Chapter 1 – Introduction to Geographical Indications: Origin and Characteristics

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Chapter 1 – Introduction to Geographical Indications: Origin and Characteristics

1 Geographical indications (GIs) acquired global relevance in 1994 with their legal protection as an intellectual property right (IPR) in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO). The term GI was coined to encompass a variety of expressions already in use in other international treaties and national legislations, such as appellations of origin. The new term was given a specific definition in Article 22.1 of the TRIPS Agreement, which is the one retained in this book:

“Geographical indications are 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.” (Article 22.1 of the TRIPS Agreement)

2 Feta cheese, Champagne, Pisco, Darjeeling tea, Basmati rice, and Parma ham are all examples of well-known GIs.

3 The subject of this book, however, is not GIs per se; it is rather the international legal regime for GIs established under the TRIPS Agreement. Since intellectual property protection is territorial, it is interesting to contrast regimes and analyse the impact of specific legal provisions, without pre-judging the soundness of these provisions.

4 Bridging the gap between the purely theoretical and purely legal analysis of economic phenomena, this book fits into the “economics of law” literature. The goal of the book is to analyse the economic outcomes that can be expected (or explained) by applying the toolbox of the theoretical economist to the legal regimes that are compatible with the provisions of the TRIPS Agreement applying to GIs.

5 The economic models presented in this book are kept as tractable, coherent, and mainstream as possible, and are fully related to well-known bodies of economic theory to ease understanding and referencing. Additionally, the questions addressed in the interpretation of results were selected based on their relevance to on-going policy
debates and multilateral negotiations. This book does not include original empirical work, although case studies and examples are used to illustrate various arguments.

This introductory chapter is divided in four parts. The first section reviews, summarily, and from a historical perspective, the international legal framework for the protection of GIs. Current debates and controversial aspects surrounding the recognition and protection of GIs are described next. The third section provides some figures on the global market value of GIs. The fourth and last presents the rationale behind the characterization of GIs as club assets, the key assumption in the theoretical models developed in Chapters 2 to 4.

1.1. The legal protection of geographical indications

The legal protection of GIs has evolved substantially since 1883, when the phrase “appellation of origin” (a particular type of GI) was first introduced in the international arena. A few features of the current international debates regarding GIs have been constant throughout the legal history of this intellectual property right: the tension between requests for legal protection confronted to claims of genericity; the option to protect GIs through trademark law instead of by establishing an ad-hoc legal regime; and the special standing of wines and spirits.

1.1.1. The early days

In 1883, the Paris Convention on the Protection of Intellectual Property singled out, in its first article, the “indications of source” or “appellations of origin” as objects of protection. These concepts were not defined, however, and the treaty provided only for remedies against the false use of indications of source; appellations of origin are not mentioned again in the Treaty.

Eight years later, the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods of 1891, which consists of only six articles, was the first treaty to (1) prevent the deceptive use of indications of source, (2) include a genericity exception, and (3) set a special regime for wines. The last two principles are embodied in Article 4, which reads:

“The courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement, regional appellations concerning the source of products of the vine being, however, excluded from the reservation specified by this Article.” (Article 4 of the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods)

The same year, 1891, the Madrid Agreement Concerning the International Registration of Marks was signed, which since has been used by many countries to protect GIs as collective, certification, or guarantee trademarks. Since then, the world has been divided between those countries that protect GIs through an ad-hoc system, and those that use their trademark law.

Interestingly, after World War I, France, probably fearing that Germany might want to supply the world with “Champagne” after the region around Reims, where Champagne originates, had been badly damaged, included an article in the Treaty of Versailles providing for the “respect” of legal, administrative, and judicial decisions regarding
“appellations for wine or spirits”; This was thus the second time that wines (and spirits) were given special attention.

“Germany undertakes on condition that reciprocity is accorded in these matters to respect any law, or any administrative or judicial decision given in conformity with such law, in force in any Allied or Associated State and duly communicated to her by the proper authorities, defining or regulating the right to any regional appellation in respect of wine or spirits produced in the State to which the region belongs, or the conditions under which the use of any such appellation may be permitted; and the importation, exportation, manufacture, distribution, sale or offering for sale of products or articles bearing regional appellations inconsistent with such law or order shall be prohibited by the German Government.” (Article 275 of the Treaty of Versailles of 28 June 1919)

1.1.2. The Lisbon Agreement: Limited country coverage

Building on these early milestones, appellations of origin were protected in a dedicated Treaty for the first time under the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, administered by the World Intellectual Property Organization (WIPO).

