Journal of Intellectual Property Rights
Vol 17, January 2012, pp 55-63

Intellectual Property Rights and the Handloom Sector: Challenges in Implementation of Geographical Indications Act

Soumya Vinayan†
Council for Social Development, Southern Regional Centre, Hyderabad 500 030, India

Received 19 July 2011, revised 15 September 2011

Actors at the local, national and global level, through their policies, institutional structure and processes, influence livelihood decisions irrespective of geographical setting. The introduction of intellectual property rights (IPR) under the WTO regime demonstrates how decisions taken at an international level affect millions of livelihoods across the globe. This has necessitated national governments to introduce new laws and legislation such as the enactment of Geographical Indications Act of India in 1999. The inclusion of Geographical Indications (GIs) under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of WTO has been acclaimed by developing countries for its potential to boost rural development, create wealth and protect traditional knowledge. The premium consumers are willing to pay for the GI registered product is inextricably linked to the quality of the product. This calls for a thorough re-organization of the supply chain to adhere to not only quality but also to ensure that the revenue arising out of GI is distributed equally along the supply chain. This necessitates strengthening of linkages between stakeholders at all levels to foster trust and facilitate access to market. In this context, the paper examines the key challenges involved in the implementation of GIs, a key component of IPR, in the traditional livelihood sector such as handloom weaving in India, drawing on the success stories of GIs from around the world.

Keywords: Geographical Indication, handloom sector

Since the introduction of Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the WTO, GIs have emerged as an important intellectual asset which not only protects the consumer's interest in high quality products but also results in specific benefits to localized producers through enhanced economic returns and protection of traditional knowledge or know-how. In other words, GIs have become an important legal and economic tool for rural development and protection of traditional knowledge. Traditionally, GIs have been linked with agricultural products and foodstuff, wines and spirits. Nonetheless, the fifth session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore pointed out that certain traditional cultural expressions (TCEs), such as handicrafts which make use of natural resources may qualify as 'goods' and could be protected by GIs.[1]

One of the earliest ways of differentiating goods, for trade purposes, has been to identify goods on the basis of their geographical origin. In other words, typically, GIs emerged to communicate information on the source of the goods and other characteristics such as quality of the product owing to natural or human factors which are peculiar to a locality or region. Thus, in wider public policy, it is viewed as more amenable to customary practices of indigenous communities who produce products which are inherently at the intersection of culture and geography. The important characteristics of GIs include – collective monopoly (held collectively by producers and knowledge, thus, remains in the public domain), non-transferability (cannot be produced outside the demarcated regions and thus promotes sustainable livelihoods), non-excludability (individuals from the location cannot be easily excluded from enjoying the benefits), non-rivalry (the enjoyment of GI by one does not diminish the same for another) and perpetuity of rights as long as good-place-quality link is maintained (thereby ensuring intergenerational equity).[2] Nonetheless, the new IPR regime necessitates introduction of new patterns of ownership over resources or knowhow which is locally held and owned. This in turn can have a profound impact on governance mechanisms which operate in the community. This is crucial to ensure equitable distribution of economic gains stemming out of GI which can lead to reduction

†Email: soumyavinayan@gmail.com

of poverty in the lowest rungs of the supply chain if distributive equity can be ensured.

In this context, the aim of this paper is to examine the key challenges involved in the implementation of GIs in the traditional livelihood sector such as handloom weaving in India, drawing on the GI success stories from around the world.

Meaning and Scope of GI

Use of geographical origin to identify goods for trade purposes is not a new phenomenon. Geographical indications impart information on the source of the good bearing them and other attributes such as product quality or characteristics. The quality of the product, as indicated by the indication of geographical origin (IGO), is related to specific natural and human factors that are peculiar to a locality or region.

The rationale for this phenomenon can be traced to the economics of information. Products can be classified into three categories based on the information accessed by or available to consumers, namely, search, experience and credence goods.[3] In case of search goods, consumers develop a robust notion of quality prior to purchase through inspection or research. On the other hand, goods whose quality is known through use and experience are categorized as experience goods. Credence goods are those where neither prior inspection nor subsequent use is a sufficient condition for developing a robust notion of quality, and where reputation plays the greatest role. In other words, differences in consumer's preferences lead to market segmentation and product differentiation by producers. For example, the colour of a fabric displays the characteristic of a 'search good', the fastness of the colour represents that of 'experience good' and type of dye used (natural, chemical free) or the fact that it is woven by weavers from Pochampally denotes 'credence good' characteristic. Thus, there is no doubt that the geographical origin is a key driver behind consumer preference, for instance, Champagne wine, Pochampally saris, Basmati rice, Roquefort cheese, Pinggu peach, etc.

