The Recent International and Regulatory Decisions about Geographical Indications

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Abstract

As worldwide consumer demand for high-quality products and for information about these products increases, labels and geographical indications (GIs) can serve to signal quality traits to consumers. However, GI systems among countries are not homogeneous and can be used as trade barriers against competition. Philosophical differences between the European Union and the United States about how GIs should be registered and protected led to the formation of a WTO dispute settlement panel. In this paper we discuss the issues behind the dispute, the World Trade Organization (WTO) panel decision, and the EU response to the panel decision leading to the new Regulation 510/2006. Given the potential for GI labels to supply consumer information, context is provided for the discussion using recent literature on product labeling. Implications are drawn regarding the importance of the panel decision and the EU response relative to GI issues yet to be negotiated under the Doha Round.

Keywords: geographical indications, product labels, trade barriers.

1. Introduction

Labeling and consumer information policies are often portrayed as preferable alternatives to direct government regulations, such as minimum-quality standards or import bans, because they involve lower costs for producers, leave consumers free to choose between products, and are less likely to constitute explicit trade barriers (see OECD, 1999). However, labeling also raises issues of access to domestic markets for foreign producers who want to compete in a label niche. Labels may entail trade distortions or impede the entry of producers who cannot comply with specific requirements. Product labeling is theoretically covered by the 1979 World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT), but in practice a number of problems arise at an international level with regard to transparency, mutual recognition, and control. These problems grow in importance as increasing numbers of countries impose their own specifications and labels. Indeed, there are incentives for each country to develop its own system of labels.

This issue of access to a label niche for foreign producers is particularly sensitive for geographical indications (GIs). Because of heterogeneity among farmers, retailers, and consumers from different countries, GI regulating systems vary among countries. In particular, the European Union has a stringent definition of GIs, allowing supply control in order to promote rural development and income support for farmers. The US position is that its trademark laws, including certification marks, adequately protect GIs and there is thus no need for special regulations.

Disagreements over the extent to which the European Union could enforce property right protections of GIs internationally ultimately led the United States to file a complaint with the WTO against the EU regulation in 1999. The main argument was that the EU regulation discriminated against non-EU GIs and did not provide sufficient protection to pre-existing US trademarks that conflicted with EU-designated GIs.

In March 2005, the WTO released the panel report regarding the European GI system. The panel's conclusions and recommendations led the European Union to revise its rules governing how international GIs are treated. Specifically, European Council (EC) Regulation 2081/92 was amended with EC Regulation 510/2006 (EC, 1992; EC, 2006b; WTO, 2005). The amendment is aimed at complying with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the WTO.

In particular, the new regulation allows the EU regulatory system to recognize and protect foreign GIs and allows foreign producers to apply directly for registration of GI products in the European Union. These changes are clear progress in terms of market integration but raise a number of issues that we address in this paper. It is difficult to assess the ultimate impact of the change in regulation because so much depends on the how the EU regulation is implemented. It is possible that the European Union could implement the rule in a manner that may still impede foreign producers' ability to obtain EU GI registration. Based on considerations linked to supply control, quality enhancement, and rural development, the European Union could favor a very restrictive view in registering very few foreign producers.

This paper differs from recent contributions by Hanrahan (2003), Fink and Maskus (2005), and Josling (2005), who focus on the main challenges linked to GIs for the (suspended) Doha Round of multilateral trade negotiations. But the 2005 WTO panel

decision and how the 2006 EU regulation is implemented may matter more to GI trade issues than the outcome of a new multilateral round.

Before detailing how recent WTO and EU decisions may affect the use of GIs and international trade, we review some effects of labeling. We then detail the recent decisions announced in 2005 and 2006 and discuss whether or not these decisions pave the way to greater integration between different systems of GI protection, with specific emphasis on differences between the EU GI and US certification mark systems. These differences between systems are often overlooked in the literature.

2. GIs around the world

GIs, labeling, branding, and/or regulation all serve to mitigate potential inefficiencies resulting from imperfect information about product characteristics. If consumers are not fully informed about product characteristics, they may consume a product with an undesired characteristic or pay a price that does not reflect the quality associated with the product in question.

GIs are voluntarily adopted by agricultural producers for whom the state provides property rights protection, laws against false descriptions of characteristics, and sometimes quality-monitoring assistance. GIs are used as signals to consumers of quality and other attributes based on geographic origin of food products. As Hayes et al. (2004 and 2005) point out, some of these GIs have had a positive impact on producer profitability. Mechanisms for controlling supply, such as a prohibition on technologies that increase yields, are sometimes used.

Systems of identifying and protecting product origin vary greatly around the world. Although GIs are used for products in several countries, such as Darjeeling tea

from India, Colombian coffee, and wine from Valle del Maipo in Chile, we detail in this section GI regulations in the United States and European Union, the two major parties involved in the WTO dispute.

