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INCREASING PROTECTION OF GIS AT THE WTO: CLAWBACKS, GREENFIELDS AND MONOPOLY RENTS

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Abstract

Currently there are proposals and negotiations regarding the strengthening of protection for geographic indicators (GIs) in the WTO. A major proponent of stronger protection for GIs has been the European Union. One of the arguments it has put forward for stronger protection has been that it will provide an avenue for economic development for agricultural producers in developing countries – a way to capture rents in the markets of developed countries. This paper first outlines the proposed changes to the international protection of geographic indicators. Second, the potential for groups of producers to generate and capture rents in foreign markets is assessed under differing assumptions pertaining to industry structure, product differentiation in the short and long run, barriers to entry reputation and the form of legal protection in importing countries. A discussion of the resource requirements to establish and maintain a GI is also provided.

Introduction

The farmer is essentially interested in greater demand for his product, and what follows therefrom, a larger income. Few of the so-called analysis made any mention at all of these two elements, a strange fact given their importance. ...

The failure of these analyses in their true purpose probably does not make them valueless from the point of view of the agents who produce them. They have a strict propaganda value within the framework of persuasion and defence in the relationships which exist between groups of farmers and growers and their respective advertising agencies, either private or state.

A.L. Wolf
Measuring the Effects of
Agricultural Advertising,
1944¹

Having farmers join together to collectively market their products – and thus enhance their incomes – has been a consistent theme of agricultural politics and policy for well over a century.² It has been manifest in many forms – traditional marketing co-operatives, new generation co-operatives, government sanctioned marketing agencies and boards, mandatory and levy financed commodity marketing (e.g. promotion at the state level in the US – Washington Apples, Maine Potatoes) and a host of others. The general premise is that to escape the “commodity trap” where each producer of a particular product is a direct competitor with every other producer, farmers need to band together, cooperate, differentiate their products and then commit resources to shifting out their now downward sloping demand curve (Gordon, et al., 1999). The current popularity of Geographic Indicators (GIs) in the European Union (EU) would appear to be the latest manifestation of this theme.

¹ See Wolf (1944, p. 345)

² See for example, Carver and Wilson (1916)

Of course, GIs are not a new phenomenon – they have had a long history in a few products and, in particular, alcoholic beverages. The European Union is the global leader in GIs with about 5000 registered indicators and new registrations occurring at a rapid rate – approximately 300 new registrations in process. GIs have become more prominent in European Union agricultural policy as more disciplines are put on Common Agricultural Policy (CAP) alternatives such as subsidies. One suspects that they are also a mechanism whereby national governments in the EU are able to channel extra (to the CAP) resources to their farmers in support of GI marketing efforts (Kerr, 2006). Josling (2006) states that:

In the EU, GIs are an integral part of the strategy for returning the agricultural sector to competitiveness (p. 359).

GI designations are also popular with farmers as a result of the “feel good” factor that comes from having ones product recognized as “special”.

Originally, the “special” features of GIs were rooted in *terroir* – something unique associated with the physical attributes of the soil and/or water (possibly in interaction with climate or other natural phenomenon) but have been expanded to include a host of factors associated with (often collective) human capital or intellectual property – sometimes classified as traditional knowledge in the intellectual property literature (Isaac and Kerr, 2003). While some of the attributes of products carrying GI designations may have attributes that can be classified as search or experience attributes, most are credence attributes.³ This credence aspect of GIs allows for a wide range of claims to being

³ Search attributes are those which can be identified by consumers prior to purchase (bruising on apples), experience attributes are those that can only be discerned upon consumption (the tenderness of a steak) and credence attributes are those that cannot be identified by consumers even after consumption (whether a fortified wine came from Porto, whether Feta Cheese came from Greece). See Hobbs (1996) for a discussion of search, experience and credence attributes.

“special” to be encompassed under a registration system so that many groups of farmers can be accommodated.⁴ This does not mean that the credence attributes encompassed in a GI designation do not have value to consumers. It means that the only way that they can discern if they are there is if they are signalled through labelling or some other mechanism (Hobbs and Kerr, 2006). It does imply that, as consuming the product won’t directly provide additional utility – e.g. cheese produced using traditional methods is not organoleptically different than the same variety of cheese produced using modern methods – marketing will be key to differentiating the product in the marketplace. Given that most newly designated GIs are unlikely to have a profile with consumers much beyond their local area, expanding their market will require considerable resources to build a profile in new markets. Given that the products are unlikely to be able to sell themselves, questions regarding the success of GIs are raised.

Solid empirical evidence regarding the efficacy of GI designations in increasing farmers’ profits is illusive. We have examined a large number of studies pertaining to GIs and failed to find any that we considered conclusive. This does not mean that GIs don’t increase farmers’ profits. Proving that GIs increase profits requires *ceteris paribus* to hold so that the effect of the GI can be separated from other market factors. Most studies did not attempt this formally. Further, most studies presented general market trends as evidence in isolation – e.g. they did not consider the costs associated with establishing and maintaining the GI in the market.

