2.1 Introduction

Marks indicating the geographical origins of goods were the earliest types of trademark. Prior to the industrial revolution in Britain, which commenced in the eighteenth century, industrial production was on a small scale. The corporate form of industrial organisation did not yet exist. For this reason, it was unnecessary for the law to develop the notion of protectable goodwill. Until this time, the principal products, which entered international trade, were primary products, such as minerals and agricultural products simple manufactured goods, such as pottery and woven fabrics. In the competition to earn revenues from the international trade, which was developing at that time, it became apparent that the products of particular regions were more saleable than comparable products from other regions, because of their superior quality.¹ This superior quality either resulted from natural geographic advantages, such as climate and geology (e.g., Seville oranges, Kentish hops, Burgundy wine); recipes and food processing techniques, local to a region (e.g., Koyoto bean cakes, Malmesbury mead, Frankfurter Sausages) or indigenous manufacturing skills (e.g., Toledo Steel, Delft Ceramic Ware, Korean Celadon ware).

To take advantage of the commercial attractiveness of these local reputations, merchants branded their goods with marks which designated the place of origin of these products. These brands utilised depictions of local animals (panda beer), landmarks (mt Fuji sake), Buildings (Pisa silk), Heraldic Sings (Flur de lys butter) or well known local

personalities (Napoleon brandy Mozart chocolates). These brands were tantamount to a warranty of the quality of the goods.\textsuperscript{2} To protect the commercial reputation of these goods, local legislators passed laws to prevent the adulteration of local produce by the addition of inferior introduced goods or ingredients. These laws punished the adulteration of goods and established systems of marking approved local goods with marks certifying their quality, where the reputation of local goods were attributable to the skills and technology of local artisans, associations, or guilds, of master workers grew up. The taxing authorities saw an advantage in preserving the skills and revenue earning capacities of these guilds and conferred upon them a monopoly of manufacture. To regulate this monopoly, the guilds developed service marks, or heraldic-type designs which were placed upon goods produced by guild members.\textsuperscript{3}

The legislation which sought to protect the commercial reputation of traders in discrete geographical localities evolved principally in Europe into systems for the protection of geographical indications. These systems permit products emanating from the region to carry the geographical indication producer representatives from those regions police the use of geographical indications.

“Champagne”, “Cognac”, “Roquefort”, “Chianti”, “Pilsen”, “Porto”, Sheffield, “Havana”, Tequila”, “Darjeeling” – some well-known examples for names which are associated throughout the world with products of a certain nature and quality. One common feature of all those names is their geographical connotation, that is to say, their function of designating existing places, towns, regions or countries. However, when one hears “Champagne” today, he rather think of sparkling wine, that of a French region.


\textsuperscript{3} www.ipr-helpdesk.org. visited on 6\textsuperscript{th} oct. 2009.
“Cognac” is associated with *eaudevie* aged in oak barrels rather than with a small French town, “Chianti”, induces to think of a red Italian wine rather than of a region in the south of Florence, “Pilsen” reminds of beer but not of a town in the Czech Republic and “Tequila” of a liquor distilled from a cactus rather than of a town in Jalisco State, Mexico.  

Those examples show that geographical indications can acquire high reputation and thus may be valuable commercial assets. For this very reason, they are often exposed to misappropriation. Counterfeiting or forgery and their protection at national as well as international levels is highly desirable.

‘Geographical indications are understood by consumers to denote the origin and the quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use of geographical indications by unauthorised parties is detrimental to consumers and legitimate producers. The former are deceived and led into believing to buy a genuine product with specific qualities and characteristics, while they in fact get a worthless imitation. The latter suffer damage because valuable business is taken away from them and the established reputation for their products is damaged’.  

With the exception of design law, there is probably no category of intellectual property law where there exists such a variety of concepts of protection, as in the field of geographical indications. This may be best demonstrated by the term “geographical indication itself, which is relatively new and appeared only recently in international negotiations.

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*5 WIPO - International Bureau, 2002.*
A number of treaties administered by the World Intellectual Property Organisation (WIPO) provide for the protection of geographical indications.

2.2 Country of Origin Designations

The concept of “geographical indications” comes from the concept of “country of Origin” or a regional or sub regional geographic origin. Over time, some locations, regions, of countries become synonymous with producing high-quality products. Producers from those locations can benefit from the “geographic origin” image, which is a set of generalised beliefs about specific products from that geographic origin on a set of attributes. Consumers use geographic origin image as an extrinsic cue for offerings for which they lack product specific information. As a consequence, high quality may be attributed to an unknown brand of consumer electronics from Japan based on the high-quality image or reputation of Japanese consumer electronics. Products that have achieved a high degree of geographic origin image include German automobiles, Japanese automobiles, Japanese consumer electronics, French cosmetics and perfumes, and Swiss watches.

This strategy of building an image of quality for a class of products made in a certain area helps products from a country or region, to achieve consumers acceptance quickly and to also communal premium pricing. The same idea has helped many food/beverage and other commoditised products such as German beers, French and Italian wines and cheeses, Swiss chocolates, Chinese tea and silk and Holland bulbs.

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6 Most notably the Paris Convention for the protection of Industrial Property. The Madrid Agreement for the Repression of false and deceptive indications of source and Lisbon agreement for the protection of Appellation of origin and their international registration, in addition Articles 22A to 24 of TRIPs Agreement.

