

**THE QUEST FOR ESTABLISHING INTELLECTUAL
PROPERTY RIGHTS OVER FOODS, HANDICRAFTS AND
CULTURAL HERITAGES: THE CASE OF BANGLADESH**

Mohammad Atique Rahman*

Abstract

In 2013 the United Nations Educational, Scientific and Cultural Organization (UNESCO) recognized Bangladeshi handicraft Jamdani as a sole tradition of the country. The UNESCO's recognition of Jamdani as a traditional product brings forth the issue of global intellectual property rights models and their relevance for Bangladesh. This paper argues that currently there are two major approaches to the protection of intellectual property rights: the United States is in favor of the trademark and certification model of protection, whereas the European Union and developing nations are in favor of adopting Geographical Indication (GI) model. It analyzes the quest of Bangladesh at the national and international levels for the establishment of intellectual property rights over its foods, handicrafts and cultural heritages. The central research question is why Bangladesh supported the establishment of Geographical Indication method, and not the trademark and certification model; and how Bangladesh has established GI rights at the national and international levels. The paper is divided into three sections. The first section traces the evolution of GI as form of intellectual property rights. The next section explores the ongoing debates between members of the World Trade Organization (WTO) in regard to the adoption of national and international legal protections for the GI products. The concluding section analyzes the initiatives taken by Bangladesh to protect her traditional products.

Introduction

Recently, Bangladeshi traditional handicraft Jamdani has been recognized by the world community as sole tradition of the country. Bangladesh has been able to negotiate at the 8th Conference of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage at Azerbaijan in 2013 and presented necessary information in favor of establishing ownership of Jamdani. At this meeting, the traditional art of Jamdani weaving in Bangladeshi has been included in the UNESCO's heritage list as the sole tradition of the country.¹ The

* Assistant Professor, Department of International Relations, University of Dhaka.
E-mail: atique@du.ac.bd

1 Jamdani Included in UNESCO's Heritage List, The Daily Financial Express, December 6, 2013, available at: www.thefinancialexpress-bd.com/2013/12/06/7476, accessed on 12.03.2014. According to UNESCO, "Jamdani is a vividly patterned, sheer cotton fabric, traditionally woven on handloom by craftspeople and apprentices

inclusion of Jamdani saree on the UNESCO's list of 'Cultural Heritage of Humanity' has opened new opportunities for thousands of local and deprived craftspeople in Bangladesh. This product represents the distinct identity, skill and dignity of the craftspeople. This recognition will help to increase interests among entrepreneurs, local producers and consumers at home and abroad to be engaged in the production, branding and marketing of Jamdani.²

In this highly integrated global market, people have larger access to products from various corners of the world. But do they consciously think for a while that why they have to pay more for drinking Ethiopian Sidamo coffee from Starbucks than a cup of Folgers? It is natural that consumers can distinguish products on the basis of taste and quality. But in spite of taste and quality a secret lies with the intellectual property rights. Therefore, some products are protected by intellectual property designations such as trademarks, certification marks, collective marks and Geographical Indication (GI).³

Question arises, whether Bangladesh can establish intellectual property protection over its popular mango varieties such as the Fazli and Langra from Rajshahi, Nakshi Kantha (embroidered quilt) from Faridpur, and Jamdani saree from Dhaka. The list of traditional Bangladesh products requiring protection includes Kataribhog rice from Dinajpur, Hilsha fish from Chandpur, and honey from the Sundarbans forest.⁴ The central logic behind protecting such products is straightforward: Bangladesh can reap economic benefits by establishing brand value and quality control of its inherited products under a system of intellectual property rights.

In this context, this paper analyzes the quest of Bangladesh at the national and international levels for the establishment of intellectual property rights over its foods, handicrafts and cultural heritages. It asks two central questions:

around Dhaka. Jamdani textiles combine intricacy of design with muted or vibrant colours, and the finished garments are highly breathable. Jamdani is time-consuming and labour-intensive form of weaving because of the richness of its motifs, which are created directly on the loom using the discontinuous weft technique." See UNESCO, "Traditional art of Jamdani weaving," available at: www.unesco.org/culture, accessed on 12.03.2014.

2 Z. Hasan, Jamdani weaver Enamul Hopes for Better Future, *The Daily New Age*, 09 December, 2013, available at: www.newagebd.com/detail.php?date=2013-12-09&nid=76005, accessed on 12.03.2014.

3 F. Addor, F and A. Grazioli, "Geographical Indications Beyond Wines and Spirits, a Roadmap for a Better Protection for Geographical Indications in WTO/TRIPS Agreement", *Journal of World Intellectual Property*, Vol. 5(6), 2002, pp. 865–97.

4 M. A. Yusuf and S. R. Burhan, "Geographic Indication: The role of the Private Sector", *The Financial Express*, Dhaka, Tuesday, November 12, 2013.

- Why has Bangladesh supported the establishment of GI rights in spite of trademark and certification mark?
- How has Bangladesh established GI rights at the national and international levels?

In addressing these questions, this paper is divided into three sections. The first section traces the origin and development of geographical indication as a method of intellectual property rights. The next section explores the debates between WTO member states on the adoption of GI rights. It also elaborates the involvement of WTO Dispute Settlement Body (DSB) and the Trade Related Aspects of Intellectual Property Rights (TRIPS) Council in addressing the debates over GI legal principles. The third section investigates why Bangladesh supported the GI method, instead of the trademark and certificate mark protection method. It also explores how Bangladesh adopted the GI legal protection. The paper concludes with a discussion of key aspects of the recently adopted GI Act in Bangladesh.

History of Geographical Indication Method

Geographical Indication (GI) has evolved as distinct form of intellectual property to provide indication to the consumer about the identification of the place of origin for a product. The Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement, adopted in 1994, was the first major international treaty recognizing the GI as distinct form of intellectual property rights. TRIPS articulate three major characteristics of GI products. These are:⁵

- It must relate to a specific type of goods;
- These goods must originate from a defined area; and
- These goods must have qualities, reputations or other characteristics that are clearly linked to the geographical origin of goods.

The GI method is commonly used in agricultural products as they have typical qualities that derive from their places of origin and are influenced by specific local and geographical factors such as climate and soil. For instance, the Roquefort cheese, Blue Mountain coffee, Darjeeling tea, Cognac, Scotch, Porto, Havana are the most common and world famous GI products which are well known because of their association with certain nature and quality associated with particular geographic origins.

5 I. Kireeva and B. O'Connor, "Geographical Indications and the TRIPS Agreement: What Protection is Provided to Geographical Indications in WTO Members?", *The Journal of World Intellectual Property*, Vol. 13, No. 2, 2010, pp. 275-276.

