

RIS DISCUSSION PAPERS

**India, the European Union and Geographical
Indications (GI): Convergence of
Interests and Challenges Ahead**

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**Research and Information System
for the Non-Aligned and
Other Developing Countries**

India, the European Union and Geographical Indications (GI): Convergence of Interests and Challenges Ahead*

by

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I Introduction

In recent past, the geographical indication (GI) has emerged as one of the important instrument of intellectual property protection. Though, there were three important International treaties such as Paris Convention, Madrid Agreement and the Lisbon Agreement with provisions to protect indications of source and appellation of origin but they could not become an effective international instrument because of the fact that either they had only general provisions or had very limited membership. As the term itself indicates the GI are designations, expression or sign which aim at indicating that a product originates from a country, region or locality. They generally cover agricultural goods but include industrial goods as well. Now there are discussions if it may include services as well.¹

The various provisions of Trade-Related aspects of Intellectual Property Rights (TRIPs) agreement covering geographical indications have attracted a considerable debate in the TRIPs Council. The additional product coverage has remained confined to wines and spirits. Several developing countries including India have been highly critical of this approach because of its adverse trade implications. The issue was raised in the last WTO Ministerial Conference at Doha. This Conference took note of these concerns. Accordingly, the Doha Ministerial Declaration refers to the issues related to the extension of protection of geographical indications provided for in Article 23, to products other than wines and spirits (paragraph 18). This is now being addressed in the Council for TRIPs. Apart from this, the Doha Declaration also called for establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Ministerial Conference to be held in September 2003 at Cancun.

However, on this, there is some confusion about interpretation of the Doha Declaration. While some countries, including Bulgaria, the EU and India among others, insist that the Doha Declaration contain a clear mandate for negotiations, others, such as Argentina,

dispute this interpretation. Nevertheless, India and EU have jointly initiated some efforts to strengthen the protection of GIs. This paper is an attempt to look into the various issues involved in the debate on geographical indications in the background of EU-India cooperation. Section II deals with the conceptual aspects of GI and explains India's stand while Section III looks into the on-going debates in the TRIPs council and their wider trade implications. The Section IV summarizes the various EU initiatives in this regard while the last section draws the broad conclusions.

II Concept of GI and Indian Stand

The term 'geographical indications' is a rather new addition to the literature on intellectual property rights. It was first introduced by WIPO during the discussion of a treaty for protection of names and symbols indicating geographical origin. The trade related intellectual property rights came under the ambit of a multilateral trade agreement for the first time in the Uruguay Round. The TRIPs agreement has been described as, "the most influential international agreement ever subscribed to on intellectual property rights".² TRIPs consist of seven parts ranging from copyrights, patents, undisclosed information, trade marks, industrial design, integrated circuits and geographical indications. The agreements set out for each area minimum standards of protections, requiring governments to provide procedures and remedies to enforce. Several developed and developing countries such as NAFTA and ASEAN have opted for advanced versions of TRIPs. There are now discussions of bringing in 'TRIPs plus' to cover new areas like databases etc.

The Section 3 of Part II of the TRIPs agreement deals with geographical indications. The related articles are from Article 22 to 24 of the Agreement on TRIPs. GIs are defined in the TRIPs Agreement of 1994 as "indications which identify a good as originating in the territory of a Member (of the WTO), 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". The concept of geographical indication as evolved during the TRIPs agreement attempts to, covers the "appellations of origin" (AO) and "Indications

of Source” (IS). However, there are certain differences between AO and GI as defined under TRIPs. Some of these differences are enlisted in Table 1.

AO is defined in the Lisbon Agreement for the Protection of Appellations of Origin, 1958. It covers products that have a specific quality, that is, exclusively or essentially due to the *geographical environment* in which the products are produced. If a geographical term is used as the designation of a kind of product in a certain country over a substantial period of time, that country may recognize that consumers have come to understand a geographical term that once stood for the origin of the product. For example, "Kohlapuri Slippers" a slipper originally from the Indian town of Kohlapur denoting a certain kind of slipper, is now a product regardless of its place of production. The IS appears in the Paris Convention for the Protection of Industrial Property, 1883 and the Madrid Agreement on Indications of Source of 1891, and can be defined as, an indication referring to a country or a place in that country, as being the country or place of origin of a product. It may normally be preceded by words such as "made in...".

