Chapter 2: Various legal frameworks protecting Geographical Indications

This chapter examines the prevailing scenario concerning the international protection of Geographical Indications as provided in the bilateral and multilateral agreements.

Given the economic implications of Geographical Indications [here in after GIs], the legal protection of this Intellectual Property Rights plays a significant role in commercial relations\(^\text{18}\). Without such protection GIs run the risk of being wrongfully used by unscrupulous businessmen and companies, because they can misappropriate the benefits accruing from the goodwill and reputation associated with such GIs, by way of misleading the consumers\(^\text{19}\).

Such misuse may end up hampering the goodwill and reputation associated with these indications over long run. In order to rule out any unscrupulous use of GIs, and to exploit fully the commercial potential of this intellectual property right, it is utmost important that, countries ensure adequate protection for their own GIs nationally, effective protection is also needed internationally, because national


\(^{19}\) Hughes, J ‘The spirited Debate over Geographical Indication’ European Economic Law Journal Vol. 20,2003, pg.48
legislation which applies to only one country is not sufficient in the context of globalised economy, where products keep traveling beyond national borders\textsuperscript{20}.

The need for globally accepted law with respect to the protection of GIs has been on the international agenda for a long time and in the recent past, has emerged as one of the important instruments of Intellectual Property Protection\textsuperscript{21}. This chapter explains the various legal frameworks used to protect GIs internationally regionally as well as nationally. Meaning of the term GIs is first examined with a view to provide an understanding of the concept regardless of what meaning the term/concept has been given by different specific treaty/convention.

The chapter also, discusses the legal ‘background prevailing before the coming into force of TRIPs agreement. Here the Paris Convention, the Madrid Agreement, and the Lisbon Agreement are examined indetail as they contributed a lot in the development of the concept globally. The WTO law relating to protection of GIs is further discussed following the discussions of the pre trips multilateral agreements. Lastly, various forms of protecting GIs nationally as reported by the WTO secretariat is discussed. Concluding remarks are given at


the end of the chapter to summarise the observation noted throughout the chapter.

General meaning of Geographical Indications

The term geographical indication provides various interpretations due to different meaning associated to the term in various places and at different times. This results to ambiguities in the use of basic terms. According to Hughes J the term affords three different meaning noted hereunder\(^{22}\),

- A geographical word is a noun or adjective that names or denotes a geographic place
- A geographical indication is any word, phrase, or symbol that designates the place where a product was produced regardless of reputation
- A geographical indication [GI] is any word, phrase, or symbol attached to a product that designates the place where a product was produced and that place has a reputation for producing that product with particular desirable qualities.

The Jurisprudence of GI laws revels that, it is built by two types of notions expressing the ‘land/qualities’ connections. The first notion expresses the products qualities that come ‘essentially’ and or ‘uniquely’ from the producing region. Indeed this is the traditional core of geographical

\(^{22}\) This definition is similar to, but has some differences with, the tripartite vocabulary introduction in A Conrad ‘the protection of geographical indications in the Trips agreement’, the trademark reporter 1996. 13-14
indications jurisprudences allows the world. The second notion is that of which regions product has a reputation for certain qualities are not claimed to be unique to the producing region, commonly denoted as ‘non-unique land/qualities connection’.

Geographical Indications usually includes geographic words, names, symbols, images or adjectives denoting places. If it is a geographical word then it must be coupled with the generic term for the product for instance Irish whisky, however, the word may stand alone for example scotch. Many of the Geographical indications are those which derived directly their respective geographical names where they are produced. Meanwhile, there are some of the most famous geographical indications are actually the post of embarkation for the producing region. Nonetheless and despite resistance to the idea

23 On this category there are French appellation d’origine, denominazioni de origine in Italy or denominocore: de origin in Portugal to mention but a few jurisdictions.

24 A good example of these categories is the Germany system of Law relating to protection of GIs which does not command the uniqueness of the products qualities being exclusively from the producing regions.

25 Typically, the places are towns, villages, or sub-national geographic regions: states Idaho potatoes, provinces, department cognac or countries Bourbon.

26 For instance Porto wine, bourbon whisky, and bord eaux wines all take their name form the region’s shipping port, not the region. Similarly parmesan cheese, named for parma, originated and is still produced best – in the Reggio nell’Emilia district which is across the Enza River from the district (and why) of Parma.
historically\textsuperscript{27} names of countries can be protected as geographical indications in at least some legal systems such as Candina whiskey, Colombian coffee etc.

Rarely geographical indications are terms or identifiers that are not names of places. Such types of geographical indications are there which are commonly known as indirect geographical indication\textsuperscript{28}.

**Pre TRIPS : Legal development of Geographical Indications:**

In order to understand the legal protection of geographical indications, understanding its evolution is essential. As with other forms of intellectual property, the life of Geographical indications began as “monopoly privileges doled out by kings to fund wars or other pursuits”\textsuperscript{29}. The first laws protecting geographical indications, found as early as 14\textsuperscript{th} and 15\textsuperscript{th} century in France, Portugal, and Tuscany, were primarily enacted for fiscal reasons\textsuperscript{30}. Over time, simple geographical indications became protected through various laws on

\textsuperscript{27} For example in 1975, the European communities argued against Germany’s claim that ‘sekt’ was an indirect geographical indications, partly on the grounds that ‘the Federal (Germany) Government gave no example demonstrating that the territory of a whole country may also be the subject of an indirect indication of origin, ‘EC v. Germany Judgment French Law does not permit country names to be protected appellations of ‘origin and , according to the California wine export program, country name like “American” do not qualify as geographical indications under EV wine doctrine. See California wine export program 2000 European Union wine labeling Regulations Memo at 2-3.

\textsuperscript{28} The best example is the word ‘claret’ as used in the British Isles. The word was derived from the French word ‘clairet’, in Britain ‘claret’ came to refer exclusively to re Bordeaux wines.

\textsuperscript{29} Peter Drakes and John Branthwaile, Information Feudalism: who owns the knowledge economy”(2002)

\textsuperscript{30} Norbert Olszak, Les Appellations d’origine et indications de provenance (2001) 51
misrepresenting but it was not until well into the 20th century that protection was afforded beyond simple GIs. The concept was known by different names such as appellation of origin, indication of sources, and others referring to different legal protection systems involving different criteria of protection (scope, coverage, requirement and means of protection). The systematic legal protection of geographical indications originated in and was developed in France31 that has later influenced the making of both national laws and international treaties.

France - The birth of protection beyond simple Geographical Indications

France protected simple geographical indications already under the law of 1824. The law imposed criminal penalties on people who falsely designated the place of origin of a product32. Under the statute, for example, Algerian apples could not be labeled as Spanish33. However, there was no obligation to actually label a product34. But if you did choose to speak about the origin of your product, what you said had to be true.

