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The Law and Economics of Geographical Indications: Introduction

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The granting and promotion of Geographic Indicators has become an important component of European Union agricultural policy. The granting of exclusive rights enforced by law, however, is a controversial policy. It is controversial both within the EU and with the EU's trading partners. The protection of geographical indications has thus become a major issue in international law and trade policy, and the widespread use of geographical indications is subject to ongoing discussion. The paper provides an introduction to the Special Section of the *Estey Centre Journal of International Law and Trade Policy*, which deals with the legal and economic controversies surrounding the EU's policies on Geographic Indicators. A brief summary of each of the papers in the Special Section is provided.

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There is a growing tendency to provide legal protection to geographical indications, in particular in the case of foods. "Prosciutto di Parma", "Roquefort" and "Café de Colombia" are cases in point, but many more than these famous and established ones are in the process of preparation and application. The European Union is at the forefront of these developments, with extensive legislation at the supranational level. In pursuit of its economic interests, the European Community has not only defined its position in multilateral negotiations, including those leading to the conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) within the framework of the Uruguay Round and the establishment of the WTO, it has also managed to enter into pertinent bilateral agreements with a number of its Southern trading partners, including Chile, South Africa and others. The protection of geographical indications has thus become a major issue in international law and trade policy, and the widespread use of geographical indications is subject to controversial arguments. Due to market imperfections, the interests of producers, processors, regions and states in protecting geographical indications for their high-quality products may be well justified. Regulation at the national or international level may be necessary if intellectual property is ignored or if consumers face quality uncertainty and high search costs. On the other hand, however, it is possible that geographical indications are being used as a new instrument of agricultural protectionism and, thus, reduce economic welfare.

It is the primary objective of this special issue to contribute to the academic and policy debate on the "Law and Economics of Geographical Indications" by stimulating the dialogue between the two disciplines. In September 2007, an international and interdisciplinary workshop addressing the issue was held at the Justus Liebig University in Giessen, Germany, bringing together a group of academics and practitioners who specialized in either the law or the economics of geographical indications. A number of speakers presenting their views in the course of the international workshop were invited to submit a revised version of their contribution to the review process of this special issue. The following selection of articles provides an overview of the discussions, analyses and assessments of the protection of geographical indications. Articles investigate and discuss whether the country or region of origin is a product characteristic that provides additional value for food consumers. The potential of geographical indications to raise income in developing countries is assessed as well. In addition, the implications for international law as well as the framework established by applicable rules are discussed. Other articles present new empirical evidence, for example, on the role of protected geographical indications in food quality policies of the EU or as an instrument to raise prices of export products from developing countries.

The collection of articles starts with "Market Differentiation Potential of Country-of-origin, Quality and Traceability Labeling" by *Wim Verbeke* and *Jutta Roosen*. They present findings from consumer research on the importance of labeling in general and origin labeling on food products in particular. Their analysis opens with a review of pertinent literature that shows ambiguous findings on the various types of labeling analyzed. *Verbeke* and *Roosen* summarize that "the perceived value of quality labels, geographical indications and traceability information depends on product-related, environment-related … and person-related factors." The authors then explore primary data collected during 2000-2005 in order to assess whether country-of-origin labeling – as compared to quality and traceability labeling – is a viable option for differentiating foods. *Verbeke* and *Roosen* concentrate on fresh meat and fresh fish, which typically are credence goods with a generic character. They conclude that the differentiation potential is lowest for traceability and highest for direct indications of quality; direct indications of quality may be best before–date information or explicit quality marks. The differentiation potential of country-of-origin labeling is higher than for traceability and lower than for quality labels, but findings related to origin differ across countries. The potential of origin labeling seems to be higher in countries where geographical indications play a major role in food quality policy.

At the interface between law and economics, two approaches are important to understanding legal regimes in relation to geographical indications: first, a comparative approach not only will provide insights into different legal traditions but also will serve to explain different policies; second, a discussion of pertinent international agreements will provide a perspective on compromise solutions that allow for a framework that will facilitate international trade while preserving local and regional traditions.

It is against this background that *Erik W. Ibele* takes a comparative perspective in his article on "The Nature and Function of Geographical Indications in Law" and provides a discussion of the existing two basic types of legal regimes for the protection of geographical indications. He explains that some systems, notably that of the European Union, define and treat GIs as a distinct type of industrial property. As he argues, this approach is reflected in the provisions concerning geographical indications in the TRIPS Agreement. Other legal systems, notably those of Australia, Canada and the United States, treat geographical indications as a subcategory of trademarks. This approach is based on the idea that geographical indications, like trademarks, function principally as a means of providing information to consumers. EU legislation and jurisprudence, however, define geographical indications more expansively than do trademark-based legal systems, and they see geographical indications as in some ways superior to trademarks. *Erik W. Ibele* illustrates that the

EU is attempting to incorporate other features of its system of protecting geographical indications into the WTO/TRIPS system. He is skeptical as to whether this will really improve the system because, according to his view, the nature of geographical indications is somewhat at odds with that of other types of intellectual property.