The protection of geographical indications may be at the national or regional level. The Annex in this paper enlists some of these endeavors. For instance, "Tuscany" for olive oil produced in a specific area of Italy³, or "Roquefort" for cheese produced in France is protected in the European Union under Regulation (EC) No. 2081/92 and in the United States under US Certification Registration Mark No. 571.798. EU has signed a series of bilateral and plurilateral agreements with Australia, Mexico and South Africa for phasing out names of European wines being used by producers from these countries and in return accepting GIs as being protected by the respective countries. Geographical indications are protected in accordance with national laws under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin.

Table 1: A Comparison between appellations of origin and geographical indication

Appellation of origin (AO), according to the definition of the Lisbon Agreement	Geographical indication (GI), according to the definition of the TRIPS Agreement
<p>Aos are necessarily <i>geographical names</i> of a country, region or locality, such as Tequila, Porto, Jerez.</p> <p>AO <i>designates</i> a product. The product's name is the same as the AO. For instance, "Champagne", "Bordeaux", etc.</p> <p>Aos are limited to the <i>quality and characteristic</i> of a product.</p> <p>AO considers the <i>geographical environment</i> where the product comes from, including natural (soil, climate, etc.) and human factors.</p> <p>AO covers only <i>geographical names</i>.</p>	<p>GIs are any indication <i>pointing to a given</i> country, region or locality, such as the symbol of the Eiffel Tower to designate famous French products or the Taj Mahal for famous Indian products.</p> <p>GI <i>identifies</i> a good. That means that a GI could be any expression –not necessarily the name of the place where the product originated—that could serve the purpose of identifying a given geographical place. For instance the French flag for identifying wines of certain quality or reputation or just the name of the place identifying the product such as "<i>jambon de Parma</i>."</p> <p>GI also refers to the <i>reputation</i> of the product</p> <p>GIs use a <i>more general concept</i> of "geographical origin".</p> <p>GI also <i>covers symbols</i>.</p>

Source: Escudero (2001).

Indian Position on GI

India has submitted two major proposals at WTO on IPR issues where geographical indications have also been covered.⁴ India, Cuba, Egypt, Indonesia and Pakistan have submitted a joint proposal in which it is requested that the additional protection as given to wines and spirits should be extended to other products as well. This would be helpful for products of export interest like Basmati rice, Darjeeling tea, alphonso mangoes, and Kohlapur slippers. In the paper, India has also demanded to expedite the work already initiated in the TRIPs Council in this regard under Article 24, so that benefits that are arising out of the TRIPs agreement spread out wider.

In December 1999, the Indian Parliament passed the Geographical Indications of Goods (Registration and Protection) Act, 1999. Prior to this, there was no rule in India to specifically deal with GIs. This Act seeks to provide for the registration and better protection of geographical indications relating to goods produced in different parts of India. The Act would be administered by the Controller General of Patents, Designs and Trade Marks, who is the Registrar of Geographical Indications. The term of protection is initially for ten years and then can be renewed from time to time. The salient features of this legislation include definition of several important terms like "geographical indication", "goods", "producers", "packages", "registered proprietor", "authorized user" etc. The Act also has provisions for the maintenance of a Register of Geographical Indications in two Parts- Part A and Part B and use of computers etc. for maintenance of such Register. The Part A contains all registered geographical indications while the, Part B contains particulars of registered authorized users.

Apart from legislative changes in the relevant intellectual property laws, the Government has also undertaken some initiatives for major upgradation and modernisation of the administrative framework covering Patents, Designs, Trade Marks and Geographical Indications. Projects to modernise the Patent Office, the Design Offices, the Trade Marks Registries and the establishment of a new Geographical Indications Registry costing over Rs. 85 crore have been initiated. The modern Geographical Indications Registry (GIR) has been established at Chennai, in July 2001, under the Geographical Indications of Goods (Registration and Protection) Act, 1999. The GIR has commenced basic work to receive and process applications. A Website has already been launched and it is proposed to upgrade it to an integrated, interactive IP portal by the end of 2002.

Some of the recent patents at US have triggered an intensive debate on linkages between IPR regime, traditional knowledge, and benefit sharing. Some of the patents are even based on GIs from developing countries, for instance, patents on basmati rice from India and jasmine rice from Thailand. After a patent on Basmati rice lines and grains, granted by the USPTO to M/s. Rice Tec Inc. USA on September 2nd, 1997, India contested this patent. In a long litigation of almost five years, ultimately the title of the patent was

changed in the year 2002. In order to avoid such situation, India has now set up a Basmati Development Fund, a watch agency to keep a worldwide watch for new trademark applications for Basmati Rice or its deceptive variations. The watch agency has identified a number of attempted registrations of which 15 have been successfully challenged and concluded in India's favour. They were largely in UK, Australia, France, Spain, Chile, UAE etc. The remaining cases of attempted registration are being vigorously pursued by Agricultural and Processed Foods Export Development Authority (APEDA) in other countries. This shows the importance of GIs are becoming in global trade.

