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GEOGRAPHICAL INDICATIONS FOR TEA

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I. INTRODUCTION

1. In considering ways to strengthen demand for tea, the Intergovernmental Group on Tea at its Seventeenth Session recommended the formation of a working group to identify potential geographical indications (GIs) for tea. The regulatory framework for the establishment and enforcement of GIs is complex, giving rise to significant administrative, organizational and financial requirements.
2. GIs are protected along with other forms of “intellectual property rights” such as copyrights, patents, and trademarks by the WTO Agreement on Trade-Related Aspects of International Property Rights (TRIPS) under which common international rules were developed for the protection and enforcement of these rights world-wide. Under the TRIPS Agreement, GIs are afforded protection against unfair practices, for example when a product is made in an area other than the named place of origin or when it does not have the usual characteristics and thus misleads consumers.
3. The following document sets out some of the main features of GIs to assist countries in deciding whether, and to what extent, they wish to embrace such schemes in order to add value to their tea exports. It discusses the possible application of GIs for tea in the context of the existing international regulatory framework. It does not discuss the implications of possible changes in this framework in the light of the ongoing discussions at the international level to modify the TRIPS Agreement. Such discussions include *inter alia* proposals to extend a higher level of protection (as currently afforded under the TRIPS Agreement to GIs for wines and spirits) to other products and to develop a multilateral system of notification and registration of GIs for wines.

II. CONCEPT OF GEOGRAPHICAL INDICATIONS

4. A GI is a place or country name that identifies the origin, quality, reputation or other characteristics of products. A GI signals to consumers that the goods have special characteristics due to their geographical place of origin. GIs are applicable to agricultural, natural or manufactured goods¹, but agricultural products are those most easily linked to a specific location. The term *geographic indication* acquired international recognition as a result of its introduction in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)².
5. GIs are thus the names of regions, specific locations, or in some cases a country used to describe an agricultural product or foodstuff, originating in that location, having a specific quality or reputation, or other characteristics attributable specifically to that geographic location, which are produced and/or processed and/or prepared in that location. GI protection may be shared by all producers in the defined area that comply with recognized standards. As a form of recognition of the traditional know-how of local communities, GI protection can also be a vehicle for rural development.
6. *Appellations of origin* are also GIs, but are more restrictive. In the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their international registration, they are defined as geographical designations of products whose *quality and characteristics* are due *exclusively or essentially* to the geographical environment, including both natural and human

¹ Earlier terminology to cover a related concept was *indication of source* as used in the Paris Convention for the Protection of Industrial Property (1883) and the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891). This broader term required only that the product originate in a certain geographical area. See M. Hopperger, WIPO, “Geographical Indications in the International Arena – The Current Situation”, Beijing, June 2007.

² In the TRIPS Agreement, the concept is defined as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

factors, whereas GIs designate products of which the *quality, reputation or other characteristics* results *essentially* from the region of manufacture. The Lisbon Agreement, open only to countries that protect appellations of origin, has 26 signatories, compared to the TRIPS Agreement that is applicable in all WTO Members.

7. Other types of registered marks may also include geographical origins among the specified qualities of the product. While trademarks³ cannot be generic and thus include geographical terms, certification marks and collective marks may include the geographical names to indicate the specific qualities of goods. Certification marks may be used by all producers complying with the standards of production defined by the owner of the mark, while collective marks are owned by a collective body such as a trade association and may be used by all the members of that body. However, neither collective nor certification marks are intrinsically linked with attributes deriving from the origin of production as in the case of GIs. Moreover, trademarks or certification marks being privately owned may be sold, while GIs may not be transferred⁴.

III. VALUE OF GEOGRAPHICAL INDICATIONS

8. As compared to mass-produced goods of no particular origin or reputation for quality, the differentiation of a product through the designation of its area of production has often become an assurance of its quality or special characteristics. Protected GIs signal to consumers that the products so designated have particular characteristics due to their geographical place of origin, and they may therefore command a premium in the market. Although GIs have been a valuable marketing tool for certain products for many decades, it is only relatively recently that their commercial value has gathered wide recognition.

9. The positive effects of properly managed GIs can be summarized as i) helping producers obtain premium prices for their products; ii) providing guarantees to consumers regarding product quality; iii) developing the rural economy; and iv) protecting local knowledge and strengthening local traditions⁵. In addition, other wider economic and social benefits are also cited, for example reduction of rural to urban migration, and the protection of rural environments and ecologies.

