

# Yashil IQTISODIYOT va TARAQQIYOT

Ijtimoiy, iqtisodiy, siyosiy, ilmiy, ommabop jurnal

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# THE CONNECTION OF LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS AND STATE'S ECONOMIC GROWTH

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**Abstract:** This article analyzes the position of geographical indications (hereafter – GI) in intellectual property law and in legal sciences at large, along with the necessity of their legal protection as a contentious object of intellectual property rights in broader context. It includes the debate over whether GI protection is justifiably provided by existing international agreements, mainly TRIPS agreement and comparative analyses are conducted between GI and other IP objects in order to explain why they need protection. The focus is put on overall legal status of this object in national IP systems of Central Asian countries and problematic issues to adopt TRIPS agreement's rules on GI upon acceding the WTO, specifically the second part of the article reviews current state of national legislations of countries, compares their norms and enforcement procedures, national approaches taken by CA states and current perspectives according to their foreign policy priorities.

**Key words:** Intellectual property, Geographical indications, appellation of origin, IP rights enforcement, compliance with international agreements, TRIPS Agreement.

**Annotatsiya:** Ushbu maqola geografik ko'rsatkichlarning (keyingi o'rinlarda - GI) intellektual mulk huquqidagi va umuman yuridik fanlardagi o'рни, shuningdek ularni intellektual mulk huquqlarining bahsli ob'ekti sifatida huquqiy himoya qilish zarurati kengroq kontekstda tahlil qilinadi. U GI himoyasi amaldagi xalqaro shartnomalar tomonidan asosli ravishda ta'minlanganmi yoki yo'qmi, asosan TRIPS kelishuvi va GI va boshqa IP ob'ektlari o'rtasida nima uchun himoyaga muhtojligini tushuntirish uchun qiyosiy tahlillar o'tkaziladi. Ushbu ob'ektning Markaziy Osiyo davlatlarining milliy IP tizimlarida umumiy huquqiy maqomi va JSTga a'zo bo'lgandan keyin GI bo'yicha TRIPS kelishuvining qoidalarini qabul qilishning muammoli masalalariga e'tibor qaratilgan, xususan, maqolaning ikkinchi qismida mamlakatlar milliy qonunchiligining joriy holati ko'rib chiqiladi, ularning normalari va ijro tartiblarini, CA davlatlari tomonidan qabul qilingan milliy yondashuvlarni va tashqi siyosat ustuvorliklariga muvofiq hozirgi istiqbollarni solishtiradi.

**Kalit so'zlar:** Intellektual mulk, Geografik ko'rsatkichlar, tovar kelib chiqqan joy nomi, IP huquqlarini ta'minlash, xalqaro shartnomalarga rioya qilish, TRIPS kelishuvi.

**Аннотация:** В статье анализируется положение географических указаний (далее – ГУ) в праве интеллектуальной собственности и в юридических науках в целом, а также необходимость их правовой защиты как спорного объекта прав интеллектуальной собственности в более широком контексте. В статье рассматриваются дебаты о том, обоснованно ли защита ГУ предоставляется существующими международными соглашениями, в основном соглашением ТРИПС, и проводится сравнительный анализ между ГУ и другими объектами интеллектуальной собственности, чтобы объяснить, почему им нужна защита. Основное внимание уделяется общему правовому статусу этого объекта в национальных системах интеллектуальной собственности стран Центральной Азии и проблемным вопросам принятия правил соглашения ТРИПС в отношении ГУ при вступлении в ВТО, в частности, во второй части статьи рассматривается текущее состояние национальных законодательств стран, сравниваются их нормы и процедуры обеспечения соблюдения, национальные подходы, принятые государствами ЦА, и текущие перспективы в соответствии с их внешнеполитическими приоритетами.

**Ключевые слова:** интеллектуальная собственность, географические указания, наименование места происхождения, обеспечение соблюдения прав интеллектуальной собственности, соблюдение международных соглашений, Соглашение ТРИПС.





