



Protection of Geographical Indications (GIs) for Agricultural Product Empowerment

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Abstract

This article aims at investigating a potential mechanism for Geographical Indications (GIs) to assist, primarily, the agricultural sector by reducing supply competition for traditional products while standardizing the quality and reputation of those products. An additional aim of this study is to review a legal construct around GIs to potentially safeguard the unauthorized usage of the agricultural products. In doing so, it will start by examining the standard of protection that should be granted to GIs by the TRIPs Agreement. Article is finding, which uses the method of document review, would highlight the fact that a potential mechanism to encourage agriculture mainly in developing countries was defined as GIs through a reduction in the cost of delivering conventional products and a standardization in quality. The GI must therefore be registered in order to enable agricultural product in the local community to be allowed by means of legal protection. Furthermore, the generic definition of GI is legally inconsistent with the prior mark and the absence of GI protection in its country of origin may constitute two major impediments to the successful registration of GI. This article concludes with a suggestion that, as long as certain requirements are met, GI registration could ensure that the right holders and all producers in a given geographic area have collective rights in relation to the product. In addition,

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a national vision and action plan on GIs with clear and transparent guidance should be developed; regulations relating to GI protection, codes of practice, frameworks for quality assurance, and effective marketing plans should be created.

Keywords: Geographical Indications (GIs), TRIPs Agreement, Agricultural Product, Registration, Economic Enhancement



1. Introduction

The agricultural products produced in each country reflect the rich diversity of different traditions and regions. To help protect and promote products with special characteristics related to their geographical origins as well as traditional products, each country has created logos, brands, and quality marks to protect the appellation of origin as well as to protect its Geographical Indication (GI).

By using maximum quality schemes, the government of each country, particularly those that are rich in diverse agricultural products, provides tools for highlighting the qualities and traditions associated with registered products and assure consumers that they are authentic products, and not imitations of the good name and reputation of the original. As a result, these systems and their GI brands help producers/producer groups to better market their products, while offering them legal protection against the misuse or falsification of the product name.

The motivations of stakeholders in local agricultural products in using the legal tools of GIs often go beyond the protecting against the misuse of geographical names in national and international markets. Local stakeholders are also interested in the other effects of the registration process, including the official recognition of the GI and the shared definition of product characteristics related to geographical origin. Recognition serves not only to provide consumers with a kind of guarantee, but also to strengthen the local identity of the product and pride of the community, especially in rural areas.³

Each legal mechanism for protecting a GI has its own constraints, costs and benefits, which may differ from one national context to another. Given the location of markets for their products, GI producers should explore and use all available means to obtain protection. GI protection must first be established in the domestic market before it can be obtained for international markets.

³ Food and Agriculture Organization of the United Nations, "Strengthening Sustainable Food Systems through Geographical Indications: An Analysis of Economic Impacts," last modified 2018, accessed January 8, 2019. <http://www.fao.org/3/i8737EN/i8737en>.



However, the potential of GIs could be restricted by a number of measures. For instance, since knowledge behind a GI is still publicly known, its misappropriation (qua bio piracy) is not protected. Therefore, GIs should be viewed as part of a wider spectrum of policies to protect and reciprocate indigenous knowledge. This improves the probability that IPRs cover similar, but overlapping, subjects. Furthermore, intermediaries run along the route and even register them because the reputation of agricultural products has always been abused by themselves.⁴ Besides, owing to the absence of awareness, laws and registration gaps, value is hardly generated and endorsed for local communities or rural development in particular. It is necessary to systemize registration systems in order to promote agricultural products, to reinforce communities and to attain a continuous decrease in poverty in local community. This article is to examine a potential GI mechanism to help agricultural communities by reducing competition between suppliers for traditional products while standardizing their quality and reputation. This article also aims at exploring a legal structure around GI, so that the illicit use of agricultural products may be covered.

2. Literature Reviews

2.1 Functions of GIs

The function of a GI is to provide information about the attributes of a product that derive from its geographical origin. A GI suggests the quality of the product and protects consumers against misrepresentation and parasitism. Intangible assets such as market distinction, reputation and quality norms are protected by GI. They make it possible to connect a particular item to its land. GIs transmit a country, area or locality's cultural identity and add a human dimension to products that have been increasing the standardization of mass production. A successful GI is an asset for producers who are allowed to use it because it can generate goodwill. Lack of protection for GIs would make it difficult for

⁴ Cerkia Bramley, Estelle Bienabe and Johann Kirsten, "The Economics of Geographical Indications: Towards a Conceptual Framework for Geographical Indication Research in Developing Countries," *The Economics of Intellectual Property*, last modified 2009, accessed January 12, 2019, https://www.wipo.int/export/sites/www/ip-development/en/economics/pdf/wo_1012_e, 129.



these producers to benefit from maintaining quality, with the result that they would not be incentivized to invest in the production of quality goods.⁵

Geographical indications perform a variety of economic and other functions, and these may depend on how producers use GIs and how consumers view them. There are four distinct functions of geographical indications:⁶

1) origin function: designations operate as indicators of the origin of products, or how they are in some other way connected to that origin;

2) quality function: designations symbolize qualities that certain products have or that consumers associate them with and guarantee that they measure up to expectations;

3) investment or advertising function: designations are ciphers around which investment in the promotion of a product is built and that investment is a value that deserves protection as such, even when there is no abuse arising from a misrepresentation either of origin or quality; and

4) culture protecting function: designations protect culture by preserving traditional production methods, habits of consumption and cultural identity

GIs can therefore enable producers, particularly SME holders, in developing countries to exercise greater control over the marketing of their products, to combat counterfeiting and to ensure greater added value by distinguishing their products. The benefits of GI systems have been demonstrated in many parts of the world, particularly in Asean countries (particularly Malaysia, Indonesia and Thailand),⁷ Latin America and Europe. The WTO-administered Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) offers the requirement to provide minimum protection for GIs in the territory of all Member States. Economic data on developing countries is more difficult to obtain, but some estimates exist.

