
AN ANALYSIS OF GLOBAL SIGNIFICANCE OF THE TRIPS AGREEMENT WITH SPECIAL EMPHASIS ON GEOGRAPHICAL INDICATION TAGS

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ABSTRACT

Everyone takes pride in belonging to their homeland and to some specific region of a nation. The same is their attachment to various products and produces that are ethnically and specially linked to the region. The products that are being referred to includes the Champagne from France, Scotch Whiskey from Scotland, and Basmati Rice from India among many others. All these products have obtained such standards and speciality because of the rarity and quality of the produce that is derived exclusively from that region. While everything is readily available for people to be obtained from any corner of the world, the production of the same is still limited. Thus, one cannot claim his production to be a produce from that exclusive region even when it is not. However, is there a legal instrument that protects such ethnically and exclusively linked products of a specific region? Will it provide protection for such produces and the people that produce the same? This is where the Geographical Indication (GI) tag endorsed under the Trade-Related aspects of Intellectual Property Rights (TRIPS) Agreement comes into picture.

This paper aims to analyse the entirety of the TRIPS Agreement and cover all the aspects of Intellectual Property protections granted under the agreement. Till date, the TRIPS is the most comprehensive and detailed agreement that the WTO has produced in relation to global protection of the Intellectual Property Rights. Further, this paper includes special emphasis on the geographical indication granted under this legal instrument.

Keywords: TRIPS Agreement, Geographical Indication, Intellectual Property, International Trade, WTO.

Introduction:

The topic of Intellectual Property is a hotly evolving one and the development of its significance in the legal industry is growing at an even higher rate. To start it off, what is intellectual property? According to the World Intellectual Property Organisation (WIPO), “*Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.*”¹ While IP is a common topic that has its own presence in all spheres of life, the field of commerce is where it is the most prominent. The mere fact that this is specifically included in the definition itself must display the importance of IP in commerce. Trade, in general, is being termed as commerce and there already exists several laws to regulate both domestic and international trade. World Trade Organisation (WTO), the only global international organisation dealing with rules of trade between nations, has several agreements to which numerous countries are parties. Out of a total of 189 countries recognised by the WTO, 164 states are member of the WTO and 25 are observers². All the members of the WTO automatically become the parties to various agreements of the WTO. One such agreement is the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. This WTO Agreement of Trade Related Aspects of IPs is the most extensive agreement on intellectual property (IP). This Agreement is a legal recognition of significant connections between the spheres of IP and of trade and the need for a balanced IP system. Being the most significant agreement in the ambit of Intellectual Property and Trade, this has a special place in Public International Law. Out of all the source of public international law, treaties and agreements are the dominant sources. Since this agreement is the landmark when it comes to protection of Intellectual Property in the International setup, it becomes a very significant part of Public International Law. This agreement contains 73 articles and applies to all members of the WTO from the effective date of 01.01.1995³. While the WTO adopts the WIPO’s definition of IP in a much more consolidated form, for the purpose of the TRIPS Agreement, the definition is given in Article 1:2 of the Agreement itself. It reads, “*For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.*”⁴ The categories of IP

¹<https://www.wipo.int/about-ip/en/>

²https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

³https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#:~:text=The%20TRIPS%20Agreement%2C%20which%20came,multilateral%20agreement%20on%20intellectual%20property

⁴ https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

included in part II of the Agreement is: 1. Copyright and Related Rights 2. Trademarks 3. Geographical Indications 4. Industrial Designs 5. Patents 6. Layout-Designs (Topographies) of Integrated Circuits 7. Protection of Undisclosed Information. All these categories are discussed in detail in the following sections of this article, with special emphasis to Geographical Indications. A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities, reputation, or characteristics that are essentially attributable to that place of origin. Member countries must provide legal safeguards against deceptive use of GIs. The agreement sets minimum standards, but countries can adapt rules to their needs. GIs support traditional and regional products while aiding consumers in recognizing and trusting their quality and origin.

