

MANUAL

on Geographical Indications

FOR CARIFORUM STATES

VERSION 2 - FOR CONSULTATION

Manual developed in the framework of CarIPI, an EU-CARIFORUM EPA project funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)



Table of contents

Abbreviations and acronyms	4
Table of figures	5
Context and objectives of the manual	7
A. Context	7
B. Objectives of the manual	8
CHAPTER 1 Understanding GIs	9
A. What are GIs?	9
1. General concepts	9
2. Importance of GIs	10
3. Interest and potential impacts of GIs	11
B. Protection of GIs	14
1. Sui Generis Systems	15
2. Use of Certification Marks or Collective Marks	15
3. Laws governing Business Practices/Methods	16
4. Legal Framework of CARIFORUM States and Cuba	16
C. International agreements, standards, and best practices	20
1. Relevant International Agreements and Standards	20
2. International Best Practices	25
CHAPTER 2 GIs manual for producers	30
A. GI eligibility	30
1. Product eligibility/Type of products to be covered by a GI	30
2. Applicant eligibility	34
B. Content of a GI application	36
1. Basic content of a GI application	36
2. GI applicant	36
3. Specifications	37
4. Cases of foreign GIs	48
5. Controllability document	48
6. Note for instance	51
C. Registration procedure	53
D. GI daily management	54
E. Protection granted with Geographical Indications	55
1. Effect of GI registration and protection	55
2. GI protection scope	57
3. How to enforce GI rights	60
4. Protection of GIs used as ingredients	61
CHAPTER 3 GIs manual for IPO examiners	67
A. GIs application	67
1. Administration responsible for assessing the application	67

2.	Prohibitions/limitations of GI registration.....	67
3.	Type of applicant	68
4.	Content of the application	70
B.	GIs registration procedure	70
1.	Overview of the GI Registration Process	70
2.	Process of GI registration.....	72
3.	Objection/Opposition procedure.....	83
4.	Cancellation and amendment procedure	95
5.	Timeframe for the registration procedure and protection	103
6.	How to Deal with Foreign GI Applications	104
7.	Official fees.....	106
C.	GIs protection.....	107
1.	Effect of GI registration and protection.....	107
2.	GI users identification/list.....	108
3.	Relationships between GI and trademarks	109
4.	Enforcement mechanisms	115
5.	Miscellaneous	116
CHAPTER 4 GIs manual for control bodies.....		117
A.	Why is it important to implement controls for GIs?	117
1.	Importance of controls for GI products	117
2.	Some definitions.....	117
3.	Rationale for a GI control system.	119
B.	GI Control procedures	123
1.	Type of controls & nature of the control bodies	124
4.	Criteria for establishing a control plan	126
4.	Procedure for controlling GIs.....	135
Annexes.....		148

Abbreviations and acronyms

AO	Appellation of Origin
CARIFORUM	Caribbean Forum
CarIPI	Cariforum Intellectual Property rights and Innovation
DO	Denomination of Origin
EEC	European Economic Community
EPA	Economic Partnership Agreement
EU	European Union
EUIPO	European Union Intellectual Property Office
GI	Geographical Indication
IP	Intellectual Property
IPR	Intellectual Property Rights
IPO	Intellectual Property Office
OLP	Origin-Linked Product
PDO	Protected Designations of Origin
PGI	Protected Geographical Indications
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TSG	Traditional Speciality Guaranteed
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Table of figures

FIG. n° 1:	A differentiation tool that attracts consumers
FIG. n° 2:	Geographical Indication: what for?
FIG n° 3:	GI Protection Regimes
FIG. n° 4:	Notable laws across CARIFORUM Member Countries governing Unfair Competition and Trade Secrets
FIG. n° 5:	Relevant International Agreements and Standards
FIG. n° 6:	Key Principles of the Australian GI Protection Regime
FIG. n° 7:	Examples of Certification marks registered in Australia
FIG. n° 8:	Examples of Products which enjoy Dual Protection
FIG. n° 9:	Type of products that can be protected by a GI
FIG. n° 10:	Link between a GI and its geographical origin
FIG. n° 11:	Summary of potential barriers to GI protection
FIG. n° 12:	The importance of the GI book of specifications
FIG. n° 13:	Key elements of the specifications
FIG. n° 14:	Example of the “Trinidad Monserrat Hills Cocoa” GI map (Trinidad & Tobago)
FIG. n° 15:	Example of the “Blue Mountain Coffee” GI map (Jamaica)
FIG. n° 16:	The proper functioning of a GI
FIG. n° 17:	GI registration application
FIG. n° 18:	GI registration process
FIG. n° 19:	The GI rights holder, the center of it all
FIG. n° 20:	GI protection

- FIG. n° 21: Typology of GI abuses
- FIG. n° 22: GI enforcement
- FIG. n° 23: Guidelines on the labelling of foodstuffs used as ingredients
- FIG. n° 24: Snapshot of the GI Registration Process
- FIG. n° 25: Acceptable Applicants for GI Registration
- FIG. n° 26: Three Step Process associated with the Examination and Processing of application for registration of Geographical Indication
- FIG. n° 27: Steps to complete the Registration Process of a Geographical Indication
- FIG. n° 28: Objection/Opposition Procedure
- FIG. n° 29: Conditional Acceptance of Application
- FIG. n° 30: Steps to be taken when applicant responds to a notice of objection
- FIG. n° 31: Procedure for convening a Hearing by the Competent Authority
- FIG. n° 32: Procedure for Registering a Foreign GI
- FIG. n° 33: The proper functioning of a GI

Context and objectives of the manual

A. Context

A **geographical indication** (GI) is a sign used on products that have a specific geographical origin and possess qualities, characteristics or a reputation that are due to that origin. Under this general concept, two definitions were historically given by international treaties and laws.

- ➔ **Appellation of origin** (AO) was one of the earliest forms of GI recognition and was first mentioned nearly a century ago (Paris Convention). The 26 Parties to the Lisbon System on the protection of appellations of origin were the first to agree formally to use the term Appellation of Origin as a form of GI by using one single registration procedure, effective among the signatories. An appellation of origin is then a special kind of geographical indication generally defined **as “the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors” (article 2(1) of the Lisbon Agreement, 1958). Appellations of origin** therefore belong to the GI category or family. The later WTO TRIPS Agreement definition was derived from this. Variations of this term are still commonly used in countries that were early adopters such as France, Mexico and parts of Europe.
- ➔ **Geographical Indication** (GI) appeared firstly under the European regulation on Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI) in 1992¹ and the TRIPS Agreement gave an official definition of GIs in 1995 and covers in Articles 22 to 24 the legal basis for a geographical indications regime. The TRIPS Agreement defines **Geographical Indications “as identifying 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” (art. 22.1).**

GI is an umbrella term whose purpose is to distinguish the identification of a product’s origin and its link with particular characteristics related to that origin. When GIs are legally registered, they take different forms such as AO, DO, PDO, PGI, GI. The term “Geographical Indication” or “GI” is more widely used nowadays. Only countries, such as in the EU, that have historically used AO still continue to use the concept for certain products.

Geographical indications (GIs) are a form of intellectual property, belonging to the family of distinctive signs. They identify a good as originating in the territory of a particular country, or a region or locality in a country, where a given quality, reputation or other characteristic of the good is essentially attributable to the physical place of origin.

Article 2 (viii) of the Convention that established the WIPO in 1967² defines intellectual property thus:

“Intellectual property shall include rights relating to: literary, artistic and scientific works, performances of performing artists, phonograms and broadcasts, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition, and all other

¹ Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

² [Convention Establishing the World Intellectual Property Organization](#) - Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979

rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.

Geographical indications have several benefits to the development, production and promotion of origin-linked products (OLPs) and are . **becoming a “useful” intellectual property right for developing countries** because of [their potential to add value and promote rural socio-economic development](#).

B. Objectives of the manual

Taking into account the national rules related to trademarks, geographical indications and IP Office internal procedures in the CARIFORUM member states, this practical guide targets future GIs producers, examiners and controllers. It aims at explaining clearly what geographical indications are, what the examination (formal and substantive) steps are, the requirements, and the effects of protection of geographical indications.

As with **other intellectual property rights applications, Geographical Indications’ applications** will be subject to examination from a competent authority, most of the time IP Offices. This examination, which will rely on formal and substantive aspects, is fundamental in order to assess the eligibility of the GI name and related products specifications associated with the GI and is a requirement to grant protection to the GI name and to confer a legal right to its rightful stakeholders. As GI protection confers a restrictive right to a name which was previously in the public domain, the examination of the GI application shall be undertaken in a serious way, preventing any objection and conferring a meaning of seriousness and guarantee not only for the concerned producers but also for the consumers.

This GI manual is elaborated in a friendly and understandable format and serves as a useful tool to help producers, examiners and other GI stakeholders to identify the eligibility of GI for protection and finding the main steps to follow in order to efficiently set up or examine GIs applications, including opposition and removal. This manual will cover all the steps of the registration process.

Based on the current legal background, the Model GI Law developed under the CARIFI project and the overall philosophy and practice on GIs, the Manual will explain the GI application process, the registration procedure for GIs as well as the conditions of GI protection, including GI controls.

Specific to the format of the GI Manual, this Manual will represent one comprehensive document integrating and featuring 4 core parts:

- Part 1: General information concerning GIs
- Part 2: Manual for GI groups/producers
- Part 3: Manual for IPO: examination & register
- Part 4 : Manual for control bodies - GI controls

CHAPTER 1 | Understanding GIs

A. What are GIs?

1. General concepts

The term **“Geographical Indication”** (GI) first appeared in the European regulation on Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI) in 1992.³ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) gave an official definition of GIs in 1995. In articles 22 to 24, the TRIPS Agreement covers the legal provisions of a GI regime. It defines GIs as:

“[...] identifying a good as originating in the territory of a Member [of the World Trade Organization], 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” (art. 22.1).

A GI is therefore a sign (understood mainly as a name) used on products that have a specific geographical origin and possess qualities, characteristics, or a reputation that are linked to that origin.

Some famous GIs have already been protected, such as “Rhum of Martinique,” “Darjeeling tea,” “Café de Colombia,” “Kampot Pepper,” “Argan Oil,” “Pisco,” “Shetland wool,” “Thai silk,” etc. Similarly, in the CARIFORUM regions some GIs are already protected, such as “Habanos” for cigars in Cuba, “Trinidad Monserrat Hills Cocoa” in Trinidad and Tobago, or “Jamaican Jerk” in Jamaica.

The basic concept underlying GIs is simple, and familiar to any shopper who chooses “Roquefort” over “blue cheese” or “Darjeeling” over “black tea.” There are some well-known examples of names associated throughout the world with products of a certain nature and quality, known for their geographical origin and for having characteristics linked to that origin.

INTEGRATE SOME PHOTOS OF FAMOUS GIs

Most commonly, a GI consists of the **name of the place of origin of the good**, such as “Jamaica Blue Mountain” or “Darjeeling.” Non-geographical names, such as “Vinho Verde” (Portuguese wine), “Reblochon” (French cheese) or “Argan Oil” (Moroccan Argan tree oil), or symbols and signs commonly associated with a place, can also constitute a GI. However, this is not a common practice. These names can be considered GIs because they still have a geographical significance.

Moreover, in order to be eligible as a GI the name must identify a product as originating in a given place. The qualities or reputation of the product should be essentially tied to the place of origin. **Since the qualities depend on the geographical place of production, there is a link between the product and its place of origin.**

The GI’s purpose is to identify **a product’s origin and its link with particular characteristics related to that origin.** When GIs are legally registered, they take different forms (such as AO, DO, PDO, PGI, GI) depending on the legal definitions given at national or regional level. **The term “Geographical Indication” or “GI” is more widely used nowadays.**

³ [Council Regulation \(EEC\) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.](#)

2. Importance of GIs

The concept of "Geographical Indication" benefits from an international dimension. Nowadays, every country in the world claims that their agricultural or traditional products, foods, or crafts belong to a cultural or gastronomic heritage, a symbol of the history of a country or a community. The intangible qualities related to the traditions or history of a country form part of the economic development strategies of that country. Therefore, the cultural richness of a country can determine a GI product's place in the global market.

Modern civil society is seeking new, more human, more sustainable, and fairer values in the products and services they consume. Demand for products is influenced by several key areas of concern in modern society: economic development, market access, improvement in living standards, and protection of the environment. The demand for sustainable values, and products, is reflected in a return to authenticity and in the concern for passing on these values to future generations.

The need for sustainability has its repercussions in marketing strategies. Particularly in developing countries, there is a proliferation of statements on products, logos, brands, etc., that does not necessarily guarantee the origin of a product or the protection of traditional know-how. Its only function is to reassure consumers and make a product easily identifiable.

This type of marketing and the abuse of labelling instruments can be harmful to GIs and to the intellectual property rights that go hand-in-hand with them. Hence, GIs have an important role because they:

- Enable traditional know-how to be recorded and passed on from generation to generation;
- Are an economic tool, enabling value to be generated from a rigorous procedure that protects producers;
- Are a vehicle for local development;
- Are a tool for the benefit of consumers, meeting and guaranteeing not only the origin but also a certain quality;
- Are a tool to protect products, producers, and consumers.

Because of the role and functions of GIs, it is important:

- To improve their protection, in particular at international level;
- To improve communication surrounding this tool for countries and consumers;
- To improve the tools and operating modes at every level (regional, national, and international);
- To educate the producers and consumers about the importance of GI protection;
- To foster fair business practices, commercial activities, direct investment, and foreign exchanges in the regions of concern.

INTEGRATE PHOTOS OF GI TERRITORY/STAKEHOLDERS

3. Interest and potential impacts of GIs

Interest in GIs has grown significantly since the 2000s. The obligation, under the TRIPS Agreement, for Members of the World Trade Organization (WTO) to protect GIs has, to a large extent, triggered this increase in interest. The attraction of GIs is that they are seen as useful tools in marketing strategies and public policies, for which there has been growing interest in the last two to three decades.

Developing a GI strategy **involves several important steps**, such as:

- Protecting intangible elements of common heritage;
- Strengthening the cohesion of the group of producers and other stakeholders, who will be the pillars of the GI scheme and protection;
- Setting up standards, sometimes outlined in a “code of practice” or “regulations of use” or most commonly “specifications.” These documents usually define **the product’s characteristics**, the **product’s geographical** region of production, and the production and processing methods. They may also describe the factors, natural and/or human, that are present in the region and contribute to the characteristics of the product;
- Defining a mechanism to effectively attribute the right to use the GI name to any concerned/interested producer who produces the product within the established boundaries and according to agreed standards;
- Establishing traceability, verification, and control schemes in order to ensure continued quality and compliance with the code of practice or specifications;
- Devising marketing strategies;
- Obtaining legal protection for the GI and designing an enforcement strategy;
- Conducting public awareness and educational initiatives regarding GIs.

INTEGRATE INTERVIEW OF POTENTIAL GI PRODUCER IN CARIFI REGION

See Moruga Hill Rice/TT Steel pan

Geographical indications as differentiation tools in marketing strategies: The truth about the origin of the products.

Consumers pay increasing attention to the geographical origin of products, and care about specific characteristics present in the **products they buy**. In some cases, the “**place of origin**” suggests to consumers that the product will have a particular quality or characteristics that they may value. Often, consumers are prepared to pay more for such products. This has favored the development of specific markets for origin-based products.

FIG. n°1 : A differentiation tool that attracts consumers



Brand recognition is an essential aspect of marketing. Geographical indications convey information about the origin-based characteristics of a product. They therefore function as product differentiators on the market by enabling consumers to distinguish between products with geographical origin-based characteristics and products without those characteristics.

GIs as a factor of rural development

In some cases, GIs can contribute to the development of the rural areas or territories in which they are located. The option to use a GI generally lies with regional producers, who benefit from the added value generated by the GI.

Because GI products tend to generate a higher price, they contribute to local employment creation, which ultimately may help prevent rural exodus. In addition, GI products often have important spin-off effects; for example, in the areas of tourism and gastronomy or in the collaboration with luxurious brands.

GIs may bring value to a region not only in terms of jobs and higher income, but also by promoting the **region as a whole. In this regard, GIs may contribute to the creation of a “regional brand.”**

However, the mere fact that a GI exists for a product does not guarantee automatic success or development for the region. For GIs to contribute to development, several conditions must be present in the region.

INTEGRATE ILLUSTRATIONS OF CARIFORUM (Moruga Hills rice?) + CUBA

Potential impacts of GIs:

A GI strategy may reach the following outcomes:

- Protecting the product and producers against fraud, misuses, counterfeiting, etc.;
- Preventing the misappropriation of the GI name by a third party;
- Limiting the risk of the GI name becoming a generic term and protecting the production of the good within the geographical area;
- **Improving the product’s position in the market as well as** penetrating new markets (national, regional, or international);

- Contributing to the creation or increase of added value for the product/the territory (increasing production, improving the quality of the product, fostering innovation, preventing delocalization of production);
- Giving clear and transparent information to consumers on the quality and origin of the products they purchase;
- Enabling better promotion and improved reputation;
- Improving the welfare of producers/farmers;
- Creating opportunities for employment;
- Improving local economy and rural development;
- Allowing for environmental sustainability and protecting biodiversity (for some types of products and under certain conditions);
- Promoting diversification, local tourism, and sometimes eco-tourism.

FIG. n° 2 : Geographical Indication : what for?



SUCCESS STORIES

BOX 1: GI Kampot Pepper⁴

Kampot Pepper, a product that dates back to the 13th century, is produced in the provinces of Kampot and Kep in Cambodia. Registered domestically as a GI since 2010 as the value chain was suffering from many abuses on the market at national and international level.

⁴ Based on World Intellectual Property Organization (WIPO) website : https://www.wipo.int/lisbon/en/news/2021/news_0001.html

Following the national registration, the product saw a steep increase in its export sales, with about 70% of the production going towards the international market, as well as a three-fold increase in its average purchase price (at farm gate)—going from an average of USD \$7,5 pre-registration to USD \$22,7 ten years after registration. In 2019, the value of Kampot Pepper production amounted to more than USD\$1million compared with USD\$70.000 of production value in 2009, according to the numbers released by the Department of Intellectual Property of the Ministry of Commerce of Cambodia.

Kampot Pepper obtained European Protected Geographical Indication (PGI) in 2014 and an international registration under the Lisbon System in 2021. With the higher market price of Kampot Pepper, the risk of fraud and counterfeit products also rises on local and international markets.

Box 2: Café de Valdesia

INTEGRATE INTERVIEW OF GI PRODUCER/ASSOCIATION ON GIs IMPACTS IN CARIFORUM COUNTRIES

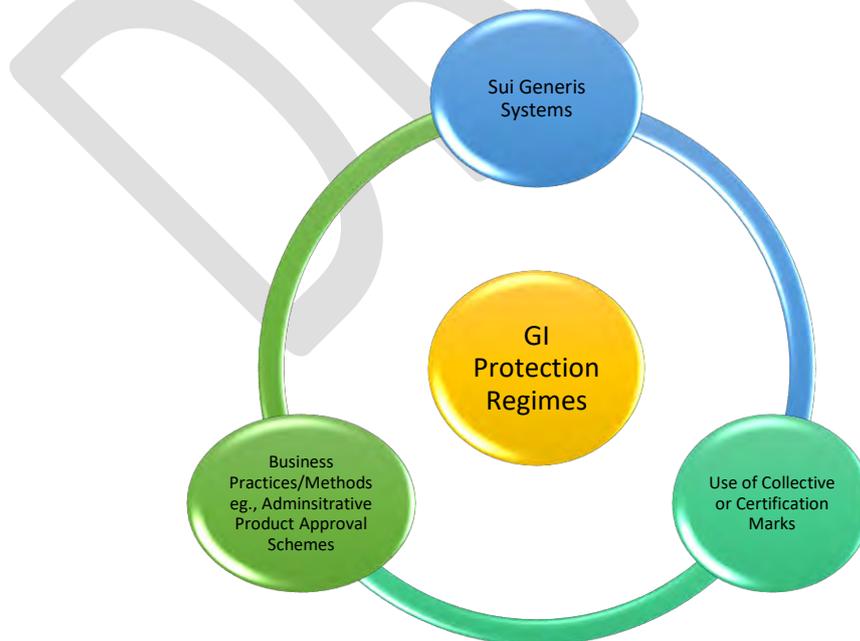
B. Protection of GIs

GIs can attract additional monetary value as origin-linked products (OLPs), similarly to a recognizable brand of notable quality or characteristic. As a result, for producers, a GI conveys a particular uniqueness based on the origin of the product and can be used to afford a higher level of legal protection.

There are three standard protection regimes in relation to GIs, as illustrated in FIG n° .⁵

Notwithstanding some similarities among the regimes, they differ in terms of the conditions for protection and/or the scope of protection.

FIG n° 3: GI Protection Regimes



⁵ Graphical illustration is based on information contained in [International Trade Centre](#).

1. Sui Generis Systems

The term *sui generis* is a Latin expression, which means unique in its characteristics or of its own kind.⁶

Sui generis systems represent special regimes of protection whereby GI specific laws are used to protect GIs as a form of intellectual property. This type of protection is established for collective use by those who comply with defined standards.⁷

Generally, under sui generis laws, protected names are afforded protection:

- Against the direct commercial use of a GI, and
- Against the indirect commercial use of a GI in situations where an inauthentic indication of origin is used and even if the inauthentic indication makes a reference to the true geographical origin.

The system also provides for protection against imitation and evocation. Most of the sui generis systems imposing registrations make provisions for an official control of the code of conduct.⁸

Illustrations of sui generis GI protection:



2. Use of Certification Marks or Collective Marks

Certification marks are utilized by many countries globally to protect goods and services. These marks are used to signal that the products or services have specific characteristics—in this case, its geographical origin. Certification marks are therefore descriptive in nature and further delineate the place of production without necessarily implying a link between the quality and the product that the mark identifies.

The owner of the certification mark must ensure that the goods or services, for which the mark is being applied to, possess the certified quality. This certification process must be carried out in an independent and impartial manner. It must be underscored that a certification mark is not used by its owner, rather authorized users use the mark. The owner however maintains control over the use of the mark. This principle is also referred to as the “**anti-use by owner**” rule.

Should it be reasonably believed that there has been an infringement of a certification mark, in principle, an action against the infringer can be initiated by the owner of the certification mark, given

⁶ Giovannucci, Daniele, et al. [Guide to Geographical Indications: linking Products and their Origins](#). Available at SSRN 1736713 (2009).

⁷ World Intellectual Property Organization (WIPO) Geographical Indications: [What is a Geographical Indication?](#)

⁸ [Organization for an International Geographical Indication Network. Legal Systems to protect GIs.](#)

that the owner possesses the responsibility of ensuring that the products carrying the mark have the certified qualities.

Examples of certification marks

In Jamaica	In Trinidad and Tobago
	

Collective marks indicate that the associated products or services were produced, provided, or commercialized by the members of an identified group. In this respect, collective marks are owned by **a collective body such as a trade association, producers’ association, or manufacturers’ association**. Members of said associations can use a collective mark to indicate that they are members of the collective body.

In contrast with the “anti-use by owner” principle present for the certification marks system, the owners of a collective mark are authorized to use it. The owner or owners of a collective mark may also bring an action for infringement in situations where a collective mark is owned by an association of producers but is used by a person who is not a member of that association.

ADD SOME EXAMPLES???

3. Laws governing Business Practices/Methods

Business Practices and Methods represent another protection regime under the Geographical Indications framework.

Laws governing unfair competition and truth in labelling or consumer protection laws represent another approach to affording legal protection to GIs.⁹ This form of protection is generally used in partnership with other means of protection, given that laws provide far reaching and non-exclusive means of protection.

4. Legal Framework of CARIFORUM States and Cuba

What does the Legal Framework of CARIFORUM Member Countries look like in respect of GIs, Consumer Protection and Unfair Competition/Trade Secrets?

⁹International Trade Centre, [Guide to Geographical Indications: Linking Products and their Origins.](#)

➔ Overview of Legal Framework governing Geographical Indications and Consumer Protection

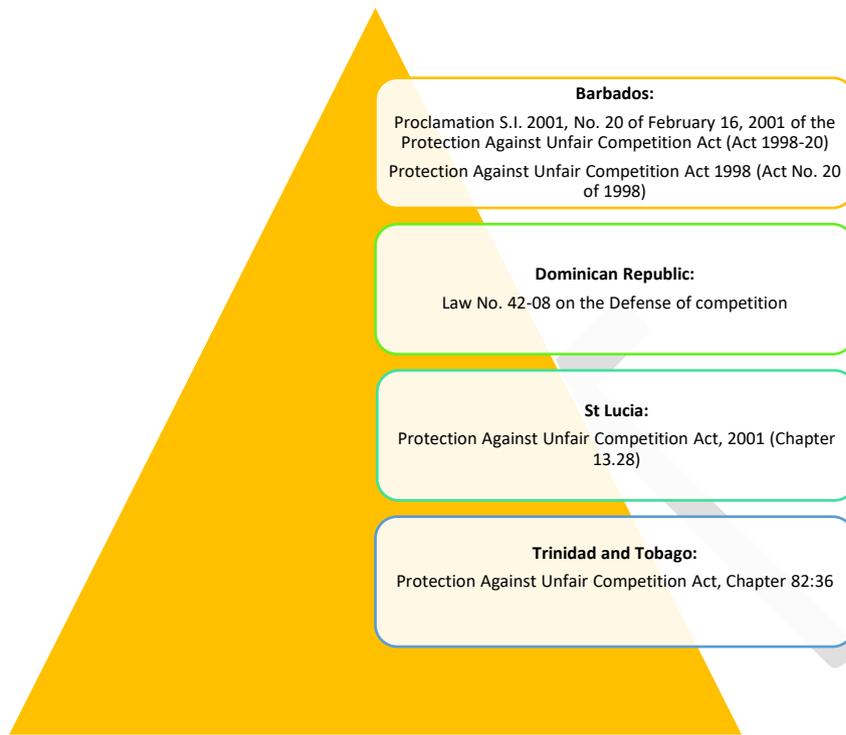
CARIFORUM Member Country	Consumer Protection Laws	Geographical Indications
Antigua & Barbuda	Consumer Protection and Safety (CAP. 97)	Geographical Indications Act, 2003 Geographical Indications Regulations 2006
Bahamas	Consumer Protection Act (Cap. 337C)	Geographical Indications, 2015 (Act No. 44 of 2015)
Barbados	Consumer Protection Act CAP 326D	Geographical Indications Act (Cap. 320, consolidated as of 2002) Geographical Indications Regulations, 2001 (Regulations No. 132)
Belize	Consumer Protection Bill Draft	No GI specific laws identified
Cuba		Decreto-Ley N° 228, de 20 de febrero de 2002 de las Indicaciones Geográficas Decreto-Ley N° 203 de Marcas y otros Signos Distintivos
Dominica	No overarching consumer protection law	Geographical Indications Act 1999 (Act 13 of 1999) Geographical Indications (Amendment) Act, 2008 (Act 13 of 2008)

		Marks, Collective Marks and Trade Names Act, 1999 (Act 12 of 1999)
Dominican Republic	Consumer Protection Rights Act (358-05)	<p>Law No. 20-00 of May 8, 2000, on Industrial Property</p> <p>Law No. 424-06 of November 14, 2006, on Implementation of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)</p>
Grenada	Consumer Protection No. 2 of 2018	No GI specific laws identified
Guyana	Consumer Affairs Act 2011	Geographical Indications Act No. 15 of 2005
Haiti	No overarching consumer protection laws	
Jamaica	The Consumer Protection (Amendment) Act, 2012	<p>The Protection of Geographical Indications Act, 2004 (Act No. 5 of 2004)</p> <p>The Protection of Geographical Indications (Amendment) Act, 2018 (Act No. 11 of 2018)</p> <p>The Protection of Geographical Indications Regulations, 2009</p> <p>The Trade Marks Act, 1999 (Act No. 32 of 1999, as amended up to Act No. 38 of 2013)</p> <p>Trade Marks (Amendment) Act, 2013 (Act No. 17 of 2013)</p>

St. Kitts and Nevis	Consumer Protection Act	Geographical Indications Act, 2007 (Chapter 18.39)
St. Lucia	Consumer Protection Act No. 9 of 2016	Geographical Indications Act, 2000 (Chapter 13.14) Geographical Indications Regulations, 2003
St. Vincent and the Grenadines	No overarching consumer protection law	Geographical Indications Act, 2004 (Act No. 24 of 2004) Geographical Indications Regulations, 2008 Trade Marks Act, 2003 (Act No. 46 of 2003, as amended by Act No. 50 of 2004)
Suriname	Decree E-47 (Price Control law)	No GI specific law
Trinidad and Tobago	Consumer Protection and Safety Act Chap. 82:34	Geographical Indications Act (82:78), 1996 Geographical Indications (Amendment) Act No. 18 of 2000

➤ Overview of Legal Framework governing Unfair Competition/Trade Secrets

FIG n° 4: Notable laws across CARIFORUM Member Countries governing Unfair Competition and Trade Secrets



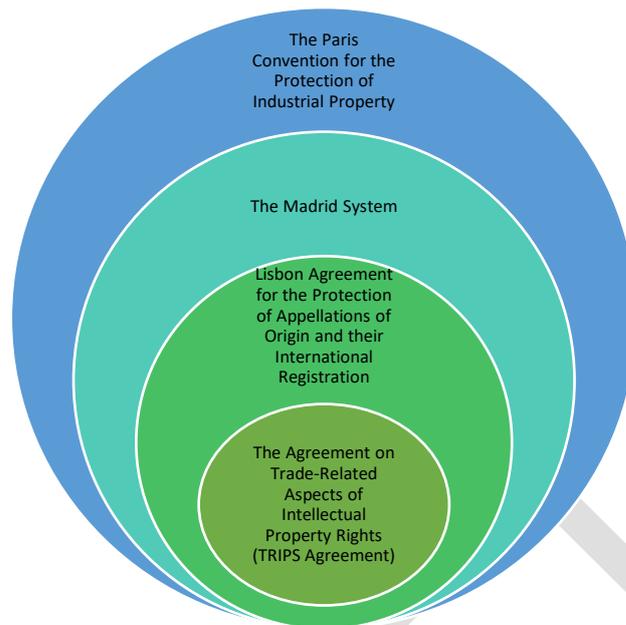
C. International agreements, standards, and best practices

1. Relevant International Agreements and Standards

There are five relevant international instruments which govern and guide standard practices and procedures in respect of GIs and their protection on an international level. These are noted in FIG n° .

FIG. n°5: Relevant International Agreements and Standards¹⁰

¹⁰ Graphic illustration based on information contained in International Trade Centre, Guide to Geographical Indications: Linking Products and their Origins.



➤ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

The TRIPS Agreement establishes minimum standards of intellectual property protection to be adopted by members of the WTO multilateral trading regime.

Article 22.2 of the TRIPS Agreement establishes that Member States must provide the legal means for interested parties to prevent the use of geographical names corresponding to GIs in WTO Member States in a manner which misleads the public as to the true geographical origin of the product or constitutes an act of unfair competition.

➤ The Madrid System - International Trademark System

The Madrid System provides for the central international registration of marks. Accordingly, it facilitates the extension of GI protection on a multijurisdictional level, therefore removing the need for separate and multiple registration of GIs in individual countries of interest. As a result, owners of marks are permitted to file one application with the national Intellectual Property Office and specify other countries of interest, once these countries gain membership into the Madrid System.

The Madrid System therefore represents both an efficient and a cost-effective system for the registration and management of trademarks on an international level, given that registrants can file and pay for a single application which allows coverage for GI protection in 124 countries at present.¹¹

➤ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

The Lisbon Agreement was established in 1958 and operationalized in 1966. There have been several revisions since then, the most recent being the 2015 Geneva Act to the Lisbon Agreement. The Agreement, along with the Geneva Act, provides for the international protection of appellations of origin and GIs through a single process governed by WIPO. Similarly, to the Madrid System, under the Lisbon System, protection is achieved through a single registration process and the payment of requisite fees.

¹¹ World Intellectual Property Organisation, [Madrid - the International Trademark System](#).

➤ The Paris Convention

The Paris Convention for the Protection of Industrial Property represents one of the oldest international agreements facilitating the protection of industrial property rights across national borders. The scope of the Agreement covers patents, marks, trade names, and GIs. The Paris Agreement does not specifically define indications of source or appellations of origin and is not explicit about the form of protection.

Article 10 of the Convention establishes the obligation to protect “indications of source” “against direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer or trader.” It does not explicitly note or include appellations of origin. However, since an appellation of origin is by definition an indication of source, it typically is understood to apply to both.

Article 10 therefore establishes that any false indication of the source of origin of a product is to be handled in the same manner prescribed for fraud and violation of other commercial laws. This prohibits fraudulent misrepresentation or utilization of geographical appellations of origin and source indications.

In addition to the above international agreements, it is also important to highlight the relevance of the World Intellectual Property Organization (WIPO).

