

Exploring the Relationship between Geographical Indications and Traditional Knowledge

An Analysis of the Legal Tools for the Protection of
Geographical Indications in Asia

Working Paper

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ABBREVIATIONS AND ACRONYMS

| | | |
|--------|---|--|
| AIR | : | All India Reporter |
| CBD | : | Convention on Biological Diversity |
| GATT | : | General Agreement on Tariffs and Trade |
| GIs | : | Geographical Indications |
| GRTKF | : | Genetic Resources, Traditional Knowledge and Folklore |
| ICTSD | : | International Centre for Trade and Sustainable Development |
| IIC | : | International Review of Industrial Property and Copyright Law |
| IPLR | : | Intellectual Property Law Review |
| IPR | : | Intellectual Property Rights |
| PTC | : | Patent and Trademark Cases |
| SCT | : | WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications |
| TK | : | Traditional Knowledge |
| TMR | : | Trade Mark Reporter |
| UNCTAD | : | United Nations Conference on Trade and Development |
| TRIPS | : | Trade Related Aspects of Intellectual Property Rights |
| WIPO | : | World Intellectual Property Organization |
| WTO | : | World Trade Organization |

EXECUTIVE SUMMARY

Geographical Indications (GIs) is a unique category of intellectual property rights with collective ownership, linking a product with its place of origin and producers of goods. It became the subject matter of binding international obligation with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Prior to the conclusion of the TRIPS Agreement, the products having a link to their place of origin were known by different terminologies like appellations of origin, indications of source, designations of geographical origin etc. It was only in the TRIPS Agreement that an attempt was made to define the concept of GIs and minimum international norms were identified for protection though the mode of protection was left open. Thus, the Members enjoy enough flexibility to design domestic legislation following the principles of unfair trade practices, trademark law or a combination thereof in a *sui generis* framework. The TRIPS Agreement mandates World Trade Organisation (WTO) Members adopt the principles of unfair competition and prevention of consumer deception to protect GIs used for all kinds of products except wines and spirits. A higher form of protection is envisaged in case of wines and spirits. The protection is afforded to the actual producers and traders of GIs products. It is argued that a carefully structured legal protection of GIs could facilitate the socio-economic development of producers of GIs products including those local and village communities in developing countries. It is also argued that effective legal protection for GIs could also extend protection to traditional knowledge associated with the GIs. The realization of this has led to demands for the extension of higher form of protection afforded to wines and spirits to products of agriculture, textiles, and handicrafts to accommodate the interests of developing countries.

It is a fact that many of the Asian countries had GI protections for products long before the TRIPS Agreement. But legal protection as envisaged under the TRIPS Agreement seems never to have existed in these countries. So an attempt is made to examine the nature and content of the legal tools adopted to protect GIs and associated traditional knowledge (TK) by India, Thailand, Malaysia, Singapore, Indonesia, Jordan, China and Pakistan. An attempt is also made to examine whether these laws are aimed at promoting the socio-economic conditions of the producers of the GIs products in these countries. The usefulness of these laws to protect the traditional knowledge associated with GIs was also examined. It is important to note that while China and Pakistan adopted protection through trademark laws the rest of the countries formulated *sui generis* laws of differing nature. The study reveals that the majority of the countries structured their laws to protect different kinds of GIs available in their countries to promote the socio-economic conditions of the people engaged in the production and marketing of products using GIs. Conscious of the fact that the products of agriculture, textile, and handicrafts from their countries have

both domestic and international markets, the majority of countries in Asia have provisions to afford higher form of protection to GIs of these products similar to that envisaged in the TRIPS for wines and spirits. Countries also adopted different strategies to ensure quality control. While the majority of the countries regulate it through insisting specific conditions at the stage of registration of GIs others left it to the producers to establish the quality in case there is a dispute.

It is important to note that the majority of the countries protect not only the interest of the actual producers of GIs products but also that of the traders. In the laws of almost all the countries there is an over emphasis to protect the interest of the traders when compared to that of the interest of the actual producers of the GIs products. This is evident from the analysis of the laws that the right to use GIs is not confined to actual producers of GIs. It appears that the social, economic and political realities of these countries where traders are more influential and organized than the actual producers are responsible for this. Though at present there are problems in protecting the GIs from misuse, we believe that the increased awareness, the involvement of trade organizations, the Government and the implementation of the laws has potential for the producers to gain benefits of GIs protection in the long run. Effective protection of GIs nationally and internationally can contribute to the improvement of the socio-economic conditions of these communities in the context of globalization.

The case studies undertaken mainly from India revealed that a large number of local and village communities and also from backward communities are involved in the production of the GIs products. It is evident that GIs play an important role in their socio economic development and that GI protection is going to determine to some extent their future development. Their products have a good reputation and wide market in India. However, it is evident that they do not have a cultural mindset conducive for legal protection of GIs at the community level. This has resulted in the widespread use of GIs by members outside the community and as a consequence increasingly leads to economic loss to the actual producers of GIs products. It is also noticed that as of now the traders reap the major economic benefits when compared to the actual producers of GIs products. In the majority of the cases traditional knowledge associated with the GIs products is known to members of the community and it is even used and promoted by outsiders. It should be noted that the producers of GIs products are not systematically organized. In many areas there were attempts to form cooperative societies to protect their economic interest. Yet conflict of interest and lack of coordination existing in these areas resulted in the failure of the effective functioning of the cooperative societies. All these factors contribute to the problem of maintaining quality of the products and preventing false use of the GIs.

It is important to note that these communities in India have started realizing the need to protect GIs. It is the traditional cultural attitude that prevented them from using legal tools to protect the GIs. There is an increasing realization that unless they protect the GIs domestically there is no possibility of claiming international protection as follows from the TRIPS Agreement. This resulted in trade organizations taking steps to register the GIs wherever they are active. In cases where large number of communities are involved and there is no effective cooperative movement, government agencies are taking steps to register the GIs and introducing various measures to maintain quality and regulate the production. There are also attempts to expand the market and export to foreign markets is one of the priorities.

It is also evident from the studies that there are limitations in providing effective protection to all forms of traditional knowledge through GIs protection. It may be true that traditional knowledge (TK) could be protected through GIs in cases where the TK is kept secret. This may also be the case where because of the very high reputation of the GIs it is extremely difficult to penetrate the market with similar products based on the same TK using different trade name. But such cases are limited and the reality is that there are a large number of TK based products in the market and the names used to sell these products do not qualify for the requirements for GIs protection.

The analysis of the different laws of Asian countries reveals that these laws never consciously addressed the issue of protecting TK through GIs protection. There is no explicit provision in any of these laws protecting TK involved in the GIs. The only notable provision is in the obligation to submit the details of the quality, reputation or other characteristics of the products required for the maintenance of quality control. Even in these provisions there is no mechanism to protect the TK kept secret. The fact that all these laws permitted traders also to register and use the GIs also weaken the position of the holders of TK in the GIs. In this context it is suggested that countries must think of introducing amendments in the law focusing on the protection to actual producers of GIs so as to protect the interest of the holders of TK in the registered GIs. There must also be express provision in the law to protect the TK held in secret while registering the GIs. In such cases only actual producers who are the holders of the TK alone be allowed to register the GIs. They must also be allowed to keep the information secret. These steps would facilitate at least to build proper links between protection of TK and GIs through the existing laws. But this is not adequate to protect all forms of TK used in GIs products since in majority of the cases TK is widely used. For effectively protecting these knowledge systems countries must initiate steps to introduce a separate legal framework.

1. INTRODUCTION

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) has been a subject of intense debate ever since its creation as an Annex to the Final Act establishing the WTO. The majority of debate is focused on its ability to usher in balanced and equitable industrial and economic benefits to unequal economies in a globalizing world¹. Those who support globalization argue that carefully structured intellectual property laws could ensure economic benefits to all sections of society². On the other hand, those skeptical of its performance express the view that the major benefits of a TRIPS Agreement based intellectual property system will be confined to developed countries³. This debate has resulted in developing countries seriously examining the scope of various items of intellectual property included in the TRIPS Agreement and the flexibilities available to take maximum advantage while implementing the obligations.

Of the many new items included in the TRIPS Agreement, the minimum standards of protection stipulated for Geographical Indications (GIs)⁴ has gained much attention in recent years. This is one area in which TRIPS provides considerable flexibilities⁵. As a legal concept GIs⁶ received international recognition for the first time through the TRIPS Agreement. It was the EU who initiated the process and lobbied for its inclusion in the TRIPS Agreement⁷. The intention of the EU was to protect their agricultural producers of GI products in the global market now that it faces strong pressures to change its agricultural subsidies and it has since started yielding the desired results⁸. Even though the obligations relating to the protection of GIs evoked very little debate during the Uruguay Round of GATT negotiations⁹, it became a subject of heated debate between the developed and developing countries in the Doha Development Round¹⁰. It was realized by many developing countries, particularly those from Asia, that protection of GIs could possibly promote international trade in many traditional products from their countries. This led to them initiating debate on the broadening of the scope of protection of GIs¹¹. It was also realized that the different standards followed in the TRIPS Agreement between wines and spirits and other products could result in disadvantage to their products in the international market. All these factors contributed to the introduction of new domestic laws in many Asian countries to provide protection for GIs and the demand for extension of protection similar to that of wines and spirits in the TRIPS Council¹². In this context it is worth examining how these countries implemented their obligations whilst also utilizing the flexibilities available under TRIPS, and whether it is going to facilitate social and economic development to the producers of GIs products.

Another related issue that has recently attracted considerable international attention is the protection of traditional knowledge (TK)¹³. TK could be described as different varieties of products available in the society as an

outcome of tradition-based intellectual activity. They are based on knowledge systems transmitted from generation to generation and constantly evolving depending upon changes in the environment¹⁴. Protection of TK was never raised as an issue of concern when TRIPS was negotiated. The liberal granting of patents by developed countries, in particular by the EU and US, for inventions based on traditional knowledge associated with genetic resources, forced developing countries to demand for new international norms to protect traditional knowledge¹⁵. In addition to this the conclusion of the Convention on Biological Diversity (CBD) and its adoption by the majority of developing countries strongly endorsed this demand. The relevant obligations under the CBD include the requirement of prior informed consent and mutually agreed terms before access to genetic resources¹⁶ and sharing of benefits for the utilization of the traditional knowledge with the holders of such knowledge¹⁷. This led to the demand by many developing countries to introduce adequate provisions in the international patent system (others find sui generis systems to protect TK is more suitable) to prevent patenting of existing products of traditional knowledge (defensive protection) and recognition of rights to TK holders to effectively prevent misappropriation of traditional knowledge without prior informed consent (positive protection). In the TRIPS Council, a number of developing countries have raised concerns about possible conflicts in implementation of the obligations under the TRIPS Agreement for patenting of biotechnological products and that of CBD obligations.¹⁸

It is in this context that the possibility of protecting TK through GIs has emerged. The new concept of GIs as introduced in the TRIPS Agreement recognizes "quality, reputation or other characteristic of the goods" as conditions for protection. Considering the fact that the quality, reputation or the unique characteristics of many of the geographical indications are the result of traditional and ancient methods and formulae that are transmitted from one generation to the other¹⁹, it is argued that there could be a possibility of protecting TK through GIs. It has also been suggested that since GIs played a role in the sustained development of the socio economic conditions of the producers of GIs, for example the producers of wines and spirits in Europe, there could be a bright prospect of protecting the interest of TK holders by effectively protecting GIs²⁰. Hence this paper attempts to find out whether protection of GIs satisfying TRIPS obligations could facilitate socio-economic development benefits for producers of GIs in Asian countries and the possibilities of using GIs as an effective legal tool to protect traditional knowledge.

1.1 The Protection of Designations of Geographical Origin – A Historical Overview

The term GIs is relatively new. Historically, the concept was known by different names such as appellation of origin, indication of source, and others referring to different legal protection systems involving different criteria of protection (scope, coverage, requirements and means of protection). The systematic legal protection of GIs originated in and was developed in France²¹. There, the protection of these kinds of designations developed initially through laws against false designations. The Law of 1824 imposed criminal penalties upon persons who with fraudulent intent indicated the origin of his goods as that of the actual manufacturer. The goal of this law was apparently to assure that the goods be labeled so that a consumer could really understand who made them and where they were produced²². At this time, the *appellation d'origine* was devoid of any quality indicative function. Later, in 1905, through *Grande Loi du ler aout*, further protection was afforded, focusing on the protection of private rights, especially the protection of consumers and victims of contract fraud²³. Among the prescribed frauds was the fraud in labeling the origin of the product. Under this law, misrepresentation of origin had to be the main reason for the buyer's purchase in order for a violation to exist²⁴. This law was primarily directed to protect the relation between sellers and buyers, rather than that between competing producers. Even though the legal justification was consumer protection it was the producers of the goods who benefited from the protection. It was the quality of the goods they produced that they sought to protect from misappropriation. These laws together constituted the concept of indications of source (*indication de provenance*)²⁵. However, all these laws were proved to be inadequate by the continued controversy over champagne labeling that arose after the French revolution in 1789.

World War I temporarily halted the major social and economic turbulence surrounding this controversy. It was only in 1919 that the French legislature had recognized that the quality of certain products, especially cheese and wines, were derived largely from their place of geographic origin. Natural and human factors like soil condition, climate, and method of preparation were responsible for the quality and the attempt of the legislature was to protect this. Thus a new concept got legally crystallized: appellations of origin (*appellation d'origine*)²⁶. Prior to the Law of May 6, 1919, the French Customs Authorities were given the power to seize foreign products, which bore French designations of origin. The 1919 Law provided the courts with the jurisdiction to consider the question of appellation of origin, but neither defined the term nor established criteria for determining the same. So the courts built up their own standards to determine the same. The primary consideration was the geographical origin of the particular product, although attention was also given to the nature of the product, its composition and its substantial qualities acquired from local, loyal and constant methods of production. There are evidences wherein the courts

had negated the status of *appellation d'origine* to many products on the ground that they lacked essential link to the place of origin other than the human factor involved in it²⁷. Thus it appears that the objective of providing protection was to safeguard the socio economic interest of the producers of the product from a geographical location. It was the collective interest of the community of producers that got legal backing through these legislative and judicial interventions. The approach of German law in relation to GIs was based on unfair competition law²⁸ in comparison to the US who had chosen to protect GIs by means of certification marks under the trademark law²⁹. In fact the different systems followed by Europe and US created considerable controversy over the protection of GIs. While Europe believed that the names of the products should be protected considering its status based on geographical origin, the US was of the view that such names did not deserve protection under the trademark law since many of the names were considered to be generic in the US³⁰.

One of the major problems in international protection of GIs was the diversity of various national concepts. Further, the trade potential of the products has made GIs a subject of the very first international convention for the protection of industrial property. The Paris Convention for the Protection of Industrial Property, 1883 (referred to as Paris Convention), in Article 1(2), for the first time, recognized that appellations of geographic origin or indications of source is worth protection as a category of industrial property. However, these terms were left undefined probably because of the lack of agreement on the scope and coverage of the concepts, or to provide enough flexibility to the Member States to structure the domestic laws to suit their local requirements. It provided that industrial property includes agricultural, manufactured and natural products³¹. Since the Convention was silent regarding the minimum standards of protection, the level of protection varied according to the domestic laws of the countries protecting their GIs.

Further, Article 10 of the Paris Convention prohibits the direct and indirect use of false indications of the source of goods or identity of the producer, manufacturer or merchant. Thus, the scope of the expression 'appellations of geographic origin' or 'indications of source' became wider, and it could cover all products like agricultural, manufactured and natural originating from a country, region or particular locality. The term calls for a territorial link only and does not emphasize the particular characteristics, quality or reputation of the goods.

A shortcoming of the Paris Convention is that it remains silent about consumer deception or confusion concerning the geographical origin. The fact that the Paris Convention is silent about the reputation and quality of the product and its relationship with the actual producer make it clear that protection of the traditional knowledge of the producers of goods never was the focus of the Convention.

Due to the ineffective protection afforded by the Paris Convention, a number of countries joined together to establish a union for the protection of GIs. Based on Article 19 of the Paris Convention, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891 (referred to as the Madrid Agreement) came into force. Though it specifically relates to the concept of "Indication of Source", the term is not defined. The Madrid Agreement provides a higher level of protection than the Paris Convention. It provides for protection against deception, thus showing an orientation towards consumer protection that in turn protects the interest of the producer.