Most of the GIs relate to agricultural products, foodstuffs, wine and spirit drinks. However, the GI protection can be extended to non-agricultural products. GI may also be used for highlighting specific qualities of products that are due to human skills found in the product's place of origin.⁶ In that sense, GI is close to traditional knowledge and know-how as it focuses on old and local creativities and skills of the community. Handicrafts and other local products which reflect local traditions, cultural traits as well as contain local natural resources can also be considered GI products. For example, India has adopted the GI legislation to protect its traditional handicrafts such as Kanchipuram Silks, Kolhapuri Chappal (type of traditional footwear), Channapatna toys and Dolls made of Ivory-wood, Mysore Silk, Mysore traditional paintings, Mysore Agarbathi, Pochampally Ikat tie-and-dye saree.⁷ On the other hand, the Czech Republic protects Jablonec Jewellery and Bohemia Crystal under its national GI law.⁸

The foregoing discussion suggests that GIs offer intellectual property rights to ensure protection of specific agricultural products, food stuff, and handicrafts which are originated in a specific place and possess qualities, reputation, traditional know-how or other characteristics that are essentially attributable to that place of origin. During the TRIPS council meeting in December 1998, many countries submitted their products under GI (Table 1).

The Trade Related Aspects of Intellectual Property Rights (TRIPS) recognizes GI as collective and community rights. GI is economically and culturally significant for countries. Worldwide protection for GI has been basically patronized by the European Union (EU) as the EU conceived it as means of promoting sustainability of small farming and rural communities. GI protections preserve the income-profit of small firms and promote rural economy. The EU was successful in its efforts to include wines and spirits under the GI protection in Trade Related Aspects of Intellectual Property-TRIPS. Article 23 of the TRIPS agreement provides for recognizing wines and spirit as GI products which all member countries should agree upon. In addition, Article 24 of TRIPS in conjunction with the Article 23 reveals the exception that the member states can negotiate to increase the protection of individual geographical indication.

⁶ *Ibid*, pp. 281.

⁷ Article 1(e) of the Geographical Indications of Goods Act, *supra*, n. 14. Also consult Geographical Indications Registry of the Intellectual Property Office of India [online], available at www.keralaindustry.org, accessed on 13.02.2014.

⁸ Official website of the Czech Republic Industrial Property Office, available at: www.isdvapl.upv.czi, accessed on 13.02.2014.

Table 1: List of Geographical Indication Products⁹

Name of Country	GI Products
Bulgaria	Bulgarian yoghurt, Traminer from Khan Kroum (wine), Merlou from Sakar (wine)
Canada	Canadian Rye Whisky, Canadian Whisky, Fraser Valley, Okanagan Valley, Similkameen Valley, Vancouver Island
Czech Republic	Pilsen and Budweis (beers), various vines, liqueurs, Saaz hops, Auscha hops, Jablonec jewellery, Bohemia crystal, Vamberk lace
European Communities	Champagne, Sherry, Porto, Chianti, Samos, Rheinhessen, Moselle Luxembourgeoise, Mittleburgenland (all wines); Cognac, Brandy de Jerez, Grappa di Barolo, Berliner Kummel, Genievre Flandres, Artois, Scotch Whisky, Irish Whiskey, Tsikoudia (from Crete) (all spirits); and a range of other products, such as Newcastle brown ale, Scottish beef, Orkney beef, Orkney lamb, Jersey Royal potatoes, Cornish Clotted Cream, Cabrales, Roquefort, Gorgonzola, Aziete de Moura, Olive de Kalamata, Opperdoezer Ronde, Wachauer Marille, Danablu, Lubecker Marzipan, Svecia, Queijo do Pico, Coquille Saint-Jacques des Cotes-d'Amour, Jamon de Huelva, Lammefjordsgulerod
Hungary	Eger (wine), Szatrademarkar (plum)
Liechtenstein	Malbuner (meat products), Balzer (Hi-tech products)
Slovak Republic	Korytnicka mineralna voda (mineral water), Karpatska perla (wine), Modranska majolica (hand-painted pottery), Pieanske bahno (healing mud)
United States	Idaho, (potatoes and onions), Real California Cheese, Napa Valley Reserve (still and sparkling wines), Pride of New York (agricultural products), Ohio River Valley (viticulture area)

The EU and many developing countries opted for ongoing negotiation within the TRIPS council in order to seek additional protections of GI. The TRIPS also promotes multilateral registration system for other products under the purview of the concept of additional protections for GI. In this regard, these countries have advocated for extending GI protections on agricultural products, food stuffs, and handicrafts which are originated in a specific place. However, this proposal was opposed by the new WTO members led by the United States. As a result of this debate in the TRIPS council and in the absence of a solution for further harmonization of the GI, the European Communities in 2005 submitted a radical TRIPS-plus¹⁰ proposal to amend the TRIPS agreement in favor of

⁹ WTO News, available at www.wto.org, accessed on 25/10/2013.

¹⁰ WTO, General Council, Trade Negotiations Committee, Council for Trade-Related Aspects of Intellectual Property Rights, Special Session on Geographical Indications, Communication from the European Communities, 14 June 2005, WT/GC/W/547, TN/C/W/26, TN/IP/W/11, accessed on 3.4.2014.

mandatory multilateral system for all products. They advocated that this proposal would also meet the need of the developing countries.

The historical evolution of Geographical Indication as an important aspect of intellectual property can be explored throughout the adoption of various multilateral conventions and agreements on industrial property in the past two hundred years. Earlier GI was a locally developed notion with limited effect. With the rapid increase in commerce and business across the world, the national protection on GI was not sufficient as the same products had a mere chance of imitation outside the border. Therefore, countries felt that GI protection should extend outside the borders and in this regard international cooperation was highly required. The primary objective of seeking international cooperation on GI was to ensure protection for the specific products at the international level and to adopt the practice of reciprocity in the level of protection between states. Against this backdrop, it is pertinent to discuss various international treaties and conventions dealing with GI protections.