➤ The World Intellectual Property Organization (WIPO)

WIPO was established in 1967 by the WIPO Convention and has served as the internationally recognized agency of the United Nations specifically set up to develop and facilitate the protection of international IP systems. WIPO is responsible for the administration of over 20 international agreements relating to Intellectual Property rights, including GIs.

WIPO endeavors to collaborate with its membership to harmonize and strengthen national legislation and processes in respect of intellectual property. In addition, the organization supports capacity building, institutional strengthening, and legislative approximation.

➤ Economic Partnership Agreement between the CARIFORUM States and the European Community and its Member States

The CARIFORUM-EU Economic Partnership Agreement was signed in October 2008. It is not just a trade in goods agreement; it includes commitments on trade in services, investment, and trade-related issues, such as competition policy, government procurement, intellectual property rights, and sustainable development. The agreement covers intellectual property, which includes GIs.

Article 145 of the Agreement refers to geographical indications¹²:

A. Protection in the country of origin

1. Nothing in this Agreement shall require the EC Party and the Signatory CARIFORUM States to protect in their territories geographical indications that are not protected in their country of origin.

¹² For the full text of the EPA see [Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, on the other part](#).

2. The Signatory CARIFORUM States shall establish a system of protection of geographical indications in their respective territories no later than 1 January 2014. The Parties shall cooperate through the CARIFORUM-EC Trade and Development Committee in accordance with the provisions of Article 164(2)(c) towards the development of geographical indications in the territories of the CARIFORUM States. To this end, and within six months from the entry into force of the Agreement, the CARIFORUM States shall submit to the consideration of the CARIFORUM EC Trade and Development Committee a list of prospective Geographical Indications originating in the CARIFORUM States for its discussion and comments.

3. The Parties shall discuss within the CARIFORUM EC Trade and Development Committee the effective implementation of this Article and exchange information on legislative and policy developments on geographical indications.

B. Term of protection

1. Protection afforded in respect of geographical indications in the EC Party and the Signatory CARIFORUM States shall be granted in accordance with the legal system and practice of the EC Party or the relevant Signatory CARIFORUM State as the case may be, and shall be indefinite (1).

2. Such protection shall ensure that the use of geographical indications of goods protected pursuant to paragraph 1 be exclusively reserved in the EC Party and the Signatory CARIFORUM States to goods originating in the geographical area concerned and that are produced in accordance with the relevant product specifications.

3. In respect of the protection of geographical indications, the EC Party and the Signatory CARIFORUM States shall prohibit and prevent, *ex officio* or at the request of an interested party:

(a) regardless of the class of product on which it is used, the use in their territory of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place or origin in a manner which misleads the public as to the true geographical origin of the good; or any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention;

(b) any use of the protected names for goods in the same class of product as the geographical indication which do not originate in the geographical area indicated, even where:

(i) the true origin of the good is indicated;

(ii) the geographical indication in question is used in translation;

(iii) the name is accompanied by terms such as **'kind', 'type', 'style', 'imitation', 'method' or other expressions of the sort.**

4. It shall be possible to cancel the registration of a geographical indication. The procedure to this effect shall allow for the participation of any natural or legal person having a legitimate interest.

C. Generic terms, plant varieties, animal breeds

1. The EC Party and the Signatory CARIFORUM States shall not be required to apply the protection of geographical indications referred to in section B with respect to goods for

which the relevant indication is identical with the term customary in common language as the common name for such goods in their respective territories.

2. Nothing in this Section shall require the EC Party and the Signatory CARIFORUM States to apply the protection of geographical indications referred to in section B with respect to products of the vine, plants or animals for which the relevant indication is identical with the name of a grape variety, plant variety or animal breed existing in the territory of the EC Party or the Signatory CARIFORUM State concerned as of the date of entry into force of this Agreement.

3. Homonymous geographical indications shall be protected by the EC Party and Signatory CARIFORUM States provided that there is a sufficient distinction in practice between the geographical indication first protected and the homonym subsequently protected, having regard to the need to treat the producers concerned in an equitable manner and not to mislead consumers. A homonymous name that misleads the consumer in to believing that products come from another territory shall not be protected by the EC Party or the Signatory CARIFORUM State concerned.

4. If a geographical indication of the EC Party or Signatory CARIFORUM State is homonymous with a geographical indication for a third country, Article 23(3) of the TRIPS Agreement applies mutatis mutandis.

D. Relationship between geographical indications and trade marks

1. A geographical indication shall not be registered in the EC Party or the Signatory CARIFORUM States where, in the light of a trade mark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.

2. From the date of entry into force of this Agreement, the registration of a trade mark which is identical with, similar to or containing a geographical indication protected respectively in the EC Party or in the Signatory CARIFORUM States pursuant to section B and relating to the same class of product shall be refused respectively in the EC Party or in the Signatory CARIFORUM States. Furthermore, the registration of a trade mark in such circumstances shall be refused respectively in the EC Party or in the Signatory CARIFORUM States if the application for registration of the trade mark was submitted after the date of application for protection of the geographical indication in the territory concerned and the geographical indication is subsequently protected.

3. Trade marks registered in breach of the preceding paragraph shall be invalidated.

4. The EC Party and the Signatory CARIFORUM States shall ensure that, subject to the provisions of section D(1), (2) and (3), a trade mark, the use of which corresponds to one of the situations referred to in section B(3), and which has been applied for, registered or established by use, if that possibility is provided for by the applicable legislation, in good faith within the territories of the EC Party or of a Signatory CARIFORUM State, before the date of application of the WTO obligations in the EC Party or a Signatory CARIFORUM State, or before the date of application for protection of the geographical indication in the respective territories, may continue to be used notwithstanding the registration of the geographical indication, provided that no grounds for the invalidity or revocation of the trade mark exist as specified by the legislation of the EC Party or of the concerned Signatory CARIFORUM State. In such case, the use of the geographical indication shall be permitted alongside the relevant trade mark.

E. Future protection agreement

The EC Party and the Signatory CARIFORUM States shall no later than 1 January 2014 commence negotiations aimed at an agreement on the protection of geographical

indications in their respective territories, without prejudice to any individual requests for protection that may have been filed directly.

F. Internet use

The EC Party and the Signatory CARIFORUM States accept the need for a clear legal framework for geographical indications owners who wish to use their geographical indications on the Internet and to participate in the development of electronic commerce which includes provisions addressing whether the use of a sign on the Internet has contributed to the usurpation, evocation, acquisition in bad faith or infringement of a geographical indication or whether such use constitutes an act of unfair competition, and a determination of the remedies, including the eventual transfer or cancellation of the domain name. In this respect, the EC Party and the Signatory CARIFORUM States shall endeavour to apply the Joint Recommendation concerning the protection of marks, and other industrial property rights in signs, on the Internet, as adopted by WIPO at the Thirty-Sixth Series of Meetings of the Assemblies of the Member States of WIPO, 24 September to 3 October 2001.

Negotiations on the agreement to protect geographical indications (GIs) are still ongoing.

2. International Best Practices

As highlighted above, there are three principal regimes of protection in respect of GIs: sui generis; collective and certification marks; or business practices and methods.

➔ The European Union

The sui generis system is grounded on the implementation and enforcement of GI specific laws. Across the globe, there are more than 100 nations, including EU Member Countries, which have enacted GI specific laws and as such rely on sui generis protection. The EU is regarded to have one of the most sophisticated regimes with over 1000 Geographical Indications currently protected¹³. [REGULATION \(EU\) No 1151/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 November 2012 on quality schemes for agricultural products and foodstuffs](#) (EC, 2012) is the principal legal instrument in this respect¹⁴.

In 1992, the EU, as a collective economic group, developed a common legal framework to protect consumers from false and misleading information, and further to protect producers from unfair competition practices. This was achieved through the development of specific rules protecting GIs and general rules and laws governing unfair competition, trade secrets, and consumer protection.¹⁵

The general regional harmonized approach adopted by the EU can be mirrored by the CARIFORUM Region; both in respect of the development of the governing legislative framework and of the practices and procedures to be adopted by producers, intellectual property offices, and control entities or regulatory bodies.

Following is relevant legislation governing the protection of GIs within the context of the EU:

Common legislation

¹³ Organization for International Geographical Indication Network (oriGIn), *Practical Manual on Geographical Indications for ACP countries*.

¹⁴ Irina Kireeva, [European legislation on protection of Geographical Indications Overview of the EU Member States' Legal Framework for Protection of Geographical Indications](#)

¹⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1151>

- o [EU regulation 1308/2013 on establishing a common organisation of the markets in agricultural products](#)

For agricultural and foodstuffs

- o [EU regulation 1151/2012 on quality schemes for agricultural products and foodstuffs, as modified in December 2021](#)
- o [EU regulation 664/2014 on the logos to be used for PDOs, PGIs and TSGs](#)
- o [EU regulation 668/2014 on how EU regulation 1151/2012 on quality schemes for agricultural products and foodstuffs should be applied](#)
- o [Commission communication: Labelling guidelines for foodstuffs using PDOs or PGIs as ingredients](#)

For wine sector

- o [EU implementing regulation 2019/34 regarding applications for protection of designations of origin, geographical indications and traditional terms in the wine sector](#)
- o [EU delegated regulation 2019/33 supplementing regulation 1308/2013 regarding applications for protection of designations of origin, geographical indications and traditional terms in the wine sector](#)

For spirit drinks sector

- o [EU regulation 2019/787 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs](#)

For aromatized wine products

- o [EU regulation 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products](#)

In addition, it is important to note that GI protection is often a feature of the bilateral arrangements pursued by the EU. **The EU's bilateral agreement with Singapore has propelled this nation to enhance their national GI regime, resulting in the development of robust and sophisticated frameworks.** Discussions continue between the EU and Australia in this respect with an eye to enhancing the GI protection regime in Australia to allow for better protection of EU GIs.

Examples of CARIFORUM GIs registered at UE level¹⁶

¹⁶ Based on GI views website : <https://www.tmdn.org/giview/>

Café de Valdesia



Country/ies of origin	Type		
Dominican Republic	Protected Designation of Origin (PDO)		
Priority date	File number	Product type	Basis of protection
30/01/2014	PDO-DO-1197	Food	EU register
Status	Product category		
Registered	Class 1.8. Other products of Annex I of the Treaty (spices etc.)		
Legal instrument of protection at EU level			
Official Journal L 170, 29.06.2016			
Publications			
Official Journal C 91, 08.03.2016			
Official Journal L 170, 29.06.2016			

Demerara Rum



Country/ies of origin	Type		
Guyana	Geographical Indication (GI)		
Priority date	File number	Product type	Basis of protection
28/06/2018	PGI-GY-02423	Spirit drink	EU register
Status	Product category		
Registered	1. Rum		
Legal instrument of protection at EU level			
Official Journal L 288, 4.8.2021			
Publications			
Official Journal C 120, 08.04.2021			
Official Journal L 288, 4.8.2021			

🇸🇬 Singapore

Pursuant to commitments under the European Union-Singapore Free Trade Agreement (EUSFTA), Singapore has undertaken efforts to enhance its national framework in respect of the protection of GIs. One of the notable tools used to strengthen this regime is the new architecture established for the registration of GIs in Singapore.¹⁷

Singapore has a sophisticated system which commenced acceptance of GI applications from April 1, 2019. Prior to the introduction of the registration system, GIs were granted protection in Singapore further to the TRIPS Agreement. However, given that the TRIPS Agreement does not impose standards or requirements for the implementation of a registration system, prior to 2019, the recognition of GIs in Singapore was only conclusively determined through court proceeding applications. The introduction of the Register provides greater recognition of the status of GIs and confers rights which are determined from the registration process itself.

Under the new registration framework, GIs registered in Singapore enjoy protection against unauthorized use, despite the fact that such use may not mislead the public as to the true geographic origin of the goods; this is applicable to all prescribed categories for which registration is accepted. This new system requires an integrated and coordinated approach among all relevant stakeholders/producers and regulatory entities alike. The introduction of the registration system has resulted in greater certainty, transparency, and accountability for GI [owner*], producers, and other relevant stakeholders.

¹⁷ Bird & Bird, [Singapore's New Geographical Indications Regime](#).

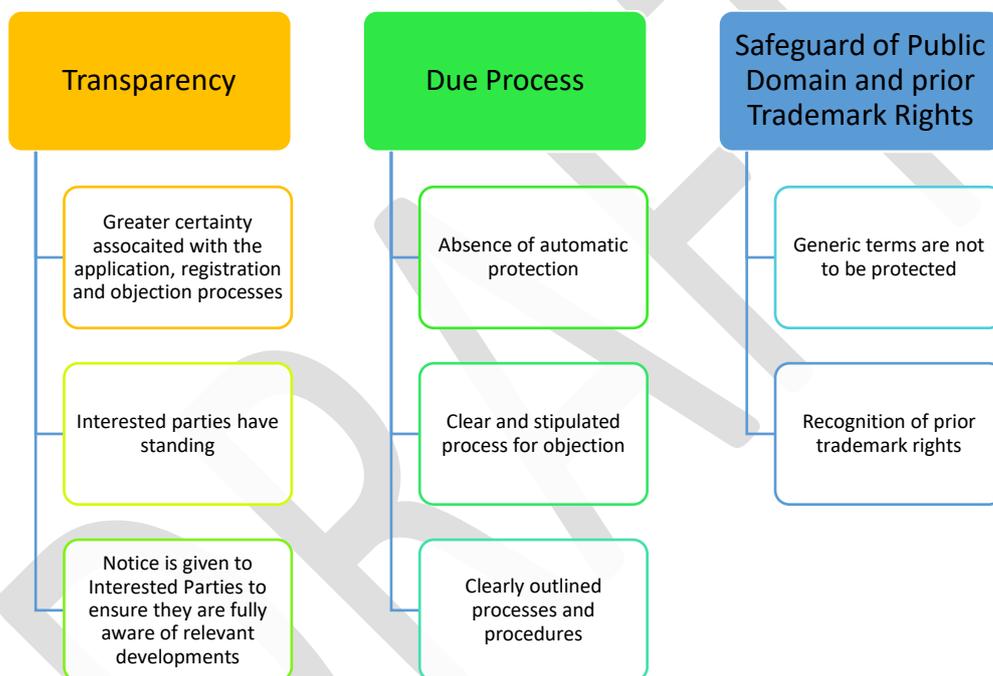
➤ Australia

In Australia there are currently two types of protection regimes utilized in respect of GIs:

- Certification marks
- Sui generis system protecting wine and grape products
- Protection against unfair business practices and methods
 - Common law tort of passing off
 - Consumer protection laws¹⁸

The Australian GI protection regime is grounded on key principles highlighted in the figure below.¹⁹

FIG n° 6: Key Principles of the Australian GI Protection Regime



The sui generis system for protection of wine GIs was introduced in 1994 in Australia and has been amended many times since its introduction to enhance the protection regime and to recognize developments under the Australia-European Community Agreement on Trade in Wine (Wine Agreement) and other developments. Protected GIs on the Register include:

- Australian wine GIs
- Non-Australian wine GIs; and
- Translations of non-Australian wine GIs.

As it relates to Certification marks, these are administered by IP Australia and assessed by the Australian Competition and Consumer Commission.

Certification marks identify that goods adhere to a particular standard associated with quality, composition, or **geographical origin**. **Certification mark standards can replicate the GI's country of**

¹⁸ Australian Government. [Recent developments in Australia in the field of Geographical Indications](#).

¹⁹ Ibid.

origin specification. Both the trademark registration and the associated standards can be subjected to third party objections.²⁰ Figure n° presents examples of certification marks registered in Australia.

FIG. n° 7: Examples of Certification marks registered in Australia²¹



It should be noted that some products can benefit from dual protection under more than one regime; e.g., under the sui generis regime and certification marks framework. FIG. n° presents examples of products which enjoy dual protection.

FIG n° 8: Examples of Products which enjoy Dual Protection



²⁰ Ibid.

²¹ Ibid.

CHAPTER 2 | GIs manual for producers

Introduction

This chapter aims at providing general principles underlying an application to register a geographical name under a GI system for producers of the concerned product.

The objective of a GI is to **protect a geographical name** of agricultural, agri-food, handicraft, or industrial products whose characteristics, quality, type, and reputation are linked to a defined territory and its specific know-how.

A GI provides a given product the **legal protection of its commercial name**, which is made up of a geographical name or a name with geographical significance.

This form of protection involves the reservation of a geographical name for a specific product for only those producers or other stakeholders who adhere to the production/transformation/elaboration specifications. In a world where markets are free and competitive, **this form of reservation can only be justified if the justification is objective and duly established/evidenced.**

In order to apply to register a geographical name, an application must contain information demonstrating that:

- o The GI applicant complies with the conditions as defined by the relevant legal framework; its statutes and or its capacity to collectively manage the GI
- o A product from a certain area has characteristics that are due precisely to its origin, and which therefore distinguish it from other products. In order to do so, a specific document **named “specification”** must be established by the applicant.

A. GI eligibility

1. Product eligibility/Type of products to be covered by a GI

Agricultural products typically have qualities that derive from their place of production and are influenced by specific local and geographical factors such as climate and soil. Most GIs throughout the world are applied to agricultural products, foodstuffs, wine, and spirits.

However, the use of GIs is not limited to agricultural products. A GI may also highlight specific qualities of **a product that are due to human factors found in the product’s place of origin, such as** specific manufacturing skills and traditions. That is the case, for instance, for handicrafts, which are generally handmade using local natural resources (or not) and usually embedded in the traditions of local **communities such as** “Kashmir Pashmina,” “Bohemia Cristal,” “Lamphun Brocade Thai silk,” “Porcelaine de Limoges,” etc. Some natural materials, such as natural stone, can also be protected as a GI (e.g., “Britain Granite” **in France** or “Makrana marble” **in India**).

INTEGRATE PHOTOS OF PRODUCTS

There are some basic conditions for a product to be GI-eligible:

- GIs cover goods and not services.
- Product categories:

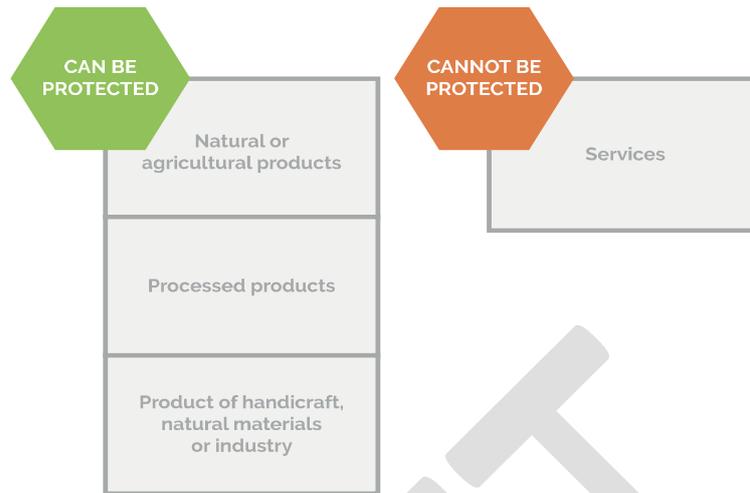
GI categories include products for human consumption, non-alimentary agricultural products, natural products, industrial products, and handicraft products. The scope of application depends on local regulations, but considering the international treaties and practices/examples in other countries, the following products/goods can be protected by a GI scheme:

- meat;
- dairy products;
- birds' eggs;
- honey;
- fisheries, aquaculture, seafood products;
- transformed product with meat and fish;
- vegetables, fruits, plants, roots, and tubers;
- transformed product with fruit and vegetables;
- coffee, tea, and spices;
- cocoa beans/chocolate;
- cereals;
- sugar;
- tobacco;
- rubbers and natural resins;
- oils/essential oils;
- transformed products;
- drinks based on plant extracts;
- beers and other fermented beverages;
- wines and spirits;
- leather, wool, silk (as raw materials);
- handicraft products (china, tapestry, fabrics, pottery, etc.);
- Industrial products (natural stone, wood, etc.).

Hence, all types of products/goods can be covered by a GI protection if they do not contradict national laws.

INCLUDE PHOTOS OF DIFFERENT TYPES OF PRODUCTS IN CARIFORUM COUNTRIES

FIG. n°9: Type of products that can be protected by a GI



- A GI is linked to its geographical origin. This link can exist based on natural factors, human factors, reputation, or the combination of all of the above. Reputation only can be enough to justify the link.
- A GI is associated with a geographical name or a geographical location.
- A GI applies to a product with specific characteristics, reputation, or quality; a shape, taste, color, or **quality that makes it “unique/different”** from others of the same category.
- A GI is tied to a name or sign that already benefits from a reputation linked to the product in question (mostly at local level but it can also be at national or international level).

What are the potential barriers to the recognition of a GI?

There are several barriers, from a legal point of view, that may arise when seeking protection for a GI, including the following:

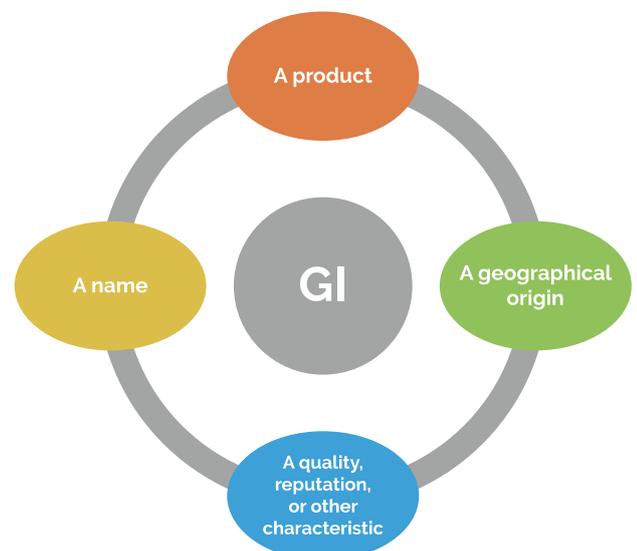
Misleading GIs

The protection of a GI may be refused if the competent authority considers that the geographical origin attributed to the GI is unreal or misleads the public about the origin of the products.

Conflict with a prior mark

A GI may be refused protection in a particular territory if the authority in that territory considers that the GI is identical or similar to a trademark previously applied for, registered or acquired through use, in good faith, and that use of the GI would result in a likelihood of confusion with

FIG. n°10: Link between a GI and its geographical origin



the trademark. It is therefore important before applying for the GI to verify that there is no registered trademark containing the GI name at the IPO.

Example: In France, “BACCARAT” is a registered trademark for glassware. This brand is well-known, but its name is also the name of the village where this know-how comes from. Other producers would have liked to register a GI. However, due to the existence of the prior trademark, which is highly identifiable by the public, and the potential risk of misleading the public, the GI could not be registered.

Generic character

“Generic” refers to a name that is identical to the term commonly used for goods or services in the country where the GI exists. Names that lost their geographical significance cannot be registered as GIs (for example, Dijon Mustard, Camembert, Eau de Cologne, etc.). The assessment to qualify a or not a name as **“generic”** lies on territoriality principle.

*Example: “Dijon Mustard” was originally a name associated to a type of mustard in France, “Dijon” being a city located in Burgundy, a province in France. However, as “Dijon Mustard” was not protected by its producers, the geographical name lost its geographical significance and became, through use, associated to a type of mustard that could be produced anywhere in the world, rather than associated to a specific origin. The producers could **no longer apply for a GI protection for “Dijon Mustard.”** They had to develop the name **“Burgundy Mustard”** which was later protected as a GI.*

Similarly, **the name “Camembert,”** which is a name of a village in the north of France where cheeses are produced, became a generic name to describe a type of cheese used everywhere in the world. Hence, in order to protect the famous French Camembert produced in Normandy, the producers had to apply for **a GI for “Camembert de Normandy” (Camembert of the Normandy region).**

ADD PHOTOS OF THESE EXAMPLES

ADD EXAMPLE OF STEEL PAN FROM TT

Homonymous geographical indications

Homonymous GIs are those that are spelled or pronounced alike, but which identify products originating in different places (and usually in different countries). In principle, these indications should coexist, but their coexistence may be subject to certain conditions. For example, they may have to be used in association with additional information on the origin of the product in order to prevent consumers from being misled.

A GI may be refused protection if, due to the existence of another homonymous indication, its use would be considered potentially **misleading to consumers with regard to the product’s true origin.**

Example (not a real one): In a case where a GI Roquefort cheese in France and a GI Roquefort cheese in Argentina existed, there could be a refusal for registration. Alternatively, parties may have to reach an agreement to further differentiate between GIs, amending the name or using a disclaimer associated with its use for example.

The indication is the name of a plant variety or animal breed

In certain jurisdictions, protection may be refused to a GI if it conflicts with the name of a plant variety or an animal breed and may, as a result, mislead the consumer as to the true origin of the product.

Example: In France, there is a cow breed known as **“Blonde d’Aquitaine”** (Blond of Aquitaine or blond-haired cow of the Aquitaine Region in English). Even though the name of the breed contains a geographical specification **“Aquitaine,”** **this denomination could not be registered as a GI as it is officially registered as an animal breed.**

Other barriers to GI eligibility:

Besides the obstacles explicitly mentioned in the legal framework, there are additional barriers to the eligibility of GIs:

- The use of which would be likely to deceive or cause confusion;
- The use of which would be contrary to any existing law; or
- Which would otherwise be disentitled to protection in a court.

Figure n° 11 Summary of potential barriers to GI protection



2. Applicant eligibility

GIs are products/goods that belong to the **common heritage of a territory**. Because of this specific element, the rights conferred by a GI must belong to the **legitimate collective stakeholders** that produce the products/goods according to recognized conditions of production that have been handed down from generation to generation.

Registration/protection of a GI may be requested by **a group of stakeholders or, in exceptional cases by a single applicant**, located in the product's delimited geographical area (see section *B.1.6. Delimitation of the geographical area*).

Organization of producers and other value chain stakeholders as a collective is not a requirement set by international GI agreements and therefore will depend on requirements present in national laws, but in practice [it is a key factor for the success of GIs](#).

Stakeholders who join a collective organization to apply for GI recognition are called the "GI applicant group" or "GI association."

The GI applicant group can include stakeholders at different stages of the product value chain: producers, processors, raw material suppliers, distributors, traders, etc.

Following are all the categories included in the term "GI producer":

- Any producer of agricultural product or natural products;
- Any processor of natural or agricultural or agri-food products;
- Any industry or manufacturer of products of handicraft; and
- Any trader dealing in the products mentioned above.

These stakeholders may become part of a producer association, a producer consortium, a cooperative, an interbranch association, a professional union, an economic interest group, or [any other collective organization that represents them and is able to guarantee that the GI meets the criteria set or agreed upon in the GI specifications](#) (see section *B.1. Specifications*). Regardless of the legal structure, the GI applicant group has to unite around a common strategy.

In some countries, recognition of a GI may also be requested by a competent national administration (e.g., a local authority).

Whatever its form, the collective organization must be able to deal effectively with all aspects involved in the management of a GI, because, in addition to drawing up the specifications, the collective organization (**which will be called "the GI rights holder"** once the GI is registered) will have to be able to

- a) manage and control the use of the GI,
- b) ensure that all its members respect the common rules defined in the specifications that covers the description of the product covered by the GI as well as the production methods, and
- c) take charge of the GI's promotional activities (see section *F. GI daily management*).

Illustration of one case in CARIFORUM MS



KEY TAKEAWAYS

- The GI must belong to the legitimate collective stakeholders
- The GI registration should be requested by a collective group of stakeholders
- The stakeholders must unite around a common strategy

B. Content of a GI application

1. Basic content of a GI application

The GI application should provide information on two main aspects that will be examined by the IPO:

1. The nature of the GI applicant;
2. The **“specifications,” including the** definition of the product and the explanation given by the applicant to demonstrate that the product is eligible as a GI.

Example of the GI model law²²:

Content of geographical indications' application

(1) An application for the registration of a geographical indication shall specify:

- (a) the name, address and nationality of the person making the application, and the capacity in which the applicant is applying for registration;
- (b) name of the representative of the applicant if any;
- (c) specifications, including the following particulars:
 - i. the geographical indication (name) for which registration is sought;
 - ii. the goods to which the geographical indication applies;
 - iii. the geographical areas to which the geographical indication applies;
 - iv. the quality, reputation or other characteristic of the goods in respect of which the geographical indication is used;
 - v. the process of production;
 - vi. the quality, reputation or other characteristic of the goods and how that quality, reputation or other characteristic (as the case may be) is essentially attributable to the place from which the goods originate,
 - vii. where the geographical indication for which registration is sought relates to a country other than NAME OF THE COUNTRY, evidence that the geographical indication has obtained recognition or registration as a geographical indication in the qualifying country or countries of origin, where applicable, and
 - viii. the reference to the control body;
 - ix. the labelling rules; and
- (d) such other particulars as may be prescribed.

2. GI applicant

The following information should be included in this section of the application:

- Name of the GI applicant group: name of the association/producer group/any competent legal person and/or the acronym when it exists (**e.g., “Jamaica Jerk Producers’ Association (JJPA)”**) AND its legal representative: the representative is currently the name of the president of the

²² Based on the GI model law proposed by the CARIFI project

association or the enterprise. It can be the director of a governmental body. It can also be the lawyer/attorney that represents the interests of the applicant;

- Contact details (of the GI applicant group and/or its legal representative): address, telephone, fax and email;
- Nature and composition: its legal nature (e.g., association, professional union, etc.), its missions, and the categories of operators concerned (e.g., producers, transformers, traders, etc.).

3. Specifications

This paragraph details the elements to be included in the **specifications** by the GI applicant group when applying for recognition of their product as a GI. These specifications will **set the conditions that must be shared and applied by all the stakeholders to benefit from the GI**. The specifications must reflect the reality of the product and the value chain. This is why the collective organization is of particular importance.

The drafting of the application can take time. A phase of consultation and deliberation within the GI applicant group is therefore essential because each operator has a specific vision of the product. This phase is all the more important as the specifications may, for certain types of products, determine the possibilities of improving the quality of the product and of adopting innovative practices.

Any lack of consensus between the different stakeholders when drafting the specifications could lead to decisions that only include a minority, exposing some legitimate GI stakeholders to exclusion or excluding traditional practices of production. It is therefore necessary to take into account the expectations and motivations of each stakeholder.

Having 100% of the stakeholders involved in the value chain of the GI applicant group is not compulsory but a good measure to ensure representation.

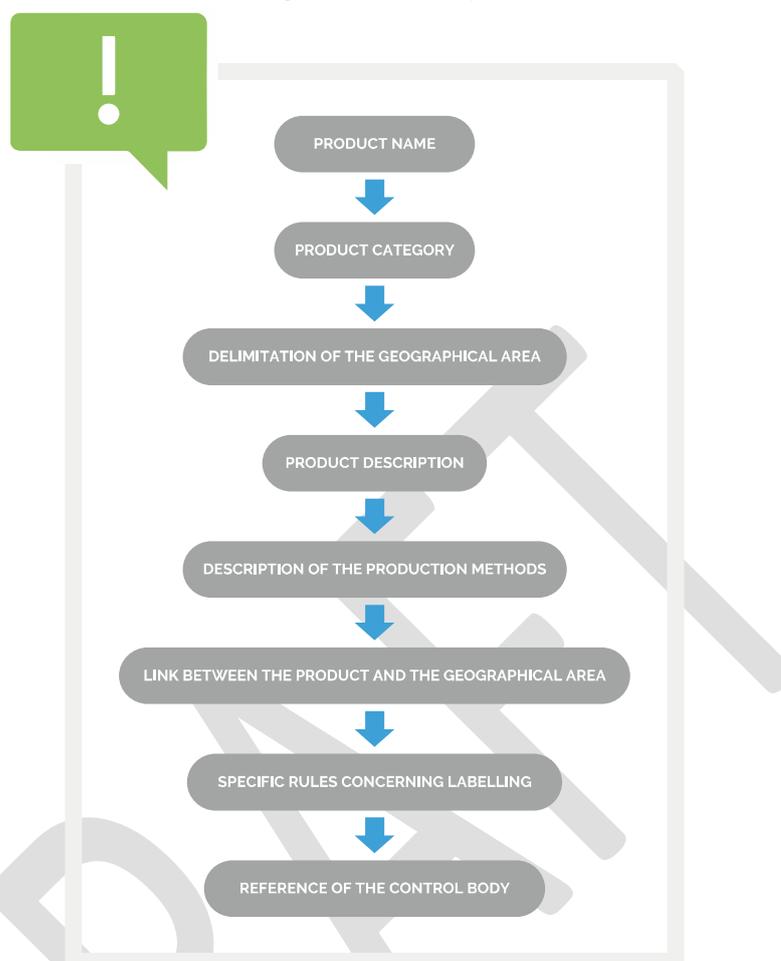
FIG. n° 12: The importance of the GI specifications



The specifications must be submitted in an editable computer file (e.g., a document prepared with the Office Word® software) to allow the responsible IPO to make changes when examining the GI application.

