TRIPS, WTO and IPR: Geographical Indication Protection in India

M D Nair†
A-11, Sagarika, 15, 3rd Seaward Road, Valmiki Nagar, Thiruvanmiyur, Chennai 600 041

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The World Trade Organization (WTO) was set up in 1995 and has been the custodian of all matters related to the implementation of the TRIPS Agreement endorsed by 153 member countries. WTO is therefore the most important body which monitors and influences working of global intellectual property rights protection in all its member countries. This opinion discusses protection of geographical indications in India.

History of Protection of Geographical Indications

Even though formal protection of geographical indications (GIs) as a part of intellectual property rights (IPR) protection came into being only in 1994 with the signing of the General Agreement on Tariffs and Trade (GATT) in April 1994, the provisions under Article 1 of the Paris Convention of 1883 included the protection of source or appellations and prevention of unfair competition. Article 10 of the Paris Convention provided for preventing direct or indirect use of a false indication of the source of goods or the identity of the producer, manufacturer or merchant.

The Madrid Agreement of 1891 further endorsed the provisions under the 1883 Paris Convention and mentioned that when the special qualities of a product are due to its source of origin, such a source could be indicated to describe and ensure the quality of that product.

Relevant laws primarily for the protection of trademarks were used to protect consumers from false trade descriptions regarding the origin of the products constituting what is generally termed as ‘passing off’. The Lisbon Agreement of 1958 for the first time mandated the protection of Appellations of Origin and their international registration, the true forerunner of the later provisions under TRIPS. Under this Agreement, it was intended to set up the system in two stages, first for domestic protection and then international protection through the World Intellectual Property Organisation (WIPO). The Lisbon Agreement for the first time recognized that both natural and human factors could be involved in ensuring qualities of a good even when it originated from a particular region. It therefore proposed the inclusion of any product which would qualify for such protection including handicrafts, art, pottery, textiles etc.

TRIPS and Geographical Indications

Article 22 of TRIPS stipulates that all Governments must provide legal opportunities in their own laws for the owner of the GIs registered in their countries to prevent the use of a geographical name which falsely represents that the product comes from elsewhere. Article 23 further specifies the right to ownership of GIs related to origin of wines and spirits, while under Article 24, members are not obliged to bring a GI under protection where it has become a generic term for describing the product in question. While TRIPS was silent on the question of multilateral registration of GIs, at the Doha WTO meet in 2001, many members wanted such a provision, apart from the extension of the special provision on wines and spirits to other products as well. Neither of these proposals has been accepted by all the members of WTO or the TRIPS Council. The European Union promotes registration with a legal effect while the US even now pushes for a ‘non-binding system’ under which the WTO is merely notified of GI registrations in member countries. In the US itself, GIs are treated as sub sets of trademarks, some notable exceptions include geographical appellations, Florida oranges, Idaho potatoes, Washington apples etc. The US stand is that it is TRIPS compliant and has the additional advantage that it can use the existing, well established TM regime. In the US, the use of false or misleading GIs/TMs may be challenged under the Lanham Act or under Section 5 of the Federal Trade Commission Act 15, USC 45.

†Email: mdnair@vsnl.com
The European Union has a well-established legal system for protection of GIs which is an extension of its 1992 regulation. Regulation No 692/2003 also includes products other than wines and spirits, namely, beer, pasta, wool, etc. In addition, in Europe there is a provision for any of the WTO members to object to the registration if there is evidence that the provision is misused and the product in question does not qualify for protection.

**Indian Legislation for Geographical Indications**

As a founder signatory of GATT and a Member of WTO, India was obliged to implement a fully TRIPS compliant intellectual property (IP) system which included the protection of GIs, before the end of the transitional period, 1 January 2005. The Indian legislation for the protection of GIs was enacted in 1999, entitled Geographical Indications of Goods (Registration and Protection) Act 1999. The Rules pertaining to the Act were framed in 2002 and the Act came into force on 15 September 2003, along with the Geographical Indications of Goods (Registration and Protection Rules 2002). The Indian Act provides for multilateral registrations of GIs, including from owners from outside India. Under the Indian GI Act, the following cannot be registered as a GI:

- Indications, the use of which would be likely to deceive or cause confusion or contrary to any law.
- Indication which comprises or contains scandalous or obscene matter or any matter likely to hurt religious susceptibility of any class or section of citizens of India.
- Indications which would otherwise be disentitled to protection in a court since they are determined to be generic names or indications of goods and are therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country.
- Indications which although literally true as a territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be. The punishment in the Act for falsifying GIs could be imprisonment and fine. The period of protection granted to GIs is ten years which could be renewed presumably indefinitely.

Unlike TRIPS, which has through Article 23, special provisions for wines and spirits, the Indian Act has no discretionary provision to favour any special class of products.

GIs may be used, under the Act for a wide variety of products which require protection since the consumer associates the nature, origin and quality of the products as originating from a specific geographical territory. If they are not adequately protected, their reputation could be at stake and the names could be used inappropriately for commercial gains. Thus, the false use of a GI could result in deceiving the consumer who believes that it is the original product from a specific geographical area and therefore is of the right quality.

Since the coming into force of the Indian Geographical Indications Act in September 2003, till 19 July 2011, over one hundred and fifty GIs have been registered by Indian authorities and many applications are pending.

An analysis of these registrations would reveal that of these 60 per cent are handicrafts from different parts of the country, 25 per cent are agricultural products and 8 per cent are manufactured items. In the case of Darjeeling tea, both the term as well as the logo have been registered and therefore protected from third party unauthorized use. Surprisingly, only three belong to foodstuffs (Tirupathi laddu, Dharward peda and Hyderabad haleem). Of registrations of foreign origins there are single registrations from UK (Scotch whisky), Italy (cheese), France (Champagne), Peru (Pisco) and US (Napa Valley wine).

**Conclusion**

As an intellectual protection system, GIs by virtue of being an integral part of TRIPS have gained legitimacy. However, unlike some of the other IP such as patents, trademarks, copyrights, etc., international standards for protection are yet to be put in place in most countries of the world. Several issues at harmonization of the existing norms are pending to be resolved. Even trickier are the questions of international registration modalities and the extension of protection of wines and spirits under Article 23 to other products. So far only GIs related to wines and spirits offer protection from infringement and infringement suits have so far been only for those GIs. Considering GIs as part of the trademark regime is a travesty of the fundamental issue of the principles of GI protection. While the TRIPS Council is aware of the intricacies involved in finalizing an equitable system of protection acceptable to all Members, consensus even on approaches are still to emerge. Even less clear are the trade and economic implications of the protection of GIs as intellectual property.