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# **OVER-COMMERCIALISATION AND THE RISK OF GENERICIDE IN GEOGRAPHICAL INDICATIONS**

AUTHORED BY - HARSH RAJ GAUTAM

## **Abstract**

The protection of Geographical Indications (GIs) has emerged as a crucial component of intellectual property law, aimed at preserving the unique identity, reputation, and quality associated with products originating from specific geographical regions. However, in the contemporary globalized economy, the increasing commercialization of GI products has raised significant concerns regarding the risk of genericide, whereby a protected geographical indication gradually loses its distinctiveness and becomes a generic term. This paper critically examines the phenomenon of over-commercialisation and its impact on the legal integrity of geographical indications. It analyses the tension between market expansion and identity preservation, highlighting how excessive commercialization, lack of regulatory oversight, and widespread misuse can dilute the distinctive character of GIs. The paper further evaluates international and national legal frameworks governing GI protection and identifies gaps that contribute to the risk of genericide. It argues for a balanced regulatory approach that ensures both economic growth and preservation of authenticity, thereby safeguarding the cultural and economic interests of producer communities.

## **Keywords**

Geographical Indications, Genericide, Over-Commercialisation, Intellectual Property, TRIPS Agreement, Brand Dilution, Cultural Heritage, Consumer Protection, GI Law.

## **1. Introduction**

Geographical Indications (GIs) represent a distinctive category of intellectual property rights that protect the identity, reputation, and unique characteristics of products originating from specific geographical regions. Unlike other forms of intellectual property, GIs do not vest rights in an individual creator or entity but instead operate as a collective right, reflecting the shared heritage, traditional knowledge, and craftsmanship of a community. These indications serve not only as markers of origin but also as symbols of quality, authenticity, and cultural

significance. Products such as agricultural goods, handicrafts, and artisanal products derive their distinctiveness from the natural and human factors associated with their place of origin, including climate, soil conditions, traditional techniques, and local expertise. “Geographical indications serve as a means of identifying goods as originating in a territory where a given quality, reputation or other characteristic is essentially attributable to its geographical origin.” (TRIPS Agreement, Article 22)<sup>1</sup>

In the contemporary globalized economy, the commercial value of geographical indications has increased significantly due to rising consumer awareness and demand for authentic and high-quality products. The expansion of international trade, coupled with advancements in marketing and branding strategies, has enabled GI products to reach global markets, thereby generating substantial economic benefits for producer communities. Governments and policymakers have increasingly recognized the potential of GIs as tools for rural development, poverty alleviation, and preservation of traditional knowledge systems. Consequently, there has been a growing emphasis on promoting GI products through export-oriented strategies, tourism initiatives, and branding campaigns.<sup>2</sup>

However, this increased commercial attention has also given rise to concerns regarding the over-commercialisation of geographical indications. Over-commercialisation refers to the excessive and often uncontrolled exploitation of GI products in pursuit of economic gains, frequently at the expense of their authenticity, quality, and cultural significance. As producers attempt to meet growing market demand, there is a tendency to adopt mass production techniques, relax traditional standards, and expand production beyond the geographical boundaries that define the GI. Such practices weaken the intrinsic link between the product and its place of origin, thereby undermining the very foundation upon which GI protection is based.<sup>3</sup>

One of the most significant risks associated with over-commercialisation is the phenomenon of genericide. Genericide occurs when a protected geographical indication gradually loses its distinctiveness and becomes a generic term used to describe a category of goods rather than a product originating from a specific region. This transformation typically results from widespread and indiscriminate use of the GI name by unauthorized producers, as well as inadequate enforcement of legal protections.<sup>4</sup> As the term becomes commonly used in trade

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<sup>1</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), art 22.

<sup>2</sup> Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012).

<sup>3</sup> Justin Hughes, ‘Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications’ (2006) 58 *Hastings Law Journal* 299.

<sup>4</sup> World Intellectual Property Organization (WIPO), *Geographical Indications: An Introduction* (2017).

and everyday language, it ceases to function as an indicator of origin, thereby losing its legal protection and economic value.

