The development of intellectual property rights (IPR) over the years has invariably brought an upsurge in the outlook of nations towards the aspect of societal and cultural growth, this being said with the preliminary assumption that economic growth has been the most affected realm and that it requires a separate spectrum of analysis.

The paper thus attempts to comprehend the immensely significant role played by IP as a regime in itself and economic growth of a State, with special emphasis being laid on certain economic theories to assert the point canvassed. IP has inextricable nexus with issues like, *inter alia*, traditional knowledge, foreign investments, geographical indications and competition laws. An understanding of such a nexus with all the intertwined issues and the resultant cumulative economic growth of the society would require a Herculean effort as each of the issues would merit a dissertation paper in its own right. However, the objective of the present paper is to highlight the unparalleled effect of IP on the nation’s economy, taking aid of the issues above stated.

The importance of intellectual property protection to develop the scientific and technological capacity of developing countries and benefits derived from the enhanced level of growth has also now become a matter of common understanding. The era of globalization has ushered in a new revolution in this regard and the present century seems to stand at the threshold of the so-called knowledge economy. Needless to say that along with innovative realms where IP is a major contributor, its importance can also be traced in the quarters of folklore including the arts of folktales, folk-poetry, folksongs and instrumental music, folk dances, plays and artistic forms of rituals, all contributing to the enhancement of the overall societal prosperity, not merely at its economic quarters. These facts hence, *inter alia* reassert the initial assertion that IPR do have an incredible and unmatched effect on the overall growth of the society. The economic impact is only one facet of the story.

**IP and Economic Development: Nexus and Indicators**

Economic growth has undoubtedly been one of the major reasons and causes for the phenomenal rise in
the study and importance of IP over the years\(^5\). Protection and enforcement of IPR are the major components of international economic trade and scientific cooperation\(^6\). The only aspect, which seems difficult, is to directly explain the apparent vital linkage between IP and parameters like the national income, rise in living standards, etc., which are among the most significant indicators of economic status of a State. This is perhaps due to the obvious reason of the diverse factors, like the variance in the cultural and socio-economic backgrounds of the people within a particular nation, say for instance, India.

This however, does not rule out the fact that there have been numerous studies and analyses conducted to establish the proximity of IP with economic growth. The flaws in each of them and the clear shortcomings are obvious fallouts, considering the massive nature of the task itself. Notably, the first cross-country research was developed by Rapp and Rozek (1990). They consulted the legal texts of each country’s patent laws and made a rough assessment of their conformity with the minimum standards proposed by the US Chamber of Commerce\(^7\). However, due to the fact that their approach (RR approach) considered only the presence or absence of particular and specific features of patent laws, such as, working requirements, compulsory licensing, product patents for pharmaceuticals and did not consider ‘enforcement effort or effectiveness’\(^8\), the lacunas were more than apparent. The RR approach was utilized by Ginarte and Park (1997) who examined the patent laws vis-à-vis five components of laws, namely, duration of protection, extent of coverage, membership in international patent agreements, provisions for loss of protection and enforcement measures\(^9\).

Maskus and Penubarti’s efforts in proving the direct and proportional linkage between IPR and GNP of a nation, stands as the most outstanding effort and merits special mention. Using the parameters of GDP per capita, primary exports of total exports, infant mortality rate and secondary enrollment ratios for 1965, in tracing the relation between IP and economic growth of a nation, the study pursued the analysis emphatically\(^10\). Indeed their research was so mathematical and close to perfection that they even succeeded in deriving the following logarithmic equation:

\[
\text{Patent} = -0.51 + 0.49\log(\text{Income}) R^2 = 0.11
\]

The role of foreign direct investment (FDI) in a country’s economy is undoubtedly not unknown. This is perhaps one of the main reasons which explain why most of the studies and researches establishing the link between IP and economic growth have focused on FDI as an important parameter. The protection of IPR emerging as one of the most important considerations of contemporary international economic diplomacy, multinational companies and firms are becoming increasingly dependent upon copyrights, trademarks and patents to protect control of their goods and services in the world market\(^12\). The implications of these initiatives hence become the fundamental concern of many countries, especially India, upon whom the pressures from peers and the WTO are increasing in enormous proportions. The western nations’ determination for prudent protection to overseas investments of their transnational corporations, and initiatives sponsored by the OECD, Multilateral Investment Guarantee Agency, the WTO’s General Agreement on Trade in Services (GATS) and Agreement on Trade-Related Investment Measures (TRIMS)\(^13\) easily signify the role of foreign direct investment in the economic sector and the intimacy of IPR with the same.

