



Geographical Indications, Food Safety, and GIs, Food Safety, and Sustainability

Challenges and Opportunities

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**“Intellectual Property Rights for Geographical
Indications:**

What is at Stake in the TTIP?”

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Paper examines interrelationship amongst:

- ▣ Geographical indications (GIs);
- ▣ Substantive food safety standards; and
- ▣ Non-GI label indications of quality, safety, or sustainability such as “organic,” “GMO-free,” and “sustainably produced.”

Paper attempts to:

- ▣ Identify the varying purposes of these schemes;
- ▣ Identify the various sources of policy and law that apply to them;
and
- ▣ Compare their treatment in various contexts, including TTIP and other free trade agreements.

International Protections for Geographic Indications

European Union (TTIP negotiating position fact sheet):

“The protection of geographical indications matters economically and culturally.”

“Create value for local communities through products that are deeply rooted in tradition, culture and geography.”

“Support rural development and promote new job opportunities in production, processing and other related services.”

“Geographical names with commercial value are exposed to misuse and counterfeiting.”

“Abuse of geographical indications limits access to certain markets and undermines consumer loyalty.”

“Fraudulent use of geographical indications hurts both producers and consumers.”

United States (letter from 50 Senators):

“EU has been using its free trade agreements (FTAs) to persuade its trading partners to impose barriers to U.S. exports under the guise of protection for its geographical indications.” . . .

“EU seeks to . . . impair U.S. competition by imposing restrictions on the use of common food names through TTIP.”

Protection of GIs operate as “a barrier to . . . trade and competition.”

EU seeking in TTIP seeking “gratuitous use of GIs as a protectionist measure.”

Disparities in domestic regulatory treatment can result in trade disputes:

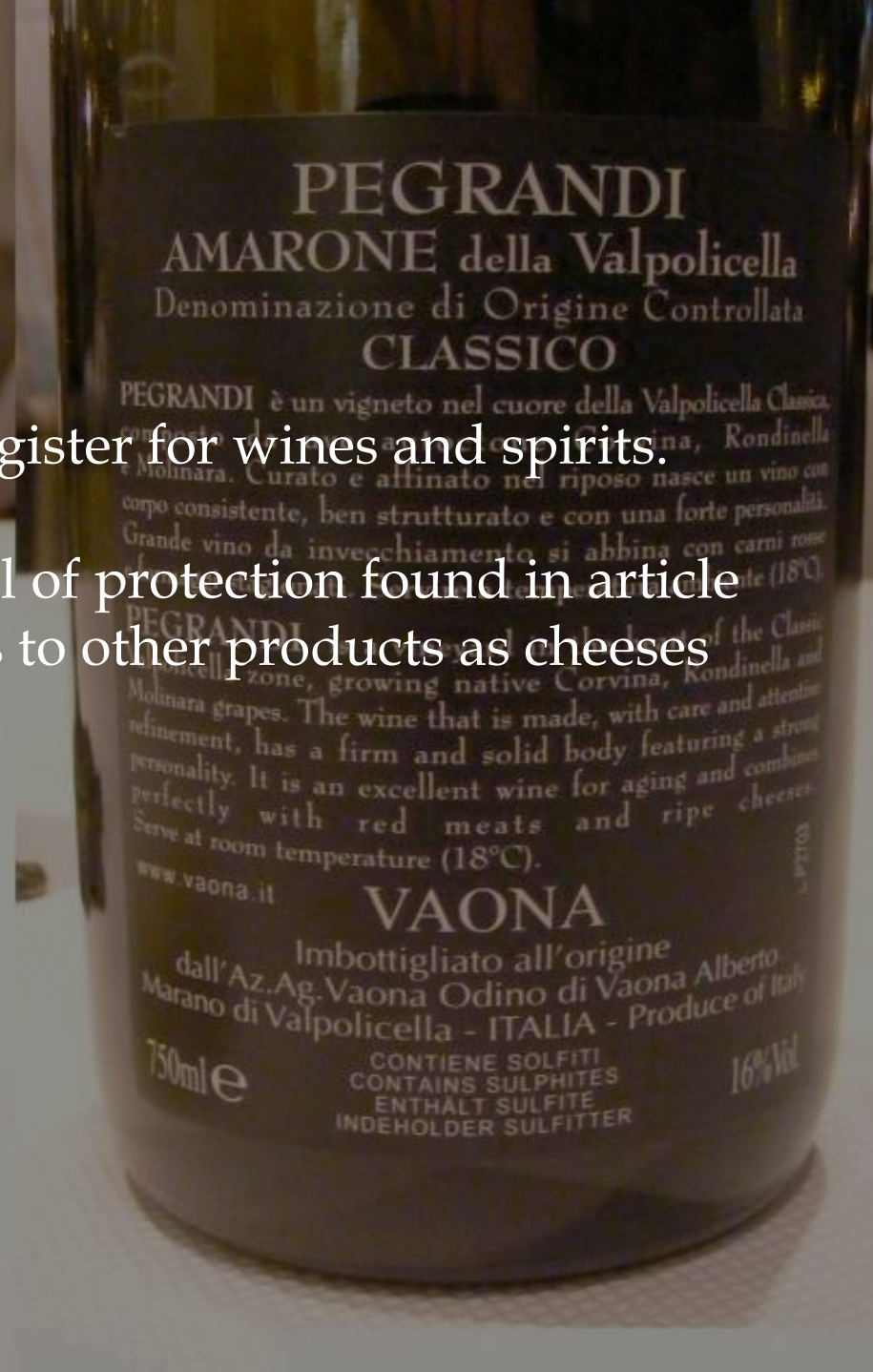
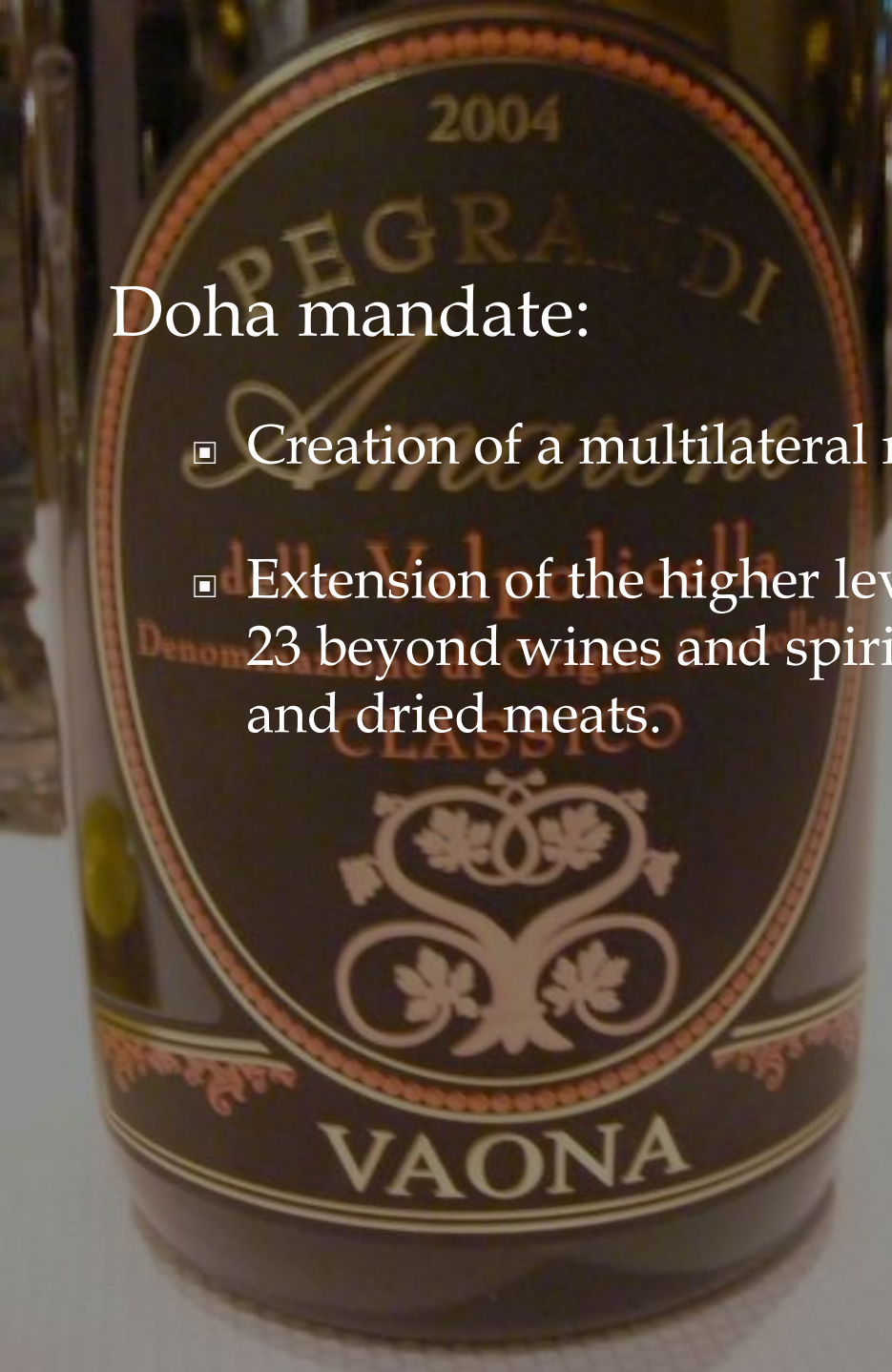
- ▣ EU law protects “geographical indications.”
- ▣ U.S. law allows producers to protect GIs as trademarks.
- ▣ Nonetheless, many EU GIs are not protected in the United States, and may not be registerable as trademarks because of their widespread generic use.
- ▣ Products can be sold in the United States which use GIs protected in Europe, but which were not produced in that region.
- ▣ E.g., “Parmigiano Reggiano” under the EU system, “Parmesan” cheese produced in the United States is regularly sold there.

