

Geographical Indications: Distinguishing the Uniqueness of BioTrade Products

Differentiating products in light of their particular characteristics is fundamental to the objectives of the UNCTAD BioTrade Initiative, which promotes trade and investment in biological resources in support of sustainable development. In this context, distinguishing the unique set of BioTrade goods and services – which are collected, produced, and commercialised under criteria of environmental, social, and economic sustainability – is critical to enhancing their international markets and thus adequately positioning these products as opportunities for sustainable development and incentives for conservation. A verification framework for BioTrade activities, for example, is currently being developed. Such a framework aims to validate progress towards compliance with the BioTrade Principles and Criteria, as well as enhance market recognition of the ethical, environmental, and quality standards of BioTrade products.

Distinctive signs, such as geographical indications and trademarks, are also potential tools to promote the recognition of BioTrade products and advance the objectives of the BioTrade Initiative. First, distinctive signs, by protecting the identity and quality standards of BioTrade products, can preserve and enhance their reputation and market share, thus maximising the economic incentives for BioTrade activities. Second, geographical indications in particular, by recognising the physical and environmental factors, as well as traditional practices, linked to the product, have important potential to protect and promote the sustainable use of biodiversity and related knowledge, practices and customs. Nevertheless, geographical indications, as well as other distinctive signs, have costs and limitations that must also be considered in order to determine their most useful application in relation to BioTrade products.

The BioTrade Facilitation Programme (BTFP), in the context of its activities to enhance sustainable management of resources, product development, value-added processing and marketing in BioTrade activities, is supporting BioTrade National Programmes and other partners in developing countries in the consideration of the feasibility of distinctive signs to promote and add value to sustainable BioTrade products. In particular, the role of geographical indications in advancing BioTrade objectives is being considered through a range of activities. In November 2005, for example, a regional BTFP workshop was organised in Lima to discuss the potential costs and benefits of using geographical indications to promote biotrade. In addition, the workshop addressed certain BioTrade products that may be protected and promoted through geographical indications, including *Borojó* in Colombia, *Maca* in Peru and *Cacao Arriba* in Ecuador. Work on the latter two cases has since continued at the national level.

Box 1. Types of distinctive signs.

Distinctive signs identify products or services in relation to their source, origin, quality, enterprise responsible for its commercialisation, or other characteristics, and thus allow consumers to distinguish them from others in the same category. Protecting these signs against misappropriation or unauthorised use thus aims to stimulate and ensure fair competition, and to protect consumers by enabling them to make informed choices.

Distinctive signs include trade names, trademarks, and geographical indications.

- A *trade name* is any name by which enterprises conduct business and distinguish themselves, independently of their goods and services.
- A *trademark* is any sign that individualises the goods of a given enterprise and distinguishes them from the goods of its competitors.
- A *geographical indication*, in its widest possible meaning, would be any name and symbol that indicates the geographical origin of a given product, regardless of whether they merely identify its place of origin or indicate certain related qualities. These labels can be registered as collective or certification trademarks, as geographical indications or mere symbols. A narrower definition refers only to the name distinguishing products whose quality and characteristics are attributable to their geographical origin. This narrower concept may also be referred to with the term *appellation of origin*.

What are geographical indications?

Geographical indications are labels used on products with a specific geographical origin and certain qualities or reputation that can be attributed essentially to this provenance. These qualities may derive from geographical factors, such as climate and altitude, or human factors, such as traditional skills. The origin and related characteristics of these products often makes them particularly valued by consumers, including in the cases of *Champagne* (France), *Prosciutto di Parma* (Italy), *Tequila* (Mexico), *Nakhornchasi Pomelo* (Thailand), and *Cacao de Chuao* (Venezuela). As a result, for producers, geographical indications are important marketing tools that can be used to generate and consolidate niche markets, often with a notable price differential. From the perspective of consumers, geographical indications provide useful information regarding the identity and quality of the products.

