



---

# The Estey Centre Journal of **International Law and Trade Policy**

---

## **The Nature and Function of Geographical Indications in Law**

Erik W. Ibele

*Attorney, Neider & Boucher, S.C., Madison, Wisconsin, USA, Adjunct Professor of Law, University of Wisconsin Law School*

There are two basic types of legal regime for the protection of geographical indications (GIs). Some systems, notably that of the European Union, define and treat GIs as a distinct type of intellectual property. This approach is also reflected in the provisions concerning GIs in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Other legal systems, notably those of Australia, Canada and the United States, treat GIs as a subcategory of trademarks. Like trademarks, GIs function principally as a means of providing information to consumers. EU legislation and jurisprudence, however, define GIs more expansively than do trademark-based legal systems, and see GIs as in some ways superior to trademarks. The EU is attempting to incorporate other features of its system of GI protection into the WTO/TRIPS system. But the nature of GIs is somewhat at odds with that of other types of intellectual property.

Keywords: geographical indications, intellectual property, Origin Regulation, trademarks, TRIPS, WTO

## Introduction

International protection of geographical indications and proposals to strengthen such protection have been among the principal topics of debate in the current round of World Trade Organization negotiations. The Doha Ministerial Declaration of 14 November 2001 states the ministers' agreement to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits. As part of the Doha Round, the Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has discussed extending the protection of TRIPS Article 23 for GIs for wine and spirits to other products. A third issue regards the proposal by the EU to restore GI protection on an international basis to a number of product names that are used by producers with no connection to the geographical area of the name, i.e., which have come to be understood in some countries as names for general kinds or types of products and which have therefore lost their geographical significance. The "claw-back" of such terms for the exclusive use of European producers is adamantly opposed by longtime non-European producers of products such as port and sherry.

The issue of protection for GIs cuts across the North-South/developed country–developing country division that has characterized debate on other issues concerning the international protection of intellectual property. One such division separates countries and regions whose laws and regulatory systems/procedures treat GIs as *sui generis*, a distinct category of industrial or intellectual property separate from trademarks, which GIs closely resemble, and those whose legal systems treat GIs as a subset of trademarks. Issues of GI protection also divide, on the one hand, countries or regions such as the EU that claim a multitude of geographical or geographically suggestive names and other identifiers for products linked to such places by long-standing traditions, methods and ingredients of cultivation and production, and on the other hand countries and regions with few such claims. Countries such as Australia, Canada and the United States have generally been skeptical of, if not opposed to, significant strengthening of international GI protection.

As with most international trade issues, the discussions regarding GIs have an economic background. From the perspective of producers and governments, GIs are a potential marketing tool. A geographical indication links the attributes of a product to its particular place of origin; the association created in the mind of the consumer may add value to products such as wine, spirits, agricultural products, cheeses and other foods. A number of recent studies claim to confirm and quantify the price premia associated with certain products marketed under GIs. One such study found that certain regional designations for Bordeaux wines commanded substantial price premia.<sup>1</sup> Another study found that wines with a "Napa Valley" designation were

priced 61 percent higher than wines with a “California” designation.<sup>2</sup> Given such survey evidence, and in view of the phenomenon of an expanding global middle class with increasingly sophisticated tastes, the interest in strengthening international protection for GIs is not surprising.

By law, the beneficiaries of a GI, like the owner of a trademark, have the exclusive right to use it. GIs, like trademarks and other types of intellectual property, thus essentially confer monopoly rights on their users. This monopoly right is granted by law, and the determination whether a term is a GI and the processes of registering a GI and defending it from infringement or challenging its existence occur in a legal context. To appreciate the current debate, it is therefore essential to understand the **legal** nature and function of GIs, i.e., what, according to law, GIs **are**, and what they **do**.