Trade-based theory of intellectual property protection, including GIs (TRIPS)

- ▣ Unique amongst WTO agreements, establishes affirmative obligations for members to enact identified legal protections for intellectual property.
- ▣ Reifies intellectual property, such as creative products like motion pictures, by creating goods that can be identified as such in international trade.
- ▣ Other provisions in trade agreements are typically “negative,” constrain governmental behavior.
- ▣ TRIPS treats GIs as intellectual property requiring affirmative governmental protection and mutual recognition.

Doha mandate:

- ▣ Creation of a multilateral register for wines and spirits.
- ▣ Extension of the higher level of protection found in article 23 beyond wines and spirits to other products as cheeses and dried meats.





EU goals in TTIP:

- ▣ “We want the US to improve its system in several important ways.”
- ▣ “These include: protecting an agreed list of EU GIs, with rules to stop other producers misusing them; [and]
- ▣ “Enforcing those rules effectively.”

CHIANTI CLASSICO
DENOMINAZIONE DI ORIGINE CONTROLLATA E GARANTITA
Riserva 2009

International Standards for Food Safety

GIs no guarantee of safety or of other indications of quality

- ❑ Laboratory tests conducted on French wines detected residues of an insecticide (bromopropylate) and a fungicide (carbendazim) prohibited in France.
- ❑ Emmanuel Giboulot, produces organic wines in Burgundy under the appellations “Côte de Beaune” and “Haute Côte de Nuits,” convicted for refusal to spray grapes with pesticides.



Harmonized International Food Safety Standards

Codex Alimentarius

Intergovernmental

Dual function

- ▣ Protect health
- ▣ Promote trade

Nonbinding, advisory

As of 2006:

- ▣ Evaluated 218 pesticides, establishing 2,930 maximum residue limitations,
- ▣ Published 1,112 food additive provisions for 292 substances



ISO 22000

International federation of standardizing bodies from 163 countries

Not an intergovernmental organization

Work product:

- ▣ Voluntary standards
- ▣ Adopted by consensus

Nonbinding, advisory

22000 series “auditable” (subject to verification by accredited private, third-party auditors or certifiers)

A conceptual image of the Earth as an apple. The globe is centered, showing the Americas, with a green leaf at the top and a brown stem. The text is overlaid on the left side of the globe.

