
PROTECTION OF GEOGRAPHICAL INDICATIONS IN FOOD PRODUCTS: A STUDY OF THE WORLD & INDIA

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ABSTRACT

Geographical Indications (GIs) protection has arisen as one of the most contentious intellectual property rights (IPR) problems in the realm of the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The protection of geographical indications (GIs) assists producers in defining common quality standards while emphasising the regional origin of food items with specific attributes. Today's food markets are witnessing an increase in customer interest in items with different geographic origins, which is evident in supermarkets, where such geographically derived products are increasingly displayed. There is currently about 10,000 protected GIs throughout the world, with a trade worth of over US \$50 billion. GI denotes a link not just between a product and its specific location of origin, but also between its unique manufacturing methods and defining characteristics. Thus, the aim of the paper is to draw attention to the geographical infrastructure of this expanding regulatory system and more fully reveal the interests served by the GI model in the world of food.

Key words: Geographical Indications, Protected Food Names, Product Standard and Differentiation

CHAPTER 1

INTRODUCTION

1.1. OVERVIEW

Geographical indications (GIs) are typically used to designate products with special features associated with a location of production, the uniqueness of which is based on unique local assets, skills, and experience. These are a type of intellectual property that is distinct from others. Unlike patents, copyright, or trademarks, they are not a discrete and globally recognised category of IPRs. Different countries, such as the European Union and India, may protect them under original and specific (*sui generis*) geographical indicators laws. So, it can be said that GI is a subset of intellectual property in which the "indication" is the markings or label that recognises a good as having originated in a specific territory of a member and that the good has certain characteristics, reputation, or other characteristics that are facilities to ensure to that geographical origin. They usually correspond with rising trade demands since they have quality, traceability, and food safety criteria. Regarding producer regions, GIs express various distinct qualities that allow items to stand out and avoid falling into the commodity trap of undifferentiated products selling only on price. This distinction from commodities can provide a crucial competitive edge that is difficult to diminish.

GIs are assigned to foods, beverages, and agricultural goods. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) states that the inherent nature of GI foods and beverages must be derived entirely or substantially from the characteristics of their respective locations. Darjeeling tea, Bordeaux wine, Parmigiano-Reggiano cheese, and Idaho potatoes are just a few examples. One such example is the traditional Champagne. Only beverages manufactured in the Champagne region of north-eastern France in conformity with the conventional way can be legally called "Champagne." However, there are many more GIs that don't end up being this reputed and successful. The shared ideas of place, limitations, and provenance that all GI conceptual infrastructures share are examined in this study. This is a comprehensive review meant to help better understand the mechanics of food and intellectual property rights.

1.2. STATEMENT OF THE PROBLEM

Foods, drinks, and agricultural products are all assigned GIs. TRIPS (Trade-Related Aspects

of Intellectual Property Rights) says that the intrinsic nature of GI foods and beverages must be derived completely or substantially from the features of their particular locations. This paper aims at having an analytical discussion on the Intellectual Property Rights regime and tries to answer the question “How does Geographical Indication’s technicalities facilitate the protection of quintessential food?”

1.3. REVIEW OF RELATED LITERATURE

1. Protection of Geographical Indications: An Overview of Select Issues with Particular Reference to India by *Kasturi Das*
2. Intellectual Property Tools For Products Based On Biocultural Heritage by *Graham Dutfield*
3. How are Food Geographical Indications Evolving? – An Analysis of EU GI Amendments by *X Ruiz, H Forster, M Penker, G Belletti, A Marescotti, S Scaramuzzi, K Broscha, M Braitto and C Altenbuchner*
4. Coffee and Chocolate – Can We Help Developing Country Farmers Through Geographical Indications? By *Justin Hughes*
5. Guide to Geographical Indications: Linking Products and Their Origins by *Daniele Giovannucci, Timothy Josling, William Kerr, Bernard O'Connor, May T. Yeung*
6. What is the geography of Geographical Indications? Place, production methods and Protected Food Names by *Matthew J Rippon*

1.4. SCOPE AND OBJECTIVES

1. To have an in-depth knowledge of the conceptions of place, limits, and provenance that are common to all GI conceptual infrastructures of the food industry.
2. To know the approach of TRIPS in the constantly developing passage of GI.
3. To find about the Indian and International Foods which are protected by the GIs.