Part of the problem is that isolating the effect of the GI is not easy to do. Take the example of Scotch whiskey. Scotch is a GI designation that denotes Scotland. What one

⁴ Certainly, what is a credence attribute for one person may be an experience good for others – for example wine tasting experts.

would like to do is determine the premium that can be attributed to the GI alone and then compare that to the expenditures made exclusively to maintain the GI – promotion of the GI, defending the GI against infringement, etc. The typical label on a bottle of scotch may carry the following information – the company brand (which is often heavily marketed), how long it was aged (e.g. 10 years, 20 years), what it was aged in (e.g. oak sherry barrels), its makeup (e.g. single malt, blended), alcohol content, sub-geographic area (e.g. highland, lowland, islands), *terroir* factors (e.g. water source), production methods (peat fires, copper stills) and possibly others, as well as the GI. Econometric methods using an hedonic pricing model could be used to determine the contribution of each to the price of the product. Similar bundles of attributes are found in most GI products – wine, cheese, olive oil, etc. We found no studies that used this approach in a systematic way. Further, many of the studies compared the performance of products carrying a GI indicator over time – but without controlling for other market influences.⁵ It is also interesting that faced with the absence of evidence of increased profitability, the number of studies that cite alternative intangible (and even less measurable) benefits expected to arise from GIs such as rising organizational skills among farmers, enhanced community self-esteem, preservation of traditional culture, etc. While these may be beneficial positive externalities associated with GIs, they are not a substitute for increased profitability.

Given the paucity of ‘hard’ evidence that GIs actually increase farmers’ profits, one wonders about the wisdom of expending resources to increase their protection in

⁵ Note, this is not a criticism of assessments of GIs alone but tends to be endemic for group marketing schemes for agricultural products – producer group state level marketing in the US, cooperatives, new generation cooperatives, government marketing agencies, etc. It is not a new problem as the classic article by Wolf (1944) quoted at the beginning of this article suggests.

trade law and, in particular, in encouraging developing countries to pursue GIs as an important element of their development strategy for agriculture. Later in this paper we make the case that focusing on GIs is a risky strategy for farmers. It still may be a viable strategy for farmers in rich countries where direct government support of costs, direct compensation for failure and indirect support subsequent to failure may be available. In developing countries, farmers are likely to face all of the downside risk and, even if governments were able to offer assistance to offset some portion of the downside risk there may be much better uses for the limited resources they have available to foster agricultural development.

The *War on Terroir*, as it has been designated by Josling (2006), primarily between the European Union and the United States⁶ relates to alternate forms of legal protection for intellectual property – the EU’s legal protection is based on a direct GI designation system while the US system uses less direct mechanisms based on trademarks. There have been numerous comparisons of the systems by legal scholars (e.g. Goldberg, 2001, OECD, 2000, Hughes, 2006). From an economics perspective, in terms of “greenfield”⁷ establishment of a GI, both systems would appear to provide similar degrees of protection. Certainly there are transaction costs associated with internationally registering products when two systems exist. There would also be large *switching costs* associated with harmonizing to one or the other of the competing systems – and one suspects that, for example, US objections to moving to a GI approach relate

⁶ There are approximately 110 countries that have specific or *sui generis* systems of GI laws in place, including the 27 EU member countries. The US and 55 other countries use trademarks.

⁷ Greenfield refers to the establishment of a new geographic-based product protected by property rights. Clawback means the assertion of property rights for geographic-based product that already has a profile with consumers in a market. There may be larger differences in the economic benefits between the two systems in a “clawback” situation. Most developing countries are faced with “Greenfield” establishment for their products.

primarily to what they perceive as unacceptable (and un-necessary) switching costs.⁸ The argument pertaining to *sui generis* systems of GIs and trademarks may also have become part of a larger conflict over approaches to agricultural governance between the EU and the US identified by Isaac and Kerr (2007). If this dispute over systems of property protection were confined to the EU and the US, while of interest to the two parties, it would not affect other participants. As the question of protection for this type of property arises in the context of the Agreement on Trade Related Aspects of Intellectual Property (TRIPS), and if the EU had it way, agricultural trade rules, other countries, particularly developing countries are being drawn into the conflict.

The GI Issue at the WTO

In the pre-Uruguay Round General Agreement on Tariffs and Trade (GATT 1947) the provisions on marks of origin constituted a relatively benign and rather innocuous aspect of trade law. The provisions were considered largely a convenient anachronism that provided some protection against the most egregious forms of misrepresentation. These provisions, like antidumping measures, represented one of the few areas where the GATT 1947, which was primarily designed to deal with the activities of governments, ventured into the regulation of the activities of private firms. After all, it is private firms that misrepresent the place of origin of their goods, not governments.

Article IX.6 of the GATT 1947 states:

The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the *detriment of such distinctive regional or geographical names of products* of the territory of a contracting party as are protected by its legislation. Each contracting party shall accord full and

⁸ It is seldom suggested that the EU harmonize to a trademark system.

sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party. General Agreement on Tariffs and Trade 1947, http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#articleIX (emphasis added).

Article IX.6 has wording typical of the pre–World Trade Organization GATT with its consensus-based dispute system. It relied not on formal dispute settlement but rather on the willingness of member states to respond to moral suasion (Kerr, 2000).

Outside of trade agreements, a number of international agreements on intellectual property provided some protection for geographic indicators. These include the Paris Convention of 1883, the Madrid Agreement of 1891, the Stressa Convention of 1951 and the Lisbon Agreement of 1958. The World Intellectual Property Organization (WIPO) put forth a draft international treaty on geographic indicators. Without an effective dispute settlement system, however, the WIPO's efficacy was limited.⁹

The topic of geographic indicators was renegotiated during the Uruguay Round. While the original wording from the GATT 1947 reported above was carried forward without change into the GATT 1994, the protection of geographic indicators was also included within the new TRIPS. Geographic indicators are dealt with in three TRIPS articles. Article 22 – Protection of Geographic Indicators – defines geographic indicators as follows:

⁹ These limitations became the spur for including intellectual property as part of the new international trade system negotiated in the Uruguay Round of GATT negotiations. See Kerr (2003) for a discussion of the reasons for including the protection of intellectual property in trade agreements.

