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Agriculture et développement rural

Protection of Geographical Indications in the EU - Legal issues

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London, 20 May 2008

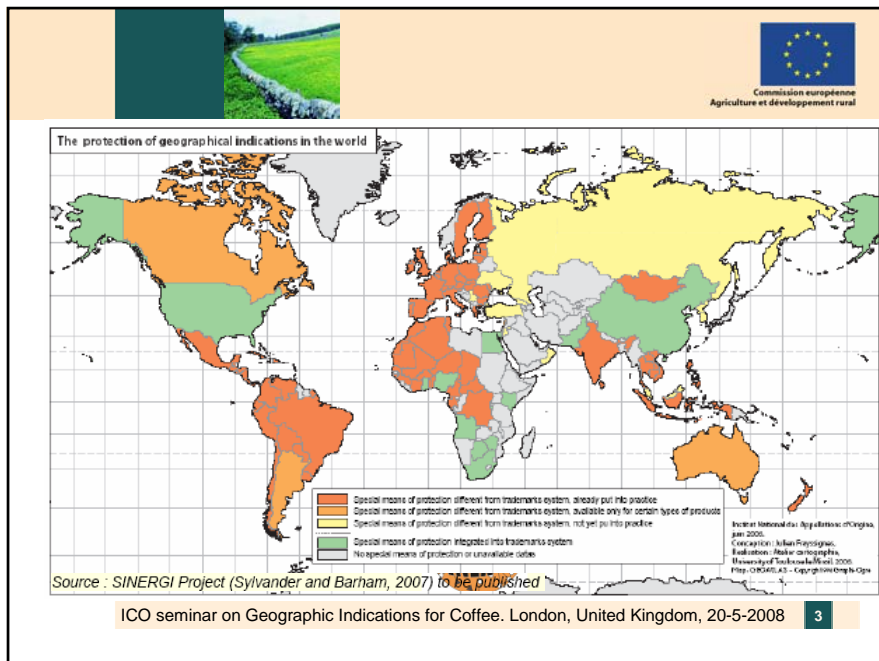


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Overview

- Protection of geographical indications in the world
- EU GI protection system
- Differences between TMs and GIs
- EU GI policy in the multilateral context

ICO seminar on Geographic Indications for Coffee. London, United Kingdom, 20-5-2008



Protection of GIs in the world

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) (GATT 1994)

Art. 22.1

Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

- According to TRIPs GIs are not necessarily:
 - Geographic names
 - Protected by *sui generis* legislation
 - Protected by intervention of public authorities on their own initiative

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EU GI protection system

- Complementary to TMs
- Co-existence GIs - TMs
- *Sui generis*
- Central EU register
- Public enforcement
- Open to the world
 - 27 Member States
 - 490 million consumers



EU GI protection system

- **Rational:**
 - Consumer demand guaranteed origin and production method
 - Promote diversification and competitiveness
 - **Fair competition in a global market**
 - Keep value-added in rural communities in the land of origin
 - Prevent de-localisation of production
 - Positive impact on tourism
 - Preserve biodiversity, local know-how, natural resources



EU GI protection system

- Registration procedure as illustrated by the GI Café de Colombia;
 - Application received by the Commission on 8 June 2005

 - Objection procedure opened on 28 December 2006 (OJ C 320 of 28 December 2006, p. 17.)

 - Registered on 12 September 2007 (OJ L 240 of 13 September 2007, p. 7.)



EU GI protection system

TRIPs Art. 23.1

Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines [...spirits...] for wines [...spirits...] not originating in the place indicated by the geographical indication in question, even where the true origin is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

▪ EU protection level - Names protected against;

- ⌘ any (in)direct commercial use of the name, comparable products
- ⌘ any misuse (imitation, evocation, translation, etc), or use of qualifiers like 'type', 'produced in', even if true origin is indicated
- ⌘ any other false or misleading indications, also symbols
- ⌘ any other practice liable to mislead the public as to true origin



EU GI protection system

▪ Example of piracy

- Misleading fantasy name
- Misleading evocation
 - Italian flag
 - Form of cheese
 - Cheese knife



Differences between TMs and GIs

	Trademark	Geographical Indication
Name, sign	May be created Usually non-geographic Fancy, new, distinctive	Shall exist Mostly geographical Determined by terroir
Quality	Usually <u>not</u> linked to specifications	Obligatorily linked to origin and laid down in specifications
Ownership	TM owner – individual, sometimes collective	Producers - public
Rights	First in time – first in rights	Registration gives rights to all producers
Use	TMs; mostly private, closed Collective TMs; rules, closed Certification TMs; rules, open	Mostly collective Open to all producers that comply with the product specifications
Duration	Limited, to be renewed (10-20 yrs)	Permanent
Protection	Private (burden of proof on owner)	Public



Differences between TMs and GIs

- A Trademark regime cannot provide the protection required for GIs under TRIPS Art. 23;
- TMs are not protected against:
 - Translations;
 - Delocalisers (Parma from Peru);
 - Use of terms like « type », « style », etc.



EU GI policy, the multilateral context

- DOHA development round, TRIPS:
 - Extension of the protection for wines and spirits (TRIPS Art. 23) to that of other agricultural GIs
 - Multilateral register with legal effects



EU GI policy, the multilateral context

- **Rational;**
- Free market access with adequate IPR protection also for GIs, is of mutual benefit to **all** partners
- Raw materials remain the bulk, but trade in quality products is increasing
- Emerging markets particularly prone to usurpation, hindering legitimate expectations for export development
- **Thus**, producers promote and demand GI protection, Café de Colombia being a clear example



Geographical Indications;
an opportunity to support rural communities
in a global market

Thank you for your attention !