

## The Evolution and Significance of Protecting Appellation of Origin

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### ABSTRACT

Geographical indication (GIs) or protection of appellations of origin has emerged as a controversial topic in the international intellectual property regime. As the countries like India have established strong systems to protect their products origin based, the United States has assumed a more adaptable tack that weighs the interests of the producers, consumer protection as well as trade requirements. As the global marketplace grows for artisanal and specialty goods, the U.S. system of GIs has become a more important topic of discussion, particularly in the context of discussions of global trade agreements like the Transatlantic Trade and Investment Partnership with the European Union.

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### 1. INTRODUCTION

Geographical indication (GIs) or protection of appellations of origin has emerged as a controversial topic in the international intellectual property regime. As the countries like India have established strong systems to protect their products origin based, the United States has assumed a more adaptable tack that weighs the interests of the producers, consumer protection as well as trade requirements. As the global marketplace grows for artisanal and specialty goods, the U.S. system of GIs has become a more important topic of discussion, particularly in the context of discussions of global trade agreements like the Transatlantic Trade and Investment Partnership with the European Union.

GIs are used as product identifiers, which identify unique characteristics based on the geographical circumstances, production, or cultural practices. In this category we usually differentiate two terms: indications of source and appellations of origin. A source merely refers to the place of origin of a product without purporting to have special qualities whereas appellation of origin is used to refer to goods whose special attribute is directly related to the place of production. This difference lies at the heart of the U.S. legal system that acknowledges both types, but places greater protection on appellations of origin.<sup>1</sup>

The United States has its approach to GIs based on the mixture of the federal and state regulations and the international agreements. Contrary to France, which has been seeking strict protections since centuries, especially in the cases of wine and cheese industries, the U.S. has always been permissive. The American law views GIs as a means of consumer protection, the means of avoiding fraud and unfair competition, and not as the means of protecting producer monopolies.<sup>2</sup> The appellations of origin recognition has a number of purposes: it facilitates a process of differentiation with the help of unique trade name, it fosters the creation of goods of high quality, and it brings economic advantages in terms of consumer confidence and marketability.

Legally, appellations of origin in the U.S. are useful branding tools. They also establish market differentiation, as well as providing a guarantee of authenticity by contacting products to geographic areas. Such a structure is beneficial in that producers have the chance to compete on the grounds of reputation, as well as in protecting the consumers against misleading or fake products. However, the U.S has been much reserved when awarding international recognition to GI when compared to Europe. It is part of the Paris Union but has not become part of more binding arrangements like the Lisbon Agreement to the Protection of Appellations of Origin and the Madrid Agreement to the Repression of False

<sup>1</sup> Patel, Nishidh, 'Geographical Indications: Pros and Cons' (Netherlands, 2011) SSRN EJ, RELX Group

<sup>2</sup> Das, Kasturi, 'Socioeconomic Implications of Protecting Geographical Indications in India' (2009) SSRN EJ, Available at <<https://doi.org/10.2139/ssrn.1587352>>

Indications of Origin. These treaties extend further protection as compared to the Paris Convention although U.S. is more flexible and trademark oriented.. GIs are seen as consumer protection tools, and are in large part, by the American law, intended to discourage deception and unfair competition, as opposed to being used to protect producer monopolies. Recognition of appellations of origin performs multiple roles: it facilitates differentiation due to unique trade names, motivates the creation of quality goods and offers benefits to the economy in terms of a consumer trust and marketability. This point of divergence is clear in the wider discussion between France and the U.S. on international regulation. France has a significant economic interest in safeguarding the traditional industries, which has demanded a solid and global protection, and pushed historically to achieve strict GI recognition. Its seventeenth century laws are still a standard in strict protection. In contrast, the U.S. allocates GIs as part of a larger intellectual property regime, emphasizing consumer rights and fair competition whilst not placing prohibitions on the potential to use a term generically in international trade.

International organisations like the World Intellectual Property Organisation (WIPO) have a vital role to play in brokering these conflicting national interests. Whereas France focuses on the rights of producers and avert abuse, the U.S. focuses on protecting consumers and promoting the freedom of the market. This is a persistent controversy, and it highlights how difficult it is to harmonize the national interests of various countries in a universal regime of GI control.

## 2. APPELLATION OF ORIGIN

A geographical indication (GI) is a name applied on products that have the origin of a certain place and have qualities, characteristics or reputations that can be related to the place. The origin of the concept can be traced back to 1883 when it was mainly used to preserve the French wines of specific regions subsequently extended to the United States to preserve the products associated with their geographical setting. GIs represent the heritage of a product, which is usually linked to the soil, climate, and old wisdom, and make the one different compared to goods that are produced elsewhere.

GIs are especially applicable to agricultural products in the U.S., where flavour or quality may vary based on local specific conditions. In order to control these differences, the U.S. law identifies three categories namely: indications of source, appellations of origin and geographical indications. Markings of origin only reveal the place of origin of a product e.g. Made in the U.S.A. An appellation of origin by contrast needs that unique characteristics of a product are essentially or solely dependent on its geographical location- as in the case of Champagne. Therefore, all the appellations are GI but not all GIs are the appellations since the latter requires a more pronounced association between features and place of origin.<sup>3</sup> In general, the appellations are mostly geographical names or other traditional names, rather than indirect names, such as symbols. A case in point is the Swiss or Swiss Made in the case of watchmaking. This appellation signifies that the watch originates in Switzerland and reflects the nation's tradition, know-how, and globally reputed craftsmanship.

