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GEOGRAPHICALINDICAT IONSANDINTERNATION ALTRADE -INDUSTRY
PERSPECTIVES

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Introduction

1. My participation in this Symposium has been sponsored by the Australian dairy industry which has joined with the dairy industries of Argentina, Brazil, Chile, New Zealand and Uruguay to form the Global Dairy Alliance.
2. The Alliance is working for the liberalization of world dairy trade through the WTO Doha Development Agenda negotiations and has adopted a position on Geographical Indications that could be summarized as recognition of the established role for GIs and acceptance of the degree of protection accorded them by the TRIPS Agreement to opposition to the extension of TRIPS Article 23 to products other than wine and spirits willing to accept the creation of a voluntary multilateral register of GIs as an information database without legal effect in the national jurisdictions of WTO member countries. The Australian dairy industry shares a concern with our partners in the Global Dairy Alliance about the potential for proposed changes to the WTO rules on GI to stifle world -market competition and trade in food products.
3. Specifically we are opposed to the creation of new WTO provisions that change either the scope or coverage of GIs beyond the present provisions of the TRIPS Agreement:
 - Scope: the creation of an 'automatic' multilateral system of GI registration, through the mechanism of a multilateral register, would undermine the necessarily territorial system of GI registration and threaten our use of dairy product names that we consider generic in our own markets and that are considered generic, up to now, in third markets.
 - Coverage: the extension of Article 23' -style GI registration to products other than wine and spirits would endanger continued trade in products that can be legitimately described in our own markets and elsewhere as, for example, 'parmesan -style' or 'swiss -style' or 'italian -style' (cheese) or 'greek-style' or 'hungarian -style' yoghurt.
4. The Australian dairy industry -- which supplies some 16% of world dairy exports -- has not registered any GIs and is unlikely to do so in future. There are four reasons, which I suspect we share to a degree with our partners in the Global Dairy Alliance.
5. First, although consumer -pack product makes up more than 1/5 of Australian dairy exports by value, the industry is strongly focused on the export of dairy ingredients including milk powders, cheeses and mixtures and on supply to the food service industries of Asia, the Middle East, and some markets in the Americas and Europe. This is a profitable business strategy that is based more on value (meeting customer needs at the best price) than on brand - franchise. GI offers no particular advantage in this important segment of the dairy market.
6. Second, most firms in the dairy industry, whether they are commodity exporters or not, are likely to consider GI less valuable than trademarks. Both classes of protected marks require investment by their owners in order to become significant assets but a trademark is a more attractive class of investment asset because it is:
 - assignable, making the potential asset more 'liquid' and useful
 - a private asset rather than a collective asset, as is the case of GIs

7. Third, trademarks are more suited to global food industry production styles. It has become an article of faith with the proponents of GIs that they are serving and strengthening consumer demand for guaranteed local production linked to a product quality guarantee based on traditional production methods. There may be some truth in this: there has probably always been a market for foods imbued with a strong local style and particular regional character and that market may be growing, along with the rest of the market. But it is far from the whole story about the food industry and, in fact, is only a tiny part of that industry. By far the majority of the food industry, measured by value, has become "globalized" with enormous benefits to the consumer and the producer. Food styles and tastes are accessible to consumers in every part of the globe; consumer options are no longer dictated by location. Production options are no longer dictated by location. The production of every sort of food takes place close to the consumer, taking advantage of ingredients that are drawn from around the globe with major benefits for the consumer in the form of lower costs and better quality. As with every other form of globalized production (goods or services) there is an increasing level of international 'intra-industry' trade in ingredients (edible proteins, fats, flavors and other components) as well as whole fruits, vegetables, meat, fish and spices. Trademarks -- possibly the name of the firm rather than the name of a product -- are suitable in this global industry: GIs, tied to location, much less so, if at all. This is a particularly important consideration for firms from Global Dairy Alliance countries that own global brands and that process milk in several different countries using those same brands. The global industry, nevertheless, sits comfortably alongside these segments of the industry that focus on specific regional production for end consumption. There is no doubt that consumers' options are enriched by these foods.