⁵ Rekha S. Chavan, "Legal Protection of Geographical Indications: National and International Perspective," (PhD diss., Karnatak University, 2013), 34-38.

⁶ Ibid.

⁷ Tanatthep Tianprasit, "The Protection of Geographical Indications in ASEAN Community," *NIDA Development Journal* 4, no.56(2016): 5-6.



2.2 Protection of Geographical Indication under International Scheme

To contribute to local development, the Food and Agriculture Organization of the United Nations has stated that the recognition of GIs as an intellectual property right requires the establishment of the “rules of the game” by competent public authorities. These rules must ensure the participation of all relevant stakeholders in the development and management of a GI system, in order to avoid the exclusion of relevant stakeholders and to ensure that social and economic issues are properly addressed and processed. This requires the integration of a wide range of policy issues at the local, national, regional and international levels to ensure the transparency, applicability and effectiveness of the system.⁸

Concerning agricultural products under GI protection, the European Union has proposed that the additional protection of geographical indications granted to wines and spirits under Article 23.1 of the TRIPS Agreement should expand to geographical indications for other agricultural products.⁹ Trends in the food sector over the past decade indicated that consumers are increasingly placing value on products that they can associate with a certain place and/or special means of production. This renewed interest in “authentic”, “traditional”, “wholesome” and “traceable” food results from a range of factors such as increased awareness of food safety, the socio-cultural status of consuming certain foods and renewed interest in and nostalgia for culinary heritage.¹⁰

In consequence, international rules for the regulation of labeled origin products have become increasingly important in recent years. By including a chapter on geographical indications in the Agreement on Trade-Related Aspects of Intellectual Property Rights, for example, members of the World Trade Organization (WTO) have recognized geographical indications as exclusive intellectual property rights.¹¹

⁸ Food and Agriculture Organization of the United Nations, “Legal Protection of Geographical Indications,” last modified May 9, 2018, accessed April 10, 2019, http://www.fao.org/fileadmin/user_upload/foodquality/fichefiles/en/c6.

⁹ Irene Calboli, “Expanding the Protection of Geographical Indications of Origin under TRIPS: Old Debate or New Opportunity,” *Marquette Intellectual Property Law Review* 10, no. 2 (2006): 181-203.

¹⁰ Cerkia Bramley and Johann F. Kirsten, “Exploring the Economic Rationale for Protecting Geographical Indicators in Agriculture,” *Agrekon* 46 no. 1 (2007): 69-93.

¹¹ *Ibid.*



Section 3, Part II of the TRIPS Agreement addresses geographical indications by defining them as “indications which identify a product originating in the territory of a Member, or a region or locality in that territory, where a quality, reputation or other characteristic of the property is essentially attributable to its geographical origin” (section 22.1).

In summary, the TRIPS Agreement requires WTO Members to provide interested parties with a legal means to prevent the misuse of geographical indications (Article 22):

1) Indicates or suggests that a product originates from a geographical area other than the true place of origin in a way that misleads the public about the geographical origin of the product, or

2) Constitutes an act of unfair competition.

In addition, Article 23 provides for a higher minimum level of protection for geographical indications identifying wines and spirits. According to this section, WTO Members are required to provide interested parties with the legal means to prevent the use of geographical indications even if they do not imply that the wines or spirits originate from a place other than the true place of origin.¹²

On the market, origin-related products that have specific quality, attributes or reputation related to the places where they are produced can guarantee price premiums, provided that they are clearly differentiated and identifiable to consumers.¹³ In accordance with the essence of the registration of GIs, GIs can be identified and protected in various ways, including consumer protection laws and trademarks.

2.3 Legal Protection of GIs and Its Importance for Local Community

The legal protection of geographical indications is important for cultural and economic purposes. The protection of geographical indications preserves traditional/indigenous knowledge (i.e., indigenous products/resources and processes). Cultural

¹² Suresh C. Srivastava, “Geographical Indications under TRIPS Agreement and Legal Framework in India: Part I,” *Journal of Intellectual Property Rights* 9, no.1 (2004): 9–23.

¹³ Cerkia Bramley, “A Review of the Socio-Economic Impact of Geographical Indications: Considerations for the Developing World,” (paper presented at The WIPO Worldwide Symposium on Geographical Indications, Lima, Peru, June 22 – 24, 2011), 10-11.



heritage, in turn, strengthens regional identity. Generally, GIs have the capacity to create value for local communities because GI products are often rooted in culture, tradition and geography. GIs are marketing tools that add economic value to agricultural products by conveying a cultural identity using the region of origin, creating a unique identity for products, and recognizing the value of natural resources and human skills in the process of production.¹⁴

GI protection often supports rural development and creates new employment opportunities in production and other related services.¹⁵

When the attributes of a product are related to its particular place of origin through geographical indications, the association created in the mind of the consumer can add value to the product. The capacity of GIs to express locality strongly supports positive rural development that reduces rural unemployment in a given geographical area.¹⁶

By contrast, goods that are not protected in their country of origin, but that fulfill the conditions of a GI, do not enjoy the benefits that such protection may offer, such as: increased incomes, job creation and maintaining the population in certain areas. In the end, the benefits and values of a GI depend on how it is protected by an effective and operated font through good marketing.