The use of "Swiss" is governed by the **Federal Council Ordinance of 23 December 1971**, amended in **2016** to reinforce protection. Under this law, a watch may bear the "Swiss" designation only if its **technical development occurs in Switzerland**, its **movement is Swiss and cased in Switzerland**, the **final inspection is conducted there**, and at least **60% of manufacturing costs** are incurred in Switzerland. These requirements ensure consumer trust and preserve the prestige of Swiss watchmaking.

## 3. DIFFERENCE BETWEEN A GEOGRAPHICAL INDICATION AND AN APPELLATION OF ORIGIN

Appellations of origin are a special type of geographical indication that are protected under the Paris Convention and defined in the Lisbon Agreement. They are a specific and highly regulated category within the broader concept of geographical indications.

Article 2 of the Lisbon Agreement defines appellations of origin as "the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors." This suggests that appellations of origin consist of the name of the product's place of origin. However, some traditional indications that are not place names but refer to a product in connection with a place are also protected as appellations of origin under the Lisbon Agreement.<sup>4</sup>

Appellations of origin and geographical indications both require a qualitative link between the product and its place of

<sup>3</sup> *Famous Appellations of Origin*, (June 2008) Available at <[https://www.wipo.int/wipo\\_magazine/en/2008/06/article\\_0009.html](https://www.wipo.int/wipo_magazine/en/2008/06/article_0009.html)>

<sup>4</sup> O'Connor, Bernard J., 'Geographical Indications: Some Thoughts on the Practice of the US Patent and Trademark Office and TRIPs' (2014) 13 *World Trade Review* 713, Available at <<https://doi.org/10.1017/s1474745614000019>>

origin. They inform consumers about a product's geographical origin and its quality or characteristics linked to that location. The key difference is that the link must be stronger for appellations of origin - the quality or characteristics must result exclusively or essentially from the geographical origin. This generally means the raw materials and processing must occur entirely within the defined geographical area.<sup>5</sup>

For GIs, a single criterion tied to geographical origin, such as quality, characteristic, or reputation, is sufficient. The production of raw materials and processing of GI products do not necessarily take place entirely within the specified geographical area.

The term "appellation of origin" is often used in *sui generis* systems that establish specific rights and protection for GIs. Geographical indication is a broader concept that does not prescribe a particular mode of protection.

#### 4. COMPARISON BETWEEN APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

The Lisbon Agreement and the TRIPS Agreement provide distinct frameworks for the protection of appellations of origin and geographical indications, respectively.

The Lisbon Agreement, adopted in 1958, establishes a system for the international protection of appellations of origin. Under the Lisbon Agreement, appellations of origin are defined as "the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors." This represents a stringent standard, as the product's qualities must be directly and uniquely attributable to its geographical origin.

In contrast, the TRIPS Agreement, which was adopted as part of the World Trade Organization framework in 1994, provides a broader definition of geographical indications. TRIPS defines GIs as "indications which 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 origin." This allows for GI protection where the product's qualities are linked to, but not exclusively dependent on, its place of origin.

The key distinction is that appellations of origin require a stronger, more direct causal link between the product and its geographical location, while GIs under TRIPS can encompass a wider range of products where reputation or other characteristics are associated with the place of origin, even if the production process is not entirely confined to that region. This difference in the stringency of the geographical link reflects the varying levels of protection afforded by the Lisbon Agreement and the TRIPS Agreement, with appellations of origin representing a more rigorous standard that must be met for a product to gain this status and access the associated international protections.

#### 5. EVOLUTION OF APPELLATION OF ORIGIN

Throughout history, humanity's pursuit of premium and unique products has driven exploration, trade, and even the discovery of new sea routes and continents. Regions known to produce goods such as silk, cotton and spices became world famous with whole communities specialising in what they did best. Gradually these products became associated with the areas they were originally produced but the increasing demand also caused replicas of such products which posed a threat to the livelihoods of the producers and the trust that consumers had on the products. This is what led to Geographical Indications (GIs).<sup>6</sup>

GIs originated with primitive trademarks prior to the Industrial Revolution in 18th century Britain. During that period the international trade was done with the primary products and simple manufactured items, where there was no such a strong legal framework to protect goodwill. But it turned out that the production in one or another region was better and it was explained by the geographical conditions like soil, climate, local recipes and craftsmanship. To identify the origin of products, merchants started to label the goods with names, symbols, or drawings of landmarks and other local icons as the way to ensure quality indirectly. These marks established reputations of regional products, and also spawned imitations.<sup>7</sup>

To curb adulteration and forgery, the early legislators came up with laws punishing counterfeiting acts and established

<sup>5</sup> Intellectual Property (TRIPS) Jan. 2011 Available at <[https://www.wto.org/english/tratop\\_e/trips\\_e/ta\\_docssec5\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/ta_docssec5_e.htm)>

<sup>6</sup> Garcia, Claude, et al. 'Geographical Indications and Biodiversity in the Western Ghats, India' Mountain Research and Development' (2007) 27, No. 3 International Mountain Society 206

<sup>7</sup> Michael Blakeney, 'Proposals for the International Regulation of Geographical Indications' [2001] 4(5) JWIP 629

frameworks in certifying local goods that were genuine. Artisans were assigned monopolies of production in guilds, controlled by service marks or heraldic designs. These protective mechanisms developed into modern day GI systems, whereby a designation of protection can be given to products based upon their region of origin in Europe. In those regions, the GI use is monitored and enforced by producers.

The development of GI is demonstrated by several examples that are well known all around the world: Champagne, Cognac, Roquefort, Chianti, Pilsen, Porto, Havana, Tequila and Darjeeling. These are the names used to refer to the geographical regions but have over time been used to refer to the products themselves. As an example, when one thinks of Champagne he/she thinks of sparkling wine and not the French territory and when he/she thinks about Tequila, he/she thinks about the Mexican town and not liquor made of agave. Such reputations render GIs worthwhile commercial assets, and at the same time, they also present them with misappropriation.

