TRADE & INDUSTRIAL POLICY STRATEGIES

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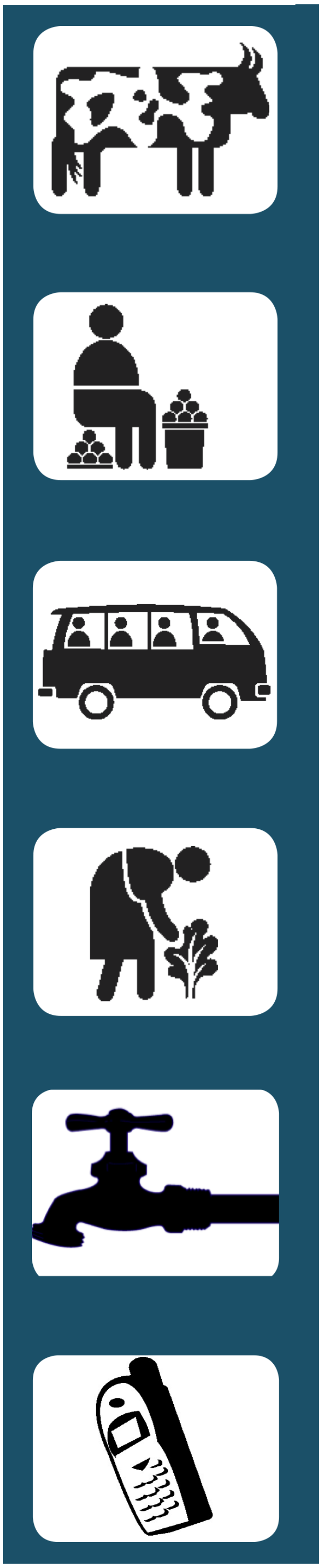

POLICY BRIEF

Policy considerations of adopting Geographical Indication protection in South Africa

INTRODUCTION

Geographical Indication (GI) protection is a type of intellectual property right that has become a major topic in both national and international debates. GIs are typically put forward as an economic tool for development, especially around rural development and the conservation of traditional knowledge. GIs are accordingly generating extensive discussion in developing countries. Yet, there are also costs associated with GIs.

GI, by definition, refers to a proper name or a sign that identifies a certain product with a specific geographical location (the product's origin) such as a province, a town or a country. The definition also implies that the product has specific qualities such as shelf life, texture, flavour, scent or nutritional properties related to its geographical origin.

GIs are predominantly and historically a European concept although in recent years they have been adopted extensively by countries outside of Europe – including developing countries. The European Union (EU) adoption in the early 1990s of the Protected Designation of Origin (PDO) framework, aimed at protecting the names of certain food products and beverages historically produced in specific regions in the EU, can be seen as a catalyst for current EU GI legislation. The law is enforceable within the EU and in some non-EU countries through bilateral trade agreements. A product is identified and its name protected as a GI based on the product's association with a geographical name and its quality being linked to the region where the product originates. By 2005, 813 GIs (Geographical Indications and International Trade database) had been identified in developed and developing countries, the bulk – 600 – from the EU.

South Africa does not have a GI regime – where GI legislation has been developed specifically to protect geographical brand names – but the Trade Marks Act of 1993 and the Liquor Products Act 60 of 1989 do make provision for protecting goods based on their historical geographical origin. In practice, the only industry that has been concerned with protecting goods based on historical geographic origin has been the wine industry. The system used by wine producers – wine of origin – was created under the Liquor Products Act, and is controlled and enforced by the Wines and Spirits Board. This system is also internationally recognised. The Wines and Spirits Board gives certification to producers according to the region from which their product originates.

Proponents of GI protection argue for its institutionalisation as a means of protecting both producers and consumers. The argument for the protection of producers holds that, with certain goods, the location of their origin – where the goods were originally produced – does influence their characteristics and therefore distinguishes them from other generic goods produced elsewhere. As a result of this genuine distinction, where there is GI protection, producers from outside of the demarcated area are not allowed to give the impression that the goods they produce are of the same quality as the GI-certified good by adopting a misleading name associated with the area where the GI originates from.

