

Beyond Wines and Spirits: Developing Countries' GI Products and their Potential in WTO Regime with Special Reference to India

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There has been a sea change in global marketing of geographically indicated products. This paper discusses the problem of protecting products of geographical origin; post TRIPS Agreement, which provides for enhanced protection to wines and spirits. Since no other product has been given enhanced legal protection in TRIPS, uncertainty for those unprotected products still continues. This has introduced inequity and unfair treatment of other products of equal importance sourced from the geographical locations and regions of the developing world. In order to evolve a fair trading system in the global market, agricultural and other natural products cannot be ignored as this affects the livelihood of a large number of people who are engaged in producing traditional and indigenous products of reputed quality. The paper further explores the possibilities of extending better protection to those unprotected products through the route of GI and probes the potential worth of Indian GI products with particular reference to newly found bonanza of bio-diesel extraction from *Jatropha* seeds as available in the state of Chattisgarh.

Keywords: Geographical indication, trademarks, wines and spirits, *jatropha*, indication of source, appellation of origin

Developing countries' u-turn from the earlier philosophy of bringing about peaceful social and economic revolution is now tormented by the changing global scenario which projects an attitude of *laissez faire* but does not minimize the importance of protecting intellectual property of individual creators. Developing countries are amidst very remarkable moments in history when many dramatic developments have taken place in the last few generations, to introduce tectonic shifts in the industrial scene and the nature of commercial activities. Though geography has lost its significance, thanks to the communications revolution; it has retained its indication to remain in place by exporting products of earth washed by natural rivers and climatic condition that are unique to their location. There is thus, an admixture of God-made and man-made creativity giving a touch to the product that confers a specialty, quality and purity, which a discerning consumer will cherish. The World Trade Organization (WTO) Agreement has brought about a sea change in global trading system and the new world economic order with a legal framework, which recognizes the importance of Trade-Related Aspects

of Intellectual Property Rights (TRIPS) Agreement. This Agreement has broadened the scope of intellectual property rights (IPRs) and included Geographical Indication (GI), which should enjoy the protection of law.¹

GI has been defined as follows:

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products typically have qualities that derive 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.²

GIs can be place names (may also include words associated with a place in some countries) used to identify the origin and quality, reputation or other characteristics of products (for example, 'Champagne', 'Tequila' or 'Roquefort'). Protection for GI under the TRIPS Agreement is defined in two Articles.³ The economic and political significance of GI has been growing in recent years as the use of distinctive or quality signs have

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promoted the demand for products of specific geographical origins.⁴

Emerging Trends

In the recent past, GI has emerged as one of the important instruments of intellectual property protection. Though, there were three important international treaties, namely, Paris Convention, Madrid Agreement and the Lisbon Agreement with provisions to protect Indications of Source (IS) and Appellation of Origin (AO), these treaties did not become effective international instruments because either they had only general provisions or had very limited membership (most of the developing countries are not members of these treaties). GIs may be designation, expression or sign aiming to indicate that a product originates from a specific country, region or locality. In trademarks, origin is traced to manufacturers or business houses. GIs must, however, have a history of reputation. But within the geographical limit, there may be 'country cousins' for example, 'Champagne' or 'Scotch Whisky' which are manufactured by different manufacturers under different brand names.

GI generally covers agricultural goods but also includes industrial. The various provisions of TRIPS Agreement covering GIs have attracted considerable debate, especially higher or enhanced level of protection for only wines and spirits. Several developing countries including India have been highly critical of this approach because of its adverse trade implications. The issue was raised in the last WTO Ministerial Conference at Doha. Accordingly, the Doha Ministerial Declaration refers to the issues related to the extension of protection of GIs provided for in Article 23, to products other than wines and spirits (paragraph 18). Apart from this, the Doha Declaration also called for establishment of a multilateral system of notification and registration of GIs for wines and spirits. Nevertheless, India and EU have jointly initiated some efforts to strengthen the protection of GIs. The concept of GI as evolved during the TRIPS Agreement attempts to cover 'appellations of origin' and 'indications of source'.

