

Frequently Asked Questions on Geographical Indications (GIs)



December, 2005

**Secretary,
Textiles Committee**

Ministry of Textiles, Government of India,
P. Balu Road, Off. Veer Savarkar Marg,
Prabhadevi Chowk, Prabhadevi
Mumbai 400 025

Tel: : 022- 56527500

Fax: : 022- 56527509

Email : secy@giabm01.vsnl.net.in

Website : www.textilescommittee.nic.in

Preface

The World Trade Organisation (WTO) is the institutional framework of the multilateral trading system and is the successor to the General Agreement on Tariffs and Trade (GATT). At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations. These agreements provide the legal ground rules for international trade.

Trade Related Intellectual Property Rights (TRIPS) agreement was signed under the framework of WTO. The main objectives of the TRIPS agreement are to protect the rights of the creators/ inventors from unauthorised use of their creation/ invention. The different types of IPs covered by the TRIPS agreement are Copyrights, Trademarks including service marks, Geographical Indications, industrial designs, patents and layouts designs of integrated circuits.

The Geographical Indications (GIs) which is a part of TRIPS agreement will prove to be an important instrument for protecting the originality of traditional products like Sambalpur sarees, Mysore Silk, Kanchipuram sarees, Solapur Chaddar etc. In India it is estimated that about 50,000 products require protection under GIs. In this regard, the parliament has enacted an Act in 1999 for protecting the Geographical Indications.

Even though several reports and publications have been published in this regard in both internet and print media, this booklet on Geographical Indications (GIs) will prove to be useful to the readers who wish to know more about the subject.

I appreciate the sincere efforts of Dr. P. Nayak, Director (Market Research), Shri T.K. Rout, Market Research Officer and all the WTO team in bringing this booklet in a user-friendly format. However, readers are welcome to give their views/ suggestions for further improvement.

(Dr. Rajiv Aggarwal)
Secretary

FREQUENTLY ASKED QUESTIONS (FAQs) ABOUT GEOGRAPHICAL INDICATIONS (GIs)

1. What are “Intellectual Property Rights (IPRs)”?

Intellectual property rights can be defined as the rights given to people over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

Intellectual property rights are traditionally divided into two main categories:

- **Copyright and rights related to copyright:** i.e. rights granted to authors of literary and artistic works, and the rights of performers, producers of phonograms and broadcasting organizations. The main purpose of protection of copyright and related rights is to encourage and reward creative work.
- **Industrial property:** This includes (1) the protection of distinctive signs such as **trademarks** and **geographical indications**, and (2) industrial property protected primarily to stimulate innovation, design and the creation of technology. In this category inventions (protected by **patents**), **industrial designs** and **trade secrets** are included.

For the purposes of the TRIPS Agreement, “intellectual property” refers to:

... all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of the agreement (Article 1:2).

- The IPRs are protected worldwide by the following ways:
- (a) Government and Parliaments have given creators these rights as an incentive to produce ideas that will benefit society as a whole.
 - (b) The 1986-94 Uruguay Round achieved that the WTO's Agreement on TRIPS is an attempt to narrow the gaps in the way these rights are protected around the world and to bring them under common international rules.

- (c) It establishes minimum level of protection that each government has to provide to the Intellectual Property of fellow WTO members. The Agreement sets out minimum standards to be adopted by the parties, though they are free to provide higher standard of protection.
- (d) When there are trade disputes over IPRs, the WTO's dispute settlement system is now available.

2. What are the different types of IPRs?

- Trademarks and Service Mark
- Industrial Design Registration
- Copyright
- Layout Designs for Integrated Circuits
- Geographical Indications
- Trade Secrets and Undisclosed Information
- Competitive Practices in Contractual Licenses
- Patents.

3. What is a geographical indication (GI)?

Geographical indications (GIs) means an indication which identifies 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 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, place names are sometimes used to identify a product, for example: Champagne, scotch, Tequila and Roquefort Cheese.

