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REPUBLIC OF LEBANON



WORLD INTELLECTUAL
PROPERTY ORGANIZATION

**WIPO NATIONAL SEMINAR ON THE PROTECTION OF
TRADEMARKS AND GEOGRAPHICAL INDICATIONS**

organized by
the World Intellectual Property Organization (WIPO)
in cooperation with
the Ministry of Economy and Trade

Beirut, March 17 to 19, 2003

PROTECTION OF GEOGRAPHICAL INDICATIONS:
THE EUROPEAN UNION EXPERIENCE

Prepared by Mrs. Susana Perez Ferreras, Administrator,
Industrial Property Unit, European Commission, Brussels





Protecting Geographical Indications...

...around the World

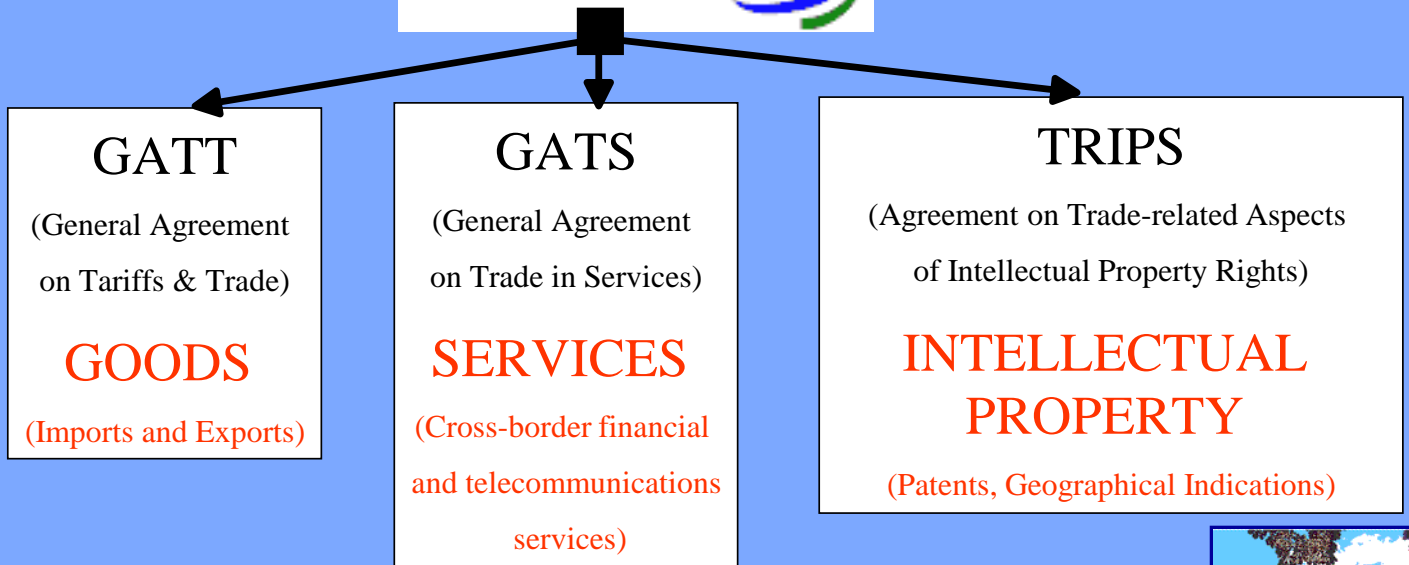




Protecting Geographical Indications...

...in a global context.

The TRIPs Agreement as part of the the WTO framework





Protecting Geographical Indications...

...effectively: The Good Points

TRIPs: GIs are getting teeth.....

- All WTO Members (some 145 countries) shall give a minimum protection to GIs in their legislation. If WTO countries so wish, they can give more protection than the minimum (e.g., EU)
- Nevertheless, protection of EU GIs is not automatic. Registration in that WTO country may be required. Also, WTO countries may claim that the EU name is, e.g., generic.
- That obligatory minimum protection is higher for wines and spirits than for other products like agri-food products.
- Compliance is verified by other country Members via the several review mechanisms.
- “Rogue” countries may be brought to a WTO court.