AO is defined in the Lisbon Agreement for the Protection of Appellations of Origin, 1958. It covers products that have a specific quality exclusively or essentially due to the geographical environment in

which these products are produced. If a geographical term is used as the designation of a kind of product in a certain country over a substantial period of time, that country may recognize that consumers have come to understand a geographical term that once stood for the origin of the product. For example, 'Banarasi Saree' a certain kind of saree originally from the Indian town of Banaras, is now a product regardless

Table 1—Comparison between appellations of origin and geographical indication

Appellation of origin (AO) as defined in the Lisbon Agreement	Geographical indication (GI) as defined in the TRIPS Agreement
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| 1. AOs are necessarily geographical names of a country, region or locality, such as, Tequila, Porto | GIs are any indication pointing to a given country, region or locality, such as, the symbol of the Eiffel Tower to designate famous French products or Taj Mahal for famous Indian products (this may include a number of products, for example, Taj Mahal brand Tea or Taj Mahal brand Mustard Oil). The symbol used evokes the sense of oneness with the country. In other words, it is a duet between the geographical name and the symbolism. |
| 2. AO designates a product. The product's name is the same as the AO. For instance, 'Champagne', 'Bordeaux', 'Darjeeling' etc. But the problem with Darjeeling is that it does not at once bring the idea of tea whereas the word Champagne sparks the idea of sparkling wine, which comes from the district of Champagne for spraying or consuming in connection with the celebration of victory or an occasion. | GI identifies goods. A GI could be any expression –not necessarily the name of the place where the product originated—that could serve the purpose of identifying a given geographical place. For instance, the French flag for identifying wines of certain quality or reputation or just the name of the place identifying the product such as 'Eau de Cologne' or 'jambon de Parma'. But the first one has become generic by usage and hence it is in public domain (Indian trademark law however, does not permit use of its national flag as a mark on goods in trade). |
| 3. AOs are limited to the quality and characteristic of a product. | GI also refers to the reputation of products based on quality or characteristic feature(s) of the product. |
| 4. AO considers the geographical environment where the product comes from, including natural (soil, climate, etc.) together with skill or artistry of human factors. | GIs use a more general concept of 'geographical origin'. |

of its place of production. In this age of mass production for massive consumption, this has already created the problem of contesting claims in trademarks-related question as to whether the product name has passed on to the basket of generic names so that it becomes the sphere of public domain. The IS appears in the Paris Convention for the Protection of Industrial Property, 1883 and the Madrid Agreement on Indications of Source of 1891, and can be defined as, an indication referring to a country or a place in that country, as being the country or place of origin of a product. It may normally be preceded by words such as 'made in...'

The protection of GIs may be at the national or regional level. The word 'Tuscany' for olive oil produced in a specific area of Italy, or 'Roquefort' for cheese produced in France is protected in the European Union and in the United States as US certification mark. EU has signed a series of bilateral and plurilateral agreements with Australia, Mexico and South Africa for phasing out names of European wines being used by producers from these countries and in return accepting GIs as being protected by the respective countries. GIs are protected in accordance with national laws under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin. The table 1 compares AOs and GIs.

There may be several other products originating from developing countries. GIs can protect not only agricultural products but also those products, which possess specific qualities arising out of human factors that can be associated to the place of origin, such as, specific manufacturing skills and traditions, like 'Swiss' watches of Switzerland. In other words, GI indicates the milieu of the cultural ethos, traditional setting, human skill, resourcefulness and climatic environment of particular regions thereby conferring a distinctive character on the goods.