CHAPTER 2

LEGAL PROTECTION OF GI IN FOOD INDUSTRY

2.1 FUNDAMENTALS OF GI & FOOD PRODUCTS

Geographical indications are a distinct type of intellectual property that differs from trademarks, patents, and copyrights. Different nations may very well be able to preserve their GIs under distinct and exclusive sui generis law. Geographical indications are incorporated into areas of law and regulation other than intellectual property for the goal of safeguarding them. These include consumer protection rules governing trade descriptions, cultural heritage regulations and policies, and rural development regulations and policies, among others. One of them is food product labelling, which is the area of focus of this research. Being new in the family of the other Intellectual Property Rights covered in TRIPS and other multilateral treaties, this got its existence from the Uruguay Round of trade negotiations of the late 1980s and early 1990s, in proposals made by the European Community and Switzerland.¹

There have been counter-currents against the homogeneity and monetization of culinary culture for many decades. It is a global phenomenon that most rich countries attempt to separate their food intakes from mainstream, homogenized supply by seeking superior or distinctive attributes in their goods. Some of the distinguishing features required by these customers are indigenous to the product. This has necessitated engaging consumers with the distinction of regional origin and grabbing their interest with de-homogenized and de-commodifying products. If one looks attentively, one will see that supermarket counters frequently identify the origin of the item, or what we call the "source of produce," as well as meticulously delineating the position of the vendor farms. As a result, the geographical indication provides an intriguing characterization of both the endogenous and external indication to the good, as a member of a given group owning certain attributes, reputation, or other characteristics that are essentially linked to that geographical area.

France was the first country to organize an endeavor to protect local agri-food production in the early twentieth century, when the first laws on origins protection were passed. France has the biggest number of GIs to date. Then, in the mid-twentieth century, around 1962, Spain

¹ Graham Dutfield, *Intellectual Property Tools for Products Based on Biocultural Heritage*, INT. ENV. DEVL. 14, 14 (2011).

attempted to safeguard wine production in the La Rioja regions.

2.2 ROLE OF TRIPS AGREEMENT

The World Trade Organization's (WTO) Trade- Related Aspects of Intellectual Property Rights (TRIPS) treaty defines GIs as indications that identify a good as originating in the territory of a [WTO] Member or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin.² Most countries are now obliged to provide legal protection for "geographical indication" (GIs) through the TRIPS (Trade Related Aspect of Intellectual Property Rights) Agreement and membership in the WTO, but unlike the laws on patents, copyrights, and trademarks, the "GI" is a concept of public international law and does not exist as such in most domestic laws.³ Thus, while observing this, we need to look at the global perspective of the individual nations in order to understand the applicability. France continues its system of *appellations d'origine contrôlée* (AOCs); the Italians and Spanish have parallel systems (*Denominazione di origine controllata*, *denominación de origen*); the European Union merges French and German juridical notions with its bifurcated system of *Protected Designations of Origin* and *Protected Geographical Indications*; the US, Canada, and Japan provide GI protection principally through certification mark law; Mexico has long-standing appellations law in its *Industrial Property Code*.⁴ The oldest source of contemporary GI is still considered as the Paris Convention.

However, in reaction to TRIPS, nations including as China, Brazil, and India enacted their own GI legislation. Consequently, major wine-producing countries such as the European Union, the United States, Australia, and South Africa have unique rules governing the use of geographical names in association with wines and spirits. TRIPS recognises the inadequacy of the GI constitutional principles that are mandated to World Trade Organization (WTO) members by advocating for additional GI agreements in a variety of ways. The Agreement was further amended in 2015 to legally incorporate the preservation of GI and to allow international bodies to join as parties. The WTO TRIPS agreement, on the other hand, is the most recent GI accord. This treaty, which was signed in 1994, provides fundamental requirements for the protection

² Matthew J Rippon, *What is the geography of Geographical Indications? Place, production methods and Protected Food Names*, 46 *Area* 154–162 (2014), <https://rgs-ibg.onlinelibrary.wiley.com/doi/10.1111/area.12085> (last visited Nov 21, 2021).

