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GI & WTO- Expanding Protection For Non-Agriculture Products.

Author-Rohit Luthra
New Delhi, India

Abstract Geographical Indications (GIs) serve as pivotal tool in identifying goods originating from specific regions, reflecting the unique qualities, reputation, or characteristics attributable to that origin. While the World Trade Organisation's (WTO) agreement on Trade-Related Aspect of Intellectual Property Right (TRIPS) provides a foundational framework for GI protection, its application predominantly favor's agricultural products. Historically, GI protection has focused agriculture products and foodstuffs (wine, cheese, tea, rice) but many non-agricultural goods (handicrafts, textiles, ceramics, metalware, industrial design-linked products) also posses qualities intimately tied to place of origin and local known knowledge. This paper tries to examines the doctrinal footing of GI protection under TRIPS, analyses key disputes and national practices (with emphasis on WTO disputes and notable national/regional developments), evaluates doctrinal and practical obstacles to expanding heightened protection to non-agriculture products, and proposes legal and policy pathways for expanding protection while balancing trademark and trade interests.

Literature Review

1) Relocating the law of Geographical Indications (Cambridge University Press 2015)¹

This book is a deep doctrinal and historical treatment of GIs it traces the conceptual evolution from source indications and appellations of origin to modern TRIPS era GIs, and critically examines the tension between trademarks and GIs precisely the doctrinal foundation.

2) Geographical Indications: What do they specify?²

WIPOs provides authoritative, practice-oriented definitions, questions, and resources. This is a concise, authoritative source for definitions, policy rational, and practical protection routes.

3) European Parliament, Geographical indicators for non-agricultural products.³

¹ <https://www.cambridge.org/core/books/relocating-the-law-of-geographical-indications/F653226727F23E2627D8EDDFAB72402C>

² <https://www.wipo.int/en/web/geographical-indications>

³ https://www.europarl.europa.eu/RegData/etudes/STUD/2019/631764/EPRS_STU%282019%29631764_EN.pdf

This targeted policy study analyses the EU policy case for extending GI protection to non-agricultural products like Handicrafts, Textiles, Industrial products). It includes economic estimate, implementation consideration, and positive and negative directly relevant to the “how

and why” of extending protection.

Introduction

GIs operate at the intersection property, trade regulation, cultural heritage protection and rural development policy. GIs indications stand at a crossroads between the intellectual property law, trade regulation, cultural heritage protection, and policy aimed at rural development. In 1994, the TRIPS agreement formally recognised GIs as deserving some minimum degree of international protection, enshrining the key definitions and commitments in Article 22-24 and providing greater protection to wines and spirits in Article 23. With the introduction of TRIPS, the question moved beyond from scope to whether the sui generis rules should be biased towards the interest of producers and local populations. One of the key concerns discussed in this paper is that the increased protection of wines and spirits provided in the Article 23 should be extended to non-agricultural products. The extension of GI protection to non-farm products provokes complex doctrinal issues such as the exact definition of quality, reputation or other characteristic that is merely attributable to geographical provenance, incompatibility with current trademark system, trade policy dissonances around national treatment and market access, and the realities of enforcement. This paper is rooted in legal doctrines, it will start with thorough analysis of TRIPS documents and jurisprudence, discuss the result of WTO disputes-settlement and domestic case laws, and identify a set of reform strategies that will help to align incompatible policy goals without damaging the multiple-layered advantages of GIs.

TRIPS FRAMEWORK

TRIPS Framework: Definitions, Tiers of Protection, and Legal Tensions

Article 22: Baseline Protection⁴

Article 22 of TRIPS supplies the working definition of a GIs and mandates a baseline protection; members must afford legal means to prevent use of a GI that misleads the public about origin or constitutes unfair competition. The language intentionally uses broad phrasing “any given good” which means that prima facie GI protection under article 22 is not limited by product type. The functional tests are reputation/quality/characteristic tied to place and the likelihood of consumer confusion or unfair competition.