## INTRODUCTION

Strengthening the connection between territories, their inhabitants and the agricultural and food outputs produced by them is an important in terms of sustainable rural development. This connection arises when products created using local resources can gain special value in the global market due to their continued attachment to their place of origin. Over a time period such products assimilate a certain reputation, associated with their distinctive quality characteristics that are inextricably linked to the place of their production. Science suggests they be called a geographical indication (GI) – as an indicator of a certain geographical territory in all, while legal sciences see it as one of the means of identification of products.

These products can be in special demand and be more expensive. Thus today, products that are traditionally produced in rural areas increase their own value being transmitted from one generation to the next, therefore their legal protection through “geographical indication” means increasing the market value of these products and their introduction to the world economy. Purchasers are more interested in the proper quality of agricultural and food products, such as crop production, distinctive properties and reliable farming practices. On top of that, geographical indications are key to socio-cultural development and poverty elimination in remote areas.

Peculiarity of products with a geographical indication, as a distinguished group of products, the quality of which is determined by their place of origin lies in the combination of such components as climate, soil, local species of animals and plants, traditional practices, etc. and cultural values of a given territory like traditions, skills and abilities. This combination refers to inseparable link with the geographical environment, natural resources, traditional equipment of production and the area where the products produced.

Over time, in the process of joint activities of various parties (farmers, processing enterprises, local consumers, government agencies, NGOs, etc.) within a particular region of production and their interaction with other factors outside (ranging from the impact of the geographical environment on production to processing conditions and/or the specific know-how used in the different stages of production), a certain class of products is formed that are associated with this territory and its inhabitants who produce them. This process involves various participants who coordinate their actions in the field of production and trade.

## LITERATURE REVIEW

The existing narrative focuses on the significance of GIs in developing and least-developed countries. The effects of GI registration has been analysed through a few country-specific (Asian) case studies, and the socio-economic significance of GI protection in these countries has been discussed. The effect of GI registration of products and its impact to economic development of a country has been studied by Lalitha, N & Vinayan, Soumya [1]; Dwijen Rangnekar [2], Rr Aline Gratika Nugrahani [3], Datta S, Manchikanti P, Bhattacharya NS. [4] Lina Monten [5], B. O'Connor [6], Yuldashov A. [7], Irene Calboli and Wee Loon Ng-Loy [8], Cottier, Thomas and Panizzon, Marion [9], Ruth L. Okedui [10], Kal Raustiala and Stephen R. Munzer [11], San, Tay Pek [12]. GIs, as club goods, balance the market by helping consumers to make informed choices. Agricultural and handicraft GIs have been studied to protect traditional knowledge and local communities.

## METHODOLOGY

In this study, a comparative qualitative analysis method was employed. The qualitative data were gathered from both primary and secondary sources, including statutes and scholarly works, for the selected countries. The study examines several parameters: the definition of the term “foodstuff GIs,” the scope of protection for foodstuffs as GIs in the chosen countries, and the similarities and differences in the statutory registration requirements for food products. The evolution of GI protection for foodstuffs is traced through two stages, based on the legislation of the different countries: the laws prior to their accession to the World Trade Organization (WTO) and the legislative approaches adopted for GI protection of foodstuffs in compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The analysis of the pathway towards sui generis protection of GIs, particularly for foodstuffs post-TRIPS, is conducted using information available on the intellectual property websites of the respective countries.

## DISCUSSION

Geographical indication was conceptualized in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and become one of the most contentious intellectual property issues in the WTO and multiple treaties. TRIPS firstly afforded GIs as a separate branch of intellectual property, which are entitled to worldwide protection by virtue of the agreement. TRIPS defines GIs as “indications which identify a good as



originating in a 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.” Furthermore, the World Intellectual Property Organization (WIPO), describes a GI as a “sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin.”

Some scholars claim that the TRIPS is not the first document in international law that included norms directly relating to GIs, but protection for this object of intellectual property was part of the Paris Convention for the Protection of Industrial Property (1883) under a bit different denomination “false indications”. The Madrid Agreement for the Repression of False or Deceptive Indications (1891) is another international treaty to have reviewed GIs as well. Over the 20th century, a third international document the Lisbon Agreement on Appellations of Origin (1958) appeared and regulated the relations in this sphere until the TRIPS was signed.

