

Summary of the presentation **“Overview of the International Situation Relating to Geographical Indications”**

Not so long ago, geographical indication has emerged as one of the important instruments of intellectual property protection. Although, there were three important international treaties such as the 1883 Paris Convention, the 1891 Madrid Agreement and the 1958 Lisbon Agreement with provisions to protect indications of source and appellation of origin, they did not become effective international instruments of protection as they only contained general provisions or had very limited membership.

Geographical indications are designations, expression or sign, which aim at indicating that a product originates from a country, region or locality. Geographical indications can be used for every sort of product, they generally cover agricultural products and foodstuffs, for example in the EC, but in several countries they include industrial goods as well. Now there are discussions if services could be covered as well.

When geographical indications are used in a proper way and are protected, they can become an affective marketing tool of great economic value. Geographical indications convey the cultural identity of a nation, region or specific area. They make it possible to add value to the natural riches of a country and to the skills of its population, as they give local products a distinguishable identity.

Currently, under the WTO TRIPs Agreement, all geographical indications for all goods must only be protected against misuse. Under the TRIPs the level of protection for wines and spirits is higher and is not conditional upon whether the public is misled or whether unfair competition occurs. Regrettably, the protection of GIs at the international level is far from being adequate. Except for wines and spirits, it is too easier to misuse GIs.

Although a number of countries, including the EC, have developed effective legislation to protect GIs, national regulations which only apply in one country are not sufficient in a global economy, when products travel beyond national borders. That is why satisfactory protection of GIs is needed at the international level without further delay.

The protection of geographical indications in the EC and some other countries for agricultural products and foodstuffs is not only higher than the minimum level of protection provided for all goods but even higher than the level of protection for wines and spirits under TRIPs. Therefore, foodstuffs producers in these countries who benefit from the higher level of protection at home encounter difficulties in protecting their names abroad.

WTO Members are currently engaged in a new Round of trade negotiations, the Doha Round. Listed as an issue of particular importance in the Doha Ministerial Declaration is the protection of geographical indications.

Convinced of the economic benefit and great trade potential inherent in GIs, many countries round the world, among them developed, developing and least-developed countries, are actively working within the World Trade Organization and consider that there are two solutions to the problem related to the low level of protection of GIs: the establishment of a register of geographical indications and the extension of the scope of the TRIPs higher level of protection to products other than wines and spirits.

The multilateral register would establish a rebuttable presumption of validity, which would enable producers to fight illegitimate use of their names abroad in a less costly and more efficient manner. It would enable notification and registration of a geographical indication that, if unopposed, could not become, for example, generic. This would preserve the use of those names even for small producers that were not yet present in third country markets. The extension would ultimately lead to a satisfactory and balanced international minimal level of protection of GIs for all products.

The EC, Bulgaria, the Czech Republic, India, Hungary, Liechtenstein, Kenya, Mauritius, Nigeria, Pakistan, the Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand, Turkey and many other countries in favour of GIs protection are no longer willing to tolerate their GIs being illegitimately used by producers and manufacturers who are not located in the designated region, as it means a considerable loss of reputation and long-term income for the producers and manufacturers within their territories.

The opponents of the protection include, in particular, Argentina, Australia, Canada, Chile, Guatemala, New Zealand, Paraguay, Uruguay and the United States. The main reasons that they give for their opposition are the following:

- the extension would incur extra costs for governments (administrative and financial burden of implementing extension), producers (costs due to trade and production disruption) and consumers (cost associated with consumer confusion);
- geographical indications can be so complex and there are also so many of them that their protection would be used by producing countries to block imports;
- many names have traveled with migrants (such as European migrants going to Australia) who naturally want to continue to make the same products as they did before and to use the same terms to identify those products;
- a better protection of GIs would be a barrier to trade because ensuring better protection of GIs would close markets or affect the producers’ activities since certain products would have to be relabeled.

In response to these arguments, it should be noted that to predict the concrete economic, financial and administrative consequences is hardly possible. These consequences will ultimately depend upon the way in which extension will be implemented by a Member. According to Article 1.1. of the TRIPs Agreement, Members are free to determine the appropriate method of implementing the TRIPs obligations within their own legal system and practice. However, it could be pointed out that the costs of WTO Members for

implementing additional protection for GIs for all products would be negligible in comparison with the costs of implementing the obligations of the Uruguay Round. Extending the scope of protection for products other than wines and spirits does not entail the setting up of any new mechanism or scheme of protection, but would mean that a GI could be used for products actually originating from the place indicated by the GI.

As regards the number of GIs, it should be admitted that there are several countries that developed high GI protection for a long time and the list of their geographical indications is considerable. However, it is important to recognize that it is not the number of GIs per country that should be taken into consideration when assessing the merits of a better GI protection, but rather the economic potential of each well-protected GI. This potential may be still small today, because the GI is known neither at the national nor at the international level; but it may grow with the increasing awareness of the producers of the potential that GIs can have for the marketing of their products, especially if GIs will get better protection at the international level.

A number of countries have a long tradition in manufacturing products which were brought by immigrants with special knowledge and skills from their old to their new home countries and which then were produced under the same geographical name as the one used in their country of origin. With regard to the question whether such use will be possible in case of extension, it is important to recall that it is not a new problem. When additional protection was negotiated for wines and spirits, a favorable solution for “immigrants” was found. The extension set out in Article 24.4 of the TRIPs Agreement now safeguards the acquired rights of such producers of wines and spirits, who have used a particular GI not originated from that country in a continuous manner with regard to the same or related goods for at least ten years. In case of extension, this solution as well as the other exceptions set out in Article 24 of the TRIPs Agreement could also apply *mutatis mutandis* to products other than wines and spirits.

The protection of GIs rewards producers that invest over a long time period in building up the quality, reputation or other characteristics of a product which are essentially attributable to the product’s geographical origin.

The current international level of protection for GIs does not adequately prevent the risk of the GIs reputation in an exploiting manner. The consequences of this are considerable for the economies of the countries which produce the respective original products.

It is often argued that the increased protection of geographical indications would lead to many disputes and conflicts. However, the EC experience in relation to the case law shows that there have been not so many cases in relation to geographical indications. There are far more cases concerning the protection of trademarks, for example.

One of the latest developments on the international arena is a new consultation request filed on 4 April 2003 under the dispute rules of the WTO by the United States for further consultations with the EC regarding EC rules on geographical indications. The US had already requested WTO consultation in July 1999.

Australia, Argentina, Sri Lanka, New Zealand, Mexico, have requested to join in the WTO consultations in support of the US. The EC has accepted the requests made by Hungary, the Czech Republic, Cyprus, Bulgaria, Turkey, Malta, Slovenia, Romania, Slovakia and Taiwan in support of the EC over the same dispute.

Of particular importance in relation to geographical indications is the adoption of new legislation on geographical indications in several Asian countries: Singapore, India, China, Malaysia and Thailand, as well as bilateral agreements aimed at protection of geographical indications, such as EC – South Africa Agreement and EC – Chile Agreement.

The WTO negotiations as defined in the Doha declarations should be concluded not later than January 1, 2005, unless stated otherwise. However, no common position has been reached yet. Let us hope that the WTO Members, which are now engaged in a new Round of trade negotiations, seize the opportunity to create a new equilibrium within the TRIPs Agreement with regard to geographical indications.