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## From the Director's Desk



K.T. Chacko

EVER since the TRIPS Agreement of the WTO recognized Geographical Indications as a form of Intellectual Property Rights with a major role in trade between countries, commercial significance of GIs has been increasing. This is not to say that GIs were insignificant in trade earlier. Quite to the contrary, the immense revenue potential of GIs necessitated their cross-border protection and

thus were included in the ambit of the TRIPS Agreement.

Article 22 of the Agreement provides for a general level of cross-border protection of GIs in the course of trade. It is interesting to note that a special provision was made under Article 23 of the TRIPS Agreement for protection of GIs in the form of wines and spirits. The major *demandeurs* of this kind of protection were the European countries with their very long tradition in making of wines and spirits. This special treatment to wines and spirits appears to be developed country-centric. Developing countries, including India, have raised this issue in the on-going Doha Round at the WTO. They seek the same higher level of protection for all GIs as was given under Article 23 for Wines and Spirits.

Many handicraft products such as *Kanjevaram* silk sarees, *Pochampali* Ikat, *Chanderi* fabrics, *Madhubani* paintings, *Mysore* Jasmine, *Bidri* metalworks, etc. have been registered as GIs in India. Many food products and agricultural products also registered. In fact, six foreign products have also been registered as GIs in India. Today, more than 170 Indian products have been recognized as GIs in India. Evidently, the potential is immense.

It needs emphasizing that the benefits of the registration of product as GI is actually realized only when these products are effectively marketed and protected against illegal copying. Effective marketing and protection requires quality assurance, brand creation, post-sale consumer feedback and support, prosecuting unauthorized copiers, etc. Thus, the registration is only the first step in creation of a market for the GI. Further, this protection first gains significance in the domestic context before international protection becomes relevant. However, for internationally recognized products like Darjeeling Tea, which has an expansive export market, international protection is of crucial importance, too.

There is a direct link between the cultural diversity that exists in India with its varied peoples, traditions and flavours on the one hand and the legal protection as GIs that the products of cultural activity can have on the other. There is also a link to local communities, in towns and villages, which possess traditional knowledge of making these products, which in themselves, many a time, are part of their traditional cultural expressions. Thus, legal protection to GIs also extends to protection of traditional knowledge and traditional cultural expression contained in the products as well. In doing so, not only are livelihoods protected but also possibilities of employment generation are encouraged. In fact, owing to the premium prices that many GIs command today, there is possibility of preserving many traditional skills.

# Unsettled WTO Debates on Geographical Indications

Kasturi Das\*

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*Geographical Indications (GIs) have been the focus of debate between developed and developing countries in bilateral as well as multilateral negotiations. The issue has currently occupied the centre stage as it deeply concerns the intellectual property rights (IPR) in a major way for developing economies. This paper makes an attempt to examine the issue in detail, related policy implications and options in terms of specifications and scope, priority rights, etc. It takes into account the complexity attached to the area and suggests measures for the developing countries to negotiate in an effective and meaningful manner at the multilateral fora.*

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THE term “Geographical Indication” (GI) entered the terminology of international intellectual property (IP) law by way of its inclusion in the World Trade Organization (WTO) Agreement on Trade-related Aspects of Intellectual Property Rights (henceforth TRIPS). TRIPS defines GI as an 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. 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. The protection of GIs has, over the years, emerged as one of the most contentious IP issues in the realm of TRIPS. Interestingly, while the Uruguay Round (1986-94) negotiations were witness to a major North-South division regarding the inclusion of IP issues in the agenda, GIs was the only issue on which there was a significant North-North divide all through. While the European Union (EU) – then called European Communities – was aggressively pushing for a fool-proof protection for GIs, particularly for those pertaining to wines and spirits, the United States (US) was strictly opposed to even recognizing GIs as a separate category of IP, vouching instead for its inclusion only as a part of

the trademarks field. Divisions also existed among other developed countries and among developing countries, exacerbating the difficulties of the negotiations further. The eventual framework of the TRIPS provisions on GIs reflected a very sensitive compromise reached during the Uruguay Round in which a higher level of protection was granted for wines and spirits<sup>1</sup> compared to all other categories of GIs, ostensibly for the political reason of persuading the EU to join consensus on the Uruguay Round package, despite strong opposition on the part of many other countries. The higher protection for wines and spirits, however, was subject to certain prior use exceptions (under Article 24) that were granted clearly to take care of the concerns raised by the US and Australia, among others, at least to an extent. The final text of the Agreement also left room for future negotiations clearly reflecting the difficulties encountered during the Uruguay Round in arriving at an agreed outcome on some of the important issues.

In the post-Uruguay Round period, negotiations on GIs have focused on two hotly-debated issues: extension of the higher level of protection presently accorded to wines and spirits to all other categories of GIs (hereinafter “extension”); and

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creation of a multilateral system of notification and registration of GIs for wines and spirits (hereinafter “multilateral register”). These two issues form parts of the three IP issues on the table in the long-stalled Doha negotiations – the third one being the relationship between TRIPS and the Convention on Biological Diversity (CBD). This time around also the traditional opponents of a strong GI regime like the US, Australia, Canada, among others, are leaving no stones unturned to deter the EU from fulfilling its objective. A striking feature of the GIs debates in this Round, particularly on extension, is that one can find developing countries joining forces with developed countries either as demandeurs or opponents, depending on their respective stakes in GIs. India, for instance, has emerged as a leading demandeur on the extension issue. This is not surprising in view of the fact that India has had in its possession numerous products that could potentially qualify as GIs – many of which have already been protected legally under “The Geographical Indications of Goods (Registration & Protection) Act, 1999” (GI Act), which came into force with effect from 15 September 2003. This *sui generis* system of GI protection was put in place as part of the exercise to set in place national IP laws in compliance with India’s obligations under TRIPS. Till March 2012, 172 GIs (including eight foreign GIs) have been registered with the GI Registry in Chennai. A striking feature of Indian GIs is the variety of product categories to which they

belong. These include textiles, handicrafts, paintings, agricultural products, horticultural products and beverages, among others. This is in sharp contrast with the European scenario, where GIs predominantly relate to wines and spirits, or other food and agricultural products. The EU has in its possession some 4,800 registered GIs – 4,200 for wines and spirits and another 600 for other categories, mainly food products.<sup>2</sup>

### Economic Rationale for GI Protection

Not much economic research has been undertaken that directly deals with GIs. However, trademarks and GIs share a common economic rationale for their protection based on the “information asymmetry” between buyers and sellers in the market and role of reputation, conveyed through distinctive signs, in tackling such asymmetry.<sup>3</sup> “Information asymmetry” is a situation where before purchasing the good, no buyer can accurately assess the value of the product through examination, whereas sellers can assess the value of the product more accurately prior to sale. From consumers’ point of view, GIs act as a signaling device linking a product, its particular quality/characteristics/reputation, and its area of geographical origin. GIs are understood by consumers to denote the origin and the quality of products.<sup>4</sup> 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 EU in 1999, for instance, found that 40 per cent of consumers would pay a 10 per cent premium for origin-guaranteed products.<sup>5</sup> Econometric models employing the hedonic pricing techniques also support the willingness to pay more for GI products. Although GI as a concept is still at its infancy in India, a study conducted by the UNCTAD India Programme has revealed that in case of agricultural products the premium in India could be in the range of 10-15 per cent, whereas in case of non-agricultural products it could be 5-10 per cent.<sup>6</sup> 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.<sup>7</sup> False use of GIs by unauthorized parties is detrimental to consumers and legitimate producers. The former are deceived and led into believing to buy a genuine product with specific qualities and characteristics, while they in fact get an imitation. The latter suffer damage because valuable business is taken away from them and the established reputation for their products is damaged.<sup>8</sup> For instance, notwithstanding the multi-pronged initiatives undertaken on the part of the Tea Board towards ensuring adequate legal shield for “Darjeeling” in India and abroad, on an average around 40 million kg. of tea per annum is being sold

globally as “Darjeeling tea”, whereas the actual production of authentic Darjeeling tea hovers around nine million kg. only.<sup>9</sup> Instances of misuse from within and outside the country are galore for Indian handicrafts and handloom products, posing serious threats to their survival. For instance, Chinese imitations of famous “Banarasi” sarees, which is already a registered GI in India, are flooding the Indian market over the past several years. These powerloom-made imitations cost only a fraction of the price of an original “Banarasi” saree, thereby posing tough competition. This forced a large section of weavers and their families in Varanasi to look for alternative means of livelihood, often in menial jobs. In the case of “Kashmir Pashmina” (shawls), already a registered GI in India, threats come from powerloom-made substitutes such as, semi-pashmina, silk-pashmina and various other categories of woolen shawls produced within India as well as in Nepal or China that are often passed off as original Pashmina in the global market, where there is a huge demand for these high-end shawls. The legal protection of GI assumes enormous significance in this context.

