

DEVELOPMENT AND PROTECTION OF GEOGRAPHICAL INDICATIONS : A STUDY OF EMERGING ISSUES

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I. INTRODUCTION

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share the benefits of scientific advancement. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.¹ Everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.² The establishment of universal society having equal opportunities for all the people has been sought by the International Covenant on Civil and Political Rights³. The states parties to the Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed :

- (a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

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¹ Universal Déclaration on Human Rights. 1948. Article 27.

² *Ibid.*, Article 29.

³ International Covenant on Civil and Political Rights. 1966.

- (b) to ensure an equitable distribution of world food supplies in relation to need,⁴ taking into account the problems of both food-importing and food-exporting countries,

The states parties to the Covenant are required to recognize the right of everyone :

- (a) to take part in cultural life;
- (b) to enjoy the benefits of scientific progress and its applications;
- (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.⁵

The steps to be taken by the states parties to the Covenant to achieve the full realization of these right shall include those necessary for the conservation, development and diffusion of science and culture.⁶ The states parties to the Covenant have to recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Certain goods, whether, naturally found, agriculturally cultivated or manufactured in a particular territory of a country or a region or locality have specific characteristics with regard to taste, aroma or quality. These goods are marketed on the basis of their appellation of origin or geographical indication. Paris Perfume, Scotch whisky, Russian vodka, French Champagne, Basmati Rice, Darjeeling Tea, Swiss Chocolates, Nagpur Orange, Kashmiri Apple, Bikaneri Bhujjiya, Benaras Silk are some of the goods which have acquired a special importance on account of their association with indication of source. However, there has been growing tendency to use false or deceptive indication or source of goods to lure customers. For protecting and promoting the rights of the collective owners of the geographical indications, the activists are making concerted efforts at various platforms.

For protection of agricultural goods, natural goods or manufactured goods or any goods of handicraft or goods of industry including food stuff, measures respecting geographical indications are being debated to promote

⁴ *Ibid.*, Article 11 (2).

⁵ *Ibid.*, Article 15(1).

⁶ *Ibid.*, Article 15(2).

the interests of the producers of the geographical indicators. The restriction on the unauthorized persons on misusing geographical indications would protect consumers from deception and would add to the economic prosperity of the producers of such goods and would also promote goods bearing Indian geographical indications in the export market. The Agreement on Trade Related Aspects of Intellectual Property Rights warrants that other countries are under no obligation to extend protection unless a geographical indication is protected in the country of its origin⁷.

The issues regarding the definition of geographical indications are under active discussion at various platforms for giving a comprehensive definition, protection and promotion of the geographical indications. Taking a step in this direction, the TRIPS Agreement has ventured to define geographical indications as:

indications which identify a good as originating in the territory of a WTO 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.⁸

II. DEFINITION OF GEOGRAPHICAL INDICATIONS

The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications of World Intellectual Property Organization⁹ analysed various documents submitted by The World Intellectual Property Organization for designing comprehensive elements of the concept of geographical indications with a view to protect and promote the rights of the owners of the geographical indications. The Committee observed that the status of the variety of the systems of protection for geographical indications, the diversity of the terminology used in the legislative instruments and the lack of sufficient information on the regulations and national administrative procedures hampers the preparation of an overall analysis of the different elements on which the definition of geographical indications and their considerations are based¹⁰.

⁷ TRIPS Agreement, 1995.

⁸ *Ibid.*, Article 22.1.

⁹ Tenth Session Geneva, April 28-May 2, 2003.

¹⁰ *Ibid.*

The Committee deliberated upon the following fundamental issues, insofar as they were assessed in different ways at the international level before considering the different elements contained in the definition of geographical indications and their assessment in the different protection systems.

