



**THE GEOGRAPHICAL INDICATIONS OF GOODS: SIGNIFICANCE,  
IMPLEMENTATION CHALLENGES AND NEEDED INITIATIVES FOR  
BANGLADESH**

**RESEARCH REPORT**

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## ACRONYMS

AO: Appellation of Origin

BOR: Book of Requirements.

CoP: Code of Practice

CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora

CM: Collective Marks

CTM: Certification Trade Mark

DPDT: Department of Patents, Design and Trade Mark

EPB: Export Promotion Bureau

FBCCI: Federation of Bangladesh Chambers of Commerce and Industry

FDI: Foreign Direct Investment

GI: Geographical Indication

IP: Intellectual Property

IPR: Intellectual Property Right

LDC: Less developed Country

MoC: Ministry of Commerce.

ODOP: One District, One Product project

PDO: Protected Design of Origin.

PGI: Protected Geographical Indication

TM: Trade Mark

TRIPS: Trade Related Aspects of Intellectual Property Rights

WIPO: World Intellectual Property Organisation

WTO: World Trade Organisation

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# Geographical Indication of Goods: Significance, Implementation Challenges and Needed Initiatives for Bangladesh

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## ***Abstract***

*This research examines four main issues: the significance of GI, the potential GI products, the role of private sector growers/producers in getting GI protection for unique products and the management challenges in the implementation of Geographical Indications of Products (Registration and protection), 2013.*

*A qualitative research design was adopted in conducting the research. Primary data were collected mainly through in-depth face-to-face interview and focus group discussions. Secondary data were collected from various published sources and web-based resources.*

*The study finds that there remains immense economic and social rationale for GI protection. GI protection helps the producers/growers to differentiate their products from competing products and they often command premium pricing for GI products. GI also helps them in building brands, enjoy consumer confidence and have improved market access. GI protection is also found to promote socio-economic development, attract FDI and access foreign markets.*

*It has been found that there are many unique natural, agricultural and manufactured goods that deserve GI protection. This study identifies 45 potential GI products including Jamdani, Hilsha fish, Curd of Bogra, Lengra Mango, Fazli Mango, Gopalbhog, Kataribhog (rice), Tangail Saree, RasMalai of comilla.*

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*Among the management challenges, this study identifies three main challenges: First, lack of awareness (among producers, processors, growers, manufacturers and public sector officials including researchers and trade bodies) about the importance of GI protection and the procedure to be followed in getting GI registration; Second, lack of human resource capacity in the DPDT/regulatory body to deal with GI issues and Third, lack of authentic historical evidence/database to substantiate GI claim/protection on unique products of Bangladesh. Having a well-crafted quality control (verification/inspection<sup>3</sup>) system in place to ensure quality and consistency of quality over GI products is another vital challenge for the producers/producer associations and the regulatory body.*

*The study concludes with some recommendations and policy implications. The limitations of the study are also mentioned in the report. The limitations include (a) lack of adequate descriptions of uniqueness of the potential GI products and (2) the list of potential GI products is not comprehensive.*

**Keywords:** Geographical Indications, Trade Marks, Homonymous GIs, Jamdani, TRIPS, Lisbon Agreement, WIPO, Verification, Reputation, Paris Convention

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<sup>3</sup> Inspection refers to a systematic examination to verify conformity with a specified standard, carried out by a public authority or a party invested with equivalent authority. It also refers to verification carried out by stakeholders themselves: (1) self-inspection carried out by each stakeholder of his or her own practices (record-keeping); or (2) internal inspection carried out by the organisation for each of its members (FAO, 2010, p. 188).

## CHAPTER 1 INTRODUCTION

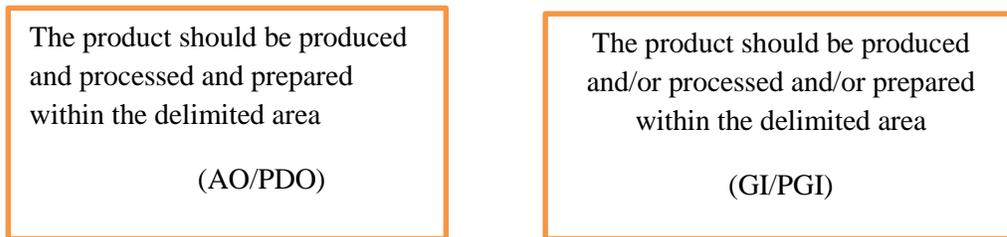
### 1.1 Introduction

Geographical Indication (GI) identifies a good as originating in a particular region, where a specific characteristic and quality of the good is attributable to its place of origin (i.e. to its geographical environmental factors including the nature, people skill or both). A GI identifies not just a geographic area but a product linked to it. The essence of GIs is that specific geographic locations yield product qualities that cannot be replicated elsewhere. For example, champagne cannot be manufactured in any place other than the Champagne District of France (even though the grapes used are the same kind). As the *place* is said to be essential to the *product*, proponents argue that producers outside a specified region cannot be permitted to use its place name in marketing and on product labels. Renowned GIs include “Champagne”, “Tequila”, “Roquefort”, *Darjeeling (tea)*, *Basmati Rice*, *English STILTON cheese (protected with PDO mark<sup>4</sup>)*, *Antigua Coffee* and ‘*Feta*’ (Raustiala and Munzer, 2007, WTO website). The lobster of Juan Fernández is registered as a geographical indication in Chile in 2011 (Benavente, 2013). Other GIs are in the pipeline for registration in Chile: tuna fish from Easter Island. All these are named after a place except Feta. This is because the name Feta is so closely connected to Greece as to be identified as an inherently Greek product. This example indicates that non-geographical names can also be protected if they are linked to a particular place. Apart from non-geographical names, use of animals (e.g. Panda beer), buildings (e.g. Pisa silk), and well-known personalities (e.g. Napoleon brandy, Mozart chocolates) as distinctive signs indicating geographical origin (while at the same time signaling a certain quality or reputation) can also be used as GIs (Rangekar, 2004). The name of the country ("territory") could be used as a GI. It could be the designation as a noun or in its adjective form. For example, "Ceylon" in Ceylon tea, "Colombia" in Café de Colombia, "Swiss"

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<sup>4</sup> The certification mark STILTON is used in relation to a rich qualified cheese made in Leicestershire in the English Midlands. Proprietors of cheese made in Stilton, a village in Huntingdonshire, cannot be prevented from using the GI “Stilton” on their products.

and “Swiss Made”<sup>5</sup> for watches<sup>6</sup>. GI is different from Appellations of Origin (AO)<sup>7</sup>. In the case of GIs, “The given quality, reputation or other characteristics [...] is essentially attributable to the geographical origin”. As for appellations of origin, “the quality and characteristics are due exclusively or essentially to the geographical environment, including natural and human factors”.



**Figure: Difference between AO and GI**

One important feature of GIs (that differentiate it from other IP assets) is that benefits are shared, and non-rival, or, at most, partially rival (because benefits to right-holders might decrease due to dilution of the GI). Free-riding by “insiders” (i.e. right-holders), through cuts in quality, may also entail dilution of the GI and partial rivalry of benefits. Any producer established in the delimited (i.e. GI area) area that meets the product specifications may label his/her product with the GI, i.e., a GI may be used by a number of different producers, which we can call “insiders”. A GI is protected from its unlawful utilisation by non-right holders; free-riding by “outsiders” might be even more damaging to the goodwill of GI legitimate producers; especially if the “*passing-off*” is somewhat legal (until Chile negotiated with the EU, the marketing of “Champagne made in Chile” was TRIPS-legal, on the basis of the *grand-father clause, Article 24.4, for example*). (Benavente, 2013).

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<sup>5</sup> The terms “SWISS” and “SWISS MADE” are geographical indications denoting the place of origin of high-quality watches, clocks, and alarm clocks manufactured in Switzerland and bearing the respective trademarks of their producers or distributors. [ *SWISS WATCH INTERNATIONAL, INC. v. FEDERATION OF THE SWISS WATCH INDUSTRY: THE TTAB’S UNWITTING MESSAGE FOR GEOGRAPHICAL INDICATIONS?*, 2012]

<sup>6</sup> As per the Ordinance governing the use of the appellation of “Switzerland” or “Swiss” for watches of December 23, 1971 (status as of July 1<sup>st</sup> 1995), a watch is considered to be Swiss if: (a) its movement is Swiss; (b) its movement is cased up in Switzerland and © the manufacturer carries out the final inspection in Switzerland. A Swiss Ordinance of December 23, 1971, governs the use of the appellation “Switzerland” or “Swiss” for watches. This law sets out the conditions under which these indications can be used on watches. As stated on the Federation of the Swiss Watch Industry’s website, the understanding is that “Swiss quality for watches depends on the amount of work actually carried out on a watch in Switzerland, even if some foreign components are used in it”. (WIPO publication no. 952).

<sup>7</sup> For example, in Europe, the rules for the delimitation of area regarding the choice between a PGI (Protected Geographical Indication) or PDO (Protected Designation of Origin) are defined as follows:

- PGI: At least the most important stage of production takes place within the area.
- PDO: All the production stages take place within the territory (all ingredients should normally originate from the delimited area, except secondary ones like salt and other ingredients or resources that cannot be produced and/or were never produced in the delimited area).

## Many forms of GI in the national level

The TRIPS Agreement contains a clear triple distinction in the level of protection for (i) GIs related to all products; (ii) wines and spirits; and (iii) wines only. The provisions of the TRIPS Agreement relating to Geographical indications concern only goods; they do not cover services, concepts or symbols. GIs by definition will benefit many producers located in a certain area. The GI system covers not only names but also signs or representations that evoke a geographical origin or place in relation to a product and meets the requirements under Article 22.1; in particular there must be a link between the unique qualities of the product and the place (the place alone can provide the qualities).

In the national level, protection of GI could be in many forms such as a *Collective Mark*<sup>8</sup> or a *Certification Mark* as GI. A Collective mark is a mark which may be used only by members of a collective body. Such a body can be an association or cooperative manufacturers, (through joint/combined research) producers or traders. The Collective mark is owned by the association. The association exclusively grants its members to use it. Once a GI has been registered as a Collective Mark, the association has the right to prohibit others (who are not a member) from using the GI. Generally, the use of Collective Marks is governed by rules.

Another form of GI is certification Marks. Certification Marks are not owned by a collective body such as a producer association or cooperative society but by a certification authority. Such an authority may be a local councilor or a commission which is not engaged in the production or the trade of the product concerned. In this case, the owner of certification marks must ensure that the goods bearing the certification mark possess a certified quality. Once a GI has been registered as a certification mark, everybody may use it under a condition that its products should meet a certain quality standard.

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<sup>8</sup> Collective marks (CM) are registered in the name of a collective entity such as an association of producers, manufacturers and traders and service providers. Thus, unlike ordinary trademarks that distinguish the goods or services of one person (i.e. the owner of the mark), from those of others, a collective mark distinguishes the goods or services of members of an association of persons (i.e. the proprietor of the mark) from those of others. Membership in the association gives the right to use the collective mark. The applicants for a CM may be required to specify the persons authorised to use the mark; the conditions of membership of the association; and the conditions of use of the mark, including any sanctions against misuse (Das, 2008, p. 474).

## 1.2 Background of the Study

Countries across the globe have their own unique/traditional products. Some of these goods are globally renowned for their quality, reputation or unique characteristics. Often these unique goods having good reputation have an origin-quality nexus, i.e. the given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. GIs are, first of all, signs and indications, necessarily linked to a particular territory.

For instance, Mexican Tequila, Basmati (Rice) of Pakistan and India and Champagne of France possess unique characteristics and quality reputation. These unique products are often protected by countries as an intellectual property of the concerned country under Geographical Indication or Appellation of Origin. The concept of GI/AO has been recognized in international conventions. The Paris Convention (1883) was the first multilateral agreement, which included “indications of source or appellations of origin. The **Madrid Agreement** for the Repression of False or Deceptive Indications of Source of Goods (1891) is specific to indications of source. **Lisbon Agreement** provides for AI for GI products among its member countries. **WTO TRIPS Agreement** is the latest agreement that provides for protection of GI.

Although Bangladesh has considerable products with unique characteristics, Bangladesh is yet to protect any of its unique products under GI due to the lack of a GI law. Of late, Bangladesh enacted its GI Law 2013 and GI Rules, 2015. Enactment of the GI law and Rules have paved the way for Bangladesh to protect its reputable products under GI. Against this backdrop, this study is aimed at gathering necessary insights and data with a view to support policy makers and GI producer associations with necessary inputs in their endeavour to register products under GI.

## 1.3 Objective and Scope of the Study

The objectives of this study are:

1. To provide a basic understanding about Geographical Indications with reference existing provisions on GI in the TRIPS agreement.
2. To Identify the economic rationale of having GI registration

3. To Identify the products of Bangladesh for which Bangladesh should seek protection under GIs
4. Obtain an idea about the costs for seeking protection (registration) under GIs.
5. What role private sector can play in providing necessary data/background information for having GI registration internationally?
6. Key Challenges in the Management of GI Act, 2013 in Bangladesh.

#### **1.4 Organization of the Study**

This study is divided into five chapters. *Chapter one* discusses the background, objective and scope of the study. *Chapter two* (Literature Review) contains concept of GI, its importance and historical developments of GI regulation as are found in the WIPO and the WTO documents, and main provisions of GI in the TRIPS. This chapter discusses the WTO debate of the extension of the protection under GIs art 23, for other products than wines and spirits, from the beginning of the Doha round till date.

*Chapter three* contains the methods of data collection for this study.

*Chapter four* contains findings of the study. This chapter discusses economic rationale of GI, costs of registration of GI, the possible products for which GI may be sought for, with a focus (detail description) on three major renowned Bangladeshi products namely JAMDANI, NAKSHIKANTHA and HILSHA FISH of PADMA. The role of private sector producer associations in claiming registration under GI is also discussed in this chapter.

*Chapter five* discusses major challenges in managing/implementing GI Law, 2013 coupled with few suggestions on Bangladesh's Strategy to have GI registration internationally. This chapter reviews the various possibilities and their feasibilities regarding the ways and means to undertake a Bangladeshi global GIs policy, focusing on three key points: (a) Should Bangladesh be a Lisbon Member and then try to have GI registration through Lisbon System, (b) Is there any risks in progressing through Lisbon and (iii) how to proceed with GI issue in the current WTO-TRIPS debates on the extension of Article 23 and on all the GIs' issues.

*Chapter Six* concludes the research report with limitations of the study. Also, a possible Action Plan is proposed to the public and private stakeholders with a view to having a meaningful and effective GI regime in Bangladesh.

## **CHAPTER 2: LITERATURE REVIEW: GEOGRAPHICAL INDICATIONS**

### **2.1 Introduction**

This chapter provides a brief history of Geographical indications including an account of International Conventions/ Regulations on Geographical Indication of goods. Geographical indications have a longer history. Brick-makers in ancient Egypt used GI to indicate the origin-related resistance of the bricks and stones with which pyramids were made. They were also used in ancient Greece as symbols of quality for wine from the island of Thasos (Grote, 2009 p. 96).

### **2.2 GI Provisions under TRIPS Agreement**

Geographical Indications serve to recognise the essential roles played by geographic and human know-how and/or climatic factors in the quality of certain products. GI helps the producers to differentiate<sup>9</sup> their products from competing products in the market. It thus enable build a reputation for their products. From consumers' point of view, GIs act as a signalling device linking a product, its quality/characteristics and reputation with its geographical origin (Das, 2008).

**GI and TRIPS Agreement:** As stated earlier, Under the TRIPS Agreement, a GI may not necessarily be the name of a geographical place on earth; Traditional names can also be used as GIs. For example, "Basmati" is taken to be an indication for rice coming from the Indian sub-continent, but it is not a place name as such (Blakeney, 2012). GI consists of symbols without naming the place of origin, e.g. Eiffel Tower for Paris or the Tower Bridge for London. Therefore, non-geographical place names or emblems would fall into the category of signs that could constitute GIs under the TRIPS agreement (Canavari et. al, 2009). For example, Jamdani is a traditional Bangladeshi origin product while Jasmine is Thai rice.

Geographical indications (GI) are a form of Intellectual property specified in Article 1.2 of the TRIPS Agreement. Such intellectual property rights are private rights as set out in the Preamble of the Agreement. It is notable that under the TRIPS Agreement a geographical

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<sup>9</sup> Historically, in a range of professions (e.g. carpenters, stone masons, tile manufacturers, potters, printers), the distinctive sign helped distinguish products and protect goodwill with consumers (Azmi et al., 1997).

indication to be protected has to be an indication, but not necessarily the name of a geographical place on earth.

As these examples suggest, nearly all valuable GIs relate to agricultural products – and many are European in origin. According to Bangladesh GI Act, 2013, GI can be claimed for three types of goods:

1. Agricultural goods;
2. Natural goods
3. Handicrafts/industrial goods<sup>10</sup>;

There remains some confusion as to whether industrial goods are eligible for GI protection. In order to make the matter clear, it is noteworthy that the laws of various countries in their respective legislations include agricultural goods, manufactured goods, natural goods, and even goods of industry protectable as GI. Article 22.1 of the TRIPS Agreement also does not define the scope of “goods” that can be protected as geographical indications; TRIPS have left it to the member countries of the WTO to determine the same. For example, Section 3(f) of the Indian Geographical Indication of Goods (Registration & Protection) Act, 1999 defines “goods” as “any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes foodstuff.” Section 2 of the Malaysian Geographical Indications Act, 2000 defines “goods” to mean “any natural or agricultural product or any product of handicraft or industry.” Thus it is clear that industrial goods can also be protected as GI.

Usually any registered associations or organisation representing the interest of the producer, any government agency or authority are eligible to apply for registration of GI. Under some systems, the GI belongs to the state/public authority administering the area identified by GI. In such case, producers in the area are entitled to use the geographical indication. Bangladesh Act on GI (Act of 2013) has provisions for Government to apply for GI registration.

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<sup>10</sup> Some analysts view that industrial products are not eligible for GI. This observation has merit where where no local input or artisanship is used. Some EC member states provide special protection of particular geographical names of industrial products. For example, German law protects geographical indication of cutlery, scissors, knives, razorblades etc. Switzerland, in addition to food products, has specific legislation for the use of geographical indications for watches. It is the ordinance of 23 December, 1971 on the use of the indication “Switch Made” on watches. (Connor, 2004).

In the case of registration under GI Law, at times, dispute is seen between two government entities or two States as to the true origin of the good. For example, ***In the Rusgulla Case- West Bengal and Odisha are in a legal fight to win the GI status.*** Odisha government started the process of seeking GI status for the rasgulla made in Pahala. But West Bengal claims it to be their product. From west Bengal, KC Das Pvt. Ltd says, “*we have all the documents supporting the fact that our ancestor NC Das invented the rasgulla. We will soon bring out a booklet substantiating our claim* (Times of India, 2015).

GI rights are given to a community /or producers association for their unique products. In some cases, a government department/regulatory board can be the owner of GI<sup>11</sup>. For example, (who is the owner of Indian Darjeeling tea) Tea Board of India is the owner of geographical indications in the DARJEELING word and logo under the GI Act 1999. The same word and logo are also registered as certification marks of Tea Board<sup>12</sup>. In 2008, the government of Nagaland applied for and received Geographical Indicator (GI) status for what it calls the ***Naga Mircha***, (known as *bhut jalokia*) and the Assam government is working on the same (Gulab, 2015)<sup>13</sup>. However, there are cases where there is no owner of GI. For example, there is no owner of GI in French; every producer is entitled to use GI he/she complies with the GI requirements.

The TRIPS agreement and the Paris Convention for the protection of Industrial Property have the same objective in relation to GI. The objective of GI is to protect consumers from

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<sup>11</sup> “GIs are protected through a wide variety of approaches in different jurisdictions, and often by a combination of two or more methods. Protection under laws against unfair competition and protection as a *sui generis* right, collective mark or certification mark are generally the modes of protection made available in different jurisdictions. *Right owners* may use the means available in the jurisdiction of interest and, where more than one mode of protection is available, they will need to determine which option is most suitable to their needs.” (WIPO, n.d. p.37)

Although the aforesaid quote of the WIPO mentions about the right owner, some GI practitioners/experts are of the opinion (as raised in the seminar held on 20 Aug in Dhaka Chamber) that there is no owner of GI. (Reference: WIPO, Geographic Indications, an Introduction; WIPO Publication 952). Here right owners means ‘authorised user’ (Mr. Ilias Bhuiyan, DD, DPDT)

<sup>12</sup> Use of the DARJEELING word and logo are protected as Geographical Indications in India and as Certification Trade Marks in UK, USA and India.

<sup>13</sup> Kushalrani Gulab, (2015). The hottest chillies in the world!, [Hindustan Times](#), New Delhi

deceptions and to protect certain products of certain regions against misappropriations. Due to the enactment of the TRIPS agreement, international protection of GI have become an important issue because GI is increasingly recognized as marketing tools in global economy (Uddin, 2012 p.119).

