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Geographical Indications and Rural Development Implications for TTIP Negotiations

Michel Petit¹ and H el ene Ilbert²

¹ Associate Professor and Senior Economist at CIHEAM-IAMM

² Research Director, political economist at CIHEAM-IAM /MOISA

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Michel Petit* and H el ene Ilbert**

*Associate Professor and Senior Economist at CIHEAM-IAMM; **Research Director,
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Abstract

In an earlier paper we interpreted the resolution of the 2005 WTO dispute on GIs as a stalemate and suggested a shift of the balance of power in favor of the pro-GI coalition. Since then, international negotiations continue to be stalled. The record of GIs as a tool for the promotion of rural development shows that few non-European GIs have been registered. The case of Morocco illustrates the difficulties faced by a government eager to use GIs as a development instrument. International recognition of GIs is difficult. The TTIP might not resolve institutional and doctrinal GIs problems.

Keywords: Geographical indication, Rural development, European registration, Moroccan “terroir” policy, Bilateral free trade agreement.

Introduction

The conflict of ideas and doctrines over Geographical Indications (GIs), which came to a head in the WTO dispute on the matter in 2005, was seen primarily as a conflict on the appropriate tools for intellectual property protection. But the ideological divide runs deeper than that. It touches on the role public policies can play in the promotion of rural development. Some are convinced that GIs can be a very useful tool in the mobilization of local resources through group action, such a process being seen as the essence of development. Others tend to argue that specific rural development policies are useless if not counterproductive and they do not give any economic significance to the value of GIS. We will argue that the 2005 settlement was a tie in the ‘game’ between these two views¹. In other words, it did not resolve the ideological dispute.

But the opening of the European Registry of GIs to non-European applications initiated a change of power balance in the international conflict between the two international coalitions, pro- and against GIs. The WTO dispute had been a conflict among developed countries, pitting the European Union against the United States supported by Australia. But the outcome of the dispute caused the European Union to change its internal rules, thereby facilitating access to its geographical indication protection regime for third parties, and in particular typical traditional products from developing countries. This could have given a major opening for developing countries eager to benefit from geographical indication legislation in the EU to obtain international legal recognition for their traditional products. And many, particularly in the Mediterranean region, have tried to do so, GIs appearing to them as useful instruments in their rural development efforts. So, the international coalition in favor of GIs is potentially much broader today than ten years ago. Could this have implications for the TTIP negotiations involving the two champions of the conflicting doctrines²?

The main purpose of this paper is to examine this question, considering what the GI record in the promotion of rural development has been over the last ten years. This is important, we believe, because the pro-GI doctrine will be weakened if GIs do not deliver rural development benefits as claimed by that doctrine. In a first part, we will review the nature of the doctrinal conflict and show that the chance of convergence is small given the depth of the divergence. We will then describe how the two international pro- and anti-GI coalitions have evolved in recent years, the former having progressed and the anti-GI camp being somewhat on the defensive. In the third part, we will examine the empirical record: what is the market value of GI products? How many non EU applications have been granted by the EU? What are the obstacles to such an inscription in the EU Registry? On the whole, this will show that the GI situation is not very rosy. Thus, the probability that the anti-GI position of the USA will be weakened seems very small³. But since the EU will probably

¹ The EU was able to claim that its GI protection program was not WTO-incompatible as such and the US could point to the fact that the EU was found to have violated WTO articles in the way in which it implemented that policy

² US protection of GIs is fundamentally different from that practiced by the EU.¹⁴ Current US policy does not recognize GIs as a separate class of intellectual property. It does however protect GIs within the scope of US law. This is done mainly through certification marks established under the trademark law. A certification mark refers to a “word, name, symbol or device” used by someone other than the owner (usually a government body) but conforming to specifications laid down by the owner. The specifications may be in terms of place of origin and/or methods of production.

³ The US, along with Australia and Canada, has tended to take a more skeptical view of GIs as a form of intellectual property. These countries have tended to argue that existing provisions are adequate. They see added protection as either unnecessary or undesirable, blocking competition from new sources of foods and giving an advantage to European producers.

continue to press the issue, we will conclude that GIs will probably continue to be a bone of contention between the two parties and that the conflict will not be resolved in the TTIP negotiations.