8. Fourth, GIs don't 'fit' well in competitive market environments such as those in the Global Dairy Alliance countries. Typically, our agricultural markets are free of administered pricing and production controls. Success depends on sound business strategies and competition among firms. GIs are typical of a regulated environment where control on prices, production and other forms of market competition put a premium on lobbying and rent-seeking as a means of extending market share. This character is particularly apparent in the way that the collective GI asset is created.

11. Unlike trademarks that are owned principally by persons (firms), GIs are owned by associations and producer groups, that are coalitions of firms who have decided to put aside competition among themselves in order to pursue a mutual interest in securing the rents due to the monopoly right. These coalitions are rewarded and sustained by the monopoly rents and by the inspection and control powers that they acquire (e.g. under the PDO or PG I regulations in Europe). The origin matters: experience tells us that the interests of the consumer are rarely quickly forgotten by the participants in these coalitions.

12. We can safely predict that the members will spend most of their effort on lobbying for the extension of the monopoly (e.g. by extension of the GI) rather than on the competitive behavior that typifies independent firms. Indeed, it is their current ambition to extend their monopoly rents that seem to be driving the demand for changes to the WTO rules. We recognize that, despite these limitations, GIs are considered appropriate in some jurisdictions and that they have been recognized for many years in some of the multilateral IP treaties. We could live with them, in the same sense that a global food industry can live comfortably with local and traditional food production were it not that the administration of GIs and the attempt to give them priority over important objectives and principles of the global trading system threatens our trading interests and even some aspects of the system itself.

13. I would like to spell out our concerns in more detail.

The multilateral register

14. We are concerned that the implementation of the multilateral register is being used by some WTO Members as a 'backdoor' to the global extension of specific protected marks, in contravention of the territorial nature of IP protection, threatening competitive opportunities for global food industries. I believe that the EU also has ambitions to "multilateralize" its protection of processes and production methods using the same route.

15. As exporters to the global market, we support the creation of regimes for the *harmonization* of national standards including standards of IP protection. But we do not consider that the fundamental choices to be made in these areas can be taken out of the hands of national governments. We do not support the *imposition* of one set of standards on all WTO members. Each government necessarily establishes its own IP protection regimes and detailed requirements for registration in accordance with national choices about the balance between potentially conflicting interests such as the society's interest in:

- fair competition among firms
- the reliability of consumer product information and the inducement to firms that might favor greater reliability
- the creation of secure property rights

16. To attempt to remove these choices from national jurisdiction by a multilateral register with automatic legal effect would positively harm the competitive environment in the course of making a monopoly right justified by purely *local* considerations into a *global* monopoly. We do not agree that the Article 24 exceptions provide sufficient safeguards, particularly for smaller economies, against the overriding of their local jurisdiction in the registration of marks under a compulsory multilateral register. Because of the unique 'bullying clause' in Article 24.1 ("...The provisions of [the exceptions] shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral agreements.") the exceptions depend, ultimately, on being able to withstand bilateral pressure from the world's largest trading bloc.

17. There is some evidence that the ambitions of the EC, in particular, travel well beyond securing GI as nationally -recognized marks of origin to the registration and protection of processes and production methods (PPMs) in ways that could constitute significant barriers to trade. The EU regulation on protected names provides for the registration of products that employ some processing or production method peculiar to a region (even if the raw materials are not from that region).

18. The protection of processing and production methods opens up the possibility of discriminating between imported products on the same basis as the EU now discriminates between products from countries on the basis of their 'reciprocation' of GI registration. Agriculture Commissioner Franz Fischler has recently linked GIs and PPMs in describing them as the future focus of agricultural policy in the Community (Speech at Corfu on 13 May, 2003):

"Anagri cultural policy not centred on quality is inconceivable today. In shaping our common agricultural policy, in the past we have already developed an array of quality assurance measures, for example to protect consumer interests and improve food safety, protect intellectual property and know-how and provide farmers with a better return for their work.

