



Geographical Indications (GIs) Webinar: the basics

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Issues covered in this webinar

- The origin of Geographical Indications
 - Uruguay Round trade negotiations and the Agreement on Trade-Related Intellectual Property Rights (TRIPS)
 - Standard form GIs
 - Strong form GIs (wines and spirits)
 - Exceptions and grandfathering
 - Post-TRIPS bi-lateral agreements on wines and spirits
- European Union (EU) GI regulations
 - Protected Designations of Origin (PDOs)
 - Protected Geographical Indications (PGIs)
 - Traditional Specialty Guaranteed (TSGs)

Uruguay Round and TRIPS

- Uruguay Round negotiations on the General Agreement on Tariffs and Trade (GATT) extended well beyond traditional trade in goods
 - Agriculture was included seriously for the first time
 - First ever international treaty on services trade
 - Brought “intellectual property” issues within ambit of trade negotiations
- The final 1994 (Marrakesh) Agreement required countries to sign up to a package of treaties to remain part of the GATT
 - To be in GATT, you must sign up for TRIPS
 - and the many other specific agreements

See https://www.wto.org/english/docs_e/legal_e/ursum_e.htm#Agreement for

A Summary of the Final Act of the Uruguay Round

Introduction

[Agreement Establishing the WTO](#)

[General Agreement on Tariffs and Trade 1994](#)

[Uruguay Round Protocol GATT 1994](#)

[Agreement on Agriculture](#)

[Agreement on Sanitary and Phytosanitary Measures](#)

[Decision on Measures Concerning the Possible Negative Effects of the Reform](#)

[Programme on Least-Developed and Net Food-Importing Developing Countries](#)

[Agreement on Textiles and Clothing](#)

Note: this Agreement was terminated on 1 January 2005.

[Agreement on Technical Barriers to Trade](#)

[Agreement on Trade-Related Investment Measures](#)

[Agreement on Implementation of Article VI \(Anti-dumping\)](#)

[Agreement on Implementation of Article VII \(Customs Valuation\)](#)

[Agreement on Preshipment Inspection](#)

[Agreement on Rules of Origin](#)

[Agreement on Import Licensing Procedures](#)

[Agreement on Subsidies and Countervailing Measures](#)

[Agreement on Safeguards](#)

[General Agreement on Trade in Services](#)

[Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods](#)

[Understanding on Rules and Procedures Governing the Settlement of Disputes](#)

[Decision of Achieving Greater Coherence in Global Economic Policy-Making](#)

GIs: what are they?

- The 1883 Paris Convention prevents “unfair competition”
 - particularly regarding trade marks and consumer confusion
- The 1958 Lisbon Agreement provides international recognition for “Appellations of Origin”
 - very few countries have signed this Agreement (28)
- TRIPS defines “geographical indications” differently from the Lisbon appellations of origin – they are goods “where a given **quality, reputation** or **other characteristic** of the good is **essentially attributable** to its geographical origin” (TRIPS, Article 22(1))
- **So GIs are about *how you label goods***

- The 1883 Paris Convention was the earliest international agreement on forms of intellectual property and covered patents, designs and trade marks. Article 10bis covers unfair competition.
https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf
- There are only 28 countries that have signed the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10
- For a detailed legal discussion of the differences between GIs in TRIPS and Appellations of Origin in the Lisbon Agreement, see Evans, G.E. and M. Blakeney, 2006, “The Protection of Geographical Indications After Doha: Quo Vadis?,” *Journal of International Economic Law* 9(3): 575-614. .
(<https://doi.org/10.1093/jiel/jgl016>)

TRIPS: Geographical Indications

- The EU insisted that GIs be included in TRIPS
 - The USA and other agriculture-exporting countries strongly disagreed
 - The outcome was a compromise, setting 2 different standards and providing strong “grandfathering” conditions
- Article 22: provides legal means to prevent misleading use of a name, or use which is unfair competition
- Article 23: applies only to wines and spirits. Provides stronger “protection” to names
 - can’t say “Burgundy-style wine from the Napa Valley”
- Article 24: provides exceptions and protects all current users of names from any new rules

For full text of TRIPS treaty see:

https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

TRIPS: Article 22

- Defines GIs as goods “where a given **quality, reputation or other characteristic** of the good is **essentially attributable** to its geographical origin”
- Requires legal means for GI owners to prevent:
 - misleading uses
 - uses which constitute unfair competition (references Art 10bis of Paris Convention)
- Refuse or invalidate trademark, if trademark misleads consumers as to the true place of origin
- **In sum, don’t allow place names as ordinary trademarks***
but note that where GIs are registered through a trademark system (e.g. as certification GIs) then a place name is OK

For full text of the TRIPS treaty see:

https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

There is a large legal literature on the shades of meaning for different terms linking a product to its place of origin.

