

Classification of Geographical Indications: A Proposal of Codification

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Despite the will to establish a uniform geographical indication (GI) system during the GATT negotiations in 1994 through regulation (the so-called TRIPS Agreement), the current situation retains a large degree of heterogeneity. Registration-based protection is not compulsory and members can protect GIs under different administrative or judicial regimes. However, given the move towards harmonization, an international register and a common, unique classification for GIs may be indispensable. This paper aims at classifying the different types of protection in the world, to propose a common language to simplify negotiations and promote GIs in the international arena. This classification allows for both commodity features of GIs, those making them potentially largely diffused, as well as specific features, which make them unique agro-food goods. The resulting complex code has the potential to become a reading and cataloguing tool for existing GIs. The paper thus proposes classification categories, called classifiers, which associate a product with an identification code. The resulting complex code is designated the International Geographical Indication Code (IGIC) and is a flexible tool that can summarize and represent GI laws, GI interpretations, and alternative GI classifications that can coexist in a product protected by GI. Furthermore, the classification allows collecting in a single compilation all international GIs and their information.

Keywords: Geographical indication, classification, code, origin, TRIPS Agreement

The competitiveness of food processing industries and farms is based today on their capability to play an active part in a globalized market, where the most important criteria seem to be efficiency and productivity. In this respect, food processing industries have several peculiarities that make them suitable for an international market, focusing on quality as a strategy for market penetration. As the European Commission notes, ‘this quest for quality is a vital part of the EU agri-food industry strategy in the global market. [...] The EU agri-food industry will need to build on this approach in the years ahead to support its competitiveness and profitability.’¹ Quality certification as well as other systems of evaluation can thus guarantee the quality of food products.

According to Tregear, ‘typicity is a typology of local food system that refers to foods with special characteristics linked to the local territory, and with a name or identifier that indicates this link, exchanged in a context where there is high cultural proximity between the consumers, the products and the producers in the system.’² As a specific peculiarity of the production process and final product, typicity is always seen as a way to resist potential negative

globalization effects on agriculture and food processing industry by improving agricultural profits through a geographical connection that acknowledges national historical traditions and culture.^{3,4} In Europe, these tools for food processing industry were first acknowledged in 1883 at the Paris Convention for the Protection of Industrial Property. Here, agricultural products were considered suitable for protection of industrial property by virtue of their geographical indications. More specifically, the Convention lists ‘indications of source’ and ‘appellations of origin’. This political sensitivity on GI was later confirmed in the Madrid Agreement concerning the International Registration of Trademark and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. Although once registered, a GI gets protected in other Member nations also, the Lisbon Agreement failed to attract support from more than a few nations.⁵

Arguably the most important event related to GIs in recent years was the 1994 Trade-related Aspects of Intellectual Property rights (TRIPS) treaty, which was signed by 150 countries in the WTO meeting of Marrakesh. Articles 22, 23, 24 of this Agreement were dedicated to GIs. Nevertheless, the debate on GIs is still in its infancy at international level, and

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protection of origin is still dependent on national laws, limiting the potential for optimization of existing regulation. Furthermore, registration-based protection is not compulsory and members can protect GIs under different administrative or judicial regimes. While the future may offer an international register, at present, there are two directions: the first presumes the commitment to create a database of registered GIs regulated domestically and voluntarily⁶; the second imposes registration with shared legal effects across members.⁷ A third approach refers to existing regulation in Hong Kong, China, which represents a middle ground allowing for certain presumption, and voluntary participation.⁸

This paper aims at classifying different types of protection in the world and proposes a common language to simplify negotiations and promote GIs in the international market. The classification allows for both commodity features of GIs, those making them potentially largely diffused, as well as specific features, which make them unique agro-food goods. The link between GIs and their origin place also make them exclusive in the IP world. The paper proposes classification categories, called classifiers, which associate a product with an identification code. The resulting complex code is designated the International Geographical Indication Code (IGIC). Classification using IGIC allows summarizing information in a code, and can include conflicting features that sometimes describe a GI. Effectively a code can summarize and also represent GI laws, GI interpretations, and alternative GI classifications that can coexist in a product protected by GI. Since a world register for GIs does not exist yet, it is very difficult to design a single classification. IGIC code allows collecting in a single compilation all international GIs.