Legal Framework of GI-Post WTO

The legal sanctity of GI has been secured by many governments by way of introducing legislative teeth in the present wave of trade based world economic growth. GI's legal framework under WTO is:

GI: The Legal framework under WTO

All products are covered by Article 22, which defines a standard level of protection. This says geographical indications have to be protected in order to avoid misleading the public and to prevent unfair competition. Article 23 provides a higher or enhanced level of protection for geographical indications for wines and spirits (subject to a number of exceptions, they have to be protected even if misuse would not cause the public to be misled). A number of countries want to extend this level of protection to a wide range of other products, including food and handicrafts. Among the exceptions that the agreement allows are: when a name has become a common (or "generic") term (for example, "Cheddar" now refers to a particular type of cheese not necessarily made in Cheddar, in the UK), and when a term has already been registered as a trademark (for example, in Italy "Parma" is a type of ham from the region of the city of Parma, but in Canada it is a registered trademark for ham made by a Canadian company). Information that members have supplied during a fact-finding exercise shows that countries employ a wide variety of legal means to protect geographical indications: ranging from specific geographical indications laws to trademark law, consumer protection law, or common law.

Source: <http://docsonline.wto.org>

The issue of linking GI to a wide variety of products originating from the developing and underdeveloped world is much more crucial than ever before. The stakeholders' claim to protect many items of tradition and cultural origin has implications in agriculture related negotiation. Hence it calls for a comprehensive review so that all countries benefit from their own products for which a system of rational classification of goods is necessary to identify some specific items deserving particular attention for the purpose of enjoying the shade of legal protection provided that those goods meet certain minimum criteria.

Protection of GIs in India by Indian Courts

GIs are understood by consumers to denote the origin and the quality of products. Many of them have acquired valuable reputations, which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use of GIs by unauthorized parties is detrimental to consumers and

legitimate producers. The former are deceived and led into believing that they have bought a genuine product with specific qualities and characteristics, while in fact, they get a worthless imitation. The latter suffer damage because valuable business is taken away from them and the established reputation for their products is damaged.⁵

In *Imperial Tobacco Co v Registrar, Trademarks*⁶, the Calcutta High Court explained the concept of 'geographic term' in following manner:

Geographical terms and words in common use designate a locality, a country, or a section of country which cannot be monopolised as trademarks; but a geographical name not used in geographical sense to denote place of origin, but used in an arbitrary or fanciful way to indicate origin or ownership regardless of location, may be sustained as a valid trademark.

Earlier, the court observed that a geographical name according to its ordinary signification is such mark inherently or otherwise incapable of registration under the trademark law but only subject to minor exceptions.

In India, GIs have hitherto been governed by common law principles, which enable an aggrieved person to file an action of 'passing off' for protection of his right. In other words, it is based on usage and common knowledge about the characteristic features and quality or reputation that the product has already earned in the market either by publicity or by its presence in the market. Since there was no enacted law to protect the products or a procedure for registration of registrable products, there was no occasion to make allegation for infringement. But Scotch whisky enjoyed better protection even under pre-existing law in India because it had been covered by specific legislation known as Scotch Whisky Act so much so that Indian court went to the extent to say that even kilted drummer's picture cannot be printed on Indian whisky by the manufacturer since it evokes the sense of Scottish origin which is not the case and therefore it is capable of wearing a deceptive look. In *Mohan Meakin v Scotch Whisky*⁷, the Delhi High Court decisively affirmed the finding of the Registrar of Trademarks in which the plea for registration of a proposed trademark for its use on whisky produced in India consisting of the words 'Highland Chief' and a design of the head and shoulder of a gentleman dressed in Scottish highland which misleadingly conveyed the idea of Scottish origin.