According to Article 1.1 of the TRIPS Agreement, Members are free to establish in their national systems their own criteria for determining eligibility criteria for protection of GIs within the parameters of Section 3, (part II) of the TRIPS Agreement. In the case of GIs, governments must provide means to prevent the use of any geographical indications that mislead consumers as to the origin of the goods (Article 22(2)(a)) and are required to discourage any use that would constitute unfair competition (Hoekman & Kostecki,2009). The reason for protection of unique heritage products of a country is not only to prevent misuse or expropriation of traditional products, it seems also necessary to gain from economic rationale of GI.

Article 23 establishes a higher standard of protection<sup>14</sup> for GIs for wines and spirits. Such GI protection for wines and spirits was especially based on pressure from France and Italy in exchange for accepting reductions in export subsidies (Grote, 2009). Higher level of protection is awarded to wine and spirits only when they are used to identify the same goods (wines or spirits) but not in cases where they are used for other products. (say coffee and handicrafts)

Good having a link between the quality/reputation and origin are protected under GI Section 3 of Part II of the TRIPS Agreement (Articles 22 through 24) incorporates provisions for protection of GIs in three Articles:

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<sup>14</sup> To avoid the use of a Geographical indicator that misleads the public as to the origin of the goods and the distinctive reputation or tradition of that location, producers may use qualifying words like 'imitation' or 'like', such as 'Basmati-style' rice or 'Roquefort-style' cheese. But as TRIPS grants higher level of protection (extra protection) for geographical indications for wines or spirits, there is no provision (scope allowed) to qualify the product's origin using 'imitation' or 'like'. So for example, sparkling wine from Chile could not be labelled 'sparkling wine in the style of Champagne, made in Chile'. This is a source of disagreement among WTO members (Collins, 2015).

- Article 22 contains a definition of GIs and sets out the general standards of protection that must be available to all GIs. The Article 22(2) provides for protection that must be available for all GIs, on food and non-food marketed products. While it is mandatory to provide for protection to GIs, Members are free to ensure protection through any “legal means”, that is reflecting the general principle embodied in Article 1. (1), as follows:

*“Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.”*

### **2.2.1 Article 22 of TRIPs: General Standard of Protection for All GIs**

Article 22.2 requires that in respect of GIs, Members “shall” provide the legal means for interested parties to prevent the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good.

Article 22.3 of TRIPs obliges Members to refuse or invalidate the registration of a trademark, which contains or consists of a GI with respect to goods not originating in the territory purported, when this could mislead the public as to the true place of origin of the product. This provision, among a few others, has been included with the aim of taking care of the conflicts that may arise between GIs and trademarks.

Article 22.4 relates to ‘homonymous’ GIs. ‘Homonymous’ GIs are geographical names, which are spelled and pronounced alike, but which designate the geographical origin of products stemming from entirely different geographical locations. *For instance, ‘Rioja’ is the name of a region in Spain as well as a region in Argentina. This designation is used for wines produced in both countries.* This kind of situation often arises in the case of former colonies (Das, 2008).

For instance, when people from one country, say France, emigrated to another country and founded a village/town there, they might have given that new village/ town the name of their

village/ region of origin, which may be famous for a special kind of good, say, cheese. In such a case, if the new village/town produced cheese under its name it could (depending on the circumstances of each case, of course) falsely represents to the public the origin of the cheese.

### **2.2.2 Article 23 of TRIPs: Additional Protection for GIs of Wines and Spirits**

Article 22 provides for the protection of geographical indications in respect of all goods. In contrast to Article 22, Article 23 of TRIPs deals exclusively with wines and spirits and gives GIs for the same (wines and spirits) a higher level of protection than for other products. The protection of Article 23 is thus an additional tool for the right holders of GIs identifying wines and spirits, complementing the protection they enjoy under Article 22. The higher level of protection for wines and spirits GIs u/s23 was granted solely for the political reason of persuading the EC to join consensus on the Uruguay Round package, although many other countries opposed the move (Das, 2008).

Although the TRIPs provision provides higher level of protection for wines and spirits alone, under the Indian Act, the central Government has been given the discretion to accord similar protection to other types of goods also, by notifying such goods in the Official Gazette (Sec 22(2)<sup>15</sup> of the Indian GI Act, 1989). Indian GI Act thus contain adequate provisions to protect consumers of specified class of products from being confused/misled by the accompanied words of “type” or “Kind” or “imitation” with GI.

Article 23.1, prohibits the use of geographical indications in translation or accompanied by expressions such as "style", "type", "kind", "imitation" or the like, even where the true origin of the wine/spirit concerned is indicated. This rule thus blocks any invocation of a protected GI for wine and spirits, even if the label makes it clear that the product is not from the GI-protected region.

In contrast, the refusal or invalidation of registration of a trade mark for any other goods (than wines and spirits), on similar grounds, is conditional to the ‘misleading test’ (Article

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<sup>15</sup> The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in the Official Gazette, specify such goods or classes of goods, for the purpose of such protection.

22.3). It is up to the national courts and national administrative authorities to decide whether the public is being misled by a particular misuse of a GI.

Article 23.3 of TRIPS deals with the case of 'homonymous' GIs for wines (not spirits), whose use is not misleading (or deceptive) under Article 22(4) of TRIPS. In such cases both the indications have to be protected and each Member must determine the practical conditions under which such homonymous indications will be differentiated from each other. In doing so, each Member must ensure that consumers are not misled and that the producers concerned are treated equitably.

Article 24 deals with the conditions of future negotiations in the field of GIs and also lays down certain exceptions to obligations on GI protection under TRIPS. To facilitate the protection of GIs for wines and spirits, Article 23.4 of TRIPS provides for negotiations for the establishment of a multilateral system of notification and registration of such GIs.

As it is evident from the heading of Articles 22 and 23, there are two standards of protection under TRIPS :

- A minimum level of protection that applies to all goods.
- An increased level of protection for wine and spirits. (Article 23.1).

### **2.2.3 Extension of the ambit of Article 23**

India along with a number of other like-minded countries such as the EU, Bulgaria, China, the Czech Republic, Hungary, Kenya, Mauritius, Nigeria, Pakistan, the Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand, Turkey etc., has been arguing in favour of an 'extension' of the ambit of Article 23 (henceforth "extension") to cover all types of goods. The goal of these countries is to ensure that in future, not only wines and spirits but all categories of products receive the complementary levels of protection available under Article 22 and Article 23 of TRIPs, taken together, i.e. other goods are also benefited from additional levels of GI protection.

However, countries such as the USA, Australia, New Zealand, Canada, Argentina, Chile, Guatemala, Japan and Uruguay are in strong opposition to the extension<sup>16</sup>. This group of countries argues that the Article 22 protection is adequate and rejects the usurping accusation advanced by the proponents of extension, particularly, when migrants have taken methods of making the products and names with them to their new homes. It is thus evident that in the case of extension debate, both developed and developing countries belong to each side of the fence (Das, 2008, p. 486).

#### **2.2.4 Article 24 of TRIPs: International Negotiations and Exceptions**

Article 24 of TRIPS deals with international negotiations and also includes a series of exceptions, most notably in relation to continued and similar use of GIs for wines and spirits; prior 'good faith' trade mark rights; and generic designations. These exceptions and concessions were included in this Article to take into account the concerns raised by some WTO Members that protection of GIs would challenge what they considered to be 'acquired rights'.

The Article 24 contains a number of exceptions regarding protection of GIs, concerning conflict of interests between Members. Following is a list of cases from the minor to the major ones:

- Art24(6): a member is not obligated to protect a GI of another member where that GI has become the generic("customary") name for products and services.
- Art24(5): measures to implement Geographical Indications must not prejudice the eligibility, or the validity of, the registration of a **prior** trade mark, on the ground that such a trademark is identical with or similar to a GI
- Art24(4): a member is not obligated to protect a GI of another member if it is attested continued uses in good faith of an identical GI for at least 10 years prior to the

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<sup>16</sup> In particular, the big food producers and exporters - the United States, Canada, Australia, New Zealand and Japan-also oppose the idea of extending GI protection to foods.

conclusion of the Uruguay Round, (15 April 1994), even when the GI has not become generic and there is not pre-existing trademark right

The TRIPS provides for three “built-in agendas” in Articles 23(4), 24(1), 24(2).

- Art 23(4): provides that “negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits eligible for protection in those members participating in the system”. The work has been initiated in 1997 but with no conclusion. As these negotiations could be a pattern for other products than wines and spirits, Bangladesh needs to monitor developments concerning this issue.
- Art 24 (1) provides that members agree to enter into negotiations aimed at increasing the protection of individual GIs under Art 23, including for other products than wines and spirit.
- Art 24 (2) provides for a review of the application of TRIPS section 3 on GIs. The work has been initiated in November 1996. (As of today, Bangladesh has not responded to the Checklist of Questions.)

Article 24.9 of TRIPS relieves Members from any obligation to protect a GI, which\_

- is not protected in its country of origin; or
- ceases to be protected in that country; or
- has fallen into disuse in that country.

The first point underscores the need for ensuring appropriate GI protection at the national level of a WTO Member, in the absence of which other WTO Members would have no obligation whatsoever to protect the GIs of the former country within their respective territories. Members have no obligation to protect a GI, which has ceased to be protected in its country of origin (Article 24.9). To the extent that this argument holds, it may be noted that TRIPS leaves it exclusively to the discretion of the country of origin to decide whether a particular geographical name has become ‘generic’. However, it is sometimes argued that the evaluation of a ‘generic name’ should be based not only on the criterion of the country of origin, but also on the status of the term in international trade.

The TRIPS agreement also prescribes negotiations on creating a multilateral register for these products. In this regard, no mentionable progress, however, is in sight till date.

### **2.2.5 Exceptions to GI (Article 24)**

Article 24 provides for exceptions to GI. In those cases, geographical indications do not have to be protected or the protection can be limited. Among the exceptions allowed under the agreement permits are: when a name has become the common (or “generic”) term (for example, “cheddar cheese” now refers to a particular type of cheese not necessarily made in Cheddar, in the UK), and when a term has already been registered as a trademark.

### **2.3 GI as a concept- GI versus Trademark**

GIs differ from trademark in that they attach to goods from a particular region rather than from a particular producer (Raustiala and Munzer, 2007). GI certification captures a notion of collective reputation and gives a collective right to the concerned community over the product (Menapace and Moschini, 2010) whereas Trademarks capture firm specific reputations and can be owned individually (a private right). GIs cannot be sold or licensed (Josling, 2006) but a trademark can be sold; if it is not sold, it exists for the life of the owner (Rangnekar, 2004 in Crote, 2009).

Furthermore, a trademark is intended to market a product developed by human being while a GI is granted for a product originated from a particular region with a quality attribute.

GI can be protected through the trademark system as well. However, alternative costs of protecting GIs through the trademark system is said to be even more prohibitive and inadequate<sup>17</sup>. Both prior trademarks and GI (which is issued later) can also exist together. However, if the prior trade mark is very renowned/well known, GI cannot be issued later (as it may mislead the people) [WIPO expert team, 2014]. These IP rights are complementary to each other.

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<sup>17</sup> Thual 2003

GI rights are perpetual collective rights. Usually any registered association of manufacturers, any institution and authority are able to get GI registration for GI-eligible products and GI department provides registration.

Three major conditions need to be fulfilled for the recognition of a sign as a geographical indication:

- it must relate to a good (although in some countries services are also included, for example in Azerbaijan, Bahrain, Croatia, Jamaica, Saint Lucia, Singapore and others);
- these goods must originate from a defined area;
- the goods must have qualities, reputations or other characteristics which are clearly linked to the geographical origin of goods.

Article 22.1 does not contain any limitation regarding the use of a country name as a geographical indication. Any country name could be protectable as a GI as long as the quality, reputation, and characteristics of the product are essentially attributable to the geographical origin designated by the GI. A concern is often raised about how to prove the linkage between the quality, reputation or other characteristic of a product and the GI (JOB (02)/94, page3; TN/IP/M/2, paras 33, 40, 50, 54). This could be done on a case-by-case basis, taking into account all the relevant specifics of individual situations.

Another view is that it is necessary to have a collective understanding about the kind of information to be included (TM/IP/M/2, para 40).

GI protection within the TRIPS Agreement is an *'on-demand'* protection, i.e. right holders had to invoke such protection in third country courts. Rights holders only went to a third country to benefit from the protection when they had the export capacity to make the investment worthwhile, and when they had an interest. In this regard, it is worthy to mention that the existing/potential trade flows (value of GI product) for each individual GI varies. A single GI, for example that on "Basmati" rice which generated some \$300 million in exports, could be much more important than many GIs which were not used for export.

### **2.3.1 Resolution of Conflict between GI and Trade Mark**

Article 24.5 contains provision what is often called a *"Grandfather clause"* to take care of the potential conflicts that may arise between GIs and Trade Marks. This article has provisions

in favour of trademarks that are identical with or similar to GIs, provided certain conditions are satisfied. This provision states that:

Where a trade mark has been applied with or registered in good faith, or where rights to a trade mark has have been *acquired through use in good faith* either:

(a) before the date of applications of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

Measures adopted to implement this Section *shall not prejudice eligibility for or the validity of the registration of a trade mark*, or the right to use a trade mark, on the basis that such a trade mark is identical with, or similar to, a GI. That means, under the TRIPS agreement, the existing Trade Mark (TM) rights should not be undermined or limited by a subsequent GI ( for details see [Annex 7: Budweiser and Bud Beer Case](#)). A WTO panel, however, found that the inconsistency between the EC regime and TRIPS with respect to the coexistence of GIs and prior TMs was sufficiently justified by Article 17 of the TRIPS agreement.

### **2.3.2 Protection of GI under Trade Mark**

There are countries where GI is protected under trade mark law through collective marks or certification marks<sup>18</sup>. Australia, the United States of America (in the USA, there is no GI law), China and Canada protect GI under TM Law. A common feature of these types of marks is that they may be used by more than one person, as long as the users comply with the regulations of use or standards established by the holder.

### **2.4. When plant or animal are not eligible for GI**

In preparing list for products that are most likely to be eligible for registration under GI, it needs to be kept in mind that wildlife animals like *Royal Bengal Tigers (of Bangladesh Sundarbans)* or Dogs of Sarail should not come under the list. This is because a Royal Bengal Tiger is not a tradable product and it is protected by CITES against over exploitation through international trade. Bangladesh ratified CITES on 20 Nov 1981 and the convention came into force on 18 Feb, 1982 ([www.cites.org/eng](http://www.cites.org/eng)). Under Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Trade on tiger

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<sup>18</sup> GI in the US includes certification marks, collective marks, individual trademarks and common law marks.

parts is prohibited. The illegal trade in tiger parts and products would seriously threaten the future of this magnificent tiger animal.

Protection (Securing) of the Sundarbans and its tigers is also necessary for the conservation of the biodiversity, an obligation under the Convention on Biological Diversity (CBD) to which Bangladesh is a party. World Wildlife Foundation (WWF) declared tiger as one of the 10 most threatened animals in its 2010 list named “10 to Watch in 2010”. These and many other species, are at higher risk than ever before because of habitat loss, poaching, and climate change-related threats ([http://www.wwf.org.uk/news\\_feed.cfm](http://www.wwf.org.uk/news_feed.cfm)). However, if a ‘dog’ or some animal from a specific geographic origin is traded for their specialized “*traits/skills*”, they may be considered for GI.

## **2.5 GI v. Appellations of Origin (AO)**

In understanding the relationship between GI and quality aspects, the difference between GI and Origin of Indication is vital to grasp. **Indications of origin or indications of source** do not provide for the necessary link between the origin of the product and its quality, reputation or other characteristic while GI under Article 22.1 provides such link between origin and quality of the product.

Appellation of Origin (AO) is much stricter than GI. In the case of AO, the quality and characteristics of goods is due exclusively or essentially to the geographical environment, including natural and human factors. An AO is a special kind of GI.

The concept of a geographical indication encompasses appellations of origin. In this sense, we can infer that all AOs are GI.

## **2.6 International Conventions Regarding GI and AO**

Efforts were taken in different time periods to harmonize the different approaches and standards that governments used to register GIs. The first attempts to do so were found in

the Paris Convention on trade marks (1883<sup>19</sup>). The Paris Convention was followed by Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891) and it was followed by a more elaborate agreement in the 1958 named *Lisbon Agreement for the Protection of Appellations of Origin and their International Registration*.

Few countries joined the Lisbon agreement, however: by 1997 there were only 17 members (Algeria, Bulgaria, Burkina Faso, Congo, Cuba, Czech Republic, France, Gabon, Haiti, Hungary, Israel, Italy, Mexico, Portugal, Slovakia, Togo, Tunisia). About 170 geographical indications were registered by Lisbon Agreement members as of 1997. The WTO TRIPS Agreement (1994) is the latest agreement that provides for GI protection for its members.

**Table 1: International Convention/Agreements on Geographical Indication**

The GI provisions/appellations of origin provisions are shown briefly in the following table.

	Agreement	Subject matter of protection	Protection
1.	Paris Convention [164 member states]1883	Indication of source Appellations of Origin	Protection against “direct or indirect use of a false indication of the source of goods” and/or unfair competition (Article 10bis)
2.	Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891) [33 member states]	Indication of Source	Protection against use of “false or deceptive indications of source”
3.	Lisbon Agreement (27 Member States) of WIPO (1958)	Appellation of Origin	Facilitate the international protection of appellations of origin (AOs) through a single registration procedure.

<sup>19</sup> as revised at Brussels, December 14, 1990, at Washington, June 2, 1911, at The Hague, November 6, 1925, at London, June 2, 1934, at Lisbon, October 31, 1958, and at Stockholm, July 14, 1967

	Agreement	Subject matter of protection	Protection
4.	WTO TRIPS Agreement  TRIPS (Articles 21, 22, 23, 24 and 66)	<b>Geographical Indication</b>	<b>GIs have to be protected in order to avoid misleading the public and to prevent unfair competition;</b>
5	<b>2015 Geneva Act of the Lisbon Agreement (Currently only 12 signatories to this Act)</b>	Allows the international registration of geographical indications (GIs), in addition to AO, and permits the accession to the Lisbon Agreement by certain intergovernmental organizations	

## 2.7 Homonymous GI/Joint GI

Homonymous GI means Geographical indications of two products by the same name in two different countries. In the case of homonymous GIs, both countries will own the GI if it (GI) does not mislead the public (see article 22.4). Among the products that India has already registered under GI, Fazlee mango has a double heritage, both in Bangladesh and India. That is, Fazlee mango is produced both in Rajshahi of Bangladesh and Maldah district in West Bengal of India. As such, a homonymous or joint GI may be preferred and both may be protected.

Tokaj wine of Hungary and Slovak is another example of homonymous GI. The region that produces Tokaj are carved into two: with most falling into Hungarian territory and a much smaller part into what today is Slovakia.

After many years of dispute between them, Hungary and Slovak reached a deal concerning Tokaj. As per the deal, wine produced on 5.65 Km of land in Slovakia is able to use the GI name Tokaj (on condition that *Slovaks have to make Tokaj of at least three or more puttonyos*) although many Hungarians voiced their fears about the quality of the Slovak Tokaj. Hungarians are fearful that the homonymous GI would mislead public because they consider their (Hungarian Tokaj) superior to Slovak one.

Homonymous GIs is possible where a particular product say wine/mango is produced in two regions/countries having the same name or the same sounding name. For example, Rioja", is the name of important wine producing region in both Spain and Argentina.

In this kind of situation, Article 23.3 provides for coexistence of the homonymous geographical indications subject to Article 22.4 (i.e., provided there is no false representation to the public that a wine from a place identified by one of the GIs comes from the place identified by the other GI). In providing for such coexistence of GIs, each Member is required to differentiate his GIs from the other, e.g. by way of labeling, the representation of a map showing the country where the name is etc.

### **2.7. 1 The PISCO Wine GI opposition resolved in India (Case on Homonymous GI!)**

PISCO wine is produced both in Peru and Chile. Pisco region is a port area which is historically shared by Chile and Peru. The Embassy of Peru filed an application for registration of PISCO wine to the Registrar of GI India which was published in September 2006. In opposition to Peru's application for registration, an opposition was filed by Mohan Dewan and A D Productories De Pisco A.G. of Los Carrera N, Depto, 414, La Serena, Chile on the ground that the Embassy of Peru was not entitled to file application for registration under Section 11 of the GI of Goods (Registration and Protection) Act, 1999.

Section 11(1) of the GI of Goods (Registration and Protection) Act, 1999 provides "Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication."

Chile asserted that the Embassy of Peru was not a proper representative of the producers and that they subsequently could not represent their interests. They also argued that PISCO is common to use in other countries and cannot be recognized as a GI in respect of the applicant. It was also stated that GI application had been filed before various countries with the result of refusal of application for GI in some countries. Chile also stated that they had no

objection to the registration of the GI PERUVIAN PISCO provided the Embassy of Peru gave no objection to the opponent's proposed application for CHILEAN PISCO (Nair, 2010).

On the issue of *locus standi* i.e. the right of a party to appear and be heard before a court, the Assistant Registrar stated that the Embassy of Peru was the true representative of the Peruvian government to look after the interest of the producers of the GI in respect of a particular region, locality or country; as such the Embassy of Peru was considered the correct authority to pursue the GI application.