4. Examples of geographical Indication in world.

Bulgaria: Traminer From Khan Kroum (Wine), Merlou From Sarkar (Wine); **Canada:** Canadian Rye Whisky,, Canadian Whisky; **Czech Republic:** Beers: Pilsen, Budweis; **EU:** Wines: Champagne, Sherry, Porto, Chianti, Samos, Fheinhessen, Mossele Luxembourgeoise, Mittleburgenland, Spirits: Cognac, Brandy De Jerez, Grappa Di Barolo, Berliner Kummel, Genievre Flandres Artois, Scotch Whicky, Irish Whickey, Tsikoudia (From Crete); Hungary: Ger (wine)

5. Examples of geographical Indication in India.

Basmati Rice, Darjeeling Tea, Pochampally Ikat, Jasmin Rice etc

6. Some of the examples of potential Geographical Indications in Textiles & Clothing in India.

Sr. No.	Product	State
1	Balarampuram Fine Cotton Sarees	Kerala
2	Kannur Home Furnishings	Kerala
3	Mysore Silk Sarees	Karnataka
4	Venkatgiri Sarees	Andhra Pradesh
5	Solapur Jacquard Bedsheets	Maharashtra
6	Paithan Sarees	Maharashtra
7	Sambalpur Tie & Dye Items And Sarees	Orissa
8	Nuapatna Tie & Dye Items and Sarees	Orissa
9	Bargarh Mul-Mul Coloured Cotton & Sarees	Orissa
10	Chanderi Muslin Sarees	Madhya Pradesh
11	Maheswar Sarees In Silk Texture	Madhya Pradesh

12	Bhuj Sarees and Dress Material	Gujarat
13	Patan Patola Tie & Die Sarees	Gujarat
14	Gazhiabad Jacquard Furnishings	Uttar Pradesh
15	Gorakhpur Terry Towels	Uttar Pradesh
16	Lucknow Chikan Work- Sarees and Dress Material	Uttar Pradesh
17	Varanasi Silk Sarees	Uttar Pradesh
18	Panipat Floor Coverings	Haryana
19	Kulu Traditional Hill Tribe Fabrics & Angami Shawls	Himachal Pradesh
20	Baluchari Sarees and Dress Materials	West Bengal

It has been estimated that about 50000 products in India needs protection under GI.

7. How Geographical Indications (Gis) are different from indication of source?

Geographical Indications bear the quality function of the product were as the indications of source indicates the source of products only. For example, made in India, made in France.

8. What is the difference between a geographical indication and a trademark?

A trademark is a sign used by an enterprise to distinguish its goods and services from those of other enterprises. It gives its owner the right to exclude others from using the trademark. A geographical indication tells consumers that a product is produced in a certain place and has certain characteristics that are due to that place of production. It may be used by all producers who make their products in the place designated by a geographical indication and whose products share typical qualities.

9. What is an appellation of origin?

An appellation of origin is a special kind of geographical indication, used on products that have a specific quality that is exclusively or essentially due to the *geographical environment* in which the products are produced. The concept of geographical indication encompasses appellations of origin.

10. What does a geographical indication do?

A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place. Since those qualities depend on the place of production, a specific "link" exists between the products and their original place of production.

11. Why do geographical indications need protection?

Geographical indications 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 geographical indications by unauthorized parties is detrimental to consumers and legitimate producers. The former are deceived and led into believing to buy a genuine product with specific qualities and characteristics, while they in fact 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.

12. How is a geographical indication protected?

Geographical indications are protected in accordance with national laws and 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. In essence, unauthorized parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product. Applicable sanctions range from court injunctions preventing the unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

13. How are geographical indications protected at the international level?

GI protection is granted by the TRIPS Agreement. There are various international agreements (The Paris Convention for the Protection of Industrial Property (1976). The Madrid Agreement for the Repression of False or Deceptive Indications of Source (1981), Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration of 1958) which grant some kind of protection for GIs as an intellectual property right. Because of its availability and the number of signatory members, the WTO (World Trade Organization) TRIPS Agreement (an agreement on trade related intellectual property rights) of 1994 is currently the principal international instrument for protecting and defending GIs. This agreement provides for two levels of protection. A basic protection fixed in Article 22 for all products which is determined by an act of misleading the public or unfair competition; and an additional protection fixed in Article 23 solely for wines and spirits which prevents any incorrect use of GIs on these types of product.

