

FULFILLING THE PURPOSES OF GI REGISTRATION IN INDIA: ROADBLOCKS AND SOLUTIONS

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ABSTRACT

The GI Act in India came into force in 2003 and since then there are 370 registered GIs in India. Registration of GIs has been going on in India on a large scale, however, what needs to be dwelt upon is, in this race of registering more GIs, is the purpose behind the registration of the GI forgotten? GI tag is given to a product because of its place of origin. The place of origin attributes to the quality, characteristics or reputation of the product. The purposes of the GI law are manifold; to give a sense of identity and security so that other producers not belonging to that geographical territory cannot mislead the consumers by portraying a wrong source of origin. However, along with this, another prime reason behind the GI registration is to help the producers fetch a premium price for their goods. However, fetching a premium price is not an easy task. It involves many steps like brand building, registration and promotion of Indian GIs in foreign countries, quality control, accumulating adequate funds for the GI management *etc.* This article is an analysis of the aforementioned steps to be taken after the registration of the GI, the hurdles in the process and how to overcome them.

Keywords : *geographical indications, law of GI, Indian GI, GI goods challenges, GI post registration challenges*

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I. Introduction

GEOGRAPHICAL INDICATIONS (*hereinafter* referred to as GI) is an indication, sign, name which is used on products to indicate that it originates from a particular location or territory. GI signifies that the product possesses certain quality, characteristics or reputation due to its geographical origin. India framed its legislation relating to GI after becoming a signatory to TRIPS. It was the result of India's obligation under the TRIPS Agreement. The legislation is titled as Geographical Indication of Goods (Registration & Protection) Act, 1999 (*hereinafter* referred to as GI Act). Before this legislation, GI related matters were dealt by various provisions

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of trade mark law such as certification trade mark (CTM) and collective trade mark. Also, the common law remedy of passing off was used in several cases. The essential purposes served by GI are protection against misleading information and protection against dilution of goods. It can protect consumers from being deceived and similarly protect producers of their reputation and good will in the market. Also, there lies a public interest policy of GI, that is to fetch a premium price thereby improving the socio-economic condition of the producers. However, to achieve this socio-economic development, a lot of steps have to be taken right from searching a potential GI product, filing the detailed application for GI to getting it registered. However, after registration, the task is not over, in fact, the real task starts then. This article addresses the key challenges like brand building, strategies to register and promote Indian GIs overseas, fund and quality control concerns which are important for making the GI registration a success.

II. Realising the purposes laid down by the Indian GI Act, 1999

The preamble of the GI Act states two purposes of the law, one is, registration of GI and other one is better protection of GI. The first purpose is easy to discern and there are currently 370 registered GIs in India; however, the second purpose of better protection of GI has not been explained in the Act. Hence, by reading the Act and the Rules, it can be inferred that better protection of GI means strong rights to the GI proprietors and users to exploit their products as well prevent it from infringement. Also, better protection entails the fact the GI tag to the products should be a tool for recognition and popularity of the product thereby fetching a premium price for the product. This in turn will bring positive socio-economic changes in the lives of the producers and other stakeholders of the GI product. In order to realise the aforementioned purpose, it is important to have a proper strategy. Without a doubt, finding a feasible and potential GI product is crucial. However, it is also essential to understand that registration is only the first step in the process of making a GI product successful. More challenging are the steps after registration of the GI, such as, brand building (creating awareness of the product and popularising the product etc.) which entails sufficient funds, promoting and registering the GI in important foreign markets (countries) and maintaining a consistent quality of the product.

III. Issues and Concerns of GI Product after the registration

Registering a GI is only the first step towards realising the full potential of a GI. Having a proper post registration strategy is extremely important for the success of a GI product. Post-registration promotion of the product and creating awareness is of foremost importance.¹ It has to begin with creating a brand image of a product. Creating a brand image requires proper logo, characteristics distinguishable from other products which should be made aware to the customers. Advertisements can also play a crucial role to reach the desired destination. Since the Act and Rules do not mandate compulsory consultation among stakeholders before registration of the GI, there is more likelihood for inadequate consultation. However, post registration, consensus amongst stakeholders on defining the product and control of quality (factors such as maintenance of uniform quality) of the product is important. There is need for capacity building and creating awareness among stakeholders as well as consumers. Only then can GI lead to socio-economic development of their producers.

Importance of Brand Building

Brand building is one of the most important steps towards successful implementation of a GI. In case of GI, it is important to understand that GI registration does not automatically lead to increase in sale of the product and subsequent benefits. Hence, effective marketing and other promotional efforts are instrumental in helping the consumer recognise and value the product. Building a brand and reputation of a product is a herculean task and needs time, resources, control and maintenance of quality and a good marketing strategy. Champagne is a good example, it took almost 150 years to build the reputation it has today. There have been stories where proper brand building has led to tremendous benefits including alleviation of socio-economic conditions of persons producing that product. One such example is that of Colombian coffee.