The European Union provides specific legislation for the registration, certification, and protection of GIs for agricultural products and foodstuffs (EC, 1992). GIs are classified as either Protected Designations of Origin (PDOs) or Protected Geographical Indications (PGIs) at the European level (EC, 1992).[1] PDO designation means the products are "produced, processed, and prepared within a given geographical area using recognized know-how." PGI designation means "the geographical link must occur in at least one of the stages of production, processing or preparation. Furthermore, the product can benefit from a good reputation" (EC, 2006a). GIs cannot be sold or delocalized and are accessible to any producer within the specified region of origin, although individual companies are allowed to add their own sub-brands. A consortium or similar type of organization comprised of producers and processors normally sets standards to control product quality and integrity, ensure appropriate use of GI identifiers and sub-brands, and promote the GI product (Babcock and Clemens, 2004). The EU system regulates GIs separately from its trademark system. Note, however, that producers using a GI may also benefit from an individual brand protected by the trademark system. This the case with Roquefort cheese, which is protected as a European PDO and which also has two private brands that are protected by trademarks in Europe (managed by the

[1] Although this paper discusses only PDOs and PGIs, the European Union protects a third designation known as Traditional Specialty Guaranteed (TSG). A TSG "does not refer to the origin of a product but instead highlights traditional character, either in the composition or means of production" (EC, 2006a). Recognition of the compliance costs of adhering to multiple labeling regulations explains efforts by the European Commission to harmonize the labeling system in the European Union. "National laws vary, leading to increased costs for producers for packaging and labeling. Streamlining the various laws will bring considerable cost savings for the food industry [statement by Günter Verheugen, EU Industry Commissioner]" (World Food Law, 2005).

Office for Harmonization in the Internal Market [OHIM]), namely, Roquefort Société (OHIM Registration No. 001514124) and Chateau Roquefort (USPTO Registration No. 000854992).[2]

The United States, on the other hand, regulates and protects GIs through its existing trademark system. The United States allows the registration and protection of GIs as long as existing property rights (i.e., US trademarks held by domestic and foreign owners) are respected. Under the US system, "geographical indications serve the same functions as trademarks, because like trademarks they are source-identifiers, guarantees of quality, and valuable business interests." In particular, "geographic names or signs—which otherwise would be considered primarily geographically descriptive and therefore unregistrable as trademarks or collective marks without a showing of acquired distinctiveness in the United States—can be registered as certification marks." Trademarks and collective marks can also be used to protect GIs under specific circumstances. Generally, however, trademark protection limits new entrants to the market, whereas a certification mark allows free entry to any producer who fulfills all the specifications for certification. Similarly, Australia protects GIs through its existing trademark system.

Although a US certification mark is not limited to protecting a GI product, it can be used as such when the mark is "used or intended for use in commerce with the owner's permission by someone other than its owner, to certify regional or other geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of someone's goods or services" (USPTO, 2006a). Unlike a trademark, a

[2] The Roquefort designation also benefits from a US trademark (USPTO Registration No. 0571798, owned by the Community of Roquefort, France) and the private company Roquefort Société benefits from a US trademark (USPTO Registration No. 79024385).

certification mark is not owned by the manufacturer or producer of the product and is not transferable. Certification marks are generally owned by government agencies or other types of organizations, and any producer who meets the certification criteria must be allowed to use the mark. The US system is self-policing, in that "competitors, businesses in the geographic area, or mark owners will undoubtedly raise issues of infringement, and failure to comply with certification standards, among other things" (USPTO, 2006a). Further, governments do not have to commit resources to ensure compliance; owners of marks can take action without waiting for government enforcement, and a party who believes that a certifier is not following its own standards or is unfairly denying use of a mark can file an opposition, a cancellation proceeding, or an action in federal court (USPTO, 2006a).

This difference in the type of regulatory system chosen to protect GIs reflects a basic philosophical difference between the European Union and the United States. Whereas the EU system directly links GIs to certification and quality and indirectly to rural development and increasing farmer incomes, the United States links GIs to property rights. All else being equal, the more "lenient" US approach on GI definition and protection through the certification mark is likely to be less contentious than the EU GI system. The US system of certification marks and trademarks applies equally to domestic and foreign GIs. Conversely, the driving force behind adoption of regulations protecting EU GIs is the objective of protecting product quality and traditional products from competition from similar products originating outside the region defined by the GI. Thus, one interpretation of EU GI regulation No. 2081/92 from 1992 is that it is a form of protectionism behind the guise of protecting quality.

However, the European system cannot be strictly interpreted as being entirely protectionist. Any domestic or foreign producer can benefit from a collective trademark, as is the case for the Parmigiano Reggiano (OHIM Registration No. 001126481). However, Parmigiano Reggiano also benefits from a PDO. The OHIM collective trademark protects property rights but does not provide the PGI/PDO stamp signaling quality, which was inaccessible to foreign producers before 2006.

The philosophical and regulatory differences may partially explain the differences in the rate of GI adoption by producers in the European Union and the United States. Because the link between origin and quality is more blurred under the US regulation, the incentive for US farmers to join a GI may be more diluted compared to the incentive for EU farmers to do so. Table 1 attempts to account for the number of EU and US appellations linked to the origin.

As shown in Table 1, GIs are widely used in the European Union. As of November 30, 2006, the European Union had 711 registered GIs (excluding wines and spirits), applications for 46 products, which have been published for opposition,[3] and 235 applications pending, including one from a foreign producer (Columbian coffee) to register additional GI products. At this time, no producer outside the European Union benefits from a PGO/PDI. In addition, for the wine sector, Peri and Gaeta (1999) count more than 400 official appellations in Italy, 450 appellations in France, and 1,397 overall in Europe.

[3] Any objection to an application must be submitted within six months from the date of publication. If no admissible objection is received, the name will be registered.

Table 1. Registered EU GIs and estimated registered and filed US certification marks used as GIs for selected foods and agricultural products.