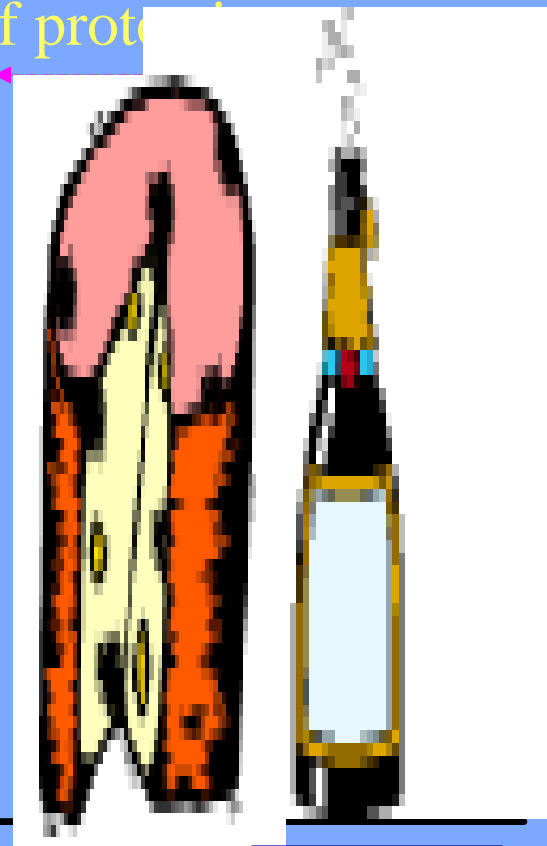
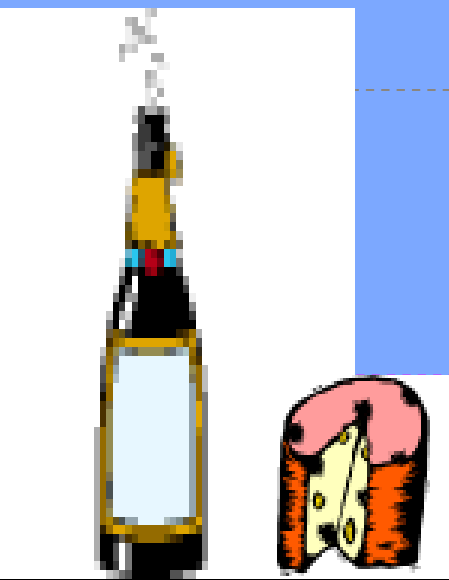
Protecting Geographical Indications...

TRIPs & EU: comparing levels of protection

Full IP (forbids evocations via, e.g., shapes (“tetilla”) + comp. prod.)

Limited IP (forbids “style of Manchego” or translation like “Parmezan”)

Unfair Competition (allows Parmezan of Australia)





Protecting Geographical Indications...

...in an effective manner around the world

EU Producers seem to face several **PROBLEMS**:

- Protection available in WTO countries is TOO LOW;
- They may need to register their GIs in each WTO country before they benefit from any type of protection (positive protection); or
- They may need to go to courts and then be subject to divergent decisions (negative protection);
- Defending EU GIs abroad entails lengthy and costly procedures

Two **SOLUTIONS**:

Extension of protection

A multilateral register for GIs





Protecting Geographical Indications...

Improving Protection of GIs abroad “on the ground”

A Multilateral Register for
Geographical Indications

Today for Wines & Spirits.... tomorrow ...





Protecting Geographical Indications...

TRIPS MANDATE





Protecting Geographical Indications...

The need for multilateral register for Geographical Indications



Diversity of national systems of protection: Producers may need to deal with many different systems before they start being protected. This is costly.



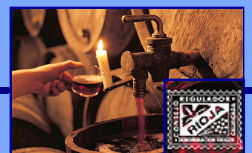
Presumption of Validity: Notified GIs will be presumed valid in WTO countries that do not oppose registration. Usurpers will have to prove that notified names are not a true GIs.



Foreclosure of Future Markets: EU producers may not be able to protect their names because usurpations began long before they arrive and names have become generic.



Non Availability of certain exceptions: E.g., notified GIs will not become generic abroad unless opposed.