India’s approach towards the entire issue of IPR vis-à-vis foreign direct investment has, fortunately, been in consonance with the above general assumptions. Indeed, the bilateral trade agreements with the European Union allowing foreign direct investment is only one of the major indications for the same, primarily shown by the fact that EU is currently India’s largest trading and investment partner with nearly a quarter of India’s trade and about a seventh of actual foreign direct investment inflows\(^14\). Deliberations on modifying the present IP laws in consonance with TRIPS is also a hint towards the general attempt to enhance FDI in the country via this sector\(^15\). The Government has initiated plans for better understanding of IPR, such as, setting up of internal IPR protection teams, examining the work that can be copyrighted or patented, ‘offshore vendor history’, curbing the availability of unauthorized software products, performing periodic IP audits, etc.\(^16\), thus signifying the latent agenda to promote foreign investments in the country.
Traditional Knowledge and Intellectual Property: A Preliminary Understanding — An Indicator of the ‘Economic Aspect’ of IP Protections

Integrating development policies with that of the growth of IP has certainly been one of the most fascinating and interesting policies of developing and developed nations in recent times. More particular is the field of traditional knowledge, which no doubt has firm roots to the societal structures of any domain. The importance of traditional knowledge not being a matter of debate, it may safely be assumed that its protection has a strong and direct link with the overall growth of the country. Not surprisingly, in India, there are about 600,000 licensed practitioners of classical traditional health systems and over one million community-based traditional health workers. IPR has the potential to protect this sector and therefore attracts study. Traditional knowledge is often associated with the emergence of modern biotechnologies and the new advancements in pharmaceuticals, agriculture, chemical and other fields which is why IP is looked upon as a tool to ‘protect’ it. The appropriateness of applying IPR to traditional knowledge thus depends upon the nature of the objectives pursued and the extent to which they can be fulfilled by different rights which form part of the IP regime.

Among the diverse areas where traditional knowledge plays vital roles in the general economic enhancement of the country, healthcare sector stands as the most significant one, not just from the point of view of pharmaceutical industry growth, but also considering the general social upliftment of the developing nations. Serving the health needs of a vast majority of the masses in the developing countries, traditional medicine becomes the only affordable treatment available to the poorer sections of people. Keeping this aspect in mind that it is often deliberated to study the issue of protection of traditional knowledge from two perspectives. On one hand, the protection may be granted to exclude the unauthorized use by third parties of protected traditional knowledge, whereas on the other hand, the protection may also mean the preservation of traditional knowledge from uses that may erode it or negatively affect the life or culture of the communities that have developed and applied it.

It is rather paradoxical to note that despite such major emphasis being given to the realm of traditional knowledge, the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) has no exclusive mention of the same. It does not acknowledge or distinguish between indigenous, community-based knowledge and that of industry. Moreover, instead of adopting any standards (as that of the UPOV), the same provides for “the protection of plant varieties either by patents or by effective sui generis system or by any combination thereof” (Article 27(3)(b), TRIPS Agreement). Fortunately enough for the macrocosm of societal development, the Convention on Biological Diversity (CBD) seems to rescue the cause by virtue of provisions requiring respect, preservation and maintenance of traditional knowledge (Article 8(j), CBD, 1992) and the encouragement of benefit sharing schemes (Article 18.4). Whatever might be the actual level of protection of traditional knowledge in the global and national spheres, it remains an undisputed fact that the impact of the same on the general growth of polity and the nation structure remains insurmountable. Besides, the effect on research and development activities in a nation as a result of IPR adds on to its value.

