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Protection Of GI & Areas Of GI Associated **With The Lisbon Agreement, 1958**

Authored by - V Sona

ABSTRACT

This research paper provides an introduction to Geographical Indications (GI), explaining their basic features, use, and protection as an intellectual property right. If we want to look into the protection of GI (Geographical Indication) as well as the Lisbon Agreement of 1958, then one must first be clear of the basic concept of GI. The concept of GI consists of the definition of GI, the right provided by GI, and the protection of GI. Protection of GI was first provided in the Lisbon Agreement of 1958 and then it was naturally included in the Trade-Related Aspects of Intellectual property Rights Agreement (TRIPS) since TRIPS was a multilateral treaty on a much larger scale than the Lisbon Agreement and protection of GI was termed to be a necessary provision to be included in the TRIPS.

This research paper will also delve into the Lisbon Agreement of 1958 and its subsequent reforms including the Geneva Act of 2015 and how this agreement affected the GI protection laws. The Geneva Act of 2015 which is the amendment of the Lisbon Agreement has now come to include Geographical Indications in addition to the Appellations of Origins and that aspect of the amendment will also be touched upon. Apart from the Lisbon Agreement, this research paper will also elucidate lightly on the Trade-Related Aspects of Intellectual Property Rights and the provisions for GI protection listed in the same. The literature reviews presented in this paper will help in highlighting the present-day governance system of GI protection provided to the member states.

At the end of this research paper, the author will provide a conclusion stating the advantages that GI protection has achieved by being protected under two major multilateral agreements i.e., the TRIPS and the Lisbon Agreement and its subsequent amendment.

Keywords: Geographical Indications, Appellations of Origin, TRIPS, Lisbon Agreement, Protection, Intellectual Property Rights

OBJECTIVE OF THE RESEARCH PAPER

- To define the provisions relating to Geographical Indications in TRIPS Agreement.
- To explain in detail the provisions of the Lisbon Agreement 1958 along with its 2015 amendment included in the TRIPS Agreement.
- To explain the minimum protection provided to GI by TRIPS Agreement.
- To explain the Appellations of Origin protection provided in accordance with the Lisbon Agreement, 1958, and its subsequent reforms including the Geneva Act of 2015.
- To answer the research question for a better understanding of the topic.

SCOPE OF THE RESEARCH PAPER

- The definition of the term geographical indications will be discussed.
- GI and its laws are still in the early stages of evolution. Hence, we will be discussing the protection provided to GIs by these laws.
- The protection provided to GI will be explained in this research paper.
- Also, the clauses that are common to TRIPS and the Lisbon Agreement will also be discussed in this research paper.
- The necessity of AO protection laws in India will also be discussed in this research paper.

RESEARCH QUESTION

- Which areas of the Lisbon Agreement of 1958 as well as its subsequent revisions including the 2015 amendment are associated with the GI protection laws?
- Should India join the Geneva Act of the Lisbon Agreement, 2015?

NOTE

TERMINOLOGY

For the purpose of this research paper,

- GI = Geographical Indications

AO = Appellations of Origin

INTRODUCTION

- **What is Geographical Indication (GI)?**

A Geographical Indication (GI) is a sign used on products with a specific geographical origin and possesses qualities or a reputation due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place.¹

In addition to the above-stated definition, the product's quality, characteristics, and reputation should be mandatorily associated with its place of origin. Hence, it should be established that there is a clear link between the product and its place of origin.

Geographical Indication is generally used for agricultural products, food items, wines and spirits, handicrafts, and industrial products.²

The term “geographical indications” in its broad sense includes a variety of concepts used in various international treaties and national laws such as appellation of origin, the indication of source, and protected geographical indications.³

Article 22.1 of the TRIPS Agreement defines geographical indication as indications that identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or another characteristic of that good is essentially attributable to its geographical origin.⁴

The appellation of origin also known as the Protected Design of Origin (PDO) is a designation representing either the name of the country, region, settlement, locality or other geographical indication, as well as an indication derived from such a name that became known as a result of its use in regards to the goods, special properties, quality, reputation or other characteristics of which are mainly related to its geographical origin including the specific environmental conditions and/or human factors.⁵ This term is defined in the Lisbon Agreement of 1958.