¹ Ruppel W. Sharma & Shraddha Kulhari, Marketing of GI Products: Unlocking their Commercial Potential *IIFT*, Oct., 2015, available at: <http://wtocentre.iift.ac.in/Papers/Marketing%20of%20GI%20Products%20Unlocking%20their%20Commercial%20Potential.pdf> (last visited on June 15, 2021).

*The case of Colombian Coffee*²

Colombia has been a coffee producing country for a long time. However, public awareness of Colombian coffee was very minimal. United States is one of world's largest coffee market, however, even the consumers in United States were unaware about existence of Colombian coffee. The association of coffee growers, names, federation of growers (FNC) understood the situation and contemplated ways to increase awareness amongst consumers on the origin of the coffee.³ The first step that FNC took was to hire a New York-based advertising agency. They started by creating a fictional character called Juan Valdez®. Juan Valdez was projected as wearing a Columbian hat and riding his horse through his coffee plantations in various advertisements where he was seen selecting and hand picking the coffee beans. Repeated telecast of this advertisement in North America was able to create a mind in the images of the consumers that Colombian coffee beans are selected, handpicked with a lot of care. Also, it was able to showcase Colombia as a destination for premium coffee. Creation of Juan Valdez is considered to play an important part in popularising Colombian coffee. The next step after popularising the coffee was to establish the reputation of Colombian coffee. It could be done by creating awareness in consumers about the genuine coffee. The term Colombian coffee could not be registered as trademark (TM); hence the logo of Juan Valdez was registered. They hoped to give license to coffee roasters which dealt with exclusive Colombian coffee.⁴ However, the process was difficult as many coffee roasters and marketers were not willing to take the license as they did not want to fulfil all the conditions laid down in the licensing agreement (using another logo/brand with their own brand). Hence to ensure compliance, they decided to use CTM as the next step. The state of Colombia along with the FNC registered the term "Colombian," in context to coffee as a certification mark in the states of Canada and United States.

(i) Steps in Quality Control

² Colombian Coffee Federation (FNC), "Making the origin count: The Colombian Experience" *WIPO*, Sep. 3, 2010, available at: <http://www.wipo.int/ipadvantage/en/details.jsp?id=2617> (last visited on May 21, 2021).

³ Nadja El Benni & Sophie Reviron, "Geographical Indications: Review of seven case-studies world wide", Working Paper No 2009/15 MARCH 2009, available at: https://www.researchgate.net/publication/265618582_Geographical_Indications_review_of_seven_case-studies_world_wide?enrichId=rgreq-042038603a7007f3678c84100385d069-XXX&enrichSource=Y292ZXJQYWdlOzI2NTYxODU4MjtBUzozMjU3MDgyNTQ1OTcxMjZAMTQ1NDY2NjMwNzg2OA%3D%3D&el=1_x_3&_esc=publicationCoverPdf (last visited on Apr. 01, 2021).

⁴ *Ibid.*

The FNC understood that the whole procedure will be a failure if quality is not maintained. They started an initiative on farmer's training on quality maintenance in 1959. The programme included strategy such that coffee specialists, technicians shall visit the farmers at regular intervals and apprise and train them on new technologies, steps to maintain consistent quality and guide them on how to meet the requirements needed under the certification mark. It was seen that with such strict adherence to quality, their consumer base increased in countries such as US, Canada, Spain etc.⁵

(ii) Geographical Indications

The CTM process proved expensive. Also, they were not getting protection against Colombian type or similar coffee. Hence, they started looking for other options which culminated into registering Cafe de Colombia as a GI. Later, they filed for registration of Columbian coffee as a GI in EU and got it registered in 2007. In America, they continued their strategy of trademark registration for protecting the coffee.

(iii) Other Strategies employed for Protecting Colombian coffee

In addition to the aforementioned steps, they sought trademark protection for 'Juan Valdez', the style of writing Juan Valdez, word mark "100% Colombian coffee", Buendia, Variedad Castillo and Juan O'Clock. The FNC established partnership with many internal and external collaborations which financially helped them as well as in other programmes. It also has partnership with the Colombian government. The FNC was able to make substantial contributions to Colombian coffee, the growers and the development of the overall country itself. It was basically an organization of small farmers and through its innovative strategies and co-operation amongst themselves was able to do wonders and develop and benefit their industry. The innovative strategies they started included brand building, registration both as CTM and GI. It was able to establish Colombian coffee as one of the world's best, which increased the country's coffee exports on one hand, and was able to get returns to the growers and traders on the other hand. Internationally, "Juan Valdez" was a huge success and was able to create a brand for the coffee. It was also claimed that Colombian coffee fetches about 20% higher price than other coffee.⁶ The success of Colombian coffee can thus be attributed to many factors, which

⁵ International Coffee Council, "World Coffee Trade (1963 – 2013): A Review of the Markets, Challenges and Opportunities Facing the Sector" *International Coffee Organization*, March 24, 2014, available at: <http://www.ico.org/news/icc-111-5-r1e-world-coffee-outlook.pdf> (last visited on Apr. 15, 2021).