GI: Protection Systems Worldwide

Articles 22, 23, and 24 of the TRIPS Agreement specifically concern the GI system. Article 22.1 represents a weak, negative protection for GIs, consisting of a prohibition to use a particular name (denomination) of the product for producers not localized in that denomination place. Furthermore, every protection is determined by the legal system of each Member State, with third parties ensuring the validity and the right use of GI claims. Article 22.4 establishes that this protection also applies to inappropriate use of geographical associations with the good, even if its place of origin is reported

correctly. Article 23 reserves a specific protection to wines and alcoholic drinks, with stricter and more specific regulation against the use of expressions such as 'kind', 'type', 'style', or 'imitation'.^{9,10} This regulation means that for any food products not included in Article 23, products cannot use an existing geographical name and imitate its content, even if the label clearly indicates the true origin of the product (i.e. made in...).

Thus, regulation on products with strong geographical/territorial links is particularly varied across countries, with no accepted method of GI protection nor a register with worldwide recognition. As has been stated by Thévenod-Mottet 'GIs may be protected as registered GIs (e. g. PDO or PGI) or administratively defined GIs, as trademarks (all kinds) or through general laws (protection of consumers, unfair competition). One GI may be protected by different tools in different countries. In addition, these different tools of protection can be the ground for conflicts regarding the rights'.¹¹

The European Union (EU) and the United States (US) are the most important markets of GI products, although their regulations follow different approaches. EU considers GIs as quality products, to preserve regional agricultural traditions, through traditional methods with a special eye on quality rather than quantity.^{12,13} This has generated many small farms and factories with limited food productions which coexist within the ambit of large GI produce (as in the case of Parmigiano Reggiano).¹⁴ On the other hand, the US regulation initially considered GIs as a marketing strategy aimed at recognizing and rewarding worthy producers and quality products. As a result, most North American GI products represent large scale production rather than quality products, with limited focus on territorial development.

According to Giovannucci, a close look at trade agreements also shows that the EU and the United States have divergent interests in their treatment of GIs. While the EU's attempts aim at consolidating the international reputation of GIs and their increased public protection; the US focus is on increasing open markets. In fact, the EU's GI efforts have been viewed as protectionist by the US. For developing countries negotiating trade agreements with either the EU or the US, these divergent approaches can pose distinct challenges to their own domestic GI and trademark efforts.¹⁴

According to O'Connor¹⁵, considering GI regulations as a part of intellectual rights protection systems, countries can be divided into three main categories:

- (i) those protecting GIs through particular laws or '*sui generis*' systems (e.g. EU);
- (ii) those using marks systems or other administrative or legal means (e.g. US);
- (iii) those neither recognizing nor preserving GIs formally (e.g. Italy which has a list of approved Traditional Agrofoods Products (PAT) valid only within the country).

Countries with some form of GI protection fall in the first two categories. EU and US are good examples for the first and second system: the former has a specific legislation independent of other laws, while the latter protects GIs through a pre-existing intellectual property rights legislation, namely the Trademark Law.¹⁴ As a result, in the US, a mark can be used to identify and protect a GI, unless it deceives consumers about the product's origin or goes against other people's rights to use a geographic name. The US legislation identifies two types of marks: collective marks and certification marks. Collective marks generally can only be used by members associated with the mark, and sometimes also by the mark owner. Certification marks can be used by any producer able to apply the production standard established by the owner of the mark. A certification mark can be given to different producers as well as to different products, because it refers to the origin of the product and not to its quality or typology. In this system, the link between origin and product is weaker than in the *sui generis* systems, unless the regulation also applies standard certifications with supplementary characteristics. Nevertheless, the North American GI regulation system determines several types of marks as a consequence of its dependence on trademark law. Being a market-oriented marketing tool, it could be difficult for customers to understand its aim and implications.