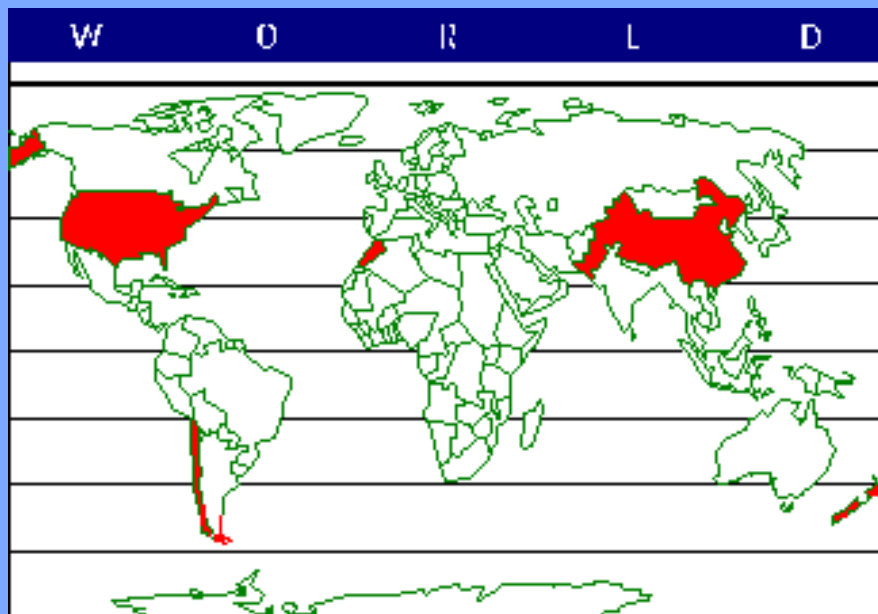




Protecting Geographical Indications...

Notification by the EU: **“BORDEAUX”**

Opposition by: U.S.; Chile; Morocco; New Zealand; China.



Effects for “Bordeaux”

- ★ PM- Will be presumed a GI
- ★ AM- E.g., no one will be able to claim that its generic
- ★ There will be a need to negotiate with “red” countries a bilateral agreement





Protecting Geographical Indications...

A PRACTICAL TOOL FOR PRODUCERS

What the EU multilateral register DOES

- The FREEZING effect => It preserves names that have not been usurped and prevents GIs from being misused in the future. As registered names cannot become generic, international expansion can develop at the right pace without rush.
- The COST effect => Legitimate producers of registered names will be able to attack usurpers at a lesser cost.
- The PIRATE effect => As usurpers will have to make the case first, they will not be able to hide behind the legal system.
- The EXPORT effect => Usurped names will not be able to be used in many third markets (e.g., China - Champ.)





Protecting Geographical Indications...

A PRACTICAL TOOL FOR CONSUMERS

What the EU multilateral register DOES

- The ACCESS effect => Consumer associations will be free to challenge misuses of GIs before domestic courts at a lesser cost. Usurpers will have to make their case first.
- The CLARITY effect => Usurpation will be discouraged and pirated products will diminish. Consumers choice is facilitated and confusion prevented.
- The GLOBAL effect => As protection is world-wide, consumers travelling will be able to buy the same product everywhere without risking being deceived.
- The LINK effect => Consumers and producers will help each other in monitoring piracy and counterfeiting.





Protecting Geographical Indications...

A PRACTICAL TOOL FOR ADMINISTRATIONS

What the EU multilateral register DOES

- The **INFORMATIVE** effect => Administrations will have a clear view of existing GIs abroad so they will not register as trademarks, for example.
- The **LITIGATION** effect => As usurpations will be discouraged, related litigation will diminish and so judicial costs.
- The **REGISTRATION** effect => National registrations will probably diminish to those case in which multilateral protection is insufficient. Administrative costs will therefore be reduced.
- The **EXPORT** effect => Border control is easier.



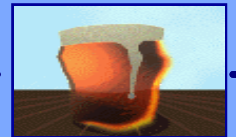


Protecting Geographical Indications...

Common Misunderstandings

What the EU multilateral register does NOT do

- Does not replace national protection systems: WTO registration provides a first line of defence, a rebuttable presumption. Full protection may still requires national registration.
- Does not alter the relationship between trademarks and GIs: This follows TRIPs rules and the EU proposal does not touch upon this matter
- Does not require WTO countries to establish any additional means of enforcement. This can be done by right-holders as is already the case for trademarks.
- Does not phase-out any past uses of names.





Protecting Geographical Indications...

