



Additional Protection for Geographical Indications in India: A Working of Section 22 (2) of Indian GI Act

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While Article 22 of the TRIPS Agreement grants a common minimum standard of GI protection to all goods, by virtue of Article 23 of TRIPS, 'wines and spirits' are given a higher level or additional protection, which is a complimentary protection in addition to the Article 22 common protection. At the national front, India has the highest registrations of GIs in agricultural and handicrafts classes of goods. Section 22 (2) and (3) of Geographical Indications of Goods (Registration & Protection) Act, 1999 enable India to grant additional protection to 'certain goods' - the expression 'certain goods' is not defined in the Act. Section 22 (2) grants the Central Government, the authority to provide additional protection to certain class of goods by publishing a notification in the Official Gazette to that effect. When Article 23 of TRIPS Agreements qualifies only wines and spirits for higher level protection; the Indian GI statute does not restrict the additional protection to any specific class/es of goods. This paper critically examines the 'working of section 22 (2) of Indian GI Act.'

Keywords: Geographical Indication, Additional Protection, TRIPS Agreement, Section 22 (2) Notification, Higher Level Protection

Geographical Indication (GI) which is a separate kind of intellectual property (IP) represents collective goodwill of a region which has built up scrupulously over centuries. During the past centuries especially during the last decades subsequent to the adoption and enforcement of TRIPS Agreement, GI has emerged as an efficient IPR tool to protect quality, reputation or unique characteristics of goods essentially attributable to their geographical origin. Article 22 of the TRIPS Agreement defines GIs 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". As per WIPO,¹ a GI is a sign used on products that have a specific geographical origin and possesses qualities or a reputation that are due to that origin.² GI identifies a good as originating in the territory of a particular country/ region/ locality where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Though TRIPS Agreement obliges Member Countries to protect GI, it does not mandate any particular or specific system for the protection of GI. As such, there is no uniformity across the globe on the GI system or the 'legal means' to protect GIs. A

multilateral framework need not be the only way of ensuring protection of GIs in the international community. India has an inbuilt statutory mechanism of granting 'additional protection' to certain goods under the Indian GI Act. Against this backdrop, this paper analyses the potentiality of additional protection provision under Section 22 (2) of the Indian GI statute and examines whether India was successful to make effective use of this legislative provision.

Trend of Registering GIs In India

Though India enacted her maiden GI legislation in the year 1999, it was only in 2004, that the first GI was registered in India. After 19 years of coming into force of the Indian GI Act, as on April 2022, India has only 420 registered GIs out of which 28 are foreign GIs.³ Let us compare this with EU GI system one of the best performing GI systems in the world. EU has more than 5000 GI registration: 1624 for wines, 1577 for agricultural products and foodstuffs, 258 for spirit drinks;⁴ 377 for traditional terms, and 76 for TSGs⁵ making it 3912 in total. Apart from this, they also have 1,747 GIs from rest of the world at the time of writing this paper. European Union GI registration of wines and spirits is comparatively very high being a wine producing region. India, like most of the developing countries does not produce a lot of wines. Rather the products of India are hugely diverse in

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nature. Yet it has a tremendous potential to promote other origin- based products. India can economically benefit from GIs of its original goods.

A cursory glance on Tables 1 and 2 clarifies the position of registered GIs in India. Indian GIs constitute 86.2 % of registered GIs in India. 54.3% of the Indian GIs registered in India belong to handicrafts, 32.7% belong to agricultural, 3.5 % to foodstuffs, 2.7% to manufacture products and 6.7% other products. The above mentioned tables and the data therein (Tables 1 and 2) show that Indian farmers and producers are not taking active interest in registering their potential GIs. During the last 19 years, we could register only 420 GIs, out of which 28 are foreign GIs. Moreover, the GI Office has extended additional protection under Section 22 (2) only to six products⁷ under the relevant notification, the details of which are elaborated in the later part of this paper.

Applications Received by Indian GI Registry

Table 1 demonstrates the details of GI applications received by the GI registry, Chennai, India from its inspection.

Few UTs of India, namely, Andaman and Nicobar Islands, Chandigarh, Ladakh and Lakshadweep have no registered GIs (Table 3 and Fig. 1). Delhi has only one GI, ‘Basmati’ that too being shared between other six states.

India has registered 14 GIs which are spread between states. While some GIs are shared by two

states, some GIs like Basmati Rice are shared between seven states (Table 4).

