The Socio-economics of Geographical Indications

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WTO Members seeking stronger protection for geographical indications believe that they posses many products with strong commercial potential that will qualify for it. But these 'demandeurs', and developing countries among them in particular, need to be aware of the specific tasks and hurdles in realising this potential.

Like trademarks and brands, indications of geographical origin (GIs) play an important role in signalling a certain level of quality.[1] The collective reputation embodied in the indication requires protection from misappropriation and dilution. Protection of indications generates incentives for investments in maintaining a level of quality that consumers have come to expect. Further, misappropriation, while harming the reputation of the indication, leads to consumer confusion and increases search costs. This economic rationale for protecting GIs is evident in Judge Gault's 1991 decision in favour of Champagne producers:

> "Champagne is a geographical name. [...] goodwill will be damaged if someone else uses the name in relation to a product in such a manner as to deceive purchasers into believing the product has the characteristics of products normally associated with the name when it does not."[2]

GIs and the Protection of Indigenous Knowledge

Many view GIs as a potential public policy instrument for the protection of indigenous and local knowledge. This is evident in the deliberations of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, where developing countries have remained ambivalent about the beneficial impact of using other intellectual property rights (IPRs). Particular features of GIs, in contrast to other IPRs, account for this perception. First, knowledge underlying the GI remains in the public domain. Second, in most jurisdictions, the rights can be held in perpetuity as long as the product–place–quality link is maintained. Finally, the scope of protection, such as the absence of a right to assign and its basis as a collective right, make it consistent with cultural and traditional rights.

> The protection of GIs requires more than the mere protection of geographical names because of the triple association between the product, its place of origin and quality-related factors. The inclusion of quality remains problematic as it is a highly contested, socially constructed and ambivalent notion. At issue is whether the product, with essentially similar characteristics, can be produced in a different physical or human environment.

This role does, however, have its limitations. Fundamentally, as the knowledge remains in the public domain, it is not protected against misappropriation (*qua* biopiracy). Consequently, GIs should be considered as part of a wider policy framework that could, for instance, include the use of complementary IPRs covering inter-related subject matter. By way of example, consider handicrafts: the technical content may be protected as a 'technical idea', the cultural value as a 'form of expression' and its distinctive characteristics through GIs.

GIs as Club Goods: Organisation and governance of supply chains

Because of their collective dimension, GIs can be described as 'club goods': they are both exclusive (i.e. individuals can be excluded from enjoying the benefits) and non-rivalrous (i.e. one producer's enjoyment of the indication by one does not diminish the right of another to enjoy it). To be clear, the reputation embedded in the indication is collective, and accrues simultaneously to all firms in the geographical region identified in the indication. However, the use of the indication is only available to those firms that fulfil the GI's specifications.

Supply chains of GI-products compound collective action problems. First, the specifications defining the indication implicate the entire supply chain. Second, firms in the supply chain face conflicting tensions as they must co-operate to develop the product's identity while competing with each other. Competition occurs at two levels: between firms at the same stage in the supply chain for market share, as well as between firms at contiguous stages of the supply chain for better share of the product's value.

Two problems in particular can be highlighted in this context: redistribution of economic returns and achieving trust.

Parmigiano-Reggiano, a GI-protected Italian cheese, illustrates how differences in economic endowment between firms at different points along the supply chain influence the distribution of returns. Compared to dairy firms, wholesaler-ripeners have a superior bargaining position partly because they are fewer in number and because they have more physical and financial capital. Although some dairy firms have vertically integrated into ripening, it is the wholesale-ripeners that control trade: seventy-six percent of dairies contact a single wholesale-ripener to sell most of their stock (77 percent); the enduring nature of relationships based on trust compensates for what might be considered adverse distribution of returns. Others suggest that agents and institutions tend to get locked into governance structures because of the time and costs involved in establishing new dependable relationships.

Teruel Ham from Spain sheds insights into the role of intermediaries in building trust. Despite a higher return and excess demand, breeders hesitated to produce pork under the protected indication. In 1996, the Regulatory Council (Consejo Regulador*)* facilitated regular meetings between participants at different stages of the supply chain and promoted contracts. This intervention succeeded in building trust between participants and improved co-ordination within distribution channels.

Differentiating Products: The task of defining GIs

It is important to recognise that protection of GIs requires more than the mere protection of geographical names because of the triple association between the product, its place of origin and quality-related factors. The inclusion of quality – a socially constructed and ambivalent notion – is a highly contested. At issue is whether the product, with essentially similar characteristics, can be produced in a different physical/human environment.

