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MASTER'S THESIS

**Geographical Indications in EU
and Key Lessons for Korea**

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DECLARATION:

I hereby declare that this thesis is my own work, based on the sources and literature listed in the appended bibliography. The thesis as submitted is 96494 keystrokes long (including spaces), 71 manuscript pages.

BoWon Kang

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Abstract

The objective of this paper is to analyze how the treatment of GIs has been made by European countries and what Korea needs for future GIs development.

Though the GIs are not only new emerging intellectual property for the deal trading card but also the method for economic value added products, the impact of Geographical Indications on the Korea economy has not yet been searched much.

Therefore, this paper is to investigate GIs conception, functions with wide range benefits, existing legal means, historical development and GIs extension dispute of GIs in EU because GIs have been established and developed with European history and their experiences can be good guidelines for us. More importantly, case studies would highlight one or more important aspects of how GIs are interpreted and problems of which are solved in various conditions. And the current protection of GIs and barriers to GI system in Korea are also studied for the improvement for Korea GIs.

The outcome of GIs superior quality may result either from natural geographic advantages such as climate and geology or from human capital in GIs manufacturing. Thus, the strategy to quantify the prospective competitive factors of GIs in Korea with should be focused on further with legal backing.

Geographical Indications in EU and Key Lessons for Korea

1. Introduction

Korea and the European Union launched negotiations for a free trade agreement the year 2007. Through the several negotiations, both sides are evaluated to make progress based on mutual trade and investment benefits. For Korea, it would be the chance to widen the global trade and from the EU point of view, it means that they would expand the Asian market.

The controversial issue remains in the Agriculture and food sectors even though Korea is not sensitive as much as that of Korea-USA free trade agreement (FTA). The reason why Korea should strive to prepare much in negotiating on GIs is significant. The prices of EU meat products, dairy products, and fruits are very competitive and the concept of 'Geographical Indications', which EU is projected to have interest in intellectual property rights for a long time, may not be favorable to Korea as well. When Mr. Francois Loos, French Foreign Trade Minister, visited Korea for a bilateral trade minister's meeting, he already pointed out the matter of using Champagne, stressing that

the right of sparkling wine of Champagne on the international level. Now, GIs are piercing problems in the trading desk.

Table 1. Major Import Items from the European countries in 2007

<Value: Million Euro>

Items	Amount	HS code(4 digit)
Wine	14,485	2204
Spirits (Whisky)	11,338	2208
Cheese	12,563	1509
Olive oil	3,314	0406

-In 2007, Korea's import scale from EU was 3,979,708(Million Euro) and the amount of export to EU was 3,872,811(Million Euro).

<Source from: KITA, Trade statistics 2007>

The European countries are dominant in GIs¹, that is, place related names associated with the food, beverages and other things. Therefore, Korea expects these sectors to

¹ In distribution of Geographical Indications, EU 27 make up more than half of Protected GIs. (- Nearly 10,000 protected GIs, developing countries all together have less than 10% of these, on the other hand, EU 27 have 5250 Protected GIs. The US has approximately 950 Protected GIs. (Source from A Brief Note on Geographical Indications)

(www.dgiovannucci.net/docs/gi_key_points-brief.pdf)

experience some difficulties following a Korea-EU free trade agreement (FTA). To be more specific, some of the EU's major export items, namely Whisky, wine, pork (more specifically three-layered bacon) and grain products can be potential obstacles to reaching the agreement. Table 1 illustrates largely imported materials from EU into Korea.

In fact, the EU has been encouraged diverse agricultural production, aiming to help producers and consumers by giving them trustful information concerning the specific character of the products with GIs since 1992, whereas to Korea, it is the new field where more study is needed. With history, throughout Europe there is an enormous range of great foods. However, when a product acquires a reputation extending beyond national borders, it can find itself in competition with products which pass themselves off as the genuine article and take the same name and it is very dangerous that this unfair competition not only discourages producers but also misleads consumers.²

In that stream, notably, the EU has created the new systems known as Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Specialty Guaranteed (TSG) to promote and protect food product³ as a part of Common

2 BBC NEWS : Double joy for lamb farmers
(http://news.bbc.co.uk/2/hi/uk_news/wales/3083483.stm)

3 Quality products catch the eye: PDO, PGI and TSG
(http://ec.europa.eu/agriculture/foodqual/quali1_en.htm)

Agricultural Policy (CAP) reform.⁴ A PDO covers the term used to describe foodstuffs which are produced, processed and prepared in a given geographical area, using recognized know-how. In the case of the PGI, the geographical link must occur in at least one of the stages of production, processing or preparation. Furthermore, the product can benefit from a good reputation. A TSG does not refer to the origin but highlights traditional character, either in the composition or means of production.

Then, why GIs have emerged to an important trade demand? Above all, there may be considerable economic returns available from meeting preferences of consumers. During the seminar on the EU Geographical Indications Labeling System, held in Japan, the keynote speaker, Paul Vandoren explained why the GIs are important.⁵ He said “Products bearing Geographical Indications carry a strong added price value.” By the way of example, the average French cheese with Geographical Indications (GIs) sells at an extra €3 per kg compared to a non-GI French cheese.⁶ He emphasized that Geographical Indications would be an opportunity for local specialty and quality

4 The common agricultural policy is fundamental to the strength and competitiveness of EU farming and of the agri-food sector as a whole, with its 19 million jobs.

(http://europa.eu/pol/agr/overview_en.htm)

5 ‘Geographical Indications : An Opportunity for Japanese Speciality quality products’ By Paul Vandoren Tokyo-Osaka, 10-12 March 2004

(http://www.deljpn.ec.europa.eu/home/showpage_en_event.eventobj53.1.php)

6 Roquefort’ cheese, called King of Cheeses, may be suitable for the best example. This cheese is produced throughout the département of Aveyron and part of the nearby départements of Aude, Lozère, Gard, Hérault and Tarn. French Roquefort cheese, in January 2003, the EC proposed that a short list of names currently used by producers other than the right-holders in the country of origin should be established so as to prohibit such use and became recognized as a monopolistic term.

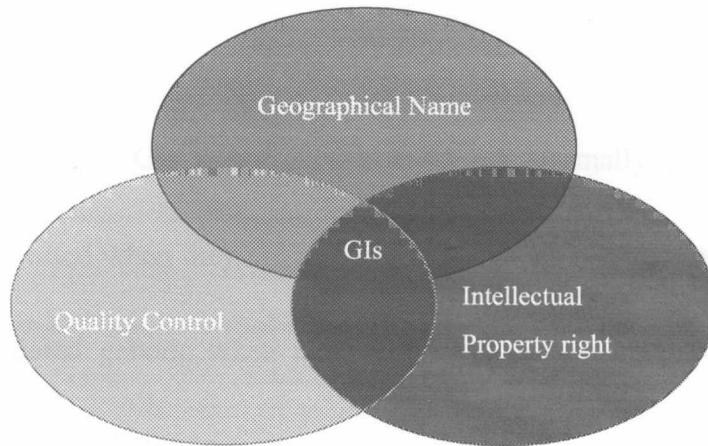
products. In short, He insisted that GIs increase Added Value and protect Consumer Choice.

Now, Korea is required to place the question how we implement effective GIs system, reviewing the GIs system of EU. This thesis will examine the regulatory structures in EU and Korea thereby, considering broader policy settings of national agricultural and industrial sectors. This article approaches the importance and problems of GIs in the world trade negotiation, simultaneously seeking to reinforce the points through the case studies.

2. Introduction to the concept of GIs

Below diagram help us to have a first idea of GIs, which centers on crossed three conceptions. This displayed diagram shows that GIs are partly in section of geographical name as one of different forms of Intellectual Property. In addition to that, they are used as a monitoring vehicle for quality control.

Figure 1. Conception of based on diagram



2.1 Geographical name and Geographical Indications

Above two terms have the same meaning usually but Geographical Indications can be understood as a more protected and recognized name by the community and the law.

Therefore, GIs are not merely place names but the value associated with the products.

Geographical names are relied upon by the community, who are identifying the place.

Place names are given to natural land and seabed features of the earth's surface. They also name man-made features and areas such as localities, suburbs, towns, cities, railway stations, historical sites, homesteads, farms. So the study of geographical names rather focuses on the place naming. Most commonly, GIs consist of the name of the

place of origin of the goods. But GIs might even include depictions of landmarks, familiar landscapes, heraldic signs and well known persons.⁷ GIs can be non geographical names.

It does not mean that GIs is not always protected. Normally, geographic terms or signs are not protected when they are generic for goods or services. A geographic term or sign is considered generic when it is so widely used that consumers view it as designating a category of all of the same type.

2.2 Quality Control and Geographical Indications

GIs are used as one of Agricultural quality control regimes. For successful establishment of GIs, technical training of local producers is needed in order to ensure that the grown products meet the product quality standards set by the institute or competent authorities. This is a very small part of GIs functions, even though some developing countries including Korea integrate GIs and quality control in the same conception, associating GIs with product quality control in agriculture.

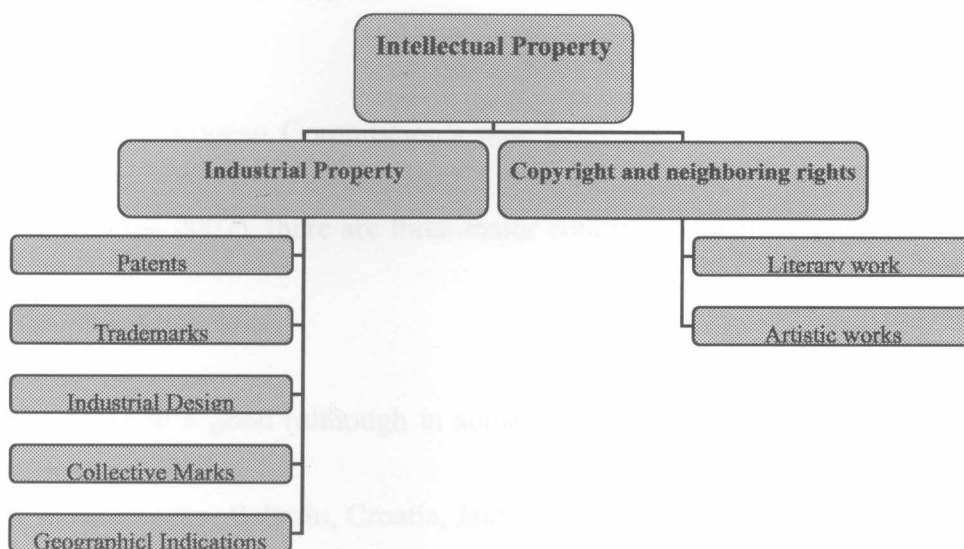
⁷ Hughes, Justin, "Champagne, Feta, and Bourbon - the Spirited Debate About Geographical Indications". *Hastings Law Journal*, Vol. 58, p. 299, 2006.