III World Trade, GI and WTO

As has been mentioned earlier, the concept of geographical indications broadly covered AO and IS. Though the importance of GI has grown over the years but very few data sets are there to substantiate this. Escudero (2001) has reported some data on AO, which gives a very interesting picture on GIs to begin with. The Lisbon Agreement for AO, is administered by WIPO. It ties up a small number of countries (19) from Africa, Europe and Latin America. There are no Asian members to this treaty. It has 766 registered AOs currently in force belonging to 12 of the 19 countries. These registrations are largely with France (66.3 per cent) followed by the Czech Republic (9.5 per cent). Table 2 provides a detailed account of the factual position. The data also show that three major economies France, Italy and Portugal account for 70 per cent of total AOs while all the European countries put together account for 95 per cent of registrations.

Table 2: Appellations of origin registered under the Lisbon Agreement arranged by country of origin

Country of origin of AO	Number of registrations	Per cent of registrations	Accumulated number of registrations	Per cent of accumulated registrations
France	508	66.3	508	66.3
Czech Rep.	73	9.5	581	75.8
Bulgaria	49	6.4	630	82.2
Slovak Rep.	38	5.0	668	87.2
Hungary	28	3.7	696	90.9
Italy	26	3.4	722	94.3

Cuba	18	2.3	740	96.6
Algeria	7	0.9	747	97.5
Tunisia	7	0.9	754	98.4
Portugal	6	0.8	760	99.2
Mexico	5	0.7	765	99.9
Israel	1	0.1	766	100.0
Total	766	100	766	100.0

Source: WIPO statistics on appellations of origin under the Lisbon Agreement.

Out of 766 registrations 61 per cent are for wines while only 9.5 per cent are for spirits. As Table 3 shows 84 per cent of the registrations are for four major category of products viz. wines, spirits, agricultural products and cheese. Tobacco and cigarettes account for only 4.3 per cent of the registrations.

Table 3: Protected products under the Lisbon Agreement

Product	Number of registrations	Per cent of registrations	Accumulated registrations	Per cent of accumulated registrations
Wines	470	61.4	470	61.4
Spirits	73	9.5	543	70.9
Agricultural products	51	6.7	594	77.6
Cheese	50	6.5	644	84.1
Ornamental products	33	4.3	677	88.4
Tobacco and cigarettes	33	4.3	710	92.7
Miscellaneous	25	3.3	735	96.0
Mineral water	17	2.2	752	98.2
Beer and malt	14	1.8	764	100.0
	766	100	766	100.0

Source: WIPO statistics on appellations of origin under the Lisbon Agreement.

Several developed and developing countries have flooded the TRIPs Council with wide ranging proposals on GI. Article 24.2 of TRIPS, provides that the WTO members shall, "review the application of the provisions of this Section..." This provision mandates a review of the application of provisions of Part II Section 3 of TRIPS which covers geographical indications. The current review has been under way since 1999. It is being conducted at two levels: an analysis of how geographical indication protection has been

provided in individual countries, and debate about whether the TRIPS provisions should be renegotiated and revised. Little substantive progress has been possible on the review to date.⁵ This is partly a result of a lack of clarity concerning the methodology for carrying out the review. The current TRIPs Council debate concerning geographical indications is focussed on two mandates contained in TRIPs:

- a. review of the application of the TRIPs geographical indication provisions (Article 24.2); and
- b. negotiations concerning a multi-lateral register for geographical indications for wine and spirits (Article 23.4).

The issue of **geographical indications** is being discussed at both the regular and special sessions of the Council for Trade-related Aspects of Intellectual Property Rights (TRIPs). The suggested target date for submitting proposals on this issue was the special session of the TRIPs Council on 20 September of this year, with negotiations scheduled to be finalised by the Fifth WTO Ministerial Conference in September 2003. During the regular session, the debate on extending the higher level of protection for GIs to products other than wines and spirits (set out in Art. 23) revolved mainly around a submission put forward by Switzerland on behalf of 20 countries (IP/C/W/353), including for the first time the EC with regard to a submission on GI extension. The EC document highlighted how GI extension could be included in the TRIPs Agreement and formulated a proposal "for appropriate action" to be included in the report of the TRIPs Council to the Trade Negotiations Committee by the end of 2002. In particular, the submission proposed that the additional protection in Art. 23 should apply to all GIs and that the multilateral register to be established should include GIs for all products. The submission stressed, however, that the proposal would not affect existing uses of names that coincided with protected GIs "to the extent that they have been in conformity with the TRIPs Agreement".