### Extension

At the international level, TRIPS sets out the minimum standards of protection that the 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 stipulates a hierarchical system of protection in which a basic protection is granted for all GIs under Article 22 whereas an additional protection is afforded to GIs designating wines and spirits under Article 23. In respect of wines and spirits, the use of GIs is to be prohibited *per se*, without the need to apply the test of deception. Thus, the GIs pertaining to wines/spirits cannot be allowed to be used on the same category of products even if the true origin of the product is indicated, or the GI is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like. Similarly, registration of trademarks containing or consisting of a GI has to be refused in respect of goods not originating in the territory indicated. A crucial point of difference in the hierarchical protection is that there is no requirement for proving deception or “unfair competition” in the case of wines and spirits. By way of an illustration, under the higher standards applicable to wines and spirits it would not be permissible to allow Indian manufacturers to label sparkling wines produced anywhere in India as “Indian Champagne”. A requirement for proving deception is not a prerequisite for the right holder to counter misuse of the GIs associated with wines and spirits. On the other hand, under the basic standard of protection (applicable to all other categories of goods) a right

holder of a GI may find it difficult to pass the “misleading test” if the good allegedly misusing the GI contains information about its true geographical origin on its label. For instance, a producer not belonging to Switzerland may use the GI “Swiss-made” prominently on the face of a watch, and engrave the true origin somewhere on the back of it in a rather illegible manner. While doing so may actually allow the producer to free-ride on the renown of a prominent GI, chances are there that s/he can get away from any legal action against such an unscrupulous business practice by claiming that such an use is not misleading the consumer, since the true place of origin is mentioned on the back of the watch. 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 room for legal uncertainty.<sup>10</sup> 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 as mentioned before.

It is the aforesaid differences in the standards of protection

available for wines and spirits GIs on the one hand and all other GIs on the other that the proponents of extension (such as, India, the EU, Bulgaria, China, the Czech Republic, Hungary, Liechtenstein, Kenya, Mauritius, Nigeria, Pakistan, the Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand and Turkey) wish to do away with by extending the ambit of Article 23 to cover all categories of goods. However, countries like the US, Australia, New Zealand, Canada, Argentina, Chile, Guatemala, Uruguay are strongly opposed to extension. The opponents argue that the perceived insufficiency of protection afforded under Article 22 is largely due to the failure of the WTO Members to implement fully and appropriately its existing obligations. The opponents are apprehensive of the possible impacts of extension on producers who do not belong to the geographical region designated by a GI, but have been using the GI concerned. Such producers, they argue, might face considerable adjustment and other costs and burdens, including the marketing costs associated with developing substitute terms, changing current packaging and labelling, generating consumer awareness, among others.

The issue of "extension" was a part of the discussions in Doha Ministerial held in November 2001. In particular, Paragraph 18 of the Doha Ministerial Declaration (DMD) notes that the issue will be addressed in the Council for TRIPS pursuant to Paragraph 12 of DMD. Notably, Paragraph 12 of the DMD declares that the negotiations on

"outstanding implementation issues" shall be an integral part of the Doha Work Programme. It further states that (a) those implementation issues, on which the DMD provides a specific negotiating mandate, shall be addressed under that mandate, whereas, (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee (TNC) by the end of 2002 for appropriate action. Members have different views on the interpretation of this paragraph with regard to the issue of "extension": proponents of extension have advanced that there is a clear "mandate" to launch negotiations, while opponents claimed that there is no mandate in the DMD to negotiate any extension.

Paragraph 39 of the Hong Kong Ministerial Declaration (HKMD) requested the WTO Director General (DG) to intensify his consultative process on the issue of "extension". It further stipulated that the General Council should review progress and take any appropriate action no later than 31 July 2006. This deadline could not obviously be met. However, for several years, Deputy DG had been consulting on behalf of the DG on the issue of extension as well as TRIPS/CBD pursuant to the mandate relating to outstanding implementation issues in Paragraph 39 of HKMD. Proponents of each of these issues call for amending TRIPS for addressing their respective concerns.

Underlying the negotiations on TRIPS/CBD is an attempt by developing countries, with India as a frontrunner, to address the problem of biopiracy and misappropriation of traditional knowledge (TK). Developing countries have argued that while the patent regime introduced by the TRIPS Agreement affords protection to technologies that have been developed using biological material, the rights of countries providing the material, as recognized by the CBD, are completely ignored. With the aim of rectifying the aforesaid lacuna of TRIPS the original proposal<sup>11</sup> calls for an amendment establishing an obligation for WTO Members to require patent applicants to disclose the origin of biological resources and/or associated TK; and provide evidence of prior informed consent as well as benefit sharing. The proposal further suggests that in cases where insufficient, wrongful or lack of disclosure would be discovered after the grant of a patent, the legal regime would include provisions for revocation of the patent in question.

### Multilateral Register

The establishment of a multilateral register for wines and spirits is essentially an EU agenda, originally supported by Switzerland. Even after years of negotiations, Members have not been able to reach a consensus on this contentious subject. The core issues have turned out to be the following two: (i) the consequences or legal effects, if any, of registration of a GI in the multilateral system; and (ii)

nature of participation in the system (i.e. voluntary or mandatory, and if it is voluntary, to what extent the effects of registration would apply to the non-participating Members). In addition, there are various other elements including notification and registration; fees, costs, and administrative burdens, particularly as they impact on developing and least developed country Members; special and differential treatment; duration of registrations and procedures for their modification and withdrawal; and arrangements for review; among others. There are mainly three key positions pertaining to this debate as contained in three formal proposals.<sup>12</sup> On the one end of the spectrum there is the EU, which is demanding a mandatory system with strong legal effect. At the other end, there is the so-called “joint proposal group” (Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, New Zealand, Nicaragua, Paraguay, Chinese Taipei and the United States, among others), which is in favour of a voluntary system with very little legal effect. A middle-ground is put forward by Hong Kong-China, that proposes a voluntary system with some legal effects, though more limited than those espoused by the EU.

### Later Developments in Doha Negotiations on IP Issues

In December 2007, the proponents of extension and TRIPS/CBD explicitly linked these two IP issues and put forward new papers calling for

both these issues to be made part of the “single undertaking” of the Doha Round.<sup>13</sup> The proponents of these two issues got together to make a submission on 15 February 2008<sup>14</sup> on extension, which included the following text intended to be included in the horizontal modalities decision of the Doha Round:

Members agree to the extension of the protection of Article 23 of the TRIPS Agreement to geographical indications of all products. Negotiations shall be undertaken, in Special Sessions of the TRIPS Council and as part of the Single Undertaking, to amend the TRIPS Agreement in order to extend the protection of Article 23 of the TRIPS Agreement to geographical indications of all products as well as to apply the exceptions provided in Article 24 of the TRIPS Agreement *mutatis mutandis*.