By linking a product to a place and its cultural and environmental characteristics, geographical indications can nevertheless also play an important role in promoting the sustainable use of the relevant components of biodiversity, and protecting the structures and knowledge that have maintained them. Protecting and encouraging the customary use of biological resources ensures the preservation and enhancement of valuable knowledge relating to their conservation and sustainable management, as has been recognised by the Convention of Biological Diversity (CBD). The CBD, in particular, acknowledges that local communities need economic incentives to maintain sustainable uses, as well as legal and institutional protection of their right to these uses. Geographical indications are an instrument that can be used to provide such incentives for the marketing of products elaborated through traditional and environmentally friendly methods, thus promoting the conservation and sustainable use of biodiversity.





Prosciutto di Parma from Italy and Champagne from France are well-known examples of geographical indications.

Maximising the generation and distribution of benefits from BioTrade activities

The main economic rationale for the protection of geographical indications, as in other distinctive signs, is protecting the goodwill of consumers towards certain goods and services, which may be exploited by enterprises misrepresenting other goods and services with similar characteristics. Geographical indications, by providing the information needed to distinguish relevant product attributes, are thus, from an economic perspective, one of the instruments used to overcome the market failure caused by asymmetrical information between suppliers and consumers.

Geographical indications, moreover, have economic impacts for producers and suppliers. Through their role in distinguishing goods and services, geographical indications are also important building blocks of the market identity of these goods and services. Geographical indications are names associated with products of a certain nature and quality that consumers prefer and are willing to pay at a premium. Market differentiation is thus a critical intangible asset for producers. Avoiding false or unauthorised use of the geographical indication prevents their product's reputation from being undermined by products of lower quality or different characteristics, and consequently allows them to protect and consolidate their market share and a price differential vis-à-vis other products in the same category.

There are other positive impacts on the reputation, market identity and eventually market share of labelled products. These impacts result from the product specifications required by most legislation for the registration of a geographical indication. Product specifications define the method of production, the provenance of raw materials, and other conditions designed primarily to guarantee the quality and typicality of the product. All users of the geographical indications must comply with these product specifications. As a result, product specifications in the framework of geographical indications significantly contribute to a consistent and constant product quality, a solid and verified reputation, and thus a consolidation of markets and premium price.

In addition to the economic benefits that generally derive from the use of geographical indications, product specification requirements also enable them to address a wide range of concerns and expectations, depending on the different actors and interested parties, as well as the particular social, economic, and environmental context. Through the specification process, geographical indications are increasingly being designed and implemented to advance the protection of traditional knowledge, the sustainable use of biodiversity, local development, and the preservation of cultural integrity. For example, product specifications in the context of geographical indications can expressly play a role in enhancing the flow of benefits to communities and producers, a basic principle of BioTrade activities. Bodies regulating geographical indications already take on tasks related to research and development, capacity-building, and commercial and marketing support. Moreover, there is growing interest and discussion on more expressly introducing benefit-sharing rules. Similarly, product specifications may also specifically encourage sustainable use. Such guidelines will often reflect the very traditional practices that give basis to the geographical indication, but that may come under pressure by the increased production and marketing.

Box 2. Legal protection for geographical indications.

Geographical indications are protected in accordance with national laws and under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin. In essence, unauthorised parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product. Applicable sanctions range from court injunctions preventing the unauthorised use to the payment of damages and fines or, in serious cases, imprisonment.

A number of treaties administered by the World Intellectual Property Organization (WIPO) provide for the protection of geographical indications, most notably the Paris Convention for the Protection of Industrial Property of 1883 and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration. In addition, Articles 22 to 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) deal with the international protection of geographical indications within the framework of the World Trade Organization (WTO).

Source: WIPO website

Protecting traditional practices and knowledge linked to the sustainable use of biodiversity

Geographical indications also provide an important legal framework for the protection of traditional practices and knowledge related to the sustainable use of biodiversity. The need for legal mechanisms and practical tools to protect traditional knowledge, both in order to prevent misappropriation and misuse, and to allow indigenous and other local communities to benefit from these innovations and practices, is widely recognised. In this regard, geographical indications, as noted by the CBD Secretariat, "permit traditional-knowledge holders to appropriate elements of their own identification and associate those elements to their products and services," and thus empower indigenous and other local communities. Geographical indications also provide protection from unfair competition and unauthorised use of references to local and traditional practices and knowledge.