History of TRIPS Agreement:

The TRIPS Agreement was formed during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) from 1986 to 1994. It is one of the landmark moments in both the fields of trade and of intellectual property. The negotiations were very much swaying from one side to another as, on one hand the developed nations wanted stronger restrictions and regulations in order to solidify their dominance while, on the other hand developing nations wanted less-restrictive regulations as strict regulations can potentially be a barrier for their development and progress. Several compromises and sacrifices were made by both the parties and in respect to both spheres of trade and IP. The TRIPS Agreement was finalized in December 1993 in Marrakech, becoming one of the foundational agreements of the World Trade Organization (WTO). It came into effect on 1st January, 1995⁵, and its implementation continues to be a subject of ongoing negotiations. From its inception, the agreement being the only global regulation for IP and trade, it has been undergoing various changes and amendments with the last amendment being done on 23rd January, 2017⁶.

Structure of the TRIPS Agreement:

The TRIPS Agreement being the most comprehensive agreement there is for all aspects of IP and trade, contains numerous provisions and engulfs many different elements in its ambit. Few of the

⁵ *Ibid*

⁶ https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm

important ones are:

General Principles: From the definitions of IP and various other terms to the minimum standards of protection of IPs, everything is included in the general principles of the Agreement. It aims to highlight the importance of obtaining a balance between protection of the creator's right and the interest of general public at large.

Minimum Standards: TRIPS sets out minimum standards of protection that member countries must provide for various types of intellectual property. The standards are included with respect to term of protection, scope of rights, and enforcement measures.

National Treatment: TRIPS Agreement mandates that each and every nation shall protect the intellectual property of another nation as equally as they protect the rights of creators in their own country.

Enforcement: This part of the Agreement contains that the countries ought to establish effective enforcement mechanisms to ensure protection of IPRs. This includes procedures for legal action, border measures to combat counterfeiting, and criminal penalties for serious infringements.

Flexibilities: The agreement allows some flexibilities, like compulsory licensing, to ensure access to essential medicines, particularly for public health emergencies. Another flexibility granted is that the developing nations were given a longer period of time to enforce the Agreement in their country as it helps them for development.

Dispute Resolution: The WTO's dispute settlement mechanism can be used to resolve disputes related to TRIPS implementation.

The Agreement is broadly divided into parts, which consists of Articles containing the contents of the agreement.

PART I GENERAL PROVISIONS AND BASIC PRINCIPLES

PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

1. Copyright and Related Rights

2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Anti-Competitive Practices in Contractual Licences

PART III ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

1. General Obligations
2. Civil and Administrative Procedures and Remedies
3. Provisional Measures
4. Special Requirements Related to Border Measures
5. Criminal Procedures

PART IV ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES

PART V DISPUTE PREVENTION AND SETTLEMENT

PART VI TRANSITIONAL ARRANGEMENTS

PART VII INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Protections under the TRIPS Agreement:

The TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) provides protection and regulation for various types of intellectual property rights, ensuring a minimum

standard of protection that WTO member countries must adhere to. The IPRs are protected under the TRIPS Agreement are as follows:

1. Patents (Articles 27-34)⁷:

TRIPS outlines the minimum standards for the protection of patents, which grant inventors exclusive rights to their inventions for a limited period. TRIPS requires patents to be available for any invention, whether products or processes, in all fields of technology, without discrimination. It sets the minimum patent term at 20 years. Member countries can make exceptions to patent rights, allowing them to issue compulsory licenses, particularly for public health emergencies.

2. Copyrights and Related Rights (Articles 9-16)⁸:

TRIPS addresses copyright protection, which covers literary, artistic, and musical works, and related rights, which protect the rights of performers, producers of phonograms, and broadcasters. Member countries must provide protection for the rights of authors and creators, set minimum copyright terms, and establish exclusive rights for authors. Member countries can define exceptions and limitations to copyright and related rights, balancing the interests of creators and the public.

3. Trademarks (Articles 15-21)⁹:

TRIPS covers the protection of trademarks, which are signs used to distinguish the goods or services of one entity from others in the market. Member countries must provide protection for registered trademarks, and they are obligated to offer trademark owners the ability to take legal action against trademark infringement. Countries can set their own procedures for trademark registration, while still adhering to the fundamental principles of trademark protection.

