



Criteria for U.S. Geographic Indications

Tara Capsuto
Berkeley Law
May 6, 2012

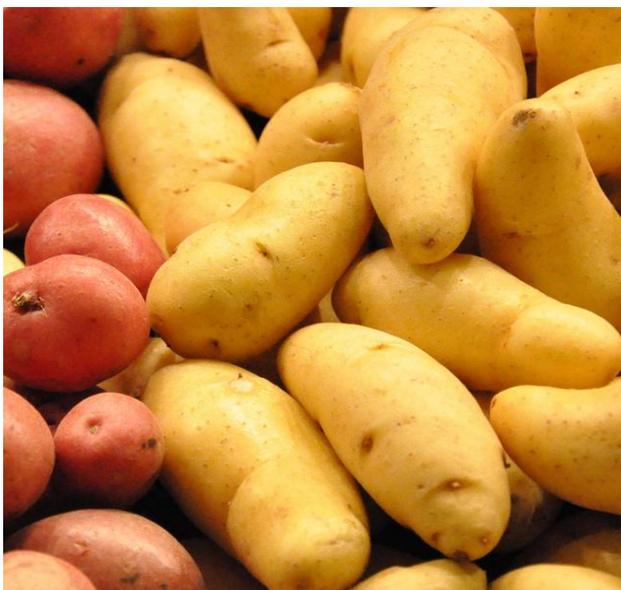


TABLE OF CONTENTS

INTRODUCTION	1
Chapter 1: CURRENT LANDSCAPE OF GEOGRAPHIC INDICATIONS.....	2
TRIPs: The Challenge	2
Overview of U.S. Geographic Indications.....	3
Lessons from the EU and India	6
EU	6
India.....	7
Chapter 2: CRITERIA FOR U.S. GEOGRAPHIC INDICATIONS	9
Explanation of Criteria	12
Product uniqueness.....	12
Production / processing / preparation	12
Geographic area of production	13
Reputation	14
Distinctive quality or characteristics: natural factors	15
Distinctive quality or characteristics: human factors.....	16
Proof of origin.....	16
Chapter 3: A PROPOSED INSTITUTIONAL STRUCTURE: CERTIFY THE CERTIFIER.....	18
Chapter 4: ISSUES FOR FURTHER RESEARCH.....	19
CONCLUSION	19

INTRODUCTION

This paper begins by providing a brief overview of the landscape of GIs globally and within the U.S., including lessons from the EU and India. Chapter Two proposes specific criteria for evaluating GIs. Chapter Three then proposes an institutional structure for implementing the U.S GI system, which draws on the successful model for organic products. Given the enormity of this topic, this paper by no means covers all possible grounds, so Chapter Four lays out the most pressing issues for further research. Although many of the examples used throughout this paper are food products, and the criteria are influenced by food and drink-specific EU criteria, the criteria presented here are intended to be applied to other types of products with some adaptation.

Chapter 1: CURRENT LANDSCAPE OF GEOGRAPHIC INDICATIONS

TRIPs: The Challenge

Geographic indications (“GIs”) are defined in Article 22 of the World Trade Organization’s (WTO) 1995 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), as indications “which 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 origin.”¹ A GI signals a link between a product and its specific place of origin and the unique production methods and distinguishing qualities of the product. While the TRIPs Agreement was an important step in GI protection, it left unresolved two major sets of issues.

First, TRIPS does not have a mechanism for enforcement, instead, members must determine the appropriate method of implementing the Agreement within their own legal systems.² Second, Article 22 does not provide specific criteria for how a GI is defined. Countries may establish a GI on rather loose criteria: reputation or a characteristic “essentially attributable to its geographic origin.”³ Consequently, a patchwork of national and regional systems has emerged that employ different criteria, legal standards, registries, and means for enforcing GI protection.

1 Uruguay Round Agreement: TRIPS, Section 3, Article 22: *Protection of Geographic Indications*. Accessed http://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm

² Ibid., Article 1.

³ Ibid., Article 22, Section 1.