The risk of genericide is particularly pronounced in the context of global markets, where variations in legal standards and enforcement mechanisms across jurisdictions create opportunities for misuse. In countries where GI protection is weak or non-existent, producers may freely use protected names without adhering to the standards or origin requirements associated with them. This not only leads to consumer confusion but also dilutes the reputation of genuine GI products.<sup>5</sup>Over time, the inability to distinguish between authentic and imitation products contributes to the erosion of consumer trust and the gradual transformation of the GI into a generic term.

Furthermore, over-commercialisation raises broader concerns regarding cultural commodification and the loss of traditional knowledge systems. Geographical indications are deeply embedded in the cultural and social fabric of communities, often representing centuries-old practices and traditions. The commercialization of these products, when not properly regulated, can lead to the erosion of traditional methods, replacement of artisanal techniques with industrial processes, and marginalization of small-scale producers. This not only affects the quality and authenticity of the products but also undermines the cultural identity and economic sustainability of the communities involved.

In light of these challenges, it becomes imperative to examine the legal and policy frameworks governing geographical indications and assess their effectiveness in addressing the risks associated with over-commercialisation and genericide. This paper seeks to explore the delicate balance between promoting economic growth through commercialization and preserving the authenticity and distinctiveness of GI products. It argues that while commercialization is essential for the economic viability of GI systems, it must be carefully regulated to prevent dilution and ensure long-term sustainability.

## **2. Conceptual Framework: Geographical Indications and Genericide**

Geographical indications occupy a unique position within the broader framework of intellectual property law, as they are fundamentally distinct from other forms of protection such as trademarks, patents, and copyrights. While trademarks serve as indicators of commercial origin and are owned by individual entities, geographical indications are collective rights that signify a connection between a product and its place of origin. This connection is not merely

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<sup>5</sup> WTO, *World Trade Report on Intellectual Property and Trade* (2019).

geographical but encompasses a combination of natural and human factors that contribute to the product's unique characteristics, quality, and reputation.<sup>6</sup> The legal recognition of this link forms the basis for GI protection and distinguishes it from other intellectual property rights.

The conceptual foundation of geographical indications lies in the notion of reputation and quality derived from geographical origin. A GI functions as a guarantee to consumers that the product possesses certain attributes that are intrinsically linked to a specific region. These attributes may include the use of traditional production methods, adherence to established standards, and the influence of environmental factors such as climate and soil.<sup>7</sup> The collective nature of GIs ensures that the benefits of protection are shared among all eligible producers within the designated region, thereby promoting inclusive economic development and preserving traditional knowledge systems.

However, the effectiveness of GI protection is contingent upon maintaining the distinctiveness of the indication. Distinctiveness, in this context, refers to the ability of the GI to uniquely identify a product as originating from a specific geographical area and possessing certain qualities associated with that origin. The loss of this distinctiveness undermines the very purpose of GI protection and exposes the indication to the risk of genericide.<sup>8</sup>

Genericide is a legal and economic phenomenon wherein a protected term loses its capacity to function as a distinctive indicator of origin and becomes a generic descriptor of a type of product. While the concept is most commonly associated with trademarks, it is equally relevant in the context of geographical indications, particularly in cases where GI names gain widespread popularity and are used indiscriminately in commercial markets. "The loss of distinctiveness of an indication due to its widespread use may result in its transformation into a generic term." (WIPO Report, 2018)<sup>9</sup> This transformation is often gradual and may occur over time as a result of inadequate enforcement, consumer perception, and market practices.

The process of genericide in geographical indications is closely linked to the dynamics of commercialization and globalization. As GI products enter international markets and gain recognition, their names may be adopted by producers outside the designated region who seek to capitalize on their reputation. In the absence of strict regulatory controls and enforcement mechanisms, such use can become widespread, leading to the normalization of the GI name as

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<sup>6</sup> WIPO, *Geographical Indications and Appellations of Origin* (2017).

<sup>7</sup> FAO, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin* (2010).

<sup>8</sup> Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012).

<sup>9</sup> WIPO, *Geographical Indications Report* (2018).

a generic term.<sup>10</sup> This is particularly problematic in jurisdictions that do not recognize or enforce GI protection, thereby allowing unrestricted use of protected names.