It gives examples of well known features such as the Eiffel Tower (France), the Matterhorn (Switzerland), and Mozart (Austria).

2.3 Intellectual property and Geographical Indications

Intellectual property is divided into two main categories as seen below figure.

Figure 2. Two categories in Intellectual Property



The first property, Industrial property includes inventions (patents), trademarks, industrial designs, collective marks and geographic indications of source. The second category, Copyright and neighboring rights relates to literary works such as novels, poems and plays, films, musical work and artistic creations such as drawings, paintings, photographs and sculptures, and architectural designs. Among them, Geographical

Indications are defined as that aspect of Industrial Property which was inserted in TRIPS Agreement by EU and its Members during the Uruguay Round on international level. Among Industrial property right, in general, collective marks and GIs are similar in their character, but not exactly same implicating the Members of the association which owns the collective mark indicate the affiliation of enterprises for using the mark.

2.4 Main components of GIs

According to European Commission's new handbook on Geographical Indications (Brussels, 27 June 2007), there are three major conditions for the recognition of a sign as a geographical indication.

1. 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)
2. These goods must originate from a defined area
3. The goods must have qualities, reputations or other characteristics which are clearly linked to the geographical origin of goods. Any sign, even geographical, may not be considered as a geographical indication

The main function of GIs is to identify the origin of goods. They point to a specific place or region of production that confers particular characteristics and qualities on the

product. It is important to emphasize that the product derives its qualities and reputation from the place of origin. These signs can acquire a high reputation and commercial value and, for these reasons, may be exposed to misappropriation, misuse and counterfeiting. This is why it is generally recognized that these signs need to be protected.

2.5 GIs and other complementary but different concepts

2.5.1 GIs and PDO

In sum, both GIs and PDO share the same a lot but the relationship between the region and PDO product contains more strict conditions. Existence of link with the territory is the necessary ingredient for PDO product but Geographical Indications is always not. Therefore, PDO product has stronger intensity because all the steps have to take place in the relevant geographical area. In definition, PDO requires that the quality or characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors. The product of GIs presents a specific quality, reputation or other characteristics attributable to that geographical origin. It means that the production or processing or preparation take place

in the defined geographical area.

2.5.2 GIs and Trademark

Geographical Indications have been protected under the Trademark law in many national jurisdictions. Even though both the GIs and Trademark are source identifiers, there are differences between the two.

GIs resemble Trademarks in their potentially unlimited duration and in their signifying function. Their ability to convey information to consumers is same. However, the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner while GIs users can be all producers who make their products in the place designated by a geographical indication and whose products share specified qualities. From this definition, there is not an absolute and exclusive right to use GIs, under which used by Geographical Indications are signs which identify a good as originating in the territory of a particular country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Whereas Trademark identifies the products with the manufacturer, the GI identify products with the place of production or origin implying the trademark can be assigned as well as licensed, but a Geographical indication cannot be assigned, transmitted or

licensed.⁸

3. The function of GIs (Variety roles of GIs)

3.1 Correction of market failure⁹

3.1.1 Information asymmetries

There is important market failure in agriculture because price and output are highly variable.¹⁰ In fact, farmers really care about income variability due to price variability. Reflecting the failure of markets to provide an appropriate distribution of income, there are many price supporting national programs for helping poor farmers. However, critics point out that this is too political approach because large farmers are usually gain more than small ones. GIs seems to be a good rationale for alternative forms for farmers in rural community, who have been excluded from large sized agricultural industries. They may also highlight specific qualities of a product which are due to human factors that

8 Patent & Trademark Consultants India IPR & Copyright Consultants India

(<http://www.trademarksconsultant.com/geographical-indications.htm>)

9 Geographical Indications: Important Issues for Industrialized and Developing Countries

(<http://www.jrc.es/home/report/english/articles/vol74/ITP1E746.html>)

10 Joseph E. Stiglitz, 'Economics of the Public Sector', W. W. Norton & Company, 3 Sub edition (February 2000) pp 86-67

can be found in the place of origin of the products, such as specific manufacturing skills and traditions. GIs are not limited to low technology production. Medium tech products such as watches, Bizen sword, which became known among the samurai class in Japan and Cremona violin, which became celebrated in Europe for the amazing its sound, can fall into same category. These few examples are enough to point out the enormous range of products for which the use of a geographical indication can have a role to play.¹¹

In a global economy, as similarly the above case, consumers are less informed than buyers when purchasing products so Information asymmetries exist. GIs can be one solution to this dilemma, the case with high quality goods, where information asymmetries between sellers and buyers may prevent market transactions.¹²

3.1.2 Free riding

The use of GIs by others than the original producers, even by de de-linking territory

11 The product categories which are identifiable by GIs are not limited. GIs products are

For Beer: "Budějovické pivo/Budweiser" (Czech Republic), "Bayerisches Beer" (Germany); for carpets: "Hereke" (Turkey), "Bukhara" (Uzbekistan); for ceramics: "Arita" (Japan), "Talavera" (Mexico); for cheese: "Sázavsk" (Czech Republic), "Parmigiano-Reggiano", "Gorgonzola" (Italy), "L'Etivaz", "Sbrinz" (Swiss); for cigars: "Havana" (Cuba); for coffee: "Antigua" (Guatemala), "Blue Mountain" (Jamaica), "Kenya" (Kenya); for crystal: "Bohemia" (Czech Republic); for fish sauce "Phu Quoc" (Vietnam); for honey: "Ulmo" (Chile); for rice: "Basmati" (India and Pakistan); for sparkling wines: "Champagne" (France), "Cava" (Spain); for tea: "Long Jin" (China), "Kenya" (Kenya), "Ceylon" (Sri Lanka); for watches: "Geneva" or "Swiss" (Swiss); for wine: "Bohemia Sekt" (Czech Republic), "Chianti", "Montepulciano" (Italy), "Fendant" (Swiss), "Nappa Valley" (USA).

12 Geographical Indications: Important Issues for Industrialized and Developing Countries

(<http://www.jrc.es/home/report/english/articles/vol74/ITP1E746.html>)

expression like 'made in', 'imitation', 'style' or 'type' contributes to the risk of GI becoming generic which could harm the original producers.

Thus, elimination these opportunities for free-riding with strong enforcement of GIs would assure right holders' predictability of future profit and promote the investment.

3.2 Value added aspects of GIs economy

The average French cheese with a geographical indication (GI) sells at an extra €3 per kg compared to a non-GI French cheese and Italian Toscano oil receives a 20 percent premium over commodity oil since the company registered its brand name in 1998. Jamao coffee from the Dominican Republic has seen its price/lb rise from US\$ 67 to US\$ 107 since it has been registered as a GI.¹³

In fact, EU consumers highly appreciate GIs as demonstrated by a 1999 consumers' survey indicating that, generally, 40% of consumers are ready to pay a 10% premium price for origin-guaranteed products. GIs obviously provides added value to the producers and possibly economic success by providing a clear market differentiation in products may mean promotion for informal innovation.

13 Some Economics on Geographical Indications (http://www.oconnor.be/content/around_about/Economic_value_of_GIs.pdf)

Speaking of GIs economy, France would be a prime example. Not only many of French wines are exported but also main source of national economy seen as 85% of GIs French wines are sold abroad. Another example, the Australian positions on Geographical Indications and how they relate to international agreements and institutions, is well known such as in the World Trade Organization, the Agreement on Trade-Related Aspects of Intellectual Property Rights, and the Agreement between the European Community and Australia on trade in wine (the EU Wine Agreement). Outside EU, too, under-pinning strong brands, region and the GIs became increasingly important for Australian wine and enable them to compete effectively in the higher price. Australia has been a new world GIs success story with wine regions Coonawarra and Barossa. Irene Calboli reported that Australian wines outsold French wines in Britain and America for the first time since 2003.

The successful use of regions in wine branding and in wine tourism is, in fact, the surprising and ironical result to Australia because she has been a main opponent in GIs extension. Contrast to her expects, anyway, GI designations proved that it can be of economical value.

Except above mentioned stories, there are still a huge number of success models. Toscano olive oil increased its price by 10% since its recognition as a GIs in the EU.

Jamao coffee from the Dominican Republic has seen its price/lb rise from US\$ 67 to US\$ 107 since it has been registered as GIs.¹⁴

3.3 Food Safety

GIs can contribute to product safety as producers can more easily be identified and held responsible for their products.¹⁵ The research results in consumer preferences for food safety indicate that a majority of consumers would be willing to pay a modest price premium for a program that would certify and label produce as complying with established food safety regulations.¹⁶ The concern for food safety, motivated by a desire to seek for a healthy life, is increasing. And GIs possibly becomes a suitable mean to meet this demand, encouraging the collectivization and control necessary to add value to a product by virtue of the geographic name on a label that in turn, can command premium prices.

14 Seminar on THE EU GEOGRAPHICAL INDICATIONS LABELLING SYSTEM

(http://www.deljpn.ec.europa.eu/home/showpage_en_event.eventobj53.1.php)

15 Geographical Indications: Important Issues for Industrialized and Developing Countries

(<http://www.jrc.es/home/report/english/articles/vol74/ITP1E746.html>)

16 Land reform and the development of commercial agriculture in Vietnam: policy and issues (Agribusiness Volume 10, Issue 4 ,

Pages 319 – 324, 2006, Wiley Periodicals, Inc., A Wiley Company

3.4 Marketing Effect

Like trademarks, Geographical Indications may add dynamic marketing power to a product and, because they are inherently collectively owned, they are an excellent tool for regional or community based economic development. At the extreme case, coffee provides the most recent example of the rapid reputation climb of a developing world GI, in this case, Rwandan coffee.