In respect of the second objection, the Assistant Registrar upon examination of the records stated that PISCO was an established GI in Peru and there is no scope to dispute this. He, however, acknowledged that *as both Chile and Peru were using PISCO, a likelihood of confusion among consumers cannot be negated.*

Against this backdrop, the Assistant Registrar (of Indian GI directorate) took the position that if the present application for a GI be registered under the title of Peruvian Pisco, no confusion or deception among consumers would result in. In this scenario, the application was accepted for registration as Peruvian Pisco, and the oppositions were dismissed. The way Indian registration authority resolved the PISCO wine dispute seems to have paved the way for future applicants to resolve GI disputes emerging out of territorial commonality in different jurisdictions (Nair, 2010).

In other words, one homonymous GI indication shall be differentiated from other homonymous indications to make sure consumers are not confused or misled in consequence of homonymous registration.

## **2.8 Different positions of Countries on GI issue**

On GI issue, WTO members are divided into two camps at the Doha Round of multilateral negotiations : On one side, the "friends of GIs" favour a strong level of protection (with the concomitant *non-misleading* requirement and no generic exemption), the establishment of a global registry of GIs, and the extension of the additional protection for wine and spirits to all products.

The other side (opponents) favour the *statu quo*, i.e. they are satisfied with the current level of protection and favour the establishment of a *voluntary system* wherein notified GIs would be registered in a data base. The governments participating in said system would have to consult the database when making protection decisions<sup>20</sup> in their own countries.

The US and EU and Switzerland also differs with regard to their respective positions over GI. This is revealed from the draft proposals of US and EU and Switzerland. The United States are seriously opposed to dealing with the case of GIs as a separate intellectual property (IP). It rather wanted GIs to be protected as a part of the trade mark law<sup>21</sup>. The US proposal was supported by Canada. The US proposal reads:

the contracting parties “shall” protect GIs that certify regional origin by providing for their registration as certification or collective marks (the proposals regarding trade marks in the US draft clarified that the term ‘trade mark’ shall include service marks, collective and certification marks), while the form of protection proposed to be provided for registered trademarks was nothing more than protection against consumer confusion and any act of unfair competition (Das, 2008, p. 489).

The United States proposed to make such protection conditional on to the misleading test, instead of the absolute protection proposed by the EC. The EC, however, regarded such trade mark protection as unsatisfactory due to the formal requirements, such as registration and the use requirement (Das, 2008).

With regard to GI, Australia had proposed a different form of protection (in the Draft text on Geographical Indications) in 1990. Australia wanted GIs to be protected solely through refusal or invalidation of registration of trade marks. For EC or Switzerland, it constituted only one of a range of provisions.

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<sup>20</sup> Unregistered GIs can be protected under the passing-off action/provisions (when unregistered GI is widely known and famous) in Commonwealth countries. This helps prevent unfair competition resulting from misuse of GI (Dr. Towhidul Islam, Professor, Law Department, Dhaka University in a seminar organized by CPD in Dhaka on 02 August; The seminar paper was presented by Alexandra Bhattacharya; the title of the presentation: ‘*Geographical Indications: Recent International Developments: Implications and Opportunities for Bangladesh*’)

<sup>21</sup> Source: WTO document MTN.GNG/NG11/14, dated 12 September 1989, para. 56.

## **2.9 Legal perspective of GI: EU Versus Others**

Two basic types of legal regimes exist for the protection of geographical indications. The European Union defines and treats GIs as a distinct type of industrial property. EU legislation defines geographical indications more expansively than do trademark-based legal systems. In EU approach, geographical indications are seen in some ways superior to trade marks. The EU approach seems to have been reflected in the provisions concerning GIs in the TRIPS Agreement.

Other type of legal systems, notably those of Australia, Canada and the United States, treat geographical indications as a *subcategory of trademarks*. This view about GI is based on the concept that geographical indications, like trademarks, function principally as a means of providing information to consumers (Herrmann and Marauhn, 2009).

## **2.10 Proponents and opponents of GI**

Proponents regard GIs as an instrument that can be used to help them in marketing their products and to establish and retain market shares and create niches. Opponents (e.g. Australia, Brazil, Canada, US) take the view that stronger protection of GIs would simply act as another form of protectionism. They add that consumers can be informed of the origin of goods through labeling-which is already in existence-and that quality can be assured through trademark. European states are more interested in GIs due to availability of more products of GI. GI protection is one arrow in the quiver of governments, particularly in European states, that seek to protect their agricultural sector from low-cost competition from abroad (Raustiala and Munzer, 2007).

Some developing countries such as Argentina, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Namibia, the Philippines and Taiwan oppose the promotion of GIs. They are fearful about the technical, administrative and legal requirements to be fulfilled for GI and high costs of compliance and monitoring the ongoing Doha Round, a new debate has emerged about including GIs in the agricultural negotiations (Crote, 2009).

## **2.11 US versus EU interest in GI**

EU has always been interested in GI because they have many reputable GI products. This is because the EC and its Member States have diverse portfolio of over 6,000 protected GIs. As such, the EC is most aggressive in seeking inclusion of GIs under TRIPs as a brand new category of IPR in the TRIPs agreement (Das, 2008). On the contrary, the USA negotiators see little or no interest in their own industry as a whole from enhanced GI protection whether at the multilateral, regional or bilateral level (Das, 2008).

## 2.12 GI as a Tool of Development

GI protection can be a tool of development for the producers of GI goods. Because of uniqueness and reputation, GI products command premium pricing<sup>22</sup> and easy market access. Furthermore, the commercial activities of the producers contribute to rural development and qualified population can be maintained in deprived area. As GI production cannot be relocated, it helps to create and foster local employment and increases place value of the areas. In some cases, GIs' production and estates attract and trigger eco and cultural tourism, like in China (tea gardens, wineries), in India (silk and handicraft), in Argentina (herbal mate infusion), Morocco,(oil of Argan),ete (Bobrie, Zohor and Khatoon, 2008).

Beyond the formal systems of protection, the usefulness of GIs is conditional on the ability of local producers to organize themselves into producer groups/associations to draw on legal and marketing resources. Initially, producers have to invest in establishing GI rights and capitalize on it. The gains from GI entitlement may not be evident in the short run. The experience of France suggests that it takes a lot of time, patience and resources to create valuable brands<sup>23</sup> (e.g. Champagne). Even after the enactment of a GI law, the process of getting the system rolling is tedious and could be expensive. (Bobrie, Zohir, and Khatoon,

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<sup>22</sup> Consumers surveys in Europe point out a steady 10%-20% premium price between GI products and regular products.

<sup>23</sup> At the WTO, the balance in rights between the owners of brands and geographical indications is the subject of fastidious legal techniques focused mainly on the possibilities of the translation of an origin name. In the decision of the WTO dispute, translations were limited so that the registration of a GI did not award a positive right to use the name in another non-registered language version.

A complaint was made by the Champagne inter-branch committee with a request for a domain name usurped by a third party (champagne.co) should be transferred to them. But procedures to denounce cybersquatting that are regulated by the *Internet Corporation for Assigned Names and Numbers (ICANN)* only have measures for company brands and not for geographical indications. As the inter-branch body is not a company that owns a commercial brand, the complaint was refused by the WIPO Arbitration and Mediation Centre. (Louis Augustin-Jean, Hélène Ilbert, Neantro Saavedra-Rivano, 2012, p.105).

2008). Claimants to a GI are required to codify distinctive facts related to their products, processes and origin. Specifying these in rigorous legal language entails significant costs.

In Europe, this one-time effort alone could cost around US\$20,000. The evidence to claim GI and satisfy GI authority by advancing all documentation and production process could be burdensome for individual and small-scale producers who want to pursue their own legal course. The early efforts at promoting GIs thus require major boost/strides from the government, preferably as part of government's rural development strategy.

The "One Tambon-One Product" (OTOP) programme, is one of the initiatives emanating from the Thai government's policy to generate more income for the people at the grassroots level. This programme was launched in 2001. To obtain an OTOP registration, products are first selected by village hearing committees and then reported to Tambon Administrative Organizations. Then, the lists of the products are reviewed at the district and provincial levels before they go to the national OTOP office. Despite this formal registration procedure, often district and provincial officers directly contact producer groups for OTOP registration. They also process the registration without the consent of producers to increase the number of OTOP registered products (Haraguchi, 2008).

Under the OTOP initiative, Thai government provides assistance to the local villagers to develop and market their local products based on traditional indigenous expertise and local know-how. The government also provides assistance in the form of technology and management techniques to local villagers to enable them market such local products through both domestic and international outlets or through the Internet. This Thai effort offers a rural development example of bottom-up engineering of awareness and action to promote traditional community products. However, as OTOP officials generally approached enterprises with greater potential for growth, favoured them with Government support, this project made the advantaged producers more advantageous, thereby limiting the project's impact on poverty alleviation.

It is notable that 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 because GIs are the only form of modern IP that grassroots communities are most likely to own.

## 2.13 Problem Statement and Research Questions

Bangladesh does not yet have a GI regime in force. As such Bangladesh cannot register its unique products under International Market. The reason is that if GI products are not protected in the country of origin, there is no obligation under Article 22 of the TRIPS Agreement for other countries to extend reciprocal protection. Bangladesh also lack detailed information (with historical evidence/documentation, product attributes, production methods, flavor or taste of products in record form) on its unique products for which it can claim registration. She has no 'primary inventory of species'- of animal or plants-which will be very crucial for GI (Wardad, 2012), both locally and internationally.

No data base has been developed so far by Bangladesh to have our traditional products registered under GI. [Bangladesh needs to formulate a comprehensive database of animal, plant and other heritages to protect our national interest]. As a result, Bangladeshi producers/manufacturers are losing the opportunity to command premium price in the international market and brand Bangladesh with its unique GI products. This is a significant problem for Bangladesh and Bangladesh producer.

This study aimed to address the problem by investigating into the following research questions:

- ✓ What is the economic and long term social value for registering products under GI?/What is the potential long-term value/impact (e.g. jobs, greater income, country branding, tourism) of having GI on unique products
- ✓ What may be costs involved in registration of GI?
- ✓ What products could be identified as Bangladesh products to be registered under GI Act? What historical accounts/evidence/qualification requirements are needed to claim GI on the products listed in R.Q. 1
- ✓ What role should private sector producer/ GI Goods producer associations need to play to collect necessary background information (such as production process, area of production of GI goods, specification of GI products) including historical evidence to substantiate their claim while applying for registration of goods under GI locally and internationally?

- ✓ How can Bangladesh protect the Bangladesh origin products having unique attributes and quality aspects by registering GI Internationally?
- ✓ What are the management challenges that Bangladesh may face in implementing new GI Act, 2013?

## 2.14 Rationale/Significance of the Study

*As Geographical indication is a ‘source identifier’ and indicator of quality”, like brands, it can play a vital role in portraying the reputation and unique quality attributes of a product/products and helps to compete for a greater share of global trade. The GI helps producers differentiate their unique products from similar competing products. And protect from the acts of infringement and/or unfair competition. The successful use of GIs (such as Tequila, Champagne,) also increases the competitiveness of products, thereby contribute to growth of income, rural development and the livelihoods of the producers.*

*Bangladeshi GI will also work as a branding of Bangladesh and would further help increase trade of the country’s products (Wardad, 2012). Absence of an appropriate legal protection encourages illegitimate competitors to have a free ride on the reputation of those goods or products. National GI regime and its enforcement will help Bangladesh to protect the country's ownership on its unique products under the GI treatise. Realising the importance of having a GI regime, India has registered Bangladesh products like *jamdani*, *Nakshikantha* and *Fazlee aam*, and is having a free ride on our centuries-old reputation and distinctiveness. Under TRIPS if GI is not protected within the territory of Bangladesh under its legal system, no reciprocal responsibility lies with the other member of WTO (World Trade Organization) to protect the same (Article 24(9), TRIPS agreement).*

None of Bangladeshi products or goods is protected as GI--due to absence of a GI law. Protection of GIs has far-reaching implications such as, help promote rural socio-economic development and assure higher economic returns (Jena and Grote, 2010; Rangnekar, 2004 in Misbah, 2012). On the other hand, lack of a GI such as not having GI on Jamdani saree, would deprive Bangladesh of its rights on its heritage product; it even may need Bangladeshi

producers to pay a fee (royalty) to the Indian Government to use the for using the name of Jamdani.

Furthermore, if Bangladesh's traditional/valuable products having quality reputation are not properly protected through GI registration, there would remain the possibility of abuse of geographic indications by unauthorized parties (countries) to the detriment to consumers and legitimate producers. Therefore, in order to protect the country's ownership on Bangladesh's famous, exceptional and heritage products, protect the rights of legitimate producers protect our rights, localise economic control, it is imperative to assure property rights to the producers of traditional goods or products. The national legislation i.e. the GI Law, 2013 is a significant progress in protecting legitimate rights on unique products. As GI products generally originate from agricultural, fisheries, handicrafts etc. and are produced by the rural community, the economic advantage gained through commercialising the GI rights accrues to the poor. GIs thus help to reduce poverty and stimulate regional economic growth. GI is also important for revitalising our centuries-old culture. It is thus clear that the registration and protection of GI products has important socio-economic practical implications for a country like Bangladesh.

As the GI Act has been enacted in 2013, this study will help the policy makers and the private sector producer group to understand the formalities and legal procedures needed to get products registered under GI. It will also shed light not only on how to get GI products registered domestically, but also how to ensure joint-registration of our renowned GI products such as Fazlee aam at the global level which are already been registered by our neighbours. Overall, the study will be a novel one as it wills the first of its nature in Bangladesh.

The following chapter (Chapter 3) details the methods used in collecting data for this study.

## ***CHAPTER 3 METHODS OF DATA COLLECTION***

### **3.1 Why qualitative research design**

This study adopted a qualitative research method of data collection. Qualitative data helps researchers to generate ‘a detailed understanding and thick description of the phenomenon of interest’, by collecting information on many aspects of a phenomenon and documenting perspectives of all key participants (Shah & Corley, 2006, p.1822).

### **3.2 Sources of data**

Qualitative data for this research has been collected from two main sources: primary and secondary data. Data from primary sources were collected through in-depth interview with relevant stakeholders. The interviewees were purposefully selected because they were all known to have expertise and experience in Geographical Indication, IP and other trade issues. The other criterion for selection was the inclusion of persons/officials who were either involved in the formulation of the GI Act, or who will have direct or indirect interest in GI matters. GI analysts and academics/researchers having interest in GI were also invited to be participants in the interviews to have rich and meaning insights about GI. A total of 15 interviews were conducted in person with the informants. **Appendix 2** details the interviewees (stakeholders).

In addition to primary data, secondary sources have been extensively used for literature review as well as to complete the study. The secondary sources include books, research reports, academic articles, GI regulations of other countries and other web-based resources on Geographical indications.

### 3.3 Focus Group Discussion

Apart from in-depth interviews, a Focus Group Discussion was held in the BFTI conference room on 21 May, 2014. Given the large numbers of mobile phone customers, FGD was preferred to other data collection techniques, following the recommendations of (Stewart, Shamdasani, & Rook, 21007), who have stated that FGD permits gathering large amounts of information from potentially large groups of people in a relatively short period of time. In this study, FGDs permitted gathering of adequate and relevant information from considerable numbers of mobile users in a relatively short period of time at minimum cost. Moreover, FGD facilitated drawing conclusions about a large population of interest to the research.

This FG Discussion was organized to generate primary data about GI, its importance, identify potential GI items, historical accounts needed for major GI products and the challenges in managing GI regime in Bangladesh. DPDT representative, Ministry of Commerce representative, Dhaka University professor and a history expert in gathering historical evidence of Jamdani production in Dhaka, Jamdani producer association representative, GI analyst/lawyer and renowned trade experts took part in the GI Round Table. The Round Table generated very live and analytical discussion and views expressed by individual participants were at times protested and modified and enriched by other participants (A summary of the RT discussion is given in Annex 1). The FG discussion thus helped immensely in gathering significant information and insights about GI and its critical issues in Bangladesh.

The researcher played the role of a moderator in conducting the focus group discussions. A written explanatory statement about the purpose and significance of the study was delivered to the participants. The moderator facilitated interactions among all the participants within the group about GI issues.

It is however to be noted that a GI-denominated product is not simply *from* a place; Production method, human skills and weather condition of the geographic location may also affect the quality aspect of a product. In the Feta case, for instance, the European Court of Justice argued that there was a close and important interplay between natural geographic factors and the specific human innovation in the making of feta cheese. In particular the traditional production method, which requires straining without pressure, has given Feta cheese its remarkable international reputation (Raustiala and Munzer, 2007).

The next chapter (chapter 4) contains the findings of the study.



## CHAPTER 4: FINDINGS (GI AND BANGLADESH)

In-depth interview, Focused group discussion and a thorough review of secondary materials provided rich data regarding the possible GI products of Bangladesh, the economic significance of GI, costs of GI, role of private sector in operatizing GI Law and the preparations/administrative steps needed to establish an effective GI regime in Bangladesh. The following are some of the main findings of the study:

### 4.1 List of potential GI products and duration of GI registration

Bangladesh has a considerable number of products/handicrafts which can be registered under Geographic Indication. The products that could be identified for registration under GI as Bangladeshi origin product might be agricultural/naturally found or handicrafts or industrial items.

The following are some of the products that could be easily registered under GI:

**Table 2: List of Possible GI Products**

Name of Products	Origin of the Product/Geographical areas	Uniqueness and physical properties/description (in brief)
1. Jamdani	Sonargoan, Rupganj Narayangonj, Dhaka	<ul style="list-style-type: none"><li>• Weather condition: Shitalakhya and Balu riverbank area</li><li>• Hand made</li><li>• It takes 6-8 months to produce one saree</li></ul> The most appropriate time for making yarns is early morning as the air then carried the highest moisture. For making yarns weavers need taku, a bamboo basket, a shell and a stone cup. They use popcorn, rice or barley for starch. Before making jamdani designs they dye their yarn and starch it. For dye they used flowers and leaves of creepers. For quality jamdani they use yarn of 200 to 250 counts. These days, weavers buy fine yarn from the market and use chemical dyes

		<p>instead of herbal dyes (Bobrie, Zohir And Khatoon, 2008).</p> <p>A number of respondents including a respondent from the DPDT office emphasized the influence of weather on the Quality of Jamdani. The common tone of the respondents is that weather is important for processing Jamdani and has unique quality of Jamdani. It has been stated that the (moisture of water of the river Shitalakhya helps quality of Jamdani (Interview, 2014). One respondent noted 'the silted water of the Shitalakhya river gives the air a unique dampness and a perfect temperature early in the morning, giving a certain quality to the yarn' (Ruby Ghuznavi, In an interview in May, 2014). Another interviewee mentioned that is of the view that the moisture (baspo) coming from the water of the River Shitalakhya is very necessary for yarn preparation and Saree Making of Jamdani (Munira Emdad in an interview, 2014). The most appropriate time for making the yarn for Jamdani is early morning as the air carry the highest moisture (conducive to making of quality Jamdani) at that time.</p>
2. Bogra's Doi (Curd)	Bogra	<p>Thick with heavy layer.</p> <p>To make yoghurt farmers used to boil milk and render it down to one-fourth its original quantity. This is why Bogra yoghurt is almost like khir. Dark colour. (Bobrie, Zohir and Khatoon,2008)</p>
3. Ras Malai	Comilla (Matree Bhandar, Monoharpur)	<p>A kind of rasagolla, but the cottage cheese 'balls' are smaller in size and cylindrical rather than round. Instead of floating in sugar syrup, the</p>

		<p>'balls' float in thickened milk. The word malai is derived from the Persian balai, which means cream of milk.</p> <p>Rasmalai is light almond in colour. It made from the local pure milk, egg, all-purpose flour, baking powder and oil. There is something about this sweet dish, the local water or the smoke flavor.</p>
3.Hilsha of Padma <sup>24</sup>	<p>Padma river (Meeting of river and sea Salinity 18-30%)</p>	<ul style="list-style-type: none"> <li>• Unique taste</li> <li>• (If Hisha is a <i>fish variety</i>, then it will not be eligible for registration under GI.</li> <li>• The taste of Hilsha is different by Padma, Gualondo or Chandpur</li> </ul> <p>It is to be noted that separate application can be made for each source/origin of Hilsha So GI application can be filed for Hilsha of Padma (Chandpur), Hilsha of Gualondo or Hilsha of Barisal.</p> <p>In India, separate application has been filed for Jasmine of each origin. For example, three separate GI applications have been filed for Mysore Jasmine, Udupi Jasmine and Hadagali Jasmine on the same date i.e. on 24.07.2006 (Das, 2008)</p>
4. FazleeAam	<p>Rajshahi Chapai Nawabgonj</p>	<ul style="list-style-type: none"> <li>• Large size</li> <li>• Unlike other mangos, even though it is fully ripe and extremely sweet to taste, it will remain hard.</li> <li>• This is a late season variety. (Bobrie, Zohir and Khatoon,2008)</li> </ul>

<sup>24</sup> Regulation 510/2006 provides for the protection of names of agricultural *products intended for human consumption*, including “Live animals” and “meat and edible meat offal”. As Royal Bengal Tiger is not intended for human consumption, it seems Royal Bengal Tiger is not registrable under GI (The protection afforded by EC Regulation no 510/2006, subject to registration, should be open to the geographical indications of third countries where these are protected in their country of origin.).