The following sections present the key elements classically requested by the legal framework in the process of a GI application.

FIG. n° 13: Key elements of the specifications



3.1 Product name

The name given in the book of specifications **must be exactly the same as that used in commerce or in the common language**, and only in the languages that are or were historically used to describe the specific product in the defined area. The original spelling of the name must be respected. The recognition of a GI does not aim to create new names, but to recognize the use of a name linked to production practices.

The application is normally based on a product **with a geographical name attached (e.g., “Mild Cévennes onions” in France, “Parmigiano Reggiano” in Italy, or “Pineapples from Benin”)**.

The name in the GI provides information to consumers as to the kind of product involved.

The name of the product, meaning the product category, is not compulsory. Some registered GIs for wines or cheeses refer directly to the geographical name without using the name of the product: **“Champagne” (sparkling wine), “Roquefort” (cheese), “Reggiano” (cheese), etc. The geographical name is enough to point to the type of product.**

Variety and breed names are accepted if they do not cause confusion for the consumer.

Descriptive words should be avoided unless they are an inherent part of the name of the product. Some **examples would be “traditional,” “original,” “homemade,” “natural,” “authentic,” etc.**

The **geographical name** may be the name of an administrative or historical region, or the name of an administrative unit (for example, a region, district, etc.), or the adjective referring to a geographical name. There is not a requirement for the GI name to correspond to an administrative legal definition.

It must be noted that **the larger the territory covered by a geographical name, the more difficult it is to preserve and protect it**. On the other hand, protection cannot be requested for names that are not representative of the area.

The geographical name is not a choice, rather it is usually indicative of the history and reputation of the product. If it is a choice, the name must be registered as a trademark.

It is important not to use a famous geographical name to take advantage of its notoriety. Its use needs to be justified and tied to the history of the product.

The presence of a geographical name or name with geographical significance is compulsory in the name of a GI.



KEY TAKEAWAYS

- ➔ The name must be exactly the same as the one used in commerce
- ➔ A geographic reference must be attached to the name
- ➔ The name is not chosen but comes from a history and reputation

3.2 Product category

The product category refers to the type/family of products to which the GI application relates.

Examples of product category: tomatoes, fresh meat, processed meat, glassware, fabrics, coffee (beans, ground), etc.

It can also be a legal definition of the category if given by the national framework:

- At the domestic level;
- At the regional level. Example of the EU categories: CLASS 1.8. Other products of annex I of the treaty (spices, etc.)

3.3 Delimitation of the geographical area

This section should include the **delimitation or definition of the geographical area to be covered by the GI**, which is an essential component of the GI scheme.

The geographical area refers to the territory where the product is found or produced. It is defined by a list of administrative entities (cities, regions, districts, etc.) and/or by natural geographic limits (topographical, climatic, etc.).

There is no requirement to make a correlation between the production area and the administrative area when delimiting the geographical area associated with the GI. In fact, this kind of connection is extremely rare due to the fact that the administrative area can move during the history of a country.

Examples: In France, most of the GI for cheeses bear the name of a city. The cities were in fact trading spots for cheeses, which took on their names as a result (*“Roquefort”, “Munster”, etc.*). **However, in practice, the area of production is much more important than the city itself. It covers a broader area. If we take the example of “Roquefort,” the city of Roquefort is one place to process the milk into cheese, but the geographical area of sheep breeders covers a larger area that includes the department of the Aveyron and some cities near this department.**²³

Furthermore, the operations taking place within this delimited area (origin of the raw material, various stages of elaboration, packaging, etc.) should be listed carefully and in accordance with the wishes of the GI applicant group.

Examples:

- For meat: elected, born, bred, slaughtered, cut up;
- For processed products: origin of the raw materials, transformation, packaging.

The applicant must explain these criteria precisely and objectively.

Delimitation is the action whereby a production zone, within which the GI is produced, is circumscribed and materialized.

In concrete terms, [the requested geographical area should take into account the elements that demonstrate the link the product has with its geographic origin](#) (section B.3.6. of this chapter).

[The geographical area must be described with precision and the criteria of its delimitation must be justified and linked to the product at hand.](#)

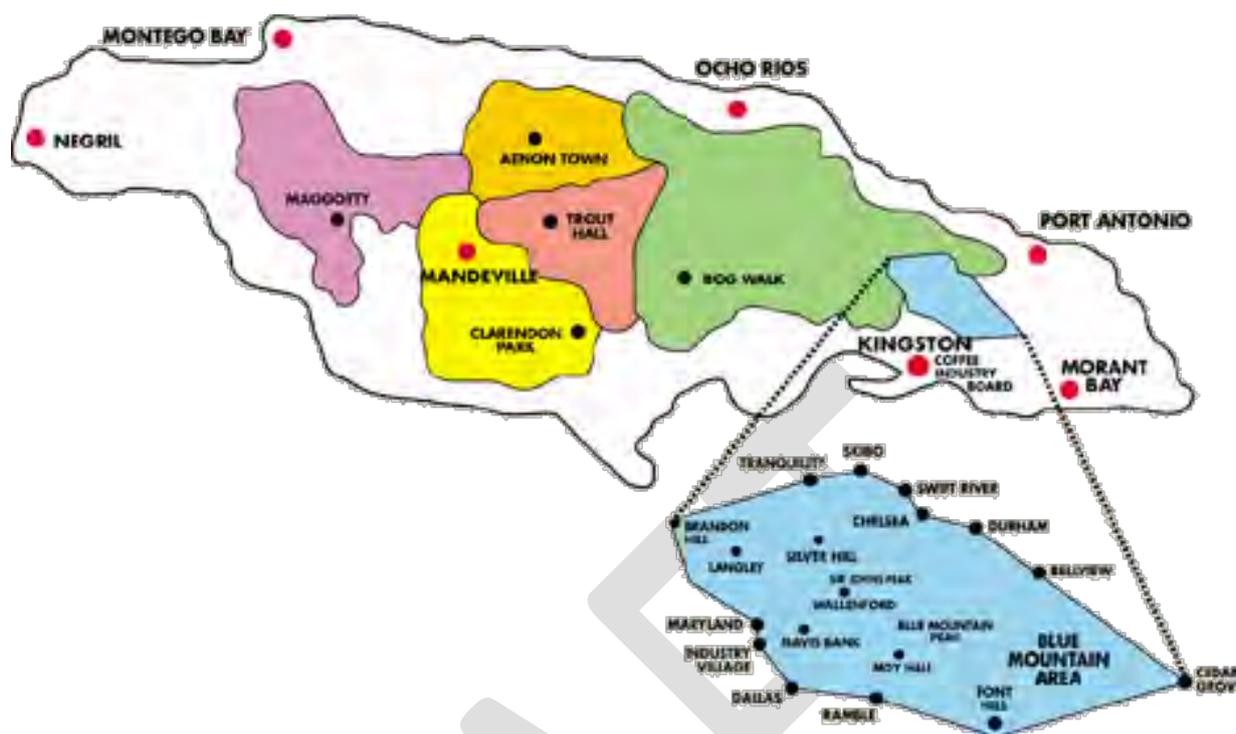
A map showing the political, administrative, topographical or other specific boundaries of the territory, region or locality identified, should also be provided. Traditionally, the map will define the exact geographical area covered by the GI, including all the villages, towns or regions that are included. If the GI is related to a natural factor, it may be interesting to include a topographic and/or climatic map.

ADD MAP OF TRINIDAD MONSERRAT HILLS COCOA

FIG. n° 14: **Example of the “Trinidad Monserrat Hills Cocoa” GI map** (Trinidad & Tobago)

²³ See the [GI “Roquefort” Map](#).

FIG. n° 15: Example of the “Blue Mountain Coffee” GI map (Jamaica)



KEY TAKEAWAYS

- The geographical area refers to a territory in which the GI must be produced
- It corresponds to the GI production, history and reputation
- It must be defined by a list of administrative entities or natural geographic limits
- Operations that take place in the area must be carefully listed
- A map should be provided

3.4 The quality, reputation, or other characteristic of the goods to which the GI is applied

This section should contain the **precise description of the product and its modes of presentation**. It aims at distinguishing the GI product from others in the same category.

Descriptors must be **objective** and measurable.

The product description can include the main organoleptic (shape, colour, aroma, flavour, texture, etc.), physicochemical (dimensions, dry matter content, sugar content, etc.), or microbiological characteristics of the product. What is included in the description will depend on what the producer group agrees are the unique characteristics of the GI product.

Only relevant descriptors shall be included. It is recommended to avoid overloading this part as all descriptors shall be evidenced/tested.

When it comes to a processed product, the description can include the raw materials used and their percentage of incorporation into the finished product.

The product is described using commonly accepted definitions and standards, units of measurement and commonly used or technical comparisons, without including technical characteristics or mandatory legal requirements applicable to all products of this type.

This section can also include:

- The species, breed and / or type of animal,
- The variety or varietal type used.

When the product comes from a specific breed or variety used outside the geographical area, it is important to specify how the product differs from other products from this same breed or variety outside of the geographical area.

Regarding the mode of presentation, it should be indicated whether the GI is requested on the fresh or processed product, whole or cut, frozen or not, packaged or not. This allows the applicant to determine in which stages of processing the product has the characteristics of the GI and therefore can benefit from the GI.

Examples:

For a cheese, it should be clearly indicated whether a GI is required for conditioned cheese or for the ripening stage.

Similarly, for a vegetable like the asparagus, there should be clarity on whether the group wishes to extend the GI to the canned or frozen product.

Example of GI DEMERARA Rum²⁴

A spirit drink with discernible sugar cane organoleptic characteristics, which is produced exclusively by fermentation and distillation of molasses or sugar-cane based substrate.

Chemical Requirements

Alcoholic strength is not less than 40 % by volume.

The total sum of congener levels (including acetaldehyde, ethyl acetate, higher alcohols) expressed in grams per hectolitre of anhydrous ethyl alcohol:

LIGHT-BODIED DEMERARA RUM : Less than 30,0 g/HL (and less than 10,0 g/HL esters)

MEDIUM-BODIED DEMERARA RUM : Greater than 30,0 g/HL but less than 300,0 g/HL (and more than 10,0 g/HL but less than 50,0 g/HL esters)

HEAVY-BODIED DEMERARA RUM : More than 300,0 g/HL (and more than 50,0 g/HL esters)

²⁴ Based on the EU single document for GI Demerara rum : [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0408\(01\)&rid=8](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0408(01)&rid=8)

Total acidity, expressed in grams of acetic acid per hectolitre of anhydrous ethyl alcohol:

LIGHT-BODIED DEMERARA RUM : Less than 20,0 g/HL

MEDIUM- OR HEAVY-BODIED DEMERARA RUM : Greater than 20,0 g/HL and less than 200,0 g/HL

Organoleptic Requirements

Appearance: Transparent with liquid consistency, density and viscosity of body varying with age.
Colour: varying with age, from colourless for unaged, to pale light straw yellow for lightly aged, to amber/gold and

deeper shades of copper/bronze/mahogany for higher aged rums.

Aroma: is primarily derived from the fermentation of sugar-cane based raw material, with the **characteristic ‘Demerara Rum’ possessing hints of sugar**-cane sweetness. This is supplemented by the subtle fruity and floral notes that are enriched through the distillation process, and the sweet aromatic, nutty, spicy, woody, herbal, earthy or other tertiary aromas that evolve during the maturation process, to the extent that the distillate is high in targeted congeners and is aged.

Flavour: distinct flavour profiles are pursued through specific styles of distillation, ranging from light/medium/heavy- bodied rums produced on wooden/copper/steel Pot and Column Stills of various **configurations. ‘Demerara Rums’ are characteristically rounded, smooth and rummy varying from** slightly sweet to dry, with tasting notes that complement the aromatic profile. The flavours may only be up to a maximum of 2,5 % of the volume of the finished product, and the rum must be free from added colouring matter (except where the colour is derived from wood during maturation or from caramel derived from sugars).

Specific characteristics (compared with spirit drinks of the same category)

The complex range of aromatic flavours of ‘Demerara Rum’ and its full-bodied nature distinguishes it from other rums. The complexity of the flavours is a result of the use of the traditional process of production and the specific mineral content of waters in the Demerara region of Guyana.

ADD EXAMPLES FROM CARIFORUM MS

The product description aims to list the characteristics of the product allowing it to be objectively distinguishable from other products of the same category.

Among the characteristics listed in this section, some will be also included in the section "Link with the geographical area" as specific features of the product linked to its geographical environment.

It is important to remember that the designation of origin and the GI allow a diversity of practices, within the limits of production rules defined collectively in the specifications. This know-how helps to build the identity of the product.



KEY TAKEAWAYS

- ➔ Precise description of the GI product and its modes of presentation
- ➔ The description must present the unique characteristics of the GI product
- ➔ The description may include organoleptic, physicochemical or microbiological characteristics
- ➔ The descriptors must be objective and controllable!

3.5 Description of the production methods

This section refers to the [method for obtaining the product](#) and contains the specifications for the elaboration of the product.

This part is the [technical component of the application](#). The description should be clear and without ambiguity. Any type of interpretation shall be avoided.

Generally speaking, the methods must include a description of the techniques used as well as the final product's technical criteria, highlighting the specificities of the GI product (see the section B.3.6. "[Link between the product and the geographical area](#)").

The description under this section must include all the stages involving the specific location of the product, including, where need be, the packaging.

For example:

- For animal-based productions: breeds, breeding practices (pasture, food, weaning, suckling, age at slaughter, maturation, classification of carcasses, pH, etc.);
- For plant-based productions: varieties, fertilization, need of irrigation, date of sowing and harvesting, period for harvesting, method of harvesting, sorting, firmness, sugar, storage, shipping, sales, etc.
- For processed productions: description of the raw materials, description of the production process, technical parameters, etc.
- For raw materials: description of the raw material origin if linked with the quality of the product.

The production methods should be checked during the control procedures.

3.6 Link between the product and the geographical area

This section of the book of specifications refers to the [link](#) between the product and the requested geographical area. [This is the fundamental point that justifies a GI application and the GI product eligibility for registration.](#)



The application must specifically establish the [link between the specificities of the product and the geographical area](#). This link may be the result of [natural factors](#) and/or [human factors](#).

There are three notions to bear in mind when identifying the specificities of the product:

- A given quality;
- A reputation;
- Or other characteristic(s).

Below is an explanation of how these notions can be related to the geographical area in question and how the resulting delimitation criteria and product specifications can be determined.

A given quality

Here, the GI applicant group must identify a specific quality that differentiates the GI product from other products of the same category (from another geographical area).

This specific quality may be the result of natural factors (geography, soil, climate, local varieties, breeds, biodiversity, landscape, etc.) and/or human factors (know-how, traditions, common practices, etc.), and is always linked to the geographical origin.

This can be highlighted using:

- The color of a meat (due to characteristic local animal feed), the color of a cheese (due to the milk used);
- A local variety or race;
- A particular soil or climate that provides a cultivated product with a unique shape or taste
- Maturation or salting using salt from the area (for transformed products).

[This information is essentially used to explain why the location leads to a different quality of the product and how geography influences its particular characteristics.](#)

A reputation

A reputation is most usually composed of [three elements](#):

- History;
- Past reputation; and
- Current reputation.

It is important to demonstrate that the product has a long history with the geographical area in question. Its reputation can be local, national or international.

The elements that constitute the historical reputation of the product serve to reinforce the application and should be mentioned in the section pertaining to the delimitation of the geographical area.

As for the current reputation, the application can include information on the local and national economic importance of the industry.

Other characteristic(s)

Reference can be made here to a specific know-how, which can be highlighted by comparing it to more usual techniques:

- Breeding methods;
- Cultural techniques;
- Manufacturing processes, etc.

It is essential to explain why these characteristics are linked to the geographical area.

Each of these three points must highlight the characteristics that are a result of the geographical area, and thereby justify the geographical delimitation. The applicant must have formalized these criteria precisely and objectively.

In concrete terms, the requested geographical area must take into account the elements that have been highlighted in order to demonstrate the link the product has with its geographical origin. The use of a reputed geographic name, without having established these links with its geographic origin, would not be acceptable.

To be complete, this section must set out, very clearly, the criteria selected to justify the geographical area. These criteria are based on the history of the product, its reputation, current production and the specific production conditions, linked to its location, all of which make it a unique product.

TO BE NOTED

This section must comply with the following presentation rules:

- I. Specificity of the geographical area (*description of the natural and/or human factors identified*)
- II. Specificity of the product (*description of the specific quality identified*)
- III. Causal interaction between the geographical area and a quality, reputation, or other characteristic(s) (*link between the specificity of the geographical area and the specificity of the product + elements of reputation, if any*).



KEY TAKEAWAYS

- This section establishes the **link between the product’s specificities and the geographical area**
- This is the fundamental point that justifies a GI application!
- This link can be the result of natural and/or human factors
- 3 notions to bear in mind to establish the link : a given quality; a reputation; or other characteristics

3.7 Specific rules concerning labelling

This section deals with the labelling of the GI product. The GI applicant group has to carefully think about the future use of the GI and start to develop a marketing strategy around the product. However, sample labels cannot be exhaustive as they will naturally evolve over time.

In practice, the labelling of the GI product must include the name of the GI product as indicated in the specifications; e.g., **“Coffee from + geographical name,” as well as “Geographical Indication” or “Protected Geographical Indication.”**

In addition, a national official logo can be used as well as a specific logo/sign that identifies the product as a GI.

Examples of national GI logos/seals :

In Jamaica	Other CARIFORUM MS
	

ADD PHOTOS PRIVATE LOGO

The labelling, appearance, and advertising of the GI product must generally avoid causing confusion in the mind of the consumer.

This labelling section can also include the use of GI names of ingredients, depending on the conditions decided by the GI applicant group.

3.8 Control body

The name, contact details, and accreditation reference of the organization responsible for future GI controls (e.g., national bureau of standard) should be indicated in this section.

According to the approved system of GI control in the country, this section can mention:

- The reference to official/public control body and/or
- The reference to a private control body

For the case of a certification body, a reference to the official accreditation number should be added.

4. Cases of foreign GIs

If a GI applicant originates from one country but wishes to protect its GI in another country, the GI should be recognized or registered in their country of origin first. Applicants are requested to present the official document (regulation) or certificate (in case of an IPO) of GI registration/recognition in the country of origin or in the regional economic union as for the European Union.

If such an application of foreign GI registration occurs, the conditions of the application will be the same as for a national GI application. The application will require only the proof of the GI registration in the country of origin such as a certificate or any official document that will give evidence of the existence of the GI. The initial specifications and all supporting documents shall be translated in the requested legal language by the applicant in order for the examiners to understand what the GI covers and who the applicant is.

The examination cannot be as strong and as detailed as the one for national GIs as national authorities from the foreign country may have already conducted a detailed examination of the GI application. However, in case of such application, it is important to check:

- If the GI application complies with the national rules (for instance specific rules concerning products, health, labelling etc.);
- If the specification contains information which is not clear for the examiners.

In addition, some countries allow foreign GI products to use their national logo. Most of the time, foreign GIs are not forced to use a national logo.

5. Controllability document

5.1 Traceability elements proving the origin of the product

In this section, the product specifications should identify the procedures that are in place to ensure the proof of origin concerning the product, raw materials, feed, process of production, and other items that are required to come from the defined geographical area. This is linked with the traceability system and all the documentation and processes implemented by producers in order to justify their compliance with the specifications.

Example of traceability system: According to the book of specifications of the PGI “Rice from Camargue” (France), the Union of Rice Growers in France (GI right holder) has set up a traceability system, or code of practice (COP), from harvesting to marketing of the product. Such system includes the following steps:

PRODUCTION STAGES	TRACEABILITY DOCUMENTS TO BE PROVIDED Example with the PGI “rice of Camargue”
N.A.	A list of producers (according to multi-year commitments and annual statements of plots).
RECEPTION	<p>At the storage agency:</p> <p>Each delivery of rice from an identified producer and declared in the production area (controlled by the union) is accompanied by an official document of customs - a receipt - which includes:</p> <ul style="list-style-type: none"> ➤ Owner’s name; ➤ Place of production; ➤ Product/type, family, variety; ➤ Date of transport; ➤ Destination; ➤ Weight. <p>This document is archived by the storage agency.</p> <p>At a producer or conditioner:</p> <p>Each delivery is identified on a register that includes:</p> <ul style="list-style-type: none"> ➤ Name of the supplier; ➤ Product/type, family, variety; ➤ Date; ➤ Amount.
STORAGE	<p>Either being the storage agency, the producer or the conditioner:</p> <p>Each storage unit is identified according to its content and its provenance from Camargue. Any movement of rice in the cells involved is mentioned in a register.</p>
ELABORATION	<p>Each batch passing to elaboration is registered including:</p> <ul style="list-style-type: none"> ➤ Provenance; ➤ Gross amounts involved; ➤ Net amounts at the end of elaboration; ➤ Quantities of by-product released; ➤ The name Camargue.

PACKAGING	<p>A document is placed on the package, noting:</p> <ul style="list-style-type: none"> ➤ Unit provenance; ➤ Quantity, type, family; ➤ Date; ➤ Identification of the conditioning lot; ➤ Destination. <p>Labelling of packaging includes Identification of conditioning lot (date, etc.).</p>
TRANSPORT	<p>A document is prepared relating the transport, noting:</p> <ul style="list-style-type: none"> ➤ Product Name; ➤ Family, cell, weight; ➤ Source/Destination; ➤ Date.

All these documents should be archived.

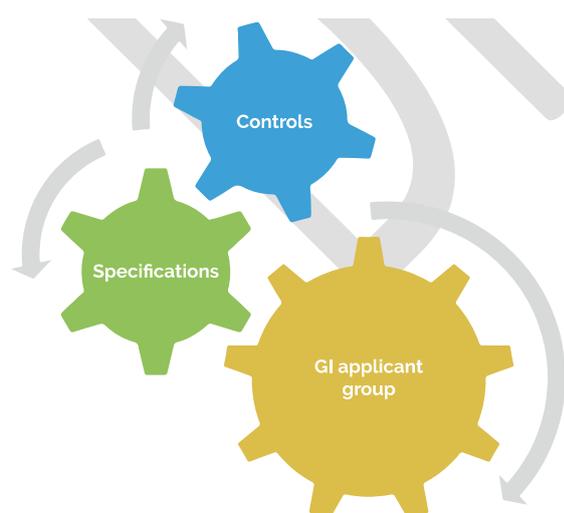
These operations (excluding packaging) can only be done in the geographical area. They are subject to internal checks from the group of producers and external control.

5.2 Control plan

It is essential to set up a control system to ensure compliance with the book of specifications.

The control document should demonstrate how the producers of the GI can comply with the rules set out in the book of specifications, especially concerning the description of the production method (section B.1.7. of this chapter). This document must relate the provisions of the product specifications

FIG. n° 16: The proper functioning of a GI



to the evaluation method used. This means that the GI applicant group must provide information on the future control of the GI. It is therefore necessary to identify the elements that can be used for the traceability of the product throughout the production process. The GI applicant group must also define the modalities of the controls (internal and/or external, frequency, etc.).

The controllability document is a working tool and must be approved by the designated external control body.

A control plan established by an external control body can also be provided at this stage (in this case, there is no need to provide the controllability document).

In any case, the control plan will be required before any approval of the book of specifications by the responsible IPO.

The control services, whether internal or external, must offer sufficient guarantees of objectivity and impartiality to all stakeholders.

In addition, there is normally no GI control before its recognition, but the GI applicant group must justify certain elements to ensure the viability of future controls, in particular:

- It should establish a list of all the producers who would like to use the GI: [these producers are the original producers of the GI](#) (the producers behind the GI application);
- It should verify, itself or through a control body, the ability of the producers to comply with the GI specifications.

6. Note for instance

Before starting the registration procedure, it is advisable that the GI product value chain stakeholders present the merits of the GI application and its technical and economic impact by carrying out collective work.

The GI applicant group must present and justify the request in [a note for instance](#). This document can contain the following type of information:

- Grounds for the application and its positioning in relation to products of the same category:
 - Present the reflections that led to the choice of this GI approach for this product (need for name protection, economic development, building of a value chain, etc.);
 - Position the approach vis-à-vis any other products in the same category, or even other origin pre-existing labelling on these products;
 - Present the valuation (especially economic) expected by the process;
 - Demonstrate the ability for producers to comply with the specifications (necessary investments) and bear the cost of control;
 - Present and develop any interactions of the proposed name with names of race, varieties, or brands (names repeating all or part of the name of the appellation) in addition to “*Product name*” of the specifications.
- Presentation of the production chain:

This should make it possible to locate production in its economic context with the following information:

- Description of the sector;
- Number of stakeholders in the sector by category (producers of the raw material, manufacturers, refiners, conditioners, etc.) and their geographic location;
- Potential for production growth;
- Summary description of the production systems of the holdings (share of the production operator activity, degree of farm specialization, etc.);
- Volumes produced (by type of operator, if applicable). For example, for a cheese: milk producers, farm producers, cooperative dairies, dairies private, refiners;
- Product marketing channels;
- Selling prices (from the farm and during the final marketing of the product);
- Packaging(s)/presentation methods used.

These data should be seen in the context of the market for other products of the same type.

This document is not usually required in a GI application, however, it is very interesting as it gives the reasons of the GI application to the IPO responsible for its registration. This document is recommended for the GI strategy of the GI applicant group.

7. Integration of measures linked with sustainability into the GI specifications

Public opinion's expectations on products have evolved significantly in recent years, with the desire for production methods to meet **more rigorous sustainability criteria**. **The environment and animal/human welfare have become major concerns for consumers**, aware of the ecological impact of the products they consume.

The consumer is even **more demanding when it comes to officially certified products such as GIs** - whose prices are generally higher than those of non-certified products - and will be more inclined to buy them if they stand out from other products and **offer social and/or environmental guarantees**. In fact, when the consumer chooses to buy GIs, he/she chooses quality, and expects production methods that are consistent with the principles of sustainable development. Moreover, it is important to remain consistent with the initial objective of official agri-food certifications, which is to offer consumers quality products, and quality does not stop at organoleptic requirements exclusively.

The consideration of sustainability issues in GI specifications has been the subject of some **proposals**. **For instance, the European Parliament** reaffirmed it in the future CAP and one of the most notable evolutions is the **integration of the contribution to sustainable development into the GI specifications** in the provisions of the EU Regulation No 2021/2117 amending EU Regulation No 1151/2012 on quality schemes for agricultural products and foodstuffs, which entered into force on December 7, 2021.



We therefore strongly advise producer groups in the CARIFORUM States to assess their performance in terms of sustainable development and to define axes of progress by integrating social and/or environmental measures into their GI specifications, if possible, in order to meet these new expectations and build consumer confidence.

The French Institute for Quality and Origin (INAO), in charge of GIs at the national level, recently **published a brochure “Agro-environment and official signs of origin and quality”**²⁵ with recommendations regarding the integration of agro-environmental measures.

INAO suggests three options to meet these challenges:

- A. The producer group integrates agro-environmental measures directly into the GI specifications;
- B. The producer group undertakes, outside the GI specifications, to collectively support producers to commit to an official environmental certification process - such as organic farming;
- C. The group integrates an official environmental certification requirement into the GI specifications - such as organic farming.

²⁵ INAO. 2021. *Agro-environnement et signes officiels d'origine et de qualité*. Consulted on inao.gouv.fr

Examples of agro-environmental measures to be inserted in the GI specifications

These measures should respect the general principles of sustainable development.

We have translated some concrete examples from the INAO below:

- ➔ Preserve and develop biodiversity

E.g. : planting of hedges and grass strips; reduction or even banning of herbicides; biodiversity of pastures and diversity of flora; development of agroforestry, etc.

- ➔ Controlling and reducing fertilisation

E.g. : limiting the use of chemical fertilisers; encourage the cultivation of green fertilisers, etc.

- ➔ Limit the use of pesticides

E.g. : use of varieties or breeds that are more resistant to some diseases; reduce the action of parasites through more natural methods, etc.

- ➔ Promote better water management

E.g. : respecting good irrigation practices; rainwater harvesting; use of drought-resistant plants, etc.

- ➔ Adapting livestock production to local resources

E.g. : reducing the use of medicines, especially antibiotics; favouring local origin of food; banning GMOs in animal feed, etc.

- ➔ Use of more suitable genetics

E.g. : favourable use of indigenous and/or locally adapted varieties and breeds, etc.

- ➔ Carbon footprint

E.g.: try to source local raw materials, define some rules to limit the carbon footprint

TO BE UPDATED WITH CARIFORUM EXAMPLES

C. Registration procedure

The GI form must be filed with the competent authority, which can be the IPO. The IPO will carry out an administrative and a substantive examination of the application before registration. There is often a need of exchanges between the GI applicant and the IPO.

The substantive examination procedure is not defined by the law yet. If the application is approved, the IPO in general will issue the GI registration certificate.

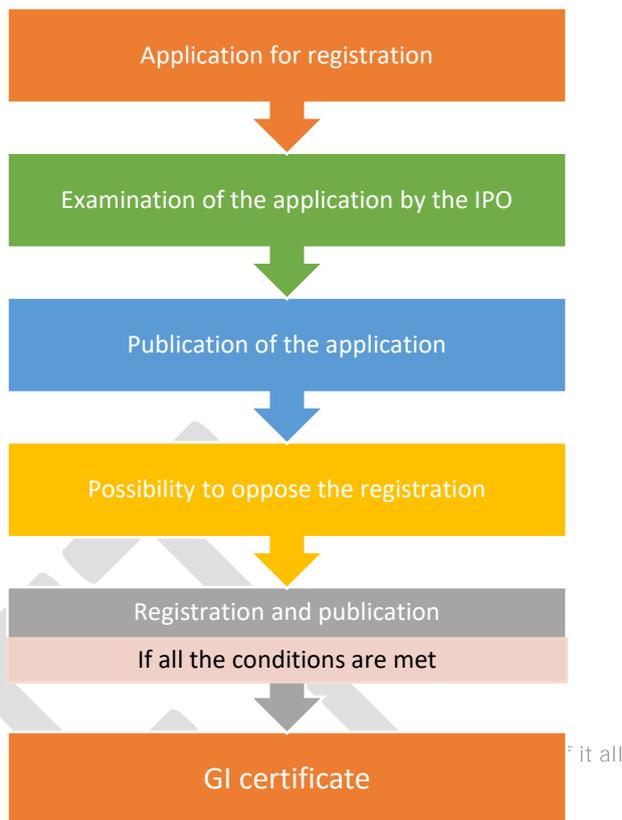
Once registered, the GI cannot be turned into public property nor become generic.

GIs are protected as long as the typical characteristics and qualities are still there and are respected by the producers.

FIG. n° 17: GI registration application



FIG. n° 18: GI registration process



ADD EXAMPLE OF GI CERTIFICATE + TEMPLATE

D. GI daily management

When the GI is registered within the IP Office, the “GI applicant group” becomes the “GI rights holder” or “GI [owner*].” In practice, different terms can be used to designate the entity or the legal person in charge of the GI management, such as GI associations, GI groups of producers or GI interbranch organizations as inclusive structures representing the GI producers and the GI value chains. That said, we will use the term “GI rights holder” throughout this manual.

The GI rights holder will be in charge of managing, fostering, and monitoring the use of the GI in question, either independently or in collaboration with public institutions. It should have the capacity to organize its members to work collectively (to manage activities for which stakeholders are not necessarily used to working together).

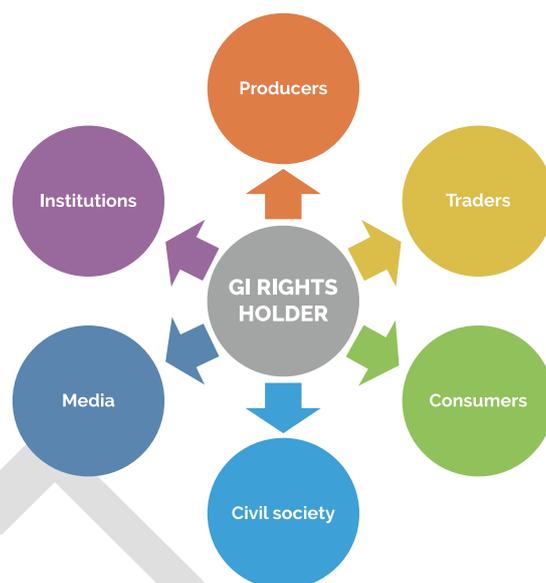
The GI rights holder is the only one that may use or authorize the use of the registered GI.

Normally, all producers able to meet and follow the defined specifications can be members of the GI rights holder organization.

The role of the GI rights holder is therefore not restricted to setting up the specifications. It must continue throughout the life of the GI product.