There are many types of identifiers GIs can represent:

- the product name can be the same as the geographical name of a place or region (for example, Bordeaux or Champagne), or it can indicate the place of origin of the product along with a common name (Colombia coffee, Civito Crioglio del Norte Neukino in Argentina, Pico Duarte coffee, etc.);
- names, symbols or words that are not names of geographical places but the names of local places and people, although they (Feta or Basmati);
- additional place-related elements such as images of mountains or monuments, flags, specific items and folklore symbols;
- special traditional shape and appearance of the product, unique packaging or common element on the label and etc.

In Central Asia, there are several pending cases related to the protection of geographical indications. The consideration and proper implementation of these cases by governments will not only contribute to the sustainable development of agriculture in the countries of the region, but also increase the prospects for cooperation of these countries with foreign ones and, definitely, boost the states' economies. Followings can be included in the list of such cases:

Firstly, the lack of national strategies or public policies to develop and promote GI products with high quality slows down the development of the GI system. Its consequence is amply illustrated in low rate of interest of producers to register their products with some specifics acquired essentially from the place of origin. Quality policy programs that focus on the improvement of GI products are to be developed.

Secondly, there is a wrong approach in distribution of competences in governmental structures in CA countries. For example, in Uzbekistan, the Intellectual property Agency under the Ministry of Justice of the Republic of Uzbekistan, as the main competent authority in regulating GI-related issues does not promote any activities for the identification nor initiate protection GIs. The Agency performs official registrations by verifying that AO registration applications and accompanying documentation comply with the prescribed provisions. And nothing more. The same situation is true for all other countries of the region. In general, it is more of a “mechanical” function of simple GI registration. Whereas a high quality GI product system requires a professional agricultural body to handle the entire process of identification, qualification, product promotion and, in general, the development of conditions for the development of the GI sector. The Ministries of Agriculture should be responsible for all of the above activities and play a key role in the GI system.

Thirdly, lack of the term “geographical indication” in the legislation of countries. In countries of CA region except Tajikistan, only appellations of origin of goods (AOG) are eligible for legal protection. The introduction of both categories of product protection (AOG and GI) into the legal fields of the countries allows manufacturers to register and protect not only products with a very strong link to their place of origin, but also products that do not have such a strong connection. As it is mentioned many times during the article both geographical indications (GI) and appellations of origin (AO) inform consumers about the geographical origin of a product and enjoy the reputation attributable to the quality or characteristics of a product associated with its place of origin. The main difference between them is that the link to the place of origin must be stronger in the case of AO. The quality or characteristics of a product protected as an appellation of origin must be exclusively or mainly determined by its geographical origin, including the natural conditions and (or) human factors.

Fourthly, lack of understanding and knowledge of the GI system, i.e. the lack of information in producers and consumers about the concept, principles and benefits of protected geographical indications. While consumers seem willing to pay more for local quality products, there is little understanding of the added value that GIs create as a guarantee of a certain quality. Producers, in particular small farmers, have little or no understanding of the system. Likewise, the multitude of requirements and bodies involved in this process, as well as the lack of transparent and clear rules and procedures significantly complicate the understanding of the system for farmers and small producers.

Fifthly, lack of branding system to make logos identifying products originated in this region. The region's countries do not have special logos to identify products with protected geographical indications. Logos build



marketing reputation of a product thus guaranteeing its commercial promotion. Therefore, national branding strategy should be part of GI product systems building in these countries. It gives consumers an understanding of the country as soon as they see the product and a sense of connection to that product. This in itself is arguably the most effective method of introducing the country to the world.

The identification and clarification of the relevant control bodies and the establishment of an appropriate oversight model are recommended to be included. To encourage the identification of products to be protected by geographical indications, implementation of measures to prepare for registration and revision of registration fees in accordance with the functions of the institutions identified to work with Protected Geographical Indications will be proper steps to deal with some problematic matters stated above.

