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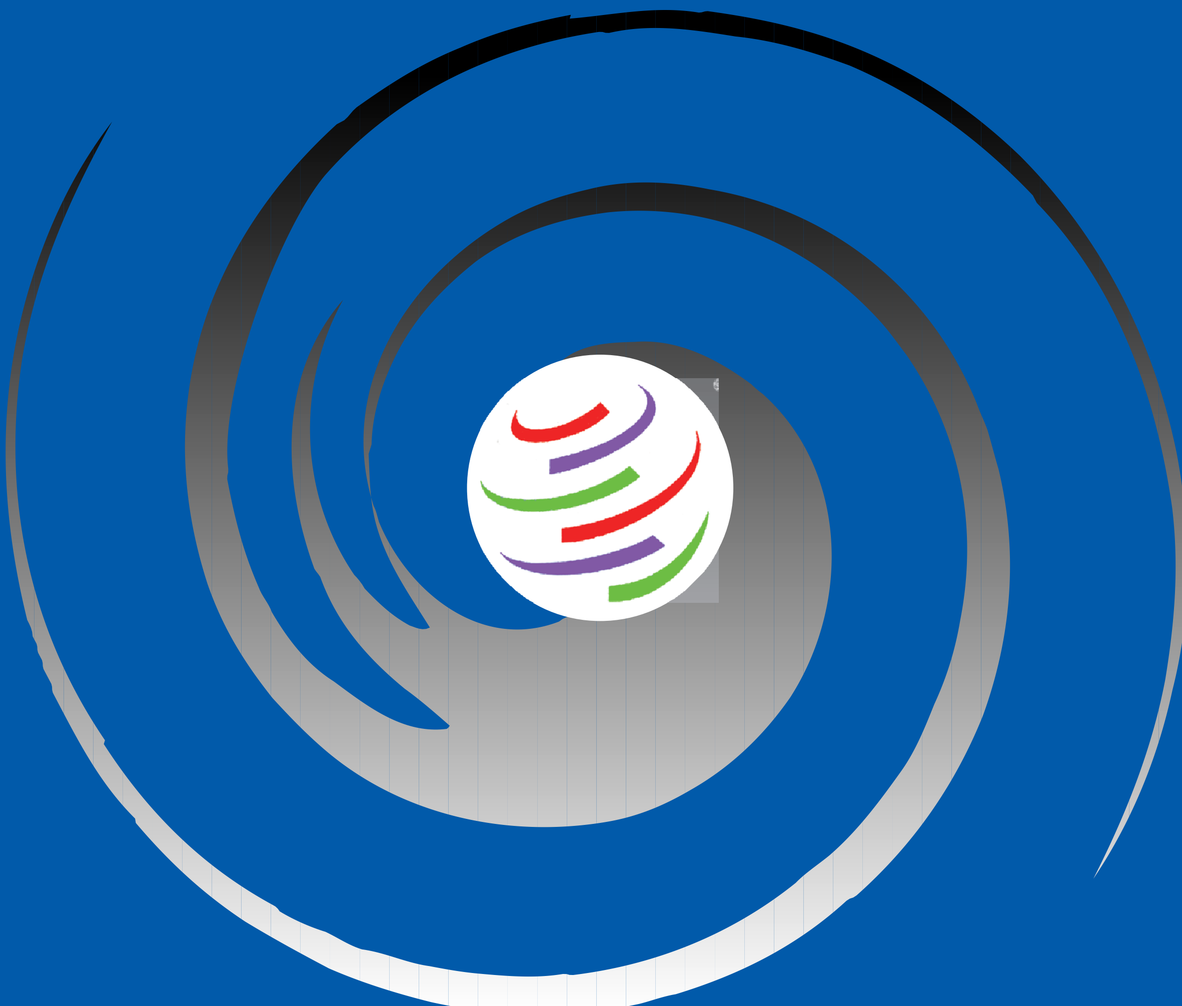

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From the Director's Desk

K.T. Chacko

INCREASING global economic integration has provided a slew of opportunities for products that have traditionally been produced by different countries to find new markets. At the same time, however, these products have faced competition from cheap imitations that have undermined their prospects in the marketplace. Geographical Indications (GIs) have typically been used to protect the producers of the traditional products by assigning exclusive rights to produce these products.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) provided the WTO Member states the framework for protecting their GIs. This framework suffers from a weakness that it provides an additional protection for only wines and spirits. Article 23 of the TRIPS Agreement that provides additional protection for wines and spirits prevents use of a geographical indication identifying these products that do not originate in the place indicated by the geographical indication in question. Additionally, GIs for wines and spirits cannot be accompanied by expressions such as "kind", "type", "style", "imitation" or the like. Developing countries have argued that such protection granted to wines and spirits discriminates against products that originate in their countries and have therefore proposed that the Article 23 protection should be extended to all products.

India enacted the Geographical Indications of Goods (Registration and Protection) Act in 1999 which became effective from 2003. More than 100 GI registration applications have been filed since, and a number of well-known GIs from India, including Darjeeling tea, Pochampalli Ikat, Chanderi Fabric and Kancheepuram Silk, have been registered. These developments are but the first step towards using GIs in an effective manner, which alone can ensure effective protection to the rich and varied tradition existing in the country. This, in turn, could provide the necessary incentives for the producers of the traditional products to continue with their activities in an unhindered manner.

Problems and Prospects of Geographical Indications in India

Kasturi Das*

The protection of Geographical Indications (GIs) is considered one of the most contentious intellectual property right (IPR) issues today. It continues to generate controversy as IPRs have started playing a crucial role in the gamut of world trade especially after the establishment of the WTO. With the increasing pace of trade liberalization and globalization, more and more countries have come to realize trade and commercial significance of GIs. As a result, the protection of GIs emerged as a key issue of negotiations in the Doha Ministerial conference in 2001. This paper makes an attempt to throw up the issues concerning GIs and tries to analyze how developing countries like India position themselves in the WTO negotiations.

Backdrop

NOW in its seventh year, the Doha Round of the World Trade Organization (WTO) is still busy juggling with permutation and combination of numbers on agricultural subsidies and Non-Agricultural Market Access (NAMA).[1]

Services negotiations also are not showing much sign of a possible breakthrough.[2] Notwithstanding the Round's abysmal track record in terms of meeting deadlines thus far, speculations are still on over the chances of meeting the latest target date of end-2008, as set by Director General Pascal Lamy.

While the lion's share of the negotiating capital of WTO Members is getting invested in the aforesaid three areas, many other important issues that did find a mention in the Doha Work Programme (DWP) have been relegated to the back seat by now. One such issue is that of the "extension" of the higher level of protection granted to "Geographical Indications" (GIs) designating wines and spirits, under Article 23 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to all other GIs.

GIs: Concept and Purpose

The term "Geographical Indication" entered the terminology of international intellectual property (IP) law by way of its inclusion in the TRIPS Agreement. As per Article 22.1 of TRIPS, GI refers to any indication that identifies a good as originating from a particular place, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. While GIs may be associated with manufactured or industrial goods, the vast majority of these indications are attached to agricultural products, mostly food and beverages. The non-agricultural products, which typically qualify for GI protection, include handicrafts, jewellery, textiles, etc. India has in its possession a number of existing or potential GIs. Some of them like, "Darjeeling" (tea), "Basmati" (rice), "Alphonso" (mango), are already renowned the world over.

Much like trade-marks, the economic rationale of GI is based on the "information asymmetry" between buyers and sellers in the market and role of reputation, conveyed through distinctive signs, in tackling such asymmetry.[3] GIs serve to recognize the essential roles played by geographic and climatic factors and/or human know-how in the end quality of certain products. From consumers' point of view, GIs act as a signaling

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device. As for producers, GIs serve as a tool, which helps them differentiate their products from competing products in the market and enable them to build a reputation and goodwill around their products, which often fetch a premium price. Various studies have quantified the price premium associated with certain GI products. A consumer survey undertaken in the European Union (EU) in 1999, for instance, found that 40 per cent of consumers would pay a 10 per cent premium for origin-guaranteed products.[4] Econometric models employing the hedonic pricing techniques also support the willingness to pay more for GI products. Though anecdotal, these studies bear testimony to the fact that GIs do have the potential to fetch a significant increase in value-added through premium pricing.[5]

TRIPS on GIs

Given its commercial potential, the legal protection of GI assumes enormous significance. Without such protection, competitors not having legitimate right on a GI might ride free on its reputation. For instance, tea produced in countries like Kenya, Sri Lanka, or even Nepal has often been passed-off around the world as "Darjeeling" tea. According to a rough estimation, around 40 million kg of tea is being sold worldwide as "Darjeeling" tea every year, which is four times the production of authentic "Darjeeling" tea.[6] Such unfair business practices result in loss of revenue for the genuine right holders of the GI and also misleads the consumers. Moreover, such practices may eventually hamper the goodwill and reputation associated with the GI.

At the international level, TRIPS sets out the minimum standards of protection that WTO Members are bound to comply with in their respective national legislations. However, as far as the scope of protection of GIs under TRIPS is concerned, there is a problem of hierarchy based on an arbitrary categorization of goods. This is because, although TRIPS contains a single, identical definition for all GIs, irrespective of product categories, it mandates a two-level system of protection – (i) the basic protection applicable to all GIs in general (under Article 22); and (ii) an additional protection applicable only to the GIs denominating wines and spirits (under Article 23).

Article 22 merely stipulates the general standards of protection that must be available for all GIs against unfair and misleading business practices. Notably, in order to be successful in a law suit pertaining to a passing-off action or an action relating to unfair competition against the allegedly un-authorized use of a GI, the plaintiff must show, *inter alia*, that the use of a given GI by an unauthorized party is misleading and, as the case may be, that damages or a likelihood of damages result from such use. This can only be done by demonstrating that the GI in question has acquired distinctiveness or, in other words, the relevant public associates the good sold under that GI with a distinct geographical origin and/or certain qualities. Since lawsuits based on passing-off or unfair competition are only effective between the parties of the proceedings, the distinctiveness of a given GI must be shown every time that the GI is to be enforced.

This requirement of the so-called "misleading test" in Article 22, which can, at best be regarded as suitable in preventing unfair competition, or consumer protection regulations, fails to provide a sufficient intellectual property protection for the benefit of the producers entitled to use a GI. Because, a producer not belonging to the geographical region indicated by a GI may use the indication, as long as the good's true origin is indicated on the label. For instance, a producer might use the GI "Geneva" on a clock-face, even though the clock does not originate from Geneva, and engrave the true origin on the back of the clock. Thus a producer can profit by riding free on the renown of a famous GI and at the same time claim that such an use is not misleading the consumer, since the true place of origin has been mentioned.

In contrast, Article 23 ensures that GIs associated with wines and spirits are accorded a higher level of protection, in cases where they are used to identify the same products, i.e. wines or spirits, as the case may be (but not in cases where they are used for other products say, cheese or coffee).

The protection of Article 23 is an additional tool for the right holders of GIs identifying wines and spirits, complementing the protection they enjoy under Article 22. Because, the Article 23 protection would apply to cases when a GI associated with a specific kind of wine/spirit is wrongfully used on another wine/spirit not originating from the place identified by the GI concerned. In addition, the general protection of Article 22 would apply in cases when the GI associated with wine/spirit is used on goods other than wine/ spirit, not originating from the place indicated by the GI. This would be the case if, for instance, the French GI "Champagne", identifying sparkling wine produced in the Champagne region of France, was used on say, grape juice produced in California. Since GIs identify designations with respect to a specific product category (e.g. wine), the misuse is likely to be more attractive in case of the same category of product compared to that on other categories of products. Hence, misuse of a GI by competitors producing the same category of product is more commonly observed to happen and results in the greatest economic losses for the legitimate right holders of the GIs. It is in these more common and pertinent cases that the additional protection of Article 23 ensures a much more effective protection, for GIs identifying wines and spirits, than that provided under Article 22 of TRIPS.

For one, the additional protection in case of GIs for wines and spirits implies that they need to be protected by the WTO Members irrespective of whether the consumers are misled or whether use of such indications constitutes an act of unfair competition.