Geographical Indications and Economic Growth: A Special Focus

After having analysed the economic significance of IPR in the arena of FDI, one needs to appreciate the fact that few particular areas of this subject have shown almost unparalleled impact on the economic performance of a State. Another crucial area whose economic ramifications have proved to be phenomenal in the recent past includes geographical indications and geographical appellations of origin. Recent times have seen the growing importance of GIs purporting to protect the ‘equality, reputation or other character of goods essentially attributable to their geographical origin’; simplistically speaking, it helps to promote goods of a particular region or country and ‘eligible for relief from acts of infringement or unfair competition’. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products typically have qualities that are derived from their place of production and are influenced by specific local factors, such as, climate and soil. Whether a sign functions as a geographical indication is a matter of national law and consumer perception. Further, the initiatives taken by the WIPO and the
WTO have given new inertia to the protection of GIs. The overall economic importance of this branch of IP can be easily inferred by the fact that together with thousands of wine and spirit names, the WTO has a list of over 700 foods and other drinks, including 25 Belgian beers, 31 German spring waters, and 41 French cheeses. Further, the EU has published a list of 35 products for global GI coverage, including 18 wines and liqueurs – e.g., burgundy, sherry, and port, named for Burgundy in France, Jerez in Spain, and Oporto in Portugal - as well as four meats and 13 cheeses including gorgonzola, roquefort and parmigiano reggiano. India, too, is not untouched by the wave of the GI ‘revolution’; the legal system of the country is being remodeled to accommodate the same. One of the primary reasons for such a revolutionary spread of geographical indications, is the fiscal benefits that could be derived by such a system, besides just the obvious intention to protect the geographical characteristics of products.

The magnitude and gravity of any discussion on GIs, in as much as its effects on a State’s economy can be analysed by the fact that, France has registered 593 GIs which generate 19bn Euro and constitute the lifeline of 138,000 agricultural products. Similarly, Italy’s 420 GIs generate a value of 12bn Euro and give employment to more than three hundred thousand citizens. A glance at these figures might suggest that GIs are being exploited in a big way in the developed nations with the developing countries still lagging behind. However, the issue of GIs and geographical appellations of origin is not one of a conflict of interests between the developing and the developed countries. This is notwithstanding the fact that recent developments in countries like India, Egypt, Pakistan, Sri Lanka and Thailand in this sphere have given new dimensions to the regime and furthered the debate. For instance, basmati export from India produces 300mn Euros thereby adding enormously to the nation’s coffers. Significantly enough, 10,000 tonnes of Darjeeling tea are produced in the country, but around 30,000m are sold under the same name around the globe demanding a strong legal protection.

A matter of growing concern involving GIs is the role of TRIPS provisions. Articles 22 to 24 of the TRIPS Agreement prescribe minimum standards of protection of GI that WTO members must provide. Under Article 22 of the TRIPS Agreement, unless a GI is protected in a country of its origin, there is no obligation under the TRIPS Agreement for other countries to extend reciprocal protection. To this, Article 23 provides additional protection to GIs only in cases of wines and spirit. This means that they should be protected even if there is no risk of misleading or unfair competition. It imposes an obligation upon the member countries to provide for a law to prevent misuse of GIs of wines and spirit ‘even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or the like’ (Article 23(1)).

It is this imbalance or apparent difference that seems to have created a stir, particularly, among the developing nations demanding equal protection for other products having almost equivalent significance in their national economies. The laxity in Article 22 as compared to wines and spirit in Article 23 puts the GIs concerned at the risk of becoming a ‘generic name’ over time. Further, the requirement of the ‘misleading test’ also leads to legal uncertainty regarding the protection and enforcement of an individual GI at the international level. This is because it is up to the national courts and national administrative authorities to decide whether the public is being misled by a particular abuse of a GI and to enforce their decisions. Since, such judgments are bound to differ from country to country, the very provision of the ‘misleading test’ leaves room for legal uncertainty and inconsistent decisions. The net result of such a discriminatory approach runs the risk of GIs of developing nations like India being wrongfully exploited in the international arena. There is hence, an upsurge amongst the developing countries in campaigning for the extension of the GI protection to other products besides just wines and spirit. However, members opposing GI extension suggest that it ‘could have a considerable burden’ in light of the ‘hundreds of domestic geographical indications that some members seek to protect – a burden that may disproportionately impact developing countries’. Further, it is suggested that it would result in the ‘disappearance of terms customarily used to identify products’, which would increase ‘search and transaction costs for consumers, at least in the short and medium terms’. The rationale for protecting indications of geographical origin is found to be similar to that for other IPR, in particular, trademarks, and is based on
the public goods properties of knowledge and the harm resulting from ‘free riding’ on reputation.\textsuperscript{40} Hence, the efforts of each nation, whether developed or developing, are in furtherance of such a rationale, rather than as mere retaliations of the policies of other countries. However, in the light of the issues unfurling in the recent past, conflicting interests of different countries and communities have made their presence felt in the international legal and political sphere. Thus, one would not be completely wrong to assert that GI is an issue of major concern in the international arena.