Overview of U.S. Geographic Indications

Currently, the U.S. uses its administrative trademark structure already in place to register GIs, rather than using a *sui generis* system.⁴ The same governmental authority, the United States Patent and Trademark Office (USPTO), processes applications for GIs and other types of intellectual property.⁵ U.S. geographic names or signs can be protected through registration as collective marks, trademarks, and certification marks, or they can be protected under the common law and need not be registered.⁶ For example, in *Institut National Des Appellations v. Brown-Forman Corp.*, the Trademark Trial and Appeal Board (TTAB) held that Cognac is protected as a common law (unregistered) certification mark in the U.S.⁷

In reaching its decision, the Board applied the U.S. Trademark standard that Brown-Forman's use would create a "likelihood of confusion" amongst consumers. The Board found that "Cognac" is a valid common law regional certification mark, because purchasers in the United States primarily understand the "Cognac" designation to refer only to brandy originating in the Cognac region of France, and because the designation, whose use is controlled and limited by the *Institut National Des Appellations d'Origine*,

⁴ International Trademark Association. "Geographic Protections." Last visited: April 22, 2012, <http://www.inta.org/TrademarkBasics/FactSheets/Pages/GeographicalIndicationsFactSheet.aspx>.

⁵ USPTO. "Geographical Indication Protection in the United States." Last visited: April 22, 2012, http://www.uspto.gov/web/offices/dcom/olia/globalip/pdf/gi_system.pdf

⁶ *Institut Nat'l des Appellations d'Origine v. Brown Forman Corp.*, 47 USPQ2d 1875 (TTAB 1998).

⁷ *Ibid.*

meets certain standards of regional origin.⁸ The U.S. should continue to employ the “likelihood of confusion” standard for evaluating potential GIs.

Neither trademarks nor collective marks seem particularly well aligned with the TRIPS definition of GIs, and the objectives for protecting GIs. Trademarks generally point consumers to a particular commercial source that offers the product, rather than a place of origin. The Lanham Act defines a trademark as “any word, name, symbol, or device, or any combination thereof...used...to identify and distinguish...goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.”⁹ Under this broad definition, it’s clear that many GIs that qualify as trademarks would not meet the TRIPS GI standard.

Collective marks, in contrast, are trade or service marks owned by associations for use by their members.¹⁰ The marks indicate origin in members of a group rather than origin in any one member or party.¹¹ Neither the collective nor its members necessarily use the collective membership mark to identify distinct characteristics of the products they sell; rather, the sole function of such a mark is to indicate that the person displaying the mark is a member of the organized collective group.¹² Consequently, collective marks are often criticized as primarily a marketing device.

⁸ Lynne Beresford, “Geographical Indications: The Current Landscape,” *Fordham Intellectual Property, Media and Entertainment Law Journal*, Volume 17, Issue 4, Article 3 (2007): 982.

⁹ “Construction and definitions; intent of chapter,” U.S. Trademark Act 15 *U.S Code*, § 1127, 2006.

¹⁰ *Ibid.*

¹¹ International Trademark Association. “Geographic Protections” <http://www.inta.org/TrademarkBasics/FactSheets/Pages/GeographicalIndicationsFactSheet.aspx>. Last visited: April 22, 2012

¹² *Aloe Creme Laboratories, Inc. v. American Society for Aesthetic Plastic Surgery, Inc.*, 192 USPQ 170, 173 (TTAB 1976).

Certification marks, on the other hand, are much better suited to protect GIs. Certification marks serve to distinguish goods or services that are certified with respect to origin, material, mode of manufacture, or other characteristics.¹³ The Idaho Potatoes GI, for example, is protected as a certification mark, and probably the best organized grower's association in the U.S.¹⁴ The name denotes a qualitative link between the potatoes and the place where they are grown. However, many of the GIs currently registered as certification marks may not qualify in a multilateral registry, if one is to be established. This is especially true for certification marks registered based on "intent to use," meaning the product does not yet have any reputation, and does not need to possess any particular quality characteristics.¹⁵ Given the entrenchment of U.S. trademark law and private law generally in the U.S., a GI certification process that works within the existing US trademark law is the most viable option.

