

Origin of the Concept of Geographical Indication under International Legal Regime: An Overview

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Abstract: The concept of intellectual property rights has always been an issue of debate since centuries. Geographical Indications is the latest addition to Intellectual Property Rights (IPRs) and defined as Indications, which identifies a good as originating in the territory of country, or a region or locality, where given characteristics of a good are essentially attributable to its originating place. The connection between the place and goods becomes so famous that any reference to the place reminds, the goods being produced there and vice versa. For example, the reference to Banaras City, India brings to mind the "Banaras Brocades" which is being produced there. This led to the enactment of international and national laws such as Paris Convention, Madrid and Lisbon Agreements and TRIPS.

This paper discusses about the origin of the G.I. in international regime and subsequent development of conventions and laws dealing with G.I. This includes development under Paris Convention, Madrid and Lisbon Agreement, TRIPS and Doha Round of Negotiations.

Index Term: Geographical Indication, Origin, Development

1. INTRODUCTION

The term of G.I. is not new in market. It's a term which is commonly used for those products, which have some identification relating to their place of origin. The term G.I. is used not only for the agro-products but also for handicrafts, manufactured goods, industrial goods like food items etc. Geographical Indication is a kind of sign that a product possesses due to the fact of its origin. A product to function as G.I. it should be identified as a product originating from a given place.

G.I. is a kin to the trademark. G.I. is the products which are identified due to their origin from a particular place, which attribute special qualities in it which cannot get replicated elsewhere. Place of origin in G.I. is playing a very prominent role as it stops, other producers of other region to use its name or replicate it and gain profit. So, the basic difference between Geographical Indication and Trademark are as follows:

1. Geographical Indication and Trademarks are distinct signs that are used for the products and services, which distinguish them from the other products available in the markets.
2. Trademark informs consumers about the source and services of the goods i.e. from which company the goods coming from. It helps the consumers to identify the product with specific quality or reputation, based on the reputation of the company. Whereas Geographical Indication helps consumer to identify the products which having specific quality, characteristics and reputation.
3. Trademark is a sign, which is used by the owners or other person to whom it is assigned or licensed. Whereas, Geographical Indication is a sign which is given to the product which originates from a particular place. It can be used by all, who are residing in that particular area or region. It cannot be assigned or licensed to any other person because it is given to the product which originates from a particular region, locality or country.

The purpose behind protection of Geographical Indication is to grab attention of the consumers, in order to increase the market and popularity of the G.I. products. As these products are unique in their own way because of their climatic conditions, regions, usage of traditional skills etc by which it makes difficult for others to replicate it. But, with every action there is an equal and opposite reaction. If we are protecting the rights of the authentic manufacturers of G.I products, there is every possibility that there can be misuse of the geographical name of any product in order to confuse consumers and gain profits. So, in order to save consumers from deception, the need for the protection of G.I.'s arose internationally, because, protection of G.I.'s adds to the financial gains of the producers and also indirectly helps in the economic development of the country.

1.1 Protection of Geographical Indication under US and EU

The method of protecting G.I. under US and EU has always been different. In US, the protection of G.I. is coming from long tradition. But nowadays, the protection of GI is dealt under the Trademark regime and Unfair Competition Law, they doesn't deal with G.I. as an independent Intellectual Property. On the hand, EU provides protection to G.I. under sui generis legislation. In EU, public law approach is used for the protection of G.I. and private law approach is used in US for protecting G.I.

The concept of protecting G.I. initially came into existence by US law which is known as Lanham Act, 1946; it was applicable to all goods and services. Earlier, geographical indication weren't included in trademarks. But, Lanham Act introduced collective marks and certification marks which were used as the main method of protecting G.I. in US.

The term "certification mark" is defined as a mark used by a person other than its owner to certify geographic origin or certain standards met (e.g. quality or other characteristics of the good/service) or work performed by member of a union.