5. Lengra Mango	Rajshahi Chapai Nawabgonj	Very thin skin and stone and flesh without fiber. Size medium to large, ovate, base round to slightly flatten, shoulders equal. Yellowish brown in color, scented, highly melting, very sweet and very juicy and very tangy. Weight of an average fruit is about ¼ kg. Fruit quality very good, bearing heavy. Season 1st to 3rd week of July. Heavy yielder.
6. Nakshikatha	Jamalpur Jessore Kushtia Mymensingh Sirajganj Chapai Nababganj	Traditional stitches Unique design
7. Kanchagolla	Natore (delimited area of production)	Kacha Golla is a kind of sweet, made of basically milk (curd) and sugar. The secret of Kacha Golla is, little amount of sugar can ensure real taste of Natore's Kacha Golla.
8. Chomchom	Porabari, Tangail Delimited area of production <sup>25</sup> has to be specified. A delimitation report makes the function easier (Annex 8:	The colour of this sweet meat is as like as the colour of a brick. The Porabari chomchom is one of the world famous sweets for its extreme sweetness, uncommon taste and flavour. It is of various designs and shapes. The milk used in chomchom is very thick. The taste of chomchom is mainly dependent on the taste of the water of Tangail. The secrecy that lies behind the taste of

<sup>25</sup> The product should be produced and processed and prepared within the delimited area. When needed, a distinction is made between the production area of the raw materials and the production area for processing and conditioning. The delimited area can be a discontinuous area fragmented in different terroir plots, taking the name of one plot or the overall area. A GI delimitation should not to be influenced by administrative or political boundaries except if they correspond to distinct cultural or natural differences which determine the product's characteristics.

	Specimen of a delimitation report)	chomchom of Porabari is the water of Tangail. This is why the same sweet makers of Porabari failed to make sweets as fine as that Porabari in other districts. ( <a href="http://goolla.jimdo.com/">http://goolla.jimdo.com/</a> )
9. Chinigura (fragrant rice)	Not found	Not found
10. Honey from Sundarbans forest	Sundaraban (Khulna)	There is a large number and big sized honeycombs in the deep forest of sundarbans. These honeycombs contain honey more than sufficient. It is also learnt that where there are more and more Khalsi and Gewa plants there are large number and king sized honeycombs abundantly available and those honeycombs contain huge quantity of honey. Honey produced by the bee from the flowers of Gewa and Khlsi is sweeter than honey produce from other flowers. Its quality is also better than that of other honey.
11. Khejurergur	Madaripur	Not found
12. Kalizira Rice (Fragrant)	Gopalganj	Not found
13. Shatkora	Sylhet, Moulvi Bazar, Borolekha, Srimongol etc.	Scientific name is Citrus macroptera. It has large "wings" (-ptera) on the petiole, which is as large as the blade of the leaf. The tree, which has thorns, can reach 5 m in height. Its fruit is about 6–7 cm in diameter, has a fairly smooth, moderately thick rind, and is yellow when ripe. The pulp of the fruit is greenish yellow and dry (does not produce much juice). The juice is very sour, and somewhat bitter. The rind of the Citrus Macroptera is eaten as a vegetable, while the pulp is usually discarded because of its bitter-sour taste. It has a unique taste and aroma.

14. Katharivog Rice	Dinajpur	TBA by growers/processors associations.
15. Badshavog Rice	Not found	Not found
16. KhadiKapor	Comilla (delimited area of production)	Khadi is a term for handspun and hand-woven cloth primarily made out of cotton. The raw materials may sometimes also include silk, or wool, which are all spun into yarn on a spinning wheel called a charkha. It is a versatile fabric, cool in summer and warm in winter. In order to improve the look, khadi /khaddar is sometimes starched to give it a stiffer feel. It is widely accepted in fashion circles.
17. Dogs	BrahmonBaria (Sorail)	Dogs may be considered for GI registration if the dogs are traded commercially for their special traits/skills and are used for a special purpose such as for security.
18. Muktagacha's Manda	Mymensingh (Muktagacha)	The cows from which milk was collected at the place of this item's origin ate fresh and green grass on the bank of the nearby river. It is learnt that businessmen from Kolkata once hired sweetmeat experts from Muktagacha with the aim to start a Kolkata-based centre for this special dish. But the experts failed to produce what they could easily do at Muktagachha. But the milk supplied at Kolkata had no such rich tradition. Naturally the milk that went into the making of manda at Muktagacha was of special quality (The financial express, Dhaka, date: October 26, 2013)
19. Chingura Rice (Fragrant)	Not found	Not found
20. Binni Rice	Srimongal	Not found

21. Pineapple	Srimongol, Chandpur [Hossain 2013]	Not found
22. Shitalpati	Not found	Not found
23. Tangail Saree	Tangail	Not found
24. Ruhitpur's Lungi	Not found	Not found
25. Gopalbhog Mango	Satkhira Chapai Nawabgonj	Medium size. Flesh with some fiber. Have a different scent and very juicy and sweet taste.
26. Dinajpur Bedana Lichi	Dinajpur	Pink coloured juicy summer fruit. Sweet taste. Large size with very small seed. (1000-3500)
27. Himsagar mango	Satkhira Rajshahi	This variety is indigenous to Bengal. Fruit is of medium size, ovate to ovate oblique. Fruit colour is yellow. Fibreless flesh and the sweetness have a cool feeling (therefore the name himsagar). Very juicy. It is an early variety.
28. Rangpur Motihar Tobacco	Rangpur	Soil condition Traditional cultivation
29. Natore Kanchagolla	Natore	A kind of rasagolla made by soaking curd in thick sugar syrup, which is later strained through a sieve.
30. Sylhet Monipuri saree	Sylhet and Chittagong (delimited area of production)	Tribal skill Hand woven, special two colour strips and borders with Monipuri design Own cotton, own yarn spinning, own weaving, dyeing with vegetable colour. The fabric, texture and colours offer a unique combination that can be worn for all occasions.

31. Hazeer biriyani	Dhaka (Nazira Bazar)	Hazir Biriyani, is prepared using, among others, exclusive thin rice, mutton, different spices and Mustered oil.
32. Shobri kola (banana)	Narsindi Bogra Barisal	Unique taste Fat bananas, very smooth and sweet. Small and medium variety. (Banana 700,000 MT/2005 18 <sup>th</sup> largest producer)
33. Lungi of Babur Hat	Narsindi (Traditional skills)	Good quality yarn, floor fastness (paka rong) and attractive design Annual demand more than 20 million pieces Price of lungi for adults: Tk. 200-1000 (higher quality ones are sold at Tk. 3000-3500/piece) Exported to India, Sri Lanka, Singapore and Malaysia (Source: <i>Channel 24 News Report</i> on 19 July, 2014 at 12.40 am)
34. Mirpur Katan	Mirpur	Skill of migrant workers
35. Black Bengal Goat	Country wide	High quality leather
36. Satkhira Tiles	Satkhira	Traditional Clay Tiles
37. Rajshahi Silk	Rajshahi	Traditional Skill Rajshahi Silk is a delicate and soft fiber produced from the cocoons of silkworms and is covered with a protein called Sericin. There are mainly three varieties of silks. <ul style="list-style-type: none"> <li>• Mulberry Silk</li> <li>• Eri (or Endi) Silk and</li> <li>• Tassar Silk</li> </ul>
38. Terracotta	Comilla	Traditional Skill of Hindu religion Produced using simple wheel and deft fingers
39. Jute		Retting Traditional Skill

40. Rangpur Satranji (Rugs)	Rangpur (Monga area)	<p>Traditional Skill</p> <p>Recycling of waste</p> <p>Poor producers (60% women)</p> <p>History: Satranji-making in our country first initiated in Nisbetganj village of Rangpur district during British period. With initiatives and support from the then District Magistrate Lord Nisbet Satranji making stated and expanded in a village that named after him as “Nisbetganj”.</p>
41. Pineapple of Srimongol	Srimangal, Moulvibazar	<ul style="list-style-type: none"> <li>• Small in size but very tasty,</li> <li>• Juicy and tasty</li> </ul>
42. Agar/Atar	Sylhet region ( Fenchuganj, Beanibazar, Golapganj and Sadar of Sylhet and Rajnagar, Kulaura, Komolganj, Srimangal and Barlekha of Moulvibazar district)	<ul style="list-style-type: none"> <li>• Agar industry is a centuries-old Agarwood industry</li> <li>• Agar is produced from Agar trees. One good thing about the agar trees is that cattle never eat the plants<sup>26</sup></li> <li>• 100 per cent export-oriented Agar-Ator item could be the country's premium product, now produced from local raw materials.</li> <li>• Agarwood has multidimensional uses in perfume, cosmetics and medicine.</li> <li>• Agar is used to make different liquid products, including fragrances, golapjal (scented water), agar bati (incense) and different types of creams.</li> <li>• It is also widely used in religious and cultural functions in different parts of the world, especially in the Gulf region.</li> </ul>
43. Khejur Good (Molasses)		<p>Dark colour</p> <p>Made of the sap of Date tree</p>

<sup>26</sup> Iqbal Siddiquee, (2011). Agar farming sees export markets, *The Daily Star*, October 19, Dhaka.

		Taste and scent different from molasses made of sugarcane
44. Ostogram Panir (cheese)	Kishorganj	Hand made Unique preparation and taste
45. Chittagong/CoxsBazar Rupchanda	Chittagong/CoxsBazar	Sea fish Unique taste Unique shape

(Source: Data collected by the researchers; Bobrie, Zohir and Khatoon, 2008)

GI of Goods (Registration and Protection) Act 2013 provides GI registration of products for lifetime. However, the authorized users can use GI for up to 5 years. It is not clear from the Act what will the course of action for the users after the expiry of said five years.

**4.2 Economic rationale/Benefits of GI**

GI is important to protect and maintain ownership on unique and famous products of Bangladesh. Traders in exporting countries often register the geographical names as trademarks without offering producers any financial benefits. GI helps producers differentiate their unique products from similar competing products, establish brand and goodwill of local products, fetch premium price for such products, and increase its sales/export by protecting reputation of these products (Rahman, 2012).

*“GI Law is an opportunity, not an obligation/obstruction. One can apply for getting his unique products registered under GI based on the cost-benefit analysis. GI registration gives the scope to draw on its reputation and thus differentiate from other goods to command a good price. But he is not bound to take GI registration and there will be no punishment for not taking GI” (Dr. Md. Mozibur Rahman, interview on 17 July, 2013).*

An interviewee noted that GI is important for two important reasons: it helps producers of good quality goods to differentiate their products and command improved market position and second, GI can act as a potential means for protecting “*traditional knowledge*”.

Studies have shown that consumers are willing to pay more for GI products. Freitas Santos and Cadima Ribeiro (2005) in Menapace (2010) find that Portuguese consumers are willing to pay up to a 30% price premium for GI-labeled olive oil. An econometric work on the

Spanish market for meat products found that products bearing the 'Galician Veal' label commanded a premium of US\$ 0.21 per kg (Das, 2008). In Thai market, Jasmine rice is priced at around 35 Baht per kilogram, compared to a price of 45 Baht per kilogram for GI product *Tung Kula Ronghai jasmine rice*. GI labeled salted eggs, also has the same pricing trend, five Chaiya salted eggs' are priced at 50 Baht, 25% higher than other salted eggs without GI (Seetisarn and Chiaravutthi, 2011).

GIs are commercially valuable in international trade. Considering the commercial side of GI products, in the EU-Korea FTA, the EU has sought to secure additional protection for its GI-designated agricultural and beverage products in the Korean market beyond what multilateral trading rules currently provide (Horng, 2012). Basmati rice, Colombian coffee and Tequila (all these from developing world) have achieved global recognition and considerable market power due to their uniqueness as GI product. It is notable that the role of GIs is substantially greater in international trade than in domestic trade, because information asymmetry is more pronounced when consumers and producers are located in distant places. GI helps dispel the information asymmetry problem by giving a signal about the reliability and quality of GI products. Through the registration of products as GI products, local businessmen can establish brand, and get recognition of the product as a unique product. Through the recognition, GI thus helps marketability (better market access) of rural and traditional products globally at a higher price which may be seen as an *alternative development strategy* for community producing GI products. GIs also preserve a location's identity in an increasingly globalized world. GI protection also helps prevent price erosion due to copycat products with lower quality in the market.

However, only GI may not be adequate in improving marketing position. It is necessary to meet the expectations of the consumers by maintaining (if not enhancing) the quality of the product, managing and promoting the geographical indication and increasing association of the geographical indications with the product (WIPO, 2011). There are other compelling reasons such as promoting rural socio-economic development and assure higher economic returns" to get products registered under GI (Jena and Grote, 2010; Rangnekar, 2004 in Mishbah, 2012).

#### **4.2.1 GI helps to attract investments in rural areas**

There are instances to claim that GI helps FDI in rural areas. For example: (a) Vietnam: The implementation of a geographic indication for Nuoc Mam from Phu Quoc in 2001, increased the value of the product and attracted a foreign investor (Unilever) which injected 1 million US \$ on a partnership with local producers (Annex 9) (b) Mexico: The tequila companies increasingly rely on contract arrangements with the agave farmers to ensure their supply of agave, and some firms have started to rent the smallholders' land. In 2005, an estimated 12,000 farmers and 11,200 agricultural day laborers (many working directly for the tequila companies) were responsible for the production of agave. Currently, 114 firms are registered to produce tequila claiming the GI.<sup>27</sup>

#### **4.3 Costs of GI/ General Costs to establish and operate a GI**

Most countries have the **legal structure** to permit the domestic recognition of a GI. The costs can be considerable in terms of both time and money in establishing the formal geographic demarcation and achieving agreement on product standards or parameters for getting a GI legally. Establishing a well-defined GI, in most cases, can take several years of effort. Defining the exact boundaries of a GI can be even difficult and at times, contentious. Some who currently are producers or processors may be excluded while "Free riders" may demand to be included. Producers within the same boundaries but who follow somewhat different methods may find themselves excluded. In the Mexican state of Oaxaca, for example, the actual parameters of the *Pluma Hidalgo* GI are still being debated after a decade. Guatemala, one of the most successful promoters of its GIs, has invested more than US\$ 1 million and nearly a decade to firmly defining and establishing its GIs (Giovannucci, Josling, Kerr, O'Connor and Yeung, 2009).

Even the physical demarcation of an area presents a challenge, especially in the case of ecological analysis and it needs significant time and cost. Colombia, for instance, took about two years with the communities to establish the physical boundary for a distinct type of coffee and invested heavily in the science to clearly determine the specific area that met the expected quality parameters prior to formally proposing a GI. Legal costs will also be incurred to apply for GI protection in relevant markets, whether domestic or abroad. In some cases, the government or producer group will need to spend a considerable amount of time understanding and filling out the applications as well as compiling accurate descriptions of

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<sup>27</sup> CNIT-2007 (National Chamber of Tequila Industry)

the methods of production and the links to geography that may be necessary as part of the specifications for the application process. Individual producers wishing to benefit from the GI designation may incur additional costs to adapt their facilities, production methods, raw materials and overall organization to the specified standard or code of conduct included in the designation application.” (Giovannucci, Josling, Kerr, O’Connor and Yeung, 2009).

### 4.3.1 Cost of GI registration

Cost of registration of goods under GI varies between countries. The cost elements and costs of GI registration in countries similar (in terms of socio-economic conditions) to Bangladesh are given in Table 3 to have an understanding about the costs/burden to be borne by GI producers:

**Table 3: Cost of GI registration for different countries**

	Country	Cost items and costs
1.	India	<p>Application for the registration for goods included in one class: RUP 5.000 (€ 84);</p> <ul style="list-style-type: none"> <li>• Notice of opposition to the registration: RUP 1.000 (€ 17);</li> <li>• Application for extension of time for filing notice of opposition: RUP 300 (€ 5);</li> <li>• Application for the registration of an authorized user of a registered GI: RUP 500 (€ 9);</li> <li>• Request for issuance of a registration certificate as an authorized user: RUP 100 (€ 1);</li> <li>• Renewal of the registration of a GI at the expiration of the last registration: RUP 3.000 (€ 53).</li> </ul>
2.	Thailand	<p>Application for registration of geographical indication is 1,000 baht each (€ 20).</p> <ul style="list-style-type: none"> <li>• Application for amendment of registration of each geographical indication is 200 baht (€ 5).</li> </ul>

		<ul style="list-style-type: none"> <li>• Application for revocation of registration of each geographical indication is 200 baht (€ 5).</li> <li>• Other applications are 200 baht each (€ 5).</li> </ul> <p>All documents must be submitted in Thai, therefore costs of translation need to be taken into account</p>
3.	China	<p>No specific amounts are mentioned in the Law. All documents must be submitted in Chinese, therefore costs of translation need to be taken into account.</p> <p><b>Trademark registration:</b> € 100 Search (word mark); € 450 Registration (including official filing fee but limited to 10 items only); € 80 Obtaining Certificate of Registration.</p> <p>All documents must be submitted in Chinese, therefore costs of translation need to be taken into account.</p>
4.	Hong Kong	<p>According to the government of Hong Kong, the cost of 5.registering an individual GI is US \$ 180 (Hong Kong Economic and Trade Office. 2003; Babcock and Clemens, 2004).</p>
5.	Pakistan	<p>Application for registration: RUP 1000 (~€ 13); Notice of opposition: RUP 3.000 (~€ 39); Renewal: RUP 5.000 (~€ 66).</p>
6.	Sri Lanka	<p>Registration fee is € 395.</p>
7.	Vietnam	<p>An application must be accompanied by a document certifying payment of <b>the prescribed fee</b> according to Article 112 of the Intellectual Property Law. Such payments have to be made before the NOIP. All documents must be submitted in Vietnamese. No specific amounts are fixed in the Law. All documents must be submitted in Vietnamese, therefore costs of translation need to be taken into account.</p>
8.	Cambodia	<p>Registration fees: +/- 240 €</p>

9.	Nepal	Application is 1000 RUP (~ € 11) <ul style="list-style-type: none"> <li>• Registration is 5000 RUP (~ € 55)</li> <li>• Complain and opposition are 2000 RUP (~ € 22)</li> <li>• Copy of the registration certificate RUP 1000 (~ € 11)</li> <li>• Renewal of trademark per year RUP 500 (~ € 5)</li> </ul>

(Source: Bobrie, Zohir and Khatoon, 2008)

Apart from the costs of registration, there are costs associated with implementation of GI and fight infringement of GI. For instance, Tea Board of India, the responsible agency in charge of Darjeeling GI, has spent approximately US\$200, 000 over four years (2000- 2004) on legal and registration expenses, costs of hiring an international watch agency and fighting infringements in overseas jurisdictions. (Yanping Xiao, Kolady Deepthi, W. Lesser, and Chunhui Ye)

#### **GI registration is not compulsory**

It is notable that the registration of a geographical indication is not compulsory. However, registration offers better legal protection and facilitates an action for infringement and gives the authorized user the exclusive rights<sup>28</sup> to the use. Unregistered geographical indications could be protected in the court on the basis of the *passing off*<sup>29</sup> action (for passing off goods as the goods of another person) (O' Connor, 2004).

A trader may in appropriate circumstances has recourse to the English law of passing off to protect unregistered rights which it has in a trade mark or service mark; the converse did not necessarily apply i.e. it does not necessarily imply that the trader holds an unregistered trade mark or service mark (Blakeney, 2007).

#### **4.4 GI and Bangladesh perspective**

The GI Act 2013 has been enacted after long wait. According to the Bangladesh GI law 2013, the association or co-operative of a product will have to apply to the registrar of GI to register

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<sup>28</sup> the exclusive right to the use of a geographical indication is subject to any condition and limitation to which the registration is subject.)

<sup>29</sup> (English Law of Passing Off)

a product. The registration of GI goods will remain valid until the same is declared void or illegal (Sec16 of GI Act, 2013). As the GI Act 2013 was enacted only very recently and the GI Rules are yet to be finalized, Bangladesh could not register any of its unique/heritage products under GI. This is because TRIPS mandates a country to enjoy protection of G I at the international level only if it has GI protection under its national legislation. India has already got entitlement on Jamdani Saree, *Nakshikantha* and Fazlee Mango as their own traditional products. Among the three products, only Fazlee Mango has a double heritage, both in Bangladesh and India. Concerning the rest two products, historical records suggest that these products originated in the place presently known as Bangladesh.

India has registered Jamdani Saree as *Upaddyay Jamdani Saree* as originating from Andhra Pradesh (although on the global framework, the World Trade Organization is yet to recognise it), from West Bengal and *Fazlee Mango* from Malda district in West Bengal as GI. Through registration of Jamdani *saree* as an Indian product, the glorious history and the unique creativity of the Bangladeshi weavers have ignored and they are deprived of their traditional but innovative product. Bangladeshi Jamdani has more than 600 years history. The *upaddyay jamdani* has only a 300 year old history behind it. As such it is at best a special type of jamdani saree.