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

The remaining three clauses set out the obligations of members to legally discipline misrepresentations of the geographic origins of products in their domestic law.

Article 24 – International Negotiations; Exceptions – provides under exceptions a number of grandfathering clauses that have effectively allowed countries to pick and choose the geographic indicators they wish to protect. As a result, effective international protection for geographic indicators will be determined by future negotiations. The exceptions clauses state:

24. 4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

24. 5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

24. 6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common

name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement. (TRIPS, 1994)

Other clauses of Article 24 pertain to matters such as rules for geographic indicators that are no longer in use and statutes of limitation on bringing forward complaints. The exceptions are used to prevent terms such as “cheddar” and “port” from obtaining protection as geographic indicators after long periods of generic use.

Article 23 – Additional Protection for Geographical Indications for Wines and Spirits – has provisions that are more specific, for example, limiting practices such as referring to wines being in the “style of” Champagne, using homonyms that might mislead, such as “Rone” for “Rhône”, and the term “Burgundy” to describe wine even if the fact that it is being produced in New Zealand is fully revealed on the label. It also commits the member states to future negotiations:

23. 4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

This is the only TRIPS obligation to engage in negotiations to establish an international system for recognizing geographic indicators. Note, Article 23.4 applies only to wines and not to spirits.

In the Doha Ministerial Declaration that launched the Doha Development Round of negotiations there was a further commitment to negotiations to extend the system of internationally recognized geographic indicators to products other than wine. Section 18 of the Ministerial Declaration states:

With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this declaration (WTO, 2001).

It has been agreed that the degree of protection will be increased and its scope may be widened. The major proponent of the increased protection for geographic indicators has been the European Union, although Switzerland and some Central and Eastern European countries have also expressed support for the strengthening of the system. Some developing countries have also latterly become supporters of the EU position.

Frustrated with the slow pace of the negotiations in the TRIPS Committee, the EU has attempted to force the issue of geographic indicators (GIs) onto the agenda of the agriculture negotiations. In the 2004 Framework Agreement that was stitched together after the failed ministerial meeting in Cancún, the issue of geographic indicators being part of the agriculture negotiations was listed as being an area of interest, but one where no agreement could be attained. The EU has pushed hard since then to ensure that the issue remains in play at the agriculture negotiations. In August 2005 the EU made public a list of 41 geographic indicators for which it is seeking recognition as the exclusive domain of EU producers. This has been referred to as a “clawback” proposal because it represents a move to make many terms that are in widespread use internationally, exclusive (Grant, 2005). For example, the list includes terms such as Chablis, Sauternes, feta and Gorgonzola. Needless to say, the United States and a number of other countries are opposed to this approach.

The reasons the EU is pushing the issue of geographic indicators so forcefully are complex and extend beyond the transparent rent seeking involved. In the case of the “clawback” designations sought by the EU, there may well be considerable rents that accrue in the short run as the favoured producers reap the benefits of many years (even centuries) of expenditures on marketing, reputation building and product refinement made by their forebears as well as the efforts of their current international competitors. Beyond the rent seeking related to long-established geographic associations such as Madeira and Roquefort, large segments of the wine industry in a few of the EU’s member states, particularly France, operate according to a classification system based on region of origin (e.g., Beaujolais, Bordeaux, Sainte-Emilion). In the global wine market, this geographic system is in direct competition with a largely “new world” (e.g., United States, Australia, New Zealand, Argentina, Chile, Canada) system based on the grape variety used in the production of the wine (i.e., Chardonnay, Riesling, Cabernet Sauvignon). The battle over what indicates wine quality is being vigorously contested and there are large and valuable markets at stake. It is a battle over the shaping of consumer perceptions of quality and taste.

The EU, however, has been largely isolated in its attempts to have its position on geographic indicators accepted at the WTO. As a result, it has been seeking allies among other members of the WTO. In particular, it has latterly begun to “beat the development drum” by fostering the impression that the EU is actually pursuing recognition of geographic indicators to assist the development prospects of member states. For example, according to the Commission:

India, Pakistan, Sri Lanka, Thailand, Kenya, Jamaica and other developing countries have demanded better GI protection. They are worried about

multinationals patenting and selling “Basmati” rice, “Ceylon” tea, “Blue Mountain” coffee, “Jasmine” rice. The EU is helping them ripping [*sic*] the benefits of the TRIPs Agreement and fully supports their demands (EU Commission, 2003).

Of course, this is a good tactic during the Doha Development Round negotiations. Some developing countries with existing grievances over products such as Basmati rice¹⁰ have begun to support the EU position. Further, geographic indicators are likely something that NGOs and other civil society groups that support initiatives in developing countries can become enthusiastic about given the emphasis on local production, traditional production methods and community values that are often bundled with geographic indicators. If these civil society groups take up the call, the EU will reap the benefit of their considerable lobbying abilities and the influence that they have with many developing-country governments. More allies among developing countries may well follow.