The characteristics of geographical indications, moreover, make it particularly suited as a legal instrument to protect traditional practices and knowledge linked to biodiversity. This is relevant given concerns of many indigenous and other local communities regarding the use of instruments that are not appropriate to the nature of their knowledge. For example, while intellectual property rights such as copyright and patents are linked to more momentous notions of innovation and creation, geographical indications reward a high standard of quality and reputation created or built up by a producer or a group of producers over many years or even centuries. At the same time, geographical indications also allow flexibility for innovation and improvement in the context of that tradition, which is important as practices linked to biodiversity products are by no means inert or stagnant.

Another important feature of geographical indications is their focus on communities or groups of producers rather than individuals. Geographical indications are based on collective traditions, and therefore, they are not subject to control by one private owner: Producers are only entitled to use the indication as

long as they work within the specific region and meet the defined product specifications. Indeed, oftentimes, it is the State that, according to national legislation, holds the title of the geographical indication. Moreover, the rules governing production under geographical indications are always established, monitored, and modified by cooperative bodies and associations composed of producers. Finally, a geographical indication can be maintained indefinitely, as long as the conditions that determined its declaration remain, which is important given the recognition that indigenous and other local communities should never lose control of their traditional knowledge.

Other considerations for the use of geographical indications in developing countries

Using geographical indications to maximise the economic, social, and environmental rewards from BioTrade products requires much more than enacting the relevant legislation. The costs associated with the declaration, implementation, use, promotion and enforcement of a geographical indication must be taken into account. Moreover, factors linked to the market, demand and consumer preference for the protected products should also be analysed in weighing geographical indications as a potential instrument to support BioTrade. Finally, other considerations that may need to be addressed in particular cases include the cross-border use of the geographical indication, its utilisation as a generic name, or its incorporation into other distinctive signs.

The protection of geographical indications results not only from the enactment of relevant legislation, but also from numerous efforts by both the public and private sectors, which requires organisation, collaboration, and significant resources. A certain infrastructure must be established, such as an association of the producers in the region, administrative and quality supervising institutions, and enforcement authorities controlling possible misuse of geographical indications. An integrated system of resources – economic, human and technological – is thus fundamental for the geographical indication to be effective.

In the European Union, for example, regulations on the protection of geographical indications require producers to form a group in order to be entitled to apply for registration. Preparing the application is, however, not a simple process, as it must include the product specifications, the details bearing out the link with the geographical environment or the geographical origin, details of the inspection structures, and specific labelling details. Inspection structures must also be in place to ensure that products bearing a protected name meet the requirements laid down in the specifications. The costs of inspections are borne by the producers using the protected name. Similar legislation exists in other countries providing protection for geographical indications.

It is also critical to recognise that the use of geographical indications does not in itself guarantee market access or commercial success. Constant development of and investment in promotion and communication strategies is necessary to effectuate the potential benefits of product differentiation. Geographical indications do not prevent producers from other regions from generating the same kind of product, but only prohibit them from selling these products using the same reference or label. Products protected with geographical indications must therefore remain competitive in their market category.

These are also issues to take into consideration in evaluating the viability of geographical indications as an instrument to support specific BioTrade products. Geographical indications are most effective when the product reputation and consumer preference are already established in national and international markets. Indeed, a significant demand or niche should already exist for the product based on its distinctive origin and characteristics. Generally, this is more likely to be the case in relation to products purchased directly by consumers, as opposed to raw materials. This may be an important point for many BioTrade products, including, for example, natural ingredients used in cosmetics or nutritional supplements.

There are other factors that may need to be taken into account in particular cases. For example, the geographical indication may be used in more than one country. 'Rioja', for instance, is the name of wine producing regions in both Spain and Argentina. The Regulating Council of the Spanish appellation of origin, as well as the Spanish and European authorities, have opposed the registration of 'La Rioja' as an appellation of origin

Box 3. Geographical Indications and organic production norms for the *Garfagnana spelt*.

In Italy, spelt wheat has been cultivated since the Bronze Age and later became one of the principle foods of the Romans. Its decline began in the Middle Ages when other cereal crops of greater yield and easier working started to be cultivated. Spelt wheat remained important in limited marginal areas of altitude between 500 and 1500 metres above sea level, where the plant, thanks to its rusticity, grows despite difficult geo-pedological and climatic conditions. Spelt persistence in the mountainous area is explained above all because of its links with local traditions. It is the fundamental ingredient in some traditional dishes such as soups and savoury cakes. Since the early 80s, spelt wheat has seen a return in various regions in central Italy, as the healthy properties of this cereal attract consumers.