In case of Café de Colombia¹⁷, this marketing strategy reflects an increasing trend within the coffee-producing countries to make use of GI protection to counter the effects of falling prices on the commodity markets, on the one hand, and to address a rising consumer demand for diversification, specialty coffees, and quality products, on the other.¹⁸ Stepping forward, harnessing market forces and allowing poor countries to benefit from Intellectual Property (IP) rights are keys to creating fairer and more equitable trade.¹⁹ GIs have the power to invoke expectations and affect consumer

17 In 2005, the FNC broke new ground by applying to protect Café de Colombia as a Protected Geographical Indication under the European Union (EU) system - the first time this had ever been done for a product from a country outside the EU following the opening of the EU system for non-European GI products. After some ups and downs along the way, the EU procedure concluded successfully in June 2007, when the two-year period of opposition expired and the formal recognition of Café de Colombia as a Protected Geographical Indication under the EU system became official in September.

MAKING THE ORIGIN COUNT Two Coffees (www.un.org/Pubs/chronicle/fyi/pdfs/wipo_pub_121_2007_05_4-7.pdf)

18 Journal of International Economic Law 9(3), 575-614 Advance Access publication 12 July 2006 The protection of Geographical Indications after doha: quo vadis? G. E. Evans and Michael Blakeney

19 Raymond C. Offenheiser, Making the Origin Count: Two Coffees, WIPO Magazine Sep 2007 (www.wipo.org/wipo_magazine/en/2007/05/article_0001.html)

behavior. This power should be properly protected and enhance the participation of producers in the marketplace.

3.5 Protection of Local Culture and Traditional Knowledge

It seeks to take trade and culture seriously, looking not only at law's effects on trade but also on culture, and to examine the extent to which legal restrictions on international trade can in fact prevent the degradation of cultural diversity in a particular regulatory context.²⁰

GIs are able to ensure protection for Traditional Knowledge, which for some reasons does not fulfill the criteria for proper legal protection. This idea coincides with UNESCO policy. Under Article 5(1) of the UNESCO Draft Convention, Member States respect "their sovereign right to adopt measures to protect and promote diversity of cultural expressions within their territory, and recognize their obligations to protect and promote it both within their territory and at the global level".

In other words, the Convention aims to reaffirm the sovereign right of States to draw up cultural policies, recognize the specific nature of cultural goods and services as

²⁰ Tomer Broude, Taking 'Trade and Culture' Seriously: Geographical Indications and Cultural Protection in WTO Law, International Law Forum working paper of Hebrew University of Jerusalem, May 2005

vehicles of identity, values and meaning, strengthen international cooperation and solidarity so as to favor the cultural expressions of all countries²¹ are sharing the same value with GIs in some points. In view of the Doha Work Program, GIs offer an established means of protecting traditional knowledge. In this regard, the type of foods consumed by indigenous communities, including the methods of handling, processing, marketing, distributing, and utilizing it, is founded in traditions that have given rise to the development of indigenous food technologies.²²

With international trade and interaction, global culture might simply dry up.²³ As pressure mounts to establish international legal mechanisms of cultural protection that entail restrictions to trade, we must ask ourselves whether by curtailing economic human exchanges such mechanisms do not at the same time prevent human cultural exchanges in whose vibrancy lies the future of human cultural development and its diversity.²⁴

21 Convention on the Protection and Promotion of the Diversity of Cultural Expressions

(http://portal.unesco.org/culture/en/ev.php-URL_ID=35405&URL_DO=DO_TOPIC&URL_SECTION=201.html)

22 Journal of International Economic Law 9(3), 575–614 Advance Access publication 12 July 2006 The protection of Geographical Indications after doha: quo vadis? G. E. Evans and Michael Blakeney

23 Tomer Broude, Taking 'Trade and Culture' Seriously: Geographical Indications and Cultural Protection in WTO Law, International Law Forum working paper of Hebrew University of Jerusalem, May 2005

24 Tomer Broude, Taking 'Trade and Culture' Seriously: Geographical Indications and Cultural Protection in WTO Law, International Law Forum working paper of Hebrew University of Jerusalem, May 2005

3.6 Poverty alleviation

GIs can be a source of competitive advantage which includes sustaining a population living in a decentralized or disadvantaged area. Higher profits through price premium are able to achieve with rural development. Regional specialties may have their stature enhanced in the eyes of the picky consumers when regional community members enjoy the exclusive right to use a particular geographical indication.

Its positive function shapes the notion of unfair trade practices and existing inequity of global economies. Economic growth would certainly contribute to combating poverty in peasant communities. There are a number of areas in which the EU could help African Caribbean Pacific (ACP) producers, for example by acting with them to reduce the abuse of dominant market positions by large companies. It could also help to promote the use of Geographical Indications and its independent financing. The fair trade market is of growing significance and GIs developments in poor economic nations could yield higher earnings for the clever producers in the future.

Summing up, the protection of Geographical Indication to African products would transform African farmers from raw material producers to exporters of differentiated products which are easily identifiable in the market. In the forum of Africa Perspective GIs, participants provided the positive impact of GIs in Africa as follows.

1. Assist African economies, which are wholly dependent on agriculture, to realize the government policies on poverty eradication and sustainable development.
2. Assist in promoting African products as origins.
3. Ensure better market access.²⁵

3.7 Biodiversity

GIs prevent the standardization of food and promote diversified and balanced diets.

Globalization of food trade impacts the everyday decisions of farmers throughout the world because agro industrial generic products are increasingly gaining access to local and regional markets. In agriculture, biodiversity includes biological and genetic resources that are managed, used and preserved by rural communities, as well as the interactions that take place in agro ecosystems.²⁶

Biodiversity is also critical to the survival and future growth potential of women farmers who have little access to mechanized tools, equipment and chemicals to manage and manipulate the soil, create and divert streams of water, and improve crop yields.

25 The Geographical Indication Protection: an Africa Perspective, WTO ROUND TABLE ON GEOGRAPHICAL INDICATION, 2004

(http://origin.technomind.be/fileadmin/origin/PDFs/English/OriGIIn_in_Action/OriGIIn_Events/Agnes_NYAGA.pdf)

26 Jorge Larson, Relevance of Geographical Indications and designations of origin for the sustainable use of genetic resources (http://www.bioversityinternational.org/Publications/pubfile.asp?ID_PUB=1263)

Biodiversity powered by GIs would help the promotion of soil fertility, and soil conservation and management, as well as affecting the nutritional content of plants and agricultural output²⁷

3.8 Tourism

What does GIs have to do with tourism? Destination marketing in tourism is about building an exciting story around a destination that promises the best sightseeing based on a unique perspective. Even besides Europe, Geographic based brand tours such as Napa Valley Vineyard tours in California are very active and common. Viable GIs are essentially building a brand and a reputation. A properly chosen and developed service brand name is a strategy which cannot be easily neutralized by competition and contribute to an ultimate success²⁸ For instance, through the Darjeeling logo, India expects her GIs brand to enable the commercial benefit of the equity of the brand to reach the industry and ultimately the plantation farmers, obtaining international status similar to champagne or Scotch whisky in terms of both brand and equity and

27 GLOBALISATION AND GENDER BRIEFS SERIES No. 2 WTO TRIPS Agreement
(<http://www.ilo.org/dyn/empent/docs/F1599852333/No%20%20-%20TRIPS.pdf>)

28 L. W. Turley, Patrick A. Moore (1995), "Brand name strategies in the service sector", *Journal of Consumer Marketing*, Vol.12, No. 4

governance in that point.

4. The protection of Geographical Indications in international law

4.1 A historical rationale for international cooperation

Originally, GIs were protected in accordance with national laws developed locally. As the law was national, it was the limited scope of the state territory in effect. It became very apparent that national protection was not sufficient, as commerce expanded in the 19th century, for their products. Therefore, international cooperation in GIs protection was required leading to mutual reciprocity in the level of protection between states.

4.2 International Treaties relevant for Protection of Geographical Indications

The first efforts to adopt a common approach to intellectual property resulted in the Paris Convention on the Protection of Intellectual Property, which was adopted in 1883. The Convention concerned all aspects of intellectual property and not just Geographical

Indications. However, GIs didn't stop to grow. GIs in international treaty, starting from the Paris Convention, have evolved in more sophisticated and modern way through many negotiations and at last, turned into what it is in TRIPS.

4.2.1 The 1883 Paris Convention

The Paris Convention was the first multilateral agreement, which included “indications of source or appellations of origin” as objects of protection in article 1(2).²⁹ The Paris Convention identifies Geographical Indications as a separate intellectual property right, but does not clearly define this concept and offers only limited protection even though most notably the United States is one of the signatory countries in the Paris Convention.

Article 2 states the principle of giving others the same treatment as one's own nation. Therefore, it means that, if other signatory country violates national treatment rules, then her GIs rights are not adequately protected in our state, either.

Article 10(1) of the Paris Convention³⁰ provides for the certain remedies in respect unlawful use of indications of source on goods, meaning that no indication of source

29 The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellation of origin, and the repression of unfair competition.

30 The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.

may be used if it refers to a geographical area from which the products in question do not originate. In original form, Members acted only in cases of serious fraud.³¹

Article 11bis of the Convention is the provision against misleading indications of source, including appellations of origin intending against unfair competition. It also contains a non exhaustive list of acts, which are to be prohibited. Paris Convention in Article 19 shows that the parties try to protect industrial property between themselves through special agreements. Later, two such following agreements of relevance to GIs were duly made. These are the 1891 Madrid Agreement and the 1958 Lisbon Agreement.

In nutshell, the Paris Convention fails to provide not only for clear cut definition of GIs but also for any special remedies against infringement of this provision. Historically, the Paris Convention for the protection of industrial property was agreed in 1883 at first and complemented by the Madrid Protocol of 1891. It was revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958), and Stockholm (1967), and amended in 1979. As of 1 October 2006, the Paris Convention had 169 signatory states.

31 Leigh Ann Lindquist, *Champagne or Champagne? An Examination of U.S. Failure to Comply with the Geographical Provisions of the TRIPS Agreement*, Ga. J. Int'l & Comp. L. 309, (1999).