This role involves several aspects:

- The GI rights holder is in charge of the day-to-day management of the legal structure: meetings, boards of directors, general assembly;
- The GI rights holder is responsible for managing the operating budget;
- The GI rights holder acts as the interface with the State;
- The GI rights holder ensures that all its members respect the common rules defined in the book of specifications;
- The GI rights holder must provide production and technical assistance and information to producers and a producer support (information on the specifications, HACCP, new standards, etc.)
- The GI rights holder must provide statistical information on the sector (data recovery and statistical processing)
- The GI rights holder is in charge of the promotion of the GI product (putting in place a marketing strategy, a communication on the GI strategy, visuals, brands, etc.)
- The GI rights holder also acts to defend the GI.



The GI rights holder has the function of coordinating, supporting, and implementing the activities necessary for the collective development of the product. But this vision, as well as the implementation and management strategy, must be shared collectively.

E. Protection granted with Geographical Indications

1. Effect of GI registration and protection

The protection of a GI name is based on regulatory provisions specific to geographical indications defined at the national, regional, or international level. The qualities of a GI are also closely tied to issues related to deception, fraud, unfair competition, and parasitism (which consists of taking advantage of the notoriety or reputation attached to a GI without submitting to the same rules and constraints).

In *sui generis* legislations, GI registrations are not subject to a specific period of validity. This means that the protection for a registered GI will remain valid unless the registration is cancelled.

However, in legal frameworks based on the trademark system, registered GIs may be protected for renewable ten-year periods.

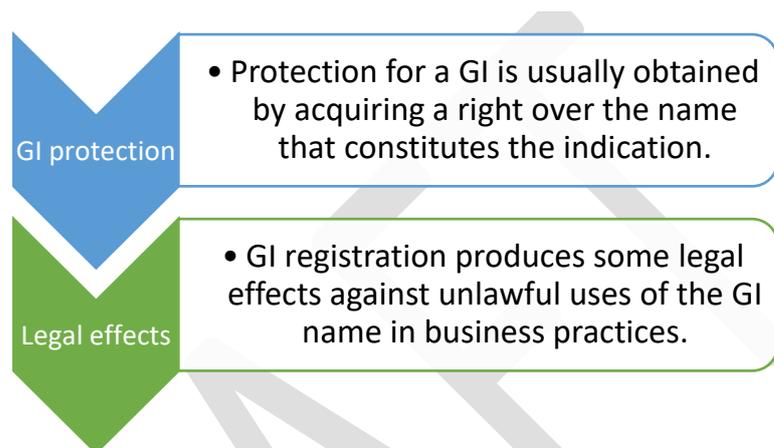
- GI protection covers the use of GIs by unauthorized parties or the lack of GI specification compliance, which may be detrimental to legitimate producers and to consumers. Such uses deceive consumers and lead them to believe they are buying a genuine product with specific qualities and characteristics, whereas they are getting an imitation. Producers suffer damage because valuable business is taken away from them, and the established reputation of their

products may be affected. Producers may even be prevented from using the indication themselves if it is registered as an individual trademark by a company.

- ➔ Protecting a GI enables those who have the legitimate right to use the indication to take measures against others who use it without permission and who benefit from its reputation free of charge (“free-riders”). Protecting a GI is also a way to forestall registration of the indication as a trademark by a third party and to limit the risk of the indication becoming a generic term.

Figure 1 below addresses GI protection and the legal effects of registration.

FIG. n° 20: GI protection



A geographical indication right enables GI [owners*] or GI right holders to prevent its use by a third party whose product does not conform to the applicable standards.

BOX: Darjeeling protection

In jurisdictions where the Darjeeling GI is protected, producers can exclude use of the term “Darjeeling” for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the GI.

In this case, the Tea Board hired a World Wide Watch agency called Compumark, whose job it is to monitor and report cases of unauthorized use and any other attempt to register products under the brand name “Darjeeling.” This is how the Tea Board prevents the misuse of the brand name.

As a result of these measures, a company called “Bulgari” agreed to withdraw its application to use the tag “Darjeeling Tea fragrance for men.”

The acquiring of this GI had positive consequences. It in fact secured premium prices, which in turn benefited the workers. Because of the protection, Darjeeling tea was able to maintain stability even when the tea sector as a whole experienced a crisis. It also brought about consolidation of ownership and new investments in Darjeeling tea.



However, a protected GI does not enable the [owner*] or right holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a GI is usually obtained by acquiring a right over the sign (which is mainly a name) that constitutes the indication.

GIs can never be considered as having a generic character and falling into the public domain once they are registered.

GI protection covers different types of issues. It is also sometimes necessary to take action when the GI faces an infringement likely to weaken the value chain and the image of the product.

In practice, some activities may be implemented:

- Identification of cases of GI abuses (direct or indirect): by the group producers, by the producers themselves, by the consumers, by the public bodies, etc.
- Identification of issues between GIs and trademarks: establishing a system of monitoring the applied trademarks likely to impact the GI.
- Enforcement activities, *ex officio* actions (enforcement of intellectual property laws, criminal enforcement, etc.), and relationships with *ex officio* competent authorities.

It is useful to distinguish between:

GI protection (as referred to above)

and

the person or institutions entitled to protect the GI. Normally, GI associations or right holders may have the competency to protect the GI. When the legal framework covers the *ex officio* protection (protection directly implemented by public bodies), some specific authorities such as the frauds department, consumers protection department, or customs may take direct actions to protect the GI.



KEY TAKEAWAYS

- ➔ The use of a registered GI is restricted to the products that meet the established specifications and gives producers an exclusive right to use the registered name for their products.
- ➔ There are legal means legitimate users can resort to in order to protect the GI name.

2. GI protection scope

Classical provisions will cover the [different types of GI abuses](#)²⁶:

No person shall:

²⁶ Based on the GI Model Law proposed in the CARIPI project.

(a) in the designation or presentation of goods, by any means, indicate or suggest that the goods originate in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of the goods;

(b) use a registered geographical indication for direct or indirect commercial misuse in respect of goods that are identical or comparable to those of the registered geographical indication where the misuse benefited or would benefit from the reputation of the geographical indication;

(c) use a registered geographical indication for direct or indirect commercial misuse in respect of goods that are non-identical or non-comparable to those of the registered geographical indication where the misuse benefited or would benefit from the reputation of the geographical indication;

(d) use a registered geographical indication identifying goods not originating in the place indicated by the geographical indication in question even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like, including imitation, evocation or translation of the registered geographical indication;

(e) engage in conduct which constitutes an act of unfair competition, being an act of competition contrary to honest practices in industrial or commercial matters and including:

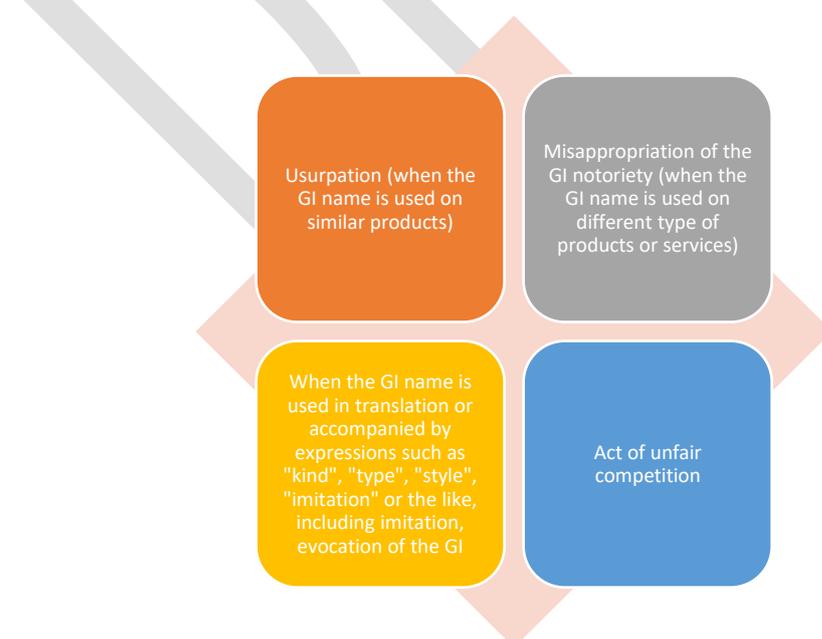
(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; and

(iii) indications or allegations, the use of which in the course of trade, is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

Figure below summarizes the main types of GI abuses

FIG. n° 21: Typology of GI abuses



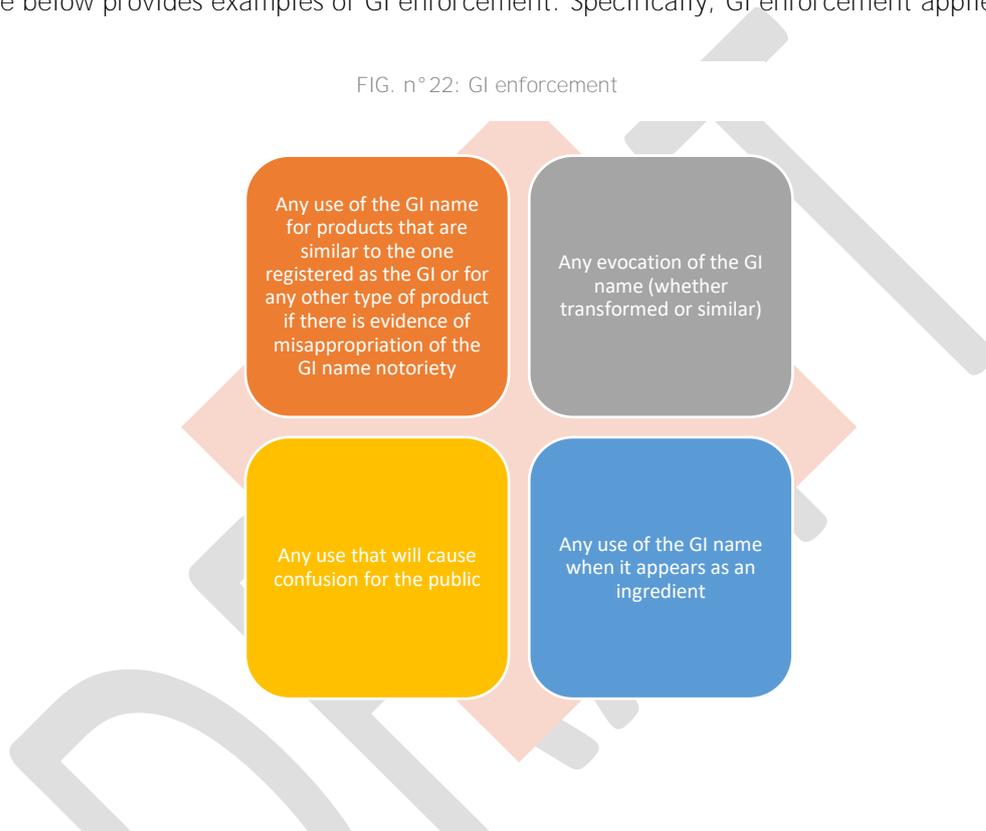
Add examples:

Photo of usurpation

The GI abuses may be identified in different ways: in local markets, supermarkets, magazines, professional booklets, fairs, trademark application publications, on the internet (website, marketplaces, etc.).

Figure below provides examples of GI enforcement. Specifically, GI enforcement applies to:

FIG. n° 22: GI enforcement



BOX: GI Champagne and Champanillo name case - Case of misappropriation of the GI notoriety

The Court of Justice of the European Union (CJEU) rendered an important judgment on September 9, 2021, on the question of the protection of the evocation of the GI Champagne in the case (C- 783/19) of a chain of Spanish tapas bars called “Champanillo” (meaning “little champagne” in Spanish) and the Interprofessional Committee of Champagne Wine (CIVC). The company, governed by Spanish laws, designates and promotes its establishments under the Champanillo brand. In its advertisements, especially on social networks, it uses a graphic medium representing two glasses tapping against each other.

The question here is whether the GI Champagne can extend to actions targeting catering services. In its decision, the CJEU answers in the affirmative and specifies that the scope of protection granted by a GI is not limited to products, it also extends to services.



KEY TAKEAWAYS

- GI protection covers a wide range of situations.
- The objective is to protect the producers involved in the GI process as well as the consumers.

3. How to enforce GI rights

GI protection is most of the time enforced by the group or the person that registered the GI:

- ☞ In relation to the GI producers - to check if they correctly implement and respect the GI specifications
- ☞ In relation to third parties (at national and international level) - to fight against GI usurpations and abuses

However, sometimes the legal framework provides for *ex officio* protection, or protection implemented by public bodies.

Enforcement by GI associations

Like all intellectual property rights, GI rights are enforced by the application of national legislation, typically in a court of law. The right to take action could rest with a competent authority, the public prosecutor, or any interested party, whether a natural person or a legal entity and whether public or private. The sanctions provided for in national legislation could be civil (injunctions restraining or prohibiting unlawful acts, actions for damages, etc.), criminal, or administrative.

It is recommended to adopt a two-step approach in case of GI infringements:

- ☞ Step one: Sending a warning letter to the infringer (warning letter may solve many conflicts)
- ☞ Step two: Initiating legal action if no positive outcome following step one

Ex officio protection

Defined national public bodies (such as the frauds department, consumers protection department or customs) may take appropriate administrative and judicial steps to prevent or stop the unlawful use of the name of products that are produced or marketed in the country.

In practice, when producers realize there is a misuse on the GI, they can ask customs or consumer offices to intervene and remove the product from the market in addition to requiring specific legal provisions for protection of the GI name.

4. Protection of GIs used as ingredients

a. Context

This section aims to provide [recommendations on what can or cannot be put on the label of a processed product using a GI as an ingredient](#).

Some processors do not hesitate to use the reputation of GIs to add value to their processed product. It can indeed be very convenient for them to use a GI as an ingredient, on the one hand to benefit from their inherent quality, but also and above all to be able to advertise them and thus benefit from their notoriety, since consumers are increasingly concerned about the authenticity of the products they consume.

The use of a GI as an ingredient can also present several opportunities for producers, including:

- ➔ An increase in production volumes by diversifying commercial outlets;
- ➔ An increase in the value and promotion of their GI product by giving it visibility.

This approach can also pose some challenges including:

- ➔ A risk of creating confusion among consumers between their GI and the processed product;
- ➔ A damage to the reputation of their GI product.

[If the final quality of the processed product that uses the GI is not considered as high enough, this can be very damaging to producers.](#)

b. European guidelines

There is no mandatory legislation on the labelling of processed products using GIs as ingredients, but there are European guidelines giving basic instructions, which are presented below.

Indeed, in 2010, the European Commission adopted guidelines in the form of a communication which aims to illustrate the legislative provisions of the [“Regulation \(EU\) No 1151/2012 on quality schemes for agricultural products and foodstuffs”](#) to help economic operators determine their room for maneuver in this area. This communication is entitled [“Guidelines on the labelling of foodstuffs using protected designations of origin \(PDOs\) or protected geographical indications \(PGIs\) as ingredients.”](#) It is based on agricultural and foodstuffs, but the principles could be implemented for other types of GI products.

[The EC guidelines are as follows:](#)

According to the Commission, a name registered as a GI may legitimately be included in the list of ingredients of a foodstuff.

The Commission also considers that a name registered as a GI may be mentioned in or close to the trade name of a foodstuff incorporating products benefiting from a registered name, as well as in the labelling, presentation and advertising relating to that foodstuff, [provided that the following conditions are met:](#)

1. [The foodstuff in question should not contain any other ‘comparable ingredient’](#), i.e. any other ingredient which may partially or totally replace the ingredient benefiting from a GI. As a non-restrictive example of the concept of ‘comparable ingredient’, the Commission considers that a blue-veined cheese (commonly known as ‘blue cheese’) could be considered comparable to ‘Roquefort’ cheese.
2. [This ingredient should also be used in sufficient quantities to confer an essential characteristic](#) on the foodstuff concerned. However, given the wide range of possible scenarios,

the Commission is not able to suggest a minimum percentage to be uniformly applied. As an example, the incorporation of a minimum amount of a spice benefiting from a GI in a foodstuff could, if appropriate, be sufficient to confer an essential characteristic on that foodstuff. By contrast, the incorporation of a minimum amount of meat benefiting from a GI in a foodstuff would not a priori be sufficient to confer an essential characteristic on a foodstuff.

3. Finally, the percentage of incorporation of an ingredient with a GI should ideally be indicated in or in close proximity to the trade name of the relevant foodstuff or, failing that, in the list of ingredients, in direct relation to the ingredient in question.

On the assumption that the above conditions are met, the Commission feels that the **Geographical Indications terms, abbreviations or symbols** accompanying the registered name should be used in labelling, within or close to the trade name or in the list of ingredients of the foodstuff **only if it is made clear that the said foodstuff is not itself a GI**. Otherwise, the Commission takes the view that this would result in the undue exploitation of the reputation of the GI and result in consumers being misled. For example, the trade names **‘Pizza au Roquefort’ (Pizza with Roquefort)** or **‘Pizza élaborée avec du Roquefort AOP’ (Pizza prepared with Roquefort PDO)** would hardly give rise to a dispute in the eyes of the Commission. By contrast, the trade name **‘Pizza au Roquefort AOP’ (Pizza with Roquefort PDO)** would clearly be ill-advised, in as much as it could give the consumer the impression that the pizza as such was a product benefiting from a PDO.

The Commission takes the view that, **if an ingredient comparable to an ingredient benefiting from a GI has been incorporated in a foodstuff, the name registered as a GI should appear only in the list of ingredients**, in accordance with rules similar to those applicable to the other ingredients mentioned. In particular, it would be appropriate to use characters that are identical in terms of font, size, color, etc.

FIG. n° 23: Guidelines on the labelling of foodstuffs used GIs as ingredients

1. NO COMPARABLE INGREDIENTS
 The foodstuff **should not contain any other 'comparable ingredient'**, i.e. any other ingredient which may partially or totally replace the GI.

2. ESSENTIAL CHARACTERISTIC
 The GI should be used in **sufficient quantities to confer an essential characteristic** on the foodstuff in question.

3. PERCENTAGE TO BE MENTIONED
 The **percentage of incorporation** of a GI should be indicated in or in close **proximity to the trade name** of the foodstuff in question.

GIs TERMS, ABBREVIATIONS AND LOGOS

If the above conditions are met, the GIs **terms, abbreviations and logos** can accompany the registered name in the labelling, within or close to the trade name or in the list of ingredients of the foodstuff **only if it is made clear that the said foodstuff is not itself a GI**.

Here are some examples of geographical indication names and logos used in processed products to benefit from their reputation in order to increase consumer interest.

GI name and logo (if any)	Processed product using the GI as an ingredient	
<p>GI « Grana Padano » Italian cheese</p> 	<p><i>Bolognese lasagna</i></p> 	<p>In this case, the name of the “Grana Padano” GI (PDO) and the logo of the GI right holder are applied on the front of the processed product's marketing packaging.</p> 
<p>GI « Parmigiano reggiano » Italian cheese</p> 	<p><i>Pesto sauce</i></p> 	<p>In this case, the logo of the GI right holder is applied on the front of the processed product's marketing packaging.</p> 
<p>GI « Beurre Charentes-Poitou » Charentes-Poitou butter (France)</p> 	<p><i>Chocolate croissant</i></p> 	<p>In this case, the name of the “Beurre Charentes-Poitou” GI (PDO) and the logo of the GI right holder are applied on the front of the processed product's marketing packaging.</p>

<p>GI « Piment d'Espelette »</p> <p>Espelette sweet chili (France)</p> 	<p>Chocolate bar</p> 	<p>In this case, the name of the “Piment d'Espelette” GI (PDO) is applied on the front of the processed product's marketing packaging.</p> <p>The GI group drafted a specific note on the use of the GI as ingredient agreed to by the public authorities.</p> 
<p>GI « Sel de Guérande »</p> <p>French salt</p>	<p>Crisp packet</p> 	<p>In this case, the name of the “Sel de Guérande” GI (PGI) is applied on the front of the processed product's marketing packaging.</p> 

c. EU case law

The Association of European Regions for products of Origin (AREPO), which is a European network of Regions and producer associations that deals with EU quality schemes and more specifically GIs, recently published a study on EU geographical indications used as ingredients in processed products,²⁷ as a result of a research carried out on AREPO member Regions and associations of producers. Below is a summary of the "Champagner Sorbet" case, which constitutes [the first European case law on the matter](#).

²⁷ AREPO. 2021. *The use of EU geographical indications as ingredients*. Consulted on arepoquality.eu.

BOX: “Champagner Sorbet” case

Reflections around the issue of GIs used as ingredients in processed products have intensified after the judgement of December 20, 2017, of the Court of Justice of the European Union (CJEU) in the case of [Comité interprofessionnel du vin de Champagne v Aldi Süd Dienstleistungs-GmbH & Co OHG](#) (C-393/16).

In 2012, Aldi, a German discount chain, started marketing a sorbet under the name of “Champagner Sorbet,” which contained about 12% of champagne.

The Comité interprofessionnel du vin de Champagne (CIVC), which quickly became aware of the existence of this product, brought an action before the Munich Regional Court for [unfair exploitation of the reputation of their “Champagne” GI](#)

(PDO). The Higher Regional Court ruled in favor of Aldi on the grounds that the champagne was present in sufficient quantity in the finished product to be considered an essential ingredient.

The CIVC did not agree with this decision and brought an action before the German Federal Court of Justice, which found it necessary to refer the matter to the CJEU for a preliminary ruling. [The CJEU stated that the use of a GI in the name of a processed product cannot be considered unfair use *per se*.](#)

As a result, the “Champagner Sorbet” case led to a ruling by the CJEU who made it officially legal to use a GI as part of the name of a processed product, even without the consent of GI right holders, [as long as the product has, among its characteristics, “a taste attributable primarily to the presence of that ingredient in the composition of the foodstuff”](#) (CJEU, 2017). Otherwise, the use of the GI name on the processed product marketing packaging constitutes a misleading indication and is therefore illegal.

In its analysis, AREPO concludes that *“Even if it establishes a certain level of protection for the GIs used as ingredient in a processed product, the judgment would seem to liberalise, under certain conditions, the use of [GIs] in the name of composite products, regardless of the authorisation of the protection consortia or the provisions of the specifications. Furthermore, it does not define ‘taste’ leaving up to the national courts to analyse and decide case by case.”*

FIG. n°: The “Champagner Sorbet” marketing packaging from Aldi



d. Recommendations

As recommended by AREPO and by AND International and al. in their report on the “Evaluation support study on Geographical Indications and Traditional Specialties Guaranteed protected in the EU,”²⁸ it is necessary for the institutions to make it compulsory to establish upstream contracts between the GI right holders and operators seeking to use the GI as an ingredient and in the sales name of their finished product, to avoid any conflict between stakeholders later on.

[It is recommended that the GI group define a common rule for the use of the GIs as ingredients and to disseminate this common rule among all the stakeholders \(retailers, processors, etc.\). This will avoid future conflicts.](#)

[Additionally, legal protection of GIs as ingredients shall be conferred by the law.](#)

²⁸ AND International and al. 2021. *Evaluation support study on Geographical Indications and Traditional Specialties Guaranteed protected in the EU*. Final report. Consulted on [op.europa.eu](#).

DRAFT

CHAPTER 3 | GIs manual for IPO examiners

A. GIs application

1. Administration responsible for assessing the application

The competent authority (“the Authority”) plays a very important role in the protection of geographical indications, including providing technical assistance, receiving GI applications, carrying out administrative and functional examinations, monitoring and cancellation of GI protection. The Authority (which in most jurisdictions would be the Registrar of the IPO or the Director of the IPO) is therefore responsible for and empowered to perform all functions in respect of the administration, maintenance and registration of geographical indications in the relevant jurisdiction. Paramount amongst such responsibilities, include:

- Assisting the GI applicants in the preparation of the specifications of the GI product;
- Examining the GI applications (including specifications);
- **Preparing materials, undertaking administrative tasks, completing the check requirements’** documents for the registration of GIs;
- Preparing material document files;
- **Conducting substantive examination’s for national GI application, including technical** evaluation on the proposal of registration or the proposal of rejection of the GI application, directly or supported by appointed external experts;
- Providing technical assistance, accompanied, if any, by a GI Commission of experts or some external experts, in substantive examination and supervision of GI products;
- Providing technical assistance to the potential GI national applicant in order to assess the eligibility of their product to become a GI;
- Monitoring the GI uses and the respect of the Specifications;
- Any other service that could help the GI process, as the facilitating role in case of protection in foreign countries (ex: providing direct GI application in EU) or the participation at negotiations that cover GIs matters (ex: international exchange of lists through FTA or other international agreement), the management of the Lisbon agreement and Geneva Act ,etc

The Authority also explores the eligibility of potential GI products, indicating to producers the compliance requirements for their products and their production processes under the GI route, as well as the potential positive impacts that GI registration could have for their product. All will depend on the duties that will be granted by the Law.

2. Prohibitions/limitations of GI registration

In practice, there are cases of non-implementation of GI protection. Normally, these case are defined in the legal framework, based on the TRIP Agreement. We will review some cases of GI registration limitations.

Generic name

“Generic” refers to a name for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of the concerned country. Such names that have lost their geographical significance cannot be registered as GIs (example: Dijon Mustard, Eau de Cologne etc...). Genericity assessment lies on territoriality principle.

Homonymous geographical indications

Homonymous GIs are those that are spelled or pronounced alike, but which identify products originating in different places, usually in different countries (ex: Rioja for wines in Spain and in Argentina). In principle, these indications should coexist, but such coexistence may be subject to certain conditions. For example, it may be required that they be used in association with additional information as to the origin of the product in order to prevent consumers from being misled.

A GI may be refused protection if, due to the existence of another homonymous indication, its use **would be considered potentially misleading to consumers with regard to the product’s true origin.**

The indication is the name of a plant variety or animal breed

In certain jurisdictions, protection may be refused to a GI if it conflicts with the name of a plant variety or an animal breed and may, as a result, mislead the consumer as to the true origin of the product.

Example: In France, there is a cow breed “Blonde d’Aquitaine” translated as Blond of Aquitaine “which means blond-hair cow of Aquitaine Region”. Despite the fact that the name of the breed contains a geographical name “Aquitaine”, this denomination could not be registered as a GI as this denomination is officially registered as an animal breed.

Conflict with a prior mark or legitimate use:

A GI will be refused protection if the IPO considers that the GI is identical or similar to a trademark previously applied for, registered or acquired through use, in good faith, and that use of the GI would result in a likelihood of confusion with the trademark.

GIs that have fallen into disuse

In this situation, a GI has been registered or recognized. However, the GI is not functioning in practice for several reasons:

- The GI producers disappeared or ceased to produce the GI product (for economic reason most of the time);
- The GI producers and the GI association did not protect the GI infringements, allowing several unfair uses that will lead to the genericity of the GI name.

The GI is no longer used in the course of trade and have disappeared from the marketplace. In this context, the GI shall be cancelled by the IPO.

➡ **These GI limitations or prohibitions shall be scrutinized by the examiners for each application.**

3. Type of applicant

GI applicant normally means any organization identified by the law to be an applicant of a GI registration to exercise legal rights representing the interests of producers or manufacturers of eligible goods and who are desirous of registering a geographical indication in relation to such goods. Once the GI is registered by the IPO, the applicant becomes the GI [owner*]. GIs have only one [owner*].

In practice, any of the following types of organizations are entitled to apply for a GI:

- Association,

- Cooperative
- enterprise,
- Interbranch organization;
- Economic interest group
- governmental body,
- industrial unions,
- Chamber of Commerce and Industries or Chamber of Agriculture, and

Regardless of the legal structure, the important thing is to unite collectively around a common strategy for the protection and management of the GI product.

Case of single applicant or single producer: The possibility of GI registration for a single person shall be considered in exceptional situations if integrated in the national legal framework. This case can occur if there is a potential GI product by only one producer is existing. There may be a risk that the product could disappear. In this type of situation, a single applicant can be accepted. However, the GI [owner*] shall be flexible and must accept other future producers if not, the GI in this case will constitute a monopoly, and hence not deliver the expected impact for local communities. Concerning the single applicant, as GIs are collective rights, this type of provision shall leave the door open to other producers in the area who will comply with the specifications. In this case, the use of the GI shall be granted also to this new producer.

The GI requires the producers and/or transformers and/or traders, as well as all the other people involved in the process or linked to the value chain (as chambers of Commerce or institutions), to be fully committed (local regulations can also enable local authorities or consumers' associations to be part of the applicant).

The GI is a voluntary and collective endeavor, involving a group of producers and/or transformers and/or traders (players on the market, where one exists), or others stakeholders, in an association.

It is therefore essential to set up an organization representing all the GI value chain stakeholders (let us call it a group or association) that will support and follow up the GI application as well as manage the future GI.

The term "group" or "association" refers to any organization of producers and/or transformers and/or traders involved with the product, regardless of its legal status or the way it is composed. It must be representative of the various categories of operators involved in the elaboration of the product and inclusive organisation allowing for all relevant GI producers to be represented without arbitrary exclusion.

The way the group is presented must generally demonstrate:

- its representativity in the course the GI product trade,
- its accessibility: the GI use must be accessible to all the producers who comply with the specifications,
- its missions, its follow-up, the way it defends the GI and its operators and the way it proposes controls to the GI.

Furthermore, the usefulness of the GI group or GI association is based on the fact that it will function as the main contact with the national authorities in charge of GI, and that it will be in charge of drawing

up the specifications and the follow-up of the GI. The GI group will represent the GI for all type of stakeholders.

- ☞ Although there is no rule as to the legal status of the applicant, the examiner shall take into account the demonstration that the GI applicant (potential future GI group or GI association to manage the GI) is representative and present its GI related duties.

4. Content of the application

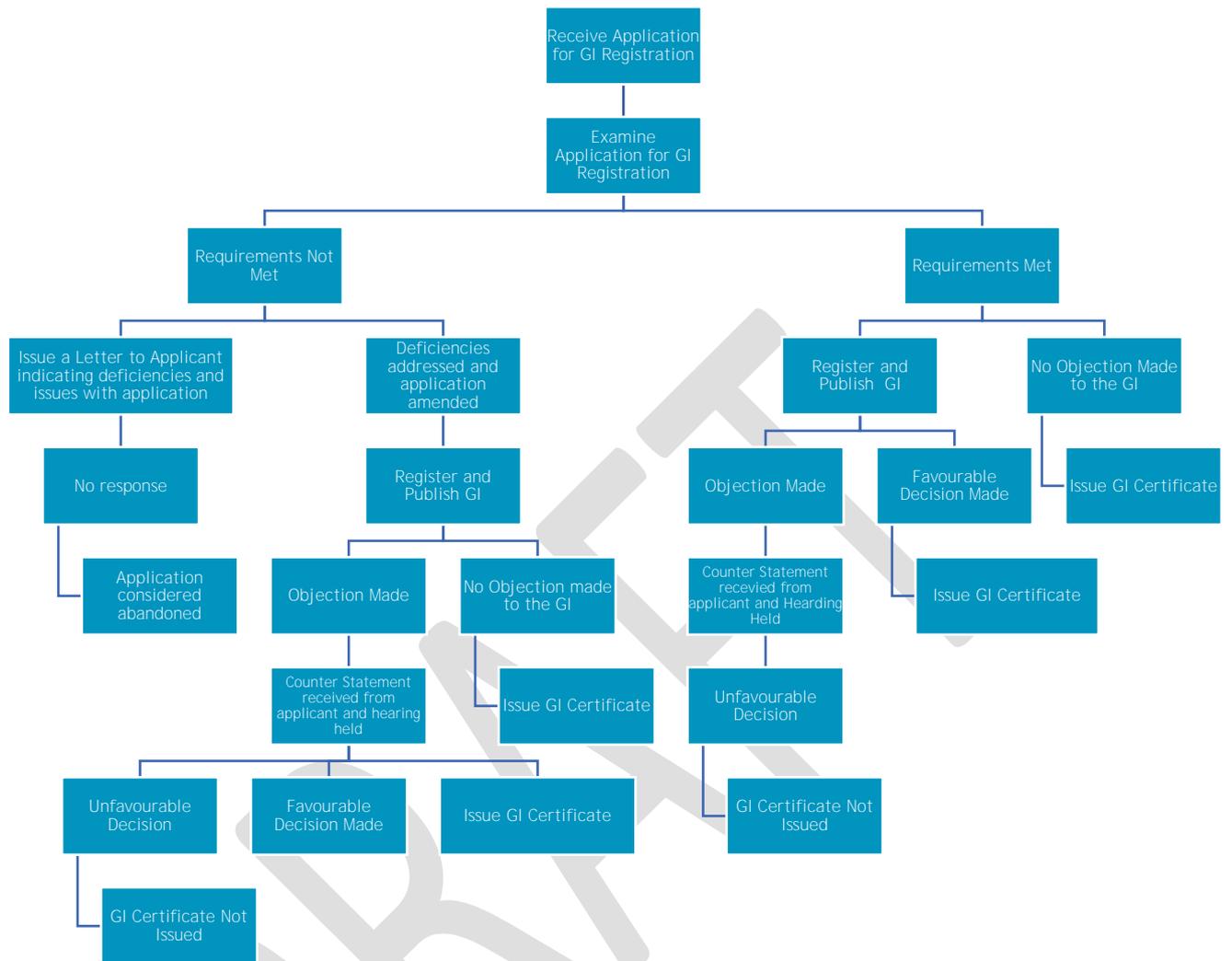
The application form solicits information in respect of the applicant and specifications in relation to the Geographical Indication itself. A sample of the application form is presented when discussing the GI registration procedure below.