The holder of the certification mark does not use it (because he is not the producer of the goods) but controls usage of the mark by others, who apply it to the goods and services in order to indicate the consumers that the standards set forth by the certifier are met. This means that various producers in the particular region are allowed to use specific (geographic) certification mark. Moreover, the owner cannot deny any producer from using the mark as long as the characteristics which the mark certifies are maintained. So certification marks are not exclusive but must be available to all. In European context we can understand that to use G.I. for a product is open to all the members of its region. In short that is similar to the French "Appellation d' Origine".

Role of G.I. as discussed above, it is important to understand and analyse legal regime of G.I. at International level constitutes of multilateral agreements between nations to protect IPR and G.I. in particular. More than a century ago G.I. was a nascent concept, but, in a temporary times G.I. has grown in nature, scope and concept. The evolution of G.I. as concept of IPR can be attributed by several conventions. Some of the important conventions are as follows:

2. PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, 1883

Granting protection to the product as G.I is not new. It originates way back in fifteen century, when Roquefort identifies a characteristics blue cheese made in the Southwest region of France, near the municipality of Roquefort-Sursoulzon. In Europe, laws relating to the protection of GIs existed for hundreds of years. For instance in 1222 in Yugoslavia a charter of Steven I governed the sale of wine in the region. In the middle-ages in the south- west of France and in other French wine producing regions, the sale of wines from other regions were prohibited. Only wines produced in that region were allowed entry into its town.

One of the first G.I. system was used by France way back in 20th century known as Appellation d' Controle'e (AOC). The items which use to meet the required standards stated by the government, then they use to issue a stamp which use to act as the certification of originality for the product and even for the consumers.

There was no definition of G.I. which was universally accepted, so, because of the constant force of France and other European nations, the basic definition of G.I. was derived from the international agreements.

Paris Convention for the Protection of Industrial Property was accepted in year 1883. This was the first convention which took initiative to provide protection to the Industrial Property in the widest sense including industrial design, patents, trademarks, utility models, , trade names, service marks geographical indication (indication of source and appellation of origin) and repression of unfair competition.

During the last century, it was difficult to have protection for industrial properties in various countries of the world because, each country had its own laws, so there was a hard desire to overcome these problems. When Paris Convention came into existence it provided protection to the national of the country who is the members of the convention.

Paris Convention protected IPR by providing certain basic principles which were applicable to all its member states.

i. National Treatment-

Article 2 and 3 of Paris Convention, deals with the principle of National Treatment. This principles states that the State shall not discriminate the members of the other State, in terms of content of IPR and the fee thus charged.

ii. Right of Priority-

Article 4 of Paris Convention, deals with the Right of Priority when it comes to the Registration of Industrial property.

As per the principle, the date of Application in one member country would be deemed to be the date of Application in other member countries, if the priority is claimed within the prescribed time of the earlier Application from which the priority is claimed.

The convention lays down certain common rules for all the industrial property but especially for Geographical Indication it lays down, that the effective measures must be taken by every contracting state against direct or indirect use of a false indication of the source of goods or the identity of their producer, manufacturer or trader.

Though Articles in Paris Convention provided certain protection to the indication of source and appellation of origin but the Convention didn't specified any requirements as to the characteristics, quality or reputation of the product. Hence, it mainly focussed on the actual geographical source or origin of the product, rather than on its features.

3. MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS, 1891

It was established in 1891 under Article 19 of Paris Convention, which allows for special agreements within its member states. It was born out of dissatisfaction with the original Article 10 of Paris Convention. The French and British proposal at the Rome Conference of 1886 to extend the scope of Article 10, were consolidated into a new compromise by prohibiting all false indications of origin, provided the courts of each member could determine which expression were generic.

Madrid agreement is the multilateral agreement, which addressed the issue of deceptive Indication. Though Paris Convention came before, but it dealt only with the origin of the product. But, it is not necessarily that consumer think only about origin. Once, the other country uses the name of the Indication of Source of goods from the origin country then Madrid Agreement comes in front.