While *Erik W. Ibele*'s article focuses on the differences between national (and supranational) regimes for the protection of geographical indications, *Matthijs Geuze* explains the compromise character of articles 22-24 of the TRIPS Agreement and thus provides insights into the international legal framework for the protection of geographical indications. In his article "The Provisions on Geographical Indications in the TRIPS Agreement", he provides an overview of the provisions on geographical indications included in the TRIPS Agreement. To this end, he briefly reviews the Uruguay Round of multilateral trade negotiations (1986-1994), which led to the establishment of the World Trade Organization and to the conclusion, among others, of the TRIPS Agreement. *Matthijs Geuze* reads articles 22-24 as a compromise that was achieved in the context of the single undertaking of the Uruguay Round. Putting the TRIPS provisions on geographical indications in their historical perspective of more than 120 years of international negotiations, he underscores the difficulties involved in arriving at international standards in this area of intellectual property. Thus, the article also contributes to an understanding of the economic, legal and, not least, political difficulties arising under the Doha Development Agenda so far.

These two law articles are followed by three articles dealing with the significance of geographical indications for developing countries: *Stéphan Marette* asks "Can Foreign Producers Benefit from Geographical Indications under the New European Regulation?"; *Sven Anders* and *Julie A. Caswell* discuss "The Benefits and Costs of Proliferation of Geographical Labeling for Developing Countries"; and *Ulrike Grote* analyzes "Environmental Labeling, Protected Geographical Indications, and the Interests of Developing Countries".

In Europe, new supranational legislation on geographical indications was induced by complaints brought under the WTO dispute settlement mechanism by the United States (WT/DS174) and Australia (WT/DS290) arguing that EC Regulation 2081/92, as amended, did not provide national treatment with respect to geographical indications and did not provide sufficient protection to pre-existing trademarks that are similar or identical to a geographical indication. Council Regulation (EC) No. 510/2006 of 20 March 2006 "on the protection of geographical indications and designations of origin for agricultural products and foodstuffs" more clearly defines the conditions for market access of third-country geographical indications, enables registration of third-country geographical indications without government involvement and provides better protection for pre-existing trademarks. In his article,

Stéphan Marette analyses who may actually gain from this new approach. He concludes that producers already having a good reputation for the high quality of their products "may benefit from the European regulation because of the protection against misuse by competitors, the quality assurance scheme and the possibility of supply control." *Marette* is much more sceptical with regard to small producers, who lack both a significant market share and a certain degree of publicity. There is less potential for them to raise product prices for their "poor GIs" as *Marette* puts it. Moreover, *Marette* considers weaker geographical indications as a source of "GI proliferation", which might confuse consumers and harm more robust geographical indications.

Sven Anders and *Julie A. Caswell* consider three types of geographical labeling: (1) geographical indications, (2) trademarks and (3) country-of-origin labeling (COOL). They discuss whether a proliferation of geographical labeling (effectively a better protection of geographical indications), an increased use of various types of trademarks or a wider use of COOL will lead to net welfare gains or losses for developing countries. Similar to *Marette*, *Anders* and *Caswell* do not provide a uniform answer with regard to all countries. They underline that the product mix is crucial for assessing the net impact on individual countries. The authors point out that proliferation of geographical labeling may lead to new non-tariff barriers and increased costs (resulting from the implementation of new standards and the administration of regulatory requirements). On the other hand, new exclusive rights may be created that are strongest for geographical indications and weakest for COOL. It will depend on the "production portfolio … held by developing countries" which effect eventually will dominate.

Ulrike Grote provides comparative insights into geographical indications on the one hand and environmental labeling on the other, both from the perspective of developing countries. Carefully distinguishing the two instruments, she investigates whether their economic impact varies and how developing countries' national interests in protected geographical indications differ from those in environmental labels. A survey of empirical studies led by *Ulrike Grote* reveals that cost-benefit analyses of environmental labels and geographical indications are still rare. In spite of this lack of detailed data, it is possible to identify similarities between environmental labels and protected geographical indications. In particular, price premia are common to both approaches, as a comparison of origin labeling and environment labeling of coffee marketed in Germany reveals. *Grote* argues that legal regimes dealing with geographical indications provide a more comprehensive system of protection than environmental labels. However, her article also casts some doubt on whether price premia arising from protected geographical indications are sufficiently high for

producing countries (in particular, developing countries) to cover the costs of application and administration.

The final section of this special issue includes various kinds of case studies related to geographical indications. There are two articles in economics, and two in law.

The first of these articles provides a discussion of the role of geographical indications in European food quality policy. *Tilman Becker*, in his article "European Food Quality Policy: The Importance of Geographical Indications, Organic Certification and Food Quality Assurance Schemes in European Countries", argues that geographical indications are an important part but not the only part of European food quality policy. He provides novel empirical evidence on the relative importance of collective quality marks and protected geographical indications as compared to organic certification and quality assurance schemes. *Becker*'s analysis confirms that collective quality marks as well as products to which regional geographical indications are attached are primarily used in Mediterranean countries, in particular France and Italy. The article demonstrates that there are also clusters of EU member states that favour other approaches. Thus, Germany, the United Kingdom, Ireland and Belgium demonstrate a tendency towards quality assurance schemes, whereas Austria and the Scandinavian countries are oriented towards organic farming. It will be a challenge for future research to explain in more detail the evidence provided by *Tilman Becker,* which suggests very different approaches to food quality policy across Europe.