B. GIs registration procedure

1. Overview of the GI Registration Process

- ☞ An application for GI Registration will be presented to the competent authority (most of the time the Intellectual Property Office) and, if any, the department in charge of GI, which will first of all examine the structure and the formal content of the application (formal examination).
- ☞ The substantive examination of the GI application contents might then be undertaken. Sometime this responsibility is given to a special board made up of competent authorities in the fields of agriculture, industry, trade, inspections and any others experts with the specific competence required for this form of examination (producers, researchers, academics, etc.). If this examination is positive, the GI is then registered by the competent authority and on the national GI registry.
- ☞ As illustrated in the diagram below, once all requirements are met, the GI is registered and the

FIG. n° 24: Snapshot of the GI Registration Process²⁹



²⁹ The GI Registration Process presented is based on the 2021 version of the GI Model Law developed.

Sample of GI Certificate

Name of the country

GEOGRAPHICAL INDICATION ACT

**GEOGRAPHICAL INDICATION
CERTIFICATE**

(Pursuant to section 18 of the GI Act)

In accordance with section 18 of the Act, it is hereby certified that the Geographical Indication.... NAME OF THE GI has been registered

REGISTRATION N°:

DATE OF REGISTRATION:

APPLICATION N°:

FILLING DATE :

In the name of APPLICANT / REPRESENTATIVE

TYPE OF GOODS COVERED BY THE GI

GEOGRAPHICAL AREA

A description of the quality, reputation or other characteristics of the goods for which the geographical indication is used and any conditions under which the indication may be used accompanies this certificate.

GI LOGO (if any)

**Date:
IPO SIGNATURE & STAMP**

ANNEX

GI specification

2. Process of GI registration

Drawing up the application is only the first phase in the recognition and/or registration of the geographical indication. This application must then

☞ The Examiner shall bear in mind that their decision shall be linked with the compliance of the GI definition & criteria, as requested and explained in the section “GI application”.

undergo a specific procedure, defined by the legal framework on GIs and carried out by the official competent authority, [with responsibility for the official recognition and registration of GIs.](#)

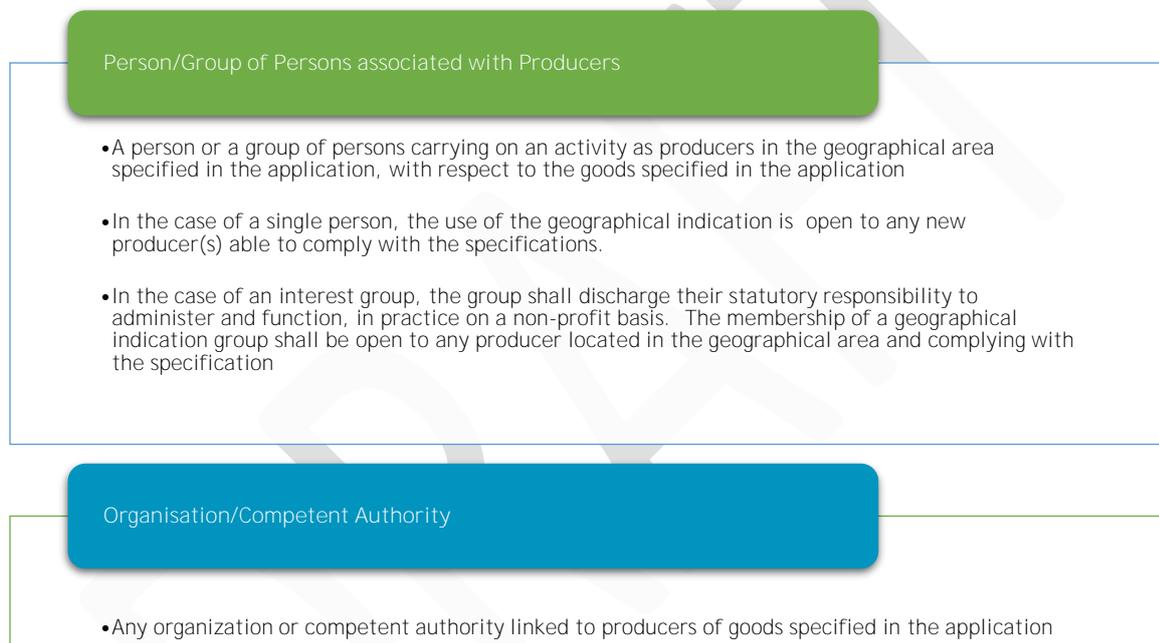
2.1 Who should an Application for Registration of a Geographical Indication be accepted from?

There are two categories of applicants who may apply to register a Geographical Indication;

- ☞ Person/Group of Persons associated with Producers
- ☞ Organisation/Competent Authority

It is important to note that the 2nd category of applicants is not as frequent as the first, given that most times application for registration of GIs are made by producers. Figure n°25 below provides an overview of the categories of applicants.

FIG. n° 25: Acceptable Applicants for GI Registration



KEY TAKEAWAYS

- The importance of the role played by the GI group or GI association must not be **forgotten in the course of this procedure as the “group” will liaise with the Competent GI Authority** all along the procedure of registration.
- The competent GI authority must check the compliance of the applicant with the **missions linked to the GI : management, controls, protection etc...**

a. What Procedure should be accepted when filing a Geographical Indication Application?



Process: Applicant files the application for geographical indication registration with Competent GI Authority

The Competent GI Authority must only accept an application that is signed by the Applicant or **Applicant’s Duly Authorized Agent**



Acceptable Forms of Application: The Competent GI Authority may accept applications which

b. What information should be contained in an application?

When applying to register a GI, it is important that all relevant information, in respect of (a) [the applicant](#); and (b) [specifications](#) (Information specific to the Geographical Indication), are reviewed and assessed. As such, these particulars must be included in the application form. Key particulars to be included in the application to register a GI are presented below.

Information to be presented in an Application Form

A. General Information on the Applicant:

- ➔ Name,
- ➔ Address
- ➔ Nationality
- ➔ Capacity in which the applicant is applying for registration
- ➔ Name of the representative of the applicant if any;

B. Information specific to the Geographical Indication (Specifications)

- ➔ Geographical indication (name) for which registration is sought;
- ➔ Goods to which the geographical indication applies;
- ➔ Geographical areas to which the geographical indication applies;
- ➔ Process of production;
- ➔ Quality, reputation or other characteristic of the goods in respect of which the geographical indication is used;
- ➔ Quality, reputation or other characteristic of the goods and how that quality, reputation or other characteristic (as the case may be) is essentially attributable to the place from which the goods originate,
- ➔ Where geographical indication for which registration is sought relates to a country other than the country where the applicant is submitting the application, evidence that the geographical indication has obtained recognition or registration as a geographical indication in the qualifying country or countries of origin, where applicable;
- ➔ Reference to the control body;
- ➔ Labelling rules; and
- ➔ Other relevant information which may be required and prescribed

A Sample [Application Form for Geographical Indication Registration](#) is presented below.

DRAFT

Sample Application Form for the Registration of a Geographical Indication

Name of the country

GEOGRAPHICAL INDICATION ACT

Form No. XXXX

APPLICATION FOR GEOGRAPHICAL INDICATION REGISTRATION

(For official use only)

[Country]:
Application Number :
Date of receipt/Filing :
Fees received on:
Gazette details:
IPO stamp

Application is hereby made for

- Registration of the geographical indication

Details of which accompany this Form, in the name of the Applicant(s) acting in the capacity of (State capacity in accordance with section.... Of the Act)

The particulars required for the purposes of the application are set out below.

PARTICULARS

I – APPLICANT(S)

(Principal applicant must complete this section)

- (a) Name :.....
(b) Address :.....
Phone Number:Fax Number:
Email :
- (c) Nationality or citizenship/country:
(d) Legal status :.....
(e) Residence:

II- REPRESENTATIVE/ATTORNEY-AT-LAW/DULY AUTHORIZED AGENT

The following (Attorney-at-Law) has been appointed by the Applicant in Authorization of Agent

- Accompanying this Form
- To be filed within 2 months from the filing of the application for registration (Regulation XXXX)

Name and Address for communication

.....
.....

Phone Number:..... Fax Number:
Email :

Where an Attorney-at-Law has been appointed, the address of the Attorney-at-law shall be treated as the address to which any communication shall be transmitted (Regulation XXXX).

III - DETAILS OF GEOGRAPHICAL INDICATION APPLICATION / SPECIFICATIONS

A - The geographical indication for which registration is sought is the following :

.....
.....
.....

B- Goods to which the geographical indication applies:

.....
.....
.....

C- Geographical area:

Description of the geographical area to which the goods for which the applied geographical indication originate:

.....
.....
.....

Additional information, possible in graphic form, maps, etc...

- Accompanies this form
- Is contained in the Annexed Schedule (GI specifications) which is incorporated in this Form

D - Description of the production methods/process of production

.....
.....
.....

Additional information, possible in graphic form, maps, etc...

- Accompanies this form
- Is contained in the Annexed Schedule (GI specifications) which is incorporated in this Form

E - Quality, reputation of other characteristics

The quality, reputation or other characteristics of the goods for which the geographical indication is used are the following:

.....
.....
.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule (GI specifications) which is incorporated in this Form

F- Quality, reputation or other characteristics of the goods and explanation on how quality, reputation of other characteristics is essentially attributable to the place from which the goods originates.

.....
.....
.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule (GI specifications) which is incorporated in this Form

G – For foreign geographical indications applications, evidence that the geographical indication has obtained recognition or registration in its country of origin

.....
.....
.....

H- References to the control body

Type of control:

.....
.....
.....

[Method to control the of the product to which the geographical indication applies including the origin, quality, traceability and authentication of the:]

.....
.....
.....

Type, activity, name and address of the control body:

.....
.....

Phone Number:Fax Number:

Email:

I – The labelling rules

IV – OTHER PARTICULARS

V – FEES

Accompanying this Form

VI – ANNEXES SCHEDULE

A- Power of Attorney;
 B- Evidence of the registration/protection of the geographical indication in the country of origin;
 C- Statute and Regulations of the Applicant;
 D- Specifications;
 E- Map of the Defined Geographical Area;
 F- Related documents required by the Department of Intellectual Property Rights;
 G- Fee payment

VII- SIGNATURE OF THE APPLICANT OR ATTORNEY-AT-LAW

A- **Signature:**

B- **Name of Signatory:**

C- **Title:**

D- **Date:**

(For official use only)
 [Country]:
 Application Number :
 Date of receipt/Filling :
 Fees received on:
 Gazette details:
 IPO stamp

ANNEX

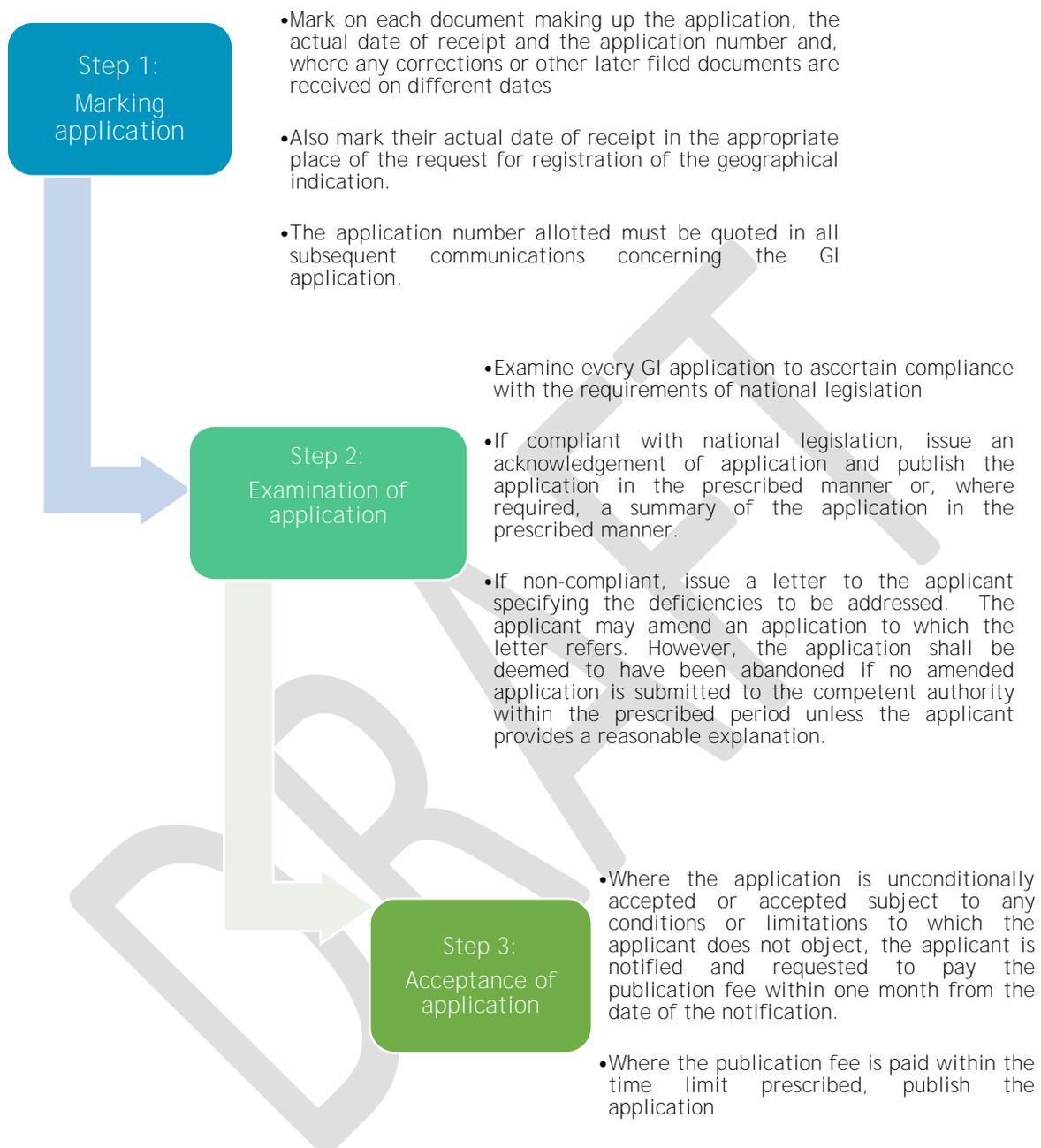
If the space provided in any of the boxes is insufficient, use traditional sheets and attached to this form.

➤ **Where an applicant’s ordinary residence or principal place of business is outside the relevant jurisdiction, the applicant must be represented by an attorney-at-law who is resident and practicing as an attorney-at-law in that jurisdiction.**

2.4 *How to Examine and Process an application for registration of geographical indication*

A Three (3) Step Process is to be undertaken after the application is received. This process is presented in Figure xx below.

FIG n° 26: Three Step Process associated with the Examination and Processing of application for registration of Geographical Indication



Key pieces of information to include in the publication include:

- the geographical indication name for which registration is sought;
- the name, address and nationality of the individual or legal entity filing the application, and the capacity in which the applicant is applying for registration;
- the name and address of any agent;
- the address for service if an agent has not been appointed in accordance with the legislation;
- the demarcation of the geographical area to which the geographical indication applies;
- the goods for which the geographical indication is used;
- the quality, reputation or other characteristic of the goods for which the geographical indication is used, and any conditions under which the indication may be used;
- the filing date and number of the application; and
- the geographical indication specifications are annexed.

☞ This information covers the content of the GI book of specification.

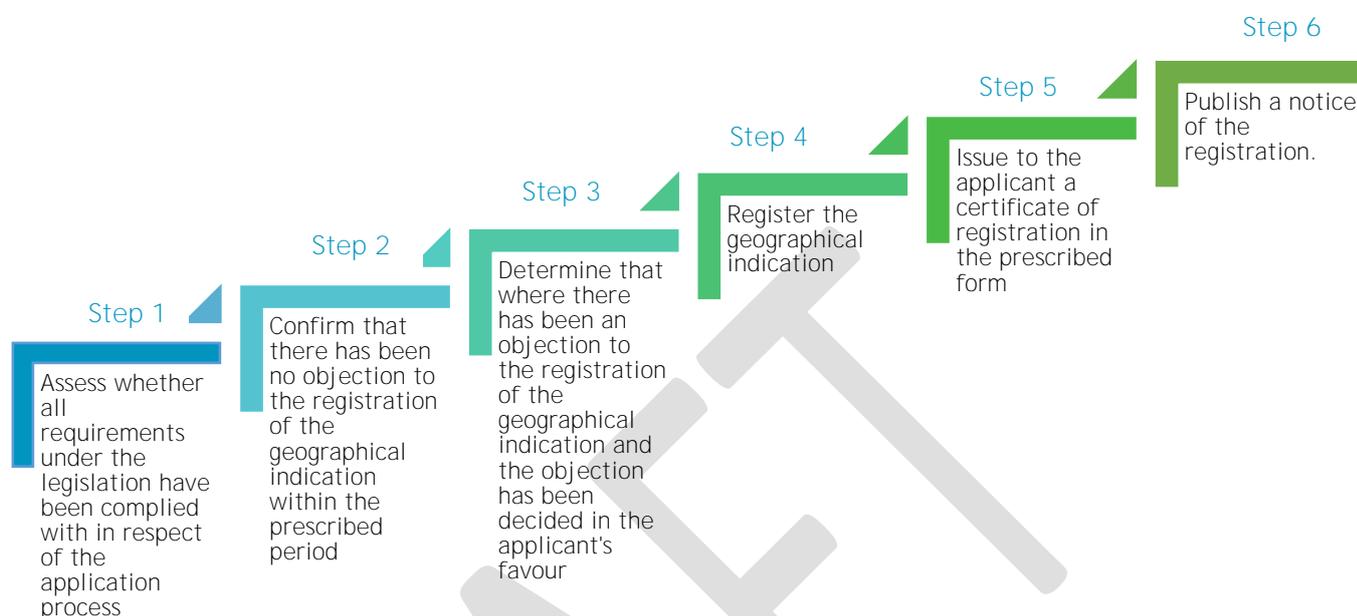
The Competent Authority must examine the information presented in respect of the specifications to ensure that the information submitted aligns with the specified criteria. This represents a critical element of the GI controls system as one must ensure **compliance of the rules set out in the specifications and that the close interaction between specifications and the control plan is maintained.**

GI specifications must feature the **production's practices, the definition of the product's main characteristics** as well as traceability procedures. It is important to note that in some situations, GI specifications includes a control plan. In this way, the national GI frameworks can provide for a GI control mechanism to be performed or supervised by the State and/or by external control bodies such as certification bodies.

2.5 How to Complete the Registration Process of a Geographical Indication

Figure n°27 highlights the steps in completing the registration process.

FIG. n° 27: Steps to complete the Registration Process of a Geographical Indication



KEY TAKEAWAYS

- The effective date of registration is deemed to be the date of the geographical indication application.
- The competent authority (IPO) may grant a phase-in period (national legislation will specify the duration) to allow producers holding stocks of products not complying with the GI registration to market their existing stocks without having to re-label them.
- Where, as the result of an objection made under the legislation or for any other reason, the competent authority is satisfied that the application for registration of a geographical indication does not comply with the requirements of the legislation the competent authority shall refuse the application. The section below addresses Objections/Oppositions.

3. Objection/Opposition procedure

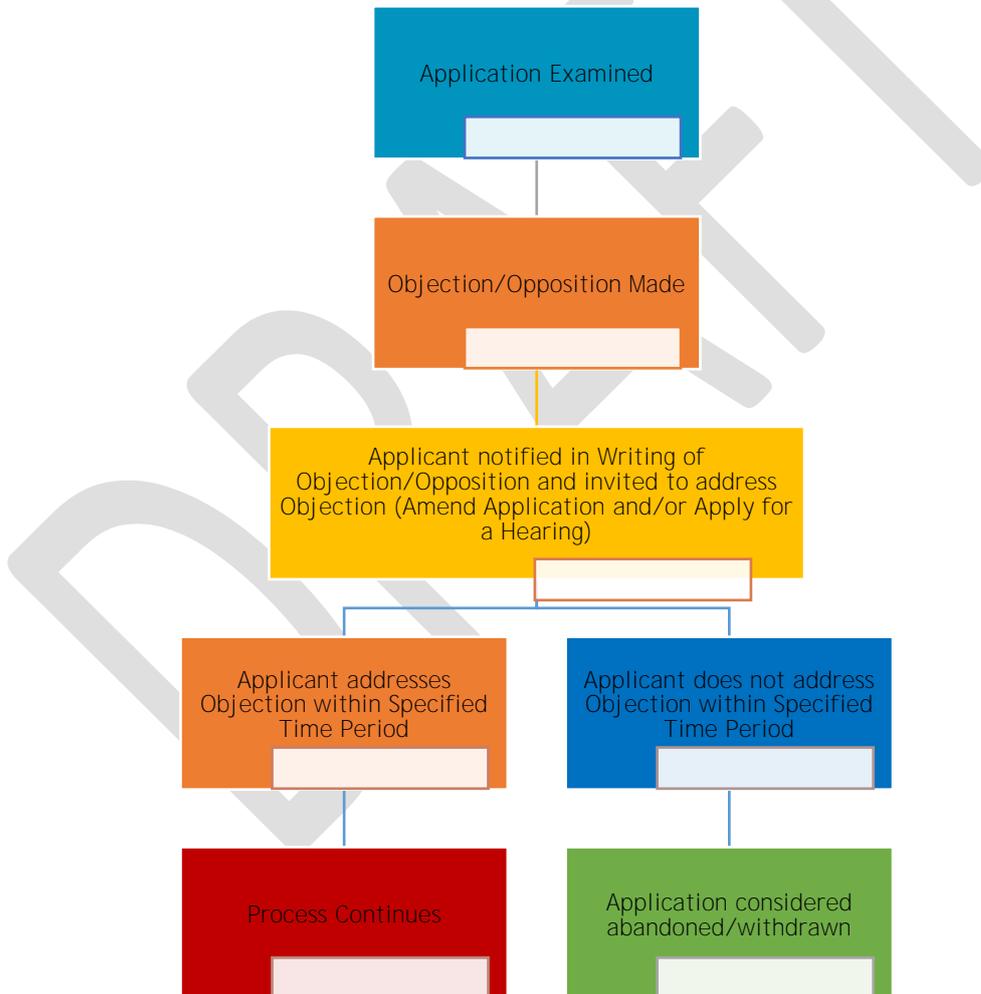
3.1 What is the Procedure when there is an Objection/Opposition to an application for Registration of a GI?

Where upon examination, the competent authority objects or opposes to the application for registration of a geographical indication, the Authority shall notify the applicant in writing of the objections or oppositions with all the relevant details such as incompliance with the law, possible conflicts with prior uses etc.

The Authority must invite the applicant to amend the application, to submit his/her observations in writing or to apply for a hearing within a defined time from the date of the notification of the opposition or the objection.

If the applicant does not comply with the invitation within the set period, the application is deemed to have been withdrawn. Figure n°28 summarizes the Objection/Opposition Procedure

FIG. n° 28: Objection/Opposition Procedure



A Sample of a [Notice of Objection to register a Geographical Indication](#) is presented below.

Sample of a Notice of Objection

Name of the country

GEOGRAPHICAL INDICATION ACT

Form No. XXXX

NOTICE OF OBJECTION TO REGISTRATION OF GEOGRAPHICAL INDICATION

(Pursuant to section 17 of the GI Act)

(For official use only) [Country]: Date of receipt/Filing : Fees received on: IPO stamp
--

Application is hereby made for

- objection of geographical indication registration

Details of which accompany this Form, in the name of the Applicant(s) acting in the capacity of (State capacity in accordance with section.... Of the Act)

The particulars required for the purposes of the application are set out below.

PARTICULARS

I – APPLICANT(S)/NAME OF PERSON/PARTY OBJECTING TO THE REGISTRATION

(Principal applicant must complete this section)

- (a) Name :
- (b) Address :
- Phone Number:Fax Number:
- Email :
- (c) Nationality or citizenship/country:
- (d) Legal status :
- (e) Address for service in COUNTRY

II– REPRESENTATIVE/ATTORNEY-AT-LAW/DULY AUTHORIZED AGENT

The following (Attorney-at-Law) has been appointed by the Applicant in Authorization of Agent

- Accompanying this Form
- To be filed within 2 months from the filing of the application for registration (Regulation XXXX)

Name and Address for communication

.....
.....

Phone Number:..... Fax Number:

Email :

Where an Attorney-at-Law has been appointed, the address of the Attorney-at-law shall be treated as the address to which any communication shall be transmitted (Regulation XXXX).

III - DETAILS OF GEOGRAPHICAL INDICATION OBJECTION TO REGISTRATION

A - The geographical indication for which objection is applied is the following :

N°.....

Name.....

Published in the (date) N° + page

B – Explanation of the applicant’s interest for the present application

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

C- Grounds for the objection to geographical indication registration

1. failure to satisfy the definitions relating to geographical indication within section 3 of the GI Act.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

2. The applied geographical indication cannot be registered as a geographical indication as stated in Article 7, 8, 13, 14 & 15 of the GI Act and its regulations.

.....

.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

3. The geographical indication infringes an existing user of the name or similar name or evocation of the name.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

4. The geographical indication infringes prior registered trademark(s);

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

5. The geographical indication is homonym with another geographical indication and that no differentiations can be made between the two indications.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

IV – FEES

- Accompanying this Form

V – ANNEXES SCHEDULE

- A- Power of Attorney;
- B- Statute and Regulations of the Applicant;
- C- Supporting evidences
- D- Related documents required by the Department of Intellectual Property Rights;
- E- Fee payment

VI- SIGNATURE OF THE APPLICANT OR ATTORNEY-AT-LAW

A- **Signature:**

B- **Name of Signatory:**

C- **Title:**

D- **Date:**

<p>(For official use only) [Country]: Date of receipt/Filing : Fees received on: IPO stamp</p>

ANNEX

If the space provided in any of the boxes is insufficient, use traditional sheets and attached to this form.

3.2 What is the Procedure when there is Conditional acceptance of application for Registration of a Geographical Indication?

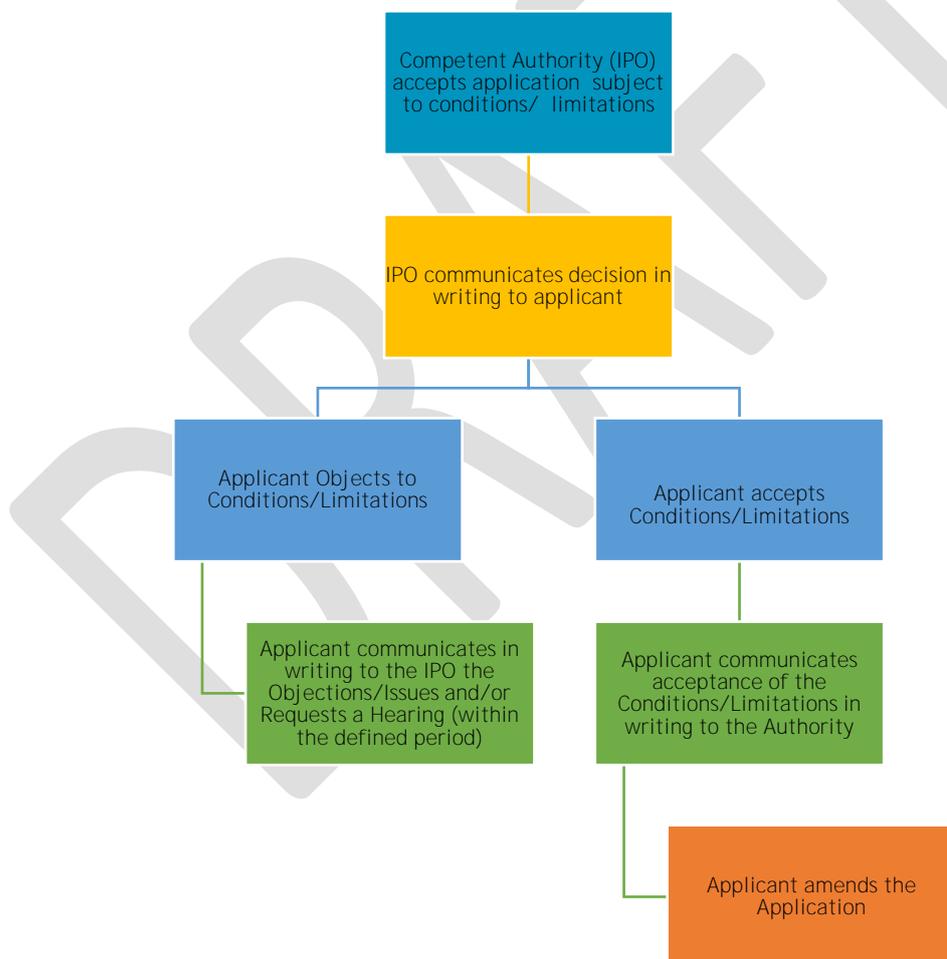
Where upon examination, the Authority decides to accept the application subject to amendments, modifications, conditions or limitations, he/she shall communicate the decision to the applicant in writing.

If the applicant objects to the amendments, modifications, conditions or limitations proposed by the Authority, he/she shall, within a defined time from the date of the communication, request a hearing in writing or submit his/her observations in writing.

Where the applicant does not object to the amendments, modifications, conditions or limitations he/she shall notify the Director/Registrar in writing and amend the application accordingly.

Figure n°29 below illustrates the process associated with conditional acceptance of an application.

FIG. n° 29: Conditional Acceptance of Application



➔ Where the applicant does not respond within the set period, he shall be deemed to have withdrawn his/her application.

3.3 *What is the Process when there is a Refusal of application or conditional acceptance to which applicant objects/opposes?*

Where after a hearing or after consideration of the applicant's amendments or observations in writing the Registrar refuses the application or accepts it, subject to any amendments, modifications, conditions or limitations to which the applicant objects, the Registrar shall communicate the decision to the applicant in writing.

The applicant may, within a defined time from the date of the communication, request the Registrar to state in writing the grounds of the decision and the material used in arriving at the decision.

3.4 *On what basis can a person object/oppose to the application for the registration of a geographical indication?*

An interested party or person may provide, in the manner and form prescribed in the national legislation notice to the competent authority of an objection/opposition to the registration of the geographical indication on different type of grounds.

Grounds for objection/opposition to the registration of a Geographical Indication:

- ➔ fails to satisfy the definitions relating to geographical indication within the meaning and as prescribed by the legislation;
- ➔ cannot be registered as a geographical indication as it falls with one of the categories which are excluded from being registered under the legislation;
- ➔ infringes an existing use of the name or similar name or evocation of the name;
- ➔ infringes prior trademark(s) registered in good faith; or
- ➔ is homonym with another geographical indication and no differentiations can be made between the two indications.

3.5 *What is the procedure for filing an objection/opposition to the registration of a geographical indication?*

A notification may be given within a define time of the date of the publication of the application and shall normally be accompanied by the specified fee and any supporting evidence. The national legislation will define the time period during which an objection/opposition may be submitted. Figure xx below notes the process associated with fining an objection.

Upon receipt of the notification of objection/opposition, the competent authority must send a copy of the notice to the applicant.

It is important to note that the competent authority must assess the following to ensure that the opposition/objection filed is within the scope to be accepted:

- ☞ The interest of the opponent to lodge the opposition/objection
- ☞ Content of the opposition/objection - it must be consistent with national legislation.

3.6 *What Steps are to be taken when an Applicant responds to a Notice of Objection?*

Upon receipt of the copy of the notice, the applicant must, within a defined time of the date on which the notice of objection/opposition is sent to the applicant, send to the competent authority a written counter-statement of the grounds on which the applicant relies for the application along with any supporting evidence. If no counter-statement is submitted, then the applicant is deemed to have abandoned the application. Where the applicant sends a counter-statement, the competent authority shall furnish a copy of it to the objector/opponent.

This process is presented in Figure n°30 below.

FIG. n° 30: Steps to be taken when applicant responds to a notice of objection



3.7 What is the procedure for an objection/opposition hearing by the Competent Authority?

The competent authority may hear the parties, where either or both parties wish to be heard or should the competent authority decide to do so to obtain greater information and context.

A request for a hearing shall be made to the competent authority/Registrar in writing at any time after the filing of the notice of objection, /opposition but not later than a defined time after the expiry of the specified period for filing the counter-statement.

The competent authority/Registrar shall give the parties a written notice of the date set for the hearing; and each party shall, within that period, pay the specified fee for the hearing.

