

Policy Brief

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Geographical Indications under TRIPS Protection Regimes and Development in Asia



I. GEOGRAPHICAL INDICATIONS AS INTELLECTUAL PROPERTY

Intellectual property (IP) is broadly defined as intangible properties related to pieces of information that can be incorporated into tangible products. The conventional categories include patents, copyrights, trademarks, industrial designs, layout designs of integrated circuits, and geographical indications (GIs). The basic principle is to award exclusive rights for exploitation of information to innovators and creative thinkers so as to give them the incentive to create and commercialise ideas, while ensuring that the society too benefits from pursuit of new knowledge through dissemination. This necessitates a sensitive balance between the commercial end of profit, moral recognition of the personality of the creator, and the development objective of enhancing capabilities of users in societies at large.

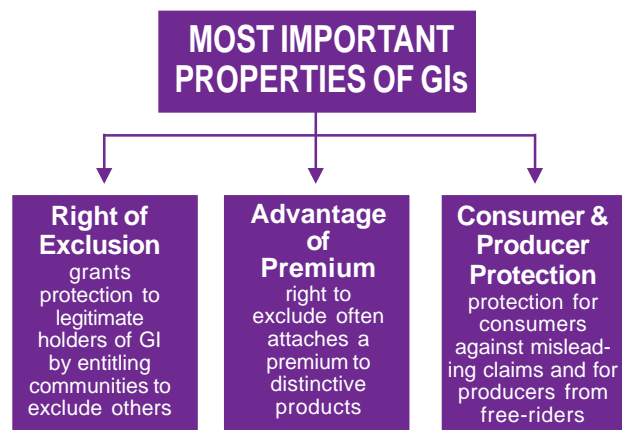
GIs are distinct IP tools, of primary interest from a development angle, to at least 147 members of the

World Trade Organisation (WTO) that have signed the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of which GIs are part. TRIPS defines GIs as indications (words, phrases, symbols, images), which identify a good as originating in the territory of a member, or region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin.¹ GIs differ from other forms of IP like patents. They are not newly *created*, but only *recognised* at a point in time, and are owned publicly by the state with a special communal right granted to a qualifying region.

The importance of GIs in Asia, thus, goes beyond trade and commerce. It has to be understood in the wider context of protecting IP pertaining to traditional cultures, assets, and production methods in some of the world's oldest human settlements. Examples of GIs in Asia are: Basmati rice, Phu Quoc fish sauce, Long Jing

tea, Himalayan waters, Alphonso and Sindhri mangoes, Hunza apricots, Bhutanese red rice, Mongolian Cashmere, Pakistani Shu (windproof woolen fabric) and Ajrak (designs from Sindh), Jasmine (Hom Mali) rice, Thai silk, Lao Agar fragrance, Sumatra Mandheling coffee, Shaoxing alcohol, Maotai, Xuancheng art paper; Darjeeling and Ceylon teas, etc.

IPRs in general are important in trade because these are exercised as “exclusive rights” with respect to tradable products that carry protected information. The most important properties of GIs are three-fold (*See the chart*).



II. GIs AND DEVELOPMENT

Links between the Millennium Development Goals (MDGs) and the significance of GIs are not direct when viewed in the aggregate, but when the MDGs are localised and the targets are assessed locally, better protection and marketing of GIs could directly contribute to MDG: 1 of reducing absolute poverty through increased local inflow of incomes and employment opportunities. Since higher incomes are also correlated with successes on other indicators like reducing disease burdens, child and maternal mortality, there are indirect connections to other MDGs. Crucially, international rules on GIs could be made much fairer to honour the spirit of MDG: 8 (fairer global partnerships) as well. Therefore, GIs can significantly contribute to promote human development by helping countries to meet the targets set under the MDGs.