Paris Convention for the Protection of Industrial Property. The 1883 Paris Convention for the Protection of Industrial Property identifies GI as a separate intellectual property rights. The notion of GI has been expressed through the protection of sign which bears the name of product's place of origin as an 'indication of source' or appellations of origin.¹¹ Article 10 (1) of the Paris Convention provides for certain remedies in respect to the unlawful use of indications of source on goods. This means that no indication of source may be used if it refers to a geographical area from which the products in question do not originate (Indication of source).¹² Article 10bis¹³ of the Convention gives the basis for protection against misleading indications of source, including

11 M. R. Ayu, "How Does Australia Regulate the Use of Geographical Indication for Products other than Wines and Spirits", *Macquarie Journal of Business Law*, Vol. 3, 2006, p. 3

12 Paris Convention for the Protection of Industrial Property of March 1883, available at: www.wipo.int, accessed on 23.04.2014

13 Art. 10bis stipulates that: all acts of such a nature as to create confusion by any means whatever with the (i) establishment, the goods, or the industrial or commercial activities, of a competitor; (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; (iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods. (See: Convention for the Protection of Industrial Property of March 1883, available at: www.wipo.int, accessed on 23.04.2014

appellations of origin. It obliges members to provide protection against unfair competition and contains a non-exhaustive list of acts, which are to be prohibited. The Paris Convention does not provide for any special remedies against infringement of this provision.

The Madrid Agreement on Indications of Source. The 1891 Madrid Agreement on Indications of Source is the first multilateral agreement for adopting specific rules for the Repression of False or Deceptive Indications of Source of Goods. Article 1(1) of the Madrid Agreement provides that all goods bearing a false or deceptive indication by which one of the countries to which this agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries.¹⁴ It extends protection to the deceptive indications of source in addition to false indications. That means a deceptive indication of source can be the true name of the place where the good originates from, but it would be confusing to the customer as to the true origin and quality of the good.

International Convention on the Use of Appellations of Origin and Denominations of Cheeses: This international convention held on June 1, 1951 in the Italian town of Stresa to determine origin of Parmesan cheese, which is commonly known as the 'king of cheeses'. The signatories of the Stresa Convention were France, Italy, the Netherlands and Switzerland. These countries committed to prohibit the use of false designations of origin on their territory. The convention determined to offer higher level of protection for Parmesan cheese, and other food products such as Gorgonzola, Pecorino Romano and Roquefort. This convention paved the way for the adoption of the 1958 Lisbon Agreement to ensure legal protection at the national and international levels for GI products.

The Lisbon Agreement for the Protection of Appellations of Origin and the International Registration: The 1958 Lisbon Agreement for the Protection of Appellations of Origin and the International Registration covers only a few countries. It is widely known for providing strong protection for a product bearing the true name of its place of origin under its special concept of appellations of origin. Lisbon Agreement extends protection to not only to the goods but also to the services. Article 2(1) of this agreement states that, "appellation of origin is the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and

14 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891, available at: www.wipo.int, accessed on 23.04.2014

characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”.¹⁵

The Lisbon agreement ensures protection of appellations of origins of products from any usurpation or imitation. This means a good or commodity can be produced in same kind, type or imitated by others. The duration of protection for the appellations of origin is for unlimited period of time as long as it is effectively used in the country of origin. Therefore, there is no requirement for international renewal. Furthermore, Lisbon agreement also recognizes the fact that when the product is protected as appellations of origin it cannot be registered or used as a generic one.

The Madrid Agreement Concerning the International Registration of Marks:

It is evident that in some countries GI products can only be protected by trademarks. Since 1891, the Madrid System for the International Registration of Marks as collective marks, certification marks or guarantee marks have also been applicable to the protection of GIs. This means that an international registration system for trademarks, established by the Madrid Agreement of 1891 and the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks of 1989, can also serve as a means of international protection of GI.¹⁶ This system can only be used by those courtiers who do not have specific (sui-generis) rules on the protection of GI. They can protect GI by using certification trademark.

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):

The 1994 WTO agreement on Trade Related Aspects of Intellectual Property Rights dedicates a specific section to GI. It is considered the first binding multilateral treaty dealing with GI. Article 22 of the TRIPS agreement provides a definition of geographical indications. They 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.¹⁷ This definition in TRIPS includes the concept of appellations of origin contained in Article 2 of the Lisbon Agreement to protect goods which merely

15 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, available at: www.wipo.int/lisbon/en/legal_texts, accessed on: 23.04.2014

16 Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, available at: www.wipo.int/wipolex, accessed on 14.04.2014.

17 Uruguay Round Agreement: TRIPS Trade-Related Aspects of Intellectual Property Rights, available at: www.wipo.int/treaties, accessed on 13.04.2014

derive a reputation from their place of origin without possessing a given quality or other characteristics which are due to that place. The TRIPS agreement adopts protections for GI in two levels. Sub-article (2), (a), (b) of 22 stipulates that member countries should prevent the use of any false geographical indication that have the potential to mislead the public and to constitute unfair competition. The second level of protection, as enshrined in Articles 23 (1), (2), (3), (4), calls for additional protection for geographical indication, specializing in wines and spirits.¹⁸

The TRIPS ensures more protection of these two types of alcohol beverages. That means protection is not only against false use of GI indication for this two types of beverages but also against any use of GI to indicate other geographic origin, even when the true origin of the good is indicated in translation or accompanied by an expression such as kind, type, style, imitation of the like. It means that especially for wines and spirits, protection is not only provided for consumers against misleading information, but also for producers, from harmful conduct on the path of competitors.

An example can simplify the situation of protection to GI. The beer under the mark Budweiser is a well known product which has been produced by Anheuser-Busch Companies, Inc. in the United States. Since 1957, Budweiser has also been produced in the Czech Republic by Budweiser Budvar, which claims to be the 'original' producer of Budweiser beer.¹⁹ The Anheuser-Busch has been producing brewer since 1957 and it is one of the leading companies in U.S and the world's largest beer brand. Therefore, under GI protection prohibition Anheuser-Busch needs to relinquish use of its beer's name which is similar to the European product name.²⁰

From the above presentation of treatment of GI in various multilateral agreements, it is easily conceivable that the GI has always been an evolving notion which encompasses various types of protections as its scope. The graphical presentation in Figure 1 reflects the current scope of GI protections.