World practices show that, the geographical indications' protection brings about many benefits for both producers and consumers at the same time(win-win game), namely secures sustainable food chains by high-quality production systems based on reliable production practices and provides better economic gains, a better distribution of profits, and a competitive advantage in the market, a strengthened brand, and after all, greater export opportunities. For instance, France GI-labelled cheeses are paid a premium of two euros per kilo over non-GI cheeses. In the another case, Nakhonchaisri pomelo fruits is a tropical and subtropical fruit native to Southeast Asia and the main ancestor of the grapefruit. On exporting, the purchase price and quality of pomelo fruits Nakhonchaisri used as a guide for fruits from other regions. Fruits from Nakhon Pathom (identified as the GI area) are sold at premium prices (with a 2-4 baht (a currency of Tailand) surcharge over fruit from Fatchaburi or other areas with almost the same quality characteristics). Supplies from other regions of the country are increasing, but consumers are willing to pay a higher price for fruits rooting in Nakhonchaisri. Thanks to the trust that has been established between exporters and consolidator suppliers over the long years of joint work, it is the latter that act as guarantors that the goods come from the specified region. Another clear example of efficient branding is undoubtedly "Switzerland", which promotes competitive advantage of goods and services and sold at a premium price compared with goods and services from other countries (Swiss products can generally be sold at up to 20% higher prices than similar goods from other countries).

Recent debates over geographical indications and TRIPS involve public health issues as well. These debates have correlations with counterfeited goods, on the one hand, and amendment of production processes of some goods because of pandemic emerged from corona situation, on the other. As we know, TRIPS Agreement requires all WTO Member States to prevent any use of a GI that amounts to unfair competition or is of such a nature as to mislead the public as to the true place of origin. Counterfeited goods are undoubtedly considered to have a direct affect on health and this concern makes member states to refuse or invalidate such misleading violated marks. As long as the reputation and value of a GI product are vulnerable to be counterfeited by lovers of profit at someone else's expense, it is strongly recommended to establish a set of rules at the local level in order to prevent a product from losing its special quality characteristics, to prevent misappropriation of its name and thus not to lose consumer confidence. And over last two years in the light of COVID-19 pandemic European producers of GI, to be exact PDO/PGI-protected products had to modify their production methods, so as to cope with the lockdown restrictions. Such temporary modifications included, for example, the use of frozen milk in cheese production or a change in planting dates, otherwise restrictively defined in product specifications. It has been argued and now being argued that the changes in production methods are being negatively affected the quality of the products that is protected under EU's regime.

In terms of Central Asian countries, they are still discovering geographical indications (GIs). The number of registered GIs is quite few and taking into account the fact that GIs have been introduced in the region quite recently(not in all states yet) and the absence of national strategy of promoting them this small number is not surprising. The lack of awareness of farmers on benefits of obtaining legal protection for GIs remain the biggest challenge in GIs' low rate of marketing.

## CONCLUSION

A product whose unique features are associated with its place of origin can become the starting point for launching a successful cycle of specialization of the territory in the production of products with special quality characteristics. GI product promotion can have an increasing effect over time, which will help preserve the agrofood system and the social foundations associated with it. Its positive impact on the economic, socio-cultural and environmental sustainability is undeniable as far as it increases the incomes and quality of life of producers and rural economy in general; it makes local interested parties take responsibility for the process, take part in the decision-making and promotion of GI products, as a result, their self-identity and pride in their work and their culture, local knowledge and traditions are strengthened; it helps conserve or even enhance local natural resources, in particular biodiversity, landscapes, soil and water resources, for the benefit of future generations.



Obtaining legal protection for GIs is not an end in itself, but an important step towards building a financially successful and sustainable system in the interests of local residents and the entire region. Reaching all parts of the value chain within a single organization is key to managing GIs through marketing tools, tracking product movement from producer to consumer, and ensuring compliance with established standards. In addition, this ensures a high level of responsibility and involvement of both agricultural producers and processing enterprises, creating opportunities for technical and managerial innovations in the interests of sustainable development of the system.

Additionally, Geographical Indications could be part of tourism industry of the region where the flow of visitors is likely to grow with increasing number of wine and food routes and traditional craft fairs. There is will be a harmony of rural and agrarian tourism, the economic benefit and added value of which undoubtedly contribute to improvement of the living standard of locals. After all, promoting products protected as geographical indications in the foreign markets help regions' wider recognition. Registration solely can not guarantee the protection of geographical indications. This process should be accompanied by conducting a series of institutional (structural and information) transformations in IP system.

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# Yashil

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