

ITED: TRADE NEGOTIATIONS (WTO)

**GEOGRAPHICAL
INDICATIONS (GIs)
AND
TRIPS & CBD**



DEFINITION

The TRIPS Agreement defines geographical indications as indications that identify a good as originating in the territory of a Member (or a region or a locality in that territory), where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

GEOGRAPHICAL INDICATIONS UNDER NATIONAL LAWS

- English Passing Off Law
- Unfair Competition Laws
- Certification Marks
- Appellation of Origin
- Anglo-American Trademarks Statutes

GENERAL OBLIGATIONS

Members have to provide legal means:

- to prevent the designation or presentation of a good that would mislead the public as to its geographical origin;
- to prevent any use constituting an act of unfair competition

In addition

- the Agreement provides for the refusal or invalidation of the registration of a trademark containing or consisting of a geographical indication, which would mislead the public as to the true place of the goods; and
- prohibits the use of literally true but misleading indications.

SPECIAL CASE

Additional (higher level) protection provided for wine and spirits

Members waived the conditions for protection against use, namely,

- misleading the public; and
- unfair competition.

Members have to prevent the use of geographical indications identifying wines (or spirits) for wines (or spirits) not originating in the place indicated, even where the true place of origin is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation”, or the like

3 EXCEPTIONS TO THE OBLIGATIONS

- Members have the right to allow continued and similar use of a particular geographical indication, provided it was used at least 10 years prior to 15 April 1995 or in good faith;
- the provisions do not apply to trademarks identical with or similar to geographical indications if before the applicability of TRIPS in the Member concerned the trademark was registered; or
- where the right to a trademark is acquired by use, the trademark was used in good faith (concerns generic terms)

WTO NEGOTIATIONS

- **Establishment of a multilateral system of notification and registration of geographical indications for wines**
- **Proposals to extend additional protection to products other than wines and spirits**
- **TRIPS & CBD “Disclosure requirement**

A MULTILATERAL SYSTEM

Two main proposals:

- the EC proposed a system that would go beyond a data base of information on GIs and would establish a register with a legal effect;
- registration would create the presumption of eligibility for protection;
- the US proposed a voluntary system that would facilitate the protection of GIs without establishing new or diminishing existing rights and obligations in TRIPS;
- The proposed register should not prescribe a method of providing protection of GIs.

EXTENSION OF ADDITIONAL PROTECTION

- **Currently no consensus about the existence of a mandate**
- **the debate cross the usual North-South alliances**
- **The EU and Switzerland introduced the GI debate into the agricultural negotiations, tying it to agricultural liberalisation**

TRIPS & Convention on BioDiversity

- **Developing countries believe there is a conflict between TRIPS & the CBD**
- **TRIPS Agreement must be amended to avoid the conflict by including a “disclosure requirement”**
- **CBD :**
 - **requires patent applicants to disclose the origin of genetic resources**
 - **provide evidence of prior informed consent**
 - **provides for fair and equitable benefit-sharing**