10. Recognition of the value of GIs is most widespread in the European Union (EU). The enlargement of the EU and the process of creating a barrier-free internal market underscored the need to establish common rules to protect producers of foodstuffs against misrepresentation and to capitalize on the specific and traditional characteristics of products linked to a territory. The exclusive right of producers to use a registered geographical name has been perceived to bring significant advantages as may be seen from the rapid increase in the numbers of registered protected geographic indications and protected denominations of origin⁶. The protection of GIs has become an integral part of EU farm policy as increased protection of quality linked to geographical origin and other standards is considered a means to achieve higher market prices in compensation for lower commodity market support.

11. The positive impacts for producers of differentiating goods on the basis of protected denominations have been extensively documented. For indications referring to a geographical

³ A trademark (TM) is a distinctive sign which is used by a business to identify itself and its products or services to consumers, and to set the business and its products or services apart from those of other businesses.

⁴ An example of this problem was the sale of the "Rooibos" trademark registered in the US by a South African company to a US business partner for US\$ 10 in 2001, giving rise to difficulties by exporters of the product to the US. Litigation, in which a number of US coffee houses joined, concluded reportedly with an out of court settlement at a cost to the industry of about US\$ 1 million.

⁵ These aspects clearly emerged at the WIPO International Symposium on GIs, Beijing, 26-28 June 2007. See http://www.wipo.int/wipo_magazine/en/2007/04/article_0003.html.

⁶ In the EU, a full list of products covered by quality designations, including GIs, may be found at http://europa.eu.int/comm/agriculture/foodqual/quali1_en.htm. A description of the EU regime may be found in R. Serra, "European Union Policy for High Quality Agricultural Products", Beijing, June 2007.

area less information is available, but the underlying effects are considered positive. In the EU, judging from their proliferation, protected GIs are perceived to generate benefits for producers. A study of the cheese sector concluded that products with designated origins obtained a 30 percent price premium, while those protected by GIs also benefited from considerable price advantages⁷. Italian olive oil “Toscano” reportedly obtains a 20 percent premium; Bresse poultry in France sells at four times the price of ordinary poultry; and Parma ham commands a premium of up to 50 percent⁸. For tea, Sri Lanka claims that the six regional teas covered by GIs obtain higher prices than those not having GIs. In China, for example, since the Pinggu Peach was registered as a GI, accompanied by promotional campaigns, the market value of the fruit nearly tripled, while for Zhangqui Scallions prices nearly doubled between 2000 and 2006⁹.

12. Indirect benefits over time derive from the confidence instilled in consumers that the products are of a regulated quality, that they are produced in line with defined specifications, that they offer guarantees of being genuine – all factors which, once established, contribute to the expansion of markets at premium prices over competing products.

13. Contrary to the situation with trademarks which are privately owned, GIs cannot be sold or delocalized and are accessible to all producers within the specified region which is a key factor in ensuring that the economic benefits of GI protection are spread along the supply chain, including to the producers who supply the raw materials¹⁰.

IV. PROTECTION OF GEOGRAPHICAL INDICATIONS

14. While the concept of GIs is simple, the legal protection of such indications is complex and gives rise to administrative and financial costs both for governments and producers, with regard to both registration and enforcement. This protection embraces enforcement both in the country of origin and in foreign markets. The following sections will deal with aspects of relevance to international trade, as the issues concerning domestic protection are within the purview of the countries concerned.

15. Two overall approaches exist to the protection of geographical origins. One is based on protection under prevailing trademark law which is considered adequate to defend the rights of producers against fraudulent commercial practices¹¹. Under this system, protection is provided to certification or collective marks which may include *inter alia* GIs. However, neither collective nor certification marks protect against the use of terms such as “blend” and “type” in conjunction with a geographical origin.

16. The second is based on the registration of a geographical indication in accordance with a specific national law regulating the subject. The decision to register may be taken by recognized representatives of the producing sector concerned, in accordance with the legal requirements for recognition. Producers may draw up their own specifications, which may be vetted by public authorities. In the EU, producers apply to their national authorities who then transmit the request to the European Commission for approval.

⁷ Information quoted in R. Serra, “European Union Policy for High Quality Agricultural Products”, Beijing, June 2007.

⁸ Studies quoted in B. Babcock and R. Clemens “Geographic Indications and Property Rights: Protecting Value-Added Agricultural Products”, Iowa State University, May 2004.

⁹ WIPO Magazine, Geographical Indications: From Darjeeling to Doha, July 2007.