In EU, the equivalent system includes the use of three forms of GIs: protected geographical indication (PGI), protected denomination of origin (PDO) and traditional speciality guaranteed (TSG). They are included in a registry, thanks to the regulation 510/2006 (ref. 16), which explains the procedure to be followed by the producers or processors who want to register a product. Particularly, the product

specification is an important document for the EU system: if a product does not fulfil all the requirements recorded in the product specification, it cannot use the registered names or the EU logo.¹¹ As an example, the product specification must highlight the definition of the geographical area and evidence that the product originates in the relevant area as well as the link between the product and the geographical area concerned.

According to some authors, it is possible to classify GI protection systems into two categories: the prescriptive system and permissive system.^{15,17} Prescriptive systems define, govern and regulate a close relationship between a product and its place of origin, thus controlling its quality characteristics. The permissive system on the other hand, gives more importance to the delimitation of the area of origin rather than to the relationship between product and quality. Certification marks are considered the best ways to protect GIs in a permissive system, as in the US: certification marks are based on producers that can define the rules to use the mark following a series of characteristics that they choose. In a prescriptive system (the European one), regulation determines more strictly the main features of products and the features of the controls for each agent involved in the different stages of production and sale.¹⁵

GI protection although beneficial in protecting intellectual property rights, is simultaneously open to the risk of fraud and counterfeiting. The substantial difference in GI laws across countries is partially determined by their history and culture but can be strongly influenced by the type of protection guaranteed by the TRIPS Agreement (weak or strong protection).

Article 22 of the TRIPS concerned with GI protection is the lowest level of safeguard. This article bans the use of geographical denomination if it triggers unfair competition and deceives consumers. Also it allows refusal of trademark registration if it includes a GI for goods not originating in the area indicated with an intention to mislead the public. This protection relates to the prevention of consumer deception and unfair competition, which have to be proved and judged by legal authorities.¹⁵

Article 23 as already explained earlier concerns a second level of protection specific for wines and alcoholic drinks. The highest level of protection is related to specific wines (Section 4, Article 23). This includes the determination of an international register

that gives GIs a specific status, with full legal value. The implementation of this register has been debated for a long time, but at present not even wines have a common GI register, in spite of the Doha Declaration in 2001 expressly suggesting its creation.

Doha Round negotiating groups drafted the first text (the Draft Composite Text) including the different point of views of all members from 1997 onwards. It stated that the draft text provided a good basis on which to continue negotiations towards a multilateral system of notification and registration for geographical indications for wines and spirits.¹⁸ Despite differing perspectives on the purpose and management of such a register by participating countries, several stakeholders stressed the importance of creating an international register, giving the same protection awarded to wines and alcoholic drinks to all other GI products.

Classification Methods of GI: An International View

Different classification models have been proposed over the years, as the long legislative and diplomatic path continued to evolve. In order to catalogue background, Thevenod-Mottet suggested estimation of GI legal and institutional aspects through 10 parameters, each of them with four degrees of intensity.¹⁵ In particular, he proposed four types of contexts from Type A to Type D, with a scale increasing with the intensity of GI legal protection. This scale uses several parameters: GI international frameworks, country's international position, bilateral agreements, specific tools of legal protection, public policies, generics, GI recognition, GI product requirements, registration authority and control. As an example, if GI bilateral agreements did not exist, it will correspond to a Type A classification, reaching a Type D if a registration system is in place.

Alternatively, this type of classification can be used for GI products in agreement with its legal and institutional characteristics, using five point-scale from 1 (low) to 5 (high). Estimation characteristics for GI product are as follows: requirements (e.g. production methods, organoleptic characteristics); involvement of public authorities; product certification; organizational power; and effectiveness in preservation. Depending on these scores, the product will be classified as Type A, B, C or D.