While this may be a good tactic in negotiations, it may lead to developing countries wasting their limited resources chasing an illusive dream. In short, protection of geographic indicators is something developed countries have the luxury to (likely) waste their resources on, but their needs to be strong evidence that GIs can provide sustained benefits to groups of farmers in developing countries – and certainly better than the claims often made by the European Commission such as:

GIs provide added value to our producers. French GI cheeses are sold at a premium of 2 euro. Italian “Toscano” oil is sold at a premium of 20% since it has been registered as a GI in 1998. Many of these products whose names are protected, are exported. 85% of French wine exports use GIs. 80% of EU exported spirits use GIs. GIs are the lifeline for 138000 farms in France and 300000 Italian employees. (European Commission, 2003).

¹⁰ See Kerr, Hobbs and Yampoin (1999) for a discussion of developing-country grievances regarding Basmati rice and similar products. The differences over intellectual property protection for traditional and indigenous knowledge are a separate issue (Isaac and Kerr, 2003) and attempting to tie it to protection for GIs only serves detract from the central, and fundamentally important, argument.

Clawback

There is little doubt that being able to assert property rights to products that have a profile with consumers in foreign markets will yield monopoly rents to producers in exporting countries.¹¹ Currently, WTO GI exceptions are claimed by a number of countries for products whose GI designations they consider as having become generic terms – feta cheese, Parma ham, Madeira – and, in the absence of protection local producers of products using the “generic” designation are in the market. If the GI was clawed back, the holder of the GI rights would benefit from premium that would arise from the GIs profile with consumers but also that arising from all of the past marketing done by the local previous “generic” producers. Attempting to clawback GIs is simply rent seeking and, if confined to developed countries, would simply represent transfers from one rich society to another.

If clawing back is applied in developing country markets, as the EU is insisting on in its regional trade agreements, such as the one with South Africa, then developing countries must spend their limited resources on protecting the monopoly rents of foreigners.¹² The reward offered by the EU for agreeing to clawbacks (and the protection of future greenfield European Union GIs) is reciprocity. The EU is offering protection for GIs from developing countries within its domestic market. Thus far only three applications for registrations have been made, two for wine – Brazil and the US (for Napa) – and one for an agricultural product (Colombian coffee). As few products from

¹¹ At least in the short run. See Kerr (2006) for a discussion of the competitive threats that exist even for high profile GI protected products.

¹² This is a central question in the TRIPS disagreement between developed and developing countries (Boyd et al., 2003) and while there are substantive arguments when innovation is involved (Gaisford et al., 2007), the arguments for protection by developing countries in the absence of innovation are more problematic.

developing countries have an existing profile in developed countries, including the EU, where rents would be available from “clawback”, the likely efficacy of pursuing a greenfield GI-based agricultural development strategy needs careful assessment.

Greenfield GIs and Economic Development

There is no set formula that can assure the success of a greenfield strategy to use GIs to enter markets in developed countries – the only markets where consumers have sufficient incomes to potentially pay a premium. The number of consumers willing to pay the premium required for a profitable GI strategy may simply never materialise. Consumer preferences are also notoriously unstable as evidenced by fads so that the initial success enjoyed by a novel GI may not be sustainable. In this, products marketed under a GI are no different than the large number of new product introduced each year that fail. A GI strategy is inherently risky and, to have any chance for long-term success, will require a sustained commitment of resources. It would seem, however, that to have a reasonable chance of success a GI-based development strategy must encompass both *ex ante* planning and *ex post* follow through to manage both demand side and supply side threats that comprise the major elements of risk.

Demand Side Risks

Acquiring and Defending Intellectual Property

Geographic indicators are intellectual property. Any value that arises from owning the rights to a GI is dependent upon being able to maintain its exclusivity. This means that the legal rights made available by the target country government must be

obtained and protected. The former relates to acquiring recognition of the GI, the latter to having the right enforced. There is little use having a domestic GI put in place if it is not recognized in the target countries and the exclusive use of the GI enforced in that country. To accomplish this requires planning and active management of the GI.

Effective management of the GI will first require that appropriate target countries are identified – some countries GI regimes may be more suitable to some products than others. Once the appropriate target markets are identified, then the GI must be registered in those countries. Recognition will have different requirements. The granting of recognition may require that the granting authority be convinced of the link between superior quality and the GI. In these instances, a case will have to be made that, indeed, such a link exists. The more tangible and measurable the difference in quality is, the easier it will be to gain recognition. Hence, in the design of the domestic regime for the GI, the more producers can be convinced to tighten the product specifications for the GI and measurably increase quality, the easier it will be to obtain foreign recognition. The trend of expanding GI designations to include a wider range of credence attributes will make obtaining recognition more difficult in some jurisdictions.

Even if quality is measurably different, it does not automatically mean that consumer will value the improvement sufficiently to pay a premium for it – or certainly it cannot be presumed. It may be necessary to gather evidence of willingness to pay from consumers to present to the granting authority.¹³ This type of evidence may be even more important when credence attributes or reputation are being heavily relied upon to give the GI value.

¹³ See Hobbs et al. (2006) and Hobbs et al. (2005) for examples of how such evidence might be obtained.

Where consumers have no experience with the product and the GI, it may first be necessary to educate the consumer through marketing prior to applying for registration. This risks awakening competitors prior to having legal protection for the GI, and a potential challenge to the registration from those competitors once the GI is applied for. Hence, a GI management strategy must be carefully designed with full recognition of the importance of timing.

