



अतुल्य भारत की अमूल्य निधि
INVALUABLE TREASURES OF INCREDIBLE INDIA

Note on Definition of Geographical Indications (GI) Products & Seeking Market Access

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Table of Contents

A. Introduction.....	1
B. Definition.....	1
C. GI Products in India.....	2
D. Market Access for Indian GI Tagged Products	3
E. GIs Under India’s FTA.....	3
F. Suggested Approach.....	4
1. Provision of Reciprocity.....	4
2. Exclusion of GI Tagged Products from Domestic Procurement Schemes	5

A. Introduction

1. Geographical Indications of Goods, are defined as that aspect of industrial property which refer to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country.

2. In a bid to promote exports of Geographical Indications (GIs) tagged products from the country, Government of India has been striving to identify new products and new export destinations and several proactive steps to promote India's GI tagged products in the global market.

3. This note covers the definition of GI tagged products and how India may seek market access under the existing and future trade agreements.

B. Definition

1. WTO: According to World Trade Organisation (WTO), a product's quality, reputation or other characteristics can be determined by where it comes from. GIs are place names (in some countries, also words associated with a place) used to identify products that come from these places and have these characteristics.

2. Paris Convention: Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of Intellectual Property Rights (IPRs). They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations.

All products are covered by Article 22, which defines a standard level of protection. This says GIs must be protected to avoid misleading the public and prevent unfair competition. There are four main ways to protect a GI:

- a) Sui generis systems (i.e. special regimes of protection);
- b) Using collective or certification marks;
- c) Methods focusing on business practices, including administrative product approval schemes;
- d) Through unfair competition laws.

3. These approaches involve differences with respect to important questions, such as the conditions for protection or the scope of protection. On the other hand, two of the modes of protection — namely sui generis systems and collective or certification mark systems — share some common features, such as the fact that they set up rights for collective use by those who comply with defined standards.

4. GIs are protected in different countries and regional systems through a wide variety of approaches, often using a combination of two or more of the abovementioned approaches. These approaches have been developed in accordance with different legal traditions and within a framework of individual historical and economic conditions.

5. 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.

6. Exceptions (Article 24): In some cases, geographical indications do not have to be protected, or the protection can be limited. Among the exceptions that the agreement allows are: when a name has become the 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.

7. A few goods having GI labels are Penja Pepper (Cameroon), Argan oil (Morocco), Kilim Carpets (Turkey), Swiss Watches (Switzerland) and Scotch whisky (UK), Feta cheese (Greece), Champagne (France), Tequila (Mexico), Antigua (Guatemalan) coffee, Ceylon tea, and Kalamata olives.

8. According to World Intellectual Property Organization (WIPO), approximately 93 national and regional authorities showed an estimated 63,600 protected GIs in 2021. In terms of regional distribution, Europe had the most GIs in force among regions, amounting to 58.1%, followed by Asia (31.7%), Latin America and the Caribbean (4.5%), Oceania (3.3%), North America (2.3%) and Africa 0.1%¹.

C. GI Products in India

1. India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003.

¹ <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2022-en-world-intellectual-property-indicators-2022.pdf>

Under the Section 2 (e) of the G.I. Act, 1999 defines “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 a country, or a region or locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin and in a case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”

2. Nine of the GI tags registered in India are for imported goods, including Napa Valley wine, Scotch whisky, Prosciutto di Parma from Italy, Porto and Douro wines from Portugal, Pisco from Peru, and Tequila from Mexico. The renowned Darjeeling tea, Hyderabad Haleem, Mysore silk, Madhubani paintings, Jaipur blue ceramics, Naga Mircha (also known as bhut jolokia) Goan feni, and numerous other goods are all made in India. Karnataka (33), Tamil Nadu (24), Kerala (22), UP (21) and Odisha (15) are the top five states with the most GI-tagged items.

D. Market Access for Indian GI Tagged Products

1. As on March 2023, a total of 429 GIs has been registered in India, including 31 foreign products, as per the DPIIT annual report 2022-23. The GI tag was created to shield customers from false advertising and counterfeit goods and to prevent manufacturers from having to revert to undervaluing their items. For instance, because Darjeeling tea carries a GI tag in India, anyone caught selling it illegally could face legal action. However, if a Bangladeshi vendor sells the counterfeit goods in Sudan and that country does not recognise the GI tag on Darjeeling Tea, it will be very difficult to counter the loss of market access.

2. The fact that a “multilateral GI registration system” hasn’t yet been formed under the WTO, with the exception of wines and spirits, effectively indicates that GI tags must be registered nationally in order to be of any value. Hence, it is important for a country like India to discuss appropriate measures to promote, protect and seek market access for GI tagged products.