	European Union	US Certification Mark with Geographical Linkage		
	Registered		Products of Foreign Origin	
Category[a]	Geographical Indication	Total[b]	EU	Other Countries
Cheese	156	21	16	1
Fruit, Vegetables, Cereals[c]	148	49	1	12
Fresh Meat and Offal[d]	101	21	0	4
Oils and Fats/Olive Oils	94	6	1	4
Meat-based Products[e]	76	4	4	0
Other Drinks	39	4	0	1
Other Animal Origin[f]	23	10	3	3
Beer	18	8	3	1
Bread, Pastry, Cakes, etc.[g]	17	9	1	4
Table Olives	16	0	0	0
Fresh Fish and Other[h]	9	16	0	3
Non-food and Other	9	4	0	3
Other Products (spices, etc.)	5	5	0	5
Totals	711	137	25	37

Sources: USPTO 2006b, EC 2006a.

[a]Selected categories from the EU list of registered PDOs/PGIs.

[b]Registered and filed certification marks with a geographical linkage, including marks covering multiple products under a single mark and marks covering national origin (e.g., US, Australian, Argentinian origin). Products with multiple marks (e.g., Parmigiano-Reggiano cheese) are counted only once.

[c]US total includes coffees and teas because the Colombian coffee application to the European Union has been included in this category.

[d]US total includes meat(s), beef, pork, poultry, and offals.

[e]US total includes ham, sausage, bologna, salami, mortadella, chorizo, thuringer, paté, and others.

[f]Other products of animal origin (eggs, honey, milk products excluding butter, etc.).

[g]Bread, pastry, cakes, confectionery, biscuits, and other baker's wares.

[h]Fresh fish, mollusks and crustaceans, and products derived therefrom.

By comparison, GIs are less widely used in the United States, although determining the exact number of US certification marks used to protect GIs is difficult for several reasons. First, whereas the European Union publishes lists of registered GIs by product category and by country of origin (EC, 2006b), no comparable list exists for US certification marks used as GIs.[4]

[4] Although certification marks are the most common method of protecting GIs under the US system, collective marks and trademarks can also be used under specific circumstances, which makes finding marks that protect GIs more difficult. Moreover, many producer groups file for several different marks protecting

Second, US and some foreign producers often use a single US certification mark to link numerous foods products to a single geographical production area. For example, the certification mark Sonoma Grown, "as used by authorized persons, certifies a particular regional origin of the goods: that the goods are grown in Sonoma County, California," with the goods for this mark are defined as "meats and processed foods; natural agricultural products; and wines and spirits, namely, apertif wines, champagne, hard cider, distilled spirits and wine" (USPTO, 2006b).[5] The link to geographical areas under US certification marks are generally broader than those for EU GIs. The Arizona Grown, Florida (for citrus), and Wisconsin Real Cheese labels apply to numerous farmers and processors, which makes the link between appellation and high-quality reputation relatively weak. Such broad-based geographical linkages operate primarily as a marketing device with little signaling role. Arguably, not all the goods covered under these marks qualify as a GI under the WTO definition that the products possess a "given quality, reputation, or other characteristic of the good [that] is essentially attributable to its geographical origin" (WTO, 1994). Idaho Potatoes, with attempts to control both varieties and supply (Martin, 2006), and Vidalia Onions, with a very restricted production area (Hayes and Lence, 2002), are examples of products with certification marks that operate most similarly to EU GIs.

Given these limitations to determining the number of US-protected GIs, two major conclusions can be drawn from Table 1: fewer US marks are being used to protect

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different words and images for use with the same product. As of December 6, 2006, for example, the Consorzio Del Formaggio Parmigiano-Reggiano Consortium of Italy had registered or filed 21 US certification marks and 3 US trademarks for Parmigiano-Reggiano cheese. Seventeen of these marks were filed in August 2006.

[5] Similarly, an application has been filed for a certification mark potentially covering hundreds of nonagricultural and agricultural products produced in Australia.

GIs for foods and agricultural products than are being used to protect EU GIs; and many of the US marks have been registered to protect EU and other foreign products. For example, the European Union has 155 registered GIs for cheeses, whereas the United States has US certification marks for 21 cheeses linked to geographic origin, of which 16 are for EU cheeses. As shown, an estimated 157 US certification marks specifically mention the products included in the categories identified for EU GIs, and close to half of these marks are for foreign products. Clearly, the US system is open to foreign producers.

However, the recent attempt by the Ethiopian government to register trademarks for the names of Ethiopian-grown coffee indicates that the US trademark system may be less lenient than the EU trademark system in defining what constitutes a generic name. In 2005, the Government of Ethiopia filed applications in more than 30 countries to register the names Sidamo, Harar, and Yrigacheffe as trademarks for coffees grown in those areas. A trademark would give the Ethiopian government greater control of prices than would a certification mark, and the UK charity Oxfam estimates that Ethiopia could earn an estimated US$88 million extra per year (BBC News, 2006). As trademarks are registered, the Ethiopian Intellectual Property Office would license the use of the coffee names to individual coffee companies. The licenses would be issued free of charge (EIPO, 2006).

In the United States, the National Coffee Association (NCA), a US trade association, filed letters of protest for the Sidamo and Harar applications. Yrigacheffe was registered as a trademark, but Sidamo and Harar were denied registration on the basis that they are generic names. This last decision could make it more difficult for Ethiopian growers or the government to use US certification marks in the future to

control the quality of Sidamo and Harar coffee. In the European Union, on the other hand, all three names were registered in the United Kingdom and as EU Community Trademarks without opposition. The Community Trademark protects the marks in all EU member countries and extends protection as new members join the union.