### **The Territorial Nature of IP Law**

**T**he TRIPS Agreement establishes international criteria for the definition and protection of GIs. This treatment is an exception to the basically territorial nature of intellectual property (IP) law. Several international treaties, for example, the Paris Convention and the Madrid and Lisbon agreements, establish criteria for the international treatment of certain IP elements, or limited aspects of such elements. The influence of these agreements has been limited by both the scope of the agreements themselves and the fact that few countries have signed them. There are also numerous bilateral and multilateral trade agreements and treaties of friendship, commerce and navigation that touch on IP issues. However, IP rights are still primarily a matter of national and, in some cases, regional law. The definitions of the various types of IP, including GIs, the administrative requirements for registration and the nature and extent of substantive IP rights are first and foremost the subject of national law. Registering a patent, copyright or trademark internationally thus requires applying to register it on a country-by-country basis. Likewise, defending IP rights against infringement or challenging others’ claims to IP protection requires bringing and pursuing claims under national law.

The TRIPS Agreement sets forth an explicit definition of GIs and establishes comprehensive minimum levels of GI protection. A number of countries have enacted national legislation incorporating the TRIPS definitions of GIs and the levels of protection mandated by TRIPS. The TRIPS Agreement may well achieve the recognition and protection of GIs on an international level that previous agreements failed to achieve. Even the TRIPS Agreement however, leaves the actual implementation of the protection mandated by it up to the WTO members, according to their national laws.

## **Terroir and GI Protection**

**H**istorically, the concept of geographical indications has been closely related to the notion of *terroir*, literally, “soil” or “terrain”. The term connotes a limited geographical area, whose geology, topography, local climate, flora and other factors impart distinctive qualities to products originating there. Thus the concept of *terroir* expresses the connection between the geographical location where a food or beverage is produced and the quality or other characteristics of the product. *Terroir* may also comprehend the human element of the geographical environment, i.e., the skilled exercise of techniques and knowledge acquired, developed and handed down over generations.<sup>3</sup> GIs are the form of industrial property protection specific to the notion of *terroir*.

### **The Nature of GIs in Law**

#### **(a) *Sui Generis* Treatment**

There are essentially two approaches to the legal definition and protection of GIs. In many countries, GIs are regarded as a type of industrial property separate and distinct from trademarks, the type of intellectual property GIs most closely resemble. Such systems establish a specific regime of recognition and protection for GIs. The EU takes this approach. The TRIPS Agreement and the EU system of GI registration and protection established by Council Regulation 510/2006 (the Origin Regulation) exemplify the *sui generis* philosophy of GI protection. Other legal systems, in particular those of Australia, Canada and the United States, address GIs as a subset of trademarks. In such systems, GIs are registered according to the same procedures that apply to trademarks, and courts essentially apply trademark principles in adjudicating disputes involving GIs.<sup>4</sup>

The TRIPS Agreement represents the culmination of a series of attempts to establish common approaches to the protection of IP at the international level. Among TRIPS predecessors are the Paris Convention for the Protection of Industrial Property (1883); the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891); the Stresa Convention on the Use of Appellations of Origin and Denominations of Cheeses (1951); and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958). Article 2 of the Lisbon Agreement defines “appellation of origin” as follows:

The geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors.

This definition expresses the essence of the GI concept and is carried over in large part into the definitions in both the Origin Regulation and the TRIPS Agreement.

Prior to the establishment of the General Agreement on Tariffs and Trade (GATT 1947), provisions regarding protection for marks of origin were sometimes included in bilateral trade agreements. Article IX(6) of the GATT 1947 contains a general obligation with respect to the protection of geographical product names:

The contracting parties shall cooperate with each other with a view to preventing the use of trade names in such a 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.  
[emphasis added]

Article IX(6) of the GATT 1947 does not further define the protected terms.