Where the objector /opponent or the applicant does not reside or carry-on business in the jurisdiction in which the objection/opposition is to be heard, the Authority may require the objector /opponent to give security for the costs of the objection/opposition proceedings for such amount as the Authority thinks fit.

An overview of the process is presented in Figure n°31.

FIG. n° 31: Procedure for convening a Hearing by the Competent Authority



A Sample Form in respect of an Objection to Registration of a Geographical indication Counter Statement is presented below.

Sample of Objection to Registration of a Geographical indication Counter Statement

Name of the country

GEOGRAPHICAL INDICATION ACT

Form No. XXXX

**OBJECTION TO REGISTRATION OF GEOGRAPHICAL INDICATION
COUNTER-STATEMENT**

(Pursuant to section 17 (4) of the GI Act)

<p>(For official use only) [Country]: Date of receipt/Filling : Fees received on: IPO stamp</p>
--

Counterstatement is hereby made in relation to an objection of geographical indication registration

Details of which accompany this Form, in the name of the Applicant(s) acting in the capacity of (State capacity in accordance with section.... Of the Act)

The particulars required for the purposes of the application are set out below.

PARTICULARS

I – APPLICANT(S)/NAME

(Principal applicant must complete this section)

- (a) Name :
- (b) Address :
- Phone Number: Fax Number:
- Email :
- (c) Nationality or citizenship/country:
- (d) Legal status :
- (e) Address for service in COUNTRY

II– REPRESENTATIVE/ATTORNEY-AT-LAW/DULY AUTHORIZED AGENT

The following (Attorney-at-Law) has been appointed by the Applicant in Authorization of Agent

- Accompanying this Form
- To be filed within 2 months from the filing of the application for registration (Regulation XXXX)

Name and Address for communication

.....
.....

Phone Number:..... Fax Number:

Email :

Where an Attorney-at-Law has been appointed, the address of the Attorney-at-law shall be treated as the address to which any communication shall be transmitted (Regulation XXXX).

III - DETAILS OF GEOGRAPHICAL INDICATION OBJECTION TO REGISTRATION COUNTER-STATEMENT RELATES

A - The geographical indication for which objection is applied is the following :

N°.....

Name.....

Published in the (date) N° + page

B- Grounds for the objection to geographical indication registration

1. failure to satisfy the definitions relating to geographical indication within section 3 of the GI Act.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

2. The applied geographical indication cannot be registered as a geographical indication as stated in Article 7, 8, 13, 14 & 15 of the GI Act and its regulations.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

3. The geographical indication infringes an existing user of the name or similar name or evocation of the name.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

4. The geographical indication infringes prior registered trademark(s);

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

5. The geographical indication is homonym with another geographical indication and that no differentiations can be made between the two indications.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

C- Grounds relied on for making the application

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

IV – FEES

- Accompanying this Form

V – ANNEXES SCHEDULE

- A- Power of Attorney;
- B- Statute and Regulations of the Applicant;
- C- Supporting evidence
- D- Related documents required by the Department of Intellectual Property Rights;

E- Fee payment

VI- SIGNATURE OF THE APPLICANT OR ATTORNEY-AT-LAW

A- **Signature:**

B- **Name of Signatory:**

C- **Title:**

D- **Date:**

<p>(For official use only) [Country]: Date of receipt/Filing : Fees received on: IPO stamp</p>

ANNEX

If the space provided in any of the boxes is insufficient, use traditional sheets and attached to this form.

3.8 *What is the procedure for communicating the decision and notification of decision of a Hearing by Competent Authority*

At the hearing, the competent authority considers the merits of the case then determines whether the geographical indication should be registered.

Where the competent authority decides to register the geographical indication, the competent authority shall notify any objector /opponent and the applicant in writing, stating the reasons for the decision.

Where the competent authority decides to refuse to register the geographical indication in compliance with the rules set out in the legislation, the competent authority shall notify the objector/opponent and the applicant in writing, stating the reasons for the decision.

Where necessary and appropriate, parties are entitled to work out -

- proposed rules of coexistence; and
- a phase out period in case of prior geographical indication use as ground of opposition

An applicant or opponent aggrieved by a decision of the Competent Authority may, within a period specified by the national law, appeal against the decision to the Court.

4. Cancellation and amendment procedure

Cancellation or rectification/amendment of geographical indication registration

4.1 *What are acceptable Grounds for the cancellation of the registration of a geographical indication*

A geographical indication [owner*] or right holder or any interested party or person with sufficient interest may apply either to the competent authority or to the Court of competent jurisdiction for the cancellation of the registration of a geographical indication on the grounds that-

- It does not comply with the legislative requirements. This can occur in situations where the specification changed due to new processes of productions, new raw material, climate change. Hence the recognized GI no longer complies with what has been registered
- The [owner*] or right holder of the registered geographical indication has requested cancellation. This can occur when the name of the GI is no longer used by the producers or not recognized as relevant.
- the goods of registered geographical indication have lost their special characteristic as geographical indication goods; or
- it is a foreign geographical indication which is not or has ceased to be protected in its country of origin or have fallen into disuse in that country. When this occurs, the GI protection is cancelled in the country of origin or the producers failed to protect the GI on time. The GI name is used by anyone with no connection with a specific product.

A Sample of the Application Form for Cancellation of Registration of a Geographical Indication is presented below..

Sample Application Form for Cancellation of Registration of a Geographical Indication

Name of the country

GEOGRAPHICAL INDICATION ACT

Form No. XXXX

APPLICATION FOR CANCELLATION OF GEOGRAPHICAL INDICATION REGISTRATION

(Pursuant to section 20 (1) (a) of the GI Act)

(For official use only)

[Country]:
Date of receipt/Filing :
Fees received on:
IPO stamp

Application is hereby made for

- Cancellation of geographical indication registration

Details of which accompany this Form, in the name of the Applicant(s) acting in the capacity of (State capacity in accordance with section.... Of the Act)

The particulars required for the purposes of the application are set out below.

PARTICULARS

I – APPLICANT(S)

(Principal applicant must complete this section)

- (a) Name :
- (b) Address :
- Phone Number:Fax Number:
- Email :
- (c) Nationality or citizenship/country:
- (d) Legal status :
- (e) Address for service in COUNTRY

II– REPRESENTATIVE/ATTORNEY-AT-LAW/DULY AUTHORIZED AGENT

The following (Attorney-at-Law) has been appointed by the Applicant in Authorization of Agent

- Accompanying this Form
- To be filed within 2 months from the filing of the application for registration (Regulation XXXX)

Name and Address for communication

.....
.....

Phone Number:..... Fax Number:

Email :

Where an Attorney-at-Law has been appointed, the address of the Attorney-at-law shall be treated as the address to which any communication shall be transmitted (Regulation XXXX).

III - DETAILS OF GEOGRAPHICAL INDICATION CANCELLATION'S APPLICATION

A - The geographical indication for which cancellation is sought is the following :

N°.....

Name.....

Registered.....

B – Explanation of the applicant’s interest for the present application

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

C- Grounds of the cancellation of geographical indication registration

1. The geographical indication does not comply with articles 2, 7, 12, 13 & 15 of the Act and its regulations;

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

2. the owner or right holder of the registered geographical indication has requested cancellation;

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

3. the goods of registered geographical indication have lost their special characteristic as geographical indication goods;

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

4. they are foreign geographical indications which are not or have ceased to be protected in their country of origin or have fallen into disuse in that country.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule (which is incorporated in this Form)

IV – FEES

- Accompanying this Form

V – ANNEXES SCHEDULE

- A- Power of Attorney;
- B- Statute and Regulations of the Applicant;
- C- Related documents required by the Department of Intellectual Property Rights;
- D- Fee payment

VI- SIGNATURE OF THE APPLICANT OR ATTORNEY-AT-LAW

- A- **Signature:**
- B- **Name of Signatory:**
- C- **Title:**

D- **Date:**

(For official use only) [Country]: Date of receipt/Filing : Fees received on: IPO stamp
--

ANNEX

If the space provided in any of the boxes is insufficient, use traditional sheets and attached to this form.

4.2 *What are the Grounds for rectification/amendment*

A geographical indication [owner*] or right holder or any interested party or person with sufficient interest may apply either to the competent authority or to the Court of competent jurisdiction for the rectification /amendment of the registration of a geographical indication on the grounds that the specifications of the geographical area the registration does not correspond to the geographical indication and the specifications should be amended, particularly the elements related to the development of technologies and sciences and the delimitation of the geographical area.

The amendment of the specifications shall be made if the amendment does not vitally affect the decision of geographical indication registration.

4.3 *Notice of the request for cancellation or rectification/amendment*

In any proceedings for the cancellation, rectification or amendment of a geographical indication, notice of the request for cancellation or rectification shall be served on the person, [owner*] or right holder who filed the application for registration of the geographical indication and the notice must, by a publication in the prescribed manner, be given to all persons having the right to use the geographical indication under the legislation. Such persons and any other interested person may, within such period as the competent authority or the Court/competent jurisdiction specifies in the published notice, apply to be joined in the proceedings. A Sample [Application Form for the Rectification/Amendment of the Geographical Indication Registration](#) is presented below.

Sample Application Form for the Rectification/Amendment of the Geographical Indication Registration

Name of the country

GEOGRAPHICAL INDICATION ACT

Form No. XXXX

APPLICATION FOR RECTIFICATION/AMENDMENT OF GEOGRAPHICAL INDICATION REGISTRATION

(Pursuant to section 20 (1) (b) of the GI Act)

(For official use only)

[Country]:
Date of receipt/Filing :
Fees received on:
IPO stamp

Application is hereby made for

- Rectification/Amendment of geographical indication registration

Details of which accompany this Form, in the name of the Applicant(s) acting in the capacity of (State capacity in accordance with section.... Of the Act)

The particulars required for the purposes of the application are set out below.

PARTICULARS

I – APPLICANT(S)

(Principal applicant must complete this section)

- (a) Name :
- (b) Address :
- Phone Number:Fax Number:
- Email :
- (c) Nationality or citizenship/country:
- (d) Legal status :
- (e) Address for service in COUNTRY

II- REPRESENTATIVE/ATTORNEY-AT-LAW/DULY AUTHORIZED AGENT

The following (Attorney-at-Law) has been appointed by the Applicant in Authorization of Agent

- Accompanying this Form
- To be filed within 2 months from the filing of the application for registration (Regulation XXXX)

Name and Address for communication

.....
.....

Phone Number:..... Fax Number:

Email :

Where an Attorney-at-Law has been appointed, the address of the Attorney-at-law shall be treated as the address to which any communication shall be transmitted (Regulation XXXX).

III - DETAILS OF GEOGRAPHICAL INDICATION RECTIFICATION/AMENDMENT'S APPLICATION

A - The geographical indication for which rectification/amendment is sought is the following :

N°.....
Name.....
Registered.....

B – Explanation of the applicant’s interest for the present application

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

C- Grounds of the rectification/amendment of geographical indication registration

1. The geographical area specified in the registration does not correspond to the geographical indication

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule which is incorporated in this Form

And/or

2. The specifications shall be amended, particularly the elements related to the development of technologies and sciences and the delimitation of the geographical area. The amendment of the specifications shall be made if it does not vitally affect the decision of geographical indication registration.

.....
.....
.....

Additional information

- Accompanies this form
- Is contained in the Annexed Schedule (which is incorporated in this Form)

IV – FEES

- Accompanying this Form

V – ANNEXES SCHEDULE

- A- Power of Attorney;
- B- Statute and Regulations of the Applicant;
- C- Related documents required by the Department of Intellectual Property Rights;
- D- Fee payment

VI- SIGNATURE OF THE APPLICANT OR ATTORNEY-AT-LAW

- A- **Signature:**
- B- **Name of Signatory:**
- C- **Title:**
- D- **Date:**

<p>(For official use only) [Country]: Date of receipt/Filing : Fees received on: IPO stamp</p>

ANNEX

If the space provided in any of the boxes is insufficient, use traditional sheets and attached to this form.

4.4 *What must the Publication of notice of the request for cancellation or rectification/amendment contain?*

The publication of a notice of the request for cancellation or rectification shall-

- identify the geographical indication by setting out the particulars of geographical indication registration;
- identify the person who, or the authority which, has applied for the cancellation or rectification/amendment of the registration of the geographical indication by setting out the name and address of the person or authority, and of the representative or any agent; and
- specify the period within which the persons having the right to use the geographical indication may apply to join in the proceedings.

4.5 *What must be contained in a publication of notice of the decision of cancellation or rectification/amendment?*

Where the Court/competent jurisdiction³⁰ hears proceedings for the cancellation, rectification or amendment of a geographical indication, the Court/competent jurisdiction shall notify the competent authority of the decision of the Court/competent jurisdiction or the decision on any appeal therefrom and the competent authority must record the decision and publish a notice of the decision as soon as possible but not later than one month from the date of the notice or publication.

The publication of the reference to the cancellation or rectification/amendment of the registration of a geographical indication shall-

- identify the geographical indication by setting out the particulars of geographical indication registration;
- indicate that the registration of the geographical indication has been cancelled or rectified/amended, as the case may be, and, if rectified, specify the manner in which the registration has been so rectified; and
- cite the decision of the Court, if any, by which the registration of the geographical indication has been cancelled or rectified/amended.

The cancellation of geographical indication registration shall be considered to take effect from the date of the notice of decision.

An applicant or opponent aggrieved by a decision of the Competent Authority may, within a period specified by the national law, appeal against the decision to the Court.

5. Timeframe for the registration procedure and protection

5.1 *What is the Period of validity of registration of geographical indications?*

The registration of geographical indication shall be valid from the date of the filing of the application provided that its registration is not cancelled or invalidated according under the legislation.

³⁰ [Where the competent jurisdiction/authority is the Registrar, the Registrar shall notify the interested parties of the decision or the decision on any appeal therefrom. The Registrar shall record it and publish a notice of the decision as soon as possible. This decision may be subject of appeal.]

5.2 What is the Period of protection of geographical indications?

The protection of geographical indications shall be as applicable to the particular jurisdiction. In this way, the legislation may provide for protection-

- (a) of indefinite duration; or
- (b) of limited duration such as where granted for 10 years and renewable for further periods of 10 years.

5.3 Renewal of protection (Only in case of limited duration of protection)

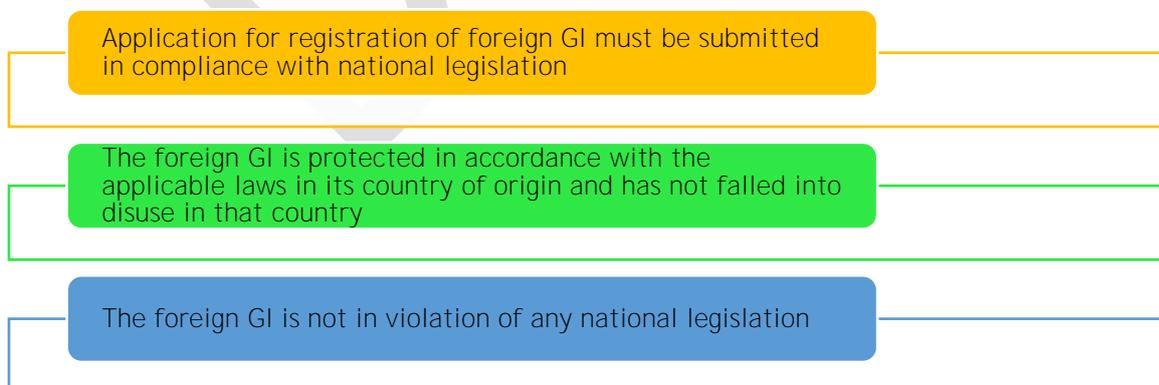
The GI applicant/[owner*]/right holder may, within a prescribed period before the registration of geographical indication expires, make a request in the prescribed form to the Registrar for the renewal of the registration. Failing this, the request for renewal may be made within up to six months after the expiry.

6. How to Deal with Foreign GI Applications

In this part, we analyse situations where the GI applicant is originating from a different country but would like to protect their GI in another country. In practice, GIs are firstly recognized or registered in their country of origin. It is requested to present the official document (regulation) or certificate (in case of IPO) of GI registration/recognition in the country of origin or in the regional economic union as for the European Union.

If such an application of foreign GI registration occurs, the conditions of the application will be the same as for a national GI application. The application will require only the proof of the GI registration in the country of origin such as a certificate or any official document that will provide evidence of the existence of the GI. The initial specifications and all supporting documents shall be translated in the requested legal language by the applicant in order for the examiners to understand what the GI covers and who is the applicant.

6.1 What are the criteria to be met a foreign GI ?



6.2 What is the procedure for the Registration of a Foreign Geographical Indication ?

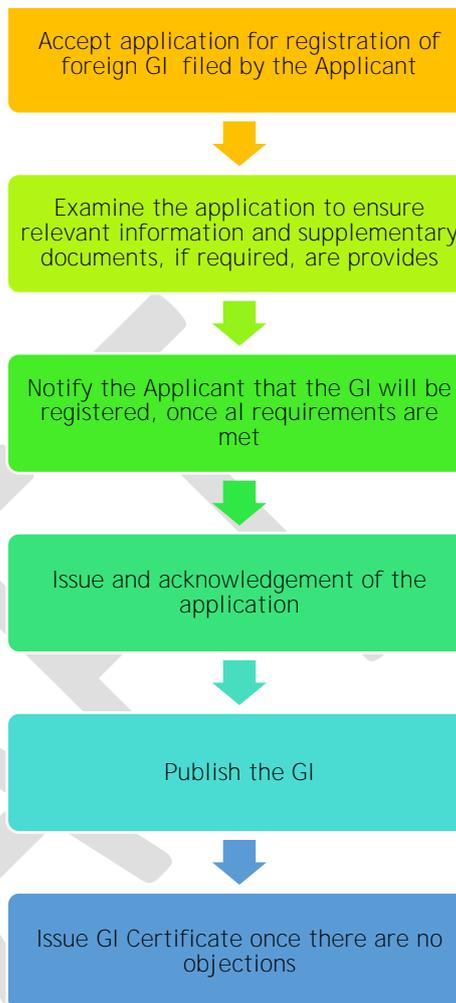
The application for a foreign geographical indication registration shall be filed with the competent authority.

FIG.n° 32: Procedure for Registering a Foreign GI

Key Points to Remember:

- ➔ The procedure for registering a foreign GI essentially mirrors that of the registration of a local GI.
- ➔ However, the examination cannot be equivalent (as strong and detailed) as the one for national GIs.
- ➔ If the specification contains information which are not clear for the examiners, some questions can be raised to the foreign GI applicant who will have to bring concrete answers.
- ➔ A foreign geographical indication shall be registered once the foreign geographical indication is protected in accordance with the local provision in its country or countries of origin.
- ➔ The competent authority may register a foreign geographical indication only if the application is made by a legal agent, administrative representative or foreign representative as defined in the legislation.

A simplified version of the process is presented at Figure 32.



7. Official fees

Official fees³¹ are specified in the **Schedule to the GI Model Regulations** and are payable in respect of the following matters contained in the below table to which they relate.

Matter or Proceeding	Fee \$
<ol style="list-style-type: none"> 1. Application for registration of geographical indication 2. Request for hearing 3. Request to the Director to state in writing, grounds of decision to refuse application or to accept it subject to conditions 4. Publication fee 5. Notice of objection to registration of geographical indication 6. Counter-statement to notice of objection 7. Application for cancellation or rectification/amendment of geographical indication registration 8. Registration fee 9. Renewal registration fee 10. Request to refuse or to invalidate the registration of a misleading trademark (A Sample of this is presented below) 11. Hearing relating to request to refuse or to invalidate the registration of a misleading trademark 12. Request to refuse or to invalidate the registration of a trademark which conflicts with a geographical indication for wines and spirits 13. Hearing relating to request to refuse or to invalidate the registration of a trademark which conflicts with a geographical indication for wines and spirits 14. Inspection of Register 15. Request for certified copies of extracts from Register or for copies of documents (per page) 14. Request for correction of error 15. Request for extension of time 16. Integration in the list of GI users 17. Use of the national GI logo 	

³¹ For guidance, see Malaysia's IPO office website at <https://www.myipo.gov.my/en/geographical-indications-form-fees/>.

C. GIs protection

In this chapter the beneficiaries will learn the following aspects:

1. Effect of GI registration and protection

GI registration provides a legal protection and produces some legal effects against unlawful uses in practice.

A geographical indication right enables those who have the legal right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards. For example, in the jurisdictions in which the Darjeeling geographical indication is protected, producers of Darjeeling **tea can exclude use of the term “Darjeeling” for tea not grown in their tea gardens or not** produced according to the standards set out in the code of practice for the geographical indication.

However, a protected geographical indication does not enable the holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a geographical indication is usually obtained by acquiring a right over the sign that constitutes the indication.

GI protection will have to cover in practice:

- The cases of GI abuses
- Relationships between GIs and trademarks
- Enforcement aspects and ex officio actions (such as reference in other legal texts as IP law, **Criminal enforcement etc....) and definition of ex officio competent authorities.**

Normally, in practice, it is useful to distinguish:

the GI protection rules

and

the person or institutions entitled to protect the GI.

Classical provisions will cover the different types of abuses concerning GIs:

No person shall :

(a) in the designation or presentation of goods, by any means, indicate or suggest that the goods originate in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of the goods;

(b) use a registered geographical indication for direct or indirect commercial misuse in respect of goods that are identical or comparable to those of the registered geographical indication where the misuse benefited or would benefit from the reputation of the geographical indication;

(c) use a registered geographical indication for direct or indirect commercial misuse in respect of goods that are non-identical or non-comparable to those of the registered geographical indication where the misuse benefited or would benefit from the reputation of the geographical indication;

(d) use a registered geographical indication identifying goods not originating in the place indicated by the geographical indication in question even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like, including imitation, evocation or translation of the registered geographical indication;

(e) engage in conduct which constitutes an act of unfair competition, being an act of competition contrary to honest practices in industrial or commercial matters and including :

(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; and

(iii) indications or allegations, the use of which in the course of trade, is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

In practice, GI protection will be implemented:

- to any use of the GI name for any kind of products: similar products as the one registered as GI and other types of product is there is an evidence that there is misappropriation of the GI name notoriety.
- The GI name is also protected against any evocation : as transformed or similar name (example: GI Champagne and Champin name)
- Any use that will get confusion for the public.

Some concrete examples of different types of misuses are presented below.

ADD PHOTOS OF MISUSES IDEALLY SOME OF CF COUNTRIES

- ☞ The use of registered GI is restricted to the products that meet the established specifications, and therefore, producers are given an exclusive right to use the registered name for their products. This means that registered GI names shall be protected
- ☞ Legal means are given to the legitimate users in order to protect the GI name.

2. GI users identification/list

The concept of “GI user” is important in order to know exactly who the GI users would be or what are the uses covered by the legal framework.

It is important to define clearly how the GI will be used and who will be entitled to use the GI once **the GI is registered and protected. The management of users or users’ list should be clearly defined** to avoid misuses in practice.

A list of such producers or legitimate users can be created and the management of such list conferred to a competent authority (IPO and or GI applicant/[owner*]).

The list of GI producers/stakeholders can evolve over time for different reasons (retired people, closure of enterprise, **death, withdrawal of GI certification etc....**). **The producers present at the very beginning of the GI will not be the same some years later. The main issue is: how to provide an updated list of “GI-able” producers?**

For instance, for non-agricultural GIs in France, IP office (INPI) provides an updated list of GI producers through its online GI database (<https://base-indications-geographiques.inpi.fr/fr/ig-homologues>)

Here the example of the GI Porcelaine de Limoges (Limoges China)

The screenshot shows the INPI website for the GI Porcelaine de Limoges. At the top, there are navigation tabs: 'COMPRENDRE la propriété intellectuelle', 'PROTÉGER Vos innovations', 'VALORISER vos actifs', and 'INNOVATION la galerie'. Below this is the 'Organisme de défense et de gestion' section, which lists the 'Association pour l'Indication Géographique Porcelaine de Limoges' with its address: 7bis rue du Général Cézé, 87000 Limoges, France, and the SIREN number 804606366. A blue arrow points to the 'Liste des opérateurs' section, which contains a list of manufacturers such as 'COMPAGNIE DES PORCELAINES DE LIMOGES', 'ETABLISSEMENTS MERIGOUS', 'A. RAYNAUD ET Cie', etc. Below the list is the 'Zone géographique' section, which specifies 'Haute-Vienne'.

3. Relationships between GI and trademarks

Clear provisions concerning the relationships between GIs and marks are important. However, this aspect is fundamental, mostly in relation to the GI international obligations.

3.1 Types of Relationships between GIs and Trademarks

There are different [types of relationships between GIs & trademarks](#):

- ☞ case of posterior trademarks that cannot be registered after GI recognition/registration of the trademark contains the same name as the one registered by the GI. The IPO shall refuse any application for registration of a trademark which is identical with or confusingly similar to a GI which applied before the filing date of application for mark registration or after the registration of the GI.
- ☞ A prior trademark registered in good faith can challenge/prevent the registration of a GI.
- ☞ The case of famous/well-known trademark that can prevent from GI registration.
- ☞ Coexistence principle: The use of a trademark and which has been registered, in good faith, before either the date of protection of the GI or the filing date of the application for GI registration, the trademark may continue to be used if there are no grounds for invalidation.

3.2 Considering trademarks during the GI application process

The IPO may consider the existence of prior trademarks when a GI is applied for registration.

Prior trademarks may prevail on the GI as the right has been granted first. The existence of a previous trademark may prevent GI registration.

The IPO may refuse the GI registration, based on the existence of a prior trademark

- Directly
- On the basis of a request to refuse or invalidate registration of a mark conflicting with a GI.

Sample of a Request to refuse or to invalidate the registration of a misleading trademark

DRAFT

Name of the country

GEOGRAPHICAL INDICATION ACT

Form No. XXXX

**REQUEST TO REFUSE OR INVALIDATE REGISTRATION OF A MARK CONFLICTING WITH A
GEOGRAPHICAL INDICATION**

(Pursuant to section 34 of the GI Act)

<p>(For official use only) [Country]: Date of receipt/Filing : Fees received on: IPO stamp</p>

I. IN THE MATTER OF:

Application for Registration/Registration No.* of Mark:

Filing/Registration*

Date:

Application/Registration* Published in the periodical

N°..... Page.....Date....

II – APPLICANT(S)/NAME

(Principal applicant must complete this section)

(a) Name :.....

(b) Address :.....

Phone Number:Fax Number:

Email :

(c) Nationality or citizenship/country:

(d) Legal status :.....

(e) Address for service in COUNTRY

III – REPRESENTATIVE/ATTORNEY-AT-LAW/DULY AUTHORIZED AGENT

The following (Attorney-at-Law) has been appointed by the Applicant in Authorization of Agent

- Accompanying this Form
- To be filed within 2 months from the filing of the application for registration (Regulation XXXX)

Name and Address for communication

.....
.....

Phone Number:..... Fax Number:

Email :

Where an Attorney-at-Law has been appointed, the address of the Attorney-at-law shall be treated as the address to which any communication shall be transmitted (Regulation XXXX).

IV – GROUNDS FOR REQUEST

The grounds for request to refuse or to invalidate the registration of the above identified mark are as follow

.....
....
.....
.....

Additional information

- Is contained in the Annexed Schedule which is incorporated in this Form
- Supporting evidence accompanies this form

IV – FEES

- Accompanying this Form

V – ANNEXES SCHEDULE

- A- Power of Attorney;
- B- Statute and Regulations of the Applicant;
- C- Supporting evidence
- D- Related documents required by the Department of Intellectual Property Rights;
- E- Fee payment

VI- SIGNATURE OF THE APPLICANT OR ATTORNEY-AT-LAW

A- **Signature:**

3.2 GIs and trademarks, as complementary tools

In several countries, producers use both GIs and trademarks in their marketing strategy:

- GIs usually protect the geographical name of a product produced by a group/association of producers. The trademark can be used to complement the protection, for example a single producer within that group who wants to protect his own trademark.
- **If GIs protect the name, the trademark will give the opportunity to create a “visual” or a logo** of to further visually identify the GI name to be promoted and recognised by the consumers.

However, this trademark shall not prejudice/conflict with the GI. Some specific conditions exist in order for the GI and the trademark to co-exist in practice:

- The owner of the trademark can be either the GI group of producers (or GI [owner*]) or a GI producer recognized as a GI user;
- The owner of the trademark cannot appropriate the name of the GI, already protected which is subject to a disclaimer inside the trademark application;
- The owner of the trademark can establish some conditions of use of this trademark : how the visual or logos can **be used (size, colour etc...), in which tools they can be used etc....**

Examples of trademarks used in collaboration with a GI:

In these examples you can see the use of the EU official logo with a specific GI trademark/logo. In these cases, only products that comply with the GI certification & verified by the control body can use the GI trademark/logo on the packaging.

GI Piment d’Espelette (Espelette sweet chili) France	GI Parmigiano Reggiano Cheese Italy
 <p>Source : Syndicat de défense de l’AOP Piment d’Espelette</p>	 <p>Source : Open food facts</p>

3.3 Difference between DO and GI³²

³² Based on GI view website

'GI' is a term commonly used to describe a name of a product linked to a specific geographical origin. Different terms such as 'protected designation of origin', 'protected geographical indication', 'appellation of origin'/'designation of origin', and 'geographical indication' cover the "GI" concept. Some national or regional legal frameworks such as in Europe cover both DO and GI concepts.

Examples of EU PDO and PGI labels



Examples of DO and GI labels in Morocco



DO and GI protect the name of a product originating in a specific place/region, which follows a particular production process, sometimes traditional. However, there are differences between the two concepts, which are primarily based on how strong the link between the product name and the geographical place in which the product is.

As the difference between DO and GI depends on the link with the geographical area in question, they have consequently different requirements. For example, protection granted to a specific name as DO may require that all raw materials are to be sourced from the geographical area where the product is, or on how many steps within the production process actually takes place in the defined area.

Product names registered as DO are those that have the strongest links to the geographical place: the product must be shown to have characteristics that are due to the natural environment and to the skills (= know-how) of the producers in the geographical area of origin. In addition, every part of the production, processing and preparation process must take place in the specific geographical area identified in the product specification.

GI emphasizes the relationship between the geographical area and the name of the product, where a particular quality, reputation or other characteristic is essentially attributable to its geographical origin. At least one of the stages of production, processing or preparation takes place in the designated area.

Differences for wines products

DO	GI
<ul style="list-style-type: none"> • the grapes must come exclusively from the geographical area where the wine is made 	<ul style="list-style-type: none"> • at least 85 % of the grapes used have to come exclusively from the geographical area where the wine is made.

Differences for meat/ham/pork processed products

DO	GI
<ul style="list-style-type: none"> • all stages of ham production had to take place in the place of origin. • The specific place of origin (understood as "terroir") confers specific whose characteristics (flavor, color and texture) and quality to the product 	<ul style="list-style-type: none"> • at least one of the stages of the production process must have taken place in the region of origin. • The place of origin is a determining factor for the product to obtain specific quality of the product

In jurisdictions where no difference is made between DO and GI, the GI concept will protect both DO-type and GI products.

4. Enforcement mechanisms

With regards to enforcement of the rights conferred to GI rights holders, the legal framework shall have established an administrative enforcement protection - i.e. a system by which the Member State or public authorities are responsible for policing and ensuring GI protection. GI groups or associations and producers are obliged to set up the necessary control bodies and procedures, thus products that do not meet the requirements of the registered GI specification must be removed from the market.

Depending on the legal means as provided by the national legal framework, the GI groups or associations, their producers and sometimes the official GI competent body can take legal action in order to ensure the protection of geographical indications and to obtain compensation for the damage suffered. There are different types of legal actions :

- civil litigation (particularly in the field of intellectual property);
- by becoming a civil party in the context of criminal proceedings, initiated on the basis of the reports and reports drawn up by the main competent authorities in the field of the repression of fraud concerning protected geographical indications.

Customs can also take measures in order to stop counterfeited products in the borders or within the country.

Like all intellectual property rights, the rights to geographical indications are enforced by the application of national legislation, typically in a court of law. The right to take action could rest with a competent authority, the public prosecutor, or to any interested party, whether a natural person or a legal entity, whether public or private. The sanctions provided for in national legislation could be civil (injunctions restraining or prohibiting unlawful acts, actions for damages, etc.), criminal, or administrative.

5. Miscellaneous

GI license

GI rights are not transferable in practice. A GI designation is conferred to an [owner*] which is most of the time a group or an association that has as main duty to manage the GI and its use by its members . Then, GIs are not subject to transfer or licenses. The right of use is given to the producer/enterprise as legal person.