4.2.2 The 1891 Madrid Agreement

The Madrid Agreement enhanced and broadened the protection on GIs comparing with Paris Convention. In other words, the Madrid Agreement added new content to the protection already given by the Paris Convention, which is that it extended protection to false or deceptive indications of source. The United States is a signatory to the Paris Convention for the Protection of Industrial Property. It is, however, not a signatory to the Madrid Agreement to which 5431 states participate in.

As mentioned earlier, article 1(1) of the Madrid Agreement³² provides specific rules for the repression of false and deceptive indications of source. However, this agreement failed to attract the accession of significant trading nations such as the USA, Germany and Italy. A threshold problem with this agreement and with subsequent revisions was the inability of nations to exempt Geographical Indications which had become generic within their borders. Madrid protocol, concluded in 1989, was the first making the Madrid system more flexible and compatible with the domestic legislations of wider range of countries which had not been able to accede to the Madrid Agreement³³.

32 All goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries.

33 International Trade Mark Treaties

(http://www.mcd.govt.nz/templates/StandardSummary___17870.aspx)

This Agreement for the Protection of Appellation of Origin and their International registration was concluded in Lisbon on 31 October 1958. It was revised in Stockholm in 1967 and amended in 1979. Any Member of the Paris Convention may accede to the treaty. As of 1 September 2006, there were 26 states party to the Agreement.

To conclude, in addition to false indications, a deceptive indication of source, which can be the true name of the place where the good originates from, was forbidden when confusing the purchaser in respect to the true origin and quality of the good.

4.2.3 The 1958 Lisbon Agreement

The aim of the Lisbon Agreement for the Protection of Appellations of Origin was to provide for the protection of appellations of origin, that is, "The geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors".

The Lisbon Agreement in 1958 reflects a much more elaborate and sophisticated approach to the Protection of Appellations of Origin and their Registration. According to the agreement, a proper definition of appellation of origin and extended protection shall be against any usurpation or imitation, even if the true origin of the product is

indicated or if the appellation is used in translated form or accompanied by terms such as “kind”, “type”, “make”, “imitation” or “the like.”

Countries are free to adopt their own system for designating appellations, either by judicial or administrative decision, or both. Once registered, a geographical indication is protected in other Member states. However, there are two basic requirements for an appellation of origin to be protected, in accordance with the terms of this Agreement.

1. The appellation of origin should be protected in its country of origin
2. The appellation of origin should be registered in the International Register of

WIPO

Contracting Parties have to protect the appellation of origin to which international protection was requested, except if a Contracting Party declares, within a period of one year, that it cannot ensure the protection for a certain application.³⁴ There are no specified grounds for refusal to names in the Agreement. The duration of the protection given by international registration is coterminous with the protection as an appellation of origin in the country of origin.

There are at the moment 26 signatories of the Lisbon Agreement, with 6 EU Member States, namely France and Portugal (from 25 September 1966), Hungary (from 23

³⁴ Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members (<http://trade.ec.europa.eu/doclib/html/135088.htm>)

March 1967), Italy (from 29 December 1968), Slovakia and Czech Republic (from 1 January 1993).

4.2.4 The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)³⁵

First of all, TRIPS is important because of this agreement stems from the large number of 149 signatory states. A specific Section of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights is dedicated to Geographical Indications and it is the first multilateral treaty dealing with Geographical Indications as such. Article 22 of the TRIPS Agreement³⁶ provides a definition of Geographical Indications. This definition expands the concept of appellation of origin contained in Article 2 of the Lisbon Agreement to protect goods which merely derive a reputation from their place of origin without possessing a given quality or other characteristics which are due to that place.

The TRIPS Agreement contains three distinctions in the level of protection³⁷:

1. For Geographical Indications related to all products,

35 Agreement on Trade-Related Aspects of Intellectual Property Rights (www.wto.org/english/docs_e/legal_e/legal_e.htm.)

36 "... 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".

37 In Section 3 of Part II of the TRIPS Agreement, three different levels of protection are provided for Geographical Indications.

2. For wines and spirits

3. For only wines

The first level is a minimum standard of protection for all products. It prohibits any use which constitutes an act of unfair competition in the sense of Article 10bis of the Paris Convention, and the misleading of the public as to the geographical origin of the good. It prevents the registration of a trademark which would contain or consist of a geographical indication for goods not originating in the territory indicated, but only if such a use would mislead the public as to the true place of origin. In conclusion, the minimum protection is in connection with misleading of the consumer, which has to be proved, and unfair competition, which has to be judged by a court.

The second level of protection is only available for wines and spirits. It prohibits the use of an untrue geographical indication, even if it is used in translation or accompanied by an expression such as “kind”, “type” and “imitation”. The registration of a trademark containing or consisting of a geographical indication for wines or spirits not having this origin is prohibited, even if the public is not misled as to the true origin of the product. Moreover, all Members enter into negotiations aimed at increasing the protection of individual Geographical Indications for wines and spirits.

The third and highest level of protection is only for wines. It deals with homonymous

Geographical Indications for wines, granting protection to each of them, but also requiring each Member to determine the practical conditions in order to avoid any misleading of the public. In order to facilitate the protection of Geographical Indications for wines, 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 eligible for protection in those Members participating in the system.

Such two tiered structure³⁸ of protection for GIs in TRIPS, with wine and spirits achieving the highest protection has been the subject of considerable debate in the current negotiation. The additional protection for both wines and spirits includes three elements:

1. The provision of the legal means for interested parties to prevent the use of a geographical indication identifying wines and spirits, not originating in the place indicated by the geographical indication.
2. The possibility to refuse or invalidate the registration of a trademark for wines or spirits which contains or consists of a geographical indication identifying wines or spirits at the request of an interested party

38 The disparate levels of protection

3. The call for future negotiations aimed at increasing protection for individual Geographical Indications for wines and spirits.³⁹

An additional protection by the TRIPS Agreement for wines emphasizes the need to accord protection for each geographical indication for wines in the case of homonymous indications and the establishment of a multilateral system of notification and registration of Geographical Indications for wines eligible for protection in the jurisdictions of those WTO Members participating in the system.⁴⁰

5. Existing means for legal protection of GIs

The need for legal protection of GIs has assumed significance in genuine right holders to prevent unfair business and mislead of consumers. Specially, Europeans have started to strengthen the protection of wine GIs, even saying each bottle of American or Australian wine that lands in Europe is a bomb targeted at the heart of our rich European Culture.⁴¹

39 Prof. James Otieno-Odek, Managing Director Kenya Industrial Property Institute 2005, 'THE WAY AHEAD - WHAT FUTURE FOR GEOGRAPHICAL

INDICATIONS?' (http://www.arbiter.wipo.int/export/sites/www/meetings/en/2005/geo_pmf/presentations/doc/wipo_geo_pmf_05_otieno-odek.doc)

40 Geographical Indications and TRIPS: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members (http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_135088.pdf)

41 The comment of wine maker from the Languedoc, 1999.

The importance of GIs as a producer device is that GIs can confer some degree of market power, and the associated rents are the reward for gaining legal protection against competitors.

In the trade policy, issue arises how the domestic regulation in developing countries can reach to the optimal state of international GIs protection. The trade impacts are in the main a direct consequence of the ability of domestic policy to provide the appropriate level of protection and information because the trade agreements purse give and take negotiations.

The WTO recognizes that a variety of means may be employed to protect GIs. There are various types and degrees of GIs protections by each country, they are often mixed, and understanding these distinctions would be helpful in setting up the strategy.

5.1 Business Practice

From the point of Business Practice, Unfair competition law (action for unfair competition) and passing off fall in this area.

In civil law countries, registration of GIs on a separate register was added to general protection under unfair competition. The law of unfair competition is primarily comprised of torts that cause an economic injury to a business, through a deceptive or wrongful business practice.⁴² For example, the French system, it has been suggested, developed with the focus of protecting producers and manufacturers as opposed to concerns about consumer confusion or deception.⁴³ The requirement of the so called 'misleading test' can at best be regarded as suitable in preventing unfair competition or consumer protection regulations. Starting in 1905, France generated a series of laws throughout the century that have largely shaped the debate over GIs today.

On the other hand, the United States and other common law countries protection for geographic indications have largely proceeded based on different conception of the law of unfair competition. This approach centers on the idea that the use of a geographic

⁴² Unfair competition (http://topics.law.cornell.edu/wex/Unfair_competition)

⁴³ Simon, Lori, *Northwestern Journal of Intellectual Law and Business*(1983) pp. 132, 141)

indication on products originating outside of the indicated area is an act of passing off the goods. In these cases, consumer protection benefits are seen to outweigh the limitation on competitive freedoms represented by the grant of a monopoly of use over a geographical indication.

5.2 Certification and/or collective marks

The United States and many common law countries have found that by protecting Geographical Indications through the trademark system, usually as certification and collective marks. This idea shares same base with action for passing off.

The United States argues that they provide TRIPS-plus levels of protection to GIs, of either domestic or foreign origin. In the United States two types of collective marks exist for the protection of GIs.

(1) Collective trademarks or collective service marks

(2) Collective Membership marks.⁴⁴

Again, both these legal signs are found in common law. Collective mark system of GIs is also employed in Korea because this distinctive sign easily appeal to consumers

⁴⁴ What Are "Geographical Indications"? by United States Patent and Trademark Office (USPTO) (www.uspto.gov/web/offices/dcom/olia/globalip/gi_protection.htm)

conveying the products meet the defined standards. And compared to the other legal mechanism, two legal marks can be administered in a more market oriented manner and be directly governed by the nation.

5.3 Sui generis system⁴⁵

Sui generis registration is suitable for small producers who cannot seek registration country-by-country. In principal, Member states are free to adopt the appropriate system under their domestic law.

In countries where there is a sui generis system which provides for the registration of GIs, producers do not encounter major difficulties in protecting their IP rights on their name. It is much more difficult for GI producers to rely on unfair competition and consumer protection acts, passing off actions or the trademark regime.

Over 13 countries in Asia (such as Mongolia, North Korea, Thailand or Vietnam among others) have established sui generis protection systems for GIs in the last 5 years. In the same category, since 2000 over 12 countries from North and Latin America have adopted a sui generis system for GI protection. Nations such as Colombia, Venezuela,

⁴⁵ In law, it is a term of art used to identify a legal classification that exists independently of other categorizations because of its uniqueness or due to the specific creation of an entitlement or obligation

Cuba and Costa Rica are examples of these countries.