Article 23: Higher Protection for Wines & Spirits⁵

Article 23 establishes a higher protection standard for wines and spirits by prohibiting the use of GIs for these products even where there is no likelihood of confusion or misleading of consumers. The drafting gave wines/spirits this special protection because of political/economic significance and the long precedent of appellations such as champagne, cognac, etc. This two-tier structure created an asymmetry that many countries with strong non-agricultural GI traditions now view as arbitrary.

Tension with Trademark Law

TRIPS Article 16.1 codifies the basic rights of trademark owners, including prevention of later confusing marks. This can conflict with GI systems when a later registered GI displaces an earlier trademark, or vice versa. The panels and commentators have highlighted tension between trademark priorities and GI system that arguably should protect place names from dilution/appropriation. The WTO disputes over the EU’s regulation on PDO/PGI registration brought these tensions to the force.⁶

Why Expanding GI Protection to Non-Agricultural Goods?

Economic Development and Value Capture

⁴ https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

⁵ https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

⁶ https://www.wto.org/english/tratop_e/dispu_e/174r_e.pdf

Non-agricultural goods like artisanal textiles, ceramics, metalwork, jewellery, handloom textiles, carpets, and certain manufactured goods can acquire premiums and reputational value from origin. GI protection can help communities secure market differentiators, prevent misappropriation, and secure price premiums. Empirical literature suggests GIs increase trade and value added where they are effectively enforced.⁷

Cultural Heritage and Traditional Knowledge Protection

Non-agricultural goods often incorporate embodied traditional knowledge and craft methods that are cultural significant. A GI protects not only a name but the cultural economic base that sustains a community. For many developing countries, protecting handicrafts and artisanal manufacture under a GI regime is a route to safeguarding heritage while providing income-generation pathways.

Legal Coherence and Avoiding Arbitrary Distinctions

The TRIPS division between article 22 that is all goods and article 23 which are wines/spirits has been criticized as an arbitrary distinction. If the policy rationale for enhanced protection is to prevent consumer deception and preserve procedures reputational investments, logically the same rationale can apply to non-agricultural GIs. Scholars and policy advocates have urged revisiting the Article 23 carve out to include other goods where similar reputational harms occur.



⁷ <https://www.sciencedirect.com/science/article/pii/S0306919222001403>

CHAPTER 3

KEY DISPUTES AND CASE LAW

WTO Disputes: European Communities

One of the most consequential WTO disputes touching GI policy was the multi-party challenge to the EU's GI regulatory framework. Which set up EU level PDO/PGI protection. Several WTO members argued that the EC regulation infringed national treatment and others TRIPS obligations, and also interfered with prior trademarks. The WTO Panel's reports contained detailed findings on how an internal GI registration regime interacts with TRIPS obligations and trademark rights, including the need to respect TRIPS article 16.1 right prior trademarks holders. The case underscored three lessons-

- 1) Regional GI system must align with TRIPS obligations.
- 2) Registration processes lacking safeguards for prior trademark holders may breach TRIPS.
- 3) GI policy remains politically contentious in multilateral forums.

The Basmati- IP, Patent, and GI Concerns

The Rice Basmati controversies in the 1990s to 2000s offer an instructive example of how patents and other IP modalities can conflict with GI interests. A

U.S. company obtained patent claims on term "basmati" and on marketing designations in U.S. Patent and Trademark Office. India viewed such patents as an appropriation of traditional regional product name and, more broadly, an instance of biopiracy. While most legal actions occurred in national jurisdiction, the dispute spurred India and others to pursue GI registration and stronger domestic frameworks to prevent misappropriation. The outcome demonstrates that GI protection may not be secured automatically by patent law, and that lack of comprehensive GI recognition can expose traditional names to unwanted IP claims. This case leads initiation of domestic GI statutes such as India's GI Act of 1999.