In order to have a better understanding of the different terminology under the purview of GI in TRIPS, it is essential to differentiate between indications of geographical origin, geographical indications, appellation of origin, protected designation of origin, protected geographical indications, and trademarks. IGOs can be broadly divided into two broad categories.[4] Simple IGOs also known as indication of source (IOS), like 'made in China', do not connote any linkage between product attributes and their geographical origin. Qualified IGOs on the other hand indicate a linkage between the geographical origin of the product and its quality, characteristics and/or reputation. Accordingly, GIs belong to the category of qualified IGOs.

According to TRIPS definition, GIs need not always be geographical names (such as name of a town, region or country) but may consist of symbols as well, if such symbols are capable of indicating the origin of the goods concerned without literally naming them. One such example of GI is 'Basmati' for a particular variety of aromatic rice produced in certain regions of India and Pakistan. Nonetheless, AOs are more restrictive than either indications of origin or GI. Appellations of origin are defined in Article 2(1) of the Lisbon Agreement, as referring to the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.[5] Though as per TRIPS definition of GIs, 'reputation', 'quality', and 'other characteristic' are individually sufficient conditions in their own right to qualify for GI status; however, a GI can qualify as an AO only if the quality and characteristics of the product identified by it are due exclusively or essentially to the geographical environment, including natural and human factors. In other words, all appellations of origin would qualify as GIs but not all GIs are capable of getting protection as appellations of origin. Similarly, all GIs can be indications of origin, but not all indications of origin can be GI.

Apart from these prevalent definitions under various international treaties, European Economic Community has adopted two categories of IGOs under its Regulation EEC 2081/92. Protected designations of origin refer to names of a region or place or in exceptional cases that of a country, to denote an agricultural product or foodstuff, whose quality or particular characteristics are essentially due to particular geographical environment with its inherent natural and human factors, and the production, processing and preparation takes place in the defined geographical area. On the other hand, protection of geographical indication is a broader concept wherein names of a region or place or in exceptional cases that of country, are used to denote an agricultural product or foodstuff, whose quality or reputation or other characteristics is attributed to the geographical area of origin and the production, processing and preparation takes place in the defined geographical area.

Even though trademarks and GIs have similar functions, important differences exist. Trademarks distinguish the products or services of one enterprise from those of another enterprise; a registered trademark gives an exclusive right or monopoly to its owner with respect to goods or services and protects the owner from unfair competition and infringement, if specific grounds of infringement criteria are fulfilled. GIs identify the geographical area from which the good originates and generally can be used by all producers within the designated geographical area. In other words, 'Darjeeling Tea' is an example of GI whereas 'Tata Tea' is a trademark that can be used on tea powder irrespective of its geographical origin. However, a geographical sign can be registered as a trademark if it has acquired distinctiveness through use. It will, however, be possible for third parties to use the registered sign in a descriptive way to refer to the origin of their goods or services.

It is worth pointing out that collective marks may also characterize group of enterprises not based in the same location but simply producing the same goods (for example, Interflora used worldwide by a flower ordering service), while certification marks may be used by anybody who comply with the same standards defined by the owner of the certification mark (for instance, Woolmark). Essentially, the owner of the certifying mark should be a competent authority to do so (for example, Tea Board of India in case of Darjeeling Tea). In contrast to the collective mark, the owner of a certification mark generally cannot use the mark. However, collective marks can be used by a group of producers or artisans from a specific geographical area and the condition to be a member of the association is that they belong to the defined geographical area. In the absence of or lack of access to a certifying authority, it is advantageous for the producers to use a collective mark. This is particularly true in case of unorganized producers such as weavers, artisans involved in production of handicrafts, and so on. Along with the collective mark, the producers can either use certification marks such as Handloom Mark or Silk Mark or trademark such as 'Pochampally Chikat' or the registered geographical indication (RGI) such as Pochampalli Ikat, Chanderi fabric, and so on.