Despite overlapping, these two levels allow an easy identification of the GI structure, although the

definition of the legal and institutional characteristics of GI products would require some degree of arbitrariness. In fact, this estimation system does not define the intensity of all characteristics considered, particularly as it lacks reference levels as well as elements to compare parameters. For instance, it is unclear what 'organization power' should be considered the best, deserving five on a five-point scale. Thus, the estimation of the intensity of all parameters seems prone to subjectivity.

Starting from the specific research hypothesis that high levels of origin product (OP) are associated with low risks of imitation and counterfeiting elsewhere, Van Der Meulen studied the link between food production and their place of origin.¹⁹ His research aimed at detecting OP originality factors (O-factors), i.e. the physical relationship with the place of origin; typicity; the specific production process and the final product; and tradition, which refers to the relation between OP and its place of origin. Each O-factor was evaluated by assigning a value between 0 and 2, depending on the existence and intensity of the factor itself (0 = absent or extremely low; 1 = not always existing; 2 = existing, quite high). For instance, territoriality included factors such as agriculture, process, distribution, and delimitation, which were assigned a score depending on the OP analysed.

This classification proposal, as indicated by the author, can neither estimate how the factors are linked together nor solve the subjective problem of assigning scores to different factors. Moreover, the research hypothesis linking the originality of an OP to the risk of imitation does not take into consideration the already existing legal protection. As such, it is quite difficult to compare a GI product with European protection, e.g. an Italian PDO, with an Italian product considered as traditional (PAT) but without legal protection. Nevertheless, this approach proved interesting in classifying and estimating any OP without legal protection but with a possible future need of legal protection, providing an understanding of its relationship with the territory and thus its market capability.

Frayssignes proposed a study of the relationship between the territorial development and a particular GI supply chain, the French Appelation d'Origine Contrôlée (AOC). He found a system considering the relationship between AOC and place on one hand, and a classification of the different places depending on this relationship on the other hand.²⁰

This research divided the analytical indicators in four main subjects: (i) Territorial trends, (ii) People, coordination and governance, (iii) Resource production and goods basket and (iv) Territorial development paths.

Inside these groups there were different indicators, used in four geographical areas chosen within AOC cheese production districts. Research data came from a quality survey based on 250 interviews involving producers, consumers, managers of farmers' cooperative, institutions, and other officers and officials linked to the supply chain.

Thanks to the application of these indicators to some specific areas, the authors could obtain a detailed description of the AOC in analysis, particularly with reference to their relationship with the territory, and the classification of areas depending on the chosen variables. This process allows an estimation of AOC systems for different thematic spheres.

Methodology and Discussion

In all classification methods examined above, evaluation criteria and scale are fundamental. For instance, the proposed case studies are based on the generic GI analysis system, as they face market, territory and, governance management problems. By trying to use a classification proposal on lower scale, it would be interesting to reach a classification methodology based on products, that allows their identification at World level, despite the ruling and institutional differences in each country.

This paper aims to classify GIs based on objective characteristics, without incorporating quality, but codifying them for future research.

In particular, the authors developed a methodological approach based on different classifiers that converges into a single identification code for each GI product. Each classifier will refer to specific information on a product characteristic, which is assigned a specific code, and combination each single code will provide a complex code, which is called the International Geographical Indication Code (IGIC). IGIC is an alphanumeric string. The following parts of the paper examine the structure of the IGIC code in more detail.

Classifiers and IGIC code

Classifiers represent classification categories (i.e. variables) in turn representing objective

characteristics of GI products. Each classifier indicates a specific element of the GI, deemed fundamental for its identification. Importantly, this code needs to be easy-to-use, and its efficiency hinges on a sufficient (and non-redundant) number of symbols that codify information.

