



QUESTIONS & ANSWERS



Managing GI systems: Specifications & Controls

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1. Can processes also be protected by Intellectual Property?

GIs protect names: geographical or traditional names that acquire geographical meaning in the mind of the consumer. So, in the product specifications you have to establish and codify that link between the product which has been named after the geographical name and the specific quality and characteristics.

Among the quality and characteristics, you may have environmental factors, like climate, but you can also have human factors. In that case, a specific process that is old or deeply linked to the environment because of a specific know-how of the area, physically attached to the area, in that case the specific process can be mentioned as a peculiarity in the product specification. But we are not protecting the process itself. Therefore, any unauthorized producer might use the process described in the product specification; what would be prohibited would be the use of the protected name in the resulting product.

If you want to protect the specific process, that would be protected by patents.

2. Does it protect Traditional Knowledge?

This has been a topic of discussion for some time. Traditional knowledge can include specific processes that are traditionally used, traditional music, traditional cultural expressions, etc. so it is a very broad area.

GIs are a way to give value to traditional knowledge, to take standard to include a traditional practice into a product specification. Of course, it doesn't protect the practice itself but it protects the name and value that the practice generates in the final product.

3. Can block chain technology be used to verify GI claims? Has it been used in the past and how effectively has it been used?

This is an option that is being explored in Europe. It seems to be a good fit as blockchain does not give third parties the possibility to modify the information therein attached. However, we do not currently have concrete examples of use in commerce of the blockchain technology applied to GIs.

4. How does the GI framework protect against the formation of cartels in terms of being able to control the sources of supply?

The GI scheme is first of all voluntary. There is no obligation for a group of producers to abide by a certain standard or specifications. If you obtain protection on the name of a commodity, it is not all the commodity produced in the country that would be under that specification. It would be a limited

amount of production which will not prevent others from producing it, except if they want to be in that particular geographical area and if they want to use that specific name they have to abide by the specifications.

Also depending on national legislations, there are different criteria to establish that but you need a certain group of producers that would be representative of the product. When a group of producers applies for registration, they become a public group which would be controlled by legal authorities and in order to achieve the protection as a GI they have to justify that the product qualifies as a GI.

Because of all those elements, there shouldn't be a risk of cartel or conflict with competition rules in general.

5. What financial outputs are involved generally in applying for a GI and what are the potential gains?

It is difficult to quantify the investments. The element of quality leading to the geographical area is fundamental, but also the level of motivation of the actors. It is something that the producers have to be motivated to do. Once you do it, the price can increase because you would have better bargaining power as an association with potential buyers. In Europe the price for GI products is three times higher than non-GI products. It is important to think in the long term. Provided that you have a specific quality, it can be recognized by the consumers. There are surveys and social and economic studies which demonstrate that consumers are willing to pay a higher price for products that are protected under GIs. Of course, consumers should first be aware of what GI means and what it entails in terms of quality and control of the product that they are buying.

6. What happens if there are two products (one protected under GI and the other under TM) that are being produced with the same name in a particular area?

Timing is important. If there is a recognized GI, a subsequent TM cannot be accepted by TM offices. If the TM was granted without knowing there was already a GI, the TM can be cancelled because there was a prior right.

If there is a prior TM there are various possibilities. If the TM can be demonstrated to have been registered in bad faith, it can be cancelled. The association of producers can request the cancellation. If the pre-existing TM was acquired in good faith, there is legislation in growing number of countries that allow co-existence. This must be framed as a limited exception to trademark rights.

In some cases, for designations consisting or including the name protected as a GI not registered as TMs but which have been used in good faith for a certain time period, a grace period of 5 years is granted for both the non-registered TM and GI to coexist. Then, after that period, the non-registered TM will cease to be used for products which are not protected under the GI.

7. Comments:

Drafting GI specifications is a teamwork effort. The operator/producer has to bring the characteristics of that particular product to the paper and then they should ask for assistance by a public administrator.

This applies specifically to the Caribbean context where the EPA negotiations are ongoing and they are all working together to get the specifications. In order to protect the Caribbean GIs in the EU there is the possibility of doing so through this agreement that is being negotiated as opposed to a direct application. There is also a simplified template for the specifications.

The simplified template is only for CARIFORUM States and is only to be used in the context of the Economic Partnership Agreement, a trade agreement between CARIFORUM States and the EU. It should be available from your National EPA Coordinator, usually in your Ministry of Trade.