Protecting GIs at national and international levels is therefore essential to prevent counterfeiting and consumer deception. Misuse of GIs not only undermines consumer trust but also diverts profits and damages the reputation of authentic producers. Given their link to culture, tradition, and reputation, GIs represent one of the most diverse and evolving fields of intellectual property law. However, the lack of uniformity in global protection systems highlights the need for stronger international frameworks.

Historically, the development of wine and its ties to the Catholic Church played a significant role in shaping GI culture in Europe. As European wines gained popularity, adulteration became widespread. To address this, Portugal created the world's first appellation system in 1756 to safeguard Port wine from the Douro region. The Douro Wine Company was tasked with demarcating vineyard boundaries and regulating production, marking the first official recognition of a regional appellation. France followed with its *appellation d'origine contrôlée (AOC)* system, codified in 1919, which recognised GIs as collective intellectual property.

At the international level, GI protection gained recognition through treaties. The Paris Convention of 1883 acknowledged "indications of source" and "appellations of origin" as protectable entities but failed to define them. Article 10 prohibited false attribution of source but left interpretation broad. The Madrid Agreement of 1891 strengthened this by preventing deceptive use of indications of source, creating exceptions for generic terms, and specifically protecting regional wine appellations. It also established the precedent for distinguishing between appellations and generic designations.

In the same year, the Madrid Agreement Concerning the International Registration of Marks made GI protection available to many countries by way of collective or certification trademarks, which resulted in a distinction between the countries adopting GI-specific systems and those that use the trademark law. Following the World War I, France demanded further safeguarding of the so-called Champagne by the treaty of Versailles according to which Germany was obliged to observe the signification of provenance of wine and spirits. This was one of the first examples of particular legal treatment of GIs in the international treaties.

Clarification was further brought with the Lisbon Agreement, which coined the terminologies of appellations of origin and country of origin, which contributed to the formation of current GI discourse. The above developments show how the protection of regional products has been shifting towards the local guilds, to extensive international systems in response to the problems of fraud, imitation and the spread of international trade.

## 6. THE LISBON AGREEMENT: LIMITED COUNTRY COVERAGE

It is based on these initial developments that the appellations of origin were given international protection at the first instance under the 1958 Lisbon Agreement on the Protection of Appellations of Origin and their International Registration, organized by the World Intellectual Property Organization (WIPO). Despite its significance, the Lisbon Agreement only came into effect in 1966 and has maintained limited participation among countries. As of October 2010, following Macedonia's accession, the Lisbon Agreement had 27 Contracting Parties, with five additional signatories awaiting ratification. The first countries to ratify the Agreement in 1966 were Cuba, France, Haiti, Israel, Mexico, and Portugal. 'Appellations of origin' according to 1958 Lisbon Agreement for the 'Protection of Appellations' of 'Origin' and their 'International Registration' are defined as follows: "Appellations of origin are the geographical name of a country, region, locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors."<sup>8</sup> A key feature of the Lisbon Agreement is its registry of appellations of origin, which ensures protection across the territories of all contracting parties.

<sup>8</sup> Lisbon Arrangement for the Protection of Appellations of Origin and Their International Registration (31 October 1958) art 2

This mechanism is widely regarded as a model by advocates seeking stronger GI protections within the WTO framework. By 2011, the registry encompassed 795 protected appellations of origin, with **France accounting for 508 entries**, representing **63.9% of the total**—a decrease from its dominant **81.2% share in 1968**. Seven contracting parties had not registered a single appellation of origin (Burkina Faso, Congo, Gabon, Haiti, the Islamic Republic of Iran, Nicaragua, and Togo); while Israel and the Republic of Moldova had one registered appellation each (Jaffa oranges and Românești red wine respectively).

Geographical indications registered under the Lisbon Agreement primarily pertain to **wine**, which accounts for about two-thirds of all entries. This is followed by **spirits, cheese, tobacco, mineral water, beer, and malt**. The registrations reflect a pattern of specialization, with certain countries dominating specific sectors. For instance, **France leads in appellations for wine, spirits, and cheese**, while **Cuba exclusively registers tobacco**, and the **Czech Republic excels in mineral water and beer and malt**.

Notable examples of appellations of origin (AOs) under the Lisbon Agreement include **Porto, Cognac, Pilsen, Champagne, Bordeaux, Tequila, Habano cigars, Jerez**, and the **French Appellations d'Origine Contrôlée**. Beyond food and beverages, non-food products have also been registered, such as **Talavera handcrafts (Mexico)**, **Cholet cloth (France)**, and **Bohemia glass (Czech Republic)**, illustrating the diverse scope of GI protection.

#### **WTO's TRIPS two-tier standard of protection for GIs**

Geographical indications (GIs) achieved near-universal recognition and protection with the adoption of the **TRIPS Agreement** in 1995. Under TRIPS, GIs are broadly protected to safeguard **consumer interests** and **goodwill associated with products**. However, the agreement establishes two distinct levels of protection. The general standard, applicable to all goods, is based on the "**non-misleading requirement**," which prevents the use of GIs in a manner likely to deceive consumers. In contrast, an enhanced level of protection is specifically granted to **wines and spirits**, regardless of whether their misuse causes consumer confusion.

The multilateral trade negotiations as represented by the Doha Round have brought out an disparity between member countries. There is a call by some countries to have the extension of protection that is enjoyed by wines and spirits to all products and some countries tend to embrace the status quo. This continues discussion highlights the divergent interests and economic goals of the member states as far as GI protections are concerned.y Organization (WIPO).