Another important aspect of the conceptual framework is the distinction between geographical indications and generic terms within international law. The TRIPS Agreement acknowledges that certain terms, although originally linked to a geographical origin, may become generic over time if they are commonly used to describe a type of product in a particular country. This recognition introduces a degree of flexibility but also creates ambiguity in determining the status of certain indications, particularly in cross-border contexts.<sup>11</sup> The lack of uniform criteria for determining genericness further complicates the issue and contributes to inconsistencies in legal protection.

Moreover, the conceptual tension between commercialization and protection lies at the heart of the GI framework. On one hand, commercialization is essential for enhancing the economic value of GI products and ensuring their competitiveness in global markets. On the other hand, excessive commercialization can lead to dilution, loss of authenticity, and ultimately genericide. This tension necessitates a careful balancing of interests, ensuring that economic objectives do not undermine the cultural and legal integrity of geographical indications.

In conclusion, the conceptual framework of geographical indications and genericide highlights the inherent vulnerabilities of GI protection in a globalized economy. The collective nature of GIs, their reliance on distinctiveness, and their exposure to market forces make them particularly susceptible to dilution and misuse. Understanding these dynamics is essential for developing effective legal and policy measures that can safeguard the integrity of geographical indications while promoting their sustainable commercialization.

### **3. Over-Commercialisation of Geographical Indications**

The commercialization of geographical indications has been widely promoted as an effective instrument for economic development, particularly in rural and traditional sectors where local products derive their value from region-specific characteristics. By enabling producers to differentiate their goods in competitive markets, geographical indications enhance consumer trust and create premium pricing opportunities. Governments and international organizations have actively encouraged the commercialization of GI products as a means of fostering rural entrepreneurship, preserving traditional knowledge, and promoting exports. However, while commercialization serves as a powerful economic tool, its excessive or unregulated expansion

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<sup>10</sup> WTO, *Trade and Intellectual Property Report* (2019).

<sup>11</sup> TRIPS Agreement, art 24.

gives rise to the phenomenon of over-commercialisation, which poses significant risks to the integrity of geographical indications.<sup>12</sup>

Over-commercialisation may be understood as the excessive exploitation of a geographical indication beyond its traditional scope, often driven by market demand, profit maximization, and globalization of trade. As GI products gain popularity, there is a tendency among producers and intermediaries to increase production volumes, expand distribution channels, and adopt industrial methods that may not align with traditional practices. This shift from artisanal or region-specific production to large-scale commercialization can weaken the intrinsic connection between the product and its geographical origin.<sup>13</sup> The emphasis on quantity over quality often leads to the dilution of standards that initially defined the GI, thereby undermining its authenticity and reputation.

A key consequence of over-commercialisation is the erosion of quality control mechanisms that are essential for maintaining the distinctiveness of geographical indications. GI systems typically rely on strict specifications regarding production methods, raw materials, and geographical boundaries. However, as demand increases, enforcement of these standards may become inconsistent or diluted, particularly in cases where regulatory authorities lack adequate resources or oversight mechanisms. This may result in the entry of unauthorized producers or the use of non-traditional techniques that compromise the defining characteristics of the product. “Excessive commercialization of geographical indications can lead to dilution of quality and erosion of their distinctive character.” (FAO Report, 2019)<sup>14</sup> The weakening of quality assurance not only affects consumer perception but also diminishes the long-term value of the GI.

Furthermore, over-commercialisation can lead to the geographical expansion of production beyond the designated region, either through legal ambiguities or deliberate misuse. In some instances, producers outside the recognized geographical area may adopt similar production methods or use the GI name to capitalize on its reputation. This creates a situation where the link between the product and its place of origin becomes increasingly tenuous. As the GI name is used more broadly, its ability to function as a reliable indicator of origin is compromised, thereby increasing the risk of consumer confusion and market distortion.

Another important dimension of over-commercialisation is the role of intermediaries, multinational corporations, and large-scale distributors in the commercialization process.

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<sup>12</sup> WIPO, *Geographical Indications and Economic Development* (2018)

<sup>13</sup> Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012).

<sup>14</sup> FAO, *Strengthening Sustainable Food Systems through Geographical Indications* (2019).