The Madrid system for the International Registration of Marks is governed by the Madrid Agreement, which got concluded in 1891, and its Protocol relating to the agreement concluded in 1989. Madrid Agreement, helped in protecting the marks by providing International Registration which is applicable to all the countries who are party to it.

Madrid Agreement 1891, made lots of improvements relating to Geographical Indication. It laid down that, G.I. can be protected in several countries, as certification marks or collective marks. It gives an opportunity to protect a mark by filing only one application. Registration under Madrid System has same effects for the Contracting Parties, as of national registration.

Indication of source of goods or products includes not only the country but also the place of origin of a product. And most importantly, Indication of Source of goods must be related to its geographical origin only and not to other kind of origin.

The Lisbon Agreement 1958 represents the high water mark in the international protection of IGOs. The agreement creates another special union, permitted under Article 19 of the Paris Convention. It came into existence to overcome the failures under the Paris Convention and Madrid Agreement.

4. LISBON AGREEMENT FOR THE PROTECTION OF APPELLATION OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

Lisbon Agreement for the protection of Appellation of origin and their International Registration 1958 is the first agreement which actually stated the definition of "Appellation of origin". Under Article 2 of the agreement states that the "Appellation of Origin", means

The geographical denomination of a country, region or locality, which serves to designate a product originating therein, the characteristics or quality of which are due exclusively or essentially to the geographical environment including natural and human factors.

The words of Article 2 of Lisbon Agreement only suggest "Geographical Denominations". So, there has been a debate over this, some say it is limited to the place names per se and some includes designations which can directly or indirectly indicate geographical origin. The problem basically have arose from the WIPO's text, which translated the term 'denominations' as the French text as 'name'.

One of the surveys of Lisbon Agreement, included a proposal that geographical name, might be replaced by the geographical indication, which can identify the product originating in order to encompass also traditional denominations with a geographical connotation.

When Lisbon agreement is compared to TRIPS, its Article 2 does not include Appellation of origin, which is constituted by sign, or other than geographical name. TRIPS can be considered broader when it envisages 'indications' which includes not only words, but also images, symbols and even shapes. The Lisbon agreement clearly states the usage of both direct and indirect, geographical denominations.

Geographical Indications or an even designation of origin doesn't always come from the same place which consists of geographical names. They can be direct if they do and they can be indirect if they don't provided the name of the indication or designation, which at least inform the consumers about the product i.e. from which place its coming, its origin, its region or its country. For example: the words 'Cava' or 'Grappa' recalls of the Spanish and Italian birthplaces of a sparkling wine and of a liqueur respectively, 'Feta' recalls of Greek cheese.

G.I. protection is helpful in protecting the rights of the producer, because when the product is labelled it acquires certain amount of commercial value which can be easily misused by others, leading to financial loss to the producers. The concept of G.I. not only protects the goods but also makes goods different from the league.

In other words we say that, it is always necessary to inform the consumers about the product i.e. from where it is coming, its origin, its region, locality and country. Its main motive is to raise the demand of those products in the market which possess certain qualities which are attributable by its locality, region or country. If the product gains the reputation in the market it automatically affects the export of the country and it attracts lots of consumers who are fond of the authentic products and it can also be directly helpful in upgrading the status of the producers and manufactures. As per Article 2(2), in order to identify the country of origin we have to look into the place which has given it a reputation. Article 1(2) of Lisbon Agreement shows that it is the members who are under the obligation to protect the appellation of origin.

In fact, the basic feature of Lisbon Agreement is to provide protection to the appellation of origin in their home country. If the appellation of origin is protected in their home country, then other Lisbon countries are obliged to protect it.

The key features of the Lisbon Agreement are as follows:

1. Recognition of the AO as distinct subject matter,
2. International registration based on prior recognition at the national level,
3. Desirable consequences flowing from this registration, including the prohibition of a range of uses beyond misleading ones and the prevention of subsequent generic use after registration.