In order to be a subject of the Madrid Agreement, the indication needs protection under a domestic legal framework. It protects all the direct and indirect indications of source of the Contracting Parties against false or misleading use³² and this protection is extended to any use in commercial transactions³³. The protection is also based on the principle of national treatment. Yet one of the major problems with the Agreement is that the freedom to decide whether a GI constitutes an indication of source protected by the Agreement or is a generic name, is left to the court of the country where dispute arise³⁴. Only wine designations are exempted from this provision and are governed by the laws of the country of origin. The only prohibition against use of indications is deception; and the provisions of this Agreement cannot prevent free riding on another's reputation. Seizure is the only remedy provided which shall not apply to goods in transit. Also, there is no possibility for civil or criminal sanctions under the Agreement. This also gives an impression that even though producers of the goods became the focus of attention, adequate and effective protection of their traditional knowledge does not seem to be the major concern of the Agreement.

The problem of free riding on the reputation of indications persisted even after the Madrid Agreement. In 1958, the Revision Conference for the Paris Convention of Lisbon adopted a few changes regarding GIs. It mainly provided for border measures against the importation of goods bearing false representations of origin, provided such measures are available under the domestic laws³⁵. It neither defined the term "indication of origin", nor stated when a representation is to be considered as false³⁶. In effect, it hardly introduced any change to what had already been provided under the Paris Convention. Similarly, under Article 10bis (3) as inserted by the Lisbon Revision, only the importation of goods containing false indications could be prevented and not the importation of goods that are merely misleading³⁷. This resulted in the formation of the Lisbon Agreement for the Protection of Appellations of Origin and their Registration, 1958 (referred to as Lisbon Agreement).

The Lisbon Agreement clearly defined the concept of appellations of origin as the "geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which

are exclusively or essentially due to the geographical environment, including natural and human factors"³⁸. Thus, it clearly established a link between the products and their place of origin through quality and characteristics of the products attributable to the various factors of the place of origin. The intention, it appears, was to protect the producers of the goods from a geographical area and their socio economic interest. However, the insistence on a requirement of the quality and characteristics of the goods to the place of origin resulted in the exclusion of many geographically specific goods from the scope of protection of the Agreement. The mere reputation of a geographical name, even established and extensive, was not sufficient to be treated as an appellation unless the geographical nexus of the goods is proved through quality and characteristics³⁹. The emphasis on the quality and characteristics of the product is also indicative of the intention to protect the human factors involved. Thus it could be argued that protection of the traditional knowledge of the producers of the product involved in the stages of production, preparation or processing also seems to be one of the objectives of the Agreement. To be specific, it is mandatory that geographical names should identify the product and any other name (for example, any emblem or non-geographical names) indicating the product cannot be treated as an appellation of origin under the Lisbon Agreement⁴⁰. This makes it clear that non-geographical names are excluded from the scope of protection.

The problem of free riding on the reputation of indications is effectively resolved in the Lisbon Agreement. This was achieved by ensuring protection against any usurpation or imitation even if the true origin of the product is indicated or the appellation is used in translated form or accompanied by terms such as kind, type, or imitation⁴¹. This also prevents registration of trademark of such names in member countries. It offers absolute protection avoiding the element of confusion or deception. It appears that it is the social and economic interest of the producers of the products of the geographical area that are the main focus of the Agreement. However, the restricted interpretation of the term "appellation of origin" allows only a small number of such indications to be covered by the instrument. It is also mandatory that such indications be recognized and protected in the country of origin. In the international plane, Lisbon stands as an effective mechanism in protecting appellations of origins. Yet its limited coverage blocked the inclusion of a wide variety of existing GIs for protection. This in fact resulted in only 23 countries joining the Lisbon Agreement.

1.2 Geographical Indications under the TRIPS Agreement

The TRIPS Agreement was the first true international legal instrument in terms of membership and effectiveness due to its dispute settlement mechanism that set minimum standards for goods deserving protection due to their link with a particular geographical area. It eliminated the legal uncertainty surrounding the

concept and tried to address many issues relating to the protection of geographical indications. A perusal of the TRIPS provisions relating to GIs is made through three major headings: (a) subject matter of protection, (b) level of protection, and (c) relation between GIs and trademarks.

1.2.1 The Subject Matter of Protection

The TRIPS Agreement recognized the term 'Geographical Indications' coined during recent WIPO negotiations⁴². TRIPS defined GIs as "indications, which identify goods as originating in the territory of a Member or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographic origin"⁴³. Thus the TRIPS definition elaborates the concept a little wider than that of the appellations of origin definition because it allows reputation as an independent criterion of eligibility for protection irrespective of the geographical nexus through quality or characteristics of the goods. It is not the name of the geographical area but the significance of the geographical area to the name of the product that is to be established to qualify for the protection. This is evident from the obligation to establish a mandatory link between the product and the particular characteristics, quality or reputation attributable to the place of origin of the product. Yet it is not mandatory to establish all the three conditions stated in the definition (i.e. quality, reputation or other characteristics of the good), to qualify for protection. Proof of any one is adequate. The expression "other characteristics of the good" implies that the goods must be having some distinguishable features like colour, texture, and fragrance⁴⁴ different from similar related products⁴⁵.

Reputation of a product particularly which belongs traditionally to a geographical area, is closely linked with its continued use by production, distribution and recognition by the public. By using the term "reputation" in the definition, it could be inferred that the indication must be in actual use and recognized by the public. This closely links GIs to traditional use by the producers of the product and in many occasions by local communities. The definition does not make it mandatory that the quality or other characteristics of the product must be well-reputed. This results in an ambiguity as to whether newly emerging terms with place-product links would qualify to be treated as GIs, ignoring the essential aspect of recognition through prolonged use⁴⁶. This is an interesting aspect because advertisements can create publicity about the quality and characteristics of new products having territorial links. This publicity is different from reputation created through prolonged use of the product and this would result in initiating a proposed user concept as in the case of trademark. Thus, without making reputation a criterion cumulative with quality or characteristics, the objectives do not necessarily seem to protect the socio-economic conditions of the traditional producers of goods from a geographical area. The fact that it is not mandatory to establish human factors to prove

reputation, quality or other characteristics also makes it clear that protection of the holders of traditional knowledge is not the main focus of GIs. While the groups who generate traditional knowledge are entitled to take benefit from GIs protection, there are many GIs that are not linked to traditional communities at all.

Another question to be considered in this respect is the scope of the expression, "essentially attributable to geographical origin". In the TRIPS context, the quality, reputation or other characteristics of the goods must be "essentially attributable to its geographical origin". Yet there is no explanation given to this expression. A similar concern is evident from the Lisbon Agreement where the quality and characteristics of the products must be due "exclusively or essentially to the geographical environment, including natural and human factors". But in Lisbon too, no test was laid down for determination of the same. The French courts considered products as *appellation d'origine* only on the proof of an established link with geography owing to natural factors like soil, climate, and elevation, negating the human contributions⁴⁷. The TRIPS Agreement does not seem to be in line with this interpretation. So even if there is no contribution of natural factors, if the reputation, quality or other characteristics is because of human or other factors like the quality of the materials that are used, the indication could qualify for GIs protection⁴⁸.

Articles 22 and 23 of TRIPS, the obligation of the Members is to facilitate "interested parties" to take measures to protect GIs. The term interested parties is not qualified and it could include not only the producers of goods but also anyone who has an interest in protecting the GIs like traders, government and other organizations.

It is also important to note that one of the important conditions for GIs to be eligible for protection internationally is the availability of protection under the domestic law of the country of origin. Members do not have obligations to protect GIs if they are not protected under the domestic law of its country of origin, if it ceases protection, or falls into disuse in the country of origin.⁴⁹ It is this provision that made countries, particularly a number from Asia, introduce laws to protect their own GIs so that they can claim protection in other WTO countries.

1.2.2 Level of Protection

The TRIPS Agreement offers a dual system of protection to geographical indications. First, it deals with GIs generally, followed by stipulations for some additional protection covering wines and spirits. GIs are generally protected from unfair competition and acts amounting to consumer deception regarding the true place of origin of the products⁵⁰. Article 22(2) calls for the minimum standards to be accomplished by Members for the protection of GIs. The

mandate is only to establish "legal means" for the prevention of unfair competition and acts which amount to misleading the public as to the true place of origin of the products. Thus, the Members have ample freedom to design their own models for compliance with the mandate⁵¹. However, to prove the acts of others to be misleading to the public, the right holder has the burden of establishing the reputation and public recognition of his product⁵². Similarly, in order to establish unfair competition as defined in Article 10*bis* of the Paris Convention, there must be an element of confusion, falsehood or an act misleading the public. Here also, the proprietor is under the obligation to prove the recognition and reputation of his product. It may also bring in ambiguities as the scope of unfair competition is not uniformly or consistently applied among the nations⁵³.

The protection under Article 23(1) to wines and spirits offers a higher level of protection to GIs indicating such products even where the true origin of the product is indicated or the GIs are used in translation or accompanied by expressions such as "kind", "type", "imitation", "style" or the like. The need for an element of consumer deception or the obligation to prove the recognition or reputation of the product, as provided under Article 22(2) is irrelevant for the protection of wines and spirits. The hierarchy in protection has resulted in the claim for extension of this additional protection to other products also. The additional protection, as it exists now, is granted at the request of European wine producing countries; especially France and Italy, in exchange for accepting reductions in export subsidies⁵⁴. Since it is not based on any intrinsic characteristics of the products involved, the demanders of extension require all GIs to be treated equally. This claim is mainly because of the chances of free riding on the reputation of the general GIs, the legal uncertainty in deciding whether the public is misled⁵⁵ and the related burden of proof problem for the GIs owner.

Countries in Asia, Europe and Africa are in favour⁵⁶ of extending protection in line with Article 23(1) to products other than wines and spirits while countries like Argentina, Australia, Canada, Chile, Guatemala, New Zealand, Paraguay, and the US oppose the idea of extended protection. The reasons for the opposition of extension include:

- (1) The possibility of extra costs to WTO members;
- (2) Claims of the adequacy of protection already given under Article 22;
- (3) The increase in the inordinate number of GIs to be protected by the Member Countries without due economic returns to the countries; and
- (4) Because the existence of exceptions under the TRIPS Agreement will preclude protection⁵⁷.

One specific argument made by the United States, has been that extended protection would mean that the US would not be in a position to use many generic names in their own country such as "BURGUNDY," "PORT" and "CHABLIS",

on which the EU claims GIs rights. This US opposition is notably in light of EU efforts to prevent the use of certain generic terms to describe food and wine unless those products come from a specific geographic region in Europe.⁵⁸

The TRIPS Agreement allows Members to provide exceptions to the higher form of protection given to wines and spirits. By virtue of Article 24(4), a TRIPS Member may grant its nationals or residents the right to continued use of a GI identifying wines or spirits of another member. This may be allowed if there is evidence to show that such indication was used in a continuous manner with regard to the same or related goods or services in the territory of that Member for at least 10 years preceding the conclusion of the TRIPS or in good faith preceding that date. This right is subject to the principle of territoriality (i.e. available only in the country where such use exists). Similarly there is also no obligation under TRIPS to protect GIs, which have become a common name (so-called generics) for goods or services identified by the indication⁵⁹ on a territorial basis. In addition to this a Member is expressly permitted to negate protection to GIs of any other Member with respect to products of wine, where the indication is identical with the customary name of a grape variety existing in the territory of that Member as on the date of entry in to force of TRIPS⁶⁰.

The TRIPS Agreement also deals with the protection of homonymous indications. Homonymous indication though not defined in TRIPS is understood as *bonafide* use of same geographical name by different countries because it is the true origin of the goods⁶¹. It is clear from Article 22(4) that countries have an obligation to deny protection to literally true names if they falsely present to the public that the goods originate in another territory. But in cases where the use is genuine, both of them could be protected provided there are sufficient measures by way of labeling adopted to avoid consumer deception⁶². An express provision is introduced in relation to homonymous GIs for wines in Article 23(3). According to this provision Members have an obligation to protect both the names in case of *bonafide* use. It also provides that while protecting homonymous indications of wines, the need to ensure equitable treatment of the producers concerned and the fact that the consumers are not misled thereby must be taken into consideration⁶³. In this context, the interpretation by Members of the term "producer" is significant, as producers could include traders and dealers who are interested parties in protecting the GIs. Thus it permits co-existence of the names in external relations while the restrictions under Article 22(4) remain in the case of direct conflict between the indications⁶⁴.

1.2.3 The Relationship between Geographical Indications and Trademarks

The TRIPS Agreement also envisaged provisions to deal with GIs which are identical or confusingly similar to trademarks. In such cases TRIPS provides for

the refusal or invalidation of the registration of a trademark, if the use of such indication in the trademark is misleading the public as to the true place of origin⁶⁵. The action can be initiated by the interested parties or the State itself and the burden of proof as to reputation or recognition does not change. However, TRIPS is silent as to trademark protection for GIs for the benefit of non-local residents⁶⁶. It does not provide a more extensive protection on GIs against registration by non-local residents on the grounds that there is a need to keep the use of the indication free for all locally resident manufacturers⁶⁷. There is also an obligation to refuse registration of a trademark consisting of GIs for wines and spirits even if there is no consumer deception⁶⁸. According to this provision, trademark protection shall not be granted if the trademark contains a GI for wines or spirits from one of the Member countries if the products do not originate from the region in question. Hence, mere incorrect or inaccurate use of a GI may result in invalidation⁶⁹.

Thus the TRIPS obligation on GIs is only to provide an effective means for the protection of GIs. Members have enough flexibility to design a system of protection in line with TRIPS, taking into account the social, economic and cultural aspects of their GIs. The TRIPS framework allows enough freedom for developing countries to design domestic laws focusing on the protection for the producers of GIs that may protect the traditional knowledge involved in the production of the goods. It is worth examining the means adopted by developing countries to implement these obligations. This paper attempts to examine the legal tools adopted and the level of protection afforded by selected Asian developing countries, and to find out to what extent it facilitates the promotion of socio-economic conditions of the producers of GIs in these countries particularly that of local populations. The scope of protection for traditional knowledge through GIs and the efforts made in this regard within GI laws are also examined.

2. THE ASIAN LEGAL FRAMEWORK: A COMPARATIVE ANALYSIS

The legal terminology of geographical indications was introduced only recently in Asian countries even though there have historically existed many GI-based products. Previously, these designations were protected through business practices such as unfair competition, consumer protection, and food standards. With the emergence of the modern trademark law after the industrial revolution, a new form of protection through collective and certification marks came into existence. The TRIPS Agreement does not take away the nature of protection prevailing prior to its enforcement. Its mandate is only to establish an effective system of protection for GIs. Thus, under TRIPS, protection can be either through business practices, trademark law or *sui generis* options. It is worthwhile considering here the response of Asian countries to TRIPS mandate for the protection of GIs. The laws of India, China, Thailand, Malaysia, Singapore, Indonesia, Jordan and Pakistan, all of which are available on the internet⁷⁰, are analyzed. Out of these nations, China and Pakistan envisage protection based on trademark law in the form of collective marks or certification marks and the rest of the countries have adopted *sui generis* forms of protection of a differing nature.

An attempt is made to compare the above-mentioned national laws as a response to TRIPS. Since the scope of the study is to find out the socioeconomic relationships with GIs and its possibility for protection of traditional knowledge, the comparative analysis is limited to five major headings:

- (i) Conceptualization of GIs;
- (ii) Nature of protection;
- (iii) Institutional arrangement for administration;
- (iv) Legal mechanisms for quality control; and
- (v) Ownership of GIs.

The 'conceptualization of GIs' section is intended to understand how the term GIs is defined in different countries, the scope and coverage of the term, the goods which could be designated by GIs and eligibility for protection. Issues including the protection granted under different legislative frameworks for GIs generally, and those designating wines and spirits, the system of protection followed, and protection of prior uses of GIs, are the concerns addressed in the 'nature of protection' section. Under the heading 'institutional arrangements for administration' the institutional framework established by different laws for protection is examined. The provisions included in the laws to regulate and maintain quality, reputation or other characteristics are discussed under the 'legal mechanisms for quality control' section. Finally, an analysis of the nature of ownership of GIs is made to question who has actual ownership rights over the GIs. The question is asked: 'is ownership of GI rights confined to actual

producers of the GIs products or to others also who are having some interest in the GIs?’