Effectively, under GI protection, producers who are not located in the demarcated region are not allowed to refer to the region of origin where the GI protected good is produced with the names of the products they produce in a misleading manner. Consider this diary industry example: Greece made a case for the protection of feta cheese to be recognised as an uniquely Greek product under a PDO status, which was granted in the EU in 2005. Other EU countries were given five years to change the name of their "feta" cheese or stop

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production. The granting of GI protection to feta as a Greek GI in the EU market will also prohibit cheese producers located outside of the EU from selling their feta produce in the European market. Cheese producers located outside of the EU will also have to develop new brand names for their feta when exporting it to the EU.

POLICY CONSIDERATIONS

This policy brief aims to raise awareness of the economic implications of adopting a GI regime. This section looks at the possible positive and negative implications.

From a producer's perspective, producers that are not located in the region of origin of a GI-certified good would lose the opportunity to use the GI name when selling their GI produce and the potential income stream associated with the GI name. Producers located in the region of origin where the GI-certified good is produced would gain market access to other regions that would no longer be permitted to produce the GI good. The latter also gain from a price premium attached to the GI-certified good. For example, Guatemalan coffees fetch a price premium of about 95% while Honduran and Bolivian coffees receive a price premium of 77% (Teuber, 2007); Italian producers of Toscano olive oil have earned a premium of 20% since it was registered as a GI in 1998 (EU, 2004); wines labelled "Napa Valley" had prices 61% higher than wines labelled "California" (Bombrun and Summer, 2003).

In South Africa, if we consider a case where beef biltong (the dried, raw meat product) were to receive GI protection, cattle farmers in Australia would no longer be allowed to describe any produce as biltong when exporting to the South African market but would have to find an alternative name. Australian farmers would then have to remarket their produce and familiarise consumers in South Africa with the new brand name.

It is important to note that as a substantial proportion of products identified for GI protection are agricultural food products, this could present a significant opportunity for a developing country such as South Africa, which has an established industry for such products and is looking for rural development opportunities. The income derived by having a GI name protected for the use of producers located in the region of origin of the GI-certified good exclusively, could potentially lead to new rural employment opportunities for a developing country.

From a consumer's perspective, GIs are meant to protect the consumer by providing information about the quality of the product they are purchasing (where quality is affected by the region where the good is produced – a concept referred to as *terroir*).

In looking at negative implications, it is worth considering that under a GI regime, GI names would be protected under legislation and this would imply that government would need to be involved when it comes to the enforcement of a GI name in the case where misuse of the GI name takes place. In this case public funds are used to protect a certified GI name as opposed to private funds where there is no GI regime and GI names are protected by trademarks for instance.

Where strict GI regulations are imposed, requiring set production techniques for GI-certified producers, slow technological adoption among the certified producers could ensue. A classic example where GI regulations have limited production techniques would be in the French wine market, where wine producers in a GI defined region are not allowed to use grape varieties from other regions.

Slower technological adoption could manifest itself in missed economic opportunities, for instance, where there is new technology available that could lead to more cost efficient production processes, or where consumers' preferences change over time, GI certified farmers would be limited in their ability to adjust their production techniques to satisfy the changing preferences of the consumers. Continuing with the French wine market example, wine consumers outside of France in the past three decades have been adapting more towards varietal wines; French wine farmers have been limited in their ability to make such wines, losing some of their international market share to newer winemaking countries.

There are also institutional costs of adopting a GI regime that cannot be ignored, such as monitoring the compliance of producers with criteria set for GI certification, administrative costs involved in establishing a GI and setting up agencies to ensure the quality and traceability of GI-certified products.

Table 1 summarises some conceivable benefits and costs of adopting a GI regime.

It is also important to consider whether South Africa's trademark laws might be a substitute for GI protection. For example, Karoo lamb has recently been granted a certification trademark, which means that farmers located outside of the Karoo may

BENEFITS	COSTS
Signalling: Benefit to consumers in that they get products with a quality assurance, traceability, and food safety (quality assurance).	Losses to producers when they lose out on already established GIs, leading to rebranding and launching costs.
Profits derived from price premium	Issues of equitable participation among the producers and enterprises in a GI region are crucial to consider, and not easy to accomplish.
Business Development for local GI products, which involves entire regions and impacts not only producers but also traders, processors, exporters, thereby fostering rural integration.	Success is often measured in decades and requires patient application and the sustained commitment of resources.
Beyond a product focus, GIs tend to have knock-on effects for other products and chains and can promote clustering.	Issues of equitable participation among the producers and enterprises in a GI region are crucial to consider, and not easy to accomplish
Potential for participation in various forms of "partnership" with private firms that drive the recognition at the consumer level.	Besides organisational and institutional structures to establish and maintain the GI, there may be on-going operational costs to consider: Dissemination Marketing Monitoring and management (separate legal enforcement).
	Most of the successes from developing countries have come on top of a long-standing popular product and via further marketing by strong partners.