Interestingly, the 'Composite Text' which had come in 1990 from the Chairman of the Negotiating Group on Trade Related Aspects of Intellectual Property Rights, including

Trade in Counterfeit Goods (Ambassador Lars Anell from Sweden) included additional protection for all kind of products and not only for wines:

“The Committee shall [examine the establishment of] [establish] a multilateral system for the notification and registration of geographical indications eligible for protection in the parties participating in the system”⁶

The establishment of a multilateral system of notification and registration of geographical indications for wines became part of the so-called “additional protection” only in the “Dunkel Text”. In fact, the initial proposals on intellectual property was submitted much after the launching of Uruguay Round. It was after the mid-term Montreal Review (1988) that EC, US and a group of developing countries submitted proposals. The first text to be presented was a proposal from the European communities.⁷ Its Section C (Article 19-21) covered geographical indications for all products and not only to wines and spirits. Moreover, it also refereed to the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those countries participating in the system.

A number of countries, including the US, Australia, Argentina, Canada, New Zealand, and Uruguay thought it was inappropriate at this stage to put forward proposals or modalities for negotiations as no negotiating mandate existed.⁸ They also questioned the benefit of extending GI extensions, arguing that had been very reluctant to accept the additional protection for wines and spirits during the Uruguay Round and were not prepared to take on any further obligations.

The division was very much evident during the Special Session of TRIPs Council meeting. The members were divided, over whether countries would have to protect the terms in the multilateral system -- as advocated by the EU and others -- or whether it should be left to each country to decide -- as favoured by Australia, Canada, Japan and the US, who envisage the multilateral system to function mainly as a database. Similar divisions were also apparent with regard to participation in the system. That is, Members

disagreed over whether the "voluntary" nature of the system should only mean that the notification and registration of GIs was voluntary, or whether the protection of registered terms should also be voluntary. The US and others have also raised the issue of foreign persons wishing to obtain protection for their GIs in the EU itself face a non-transparent process that appears to come into some conflict with the EU's TRIPs obligations. Meanwhile EU has strengthened its retaliatory capabilities on the pretext of IPR violations. Some of such instances have been seen as trade barriers.

IV Initiatives at EU

The European Commission (EC) introduced a major trade instrument in 1996, called the Trade Barrier Regulation (TBR). Its main purpose is to provide EC industries with a weapon against obstacles faced by community firm in third countries or within the EC. The EC has established a database to provide an overview of the TBR and its application, including instructions to community enterprise on how to lodge a formal complain and the summary of the procedures involved. The database also contains a list of cases launched under the TBR.⁹ As of now, 18 cases have been dealt with under the TBR, 9 have involved some resort to WTO dispute settlement proceedings, 7 were suspended or appear to have been settled and other cases are up, to be fully resolved.¹⁰ One of the unresolved cases is against Canada, concerning geographical indications. In May 1999, the Consorzio del Prosciutto di Parma (an association of 201 Prosciutto di Parma producers) lodged a TBR complaint against Canadian lack of protection of the geographical indication of "Prosciutto di Parma". The Consorzio claimed that there is an absence of appropriate legal remedies to redress effectively the unfair competition generated by the use of the trademark "Parma" by the Canadian producers.

The Commission initiated an examination procedure in June 1999, and presented its investigation report to the TBR Committee in the year 2000, where it was unanimously endorsed by Member States. Therein, the Commission found that the degree of protection of the geographical indication, Prosciutto di Parma, would only be clear after the conclusion of the court proceedings commenced in Canada by the Consorzio. The Commission declared that if these proceedings resulted in a lack of protection for the

geographical indication, WTO action would have to be seriously considered. Therefore, this case is on hold pending the outcome of the Canadian court proceedings.¹¹

At another level the European Union has launched an important initiative to help improve protection of geographical indications across the various developing countries. At the WTO, it would be in form of two separate proposals being co-sponsored by India and several other developing countries. These two proposals would focus on a multilateral register for high quality products to guarantee their geographical origin.¹² The Doha Ministerial Declaration had suggested to establish such a register by the Fifth Ministerial Conference to be held in September 2003 in Cancun. The second communication seeks to attempt the extra protection that WTO members already apply to wines and spirits to other traditional high quality products that are just as deserving to such recognition such as Indian saris, oriental carpets, specialty teas such as Darjeeling (India), Jasmine rice (Thailand), cheeses such as Parmigiano Reggiano (Italy), Jamon de Huelva (Spanish ham), art paper (China), porcelain from Limoges (France).