Definition of Geographical Indication

TRIPS Agreement has defined the term Geographical Indication under Part 3, Section 3, of Article 22.1, as follows:

“Geographical Indications are for the purposes of this agreement, indication which identify a good as originating in a territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin”

According to WIPO, Geographical Indication is defined as following:

“A used on goods that have specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.”

5. GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

During World War II, the situation became very haphazard when it came to trade, so after World War II, some nations got together and signed the agreement of their choice in which all the member states gave consensus accordingly, for their own benefit without thinking the pros and cons of the agreement. But still the trade related issues didn't get solved as GATT agreement was only provisional agreement as Section 2 Part II of GATT Agreement itself says that it shall be suspended on the day as soon as the Havana Charter comes into force. But Havana Charter never came into force and GATT agreement remained in force only on provisional basis. GATT was lacking not only in this area but also in the field of dispute settlement mechanism, it was merely compensatory in nature. So, again some nations came together in the last negotiation which is popularly known as Uruguay Round and formed WTO which superseded GATT provisions and amended the previous GATT agreement and formed the new GATT agreement 1994.

5.1 Origin of GATT

Initially ITO (International Trade Organisation) was the organisation to deal with the matters relating to the legal documents, which were mentioned in the Havana Charter. GATT (General Agreement on Tariff and trade) was ITO's extensive projects.

ITO was negotiated only for Breton Woods, World Bank and IMF (International Monetary Fund). There were basically two reason behind having all these negotiations which took place between 1946 to 1948 in London, New York, Geneva and finally in Havana, Cuba, was firstly to promote International cooperation amongst each other, after the disaster of world war II, and secondly, to distinguish from the United Nations (UN) which was working towards avoidance of another world war. However, ITO then took many important steps to promote International trade among nations, by providing them technical assistance, in order to address, trade related issues. At that time many financial policies were made to deal with the problems of International communities, just to overcome the causes of their conflicts. It was basically an ambitious project which couldn't fulfil the expectations of the International community.

But, on the other hand, some nations wanted a less ambitious project, so in order to begin with their discussion, nations came together for negotiation in Lake success, New York, between January and February 1947 and the GATT was concluded. The main purpose of GATT was to reduce and bind the custom tariffs. Again the members of the Preparatory Committee conducted a round table negotiation between April and October 1947 at the European office of UN. This was the first multilateral negotiation.

So, the conclusion of both the negotiation constituted the Geneva Final Act, which also included PPA (Protocol of Provisional Application). The involvement of PPA and other nations governments took the initiative to apply the provisions of GATT especially Part I of GATT, which deal with the Most Favoured Nation clause, and Part III of GATT, which deal with articles dealing with administrative issues. After the application of above mentioned parts of GATT, the members took the responsibility to apply Part II of GATT, which deal with the most important issues including national treatment, anti- dumping , subsidies, safeguards, balance of payments, prohibition of quantitative restrictions, exception to the obligations etc.

GATT came into force on 1st January 1948, but it was provisional because as per Section 2 of Part II of GATT Agreement, GATT shall be suspended on the day when the Havana Charter comes into force. But, unfortunately Havana Charter never came into force, so, GATT in its entire 47 yrs was applied on the provisional basis.

5.2 GATT: An Agreement and Institution

GATT agreement over the time became an institution itself and its Articles became an umbrella in order to protect the nations, inspite of ITO existence. The fact that GATT agreement didn't failed was that, its member nations use to take decisions with consensus and its Articles were according to the needs of its members, unless it is opposed by its contracting parties.

5.3 GATT and US

Under US law it was classified as a congressional executive agreement. GATT agreement is basically laid on the foundation of the “most favoured nation treatment”. GATT totally held eight rounds.

5.4 Geneva Round

The first Round got conducted in Geneva in 1947, 23 countries participated and it continued for the duration of 7 months. Signing of GATT agreement took place and, 45,000 tariff concessions affecting \$10 billion of trade was negotiated.