This Agreement, however, only entered into force in 1966 and has had limited country coverage. With Macedonia joining in October 2010, the Lisbon Agreement counts 27 Contracting Parties (with five additional signatories with pending ratification). Its first signatories, in 1966, were Cuba, France, Haiti, Israel, Mexico, and Portugal. Figure 1.1.a shows a moderate increase in membership over time, with a 15-year period of stagnation from 1978 to 1993.

Figure 1.1.a: Lisbon Agreement membership and registrations

Source: based on WIPO (2012).

Appellations of origin are defined as follows:

“Appellations of origin are the geographical name of a country, region, locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical
environment, including natural and human factors.” (Article 2 of the Lisbon Agreement)

15 The most prominent instrument under the Lisbon Agreement is a registry of appellations of origin protected in the territories of all contracting parties, a feature that proponents of an increased level of protection for GIs would like to import to the WTO (next Section). In 2011, the Agreement covered 795 protected appellations of origin, 508 of which belonged to France (63.9 per cent of the total, down from 81.2 per cent in 1968). Seven contracting parties had not registered a single appellation of origin (Burkina Faso, Congo, Gabon, Haiti, the Islamic Republic of Iran, Nicaragua, and Togo); while Israel and the Republic of Moldova had one registered appellation each (Jaffa oranges and Românești red wine respectively). Wine accounts for approximately two-thirds of GI registrations, followed by spirits, cheese, tobacco, mineral water, and beer and malt. Registrations demonstrate a pattern of specialization of certain countries in particular sectors (Escudero 2001): appellations in wine, spirits, and cheese are led by France; all registrations for tobacco are from Cuba; and the Czech Republic specializes in mineral water and beer and malt. Further examples of AOs covered by the Lisbon Agreement are: Porto, Cognac, Pilsen, Champagne, Bordeaux, Tequila, Habano cigar, Jerez, and all the French Appellations d’Origine Contrôlée. Non-food products have also been registered, such as Talavera handcrafts (Mexico), Cholet cloth (France) and Bohemia glass (Czech Republic) (WIPO 2009).

1.1.3. WTO’s TRIPS two-tier standard of protection for GIs

16 Geographical indications were given (virtually) universal attention and protection only in 1995, with the signature of the TRIPS Agreement.

17 Broadly, GIs are protected under the TRIPS Agreement on the grounds of consumer and goodwill protection. There are, however, two standards of protection, a minimum level that applies to all goods and revolves around the so-called “non-misleading requirement”, and an increased level of protection for wine and spirits. The Doha Round of multilateral negotiations opposes, among others, those countries that favour the extension of the additional protection to all products to those that favour the statu quo.

a) The minimum level of protection

18 The stated aim of the TRIPS Agreement is to reduce distortions to international trade, to promote the effective protection and enforcement of all categories of IPRs, and to promote technological innovation and transfer. The TRIPS Agreement includes a series of provisions that apply to all categories of IPRs (patents, utility models, trademarks, etc.), and therefore, as such, to GIs. In substance, these include the traditional clauses of non-discrimination, and most of the obligations regarding enforcement at the domestic level (judicial review, indemnification, provisional measures, and criminal procedures).

19 Other obligations, however, are specific to GIS, under Part II, Section 3 of the TRIPS Agreement, or elsewhere. For example, it is left to members to apply measures at the border in relation to the infringement of GI protection.6

20 The GI Section of the TRIPS Agreement specifically prevents the use of a GI in a manner “which misleads the public as to the geographical origin of the good” (the so-called “non-misleading requirement”), or “which constitutes an act of unfair competition”. The
protection extends to the invalidation of the registration of a trademark that contains, or consists of, a GI if (and only if) it is misleading. These provisions apply to deceptive indications as well (i.e. indications that despite being literally true, falsely represent the goods as originating in another territory).