GI – International and National Regimes

International Regime - GI under TRIPS

Geographical indications are dealt within three articles under TRIPS, namely, Articles 22, 23 and 24. TRIPS (Article 22.1) defines GIs as '…for the purposes 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'. It is clear from the definition that the GI depends on the 'quality', 'reputation' or 'other characteristic' of the good. It also qualifies that the indication, quality, reputation or characteristics and geographical origin can be linked together. Despite the single definition in Article 22, there exists hierarchy in the level of GI protection. Wines and spirits have additional protection under Article 23 and this forms the basis, amongst other issues, of the TRIPS Council negotiations with some of the member countries seeking extension of this additional protection to GIs for other products. In other words, while it is not allowed under the Agreement to use the expression 'Champagne made in America' or 'Antarctica Merlot' with respect to wines, Kenya or Sri Lanka marketing its tea as 'Darjeeling tea, produce of Kenya/Sri Lanka' is allowed. Moreover, the Agreement does not specify the preferred legal means nor does it identify the range of legal options available for 'interested parties' to enforce implementation of GIs.[6] Nevertheless, scholars suggest that this reflects the diverse range of legal means for protection of IGOs as evident in different domestic regimes or national laws enacted in member countries.[7] Before turning to the Indian legislation on GI, it is finally worth pointing out that Article 24.9 of TRIPS indicates that WTO member countries have no obligation to protect GIs which are not protected or ceased to be protected, or which have fallen into disuse, in another WTO member country ('country of origin').

National Regime - Geographical Indications Act in India

Protection of GIs assumes great significance in India, well endowed in not only natural and agricultural products[8] but also in world renowned handmade textiles and crafts. The first piece of relevant legislation in India was the Geographical Indications of Goods (Registration and Protection) Act (henceforth the GI Act). This was followed by the Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules). GI Act stipulates that any name which is not the name of a country, region or locality can also be considered as a GI if it relates to a specific area and is used in relation to particular goods originating from that area. In other words, this leaves ample room for providing protection to symbols other than geographical names, such as 'Basmati'. Another significant feature of the Indian legislation is the mention of activities of production, processing or preparation of goods. Similarly, the inclusion of 'human factors' is very crucial for India, which opens the door for handicrafts and handmade textiles.[9] Moreover, the additional protection for wines and spirits embodied in TRIPS is extended to all goods under Article 22(2) and 23(2) of the GI Act.

Section 20.1 of the GI Act makes registration of GIs mandatory through the clause that unregistered GIs are not protected.[10] The Act provides registration in two parts: Part A relates to the registration of GIs and Part B relates to the registration of authorized users/proprietors such as names, addresses and descriptions indicated. The cost of application for each class of good is relatively modest at Rs 5000. To facilitate GI registration, the Central Government has established the Geographical Indications Registry with all India jurisdiction at Chennai. As on 12 May 2011, 151 products have been protected including products under the handicraft (97), agricultural (39), manufacturing (12) and food stuff (3) categories. The enforcement of GI has two dimensions: civil and criminal.[11] Criminal remedies deal with falsifying and falsely applying GIs to goods, selling goods to which false GIs is applied, falsely representing a GI as registered, improperly describing a place of business as connected with the GIs registry and falsification of entries in the register. The punishment could be imprisonment and/or fine. With regard to civil remedies, if the defendant pleads that the registration of GIs relating is invalid, then the court shall stay the suit pending before the registrar or appellate board if any such suit is pending, and if no such proceedings are pending, then raise an issue regarding the same and adjourn the case for a period of three months to enable the party concerned to apply to the appellate board for rectification of the register.

GI and the Handloom Sector

Hand woven fabrics from India have been famous since time immemorial. Hand woven fabrics with its rich tapestry of design and myriad range of products perhaps represent the cultural diversity of India at its best. From Patola and Mashru in Gujarat, Kota Doria in Rajasthan, Banaras silk in Uttar Pradesh, Daccai Jamdani in West Bengal and Sambhalpuri in Orissa, Mysore Silk in Karnataka, Chanderi in Madhya Pradesh, Balaramapuram saris and Kannur hosiery in Kerala, Chettinad and Kancheepuram in Tamil Nadu to Narayanpet and Pochampally in Andhra Pradesh, and Pashmina in Kashmir, handloom weavers for thousands of years have woven rich variety of designs and textures that are often considered the pride of India.