Starbucks Corporation has been linked to the NCA actions against Ethiopia's trademark applications (BBC News, 2006). In 2004, Starbucks filed a USPTO application to register Shirkina Sun-Dried Sidamo for trademark protection but abandoned the application following opposition. The link to Starbucks has focused much media attention on the case, and the Ethiopian applications exemplify the intellectual property issues facing multinational corporations that must operate under different systems in different countries. Starbucks will have to observe EU trademark regulations for the three Ethiopian coffees if they are sold in Starbucks stores in the United Kingdom and in other EU countries under the Community Trademark, as well as in other countries that allow registration of one or more of the trademarks. This coffee example is the epitome of the philosophical differences over property rights definitions between the European Union and the United States.

We now turn to a brief review of economic mechanisms that will be useful in understanding the consequences of the recent WTO and EU decisions.

3. GIs and international trade

The need for quality signals may be important when consumers cannot be certain of a product's origin, which is the case when agricultural products from a variety of processors and countries are sold at the retail level with no brand designation. This lack

of information may explain why GIs are increasingly favored by consumers in Europe and by a smaller proportion of US consumers. In particular, GIs provide value when they protect the common reputation of farmers who strive to improve the quality of their products.

Trade liberalization and the resulting increased international competition lead to new competitive environments that modify the incentives for signaling strategies. In general, under perfect information and perfect competition, opening a domestic market to imports increases domestic welfare. Under imperfect information, opening a market to foreign competition increases the incentive for domestic producers to differentiate their product by improving quality and by supplying consumers with additional product information. Faced with having to choose between a familiar domestic product or a new imported product, domestic consumers may want more information about the origin of the imported product and how the imported product was produced. These effects may lead to the emergence of new brands or labels, leading to potential label proliferation and greater use of GIs.

However, if the fixed cost for informing and improving quality is high, trade liberalization may result in concentration of brands and advertising. Shaked and Sutton (1987) showed that concentration increases as market size increases (which is the case with trade liberalization). If quality and information are produced at a fixed cost, a firm—by selecting a relatively high level of quality—can potentially drive competitors with lower-quality products out of a market. Existing producers may choose not to pass on the fixed cost to consumers via prices, thus eliminating potential rivals. As a result, concentration at the producer level will increase and product variety could decrease,

suggesting that globalization could reduce both the number of producers of a product and the number of brands.

The use of GIs could also be limited by another feature of globalization. As international markets for food products increase, the capital and the technology required to achieve quality should move around the world and smooth out quality differences among countries. As a consequence, the use of GIs could eventually be limited to distinguishing idiosyncratic dimensions coming from climate or territory specificity.

Perhaps the most affected product by international competition is wine, where the development of brands and increased winery concentration in Australia and Chile are challenging the leadership of the European GI in world markets. The wine sector in the European Union is based on the GI for medium- and high-quality wines, in which grape production is regulated, with a maximum yield allowed per unit of land.[6]

Some European GIs impose numerous restrictions that stifle the search for commercial efficiency. The excess of regulation for linking origin and quality seems problematic (see Zago and Pick, 2004, and Ribaut, 2005). Conversely, the main features of regulations in the United States, Chile, and Australia are the lack of detailed rules, that is, the freedom to experiment with new techniques; the production and marketing of wines according to single varieties of grapes, sometimes associated with the production region; and the very intense use of marketing investments.

[6] This yield system, which is often disconnected from market demand, does not impede excess supply in some areas, as for the Beaujolais area in France in 2005 (Bombaron, 2005). The maximum yield imposed on a GI may impede farmers' ability to reach the minimum-efficient scale. Benitez et al. (2005) compare the cost structure of GI producers with non-GI producers for the production of French Brie cheese. They demonstrate that GI producers face a more costly production technology and do not profit from scale economies.

Wine promotion in Australia, Chile, and by large US producers favors brand advertising, which facilitates the development of a good reputation and recognition by buyers. The brand is clearly the most visible information for Australian wines. This trend seems consistent with the theoretical results of Shaked and Sutton (1987), namely, a trend toward more concentration of brands in the context of an increase in market size. Smaller US wine producers are increasingly relying on appellations to distinguish their wine.

Unlike the wine industry in Australia or Chile, the industry in Europe is very fragmented (Marette and Zago, 2003).[7] The large number of GIs assures product diversity but certainly increases buyers' confusion (see *Consumer Reports*, 1997).[8] However, GI designation still matters as a way to signal a collective reputation. The Champagne appellation is an example in which the combination of famous brands (with large vineyard size and enough capital for advertising) and a prestigious GI matters to consumers ready to pay a large premium (Combris et al., 2003). An "efficient" combination of brands and a GI also characterizes the Napa Valley appellation, which generates a price premium compared to an equivalent-quality bottle of wine with a different appellation (Bombrun and Sumner, 2003). The GI issue regarding international trade is perhaps overstated, as the wine example underscores the fragility of the GI system for wine as a result of recent changes in the world wine market.

[7] Wineries in Australia are much larger than those in Europe. The average vineyard size in France is less than 2 hectares, versus 111 hectares in Australia.

[8] Berthomeau (2002) discusses the difficulty that various French appellations have had in entering new export markets because of the absence of any clear specification of the label that distinguishes one appellation from another in consumers' minds. The collective reputation of French wines plummeted during the last decade (Conan, 2005; Echikson, 2005; Ribaut, 2005). In response to some of these problems, the GI system in Europe is undergoing a process of reform (Giraud-Heraud et al., 2002; Ribaut, 2005). The inter-professional group of Bordeaux producers (CIVB, Conseil Interprofessionnel des vins de Bordeaux), for example, completely revamped its generic advertising campaign for reaching consumers of different countries in order to restore its collective reputation (Germain, 2005).