The TRIPS Agreement defines and establishes minimum levels of protection for all types of intellectual property. Article 22 of the TRIPS Agreement defines GIs as follows:

(1) Geographical indications are, for 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 TRIPS Agreement definition of GI is thus broader than “appellation of origin” as defined in the Lisbon Agreement. Under the Lisbon Agreement definition, the quality and characteristics of the goods bearing the appellation of origin are due *exclusively or essentially* to the geographic environment. The TRIPS Agreement language is not as rigorous; it is sufficient under the TRIPS Agreement definition that a given quality of the good be attributable to its place of origin. More significantly, it is not even necessary that any of the product’s *unique* qualities derive from/are attributable to the product’s geographic origin. If the good’s reputation or some “other characteristic” is essentially attributable to the place of origin, this too qualifies for a geographical indication.

In addition, a GI need not, under the TRIPS Agreement definition, be an actual geographical place name. As long as the indicating term identifies goods as originating in the territory (or region or locality contained in such territory) of a member, it will qualify as a GI. This means that iconic symbols such as the Matterhorn or the Taj Mahal may serve as GIs for products of Switzerland or India. Traditional names that connote but do not directly state the name of a place may also serve as GIs, e.g., Basmati for rice from India, and Feta for cheese from Greece. The TRIPS Agreement GI definition is important because the TRIPS Agreement imposes positive obligations on its members to bring their individual national systems of GI registration and protection in certain respects into compliance with its provisions.

The TRIPS GI provisions are in large part the result of the historical interest of individual European countries, and subsequently the efforts of the EU, in insuring

protection for GIs. The coverage of GI protection in the EU, previously limited to wines and other alcoholic beverages, was expanded in 1992 to include agricultural products and foodstuffs.<sup>5</sup> As a result of the WTO dispute panel decisions in cases brought by Australia (WT/DSU290) and the United States (WT/DSU 174), Regulation 2081/92 has been superseded by Council Regulation 510/2006 (the Origin Regulation). Regulation 510/2006 defines two types of geographical indications: Protected Geographical Indications (PGIs), in Article 2(1)(a), and Protected Designations of Origin (PDOs), in Article 2(1)(b). Both terms are defined as the name of a region, specific place, or, in special circumstances, a country, which is used to describe an agricultural product or foodstuff. A PDO must satisfy three criteria:

- the product must originate in that geographical area;
- the quality or characteristics of the product must be essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and
- production, processing and preparation of the product must take place in the defined geographical area.

To qualify as a PGI,

- the product must originate in the geographical area;
- a specific quality, reputation or other characteristics must be attributable to that geographic origin; and
- the production and/or process and/or preparation of the product must take place in the defined geographical area.

A PDO is thus similar to an appellation of origin, as defined in the Lisbon Agreement, in that the essence of the product *as a whole* must be attributable to its place of origin. The relationship between a PGI and the product it identifies is not as close; it is sufficient that a quality, reputation, or other characteristic of the product be attributable to the product's geographic origin. Furthermore, only one of the elements of production, processing and preparation need occur in the geographical area. Council Regulation 510/2006 also creates an exception for circumstances that implicate the requirement of Article 2(1)(a) and (b) that the product "originat[e] in the region, specific place or country." Article 2(3) provides that "where the raw materials of the products concerned come from a geographical area larger than or different from the processing area" geographical designations with respect to such products will be treated as designations of origin, as long as

- the production area of the raw materials is limited;
- special conditions for the production of the raw materials exist; and
- inspection arrangements ensure compliance with such conditions.
- Such designations must also have been recognised as designations of origin in their country of origin prior to 01 May 2004. The PDO

“Prosciutto di Parma” benefits from this provision. It is produced using meat from pigs born and raised in 11 sections of central-northern Italy. On its face, a product using pig meat from outside Parma does not originate in that geographical area, as required by Article 2(1)(a) of the Origin Regulation. As with the TRIPS definition of GI, a traditional, non-geographical term that denotes a region or specific place may also be registered as a PDO or PGI.