1 - Two conflicting doctrines

The title of a famous paper by Tim Josling (2006a) vividly expresses the depth of the conflict. Note that the word “terroir” appears in italics, reflecting the fact that it is a French word having really no equivalent in English, suggesting some drastic difference of points of view, what we call here doctrinal differences. The word ‘war’ may be somewhat ironical. It does however indicate that the conflict is contentious.

Economists, including Josling, have sought to inject some objectivity in the debate, resorting to modern developments in economic theory regarding the asymmetry of information between producers and consumers. Thus, GIs are often characterized in the economic literature as reputation goods, more precisely as ‘credence goods’, i.e. as goods the quality of which must be trusted by the consumer, who can neither resort to experience nor to search in order to judge that quality. This puts clearly the emphasis on consumers’ perceptions and information in the assessment of the value of GIs and in the search for their legitimacy. Accordingly, Josling wrote: “The economic benefits of GIs must rest in large part on the provision of information to consumers who may be beneficial for conveying information needed by consumers for informed choices would pass a public policy cost-benefit test” (Josling, 2006b). This consumer approach tends to dominate the main stream of the economic profession, as illustrated for instance by the seminal article of Anania and Nisticò in 2004 and also by a very recent paper by Desquilbet and Monier-Dilhan in 2015.

Even though we agree that this ‘consumer approach’ leads to interesting insights, we believe it misses the main point of doctrinal divergence, which has to do with the potential usefulness of GIs for the promotion of rural development. Looking from the producers’ perspective, GIs are collective goods, often more specifically “club goods” (Thiedig and Sylvander, 2000). In addition, they are claimed by their defenders to have positive dynamic effects at the local level, exactly what economic development requires. The intellectual property right, which GIs enforce, is a collective one, that of the producers of a specific product located in a given geographic area and abiding by production rules, which are collectively determined. As such, they enhance the collective mobilization of local resources. One can say that these producers form a club, which is restricted to those in the geographic area but open to all those in that area who respect the production rules. But, of course, the economic viability of the producers requires that the product under GI be differentiated and can command a price *premium* over similar products on the market. In that sense, we see that GI products are at the same time club goods and credence goods. And this duality is important.

A further claim in support of GIs is that the quality differential is based on production methods relying on traditional local knowledge, which will have a better chance to be conserved and also enhanced, thanks to the economic viability of the GI product. Thus GIs have an important cultural dimension. Note that this cultural value is supported by consumers who pay the price *premium*⁴ and this cultural aspect may be particularly important for those consumers in the geographic area as well as those originating from it. Buying and consuming that product reinforces their sense of cultural identity. Even, other consumers can benefit from this cultural asset, as they may have a sense of partaking in the local culture. Finally, biodiversity benefits are also claimed by GI supporters. The traditional production methods used are less likely to require large quantities of external inputs and therefore have a good

⁴ The price *premium* may reflect the perception that GIs are reputation or positional goods, which may totally change how they are consumed (Yotopoulos and Donato, 2007)

chance to be less polluting than more modern methods. In addition, the traditional methods are likely to rely on traditional crop varieties, which tend to disappear with the modernization of agriculture. Thus, the development of GI products contributes to conserve these local varieties and, as a result, they are a tool of biodiversity protection.

The potential positive role of GIs for rural development has been well recognized by international organizations, as reflected by two good synthesis reports produced by ITC and FAO (Giovannucci et al, 2009; Vandecandelaere et al, 2010), the latter emphasizing what it calls the “different steps of the origin-based quality virtuous circle”. The idea of a virtuous circle effectively conveys the dynamic features of development mentioned above. But the most interesting feature of these two reports is that while recognizing the potentially useful role of GIs in the promotion of rural development, they stress their limitations; GIs are by no means a panacea and the conditions for success are hard to meet.

