

The International Aspect on the Extension of GI Protection : TRIPS Standard and New Development for Protecting GI

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Coverage

- Starting Point : Where is the issue derived from?
- Development of the issue : How has it been negotiated?
- The way forward : What should we do in the future?

Where is the issue derived from?

- From concession in the Uruguay Round to foreseeable benefits for developing countries.
- Paragraph 12 (b) and 18 of the Doha Declaration
- Communication from Bulgaria, Kenya, India Sri Lanka, EU, Thailand (WT/MIN(01)/W/9-11) in 2001
- Proposal TN/C/W/14
- Opponent WT/MIN(01)/W/8

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Where is the issue derived from?

- Paragraph on Implementation in the General Council Decision of 1 August 2004 for addressing issues of GI extension under Art. 23 of TRIPS
- Hong Kong Ministerial meeting requested more effort from Members to continue work on implementation issues, including GI extension.
- Para 39 of Hong Kong Declaration specified deadline for action(s) to be taken by 31 July 2006

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How has it been negotiated?

- Several consultative meetings held through out the years.
- Among the key issues, in the view of DG, are
 1. Whether the current level of protection for GIs under Art. 22 is or is not sufficient.
 2. The implications of extension for other producers using terms in question in their own market and 3rd country markets.
 3. The extent to which extension of the exception under Art. 24 would meet their concerns.

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How has it been negotiated?

- Overall issues can be divided into 3 groups.
 1. Legal issues concerning differences of general protection under Art. 22 and additional protection for wine and spirit under Art. 23
 2. Policy issues or economic issues such as impact of extended protection on producers and consumers
 3. Practical issues concerning administrative cost and burdens of procedures associated with extended protection

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How has it been negotiated?

1. Legal issues

- Balance of rights and obligations between Members.
- Rationale for IPR protection.
- Scope of protection : e.g. Art. 24 exceptions, TM vs. GI, homonymous GI.

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How has it been negotiated?

1. Legal issues

- Protectable subject-matter : e.g. country's name? non-places names? Traditional expressions?
- Differences between two levels of protection

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How has it been negotiated?

2. Policy and economic issues

- Impact on producers : those who gain benefit from extended protection vs. those who would be prevented from using GI,
- Increase trading opportunities, especially developing countries?
- What is the impact on third party's markets?
- Extension helps prevent GI becoming generic.

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How has it been negotiated?

2. Policy and economic issues

- Impact on consumers (relative importance) : greater clarity of the product's origin vs. higher prices arising from disruption to the existing marketing practices.
- Costs and burdens to be passed on to consumers are not alienated, comparing to other IPRs.

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How has it been negotiated?

3. Practical issues for Govt.

- Amendment of legislation at various levels.
- Dealing with increased number of applications both from domestic and abroad.
- Effective enforcement requires input from commercial interests concerned and governments. Litigation at national and international level anticipated.

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How has it been negotiated?

At the present time

- Positions remain unchanged and polarized.
- No more informal consultation.
- Complicated by initiatives in other forums.

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What should we do in the future?

- Promote the use of GI – the best way to demonstrate its benefits to other countries
- Some countries apply similar protection across the board, so extension should not pose any difficulties.
- Legal clarity is certainly needed.

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What should we do in the future?

- Fear of overwhelming applications must be mitigated and reasonable measures should be introduced.
- Negotiation on extension should be mandated but should not be tied with other issues.
- Agriculture-related products should be given priority

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What should we do in the future?

- Harmonization on GI law needed?
- What's your opinion?

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Thank you

Questions and Answers

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