¹ www.wipo.int/geo_indications/en/, What is a geographical indication?

² www.wipo.int/geo_indications/en/, For what type of products can geographical indications be used?

³ www.wipo.int/geo_indications/en/

⁴ Art. 22, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994

⁵ <https://kazpatent.kz/en/content/what-appellation-origin>, Article by National Institute of Intellectual Property

The term indication of source is defined in the Madrid Agreement of 1891. It is defined as the goods bearing false or deceptive indications by which one of the countries to which the Madrid Agreement applies, or a place situated therein, directly or indirectly as being the country of place or origin.

- **Protection of Geographical Indications (GI)**

The minimum standards for the protection of GIs are stated in Section 3 of Part II in the TRIPS Agreement from Articles 22 to 24.

Article 22 states that unless a GI is protected in the country of origin, there is no obligation under the TRIPS Agreement for other countries to extend reciprocal protection. This means that while TRIPS provides for the minimum protection of GI on an international level among the Member states, the Member states will not be able to enjoy the benefits of these protections until and unless they incorporate GI protection laws into their own legal system.

Article 22 provides for minimum protection of GI but Article 23 provides for the additional protection of GIs only if the GI is concerned with wines and spirits. This means that wines and spirits-related GIs should be protected even if there is no risk of misleading or unfair competition. Only in the cases of wines and spirits, the TRIPS takes an overprotective stance whereas in other cases it only provides for the bare minimum protection.

Whereas Articles 22 and 23 of the TRIPS Agreement provide provisions relating to the protection of GIs, Article 24 lays down certain exceptional cases where the protection given to a GI may be withdrawn or nullified. In some cases, geographical indications do not have to be protected or the protection provided is limited. For example, when a name has become a common/generic term such as the word “cheddar” refers to a particular type of cheese not necessarily made in Cheddar, UK and when a term has already been registered as a trademark are the instances where a GI can cease to exist.⁶

TRIPS is the multilateral agreement that governs the protection granted to GIs on an international level. Before TRIPS was enacted, there was no multilateral agreement that contained all the provisions regarding the protection of GIs. Some provisions were listed here and there in different conventions before the enactment of TRIPS but there was no uniform

⁶ www.wto.org/english/tratop_e/trips_e/gi_background_e/htm, Geographical Indications in general published by the Information and Media Relations Division of the WTO Secretariat

code that governed the whole world. For example, the Madrid Agreement of 1891 contained provisions related to the indication of source whereas the Paris Convention of 1883 and Madrid Agreement of 1958 contained provisions related to the appellation of authority. But since these agreements were not signed by a large number of countries, none of the above-mentioned agreements except the TRIPS could provide for a uniform code that could protect the GIs of the member nations on a large scale.

LITERATURE REVIEW

1. MEGHNA BISWAS, TRIPS AGREEMENT AND EXTENDED PROTECTION OF GEOGRAPHICAL INDICATIONS, 4 INT’I J.L. MGMT. & HUMAN. 2872 (2021)⁷

This research paper discusses the provisions for the protection of GI under the Trade-Related Aspects of Intellectual Property Rights (TRIPS). The author of this paper first starts off by first writing about the historical background of the TRIPS and how it first came into being. Then she states what geographical indication is in detail. After the author has explained both TRIPS and GI, she starts the next section of this research paper which established the relationship between TRIPS and GI. Articles 22 and 23 of the TRIPS that provide protection to GI are elucidated in detail by the author. In the end, the author concludes this research paper by presenting her opinion that the protection of GI has gone stale in the past few years and that the protection of GI as presented under Article 23 should be extended to other goods apart from just wines and spirits. The research gap that can be identified in this research is that the author did not mention Article 24 of the TRIPS which also covers provisions related to the protection of GI anywhere in this paper.