The wording of the Origin Regulation invites expansive interpretation. Under Article 2(1)(a) and (b) of Council Regulation 510/2006, GIs are geographical names. Article 2(2) however provides that certain traditional, non-geographical terms that have come to be understood to denote a geographical place may also be GIs. This is the case, for instance, with the term “Feta” for cheese. In the Feta cases, Greek makers of Feta cheese, supported by the Greek government, brought actions to prohibit the use of the term by Danish and German producers. German courts were asked to determine whether the claim to the GI “Feta” by its Greek proprietors was in fact supported by scientific evidence of a link between the characteristics or elements of the product as set forth in the specifications required by Article 2(1), and its geographic origin. The court held that a determination of the essential or exclusive link between the product and its place of origin is not based on strict scientific criteria, but on a “global evaluation of all factors including flora, and people.”<sup>6</sup>

### ***(b) GI Protection as Trademarks***

A number of countries, including Australia, Canada and the United States, take a fundamentally different approach to the protection of GIs. In these and other legal systems, GIs are treated as a subcategory of trademark. The U.S. Trademark Act, for example, does not specifically mention GIs at all.<sup>7</sup> Instead, the Trademark Act establishes two categories of marks: certification marks and collective marks. A certification mark is

- ... any word, name, symbol or device, or any combination thereof
- (1) used by a person other than its owner, ...
- (2) ... to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person’s goods ...” (Id)

A collective mark is

- ... a trademark ...
- (1) used by the members of a cooperative, an association, or other collective group or organization ... (Id)

GIs sought to be registered in the U.S. Patent and Trademark Office will fall into one of these categories. The Trademark Act thus does not define the essential nature of GIs as do the European Origin Regulation and the TRIPS Agreement.

The Canadian Trade-marks Act, R.S.C. 1985, c.T-13, contains a similar definition of certification mark. The Trade-marks Act also defines “geographical indication” in terms similar to TRIPS Article 22; this definition is limited to wines and spirits.<sup>8</sup>

There is comparatively little GI jurisprudence in the trademark-based systems. The principal U.S. case regarding GI protection concerned the application by a U.S. alcoholic beverage producer to register the trademark “Canadian Mist and Cognac” in the U.S. Patent and Trademark Office (USPTO).<sup>9</sup> The application was opposed by the Institut National Des Appellations d’Origine and the Bureau National Interprofessionnel du Cognac. The former is the agency of the French Ministry of Agriculture responsible for maintaining and protecting, both in France and internationally, the French appellations of origin system. The latter is a trade organization representing wine and spirits growers, producers and merchants from France’s Cognac region. The mark “Cognac” was not registered as a trademark in the USPTO. The French opposers, however, alleged that the mark had been used in the United States since 1994 and the U.S. public associated it solely with them and their members. The name was also the subject of protections afforded by international agreements, including the 1994 Distilled Spirits Agreement between the EC and the United States, which required the United States to restrict the use of the “Cognac” designation to products of that region. The French parties sought a determination that the term was a common law certification mark, i.e., a mark not registered in the USPTO, but to which certain trademark protections nevertheless attached.

Brown-Forman argued that the term “Cognac” had become generic and that, in order for the term to be a certification mark, it was necessary to show that the purchasing public was aware that the term constituted a certification of regional origin, rather than one simply identifying brandy produced in Cognac. The USPTO decided in favor of the French opposers, finding that they in fact controlled and limited the use of the designation to brandy that met certain standards of regional origin. The decision also rejected Brown-Forman’s argument that the public had to be expressly aware of the certification function performed by a certification mark in order for a term to be accepted as a certification mark. The Brown-Forman case indicates that, in U.S. law, the essential nature of a GI is its source-indicating quality – its ability to communicate the fact that a product comes from a certain place, meets certain quality or other standards or otherwise satisfies criteria established and administered by a certifying body.