5.5 Annecy Round 1949

The second Round, of negotiations of GATT took place in Annecy, France. In this Round, around 26 countries participated. The focus of the talk was the reduction of tariff.

5.6 Torquay Round 1951

The third Round took place in Torquay, England in 1950 and 38 countries participated. In this 8, 700 tariff concessions were made totalling the remaining amount of tariffs to three fourths of the tariffs which were in effect in 1948.

5.7 Geneva Round

The fourth Round took place in Geneva in 1955 and 26 countries took part in it. \$2.5 billion in tariffs were reduced.

5.8 Dillion Round

Fifth Round once again got conducted in Geneva, and this round was named after the former US Treasury Secretary and former under Secretary of State Douglas Dillion. In this round they spoke about creating the EEC (European Economic Community).

5.9 Kennedy Round

It took place in between 1964 to 1967.

5.10 Tokyo Round

Tokyo Round of GATT agreement took place since 1973, in which 97 countries agreed to participate. The reason why Tokyo Round was called upon was that, the GATT dispute settlement mechanism was not satisfactory. And hence, members wanted more effective dispute settlement mechanism. The purpose behind establishing any International structure is that, its members abide by its rules and procedures and its non compliance make them face strict actions but GATT chose not to be coercive, rather, it was only compensatory. As per GATT Article XXIII (2), permits the contracting parties to authorise governments to suspend obligations (i.e. impose prohibited trade restrictions) against the government that violate the General Agreement.

In Tokyo Round, the main concern was the dispute settlement, but the government nations chose not to have coercive mechanism. In spite of this entire lacuna's GATT dispute settlement mechanism didn't change, and by continuance of these procedures GATT risked its prestige also in wrong cases.

After Tokyo Round also, there was hardly any improvement in the protection of intellectual property rights. GATT though it deals with the trade and tariff between countries but the other vital issues is also involved when it comes to IPR. So the Uruguay Round of Negotiations took place in order to overcome the drawbacks relating to the Intellectual property protection.

6. URUGUAY ROUND

Uruguay Round was the multilateral trade negotiation, which took place within the framework of GATT between 1986 to 1994. In this Round 123 contracting states participated. This negotiation took place in order to extend the GATT and include all those issues which previously haven't got discussed in GATT e.g.: Agriculture, textile, intellectual property rights, investment etc. But we will be dealing only intellectual property issues. After Uruguay Round TRIPS came into existence by WTO in order to regulate intellectual property by laying down the minimum standards for the protection of intellectual properties

7. THE AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

In 1994, for the first time International agreement came into existence in order to govern or to regulate the international monetary policy, and it was Bretton Woods, which created two institutions to govern international monetary policy, they were IBRD (International Bank for Reconstruction and Development) 1945 and IMF (International Monetary Fund) 1946. And later on in 1947 GATT was also got established, to regulate trade between countries. GATT underwent eight negotiations in order to extend its scope and to form stringent rules and procedures, which can be helpful to regulate trade and tariff.

The first Five Rounds mainly dealt only on tariffs. Sixth Round then focussed on the Anti-Dumping Rules and Provisions in order to help the member states to control the dumping of goods into their territory by other nations which can affect the member nation's economy. Seventh Round discussed tariff and non tariff measures. And its last round was Eight Round which was Uruguay Round which was meant to extend the provisions of GATT, to agriculture, intellectual property rights, investment, textile etc.

After all these discussions and negotiations WTO came into existence in 1994 and it became effective on 1st January 1995. All these treaties basic principles were:

7.1 Most Favoured Nation Treatment (MFN)

It is a clause which gives a level of status to a particular country which is enforced by WTO. It is granted in order to increase the trade with that country. It is helpful in reducing tariffs on imported goods etc.

7.2 National treatment

It prohibits discrimination between imported and domestically produced goods with respect to internal taxation or other government regulation.