5.4 Others (Administrative schemes of Protection and Labeling & Advertising Standard)

Administrative label control method provides a practical tool for consumers of choosing the goods and establishes the standard of a fair business. For creating the strong GIs and marketing them successfully, the producers and manufacturers have to be informed fully about the applicable laws and keep compliance of the product for which marketing authorization is sought with relevant legal requirements. To ensure fair trade and consumer protection, administrative approval procedure can be reached to market some goods because the administration is able to ask labeling requirements meeting legal components from production to circulation.

6. Protection of GIs in Korea

At the second round of talks, the EU will ask Korea to limit the use of registered GI names and ultimately erase them out. If this demand is accepted, appellations like Champagne, Cognac, Scotch, and Bordeaux can no longer be used on domestic Korean

products.⁴⁶

The TRIPS agreement requires every signatory to establish minimum standards at their national level. However, while Member States of EU has come along with development of GIs for a long time, Korea has introduced the term ‘GIs’ in the TRIPS in 1999⁴⁷ as a recent topic and still exposed weak points in the administrative organization, legal system and collaboration. Thus, to promote competitiveness of local agricultural products and strengthen local specific industry, we need to explore the insight of current Korea protection system of GIs and prepare an effective and strategic plan in the challenge of globalization.

From the legal aspect, protection of GIs is defended by several Acts as below table 2 but mainly activated by two major governmental systems, Korean Intellectual Property Office (KIPO) and the National Agricultural Product Quality Control Service (NAPQCS), in forms of Collective Mark in Trademark Act and GIs provided in Agricultural Product Quality Control (APQC) Act.⁴⁸ Though Ministry of Maritime

46 Geographic Indications Surfacing as Obstacle to Korea-EU FTA Talks
http://www.koreatimes.co.kr/www/news/biz/2008/02/127_7382.html

47 DongA Newspaper 한국 ‘지리적 표시제’ 걸둔다
<http://www.donga.com/fbin/output?n=200712030028>

48 History of GIs system in Korea

1999.7: GI, as in the TRIPS, provided in APQC Act

2000.9: Regulation on GI Registration Committee adopted

2000.9: Products subject to GI registration announced

Affairs and Fisheries (MOMAF) adopted GIs on fisheries first in the world, MOMAF is not active in GIs so far, compared to the other two governmental departments.

Table 2. Acts in Korea relating GIs protection

Name of Act	Regulation
Unfair Competition Prevention and Trade Secrets Protection Act	To prohibit, as unfair competition, use of marks identical or similar to another person's name, trade name, emblem or any other well known mark, including selling, distributing, importing or exporting goods so marked, that would mislead the public on the place of production
Fair Labeling and Advertising Act	To prevent deceptive labeling and advertising, including any vague or false labeling or advertising that may mislead

2001.8: GI Registration Committee comprised (10 ex officio, 17 appointed)

2004.12: Collective Mark for a GI provided in Trademark Act

2006.11: GI Registration Committee comprised secondly (7 ex officio, 13 appointed)

	consumers on the product's origin
Trademark Law	To prevent registration of trademarks consisting of a "conspicuous geographical name To prevent registration of any trade mark containing Geographical Indications for wines or spirits originating in any WTO Member (Art. 7(1)(xiv))
Foreign Trade Act	To prohibit Imports or exports with false origin indications or infringing GIs

<Source from: World Economic Law Research Center at KOREA UNIV>

As above mentioned, the history of GIs in Korea is not long enough to establish a proper advanced system. Thus, the works of two different bodies are overlapped in some sectors, being criticized as the waste of administrative use, money and effort. Two applications for one product may provoke confusion of consumers as well as possible conflicts of interests.

In that point, both of governmental GI systems in Korea should set up an effective

single window procedure to confront global competition. KIPO recently inserted the provision in Trademark Act to minimize conflict risks but potential vulnerability to it still exists.

Figure 3. Registered 51 GIs in Korea in 2007



< Source from: DongA Newspaper⁴⁹>

The number of registration of GIs in NAPQCS is absolutely high than that of KIPO, which are about ten items. Till April of 2008, the fifty six forest and agricultural

49 DongA Newspaper 한국 '지리적 표시제' 걸든다
<http://www.donga.com/fbin/output?n=200712030028>

products have been registered and supervised by the NAPQCS and its GI Registration Committee under APQC Act. The GI system under APQC Act has been understood as 'quality certification' or 'Quality assurance and control' because NAPQCS has managed policies only for quality of agricultural products. For example, GI provisions in APQC Act give strong emphasis on maintenance and quality of GI registered products.

The KIPO amended the Trademark Act to induce the conception of GI in the form of a collective mark in December, 2004. Agricultural Ministry's opposition against the amendment was mediated, with difficulty, by Ministry of Finance and Economy.⁵⁰ The main cause of amendment was that GIs are thought to be well protected under both of APQC Act and Trademark Act. However, concerns are raised about possible conflicts rights and jurisdiction when two protections for the same product are not well harmonized. According to the Nongmin newspaper, KIPO argues that the protection of GI in APQC Act doesn't have any exclusive right, in that point Collective Mark plays a role to provide the private rights of producers at the national level whereas NAPQCS insists that GIs can be protected via administrative, criminal and civil relief, regardless of right of claim against infringement. Additionally, NAPQCS says that their GIs shares common characteristics with GIs of EU, which has been in the long-term operation test.

50 Geographical Indications in Korea

(www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bei_07/wipo_geo_bei_07_www_81760.ppt)

In consequence, two separate protection given to different entities in the same region. Where products of an application for a collective mark for a GI are subject to APQC Act, the Commissioner of KIPO should obtain Agricultural Minister's opinion on whether a GI is available.⁵¹ This Art 22bis of Trademark Act shows trial of collaboration between NAPQCS and KIPO but is not likely to overcome all shortcoming and difficulties. The divergences of two administrations still have to be adjusted by collaboration and practical consultations. The name 'King Icehon rice' was registered in each department as GIs under APQC certification and Collective Marks by different right holders at the same time, resulting in the potential conflict where the exclusive right of King Icehon rice was not protected. In many respects, to expect trade marks to get along with Geographical Indications is like trying to mix water and oil in Korean proverb. The problems caused by the need for trade marks and Geographical Indications to co-exist is exacerbated when, in new world countries in particular, the legal mechanisms for protecting Geographical Indications are relatively recent creations, whereas trade marks, and the protection of reputations, have formed part of the established jurisprudence for hundreds of years.⁵²

51 Geographical Indications in Korea

(www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bei_07/wipo_geo_bei_07_www_81760.ppt)

52 WIPO/GEO/SFO/03/13 WORLDWIDE SYMPOSIUM ON GEOGRAPHICAL INDICATIONS in 2003

http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_sfo_03/wipo_geo_sfo_03_13.pdf

Procedure and protection of foreign GIs in Korea under APQC Act and Trademark Act is almost identical to Korean GIs because Korea accepts the structure of the EC GI law. In other words, foreign GIs for agricultural products that go through the same registration procedure and evaluation standards as Korean GIs may also be protected.⁵³ In detail, if foreigners or Korean citizens want to receive GI protection, they have to file a GIs application form with relevant documents to NAPQCS.

Actually, GIs are the issue that originated as the result of real politic controversy and the implementation of systems for the protection of Geographical Indications entered worldwide political spectrum through bilateral or multilateral international trade negotiations.

The study cases below listed are possibly good lessons for future of Korea GIs. These cases may enable Korea to realize we already face potential GIs debates and what we need for consideration in further development.

7. Lessons from case studies in GIs

Some countries set minimum criteria all along the chain, some only for raw materials

⁵³ Geographical Indications in Korea

(www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bei_07/wipo_geo_bei_07_www_81760.ppt)

or for processing methods, others depending on the products to be protected, keeping open the possibility of coexistence on a case-by-case basis.⁵⁴

We have a good many such examples. International Alpaca Association (IAA) based in Peru opposes U.S. Certification Mark Registration and the use of alpaca by American Certification Mark will have serious and damaging impact on the entire alpaca industry in Peru, whose exports generate income for some of the poorest communities in isolated areas of the Andes.⁵⁵

Another illustration is provided by Malabar Pepper, recently registered for a wide range of foodstuff including pepper in the UK, when Malabar Pepper has been applied for as a Geographical Indication in India.⁵⁶

Sometimes, consumer protection and producer goodwill preservation were bundled together and unpacking them now may lead to an existential crisis.⁵⁷ To resolve potential conflicts, there has been a real need for analysis of the case study on the past dispute settlement and the techniques.

54 Gangjee, Dev Saif, "Quibbling Siblings: Conflicts between Trademarks and Geographical Indications" *Chicago-Kent Law Review*, Vol. 82, No. 2, 2007

55 International Alpaca Association (IAA) Opposes U.S. Certification Mark Registration Newsletter Vol. 5 (Jan 2007) (http://www.piipa.org/newsletter_Jan07.pdf)

56 Gangjee, Dev Saif, "Quibbling Siblings: Conflicts between Trademarks and Geographical Indications" . *Chicago-Kent Law Review*, Vol. 82, No. 2, 2007

57 Gangjee, Dev Saif, "Say Cheese! A Sharper Image of Generic Use Through the Lens of Feta" . *European Intellectual Property Review*, Vol. 5, 2007

7.1 Parma Ham Case

GIs does not only mean the products from the specific location only but also do they represent a know how of associating certain food products with particular regions

This case to attention recently when Asda, a U.K. supermarket owned by Wal-Mart, was taken to court in the United Kingdom by the Italian Parma Ham trade consortium, Consorzia del Prosciutto di Parma, which claimed dilution of the name Parma Ham because Asda bought Parma Ham in bulk and sliced and pre-packaged it in the United Kingdom. The suit alleged that the reputation of Parma Ham is not just based in where it is produced but how thin its slices are and the only genuine way to slice it is to make sure it is done in Parma. Asda only can still use the Parma name when the meat is sliced on a delicatessen counter in front of the customers⁵⁸

7.2 Pisco Liquor Dispute between Chile and Peru

58 BBC News 2003 Asda slams 'ham-fisted' Parma ruling
<http://news.bbc.co.uk/1/hi/business/3043283.stm>

GIs through WTO rules do not always guarantee the exclusive right of GIs for cultural commodity product if they sense political weakness.