It is also to be noted that the present notification under Section 22 (2) covers only wines and spirits which is already protected under the additional higher protection provision of TRIPS Agreement under Article 23. Wines and spirits fall under the ‘manufactured goods’ which constitute merely 3% of registered GIs in India. About 93% of registered GIs are for Indian products while only 7% are for foreign goods (Fig. 2). Twelve countries have registered their goods under GI in India (Fig. 3).

Section 22 (2) and (3) of the GI Act and Additional Protection

The experience shows that India has not been proactive in pursuing the issue of GI protection under TRIPS until it was faced with public outrage due to the ‘Basmati controversy’.⁷ The desire of the exporters to protect the misuse of the term ‘Darjeeling’ for tea in the foreign markets also pressurised India to adopt a strong IP protection system. The Government realised that in the absence of a strong legislation the Indian community was defenceless. Thus, adopted a statute for *sui generis* GI protection mainly along the lines of the European Regulations.

As stated earlier Section 22 (2) of Indian GI Act is enabling India to grant ‘additional protection’ to certain goods. Section 22 (2) of the GI Act, 1999 grants the Central Government the authority to provide additional protection to certain class of goods by publishing a notification in the Official Gazette. This is, ideally, a unique form of extension of Article 23 of TRIPS Agreement. Under Article 23 of TRIPS Agreement, similar form of ‘higher level protection’ is available, but only to wines and spirits. In the Indian statute, however, no specific class of goods is mentioned. Hence, it is to be understood and interpreted that the additional protection clause under Section 22 (2) of the GI Act is not restricted or limited to any classes of goods but extendable to all classes of

Table 1 — Total number of GI applications received

S. No	Information of GI applications	Number of GI applications
1	Registered	420
2	Refused	53
3	Withdrawn	27
4	Abandoned	28
5	Pending	353
	Total	881

(Source: Data was collected by the author on 20th April 2022 from the GI registry’s official website).

Table 2 — Goods-wise breakup of registered GIs in India

Goods as per Section 2 (f)	GI applications registered	Indian GI products registered	% age	GI Logo applications	Foreign registered GIs
Agricultural	126	126	30	0	0
Natural	02	02	0.47	0	0
Manufactured	36	12	2.86	0	24
Handicraft	232	202	48.1	29	01
Foodstuff	24	20	4.8	0	04
Total	420	362	86.2	29	29

Table 3 — State-wise break-up of registered GIs in India

State & UT	Total	Agriculture	Food stuff	Handicraft	Manufactured	Others
Karnataka	48	24	1	20	3	0
Tamil Nadu	41	10	3	24	3	1
U.P	36	6	0	26	0	4
Kerala	33	18	0	15	0	0
Maharashtra	33	25	0	7	1	0
West Bengal	22	7	4	11	0	0
Andhra Pradesh	17	2	1	14	0	0
Odisha	17	2	1	13	1	0
Telangana	17	0	0	13	0	4
Rajasthan	16	1	1	12	0	2
Bihar	14	4	1	9	0	0
Madhya Pradesh	12	2	0	8	0	2
Himachal Pradesh	11	3	0	6	1	1
Jammu and Kashmir	8	1	0	7	0	0
Uttarakhand	8	2	0	6	0	0
Manipur	7	4	0	3	0	0
Mizoram	7	1	0	0	0	6
Chhattisgarh	6	1	0	5	0	0
Goa	4	2	1	0	1	0
Nagaland	4	3	0	0	0	1
Arunachal Pradesh	2	1	0	0	0	1
Punjab	2	1	0	0	0	1
Sikkim	2	1	0	0	0	1
Dadra & Nagar Haveli and Daman & Diu	1	0	0	1	0	0
Haryana	1	0	0	0	0	1
Jharkhand	1	0	0	1	0	0
Total	420	121	13	201	10	25
Percentage	--	32.7%	3.5%	54.3%	2.7%	6.7%

