

**Study Note:** This section should take around 3 hours to study.

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## **Module 5: Geographical Indications**

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### **Objectives**

After completing the study of this module you should be able to:

1. Describe in 100 words the nature and purpose of a geographical indication.
2. Give some examples of geographical indications.
3. Describe in 100 words the difference between the terms geographical indication, appellation of origin, and designation of source.
4. Describe different methods of protection for regionally produced goods or services.

## Introduction

The use of geographical indications is an important method of indicating the origin of goods and services. One of the aims of their use is to promote commerce by informing the customer of the origin of the products. Often this may imply a certain quality, which the customer may be looking for. They can be used for industrial and agricultural products. Protection of such indications is on a national basis but there are various international treaties that assist the protection in a range of countries.



## Geographical Indications

Geographical indications in a broad sense include indications of source, appellation of origin, and geographical indication (in the strict sense). It should be pointed out that the Paris Convention does not use in its terminology the term geographical indication; it rather utilizes the terms, indications of source and appellations of origin.

An indication of source means any expression or sign used to indicate that a product or service originates in a country, a region, and a specific place where the product originated. Example: Made in Japan.

An appellation of origin means the geographical name of a country, region, specific place which serves to designate a product originating therein, the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural or human factors or both. Example: Champagne.

Begin by listening to the first audio segment, which explains in broad terms the meaning of geographical indications.

### **Audio Segment 1:** *Can you tell me what a geographical indication is?*

Basically, a geographical indication is a notice stating that a given product originates in a given geographical area. The best known examples of geographical indications are those used for wines and spirits. For instance, the geographical indication Champagne is used to indicate that a special kind of sparkling wine originates in the Champagne region of France. In the same way, Cognac is used for brandy from the French region around the town of Cognac. However, geographical indications are also used for products other than wines and spirits, such as tobacco from Cuba, or for cheeses such as Roquefort. They may also be used for industrial products, as Sheffield is for steel.

## Self-Assessment Question (SAQ)

**SAQ 1:** List 2 or 3 geographical indications that are used in your own country.

Type your answer here:

[Click here for answer](#)

**SAQ 1 Answer:**

I hope that you were able to find some. If you could not, try to think why this might be. Is the idea of intellectual property not well known amongst regional producers or do they not see the value in such indications?

To sum up, “Champagne”, “Cognac”, “Roquefort”, “Chianti”, “Porto”, “Havana”, and “Tequila” – are some of the well-known examples of names which are associated throughout the world with products of a certain nature and quality.

The next audio segment clears up a confusion that often exists between the terms geographical indication and trademark.

**Audio Segment 2:** *What's the difference between a Geographical indication and a Trademark?*

A trademark is a sign that an individual trader or company uses to distinguish its own goods or services from the goods or services of competitors. A geographical indication is used to show that certain products have a certain regional origin. A geographical indication must be available for use by all the producers in that region. For instance, Bordeaux and Champagne can be used by all wine growers in the Bordeaux or Champagne area, but only Moët & Chandon can call its champagne "Moët & Chandon®" as a trademark for its champagne.

I hope that you can now see the benefits that might be gained by using a geographical indication so the next question you may have is how can they be protected? The next audio segment explains this.

**Audio Segment 3:** *So how do you protect geographical indications?*

Unlike trademarks and patents, there's a wide variety of types of protection available for geographical indications. They can be protected either through "*sui generis*" legislation or decrees; that is the system used by France and Portugal, for instance. Another possibility is to have a register of geographical indications.

Another possibility again is to rely on the law against unfair competition or the tort of "passing off," which basically says that unfair trade practices should not be used. To use a geographical indication for a product that does not originate in the region named, would be a very good example of an unfair trade practice. If protection is sought under tort law, there are no formalities to be observed such as registration or decree; the injured party goes to court and puts his case.

Geographical indications can also be protected by the registration of collective marks or certification marks. Unlike individual trademarks, collective marks belong to a group of traders or producers. A certification mark, on the other hand, doesn't belong to anyone: it is registered on the understanding that anyone who meets the specified conditions is allowed to use it. For example, the use of the certification mark for Stilton cheese is restricted to certain farmers who comply with the rules that have to be observed for the use to be allowed.

So, there are a variety of different ways in which geographical indications can be protected depending on the national law and there are different ways in which this protection can be extended internationally.

**Audio Segment 4:** *You seem to talk quite a bit about ways of getting protection for a geographical indication inside a country; is it possible to get protection worldwide?*

Well in theory it is, but in practice it is very difficult. Patents and trademarks have well established application procedures, but the situation is quite different for geographical indications on account of the wide variety of protection systems available. Where a local system does not provide for registration of a geographical indication or the granting of the right to use an appellation of origin, there is a risk of problems. A distinction can usually be made between two situations, one bilateral and the other multilateral. In the bilateral context, one country enters into an agreement with another for the mutual protection of their geographical indications. The next stage is the exchange of lists of the geographical indications concerned, and protection is then granted on a reciprocal basis. For example, if France were to have a bilateral agreement with Spain, France would send its list of geographical indications to Spain and Spain would send its list to France, whereupon the geographical indications of each country would be protected by the other.