Darjeeling Tea- Enforcement, Overseas Use and Reputation

Darjeeling tea is a widely cited example of GI enforcement challenges and strategies. India registered Darjeeling as a GI domestically, but global enforcement required sustained opposition to improper uses in export markets, and coordination with trademark registry system abroad. Like Basmati Darjeeling has driven political will to strengthen GI recognition and cross border cooperative enforcement.

Doctrinal Hurdles to Extending Article 23, Protection to Non-Agricultural Products

Textual Limits and Treaty Politics

TRIPS explicitly grants the higher Article 23 protection only to wines and spirits. Modifying this would require either an interpretative evolution, an agreement among members to revise TRIPS, or an ancillary agreement elaborating on GI scope. WTO negotiation history demonstrates that member states have sharply divergent interest on GI's, exporters of wine/spirits sought protection historically, while many agricultural exporters have resisted broadening scope without safeguards. The politics of treaty amendment are therefore an immediate barrier.

Trademark Conflicts- Prior Rights vs Later GI's

A central legal problem is protecting pre-existing trademark owners from being unfairly displaced by later GI registrations. TRIPS tries to balance these rights by requiring members to provide means to prevent misuse and by promoting prior trademarks. The EC WTO dispute

illustrated that vigorous GI systems must include robust procedural safeguards to respect trademark owner's rights. Any expansion of Article 23 style protection to non-agriculture goods must propose mechanism for reconciling such conflicts.

Proof of Linkage Between Product Attribute and Geography

The key of GI protection is the casual or essential link between product attribute and geographic area. For many non-agriculture goods, the connection is culture/technical like weaving technique, firing clay with a particular mineral content, or a metalworking tradition rather than environmental. Demonstrating the essentiality of origin can be more complex in the non-agricultural context, though not impossible. Standardizing evidentiary norms across jurisdictions for such proof is a technical legal task with significant variance among administration bodies and courts.

Enforcement Practicalities and Resource Constraints

Once registered, GIs require monitoring, policing and enforcement. For artisanal and dispersed production system, ensuring traceability can be difficult. Governments and producer groups may lack the administrative capacity to monitor the global marketplace for misuse. This is a practical barrier for many developing countries with significant non-agriculture GI candidates.

CHAPTER 4 COMPARATIVE ANALYSIS

The EU's protected designation of Origin and Protected Geographic Indicator system represents one of the most mature and sophisticated models for geographical indication, registration, specification, certification, and enforcement. It highlights both the benefits such as enhanced market premiums, procedure organization, and strong consumer recognition and the inherent challenges, including conflicts with prior trademarks, complex registration procedures, and political resistance from non-EU produces. The WTO disputes concerning the European Communities GI regulation underscored that even well-developed internal system must comply with TRIPS obligations, particularly regarding the rights of prior trademark holders, and that regional registries must incorporate mechanism to reconcile conflicts. The EU's practice of embedding extensive GI lists within its external trade agreements further illustrate the effectiveness of regional approaches in facilitating mutual recognition and promoting high protecting standards.

In contrast, India's Geographical Indications of Goods Act, 1999, provides a sui genesis legal framework for the registration and protection of GIs across a wide range of goods, including handicrafts like Kanchipuram sarees, agricultural products such as Darjeeling tea, and manufactured goods. India's proactive stance, as seen in the Basmati and Darjeeling disputes, reflects how national legislation can effectively operationalize GI protection for both agricultural and non-agricultural products while safeguarding domestic producers from external misappropriation. Nevertheless, India's experience also reveals administrative hurdles in proving origin, preventing misuse, and organizing procedure associations.

Meanwhile, several African nations, often with support from WIPO and international donors, are in the process of developing or strengthening their GI regimes to protect indigenous crafts, traditional textiles, and other unique products. These emerging frameworks frequently emphasize value chain development and rural empowerment, though they face challenges relating to limited institutional capacity, lack of awareness, and difficulties in international enforcement. Pilot initiatives across the continent demonstrate considerable local enthusiasm for GIs but underscore the necessity of enhanced technical expertise in traceability, certification, and branding to ensure that such protections translate into tangible economic and social benefits.