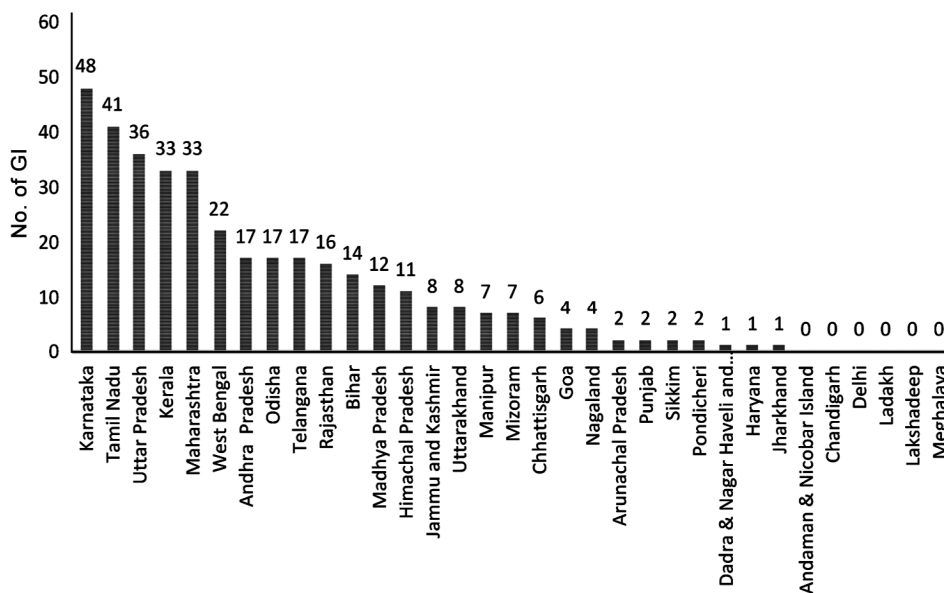


Fig. 1 — No. of GIs registered, State and UT wise

goods. It is up to the authorities to determine what goods can be included in this provision by way of notification as contemplated by the Section. Section 22 (2) and (3) read as follows:

(2) The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in the

Table 4 — The spread of shared Indian GIs

S. No.	GI	Class	Sharing states
1	Malabar Pepper	Agricultural	Kerala, Karnataka & Tamil Nadu
2	Monsooned Malabar Arabica Coffee	Agricultural	Karnataka & Kerala
3	Monsooned Malabar Robusta Coffee	Agricultural	Karnataka & Kerala
4	Alleppey Green Cardamom	Agricultural	Kerala & Tamil Nadu
5	DalleKhursani	Agricultural	Sikkim and West Bengal
6	MahobaDesawari Pan	Agricultural	Uttar Pradesh and Madhya Pradesh
7	Chak - Hao	Agricultural	Manipur & Nagaland
8	Araku Valley Arabica Coffee	Agricultural	Andhra Pradesh & Odisha
9	Kolhapuri Chappal	Handicraft	Karnataka & Maharashtra
10	Banaganapalle Mangoes	Agricultural	Telangana & Andhra Pradesh
11	Nagpur Orange	Agricultural	Maharashtra & Madhya Pradesh
12	Basmati	Agricultural	Punjab/Haryana / Himachal Pradesh / Delhi / Uttarakhand/ Uttar Pradesh / Jammu & Kashmir
13	Phulkari	Handicraft	Punjab, Haryana & Rajasthan
14	Warli Painting	Handicraft	Maharashtra, Gujarat, Dadar & Nagar Haveli, Daman Diu

(Source: The GI registry's official website)

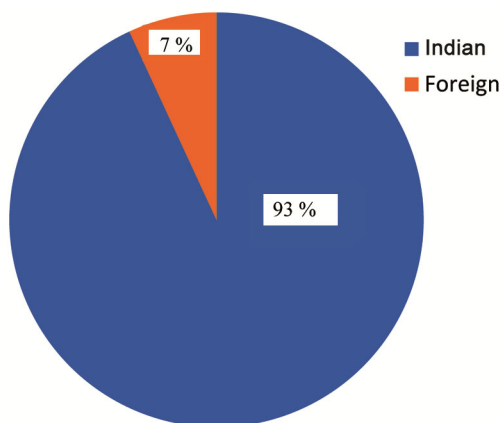


Fig. 2 — Percentage of foreign and Indian GI goods registration

Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.