The development of GI protection beyond simple GIs is connected to the Phyllozera out breaks that plagued Europe in the late 19th century. This root in

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31 Albrech Conrad “The protection of Geographical indications in the TRIPS Agreement”, 86 TMR 1996 at 11-46
33 Ibid, at 814
34 Ibid, at 815
Festing pest left French vine-yards in complete ruin\textsuperscript{35}, with high demand for wine, opportunism ran rampant', low quality wine was sold under the names of quality wines and same producers even pushed the boundaries of what they called wine. Staggered by the loss of most vineyards, and now faced with the extra ordinary cost of replenishing the wine makers wanted assurances that their effort would eventually at least be rewarded by the market\textsuperscript{36}.

In response to producer concerns, the government enacted between years 1905 and 1911 laws to combat frauds and to delimit the use of certain GIs such as Champagne and Bordeaux. Unfortunately, the laws were unable to prevent the market from being flooded by wines of low quality and consequently the price of wine collapsed. The delimitations were also challenged by revolting producers who had previously used the GIs and had now been left out of the delimited area. The legal measures proved insufficient since, in order to protect quality, criteria intrinsic to production and even gustatory elements would need to be defined. The delimitations were suspended pending reform which did not occur before the end of the First World War, and at this point it was urgently required


\textsuperscript{36} Olszak, supra note 13, at 6; SCT/6/3 Geographical Indications: Historical Background, Nature of Rights, existing systems for production and obtaining effective protection in other countries, WIPO (2001), at 9.
because France wanted an obligation upon Germany to respect its regional wine and spirit GIs to be included in the Treaty of Versailles\textsuperscript{37}.

The Law of 1919 established GIs as collective intellectual property\textsuperscript{38}. Under the law, a producer could register a geographic name as an appellation of origin (AO) simply by declaring it so. As long as it went unchallenged by other interested parties, a produce could legally continue to use the designation\textsuperscript{39}. An AO could legally be used in the territory of the geographical indication of the product, which was usually defined to be the administrative borders of the province or locality. Because the administrative borders did not always coincide with the economic territory of the AO, use was also allowed outside the territory when it was in accordance with honest and constant local practices\textsuperscript{40}. Any disputes regarding the use of a designation were decided by courts, for the most parts, using the territorial criteria. Only in some cases the producers were able to persuade the courts of additional criteria such as type of Vince or the modes of wine making\textsuperscript{41}.


\textsuperscript{39} Paul Roubier, supra note 13 at 759.

\textsuperscript{40} Ibid at 760 -761; Olszak, supra note 13 at 9.

\textsuperscript{41} Olszak , supra note, 13 at 8
An amendment in 1927 added additional criteria for wines and granted the right to an AO only for wines which came from certain type of vines grown in certain areas in accordance with honest and constant local practices. In addition, the area and its soil had to be suitable for producing a wine under that AO. The courts were naturally poorly equipped to handle the wide range of evidence ranging from traditional production methods to technical details on soil types and climate conditions brought by the amendment. The result was a variety of decisions depending upon the parties.

Finally, the law of 1935 established as controlled appellation of origin (AO) for wines and spirits. It also setup an institution of experts, which later became National Institution of Appellation of Origin for wines and spirits (INAO), to specify the production requirement. From that time onwards, the responsibility for AOC recognition was under the supervision of the state and it was no longer possible to register AOs for wines or spirits. A similar system was introduced to cheeses in 1955 and finally to agricultural products in 1990. Later, the previous laws on AOC were incorporated into the consumer code that now regulates national geographical indications in France.

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42 Paul Roubier, supra note 15 at 784 – 785.
43 Olszak, supra note 13 at 9.
44 Code de la consommation.
International Treaties.

National protection of geographical indications was powerless against imitation outside the country of origin. Consequently from the end of the 19th century, concern for geographical indications made its way, directly or indirectly, into several multilateral treaties as well as many more bilateral and plurilateral treaties46. Today they still form a complex web of protection for GIs in international law. For the purpose of this treaties, some multilateral agreements and bilateral and plurilateral agreement in general set the stage for the protection of geographical indications in the world.

Bilateral Agreements47

Bilateral international agreements are typically concluded between two countries on the basis of reciprocity in order to increase protection of the countries’ respective geographical indications. They may be independent treaties or form part of a wider trade agreement48. They may simply provide for a prohibition of use of the other party’s geographical indications for goods (usually listed in an annex to the agreement) not having that origin. Or they may go further and provide for the extra territorial application of the other country’s national law concerning the protection of geographical indications. This latter aspect may be

46 Hughes, supra note 2, at 17-18
47 WIPO/GEO/SFO/03/1, June 12, 2003, world wide symposium on GIs, at 9.
48 Example the ‘crayfish agreement’ between France and South Africa from the 1930’s (see symposium on the International protection of Geographical Indications, Somerset west 1999, at 31.
imported in cases where a given geographical indication does not only indicate the geographical origin of certain goods, but also certain qualities that are due to that origin. Such as is the case with protected appellation of origin.

**Bilateral treaties**

Bilateral treaties have long been used to protect geographical indications. Although the agreements usually specified the protected indications and their respective areas, the parties usually failed to determine the scope of protection. As a general rule, the bilateral treaties on GIs protect certain geographical indications against all commercial use and against use with delocalizing expressions. The names of countries and cantons are granted absolute protection. The protection of the designation ‘Switzerland’s therefore not limited to certain types of product or goods. This may include all industrial products (such as watches, chocolates, textile etc) as well as natural products (such as wines and agricultural products). However, there is a general provision preventing uses of indications of source which mislead the public. These treaties specify that geographical indications must be used in conformity with the law of the country of origin (re application of the law of the country of origin). The protection system also prohibits the illicit appropriation of an indication of source as a

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49 Dr.Prabudha Ganguli, MVIRDL WORLD TRADE CENTE MUMBAI: Geographical indications. its evolving contours.tips by SVKM’s NMIMS University’s Institution of Intellectual Property studies at [www.iips.ac.in](http://www.iips.ac.in) at 20
trademark. In addition, an indication of source cannot be transformed into a generic name in the country where it is protected. Finally, with regard to sanctions, the legislation of the country origin applies. In the end, these bilateral treaties basically transfer the protection provided for in the country of origin to the other signatory states. 50 Thus the promotion of the protection of GIs is ongoing. One of the ways to protect GIs internationally is the conclusion of bilateral and regional agreements which link EU market access for third countries with the protection of EU GIs in those countries. Over the years the EU has concluded a number of bilateral and plurilateral agreements on GIs. Some of these agreements deal specifically with GIs while others are more general trade agreements containing sections devoted to GIs.

