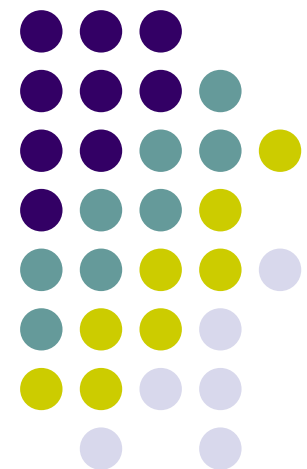
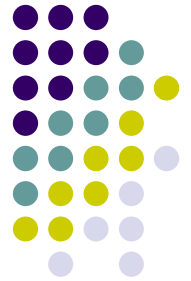


IPRs in Business Decisions (Gls example)

Ludmila Štěrbová
Czech Republic





Business Decisions

Based on trade aspects of IPRs (except for the possibility to negotiate payment in return for IPRs used by others):

- **Marketing aspects**

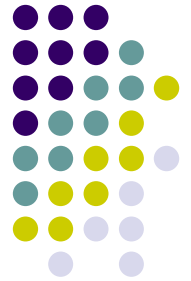
- form of market entry (a high level of IPR protection and enforcement allows more a intensive presence in the market – joint ventures, FDI, etc.)
- promotion and communication through IPR categories (IPR as a marketing tool)
- consumer preferences related to IPR

- **Competitive aspects**

- exclusivity in the target market

→ **PEST and SWOT analyses**

IPR and PEST Analysis

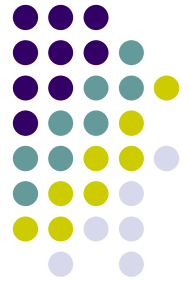


The level of IPR protection and enforcement should be considered as a POLITICAL factor and, from a certain point of view, also as a SOCIOCULTURAL factor of the PEST analysis.

(The other factors are: economic and technological.)

Why a Political Factor?

/PEST



The political arena, including the legal environment, has a huge influence upon the regulation of businesses, and the spending power of consumers and other businesses.

Among other questions, the following should be considered:

- **Is the country a member of the WTO? Is the government involved in other IPR agreements (WIPO, bilateral)?**
- **What is the level of IPR protection and enforcement (TRIPS- or TRIPS+)? Did the government implement the IPR enforcement provisions in an effective way?**

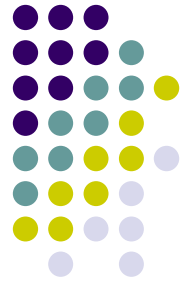
Other Qs – the Political Factors

/PEST



- How stable is the political environment?
- Will government policy influence laws that regulate or tax your business?
- What is the government's position on marketing ethics?
- What is the government's economic policy?
- Does the government have a view on culture and religion?

Why a Sociocultural Factor? /PEST



- Consumer preferences
 - preferences for branded goods
 - preferences for traditional products
 - preferences for high technology
 - preferences for quality, modern design
- Level of education and access to information technology
 - demand for new information (publications)
 - demand for new computer programs, etc.
- Declination degree in the society towards IPR infringement

Other Qs – the Sociocultural Factors

/PEST



- What is the dominant religion?
- What are the attitudes towards foreign products and services?
- Does language impact the diffusion of products onto the markets?
- How much time do consumers have for leisure?
- What are the roles of men and women within the society?
- How long does the population live? Are the older generations wealthy?
- Do the population have a strong/weak opinion on green issues?

Economic and Technological Factors

/PEST



- Readiness of the economy and society to accept and enforce IPRs (Does the business environment support IPR protection and enforcement?)
- Size of the market with counterfeited and pirated goods
- Price level of branded goods and new technologies in relation to the average remuneration and to the average level and structure of expenses (the demand curve of IPR goods)
- Use of IPRs depends on the level of new technologies, new ways of communication, etc.

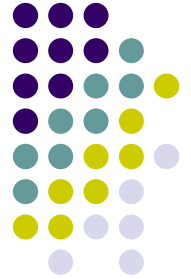
Other Qs – the Economic and Technical Factors

/PEST



- Interest rates
- The level of inflation
- Employment level per capita
- Long-term prospects for the economy Gross Domestic Product (GDP) per capita
- Does technology allow for products and services to be made more cheaply and to a better standard of quality?
- Do the technologies offer consumers and businesses more innovative products and services such as Internet banking, new generation mobile telephones, etc?
- How is distribution changed by new technologies e.g. books via the Internet, flight tickets, auctions, etc?
- Does technology offer companies a new way to communicate with consumers, e.g. banners, Customer Relationship Management (CRM), etc?