Handloom products are region-specific and are often highly influenced by the natural and human factors attributed to the region or locality such as the skills of the weaver, process of weaving, dyeing of the yarn and so on. From weaving coarse cloth for local markets to producing a range of medium and fine fabrics for larger (usually urban and export) markets, the varieties of cloth produced on handlooms are indeed varied. Each region is known for a specific product that is unique in design and style. What is woven is, in fact, inseparable from where and how it is woven. In other words, the sector is a gold mine of geographical indications. In view of this, GI offers immense potential for handloom products as a marketing tool against powerlooms (automated looms), which produce similar products at a much cheaper cost. This assumes great significance in the context of the handloom sector being the largest provider of employment in India next to the agricultural sector.[12] With respect to production of cloth, the handloom sector accounts for about 15 per cent of total cloth production in the country (excluding hosiery, khadi, wool and silk). In terms of exports, handloom sector accounted for order worth US$ 260 million. Further, as per the latest Census figures, 87 per cent of total handlooms in the country are concentrated in the rural areas. An effective support policy to this sector, therefore, has formidable consequences in terms of poverty reduction and equity.

In terms of organization of production, the handloom sector falls under the category of a household-based cottage industry. Weavers are found in large numbers in the handloom clusters, which are often a group of villages within a particular geographical area. Family labour still forms an important component in the process of production. In each stage of production, every member of the household has a clear role to play. In many ways, it is similar to subsistence agricultural household that engages in self-exploitation of labour in order to remain at the subsistence level. A weaver, while being a member of co-operative might also work for the master weaver or other members of his family might work for other forms of institutional arrangements. Thus, the organization of production is highly complex. However, even today, there are only less than 10 per cent of weaver households under the cooperative fold.[12]

This highly decentralized structure of the sector leads to the emergence of problems that are often associated with micro, small and medium enterprises (MSMEs). Their small size and isolation restrict their potential to achieve economies of scale. Traders and master weavers who are in a better bargaining position in the supply chain are, disproportionately, the beneficiaries of the market premium for unique handloom products. Registration and implementation of GI as well as the distribution of economics, poses innumerable challenges given the highly decentralized nature of the sector.

Challenges for Successful Implementation of GI in Handloom Sector

GI represents collective monopoly, but pre-supposes considerable level of collective action often involving local know-how, cultural factors (such as notion associated with 'good farming' or 'intricate weaving') and the 'symbiotic relationship between reputation and geography'.[7] This is because the important features of GI include non-excludability and non-rivalry. These characteristics lead to difficulties since in most countries there already exists some form (usually informal) of indication of origin prior to GI registration, and the latter calls for a thorough re-organization of the supply chain to cater to the demands of a well-established market. This is necessary given the emphasis on quality, and the inalienable relationship between reputation and geographical factors. Studies show that the position of firms in the supply chain greatly influences the distribution of the economic returns.[2] Thus, GI has a clear potential to protect traditional knowledge and to promote rural development. It can act as a crucial poverty-alleviating tool provided the distribution of economic gains benefit stakeholders along the supply chain.

The literature review on the operationalization of GI in India and around the world highlights the fact that identification and registration of GI is not only unwieldy in terms of paperwork, time and costs but also pre-supposes the potential economic gain arising out of GI as evident from proper market assessment. They underscore collective action problems with respect to sharing of costs of registration, uncertainty regarding grant of GI and its enforcement. Moreover, non-excludability can lead to 'free-riding' among stakeholders in adapting to the specifications of the 'club', especially since the benefits are non-rivalrous. Unreasonable behaviour on part of any one of the stakeholders (horizontal or vertical) has the risk of compromising the reputation of the protected good. Since quality control is at the core of GI, enforcement encompasses standardization of the product, re-organization of the supply chain through strengthening networks and linkages both at horizontal and vertical levels. More specifically, the following challenges seem to be particularly relevant in the handloom sector with regard to implementation of GI:

Capacity of Stakeholders to Form an Association

Evident from the case studies on GI from Europe and India, the capacity of stakeholders to form an association is at the core of GI operationalization. For example, the Tea Board of India in close cooperation with Darjeeling Planter's Association facilitated the registration of Darjeeling GI, whereas in case of Parma Ham it is the Consortium, which facilitates the implementation of the GI by way of its authority of monitoring and evaluating compliance to quality. This enables stakeholders to have a common platform to interact and enter into dialogue. In this context, it is significant to draw attention to the fact that while managers of the Parma Consortium played a key role in the formation of an export consortium to increase coordination among exporters (such as sensitizing the entrepreneurs, providing them meeting place, allowing them to interact with a network of experts, consultants), they were not directly involved in the initiative. A senior member of Parma Consortium defended that the move was necessary 'to maintain a third party status *vis-à-vis* its members and therefore not to be perceived as being endorsing more enthusiastically any sub-group among them.'[13] This is reinforced by the statement that 'third party agencies representing the interests of different producer groups located at various points along the product's supply chain are best suited at resolving the collective action problem'.[14]

In other words, the existence of a multiplicity of stakeholders within the handloom sector requires intervention by neutral third party agencies for the operationalization of the entire process of identification, registration and enforcement, playing a role which does not favour any particular group or interest within the supply chain. This criterion is crucial in a sector like handlooms where almost 80 per cent of weavers are unorganized. In addition, the GI Act of India stipulates that every producer who wants to use the indication must be registered. This implies time-consuming and bureaucratic procedures and calls for an institutional mechanism to facilitate group registration.