¹⁰ B. Babcock and R. Clemens “Geographic Indications and Property Rights: Protecting Value-Added Agricultural Products”, Iowa State University, May 2004.

¹¹ Opposition to the protection of GIs as such is more prevalent in countries such as the United States where such indications have wide acceptance as generic terms, or in those where immigrants may wish to continue to make their native products.

17. Revisions introduced in the EU legislation in 2006¹² opened up the EU system to direct application to the Commission from producer groups in non-EU countries (rather than via national government channels) for registration of protected GIs and denominations of origin¹³. There is no fee when submitting the application to the Commission during the procedure of scrutiny and publication by the Commission. A pre-condition for recognition in the EU is that protected GIs and denominations of origin be protected and controlled in the country of origin. The first non-EU product to obtain designation as a protected geographical indication was “Café de Colombia”. As of mid-November 2007, no protected GIs or denominations of origin for tea had been included in the EU register; nevertheless two applications for tea were under scrutiny: “Darjeeling” from India and “Longjing tea” from China.

18. As regards enforcement, aside from bilateral agreements, the most important multilateral engagement is that provided under the TRIPS Agreement. WTO Member governments are required to ensure that intellectual property rights can be enforced under their laws, that the procedures are fair and equitable and not unnecessarily complicated or costly, and that the penalties for infringement are sufficient to deter further violations. Manufacturers and traders can thus seek to protect the goodwill generated by GIs through the various legal channels available to them, both nationally and internationally, depending on the legal framework prevailing in the market concerned.

19. In specific terms, several legal instruments, usually more than two, are available in individual countries to protect GIs. These include specific geographical indication laws, trademark laws, laws against unfair competition and passing off (representing goods of one producer as being those of another), consumer protection laws, agricultural quality control measures, and product certification and registration regimes.

20. According to the TRIPs Agreement, in two broad areas, however, GIs are not afforded protection or the protection can be limited, giving rise to the need for negotiations between the countries involved. In the first, a trademark that is identical or similar to a GI is allowable when established prior to the application of the WTO Agreement in good faith or before the GI was protected in its country of origin. The potential for conflict between trademarks and GIs is significant, and in instances when substantial economic interests exist, the protection of the GIs may be onerous¹⁴.

21. The second is when a GI is synonymous with the customary name of goods or services in the territory of the WTO Member as of the date of entry into force of the WTO Agreement. In that case, that Member does not have to protect that GI, which in practice is considered to have become the common or generic term for the goods or services in a particular market¹⁵. Here too the potential for differences is significant as may be illustrated by the contested use of the terms Champagne and Dijon in the US as generic terms synonymous for sparkling wine and mustard, respectively. Another example is the use of the term “cheddar” which now refers to a particular type of cheese, not necessarily made in Cheddar in the UK. Similarly, the word Chablis is used

¹² These revisions made the EU registration system WTO-compatible by deleting an earlier requirement that third countries should apply similar protection on a reciprocal and equivalent basis.

¹³ Council Regulation (EC) No. 510/2006 of 20 March 2006, OJ L 93 of 31.03.2006. The information to be provided when applying for registration is indicated at http://ec.europa.eu/agriculture/foodqual/quali1_en.htm. A guide to submitting applications along with the relevant forms may be found at http://europa.eu.int/comm/agriculture/foodqual/protec/thirdcountries/index_en.htm

¹⁴ An example is legal action taken by the Anheuser-Busch Company to protect the trademarks Budwieser and Bud used to identify a beer produced in the US under these trademarks since 1876, against claims by the Czech Republic that these were geographic indications for beer from the town of Ceske Budejovice. The Czech Republic was successful in cancelling the trademark registrations in several countries, while the company was able to protect the mark in several other jurisdictions.

¹⁵ Under the TRIPS Agreement, WTO Members can however waive this provision and grant protection to generic GIs anyway.

synonymously for white wine in the US and is thus also considered generic. Protection afforded to specific GIs may thus vary significantly in different markets, depending on national usage of the terms involved.

V. ISSUES CONCERNING GEOGRAPHICAL INDICATIONS

22. The broader issues concerning possible future modifications of the TRIPS agreement in regard of GIs are not discussed in this paper which deals with the existing regulatory framework. However, it may be recalled that these issues concern not only the desirability of establishing a Multilateral Register, and the extension of a higher level of protection to all products, but also definitional concerns affecting concepts such as “given quality”, “reputation”, and “other characteristics attributable to a geographic region” as well as the possibility of fixing minimum standards of inspection.