In this exercise, five classifiers are used, which are:

- x_1 : legal classifier
- x_2 : origin classifier
- x_3 : denomination classifier
- x_4 : product classifier
- x_5 : commodity classifier

The strings composing each classifier are put together in a single code:

$$IGIC = |x_1| + |x_2| + |x_3| + |x_4| + |x_5|$$

Thus,

$$IGIC = x_1 x_2 x_3 x_4 x_5$$

The Legal Classifier (x_1)

The legal classifier refers to laws regulating protection of any product at international level. This classifier provides a first piece of information regarding the typology and the legal standing characterizing GIs.

The literature on legal protection highlights different existing systems: a *sui generis* system, where a unique law regulates GIs as a specific and independent case of intellectual property right; and a system of marks, where GIs are not considered as a right outside other existing intellectual property laws.¹⁵ If one refers to this theoretical classification, the first important difference between the legal structures of different countries can be readily obtained. The first classification level divides GI products between those belonging to a *sui generis* system (1), those belonging to a system based on registered marks (2) and a third typology including products without legal protection but equally indicated (3). Furthermore there is a fourth typology concerning those products belonging both to the first and the second category, because they are registered in different countries (or in the same country) with different legal protection (4). Generally, products belonging to typology 1 have a protection system very close to European Union PDO and PGI regulations,

while products belonging to typology 2 refer to a complex protection system similar to North American trademarks. The third category includes products without a formal legal protection but with an acknowledgement by public authorities, as in the case of Traditional Agrofood Products of Italy: they have a dedicated register authorized by an Italian minister although the same is not recognized in EU. The fourth category indicates products with multiple protection as in the case of Parma Ham, that has a PDO in the EU and a trademark in the US.

The second classification level refers to registration requirements for GI certification. Particularly, there are two approaches¹⁵:

- A. *ex-officio* protection referring to the typology, where the countries and public authorities are responsible for GI policies;
- B. *ex-parte* protection which is a type of protection supplied upon request (generally by producers themselves). The responsibility of protection belongs to producers or organizations, such as farmers' cooperatives, or other specific groups in charge of the legal procedure to officially recognize GIs.²¹

As an example, if a GI belongs to a *sui generis* system (1) and its registration is filed by a farmers' cooperative supporting its legal protection as well (B), the legal classifier assigned will be 1B. If a product is without a recognized denomination, there will be no second level of legal classification and it will be identified by a digit 0.

The Origin Classifier (x_2)

According to Josling, quality or characteristics of a product must be essentially or exclusively due to the particular geographical environment (including natural and human factors such as climate, soil quality and local know-how) of the place of origin.²² GIs are marks normally used to distinguish products depending on their peculiar quality, which is recognized by consumers and strongly connected to the place of origin.^{23,24} The relationship between the territory and the product defines the characteristics of GIs, making the origin classifier essential for an IGIC code. The classifier, x_2 , uses a recognized international nomenclature to identify the country of origin. It uses the ISO 3166 standard international classification system, where for instance the code of origin of Italy would correspond to 'IT'. This approach would make the identification of the origin a straightforward process.

The Denomination Classifier (x_3)

The denomination classifier codifies the denomination of the product (e.g., PDO, PGI or AOC). Given the high number of denominations worldwide, the classifier, x_3 , will have to allow for a large quantity of information. It is made up of a 5-digit string allowing for up to 10,000 denominations. Each denomination is expected to be assigned a personal code. As an example, the code, 00002, may correspond to European PDO denomination in all IGICs. This code will correspond to a progressive series of numbers, increasing for any new denomination.

The Product Classifier (x_4)

The product classifier identifies a specific product, and represents the specific name of the product. This classifier is the only one that allows the identification of a single GI product. Thus, the same code would characterize the same item throughout the world. The code translation system of the specific name of the product is similar to the denomination code, x_3 . Like x_3 , it corresponds to a numeric string allowing for the classification of a large number of products. As the number of GI products becomes higher than the number of denominations, x_4 shall correspond to a string composed of a progressive series of numbers starting from 0 for each country (x_2) and denomination (x_3). The classifier, x_4 , is initially conceived as a 5-digit number, to allow up to 10,000 products for each denomination in each country. Each product will have its personal code: for instance, the code 00016, with both the origin classifier (e.g. IT), and denomination (e.g. 00001 for PDO), will codify a specific product (e.g. the 'Casatella trevisana PDO').

