



Geographical indications for agricultural and handicraft goods

The strength of the link to the origin as a criterion

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The recognition of geographical indications (GIs) by the World Trade Organization (WTO) has led many countries to establish a specific legal framework to protect their traditional local products, whether agricultural, foodstuff or handicraft.

These changes are taking place within a heterogeneous international legal context. The European Union, for example, only protects GIs for agricultural products and foodstuffs. This regulation deprives designations of traditional handicraft goods, which are numerous in the countries of the South, of protection on the European market, and fosters risks of misuse.

Historical analysis of the protection of GIs and practices in Europe and India nevertheless show that there is no justification for treating products differently according to their nature. Hence the proposal to create a new international and European legal framework based on the strength of the link between the product and its geographical origin. The strength of this link would be assessed using criteria pertaining to natural and human factors, whether individually or combined, which are relevant whatever the product is.

A geographical indication identifies a good as originating in a specific area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. This definition provided in the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) under the World Trade Organization applies to its 155 members. This agreement has prompted many countries to protect their traditional local products through sui generis regulations. India thus

adopted a GI Act in 2003; it has so far registered more than 150 GIs, two thirds of which are for handicraft goods.

Low protection for handicrafts

The TRIPS Agreement proposes a broad definition of GIs and provides few binding mechanisms of implementation. The different

perspective

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countries have therefore established their own legal frameworks adapted to their needs. This has resulted in heterogeneous laws, making it difficult to protect GIs in foreign export countries.

The European Union, for instance, only protects GIs for agricultural products and foodstuffs. It excludes GIs for handicraft products from any protection, which penalises countries from the South, such as India. Trade is thereby hampered by increasing risks of misuse: this is demonstrated by the countless imitations of pashmina shawls from Kashmir. This rule also puts European handicrafts at a disadvantage, such as Vosges textiles in France, which could justifiably be given better protection, like agricultural products and foodstuffs.

Why such a restriction? One of the reasons given is that Europe, and especially France, which has developed the concept of *terroir*, favours natural factors to characterise the link with the geographical origin. Natural factors are understood as biological or ecological factors (soil, water, climate) that are revealed or even modified by humankind. But these factors often play only a marginal role for handicrafts, which are essentially characterised by human factors: the practices, knowledge and know-how (*savoir-faire*) of artisans.

This justification does not stand up to historical analysis of GI protection. Since ancient times, agricultural and non-agricultural products – marble, bronze, silk, incense – have acquired their reputation because of their region of origin. In the recent history of GIs, the nature of the products concerned and the characterisation of the link with the territory have varied. In France, the law of 1905 protected designations of origin for agricultural products in order to distinguish them from manufactured goods. The law of 1919, on the other hand, applies to all products without specifying the nature of the link with the geographical origin, and gives the courts the power to define appellations of origin. The Lisbon Agreement (1958), adopted within the framework of the World Intellectual Property Organization (WIPO), protects appellations of origin for all products, including non agricultural. It stipulates that the quality and characteristics of the product are due exclusively or essentially to the geographical environment, including natural and human factors. But in France, the importance of appellations for wine and cheese, which are defined by a national committee, has limited the use of appellations of origin to only agricultural products and foodstuffs, including wines and spirits. This principle was taken up

in the European regulation on GIs adopted in 1992. Furthermore, the European regulation takes into account the strength of the link with the geographical origin: alongside the protected designation of origin (PDO), close to the appellation of origin, it created the protected geographical indication (PGI). The PGI protects reputed products demonstrating a weaker link with the origin, such as when only one of the steps of production or processing or preparation takes place within the given area.

In addition to the historical analysis of legal frameworks, practices in Europe and India show that the link with the geographical origin for both handicrafts and agricultural products can be assessed according to identical criteria: natural factors and human factors, whether individually or combined.

A link with the place of origin based on know-how alone...

Most handicraft products, and also foodstuffs, are linked to the geographical origin only through know-how and practices, which are often sophisticated.

In 1931, the French appellation of origin Dentelle du Puy (lace), made exclusively by hand on a bobbin rather than a loom, was recognised by judges under the law of 1919.

In India, know-how is considered as essential and sufficient, in conformity with the TRIPS agreement. In textiles, this know-how relates to the method of production, which is always manual, or to the creation of motifs and designs. Often intricate, these are described in detail in GI applications. For example, the GI for Kancheepuram silk designates silk woven by hand in the sacred royal city of Kancheepuram, with heavy thread conferring its quality and with contrasting colours between the body of the sari and its borders. The Pochampally ikat and Orissa ikat GIs designate fabric made using the tie-and-dye technique – the threads are dyed while protecting certain parts according to specific designs, which then appear during weaving –, with diamond patterns in Pochampally and ombre floral motifs in Orissa.

In India, for handicraft products, natural factors such as the use of local raw materials are not a decisive criterion. For example, the Kondapalli bommalu GI, designating wooden figurines, defines the production area, a village of 1.5 km², rather than the nearby forests where

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the wood comes from. However, in France in the 1990s, know-how alone was not enough to protect Moustiers earthenware, which was undergoing a revival and was in danger of usurpation, prompting its producers to protect it as an appellation of origin. Since the raw materials (fuller's earth, enamel, etc.) no longer came from Moustiers, the product did not meet the criteria for appellations of origin in force since the Lisbon Agreement, namely the presence of natural factors and human factors. And because the earthenware was not an agricultural or food product, a PGI was also impossible, confirming the limitations of the current French and European regulations.

Unexpectedly, GIs are beginning to be registered in Europe for foodstuffs linked to their geographical origin only through know-how. Since the use of local raw materials is not required for a European PGI, this type of PGI is on the increase. One example is the British Melton Mowbray pork pie PGI, which designates a pie prepared with pork of any origin, without any other natural factors being involved; or the French Le Mans rillettes PGI, which is about to be accepted, and is based only on know-how without any specific pork or climate influence being required during preparation.