Two case studies on coffee follow. In her economic analysis, *Ramona Teuber* focuses on "Café de Marcala – Honduras' GI Approach to Achieve Reputation in the Coffee Market", and *Lennart Schüssler* deals with "Protecting 'Single-origin Coffee' within the Global Coffee Market: The Role of GIs and Trademarks". Coffee is a very interesting market, as the origin of coffee increasingly matters when it comes to the specialty and high-quality segment of the coffee market, whereas the mass market has been dominated by blends from different origins.

Empirical economic studies looking for a price-premium effect of the origin of foods typically choose a hedonic price analysis. *Ramona Teuber* develops such a hedonic model for specialty coffees that are offered at internet auctions. Auction data are utilized in order to detect the influence of the region of origin on the realized auction price. The author focuses on Honduran specialty coffees and investigates whether Café de Marcala receives a price premium for the origin apart from other major coffee attributes. Interestingly, this is not the case. *Ramona Teuber* does not detect a significant impact of the region itself, but identifies strong effects on the price from the coffee's achieved score and scarcity. Thus, Marcala coffee gets a higher price compared with other Honduran coffees due to its better quality as measured by its

score, but the reputation of the region is not yet sufficiently high to yield an additional price premium. This major finding suggests that quality assurance is crucial in the first place for a region or country without a strong reputation. The protection of geographical indications will be more important for regions or countries with already well-established reputations.

In his legal analysis, *Lennart Schüssler* begins by focusing on the fact that, for more than ten years now, coffee producers have been struggling with the world market's low and unstable coffee prices. Some coffee producing countries try to manage this crisis by moving from pure commodity exports to higher-price exports of niche market quality products, such as "single-origin coffee", protected by intellectual property rights. Such protection can take the form of either trademarks or geographical indications. *Lennart Schüssler* shows that, at present, within the single-origin coffee sector, a trend to use the latter form of protection can be observed. The author explains that "Café de Colombia" was registered as a Protected Geographical Indication under Council Regulation (EC) 510/2006. In his article, he takes up the "Ethiopian Fine Coffee Trademarking and Licensing Initiative". In this case, the Ethiopian government, in order to protect its coffee industry, has filed trademark applications for the country's most valuable brands in over 30 countries, including all major coffee markets. *Lennart Schüssler* suggests that both approaches can provide a mixed blessing. The particularities of the global coffee market might in some cases be better accommodated by a trademark scheme whilst in other cases by a geographical indication system. However, the author makes it clear that, in order to ensure that the benefits of the higher price paid for single-origin coffee on the world coffee market reach individual farmers, further steps will have to be taken.

The final article takes a critical look at geographical indications with its focus on wine in EU–South African relations. Based on the international legal framework as established by the TRIPS Agreement, *Andries van der Merwe* discusses the approach to GI protection under South African law. While South Africa has not introduced a registration system with regard to GIs, it relies, among others, on common law approaches to defending GIs. The author further explains that GIs which are by now protected under the EU registration regime have long been used in South Africa to the effect of having become generic. It is against this background that *Andries van der Merwe* argues that in light of the strong negotiating position of the EU, the Europeans, when negotiating the free trade agreement with South Africa, in fact coerced South African negotiators into accepting the terms of the EU with regard to certain GIs. The author concludes that it may be useful for jurisdictions like South Africa to associate with other New World economies to ensure a better bargaining position during negotiations, except where such negotiations deal with purely localized issues.

Although this collection of articles makes a strong contribution to the "Law and Economics of Geographical Indications", major questions remain for both disciplines. One of these questions is how developing countries would be affected by stronger standards under the TRIPS Agreement as discussed in the Doha Round. Several articles in this special issue suggest that while some developing countries would benefit, others might suffer from higher standards. However, it is unclear which countries would be among the winners and losers and what the net effect would be. More case studies are needed in which the implications of such a policy change on rural and national income would be modeled. Furthermore, it seems necessary to increase consistency and coherence among national, supranational and international rules on the protection of geographical indications.

Probably the best way to address these challenges in future research is to adopt an interdisciplinary approach, linking law and economics. Different rules for the protection of geographical indications will induce differential impacts on allocation and distribution. In return, a comparative economic analysis may guide the search for a first-best legal framework to protect geographical indications. Conversely, the development of model laws on the basis of comparative legal analysis embedded in pertinent international rules may influence and stimulate the choice of policy scenarios. This will again affect the implications modeled by agricultural economists of geographical indications for foods.

Finally, the interface between empirical and normative research has proved to be extremely fruitful even though communication between the two disciplines has not always been easy. We believe that further conclusions on methodology can best be drawn if topical areas of joint interest are taken as experimental ground for true interdisciplinary discourse. While this allows debates crossing the boundaries of the two disciplines, the development of proper methodology for the handling of interdisciplinary projects necessitates processes of trial and error. Only then can solid and well-founded methodological "grids" be established in a highly dynamic research environment.