



WTO AND GEOGRAPHICAL INDICATIONS: INDIA'S ECONOMIC DIPLOMACY

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ABSTRACT

Over the years, Geographical Indication (GI) has emerged as one of the most contentious issues particularly with provisions of Article 22 and 23 under the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement in the realm of the World Trade Organisation (WTO) due to the enormous economic and commercial implications of GIs both nationally and internationally respectively. What are the legal and economic concerns of the protection of GIs to developing countries in general and India's rural development in particular? Can GIs extension of Article 23 brings increases in economic value and commercial viability globally? Therefore, to answer above key questions and many other related questions this study is an attempt to understand, the comprehensive overview of a range of critical issues in the context of global debate on GIs protection. This paper examine with a particular focus on India's economic concern under global trading system which provides enhanced protection to wines and spirits whereas other products including the handicraft and agricultural products has not been covered under legal protection of TRIPS agreement. This paper further depicts the current status of GIs registrations in India under Indian GIs Act and gives important policy suggestions India's economic diplomacy.

KEYWORDS : Diplomacy, Economy, Geographical Indications, Traditional And Indigenous Knowledge, World Trade Organisation

INTRODUCTION

Geographical Indications (GIs) extension progressively acquired global debate with their legal and economic framework as an Intellectual Property Rights (IPR) in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement of the World Trade Organisation (WTO) in 1994 which has brought a radical transformation in global economic model of trading system.

What is Geographical Indications (GI)?

GI is an Intellectual Property Right (IPR) that is granted to a product because of its geographical uniqueness. Geographical Indication (GIs) tag is a proof of where the product which include natural, manufactured, agricultural or industrial goods. In addition, GIs products that have a specific name of the place from where they originate because products in particular possess qualities or a reputation that derive from their place of production and are influenced by unique characteristics, such as climate, soil water, cultural heritage, human skill or any other characteristics¹, by using traditional techniques and indigenous knowledge.

Today, the two most contentious issues concerning GIs under TRIPS have grown increasingly due to 'unequal provisions' encountered to developing countries; these Protections under TRIPS are defined in two articles – Article 22 and 23.

Geographical Indications: The Legal framework under WTO Article 22 of the TRIPS Agreement

Agreement defines GIs as "Geographical indications are, for the purpose of this agreement, indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

Article 23 of the TRIPS Agreement

Agreement provides additional "protection to geographical indications only in cases of wines and spirits which means they should be protected even if there is no risk of misleading or unfair competition. The Article further imposes an obligation upon member countries to legislate to prevent the use of geographical indications regarding wines or spirits, which do not originate in the place indicated".

However, several developing countries including India (Darjeeling tea), Mexico (Talavera ceramics), Pakistan (Basmati rice), Sri Lanka (Ceylon tea), Switzerland (Swiss watches) and Thailand (Jasmine rice), Turkey (Hereke carpets) whereas from least developed countries (LDCs)

countries like Bhutan (Bhutanese red rice), Cambodia (Kampot pepper), Ethiopia (Harennna wild coffee) and Madagascar (Pink rice from Amparafaravola), among others also have raised serious economic concerns. The provisions are highly critical because of its adverse trade implications. Thus, the issue has gathered impetus with the recognition of the TRIPS on GIs as a form of IPR.

Countries are demanding the same higher level of protection for all GIs as was given under Article 23 for wines and spirits. But, the GIs protection is not available for other products due to which many GIs are under the threat of becoming generic products. Consequently, India is in disadvantage due to inadequate "GI protection". This will not only have a negative repercussions on many of the million poor in the rural areas but also are unable to achieve their full potential at the international market. Hence, the various provisions of TRIPS Agreement covering GIs have attracted fair share of controversies.

Background

Historically, prior to the multilateral TRIPS Agreement, there were mainly three international treaties, namely

- The Paris Convention for the Protection of Industrial Property, 1883
- The Madrid Agreement focused on 'indications of source', 1891
- The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration conferred on protection of 'appellations of origin', 1958

But, these international legal framework for the protection of GIs is not effective international instruments of protection as they only contained general provisions or had very limited membership.

Registered Geographical Indications in India

India, as a member of the World Trade Organisation-Trade-Related Aspects of Intellectual Property Rights, enacted the *sui generis* legislation on GIs in December 1999. The Indian Parliament passed the Geographical Indications of Goods (Registration and Protection) Act, 1999 as the legal protection to GIs in India. This Act provide for the registration and better protection of GIs relating to goods in India. The Act administered by the Controller General of Patents, Designs and Trade Marks who is the Registrar of Geographical Indications. The Geographical Indications Registry located at Chennai. The Act came into force on 15th September 2003.

The Indian GIs is the variety of product categories which are registered GIs under Goods (As per Sec 2 (f) of GIG Act 1999) includes natural goods (Makrana Marble, Chunar Balua Patthar), manufactured goods (Mysore Sandal soap, Kannauj Perfume), handicrafts (Banarasi Saree Textiles, Madhupani Painting), agricultural products (Darjeeling Tea, Malabar Pepper, Nagpur Orange) and food stuff (Bikaneri Bhujia, Banglar Rasogolla) etc.