The House of Lords in *Erven Wrink B V v Townend and Sons*⁸ explained the essentials of the cause of action for passing off. Lord Diplock relied upon the Halsbury's *Laws of England*⁹ and ruled that the plaintiff must prove each of the following five essentials in an action for passing off: (i) a misrepresentation, (ii) made by a trader in the course of trade, (iii) to prospective customers of his or ultimate consumers of goods or services supplied by him, (iv) which is calculated to injure the business or goodwill of another trader, in the sense that this is a reasonably foreseeable consequence, and (v) which causes actual damage to a business or goodwill of the trader by whom the action is brought. Lord Foster in the above case also formulated following five different elements for actions of passing off which must be established: (i) plaintiff's business consists of, or includes, selling in England a class of goods to which the particular trade name applies, (ii) the class of goods is clearly defined, and that in the minds of the public, or a section of the public, in England, the trade name distinguishes that class from other similar goods; (iii) because of the reputation of the goods, there is goodwill attached to the name; (iv) the plaintiff, as a member of the class of those who sell the goods, is the owner of goodwill in England, which is of substantial value; (v) the plaintiff, has suffered, or is really likely to suffer, substantial damage to his property in the goodwill by reason of the defendants selling goods, which are falsely described by the trade name to which the goodwill is attached.

In *Reckitt and Colman Products Ltd v Borden Inc*¹⁰ (the Jif Lemon case), Lord Oliver reduced the aforesaid five essentials elements evolved by Lord Diplock to three, namely: (i) the existence of plaintiff's goodwill; (ii) a misrepresentation as to the goods or services offered by the defendant; and (iii) damage (or likely damage) to plaintiff's goodwill as a result of the defendant's misrepresentation. This view was reiterated in a number of decided cases.

The decision in *Consozito de Proscuitto di Parma v Marks and Spencer*,¹¹ also identified the ingredients of a passing off action as being comprised of three, namely: (i) the goodwill of the plaintiff; (ii) the misrepresentation made by the defendant; and (iii) consequential damage. The courts in India have also adopted and applied the same criteria in determining the act of passing off.

A survey of decided cases reveals that Indian courts have maintained the action of passing off to

protect GIs. *Scotch Whisky Association v Pravara Sahakar Karkhana Ltd*¹² is a leading case on this subject. In this case, the plaintiff, Scotch Whisky Association, a company incorporated under the Companies Act of United Kingdom instituted the passing off action against the defendants -- a manufacturer of various brands of Indian whisky like 'blended Scotch whisky' or 'blended with Scotch', under various brand names, 'Drum Beater' and 'God Tycoon'. On these facts, the Bombay High Court held: The plaintiffs had sufficient interest to prevent passing off of Indian whisky manufactured by the defendant and to prevent damage to reputation and goodwill of Scotch whisky. The defendants were passing off their goods as blended Scotch whisky which in fact they were not. The case therefore merited interim injunction. The defendants resorted to unfair means by using the words 'blended with Scotch' and indulged in colourable imitation and unfair trading in an attempt to harvest unjust benefits by appropriation of plaintiff's goodwill. The defendant was restrained from advertising or offering for sale or distributing in any country whisky, which is not Scotch whisky.

It is evident from the aforesaid decision that the judiciary in India has consistently extended the umbrella of legal protection to GIs even in the absence of any legislation in force at that point of time. It is significant to note that such protection was afforded much before the TRIPS Agreement came into force. But this kind of legal protection does not make a difference between trademarks and GI and the protection available were purely judge-made. The WTO provisions strengthened by statutory legislation in the member States have made things easier and hence law on GI is bound to develop further with more and more cases coming before the court. The protective umbrella extended by the legislation is completely new to India as it is for many other countries. The entitlements are community-based rather than based on individual enterprise which is the case with the trademarks.