One of the earliest treaties of 1910 between Portugal and the United States under which the name ‘Porto’ and ‘Madeira’ were to be protected in the US and since the scope was not clearly defined, the debate pertaining to terms like ‘type’ or ‘kind’ was also carried into this agreement51. A new type of treaty emerged after the First World War,52 in these agreements the protection of the geographical indications is determined under the law of the country of origin. As a result, the

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50 SINER – GI WP1 Report legal and institutional issues related to GIs, communication and summary: Paivi Laldesmaki: the protection of geographical indication the international level WIPO at 17.
rules of the country of origin are ‘exported’ together with its goods into the importing country. In an alleged violation, the court has to apply the laws of the country of origin instead of its own laws. Many of these treaties were initiated by countries of southern Europe. Such as Italy, France and Spain, and are still in force today, as for example the 1921 trade agreement between Finland and France that prescribes in Article 16 that French law shall govern the use of French Geographical Indications. The following are the bilateral agreement:

EC – Mexico Agreements on Designation for spirit drinks

On May 27th 1997, Mexico and the EU signed an agreement under which both parties agreed to protect the denominations of origin of certain spirit. The agreement provides protection to more than 250 European GIs, among them being scotch whisky, Irish whiskey, Rum de Madeira, Rham de la Martinique, Ron de Malaga, Kombrand, Armagnac, cognæ, Brandy de jerez, grappa, kirsch, calvados, onzo, Irish cream, carries de Dijon, Swedish punch, Swedish vodka and Finks vodka. Two Mexican appellations is ‘to improve the conditions under

54 Example of bilateral agreements by France see Olszak, supra note 13, at 125-126.
55 Trade agreement between Finland and France 21.7.1921 sop 3/1921, also available at www.finlex.fi/fi/sopimukset/sopstelo/19210003>
which spirits are marketed in the community and Mexico in accordance with the principles of equality, mutual benefit and reciprocity’.

**Agreement between EC and South Africa on Trade in wine.**

An agreement on trade in wine between South Africa and EU was signed in January 2002\(^{57}\). Under the agreement, South Africa agreed to phase out the use of the European names ‘port’ and ‘sherry’. Annex II to the agreement on wine contains a full list of GIs for wines that will be protected. In return for agreeing to phase out the use of these names. The EU provided import aid (5 million) for restructuring the South African wine and spirits industry and the import quota for South African wines was increased from 320,000 hectoliters to 420,000 hectoliters per year. The parties concluded that at the end of an agreed period, the new denominations of these products would be used on the South African domestic market. These denominations would be jointly agreed between the Republic of South Africa and the EU.

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\(^{57}\) Agreement between the European community and the Republic of South Africa on trade in wine, signed on January 28\(^{\text{th}}\) 2002 (provisionally in force); council decision of January 21\(^{\text{st}}\) 2002 on the conclusion of an agreement between the European community and the Republic of South Africa on Trade in wine. OJL 28, January 30\(^{\text{th}}\) 2002, at 3.
**Agreement between EC and South Africa on Trade in spirit**

The agreement between the EU and South Africa on Trade in spirit 58 was signed on the same day as the agreement on trade in wine. These area numbers of similarities between these two agreements. A full list of GIs for spirits that are protected under the agreement on spirits may be found in the Annex to the agreement, which includes the obligation for South Africa to phase-out the use of European terms ‘Grappa’, ‘Korn/Kombrand’, ‘Jagertee/jagestee/Jagatee’ and ‘Pacharan’ after a transitional period of five years (beginning on January 1\textsuperscript{st} 2002).\textsuperscript{59}

Both agreements concluded by the EU and South Africa were parts of the general Trade Development and Cooperation Agreement [TDCA] concluded in October 1999. The objective was to remove customs tariffs between the parties. As a result, Botswana, Lesotho, Namibia and Switzerland, which are part of the Southern African Customs Union [SACU], lost up to 15 percentage of their fiscal revenue.

\textsuperscript{58} Council decision of January 21\textsuperscript{st} 2002 on the conclusion of an agreement between the European community and the Republic of South Africa on trade in spirits, 2002/51/EC, OJL 28, 30/01/2002, at 112.

\textsuperscript{59} Council decision of January 21\textsuperscript{st} 2002 on the conclusion of an agreement in the form of an exchange of letters between the European community and the Republic of South Africa on trade in wine, OJL January 26\textsuperscript{th} to 30\textsuperscript{th} 2002, at 133.
It should be noted that the EU – Australia wine agreement of 1994 (renewed in 2008) – is one of the earliest examples of bilateral agreements concluded between the European community and another country for the protection of Geographical Indication. The agreement provides a definition of geographical indications and limits the scope of the protection to names specified in Annex II to the Agreement. An important condition for the protection is the recognition of geographical indications under the laws of the contracting parties. In addition, the agreement contains provisions relating to the mutual recognition of traditional expressions\(^60\).

The Free Trade Agreement between the US and Morocco of 2004\(^61\) included GIs protection in Article 15.3 that tracks the TRIPs definitions [15.3(3)] but adds a comment in footnote 5 regarding the meaning of “originating”. The comment distinguishes originating for GI purposes from ‘originating’ for customs purpose\(^62\). In Art: 15.3(1) the procedures with respect to geographical indications are listed, including the acceptance of GIs without requiring intercessions by a party on behalf of its national or to make available contact information sufficient to allow the general public to obtain guidance concerning the procedures for filing application as well as for procedures for opposing and cancellation of

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\(^{60}\) O’Connor 2007: The Guide of GIs and TRIPS, O’Connor and company, European lawyers at 9.

\(^{61}\) [http://www.ustr.gov/Trade_Agreements/Bilateral/Morocco/FTA/Final_Text/section_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Morocco/FTA/Final_Text/section_Index.html)

geographical indication that are the subject matter of applications or petitions. Article 15.1(2) fixes the relationship of GIs to trademarks. In general trademarks are given priority whether or not they preexist the GI application and whether or not registered. Refusing protection or recognition of a geographical indication is possible when the GI is likely to be confusingly similar to a trademark that is the subject of a good faith pending application or registration or if it is confusingly similar to a pre-existing trademark in the territory of the party through use in good faith.

The EC – US wine agreement of 2005 63 seals a conflict between the European community and the United States that lasted for about 20 years. The USA claimed that the EC did not recognize their viticulture practices as compatible with EU Regulations. The EC claimed that the USA allowed their country wine imports with labels that used names that the EU considered GIs. Also at issue were a number of ‘semi-generic’ terms that had been legally used by non-European wine in the US market. In the agreement the EC agreed to accept all existing US wine-making practices and the US agreed to ban the use of some semi-generic names by non-EU producers’ imports. The US and EU agreed also to recognize some existing names of origin. Strictly speaking this bilateral agreement is not related to the TRIPs agreement, because trade restrictions based

on different wine making practices and the issue of simplification of wine
certification are covered by the sanitary and the Technical Barriers to Trade (TBT)
, both parts of the WTO. But the aspects of the accord that resolve labeling and
issues, including the tightening up of semi generics, the recognition of certain
terms on labels and the agreement on certain names of origin range into the
TRIPs category. The 2005 agreement was intended to lay the foundation, as the
first phase, for a broad agreement on trade in wine between the two trading
partners. However, since then, the agreement was hardly extended.