The agreement is the first agreement under which its members are required establishing legal norms in their domestic system, along with the enforcement measure and procedures. There are three important features of the agreement which are as follows:-

- a. Standards
- b. Enforcement
- c. Dispute Settlement

7.3 TRIPS provisions relating to Geographical Indication

As per Article 22.1 of the TRIPS Agreement, member states are required to provide protection for Geographical Indications. The term 'Indications' is used to identify goods as originating in the territory of a member nation, region or locality where a product attains its distinct characteristics and reputation because of its geographical origin.

The TRIPS Agreement does not specify any legal form in order to protect geographical indications. In fact it has left this to the member nations. In practice, various means are used in order to protect geographical indications, which include laws on business practices, Sui generis (i.e. a system created especially for this purpose), trademark law and GI laws.

TRIPS Agreement Article 22.2 requires two basic forms of protection in respect of all GIs, against use in a manner which would mislead the public as to the true origin of the goods and against the use which would constitute an unfair means of competition, within the meaning of Article 10bis of the Paris Convention.

Article 23 of the agreement, provides the higher level of protection for the geographical indications for wines and spirits. And it plainly prohibits the use of wines and spirits which do not originate in the specific geographical origin, whether the true origin has been identified or not. In fact, under Article 23, the legitimate holders have to prove that the following product on which the GI has been used, does not originate in the geographic area, identified by its indication. Thus, under Article 23, the competitors of geographical indications of wine and spirits, which are not producing the product within the geographical area, are simply prohibited from using corresponding denominations such as 'kind', 'type', 'style', 'imitation' or 'the like'.

Article 22 and 23 deals with certain restrictions, which are subject to certain restrictions, which have been dealt in Article 24. The exceptions are following:

- i. WTO members have a right to use the similar GI of another member, for identifying its wines and spirits, and it is only permitted when GI have been used in a continuous manner, in the territory of that member for at least ten years.
- ii. It relates to those GIs which have a generic, in a particular country and yet not protected. So, a member can expect protection of GI by other members if it protects its own GIs through its national measures.

7.4 Analysis of Section 3 of TRIPS Agreement

Part II of the TRIPS agreement has defined the term Geographical Indication. The definition can be divided into three main parts:

- i. Definition and scope of GI and protection and minimum standards, provided for GI, is being provided to all kinds of products.
- ii. Higher level of protection for wines and spirits.
- iii. With certain exceptions to the protection of GIs.

Article 22(1) of the TRIPS Agreement, defines the term GI as follows:

"Indication which identify goods as originating from a particular origin, locality or territory of a member, where a given quality, reputation or characteristics of the goods is essentially attributable to its geographical origin."

The above definition is based on Article 2 of the Lisbon Agreement but the definition of TRIPS Agreement is much broader than Lisbon Agreement.

7.5 Additional Protection of GIs for wines and spirits in Article 23 of TRIPS

Article 23 of TRIPS Agreement deals exclusively with wines and spirits. According to Article 23(1) "Every member nation shall provide a legal measure to the legitimate holders, in order to prevent the use of geographical indication identifying wines and spirits, not originating from the place, which is indicated by the geographical indication in question or identifying the spirits not originating from the place, which is indicated in question, even where the true origin of the goods is indicated by the expression such as "type", "like", "style", "imitation" etc. This is also been dealt under Section 22(2) and 22(3) of the GI Act.

Article 23(2) of TRIPS Agreement is the complete opposite of Article 22(3). As Article 22(3) allows the, refusal or invalidation of trademarks containing an illegal GI, irrespective of whether it mislead the public.

According to Section 25(b) of GI Act deals with similar provisions but for all products which central government may notify.

Article 23(3) of the TRIPS Agreement, deals with the 'homonymous' GIs for wines and not for spirits, whose use is not deceptive or misleading under Article 22(4) of the TRIPS Agreement.

Article 23(4) of TRIPS, provides for negotiations for the establishment of a multilateral system of notification and registration of such GIs.