The conflicting doctrine against GIs must also be recognized and specified. It is essentially based on a great skepticism regarding the potential effectiveness of public policies seeking to directly support rural development. This has been the traditional position of the Republican party in the USA for decades. Ever since FD Roosevelt, Democrats have pushed rural development programs when they were in control of the government. Invariably, they were sharply criticized by Republicans, who abandoned these programs when they came to power. Several issues are raised by skeptics of government support to rural development: the traditional opposition to government interventions in economic affairs and the related belief that market mechanisms are generally more effective undoubtedly plays a role. In addition, the need for a clear definition of property rights and their enforcement being well recognized, individual rather than collective property rights are generally seen as preferable. Public policies should concentrate on the provision of public goods, such as infrastructure development and basic education. Any specific rural development policy risks slowing down the mobility of labor, holding poor rural people in agriculture and other rural sectors where the opportunities for productive employment are scarce. One thus can understand that in such a perspective GIs are not needed, they can be counterproductive and they risk to only give some local monopoly power to a few rent- seekers.

2 - The International Stalemate

The current international agreements on GIs involving the EU and the USA reflect a stalemate between the two doctrinal positions, in spite of the changes which occurred since the 1994 Marrakech Agreement. Already the issue had been negotiated during the Uruguay round. The text on GIs in the final TRIPS agreement (WTO, 1994) is itself a compromise: “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 geographic origin.” (Article 22, paragraph 1). This can be interpreted as a concession by the USA and its allies to the EU, which had had to undertake a major reform of its price support policy to make the final agreement possible. The concept of GI is recognized but finally not much international protection was granted to the property right instrument, except to some extent for wines and spirits.

One should note here that US law provides some tool to protect geographic indications through so-called “certification marks” under the trademark law, the specifications possibly being for places of origin and/or methods of production. And, somewhat paradoxically, it is on that basis that the US initiated a dispute with the EU, first in 1999 and then, more formally, in 2003 with the support of Australia. The US argued that the EU did not give enough protection to its trademarks and thus was breaching the clause of ‘national treatment’ in favor of its GIs. The final judgment of the Appellate Body vindicated the US position on this point.

Yet, as keen an observer as Josling could write afterwards: “The outcome of the WTO case managed to give comfort to both sides to the dispute. The EU was able to claim that its GI protection program was not WTO-incompatible as such and the US could point to the fact that the EU was found to have violated WTO articles in the way in which it implemented that policy” (Josling, 2006b). This view is broadly shared and this vindicates our claim that the final decision of the WTO dispute settlement mechanism did not break the stalemate. Indeed today both protection systems – trademarks and GIs - coexist, which means that both legal and economic traditions concerning the use of forms of intellectual property rights are recognized as such. Thus, the EU had to amend Regulation No. 2081/92 in order to clarify the terms of registration and filing according to the WTO’s reciprocity rules but did not have to radically change its GI policy. A new European Communities Regulation No. 510/2006 was published in March 2006 and followed rapidly by rules of implementation in December 2006 (EC Regulation No. 1898/2006)⁵. This had one immediate consequence: the EU opened its registration system to third-country stakeholders in order to comply with the non-discrimination principle (Ilbert and Petit, 2009).

Meanwhile, GI issues were negotiated in the Doha round, started in 2001. In particular regarding TRIPS, the parties negotiated on the establishment of a multilateral system of notification and registration of GIs for wines and spirits as well as on extending GI protection to other agricultural products beyond wines and spirits. Four years later, the stalemate continued as noted by Anania and Bureau (2005): “Negotiation in TRIPS on the geographical indications of origin for wine and spirits also seems to be stalled, and no agreement emerged to start negotiations to extend protection for geographical indications to other agro-food products, neither in the TRIPS negotiation, nor within the negotiation on agriculture” and this stalemate continues today. The first point of the negotiations never found a solution. EU proposal focused on the notification and registration of a GI in such a way that a Member State could benefit from an international register. This multilateral system was to be applicable to all WTO members and would commit them “to consult the Register when making decisions on registration and protection of Trademarks and GIs in accordance with domestic law” (WTO, 2008) These procedures are at the opposite of the US position which recommends a voluntary information database. As the US and its allies refuse any compromise on the mandatory nature of an international registration system, the EU did seek support from third countries, especially from India, Mexico and China. At that time we hypothesized that the pro-GI coalition was in the process of strengthening, arguing that the emergence of many new players from the South could “change the balance of power on the GI issue”. We went even further when we wrote: “In the Development Round, it can be considered that the extension of protection is politically inevitable” (Ilbert and Petit, 2009: 515-516).