This paper proposes a set of criteria for establishing a GI in the U.S. as a separate category of certification marks. If GIs are included as a separate class of certification marks within the U.S. Trademark system the entire system could be easily searchable, which would produce efficiency gains for all parties involved, and provide the necessary information for stronger protection of GIs.¹⁶ The standards proposed here would bring U.S. GIs into conformity with the TRIPs standard, and more in line with what is recognized in India and the EU.

¹³ Ibid.

¹⁴ Mendelson, Richard. "Protecting Products of Place," Class at Berkeley Law School, January 26, 2012.

¹⁵ Scott Gerrien (Intellectual Property Attorney at Dickenson Peatman & Fogarty), interview by Tara Capsuto, March 15, 2012.

¹⁶ Canada has integrated GIs into its trademark system; this could be a useful case study for the mechanics of integration.

Lessons from the EU and India

While it is important for the US to develop its own criteria and registry, adapting features from the EU and Indian GI systems sets up the U.S. system for easier integration into a multilateral registry in the future. Chapter Two of this paper, which proposes specific criteria, incorporates some aspects of the Indian and EU systems, as well as features of Quebec's GI system.

EU

The EU follows a regional *sui generis* system of recognition and protection for two tiers of GIs: Protected Designation of Origin (PDOs) and Protected Geographic Indication (PGIs). Both categories require that a product name must be “the name of a region, a specific place, or, in exceptional cases, a country used to describe an agricultural product or foodstuff.”¹⁷ The EU also designates “traditional specialty guaranteed” (TSG) products, which must be highly distinguished from similar products or food in the same category based on their traditional character, either in the composition or means of production and used in the local, national or international markets for an extended period of time, at least for 25 years.¹⁸

PGIs must meet requirements about origin and either quality, reputation, *or* other characteristics attributable to the origin; and either production *and/or* processing *and/or* preparation in the geographical area.¹⁹ PDOs, on the other hand, are required to meet criteria that the origin, quality or characteristics of the product are essentially or

¹⁷ European Commission, Agriculture and Rural Development. “Geographical Indications and Traditional Specialties.” Last visited: May 3, 2012, http://ec.europa.eu/agriculture/quality/schemes/index_en.htm.

¹⁸ Ibid.

¹⁹ Echols, Marsha A., *Geographical Indications for Food Products* (Kluwer Law International, 2008), 118-19.

exclusively due to inherent natural and human factors; *and* production, processing, *and* preparation take place in the proposed GI area.²⁰ Applications for PDOs contain extensive information relating to historic, natural, and human factors that link the product to region. In comparison, a PGI application may contain only information establishing the connection between product and place, a description of processing technique, and an overview of the product's reputation.²¹

India

India's Geographic Indications of Goods Act in 1999 established an elaborate legal system to recognize GIs at home and to demand recognition abroad.²² Applicants for a GI in India must show that the geographic indication serves to designate the goods as originating from the concerned territory of the country region and possess specific quality, reputation or other characteristics due exclusively or essentially to the geographical environment, with has inherent natural *and* human factors.²³ (emphasis added). Applications must include the "human creativity" related to the unique features of the product as well as historical records tracing the origin of the product. Applicants must also include a map of the production area, although the application manual does not specify a limitation on the size of the area that can be delineated.²⁴ Finally, GIs must also set up and maintain an inspection system to ensure the quality, reputation, and other

²⁰ Ibid., 120.

²¹ Based on analysis of applications in the EU Database of Agricultural Products and Foods (DOOR) for Armagh Bramley Apples (PGI); Newmarket Sausage (PGI); Scottish Wild Salmon (PGI); Vinagre de Jerez (PDO); Peperone di Pontecorvo (PDO)

²² Echols, *Geographical Indications for Food Products*, 109.

²³ The Geographical Indications of Goods (Registration & Protection) Act, 1999. Last visited: May 4, 2012, http://ipindia.nic.in/girindia/GI_Act.pdf.