Importantly, a GI must be protected in its country of origin and not have fallen into disuse to have the right to be protected abroad, a requirement that does not apply to trademarks. This is not an insignificant issue, particularly for firms in developing countries, which witness with some frustration the use of their traditional names by producers in both foreign and national markets seeking profits by free-riding on the reputation of their products, and which have little legal redress due to the lack of protection within their own territories. For instance, in Chile, the producers of the Azapa olive (“aceituna de Azapa”, from the Azapa Valley) have been unsuccessful in preventing producers in Bolivia and Peru from using the Azapa indication, at least partially due to the lack of legal domestic protection for the said indication in Chile.

The TRIPS Agreement also includes an exception for GIs that are reputed to have become generic terms, concerning products such as Moutarde de Dijon, Cheddar cheese, or Camembert (Giovanucci et al. 2009). Additionally, a “grandfather clause” prevents the invalidation of trademarks identical or similar to a GI when the trademark was acquired in good faith prior to 1994, or before the GI was protected in its country of origin. Parma, which has been trademarked in both Mexico and Canada, is an example of this phenomenon; Parma ham Italian producers have been prevented from marketing their products with the Parma GI in these two countries, resulting in an estimated loss of EUR 3 million per year in Canada alone (European Commission 2003).

**b) Additional protection for wines and spirits**

The TRIPS Agreement provides for an additional level of protection for GIs of wine and spirits, in the tradition established in the Madrid Agreement of 1891 and in the aftermath of World War I (see Section 1.1.1). First, there is a “non-misleading requirement”. Second, the use of a GI is prevented “even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like” (Article 23.1).

The agreement holds some exceptions (for homonymous GIs, for example) as well as additional obligations (Article 24). In particular, the genericity exception applies to those GIs that are identical to the customary name of a grape variety (such as Montepulciano). There is also a second “grandfather clause” which allows the continuous use of a protected GI for wine or spirits by those who can prove prior use (before 1984, or in good faith before 1994). Finally, WTO Members may not refuse, if requested, to conduct negotiations of international agreements aimed at increasing the protection of individual GIs for wine and spirits.

1.2. Policy debate at the WTO: “Usurpation” versus “confiscation”

Since the Doha Round of multilateral trade negotiations of the WTO was launched in 2001, a number of countries have expressed their willingness to renegotiate the GI-relevant section of the TRIPS Agreement, though the subject has not been retained. There is,
however, a so-called “built-in agenda” mandating negotiations aimed at establishing a registration of wine GIs and a multilateral system of notification (Article 23.4 of the TRIPS Agreement). Since no deadlines were set, however, and negotiations have systematically stalled, they are now part of the Doha Round. The Doha mandate on GIs includes two issues: the creation of the multilateral register for wine and spirits and the extension of the higher level of protection granted under Article 23 to products other than wine and spirits.

Briefly, current discussions at the WTO are framed by two opposing groups of countries. On one side, the “friends of GIs” favour a strong level of protection (with the concomitant non-misleading requirement and no generic exemption), the establishment of a global registry of GIs, and the extension of the special protection for wine and spirits to all products. Their main goal is to inveigh against the “usurpation” of their geographical indications by New World producers. The EU has the strongest position, defined in a proposal dated June 2005 (TN/IP/W/11). The EU calls for the TRIPS Agreement to be amended by adding an annex to Article 23.4 holding that the registration of a GI would establish a “rebuttable presumption” that the term is to be protected by all Members, except in a country that makes a reservation “on permitted grounds” (such as genericity) within a specified period (for example, 18 months). It also favours the extension of the higher protection of GIs for wine and spirits to all products.

Their opponents favour the statu quo. These countries are satisfied with the current level of protection and favour the establishment of a voluntary system wherein notified GIs would be registered in a database. The governments participating in said system would have to consult the database when making protection decisions in their own countries. Non-participating members would be “encouraged” but “not obliged” to consult the database. Opponents also counter the “usurpation” argument by recalling that European colonial rule and immigration led GIs to be adopted and popularized as generic terms outside Europe. They argue that current users of European GIs outside Europe would have the value of their investments “confiscated” if a monopoly over the GI label were imposed.

On this point, David Spencer (2003), former Ambassador of Australia to the WTO, has argued that:

“Enhancing GI protection in the way some WTO Members have proposed would: erode, rather than strengthen, competition; lead to rent-seeking at the expense of the consumer; add costs to producers and governments; do nothing to open up markets; not guarantee more sales or higher returns for developing countries; undermine the cultural heritage of those countries in the Americas, Oceania and Africa which were based on immigration; not guarantee that developing countries could protect the terms they would like to protect”. (WIPO/GEO/SFO/03/25 of 15 July 2003, p. 4.)