A. Alternative Elements and Quality

The TRIPS Agreement introduces an alternative “a given quality, reputation or other characteristic”, whereas the definition of the appellation of origin under the Lisbon Agreement makes express reference to a combination of natural and human factors representing the quality and the distinguishing characteristics of the product.¹¹

The determination of the quality of a specific product cannot be undertaken in overall terms at the global level according to harmonized and exhaustive criteria which would take account of the cultural diversity of the international community. This appreciation, therefore, appears to be derived from a factual approach and from the prerogative of the competent national authorities, based on the criteria which are specific and individual to them. In this regard, the WTO study¹² indicates that the reference to “quality” is formulated in a different manner, sometimes in the plural, in the various definitions appearing in different national legislations. For example, “established quality,” “particular quality,” “given quality,” “specific quality,” “special quality characteristics,” “special outstanding quality distinguishing the product from generic products,” superior quality/quality of the highest grade as determined in accordance with standards specified in the law for the product concerned or, as determined through customary use in the respective industry. Thus, the term “quality” appears less to imply a certain quality of the product – qualitative criterion – than a characteristic – legal criterion – allowing a product to be distinguished as a result of its geographical origin.¹³ If the qualitative link is not sufficient, can it therefore be concluded that there is no geographical indication? Generally speaking, this approach prevails in relation to appellations of origin; i.e., if the characteristic qualities are essential only to a slight extent due to the geographical environment, protection cannot be

¹¹ WIPO Standing Committee on Trade Laws, Industrial Designs and GI, para 4.

¹² WTO Document IP/C/W253, dated April 4, 2001, paras 40-41.

¹³ *Supra* n. 11, para 7.

granted in the form of an appellation of origin. The qualitative link between a product and its geographical origin will be all the more difficult to evaluate since it will involve, for identification purposes, other subjective factors such as the quality of the ingredients used or the manufacturing process. Thus, the fact that a product is produced by a traditional method or that its production, preparation and processing has occurred in a particular geographical area can contribute to its “quality,” but these factors may, in another specific case, not be decisive for another product.¹⁴

The requirement for a qualitative link between the geographical environment and the product as part of a cumulative interpretation of the elements of the definition would lead to a disadvantage for the countries whose geographical indications apply not to agricultural or crafts products but to industrial products. This link, which may have existed at the beginning of the manufacturing of an industrial product, may subsequently be broken to the extent that its existence is henceforth difficult to prove. Moreover, manufacturing traditions and human skills can be transferred from one geographical area to another, taking into account in particular increasing professional mobility and economic globalization¹⁵.

The methods for manufacturing and obtaining the product should/may also be the subject of a precise description. This description must help to identify the product’s personality. Thus, the description of the methods for obtaining the product should/may contain the description of the techniques implemented as well as the quality criteria of the final product, by demonstrating the particular features linked to the product. The description should relate to all the stages concerned with the location of a case including, where necessary, the packaging. For animal breeds, the following will, therefore, be mentioned: the breed, breeding practices of feeding, grazing, suckling, age of slaughter, maturation, classification of carcasses, pH, and so on. For plant productions, the varieties, dates of seeding and harvesting, harvesting periods, harvesting method, storage, dispatch, firmness, sugar level, etc. will be mentioned. Finally, for manufactured products, the description of the raw materials of the type of product, part of the selected product, etc., the description of the manufacturing process of preparation, drying, salting, etc. may be noted.¹⁶

¹⁴ *Ibid.*, para 9.

¹⁵ *Ibid.*, para 10.

¹⁶ *Ibid.*, para 10.

B. Reputation

The countries which have adopted the Lisbon model do not generally refer to reputation in their national legislation as an element linked to the geographical origin of the product, whereas the countries that base themselves on the TRIPS model do so systematically. The Lisbon model does not mention reputation as an element linking the product to the place. It appears rather that the reputation of the geographical location is based on the quality and characteristics of the product for which it is best known. As regards the countries whose legislation follows the TRIPS model, the study shows that several of them have adopted various forms of qualification standard such as “general reputation,” “given reputation,” “specific reputation,” etc.¹⁷