³ Justin Hughes, *Coffee and chocolate – can we help developing country farmers through geographical indications?*, *INT. IP. INST.* 4, 5 (2009).

⁴ *Id.* At 5.

and implementation of GI in signatory nations. It sets methods for GI implementation that are transparent and accountable, as well as safeguards against unfair competition. Despite these achievements, GI remains a contentious international battlefield marked by disputes between two opposing perspectives.

If we look from a neoliberal point of view, the markets should decide the desirability of a particular performance. Therefore, the market demand should regulate the production of the commodities and the provision of the services. In case of corporate behaviour, the existence of intellectual property rights involves not only the design to include industrial products but also natural resources such as plants, animals and biological products employed in agricultural and food production. Supporting TRIPS, corporations took advantage of the agreement and appropriated biological resources that historically were shared by local communities.⁵

Article 22.3 of TRIPS requires Members to deny or cancel the registration of a trade mark containing or consisting of a GI for commodities not originating in the stated territory, if doing so could mislead the public about the true place of origin of the product.

2.3 INTERNATIONAL PROTECTION REGIME

A food product must have previously come from a single geographical region, with unique features or a reputation that can be traced back to a locality, to be protected by a GI tag. This is done so that buyers can connect it to its origin. As previously explained, this is done to ensure that the food product has a quality assurance that is distinct from others. The name of the country or place of origin adds to the commodity's prominence. This includes a range of food items starting from cheese to coffee and even wines and spirits. The legal environment is usually appropriate for the successful development of GIs as long as they are protected against fraudulent or confusing usage. Because it is a strategy capable of fostering local development and boosting family farming, the role of GIs goes beyond market access. GI areas and locales offer a unique perspective on the possibility for new forms of territorial organisation, technological advancement, social inclusion, and improved quality of life in local communities.

Colombia, Ethiopia, Jamaica, Hawaii, and Mexico have already protected and registered coffee GIs in the United States and the European market. One of the most successful GI marketing campaign ever mounted for a developing country's agricultural product, the now half-century

⁵ ALESSANDRO B, KAE S, HART N. F., *GEOGRAPHICAL INDICATION AND GLOBAL AGRI-FOOD: DEVELOPMENT AND DEMOCRATIZATION* 30, (Routledge 2020).

promotion is of *Colombian Coffee*, done completely with certification mark protection in the US and Europe.⁶ At the same time, Jamaica (Jamaica Blue Mountain Coffee) serves as an example of successful central government involvement in restoring and stabilising GI product quality, as well as central government control over GI marketing. The Jamaicans, like Colombian coffee, earned success in their main markets by obtaining certification or trademark protection.

The EU's institutional support for GIs is codified in legal laws like TRIPS and Regulation 2081/92. The Protected Food Names (PFN) system was established by the EU in 1992 with Regulation 2081/92 on the Protection of Geographical Indications and Designation of Origins for Agricultural Products and Foodstuffs. According to this, Scotch Beef from Scotland, Orkney Lamb from the Orkney region, Grimsby Traditional Smoked Fish from the town of Grimsby, and Melton Mowbray Pork Pies from the borough of Melton Mowbray may be included in the British zone of protection for PFNs.

Moving to Asia, Japan has the Hatcho Miso, a red fermented bean paste that has continuously been produced in Hatcho district in Okazaki, a city in Aichi Prefecture for almost 700 years. However, this has been in the conflict over the definition. A GI for Hatcho miso was granted in December 2017 to a consortium of more recent red miso producers from other parts of Aichi Prefecture, with the oldest two producers in Hatcho district refusing to join on the grounds that the standards proposed by the other producers were not strict enough to be respectful of the product's storied history.⁷ Following this, Hatcho district historical producers filed a formal complaint with the Ministry of Agriculture and started a petition to protest their treatment. The ability of a GI policy to neatly integrate the suggested items is again disrupted by this type of "competition," which imposes certain norms and relativizes authenticity. Instead, the GI registration provides a public platform, some urgency, and some fewer binary approaches for spotting tiny quality distinctions among heterogeneous items. The potential to leverage this aspect of GI legislation, however, depends on the manner in which the narrative of the product is socially constructed, and this in turn is subject to power relations between producers and to the whims of government arbitration.⁸

⁶ Justin Hughes, *supra* note 2 at 8.