1.3. Bilateral agreements: Main tools for an effective protection

Several bilateral agreements on GIs have been negotiated, most of them on the basis of the TRIPS clause that mandates GI wine and spirits negotiations at the request of a WTO Member. Bilateral agreements are usually negotiated and enforced under the umbrella of
Free Trade Agreements (FTAs), which facilitate trade-offs in other sectors over the course of the negotiations.

Regarding wine and spirits alone, by 2010 the European Commission had concluded agreements with Albania, Australia, Bosnia-Herzegovina, Canada, Chile, Croatia, the Former Yugoslav Republic of Macedonia, Mexico, Montenegro, South Africa, Switzerland, and the United States. Through these bilateral agreements, the EU has secured the protection of its GIs in territories where these were formerly used as generic terms, and this notwithstanding the grandfather clauses and genericity exemptions of the TRIPS Agreement. In trade jargon, this practice has been labelled the “claw-back” of GIs (see Chapter 4).

Since most GIs are agricultural products, it would follow that states with agriculture-based economies would be inclined to advocate for a strong international protection of GIs, but this does not seem to be the case – mainly due to the use of GIs as generic terms. It is worth noting, however, that some developed countries have become demandeurs in this area, particularly those few that possess GIs with some international recognition (Escudero 2001). These demands are often channelled through bilateral negotiations, a fact that could signal a perception of potential imbalance in the eventual outcome of multilateral negotiations.

### 1.4. Protection at the national level

Domestic protection regimes, which are closely tied to national legal traditions, differ greatly across the globe. This section will not attempt to describe these in detail, but rather to depict some salient features that led to the assumptions made in the following Chapters.

I refer to (Blakeney 2001) and (OECD 2000) for a detailed description of national systems of the protection of geographical indications. The aspect of primary relevance to this book is the fact that the TRIPS Agreement does not specify the legal means to protect GIs – it is left to each member to decide upon specific instruments. Members usually provide protection to GIs by means of (i) laws focusing on business practices; (ii) trademark law; (iii) special or sui generis protection. Distinctly, several countries (such as the United States) protect GIs under collective, certification, or guarantee mark regimes, or under common law action of “passing-off” (Escudero 2001).

Conversely, a determinant feature of most national regimes is that registration of GIs as trademarks is generally prohibited (explicitly or through jurisprudence). This does not necessarily imply that the GI is recognized a protection in itself – in most cases, the trademark registration of a GI is refused on grounds that the GI has become a generic term.

In any case, the efficacy of national GI regimes is not guaranteed; markets often require some maturity before a GI may create value. Chile established a national system of appellations of origin for wines in 1995 by means of Decree Nº 464 of the Ministry of Agriculture. Until recently, however, the impact of this Decree was rather limited, as trademarks and grape varieties (not GIs) tended to prevail at the consumer level. This has been steadily changing as a number of GIs have acquired increasingly positive reputations. For example, the marketing success of the Casablanca Valley wineries,
particularly in relation to their Chardonnay and Sauvignon Blanc, led the wine producers and grape farmers to organize themselves into an Association in 2001.  

Last but not least, there is a developmental issue linked to legal traditions. While the current international protection framework is in harmony with the European tradition of protecting geographical names (such as the French “Appellations d’Origine Contrôlée”), it has proved less suited to the protection of indications that originated in a particular locality but that are not proper geographical names; even though nothing in the TRIPS Agreement explicitly states that a GI has to be a geographical “name” – contrary to the Lisbon Agreement. Greece and India, for instance, have found it difficult to counter arguments of genericity regarding terms such as Feta cheese, Basmati rice, and Darjeeling tea. The European Commission had to go all the way to the European Court of Justice against its own Member countries to establish the exclusivity of Greece over the use of the name “Feta”.

In relation to the socio-economic and developmental aspects of GIs, I refer to Rangnekar (2003a), the OECD (2000), Marette (2005), and Giovanucci et al. (2009). Each work includes its own extensive literature review. These papers take stock of the major theories that have been (or may be) applied to the topic, and review the major models developed for related issues, such as trademarks. Their main topics of concern involve information asymmetries and market failure; product differentiation and competitive advantage; market access and market segmentation; competition policy (oligopolies) and state aid; and rents and social welfare.

