

CHALLENGES FACING AMERICAN FOOD PRODUCERS IN PROTECTING THEIR IP IN OTHER JURISDICTIONS



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OVERVIEW

1. Status of Protecting GI eligible American Food Products in the US
2. Producers Realization That Systems Other than Trademarks Exist
3. Organization of Producer Groups
4. Organization of Groups of Producer Groups
5. Where to Next



U.S. TRADEMARK AND COMMON LAW

- ▶ US uses trademark system rather than a sui generis system
- ▶ Can be registered as collective marks, trademarks and certification marks
- ▶ Are protectable under common law as well
- ▶ No GI System in the U.S.



RECENT DEVELOPMENTS IN THE US

Academic Papers: some examples

- ▶ “*Criteria for US Geographic Indications*” by Tara Capsuto
- ▶ “*Geographic Indications in the US: Developing a Preliminary List of Qualifying Product Names*” by Richard Mendelson and Zachary Wood
- ▶ “*American Origin Products: Protecting a Legacy*”
E. Barham, Editor



OBSTACLES FACING CREATION OF A GI PROTECTION SYSTEM IN THE US

- ▶ Firm Opposition from Large Producer and Supplier Groups
- ▶ Extension Issue (From Wine & Spirits to Food and Other Products)
- ▶ Limited Participation to Date by US Producers who might qualify as GI's in the US



DOES SOIL MATTER?

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WA

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DOES CLIMATE MATTER?

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DOES LOCATION MATTER?

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REVIEW OF THE PRELIMINARY LIST OF GI CANDIDATES FROM MENDELSON

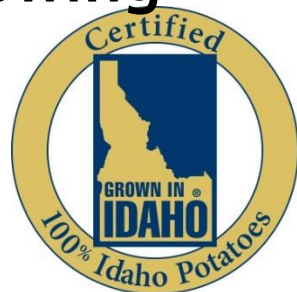
- ▶ Assumed that All American Viticulture Areas (AVAs) would qualify
- ▶ Reviewed 5,810 Registered US Certification Marks
- ▶ Identified Marks that might be geographically based for goods
- ▶ Narrowed to 319 certification marks



MARKS EVALUATED USING TRIPS

SECTION 3, ARTICLE 22:

- ▶ A good originating in a territory where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin
- ▶ Authors concluded that approximately 51 Candidate GI's were likely to meet the criteria for inclusion
- ▶ But, because there is no “Official List” there are no incentives to describe goods in a manner allowing GI status to be easily deciphered



CIRCULAR CONUNDRUM

- ▶ Organizing Producers is difficult due to the very nature of the type of goods most likely to qualify as GI's
- ▶ US Agriculture is Heavily Geared towards Mass Commoditization/Production
- ▶ To Date US/EU Negotiations Unproductive



US PRODUCERS NEEDS

- ▶ Both Certification Mark System & E.U. GI System are insufficient.
- ▶ Some Type of Multi-Lateral Register
- ▶ Some Requirement for Reviewing Existing Registers
- ▶ Some Negotiated Resolution of the GI Issue



EXAMPLES OF THE PROBLEM:

- ▶ Idaho® in Turkey
- ▶ Idaho® in Mexico
- ▶ Idaho® in Argentina
- ▶ Idaho® in Germany
- ▶ Napa Valley Wines in China



Does the Transatlantic Trade and Investment Partnership (T-TIP) Provide A Possible Path Forward?