Broadly, GIs confer on owners the legitimate rights – empowering them; they offer opportunities to make productive use of those rights, and through characteristics of the assumed owners of these rights (mostly low-income agricultural and artisanal societies), the result is one that can be expected to contribute to an equitable reach of benefits. The legal-economic incentives could then create a virtuous cycle of other incentives to nurture, and sustain traditional methods and know-how that can contribute to inter-generational equity. There are also indirect benefits associated with promotion of



GIs: examples from Europe and South Asia show that GIs are linked with regions that are popular with tourists, which widens economic opportunities for local people through micro-enterprises and services. Certainty afforded by legal protection could also attract additional investment into the region to develop the product and place, such as in Vietnam’s Phu Quoc sauce. Such legal certainties also benefit producers by reducing their costs to contest cases of usurpation.

GIs also accord products a certain economic “rent” because of productive advantages derived from reputation and quality. These could be reaped in lucrative global markets. GIs provide the consumer with assurances on authenticity, but by differentiating products by their area of origin, restricting supply, and creating barriers to entry into production, they enhance the value of the product they are differentiating, thereby increasing rents captured by communities using traditional practices (Moran 1993). A 1999 survey² in the European Union (EU) illustrated that 43 percent of consumers were willing to pay a premium exceeding 10 percent on products they knew were GIs.

Most GIs potentially draw on products related to agriculture, fisheries, crafts, and artisanal products. These sectors remain important to the lives of the poor. Any trade advantage that draws on these is, thus, potentially pro-poor, and contributes to a less skewed distribution of incomes. This point is especially important when one considers that other IPR categories are overwhelmingly owned by industrialised countries. Ninety-seven percent of all patents worldwide belong to the rich countries, including 80 percent of those granted in developing countries (HDR 1999). GIs in contrast have the potential to be more evenly owned, for even subsistence-based societies with low levels of technology can promote their traditional products and know-how. While one can argue that the added “rent” can make the product more unaffordable to the poor, it has to be accepted that well-known GIs in most cases are already special products with high value. These are seldom, staple items of basic needs and consumption.

GIs have also been considered a relevant tool of IPR that can be used to protect *some forms* of traditional knowledge, unlike patents or copyrights. *First*, GIs are held in perpetuity with no time limit as long as local knowledge is sustained and the indication is prevented from being generic. *Second*, rights of use are granted to a community, and not individual monopolists. *Third*, GIs are not created, but only recognised, which means that investments are related only to building a reputation of a product already created, whereas patents and copyrights relate to creating products in the first place. *Fourth*, GIs have features

that respond to norms for use and management of bio-resources and traditional knowledge — their criteria includes variety or species, yield, production methods and processing methods (Moran 1993, Downes and Laird 1999).

III. GI REGIMES IN ASIA

While GIs have existed and been used in the civilisations of Asia for hundreds of years, the notion of recognising and protecting them through a modern IP regime is new. Most countries do not have a separate legal instrument for protecting GIs (*sui generis* system). When protection for GIs exists, it is usually through two channels:

- Laws on business practices such as unfair competition, consumer protection or food standards,
- Trademark laws through certification or collective marks.

These are generally expressed in terms of principles, without prescriptions for supporting infrastructure or regulations for implementation. Business practice laws, for example, bar entities from misleading or misrepresenting that goods originate from a certain area when they do not (passing off). Trademark laws do not allow registration of geographical names as individual trademark, except when they are harmless or fanciful (e.g., North Pole coconuts). They protect GIs through either collective marks (sign registered by a group of enterprises) or certification marks (belonging to a supervising entity). These provisions are arguably inadequate and weaker than provisions in a *sui generis* system of GI protection.

India, which fought a well-publicised battle to rescind some US patents on Basmati rice in the late 90s, did not have its own law on GIs then. It passed the law belatedly: Geographical Indications of Goods (Protection and Registration) Act 1999. This Act defines GIs (chapter I, paragraph 2e) differently from TRIPS. In addition to agricultural goods bearing geographical names, it covers natural goods (like coal, bauxite), as well as manufactured goods (like Kanchipuram Sarees and Kohlapuri slippers). It also lays down that one of the activities of either production or of processing or preparation of the goods concerned should take place in the territory, region or locality. The Act (paragraph 9 in chapter II) specifies what cannot be registered as a GI, and provides for additional protection to certain classes of goods determined by the Central Government. To prohibit the registration of a GI as trademark, the Indian Act follows TRIPS. The Act, however, only came into effect on 15 September 2003. The new Indian law on GIs also has an elaborate procedure for registering GIs at an office located in the southern city of Chennai.



