

Dhaka, Tuesday, November 12, 2013

Geographic Indication: The role of the private sector

Mohammad Abu Yusuf and Seikh Ruksana Burhan

Geographical Indication (GI) identifies a good/product as originating in a particular region, where a particular quality of the good is attributable to its place of origin. The essence of GIs is that specific geographic locations yield product qualities that cannot be replicated elsewhere. GI-registered product is produced using the GI technology (i.e., that the conditions of the area of production favour the attainment of quality). Some renowned GIs include Champagne, Tequila, Cognac, Pallar de Ica (Vegetable, Peru), Scotch whisky, Darjeeling tea, Cashmere wool, Havana cigar, Guacamayas (Handicrafts, Colombia). As these examples suggest, nearly all valuable GIs relate to agricultural products - and many are European in origin. GI rights are granted to a community/country or to all producers within a designated production area who comply with the product specifications to meet unique product criteria/quality. For example, Dhakai Jamdani is a traditional Bangladeshi origin product while Jasmine is Thai rice.

GI differs from trademark in the sense that it cannot be sold or licensed while a trademark can be sold; if it is not sold, it exists for the life of the owner. Unlike trademark, which can be owned individually or by a group of people, GI gives a collective right (collective brand) to the concerned community/producers over the product. GIs are thus a form of Intellectual Property Rights that are associated with geography, culture, heritage and traditional practices of people and countries (Misbah, 2013).

The TRIPs (Trade-Related Aspects of Intellectual Property Rights) agreement suggests a two-tier system of protection: (a) basic protection under Article 22 (generally applicable to all GIs), (b) additional protection for GIs, under Article 23 for wines and spirits. The extra cushion offered by Article 23 of the TRIPs created a sort of division between WTO (World Trade Organisation) members. A number of countries, including India, strongly urged the WTO membership to extend the scope of Article 23 beyond wines and spirit to all products on the ground of improving the marketing of their products. The differing levels of protection given to wines and spirits and all other products leads to a situation where GIs can be misappropriated without violating the law.

Usually, any registered association of manufacturers, any institution and authority are eligible to get GI registration and a designated government agency (say, GI department) provides the registration. The distinctive features of the GIs (GI label or logo) is that they (indications) identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality or reputation or other characteristics of the good is essentially attributable

to its geographical origin. In other words, WTO TRIPS agreement requires the existence of a 'quality/geography nexus' to get products GI registered.

GI protection within the TRIPS Agreement is an 'on-demand' protection, i.e., the right holders have to invoke such protection in third country courts. In other words, if protection against unauthorised use of a GI is sought, it is up to the GI owner (or product association) to institute legal action and carry the concomitant costs. Ideally, a sui generis system would provide for the State to institute action on behalf of those producers entitled to use the designation. This is an important issue for small producers who may not have the resources to ensure effective legal protection under a GI system. Furthermore, under a sui generis system, provision can be made for a one-off registration resulting in protection for as long as the conditions for protection are upheld. India has adopted such sui generis system in its GI Act for registration and protection of GI Products.

BENEFITS OF GI: GIs are needed to be protected in order to avoid misleading the public and to prevent unfair competition. Protection through GIs can enhance profits for producers through premium pricing. Studies have shown that consumers are willing to pay more for GI products. A study shows that Portuguese consumers are willing to pay up to a 30 per cent price premium for GI-labeled olive oil. GI offers the possibility to establish a niche market for GI products and they provide increased profits due to the recognition of GI products. The Tuscano olive oil producers in Italy commanded a 20 per cent premium price ever since its registration as a GI in 1998 (Origenandino, 2013). Producers of milk used for Comté cheese are paid 10 per cent over regular milk prices. In Mexico, the GI product Tequila increased the price of agaves and other domestic inputs, resulting in increased profits for Mexican producers (Babcock and Clemens, 2004). GI products could also identify or represent a country as a brand to the global market like "Tequila" or "Champagne," which identify Mexico and France respectively to the rest of the world.

COSTS TO ESTABLISH AND OPERATE GI: The costs for having the 'legal structure' to permit the domestic recognition of a GI can be considerable in terms of both time and money. The costs are needed to establish formal geographic demarcation and achieving agreement on product standards or parameters for getting a GI legally. 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. 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. Even the physical demarcation of an area presents a challenge. 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 scientific research to clearly determine the specifications that met the expected quality parameters prior to formally proposing a GI.

GI AND BANGLADESH: 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 may include, among others, Fazlee aam (mango), Langra aam from Rajshahi, Nakshi Kantha from Faridpur, Dhakai Jamdani, Kataribhog rice of Dinjajpur, Hilsha fish from Chandpur, Dogs from Sarail, Honey from the Sundarbans forest and pineapple, to name a few. There is enough official evidence to prove these as products of Bangladesh. For instance, Bangladesh has been exporting Jamdani saris to India for many years. It indicates that the property right of Jamdani saris belongs to Bangladesh (The Financial Express, Nov. 21, 2012). None of the country's special products is protected under GI as yet due to the absence of a GI law in Bangladesh. The TRIPS agreement mandates a country to enjoy protection of GI at the international level only if it has GI protection under its national legislation. The Bangladesh Parliament passed 'The Geographical Indication (Registration and Protection) Bill 2013' on November 05, 2013 paving the way for registering distinctly unique products of the country.

India has already registered some traditional products of Bangladesh namely Jamdani Sari, Nakshi Kantha and Fazlee Aam (mango) as their own traditional products. Among the three products, only Fazlee Aam has a double heritage, both in Bangladesh and India. Concerning the rest of the two products, historical records are there to establish that these products originated in the place presently known as Bangladesh. As the GI Law is passed and some of our renowned products are already registered by India, Bangladesh needs to assert that Jamdani and other unique products having their historical, cultural and geographic roots to the soil of Bangladesh as its own, or else it would have to pay a fee to the Indian government to use the name of Jamdani and other names.

GI will help Bangladeshi producers differentiate the uniqueness of the products from similar competing products, establish brand and goodwill of local products, fetch premium price for such products, and increase sales/export by protecting reputation of the products.

In this regard it is to be mentioned that passing of the GI Act is not enough to protect our traditional goods under GI. More work and background research needs to be done by Bangladeshi producers/associations willing to register their products under GI. The documents and product specifications required by the Indian authority to grant GI to Gir Kesar Mango could be a good source 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.

ROLE OF THE PRIVATE SECTOR: Any person, product association or a government organisation can apply for a GI registration. Necessary supportive documents, historical accounts/evidence of origin of goods, detailed description of the product (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 Sari, Nakshi Kantha, 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 agri-food industries, build country branding and attract premium price.

Dr Mohammad Abu Yusuf is a senior fellow and Seikh Ruksana Burhan is a research associate at the Bangladesh Foreign Trade Institute (BFTI). ma_yusuf@hotmail.com