²⁴ Manual of Geographic Indications Practice and Procedure. Last visited: May 4, 2012, http://www.ipindia.nic.in/girindia/GI_Manual_27July2011/Html%20and%20pdf/Manual%20of%20Geographical%20Indications%20Practice%20and%20Procedure%20%20pdf/Manual%20of%20Geographical%20Indications%20Practice%20and%20Procedure.pdf

special characteristics of the product are maintained. It's not clear whether all food products are subject to an organoleptic test, but the GI Registry generally requests product samples.²⁵

The EU and India share two key features that the U.S. should consider adopting. First, in addition to having a specific set of criteria, both systems publish applications for GIs: India publishes a Geographic Indications Journal, and EU publishes applications in the Official Journal of the European Union. These publications serve the dual purpose of making the criteria transparent, and allowing for applications to be contested.²⁶

Second, the U.S. should agree to extend Article 23 of TRIPS to other products beyond for wine and spirits to prohibit the use terms such as "kind," "type," or "style" in connection with place of origin. India has already implemented this standard within its own system and the EU has been a strong proponent of the extension of Article 23 in international negotiations.

²⁵ Richard Mendelson, "Geographical Indications in India," 2011, 6.

²⁶ Ibid.

Chapter 2: CRITERIA FOR U.S. GEOGRAPHIC INDICATIONS

TRIPs Section 3, Article 22: Protection of Geographical Indications

“Geographical indications are, for the purposes of this Agreement, indications which 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 origin.**”

The standard for GIs proposed here is similar to the EU’s PGI standard, with some adjustments to account for major differences in the U.S. market, as well as to incorporate the role of AVAs and political appellations. Additionally, some of the requirements are adapted from Quebec’s Application Guide for PDOs and PGIs.

Unlike the TRIPS definition, reputation alone should not be sufficient to establish a GI in the U.S. The dominance of brands in the U.S. would make this too problematic – many products have built a reputation based on powerful marketing campaigns, without necessarily embodying a true connection to geography. Instead, what’s proposed here is a broad standard for reputation that encompasses a range of possible indicators, which must be established in addition to either human or natural factors. While some products may qualify under natural *and* human factors, as required in India, products need only one or the other to qualify as a GI. In the criteria that follow, there is a notation where applicable, indicating what source(s) influenced the particular criteria. It is not necessary to meet all of the standards in the table below; the next subsection addresses how potential GIs can meet different combinations of the criteria to qualify as a GI.

Criteria	Description of Criteria
<p>Description of product uniqueness</p> <p><i>Influenced by the EU's and Quebec's PGI & PDO standards</i></p>	<ul style="list-style-type: none"> • Specific product characteristics should include: size, shape, color, texture, aroma and flavor for food and beverages • Application should differentiate proposed-GI product from similar products currently on the market based on product description, preparation methods, local reputation and tradition, distinguishing final characteristics, and perceived quality
<p>Percentage produced (grown), processed, or prepared or in the region</p>	<ul style="list-style-type: none"> • 100% of either production and processing or production and preparation must take place in the area (rebuttable presumption)
<p>Geographic area of production</p> <p><i>Influenced by interviews; Quebec's PGI & PDO standards</i></p>	<ul style="list-style-type: none"> • Geographic area is delimited by natural or human factors • Smallest possible geographic area: a municipality; no maximum geographic area • Does not necessarily need to be a contiguous area
<p>Reputation</p> <p><i>Influenced by EU PGI applications</i></p>	<ul style="list-style-type: none"> • Controlled test of consumers able to distinguish between proposed GI product and generics (reputation, appearance flavor, functionality) –or– • Consumer knowledge of a connection between product and place of production/processing/preparation –or– • Evidence of reputation using other flexible indicators (described below) • This is similar to the reputation prong of PGIs
<p>Distinctive quality or characteristics of the product due to human or natural factors</p> <p><i>Human factors: influenced by Indian GI applications and Quebec's PGI & PDO standards</i></p> <p><i>Natural factors: influenced by EU PDO applications</i></p>	<p>Human Factors</p> <ul style="list-style-type: none"> • For all products: specific know-how tied to the geographic area and advantages of particular production techniques • For crops: detailed standards for growing, storage, and packaging • For animals: breeding, slaughtering and cutting specifications • For processed products and handicrafts: raw material sources, processing standards, and specific techniques employed
	<p>Natural Factors</p> <ul style="list-style-type: none"> • Climate, soil type, vegetation, elevation, air and water quality • A link between the product's uniqueness and the natural environment (essentially, <i>terroir</i>)
<p>Proof of origin (historical records)</p> <p><i>Influenced by Quebec's PGI standards</i></p>	<ul style="list-style-type: none"> • Key elements of the product's history including proof of the product's use and notoriety • Where applicable, description of the product's first utilization • Ten years or longer in production • History of production longer than ten years may overcome weaknesses in other categories