All three IP issues on the table in the Doha Round subsequently got clubbed together as a result of the strategic coalition among the proponents of these three issues that came up with a “non-paper” dated 26 May 2008 demanding all the three issues to be made part of the horizontal modalities of the Doha Round. This was followed by another “non-paper” dated 6 June 2008, issued by a small group of WTO Members including the US, Canada, Chile, Korea, Australia, among others, which opposed the linking of all three IP issues and their inclusion in the horizontal modalities exercise. The Report by the DG released on 19 June

2008,<sup>15</sup> which was basically a state-of-play kind of document, acknowledged that “Different views have been expressed about linkages between the issues of GI extension and TRIPS/CBD and also between these issues and work elsewhere” referring to both the aforesaid non-papers. The Report further mentioned that on the one hand, there were a number of Members who supported GI extension and who wanted clear guidance on this question as part of the modalities decision, while on the other there were others who were opposed to negotiations on extension, who believe that “...the case has not been made for such extension and that even basic objectives are far apart”.

On 18 July 2008, just prior to the WTO Mini Ministerial, the joint proponents of TRIPS issues submitted to the TNC a joint “Draft Modalities on TRIPS Related Issues” (W/52) that included the draft modality texts sponsored by them on each of the three IP issues.<sup>16</sup> The modality text on extension comprised the following two paragraphs:

- Members agree to the extension of the protection of Article 23 of the TRIPS Agreement to geographical indications for all products, including the extension of the Register.
- Text based negotiations shall be undertaken, in Special Sessions of the TRIPS Council and as an integral part of the Single Undertaking, to amend the TRIPS Agreement in order to extend the protection of Article 23 of the TRIPS Agreement to geographical

indications for all products as well as to apply to these the exceptions provided in Article 24 of the TRIPS Agreement *mutatis mutandis*.

In the July 2008 Mini Ministerial in Geneva that ended up in a collapse, the focus was squarely on agriculture and NAMA and the IP issues never got a chance to rise to the level of full negotiations at the ministerial level.

On 21 April 2011, the chair of the TRIPS Council's Special Session presented his report, attaching a draft composite text of the future register. In a separate report DG Pascal Lamy presented the state of play on the two other IP issues. On extension, Mr. Lamy elaborated on discussions over the previous two years, including their structure and the clarification process on technical issues. In his final observations, he concluded that delegations continued to voice the divergent views that had characterized this debate, with no convergence evident on the specific question of extension of GI coverage.

There has been some movement on the multilateral register of late. Nonetheless, as it stands now, it may still be difficult to arrive at a landing zone on the issue of the register. On the other two IP issues, the gaps persist and progress continues to be elusive.

## Concluding Remarks

GI-extension is an issue on which a number of developing countries have long since been supporting the EU. Indeed, the

basic protection now available for all goods other than wines and spirits leaves adequate room for misappropriation of these GIs. Moreover, the hierarchical protection enshrined in TRIPS in its present form does not have any logical or legal justification whatsoever. It was nothing but a political compromise reached in the Uruguay Round. Hence, the proponents do have a point in demanding a level playing field for all GIs. This is crucial from the point of view of some of the developing countries like India, which has in its possession a number of potential or already-protected GIs belonging to a range of product categories, such as handlooms, handicrafts, food/beverages and so on. In many of the developing countries, which are *demandeurs* in this WTO debate, GI is also regarded as an important tool for protection of traditional knowledge and promoting rural development. Extension of Article 23 armour to all GIs can go a long way towards ensuring better protection for the GIs belonging to these developing countries. However, it needs to be underscored here that reaping commercial benefits from GIs, particularly in the foreign markets, would require multi-pronged initiatives and efforts on the part of these countries, including identification of valuable GIs; ensuring enforcement of the legal protection in the domestic and export markets, brand-building and promotion, tapping appropriate marketing channels and strategies, and so on. Hence, amendment of the TRIPS provisions can at best be regarded as necessary but in no

way sufficient to reap commercial benefits out of GIs. Many developing countries (e.g. India<sup>17</sup>) have only recently begun to develop their national GI systems; it will take time before substantial commercial benefits will arise. Meanwhile, there are difficult questions to resolve, such as delineating the geographic boundaries of a GI, defining its quality attributes and other characteristics, establishing quality control mechanisms, and collectively managing and promoting an indication. Addressing these challenges will require concerted efforts regardless of what emerges from the GI discussions in the WTO.<sup>18</sup>

Finally, proponents of the GI agenda from the South need to weigh costs and benefits among various issues of interest to them before taking any particular stance on the issue. While the strategic alliance reached among the proponents of the three IP issues could arguably be helpful in pushing the extension agenda forward, it may be noted that the alliance was reached at the cost of a significant compromise on the TRIPS/CBD front on the part of the proponents of this crucial issue, which includes India. While originally they were demanding a strong legal effect in the disclosure proposal tabled by them, the draft modality text included in W/52 did not include this important part of the disclosure proposal. Even on the issues of prior informed consent and access and benefit sharing, W/52 only mentioned that "Members agree to define the nature and extent of a reference to Prior Informed Consent and

Access and Benefit Sharing". This was again a significant departure from the original proposal put forward by the proponents of the disclosure requirement. Whether such compromises were worth making at least for those developing countries, which evidently have higher stakes in getting a better deal on TRIPS/CBD than on GIs, remains an open question for their policy makers to think through.<sup>19</sup>

### NOTES

- <sup>1</sup> The addition of spirits occurred at the end of the negotiations. See WTO document MTN.TNC/W/89 of 7 November 1991.
- <sup>2</sup> European Commission (2003), "Why Do Geographical Indications Matter to Us?", p. 2.
- <sup>3</sup> Rangnekar, Dwijen (2004), "The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe", UNCTAD-ICTSD Project on IPRs and Sustainable Development, p. 1.
- <sup>4</sup> World Intellectual Property Organization (WIPO) (2002), "What is geographical indications?", International Bureau.
- <sup>5</sup> World Trade Organization (WTO) (2004), *World Trade Report 2004: Exploring the Linkage between the Domestic Policy Environment and International Trade*.
- <sup>6</sup> Banga, Rashmi (2008), "Geographical Indications: UNCTAD's Initiatives", Presentation delivered in the "Regional Conference on IPR Protection through Geographical Indications", co-organized by the UNCTAD India Programme and the Textiles Committee, Lucknow, India, 4-5 September.
- <sup>7</sup> Fink, C., and K. Maskus (2006), "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), p. 203.
- <sup>8</sup> WIPO, (2002), Note 4 above.
- <sup>9</sup> There are certain other nuances intertwined with the very system of trading of authentic Darjeeling tea that leaves room for the blending companies to take undue advantage of the brand equity associated with the name "Darjeeling". For details, refer to Das, Kasturi (2006), "International Protection of India's Geographical Indications with Special Reference to 'Darjeeling' Tea", *Journal of World Intellectual Property*, Blackwell Publishing Ltd., 9 (5), at pp. 482-483.
- <sup>10</sup> See WTO Document: IP/C/W/247/Rev.1 dated 17 May 2001, paragraph 13.
- <sup>11</sup> See WTO document: WT/GC/W/564/Rev.2 of 5 July 2006.
- <sup>12</sup> The formal proposals on the three positions are contained in the following three WTO documents: TN/IP/W/11 of 14 June 2005 (EC); TN/IP/W/10 of 1 April 2005 (Joint Proposal Group) and TN/IP/W/8 of 23 April 2003 (Hong Kong, China). The key points of these three formal proposals have been compiled and put side by side in the WTO document TN/IP/W/12 of 14 September 2005.
- <sup>13</sup> <http://www.ip-watch.org/weblog/index.php?p=859>
- <sup>14</sup> The submission was made by the European Communities, Guinea, India, Jamaica, Kenya, the Kyrgyz Republic, the Former Yugoslav Republic of Macedonia, Madagascar, Morocco, Pakistan, Sri Lanka, Switzerland, Tanzania, Thailand and Turkey. See WTO document TN/C/W/48 of 19 February 2008.
- <sup>15</sup> See WTO document: TN/C/W/50 of 19 June 2008.
- <sup>16</sup> The communication was circulated by the WTO at the request of delegations of Brazil, the EC, India and Switzerland in the form of the WTO document TN/C/W/52 of 19 July 2008.
- <sup>17</sup> For challenges confronting the Indian GIs initiatives, refer Das, Kasturi (2010), "Prospects and Challenges of Geographical Indications in India", *The Journal of World Intellectual Property*, 13 (2), pp. 148-201.
- <sup>18</sup> CTA (Technical Centre for Agricultural and Rural Cooperation ACP-EU) (2008), "Executive Brief: WTO Negotiations on Agriculture", April, p. 13.
- <sup>19</sup> Das, Kasturi (2010), "Unresolved Issues on Geographical Indications in the WTO" in Correa, Carlos M. (edited) *Research Handbook on the Protection of Intellectual Property under WTO Rules*, Research Handbooks on the WTO Series, Edward Elgar Publishing, Cheltenham, UK at p. 513.