14. Which acts in India protect the Geographical Indications

Prior to 1999 there was no specific legislation to regulate geographical indication. 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. This act seeks to provide for registration and better protection GIs relating to goods. It excludes

unauthorised persons from misusing GIs. This would protect the interest of producers, manufacturers and thereby consumer from being deceived by the falsity of geographical origin to economic prosperity of the producer of such goods and promote goods bearing GIs in export market. Unless a geographical indication is protected in the country of its origin, there is no obligation under the agreement under Article 22 of the TRIPS Agreement on for other countries to extend reciprocal protection. It is in this context that the act was enacted.

The act provides registration in two parts Part A is related to the registration of GIs; Part B relates to the registration of authorised users/proprietors such as names, addresses and descriptions.

15. What are the benefits of GI registration?

- It prevents unauthorized use of a registered Geographical Indication goods by third parties.
- It boosts exports
- It promotes economic prosperity of producers.
- Only an authorized user has the exclusive rights to use the geographical indication in relation to goods in respect of which it is registered.

16. Who are responsible for administration of GIs in the country?

The Controller General of Patents, Design and Trademarks administers patents, designs, trademarks and geographical indications, which is under the control of the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, govt. of India. The Geographical Indications (Registrations and Protection) Act Rule, 2002 has also stipulate the protection of GI. The GI Act come into force with effect from 15th September 2003. The central govt. has established Geographical Indications Registry at Chennai, with Controller of Patents, Designs & Trade

marks of the Registrar of GI where the right holders can register their respective product.

17. Who can apply for the registration of a geographical indication?

- Any association of persons, producers, organisation or authority established by or under the law can apply:
- The applicant must represent the interest of the producers
- The application should be in writing in the prescribed form.
- The application should be addressed to the Registrar of Geographical Indications alongwith prescribed fee.

18. Who is a registered proprietor of a geographical indication?

- Any association of persons, producers, organisation or authority established by or under the law can be a registered proprietor.
- Their name should be entered in the Register of Geographical Indication as registered proprietor for the Geographical Indication applied for.

19. Who is an authorised user?

- A producer or group of producers of goods can apply for registration as an authorised user
- It must be in respect of a registered geographical indication
- He (they) should apply in writing in the prescribed form alongwith prescribed fee

20. Who is a producer in relation to a Geographical Indication?

The persons dealing with three categories of goods are covered under the term Producer:

- Agricultural goods including production, processing, trading or dealing of such goods.

- Natural goods including exploiting, trading or dealing of such goods.
- Handicrafts or Industrial goods including making, manufacturing, trading or dealing of such goods.

21. Is a registration of a geographical indication compulsory and how does it help the applicant?

- Registration is not compulsory
- Registration affords better legal protection to facilitate an action for infringement
- The registered proprietor and authorised users can initiate infringement actions
- The authorised users can exercise the exclusive right to use the geographical indication.

22. Who can use the registered geographical indication?

An authorised user has the exclusive rights to the use of geographical indication in relation to goods in respect of which it is registered.

23. How long the registration of Geographical Indication is valid?

The registration of a geographical indication is valid for a period of 10 years.

24. Can a Geographical Indication be renewed?

Yes, GI registration can be renewed from time to time for further period of 10 years each, if the authorised user so desires.

25. What is the effect if it is not renewed?

If a registered geographical indication is not renewed it is liable to be removed from the register. As such the product will not enjoy legal protection provided by the Act the product may lose its unique quality in the long run.

26. When is a registered Geographical Indication said to be infringed?

- When an unauthorised user uses a geographical indication that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which mislead the public as to the geographical origin of such goods.
- When the use of geographical indication result in an unfair competition including passing off in respect of registered geographical indication.
- When the use of another geographical indication results in false representation to the public that goods originate in a territory in respect of which a registered geographical indication relates.

27. Who can initiate an infringement action?

The registered proprietor or authorised users of a registered geographical indication can initiate an infringement action.

28. Can a registered geographical indication be assigned, transmitted, etc?

No. A geographical indication is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement
However, when an authorised user dies, his right devolves on his successor in title.

29. Can a registered geographical indication or a registered authorised user be removed from the register?

Yes. The Appellate Board or the Registrar of Geographical Indications has the power to remove the geographical indication or an authorised user from the register. Further, on application by an aggrieved person action can be taken.