The Business Potential of a Concrete IPR Category



(From the microeconomic and
macroeconomic perspectives)

S W O T analysis

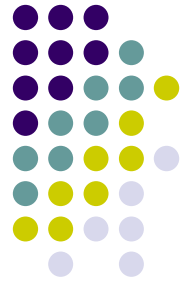
IPRs and SWOT – why?

/1

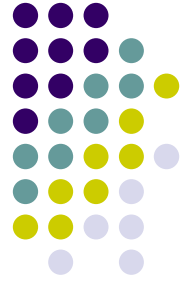


- IPR categories used/not used in business relations always have impacts on the effectiveness of trade.
- The level of IPR protection and enforcement in the target markets influences the trade and marketing decisions of the private sector, namely in considering forms of market entry and promotion of a market presence.
- Governments could use SWOT analysis in the consideration process of implementing different level of IPRs protection (TRIPS minimum standards or TRIPS+ protection).
- Consumers apply SWOT analysis in an intuitive way; however, the results should be taken into consideration by the government.

IPRs and SWOT – why? /2



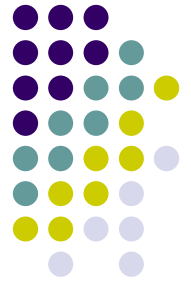
- Each and every IPR category has its strengths and weakness, due to its nature and the level of protection (different in several markets).
- Using an IPR category represents certain opportunities to take advantage of and threats to be faced.
- Protection of IPRs has its opponents, whose trade interests (and force) should be analysed in order to prevent and avoid economic losses.
- A better understanding of the mentioned parts of SWOT analysis could help both industry and governments in their decisions regarding the use of IPR categories as well as the implementation and enforcement of IPR protection.



SWOT

Geographical Indications Example

- Assumptions
- Points of view (industry, society, free riders, consumers)
- Strengths, weaknesses, opportunities, threats
- Conclusions



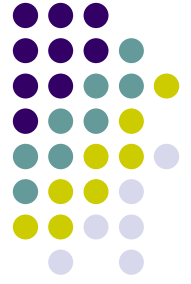
Assumptions (1)

- Definition of geographical indications: signs used on goods or services that have a specific geographical origin and possess qualities, reputation or other characteristics that are due and essentially attributable to that place of origin (distinct from indications of source and different from trademarks)
- The same GI name is shared by producers of the same product from the same region - no GI producer has any exclusivity



Assumptions (2)

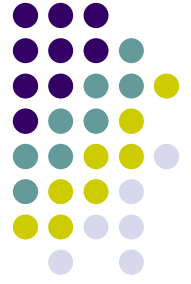
- Minimum worldwide level of protection (within WTO Members) – TRIPS Art.22, for wines and spirits, TRIPS Art. 23 (different legal means of national implementation)
- There are TRIPS Art. 24 exceptions
- A higher level of protection for all GI products in the national legislation of certain countries than is provided by TRIPS Art. 22
- International Lisbon agreement on protection of geographical indications
- Protection of GIs as a part of regional trade agreements or subject to bilateral agreements



Points of view

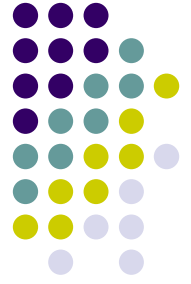
- **Industry**
 - Enterprises are mostly SMEs
 - Their production potential overreaches the local perimeter
 - They decide between using a geographical indication and using a trademark in their marketing strategy (branding policy)
 - (The case of producing no-name products or products for supply to retail chains is not considered.)
- **Society**
 - Interest of governments in economic and social development, in expanding trade and in preserving national patrimony
- **(Free riders)**
- **(Consumers)**

S for STRENGTHS



- **Industry point of view**
 - GI is an IPR category which helps to distinguish products with specific characteristics from others.
 - GI proved its usefulness as a marketing tool (quality label) facilitating promotion of product – it does not demand high investment for convincing a consumer of the quality or characteristics of products.
 - The investment into reputation is shared among all producers of the same GI.

S for STRENGTHS



- **Industry point of view – continued**
 - Products achieve higher prices (a consumer is willing to pay for quality, its guarantee and traditional methods of production).
 - Lower costs of protection (compared to TM protection; in most countries GIs are protected „forever“ - the registration should not be renewed).
 - Reputation and consequently export potential are strengthened due to globalization (tourism, the Internet) and through country promotion (international fairs, exhibitions).