CHAPTER 4 | GIs manual for control bodies

A. Why is it important to implement controls for GIs?

1. Importance of controls for GI products

This chapter will aim at helping GI producers/stakeholders, competent authorities and potential control bodies to better understand the aim of GI controls and to communicate on the protected name of the **GI products, the products' characteristics and attributes to buyers, consumers and the public, thereby ensuring:**

- the respect of GIs as intellectual property rights;
- the fair competition between all stakeholders of GI products, having value-added characteristics and attributes;
- the availability for consumers of reliable and fair information to such products;
- the integrity of the market(s).

A GIs framework can support the production of origin-linked products and their production systems for which an intrinsic link exists between products characteristics and their geographical origin, thereby contributing to the achievement of rural development and economic development policy objectives.

The role of the GI [owner*] /group of producers therefore is to identify, depending on the national legal framework and when applying for GI registration within the competent authority, the relevant control body, for the control of their GI. This control body must be independent, have the relevant competency to ensure compliance with the provisions of the GI control scheme.



KEY TAKEAWAYS

- ➔ The specific link between the product and its origin is what is monitored by the GIs controls.
- ➔ GIs controls are performed on a compulsory basis for the stakeholders who wish to benefit from the use of the GI designation.
- ➔ The role of the GI [owner*] /group of producers is fundamental to guarantee the correct implementation of the production rules.

2. Some definitions

Audit: audits are a vital part of the management system approach or certification process as they enable a company or an organization to check how far their achievements meet their objectives and show conformity to the standard (= GI specification and control plan).

Certification: the purpose of product, process or service certification is to provide assurance to all

interested parties that a product, process or service meets specified requirements. The value of a certification resides in the degree of confidence that is created after an impartial and competent third-party demonstration of compliance (source: ISO).

Certification Body: means private inspecting organization or inspecting entity, accredited by an accreditation body, able to deliver the certification requirements according to national and international agreements, relevant laws with regard to industrial product standards, agricultural product standards, craft & industrial standards and other related laws, and providing GI certification in accordance to ISO/IEC 17065:2012 standard for the product certification.

Certification program: specific set of specified requirements, specific rules and procedures applying the GI certification such as ISO / IEC 17065:2012_ Conformity assessment – Requirements for bodies certifying products, processes and services; national Laws on GIs, its regulation & relevant procedures and other related laws and regulations. The certification program shall be respected and implemented by the GI group, the GI producers and the certification body.

Geographical Indication control plan: means a document, giving details on methods to control and inspect the production, process according to the GI specifications as well as establishing rules of corrections/sanctions for non-conformity(ies) with regard to the compliance with the GI specifications. The objective of the control plan is that the produced good meets the required characteristics/attributes as validated through the Geographical Indication registration. Sometimes, this specific document can be included in the specifications, but it is not compulsory. Most of the times, this document is separated from the specifications but is regarded as an element of the GI control or certification program.

Geographical Indication controls: is the action of verifying the compliance of goods with the specifications of GI registered by the competent authority. GI controls may include three level of control: auto control, internal and external control.

GI control program: specific set of specified requirements, specific rules and procedures applying the GI certification such as national Laws on GIs, its regulation & relevant procedures and other related laws and regulations. The GI control program shall be respected & implemented by the GI group, the GI producers and the control body.

GI group: Is the responsible person (Association, enterprise, industrial unions, Chamber of Commerce and Industries and alike that) that, in accordance with specified standards has the right to internally monitor and exercise control over the use of the GI.

Conformity assessment : involves a set of processes that show the product, service or system meets the requirements of a standard (= GI specifications). Undergoing the conformity assessment process has a number of benefits: It provides consumers and other stakeholders with added confidence. Conformity assessment if provided by an external body.

Control Applicant: refers to the GI group or its members individually (i.e. GI producers) that request the control for their products.

Inspection: Inspection describes the regular checking of a product to make sure it meets specified criteria.

Internal control system (ICS): means the GI control system implemented by the GI group or association internally for their members. ICS is not compulsory.

Labelling: any words, signs, trademark, brand name, pictorial matter or symbol relating to a product and used on any packaging, document, notice, label, ring or collar accompanying or referring to such product in the course of the trade. Labelling is a means for providing accurate and verifiable information to consumers.

Private Control Body: means private inspecting organization or inspecting entity which may provide GI controls according to national standard law, relevant laws with regard product standards, and other related laws, to ensure conformity with the specifications of GI products.

Public Control Body: means public inspecting organization or inspecting entity which may provide GI controls according to national standard law, relevant laws with regard product standards, and other related laws, to ensure conformity with the specifications of GI products.

Specifications: refers to all supporting documents and information as requested for the GI application, specifying namely the product name, the production geographical area, production conditions, the quality control process of geographical indication goods, which is compiled by the GI applicant. It explains how the GI product(s) has/have to be produced, the elements of traceability and how the link between the origin and the product is evidenced. The specifications are a central element of all quality schemes because specifications must be controlled to verify the compliance with the rules set up inside. This document is examined and approved by the competent authority during the GI registration process.

Testing: Testing is the determination of one or more of an object or product's **characteristics and is** usually performed by a laboratory or by a competent panel composed of skilled and regularly trained persons.

3. Rationale for a GI control system.

GI controls are important as they constitute the **credibility of the GI system**. GI controls therefore, allow for the guarantee of key quality and authenticity of origin elements of different GI stakeholders through providing a mechanism for:

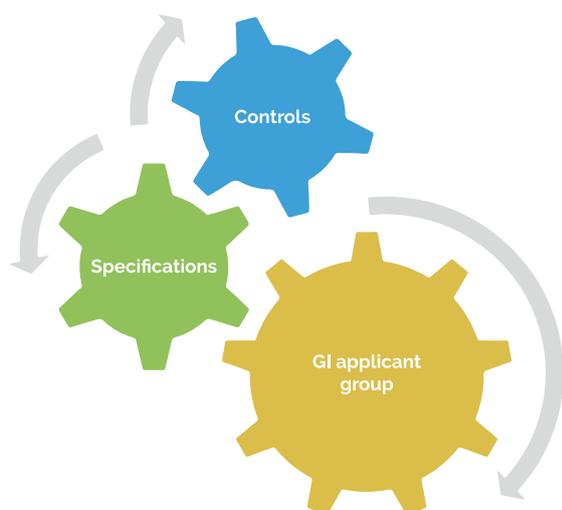
- Protection of **producers: against frauds, counterfeiting, unfair competition practices etc....**
- Protection of consumers: guarantee of traceability, true labelling, quality and origin of the product as defined in the GI specification
- When GIs are part of official origin signs or labels, they are regarded as “public IP tools”, which may concern:
 - **The State's commitment: competent authority that may sometimes provide control oversight;**
 - Integration of the GIs or quality schemes in domestic law;
 - Existence of an official policy on products or food quality.

GI control system shall ensure compliance with the book of specifications.

The GI control may demonstrate how the producers committed in the GI scheme can comply with the rules set out in the book of specifications, especially in the part that concerns

- the description of the characteristics of the product
- the description of the production methods.

FIG. n° 33: The proper functioning of a GI



The control system must relate the provisions of the product specifications to the evaluation method used. This means that the GI applicant group must provide information on the future control of the GI, it is therefore necessary to identify the elements that can be used for the traceability of the product throughout the production process. The GI applicant group may also decide to define modalities of the controls (internal and/or external, frequency, etc.).

A control plan established by an external control body can also be provided, mostly in case of certification process.

In any case, a control plan will be required before any approval of the book of specifications by the responsible IPO.

The control services, whether internal or external, must offer sufficient guarantees of objectivity and impartiality to all stakeholders.

In addition, there is normally no GI control before the GI recognition but the GI applicant group must justify certain elements to ensure the viability of future controls, in particular:

- it should establish a list of all the producers who would like to use the GI: these producers are the original producers of the GI (the producers behind the GI application);
- It should verify, by itself or through a control body, the ability of the producers to comply with the GI specifications or the relevancy of the control method to be used in the future.



KEY TAKEAWAYS

- GI controls shall be seriously established as they guarantee the credibility of all the GI system
- The control system must efficiently relate the provisions of the product specifications to the evaluation method used.
- The control services, whether internal or external, must offer sufficient guarantees of objectivity and impartiality to all stakeholders.

Scope of GIs controls

A product registered as a Geographical Indication within the national competent authority according to the applicable legal framework is subject to controls. In practice, different types of control systems may exist, mostly in relation to quality management.

- Products controls which cover the control system of a type of product. In these controls, the **quality and the process of the product's production will be checked. These controls make it possible to know whether or not the products comply with the product's specifications.**

- Systems controls: The control system is applied to a company or an organization. It is based on measurements that allow progress to be assessed in order to compare it with predetermined standards. It is a necessary process to keep the organization running smoothly.

Different types of controls:



Source: Aubard Consulting

A GI control system belong to the product controls category as GI controls may verify compliance with the conditions set out in the product specifications, explaining the quality of the product and the process of production.

Basic elements on GI controls

GIs controls rely on important and easy principals

« I say what I do and I do what I say » which means that GI producers defined the GI specific conditions in the specifications recognized by the national competent authority. In these specifications, producers explained in an objective way the main features of the product and the way they are producing it (= I say what I do). GI controls provide a mechanism to check the correct implementation of the product specifications by the producers (= I do what I say).

GIs controls system shall be perceived as a tool to check the **compliance of the rules set out in the specifications** .

GI controls are based **on conformity assessment**.

There is a **close interaction between specifications and the control plan**. Both shall be clear and objective. All these documents must be drafted in an easy way to be accessible to the GI producers and allow for their participation in the GI system.

GI controls means costs. Controls are services and often require that fees be paid the organization that performs them. However, GI controls cost must be acceptable for the producers.

The **control system must be adapted for the production and producers' situation**. Too complicated a control system will be dissuasive for the GI stakeholders.

GI controls stakes

GI controls are based on three main principles:



Request for quality/typicity/origin



Truth : precise information on qualities, specificities of products , their origin etc....



Credibility : official guarantee of quality , origin – product's authenticity

Consulting, 2020

Source: Aubard

In addition, GI controls may achieve several objectives:

- They must be impartial and objective in order to avoid varied or inconsistent interpretations and unfair competition between GI producers;
- They must give producers/group of producers a sense of responsibility;
- They provide assurance to consumers that the products covered by the GI scheme have guaranteed characteristics, quality and/or origin;

- Allow for producers to profit on the national and/or international markets by promoting the specific qualities of their product and by being able to provide evidence that their products are produced according to variable specifications

There are 3 main areas that shall be verified during the GI controls process:

- The origin of the product (**traceability's respect of the production chain**);
- The respect of the specifications and the production conditions;
- The products, their specificities and quality if defined.

GI controls applicant

Eligible people who can apply for GI control are the following:

- Any legal persons representing GI group of producers. This eligible organization must have been recognized as a GI group or GI association during the GI registration process.
And/or
- Any producer of the concerned GI goods, having a production activity linked with the related GI goods and, if any, member of the GI group of producers. Typology of producers (= in terms of steps of production) shall be clearly defined in the specifications.

Stakeholders subject to GI control: GI producers are all subject to controls. In addition, in case of a collective GI group, each member or producer of the concerned GI **good, located in the GI product's** geographical area or enterprise who is doing business in relation to the GI product are also subject of GI controls. In this case, it is recommended to have only one single control body appointed to provide certification of compliance to the controls among all the GI producers.



The interest of having only one single control body : each control body has its own vision of the controls and its own methodology. Having several control bodies for one GI may be risky if the controls are implemented with different methodologies.

Duties and responsibilities of the GI control applicant:

The GI control applicant must follow the following conditions:

- To be in compliance with the GI specifications as registered by the national competent authority;
- To be willing to comply with the control scheme of the GI;
- To provide **information at the control body's request**;
- To accept the inspection/control plan mutually agreed between the applicant and the control body including terms, conditions, and agreement related to the control such as inspection acceptance, notification of change of important production information and occurred expenses;
- To agree to let the representative of the control body or the representative of the national competent authority office (in case of control oversight) to observe the inspection performed by the auditor of the control body;
- If any, to have at the GI group level an internal quality control system;
- To object the chosen auditor in case that the auditor does not have equity or for any objective and justified reason. The objection can be made and sent to the control body for considering facts and appointing another auditor to replace the existing one.

B. GI Control procedures

1. Type of controls & nature of the control bodies

The GI products can be controlled internally and/or externally to ensure that it complies with the specifications, but also to avoid abuses by third parties.

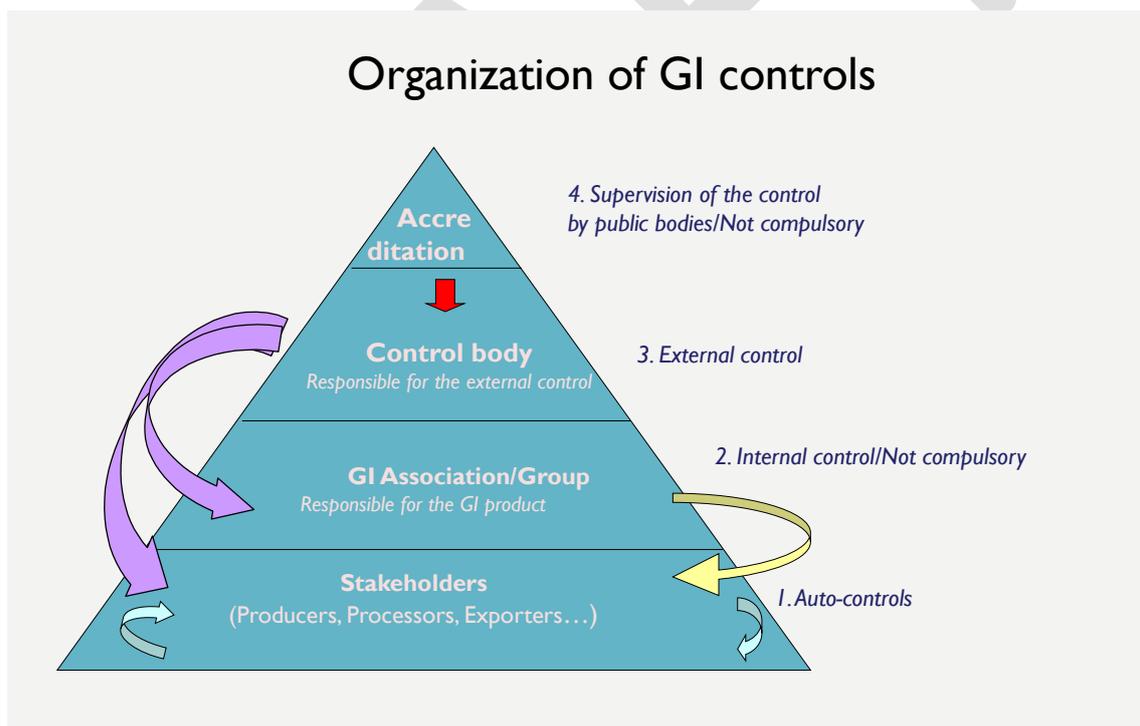
Type of controls

Normally, the GI specifications must contain the production's practices, the definition of the product's main characteristics as well as traceability procedures. In some cases, GI specifications includes a control plan. Then national GI frameworks can provide for a GI control mechanism to be performed or supervised by the State and/or by external control bodies such as certification bodies.

3 levels of control may exist for GIs:

- Self-control or auto control: by producers and other operators of the value chain if possible
- Internal control: by the group of producers or GI association, regularly on the basis of an internal control system (ICS)/procedure. This type of control is not compulsory.
- External control: by an external control body and will , consist of checking up of the internal control by the group of producers as well as the auto-control.

Scheme of GI controls organization



Source: Certipaq & Aubard Consulting, 2020.

Control plans/Levels of controls

There may be 2 types of controls plans: one at internal level (= GI group or association) - but not compulsory and one at the external level. This external control can be compulsory and if not, it is highly recommended.

Internal control plan/Internal control: Such a control system is prepared and implemented by the GI Association for its members. **Internal controls are based on an association’s own internal control system** established for the concerned product and includes the frequency of inspections.

The GI group/association who wishes to have the internal control system (ICS) must have the capacity to undertake relevant inspection and management and must also have an appropriate structure and quality management to undertake the task per the specifications and control plan.

New members of the GI association wishing to use the GI must be internally inspected before being granted permission to use the GI and have their name in the list of registered members or GI recognized users.

External control plan/External control: This type of control shall be implemented by an external control body chosen by the GI producers/GI group.

- In case of individual control or certification, the auditor from the control or certification body shall inspect the GI producer requesting the GI control/certification, based on the GI specifications;
- For the members of a GI group: during the external inspection, the auditor will review if the Internal Control System (ICS), if available, has been implemented by the GI group. The auditor will control if those members complied with the GI specifications. The auditor will then check all records and relevant information in relation to the internal inspection performed.

The number of members to be randomly selected for inspected should be defined in the control plan as **a relevant percentage representative of all applicant’s members** applying for the control & certification. The number of the aforesaid percentage can be increased, if the control body considers that it is necessary. For example, if the internal control system is not effective and the evaluation results of the control body are not consistent or are too different among the selected producers.

Inspection and Evaluation

The methods and frequencies of control are defined, based on each GI product specifications, and control plan.

Different type of control techniques or methods may be implemented by the control body. They are not all compulsory and should be selected as relevant, based on each GI products, to be able to verify the compliance with the concerned specifications. These techniques can be:

Documental	Inspective	Visual	Analytical: laboratory tests on the product, if applicable to the product specification
			

Additional ad hoc inspections

Sometimes, and if defined in the control plan, an **additional inspection** can be carried out:

- In case of **major findings due to non-conformity** and which are liable to endanger the correct implementation of the GI specification and the final quality of the product;
- If, on the **request of the GI group, a member’s reliability must** be verified

- In cases where the member communicates **important changes to the production/process** or to the facilities (variations requiring an additional inspection to assess whether the changes may impact the conformity requirements set out in the control plan and in the GI product specification).

Type of control bodies

GI controls may be carried out by different types of control bodies or entities. It is therefore important to verify:

- The **qualifications or competency** of the organization/body: regarding the control process, the **kind of product controlled, the system controlled, the experience of the control body etc...**
- The **independence of the organization/body** regarding monitoring and enforcing the control system. This allows for the prevention of fraud and negative consequences on the GI concerned.

What is important is the competency, the objectivity and impartiality of such a body.

The different types of control bodies can include:

1. Public authorities of control: this can cover official control bodies (for food product, for safety **etc...).** **Sometimes a GI competent authority can be in charge of the GI controls but in this case,** this authority needs to have the competencies to implement the control process.
2. Certification or private organisms, as standards and quality organizations (in the CARIFORUM Region, there is CROSO) which have to be competent for the products and processes covered by the GI controls. When it relates to the certification process, the certification body shall be accredited by an accreditation body, according to the ISO 17065.
3. Other kinds of organisations/entities specialized in implementing controls or specially created for such a purpose (technical team, commission, local community ...).

To be noted:

- ☞ The control body shall be selected during the drafting of the specifications to ensure the enforcement of the contents thereof and the competency of the body.
- ☞ When the regulation foresees the intervention of a certification body, such body must be accredited by an internationally recognized body (ISO 17065). Evidence of accreditation shall normally be presented in the GI application
- ☞ The GI group must ensure its ability to support producers: The controls are not only used to verify compliance with the specifications, they must also be part of a global approach to progress.

4. Criteria for establishing a control plan

A control plan is a formal document that defines the necessary elements to control the main characteristics of a process - GI process. The purpose of the plan is to ensure that the product meets the requirements as set out in the specifications and to support the effort of continuous improvement of the process.

In a production environment, it is important to create and revise the standard operating conditions that contribute to process management. A control plan must be developed, implemented and employed to document control and inspection activities : either from receipt of raw materials (if any to final shipment of the final product or from the process of production to the final product. .

In this control plan you have to answer the following questions:

Where? What? Who? When? How?

The control plan is specific for each product (part, component).

The essential elements of the control plan are:

- ➔ The type of producers/production process steps to be controlled
- ➔ the identification of control points in the steps of the process and the characteristics (indicators, variables) to be controlled: what type?
- ➔ the tolerances (specifications, requirements) to be observed;
- ➔ the frequency of sampling / inspection;
- ➔ the sample size;
- ➔ the control and analysis methods;
- ➔ the measuring instrument and the inspector;
- ➔ the actions to be taken when non-compliance is detected.

Main steps for creating a GI control plan

- ➔ Identify the specific product and the associated process.
- ➔ Define the main stages of the process.
- ➔ Define indicators, requirements (targets) and tolerances.
- ➔ Define the means of control, the measuring devices and those responsible.
- ➔ Define the control frequencies:
 - How many producers will be controlled?
 - How many times a year?
- ➔ Consider the use of official laboratories or panel testing (only if some specific characteristics of the products in terms of organoleptic and/or chemical features are defined)
- ➔ The plan should be:
 - identified with a specific number;
 - identified with the Reference to the Product Specification
 - approved and dated by the GI applicant/owner;
 - periodically updated and contain a revision number.

Example of control plan presentation:

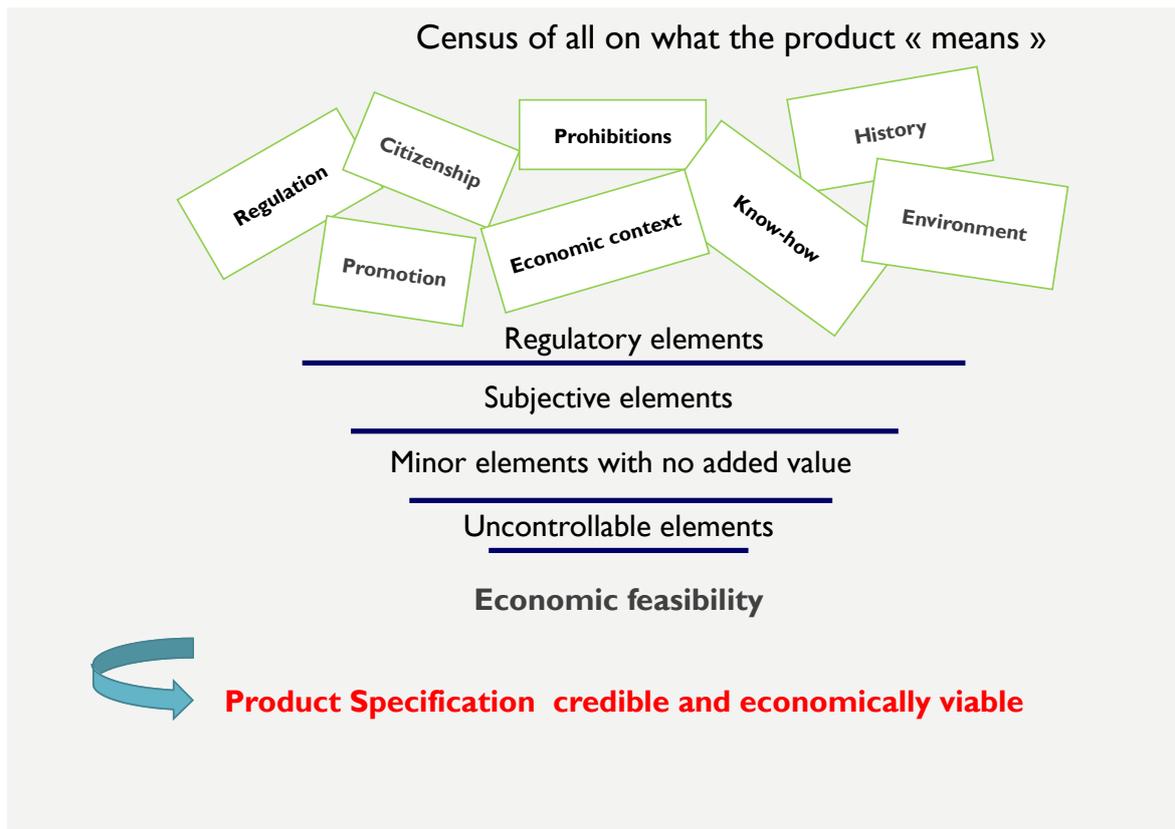
Control Plan n°....	GI (name of the GI)	Approved by Date	Version n° Date
---------------------	---------------------	---------------------	--------------------

Drafting a GI control plan

There is a close link between the GI specifications and the control plan as both must be taken into consideration when developing a GI management system which can be easily implemented by the GI producers. As a consequence, when writing GI specifications it is important to be **specific, concrete and pragmatic**. GI specifications shall not contain subjective elements as each statement may become a "checkpoint" during the control process.

GI producers must avoid developing overloaded specifications that will result in a high level of control and costs, sometimes with no relevancy. Hence the necessary sorting when the GI specification is drafted. It is necessary to avoid including elements with no added value or which cannot be easily subjected to control processes within the means of the selected control body or which can be afforded by the producers.

The controllability of the GI specification draft is hence important before applying for the GI.



The main chapters of the GI control plan are:

1. Reference to the GI and the product specifications
2. Scope of application of the control plan
 - **Applicant's information (contact, address, existence of certifications)**
 - Productions to be controlled: raw materials, plant productions, animal productions, processing activities, storage, placing products in the market etc.
3. Organization of controls
 - Staff involved on the controls process
 - Enabling of producers and GI association- 1st audit and follow-up audits
 - Need of analysis or panel testing
4. Modalities of controls
 - Auto controls
 - Internal controls (not compulsory)
 - External controls
5. Treatment of failures to comply (sanctions)

Modalities of GI controls: assistance to read a control plan

Most of the control plans and the controls grids are build according to the same content.

1. Criteria in relation to the product or control point
2. Monitoring plan: type of follow-up, frequency, responsible person in relation to the control point, corrective action to be implemented
3. References (documents, analysis etc., evidences etc...)

Criteria defined on the Product Specification

Monitoring Plan

Documents

Code		Points to master	Target Value	Preventive Action (P) Internal (S) and External (SE) Monitoring Action	Minimum frequency	Responsible persons	Corrective Action	References Documents
E	P							
I	M							

PM = Point to master

E/I = Characteristics
Explicit / Implicit

Example 1 : GI Clémentines de Corse certified by the certification organisme Certipaq (France)

- GI Specification : rule concerning the size of the fruits

Code	Characteristics	Qualitative objective
CE21	Only sizes 1-5 are selected for certification as clementines of Corsica: Size 1 : 63-68 mm; size 2 : 58-63mm; size 3 : 54-58mm; size 4 : 50-54mm; size 5 : 46-50mm	The elimination of large fruits (> 68mm) and small fruits (<46mm) aims at maintaining the image of the Corsican clementine, usually known as a “small fruit” .

- GI control plan

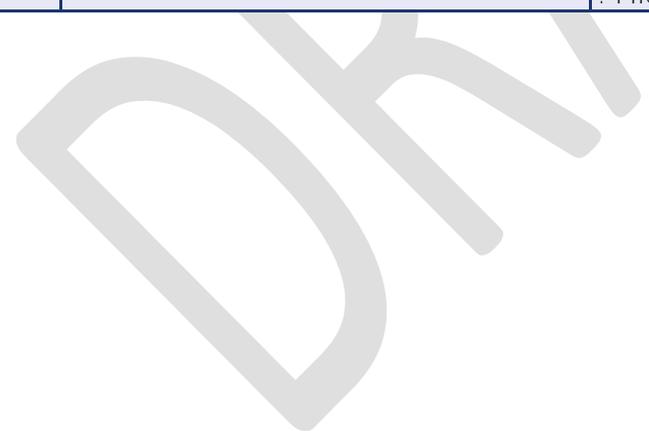
Code	Point to master	Target value	PA	Preventive Action	Frequencies minimum	Responsible of control
			AC	Auto-Control		
			IC	Internal Control		
			SE	External Monitoring action		
CE21	References diameters sizes 1-5	Diameter comprised between 46 and 68 mm	PA	Information of the station responsible person	Continuously	Quality Manager station
			AC	Visual control of certifiable fruits	1 time/ week	Quality correspondent station or organization of producers
			IC	Visual control of certifiable fruits	2 times / campagne	APRODEC
			SE	Visual and documentary control of certifiable fruits	1 time/ year / station	External Auditor CERTIPAQ

Source: Certipaq

Example 2 : control grid of GI association

Points to master	Checkpoints	Method of external control
General and Documentary organization	- Respect the general conditions of certification (commitment of stakeholders, management of new applications...)	- Exam and follow up: <ul style="list-style-type: none"> . Statutes and internal regulation of the GIG . Organization and management of the GIG . Agreement on the certification of the GIG/ Certification Body . Accession Agreements . Product Specification and Control Plan of the PGI
	- Documents managed by the GIG	- Monitoring and follow up of the official documents, quality control documents and documents CERTIFICATION BODY: Procedure of document control and document distribution - Verify the updated lists of authorized operators/stakeholders
	- Management of the material accounting	<ul style="list-style-type: none"> - Verify keeping statistics of labelling and sales - Verify the coherence between the produced quantities and the sold quantities
Point to master	Checkpoints	Method of external control
Training and information of operators / stakeholders	- Dissemination of quality documents to operators /stakeholders	- Verify the dissemination of informative documents, registration documents and traceability documents of the authorized operators

	- Training	- Follow up on the respect of the established training plan - Verify the registration of training conducted
Follow up of operators /stakeholders	- Training and qualification of staff	- Exam: The competence of internal controllers
	- Follow the internal controls	- Monitoring compliance of: . The management of internal control (frequency, controls and tests) . The procedure for handling identified deficiencies in internal and / or external - Monitoring and Review: . reports of internal control: support of controls, record reading failure . records relating to the management of failures . Files registering the sanctions



In some cases, GI products shall be tested by analysis or testing panel. These controls have as main objectives to check if the characteristics as set out in the specification are guaranteed in the final products.

If these tests are made, they shall be provided by competent laboratories or panels duly trained and skilled to test the GI products.

Example of Jamaican Jerk organoleptic test report and checklist:

CONTROL MANUAL

Organoleptic Test Report

- Name of Panelist
- Jerk Seasoning Jerk Sauce

- Sample ID Code

- Decision by Panelist**
- Note:
Only a sample with a maximum of 1 "Fair, just passed" result can be accepted as "Jamaica Jerk".
A sample with 1 "Poor" result cannot be accepted.

- Congratulations! Your product has been accepted as "Jamaica Jerk" GI.

- Sorry, please try again, your product cannot be accepted as "Jamaica Jerk".
Reasons and recommendations for improvement.

- Signature: _____
Panelist

Jamaica Jerk Producers' Association

Table 4: Organoleptic Test Checklist

Characteristics	Excellent	Very Good	Good	Fair (Just passed)	Poor (Unacceptable)	Comment
Colour	Brownish, Brownish-green	Red, Brown, Green	Brownish, Green	Brownish or Greenish	Any colour not specified here	
Aroma	Spicy	Peppery	Pungent	Sour	Flat	
Texture	Consistent, Thick	Consistent	Smooth	Granular	Soggy	
Taste	Powerful	Spicy, Salty	Sweet, Sour	Acidic	Bland	
Appearance*	Vibrant, Glossy	Fresh	Smooth	Moist	Watery	

*See Figure 2 below for Jerk Models

Additional information to be added (coffee, cocoa, rum)

Disciplinary and corrective actions in case of non-compliance

If the GI association or the producer do not comply with the GI specifications and control scheme, the following measures may be applied as agreed on in the validated control plan.

Level 1: Warning

1. If the GI association or the producer do not comply with some minimum requirements that will not endanger the overall compliance with the GI specifications or control plan, the control body shall issue warning(s) to make a correction in order to comply with the GI specifications within an adapted time, defined in the control plan.
2. Correction period is the time period that the control body defines from the date of warning to provide a correction of the non-conformity.
3. If the controlled GI association or producer do not demonstrate willingness and expediency in making the correction within the specific agreed period, the control body shall propose the next level of sanctions, i.e. the GI suspension.

Level 2: Suspension of the GI Right of Use

Suspension refers to the action performed by the control body against a GI association or producer to temporarily suspend the use of a GI when non-compliant with the specifications. In this case audit conclusions made by the control body may also be sent to the GI association for final decision.

In case of non-conformity that has a severe impact on the GI product's integrity, consumer protection, food safety or other product standard quality, the control body can consider the suspension of the GI right of use without the warning process.

- Suspension of the GI right of use shall be applied when the GI association or producer cannot correct the non-conformity and after notification by the control body.
- This suspension may be applied to the GI association or producer when any part or the entire GI production system is found unsatisfactory by the control body.

After the suspension of GI right of use, the timeframe of correction shall be defined by the control body. The GI association or producer shall complete the correction actions prior to the removal of the suspension and within the expiration limit in accordance with the rules defined in the control plan.

- During the suspension, the GI association or producer shall not use the name of the GI product or national logo, or other documents related to the GI.
- If the GI association or producer provides any evidence that the non-conformity correction has been performed within the period required by the control body. The control body shall consider the cancellation of the suspension.
- If the cause of suspension is not solved within the required period, other sanctions shall be considered by the control body.

Level 3: Cancellation/removal of the GI right of use

Cancellation of the GI right of use refers to the action performed by the control body against a GI association or producer to cancel the use of a GI when they do not comply with the specifications and the non-compliance impacts the credibility of the GI product.