Moreover, the use of accompanying expressions such as "style", "type", "kind", "imitation" or the like in connection with wines and spirits is prohibited under Article 23.1. Protection is also provided against the use of indications in translated forms. No such protection is available for GIs associated with other categories of goods, under Article 22. Competitors, not producing in the geographical region purported by a GI associated with wines and spirits are also not allowed to use such an indication in their trade-marks (Article 23.2). In contrast, the refusal or invalidation of registration of a trade-mark for any other goods (than wines and spirits), on similar ground, is conditional on the "misleading test" (Article 22.3).

If Article 23 were amended to include other products than wines and spirits alone, it would prevent any tea merchant belonging to, say, Kenya from marketing its tea as "Darjeeling tea, produce of Kenya"; or "Kenyan Darjeeling tea"; or "Darjeeling type tea", with the true origin of the product indicated elsewhere. However, since Article 22 does not provide this kind of protection, so, as it stands now, India may find it difficult to prevent any such misuse of the reputation and goodwill associated with the geographical name "Darjeeling" in the international arena. The allowance of such use, however, puts the GIs at risk of becoming "generic names" over time. For instance, in the absence of GI-status for "Basmati" (rice), an US-based multinational Rice Tec Inc. had been wrongfully using the term "Basmati" for its rice "Texmati" for more than two decades and when this practice was challenged in the court, the company claimed that "Basmati" is a generic term, which refers to a class of rice, and not necessarily a particular category of rice produced in certain regions of India and Pakistan.[7]

The requirement of the "misleading test" also leads to legal uncertainty regarding the protection and enforcement of a GI at the international level. This is because, it is up to the national courts and national administrative authorities to decide whether the public is being misled by a particular misuse of a GI. Since, such decisions are bound to differ from one country to another, the very provision of the "misleading test" leaves adequate room for legal uncertainty, which is not the case with GIs associated with wines and spirits.[8]

Another disadvantage of the "misleading test" is that, it is up to the plaintiff - the genuine right holders of GIs - to prove to the judicial or administrative authorities that the public has been misled. No such burden of proof has been put on the right holders in the domain of GIs for wines and spirits.

The additional protection granted under Article 23 coupled with the protection granted under Article 22 of TRIPS amounts to a very stringent protective shield for GIs associated with wines and spirits from any kind of misappropriation. Such stringent protection is not currently available for other GIs, due to the inapplicability of Article 23 for them. It is this absence of Article 23-cover for these other GIs, which enables competitors from outside the region identified by such a GI to usurp the reputation of the GI, thereby dividing a considerable share of the market away from the legitimate right holders of the GI concerned. This kind of illegitimate practice not only damages the reputation of the original GI, but also deprives the genuine right holders of the full benefit of the investments they put into developing their goods and creating the goodwill and reputation in the market. Besides, the consumers are also likely to be misled into thinking that they are purchasing is an authentic good with certain well-specified quality and characteristics whereas what they are actually buying is a mere imitation. Hence, the inadequacy of Article 22 protection is harmful both for the legitimate right holders of the GIs (other than those designating wines and spirits) as well as the consumers.[9]

TRIPS Debate: Then and Now

Importantly, there is no logical or legal reason, which could justify the discriminatory treatment between GIs associated with wines or spirits and those designating other goods. The origin of this hierarchical protection may only be traced back to the negotiating history of the Uruguay Round (1986-94) that culminated into the creation of the WTO. A close look at this negotiating history of TRIPS clearly reveals that the final framework of GI protection was arrived at as a very sensitive compromise in an area that was one of the most difficult to negotiate during the Uruguay Round. These provisions are basically the result of trade-offs, which were specific to the circumstances prevailing at the time of the Uruguay Round negotiations, in particular, the Brussels Ministerial Conference (1990). This was, to some extent, due to the link at that time between the negotiations on GIs and the negotiations on agriculture.[10] Given this link, the higher level of protection for wines and spirits[11] was granted solely for the political reason of persuading the EC to join consensus on the Uruguay Round package, despite strong opposition on part of many other countries. In fact, Article 24 of TRIPS is also the direct consequence of difficult negotiation between a number of wine-producing participants, notably in the EC, that wished to protect indications for wines and spirits fully, i.e. without legitimizing "past sins" for all posterity, on the one hand and others (e.g. Australia) that were afraid that it might affect rights more or less considered to be acquired rights in certain appellations, on the other. The result of the negotiations was only partly satisfactory for both sides, because, though protection was granted, it was not done exactly in the way proposed by the former group. Similarly, while safeguards for "acquired rights" were included, these were neither complete nor permanent, given the scope of further negotiations and agreements regarding these issues (under Article 24.1 of TRIPS). In fact, the only feasible option not blocking the negotiations was to agree to further talks. In this context, Article 24.1 established the principle, clearly with a view to increasing the protection. Since safeguards were added to satisfy one group, negotiators clearly stated in Article 24.1 that (a) those safeguards (i.e. exceptions granted under Article 24.4 through Article 24.8) "…shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements", but (b) that in the context of such negotiations, "…Members shall be willing to consider…" the continued applicability of the safeguards for individual GIs.[12]

Aware of the inadequacy of the protection granted under Article 22, since 2000, India, along with a host of other like-minded countries (e.g. the EC, Bulgaria, China, the Czech Republic, Hungary, Liechtenstein, Kenya, Mauritius, Nigeria, Pakistan, the Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand and Turkey) has been pressing for an "extension" of the ambit of Article 23 (henceforth "extension") to cover all categories of goods. However, countries like the United States (US), Australia, New Zealand, Canada, Argentina, Chile, Guatemala, Uruguay are strongly opposed to the "extension". The "extension" issue formed an integral part of the Doha Work Programme (2001) as an "outstanding implementation issue". Nevertheless, as a result of the wide divergence of views among WTO Members, not much progress could be achieved in the negotiations so far.

GI Protection in India

As far as India is concerned, the country has enacted 'The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) as part of the exercise to set in place national IP laws in compliance with India's obligations under TRIPS. Under the purview of this Act, which came into force with effect from 15 September 2003, the Central Government has established the "Geographical Indications Registry" with all-India jurisdiction at Chennai, where the right holders can register their GIs. Interestingly, unlike TRIPS, the counterpart of Article 23 in the Indian Act does not restrict itself to wines and spirits only. Rather, it has been left to the discretion of the Central Government to decide which products should be accorded such higher level of protection. This approach has deliberately been taken by the drafters of the Indian Act with the aim of providing the Article 23-type stringent protection to GIs of Indian origin, most of which do not relate to wines or spirits. However, other WTO Members are not obligated to ensure Article 23-type protection to all Indian GIs, thereby leaving room for their misappropriation in the international arena.

More than 60 GIs have already been registered with the GI Registry. These include GIs like Darjeeling (tea), "Pochampalli" Ikat (textiles), "Chanderi" (saree), "Kancheepuram silk" (textiles), "Kashmir Pashmina" (shawls), "Kondapalli" (toy), "Mysore" (agarbathi). However, "Basmati" (rice) - one of the most controversial and crucial GI - is yet to be registered under the GI Act. One of the main reasons for the delay in getting "Basmati" registered under the GI Act is the selection of the right varieties. Over the years, scientists have developed several varieties of aromatic rice naming them as "Basmati", although many of these aromatic rice varieties do not contain any parental line of the traditional "Basmati". This has generated enormous confusion regarding the authenticity of different varieties of "Basmati".[13] The demarcation of the geographical area relevant for this GI is also a debatable issue - not only because it is grown in both India and Pakistan, but also because of the differences of opinion within India over this matter.

Key Issues and Concerns

Domestic registration is a step in the right direction on the part of the right holders of potential GIs of India towards ensuring an appropriate protective cover for their respective indications. However, there are a number of issues and concerns in the context of harnessing the potential benefits out of GI registration in India.

First of all, it needs to be underscored that the identification of the products eligible for GI protection is in itself a crucial task requiring expertise from specialists. This is because, the products to be protected are not necessarily those, which flatter the national pride and which have always been known by the population.[14] Although from a legal angle, "reputation" of a product (linked to its geographical origin) would in itself suffice for it to get protected as a GI as per the TRIPS definition, from a practical point of view it is important to assess the commercial status/prospect of a GI-product in the domestic and export markets; the potential of its GI status in contributing to its future growth; and the socioeconomic implications of its protection as a GI for the communities involved in its supply chain. The existing literature, however, does not throw adequate light on these issues from an Indian perspective. Nor is it clearly known whether any such systematic assessment is being undertaken by the relevant agencies in India while identifying the products to be accorded GI status.

While domestic registration of a GI is a relatively easy task, registration and enforcement in other countries is a much more complicated venture. Constraints encountered in this process may include, among others:

- Technicalities involved in the registration process in various foreign countries;
- Exorbitant expenses involved in appointing a watch-dog agency to get information on misappropriation;

- Huge financial resources needed for fighting legal battles in foreign countries.

As for commercial benefits of GI protection, actual realisation of these potential benefits is contingent upon a range of factors. Apart from effective enforcement of GIs in the relevant markets (domestic and export), much depends on the strategies adopted for marketing and distribution of the product, and its branding and promotion – tasks that are neither costless nor easy to perform, especially for the stakeholders from a developing country like India. Building up reputation of a GI product takes a long time, patience, money, quality control, and a well-crafted marketing strategy. "Champagne", for instance, is said to have taken as long as 150 years to build up reputation and goodwill. While domestic market may be a relatively easier proposition to handle, marketing and promotion of GI products in various export destinations is a much more challenging and tricky task. Producers of a GI product might have to adopt different distribution channels in different countries for selling the same product. Furthermore, producers might also have to contend with the economic power of various intermediaries to reach the market. Processors, for instance, are increasingly penetrating supply chains of agro-food products to substantially control most aspects of the production process, often making the primary producers significantly dependent on them. In case of coffee and tea, where India has quite a few GIs, only a few processing companies control a very large share of the global trade, for instance. Equally problematic is the position occupied by a handful of retail companies, on account of their growth and concomitant economies of scale and scope.[15] Given such complexities, an appropriate marketing and distribution strategy is an essential prerequisite for a GI to act as an effective commercial tool. Not much is known about India's preparedness in these spheres. However, without well-crafted policies and strategies on marketing and promotion of Indian GIs, the commercial potential underlying them might remain unrealized.

GIs and Rural Development

As far as the implications of GIs in the context of rural development in India is concerned, this is an area worth exploring further, given that most Indian GIs are linked to products related to agriculture, fisheries, crafts and artisanal works and that these are some of the sectors that provide livelihood for a large section of the poor in India. In order to examine such socio-economic implications of a GI, the entire supply chain of the product concerned needs to be examined. However, it is important to underscore here that the process of GI-registration might itself raise substantive issues concerning reorganization and governance of the supply chain of the product. In seeking protection, the relevant interested parties must specify, among other factors, the distinguishing characteristics of the product; its production process; and details concerning its link to its area of geographical origin. This process might entail some reorganization of the product's existing supply chain, thus generating new economic opportunities for some while creating problems for others. There may be a number of specific tasks to be completed while reorganizing the supply chain. These include, among others, agreeing codes of practice and defining the GI product; developing certification schemes and methods of governance; formulating written and/or unwritten contracts to mediate the transfer of intermediate goods within the supply chain; managing production at various stages of the supply chain; promoting and protecting the product.[16] Thus, while GI protection may indeed strengthen the sector concerned by yielding financial benefits, these benefits may not be shared equitably among various stakeholders along the supply chain of the product. The price premium received by a product on account of GI protection may be confined to the more powerful actors on the upper stream of the supply chain and may not get percolated to the weaker sections of the chain downstream, thereby nullifying to a large extent, the development implications of GI protection. Given such possibilities, the ground realities of the implications of GI protection on rural development in India is worth investigating.

The Ways Forward…

At the multilateral level, considering the long-drawn deadlock over the issue of "extension", it seems highly unlikely that the debate will actually be resolved some time in the near future. However, given the interlinked nature of multilateral trade negotiations, even if an agreement is ultimately reached in favour of the "extension", it is most likely to be a *quid-pro-quo* for concessions to be granted elsewhere. Hence, it is extremely important for India to weigh the costs and benefits of GI protection in general and the "extension" of Article 23, in particular. Given the scarcity of research-based inputs in this regard, there is not much clarity on these issues till now. Hence, rather than pushing too hard for the "extension" at the WTO, a more prudent approach on the part of India would be to "go slow". Meanwhile, the country may attempt to explore more about the economic and socio-economic benefits and costs of GI protection on the basis of rigorous empirical research. This would enable India to adopt a more informed negotiating stance on the issue of "extension" at the WTO.