A survey of the laws under these different headings is intended to provide a clear picture of how different countries have conceptualized and customized the concept of GIs protection and to determine their conformity with the TRIPS Agreement. From the comparative analysis, it is also assessed whether protection of traditional knowledge is one of the clear objectives of the GIs laws, and if so, to what extent. How far the national laws are successful in protecting the interests of the actual manufacturers of the goods designated by the GIs and promoting their socio-economic conditions is another issue examined in this analysis.

2.1 The Conceptualization of Geographical Indications

The definitions of GIs in all the *sui generis* laws are very much in conformity with the GI elements included in the TRIPS Agreement. The definition of GIs in Thailand⁷¹, Malaysia⁷², Singapore⁷³ and Jordan⁷⁴ is confined to that of TRIPS definition. However, the definition in the law of the Republic of Indonesia, though in line with TRIPS, elaborates by adding that geographical environmental factors, including the factors of nature, the people, or combination of the two factors must be responsible for the specific characteristics and quality of the goods bearing the GIs⁷⁵. Similarly the definition in the Indian legislation is much wider providing that “geographical indications in relation to goods means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality as the case may be⁷⁶.” This definition helps to properly identify designations eligible for protection, clearly establishing a link between the product and the geographical factors.

Regarding the coverage of geographical indications, the trend of the majority of nations has been to incorporate as wide a range of products as possible to be designated by the GIs. India⁷⁷, Thailand⁷⁸, Malaysia⁷⁹ and Singapore⁸⁰ permit natural, agricultural, handicraft and industrial products to be included in the definition of goods designated by the GIs while Indonesia and Jordan remain silent on this. This trend in the majority of laws increases the scope and coverage of GIs protection domestically. All the laws are silent on the possibility of extending GIs protection in the field of services. With respect to TRIPS exclusion of homonymous indications⁸¹ from protection, all the laws except that of Indonesia are in TRIPS conformity. In Indonesia, the Act is silent with respect to homonymous indications. Implementing the TRIPS obligation, Malaysia⁸²,

Singapore⁸³ and Jordan⁸⁴ expressly extend protection to homonymous indications of wines only. While in India, though there is a general prohibition on registration of homonymous indications⁸⁵, all homonymous indications could be protected after considering the practical conditions under which each indication could be differentiated. It is also necessary to ensure equitable treatment of the producers concerned and the consumers from not being misled in consequence of such registration⁸⁶. In Thailand, this extended protection is available to the homonymous indications not only of wine but also of the additional categories to which they are offering protection similar to wines and spirits⁸⁷. The countries are also excluding from protection GIs contrary to public order or morality⁸⁸, those causing confusion regarding the place of origin of the products⁸⁹, those which have become generic⁹⁰ and those which have fallen into disuse or ceased protection in the country of origin⁹¹ thereby satisfying the TRIPS requirements.

China and Pakistan are the two Asian countries that afforded protection of GIs through trademark law. The definition of GIs of both Pakistan⁹² and China⁹³ are also in conformity with TRIPS. The Trademark Ordinance of Pakistan defines goods broadly to include anything subject to trade, manufacture or commerce⁹⁴. It is interesting to note that unlike other Asian countries, in China and Pakistan the GIs could designate goods and services. Both China and Pakistan are silent with respect to protection of homonymous indications. Considering the nature of the trademark regime, it is assumed that homonymous indications could not be protected under this system even in relation to wines as mandated by TRIPS. The general prohibitions applicable to registration of trademarks like marks contrary to public order, morality, misleading the public etc. are also applicable in the case of registration of a GIs as collective or certification marks⁹⁵.

It is evident from this analysis that the intention of these countries is to cover all categories of GIs within the definition, keeping in mind the nature of products in which GIs are used domestically. It is also clear that these countries have attempted to satisfy the obligations stipulated in the TRIPS Agreement.

2.2 The Nature of Protection

Asian countries that have followed *sui generis* approaches for GIs responded differently with respect to the manner in which protection is afforded. Though India⁹⁶, Thailand⁹⁷, Malaysia⁹⁸ and Indonesia⁹⁹ envisage a registration system, it is clear from the provisions that unregistered GIs are also eligible for protection in these countries in different ways. In Singapore and Jordan, there is no system of registration for protection of GIs. At the same time, Singapore provides that rights under the trademark laws or passing off are not affected by its laws¹⁰⁰. All the above countries except Indonesia offer protection against unfair competition and acts misleading the public as to the place of origin of the goods. Thailand and Indonesia grant protection against unlawful uses also. In Thailand¹⁰¹,

unlawful uses are defined to include unfair competition and consumer deception as to the place of origin of the goods and in Indonesia¹⁰², it is not defined. In Singapore¹⁰³ and Jordan¹⁰⁴, unfair competition and consumer deception are, *inter alia* specified as prohibited acts or uses. Yet Malaysia describes them as acts against which injunction and damages could be claimed¹⁰⁵. India on the contrary incorporates them as acts constituting infringement¹⁰⁶.

All the laws, though different in approach, seems to be conformity with the TRIPS Agreement by providing legal means to protect GIs against consumer deception and unfair competition. Except Thailand, all the countries offer remedies in the form of injunctions and damages by conferring rights to initiate legal proceedings. In Thailand, the right to legal action against unlawful uses is not expressly provided, but reiterates the right to get monetary compensation¹⁰⁷. In Thailand, the plaintiff can claim compensation for infringement of GIs (and other IP rights) under the general tort provisions of the Civil and Commercial Code. This seems to be the reason for not expressly stipulating it in the specific law. Likewise, the remedies such as interim injunctions are available under other laws including the Civil Procedure Code and the law establishing the Central Intellectual Property and International Trade Court. This is why the GIs Act is silent on these two issues.

One of the specific obligations under TRIPS is the additional protection for wines and spirits. Countries like Malaysia¹⁰⁸, Singapore¹⁰⁹ and Jordan¹¹⁰ provide only TRIPS level protection by confining it to these two categories only. Thailand adds silk and rice to this category¹¹¹ and in India, the Act leaves ample scope to make additions by extending the additional protection to class/classes of goods through a notification by the Central Government¹¹². Thus the countries domestic provisions are in tune with their demand for extending additional protection beyond wines and spirits¹¹³. Indonesia is silent about the level of protection offered to geographical indications and does not even make any classification into ordinary GIs and those designating wines and spirits. The interpretations of these provisions are not yet clear since the law is only at an early stage of implementation. However, it is possible to assume that since there is no classification mentioned in the law of Indonesia all GIs could enjoy the higher level of protection. All the countries except Indonesia respect the prior uses of GIs and prior use as trademark (although Thailand is silent in respect of the latter since the exception is mentioned in the Trademark Act). In Indonesia, after registration of GIs, the prior users of such GIs get a right to use it only for a further period of two years¹¹⁴.

The nature of protection followed in China and Pakistan is different. In China, it is expressly stated that marks consisting of signs or indications designating the geographical origin of goods and services are eligible for registration as certification trademarks in Part B of the Register¹¹⁵. The definition of certification in China is a type of trademark which is controlled by an organization capable of

supervising a type of goods or service and which is used in respect of goods or services by other organizations or individuals who do not belong to the said organization, with a view to certifying the origin, raw material, mode of manufacture of goods or performance of services, quality or other characteristics¹¹⁶. In Pakistan, there are three different ways in which one could protect GIs. The first option is that GIs designating goods or services could be registered as trademarks if they have acquired distinctiveness prior to the application for registration¹¹⁷. It also permits GIs to be registered as collective, or certification marks¹¹⁸. Thus the owner of the GI has three options. It is not clear why such options are created. It appears that this may result in confusion when the law is put into practice. Both China¹¹⁹ and Pakistan¹²⁰ protect the prior uses of the GIs, which are registered as a trademark, collective mark or certification mark as the case may be. From this, it could also be presumed that for unregistered geographical indications, passing off remedies might be available in both the countries. No differentiation has been made in the laws of both the countries in respect of GIs indicating goods generally and those indicating wines and spirits. Hence it is assumed that a higher level of protection as mandated for wines and spirits is available to all GIs in both Pakistan and China. From the laws of both the countries, it is clear that the authorized users and the registered proprietor can take action against the use of GIs contrary to the honest practices of industrial and commercial matters. So the countries are also in conformity with the TRIPS mandate to provide protection against unfair competition and acts misleading the public as to the true place of origin of the goods.

Thus it is evident that the provisions of the majority of the countries satisfy the minimum standards prescribed in the TRIPS in this regard.

2.3 The Institutional Arrangement for Administration of Geographical Indications in Asia

Out of the countries examined, a clearly detailed institutional framework for administration of GIs protection is only laid down in the Indian law. The application for registration of GIs and their authorized users are to be made to the Registrar of Geographical Indications. For the purpose of registration, a register of geographical indications is maintained at the Head Office of the Geographical Indications Registry (Chennai) in which all the registered GIs are entered with the names, addresses and a description of the proprietors, the names, addresses and a description of the authorized users and such other matters relating to the registered GIs as prescribed¹²¹. The Register of GIs contains two parts: Part A containing details of registration of the GIs and Part B containing the particulars of authorized users¹²². Procedures for registration are the same for both classes¹²³. GIs may be registered in respect of any or all of the goods comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, region or a locality as the case

may be¹²⁴. Goods are to be classified according to the International Classification of Goods for the purpose of registration of the GIs¹²⁵. Procedures for registration are also detailed along with particulars to be furnished with the application¹²⁶. Registration is valid for a period of 10 years and is subject to renewal¹²⁷.

In Malaysia also, the Registrar of GIs is conferred with the power of administration¹²⁸. A Central GIs Office with branch offices is established under the Act and documents filed at the Branch Offices are deemed to have been filed at the Central Office¹²⁹. The Registrar is bound to keep a Geographical Indications Register in which all the prescribed particulars are recorded¹³⁰. Procedures of registration like application¹³¹, advertisement of the application¹³², opposition¹³³, appeal¹³⁴ and registration¹³⁵ are also specified.

In Singapore and Jordan where there is no registration mechanism, the institutional mechanism for administration of the GIs is left to the law courts where the affected parties can opt to undertake law suits. The provisions of the Indonesian GI law are vague in this respect.

In Thailand¹³⁶ also, the Act briefly mentions procedure for registration the Registrar of Geographical Indications, the Geographical Indications Board and the IP Court in a hierarchical manner.

In China, any person claiming to be entitled for registration of GIs as the proprietor of a certification trademark used or proposed to be used by him and is desirous of registering must apply in writing to the Registrar of Trademark in the prescribed manner for registration.¹³⁷ The application will be treated like an ordinary trademark application in all respects¹³⁸. When the application is accepted whether absolutely or conditionally, the applicant has to advertise the application as accepted and it will also be subject to opposition. After giving due hearing to the parties, and following all the necessary formalities like considering evidence, imposing conditions and limitations, amendments, and modifications, the registration would be allowed¹³⁹.

In Pakistan also, the application for registration of GIs is to be filed with the Registrar of Trademarks along with the regulations governing the use of the mark¹⁴⁰, specifying the persons authorized to use the mark, conditions for membership of the association, conditions for the use of the mark and any sanctions against misuse in the case of a collective mark¹⁴¹. The regulations are to be approved by the Registrar taking into account compliance with the requirements to be furnished along with the application and that they are not contrary to public policy or morality¹⁴². For a certification mark, the Registrar has to also look into whether the applicant is competent to certify the goods or services for which the mark is proposed to be registered¹⁴³. If all the requirements are met, the application would be accepted and then the

regulation is published¹⁴⁴. All other procedures in respect of trademark registration would be followed.

It appears that since there is no minimum standard laid down in the TRIPS Agreement regarding the mode of GI and trademark administration, the countries adopted different approaches taking into account their domestic practices. It is clear that while some countries laws provide adequate provisions for registration, others seem to have left the details to the administrative authorities to frame adequate rules and regulations. In all these countries registration is a *prima facie* proof as to the existence of GIs. In the countries where registration is not mandatory, the evidence of existence of the GIs is determined by the courts in cases of disputes regarding the use of GIs by unauthorized persons. It is also clear that in many countries even unregistered GIs are protected through the common law type remedies such as passing off. This is expressly stated in some of the GIs legislation. This may result in parties using both the options to protect the GIs in cases of unauthorized use.

2.4 The Legal Mechanisms for Quality Control

It is needless to emphasize the importance of preserving the quality of GI products. If one of the objectives of protecting GIs is to protect the consumer interest in maintaining the reputation of the GIs, ensuring the quality is the most essential factor. Though TRIPS does not envisage any method of quality control system in its text, it is clear from Article 22(2) that this is an implied obligation of the national laws. There could be different ways of ensuring quality while protecting the GIs. The direct approach is to prescribe the method of quality control system in the legislation itself as a precondition for registration. The best example of such a system is the EC Regulations on the protection of GIs on agricultural products and foodstuffs¹⁴⁵. Article 4 of the Regulation dealing with the product specification contains the quality requirements to be established to claim protection. In the absence of such a provision this could find place in the rules and regulations implementing the GIs law. The other approach could be to leave it to the parties to establish it before the court of law when there is infringement of GIs.

A notable feature of all the *sui generis* laws examined is that they do not contain any specific provision for quality control. Still, some of the provisions relating to registration of GIs in these laws could be read as providing some inbuilt mechanism for quality control. Only in Indonesia, quality or the peculiar feature is made the basis for protection. A GI can be protected in Indonesia so long as it maintains the quality or unique features that form the basis for protection¹⁴⁶. But in Singapore, use of GIs is a pre-condition for protection¹⁴⁷ and there is no reference regarding maintenance of quality. It appears that whenever there is allegation of prohibited uses of GIs, the plaintiff has to establish the quality based on prior use of the GIs and the reputation acquired. The prior user

concept seems to be introduced in Singapore to ensure that only actual manufacturers of the product are entitled to use the GIs and others could use only with permission. This will enable the producers to maintain the quality of the product and also compels them to join together and protect the reputation of the GIs.

India, Thailand and Malaysia require details about the quality, reputation or other characteristics of the GIs at the time of registration. In India, under the GIs Rules the applicant has the obligation to explain how the GIs serves to designate the goods as originating from the territory, region or locality as the case may be in respect of quality, reputation or other characteristics which are due exclusively or essentially to the geographical environment with its inherent natural and human factors and the production, processing or preparation which takes place in such place¹⁴⁸. It also insists on description of the human creativity involved if any¹⁴⁹. The application must also specify the standards for the use of GIs as regards the production, exploitation, making or manufacture of the goods and particulars of the mechanism to ensure that the standards, quality, integrity and consistency or other special characteristics are maintained by the producers, makers or manufacturers of the goods¹⁵⁰. The application must also detail the particulars of special human skill involved, the uniqueness of the geographical environment, or other characteristics associated with the GIs¹⁵¹. Similarly, the application in respect of the registered proprietor and the authorized users of the GIs must contain a statement of the period during which, and the person by whom, the GIs have been used in respect of the goods specified in the application¹⁵². The applicant has to file an affidavit testifying to such use with exhibits showing the GIs as used, the volume of sale under that GI, definite territory and related particulars¹⁵³. These provisions could be treated as an attempt to ensure prescribed standards of manufacture and quality.

In Thailand, the application must indicate the product using the GIs, details about the quality, reputation and other characteristics of the goods, and the relationship between the product and the geographical origin¹⁵⁴. After registration, the producers in the geographical area and the traders get the right to use the GIs¹⁵⁵. It is important to note that even though there is an obligation to provide details on the quality, reputation and other characteristics, the law of Thailand only prohibits the use of GIs in a manner causing confusion as to the geographical origin, quality, reputation or other characteristics of the goods. It is doubtful whether this provision could ensure quality of the products by users, particularly traders. Permitting the use of GIs by traders without proper quality control could result in dilution of the value of the GI causing irreparable injury to actual producers.

In Malaysia also, there is an obligation to give the details of the quality, reputation or other characteristics of the goods in the application for registration of GIs¹⁵⁶. The certificate of registration will contain the GIs

registered, the demarcated geographical area, the name and address of the person in whose name the GIs is registered, the concerned goods, the quality, reputation and other characteristics of the goods and any conditions for use etc¹⁵⁷. Thus the intention of the Act is to ensure quality control. The right to use is limited to producers carrying out activities in the geographical area specified in the register in accordance to the quality, reputation or other characteristics¹⁵⁸. This ensures quality control and puts the responsibility on the actual producers in the geographical area. Even though dealers and traders are included in the definition of producers¹⁵⁹, they must also carry out their activities in the specified geographical area¹⁶⁰. The only Asian country whose law has no direct or indirect reference to quality control is that of Jordan. It is not clear whether there are any regulations in this regard.