Explanation of Criteria

Product uniqueness

The description of the product's uniqueness should include characteristics including but not limited to: size, shape, color, texture, and aroma and flavor for food and beverages. Additionally, the application should reference similar products currently on the market, distinguishing the description, preparation methods, local reputation and tradition, final characteristics, and perceived quality. Where relevant, the product description should include specific chemical characteristics.

Production / processing / preparation

Rather than production *or* processing *or* preparation, a U.S. product of origin should be required to have production and processing or production and preparation take place in the named area. The purpose behind this strict standard is to encourage production, processing, and preparation to be done together, for purposes of regional economic development. If the U.S. followed the PGI “or” test there is a risk that GIs will not promote value-added production, which is essential to rural development. The EU has institutional safeguards in place (e.g. the Common Agricultural Policy), which protects the agricultural sector; the U.S. G.I system must account for a lower level of protection in the U.S. However, the requirement for production and processing or production and preparation should be set as a rebuttable presumption to allow potential GIs to make a case for why the value chain must be separated (e.g. constraints in land, skill, or manual labor) – reasons which may be particularly salient in smaller GIs.

Existing certification marks that do not meet the production and processing standard could be grandfathered in, on a case by case basis. The Wisconsin cheese

certification mark, for example, certifies that the cheese is 100% cow's milk natural cheese produced in the state of Wisconsin *or* processed cheese made exclusively with cow's milk natural cheese produced in the state of Wisconsin.²⁷

Geographic area of production

Choosing the boundaries of a GI involves an interplay between ecological factors, cultural factors, and reputation.²⁸ While there is not information readily available on the size of GI-delimited areas in the EU or India (suggesting perhaps there are no hard limits), there are vast differences in the size of GIs around the world. In this proposed system, when a product qualifies under the “natural factors” standard because its uniqueness derives from *terroir*, the relevant geographic area may be smaller than for a product qualifying based on “human factors.” The smallest geographic area the U.S. should recognize as a GI is a municipality, and there should be no maximum geographic area. The risk inherent in having no maximum area is that when a GI area is too large it becomes difficult to limit supply, or control the quality of production and character of the product.²⁹

Political boundaries should not play a determinative role in mapping GIs; instead, there must be an underlying reason for delineating the territory.³⁰ Colombia's Café Nariño coffee is an example of best practices in GI demarcation. The Colombian Coffee Federation recognized that the agro-ecological zones for flavor quality could stretch over the political boundaries of the Nariño province, and that a portion of the province may

²⁷ Gerrien, Scott. “Protecting Products of Place,” Guest Lecturer at Berkeley Law School, February 9, 2012

²⁸ Dr. Elizabeth Barham, interview, April 6, 2012.

²⁹ Christian Miller, interview, April 3, 2012.

³⁰ Dr. Elizabeth Barham, interview, April 6, 2012.

not offer such characteristics. Significant research was undertaken to determine that a particular product parameter, in this case a unique organoleptic quality, was contained within the proposed GI area.³¹