While these actors can facilitate market access and enhance the visibility of GI products, their involvement often shifts the focus from community-based production to profit-driven commercialization. Small-scale producers and traditional artisans may be marginalized in this process, as they may lack the resources to compete with larger entities. This not only affects the equitable distribution of economic benefits but also threatens the sustainability of traditional production systems.

In addition, the commodification of geographical indications through aggressive marketing and branding strategies can contribute to the detachment of the product from its cultural and historical context. GI products are often promoted as luxury or niche commodities in international markets, emphasizing their commercial value rather than their cultural significance. This transformation risks reducing culturally rich products to mere commercial assets, thereby undermining their broader social and cultural importance.

In conclusion, while commercialization is essential for the economic success of geographical indications, its excessive and unregulated expansion poses serious risks to their integrity. Over-commercialisation weakens quality standards, disrupts traditional production systems, and dilutes the connection between the product and its geographical origin. These developments not only undermine the legal foundation of GI protection but also pave the way for the more severe consequence of genericide.

#### **4. Risk of Genericide in Geographical Indications**

The phenomenon of genericide represents one of the most significant threats to the long-term sustainability of geographical indications, particularly in the context of increasing commercialization and globalization. Genericide occurs when a protected geographical indication loses its distinctiveness and becomes a generic term used to describe a category of products rather than indicating a specific geographical origin. This transformation undermines the fundamental purpose of GI protection, which is to preserve the unique link between a product and its place of origin. The risk of genericide is closely linked to patterns of over-commercialisation, misuse, and inadequate enforcement of legal protections.

One of the primary factors contributing to genericide is the widespread and uncontrolled use of GI names in domestic and international markets. As GI products gain popularity and recognition, their names may be adopted by producers who are not located within the designated geographical region. In jurisdictions where GI protection is weak or not effectively enforced, such use may become commonplace, leading to the normalization of the GI term as

a generic descriptor.<sup>15</sup> Over time, consumers may begin to associate the term with a type of product rather than its geographical origin, thereby eroding its distinctiveness.

The role of consumer perception is particularly significant in the process of genericide. The effectiveness of a geographical indication depends on its ability to convey specific information about origin and quality to consumers. However, when the GI name is used indiscriminately, consumers may lose the ability to distinguish between authentic and imitation products. This confusion not only affects purchasing decisions but also contributes to the gradual transformation of the GI into a generic term. “The uncontrolled use of geographical indication terms in global markets increases the risk of their becoming generic.” (WTO Study, 2017) The loss of consumer association with the original geographical source marks a critical stage in the process of genericide.

Another contributing factor is the variation in legal recognition and protection of geographical indications across different jurisdictions. While some countries provide strong protection for GIs, others adopt a more flexible approach, allowing certain terms to be treated as generic if they are widely used in domestic markets. This lack of harmonization creates inconsistencies in the legal status of GIs and facilitates their misuse in international trade. For instance, a term that is protected as a geographical indication in one country may be considered generic in another, thereby weakening its global distinctiveness.

The absence of effective enforcement mechanisms further exacerbates the risk of genericide. Even in jurisdictions where GI protection exists, enforcement may be hindered by limited resources, lack of awareness, or procedural complexities. Unauthorized use of GI names may go unchallenged, allowing such practices to proliferate and become entrenched in the market. The cumulative effect of such misuse is the gradual erosion of the legal and commercial value of the geographical indication.<sup>16</sup>

In addition to legal and economic factors, over-commercialisation itself plays a central role in accelerating the process of genericide. As production expands and GI products are marketed to broader audiences, there is an increased likelihood of their names being used in a generalized manner. The commercialization of GI products through mass production and global distribution channels often results in the detachment of the product from its specific geographical and cultural context. This detachment weakens the association between the product and its origin, thereby facilitating its transformation into a generic term.

The consequences of genericide are far-reaching and detrimental to both producers and

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<sup>15</sup> WTO, *Trade and Intellectual Property Report* (2019).