23. Under the existing regulatory framework, protection of a geographical indication in international trade requires its establishment in the domestic market and subsequently its registration in foreign markets. For products that may offer future potential, the issue arises of whether to establish a domestic GI that may provide the basis for required protection at some later date. The *link between the product and the geographical area* is essential to demonstrate a causal relationship regarding the specified area which would not be associated with other areas.

24. Obviously, as there may be *costs involved for obtaining recognition in foreign markets*¹⁶, registration should be undertaken in those markets which are most important or where competition from like or similar products is greatest. Such costs are often difficult to sustain in developing countries, particularly for GIs in the fields of agriculture and handcrafts.

25. The *legal framework existing in the markets of interest* may influence the action that may be taken to protect a GI. For example, a trademark regime may not provide as comprehensive protection as under a *sui generis* GI regime. First of all, under trademark laws, requests from producers to register names with GIs are often rejected by intellectual property offices on the grounds that the names are simply the indication of the place of origin of the goods, a description of the product, or a generic name. Thus, the alternative is usually to seek protection of GI names through a collective or a certification mark. When this option is not available, GI producers have sought limited protection via the registration of their logo only¹⁷.

26. In addition, there are significant *costs involved in the monitoring of markets* where a geographical indication is registered, whether under trademark or *sui generis* regimes. Under the trademark system, action to obtain redress must be initiated by the owner of the mark. For GIs, governments may seek to obtain enforcement of the legislation.

27. As an illustration of the action needed, in order to protect the Darjeeling mark and logo, a watch agency was appointed to monitor possible conflicting registrations worldwide. Some of the infringements identified were challenged through legal proceedings, others through negotiations. As of 2007, seven of the fifteen instances identified were still pending decision. Over a four year period, the Tea Board of India has spent approximately US\$ 200 000 on legal and registration expenses, costs of hiring an international watch agency and fighting infringements in overseas jurisdictions¹⁸. In addition, significant administrative and other expenses are incurred for the monitoring mechanisms employed by the Board.

¹⁶ Costs were reported in 2007 as 1400 – 2000 euros for the registration of trademarks but costless in the case of GI names registered, for example, in the EU. E.Olivas Caceres, OriGIN, “Perspectives for GIs”.

¹⁷ Ibid., page 3.

¹⁸ R. Kumar and V. Naik, “Darjeeling Tea – Challenges in the Protection and Enforcement of Intellectual Property Rights”.

28. The realization of premium prices for products from a specified location does not derive solely from the establishment of a geographical indication. In the long run a *package of coordinated actions* is required. Aside from clear approval and monitoring procedures, there is a need for *reliable inspection and certification*. Procedures need to be put in place to monitor the full traceability of the product, identifying the path between the area of production and the final product on the market.

29. Implementation issues arise when a tea of geographic indication is one of several obtained from other origins which are included in *blends* that are marketed under a brand name. For Darjeeling tea, the Tea Board insists that the expression “Darjeeling blend” may be used only for a blend of all Darjeeling teas from various estates. Some underlying difference of interest may exist between producers from a specific origin and those who blend or market finished products. For example in the case of coffee, roasters and marketers reportedly prefer downplaying origin in order to maintain flexibility in costs and prices through blending¹⁹.

30. Finally, there is a need to strengthen *promotion, advertising and education* to improve and maintain the perception of quality by consumers. Lastly, it is important to aggressively challenge any improper usage of the geographical indication.

VI. THE USE OF GEOGRAPHICAL INDICATIONS FOR TEA

31. Among tea producing countries, the experiences of India and Sri Lanka in establishing GIs for tea are most relevant and provide guidance to possible similar actions in other tea producing countries.

32. In India, based on *sui generis* legislation which entered into force in 2003, India extends GI protection to all natural, agricultural and manufactured goods meeting the requirements for such indications. As of late 2007, 37 products had been registered under the GI Act. While no foreign GIs had been registered, some applications had been received and were under scrutiny.

33. However, as early as 1983 the Darjeeling logo was created to prevent misrepresentation of this tea in international markets by other types of teas and to ensure delivery of an authentic product to consumers. The logo was registered in major markets as a trademark/certification mark/collective mark, depending on the relevant laws available in the countries concerned. In the domestic market, the logo and the word “Darjeeling” were initially registered as certification marks. Following the GI Act, the Tea Board also filed for both to be registered as GIs. Since 2000, a compulsory system of certifying the authenticity of the Darjeeling tea being exported was established, requiring all dealers of Darjeeling tea to enter into a license agreement with the Tea Board.