This issue was raised in *Imperial Tobacco Co of India v Registrar of Trademarks*.¹³ In this case, the Imperial Tobacco Company of India applied to the Registrar of Trademarks for registration of a label, used as wrapper for packets of cigarettes bearing a design of snow clad hills in outline with the word 'Simla' written prominently in various panels of the label with small inscription that the content is a

product of the appellant company. The registrar rejected the application for registration. On appeal, the Calcutta High Court while disallowing the appeal laid down the following principles:

(i) The mark 'Simla' was a geographical name and the snow-clad hills in outline in the mark indicated its use in ordinary or geographical signification, so that the mark was neither a fancy or invented word nor one with a secondary meaning. Though, a word was not debarred from registration under Section 9(1) (e)¹⁴ as a distinctive word merely because it was geographical, some geographical names can be inherently adapted to distinguish the goods of particular traders, only if they can be predicated that they are such names as it would never occur to any other trader in such goods to use. At the other extreme, the name of a major industrial area or city will be totally unregistrable in respect of almost any goods. Although, it may tip the balance that the applicant is able to show that he has a natural or legal monopoly of the production of goods concerned in the place concerned; that alone will not make a geographical name registrable without substantial evidence of distinctiveness.

(ii) No trademark shall be allowed to be registered which may hamper or embarrass the traders or trade now or in future in respect of the place or country in which it is proposed to be registered.

(iii) In view of the imprint of snow clad hills in outline in the trademark 'Simla' the ordinary or geographical signification was obvious and patent even though it had no reference to the quality or place of origin of the goods. Registration of such trademark may hamper or embarrass the trade or traders in or around the locality in future as held by judicial authorities cited earlier in similar cases. Also as 'Simla' was too prominent a city, well known in the country and abroad and in its ordinary or geographical significance, it was inherently neither distinctive nor adapted to distinguish the goods of the appellant as a particular trader from those of others, and also hit by the provisions of Section 9(1), Clause (d) of the Trade and Merchandise Marks Act, 1958.

Legislative Protection of GIs in India

Prior to 1999, there was no specific legislation to regulate GIs. It was in the year 1999 that India in compliance with its obligation under TRIPS Agreement enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999.

The Act came into force with effect from 15 September 2003 and provides registration of GIs and better protection relating to goods. It was designed to discourage malpractice and misuse by unscrupulous persons of the products of producers, manufacturers and thereby protect the consumers from being deceived by the falsity of geographical origin leading to loss of economic prosperity of the real producer of such goods and to promote goods bearing GI marks in export market. Unless a GI is protected in the country of its origin, there is no obligation (under Article 22 of the TRIPS Agreement) on other countries to extend reciprocal protection.

The Act provides for registration in two parts, Part A is related to the registration of GIs; Part B relates to the registration of authorized users/proprietors, such as, names, addresses and descriptions. Section 2(e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 defined GI as:

‘Geographical indication’, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in the territory, where a given quality reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Section 2(f) of the Act defined ‘goods’ as- any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff. The term ‘indication’ in Section 2(g) of the Act includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies.

A lot of thought and in-depth research is required to find ways and means to protect Indian products in the international market. Indian market share in the middle-east is facing stiff and unfavourable competition from the American exporters as they enjoy patronage in the form of subsidy. At the same time, it is necessary to change our marketing strategy in the face of the stern reality that Basmati is being re-exported after re-packaging them to African countries and gaining exploitative benefits at our cost. Creating an attractive logo is another task in hand which should not be delayed.

Natural products like water or mineral water sourced from the springs can be registered under the new legislation. ‘Ganga’ water from the river Ganges can be one distinct possibility. Laboratory research made more than hundred years back showed that microbes were unable to survive in this water for more than 24 hours. Now, even after the Ganga Action Plan, there is a huge gap between aspiration for clean water and the condition of the polluted river. But opportunities should not be lost without a try. In usual context geographical names are in the public domain and no one should be allowed to monopolise through the route of trademark registration and in addition, the religious connotation of the word creates other problems. Ganga water being river origin from Ganga as a geographical source may be legally protected as GI.

Darjeeling Tea Logo

One of the first significant measures was taken by the Tea Board to protect Darjeeling tea as a GI about 15 years ago by developing a ‘Darjeeling Tea’ logo in 1983. Now, Darjeeling tea is also protected through the route of registration. Darjeeling tea popularly known as ‘Indian Champagne’ has a flavour of its own, unique to its kind, due to soil condition coupled with weather and terrain for draining the excess water down the stream to ensure the perfectness in taste and flavour. Even Assam Tea is a deserving candidate for enjoying protection under GI Act.