Improving the Level of Protection of all GIs abroad

Extension of additional protection now
only available to GIs on wines and
spirits to all GIs alike





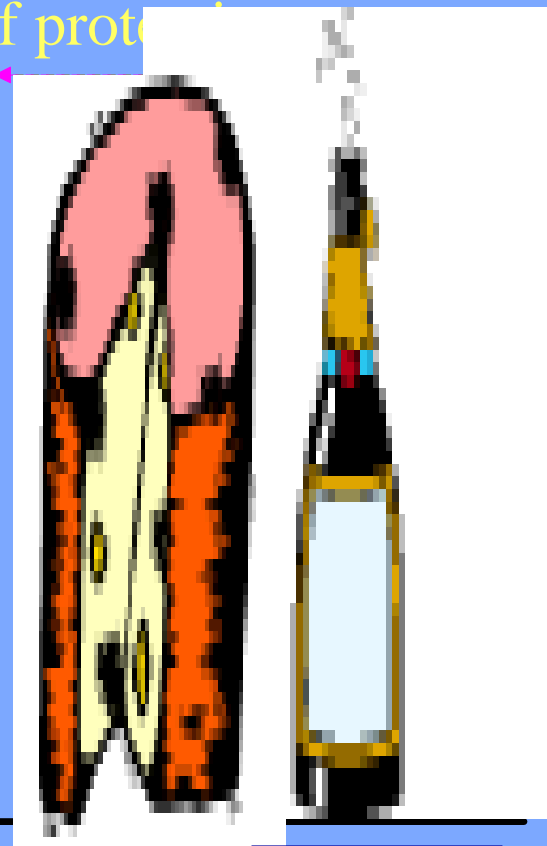
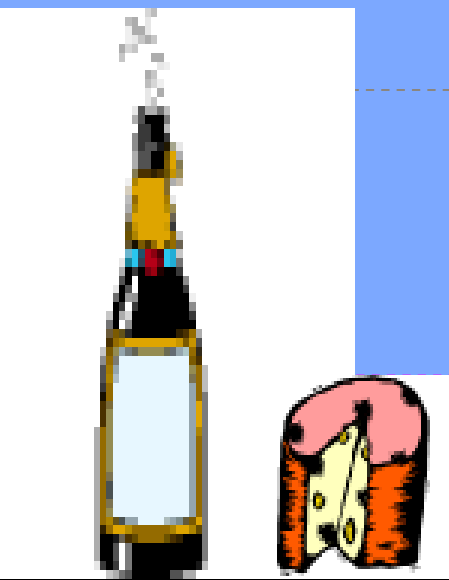
Protecting Geographical Indications...

TRIPs & EU: comparing levels of protection

Full IP (forbids evocations like imitation of shapes “tetilla”)

Limited IP (forbids “style of Manchego” or translation like “Parmezan”)

Unfair Competition (allows Parmezan of Australia)





Protecting Geographical Indications...

WHERE DOES MY HAM COME FROM?

Ingredientes: Perna de cerdo, sal yodada, se de cloruro, azúcar, condimento.

Is this consumer protection?????

= Ita

Producto empacado al alto vacío.