30. Which of the Geographical Indications cannot be registered?

- The use of which would likely to deceive or cause confusion or contrary to any law.
- Which comprises or contains scandalous or obscene matter or any matter likely to hurt religion susceptibility of any class or section of citizens of India.
- Which would otherwise is disentitled to protection in a court, which are determined to be generic names or indications of goods and are,
- Therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country.
- Which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.

31. What is the punishment in the Act for falsifying GI?

A sentence of imprisonment for a term between 6 months to 3 years and a fine between fifty thousand rupees and two lakh rupees or stipulated in the Act. However, the court may reduce the punishment under special circumstances.

32. Why are producers interested in GIs?

GIs are anchored to the particular region for which they come from and as such contribute to the socio-economic dynamics in many regions of the world. They also create and support jobs and encourage diversification in production. They allow producers and manufacturers to dedicate themselves to the commercialisation of traditional products in response to the demands of quality-conscious consumers. GIs also contribute to the conservation of natural resources and the preservation of native traditions and cultural heritage often reaching back to distant ancestors. As such, GIs are of importance to producers and manufacturers throughout the world, especially those in developing countries who need the means to put

products on the market which are easily differentiated and identifiable via their geographic origin.

33. What are exceptions to GI protection under TRIPS Agreement:

The TRIPS Agreement enumerates a series of exceptions to the protection of geographical indications such as prior use in good faith and continued use of geographical indications that have become generic terms.

Article 24 of the TRIPS Agreement lists five exceptions:

- If a name has been used for at least 10 years preceding to the conclusion of the Uruguay Round or in "good faith" for a shorter period of time preceding that date, the user can continue to do so;
- A trademark will remain valid if it was registered in good faith before the TRIPS Agreement came into force, or if it has been registered before the geographical indication was protected in its country of origin;
- When a geographical indication has become a common term for the type of goods in the language of a particular Member State (i.e. generic), protection must no longer be accorded in that State;
- The protection of geographical indications does not prevent a person whose name corresponds to a geographical indication to use that name in their commercial operations as long as that name is not being used in any misleading way.
- There is no obligation to protect geographical indications which are not, or have ceased to be, protected in their country of origin or which have fallen into disuse in that country.

34. Why does the current legal protection for geographical indications need improvement?

There are multiple reasons for revising and improving the protection of geographical indications, in particular:

With global markets now increasingly open, it is indispensable that:

- Consumers can immediately recognize the origin of products. The improvement of protection for GIs at the international level will help the fight against the public being misled. A product whose name refers to or evokes a certain geographical region must be from that region.
- Producers and manufacturers of products identifiable by their GIs can position and defend their local products with an effective legal protection. Such a protection facilitates the preservation of diversity and the quality of production in different parts of the world. Without this protection, producers of specific products will continue to be exposed to abusive uses of their geographical indications by producers in other countries who free ride on the reputation and recognition already established by those names in order to better sell products that do not bear the same qualities as the originals.

The TRIPS Agreement currently does not provide for adequate or sufficient protection of geographical indications. The TRIPS Agreement does not automatically protect all GIs. Protection must be sought on a country-by-country basis. This is often too costly for small GI producers. Thus, a simplified mechanism to help producers achieve worldwide protection is needed.

35. How can better protection for Geographical Indications be achieved?

- The better protection for GI can be achieved through the extension of protection to products under Article 23 of TRIPS- which currently benefits only wines and spirits. The extension of protection will be granted to the products other than wine and spirit, producers would be able to more easily defend their rights. They would no longer have to prove that the public has been misled of their geographical indications.

- Establishment of a multilateral registry

At the same time, the establishment of a multilateral registry for GIs would constitute a powerful complementary tool for concretely defending this intellectual property right.

A registry at the international level would require a list of GIs to be officially recognized by all of the economic players in all countries of the world. Registration of a name in the registry would also make it possible to reverse the burden of proof. In the current situation, it is the producer who is the victim of usurpation who must demonstrate that he is the true owner of the GI. In the future, from the moment a GI is registered in the registry, it will be the producer accused of usurpation who will have to demonstrate his innocence.