The certification and collective mark systems for the protection of GIs followed in China and Pakistan have adequate provisions to maintain quality. In China, the certification mark is defined as “a mark which is controlled by an organization capable of supervising a type of goods or service and which is used in respect of goods or services by other organizations or individuals who do not belong to the said organization with a view to certifying the origin, raw material, mode of manufacture of goods or performance of services, quality or other characteristics”¹⁶¹. The applicant for the registration of a GI as certification mark in China has to transmit to the Registrar draft regulations for governing the use of the mark concerned including instances where the proprietor is to certify goods or services and to authorize the use of the mark¹⁶². The approved regulations shall be deposited with the Registrar and shall be open to inspection¹⁶³. The processing of the application will be in relation to the competency of the applicant to certify, whether the draft regulations are satisfactory and whether registration will result in public advantage¹⁶⁴. Registration gives the proprietor and the persons authorized by them the exclusive right to use the mark in relation to the goods concerned¹⁶⁵. It is their responsibility to ensure the quality as specified in the regulation before permitting anyone to use the mark. The deposited regulations can be altered, expunged or varied with the consent of the Registrar¹⁶⁶.

In Pakistan, it is specifically provided that the collective or certification marks registered in respect of a GI should not be misleading as to character or significance¹⁶⁷. The application for registration is to be filed with the Registrar along with the regulations governing the use of the mark¹⁶⁸, specifying the persons authorized to use the mark, conditions for membership of the association, conditions for the use of the mark and any sanctions against misuse in the case of a collective mark¹⁶⁹. In addition to this the persons authorized to use the certification mark, the characteristics to be certified by the mark, the manner in which the certifying body shall test the characteristics and supervise the use of the mark, and other related matters, must also be mentioned¹⁷⁰. These provisions indicate that a quality control mechanism has

been deliberately built into the system. The position becomes stronger in Pakistan since the collective or certification mark is subject to revocation owing to the failure of the proprietor to secure observance of the regulations governing the use of the mark.¹⁷¹

Thus it is clear that the majority of the countries examined address the issue of quality control and some of them, particularly Malaysia, mandate that the actual producers ensure that standards of quality are maintained. In some other countries like India it is the responsibility of the registered owner and user of the GIs to ensure the maintenance of the quality of the goods.

2.5 The Ownership of Geographical Indications

The provisions dealing with ownership of GIs are the most important in as much as it would enable one to understand whether the legislation is intended to protect the actual producers of the GIs products or not. If the intention of the legislation is to protect the actual producers, the ownership of GIs must be exclusively with them. This will also help to ensure that in cases where there is an element of human intervention in the creation of a reputation relating to the GIs, the ownership of GIs will be with the holders of traditional knowledge. It is interesting to note that in all the legislations except that of Jordan, dealers and traders are included in the definition of producers or the persons eligible for making registration or claims on the GIs. From this, it appears that in addition to actual producers, traders and dealers could also be treated as owners of the GIs. Thailand¹⁷², Indonesia¹⁷³ and India¹⁷⁴ even allow consumers to register GIs. Some countries like India, Thailand, Indonesia and Malaysia also permit governmental agencies to file application for registration of GIs.

Notably, Jordan is silent about which individuals or groups the owners of the GIs may be, and it provides that affected parties will have a right to sue. So it seems that in Jordan, actual manufacturers could only be the owners of the GIs. In Singapore, interested persons have the right to sue against the prohibited acts and these interested persons include traders, producers and their associations¹⁷⁵. But the right to sue seems to be established based on the prior use of the GIs since no registration system is followed in Singapore.

In Malaysia, even though the definition of producer includes trader and dealer¹⁷⁶, the right to use the GIs is confined to producers including traders carrying out the activities in the specified geographical area¹⁷⁷. However, the Act is silent about the persons entitled to sue in cases of infringement. It appears that the persons entitled to use the GIs are the ones who could file cases against infringement and to protect GIs. In Thailand also the law is not very clear as to who could sue for infringement though the right to use the registered GIs is confined to manufacturers in the particular geographical area and the traders¹⁷⁸. But in Indonesia it is made clear that the right-holder has the right to sue in case

of infringement¹⁷⁹. Under the Indian law both the registered proprietor and user are permitted to take action for infringement¹⁸⁰. This makes it clear that the intention of the law is to put the control of the use of GIs with genuine persons. It is evident that since the approach of these laws is to protect the commercial interest involved in the GIs, the ownership of GIs is vested with all the persons involved in the commercial transaction. This brings in the notion of collective ownership of GIs in these countries.

The persons entitled to register for certification marks in respect of GIs in China can be "any person who is using or proposes to use the certification mark".¹⁸¹ According to the law, registration provides the proprietor and the persons authorized by him the right to use the mark in relation to the goods concerned¹⁸². The definition of certification mark prevents the proprietor from using the mark in the case of ordinary trading and allows him to use it only for the purpose of certification. Therefore there is a collective ownership for the authorized users to use the mark over the goods and services specified. But the problem is that there is no provision which mandates that an association of persons producing the GIs alone could file an application for registration of the GIs. Since this is not specified, any trade organization could file an application and start controlling the GIs resulting in difficulties to actual producers of goods in the geographical area. In Pakistan also, it is not specifically provided that association of persons actually producing the goods or services designated by the GIs alone can apply for registration as trademark, certification mark or collective mark. The authorized users receive the right to initiate action against infringement by persons not duly authorized¹⁸³.

2.6 Conclusion: Asian Legal Framework

The above analysis of the legislation attempts to make it clear that Asian countries have adopted different approaches to satisfy the obligations under TRIPS. It is evident that in all these countries GIs protection is a new initiative undertaken because of TRIPS obligations. It is an accepted fact that in some countries like India, foreign GI owners used passing off remedies to prevent abuse of GIs even before TRIPS¹⁸⁴. It is clear that none of these countries insisted on compulsory registration for protection of GIs. It appears that in all these countries parties are free to take other remedies like passing off, certification mark and collective mark registration as an alternative way of protecting GIs. Countries where registration is permitted are almost uniform in respect of allowing actual producers, traders, dealers, consumers, and governmental agencies to act as registered proprietors of GIs. This seems to ensure protection of the interest not only of the actual producer of the goods but of the trader also. This also reflects the fact that trading communities in these countries use GIs extensively and they have a vested interest in safeguarding their business interest particularly in the export market. In the context of the TRIPS Agreement it is clear that only if GIs are protected under

domestic laws is there a possibility of seeking protection in foreign countries. It appears that it is this realization that made the legislators include provisions allowing different interest groups to claim protection of GIs in domestic laws. Once it is registered under domestic law within the country by any person it then becomes easier to claim protection in foreign countries. The lack of a culture of protecting GIs and the weak socio-economic conditions of the producers of GIs also seem to be reasons for such provisions.

There are differences regarding the right to use GIs, registered or protectable as the case may be. In all the countries both producers and traders are allowed to use the GIs. This triggers a question about whether the system could protect the interests of the actual manufacturers of the goods designated by GIs. This rests on two primary inquiries (i) who is having ownership over the GIs and (ii) who is having the right to use the GI. It is clear from the comparative analysis that traders, dealers, consumers and governmental agencies are permitted to act as the proprietors of the GIs in addition to the actual producers. The incorporation of traders and dealers as owners is a reflection of the trader's interest as seen in the international instruments. The reason for permitting consumers and governmental agencies could be because of the highly disorganized nature and weak socio-economic conditions of the actual manufacturers¹⁸⁵. Yet most of the laws confined the right to use the GIs to persons who are actually producing and trading the goods in the specified geographical area. This is intended to ensure that the socio-economic benefits of GIs reach the genuine users of GIs and not to intermediaries. It appears that since all the countries allow traders also to use the GI and there is no direct control by the producers on the traders, quality control seems to be a major problem. Since protection of GIs is also intended to safeguard the consumers by ensuring the quality of the product it is necessary that there must be a direct control by the actual producers of GIs on the use of GIs by other interest groups like traders. The laws which do not provide for a system of registration cast a burden on the plaintiffs to prove every time that they have *locus standi* and that the GIs alleged is an eligible one for protection. The reputation acquired through prior use of GIs seems to be the pre-requisite for protection in this approach. Though this system may indirectly maintain the quality of the products, the problem of locating the actual producers and the quantum of production still persists.

It is clear from the analysis of the various laws that countries consider human contribution as one of the factors to recognize GIs for protection. Of interest questioning this paper is a question of whether the laws address the issue of protecting this traditional knowledge base while affording protection to GIs. It is evident that no law attempts to link GIs expressly with TK. But by preventing the unauthorized use of GIs, this paper asks if it is possible to prevent the use of traditional knowledge associated with the GIs. In the context of the wider definition of GIs used by these countries traditional knowledge could form part of GIs provided human factors are one of the contributors in the reputation of

the GIs. Yet it is clear that this is not a mandatory requirement in any of the countries for GIs to become eligible for protection. Thus the focus of GI protection in these countries is not on protection of traditional knowledge associated with GIs. In fact the requirements of the definition of GIs in the laws of Jordan and Indonesia are silent even on the traditional practices involved in production of goods involving the GIs. If one examines the requirement of GI registration in India¹⁸⁶, Thailand¹⁸⁷ and Malaysia¹⁸⁸, though there is no express provision for protecting TK, the insistence on details of the human factors required for registration facilitate the protection to the traditional methods involved in the production, which are responsible for the quality, reputation or other characteristics of such products. This protection will be effective only in limited circumstances.

If one examines the nature of traditional knowledge associated with GIs, in majority of the cases the knowledge is widely known and available not only to all members of the locality but also to others who are interested¹⁸⁹. Only in a few cases the traditional knowledge is completely kept secret and known only to limited members involved in the production¹⁹⁰. Since the traditional knowledge in many cases are widely known, the protection of GIs never prevents the TK associated with it from being used by others in producing similar products and selling it under different names. In such cases protection for TK is possible only in cases where it is not practically possible to trade on the product using a different name since the traditional knowledge is so closely merged with the GIs. Another circumstance one could envisage where effective protection of TK using GIs might occur, is in cases where the producers keep the knowledge secret and market the products using the GIs. These limitations seems to be the reasons for the GI laws not addressing the wider question regarding prevention of the use of traditional knowledge without permission of the holders of the knowledge.

Even though the *sui generis* laws have various limitations, they ensure protection in a partial way for the GIs and their actual producers. Maintenance of the claimed quality and the status of a legally protected category will of course give a trade impetus to the products covered which will ultimately result in improved socio-economic conditions such as improvement of the quality of life, economic stability, social respectability, educational standards and other related conditions for these groups. Expansion of trade by promoting export and capturing foreign market would surely add to this. This in fact warrants extension of GI protection similar to that of wines and spirits to other products as well. The system of protection for GIs through collective and certification marks followed in China and Pakistan seems to be quite satisfactory. This system could provide protection for not only goods but also services. Here, the quality of the goods is ensured. In the case of a collective mark, it has a direct link to the origin of the product also. The certification mark can also ensure the geographical origin of the product since the proprietor of a certification mark

can incorporate provisions to ensure the same. The insistence on regulations could ensure quality control resulting in the benefit of protection to the actual producers of the goods. There is no doubt that the use of certification marks for protecting GIs is an effective one. The important element of the certification mark in ensuring effective protection and quality control is the obligation of the applicant to give a regulation regarding the nature and content of the use of the mark. In the case of GIs, this could include the geographical location, quality control measures, and persons eligible to use GIs. Notably, there are no separate conditions mentioned in the law of China or Pakistan regarding special requirements for GIs. If this could be added in the law, this system could effectively protect GIs.

The registration system of collective marks permits actual producers, traders, dealers and even consumers to register. This is also the case with certification marks and there is no mandate in the two laws to confine ownership of the mark or the right to use the GIs only to the actual manufacturers producing goods in the specified geographical area. How far they could ensure the socio-economic benefits to the actual manufacturers seems debatable. Also there is no express provision for the protection of traditional knowledge in both the laws. The system could also be used for the protection of traditional knowledge involved in the production of goods bearing the GIs if it is exclusively known to the users of GIs only. If the knowledge could be easily found out or widely known it may be possible for others to produce the product using the same knowledge and could sell the product in a different name.

This analysis of the different laws of Asian Countries makes it very clear that all these countries provide protection for all forms of GIs. The majority of the countries even provided the protection mandated in TRIPS for wines and spirit to all categories of products. These countries not only have a domestic market for these goods but also an export market. Even though the domestic legislation will facilitate socio-economic development benefits for the producers of GIs the lack of international obligations to provide adequate protection could affect their export market and economic returns. The analysis of the legal protection afforded in these countries highlights the reasons for demanding the extension of GIs protection in the TRIPS Council.

3. CASE STUDIES ON THE GEOGRAPHICAL INDICATIONS AND THEIR POTENTIAL FOR SOCIO-ECONOMIC GROWTH

It is often argued that proper protection to GIs could lead to socio-economic changes for the producers of goods that also involve traditional knowledge. With the major Asian countries putting in place laws to protect GIs, it is interesting to find out the nature of the GIs that exist and the potential to bring in socio-economic changes to the producers of the goods. A limited case study of certain GIs, especially from India, is undertaken to find out the potential of GIs to bring socio-economic change and protection of traditional knowledge.¹⁹¹

3.1 The case of Aranmula Kannadi

Aranmula is a rural place in Pathanamthitta District of the State of Kerala in India¹⁹². This is a rural area and the place is known for a peculiar type of metal (combination of tin and copper) mirror called "Aranmula kannadi". The high quality of the mirror, which is made of metal, makes it different from ordinary mirror and is in great demand as a gift and as a keepsake item. Only a few traditional families are engaged in the production of this metal mirror. Their ancestral origin is from Sankarankoil near Tirunelveli in the State of Tamil Nadu. They belong to the category of Viswakarma bronze smith. Their ancestors were brought to Kerala from Tirunelveli approximately 500 years ago by the Maharaja of Travancore for the construction of temples. They were given landed properties for residence, cremation and other practical purposes by the Raja, and the present generation still possesses parts of the land given to their ancestors.

There is a belief that the secret behind the production of Aranmula kannadi was revealed to a female member of the family by Lord Sri Krishna of Aranmula Parthasarathi Temple. However there is a difference of opinion among the members and some do not believe in this myth. According to them the unique combination of factors leading to the Aranmula metal mirror was actually through accidental invention during the production of a crown, which was made to please the Maharaja of Travancore. The crown was with extra-ordinary reflection and the Maharaja directed them to make mirrors with the same combination instead of crowns and thus started the production of Aranmula kannadi.

The peculiarity of the Aranmula metal mirror is that it resembles a glass mirror in every respect, but the surface gives reflected images instead of the refraction that occurs in glass. In the manufacture of the mirror, the metals used are tin and copper in a specified combination, which is kept secret by the members of the family. For casting and moulding, they use clay from Aranmula itself and the proportion of the clay used in different parts of the mould is also a secret. The

casted combination of tin and copper is brittle and silver-like in colour with rare brilliance. It acquires the quality of its reflection on cleaning and polishing. The combination of tin and copper as well as the proportion of clay used in the different parts of the mould is a closely guarded secret and the same is transferred from father to son for generations.

The local knowledge holders also claim that even if the secret of the combination is revealed, nobody could make the mirror with this perfection since a lot of know-how, skill and experience is needed for the manufacture. This is the reason for the reputation of the product and the control of the business exclusively within specific family groups for a long time. It takes almost 6 months for the completion of the manufacture of one piece of mirror and each and every stage of production is done manually, without the use of machines. Although the material cost is very low, substantial time is required using skill and craftsmanship for the production and polishing of the mirror. The market price of a small mirror is more than Rs. 2000 (\$ 50) and the price can go up to Rs. 25,000 (\$ 600) depending up on the size of the mirror. Even though the producers make a reasonable profit they are of the view that it is inadequate to compensate the craftsmanship involved. Even today the mirror manufacturing is purely a family business. At present there are four families in Aranmula continuing with the production and all of them are relatives. There are around 50 members who are involved in the business and all of them belong to middle class families. The fact that they currently can make only reasonable profits shows that GIs could have a significant impact on the socio-economic conditions of actual producers provided they could prevent others from using it.

Aranmula kannadi is now marketed nationally and internationally. Due to the exorbitant price of the product, only the elite class could afford it. It is interesting to note that the families manufacturing the mirror directly market the mirrors. They have recently created a web site for promoting the sale of the product¹⁹³. They are also associated with government cooperative societies in Kerala such as *Surabhi* and *Kairali* for sale of their product. The Development Commission of the Handicrafts and Handloom Department has issued identity cards and artisans' credit cards to them. Even though they are making reasonable profits from their business, they are not sure whether their younger generations will continue with this business considering the changing life patterns of Kerala. Their aim is to educate their children to enable them to get good jobs.

