

Ministry of Agriculture and Agrarian Reform

NAPC

National Agricultural Policy Center

Policy Brief No 20

Intellectual Property Rights (IPR) and Geographical Indicators (GIs)

Hajar Baghasa

NAPC Researcher

November 2006

With the support of

Project GCP/SYR/006/ITA



Food and Agriculture
Organization of
the United Nations

COOPERAZIONE
ITALIANA

Ministry of Agriculture
and Agrarian Reform

1. What are intellectual property rights (IPR)?

Intellectual property rights are the rights given to persons, organizations, institutions, companies, and countries for the creations of their minds. They usually give the creator an exclusive right over the use of their creation for a certain period of time.

2. Types of intellectual property rights

The areas covered by the TRIPS Agreement are the following:

- Copyright and related rights
- Trademarks, including service marks
- Geographical indications
- Industrial designs
- Patents
- Layout-designs (topographies) of integrated circuits
- Undisclosed information, including trade secrets

3. Means of protection and categories of IPR

Intellectual property rights are customarily divided into two main categories of protection.

1) The first category of rights consists of copyright and rights related to it. These rights mainly deal with the rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) and are protected by copyright for a minimum period of 50 years after the publication of the work.

The development of new methods of propagation for international output has led to the necessity to extend protection as to the subject-matter in question. Copyright and related rights are therefore likewise extended to producers of phonograms and broadcasting organizations and any similar products.

The main social purpose of protection of copyright and related rights is to encourage and reward creative work and to assure its equitable and sustainable exploitation.

2) The other category of IPR, namely Industrial property: This can divide into two main areas:

- The first area can be characterized as the protection of distinctive marks, in particular trademarks and geographical indications.

The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services.

- The second area of industrial property is protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions that are protected by patents, industrial designs and trade secrets.

The social purpose here is to provide protection for the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities. A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing. The protection is usually given for a finite term, typically 20 years in the case of patents.

While the basic social objectives of intellectual property protection are as outlined above, it should also be noted that the exclusive rights given are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of right holders and of users.

4. Intellectual property and relation with trade

IPR policy coordination is likely to imply a change in global trade relations. The demand for general legal protection against unfair imitation of creations, inventions, marks, and names has to be understood as a product of the commercial revolution. That demand has swollen immensely with the development of modern advertising and large scale retailing. An enough protection of IPR reduces trade distortions and barriers to international trade, in particular trade in counterfeit goods and pirated copyright goods.

Measures and procedures to enforce IPR however should not themselves constitute barriers to trade through practices of unfair competition, restriction of trade and international transfer of technology, etc.

5. Geographical indications (GIs)

Geographical indications identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical indications

Several commercial products are traditionally produced in specific geographically definable region. Where these products are accredited specific criteria essentially attributable to their geographical provenance, the geographical indication becomes, in trade relations, the reliable “carrier” of qualifying product characteristic. Geographical indications are then ascribed the function and importance of trademarks and are entitled to legal protection Well-known examples about geographical indications are Champagne¹, Roquefort and Feta² cheese.

Wine and spirits makers are particularly concerned about the use of place-names to identify products, and the TRIPS Agreement contains special provisions for these products. But the issue is also important for other types of goods.

Protection required under the TRIPs Agreement is defined in two articles:

All products are covered by **Article 22**, which defines a standard level of protection. This says geographical indications have to be protected in order to avoid misleading the public and to prevent unfair competition.

Article 23 provides a higher or enhanced level of protection for geographical indications for wines and spirits, subject to a number of exceptions. They have to be protected even if misuse would not cause the public to be misled.

¹ - Champagne, a sparkling wine, comes from the Champagne region of France. Champagne has produced sparkling wine since the days of the Roman Empire, and still bottles some of the best vintages in the world. www.cnn.com/Food/secials/1999/champagne

² - Feta is a classic and famous Greek curd cheese whose tradition dates back thousands of years. Strictly speaking, real Feta cheese is produced exclusively in Greece. www.greekproducts.com

Box 1 – WTO: From Doha to Hong Kong, Via Cancun

The Draft Hong Kong Declaration in 2005 is an attempt to retreat from commitments made at Doha. Para 18 of the Doha Declaration addressed the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits. These products are of interest to developing countries and include products such as Basmati rice (pirated and patented by Ricetec corporation of Texas) and Darjeeling tea. The Hong Kong Declaration makes no reference to extension of geographical indicators to other products.

6. Patent protection of agricultural chemical products

Within the framework of TRIPS Agreement negotiations, the issue of providing intellectual property protection for pharmaceutical and agricultural chemical product was particularly controversial. Given the substantial significance of these products for the domestic agriculture and food related economy in developing countries, those countries feared a serious increase of costs, since these products are often supplied by developed countries.

According to Article 27 of the Agreement, members are obliged to make patents available for any invention, whether products or processes, in all fields of technology. In recognition of the controversial aspects in these issues, Article 70.8 provides for transitional exceptions to the mandatory principle for pharmaceutical and agricultural chemical products. This is done by committing those countries currently not granting legal protection for the products in question to establish what is called a “mailbox”³ system” for receiving and filing patent applications concerning these products.

7. International Convention for the Protection of New Varieties of Plants UPOV Convention

The International Union for the Protection of New Varieties of plants UPOV is an intergovernmental organization established in 1961 to coordinate the implementation, at the international level, of the plant breeder’s rights established by the convention for the protection of new varieties of plants.

The UPOV Conventions is aimed at ensuring that member states acknowledge the accomplishments of new plant variety breeders and make available to them exclusive rights of exploitations if their varieties are distinct, homogeneous and stable.

The plant varieties have created specific problems with regards to the intellectual property regime that may be applicable to them. There is no harmonized regime for the protection of plant varieties at the international level. In order to stimulate plant breeding, different systems of the intellectual property protection for plants and plant material are applied in the world. Many factors have to be taken into consideration when establishing such systems at the national level, the reality and the priorities of a given country and its needs, including the need to comply with various international inter- related commitments.

Regarding implementation, Article 27.3 b of the TRIPS Agreement gives the first basic indication of the options available to implement protection of plant varieties: “Members shall provide for the protection of plant varieties either by patents or by an effective sui generic system or by any combination there of”

8. Review of the status of Syria and the initiated procedures

³ This mailbox allows inventors to file for patents establishing priority dates that serve as evidence of the novelty of their inventions, allowing countries to defer the subsequent actual granting of patents to the time when the requested system has been established. After the passage of a specified period, a country must then retrieve applications from its “mailbox” and review them for patentability, granting protection to those applications that fit the required. criteria

The two main agriculture-related elements of the TRIPs Agreement are those pertaining to geographical indications which are at the present time relate mainly to wine, and plant variety protection. Perhaps understandably, given the present focus of the TRIPS Agreement on alcoholic beverages, there appears to be little activity or interest in the GI area at present in Syria.

There is considerable interest from Ministry of Agricultural and Agrarian Reform in the area of the preservation of genetic resources. To a large extent, this is an agricultural concern. There was a project (1999-2005) in the biological diversity area funded by UNDP promoting the conservation and sustainable use of plant varieties in Syria.

Syria has signed the “International Treaty for Plant Genetic Resources” developed under the aegis of FAO in 2002, the “Convention on Biological Diversity”, and the “Cartagena Protocol”. However, at present there is no law in Syria dealing with both plant varietal protection and geographical indications. There is recognition from in questions Ministries that such legislation will be needed in Syria for WTO accession and they are presently in the process of complete revision.

References

- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)Article 27.3 (b) : Related International Agreements
- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)Article 22 & 23
- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)Article: Articles 70.8 & 70.9