

# Protection of Geographical Indications

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# Meaning of GI

- A geographical indication (**GI**) is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin.
- A GI includes the name of the place of origin of the goods.
- Geographical indications may be used for a wide variety of products, whether natural, agricultural or manufactured.
- The use of a GI acts as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a certain reputation, due to its geographical origin

# Creating value through Origin

- Products that have achieved a high degree of geographic origin image include German automobiles, Japanese automobiles, Japanese consumer electronics, French cosmetics and perfumes, and Swiss watches.
- This strategy of building an image of quality for a class of products made in a certain area helps products from a country or region achieve consumer acceptance quickly and to also command premium pricing. The same idea has helped many food/beverage and other commoditized products such as German beers, French and Italian wines and cheeses, Swiss chocolates, Russian vodka, Chinese tea and silk, and Holland bulbs.
- Not all of them have GI protection. Protection- emerged as a consequence of reputation.

# Purpose of GI

- GIs serve two very important purposes: (i) protection of producers of the GI product; and (ii) protection of consumers through assurance of quality
- Evolution of GIs as a form of IPR is of very recent origin in India.
- Cultural and traditional practices, whether in the area of agriculture, or textiles and handicrafts, or food products, (which are typically the subject matter for GIs), have traditionally not been subject to IPR protection.
- This is in contrast with the concept of GIs in a continent like Europe, where GIs have been used to protect certain industries since mid-twentieth century: Wines/ Dairy

# Purpose of GI

- Branding strategies centering on the geographical origins of a product can provide a basis for differentiating commodity products. The use of such GIs can involve unique quality characteristics associated with a particular location or quality images that are based on the history, tradition, and folklore in a region
- Few producers (notably, Dole and Chiquita) have been successful in using traditional branding strategies to sell commoditized products (such as pineapples and bananas)
- Florida Oranges, Idaho Potatoes, Maine Lobster, Napa Valley Wine, and Washington State Apples- GIs which have effectively used GI as branding strategy

# Difference between Trademark and GI

- **Trademark:**

- Sign used by an enterprise to distinguish its goods and services from those of other enterprises.
- Gives its owner the right to exclude others from using the trademark.
- Can be any fanciful or arbitrary name or device.

- **Geographical indication:**

- Product is produced in a certain place and has certain characteristics that are due to that place of production.
- May be used by all producers who make their products in the place designated by a GI and whose products share specified qualities.
- Unlike a trademark, the name used as a geographical indication will usually be predetermined by the name of the place of production.

# GI Protection under TRIPS

- Articles 22 to 24 of the TRIPS Agreement provide for protection of GIs.
- History of negotiations of the TRIPS Agreement reveals a fair degree of dichotomy between the U.S. and the European Union on the nature of provisions that would need to be enacted for protection of GIs.
  - While the EU's position was on the need for recognizing GIs as a distinct category of IPRs,
  - the U.S. position was that current trademark related laws offered sufficient protection for all kinds of marks, including GIs.

# GI Protection under TRIPS

- Compromise reached was that while Article 22 provides for a base level of protection for GIs, Article 23 provides a higher degree of protection for wines and spirits
- **Article 22 of the TRIPS Agreement:** All members must provide legal opportunities in their own laws for the owner of a GI registered in that country to prevent the use of marks that mislead the public as to the geographical origin of the good.
  - This includes prevention of use of a geographical name which although literally true "falsely represents" that the product comes from somewhere else.
- Trademark registration may be refused or invalidated if it misleads the public as to the true origin of a good.



# GI Protection under TRIPS

## **Article 23 of the TRIPS Agreement: Special Protection for Wines/Spirits**

- Governments must provide the owners of GI the right, under their laws, to prevent the use of a GI identifying wines not originating in the place indicated by the geographical indication.
- This applies *even where the public is not being misled*, or where there is no unfair competition and where the true origin of the good is indicated or the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation" or the like.
- Similar protection must be given to geographical indications identifying spirits. Article 23 says governments may refuse to register or may invalidate a trademark that conflicts with a wine or sprits GI whether the trademark misleads or not

# India's GI Act Provisions

- First IPR law providing for “collective rights”
- GI acts as an authenticity/ quality mark for the quality, reputation and characteristics of the product
- Applicant can be:
  - Any association of persons, producers, organisation or authority established by law;
  - Must represent the interest of the producers.
- Protection for Producers and “Authorized Users”
- Registration for 10 years; can be renewed every 10 years.  
No time limit

# GIs in India

- 150 GIs registered in India: Both Agricultural Products, and Handicrafts
- Eg: Darjeeling Tea
- Kancheepuram Saris
- Export potential capitalizing on GIs- very limited for most GIs.
- Progressing from idea to chanelising market potential- yet to be done.