The creation of the Organization for an International Geographical Indications Network (oriGIIn), which actively campaigns for an effective international GI legal protection system since its creation in 2003 and which has quickly expanded to cover five continents, can be taken as a sign of the strengthening of the pro-GI coalition. It boasts being “today a truly global alliance of Geographical Indications (GIs) from a large variety of sectors” representing some 400 associations of producers and other GI-related institutions from 40 countries”⁶. Incidentally many major non-European countries have members, notably the USA, China and Mexico, as well as many others. Another sign of the shifting balance of power could also be

⁵ Commission regulation (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. *Official Journal of the European Union*, OJ L, 23.12.2006, n. 369, p. 1.

⁶ OriGIIn. about us. <http://www.origin-gi.com/index.php/en/about-us/background.html>. Accessed 20 March 2015

the campaigns by some producers groups in non-GI friendly countries for better recognition of geographic indications. Two eloquent illustrations of this development are the activities of the Napa Valley Vintners (NVV) for the protection of ‘Napa Valley’ wines and those of the Idaho Potato Commission. Interestingly, the position of the former was taken at heart by the US government which negotiated the recognition by the EU of the ‘Napa Valley’ appellation in 2007.

Yet, in spite of these signs, the international stalemate continues, as reflected by the difficulties faced in the revision of the Lisbon Agreement on Appellations of Origin and Geographic Indications, which remains an effective international institutional official framework. Major oppositions between the US and the EU concerning the acceptance of international applications, such as the compulsory information on the fundamental characteristics of a GI and the possibility for a Member to require a declaration of a registered GIs, are repeated during this revision process (WIPO, 2014). Besides, this International Agreement only covers a few countries and it is not linked to trade sanctions mechanisms such as the Dispute Settlement Body. The ongoing negotiations process and the absence of effective resolution do not achieve GIs protection at the international level. Only domestic and regional registers, such as the EU register, are effective. A final sign that the US government is not likely to yield and make major concessions on the stalemate can be found in the activities of another American pressure group. The U.S. Dairy Export Council accuses the E.U. to restrict third country markets for U.S exports. It is now active in TTIP and EU negotiations, as well as Lisbon Agreement: it focuses in finding a solution for the reintroduction into the E.U market of key US products bearing common names⁷.

3 - The Current Situation of GIs

Could an expansion of internationally recognized GIs break the doctrinal and negotiation stalemate? For such a scenario to happen, the economic importance of GI products would have to be significant and growing. In addition, the momentum created by the opening of the European Registry to foreign products would have had to lead the EU to grant a large number of non-European applications for recognition of GIs. We will see now that the current record is not that great.

On the value of GIs, the most common indicator used by analysts is the value of total sales. This has obvious shortcomings since it does not really measure the added value provided by the fact that products are qualified as GIs. So, some analysts use an estimate of that added value, based on the price differential between GI products and similar products multiplied by the quantity of GI products sold. The obvious limitation of this indicator is that it is not easy to find ‘similar’ products, the very purpose of GI being product differentiation. As a result, this indicator does not take into account the extra cost of producing GI products, in particular the cost of respecting traditional production rules. In addition, finding the appropriate data to estimate this indicator is not easy. Thus, it is not surprising that estimates of the value of GIs at the world level are scarce. The most comprehensive source we found in the literature is provided by Giovannucci (2009), which was published more than five years ago. This report estimates that: “More than 10,000 legally protected GIs exist globally. Together, developing countries have about 10% of the total. Many more are recognized but not adequately protected”. In addition: “The market for GI products is significant, especially in the United States, Europe and the more affluent countries. The estimated value for sales of

⁷ CFN. (2015). US dairy industry drives home concerns on Geographical Indications and Common Food Name issues during TTIP stakeholders forum. <http://www.commonfoodnames.com/u-s-dairy-industry-drives-home-concerns-on-geographical-indications-and-common-food-name-issues-during-ttip-stakeholders-forum/>.