18 See *Article 23: Additional Protection for Geographical Indications for Wines and Spirits of Uruguay Round Agreement: TRIPS Trade-Related Aspects of Intellectual Property Rights*, available at: www.wipo.int/treaties/en, accessed on 1.12.2013

19 Budweiser Budvar, "Trademarks", available at: www.budvar.cz/en, accessed on 1.11.2013

20 I. Shalevicht, "Protection of Trademarks and Geographical Indications", *Buffalo Intellectual Property Law Journal*, 2008, available at: www.heinonline.org, accessed on 23.11.2013, p. 69

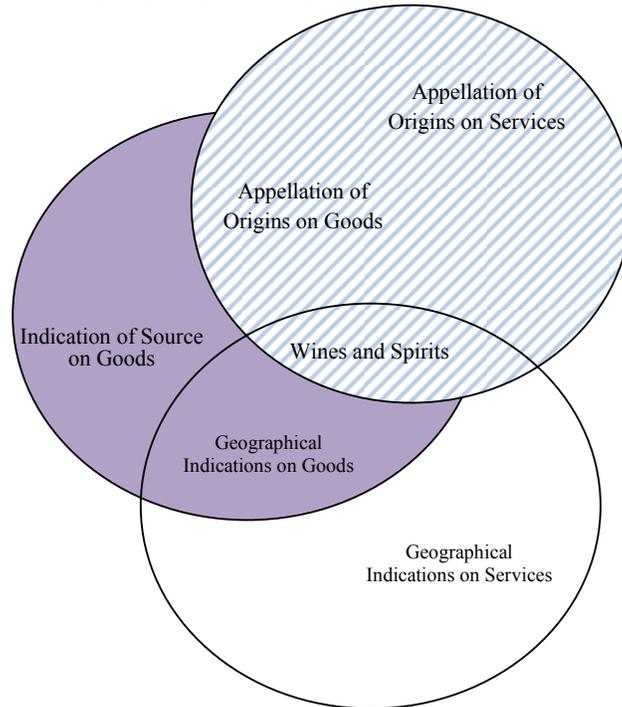
Figure 1: Overlapping Scope of Geographical Indication²¹

Figure 1 shows that GI has been used as synonymous for indication of source in the Madrid Agreement (1891) and in the Paris Convention (1883). Here the GI refers to a source to identify the geographic origin of a product.

The foregoing discussion on the evolution of geographical indication clearly shows the difference between GI and trademark. The latter introduces the proprietor or manufacturing enterprise of a product or service to its customers. By contrast, the concept of indication of source does not imply any special quality, characteristic or reputation of the identified product attributed to its place of origin. The 1958 Lisbon Agreement specifies GI products by labeling them under the appellations of origin. It is more specific than the source of indication. It extends protection beyond indications of source because a product identified using an appellation of origin must not only originate from a specific place but also have indigenous characteristics and qualities that reflect the

²¹ M. Risnag, "How Does Australia Regulate the Use of Geographical Indication for Products other than Wines and Spirits", *Macquarie Journal of Business Law*, Vol. 3, 2006, p. 3

special environment, unique geography, and natural and human factors not likely to be found elsewhere. The TRIPS agreement adopted GI as appellations of origin. But unlike Lisbon which focuses on quality and characteristics of a product, TRIPS also adds the reputation of product. Under the TRIPS Agreement, quality, reputation, and other characteristics are each in its own right sufficient and indispensable condition for the existence of a GI.²² Countries adopted the notion of reputation and extended it to include services other than goods as GI. Therefore, the scope of protection has been overlapping with indication of sources, appellation of origins and geographical indication. In this regard, countries are increasingly facing challenges for choosing appropriate legal measures from the existing scopes of GI protection at their national levels.

Debates among WTO Member Countries Regarding the Adoption of GI Protections

On the question of GI protection, the United States and the EU offer two competing models. Interestingly the debate is not between the Global North and the Global South; instead, between north-north countries. There are some intricate reasons behind the differences between these two models of protection of GI. These are as discussed below:

The U.S. approach to geographical indication. The US approach to GI is different from the EU approach. The United States protects GIs under trademarks, collective or certification marks regime.²³ In fact, it is a leading state that refuses to protect GI under the special independent law or Act. Instead of adopting special sui-generis legislation, the US has established certification and collective marks legal regime for the protection of GI products. According to the US Trade Mark Act 1946, The United States Patent and Trademarks Office suggests that:

Certification Mark is defined as any word, name, symbol device, or any combination, used or intended for use in commerce with the owner permission by someone other than its owner, to certify regional or other geographical origin, material, mode of manufacture, quality, accuracy, or other characteristics of someone's goods or services.²⁴

Collective marks can be used by associations, unions, corporations, or other organized groups. In the US certification mark system, GI is compounded with

²² *Ibid*, p. 71.

²³ I. Shalevicht, "Protection of Trademarks and Geographical Indications", *Buffalo Intellectual Property Law Journal*, Vol. 6(1), 2008, p.68.

²⁴ The United States Patent and Trademark Office, 2003, available at: www.uspto.gov, accessed on 12.03.2014.

other unregistered marks that do not identify the origin of a good or service but are eligible to be certified. As a particular type of trade mark, the certification mark does not identify a source of goods, but indicates their quality or conforms to its particular standards. For geographical indication purposes, the US certification mark recognizes all aspects of the nature of origin of the goods or services to which it has been applied.²⁵ Under the US GI protection system, the scope is much wider for acquiring protection. Under this system individual, club, private or public enterprise can be owners of GI. The US geographical indication ownership is therefore not a typical collective or communal ownership as is commonly known in many countries, especially in the European Community.²⁶ The United States also extends GI protection through collective marks which is a particular type of trademark that does not identify the source of a good but indicates membership in particular organizations. The benefit of protecting all types of geographical indication under certification marks are as follows:²⁷

- The certification mark is successfully used to identify the origin of an individual agricultural product;
- As a form of protectable unregistered mark, the certification mark system enables an unregistered geographical indication or indication of source to be protected, as long as it has a distinct reputation that can be proven in court. This system reduces the cost of formality; and
- Protecting geographical indication under certification marks, the objects of protection can be broader, not only for goods, but services as well.

The EU approach to geographical indication: Europe has a long history of fostering and protecting geographical symbols.²⁸ The European Union believes that such symbols should be associated with a given place which has greater influence in determining characteristic of specific products. It is evident that this autonomous protection (sui-generis) other than trademarks, collective or certification marks had been developed and practiced across the European

25 International Trademark Association's Information Centre, 'Certification Marks', available at: www.inta.org, accessed on 15.11.2013.

26 M. R. Ayu, "How Does Australia Regulate the Use of Geographical Indication for Products other than Wines and Spirits", *Macquarie Journal of Business Law*, Vol. 3, 2006, p. 15.

27 M. Risnag, *Op. cit.* p.18.

28 M. Ricolfi, 'Geographical Symbols in Intellectual Property Law: the Policy Options' in Reto M. Hilty and others (eds), *Festschrift für Ulrich Loewenheim zum 75*, 2009, p.1.

Economic Area (EEA) before TRIPS negotiation. In 1979, the European Court of Justice (ECJ) held that products legally originated and marketed in one Member State could be marketed in another.²⁹ The Court's affirmation of the principle of free movement of goods within the European community thereby removed any protection of agricultural and food producers might have enjoyed in respect of measures equivalent to quantitative restrictions between Member States.