For a detailed legal discussion of the differences between GIs in TRIPS and Appellations of Origin in the Lisbon Agreement, see Evans, G.E. and M. Blakeney, 2006, "The Protection of Geographical Indications After Doha: Quo Vadis?," *Journal of International Economic Law* 9(3): 575-614.
(<https://doi.org/10.1093/jiel/jgl016>)

Another useful article is Gangjee, D.S., 2017, "Proving Provenance? Geographical Indications Certification and its Ambiguities " *World Development* 98: 12-24.
(<https://www.sciencedirect.com/science/article/abs/pii/S0305750X15000935>)

TRIPS Article 23

- Only applies to wines and spirits.
- Stronger rules
 - can't say "Moselle-style wine from the Hunter Valley"
 - *this is **defined** as being misleading as to the origin*
- Article 24 says only applies to future
 - But EU has successfully negotiated bi-lateral wine agreements
 - e.g. with the USA, Australia, New Zealand, Chile
 - Improved access to the EU wine market in exchange for ceasing use of European place names on labels
 - e.g. Burgundy now sold as pinot noir
- Provides for continuing negotiations for an international wine name register

In summary this article – which covers only wines and spirits. Requires:

1. legal means to prevent use of a GI name for wines, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like
2. refusal or invalidation of a wine trademark if it contains or consists of a geographical indication (if not from that place)
3. special provisions where names are similar in different countries (homonymous names)
4. continue negotiations about establishing a multilateral register of wine names

For bi-lateral wine agreements see:

https://ec.europa.eu/agriculture/wine/third-countries_en

which lists 20 specific agreements. Two of these cover more than one country.

For a relatively recent discussion of the proposed international wine name register see Kasturi Das, "The Protracted WTO Battle over a Multilateral GI Register: What Lies Beneath", 49(6) *Journal of World Trade* 1073–1102 (2015).

<http://www.kluwerlawonline.com/abstract.php?area=Journals&id=TRAD2015041>

TRIPS Article 24

- Major provision is that all existing good faith or continuous users of place names can continue this use in perpetuity
 - i.e. “grandfathers” all current place name uses
- Does not allow GI name registration for names which are customary or common names (“generic names”) or grape variety names
- Allows use of own name as long as not misleading
- Continuous monitoring by TRIPS Council
- Continuing negotiations over multilateral register
- 5-year limit to challenge trademark registrations

In very summary form Trips Article 24 covers:

1. Continuing negotiations on GIs
2. TRIPS Council to keep exceptions provisions under review
3. No diminution in pre-existing GI protection
4. Any continuous use of a GI either for at least 10 years before 15 April 1994 or in good faith before that date allows continuous use of the GI (i.e. perpetual grandfathering)
5. A trademark that has been applied for, registered or used in good faith before this agreement can continue undisturbed
6. No requirement to protect GIs if name identical to a customary or common name for relevant goods / services. No requirement to protect GI if it is a customary grape variety name.
7. Five year period to object that a trademark is used or registered in bad faith.
8. No prejudice to right to use own name in trade, except where use misleads the public.
9. No obligation to protect GIs which are cease to be protected (or have fallen into disuse) in their country of origin

For the full text of the TRIPS treaty see:

https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

The essence of a GI

- A label indicating geographic source
 - only for goods where quality, reputation or other characteristic is “essentially attributable” to its geographic origin
- Anyone has the right to use the registered name, **but only if**:
 - ❖ they are from the designated region; and
 - ❖ they use the designated production processes
- Similar to a trademark – indicates origin
 - But from **where** not from **whom**
 - Communally owned
 - Cannot be sold or licensed
 - Enforcement options: government and/or owners
- If no longer registered in home country, no longer recognized internationally