Furthermore, the protection of GI can help to limit the risk that the GI will become a generic term. When a GI is no longer associated with a product that is typically related to a geographic origin but is, rather, used as a common name for the product, it is said to have become a generic term.¹⁷

¹⁴ Marija Radman, Zeljka Mesic and Damir Kovacic, "Geographical Indications in Croatia a Case Study of Virovitica Pepper," (paper presented at Food and Territories: Alter 2006, Baeza (Jaén), Spain, October 18–21, 2006).

¹⁵ Justin Hughes, "The Limited Promise of GIs for Farmers," in *Geographical Indications at the Crossroads of Trade, Development, and Culture*, eds. Irene Calboli and Wee Loon Ng-Loy (Cambridge: Cambridge University Press, 2017), 84-85.

¹⁶ Food and Agriculture Organization of the United Nations, "Legal Protection of Geographical Indications."

¹⁷ World Intellectual Property Organization, "Geographical Indications: An Introduction," 24-25, last modified 2017, accessed May 22, 2019, http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.



In such a case, the indication may be used by anyone to designate a type of product rather than that product having a distinct geographical origin and specific geographical qualities or characteristics. As a result, it can no longer be used as a distinctive sign or used in a product differentiation strategy. The protection of a GI and the application of the right obtained on it contribute to reducing the risk that the indication will become used a generic term. One such example of a GI that has become a generic term is “Camembert” for cheese. This name can now be used on any Camembert cheese manufactured anywhere in the world. On the other hand, Camembert de Normandie is an appellation of French origin for a cheese produced only in Normandy.¹⁸

Additionally, a GI right allows those who have that right to use the indication to prevent its use by a third party selling a product that does not comply with applicable standards. For example, in jurisdictions where GI Darjeeling is protected, Darjeeling tea producers may exclude the use of the term “Darjeeling” for tea not grown on Darjeeling tea plantations or not produced in accordance with the standards set out in code of practice for the Darjeeling GI. A protected GI, however, does not allow its holder to prevent someone from manufacturing a product using the same techniques as those set out in the GI standards.¹⁹

To sum up, the development of such a knowledge base owes its origin to the geographical environment and human interactions and becomes an important part of their economy and tradition. GI laws apply to a wide variety of products ranging from natural, agricultural, to manufactured products. If a name is related to the specific geographical area and a particular area has indicative power, then legal protection under geographical indication laws may be claimed.

The GI economy is evaluated in the context of vertical product differentiation that is consistent with the competitive structure of agriculture. There are three main points of agreement to consider the objectives of GI protection as follows;

¹⁸ David Schrieberg, “Why Your Genuine French Camembert Cheese is in Danger,” *Fobes*, last modified February 25, 2018, accessed May 8, 2019. <https://www.forbes.com/sites/davidschrieberg/2018/02/25/why-your-genuine-french-camembert-cheese-is-in-danger/#a2a7d4f1545e>.

¹⁹ Sudhir Ravindran and Arya Mathew, “The Protection of Geographical Indication in India – Case Study on ‘Darjeeling Tea’,” accessed May 16, 2019. <https://www.altacit.com/wp-content/uploads/2015/03/The-Protection-of-Geographical-Indication-in-India-Case-Study-on-Darjeeling-Tea>.



1) GI protection for agricultural products under registration system to strengthen quality and process controls

Many farmers hold valuable assets in their traditional and regional products. Local production characteristics, namely climate and soil, help giving a product special characteristic. Indigenous knowledge of producers is broadly accepted. In addition, the main beneficiaries are consumers to obtain the high quality of GI products. Producers can also benefit if the production of high-quality products is based on rare factors they possess.

Slovenia, for example, is a country rich in customs and traditions that are reflected in its rich gastronomic heritage and the diversity of its local and traditional agricultural products and food products. The most enjoyable way to experience Slovenia is to taste local and traditional Slovenian dishes and products.²⁰

Cimerman and Miklavžin suggested that there are four quality systems in Slovenia that allow for the protection of its agricultural products and foodstuffs. The conditions and requirements of each quality system is clearly defined in European and national legislation that allows for the protection of agricultural products and foodstuffs on EU markets.²¹

The protection of agricultural products or foodstuffs means that the name of a certain agricultural product or foodstuff, the methods of its production, and its recipe are protected. In the first phase, the name is protected, while a certificate that proves the authenticity of the product is essential to the next phases of the protection process. Producers must certify their products annually. Certification means that an independent control organization oversees the compliance of each producer with the production rules and other conditions clearly defined in the regulation. The institution responsible for the procedures that protect agricultural products and foodstuffs in Slovenia is the Ministry of Agriculture, Forestry and Food. After the completion of the registration procedure,

²⁰ Polona Cimerman and Alenka Miklavžin, eds., "Slovenian Protected Agricultural Products and Foodstuffs," Republic of Slovenia, Ministry of Agriculture, Forestry and Food, accessed May 20, 2019, http://www.mkgrp.gov.si/fileadmin/mkgrp.gov.si/pageuploads/publikacije/Zasciteni_prproizvo_SLO_ANG/Zasciteni_brosura_ANG_SPLET.