Reputation

Reputation is probably the most contentious standard and could be especially problematic in the U.S. where reputation and consumer awareness are heavily influenced by major brands. An additional obstacle to U.S. consumers associating products with their geographic origin is the incredibly low consumer knowledge of geography.³² Notwithstanding these challenges, reputation constitutes an important component of U.S. GIs and there are several ways in which producers can prove their product's reputation. Producers could be required to submit proof of reputation based on a controlled survey of consumers' perceived connection between the product and the geography, or a survey demonstrating that consumers can distinguish the product from its competitors, based on taste, appearance, or other functionality.³³ PGI applications suggest a usefully broad standard for reputation. The successful application for the Armagh Bramley apple for example, describes the reputation of Armagh County as the "Orchard County" due its famous apples, and highlights that local restaurants "actively promote dishes made from local Armagh Bramley apples." The application for Newmarket sausage describes its association with horseracing dating back to the 19th century, the fact that numerous

³¹ Daniele Giovannucci et al, *Guide to Geographic Indications: Linking Products and Their Origins* (International Trade Center, 2009), 97. <http://www.intracen.org/Guide-to-Geographical-Indications-Linking-Products-and-their-Origins/>.

³² Dr. Elizabeth Barham (Dept. of Agricultural Economics and Agribusiness, University of Arkansas), interview by Tara Capsuto, April 6, 2012.

³³ Christian Miller (Proprietor, Full Glass Research), interview by Tara Capsuto, April 3, 2012.

cookbooks and guidebooks mention the sausage, and that over 4,000 references in Google to Newmarket sausage. The U.S. should adopt similarly open-ended indicators for reputation.

There is much debate as to whether reputation should be based on knowledge of the product amongst connoisseurs or ordinary consumers. Recognition by connoisseurs can constitute part of the evidence of the product's reputation but it should not be sufficient that connoisseurs recognize the distinction between the GI product and a comparable non-GI product. For example, the application for Atlantic Wild Salmon boasts that the fish has been supplied to top chefs and restaurants and, "Forman & Field Salmon Smokers in London consider that when looking for the best quality salmon 'only wild Scottish salmon has the historic reputation' to match the quality being sought." The product's reputation amongst connoisseurs is connected to its history *and* the product has a reputation amongst customers (presumably average consumers) – this is a sensible and holistic standard. The way in which the U.S. could use reputation amongst connoisseurs would need to be similarly tempered if GIs are to meet the objective of providing valuable information to consumers.

Distinctive quality or characteristics: natural factors

Products qualifying under this standard must show a link between the product's uniqueness and the natural environment. This is essentially *terroir*, the special characteristics that geography, climate, soil type, vegetation, elevation, and air and water quality bestow upon a product. The application for Vinagre de Jerez, a PDO, includes details such as, "[t]he production area is characterized by flat or gently undulating land, with slopes between 10% and 15% where the prevalent soil type is known as albariza, a

soft, while loam soil...” U.S. products that aim to qualify as a GI based on natural factors should include similarly detailed information about the natural environment and its effects on the product.

Distinctive quality or characteristics: human factors

Products qualifying based on human factors should detail all distinctive qualities or characteristics due to human factors including specific standards for growing, processing, preparation, and packaging. A highly detailed description is especially important for locally made handicrafts. For example, the application for Indian Maheshwar sarees and fabrics details the specific grades of silk and cotton used, the source of the water used, and each minutiae of production. A description of local expertise related to the product should also be included.

Proof of origin

According to one author, “[c]ountries that stand to benefit the most from [GI] protection are those that have a long history of traditional industries, such as many European countries...”³⁴ While there may be some truth in that, a historical standard need not bar the U.S. from robust GI protection. Given the relatively nascent status of the U.S. compared to India or to countries in the EU, a historical requirement for GIs needs to be a much lower standard. Europe’s TSGs are required to be in production for 25 years; ten years is reasonable standard for U.S. products. Applications should include key elements of the product’s history, including proof of the product’s use and notoriety, a description of the product’s first utilization, and historical reasoning justifying the product and its

³⁴ C. Farley, “Conflicts between U.S. Law & International Treaties Concerning GIs,” *Whittier Law Review*, Volume 22, Issue 73 (2000): 74.

characteristics. Preferably the application would include citations and references making historical links between the product and the territory, with particular reference to any relevant human know-how.³⁵