Further research on the ground realities of GI scenario in India becomes all the more important when judged in the light of the fact that India is already negotiating a comprehensive trade and investment agreement (TIA) with the EU, which is supposed to include provisions on GIs. Given that both India and the EU belong to the list of demandeurs of "extension" at the WTO, the India-EU TIA would, in all likelihood, ensure an Article 23-type protection for all categories of GIs. While such a provision, if indeed included, might help Indian GIs in securing better protection in the EU markets, the benefits of such stringent protection are likely to be tilted heavily in favour of the EU. This is not only due to the fact that the number of European GIs is significantly higher compared to that of India, but also because, many of the European GIs already have an established reputation in the international markets, including India, unlike many of the Indian GIs that are likely to get protected. Moreover, given the TRIPS-plus nature of GI provisions in the bilaterals involving the EU, India may also be urged to give more than what the country is seeking to achieve in the multilateral forum. For instance, many EU FTAs obligate the Parties to ensure "reciprocal" or "mutual" protection of particular GIs that are listed in the agreement. This approach goes beyond the TRIPS minimum standard of providing "legal means" for the protection of GIs. Under TRIPS, a country is not obligated to accord *automatic* protection to a foreign GI. Rather, its authorities maintain the discretion to examine whether the GI in question actually meets the basic eligibility requirements under Article 22.1 of the TRIPS, or whether any of Article 24 exceptions apply. The mutual recognition provision ensures *automatic* protection, thereby taking away the partner country's discretion to examine the GI is question before granting protection. Would such TRIPS-plus provisions be beneficial for India? If at all, to what extent? These are not easy questions to answer from the Indian perspective. More so, because while the EU's stakes in GI protection is a well-established fact, very little is known about India's stakes from a stringent system of GI protection. Without adequate research-based inputs on these aspects, India may end up with a bad deal on GIs. Hence, the need for rigorous empirical research on economics and socio-economics of GIs in India from an Indian perspective cannot be overemphasized at this juncture.

NOTES

1 For more on NAMA negotiations, refer to: Das, Kasturi, "Draft NAMA Text: Development Concerns Remain Neglected", *The Hindu Business Line*, India, 15 March 2008, available on-line at: http://www.thehindubusinessline.com/2008/03/15/stories/2008031550040800.htm.

2 For more on services negotiations under the Doha Round, refer to: Das, Kasturi, "GATS 2000 Negotiations and India: Evolution and State of Play", *Journal of World Trade*, Vol. 41(6), Kluwer Law International, Netherlands, 2007

3 For further details on economic rationale of GI protection, refer to: Das, Kasturi, "Select Issues and Debates around Geographical Indications with Particular Reference to India", *Journal of World Trade*, Vol. 42(3), Kluwer Law International, Netherlands, 2008 (forthcoming).

4 World Trade Organization (WTO), *World Trade Report 2004: Exploring the Linkage between the Domestic*

Policy Environment and International Trade, 2004.

[5] Fink, C., and K. Maskus, "The Debate on Geographical Indications in the WTO", Ch. 16 in R. Newfarmer (ed.) *Trade, Doha, and Development: A Window into the Issues*, (Washington DC: World Bank 2006), p. 203.

[6] Das, Kasturi, "International Protection of India's Geographical Indications with Special Reference to 'Darjeeling' Tea", *Journal of World Intellectual Property*, Vol. 9 (5), Blackwell Publishing Ltd., 2006, p. 480.

[7] www.indiaip.com/main/articles/basmati_issue.htm.

[8] See WTO document: IP/C/W/247/Rev.1 dated 17 May 2001, paragraph 13.

[9] For more on inadequacy of Article 22 protection, refer to: "Protection of Geographical Indications: An Overview of Select Issues with Particular Reference to India", *Working Paper 8*, Centre for Trade and Development (Centad), New Delhi, India, 2007, pp. 23-25, available on-line at: http://www.centad.org/download/WorkingPaper_FinalPDF_4June07.pdf.

[10] See WTO document: IP/C/W/204/Rev.1, dated 2 October 2000, paragraph 6.

[11] The addition of spirits occurred at the end of the negotiations. See WTO document MTN.TNC/W/89, dated 7 November 1991.

[12] Gervais, Daniel, "The TRIPS Agreement: Drafting History and Analysis", (London: Sweet & Maxwell 1998), pp. 134-35.

[13] Sharma, Ashok B., "Honesty in Trade Can Enhance the Image of Basmati Rice", *The Financial Express*, 5 September 2005.

[14] Croze, Denis, "IPRTA & Geographical Indications: Challenges and Opportunities", IPRTA Forum Project Stakeholder Workshop, Bangkok, 3-6 December 2006, p. 6.

[15] Rangnekar, Dwijen, "The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe", UNCTAD-ICTSD Project on IPRs and Sustainable Development, 2004, pp. 27-29.

[16] *Ibid*, pp. 19-23.

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NEWS
(NATIONAL/INTERNATIONAL)

India Retains Second Position in FDI Confidence Index 2007

In recognition of the efforts made by the Government of India in modernizing its intellectual property systems as well as infusing transparency and openness in the system, the 170 plus Member States of the World Intellectual Property Organization (WIPO), in the recently concluded General Assemblies of WIPO, endorsed India's recognition as an International Searching Authority (ISA) and an International Preliminary Examining Authority (IPEA).

"The recognition of India as an ISA/IPEA puts India in a coveted league of only 15 nations and organization which are currently recognized at a global level by ISA/APEA", Shri Kamal Nath, Union Minister of Commerce and Industry, informed in a press briefing. He further said that it is recognition of our efforts to recognize the intellectual property system as well as lay down benchmark for future milestones that we need to achieve.

The status of ISA and IPEA would be beneficial for India in several ways. Apart from the international recognition that our IP system would get, it would also generate revenues in the form of fees that would be provided to us for functioning as an ISA/IPEA. Being the only English speaking nation in the Asian region to be recognized as an ISA/IPEA would mean that several international applications received by WIPO under the Patents Cooperation Treaty would be sent to the Indian Patent Offices for search and preliminary examination purposes.

E-filing facilities for patents and trademark applications was launched in July this year. In the last three years, several important milestones have been achieved in the field of intellectual property rights in India. The Patent Act was amended in 2005 in order to meet our international obligations. A Rs 153 crore modernization programme for augmenting the infrastructure and human resources in Intellectual Property Office, creation of awareness regarding IPRs and introducing IT enabled efficient systems was completed on 31 March 2007.

During the briefing, Shri Kamal Nath also informed that India has retained the second place in A.T. Kearney's 2007 Foreign Direct Investment Confidence Index, a position it has held since displacing the US in 2005. "India continues to attract investors in the high value-added services industries like financial services and information technology. India is the 2nd most preferred location for investors in Asia and the US. However, for European investors, India has claimed the top slot, displacing China", he further informed.

Background on IP/Trademark/Design/GIs

The foundation stone for a National Institute of Intellectual Property Management was laid in August, 2007 at Nagpur. The Institute is expected to be of global standards and would cater to training, research, education and would serve as an IP think-tank. A Rs 20-crore project has been approved for this purpose. The Institute is expected to be operational by the end of next year. The impact of the modernization programme is already self-evident. In the last three years, the number of patent applications has gone up three-fold and more importantly, the patents granted by four-fold. Similarly, there has been a steady increase in the number of trademark applications being filed. The revenues generated by the Intellectual Property Offices gone up eight-fold in the last three years. This is 10 times more than the expenditure on these offices.

The registration of trademarks per annum, which is close to one lakh, has kept a pace with the filing. In a major effort to clear the backlog of patent and trademark applications, a total of 44,000 patent applications and more than 4.5 lakh trademark applications were cleared. A major effort is under way to digitize the patent and trademark records. Our effort is to digitize all records pertaining to 2 lakh plus patent and 6 lakh plus trademarks that have been granted so far. This exercise is expected to be completed by the end of 2008.

The rising trend has also been witnessed in the area of industrial designs where a record number of over 5,000 applications were received last year. In the area of geographical indications, as on date, 46 GIs have been registered and over 100 applications are in the pipeline. Some of the most important GIs registered are Darjeeling Tea, Chanderi Saree, Pochampalli Ikat and Kangara Tea.

Bearing in mind the significance of designs in the competitive economic scenario, the Government of India announced the National Design Policy earlier this year. This Policy envisages the strengthening of design infrastructure in the country as well as the spread of design education. Further, we intend to establish a design Council as well as undertake efforts to brand Indian designs. To establish three more Institutes of Design in the Southern, Eastern and Northern region of the country on the pattern of the National Institute of Design, Ahmedabad. Given the premier character of the NID, Ahmedabad, we are proposed to give NID the status a deemed university.

The Government of India has taken a decision to accede to the Madrid Protocol – an international system for registration of trademarks. Accession to the Madrid Protocol would give the Indian business community an opportunity to register their trademarks through a single application in as many as 80 countries.

A more ambitious second phase of modernization at a cost of Rs 300 crore is proposed to be implemented during the 11th Plan period. Under this proposal, it is proposed to further augment the existing infrastructure, establish a state-of-the-art Trade Marks Office at Ahmedabad, procure international databases, establish online processing of IP applications, manifold increase in human resources particularly of patent and trademark examiners, launch a massive awareness campaign and sensitization programme which would cover all major stakeholders including industry, academia, judiciary, enforcement agencies, policymakers and State Governments.

(Press Release, Ministry of Commerce & Industry, 18 December 2007)

WTO Members Continue Debate on Geographical Indications Register

MEMBERS of the World Trade Organization continue with a longstanding debate over the creation of a register for geographical indications (GIs), products whose names derive from places. Debate centered on a recent compromise proposal from European countries driving the efforts to establish the register. The EU received new support from countries seeking a separate biodiversity amendment to international trade rules.

The 14 December informal meeting among key players on the GI issue did not result in significant breakthroughs and one official said it will inform high-level meeting of the WTO General Council. Other sources said consultations on the issue with Chairman Manzoor Ahmad, the ambassador of Pakistan, would continue in the new year.

The new draft proposal for a register offered by the European Union included several changes over a previous, rejected version. For instance, the EU would leave open the decision of which products would be covered by the register, rather than ordering that it covers all products. Currently, wines and spirits receive higher level GI protection than other products, but the EU had originally proposed the register cover other products as well, which met with resistance.

In addition, the new proposal would remove an 18-month deadline for any challenges to be filed, leaving it open-ended. Furthermore, it would reduce the administrative burden of making countries monitor all registrations in order to oppose a registered name. Finally, the EU suggested that participation in the register would change from a system with participating members being those who notify a GI to the register to members who are above a certain share in world trade. One participant said Switzerland supported the register but not the proposal for the use of world trade share as the measure for participation.

A group of countries with fewer GIs to protect again opposed the EU proposal despite the changes, sources said. The group of 17 supporting a 2005 "joint proposal" for a voluntary register of wines and spirits GIs entered in a database includes Argentina, Australia, Canada, Chile, Japan, New Zealand and the United States.

At least one opponent government said the new EU proposal is "more similar than different to the last proposal," and raised several concerns. These include that the scope would not be limited to wines and spirits, and that participation would not be voluntary. It also includes legal concerns about territoriality, the effect in other countries of registration in one country.

Meanwhile, new support for the EU effort appeared from countries seeking an amendment to the WTO to require patent applications to include the disclosure of the origin of genetic resources and traditional knowledge. Those supporting the linkage of the two issues include Barbados, China, India, Morocco, and Turkey. A developing country official said countries were pleased with the EU's removal of an "onerous administrative burden and costs."

One source said Brazil, which backs the origin disclosure proposal (sometimes referred to as the CBD proposal for its relation to the UN Convention on Biological Diversity), also supported the register proposal, but another source said Brazil's support for the linkage included concern about the EU proposal. Brazil could not be reached for comment.

(Intellectual Property Watch, http://www.ip-watch.org/weblog/index.php?p=874, 17 December 2007)

Commission Welcomes Council and Parliament Approval of New Spirit Drinks Regulation

ACCORDING to the European Commission, European Union agriculture ministers on 17 December reached political agreement on the new Spirit Drinks regulation, thereby sealing a first reading agreement between the Council of Ministers and the European Parliament.