Accessed 20 March 2015

GI products worldwide is well over US\$ 50 billion. The majority of that is for wines and spirits. A number of countries, ranging from Scotland to Australia and China to Chile have GI exports in excess of US\$ 1 billion. Unfortunately, there are very few comprehensive estimates for the distinct origins”. In other words, the number of GIs in the world is impressive and the value of GI products is significant, mainly in Europe and mainly for wines and spirits.

A more recent report (Chever et al., 2012), commissioned by the EU, provides more detailed information but limited to that economic entity. It is worth noting first that the number of registered GIs reported for the EU in that report (2 768) is much smaller than the number in the ITC report just mentioned (6 021). This difference, which we have not been able to explain⁸, should serve as a note of caution regarding the reliability of the data on GIs. Yet, that EU report seems to be very professional. The value of sales is carefully defined as: “sales at wholesale stage at regional level, transport and taxes excluded, for instance: for cheese: ex-dairy stage; for meat: ex-slaughterhouse or ex-cutting plant stage; for fruits and vegetables: ex-co-operative stage or ex-regional wholesaler stage”. And the total sales value thus estimated for the EU, namely 54.346 billion Euros in 2010, is close to that provided by the ITC report. And this source gives an increase of 12% from 2005 to 2010. Two other figures from that report are worth noting the total value of GI sales in the whole EU represents 5.7% of total sales on domestic food and drink markets and “The whole value premium rate in the EU 27 for GI products was estimated at 2.23, which means that GI products were sold 2.23 times as high as the same quantity of non-GI products”.

Clear lessons can be drawn from these data. Even though GI products are important, they only represent a marginal share of the total food and drinks market, even in the EU. In addition, the total value of their sales has been growing but their market share is not increasing.

The number of non-European GI applications granted by the EU is very small, as reflected in table 1.

⁸ The difference is difficult to explain since the EU report is based on the “value and trade of production for each of the GIs registered under Reg. (EC) No 510/2006 (period covered 2005-2010)”, whereas the ITC report deals with “protected Geographical Indications”, a very similar concept apparently.

Table 1: Registered denominations, March 2015.

Country	Number
Italy	271
France	219
Spain	181
Portugal	126
Greece	101
Germany	80
United-Kingdom	57
Poland	36
Czech Rep.	29
Slovenia	22
Belgium	16
Austria	14
Hungary	14
Slovaquia	13
China	10
Finland	10
The Netherlands	10
Lithuania	7
Sweden	7
Denmark	6
Bulgary	5
Eire	5
Luxembourg	4
Multi-country	4
Latvia	3
Cyprus	2
Andorra	1
Columbia	1
India	1
Norway	1
Rumania	1
Thailand	1
Turkey	1
Viêt Nam	1
TOTAL	1260

Source: EU, Door Database, retrieved on March 15, 2015.

Out of a total of 1260, only 17 have been granted to non-European countries: 10 to China and one each to Andorra, Columbia, India, Norway, Thailand, Turkey, and Vietnam. Besides, the number of pending applications (table 2) is also quite small with 12 non-European out of 205 (Turkey 4 and one each from Brazil, Cambodia, the Dominican Republic, India, Morocco and Thailand with two published for Thailand).

Table 2: Pending applications, March 2015.

Country	Applied	Published	Pending
France	26	10	
Spain	21	4	
Italy	20	11	
Germany	13	4	
United Kingdom	13	3	
Croatia	10	4	
Cyprus	4	0	
Turkey	4	0	
Greece	3	2	
Ireland	3	0	
Portugal	3	9	
Slovenia	3	0	
Austria	2	2	
Latvia	2	0	
Netherlands	2	3	
Romania	2	1	
Belgium	1	2	
Brazil	1	0	
Bulgaria	1	1	
Cambodia	1	0	
Denmark	1	2	
Dominican Rep.	1	0	
Hungary	1	0	
India	1	0	
Lithuania	1	0	
Morocco	1	0	
Poland	1	0	
Slovakia	1	0	
Thailand	1	2	
Czech Republic	0	1	
TOTAL	144	61	205

Source: EU, Door Database, retrieved on March 15, 2015.