C. Other Characteristics

The other characteristics of the geographical environment can be understood to include natural factors such as soil and climate, and human factors such as the particular professional traditions of the producers established in a given geographical area. The region demonstrates the interaction between the physical (natural) and human factors built up over time. The link to the “*terroir*” will therefore be manifold and will vary according to the products. Consequently, the basis of the relationship between the region and the typical characteristics of the product, at the different stages of manufacturing, conversion and production, should be accurately described. The typical characteristics of the product linked to the region include any objective or subjective characteristic which discriminates the product within its reference family, and refers both to the characteristics of the final product, the practices linked to the manufacturing of the raw materials, the conversion and production of the product, and the social and cultural representation which the producers and consumers of the product have. The analysis of these factors should define, in objective terms, the different components of the product such as the color, shape, texture, composition and so on. For manufactured products, this definition is made firstly on the raw agricultural material and, secondly, on the product resulting from manufacturing. The means used to define these characteristics may be bibliographical, through

¹⁷ *Ibid.*, para 42.

the interrogation of the producers themselves, or through physical, chemical and sensory analysis work (testing panels).¹⁸

D. Link with the Geographical Origin

It is most important for the justification of the elements of the definition to be made in the most objective manner possible with a view to giving the link a precise and specific form, since this constitutes the basis for the protection of a geographical indication. The grant of an exclusive right to a denomination is made only in so far as this right is justified by objective elements and forms of proof. The elements and proof set claims for the subject matter to seek protection by specifying the elements in methodological and practical manner.¹⁹

III. DEVELOPMENTS IN GEOGRAPHICAL INDICATIONS FIELD

A. Identification of Geographical Indications

The geographical indications move beyond the concept of appellations of origin in important ways. First, geographical indications may be any indication identifying a particular region, locality, or country, including words and pictorial symbols; they do not have to be the place name itself. Thus, geographical indications may identify a good with any expression including, most likely, a place name or symbol that may be made to evoke a location. Geographical indications refer not only to products with quality characteristics that are attributable to a region but also to the reputation of a product. Thus, it is permissible to apply geographical indications to goods that enjoy reputations stemming from local innovativeness such as craft goods rather than physical characteristics emanating from climate or soil quality. However, this reputation needs to be tied to a geographical origin that may be uniquely identified in order to exclude others from its use.

There is a double lared structure of protection for geographical indications in TRIPS, keyed to the type of product, with wine and spirits achieving the highest protection. This structure emerged from interest-based bargaining in the Uruguay Round, with the main *demandeurs* being wine producers from the EU. However, given the relatively expansive scope, at least on paper, of coverage for geographical indications, many countries are

¹⁸ *Ibid.*, para 24.

¹⁹ *Ibid.*, para 29.

considering the benefits of extending stronger protection to other goods, including foodstuffs, tobacco products, artisan goods, and even services. The question of extension lies at the center of controversy within ongoing TRIPS negotiations, which have made little leeway to date. Interestingly, this is by no means (and perhaps uniquely within the intellectual property arena) an issue pitting North versus South. Rather it is largely one in which some agricultural and food exporters see potential benefits for their producers through claiming distinctive place-based qualities, arrayed against other agricultural and food exporters that perceive their commercial interests lie in being able to imitate those quality characteristics and attach the same place names. Also significant are perceptions by some developing countries that geographical indications can play a useful role in defining and exploiting the products generated by collective knowledge. Close analysis of particular forms of intellectual property rights (IPRs) tends to frustrate economists for three simple reasons. First, such policies are inherently second-best interventions in a world of multiple distortions. As such, whether IPRs generate net benefits for a country depends on circumstances and time horizon, with the analysis often playing out against an unobservable counterfactual situation. Put differently, countries must find an appropriate balance the interests of inventors and creators (recognizing that these may be foreign entities) and the needs of the public for access to information, products, and services. Second, the precise regulatory standards in IPRs (e.g., the novelty requirement in patents and the scope of fair use in copyrights) are arcane and difficult to model in a systematic way. Third, and perhaps most important, relevant data generally are unavailable and cannot support definitive analysis.

B. Doha and TRIPS Agreement

The most general mandate of Article 22.2 of the TRIPS is that countries must permit interested parties to use legal means to prevent the identification or presentation of a good that would mislead consumers as to its true geographical origin and to prevent acts of unfair competition in this regard.²⁰

²⁰ Even more general are the TRIPS obligations of national treatment and MFN (Maskus, *INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY*, Washington DC, Institute Of International Economics, 2000). See "*WTO Mandated Negotiations on Geographical Indications (TRIPS)*" available at www.intracen.org/worldtradenet/docs.