The new regulation enhances the clarity of the EU legislation on spirit drinks. It combines two previous regulations into one and adapts the rules to take account of technical changes, WTO requirements and the EU's system of geographical indications. The new regulation sets out clear definitions for all spirit drinks, and should help producers market their products while providing new clarity for consumers. One of the main points of discussion since the proposal was tabled by the Commission in December 2005 has been the definition of vodka. The new regulation leaves the current definition unchanged, but changes slightly the labeling requirements. In future, vodka made from cereals or potatoes will be labeled simply as vodka. Vodka based on other raw materials will bear the indication "produced from" supplemented by the name of the raw material used. This regulation shall enter into force on the seventh day following that of its publication in the Official Journal of the European Union.

"To reach agreement between Council, Parliament and Commission in the first reading is a major achievement," said Mariann Fischer Boel, Commissioner for Agriculture and Rural Development. "I am pleased that we were able to reach a pragmatic compromise on the definition of vodka, which will allow producers of this important product to continue going about their business. I think this new regulation will help our producers build on their success and make things clearer for consumers" he said.

The new regulation will safeguard the reputation which the EU spirit drinks have achieved in the EU and on the world market by continuing to take into account the traditional practices used in their production. Technological innovations have been taken into account where they improve quality. The regulation takes account of the provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights and the General Agreement on Tariffs and Trade, which forms an integral part of the Agreement establishing the World Trade Organization.

The definitions continue to respect the traditional quality practices but are updated where previous definitions were lacking or insufficient or where such definitions could be improved in the light of technological developments.

Since the Commission tabled its proposal on 15 December 2005, there have been intensive discussions in both the Parliament and Council. In line with its international obligations deriving from the Technical Barriers to Trade agreement, the Commission notified the file to the WTO, setting a two-month period for comments. This procedure was completed successfully with no major reservations being expressed by the EU's trading partners. On 19 June 2007, the European Parliament backed the General Approach in a First Reading with an overwhelming majority. After successful WTO notification, the Commission also endorsed the Council compromise as voted for by the European Parliament, clearing the way for the political agreement in today's Council meeting.

(http://finchannel.com/index.php?option=com_content&task=view&id=2692&Itemid=38, 17 December 2007)

Croatia Acquires Full EPO Membership Status

FOLLOWING amendments to the Intellectual Property Laws in Croatia enacted in July 2007, the Croatian Parliament has adopted new Regulations amending regulations on patents, trademarks, industrial designs, geographical indications and Appellations of Origin and Topographies and Semiconductors. According to SD PETOSEVIC, the Regulations came into force on 14 November 2007 and were published in the Official Gazette No. 117/07.

On 31 October 2007 the Republic of Croatia has deposited its instrument of accession to the European Patent Convention (EPC) and to the Act revising the EPC of 29 November 2000. Accordingly, the EPC shall enter into force in Croatia on 1 January 2008.

Extension agreement between the Republic of Croatia and the European Patent Organization that is still in force will be terminated when EPC comes into force in Croatia. European patent applications that are filed on or after 1 January 2008 will include the designation of the new contracting state, HR. However, it will not be possible to designate Croatia retroactively in applications filed before 1 January 2008.

With respect to the PCT system and international applications, any PCT application filed on or after 1 January 2008 will automatically designate Croatia for the purpose of obtaining a European patent (Rule 4.9(a) PCT). However, European patents for Croatia cannot be granted on the basis of international applications with the filing date prior to 1 January 2008. A national patent may be granted assuming that Croatia has been designated in the international application. Moreover, international applications with the designation of Croatia with a filing date prior to 1 January 2008 shall be deemed invalid.

Currently, and in compliance with provisions of Article 103 (2) and (3) concerning extension of European patents to Croatia, the owner of European patent has to submit a full translation of patent specification in Croatian language. By entering into force of the EPC in Croatia, Article 65 of the Convention for the Grant of European Patents will automatically come into force, as well as Article 114 of the Croatian Law Amending the Law on Patents.

The provisions of Article 114 stipulates that the owner of a European patent will have to submit an English translation of patent specification or English translation of the specification and the Croatian translation of patent claims, where patent has been granted in a language of the proceedings other than English.

English text of patent specification shall be regarded as authentic in any proceedings in the Republic of Croatia, except in revocations proceeding, where the translations in the Croatian language confers protection narrower in scope than that conferred by the extended European patent in the language of proceedings.

Nonetheless, in case of a dispute relating to the extended European patent, and upon request of the alleged infringer, or the competent court or other judicial authority in the course of legal proceedings, the owner of the European patent will still have to, at his own expense, provide full translation of the specification in the Croatian language (Article 114(3).

(http://www.ag-ip-news.com/GetArticle.asp?Art_ID=5312&lang=en, 16 December 2007)

Commerce Dept. Leaves Basmati Rice Definition to Agri Ministry: To be in Conformity with Global Agreements and Indian Seeds Act

THE Department of Commerce has come to an "understanding" with the Ministry of Agriculture on the definition issue of basmati rice with the task now falling on the latter so that the new appellation for basmati would be in conformity with international agreements and the Indian Seeds Act.

On Geographical Indications

Official sources mentioned that at a recent meeting held under the Chairmanship of Commerce Secretary, Gopal K. Pillai, it was made clear that there should not be any compromise on the Geographical Indication (GI) protection of basmati rice, while determining the definition so as to obviate the needless controversy. The meeting was attended by representatives of the Commerce Ministry, the Agriculture Ministry, the Indian Council of Agricultural Research and the Agricultural and Processed Food Products Development Authority (APEDA).

The Agriculture Ministry made it clear that the GI region for basmati, i.e., the Indo-Gangetic plain falls in both India and Pakistan. It was also pointed out that the basmati definition is currently not notified under the Seeds Act and it should be done forthwith.

Clarification

The representative of the Commerce Ministry clarified that the definition of basmati rice was framed under the Export of Basmati Rice (Quality Control & Inspection) Rules, 2003 since there was no definition of basmati rice in vogue at that point of time. When contacted, Shri Pillai clarified that once the definition of basmati rice is in place by the Agriculture Ministry incorporating the essential components of GI, international agreements and Seeds Act, "we will get our definition modified" to reflect the new elements of the definition.

Definition Task

Scientists at farm research centres are overly happy that the definition task has now rightly come to the Agriculture Ministry and hope that the emerging definition would definitely factor in all the relevant materials encompassing pedigree of rice, international agreements and Seeds Act. The sources further contend that since the onus is now on the Agriculture Ministry for ensuring the supply of authentic basmati paddy and protection of GI for basmati, the Farm Ministry might have to draw blueprint and norms for supply of authentic basmati paddy seed to the growers.

To Frame Licensing Norms

The Agriculture Ministry might toy with the proposal to frame licensing procedure on sale of basmati paddy seed to the growers to regulate and promote the authentic seed variety so that genuine basmati rice is produced. The objective is to prevent sale of spurious seeds by vested interests which have developed stakes in the export of dubious basmati or basmati of questionable parentage. How far this could be implemented before the next sowing season which begins in April-May 2008 depends on how fast the official machinery is geared to the task on hand.

Exact Geographical Area

Trade policy analysts say that it is important to capture precisely the basmati paddy growing area in line with the GI of TRIPS Agreement, since leaving the entire Indo-Gangetic plain would make basmati rice generic as there are wide variations in climate in this vast region. Hence, the task of defining the exact geographical area for basmati falls squarely on the Agriculture Ministry, entailing the sensitivities of other basmati rice growing States of Central and Eastern Uttar Pradesh, Bihar, West Bengal, Orissa, Rajasthan, Madhya Pradesh, Maharashtra, Andhra Pradesh, Karnataka and Kerala. This is important because the reference in various raging legal battles on IPR over basmati clearly is to Punjab, Haryana, Western UP and Uttarakhand as unique to basmati rice in India.

Traceability Mechanism

This also raises larger issue of establishing the traceability mechanism in basmati rice supply chain to verify the authenticity of the product as enjoined in the implementation of GI. Every transaction in basmati rice supply chain is required to be documented from the seed to store to ensure the GI and to justify the premium price being charged to the ultimate consumers. Hence, basmati rice exporters would do well to initiate a process in this regard for ascertaining traceability, before the importing countries insist on such information before long, the sources added.

(http://www.thehindu businessline.com/2007/12/14/stories/2007121451581300.htm, 14 December 2007)

Agriculture/Fisheries Council Meet

THE Agriculture & Fisheries Council will meet in Brussels on Monday 17 (starting at 10 a.m.), Tuesday 18 and (if necessary) Wednesday 19 December, under the Presidency of Jaime Silva, Minister for Agriculture, Rural Development and Fisheries. Commissioners Mariann Fischer Boel (Agriculture and Rural Development) Markos Kyprianou (Health) and Joe Borg (Fisheries and Maritime Affairs) will represent the Commission at the meeting. The two main items on the agenda of the Council are the reform of the wine sector and the fishing opportunities for 2008 (TACs and quotas). The Council is expected to reach political agreement on those two important dossiers.

On 4 July 2007, the European Commission adopted proposals for a wide-ranging reform of the Common Market Organization for wine. This followed more than one year's discussion with all parties on the ideas launched in the June 2006 Communication. This aims to increase the competitiveness of EU producers, win back markets, balance supply and demand, simplify the rules, preserve the best traditions of EU wine production, reinforce the social fabric of rural areas and respect the environment. The Council is expected to reach a political agreement on the reform of the wine market.

On 15 December 2005, the Commission adopted a proposal to update the EU spirit drinks legislation (see IP/05/1659). Based on existing EU legislation on spirit drinks, it largely enhances applicability, readability and clarity, by adapting the regulations to new technical requirements. The draft Regulation includes a well defined policy for spirit drinks. And TRIPS and WTO requirements are included to safeguard the protection of EU geographical indications on the world market. It sets out clear definitions for all spirit drinks.

A compromise has been found on the definition of vodka, one of the main points of discussion since the proposal was tabled. The Council will now adopt the new spirit drinks legislation, thereby sealing a first reading agreement between the Council of Ministers and the European Parliament.

(http://www.edubourse.com/finance/actualites.php?actu=34708, 14 December 2007)

Fighting over Basmati

THE cold war between India and Pakistan over basmati seems to be unending. The latest blitz is in the form of the legal notice served on the Commerce and Industry Ministry by the Rice Exporters' Association of Pakistan for notifying 'super basmati', hitherto that country's deemed monopoly, as an Indian basmati variety and hence eligible for export to the European Union at zero duty. What has irked Pakistan is the signal that is implicit in the Indian move, that it is challenging Pakistan's exclusive control over the supply of this variety, which is in great demand in export markets because of its superb quality. There is no denying that the super basmati variety of Pakistan has, in some ways, outdone the prime Indian export variety, Pusa Basmati-1, which at one stage commanded nearly 60 per cent of basmati exports. As might have been expected, New Delhi has lost little time in replying to the notice and contesting Islamabad's allegation that India is usurping its basmati variety.

As is widely known, the truth is that the seeds of super basmati rice were originally sourced from Pakistan but worked upon and engineered at the Ludhiana-based Punjab Agriculture University to evolve the variety that is now being grown in India and shipped abroad as Indian super basmati. As such, the Commerce Ministry is well within its rights to include it in the list of scented rice varieties eligible for export as basmati. What is hard to understand is why there is no recognition of the fact that basmati is a part of the common heritage of both countries, and that there are several basmati varieties that have been grown in both countries for many years, and exported as well. The most authentic traditional variety, Basmati-370, is a good case in point. Both countries have used this as one of the parents for evolving new basmati varieties for export as well as for domestic consumption. Indeed, much of the germplasm of the long-established varieties of basmati was left in Pakistan at the time of Partition because it was in the possession of the agriculture college at Lyallpur, now in Pakistan. Surely that should not debar India from accessing that material or using it for breeding purposes, though Pakistan seems to think otherwise.

This perhaps explains why Islamabad is not keen to accept the Indian offer of joint registration of basmati as a Geographical Indication. Meaningful bilateral cooperation in this field will make it much easier to subvert the bids being made constantly by other countries to appropriate the basmati brand for their own commercial use. Though India has been fighting legal battles to thwart such attempts and has applied for the registration of basmati as a Geographical Indication, the lack of joint initiatives makes its task tougher as this rice legitimately belongs to Pakistan as well. It is, therefore, in the interest of both countries to stop squabbling over this issue and instead to open a joint front for guarding this premium rice against bio-piracy by third countries. Indeed, even when it comes to exports, the two countries would gain by cooperating with each other instead of competing to undercut each other and thereby yielding the advantage to importers in other countries.