Consumers buy various brands of these products as long as those brands originate in a country/region, known for producing those products. Such geographical identifiers have not been treated as a brand, but as an additional cue for consumers to judge products. The legal production of such identifiers was not considered necessary because it is not possible to call vodka that is not produced in Russia “Russian” Vodka, on the other hand, because firms from one country compete with those from other countries, it helps to build a positive geographic origin image. The following example shows how one county built this image.\footnote{Sanjeev Agarwal and Michael J. Barone, “Emerging Issues for Geographical Indication Branding Strategies MATRIC” Research Papers, 05 MRP 9 January 2005, p.7.}

Today, if someone is asked as to which country produces the best coffee, the answer is likely to be Columbia. However, in 1959 the answer was Brazil. Columbia received almost no mention then (although it produced about12 percent of the World Coffee Second only to Brazil). The Federation National de cafeteros of Columbia sought to brand Columbian Coffee. It created awareness and emphasized the idea to “Buy Colombian when buying Coffee” through the use of a character named Juan Valdez and his mule. The Valdez character explained the unique properties of Colombia’s location that enabled it to grow the best coffee in the world. Borrowing from branding strategies for manufactured products, the federation sought to create a premium image. Consequently, it employed advertising that emphasized that its coffee is the “Richest Coffee in the World”. The Federation also associated images of high income and high society with Colombian coffee by using statements such as “50 percent Tax Bracket, 100 percent Colombian Coffee” and by suggesting “no Colombian, no thank you” in its consumer advertising. By the end of 1980s, unaided awareness reached 96 percent and
62 percent believed Colombia grows the best coffee; moreover, people were willing to pay is percent more for the coffee.

Are there truly significant advantages to Colombian coffee? Consumer think that freshly roasted Colombian coffee has rich flavour; is heavy bodied, has a bright acidity, and is intensely aromatic. This advantage can, however, be copied by other countries producing the same variety of coffee. Coffee production in Vietnam is expected to surpass that of Columbia. Fortunately, for Colombia, Vietnam produces almost 100 percent Robusta beans and thus does not directly compete with Colombian beans. Even if producers from other parts of the world could reproduce coffee varieties made in Columbia, Colombian producers will have an advantage because of their established geographic origin image. They have strong incentive to ensure that none from any other country can use “Colombian” generically to describe coffee produced in another country. That is why they zealously protect the name all over the world by “certifying” the coffee Produced in Colombia.

2.3 Geographical Indication Designations

Geographical Indications, also referred to as appellations of origin, are “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”.\(^9\) Obtaining the status of protected Geographical Indication requires “a precise product specification which includes a definition and evidence of the link to the geographic area in which the product

As an example, Newcastle Brown Ale is protected as a Geographical Indication in the United Kingdom because it originates in the city of Newcastle upon Tyne and because its “Unique recipe was developed to meet local tastes using yeast grown at the brewery and a unique salt/water mix”. In essence, special status is conferred upon generic terms that describe qualities and characteristics of goods based on their geographical origins. For instance, wines emanating from a particular region are granted the rights to use the Geographical Indication defining that region, while winemakers producing wines outside that region are prevented from doing so in the marketing of their goods. Thus, Geographical Indications represent important intellectual property assets that convey important information concerning the geographical origins of a product; that is, a product originates in a certain place and therefore possesses a certain quality.

2.4 Geographical Indications and related concepts

Internationally, geographical Indications as a form of intellectual property are defined by a wide range of terminology. Unlike other categories of intellectual property rights such as patents or trademarks, where there is a general definition accepted worldwide, in the case of geographical indications there is not a single definition or a single terminology.

“With the exception of design law, there is probably no category of intellectual property law, where there exists such a variety of concepts of protection as in the field of geographical indications. This may be best demonstrated by the term “geographical indication” itself, which is relatively new and appeared only recently in international negotiations”.11

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10 “Move over the River Is a Tide of Change for SS” May 20, ed 1 P.S. New Castle Chronicle and Journal Ltd., 2004, UK.
Any study on the matter, therefore, needs to clarify the concepts used in order to avoid misunderstandings and permit to adequately assess the available policy option.

A geographical Indication of source is sign used in connection with goods in order to indicate their geographical origin. Conceptually, two main types of geographical indications of source may be distinguished:

(a) Simple, quality-neutral geographical indications of source, where there is no suggestion of a direct linkage between attributes of the products and their geographical origin. The use of an indication of source on a given product is merely subject to the condition that this product originates from the place designated by the indication of source.

(b) Qualified geographical indications having a particular descriptive meaning because the characteristics, quality or reputation of products are essentially attributable to a country, region or locality. These indications consist of a name which is used to designate a product. They are often called “appellations of origin”.

Geographical indications may also be classified as direct and indirect. Though geographical Indications generally consist of geographical names “direct indications, they may also be based on non-geographical names or symbols, if perceived by the public as identifying certain geographical origin. These are generally called “indirect” geographical indications”.

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12 (like made in ….).
13 Geographical Indications or appellations of origin are often considered a sub-category of the indications of source, See e.g. WIPO, 1998, pp 115-116.
14 This is the case for instance, of “Mozart Kugeln” which is associated by the consumer with Austria, and “OUZO” and “Grappa” associated with Greece and Italy, respectively.
15 Some symbols may be capable of indicating the origin of goods without literally naming its place of origin. Examples are the Eiffel Tower for Paris, the Masterwork for Switzerland, the Tower Bridge for London, the Colours of the French Flag for Cigarettes the Statute of Liberty, etc.
In accordance with the European approach – which has influenced the provisions in the TRIPs Agreement – geographical indications constitute a component of intellectual property if the designated product possesses characteristics, reputation or quality that are essentially attributable to its geographical origin. That is, this concept applied only to qualified indications. Simple geographical indications, not possessing such attributes may also be protected against misuse, under the discipline of unfair competition, consumer protection or trademark law, but they are not one of the categories of intellectual property, that WTO members are bound to protect.