WTO Members also must provide for refusal or invalidation of trademarks containing misleading geographical indications. These general requirements must be afforded to any product for which geographical indication protection might be sought. TRIPS calls for a higher level of protection for geographical indications for wines and spirits.²¹ The Agreement requires WTO Members to prevent the use of geographical indications identifying wines and spirits that do not originate in the place indicated, even where the true place of origin is indicated or the geographical indication is used in translation or accompanied by such expressions as “kind”, “imitation”, or the like (Article 23.1). Further, it mandates negotiations concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members choosing to participate in the registration system.

WTO Members may permit continued use of a particular geographical indication, if it was used at least ten years prior to 15 April 1995 or in good faith before that date. Next, the restriction on misleading trademarks is waived where the trademark was registered, applied for, or acquired by use in good faith before the TRIPS phase-in periods expired or before the geographical indication is protected in its country of origin. Further, the terms that are generic within a territory need not be awarded geographical indication protection. In the end, members are not required to recognize geographical indications that are not protected in their country of origin or have fallen into disuse there.

The essential mandate for strong geographical indications were EU wine-producing countries, in particular France, which owned by far the largest number of registrations of appellations of origin under the Lisbon Agreement.²²

²¹ Escudero, Sergoi, *International Protection of Geographical Indications and Developing Countries*, Working paper for UN Millenium Project Task Force on Trade, (2001) points out that wines have even stronger protection than spirits through protection against homonymous indications (Article 23.3 of TRIPS).

²² As of December 31, 1999, France owned 508 registrations, or 66.3 percent. Virtually all of these were in wines, which accounted for 61.4 percent of registrations by product type. Other significant registrants were the Czech Republic, Bulgaria, the Slovak Republic, Hungary, Italy, and Cuba, while other significant products were spirits, agricultural goods, cheeses, ornamental products, and tobacco products. See, Escudero, *supra* n. 21.

Some relatively new wine-growing countries as the United States, Chile, and Australia, which had established the use of such place names as “Champagne” “Burgundy”, and “Shiraz”, were leery of strong retrospective protection for wines and succeeded in achieving the limitations mentioned. However, the EU insisted on the additional negotiations toward a registration system. In general, developing countries had no common or particular part to play in the negotiations up to that point, though India attempted to extend the scope for additional protection under Article 23 to beverages such as tea.²³ Work in the TRIPS Council since the Singapore Ministerial Conference in 1996 on geographical indications has focused on the question of extending this special protection for wines to other products. The negotiations began with a submission in 1998 by the EU to establish the mandated (in the EU’s view) register for wines and spirits.²⁴ This proposal did not limit itself to wines and spirits, opening the door to extension to other products of interest to EU members, such as cheese, chocolates, beer, and embroidery designs. This open door lies at the heart of discussion by WTO Members on extension.

C. Claims of Rich Countries

For stacking claim, in 1999 a proposal was made by the United States, Japan, Canada, and Chile.²⁵ They argued that the EU proposal interfered with the right to choose appropriate national implementation methods and raised unreasonable administrative burdens. Their proposal focused on a voluntary register without legal effect, in which participating Members would agree to refer to the list when making decisions regarding national protection of particular geographical indications. Hungary submitted a communication in 2000 attempting a compromise, though it built on the EU approach.²⁶ Hungary argued that the EU’s framework was consistent with the spirit of Article 23.4 but that opposition procedures should be transparent and effective, while allowing for consultations and binding arbitration for settling disputes. Its proposal also claimed that successfully challenged geographical

²³ Watal, Jayashree. *INTELLECTUAL PROPERTY RIGHTS IN WTO AND DEVELOPING COUNTRIES* (London, Kluwer Law International, 2001).

²⁴ IP/C/W/107 and IP/C/W/107/Rev.1, available at http://docsonline.wto.org/gen_home.asp).

²⁵ IP/C/W/133 and IP/C/W/133/Rev. 1, available at http://docsonline.wto.org/gen--_home.asp.