34. Based on the information requirements specified in the licensing agreement, the Board is able to monitor the production and sale of Darjeeling tea, for which no blending with other teas is permitted²⁰. The certification system entails detailed supply-chain information from the point of production to export. To ensure the effectiveness of the certification system, however, cooperation is required from overseas buyers who should insist that Certificates of Origin accompany all exports shipments of Darjeeling tea. Notwithstanding the domestic checking and certification system, at the global level there have been indications of teas of other origins being sold under the geographical indication of Darjeeling so as to capitalize on the image of high quality of the authentic product.

¹⁹ L.F.Samper, National Federation of Coffee Growers of Colombia “Café de Colombia: protecting and promoting a well-known origin” Beijing, June 2007.

²⁰ Under the authentication process, of the 171 registered companies, 74 are producer companies and 97 are trader/exporter companies.

35. In Sri Lanka, the Lion symbol was developed a couple of decades ago to identify pure Ceylon Tea. The symbol denotes the geographical origin of the tea and also the adherence to certain quality standards. All exporters may use the emblem on the pure Ceylon Tea packs subject to the terms and conditions stipulated by the Sri Lanka Tea Board. The Lion symbol has been registered as a trademark in Sri Lanka and in 67 foreign countries which are important markets for Sri Lanka. With the advent of the TRIPS Agreement, Sri Lanka has taken steps to register "Ceylon Tea" and six growing areas²¹ as GIs. Initially these names will be protected domestically, with registrations in foreign markets to be undertaken in due course.

VII. CONCLUSIONS

36. The trend towards establishing GIs for food and agricultural products has grown steadily over the past two decades and has intensified in recent years. While it is recognized that the protection of GIs, a kind of intellectual property, is appropriate and often necessary, there are differences of views about the form that this protection should take, the conditions under which it should be implemented, the longer term impacts on competition and trade and the real benefits to consumers, producers and national economies.

37. From a qualitative point of view, demand for quality products has demonstrated strong growth while that for bulk, undifferentiated products has either grown slowly or stagnated. Producers able to differentiate their products tend to be rewarded by a price premium over competing products. GIs represent one means for differentiation. Indeed, it is often stressed that such indications may be one of the most significant vehicles available to developing countries for differentiating and adding value to their products, as long as the GIs are properly managed and lead to consumer awareness and loyalty.

38. Much as the concept of GIs may appear attractive, there are situations in which they may be unnecessary or ineffective. GIs established by small groups of producers, with limited international trade links, are at most likely to influence only local markets. The protection of such indications should not give rise to false hopes in terms of rising market shares and prices, except in niche markets where they may have a role. In addition the proliferation of GIs, including from little-known areas, are held responsible for consumer confusion and inability to associate preferences with the products concerned.

39. In order for a product of a specified geographical indication to obtain favor in the market, there is a need to insure that it meets consumer expectations with regard to quality, consistency and price. There are thus costs of the geographical indication that go beyond its establishment and registration. The indication must be properly managed, with appropriate controls and certification. Part of these may be offset by license fees from producers. In addition, there are costs for monitoring correct use of the geographical indication and for legal challenges. Lastly, as for all marketing efforts, promotion of the geographical indication is needed to enhance consumer awareness.

40. Therefore, it would appear that while there are merits to seeking protection of GIs for teas produced in developing countries, the trade-off between the costs involved and the improved returns expected needs to be carefully evaluated. As a first step, individual tea producing countries may wish to undertake an identification of possible GIs within their boundaries, bearing in mind that for such indications to be effective and defensible they need to be intrinsically linked to the specified location²².

²¹ Nuwara Eliya, Dimbulla, Uva, Uda Pussellawa, Kandy and Ruhuna.

²² The framework provided by the EU may be used as a basis for identifying whether the geographical indication being considered would in fact qualify for such designation.

41. The Intergovernmental Group's Working Group on GIs could provide producing countries with technical support and guidance to help them to develop appropriate programs in this area. The Working Group should comprise both producing and importing countries, including representatives of producer, consumer and trade interests. The first session of the Working Group should define the key elements of its program which could include *inter alia*:

- Provision of information regarding technical factors influencing the development of GIs by individual countries;
- Development of indicators of the international trade impacts of GIs;
- Identification of technical assistance, including legal assistance with the development of primary and subsidiary legislation, which might be required by countries in instances where they chose to develop and implement GIs.

42. In its work, the Working Group should draw on the experience available in other international organizations and intergovernmental bodies, in particular WTO, WIPO and the European Union.