 2007.
- Van Ittersum, Koert, Candel, Math J.J.M., Meulenbergh, Mathew, T.G., *The influence of the image of a product’s region of origin on product evaluation*, *Journal of Business Research*, Vol. 56, 2003, 215–226.
- Van der Lans, Ivo A., Van Ittersum, Koert, De Cicco, Antonella, Loseby, Margaret, *The role of the region of origin and EU certificates of origin in consumer evaluation of food products*, *European Review of Agricultural Economics*, Vol. 28, No.4, 2001, 451-477.