²⁶ IP/C/W/234, available at http://docsonline.wto.org/gen--_home.asp.

indications should not be entered into the register, thereby removing them from obligated protection. This approach has gained adherents on both sides of the geographical indication registration debate.

What is the scope of products to be covered by a WTO register of geographical indications? The EU and Mexico, among others, have argued that spirits are covered in the ambit of Article 23, though other nations have disputed this claim. The EU prefers to keep the wording as open as possible in order to permit extension of geographical indications beyond wines and spirits. This approach is supported by numerous other countries, both developed and developing, including Switzerland, the Czech Republic, Bulgaria, Slovenia, India, Turkey, Egypt, Pakistan, Mauritius, and Sri Lanka, who have made joint representations.

No real progress has been made to help bridge the gap between the camps on either side of these issues.²⁷ A commitment at the Doha Ministerial Conference in November 2001 simply committed Members to "...negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. ...issues related to the extension...to products other than wines and spirits will be addressed in the Council for TRIPS..." (Paragraph 18).²⁸ Presumably, this paragraph commits Members to negotiate in the Doha Round over at least the modalities, scope, and legal effect of a registration system for wines and spirits. It clearly opens the door for obligations in additional products as well. That the disagreements remain wide implies that cross-issue negotiations may be required to achieve consensus. Thus, in the Doha Round it is to be expected that the EU and other participants preferring a strong system will need to offer other concessions, especially in agriculture.

D. Economic Analysis

The searching aspect of the geographical indication debate is that there are both developed and developing nations on both sides. India, Sri Lanka, Turkey, Egypt, Slovenia, and other developing or transition economies have joined the EU and Switzerland in pushing for a strong and expansive

²⁷ WTO, TRIPS Council (2002).

²⁸ "Ministerial Declaration" WT/MIN(01)/DEC/1, 20 November 2001.

registration system. On the other side are the United States, Canada, Japan, Australia, New Zealand, Chile, Argentina, and Mexico, among others.²⁹ It is evident that the former group sees advantage in protecting the place names associated with its distinctive products, even to the point of recovering such names as Basmati (India).³⁰ The latter have developed wine and food industries that produce close substitutes for goods that might be protected globally under a geographical indication registration system, raising their costs of marketing and litigation.

It is worth pointing out here that the United States is in the position of “second comer” in the competitive game and opposes a strict and comprehensive registration system. The submission on which it was joint author stated that “...free and fair imitation of a product often enhances the intrinsic value of the genuine geographical indication” and that extension to other products would not necessarily achieve more effective protection than would recourse to the basics in Article 22.³¹

This is not the kind of language one ordinarily associates with the United States Trade Representative or the U.S. Patent and Trademark Office. Many developing countries favor extension makes geographical indications rather unique in the panoply of intellectual property rights, most of which may be characterized loosely along a North-South as producer-consumer divide. This reflects the fact that some poor countries consider themselves to be net producers and exporters of geographical indication goods, perhaps especially in the future after registration is sorted out. When seen through the lens of comparative advantage, of course, this view is unsurprising. To a first approximation, geographical indications perforce refer to agricultural goods and beverages derived from agricultural products. Exclusive rights emanating

²⁹ It should be noted that opposition to a rigorous registration system does not necessarily mean a recognition of the importance of GIs. Language in NAFTA, for example, provides protection for Mexican spirits (Tequila, Mezcal) and U.S. spirits (Kentucky Whiskey).

³⁰ Basmati is a protected GI in India and Pakistan and has been recognized within rice marketing regulations in the UK and Saudi Arabia. However, the term has been declared generic in the United States and U.S. authorities do not consider a label such as “American-grown Basmati” to be misleading or unfair competition. See Commission on Intellectual Property Rights.

³¹ IP/C/W/289., available at http://docsonline.wto.org/gen--_home.asp.

from geographical production may enhance export prospects and raise value added (monopoly rents) for those regions that can establish distinctiveness of this kind. However, geographical indications also bear some scope for application to designs of carpets, embroidery, and the like, which may serve as an effective complement to the protection and exploitation of collective or traditional knowledge.