(*Business Standard*, 13 December 2007)

Coir Industry Sees Sunny Days Ahead

THE second India International Coir Fair, aimed at popularizing the status of coir as an eco-friendly, ethnic, and versatile product and showcasing the capabilities of Indian coir sector, will open on Friday. The fair is being conducted after a gap of six years, when demand for various coir products like coir pith and coir geotextiles is on the rise. Coir Board has targeted an export turnover of Rs 700 crore in the current fiscal, which is almost Rs 100 crore more than that in the previous year.

Apart from increased assistance from the Centre for coir promotion, the sector also has other reasons to cheer this year. The awarding of geographical indication (GI) status to Alleppey coir and the formation of the Indian chapter of International Erosion Control Association with Coir Board chairman AC Jose as patron are expected to give a shot in the arm for coir exports.

(7 December 2007, Economic Times) http://economictimes.indiatimes.com/Commodities/Coir_industry_sees_sunny_days_ahead/articleshow/2602158.cms

Darjeeling's Black Tea Gains Popularity in China

DARJEELING tea, globally known for its flavour and high quality, is becoming popular in China, which is a predominantly green tea market. In the first nine months of this fiscal, more than 500 tonnes of Darjeeling tea has been exported to China.

China has been a leader in tea production, accounting for 1 billion kg annually. About 40 per cent of this is exported. But India has never seriously looked at selling tea to China. Last year, Lochan Tea had exported 250 tonnes to China. "We have been trying to get into the Chinese market for five years now and finally, the results have started showing. Other exporters will look at this market soon," said Lochan Tea chairman Rajiv Lochan.

According to him, a substantial portion of the annual Darjeeling tea production of 9 million kg can make it to the Chinese market. Currently, around 55-60 per cent of these teas are exported to the US, the UK and a few other countries in Europe. About 2-2.5 million kg can easily be sold in China at an attractive price, Shri Lochan said. "The Darjeeling tea has won recognition of discerning consumers all over the world for well over a century," said Sanjay Bansal, chairman of the Darjeeling Tea Association.

The cultivation of tea in Darjeeling, a northern district in West Bengal, dates back to the 1830s and is now spread over 17,800 ha in 87 designated gardens. It was registered as "geographical indication" globally in 2004. This status protects it from unauthorized production, duplication, abuse or misuse. This helps enhance the brand image of Darjeeling tea, both in the national and global markets, Shri Bansal said.

According to Shri Lochan, Darjeeling tea gets its particular flavour from being grown at an altitude of more than 3,000 ft above sea level and the peculiar geographical conditions of Darjeeling, such as the hot winds that hit the peak of Mount Kanchenjunga, the third highest mountain in the world. The peak acts as a wall returning the winds to the tea gardens across the district. At a high altitude, the atmosphere has less oxygen and this adds to the oxidants in Darjeeling tea leaves, making it a healthy drink. Its aroma and flavour fetch a premium in the market. While other Indian teas sell for $1-1.5 (Rs 39.7-59.6) a kg, Darjeeling tea is sold at a price between $4 and $9 a kg, depending on the quality.

(http://www.livemint.com/2007/12/02234759/Darjeeling8217s-black-tea-g.html, 2 December 2007)

Indo-Pak Battle over Pashmina

A NEW thread was added to the Indo-Pak tussle over a patent for Pashmina. At loggerheads for a while over a Geographical Indication (GI) tag for the prized wool, Pakistan said it is "open to a joint GI tag", shared by both sides of Kashmir. India said this is possible only if Pakistan's Pashmina is the same quality for which it has sought a patent.

If Pashmina gets the patent — Kashmir Pashmina — it will join the league of Darjeeling tea, Alphonso mango, Assam orthodox tea and Muga silk. New Delhi's efforts to give Pashmina the tag hit a hurdle with two Pakistani trade lobbies contesting its claim.

President of Azad Jammu & Kashmir Chamber of Commerce and Industry in Pakistan-Occupied-Kashmir, Zulfikar Abbasi, said, "Pashmina is common Kashmiri heritage. A patent for Srinagar Valley would be unfair just like a patent only for Pakistan. We are open to a joint GI status."

On whether India would consider a joint patent, Srinagar's Craft Development Institute Director MS Farooqi said: "A joint GI is possible only if it is proven that Pakistani Pashmina is the same wool as ours. The finest Pashmina is found only in the Srinagar Valley."

(*The Hindustan Times*, 1 December 2007)

Darjeeling Tea to be Included in EU Registry

DARJEELING tea is all set to be the first Indian commodity to be included in the EU registry for geographical indications (GI) – a move that will prevent tea originating from any other place from being sold under the name Darjeeling in the EU market.

India applied for inclusion of the product in the EU's GI registry after completion of all formalities, including putting in place a domestic certification system and building a unified supply chain system for all gardens in Darjeeling. It may take up to two years for Darjeeling tea to be granted GI status by the EU.

Tea Board chairman Basudeb Banerjee said the application for a GI in EU was a step in the right direction and could prevent the misuse of the name Darjeeling tea. Tea Board has fought more than 15 cases against infringement and misuse of the Darjeeling name in the last few years including from Sri Lanka, the US and France. Tea Board was successful in seeking rejection of trademark application for Darjeeling Nouveau by US Company Republic of Tea (ROT). The Trademark Trial & Appeal Board of the US ruled that ROT had not been able to prove that consumers view Darjeeling tea as a generic type, as opposed to tea from the Darjeeling region in India. Another important victory for Tea Board was against French company Dusong's adoption of the Darjeeling mark with a kettle device. The court of appeal of Paris, on 22 November 2006, ruled that Dusong's mark impaired the GI Darjeeling and is prejudicial to the Tea Board's interest. Steps would soon be taken to get Kangra tea, a registered GI in India, to get an EU registry.

(28 November 2007, *Economic Times*)

WIPO Hosts International Roundtable on the Economics of IP

THE World Intellectual Property Organization (WIPO) hosted during 26-27 November 2007 a discussion grouping 15 leading economists from around the world on the economics of Intellectual Property (IP).

According to a press release by WIPO, the aim of the International Roundtable on the Economics of IP was to review the available economic literature in this field and identify empirical research projects that could be undertaken in developing countries and countries in transition.

"The roundtable provided an opportunity to review the empirical evidence, identify gaps in the literature and discuss methodological approaches that could be applied to study the economics of IP in developing countries and countries with economies in transition," Executive Director of WIPO's Office of Strategic Use of IP for Development Sherif Saadallah said.

The economists reviewed relevant empirical evidence, identified gaps in the literature and discussed methodological approaches that could be applied to study the issues in developing countries and countries in transition.

The basis for discussions was six draft papers on the following themes: Innovation and Appropriability Strategies, IP and International Technology Transfer, IP Rights in the Pharmaceutical Industry, The Economics of Copyright, The Economics of Geographical Indications and IP Rights and Knowledge Transfer from Public Research Organizations and Universities to Industry.

Discussions focused on the type of empirical research that could be undertaken in developing countries and countries with economies in transition in these areas.

Participants generally recognized that there had not been adequate empirical economic research on IP in developing countries and that this could limit the capacity for evidence-based policy-making in this field. It was highlighted that the lack of data and difficulties in understanding the intricacies of the IP system by economists may be some of the reasons why limited research has been undertaken in this area.

Participants acknowledged that empirical research undertaken over recent years in industrialized countries could provide interesting insights on how to study the issues in developing countries, but greater efforts should be made at ensuring that research was adapted to the realities and policy-making needs of developing countries.

On each of the six themes, suggestions were made on the types of research projects that could be undertaken and discussions enabled participating economists to test their ideas with colleagues and jointly explore possible projects.

(http://www.ag-ip-news.com/GetArticle.asp?Art_ID=5252&lang=en, 28 November 2007)

India-Malaysia Trade Talks in January

INDIA is likely to begin negotiations with Malaysia in January next year for signing a Comprehensive Economic Cooperation Agreement (CECA), Union Commerce and Industry Minister Kamal Nath said.

Inaugurating a seminar on "Malaysia-India Business Opportunities," organized by the Confederation of Indian Industry, Shri Kamal Nath said: "I am confident that this agreement would take our bilateral relations to newer heights and contribute to the overall growth of our economies."

Dutch Delegation

Speaking on the occasion, Malaysian Minister of International Trade and Industry Dato' Seri Rafidah Aziz emphasized the need for providing the business communities of the two countries with an update of trade and investment opportunities. India and the Netherlands hoped that the Indo-European Union Free Trade Agreement (FTA) would be signed soon.

"The third round of talks on the India-EU FTA would be held next month in Brussels. While common areas have been identified for the FTA, discussions have been held in areas of intellectual property rights, geographical indications, dispute settlement and competition policy," Union Commerce and Industry Minister Kamal Nath said after his talks with the visiting Dutch Minister for Foreign Affairs Frank Heemskerk.

"The visiting Dutch delegation have identified biotechnology, agro-industry, pharma, infrastructure and logistics, research and design as focus areas," he added.

(*The Hindu*, 27 November 2007)

GEOGRAPHICAL INDICATIONS

Frequently Asked Questions (FAQs)

In December 1999, the Parliament has passed the Geographical Indications of Goods(Registration and Protection) Act, 1999. This Act seeks to provide for the registration an better protection of geographical indications relating to goods in India. the Act would be administered by the Controller General of Patents, Design and Trade Marks who is the Registrar of Geographical Indications. The Geographical Indications Registry is located at Chennai.

1. What is a Geographical Indication?

- It is an indication
- It originates from a definite geographical territory
- It is used to identify agricultural, natural or manufactured goods
- The manufactured goods should be produced or processed or prepared in that territory
- It should have a special quality or reputation or other characteristics.

2. Examples of possible Indian Geographical Indications

- Basmati Rice
- Darjeeling Tea
- Kanchipuram Silk Saree
- Alphanso Mango
- Nagpur Organge
- Kolhapuri Chappal
- Bikaneri Bhujia
- Agra Petha

3. What is the benefit of geographical indications?

- It confers legal protection to Geographical Indication in India
- Prevents unauthorized use of a Registered Geographical Indication by others
- It provides legal protection to Indian Geographical Indications, which in turn boost exports
- It promotes economic prosperity of producers of goods produced in a geographical territory

4. Who can apply for the registration of a geographical indication?

- Any association of persons, producers, organization or authority established by or under the law can apply: . The applicant must represent the interest of the producers
- The applicant should be in writing in the prescribed form
- The applicant should be addressed to the Registrar of Geographical Indications along with prescribed fee

5. Who is a registered proprietor of a Geographical Indication?

- Any association of persons, producers, organisation or authority established by or under the law can be a registered proprietor.
- Their name should be entered in the Register of Geographical Indications as registered proprietor for the Geographical Indication applied for.

6. Who is an authorised user?

- A producer of goods can apply for registration as an authorised user
- It must be in respect of a registered Geographical Indication
- He should apply in writing in the prescribed form alongwith prescribed fee.

7. Who is a producer in relation to a Geographical Indication?

The persons dealing with three categories of goods are covered under the term procedure:

- Agricultural Goods includes the production, processing, trading or dealing
- Natural Goods includes exploiting, trading or dealing
- Handicrafts or Industrial goods includes making, manufacturing, trading or dealing.

8. Is a registration of a GI compulsory and how does it help the applicant?

- Registration is not compulsory
- Registration affords better legal protection to facilitate an action for infringement
- The registered proprietor and authorized users can initiate infringement actions
- The authorized user can exercise the exclusive right to use the Geographical Indication.

9. Who can use the registered Geographical Indication?

- An authorized user has the exclusive rights to the use of Geographical Indication in relation to goods in respect of which it is registered.

10.How long the registration of Geographical Indication is valid?

- The registration of a Geographical Indication is valid for a period of 10 years.

11.Can a Geographical Indication be renewed?

- It can be renewed from time to time for further period of 10 years each.

12.What is the effect if a Geographical Indication if it is not renewed?

- If a registered geographical indication is not renewed it is liable to be removed.

13.When is a registered Geographical Indication said to be infringed?