⁷ Hart N. Feuer, *Geographical indications out of context and in vogue: The awkward embrace of European heritage agricultural protections in Asia* 39, 46 (2020).

⁸ *Id* at 46.

CHAPTER 3

GI REGULATIONS IN FOOD INDUSTRY IN INDIA

3.1 FUNDAMENTALS

Language, dance, music, religion, architecture, and food are all part of India's rich past. Food, as well as the food industry, contributes to a variety of beneficial and bad changes in the current shifting lifestyle and market context. Traditional cuisines are under tough competition as a result of globalisation, as well as a lack of technological advancements, effective marketing, and changing customer demands. These items require specific protection, up-scaling investment, and regional indicators to increase their popularity.

The first steps of Geographical Indication in India dates back to 2004 with Darjeeling tea obtaining the GI tag. However, the Geographical Indication of Goods (Regulation and Protection) Act was introduced in 1999 with the aim of facilitating registration and protection of intellectual property in relation to goods which came into effect in 2003. GI is defined under section 2(1)(e) of this Act. Broadly, GI in India lays in three categories, i.e., Handicraft goods, Agricultural Products and Foodstuffs. As of now, there are more than 365 items which have received the GI tag. Karnataka, out of all the states has the highest number of GI registration, followed by Maharashtra and Tamil Nadu. The representation of India's foodstuff in GI is quite low with just nine.

It is pertinent to note that whereas the TRIPS definition refers to goods in general, the Indian GI Act specifies the goods to be either agricultural goods or natural goods or manufactured goods that can qualify as a GI. Further, in the Indian Act, if a producer applies for a GI for a manufactured good, he or she must make sure that at least one of the activities of either the production or processing or preparation of the good must take place in the territory. In that sense, the GI Act is more restrictive than the TRIPS definition.⁹ The GI Act allows parties not being producers to file for registration if they can represent the interest of the producers.¹⁰

In recent decades, there has been a push for better agriculture, resulting in the replacement of

⁹ Rewa Kumari & Jagbir Rehal, *Geographical indications: A Tool for Indian traditional food industry*, 6 J. Progressive Agri 105, 106 (2015).

¹⁰ Jupi Gogoi, *Proprietorship of GI in India with Special Focus on the State of Assam*, 25 Journal of Intellectual Property Rights 146–154 (2020), <http://nopr.niscair.res.in/bitstream/123456789/55614/1/JIPR%2025%285%29%20146-154.pdf> (last visited Nov 21, 2021).

farmer's varieties in many crops with new variants developed by plant breeders. Nonetheless, in pulses, vegetables, fruits, and other crops, farmer's variety continues to reign supreme. The GI for agricultural goods like Basmati rice, coffee, tea, wine, etc. revolve around consumer preferences for the palate feeling, aroma and physical appearance that enhances the appetite. An ideal mixture of all these attributes raises the value of the product due to reasons of consumer preference.¹¹

3.2 PROMINENT INDIAN GI TAGS

Darjeeling Tea has the oldest GI designation in India, according to chronological order. The Tea Board of India began the Geographical Registry application on October 27, 2003. Darjeeling Tea became the first registered GI on October 29, 2004, after a thorough review of the application and completion of all criteria. Because to the particular weather and soil conditions of the Darjeeling Hills in Eastern India, this tea is noted for its distinct flavour. In 2019, both Darjeeling Green Tea and White Tea were given GI protection for the domestic market, which will put to rest any doubt about their authenticity and quality.¹²

Darjeeling white tea is popular in the United States and the European Union and the production is expected to be one lakh kg per year. This is because it undergoes minimal processing and the terminal buds with abundant pubescence of tea shoots are simply dried in natural sunshine, allowing the bud to keep the velvety silver color covering. The Green Tea is also said to have a sweet flavor rather than a grassy undertone because it is less oxidized than other green teas on the market. This is why the Darjeeling Tea Association secretary stated that the board has begun the process of registering both of these types as Protected Geographical Indications for global markets.