⁶ *Ibid.*

included clever use of IP laws, early realisation of branding, differentiating and marketing the product which lead to the success of the GI. The move from TM to GI was also instrumental for the success.

Brand Building of Indian GI products

Domestic markets are not the only focus of GI. It needs to be exposed to foreign markets especially in developed countries where the consumers have good financial resources and are willing to pay more for good quality products. Except a handful of Indian GIs, most GI products from India have not been able to establish their images in these foreign markets which is a huge setback. Consumers have to be made aware of the existence of a GI, its specialty and they have to be convinced of the quality. The way the FNC of Colombia by repeated advertisements in North America and other countries where there was a huge demand for coffee tried to bring awareness amongst consumers about Columbian coffee is noteworthy.

Once the consumers are convinced to try the new product, what needs to be followed is a different marketing strategy from experimental use to regular use. This is challenging as there will be competitors with new products. The traders have to be brought into confidence and they must be lured to use only the origin labelled GI products.⁷ In case of India, what has been observed is that after registration of GI, steps for brand building is not taken. In very rare cases, such as Pochampally Ikat,⁸ the GI registration have been able to garner public attention. The

⁷ May T. Yeung & William A. Kerr, "Geographical Indications, Conflicted Preferential Agreements, and Market Access", 16(2) *J. Int. Economic Law* 409-437 (2013).

⁸ Ikat got a lot of publicity after its registration as GI and that publicity fetched it a huge consignment from Air India who placed a huge order for *Ikat* sarees as its uniform for airhostesses in the year 2005. This huge consignment made them realize about their infrastructural limitations and the small manufacturing units in the cluster were not in a position to complete the order on time. This led the producers to change their strategy and they approached the state government as well as Central Government for supporting them. Along with immediate help, they also started long discussions among state government, IL&FS (Infrastructure Leasing & Financial Services Limited), Textiles Committee, culminated into developing a 'Handloom Park'. The Handloom Park was supposedly to cover a huge area and it would spread across forty villages producing '*Pochampally Ikat*'. The park would have production facilities of more than 2000 looms with 4 million metre annual production capacity. Other facilities included using machineries in pre-weaving; dying processes; art testing labs; labs for design; training centres; and other infrastructural facilities for large scale production. The weavers shall be provided raw materials. They just had to go there to weave. This process was designed to give specialization, division of labour and low cost of production. The artisans were to be given various facilities and training which will aim at honing their skills. It was planned that initiatives will be taken to associate renowned designers with the Handloom Park and IL&FS will provide professional support. There were deliberations on technology upgradation on looms resulting in reduction of sound pollution, and improving productivity. It was believed that small weavers will be able to overcome their constraints

popularity of *Ikat* increased with its registration as GI and this popularity paved the way for product diversification and design innovation.⁹ It is important that not only GI protection creates a mechanism for securing the product from unauthorised mass poaching but also bringing a positive change in terms of price, quality and productivity.¹⁰ In case of *Ikat*, the stakeholders even emphasised on quality control and recently the initiative of developing a Handloom park for *Ikat* throws positive light.¹¹ But examples like that of Pochampally *Ikat* are rare. Most GIs in India are not even venturing into this territory. Let alone foreign countries, many GIs will not be recognised in other states of India. Hence despite the GI registration, these products are not able to fetch premium prices and benefit the producers.

Important Strategies for promoting and exporting Indian GI products in foreign countries

GI is based on fetching more price for premium quality product. It is important thus to focus on foreign countries, especially those where the consumers are economically better off and are more than willing to pay more for a better quality product. A very interesting report was submitted to Export Promotion Council for Handicrafts (EPCH) on promoting handicrafts of India in foreign countries. The report stated that different methods have to be taken in different countries. The report stated that to enter and exploit a foreign market, a proper survey and planning is required.¹² The first step involved was to survey the market opportunity in other countries without looking into the strengths and weakness of India's producers and exporters. It was mainly to identify markets which have potential for exports of handicraft goods. Then, the second step was to figure out the competency of the Indian producers and exporters in each category of goods. Factors that influence the imports need to be observed. Consumer preference is of utmost importance. Equally relevant is to understand the market structure of the foreign

in supply thus helping the good to reap benefits of GI registration and help them build '*Pochampally Ikat*' as a brand.

⁹ Centre for WTO studies, "Market analysis of Pre and Post Registration Period of GI Act" *IIFT*, available at: <http://wtocentre.iift.ac.in/UNCTAD/01.pdf> (last visited on Feb. 8, 2021).