Of these three items, *Jamdani* originated in Bangladesh. Historical records show that Moroccan traveler Ibn Batuta saw Jamdani made in Bangladesh during his visit to Bangladesh in the 14<sup>th</sup> century. He praised its quality. English traveler Ralph Finch also appreciated muslin and Jamdani that were made in Sonargaon (police station) of Narayanganj district, Bangladesh. The fabric became a sought after item during the reign of the great Mughal Emperor Akbar that the British East India Company had to post a high official in Dhaka to buy *mulmul khas*. He was known as the “Daroga-Mulmul”. According to a 1417 account of Muslin export, fabrics worth Rs 550000 were bought for the emperor of Mughal India, the Nawab of Bengall and the famous trader Jagat Sheth (Siddiqui, 2013).

Similarly *Nakshikantha* another exclusive item has its historical, cultural and geographic roots to the soil of Bangladesh (details are given in Case)

India stands to get a premium price for these products whereas these are originally from Bangladesh as evidenced in historical accounts. Around 300 A.D, Kautilya had referred to Jamdani sarees in his book *Artha Shastra* as being made in Pundra (now Bangladesh). Arab, Chinese and Italian traders had also given detailed accounts of this fabric coming from what is now Bangladesh.

#### 4. 5 Problems in implementing GI law

Government does not have enough research on GI. Bangladesh seriously lack needed database and historical evidence for GI products. Necessary records necessary for GI registration are not maintained. E.g. we do not have accurate history of Muslin and Nakshikantha (Interviewee, 17 July, 2014).

#### 4.6 Role of producers (growers)/private sector associations in GI registration, protection and quality control

The enactment of the GI Act in Bangladesh is the beginning to have a GI regime. Much work has to be done to protect traditional products under GI. In seeking GI protection, the producer associations/relevant interested parties must specify, among other things, the historical accounts in support of GI claim, the distinguishing characteristics of the product, its production process, and details concerning the link of potential GI product to the area purported to be the geographical origin. Private sector also need to prepare/keep the “*book of specification*”. This book of specifications fixes the rules in terms of:

- Production methods (farm plots, authorized products, hygiene...),
- Processing;
- Traceability; and
- Packaging

For example, *Kampot Pepper* book of specifications forbids the use of chemical fertilizers.

The documents and product specifications required by the Indian authority to grant GI to Gir Kesar Mango might be taken as a reference to understand the extent of background work needed. In getting Gir Kesar Mango of Gujrat registered under GI, Indian GI registration authority required information under nine categories including specification and description of mango, geographic area of production and map of the area, proof of origin (historical records), method of production and uniqueness of the product.

Specification of the mango include a number of information such as height of the mango tree, fruit weight, fruit shape, skin weight as a percentage of total fruit weight, colour of the fruit (during fruit development stage and when it is ripe), pulp weight, nature of juice (semi solid or solid), taste (sweet/sour), fruit maturity time (month/months' name), average yield of mango (in kg) per tree, shelf life of the fruit (e.g., days) and the biochemical parameters

(acidity, vitamin, sugar etc.). Similar detailed description is also needed for other categories. This example shows that extensive evidence in support of GI claim is needed to be submitted to the GI registrar's office.

In Indonesia, during the GI qualification phase of the "*Coffee of Kintamani Bali*"-Producers defined

- the specific quality of the product,
- the link between the product and territory, and
- *delimited the territory.*

### ***Role of producers in quality control:***

In the GI system, it is the GI producers (GI right holders) who are set to benefit from GIs. As such GI producers have to take steps to maintain/enhance the quality of GI goods. If the initial GI rules are too loose, they may decide to strengthen them in order to enhance product quality, or incorporate additional environmental and social aspects. For example,

*"The Roquefort cheese made from raw ewes' milk has an image and reputation for quality and natural tradition. In order to maintain this reputation and the corresponding quality expected by consumers, breeders in the Roquefort GI management council decided to ban the use of silage feed. They decided to write this rule into their CoP."* (FAO, 2009-10, p. 136)

Private sector producer associations will need to establish necessary verification procedure/quality control procedure (also known as *guarantee system*) to ensure GI products conform to product specifications. Producers follow different verification system in different countries (Annex 6 contains such an example of different verification systems). Among these verification systems, the self-verification system seems primal because under this system, the producers take responsibility for the reliability of quality attributes; and it is the producers who are the primary actors/firms in production process along the value-chain.

Bangladesh frozen food exporters' association (BFFEA) has its quality assurance programme. GI producers may follow such example to ensure product quality. This is because a determination of quality by the national authority (and then, how the standard would be applied) is not required under either TRIPS or Lisbon Agreement (Gervais, 2010).

Any product association or organization or formed registered under applicable laws to represent the interests of the GI producers or a government agency can apply to the Registrar of DPDT, in prescribed form and method and on payment of **specified fees for a**

**GI** registration in Bangladesh. Necessary supportive documents, historical accounts/evidence of origin of goods, detailed description of the goods(for instance, in the case of mango, regularity in bearing, shape, colour, size, taste, yield and resistance to disease and insects) including the delimited area of production have to be attached/detailed with the application.

It is the private sector entrepreneurs who have the knowledge, interest and organisational ability to collect such information. The producers of a certain GI product, for instance, Fazlee Aam producers, may form a GI managing group and gather all the required information/specifications of the product through their Association. They can take the help of experts/product specific research institutes (such as Regional Horticulture Research Station (RHRS) at Chapainawabganj for Mango)/ Bangladesh Agriculture Research Institute (BARI)/universities in identifying product specifications of mango for facilitation of GI registration. Similarly, National Crafts Council of Bangladesh can assist in claiming GI for Jamdani/handicrafts. In Indonesia, during the GI qualification phase of the "Coffee of Kintamani Bali", producers, with the help of facilitators/research organisations, defined the specific quality of the product, the link between the product and territory, and delimited the territory. Similarly, for other unique products like Hilsha fish of the Padma, Jamdani, *Nakshikantha*, Roshmalai of Comilla etc., the Associations will need to take the lead role in collecting necessary information/evidence and accomplish required formalities in order to claim GI. In their efforts, they may ask for assistance from the government, if necessary. These products will get recognition as intellectual property once they are registered under GI. Registration of Bangladesh's unique products would help protect our traditional items, create a genuine niche for development of agro-food industries, build country branding and attract premium price.

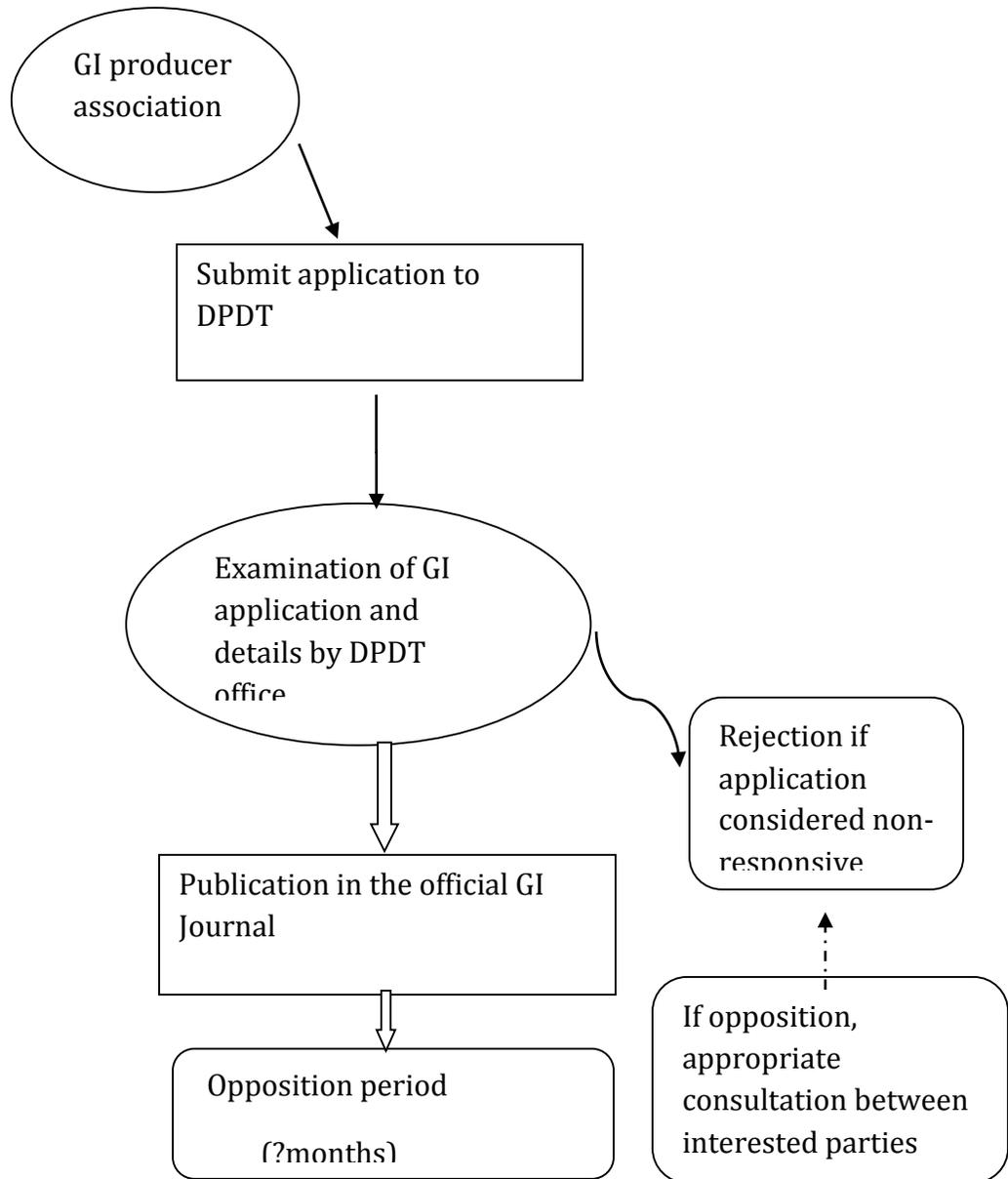
#### **4.7 Role of DPDT in the implementation of GI Act, 2013**

Once a GI application is received, it has to be formally examined by the DPDT office. The application then has to be scrutinised regarding compliance with all the requisites for registration. The examination of GI application can take up to two years. Indonesian GI authority post completion of administrative requirements by the GI Expert Team within the maximum period of 2 years by visiting the production area and scrutinising the supply chain

of the production. If the Book of Requirement (BoR<sup>30</sup>) confirm to the actual field condition GI expert team will provide recommendation to the Registrar, DPDT to consider in issuing certificate of GI protection. GI protection usually lasts as long as the products retain the relevant defining characteristics<sup>31</sup>

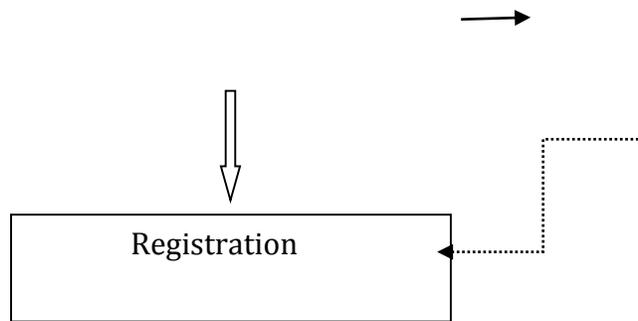
Bangladesh DPDT office may consider the following procedure (Figure 1) in giving registration to the GI applications.

Figure 1 Registration procedure of GI



<sup>30</sup> The book of requirements contains the defining characteristics and information on the typical quality and characteristics of the product that distinguish it from other products in the same category.

<sup>31</sup> In Indonesia, protection lasts as long as the products retain the relevant defining characteristics.



**Additional Information that the application needs to contain:**

- The class of goods to which the geographical indication relates shall apply;
- The geographical map of the territory of the country or region or locality in the country in which the goods are produced or originate or are being manufactured.
- The full name and address of the association of persons or organisation or authority representing the interest of the producers of the concerned goods;
- Where the geographical indication is a homonymous indication to an already registered geographical indication, the material factors differentiating the application from the registered geographical indications and particulars of protective measures adopted by the applicant to ensure consumers of such goods are not confused or misled or confused in consequence of such registration

**4.8 Should producer associations opt for GI registration?**

There is no clear measuring tool yet to guide private sector associations whether they should opt for GI registration for their famous products. It seems feasible for produces to gauge the possible financial benefits/long lasting impact of having GI right against administrative and financial costs needed for having GI right (i.e. whether the benefits would outweigh the possible costs).

**4.9 Specification, Quality and Reputation, of Selected Potential GI goods of Bangladesh**

In getting GI protection, the producers/growers (association) have to apply to the Department of Patent, Design and Trademark (DPDT), the main focal point of GI registration in Bangladesh. In the application they have to specify their products in detail and have to submit evidence to prove its quality and reputation and its link with origin. The following case studies may help the growers or producers (association(s)) to come to know about the detailed application procedure.

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### Case 1: JAMDANI

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In getting Jamdani registered under GI, background information in support of historical evidence of Jamdani producing in Dhaka has to be provided. The following are the information needed to apply for Jamdani to be registered under GI:

#### 1. Historical accounts of Jamdani

Jamdani is believed to be a fusion of the ancient cloth-making techniques of Bengal (perhaps 2,000 years old) with the muslins produced by Bengali Muslims since the 14th century. Jamdani is the most expensive product of Dhaka looms since it requires the most lengthy and dedicated work. In the Mughal regime, most likely during the reign of either Emperor Akbar (1556–1605) or Emperor Jahangir (1605–1627), the figured or flowered muslin came to be known as the *Jamdani*. Jamdani was the most expensive of all muslins. Jamdani was the *chef d'oeuvre of the Dhaka loom*. Derived from the Persian word Jam-dar means flowered or embossed (Ghuznavi, 2006). Indeed, Jamdani was an innovation based on “Muslin tradition”. The survival variety of Muslin is known as Jamdani. (Dr. Iftexhar Iqbal, in a Round Table Discussion on 21 May, 2014). Very specialized skills were required to spin the yarn for muslin. It was done by a small number of young Hindu women working with a *takma* (spindle) instead of the usual *charkha* (wheel). And such spinning required a certain degree of moisture in the air (temperature of 82 degrees Fahrenheit or so). Such moisture was available in the erstwhile Dacca province (i.e. a tract of land extending from Feringey Bazar twelve miles south east of Dacca along the banks of the Meghna to Idlepore, twenty miles north of the sea occupying a space about 40 miles in length and in some places as far as three in breadth, situated in the pargunnas Kederpore, Bickrumpore,

Rajenapore, Cartickpore, Serampore and Idlepore). It was believed that the freshness of the sea air nourished the *Kapas* cultivation (Ghuznavi, 2006).

2. Forbes Watson in his most valuable work titled *Textile Manufactures and Costumes of the people of India* holds that the figured muslins, because of their complicated designs, were always considered the most expensive productions of the Dhaka looms (Glassie, Henry and Mahmud, Firoz, 2008). Around 300 A.D, Kautilya had referred to Jamdani sarees in his book *Artha Shastra* as being made in Pundra (now Bangladesh). Bangladeshi Jamdani has been included in the UNESCO’s heritage list as the sole tradition of Bangladeshi product<sup>32</sup>. Arab, Chinese and Italian traders had also given detailed accounts of this fabric coming from what is now Bangladesh. Similarly, Fazlee mango was best known as a product of Rajshahi in Bangladesh (Businessline, 2011).

### 3. Description of Jamdani

Bangladesh can protect its GI multilaterally only if it can prove that Jamdani is produced solely in Bangladesh. The following information will be necessary for registration of Jamdani under GI. And there is enough official evidence to prove Jamdani is the product of Bangladesh.

Introduction (Make of Jamdani)	Jamdani is a handloom woven fabric Made of cotton. Nowadays only 80-100 count yarn is found for Jamdani. Jamdani association is of the view that for finest quality Jamdani, they needed import permission for limited quantity of Yarn (120-150 count). They also said that it (such yarn) has no other use. So Import Policy Order (IPO) should allow them import of certain quantity of 120-150 count yarn.
Proposed GI name	JAMDANI. We must ask for GI name “JAMDANI” not Dhakai Jamdani because the finest and most famous Jamdani is produced in Bangladesh. No other country has the heritage of JAMDANI. The very name JAMDANI automatically identifies its origin to be in certain parts of Bangladesh (e.g. Narayangonj /Dhaka) So we must emphasize “JAMDANI” and not “Dhakai

<sup>32</sup> Bangla Academy has done the required documentations for the inclusion of Jamdani in UNESCO’s heritage list highlighting the uniqueness of the traditional Jamdani textiles.

	<p>Jamdani” (Ghuznabi, 2014 in an interview). Moreover, the word “Jamdani” is a not a “generic” name, it is a trade name; it is the name of a special product.</p> <p>The tradition/historical evidence of Jamdani production, moisture of Shitalakhya River conducive for Jamdani, the unique skills of Jamdani weavers of Narayangonj and the climatic condition makes Narayangonj area the proper place to produce Jamdani. Furthermore, if we call “<i>Dhakai Jamdani</i>”, it automatically gives credential to Indian claim that Jamdani is also produced in other countries such as “Upaddhyay Jamdani”. But no country in the world has the historical legacy/credential and climatic condition to claim that Jamdani is produced there, and as such it is their product. Moreover, if we accept the name “Dhakai Jamdani”, the word “Jamdani” becomes a generic name which seems to be hidden intention of India. (Round Table Discussion on GI, 2014). It may also allure other countries to add their country name before ‘Jamdani’ and then claim Jamdani as their own. Such claim will mislead public about Jamdani.</p> <p>WIPO representative said that even a non-geographical name can be a GI if the name (such as Feta, BASMATI) if the name is so famous that it automatically signifies/identifies the product to the particular origin.</p>
Key element	<p>Neatly cut yarn from the finest quality Karpash is the key element to weave a perfect piece of Jamdani.</p> <p>Bangladesh Jamdani association wants to import 120-150 count yarn (Limited volume needs to be imported) for Jamdani. For half silk Jamdani, we also want to import half-silk (Monira Emdad/Ruby Ghuznabi, 25 April, 2014).</p>
Softness or hardness	Soft in touch
Colour combinations	One or two or many colours are combined for making difference in look.
Washing	Very difficult to wash. Have to be very careful while washing. This (Jamdani) is not iron-able (cannot be ironed). High quality

	full cotton Jamdani can be hand-washed with soft soap soap. Still there is a risk that colour may be faded/discoloured (Monira Emdad, in an interview in April 2014).
Design and its development timing	Intricate elaborate design: Jamdani is characterised by geometric or floral designs. Designs are never sketched or outlined. Jamdani designs are made while the fabric is still on the loom, inserted by hand during the process of weaving, producing the effect of embroidery (Parveen, 2008).
Motifs (Naksha) and its features	The motifs used in Jamdani are, mostly floral, are of geometric shape, and the sari is embossed with the design often in a diagonal form. One unique feature of the motif is that there are no human or animal figures in Jamdani.
Border Design	In the beginning it was produced only in whites, later with black, grey and straight golden line borders. Colours appeared in the 19th century
Colour fastness (paka rong)	With regard to colour fastness, Jamdani does not have any special requirement.
Shrink resistance	If the material/yarns are of goods quality, jamdani does not shrink much (Interview with Ruby Gaznabi, April 2014)
Paloo	Varies depending on price of the Jamdani.
Weight	Usually light weight; the weight, however, depends on the count of the yarn and fineness of thread. (Interview with Monina Emdad, April, 2014).
Area of production/delimited area	Vast areas of Dhaka were famous for making Jamdani including Sonargaon, Dhamrai, Titabari, Jangalbari, and Bajitpur. Still the villages in Rupganj, Araihasar, Sonargaon, Shiddhirganj and other places around the Shitalakhya river remain the main Jamdani-making belt. The delimited Jamdani producing area has to be distinguishable by geographical features and its boundaries are to be recognized and defined by regulations.

Nature of fabric	Jamdani is made of cotton solely. However, Jamdani producers have introduced half-silk Jamdani as there is a dearth of fine cotton in Bangladesh.
Zari work	Not found.

**Human factor and climatic condition is important for Manufacturing Jamdani**

In the case of Jamdani, the human factor and climatic condition influence the quality of the fabric. The unique skills possessed by Jamdani weavers help to make finest quality Jamdani in Narayangonj area. Weavers from other areas lacking such skills (which the weavers learnt/carried through generations) cannot make quality Jamdani. For instance, Tangaili weavers also tried to make Jamdani but they could not do it due to their lack of skills and orientation with Jamdani production (Monira Emdad, April, 2014). It is found that in 1880, there were as few as some 33 spinners in Dhaka, 16 in Sonargaon and 20 in Jangalbari and Bajitpur. They were from few families who acquired the skills of weaving Jamdani over generations. Cooke Taylor complimented their delicacy of touch as being higher than any other in the world while Ure commented on their gentle temperament which combined an equal measure of skills and patience (Ghuznavi, 2006).