E. GIs Under India’s FTA

1. As on date, under trade agreements, GI tagged products have not been looked separately. India has trade agreements with Japan, Korea, ASEAN countries, UAE, Australia (early harvest deal), preferential trade agreements with Latin American countries, etc. India has been discussing trade agreements with the UK, EU, Canada,

Israel, Gulf countries, etc. According to a Ministry of External Affairs report, there are 32 million Non-resident Indians (NRIs) and Person of Indian Origin (PIOs) (inc. Overseas Citizen of India-OCIs) residing outside India and overseas Indians comprise the world's largest overseas diaspora. Every year 2.5 million (25 lakhs) Indians migrate overseas, which is the highest annual number of migrants in the world. This shows, along with Indian expats, due to the quality of Indian GI products, there is a huge potential of exports of Indian GI tagged products in foreign countries.

F. Suggested Approach

Please find below some suggested ideas for seeking better market access for GI tagged products:

1. Provision of Reciprocity

Under the Geographical Indications of Goods (Registration & Protection) Act, 1999, section 85 talks about Provisions as to Reciprocity. It says:

Where any country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of geographical indications as it accords to its own nationals, no nationals of such country or a country which is a member of a group of countries or union or countries or Inter-Governmental Organizations, as the case may be, shall be entitled:

- (a) to apply for the registration of, or be registered as the proprietor of the GI;*
- (b) to apply for registration or be registered as an authorised user under a GI*

- a) Preferential Access under FTA: In order to promote trade of GI tagged products with FTA partner countries, India may give and request preferential access for GI tagged products. Such preferential access may be but not limited to preferential tariff access, ease of conformity assessment procedures, ease of customs clearances, strict rules of origin, common portal for listing GI tagged products, export and import facilitation, etc.
- b) MRA on GI: However, with non-FTA partner countries, India may consider having a separate Mutual Recognition Agreement (MRA) where excluding tariff, some of the other major issues like ease of conformity assessment procedures, ease

of customs clearances, strict rules of origin, no restrictions into government or public procurement schemes, export and import facilitation, etc. can be looked at.

- c) GI Protection: In addition, there are some instances, where countries have been struggling to protect their GI tag rights with neighboring countries. For instance:
- i. Tassel between the US and the EU – EU is using GIs to impose restrictions on the use of common names for some foods, such as feta, parmesan and provolone cheese & certain wines and limit US food companies from marketing these foods using the common names. The EU trade partners – South Korea, Canada, South Africa & others prefer EU over USA.
 - ii. Fake Darjeeling Tea- The Indian Tea Association (ITA) had flagged an issue with the Union Ministry of Commerce and Industry and the West Bengal government as tea import from Nepal rose by over 60 per cent in 2020, and in 2021 it had crossed over 50 per cent. ITA had raised the concern that some of the companies in India are importing tea from Nepal and adding to Indian tea and calling it as Darjeeling tea and selling in foreign markets.

In such cases, the protection of GI tags becomes very important. Such disputes may lead to loss of market access and revenue for countries. Hence, we suggest that India, under its FTA pacts or any other bilateral discussion, may consider creating a separate mechanism or portal to track and protect its GI tags.

2. Exclusion of GI Tagged Products from Domestic Procurement Schemes

- a) We are of the view that if GI tagged products can be looked separately under domestic procurement and promotional schemes like *Atmanirbhar Bharat*, *Buy America*, etc.
- b) For instance, the Canteen Store Departments (CSDs) under the Ministry of Defence does not allow sale of imported liquor. The Ministry of Defence issued an order (CSD) No. 2/MS/Misc/1461 dated 29th October 2020, prohibiting the purchase of imported items for sale at CSDs. Such imported items includes both GI tagged and non-GI tagged alcoholic beverages. It is clear that the core principle of the *Atmanirbhar Bharat* policy is to promote domestic manufacturing rather depending on imports. However, as the name suggests, GI tagged products can only be made in a defined geographical locality, region or country. For instance, imported GI-tagged spirits and wines can only be manufactured in a specific location with specific weather conditions, process making, maturation, etc. When

traded across borders, no third-party/country content or materials can be added while making these products for exports. This is also applicable to Indian Feni where it can only be made in the state of Goa. Hence, only imported GI tagged alcoholic beverages should be brought out of such prohibition order to protect the basic element of geographical indication.

- c) Similarly, under the Buy America order, US companies prefers procurement of locally made products in comparison to imported products. In such cases, exports of GI products from India also get impacted.
- d) Hence, we suggest while looking at GI tagged products, these should be excluded from any such promotion or public procurement schemes.

About VeK

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