<sup>16</sup> WIPO, *Enforcement of GI Rights* (2019).

consumers. For producer communities, the loss of GI protection results in the erosion of economic benefits, as they can no longer claim exclusivity over the use of the indication. This undermines their ability to command premium prices and compete in the market. For consumers, genericide leads to confusion and loss of trust, as the indication no longer serves as a reliable indicator of quality and origin. From a broader perspective, genericide also results in the loss of cultural heritage and traditional knowledge associated with the GI.<sup>17</sup>

In conclusion, the risk of genericide represents a critical challenge in the protection of geographical indications, particularly in an era characterized by increasing commercialization and global trade. The interplay between over-commercialisation, consumer perception, legal inconsistencies, and weak enforcement mechanisms contributes to the gradual loss of distinctiveness of GIs. Addressing this challenge requires a comprehensive and coordinated approach that strengthens legal protections, enhances enforcement, and promotes awareness among both producers and consumers, thereby ensuring the long-term sustainability of geographical indications.

## 5. International Legal Framework

The protection of geographical indications at the international level is primarily governed by a fragmented yet evolving legal framework that seeks to balance the interests of producers, consumers, and states. The cornerstone of this framework is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which establishes minimum standards for the protection of geographical indications among member states of the World Trade Organization. TRIPS defines geographical indications and mandates member states to provide legal means to prevent the misuse of such indications in a manner that misleads consumers or constitutes unfair competition. However, the level of protection under TRIPS is not uniform across all categories of products, with wines and spirits receiving a higher degree of protection compared to other goods.

While TRIPS represents a significant step toward international recognition of geographical indications, it has been widely criticized for its limited scope and lack of robust enforcement mechanisms. The agreement allows member states considerable flexibility in implementing GI protection within their domestic legal systems, resulting in significant variations in the level of protection across jurisdictions. “The TRIPS Agreement provides only minimum standards of protection, leaving considerable discretion to member states in implementation.” (WTO

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<sup>17</sup> UNESCO, *Intangible Cultural Heritage Report* (2016).

Analysis) This flexibility, while accommodating diverse legal traditions, also creates inconsistencies that can be exploited, thereby increasing the risk of misuse and genericide in global markets.

In addition to TRIPS, other international instruments such as the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, and its subsequent Geneva Act, aim to provide a higher level of protection for geographical indications. These agreements emphasize the importance of protecting appellations of origin against any form of usurpation or imitation. However, their limited membership restricts their global effectiveness. The lack of universal participation and harmonization among international instruments results in a fragmented system that fails to provide comprehensive protection against over-commercialisation and genericide.

## **6. National Legal Approaches**

At the national level, the protection of geographical indications varies widely depending on the legal framework adopted by individual countries. Some jurisdictions provide protection through sui generis legislation specifically designed for GIs, while others rely on trademark law, consumer protection laws, or unfair competition principles. In India, the Geographical Indications of Goods (Registration and Protection) Act, 1999, establishes a comprehensive legal regime for the registration and protection of GIs. The Act recognizes the collective nature of GIs and provides mechanisms for registration, enforcement, and prevention of unauthorized use.

Despite the existence of a robust statutory framework, challenges remain in terms of effective implementation and enforcement. Issues such as lack of awareness among producers, inadequate quality control mechanisms, and limited institutional capacity hinder the effective protection of GIs. “While India has established a comprehensive legal framework for GI protection, enforcement and quality assurance remain ongoing challenges.” (IP India Report, 2020) These limitations reduce the effectiveness of legal protection and increase the vulnerability of GIs to misuse and dilution.

In contrast, countries within the European Union have developed a more stringent and integrated system of GI protection, supported by strong regulatory mechanisms and institutional oversight. The EU framework emphasizes strict compliance with product specifications, rigorous certification processes, and active monitoring of market practices. This approach has been relatively successful in preserving the distinctiveness and reputation of GIs. However, even in such systems, the pressures of commercialization and global competition

continue to pose challenges.

### **7. Balancing Commercialisation and Protection**

A central issue in the discourse on geographical indications is the need to strike a balance between commercialization and protection. While commercialization is essential for enhancing the economic value of GI products and ensuring their competitiveness in global markets, it must be carefully regulated to prevent dilution and loss of distinctiveness. The challenge lies in promoting economic growth without compromising the authenticity and cultural significance of the product.