## Case 2: Hilsha Fish from Padma

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Hilsha fish one of the most economically important tropical fish of the family *clupeidae* under the genus *Tenualosa*. The species *ilisha* is anadromous in nature (an uncommon phenomenon in tropical waters) and lives in the sea for most of its life, but migrates up to 1,200 km inland through rivers for spawning. It is the national fish of Bangladesh and famous in the Indian sub-continent. The best quality fish is caught from the river Padma in Bangladesh. Besides Bangladesh, this fish can be found in India, Pakistan, Malaysia, Thailand, China, Vietnam and Sri Lanka

The length of a mature Hilsha ranges from 30-55 cm and it lays 0.1-2.0 million eggs. The eggs are deposited in fresh water, and hatching takes place in about 23 to 26 hours at an average temperature of 23°C. The newly hatched larvae are recorded as 2.3 mm in size. The larvae and juveniles make their way downstream to the sea during a period of several months, feeding and growing on the way. At this stage of their life cycle they are locally known as "Jatka". *JATKA* the juveniles of Hilsha are widely available from February to May in the foreshore and riverine water of Padma, Meghna and other deltaic rivers of Bangladesh (Bobrie, Zohir and Khatoon, 2008).

Yearly 5,000,000 tons of Hilsha fish are caught and among them, 50%-60% are caught by Bangladesh. Bangladesh also exports Hilsha fish to India and some other countries. The Hilsha fish of Bangladesh is very famous for its inimitable taste due to distinctly soft oily texture, mouthwatering flavor and superb mouth feel. Bangladesh earns lots of foreign exchange by exporting Hilsha Fish to India and to countries where Bangladeshi ethnic community lives (USA, UK, and Australia). However, if Hilsha fish is proved to be an animal variety, then it would not be protectable under GI.

### **Hilsha works as a brand for Bangladesh**

Hilsha is a deep sea fish and usually caught in the estuaries (where river meets ocean) of the Bay of Bengal, where they come to lay eggs. It is found in almost all the big rivers in Bangladesh, mainly in the Padma, Meghna, Jomuna and Brohmoputra. The best quality Hilsha is, however, caught from the river Padma and it works as a brand like "Hilsha from Padma". The uniqueness in taste of Padma Hilsha is because of the favourable water condition available in Padma (an i.e. taste of Hilsha is specially related to the water condition

of the breeding place). So, this fish can be registered as a GI good by the name Hilsha fish of Padma or “Padmarllish”. At Chandpur district in Bangladesh, the meeting place of river Padma with the Bay of Bengal has water salinity between 18 to 30‰ which is the most suitable for Hilsha breeding. The environmental condition made this a special variety with its glassy silver colour (Bobrie, Zohir and Khatoon, 2008).

### **Hilsha a Bangalee Tradition**

It is very popular in this region and has a traditional and cultural value. Pohela Boishakh (1st Day of Bengali Year) is celebrated by eating fried Hilsha fish with Panta Rice- a traditional platter of stale rice (in soup) with fried Hilsha slice, supplemented with dried fish (*Shutki*), pickles (*Achar*), dal, green chillies and onion. It is cooked in many different ways and with very little oil. Its unique taste and wide availability in this region along with the high food value make it very popular.

In considering whether Hilsha fish can be a potential GI product, the EU council regulation 2081/92 on protection of Geographical Indications has been consulted. According to the said regulation, most food products can be registered including meat, dairy and fish products, fruits and vegetables, beer, beverages made from plant extracts, pastries, and cakes. Natural gums and resins, wool, essential oils (including lavender oils) can also be registered as Protected Design of Origin<sup>33</sup> (PDOs) or Protected Geographical Indication (PGI<sup>34</sup>). Only geographical and traditional non- geographical names could be registered under regulation 2081/92 (Connor, 2004)

For the registration of Hilsha fish as GI, the historical accounts and other background information and specification of Hilsha fish are needed. The following specifications of Hilsha can be used in making application for GI registration:

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<sup>33</sup> For PDO products, all stages of the production process must take place in the defined geographical area. And there must be an objective and exclusive link between the features of the product and its geographic origin and all stages of the production process must take place in the defined geographical area. *In order to qualify for a PDO, the raw materials must come from the defined geographical area; there is no such rule for a PGI.*

<sup>34</sup> For a PGI product, the link with the geographical area does not need to be essential or exclusive but has to be causal. It is sufficient that the features or the reputation of the product are ‘attributable’ to the geographic origin. Further, not all stages of production have to take place in the defined area (in fact, it is sufficient that only one stage of production takes place in the defined area (M. Zialic, A. Rosati, A. Dimitriadou and E Murelli, 2012)

**Information/data base needed to get Hilsha Fish (Hilsha Fish of Padma registered under GI).**

1. **Type of goods (Class):**

- a. **Scientific Name:** *Tenulosailisha*
- b. **Family:** Clupeidae (Herrings, shads, sardines, menhadens)
- c. **Order:** Clupeiformes (herrings)
- d. **Class:** *Actinopterygii* (ray-finned fishes)
- e. **Max size:** 60.0 cm SL (male/unsexed; Ref. 188); max. published weight: 680 g (Ref. 4832); max. published weight: 2,490.0 g.
  - **Lengths of Hilsha fish by stage**
    - Juvenile Hilsha (TL < 180 mm)
    - Immature Hilsha (TL - 240 to 290mm)
    - Adult Hilsha (TL > 300mm)
  - **Weight of Hilsha fish by size (Average 445gm)**
    - Small (200g+)
    - Medium (500g+)
    - Large (800g+)
- f. **Environment:** pelagic; anadromous (Ref. 51243); freshwater; brackish; marine; depth range - 200 m
- g. **Climate:** tropical; 34°N - 5°N, 42°e - 97°e
- h. **Resilience:** High, minimum population doubling time less than 15 months(K=0.5-1.2; Fec=220,000)
- i. **Morphology:** Dorsal spines (total): 0 - 0; Dorsal soft rays (total): 18 - 21; Anal spines: 0; Anal soft rays: 18 - 23. Belly with 30 to 33 scutes. Distinct median notch in upper jaw. Gill rakers fine and numerous, about 100 to 250 on lower part of arch. Fins hyaline. A dark blotch behind gill opening, followed by a series of small spots along flank in juveniles. Color in life, silver shot with gold and purple.
- j. **Biology:** Schooling in coastal waters and ascending rivers for as much as 1200 km (usually 50-100 km).
- k. **Food and feeding behavior:** Plankton, mainly blue green algae, grubs, diatomscopepods, cladocera, rotifer, organic detritus, mud, sand etc. (<http://www.sos-arsenic.net/english/cooking/cooking.html>)

### 1. The biochemical parameters:

Parameters	Value
Calories	309.58
Calories from fat	200.00
Protein	24.72 g/100g
Total fat	22g/100g
Total carbohydrate	3.29g/100g
Vitamin C	27.22mg/100g
Calcium	204.12mg/100g
Iron	2.38mg/100g
Total Carbs	3g
Total sugar	12-13%

### 2. Name of Geographical Indication: Hilsha Fish with picture

### 3. Physical Characteristics and other attributes of Hilsha Fish:

The following table contains the details of Hilsha fish:

	Quality parameters	Description
1.	Product type	Fish
2.	Taste and Flavor (Soft oily texture, mouthwatering flavor and superb mouth feel)	Certain fatty acids like steareic acid, poleic acid and many poly unsaturated fatty acids ( $\omega$ 3, $\omega$ 6) viz., linoleic, lenoleneic, arachidonic, eicosapentanoic and docosa-hexanoic acids. The transformation of saturated and mono unsaturated fatty acids into poly-unsaturated fatty acids

		are believed to be the key important phenomena that control the unique taste of freshwater Hilsha.
3.	Lipid in female Hilsha Fish	Pre-spawning time: range from 16-22%
4.	Polyunsaturated fatty acid	In marine Hilsha: lowest of 11.41% In freshwater Hilsha: highest of 26.87%
5.	The quantity of docosa-hexaenoic acid (DHA, C22:6 $\omega$ 3)	5.4 times higher than eicosa-pentaenoic acid (EPA, C20:5 $\omega$ 3)
6.	Salinity	From the 30-35 ppt to almost zero (due to changed osmotic balance).
7.	Flesh	More soft and relaxed
8.	Musculatory system	Soft and flexible, the fat protein inter molecular adjustment are comfortable.
9.	Cell membrane	The integral component is the PUFA
10.	NICE classification code	F0223
	HS code:	030379

## Relation between Hilsha fish and the Geographical Location

### 3. Scope of Geographical Area

The unique water condition of the estuaries of the Bay of Bengal near Chandpur district of Bangladesh results in the special quality Padma Hilsha which is the most popular one. 40 percent of Bangladeshi fishermen (2 percent of the total population) are earning their livelihood directly or indirectly depending on Hilsha. People use special nets set against the current to catch Hilsha and that indiscriminately catch all types, young (Jatka) to mature ones. According to a report published through Bangladesh Fisheries Research Institute, over 3700 metric tons of Jatka are caught annually during their nursery season from inland rivers. To increase the production of Hilsha it is necessary to ensure that the fishermen are not catching younger fishes or fishes with eggs.

#### **4. Proof of Origin**

It is an established fact that the Hilsha from the river Padma is unique for its taste. It can be identified by its glassy silver colour and size. It has special value to the consumers and that is recognized only by its name "Hilsha from Padma".

#### **5. Eligible for Registration**

Historically and traditionally the special variety of Hilsha from Bangladesh is associated with the name of the river Padma. Its special quality and taste makes it worthy of being registered as a *Geographical Indication*.

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### **Case 3: Nakshikantha**

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*Nakshikantha* is a traditionally Bangladeshi Product. Aarong (BRAC owned Bangladeshi shop for handicrafts and fashion items) plays a vital role in protecting and promoting traditional Bangladeshi products and designs. *Nakshikantha* art and Jamdani has been described as Bangladesh's rich craft heritage (Rogers, 2009).

Poet Jasimuddin wrote his famous "*Nakshikanthar Math*" in 1929. Through this poem, the art form that had originated in the villages of Bangladesh became known to the world. The *kantha* is made out of old saris, *lungis* and dhotis. At least 5-7 saris usually make a standard size *kantha* or quilt. They are sewn together to attain the size and the layers required. The needle and thread is used to outline a design followed by focal points. The filling motif is then worked on. The designs are usually flowers, undulating vines, images of birds and fish, animals, etc. No two are the same. Each *Nakshikantha* is unique and often tells a tale. *Nakshikantha* is uniquely Bangladeshi (Rahman, 2012). However, '*Nakshikantha*' varies in its form and weaving pattern from place to place within Bangladesh. To address such situation, section 7 of the draft GI Act of Bangladesh and section 10 of The Geographical Indications of Goods (Registration and Protection) Act, 1999 of India have made provisions for the registration of 'homonymous' GI if they are true to their place of origin. The concerned authority needs to decide the conditions of registration of 'homonymous' GI considering the practical implications including ensuring equitable treatment to all the producers and traders.

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#### **Case: 4 Fazlee Aam**

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Fazlee aam (mango) was best known as a product of Rajshahi in Bangladesh (Businessline, 2011). Rabindra Nath Tagore has referred to it in our national anthem. He writes: "In Falgun (March) your mango gardens spread maddening aroma." Mango thus occupies a special place in our food, literature and culture. The best variety of mango grown here (in the Rajshahi region) is the Fazlee, which is grown (Rahman, 2012).

1. **Type of goods (Class.):Mango: Bangladesh/DPDT needs to decide on the Class of the product (Mango). India has put its GIR KESAR MANGO** in respect of Mango falling in Class - 31in Class 31-Mango<sup>35</sup>
2. **Specification: in language and dot points containing the following**
  - a. Tree height:
  - b. Fruit weight:
  - c. Fruit shape:
  - d. Skin heavy/medium thick about % of total fruit weight,
  - e. Colour of the fruit (during fruit development stage and lateron),
  - f. Pulp colour, fibreless or with fibre, pulp weight % of the total fruit weight,
  - g. The stone is flat/... With ...% of total fruit weight,
  - h. Juice (semi solid or solid?), sweet/sour tasty with good/not good flavoured
  - i. **Fruit maturity time (April May/Nov-Dec),**
  - j. Its average yield is ... kg per tree.
  - k. Regularity in bearing:
  - l. The keeping quality of the fruit is 15-20 days
  - m. The biochemical parameters:

TSS	(18-22 oB)
Acidity	(0.25-0.27%)
Vitamin A	(42.0 IU)
Vitamin-C	(42-48 mg/100 g)
Total sugar	12-13% etc

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<sup>35</sup> This class is based on the current edition of International Classification of Goods for the purpose of registration of trademarks published by the World Intellectual Property Organisation (WIPO). This is referred in Rule 21 of the Indian GI Rules 2002 for Classification of Goods.

**3. Name of Geographical Indication: Fazlee Aam (Fazlee Mango) with picture**

**4. Description of Goods:** Basic description of Fazlee Aam has to be identified. For example, the description of Indian **Gir Kesar Mango** provided the following description in getting registration under Geographical Indications of Goods (Registration and Protection) Act, 1999 of India.

	<b>Quality parameters</b>	<b>Description</b>
1.	Fruit Shape	Oblong
2.	Fruit color	Deep green during fruit development and turns to light apricot yellow with pink spot on shoulder during ripening stage
3.	Fruit weight (g)	250-300
4.	Skin thickness	Medium (13% of fruit wt.)
5.	Beak	Small
6.	Pulp color	Saffron color
7.	Pulp weight (g)	180-200 (69% of total weight)
8.	Pulp flavor	Saffron
9.	Fiber	Fiber less
10.	Stone shape & weight	Flat (18% of fruit wt)
11.	Peel (%)	13.28
12.	Juice consistency	Semi solid
13.	Taste	Sweet
14.	Fruit maturity	April-May
15.	Keeping quality	15-20 days
16.	TSS (oB)	18-22
17.	Ascorbic acid (mg/100 g)	28.59
18.	Reducing sugar (%)	3.15
19.	Total sugar (%) : 13.96	13.96
20.	Non reducing sugar (%)	10.81
21.	Spongy tissue	Tolerant

**5. Geographical Area of Production and Map (...to be shown)**

6. **Proof of origin (Historical Records):**
7. **Method of Production:**
8. **Uniqueness:**
9. **Inspection body:**

#### **4.10 Management Challenges in the Implementations of the GI Act, 2013**

Being a new issue, the producers or their associations, manufacturers and the business community are not very aware of the concept of GI and related issues. It has been reported (by interviewees) that most stakeholders for GI have little or no idea about the legal provisions and requirements for obtaining GI registration. Moreover, GI producers (in many cases) will have to prove that their product name has not become generic in the concerned market. This is an expensive challenge as the interpretation and analysis regarding the generic or descriptive character of a name varies extensively from person to person or from country to country. Educating the stakeholders of GI about the rules and requirements of GI is a major challenge in the implementation of GI Act and Rules.

Furthermore, the producer associations/manufactures have to be convinced about the economic rationale of GI. This is because producers will apply for GI registration and bear the costs of official procedure only when they realise that their benefits of GI outweigh its costs. As such, it would be a challenging task for the regulatory authority to convince the potential producers of GI products on the economic and commercial benefit of GI.

The third management challenge is to train a pool of officials and give them hands on experience in GI registration, examination of GI applications (including how to verify product descriptions, specifications) preparation of GI Journals, detail knowledge on how to determine/guide benefit sharing, and maintenance of GI register to have a functional GI regime.

According to Dr. Md Mozibur Rahman, “Government does not have enough research on GI, nor does private sector research institutions. It is not clear in which areas of production/manufacturing and for what type of goods, GI will be applicable. So both the government and the private sector will have to do more work/research on GI to identify the potential GI products”.

**Enforcement of Geographical Indications** is another challenge given lack of experience of DPDT officials in dealing with GI. Once products are registered as GIs, the producers or manufacturers of the goods in the geographical origin of the goods or persons engaged in trade related to the goods should be eligible to use the registered GI. The specifications of the goods should be in accordance with the conditions prescribed in giving registration of GI. If it is found GI products are produced and marketed by persons (unauthorized users) without complying with the product specifications, the Right-owner will have to take it to the notice of the proper authority. If that person still fails to comply with the conditions without proper reason within such period of time, the Registrar will have to take actions against the users/infringers. Taking such action is difficult in Bangladesh due to undue influence by infringers. Moreover, the right-holder must be able to detect unauthorised users on time and take necessary action. Furthermore, the GI right-holder must be able to train users on specifications, monitor and control users' compliance with the correct specifications of the registered product.

#### **4.10.1 Challenge for Government and producers/growers/processor**

Significant challenges exist for the successful implementation of GI. Initial challenges include how to examine GI applications and arrive at a decision as to who will get registration GI given the fact that DPDT do not have any prior experience in GI. Other challenges relating to management of GI includes:

The Government should address the following issues:

- Capacity building of collective bodies and reliable inspection bodies
- Cost of registration should be set for: application, notice of opposition, extension of time, certificate, amendments of registration, revocation of registration.
- Cost of litigation should be set for: opposition, appeal. It will depend on the complexity of the case.
- Time frame for registration and protection should be set.

In order to apply for registration of GI, there has to be organization of producers. Most of the organisations in Bangladesh are weak as institutions. The producer associations or organized associations need to be strengthened, Capacity building of these organizations is

needed so that they can draft the product specifications, draft the application for registration and monitor through inspection. For small producers or unorganized producers of GI goods, making them organized to understand the significance of GI and apply for GI is a challenge.

Coming up with necessary but detail information such as product attributes, details about the process and production method, delimited area of production, who will be given GI registration in case there are more than one applicants for GI for the same item, historical evidence in support of the claim that that the particular GI product is produced in the delimited area of production generation after generation, *definition of the product according to precise specifications/standards* and the description of the production process in a meaningful way<sup>36</sup>.

For getting GI internationally, there may be a need to even go for the DNA testing of products where Bangladesh application is faced with opposition from other countries.

Building up the reputation of the GI product and maintaining consistency of the quality of the same is not an easy task. GI producers have to establish some mechanism to ensure quality. They have to invest lot of time, patience, capital, quality control and well-crafted marketing strategy to create a valuable GI. In this case, it is worth noting that Champagne (wine) is said to have taken as long as 150 years to build up its reputation and goodwill (Das, 2008).

#### **4.10.2 Monitoring of product - whether products meet specifications**

The product specifications should be prescribed in a legal/ technical document establishing the requirements of the GI in the application(s) form(s) for examination. It should also be in the registration document. Submission of the complete technical document with application for GI registration should be compulsory requirements for GIs members/users. It is a

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<sup>36</sup> The application for GI registration in Indonesia has to describe the production process. The description of the production process has to be explained in such a way so as to allow any producer within the region to produce the given product on the basis of the information given in the specification. GI application also needs to contain a description of the *method used to control the goods as well as measures taken to ensure the traceability of a good*; (<http://www.trademarkcopia.com/indonesia.html> accessed on 15 June, 2014).

challenge to ensure that GI producers/users produce/make GI products maintaining product specifications and specific methods of production.

- Promote awareness of the GI Bangladeshi products
- A specific mark should be set for each product. Collective advertising campaigns could be undertaken.
- On a national level, by a marketing policy of the right-owners' bodies and organizations to organize fairs, skill training, setting up website and GI Portal, emporium, etc. The "One District-One- Product, (ODOP)" project of Export Promotion Bureau (EPB), can be a tool to promote GIs products.
- On an international level by an appropriate policy of the public and professional organizations, like the MOC, BFTI, Export Promotion Bureau, the Dhaka Chamber of Commerce, The FBCCI, etc. Web site and GI portals could be set up. Fairs and promotional tours for major global retail buying houses (Wal Mart, Carrefour, Auchan, Tesco) could be undertaken.

The next chapter (chapter 5) discusses the challenges of promoting GI products abroad.

## ***CHAPTER 5: CHALLENGES IN PROMOTING GI PRODUCTS IN INTERNATIONAL MARKETS***

This chapter details the challenges that the relevant government department and the producers/growers (including their associations) may confront in proper implementation of the GI rules and regulations.

### **5.1 GI registration internationally**

Reputation and unique characteristics of products originating from a particular geographic area/region/country helps international GI registration. In applying for international registration, specific information has to be mentioned in the application form (Annex 2). As a result of Napa Valley's worldwide reputation for its quality wine, US "Napa Valley" has been registered as a GI (Napa Valley is a GI) in six countries so far, including Thailand in 2011.

### **5.2 Protection of Bangladeshi GIs abroad**

Bangladesh may consider follow Indian steps in its effort to protect GI products abroad. India protected its Darjeeling tea internationally as a trade mark/CTM. (Annex 3).

### **5.3 What about Jamdani, Nakshikantha and Fazlee Aam already registered by India**

Sometimes several countries of region may share the same heritages as is the case with Jamdani. Bangladesh is famous for Jamdani. India has also got GI for its Upaddyay Jamdani because India has also Jamdani craftsmen (Kamol, 2013). As Bangladesh and India share some common heritages, it may be the case that India's registration of Upaddyay Jamdani has its own heritage. As GI is a territorial right, GI registrations in India obviously only apply in respect of the territory of India. In other words, GI rights will only be valid for the country where it is registered. That is registration as a GI product in India will be applicable only in India. As such, it is possible to have same product (e.g. Mango) may be registered as a GI product in different names in different countries;

In that case, joint ownership/GI could be a possibility. This possibility can be turned into a reality through mutual consultation and negotiation. But as our (Bangladesh's) claim including Jamdani as our sole heritage is accepted by UNESCO in the Ajarbaijan convention, Bangladesh may argue that it is Bangladesh's heritage product and the proper procedure would be to challenge in the Indian Court of Law. And such court case can only be preferred

within a given time limit. As India has registered Jamdani (although by a name of its own locality), Bangladesh may consider file a case against India to prevent Indian manufacturers of Upaddyay Jamdani from using the word 'Jamdani'. Although India has registered Jamdani Saree as Upaddyay Jamdani Saree as originating from Andhra Pradesh, historical records show that Jamdani is originated (and historical root) in Bangladesh.