2. MICHAEL HANDLER, THE WTO GEOGRAPHICAL INDICATIONS DISPUTE, 69 MOD. L. REV. 70 (2006)⁸

This paper discusses the legal issues related to geographical indications between the EC, Australia, and the USA. A dispute ongoing in the World Trade Organization (WTO) has been addressed in this paper by the author. The dispute has been popularly known as European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs. The Dispute Settlement Body of WTO was asked by the US and

⁷ Meghna Biswas, Trips Agreement and Extended Protection of Geographical Indications, 4 INT’I J.L. MGMT. & HUMAN. 2872 (2021).

⁸ Michael Handler, The WTO Geographical Indications Dispute, 69 MOD. L. REV. 70 (2006).

Australia to decide on the issue of whether the European Communities' way of providing protection to their own GIs was in accordance with the provisions of the TRIPS Agreement. The author then discusses the significance of this dispute since this is one of the major disputes that discusses the protection of GI pertaining to food items. Though the author states that this dispute, even if ruled against the EC, will not force them to change their protection provisions, he is hopeful that this will help other countries also aggressively opt for WTO dispute settlement mechanisms in case a dispute arises. The research gap that can be identified in this research paper is that the author does not provide a conclusion to this paper and does not provide any measures that can be taken by Australia and US to resolve this dispute in a more advantageous manner.

3. IRINA KIREEVA & BERNARD O'CONNOR, GEOGRAPHICAL INDICATIONS AND THE TRIPS AGREEMENT: WHAT PROTECTION IS PROVIDED TO GEOGRAPHICAL INDICATIONS IN WTO MEMBERS, 13 J. WORLD. INTELL. PROP. 275 (2010)⁹

The research paper starts off by stating the definition of Geographical Indications as it is recorded in the TRIPS Agreement. Then, the author moves on to elucidate the various types of protection that can be provided to a GI in a member state of the WTO such as passive protection and sui generis protection. Afterward, the process of how registering a GI and obtaining international-level GI protection among the member states is explained by the author of this research paper. The protection of GI as trademarks is also discussed by the author in this paper. Many famous GIs are mentioned in this paper such as Darjeeling Tea to help the readers of the paper understand the dynamics involved in the protection of GI under TRIPS. The research gap that could be identified in this paper is that the author failed to touch upon the provisions of the TRIPS protecting the GI amongst member states. The author did not make a mention of either Articles 22, 23, or 24 of the TRIPS in this paper that explicitly deal with GI protection.

⁹ Irina Kireeva & Bernard O'Connor, Geographical Indications and the TRIPS Agreement: What Protection is Provided to Geographical Indications in WTO Members, 13 J. WORLD INTELL. PROP. 275 (2010).

4. TUNISIA L. STATEN, GEOGRAPHICAL INDICATIONS PROTECTION UNDER THE TRIPS AGREEMENT: UNIFORMITY NOT EXTENSION, 87 J. PAT. & TRADEMARK OFF. SOC'Y 221 (2005)¹⁰

The paper starts off by introducing the different aspects related to TRIPS that are connected to the protection of GIs. After explaining TRIPS provisions, the author then moves on to discuss exactly what geographical indications are. Then the reason why GI is provided protection is elucidated by the author. One research gap that can be identified here is that instead of starting from Article 22 of the TRIPS to explain the GI protection provisions provided by the GI, the author starts directly by explaining Article 23 which provides for additional protection to wines and spirits. Another research gap that can be identified here is that the author has based his research on biases towards the US markets rather than taking a global view of the same.

LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

- **Introduction**

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was signed on 31st October 1958. This agreement ensures that in the member states, appellations of origin receive protection in case they are protected in their country of origin. The Lisbon Agreement also specifies the provisions for what qualifies as an appellation of origin as well as the protection provided to the appellation of origin.