(3) Any person who is not an authorised user of a geographical indication registered under this Act in respect of the goods or any class or classes of goods notified under sub-Section (2), uses any other geographical indication to such goods or class or classes of goods not originating in the place indicated by such other geographical indication or uses such other geographical indication to such goods or class or classes of goods even indicating the true origin of such goods or uses such other geographical indication to such goods or class or classes of goods in translation of the true place of origin or accompanied by expression

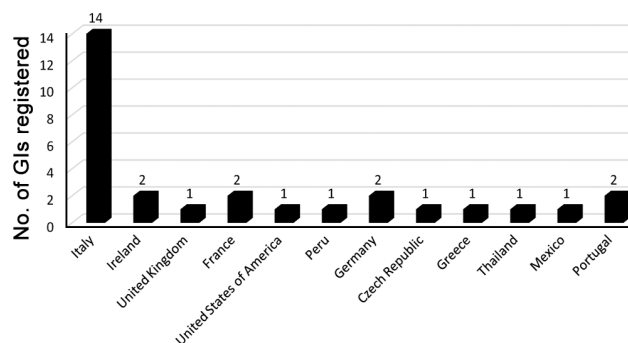


Fig. 3 — Country wise foreign goods registration in India

such as “kind”, “style”, “imitation” or the like expression, shall infringe such registered geographical indication.

Section 22(2) of the GI Act thus can be literally interpreted as ‘Indian way’ of affording ‘additional protection’ of Article 23 of TRIPS to products which may be non-wine and non-spirits too. This is a discretionary provision and such protection can be obtained only subsequent to the notification by the Government and its publication in the Official Gazette. This provision mirrors the desire of Indian legislatures to extend the similar scope Article 23 of TRIPS protection. Correspondingly, Chapter VII of GI Rules (The Geographical Indications of Goods (Registration and Protection) Rules, 2002) delineates the procedure relating to additional protection to certain goods under Section 22(2) of Geographical Indications of Goods (Registration and Protection) Act, 1999.

Rule 77 provides that an application may be made to the Registrar in respect of goods notified by the Central Government under Section 22(2) for additional protection for a registered GI in Form GI-9 accompanied by prescribed fee in triplicate along with a Statement of Case. Such case shall be furnished in triplicate and shall be accompanied with the copy of the notification issued. Rule 78 states that the application shall be made jointly by the registered proprietor of the GI in India and by all the producers of the GI whose names have been entered in the register as authorised user in Part B. Rule 79 states that the Registrar on receipt of the application under Rule 77 shall examine whether there are measurable attributes to the particular GI in relation to the goods or classes of goods in question with special regard to the reputation of the goods or classes of goods on a global scale, which requires the additional protection envisaged under Section 22(2) be conferred against usurpation or imitation of the GI even where the true origin of the goods or classes of goods is indicated or if the registered GI is used in translated form or is accompanied by terms such as “kind”, “type”, “style”, “imitation” or other like expressions.

Rule 80 states that if the Registrar has any objections to the acceptance of the application or proposes to accept it subject to certain conditions; he shall communicate such objections or proposals in writing to the applicant. This decision of the Registrar after a hearing or without a hearing (if the applicant has duly communicated his observations in writing and has stated that he does not desire to be heard) shall be communicated to the applicant in writing and if the applicant intends to appeal from such decisions, he may within 2 months from the date of such communication request the Registrar requiring him to state in writing the grounds and the material used by him in arriving at his decision. Rule 81 provides that where the Registrar decides to allow the GI in respect of which additional protection is to be provided as given under Section 22 (2), he shall enter in the

Register a summary of the grounds and the material used by him in arriving at his decision to accord additional protection to the notified goods in respect of the relevant application. The entry in Part A of the Register shall state the date on which the application for additional protection was made, the name, description and principal place of business in India of the registered proprietor and if they do not carry on business in India their address for service in India.

Upon the notification by the Central Government for additional protection, an application is to be made to the Registrar of GI in respect of goods notified by the Central Government for additional protection for a registered GI in Form GI-9 accompanied in triplicate. It has to accompanied by a ‘statement of case’ and copy of the notification issued. The application shall be made jointly by the registered proprietor of the GIs in India and by all the producers of the GI.

However, it is disheartening to note that the government has issued only a ‘single’ notification under Section 22 (2) till date even after 22 years of the legislative provision: Additional GI protection notification dated 1 October 2010 by virtue of notification issued by Ministry of Commerce and Industry, the then DIIP, - titled “Notification regarding Geographical Indication of Goods (Registration & Protection) Act, 1999 - Additional protection”⁸ that too surprisingly covering ‘wines and spirits’. It covers six products as on date as shown in Table 5.

This means that the Indian authorities have never used in the past two decades the legislative provision for additional protection for any Indian goods including agricultural products or handicrafts which are top performing GIs in India; rather we are waiting for international initiatives for extending extending protection under Article 23 of TRIPS Agreement. The above table also shows that none of the six products which are given additional protection is originating in India or they are not Indian GIs. This is sheer administrative and executive laxity and non-use of legislative mechanism.