- When an unauthorized user uses a Geographical Indication that indicates or suggests that such goods originate in a Geographical area other than the true place of origin of such goods in a manner which mislead the public as to the Geographical Origin of such goods.
- When the use of geographical indication result in an unfair competition including passing off in respect of registered geographical indication
- When the use of another geographical indication result in false representation to the public that goods originate in a territory in respect of which a registered Geographical Indication relates.

14.Who can initiate an infringement action?

- The registered proprietor or authorized users of a Registered Geographical Indication can initiate an action

15.Can a registered Geographical Indication be assigned, transmitted etc.

- No. A Geographical Indication is a public property belonging to the producers of the concerned goods, it can neither be assigned nor transmitted etc.
- It shall not be the subject matter of assignment, transmission, licencing, pledge, mortgage or such other agreement
- However, when an authorized user dies, his right devolves on his successor in title.

16.Can a registered Geographical Indication or a registered authorized user be removed from the register?

- Yes. The Appellate Board or the Registrar of Geographical Indications has the power to remove the Geographical Indication or an authorized user from the register. Further, on application by an aggrieved person action can be taken.

17.How a Geographical Indication is different from a TradeMark?

- A Trademark is sign, which is used in the course of trade, and it distinguishes goods or services of one enterprise from those of other enterprises.

  Whereas a Geographical Indication is an indication used to identify goods having special characteristics originating from a definite Geographical Territory.

Geographical Indications

UNDER Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations.

Section 2(e) of the Geographical Indications of Goods (Registration and Protection) Act has defined the geographical indication, 1999. The "geographical indication", in relation to goods, means an indication which identifies such goods as

(Contd. on page 24)

BOOKS/ARTICLES NOTES

BOOKS

The Impact of Geographical Indication on the Revitalization of a Regional Economy: A Case Study of "Boseong" Green Tea by Jeongwook Suh and Alan MacPherson, *Area*, Vol. 39(4), 2007, pp. 518-527.

IN the present era of globalization, the agricultural sector has been a focus of concern in the newly industrializing countries. In most of these countries agricultural sector has been protected through steep import tariffs which are to disappear over next few years under the WTO mandate. This gives the producers in these countries a reason to worry as they would be faced with incremental competition from foreign producers. This paper argues that the "Geographical Indications" (GIs) offer a protection in the liberalized world. The authors argue that the agricultural sub-sectors that are import-threatened under tariff elimination might be able to "reposition themselves as producers of specialty outputs" under GIs protection. They make their case by taking the green tea production in South Korea as their case study.

The argument that this paper puts forward is based on the competitiveness resulting from the specific quality parameters that are safeguarded by the GIs. A Geographical Indication refers to the name of a country, region or locality where the product originates. This place of origin is associated with certain quality and characteristics of the product which are "exclusively or essentially derived from the geographical environment, including natural and human factors". Thus, by referring the place of origin, a GI also indicates the peculiar qualities of that product, which in turn adds to the competitiveness of the producers in region mentioned in GI.

"Boseong" green tea was the first product officially registered as a GI in South Korea after the concept of GI was introduced through the Agricultural Product Quality Control Act of 1999. According to the authors, "Boseong" is a success story and exemplifies the potential positive impact of GI on the revitalization or stimulation of regional economies. The paper asserts that this finding is very significant as the impact of GI on overall economy has not been explored sufficiently. Their study is based on the analysis of Korea's GI system and personal interviews with 18 tea producers who are currently protected by major import tariffs.

The GI system in South Korea, for awarding a GI, requires a unified legal coalition of producers and processors within a tightly specified region. It also requires documentary proof of the reputation of the product, its difference from like-products from other regions and the proof of its reputation or quality originating from the particular geographical and human factors of the region. By December 2005, 13 products have been registered as official GI products.

Boseong is the biggest tea-producing location in Korea contributing 46.4 per cent of total green tea production in the country. Boseong green tea is known for its distinctive smell and taste. During 1980s and early 1990s the demand fell which resulted in the change in the pattern of agricultural land use. This was added by the possible competition from cheap green tea due to WTO and various FTA commitments. When the government introduced GI in 1999, the local government and producers built a network with universities and research institutes to utilize this option to face competition. It was registered as a GI product in 2002.

In this process, the authors argue, the producers were organized and cooperate with each other because the law requires them to be organized as one legal person. This resulted in improved information sharing, education and learning which, in turn, led to improved quality and innovation process. As a bi-product of this process the green tea industry of Boseong grew into an integrated industry including cultivation, processing and tourism.

The authors argue that the success of Boseong case is remarkable as in a time span of six years production has doubled, tourist numbers have tripled and prices have increased by more than 90 per cent. However, they assert that this success is equally a result of concerted efforts of producers and a variety of public agencies. In other words this paper presents an interesting example to learn how GIs can be used not only to protect the domestic agricultural sectors from foreign competition but also to improve the overall regional economy through a cooperative approach.

What's in a Name? : The Economics, Law and Politics of Geographical Indications for Foods and Beverages by Tim Josling, IIIS Discussion Paper No. 109, January 2006.

APART from the issues relating to the approximating diverse laws and regulations, the debates over the need and implications of GIs are centered mainly on two issues: protection of intellectual property rights and the anti-competition nature of GIs. The supporters of GIs see them as an important means to protect intellectual property. While those, who are against it argue that if a type of product traditionally associated with a geographical region can be successfully produced in other regions then GIs may function as anti-competitive protection and can also distort trade. The issue of providing accurate information to the consumer too is one of key points of debate over GIs. The author of this paper, Tim Josling, believes that though these conflicting opinions are the reasons behind the difficulties in current negotiations on agreeing a multilateral GIs registry, there is actually "much more at stake than the impact of GIs on trade gains and losses". In this paper he attempts to explore the "intertwined economic, legal and political aspects" of the GI debate.

According to Josling, the economics of GIs is different from that of other forms of intellectual property protection as it does not explicitly promote innovation by providing temporary monopoly rather it restricts the use of new inventions and protects the "reputation associated with a quality attribute linked to a geographical area". Thus the economic benefits of GIs are the ones resulting from the information provided to consumers to help them make their choices. This is not to say the GIs are relevant only from a consumer's point of view. The producers are also benefited from GIs in the sense that they are conferred some degree of market power through GIs. This, however, makes things complicated from consumer welfare point of view for market power may enable the producer to gain at the cost of consumers' welfare.

However, the essence of GIs is that the geographical place name indicates quality, taste or other related attributes to the consumer. Therefore, it needs to be ensured that such a correlation between quality and originating place exists. This would necessitate each situation to be explored individually making it a subject of public policy where enforcement of law and protection of GI is mainly the responsibility of the government.

The legal aspects of GIs arise primarily due to the fact that the protection of GIs takes place within the country of production and marketing, through the specific regulatory systems developed over time. If these systems are not equally developed in all countries then in the case of trade in GI products, the country having developed GI systems would enjoy a higher effective protection. In international trade negotiations/agreements, therefore, the place of GIs is determined by the political aspects. This holds even for two countries which have equally developed GI systems. But it is much more significant and critical from the developing countries' point of view when they negotiate with developed countries.

In order to explore the political aspects of GIs, Josling compares the GI systems in the EU and the US and also studies the development of GI discourse in international negotiations. He argues that EU and Switzerland have been the strongest supporters of inclusion of GIs in WTO negotiations because they have already been using such measures to protect their producers. He also examines the US-EU Wine Accord and the different policy positions taken by the EU and the US in multilateral negotiations. On the basis of his analysis he concludes that more than universal consumer welfare and promotion of competition, protection of the individual interests of each country has been the guiding principle for their policy decisions.

This article, however, is an important read not so much for its conclusions but for the hawk-eye view that it provides of the GIs debate and its development. Also the comparison of the EU and the US GI systems, their bilateral agreement and their policy positions in multilateral negotiations together with a number of specific examples of conflict and resolutions make it an useful read not only for the beginners in this area but also for the policy-makers and students. It offers a good overview of the issues and a substantially large set of information to think about.

Geographical Indications and the South Africa-European Union Free Trade Agreement

by Emily Crayen and Charles Mather, *Area*, Vol. 33(3), 2001, pp. 312-320.

GEOGRAPHICAL Indications, as a form of intellectual property, are becoming increasingly important in global trade. Crayen and Mather, in this article examine the South Africa-European Union Free Trade Agreement to explore the nature and implications of conflict over GIs. The importance of this study lies in the fact that during four years long negotiations that resulted in the Trade Development and Cooperation Agreement (TDCA) between South Africa and the EU, the debates over the use of names which indicate a source of origin of several wines and spirits resulted in situations where the entire agreement came to the brink of collapse. This shows the importance assigned to GIs, at least in this case if not universally, while negotiating international cooperation in trade.

The agreement between two parties consists of three bilateral agreements on Science & Technology, Fisheries, and Wines & Spirits and a free trade agreement. As a part of free trade agreement, both parties agreed to reduce customs duties substantially. During the negotiations over the Wines and Spirits bilateral agreement, the EU raised objections in 1998 over the names "port' and "sherry" used by South African producers. They argued that these were GIs and could only be used for fortified wines produced in Jerez in Spain and Duoro in Portugal. The South African negotiators didn't accept this logic arguing that these were the names of the wine-making processes and therefore could not be considered as GIs. This impasse ended with the intervention by the South African Minister of Trade and Industry. South Africa agreed to phase out the terms over a period of five years in export markets and twelve years in domestic market. In return the EU agreed to give a duty free quota of 32 million litres of wine to South African wine producers along with a guarantee of a grant of 15 million Euros to assist them in creating new brand names for products previously sold as port or sherry.

According to the authors, this objection by the EU was backed and pushed by Spain and Portugal. A similar objection was raised in 1999 by Greece and Italy to the use of the names "grappa" and "ouzo" by some South African farmers producing these spirits. The authors argue that considering that the production of these spirits by South African producers is very small and their export is almost negligible as compared to that of Spain, Portugal or Italy, these objections must be seen in the context of current debates on the protection of this form (GIs) of intellectual property at the WTO.

The GIs are protected under Articles 22 to 24 of the TRIPS agreement. These articles state the responsibility of state to protect a GI and list exemptions. The authors argue that as a whole, these articles can be described as a compromise between countries such as France demanding higher levels of protection for wine and countries like the US with less restrictive systems of identifying source of origin. It is argued that the growth and development of wine and spirit industry in the US and the EU has been closely dependent upon their respective GI systems therefore their different approaches towards GIs are due to the different requirements of the industry in domestic markets.

Both, the EU and the US (together with Japan) submitted their proposals of a "multilateral system of notification and registration for geographical indication" for wines and spirits to the WTO in 1997 and 1999, respectively. The US-Japan proposal was clearly a counter-proposal to that of the EU. Both proposals are similar in terms of participation and global administration but differ substantially on where and how GIs are protected and enforced. While the EU proposal suggests a binding multilateral register of GIs, the US-Japan proposal suggests that member countries "refer to the WTO's register" but the names should not be binding on domestic producers. It also suggests that the challenges must be made and resolved within the national regulations on intellectual property in the offender's country instead of WTO. The member countries are divided on these two proposals and consequently there hasn't been any substantial progress on the multilateral register.

According to the authors, the challenge faced by the TRIPS Council in establishing consensus on a multilateral register protecting GIs for wines is similar to the problems faced by South Africa in reaching consensus over the Wine and Spirits accord with the EU. They argue that due to the absence of an effective multilateral register protecting its GIs, the EU has used bilateral trade agreements to protect them. And in most cases it has been successful in extracting concessions from the small wine-producer countries wherein they have given up terms that have been used in domestic markets for decades. So South Africa is not the lone case of this sort. The authors conclude their analysis by hinting at the need of an effective multilateral register protecting GIs to safeguard the interests of weaker and smaller countries entering into any sort of bilateral trade agreement with the EU.

The Debate on Geographical Indications in the WTO by Carsten Fink and Keith Maskus, http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/16.TheDebate.pdf

THE Geographical Indications (GIs) are a form of intellectual property rights protection, yet the divide among the countries in WTO negotiations on GIs does not follow the typical North-South pattern. This article examines the nature of this divide by looking at the discussions on GIs that took place during the Doha round. It also locates the broader economic context of these discussions.