Such small numbers will not sway the balance of power between the two international coalitions on GIs. Why such a poor record? This question must be answered if one wants to assess the international future of GIs. Many explanations can be imagined and several causes are probably at play. It would be beyond the scope of this paper to investigate all of those at the world level. But much can be learnt from one case study, that of Morocco which we the authors are quite familiar with.

The case of Morocco is particularly interesting because a deliberate effort has been made by the government to promote ‘terroir products’. A renewed agricultural and rural development strategy, called “Green Morocco” Plan, was launched in 2008. It gives an important place to rural poverty alleviation through support to what is called “agriculture solidaire”, conveying the idea that the Nation is supportive of poor smallholder agriculture, because of a sense of solidarity with them. Perhaps the best translation in English would be “social agriculture”. Dedicated programs have been initiated and funds allocated for this purpose in what is called the “second pillar” of the Green Morocco plan. And support to terroir products is a critical component of this second pillar. A specific law was passed in

June 2008 for distinctive signs indicating origin and quality of foodstuffs and agricultural and fisheries products (law n°25-06) in the Official Bulletin N°5640⁹. Three legal categories of signs were created and the national Agency for Agricultural Development lists in 2015: 23 “Protected Geographic Indications” (IGP), “Protected Origin Appellations” (AOP) and one “label” (Table 3).

Table 3: Designations of quality and origin registered in Morocco, March 2015.

Region	Registered	Number
2009	IGP « Argane » AOP «Huile d’Olive Tyout - Chiadma»	2
2010	IGP «Dattes Majhoul de Tafilalet» AOP «Safran de Taliouine» IGP «Clémentine de Berkane» LA «Agneau Laiton»	4
2011	IGP «Viande Agneau Béni Guil» IGP «Figue de Barbarie d’Aït Baâmrane» AOP «Rose de Kelâat M’Gouna-Dadès» IGP «Fromage de Chèvre Chefchaouen» IGP «Grenade Sefri Ouled Abdellah»	5
2012	IGP «Amande de Tafraout» IGP «Dattes Boufeggous» IGP «Dattes Aziza Bouzid de Figuig» IGP «Miel d’Euphorbe Tadla-Azilal»	4
2013	IGP «Dattes Bouittob de Tata» IGP «Huile d’Olive Vierge Extra Ouezzane» IGP «Nèfles de Zegzel» IGP «Pomme de Midelt» IGP «Keskes Khoumassi»	6
2014	IGP «Miel d’Arbousier Jbal My Abdessalam» AO «Huile d’Olive Vierge Extra Ghmat Aylane» AO «Huile Essentielle de Lavandin d’Oulmès» IG «Huile Essentielle du Romarin de l’Oriental» IG «Feuilles Séchées du Romarin de l’Oriental» IG «Câpres da Safi» IG «Raisin Doukkali» IG «Noix d’Azilal» IG «Dattes Jihel de Draa»	8
	Label Agricole	1
	Indication géographique	23
	Appellation d’origine	5
	TOTAL	29

Source: Agence pour le Développement Agricole, Direction du Développement de la Commercialisation des Produits du Terroir, Rabat, Maroc, March 16th 2015.

⁹ Loi n° 25-06 relative aux signes distinctifs d'origine et de qualité des denrées alimentaires et des produits agricoles et halieutiques promulguée par le dahir n°1-08-56 du 17 jourmada I 1429 (23 mai 2008). (2008). *BO [Bulletin Officiel du Maroc]*, 19/06/2008, n. 5640, p. 394-399. http://www.onssa.gov.ma/fr/images/reglementation/reglementation_connexe/LOI.25-06.FR.pdf. Accessed 20 March 2015

Thus it is not surprising that the government of Morocco filed an application for inscription on the EU Registry for its most emblematic terroir product, namely “argane” oil, on October 14, 2011. But, as seen above, the application is still pending.