Obtaining official recognition of a GI may also allow for comment and/or objections from interests in the target country. The GI may be opposed if domestic interests believe that opportunities may be forgone if the GI is granted. Effective management of the GI will require that these objections be anticipated and strong counterarguments developed.

Once official sanction of the GI is obtained, it will likely have to be defended. Markets must be monitored on an ongoing basis to determine if counterfeit goods are being *passed off*. In addition, there will be disputes with competitors regarding whether their products or marketing efforts are infringing on the GI. In both instances the domestic authorities in the importing country will have to be informed of the basis of the dispute. It is unlikely that foreign authorities will act on their own to investigate counterfeiting or questions of infringement and, hence, the owner of the GI will be faced with gathering and presenting evidence. In many countries counterfeiting and infringement cases will have to be decided in the courts. Legal cases will have to be financed and prepared. The greater the success of a GI in generating profitable sales the more incentive there will be for potential competitors to attempt to free ride on that success. Other forms of intellectual property such as copyrights and trademarks provide

endless examples of ongoing battles over counterfeit and infringement – Levis, Sony, Gucci, Microsoft, music CDs, movie DVDs, etc. GIs are no different.

Successful management of a GI, particularly if it involves a food product, also requires processes to be put in place to manage a disaster. No matter how stringent the production, processing and distribution controls that are put in place, breakdowns in the product's safety will inevitably happen. In the case of a disaster – food poisoning, tainted wine, rancid product – the GIs quality association and/or reputation are at risk. Just as the GI can be what consumers learn to search for when they want to purchase, it can become the signal when they are attempting to avoid purchasing the product. Years of hard work building the positive image of a GI can be destroyed in a few hours – and may never be regained.

Strong protocols must be developed for quick responses to disasters before they happen. These include automatic procedures for product recalls, co-operation with local health and other disaster management authorities and measures to inform the consuming public of the measures being taken to minimise the risks both at the time and in the future. Nothing can ruin the reputation of a GI faster than the appearance of incompetence or indifference when consumers are, or believe they are, at risk. While everything possible should be done to prevent a disaster from happening, the fate of a GI can still hinge on how one is managed.

Establishment and Promotion

One of the most obvious characteristics of GIs is that they do not “sell themselves”. One has only to look at the scale of the marketing efforts of those promoting Champaign, Bordeaux wines and Kona coffee to realise the effort required to garner a

large scale success. If a perception of value is going to be created in the minds of foreign consumers, marketing is going to be a central element. Josling (2006, p.360) comments on the limited success of some GIs in the EU:

A quick glance at the scale of production of many of the GIs suggests they are not geared toward global markets. Many names protected by GIs would not be recognised in other parts of the same country, let alone in other member states in the EU. So the role of these GIs in marketing is unclear. If small groups of producers choose to register their name and production process, ... they are unlikely to benefit from sales beyond their own region if the information is not meaningful to more distant consumers.

In most cases, consumers in developed countries will have to be both informed of the GIs existence, and in many cases its whereabouts¹⁴, as well as convinced of the quality that is associated with the GI. While a segment of consumers in developed countries appear predisposed to products originating in destinations they consider “exotic”, even for those consumers there are many competitors for their attention. Often consumers will also have to be informed of how to prepare and serve products with which they are not familiar.¹⁵

Once consumers have been induced to try a new product and have enjoyed a positive experience, a different form of marketing effort will be required. Novelty consumption must be replaced by sustained consumption. This is a more difficult challenge because consumers will be continually presented with new novel products. It is a formidable task to change consumers’ dietary habits so that they include the new GI product in their menus – or even to permanently commit to a GI-based brand. If this can’t

¹⁴ For example, some products from developing countries suggested as good candidates for a successful GI strategy are Sambhalpuri cotton, Alphonso mangoes, Pochampalli silk, Feni, Wyanadan tumeric, Multani Sohan Halwa, Nehari, Ngoc Linh, Buon Ma Thuot, Hoa Loc (Rangnekar, 2004).

¹⁵ Probably nothing can devalue a high quality product’s image with consumers more than inappropriate preparation or presentation.

be done, the producers of the GI may well have been misled by an initial success based on novelty into making investments to increase production that cannot be justified by the post-novelty market reality.

Success will also bring competitors. Firms may attempt to *pass off* their product as the genuine GI item through counterfeiting or near counterfeiting (calling their tea Dargeelong rather than Darjeeling, their cheese feda rather than feta). More difficult, however, the competition will often be legitimate. Being granted a GI cannot prevent a competitor from producing an exact (or near) duplicate product – it only prevents them from claiming it is from the GI. For example, a firm that chooses to respect the Port GI produces and markets a remarkably similar tasting product called Pipe (Kerr, 2006) – and they have all the best marketing resources in the developed world available to them. Good products that compete with the original GI products can be developed and marketed by firms in developed countries – sometimes under trademarked, but tenuous GIs – an example is the very popular Yorkshire Tea brand. Resources will be required to counter the efforts of competitors.

The task of creating, expanding and defending a viable market for a GI requires good planning and an understanding that resources must be provided. Successful GIs are a success because of good marketing that is part of a well thought out system for managing the GI.

Supply Side Risks

Value Chain Organization

It is a long way from the hill farms in Darjeeling where tea is nurtured to the tea shop in Vancouver where the consumer asks specifically for Darjeeling to be incorporated in their afternoon Cha. The tea passes through many hands that can affect the quality and reputation of the GI and who have an interest in profiting from their role in moving the product to the final consumer. Hence, a pro-active value chain strategy is required for two reasons. First, all participants in the value chain must understand and *buy into* the protection of the GI's quality and/or reputation. Second, relationships with participants in the value chain must be organized so that a significant portion of the returns that are generated from the existence of the GI return to those who hold the rights to the GI.