There are at least two other concepts linked to the idea of geographical indications. These are “indication of source” and “appellation of origin”. Both were incorporated in other international treaties before the TRIPs Agreement was adopted, mainly the Paris Convention of the Protection of Industrial Property of 1883, hereinafter “the Paris Convention”, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891, hereinafter referred to as “the Madrid Agreement” and the Lisbon Agreement of the protection of appellations of origin and their International Registration of 1958, hereinafter” the Lisbon Agreement”.

2.4.1 Indications of Source

The broadest concept is “indication of source”, which appears in the Paris Convention and also in the Madrid Agreement. Neither the Paris Convention nor the Madrid Agreement gives a definition for indication of source. However, the Madrid Agreement contains language which clarifies what is meant by the term.

“All goods bearing a false or deceptive indications by which one of the countries to which this agreement applies, or a place situated therein, the directly or
indirectly indicated as being the country or place of origin shall be seized on importation in to any of the said countries”.

Consequently an indication of source can be defined as:\textsuperscript{16} 

“An indication referring to a country or to a place situated therein as being the country or place of origin of a product”.

There are three key components to this concept:\textsuperscript{17}

i) There is a clear link between the indication and geographical origin;

ii) Unlike other indications of geographical origin, there is no requirement for distinguishing qualities or attributes of the good;

iii) The protected indication can be constituted by words or phrases that directly indicate geographical origin or phrases, symbols or iconic emblems associated with the area of geographical origin.

An indication of source is distinguished from a geographical indication in that its definition does not imply any special quality, reputation or characteristic that is attributable to its geographical origin. As such, an indication of source is dependent only on the products geographical origin and not necessarily its inherent qualities.

2.4.2 Appellations of Origin

The term appellation of origin is mentioned in the Paris Convention (Section 1.2) and defined in the Lisbon Agreement as follows (section 2.1)


\textsuperscript{17} Rangnekar D. “Geographical Indications: A Review of proposals at the TRIPs Council”: Extending Article 23 to products other than wines and spirits. ICJSD UNCTAD issue paper No.4, Geneva 2003.
“Appellation of origin means the geographical name of a country, region or locality which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”.

The key component to this concept are:

i) Appellations must be direct geographical names;

ii) The appellation must serve as a designation of geographical origin of the product;

iii) Quality and characteristics exhibited by the product must be essentially attributable to the designated area of geographical origin.

Appellations of origin can thus be regarded as a special type of indication of source in that they not only convey the geographical source of a product but make a direct link between a product's quality and its geographical origin.

Part two (section 3) of the TRIPs Agreement deals with the protection of “Geographical Indications”. The concept is defined as;

“Indications which identify a good as originating in the territory of a member (of the WTO), or region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographic origin”.

Three conditions must be met:

i) The indication must necessarily identify a good and can be non-geographical names, iconic symbols, words or phrases;

ii) The good must necessarily possess “given quality”, “reputation” or “other characteristics” that are “essentially attributed” to the designated geographical area of origin;

iii) The designated geographical area must be identified by the indication.
The definition is apparently based on the definition of appellation of origin in the Lisbon Agreement. If differs, however, in that TRIPs defines geographical indications as “indications which identify a good” whereas the Lisbon Agreement defines appellations of origin as the geographical name of the country, region, or locality, which serves to designate a product. Therefore, signs to other than geographical names, for example a non-geographical name or an emblem, would not be covered by section 2 of the Lisbon agreement. They would however, fall into the category of signs that could constitute geographical indications under the TRIPs agreement

2.4.3 Comparison between appellations of origin and geographical indications

<table>
<thead>
<tr>
<th><strong>Appellations of origin</strong> (as defined in the Lisbon Agreement)</th>
<th><strong>Geographical Indications</strong> (as defined in the TRIPs Agreement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appellations of origin are necessarily geographical names of a country, region or locality, such as Tequila, Porto, Jerez</td>
<td>Geographical Indications can be any indication pointing to a given county, region or locality and could therefore include symbols.</td>
</tr>
<tr>
<td>Appellations of origin designate a product. The product's name is the same as the appellations of origin. For instance “champagne”, “Bordeaux” etc.</td>
<td>Geographical Indications defines a good. That means that a geographical indication could be any expression not necessarily the name of the place where the product is originated that could serve the purpose of identifying a given geographical place. For instance the French flag for identifying wines of certain quality or reputation.</td>
</tr>
<tr>
<td>To qualify as an appellation of origin both the quality and characteristics of a product must be attributable to its geographical origin.</td>
<td>The quality, characteristics or reputation of a product that is attributable to its geographical origin is each in own right a sufficient condition for the existence of a geographical indication.</td>
</tr>
</tbody>
</table>
Mere reputation is not sufficient to qualify as an appellations of origin

<table>
<thead>
<tr>
<th>Mere reputation is not sufficient to qualify as an appellations of origin</th>
<th>It is possible to qualify as a geographical indication if a product has a certain reputation essentially attributable to its geographical origin.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appellations of origin, specifically refers to the geographical environment where the product comes from, including natural and human factors.</td>
<td>Geographical indications only refer to geographical origin in general.</td>
</tr>
</tbody>
</table>

Source: *Adapted form Escudero (2001)*

From the above discussion it is clear that indication of source is the broadest term. It includes both geographical indications and appellation of origin. In turn, geographical indications are more broadly defined than appellations of origin. Thus, all appellations of origin are geographical indications but some geographical indications are not appellations of origin.