Beyond the wine market, empirical evidence supports the notion that some consumers are interested in getting more information about the conditions of production from different countries and that increased international trade leads to a higher consumer sensitivity regarding the origin of products. Loureiro and McCluskey (2000) show that inclusion of a label of origin on fresh meat in Spain leads to a price premium for medium-quality meat. Scarpa et al. (2005) and Whirthgen (2005) confirm the existence of consumer preferences for territorial origin of production certification and regional food. Stefani et al. (2005) show that in the case of Italian spelt, a direct impact of origin on willingness to pay exists. Roosen et al. (2003) also suggest that consumers place more importance on labels of origin as opposed to private brands for beef, although this study is applied to European consumers facing bovine spongiform encephalopathy, or "mad cow disease," for whom regional labels take on a highly significant meaning. Bazoche et al. (2005) show that origin matters during an experimental process comparing consumers' reactions to French and Californian wines.

The previously described developments suggest that a significant effect on prices or consumers' willingness to pay exists, even if the price premium may be relatively low. As McCluskey and Loureiro (2003, p. 101) mention, "The major generalization we can draw from [the] group of empirical studies on consumer response to food labeling is that the consumer must perceive high eating quality in order for the food product to command a premium. This was particularly important for socially responsible and origin-based products." This finding means that good quality is essential to obtaining a premium with a GI. This is a sensitive issue for (1) the plethora of GIs in Europe (namely, 711 PDOs/PGIs noted in Table 1), creating risks of confusion for consumers by making it

difficult to identify high-quality products;[9] and (2) US certification marks that are defined at state levels and that imply the participation of numerous farmers and processors, which makes the link between appellation and high-quality reputation relatively shaky.

The previous examples suggest that the importance of GIs is sometimes overstated when alternative and less regulated methods of brand promotion are possible. Producers who cannot enter a protected GI system can always turn to the classical trademark system, which protects foreign brands in the European Union, the United States, and many other countries.

Concern over trademark issues is one reason the United States objected so strongly to the EU GI regulation. The European Union has consistently viewed GIs as an effective method of labeling and protecting quality in agricultural products and has enacted policies to support their use. The United States has neither encouraged nor discouraged the use of GIs for US products and has incorporated GI protection into its existing trademark system. Given these philosophical differences over how GIs should be recognized and regulated, the United States (and other countries) perceived the EU system as a threat to existing trademarks, many of which would be affected if the European Union were to accomplish its goal of gaining exclusive use of selected product names considered generic in the United States. The US cheese industry, for example, would potentially lose rights to many names that are already trademarked or used

[9] Label proliferation is the main flaw in promoting high-quality reputation (Lohr, 1998 and Clemens, 2005). Indeed, Loisel and Couvreur (2001) show that even in France such signals of quality are not clear to many consumers. For example, recognition of quality labels by French consumers is only 43% for Label Rouge (a high-quality seal for poultry; see Westgreen, 1999), 18% for l'Agriculture Biologique (organic food), and 12% for Appellations d'Origine Contrôlée (the French GI). One major problem is simply the legibility and clarity of a label, especially one showing some official seal. Although Label Rouge is a well-established label, suggesting that reputation matters, the fact that less than half of French consumers recognize it is suggestive of the problems inherent in any label.

generically. We now turn to a description of the recent WTO decisions and their potential to affect agricultural markets and trade.

4. The recent WTO decision and its consequences

Philosophical and regulatory differences regarding GI protection between the United States and the European Union, and the lack of codified or uniformly enforced systems in other countries, underpin the debate over how GIs should be protected under the WTO. There is an inclination for each country to develop its own system of GI registration and protection, which raises the issue of access to the domestic market for foreign producers who want to compete against a protected GI in a label niche. In principle, foreign producers (with enough capital) could adhere to a voluntary label program and benefit from a collective reputation already established by a common label, which should favor entry. However, the cost of complying with label requirements may be prohibitive, particularly for producers in developing countries. Harmonization of different labeling systems is difficult to implement because some countries must make their labeling rules more stringent while others must make their rules more lenient.

In contrast to standardization (or harmonization), mutual recognition is the alternative way to combine labeling diversity and trade development among countries. However, mutual recognition of labeling is sometimes difficult to achieve because countries apply relevant criteria more or less strictly, as in the case of organically farmed products. In the debate over GIs, the stumbling block is the relative importance of production conditions to consumers with preferences that vary greatly among countries, impeding harmonization of recognition and enforcement. Beyond the diversity of GI

systems, the crucial point from the WTO perspective is the equal treatment of domestic and foreign producers.

The recent WTO panel decision on GIs addressed disputes over how the 1994 TRIPS Agreement could be applied (WTO, 2005). GIs signaling a particular quality in products from a specific geographical region are addressed under Articles 22 through 24 of the TRIPS Agreement. Article 22 defines GIs as "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." Article 22 also protects against the use of misleading information that might confuse consumers about a product's geographical origin or that would create unfair competition as a result of such misunderstanding. With regard to trademarks, part 3 states that "A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication of such a nature as to mislead the public as to the true place of origin" (WTO, 1994).