All actors in the value chain have the ability to both promote the quality and/or reputation of the GI or to denigrate it. The only way to fully assure the quality of the product to which a GI is attached is to have a fully vertically integrated ownership structure – from the farmers through to the consumer.¹⁶ In most cases, however, this is unlikely to be feasible for GI rights holders in developing countries. There will be other independent businesses handling the GI product along the supply chain.

The quality and/or reputation of a GI product can be harmed in many ways. A coffee roaster may try to shave costs by adding low quality coffee beans to the GI product during roasting but continue to label the product with the GI. As a result, consumers' expectations of quality will not be fulfilled and they will switch to alternatives.

¹⁶ Of course, a vertically integrated supply chain presents its own challenges in terms of motivating and monitoring the activities of managers and employees. See Hobbs (2003) for a discussion of incentives in supply chains.

Transportation firms may not move the product promptly through the system, leaving them in warehouses until a convenient shipment can be assembled. As a result, retailers expecting supplies will not receive them. Retailers expect reliability of supply and may well drop the GI product from their shelves. Restaurants often tie specials and the purchase of other menu items to a GI in their promotions. If the promised supplies of the GI product don't arrive, repeat business is unlikely.

Perishable products may not be stored in optimal conditions leading to increased spoilage and lower profits. Quality may also deteriorate lowering the value consumers attached to the GI. Downstream firms may fail to report problems back to the primary producers of the GI product meaning that corrective action is not taken and the GIs value can be eroded. Well managed supply chains pay particular attention to information flows both up and down the chain (Hobbs, 2001; Hobbs et al., 1998).

Pro-active value chain management requires that information be provided to all the firms in the supply chain, that their activities are monitored and that close attention is paid to incentives (Hobbs and Young, 2000; Bolger et al., 2001) . It is particularly important that all participants have a stake in the success of the GI (Young and Hobbs, 2002). There is no reason for producers in developing countries to go to the trouble of creating a GI product if other supply chain participants capture all the extra value that is created by the GI.

Quality, Reputation and Cheating

Producers in developing countries that wish to avail themselves of the opportunities that owning rights to a GI can provide need to agree on the quality

standards and/or reputation attributes that will impart value to products identified with the GI – and then they must collectively stick to them and support them.

Arriving at an agreement on standards is unlikely to be an easy process. Even when standards are agreed, there must be a realization by all the perspective holders of the collective rights in the GI that they are important to the success of the GI. Sometimes in the haste to put the GI in place, social pressure or more overt forms of coercion are used to gain agreement on standards, but no real buy in. While they may have agreed to the standards, those who do not fully buy into them will not take them seriously and quality will suffer, eventually devaluing the GI. All standards must be enforced but without full buy in of the standards by all participants, disputes will be inevitable. These types of disputes can threaten the cohesiveness of the rights holders which, in turn, can threaten the viability of the GI.

Even if there is a full buy in of the set of standards arrived at, enforcement will be required to ensure quality. All producers will not have equal ability in being able to achieve the standards or will pursue their achievement with equal intensity. Further, honest mistakes will take place. While more stringent standards will likely lead to higher value for the GI, the rate of failure to achieve the standards will also rise. Hence, the characteristics of the group of producers must be taken into account when the standards are established. Of course, education and training can reduce, but never eliminate, the incidents of failure.

Enforcement of standards must be strict. Otherwise the value of the GI will be eroded. Enforcement may be difficult, however, because of group dynamics, individual personalities within the group and cultural parameters such as face and status. If the GI's

value is dependent on quality or reputation, then ‘one bad apple spoils the lot applies’ so laxity or favouritism in enforcement of standards or conduct pertaining to reputation can endanger the GI’s value. Procedures must also be put in place to deal with those that consistently fail to meet the standards or who cheat. Given the collective nature of the rights to a GI, provision for the exclusion or neutralisation of those who under-perform or purposely threaten the integrity of the GI must be made prior to establishing the GI – in other words the individual’s rights in the GI must be made conditional on performance and integrity. Enforcement and exclusion issues have been identified as central issues in the survival “new-age agricultural cooperatives” which share many characteristics with the institutional arrangement required to manage a GI.¹⁷

Education will be a crucial component of having stringent standards for farmers participating in a GI. While there may be considerable traditional knowledge possessed by individual farmers, standardization may not be a familiar concept. While product homogeneity may or may not be a goal of the GI standard, minimums or thresholds will be. Farmers must be educated as to what those thresholds are, how to achieve them and where they can look for help if they are having difficulty.

An Effective Domestic Sui Generis System

Domestic recognition of a geographic indicator is a prerequisite for acceptance by importing countries. A strong domestic GI system will make it easier to convince foreign recognition granting institutions that the GI will provide value to their consumers and that quality and/or reputation have been validated.