## **7. THE MINIMUM LEVEL OF PROTECTION**

The TRIPS Agreement is targeted to lessen distortion of international trade, guarantee the effective protection and enforcement of intellectual property rights (IPRs), and technological innovation and transfer. It offers a broad structure to all forms of IPRs, such as geographical indications (GIs), and general requirements on non-discrimination and enforcement provisions, such as judicial review, indemnification, provisional measures and criminal procedures.

There are however certain requirements with regard to GIs which are stipulated in Section 3 of Part II of the Agreement. These are the rule to the effect that one shall not use a GI in a manner that would deceive the populace as to the geographical origin of the good (the non-misleading requirement) or amounts to unfair competition. Protection also extends to the invalidation of trademarks incorporating a GI if they are misleading. This provision covers deceptive indications, which, while literally true, falsely suggest that goods originate from another region.

A key requirement under TRIPS is that a GI must be protected in its **country of origin** and not have fallen into disuse to qualify for international protection. Unlike trademarks, this stipulation can be challenging for producers in developing countries, who often lack adequate domestic legal frameworks. As a result, these producers face difficulties in addressing the unauthorized use of their traditional names both locally and internationally. For example, Chilean producers of **Azapa olives** (from the Azapa Valley) have been unable to prevent Bolivian and Peruvian producers from using the Azapa name, largely due to insufficient legal protection within Chile.

The TRIPS Agreement also includes exceptions for GIs that have become **generic terms**, such as **Moutarde de Dijon, Cheddar cheese, and Camembert**, which limits their protection as GIs. Additionally, a "**grandfather clause**" safeguards trademarks identical or similar to a GI if the trademark was registered in good faith before 1994 or before the GI was protected in its country of origin, ensuring continuity for existing trademarks. Parma, which has been trademarked in both Mexico and Canada, is an example of this phenomenon; Parma ham Italian producers have been prevented from marketing their products with the Parma GI in these two countries, resulting in an estimated loss of EURO 3 million per year in Canada alone (European Commission 2003).

## 8. ADDITIONAL PROTECTION FOR WINES AND SPIRITS

The TRIPS Agreement offers an enhanced level of protection for geographical indications (GIs) specifically for wine and spirits, building on traditions established in the Madrid Agreement of 1891 and reinforced after World War I. First, there is a “non-misleading requirement”. Second, the use of a GI is prevented “even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.

The agreement holds some exceptions (for homonymous GIs, for example) as well as additional obligations (Article 24). In particular, the genericity exception applies to those GIs that are identical to the customary name of a grape variety (such as Montepulciano). There is also a second “grandfather clause” which allows the continuous use of a protected GI for wine or spirits by those who can prove prior use (before 1984, or in good faith before 1994). Finally, WTO Members may not refuse, if requested, to conduct negotiations of international agreements aimed at increasing the protection of individual GIs for wine and spirits.

**The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications was adopted on 20 May 2015.** This significantly expands the scope of the Lisbon Agreement from just AOs, which are a narrower subset of GIs in which products are exclusively or essentially linked to a geographical environment, to the broader category of GIs.<sup>9</sup>

In India, the geographical indications regime is regulated by the **Geographical Indications of Goods (Registration & Protection) Act, 1999** and the **Geographical Indication of Goods (Regulation and Protection) Rules, 2002**. Registration of the geographical indication is not compulsory in India<sup>10</sup> the owner of the unregistered geographical indication can enforce his rights through the common law remedy of passing off. It is recommendable to register the geographical indication as the registration certificate acts as the *prima facie* evidence in the court in case of any dispute and no additional evidence is required to prove the validity / ownership.<sup>11</sup>

While registration of geographical indication is not mandatory in India, Section 20 (1) of the Geographical Indication of Goods Act states that no person “shall” be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an “unregistered” geographical indication. The registration of a geographical indication gives its registered owner and its authorized users the right to obtain relief for infringement.<sup>12</sup>

To register the geographical indication, any organization or association of people or statutory authority can apply for the registration. They need to file the application which should consist of the statement of how the geographical indications are related to the quality and with other characteristic features which are the result of the geographical environment encompassing the natural qualities and human factors, unique methods of production, processing and preparation, which occur within the said geographical area.

In India, a geographical indication may initially be registered for a period of ten years, and it can be renewed from time to time for further periods of 10 years.<sup>13</sup> Indian law places certain restrictions in that a registered geographical indication is not a subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement. In 2004, the first ever geographical indication mark was registered with the advent of Darjeeling Tea. Today the list consists of more than 270 registered GIs such as Pochhanpalli Ikat, Chanderi Handloom, ‘Basmati’ (rice), ‘Alphonso’ (mango).

The aim for introducing such act pertaining to GI was to ensure;

1. Protect for the interest of the producers and add prosperity to them.
2. Protect the consumers or buyers from deception and fraud.
3. Promote export of goods bearing GI quality.

Since the 14<sup>th</sup> century it has been the specialty of Banaras to weave brocades with intricate designs with gold and silver threads. There was a time when few used banana tree resin to create threads which are then polished to give the look of

<sup>9</sup> Trends in Geographical Indications (n 18)

<sup>10</sup>The Geographical Indications of Goods (Registration and Protection) Act, 1999, sec. 22 (GI Act)

<sup>11</sup> Arya Mathew, ‘Protection Of Intellectual Property Rights Under The Indian & International Laws’ (2009) <<https://www.altacit.com/publication/protection-of-intellectual-property-rights-under-the-indian-and-international-laws/>> accessed on 13th Dec, 19

<sup>12</sup>The Geographical Indications of Goods (Registration and Protection) Act, 1999, sec. 21 (a)