Article 23 provides for an enhanced level of protection for wines and spirits and prevents the use of GIs for spirits not originating in the place indicated by the GI, even where the true origin of the goods is indicated or the GI is used in translation or accompanied by expressions such as "kind," "type," "style," or "imitation." Article 23 also addresses homonymous GIs for wines and provides for negotiations to develop a multilateral system of notification and registration of GIs for wines (WTO, 1994).

Article 24 addresses international negotiations and specifies that an appellation deemed as "generic" cannot benefit from an exclusive GI. In particular, if a quality

dimension is recognized for a product coming from a single area, no producer external to the area is allowed to mimic the indication. However, major controversy arises when names that are protected in one region have a common usage in another. For example, the term *Parmesan* is protected in the European Union as Parmigiano Reggiano, a PDO from Italy, but is considered a generic name in the United States. Decisions concerning "generic" dimensions are decided by national courts, and this explains why the name *Chablis* is considered a generic wine name that every farmer may use in the United States but is registered as a GI in the European Union, with production limited to a restricted area of Burgundy in France.

The disputes over how the TRIPS Agreement should be interpreted and implemented are not limited to Articles 22 through 24 but also include Article 2 (concerning international property conventions), Article 3 (national treatment), Article 41 (general obligations), and Article 65 (transitional arrangements). Because the TRIPS Agreement allows for enhanced protection for wines and spirits, negotiations for these products are handled separately from those for other agricultural products and foodstuffs. Because the WTO panel addressed in this paper was formed to decide issues regarding agricultural products and foodstuffs, the following discussion applies to those items. We now turn to the recent WTO panel decision.

Controversies between the European Union and the United States over protection of GIs led the WTO Dispute Settlement Body to establish a panel to determine whether EC Regulation No. 2081/92, the EU law regulating GIs, violated the TRIPS Agreement (Babcock and Clemens, 2004; WTO, 2005).[10] The US challenge of the EU regulation was

[10] Australia filed a separate complaint and received a separate panel decision. Several other countries joined both the US and Australian requests for consultations.

based on two main points: “discrimination against foreign nationals and foreign products with respect to geographical indication protection, and failure to protect foreign trademarks,” which violated the WTO principle of national treatment requiring members to provide at least equal treatment to domestic and foreign nationals regarding intellectual property rights (USPTO, n.d.).

In a 1999 request for consultations, the United States contended that Regulation 2081/92 did not “provide sufficient protection to pre-existing trademarks that are similar or identical to a geographical indication” and was inconsistent with the European Union’s obligations under the TRIPS Agreement (WTO, 2006). In 2003, the United States filed an additional request for consultations concerning the protection of trademarks and GIs for agricultural products and foodstuffs, contending that Regulation 2081/92 limited the GIs that the European Union would protect and limited access to the GI procedures and protections by nationals of other WTO members. The second request, which served as a supplement to the original request, claimed inconsistencies with articles of the TRIPS Agreement and the 1994 General Agreement on Tariffs and Trade (GATT).[11] The US position with respect to its domestic market is that its trademark laws (in the form of certification marks) adequately protect US and non-US GIs alike, and that there is no further need for special property right protection for GIs. A WTO dispute settlement panel was formed in October 2003.

In April 2005, the WTO panel ruled that the United States had not made a *prima facie* case supporting all the elements of its complaint, but that EC Regulation 2081/92

[11] The United States was joined by Argentina, Canada, Chile, Guatemala, New Zealand, Paraguay, and Uruguay. The counties in support of the EU position included Bangladesh, Bulgaria, Cuba, the Czech Republic, Egypt, Georgia, Hungary, Iceland, India, Jamaica, Kenya, Kyrgyz Republic, Lichtenstein, Mauritius, Moldova, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey, and Venezuela.

was inconsistent with the TRIPS Agreement and the 1994 GATT in several respects. Regarding claims for which the United States did not establish a *prima facie* case, the WTO panel ruled, for example, that the EC regulation was consistent with the TRIPS agreement (Article 3.1) with respect to equivalence and reciprocity conditions applicable to objections, standing requirements for objections, prescriptive requirements for inspection structures, and labeling (WTO, 2005).

However, among other decisions, the panel determined that EU regulations were inconsistent "with respect to the equivalence and reciprocity conditions, as applicable to the availability of protection for GIs" and that the European Union could not deny GI protection to third-country products from countries whose GI protection systems were not equivalent to the EU system (WTO, 2005; USTR, 2005). In other words, foreign nationals should be guaranteed the same access that EU producers have to the EU system for protecting GIs.

Guaranteed access is a contentious question because producers from non-EU countries with more "lenient" approaches to GI definition and protection wish to register GIs under the EU system to receive the benefits of the PDO/PGI seals that are known by at least some EU consumers. The EU system will continue to try to protect both quality and common reputation against systems that, by comparison, are perceived to be too lenient.

The panel also determined that the EU regulation failed to protect pre-existing trademarks from confusing uses of GIs and that the European Union could not require third-country government participation in the processes of verification and transmission of applications, verification and transmission of objections, and inspection structures and

declarations (WTO, 2005). Given that these inconsistencies "nullified or impaired benefits accruing to the United States," the panel recommended that Regulation No. 2081/92 be brought into conformity with the TRIPS Agreement and GATT 1994.

5. The new EU 2006 regulation

In response to the WTO panel decision, the European Union published Council Regulation (EC) No. 510/2006 on March 20, 2006 (EC, 2006b). The new regulation, which came into force on March 31, 2006, more clearly defines EU systems for recognition and registration of third-country GIs, allows individuals and groups to apply for registration of a third-country GI in the European Union without participation of the third-country government, and provides greater protection for pre-existing trademarks.