¹⁰ *Ibid.*

¹¹ Centre for WTO Studies, Kasturi Das, "Socio-economic implications of protecting GIs in India" *IIFT*, Aug., 2009, available at: http://wtocentre.iift.ac.in/Papers/GI_Paper_CWS_August%2009_Revised.pdf (last visited on Apr. 01, 2021).

¹² Dwijen Rangrekar, "Socio-economics of geographical indication empirical reviews from Europe" *Intellectual Property Rights and Sustainable Development* May, 2004, available at: <https://www.iprsonline.org/resources/docs/Ragnekar%20-%20Socio%20Economics%20of%20GIs%20-%20Blue%208.pdf> (last visited on Apr. 01, 2021).

country and its distribution channel. Market share of top import countries is to be looked into as well. Primary research may be particularly beneficial which includes interviews with importers, retailers, distributors and associations. With the help of secondary data sources such as published data, the primary data can be verified. Other cultural factors such as season, festival etc. can be kept in mind.¹³In the same study,¹⁴ factors which were noted were that in the foreign market ,delivery time, product variety, innovativeness, quality, price, marketing strategies, service *etc.* is very important. They analysed the potential importing nations of India primarily in handicraft sector and suggested that it is important to identify large markets that are best suited or potentially suited for India. Smaller markets that offers good potential to India can be the country's targeted market. The report further recommended that EPCH should develop a database of important wholesale importers and agents in important exporting nations. EPCH should help build a platform for communication between manufacturers/exporters and wholesale importers/ buying and selling agent.

Important Recommendations for Exporting GI goods

Some of the important ways to export GI goods included methods such as Fair trade channel, direct marketing, pre-importation promotion, participation in trade fair.¹⁵ Internet advertising and publicity was cited as other important methods. Some leading fair trade associations are FTF¹⁶, EFTA¹⁷, NEWS¹⁸, FTA.¹⁹ It could help producers in rural areas in accessing markets. Direct

¹³ Frost & Sullivan Report, "Market Feasibility Study and Business Development Plan for the Handicrafts Sector" *Export Promotion Council for Handicrafts, New Delhi, India, Aug., 2005, available at:* http://www.epch.in/projects/Handicrafts%20Final%20Report_August,%202005.pdf. (last visited on Apr. 20, 2021).

¹⁴ *Ibid.*

¹⁵ It is a global network of importers, retailers and producers. This channel of trade is outcome of the fair trade movement which led to the establishment of the International Federation for Alternative trade (IFAT) in Netherlands in 1989.

¹⁶ FTF is an association of fair trade wholesalers, retailers, and producers who are committed to provide fair wages and good employment opportunities to economically disadvantaged artisans and farmers worldwide. The membership is open to groups from all over the world but the members of FTF is mostly made up of North American organizations.

¹⁷ European Fair Trade Association (EFTA) is a network of 11 Fair Trade organizations in nine European countries which import Fair Trade products from some 400 economically disadvantaged producer groups in Africa, Asia and Latin America.

¹⁸ Network of European world Shops (NEWS) was established in 1994, as a network of national associations of world shops, representing more than 2,700 shops in 13 countries. NEWS facilitates cooperation and networking between its members by providing information (newsletters, website, workshops, etc. and by organizing a biannual European world shops conference. It develops and coordinates European-wide campaign activities and provides members with the materials needed to participate.

marketing is an important tool to spread export to other countries. Setting up showrooms in targeted importing countries could be a good option to promote export.²⁰Pre-importation strategies are extremely important specially for GI goods. It can include participation in fairs (both local handicraft and international fairs), advertisements through various mediums etc. Promotions after importation is also crucial. Usually importers take the responsibility but some steps such as awareness creation, brand building, advertisements can be of help. The labelling and important information about the product (product literature) is also very important. Hence for the Indian GI producers, attending fairs are very important. They can also take the aid from various export promotion bodies. Such bodies can not only provide funds but make them aware of the fairs that are organised relating to their products. The export promotion bodies can compile a list of such events and regularly update it for the benefit of the producers. The other role that can be played by such export promotion bodies is helping them in advertising their products *via* technology and can also guide and aid them in maintaining websites.

Publicity in the form of repeated advertisements can lead to success of exports as was seen in the case of Colombian Coffee. Promotion councils must have a proper publicity programme and create awareness among potential exporters. Fair Trade organizations, other organizations such as CHF International, import promotion offices of Japan, that is, JETRO & JICA, AusAID of Australia, Centre for promotion of Imports from Developing countries (CBI) of the European Union etc. can be useful for publicity. Thus all these methods may be useful for brand building the product, especially in targeted foreign countries.

Registration in Foreign Countries

One of the important step after registration in India is to seek GI registration in foreign countries, especially the ones which are potential markets of Indian GI products. However, there are various challenges in this front, including financial challenges of travelling to other countries and

¹⁹ FTA - Fair Trade Association - The FTA was established in 2003 in Australia. It is an association of importing & wholesaling associations from Australia & New Zealand.