Tea Board of India has been recognized as the representative for the registration of the Darjeeling Tea by the GI Registry, Chennai and accordingly a logo of Darjeeling Tea with a bud of three leaves in the hand of a lady is now being widely used and known in the market.

The Case of Chattisgarh

The registration of GI may be granted to persons or association of persons and not to individuals under Section 11 of the GI Act. In India every state and geographical region has something to offer to the world at large, which deserves protection of law by some kind of registration. But it is absolutely essential that a national register is created and maintained for this purpose.

In the bio-rich newly created Indian State of Chhattisgarh, there are items, which are known for centuries for their artistic or unique characteristics, and some of them have already been identified by the business bodies and the stakeholders. They need to be aware of their rights and duties for ensuring that

Table 2—Identified geographical indications of Chhattisgarh

Representative Stake holders	Potential GI	Description
Govt of Chhattisgarh	Bastar Art	Traditional art of Chhattisgarh flourishing in Bastar area
Govt of Chhattisgarh	Kosa silk	Characteristic designs replicating the local Chhattisgarh culture is an identified feature of these unique silk woven sarees
Govt of Chhattisgarh	Dastkari-Handicrafts	A unique masterpiece handicrafts reminiscent of the traditional culture of Chhattisgarh
CHIPS	Chhattisgarh Traditional medicinal & aromatic plants	There are extensive varieties of locally grown aromatic medicinal plants which have unique medicinal & aromatic characteristics and make them distinguishable geographically & qualitatively
Raipur Alloys & Steel Ltd	Raipur Alloy	These alloys have specific properties which are distinctive
Chhattisgarh Mushroom Grocers Cooperatives	Mushroom & local agro products	Some of the identified products which are unique and are grown in Chhattisgarh: <ul style="list-style-type: none"> ➤ Spawn ➤ Pleurotus Mushroom Species ➤ <i>Agricus Bisporus</i> ➤ <i>Calocybe indica</i> ➤ Dehydrated Mushroom ~ Oyester ➤ Mushroom pickle ➤ Mushroom papad ➤ Mushroom badi ➤ Mushroom powder ➤ Mushroom soup ➤ Compost
Aditya Biotech Pvt Ltd	Local forest based products	Chhattisgarh is rich in forest resources. There are several thousands species grown which a wide application in medicine food & there aquatic healings. These products are unique qualitatively and are distinctively grown in the forest of Chhattisgarh.
Laghuban Upyaj Byapari Mahasangh-Chhattisgarh	Minor forest based products	

Source: CII data base at Raipur, Chattisgarh, India, 2005

geographically indicated products are not distorted in the process of marketing if their names are to be protected finally after the registration is affected.

Some identified products screened by the Confederation of Indian Industry's (CII) Chhattisgarh branch, which can be further examined for extending protection by registering them by the stakeholders, are given in table 2.

An effort by Sygenta (the Switzerland-headquartered agribusiness giant) to collect germ plasm failed in December 2002 as the Raipur-based Indira Gandhi Krishi Vishwavidyalaya (IGKV) was prevented from handing over its repository of 22,972 varieties of rice germ plasm, developed over generations by farmers in the rice-rich State of Madhya Pradesh (now divided into Madhya Pradesh and Chhattisgarh) largely because of protests organized by the Chhattisgarh Mukthi Morcha.¹⁵ Hence, arguably, apart from the list cited in the table and the varieties of rice, the current list can be extended to other products like *Jatropha (Ratanjot)* seed abundantly available in Chattisgarh. Study suggests that *Jatropha* seeds are a major bio fuel source which can throw open huge investment opportunities in Chattisgarh. The State of Chattisgarh has already embarked upon an ambitious plan to sow 80 million *Jatropha* saplings during the current year in all of its 16 districts in wasteland areas. The Government is seeking Rs 150 billion in investment to cultivate the plant and fuel production units over the next year hoping to become India's first bio-fuel secure state by 2015. The bio-fuel will provide energy security to the country by saving a minimum of Rs 100 billion from the county's annual import bill of Rs 1 trillion and the value of cultivation itself will yield Rs 40 billion annually to the State from the selling of the seeds.¹⁶ In future, if the State goes on to export, the claim for the GI should be in favour of the farmers of Chattisgarh since the *Jatropha* seeds are the local product of this region. Thus, it can benefit the agriculture community at large because of the protection to be enjoyed through the route of GI. Thus, legal and the economic implications of GI for the future of any country's economy are far-reaching.