Pisco is the almost national drink in Peru and Chile. While both countries claim a historical legacy to pisco, the underlying cause of the dispute is over exports and control over the market. A WTO decision granting Peru the sole right to export brandy liquor under the name pisco, would affect all Members of the WTO. But, the attempts by Chile to acquire pisco domination were shown in many political activities such as a Chile-Korea FTA in 2003. Chilean government asked Korea to regard recognition pisco as a designation of origin of Chile, without prejudice to denominating any product from Peru as pisco. With the gap between realities, this case will leave a precedent for additional countries to claim exclusive rights to a so-called cultural commodity

7.3 Turrón de Alicante and Turrón de Jijona

The criteria of generic names are ambiguous and this ambiguity brings the competition with Trademark.

In the 1992, before the European Court of Justice (ECJ), French candy makers contended that two Spanish candy names, “turrón de Alicante” and “turrón de Jijona,”

had become generic.⁵⁹ The British Government intervened on the side of the French producers, agreeing that the two candy names had come to represent only “certain recipes for confections, whose principal distinctive ingredients, namely honey and almonds, originate in different regions or even different countries.”⁶⁰ The British Government summarized the issue saying, if appropriate labeling ensures that imitations are clearly distinguishable from the originals, there is no risk of fraud or deception and so the original name becomes generic. The original name comes to represent the results of the recipes.

This case, however, was judged by EC confirming both 'Turrón de Jijona'⁶¹ and 'Turrón de Alicante' are protected Geographical Indications in the European Union. They are on the list of 'Foodstuff listed in Annex 1 to regulation (EEC) No2081/92.' 'Turrón de Jijona' and 'Turrón de Alicante' needs to be aware of the specific problems in seeking trademark protection, as it does not always cover individual terms of the composed name.

59 Hughes, Justin, "Champagne, Feta, and Bourbon - the Spirited Debate About Geographical Indications". *Hastings Law Journal*, Vol. 58, p. 299, 2006

60 Hughes, Justin, "Champagne, Feta, and Bourbon - the Spirited Debate About Geographical Indications". *Hastings Law Journal*, Vol. 58, p. 299, 2006

61 Jijona is a Spanish city located in the province of Alicante, famous for an exclusive Christmas sweet made of almonds, honey and sugar.

7.4 Bocksbeutel case⁶²

Members can not refuse negotiating in GIs as exceptional cases where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either before the TRIPS Agreement.

The European Court of Justice (ECJ) held in the Bocksbeutel case that Germany could not limit the importation of an Italian wine on the grounds that the wine bottle resembles the distinctive Bocksbeutel bottles, although the Bocksbeutel bottle was protected as an indication of origin in Germany. The European Court of Justice (ECJ) found that the Italian wine producers did not choose the bottle design for the resemblance. They rather had been using it for over a hundred years. More specific, if a name and logo, shape and design in this case have been in continuous use for at least ten years or has been in use in good faith before TRIPS, then The European Court of Justice (ECJ) has allowed that the GIs provisions not to prejudice prior trademark rights

62 Commission Regulation (EEC) No 3201/90

7.5 Vinho Verde for a Portuguese white wine

Non-place names or non-geographical names are protected in some cases in GIs regime.

The TRIPS Agreement did not spell out that a geographical indication was a geographical name, while the Lisbon Agreement used the term 'geographical name'. Thus, it could be regarded that a word which was not a geographical name in the strict sense but if it had the strong power of a geographical evocation could be considered a geographical indication. Of courses, this exceptional situation was regulated in certain regions. In reply to a request for clarification regarding traditional expressions which could be assimilated to Geographical Indications, the Representative of the International Vine and Wine Office (OIV) added that Vinho Verde and Muscadet, which were not geographical names but had acquired a reputation over time. In the case of Muscadet, this denomination was recognized as a GI under French regulations.

7.6 Café de Colombia and Swiss watch

TRIPS Agreement's definition of Geographical Indications allows countries' names

to be protected in some cases.

In GI formality, EC law defines that a 'geographical indication' means the name of a region, a specific place or, in exceptional cases, a country, and used to describe an agricultural product or food stuff.

Café de Colombia is the first foreign geographical indication that has requested to be registered in the European Union.⁶³ The "Swiss" for watch is one of special cases which do not concern foodstuffs or wines. Since June 1997, the EU has complied with the prohibition of Switzerland, as stated in the decree of 23-12-1971, that manufacturers of watches within the EU are prohibited from using this indication.⁶⁴

In principle, the name "Switzerland," as well as designations such as "Swiss," "Swiss quality," "Made in Switzerland," "Swiss Made" or others containing the Swiss name, can only be used for products manufactured in Switzerland and this also applies to the translation of any of these terms into any other language.⁶⁵ However, in reality, the use of Swiss plays different and interesting roles when used in different places shown as Swiss cheeses and Swiss airline.⁶⁶ In general, "Switzerland" or "Swiss" are perceived as

63 The appellation of origin of Café de Colombia was declared through the Resolution No. 4819 of March 4, 2005, by the Superintendencia de Industria y Comercio

64 European Council Reg. No. 510/2006

65 Swiss Federal Institute of Intellectual Property, Use of the "SWISS MADE" Indication of Source (Origin) (www.ige.ch/e/jurinfo/documents/j10709e.pdf)

66 SWISS watches (GI); SWISS cheese (Generic); SWISS airlines (Trademark)

a geographical indication in many countries, in particular, for watches. The Swiss believe that Swiss made embodies a concept of quality that has been forged over the years. It includes the technical quality of watches (accuracy, reliability, water-resistance and shock-resistance), as well as their aesthetic quality (elegance and originality of design).⁶⁷ It may cover both traditional manufacturing and new technologies. They say that Swiss watches could not be produced under the same name by anyone from another location.

By the same token, however, GIs registration of Korea ginseng is suspicious. Though, EC law says a country name can be a GI, Korean law is not clear and sure about it. This issue deals with the essentially attributable clause. No one can assert that Korea ginseng's quality, reputation, or other characteristic be essentially attributable to a whole country. Thus, it is doubtful that Korea Ginseng can be registered as GI under Korean law even though the commercial value of Korea Ginseng in GIs is immeasurable. A ginseng's reputation, however, may be essentially attributable to a country in the future when all associated ideas are attributable to a country with best effort support.

⁶⁷ The Swiss Watch Industry - Swiss Made (www.fhs.ch/en/swissm.php)

7.7 The Feta case

To decide whether the certain GIs are generic status is not only technically complex, complicated, difficult process but also provoke many concerns.

The recent Feta⁶⁸ dispute, where the European Court of Justice (ECJ) considered the test for generic status under the pan European GI system, came to end that Feta was not a commonly used expression for a type of white cheese in brine, instead designating cheese with a specific Greek origin. On the issue of generic status, arguments were advanced by Germany and Denmark that Feta did not have a geographically specific meaning to begin with and even if it once did, it had slipped into usage as a common name.

In conclusion, the court rules that general consumers perceive Feta as a cheese 'associated' with Greece.⁶⁹ The commission also emphasizes that, for that purpose, the basic regulation requires a comprehensive examination of all factors likely to influence the public perception in that regard and not merely of the indicative factors which it expressly mentions.

So the European Court of Justice (ECJ) decision gave the same legal protection to

68 Feta is a soft white cheese made from sheep or goat's milk, and is an essential ingredient in Greek cuisine

69 Case 85 C-3/91, Exportur SA v LOR SA and Confiserie du Tech ('Exportur'), [1992] E.C.R. I-5529

feta as to Italian Parma ham and French Champagne.

7.8 Budvar case

How collision of trademark and GIs is governed by the international bodies? There is no easy solution here. In the end, this kind of conflict is like to be solved by Court battle at the huge cost in time and money. In managing each case, two sides possibly try to defend their properties at most so the court must be affected in some way by political influence. EU says that this prolonged struggle over the name can be harmonized gradually by law through the European Court of Justice (ECJ). But this is always easier said than done.

In the development of trans-border trade, conflicts between trademarks and GIs are inevitable. U.S. brewer Anheuser-Busch has sought to protect its trademark against a state-owned Czech brewery, Budejovicky Budvar, over the Budweiser or Bud name. The Czech company started to use the name Budweiser or Bud, registering it as a GI, although Anheuser-Busch had registered the trademark prior to this.

The European Court of Justice (ECJ) considers that Budweiser or Bud is GIs for the Czech beer, which is superior to a prior trademark. This decision is the sign of notorious

clash between the Budweiser trademark owned by Anheuser-Busch and trade name relating to the Czech brewery Budějovický Budvar.⁷⁰

In essence, the European Court of Justice (ECJ) ruled that even if no valid rights in the trade name could be asserted in the Member state where the conflict arose and at the point in time when the trademark right was acquired, the trademark holder still had to tolerate further use of the trade name, including its use as a mark, on the basis of Article 6.1(a) of the European Trademark Directive.⁷¹ So up to this point, it can be understood that the European Court of Justice (ECJ) decision is rather opposite to the general belief, which is that trademarks take precedence over GIs.

Czech Republic successfully canceled Anheuser-Busch's trademark registrations for "Budweiser" or "Bud" in several European countries⁷². However, outside the EU, Anheuser-Busch's has been successful in protecting this mark in several other jurisdictions in Hong Kong, the US and recently in Russia with respect to their Bud mark. In England, two names co-exist. It is noticeable that a decision rule in legal cases

70 Case C-245/02, *Anheuser-Busch v. Budějovický Budvar*, 2004 E.C.R. I-10989.

The town where the brewery is situated—Česke Budějovice in the Czech language—was called "Budweis" under the former Austrian-Hungarian rule and is still known in some parts under that name.

71 Relying on Article 6.1(b) of the Directive, "Limitation of the effects of a trademark", a trademark did not entitle the proprietor to prevent a third party from using in the course of trade, indications concerning the geographical origin of goods or rendering of services provided the third party uses them in accordance with honest practices in industrial and commercial matters.

72 Austria, Germany, Ireland, Israel, Portugal, and Switzerland

in Europe is favorable to Czech Republic.