The general significance of GIs on the national economy remains a matter conclusively proved. Particularly significant is the agricultural sector, which, as such having an unprecedented importance in India, shares a close link with the GI issue. Certainly, the development of agriculture and more specifically the production, manufacture and distribution of agricultural products is instrumental for the economy of any country, particularly, for an agriculture-based nation like India. Hence in order to achieve a holistic growth in this sector, it is vital that diversification in agricultural production is promoted so as to achieve the best possible balance between market supply and demand.\textsuperscript{41} Thus in order to create diversification of agricultural products using the criterion of origin from a specific place, the need for a legislation concerning indications of geographical origin emerges. These indications have two very important functions for the economy. They are ‘important means of individualization of the products’ and at the same time ‘it is possible to signify a certain quality or some specific virtues of the merchandise’.\textsuperscript{42}

Basmati is an indigenous variety of rice produced in India (as also Pakistan) since long and a significant contributor to the net agricultural income.\textsuperscript{43} Hence, when the issue of its protection by GI came to the foreground, a general outburst was obvious. The apprehension of the US Government’s decision of granting IP protections to Basmati strains of rice as developed by a company, RiceTec, induced the Government to frame an appeal that persuaded the US patent office to reject three of the more important claims in the patent, which suggested a novelty about the Basmati-like characteristics of the three rice strains developed by RiceTec.\textsuperscript{44} But this will not prohibit RiceTec and other US companies from marketing their aromatic rice as ‘Basmati-like’, ‘superior to Basmati’ or ‘American Basmati’, which is essentially misappropriation of geographic indication.\textsuperscript{45} Indeed, Basmati is a classic example of a product whose uniqueness and therefore commercial value is associated with the geographic origins of its production.\textsuperscript{46} The exigency of the matter can further be felt by the fact that despite over 6% growth in the agricultural income over the years, the Government still intends to modernize the basmati cultivation due to the high importance it holds for the entire polity. Fortunately, efforts are on to strengthen India’s case in other countries by classifying Basmati varieties in terms of GIs.\textsuperscript{48} The adoption of a new national legislation in this regard is further a positive sign of India’s endeavor to pursue the matter in right earnest.

**IPR and Competition Laws: Contradictory Theories**

**Feasibility of having them in the National Legal Regime: An Economic Analysis**

IPR regime in the global economy, recent though, seems to have made a tremendous mark in the macrocosm. With TRIPS, under the WTO, coming into operation, campaigning for a uniform standard of protection in all the nation states and moreover furthering the propaganda of a free trading regime in the world, the situation has taken a complex hue. Further concerning is the fact that the present scheme of IP laws which provide for a monopolistic right of the creator over his IP might as well turn the tide against the WTO itself inasmuch as it would be a deterrent for the creation of a competitive and free market economy. This is perhaps where the role of competition laws has emerged and merits an in-depth analysis in order to study the economic implications of IPR as a regime in itself.\textsuperscript{50}

The economic implications of having an antitrust regime and policy are well established. The general monopolistic power of corporate entities in the global market can easily be witnessed by looking at Microsoft. Having a customer scale of 2.4 million professionals in the US alone, the company, by adopting tactics that could otherwise be alleged as being monopolistic, has become almost a single player in its area of expertise.\textsuperscript{52} Such monopolistic tendencies driving out competition from the market and thereby affecting the economy immensely would certainly be ameliorated by a strong IP regime providing for exclusive rights over one’s creation. What is thus needed is a system that harmonizes the
missions of a competitive market economy as well as caters to the objective of having IPR.