²¹ Ibid.



the Ministry submits the necessary documentation to the European Commission for the Protection of Agricultural Products and Foodstuffs throughout the EU.²²

The reputation stems from the special qualities of the local products. The following products and agricultural products are recognized for their characteristics.

Mohant cheese

Mohant, produced in the Bohinj area, is a soft type of cheese of a whitish-yellow color, and a distinctive smell and piquant taste that can be repellent to some people. Even today Mohant is produced in a way that has passed from generation to generation.²³

Kočevje forest honey

The area of the bee pastures for Kočevski gozdni med is wooded and has a varied floral composition. Individual areas vary according to the occurrence of honey plant communities, the diversity of individual habitats, climatic conditions, and altitudes. Beekeepers know and use the diverse flora and different growing seasons to produce their honey. Kočevski gozdni med varieties are honeydew, spruce, fir and lime.²⁴

Piranska sol Piran salt

Salt from the salt pans of Piran is produced manually in a tradition that is more than 700 years old, using only traditional tools and is harvested daily. The basic process involves natural crystallization in the fields where the salt is harvested from the base of a few millimeters thick bio sediment called petola which is composed of minerals and microorganisms. Piranska soil is unmilled and unrefined, rich in marine minerals and of remarkable taste.²⁵

These are some well-known examples of geographical and traditional names that are worldwide linked by the products of a certain reputation, quality, and commercial designations of high value. In short, the term “GI Protection System” for these products preserves the product name, which is basically the consequence of its geographical origin and value, quality and other existing characteristics.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.



2) GI protection to differentiate tools in marketing strategies from the simple source of indicators to brands

Consumers are paying increasing attention to the geographical origin of products and they are becoming concerned about the specific characteristics of the products that they buy. In some cases, the “place of origin” suggests to consumers that the product will have a particular quality or characteristic that they value.²⁶ Often, consumers are willing to pay more for such products. This has favored the development of specific markets for products with certain characteristics related to their place of origin.

Brand recognition, meanwhile, is an essential aspect of marketing. GIs convey information on the characteristics related to the origin of a product. They therefore serve as product differentiators on the market, allowing consumers to distinguish products with geographical characteristics from those that do not have these characteristics. Geographical indications, thereby, can become a key element in the development of brands for quality products that are linked to origin.

For example, in the late 1950s, the price of Colombian coffee fell from US \$ 0.85 to US \$ 0.45 per pound. This triggered a new differentiation strategy by the Colombian Federation of Coffee Producers (FNC) aimed at raising public awareness of the Colombian origin of coffee. The FNC began by giving a human face to Colombian coffee, thus creating the character of JUAN VALDEZ to represent the Colombian coffee archetype. In the 1980s, the FNC registered the Juan Valdez logo and began licensing the brand to roasters for use on their own branded Colombian coffee products. In addition, the Republic of Colombia has registered the word “Colombian”, as a certification mark for coffee sold in the United States of America and Canada. This was followed by intensive advertising campaigns.²⁷

In 2005, Café de Colombia has been recognized in Colombia as an appellation of origin. It was first registered with the European Union (EU) in 2007 as the Non-European Protected Geographical Indication (PGI). The FNC differentiation approach

²⁶ World Intellectual Property Organization, “Geographical Indications: An Introduction,” 7

²⁷ World Intellectual Property Organization, “Making the Origin Count: The Colombian Experience,” last modified September 16, 2015, accessed June 1, 2019, <http://www.wipo.int/ipadvantage/en/details.jsp?id=2617>.



based on Colombia's geographical origins has not ended in the JUAN VALDEZ figure and the "Coffee of Colombia" designation of origin. Two new appellations of origin for coffee in Colombian areas, "Café de Nariño" and "Café del Cauca" were acknowledged as new in 2011.²⁸

In the case "Café de Colombia" a greater sale cost may be indicated as one of the first goals in support of the product policy, which can help to increase financial yields by strengthening product differentiation to promote better marketing and access to new markets. A successful strategy for value-added origin-related products should allow local producers to participate in markets where they can obtain a price that covers production costs despite the presence of cheaper products from outside the country.

3) GI protection for rural development empowerment to build the regional brand

Several studies have shown that GIs can contribute to rural development under suitable circumstances. As a general rule, regional producers are permitted to utilize a GI, and, as a matter of principle, these manufacturers are subject to the added value produced by the GI.²⁹

GI products tend to generate a premium brand price, which allows local job creation that can help to prevent migration from rural to urban areas. Furthermore, GI agricultural products are often significantly affected, for example in the tourism and food sectors. GIs, in other words, can bring value to a region not only in terms of jobs and higher incomes, but also by promoting the region as a whole. In this respect, geographical indications can contribute to the creation of a "regional brand."

For instance, winters are harsh and long in the Jura Mountains, a medium sized mountainous region north of the Alps in eastern France; hills are not appropriate for cereal production, but their diverse flora and wild meadows are ideal for the obtaining of high-quality cow milk. For many centuries, farmers in the region turned milk into a hard cheese, matured in the form of large millstones, which, historically, was their main food in the winter. Since many liters of milk (450 liters) are required to produce a cheese wheel,

²⁸ Ibid.