The EU has also adopted the idea that special GI protection would facilitate small and medium sized farms to compete in international commodity markets through achieving product differentiations and financial stabilities. In view of the inalienable relationship of GI with the land, in 1992 the European Commission took the decision to protect high-quality agricultural products based on geographical origin using designations of GI. In this regard, Regulation No. 2081 of 1992 created a *sui generis* or specialist system of indications of origin throughout the common market. The regulation expressed common agricultural policy as it is going to fulfill its objective of contributing to:

the diversification of agricultural production ... so as to achieve a better balance between supply and demand on the markets; ... [and benefiting] the rural economy, in particular ... less-favored or remote areas, by improving the incomes of farmers.³⁰

Later the EU also adopted regulation 510/2006 in which Article 2(1) enhances the protection of 'designation of origin' to only for agricultural products which at least in principle are unique because of the quality or characteristics. Unlike Trademark, the subject matter of GI in Europe is broad. GI rests on the principle of specialty. Therefore, Article 1 of the EU Regulation 510/2006 extends protection of GI to the agricultural products and foodstuffs intended for human consumption, which may comprise the subject matter of protected designations of origin and GIs.³¹ These include essential oils, meat, fish, dairy products, and preparations thereof, fruit and vegetables and preparations thereof, cereals and

29 G. E. Evans and M. Blakeney, "The Protection of Geographical Indications after Doha: Quo Vadis?", *Journal of International Economic Law*, Vol. 9, No. 3, 2006, pp. 8-9.

30 WIPO Database of Intellectual Property, European Community, Legislative Texts, Council Regulation (EEC) No 2081/92 of 14 July 1992 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, available at: www.wipo.int/wipolex, accessed on 23.04.2014.

31 Council Regulation (EC) No. 510/2006 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, available at: www.wipo.int/wipolex/en, accessed on 2.03.2014.

medicinal plants, and beers, bread, confectionery, and pasta.³² The regulation applies to a wide variety of agro-products including Tuscany for olive oil produced in a specific area of Italy and also 'Roquefort' for cheese produced in France.

The amended regulation in Europe (Regulation 510/2006 on the Protection of Geographical Indications and Designations of Origin) establishes two types of GI designations. At first, the 'Protected Designation of Origin' (PDO) encompasses traditional and non-geographic names. To qualify for a PDO, a product must be manufactured, processed, and prepared within the specified geographical area. In exceptional cases a country is used as a designation for an agricultural product or a foodstuff. Secondly, the Protected Geographical Indication (PGI) is broader in scope. A PGI product has a specific quality, goodwill or other characteristic property, attributable to its geographical origin. This type of product is produced, processed and prepared within the determined geographical area. Therefore, to achieve PGI status a product needs to be entirely produced or at least partially manufactured (prepared, processed *or* produced) within the specific region and thus acquire unique properties. A registered PDO or PGI enjoys the broad description of exclusive rights that are provided in Article 13.³³ These are as follows:

- a. any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name;
- b. any misuse, imitation, or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as style, type, method, as produced in, imitation, or similar;
- c. any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- d. any other practice liable to mislead the public as to the true origin of the product.

32 Treaty Establishing the European Communities, Official Journal C 325, 24 December 2002, consolidated version, available at: www.europa.eu.int/eur-lex, accessed on 2.02.2014.

33 Article: 13, Council Regulation (EC) No 510/2006 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, available at: www.wipo.int/wipolex/en, accessed: 03.02.2014.

The EU Regulation not only prohibits food products from outside the region from using the same geographical name but also denies the use of the name of products within the region that do not meet the standards set forth in the application. In a nutshell, it can be argued that there are significant differences between the EU and U.S. approaches to GI. In Europe, GI is seen as a means of changing from quantity to quality based production and distribution of agro-products system which provides opportunity to consumers to recognize and pay a premium for high-quality products. In this respect, one of the most important differences between trademarks and GIs is that the GI cannot be sold or delocalized and are accessible to any producer within the specified region of origin.

U.S.-EU trade dispute over geographical indication: The EU proposes to extend protection for wines and spirits to other products. For example, the Parmesan cheese³⁴ originally came from Parmesan, Italy. The EU wants to take back the name so that it could only mean cheese produced in the Italian region. The geographical indications in cheeses, rice, and teas should obtain the same protection. Producers outside the region could not avoid the protection by noting that the product is in the "style of Parmesan" or "U.S. Parmesan cheese." It is obvious that such initiatives were seen by the U.S. and other countries as a threat to their trading interests.

The United States and Australia became highly concerned at the systemic discrimination of their trademark owners in the face of EU-registered GI which denies access to agricultural and food processing market at the global level. On 18 August 2003, the United States and Australia requested the establishment of a WTO dispute settlement panel to review the consistency of the EU Regulation 2081/92 with the rules of the TRIPS and GATT Agreements. They argued that the Regulation 2081/92 does not provide the same treatment to other nationals and products originating outside the European Community that it provides to the European nationals and products. The regulation also violates exclusive rights of registered trademarks and the principle of senior marks. Considering

34 It is a hard dry Italian Cheese used chiefly in grated form. ORIGIN C.16: from Fr., from Ital. Parmigiano 'of Parma.'" Concise Oxford English Dictionary, *supra* note 1, at 1038. Parmesan cheese is an Italian cheese from the Parma region of Italy that takes up to two years to mature and contains no additives. Parmigiano-Reggiano, (for more information see: Michelle Agdomar, Removing the Greek from Feta and Adding Korbel to Champagne: The Paradox of Geographical Indications in International Law), available at: www.iplj.net/blog/wp-content, accessed on 23.02.2014.

the arguments from the U.S. and Australia, the WTO Dispute Settlement Body announced³⁵ in 2005 that the EU Regulation 2081/92 is inconsistent with the national treatment principle of TRIPS Article 3.1 with respect;

- to the equivalence and reciprocity conditions, as applicable to the availability of protection for GIs;
- to the application procedures, insofar as they require examination and transmission of applications by governments; and
- to the objection procedures, insofar as they require verification and transmission of objections by governments.

The WTO panel also holds that the GI is a discrete form of intellectual property and it endorses the EU principle of coexistence with the most famous prior trademarks.