This works for any two countries that enter into an agreement, but then not all countries have such two-way agreements. There are also multilateral agreements, of course, one of which is administered by WIPO, namely the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.



You may have also come across the term appellation of origin and the next audio explains the difference between this term and geographical indication.

**Audio Segment 5:** *Can you tell me the difference between appellations of origin and geographical indications?*

Appellations of origin are specific types of geographical indication. A geographical indication is a notice stating that a given product comes from a particular area. For example, the expression "Made in Switzerland" is a geographical indication: the purchaser knows that the product has come from there. An appellation of origin is a more precise geographical indication which specifies that the product in question has certain qualities and that those qualities are due essentially or exclusively to its place of origin. The underlying idea is that certain products owe their special qualities to the place that they come from. This is very common with agricultural products such as Roquefort cheese. The people who make Roquefort, say it tastes the way it does because it is matured in the caves of the Roquefort region. And it is only because it is matured in that special place that it eventually acquires the taste for which it is famous.



If you were to use the same method of cheese making in a different set of caves you would end up with a different taste, and the result would not be Roquefort cheese. The same applies to the natural conditions that influence wine growing such as climate, soils, and so on.

Basically an appellation of origin is a geographical indication that declares the quality of the goods for which it is used to be derived essentially or exclusively from the area of production.

**Audio Segment 6:** *So let's go back to your original Champagne example, would it be an appellation of origin or a geographical indication?*

It would be both. Geographical indication is the broader term, however. To put it in another way, all appellations of origin are geographical indications, but not all geographical indications are appellations of origin.

## Self-Assessment Question (SAQ)

**SAQ 2:** Choose from the list below those geographical indications which may also be considered appellations of origin

- a) **Bordeaux wine**
- b) **Stilton Cheese**
- c) **Roquefort Cheese**
- d) **Champagne**
- e) **Sheffield steel**
- f) **Made in Japan**

Type your answer here:

[Click here for answer](#)

**SAQ 2 Answer:**

a,c,d . 'Stilton' refers to the way in which the cheese is made not from where it originates. 'Sheffield Steel' is a geographical indication but does not claim its qualities from the situation of Sheffield in the north of England. Likewise for 'Made in Japan'.

In short an appellation of origin is a geographical indication that declares the quality of the goods for which it is used to be derived essentially or exclusively from the area of production.

As mentioned at the beginning of the module, another term used to in the Paris Convention is indication of course which should be distinguished with appellation of origin. The former is merely an indication of the geographical region where the product is made. Whereas an appellation of origin requires quality link between the product and its area of production.

Now to finish this module, listen to some more about the relevant International Protection Systems.

**Audio segment 7:** *Now that we've learned the difference between appellations of origin and geographical indications, would you please explain the international protection systems?*

Well in fact there are several, including a very general one provided for in the Paris Convention, which says that geographical indications must be protected against any unauthorized use that is misleading. For appellations of origin there is a special Agreement, administered by WIPO, known as the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. This international Agreement provides an international registration system for appellations of origin. A country that operates a national system for the protection of appellations of origin can apply for international registration of a given appellation of origin, which is then communicated to the other States party to the Agreement. This arrangement works very well, but owing to the limited number of States that have national systems for appellations of origin, its geographical scope is limited to the 20 States that are party to it.

There is now another international agreement, the TRIPS Agreement, which is an integral part of the WTO system. This Agreement requires that all Members of the World Trade Organization protect geographical indications, if their unauthorized use would be misleading or would constitute an act of unfair competition. The TRIPS Agreement provides for a somewhat higher degree of protection for geographical indications in the case of wines and spirits, as the geographical indications for such products have to be protected even in the absence of confusion or unfair competition.

However, this broader protection is subject to certain exceptions for geographical indications that have been in use for a long time, or are used in good faith.

## Summary

A geographical indication is basically a notice stating that a given product originates in a given geographical area. An appellation of origin is a more precise form of geographical indicator, which specifies that the product has qualities that are derived specifically from the fact that it is made in a particular region.

As stated above a geographical indication is a broad term, which includes appellation of origin, indication of source, and geographical indication in strict sense. In the literature, the term geographical indication is generally used in its broader sense to embody all these terms (appellation of origin, indication of source, and geographical indication in strict sense).

Geographical indications can be protected nationally either by decree or by a register.

Internationally they can be protected by reciprocal arrangements between countries or in the case of appellations of origin by the Lisbon Agreement. Furthermore the TRIPS Agreement requires all members of the World Trade Organization to protect geographical indications.

### Legislative Texts:

- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
- TRIPS Agreement
- Paris Convention for the Protection of Industrial Property