Key Worries for Developing Economies

GI products are not only a matter of international trade but also a support base for the mass population of the developing countries. The commercial value of GI products will be beneficial to the community of producers of the world but current trends in protecting the interest of artisans, farmers, and other producers from traditional society are much more important from livelihood point of indigenous people in the post

WTO regime. 'The Third World stores the most important resources on the earth. It does not only have populations but also the longest history and the deepest cultural roots which gave the rest of the world its material and philosophical bases. And we are still giving them away while our people die of hunger and diseases'.¹⁷

The indigenous people and local farmers in various countries - especially developing countries - have developed, over the years, their own knowledge for obtaining food and medicines from land resources and their traditional knowledge base. This knowledge evolved outside the formal legal structure of the intellectual property protection system. Considering that many of these products -- produced according to traditional and ancient methods -- have a given quality, reputation or other characteristic essentially attributable to their geographical origin, protection through a GI could be applied to them. The other important linkage between GIs and developing countries interest corresponds to the protection of traditional knowledge. Probably the only existing category of IPR that may be directly applied to the protection of traditional knowledge is that of geographical indications. Countries that have certain tradition or at least some experience in the use of GIs, bear witness to its importance and necessity for their legal protection. Not only do producers of products protected under GI to receive benefits of this kind of protection, but also consumers who recognize a certain quality, reputation, or other characteristics of these products through the use of a GI. Considering that most GIs are related to agricultural products, at least theoretically this category of intellectual property protection should favour those countries, which have an agriculture-based economy, as is mostly the case with developing countries. But for cultural and educational reasons, it seems that in practice this has not happened.¹⁸

Research and Information System for Non-Aligned Countries (RIS) in its publication appears to provide an answer as:

A number of countries, including the US, Australia, Argentina, Canada, New Zealand, and Uruguay thought it was inappropriate at this stage to put forward proposals or modalities for negotiations as no negotiating mandate existed. They also questioned the benefit of extending GI extensions, arguing that they had been very reluctant to accept the additional protection for wines and spirits during the Uruguay

Round and were not prepared to take on any further obligations. The Doha Ministerial Declaration had suggested to consider extra protection that WTO members already apply to wines and spirits and to other traditional high quality products that are just as deserving for such recognition such as Indian Saree, Oriental carpet, specialty tea such as Darjeeling (India), Jasmine rice (Thailand), cheeses such as Parmigiano Reggiano (Italy), Jamon de Huelva (Spanish ham), Art paper (China), and Porcelain from Limoges (France).¹⁹

Some developing countries look to GIs as an important mechanism for defining and protecting the commercial fruits of certain forms of traditional knowledge or collective knowledge. Undeniably, there is a linkage here; GIs may be scaled to incorporate all local users of knowledge regarding the exploitation of natural resources or design traditions. Indeed, GIs are the only form of IPR that provides this kind of collective right, albeit based on production location rather than underlying knowledge. Thus, there is scope for marrying these two concepts, a marriage that bears potential for reducing poverty.²⁰ The time has come for this imbalance to cease, and for the commercial strength of GI for all products to be recognized and protected effectively. It is to remove this incoherent, discriminatory situation that for some years now a number of countries, among others Bulgaria, Cuba, the Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela, have been fighting at WTO for GI of all deserving products to have the benefit of the same level of protection.²¹