But today that is no longer enough. These days consumers expect the food that they buy not just to taste good and look perfect. They are looking for products with special quality characteristics such as specific geographical origins or particular production methods. Free-range eggs and organic products spring to mind. As you know, we adopted special legislation for labellings such quality criteria in the 1990s. But we should not forget that the production methods required for these quality marks often entail higher costs or lower yields, which up to now have not always been adequately compensated by the market. Therefore it is right that only producers who are willing to sign up to such quality rules should continue to benefit from public funding."

19. The GATT, which permits many types of import restriction, forbids barriers that distinguish between imports on the basis of PPMs (other than by narrowly defined, non-discriminatory exceptions related to e.g. protection of scarce natural resources). It does this because distinctions between 'like' products on the basis of the way in which they were produced nullify the benefits from trade.
20. Comparative advantage, reflected in production methods that rely on using competitively priced production inputs and methods, flourishes only when 'like products' are allowed to compete fairly and are guaranteed national treatment.
21. Regulations that favor particular PPMs carry great dangers, too, for the terms of domestic competition and for innovation. There is good reason to argue that they should be used only when necessary to achieve significant overriding goals (such as the avoidance of unacceptable environmental or health risks). It may well be true, as the Commissioner says, that many consumers are now strongly interested in PPMs (it is hard to disagree with the implication that PPMs predominate consumer concerns). But it is disturbing to hear him give such prominence to these issues in the future agricultural policies of the Community without regard to the broader public interest in trade and competition.

Extension of GIs

22. There are two principal reasons for our opposition to negotiations on the extension of the product coverage of GIs under Article 23.
23. First, some proponents of extension (particularly in Europe) have ambitions to extend GIs that are unbounded by what seems to be good public policy considerations. We are not convinced that there is sound argument for the registration of *any* Article 23 GIs. The creation of private monopoly rights in a name protected by extended GI rights is not balanced by any benefits to the society because the issue of consumer benefit (information) is not assessed at the time of registration. In other words, the legally protected competitive opportunity created by the mark is a 'gift' to the producers without any offsetting social benefit. This is poor public policy and bad for competition. We are not aware of *any* circumstances in which a producer's rights were not fully protected under a properly

administered "Article 22" -style GI in which the producers invested effort and promotional collateral. There is no need for extension.

24. Second, we have already seen the consequences of extension by observing the policies of the EU that are trade -restrictive, discriminatory and likely to shrink world market opportunities. Europe already grants all PDOs and PGI's protection that is independent of a consumer-benefit test --in other words, the EU has already extended TRIPS Article 23 protection to all GIs within its own jurisdiction (in addition to wines and spirits). Council Regulation (EEC) No. 2081/92 of 14 July 1992, Article 13.1 provides that registered names shall be protected against "any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar. "Exporter to the EU may make use of a protected name such as e.g. "Australian parmesan" or "Argentine feta" (as they would be entitled to do if Article 22 style protection applied to goods other than wine and spirits) even if the exporter takes care to inform the consumer of the true origin of the product. Because it exceeds the standards of protection described in the TRIPS agreement, extension of GI protection to products other than wine and spirits represents a barrier to trade that *more restrictive than necessary* unless it is shown to serve some overriding purpose. There is no evidence that it does. Although the EU has an arguable right to extend GI protection on its own market, we question whether such regulations, which amount to a labeling restriction that exceeds international standards (as reflected in Article 22 of TRIPS for products other than wine and spirits), are justified by a necessity test. As normally required, for example, by the WTO Agreement on Technical Barriers to Trade (TBT).

25. The TBT Agreement says that labeling regulations should not be more restrictive than necessary to achieve legitimate objectives taking account of the risks posed by *not achieving* those objectives. It is not at all clear whether the EU has ever objectively *evaluated* this risk (i.e. that the consumer would be misled). Despite the urgency of its demands for the extension of the WTO rules on GI, the Commission acknowledges that it still does not have even the most basic data on the use of its own GI, such as *the value of products sold in the EU using these marks*. EU demands for the reciprocation of the practice of extension in its own market amount to unjustified trade discrimination which, if it succeeds, will result in the spread of these barriers and the *narrowing of world markets*. In its zeal to bring global support for extended protection, the EU discriminates in the protection of foreign GI in a way that we consider is incompatible with the EU's MFN obligations. The EU does not reciprocate the protection of foreign GI in its market (see the provisions of Council Regulation 2081/92 Article 12) unless the country of origin offers an 'equivalent' level of GI protection. That is, *has accepted and adopted the practice of Article 23 -style GI extension to all product groups and reciprocates the protection of all 700 EU registered GI's*. We do not consider that there is any WTO justification --for example in the TRIPS Agreement --for this discrimination between trading partners and look forward to a resolution of the matter in the current dispute between the United States and the EU (the 'Budweiser' case).