Considering the relations between an indication of source, an appellation of origin and a geographical indication, the most generic, simple and broadest concept corresponds to “indication of source”, which refers to the designation of any country or place situated therein, from where the product originated. This concept does not require that the product have a certain quality nor a reputation or characteristic linked to its geographical origin. Indication of source includes both geographical indications and appellation of origin. “Appellation of origin” is the most specific concept. In this case the expression identifying the appellation of origin should necessarily correspond to the name of a country, region or locality. This name permits the designation of a product whose quality and characteristics are given exclusively or essentially by its geographical origin,
including natural and human factors. As in the case of “Porto”, “Tequila”, “Jerez” or the like.

In between is the term ‘geographical indication’ which is necessarily a name of a geographical place, it could be a symbol. A geographical indication is an expression that identifies the product as originating in a territory, region or locality, where a given quality, or reputation or other characteristic of the product is essentially attributable to its geographical origin. For instance the case of the French flag associated with qualified wines.

Until present, geographical indication have been used to identify primarily agricultural products or products that derive their qualities from their place of production and are influenced by specific local factors, such as climate and soil. “Idaho” Potatoes, “Napa valley”, “Chianti”, or “Bordeaux” wines, and “Roquefort” or “Parmigiano Reggiano”, Cheeses are examples of famous geographical indication for agricultural products. Agricultural products, however, are not the only products that can be or are identified by geographical indication. Unique qualities, due to the materials and labour associates with the place where they are manufactured, have also characterised products, such as “Swiss watches” “Belgian” Chocolate, “Waterford” crystal, or “Sheffield” sterling. These non-agricultural geographical indications are nonetheless less common, and their protection is even more controversial than the more traditional agricultural geographical indication.

19 For list of some of the most famous Geographical Indications worldwide, See Felix Addor and Alexandra Graziole Geographical Indications beyond wines and sprits. A Roadmap for a better Protection for Geographical indications in the WTO/TRIPs Agreement, 5 JL World Intell.Prop.865.
20 Sreven A Bowers, location, location, location: The case Against Extending Geographical Indication Protection under the TRIPs Agreement 31 AIPLA Q.J. 134.
21 Ibid., pp 134 -135.
The geographical connection between geographical indications and the qualities or reputation of the products they identify has also been reflected in the very special type of right that geographical indication grants to their beneficiaries.\textsuperscript{22} Because of this link with particular geographical areas, unlike other intellectual property rights, geographical indication cannot, in fact be “owned” by just one or a few owners. Geographical indication cannot be licensed because their use strictly depends on their tie with the geographical place they identify. Geographical indication are traditionally “owned and exercised collectively” by all those individuals that are living and producing products in those geographical areas. Despite this “relative impersonality of the right”, however, geographical indication still operate similarly to most other intellectual property rights in so far as they also confer to their legitimate users “the exclusive rights to use this distinctive designation, which grants it additional economic value”.\textsuperscript{23}

### 2.5 Functions of Geographical Indications

Geographical indications perform a variety of economic and other functions, which may depend on how producers use geographical indications and consumers view them.\textsuperscript{24}

i) **Origin function:** Designations operate as indicators of origin from which the products come or are in some other way connected.

ii) **Quality Functions:** Designations symbolise qualities which certain products have or which consumers associate them with and guarantee that they measure up to expectation.

\textsuperscript{22} See Addor and Grazioli, supra n.19, p.869.
\textsuperscript{23} Ibid., 869-70
\textsuperscript{24} These functions are similar to those traditionally distinguished for trademarks. See e.g. Jeremy Philips, Trademark Law: A Pravrical Anatomy (2003); and Onno Brouwer, Community Protection of Geographical Indications and Specific Characters as a means to enhance Foodstuff Quality (1991) 28 ML Rev. 615, 630.
iii) Investment or advertising function: Designations are ciphers around which investment in the promotion of a product is built and that investment is a value which deserves protection as such, even when there is no abuse arising from misrepresentations either about origin or quality.

iv) Culture protecting function: Designations protect culture by preserving traditional productions methods, habits of consumption and cultural identity.\(^{25}\)

The Functions underlie the nature and scope of geographical indication protection. Discussions about the proper scope of geographical indication protection often take these functions as a starting point and they are also used as tools in the arguments about various legal policies. Geographical indication protection and various policies may be justified only if geographical indications really fulfil their functions. However, there might be inherent problems in the geographical indications ability to do this. These possible problems are connected to the notion of terroir and the generic nature of geographical indications.

### 2.5.1 Terroir

The tradition and publicly acknowledged theory is that geographical indications serve a special combination of the origin and quality functions.\(^{26}\) They communicate the products geographical origin and non-geographic qualities that are related to its

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\(^{26}\) A Similar Combination of Functions can be found in trademark of: a trademark indicates the source of control over the quality of products the marks is used. See Neil J. Wilkof and Daniel Burkitt, Trade Mark Licensing (2005) 30-31.
geographic origin. This combination of the two functions is based on the notion of terroir.

Terroir has no direct English translation and refers, in its narrowest sense, to a rather small area or terrain, whose geology, topography; microclimate, flora and other related factors impart distinctive qualities to a product. Each product should be an imitable reflection of its geography. It is thus that different products are distinguishable from each other and may be associated with their geographical origin. Since goods from different regions are different, there is no justification for using the same geographical name to describe them. In a wider sense, terroir also includes the human environment. The skilled producers manifesting technique. For terroir advocates, the character of a product is determined by terroir, whilst man determines quality. An incompetent producer can destroy the potential of a given terroir to produce products of great character and quality respectively.