<sup>13</sup>*Ibid*, sec. 18 (1)

silver or gold thread, these were known as kela sari and sold under the impression of being Banarasi Saris. This caused the legit producers to suffer huge loss and even those who bought them. But not long back, around 2009, the Banarasi Brocade was registered in the name of 'Banaras Brocades and sarees'.<sup>14</sup>

Another case of GI came forward in 2008, when Tirumala Tirupati Devasthanams Venkateswar, who manages all the affairs at Tirumala Venkateswara Temple (along with offering the Tirupati Laddu or Sri Vari Laddu) came forward to register their famous laddu for GI in order to prevent black marketing of the same.<sup>15</sup>

In the year 2005, the Government of Tamil Nadu applied for the registration of its famous Kanchipuram sarees to protect its authenticity and quality. These sarees are woven with heavy silk and gold cloth and are worn by ladies on special occasions. The government of India recognized the same as an officially registered Geographical indication since 2005-06.<sup>16</sup>

Every Indian might be aware of the famous 'Nasik Valley Wine', a place in Maharashtra where the wine is produced from more than 29 wineries. These are protected under the patent of geographical indication since 2010. Nasik is also occasionally known as epithet "The Wine Capital of India".<sup>17</sup>

## 9. TEA BOARD, INDIA VS. I.T.C. LIMITED

This case featured a dispute over "DARJEELING" between Tea Board of India and ITC Limited. The Tea Board asserted exclusivity over "Darjeeling" and ITC maintained that there is more to "Darjeeling" than the tea that is grown there. Tea Board, India (registered proprietor of the GI "Darjeeling") filed a case against ITC Limited for using the mark 'Darjeeling' for its Lounge at the hotel in Calcutta. Under the application for interlocutory injunction, concerned with the existence of a *prima facie* case of the Tea Board against ITC based on the Trade Marks Act, 1999 (TM Act) and The Geographical Indications of Goods (Registration & Protection Act, 1999 (GI Act), ITC contended that grievances with respect to rights breached under the GI Act are only restricted to goods and not against any services.<sup>18</sup> The Court concluded the Tea Board's *prima facie* failure in proving violation of its registered certification trademark in terms of sec 75 of the TM Act as it had not registered its name as holder of the mark DARJEELING in respect of hotel business but for the purpose of certification of tea as one grown in Darjeeling where benefit of Sections 28 and 29 of the TM Act is not available.<sup>19</sup> The Calcutta High Court held that the word "Darjeeling" is not the exclusive right of the Tea Board, and decided the case in favour of the Kolkata hotel ITC Sonar and its Darjeeling Lounge.<sup>20</sup>

At the international level, TRIPS sets out minimum standards of protection that WTO members are bound to comply within their respective national legislations. However, as far as the scope of protection of geographical indication under TRIPS is concerned, there is a problem of hierarchy. This is because, although TRIPS contains a single, identical definition for all geographical indication<sup>21</sup>, irrespective of product categories, it mandates a two-level system of protection: (i) the basic protection applicable to all geographical indication in general (under Article 22), and (ii) additional protection applicable only to the geographical indication denominating wines and spirits (under Article 23)."

Like any other 'intellectual property law', the regulations which govern 'geographical indication' also vary from one country to another. An Indian registration of 'geographical indication' provides protection only in I

## 10. BILATERAL TREATIES

Countries that are parties to international conventions and treaties can establish special arrangements for the protection of **geographical indications (GIs)** through regional or bilateral agreements, provided these arrangements do not conflict with the provisions of the main international agreements. In addition to the primary legal instruments, there are numerous **regional and bilateral agreements** designed to protect GIs. These agreements aim to shield GIs from unauthorized commercial use and prevent misleading representations of the goods. Under such treaties, the names of countries are

<sup>14</sup>Trends in Geographical Indications (n 20)

<sup>15</sup>*Ibid.*

<sup>16</sup>Trends in Geographical Indications (n 20)

<sup>17</sup>*Ibid.*

<sup>18</sup>*Ibid.*

<sup>19</sup>*Ibid.*

<sup>20</sup>*Ibid.*

<sup>21</sup>The Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreements

granted **absolute protection**, ensuring that GIs are used in accordance with the laws of their country of origin. Essentially, these bilateral agreements extend the protection granted in the country of origin to other signatory states.

The development of **GIs** is deeply tied to the history and identity of regions. For example, **Christopher Columbus's journey** was not only to discover new lands but also to capture valuable spices from India. The reputation of each region's products was carefully nurtured by local producers, combining **nature and craftsmanship**, and passed down through generations. Over time, a unique connection between products and their place of origin emerged, leading to the rise of **geographical indications (GIs)** as a form of intellectual property, preserving both the legacy and the distinctiveness of these goods.

## 11. GEOGRAPHICAL INDICATIONS AS INFORMATION FOR CONSUMERS

The core idea behind a **geographical indication (GI)** is that the name of a geographical region should convey specific qualities, such as taste, quality, or other attributes, that consumers associate with products from that region. If there is no real connection between the geographic region and these qualities, then the GI would lose its meaning, rendering it misleading to consumers. In such cases, local laws that protect such GIs would only serve to generate profits until consumers realize the labels are deceptive through repeated experiences with the product.

Therefore, **public policy** regarding the establishment of GIs should typically assess whether a genuine correlation exists between the geographical region and the product's attributes before offering legal protection to the regional name. GIs that lack any meaningful connection to the product's quality should be rejected by local policy. Similarly, potential GIs that are clearly beneficial for consumer decision-making should pass a **cost-benefit analysis** to ensure they contribute positively to consumer welfare. While some producers may lose out due to increased transparency, the overall protection of GIs can enhance welfare by helping consumers make informed choices.

Yet when the regulation is usurped by the interest of the privates, then the desirable outcomes of the GI protection may be compromised to the detriment of the consumers and rival producers. Finally, although origin information may be worthy, it is essential to make sure that GI protection should not be used in unfair commercial gain.