With the economic implications of competition laws and mitigation of excessive exclusive rights having been established, it ought to be mentioned that both the regimes (of IP and competition laws) happen to run on counteracting philosophies and often directly conflict with each other. The economics of the debate too lies on this very fundamental issue and would inevitably be solved if one could evolve a solution to the jurisprudential clashes between them.

The emergence of the GATT and subsequently the WTO has certainly brought in a new paradigm of ideas in the spheres of monopoly rights, particularly in the IPR regime. The WTO TRIPS treaty and the EC sui generis legislation exemplify the fact that various aspects of IP law place an increasing emphasis on unfair competition law. In fact, the GATT-WTO system is a system built on reciprocity and mutually beneficial concessions on market access. If competition policy allows private behavior to erode the benefits of this negotiated bargain by foreclosing market access to exporters, then competition policy would undermine trade policy.

It is often contended that restrictive business practices may now constitute a more important barrier to market access than border controls. While there is no empirical evidence to support this contention, few dispute the philosophy of the view that governmental barriers to market access remain the most significant impediment to the free flow of goods and services across national borders. Indeed, this was a point made in the discussions at the WTO Working Group on the Interaction of Trade and Competition Policy that:

“Although anticompetitive practices of enterprises might well have detrimental impact on economic development, it was important to consider the impact on economic development, it was important to consider the impact of anti-competitive policies and measures of governments. In many cases, this would be as great as or greater than that of purely private anti-competitive practices. Furthermore, in many cases, ostensibly private anti-competitive behaviour was itself promoted or facilitated by government actions.”

The growth of technology and the development of the concepts of IP have, over the years created substantial turbulence in this realm of legal studies. In fact, whether technology should become a concern for the anti-trust regime has been a question finding a long list of answers even today. Even assuming the basic justification for antitrust being that monopoly practices, as is often encouraged by the WTO, are socially harmful because they decrease total surplus, there seems to be a disagreement over whether economic efficiency is now or ever was the goal of antitrust, and that there are scores of disagreements about exactly what practices result in monopoly inefficiencies.

**Conclusion**

After an elaborate discussion on the major aspects of the subject at hand, it may well be established beyond doubt that the potential economic and social repercussions of IP policy making are tremendous, and the stakes have never been higher than they are today. Increasing number of nations have begun to recognize this. Consequently, despite its long history, public interest in IP worldwide has reached unprecedented levels. It is an undisputed fact that wealth creation is shifting from a resource to knowledge base. The economy seems to be experiencing radical changes due to paradigm shift in the approaches of business, commercial values of business and diversification of business. Such a shift is due to changes taking place in the business models and legal environment. The conflicts of interests are the result of interaction of existing law of the land with that of the economy. It is in this avenue that one needs to locate the status of IP laws and understand the gravity of the role played by the same.

The nexus between the IP regime and the national economy can easily be deciphered by the fact that India’s independence had itself ushered in an era where the enactment of the national IP laws were considered to stand on the touchstone of the market economy.

**References**


The Patent Cooperation Treaty (PCT) has ushered in an era of international cooperation in the diverse international property systems with reference to patents. Emergence of PCT system and its benefits, e.g. long term gains, availability of best technology, faster industrial progress and development, increase in the foreign direct investment (FDI) has also been clearly established. Among the developing countries, India has also gained substantially and holds the third position in international filing of patent applications and the Council of Scientific & Industrial Research (CSIR) is second to Biowindow Gene Development Inc from China, Ranjan Rajeev, PCT system and its impact on the developing countries, Journal of Intellectual Property Rights, 8, 2003, 50-57

The scale ranged from zero, signifying the absence of patent law, to five, indicating full conformity with minimum standards, Maskus Keith E, Intellectual Property Rights and Global Economy (Institute for International Economics, Washington DC), 1st ed, 2000, 96


The graph established by the survey conducted further suggested that patent rights declined as income rose from low levels, then accelerated sharply towards the highest income levels. Thus there seems to be a quadric relationship between FDI and GNP per capita, estimation of which resulted this equation:

\[ \text{Patent} = 10.5 - 2.63\log(\text{Income}) + 0.21\log(\text{Income})^2 \]