There is a vast literature on GIs. In searching this one must be aware of the various perspectives offered:

- The intellectual property literature is largely data-free, but there are useful analyses of the philosophical arguments. One needs to beware of the mis-use of economic theories such as information asymmetry. Three useful articles, all from 2006, taking a broad perspective are Dev Gangjee’s Melton Mowbray article (see slide 17), Justin Hughes’ “Champagne, Feta ...” article (see slide 15) and Evans and Blakeney (see slide 4). Irene Calboli is more supportive of GI policy but is critical of poor GI administration – see, for example, “Geographical indications of origin at the crossroads of local development, consumer protection and marketing strategies,” *International Review of Intellectual Property and Competition Law*, 2015, 46(7): 760-780.
(<https://link.springer.com/content/pdf/10.1007%2Fs40319-015-0394-0.pdf>)
- There is a practical “how to” literature largely promoting the use of GIs. Within this literature the FAO’s work is refreshing in its focus on sustainability and regional impact. Sometimes this literature blurs, discussing Basmati and Jasmine rice as GIs not as rice varieties.
- Econometric studies tend to make many assumptions, so cannot entirely be classed as empirical.

The issue of enforcement is important in the policy difference between the EU and New World countries. The EU focuses on administrative enforcement. New World countries tend to use trademark based systems with a preference for private enforcement. Both options can be available.

EU GI policy: the privileges

- In every form of IP, there is a privilege that passes to the IP owner, with an offset benefit to the public
- In trademarks, the privilege is that the producer does not need to demonstrate that the trademark is confusing consumers, merely that it has caused economic loss
 - The consumer benefit is reliable information on who the producer is
- In the EU, registration of a GI confers the benefits of:
 - Administrative enforcement re any misuse of the name
 - No use of a variant or qualifier to the name for the product class
 - Prevents any 'evocation' of the name
 - Access to EU funds for market promotion

In respect of the consumer benefit of knowing the producer from the trademark, this is attenuated by the modern practice of branding. For an excellent discussion of problem issues in trademark policy see Greenhalgh, C. and E. Webster, 2015, "Have trademarks become deceptive?," *The WIPO Journal* 6(2): 109-116.

<https://www.wipo.int/publications/en/details.jsp?id=3936&plang=EN>

'Evocation' is a highly technical legal term. It prevents comparison marketing. For example Perrier is no longer allowed to market its mineral water as "the champagne of mineral waters."

In respect of the EU's GI regulation, Gangjee argues that "Tilting the rules in favour of producers, even in the absence of concomitant consumer protection justifications, is evinced elsewhere in the Regulation's architecture. Article 13(3) stipulated that protected names "may not become generic" ... Furthermore, Art.13(1)(b) prohibits any misuse, imitation or evocation of a registered designation. Preventing infringement by evocation is a standard designed to check the mental association or "calling to mind" of a registered GI. It prohibits free riding as an instance of unfair competitive behaviour. **Evocation does not require any consumer confusion.** This is emblematic of a longstanding view in Europe that GI protection is a species of broader unfair competition law, with **an independent agenda for preserving producer goodwill** and not limited to situations where this coincides with consumer deception or confusion." (Gangjee, Dev, 2007. "Say Cheese! A sharper image of generic use through the lens of feta", *European Intellectual Property Review*, 29, 5, pp.172-79: 178, emphasis added)

EU GI regulations: TSGs

- In the EU there are 2 major forms of GI, and a less used form: Traditional Specialty Guaranteed (TSG)
 - As at 30 November 2018, **58** registered TSG products
 - Compared to **635** PDOs and **747** PGIs
- TSG registration protects the *method of production*, ensuring that only products made by that method may be sold with that name – origin does not matter
 - As at 2000, only 7 products were registered as TSGs: Vieille Kriek/Vieille Gueuze/Faro/Kriek/Lambic (Belgium), **Mozzarella** (Italy) and **Jamón Serrano** (Spain)
 - **Mozzarella** and **Jamón Serrano** probably remain the best known TSGs
 - 18 member states have TSGs registered – and there are 4 multi-country registrations (as at 30 Nov 2018)
 - 6 applications are pending, including 2 2010 UK applications (watercress and traditional farmfresh turkey)

TSG registrations: 1997 (3), 1998 (3), 1999 (1). So none pre-1997.