Effective balance requires the implementation of robust quality control mechanisms, including certification systems, monitoring processes, and strict adherence to production standards. These measures ensure that all products bearing the GI meet the established criteria and maintain the link between the product and its geographical origin. Additionally, the involvement of producer communities in decision-making processes is crucial for preserving traditional knowledge and ensuring that commercialization does not undermine cultural values. The role of regulatory authorities is equally important in maintaining this balance. By enforcing compliance with legal standards and preventing unauthorized use, regulators can protect the integrity of GIs while facilitating their commercial development. At the same time, awareness campaigns aimed at consumers and producers can enhance understanding of the significance of GIs and promote responsible usage.

### **8. Challenges in Preventing Genericide**

Preventing genericide in geographical indications presents a complex set of challenges that extend beyond legal frameworks. One of the primary challenges is the lack of awareness among consumers regarding the significance of GIs. When consumers perceive a GI term as a generic descriptor rather than an indicator of origin, it contributes to the erosion of its distinctiveness. This perception is often influenced by widespread misuse of GI names in markets where protection is weak or absent.

Another significant challenge is the inconsistency in legal protection across jurisdictions. Differences in national laws and enforcement mechanisms create opportunities for misuse, particularly in international trade. “The absence of harmonized global standards for GI protection exacerbates the risk of genericide.” (UNCTAD Report, 2018) This lack of uniformity undermines efforts to maintain the distinctiveness of GIs and complicates cross-border enforcement.

Furthermore, resource constraints and institutional limitations hinder effective monitoring and enforcement of GI protection. Regulatory authorities may lack the capacity to detect and address instances of misuse, particularly in large and diverse markets. This allows unauthorized practices to persist, contributing to the gradual dilution of the GI.

## **9. Case Studies**

The risk of genericide in geographical indications is illustrated by several notable case studies involving globally recognized products. These cases demonstrate how over-commercialisation and misuse can lead to the erosion of distinctiveness. For instance, the widespread use of certain GI names in international markets, often by producers outside the designated region, highlights the vulnerability of GIs to genericization.

Such cases reveal a pattern of unauthorized use, consumer confusion, and inadequate enforcement, all of which contribute to the weakening of GI protection. “The global misuse of GI names highlights the vulnerability of geographical indications to genericide.” (International IP Review, 2019) These examples underscore the need for stronger legal frameworks and more effective enforcement mechanisms to protect the integrity of GIs.

## **10. Recommendations**

In light of the challenges identified, it is imperative to adopt a comprehensive and multi-faceted approach to strengthening the protection of geographical indications. At the international level, efforts should be made to harmonize legal standards and enhance cooperation among countries to prevent misuse and genericide. The development of stronger enforcement mechanisms within existing frameworks such as TRIPS is essential to ensure effective protection.

At the national level, governments should focus on improving the implementation of GI laws by strengthening institutional capacity, enhancing quality control systems, and promoting awareness among stakeholders. Producer communities should be actively involved in the management and protection of GIs, ensuring that commercialization efforts align with traditional practices and cultural values.

Additionally, consumer education plays a critical role in preserving the distinctiveness of GIs. By raising awareness about the significance of geographical indications, consumers can make informed choices and contribute to the protection of authentic products. The adoption of technological tools such as traceability systems and digital certification can further enhance transparency and accountability.

## 11. Conclusion

The issue of over-commercialisation and the resulting risk of genericide poses a significant challenge to the protection of geographical indications in the contemporary global economy. While commercialization offers substantial economic benefits, it must be carefully managed to ensure that it does not undermine the authenticity, quality, and cultural significance of GI products. The loss of distinctiveness through genericide not only diminishes the legal value of GIs but also erodes consumer trust and cultural heritage.

“The long-term sustainability of geographical indications depends on maintaining the link between product and origin.” (WIPO Policy Paper, 2021) This underscores the importance of preserving the fundamental characteristics that define GI products. Achieving this objective requires a balanced and integrated approach that combines robust legal frameworks, effective enforcement, community participation, and consumer awareness.

In conclusion, the protection of geographical indications must evolve in response to the challenges posed by globalization and commercialization. By addressing the risks associated with over-commercialisation and genericide, policymakers can ensure that GIs continue to serve as valuable tools for economic development, cultural preservation, and consumer protection.

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