CHAPTER 5

POLICY PATHWAYS, RECOMMENDATIONS AND CONCLUSION

Legal Pathways to Expand Protection

Amendment or Protocol to TRIPS

Formally amending TRIPS to expand Article 23 protection would achieve the clearest legal result, but would require broad political consensus. A narrower alternative is a multilateral protocol or interpretive declaration that extends higher protection to specific categories of non-agriculture goods like handicrafts and artisanal manufactured goods, negotiated as a plurilateral or consensus instrument. Any such instrument should include carefully crafted transitional rule for pre-existing trademarks and fair coexistence mechanisms. Scholarly proposals have discussed targeted expansion of Article 23, or an Annex to TRIPS listing additional categories warranting higher protection.

Regional and Bilateral Agreements

Regional trading blocs and bilateral FTAs have been effective venues for enhanced GI protection. The EU routinely negotiates GI lists into FTAs that include non-EU GIs and sometimes expanded coverage. Countries seeking to protect non-agriculture GIs could prioritize inclusion in trade agreements as a politically easier first step. Bilateral recognition and market access regime can create de-facto expansion without immediate multilateral consensus.

Domestic Law & Administrative Reform

Domestic GI legislation can be reformed to better incorporate non-agricultural products. Strengthening objection/opposition procedures and offering sui generis alternative to balance prior trademarks can be include. India's GI Act the EU's PDO/PGI system show that robust administrative frameworks can be established domestic reforms can be harmonized with international negotiating goals.

Use of WIPO Instrument and cooperative Registries

WIPO's Lisbon Agreement historically covered appellations of origin and provides a model for multilateral registration, but Lisbon's membership is limited and oriented toward certain WTO members. Enhanced WIPO administered registries and cooperation could help bridge enforcement gaps and support developing countries. A modernization WIPO instrument tailored for non-agricultural GIs could be an attractive multistakeholder alternative to a TRIPS amendment.

Designing an Expansion with Policy Recommendations

1) Pursue a phased multilateral approach by securing a TRIPS Protocol or interpretative instrument that recognizes a narrowly defined set of non- agricultural categories for potential Article 23 protection like handicrafts and traditional manufacturing products, with clear evidentiary criteria and transitional safeguards for existing trademarks.

2) Any expansion must include robust procedural safeguards. Mandatory opposition/objection windows, requirements to consider prior trademarks, and tailored coexistence/co-use regimes where appropriate. WTO jurisprudence shows that failure to accommodate prior rights creates legal vulnerability.

3) Develop model specification templates and evidentiary guidance for non- agricultural goods. WIPO and WTO technical assistance can produce these templates, increase uniformity and reduce disputes about the “essential link” requirement.

4) Donors, WIPO and WTO should fund capacity building, administrative training, labelling system, supply chain traceability tools, and producer association support. Many developing nations lack the resources for policing and enforcement building this capacity is essential for meaning protection.

5) Countries should negotiate GI protections for non-agriculture goods in FTAs and bilateral agreements to create pockets of stronger protection while the multilateral process proceeds. The EU’s FTA practice provides a model for negotiating GI list

Counterarguments

Risk of Protection as Trade Barriers

Critics argue that expanding GIs will create protectionist non-tariff barriers and hinder competition. The counter is that well designed GI system with transparency, objective criteria, and procedural safeguards can avoid arbitrary exclusion while protecting legitimate reputation investment. Moreover, traceability and specification rules enhance consumer information rather than restrict trade when implemented with non-discriminatory principles.

Trademark Owner’s Concerns

Trademark owners fear displacement by GIs mandatory opposition processes, grandfathering of pre-existing rights, and negotiated coexistence can mitigate these concerns. International experience suggest legal mechanisms can fairly balance both sets of rights if they are clearly articulated.

Administrative Burden and Enforcement Costs

While administrative cost exists, the socioeconomic benefits and private incentives can offset public cost. International technical assistance can also lower the barrier.

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