Emphasis on Quality

Quality and GI are inseparable. In GIs there is as much emphasis on the quality of the product as is on its geographical origin. The indication of origin over time has become synonymous with the quality of the product. Thus, maintaining product quality is vital to the success of GI. This has been illustrated amply in the discussion on Tuscany olive oil, Parma ham and Mezcal.[2] In the case of Parma ham, its slicing is a particularly important step in processing crucial to determining its quality and this led to the Consortium objecting to UK grocery chain, ASDA undertaking the slicing outside the Parma region and marketing it as authentic Parma Ham while in case of Tuscany olive oil, heterogeneity in quality in the existing supply chain led to the rejection of PDO (protected designation of origin) application in 1997 while PGI (protected geographical indicated) was granted in 1998. Thus, quality maintenance requires integration of stakeholders at the horizontal level. The case of Mezcal is an illustration for integration at the horizontal level, which enabled the producers of the spirit to get protected and also develop a brand, thereby maximizing the potential of the product within the purview of the indication. The brand building helped to diversify the reach of Mezcal products. Thus, there are blends, single distillations, distillations from single species, and so on.

With respect to handlooms, again, the diversified nature of production poses enormous challenge in the standardization of product. In other words, lack of uniform norms for quality adherence in the present organizational structure of handlooms raises concern over tapping the economic benefits arising out of the use of GI. In this context, pertinent questions arise as to the constitution and financing of the quality control body. In case of handlooms which come under the textile industry, there exists the Textiles Committee, an autonomous body of Government of India, a premier organization for quality control in the textile industry. At present, it facilitates GI registration in India but is not the exclusive agency involved in the facilitation. Moreover, even though it is a public body, it faces constraints as far as financial resources for GI registration, facilitation and monitoring are concerned. Besides, there are other bodies like the IPR Cell of Andhra Pradesh Technology and Development and Promotion Centre (APTDC), a joint initiative of Government of India, Government of Andhra Pradesh, and Confederation of Indian Industry, which facilitates applicants in Andhra Pradesh in conversion of technical information into a legal document. Nonetheless, at present, there exist no proper mechanisms to monitor or supervise the registered GIs. In most of the cases, the inclusion of producers under Part B is yet to begin even after registration of GI under Part A.[15]

Integration at Various Levels of Supply Chain

Since, geography and quality are inalienable aspects of GI, it is essential to strengthen linkages not only at horizontal but also at vertical levels along the supply chain to ensure quality and wider distribution of rent. This assumes greater significance in the context of consumer surveys indicating the willingness to pay premium for indications of origin.[16] In addition, there are studies which exhibit consumer's willingness to pay additional premium for fair trade or organic goods which show that the quality of the product is at the core of the willingness of consumers to pay a premium.[17, 18]

The cases in point for vertical integration are the Mozzarella di Bufala Campana and Parmigiano-Reggiano supply chain.[2] In case of the former, the increase in returns for the protected cheese did not trickle down to breeders and diaries positioned in the middle level of the supply chain. On the other hand, in the case of the latter, the re-organisation of the supply chain between cheese dairies and wholesalers-ripeners (wherein the superior bargaining position of the latter on account of the larger physical and financial capital) helped some of the dairies to integrate the ripening stage to improve their bargaining position. This led to cheese dairies economising in their transactions costs (having done the ripening themselves) as well as achieving stability in sales through a secure and steady outlet for their production. Thus, strengthening linkages, which fosters trust, is important in the distribution of rent arising out of operationalization of GIs.