²⁹ Rachael M. Williams and Marianne Penker, "Do Geographical Indications Promote Sustainable Rural Development?," *Journal of the Austrian Society of Agricultural Economics* 18, no. 3 (January 2009): 153 – 154.



farmers have to pool their milk, which has resulted in a long tradition of cooperative work. In 1958, the County was recognized as an appellation of origin by a French court. The GI specifications define the conditions necessary for the production of the County. For instance, milk should originate only of the Montbéliarde and Simmental races in France. It should be only one cow per hectare of herbal wilderness, and the milk should be gathered in a radius of 25 kilometers from this territory. These criteria have been used to create more employment than intensive techniques of agriculture.³⁰

In addition, the specifications limit the kind of concentrates given to cows, favoring feed based on local fodder, and the amount of fertilization is also limited in order to preserve the natural biodiversity of the region's soil and natural flora. This, in turn, has a positive effect on biodiversity. Today, the Comté is a cheese recognized on the French market. The strict, albeit balanced, conditions set out in the specifications carefully protect the interests of all actors in the production chain. They are also the foundation for a new tourist attraction around the Appellation of Origin of the County, through the creation of "Circuits Comté". The socio-economic impact of the appellation of origin for the region has also been positive for job creation and income levels, limiting both rural exodus and environmental impact.³¹

3. Research Methodology

Qualitative design is applied since this inquiry was based on the assumption that the protection offered by GIs for products of a specific quality and reputation from a certain region is a key feature of modern trade agreements on agricultural products. This can contribute to the establishment of sustainable and reliable control systems for GI products. In this case, the data was collected by studying the relevant documents and the complex and detailed understanding of the case studies.

³⁰ World Intellectual Property Organization, "Geographical indications: An introduction," 17.

³¹ Ibid, 17-18.



4. Research Findings

The findings from this article will provide better insights into the promotion of economic prosperity for the producers of goods and traditional knowledge and ways to empower registered proprietors to initiate legal action against unauthorized users. Two key issues will be examined in this section: the review of the functionality of GI protection for the empowerment of agricultural products; and the analysis of the protection of GIs on agricultural products: challenges and obstacles.

4.1 Reviewing Functionality of GI Protection for Agricultural Product Empowerment

For a GI to effectively create a brand image for a product or to have a positive effect on rural development or the preservation of traditional knowledge, traditional cultural expressions or biodiversity, it is necessary to develop a comprehensive system GIs. This underscores the essential function of GI protection: it works both as customer protection (by addressing data and quality asymmetries) and as protective measures for manufacturers (by their role as an asset to preserve their reputation). The functionality of a GI system involves several important steps, such as:

1) Identifying the characteristics of the agricultural product and whether it has potential internal or external markets.

2) Strengthening the cohesion of the group of agricultural product producers and other operators involved, which serve as pillars of the GI system.

3) Establishing standards, sometimes called a code of practice or regulations for use. The code of good practice or the regulations of use generally circumscribe, among others, the geographical region of production of the agricultural product and describe the methods of production and processing. It can also describe the factors, natural and/or human, present in the region that contribute to the characteristics of the product.³²

³² Pascal Bernardoni, Magali Estève and Marguerite Paus, "Case Studies on Quality Products Linked to Geographical Origin Balkans," last modified April 2008, accessed June 9, 2019, <http://www.fao.org/fileadmin/templates/olq/files/etudecasEuropeEst>.



4) Devising a mechanism to effectively allocate the right to use the indication by any producer and other relevant operator that produces the agricultural product within established limits and according to agreed standards.³³

5) Establish traceability, verification and control systems to ensure continuous quality and compliance with the code of practice or the regulations for use.³⁴

6) Develop marketing strategies.

7) Obtain legal protection for the GI and design an enforcement strategy.

Nonetheless, origin-related product names and GIs in developing countries cannot be effectively protected by certain laws that focus on business practices, such as unfair competition laws, consumer protection laws, or labeling laws.³⁵ These laws do not create an individual industrial property right over the GI. However, they indirectly protect GIs to the extent that they prohibit certain acts that may involve their unauthorized use. (WIPO)

GIs have been identified as the potential mechanism for supporting primarily agriculture in developing countries by reducing the supply competition for traditional products, while increasing / standardizing the quality of such products by policy-makers both in developed and developing countries.³⁶

The EU and the United States are not only interested in the developing countries, but they believe that developing countries, including oolong tea (China), and basmati rice and Darjeeling tea (India), may possibly increase exports to the EU would benefit. GIs are particularly important in developing countries as they are operated by businesses and not individuals, and because the requirements set out allow a number of small

³³ World Intellectual Property Organization, "Geographical Indications: An Introduction," 21-22.

³⁴ Food and Agriculture Organization of the United Nations, "Rural Development and Agrifood Product Quality Linked to Geographical Origin in Asia," (proceedings from the Technical Consultation, Bangkok, June 8-10, 2009).

³⁵ Dwijen Rangnekar, "Geographical Indications: A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits," last modified June, 2003, accessed June 12, 2019, https://unctad.org/en/PublicationsLibrary/ictsd2003ipd4_en.