Authorities claim that this law has two key characteristics: i) protection of producers against counterfeiting and misleading commerce, and ii) striking of balance between trademark and GI protection (see Ravi 2003).

Thailand, too, sprung into action only after a variant version of its famous Jasmine rice was patented in the US as Jasmati. Attempts to pass a specific Act on GIs created much awareness and interest in the country. After five major re-drafting exercises, and a famous rejection of the bill in the House of Representatives in March 2003, the Commerce Ministry finally succeeded in passing it in September. Now popularly labeled the “Champagne Law”, it came into force

on 28 April 2004. It has standard procedures for misuse (fine of up to US\$ 5,000), registration and appeal, as well as cancellation for a variety of abuses, including when GIs are “contrary to peace and order, good public morals and national policy.”³

The work on protection of GIs in *China* is also new and evolving. The Chinese Chamber of

International Commerce (CCOIC) asserts that the country has established a “relatively complete” legal system for the protection of IPRs,⁴ including all TRIPS articles on GIs. At present, there are two distinct regimes of GI protection – through the China Trademark Office (CTMO) and Administration for Quality Supervision, Inspection and Quarantine (AQSIQ). Ever since China joined the Paris Convention in 1985, basic protection of GIs was being done through the CTMO, with the first regulation on registering GIs as certification marks introduced in 1993, and later augmented in 2001. As of November 2003, there were 233 applications for certification marks with 100 registered.

Separately, AQSIQ in cooperation with the French government tried to create a different system of GI protection. In 1999, it recognised GIs in conformity with the EC regulation 2081/92 by conducting tests for Shaoxing Wine. As of November 2003, 123 GI applications were made to AQSIQ, of which 49 were approved and 41 were under examination (Li *et al.*, 2003). The Ministry of Commerce is seriously exploring the virtues of these two different types of systems of protecting GIs. These two regimes are quite different in terms of process and costs of registration, as well as legal bases, with countries in the Americas preferring the former and those in Europe the latter. Select industry interests, such as Consorzio del Prosciutto di Parma have long argued on the basis of their experiences in Europe (*sui generis*) and in North America, Australia and Canada (Trademark system) that the latter could be more costly, inadequate, and unfair to genuine producers of GIs (Thual 2003).

China is also undecided how actively it will emerge in favour of a particular negotiating proposal on either extending additional protection to all GIs and not just wines and spirits under TRIPS, or how binding the multi-lateral register for wines and spirits ought to be. Regardless, its national laws are being availed of by select producers of the most famous Chinese GIs such as Long Jing tea, and pottery, who claim that following legal protection, their sales and prices have increased rapidly, they have paid more taxes to state coffers and demand for their rival counterfeit products have also declined.⁵

Nepal, the newly acceded member of the WTO, and *Cambodia*, which got approval for membership during the Cancun Ministerial in September 2003, exemplify the state of the IPR regime on GIs in the poorest countries of Asia. They have no existing legislation, and only pledged to an Action Plan to have legislation over a transition period to fulfill TRIPS obligations. Non-LDC countries of the region like *Indonesia*, *Philippines* and *Vietnam* are also in their nascent stages of developing legal and enforcement mechanism in GIs. In Indonesia, four separate articles under its 2001 Trademark Law no. 15 cover provisions for protection of GIs, including solution to conflicts with trademarks. Vietnam has a section on IP in its Civil Code of