EU proposal for the extension of GI protection and developing countries. In line with the WTO Dispute Settlement Body's decision, the European Union proposed for an amendment to Article 23 of the TRIPS to extend their scope to GIs for all products. In support of the extension of GI scopes of protection, a number of developing countries have identified GI as an important category of intellectual property which can bring economic benefit for them.³⁶ Kenya, Nigeria and South Africa, requested that the protection of GIs be extended 'to other products recognizable by their geographical origins, notably agricultural, food, and handicraft products.'³⁷ This proposal was also adopted by Cuba, Czech Republic, Dominican Republic, Honduras, India, Indonesia, Nicaragua, Pakistan, Sri Lanka, and Venezuela. These developing countries supported an

35 G. E. Evans and M. Blakeney, *Op. cit.*, p.23.

36 European Communities argued that the proposal would also meet the needs of developing countries as Developing countries would find this proposal more tailored to their needs since it covers geographical indications on other products like coffee, rice and teas. Furthermore, it advances a protection system that is easy to apply. It is sufficient to determine whether the good has the origin referred to by the geographical indications. The suggested changes are important given that the current system cannot be used by poor producers as it requires costly evidence (e.g. consumer surveys) that the public is misled. (For more information see: See WTO, General Council, Trade Negotiations Committee, Council for Trade-Related Aspects of Intellectual Property Rights, Special Session on Geographical Indications, Communication from the European Communities 14 June 2005, WT/GC/W/547, TN/C/W/26, TN/IP/W/11).

37 Preparations for the 1999 Ministerial Conference the TRIPS Agreement Communication from Kenya on Behalf of the African Group, WTO Doc WT/GC/W/302, 6 August 1999.

extended GI regime for food in order to facilitate market differentiation for a variety of common commodities such as tea, coffee, and rice.

Significantly, the protection of GIs has been identified as a useful legal instrument for the protection of traditional knowledge in so far as such products have a strong association with the land and reflect historical links between a particular region and the products of that region.³⁸ In reaction to that such proposal for extension, the United States suggested that the extension of Article 23 (1) would oblige WTO members to protect the GIs of all other members at an enhanced level of protection and that ‘this could involve a considerable burden, particularly in view of the fact that some members, such as the ECs, have over 700 hundred domestic GIs’.³⁹ The opponents, including Australia, Chile and Guatemala, further pointed out that any grant of exclusive rights to one group of producers necessarily involves depriving others of the right to use those terms. The example of ‘Feta’ cheese, which is produced by a range of companies in Australia, Canada, Denmark, Greece, New Zealand, and the United States, is given in the Communication as an example of the way in which the extension of Article 23(1) might cause conflicts between WTO members⁴⁰. Therefore the debate on GI resurfaced on the question of the extension of its scope of protections. Being a developing country, Bangladesh also supported the EU proposal in order to achieve intellectual property rights over its products and cultural heritages. The next section analyzes Bangladesh’s quest for achieving GI protections and its impacts.

Bangladesh’s Quest for Establishing Geographical Indication (GI) Protections

This section examines why Bangladesh has supported the adoption of GI protection and how the country has achieved such legal protection at the national level. As stated before, GI is the property rights used by the countries as a source identifier and protection of the integrity, specialty, and commercial value of products whose uniqueness is identical to their geographic origin and customary process of manufacture.⁴¹ The 1994 TRIPS agreement leaves the opportunity to the WTO members to determine the appropriate legal mean of

38 G. E. Evans and M. Blakeney, *Op. cit.*, p. 575.

39 WTO Doc. IP/C/W/289

40 *Op. cit.*, 2006, p. 31.

41 P. Matthews, “Increasing Revenue in Developing Nations Through Intellectual Property Rights: Why a Diversified Approach to Intellectual Property Protection with a Focus on Geographical Indications is the Best Method”, *Buffalo Intellectual Property Law Journal*, 2010, p. 203

implementing GI protections at their national levels. However, TRIPS agreement provides two options for its member countries: first, a country can adopt specific ‘sui-generis’⁴² legislation for GI protection of GI; second, a country can protect GI by means of existing legislation i.e. trademark or through tort law. Bangladesh followed the path of many developing and underdeveloped countries, and adopted the GI protection model instead of the trademark model.

In 2013 Bangladesh adopted the Geographical Indicative Products (Registration and Protection). This Act is the product of a long-term quest at the national and international levels for establishing GI norms and regulations. The Bangladeshi policy makers conceived the idea that the GI will extend protection to the informal innovations. The purpose of adopting GI Act is to protect products of Bangladeshi origins, many of which have worldwide reputation. Bangladesh supports GI legislation as it provides protection of consumers against fraud, protection of producers of the goods, ensure territorial, community and local development, and conservation of biological resources, bio-diversity and cultural diversity.⁴³ Without GI protection these products can be wrongfully used by other producers in unfair ways as they can misappropriate the benefits emanating from the goodwill and reputation associated with such GI products by way of misleading the consumers.⁴⁴ Such unfair acts can cause huge loss of revenue for the genuine right holders of the GI in Bangladesh.⁴⁵ Therefore, like many developing countries, Bangladesh supported the initiative to extend GI protection for food items under TRIPS. Like Kenya, Egypt, Morocco, and Jamaica, Bangladesh had also supported GI extension during Uruguay round of multilateral trade negotiations.

42 Sui generis is a Latin expression, simply meaning of its own kind/genus or unique in its characteristics. This expression refers to an idea, an entity or a reality that could not be included in a wider concept, and in the structure genus4species, a species that heads its own genus. In intellectual property law, it is a term used to identify a legal classification that exists independent of other categorizations. (see: I. Kireeva and B. O’Connor, “Geographical Indications and the TRIPS Agreement: What Protection is Provided to Geographical Indications in WTO Members?”, *The Journal of World Intellectual Property*, Vol. 13, No. 2, 2010, pp. 275-276.

43 D. Marie and Vivien, “The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India”, *the Journal of World Intellectual Property*, Vol. 13, No. 2, 2010, p. 121.

44 K. Das, “International Protection of India’s Geographical Indications with Special Reference to “Darjeeling” Tea”, *The Journal of World Intellectual Property*, Vol. 9, No. 5, 2006, p. 461.

45 *Ibid*, p. 461.