Information is an essential factor in allowing rational consumer decision making particularly in the case of products that cannot be evaluated prior to purchase because of their quality that is hard or impossible to determine. Getting quality in information may take time and effort effort and there is a chance of making purchases decisions based on the unknown qualities. Here, geographical origin may be a valuable guide since it will enable the consumers to recognize the products that can match their personal expectations in terms of quality and features.

Such expectations may be based on past experience, advertisement, or even the recommendation of others. Geographical origin of a product gives a credible marker that can be used to direct purchasing activities, and it gives the consumer a means of maneuvering the ambiguity related to quality, especially in the case of products that cannot be easily checked or verified ahead of time. Geographical indications in this case assist in mitigating information asymmetry and assisting consumers to make better decisions that are aligned to their interests and previous experiences.

It is well argued that it is worth regulating misleading indications in the interests of the consumers, especially where geographical indication (GI) is a true reflection of the special characteristics derived out of the geographical origin of a product. These attributes are usually not replicable in other places and as such, the GI serves as a valuable instrument in indicating authenticity and guarding consumers against fraudulent activities. Nevertheless, these safeguards are indirect, because GI law provides rights that are enforceable not to consumers as such but to producers.

Conversely, the concept of artificial differentiation of products by means of controlled usage of GIs does not necessarily benefit the consumers. It may even lead to monopolies and producers can take up market share on the pretext of exclusiveness and quality that cannot be proven. Nonetheless, consumer decisions are not rational in all the cases, and they are often determined by emotions. Geographical indications, just like, some trademarks, may have symbolic importance, and consumers desire to identify with the prestige or image of a product.

A GI can have cultural, heritage or location connotations, and even time that may be of interest to consumers not inherent in the product itself. Some of the reasons why consumers can buy GI products are that they want to show off their own status or make a statement of lifestyle. To such consumers, the GI label per se is more significant than the real features of the product. In this regard, GIs are able to be used as cultural icons or luxury badges, which adds even more desirability to them in the market.

## 12. GEOGRAPHICAL INDICATIONS AS A PRODUCER DEVICE

For producers, differentiating their products from competitors is crucial, especially in markets where products are highly **commoditized**, such as agricultural goods. **Geographical indications (GIs)** offer producers a powerful tool to **identify** and **promote** their products, distinguishing them in the marketplace and potentially attracting more consumer interest. This is especially beneficial for **small-scale producers** who may not have the resources for substantial brand-building investments. GIs provide an alternative means of creating a strong **product image**—one that could convey qualities like **exoticness, prestige, or high quality**, which resonate with consumers and drive sales. This is often referred to as the **advertising or investment function** of GIs.

The **sales-promotion effect** of a GI is typically linked to the product's inherent quality. However, GIs can also generate value through more **evocative** and **aesthetic** associations. In such cases, the GI itself becomes a **desired characteristic**, even if the actual product quality is not directly linked to the geographical origin. This allows the GI to acquire a **selling power** that extends beyond the reputation of the product itself. Essentially, a GI can help producers charge **premium prices** for goods that might otherwise be viewed as commodity items.

However, this value can be undermined if other producers attempt to **imitate** a well-established GI. By using the GI on similar or different products, these third parties can tap into the **goodwill** and **sales-promoting effect** the original producers have cultivated, which can be considered **unfair competition**. For producers to safeguard the added value GIs bring to their products, it is essential that the **advertising and investment functions** of GIs are properly **protected**. Ultimately, GIs allow producers to **unlock value** by meeting consumer demand for **diverse, unique, and high-quality** products.

## 13. GEOGRAPHICAL INDICATIONS AS INTELLECTUAL PROPERTY RIGHTS

Some products are unique because they can be produced only in a certain geographical region and they have certain quality traits like in the case of Champagne or Basmati rice. The important issue about these products is the link between their quality characteristics and the geographical attributes of the region where these products are being produced. Such products are mostly agricultural commodities like wine, cheese, rice, fruits, and coffee but also refer to handicraft items such as silk clothes with traditional paintings on them; or it could even be even herbal medicines such as Neem and Turmeric. Property rights are often sought for such goods based on the fact that they are produced in geographical region which has unique geo-climatic characteristics and users traditional skills. These render a unique value to the product and make replication of these goods elsewhere impossible. Since goods emanating from another region must, by definition, be different, there can be no justification for using the same geographical term for them. It will ipso facto be a misrepresentation to do so and therefore, a special right makes more sense than an action which requires proof of misrepresentation. In that way there is a much stronger link between the distinctiveness of a geographical indications and the uniqueness of the underlying product, and an even stronger justification for a priori broad property rights. Goods in a market can be categorised based on the nature of activity required from the consumer in order to derive information on the good. In a market where there exists an inequitable distribution of information producers will be unable to differentiate their goods. Accordingly, being unable to inform customers of the superior qualities of their products, producers would cease to invest in increasing quality, thereby impeding product innovation. The reputation theory logically builds on this basic hypothesis. It argues that a producer has the incentive to invest in the promotion of his or her products reputation only if the same can be effectively conveyed to the consumer. A regime seeking to protect geographical indications would therefore seek to bridge the asymmetry of information between the producer and his or her consumers thereby allowing him or her to invest to a maximum into improving the quality and indirectly, the reputation of the good.<sup>22</sup>

The justifications for providing intellectual property rights can be broadly classified as:

- i) Equity considerations- the custodians of geographically indicated products should receive some price benefits if marketing of such products leads to commercial gain.
- ii) Conservation concerns – the protection of geographical indications products contributes to the wider objective of conserving the environment, biodiversity and sustainable agricultural practices.<sup>23</sup>
- iii) Preservation of traditional practices and culture- protection of geographical indications products would be used to raise the profile of the knowledge and the people entrusted with it both within and outside communities.
- iv) Prevention of appropriation by unauthorized parties or avoiding “biopiracy”, and promotion of its use and its importance to development.<sup>24</sup>

<sup>22</sup> Nelson P, ‘Information and Consumer Behaviour’ (1970) *Journal of Political Economy* 78, 311–329

<sup>23</sup> L Berard and P Marchenay, ‘From Localized Products to Geographical Indications, Awareness and Action’ (CNRS Resources des terroirs, Bourg-en-Bresse, 2008)

<sup>24</sup> CM Correa, *Protection of Geographical Indications in CARICOM Countries* (2002).