There are many duplicates of Aranmula kannadi in the market. It is very difficult to trace out the duplicates and the manufacturers could identify it only when it comes to them to be polished in their hands. The duplicates cannot attain the reflection of their own mirrors on polishing. Similarly it is very difficult to properly cut the edges of the casted combination like the original mirrors. The fact that the duplicates did not affect their market share seems to be the reason

for not initiating any legal action to prevent this. Recently the producers formed an association, Aranmula Metal Mirror Nirman Society. The society in the name of Parthasarathy HandiCraft Centre has registered "Aranmula Kannadi" as a GI under the new Act.

It is worth noting that even in the application for GIs protection they did not disclose the secret of moulding and casting. The application contains only details of various items used for the preparation of alloy and plates that are made out of Aranmula special clay for the purpose of casting and moulding. The unique nature of this product is that it involves extraordinary skill and craftsmanship in the combination of casting and moulding. This was made clear in the application thus: "preparation of moulding and castings are top secret which are not accessible to others but the artisans. The clay available in Aranmula Panchayat area is peculiar and has better quality than the clay available anywhere else, playing a key lead role in moulding and casting"¹⁹⁴. They were well aware of the GIs protection offered to their product, but were ignorant that a separate registration is needed as authorized users under the Act. Since more than one family is engaged in the production of the mirrors, there are chances of variation in quality. To ensure uniform quality, the Society is planning to introduce a "seal" system. The sealed goods released to the market will be of a specified quality.

It is evident from the case study that the direct manufacturing and selling of the mirror enables them to reap the maximum economic benefit from the GI. The traditional knowledge used for making the mirror is kept secret. The fact that no one could find this out makes it possible for them to keep the quality of the product unique. The case of "Aranmula Kannadi" make it clear that traditional knowledge used in the products of GIs could be protected effectively only if the knowledge is kept secret by the producers and the GIs acquires unique reputation.

3.2 The Case of Kancheepuram Silk Saree

Kancheepuram is a temple city in the State of Tamilnadu in South India, well known for silk sarees¹⁹⁵ by name "Kancheepuram Silk". History of the craftsmanship and silk producing tradition in Kancheepuram is very old and it can be traced back to more than 400 years. This city was the capital of Pallava kings which was later ruled by Cholas, Vijayanagar rulers, Muhammadan kings and the British. All these regimes contributed their share in preserving the tradition of Kancheepuram weaving. Kancheepuram silk sarees are hand woven with dyed silk yarn and inter-leaved designs made with "*Zari*"¹⁹⁶. The consumers prefer this saree because it is woven from pure mulberry silk made up of three single threads twisted together and it has an enviable reputation for texture, luster, durability and finishing. Originally, weaving in Kancheepuram was a pure community-based business by the "*Salia*" community. But now almost all the

communities within the radius of 8 kilometers from Kancheepuram city are engaged in weaving. There are 21 registered co-operative societies in this field having total membership of more than 30,000 weavers and about one million weavers who are not members of any society. According to the official report 75 % of the population in Kancheepuram District is directly or indirectly connected with saree industry. It is this industry that sustains the socio-economic conditions of Kancheepuram.

Manufacturing of Kancheepuram saree is associated with several factors. It is a combination of conventional and traditional technique of weaving with craftsmanship. These sarees are made of natural silk and Gold '*Zari*'. The quality of *Zari* is an important variable in deciding the quality of sarees. This city does not manufacture silk or *Zari*. Silk is sourced from Dharmapuri in the same State and Bangalore, in the nearby Karnataka State and *Zari* is procured only from Surat of Gujarat State. The weavers claim that water used at Kancheepuram for processing the raw silks give the luster to silk fabrics and this may be one of the reasons for setting up the silk industry here. Above all, the traditional weaving technique used in Kancheepuram is unique and very important for the reputation of the saree. All weavers in Kancheepuram openly use this traditional technique.

Today the cultural center in Kancheepuram gives training to the new generation of weavers to learn these techniques. They use their traditional weaving of "Adai" and "Jacquard" design techniques. The "Adai" and "Jacquard" are the two methods of design pattern. "Adai" is a normal design work on saree borders. Preparation of "Adai" is very complicated and normally undertaken by the master designers using hand work. "Jacquard" design is also highly complicated design work on the body of the saree, "munthi"¹⁹⁷ and in borders. "Jacquard" looms use the holes punched in paper cards in accordance with designs already made in graph paper. These holes in the punch card control the weaving patterns in the fabrics. Each punch card corresponds to one row of the design and the cards are strung together in order. Each hole in the card corresponds to a hook, which can either be up or down. The hook raises or lowers the warp thread so the shuttled yarn will either lay above or below it. The sequence of raised and lowered threads creates the pattern or design in the fabrics. This traditional technique makes their product unique and well-reputed.

Kancheepuram sarees are now available in both national and international markets. There are two channels of manufacturing silk sarees, one by the members of the societies and another produced by weavers who are not members of the society. The unique nature of this silk saree industry is that all the registered societies are very active. The annual turnover of each society is between one to two million rupees. A common logo along with the name "Kancheepuram Silk" is printed in the saree to ensure its genuineness. But there is no quality control in case of sarees produced and marketed as

“Kancheepuram Silk” by weavers who are not members of the society. Since these weavers were using the name for a long period of time it is not possible to prevent them from using the name.

To ensure protection of the consumers, the Handloom Department of Government of Tamilnadu has installed a machine to identify the original Kancheepuram Silk. This is a non-destructive testing (X R F) developed by the Government of Tamilnadu in collaboration with Technology Information Forecasting Assessment Council (TIFAC) New Delhi and Indira Gandhi Center for Atomic Research, Kalpakam, to measure the prescribed standards of *Zari* and silk quality used in the Kancheepuram sarees. A consumer who is interested in finding out the genuineness of the saree could test this by paying 50 rupees per saree. This is expected to compel all the saree producers in Kancheepuram to follow the prescribed standards.

The societies sell their product directly through their shops, authorized agents and Co-optex, the apex cooperative society of Government of Tamilnadu. The society gets 7%-9% margin while selling their product. All the members of societies are shareholders of the society. The societies supply the design with raw material to the weavers and wages were paid when the finished product is returned. To ensure quality of the product a non-destructive test (X R F) on the raw material was conducted before supplying the raw materials and the same test was repeated when the weavers return the finished product to the society. It is the nature of the design that determines the duration taken for weaving a single saree. Normally one family could weave two sarees in a month and earn a minimum of Rs. 4000/- (\$ 95). But the weavers who are not members of the society earn much less when compared to members of the society. Wages may also vary according to the nature of the design work. Unlike other sarees, the cost of the production of Kancheepuram saree depends up on the quantity of the *Zari* used for weaving. Since *Zari* is very expensive, the price of the sarees varies depending up on the nature of the *Zari* work. Thus the market price of the Kancheepuram sarees ranges between Rs. 2000 (\$ 50) to Rs. 50,000 (\$ 1150). The weavers seem disappointed by the profit they make when compared to the market price of the sarees. There is no enthusiasm on the part of the new generation to continue with the work. The State and Central Governments are providing support and assistance to these societies by way of welfare measures for encouraging the members to continue with the business. In addition to this, the Indian Silk Export and Promotion Council, Mumbai also supports these societies in exporting the silk products. Kancheepuram saree is exported to Sri Lanka, Singapore, Hong Kong, England, Africa, Aden, Gulf, U.S.A., U.K., Germany Italy and Russia.

“Kancheepuram Silk” is a registered GI in the name of the Department of Handlooms and Textiles, Government of Tamilnadu, in respect of Textile Goods falling in class 24 & 25¹⁹⁸. It is interesting to note that none of the societies are

registered users under the Act. They are also ignorant about the need to become a registered user under the Act to use the mark. They are equally unconcerned about the use of the name Kancheepuram by others. They believe that the use of the common logo adopted by the societies along with the name will enable them to protect their economic interest. The traditional knowledge of weaving Kancheepuram Saree, though known to all and open for learning, is well protected since the GI is very popular. It is the name coupled with the traditional technique that makes the product well-reputed. Even if someone is going to weave sarees using the same technique, and if they market it using some other name, this is not likely to significantly affect the market of the Kancheepuram sarees. This makes it clear that if the traditional knowledge is closely linked to the reputation of the GIs, effective protection of GIs could protect the traditional knowledge as well, even if it is openly used.

3.3 The case of Pochampally Ikat Handloom and Sarees

Pochampally is a small rural village in Nalgonda District of the State of Andhra Pradesh in India, known for its very unique *ikat* design for handloom silk and other cloth materials¹⁹⁹. The weavers in Pochampally are basically Hindus of the *Padmasali* community and they have been marketing their products using the name "Pochampally Handloom" for a long time. The "Pochampally Handloom Weavers Co-operative Society Ltd", an autonomous society registered under the Societies Act, and "Pochampally Handloom Tie and Dye Silk Saris Manufacturers Association" now regulates various weaving activity in Pochampally. The Pochampally design started during the period of Nizam when the *ikat* technique was brought from Chirala, a place in Andhra Pradesh. The weaving originally started with cotton material to produce "Rumal"²⁰⁰ for the rural people, particularly for the Muslim community, who used it as a turban. It became very famous and came to be known as "Asian Telia Rumals". The "Rumals" were exported in large quantity to Burma, the Middle East and some African countries. In 1960, the Chairperson of the All India Handicrafts Board Smt. Kamaladevi Chatopadhyay visited Pochampally and persuaded the weavers to weave the first cotton saree using the traditional technique. The success of this attempt resulted in the weaving and marketing of sarees using the name "Pochampally Handloom". Later, the Board sent two weavers to Banaras to study silk weaving and this facilitated the production of silk sarees. The weaving of Pochampally design cloth has now spread over the entire Nalgoda district, Medak, Mahabooba Nagar, Ranga Reddy and Warrangal. More than a million people are engaged in this business and are now producing handloom silk sarees, cotton bed sheets, curtain cloths and all other cloth materials.

The material used for manufacturing the sarees and other items are collected from different parts of the country. Silk is procured from Bangalore, in the State of Karnataka and Surat in the State of Gujarat; the cotton from the State of Andhra Pradesh; and chemical for colouring from Mumbai in the State of

Maharashtra. The producers also use vegetable colours prepared from local plants and flowers. The Agricultural Training Institute, in Nalgonda, is conducting research in this area to improve the quality of preparing colours. The attraction of Pochampally sarees is their colour combination and design. The weavers achieve this through their traditional technique of "Tying and Dyeing"²⁰¹. It involves the sequence of tying and dyeing sections of bundled yarn to a pre-determined colour scheme prior to weaving. The weavers first prepare the design over a graph paper and decide the colour pattern before dyeing the yarn. After this, the threads are stretched on warping blocks and are divided into a number of sets. They mark the design over the threads and tie or cover it with a rubber tape in the areas where the original colour is to be retained. The exposed portion of the yarn is dyed while the tied section remains undyed. After it becomes dry it is again stretched for dye in the other part of the yarn. This process is repeated several times till the designing is completed. Historically, this traditional technique of "Tying and Dyeing" was very secret and used only by the male members of the family. They did not even allow their wives to see it. Now it is open for several reasons, mainly because they themselves allowed foreigners to take photographs and explained the production methods to them. The Society is now training the new generation of weavers to learn this technique.

Marketing of the Pochampally *ikat* design is controlled by the Pochampally Handloom Weaver's Cooperative Society and the Pochampally Handloom Tie and Dye Silk Sarees Manufactures Association, a body representing weavers' who are not members of the Society. They are marketing their product nationally and internationally. The Society provides the materials for weaving to its members and the weavers get a 12% margin for the final product. The members are not allowed to sell the product in the open market. The society sells 50% of their product through the Andhra Pradesh Cooperative Society, (APCO) and the rest is sold directly in the open market and through exhibitions. The Society receives financial assistance from Andhra Pradesh Cooperative Bank. The Government of Andhra Pradesh also offers a 20% rebate during festival seasons. As far as the weavers who are not members of the society are concerned, the dealers supply the materials needed for weaving and the weavers make a 12-15% margin when the finished products are returned to the dealers.

For maintaining the quality of Pochampally silks and cloth items, the Government of Andhra Pradesh has taken a number of different measures. In the case of weavers who are members of the society, quality control technicians are appointed in each branch to give training to the weavers and to suggest new designs. In the case of weavers who are not members of the society, the Assistant Director of Handicraft, Nalgonda issues identity cards to weave the Pochampally design. The socio-economic conditions of the weaving communities are very weak. They are not satisfied with their profits and wages. When they weave 8 sarees in 45 days with the assistance of the entire family,

they earn only Rs. 2000/- (\$ 50) as wages while the market value of a single saree exceeds Rs.2000/-. The younger generation does not seem willing to continue this business and 60% of the people belonging to this community are now looking for other jobs. Their market is also affected by high competition and new trends in fashion.

Legal protection of their intellectual property right is not familiar to the producers. There is actually no technical mechanism to identify duplicate products. They can find out duplicates by viewing the design itself. They usually visit near-by shops to find out if there are duplicates being made. Once the traditional producers took action against Aravind Mills, a local power loom cloth mill, in their attempt to print the Pochampally design. The Andhra Pradesh Government shut down this mill.

“Pochampally Ikat” is now a registered GI under the new Act²⁰². The Pochampally Handloom Weavers’ Co-operative Society Ltd and Pochampally Handloom Tie and Dye Silk Sarees Manufacturers Association, with the support of the Andhra Pradesh Government, filed the application. The weavers are ignorant about the existence and the benefits of the Geographical Indications (Registration and Protection) Act, 1999, though they believe that they own the patent rights on “Tying and Dyeing”. The weavers are now taking additional precautions to maintain the quality of their products. It is clear that this GI is the life-support of a large number of rural people surviving on the revenue generated from this business. It is also evident that the technique they use is traditional and there is no protection for it since it is now openly used by members of local industry and known to many. The attempt of the Aravind Mills is a clear indication that there is the possibility to act against the misappropriation of traditional knowledge that could not be controlled only through enforcing the rights under the GIs Act.

3.4 The case of Balaramapuram Handloom

Balaramapuram, a rural area in the Thiruvananthapuram District of State of Kerala in India, is known for cotton handlooms²⁰³. The cloths made from this place are sold in the market using the name “Balaramapuram Handlooms”. The history of handloom weaving here is connected with the former Travancore royal family. Handloom in Balaramapuram started during the period of king Balaramavarma 250 years ago. The King brought five weaving families from Valliyoor, Tirunalveli District of Tamilnadu, a nearby State. They belonged to the *Chalia* community and were brought to weave and supply cloths to the members of royal families. The King allotted four streets to them and gave financial assistance initially to start the business. The handloom sector in Balaramapuram today provided jobs for about a thousand families consisting of around a million members, belonging to different communities like Ezhava, Nadar, Mukkuva, and others. All these communities are treated as educationally, socially and economically backward communities by the State for special educational and

other benefits. There are more than 30 handloom co-operative societies in Balaramapuram though the majority of them are not functioning properly. It is interesting to note that the majority of the traditional weavers from *Chalia* community are not members of these societies. There are a number of families who are not members of the society but are involved in weaving. This makes it clear that the weaving activity and the economic benefit deriving from the production and sale of cotton clothes in Balaramapuram based on the traditional reputation is no longer confined to the members of the traditional *Chalia* community. This means that the reputation of the name acquired by the *Chalia* community is now enjoyed by a large number of people belonging to weaker sections (economic, education and lower cast) of society.

The major items manufactured from Balaramapuram are Pudava and Kavani²⁰⁴, Sarees, Veshti²⁰⁵, bed sheets etc. The materials used for their weaving are cotton and *Kasavu*²⁰⁶. The cotton required for the manufacture of these items is procured from Tamilnadu and the *Kasavu* from Surat, a place reputed for making *Kasvu* in the State of Gujarat. The processing of yarns used for weaving is generally known to the weavers and is not special to any geographical elements of Balaramapuram. The quality of the products is connected with the equipment used for weaving. The "Reeds" in the weaving loom are made out of bamboo pieces. This, according to the traditional weavers, helps them to adjust the gap between yarns, which is very narrow when compared to the clothes manufactured using metal reeds. The weaving is also done by hand. It is through the techniques of hand weaving and the particular nature of the looms used by the traditional weavers that makes the product look very fine and comfortable for use. It is these features that make the products from this place unique and reputed in the market.