Article 24 of TRIPS deals with international negotiations and exceptions

8. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

The agreement aim was not only to provide minimum standards for protecting IPR, but also to provide enforcement for the same. The agreement provided minimum standards for the protection of IPR, which allowed the legitimate holders to protect their interests through civil or administrative proceedings. It is not required for the WTO members to establish a separate courts or special courts for IPR. Part III of the agreement, lays down that for the enforcement of IPR, the member nations are under obligation to establish domestic judicial and administrative mechanism, through which legitimate IPR holders can seek effective protection of their interests and it is the obligation of the member nation to provide “fair and equitable” enforcement procedures and not unnecessarily complicated or costly. The agreement also provides that both the parties should have a equal rights of presentation and contest evidence, and the adequate remedial measures should be available.

The agreement allows the member nations to exclude the grant of injunctions in the circumstances like compulsory licenses and other uses are involved.

The agreement obligates the member nations to make provisions in order to prevent the entry of infringing goods into the channel of trade and commerce. This means that the IPR holders are entitled to seek a prompt action against the infringement.

9. THE DOHA DEVELOPMENT ROUND

Doha Development Agenda, often referred as Doha Round, was negotiated under the umbrella of WTO (World Trade Organisation). Nine negotiations came into existence, but it was Doha Round, to be first which focussed to help developing countries to join Global Market, and to boost their economies as well. The Round was officially launched at WTO Fourth Ministerial Conference in Doha, Qatar, in November 2001. The purpose behind all these talks was to regulate the tariffs on things which include wheat to cars, banking to consulting, negotiating new Intellectual Property rules on things such as drugs and copyrighted work. Basically it had three main objects; **Firstly**, to strengthen the global multilateral trading system, **Secondly**, to establish conditions in order to increase global welfare with a special focus on the needs of a developing countries and **thirdly**, to reform agricultural subsidies.

Doha Round main aim was to cover trade facilitation and not the broad liberalisation. It included some interesting clauses such as cutting customs red tape could raise annual global output by \$400 billion, which much of a gain flowing to developing economies. In fact, it took years effort to gain this success. The problem of WTO was it's of all or nothing approaches of seeking a jumbo accord which has to be approved by all its 159 members. This is the way to ensure trade liberalisation globally. In practice it allowed all its members to have a veto power which is actually a recipe for deadlock and handing power to obstructionists.

In all the negotiations Doha Round has its own importance because it was the first negotiations which dealt with the issue of the economic development of the developing countries. So, that they can grow economically and should also be treated equally amongst all the nations and be able to compete with the developed countries, when it comes to the protection of their rights in the entire field possible.

The following objects of the DDA had its importance because, it intends to support the developing countries to reach the standards which they are aiming for and integrate them further, for a global market. Though the initial negotiations failed all of the unsettled items from the DDA, it still remained at the centre of all follow up ministerial Rounds, which failed all together.

The fifth WTO Ministerial Conference took place in Cancun, Mexico was held in Mid September 2003. The issues raised in this conference were as same as raised in Doha Round. The talks in this conference failed because all the developed countries wanted to talk about new issues but the developing countries wanted to discuss the previous issues which mattered them the most. This was the first time when all the developing countries took stand as united against the developed countries.

This conference basically dealt with whether all members together agree on completing remaining negotiations. But the meeting ended on soured discord when it came to the issue of agriculture including cotton and ended in deadlock on the “Singapore Issues”. And the real progress on the Singapore Issues and agriculture were not available until early hours of August 1, 2004, with a set of decisions in the General Council.

In 2003, the Doha Development Agenda, suffered severely, when the Ministerial Conference in Cancun, Mexico, failed terribly, when all its members didn't agreed upon how to proceed with the remaining negotiations. In this conference, basically, the developed countries didn't agree to commit to decreased agricultural protection and subsidies and on the other hand developing countries couldn't engage themselves in a Singapore Issues which included investment, competition policy, government procurement and trade facilitation. The meeting hence failed to deliver any consensus.