The article begins with defining GIs and argues that generally GIs are the "signs that link a product" to a particular "region's inherent characteristics" such as soil attributes, climatic conditions. However, these peculiar characteristics of that region may also include "certain manufacturing skills or production processes that are associated with a particular place". The economic rationale for the GIs arises from the resulting quality differences due to such regional peculiarities. The main purpose that GIs serve is to fill in for the lack of information about the qualities of a product and reduce the cost that a consumer has to incur in searching for those qualities. The authors argue that by providing a signal to potential buyers, GIs can lower these costs and "make markets more efficient". They assert that the "signaling function of GIs is (more) valuable" in international trade because "informational problems are likely to be more pronounced when producers and consumers are located in different countries". The article also clarifies the difference between trademark and GIs as a trademark is owned by a particular firm while GI is a property shared by several firms. Also, unlike GIs, trademarks are not associated with geographical locations.

By referring to several studies, the authors argue that the consumers are found to be generally willing to pay more for a GI protected product. This enables a producer of one region to sell a product at a higher price as compared to a producer from a different region. Thus, protection of GIs is also a protection of market for the firms of a particular region which is the source of conflict among the countries. According to the authors, international conflicts over the protection of GIs arise because the policy-makers of different countries adopt different approaches to protection. For example, the EU, which provides strong GI protections view weaker standards of protection abroad as a barrier to their exports as they may generate confusion among the consumers which may cause unwarranted competition. In the case of Singapore's weaker GI rules, the EU members argue, the European producers face competition from American producers using semi-generic expressions. The authors argue that it is to resolve such conflicts that various international agreements for the protection of GIs have emerged over time. For example, the EU and the US signed an Agreement on Trade in Wines in September 2005 to settle the disputes on wine names and wine making practices. The US agreed to seek legislative changes to "limit the use" of 17 generic names and the EU, in return agreed to recognize US wine-making practices which would facilitate access of US wine producers to the European market.

In the context of the WTO, the authors discuss the debates that took place in the Doha round of negotiations. According to them, the debate over GIs in WTO is centered on three points — the establishment of a multilateral system of registration for GIs, the extension of protection to products other than wines and spirits, and the protection of product names currently used by non-original producers (the "claw-back" of GIs). Here, they compare the positions on these three points taken by countries that demand a strong GI system with that of the countries that support a lenient GI system.

On the basis of their comparison they argue that the creation of a multilateral GI register is the least controversial issue as the participation in it is voluntary. However, what remains is the arrival at a consensus on certain features of the registration system. The two critical features of dispute are the scope of coverage (range of products) and Legal implications of registered GIs (whether national legislation should be applicable or a global code at WTO; how to address the conflict with a non-participating country). On the issue of extension of protection to products other than wine, the debate is centered on the equal protection to producers of all kind of products and improvement of consumer choice. Those countries supporting extension, mostly developing countries like India, Kenya, Pakistan and Thailand, argue that the current system discriminates against countries that are not significant producers of wines and spirits but that possess valuable GIs on other products. The opponents of extension contend that certain uses of GIs by non-original producers can improve consumer choice, as long as the true origin of products is made clear. Also, in many cases, production methods and product names were brought in by immigrants decades ago, therefore they are entitled to use their original geographical names.

The third point of debate i.e. the "claw-back" of GIs is the most controversial point of discussions. This refers to a list put by the EU in 2003 in the Doha round of negotiations. The EU wants to prohibit the use of listed names by non-original producers. The controversy is due to two reasons: *first*, many of the names on the list don't enjoy GI protection in some countries as they are considered to be generic terms falling under the common-language exception of the TRIPS agreement, and *second*, the EU put forward this list in the Doha Development Agenda's agricultural negotiations instead of putting it in the TRIPS Council – the formal WTO forum responsible for trade related intellectual property issues. Moreover, if the list is accepted then it would imply new obligations even for those countries that have entered into bilateral agreements on wines and spirits with the EU.

The authors conclude their discussion by saying that from an economic perspective the EU, and countries which have advanced GI systems are to benefit from a global GI system. Developing countries may also benefit from GIs but that requires complementary efforts to identify valuable GIs and to build an international reputation for them. A global GIs system, however, involves substantial adjustment costs which are yet uncertain. The protection from the misuse (usurpation) of GIs too is an aspect that needs to be addressed regardless of what emerges from the GI discussions at WTO.

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agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of goods concerned takes place in such territory, region or locality, as the case may be".

India's perspective in WTO regime is to harmonize with national interest and international obligation. But no compromise should be at the cost of public interest. Areas like pharmaceuticals, agro-chemical products should be taken into consideration while changing Indian law as regards to patent. On the international front India should raise its stand to endeavor to curb the exploitative aspects in international patent regime. The geographical indications should also be effectively implemented and efforts should be made at international level to stop abuse of geographical indications.

(www.legalserviceIndia.com)

DOCUMENTS

Ministry of Commerce & Industry

28 Products Registered as Geographical Indications

Darjeeling tea is among the 28 Indian products registered with the Geographical Indications (GI) Registry. (Darjeeling tea has been registered twice in the GI Registry).

The other products are: Pochampally Ikat (Andhra Pradesh); Chanderi Saree (Guna, Madhya Pradesh); Kotpad Handloom fabric (Koraput, Orissa); Kota Doria (Kota, Rajasthan); Kancheepuram silk (Tamil Nadu); Bhavani Jamakkalam (Erode, Tamil Nadu); Mysore Agarbathi (Mysore, Karnataka); Aranmula Kannadi (Kerala); Salem fabric (Tamil Nadu); Solapur terry towel (Maharashtra); Mysore silk (Karnataka); Kullu shawl (Himachal Pradesh); Madurai Sungudi (Tamil Nadu); Kangra tea (Himachal Pradesh); Coorg Orange (Karnataka); Mysore betel leaf (Karnataka); Nanjanagud banana (Karnataka); Mysore sandalwood oil (Karnataka); Mysore sandal soap (Karnataka); Bidriware (Karnataka); Channapatna toys & dolls (Karnataka); Coimbatore wet grinder (Tamil Nadu); Mysore rosewood inlay (Karnataka); Kasuti embroidery (Karnataka); Mysore traditional paintings (Karnataka) and Orissa Ikat (Orissa).

A Geographical Indications Registry with all India jurisdiction operates in Chennai, as per the Geographical Indication of Goods (Registration and Protection) Act 1999. Under the Act, agricultural, natural or manufactured goods originating or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in cases where such goods are manufactured goods, one of the activities of either production or of processing or preparation of the goods concerned takes place in such territory, region or locality, are registrable as Geographical Indications. Whether a particular product is registrable or not is determined by the Registrar of Geographical Indications, on receipt of the application.

Geographical Indications registration gives to the registered proprietor and its authorized users, the legal right to the exclusive use of the GI and also the right to obtain relief in case of its infringement. Exclusion of unauthorized persons from misusing GI would ensure that genuine products of the rightful producers are marketed.

(*PIB Release*, Government of India, 9 November 2006)

Council for Trade-Related Aspects of Intellectual Property Rights
Special Session

Proposed Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits

Submission by Argentina, Australia, Canada, Chile, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, New Zealand, Chinese Taipei and the United States

The following submission, dated 9 March 2005, from the Delegations of Argentina, Australia, Canada, Chile, Ecuador, Mexico, New Zealand and the United States was circulated as an advance copy to the Special Session of the Council for TRIPS at its meeting of 11 March 2005. At that meeting, the Delegations of Dominican Republic, El Salvador, Honduras and Chinese Taipei requested that their names be added as co-sponsors.

Further to the Joint Proposal (TN/IP/W/5, 23 October 2002) and the Question and Answer Communication on the Joint Proposal (TN/IP/W/9, 13 April 2004), the following draft TRIPS Council Decision sets out in draft legal form a means by which WTO Members could implement the mandate from TRIPS Article 23.4 and Paragraph 18 of the Doha Ministerial Declaration. In that light, this text proposes the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits that facilitates the protection of wines and spirits GIs through a system that is voluntary, that preserves the existing balance of rights and obligations in the TRIPS Agreement, that preserves the territoriality of intellectual property rights for geographical indications, and that allows WTO Members to continue to determine for themselves the appropriate method of implementing the provisions of the TRIPS Agreement within their own legal system and practice.

The Council for Trade-Related Aspects of Intellectual Property Rights ("the Council for TRIPS")

Having regard to paragraph 4 of Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), which provides that "in order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system";

Having regard to paragraph 18 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), which states that "with a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we [Ministers] agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference";

Noting that the purpose of the multilateral system of notification and registration of geographical indications for wines and spirits shall be to facilitate the protection of these geographical indications, consistent with Part II, Section 3 of the TRIPS Agreement;

Noting that the system shall not confer any rights with respect to the geographical indications registered in the system;

Noting that the system shall not prejudice any rights or obligations of a Member under the TRIPS Agreement;

Recognizing that, as provided for in paragraph 1 of Article 1 of the TRIPS Agreement, each Member is free to determine the appropriate method of implementing the provisions of that Agreement within its own legal system and practice, and that systems for protecting geographical indications include: trademark law, including collective, guarantee or certification marks, specific protection systems for geographical indications, and other relevant laws such as those pertaining to unfair competition and consumer protection.

Decides as follows:

1. Establishment of the System

A multilateral system for the notification and registration of geographical indications for wines and spirits ("the System") is hereby established.

2. Participation

2.1 In accordance with paragraph 4 of Article 23 of the TRIPS Agreement, participation in the System established in this Decision is strictly voluntary, and no Member shall be required to participate.

2.2 In order to participate in the System, a Member shall make a written notification to the WTO Secretariat of its intention to participate.

3. Notification

3.1 Each Participating Member may notify to the WTO any geographical indication that identifies a wine or a spirit originating in that Member's territory.

3.2 The notification shall:

(a) identify the notifying Member;

(b) identify the geographical indication as it appears on wine or spirit goods in the territory of the notifying Member;

(c) identify the territory, region or locality of the notifying Member from which the wine or spirit bearing the notified geographical indication is identified as originating;

(d) when the geographical indication is in characters other than Latin characters, include, for information purposes only, a transliteration into Latin characters of the geographical indication using the phonetics of the language in which the notification is made ("transliteration"); and

(e) specify whether the indication refers to a wine or spirit.

3.3 The notification may also include:

(a) information concerning the date on which the geographical indication received protection in the territory of the notifying Member and the date, if any, on which protection will expire; and

(b) information concerning how the notified geographical indication is protected in the territory of the notifying Member.

3.4 The notifications of each geographical indication shall be made on the basis of a standard form to be adopted by the TRIPS Council prior to the entry into operation of the System.

4. Registration on the Database

4.1 The WTO Secretariat shall, following receipt of the notification, register the notified geographical indication on the Database of Geographical Indications for Wines and Spirits ("the Database").

4.2 The registration of a geographical indication on the Database shall consist of the recording of the information provided under paragraph 3.2.

4.3 The Database shall be searchable on-line, free of charge, accessible to all WTO Members and the public, and provide a means to access the original notifications.

4.4 With the exception of each notified geographical indication itself and, as applicable, its transliteration, the Database shall be available in all three WTO languages.

5. Procedures to be Followed by Participating Members

Each Participating Member commits to ensure that its procedures include the provision to consult the Database when making decisions regarding registration and protection of trademarks and geographical indications for wines and spirits in accordance with its domestic law.

6. Access for Other Members

Members who choose not to participate are encouraged, but are not obliged, to consult the Database in making decisions under their domestic law involving registration or protection of trademarks and geographical indications for wines and spirits.

7. Modifications of Notifications and Registrations of Geographical Indications

Each Participating Member may, at any time, submit to the WTO amended notifications of geographical indications. The provisions of paragraphs 3 to 5 above shall apply to amended notifications.

8. Withdrawals of Geographical Indications

8.1 Each Participating Member may, at any time, withdraw a notification it has made earlier of a geographical indication. Any withdrawal shall be notified to the WTO Secretariat in writing.

8.2 The previously-registered geographical indication for which the notification of withdrawal was made shall thereupon be removed from the Database.

9. Termination of Participation

A Member may also terminate, at any time, its participation in the System. Any termination shall be notified to the WTO Secretariat in writing. Once a Member has terminated its participation in the System, all geographical indications previously notified by that Member shall be removed from the Database.