The Commodity Classifier (Codex Alimentarius, x_5)

Food classification supplies important information about product commodity, including legal and geographical information along with technical information about food characteristics. This is normally used to catalogue GIs depending on food categories they belong to. The Commodity classifier is a two-digit code going from 01 to 16 indicating the main food categories included in the Codex Alimentarius, which is a worldwide recognized classification. For example, the x_5 classifier for 'meat products' will have the numeric string '08'.

Table 1—Example of classification grid of twenty Italian GIs by IGIC method

	x1	x2	x3	x4	x5	IGIC
Aceto Balsamico Tradizionale di Modena	1A	IT	00002	00001	12	1AIT000020000112
Aceto Balsamico Tradizionale di Reggio Emilia	1A	IT	00002	00002	12	1AIT000020000212
Aglione Bianco Polesano	1A	IT	00002	00003	04	1AIT000020000304
Aglione di Voghera	1A	IT	00002	00004	04	1AIT000020000404
Arancia di Ribera	1A	IT	00002	00005	04	1AIT000020000504
Asiago	1A	IT	00002	00006	01	1AIT000020000601
Asparago Bianco di Bassano	1A	IT	00002	00007	04	1AIT000020000704
Basilico Genovese	1A	IT	00002	00008	04	1AIT000020000804
Bergamotto di Reggio Calabria - Olio essenziale	1A	IT	00002	00009	04	1AIT000020000904
Bitto	1A	IT	00002	00010	01	1AIT000020001001
Bra	1A	IT	00002	00011	01	1AIT000020001101
Caciocavallo Silano	1A	IT	00002	00012	01	1AIT000020001201
Canestrato Pugliese	1A	IT	00002	00013	01	1AIT000020001301
Capocollo di Calabria	1A	IT	00002	00014	01	1AIT000020001401
Carciofo Spinoso di Sardegna	1A	IT	00002	00015	04	1AIT000020001504
Casatella Trevisana	1A	IT	00002	00016	01	1AIT000020001601
Casciotta d'Urbino	1A	IT	00002	00017	01	1AIT000020001701
Castagna di Vallerano	1A	IT	00002	00018	04	1AIT000020001804
Castelmagno	1A	IT	00002	00019	01	1AIT000020001901

Classification Grid

Allowing for an endless number of products and GIs (recognized or not), it is then possible to structure a classification grid by placing a GI product in each line and a classifier in each column (Table 1). This data bank will then include all the GI products involved, and will identify an IGIC for each product containing all the necessary information.

Conclusion

The strong differences between the legislations regulating GIs do not promote a free exchange system. Moreover, there is a lack of a classification that uses a single language to find information on different GIs. IGIC is an innovative tool to allow GI cataloguing with or without a unique protection law. The classification of products through IGIC supplies a large amount of information that can be used for in-depth analysis and allows data collection and cataloguing in a friendlier and more organized manner. As an example, product descriptive statistic analyses could be used to evaluate GIs all over the world, and improve knowledge about GI. Furthermore, the generation of IGICs through classifiers allows further modification and widening, a subject for future research. In fact, a codification system can be designed using endless combinations of classifiers, which may be added or removed if needed.

There could be also some limitations of the classification, for example related to 'generic names':

if a country protects a product with a GI, but other countries do not, the IGIC considers this product as having a GI. This problem is difficult to solve in a comprehensive way, since it that would need to take into account all the different types of regulation across countries, which differ substantially worldwide. Taking into account IGIC's flexibility, it is hoped that further analyses could lead to newer solutions.

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