4. Trade Secrets and Undisclosed Information (Articles 39-40)¹⁰:

TRIPS addresses the protection of undisclosed information, which includes trade secrets, as a form of intellectual property. TRIPS requires member countries to establish legal protection against the

⁷ note 4

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

unauthorized disclosure and use of trade secrets. Countries can define their own standards for what constitutes undisclosed information, but they must ensure effective protection against unfair competition practices.

5. Geographical Indications (Articles 22-24)¹¹:

TRIPS covers geographical indications, which are used to identify products that come from a specific geographical origin and possess certain qualities, reputation, or characteristics. Member countries must provide legal means for interested parties to prevent the use of geographical indications for goods that do not originate in the indicated territory. Countries can define the standards and procedures for protecting geographical indications, while respecting the principles outlined in TRIPS.

6. Industrial Designs (Article 25)¹²:

TRIPS addresses the protection of industrial designs, which refer to the visual design of products or their ornamentation. Member countries must provide protection for registered industrial designs, allowing creators to prevent unauthorized copying. Countries can define their own procedures for registering industrial designs while complying with the minimum standards set by TRIPS.

Patent Protection:

A patent is a legal instrument that grants its holder exclusive rights to an invention for a specified period, usually 20 years from the filing date. This exclusive right allows the patent holder to prevent others from making, using, selling, or importing the patented invention without their permission. Patents are crucial for incentivizing innovation, as they provide inventors with a temporary monopoly, giving them the opportunity to recoup their investment and benefit from their creations. In return, this system encourages the dissemination of knowledge and advancements, ultimately contributing to technological progress and economic growth.

Under the TRIPS Agreement patent protection is a critical component of intellectual property rights. TRIPS establishes minimum standards that member countries must adhere to regarding

¹¹ *Ibid*

¹² *Ibid*

patent protection. These standards are designed to ensure a balance between protecting the rights of inventors and providing access to technology, particularly in fields like medicine.

Key provisions related to patents under TRIPS include:

1. Scope of Patents (Article 27)¹³: TRIPS requires member countries to grant patents for inventions, whether they are products or processes, in all fields of technology. However, certain subject matters, such as methods of medical treatment and plant and animal varieties, can be excluded from patentability.
2. Non-Discrimination (Article 27.1)¹⁴: Member countries must not discriminate between domestic and foreign inventors or among different fields of technology. Patents should be available to all on an equal basis.
3. Term of Protection (Article 33)¹⁵: The minimum term of protection for patents is set at 20 years from the filing date, allowing inventors to enjoy exclusive rights for a reasonable period.
4. Exceptions and Flexibilities (Article 30)¹⁶: Member countries can establish certain exceptions to patent rights, including allowing the use of patented inventions without the patent holder's consent, known as compulsory licensing. This is particularly important in the context of public health, allowing countries to ensure access to essential medicines, even if they are patented.

Copyright Protection:

Copyright is a legal concept that grants exclusive rights to creators of original literary, artistic, and intellectual works. These rights allow creators to control the reproduction, distribution, public performance, and adaptation of their works. Copyright serves as a critical incentive for creativity and the dissemination of knowledge and culture. It protects a wide range of works, including books, music, films, software, art, and more.

Under the TRIPS Agreement, copyright is one of the core intellectual property rights that receive protection and regulation. The agreement sets out minimum standards for the protection of

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*

copyrights and related rights. These standards are designed to create a level playing field for creators and rights-holders, while also ensuring that member countries strike a balance between protecting the interests of creators and the broader public interest.