*The Swiss -Vietnam agreement* of 1999 on the Protection of Intellectual
Property and on Co operation in the Field of Intellectual Property was the first
agreement focusing only on intellectual property. The agreement is twofold. A
first part deals with material law containing obligations for both parties to
provide effective and non discriminatory measures for the protection of
intellectual property rights, such as the national treatment and most favored
nation clauses. The second part deals specifically with co operation in the field of
intellectual property, including a special program of co operation (SPC) in the
annex to assist Vietnam to fulfill the obligations set forth in international treaties
on intellectual property, including the agreement on trade related intellectual
property rights (TRIPs – agreement) under the WTO.

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64 Swiss Federal Institute of Intellectual Property (2009): The special programme of co operation n the field
of Intellectual property between Vietnam and Switzerland ( SPS Vietnam),
http://www.ip4all.ch/e/jurinfo/j130shtm
A few of the bilateral treaties signed by Switzerland on the protection of Geographical Indications are:65


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65 SINER GI Report on GIs Legal and Institutional Issue, supra note 33 , at 17.


Bilateral agreements are still an effective instrument to develop the international protection of geographical indications, and the EU is the principal advocate of this increased protection. It is seeking TRIPs-plus protection with bilateral agreements that recoup GIs that have become generic by requiring the phasing out of generic use and establishing the preeminence of GIs over trade mark rights, even if prior registered. A good example is the 1994 Wine Agreement

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between Austria and the EC\textsuperscript{67}, which requires the phasing out of the generic use of a term like champagne and Chianti\textsuperscript{68}. Latest example is wine Agreement between US and EC\textsuperscript{69}, which similarly requires the phasing out of the generic terms like champagne.\textsuperscript{70}

\textit{Plurilateral Agreement}

\textit{The Cotonou Agreement} \textsuperscript{71} is a multilateral trade, development and governance agreement between African, Caribbean and Pacific countries and the European community lasting 20 years from March 2000 to February 2020 with the expectation of revisions every Five Years. Article 46 covers the protection of Intellectual property Rights in a general way to ‘recognize the need to ensure an adequate and effective level of protection of intellectual industrial and commercial property rights and other rights covered by TRIPs including

\begin{itemize}
\item \textsuperscript{67} Agreement between the European community and Australia on trade in wine OJ 1994 L 86/3 and Agreement between the European community and Australia amending the agreement on trade in wine, IJN 2003 L 336/100.
\item \textsuperscript{68} Article 8 and 9. See also Des Rayan,’the protection of Geographical Indications in Australia under the EC/Australia wine Agreement, (1994) 16 E.I.P.R. 512, at 522.
\item \textsuperscript{69} Agreement between the European community and the United States of America on trade in wine, OJ 2006 L.87/2.
\item \textsuperscript{70} Arthritis. See also IP/06/294, EU-US Wine accord will help EU wine Trade with US, 10 March 2006.
\item \textsuperscript{71} Partnership agreement between the members of the African, Caribbean and Pacific group of states, of one part, and the European community and the member states, of the (Echolle M.A (2008): Geographical indications for food products, Kluwer law international. BV, the Netherlands at 99).
\end{itemize}
protection of geographical indications, in line with the international standards with a view to reducing distortions and impediments to bilateral trade. The North American Free Trade Agreement of 1994 joins Canada, México and the United States in a free trade area. Its language about geographical indication, contained in article 1712, is almost identical to TRIPs Article 22 but without definitions of the term geographical indication.

The Bangui Agreement signed 1977 created the African intellectual Property organization and enjoin its members to recognize and co operate in the enforcement of different categories of intellectual property rights including appellation of origin. The agreement provides for common administrative procedure through a centralized application and registration process for all Intellectual Property Rights. It does not restrict the usage of a GI to a particular group but instead extends it to anyone, including foreigners that meet the expected criteria as long as they are carrying out business in the covered Bangui Agreement area.

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73 Ibid, supra note 55.at 89.
74 Revised in 1999 and entered into force in February 2002
The Andean group decision of 1993 is the common patent and trademark law for the five Andean Pact Countries: Bolivia, Colombia, Ecuador, Venezuela, and Peru. It applies directly in the member countries and does not require ratification. It provides for the protection of the exclusive right to make use of officially recognized ‘appellation of origin’. In general, the decision prohibits the registration of marks consisting exclusively of signs or indications which may be used in commerce to designate or describe the species, quality, quantity, destinations, value, origin, time of production, or other characteristics of the products or services to be protected. 

The treaty of Asuncion joins the countries Brazil, Argentina, Paraguay and Uruguay since 1991 to create the common Market of the southern cone, the MERCOSUR co ordination regarding intellectual property is not mentioned in the treaty. The 1995 MERCOSUR protocol on Harmonization of Rules on intellectual property in relation to trademarks, geographical indications and denominations of origin contains a general obligation for parties to protect both geographical indications and appellations of origin. However, the protocol does not define? The scope of protection.

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76 Ibid, supra note 58 at 186.
77 Ibid, supra note 55 (Echols 2008)
78 Ibid, supra note 58 at 186.
The ‘Group of three’ joins Colombia, Mexico and Venezuela and lays down the rights of member countries to protect ‘designations of origin’ and geographical indications. However, it is left to domestic legislation to determine the conditions for protection.79

The revised Central American Convention for the protection for the industrial property was signed between El Salvador, Guatemala, Costa Rica and Nicaragua. Its 1994 revision requires the protection of geographical indications, using the same definition of that notion as employed by Article 22(1) of the TRIPs Agreement.80

**Multilateral Agreements**

A second possibility for obtaining international protection for geographical indications is through the conclusion of, and the adherence to, multilateral agreement.81 As noted above many nations relied upon bilateral or regional agreement for the protection of GIs.82 Many of these agreements designated

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79 Ibid, supra note 58 at 187.
80 Ibid, supra note 58 at 187.
81 WIPO/GEO/SFO/03/1. World wide symposium on Geographical Indications and recent developments in the world intellectual property organization.
82 WTO secretariat, overview of existing international notification and registration systems for geographical indication relating to wines and spirit Ip/c/w/85 at 6 (Nov.17. 1997) [herein after international Notification and registration systems]
specific geographical indications to be protected by the parties and typically followed one of two main models\textsuperscript{83}.