Box: 1

THE BASMATI BATTLE

Basmati, a variety of *Oryza Sativa*, is the fragrant, long, slender rice with a nutty flavour that has been grown in the northern parts of the Indian sub-continent for hundreds of years. Among the 100 or more types of aromatic rice in the world, Basmati is probably the most expensive – Indians earn over US\$ 400 million annually in exports. In September 1997, the Texas-based Rice Tec Inc. was awarded Patent number 5663484 on Basmati rice lines and grains by the USPTO. This caused a furore in the subcontinent, and provoked India to lodge an immediate protest. RiceTec had made 20 patent claims essentially covering, i) rice plants with characteristics identical to Basmati, ii) grain produced by such plant, and iii) method of selecting rice plant based on starch index test. Following the Indian challenge, RiceTec withdrew in September 2000 four of its 20 claims. In March 2001, the USPTO told RiceTec that of its 20 claims only three were approved, issuing it a “varietal patent” to market the types of Basmati developed by itself, and not cultivated and bred traditionally by farmers in India and Pakistan.

Source: Asia Trade Initiative research.

1995, and a regulation on GIs under Decree 54/2000/ND-CP, but these have not been applied as there has been no litigation to date.

Pakistan too does not have a *sui generis* system of GI protection yet. GIs receive some protection in its Trademark Ordinance 2001, which has been promulgated but not brought into force. A draft Ordinance on GIs of Goods (Registration and Protection) has not yet been promulgated because of expert remarks that it is vague (Shah 2003). It nonetheless foresees a registration system akin to that of trademarks whereby communities

file an application, which is then examined by a Registrar of GIs for its merit – and other factors such as prior registration, public opposition, etc. Work on GIs in Pakistan is new; awareness grew after the patenting of some Basmati grains and lines by Ricetec, Inc. of Texas, which India contested at the United States

Patent Office (USPTO) (See Box:1).

Sri Lanka, which relies overwhelmingly on its most famous GI, the Ceylon tea, to bring in nearly US\$ 700 million in annual export earnings and employing over 1 million people in a country with working population of under 12 million, has recently drawn up its own provisions for protecting GIs (part IX, chapter XXXIII) under the new IP Act, passed on 12 November 2003. Its definition and scope of protection go beyond TRIPS by extending stronger protection to agricultural products at par with wines and spirits.

Although a *sui generis* system of GI protection, Sri Lanka has not opted for a registration system, and thus has some critics pointing out that the type of protection is akin to that of copyrights, thus vulnerable (Waglé 2003). GI protection is also offered through Trademark laws, and places most of the burden on the courts and the industries that are required to seek remedies in the form of injunctions or damages through the courts if they feel violated. It also does not cover handicraft and fishery products, and it could be said that the new Sri Lankan laws on GIs are less active than their Indian counterpart. It is too early to assess the impact of these concerted efforts at creating new laws on GIs across Asia.

Many seem to be guided by their existing or foreseen obligations in TRIPS. From a development standpoint, this enhancement of national capacity is welcome. Where critics diverge is in questioning the order of importance accorded to the issue, especially when costs of enacting legislation and creating systems can be considerable both to the state as well as producer associations.

The gains may also not be evident in the short run. Anecdotal evidence shows it takes a lot of time, patience and resource to create valuable brands. While it is advisable for countries to build up awareness on GIs and

traditional products, such efforts should ideally begin from the grassroots with participation of rural producers themselves. Beyond the formal systems of protection, usefulness of GIs is conditional on the ability of local producers to organise themselves into associations to draw on legal and marketing resources. In the countries of Asia, states thus have to play a crucial first step in creating awareness and offering seed-grants or concessional loans to communities to mobilise themselves. Even after a law on GI is passed, the process of getting the system rolling is tedious and could be expensive. Claimants to a GI are required to codify distinctive facts related to their products, processes, and origin. Specifying these in rigorous legal language is costly – in Europe, this one-time effort alone could cost around 20,000 US dollars.⁶

The new Indian registration system is also quite elaborate requiring full effort on the part of industry associations. Alternative costs of protecting GIs through the trademark system is said to be even more prohibitive and inadequate (Thual 2003). Both systems could also be daunting to individual and small-scale producers who want to pursue their own legal courses. The early efforts at promoting GIs thus require a major boost from the government, preferably as part of a rural development strategy.