## Surat's Rich Zari Craft Gets Geographical Indication Status

AFTER "Tangaliya", the grand and glittering centuries-old "Zari" making craft of Surat district in Gujarat has been granted Geographical Indication (GI) status, offering it the much needed succour from infringement. "The Geographical Indication office in Chennai has accorded GI status to Surat's Zari craft recently. It has brought cheers to over 1.5 lakh stakeholders directly or indirectly earning their livelihood," a member of FICCI (Western Region) said.

GI of goods refer to the geographical indication referring to a place of origin of that product, which attributes it the quality, reputation and distinctiveness.

"The grant of GI status to Surat's Zari craft will prevent others from duplicating it. It is amongst one of the oldest industries in Surat linked to changing prices of gold and silver from which it is made," Arun Zariwala, member of Federation of Indian Art Shilp Weaving Industry Association remarked.

"Zari" is a type of thread made of fine gold or silver wire used in traditional Indian and Pakistani garments. This thread is woven into fabrics, primarily made of silk to create intricate patterns.

Duplicate "Zari" was being flooded into India by the Chinese zari manufacturers and few domestic producers in other parts of the country.

The Textile Committee of FICCI and the Surat "Zari" industry felt the need for protection of this craft from infringement under the provisions of Geographical Indications Act. This is when they filed an application to obtain GI status in 2009.

"The Surat zari industry should now look at not only scaling up its manufacturing operations but also improving technology and product quality," Director FICCI Western Region Dr Vaijayanti Pandit said.

Tangaliya, a 700-year-old hand woven textile craft of Surendranagar district in Gujarat, had received GI recently.

GI ensures the collective right of the Surat "Zari" community (dominated by Rana community). This would immensely help this "Zari" art which dates back to as early as 16th century, and artisans to survive, a member of FICCI said.

The bulk of "Zari" produced in Surat goes to Varanasi and centres in Uttar Pradesh, Tamil Nadu, Karnataka and Andhra Pradesh. In Varanasi, Surat's "Zari" is used to manufacture the world famous "Banarasi sarees", a must on weddings.

Similarly, "Kanjivaram" sarees, manufactured in Southern India, also use Zari liberally.

A survey shows that there are at least 500 composite or semi-composite manufacturing units in Surat alone. Apart from this, there are around 3,000 small household units of Zari manufacturers in Surat, who produce real Zari, imitation Zari and plastic Zari.

Globally, Indonesia, Malaysia, Pakistan, United Arab Emirates (UAE), Afghanistan, France and Japan are amongst the few leading consumers of Zari, industry sources said.

While artistic zari textiles and embroidered zari goods like purses, bags get sold mostly in sophisticated markets of the UK and the US, they said.

*(The Hindustan Times, 6 July 2012)*

## Efforts on for Five More Geographical Indication Tags for Region

NOW, five more handicraft items of the region are in the quest for the Geographical Indications (GI).

The Human Welfare Association (HWA) has intensified efforts for getting GI status for five more handicrafts, including metal repousse work of Varanasi, gulabi meenakari (pink enameling) of Varanasi, wooden lackerwear (wooden toys) of Varanasi, black clay pottery of Nizamabad (Azamgarh district) and Mirzapuri punja dari of Mirzapur district. Rajnikant of HWA told TOI on the eve of World Intellectual Property Right Day, "In November 2011, my NGO was working as a sustainable development resource centre and had started the procedure by forwarding a proposal to the National Bank for Agriculture and Rural Development (NBARD) Lucknow unit to procure financial aide from its rural innovation fund."

He said if the proposal of HWA was sanctioned by the NABARD, the HWA would start separate documentation of each handicraft and forward it to the Chennai office of GI for registration. When district development manager of NABARD A.K. Tripathi was contacted, he admitted that the proposals had already been forwarded to the Lucknow office. It was expected that the necessary formalities would be completed very soon.

In 2009, the joint effort of the Banaras Bunker Samiti, Human Welfare Association (HWA), AD Handloom Varanasi, Joint Director (Industries) Varanasi, Eastern UP Exporters Association, Banaras Vastra Udyog Sangh and three other institutions had resulted in the registration of Banarasi sari and brocades under the Geographical Indication Act (GI Act). In 2010, the handmade carpet of Bhadohi also got registration under GI Act.

However, the process of getting GI registration is not an easy task as after completing the exercise of the institution seeking such registration, the GI office starts its own survey. Though the agencies exercised hard to get GI registration for Banarasi sari, brocades and Bhadohi carpets are not very happy with the Government of India as the post-

GI initiatives regarding the publicity, awareness, special exhibitions, special events, appointing brand ambassador for the promotion, international events and strict implementation under the GI Act to put a check on fake and duplicate products has not been started so far, they find some improvement in these sectors.

Rajnikant said only Banarasi sari industry had ensured a growth of 28% in the past one-two years. If the Government had performed its duty of post-GI registration, the crisis of weavers for sari and carpet sectors could be over, he said. It could ensure further increase in the growth percentage of business in those sectors. However, he considers that GI registration is a must for all handicrafts of this region as the product IPR (intellectual property right) establishment provides legal protection to the products from outside intruders.

"The GI would bring back the manpower that had already migrated to other cities and help increase the export potential of the product, especially in markets like the UK and the US. The GI reflects the quality of product, its originality and authenticity by establishing a brand of the product in the international market. Not only has these but the per capita income of producers as well as GDP also increases by ensuring an inflow of foreign exchange," he pointed out.

*(The Times of India, 26 April 2012)*

## EU Extends Special Status for Darjeeling Tea

DARJEELING TEA has become the first product from India to be protected as a geographical indication (GI) in the European Union (EU), according to the Tea Board. With this, the Darjeeling tea confirms its position among the world's best known teas, and the qualities of Darjeeling tea are now legally recognized and protected in India and in the EU, says the Board.

### What it Means

It means the name "Darjeeling" can only be used to denote tea grown in Darjeeling and which is processed in the typical Darjeeling style of manufacture in the factories situated in the specified gardens within the defined tea-growing area; and

for which all steps of production, with the exception of packaging, (harvesting, drying and processing) has taken place in the defined area.

The registered name "Darjeeling" is protected in all the member States of the EU against:

- (a) Any direct or indirect commercial use of the name Darjeeling in respect of tea or products comparable to tea or in so far as it exploits the reputation of the name Darjeeling;
- (b) Any misuse, imitation or evocation even if the true origin of the product is indicated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation";
- (c) Any other false or misleading indication;
- (d) Any other practice liable to mislead the consumer as to the true origin of the product.

### Major Victory

The registration of Darjeeling represents a major victory for all producers, plantation workers, worldwide connoisseurs and consumers of Darjeeling tea and marks the successful culmination of a long arduous journey spanning four years.

Filed in November 2007, the application for Darjeeling tea as a Protected Geographical Indication (PGI) under European law underwent normal lengthy administrative procedures before the European Commission.

More importantly, the application stood up to fierce objections from France, Germany, Italy, Austria and the UK on behalf of the different national members of the European Tea Committee (ETC).

Among other objections, ETC, representing EU tea blenders, claimed that the reputation of Darjeeling tea had been achieved by the EU tea blenders and not the producers and plantation workers.