1.5. The economic value of GIs  

Estimates of GI registrations, value-added and exports are neither comprehensive nor consistent; figures from different sources indicate great disparities in number and value. The number of legally protected GIs globally is estimated to be close to 10.3 thousand, with an estimated trade value of over USD 50 billion (EUR 39 billion). Approximately 90 per cent of GIs originate in the OECD countries, with France, Italy and Spain accounting for approximately 10 per cent of all registered GIs, and 70 per cent of the total value of GIs worldwide. The participation of the rest of the world is small but increasing (Giovanucci et al. 2009).

Figure 1.5.a: Disparities in value of GIs
This estimate is likely conservative, as the European Commission, had evaluated the combined value generated by its three main GI countries, France, Italy, and Spain, to be EUR 34.5 billion in 2002 (European Commission 2003), when GIs in seven other EU countries were estimated to generate a value-added of about EUR 5.2 billion (Giovanucci et al. 2009). The European Union represents more than half the total number of protected GIs, with 6,021 registered GIs (of which 5,200 are wines and spirits). Spirits alone accounted for EUR 3.5 billion of the EUR 5.4 billion of EU exports (Giovanucci et al. 2009). Figure 1.5.a shows the global disparities in GI-related value, with an estimated worldwide value set at EUR 50 billion.

Some figures for developing countries exist as well. For example, India and Pakistan exported USD 1.5 billion and USD 250 million of Basmati rice in 2007; Mexico exported an estimated USD 725 million of Tequila in 2007; and Jamaica exported USD 24 million of Blue Mountain green coffee in 2008 (Giovanucci et al. 2009).

1.6. Geographical indications characterized as club assets

As a final introduction to the following Chapters, this last section details the characteristics of GIs – in areas such as origin (in time and space), transferability and control, and production processes – that distinguishes them from other IPRs.

It is then argued that a GI can be modelled as a “club asset” for a club membership consisting of the firms that were granted the legal right to use the GI as a collectivity, due to two main features: excludability of benefits and non-rivalry in benefits. Here “club” has a precise definition that builds upon the economic literature on “club goods”, reviewed in Section 1.7.

1.6.1. GIs are intangible assets

Like all IPRs, a GI is an intangible asset: an identifiable, non-monetary resource, not physical in nature, which constitutes a legal claim to future benefits through the special rights and privileges attached to it. Similarities with other IPRs, however, end here.

GIs may not be sold, transferred, licensed, rented or exchanged, since they are either collectively owned (certification marks) or controlled by the State. Right-holders of other IPRs such as trademarks, copyrights or patents are not constrained by this limited control over their IP asset.

The useful life of this asset is indefinite (a priori). In that, GIs are somewhat similar to trademarks; since under the TRIPS Agreements a trademark registration shall be for “no less than 7 years ... and renewable indefinitely”. On the other hand industrial designs, patents, layout designs of integrated circuits and copyrights shall be protected for at least 10, 20, 10 and 50 years respectively. For GIs, there is no specific article on the “term” or “duration” of protection, but it is acknowledged that a GI might cease to be protected or fall into disuse in its country of origin (Article 24.9).

In addition, it is the label that is protected (i.e. the GI name “Darjeeling”, “Pisco”, etc.), and not the physical appearance or the production process of the good attached to the GI. By definition, GIs identify a good as originating in a region or locality “where a given
quality, reputation or other characteristic of the good is essentially attributable to its geographical origin” (Article 22.1 of the TRIPS Agreement), linking the attributes of a GI good to the land, what the French call the “terroir”. Often, in addition, standards of production and product specifications must be fulfilled to qualify to use the GI label. The all-encompassing term that is frequently used to refer to these requirements is the “code of practice” of a particular GI (Vandecandelaere 2009). It is important to note, however, that GI production methods, standards, and final products are not protected as such (they are not “patented”, nor protected in their “design”, so to speak), implying that anyone in the world could replicate the GI method. For example, the “métode champenoise” originally developed in the production of Champagne, is used in the production of sparkling wines across the globe, even if these sparkling wines are well-known GIs, such as the Spanish Cava. This brings GIs closer to trademarks and distinguishes them from other IPRs such as designs and patents.

