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Geographical Indications

Legal Aspects

Dr. Burkhart Goebel, Lovells Madrid
Law provides a ...
Law serves by creating a …
Geographical indications: Article 22(1) TRIPS:

“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.”
Examples of geographical indications

• Rioja
• Napa Valley
• Café de Colombia
• Prosciutto di Parma
• Roquefort
• Gorgonzola
• Parmigiano Reggiano
• Newcastle Brown Ale
One Word – Three Functions

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One Word - Three Functions

• Geographical Indication
• Generic name
• Trademark

• All subject to TERRITORIALITY
Definition

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TRIPS requirements for GI protection

- Article 22 TRIPS, protection against misleading use
- Article 23 TRIPS, additional protection for wines and spirits
- Member states free to adopt the appropriate procedures under their domestic law (trademark system/sui generis system)
GI protection mechanisms

- Unfair competition

- Registration Systems
  - Trademark law (national/international)
  - Sui generis systems (national/regional)
  - Sui generis systems (international)
Protection mechanisms under trademark law

- Certification marks
- Collective marks

- Advantages:
  - Well-defined standards for protection and enforcement
  - Familiarity of Trademark Offices/Courts
  - Predictability/Certainty
GI protection via trademark systems

• Trademark systems increasingly recognized as appropriate protection mechanisms for geographical indications

• Example: recent introduction of regional collective mark system in Japan
Collective CTMs – some examples

• BAYERISCHES BIER (CTM 226621)
• DARJEELING (CTM 4325718)
• MADEIRA (CTM 3540911)
• PARMA HAM (CTM 3493781)
• PROSCIUTTO DI PARMA (CTM 1116458)
• THAI SILK (fig.)
(e.g. 4099412):

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TM - disadvantages

It's your money and responsibility!
**Sui generis systems**

- Regional systems: EC Regulation 510/2006 (formerly Regulation 2081/1992)

- National systems, e.g. China, Vietnam, Thailand, Indonesia, Malaysia, some European countries

- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
Advantages of *sui generis* systems

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Advantages of *sui generis* systems

- Tend to be inexpensive (but not necessarily)
- Tend to provide a fairly broad scope of protection
Disadvantages of *sui generis* systems

- Tend to emphasize the “public nature of the GI”
  - Somewhat unclear message under EC Reg. 510/06 (PDO / PGI) – sufficiently clear quality standard?
- Tool to redesign the value chain or trade impediment?
- Straightjacket and uncertainty about extent of protection
Redesigning the value chain?

- European Court of Justice on the slicing of Parma ham (Oct. 2003)
- Monopoly of local producers up to the very last step of the production process

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Straightjacket?

- Newcastle Brown Ale
Conclusion

• Different means of monopolisation of designations available

• GIs will not be available for all agricultural products – i.e. commodities are out

• Question: is the Designation of Origin / Geographical Indication system strong / efficient enough to truly provide a competitive advantage?