Parma Ham offers a good example of the problems involved here. For Asda, a UK grocery chain owned by Walmart, the slicing and packing of Parma ham was considered a trivial stage in its production that did not impact the product's authenticity or quality. In contrast, the *Consorzio del Prosciutti de Parma*, the quasi-public body representing Parma ham producers, considered this stage as significant in controlling the way in which the product appears on the market, thus safeguarding the product's authenticity and the indications' reputation. The European Court of Justice ruled in favour of the *Consorzio*.

The definition of a GI, a requirement under EEC 2081/92 (Article 4), elaborates the product specifications (i.e. mode of production) and identifies the basis for product differentiation (i.e. typicity of the product). The specifications are the basis for membership of the 'club': (a) they articulate the obligations that must be complied with by all users of a given indication, and (b) they mark out the rights to be protected against third parties.

It is important to recognise the wider socio-economic impact of establishing product specifications whilst defining a GI. For instance, the (high) standards required by the specifications for *Tuscany extra virgin olive oil* lead to the exclusion of some firms: small producers accounted for less than two percent of the certified production while large producers accounted for more than 77 percent. The exclusion of small producers could be on account of 'self-exclusion' (disinterest in using the indication) or inability to access certification (explicit/implicit costs). On the other hand, product specifications can have positive implications on pricing, since products bearing the indication become the reference point for quality and thus earn a premium. However, this 'recollectivisation of cultural values' has been largely appropriated by regions that did not enjoy similar renown outside Tuscany and by firms at the bottling end of the supply chain.

Segmented Markets: The promotion and marketing of GIs

A dominant characteristic of the agro-food industry is its mass-produced and standardised food with globally dispersed supply sources. This weakens any territorial and land-based associations that consumers might link to products. In addition, GI-products must contend with the economic power of intermediaries such as processors, distributors and, finally, retailers. While processors substantially control most aspects of the production process, retailers – the final gatekeepers to consumers – grew rapidly through the 1990s and now dominate the supply chain.

Countering these trends of economic consolidation are growing reconfigurations of institutions, producers, intermediaries and consumers where novel socially-constructed quality labels have proliferated (e.g. fair trade, organic, ethically traded, no sweat shop). The recent emergence of labels that mix these different niche markets is an encouraging sign. Thus, for example, in the case of coffee and tea we note the emergence of *single-origin* labels (e.g. Jamaican Blue Mountain, Café de Colombia) that are also fair trade and organic. Equally encouraging is evidence of deeper product differentiation strategies through the development of a portfolio of products within and around the protected indication. Illustrative of this strategy is the case study of *Mezcal* from Mexico, where apart from the protected indications there are single estate *Mezcal* and blends.

The general conclusion of the literature is that success of policy measures promoting GIs may hinges significantly on effective marketing strategies. This would involve analysis of how to present the product, what communication strategies to develop, how to price the product in different markets and an assessment of the distribution channels of the product.

Conclusion

There is a growing interest in GIs across a number of inter-related policy arenas. This includes the GI-extension debate at the TRIPs Council[3], as well as the debate at WIPO on indigenous peoples' knowledge. It is clear from the range of case studies and from the policy deliberations that GIs are promising. The mixed results that we have highlighted are testimony to the wide range of factors that must mobilised for success.

In particular, a number of tasks need to be successfully accomplished to actualise the (commercial) potential of GIs, such as organisation and governance of product supply chains, developing product specifications and the marketing of GI-products. The latter is considered most problematic because of the consolidation within the agro-food industries. However, proliferation of new socially constructed labels (e.g. fair trade, organic, etc.) is encouraging. It is important to recognise that the process of codifying existing practices and reorganising supply chains requires patience and commitment so that new institution and trust can be built. Intellectual property protection through GIs is an important element in this process; while necessary it is clearly not sufficient for ensuring success.

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ENDNOTES

[1] There are important differences between the two. For instance, trademarks belong to an enterprise and are not limited by any territorial link whereas geography is at the heart of GIs. More importantly, GIs are not limited to any particular enterprise, but enjoyed by all enterprises within the demarcated geographical area that meet the stipulated requirements for use of the indication.

[2] In *Wineworths Group Ltd. v. Comité Interprofessionel du Vin de Champagne*, 2 NZLR 327 [1991]

[3] This debate concerns the extention of the strong level of protection already granted to wines and spirits to other, mostly agricultural, products.