Table 1: Benefits and costs of GIs

be challenged from making reference to the Karoo for their lamb products. This opens the space for questioning the following: "Is it necessary for South Africa to adopt a GI regime where new GI laws would have to be instituted or are South Africa's trademark laws sufficient to protect GI names?"

Before adopting a GI regime it would be beneficial to conduct a cost benefit analysis, including consulting stakeholders such as legal experts, economists and producers, to analyse the likely social welfare outcome. Investigation on whether to grant wholesale protection or whether each item should be considered individually would be important, for example. Some scholars have suggested that countries should develop a formula to determine which products are worthy of receiving international GI protection.

INTERNATIONAL EXPERIENCE

This section looks at the impact of GI protection in different countries, specifically on the stakeholders associated with GIs, with the aim of putting into context the welfare implications of GI protection for policymakers.

GI-PROTECTED BASMATI RICE PRODUCED IN INDIA

Basmati is grown exclusively in the northern part of Western Punjab, Haryana and Uttarakhand provinces of India. It is considered a superior brand of rice because of its special characteristics of taste, aroma and long grain, and fetches a higher price in international markets compared to other varieties of rice. Basmati rice is an important GI in India given its export earnings and rural development potential. Basmati's total export earnings for 2006-2007 were about Rs 28 billion (about US$617 million) which accounted for about 40% of India's total rice exports.

A study by Grote and Jena (2010), which looks at Basmati production in Uttarakhand based on a 2008 survey of 300 rice farmers, assessed the impact of GI protection in India. Since 2003, the Uttaranchal Organic Commodity Board has been operating in the state, promoting organic farming in Basmati rice and also providing organic certificates to farmers who comply with the criteria of the board – these certificates also make reference to the name 'Basmati'. Such criteria include compliance with the following initiatives:

- ISO – 9001:2008: Quality Management System certified for the Basmati Export Development Foundation (BEDF) Lab;
- National Accreditation Board for Testing and Calibration Laboratories accreditation of BEDF Lab; and
- Authorised centre for testing samples of Basmati rice for variety identification.

In the study, performance-based comparisons are conducted of GI Basmati farmers versus farmers of other competing crops; and GI-certified Basmati farmers versus GI Basmati farmers without the organic certification which makes reference to 'Basmati'. The comparisons involve profitability of GI production and an assessment of the welfare of GI Basmati farmers. It was found that the yield of Basmati rice is generally lower than the yield of other non-GI rice. This is due to Basmati rice being more dependent on weather conditions than other varieties of rice; and the cost of cultivating GI Basmati rice being higher than the cost of cultivating non-GI rice as GI Basmati rice needs adequate irrigation and regular weeding during the growing months of the plants, which increases the labour cost significantly. Basmati is therefore lower yielding and has higher costs of cultivation compared to other varieties of rice.

However, on the demand side Basmati fetches a price sufficiently high enough, compared to non-GI rice, to make Basmati more profitable. The 2008 survey found that the average price for Basmati was Rs 2 100 (US$50) per quintal compared to Rs 800 (US$18) per quintal for the non-GI rice. The price premium of GI certification can be seen more clearly when a comparison is done of the certified GI and the non-certified GI. The certified GI brings an average price of Rs 2 300 (US$53) per quintal; the non-certified GI brings an average price of Rs 1 800 (US$41). What is interesting is that, according to the study, there is not much difference in the cost structure between the certified GI and the non-certified GI. The certified GI has a unit cost of Rs 1 260 (US$29) and the non-certified GI has a unit cost of Rs 1 240 (US$28). This is contrary to the expectation that the unit costs of the certified GI would be significantly higher due to additional costs associated with certification such as quality assurance mechanisms.

The study also found that the welfare impact induced by adopting GI rice cultivation on farmers, after taking other non-farm income factors into account, was an increase of a farm household's income by Rs 15 000 (US$342) where the average annual income for Basmati farmers was estimated to be Rs 93 406 (US$2129).