Rejecting the objections, the European Commission held:

- (i) That the *savoir-faire* and acquired skills employed by producers as well as the pedoclimatic features and geographical environment of the geographical area of Darjeeling (natural

drainage of the soil, complex combination of very high rainfall and continuous low temperatures) significantly affect Darjeeling tea's characteristics which constitute the core of its reputation;

- (ii) The name "Darjeeling" should only be used as a sales designation for tea grown and processed in accordance with the PGI. That means that, to be called "Darjeeling tea", tea must be grown and dried in the Darjeeling area by traditional methods. The tea may be packaged outside of Darjeeling and teas from different Darjeeling tea gardens may be blended;
- (iii) Tea which is a mixture of Darjeeling with other teas cannot bear the name "Darjeeling";
- (iv) Tea not conforming with the Darjeeling PGI specification can still be called "Darjeeling tea" for a transitional period of five years but only if that tea had been legally marketed in the EU for at least five years prior to 14 October 2009; this is, for example, applicable to green or white Darjeeling tea, but not to mixtures of Darjeeling tea with teas of others origin misleading the consumer.

(The Hindu Business Line, 6 February 2012)

### Agra Inlay Craftsmen Seeks Geographical Indication Tag for Their Products

AGRA craftsmen practising the marble inlay work, found in famous works of architecture such as the Taj Mahal and Fatehpur Sikri, have sought the Geographical Indication tag for their product.

A Geographical Indication tag not only certifies a work's geographical origin but also confirms adherence to some production standards.

Agra's Marble Udyog Vikas Samiti, which represents 4,000 craftsmen involved in this craft, has applied to the Geographical Indications Registry in Chennai for the tag. The inlay work is used in building material, monuments, and even decorative items such as table tops.

The annual turnover of the marble inlay industry in Agra is ₹ 275 crore, including exports

of ₹ 125 crore to countries such as Saudi Arabia, US and Japan. The price range varies from ₹ 150 to ₹ 15 lakh, depending on size, design complexity, number and quality of semi-precious stones used.

“If the Geographical Indication is approved, only artisans from Agra can make and sell the product. Other places like Jaipur cannot produce the product,” said GK Muthukumar of GMS Law Associates, who worked on the product’s registration.

Famous products that have already earned this geography-based tag in India include the Darjeeling Tea, Kanchipuram sarees and Tirupati Ladoo.

*(The Economic Times, 18 January 2012)*

## Seminar Creates Awareness on Geographical Indications

Goods with GI recognition are shielded from exploitation

A DAY-LONG seminar to create awareness on geographical indications (GIs) and their benefits was organized by the Government of India’s office of the Geographical Indications Registry at Ooty (Tamil Nadu) during October 2011.

Inaugurating the seminar, Shri P.H. Kurian, Controller General of Patents, Design and Trademarks, said that there is a lot of scope for various products associated with the Nilgiris to be brought under the ambit of GIs. Among them are the items produced by tribal groups, the Nilgiri carrots, potatoes, eucalyptus oil and honey.

### Origin

Tracing the origin of the system of granting GIs, he said that 156 products have so far been granted the GIs recognition in India. About 40 to 50 applications are pending.

A geographical indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are attributable to the place of origin. Most commonly a GI consists of the name of the place of origin of the goods, which could be agricultural, natural or manufactured goods including handicrafts and food items.

The exclusive right to the use of the Registered GI lies with the authorized user under Section 21(b) of the Act.

He added that goods with GI recognition are shielded from exploitation and command a premium. Anyone who infringes the rules can be prosecuted and incarcerated up to three years.

However, all in the supply chain should ensure that the products which carry the GI logo retain the location specific qualities.

He added that the Registry will help the tea sector here make optimum use of the GI recognition granted to the Nilgiri Orthodox Tea.

Among those who participated in the seminar were representatives of planters associations, members of tribal communities like Todas and Kotas and non governmental organizations.

*(The Hindu, 4 October 2011)*

## Geographical Indication Tag for Bhalia Wheat

BHALIA, a long grain wheat variety rich in protein and grown under conserved soil moisture conditions in the Bhal region of Gujarat state, has received the Geographical Indication (GI) tag, a move which is likely to benefit over 5,000 farmers.

“Bhalia wheat, which is cultivated in Bhal region and its extension in Gujarat spread across from Ahmedabad to Bhavanagar and comprising part of Khambat, has got the GI tag,” said A.M. Sheikh, Vice-Chancellor, Anand Agriculture University (AAU).

AAU was involved with the filing of GI application for Bhalia wheat and has been engaged in research on it, while the state-run Gujarat Agro Industries Corporation (GAIC) had filed the GI application.

“There is evidence that this wheat variety was cultivated in Bhal before Independence. GAIC and Agricultural Produce Market Committee (APMC), Ahmedabad, will ensure the protection of the rights of stakeholders in accordance to GI provisions now onwards,” Shri Sheikh added.

As per GI laws, if anyone, apart from Bhal region farmers, are found selling this wheat then

they could be jailed for one to two years and a fine of over ₹ 50,000 could be imposed as penalty, another AAU official said.

“The wheat is high in gluten content, a type of amino acid,” said AAU scientist R.H. Patel.

The GI registration of this high protein variety will convey assurance of quality and distinctiveness – essentially attributed to the place of its origin in a defined geographical locality.

The wheat is locally known as Daudkhani, with desirable qualities like high carotene, low water absorption, high protein content and is preferable for semolina (suji) for use in pasta goods such as macaroni, spaghetti, vermicelli, noodles, pizza, the GI document stated.

Farmers from the Bhal region receive nearly 25 per cent premium price opposed to other wheat varieties and 40-50 per cent higher price than the bread wheat varieties, the document said.

The Bhal region and its extension include talukas such as Dhandhuka, Dholka, Bavala in Ahmedabad, Limbdi in Surendranagar, Vallabhipur in Bhavnagar, Tarapur in Anand, Matar in Kheda, Jambusar and Vagra in Bharuch, besides parts of Khambhat. In Bhal, the wheat cultivation under conserved soil moisture condition is unique in the world.

The sowing is done under a typical condition. After sowing, neither irrigation is given nor rain is received, and wheat can grow successfully under such situation, Shri Patel said. “Bhalia wheat is sown between the last week of October and the first week of November, when the rain water gets drained out,” he added.

([www.indianexpress.com](http://www.indianexpress.com), 17 August 2011)

## Intellectual Property: Geographical Indications Negotiations

WTO intellectual property talks, which are about setting up a multilateral geographical indications register for wines and spirits, became the latest on 10 December 2010 to aim for an endgame spurt in early 2011 and a conclusion to the whole Doha Round by the end of the year.

In an informal meeting, members supported chairperson Darlington Mwape’s plan to produce the negotiating group’s first draft text by the end of the first quarter following a six-point sequence point by point – described as “elements” of the procedure for the register:

- Notification – e.g., how a term would be notified and which member would do it (also related to “participation”).
- Registration – e.g., how the system would be run and the WTO Secretariat’s role.
- Legal effects/consequences of registration, in particular any commitments or obligations on members arising from a term’s registration (also related to “participation”).
- Fees and costs – including who would bear these burdens.
- Special treatment for developing countries (officially, “special and differential treatment”).
- Participation – whether the system is entirely voluntary, or whether a term’s registration would have some implications for all the WTO members.

The plan had already been discussed with a small group of key members on both sides of the debate in earlier consultations.

The timetable is designed to synchronize with plans for all subjects in the Doha Round, as outlined by WTO Director-General Pascal Lamy’s statement to ambassadors at an informal meeting of the Trade Negotiations Committee, which he chairs, on 30 November. This, in turn, was based on political declarations from the G-20 summit in Seoul and APEC meeting in Yokohama.

Mr Lamy noted “a collective sense emerging that revised texts in all areas of the negotiation will have to be developed so that they appear towards the end of the first quarter of 2011.”

All delegations said their preference would be for a process that is based on a text with input from members, and driven by the members themselves.

### Topic by topic

Ambassador Mwape said each of the six topics will be discussed in sequence with the aim of producing a single negotiating text under each

heading before moving on to the next one. The text could include “bracketed alternatives and options” if members cannot agree on a single set of provisions.