## The Function of GIs in Law

**G**Is confer monopoly rights on those allowed to use them. If a term is recognized as a GI, producers in the relevant geographic area may use it, and those outside the area may not. Obviously, on a superficial level, the *function* of GIs, in both *sui* *Estey Centre Journal of International Law and Trade Policy* \_\_\_\_\_ 43

*generis* and trademark-based legal systems, is exclusionary. At a deeper level of analysis, function refers to rationale, the justification for the existence of a legal concept. The most explicit statement of the policy rationale for GIs appears in the preamble to the EU Origin Regulation, which defines GIs and establishes a system for their registration and protection. Council Regulation 510/2006 sets forth 19 recitals or statements of principle, which collectively express the policy rationale for the protection of GIs. Several of these recitals are procedural references to the mandates of prior law, or to the general necessity or desirability of a European Community approach to GI protection. Recitals (2), (3) and (4), however, express the substantive rationale for GIs:

- (2) The diversification of agricultural production should be encouraged so as to achieve a better balance between supply and demand on the markets. The promotion of products having certain characteristics can be of considerable benefit to the rural economy, particularly in less-favoured or remote areas, by improving the incomes of farmers and by retaining the rural population in these areas.
- (3) A constantly increasing number of consumers attach greater importance to the quality of foodstuffs in their diet rather than to quantity. This quest for specific products generates a demand for agricultural products or foodstuffs with an identifiable geographical origin.
- (4) In view of the wide variety of products marketed and the abundance of product information provided, the consumer should, in order to be able to make the best choices, be given clear and succinct information regarding the product origin.

The recitals to Council Regulation 510/2006 do not stand alone; they must be read together with other expressions of legislative intent in the EC Treaty, including the general purpose to establish a common market in goods and services. Still, the recitals reflect the legislators' conception of the range of the functions performed, or which could be performed by GIs, or the advantages of GI protection, including market rationalization, rural agricultural income support and consumer information.

Despite the available rationale in the recitals to the Origin Regulation, the jurisprudence of the regulation seems to take a more cautious view of the functions of GIs. The Spreewalder Gurken case in Germany involved the definition of the geographical area within which pickle producers could use this GI. The national application to register "Spreewalder Gurken" as a PGI defined a geographical area more than double the size of the area traditionally thought of as the Spreewald. The German court raised the issue whether the enlarged definition meant that pickles bearing the GI would in fact not meet consumer expectations. The European Court of Justice (ECJ) did not express an opinion on the matter, finding instead that is was for

national courts to determine the validity of an application for registration of a designation.<sup>10</sup> In a more recent decision, however, the ECJ held that commercial distributors outside the Italian region of Parma could not slice or package Prosciutto di Parma,<sup>11</sup> and that commercial distributors outside the regions authorized to use the GI “Grana Padano” could not grate such cheese.<sup>12</sup> The ECJ found that the Italian legislation has as its purpose to guarantee the authenticity and quality of the product, and as a result, the reputation of the protected designation of origin. The ECJ thus appeared to base its decision in part on the foodstuff quality rationale expressed in recital (3) to Regulation 510/2006.

The U.S. Trademark Act expresses the function of GIs briefly and directly. The Trademark Act’s definition of “certification mark” states that such marks certify geographic origin, or satisfaction of certain standards relating to the quality of materials or mode of manufacture. The jurisprudence of non-*sui generis* systems seems to focus exclusively on the informational rationale for GIs. This is consistent with the limited definitions given GIs in national legislation. The U.S. Trademark Trial and Appeal Board’s ruling in the Cognac case was based exclusively on the finding that consumers understood the term to refer to brandy produced in Cognac. The function of certification marks/GIs in U.S. law thus seems to be essentially synonymous with their nature; that is, they function as indicators of source and other information.

### **GIs vs. Trademarks**

**B**oth GIs and trademarks are source indicators and can, whether by their association with high-quality goods, or astute marketing, or both, add value to the products they identify. Both as a result are subject to infringement, counterfeiting and other misuse. There are fundamental differences between GIs and trademarks, however. Identifying these distinctions highlights several other aspects of the nature of GIs.

**Reference.** A trademark is primarily a *commercial* source indicator; it points to a product’s particular manufacturer or producer. A GI, in contrast, does not identify a particular business enterprise but rather the place of origin and the special quality, reputation or other characteristic of the product that derives from the place of origin.