In a joint communication (document no. IP/C/W/308/Rev. 1, 2 Oct, 2001) Bangladesh along with other developing and developed countries such as Bulgaria, Cuba, The Czech Republic, Georgia, Hungary, Iceland, India, Jamaica, Kenya, The Kyrgyz Republic, Liechtenstein, Moldova, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, and Turkey proposed for extension of the protection of Geographical Indications for wines and spirits to Geographical Indications for other products. They argued that GI extension would enable consumers:

clearly and quickly [to] determine whether the product they want to purchase does in fact originate from the territory referred to by the geographical indication as well as whether that product will actually have the qualities, reputation and other characteristics that are essentially attributable to its geographical indication.... Consumers are entitled to a real choice based on correct, distinctive indications.⁴⁶

Bangladesh supported this proposition because it can benefit from extending GI protection of food items. GI protection is relatively impersonal. The protected subject matter is related to the product itself and is therefore not dependent on a specific right holder. As stated before, the GI offers protection and benefit opportunities for local communities to control the productions, branding and marketing of their products. Bangladesh has diverse agricultural products and the country is rich in crafts, cultural heritage, and traditional knowledge. These rich crafts and agricultural products are indigenous to its communities and groups of people who need legal recognition in order to maintain their heritage. As a result, GI can offer necessary protections for these resources and foster economic and social development for the country. Bangladesh can reap benefits from its GI products and crafts.

The GI legislation in the country can add brand value to the local rural products which have certain special qualities. GI can provide support for the economic and social stability and encourage the expansion of small businesses in the rural areas. Trading on the name and origin of a food can bolster the economy of a local community and improve the income of small producers. GI protection can thus help Bangladesh to differentiate the uniqueness of its products from similar

⁴⁶ WTO, Council for Trade-Related Aspects of Intellectual Property Rights, Communication from Bangladesh, Bulgaria, Cuba, the Czech Republic, Georgia, Hungary, Iceland, India, Jamaica, Kenya, The Kyrgyz Republic, Liechtenstein, Moldova, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, and Turkey, document no: IP/C/W/308/Rev.1,2 October 2001, work on Issues Relevant to the Protection of Geographical Indications Extension of the Protection of Geographical Indications for Wines and Spirits to Geographical Indications for other Products.

competing products originated from other countries. For example, India enacted the Geographical Indication Act in 2009 in compliance with the TRIPS agreement. It is evident that India has registered Jamdani saree, Fazli mango and Nakshi kantha as geographical indicative products of India. According to the Geographical Indications Registry of India, Nakshi Kantha was registered as a GI product in 2008, while Fazli mango and Jamdani Saree were registered in 2009.⁴⁷

Bangladesh can initiate several steps at the national and international levels to establish GI protection. At the national level Bangladesh can follow India's footsteps and enact special GI Act to establish its exclusive rights over its foods and products. Bangladesh has to register its food and products under its GI Act given the basic fact that such products should be able to indicate specific place, or region of production, that determines the characteristic qualities of the product which originates from that place. The community owners of these products will be encouraged to prove a specific "link" which exists between the products and their original place of production. As for example, Bangladesh can register Jamdani as Dhakai Jamdani which has been registered in India as Uppada Jamdani. In India Uppada Jamdani has registered to identify such unique handicraft item which is produced in the Andhra Pradesh state. Therefore, Dhakai Jamdani in Bangladesh as registered GI product can easily be identified by the consumers as a unique handicraft item made by Bangladeshi handloom workers. Protection of Dhakai Jamdani under GI protection is necessary for the preservation of cultural heritages, traditional knowledge, and community ownerships.

Like Dhakai Jamdani, Bangladesh can also register Fazli mango as Rajshahi Fazli Mango. In India the Fazli Mango has been registered as Maldah Fazli Mango of West Bengal. If Bangladesh registers Fazli Mango as the Mango of Rajshahi, this will not contradict with the Indian claim. The GI Act therefore will help local community producers to differentiate the uniqueness of the products from similar competing products originated from other countries. This Act will also ensure exclusive rights over Bangladesh's local food stuff, handicrafts and traditional knowledge as well as prevent others from using the name, logo and marks which exclusively identify Bangladesh's origin of products. By using GI Act, Bangladesh can assert sovereign rights over its

⁴⁷ A.B. Siddique, "Bill passed to protect local products' patent rights", *The Daily Dhaka Tribune*, November 7, 2013, available at: www.dhakatribune.com/bangladesh/2013, accessed on 04.03.2014.

products and provide evidence of these products' historical, cultural and geographic roots in the country. The GI Act can also establish brand value and goodwill of locally produced products, set high value and increase sales by protecting reputations of the products.

So far Bangladesh included seventy three products under GI in which fifty two are food products and the remaining twenty one are non-food products. Food products include three fish items, twelve fruits, fifteen processed foods and sweets, fourteen agricultural products and eight types of vegetables. These food products are mostly produced by the rural communities in Jessore and Chittagong districts.⁴⁸ The GI protection on food items in Bangladesh will certainly increase the level of food safety as many of food items are produced by traditional methods in small scales. These methods are pre-dated and out of modern technology and quality control measures. As these food products are produced at in-house facilities and concentrated in small and cottage industries, the issues of quality and taste need to be emphasized. Salt and heat are the principle means for controlling pathogens. For example, their time and temperature controls are based on years of experience rather than laboratory analysis. These practices can be carried over into the approval of a geographical indication. From the economic point of view Bangladesh can get benefits from product differentiation through GI.

Under the GI, a product can be differentiated from its generic and thus becomes a tightly controlled commodity. Some consumers express a preference and a willingness to pay a higher price for such a unique product. The GI can establish a monopoly of Bangladesh over some food items. This monopoly will provide levers to Bangladesh in establishing control over the supply of the product and can be a great source of revenue when used correctly. Bangladesh must provide product information and create awareness among the consumers from different parts of the world to ensure GI protection. Such information sharing can create greater demand for the attributes and qualities of the traditional products originating in the country.

The 2013 Geographical Indication (Registration and Protection) Act in Bangladesh includes a preamble and consists of ten chapters, forty-six sections, eighty-five sub-sections and two provisions. According to this Act the authorized users of GI refers to the producer or collective organization of

48 FAO, Rural Development and Agri-food Product Quality Linked to Geographical Origin in Asia, Proceedings from the Technical Consultation, 8–10 June 2009, Bangkok, available at: www.foodquality-origin.org, accessed on 23.3.2014, p. 43.

producers or cooperative societies which are registered as the producers and users of such GI products. The registration of GI gives its registered owners and authorized users the right to obtain relief for infringement. The GI Act in Bangladesh defines producers of geographical indication products who in order to sell and trade:⁴⁹

- Produce agricultural product;
- Collect products from the nature ; and
- Prepare handicrafts and industrial goods.

The GI law deals exclusively with the community ownership of goods, and not with the individual ownership. Section 2 (9) of the GI Act, stipulates that geographical indication identifies:⁵⁰

such foods as agricultural goods or natural goods or manufactured goods as originated or manufactured in the territory of a country or a region or locality in that territory, where a given quality, reputation or unique characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or a processing or preparation of the goods concerned takes place in such territory, region or locality.