(R)^2, Supra note 2

MacCalman Phillip, Foreign direct investment and intellectual property rights: Evidence from Hollywood’s global distribution of movies and videos, 1 January 2004, http://econ.ucsc.edu/faculty/ pcalman/Modsept.pdf. The article clearly establishes the importance of IP in the entertainment sector in the US which as such is one of the primary sources of FDI in that country


At the EU-India Business Summit held in Copenhagen in 2002, a target was set to increase the bilateral trade from the present level of about €25 billion to €35 billion by 2005 and to €50 billion by 2008, Anon, European Commission and India Sign Agreement on Rs 77 Crore Co-Operation Programme in Trade and Investment, 24th December, 2004, http://www.delind.cec.eu.int/en/political_dialogue/summits/f ourth/106-tidp.htm

Anon, Meeting of Foreign Investment Implementation, 16 February 2004, http://www.siadipp.nic.in/new/min_meet_070803.htm


Traditional knowledge assets are important sources of income, food, and health care for large parts of populations, particularly, but not only, in developing countries. According to the World Health Organization (WHO), up to 80% of the world’s population depends upon traditional medicine for its primary health needs, Anon, Intellectual property – Power tools for economic growth, 1 January 2005, http://www.wipo.org/about-wipo/en/dgo/wipo_pub_888/wipo_pub_888_1.htm

There have been genuine doubts raised as to the justifications for the protection of traditional knowledge. In fact, in reply to this, equity considerations, conservations concerns, the preservation of traditional practices and culture, the prevention of appropriation by unauthorized parties of components of traditional knowledge, and ‘promotion of its use and its importance in development’, have been adduced; Correa Carlos M, Traditional Knowledge and Intellectual Property – Issues and Options Surrounding the Protection of Traditional Knowledge: A Discussion Paper, 25 November 2004, 5, commissioned by The Quaker United Nations Office, Geneva, with financial assistance from the Rockefeller Foundations, http://www.geneva.quno.info/main/publication.php?pid

Such objectives may be attained without the recognition of IPR by other means, such as by implementing, through national legislation, the benefit sharing required by the CBD

The World Health Organization estimates that the majority of the population of most non-industrial countries still relies on traditional forms of medicine for everyday health care. In many countries up to 80-90% of the population is in this category. Medicinal plants and, to a lesser but important extent, animal products, form the materia medica of these traditions. Bodeker Gerard, Indigenous Medical Knowledge: the Law and Politics of Protection, Oxford Intellectual Property Research Center Seminar, St Peter’s College, 25 January 2000, http://www.oiprc.ox.ac.uk/EJWP0300.pdf


Article 22.1 of the TRIPS defines Geographical Indications as:

“...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”

Geographical Appellations of Origin indicate the quality linkage between the product and its geographical name of its geographical origin that needs to be established and the geographical name itself designating the product. Noting the minute though important difference between the two concepts, Geographical Appellations of Origin is perhaps less inclusive than the concept of indications of source. Firstly, GI may be any indication identifying a particular region, locality, or country, including words and pictorial symbols; they do not have to be the place name itself, which is in fact the prime consideration in the other concept.
Secondly, GIs refer not only to products with quality characteristics that are attributable to a region but also to the reputation of a product. Hence it is permissible to bring in GIs also to products which, have unique characteristics not necessarily attributable to the quality of the soil or the climate, rather derive their specialty from, say, the indigenous innovativeness. This difference is particularly significant to note when one considers the case of Basmati which is being vehemently debated even though it does not bear the geographical connection as does, say, Darjeeling Tea; Maskus Keith E, Observations on the Development Potential of Geographical Indications, paper prepared for the UN Millennium Project Task Force on Trade, March 2003, http://www.yale.edu/documents/papers/Maskus.doc. This source however should not be taken for further reference, as the same was a ‘Very Preliminary Draft’ for the preparation of above-stated purpose; Anon, Geographical Indications, http://www.wipo.int/about-ip/en/about_geographical_ind.html. It may be reiterated at this juncture that the objective sought to be achieved by the discussions to follow is to highlight the imperative nexus of the various facets of IP with that of the economic bearings of the same, rather than a detailed legal analysis of the subjects.