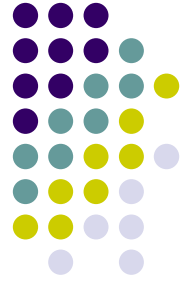
S for STRENGTHS



- **Society point of view**

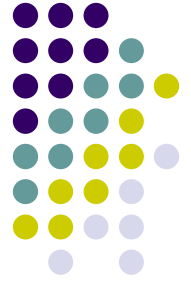
- GI production facilitates development of rural communities and small and medium size enterprises (Knowledge and traditional methods of production are in place and **should** be exploited; consequently the need for investment into new methodologies and human skills is limited.)
- Governmental support of GI export aimed at strengthening GI protection is fully compatible with WTO rules (for example, through bilateral, regional or multilateral agreements).

S for STRENGTHS



- **Society point of view** – continued
 - Effectiveness of support for development of rural communities and SMEs utilizing GIs names is higher than in other cases (marketing costs of enterprise are lower).
 - GIs help promote the country's image and attract tourists.
 - GI producers cannot control the national market due to natural limits in production potential (see W for industry).

W for WEAKNESSES



- **Industry point of view**

- GI usurpation by free riders is easier than TM usurpation (The protection based on misleading consumers misleading according to TRIPS Art. 22 for products other than wines and spirits is not sufficient) – consequently the danger that the GI will become generic is very high.
- GI could have already become generic in certain markets (protection in favor of a genuine producer is no longer possible – TRIPS Art. 24).



W for WEAKNESSES

● Industry point of view – continued

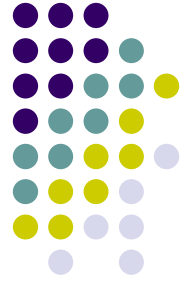
- A GI could be registered as a TM for a non genuine producer in certain markets (entry into the market with this GI could be impossible, a positive decision about coexistence is uncertain and mostly subject to court judgment).
- The distinction among the genuine GI producers is not always clear (The lack of clarity could be eliminated by use of additional signs – name of factory, TM, etc.)
- Using a TM with the same wording as the GI could result in a conflict with other legitimate GI holders.

W for WEAKNESSES



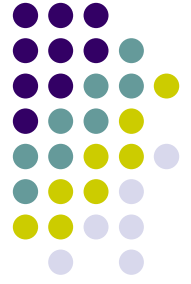
- **Industry point of view – continued**
 - GI could not be subject to a license (an exception could be a producer from the same region), it results into a limited production scope and capacity and limited export potential.
 - GI products could not be produced or completed abroad; consequently transport increases production costs, export of GI goods could not benefit from WTO rules of origin, from preferential tariffs among third countries under RTAs, or from supplies and labor costs differences.

W for WEAKNESSES



- **Society point of view**
 - Insufficient governmental capacity to establish a legal GI protection and enforcement system and to enter into bilateral and multilateral negotiations on GIs protection.

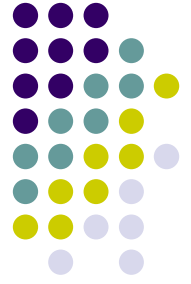
O for OPPORTUNITIES



- **Industry point of view**

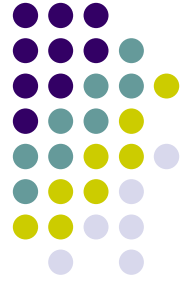
- To differentiate marketing and brand policy according to the level of GI protection provided by the given country (information on bilateral agreements, regional trade agreements and international registration is necessary).
- To use additional signs (TM) for which higher protection is available.
- Higher protection of GIs for products other than wines and spirits as a result of WTO (future) negotiations; consequently lower enforcement costs of protection would exist (no need to undertake consumer surveys).

O for OPPORTUNITIES



- **Industry point of view – continued**
 - To cooperate with other GI producer and NGOs (for example OriGIn) in order to:
 - prevent free riding and counterfeiting,
 - involve governments into international negotiations on high GI protection,
 - help governments establish an effective system of GI protection and enforcement.

O for OPPORTUNITIES



- **Society point of view**

- International registration based on the Lisbon agreement (it allows enterprises to protect their GI within 30 countries),
- High level of protection for specific GIs could be provided by regional trade agreements,
- Engagement into WTO negotiations could not only have as a result higher protection for GIs and consequently better conditions for development of SMEs and rural communities, but at the current stage, also promotes awareness of GIs originating from a proponent country.