The first model encompassed agreements that established openended systems for the registration of geographical indications that meet specified criteria of general application after compliance with specified procedures\textsuperscript{84}. An example of an agreement that followed this model is the Bangui Agreement of March 2 1977, relating to the creation of an African intellectual property organization\textsuperscript{85}. The second model, used by many bilateral agreements and some regional agreements. Specified lists of geographical indications from each of the countries party to the agreement. Sometimes in conjunction with minimum standards defining the protection to be accorded\textsuperscript{86}. These agreements typically lacked internal mechanisms by which the parties could make additions to the lists; correspondingly, such additions typically required a new agreement amending the earlier agreement\textsuperscript{87}. An example of this model is the agreement between

\textsuperscript{83} Id. International Notifications and Registration system at 6.

\textsuperscript{84} Id.

\textsuperscript{85} See Agreement relating to the creation of an African intellectual property organization, constituting a revision of the agreement relating to the creation of an African and malign system office of industrial property , March 2 , 1977, world intellectual property organization industrial property laws and treaties , Text 1-105

\textsuperscript{86} International notifications and registration system, supra note 65, at 7.

\textsuperscript{87} Id.
Germany and France, of March 8, 1960, on the protection of Indications of Source, Appellations of Origin and other Geographical Designations\textsuperscript{88}.

Increasingly, states rely on multilateral rather than bilateral instruments to strengthen protection for geographical indications abroad, with the obvious benefit that with more adherent more universal and uniform protection may be achieved. The most notable multilateral instruments administered by WIPO are: The Paris Convention for Protection of Industrial Property, The Madrid Agreement for the Repression of False Deceptive Indications of Sources on Goods, the GATT 1947, Article IX, the Stresa convention 1951, the Lisbon Agreement ("NAFTA")\textsuperscript{89}. As will be demonstrated, each of these agreements had shortcomings that the TRIPs agreement attempted to address.

The Paris Convention:

The Paris convention for the protection of industrial property [1883-1884] was the first major international treaty established in 1883\textsuperscript{90}. French delegates were responsible for drafting it\textsuperscript{91}, and its provisions on the protections of geographical indications are reminiscent of the protections afforded by the law of 1824 in


\textsuperscript{89} Supra note, 65, at 1-6, 10.

\textsuperscript{90} Paris convention for the protection of industrial property of March 20, 1883 [ here in after ‘ Paris convention’]

\textsuperscript{91} For an account of the origin of the Paris convention, see, Ladas, supra note 91, at 59-94.
France. The original text of 1883 only applied to false simple GIs when used either with a fictitious word or with fraudulent intent. The treaty has been revised several times in the 20th century and has now a much wider scope\textsuperscript{92}.

The treaty protects simple GIs under the term ‘indication of source’\textsuperscript{93} or appellations of origin as objects of protection and is open to all states. Article 1(2) of the Paris convention states:\textsuperscript{94}

Paris convention Articles, Article 1(2) “The protection of industrial property has as its objects patents, utility models, industrial designs, trademarks, service marks trade names, indications of source or appellation of origin, and the repression of unfair competition”. In addition Article 1(3): The definition of industrial property of the Paris convention ‘All manufactured or natural products, for example, wine, grain, tobacco leaf, fruit cattle, minerals, mineral water, beer, flowers, and floor’\textsuperscript{95}. Furthermore, Article 2(1): ‘the convention


\textsuperscript{94} Article 1(2) of the Paris convention includes some indications of source and appellations of origin as subject matter of industrial property protection.

\textsuperscript{95} Supra note 31 at 10.
applies to the widest range of industrial property, including “indications of sources and appellation of origin and the repression of unfair competition”\textsuperscript{96}

The above convention has been revised several times, in Brussels [1900], Washington [1911], the Hague[1925], London [1934], Lisbon [1958], and Stockholm [1967] and amended in 1979. As of October 2007, the Convention has 171 signatory states. A provision prohibiting the use of a false indication of source appeared in the original text of the Paris convention of 1883\textsuperscript{97}.

The Paris Convention identifies geographical indications as a separate intellectual property right, but does not clearly define the concept\textsuperscript{98}. The provisions of the Paris convention were subdivided into three main categories by the WIPO\textsuperscript{99}:

The right to ‘national treatment’ guarantees that each country party to the Paris Convention must grant the same protection to nationals (natural persons and legal entities) of the other member countries as it grants to its own nationals. Additional, nationals of the other member countries as it grants its own nationals. Further, nationals of countries who are not part of the Convention

\textsuperscript{96} Supra note 31 at 10.
\textsuperscript{97} Supra note 31 at 10.
\textsuperscript{98} O’ Connor (2007): The guide of GIs and TRIPs, O’Connor and company, European lawyers, at 2.
must be protected if they are domiciled in a member country and it is not allowed to discriminate against foreigners in any way.

The ‘right of priority’ is provided by the Convention in the case of patents, marks and industrial design. This right means that within a certain period after the first application in one of the contracting states, later applications will be regarded as if they had been filed on the same day as the first application. The practical advantage of this provision is that, an applicant desires protection in several countries, he is not required to present all his applications at the same time.

There are common rules for marks (and patents) which all the contracted states must follow. The convention does not regulate the conditions for the filing and registration of marks which are therefore determined in each contracting state by the domestic law. The registration in one country is independent of the registration in another country, but where a mark has been duly registered in the country of origin, it must, on request, be accepted for filing and protected in its original form in the other contracting states. Nevertheless, registration may be refused in well defined cases, such as when the mark would infringe acquired rights of third parties, when it is devoid of distinctive character, when it is contrary to morality of public order, or when it is of such a nature as to be liable to deceive the public.
Each contracting state must refuse registration and prohibit the use of marks which constitute a reproduction, imitation, or translation. Collective marks must be granted protection among others as to indications of source and trade names. Measures must be taken by each contracting state against direct or indirect use of a false indication of the source of the goods or the identity of the producers, manufacturer, or trader. Protection must be granted to trade names in each contracting state without the obligation of the filing or registration.

The treaty protects simple GIs under the term ‘indication of source’100. Article 9101 read together with article 10 requires member countries to ‘seize on importation’ goods bearing ‘direct or indirect false indication of source of the goods’102. For instance, the words ‘German beer’ would clearly be a direct indication, where as a picture of the Eiffel Tower might be seen as an indirect indication103.

100 Supra note 76 at 19.
101 Article 9 of Paris Convention provides remedies available in the event of importation, etc., of Goods unlawfully varying a mark or trade name. Also see Guide to GIs, linking products and their origins, International Trade Center, Chapter 3 Global overview of legal protection system for GIs, at 44-article 9 of Paris Convention outlines the right for industrial property, such as trademarks, and provides the rights of seizure or containment of fraudulent products for injured parties (i.e. Producer, association, or business associated with the source or appellation). When that seizure option is part of a country’s legal code, also see supra note 31, at 10 articles 9 provides the remedies available in the event of importation, etc., of Goods Unlawfully bearing a mark or trade name.
102 The words ‘direct or indirect’ were added at the diplomatic conference in Lisbon (1958). Bodenhausen, supra note 75, at 138; Ladas supra note 20, at 1581.
103 Bodenhausen supra note 75, at 139.
Paris convention Article 10\textsuperscript{104} is titled ‘False indication: seizure, on importation, etc., of Goods Bearing False Indications as to their source or the identity of the producer’. This article does not explicitly refer to appellations of origin. However conceptually all appellations of origin may be interpreted to constitute an indication of source.