#### 14. DETERRING FREE-RIDING

A GI's reputation is the result of efforts undertaken by producers in a given region. Producers who do not work according to the specifications for that GI, which are sometimes restrictive, or who are not located in the defined production region may be tempted to use the GI to free-ride on its reputation. Often, such use is made in connection with lower-quality products.

It is important for several reasons that those who have the right to use a GI prevent its unauthorized use, not only to avoid losing business, but also, in the longer term, to ensure the GI is used only in relation to products that possess the qualities or characteristics to which it owes its reputation. Use of a GI for lower or different-quality products most likely results in tarnishing its reputation.<sup>25</sup>

#### 15. ECONOMIC AND SOCIAL BENEFITS OF GEOGRAPHICAL INDICATIONS

A product bearing a geographical indication have an added value for which consumers are ready to pay. Consumers are ready to pay a 10% premium price for origin – guaranteed products. Geographical indications therefore unlock value by capitalizing on consumers' desire for 'authentic', 'quality product', and as a consequence, most products bearing a 'geographical indication' enjoy a higher retail price than that of similar products.<sup>26</sup> The premium then pays for the renown of the product.

Geographical indications (GIs) provide primary producers with a significant benefit in the form of **higher prices** for their products. Beyond the immediate price advantage, GIs create **value** in various ways. For instance, the registration of a GI can lead to **increased production output** and **higher land values**. Additionally, the legal certainty provided by a GI registration encourages **investment** in both the product and the region.

A notable example of the positive impact of GIs is the **Phu Quoc fish sauce** in Vietnam, which gained GI protection in 2001. Phu Quoc fish sauce, a fermented fish sauce made from a particular variety of salted anchovies, is considered a delicacy in many East Asian countries. Its distinct characteristics arise from the region's unique environmental conditions, the quality of raw materials, and the traditional manufacturing process, which involves catching, salting, and fermenting anchovies in wooden barrels.

Before the GI registration, around 90 fish sauce producers on Phu Quoc Island collectively produced **10 million liters** of sauce annually, with only about **half a million liters** being exported, primarily to **Europe** and **Japan**. Despite its high quality, demand for authentic Phu Quoc fish sauce exceeded supply, and the market was flooded with counterfeit products. It is estimated that **80%** of the Phu Quoc-labeled fish sauce in European and Japanese markets was fake, often produced by Thai enterprises under deceptive trademarks.

The GI registration for **Phu Quoc** in 2001 significantly boosted the product's value. It attracted foreign investment from **Unilever**, which entered into a **10-year contract** granting them a license to use the Phu Quoc GI. This partnership allowed producers to upgrade their production facilities and expand their market reach globally, helping to ensure the authenticity of the product and protect it from counterfeiters.

#### 16. FORESTALLING REGISTRATION OF THE GEOGRAPHICAL INDICATION AS A TRADEMARK BY A THIRD PARTY

In case of a geographical indication (GI) being unprotected, it can at least be registered as a trademark by a single producer or company, particularly in case of goods of the same nature or similarity to those recognized by the GI. Such situation is characteristic of the international level, when GIS is recognized in a particular jurisdiction and is not in others.

In any jurisdiction where the GI is not nationally registered, the geographical name or sign might be considered a distinctive sign, a trademark registration of which may be obtained. Here, a party that registered could secure the trademark rights of the GI even though it is not a resident of the geographical area that the GI refers to. This may grant them an entitlement to bar others to use the indication like those producers who historically used the GI in its country of origin.

This poses a possible issue because local manufacturers in the country of origin can no longer use the GI should some

<sup>25</sup>*Ibid.*

<sup>26</sup>Stephane Passeri, 'Protection and Development of Geographical Indications (GIs) in Asia' (Conference on IP in Hong Kong and Mainland China: Best Practices and International Impact, 22 March 2007)

foreign investor register it as a trademark first which in effect mis-appropriates the indication and the reputation attached to it. This brings about the need to seek protection under GI at an early stage and furthermore ensure that such protection is registered in as many jurisdictions as possible to avoid its misuse or unauthorized use by third parties.

## 17. LIMITING THE RISK OF THE GEOGRAPHICAL INDICATION BECOMING A GENERIC TERM

Where a geographical indication (GI) is no longer applied to a product which is traditionally connected to a geographical origin, but rather as a common name to identify a product, it is said to have become a generic term. In these instances, the GI becomes powerless in that it cannot serve as a unique mark identifying the geographical source of a product and its particular qualities or attributes. Rather, it is applied in a general sense as a category of product, not one that is a creation of a specific area.

As a case in point, the name Camembert has become a generic name of the type of cheese and because of this, it is applicable to any such cheese of this type irrespective of the origin. This implies that the cheese manufacturers of any country on the planet could sell the goods under the brand name Camembert, although this word was initially linked with a particular area in France.

Conversely, Camembert de Normandie is a model of a shielded GI, namely that applied to the cheese produced in the Normandy area of France. This name remains a unique symbol of origin that only manufacturers in the named area will be allowed to make use of the name.