In the handloom sector there are various levels of vertical linkages involved in the value chain of weaving. Even though, a weaver forms the basic unit of production, the production chain is relatively long including the yarn merchant, dyers, warpers, designers and so on. Moreover, suppliers of machinery involved in all these stages such as that of the warping/sizing machines, the loom and its accessories are also important stakeholders within the value chain. Within this value chain, as mentioned earlier, weavers work under three institutional arrangements within the clusters – co-operatives, master weavers and independent weavers. Synchronization along this complex value chain is vital in the distribution of benefits arising out of GI operationalization in a fair manner. Nevertheless, there exists virtually no institutional mechanism in the handloom sector, which brings all these stakeholders under one umbrella. Absence of such an institutional structure to strengthen backward and forward linkages at all levels to ensure distribution of economic returns poses immense challenge to the operation of GI in the sector.

Trust among Stakeholders

Trust is an important element behind strengthening linkages– horizontal or vertical. This aspect of trust building is core to effective networking of linkages. The case study of Teruel Ham supply chain illustrates the role of intermediaries in building trust.[19] In order to rectify the lack of sufficient stock of pig for slaughterhouses and ripeners, in spite of the high demand for the product, the Consejo Regulador, the inter-professional body which was managing the indication, initiated a series of annual meetings between different parties in the supply chain. These were essentially aimed at improving access to information, building trust and strengthening coordination. Moreover, the Consejo also played a crucial role in developing a sample contract with a minimum price, quantity and delivery time between fatteners and the slaughterhouses to rectify the non-availability of pig. The Consejo was also able to facilitate the regional government to indemnify the credit envisaged under the contract. These strategies had a huge impact on building trust between different firms/individuals along the supply chain.

In the handloom sector, many of the stakeholders – weavers, master weavers, pre-loom workers – traditionally belong to the same community. Hence, kinship plays a crucial role in building trust among these stakeholders. Nevertheless, hierarchy within the traditional caste groups (a problem peculiar to India) engaged in weaving often acts as pressure or interest group rather than a tool for fostering trust. The entry of non-weaving castes has also complicated the hierarchies in the sector. In this context, the diversity in relations of production and the distrust individual weavers have developed over a period of time in institutional arrangements such as (due to failure of) cooperatives and (exploitation of) master weavers, remain a major impediment to nurturing trust among these stakeholders.

Access to Market

Against the backdrop of the discussion on information asymmetry and product differentiation exercised by the consumer, it is necessary to note that marketing strategies to promote the product highlighting the protected indication is crucial. This is even more vital in the wake of empirical studies showing the willingness of the consumer to pay premium for indication of origin. The case study of Mezcal shows that product differentiation within the purview of protected indication can be useful in widening the base of the product. The strategies to promote also include the use of certified trademarks along with the indication of origin as illustrated in the case study of Darjeeling tea. Use of such ‘collective labels’ has been justified especially in the context of consumers predominantly identifying the Parma ham and Parmigiano-Reggiano cheese with the respective consortium’s label in contrast to the individual firm’s brand.[20] In addition, the strategy of using logos or certification marks or collective marks along with GIs would be more effective with the use of local images, traditional symbols and other ‘signifiers of nostalgia’ to construct greater affinity in the minds of the consumer between indication labels and the product.[2] Moreover, many studies point out to the use of choice of final outlets as crucial in marketing GI products. In this regard, scholars suggest that different distribution channels should be adopted to widen the consumer base of the product.[21] These could involve selling through retailers and supermarkets in countries with highly concentrated supply chains or selling through local boutique shops or agro-tourism locations.

Various studies have revealed that with regard to handloom sector, the marketing strategies employed differed between institutional arrangements. The master weavers were found to be more diversified in not only products but also in the use of colours and designs. They were also flexible with regard to sales over the counter allowing credit facilities to the customers whereas in case of cooperative societies credit sales are not allowed under the rules and regulations laid down by the government.[22] Moreover, lack of access to credit and finance, seriously hampers the marketing strategies of the cooperative sector. Above all, there exists a near absolute disconnect between the individual weaver and the market. The weaver who often works for the master weaver or cooperative has no information for whom the product is produced and how it is marketed. This aspect of relation of production can have serious repercussions with respect to adherence to quality.