It is hard to find detailed information on the TSG scheme on the EU website. But under DG-AGRIC there are some data on quality schemes, under which GIs fall:

“Traditional speciality guaranteed (TSG) highlights the traditional aspects such as the way the product is made or its composition, without being linked to a specific geographical area. The name of a product being registered as a TSG protects it against falsification and misuse.

Products Food and agricultural products

Example Gueuze TSG is a traditional beer obtained by spontaneous fermentation. It is generally produced in and around Brussels, Belgium. Nonetheless, being a TSG, its production method is protected but could be produced somewhere else.

Label Mandatory for all products”

https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en

(accessed 30 Nov 2018)

Poland: 9, Belgium, Bulgaria: 5, UK, Spain, Italy, Netherlands: 4

Product classes: fresh meat: 4, meat products: 16, cheeses: 7.

EU GI regulations: PDOs & PGIs

- The main part of EU GI policy is PDOs and PGIs. The privileges are the same, but the registration requirements differ
- Protected Designations of Origin (PDOs)
 - French/Italian wine background – the basic registration requirement is that the product come from the specified region and that the product's qualities have a strong link to the *terroir* from which it comes
- Protected Geographical Indications (PGIs)
 - German case law background, with a focus on the reputation of the producer. While there must be a historic link to the designated region, there is no minimum requirement for production within the region

There is a very detailed description of the 1992 and 2006 regulations in London Economics, 2008, *Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)*, Retrieved April 15, 2013 from http://ec.europa.eu/agriculture/eval/reports/pdopgi/short_sum_en.pdf.

Hughes points out that products most closely linked with *terroir* – e.g. building materials (marble) or minimally processed foods – do not generally have registered names. It is **processed** foods – esp wine – that gave rise to GI labelling and restraints on competition. He also notes how the origin of raw materials has substantially changed over time even for products whose mode of production has not allegedly changed since the C13th (Parmigiano-Reggiano). These factors explain the addition of "human factors" to the geographic features of *terroir*. But, as history shows, migrants take these human factors with them to new homes. Hughes, J. (2006), 'Champagne, Feta, and Bourbon: The Spirited Debate about Geographical Indications', *Hastings Law Journal*, 58 (2): 299-386: 357-368.

https://repository.uchastings.edu/hastings_law_journal/vol58/iss2/3

Gangjee points to the **limited credibility of the consumer confusion rationale** for GIs. Exploring the nature of generic names against the background of the DE-FR PGI-PDO compromise, he comments "fig leaf of consumer protection is easily blown aside by sufficiently determined gusts of litigation, leading to embarrassment all round," making particular reference to "the strained consumer protection rationale" in the Parma ham litigation with ASDA (Gangjee, 2007, 'Say Cheese! A sharper image of generic use through the lens of feta', *European Intellectual Property Review*, 29 (5): 172-179 : 179.

EU GI databases

- 4 separate databases, by type of product
(https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-products-registers_en)
- DOOR (agricultural products and foodstuffs, incl beer)
(<http://ec.europa.eu/agriculture/quality/door/list.html>)
- E-Bacchus (wines)
(https://ec.europa.eu/agriculture/wine/e-bacchus_en)
- E-Spirit-Drinks
(<http://ec.europa.eu/agriculture/spirits/>)
- Aromatised wine products
(https://ec.europa.eu/info/files/register-geographical-designations-aromatized-drinks-based-wine-products_en)

All GI Register databases are accessed from the page
https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-products-registers_en

E-Bacchus does not appear to be a searchable database. It provides pdfs of the most recent updates to the register. It is not clear from the website where the full register is and how you access it. For summary statistics go to