Table 1: Classification of Product under Registered GIs in India till April 2020

S. No.	Goods (As per Sec 2 (f) of GIG Act 1999)	Number of registered GIs
1	Handicrafts	214
2	Agricultural	112
3	Manufactured	24
4	Food stuff	18
5	Natural	2
Total GIs registered		370

Source: <http://www.ipindia.nic.in/registered-gis.htm>

Thus, 370 GIs were registered till April 2020, which are high market value both at the national and international market. Table 1 represents the distribution of registered GIs in India as per product categories. According to Table 1, 214 out of total of 370 (i.e. around 58%) are registered GIs under the category of handicrafts (i.e. textiles, paintings, etc.). It may also be noted as per the Table 1 that out of 370 registered GIs, 112 (i.e. around 31%) belong to agriculture sector. Under the registered GIs cumulatively both handicraft and agricultural products taken together include 326 out of the total of 370 (i.e. 89 %) clearly indicates that GIs have a substantial potential to facilitate rural development in India.

Particularly, handicrafts products are national heritage which are based on the traditional techniques in arts and crafts of varied diversity by artisans' community which have been carry forward by a community from one generation to the next as 'traditional cultural legacy'. Additionally, in agriculture related products are indigenous agriculture ecological knowledge which developed over a period of time through traditional practice of conserving seeds and understanding of environment. This shows that cultural diversification plays a pivotal role in bringing together various players along the value chain supply, including producers, government authorities and researchers. Hence, in the context of these products the GIs can potentially play significant advantage to the rural economy in branding their products at national and international level both in cultural and commercial lines.

Economic Concerns for Developing Countries

There are many loopholes of 'unequal treatment' in GIs protection under TRIPS. Due to which the developing countries are at the risks of losing the international market and competition. Particularly, in recent years, the overall India's open and export reliant economy has slowdown. Furthermore, under the New International Economic Order the issues and concern of GIs protection have undoubtedly is polarisation by developed countries.

Thereby, economic issues related to the extension of GIs particularly relevant to developing countries. GIs is a tool that has the potential means to contribute to income generation through rural development, local employment, tourism, access and creating markets. By this means, this will help to reduce poverty through financial strengthening of local and indigenous artisans along with other potential sectors of the region. On the other hand, legally, for a country like India, future development of commercial potential, where availability of handicrafts and agricultural products are immense thus an adequate legal protection of GIs is assumes huge significance. For the past recent years, there has been an

increasing number of cases of commercial exploitation reported both agricultural and non-agricultural products such as such as Ayahuasa (Amazon basin), Hoodia Cactus (Southern Africa) and Basmati rice, Haldi, Neem (India) are well-known examples of cases of misuse of genetic resources and protection for traditional knowledge. Hence, by protections of GIs, will give the rights of ownership of traditional and indigenous goods. This would also prevent unauthorized use of goods under the 'Biopiracy' by others in case of violation through civil litigation.

Thus, multilateral trading system as the extension of GIs to products other than wines and spirits will give thrust to India's foreign trade activities. Hence, both legal and economic reasons certainly calls for a revisit provision like Article 23 of the TRIPS Agreement.

Diplomacy

In recent years, diplomatic negotiations also proved to be unsuccessful from Uruguay Round to Doha Ministerial Declaration in 2001 which unable to protect developing countries economic interest. In view of the stalemate due to North-South division it is test of India's economic diplomacy as diverse economic interests are at stake. Therefore, in future international economic negotiations need to be pursued pragmatically that contain following policy suggestions.

Firstly, as it is evident that most of the GIs designated products in India have originated from rural area. Henceforth, India must be prepared, among others developing countries should raise strong demand collectively for the legal restrictions on misappropriation of biological and genetic resources. As without adequate legal protection creates the opportunity for various entities to engage in bio piracy, counterfeiting products and misleading labelling. Therefore, comprehensive and stringent legal measures needs to be evolve on rules and procedures for GI registration in all the member countries of the WTO. This will widen the scope of legitimacy particularly the country like India where they can oppose to other countries' competitors if "usurping their products".

Secondly, for the extension of "higher level of protection" to other products as well, which has been provided to wines and spirits under WTO. This will not only expand their economic value of the products internationally; but also benefits arising out of the TRIPS Agreement will be more just and rapid.

Finally, an International Vigilance Commission should be established in order to facilitate parties in case of violation and misuse of the GI of any product as large numbers of socially and economically poor rural communities are involved in the production of the goods where their livelihood is completely dependent on the income generated from the GIs.

CONCLUSION

In the era of globalisation the multilateral organizations like the TRIPS-WTO need to recognize the legal and economic concerns of the developing countries. Thus, trade negotiations should be shaped by mitigating issues and recognition of GIs which are nationally registered. This would bring development of rural economy by facilitating the products in niches markets internationally. Hereafter, this will bridge the income disparities, economic growth and prosperity. Thereby, restrictions on misappropriation of biological and genetic resources, protection for traditional knowledge and extension of GIs assumes a greater and urgent significance.

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