Article 10(1)\textsuperscript{105} provides for indications of source, the same remedies prescribed in respect of goods unlawfully bearing a trade mark or a trade name in case of direct or indirect use of a false indication of source of the goods of the identity of the producer, manufacturer, or merchant.

According to Article: 10(2)\textsuperscript{106} of the Paris convention, any ‘…. Producer manufactures or merchant whether a natural person or legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is need, shall in any case be deemed an interested party’.

\begin{footnotesize}
\textsuperscript{104} Supra note 31, at 10. \\
\textsuperscript{105} Supra note 31 at 10. \\
\textsuperscript{106} Supra note 31, at 10. 
\end{footnotesize}
The basic principle of protection against unfair competition is set out in Article 10 bis of the Paris convention, which is both generally incorporated in TRIPs at Article 22 (see chapter 3), and specifically incorporated as a foundation for protection of geographical indications at Art:22.2(b) 107.

It should be noted that Article:9(5) and Art:9(6) of the Paris Convention lay down conditions for countries who are parties to the Paris Convention but whose national laws do not permit seizure on importation or inside the country to replace those remedies by either a prohibition of importation or by any other nationally available remedy. Furthermore, Art: 10ter (2) contains an undertaking of the states party to the Paris convention to allow federations and associations representing producers and trade circles to bring actions in order to enforce the means of protection envisaged in Articles 9 and 10108.

Article 11 bis109 of the Paris Convention obliges members to provide protection against unfair competition and contains a non-exhaustive list of acts, which are to be prohibited. This provision gives the basis for the protection against misleading indications of source, including appellations of origin. The Paris
Convention does not provide for any remedies in case of infringement of this provision. However, it may be noted that the protection was rather limited, since the prohibition was only applicable where the false indication of source was used in conjunction with a fictitious or non-existing trade name.

The positions of the founding states of the Paris Convention at the 1883 Paris Diplomatic Conference regarding the protection of indications of source did not allow more than a minimum common position with regard to protection on the multilateral level. As already indicated, the original text did not provide for the prevention of the use of false indications per se, but only where such use occurred in connection with the use of a false trade name.\(^{110}\)

Consequently, countries which had greater interest in an improved international protection of indications of source established a special union under the Madrid Agreement for the Repression of false or deceptive indication of source on goods.\(^{111}\) (‘Madrid Agreement on indication of source’).\(^{112}\)

\(^{110}\) WIPO/GEO/SFO/03/1 United States patent and trade office : worldwide symposium on Geographical Indication : Introduction of Geographical Indication and recent development in the world intellectual property organisation, para 37 at 10.

\(^{111}\) Supra note 94, para 38 at 10.

\(^{112}\) On April 15, 2003, 32 states were party to the Madrid Agreement on indication of source.
Madrid Agreement 1891

The original test of the Paris Convention of 1883 did not provide for the prevention of the use of false indication per se, but only where such use occurred in connection with the use of a false trade name. The next step in enhancing the protection of indications of source was the Madrid Agreement for the Repression of false or Deceptive indications of source on goods ('Madrid Agreement on indications of source')\textsuperscript{113}.

The Madrid Agreement was adopted in 1891 and revised in Washington (1911), The Hague (1925), London (1934) and Lisbon (1958), which was supplemented by the Additional Act of Stockholm (1967). As of October 2007, the Madrid Agreement for indication of source has 35 contracting parties. The Madrid Agreement on indications of source not only prevents the use of ‘false’ indications of source, but also prohibits the use of indications of source that are ‘deceptive’ literally true but nevertheless misleading.

The narrow scope of Article 10 of the Paris Convention might have helped the acceleration towards the prompt return of the notion of GIs at the end of 19th century, when the Madrid Agreement of 1891 came into being\textsuperscript{114}. Various diplomatic conferences met to amend the Madrid Agreement, still the treaty

\textsuperscript{113} http://wipo.int/treaties/en/ip/madrid/trtdocs_woo32html.

\textsuperscript{114} J. Thomas et al protection of geographical denominations: domestic and international (1979) TMR 199-203.
remain a diplomatic dead-ends. However, it potentially showed the development of legal protection for Geographic identifiers, as it altered the Paris Convention standards in a few ways.  

Firstly, whereas article 10 of the Paris Convention requires false indications to be seized on importation, Article: 1 (1) of the Madrid Agreement provides that:

Article 1(1) of the Madrid Agreement “All goods bearing a false or deceptive indication by which one of the countries to which this agreements applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation ... into any of the said countries.” Explicitly this marked an expansion of liability to include the effect of the designation on the consumer.

Secondly, at its diplomatic conference held in 1934 the Madrid Agreement added article 3bis, that expanded the commitment of fighting false or deceptive marks or source indications ‘appearing on signs, advertisements, invoices,... or any

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116 Note that this may expand Article 10 of the Paris Convention’s coverage less than what it appears because Paris Article 10 already applied to ‘indirect use of false indication of the source of the goods’ which would seem to capture many, if not most, practices that could be called deceptive, but not directly false.

117 A standard of a ‘false’ designation seems to require less analysis of the consumer’s reaction to the designation in the sense that the plain meaning of the word renders it true of false in relation to the goods to which it is attached.
other communication’. That marked a shift from a focus on deceptively marked goods to fighting deception throughout channels of commerce.118

Furthermore, Madrid Agreement introduced for the first time wine-specific rules into a modern multilateral treaty. Article A of the agreement provides that: ‘The courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement, regional appellations concerning the source of products of the vine being, however, excluded from the reservation specified by this article.119

Nonetheless, this agreement failed to attract the accession of significant trading nations such as the USA, Germany and Italy. A thresed problem with this Agreement and with subsequent revisions was the inability of nations to exempt geographical indications of nations to exempt geographical indications which had become generic within their borders. Finally under an international

118 Supra note 31, at 12. Article 3bis of the Madrid Agreement provides that, ‘the countries to which the Agreement applies also undertake to prohibit the use, in connection with the sale or display or offering for sale of any goods, of all indications in the nature of publicity capable of deceiving the public as to the source of the goods, and appearing on signs, advertisements, invoices, wine lists, business letters or papers, or any other commercial communications’.