In this regard, Thailand's "One Tambon, One Prod-



uct" programme, launched in 2003, stands out. It is too early to be declared a model for others, but the motivation is inspiring. The government has set out to select 60 community products, upgrade and certify their quality with the intention of expanding, first, their domestic market, followed by exports. Fairs organised to generate incomes and develop local products at the grassroots in all the country's 76 provinces have led to the identification of distinctive fabrics, artistic creations, processed food and fruit, utensils, wickerwork, fermented liquor, that the government now seeks to promote. This Thai

example offers a rural development example for bottom-up engineering of awareness and action on promoting traditional community products. The irony, however, is because of insufficient inter-ministry coordination, this rural development programme has not been overtly linked with the idea of GIs. This missing link is noteworthy be-

cause GIs are the only form of modern IP that grassroots communities are most likely to own. The risk of driving GI awareness with a top-down legislative decree, possibly triggered only by external treaty obligations, or supply-driven foreign aid programme is that it may not command enough national ownership for effective enforcement.

Overall, although debates at the TRIPS Council on GIs have been comprehensive, especially on the legal and administrative aspects, academics rightly point out that

Box: 2

AUCTIONING CEYLON TEA IN A DEVELOPMENT-FRIENDLY WAY

Ceylon (colonial name of Sri Lanka) is synonymous with its famous product of black tea. Ninety-four percent of tea consumed is of the black variety, and most of it comes from South Asia. The British adapted the Chinese *Camellia Sinensis* to the subcontinent. This industry is labour intensive, often employing entire families and especially women. Tea is plucked by hand — usually two leaves and a bud. Tea industry in Ceylon followed precedents in Darjeeling, but was given a boost by the fall of coffee plantations there circa 1870. Today, it is the world's third largest producer of black tea, but because the Indians and the Chinese use up most of their production domestically, Sri Lanka is the largest exporter, bringing in over US\$ 700 million in export earnings to support over 1 million people. Ceylon teas grow at varying altitudes (high, mid and low elevations), but like Darjeeling, it's the flavour and a bright golden appearance of the high grown, at around 7,000 feet of altitude, that's best appreciated.

A unique institution in tea trade in Ceylon is the system of auctions. It is an efficient, competitive, and

fully transparent mechanism that gives a fair chance to all buyers – small and big - to bid for 95 percent of Ceylon tea produced. There are 450 registered buyers of which 100 are regular attendees of the twice-weekly auctions that are conducted in a lively, but subtle manner. The Colombo auctions are the largest in the world, and there's long history of the practice with the first public sale going back to 1883. Auctions are necessary because tea quality varies immensely and needs to be tested and sampled. But the volume of tea traded is rising (estimated to exceed 350,000 tons annually by 2005) and there are new debates surrounding the automation of auctions, and option of auctioning in US dollars. From a development angle, an automated auction room will affect forms of civic engagement that bonds various stakeholders and contributes to social capital formation. Dollar auctions could also lessen competition as this would affect the ability of small buyers.

Sources: *Asia Trade Initiative research, and David Jansze (Ceylon Tea Traders Association).*

much of these discussions are taking place in absence of adequate empirical evidence. A statistical analysis that draws on economic evidence of GI protection is still lacking in Asia.

IV. TRIPS AGREEMENT AND GIs

Article 22 of TRIPS applies to all GIs and provides certain minimum standards of protection. The central element of Article 22 is that the public should not be misled. If the public is not misled, then, it does not constitute an infringement of the Article. The reason this can be problematic is that not only can there be circumstances where producers free-ride on the reputation of a product without necessarily misleading the public, but this can also create legal uncertainty in deciding whether or not the public is misled.