The Lisbon Agreement came into force in 1966 and was revised in Stockholm in 1967 and then amended in 1979 as well as in 2015. As of 2015, 30 states are party to the convention and over 1000 appellations of origin have been registered.¹¹

Some aspects of the agreement have been superseded by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

- **The Geneva Act of the Lisbon Agreement**

The Lisbon Agreement was amended in May 2015 and due to this amendment, the Geneva Act was adopted. Due to this amendment, the name of the Lisbon Agreement was changed to

¹⁰ Tunisia L. Staten, Geographical Indications Protection under the TRIPS Agreement: Uniformity Not Extension, 87 J. PAT. & TRADEMARK OFF. Soc'y 221 (2005).

¹¹ About Lisbon Agreement by WIPO, retrieved on 13th November 2022

the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.¹² The Geneva Act extended protection to GI in addition to the already existing protection to the appellations of origin. The Geneva Act came into force in the year 2020.

The Geneva Act was signed by 13 countries at the initial stage: Bosnia and Herzegovina, Burkina Faso, Congo, France, Gabon, Hungary, Mali, Nicaragua, Peru, Romania, and Togo. Further along, it was ratified by 5 more parties namely Albania, Cambodia, European Union, North Korea, and Samoa.¹³

- **Areas of GI associated with the Lisbon Agreement, 1958**

The Lisbon Agreement of 1958 was only responsible for the protection of appellations of origins on an international scale. Though appellations of origin were termed to be intertwined with GI very closely GIs were not provided with any protection under the Lisbon Agreement in the year 1958.

The Agreement defines appellations of origin as “the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors.”¹⁴ This definition has been incorporated in Article 2 of the Agreement.

The Lisbon Agreement extended the protection of appellations of origin to “any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as kind, type, make, imitation or like.”¹⁵

While TRIPS makes it mandatory for a GI to be registered in its country of origin, the situation is the same in Lisbon Agreement as well. The Agreement makes it mandatory for the appellation of origin to be protected in its country of origin for it to be eligible to be protected under the Lisbon Agreement of 1958. Also, in addition to the above-stated condition, the appellation of origin must be registered in the International Register of the World Intellectual Property Organization (WIPO).¹⁶

¹² Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

¹³ Geneva Act, Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

¹⁴ Article 2 of the Lisbon Agreement, 1958

¹⁵ Article 6 of the Lisbon Agreement, 1958

¹⁶ www.wipo.org, International Register

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was revised in Stockholm in the year 1967 and then was further amended in the year 1979 with amendments pertaining to Articles 9 to 12 introduced into the Agreement on revision and amendment.

- **Areas of GI associated with the Geneva Act of the Lisbon Agreement**

The Geneva Act of 2015 amended the Lisbon Agreement and widened the scope of the Agreement vastly. In addition to the protection provided to appellations of origin, the Geneva Act modernized the Lisbon Agreement and expanded its scope of protection to all geographical indications. Similar to the TRIPS, the protection to GI provided under the Geneva Act can only be availed by a member state if the GI is protected within the member state's territory under the jurisdiction of the local laws.

Also, each contracting member state is obliged to protect on its territory, within its own legal system and practice, the AO and GI of products coming from other signatory countries for which it accepts protection.

The Lisbon Agreement of 1958 and the Geneva Act of 2015 are collectively known as the Lisbon System. **The Lisbon System is a practical and cost-effective solution for the International Registration of Appellations of Origin and Geographical Indications, offering protection in 37 contracting parties, covering up to 56 countries, through a single registration procedure and one set of fees.**¹⁷

The Lisbon Agreement of 1958 had 30 contracting parties and each party was a separate member state. The Geneva Act of the Lisbon Agreement introduced a new provision that allowed for special unions to also become contracting parties to the Agreement. This resulted in the European Union ratifying the Geneva Act which in turn resulted in the Geneva Act providing GI and AO protection to each member of the European Union. The Geneva Act of the Lisbon Agreement has 8 contracting parties with a total number of countries being provided protection 33. Altogether, the Lisbon System offers protection to over 54 countries worldwide.