Article 2.1 of Regulation 510/2006 requires that the agricultural product or foodstuff "possesses a specific quality, reputation, or other characteristics attributable to that geographical origin" (EC, 2006b). Some related points of the regulation will be deeply scrutinized. Part 2 of Article 11 states that "in respect of geographical indications or designations of origin relating to a geographical area in a third country, verification of compliance with the specifications, before placing the product on the market, shall be ensured by one or more public authorities designated by the third country and/or one or more product certification bodies" that "shall comply with, and from 1 May 2010 be accredited in accordance with European standard EN 45011 or ISO/IEC Guide 65" (EC, 2006b). Some third-country applicants (especially in developing countries) may have difficulty finding qualified certification bodies to perform this function at reasonable cost to producers.

While acknowledging that EC Regulation 510/2006 "made certain changes" that address stated concerns about encroachments on existing trademarks, the United States does not go so far as to accept that the regulation fully complies with the WTO Dispute Settlement Body's recommendations and rulings (USTR, 2006). Specifically, the United States contends that the new regulation may actually expand exceptions to trademark rights by allowing continued trademark rights only for trademarks acquired before January 1, 1996, in cases in which trademarks conflict with an application to register a new GI in the European Union. Further, countries acceding to the European Union after January 1, 1996, would have trademarks with rights acquired before the date of application of the TRIPS Agreement in that country, but after January 1, 1996. The United States (along with Australia) has asked the European Union to revise the new regulation. Despite these remaining differences, the regulation appears to satisfy most US concerns about registration of third-country food products and to move the opposing sides toward mutual recognition.

Our reading of EC Regulation 510/2006 leads us to conclude that a foreign producer now has a chance of registering a PDO or PGI in the European Union. However, the probability that a third-country GI will be accepted remains difficult to assess. It is not clear how many foreign producers or GIs will apply for this regulation, and the only attempt to register a third-country GI was submitted to the European Commission prior to publication of Regulation No. 510/2006 and has not yet received a decision.[12] The Commission has up to 12 months to scrutinize each application. If the

[12] Application No. 0467 for a PDO for Café de Colombia, dated June 8, 2005, remains on the EU "List of applications for registration of PDOs and PGIs under Regulation (EC) No 510/2006, for which no first publication has been made" (see http://ec.europa.eu/agriculture/foodqual/protec/applications/pdopgi_list110906.pdf).

Commission determines that the conditions of the regulation have been met, the application is published in the *Official Journal of the European Union,* and interested parties have six months in which to file an objection.

The key issue at stake is whether or not the European Commission will accept more "lenient" GIs from groups of producers applying for PDOs/PGIs. To protect the common reputation of the PDO/PGI system (see section 3 for a description of problems stemming from common reputation and labels proliferation), the Commission may be tempted to reject applications for foreign GIs from groups of producers applying for European GIs. On the other hand, the fact that the PDO/PGI system has registered more than 700 GIs (excluding wines and spirits) in the European Union suggests that the system will be sufficiently lenient in accepting foreign GIs.

Given the absence of examples, we need to identify the chances of acceptance and the risks of rejection of a third-party GI. First, there are risks associated with the fee charge. Regulation 510/2006 states that "member states may charge a fee to cover their costs, including those incurred in scrutinizing applications for registration, statements of objection, applications for amendments and request for cancellations under this Regulation," (Article 18). However, no fee schedule has been published for third-country applications. High fees are a potential hurdle to individuals and small groups of producers (particularly from developing countries) wishing to register a PDO/PGI in the European Union.

Second, organic exports to the European Union may provide insight into the chances that third-country products will obtain EU PDO/PGI designation. Article 11 of Regulation 2092/91/EEC opens the EU organic food market to products from non-EU

countries based on the concept of equivalence and allows foreign producers to stamp their products with the EU organic label.[13] Organic standards are set at the EU level, but implementation and enforcement of the regulation are the responsibility of each member state. A few non-EU countries are approved for "third-country equivalency." However, for organic products from other non-EU countries, import authorization is granted on a case-by-case basis, and the authorizing bodies in EU member states use different criteria for judging compliance with EU organic regulations (USDA, 2006). This system has made penetration of the EU organic market difficult and costly for third-country producers without equivalency. Despite these obstacles, many products from abroad are benefiting from the use of the EU organic stamp. And, unlike the regulation for organic products, decisions about GI registration and verification procedures are made by the European Commission rather than the member states. This EU-wide system means that third-country GIs should not face the same obstacles that have limited access to EU markets for imported organic products.

Third, the EU-wide system of GI registration means that the process should be less open to influence by interest groups who might oppose PDO/PGI designation for products that would compete against EU products. Article 7 of EC Regulation 510/2006 allows any member state, third country, or any natural or legal person having a legitimate interest to file an objection to any proposed registration, but the bases for objections are limited to those defined by the regulation.

Fourth, as noted, verification of compliance with stated GI specifications will need to meet European standard EN 45011 or ISO/IEC Guide 65 (the same standards

[13] Lohr and Krissoff (2001) show ambiguous effects of these mutual recognition programs in terms of domestic and exporters' welfare for organic products.

used for verification of third-country organic systems). Verification must be ensured by at least one public authority designated by the third country or by at least one product certification body. The important point is that producers from a country without a specific GI regulation may benefit from the EU recognition of GIs as soon as a product receives certification by a private body. In other words, foreign producers may benefit from this established EU system without undertaking major regulatory reforms in their own countries, which means that globalization may also occur without harmonization of regulation. The costs of meeting these standards may limit the ability of some producer groups to register a PDO/PGI in the European Union, especially those from developing countries that do not have public authorities or certification bodies qualified to meet EU verification standards.