³⁶ Deepthi Kolady and William Lesser, "Economic Effects of Geographical Indications on Developing Countries: A Review and Identification of Research Needs," accessed June 14, 2019, <https://www.researchgate.net/publication/289415237>.



providers to standardize their quality. GIs are important to agriculture in developing countries.³⁷

It matters economically and culturally to protect geographical information. Producers will produce useful goods and products for the local communities that have strong roots in history, culture and geography. Specific characteristics and quality of agricultural product can nurture to foster economic growth and new jobs in manufacturing, storage and other related services.³⁸ In view of the global competitive environment, characterized by decreasing farm commodity prices, this trend toward traditional and/or high-quality products with a strong cultural relationship provides a highly linked value-added product producer with the possibility of moving from commodity markets through distinction into more lucrative niche markets. As such, territory is becoming a strategic instrument for distinguishing between agri-food markets.³⁹ Nonetheless, whether steps are in place to ensure localization of output is essentially a requirement for such a marketing strategy. In the past few years, therefore, international rules have become more and more relevant in the regulation of origin-labeled goods. Nevertheless, GI protection has proved controversial as far as the existence and extent of safeguards that will be given are concerned, as evidenced by the divisions that occurred during the TRIPS negotiations, when the willingness of countries to secure this IPR was largely based on national and international political pressures as well as potential financial impact of protection.⁴⁰

Protection for GI may be extended through a special GI system or unfair competition disciplines under collective trademarks. Geographical indication protection may add value and generate economic advantages in certain regions for certain local agricultural products with niche markets and high value customers. Nevertheless, improved protection for GI itself does not ensure better access to the market unless value is guaranteed. In addition, extended protection against Gi could restrict local production of products

³⁷ World Trade Organization, "The Doha Declaration Explained," accessed June 13, 2019, https://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm#top;%20last%20checked%206/18/08.

³⁸ European Union, "EU Trade Policy and Geographical Indications," accessed June 14, 2019, <https://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/>.

³⁹ Cerkia Bramley, Estelle Bienabe and Johann Kirsten, "The Economics of Geographical Indications: Towards a Conceptual Framework for Geographical Indication Research in Developing Countries," 130.

⁴⁰ Ibid.



that violate international GIs. The design of the national GI regime should therefore be influenced by a full cost-benefit analysis.

To sum up, it is important to understand the primary role and role of GIs in order to enable local communities to preserve geographic sources which provide agricultural products with quality and quality standards. Coffee, for example, is the only commodity in Papua New Guinea that exports to and operates by local people and coffee production for most people in the Highlands of Papua New Guinea is the main source of income.⁴¹

Furthermore, it is essential to understand the traditional knowledge of the local individuals, which is a key component in maintaining the unique characters of goods manufactured with viable geographical designations. Thus, for the public sector, it is important for the award to qualify as a GI under the applicable law without being impeded by GI registration. GIs can be used as a means for preserving added value and for maintaining special agro-food products in regions within the framework of globalization. GIs can also improve the reputation of an area and therefore promote tourism in the emerging areas, an activity with growing potential.⁴²

4.2 Analysis of GI Protection on Agricultural Products: Challenges and, Obstacles

Unlike trademarks that require distinctiveness, GI do not require distinctiveness because GI rather describes the geographical origin of the product than its commercial origin. Thus, the trademark could be invalidated because it has become a generic term, while the registered GI cannot become generic. From a legal point of view, the following may be possible obstacles to the successful registration of a geographical indication (GI).

- 1) Costs and benefit GI protection
- 2) Time-Consuming to obtain GI protection
- 3) The existence of a homonymous GI
- 4) Generic term character which constitutes GI

⁴¹ Hughes, "The Limited Promise of GIs for Farmers," 84-85.

⁴² William Van Caenegem and Jen Cleary, *The Importance of Place: Geographical Indications as a Tool for Local and Regional Development* (Cham, Switzerland: Springer International Publishing AG, 2017), 229-230



- 5) Conflict with a prior mark
- 6) The indication's name being that of a plant variety or animal breed
- 7) The lack of protection of the GI in its country of origin

4.2.1 Costs and Benefit of GI Protection

It is obvious that the development of a GI system entails costs. It would be difficult, and beyond the purpose of this article, to quantify the costs involved in each of the steps required to prove the quality of the agricultural product for the purpose of obtaining legal protection. According to WIPO database, registration and protection costs varying from one country to another.⁴³ The cost consequences of distinct institutional strategies need to be taken carefully into account, given that the main reason for pursuing a GI approach is the potential to boost rural income.

Protecting a GI does not only require the right to be acquired by registration and other suitable means, but also the right to use it.⁴⁴ In certain nations, such as Japan, it makes sense to receive GI registration if the stakeholders weigh the pros and cons. In order to be granted the GI certificate, the GI registration fee must be paid to the Ministry of Agriculture, Forestry and Fishery (MAFF). The only official fee required to obtain the GI registration is a JPY90,000 registration fee to be charged to MAFF. Once it was registered, the GI registration remains valid without renewal unless it has been cancelled. A GI registration is therefore cost-effective in the long term.⁴⁵

At the same time, the challenges of assessing real costs and net benefits of GIs clearly complicate the deduction of rising consumption and their impact on rural development, which are important factors for developing countries in their decision as to whether scarce resources should be devoted. When estimating the total costs, costs associated with conventional production methods and in achieving and ensuring the

⁴³ World Intellectual Property Organization, "Frequently Asked Questions: Geographical Indications," accessed September 9, 2019, https://www.wipo.int/geo_indications/en/faq_geographicalindications.

⁴⁴ Alexander Bayntun-Lees, "South-East Asia IPR Basics Series: Geographical Indications in Thailand," last modified December 8, 2015, accessed September 11, 2019, <http://www.youripinsider.eu/south-east-asia-ipr-basics-series-geographical-indications-thailand>.