³⁵ Conseil des appellations réservées et des termes valorisants. “Designation of Origin (DO) and Protected Geographical Indications (PGI) Application Guide,” Last visited: May 4, 2012, http://cartv.gouv.qc.ca/sites/documents/file/documents_formulaires/application_guide_D_O_PGI_v_1_5.pdf

Chapter 3: A PROPOSED INSTITUTIONAL STRUCTURE: CERTIFY THE CERTIFIER

There is, of course, a tension between accommodating a relatively complex and flexible set of GI standards, as this paper proposes and maintaining a lean institutional structure. An institutional structure is needed to: 1) identify and certify GIs; 2) monitor existing GIs; and 3) protect the integrity of GIs from infringing use by geographically mis-descriptive products. One possible solution to meet objectives one and two is to adopt the model successfully implemented to certify organic products in the U.S.³⁶

The process of organic certification is as follows. The USDA's National Organic Program regulates the standards for any farm, crop harvesting, or handling operation that wants to sell an agricultural product as organically produced.³⁷ To implement the standards, the National Organic Program accredits state, private, and foreign organizations and individuals to become “certifying agents.”³⁸ The certifying agents review applications for certification and can grant certification. The agents then conduct annual inspections to insure compliance and the USDA or the certifying agent can conduct unannounced inspections at any time. Essentially, the USDA’s National Organic Program sets the standards and certifies the certifier. One could imagine a similar governance structure for GIs, with the USPTO or the USDA certifying GI certifiers.

³⁶ Credit for the idea of using the organic “certify-the-certifier” process for GIs is due to a classmate in Richard Mendelson’s “Protecting Products of Place” class at Berkeley Law.

³⁷ USDA “Organic Certification.” Last visited: May 4, 2012, http://www.usda.gov/wps/portal/usda/usdahome?navid=ORGANIC_CERTIFICATIO

³⁸ USDA “National Organic Program.” Last visited: May 4, 2012, <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3004346&acct=nopgeninfo>.

Chapter 4: ISSUES FOR FURTHER RESEARCH

There would be of course be a substantial process to adapt GIs from their current status to the standards presented here. A catalogue of existing GIs in the U.S. is a necessary precursor to putting a new system into effect, and the criteria proposed here may need to be adjusted depending on how far already-certified GIs are from the proposed standards. While this paper certainly does not purport to have cover this topic exhaustively, it hopefully has provided a useful set of criteria for further exploration. While there are many directions to take this research, what follows are a few additional issues that could be pursued in subsequent research:

1. What is the cost of implementing the proposed “certify-the-certifier” model? The National Organic Program can be used as a correlate.
2. Should organoleptic testing (or other product testing) be conducted at the time of application for GI status and on an ongoing basis by certifiers?
3. Under the proposed scheme, should political appellations be afforded the same level of protection as those AVAs that do not qualify for a certification mark?
4. What exceptions need to be put in place for the proposed system to operate reasonably and effectively? For example, perhaps geographically descriptive marks that have been in use for 25 years or longer could raise a presumption of acquired distinctiveness, and be required to meet looser standard to establish a GI.

CONCLUSION

Establishing a system for geographic indications (GIs) in the U.S. is up against real challenges. First and foremost is fear from multinational food companies that GIs

will claw back terms they have used generically. Second, the sheer size of the country poses a challenge for delineating the appropriate size of GIs, and presents logistical challenges for maintaining and enforcing GIs. Third, the insufficient proof of the economic value of GIs in the U.S. makes it a difficult campaign.

However, there are real reasons to be optimistic about the future of GIs in the U.S. There is growing American interest in where food comes from. The GI movement and the local food movement are not entirely at odds. Both movements inspire people to consider the origin of their food and charge a premium for quality assurance and/or uniqueness. Given that in the near term the majority of Americans cannot feasibly buy most of their food locally, global GIs and local food can peacefully co-exist and build on each other's momentum. Additionally, several other movements are afoot in the U.S. that share common interests with GIs: food safety and traceability, rural economic development, environmental preservation, and the rise of organic food products. While this paper is only one step in identifying relevant criteria for U.S. geographic indicators, it has hopefully provided a useful foundation for further research.