Balaramapuram handlooms have gained good markets in Kerala and nearby States. They are also exporting limited quantities to the Middle East where large numbers of people from Kerala are working. Their main channels of distribution to the market are through their own societies, "Hantex" - the apex cooperative society for handloom under the control of Government of Kerala, and through exhibitions. The cooperative societies supply the weaving materials to their members, and members return the final product to the societies. Societies keep a detailed register regarding the supply of raw materials as well as the wages, special wages and bonus. Now, due to insufficient funds, societies are not supplying the yarn in advance but while supplying the final product to societies, societies pay the wage and cost of yarn to its members. The normal wage of the weavers for a Veshti is Rs. 40/- (less than one \$) and a good weaver can weave two Veshties a day. The market price of the Veshti could range between Rs.200 (\$.4) to Rs.500 (\$.11) depending upon the quantity of the *Kasavu* used. The members of the society are generally unhappy with their wages. Their next generation has very little interest in weaving because of low wages and the intervention of power looms. The weavers, who are not members of the society,

sell their products to private dealers for a minimum price fixed by the dealers. The dealers add another 20 % and fix the market price of the product. These weavers are basically happy with their profit, though the younger generation is more commonly being educated, seeking employment in the Government sector and other professional fields showing very little interest in the business.

The quality of the cotton and the comfort one enjoys by wearing these products are the major attractions of "Balaramapuram Handloom". Since the equipment they use for weaving is different from others they could identify the duplicates of their products at a mere glance. The large number of people involved in the weaving and the reputation of the product is a clear indication that the name "Balaramapuram Handloom" significantly contributes to the socio-economic conditions of these weavers. It is a fact that there are several duplicate handloom products and even power loomed cloths that are being sold using the name "Balaramapuram Handloom". It is disappointing to note that these weavers are not taking any action since they are worried about their own market. The fact that they are disorganized also contributes to the failure to monitor the misuse of the name. This also seems to be the reason for not registering the name under the GIs Act. It was also noticed that there is no uniqueness in the production since there is no quality control mechanism. Since these weavers are highly disorganized it was extremely difficult to find out the total production and turnover from this place. It is an accepted fact that one could locate a larger quantity of products in the market in the name of "Balaramapuram Handloom" when compared to the actual quantity which is produced from this place. It is also evident that if this is allowed to continue, this could directly affect the economic benefits arising from the reputation of GIs now enjoyed by thousands of weavers engaged in the business. There is an urgent need for the State to intervene to protect the GIs and its use.

3.5 The Case of Darjeeling Tea

Darjeeling tea is the world's most expensive and exotically flavoured tea. Naturally occurring quality and flavor has made it unique among teas. Darjeeling among teas may be equated to champagne among wines²⁰⁷. It is a major export product of India and it was the first GIs application filed in India under the Indian GIs Act. According to the Tea Board of India, Darjeeling tea means tea which has been cultivated, grown, produced, manufactured and processed in tea gardens in the hilly areas of Sadar Sub-Division. This include the hilly areas of Kalimpong Sub-Division comprising of Samabeong Tea Estate, Ambikok Tea Estate, Mission Hill Tea Estate and Kumai Tea Estate and Kurseong Sub-Division²⁰⁸ of the District of Darjeeling in the State of West Bengal, India. The tea which has been processed and manufactured in a factory located in the aforesaid area; and which, when brewed, has a distinctive, naturally occurring aroma and taste with light tea liquor and the infused leaf of which has a distinctive fragrance is recognized as "Darjeeling Tea".²⁰⁹

Darjeeling is situated in West Bengal in the foothills of the Himalaya at elevations of between 2,000 and 3,000 meters above sea level.²¹⁰ The distinctive, exclusive and rare character of Darjeeling tea is the result of several factors. The elevation from 610 to 2134 meters on steep slopes provides ideal natural drainage for the generous rainfall coupled with intermittent cloud and sunshine. These natural factors impart the unique character of Darjeeling tea. The beginning of tea plantations in Darjeeling started during the first half of the 1800s. The first experimental trial of tea plantation began in 1841 with the seeds obtained from China being quite successful²¹¹. Tea bushes cultivated in Darjeeling are mostly of Chinese origin, which take four to six years to mature. Plucking season is March - November. The average yield is 500 kgs/hectare of dry tea and is less than a third of the yields of tea gardens in areas of cultivated plains. The yield of a single bush amounts to 100 grams of the total tea produced during a year. It grows in a temperature variation of 8° and 35°C. The highest yield is obtained in June and the lowest during October with low temperature as a major climatic factor limiting the yield.²¹²

Darjeeling Tea is still manufactured using old traditional industrial methods known as "orthodox production".²¹³ This helps the tea to maintain the inherent aroma. The leaves undergo uniform stages during processing with focus primarily on quality. The various stages involved are withering, rolling, fermentation, firing/drying, sorting and grading.²¹⁴ Now, there are around 87 tea gardens producing Darjeeling Tea and they function in the Darjeeling Hills on a total area of 19,000 hectares.²¹⁵ The industry employs about 52,000 people permanently and another 15,000 people on a temporary basis during the plucking season. About 60% of the workforce consists of women and the majority of work involves planting, tending, plucking and package of the produce. The workers are given monetary compensation as well as amenities like food, accommodation, subsidized cereal ration, free medical benefits and infrastructure like buildings for schools, amongst other things.²¹⁶

A major proportion of the Darjeeling Tea produced is exported to countries like Germany, Japan, UK, USA and EU countries such as the Netherlands and France. In 2000, the net export of Darjeeling Tea raised a total amount of US \$.30 million²¹⁷. The annual production of Darjeeling Tea ranges from 10 to 11 million kgs. Yet over 30 million kgs are sold around the world as Darjeeling Tea²¹⁸. This clearly indicates the extent of free riding that occurs on the reputation of the product. The Tea Board of India created under the Tea Act, 1953 is the authority to deal with the regulation of tea industry. To protect the high repute of Darjeeling Tea, the Tea Board in co-operation with the Darjeeling Planters Association is involved in various activities. Creation of a Darjeeling logo in 1983, giving it statutory protection under the Trademark Act as a certification mark, and the setting up of a World Watch Agency for monitoring conflicting registrations, are a couple of examples²¹⁹.

The certification mark system introduced by the Tea Board is aimed at protecting the interests of Darjeeling Tea producers and also ensuring that the tea claimed to be Darjeeling is truly genuine. The new scheme is intended to secure the trade origin; to distinguish Darjeeling tea from other teas and to provide a certified guarantee of origin, quality, composition and mode of manufacture. It aims to secure that the sale of Darjeeling Tea is within the limit of production, thereby taking care of the interest of producers, traders, importers and consumers. Under the Certification Trademark System (CTM) introduced by the Tea Board, anyone who wants to sell tea in the name of Darjeeling should secure permission from the Tea Board or Darjeeling Planters Association to use the certification trademark. The certification will be awarded only to the teas produced from the 87 authorized gardens and sold as single or blended Darjeeling Tea. Darjeeling Tea blended with those produced from other regions will not be given certification.

Licenses are issued when the certifying authority is satisfied that the tea comes from Darjeeling and on conformation of such other conditions. Such licenses are a pre-condition to use of the term 'Darjeeling' even if the tea comes from the authorized gardens. In addition to this, the Tea Board has also devised a special logo that consists of the word Darjeeling with the pictorial representation of an Indian woman holding tea leaves, arranged in a roundel. This logo can also be used only under the license and authority of the Tea Board. The Tea Board has also applied for the registration of the name "DARJEELING" and the logo under clause 30 of the GIs Act, and the registration has been granted²²⁰. It is interesting to note that they now have registration under the GIs Act and the Trademark Act. One has to wait and see how they are going to use this dual protection. With all these measures it is expected that protection of the GIs can improve the socio-economic conditions of the people involved in the production of tea in Darjeeling.

3.6 The Case of Ceylon Tea

Sri Lanka is known for its teas with unique flavours and aroma. The British sailor James started tea plantation in 1867 in 19 acres of land. This has now spread over large areas mainly in the central highland and southern inland generating a job opportunity for more than 3,000,000 people every day. The unique quality of the tea is attributable to the different altitudes of terrain above the sea level where it is grown. These areas are categorized into low, middle and high grown areas ranging from 600 meters to 1200 meters above sea level. The main areas are Galle, Kandy, Dimbula, Nuwara Eliya, Uva, and Ratnapura. The "Ceylon Tea" as it is traditionally known has a global market and the major buyers are Australia, Europe, Japan, and North America. Today, tea accounts for approximately 15 % of the agriculture exports of Sri Lanka. The policy followed by the government after independence in 1948 and the economic liberalization

that took place since 1970 is responsible for this growth. This made private investment possible in this sector taking it to further heights²²¹.

The process of preparing the tea is another reason for its high quality. One major reason for the unique quality of Ceylon Tea is the plucking of tea leaves by hand. It is only the bud and two youngest leaves that are plucked that give the flavour and aroma. The first quality inspection is made in the *muster sheds* where the leaf is weighed. In the factory the leaves are *withered* using large blowers and they are cut to bring out the juices for fermentation. During fermentation the humidity, temperature and fermentation time are well controlled to ensure that the flavour and aroma are not lost. Once the fermentation is completed the leaf is *fired*, to lock in the flavour, to dry it to improve the keeping qualities. It is worth noting that no preservatives or artificial flavourings are added in the manufacture of pure Ceylon Tea. Separation of the product according to the colour and the particle size is the final stage, and stringent quality control is maintained. Anything that does not measure up to the standards is rejected. The best tea is exported to foreign markets²²².

Today Sri Lanka is the world's third biggest tea producer and the industry is the main source of foreign exchange earnings. Out of the total 21% of the GDP from agricultural export the tea industry accounts for 15%. Its production is around 9% of the share globally and also accounts for 19% of the market share. The major export countries are the U.S. (\$1.8 billion), U.K., Germany, Japan, and Belgium. Moreover, Russia, countries of the Commonwealth of Independent States (CIS), UAE, Syria and Turkey are Sri Lanka's other minor tea export countries²²³. It is evident that the GI "Ceylon Tea" contributes substantially to the socio-economic development benefits for a large number of people in Sri Lanka and also for the national economy. It is not evident whether there is any special traditional technique involved in the process of making tea. If there is one it can be protected through the GI because of its wide reputation. It is also important to note that a higher level of protection is internationally needed to ensure better socio-economic benefits. It appears that the system of collective marks is used to protect the name.

3.7 Conclusions drawn from the Case Studies

The above case studies give a very clear picture that there are different categories of GIs that contribute to the socio-economic conditions of the rural people in the developing countries. Large numbers of local communities that too from socially, economically and educationally backward groups are involved in the production of the goods and their survival is solely based on the income generated from the GIs. They market the products nationally and internationally and some of them, for example Darjeeling and Ceylon Tea, are very popular. Though others are not that popular in the international market, globalization

could bring in new markets and thereby protection of GIs assumes a greater significance.

It is also evident that the majority of the communities were traditionally not conscious of legal protection of the GIs. Since their products were very local in the past and there was no culture of protection through GIs, in the majority of cases, adequate steps were not taken to prevent the misuse of the products. It is clear that in India only in the case of Darjeeling Tea had there been an attempt to protect the name. The expansion of the market, increasing problems of infringement, the enactment of new laws on GIs protection in these countries and the steps taken by the governments to protect these GIs started bringing changes in this attitude. This is evident from the steps taken by the users of GIs "Kanchipuram saree", "Pochampalli", "Aranmula Kanndi" and the others discussed, to register the name as a GI and take steps to prevent the misuse of the name.

It is true that currently the major economic benefits of the GIs are not reaching the actual producers, but rather it is being enjoyed by the traders. But the effective protection of GIs nationally and internationally is going to contribute substantially to the socio-economic conditions of these communities. What may be needed to facilitate this is a uniform level of protection for these GIs internationally. Thus international extension of GIs protection to these products similar to wines and spirits assumes great significance, this should however be counterbalanced by giving up terms that are currently generic terms in India (such as names for dairy products). It is also evident from the case studies that traditional knowledge did contribute significantly to the reputation of the GIs examined. In the majority of the cases the knowledge was open and widely used. There was no restriction on its use by others. In some cases for example "Kanchipuram saree" the producers could receive economic benefits from the traditional knowledge since the GI protected product is very popular. Only in cases where the traditional knowledge is kept secret for example "Aranmula Kannadi" the actual producers could prevent its use by others. This also shows the limitation of GIs in providing positive protection to traditional knowledge associated with GIs.

4. CONCLUSION

The advocates of international trade globalization promise social and economic change to all sections of society in the world including people engaged in the production and distribution of goods and services from the local areas of developing countries. One effective way of actually achieving this is to ensure that the products they produce maintain high quality and find a place in the global market. It is an accepted fact that in the context of the globalization of trade, there is an increasing demand for traditional products in international markets. Thus protection of traditional knowledge and sustainable use of natural resources, particularly genetic resources, is one of the means of accelerating the market share of the producers of these goods and services. The most important way of protecting global market share is to effectively protect the intellectual property of the producers of products based on traditional knowledge. It is evident that there are no explicit provisions in the TRIPS Agreement mandating protection of all forms of traditional knowledge from misappropriation. The main provision in the TRIPS Agreement that has the possibility of directly or indirectly protecting traditional knowledge in some way is that relating to GIs protection.

The analysis of the international and national legal frameworks for the protection of GIs makes it very clear that the main objective of protection is to facilitate international trade safeguarding the interests of the consumers from deception. The special protection given to wines and spirits is a clear indication in this regard. It is also evident from the provisions of national laws of Asian countries on the scope of the definition of GIs, and from the case studies, that the products from the developing countries using GIs are not on wines and spirits but rather, they relate to products from agriculture, textiles, and handicrafts. Using the flexibilities available in the TRIPS Agreement, the majority of the countries adopted *sui generis* systems of protection to facilitate the socio-economic development of the producers of GIs. The majority of the countries utilized the existing possibility of providing higher forms of protection envisaged for wines and spirits to other products as well. Realizing the importance of maintaining the quality of the products, for the facilitation of international trade, adequate provisions have been included in the laws to achieve this.

It has been well established from the case studies that large numbers of local and village communities survive based on the income generated from their products using traditional knowledge, and through marketing using GIs. Though at present there are problems in protecting the GIs from misuse, we are convinced that the increased awareness, the involvement of trade organizations, the Government and the implementation of the laws will surely enable the producers to reap the full benefit of GIs protection in the long run.

At the national level, one of the major problems identified based on the analysis of the GIs laws and the case studies from India, is the question of right to use. The majority of the countries following *sui generis* approaches permitted all interested parties to file applications for registration of GIs. This included actual producers, trade organizations, consumer groups and government agencies. Similarly all persons using GIs are also permitted to enjoy the benefits conferred through registration. Almost all the laws provide traders more legal protection than they deserve when compared to the actual producers.

It is also evident from the case studies that the traders now enjoy more economic benefits than the actual producers of GIs. This, it is felt, may result in misuse of GIs and dilution of the quality of the products in the long run. This may finally adversely affect the improvement of the socio-economic conditions of the actual producers of the GIs products. Hence it is recommended that the right to use the registered GIs must be confined to the actual producers of the GIs from the identified geographical area and only with their permission the traders and others involved in the trade could use the GIs. Such a change in the law will facilitate the focus of protection to the actual producers of the GIs products and ensure the continued maintenance of the quality of the product. This will also ensure that the substantial economic benefits of GIs protection reach the actual producers of GI products. This will also reduce the possibility of the legal control of GIs by the traders. The positive consequence of this is the compulsion on the part of actual producers to organize themselves by way of cooperative societies to monitor the production and licensing of the use of GIs strictly maintaining the quality.

It is evident from the analysis of the international and national legal framework for the protection of GIs that the main focus is not the protection of actual producers and their traditional knowledge systems if any involved. It is clear from the limited case studies from India that only in cases of undisclosed traditional knowledge associated to GIs there is a possibility of effectively protecting it through GIs. Even for this there are no specific provisions in the laws. On the contrary there could be the possibility of denying protection in such cases if one examines the provisions in these legislations dealing with quality control. It is well established from the analysis of the provisions dealing with quality control that the applicant for GIs registration is bound to produce documentary evidence regarding the nature and quality of the product and how it is going to be maintained. If insisted, this would force the holder of undisclosed TK associated with GIs to disclose the TK when an application is made for registration of GIs²²⁴. This would conversely result in traditional knowledge being made open and used by others to compete in the market with same product. To avoid this it is suggested that the countries could introduce an exception on disclosure of details of the secret traditional knowledge

responsible for the maintenance of the quality. This exception could continue as long as the traditional knowledge remains secret.