Because of all the ruckus which got created in the fourth ministerial Conference, a deadlock came between them, while all these things were undergoing, EU and US, tried their level best to break the unity of the developing countries and force their own interest at the expense of poor countries using intimidation at the WTO but they failed miserably.

After the deadlock, the WTO members again met and started talking. The agreement reached the level of package of framework agreement by the end of July 2004. Its first draft was known as “July package” which got circulated on 16th July and its negotiation started on 19th July. The meeting achievements included a manual which indicated the future elimination of agriculture export subsidies, new commitments to discipline trade distorting farm subsidies and most important commitment to reduce agriculture tariffs in order to achieve substantial improvement in the market access while allowing them more flexibility in the treatment of sensitive products.

There were also other negotiations which intended to initiate negotiations on trade facilitation, with the object to expedite the movement, release and clearance of goods and improved custom procedures all around the world. But other Singapore Issues were dropped. Here, the delay in reaching the agreement means that the original January 1st 2005, deadline for finishing the talks could not be met. So, the members planned to meet unofficially in order to complete the next phase of the negotiations, which was at Hong Kong Ministerial Conference in December 2005, which included full modalities in agriculture and market access for non agriculture products and to finish the talk by the end of the following year.

Since, the launch of the Doha Round of Multilateral Trade Negotiations, the WTO members, among other subjects, has also negotiated for the possible rules for enhancing the protection of GIs.

There were mainly two issues got discussed in the negotiation, the first issue was, the establishment of a multilateral register for wines should be made compulsory under Article 23 of the TRIPS Agreement, and the second issue was, related to whether the level of protection provided for wines under Article 23 of TRIPS, should be extended to cover all products.

In these issues WTO members remained sharply divided on a range of procedural and technical points. The difference between the members actually arose on political issues, such as, to mandate through to substantive questions regarding the costs and benefits of the various proposed solutions.

But the opposing countries argued that the existing Article 22, level of protection is adequate because, they feared that the enhanced protection would be a burden and will disrupt the existing marketing practices. But India, along with other countries stressed upon the enhancement of Article 23, in order to cover all categories of goods.

However, the countries like U.S.A, Chile, Argentina, Canada, Australia, New Zealand, Uruguay and Guatemala, were the countries which opposed to any kind of “enhancement”. But, the “enhancement” issue became the integral part of the Doha Work Programme 2001. However, there was the vast difference of opinion among the WTO members, so, not much progress could be achieved in the negotiations and the same remains as an “outstanding implementation issue”.

The topic of GI is rather vexed; involving significant differences of opinions in WTO/TRIPS agreements regarding protection of GI, protection is currently limited to GIs for wines and spirits. Along with India, there are other countries like European Union, Thailand, Kenya, Switzerland, Turkey, Poland and Hungary, wish to extend Article 23 of TRIPS Agreement, in order to protect all GI products, along with the establishment of a legally binding multilateral register for GI products.

However, a very important issue came into light in the Doha Development Agenda about food GIs policy regarding GIs and rural development, private (personal) versus communal rights, traditional versus creation, the expansion of the protection offered for foods other than wines and spirits and its trade effects.

India, along with other countries appealed for the extended protection of GIs especially under Article 23 of TRIPS Agreement. The additional protection has also been appealed for products other than wines and spirits.

REFERENCES

- [1] Myneni S. R, Law of Intellectual property, 6th Edition, Asia Law House, Hyderabad
- [2] Connor O’ Bernard. 2004 The Law of Geographical Indications, Cameron May, London, ,p501
- [3] Gangjee Dev. 2012, Relocating the Law of Geographical Indications, Cambridge University Press
- [4] Mavroidis C. Petros. 2005, The General Agreement on Tariff and Trade, A Commentary, Oxford University Press,
- [5] Raustiala Kal and Munzer R Stephen. 2007 “The Global Struggle over Geographical Indications”, Volume 18, EJIL 3