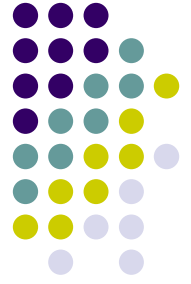


T for THREATS

- **Industry point of view**

- The possible lower quality and different characteristics of non genuine production (free riders) undermines the reputation of GI products; consequently, consumers lose their trust in the guarantee represented by GIs.
- The number of free riders increases along with the increasing reputation and export expansion of the GI product.
- Using the GI name as a word expressing a methodology of production in markets without the genuine presence of GI products, the GI becomes generic.
- Conflicts with free riders or TM holders in third markets (a certain market could be forbidden for an original GI product; disputes require costs).

T for THREATS



- **Society point of view**

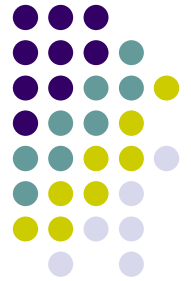
- Pressure from foreign governments whose producers are exporting or want to export to the national market products using GIs not originating in their territory,
- Lobbying from free riders and importers of non genuine GIs products,
- But: low GI protection could result into relinquishing of GI production - part of valuable patrimony is lost forever.



(Consumers' SWOT of GIs)

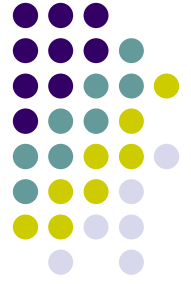
- **S**
guarantee of quality, characteristics and origin of a good
- **W**
higher price (but still willing to pay it)
- **O**
extended higher GI protection – more comfortable shopping –
no need to study the true origin
- **T**
free riding, GI becomes generic – no guarantee of the quality of
goods or services

(Free riders' SWOT of GIs)



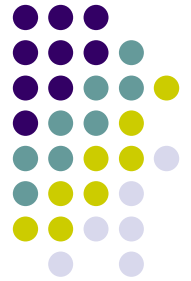
- Strengths
 - GI's reputation (usurped)
 - No investment into building consumer confidence or into promoting products - marketing for free
 - Weak GI protection based on TRIPS Art. 22 (It is difficult to prove that a consumer is misled; consumer surveys and disputes require costs which the genuine producer is not able to pay.)

(Free riders' SWOT of GIs)

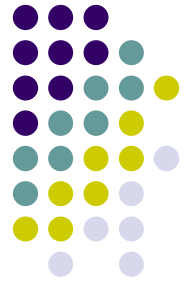


- Weakness
 - High level of GI protection in several countries
 - GI could become a generic expression due to the weak protection in most markets (If it becomes an expression of methodology, it is against the interests of free riders, who rely on the usurped GI reputation.)

(Free riders' SWOT of GIs)



- Opportunities
 - GI producers will invest more into the reputation and promotion of their products,
 - The WTO negotiations on extension of the higher GIs protection will never happen,
 - The number of members of the Lisbon agreement remains limited,
 - Governments will not implement strong legislation on GI protection for several reasons.



(Free riders' SWOT of GIs)

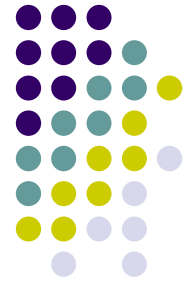
- Threats

- Worldwide high level of GI protection (As a result of WTO negotiations, the protection of Art. 23 will be extended to all products.)
- Increasing number of bilateral agreements on GI protection or RTA with a GI protection aspect,
- Informed consumers will insist on the guarantee of true origin of the products,
- Increasing number of producers using GIs as an expression for methodology (price decreases)



Conclusions (1)

- The nature of GI and its features, which are distinct from TM, represent GI strengths. However, they limit the manufacturing capacity of genuine producers.
- The current worldwide level of GI protection is a weakness of this IPR category (with exceptions). In some markets, GI producers should rely exclusively on TM protection.
- The consequences of the low level of protection represent a threat; nevertheless, it could be partially managed and prevented by a well-targeted marketing and brand policy.
- Another threat for the GI category is easy free riding and an opposition to its stronger protection from free riders and those who intend to benefit from the weak protection in the future.



Conclusions (2)

- GIs represent many opportunities that are available for one to take advantage of, namely marketing and export strategies.
- The future extension of a higher level of GI protection would also extend the export potential of genuine producers and would contribute to the development of the poorest communities and SMEs worldwide.
- Among opportunities one should also consider consumer interest in higher quality and the origin guarantee of products, which increases in relation to his/her economic power and level of education.



Thank you for your attention!

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