Similarly there are also problems with the ownership of GIs. Almost all the countries permit both producers and traders to file applications for registration of GIs and permit them to collectively use the GIs. In cases of undisclosed TK associated with GIs this could result in traders using GIs without the permission of the actual producers who are holders of TK. To prevent this it is further suggested that it must be made mandatory in the laws that in case of GIs with undisclosed traditional knowledge, only actual producers of products of such GIs alone could register and use it. It is expected that these measures will go a long way to providing effective protection to undisclosed traditional knowledge associated with GIs, through GIs protection.

It is equally clear from the case studies that in the majority of the cases the traditional knowledge used in the GIs product is widely known. There is no provision in the laws of the countries for the owners of protected GIs to prevent the use of such known knowledge by others. It is clear from the analysis of these laws that the role of GIs protection is only to facilitate the trade of TK-based GIs products for the socio-economic development of the producers of GIs and not to afford protection of traditional knowledge associated with it. The fact that the TK associated with the GIs are widely used for a long time also acts as a limitation on GIs laws to provide adequate protection to the disclosed TK.

It is evident from the GIs laws of Asian countries and the case studies from India that it is not possible to fully address the effective protection of TK within the framework of these laws. This is the reason for the demand for a separate legal framework both internationally and nationally for the effective protection of traditional knowledge from misappropriation.

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During the short span of the study we encountered many problems including access to laws, data and literature. This resulted in serious limitations in achieving the complete objectives of the project. The lack of availability of case studies from different Asian countries put a lot of constrains on the analysis of the socio-economic link of GIs. Despite of our efforts to conduct limited case studies in South India to establish this, the shortage of time and other practical difficulties deprived us from collecting adequate data to link this with genetic resources and its sustainable use. There is hardly any published material or case studies available to establish the relationship between GIs, genetic resources and traditional knowledge. The lack of published material on the analysis of the laws of different Asian countries also was a serious limitation. The relatively new legal framework seems to be one of the reasons for this. We are sure that many issues we identified and observations made would facilitate further research in this area.

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⁴ Articles 22 – 24 of TRIPS Agreement deal with GIs.

⁵ For details see, UNCTAD-ICTSD, *Resource Book on TRIPS and Development*, Cambridge University Press, 2005, pp. 289-307.

⁶ Article 22 (1) reads: "Geographical indications are, for the purposes of this Agreement, indications which 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 other characteristic of the good is essentially attributable to its geographical origin". For detailed discussions see *infra*.

⁷ Albrecht Conard, "The Protection of Geographical Indications in the TRIPS Agreement", 86 *TMR* 11 at pp. 29-31.

⁸ For details see D. Rangnekar, *The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe*, UNCTAD-ICTSD, Geneva, 2004.

⁹ Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis*, Sweet & Maxwell London (1998), pp. 124-131.

¹⁰ See WTO, "TRIPS: Geographical Indications; Background and the Current situations", http://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm See also Sumathi Subbiah, "Reaping What They Sow: The Basmati Rice Controversy and Strategies for Protecting Traditional Knowledge", 27 *B. C. Int'l. and Comp. L. Rev.* 529 (2004), p. 549; M. R. Subramani, "US Opposes EU move to protect Basmati rice", *The Hindu Business Line*, 8th October 2002. available at: <http://www.thehindubusinessline.com/2002/10/08/stories/2002100801311100.htm>.

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¹³ See WIPO, *Intellectual Property Needs and Expectations of Traditional knowledge Holders*, WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999), Geneva.

¹⁴ WIPO documents define 'traditional knowledge' ... refer[s] to tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. See WIPO, "Protection of Traditional Knowledge: Revised Objectives and Basic Principles" and "Tradition-based" refers to knowledge systems, creations, innovations and cultural expressions which have generally been transmitted from generation to generation; are generally regarded as pertaining

to a particular people or its territory; and, are constantly evolving in response to a changing environment" see WIPO/GRTKF/IC/3/9.

¹⁵ Ameenah Gurib-Fakim, *Bridging the Gap between TRIPS and the CBD*, available at:

http://irfd.org/events/wfsids/virtual/papers/sids_guribfakim2.pdf

¹⁶ See Article 15 of CBD. For details see, Philippe G. Le Prestre, *Governing Global Biodiversity: The Evolution and Implementation of the Convention on Biological Diversity*, Ashgate, 2004.

¹⁷ Article 8(1)(j) read: "Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".

¹⁸ For a comprehensive view of the issues before the TRIPS Council see Note by the WTO Secretariat, "The Relationship between the TRIPS Agreement and the Convention on Biological Diversity: Summary of issues raised and points made", IP/C/W/368/Rev.1 dated 8th February 2006.

¹⁹ Sergio Escudero, "Working Paper on International Protection of Geographical Indications for Developing Countries", July 2001, South Centre,

<http://www.southcentre.org/publications/workingpapers/wp10.pdf>.

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²¹ Albrecht Conrad, *supra n. 7* at pp.11-46.

²² Louis C. Lenzen, "Bacchus in the Hinterlands: A Study of denominations of origin in French and American Wine Labeling Laws", 58 TMR 1968 p. 145-187.

²³ Lori E. Simson, "Appellation of Origin: the Continuing Controversy", IPLR 1984 Vol. 16 p. 337-359.

²⁴ *Ibid.*

²⁵ See Louis C. Lenzen, *supra n. 22*.

²⁶ See Molly Torsen, "Apples and Oranges: French and American Models of Geographic Indication Policies Demonstrate an International Lack of Consensus", 95 *Trademark Reporter* 1415, 1425-1430 (2005).

²⁷ See Louis C. Lenzen, *supra n.22*.

²⁸ See Albrecht Conrad, *supra n.7* p.15.

²⁹ See M.G. Coerper, "The Protection of Geographical Indications in the United States of America, with particular reference to Certification Mark", *Industrial Property*, 232 (1990); Lee Bendekgey & Caroline H. Mead, "International Protection of Appellation of Origin and other Geographical Indications", 82 TMR 765 (1992); Lina Montén, "Geographical Indications Of Origin: Should They Be Protected And Why? -- An Analysis Of The Issue From The U.S. And EU Perspectives", 22 Santa Clara Computer & High Tech. L.J. 315, 326; Stacy D. Goldberg, "Who Will Raise The White Flag? The Battle Between The United States And The European Union Over The Protection Of Geographical Indications", 22 U. Pa. J. Int'l Econ. L. 107 (2001).

³⁰ See Stacy D. Goldberg and Lina Montén, *ibid.*

³¹ The Paris Convention, 1883, Article 1(3).

³², Article 4.

³³ *Ibid.*, Article 3bis.

³⁴ *Ibid.*, The Madrid Agreement, 1891, Article 4.

³⁵ See Albrecht Conrad, *supra n.7*.

³⁶ *Ibid.*

³⁷ This was due to the opposition from US. *Ibid.*, p. 25.

³⁸ The Lisbon Agreement, 1958, Article 2(1).

³⁹ Ivan Mark Posa, *Extended Protection of Geographical Indications Beyond Wines and Spirits: the TRIPS Council Negotiations*, Master Thesis, European Intellectual Property Master Programme, 2003, University of Stockholm, Sweden.

⁴⁰ See WIPO, Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, ^{SCT/8/4}, April 2, 2002.

⁴¹ The Lisbon Agreement, 1958, Article 3.

⁴² 1974 WIPO started negotiations to bring in international consensus regarding appellations of origin and indications of source. It endeavored to set up a new multilateral treaty. It coined a new term 'geographical indications' and framed an international registration system for the same. The negotiations were never concluded as the Paris Convention review stepped in but could not reach consensus.

⁴³ The TRIPS Agreement, 1994, Article 22(1).

⁴⁴ UNCTAD-ICTSD Resource Book, *supra n. 5* at p.290.

⁴⁵ *Ibid.*

⁴⁶ Latha R.Nair and Rajendra Kumar, *Geographical Indications: A Search for Identity*, Lexis Nexis, New Delhi, 2005, p. 100.

⁴⁷ See Louis C. Lenzen, *supra n.22*.

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⁴⁹ *Ibid.*, Article 24(9).

⁵⁰ TRIPS, Article 22(2).

⁵¹ See UNCTAD – ICTSD, *supra n.5* at p. 291.

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⁵³ *Ibid.*

⁵⁴ International Food and Agricultural Policy Council, Discussion Paper, Geographical Indications, August 25, 2003, <http://www.agritrade.org/Publications/DiscussionPapers/GI.pdf>.

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<http://usinfo.state.gov/ei/Archive/2003/Dec/31-988250.html>, Also see Dara Williams, "Extension of Stronger Geographical Indications Protection: Against the Interests of Developing Countries",

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⁵⁶ See EU submission TN/IP/W/11

⁵⁷ For details see the submission by Switzerland in IP/C/ W/353.

⁵⁸ <http://www.ogc.doc.gov/ogc/legreg/testimon/108f/dudas0722.htm>

⁵⁹ *Ibid.*, Article 24(6).

⁶⁰ *Ibid.*

⁶¹ For eg: the word "Rioja" designates a region in both Spain and Argentina. See Arron C. Lang, "On the Need to Expand Article 23 of the TRIPS Agreement, 16 *Duke J. of Comp. & Int'l L.* 487 in <http://www.law.duke.edu/journals/djcil/articles/djcil16p487.htm#H1N8>.

⁶² UNCTAD-ICTSD, *supra n. 5* at p. 295.

⁶³ TRIPS, Article 23 (3).

⁶⁴ Roland Knaak, *supra n.34*.

⁶⁵ TRIPS, Article 22(3).

⁶⁶ Roland Knaak, *supra n. 34*.

⁶⁷ *Ibid.*

⁶⁸ TRIPS, Article 23(2).

⁶⁹ See Ivan Mark Posa, *supra n.43* at p.112.

⁷⁰ Thailand: http://www.jetrobkk-ip.com/IP_Law/TH_GI_Law.pdf ; Malaysia

<http://www.myipo.gov.my/media/acts/GIAct.pdf> ; Singapore http://www.ecap-project.org/fileadmin/ecapll/pdf/en/ASEAN_IP/Singapore/geographical_indications_act.pdf ;

Jordan

http://www.wipo.int/clea/docs_new/pdf/en/jo/jo009en.pdf ; India

http://www.patentoffice.nic.in/ipr/gi/gi_act.PDF; China

http://www.sipo.gov.cn/sipo_English/flfg/xgflfg/t20020416_34755.htm ; Pakistan

http://www.pakistanlaw.com/trade_marks_ordinance_2001.php

⁷¹ Geographical Indications Protection Act, B.E. 2546, section 3 defines GI “means a name, sign or anything which is used to call or represent a geographical origin which can identify that the product originating from that geographical origin is the product of quality, reputation or any unique characteristic of that geographical origin”.

⁷² The Geographical Indications Act, 2000 section 2 defines GIs as “an indication, which identifies any goods as originating in a country or territory or a region or a locality in that country or territory, where a given quality, reputation or other characteristic of the good is essentially attributable to their geographical origin”.

⁷³ The Geographical Indications Act, 1999 section 2 defines GIs as “any indication used in trade to identify goods as originating from a place provided that (a) the place is a qualifying country or region or locality in the qualifying country; and (b) a given quality, reputation or other characteristic of the good is essentially attributable to that place”.

⁷⁴ Geographical Indications Law for the Year 2000 Article 2 defines GIs as “any indication, which identifies a good as originating in the territory of a specific country, or a region or locality of that territory where a given quality, reputation or other characteristic of the good is essentially attributable to its origin”.

⁷⁵ Law of The Republic of Indonesia Number 15 Year 2001 Regarding MARKS, Article 56 (1) defines GIs as “a sign indicating the place of origin of the goods, which due to its geographical environment factors, including the factor of the nature, the people or the combination of the two factors, gives a specific characteristic and quality on the goods produced therein”.

⁷⁶ The Geographical Indications Act, 1999 section 2 (e).

⁷⁷ *Ibid.*, section 2. 1. (f) defines goods as “...any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff.”

⁷⁸ Section 3 Goods" means things which can be purchased, exchanged or transferred whether they originate by nature or they are agricultural products including handicraft and industrial products.

⁷⁹ Geographical Indication Act 2000 section. 2 "goods" means any natural or agricultural product or any product of handicraft or industry.

⁸⁰ Geographical Indication Act 1999 section. 2 "goods" means any natural or agricultural product or any product of handicraft or industry;

⁸¹ Homonymous means using same name for different things. For details see discussion on the TRIPS Agreement Article 23.3 *supra* p. 25.

⁸² The Geographical Indication Act, 2000 of Malaysia, section 7(1) In the case of homonymous geographical indications for wines, protection shall be accorded to each indication. (2) The Registrar, in cases of *bona fide* concurrent use of homonymous geographical indications, shall determine the practical conditions under which the homonymous geographical indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that the public are not misled.

⁸³ The Geographical Indications Act 1999, Singapore, section. 3 —“(1) Subject to the provisions of this Act, an interested party of goods identified by a geographical indication may bring an action against a person for carrying out an act to which this section applies in relation to the geographical indication. (2) This section shall apply to the following acts: (a)..... (d) any use of a geographical indication, being a geographical indication which identifies a spirit, in relation to a spirit which did not originate from the place indicated by the geographical indication, whether or not — (i) the true geographical origin of the second-mentioned spirit is used together with the geographical indication; (ii) the geographical indication is used in translation; or (iii) the geographical indication is accompanied by any of the words “kind”, “type”, “style”, “imitation” or any similar word or expression.” Also see section 5 —“(1) Subject to section 3 (3), any interested party of wines identified by homonymous geographical indications may take action under section 3 against the carrying out of an act to which that section applies. (2) Any

interested party of wines identified by homonymous geographical indications may apply to the Court for a declaration of the practical conditions under which the geographical indications are to be differentiated from one another. (3) The Court shall, in making a declaration under subsection (2), take into account — (a) the need to ensure equitable treatment of all the interested parties concerned; and (b) the need to ensure that consumers are not misled.

⁸⁴ Geographical Indications Law For The Year 2000, Jordan Article 6 A - Subject to the provisions of Item (3) of Paragraph (A) of Article (3) and Paragraph (B) of Article 4 of this Law; the protection determined in this Law shall be accorded to homonymous geographical indications for wines, provided that equitable treatment of the producers concerned is ensured, and that consumers of such products are not misled. B- The practical conditions, under which homonymous geographical indications for wines will be differentiated from each other, shall be determined in Instructions issued by the Minister for this purpose. Such Instructions shall be published in the Official Gazette.

⁸⁵ India, section 9.

⁸⁶ India, section 10.

⁸⁷ Thailand, see section 29. The following are prescribed by the relevant ministerial regulations dated April 28, 2004 as "specific goods": (1) Rice (2) Silk (3) Wines (4) Spirits. Where a geographical indication for any of the specific goods above is identical or homonymous with another registered or pending geographical indication for certain specific goods and where the geographical origins are different, use of the subsequently registered geographical indication on the specific goods must be clearly followed by a designation of the geographical origin and the country of manufacture of such goods.

⁸⁸ Thailand, Malaysia, India, Indonesia and Singapore.

⁸⁹ India, Indonesia.

⁹⁰ Thailand, India, Singapore.

⁹¹ India, Singapore, Malaysia.

⁹² The Trademark Ordinance 2001, Pakistan, section 2: "Geographical indications, in relation to goods originating in a particular country or in a region or locality of that country, means a mark recognized in that country as a mark indicating that the goods- (a) originated in that country, region or locality; and (b) have a quality, reputation or other characteristic attributable to their geographical region".

⁹³ The Trademark Law of the People's Republic of China, Section 16 (explanation). Geographical indications mentioned in the preceding paragraph are indications, which identify a good as originating in a region, where a given quality, reputation or other characteristic of the goods is essentially attributable to its natural or human factors.

⁹⁴ Section 2(i) read: "goods" means anything which is subject of trade, commerce or manufacture".

⁹⁵ A collective mark is owned and used by a group of persons based on some common understanding as to the maintaining of the quality of the products. A certification mark is controlled by the person authorized to certify the use of the mark by those who maintain the quality and standards of the product. For details of the collective or certification mark in Pakistan and China see *infra* note 106 onwards.