Table 5 — Additional GI protection to goods of Class 33

S. No.	GI	Goods	Country	Additional protection from
1	Champagne	Wine	France	28.11.2011
2	Scotch Whisky	Whisky	Scotland, UK	28.11.2011
3	Porto	Alcoholic beverages (except beer)	Portugal	28.11.2011
4	Douro	Alcoholic beverages (except beer)	Portugal	28.11.2011
5	Cogne	Spirit	France	28.11.2011
6	Tequila	Alcoholic beverages (spirit)	Mexico	22.3.2016

Though India does not have any bilateral standalone agreement on GI, India does have GI provisions under two of her FTAs, *i.e.*, India-Japan and India-UAE. The comprehensive Economic Partnership Agreement (CEPA) between Japan and the Republic of India, was signed on 16 February, 2011 which came into force on 1 August 2011, states in Article 107: “*Each Party shall ensure protection of geographical indications in accordance with its laws and regulations and in conformity with the TRIPS Agreement.*”

India UAE CEPA⁹ which was signed on 18 February, 2022 is yet to come into force as per the status at the time of writing this paper. Articles 11.24 and 11.25 are exclusively dedicated on GIs. As per Article 11.24, “the Parties shall ensure in their domestic laws, adequate and effective means to protect geographical indications. Such protection may be provided through a trademark system, or a *Sui Generis* system or other legal means, provided that all requirements under the TRIPS Agreement are fulfilled. “The goods covered under GI would include “agricultural goods, natural goods, and manufactured goods, including goods of industry, handicrafts, and foodstuffs.” With respect to the opposition procedures, Article 11.25 prescribes that the parties must provide procedures that allow at least interested persons to oppose the protection of a GI in accordance with its laws. These bilateral treaties also do not consist provision for any ‘additional protection’ or ‘special protection’ more than what is stipulated in TRIPS Agreement as a minimum standard protection.

Thus, within the existing national and international legal framework, the only solution for India to protect her cultural, agricultural and traditional patrimony in the form of GIs from violation and free riding is to trigger her national legal GI protection. Such a need can be illustrated with the example of ‘*Darjeeling*’ which is India’s first registered GI (for Tea). However, since there is no absolute or additional or higher protection exists for tea under Article 22 of TRIPS Agreement, the other countries are taking advantage of reputation attached to the world ‘*Darjeeling*’ - the reputation deriving from world famous *Darjeeling* tea. Surprisingly, in US ‘*The Darjeeling Bags*’ is a registered mark under Class 18¹⁰ and ‘*Darjeeling*’ under Class 25.¹¹ ‘*Darjeeling*’ was also registered as a trademark under Class 35¹² by Delta Lingerie. In Canada “Metropolitan *Darjeeling*”

and “Lipton Finest *Darjeeling* Indian Spices” are registered certification trademark.

However, in the strict legal interpretation of Article 22 of TRIPS Agreement, such uses are deemed to be legitimate under Article 22 “if producers fail to demonstrate public confusion and unfair competition”. As long as the true origin of the goods is indicated, Article 22 does not prohibit unauthorised use of GI which in turn ‘legitimise’ intentional and wilful exploitation of GIs. This poses risk of rendering ‘Article 22 GIs’ generic by gradual dilution of the source identifying function. Further, the requirement of consumer confusion under Article 22 is subject to wide judicial discretion casting legal uncertainty in cross border GI enforcement proceedings.

Though as a Member State of WTO and signatory to TRIPS Agreement, India at international level can only lobby for Article 23 extension to goods other than wines and spirits; in national front, India can definitely invoke notification powers under Section 22 of the GI Act. This is the need of the hour to protect our vital industries and trade. For illustration purpose, let us consider the example of rice. Rice is the most widely consumed grains in the world.¹³ There are 14 rice varieties which are registered in India as GI: 6 from Kerala, 2 from Assam, 1 from Uttar Pradesh, 1 from Bihar, 2 from Maharashtra, and 2 from West Bengal. India is ranked second with 103.5 million metric tons of rice consumption after China, the most populous country. In this scenario, rice can be considered as a candidate worth for additional protection under Section 22 (2). India is the world’s biggest rice exporter. We mainly export non-basmati rice to African countries. The country’s total rice exports increased 46% in 2021. As per FAO, agriculture is the primary source of livelihood for 59% of Indian population¹⁴ including 70% of its rural households who depend primarily on agriculture for their livelihood among whom 82 % are small and marginal.¹⁵ 60.43 % of land is used for agriculture in India. It indicates the need to intensify GI sensitisation for clustering and grouping potential GI farmers under GI system for enhanced means of production, monetising traditional way of farming that is indigenous to India and modern way of marketing to penetrate the global markets. Hence, the government has to positively consider notifying agro products for additional protection under Section 22 (2) of the GI Act.