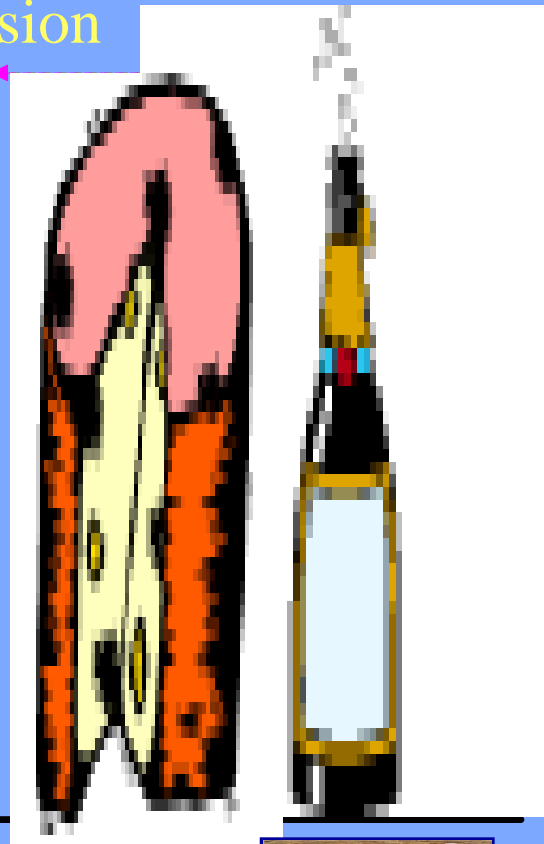
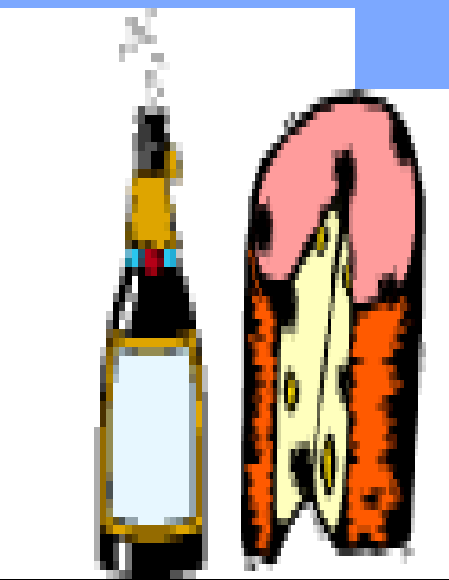
Protecting Geographical Indications...

TRIPs & EU: the effects of extension

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Protecting Geographical Indications...

One remaining question:

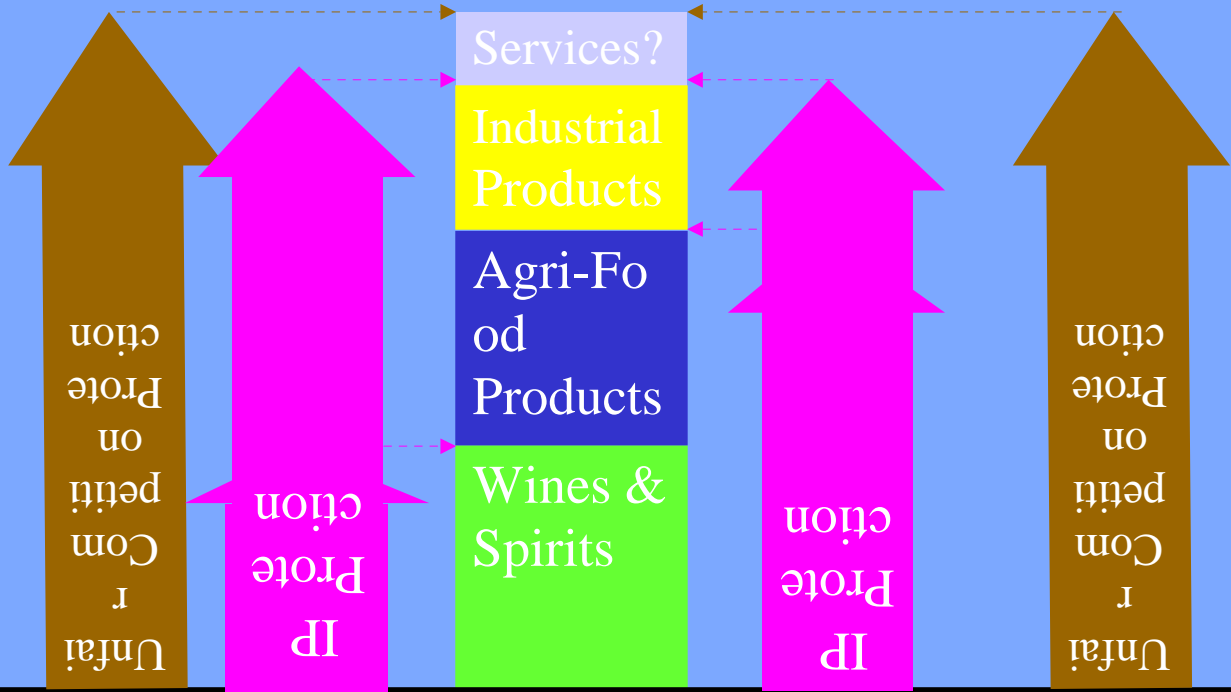
Should we extend GI protection to non-agricultural products (e.g., carpets, pottery, lacery)?