Production based on the terroir view is a ‘complex dance with nature’ to preserve the learned balance of all the factors. Indeed, it is so complicated that many do not even try to analyse it but, tell that terroir has ‘a spiritual aspect’. This lack of analysis has caused some to view the idea of terroir as an insufficient basis for geographical indication protection. There is a lack of scientific evidence about what the terroir inputs actually do. Even if one accepts that geography influences the characteristics of a product, it is far from clear that these characteristics are exclusive. As Justin Hughes observes, any one

natural aspect of a region can also be found somewhere else. In the modern global market raw materials, animals, equipment and skilled labour can be transported from place to place. All in all, it seems that it is actually human skill that produces any distinctness in products.

Many of the laws and international treaties protecting geographical indications are founded on the idea of terroir. In today’s world it seems that many geographical indications would be precluded from protection because modern production techniques enable us to replicate and produce almost any product anywhere. If this is the case, then geographical indications function as something else than a combination of the origin and quality function. This might also explain why modern geographical indication law seems to be moving away from the idea of terroir and afford protection to geographical indications solely on the basis of a certain reputation among consumers.

2.5.2 Genericness

Language is not a static but a dynamic creature words drift naturally in meaning and from one grammatical form to another. Proper nouns can develop into common nouns and vice versa. An example of this is the transformation of the proper name of the Belgian town spa, renown for its thermal mineral springs, to the common noun ‘spa’, which means any mineral spring. The extent of the meaning of the word spa has increased because the word now denotes all places having mineral springs and not just the town of spa. Proper names like Newcastle, Bath or Turku exemplify this

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31 'Spa' Webster’s Third New International Dictionary, Unabridged (2002).
33 The World turku means originally the intersection of main roads.
development in the opposite direction, from common nouns to proper names. The development is not necessarily global and may even go in different directions in different places of the world. Like words, signs and other symbols may become generic or acquire a distinctive meaning in a similar way as described above. There is no basic difference between words and signs in respect their semantic transformation.

Linguistically names of geographic locations are undoubtedly proper nouns. Berlin denotes a city in Germany. Direct geographical indications, in contrast, are common nouns and have developed from a name of geographical location to a name of a product. They have undoubtedly lost a certain amount of their individualistic character in that the scope of the words meaning has increased to denote products coming from that geographical location. If a geographical indication loses the remaining individualising character, so that the meaning broadens to denote a style or type of a product, the word may be said to have become generic. An example of a word that has undergone the transformation into a generic term is Dijon for mustard that how denotes a certain kind of mustard regardless of its place of production.

Generic words are incapable of communicating the origin or the defences in quality between similar products. It is hard to see that generic words would be able to fulfil any of the functions of geographical indications. Affording geographical indication protection for generic words would likely to lead to the depletion of language. The cost of appropriation of words as private property is the removal of those words from language. If generic terms can be protected as geographical indications, competing producers would encounters enormous difficulties if they were prevented from using
identifiers that they require in order to be above to compete effectively. They would have a hard time informing consumers that they are competitors because they would be enable to give a name to the product they are selling. Using elaborate and possibly confusing Para phrases to sell their products would hardly be effective.

Policies

2.5.3 Geographical indications as information for consumers

The essence of a geographical indication is that the geographical place name indicates quality, taste or other related attributes to the consumer. So that should suggest a testable proposition. If there is no correlation between the geographical region and the quality attribute then a geographical indication would be unambiguously meaningless to the consumer. Its protection by local law would merely have the effect of generating rents until consumers learned (through repeated tasting) of the fatuity of such labels. Thus public policy on establishing geographical indications should, and usually does, include an examination of whether such a correlation exists before protecting the regional name. All meaningless geographical indications should be still born by appropriate local policy, and patently meritorious potential geographical indications never see the light of day. However, geographical indications that are clearly beneficial for conveying information needed by consumers for informed choices would still need to pass a public policy cost benefit test. There would be losers, those who could profit by some consumer confusion, but the protection of geographical indications

34 Originally from the French town of Dijon.
37 The use of geographical indications to denote husbandry practise complicates he issue somewhat as the identification of products by the way in which they are produced poses a fundamental challenge to the trade system see Josling, Roberts and Order (2004) and Anderson and Jackson (2005).
could well be welfare enhancing. If public policy were limited to such extreme cases then one would assume that controversy would be minimal. It is the range of cases between these two extremes that makes for controversy. There is often some merit in providing region of origin information to consumers but if the regulatory process is captured for private gain the consumers, and competing producers, may suffer.  

Information facilitates rational consumer choices. Acquiring information about quality is often time-consuming and difficult; particularly so regarding qualities that cannot be checked or tested before purchase. Risks must be taken. The source of the product enables the consumer to identify the product that best caters to a range of personal expectations about quality and characteristics, which in turn may derive from previous experience, advertising or even the recommendations of others. There is a strong case to control misleading indications in the interest of consumers, if geographical indication truly communicates non-geographical qualities arising from the geographical origin of the product because such products cannot truly be reproduced anywhere else. However, such protections would only be indirect as geographical indication law does not grant enforceable rights to consumers but to producers. Conversely, artificial product differentiation through regulated use of geographical indication might not be in

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38 “O” Connor (2004) documents the registration procedures for Geographical Indications in several countries.
40 One objective of regulating the use of geographical indications is to convey information to facilitate rational choices is see Origin Regulation, Point 4 of the Preamble; Wine Regulation, point 50 of the Preamble; Wine Labelling Regulation points 13 and 16; Spirit Drink Regulation para 3 of the Preamble.
42 It may be interesting in this connection to note that although consumers take grate interest in the true origin of products they do not in general recognise what the geographical indications stand for this is the case even in France and Italy where geographical indications have been used for decades to inform consumers of origin and quality. See Dominique Barjolle, Policy Evaluation, WP6 (2002), concentrated Action Dolphins, QLK 5 2000-00593, 26 available at and www.origin-food-org/pdf/wp6/6-02-09crz.zip
the interest of consumers as it would allow producers to create monopolies and gain sales based on non-existent uniqueness and quality.43