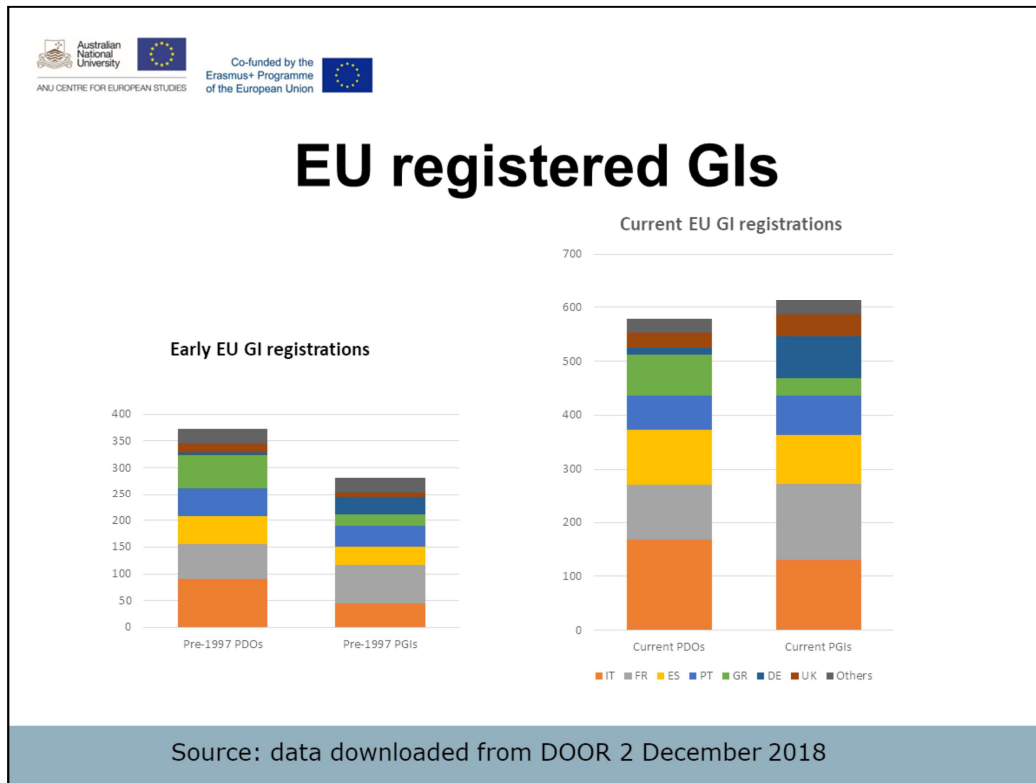
<http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=statistics&language=EN>

E-Spirit-Drinks does not open at all. For summary statistics go to

<http://ec.europa.eu/agriculture/spirits/index.cfm?event=searchIndication>

Aromatised wine products database: simply a pdf with 5 names (Nürnberger Glühwein; Samoborski bermet; Thüringer Glühwein; Vermouth de Chambéry; Vermouth di Torino. No further information is provided.

The DOOR database is searchable, but is a simple register with mainly formalities data. It does show the type of registration (PDO/PGI/TSG) and the status of the registration (registered/published/applied). It also shows country and product classification. But fundamentally you can only do a count of the number of registrations. There is no information about how many producers there are, the distribution of producers by size (sales value or number of employees), and nothing on the value of the output for each GI.



Data downloaded from DOOR, 2 December 2018.

There are currently 635 PDO registrations, with a further 77 pending.

There are currently 747 PGI registrations, with a further 135 pending.

As shown above the dominant user of the GI system is Italy, followed by France, Spain, Portugal and Greece.

Over time other countries have participated more, particularly re PGIs, but in the PDO category the 5 Mediterranean countries dominate the number of registrations.

When one turns to the limited data (from 2010) on the value of GI produce, other country/product categories emerge as important, particularly German beers and UK fresh meats. (AND-International, 2012, *Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a geographical indication*, Commissioned by the European Commission (tender no. AGRI-2011-EVAL-04), http://ec.europa.eu/agriculture/external-studies/2012/value-gi/final-report_en.pdf. The EU plans to repeat this data gathering exercise for 2011-2016, but has only put this job out to tender in September 2018 (see https://ec.europa.eu/agriculture/calls-for-tender/337757-2018_en). In the current version AND-International (2012) found the centrally available data insufficient for the job, so added a direct survey of producers and producers' groups and an indirect survey when no producers and producers' group could be identified.