E. Economic Concept on Geographical Indications

The logic of supporting registration of trademarks is that information is costly to acquire and asymmetrically distributed between consumers and producers.³² In the absence of legal means for excluding rivals from use of a distinctive mark, firms could not readily signal to consumers the identity of ultimate producers. As a result, the inability of consumers to assess the true quality of products on offer would eliminate some transactions in higher-quality goods, thereby reducing firm incentives to invest in quality. Put differently, in the absence of trademarks consumers would have higher search costs for finding quality of the desired level and, if they are risk averse in the presence of uncertain information, would consume less. The notion that firms have an incentive to establish and even improve the quality of their products under trademark protection is not without controversy but seems easily supported in market economies. It is evident that the expected benefits from exclusive rights are likely to rise with the underlying quality of products. The likelihood of imitation (infringement) is typically highest for high-quality goods because of their high price premium, raising the gains to firms from protection. Further, advertising costs are likely to be higher among high-end goods in order to convince consumers to sample products and establish attachments to them. In consequence, consumers reliably can assign high advertising budgets to quality under most circumstances.³³

³² Akerlof, George A., *The Market for Lemons: Qualitative Uncertainty and the Market Mechanism* Quality, 84 JOURNAL OF ECONOMICS 488-500 (1970) is the canonical article on information asymmetries.

³³ Nelson, *Information and Consumer Behaviour*, 78 JOURNAL OF POLITICAL ECONOMY 311-329 (1970), Klein and Leffler, *Non-Governmental Enforcement of Contracts: The Role of Market Forces in Guaranteeing Quality*, 89 JOURNAL OF POLITICAL ECONOMY 615-641 (1981), and Fink, Smarzynska, and Spatareanu, *Product Quality, Trademarks and Trade*, World Bank Manuscript (2003).

Though, there are no formal studies or surveys, in many respects geographical indications afford the same characteristics. As guarantees of the origin of products, they reduce consumer search costs. Moreover, unlike trademarks (which bear no direct guarantee of quality), geographical indications are required to be associated with inherent quality or reputation of a location or region. Thus, the information content in terms of quality is similar but more direct. The returns to investing in high-quality uses of regional characteristics (e.g., establishing high-end wines) surely are higher for premium locations, so one would anticipate a market-based ranking of locations to emerge. Indeed, Napa Valley within the United States and the Barossa Valley and Coonawarra District in Australia are renowned for the quality of most of their wines. Finally, like trademarks geographical indications do not protect underlying technology or knowledge; anyone is free to reverse engineer a product marketed solely under geographical indication protection. In this way, geographical indications may be expected to have some pro-competitive and pro-development features. Most importantly, they should induce firms within regions to organize their innovation and production methods to achieve distinctiveness in flavor, color, design, or some other characteristics. These characteristics then become the basis for national and global marketing that can increase rents per unit of product. It is evident that firms in developed countries may have an advantage in meeting these costs but if the profit potential is real it should be possible to organize them in developing economies as well. For their part, global consumers gain from lower search costs, greater choice and a deeper continuum of quality. However, there are important differences between geographical indications and trademarks beyond the direct linkage with quality or reputation. Primarily, a trademark attaches to a firm regardless of its location. A geographical indication designates a particular area, within which many firms may have rights to its use. In this context a number of complications arise. First, even though a product may come from a region that has a particular reputation, the product of specific firms may still be differentiated by quality (and therefore require supplemental trademark protection). Some wines from Napa Valley are surely better than others, and their relative price premia reflect both the geographical designation and their individual reputations. In this context, geographical indications are hardly sufficient to encourage competition among member firms in quality; rather the firms might be expected to migrate toward some average or least-

cost quality. As such, geographical indications may not carry with them automatic pressures among firms to sustain quality.³⁴

The very definition of how broad a region a geographical indication should cover is difficult. Consider the use of a geographical indication to register and protect traditional clothing designs. It is likely that many villages or provinces within a developing country have skilled artisans making such clothing. It might be sensible, therefore, to register a broad territory (even the country) as a geographical indication in order to economize on registration and marketing costs. However, the broader the territory, the more difficult is the coordination problem and the greater are the incentives to cheat on quality.