Key provisions of copyright protection under TRIPS include:

1. **Minimum Standards:** Member countries are required to provide copyright protection for a minimum term of 50 years after the author's death. This sets a common baseline for copyright duration.
2. **Exclusive Rights:** Authors and creators are granted exclusive rights to their works, including the right to reproduce, distribute, and publicly perform their creations.
3. **Limitations and Exceptions:** While copyright protection is important, TRIPS recognizes the need for limitations and exceptions. Member countries have the flexibility to establish reasonable limitations to copyright, such as fair use or fair dealing provisions, for purposes like education, research, and news reporting.
4. **Protection of Related Rights:** TRIPS also extends protection to related rights, which encompass the rights of performers, producers of phonograms, and broadcasters. This protection ensures that those involved in the creation and distribution of creative works are also safeguarded.
5. **Enforcement:** TRIPS provides mechanisms for the enforcement of copyright and related rights. Member countries are required to establish effective legal remedies for rights-holders in cases of infringement.
6. **International Framework:** The TRIPS Agreement establishes a framework for the recognition and enforcement of copyrights and related rights across borders, ensuring that creators enjoy protection in multiple countries.

Overall, copyright protection under the TRIPS Agreement aims to create a harmonized global system that encourages creativity and the dissemination of knowledge, while also respecting the need for limitations and exceptions to balance the interests of creators with those of the broader public. It underscores the importance of intellectual property protection in fostering innovation and economic growth, while also acknowledging the need to preserve access to information and

cultural works.

Trademark Protection:

A trademark is a distinctive sign or symbol used to distinguish the goods or services of one business from those of others. Trademarks can take various forms, such as words, logos, slogans, and even sounds or scents. They play a critical role in branding, consumer recognition, and market competition. A strong trademark can enhance a company's reputation and set its products apart in a crowded marketplace.

Under the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights), trademarks receive protection as a form of intellectual property. The agreement sets out the minimum standards for trademark protection that member countries must adhere to. This includes the following key aspects:

1. **Registration Requirements:** TRIPS requires member countries to provide a system for the registration of trademarks. This system should allow applicants to secure exclusive rights to use their trademarks in connection with specific goods and services. The registration process typically involves an examination of the trademark's distinctiveness and potential conflicts with existing trademarks.
2. **Non-Discrimination:** Member countries must ensure that trademark protection is available to both domestic and foreign trademark owners on a non-discriminatory basis. This means that foreign trademark owners should receive the same protection and treatment as domestic ones.
3. **Enforcement:** TRIPS also mandates the establishment of legal mechanisms for trademark enforcement. This includes the ability to take legal action against trademark infringement, such as unauthorized use of a registered trademark on goods or services that are not approved by the trademark owner.
4. **Term of Protection:** TRIPS sets a minimum standard for the term of trademark protection. Generally, trademarks are protected for a renewable period, often lasting 10 years or more.
5. **Rights of Trademark Owners:** The agreement outlines the rights of trademark owners, including the exclusive right to use the trademark and the ability to prevent others from using a confusingly

similar mark. This ensures that trademark owners have control over their brand identity and reputation.

6. Flexibility: While TRIPS establishes minimum standards for trademark protection, member countries have the flexibility to define their own procedures and criteria for trademark registration and enforcement, provided they meet these minimum standards.

Overall, the protection of trademarks under the TRIPS Agreement is vital for fostering fair competition and consumer confidence in the global marketplace. It encourages businesses to invest in branding and marketing while safeguarding consumers against counterfeit and deceptive products. Trademarks are an essential element of international trade, and their protection under TRIPS ensures that intellectual property rights are upheld consistently across WTO member countries.

Geographical Indication:

The part of the TRIPS Agreement which deals with the GI tags are majorly and broadly divided into 4 parts. The first part deals with the definition of geographical indication. The second part handles all the various protections for such products or produces with the GI tag. The third or penultimate part of the provisions gives for the additional protection of the GI tags that are given for wines and spirits and the fourth and final part that legislates for future negotiations and certain exceptions to the protections granted under this agreement. The agreement, apart from the above topics, also provides for, in detail, the procedures and remedies available to the right holders to allow them to effectively enforce their rights with the assistance of judicial bodies and other competent authorities. The TRIPS takes draws from various other agreements and conventions, such as the Paris Convention¹⁷ in order to complete the provisions relating to the GI tag and for dispute resolution.