Apart from the agro products, the handicraft industry in India has been contributing significantly in

generating employment as well as earnings from export. They bear the ‘cultural identity’ of India and produce ‘value-added products’. It is therefore necessary to include artisanal products or handicrafts within the scope of additional protection. India has played an active role at international level in fighting for the rights of small producers belonging to a developing nation.

Another example can be ‘handicrafts,’ being the class of goods responsible for highest number of GI registration in India with 232 applications received, 202 GIs registered and 29 logos registered, amongst which only one is belonging to a foreign nation. India is home to more than 3,000 diverse craft forms with skilled and traditional artisans spread across the country having potential to make handicraft sector a multi-billion dollar industry.¹⁶ Export of Indian handicrafts during the period 2019- 20 reached INR 25,706.3 crores (US\$ 3.5 billion).¹⁷ Hence, there must be encouragement and proper awareness to the artisans for availing GI protection owing to the numerous advantages of GI registration and increased export opportunity as goods with GI tag have 10-15% more premium and double demand in the market.¹⁷ With right GI support, the handicraft sector will certainly have augmented global competitiveness in the export and international trade. Granting additional protection to more number/category/classes of Indian goods will undeniably help such GIs to be more popular both in home and abroad. From an academic perspective, additional protection under GI Act can be compared to the concept of ‘well-known trademarks’ under the trademark jurisprudence. The world will start recognising the GIs with additional protection as famous, popular and well-known.

Conclusion

The highest number of GI registration in India is for handicrafts which is of 54.3 percentage and the second highest is agriculture which is 32.7 percentage. There is only one foreign GI registration in India for handicrafts¹⁸ and none foreign GI registration in India for agriculture. Hence this data throws light on the need to protect handicrafts and agricultural product by immediately extending ‘additional protection for certain goods’ under Section 22 (2) of the GI Act. Though Indian GI Act is territorial in nature, still the additional protection will spread a strong message internationally, and that would pave way for higher protection in more and more countries in similar lines.

Section 22 (2) of the Indian GI Act, though a unique provision having the potential of protecting Indian GI goods by providing additional protection, is an underused section as there is only one notification so far under the said provision covering six products, that too wines and spirits belonging to foreign countries which are already otherwise covered by ‘Article 23 TRIPS additional protection clause’. None of the Indian goods or Indian GIs is under the current ambit of this notification under Section 22 (2). Hence, there is an urgent need for greater, meaningful, more comprehensive and effective protection of GI in India at national level through the legislative mechanism envisaged under Section 22 (2) as a precursor for such protection at international levels.

For instance, *Kalamata olives* from Greece, *Parmigiano Reggiano* from Italy and *Champagne* from France have contributed to a total sales value of €74.76bn for GIs, according to a recent study. Therefore, it is obligatory to recognize and grant additional protection to GIs to all the goods that are exported from India to signal India’s legislative care at national front. Without additional protection, the economy of the country and the talent and hard work of our farmers, weavers and artisans would lay at waste. Indian States have been continuously promoting protection of GI through its commodity boards such as Spice Board, Tea Board, and Coffee Board. They could encourage only few stakeholders in registering various GIs in India. However, the rate of registration as well as authorised users is low in all sectors considering the richness and diversity of India in TK, traditional farming, food production practices, and agro-diversity indigenous to Indian soil, etc. This also shows the need to vigorously sensitise Indian farmers and agro producers who produce quality agro product due to ‘regional specialities’ to seek GI protection. The producers are to be sensitised as to the exclusive rights of authorised users and thereby stimulating them to register as authorised users with respect to appropriate goods without taking the risk of infringement liability. Since India is a culturally rich country with variety of products reputed for their origins, there is no shadow of doubt that India should grant additional protection with immediate effects to these classes of goods and advocate for higher level protection in international fora.

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