Understanding why this is so will help us answer the general question raised above on why so few non-European GIs have been put on the EU Registry. Thanks to recent personal interviews with key officials in Brussels and in Rabat, the following interpretation can be suggested. First, EC officials in charge of the Registry must ensure that the new application meets the legal and procedural requirements which an EU application must fulfill. The Moroccan “argane” application was first rejected by the Commission on the ground that the quality control mechanisms were not respected. In particular, the national certification authority “Normacert” did not comply with European and international certification rules¹⁰. The complexity of the procedures to be followed is entailing new transaction costs for Morocco. “Ecocert” Morocco subsidiary which was created in 2009 took the measures to meet the necessary requirements but the process is not yet approved. Hence, as already indicated, no other application was submitted by Morocco in spite of their having a national GI legislation and supporting administrative apparatus. Ironically, this apparatus was developed with the strong support of the EU and of some EU member states. We can thus surmise that the high transaction costs result from the complexity of the EU procedures and international regulation, not from a political desire to slow the international development of GIs.

This is confirmed by the opening of a new avenue to support non-European GIs, the bilateral trade negotiations. Indeed the history of trade agreements and negotiations between Morocco and the EU is long. Somehow, outside observers monitoring the situation over the years get the impression that negotiations are always on-going. For instance in recent years, a bilateral Agreement on agricultural, processed agricultural and fisheries products entered into force on 1st October 2012. It was then agreed « to open negotiations » on protection of GIs. And on January 16th 2015, both sides concluded talks on a stand-alone GI agreement that will be incorporated in the future Deep and Comprehensive Free Trade Agreement (DCFTA) currently under negotiation.

The most important clause for our purpose of the latest agreement is that it provides for reciprocal direct and automatic protection of the GIs of the parties – EU GI names in Morocco and Moroccan GI names in the EU, on the basis of the respective legislations. A specific list of GIs is agreed: regarding the Moroccan ones, it includes 14 agricultural products and 16 wines (table 4).

¹⁰ Certification is subject to supervision and certification bodies are audited in order to receive their accreditation according to international standard. Beside, according to regulation (EU) n° 1151/2012 on quality schemes for agricultural products and foodstuffs in force since 3 January 2013, the Commission’s Food Veterinary Office and the Quality Policy Committee are charged to verify quality procedures.

Table 4: List of Geographical Indications presented for protection by the Kingdom of Morocco for agricultural products and for wines, 2013.

	Names as registered	Type	Designation
01	Argane	Oil	GI
02	Huile d'olive Tyout Chiadma	Oil	PDO
03	Safran de Taliouine	Spices	PDO
04	Dattes Majhoul de Tafilalet	Fruit	GI
05	Clémentine de Berkane	Fruit	GI
06	Viande Agneau Béni Guil	Meat	GI
07	Grenades Sefri Ouled Abdelah	Fruit	GI
08	Fromage de chèvre de Chefchouen	Cheese	GI
09	Figue de Barbarie d'Ait Baâmrane	Fruit	GI
10	Rose de Kelaât M'Gouna-Dadès	Flower	PDO
11	Dattes Aziza Bouzid de Figuig	Fruit	GI
12	Amande de Tafraout	Fruit	GI
13	Dattes Boufeggous	Fruit	GI
14	Miel d'Euphorbe Tadla Azilal	Honey	GI
15	Berkane	Wines	
16	Angad	Wines	
17	Sais	Wines	
18	Beni Sadden	Wines	
19	Zerhoun	Wines	
20	Guerrouane	Wines	
21	Beni M'Tir	Wines	
22	Rharb	Wines	
23	Chellah	Wines	
24	Zaer	Wines	
25	Zemmour	Wines	
26	Zenata	Wines	
27	Sahel	Wines	
28	Doukkala	Wines	
29	Les côteaux de l'Atlas	Wines	
30	Crémant de l'Atlas	Wines	

