Geographical Indications and Developing Countries: Some Facts

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Abstract

Many geographical names in developing countries have been usurped outside the region or country concerned. For both economic and cultural motivations, the re-appropriation of the use of these usurped names is often essential for the recognition of GIs. Official recognition of GI products is then seen as a means, simultaneously, to protect and assert identity, promote economic organization and add value.

KEYWORDS: Geographical labelling, International Trade, Geographical indication, Darjeeling tea, Basmati rice, Trade Related Intellectual Property Rights, World Intellectual Property Organization.

Introduction

GIs provide a framework for the promotion and protection of specific resources on the basis of the development of local rules. As a result, GIs appear to be a tool capable of providing at least some answers to a number of issues, such as: improved market access (Devautour et al., 2004); the structuring of development projects; a means of protecting traditional knowledge (Rangnekar, 2004b); and biodiversity protection (Larson Guerra, 2004). In addition, GIs provide a response to bio-piracy or trade-related imitation and fraud: 'Currently, 6 million pounds of "Antigua coffee" are produced in the Guatemala region but 50 million pounds of coffee are sold in the whole world under this name. Similarly, 10 million kg of "Darjeeling" tea are produced in India but 30 million kg are sold under this name worldwide' (EC, 2003).

In the European context, Sylvander et al. (2006) listed four successive main arguments for the justification of GIs: first, protection for the consumer against fraud; secondly, positive protection for producers; thirdly, subsequently this becomes an aspect of rural development; and fourthly, more recently, the promotion of biological and cultural diversity (Bérard and Marchenay, 2004; Bérard et al., 2008). In developing countries, one can note the 'numerous concerns and needs that are often considered together whenever GIs are discussed' (Laing and Erasmus, 2004).This paper explore the major issues regarded to geographical indications in developing countries.

Key issues of GIs in Developing Countries

A GI, as stated by Hermitte (2001), 'establishes the joint work of nature and man in developing a product'. It refers to the specific quality production of a good, dependent on particular local conditions and, consequently, is produced in a circumscribed geographical area. It is a peculiar IPR, given the fact that it is a collective right employed to reserve the use of the name for the local producing community in the related territory. Many geographical names in developing countries have been usurped outside the region or country concerned. For both economic and cultural motivations, the re-appropriation of the use of these usurped names is often essential for the recognition of GIs. Official recognition of GI products is then seen as a means, simultaneously, to protect and assert identity, promote economic organization and add value.

Key issues of GIs in Developing countries

1. **Value Added Products**

The major argument for consumers to favour geographical Indication is that it provides information on a product's origin and quality, and this information is effective in mitigating quality uncertainty. Loureiro and Umberger (2005) explicitly emphasize that European consumers' willingness to pay for specific geographical origins is closely linked to a positive eating experience and high product quality. Hence, "origin" adds extra value to Italian Parmesan, French Champagne, and Portuguese Sherry, as these products carry a portfolio of certified quality attributes, including food safety and consistent store availability. However, many or most foods from developing countries do not have the cachet and certified supply-chain systems that European geographical indications can bank on.

2. **Consumers' expectations**

In Africa, Asia and Latin America, there are many unprotected GIs which are rooted in particular territories. They are not officially recognized but exist on the basis of tacit codifications, relying on the skills distributed among producers, traders and consumers. The relevance of formal GI recognition as a differentiation sign is not necessarily obvious; it has to be considered in terms of the context of production and trade. In order to establish formal GI protection, a relevant market needs to be identified which is likely to recognize the advantages of the GI and be prepared to pay for it as well. Consumers' interest depends on income as well as on cultural proximity. In addition, the geographic distance may also play a role in the search for formal guarantees. The need to formalize the production rules often arises when larger and more distant markets are targeted.