Pilsner Beer, for interesting beer case, has become regarded as both a generic term and a GI depending on the country concerned. Countries considering the term to be generic include Australia, Canada, Japan, Norway, Sweden and South Africa, whilst those viewing it as a GI include Argentina, Austria, Britain, China, India, Italy and the United States of America.⁷³

7.9 Markenqualität aus deutschen Landen case

National Quality scheme through revealing origin is not compatible GIs because of its national control effect, infringing Article 28 EC.

The scheme, the use of the mark 'Markenqualität aus deutschen Landen' had been set up in order to promote the distribution of agricultural and food products made in Germany. Its advertising message emphasized the German origin of the products, conferring the right to products made in Germany which meet certain quality standards.

This issue concerned the compatibility with Article 28 EC⁷⁴ of the award of a quality

73 Intellectual Property Rights and Geographical Indications

(www.acci.asn.au/text_files/issues_papers/E%20Commerce/October%2005%20-%20Intellectual%20Property%20Rights.pdf)

74 Article 28 Any autonomous alteration or suspension of duties in the common customs tariff shall be decided by the Council, acting by a qualified majority on a proposal from the Commission.

label, which was managed by a private company, which was supervised and funded by a public body.⁷⁵ The Court confirmed that the contested scheme had restrictive effects on the free movement of goods between Member States. The Court observed that this German scheme cannot be regarded as a geographic indication capable of justification under Article 30 EC.⁷⁶ According to Opinion of Mr. Advocate General Jacobs, the establishment of a quality label scheme, adopted by a private body falls within infringement of Article 28 EC.⁷⁷

Therefore, the equivalent scheme of GIs by granting the right to use the quality label 'Markenqualität aus deutschen Landen' to finished products of a specific quality produced in Germany, became the lost case to the Federal Republic of Germany.⁷⁸

7.10 Newcastle Brown Ale

The message of GIs cancellation of Newcastle brown ale, a single manufacture, is

⁷⁵ Proceedings of the Court of Justice in 2002 by Mr G.C. Rodríguez Iglesias, President of the Court of Justice (<http://curia.europa.eu/en/instit/presentationfr/rapport/pei/cj2002.pdf>)

⁷⁶ Article 30 Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States

⁷⁷ He delivered his opinion, regarding following points. 1. That company acts for a purpose which is broadly defined by provisions of national law, 2. Its activities are financed by a public body (Fund) which in turn is financed through a compulsory charge on producers of agricultural and food products and 3. The Government exercises, directly or through the Fund, some degree of control over the activities of the company.

⁷⁸ Case C-325/00 Commission v Germany (<http://curia.europa.eu/en/instit/presentationfr/rapport/pei/cj2002.pdf>)

that GIs are similar to trademark.

Reason for GIs cancellation of Newcastle Brown Ale was simple. The conditions laid down in Regulation 510/06 concerning the usage of the PGI 'Newcastle Brown Ale'⁷⁹ could not be met.⁸⁰ And its PGI status was cancelled.

Newcastle Brown Ale is restricted to being brewed in the city of Newcastle upon Tyne in England. However, in 2004, it decided to move across the river Tyne to Gateshead because of difficulty to produce at the previous site. Ironically, despite of a short distance, its GIs does not fall within the required category. The beer factory is now applying to the European Union to have the geographical restriction revoked. The fate of Newcastle Brown Ale seemed to either have to move back to Newcastle, or stop calling its beer Newcastle brown ale. But Brown ale still carries the name whether it was brewed in Newcastle, New York or Novosibirsk, depending on who held a relevant trademark. GIs are protectionism by another name, we are told⁸¹

79 The beer Newcastle Brown Ale was first brewed in 1927 in Newcastle-upon-Tyne, England, by Jim Porter and now best-selling bottled beer in the UK with a masculine image.

80 COUNCIL REGULATION (EC) No 510/2006 Cancellation request according to Article 12(2) and Article 17(2) 'NEWCASTLE BROWN ALE' EC No: UK/017/0372/16.08.2004

81 Danish Agricultural Press - 100 years anniversary conference Copenhagen in 2005

Mariann Fischer Boel Member of the Commission responsible for Agriculture and Rural Development

(<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/05/326&format=HTML&aged=0&language=EN&guiLanguage=en>)

7.11 Basmati rice

Developing countries have fewer and weaker GIs but they are wake up by the increasing benefits and interests.

Recently, Basmati rice seems to be marked with controversy. It is safe to say Basmati rice is exclusively associated with India and Pakistan meaning “the fragrant one” in Hindi. So far, the system for such protection in India and Pakistan is still poor and their GIs are vulnerable to piracy.

Indians started to argue that the US cannot put label rice Basmati on the other rice, those are unrelated to the territory of India and Pakistan as trademark. In subsequence, the U.S. Patent and Trademark Office prohibited RiceTec from using the term basmati and restricted the scope of the patent to three specific rice strains developed by the U.S. Company. Though RiceTec already had a trademark registration under “Kasmati” for basmati rice in the UK, the Indian government succeeded in forcing RiceTec to voluntarily surrender the “Kasmati” trademark registration. The Indian government, too, put up a spirited challenge, citing the existence of basmati as a well-recognized product associated with certain regions in India, thus making it eligible for GI status.

As the statutory protection to GIs in India is still relatively new, it is likely that

various unaddressed issues will be discovered that may require the Indian law to be enhanced. But it is clear that they seek GIs benefits through international negotiations in the Member countries of WTO.

8. The issue under debate GIs extension for the more effective protection

In the realm of the World Trade Organization (WTO), the GIs extension creates significant controversies. Not only great economic stakes but also historical and socio-cultural dimensions sensitive, controversial at international and national levels makes it more difficult to compromise the outcome, generated from the lack of harmonization at national level differing interpretations regarding mandate and difficulties in discussion in the WTO because of linkages with other areas of negotiations, in particular Agriculture.⁸²

However, while the misuse of geographical attributions may offend many feelings, only certain types of such misuse are sanctioned by the law in reality. Having failed to reach the agreement at international level, global ministers in WTO are still in a wide

82 Geographical Indications :Ongoing negotiations/discussion in the WTO 2007

(www.wipo.int/edocs/mdocs/sct/en/wipo_geo_bei_07/wipo_geo_bei_07_www_81754.ppt)

ranging set of negotiations.

There have been many debates over GI extension so far. For instance, in June 2002, several WTO Members⁸³ tabled a communication describing the main elements for addressing the issue of extension of the additional protection of GIs and in December 2005, WTO Ministerial Conference was held in Hong Kong dealing with risk of extended protection of GIs at the expense of trademarks.

Details on WTO case of 2002 shows that Australia and the United States each separately challenged the legislation that had been adopted by the European Communities.⁸⁴ The challenges were considered by the same Panel. The EC required that another WTO Member agree to protect all of the EC's GIs for agricultural products and foodstuffs, other than those for wines and spirits, before the EC would agree to protect any GIs from that other WTO Member.⁸⁵ The EC also required the other WTO Member to provide the same high level of protection for GIs from the EC as the EC

83 Times in 2002, the Council for TRIPs continued negotiations on the establishment of a multilateral register of Geographical Indications (GIs) for wines and spirits, based on a first draft text circulated by TRIPs Council Chair Ambassador Eui-yong Chung of Korea on 16 April. The contentious implementation issue of whether the higher level of protection awarded to wines and spirits should be extended to other GIs arose for the first time in the negotiations, sparked by Bulgaria and supported by a number of other countries. (<http://www.ictsd.org/weekly/03-05-07/story2.htm>)

84 EC (which is the official name of the European Union in the WTO). – Geographical Indications (GIs) for foodstuffs and agricultural products

(http://www.dfat.gov.au/trade/negotiations/disputes/290_protection_of_trademarks_q_a.html)

85 EC – Geographical Indications (GIs) for foodstuffs and agricultural products

(http://www.dfat.gov.au/trade/negotiations/disputes/290_protection_of_trademarks_q_a.html)

itself provided before the EC would agree to protect any GIs from that WTO Member.⁸⁶

The EC required that the government of another WTO Member act as the EC's agent as well. The fact that EC restricted the rights attached to a trademark that included a term subsequently registered as a GI, caused a big dispute, too. As a result, this debate has seen the formation of two clear camps within the WTO, proponents for the extension of GIs and those against.

8.1 Opposition camp

Opposition camp even says that Geographical Indications (GIs) for agricultural food products are a major asset of the European model of agriculture. They say that GIs are set out for defending the EU's economic interest. Obviously, GI systems among countries can be used as trade barriers against competition. And philosophical differences between the European Union and the United States about how GIs should be registered and protected led to the formation of a WTO dispute settlement panel.⁸⁷ Indeed, as we noted in the introduction, enhanced GI protection has been widely understood as an effort by the Old World to secure legal protection against the New.

⁸⁶ EC- Geographical Indications (GIs) for foodstuffs and agricultural products

(http://www.dfat.gov.au/trade/negotiations/disputes/290_protection_of_trademarks_q_a.html)

⁸⁷ Regulation 510/2006

WTO Members opposing GI-extension⁸⁸ contest that GI-extension is part of the Doha Round mandate⁸⁹. They are arguing that GIs would impose serious trade restrictions in new and emerging dairy and processed agriculture. Also, extension would cause significant cost to producers who have been legally using a specific GIs and suddenly have to give up. Their opposition to GI-extension even increased after the European Commission submitted, in September 2003, a list of geographical names to the negotiating group on agriculture. In a parallel strategy to GI-extension, this proposal intends to prohibit the use of specific geographical names currently used by producers other than the right-holders in the country of origin⁹⁰. The latter was understood by those Members opposed to GI-extension as confirming their concerns that the ultimate goal is to 'claw-back'⁹¹ the use of 41 product terms for exclusive use by EC producers. Above all, the U.S., Australia and New Zealand, all big food producers and exporters, who are adamantly opposing the EU idea, say that Parmesan and the other names on the

88 These include, in particular, Argentina, Australia, Canada, Chile, Chinese Taipei, Colombia, the Dominican Republic, El Salvador, Ecuador, Guatemala, Honduras, New Zealand, Panama and the United States.

89 Among the more recent and important communications submitted to the WTO are the following- IP/C/W/289 of 29 June 2001, IP/C/W/360 & 386 of 8 November 2002, IP/C/W/395 of 10 December 2002, Job(05)/8 of 4 February 2005 from Australia.