36. Is usurpation economically detrimental to tradition-based producers?

Usurpation causes harm to traditional producers throughout the world because it prevents them from claiming their position on the world market. To illustrate, when tea which is produced outside the Darjeeling region labeled "Darjeeling Tea" in the market, the value of the true Darjeeling tea traditionally produced in India goes down with economic repercussions for the producers. It has been estimated that near about 40000 tonnes of tea is sold as Darjeeling tea in the world market. Whereas only 10000 tonnes is produced in Darjeeling. That means, about 30000 tonnes of tea which is not Darjeeling tea are being misleadingly sold in the same brand. In this cases, the real producers are sufferers as they do not get actual price of their product and also consumers who misleadingly consumed other tea in the name of Darjeeling tea.

37. What is WIPO's role in protection of geographical indications?

WIPO is in charge of the administration of a number of international agreements, which deal partly or entirely with the protection of geographical indications (see, in particular, the Paris Convention for the Protection of Industrial Property, and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration). Furthermore, through the work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, made up of representatives of member States and interested organizations, WIPO explores new ways of enhancing the international protection of geographical indications.

Pochampally Ikat Received Geographical Indications (GI) Protection:

Pochampally Ikat is produced/manufactured in the district of Nalgonda and part of Warangal in the state of Andhra Pradesh. There are at least 40 villages within a 70-km radius of Hyderabad whose main source of livelihood is production and marketing of these Ikats. The Products are promoted and marketed by Pochampally Handloom Weavers Co-operative Society Ltd. and Pochampally Handloom Tie and Dye Silk Sarees Manufacturers Association.

Description of Goods

Pochampally Ikat is made of natural materials such as cotton or silk or a combination of both, having designs that are derivative of the diffused diamond or chowks design. The process of making Pochampally Ikat involves tying and the sequence of tying (or wrapping) and dyeing sections of bundled yarn to a predetermined colour scheme prior to weaving. Thus, the dye penetrates into the exposed section, while the tied section remain undyed. The pattern formed by this process on the yarn are then woven into fabric and the fabric so woven has been used as sarees for centuries. Now the weavers of Pochampally Ikat are also manufacturing furnishing, textile, and textile goods.

These products are characterised by specific quality and uniqueness through out the world. But in due process the large mills started copying the designs of the Pochampally Ikat and consequently captured the market of the original product which ultimately put the weavers of the Ikat in a very measurable position and the consumers are also misled by large mills for their own advantages. In order to search out a solution to the age-old problem, the weavers approached Government of Andhra Pradesh for a possible solution and the process started.

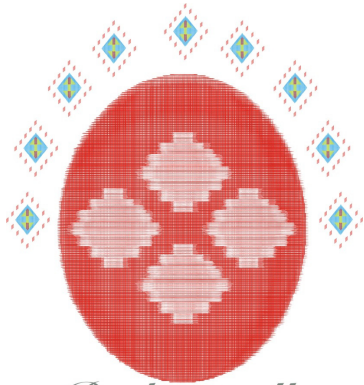
The process started with the visit of a team comprising experts from Andhra Pradesh Technology Development and Promotion Centre (APTDPC), Government of Andhra Pradesh; Textiles Committee, Ministry of Textiles, Government of India; Weavers Service Centre, Government of India; NABARD and Attorney's - Anand and Anand. This was followed by sensitization workshop for the benefit of weavers and documentation process for filing GI application i.e. finally the application was filed on 15th December 2003.

Subsequently, the Expert Committee from Government of India led by the Controller General of Patents and Designs and Trademarks visited the site on May 2004.

The case of Pochampally Ikat was found meritorious by the Expert Committee and subsequently the IKAT get registered under GI.

What is guaranteed by GI Protection?

- It confers legal protection to **Pochampally Ikat** in India.
- Prevents unauthorized use of **Pochampally Ikat** by others.
- Registration affords better legal protection to facilitate an action for infringement.
- The registered proprietor and authorized users can initiate infringement actions.
- The authorized users can exercise the exclusive right to use the geographical indication.
- It promotes economic prosperity of producers of goods produced in a geographical territory.



Pochampally
IKAT



Dyeing



Weaving