The first topic, notification, will be discussed in consultations in the week of 10 January, followed by a meeting of the full membership. The schedule will be tight if the end-of-March target is to be met, he said.

Ambassador Mwape urged members to help the drafting move ahead by focusing on each topic, avoiding getting distracted by related issues, and to try to work among themselves to produce suitable drafts.

**Chairperson:**  
**Ambassador Darlington Mwape**  
**of Zambia**

#### *Current Proposals*

Three alternatives are currently on the table:

- The Joint Proposal TN/IP/W/10/Rev.2 from Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Rep. Korea, Mexico, New Zealand, Nicaragua, Paraguay, Chinese Taipei, South Africa, the US. This envisages the register as a database. Members would choose whether or not to participate in the register. The intellectual property authorities of participating members would consult the database when considering protection for individual trademarks or geographical indications within their countries.
- TN/C/W/52 of 19 July 2008, from over 100 WTO members, which includes a modified and stripped-down version of the EU’s original proposal for the multilateral register. It is now in the form of proposed “modalities” or a blueprint of the final outcome, with details to be negotiated later. Described as a negotiated compromise among the sponsors, the proposal envisages a system applying to all members although members could choose whether or not to register their own geographical indications.

All members would have to take a term’s registration “into account” and treat it as “prima

facie” evidence (first sight, or preliminary, before further investigation) that the term meets the definition of a geographical indication. Further procedures for that term within each country would be handled entirely within the country’s domestic legal system. These include confirmation that the term is an eligible geographical indication, possible challenges, and whether it is subject to exceptions such as because the term is generic.

(Previously, the EU had proposed that if a term is registered with the assumption – the legal phrase is “irrebuttable presumption” – would be that it should be protected in all WTO members except those that have successfully challenged the term.)

Opponents of this proposal also object to the link with two other intellectual property issues: “extending” to all products the enhanced protection currently given to wines and spirits; and requiring patent applicants to disclose the origin of genetic materials and related traditional knowledge used in their inventions.

- TN/IP/W/8 from Hong Kong, China: if a term is registered, this would be preliminary (“prima facie”) evidence – which could be rebutted – about who owns the term, that it is protected in the country of origin, etc, but only in those countries choosing to participate in the system. Hong Kong, China also proposes an initial period of four years for this system followed by a review.

(<http://www.wto.org>, 10 December 2010)

## **Now Nashik Grapes Get Geographical Indication**

NASHIK Grapes, famous for their taste, have received the geographical indication (GI) from Chennai based Geographical Indication Registry, which falls under the Union Ministry of Commerce. Apart from Nashik Grapes, the strawberries from Panchgani-Mahabaleshwar, Puneri pagadi, ‘Solapur’s chaddar and towels’, Yeola’s “paithani”, Alphanso Mangoes and Nashik valley wine have received this prestigious recognition. The Nashik Grape Farmers Society, which represents the farmers in district, has received the certificate from

the Registry recently. Ganesh Hingmire, chairman of Pune based Great Mission Group consultancy (GMG) which had filed the proposal for the GI status, said: "The sweetness and content of the fruit are the speciality of Nashik grapes". The GMG undertook the research of the grapes, its speciality, how the climate is contributing to its taste, etc. Though other parts of Maharashtra use similar variety of plants, it could not attain the taste of Nashik grapes, he said. The state of Maharashtra is the largest exporter of grapes in the country. In the past couple of years, grape export from the state has reached around 30,000 tones, of which almost half is from Nashik district, Shri Hingmire said. P.H. Kurian, comptroller general of patent, trademarks and design, visited Nashik for three days and personally checked the documents and grape farms in the district, Shri Hingmire added.

(*Times of India*, 16 November 2010).

## Geographical Indication Tag for "Mannapparai Murukku" Sought

THE Tamil Nadu State Council for Science and Technology has applied for Geographical Indication tag for "Manapparai Murukku" along with Thanjavur Veena and Madurai "Malli".

The State Government was keen on obtaining patents for these products so as to safeguard the waning tradition, trade and livelihood of people in these geographical locations with suitable support systems, S. Vincent, Member Secretary of the Council, remarked, after inaugurating a programme on "Traditional Science and Technology Development" organized by the National College with the Council's sponsorship.

With Tamil Nadu's unique strength of natural resources, the scheme to promote traditional science and technology through training women self-help groups has been taken up in 10 districts to improve their standard of living.

The State Skill Development Mission was into the task of facilitating women SHGs to launch small scale industries after the training. By obtaining the patents for traditional products and securing scientific validation, the Government would be able to bring the trainees under the

ambit of its welfare schemes and secure bank loans, Dr. Vincent said.

The vast database being generated by the Central Government's Traditional Knowledge Digital Library would help substantially in improving the health sector. India has documented medicinal properties of 6,000 herbs and there were 7,000 registered practitioners of traditional medicine.

It was to rectify the only shortcoming of scientific validation that patent cells for ensuring intellectual property rights have been created in five universities, Dr. Vincent said, exhorting colleges to coordinate with the patent cells and appealing to the stakeholders of traditional knowledge to help in dissemination of their methodologies for wider reach of benefits.

P. Brindha, Associate Dean and Co-ordinator, CARISM (Centre for Advanced Research in Indian System of Medicine), explained how developed nations were capitalizing on Indian traditional products by processing and offering them back to Indians as dietary supplements.

The CARISM would help the trainees undergoing the training in preparation of Ayurvedic medicines to start their own units through scientific validation of their proposals, Prof. Brindha said.

Principal K. Anbarasu felt the reluctance on the part of practitioners of traditional medicine to divulge information was causing extinction of the traditional systems, and a loss to the economy.

(*www.thehindu.com*, 25 October 2010)

## Nashik's Vintners Seek Geographical Indication Status

VINTNERS from Nashik, the country's foremost wine producing district have applied for Geographical Indications status for their produce under the name of "Nashik Valley Wines", and hope that the successful registration will provide support to the flagging industry.

In fact, in April 2008, the National Horticulture Board (NHB) had made an application for GI status in the name of Dindori Wines. Dindori is a small tehsil in Nashik district and home to less than half the wineries in Nashik, including those of companies

like Sula Vineyards and Seagrams. The same application has now been amended to be in the name of "Nashik Valley Wines" and the GI Registry in Chennai has in principle, approved the change in the original name. All the documents required for the amended GI application were filed earlier this month, and the Nashik Valley Wine Producers' Association (NVWPA) is now a co-applicant along with the NHB, Mr. Manoj Jagtap, Joint Secretary, NVWPA, told *Business Line*. With 38 wineries in the area, including five for which 2010 will be the first crushing season, Nashik Valley is estimated to account for around 70 per cent of Maharashtra's wine production that stood at 1.32 crore litres during 2009. "A GI registration in the name of Dindori Wines would have been restricting. The amended name will widen the scope and bring more wine-makers into the fold," Mr. Jagtap said. The wine industry in Maharashtra has currently hit a roadblock with large stocks of last year's wine still unsold. GI status will expedite the setting up of a wine cluster that will provide small vintners support and provide common facilities including a hi-tech lab. Farmers from the region, many of whom switched from table grapes to wine grapes without entering into contracts, and have subsequently suffered losses, will also be trained on the modalities of undertaking contract farming. Alphonso mangoes produced in the Konkan belt along the coast of Maharashtra are also in the queue for GI status. The application for it was filed by the Director of Research at the Dr. Balasaheb Sawant Konkan Krishi Vidyapeeth at Dapoli in September 2008, and pertains to fruit grown in the districts of Sindhudurg, Ratnagiri, Raigad and Thane. "Its uniqueness lies in the flavour and the fact that it does not degrade with keeping and the sugar to acid ratio is not affected," Dr. B.B. Jadhav, Director of Research, BSKKV said. The GI will help to distinguish the Ratnagiri Alphonso from that grown in Gujarat and Karnataka. To date, the GI Registry has registered five mango varieties from various parts of the country. While the Appemidi from Karnataka is the latest, the Malihabadi Dussehri of Uttar Pradesh, and the Laxman Bhog, Khirsapati (Himsagar) and Fazli grown in the district of Malda (all from West Bengal) are earlier recipients. And waiting for the recognition along with the Konkan Hapoos is the Gir Kesar from Ahmedabad.