V Summing Up

The geographical indications have emerged as one of the important feature of IPR regime across the countries. It is interesting to note that the awareness among the developing countries has also increased manifold. Series of proposals to widen the list of geographical indications is a clear evidence of this. However, apart from getting their GIs protected they also would have to take care of maintaining and insuring quality of their GI protected products. For instance, Darjeeling Tea would be more acceptable in the market if it bears the distinctive certification mark alongwith the seal of approval from the concerned Tea Board. A separate and distinguishable packaging would also add a distinct marketability to the product. The developing countries in general would have to take into account these factors while exporting GI protected agricultural and other commodities.

The growing acceptance of GI as an instrument has widened the concept and apart from agricultural products more and more industrial goods are also being included. It is

important that all the WTO member countries work towards development of a comprehensive mechanism for a more effective protection of geographical indications. In this regard, the recommendation of Doha Declarations for establishment of a multilateral system of notification and registration of geographical indications is an important initiative.

The recent EU proposal of enhancing the coverage of Article 23 to products other than wines and spirits reflects the concerns emanating from developing countries. India, Cuba, Indonesia and others have been demanding for such an enhancement. The convergence of interests at this point would help in facilitating the establishment of a representative regime for protection of geographical indications. However, the proposal from US and others have raised some pertinent points regarding transparency in extending GIs. The point about the national treatment with respect to geographical indications and sufficient protection to pre-existing trademarks that are similar or identical to a geographical indication is also important. The demand that the multilateral system of notification should function mainly as a database is to be negotiated at the TRIPs council. Some countries are demanding that the whole exercise should remain voluntary in nature. The US proposal suggests that WTO members would notify GIs to the WTO Secretariat. The Secretariat would enter the notifications into a centralised database available via the Internet and the participating members would use the database for domestic determinations regarding trademarks and GIs. The Non-participating members would have no obligations placed upon them by this proposal. Some of these points have emerged as a major challenge in terms of developing a global regime for GI protection. They should be carefully considered before the TRIPs Council Report is finalised by the end of this year.

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Box 1: Examples of protected geographical indications

National

Bulgaria: Bulgarian yoghurt, Traminer from Khan Kroum (wine), Merlou from Sakar (wine)

Canada: Canadian Rye Whisky, Canadian Whisky, Fraser Valley, Okanagan Valley, Similkameen Valley, Vancouver Island

Hungary: Eger (wine), Szatmar (plum)

United States: Idaho, (potatoes and onions), Real California Cheese, Napa Valley Reserve (still and sparkling wines), Pride of New York (agricultural products), Ohio River Valley (viticulture area)

India: Darjeeling Tea, Basmati rice; Kanjivaram and Banarasi Sarees etc.

Regional

European Union: Champagne, Sherry, Porto, Chianti, Samos, Rheinhessen, Moselle Luxembourgeoise, Mittleburgenland (all wines); Cognac, Brandy de Jerez, Grappa di Barolo, Berliner Kummel, Genievre Flandres Artois, Scotch Whisky, Irish Whiskey, Tsikoudia (from Crete) (all spirits); and a range of other products, such as Newcastle brown ale, Scottish beef, Orkney beef, Orkney lamb, Jersey Royal potatoes, Cornish Clotted Cream, Cabrales, Roquefort, Gorgonzola, Aziete de Moura, Olive de Kalamata, Opperdoezer Ronde, Wachauer Marille, Danablu, Lubecker Marzipan, Svecia, Queijo do Pico, Coquille Saint-Jacques des Cotes-d'Amour, Jamon de Huelva, Lammefjordsgulerod

Bilateral and Plurilateral Agreements

EU-Australia (1994); EU-Mexico (1997); EU-South Africa (1999).

Source: RIS, based on several reports including Escudero (2001), *WTO News – 1998 News Items* (www.wto.org) and Rangnekar (2002).

Endnotes:

- ¹ Rangnekar (2002)
- ² See Correa (1998)
- ³ Protected in Italy by Law No. 169 of 1992
- ⁴ India (1999a) and India (1999b)
- ⁵ Australian website on Gis.

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- 6 see Article 27 of Document MTN.TNC/35/REV.1
7 Escudero (2001).
8 BRIDGES Weekly Trade News Digest, Vol. 6, Number 25, 3 July, 2002
9 Commission database on <http://europa.eu.int/comm/trade/policy/instruments.htm>
10 Sundberg *et.al.* (2001)
11 *ibid.*
12 EU (2002)