²⁰ Based on interactions with associations especially Department of Export Promotion, Thailand and Malaysian Handicraft Development Corporation (MHDC) it was ascertained that other competing countries too have already established or are planning to establish showrooms in significant importing countries mainly USA and European Union countries to showcase their country's crafts products. Frank & Sullivan EPCH.

filing for registration, there are also technical issues in some countries such as GI registration can be granted only to an association of producers, whereas in India most of the GIs are owned by authority or organisation established by law or in short government agencies. Nevertheless, the only international legal instrument for registering Appellation of Origin (AOO), a neighbouring concept of GI was the Lisbon Agreement for the Protection of Appellation of Origin and their International Registration (hereinafter Lisbon Agreement). India, however, is not a member of this Agreement. The definition of AOO as given in the Lisbon Agreement is that it is the name of a particular territory, locality, region or country and it is used as a designation to indicate that the good has originated in such a place and the quality and other characteristics of the good can be linked to the geographical environment. All AOO are GIs but all GIs are not AOO. There were certain disadvantages of the Lisbon Agreement.²¹ To be a AOO, firstly it has to be a name of a place (for example, Basmati Rice will not be an AOO as it is not the name of a place). A good which has only a reputation that it comes from a particular place but does not have any quality or special characteristics as it comes from that place will be a GI but won't be an AOO. The first one is that only the geographical names will be protected. Other names which are not geographic will not be protected, for e.g., Basmati will not qualify under the Agreement as it is not a geographic name. Secondly, the indications which are based on the reputation due to involvement of the human factors and has nothing to do with the geography including factors such as, soil, climatic factors will not be protected under this Agreement. For e.g., watches 'Made in Switzerland' will not qualify. Thirdly, it is important that the names which are to be protected have to be registered in the country of origin.²² It is important to note that under the Agreement, member states are obliged to protect even though the name has become generic in their respective countries.

The Geneva Act of the Lisbon Agreement

The Geneva Act was enacted in 2015 to reform the Lisbon Agreement which came into force in February, 2020.²³ Some of the highlights of the Geneva Act are that with the help of a single

²¹ Intellectual Property Watch, "Q&A with The EU on the Benefits of Amending the Lisbon Agreement, 2015" *IPW*, May 05, 2015, available at: <https://www.ip-watch.org/2015/05/05/qa-with-the-european-union-on-the-benefits-of-amending-lisbon/> (last visited on Apr 29, 2021).

²² *Id.* at 19.

²³ WIPO, "EU Joins Geneva Act of Lisbon Agreement, Enabling entry into Force" *WIPO*, Nov. 26, 2019, available at: https://www.wipo.int/pressroom/en/articles/2019/article_0015.html (last visited on Apr. 29, 2021).

application, a person can seek registration in all the member nations of the Act. Under the Act, countries can jointly file for registration of the goods (there are certain GI good which transcends national boundaries, for example, Basmati Rice, which is grown both in India and Pakistan). The protection offered for such AOO or GI is against same kind of goods not originating in the same geographical area or not complying with the requirements for using the GI or AOO and also on goods that are not of the same kind or on services, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the GI or AOO concerned, and would be likely to damage their interests, or, where applicable, because of the reputation of the GI or AOO in the relevant country, such use would unfairly dilute or take advantage of, that reputation. Moreover, unlike the TRIPS Agreement, it does not favour just wines and spirits,²⁴ but the protection is offered against any such use which amounts to imitation even if the true origin of the goods is indicated or the GI or AOO is accompanied by terms such as “style”, “kind”, “type”, “make”, “imitation”, “method”, “as produced in”, “like”, “similar” or the like. India should definitely deliberate on joining it especially because some of the GI products are premium export products.

Importance of Quality Control in the Post Registration Stage

Co-ordination and co-operation in the supply chain is vital to any success of GI. Although the producers are competitive at one level, they have to understand that they cannot act in isolation and have to co-operate since they are dealing with a common GI product. One such instance where co-ordination and co-operation is required is for maintaining consistent quality. It is of importance to understand that a GI products’ success depends on maintaining consistent quality. Hence quality standards have to be met. All the actors who are part of the supply chain has the duty and responsibility to conform to the quality related specifications which are laid down under the GI Act. However, in the beginning itself it is to be understood that agreeing on quality standard by all producers/ registered users of GI is challenging as all may not agree to same standards. The second challenge lies that even after agreeing, if they will in practice conform to the practice or not. One

²⁴ Special protection for wines and spirits is included in art. 23 of the TRIPS. It means that all member-states of TRIPS must grant owners of GI of wines and spirits the right to file action against use of any GI to indicate wines and spirits which does not originate from a protected geographical territory. It is also applicable in those cases wherein the actual origin of the wine and spirit is provided or even in those cases where the indication is followed by words such as similar to or imitation of protected GI.

user not adhering to the quality standards can lead to spoiling the entire brand image of the product. Hence it is at times suggested that if someone does not adhere to the specifications, they should be excluded. GI tag should be allowed to use on condition of honesty, integrity and performance.²⁵ Hence it is important that at periodic intervals, a regulatory body should check the quality.