1. The cancellation of the GI right of use shall apply to the following cases:
 - The controlled GI association or producer cannot correct the non-conformity(ies) within the timeframe defined in the control plan and/or;

- The non-conformity(ies) of the production/process impact the quality of the product, GI product integrity, consumer protection, food safety or other products standard quality.
- 2. The GI association or producer whose GI right of use is cancelled cannot re-apply for a GI control to a control body, before a certain timeframe which shall be no less than 6 months from the date of cancellation, based on the audit conclusions of the control body and sometimes validated by the national competent authority.
- 3. The GI association or producer can re-apply for GI control once the grounds for the cancellation have disappeared.

All these disciplinary sanctions shall be subject to appeal. An appeal procedure shall be defined either in the control plan or within the control body procedures.

4. Procedure for controlling GIs

Introductory elements

As mentioned earlier, GIs controls are based on audits performed on GI producers and sometimes GI groups. The purpose of the audit is to verify the operator's ability to meet and comply with the requirements of the GI specifications.

The evaluation covers all the control points and target values determined by the GI control plan which includes 2 or 3 types of control: self-control, internal control (not compulsory) and external control according to the frequencies defined by the GI group and agreed with the control body.

The audit is carried out by an evaluation visit carried out on site by an auditor mandated by the control body and is the subject of an audit report.

The process explained below may be implemented for official controls, inspection or certification.

Process

1. IMPLEMENTATION OF THE CERTIFICATION

Once the GI is registered, the GI owner shall inform the control body and submit the last version of the GI specifications. The control body shall transfer to the GI owner the documents relating to the implementation of the GI control process. It is highly recommended that the information be centralized within the GI group (if any).

The control body sends the GI group documents including :

- Up-to-date control plan
- GI producer identification document
- A contract (compulsory for certification process)
- Information on control costs
- Other documentary materials relevant to GI controls

2/ APPLICATION FOR GI CONTROLS

Any request for a GI control process/audit or extension of control must be the subject of a written request to the control body. A declaration of commitment to comply with the relevant GI control requirements must also be provided. In case of certification, there is an obligation to sign a contract between the certification body and the applicant.

Each producer who wishes to use the GI, and in case of certification to be GI certified, must request the GI audit. If the producer is a member of the GI group, this application can be made through the GI

group that will inform the control body. If there is no GI group, the producer will directly ask the control body.

It is recommended for GI groups to define a GI identification document (GIID) for each producer. In this document, some important elements shall be defined and explained, including:

- Information concerning the identity of the producer:
 - ➔ **Name of producer (individual, enterprise etc...**
 - ➔ Contact person
 - ➔ Responsible person(s) (important in case of identification of sanctions)
 - ➔ Current contact address
 - ➔ Contact information (e.g. telephone number, fax number, e-mail address);

 - ➔ Type of product;
 - ➔ Type of activity (production, process, packaging, labelling) concerned by the GI control;
 - ➔ If relevant, cultivated area in hectares or number of plants/number of heads breeding in case of products of animal origin
 - ➔ Location of the field / farm / enterprise/ production premise of the producer;
 - ➔ If relevant, estimated production volume;
 - ➔ Individual control/certification or association control/certification;
 - ➔ Any other required information

- **Information concerning the producer's commitments**
 - ➔ Respect the production conditions set out in the specifications;
 - ➔ Carry out auto-controls and accepts the GI controls;
 - ➔ (if necessary) Bear the costs related to the aforementioned controls;
 - ➔ Agree to appear on the list of GI producers/users (if any).

The GI group shall send or give the GIID that the producer must return to the latter.

Once the GIID is returned to the GI group, the GI group registers the producer in the file of identified GI producers that it must keep up to date in case of new producers entering in the GI group or if producers are leaving the GI.

As soon as the GIID is complete, the GI group sends it to the control body. The GI group must record the date of receipt of the GIIDs.

The control body will check the completeness of the GIID and contact the GI group and/or the producer if necessary.

3/ REVIEW OF THE APPLICATION BY THE CONTROL BODY

This review is based on the classical certification/inspection process.

Once the control body receives the application for GIs control audit, it shall proceed to:

- Undertake a feasibility study : whether there is or not a conflict of interest or if the body has the capacity and competencies to undertake the controls.
- Prepare a quote for the concerned producer: most of the time control costs are based on the time spent by the auditors to make the audit.

Then, the control body shall send the following documents to the producer/GI group:

- Contract
- The proposed costs
- In the case of certification, the rules of use of the certification body trademark.

The producer/GI group will have to sign the control contract and the quote (if accepted) and send it return it to the control body. In the case of individual producer, the GI group shall be informed to follow up (e-mail copy is sufficient).

Then, the control body will undertake the finalization of the review of the application and commence the GI audit process.

4/ INITIAL AUDIT OR FIRST GI AUDIT

As mentioned earlier, in order to officially use the GI name and official logo (if any) on the products, producers shall be firstly audited.

Once the producer applies for the GI audit and fulfil all documentary steps, the control body shall plan the audits and propose an appointment with the producer. It is recommended the GI group be informed (e-mail copy is sufficient)

The auditor shall be

- competent : the person must know about the GI system, about the control product and value chain; and
- be independent: there is no link between the auditor and the GI value chain (GI group, producers etc...)

During the audit, the GI producers must have the following information:

- ➡ Specifications of the GI
- ➡ GI control plan (sometimes integrated into the specifications)
- ➡ All or part of the documents/information cited in the GI specifications: traceability elements (**documentation, test analysis etc...**)
- ➡ Recording of corrective actions, if any.

The audit must result in a report which must be justified and, where appropriate, include non-compliance sheets. This report and these sheets must be sent to the producer as soon as possible after the completion of the audit.

Control bodies shall keep the GI group informed of the progress of the controls audit and the results thereof.

In case of non-respect of the GI specification and non-compliance sheets, the producer shall explain to the control body the solutions (at short, mid or long term).

Definition of non-respect of the GI specification:

- Major : major breached may impact the overall credibility of the GI. Hence, the producer must provide proof of corrective action to the control body;
- Minor : no delay - the control body will note the lifting of the non-respect during the next follow-up audit

The control body must evaluate the relevance of the proposed corrective actions:

- If satisfactory, the control body will propose to grant the GI use/certification
- If the response is unsatisfactory or if there is a lack of response within a defined time (sometimes 6 months) of sending the audit report; the control body can refuse to grant the GI use/certification and possibility of renewing the initial GI application request to the control body.

5/ ACCEPTANCE OF GI USE/DECISION OF CERTIFICATION

If the control body is satisfied that the producer group/producer complies with the requirements of the GI specification, the producer will be authorized to use the GI. This authorization can be granted through a decision of the control body or a decision of certification (compulsory in case of ISO certification).

Producers will receive a GI compliance decision if the control process is successful, after the audit performed by the control body.

Each control body must define rules for the granting of the compliance decision.

In case of a certification process, the granting of the certification decision will adhere to the rules set **out in the ISO 17065 'Conformity assessment Requirements for bodies certifying products, processes and services'**

The GI compliance decision takes the form of:

- Decision letter from the control body and
- Certificate attesting to the granting of the GI certification to the producer.

If possible, issuance of the 2 certificate decisions at the same time.

Copies of these documents must be sent to: the group of producers and sometimes, if the law requests it, to the GI competent authority.

The GI certification is issued for an indefinite period.

The GI group must keep an up-to-date list of certified producers which can be transmitted to the GI competent authority. In some country this list is published.

The compliance decision's period of validity is decided by the control body from the date of compliance decision granted by the control body and under the condition that the producer(s) complies with the GI specifications.

6/ FOLLOW-UP AUDITS/SURVEILLANCE

Follow-up audits take place every X years (according to the frequencies provided for in the GI control plan and accepted by the producers).

Planning of follow-up audits are made by the control body which will make an appointment with the producer.

During the follow-up audit, the auditor will check the compliance of the producer with the GI specification and follow up on the deficiencies, if any, identified during the previous audit.

Warning: a minor non-respect of the specification again noted and not corrected can become a major one.

The audit must be subject of a report which must be justified and, where appropriate, include non-compliance sheets. This report and these sheets must be sent to the producer as soon as possible after the realization of the audit.

If deficiencies are identified, the producer shall provide answers. The auditor will check the relevancy of the corrective actions and may request additional information.

At the end of the follow-up audit, the following decisions can be taken by the control body:

- maintaining the GI use/the certification
- suspension of GI use/certification: if no corrective actions to remove all major deficiencies within 2/3 months in general

- withdrawal of GI use/certification: if there are no corrective actions to remove all major deficiencies within 6/7 months in general

The GI group shall be informed (e-mail copy is sufficient).

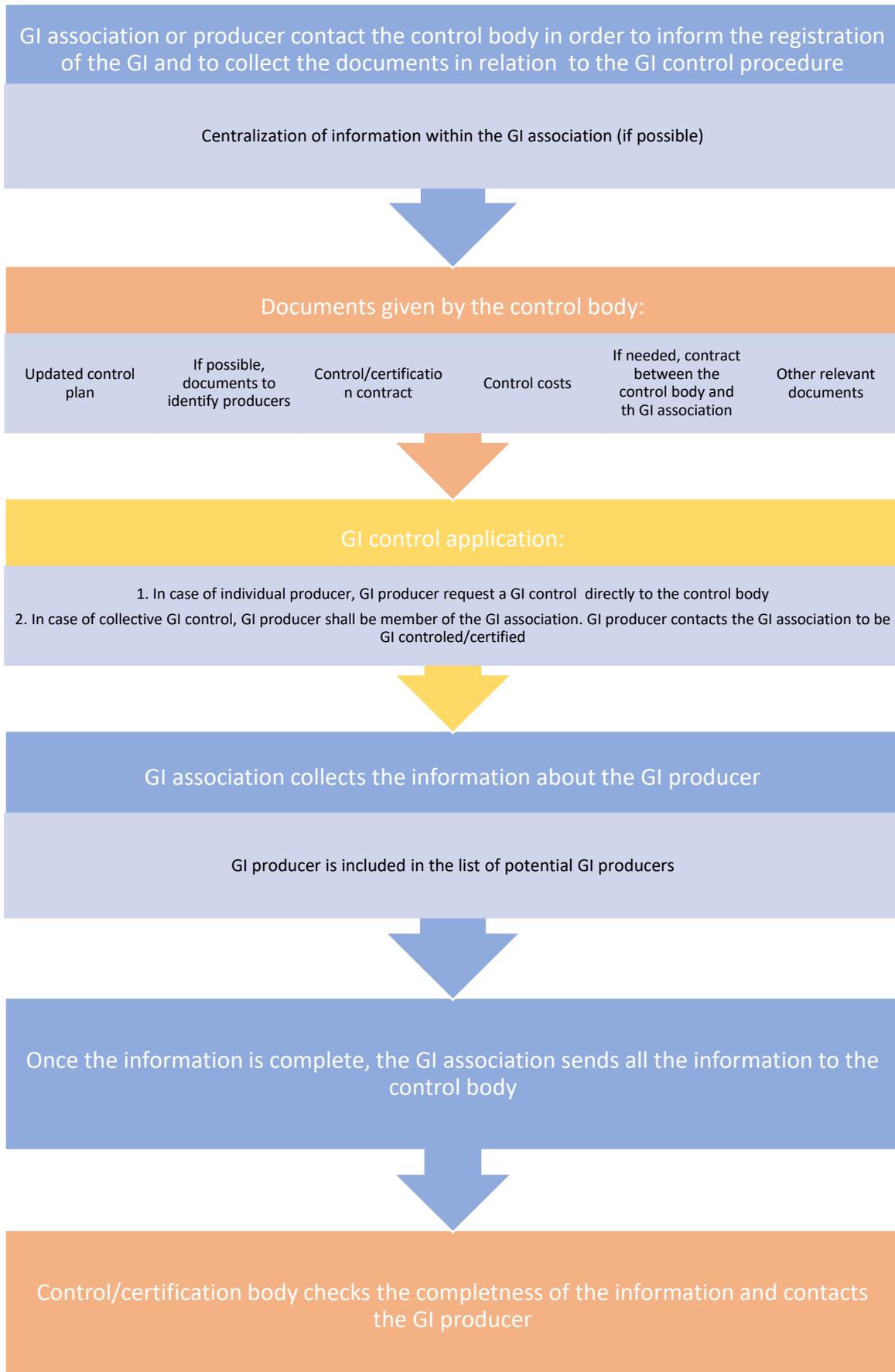
GI control scheme

These diagrams of GI control scheme are based on the GI certification scheme, as requested by ISO norms. Some of the steps can be adapted according to each GI product situation.

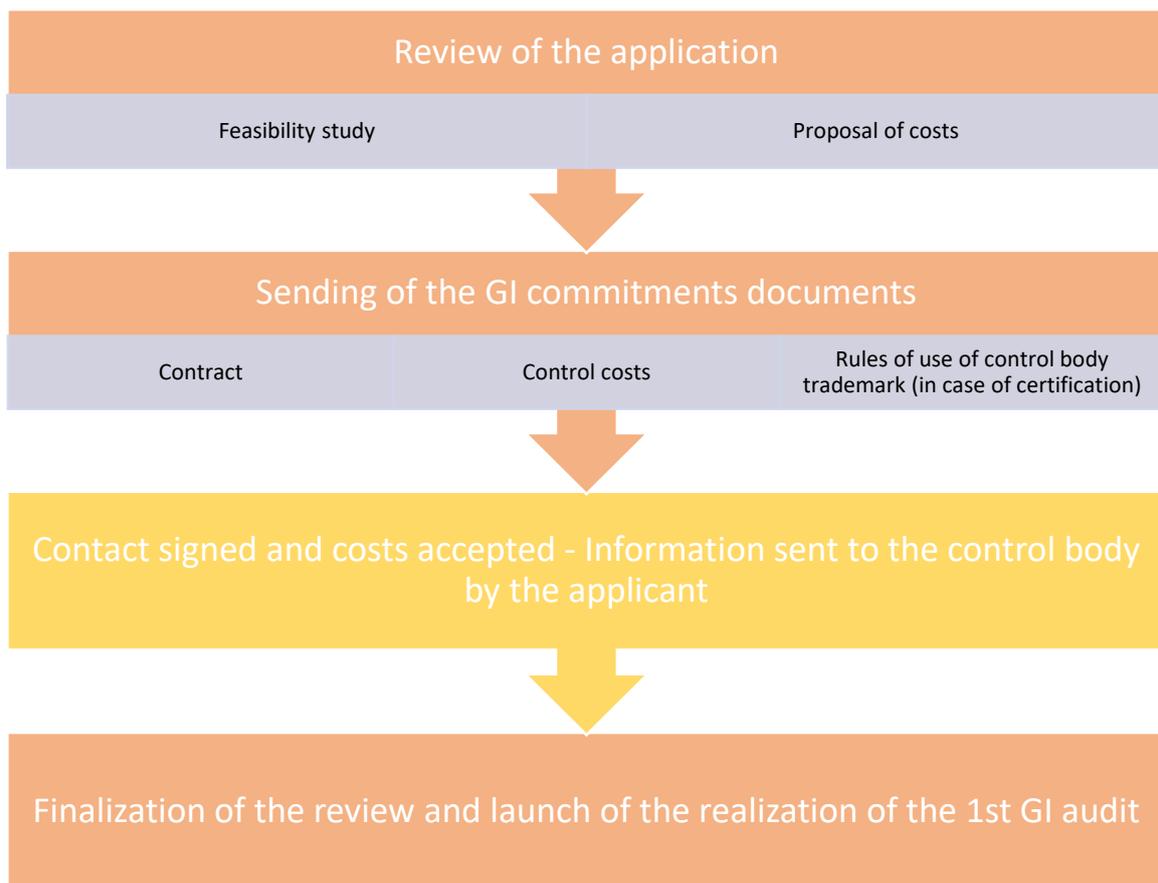
Diagram legend

-  Producers
-  GI association
-  Control Body

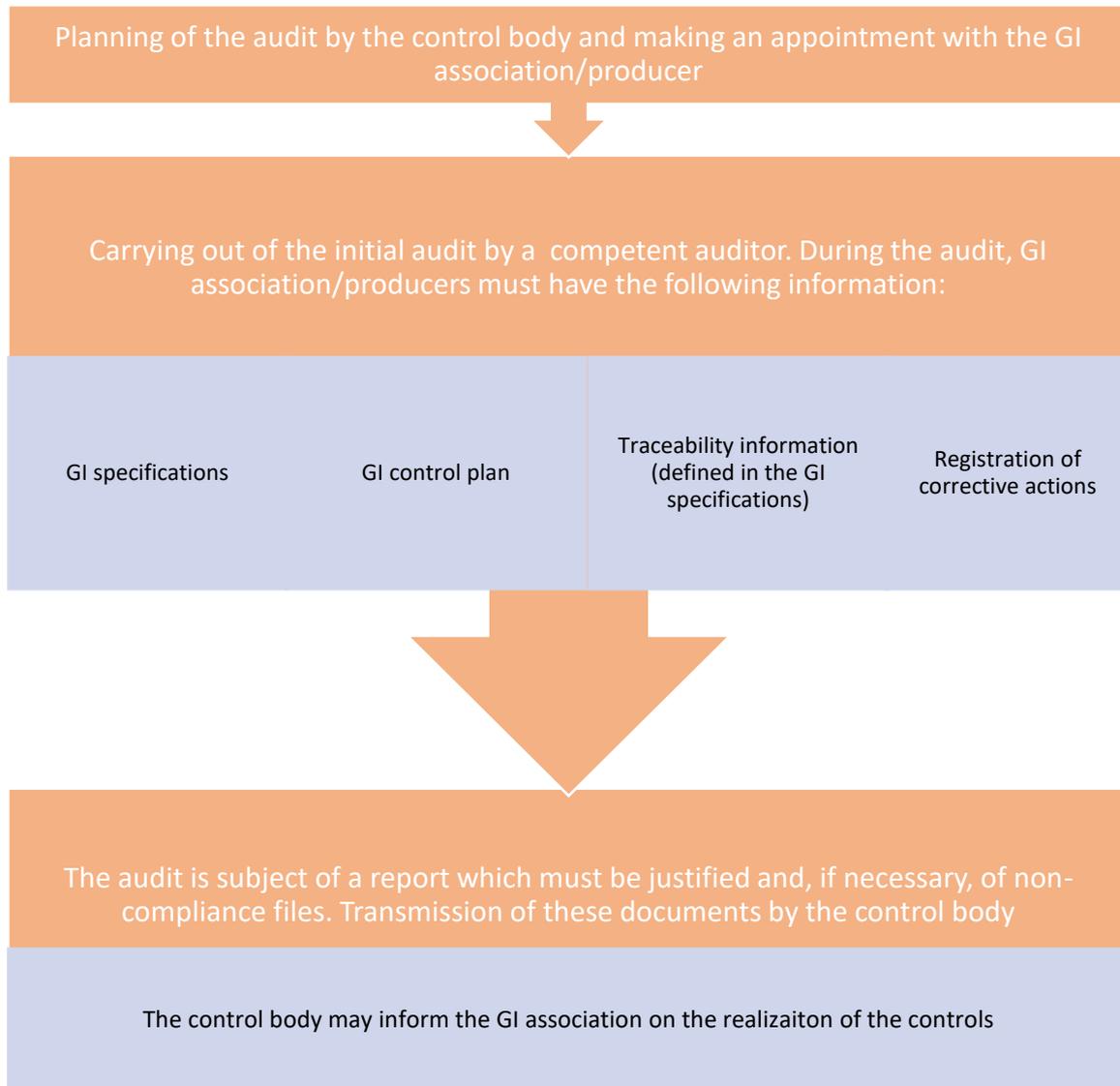
STEP 1: IMPLEMENTATION AND APPLICATION FOR CERTIFICATION



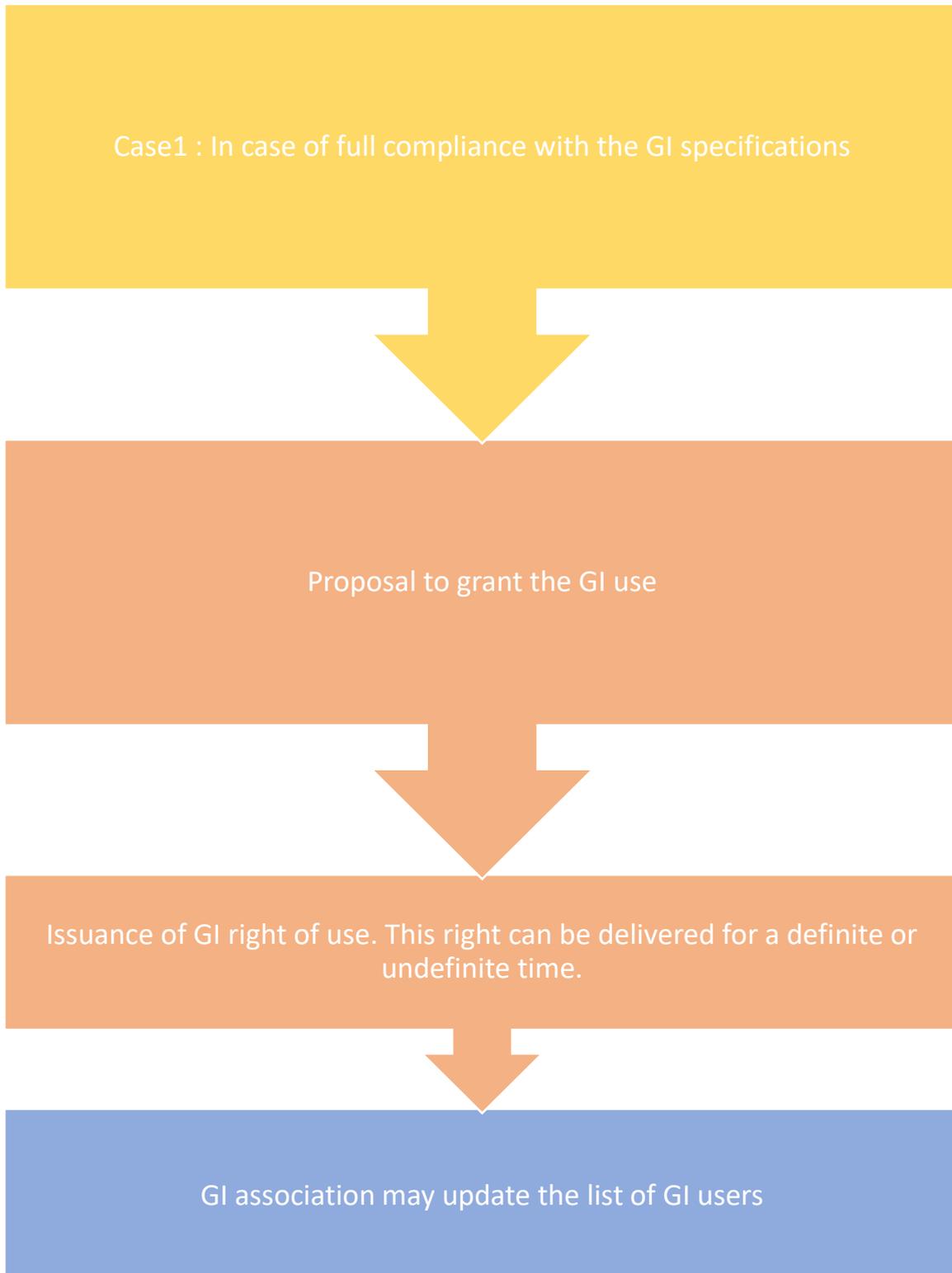
STEP 2: REVIEW OF THE APPLICATION

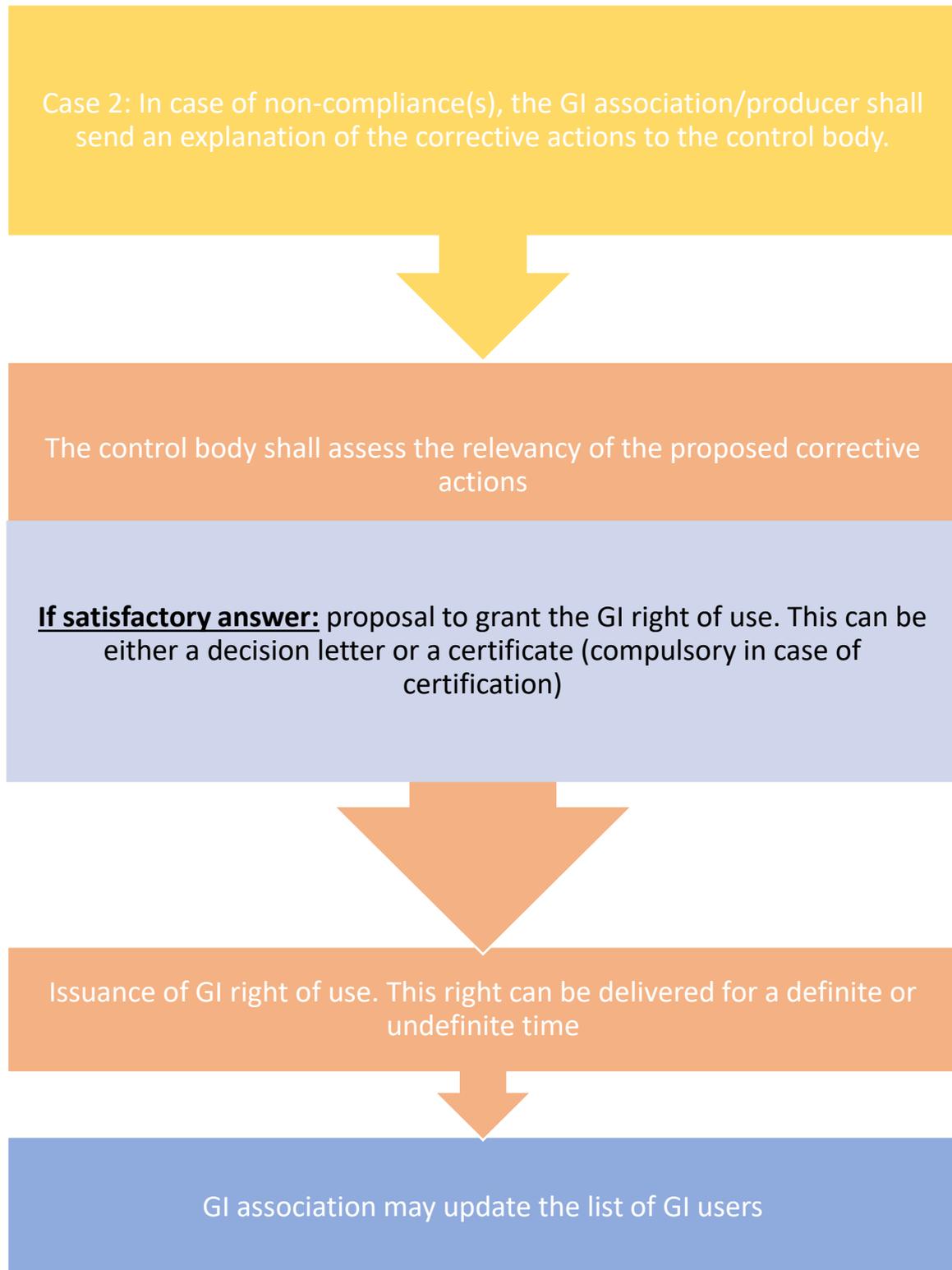


STEP 3: INITIAL AUDIT

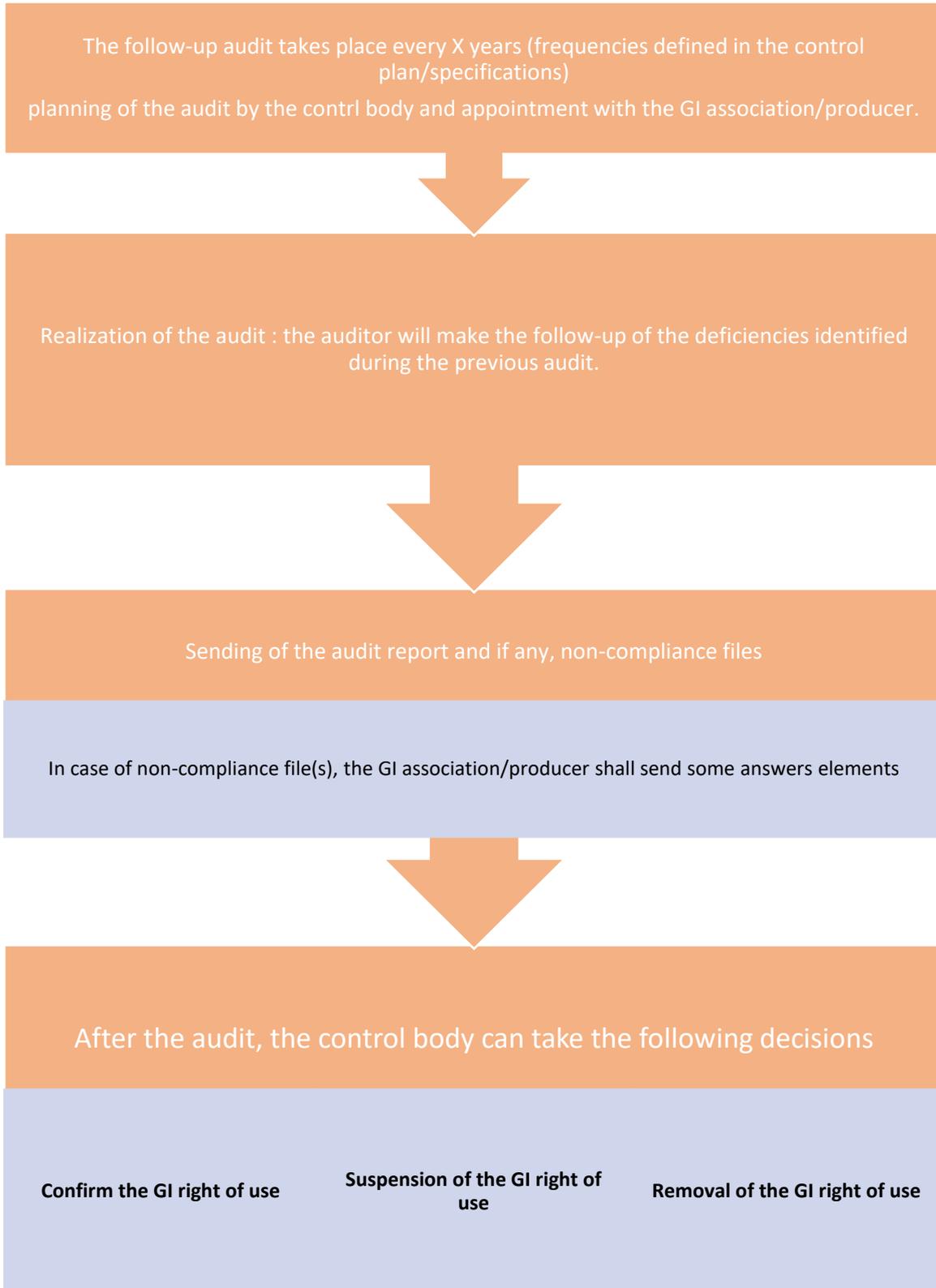


STEP 4: DECISION





STEP 5 : FOLLOW-UP AUDIT



Annexes

Annex 1: Main concerns raised by GIs stakeholders in CARIFORUM States

A [survey is currently being conducted](#) among various GIs stakeholders of the CARIFORUM States to identify their needs and expectations for the present GIs manual.

Stakeholders surveyed included [IPOs](#), [producers](#), and [control bodies](#) (e.g., bureaus of standards).

The main concerns identified are as follows:

For the IPOs:

- laws are drafted for the introduction of GIs, but regulations are not developed;
- insufficient expertise to review the GI book of specifications;
- the law does not provide for the registration of the names of all producers using a GI. Therefore, there is no management system for adding or removing persons from the list of persons authorised to use a given GI;
- there is no provision for the nature of the GI (whether it is a word only, a figure or device, or a combination of both), nor for the production process to be covered, nor for the requirement to prove the existence of GI protection for foreign GIs;
- with regard to the legislative requirement that the applicant must indicate the specifications of its GI on the application form, there is no indication in the law as to whether there should be a formal or substantive examination of the GI specifications;
- the legislation does not set time limits for the whole registration procedure. Thus, no indication can be given as to the approximate duration of the registration procedure;
- the only stakeholders who can apply for a GI under the law are producers. the definition given to the term "producer" is somewhat restrictive and excludes certain categories of stakeholders who might wish to apply for a GI, such as dealers or traders.

For the producers:

- producers do not have the appropriate resources and technologies to comply with the whole GI registration procedure;
- GI controls are complicated and expensive.

For the control bodies: *no answers yet*³³

³³ Survey still ongoing

Annex 2: Forms

Annex 3: List of CARIFORUM GIS