The determining factors cited by Grote and Jena positively influencing farmers adopting GI Basmati rice cultivation include the following: access to extension training facilities, a credible hedge against risk, and household labour. These factors are attributed to the higher cost and lower yielding production associated with Basmati rice. It is also worth mentioning that in India, although many Basmati farmers successfully participate in the export market and are required to obtain certification which makes reference to the name 'Basmati', there are small-scale poor Basmati farmers who traditionally sell to agents at the local market, without any certification attached to their produce at lower prices than prices received in more value-added markets.

COFFEE IN MARCALA

The consumption of regular coffee is slowing down in the mature markets of Europe and North America as well as in Japan, which is a rather new market and now the world's third-largest importer of coffee. In contrast, the speciality coffee segment has had tremendous growth in recent years and further growth is expected. In view of this market trend, more coffee-producing countries are turning to GI certification. GIs are not only considered as a useful tool to protect an established reputation against misuse by imitators, but also as a useful strategic tool to enter the growing specialty coffee market.

A study by Teuber (2008) shed empirical light on the relevance of regional reputation in the coffee market and specifically on its effect on coffee prices. The Marcala region in the Honduras was chosen as a case study for two reasons: first, because of the economic and social importance of coffee in Honduras; and second, because it has relatively recently (in 2005) established a GI for Café de Marcala with the aim of gaining recognition as a high-quality producer in the main export markets. Until recently, coffee from Marcala has been mainly used for blends. This has resulted in low prices and a low reputation, even though the coffee shares the same quality as coffee from neighbouring regions.

In contrast to other studies of the coffee market, which found that reputation at the country level plays a crucial role in determining price, Teuber could not identify such an impact for coffee from Marcala. After allowing for quality differences, no significant regional or reputational effect could be identified. Based on these findings, it was deduced in Teuber's study that the region of Marcala had not yet established a sufficient reputation to earn itself a price premium on Café de Marcala at the time of the study. However, it must be noted that the Denomination of Origin was only established in November 2005 (three years before Teuber's paper was published) and that – as he points out – creating a reputation for a special quality takes time and considerable financial investment.

PDO FRENCH CHEESE

In Europe, GIs of agricultural products and foodstuffs are protected through Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs). In France, PDO cheeses are important GIs and serve a niche market. French PDO cheeses hold a significant global market share with estimates of around 17% in volume.

PDO cheeses are raw milk cheeses, which makes them tastier than non-PDO cheeses, which use pasteurised milk. PDO cheeses are considered upmarket products and are protected based on their geographical region of origin and traditional production processes; and the desire of PDO cheese producers to convey quality assurance information to consumers which is associated with the historical region of origin of PDO cheeses.

Hassan, Monier-Dilham and Orozco (2011) conducted a study to investigate consumer loyalty for PDO cheeses based on consumers understanding the quality of PDO cheeses. The authors propose a strong assertion to guide their research – though not hard to conceive – that consumer loyalty should be a reflection of quality. Consumer loyalty for PDO cheese consumers should be reflected by less price-sensitivity to PDO cheeses compared to other non-PDO cheeses. Consumers' buying patterns should therefore be less influenced by price changes of PDO cheeses compared to price changes of other products. This however has not been identified. There is no evidence that PDO cheeses benefit from greater consumer loyalty in the cheese industry in France. Thus the finding in the study challenges the notion that GIs should systematically correspond to high quality, if consumer loyalty is assumed to be a reflection of the quality of a product.

CONCLUSION

GI protection in developing countries could play a significant role in economic development as most GIs are agricultural products. The protection would mainly therefore be potentially highly beneficial to developing countries by linking rural communities to commercial markets. One of the more prominent channels GI certification manifests itself in is through a price premium. This was the case with Guatemalan coffees, for example. This is a benefit that accrues to producers of the GI. Consumers concerned about product quality can also be assured that the product they purchase truly is from the region of origin as far as historical location of origin affects quality.

However, the case study of coffee in Marcala shows that price premiums will be exhibited only when the GI-certified good has a long-standing reputation. Building reputation among consumers might be a costly exercise financially and in terms of time.

Finally, considering change in social welfare of adopting a GI regime should involve an assessment of all aspects concerning adoption.

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