3. **Guarantee schemes**

A GI is a technical, social and institutional construction based on the link between a product and a geographical and human environment. It is dependent on three factors: an original product; a responsible professional organization; and effective recognition (Sautier, 2003; Avelino et al., 2005). A guarantee scheme is required in order to implement a GI. As mentioned earlier, countries may resort to a wide range of means to protect their GIs. The cost of protection using GIs is a key issue in the debate. The main point is not the degree of sophistication or formalization of the rules, but the efficiency of the whole guarantee scheme i.e. the consistency between rules, controls and sanctions. The structure of the guarantee system may combine components linked to collective commitments, private and third-party controls and public recognition procedures.

4. **Producer's organizations**

The impact of GIs in Europe can be related to two major sets of factors: first, the specificity of the product, which is critical to defining a clear niche market; and secondly, the collective action which is necessary to set up and implement the GI (Barjolle and Sylvander, 2000). It is important that producers are organized, committed and empowered in accordance with the rest of the supply chain. In some southern countries, the notion of local community is very strong and provides structure. Similarly, the legal status and recognition of producer organizations, and their experience and responsibilities in the economic domain, vary from one country to the other.Even producers' access to information regarding GIs differs. In many developing countries, GI implementation is the result of the necessary national adaptation to the WTO TRIPS Agreement, whereas in Southern Europe it was the result of the mobilization of producers from the bottom up.

5. Capacity of Public policies

The role of the state varies, particularly between North and South. In the EU, considerable regulatory, technical and financial resources are involved in the function and management of GIs. This is consistent with the production of public goods expected in the context of national and community agricultural food policies. In developing countries though, public policies rarely take GIs into account. Many countries have not yet set up a specific legal mechanism and manage GIs using trademark or consumer protection laws. However, developing countries have proven to be very responsive to cases of bio- piracy and patent requests on traditional products or names. This has often triggered moves towards GI recognition (as in Brazil, Ethiopia, India, Indonesia, Jamaica, etc.). None the less, the capacity of southern countries to inform the public and implement and control the establishment of GIs varies tremendously. The capacity of large emerging countries (such as Brazil, China, India), to invest in training, research or support services, as well as in legal capacity building, is simply not comparable to that of low- income, aid-dependent countries in sub- Saharan Africa.

6. Lack of Experience

The majority of policy makers in developing countries have no or limited experience in the use of the most demanding form of geographical indications, as a policy tool. A broader protection of GIs at the international level may create yet another strong obligation for developing countries to invest scarce resources in establishing national GI frameworks. But chasing the dream of price premia for protected and origin-labelled products may prove costly. This burden may increase if the scope of GI protection is expanded.

7. Regulatory Issues

Two major regulatory issues have arisen for developing countries in close relation to GI implementation. The first is in regard to the exemption clause in TRIPS Article 24, which explicitly regulates "generics". These are products that a priori do not qualify for GI protection because their names have evolved into generic expressions (e.g., Basmati rice). The exemption of generic terms from GI protection has led to 175 bilateral agreements that regulate specific GIs apart from existing certification marks. In some cases these go beyond the current status of GI protection under TRIPS.

The EU and the United States both seek to promote their respective regulatory versions of a GI protection system in order to incur minimum adjustment costs and pursue their best economic strategies. Hence, bilateral agreements emerge as an additional commitment for developing countries. They also create restrictions that reduce the options for convergence of approaches on the GI issue in the interest of developing countries (Vivas-Eugui and Spennemann, 2006). As a result, developing country policy makers need to scrutinize bilateral agreements related to GI labelling for their conformity with their economic and societal priorities and coherence with other existing obligations in order to avoid unnecessary burdens for their producers.