But consumer choices are not always based on rational judgment and are also effected by emotional preferences.44 Like certain trade marks, geographical indications may have a certain drawing power or cachet which makes consumers wish to be associated with it. A geographical indication may be attractive due to connotations to culture and heritage or even, from a link to specific place and time. Moreover, a geographical indication may enable consumers to flaunt their desirable personal characteristics or ‘strive for status through the process of consumption’.45 Such as ‘I’ on a person who drinks champagne’. In other words, consumers use geographical indications as a lifestyle statement. In such cases the label is more important than the product.

2.5.4 Geographical indications as a producer device

It is in the interest of a producer to try in some way to differentiate his products from those of others. This power of branding has traditionally evaded producers of highly commoditised products such as agricultural products.46 Geographical indications may provide producers with a new or an extra means to identify their products as satisfactory and thereby attract further purchases from the consuming public.47 This may

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43 This which is true of trademark law is also applicable to geographical indication law. See Jennifer Davis, To Protect or Serve; European Trademark Law and the Decline of the Public Interest, (2003) 24 E.I.P.R. 180,187.
45 Cornish and Llewellyn, supra n.38 at p.587.
47 Chiquita and Dole are one of the few who have been successful in promoting highly commoditised products, namely bananas and pineapple.
be especially important to small-scale producers who may not be able to make the substantial investments which are needed to promote an individual brand.\textsuperscript{48}

Geographical indications allow producers to create an attractive product image, possibly even an image of exoticness, quality or prestige, which the consumer associates with the product. The image that is formed has a sales-promoting effect. This is what is traditionally meant by the advertising or investment function. The sales promoting effect of given geographical indication is usually connected to the quality of the product but geographic indications can also generate their utility through evocative and aesthetic uses. In such cases, the geographic indication itself becomes a desired characteristic of a good or services, regardless of quality. Thus, a geographical indication can gain ‘a selling-power above that of the underlying goodwill’.\textsuperscript{49} In other words, with the help of geographical indications producers may obtain premium prices for products that would otherwise be regarded as a commodity product.

Others may try to imitate a geographical indication and use the goodwill the producers have built up. By using the geographical indications on a similar or different product, third parties can transfer the sales-promoting effect to their products through the inevitable association in the consumers mind. This may be seen as unfair competition. Producers can use geographical indications to shore up the prices of their products only if the advertising and investment function is properly protected. Geographical indications are valuable to producers as they allow producers to ‘unlock value by capitalising on consumer desire for diversity, typical, quality products.

\textsuperscript{49} Sanjeev Agarwal and Michael J. Barone, \textit{supra} n.8.
2.6 Protecting Local Culture and Traditions

Geographical indications seem apt for the preservation of local traditions, national culture and cultural diversity. This is because geographical indications do not reward innovation but rather producer adherence to the traditional methods used in the region of production. Geographical indications enhance the commercial value of traditional artisan products and may even rescue ‘national treasures’ from certain extinction.\(^{50}\) According to Broude, geographical indications products may be ‘cultural’ in three ways through (1) the culture of its production, (2) the culture of its consumption or (3) as a part of the culture identity. A product does not receive geographical indication protection only by virtue of its geographical origin but because it complies with a given set of criteria pertaining to content and production methods. In many cases, these practices are rooted in social and historic circumstances and are not necessary for the characteristics and qualities of the finished product. If the practices were to become extinct, it would also result in the eradication of the associated culture of production. Thus, geographical indication rules can also be seen to preserve a certain historical and cultural purity of production. However, for product qualities and characteristics to survive and be appreciated, they need a culture of consumption. This culture of consumption is maintained by providing consumers with accurate information on the geographical origin of products.\(^{51}\) Geographical indication products may also be cultural symbols part of cultural identity.\(^{52}\) They can symbolise or even personify a country or a region. Thus,

\(^{50}\) Andrew Griffiths, The Impact of the Global Appreciation Approach on the Boundaries of Trademark Protection (2002) I.P.Q. 326 see also David Aakes, Building Strong Brands (1996) 7, who identifies goodwill consisting of the following four elements: awareness, loyalty, perceived quality and positive associations.

\(^{51}\) Nany Harmon Jenkins, ‘Food court” the European Union has judged hundreds of traditional foods to be national treasures. Here is why cooks are celebrating’, food and wine, August 1999.

\(^{52}\) Broude, supra n.22, at 10-12.
geographical indications can be seen as guardians of cultural identity and a defence against homogeneity brought about by globalisation.

2.7 Economics of geographical indications

In theory, there are some strong economic justifications for why geographical indications merit protection as such.

2.7.1 Geographical indications as Intellectual Property Rights

Some products are unique because they can be produced only in a certain geographical region and they have certain quality traits like in the case of Champagne or Basmati rice. The important issue about these products is the link between their quality characteristics and the geographical attributes of the region where the products are being produced. Such products are mostly agricultural commodities like wine, cheese, rice, fruits, and coffee but also refer to handicraft items such as silk clothes with traditional paintings on them; or it could even be even herbal medicines such as Neem and Turmeric.