The section clearly articulates the fact that geographical indications (GI) is a sign which defines the special qualities, reputations, tastes, production methods and know-how which adds special characteristics, source and contains the goodwill of a product that originated in a particular area such as the Fazli mango from Rajshahi, Hilsha fish from Padma, Chamcham sweets from Tangail, Kanchagolla dessert from Natore and Jamdani saree from Dhaka. Therefore, if any country tries to registrar any GI products of Bangladesh then the government or the producers can go to the WTO dispute settlement panel or to the TRIPS council for litigation.

According to the law, a separate unit will be formed under the Ministry of Commerce's Department of Patent, Design and Trademark (DPDT), to deal with issues related to the GI products. Manpower from DPDT will form the GI Unit and the Registrar of DPDT will serve as the Registrar to lead the GI Unit. Under this law the Registrar of DPDT is required to classify goods in accordance with the International Classification of Goods for the purposes of the registration of GI. The special GI unit will conserve a detailed list of the GI products from across the country as a primary database of the local products.

⁴⁹ Geographical Indication (Registration and Protection) Act, Bangladesh Gazette, November 10, 2013, No. D.A-1, p. 9682.

⁵⁰ *Ibid.*

According to the law, products need to be registered to receive GI protection. The association or the co-operative for a product will have to apply. Under this law, no individual can register a product. The Act will ensure the quality of Bangladesh's traditional products and protect against indiscriminate replication. The validity of a registered GI product will remain for five years. The GI product can be re-registered within the period of three years after the expiry of registration. Therefore, producers would have to apply for re-registering after the validity expires. According to the law, if any party opposes the registration of a product then it will have to file complaint with the GI wing within sixty days from the date of the newspaper circular. Under this Act (Art. 18) the right holder holds the right to use the name of GI product. Such GI product cannot be licensed, deposited and under agreement without the permission of the right holders. If someone violates this right, right holders have access to a number of remedies.⁵¹

The GI Act of Bangladesh also includes remedies and punishment in regard to the false use, unfair competition, misleading consumers, and free riding on already registered GI products. In this regard, any person or organization will be punished with three years of imprisonment and BDT 200,000 fines for producing, transporting, storing and selling of a particular geographical indication product by providing false and fabricated information.⁵² Similar punishment will be charged for the marketing of a particular registered product, and for breaching the conditions of the registration as a geographically indicative product.

According to the GI law (Article 13, 3), registration of GI product can be denied by the authority given that such product can be fallen under the definition of geographical indication, contrary to public morality and religious sentiments. Article 21 in section 5 of the GI Act of Bangladesh includes provisions regarding trademark and geographical indication. Under this Act, any trademark license can be cancelled given that the trademark which indicates a specific product in reality does not originate or produce from the specific geographic area, region or locality. This provision is highly linked with the EU-led GI norms and standard. The authority can also cancel the trademark license if such mark mislead and can create confusion among the consumers about the origin of the specific product. However, the GI Act of Bangladesh grants the validity of the trademarks of GI products. Article 22 of the Act stipulates that producers

51. *Ibid*, p. 9687.

52. *Ibid*, p. 9693.

can preserve some old trademarks which are used to identify GI products given that such marks were adopted before the inaction of GI law in Bangladesh and done in fair trust.

Bangladesh can get benefit from using GI Act in the international trade. The GI Act of Bangladesh is only applicable at the national level. Therefore, to promote GI protection at the international level, Bangladesh needs to join international conventions and treaties on GI protection. Bangladesh needs to be the member of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. In this way, the country can place absolute claims to its products which will be respected and protected by other countries. Also as member of the World Trade Organization (WTO), Bangladesh can use Articles 22-24 of TRIPS agreement to prevent misuse of its geographical indication products by other countries. Bangladesh can lodge complain at the WTO Dispute Settlement (DSB) body against any member countries which allegedly misuse Bangladeshi GI products.

Conclusion

In an increasingly integrated and competitive global market, countries should establish their rights over their own products. Success in international trade depends largely on the product differentiation from their sources of origins. In this context, GI provides opportunities for the agro-based developing countries which produce goods with unique physical and cultural attributes. These products have the potential to translate into distinctive items and, therefore, to become highly valuable commercial assets. This paper argues that conventionally, intellectual property rights include copyright for original works of authorship, trademark for protection of signs and symbols identifying a product of specific company, industrial designs, and patent to protect new inventions. Apart from these rights, geographical indication has been developed as an intellectual property right to identify and protect product with specific geographic region.⁵³

Given the commercial values of GI products both developed and developing countries have been trying to adopt GI legislation at the national and international levels. Instead of promoting trademark and certification mark models, many countries have been advocating for adoption sui-generis GI

53 S. Nyakotoyo, "The Protection of Geographical Indications in Zimbabwe: An Overview of the Relevant Legislation, Institutional Framework and Mechanisms", *The Journal of World Intellectual Property*, Vol. 16, No. 3-4, 2013, p. 189.

protection. Since the Paris Convention in 1883 several international conventions and treaties have been adopted to promote GI. Among them most notable are the 1958 Lisbon Agreement for the Protection of Appellations of Origin and the International Registration, and the 1994 Trade Related Aspect of Intellectual Property (TRIPS) of WTO. The TRIPS agreement is legally binding to all its members. The TRIPS leaves the opportunity to its members to extend GI protections. Following the TRIPS agreement, many countries have enacted national GI laws to establish sovereign rights over their products. An estimate shows that there are currently 10,000 protected GIs in the world with an estimated trade value of over US\$50 billion.

Interestingly ninety percent of these come from the developed thirty three countries of the Organization for Economic Co-operation and Development (OECD). From the developing countries perspectives, GI Act is highly beneficial for their social-economic development. Bangladesh enacted the GI Act in 2013 to ensure exclusive intellectual property rights over its foodstuffs, handicrafts and traditional knowledge. The development of GI mechanism and enforcement is expensive. Bangladesh should develop skilled manpower and institutions to foster GI registration process at the rural level. Skilled manpower is highly required to help rural communities which are GI owners in terms of litigations, dispute settlements, and negotiations. On the other hand, for effective implementation of GI law Bangladesh needs extensive activities regarding product recognition, marketing and sales. Marketing involves branding activities which require community level production and branding strategy, advertising and worldwide awareness programs. Also like other intellectual property right laws, the 2013 GI Act is a national legislation. Therefore, Bangladesh has to seek its GI protection in each nation state which also requires extensive negotiations and diplomatic efforts to seek GI protection worldwide. The country has already a well defined GI Act. A long-term implementation process of GI Act can help Bangladesh to establish intellectual property rights over its food, handicrafts and cultural heritages.