Concerns relating to quality control of GI products in India

In India, rule 32(1)(6)(c) provides for inclusion of mechanism to ensure that the standards, quality, integrity and consistency or other special characteristic in respect of the goods to which the GI relates which are maintained by the producers, maker or manufacturers of the goods, as the case may be. It also provides that while filing GI application, particulars of the inspection structure, if any, to regulate the use of the GI in respect of the goods for which application is made in the definite territory region or locality mentioned in the application.²⁶ The phrase ‘if any’, can also mean that the inspection structure is not mandatory for quality control. In many cases giving details of about proposed plans on quality control may be considered sufficient for getting GI registered.²⁷ It is important that the GI Registry pressurises on fulfilment of these criteria properly. The positive side is that some GIs are working in this direction like that of Darjeeling tea. Darjeeling tea got registered in 2004 but they have had an inspection structure since 2000. The system includes certifying Darjeeling tea for exports. The system requires all exporters to obtain license from the Tea Board of India. The licensee has to provide information relating to production, sale etc of the tea. The Tea Board can thus come to know as to how much actual tea is produced. The export certificate is granted only after cross checking the data and checking garden invoice number. The customs have been notified to allow exports only for those which carry the certificate from the Board. This ensures that only genuine Darjeeling tea is leaving the country as exports.

²⁵ Yeung, M.T. & W.A. Kerr, “Increasing Protection of GIs at the WTO: Clawbacks, Greenfields and Monopoly Rents, CATPRN Working Paper 2008-2”, University of Guelph, Canadian Agricultural Trade Policy Research Network, available at: http://www.uoguelph.ca/~catprn/PDF/Working_Paper_2008-02_Kerr.pdf (last visited on July 05, 2021).

²⁶ GI Rules, 2002, r. 32(1)(6)(f).

²⁷ The application of Muga silk which was registered in 2006 is an example of this.

Problem relating to Quality control in case of two famous Indian GIs: Banarasi Saree and Alphonso Mango

(i) Banarasi Sarees

In the case of Banarasi sarees, it was found that most GI users/ producers were not serious about quality control and there was subsequent loss of reputation for low quality products.²⁸ Such state of affairs is not uncommon for other goods in India.²⁹ Despite the considerable reputation that the Banarasi silk industry enjoys in the domestic and international markets, and in spite of the GI registration, the weavers face tough competition from cheap silk fabric imports from China and Surat. In order to compete with power loom-based manufacturers, master weavers and artisans have also started to resort to strategies such as passing off synthetic fibres for silk and power-loom fabric as handloom. This, in turn, has compromised the quality of dyes and designs of the traditional sarees. To date, the availability of these inferior-quality products has reached a juncture that it is difficult for the ordinary Indian consumer to be sure of the quality of the Banarasi saree he or she is buying. This uncertainty raises transaction costs for the consumer and unfortunately operates against the collective group of producers that have seen the sales of their artisans' products greatly reduced.

There were five inspection group identified by the GI applicants of Banarasi saree. These included Department of Handlooms of government of UP, Master Weavers' Self-Regulation and the Textiles Committee, the Development Commissioner (Handlooms), the Weavers' Service Centre.³⁰ The Textiles Committee was the body to supervise quality control in the textile. The Export Promotion and Quality Assurance division of the Textiles Committee provide inspection services for various importer, exporter, manufacturers etc and is an accredited inspection body of India. The Textiles Committee also certifies handloom products. Like European models, the certification bodies of agricultural produce are accredited in accordance with European standard EN 45011 or ISO/IEC Guide³¹. What is observed in this case is that the Textile Committee only facilitated the registration of GI but it did not really focus on the aspect of quality control or to

²⁸ Yogesh Pai & Tania Singla, "Vanity GIs': India's Legislation on Geographical Indications and the Missing Regulatory Framework" in Irene Calboli & Wee Loon Ng-Loy (eds.), *Geographical Indications at The Crossroads of Trade, Development, And Culture* (Cambridge University Press, UK, 1st edn., 2017).

²⁹ *Ibid.*

³⁰ *Id.*, at 16.

³¹ *Ibid.*

inspect whether the goods are in compliance with the specifications specified or not.³² Banarasi silk now operates on other certification agencies such as Silk Mark and the Handloom Mark. It is also noteworthy that legitimate users of the Banarasi GI for sarees are not in the financial position to bear the cost of protracted litigation against traders involved in non-compliance with the product specification, which in turn diminishes the premium value that a consumer of Banarasi sarees would have ordinarily paid for the Banarasi GI due to inferior alternatives.