PDOs: issues

- Pre-1984 Products: raw materials from outside regions
 - Pre-1984 products can draw raw materials from outside the region
 - only Italy, France, Spain, Portugal and Greece
 - Parma ham: the pigs can come from up to 600 kms away
 - *Does this constitute deceptive labelling?*
- Climate change: impact on raw materials sourcing
 - *Regulatory response?*
 - *Accuracy of GI labelling?*
- Claims to very long parts of supply
 - Parma ham can come from 600kms away, but if the slicing and packaging is not done in Parma, the product can't be called Parma ham.
 - *Suggests need for competition authority review of protected processes*

Hughes notes how the origin of raw materials has substantially changed over time even for products whose mode of production has not allegedly changed since the C13th (Parmigiano-Reggiano). These factors explain the addition of "human factors" to the geographic features of *terroir*. Hughes, J. (2006), 'Champagne, Feta, and Bourbon: The Spirited Debate about Geographical Indications', *Hastings Law Journal*, 58 (2): 299-386: 357-368.

Blakeney suggests future climate change may raise issues for Champagne: "Historic geography-quality relationships are being compromised by climate change. For example, it can be envisaged that the grape producing areas of southern England may in time become closer to the growing conditions for champagne than the vineyards of Epernay. In this situation, the wine producers of the Champagne province may look to England for their raw material." Blakeney, M., 2014, "Geographical Indications: What Do They Indicate?," *The WIPO Journal* 6 (1): 50-56: 52.

PGIs: problem issues

- No minimum requirement for production in specified region
 - German High court concerns (C-269/99 - *Carl Kühne GmbH & Co. KG* and others v. *Jütro Konservenfabrik GmbH & Co. KG*)
- Some material inputs come from very far away
 - Bresaola della Valtellina – Italian, but raw material is from Brazil
- Potentially PGI labels can mislead consumers
 - Scotch beef – led to change in production regulation
 - Originally cows only had to live 90 days out of 1.5 years in Scotland
 - Now must be born, live and die in Scotland
- Tenuous link to place prejudices integrity of whole GI system

Minimum PGI content requirements appear to be a matter for member state governments, but there is little evidence that they have such requirements. In the C-269/99 - *Carl Kühne GmbH & Co. KG* and others v. *Jütro Konservenfabrik GmbH & Co. KG* case, the ECJ did not address the question referred re content.

Bresaola della Valtellina P.g.i.: “The fresh air and clear air that descends from the heart of the Alps and the particular shape of the Province of Sondrio, totally covered in the typical area of production, create ideal conditions for the gradual seasoning of bresaola. However, the climate is not the only determining factor. The charm of this high-quality cured meat, made with the best cuts of beef thigh, is implicit in its transformation, since the processing steps must follow strict rules, that tradition has turned into a real ritual, passed down from father to son with passion and professionalism.” [Source Consortium for the protection of Bresaola della Valtellina](https://www.robustellini.com/en/bresaola-della-valtellina-pgi/) from <https://www.robustellini.com/en/bresaola-della-valtellina-pgi/>

EU GI policy - changes

- First EU regulation introduced in 1992
 - First draft covered only PDOs, but Germany asked for PGIs too (Gangjee, 2006)
- Original set of GI names from countries using prior systems
 - 370 PDOs (97% from 5 Mediterranean member states) and
 - 281 PGIs (75% from 5 Mediterranean member states)
- 2006 WTO dispute, EU-USA / Australia found:
 - regulation discriminated against non-EU WTO members; but
 - confirmed adequate protection for pre-existing trademarks
- 2012 redraft following an 'evaluation'
 - Streamlines administration to address poor participation of very small scale producers

"Regulation 2081/92 is a compromise at the intersection of French commitments to GI protection based on the registered Appellation d'Origine, which emerges from the history of wine regulation and the German regime, which is unregistered and grounded predominantly in Unfair Competition Law. This article argues that the incomplete conceptual compromise results in a serious structural gap in the Regulation and Melton Mowbray falls into it." (Dev Gangjee, 2006, "Melton Mowbray and the GI Pie in the Sky: Exploring Cartographies of Protection", *Intellectual Property Quarterly* 3: 291-309).

Original set of names – from DOOR, 2 Dec 2018, registrations with no submission date: 370 PDOs (97% from 5 Mediterranean member states) and 281 (75% from 5 Mediterranean member states) PGIs show no submission date.

2006 WTO dispute US (WT/DS174); Australia (WT/DS290)

(Sparshott, Jeffrey. WTO name ruling favors U.S. brewery

[Knight Ridder Tribune Business News](#) [Washington] 16 Mar 2005: 1):

- Win for US in terms of MFN and GI applications;
- Win for EI as confirmed later GI registrations can co-exist with earlier trademarks.