This contrasts with provisions in Article 23 that constitute additional protection in two ways for just wines and spirits, and not for any other product: *First*, Article 23 provides legal means to prevent the use of a GI identifying wines and spirits not originating in the place

Box: 3

PURE DRINKING WATER IN THE HIMALAYAS

Among the 766 valid registrations of appellation of origins under the 1958 Lisbon Agreement for the Protection of AO and their International Registration, 17 are related to mineral water. According to the WWF, bottled water is the fastest-growing beverage sector in the world, worth over US\$ 20 billion. Producers of bottled drinking water make a sharp distinction between “normal” mineral water and “natural” mineral water. Most bottled waters are claimed to be ordinary water tapped from any kind of source, and chemically treated. “Natural” mineral waters, however, have to come from approved underground sources. Considered biologically pure, these waters are required to undergo no treatment other than physical filtration and iron removal. Waters trapped in deep underground clay layers that are untouched by human settlements, especially in high mountains like the Himalayas are known to pass through several aquifers, taking up to 20 years gathering useful chemicals like calcium and magnesium from nearby rocks. Such rare underground sources have been exploited in parts of Europe and the US. But in the Himalayan region, this remains virtually untapped with huge prospects for countries like Bhutan, Nepal, and India to explore potentials in marketing this lucrative yet unusual resource, duly using a conspicuous Himalayan GI.

Source: Asia Trade Initiative research.

indicated by the GI, even where the true origin of the good is indicated. *Second*, it permits refusal or invalidation of registration of a trademark for wines or spirits, which contains or consists of a GI identifying wines or spirits, at the request of an interested party. In addition, wines have two other provisions specific to them in TRIPS — the obligation to protect homonymous GIs is only provided for wines in Article 23.3 and in Article 22.4, and Article 23.4 of TRIPS mandates negotiations in the TRIPS Council concerning the establishment of a multilateral system of notification and registration of GIs for wines.

Article 24 of TRIPS deals with exceptions. One important exception provides that nothing prevents a member to continue the use of a particular GI of another member identifying wines or spirits in connection with goods or services by

any of its nationals who have used that GI in a continuous manner with regard to the same goods or services in the territory of that member either, (i) for at least 10 years preceding 15 April 1994, or (ii) in good faith preceding that date.

This differing level of protection indicates an imbalance in TRIPS. For example, it would be impossible to sell, say, “Beaujolais type wine produced in Southern Vietnam”. This would not fall foul of Article 22 since it is clearly mentioned that the product is from Southern Vietnam; it will, however, fall foul of Article 23 for reasons mentioned. There exists now a coalition of developing and developed countries seeking to redress the imbalance in TRIPS by extending additional protection for GIs to products other than wines and spirits. Asian communities whose strengths are in products much broader than beverages stand to benefit from widened protection of all kinds of GIs including food items, arts and crafts. While there appears no just rationale to have two different levels of protection, demanders of extended protection are, however, struggling to provide a comprehensive evidence of verifiable economic losses on account of weaker protection (Rangnekar 2002).

V. DEVELOPMENT TRADE-OFF AND POSSIBLE ACTIONS

Charity on GIs begins at home foremost for a legal reason – unless products are appropriately protected at home, the case for protection abroad becomes difficult. Paragraph 9 of Article 24 of TRIPS only obligates members to protect a GI if it is protected in its country of origin. Because the regime of protecting GIs is in its infancy in Asia, the following could be a basic course of action for countries seeking to promote human development and MDGs *within* and *through* the modest reach of GIs.

First, know what you know and catalog what you have

Most Asian societies are underdeveloped, with vast rural, agrarian populations. Many are aware of their distinctive cultures, and ancient ways of life, including production based on tradition. These products need to be preserved. Countries could thus benefit by, i) publicly cataloging such precious products and associated knowledge, ii) demarcating special regions for targeted rural development efforts aimed at extending preferential credit to small enterprises and tying them to “niche” export promotion plans, iii) estimating the number of households employed in such activities, disaggregated by gender, ethnicity, and income groups, iv) estimating existing value of output and contrasting that with maximum potential benefits should full legal, marketing and technological investments be brought to bear, and v) identifying an “endangered list” of GIs that have been or are at risk of being usurped as trademark, patent, or plain piracy. Such attempts, as part of a biodiversity or rural development programme, will allow a country to follow an integrated (cultural-environmental-commercial) approach to protecting its heritage. Creating a national roster of GIs marries the old and the new: national imperative of creating awareness about traditional products and knowledge with preparedness to engage internationally on trade of goods and ideas in the 21st century.



return to investment are visibly much higher in the long run.