Definition:

The agreement defines geographical indications in Article 22.1¹⁸ as indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a

¹⁷ <http://www.wipo.int/treaties/en/ip/paris>

¹⁸ Note 4

given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Thus, this definition specifies that the quality, reputation or other characteristics of a good can each be a sufficient basis for eligibility as a geographical indication, where these are essentially attributable to the geographical origin of the good.

Standard for Protection:

Article 22.2¹⁹ refers to the general standards of protection that must be available for all geographical indications. In particular, the agreement provides that legal means must be provided to prevent the use of geographical indications in ways that mislead the public as to the geographical origin of the good. In addition, the agreement requires that legal means must be provided to prevent use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention²⁰. Protection must also be available against the registration of a trademark that contains a geographical indication with respect to goods not originating in the territory indicated whose use for such goods would be of such a nature as to mislead the public as to the true place of origin.

Additional Protection for Wines and Spirits:

Article 23²¹ of the TRIPS Agreement provides for additional protection in relation to geographical indications for wines and spirits. Pursuant to Article 23.1, interested parties must have the legal means to prevent the mere use of a geographical indication identifying a wine when used on a wine that does not originate in the place indicated by that geographical indication. To apply this form of protection, one does not need to prove that the use in question could be a false representation or constitutes unfair competition, regardless of whether the actual origin of the product is specified or if the geographical indication is accompanied by other terms like “kind”. The registration of a trademark for wines requires protection if the trademark contains identifying geographical information that does not indicate their origin. This is particularly problematic. Identifying spirits through geographical indications requires comparable safeguarding. When used for other products, these geographical indications are protected by the general protection outlined in Article 22²². If

¹⁹ *Ibid*

²⁰ *Note 17*

²¹ *Ibid*

²² *Ibid*

two or more geographical indications have the same identifier, each of these indications will be protected. The protection may not be effective if the use of one geographical indication in a specific WTO member would deceive the public by indicating that the products in question are produced on the same territory as the other, which is not recognized. The agreement includes a distinct regulation on wine classification, which specifies that practical considerations must be made to distinguish between geographical indications and ensure fair treatment of relevant producers and avoid misrepresenting customers. However, there are 3 main exceptions to this special protection for wines and spirits. The first is that the member state is not obliged to protect a GI tag in cases where it has become a generic name in the country for a product or a grape variety. The second exception is that the trademark that was registered before a GI tag was obtained that is in conflict with the trademark, will be protected fully as given under the Agreement. Further, the Agreement provides that an existing GI tag should not prejudice the eligibility or validity of the registration of a trademark on the basis of similarity. The third exception allows use of a GI tag that has been in use since before the Uruguay rounds²³ of negotiation for the TRIPS agreement.

Protection of the GI tag:

There are four main ways to protect a geographical indication:

- ☐ so-called sui generis systems (i.e. special regimes of protection);
- ☐ using collective or certification marks;
- ☐ methods focusing on business practices, including administrative product approval schemes; and
- ☐ through unfair competition laws.

These approaches involve differences with respect to important questions, such as the conditions for protection or the scope of protection. On the other hand, two of the modes of protection — namely sui generis systems and collective or certification mark systems — share some common features, such as the fact that they set up rights for collective use by those who comply with defined standards.

Broadly speaking geographical indications are protected in different countries and regional

²³ https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm

systems through a wide variety of approaches and often using a combination of two or more of the approaches outlined above. These approaches have been developed in accordance with different legal traditions and within a framework of individual historical and economic conditions.

Conclusion:

With this, the significance, and the importance of the TRIPS Agreement in the current global scenario of law and other fields and spheres of Trade and Intellectual Property is well established. This paper should make the reader clear about all the factors that is being engulfed by the TRIPS Agreement and a fair bit about all the protections granted under the Agreement. The structure and the history of the Agreement plays a pivotal role in doing so. The significance of the Agreement's development is vital to interpret the true meaning of the Articles in the Agreement and thus prove helpful even in the present situation. With GI tag being one of the major part of the TRIPS Agreement and the central focus of this publication, it shall make all the aspects relating to the provisions and to the procedures related to it crystalline clear. Conclusively, The reader is provided with comprehensive overview of the TRIPS Agreement with various other knowledge of it