Protecting a GI by legal means and enforcement is important in avoiding the term turning into a generic name because it will make sure to keep the name linked to the distinctive geographical attributes of the term. The absence of this safeguard creates a risk that the GI will lose its connection to its geographical origin and the word will be used by anyone and it will lose its meaning and business worth.

## 18. GEOGRAPHICAL INDICATIONS AS A FACTOR OF RURAL DEVELOPMENT

Research indicates that geographical indications (GIs) may play a major role in the economic development of the rural regions particularly when well-suited conditions are met. GIs are beneficial to the regional producers as they can sell their commodities at a high price hence contributing to the improvement of local economies. The value added by the GI usually transfers to the producers within the region giving them a financial stimulus to produce more and enhancing the lives of employees.

Another significant benefit of GIs is employment creation as a greater price and demand of GI-protected products can contribute to the preservation of local businesses, to decrease unemployment, and even to avoid the rural flight, as people can move to cities to find more opportunities.

In addition to farming or manufacturing, there is also the significant spin-off impacts of GIs in other fields including tourism and gastronomy since the identity of the area becomes more linked with the distinctive products. Tourists can be attracted to the region to either taste the products or to share the local culture related to them. This is capable of producing a wider regional brand that would increase the reputation of the area and attract investment.

Nevertheless, it should be noted that the creation of a GI on a product alone does not necessarily mean success and growth at the regional level. There are a number of requirements to provide sustainable benefits by GIs. These are the necessity of proper regional collaboration, proper managing GI system, and balancing the benefits among the local producers. Furthermore, there should be a definite and strong connection between the area and quality of the product and market demand that warrants the high premium prices of the GI products.

Expressed briefly, even though the concept of GIs can be a great solution to rural development, the implementation must be well-designed and executed in order to make sure that the area in question is actually benefiting.

## 19. GEOGRAPHICAL INDICATIONS AS A MEANS TO PRESERVE TRADITIONAL KNOWLEDGE (TK) AND TRADITIONAL CULTURAL EXPRESSIONS (TCEs)

**Geographical indications (GIs)** are more than just labels for products—they embody traditional knowledge (TK) and cultural expressions (TCEs) that are deeply rooted in the history and identity of a specific region or community. These products often result from long-standing, traditional processes and carry forward community knowledge from generation to generation. For instance, many GIs, especially tangible products like handicrafts, reflect the traditional artistic heritage of a region, which is often intertwined with natural resources and local environmental conditions.

Moreover, GIs can protect certain **traditional cultural expressions** (TCEs) even if they do not have a direct geographical meaning. For example, indigenous names, signs, and symbols associated with products may be registered as GIs. This form of protection is compatible with the nature of TK and TCEs, as GIs provide a potentially unlimited timeframe of protection, contingent on the maintenance of a clear qualitative link between the product and its geographical origin, and as long as the indication has not become generic.

GIs are a collective right and do not provide licensing or assigning of the indication and also limit the application of the indication to manufacturers in a specified territory. Such communal safeguarding assists in conserving the traditional processes and knowledge in that producers may be deterred to replace the less expensive, possibly less authentic process. To take one example, sarees manufactured on powerlooms in India are commonly mis-sold as the so-called Banarsi sarees, branding them with the name of the actual handloom versions made in Varanasi. GIs could contribute to countering such deceptive practices by making sure that the GI label can only be applied on the real, traditionally-made products to safeguard the genuine value of the product, and the cultural heritage of the community.

More so, with the help of GIs, TK and TCEs receive a kind of indirect protection as ordinary intellectual property (IP) systems continue to leave these in the public sphere and subject to abuse by third-party actors. The incentives to take part in such deceitful acts are minimized by improving the economic value of authentic products by means of a GI. GIs enable native populations to commercially utilize their TK and TCEs, and they, therefore, enable indigenous populations to gain economic advantage of the distinctiveness of their traditional products. This distinction will result in sustainable economic growth because local artisans and producers will be able to stay with their traditional crafts and skills thus their culture and will be economically self-reliant.

The U.S. legal system has seen a long evolutionary process in the protection of geographical indications, as the nation has largely been using the trademark law and the collective marks/ certification to protect these valuable intellectual property rights. Although the approach is not the same as the *sui generis* GI system of the European Union, the two models are both intended to offer consumer protection and to promote regional economic development.

Closer analysis of U.S. strategy on GI protection shows that there are advantages and shortcomings. The apparent applications of trademark law and certification/ collective marks provide an open and adjustable framework, permitting protection of a broad spectrum of GI. This system has also had its fair share of criticism citing that it fails to convey all the special cultural and historical meaning most GI possess. Also, the absence of a specialized GI registration procedure may pose a problem in terms of enforcement and consumer awareness.

The safeguarding of GIs is a controversial topic on the global level, and the discussion on the preferences between intellectual property, free trade, and the interests of the consumers continues. Negotiating this complicated terrain, the U.S. is bound to encounter a set of challenges and opportunities in the sphere of GI protection both within and within the framework of international trade agreements.

Some of the recommendations of reinforcing the U.S. approach to GI protection are the introduction of a robust and simplified system of registration, better cooperation with foreign partners to align GI protection, and more serious investment in consumer education and awareness. Also, the policymakers are advised to cautiously think about the economic and social impact GIs can have, especially in the agricultural sector, and attempt to find a balance between the right of intellectual property, free trade, and consumer interests.

In the future, the position of GIs in the formation of global markets, trade, and consumer preferences is bound to gain more significance. With the world economy ever changing, close consideration by policy makers, industry stakeholders and scholars will be vital to the effective exploitation and implementation of geographical indications in the United States and other parts of the world.