(ii) Alphonso Mangoes

Another instance is that of another famous Indian GI, Alphonso mangoes. In 2014, the European Union banned a few items of India which included Alphonso mangoes because some consignments of Alphonso mangoes and other products were contaminated with pests.

The inspection and certification for agricultural food products in India is vested on the Agricultural and Processed Food Products Export Development Authority (APEDA). APEDA is a statutory body established in 1986 and it fixes standards and specifications for agricultural products for the purpose of exports and it has also got powers to carry out inspection at storage houses where such products are kept to ensure quality. State-of-the-art packaging houses in major production zones are set up to ensure uniform quality for export consignments to maintain the highest quality standards in mangoes. APEDA has also put internationally recognized treatment facilities.³³ Alphonso got the GI tag recently in October 2018. The group of producers that applied for the GI for Alphonso mango, Dr Balakrishna Sawant Konkan Krishi Vidyapeeth ('BSKKV') stated that for the internal quality check of the mangoes, the BKSSV and the Department of Horticulture, College of Agriculture, will have a Standards and Quality Committee, which shall act as the inspection body and will try to ensure high standards in the quality of the mango. The long-term success of the GIs and the producers of Alphonso mangoes certainly require a high level of product quality control and traceability of products from the producers to the market. The EU ban on Indian mangoes indicates that internal quality control mechanisms to protect a GI product have to be carefully coordinated with the specific requirements of applicable Sanitary and Phytosanitary (SPS) measures in the country where the exports are destined. EU has strict standards to ensure the quality of all European products. The enforcement of standards is entrusted to competent authorities who are designated by

³² *Ibid.*

³³ Like hot water treatment, vapour heat treatment and irradiation facilities at various places along the production belt.

member states to carry out the task of compliance with the requirements needed under the law relating to the quality schemes. The reports on quality control are included in yearly reports to be submitted to the European Union. During the registration process of GI (PDO and PGI), it is compulsory for applicant to mention certification bodies for ensuring the specified specifications. The certification bodies come under the control of competent authorities. Thus, if Indian GIs want to compete in the world market or even in the national level market, adhering to quality parameters and proper inspection is mandatory.

Steps that can be taken for quality control in India

The law in India could be strengthened if an independent neutral agency is appointed to check and maintain the quality standards of the GI-denominated products post-registration of the GI. It should also be noted that the current legislative framework has no teeth as there is no liability imposed on inspection bodies under the current GI Act in case they do not conduct verification to check compliance with the product specifications of the associated GI. Under the current law, if members of the collective group entitled to use the GI, or consumers, can hold a member of the group accountable for not complying with the quality standards of the products only by moving an application to cancel the registration of the non-complying member from the list of authorized GI producers under section 27 of the Act, this might lead to more seriousness in the quality of production. At times it is reported that popular GI denominated products lose their markets to duplicate products that are sold by ‘insiders’. Further, the availability of cheaper raw material imports is promoting the sale of inferior-quality products. These products are handed to the unaware consumers who still rely on the name of the GI-registered products and thus are lured into paying premium prices for products that no longer carry the same characteristics of the genuine GI-denominated products. Periodic surprise visits, meetings with the producers regularly discussing about the quality can be good steps in this regard. As was seen in the case of the case of Colombia coffee earlier, the growers association FNC understood that the whole procedure will be a failure if quality is not maintained. They started an initiative on farmer’s training on quality maintenance in 1959. The programme included strategy such that coffee specialists, technicians shall visit the farmers at regular intervals and apprise and train them on new technologies, steps to maintain consistent quality and guide them on how to meet the requirements needed under the certification

mark. It was seen that with such strict adherence to quality, their consumer base increased in countries such as US, Canada, Spain, *etc.*³⁴

In many ways, it could be said that the Indian GIs regime promotes a system of ‘Vanity GIs’³⁵ where the registration of GIs is seen as an end in itself and a measure for brand promotion, with little attention being paid to the deep linkages between the registration of GIs and the quality control that should follow the registration. What is not focused is quality assurance which GIs stands for. It is important to understand the link between consumer’s desire for good quality and its influence on the economics of GIs.³⁶

Funding Concerns

Another important aspect to take note of in the post registration stage is funds. Funds are important, especially for brand building. As noted earlier, most GI proprietors in India have taken very little or no steps for brand building. They cite lack of funds as the main hindrance for advertisements and other brand building mechanisms. It is important to understand that without brand building, GI will never be a success.³⁷ Hence, the proprietor has to figure out a way to find funding. They should ideally find ways in the beginning of the registration process because if they do not have funding later, the entire purpose of GI fails. The GI Registry should harp on the funding requirements when the process of GI registration is going on. In a survey conducted,³⁸ it was seen that by 2016, there were four registered GIs from the state of Assam. The first GI registered was Muga Silk and the proprietor was Assam Science Technology and Environment Council, a part of the department of the Science and Technology of the government of Assam, the second GI was Assam Orthodox Tea and the proprietor was the Tea Board of India, the third and the fourth one was Karbi Anglong Ginger and Tezpur Litchi and the proprietor was North Eastern Regional Agricultural and Marketing Council, a part of the Ministry of DoNER. All the proprietors of GI products in Assam except Tea Board of India mentioned that funding is a big

³⁴ *Supra* note 5.