⁴⁵ Nami Togawa and Miwako Takimura, GI registrations for "Prosciutto di Parma," last modified, November 2, 2017, accessed September 10, 2019, <http://www.seiwapat.jp/en/IP/pdf/en00041>.



quality of the product are often not taken into account, suggesting that evidence of the real costs of GIs is less than evidence of their advantages.⁴⁶

4.2.2 Time-Consuming to Obtain GI Protection

The establishment of a complete GI system can take several years because it involves several actors and needs to take into account multiple interests and political considerations. The actual time required to develop a complete GI system may depend on some of the following factors, including:

1) the level of cohesion and organization of the group of producers and other operators concerned;

2) the number and degree of conflicting interests and how these interests are managed;

3) the number and level of obstacles to the legal protection of the GI - in the domestic market or in foreign markets; and

4) the existence of institutional support

4.2.3 The Existence of Homonymous GI

Homonymous GIs are those that are spelled or pronounced in the same way, but that identify products originating from different locations, usually in different countries. The problem or conflict usually occurs if homonymous GIs are sold on the same market and accentuated if the GI of these products is similar or identical. In other words, there is a homonymous GI which might be considered misleading with respect to the actual origin of the product.⁴⁷

Competitive use in the same territory with same geographical indicators can be problematic if there are special qualities and characteristics of the products used for geographical indication that do not exist in the products used for this geographical indication. In this case, the homonymous geographical indications are misleading because the qualitative expectations of the products used are not met.⁴⁸

⁴⁶ Bramley, Bienabe and Kirston, "The Economics of Geographical Indications: Towards a Conceptual Framework for Geographical Indication Research in Developing Countries."

⁴⁷ Kolady and Lesser, "Economic Effects of Geographical Indications on Developing Countries: A Review and Identification of Research Needs,"

⁴⁸ Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Cheltenham: Edward Elgar Publishing, 2014), 26.



In principle, these indications may coexist, but their coexistence may be subject to certain conditions. For example, they may be required to be used in combination with additional information about the origin of the product in order to prevent consumers from being misled. A GI may be denied protection if, because of the existence of another homonymous indication, its use would be considered potentially misleading for consumers about the true origin of the product.⁴⁹

4.2.4 Generic Term Character which Constitutes GI

In the light of GIs, generic terms refer to names which, although they denote where the product comes from, become the customary term for such a product. Camembert for cheese is an example of a GI that has become a generic term. A GI may also deny protection if the competent authority considers the sign to be the common name for the type of product or service to which it applies.⁵⁰

Subsequent to the absence of alternative names to define existing products, other generic terms that identify those products do not exist, a stronger GI protection would never benefit the market. In this case, the interest of the society should prevail over the interest of the GI's owners over a generic term and the derogation under Article 24(4) of the TRIPs agreement should also continue to be applied in the event of increased protection. In this respect it does not seem to be consistent with an understanding of GI as a fresh chance for the prospective use of current GIs to define products as “kind,” “like” or “type,” thus not implementing it despite the strong push by GI proponents in this direction. Similarly, in comparative advertising, parodies or other fair-use doctrines, the use of registered GI should not be prohibited unless this constitutes an act of unfair competition.⁵¹

⁴⁹ Shrabani Rout, “India: Homonymous Geographical Indications in India,” *Mondaq*, last modified March 5, 2018, accessed June 24, 2019, <http://www.mondaq.com/india/x/679284/Product+Liability+Safety/Homonymous+Geographical+Indications+In+India>.

⁵⁰ World Intellectual Property Organization, “Geographical Indications: An Introduction,” last modified 2017, accessed May 22, 2019, http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.

⁵¹ Christopher Heath, Anselm Kamperman Sanders and Anke Moerland, eds., “Scope of Protection of Generic Term,” in *Intellectual Property Rights as Obstacles to Legitimate Trade?, IV IEEM Series on International Intellectual Property Law*, vol. 9 (Alphen aan den Rijn: Kluwer International, 2018).



4.2.5 Conflict with a Prior Mark

The protection of a GI may be denied in the land where it is considered in good faith by the authorities in that land to be the same or comparable to any earlier applicable trade-mark, registered or acquired, and where the use of the GI is likely to lead to a conflict with the trade-mark or lead to a likelihood of confusion with the established brand.⁵²

Geographical names are generally used in companies to define and promote product or service market features. Many of the products demonstrate a reference to their geographical origin in their markings or packaging. Therefore, a trader must be aware of the connection between trademarks and GIs and of any possible conflicts between them because of their specific duties.⁵³

Thus, if an earlier GI is registered (or registration applied), the later mark (priority principle) prevails. Consequent the request would be dismissed if the applicant needs registration as a trademark with a geographical title already registered as a GI.

When a GI has been registered, the senior trademark must coexist with it, unless it is shown to be in bad faith. However, this mark will be prevailing, in the event of an imitation mark, if the registration of the name suggested as the protected GI would lead to the misleading customer in relation to real identification of a product.⁵⁴

4.2.6 The indication's name being that of a plant variety or animal breed

Protection against a GI can in some jurisdictions be rejected if it goes beyond the name of a plant species or a breed of animals and can therefore mislead the consumer as to the true origin of the product.⁵⁵

⁵² Robert Brauneis and Roger E. Schechter, "Geographic Trademarks and the Protection of Competitor Communication," *GW Law Faculty Publications & Other Works, 96 Trademark Rep.*, accessed June 24, 2019, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1306&context=faculty_publications.

⁵³ Herchel Smith, Guido Westkamp, *Emerging Issues in Intellectual Property: Trade, Technology and Market Freedom: Essays in Honour of Herchel Smith* (Cheltenham: Edward Elgar Publishing, 2007), 290.

⁵⁴ Nicolas Guyot, "European IPR Helpdesk Fact Sheet: The Value of Geographical Indications for Businesses," last modified September, 2016, accessed September 11, 2019, https://www.iprhelpdesk.eu/sites/default/files/newsdocuments/Fact-Sheet-Geographical_Indications_2.