¹⁷ www.wipo.int, Lisbon – The International System of Appellations of Origin and Geographical Indications

- **Should INDIA become a member of the Geneva Act of the Lisbon Agreement, 2015?**

The Indian GI Registry has a vast number of registered and pending GIs and therefore, it would prove to be beneficial to India if it were to become a member of the Geneva Act of the Lisbon Agreement.

India neither signed the Lisbon Agreement nor it became a member of the Geneva Act of the Lisbon Agreement. In the past, India did not require international protection for their intellectual property since the country itself was still undergoing a high level of changes and evolution. But now, the scenario has changed drastically. India has now become one of the fastest developing nations and as stated above has a vast number of registered and pending GI in the Indian GI Registry.

India's rich cultural diversity and production of area-specific products have led to the formation of several GIs. As of March 2020, India had 361 registered GIs and 222 pending applications under the Geographical Indications of Goods (Registration & Protection) Act, of 1999.¹⁸

If India becomes a member of the Geneva Act of the Lisbon Agreement, then India's around 400 registered GIs would be able to be granted protection on an international level for their GIs in addition to the protection provided by TRIPS.

Since India had already signed TRIPS, technically, India's GI is protected by the TRIPS internationally and the GI Act, of 1999 nationally. But with the ever-evolving society come ever-evolving origin products. India, especially now, needs a mechanism that can protect its appellation of origin products because, with the increase in the registration of different kinds of intellectual property products in India, it is no doubt that in the coming years, India will need an AO protection mechanism. If India becomes a member of the Geneva Act, then in addition to GI protection, India will also be provided with AO protection as long as India incorporates AO protection clauses in its own legal system first. This will prevent India's original products from being misused by other nations.

¹⁸ www.spicyip.com. Should India join the Geneva Act of the Lisbon Agreement, 2015?, by Latha Nair, published on 12th March, 2020.

CONCLUSION

The Lisbon System has proven to be an immensely efficient protective system. Since the Geneva Act allowed for the protection of GI in addition to the protection of AO, the Act also introduced a single registration procedure that is simple and widely accessible to facilitate the international protection of GI and AO. This provides a golden opportunity to a nation that has not signed or ratified the Geneva Act. The nation can simply become a member of the Geneva Act of the Lisbon Agreement and gain geographical indication and appellation of origin protection in over fifty countries. TRIPS only provides protection to GI and does not explicitly state the protection provisions for appellations of origin and the Lisbon Agreement of 1958 only provided for the protection of appellations of origin. Now that the Lisbon Agreement has been amended into the Geneva Act, 2015 this provides the non-member states with an opportunity to become a member of only one agreement and gain protection for two areas. Also, the registration process for the GI and AO is the same, making registration of either GI or AO very simple and efficient.

The Lisbon System helps in strengthening the economic value of origin products protected as GI or AO in third-party markets. Since the Geneva Act has clauses for protecting origin goods from being copied and sold, it helps sustain the brand value of origin goods which in turn increases people's reliability in that particular origin goods thereby increasing their economic value.

A non-member state can face many challenges in case its GI and AO are not protected on an international level. Some of these challenges are:

1. Any foreign party may misrepresent their product as a particular origin product in order to take advantage of the reputation and brand value of the product. This process of free riding cannot be fully stopped by becoming a party to the Geneva Act since only around fifty nations are a member of the Agreement but it would at least provide the origin product with protection in these fifty nations.
2. A third party may register any unregistered and unprotected GI or AO as their own and this would prevent the original product from being granted protection as a GI or AO.

3. With unprotected overuse, the name of the original product might get transformed into a generic name over time. A generic name is a name that is commonly used by the general public and these names cannot be granted protection as a GI or AO.

Hence, in times like now, it has become very important for a product to be given the protection of any form that is available whether it is a trademark, GI, or AO protection. To be granted these protections, a nation has to sign multilateral agreements regarding the different kinds of Intellectual Property Protection and to be granted protection for GI and AO, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Geneva Act of the Lisbon Agreement, 2015 are a must.