The fixed costs of organizing and sustaining a system of geographical indications are far higher than in the case of trademarks. Little surprise, then, that while there are hundreds of thousands of registered trademarks in the world, there are fewer than 1,000 registered geographical indications.³⁵ In this regard, small regions in poor developing economies may not be able to marshal the resources needed for an effective use of geographical indications on a global scale. Technical and financial assistance, both for identifying appropriate market niches and establishing the right forms of registration and marketing, may be central in this area of intellectual property rights. Some developing countries look to geographical indications as an important mechanism for defining and protecting the commercial fruits of certain forms of traditional knowledge or collective knowledge. Undeniably there is a linkage here, for geographical indications may be scaled to incorporate all local users of knowledge regarding the exploitation of natural resources or design traditions. Indeed, geographical indications are the only form of IPR that provide this kind of collective right, albeit based on production location rather than underlying knowledge. Thus, there is scope for marrying these two concepts, which marriage bears potential for reducing poverty. Getting from

³⁴ Put in more technical terms, firms availing themselves of a GI may have incentives to cheat on its reputation individually, with a joint “prisoner’s dilemma” outcome of eroded quality over time. The evident solution to this free riding is a coordinated strategy within producer coalitions or associations that provide implicit or explicit punishments to defectors. Such associations themselves may be exclusionary, of course.

³⁵ Fink, Smarzynska, and Spatareanu, *supra* n. 33 and Escudero, *supra* n.21.

this observation to a practical outcome is liable to be quite difficult, however. The coordination costs noted above for geographical indications are of much higher magnitude in the area of traditional knowledge and it is not theoretically clear whether these costs would be offsetting or cumulative.³⁶

IV. RECOMMENDATIONS

For realizing the rights of the owners of geographical specific products, concerted efforts in the following way are anticipated to yield results :-

- (1) We must support actively the initiatives to disaggregate information about rural production systems beyond generic data and the application of hierarchical and compatible classification systems.
- (2) It is a matter of consideration that natural and cultural history institutions in developed countries harbor collections and documentation on developing country's local resources and products that should be made accessible through the integration, repatriation and dissemination of agronomical, biodiversity, ethnological and anthropological information.
- (3) For getting better results, comparative studies on the economic and biological considerations are needed to identify optimal geographical indication sizes considering the financial and geographical thresholds above which a governing body can be sustained and beyond which it cannot be affordable, democratic and representative.
- (4) Concerted efforts on basic and participatory research on resource description including natural, biological and genetic resources, landscapes and ecosystems to sustain solid management actions in the context of geographical indication production systems.
- (5) It is legitimately stated that "a resource is not one until it is known to be one by a human group". This simple statement underlines the relevance of knowledge and practice, traditional and innovative, in order for the components of biodiversity to become resources. Such knowledge has

³⁶ See, Luthria Manjula and Keith E. Maskus, *Protecting Industrial Inventions, Author's Rights and Traditional Knowledge, Relevance, Lessons and Unresolved Issues*, in Kathie Krumm (ed.), *TRADE & POVERTY : A REGIONAL AGENDA* (Washington DC : the world Bank, 2003) on administrative and coordination costs in traditional knowledge.

been the subject of illegitimate appropriation *i.e.* biopiracy and this is a legitimate concern for indigenous peoples, peasant organizations, civil society and academics, as well as developing country governments. Without minimizing the strategic importance of the issue, a negative consequence of prioritizing the patent debate has been that of neglecting the positive potential of collective forms of intellectual property in promoting the sustainable use of biological and genetic resources related to traditional knowledge.