119 In other words, while the Madrid obligations applied to geographical identification, Article 4 permits a national court determination that a geographical identification or identifier has become generic within that country, effectively triggering a treaty-level reservation concerning that word. However, it then immediately eliminates this possibility vis-à-vis terms of viniculture Eg. Chianti etc.
registration system for trademarks, such as the Madrid Agreement concerning the International Registration of Marks of 1981 (also known as Madrid Agreement), and the protocol relating to the Madrid Agreement concerning the International Registration of Marks of 1969, it was possible to protect geographical indication as Collective Marks, Certificate Marks or Guarantees Marks.120

The GATT 1947, Article IX of the GATT 1947 addressed Marks of origin121, inter alia, at Article IX:1 requiring MFN treatment for such marks. The concept of the geographical indication is previewed at Article IX:6 providing:

121 Article IX, GATT 1947:

1. Each contracting party shall accord to the products of the territories of other contracting parties treatment with regard to marking requirement no less favourable than the treatment accorded to like products of any third country.
2. The contracting parties recognize that, in adopting and enforcing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to minimum, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications.
3. Whenever it is administratively practicable to do so, contracting parties should permit required marks of origin to be affixed at the time of importation.
4. The Laws and regulations of contracting parties relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.
5. As a general rule, no special duty or penalty should be imposed by any contracting party for failure to comply with marking requirements prior to importation unless corrective marking is unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.
‘The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its registration. Each contracting party shall accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party’.

Article IX: 6, GATT 1947, was not framed in terms of strict obligations, but rather in terms of co-operation with a view to prevent misrepresentation. Also, the duty to co-operate is based on protection of a distinctive regional or geographic name by legislation in the country requesting co-operation, and further based on notification of the applicable names.

Article IX:6, GATT 1947, was subject to interpretation by a Panel in the Japan-Alcoholic Beverage case122.

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6. (See text above. Article IX:6)

The 1951 Stresa Convention\textsuperscript{123} provided protection to designation of origin only to specific categories of products, i.e. cheese. This Convention attracted a

\textsuperscript{123} Relevant excerpts from the Panel report, id., state: “The Panel noted from the drafting history relating to Article:IX:6 that it had been agreed that the text of Article:IX:6

‘Should not have the effect of prejudicing the present situation as regards certain distinctive names of products, provided always that the names affixed to the products cannot misrepresent their true origin. This is particularly the case when the name of the producing country is clearly indicated. It will rest with the governments concerned to proceed to a joint examination of particular cases which might arise if disputes occur as a result of the use of distinctive names of products which may have lost their original significance through constant use permitted by law in the country where they are used’. (Reports of committee and principal sub-committees, UN Conference on Trade and Employment, 1948, P.79)

The Panel noted that the Japanese Law and Cabinet Order concerning Liquor Business Association and measures for securing Revenue of Liquor Tax stipulated that’ Any manufactures of liquors must indicate, at a legible location of the container of liquors… which are shipped out from the manufacturing premise… the capacity of the container…. The category of liquors…. The grade of liquors and the following matters according to the category of liquors, in a conspicuous manner’, is including the alcohol content in the case of wine, whisky, brandy, spirits and liqueurs. The Panel examined a large number of labels, photos, wine bottles and packages submitted by the EEC as evidence. The Panel found that this evidence seemed to confirm the Japanese submission to the Panel that the labels on liquor bottles manufactured in Japan indicated their Japanese Origin”.

5.15 The Panel examined the view of the European community that the use of French words, French names, of other European languages and European label styles or symbols by Japanese manufacturers continued to misled Japanese consumers as to the origin of the liquors, and that the indication of a Japanese manufactures did not clarify his precise activities because, for instance wine bottled in Japan could contain as much as 95 percent imported bulk wine. The Panel inferred from the Wording of Article IX:6 that it was confined to an obligation to ‘cooperate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation’. The Panel noted that there was no definition of a ‘trade name’ in the General Agreement, and that there were differences in the laws of various countries as to what might constitute a trade name. The Panel did that consider it necessary to define the term’ trade name’ in this case for the following reasons. Article IX:6 was designed to protect ‘distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation’. The Panel did not dispose of evidence and was unable to find that the use by Japanese manufactures of labels written partly in English ( in the case of whisky and brandy) or in French ( in the case of wine), the use of the names of varieties of grapes ( such as: ‘Riesling’
limited number of signatories (only European countries). It established for the first time the protection of the use of appellations of origin and denominations of products. This principle was confirmed in 1958 by the signature of the Lisbon Agreement for the protection of Appellation of Origin and their International Registration\textsuperscript{124}.

Lisbon Agreement 1958

By 1958, there had been several failed attempts to strengthen the protection of geographical indication. Portugal along with the International Bureau of WIPO proposed to secure protection of GIs on a new basis under the term \textit{appellation of origin}, which had become to be understood to designate not only the origin of a product like indication of source, but also certain essential qualities pertaining to that origin\textsuperscript{125}. The result was the Lisbon Agreement\textsuperscript{126}, established in 1958. It

\textsuperscript{124} International Conventions of the use of Appellations of origin and Denominations of Cheeses, \textit{Journal Officiel de la Republique Francaise}, No 11, 1952. Pg 5821..

\textsuperscript{125} The Agreement for the Protection of Appellation of Origin and their International Registration was concluded in Lisbon on 31 October 1958. As of 5 May 2007, there were 32 states party to the Agreement. See on \url{http://www.wipo.org} “Treaties”, “Intellectual Property Protection Treaties”, “Lisbon Agreement”.

\textsuperscript{126} P. Ladas, Patents, Trademarks, and Related Rights: National and International Protection I-III (1975) 1579.
became operational in 1966 was revised in 1967 (Stockholm), and the Regulations under the Agreement were last amended in 2002, which is not restricted to border measures like its predecessors, but also includes the adoption of a registration system. Because the treaty provides extremely strong protection, only a handful of countries have been willing to adopt it, and it only has 25 member countries\textsuperscript{127}.

Unlike the Paris and Madrid treaties, the Lisbon Agreement restricts the protection to GIs that are a name of a country, region, or locality, and which designate the quality and characteristic that are ‘exclusively essentially due to the geographical environment, including natural and human factors\textsuperscript{128}. GIs that are recognized and Protected as such in the country of origin may be registered at the International Bureau of WIPO, and, once registered, the GI is protected in all member countries\textsuperscript{129}.

The Lisbon Agreement also exceeds the previous treaties in three main ways. First, Article 3 broadens the protection to any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated

\textsuperscript{127} Lisbon Agreement for the Protection of Appellation of Origin and Their International Registration and Regulation of October 31, 1958 (hereinafter Lisbon Agreement)


\textsuperscript{129} Article:2 of Lisbon Agreement.
form or accompanied by terms such as ‘kind’, ‘type’, ‘make’, ‘imitation’, or the like. This effectively eliminates the construction problems associated with cases like ‘Port-like fortified wine’ that are completely forbidden. Second, it extends protection against deeming GIs generic to cover all products. Third, the treaty treats GIs as superior and provides in Article 5(6) a two-year phase out for prior trade marks conflicting with a newly registered geographical indication.