Protecting Geographical Indications...

TRIPs & EU: comparing levels of protection & coverage



European Union





Protecting Geographical Indications...

What's in it for developing countries?

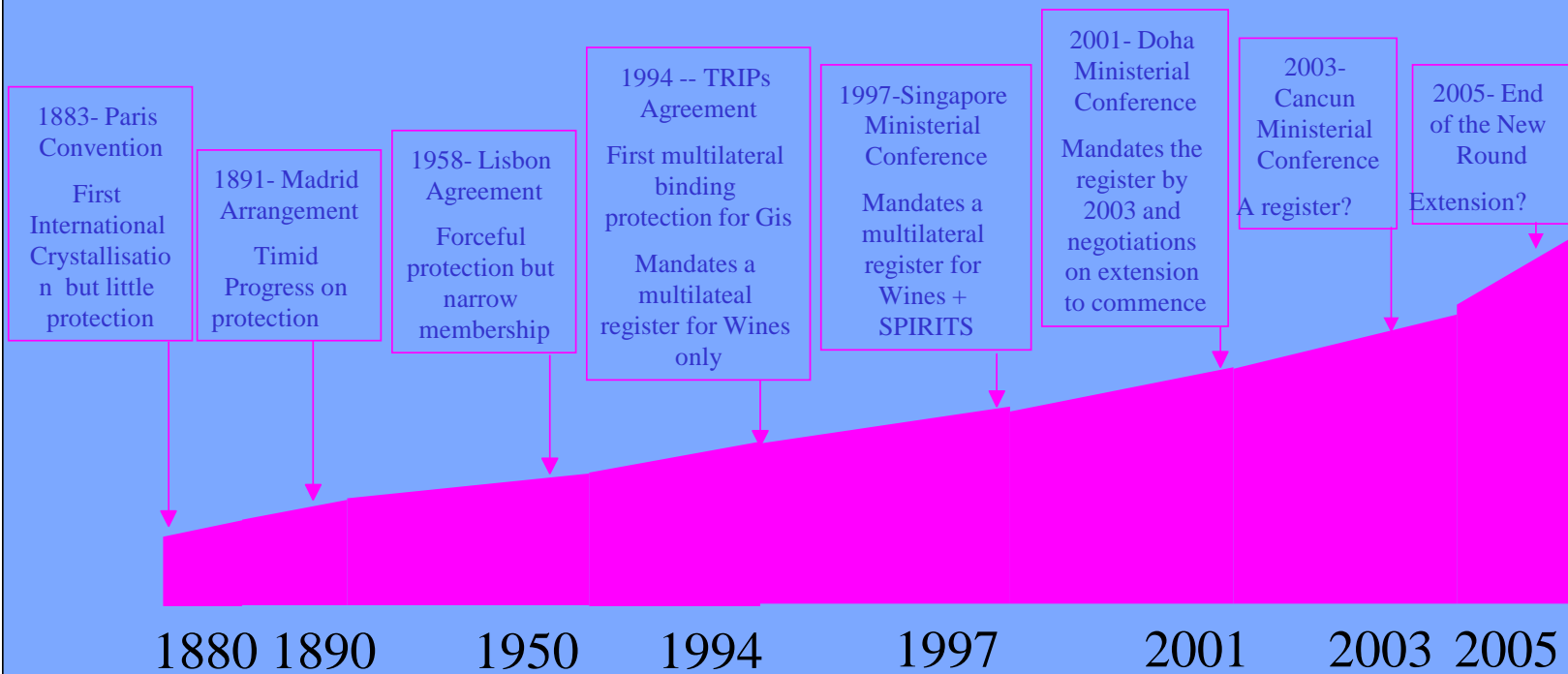
- Higher protection for wines and spirits mostly benefits the developed world. This needs to be rectified.
- Increased rents coming from GI protection promote agricultural and industrial development.
- GIs are fair. Anyone can use them and cannot be removed from the territory by any corporation.
- They promote trade and help developing countries' products make inroads in foreign markets.
- They can provide some protection to products which incorporate traditional knowledge.
- They can even promote tourism and other geographically -related activities.





Protecting Geographical Indications...

... a long standing European ambition.





Protecting Geographical Indications...

THE END