- (6) All out efforts should support innovation in the design of geographical indication governing bodies that includes space for a respectful relation with traditional governance structures when natural resources from communal lands or traditional knowledge is involved in the value chain of the GI.
- (7) We must promote the creative use of traditional knowledge in geographical indication product development while providing resources for the timely and careful acknowledgement of governance over such knowledge. Geographical indication regulation should give particular attention to indigenous languages in decrees, regulations and registries when the traditional knowledge of indigenous peoples is involved.
- (8) Universal respect and recognition for horizontal governance over biological resources and knowledge in order to empower small farmers in projects that support vertical integration is needed.
- (9) We must maintain relationship between geographical indication governance, which is inherently regional, and collective governance over resources or knowledge at the local and community level. Assess the extent to which publication of product description and geographical indication recognition decrees may be useful as preventive protection for traditional knowledge, in particular food production related practices.
- (10) For getting true value of the products, production systems that are market oriented *e.g.* cash crops or livestock are certainly a key component of poverty alleviation strategies in rural areas. Geographical indications can contribute to their economic success by providing a clear means of differentiation in the market. Economic growth will certainly contribute

to combatting poverty in peasant communities but it must be kept in mind that creating value does not necessarily mean that there will be adequate or fair distribution of wealth along the value chain. In fact, adding value to local crops and breeds may imply excluding part of the communities from accessing resources previously available, because quality controls and additional processing increase the price and value of raw materials and products.

- (11) The modernized changes in food habits is unhealthy. Carbohydrate-rich diets are becoming more popular in developing countries, while diverse diets that are traditional in rural communities are being revalued as 'healthy' in developed countries. Thus, besides addressing food availability in both the rural and urban environments of developing countries, diversity and the intake of fresh leafy vegetables should be given priority
- (12) As our end, food availability, in both quantity and quality, for peasants and rural populations but also for lower and middle classes in suburban and urban areas of developing countries needs to be carefully considered as part of the markets for geographical indication products. The exclusion of poor consumers from the value-added, quality-controlled high end niche markets would be an unacceptable consequence of geographical indication implementation in developing countries.
- (13) At all levels, differentiation of various production and commercialization chains at least local, regional and national/exports is the only means by which geographical indication implementation in developing countries may avoid economic exclusion processes.
- (14) From every corner, we must support developing countries in designing adequate differentiation strategies to avoid limiting access to geographical indication foodstuff for local and regional consumers e.g. differentiated presentations, quality grading, labeling and taxing schemes.
- (17) It is a fact that when the registering of a geographical indication becomes a possibility for a small group of producers, it means that there is an existing or potential market for the product and a structure that is oriented towards commercialization. The main challenge for social and collective undertakings is to acquire professional management capabilities to meet

formal demands they have never confronted previously. For example, consumers are now used to certain ways of perceiving safety, and product presentation is one of the most important of these.

V. CONCLUSION

The determination whether particular countries or regions would benefit from a rigorous multilateral and extended system of registration of geographical indications is not at all straightforward. There is a strong need for close research in this area. which is not a very helpful statement at this point. It seems clear that geographical indications are most applicable to agricultural goods and foodstuffs. Their application to designs, services, and traditional knowledge are less concrete. The establishment of geographical indications on their own is likely not to be sufficient to provide significant incentives for building markets and exports. Complementary technical and financial assistance may be required. More centrally, other forms of IPRs in trademarks, trade secrets, design protection and competition regulation are required complements. Careful consideration needs to be paid to the tradeoffs between economies of large scale area geographical indications and problems of coordination. Because most conceivable geographical indications would implicate firms that are already producing with some access to the associated region or knowledge, instituting a system of geographical indications will generate significant redistribution of opportunities and wealth across actors. In light of these uncertainties it is surprising that so many developing countries are advocating for a multilateral registration system with strong legal effect. For most nations, especially the least developed ones, it is probably advisable at this point to maintain as much flexibility as possible. This would mean sticking with an Article 22-based interpretation of the scope of obligations, not linking themselves to the extensive registration system, and taking advantage of the limitations on geographical indications set out in TRIPS. This approach presumably would not exclude them from registering and enforcing what they consider to be important existing and new forms of geographical indications.

Identification and recognition of different markets is one of the most important challenges for small producers. Migration processes to developed countries create a situation in which physically distant markets may be culturally close and with increasing purchasing power, while cultural change in urban

consumers may create situations in which physically closer markets may be culturally distant. Thus, markets should be understood not only in terms of distance, scale or regulation but also in terms of cultural approaches, because an essential condition for origin-labelled products to be successful is that they be well-perceived and even culturally close to consumers.