An effective domestic GI system is also required to preserve the integrity of the GI. At its most basic, a GI only indicates that the product originates in the recognized

¹⁷ See Fulton et al., (1998) and Fulton (2000) for discussions of New Generation Cooperatives.

geographic area. While sub-groups of producers may initially wish to establish a GI, other producers may not want to assume the risk. The sub-group that comprises the membership may establish standards and undertake investments to promote the GI in foreign markets. If the GI is successful, producers who reside in the geographic area but were not members may want to cash in later. If the domestic GI regime is weak, they may be able to begin to market their products, individually or collectively, using the GI without adhering to the standards. While the product originates from the designated area, the absence of quality control threatens the value that has been created in the minds of foreign consumers – the GI is no longer a credible signal.

The domestic GI system can also determine whether and how producers who want to avail themselves of the GI can be accommodated. If the GI is to be a mechanism for regional development then more producers should probably be accommodated as time passes. These can be both those who were producing the product at the time the GI was established but did not wish to participate and those who wish to latterly engage in the production of the product. Of course, new entrants will increase supply which may put downward pressure on prices that will be resented by the original participants in the GI. A well thought out and transparent domestic GI regime that specifically deals with the “entry” issue will reduce conflict and animosity.

The domestic GI system may also wish to take a role in guaranteeing that GI standards are being adhered to or in certifying those that provide the quality guarantees. While guarantees can be left entirely in the private sector, the state can often provide a degree of credibility that may be hard for the private sector to attain.

Dealing with Success

If a GI has success in the international marketplace, pressures for change will inevitably arise. These may arise from market success itself, where a major expansion of the industry is required. They may arise as experience with foreign consumers is gained and it becomes apparent that the success of the GI could be improved by making changes in the product. It may arise as new entrants are attracted into production that may have different ideas regarding production processes, standards or marketing. Further, over time foreign regulations may evolve requiring changes to retain market access for the GI or its continued acceptance by foreign consumers (e.g. changes in import market requirements pertaining to the use of pasteurised milk in cheese-making). If not anticipated and managed well, changes can be a divisive force among those who hold the rights to the GI and internal strife can be as significant a threat to the competitiveness of the GI as any external threat.

Change can become particularly divisive when part of the rationale for having the GI is to assist in maintaining ‘traditional production methods and/or lifestyles’. Those producers of the GI that have a strong attachment to traditions will resent (and possibly feel threatened by) others who wish to employ more modern methods or simply to subtly alter traditional practices. On the other hand, those producers that see economic advantages from making changes will be frustrated if they perceive opportunities are being foregone due to slavish adherence to traditions. These types of conflict can lead to acrimonious disputes and can sometimes threaten the integrity of the GI. In the organic industry in some countries, for example, the initial practitioners tended to have strong environmental or ethical beliefs; later, however, when demand for organic products

increased, profits became the motive of many new entrants. Even if the new entrants adhered to the organic industry protocols, the conflict of values led to industry fragmentation.

While the exact source of pressure for change may be difficult to predict, it is likely to arise in the wake of a GI gaining success in a foreign marketplace. Hence, it is important to anticipate demands for change and have mechanisms in place to deal with them. Otherwise, the effort and resources expended on creating a successful I may be largely wasted. Garnering monopoly rents from GIs is far from a sure thing.

Conclusions

All elements of the strategy outlined in the previous section are important and not anticipating and dealing effectively with each one can lead to a commercial failure. Even the most successful products marketed on the basis of their GI must constantly promote the GI and aggressively protect it from competitive threats. While there may be benefits available to developing countries from embracing the use of GIs in their export oriented development strategies, GIs are not a *quick fix* for low market returns for agricultural producers. Success will hinge on being able to put together and execute a well thought out strategy to exploit whatever natural and human geography provide as a basic endowment. In many cases both the required level of organizational skills and the resources needed to garner sustained profits from a GI designation will simply not exist in developing countries.

Given that much of the evidence regarding the efficacy of GIs in increasing farmers' profits in developed countries is suspect, it is difficult to recommend that

developing countries incorporate expansion of GIs into their agricultural development programs. Thus, supporting the strengthening of protection for GIs at the WTO on the basis of reciprocal protection in developed countries markets may not be in the interests of developing countries. They will have to expend considerable resources to protect the GIs of developed countries, but may not have the wherewithal to gain any reward from reciprocal protection. Further, the potential gains are likely to be asymmetric given that there may be far more products in developed countries that would benefit from clawing back GI property rights than exist in developing countries. Certainly, developed countries should not inhibit developing countries from accessing their existing GI protection mechanisms – whether based on trademarks or *sui generis* GI systems. Both provide considerable protection for property rights. That is, however, a far cry from encouraging developing countries from actively pursuing a GI-based development strategy. That should wait until credible assessments of the efficacy of GIs in generating sustained increases in profitability have been undertaken.