1.6.2. GI benefits are excludable and non-rival or partially rival

IPRs provide excludable benefits by granting a monopoly over the exploitation of the particular IP asset. What is distinct for GIs is the fact that benefits are shared, and non-rival, or, at most, partially rival (because benefits to right-holders might decrease due to dilution of the GI).

Once protected, the production of GI-labelled products is always geographically confined to the region, locality or terroir that provided the good with its special attributes. In most jurisdictions, this also implies that any producer established in the GI area that meets the product specifications may label his/her product with the GI, implying that a GI may be used by a number of different producers, which we can call “insiders”, as opposed to “outsiders”. This is specific to GIs among other IPRs.

This geographical confinement implies capacity limitations in supply, often resulting in price premia, with an added impact on factors’ costs: the market value of land and local wages typically go up, with a positive effect on the terms of trade with other territories (even neighbouring regions). The price premium, coupled with production specifications, ensures both a strong homogeneity and a minimum level of quality among final products, limiting free-riding from “insiders” and ensuring non-rivalry in benefits to GI right-holders.

Imperfect excludability and partial rivalry might occur, however, for a number of reasons. First, a brand associated to a particular GI might benefit from a higher consumer recognition or reputation, and exert a higher price premium, thus adding an element of competition to other GI producers. Second, free-riding by “insiders” (i.e. right-holders), through cuts in quality, may also entail dilution of the GI and partial rivalry of benefits. Third, as an IPR, a GI is protected from its unlawful utilization by non-right holders; free-riding from “outsiders” might be even more damaging to the goodwill of GI legitimate producers, particularly if the “passing-off” is somewhat legal (until Chile negotiated with the EU, the marketing of “Champagne made in Chile” was TRIPS-legal, on the basis of the grand-father clause, Article 24.4, for example). Fourth, the fact that production methods can be and are replicated (Grana Padano versus Parmiggiano; Cava versus Champagne, etc.), while technically a competition issue, might also be associated to partial excludability when it is assumed by consumers that the said products are essentially the same except for their terroir of origin, particularly if these are marketed with expressions...
such as “kind”, “type”, “style”, “imitation” or the like (illegal for wines and spirits, but not for other products under the TRIPS Agreement).

Once countries start protecting their GIs at the national and international levels, past processes of GI dilution through the utilization of the GI label by “outsiders” (national producers from other regions or foreign producers) are hard to reverse, as vested interests are well entrenched. The European Commission reports that 2.7 billion kg of Antigua Coffee and 10 billion kg of Darjeeling tea are produced in Guatemala and India respectively, although eight and three times as many kilograms are sold under those names around the world (European Commission 2003).

1.6.3. A GI can be characterized as a “localized club asset”

The properties of geographical confinement of production, excludability of benefits and non-rivalry of benefits allow the GI to be characterized as “a localized club asset”, with a club membership consisting of the firms producing the GI good.

The “club” aspect of the GI derives from the collective nature of the IPR. Cost-sharing, value-added-sharing and profit-sharing agreements are present all along the production, marketing and distribution chains of a GI product. The French term these arrangements the “cahier des charges” of the GI (or “book of specifications”), which refers not only to the duties of each agent involved in the lifetime of a GI product but also influences costs, pricing, sustainability of the GI product business model and strategic interactions among agents. Conformity assessment activities often constitute a large proportion of shared costs, although cost-sharing encompasses other expenses involved in the establishment, maintenance and exclusivity of the GI “club”, such as advertising campaigns, lobbying activities, legal actions, etc.

Collective action among GI right-holders is required to coordinate activities, as well as to avoid free-riding on the reputation of the GI and prisoner’s dilemma-like opportunistic behaviour (Rangnekar 2003b). Excessively close coordination, however, has often led to uncompetitive behaviour; the OECD, for example, has documented anti-competitive practices in the GIs Cantal, Parmigiano Reggiano, Grana Padano, Parma, San Daniele, and Gorgonzola (OECD 2000).

In some cases, part of these costs is subsidized by the State. All states, obviously, enforce national and international legal protections, but expenses related to specific GIs are often subsidized as well. In some countries, GIs involve State monopolies (Habanos in Cuba for example).