Notwithstanding reservation by some peers, Finger (2000) has noted, for instance, that just implementing (revising laws, training officials, purchasing equipment and building) three of the six Uruguay Round agreements on customs valuation, IP, and sanitary measures would require, at least, on an average a minimum of US\$ 150 million in a typical poor country. This is a substantial share of the development budgets of most poor nations. While enforcing GI provisions will cost much less, the fact that GIs are part of the IP parcel (together with patents, trademarks, and copyrights) means that an isolated as-

essment of its separate implementation is difficult.

There is, however, no standard model of GI protection; countries can choose their own model that matches their development stage. They could opt for a simpler system of “negative protection” that bars illegitimate users from using a GI not belonging to them (like in Sri Lanka), while the system of “positive protection” could be more elaborate including formal registration systems (like in India). As is underway in China, a cautious process to explore the pros and cons of alternative systems of GI protection could also help educate stakeholders on GIs before declaring policy.

It has been suggested that according privileged protection to GI holders in certain rural areas with feudal agrarian set-ups could have a perverse, regressive outcome. While some argue that it could strengthen the power and legal rights of the land-owning class over those of the landless and the poorer, others point out that because GIs cannot be held by monopolists, and would instead be owned by everyone in a qualifying region, this fear is exaggerated.

Third, act if development interests are compelling

Countries that go through national consultations, and ascertain that GIs ought to be a part of their development priorities could then adopt positions in favour of specific negotiating proposals for stronger protection of all GIs. While a multilateral agreement [at the WTO or World Intellectual Property Organisation (WIPO)] is desirable to some, in light of opposition, a consensus to even launch negotiations is elusive. The idea of a multilateral register for wines and spirits (as stipulated in TRIPS) is itself controversial over how binding it ought to be. Nations impatient with slow pace of such multilateral progress could instead initiate bilateral agreements. *Ceteris Paribus*, this approach is beneficial for two reasons: i) countries can choose products as well as attractive markets to be associated with, and ii) they can

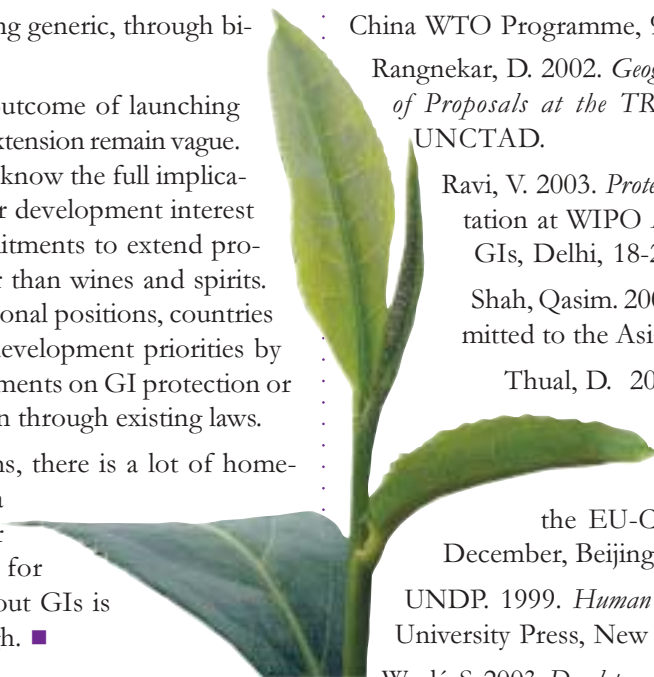
Second, weigh the wealth against opportunity costs

The legal and administrative aspects of IP protection have been better researched than the economics – and the empirical evidence — of quantifiable costs and benefits of forms of IPR protection. Each country will thus have to make its own decision on whether it wants to adopt a *sui generis* system for protecting its traditional knowledge and products. Countries have to weigh the merits and the value of the cases, and contrast them with the opportunity costs of having an enhanced system of GI protection. Some maintain that existing national and international provisions are enough, and any new measures would be unnecessarily costly. They point out that the actual cases where unprotected products have become generic and lost value, or have been expropriated unfairly by outsiders are not as numerous as they are made out to be. In contrast, it is argued, the cost of maintaining blanket protection could be huge. The chief argument is that this would divert away precious resources from more pressing human development needs like investments in health, education of women and girls, infrastructure, and democratic institutions of governance. These are areas where rates of

try to prevent GIs from being generic, through bilateral petition.