References

- Boger, S., J.E. Hobbs and W.A. Kerr (2001) Supply Chain Relationships in the Polish Pork Sector, *Supply Chain Management*, 6 (2): 74-82.
- Boyd, S.L., W.A. Kerr and N. Perdakis (2003) Agricultural Biotechnology Innovations versus Intellectual Property Rights – Are Developing Countries at the Mercy of Multinationals?, *The Journal of World Intellectual Property*, 6 (2): 211-232.
- Carver, E.K. and G.L. Wilson (1916) Studies in the Marketing of Farm Products in France and England, in T.N. Carver, *Selected Readings in Rural Economics*, Boston: Ginn and Company: 851-897
- European Commission. 2003. *Trade Issues*, 30 July 2003.
http://europa.eu.int/comm/trade/issues/sectoral/intell_property/argu_en.htm.
- Fulton, J., B. Jones and L. Schrader (1998) *New Generation Cooperatives*, Purdue Agricultural Economics Report,
<http://www.agecon.purdue.edu/ext/paer/1998/paer0898.pdf>
- Fulton, M. (2000) *New Generation Cooperatives*, Centre for the Study of Cooperatives, University of Saskatchewan, Canada, <http://www.coop-studies.usask.ca/pdf-files/What%20Are%20NGCs%3f.pdf>
- Gaisford, J.D., J.E. Hobbs and W.A. Kerr (2007) Will the TRIPS Agreement Foster Appropriate Biotechnologies for Developing Countries?, *Journal of Agricultural Economics*, 58 (2): 199-217.
- Goldberg, S. (2001) Who Will Raise the White Flag? The Battle Between the United States and the European Union over the Protection of Geographical Indications, *University of Pennsylvania Journal of International Economic Law* (22): 107–151.
- Gordon, D.V., R. Hannesson and W.A. Kerr (1999) What is a Commodity? An Empirical Definition Using Time Series Econometrics, *Journal of International Food and Agribusiness Marketing*, 10, (2): 1-29.
- Grant, C. (2005) Geographic Indicators: Implications for Africa. Trade Law Centre of Southern Africa.
http://www.iprsonline.org/resources/docs/Grant_GIs_paper_Africa.pdf.
- Hobbs, J.E. (1996) A Transaction Cost Approach to Supply Chain Management, *Supply Chain Management: an International Journal*, 1 (2): 15-27.
- Hobbs, J.E. (2001) Dimensions of Competitiveness: Lessons from the Danish Pork Industry, *Current Agriculture, Food and Resource Issues*, 2: 1-11, www.cafri.org

- Hobbs, J.E. (2003) Information, Incentives and Institutions in the Agri-Food Sector. *Canadian Journal of Agricultural Economics*, 51(3):413-429.
- Hobbs, J.E., D. Bailey, D.L. Dickinson and M. Haghiri (2005) Traceability in the Canadian Red Meat Sector: Do Consumers Care?, *Canadian Journal of Agricultural Economics*, 53(1):47-65.
- Hobbs, J.E. and W.A. Kerr (2006) Consumer Information, Labelling and International Trade in Agri-Food Products, *Food Policy*, 31:78-89.
- Hobbs, J.E., W.A. Kerr and K.K. Klein (1998) Creating International Competitiveness Through Supply Chain Management: Danish Pork. *Supply Chain Management*, 3 (2): 68-78.
- Hobbs, J.E., K. Sanderson and M. Haghiri (2006) Evaluating Willingness to Pay for Bison Attributes: An Experimental Auction Approach. *Canadian Journal of Agricultural Economics* 54(2): 269-287.
- Hobbs, J.E. and L. Young. 2000. Closer Vertical Co-ordination in Agrifood Supply Chains: A Conceptual Framework and Some Preliminary Evidence, *Supply Chain Management*, 5 (3): 131-142.
- Hughes, J. (2006) Champagne, Feta and Bourbon: The Spirited Debate About Geographic Indications, Working Paper No. 168, Benjamin N. Cardozo School of Law, Jacob Burns Institute for Advanced Legal Studies, New York: Yeshiva University.
- Isaac, G.E. and W.A. Kerr (2003) International Trade, Intellectual Property Rights and Traditional Knowledge – The Case of Plant Genetic Resources, *Journal of Aboriginal Economic Development*, 3 (2): 75-85.
- Isaac, G.E. and W.A. Kerr (2007) Whose Vision of the Future? The Entrenched International Conflict Over Genetic Modification, *The Geneva Post Quarterly*, 2 (1): 87-107.
- Josling, T. (2006) The War on *Terroir*: Geographical Indicators as a Transatlantic Trade Conflict, *Journal of Agricultural Economics*, 57 (3): 337-363.
- Kerr, W. A. (2000) Is It Time to Re-think the WTO? A Return to the Basics. *Estey Centre Journal of International Law and Trade Policy* 1(2): 99-107.
- Kerr, W. A. (2003) The Efficacy of the TRIPS: Incentives, Capacity and Threats, *The Estey Centre Journal of International Law and Trade Policy* 4(1): 1-14.

- Kerr, W.A. 2006. Enjoying a Good Port with a Clear Conscience: Geographic Indicators, Rent Seeking and Development, *The Estey Centre Journal of International Law and Trade Policy*, 7 (1): 1-14.
- Kerr, W. A., J. E. Hobbs, and R. Yampoin (1999) Intellectual Property Protection, Biotechnology and Developing Countries: Will the TRIPS be Effective? *AgBioForum* 2 (3 and 4 Summer/Fall): 203-211.
- OECD (2000) Appellations of Origin and Geographical Indications in OECD Member Countries: Economic and Legal Implications. Directorates for Food, Agriculture and Fisheries and Trade, Paris: Organization for Economic Co-operation and Development.
- Rangnekar, D. (2004) *The International Protection of Geographic Indicators: The Asian Experience*, UNCTAD/ICTSD Regional Dialogue in collaboration with IDRC, Hong Kong: University of Hong Kong.
- Wolf, A.F. (1944) Measuring the Effect of Agricultural Advertising, *Journal of Farm Economics*, 26: 327-347.
- Young L.M. and J.E. Hobbs (2002) Vertical Linkages in Agri-Food Supply Chains: Changing Role for Producers, Commodity Groups and Government Policy, *Review of Agricultural Economics*, 24 (2): 428-441.