Property rights are often sought for such goods based on the fact that they are produced in geographical region which has unique geo-climatic characteristics and users traditional skills. These render a unique value to the product and make replication of these goods elsewhere impossible. Since goods emanating from another region must, by definition, be different, there can be no justification for using the same geographical term for them. It will *ipso facto* be a misrepresentation to do so and therefore, a special right makes more sense than an action which requires proof of misrepresentation. In that way there is a much stronger link between the distinctiveness of a geographical indications
and the uniqueness of the underlying product, and an even stronger justification for a priori broad property rights.

Goods in a market can be categorised based on the nature of activity required from the consumer in order to derive information on the good. In a market where there exists an inequitable distribution of information producers will be unable to differentiate their goods. Accordingly, being unable to inform customers of the superior qualities of their products, producers would cease to invest in increasing quality, thereby impeding product innovation. The reputation theory logically builds on this basic hypothesis. It argues that a producer has the incentive to invest in the promotion of his or her products reputation only if the same can be effectively conveyed to the consumer. A regime seeking to protect geographical indications would therefore seek to bridge the asymmetry of information between the producer and his or her consumers thereby allowing him or her to invest to a maximum into improving the quality and indirectly, the reputation of the good.53

The justifications for providing intellectual property rights can be broadly classified as:

i) Equity considerations- the custodians of geographically indicated products should receive some price benefits if marketing of such products leads to commercial gain.

ii) Conservation concerns – the protection of geographical indications products contributes to the wider objective of conserving the environment, biodiversity and sustainable agricultural practices.  

iii) Preservation of traditional practices and culture - protection of geographical indications products would be used to raise the profile of the knowledge and the people entrusted with it both within and outside communities.

iv) Prevention of appropriation by unauthorised parties or avoiding “biopiracy”, and promotion of its use and its importance to development.

2.7.2 Geographical indications as Institutions

Institutions are in principle a set of formal and/or informal rules which lay a framework within which certain activities take place. Institutions not only define rules for activities, they also monitor the implementation of those rules. Institutions such as laws and regulations, codes of conducts and norms, or property rights are crucial in making markets function well. They influence patterns of scientific advance and technological innovation patterns across history. To govern and protect intellectual property rights, no matter in whichever form they are created, institutions are required. It is an acceptable argument in the New Institutional Economics Literature that an entrepreneur would not have an incentive to innovate unless he or she is allowed to exercise sufficient control over the returns to the assets that he or she produced. Here what is important is control over the property, not just the ownership rights. Here comes the importance of necessary, institutions that provide control over intellectual property to


its owner. These institutions could be either formal or informal as well as a mixture of both depending upon the country within which they originate. In fact, geographical indications need more formal and sophisticated institutions for their efficient functioning since the forms is in most cases a tradable commodity.

As institutions, geographical indications encompass several aspects – most fundamental are of course the legal rules and their implementation. The Legal rules are basically of two types. First, countries ensure adequate protection for their own geographical indications at the national level and second effective protection is also granted for all geographical indications at the international level. This is because national legislation, which applies to only one country, is not sufficient in the context of a globalised economy where products keep travelling beyond national borders. This latter type of legislations involves higher complexities given the fact that countries differs in their rules of defining geographical indications and instruments to implement them.56

Apart from legal institutions, geographical indications also foster social capital. Social capital which refers to the social contacts between economic actors is considered as a crucial factor for productivity increase and value addition to the economic system. The social capital could be defined as community- based institutional arrangements which help in conservation and reproduction of natural capital. It is essentially a trust- based community capital.57

Specifically, in case of geographical indications products, social capital plays an important role in augmenting the human and natural capital embedded in the production

57 William Kerr. 2006, Enjoying a Good Port with a clear conscience: Geographic Indicators, Rent seeking and Envelopment. The estey Centre Journal of International Law and Trade Policy, 7 (1) 1-14.
process. Traditional knowledge practices always been passed from old generations to new ones. This knowledge base has been gradually modified by constant practice within the community. This community level interaction has increased the cooperation among the producers of geographical indications products. It also helps buildings trust among the producers. Sometimes, these trust based informal institutions serve greater purpose than the formal institutions because the forms require less effort to implement the norms and rules.

2.7.3 Geographical indications and Transaction Cost

Consumers often have to rely on experience when selecting a good that cannot be tested before using. Such a good embodies information cost that is higher if the market for such goods is heterogeneous. Information asymmetry is crucially significant in the context of experience goods, like most foodstuffs, including wine and spirits. Geographical indications play an important role in producing information about such experience goods. In this respect, a geographical indication can function as an important method of market signalling to assure the quality of the product, and thus reduce the degree of asymmetric information between traders. Legal protection of signs used in relation to these types of goods is prima facie acceptable within the broader framework of the information cost reduction theory.

However, the information cost reduction theory has to prove good enough in reality as opposed to what can be called as perception advertising, i.e., influencing the emotions of the consumer rather than accepting the consumer as a rational maximises.

What is crucial for the goods seeking for geographical indication protection is to ensure that consumers’ perception of the brand closely approximates real, as opposed to perceived product qualities; thus search cost reduction is maintained as the prime objective of a geographical indication. Key factor in the growth of brands and their legal regulation is the separation between consumer and producer. In the last century this distancing process accelerated rapidly for manufactured goods, but less for agricultural goods. Now however, with modern packaging, transport and global trade the separation between consumer and producer has rapidly increased in agriculture too. In such circumstances, registered geographical indications are one method by which a small scale producer, far away geographically from the consumer, can reach through to that consumer with a consistent quality message.