Source: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013XC0810%2803%29>
 Official Journal of the European Union, Text 10.8.2013

Without prejudging the final agreement outcome, those geographical indications names are as referred to in the Official Journal of the European Union of 10 August 2013¹¹. The principle of an enlargement of that list in the future is also specifically agreed. This will be done through the process of updating the agreement. In other words, this somewhat political process provides Moroccan authorities with a way to bypass the EU registration procedures and to avoid their high transaction costs. But the political nature of the process entails some risks. This trade agreement, like others, will have to be ratified by the European Parliament, which on the basis of past experience will probably not be a simple formality. Interestingly, Commission negotiators seem to be confident that the sailing will be smooth this time.

Bilateral trade agreements may be the second best avenue for further international recognition of GIs, as illustrated by several cases in recent years. Yet they have shortcomings

¹¹ Geographical indications from the Kingdom of Morocco. (2013). *Official Journal of the European Union*, 10/08/2013, 2013/C 232/05, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2013:232:FULL>. Accessed 20 March 2015

as clearly explained by a recent paper from B. O'Connor (2014)¹², commenting on the recent trade agreement concluded recently between the EU and Canada and drawing lessons from comparison with the EU-Korea agreement.

Conclusion

The international conflict over GIs, which has principally pitted the EU against the USA, is a conflict about the most appropriate instrument of intellectual property. But we hope to have convinced the reader that it reflects also a deeper doctrinal conflict on the role of public policies in the promotion of rural development. Following the resolution of the 2005 Dispute in WTO, we had hypothesized that the opening of the European Registry to non-European products could shift the balance of power in favor of the EU, because of the opportunities given to developing countries in particular to use GI as a rural development instrument. And indeed a significant number of countries have shown an interest and taken serious steps to develop GI legislation and administrative support in their own countries, incidentally often with the help of the EU and some EU member states.

Ten years after the WTO ruling, the actual record of GIs does not offer much support to our earlier hypothesis. The economic value of GIs in the world remains marginal as a whole, even if it is significant for some products, wines and spirits in particular. And the distribution of these benefits remains highly concentrated in Southern European countries, developing countries contributing only a small share of that total value. Besides, anecdotal evidence from Southern and Eastern Mediterranean countries, not analyzed in this paper because of its anecdotal character, suggests that producers of terroir products in these countries receive little benefit from an official GI recognition¹³. In addition, it is startling to observe that so few non-European GIs have been put on the EU Registry and that so few applications from non-European products are pending.

Thus, it is not likely that the conflict over GIs will be resolved easily and quickly. There is no reason to believe that the traditional US reluctance to move toward a greater international recognition will be swayed. And on the European side, the ideological and political commitment has been such for several decades that a change of fundamental attitude is not likely, as demonstrated by the insistence of the EU to put GIs on the agenda of all the bilateral trade agreement negotiations. Thus the TTIP will, in all likelihood, not be the occasion for resolution of the doctrinal conflict. And the GI issue may even be contentious in the negotiation. The economic stakes are not very high however. Therefore, the GI issue could remain in the background. If GIs remains in the front stage, this might be because of the reputation good dimension of the GIs: counterfeiting practices heart “the living cultural and gastronomic heritage”¹⁴.

¹² “The draft agreement goes some way to protecting, in Canada, certain geographical names considered economically important for the EU and introduces a degree of coexistence between specific trade marks and geographical indications. It does not, however, address the more fundamental problem of the coexistence of trade marks and geographical indications as two distinct forms of intellectual property or establish principles to guide the resolution of conflict in specific cases. It is to be hoped that the approach taken will not be repeated in the free trade agreement currently being negotiated between the EU and the United States”

¹³ Turkey, Morocco, Algeria and Tunisia are Mediterranean GIs friends. Our research in Morocco shows that *premium price* for GIs product is very small and sometimes do not exist. Norms are high and many farmers prefer to sell their products through informal markets or traditional “souk” system.

¹⁴ Regulation (EU) no 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs. (2012). *Official journal of the European Union*, 14.12.2012, L 343.

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