In addition, GIs present a strong rural bias linked to a particular cultural heritage, leading some to argue that there is a public good dimension to their protection, as social benefits go beyond the profits of the firms involved in their production. The GI is therefore a “club asset” that has both a private and a public dimension to it.

Last but not least, the term “localized” should not be confounded with the “territoriality principle” of IPR protection, which applies to GIs as well and has important economic consequences analysed in detail in Chapter 4. The territoriality principle holds that IPR protection is granted in each territory as a matter of domestic law. This means that as long as no registry with universal membership exists (which is the case for GIs currently), GIs are recognized, and the TRIPS protection is enforced, either on a national basis or through bilateral agreements recognizing individual GIs. The Lisbon Agreement
establishes the legal protection of Appellations of Origin in the territories of all the contracting parties to the Agreement, but with only 27 members, protection is far from universal.

The territoriality principle is crucial. Mexico, for example, protects 206 European GIs in exchange for the protection of Tequila and Mezcal in the European Union, but such a protection is not automatically extended to other WTO members, as territoriality, grandfather or genericity clauses may apply. Trevor Clarke, Chair of the negotiations on IPRs at the Doha Round, recommended five guiding principles for future work on the register of GIs for wines and spirits, including the suggestion that “the ‘territorial nature’ of intellectual property rights should be preserved (i.e. countries right to determine how to protect intellectual property within their own territories)”.

1.7. Literature review: Club goods theory

Club goods are impure public goods characterized by partial excludability, no or partial rivalry of benefits and congestion phenomena (Buchanan 1965). Table 1.7.a is an illustrative expansion of the classic taxonomy of goods developed by Paul A. Samuelson (1954), according to which a GI can be characterized as a voluntary, imperfectly excludable (due to free-riding from outsiders), shared, non-rival but congestible (due to potential dilution from within) club asset with a limited membership.

Table 1.7.a: Expanded Samuelson taxonomy of goods

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<td></td>
<td>car</td>
<td>racing clubs</td>
<td>roads</td>
<td>traffic lights</td>
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<td></td>
<td>brand</td>
<td>GI</td>
<td>Haute-couture design</td>
<td>safety regulations</td>
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Relatedly, Cornes and Sandler (1996) define a club as a voluntary group deriving mutual benefit from sharing one or more of the following: production costs, the members’ characteristics, or a good characterized by excludable benefits. Besides excludability and rivalry, these authors stress four features of club goods.

A primary distinction between club goods and pure public goods is that a club is voluntary (which is not the same as being excludable). Members choose to belong because they anticipate a benefit from membership, but they have a right (and ability) to exit. An individual can sell his/her share of a sports club or a yacht marina, for instance, but cannot opt out from national defence or traffic lights. That being said, Thiedig and Sylvander (2000), conversely, contend that voluntarism is not a characteristic of GIs, as “once the [GI] group is established, all the producers using the protected name within the
delimitation are compulsory members, even if they have not applied for the protection. An involuntary member has to pay the control costs or risks to be fined” (p. 433). I would argue, however, that technically a producer in a delimited GI area may exit the GI market or opt not to use the GI label. The compulsory aspect of a GI is not participation in the market itself, but rather what is done with said GI following the product specifications, just like an individual must follow the rules at its tennis club.

The second significant characteristic of club goods is that they involve sharing, despite the fact that sharing often implies, as of some specific level, partial rivalry of benefits through dilution (congestion or crowding phenomena). To avoid partial rivalry, a club is excludable and has finite membership. In the case of GIs, dispersion in the quality of the products bearing the GI should decrease the market value of the GI as a consequence of a lower valuation by consumers. Such a dilution could be due to an increase in output or in the number of GI-firms, low-quality firms free-riding on the reputation of the GI, standards compliance being loosely assessed, etc. The geographical confinement of production may prevent this phenomenon from occurring, although a priori dilution may result from extra-regional producers bearing the GI (due to lack of protection or generic status).

Thirdly, a club has an exclusion mechanism, achieved and maintained at some cost. For GIs, the exclusion mechanism is the legal protection of the GI, with its concomitant often-prohibitive cost of enforcement.

Finally, the optimal levels of membership in the club and of provision of the club good must be determined concurrently.