³⁵ *Supra* note 28.

³⁶ *Supra* note 11.

³⁷ *Supra* note 2; *Supra* note 3.

³⁸ Jupi Gogoi, *The Protection of Agricultural and Natural Goods under the Geographical Indications of Goods (Registration and Protection) Act, 1999: A Socio-Legal Study with Special Reference to the State of Assam* (2019) (Unpublished Ph.D. thesis, Gujarat National Law University).

hurdle in the process. In case of Muga Silk, it was revealed that though Patent Information Centre of ASTEC took the initiative to register it for the benefit of the state, they have not been able to do as much work for Muga's promotion. Officials mentioned that they had inadequate funding (specially keeping in mind the nature of the work they are devoted to), inadequate infrastructure as well as inadequate man power to undertake promotion related activities of Muga Silk. In case of Karbi Anglong Ginger and Tezpur Litchi, the proprietors said there was no funds for taking up brand building activities. Officials mentioned that although NERAMAC has registered it as a GI, it is a central government department and horticulture (ginger as well as litchi) is a state subject. From the study conducted,³⁹ it can be deduced that such funding problems are being faced by many GIs. This deduction can be correlated with the fact that out of the 370 registered GIs in India, there are hardly any GI which are either recognised outside the state or in the domestic level. Had brand building taken place, many GIs would have become household names by now at least at the national level.

In case of India, there are only four categories of applicants of GI, that is, (i) association of persons, (ii) association of producers, (iii) organization established by or under any law for the time being in force and (iv) any authority established by or under any law for the time being in force. It is important to note at this stage that the maximum proprietors of GIs in India fall in the last two categories, that is, organization or authority established by or under any law for the time being in force. Analysing the aforementioned examples of Muga silk, Karbi Anglong Ginger and Tezpur Litchi, the inevitable question that arises is that whether there should be an eligibility criterion for such governmental or semi-governmental bodies to be GI proprietor (whether ASTEC which is a Science and Technological department should not have been allowed to be GI proprietor of Muga silk which is a textile item). The two proprietors in the above paragraph clearly mentioned that they did not deal with the product as such and hence are not able to devote funds for post registration management of the GI product. It is perhaps important to understand the words under section 11 which states only those who can 'represent the interest of the producers' shall be given GI registration. Adequate funds are important for brand building, advertising and other marketing strategies as well as for filing infringement charges, registering abroad, hiring a watchdog to keep checking the markets for duplicate/infringing goods. So, the

³⁹ *Ibid.*

GI Registry should also look into whether the proprietor is eligible or not, can they carry manage the GI product post registration properly or not, how will they arrange funds for post registration activities *etc.* Only after a thorough examination, should GI registration be granted.

IV. Conclusion

To conclude, in cases of GI products in India, a lot of effort is still required. Registration of 370 GIs so far is not enough. More concerted effort is required. Coordination and co-operation of the GI proprietor is required to carry on the post registration steps which is extremely essential for the success of any GI. The purpose of the GI law as highlighted earlier is to fetch a premium price of the product as GI tag is an assurance of the origin of the product with a certain unique quality or characteristic. Hence, to fetch this premium price, awareness of the existence of a product is necessary. For example, a person is fond of cooking Indian dishes and wants to use the best of spice. However, if he is not aware for example that there is a good quality Cardamom by the name of Allepey Green Cardamom, how will he buy it even if he does not mind paying a bit extra for the premium quality cardamom. The awareness creation should also highlight the characteristics of the product, for example, one of the registered GI from Assam is Assam Orthodox Tea. Orthodox tea is used to make black tea. However, an ordinary consumer who does not have the knowledge of the peculiar quality of Orthodox tea, might become very dissatisfied if he uses it to make strong milk tea because of his lack of knowledge. Hence, creating awareness of the product highlighting the peculiar characteristics or quality of the product is very important. For brand building, various steps have to be undertaken including advertisements, participation in trade fairs, expos, *etc.* This entails a lot of funds. Hence, funds are also crucial in the post registration stage. Hence, the GI proprietors and the producers have to find ways to gather funds. The government should can also aid in funding. Another important factor, is maintaining consistent quality of the GI product. The quality parameters of a product have to be established and has to be informed to all producers who should mandatorily adhere to it. Without maintaining consistent quality, the GI product is bound to fail. So, the GI stakeholders have to be cautious of the same and should immediately set up inspection structure that will help in quality control and assessment. Even one producer/ user not conforming to quality standards can tarnish the image of the GI product. Only when the aforementioned steps are carried out properly, the true purpose of the GI law can be realised.