10. Contact Point

Each Participating Member shall notify to the WTO a contact point, from which further information on geographical indications notified by that Member can be obtained. The WTO Secretariat shall publish the contact points in the Database.

11. Date of Entry into Operation

(www.wto.org TN/IP/W/10, 1 April 2005)

Council for Trade-Related Aspects of Intellectual Property Rights

Work on Issues Relevant to the Protection of Geographical Indications

INDIA'S SUBMISSIONS IN WTO

REVISION

Extension of the protection of geographical indications for wines and spirits to geographical indications for other products

I. Introduction

In their communication which was circulated in document IP/C/W/289, Argentina, Australia, Canada, Chile, Guatemala, New Zealand, Paraguay and the United States present their views on the extension of the protection of geographical indications for wines and spirits to geographical indications for other products. They point out potential consequences which they fear could result from such an extension.

Document IP/C/W/289 raises three concerns in particular to which the communication in question would like to respond. These are:

potential costs to Members resulting from extending the protection of geographical indications for wines and spirits to other products;

potential effects on consumers; and

potential effects on trade.

The purpose of the present communication is to show that the concerns contained in document IP/C/W/289 are unfounded and that the arguments put forward against extension are not valid. It is important to demonstrate and reiterate that such an extension of protection would benefit all Members, trade and consumers.

II. Potential Costs of Extending Protection

The Members co-sponsoring the communication circulated as document IP/C/W/289 consider that extending the protection of geographical indications for wines and spirits to geographical indications for other products would necessitate the introduction of new administrative mechanisms, entailing costs for those Members that do not already provide for additional protection for products other than wines and spirits. The argument is put forward that this financial and administrative burden would outweigh the benefit of more effective protection of geographical indications for other products on an equal footing with those for wines and spirits.

It is difficult to follow this line of reasoning. In accordance with Article 23 of the TRIPS Agreement, Members (least-developed country Members excepted in accordance with Article 66.1 of the TRIPS Agreement), whether producers of wines and spirits or not, are already required to grant additional protection to geographical indications for wines and spirits as well as protection for geographical indications for other products in accordance with Article 22. Extension therefore does not imply the setting up of any new mechanism or scheme of protection, but would merely extend the level of protection required by Article 23 of the TRIPS Agreement for geographical indications for wines and spirits to geographical indications for other products. Thus, as for other intellectual property rights such as patents, trademarks or copyright, the TRIPS Agreement would provide for a more coherent and transparent solution for the protection of geographical indications.

According to Article 1.1 of the TRIPS Agreement, Members are free to determine the appropriate method of implementing the TRIPS obligation within their own legal system and practice. Therefore, the protection system or mechanism chosen by Members to implement Article 23 of the TRIPS Agreement in respect of geographical indications for wines and spirits could also be used to grant the protection of Article 23 of the TRIPS Agreement to geographical indications for other products. Some Members may have chosen to establish a national register for geographical indications in order to grant protection in accordance with Article 23. While this can prove to be an effective option for implementing obligations under Article 23 and facilitate protection, it is by no means the only one or a prerequisite.

Document IP/C/W/289 itself confirms on page 4, paragraph 5, that "*Members' governments are not themselves directly obliged under Article 23 to enforce protection for geographical indications, but simply to ensure that the legal means to do so are available. Therefore, even under Article 23 producers wishing to enforce protection of a certain geographical indication would do so via recourse to the available legal and/or administrative mechanisms...*".

In this context, it is worth recalling the essential difference between the protection provided by Article 22 and that required by Article 23. Unlike Article 22, Article 23 does not require evidence of the public being misled or the presence of an act of unfair competition in order to prevent the use of a geographical indication in respect of a product from a place other than the indicated region. Further, the use of accompanying expressions such as "style", "type", "kind", "imitation" or the like are prohibited, and protection is also provided when the indication is used in translated form.

Extending this protection would therefore not involve the creation of a new protection mechanism, but would simply mean that a geographical indication could only be used for products actually originating from the place indicated by the geographical indication. It would mean that the appreciation of whether or not the use of a geographical indication was lawful would no longer have to be based on the additional conditions of misleading the public or the presence of an act of unfair competition. The question would be decided on the basis of objective, foreseeable criteria (namely the correct or incorrect use of a geographical indication, i.e. whether the product does actually originate from the place as indicated by the geographical indication used on that product) for geographical indications of all products alike.

To rely on the consumer (referred to as "the public" in the Agreement) in order to determine whether or not the use of a geographical indication is misleading or constitutes an act of unfair competition and making protection dependent on this is not adequate and effective protection of an intellectual property right. To take public opinion as the decisive criterion in granting protection results in unpredictable and uncertain protection, dependent on time and place. Such protection can lead to arbitrary decisions. This uncertainty and lack of transparency can be removed by extending the protection offered by Article 23 for geographical indications for wines and spirits to geographical indications for other products.

When looking at the cost issue, it is important to emphasize that if protection were to be extended, those entitled to prosecute the misuse of a geographical indication would no longer have to establish time-consuming and costly legal proof that by the use of the geographical indications the public is actually misled as to the true origin of the good or that such use constitutes an act of unfair competition. As with geographical indications for wines and spirits today, the authorities would simply have to examine whether the product actually originates from the place indicated by the geographical indication. This would clearly facilitate the procedures of enforcing the protection of geographical indications and result in a reduction of the workload of judicial and administrative authorities as well as cost advantages for the enforcement of geographical indications against misuse in general. This would more than offset any costs that might be incurred by extension.

III. Potential Implications of Extension for Consumers

Document IP/C/W/289 raises the concern that extension could imply search and transaction costs resulting from consumer confusion caused by the need to re-name and re-label products as well as by the disappearance of terms customarily used to identify products.

This reasoning is flawed. Geographical indications serve to identify 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 indication. Thus, geographical indications are to help consumers identify the true origin of a product they want to purchase and to prevent situations where consumers are misled as to the true geographical origin or the characteristics of the product.

By extending the additional protection of Article 23.1 of the TRIPS Agreement to include geographical indications for products other than wines and spirits and by prohibiting the false use of geographical indications in translations or accompanied by expressions such as "kind", "type", "style", "imitation" and the like, consumers are enabled to clearly and quickly determine whether the product they want to purchase does in fact originate from the territory referred to by the geographical indication as well as whether that product will actually have the qualities, reputation and other characteristics that are essentially attributable to its geographical origin. Consumers will no longer be influenced in their choice by the use of geographical indications in combination with a de-localizing indication for products which try to free-ride upon the reputation of a geographical indication and the efforts and achievements of those to whom the geographical indication owes its reputation. Consumers are entitled to a real choice based on correct, distinctive indications. The use of indications such as "Carolina rice, made in India" should be just as illegitimate as "Napa Valley wine, produced in Bulgaria". With the extension of the protection of Article 23.1 to include geographical indications for products other than wines and spirits, such use of correctives would no longer be allowed and this would help prevent consumer confusion.

The concern expressed in document IP/C/W/289 that extension could lead to the need to re-label products and even result in the disappearance of terms customarily used to identify products, thereby confusing consumers, is not substantiated. The exceptions provided for in Article 24 of the TRIPS Agreement mean that indications which have been used in good faith and in a customary manner over some time and for specific products will not have to be abandoned. If protection were extended, markets would not be closed to such products and they would not need to be re-labelled.

These exceptions are proof that the TRIPS Agreement provides for flexibility, takes into account the interests of the various parties with an interest in the protection of geographical indications, and offers balanced solutions for extending protection.

Apart from the cases falling under the exceptions referred to in Article 24, it seems only legitimate to stop the continued use of geographical indications that do not reflect the true origin of a product. This would stop producers from free-riding on the reputation of others and protect geographical indications from the risk of becoming generic terms. It is difficult to understand any other line of argument, and questionable whether it would be advocated by the opponents of extension in relation to other sections of the TRIPS Agreement and areas of intellectual property rights.

One of the key reasons for advocating extension is a desire to prevent more geographical indications from becoming generic through their use in translated form or by the use of a corrective or de-localizing indication for products which are not from the place of origin mentioned by the geographical indication used or do not possess the particularities and quality characteristics owed to that origin. In document IP/C/W/289 it is maintained that such use and the fair imitation of a product often enhances the intrinsic value of a geographical indication or the genuine product. This reasoning is rejected. Again, such a line of argument seems to lead to dangerous waters when applied to other fields of intellectual property rights. There is no valid argument why it should be different for geographical indications. The example of "feta" cheese cited in document IP/C/W/289 may serve as an example of the potential danger of a famous geographical indication becoming a generic if it is widely used with a de-localizing indication.

IV. Potential Effects of Extension on Trade

Document IP/C/W/289 points out that extension and the more effective protection of geographical indications resulting from it might have negative implications on trade. The argument set forth runs that certain industries, in particular those where the use of geographical indications is particularly relevant, such as dairy and food processing industries, could find access to lucrative trade opportunities in new and emerging markets closed to their products, or would incur costs due to the need to re-name or re-label their products.

As already pointed out, Article 24 of the TRIPS Agreement provides for exceptions to the protection of geographical indications which take due account of the need to balance the interests of the various parties that have an interest in the protection of geographical indications. However, the use of a geographical indication for products not from the place of origin indicated and not qualifying for one of the exceptions in Article 24 should be prevented. Otherwise, free-riding is encouraged.

Geographical indications are a form of intellectual property like patents, trademarks or copyright and the prevention of their misuse is legitimate. It is the "*raison d'être*" of the intellectual property rights system to protect such property effectively and to prevent free-riding, usurpation or misuse.

Equally, the reproach that the protection of geographical indications would restrict trade could be applied to other intellectual property rights as well. The question is simply what kind of trade is being referred to, and is it not legitimate to restrict trade which free-rides on the efforts and success worked for by others?

Quality products or products with distinctive, sought-after characteristics will always make a name for themselves and be a success on the market. But their reputation should be based on the intrinsic qualities they derive from their proper geographical origin and not free-ride on the achievements of others.

The concern that geographical indications could be used as a protectionist instrument to restrict trade, whether in agriculture or any other area, is unfounded. The provisions of the WTO Agreement are there to prevent this happening. If the protection of geographical indications for wines and spirits is extended to other products, goods will continue to circulate freely, ensuring to both producers and consumers that the geographical indication on a product does indeed correspond to the place of origin of the product.

V. Conclusion

It is the purpose of the present paper to respond to the main concerns and issues raised in document IP/C/W/289 in respect of extension:

- The cost of extension, if any, would be more than offset by the benefits of more effective protection of geographical indications in world trade.
- Extension does not require the establishment of a new legal or administrative protection regime such as a register, but merely an extension of the scope of the protection Members already have to provide under Article 23 of the TRIPS Agreement for geographical indications for wines and spirits to those for other products. The cost factor is therefore not a valid argument against extension.
- Extension facilitates the protection and enforcement of geographical indications, since the misleading test and/or the proof of a case of unfair competition would no longer have to be established. A simple examination as to whether the product actually originates from the place indicated by the geographical indication used with that product would suffice, just as for wines and spirits. Extension therefore brings cost savings for judicial and administrative authorities as well as for those entitled to the use of a geographical indication and interested in the enforcement of their right against misuse.
- The purpose of extension is not to benefit those Members with a large number of geographical indications at the expense of those with few. The aim is to achieve a level playing field in the TRIPS Agreement for all geographical indications, enabling all Members and their products to benefit from the additional, more effective protection.
- Extension would prevent further geographical indications from becoming generic through misuse of such indications in translations or with de-localisators. Considering the exceptions from protection as contained in Article 24, extension is of particular interest and benefit to those Members who start to make use of and intend to develop their geographical indications as a marketing tool for their products in the future.
- The reasons why the protection currently provided for geographical indications for products other than wines and spirits is insufficient, why additional protection provides more effective protection and what benefits Members would gain from extension are addressed in detail in document IP/C/W/247/Rev.1.

In conclusion, it is recalled that extending the protection of geographical indications for wines and spirits to include geographical indications for other products would benefit all Members. It is of particular importance for Members in view of increasingly intense international trade. Efforts put into the reputation of a geographical indication and its intrinsic qualities deserve to be effectively protected. This can offer Members and their products new opportunities in a competitive global market, other than just the benefit of economies of scale. The more free trade is, the more important the protection of geographical indications becomes.

(http://commerce.nic.in IP/C/W/308/Rev.1, 2 October 2001)

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