Regulation (EU) No 1151/2012 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1151&from=en>) followed a rather poor quality evaluation of the GI program, largely because of the absence of relevant data. The EU's Impact Assessment Board considered that the added value of the GI schemes had not been demonstrated ([European Commission staff, 2010a](#): 6 and http://ec.europa.eu/agriculture/quality/policy/quality-package-2010/ia-gi_en.pdf).

2006 regulatory changes

- New application procedures to include non-EU producers (implements WTO ruling);
- Other regulatory changes:
 - Non-geographic names eligible for PGI registration
 - Regional GI boundaries not identical to administrative boundaries
 - Exceptions to source of raw materials for PDOs registered before 1984
 - Drops requirement for an official register of generic names
 - Allows GI registration where region crosses a national border
 - Timelines for processing applications
 - Public register (DOOR)
 - Processes for amending production specifications

Above is a summary of the regulatory changes which were not due to the WTO dispute and comes from the detailed discussion in:

Adriano Profeta, Richard Balling, Volker Schoene and Alexander Wirsig, “The Protection of Origins for Agricultural Products and Foods in Europe: Status Quo, Problems and Policy Recommendations for the Green Book” (2009) 12(6) *Journal of World Intellectual Property*, 622–648.

<https://onlinelibrary.wiley.com/doi/10.1111/j.1747-1796.2009.00380.x>

The issues in blue are those which are most problematic with respect to the different perspectives of the EU and New World countries.

2012 regulatory changes

- 2008 Green Paper on Agricultural Product Quality – part of the Common Agricultural Policy (CAP)
 - 2008 London Economics and 2012 AND-International studies
 - Internal EC “evaluation” of GI policy
 - Criticised for its poor quality / lack of data by EC’s own Impact Assessment Board
 - One clear finding was failure to attract very small scale producers into GI schemes
- 2012 amendments
 - Bring TSGs into same regulation as PDOs and PGIs
 - Shorten, clarify and streamline administrative processes
 - Implicit intent to address failure of GI schemes to attract very small scale farmers
 - Single supervisory committee

EC’s explanatory memorandum to European Parliament (rather broad-brush), sets out background and summarises changes:

- Brings PDOs, PGIs and TSGs into single system, but separate from wines and spirits as recent changes to wines and spirits systems need to bed down;
- Streamline, simplify etc administration – but short on detail
- Single committee
- Parallel modifications to marketing standards regulations

The third report by the Impact Assessment Board is available at

http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2010/agri_2010.pdf

“However, both the impact assessments for geographical indications and for traditional specialities guaranteed highlighted the widespread failure of these schemes to attract participation of very **small-scale producers**, notwithstanding that small-scale producers are often associated with artisanal product, traditional methods and local marketing, the European Union schemes are seen as burdensome in terms of application, necessitate costly controls, and require adherence to a specification. Therefore, further study and analysis will be carried out in order to assess the problems faced by small-scale producers in participating in Union quality schemes. On the basis of the results of this analysis, the Commission may propose appropriate follow-up.” (European Commission, 2010, *Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes (Explanatory Memorandum)*): 7,

available at <http://www.ipex.eu/IPEXL->

[WEB/dossier/document.do?code=COM&year=2010&number=733&extension=FIN](http://www.ipex.eu/IPEXL-WEB/dossier/document.do?code=COM&year=2010&number=733&extension=FIN).)

EU food GIs: rationales

- Intellectual property
 - TRIPS Article 22 standard
 - don't use place names for trademarks
 - TRIPS Article 23 Standard
 - Place-name qualifiers are defined as misleading "feta-style cheese from Gippsland"
 - EU TRIPS Article 23 Plus standard
 - No evocation → no comparative marketing
- Agricultural and regional development
 - Increase net producer income
 - Contribute to regional economic growth
- Cultural
 - Protect traditional methods of production

"IP" rationales

TRIPS Article 22 is uncontroversial

TRIPS Article 23. The IP "rationale" is based on the economic theory of information asymmetry, a theory developed to explain issues in the consumer durables (fridges, cars, etc) markets. That is, for goods which are rarely purchased. It's application to the purchase of foods, an even which occurs weekly if not daily, is highly questionable. For a more detailed discussion see Teuber, Ramona, 2011, "Protecting Geographical Indications: Lessons learned from the Economic Literature," Presented at European Association of Agricultural Economists, 2011 International Congress, August 30-September 2, 2011, Zurich, Switzerland, available at <http://purl.umn.edu/116081> (accessed 10 December 2018).