The name '*Upaddyay Jamdani*' can mislead the public about the true origin and quality of Jamdani. Using of the word 'Jamdani' with upaddyay can be an action of passing-off. So, to protect Jamdani under geographical indications, we can go India and can file case against India in Indian court to get redress. The plaintiffs got relief in similar situation in Scotch Whisky Case. **(Annex 5)**.

In Scotch whisky case, The Scotch Whisky Association (henceforth to be called 'Plaintiffs') have filed the suit for a permanent injunction restraining the Defendant (a manufacturer of various brands of Indian whiskey) and those acting under the Defendant from dealing, in any manner, with whisky under the name 'Red Scot' or any other name containing the word 'Scot' or any word similar thereto so that the Defendant cannot pass off its whisky as Scotch whisky. The case was settled by granting the relief prayed for by the Plaintiffs and the Defendant and those acting under the Defendant are restrained from using the word 'Scot' or any other word similar thereto in the whisky manufactured and sold by the Defendant.

- Another option could be to resolve the issue through bilateral negotiations. Such negotiation can result in bilateral agreement. Under such agreement, each country can provide GI protection to other countries' products on a reciprocal basis.

#### **5.4 Should Bangladesh become a Signatory to Lisbon Agreement?**

Geographical Indications are usually protected in accordance with national laws and international treaties. It is however difficult to protect GIs internationally due to variations in legal systems of different countries. Since Bangladesh is a signatory to the Paris Convention, Bangladesh is eligible to become a member of the Lisbon Agreement. Bangladesh may consider the relative rights and obligations that it may enjoy/shoulder and decide to be a signatory to the Lisbon. The Lisbon Agreement for the Protection and Appellations of Origin and their International Registration could be an option for Bangladesh to gain GI internationally for its heritage products. It provides the Platform to protect special category of GIs or Appellations of Origin in countries beyond the country of origin through registration with WIPO (Misbah, 2013).

If Bangladesh becomes a Lisbon Agreement signatory, it will have the scope to register its GI products in all 28 Lisbon Member countries<sup>37</sup> (as Lisbon Agreement is under process of revision, Number of Members of the Lisbon Agreement is expected to increase soon) using one procedure through WIPO and after completion of certain formalities.

Lisbon system is a system for the International Registration of Appellations of Origin (AO), a special category of GIs that offers a means of obtaining protection for an AO in the contracting parties to the *Lisbon Agreement* through a single registration.

As per Article 1(2) of the Lisbon Agreement an “appellation of origin” must be “recognized” and “protected” in the “country of origin” in order to qualify for registration at the International Bureau of WIPO.

Lisbon Agreement, however, does not take away the rights of individual member countries to refuse GI. The competent authorities of the member countries that have received notice of the registration of an appellation of origin have the right to refuse to protect it in their territory. It is, however, to be noted that refusal of application for registration by one Lisbon Member *does not mean refusal by other countries*. The declaration of refusal has to specify the grounds for refusal such as the appellation has already acquired a generic character in its territory in relation to the product to which it refers (WIPO website, n.d 2014).

*However, if Bangladesh becomes a Member of the Lisbon Agreement, the institutional capacity of the DPDT (GI directorate) has to be increased (created). That means necessary investment in infrastructure and human capacity building will be required to have proper regulatory establishments/set up in order to handle the pressure of the registration and protection of the significantly large number of GIs from other countries, mostly the EU.*

It is to be noted that application based on domestic GI is normally not refused by GI Members. Before applying for GI registration in Lisbon Members, the same has to be protected in the country of origin. It is to be noted that at the moment, there is no international Register for GI even for wine except Lisbon Registry; it is however in a limited scale. For the establishment of multilateral system of notification and registration of GIs for wines eligible for protection in Members participating in the system, negotiations are to be undertaken in the Council for TRIPS.

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<sup>37</sup> Upon registration of a GI product (say Bangladesh Jamdani Saree), WIPO will notify all other members within a year time. If no protest is received from its member countries, registration will be available in all 28 countries (WIPO Representative in a telephone interview on 24 February, 2014).

The reality is that in the WTO TRIPS Council, negotiations for International system of notification and registration for GI has been started but stalled for quite some time due to non-agreement on the issue. In other words, registration of GI under TRIPs Agreement remains an unfinished business.

In this regard, some analysts view that that Bangladesh may initiate a Dispute with the WTO DSB to establish its absolute claim over the three products (*Jamdani, Nakshikantha, Fazlee Aam*) as per article 64 of the TRIPS agreement (which is subject to Articles XXII and XXIII of the GATT, 1994).

However it appears that Bangladesh may first get these products registered under GI and then try to get protection internationally through Lisbon System. For Jamdani, Bangladesh may, with adequate documentations, proceed further and exhaust all avenues (since there is a detailed study on Jamdani by CPD)] to get GI right by the name JAMDANI.

### **5.5 Setting Bangladesh Position in the GI Extension Debate**

When Bangladesh will start implementation of its new GIs Act (2013), and set up the appropriate Control Authority, namely a “*GI Board*”, the country will be in a position to develop its strategy for getting GI protection for its reputable products multilaterally. In the WTO debates on GIs, Bangladesh may consider to support the following:

- The extension of Article 23 to products other than wines and spirits, to give to Bangladeshi products the same protection given to wines and spirits. (moreover to give higher protection for wines and spirits and not to local food and non-food products is not very relevant in a Muslim country)
- Extension of TRIPs exemption for LDC as long as they remain an LDC
- Bangladesh can place requests for providing S&DT to LDCs on following areas:
  - Funds available to strengthen the customs inspections in LDCs
  - Fund for domestic data base
  - Fund for training producers and officials on GI
  - Fund for awareness raising and promotion
  - Fund for drafting product specification

## ***CHAPTER 6 CONCLUSION LIMITATIONS AND POLICY IMPLICATIONS***

### **6.1 Conclusion**

This study on GI has proposed a list of potential GI products, the economic rationale of GI citing some examples, the role of producer/private sector associations in the implementation of GI Act/Rules and the challenges for both the government and the private sector to have an effective GI regime. The policy makers and the producers of potential GI products have to work in a coordinated way for maintaining title to the unique and heritage products of Bangladesh. Effective GI regime would not only help get improved market access and premium pricing for GI products, it would also help the country in its effort to establish Bangladesh Branding.

This chapter concludes the report with recommendations, policy implications/responses and limitations of the study.

### **6.2 Recommendations**

In order to build up an effective GI regime in Bangladesh, the following activities are proposed for implementation:

**Creation of awareness:** An awareness initiative is needed to make the GI producers, farmers/community and industry aware about the significance and economic rationale of having GI registration for their unique (famous) products/heritage products. Only then they GI producers/owners will come forward with necessary evidence to register their famous products. Central public bodies in partnership with local level entities/elected representatives should undertake the task of educating the producer associations/communities on the benefits of getting GI products registered. To put it differently, there must have Government initiatives to take the GI as a development issue. Initially, it is the Government who has to play a crucial role in increasing awareness about GIs and traditional products, and such efforts should be supported by private sector through their (producers'/growers') participation. Special emphasis on building brands will also be necessary to safeguard the rights of the GI owners. Application for GI registration, will, however, largely depend on the trade interests of the producers of GI goods.

**Create a database and identify products:** There exists no exhaustive database of distinctive products, or assessment of their potential market values in Bangladesh. Claiming

GI for country's unique and traditional products and giving right to the producer community/rightful owners need a comprehensive data base. It is important to conduct detail study and consult relevant stakeholders/producer associations/GI analysts to identify not only a list of potential GI products but also the detail description/product attributes of each GI item. Sincere and timely efforts both by the government and private sector are necessary in this regard.

**Role of Government:** Under the “One Tambon-One Product” (OTOP) programme of Thailand, district and provincial officers often directly contact producer groups for OTOP registration. They also process the registration without the consent of producers to increase the number of OTOP registered products (Haraguchi, 2008). As most of the producers of potential GI products are not aware about GI, its economic/social significance and the formalities to be observed in getting GI registration, DPDT/or government officials may consider explore GI products and contact producer groups and extend possible support and encouragement so that they register their products.

Moreover, as there is lack of high quality yarns to produce Jamdani, import permission (for limited quantity) may be awarded to Jamdani manufacturers to import *120x150 count yarn*. Yarn of this specification is necessary to produce high quality Jamdani (Interview, 2014).

**Role of producers' organisations/associations:** In establishing and managing a GI regime, the producers' organization has to come up with sufficient factual basis for registration. They need to identify the qualities and *characteristics/specifications* of the product. Defining the exact physical boundaries (i.e. delimiting the area of production) for the GI product is an important task for group of producers. The most important job for producers' organizations/their collective organizations is to advance historical/documentary evidence in support of the geographic origin of the goods. Furthermore, monitoring the market is important to detect infringements before the infringer has created “goodwill”. Moreover, producers' organisation has to increase and protect the reputation of a typical local product. Producer associations/group of producers<sup>38</sup> also need to comply with the specifications of the product (advanced by them) in order to be entitled to use the geographical name.

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<sup>38</sup> Association of producers or public body or controlling authority will have to ensure that a GI product is produced meeting quality specifications. The reason is that if they do not control quality specifications, the GI product will lose its credibility and quality signal and thus its uniqueness and value (premium pricing).

The public sector should lead the way in encouraging the private sector to register, and promote unique Bangladeshi local products so that they become well-established both in and outside the country, in the same way as Parmesan cheese and Parma ham has been promoted by Italy, or Bordeaux wine by France. Geographical Indication would be a major competitive advantage for Bangladesh in creating the country's brand, identity and reputation in today's highly competitive globalised market.

DPDT officials are in urgent need of training. For example, they mentioned that although the law has been enacted and the formulation of GI Rules is in process, they are still in the dark about the precise contents and information to be recorded in different forms and GI register. They need to practically see the columns, and contents of GI register from other countries.

***Examination protocols*** should be in place to ensure that the GI producers comply with production specifications/prescribed quality standards. In the examination stage of GI application, "historical evidence/accounts" has to be emphasized to substantiate the claim of the applicant that the goods (for which GI is sought) have been in production for many years/decades in the delimited area. The lack of historical records/evidence of potential GI products tracing their ancestry to the soil and geographic boundary of Bangladesh will weaken claims on our traditional products. The government will have to institute an authority/body and also put in place the rules and procedures for registration of the products. The registration process should follow the internationally set procedures. Once the unique products are registered under GI, implementation of the GI may be effectively done through PPP. Ecuador has adopted such PPP project for its Montecristi Straw Hat" (Panama Hat).

Having control on quality/process of production through public or private inspection bodies is also important to ensure consistency of quality. Otherwise GI goods would lose its appeal and there would be a lacking of *origin-quality link*.

Before making any effort for international registration or protection, it is vital to make sure that GI protection is first ensured within the home country. For example, it will be an important priority of the authority to see whether Porabari/Tangail Chomchom is produced in some other places beyond the delimited area of Porabari/Tangail.

Jamdani saree has to be registered under the name "JAMDANI" and not "DHAKAI JAMDANI". This will protect the interest of Jamdani producers of Bangladesh. Otherwise, use of the name "Dhakai Jamdani" will basically mean "giving legitimacy to Indian claim" that they can also produce Jamdani named Upaddhyay Jamdani. It will also be a recognition that Jamdani is

produced in other countries, which is not the case and which will create scope for other countries to register some other type of saree as their Jamdani like “SRI LANKAN JAMDANI”.

**Declaration of Convention countries:** Section 20 of the GI Act 2013 provides for declaration of Convention countries from Paris Convention and WIPO members who agree to provide facilities to any Bangladeshi citizens to register and protect GI products as they give to their own citizens. This has to be done as soon as possible to pave the way for registering Bangladesh products abroad and allowing producers of foreign GI products get registration in Bangladesh.

**Classification:** GI registration also requires determining classification of GI products. For instance India follows **NICE CLASSIFICATION** for its GI products. The Nice Classification (NCL), established by the Nice Agreement (1957), is an international classification of goods and services applied for the registration of marks (WIPO). The concerned officials of Bangladesh DPDT office has to be trained on Classification of GI products.

**Maintain Shitalakhya River:** As Jamdanis can only be produced on the banks of river Shitalakhya, where its distinct climatic conditions help make the fine texture of Jamdani, it is vital to save this river. In particular, rivers and canals in Bangladesh are getting polluted due to human actions. This river needs to be maintained and free from pollution and illegal grabbing in order to support Jamdani producers continues their production.

**Monitoring of commercial use:** Commercial use of GI has to be monitored by the team of GI experts. *Use that is not in line with the book of requirements is considered a violation of GI rights.* Indonesia publishes the book of requirements with the relevant GI registration. Classification for GI goods has to be finalized and made known to the potential GI applicants/associations. India uses ‘NICE’ classification (a classification for Marks) for its trade marks. There is no international classification for GI as such. However, the EU has its own classification for GI.

**Promotion:** A GI registration does not automatically provide reward. Like other labels or brands, GI must be promoted and advertised. This is because only a very small share of consumers is familiar with GI or certification scheme. A wider promotion campaign informing consumers about the granted GI protection and stressing the high quality, authenticity and typicality of Jamdani or any GI product may convince consumer to be willing to pay more for GI products.

**Protection of GIs<sup>39</sup> reciprocally:** Bangladesh may get protection for some of its goods of reputation as GI products through bilateral negotiation. E.g. the European Union and China agreed on the reciprocal protection of some ten reputable geographical indications (Louis Augustin-Jean, H  l  ne Ilbert, Neantro Saavedra-Rivano, 2012).

The national IP system needs to be linked with regional and international IP systems to facilitate the protection of geographical indications outside Bangladesh.

Feasibility studies for specific product needs be done. This is because whether producers will apply for GI depends on the relative benefits and costs of having GI.

**Benefit sharing:** A fair and equitable mechanism have to be developed for benefit sharing of GI. Usually the formula for benefit sharing is determined on a case by case basis. It is the GI authority who will determine the benefit sharing formula. The guidelines for benefit sharing (to be determined by GI authority) shall provide for monetary and other benefits such as royalty, joint ventures, technology transfer and product development. All the producers in the GI region should be able to reap the benefits of GI protection.

Finally, other common challenges in the effective implementation of GI such as *ownership issue*<sup>40</sup>/*benefit sharing*, delimitation, setting up of impartial control system (Bhattacharya, 2015) and protection abroad has to be dealt with due diligence, consultation and deliberative process.

### **A GI Board may be established for Accessible and smooth registration**

In order to assist the registrar, a committee hereafter called the “Geographical Indications Board” may be formed consisting of representatives of the Government and private sector, representatives of the Lawyers’ and IP Practitioners, and qualified persons in area of law, science, agriculture, economy, liberal arts, history, geography or cultural studies to be appointed by the Government. Such GI Board exists in Thailand. Some of them should be appointed from organization or agency related to consumer protection. The Board could have 9-12 Members. The Secretary Ministry of Industry could be the Board Chair Person and the Registrar Department of Patent, Design and Trademark, should be the Board Member Secretary.

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<sup>39</sup> Eight star products from Asian countries (including ‘Darjeeling tea’ from India) and two from Turkey and Morocco have been published on the EU register (Louis Augustin-Jean, H  l  ne Ilbert, Neantro Saavedra-Rivano, 2012)

<sup>40</sup> making sure that some legitimate producers are not excluded from GI benefits.

The Board could have the following powers and duties:

- (1) To give recommendations or advice to the Minister in the issuance of Ministerial Regulations under the new GI Ordinance.
- (2) To consider and decide the appeals under the GI Act/Rules.
- (3) To order the amendment or revocation of GI registration
- (4) To consider other matters related to geographical indications assigned by the Registrar and the Government
- (5) To consider the appointment of subcommittees, when needed.

In performing duties, the Board should have the power to issue order in writing to summon any persons concerned to give statement or furnish documents to perform its duties related to GI. The applicants shall have the right to appeal against an order of the Registrar to the Board. The appeal shall be in accordance with the rules and procedures prescribed in the Regulations.

**Exclusive Marketing Rights:** Provisions should be made to provide exclusive market rights to registered GI products in the domestic Bangladesh market. Non-complying products must be withdrawn from the market.

With regard to the future of GI protection, although the European Commission has continued to fight for greater GI protection at the international level, it is unclear whether the current effort to expand GI protection in the Doha Round of world trade negotiations will succeed.

### 6.3 Limitations

Although all efforts were taken, this research suffers from the some limitations. The research report could not incorporate detail descriptions of uniqueness of all the potential GI products due to the lack of a database/information on the products. The historical evidence (proof of origin) and Map of Production for potential GI products are also not available. This research considers that this is an important area where the private sector producer associations can play a significant role by advancing uniqueness of their products.

The list of potential GI products explored (and reported) in this study is *not a comprehensive one; it is an indicative one only*. Additional products may qualify to get GI protection. Combined efforts of both the public and the private sector (inputs of growers/producers,

experts) would be necessary to prepare a comprehensive product list for GI protection. In making the list, the reputation and special characteristics of the products and their link with origin has to be the main consideration.

This research report also could not much light on the probable course of actions to be taken by the GoB to reclaim ownership on Jamdani and two other products (already registered by India) due to non-legal background of the researchers.

#### **6.4 Policy Implications**

If GI law is properly implemented it would help Bangladesh products to get improved market access and thus establish Bangladesh brand abroad. As such government may consider devote more resources to make awareness among the stakeholders about the rationale and preparations needed to get GI. Potential GI products have to be identified by taking the help of elected representatives, district administration and DPDT.

What is more important is to gather enough data base and historical evidence to establish that Jamdani is Bangladeshi product and make efforts through administrative and legal channel to establish ownership on Jamdani in foreign countries.

Moreover marketing and promotion strategies have to be adopted at Government level. GI products may have to contend with the economic power of various intermediaries to reach the market. For example, in the case of tea and coffee, India has a number of GIs. But, only a few processing companies control a very large share of the global trade. Similarly, often few large retail companies control the shelf space for most products because of their size/growth and concomitant economies of scale and scope. Given such a scenario, well-crafted marketing and distribution strategy has to be in place for a GI to act as an effective economic tool. Otherwise the commercial potential underlying GI products might not be achieved.

Government also needs to make sure that the benefits of GI are equitably distributed among different supply chain partners. The potential benefits of GIs diminish when they are captured by a select few. If the GI process is captured for private gain, both the consumer and other producers may suffer. It is not surprising that SMEs, small producers, and indigenous peoples are likely to be the biggest losers. This seems to be case with the individual producers of Jamdani in Bangladesh as one respondent stated, "Jamdani producers do not get good bargain/price for their exclusive product. They lack capital and are subject to business terms often dictated by more powerful partners in the supply chain such as super shops/luxury shop owners/shelf space owners. Although they are the most

important partner in the whole value chain, they get very little. It is the shop owners at Bailey road or Bashundhra market or Gulshan area, who gets maximum profitability out of Jamdani. They do not offer much to producers”. Therefore, there need to have some institutional mechanism to oversee that GIs are managed by representative stakeholder associations.

With regard to Jamdani, Bangladesh authorities need to examine the Indian Register for Uppdahay Jamdani, i.e. what are the rights granted, who are the right holders, are the rights exclusive to certain producer associations, etc. For example, if rights are exclusively granted to certain producer associations, then the right holder may prevent the import of products with the use of GI in question<sup>41</sup>; or selling of that product in India would require prior authorisation. In other words, the GIs registered in India could act as a potential market access barrier for our Jamdani exports. So Bangladesh need to act quickly to first register Jamdani with our DPDT and then explore best action (including legal steps as a last effort) to retain ownership on Jamdani.

### **Future Research Agenda**

Although GI protection may help strengthen the sector concerned by yielding premium pricing and facilitating market access of GI products, the benefits may not be shared equitably among concerned stakeholders along the supply chain of the product. The price premium received by a product on account of GI protection may be reaped by more powerful actors on the upper stream of the supply chain and may not get percolated /shared to the weaker partners of the chain downstream, thereby nullifying to a large extent, the development implications of GI protection. Given such possibilities, researchers may investigate (in future) the possible impact of GI protection on rural development of Bangladesh. The determinants and *modus operandi* of benefit sharing of the GI products/GI right also needs detailed study.

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<sup>41</sup> With the ground that [Jamdani Sari in India \(imported from Bangladesh\)](#) are violating the Indian GI rules by naming the product a Jamdani Sari.

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## *List of Annexes*

### **Annex 1: Report on the Focus Group Discussion on Geographical Indication in Bangladesh**

Bangladesh Foreign Trade Institute (BFTI) had arranged a focus group discussion (FGD) on “Geographical Indications (GI) of Goods in Bangladesh: Needed Initiatives and Management Challenges” on May 21, 2014 at BFTI Conference Room. This FGD discussion was chaired by Dr. Md. Mozibur Rahman, Chief Executive Officer, BFTI. The Chief Guest was Mr. Suhel Ahmed Chowdhury, Former Commerce Secretary. The round table discussion has generated, heated but constructive discussion about the history and naming of Jamdani saree (for registration as a GI product).