⁹⁶ India, Chapter 2, 3 and 4 deals with the particulars of registration. Section 20(2) provides that "Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

⁹⁷ Chapter 2 of the Law of Thailand provides for registration of the GIs, but does not expressly provide that unregistered GIs are prevented from enjoying the passing off remedy. So it is assumed that Thai being a common law country protects unregistered GIs under the passing off remedy.

⁹⁸ Malaysia, section. 3 Protection under this Act shall be given to a geographical indication (a) regardless whether or not the geographical indication is registered under this Act.

⁹⁹ In Indonesia, unregistered GIs are protected as source of origin (Article 59) and they enjoy the same rights enjoyed by the registered GIs (Article 60).

¹⁰⁰ Singapore, section. 12.

¹⁰¹ See section 27.

¹⁰² Indonesia, Article 57(1) The Right Holder to a Geographical Indication may file a lawsuit against an unlawful user of the Geographical Indication, in the form of claim for damages and an order for stopping the usage as well as disposal of labels of the Geographical Indication concerned which have been unlawfully used." But the Act never defines the unlawful uses of the GI.

¹⁰³ Singapore, sections. 3 (1) and (2).

¹⁰⁴ Jordan Article 3.

¹⁰⁵ Malaysia, section. 5.

¹⁰⁶ India, section. 22 (1).

¹⁰⁷ Thailand, Chapter 7 section 39 read: Whoever commits the acts under Section 27 shall be liable for a fine of not exceeding two hundred thousand Baht.

¹⁰⁸ Malaysia, section 5(1)(d) "5. (1) Any interested person may institute proceedings in the Court to prevent, in respect of geographical indications (a)..... (d) any use in the course of trade of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or a geographical indication identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the wines or spirits is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style" or "imitation".

¹⁰⁹ Singapore, section 3 (2) (c) & (d).

¹¹⁰ Jordan, Article 3 (2).

¹¹¹ Section 28 permits Minister to specify any good as specific goods by issue of a Ministerial Regulation. See also the Ministerial Regulation of 2004.

¹¹² India, section 22(2) "The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in the Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.

¹¹³ See WT/GC/W/546 and TN/C/W/25.

¹¹⁴ Indonesia, Article 56 (8).

¹¹⁵ Trademark Ordinance, China, section 64 (3).

¹¹⁶ Trademark Law of China, section 3.

¹¹⁷ The Trademark Ordinance 2001, Pakistan, section. 14.

¹¹⁸ *Ibid*, see Schedule I & II.

¹¹⁹ Trademark Ordinance, China, section.64 (4) Nothing in this Ordinance shall entitle the proprietor of a certification trade mark that consists of signs or indications described in subsection (3) to interfere with or restrain the use by any person of any signs or indications the use of which is in accordance with honest practices in industrial or commercial matters (in particular, by a person who is entitled to use a geographical name). See also section 33 (1) Nothing in this Ordinance shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior-(a) to the use of the first mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his, or (b) to the registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his, whichever is the earlier, or to object (on such use being proved) to that person being put on the register for that identical or nearly resembling trade mark in respect of those goods or services under section 22. (2) The references in subsection (1) to the use of a trade mark by a person's predecessor in title shall, as respects use in relation to services before the commencement of the Trade Marks (Amendment) Ordinance 1991 (44 of 1991), be construed as references to use by any predecessor of his in business. Also see section 34. No registration of a trademark shall interfere with- (a) any bona fide use by a person of his own name or of the name of his place of

business, or of the name, or of the name of the place of business, of any of his predecessors in business (b) the use by any person of any bona fide description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in section 27(1)(b) or in section 67(1)(b); or (c) the use by any person of any bona fide description of the character or quality of his services, not being a description that would be likely to be taken as importing any such reference as is mentioned in section 27A(1)(b) or in section 67A(1)(b).

¹²⁰ The Trademark Ordinance 2001, Pakistan, Entry 3 (2) of Schedule I & II The proprietor of such a mark shall not be entitled to prohibit the use of the marks or indications in accordance with honest practices in industrial or commercial matters, in particular, by a person who is entitled to use a geographical name.

¹²¹ India, section. 6.

¹²² India, section.7.

¹²³ *Ibid.*, section. 17 (3).

¹²⁴ *Ibid.*, section. 8 (1).

¹²⁵ *Ibid.*, section. 8 (2).

¹²⁶ *Ibid.*, sections. 10 & 11. Also see Rule 32 & 25.

¹²⁷ *Ibid.*, section. 18.

¹²⁸ Malaysia, section.7.

¹²⁹ *Ibid.*, section. 9.

¹³⁰ *Ibid.*, section.10.

¹³¹ *Ibid.*, sections. 11 & 12.

¹³² *Ibid.*, section.13.

¹³³ *Ibid.*, sections. 14-17.

¹³⁴ *Ibid.*, section.18.

¹³⁵ *Ibid.*, section.19.

¹³⁶ See 12 to 20 on registration and Chapter 6 on the Board.

¹³⁷ Trademark Ordinance of China, section 65 (1) r/w section 13 (1).

¹³⁸ *Ibid.*, section 65 (2), (3).

¹³⁹ *Ibid.*, section 66.

¹⁴⁰ The Trademark Ordinance 2001, Pakistan, Entry 6 (1) of Schedule 2 & Entry 5 (1) of Schedule 1

¹⁴¹ *Ibid.*, Entry 5 (2) of Schedule 1.

¹⁴² *Ibid.*, Entry 6 (1) of Schedule 1 and Entry 7 (1) of Schedule 2.

¹⁴³ *Ibid.*, Entry 7 (1) of Schedule 2.

¹⁴⁴ *Ibid.*, Entry 7 & 8 of Schedule 1 and Entries 8 & 9 of Schedule 2.

¹⁴⁵ See Council Regulation (EC) No. 510/2006 of 20, March 2006, Official Journal of the European Union, 31.3.2006, L 93/12.

¹⁴⁶ See Article 56 (7) of law of Indonesia.

¹⁴⁷ Singapore, section 2 read: "Use means use as part of, or in connection with — (a) any transaction, including a purchase, sale or exchange; (b) any importing or exporting; (c) any advertisement; or (d) any invoice, wine list, catalogue, business letter, business paper, price list or other commercial document". Also see section 4 "Subject to the provisions of this Act, if it is established to the satisfaction of the Court that the defendant to an action brought under section 3 (1) has carried out or is carrying out an act to which section 3 applies, the Court may grant to the plaintiff one or both of the following: (a) an injunction (subject to such terms, if any, as the Court thinks fit) to restrain the further carrying out of the act; (b) damages or an account of profits.

¹⁴⁸ India, Rule 32. 1. (1).

¹⁴⁹ India, Rule 32. 1. (6) (c).

¹⁵⁰ India, Rule 32. 1. (6) (b).

¹⁵¹ India, Rule 32.1.(6) (e).

¹⁵² India, Rule 25.

¹⁵³ *Ibid.*

¹⁵⁴ Section 10 reads "An application for geographical indication shall consist of details concerning quality, reputation or any other characteristics of the goods, geographical area and any other details prescribed in the Ministerial Regulations".

¹⁵⁵ See the provision Use and Suspension of Use of GI in the Act.

¹⁵⁶ Malaysia, section 12 (1).

¹⁵⁷ Malaysia, Rule 29 (2).

¹⁵⁸ Malaysia, sections. 21 (1) & (2).

¹⁵⁹ Malaysia, section. 2.

¹⁶⁰ *Ibid.*, section. 21 (1).

¹⁶¹ Trademark Act of China, section 3.

¹⁶² Trademark Ordinance of China, section 65 (4).

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*, section 65(5).

¹⁶⁵ *Ibid.*, section 67(1).

¹⁶⁶ *Ibid.*, section 68.

¹⁶⁷ The Trademark Ordinance 2001, Pakistan, Entry 5 (1), Schedule 2 and Entry 4 (1), Schedule 1.

¹⁶⁸ *Ibid.*, Entry 6 (1) of Schedule 2 and Entry 5 (1) of Schedule 1.

¹⁶⁹ *Ibid.*, Entry 5 (2) of Schedule 1.

¹⁷⁰ *Ibid.*, Entry 6 (2) of Schedule 2.

¹⁷¹ *Ibid.*, Entry 13 of Schedule I and Entry 15 of Schedule II.

¹⁷² Thailand, Section 7 reads: "The following person is eligible to apply for registration of geographical indication: (1) an official division, government sector, state enterprise, local administrative organization or any other government organization being a juristic person whose responsibility covers the geographical area of the goods; (2) a natural person, group of persons or juristic person trading in relation to the goods using the geographical indication and has domiciles in that geographical area; (3) a consumer group or organization of the product using the geographical indication".

¹⁷³ Indonesia, Article 56 (2) Geographical Indication shall be protected after registration, based on an Application filed by: (a) an institution that represents the society in the area which produces the goods concerned, which consists of: (1) parties who undertake business on goods of natural products or natural resources; (2) producers of agricultural products; (3) people who make handicraft or industrial products; or (4) merchants who sell the goods concerned; (b) an institution that is given the authority to do so; and (c) groups of consumers of the goods concerned.

¹⁷⁴ India, section. 11(1) read: "Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication." Section 2 (k) "producer", in relation to goods, means any person who:- (i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods; (ii) if such goods are natural goods, exploits the goods; (iii) if such goods are handicraft or industrial goods, makes or manufactures the goods, and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods."

¹⁷⁵ Singapore, section 2 read: "Interested parties in relation to goods identified by a geographical indication, means a producer of the goods, a trader of the goods, or an association of such producers or traders or of such producers and traders". "Producer" means — (a) in relation to agricultural products, a person who produces those products for sale or other commercial purposes; (b) in relation to natural products, a person who exploits those products for sale or other commercial purposes; or (c) in relation to products of handicraft or industry, a person who manufactures those products for sale or other commercial purposes;

¹⁷⁶ Malaysia, section. 2.

¹⁷⁷ *Ibid.*, section. 21 (1).

¹⁷⁸ Section 25 read: "When a geographical indication has been registered for any goods, the manufacturer of the goods, locating in that particular geographical area or the person trading in relation to such goods are entitled to use the registered geographical indication with respect to the goods for which it is registered in accordance with the conditions set forth by the Registrar".

¹⁷⁹ Article 57(1) read: "The Right Holder to a Geographical Indication may file a lawsuit against an unlawful user of the Geographical Indication, in the form of claim for damages and an order for stopping the usage as well as disposal of labels of the Geographical Indication concerned which have been unlawfully used".

¹⁸⁰ Section 21(1)(a) read: (a) to the registered proprietor of the geographical indication and the authorised user or users thereof the right to obtain relief in respect of infringement of the geographical indication in the manner provided by this Act.

¹⁸¹ Trademark Ordinance of China, section. 65(1).

¹⁸² *Ibid.*, section.67(1).

¹⁸³ The Trademark Ordinance 2001, Pakistan, Entry 13 of Schedule II and Entry 12 of Schedule I r/w section 53.

¹⁸⁴ See *Dyer Meakin Breweries v. Scotch Whisky Association*, AIR 1980 Del 125; *Scotch Whisky Association and Another v. Parvara Sahakar Shakar Karkhana Ltd*, AIR 1992 Bom. 295; *Khoday Distilleries Ltd. v. Scotch Whisky Association and Another* AIR 1999 Mad. 274, and *Bloomfield Co., Ltd., v. Bagaria Business (P) Ltd.* 2002 (25) PTC 40.

¹⁸⁵ This is evident from the case studies from India. For details see the next session on socio-economic conditions.

¹⁸⁶ India, Rule 32. (1) "Every application for the registration of a geographical indication shall be made in the prescribed forms and shall contain the following: (1).....(6)The statement contained in the application shall also include the following: (a)..... (b) The standards benchmark for the use of the geographical indication or the industry standard as regards the production, exploitation, making or manufacture of the goods having specific quality, reputation, or other characteristic of such goods that is essentially attributable to its geographical origin with the detailed description of the human creativity involved, if any or other characteristic from the definite territory of the country, region or locality in the country, as the case may be;..... (e) the particulars of special human skill involved or the uniqueness of the geographical environment or other inherent characteristics associated with the geographical indication to which the application relates."

¹⁸⁷ In Thailand, the Act requires that an application for registration must state, among other things, goods using the geographical indication, details about the quality, reputation or any other characteristics of the goods, the relationship between the goods using the geographical indication and the geographical origin

¹⁸⁸ Malaysia, section 12 (1) An application for the registration of a geographical indication shall be filed with the Registrar in the prescribed manner and shall specify (a) the name, address and nationality of the natural person or legal entity filing the application, and the capacity in which the applicant is applying for registration; (b) the geographical indication for which registration is sought; (c) the geographical area to which the geographical indication applies; (d) the goods for which the geographical indication applies; (e) the quality, reputation or other characteristic of the goods for which the geographical indication is used; and (f) any other particulars as may be prescribed.

¹⁸⁹ For examples see the case studies from India *infra*.

¹⁹⁰ For example is the knowledge associated with "Aramnula Kannadi". For details see case studies from India *infra*.

¹⁹¹ We tried to identify case studies from other countries. However we could not locate these on the web or in printed articles. Hence the studies are limited to India, particularly from south India for practical reasons.

¹⁹² Information collected based on the field study.

¹⁹³ See <http://www.aditimetalmirror.com>

¹⁹⁴ See GI application no.3, Government of India, *Geographical Indication Journal*, No.3, November 1, 2004.

- ¹⁹⁵ Saree is one of the traditional dresses of women all over India particularly of South India. Information collected based on fieldwork.
- ¹⁹⁶ Zari is a silk thread twisted with a thin silver wire and then dipped in pure gold.
- ¹⁹⁷ *Munthi* is the front portion of the saree with colourful and decorative designs.
- ¹⁹⁸ See Official Notices, Government of India, *Geographical Indication Journal*, No.7 July 1, 2005, p. (i).
- ¹⁹⁹ Information collected based on field work.
- ²⁰⁰ Rumals are long piece of cloth used as turban to wear on the head.
- ²⁰¹ For details see GI application no.2, Government of India, *Geographical Indication Journal*, No.2, September 1, 2004, pp. 3 – 6.
- ²⁰² See Official Notices, Government of India, *Geographical Indication Journal*, No.4, January 1, 2005, p. (i).
- ²⁰³ Information collected based on field work.
- ²⁰⁴ Pudava and Kavani is the traditional wedding dress for the bride in Kerala.
- ²⁰⁵ Veshti is the traditional dress of mail members of Kerala and South Indian.
- ²⁰⁶ Kasavu is Malayalam word of “Zari” a silk thread twisted with a thin silver wire and dipped in pure gold.
- ²⁰⁷ See www.darjeelingtea.com/dtand health.htm
- ²⁰⁸ But the areas in jurisdiction list 20, 21, 23, 24, 29, 31 and 33 comprising Subtiguri Sub-Division of New Chumta Tea Estate, Simulbari and Marionbari Tea Estate of Kurseong Police Station in Kurseong Sub-Division is excluded.
- ²⁰⁹ *Ibid.*
- ²¹⁰ <http://darjeeling.biography.ms/>
- ²¹¹ www.dtdrc.org
- ²¹² *Supra* n.217.
- ²¹³ *Ibid.*
- ²¹⁴ *Ibid.* See also GI application no. 1, Government of India, *Geographical Indication Journal*, No.1, July 1, 2004, pp. 4 & 5.
- ²¹⁵ www.wipo.int/sme/case_studiesdarjeeling_tea.htm
- ²¹⁶ *Ibid.*
- ²¹⁷ *Ibid.*
- ²¹⁸ *Ibid.*
- ²¹⁹ *Ibid.*
- ²²⁰ See Government of India, *Geographical Indication Journal*, No1 July 1, 2004 and Official Notice, Government of India, *Geographical Indication Journal*, No.4, January 1, 2005.
- ²²¹ “The Story of Ceylon Tea: Teas from the Island of Sri Lanka,” http://www.angelfire.com/wi/SriLanka/ceyl_tea.htm
- ²²² *Ibid.*
- ²²³ “TED Case Studies, Ceylon Tea”, <http://www.american.edu/ted/ceylon-tea.htm> .
- ²²⁴ It may be noted that in case of registration of Aranmula Kannadi in India the authorities did not insist to disclose the trade secret. But this could not be taken as the law since the GI Rules in India specifically ask for details of quality and the human factors involved.