Some authors have studied geographical indications in the club goods framework. Thiedig and Sylvander (2000), for instance, analyse GIs as club goods by using a simple but telling graphical analysis. They do not formally derive the production, provision and membership conditions for a GI club. Langinier and Babcock (2005 and 2006) analyse GIs as non-rival, congestible (through membership) and excludable clubs. Their main interest lies in comparing competing regimes (nothing, certification, GI-label). They develop a model with two types of goods (high- and low-quality) and heterogeneous consumers and perform a welfare analysis.

1.8. Concluding remarks

This chapter aims at contributing to the understanding of the economics of geographical indications (GIs) through the development of a general analytical framework that draws on club goods theory. It provides some indication as to how GIs may be characterized in economic terms, and how they work at the firm and club levels.

The chapter is relevant as it sheds light on the under-studied economic aspects of current debates at the World Trade Organization and the World Intellectual Property Organization between a few countries that advocate for a stronger level of protection of this type of intellectual property right to those that favour the statu quo.

In the following Chapters (Chapters 2 to 4), I show that these assumptions can be directly linked to the TRIPS Agreement, and that when modelled as a club, important issues regarding the organizational and market structure of GI varieties can be assessed, in conjunction with their allocative, competitive and welfare effects. These issues, however, are currently virtually absent from the policy debate regarding the eventual
strengthening of the TRIPS Section on GIs at the Doha Round, as more emphasis is placed on the right to protection than on the impact of the international law regarding GIs on the market structures surrounding a particular GI variety.

NOTES

2. The TRIPS Agreement is part of the single undertaking negotiated during the Uruguay Round of multilateral negotiations which created the WTO in 1994; as such, it has to date 153 signatories.


4. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was signed in 1958 and entered into force in 1966. It is open to signatories to the Paris Convention for the Protection of Industrial Property of 1883. The World Intellectual Property Organization (WIPO) administers both treaties.

5. Correlative registration numbers go up to 900 due to 105 cancellations over time; among these 56 in 2011 by France, and 31 in 2011 by Slovakia.

6. The adoption of border measures regarding the infringement of trademarks and copyrights (against counterfeit and pirated goods respectively) is mandatory.

7. None of these indications are GIs properly; for Camembert, only Camembert de Normandie is protected as an appellation of origin in France. On the genericity issue, the protection of the Lisbon Agreement is broader: once an appellation of origin has been recognized, registered and protected under the terms of the Agreement, it cannot be deemed to have become generic as long as it maintains its protection in its country of origin.


9. The built-in agenda of Article 23.4 refers explicitly only to “wines”. The extension of the mandate to include spirits was initially highly controversial and resented as it affected the balance of benefits struck during the Uruguay Round. I am grateful to Sergio Escudero for pointing out this aspect.

10. The Friends of GIs include: Bulgaria, the European Union, Guinea, India, Jamaica, Kenya, Madagascar, Mauritius, Morocco, Pakistan, Romania, Sri Lanka, Switzerland, Thailand, Tunisia, and Turkey.

11. At Doha, this position is represented in a “joint proposal” submitted in 2005 and revised in 2008 (TN/IP/W/10/Rev.2), which was sponsored by Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Republic of Korea, Mexico, New Zealand, Nicaragua, Paraguay, Chinese Taipei, South Africa, and the United States.


13. By 2010, the only other product that had been granted a similar level of protection in Chile is Pisco, the national eau-de-vie made of grape, protected by D.F.L. N ° 181 of 16 May 1931. More
recently, Chile registered as GIs the lobster from Juan Fernández (at the origin of the cover picture for this book) and the lemon from Pica.

14. The Asociación de Empresarios Vitivinícolas del Valle de Casablanca was created in June 2001 and regroups the Casablanca producers of grapes and of wine (http://www.casablancavalley.cl/).

15. The European Commission reports that France’s 593 GIs generate EUR 19 billion of value (of which EUR 16 billion for 466 wine and spirit GIs) and constitute the lifeblood of 138,000 agricultural operations. Similarly, Italy’s 420 GIs generate a value of EUR 12 billion (EUR 5 billion for 300 wine and spirit GIs) and give employment to more than 300,000 people. In Spain, 123 GI products generate some EUR 3.5 billion of income (EUR 2.8 billion for wines and spirits), with more than EUR 1 billion going into exports.

16. In this book, however the term “standard” is maintained for the sake of congruence with the economic literature on quality standards.

17. Patents protect products (in their features) and processes (methods).