26. The doubtful EU demand for reciprocity of their domestic regulation highlights a danger in extension that must concern all food exporters that depend on global market access. If the EU is able to use leverage under the 'bullying clause' to secure equivalent protection (ie. Article 23 -style, extended protection) for names it has registered then Australian dairy exporters face the real danger that words such as 'parmesan' or 'feta' or 'brie' would become unavailable in third country markets, even when modified by phrases that specify the true origin of the product.

Harmonized on't dictate

27. Finally, a more general point about how these debates fit into the management of the 'global commons' that is the multilateral trading system. WTO, which (with the possible exception of the TRIPS Agreement), has never attempted to erect specific policy standards but has always been open to the wide range of national policy choices, has no role in favoring one approach to competition over another. Brand -franchise based on protected product-marks -- whether a trademark or a GI -- is not the only source of competitive 'leverage' in the marketplace.

28. In globalized industries where intra -industry trade is common, product -marks attach to only a small fraction of international exchange by volume or value. Most producers of goods and services rely on means other than product -marks to secure their place in the market including customer relationships (where there is little likelihood of consumer confusion), reputation within an industry, market segment or 'niche' that may or may not be capitalized in a registered brand, competitive price/quality/characteristics position. The role of WTO is to manage conflicts among governments in the way in which they regulate markets and to reduce the opportunity for conflict by minimizing regulatory burdens and taxes on trades so that trade will grow and the benefits of trade will be more widely spread.

29. We should by all means attempt to harmonize, or at least mutually respect differences in, the balance that national governments strike between the interests of the society in maintaining a competitive market and in creating incentives for the continuation of unique local production styles.

30. But to do this by imposing specific national provisions on the global commons will reduce and impoverish opportunities for growth and innovation in global markets

Conclusion

31. The global dairy market is already one of the most restricted and distorted world markets for any goods. A tariff is a slow cut and a quota is open up kilo -by kilo, we are naturally on our guard against further barriers to competition in the world's major market that will block entry for our products or reduce the value we can achieve for our customers and for ourselves from doing business globally.

32. We are always ready to work with governments toward rules that promote fair international competition and we are keen to find mutually beneficial ways to arrive at those ends by negotiation, e.g. the harmonization or even homologation of standards in different national jurisdictions. But there has to be some evidence of mutual gain before there is any

prospectofagreement.WecannotseethatprospectinanyextensionofGISorinarule
makingmultilateralregister.

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[Annexfollows]



Geographical Indications in global dairy trade

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Summary

- Global dairy alliance
- Why we don't use GIs
- Multilateral register
- Extension of GIs
- Concerns about future competition

Global Dairy Alliance

Reform of dairy markets
Recognize established role of
GIs

Oppose **extension** and
registration with legal effect



value of gis



No advantage
in most trade



Less valuable
than trademarks



Less compatible
with competition



Less suitable to
globalized market

○ ● ● multilateral register

1

IP standards must reflect national choices

2

Register with legal effect would harm competition



○ ● ● multilateral register

3

Art 24 safeguards
are not effective

4

We must not allow
new barriers based
on PPMs



○ ● ● extension of gis

- No convincing need for Article 23 protection
- Consequences of EU policies
 - More restrictive than necessary
 - discriminatory

globalcommons

- WTO allows a wide range of policy choices
 - one exception, TRIPS
- No role in enforcing one approach to competition over another
 - certainly not competition restrictions

○ ● ● harmonizedon'tdictate

Thank you

for your attention

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