**Ownership.** Trademarks are personal property; they belong to individual enterprises. GIs in contrast are, in a sense, collectively owned by the producers who have the right to use them, due to their location in the relevant geographic area. All producers in a geographic area have the right to use the GI that denotes the area, and no one outside the area does; the transfer of a GI and its use by a producer outside the area would automatically render its use deceptive. This means that GIs cannot be licensed or otherwise transferred.

**Term.** A trademark expires when the commercial enterprise that owns it ceases to exist, whether as the result of dissolution, merger or acquisition, or bankruptcy, unless it is transferred to a successor enterprise. A trademark can also expire if it ceases to be used in commerce for the purposes set forth in the relevant trademark law. GIs by contrast are essentially everlasting. As long as the geographic place of origin exists, with the soil, climate, flora, human knowledge and other features of the place that impart special qualities to products produced there, the GI exists.

**Genericism.** If one accepts the notion of the uniqueness of *terroir*, one can argue that generic use of a GI is simply not possible. The fact that products bearing certain features come only from certain places means that uses of the GI for products not from that source will therefore be deceptive.<sup>13</sup> Yet it is indisputable that geographic terms such as “Champagne” have in fact become generic terms for a certain type of product; this is the point of the EU’s “claw-back” proposal. There is always a risk that a well-known trademark may become generic. The claw-back proposal and the separate statutory treatment of GIs in the Origin Regulation and in the TRIPS Agreement seek to exempt GIs from ever becoming generic.

**Rationale.** The rationale for intellectual property protection, at least in the industrialised west, is incentive-based. Patents and copyrights, and the temporary monopolies they confer, are awarded in order to encourage the invention of new products and processes and the creation of new artistic works. Trademarks are more overtly commercial; they exist to distinguish the products of particular business enterprises. Because they are also to an extent the result of human inventiveness, however, they receive similar intellectual property protection. GIs, by contrast involve much less in the way of human inventiveness, at least of the sort that the IP system seeks to reward. The derivations of most GI names themselves are lost in history. The things that make up the *terroir* – the soil, climate, flora and other elements that impart unique qualities to the products of the particular geographic region – are for the most part the products of nature. To the extent that human knowledge is an aspect of the characteristics to which the GI refers, the methods, processes, techniques and other human inputs have in most cases already existed far longer than the patent lives with which even the most generous IP laws would have rewarded their inventors. Thus, what GIs encourage is arguably not innovation and the creative spirit but the opposite; the maintenance and preservation of the unchanging relationship between the place of geographic origin and the products that derive their unique characteristics from it. This fundamental difference between the ways in which GIs and trademarks come into existence raises the question of whether or not the intellectual property system is the appropriate vehicle for the protection of GIs.

The protection accorded GIs by the EU Origin Regulation and in the TRIPS Agreement exceeds in some ways that which trademarks receive. The Origin

Regulation essentially prohibits the commercial use of names or terms that are protected GIs, with respect to **any** other product. It bars, for example, any “misuse, imitation or evocation” of a registered GI in connection with an unprotected product, even where the actual origin of the product is indicated or where name of the unprotected product is qualified with terms such as “style” or “type”. This provision was held to forbid the use of the GI “Champagne” in the tagline *Champagner bekommen, Sekt bezahlen* (Get champagne, pay for sparkling wine) by a German computer retailer.<sup>14</sup> The prohibitions of the Origin Regulation, and their interpretations in such instances, suggest that GIs are in some sense superior to trademarks. In many countries, terms that are protected GIs in the EU have instead become generic for a type or category of product. The resistance of such countries to proposals to strengthen GI protection at the international level along EU lines, and to reclaim for exclusive use by European producers terms that have long been generic, is understandable.