90 WTO Doc JOB(03)/12/Add.1 of 5

91 The EC has produced a list of 41 products, such as 'feta' and 'parmesan' which it wants to 'claw back' for the exclusive use of its own producers. There is no mandate for negotiations on 'clawback', but like GI-extension, consultations are continuing. Whereas under GI-extension the exceptions in TRIPs Article 24 would continue to apply, however, 'clawback' would remove them, and with them, the ability of WTO Members to use established trademarks and generic terms.

list are either generic and should be available to all, or are sufficiently specific to be covered by existing trademark legislation.

8.2 Support camp

The counterpart league⁹², GIs extension supporters say that Current protection should be revised and the multilateral register should be open for GIs for all products. They insist that such a system would assure increased predictability, reverse the burden of proof and put the legitimate users in a better position in enforcement proceedings. The reason for higher or enhanced protection to wines and spirits goes back to the origin of the idea that GI protection has been promoted by wine. Good quality wine producing nations have been the major players, when TRIPS was being negotiated, drafted and finalized. Then they struck this additional protection as a political bargain. This discrimination between product categories is not based on any intrinsic character of the goods, the locality or skills associated with the product's production.

WTO Members advocating GI-extension (Friends of GIs)⁹³ are very active persuading WTO Members. They have presented, in written communications to the

92 European countries and Africa

93 These include, in particular, Bulgaria, Cuba, the European Communities and their 25 Member States, Georgia, Guinea, India, Jamaica, Liechtenstein, Kenya, Kyrgyz Republic, the Former Yugoslav Republic of Macedonia, Madagascar, Nigeria, Pakistan, Romania, Sri Lanka, Switzerland, Thailand, Tunisia and Turkey.

TRIPS Council, the Trade Negotiation Committee (TNC) and the General Council (GC), the benefits of GI-extension for both producers and consumers from least-developing, developing and developed countries as well as for sustainable development.⁹⁴ They also proposed wording in draft legal form on how to modify the scope of the additional protection of Article 23 TRIPS, currently limited to Geographical Indications of wines and spirits, in order to extend it to all products without discrimination⁹⁵.

8.3 Main dispute issues in GIs extension

At this point, the issues related to GIs extension in TRIPS Agreement needs to be examined deeper. In TRIPS agreement, there are three articles (Article 22⁹⁶, Article 23⁹⁷, Article 24⁹⁸) dealing with GIs and main issues are below listed. First, WTO Members are still struggling to solve imbalance in maintaining two levels of protection. Second, they discuss insufficiencies of the scope of protection available under Article 22. At last,

94 Felix Addor, The Way Ahead - What Future for Geographical Indications? Extension of the more effective protection of Article 23 of the TRIPS Agreement to all products

(www.arbiter.wipo.int/.../www/meetings/en/2005/geo_pmf/presentations/doc/wipo_geo_pmf_05_otieno-odek.doc)

95 WTO Doc TN/C/W/14/Add.2 and JOB(05)/61/Add.2.

96 The definition of GIs- GIs 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

97 Additional protection ("legal means") against use of a GI for wines on wines (and for spirits on spirits) not originating in the place indicated by the GI. The protection under Article 23 is to be read in conjunction with the exceptions under Article 24.

98 Exceptions to apply mutatis mutandis (Changes changed by analogy).

This article contains that Generic terms ("customary") (Article 24.6), Names of grape varieties (Article 24.6), Prior trademark rights (Article 24.5), Certain other prior uses (Article 24.4) (grand-father clause), Use of personal names (Article 24.8)

they did not figure out the potential impact of GI-extension on trade and did not settle down consumers and TRIPS obligations clearly.

Therefore, finding the means by which each Member is able to leverage some benefit from the protection of GIs, as the lack of progress in negotiations, will be a tall order in view of the legal and institutional problems involved.⁹⁹ Below the summarized list of the GIs extension debate shows that two camps have many interest conflicts to settle.

Table 3. Summarized main issues in GIs extension

	Proponents	Opponents
Main actors	European Union, India, Sri Lanka, Cuba, Thailand and Pakistan (EU and its allies of GIs)	Australia, Canada, Chile, New Zealand and the United States,
Their claims	- Broader range of agricultural produce and processed foods - The creation of an international system for the listing of GIs, mainly participated by WTO Members	- WTO TRIPS negotiating range as limited mandate to individual GIs
Dispute	- Party negotiation	- Party negotiation

⁹⁹ Judgment of the Court 2004, Directive 89/104/EEC - Limitation of the effects of a trade mark in relation to indications concerning geographical origin - Use of a geographical indication as a trade mark as an element of use in accordance with honest practices in industrial or commercial matters
(<http://oami.europa.eu/en/mark/aspects/pdf/JJ020100.pdf>)

settlement process	<ul style="list-style-type: none"> - WTO Dispute Settlement Mechanism (DSM) through negotiation on agriculture and WTO TRIPS Council 	<ul style="list-style-type: none"> - WTO Dispute Settlement Mechanism (DSM) through negotiation on agriculture and WTO TRIPS Council
Their arguments	<ul style="list-style-type: none"> - The guarantee that only the genuine product reaches the end consumer with the GI attached. - More effective protection of GIs for the GIs products by WTO law to make a better living - Sustainable development of local rural communities, employment in decentralized regions 	<ul style="list-style-type: none"> -The administrative and legal costs - The lack of evidence of the inadequacy of existing protections for products - The lack of evidence that extension would deliver more effective protection - Prejudice existing IP rights holders - Unclear future market access opportunities and unexplored opportunities
Their reasons	<ul style="list-style-type: none"> - Current labeling system possibly confusing and potentially misleading for consumers - Provision of superior protection for the intellectual property (IP) of GI holders - Potential benefits for producers for open new export market 	<ul style="list-style-type: none"> - Likely conflict with trademark systems - Anti-competitive, monopoly right - Unfair to the company which sustained intangible capital investment in the branding associated with that mark

	<ul style="list-style-type: none"> - Marketing value of GIs, likely to become more important in GI holders' efforts to remain internationally trade competitive - Generic interference - The smaller costs of compliance and registration of GI than that of trademarks - Governmental enforcement 	<ul style="list-style-type: none"> - Mere existence of a place as the basis for a GI quality, which doesn't mean reputation and similar characteristics - Serious and significant barrier to liberal international trade by the registration and protection of processes and production methods (PPMs) - No longer be able to recognize once-familiar products by new system - Repackaging and relabeling cost - Changing domestic arrangements by creating new regulatory
<p>Their supporting documents</p>	<p>IP/C/W/204/Rev.1 IP/C/W/247/Rev.1 IP/C/W/308/Rev.1 IP/C/W/353 TN/C/W/7 TN/C/W/14 TN/C/4 TN/C/W/21 GC/W/540</p>	<p>IP/C/W/289 IP/C/W/360 and 386 IP/C/W/395 JOB(05)/8 (Australia)</p>

	JOB(05)/61 TN/C/W/26 WT/GC/547 (UE)	
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<Main source from: Intellectual Property Rights and Geographical Indications¹⁰⁰ and organized by writer>

9. Conclusion

GIs represent important intellectual property assets that convey information concerning the geographical origins of a product which originates in a certain place and therefore possesses a certain quality¹⁰¹

Thus, Geographical Indications play an important role for producers and consumers alike. GIs are very attractive because they are available even for small farmers and enterprises. GIs allow producers to offer guarantees to consumers on the authenticity, traceability by supply chain management. At the same time, local producers can keep on producing and making a living stably. Beyond a product focus, if steps are taken forward, exporters, traders and processors tend to have knocked on effects for other

¹⁰⁰ Intellectual Property Rights and Geographical Indications

(www.acci.asn.au/text_files/issues_papers/E%20Commerce/October%2005%20-%20Intellectual%20Property%20Rights.pdf)

¹⁰¹ Agarwal, Sanjeev Barone, Michael J, 2005, "Emerging Issues for Geographical Indication Branding Strategies", MATRIC Research Paper 05-MRP 9 pp. 8.

products and chains and can promote clustering. Producers and enterprises possibly get advice and support easily from the regulatory body experts, through the associated the cluster. In this respect, the local business is encouraged to participate closely in various forms of “partnership” with private firms that drive the recognition at the consumer level.¹⁰²

If the future Trade Agreement establishes a dispute settlement mechanism based on various arbitration agreements successfully, GIs might form milestone of the Trade by WTO Members in the global market, particularly covering Asia, Europe and America.

As a logical explanation, the European nations have many of them, recognizing their essence in commerce and seeking for the escape from the overwhelmed domestic competition. That is, they knew the protection of the GIs would increase the incentive to create new brands because future competition would be limited¹⁰³

However, the developing nations including Korea have fewer and difficult position to achieve them. The exclusion of participation in the value-added and quality-controlled high end markets would be the consequence, if Korea fails to prepare structured implementation in GIs.

102 A Brief Note on Geographical Indications

(www.dgiovannucci.net/docs/gi_key_points-brief.pdf)

103 Babcock, Bruce A. 2003. “Geographical Indications, Property Rights, and Value-Added Agriculture.” *Iowa Ag Review*, Vol. 9, No. 4, pp. 3.

There's no substitute for good preparation. Now, Korea has to admit there are still significant legislative deficiencies and insufficient enforcement practices. Fortunately, however, Boseong Green Tea, the first Korean crop to receive Geographical Indication (GI) in 2002, gives a good vision to follow. It has created extensive attraction with Boseong Green Tea Festival based on the GIs reputation. Currently, this area produces approximately 40% of Korea's tea, showing the unexplored opportunity of GIs.

Late-starter nations in GIs do not necessarily be losers in this global economic war even though the obstacle, GIs do not make sense all the time at the international level, exist.

As seen above in the case studies, GIs dispute was affected by political spectrum and most protected GIs were born from the efficient legal mechanism.

In order to execute good strategy for GIs system, Korea needs the patience for testing resources to accomplish reputation in the world and endure considerable cost for marketing. EU's push for greater legal enforcement implicates that GIs are the new emerging deal trade trading card. In this respect, the urgent task for the best administrative monitoring and management is to renew the registration through a single procedural step because, if the collective interest of the community of producers is the beginning of GIs development, administrative legal backing is the final base of it through the legislative and judicial interventions.

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