26 Srivastava Suresh C, Geographical Indications under TRIPS Agreement and Legal Framework in India (Gitam Institute of Foreign Trade, Series 2, Vishakhapatnam), 2003, 2
27 Geographical indications may be used for a wide variety of agricultural products, such as, for example, ‘Tuscany’ for olive oil produced in a specific area of Italy (protected, for example, in Italy by Law No 169 of 5 February 1992), or ‘Roquefort’ for cheese produced in France (protected, for example, in the European Union under Regulation (EC) No. 2081/92 and in the United States under US Certification Registration Mark No 571798), Anon, Geographical Indications, 25th January, 2005 http://www.wipo.int/aboutip/en/geographical_ind.html
28 According to the WIPO, ‘a GI is best protected under trademark and unfair competition law. Trademark having acquired in good faith had to be protected against conflicting geographical indications’, draft report of the International Bureau of WIPO, Geneva, 13-17 July, 1998, 2, Supra note 38
30 Ibid
32 Basmati export counts for 10% of total agricultural export in India, Ibid
33 Ibid
34 Article 22: Protection of Geographical Indication
Article 23: Additional Protection for Geographical Indications for Wines and Spirits
Article 24: International Negotiations — Exceptions
35 The term ‘generic name’ denotes the name of a good which, although relates to the place or the region where the good was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods, Anon, TRIPS and Geographical Indications, http://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm
36 Anon, Geographical indications in jeopardy, www.indiagether.org/2004/apr/eco-tradeGIs.htm
37 Another disadvantage of the ‘misleading test’ is that, it is up to the plaintiff to prove to the judicial or administrative authorities that the public has been misled. No such burden of proof has been put on the producer (the plaintiff) in the domain of GIs designating wines or spirits, Ibid
39 Ibid
40 The ‘mark’ on the good allow consumers to easily identify it. It thus follows that the accumulated goodwill of the firm should be protected from misappropriation, since ‘free riding’ on thus reputation misleads consumers and is unfair competition. A similar rationale forms the legal foundation for protecting GIs, namely, protection against misleading use of IGIs and protection against dilution of IGIs. Rangnekar Dwijen, Geographical indications: A review of proposals at the TRIPS Council: Extending Article 23 to products other than wine and spirits, UNCTAD/ICTSD Capacity Building Project on Intellectual Property Rights and Sustainable Development, http://www.iprsonline.org/unctadicts/docs/rangnekar_may2003_final.pdf
43 Supra note 44
45 The previously discussed issue of generic name might be argued by certain quarters in such a case, Ibid
46 Corporations in France and the US have been producing rice based on ‘Basmati’ varieties in those countries, and registering trademarks that refer to ‘Basmati’, thereby seeking to gain from this renowned geographical name. Thus, the issue of Basmati is not just to be dealt with in US, but also in many other countries, where rice strains are sold in the name of Basmati, Anon, Geographical Origins in Jeopardy, http://www.indiagether.org/
49 The Geographical Indications of Goods (Registration and Protection) Act, 1999
Even the TRIPS Agreement under Section 8 of Part II has accepted the importance of anti-competitive provisions in the form ‘Control of anti-competitive practices in contractual licences’.

Anon, Why Microsoft is a monopoly, [http://www.netessays.net/viewpaper/10407.html](http://www.netessays.net/viewpaper/10407.html)

As of March 1997, 87% of all the software developers were actually developing the Windows 32 platform, which is the operating system for Microsoft, [Ibid](#)


WTO, Working Group on the Interaction between Trade and Competition Policy, Report to the General Council, WT/WGTCP/2, at 15, 40 (8 December 1998), as mentioned in [Supra note](#) 1, 19. Notably, another anti-competitive governmental barrier to trade are the so called ‘gray area measures’, government managed, horizontal restraint of trade that sanctions a market-sharing arrangement among competing firms.

There seems to be growing a new concern in the realm of antitrust law, that being, are there systematic tendencies for inefficient technologies to become established and resist replacement by superior alternatives. Liebowitz SJ & Margolis Stephen E, Should Technology Choice be a Concern of Antitrust Policy?, *Harvard Journal of Law and Technology, 9(2)*, 1996, 284, [http://www.jolt.law.harvard.edu/articles/pdf/v09/09HarvJLTech283.pdf](http://www.jolt.law.harvard.edu/articles/pdf/v09/09HarvJLTech283.pdf)