The North American Free Trade Agreement (NAFTA)

NAFTA addresses the protection of geographical indication in chapter XVII (Intellectual property) and Annex 313 to Chapter III (National Treatment and Access of Goods to the Market). Annex 313 (Distinct products) specifies that “Bourbon Whiskey”, “Tennessee Whiskey”, “Canadian Whisky”, “Tequila”, and Mexico. Correspondingly, NAFTA countries other than the country of origin are not permitted to sell any products bearing these names unless the products are manufactured in the country of origin in conformance with that country’s laws and regulations that govern the products, manufacture. Not surprisingly, one of NAFTA’s greatest shortcomings in its protections of geographical indications is that it is a regional rather than a global agreement, chapter XVII.

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130 See North American Free Trade Agreement, December 17, 1992, 32 I.L.M. 605, 675 [hereinafter NAFTA].
131 Id., annex 313, 32 I.L.M. 289 at 319.
132 See NAFTA; supra note 115, at annex 313, 32 I.L.M. at 319.
133 See Id.
extends protection to geographical indications closely paralleling TRIPs agreement. Articles 22.1-4 and 24.4-9, discussed in the next chapter\textsuperscript{134}.

**Role of GI in Intellectual Property Rights:**

GIs are a branch of Intellectual Property Rights [IPR] which deal with identification and attribution of a product to a specific geographic location. GIs are collective IPR, which identify a good as originating in a certain territory or a region where a given quality, reputation or other characteristics is essentially attributable to its geographical origin. These indications consist of a name that is used to designate a product. A geographical indication cannot be created, but it can be identified and developed\textsuperscript{135}.

The rationale for granting any Intellectual Property Rights is the furtherance of the public interest. Exclusive rights afforded by copyright and patents are seen as a means to encourage authors, performers and inventors to create and share their works with the public. Trademarks and geographical indications are afforded protection for different reasons. They are used to balance competing interests in the market place; to protect consumers from misinformation and producers from ‘unfair’ business practices\textsuperscript{136}.

\textsuperscript{134} See infra chapter 3 of this thesis.

\textsuperscript{135} Dr. Prabuddha Ganguli – Geographical Indications and its evolving contours available at http://www.iips.ac.in/main_book.pdf

Legal protection of GIs has traditionally been based on the idea that geographical origin endows a product exclusive qualities and characteristics. Only local producers are entitled to exclusive use of a product name because no one outside the locale can truly make the same product. In today’s world we are able to replicate almost any product anywhere, including its qualities and characteristics. One would think that this would preclude protection from most geographical name, yet the number of geographical indications seems to be rising\textsuperscript{137}.

Intellectual Property Law is traditionally territorial in nature, but the various major multilateral agreements on copyright, patent and the other forms of IP have created a measure of convergence in substantive law across countries. In the 1980s, the rise of knowledge-based economies made the importance of IP greater. The growth of technological and especially the internet made copying of many intellectual property-related protected products far easier\textsuperscript{138}. The current mechanisms of IP protection were primarily designed to cater to the needs of the modern Research and Development oriented business and industries.


The recognition of a geographical indication in its country of origin needs to be understood in the light of IPRs, since the geographical indication associated with a product signifies the link between the quality, reputation or other characteristic of the product and its geographical origin. The essence of GIs is that the product is tied to a particular place, which implies that the same indication may not be used with a product of the same or similar kind produced elsewhere.\footnote{Lina Monten,'Geographical Indications of Origin: Should They Be protected and Why? – An Analysis of the Issue From the US and EU Perspectives', January, 2006, 22 Santa Clara Computer & High Technology Law Journal, 315}

Geographical indications being territorial in nature, the territoriality principle generally associated with the protection of intellectual property rights is also quite naturally referred to in the field of geographical indications as well. Indeed, geographical indication are established and protected [or are denied legal recognition] on the basis of the laws and regulations applicable in a given territory.\footnote{See generally Dinwoodie, Graeme B., Developing a Private International Intellectual Property Law: The Demise of Territoriality? [November 8,2009], William & Mary Law Review, Forthcoming; Oxford Legal Studies Research Paper No.52/2009.Available at SSRN: \texttt{http://ssrn.com/abstract=1502228}}

The World Intellectual Property Organization: was established in 1967 by the WIPO convention and became a specialized agency of the United Nations in 1974, WIPO started work on the preparation of a new international treaty for the protection of appellations of origin and indication of source. However, the work on the draft treaty was terminated, when it became obvious that further progress...
on GIs would require the revision of provisions of the Paris conventions. In 1975 WIPO issued a proposal for a Model Law on Geographical Indications\textsuperscript{141}.

A Model Law is not a draft international treaty. It is intended for use in national law as a standard or template, which can be adjusted or adapted to local conditions. Since 2008, WIPO is working on the revision of the Lisbon Agreement for the protection of Appellations of Origin. In September 2008, it established a Working Grouping responsible for exploring possible improvements of the procedure under this Agreement. The Working Group is discussing proposed amendments of the Agreement concerning the particular:

- the introduction of the concept of GI based on the WTO TRIPS Agreement definition in parallel to the existing concept of appellation of origin.
- the scope of protection to be given
- the relationship with other Intellectual Property Rights
- the registration procedures in order to simplify them.

WIPO’s strategic goals are to promote an IP culture with common international protection standards and to integrate IP into both national and international

development policies and programs. Through its secretariat and collaboration with its member states, it seeks to:

Harmonize national intellectual property legislation and procedures

Promote better understanding of IP through debate and exchange of Intellectual Property Information.

Encourage the use of IP for economic development and provide legal and technical assistance to members.

Facilitate the resolution of private intellectual property disputes.

It is the international governmental body that in most involved with the issues of GIs. WIPO offers information and training on several aspects of GIs that have to do with law and trade\textsuperscript{142}.

Concluding Remarks.

From the foregoing discussion it is concluded that, the concept of GIs dates back for centuries. It has been understood differently depending on the Jurisdiction’s perception. However, what is in the core is, for a product to benefit from GI protection it must have qualities which are in one way or another linked to its place of origin. Globally, GIs have been given protection even before the coming of TRIPs Agreement.

\textsuperscript{142} Guide to GIs, Linking products and their origins. International Trade Centre. Chapter 3: Global Overview of Legal Protection System for GIs at 45.
The Paris Convention prohibited the use of deceptive geographic identifiers by allowing seizure on importation. The Madrid Agreement extended the concept and lastly this Lisbon Agreement introduced strict requirement for a product to earn GI status. When the TRIPs came into being, it borrowed some of the aspects dealt by the treaties established before it.