A FEW DROPS OF LAW IN AN OCEAN OF WINE:
(VERY) FORWARD-LOOKING EXAMPLE OF THE AGREEMENT CALLED FOR IN ARTICLES 22 TO 24 TRIPS ON GEOGRAPHICAL INDICATIONS.

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One must certainly see as an obligation imposed on States to reach the "legal means" called for in the article 22§2 of the TRIPS agreement but rather minimum since they refer only to the geographical component of the GI and in the sphere of domestic law. The objective of 23§4 (and 24§1 for other products than wine) go well beyond, to create "a multilateral system of notification and registration of geographical indications likely to benefit from protection in the Member participating in the system, for the wine." taking into account the qualitative aspect of the GI on a multilateral basis. The international community was thus called for a qualitative leap. This is perhaps why 23§4 and 24§1 are limited to a duty to negotiate.

In a first version of this article, in August 2009, it was therefore questioned where could lead these negotiations, if they were moving, by adventure. But recent events have given a serious boost to our work of Prophet in the desert:

Ø During the summer 2010 with first, the academic case of the Swiss AOC Gruyère and second, the strong commitment of the European Parliament for the GI and at the same time, and I would say contrarily, the resolution dated 16/06/2010 on the compulsory mention of the geographical origin of products to improve consumer information (even if the text which dates from June 2010 is now in between the Parliament and the Council, the content is now well seated, it seems)1?

Ø and especially during the few last months, with a frenzied agitation of the WTO: it was very worrying! Would the question be definitively resolved a few days before our Congress? It would have been certainly most shocking.

But we can rest: it is only a frenzied trampling, for the moment! WTO has just compiled the 3 (or 2.5, perhaps) versions derived from the packages of 2005 and 2008: now, they say that because that is all that is there on the table, it only remains to complete the options in square brackets, and finished.

However, there are only 208 and said in passing, many represent the core of the problem.

This article is therefore an enrichment of the initial thinking but we see that the title which was at the time supposed to be "highly prospective" is no longer so, the reality has caught up with fiction.

This first part will be dedicated to studying the multilateral system called for by 23§4 stricte sensu, by showing that the existing offer in the legal spectrum of the positions can lead only to one satisfactory synthesis: an international agency to guarantee a neutral examination of the opposability of the GI when legitimate, that we baptized the International Office of Opposability or IBOPP (BIOPP in French), the "customers" of which cannot be the States but only the parties interested to the GI, i.e. local communities and producers. This is exactly the opposite of the current official view.

For the second part, we want to show that there is indeed a concrete interest in the GI but that it is difficult to conceive it without a more global concept, an autonomous right to the geographical names, to avoid strong contradictions in the various uses that one would like to see for these names, GI’s, trademarks, simple information of origin etc. because these confusions would generate more of confusion between them, ultimately damaging to all.

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