In order to give value to local production, the Mountain Community of Garfagnana applied for, and obtained, European recognition for Protected Geographical Indication (PGI) in 1996. Traditional cultivation techniques are quite simple, with no chemical inputs, and the spelt naturally assumed the characteristics of an organic product. The product specifications for the PGI now prescribe organic agronomic practices for its production, including rotations with meadows, the prohibition of the use of chemical pesticides, herbicides and fertilisers and the mandatory use of seeds coming from local populations. Compliance with these regulations is guaranteed by the activities carried out by the Italian Association for Organic Agriculture (AIAB), under the authorisation of the Ministry of Agriculture. These measures have stimulated an increase in the production of *Garfagnana spelt* and in the value of the production. It has also proved important for the preservation of local varieties that have been selected throughout the centuries.

Sources: Rossi Asanella and Massimo Rovai, 1999 and Di Napoli Raffaella, Davide Marino and Paolo Foglia, 2001, as cited in Nadia El-Hage Scialabba et al, "Case study No. 4: Organic Agriculture and Genetic Resources for food and agriculture," 2002.

An integrated system of resources – economic, human and technological – is thus fundamental for the geographical indication to be effective.

Box 4. Geographical indications and other distinctive signs.

Distinctive signs perform many of the same economic functions, as well as share many characteristics from a legal perspective, including distinctiveness, non-deceptiveness, and unlimited duration of protection. At the same time, there are significant differences. Geographical indications, for example, are mainly a public right, owned by the State or a state institution. Trademarks, on the other hand, are private rights, owned by an individual or an enterprise. The distinction in terms of ownership also affects the procedures for registration, administration, use, and enforcement of each distinctive sign. There are particular types of trademarks that, while remaining private rights, may be used more broadly and are thus particularly interesting in the BioTrade context. These are collective or certification marks. A collective mark is owned by an association, with members being able to use the mark if they comply with the requirements fixed in the regulations. A certification mark is owned by one enterprise or group, but may be used by anybody who complies with the defined standards.

The use of one distinctive sign, however, does not preclude the use of others. Indeed, in practice, trademarks and geographical indications support and complement each other.

in Argentina on the basis of potential consumer confusion. The National Wine Institute of Argentina, on the other hand, has insisted on the validity of the appellation of origin, given that the regions are homonymous and that any risk of confusion is avoided by the additional indication of Argentina as the origin of the wine. Another concern might be the use of a geographical name as a generic name for the product, such as the use of term 'Dijon' for a certain kind of mustard, regardless of its place of production, which impedes registration of the name as a geographical indication. Finally, the existence of other distinctive signs over the same term should also be borne in mind, as international rules do not allow the unqualified coexistence of geographical indications with prior trademarks, for example.

Appellations of origin and BioTrade products: Experiences in Peru and Ecuador

Geographical indications or appellations of origin – as is the term used in some legislation – have already been effectively used in a number of developing countries to recognise, protect, and reward traditional practices. *Cacao de Chuao*, for example, is the appellation of origin given to the native cacao varieties found in the Chuao locality of Venezuela and produced using the traditional drying and fermentation procedures of the Afro-American communities living within this area. The appellation of origin resulted from the joint efforts of the local community, local, national, and regional authorities, and research and development centres. The *Cacao de Chuao* is highly regarded for its aroma and flavour and is currently exported to the high-quality chocolate producers in Europe.

The BioTrade Initiative is thus supporting BioTrade National Programmes and other partners in developing countries to advance consideration of the feasibility of distinctive signs to promote and add value to sustainable BioTrade products. For the 2005 BTFP Andean workshop on geographical indications, for example, case studies were commissioned to analyse whether the use of geographical indications was possible and advisable in concrete cases in the region. In some cases, such as *Borojó* in Colombia, seeking an appellation of origin was seen as premature. Although all the requirements for an appellation of origin exist, including a strong link between the fruit and the geographical location in which it is produced, the quality-location connection, for example, has not yet been verified. Another concern raised in discussions was the lack of an organisation with the necessary technical, political, financial and human capacity to control uniform quality throughout the productive chain of *Borojó*. Strengthening the value chain, organising stakeholders, and consolidating markets were thus identified as necessary initial steps towards an eventual geographical indication.