India as a leading member of the developing countries has more responsibility as the second largest common population of the world as well as the resource -poor farmers who operate about 82.7 per cent of the total holding in the country.²² At international level, India is one of the forerunners in advocating the extension of higher protection to GI for products other than wines and spirits.²³ The key worries associated with the GI are that this may increase an unjustified world where most of the countries will lose their rights to keep their traditional potentials and possibilities. There are continuous threats in South Asian and South East Asian countries where farmers' poor conditions warn us for more proactive measures, legal and economic, to tackle the

unjustified and uncertain protection of GI of developing countries in post- WTO regime.

Conclusion

The time is ripe for a fresh look at the hitherto evolved legal framework that has taken care of the GI interest of the developed countries. The present global scenario has assumed a distorted view which was supposed to throw open a level playing ground for all the stakeholders within the membership of WTO. The next round of talks should be centred on putting in place a system and mechanism to ensure an equitable, just and fair global legal and commercial order. The various ministerial meetings have failed to resolve the contentious issues relating to GI products from developing countries. Therefore, opportunities must be unfurled for exploitation of the potential of GI of the developing world so that the progress can be registered through international trade in the new trading system under the WTO regime. India as a founder of GATT as well as WTO has many times raised various issues of unequal treatment. Indian courts too are active in protecting the interest of the GI of other countries and are inclined to protect GIs further in view of the new legislation which has already come into force.

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- 5 It is a matter of serious concern that misuse continues in the garb of manipulation and phrases like 'Designed in America', 'Made in Japan', 'Styled in Germany' 'Murshidabadi Pattern', 'Assam type' and the like are being used to mislead the consumers. Sometimes the first word is stitched in folded form so that the customer will assume that it stands for the word 'made' whereas it is in fact printed as 'mode' as a clever device to mislead the public.
- 6 AIR 1977 Cal 413.
- 7 AIR 1980 Del 125.
- 8 1970 RPC 31.
- 9 4th Ed. Vol. 48 Para 144 at p. 98.
- 10 1990 1 All E R 873.
- 11 1991 RPC 351.
- 12 AIR 1992 Bom 294.
- 13 AIR 1997 Cal 413.
- 14 Trade and Merchandise Marks Act, 1958.
- 15 India has the second largest collection of varieties of rice genome in the world. Rice, the staple crop of millions of people, has strategic importance. At stake are the ability of the Indian farmer to compete in the global marketplace, the food security of the nation, and the public health of millions of people. But more important, such transactions make a mockery of the efforts of people like Dr R H Richharia, the well-known rice researcher, who spent a lifetime collecting rice germplasm to help the local farmers, *Frontline*, 20(2), 18 - 31 January 2003.
- 16 *The Hindu* and *The Indian Express*, 16 August 2005.
- 17 Querol Daniel, Genetic resources our forgotten treasure, *Third World Network*, (Malaysia), 1992, p. 189.
- 18 <http://www.southcentre.org/publications/geoindication/paper10-07.htm>.
- 19 <http://www.ris.org.in/Pbno7>.
- 20 Maskus E Keith, *U N Millenium Project Task Force on Trade: Draft*, March 2003 as cited on <http://www.ycsg.yale.edu/documents/papers/Maskus>.
- 21 Grazioli Alexandra, <http://www.iprsonline.org/ictsd/docs/GrazioliBridgesYear6N1January2002.pdf>.
- 22 Farmers with land holdings below 10 ha, Sharma Anil, in *Annual Bank Conference on Development Economics, 2003: South Asia Component*, by Sadiq Ahmed and Suman Bery (World Bank and National Council for Applied Economic Research, New Delhi), 2004, p. 85.
- 23 Ahuja V K, Protection of geographical indications: National and international perspective, *Journal of the Indian Law Institute*, 46 (2) (2004) 269-287.