Enforcement – Institutional Mechanism

The TRIPS Agreement does not explicitly refer to any legal means for implementation of GI, which implies that diverse range of legal means, are applicable. However, the Article 24.9 stipulates that unless the GI in question is protected under national legislation, its violation will not be taken into consideration. In this respect, the first and foremost legislation in India is the GI Act. Although the processes involved in GI registration, renewal and removal are long and time-consuming, it is nevertheless, applicable to all users who wish to register a GI under the Act. This again reinforces the necessity to strengthen greater interaction not only among the stakeholders but also between them, the civil society and government officials. This again reiterates the importance of networking and strengthening of linkages. Moreover, with regard to implementation, it has been pointed out that the financial cost of enforcement or hiring of a watchdog (as in the case of Darjeeling tea) can be extreme. In pursuing the strategy of acquiring legal rights, hiring international watch agency and fighting infringement overseas, the Tea Board of India spent about Rs 9.4 million (approx US$ 200,000) in four years (1999-2003).[7]

In this context, with respect to enforcement in handloom sector, the performance of the existing Handloom Reservation (HR) Act has been abysmal. The common reservation of products for handlooms and powerlooms till 1993, technical difficulties in implementation, etc., have rendered the implementation of the HR Act totally ineffective. Against this backdrop, the stakeholders perceive enforcement and implementation of GI in handloom sector with great scepticism. The GI Act, unlike the HR Act, also involves distributive issues and hence needs to be considered seriously by the policy makers. Nonetheless, along with certified trademarks or registered trademarks, it can act as a powerful tool to arrest the imitation of handloom products. In addition, unless specifically mentioned, the GIs can be used by producers of powerloom products since the geographic origin of the product is protected. Thus, adequate diligence should be exercised before the registration of a GI. Since registration of GI is a new phenomenon in India, there has been lack of understanding in practice about its meaning and application. The entire process of filing to registration is undertaken in an incompetent manner. Such ineptitude is amply illustrated through the instances of Jamnagar Petroleum being advertised by the Reliance Group of Industries in the GI Journal to be registered as a GI and the registration of 'Tirupati laddu' as a GI.[23, 24] Registration of GIs in the handloom sector is viewed by the weaver community as a yet another routine programme of the Government and they are completely unaware of its economic and legal potential.[15]

Although, operationalization of GIs in handloom sector faces innumerable obstacles, given its relevance in protecting traditional knowledge (such as know how involved in handicrafts or hand made textiles), increased economic returns and thereby significance in alleviating poverty, the implementation of GIs need to be streamlined.

Conclusion

The introduction of TRIPS in the Uruguay Round of negotiations was marked by controversies over its impact on the developing world, especially the potential rise in prices of life-saving drugs. Nevertheless, GI under TRIPS is regarded as an instrument amenable to the poor given its potential in promoting rural development by means of protecting traditional knowledge. The collective monopoly feature of GI renders it with greater potential to reduce poverty, given its wider reach and a proper framework for distribution of economic returns arising out of its use. Moreover, GIs hold immense relevance as a marketing tool especially for traditional industries like the handloom sector in India. The decentralized nature and rural location of the handloom sector as well as the pro-poor rural population dependent on handloom weaving also provide the unique opportunity for GI to be an instrument for poverty alleviation.

Nevertheless, GIs face series of challenges in implementation. The identification and registration process for GI demands the capacity for stakeholders to form an association or similar groupings. Moreover, since quality is at the core of GI, linkages – vertical and horizontal – between the stakeholders all along the supply chain is crucial. In addition, aggressive marketing strategies are required to highlight the authenticity of the protected indications, which can be not only time-consuming but also costly.

The all-encompassing feature of all the above-mentioned challenges is the notion of building trust among stakeholders. In other words, a framework, which fosters trust through strengthening of networks with respect to quality, access to market and which facilitates formation of association or group is essential for the operationalization of GI.

Acknowledgement

The author is extremely thankful to Dr Michele Clara, Industrial Development Officer, Cluster and Business Linkages Unit, UNIDO, Vienna and Mrs Thu-Lang Trans Wasescha, Counsellor, IPR Division, WTO, Geneva for their comments and suggestions on an earlier draft of this paper. The author also thanks the Indian Council for Social Science Research for financial support for an ongoing study in Andhra Pradesh on Pochampally GI.

References

1 Consolidated analysis of the legal protection of traditional cultural expressions, (WIPO, May 2003), http://www.wipo.int/edocs/ mdocs/tk/en/wipo_grtkf_ic_5/wipo_grtkf_ic_5_3.pdf (9 September 2011), p. 27.

2 Rangnekar D, The socio-economics of geographical indications: A review of empirical evidence from Europe, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No 8, 2004, p. 17, 22, 25-32, www.ictsd.org/downloads/2008/07/a.pdf (15 June 2011).

3 Nelson P, Information and consumer behaviour, *Journal of Political Economy*, 78 (2) (1970) 311-329.

4 Correa C M, Protection of geographical indications in CARICOM Countries, (September 2002), http://www.crnm.org (30 June 2011).