Purely private schemes

- ▣ Global Food Safety Initiative
- ▣ Global GAP
- ▣ Concern among developing country exporters about operation as trade barriers, but not disciplined under trade agreements.

Trade-Based Disciplines on Food Safety Standards

Trade agreements concerned with abuse of excessively rigorous standards as trade barriers (negative obligations)

E.g., WTO Agreement on the Application of Sanitary and Phytosanitary Standards

Codex Standards

- ▣ Transformed from floor to ceiling
- ▣ Operate as both sword and shield.

Stricter standards subjected to scientific tests

WTO disputes

- ▣ EU beef hormones
- ▣ EU biotech

Other International Standards for Labeling of Food


Proliferation of labels, e.g.,

- ▣ Organically produced;
- ▣ Sustainably produced;
- ▣ Natural or all-natural;
- ▣ GMO-free;
- ▣ Antibiotic-free;
- ▣ Hormone-free or no hormones added;
- ▣ Free-range or cage-free;
- ▣ Grass-fed or pasture-raised; and
- ▣ Humane raised and/or handled

In contrast to food safety standards, little international harmonization

Primarily through Codex:

- Nutrition Labeling (mandatory to governmentally-established standards);
- Organically produced foods (optional to governmentally-established standards)
- GMOs (optional)



The background of the slide is a close-up of a peach. Overlaid on the peach is a 'Nutrition Facts' label. The label text is as follows:

Nutrition Facts		
Peach, raw		
Serving size 175g		
Calories		68
Water		155
Cholesterol	0g	0%
Vitamin A	570IU	11%
Vitamin C	11.6mg	18%
Vitamin K	4.8mcg	6%
Fiber	1.4mg	7%
Potassium	333mg	10%

Trade-Based Disciplines on Food Labeling

As with food safety, concern is for abuse

E.g., Uruguay Round Agreement on Technical Barriers to Trade

Requires use of “relevant international standards,” e.g., Codex, ISO

Departures allowed, but only when international standard “would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.”

All labels litigated in WTO held inconsistent with TBT:

- ▣ EU Sardines (violates Codex standard)
- ▣ U.S. tuna (violates national treatment standard)
- ▣ U.S. meat (violates national treatment standard)

Comparison of GIs with food safety and quality labels

	International Protections for National Measures	Affirmative (Positive) Harmonization	Trade-Based (Negative) Disciplines
GIs	TRIPS TTIP?	No need – international protection for nationally-established GIs in TRIPS	None
Food Safety Standards	Not applicable	Codex (non-binding) ISO (non-governmental, non-binding) Private certifying organizations	WTO SPS Agreement TTIP SPS chapter
Non-GI labeling of quality, sustainability, humane treatment, etc.	Not applicable	Codex (non-binding), but coverage very limited	WTO TBT Agreement TTIP TBT chapter

Figure 1. Comparison of international legal standards for GIs, food safety standards, and non-GI claims of food quality

Conclusion

- GIs, a form of label, receive highest level of affirmative protection under TRIPS
- GIs not necessarily correlated with food safety (French wines) or other indications of quality (M. Giboulot)
- But GIs typically include not just geographical origin but also production methods which are protected
- Trade agreements restrict domestic use of food safety and labelling
- Trade agreements also restrict use of process and production methods (e.g., TBT tuna labeling dispute)
- Only distinguishing feature of GIs is location of production (*terroir*)
- If we give the highest trade-based protection to GIs, then
- Maybe food safety standards and other label indications of quality deserve some trade-based measure of affirmative protection and mutual recognition . . .
- And, contrary to received wisdom about trade agreements, GIs demonstrate that affirmative protection for food safety standards and other label indications of quality are consistent with structure of trade agreements.