⁵⁵ Marsha A. Echols, *Geographical Indications for Food Products: International Legal and Regulatory Perspectives* (Austin: Kluwer Law International, 2008), 242.



4.2.7 The lack of protection of the GI in its country of origin

Members generally protect GIs through (i) company practice legislation; (ii) trademark legislation; (iii) unique or sui generis protection.⁵⁶

Several nations (like the United States) are distinctly protecting GIs by means of systems of collective marking, attestations, guarantees or 'passing-off' prevalent legislation.⁵⁷

It is also a determining feature of the majority of national schemes to say that GIs are generally prohibited from being trademarks (explicitly or legally). In most cases registration of the GI trademark is dismissed on the grounds that the GI becomes a general term and that the GI is not given protection. In any case, the efficacy of national GI schemes is not guaranteed; markets frequently require maturity prior to the creation of GI values. In general, protection is based on registration obligations.⁵⁸

Nevertheless, certain countries, such as Singapore, cannot register GIs. The GI is automatically protected by the Geographic Indications Act of 1998: it is known as "passive" or not registration protection. Any party concerned may take an action against misleading signs before the Court.⁵⁹

In India (Geographical Indications of Goods Act, 2003) or Latvia (Commercial Marks and GIs Law). The same strategy has been taken. There is but not mandatory registration in those nations. In India DARJEELING's topography and size of its original label are shielded from abuse by the producer who makes use of Darjeeling's tea as an ease of combination, but it makes its tea fully DARJEELING content. The Goods Act of Geographical Indication (1999).⁶⁰

⁵⁶ Edi Defrancesco, Luigi Galletto and Mara Thiene, *Food, Agriculture and the Environment: Economic Issues* (Milano: F. Angeli, 2005), 69.

⁵⁷ Organization for an International Geographical Indications Network, "Legal Systems to Protect GIs," accessed September 19, 2019, <https://www.origin-gi.com/your-gi-kit/legal-info/item/4744-legal-systems-to-protect-geographical-indications-en-gb-4.html>.

⁵⁸ United States Patent and Trademark Office, "Geographical Indications (GI) Protection," accessed September 19, 2019, <https://www.uspto.gov/ip-policy/trademark-policy/geographical-indications-gi-protection#heading-6>.

⁵⁹ Irene Calboli and Wee Loon Ng-Loy, eds., *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge: Cambridge University Press, 2017), 255.

⁶⁰ Organization for an International Geographical Indication Network, "Legal Systems to Protect GIs," accessed September 10, 2019, <https://www.origin-gi.com/your-gi-kit/legal-info/item/4744-legal-systems-to-protect-geographical-indications-en-gb-4>.



In accordance with Chinese trademark law, a GI may be recorded as a collective or certified mark in respect of the geographic region or any other graphic symbols which could imply that a product originates from a region. The region originating from GI products shall not comply in full with the administrative division name or boundary of the region in question.⁶¹

5. Conclusion and Recommendations

Although they are one of the oldest forms of intellectual property, GIs have only recently become a subject of general interest. In many countries, compliance with the obligations of the TRIPS Agreement has emphasized GIs. Countries quickly realized that there was a potential value in this form of intellectual property. The fact that GIs are integrated into a territory means that they can be effective tools for promoting local development especially in agricultural product quality.

Many GIs have gained precious reputations that could be misrepresented by unfair business providers without being properly protected. By misuse of GIs, unauthorized parties could actively harm consumers and legitimate producers. This could be considered a deceptive behavior in trade, which is the manner in which the customer is misled by the fact that they buy a real product with special properties and characteristics, while they actually get an imitation. They are harmed by the removal of valuable companies, which damage their reputation.

The GI protection system must have specific intellectual property registration criteria that the application of the registration process must take in a shorter period of time. The application of GI protection through appropriate administrative measures by public authorities in the framework of the structures and standards applicable to these names should be strengthened.

Legal provisions establishing that a protected GI may be used by any operator marketing the agricultural product or foodstuff conforming to the relevant specification. In addition, the legal provisions should establish in accordance with the TRIPs Agreement that

⁶¹ Louis Augustin-Jean, Hélène Ilbert and Neantro Saavedra-Rivano, eds., *Geographical Indications and International Agricultural Trade: The Challenge for Asia* (UK: Palgrave Macmillan, 2012), 208.



a protected GI is protected against misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated, transcribed, transliterated or used with words such as that “nature”, “type”, “style”, “imitation”, or similar words or expressions. Furthermore, any false or misleading indication as to the source, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packaging of that product in a container with a false impression as to its origin should be prohibited and charged with infringement of the GI.

The following messages should be taken into account on the basis of the key findings in the emerging Asian countries:

1. Some foods will play a special role to promote sustainable rural development, enhance farmer incomes and broaden export opportunities by granting special labels connected with their place of origin;

2. There should be a robust and coherent national policy on quality, focused on developing and supporting local GI products;

3. Producer instructions on GI security and use should be clear and transparent;

4. The national law shall provide flexibility and derogations which allow for compliance with the food safety regulation of smallholder and traditional products;

5. Strengthening sustainable food systems by means of GIs: GI value chains create new employment and services in rural areas, contribute to higher rural incomes and reduce rural immigration; and

6. A “collective approach,” because it cannot be an individual property, should be consciously defined as GI is a collective property which is transmitted from one generation to the next.



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