A second major regulatory issue for developing countries arising out of GI implementation is the process of claiming rights for new GIs. Certification marks, as private intellectual property, can create valuable brand recognition for the IP owner that is transferable. In contrast to IP, the exclusiveness and perpetuity of producer rights conveyed by GIs is quite constrictive. Any producer group aiming for multilateral recognition of a new GI bears the burden of proof, including all necessary expenses for full compliance with TRIPS requirements. This involves being able to prove at all times that the product's quality is fully attributable to its origin. Moreover, producers with the assistance of their government must provide sufficient evidence of the GI's long-standing reputation in the respective domestic market that would justify GI status. These requirements clearly limit the possibilities for developing countries to create new GI labels that have a strong market identity; they help to explain why trademarks are distributed across a much broader country base (Baroncelli, Fink, and Smarzynska, 2005).

Fink and Smarzynska (2002) argue that the main hurdle for many developing countries is that GIs have to be protected domestically before they can be registered at the international level. This is in contrast to the situation in the EU, where the GI concept originated and which has large, established, commercial interests in assuring exclusive production rights. The same regulatory circumstances for international GIs do not exist in many developing economies. This implies an immediate disadvantage for those countries that already lag behind in the adoption of other international trade standards, such as food safety and technical trade regulation (Anders and Caswell, 2007).

8. Trade Impacts

Several countries, many of them commodity exporters, have argued that GIs are inherently trade restrictive and have the potential to create non-tariff trade barriers. In fact, the current TRIPS protocol does not prevent the risk of misuse of GIs. Given the diversity of agricultural production in the developing world, increasing investments in GIs may not always or frequently result in additional export revenues. Nor would better domestic GI policies guarantee developing countries better access to high-value export markets. In addition, there is some reason to believe that greater investment in GI protection by developing countries has poor prospects as long as the existing challenge of compliance with technical regulations and trade standards has not yet been successfully met. Supply-chain structures are a particular concern of policy makers, related to market access and the trade impact of GIs.

In addition, it remains unclear how the marketing of potential GI products from developing countries will be affected by the specific demands of intermediaries, such as global retail chains. Given the high priority consumers in Western economies place on food standards, it is unlikely that retailers in Europe or North America will waive existing requirements above and beyond regulatory requirements in favour of GIs from the developing world. Moreover, retail market power could deprive developing-country producers of the benefits of GI labelling. For example, when Ethiopia's coffee producers attempted to obtain certification marks for the region where its famous coffee is grown, producers had to contend with the global coffee giant Starbucks, which claimed property rights to use the geographical name (Adamy, 2007; Patrick, 2008). A more equal and open multilateral system for GI protection may provide easier access to consumers in high-value markets.

9.**Traditional Production methods and High cost**

There is a range of challenges facing producers in developing countries in using GIs. Rangnekar (2004) points out that developingcountry producer pursuing traditional production methods under GIs might face unforeseen costs. Supply-chain adjustments, new and added quality assurance schemes, and record keeping could result in prohibitively high costs for protecting GIs. These costs would need to be subtracted from the anticipated benefits of GI labelled products. Echols (2003) states that obligations from a GI system could lead to additional overhead production costs comparable to those associated with international food safety regulations. In a case study for South Africa, Bramley and Kirsten (2007) find a strong economic rationale for producers to protect GIs. However, although GIs might provide a unique opportunity for market development in South Africa, the authors acknowledge that in some cases the economic premia for GIs could turn out to be marginal. Confusion already exists among consumers about the relation between geographical origin and quality given the multitude of existing GI labels in Europe and certification marks in the United States (Marette, Clemens, and Babcock, 2007). Thus, considerable market risk exists for new launches of geographical origin labels by developing countries.

Conclusions

IPRs are concentrated in developed countries. GIs are also unequally distributed between nations at the moment. However, they have the potential for a more equitable distribution because even subsistence societies, with low levels of technology, may promote their traditional products and know-how. Furthermore, GIs have the potential to protect the traditional indigenous know-how that is associated with agro-food production in southern countries and to legally regulate land-use strategies and harvesting practices, by means of various specifications. As a result, GIs provide a relevant tool to protect and promote bio- diversity and related indigenous and traditional knowledge.

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