Fifth, uncertainty still remains regarding the equal treatment of domestic and foreign producers benefiting from the PDO/PGI system. For instance, the European Union may jointly finance advertising campaigns for promoting food products (see EC, 2005). In particular, EC Regulation 2826/2000 on information and promotion actions for agricultural products on the internal market allows the European Union to finance information campaigns for the EU PDO/PGI system (EC, 2002). As soon as a foreign producer obtains EU GI registration, that producer should be eligible to use the EU subsidy system for quality promotion. This issue is still not clear because the European Union may refuse the promotion subsidies to foreign producers with a European PDO/PGI by arguing that European domestic producers do not benefit from promotion subsidies abroad.

Sixth, even though the United States was the primary complainant for the WTO panel report of March 2005, it seems likely that the opportunity to apply for an EU PGI/PDO will be used mainly by non-US farmers because the use of US certification marks as GIs is less developed in the United States (see Table 1). Compared to US producers, farmers from developing countries may be more interested in using PGI/PDO to enter the EU high-quality market. One interesting option for farmers in developing countries would be to "couple" the PGI/PDO with other labels such as fair trade labels, which are supposed to favor decent incomes for "poor" farmers.[14] Recently, labels for fair trade and fair working conditions in developing countries have gained prominence, although these producers' market share in Western countries is relatively limited (between 2% and 4% for different products and locations).

Note that this last option was not selected by the government of Ethiopia, which chose the trademark option for its coffees. The trademarks were accepted in the United Kingdom (and by extension in the European Union) in 2006 (see, for example, Harar with the OHIM Registration No. 004348777), whereas two of the three were rejected in the United States. The choice to register as a trademark gives exclusive right to the owner (namely, the Ethiopian government) in Europe, while a PDO/PGI would be more producer/market oriented if Ethiopian farmers unions were the owners. The trademark system is not harmonized since the United Kingdom and the United States made opposite decisions. As we discussed in section 2, this would lead to different royalties paid by

[14] The practice of "coupling" PGI/PDO to other labels is frequently used in France, where the Label Rouge is mainly given to products with GIs. The Label Rouge (LR) system benefits from a quality reputation mainly for poultry. In 2004, the average price for a Label Rouge chicken was € 6.06/kg versus € 2.48/kg for the cheapest chicken on the shelf (see http://www.label-rouge.org/, accessed June 2005). LR combines this good reputation with a relatively large market share (34% in France) for poultry (Westgren, 1999). In other words, LR allows local farmers to develop typical/territorial products with the PGI by benefiting from the LR national reputation.

Starbucks for the Ethiopian coffees in the United Kingdom (with 532 stores) from those paid in the United States.

Finally, if a third-country application for an EU GI is rejected, the applicant(s) can appeal the decision in an EU court. Although the appeal process would take place outside the purview of the WTO, the perceived failure on the part of the European Union to abide by the spirit of the regulation would likely result in another request for WTO dispute resolution.

As stated, Regulation 510/2006 appears to conform to the WTO panel decision that producers from third countries be allowed to register a PDO/PGI. Regulation by the European Commission should allow uniform implementation of the regulation, thereby allowing the same protection and potential benefits to third-party PDOs/PGIs as those allowed to GI products from member states. However, it also appears that application and verification costs may limit access to the EU system for some groups.

6. Conclusion

Previous studies have demonstrated that labels on goods affected by international trade often convey information that affects consumers' purchasing decisions. In this paper we introduce some economic effects of GIs for traded goods. GIs are addressed in the TRIPS Agreement of the WTO, but countries have differed in their interpretations of how some aspects of the agreement should be implemented with regard to agricultural products. An especially contentious issue has been the EU requirement for equivalency to its own system of registering and verifying third-country GIs for agricultural products and foodstuffs.

In 2005, a WTO panel ruled that the EU equivalency requirement did not meet the TRIPS Agreement conditions for equivalence and reciprocity in protecting GIs and that the European Union could not deny GI protection to third-country products from countries whose systems were not equivalent. In 2006, the European Union implemented EC Regulation 510/2006. Although the regulation has yet to be tested for a third-country GI, the new EU regulation appears to address most of the concerns of third countries about the previous EU legislation.

The panel decision and new EU regulation denote significant progress in the WTO negotiations because they move GI protection toward mutual recognition of GI registration systems among countries rather than requiring equivalency. A second significant result is that the WTO panel decision demonstrates that the WTO process is compatible with EU efforts to differentiate and label quality in agricultural products and foodstuffs.

Several contentious issues remain on the table within the Doha Round. Although bilateral agreements have been reached for treatment of wines and spirits (e.g., between the European Union and Australia, and between the European Union and the United States), issues regarding the creation of a multilateral register of wines and spirits have yet to be resolved. For example, reports from a recent special session of the TRIPS Council indicate that opposing sides remain highly polarized on whether protection of registered wines and spirits is obligatory or voluntary for WTO members (Agra Europe, 2006). Work also continues on the highly contentious issue of whether to extend to other agricultural products the higher level of protection currently covering wines and spirits.

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