In other cases, however, experts and BioTrade partners found significant potential for the use of appellations of origin. In the case of *Maca*, a plant native to Peru with well-known nutritive and medicinal properties, for example, the requirements for an appellation of origin under Peruvian law are clearly there, such as its particular qualities derived from geographical, natural, and human factors. In addition, the Peruvian government and various other organisations linked to the production and export of *Maca* are already actively involved in establishing the institutional bases and technical standards needed for the registration and implementation of an appellation of origin. Questions remain, however, as to the adequate terminology and the geographical boundaries for the appellation of origin, particularly given that *Maca* is also cultivated in Bolivia.

The special quality of *Cacao Arriba*, a type of cocoa with a perfumed aroma found in Ecuador, is also recognised around the world. Given the link of its quality with the natural factors in the area of cultivation, as well as the traditional 'know-how' used in production processes, there are also grounds for an appellation of origin. Moreover, given the existence of a Consultative Council for the cocoa value chain, through which national associations of producers, rural workers, professionals from the farming sector, and exporters have contributed to the national definition of sectoral policies, increased collaboration in monitoring and controlling production and quality processes, as well as promotion and marketing of the product, is seen as a logical next step. Challenges include, however, the lack of national legislation on key procedures and elements for the implementation of appellations of origin, including, for example, rules regarding the Regulatory Councils that must administer and control the use of appellations of origin.



Next steps

Geographical indications are well established as a tool for marketing and consumer protection, and often have direct impact on local development and the promotion of traditional practices. Increasingly, geographical indications also provide a possible framework within which to specifically provide for the sustainable use and more equitable sharing of benefits deriving from biodiversity. As any legal and policy instrument, however, geographical indications have costs as well as benefits. The effective use of geographical indications also presupposes certain commercial and institutional conditions, including existing consumer recognition of the quality of the labelled products, which will in turn need to be reinforced through marketing and communication strategies. Case-by-case assessment of the potential costs and benefits of the use of geographical indications is thus fundamental, particularly in developing countries.

As part of its activities to enhance the sustainable use of biodiversity, the BTFP will therefore continue to support BioTrade National Programmes and other partners in developing countries in the consideration of the feasibility of distinctive signs to promote and add value to BioTrade products. In addition to general analytical and strategic assistance, the BTFP will continue to support national processes aiming to achieve the declaration and implementation of geographical indications for specific BioTrade products, as it is already doing for *Maca* from Peru and *Cacao Arriba* from Ecuador.

References

CBD Executive Secretary, "Assessment of the effectiveness of existing subnational, national, and international instruments, particularly intellectual property rights instruments, that may have implications on the protection of the knowledge, innovations, and practices of indigenous and local communities," 27 November 2001, Ad Hoc Open-ended Inter-sessional WG on Article 8 (j) and related provisions of the CBD, UNEP/CBD/WG8J/2/7.

David R. Downes and Sarah A. Laird, "Innovative Mechanisms for Sharing Benefits of Biodiversity and Related Knowledge: Case Studies on Geographical Indications and Trademarks," Prepared for UNCTAD BioTrade Initiative, 1999.

Dwijen Rangnekar, "The Socio-Economics of Geographical Indications: A Review of Empirical Evidence

from Europe," UNCTAD-ICTSD Capacity Building Project on Intellectual Property Rights, Issue Paper No. 8, 2004.

Elisabeth Chouvin, Sélim Louafi, and Bernard Roussel, "Taking into Account Knowledge and Know-how about Nature: The French experiences," Les documents de travail de l'Iddri, n° 2. Iddri, 2004.

Jorge Larson, "Indicaciones Geográficas y Usos Sustentables de Recursos Biológicos," Diálogo Regional sobre Propiedad Intelectual, Innovación y Desarrollo Sostenible UNCTAD/ICTSD, Costa Rica, 10 - 12 de Mayo 2006.

Sabrina Lucatelli, "Appellations of origin and geographical indications in OECD member countries: economic and legal implications," OECD - Directorate for Food, Agriculture and Fisheries - Trade Directorate, Paris, 2001.