## Conclusion

**T**he EU Origin Regulation and the U.S. Trademarks Act represent fundamentally different legal approaches to GI protection. In *sui generis* and trademark-based systems, GIs function primarily as source indicators. The definitions of GI in the Origin Regulation and the GI provisions of the TRIPS Agreement are subject to expansive interpretation, especially with respect to the notion of geography, when linked to a quality, production process or other characteristic. In addition, GIs are a somewhat uncomfortable fit with the other elements of intellectual property, particularly trademarks, with which they most frequently come in conflict. The GI-related elements of the Doha Development Round of WTO negotiations, the EU’s claw-back proposal and the responses to these proposals indicate fundamental disagreement as to certain aspects of the nature of GIs.

## Endnotes

---

1. Bombrun, Helene, and Daniel A. Sumner. 2003. What Determines the Price of Wine? AIC Issues Brief 18, University of California, Davis.
2. Landon, Stuart, and Constance E. Smith. 1998. Quality Expectations, Reputation, and Price. *Southern Economic Journal* 64(3): 628-47.
3. Broude, T. 2005. Culture, Trade and Additional Protection for Geographical Indications. *BRIDGES* September-October, no. 9: 18.
4. See O'Connor, Bernard, 2004, *The Law of Geographical Indications* (London: Cameron May), for a comprehensive country-by-country survey of the legal issues with respect to registration and protection of GIs.
5. EC Council Regulation 2082/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.
6. Opinion of AG Colomer in joint cases G-465-02 and G-466-02 FRG and Kingdom of Denmark v. Commission of the European Communities ("Feta II") [2005] E.C.R O paras 194-196).
7. Lanham Act (1946), 15 U.S.C. 1051, et seq. The Lanham Act defines trademark as follows: "The term 'trademark' includes any word, name symbol, or device, or any combination thereof (1) used by a person ... (2) ...to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods ..." (15 U.S.C. 1127).
8. The GI definition in the Trade-marks Act is a consequence of the EU-Canada Wine Agreement, which provides for special treatment of wine and spirit GIs that are notified by one party to the other. The EU has entered into similar agreements with Australia (Agreement of 1994 between the European Community and Australia on Trade in Wine [see 94/184/EC, Council Decision of 24 January 1994, concerning the conclusion of an agreement between the European Community and Australia on trade in wine, Official Journal L 86, 31/03/1994 pp. 1-2]; a revised trade in wine agreement is to come into effect in 2008); and the United States (Agreement of 2006 between the United States of America and the European Community on Trade in Wine [Agreement between the European Community and the United States of America on trade in wine, Official Journal L 87, 24/03/2006, pp. 2-74]). Under these agreements, certain wine and spirit GIs are removed from the trademark regime of registration and protection which would otherwise apply. The EU wine agreements represent a limited concession by the non-*sui generis* countries to the idea of *sui generis* protection for certain wine and spirit GIs.
9. Institut National Des Appellations d'Origine v. Brown-Forman Corp., 47 U.S.P.Q. 2d 1875 (Trademark Tr. & App. Bd., May 29, 1998) (NO. OPPOSITION 97,417).
10. Case C-269/99.
11. Case C-108/01, Consorzio del Prosciutto di Parma v. Asda Stores Ltd., 2003 E.C.R. I-5121, I-5194.
12. Case C-469/00, Ravil S.A.R.L. v. Bellon Imp. S.A.R.L., 2003 E.C.R. I-5053, I-5119.
13. See for instance P. Roubier, *Le Droit de la Propriete Industrielle*, 44 TMR, 1954, p. 722; and WIPO – International Bureau, *Geographical Indications and the Territoriality Principle*, SCT/9/5, 11 November 2002, WIPO 9th Session, Geneva.

14. Bundesgerichtshof [BGH] [Federal Court of Justice] 17 January 2002, docket no. I ZR 290/99, slop op. at 3-4 (F.R.G.), available at <http://www.bundesgerichtshof.de/>, translated in 2002 EUR. TRADE MARK REP. 1091, 1093-4.

The views expressed in this article are those of the author(s) and not necessarily those of the Estey Centre Journal of International Law and Trade Policy nor the Estey Centre for Law and Economics in International Trade. © The Estey Centre for Law and Economics in International Trade. ISSN: 1496-5208