There is no reason to treat agricultural products and handicrafts differently.

... or combined with natural factors

However, some handicrafts are linked to their geographical environment by natural factors as well as know-how. In France, the Vallauris pottery appellation was recognised in 1930 for pottery made in the village with local clay; and the Cholet designation was registered in 1936 for cloth bleached in wet meadows with specific soil and water qualities. In India, the Kashmir pashmina GI designates shawls woven with very fine wool from Himalayan goats living in Ladakh, which is spun in the region of Srinagar, the capital of Kashmir, and woven all over the State of Kashmir. Indian law thus includes the weaving stage, whereas in Europe, the Native Shetland wool PDO only concerns shearing and spinning processes, while weaving can be done anywhere using different methods, which does not protect any traditional weavers.

These GIs can therefore be compared with the many that exist for agricultural products and foodstuffs, which are mostly linked to the geographical origin by natural factors and human factors. In fact, France still favours natural

factors, especially the origin of raw materials. As a consequence, the Alsace geranium PGI application was not accepted because the cuttings came from Kenya. Yet the horticulturists have developed know-how enabling them to obtain a geranium suited to the local climate, which flowers abundantly and rapidly; and all of the operations involved are conducted in Alsace, from rooting to packaging.

Conversely, the use of local plant varieties strengthens the link with the geographical origin. Nyons olive oil is obtained using olives of the local variety, Tanche. In India, Navara rice is an example of a non-geographical GI, like Basmati and Rooibos, which pertains to old local varieties from Kerala used in ayurvedic medicine. Darjeeling tea, the "Champagne of teas", is cultivated at altitudes between 600 and 2 000 metres, on steep slopes in a specific climate, which is wet and cool in summer and dry and cold in winter; it is processed in the production area.

Sometimes natural factors influence the processing step: for Morteau sausages, the link to the geographical origin is the wood used for smoking, which comes from local forests, giving the sausages their special taste; for Monsooned Malabar coffee, it is the processing, specific because of the monsoon, and discovered by accident on the Malabar Coast in India.

A legal framework with two reference signs...

The implementation of the legal frameworks protecting GIs as illustrated here shows that the link with the geographical origin can be analysed on the basis of human factors, individually or combined with natural factors, for agricultural products and foodstuffs as well as for handicrafts. There is therefore no reason to treat these categories of products differently.

But this raises one question: is a link to the geographical origin through know-how alone legally valid with respect to the definition of a GI? Can know-how be rooted in an area, and can it confer to the product a quality or reputation linked to its geographical origin? How can this be assessed? Several criteria are possible, beginning with the environment, especially the climate, which influences the know-how, as shown by the Alsace geranium. Next, the historical depth and the collective practices belonging to a particular area strengthen the continuity of the link to the origin, while maintaining the quality, which

A few words about...

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is refined over time. A community that has been settled in a place for a long time and shares techniques is more closely linked to that place than isolated individuals. And isolated artisans do not have the benefit of appraisal by their peers to perfect their production. Thus, in India, as a consequence of the caste system that associates a community with an activity, know-how linked to handicrafts is held by specific groups and passed down from generation to generation.

However, even if these criteria mean that the existence of the link with the geographical origin can be based on know-how taken alone; this link is weaker than in the case of a combination of natural and human factors. Hence the proposal to extend the principle of two geographical reference signs, such as PDO and PGI, by distinguishing them according to criteria of human factors and natural factors: the equivalent of the PDO would be granted when natural and human factors are combined; and the equivalent of the PGI when only human factors are involved. This dual level of geographical reference would apply to all products, including non-agricultural and non-food products. If know-how is the only link between the product and the place, mandatory labelling of the origin of raw materials could be enforced to avoid risk of confusion, as suggested by the European Parliament. The Alsace geranium PGI, for example, could then be recognised without risk of misleading consumers if the Kenyan origin of the cuttings is indicated.

... and two levels of protection

Recognising two signs of protection of geographical origin according to the strength of the link raises questions about the level of protection. Today, the protection granted to GIs throughout the world is heterogeneous. It is high in Europe, which confers to PDO and PGI the same protection, even though the strength of the link is different. It is minimal at the WTO, except for wines and spirits, which benefit from higher protection, similar to that granted in Europe to PDO and PGI. Hence the proposal to create two levels of protection according to the strength of the link with the geographical origin, which would be substituted for the identical protection of PDO and PGI in Europe, and for the distinction according to the nature of the product at the WTO.

The ongoing debates within different fora seem to be moving in this direction. At the

WTO, many countries are asking that the level of protection be aligned with the higher level for wines and spirits. In France, a bill on consumer rights proposes registering PGIs for non-food products. In Europe, professionals reconfirmed their attachment to the dual level of geographical reference during the consultation on the European Commission Green Paper. At WIPO, discussions are underway to include the WTO definition of GI in the Lisbon Agreement alongside appellations of origin. The context therefore seems favourable to debating the proposals mentioned. ■

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- Marie-Vivien D., 2010. Le droit des indications géographiques en Inde : un pays de l'Ancien monde face aux droits français, européen et international. Doctoral thesis, École des hautes études en sciences sociales, 612 p. (hal.cirad.fr/tel-00587307_v1).
- Marie-Vivien D., 2010. The role of the State in the protection of Geographical Indications: from disengagement in France/Europe to significant involvement in India. *The Journal of World Intellectual Property*, 2010, (13) 2, p. 121-147.
- Marie-Vivien D. The protection of geographical indications for handicraft goods or how to re-use the original concepts of natural and human factors. Submitted, December 2011.

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