2.7.4 Geographical Indications as a development Tool

2.7.4.(1) Economic and Social Benefits of Geographical Indications

A tool to create value- products bearing a geographical indication have an added value for which consumers are ready to pay. Consumers are ready to pay a 10% premium price for origin – guaranteed products. Geographical indications therefore unlock value by capitalising on consumers’ desire for authentic, quality product, and as a consequence, most products$^{60}$ bearing a geographical indication enjoy a higher retail price than that of similar products. The premium then pays for the renown of the product. In addition to a higher retail price, primary producers benefit from their participation in

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$^{60}$ Stephane Passeri, Protection and Development of Geographical Indications (GIs) in Asia, Conference on IP in Hong Kong and Mainland China, Best Practices and International Impact, 22 March 2007.
the producers benefit from their participation in the production of goods bearing a geographical indication production, by getting a higher price for their products.  

Geographical indications create value, which is expressed in a variety of ways. For example, the registration of a geographical indication has been shown to increase production output and land value. Also, the certainty afforded by legal production creates opportunities for investment in a product and region.

An example of that can be found in the registration of Phu Quoc in Vietnam in 2001 for fish sauces. Fermented fish sauces made out of a particular variety of salted anchovies are considered to be a delicacy in many East Asian Countries. One of the most famous ones, nuoc mam. Originates from the island of Phu Quoc, which is located in the Gulf of Thailand. Its reputation stems from its peculiar characteristics, which are due to the conditions of nature and environment in which it is produced, the characteristics of the raw material used and the manufacturing process, which involves the catching, layering and salting of the anchovies, followed by decomposing them in special wooden barrels. There are about 90 fish sauces enterprises on the island of Phu Quoc, that collectively produce around 10 million litres of sauce each year, of which only half a million is exported, mainly to the Europe and Japan. This quality is below the markets demand for Phu Quoc fish sauce, however, such exports are also limited by the presence of fake and counterfeit Phu Quoc sauces on these markets, which are often sold under trade marks allegedly owned by Thai enterprises. Indeed around 80% of fish sauce labelled Phu Quoc in Europe and Japanese markets is said to be fake. In 2001, the implementation of a geographical indication for Phu Quoc by the Phu Quoc Fish Sauce

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61 Ibid.
producing Association increased the value of the product and attracted a foreign investor, Unilever, which injected a 10 year contract granting Unilever a licence to use the Phu Quoc appellation, gave producers the opportunity to upgrade their production facilities and expand their reach in global markets.

2.7.4 (2) A tool to promote rural development and sustainability

Geographical indication products have significant implications for producers of developing countries. One important aspect of such traditional products and activities is that they relate to community engagement. Millions of people in the developing world depend upon such traditional activities for their food security and health in many countries and traditional medicines provide the only affordable treatment available to poor people.63

Geographical indications can provide rural areas with a new vitality. In the first instances, the grant of a geographical indication will provide the right owners with the opportunity to get economic benefits from their geographical indication and with the right to exclude non entitled users by creating a barrier to entry into a niche market segment. These attributes will, in turn translate into an equitable distribution of value and benefits to the owners of geographical indications and their communities. Subsequently, the economic incentives will then produce other incentives to nurture and sustain traditional methods and know-how, which will contribute to inter-generational equity. Other indirect benefits, such as the creation of employment, the retention of the population in rural areas and the possibility to generate tourism will also benefit the owners of a geographical indications and the community as a whole.

Some basic properties of a geographical indication are likely to benefit the local producers and the regional economy. First, geographical indication is held in perpetuity with no time limit as long as local knowledge is sustained and the indication is prevented from being generic. This means the marketing costs are needed only to reach out to consumer with the message of further innovations in the product second, the right is granted to a collective body of producers and to and not to an individual producer. Therefore the whole community is going to benefit, and this in turn may spur the regional economy. Third unlike patents and copyrights, geographical indications are not created but only recognised which means that investments are related only to building a reputation of a product already existing, whereas patents and copyrights relate to creating products in the first place.

2.7.3 (3) Costs and limitations of geographical indications as a Development Tool

It is undisputed that successful geographical indications could bring a number of economic and social benefits to developing countries. However, the value and benefits of a geographical indication will depend on the way it is exploited, marketed and policed.

Firstly, the economic and social benefits attributed to geographical indications through the creation of value in the market place requires investment, such as in production methods, the development of reliable supplies of raw materials and quality controls. These costs, which may be significant, are to be borne by the owners of geographical indications, be it the producers or their government.

Secondly, the exploitation of a geographical indication needs to be accompanied by appropriate marketing strategies to guide and develop consumer perception of the good-place-quality link attached to the geographical indication and securing consumer’s
loyalty. The importance of marketing in achieving market penetration was highlighted in a study on the link between origin labelled products (OLPs) and local production systems by Albisu:

The marketing of many OLP is often one of the weakest links in the chain. Many firms belong to an OLP supply chain tend to be more product oriented than market oriented. Pride of the product and loyalty to the traditional production technique may generate highly valuable product qualities put it is definitely not a guarantee for a sound and successful sale strategy. 64

Therefore appropriate marketing strategies taking in to account the tangible features of the final product as well as communication, pricing and distribution strategies are essential to the successful exploitation of a geographical indication.

2.8 Conclusion

GI as a form of intellectual property are defined by wide range of terminology. The term GI was used for the first time in International Intellectual Property Laws in the TRIPS Agreement of WTO, Which came in to force in 1995. The essence of a GI is that the geographical place name indicates to the quality, taste or others related attributes to the consumers. GI performs a variety of economic and other functions, which may depend on how procedures use GIs and consumer view them. The functions underlie the nature and scope of GI protection. GI protection and various polices may be justified only if GIs really fulfil their functions.

64 Luis Miguel Albisu, work programmes 2, (Link between origin labelled products and local production systems, supply chain analysis) - Final Report, July 2003 as reported in Rangnekar (2004).