(The Hindu business Line, 25 February 2010)

## Expert Poser on GI Tag for "Hyderabadi Haleem"

INTELLECTUAL Property Rights (IPR) experts express positive contribution to the GI field at the grant of geographical indication (GI) tag to "Hyderabadi Haleem" after a similar appellation to "Tirupathi laddu" had soured their palates not too long ago.

Haleem is a delicacy associated with the Ramzan period, and will now be called "Hyderabadi Haleem".

### Prescribed Standards

Shri P.H. Kurian, Controller-General of Patents, Designs, Trademarks and Registrar of Indications, gave away the certificate to the claimants at Hyderabad in September 2010.

The certificate does not bar anyone from preparing Haleem, but they cannot market it as Hyderabadi Haleem, Shri Kurian said.

Haleem makers would now have to follow prescribed standards in its preparation and must mention the GI mark on the package. They are also mandated to apply for renewal of the certificate after 10 years.

The tag fails to convince, said R.S. Praveen Raj, a scientist with the National Institute for Interdisciplinary Science and Technology, Thiruvananthapuram, and a former examiner of patents and designs at Indian Patent Office, Chennai.

The peculiarity of the delicacy is only in the method of preparation. There is nothing to suggest that quality will change if it is made in another part of the world. "People prefer to consume it because of its taste and not because of the appellation indicating origin," Shri Raj told *Business Line*.

According to Section 2(1)(e) of the GI Act, Geographical Indication in relation to goods, means an indication which identifies such goods as originating, or manufactured in the territory of a country, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin.

“Goods” means any agricultural, natural or manufactured goods or any goods of handicraft or of industry, and includes food stuff. Food stuff is covered, but only if it answers to any of the following description – agricultural goods, natural goods, manufactured goods, goods of handicraft or goods of industry. “To the best of my understanding, Hyderabad Haleem cannot be considered as a manufactured good or a handicraft or industry product. This is also true in the case of Tirupathi laddu,” Mr. Raj said.

Neither is the quality, reputation or other characteristic of the stuff essentially attributable to Hyderabad – which the consumer wants to make doubly sure before committing himself.

Would the consumer feel cheated if were to know that the stuff was not manufactured in Hyderabad? Or, could anybody point to a factory or industrial site where Hyderabad Haleem is manufactured as part of production, processing or preparation? “This is exactly why GI on Darjeeling Tea may hold but that on Tirupathi Laddu or Hyderabad Haleem would not,” Mr. Raj said.

*(The Hindu Business Line, 6 September 2010)*

## Geographical Indications Patent Given to Tirupathi Laddu

AFTER Darjeeling tea, champagne and Florida oranges its the turn of Tirupathi laddus to get a geographical indications (GI) patent. The term GI, which comes from the World Trade Organizations rules on intellectual property rights, is defined as a marker that identifies a good as originating in a particular region or locality. The products geographical location is seen to contribute to its quality and reputation. In India, GI is governed by a national legislation.

The Tirupathi laddu is an apposite candidate for GI status. It is identified with a particular place and is made from ingredients put together in a specific manner. A Tirupathi laddu is not any old laddu made by the local halwai. It is a brand that has global recognition and people are willing to pay a premium for that, much like Darjeeling tea or Jamaican Blue Mountain coffee.

Indeed, that is the rationale behind GI. It is meant to promote and brand items that are

inextricably identified with a particular region. Moreover, it is meant to discourage products that want to masquerade as the real McCoy. There’s no reason why laddus made by confectioners elsewhere should capitalize on the famous Tirupathi brand name.

GI is also essential for combating attempts to patent items like basmati or products such as neem or turmeric that have medicinal qualities. Over the past few years, this issue has become contentious with patents being filed in the US for several such traditional Indian items. One of the reasons behind the Geographical Indications of Goods (Registration and Protection) Act in India was to ward off such attempts of biopiracy. The Indian government challenged the patent on basmati by an American company on the grounds that it is grown in a particular region of north India.

GI for Tirupathi laddus is somewhat different from other items that have got similar status since it is normally associated with a temple and not an entire region. But that should not be a bar to GI status. Indeed, its several million consumers would vouch for the uniqueness of Tirupathi laddus. The GI status merely confirms that.

*(The Times of India 17 September 2009)*

## UNCTAD Promotes Geo Indication

EVEN as products like the Banarasi sari wait to get intellectual property rights recognition for geographical exclusivity, the United Nations Conference on Trade and Development (UNCTAD) organized a series of events to promote the benefits of getting geographical indication (GI) for products.

UNCTAD India programme launched a series of events, including a workshop and conference, to highlight the benefits of geographical indications (GI), an important intellectual property right under the WTO TRIPS Agreement.

‘We haven’t had awareness about geographical indications. So, we are in the process of building awareness about the benefit of GIs,’ said Abhijit Das, the deputy project coordinator and officer in charge of UNCTAD. The UN organisation along with a number of partners is already working on getting Geographical Indications (GI) for 21 products, including Banarasi sari and Badohi carpets.

The applications have been filed for the products even as attempts are made to spread awareness on the benefits getting geographical exclusivity for a product. The UNCTAD, which is attempting to build awareness through small focus groups, has found that the wages of artisans increased two to three times after a product was recognized as being exclusively from a particular area.

*(The Economic Times, 12 June 2009)*

## UNCTAD to Support Geographical Indication Registration of Banarasi Silk

IN order to promote the world-renowned India's "Banarasi silk sarees", the United Nations Conference on Trade and Development (UNCTAD) has said it would support the geographical indication registration of the traditional Indian women's drape.

Supachai Panitchpakdi, Secretary-General of the UNCTAD personally visited the handlooms at Varanasi earlier known as Banaras, and saw for himself the labour being put in by the artisans in weaving the traditional brocade silk sarees.

Mr. Panitchpakdi assured the people that special measures would be taken to safeguard the indigenous production of these sarees.

"We would like to support the effort to have a formal geographical indication, of course, at national level. There would be a subsequent international recognition of this product of "Banarsi silk sarees" and brocades and other products that should be gaining in terms of more value outside India as well," said Mr. Panitchpakdi.

The UNCTAD plans to produce a systematic information network that would be disseminated around in a way that markets abroad will be well informed of the products from Varanasi. They would also try to create brand recognition along with the geographical indication of the products.

Handloom industry of Varanasi has undergone a lot of rigours for quite some years now. Weavers allege that their business has declined due to new

people venturing in the markets with machine made products.

"We are facing problems due to machine-made sarees. Our production rate is less compared to them. They produce many sarees compared to our hand woven sarees. Each saree takes 15-16 days to produce. We have incurred a huge loss because of the competition in the market. Government is not helping us. Many weavers have closed their shop," said Kalpnath Maurya, a weaver.

However, Mr. Panitchpakdi's visit to Varanasi has brought a new ray of hope among the artisans who are virtually on the verge of starvation.

"We hope that Mr. Panitchpakdi's visit would reap some benefit for us. As we are on the verge of starvation, we hope for some help from his end," said Mohammad Tufail Kadri, a weaver.

The handloom industry has been incurring huge losses because of the unfair competition from mechanized units producing the "Banarasi silk sarees" at a much faster rate and at much cheaper cost.

*(The Economic Times, 19 August 2008)*

## Intellectual Property Rights (IPR) and Geographical Indicators (GIs)

GEOGRAPHICAL indications 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 indications

Several commercial products are traditionally produced in specific geographically definable region. Where these products are accredited specific criteria essentially attributable to their geographical provenance, the geographical indication becomes, in trade relations, the reliable "carrier" of qualifying product characteristic. Geographical indications are then ascribed the function and importance of trademarks and are entitled to legal protection. Well-known examples about geographical indications are Champagne<sup>1</sup>, Roquefort and Feta<sup>2</sup> cheese.