Another example of GI in India is the Bikaneri Bhujia, which was made for the first time in Bikaner in 1877. The streets of Bhujia Bazaar are famous for their gourmet offerings. However, Haldiram, which began manufacturing these in large quantities and exporting them to global markets, has also contributed to its reputation. Bikaneri Bhujia obtained its GI tag in September 2010, restricting the use of the product's name to those who have registered as approved users.

¹¹ R Chaudhary, Sujit Kumar Yadav & Sunil Kumar, *GEOGRAPHICAL INDICATIONS IN INDIAN AGRICULTURE ON THE ANVIL*, 6 September Edition |www.jbino.com | Innovative Association J.Bio 790–816 (2017), https://www.jbino.com/docs/Issue05_16_2017.pdf (last visited Nov 12, 2021).

¹² Sutanuka Ghosal, Darjeeling green, white teas get GI backing The Economic Times (2019), <https://economictimes.indiatimes.com/markets/commodities/news/darjeeling-green-white-teas-get-gi-backing/articleshow/72103877.cms> (last visited Nov 12, 2021).

The main raw material for manufacturing Bikaneri Bhujia is Moth Dal, which is grown in the arid zone of Rajasthan and the saline water which is available from deep wells. Both of them are gifts of nature to the area along with the labor skill. Therefore, the quality and specific characteristics of Bikaneri Bhujia is identified by the Bikaner Region.¹³

Tirumala Tirupati Devasthanams (TTD) proposed the geographical indication of Tirupati *Laddu Prasad* as it is unique in preparation, quality and reputation and to avoid its black-marketing by hawkers. It received GI patent in September 2009. Around 1.5 lakh *laddus* are made daily and the annual revenue from sales is a whopping Rs 2 crore. Such instances show that it is important to maintain the quality and curtail the growth of cheat products in the market.¹⁴

The Agricultural and Processed Food Products Export Development Authority has registered the Basmati Rice, which is one of the controversial GIs in the agricultural industry. This is a governmental entity that developed intellectual property protection for particular items both within and outside of India. The delineation of the relevant geographical area for this GI is also a sensitive issue, not only since it is grown in both India and Pakistan, but also because there are variations of opinion on the subject inside India. In a way it can be observed that the legislature in India helped in nationalization of the mark ‘basmati’ which otherwise would have been the property of private farmers.¹⁵ With an export value of Rs 28,000 million, basmati rice is India's most valuable GI product. Basmati is grown in India's five Northwestern regions, employing a large number of small-scale agricultural households.

CHAPTER 4

CONCLUSION

This research demonstrates that GIs must be viewed as changing institutions rather than static food production systems. Policymakers and academics are interested in the relationship between protected GIs and innovation. During multiple WTO TRIPS meetings, the issue of geographical indications has been a cause of controversy between and among developed and

¹³ DP Singh, *Globalization of Bikaneri Bhujia and Rasgulla Under Geographical Indication Act of Trips*, 3 INDO-AM. J. AGRIC & VET SCI. 1, 3 (2015).

¹⁴ Rewa Kumari, *Supra* note 9 at 107.

¹⁵ Prashant Reddy, *The “Nationalization” of Geographical Indications in India* SpicyIP (2012), <https://spicyip.com/2012/02/nationalization-of-geographical.html> (last visited Nov 21, 2021).

developing countries. Some poor countries have expressed strong objection to the intention to extend enhanced geographical indication protection to other types of products under TRIPS. The European Union and the Swiss government are both eager to promote GIs around the world, claiming that this part of TRIPS has the potential to assist developing countries significantly.

In export markets, developing countries like India must ensure that valuable GIs do not become generic or semi-generic. As a result, India must continue to make efforts to have all of its distinctive food products labelled with a geographical indication. However, it is also crucial to note that India is frequently thought to get the GI through the European Union, and as a member of the WTO, many GI registrations have been delayed. Despite having a thriving food business, India's food industry lags far behind that of other countries in terms of receiving the labels. It is common to see that handicrafts and non-food industries bag the majority of tags, but there is still a long way to go.

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