5 *International Encyclopedia of Intellectual Property Treaties*, edited by A Ilardi and M Blakeney (Oxford University Press, New York), 2004, p. 675-692.

6 Three major approaches which have been identified under the range of legal options include; laws focusing on business practices, trademarks and special measures for protection.

7 Rangnekar D, *The International Protection of Geographical Indications: The Asian Experience*, at the UNCTAD-ICTSD Regional Dialogue, Intellectual Property Rights, Innovation and Sustainable Development, Hong Kong, 8-10 November 2004, p. 1, 7, 29, http://www.iprsonline.org/unctadictsd/dialogue/docs/Rangnekar_ 2004-11-08.pdf (15 June 2011).

8 India is home to an extraordinary variety of climatic regions, ranging from tropical in the south to temperate and alpine in the Himalayan north, where elevated regions receive sustained winter snowfall. Based on Köppen classification system, India has the following climatic zones: alpine, humid sub-tropical, tropical wet and dry, tropical wet, semi-arid, arid.

9 Das K, Protection of geographical indications: An overview of select issues with particular reference to India, Centre for Trade and Development, New Delhi, Working Paper No 8, 2007, p. 29.

10 According to Section 20.1 of the GI Act ‘no person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.’

11 Srivatsava S C, Geographical indications and legal framework in India, *Economic and Political Weekly*, 38 (39) (2003) 4022 – 4033.

12 NCAER Handloom Census 2009-10: Third National Census of Weavers and Allied Workers - Primary Census Abstract (Ministry of Textiles, New Delhi), 2010, p. 17, 37, www.ncaer.org/downloads/Reports/HandloomCensusReport.pdf (15 June 2010).

13 Clara M, Quality Consortia: Parma and San Daniele – Food processing, Case Study for Project US/GLO/95/144 – UNIDO/Italy Programme for SME Development (UNIDO, Vienna), 1999, p. 9, http://www.unido.org/fileadmin/import/userfiles/russof/ qualityconsortia.pdf (30 June 2011).

14 Rangnekar D, Demanding stronger protection for geographical indications: The relationship between local knowledge, information and reputation, Discussion Paper Series No 2004-11, (United Nations University, Institute for New Technologies, Maastricht), 2004, p. 30, www.intech.unu.edu/publications/discussion-papers/2004-11.pdf (15 June 2011).

15 Field level observations by the author in an ongoing study of GI implementation in Pochampally handloom cluster in Andhra Pradesh funded by the ICSSR.

16 Loureiro M L and McCluskey J J, Assessing consumer response to protected geographical indication labeling, *Agribusiness*, 16 (3) (2000) 349-69.

17 Marsden T, New rural territories: regulating the differentiated rural space, *Journal of Rural Space*, 14 (1) (1998) 107-117.

18 Tregear A, Work Programme 4 (Link between origin labeled products and consumers and citizens) – Final Report, Dolphins – Concerted Action (European Commission, Brussels), 2002, http://www.origin-food.org/pdf/wp3/wp3.pdf (15 June 2011).

19 Chappuis J M and Sans P, in *The Socio-economics of Origin Labelled Products in Agri-food Supply Chains: Spatial, Institutional and Co-ordination Aspects*, edited by B Sylvander, D Barjolle, F Arfini, *Actes et Communications*, 17 (2) (2000) 51-66.

20 Arfini F, in *The Socio-economics of Origin Labelled Products in Agri-food Supply Chains: Spatial, Institutional and Co-ordination Aspects*, edited by B Sylvander, D Barjolle, F Arfini, *Actes et Communications*, 17 (1) (2000) 10-45.

21 Albisu L M, Work Programme 4 (Link between origin labeled products and consumers and citizens) – Final Report, Dolphins – Concerted Action (European Commission, Brussels), 2002, http://www.origin-food.org/pdf/wp2/wp2-1.pdf (15 June 2011).

22 Galab S, *et al.*, *Handloom Industry in Andhra Pradesh: Problems, Prospects and Policy Options*, Report submitted to the Government of Andhra Pradesh (Centre for Economic and Social Studies, Hyderabad), 2005.

23 Nair L R, The Jamnagar petrol GI case, http://spicyipindia.blogspot.com/ 2009/09/guest-post-jamnagar-petrol-gi-case.html (10 September 2011).

24 Banerjee M and Susanah N, Grant of geographical indication designation to Tirupati laddu: Commercialization of faith? *NUJS Law Review*, 3 (1) (2010) 107-121.