*(Contd. on p. 32)*



## BOOKS/ARTICLES NOTES

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### 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, IIS 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.

## ARTICLES

**Geographical Indications & Socio-Economic Development** (Working Paper 3), by Daphne Zografos, [www.iqsensato.org](http://www.iqsensato.org).

THIS paper outlined the level of protection that should be granted to geographical indications by WTO Members within the TRIPS Agreement and examines some of the practical implications of registering a geographical indication for producers in developing countries. In particular, it focuses on two issues: the protection of indigenous knowledge and the use of geographical indications as a development tool.

In relation to indigenous knowledge, it was established that tangible indigenous knowledge can constitute the subject matter of geographical indications, and that geographical indications can be used to protect such knowledge, essentially because of their compatibility with the nature of indigenous knowledge. In that view, it was argued that the use of geographical indications to protect indigenous knowledge, combined with appropriate marketing strategies can enable the holders of such

knowledge to transform their long-standing, collective knowledge into commercial income, while at the same time preserving and promoting their heritage. In relation to development, it was argued that geographical indications can present long term benefits as they create value, enhance the marketability of goods and give an edge to developing countries to promote exports and rural development, thus generating sustainability and inter-generational equity. However, as it was highlighted throughout this paper, the use of geographical indications to protect indigenous knowledge and to foster development also presents some costs and limitations. In relation to indigenous knowledge, geographical indication will only protect tangible indigenous knowledge and the actual knowledge associated with the geographical indication is not protected and is open to misappropriation by third parties. More generally, the extent of the benefits that can be gained from the grant of a geographical indication for the holders of indigenous knowledge or for producers in a developing country will depend on the way it is exploited, marketed and policed.

The protection of geographical indications is still in its infancy in most developing countries and further research should be carried out on the benefits and costs of making use of the geographical indications system. In this view, care should be taken when trying to implement a geographical indication. While it appears undeniable that developing countries should try and take advantage of their well-known products, the potential benefits of a geographical indication should be carefully weighed against opportunity costs, in relation to less known products.

**Geographical Indications and the Obligation to Disclose the Origin of Biological Materials: Is a Compromise Possible under TRIPS?** by Carlos M. Correa, Policy Brief Number 8, ICTSD Programme on IPRs and Sustainable Development, September 2010, <http://ictsd.org>

THE article tries to explain that the relationship between the TRIPS Agreement and the CBD has become an issue of major concern for developing countries. As noted, however, there has been insufficient coordination amongst developing countries' to deal with this issue in different fora.

The broad support received by a proposal to the Council for TRIPS for the establishment of an international obligation to disclose the origin of biological materials claimed in patent applications, suggests some progress in coordination and in the definition of a common strategy on the subject. Arguably, the establishment of a disclosure obligation would contribute to a more transparent and equitable patent system and to the fulfillment of the objectives of the CBD. It would also be instrumental to the achievement of some of the objectives of the recently adopted United Nations Declaration on the Rights of Indigenous Peoples.

The incorporation of the disclosure obligation into the TRIPS Agreement would allow a Member to trigger the application of the WTO dispute settlement system in case of non-compliance. This would constitute a distinct achievement, provided that the scope and effects of the adopted obligation are properly defined so as to attain its purpose. Although negotiations in the context of the "international regime" or at the IGC in WIPO would leave some room to operationalize such an obligation, their outcome is uncertain, including the mechanisms that may be available in cases of non-compliance and whether developed countries will adhere to any new instruments.<sup>42</sup> The adoption of an effective disclosure obligation in the context of the TRIPS Agreement, hence, should continue to be the priority for developing countries.

**Trademarks and Geographical Indications: Policy Issues and Options in Trade Negotiations and Implementation, *Asian Development Review*, Vol. 26, No. 1, pp. 166-205, [citeseerx.ist.psu.edu](http://citeseerx.ist.psu.edu)**

THE article suggests that GIs are critical issue of IPRs. They need to be handled carefully as majority of the countries are developing or LDCs. It explains GIs and TMs, two independent and equal domains of IPRs, are subject to different regulatory systems among the WTO members, including ASEAN FTA partners such as ANZ and EU. The EU has been a strong advocate at the bilateral and multilateral levels of its TRIPS-plus, specialized regime on GIs.

The EU itself has experienced complex and novel issues in trade negotiations and recurrent

commercial disputes in implementation relating to TMs and GIs.

Thus, difficulties for mutual resolution could be expected in ASEAN-EU FTA negotiation as well as in the implementation of trade- and IP-related obligations and laws in AMSs whose regulatory systems on GIs are currently TRIPS-compliant.

This paper has examined a wide range of substantive and financial issues – and the pertinent implications and options – arising from the delicate, overlapping, and problematic relationships between TMs and GIs. The paper focused on the specifications and scope of GI protection, priority rights and coexistence between TMs and GIs, and the treatment of generic and customary names and terms in the registration of GIs. The discussion demonstrated that sophisticated institutional resources and infrastructure are required for EU-style protection of GIs in ASEAN and elsewhere. In addition, the balance of protection between local and foreign GIs tilts almost wholly toward the latter, even assuming a multilateral extension of enhanced GI protection to all products of handicraft and industry. These products are covered in AMSs' regimes on GIs.

The very small number of registered GIs in ASEAN raises several worrisome implications. In particular, the lack of protection thus far might have contributed to a significant dilution of the reputation of qualified and registrable GIs. It may have likewise led to the genericism and hence the unregistrability of those indications. As such, a different approach toward genericism may be considered to minimize the possibilities of misappropriation and misrepresentation of IPRs by unauthorized parties.

There have been many external attempts to register TMs for Asian GIs, among those in other countries, and to obtain exclusive rights (by means of patenting) over biogenetic resources wholly indigenous to Asian and other developing countries.

As regards trade costs and development potential, enforcement of EU style, enhanced and extended protection of GIs would likely reduce AMSs' imports of competing products from ANZ

and push up local prices for GI protected imports due to supplier adjustment costs and reduced competition.

The benefits to ASEAN from the development and commercialization of GI based products may be significant, however. They include the revitalization and preservation of rural regions, ethno-cultures and skills, environmental quality, and bio-diversity in AMSs. More immediately, soft provisions on several IP-related matters, EU assistance in GI development and commercialization, and better market access for textiles and clothing and agro-product and fisheries exports for AMSs are among the options and possible trade-offs for consideration in negotiation.

A rich agenda awaits further policy-based research and information dissemination, generally and in the context of ASEAN. Among the pending issues on the demand side are the administrative, legal, financial, and other burdens and implications associated with maintaining an enhanced and extended system of protection for GIs. Policy design and implementation in AMSs has been made more difficult by inadequate information on several crucial supply-side variables. Therefore, accurate, balanced, and transparent mapping of the possibilities and constraints is needed of the range of GIs having current and prospective trade significance and of the stakeholders who have benefited or stand to benefit from the development and commercialization of those GIs.

BDSs are a major determinant of the success, or lack of success, in GI development, commercialization, and protection. Customized promotion campaigns, for example, are crucial in obtaining a price premium for high quality rice; more generally, such campaigns are needed for many other products currently or to be protected as GIs in AMSs. Meanwhile, unauthorized attempts at appropriation or usurpation of IPRs, including GIs, are not uncommon. In external jurisdictions especially, experience has shown that effective protection of GIs requires significant support not just from the involved stakeholders and interested third parties but also from a wide range of BDS inputs.



## 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)

(Contd. from p. 17)

Wine and spirits makers are particularly concerned about the use of place-names to identify products, and the TRIPS Agreement contains special provisions for these products. But the issue is also important for other types of goods.

Protection required under the TRIPs Agreement is defined in two articles:

All products are covered by **Article 22**, which defines a standard level of protection. This says

geographical indications have to be protected in order to avoid misleading the public and to prevent unfair competition.

**Article 23** provides a higher or enhanced level of protection for geographical indications for wines and spirits, subject to a number of exceptions. They have to be protected even if misuse would not cause the public to be misled.

([www.napcsyr.org](http://www.napcsyr.org))



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