The EU's "evocation" policy is a TRIPS-Plus standard. For useful discussions see:

- Dev Gangjee, 2006 (see slide 17);
- Calboli, Irene, 2015, "Time to Say Local Cheese and Smile at Geographical Indications of Origin - International Trade and Local Development in the United States," *Houston Law Review* 53(2): 373-419; and
- Handler, Michael, 2016, "Rethinking GI extension," pp. 146-182 in *Research Handbook on Intellectual Property and Geographical Indications*, edited by D.S. Gangjee. Cheltenham: Edward Elgar.

EU food GIs: the economics

- Increase net producer income
 - What is the market size for GI labelled products?
 - Even in EU is only 6% of market
 - How does GI labelling intersect with demand for organics, fair trade, food miles?
 - What **willingness to pay** a premium do consumers exhibit?
 - Evidence to know when GIs will increase net producer income and when won't
 - Little systematic data; case studies show conflicting results
- Contribute to regional economic growth
 - Again little systematic evidence
 - Main finding is that effective regional development needs a **package** of approaches

For a detailed review of the evidence on this topic see:

Török, Á. and H.V.J. Moir, 2018, "Understanding the real-world impact of GIs: A critical review of the empirical economic literature," ANU Centre for European Studies Briefing Paper Series Vol.9 No.3 (July 2018). Available at http://politicsir.cass.anu.edu.au/sites/default/files/docs/2018/7/Briefing_Paper_GeographicalIndications_Vol.9_No.3.pdf

For a summary of the data on GI market size see:

Török, Á. and H.V.J. Moir, forthcoming, "The market size for GI food products – evidence from the empirical economic literature," *Studies in Agricultural Economics* 120 (doi: <https://doi.org/10.7896/j.1816>)

Two excellent summaries of willingness to pay literature are:

- Grunert and Achmann, 2016, who set up a useful model of the psychological steps in brand choice and review 35 studies related to these steps. Although their review focuses very much on the EU GI labels, it is a useful and serious analysis of the available material. (Grunert, K.G. and K. Achmann, 2016, "Consumer reactions to the use of EU quality labels on food products: A review of the literature," *Food Control* 59: 178-187.); and
- Deselnicu and colleagues who undertake a meta-analysis of 25 studies estimating GI price premiums (Deselnicu et al., 2013, "A Meta-analysis of Geographical Indication Food Valuation Studies: What Drives the Premium for Origin-Based Labels?," *Journal of Agricultural and Resource Economics* 38(2): 204-219).

EU food GIs: trade issues

- Few outstanding issues for wines and spirits
 - improved market access → agreement to adopt TRIPS Article 23 “strong” GI protection for wines and spirits
 - 20 bi-lateral wine agreements, 2 covering more than one country
- Major trade disagreement over GI names for foodstuffs
 - EU demands are:
 - Strong-form GIs for foodstuffs (usually only specified names in Annex)
 - Administrative enforcement (*sui generis* style system)
 - GIs recognised even if pre-existing trademarks
 - US/Australia demands are:
 - Processes to challenge registration of GIs
 - Processes to recognise generic names
 - Owner-based enforcement (trademark style system)

For bi-lateral wine agreements see:

https://ec.europa.eu/agriculture/wine/third-countries_en

which lists 20 specific agreements. Two of these cover more than one country.

For a discussion of GIs and trade negotiations see, for example:

Das, K., 2015, "The protracted WTO battle over a multilateral GI register: what lies beneath", *Journal of World Trade* 49(6), 1073-1102;

<http://www.kluwerlawonline.com/abstract.php?area=Journals&id=TRAD2015041>

Moir, Hazel V. J., 2017, "Understanding EU Trade Policy on Geographical Indications", *Journal of World Trade* 51:6, 1021–1042.

<http://www.kluwerlawonline.com/abstract.php?area=Journals&id=TRAD2017040>

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