The Focus Group discussion has been greatly successful in generating necessary insights about various critical issues of GI, importance of GI, potential GI items and the management challenges (including development of a GI database) that may emanate during the initial phase of GI regime in Bangladesh had become successful with the contribution of knowledge about GI of different intellectuals from both public and private sectors including Dhaka University. The discussants were Mr. Md. Fazlul Haque, Project Director, BTPSP, Barrister A B M Hamidul Mishbah, IPR Lawyer, Sheikh Ruksana Burhan, Bangladesh Copyright and IP Forum, Dr. Khondker Iftekhar Iqbal, Associate Professor, Department of History, University of Dhaka, S M Nurul Alam, Ministry of Commerce, GoB, Mr. M S Siddiqui, Mr. Md. Elias Bhuiya, The Department of Patents, Designs and Trade marks (DPDT), Ms. Maleka Khan, Bangla Craft, Dr. Mostafa Abid Khan and Dr. Mohammad Abu Yusuf.

As Bangladesh has recently enacted Geographical Indications of Goods (Registration and Protection) Act, 2013, the discussion centred around like what products could be registered as GI products (i.e. identification of products), what we need to know about the potential, what role private sector producers/ associations need to play in collecting evidences for and what options are available for Bangladesh to maintain ownership of our products which are already registered by another country. In the focus group discussion, it was emphasized that protection of unique products under GI is vital to maintain ownership on our traditional

products. This is also important to ensure the benefits of GI i.e. the reputation and origin benefits goes to both the producers and consumers. Awareness building among the producers and producer associations about the economic benefits were also emphasized. With regard to the protection of our GI products in foreign countries, a number of FG members proposed that Bangladesh may seriously consider to be a member of the Lisbon Agreement so that it can claim and maintain its ownership of GI goods internationally. The case of “Darjeeling” (Tea) case was highlighted in the discussion to motivate Bangladesh to explore some alternative avenues in getting our unique products protected in foreign countries either under GI or under Trade Mark Law.

The discussants made some conclusions like that the Jamdani Saree should be registered as a GI good by the name “Jamdani” instead of “Dhakai Jamdani” as UNESCO has already declared “Jamdani” as a heritage product of Bangladesh. Also, Hilsha fish can be registered as GI by the name of “Padmar Ilish” or “Hilsha of Chandpur”

## Appendix 2: List of Interviewees

	Organization
1. Mr. Suhel Ahmed Chowdhury	Ex-Commerce Secretary, Govt. of Bangladesh
2. Mr. Taufiqur Rahman (email interview, 17.02.2014)	Economic Affairs Officer, Development Division WTO Secretariat
3. Dr. Iftexhar Iqbal	History Department, Dhaka University
4. Dr. Md. Mozibur Rahman	CEO, BFTI
5. Barrister A.B.M. Hamidul Misbah	Founder, Bangladesh Copyright and IP Forum
6. Ms. Rubi Guzhnavi,	Jamdani Expert
7. Ms. Monira Emdad	MD, Tangail Saree Kutir
8. Mr. Ilias Bhuiyan	Deputy Secretary, (Deputy Registrar), DPDT
9. Prof Kamal Uddin	IAP, BUET
10. Mr. MS Siddiqui	Columnist, The Daily Observer, Dhaka
11. Mr. Matthijis GEUZE	Head, Lisbon Registry, World Intellectual Property Organization (WIPO).

12. Mr. Veronique Fouks	Head of the legal and international department Institut National De Lorigine Et De La Qualite (on 20 May, 2014)
13. Mr. Lablur Rahman	Deputy Registrar, DPDT
14. Dr. Towhidul Islam	Professor Department of Law University of Dhaka
15. Ms. Maleka Khan	Founder of Bangla Craft

## **Annex 2 Application for International Registration**

The following information is needed to apply for International Registration of GI as per Lisbon Agreement:

- 1.** Country of Origin
- 2.** Office filing the application for registration
- 3.** GI/Appellation of Origin
- 4.** Holder(s) of the right to use the appellation of origin: The owner/owners of GI must be designated collectively. For instance, as “producers or groups of producers benefiting from the Geographic Indication concerned,” or “organizations which, in the region concerned, are engaged in production of the product mentioned,” etc.; if collective designation is not possible, the owner or owners should be designated by name(i.e., individually), if necessary using an additional sheet
- 5.** Product to which the appellation of origin applies
- 6.** Area of production of the product
- 7.** Legal basis for the grant of protection to the appellation of origin in the country of origin
- 8.** Payment of Registration Fee.

### **Annex 3: Steps Taken By India at International Level to Get Protection for Darjeeling Tea**

In order to provide legal protection to Darjeeling tea producers in India, the Tea Board of India registered the '*Darjeeling logo*' and also the word '*Darjeeling*' as certification trademarks (CTMs<sup>42</sup>) under the (Indian) Trade and Merchandise Marks Act, 1958 (now the Trade Marks Act, 1999). The Tea Board of India has also registered the DARJEELING word and logo as GI. The words 'DARJEELING' and 'Darjeeling logo' were the first Geographical Indications to be registered in India in the name of the Tea Board under *the Geographical Indications of Goods (Registration and Protection) Act, 1999* which came into force with effect from 15 September 2003, in addition to the CTMs mentioned above.

It seems that India registered Darjeeling tea both under Trade and Merchandise Marks Act, 1958 and GI Act, 1999 considering that these two (CTM and GI protection) protections are complementary. Registration under Trade Mark protects the 'logo or word'. Moreover, registration of Darjeeling as GI product became possible since 2003 as India had no GI Rules (although the GI Act was passed in 1999) before 2003 but registration as CTM was possible before 2003.

To get protection of 'Darjeeling' and 'Darjeeling logo' at international level as GI, the Tea Board of India registered the marks in various countries, including the United States, Canada, Japan, Egypt, and the United Kingdom and some other European countries, as a Certification trade mark (CTM<sup>43</sup>)/trade mark (TM). On 3 August 2001 the UK Trade Registry granted

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<sup>42</sup> The reasons for the need for additional protection for GI over and above the CTM has been as follows: (1) when CTM registration is not accepted in a jurisdiction where protection is sought, e.g. France for Darjeeling; (2) because GI registration is necessary to obtain reciprocal protection of a mark mandated under EU Regulation 2081/92; and (3) registration gives clear status to a GI, indicating a direct link with geographical origin (Srivastava, 2005 p. 234)

<sup>43</sup> Unlike an "ordinary" trade mark, a CTM does not indicate commercial origin by identifying the manufacturer, producer or provider of the goods or services, to which it is attached. Instead it conveys the message that the goods or services to which it is attached have been examined, tested or in some way certified by the registered

registration of the word '*Darjeeling*' under the UK Trade Marks Act 1994. The United States has also accepted the application of the Tea Board for the registration of 'Darjeeling' as a CTM in October 2002 (Srivastava, 2014).

**Darjeeling tea as GI in EU:** India has in its possession several existing or potential GIs such as "Darjeeling" (tea), "Basmati" (rice), "Alphonso" (mango), etc. Darjeeling (tea) has been registered as a GI product in the EU. India submitted the application (application type was PGI) to the EU on 12 Nov 2007. The application was published on October 14, 2009 (i.e. date of publication of application for opposition) and the same was registered on 21 October 2011.

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proprietor of the mark. "The registered proprietor of a CTM is not permitted to undertake trade or business involving the supply of goods or services of the kind to which the CTM concerned is attached. The proprietor can only authorise third parties to use the CTM, once checks have been undertaken to ensure that the third party's products and services meet the requirements guaranteed or certified by the mark. Competence to certify is usually a question of the applicant's ability to monitor and control its licensees, or authorized users. CTMs is generally found in Common Law Countries" (Das, 2008 p. 473).

#### **Annex 4: Role of Producer/Grower Organisations in the Guarantee System**

Producer associations can play an important role in the guarantee system to ensure quality of GI products by complying with administrative and technical procedures. Such verification system costs less than one done by Individual producers. Once the control plan is established, a GI association can manage the internal controls, allowing costs to be reduced through economies of scale and collective expertise to be applied to activities such as traceability control and final product testing. The association can also organize some collective control activities. It is thus clear that the producers and their association have different roles to play in the guarantee system:

- to define the guarantee system, especially the control plan, by identifying the control points and sanctions related to each requirement of the CoP;
- to organize the internal control on quality aspects of GI products; to take part in a participatory guarantee system (together with consumers, local authorities etc.); and
- to contribute to the controls and keep records of them (traceability system)

## Annex 5: Scotch whisky Case

The Scotch whisky case (20 April, 2006) was about the action of passing-off to protect geographical indications. This case concerns Scotland's intellectual property rights to its nationally-labeled trade item and protection of the cultural traditions associated with the production of Scotch whisky. Scotch whisky is one of Scotland's most favorite cultural products as well as one of its most profitable trade items. Scottish distillers have been perfecting production processes of the world's leading spirit for centuries and deservedly have earned the right to be sole owners of the label "Scotch". In this case, the plaintiff, Scotch Whiskey Association, incorporated under the Companies Act of the United Kingdom instituted *the passing off*<sup>44</sup> action against the defendants; a manufacturer of various brands of Indian whiskey known as 'Red Scot' or 'Blended Scotch Whiskey' or 'Blended with Scotch' under various brands, namely 'Drun Beater' and 'God Tycoon'.

The Plaintiffs have filed this suit for a permanent injunction restraining the Defendant and those acting under the Defendant from dealing, in any manner, with whisky under the name 'Red Scot' or any other name containing the word 'Scot' or any word similar thereto so that the Defendant cannot pass off its whisky as Scotch whisky.

Since the name 'Red Scot' whisky gives an impression that it is Scotch whisky, the Plaintiffs sent legal notice to the Defendant two times. One notice sent on 30th September, 2000 advising it not to use the word 'Scot' in its whisky and another letter dated 26th May, 2001 to the Defendant requesting it not to pass off its 'Red Scot' whisky as if it was Scotch whisky. Both times the Defendant received the notices, but there was no response.

Later on, the Plaintiffs came to know that 'Red Scot' whisky was no longer available in the market and assumed that the Defendant had realized that it was not advisable to sell whisky using the word 'Scot'. However, sometime in June, 2003, the Plaintiffs again came to know that 'Red Scot' Whisky was being sold in the market by the Defendant. On 22nd April, 2004,

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<sup>44</sup> The principle of passing off states that "no one is entitled to pass-off his goods as those of another. The principal purpose of an action against passing off is therefore, to protect the name, reputation and goodwill of producers or traders against any unfair attempt to free ride on them (Das, 2008, p. 467)

summons was issued in the suit and the Defendant was restrained from dealing in any whisky containing the word 'Scot'. Accordingly, by an order dated 10th December, 2004, the Defendant was proceeded against *ex parte*. Subsequently, the Plaintiffs filed an affidavit in evidence dated 18th August, 2005. The contents of this affidavit have not been denied by the Defendant and are, therefore, deemed to be admitted.

It is submitted by learned Counsel for the Plaintiffs that under the WTO TRIPS Agreement, protection is provided for geographical indications in terms of Article 22 thereof. Article 22.1 defines geographical indications as 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. Again, article 22.3 defines each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like.

It is submitted by learned Counsel for the Plaintiffs that the word 'Scot' or 'Scotch' is a geographical indication within the meaning of Article 22.1 in as much as it identifies whisky produced in Scotland. The plaintiffs have sufficient interest and locus standi to prevent passing-off of Indian whiskey manufactured by defendant as 'Scotch Whiskey' and to prevent damage to reputation and goodwill of Scotch Whiskey. The attempt of the defendants to justify the use of the words 'Blended with Scotch' has totally failed. The balance of convenience is in favour of the plaintiffs and not in favour of the defendants.

Under the circumstances, the relief prayed for by the Plaintiffs has been granted and the Defendant and those acting under the Defendant are restrained from using the word 'Scot' or any other word similar thereto in the whisky manufactured and sold by the Defendant.

In terms of Section 67 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 of India, the Plaintiffs have also prayed for damages to the extent of about Rs. 5 lakhs for the 'offence' of passing off committed by the Defendant. It is submitted that the reputation of Scotch whisky has been irreparably damaged by the use of the word 'Scot' in whisky manufactured by the Defendant, whose whisky is not Scotch whisky. Under the circumstances, the suit is decreed in the above terms. The Plaintiffs are entitled to the

permanent injunction prayed for and also to damages to the extent of Rs. 5, 00, 000/-. The Plaintiffs will also be entitled to costs of Rs. 3, 10, 000/- which they say they have incurred in this litigation.

India has registered Jamdani Sari as Upaddhyay Jamdani Sari as originating from Andhra Pradesh but historical records show that Jamdani is originated in Bangladesh. The name Upaddyay Jamdani can mislead the public about the true origin of Jamdani as well as the quality. Using of the word Jamdani with upaddyay can be an action of passing-off. So, to protect Jamdani under geographical indications, we can go India and can file case against India in Indian court as evidenced from Scotch Whisky Case.

(<http://www.indiankanoon.org/doc/1122965/?type=prin>)

Ref: Delhi High Court

The Scotch Whisky Association, vs Golden Bottling Limited on 20 April, 2006

## Annex 6: The Different Verification Systems

**A first-party verification** consists of guarantees provided by producers themselves, based on auto controls (by individual producers) or internal controls (by the GI producer organization). Without other external controls, this *self-verification system means* the producers take responsibility for the reliability of quality attributes. They can sign a formal document (the self-attestation) either individually or through the GI association. Social sanctions and trust relationships based on cultural and geographical proximity contribute to making sure that the rules are respected. Self-verification works when the production system is mainly composed of small-scale agricultural and artisan producers directly selling on local markets.

**A second-party verification** system involves a trade agent who verifies that suppliers comply with the Code of Practice (CoP) requirements. Many retailers are using second-party verification systems, also for GI products. The degree of effectiveness of this system depends largely on the agent's reputation.

**A participatory guarantee system** is based on the active participation of stakeholders, both internal and external to the GI value chain (even consumers) and is built on a foundation of trust, social networks and knowledge exchange. Such an alternative is entirely realistic in the context of the small-scale farms and local direct markets. This can be managed by a local association of stakeholders (including producers, local authorities and buyers) which carries out its own GI supply chain control.

**A third-party certification** system involves an independent and external body (private, public or joint public-private) without direct interest in the economic relationship between the supplier and the buyer. This type of certification provides assurance that the relevant requirements have been followed. Standards for certified products are now recognized worldwide (Independent third party certification - ISO/IEC 65 or the European standard for PDOs and PGIs EN 45011). All countries participating in international trade and negotiations, are establishing, or have established, a national framework for guarantee systems which complies with these international standards (official accreditation service, certification bodies, etc.) for products to be exported. This trend is

prompted by requests from traders, retailers and consumers, especially in developed countries.

(Source: FAO,2009-10)

## **Annex 7. Budweiser and Bud Beer Case**

### **Budweiser and Bud Beer**

Disagreements over the exclusive rights to use the trademark (TM) of Budweiser (and later on, Bud) started in the late 1890s, when Anheuser-Busch, a giant brewer of Saint Louis, Missouri, and Budejovicky Budvar, a much smaller company in the former Czechoslovakia, began to export their like-named products. Some 100 legal challenges involving TM rights have since been mounted in over 40 jurisdictions across the globe in the century-long battle between these two brewers. Anheuser-Busch was taken over by In Bev, a brewer from Belgium, for US\$52 billion in July 2008, but the conflict is expected to drag on. Budweiser means the beer of the Budweis region. This is the same as the concept in which champagne describes the wine of the wineries in the Champagne region of France. The name Budweiser was adopted and registered in the United States (US) in 1876 by Anheuser-Busch. Budejovicky Budvar was founded in 1895 in the town of Ceske Budejovice (also known as Budweis) in the former Czechoslovakia. Reportedly, the beer has been brewed in the same town since the thirteenth century.

The court judgments delivered so far have resulted in a division of markets. Anheuser-Busch has been selling Budweiser in some 16 countries and Bud in another 15 countries. The company has a dominant market share in North America and most of South America and Asia. Budejovicky Budvar has Budweiser and Bud registered as TMs and appellations of origin in 28 European countries and 37 non-European countries. Rather exceptionally, however, both brewers have the right to use Budweiser and Bud in the United Kingdom, the second most important global market for beer to Anheuser-Busch. Under the European Union (EU) system, the prior existence of a conflicting TM (Budweiser and Bud

from Anheuser-Busch) does not necessarily prevent registration of a protected geographical indication (PGI) or protected designation of origin (e.g., Budějovické pivo and Českobudějovické pivo from Budejovický Budvar) in the EU. Once registered, however, geographical indications (GIs) have priority over prior and later TMs in the EU. Judgment from the Court of Appeal in Sweden (January 2006) reaffirmed that a PGI is protected against misuse even if translated. Ordinarily, however, a PGI is only protected in its registered form and this does not confer owners the right to use the PGI in any other (unregistered) form. As such, Budweiser Beer cannot be used in Sweden by Budejovický Budvar to denote the PGIs granted to Budejovický Budvar because the terms in question are a translated PGI.

Notably, a World Trade Organization (WTO) panel had made a similar finding in April 2005. The TM “Budweiser” had been in existence prior to the registration of “Budejovický pivo” and “Českobudějovické pivo” as PGIs. Therefore, under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the existing TM rights should not be undermined or limited by a subsequent GI. The panel found that Anheuser-Busch could continue to use its TM in the European Communities (EC) (Waggoner 2008). Nevertheless, the same WTO panel also found that the inconsistency between the EC regime and TRIPS with respect to the coexistence of GIs and prior TMs was sufficiently justified by TRIPS Article 17, as discussed in the text.

It is also pertinent to note that the brand Parma ham had been registered as a TM by ham producers in Canada in 1971. As a result, Parma ham producers in Italy cannot export the ham to Canada under the original name “Prosciutto di Parma.” Similarly, the Office for Harmonization of the Internal Market of the EC could not register the name “Budweiser” as a single TM in all 25 EU countries because it was identical to a prior TM registered in Austria and France by the Czech brewer Budejovický Budvar. This decision aimed to avoid causing confusion to the consumers in those two countries.

(THITAPHA WATTANAPRUTTIPAIAN,2009 )

## **Annex 8: Method and Contents of A GI Delimitation Report**

The “*delimitation report*” constitutes the basis of delimitation. It should be produced through the collaboration of all stakeholders involved and should include the following *elements*:

1. *Presentation of the area* with physical and administrative organization descriptions, etc.
2. Economic data: A study detailing production data, farming systems, farm structures, etc.
3. History and reputation: product’s history, popularity, level of recognition, etc.
4. Markets and consumption: data on marketing, sales, exports, consumption, etc.
5. Production methods: fabrication techniques and production systems (production units, processing methods, etc) and characterization of the future GI product, etc.
6. Production uses: data regarding production per region, district, village, number of production units, importance of GI production in relation to local economy, etc.
7. Geographical situation: landscape and vegetation, climate, geology and main soils. (maps of delimited area)
8. Evidences of the link with the Geographical Origin: Evidence of the links between local natural and human factors, production practices and the products, necessary for linking the delimitation of physical criteria and human criteria.

(FAO, 2009-10).

## Annex 9: GI for FDI and Market Access: Phu Quoc (Fish sauce) Case in Vietnam

### The case of Phu Quoc in Vietnam (Fish Sauce case)

The registration of a geographical indication and the certainty afforded by legal protection creates opportunities for investment in a product and region and helps market access. The *Phu Quoc* (fish sauce) case in Vietnam demonstrates this.

An example of that can be found in the registration of Phu Quoc (fish sauce) was registered in 2001 under GI in **Vietnam** in 2001. Fermented fish sauces made out of a particular variety of salted anchovies are considered to be a delicacy in many East Asian countries. One of the most famous ones, *nuoc mam*, originates from the island of Phu Quoc, which is located in the Gulf of Thailand. Its reputation stems from its peculiar characteristics, which are due to the conditions of nature and environment in which it is produced, the characteristics of the raw material used and the manufacturing process, which involves the catching, layering and salting of the anchovies, followed by decomposing them in special wooden barrels.

There are about 90 fish sauce enterprises on the island of Phu Quoc, that collectively produce around 10 million litres of Sauce each year, of which only half a million is exported, mainly to the EU and Japan. This quantity is below the market's demand for Phu Quoc fish sauce, however, such exports are also limited by the presence of fake and counterfeit Phu Quoc sauces on these markets, which are often sold under trademarks allegedly owned by Thai enterprises. Indeed, around 80% of fish sauce labelled Phu Quoc in EU and Japanese markets is said to be fake.

In 2001, the implementation of a geographical indication for Phu Quoc by the Phu Quoc Fish Sauce Producing Association increased the value of the product and attracted a foreign investor, Unilever, which injected US\$ 1 million on a partnership with local producers. The partnership, which involved a 10 year contract granting Unilever a licence to use the Phu Quoc appellation, gave producers the opportunity to upgrade their production facilities and expand their reach in global markets.

(Daphne Zografos, 2008)