Despite much debate, the outcome of launching negotiations on the issue of extension remain vague. Asian countries should thus know the full implications of whether it is in their development interest to undertake binding commitments to extend protection to *all* products other than wines and spirits. Prior to taking firm international positions, countries should also adapt to their development priorities by creating separate legal instruments on GI protection or seek to strengthen protection through existing laws.

In the final analysis, it seems, there is a lot of homework yet to be done in Asia on the issue of GIs and their development implications, for one thing that we know about GIs is that we do not know enough. ■



CORE REFERENCES

- Chuenjaipanich, Vipa. 2004. *Champagne law comes into effect*, Corporate Counsellor, Bangkok Post Business News, 23 April.
- Downes, D., and S. Laird. 1999. *Community Registries of Biodiversity-Related Knowledge*, paper prepared for UNCTAD Biotrade Initiative.
- Finger, Michael. 2000. "The WTO's Special Burden on Less Developed Countries", *Cato Journal*, Vol. 19, No.3, Winter.
- Heath, C. 2003. *The European Law on Geographical Indications*, paper presented at EC-ASEAN workshop in GIs, Hanoi, 7 October, Max Planck Institute, Munich
- Kumar, Mohan. 2003. *TRIPS: Geographical Indications*, draft paper submitted to the UNDP Asia Trade Initiative.
- Li, S., et al. 2003. *Assessment and Evaluation of Systems of GI Protection in China*, draft paper presented to the EU-

China WTO Programme, 9 December, Beijing.

Rangnekar, D. 2002. *Geographical Indications: A Review of Proposals at the TRIPS Council*, ICTSD and UNCTAD.

Ravi, V. 2003. *Protection of GIs in India*, presentation at WIPO Asia Pacific Symposium on GIs, Delhi, 18-20 November.

Shah, Qasim. 2003. *GIs in Pakistan*, draft submitted to the Asia Trade Initiative.

Thual, D. 2003. *Sui Generis Protection versus Trademark Registrations: The Parma Ham Experience*, draft paper presented to the EU-China WTO Programme, 9 December, Beijing.

UNDP. 1999. *Human Development Report*, Oxford University Press, New York.

Wagl , S. 2003. *Development Dimensions of the Sri Lankan GI of Camellia Sinensis (Tea)*, draft paper prepared for UNDP Asia Trade Initiative, Hanoi & EU-China WTO Programme, Beijing, December.

WTO. 1999. *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations*, Cambridge.

FOOTNOTES

- 1 Article 22.1, Agreement on Trade-Related Aspects of Intellectual Property Rights, the WTO Legal Texts.
- 2 TBC.
- 3 Chuenjaipanich. 2004.
- 4 http://www.ccpit.org/static_ccpit/en/related.jsp
- 5 Presentations by Chinese producers at the EU-China WTO Seminar, Beijing, 20 October 2003.
- 6 According to lawyer, C. Heath of Max Planck Institute for IP, Munich, at a workshop on GIs, Hanoi, 7 October 2003.

Launched in December 1994 at Nagarkot, Nepal by a consortium of South Asian NGOs, South Asia Watch on Trade, Economics & Environment (SAWTEE) is a regional network that operates through its secretariat in Kathmandu and 11 member institutions from five South Asian countries, namely Bangladesh, India, Nepal, Pakistan and Sri Lanka. Registered in Kathmandu in 1999, the overall objective of SAWTEE is to build the capacity of concerned stakeholders in South Asia in the context of liberalisation and globalisation.



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