

*An appeal from Channapatna to Hong Kong*

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The Department of Industrial Policy and Promotion of Ministry of Commerce and the European Union organized a symposium in New Delhi during the third week of November 2005 on the protection and promotion of geographical indications. Apart from discussing various issues of national and international relevance on the protection of geographical indications, the symposium also beautifully showcased the richness of India's cultural heritage as well as the sincere attempts by various quarters to protect and preserve the same through the geographical indication regime. The narration by the various representatives of Chanderi saris, Mysore silks, Darjeeling tea and Karnataka handicrafts of their experience and process of registering and protecting various Indian geographical indications was a sure sign of geographical indications coming of age in India.

Kenchayya, an artisan from Karnataka, specially brought for the symposium charmed the participants by his live demonstration of making Channapatna toys, which has already been applied for protection as a geographical indication in India. The Geographical Indications Registry in Chennai appears to play an encouraging role in the protection of Indian geographical indications in India. Established in 2003, the Registry has been receiving a host of applications for registering Indian geographical indications for agricultural products and products of handicrafts.

When it comes to cultural diversity, India is a continent itself and many a geographical indication is born out of this diversity, thereby making India a kaleidoscope of geographical indications. Handicrafts and hand woven textiles are two major categories of products that may be protected as geographical indications in India in view of the density of their presence through the length and breadth of India. From the north to the south, we have handicraft geographical indications such as Pashmina shawls, Kullu shawls, Bengal cotton, Orissa Ikat, Chanderi Saris, Lucknow Chikan embroidery work, Jaipur silver, Pochampalli Ikat, Mysore silk, Karnataka sandalwood work and Kerala coir products, just to name a few.

Today there are several workshops and seminars conducted by the Ministry of Small Scale Industries and other government bodies to spread awareness about IPRs in general and geographical indications in particular. Due to these activities, the stake holders in these products are encouraged and some are even determined to protect and preserve these product names with a possible registration at the Chennai Registry. But is that all that is required? Can these products compete in international markets merely with a home registration as geographical indications? Owing to the popularity enjoyed by Indian textiles and handicrafts in foreign countries, there is a huge export potential for these products, which is currently untapped. The question that arises, therefore, is whether these products enjoy protection of the kind enjoyed by Champagne and Scotch internationally. The unpleasant news is that certain provisions of the TRIPS Agreement do not afford these products a similar protection a la Champagne and Scotch.

What does the TRIPS Agreement say about protection of geographical indications? Briefly explained, while Article 22 of the TRIPS Agreement offers a general level of protection to all geographical indications, Article 23 offers an additional level of protection to geographical indications relating to wines and spirits alone. The effect of such protection under Article 23 is that right holders of wine and spirit geographical indications, while enforcing their rights in member countries of the WTO, subject to the exceptions provided under Article 24, need not prove that the use complained of is misleading by adducing evidence of confusion and deception; it suffices if they can establish that such use is incorrect. Hence, to illustrate, while Champagne may be protected in India against any possible abuse (e.g., 'Indian Champagne') merely because of its incorrect usage on Indian wines, Channapatna toys may not be protected in the United Kingdom against a similar abuse (e.g., 'British Channapatna toys'), unless it is proved by India that Channapatna toys have a reputation in the UK.

For some reason wines and spirits are placed above other products by the TRIPS Agreement. This issue was part of the Doha declaration (Para 18) and was to be taken up at the Cancun Conference that followed it. Immediately before the Cancun conference, there were conflicting views whether this issue could be taken up at the Cancun conference or not. Unfortunately, it did not even figure in the Cancun agenda as one of the items and the time has now come for the next WTO ministerial conference.

Paragraph 21 of the draft ministerial text for the upcoming Hong Kong Ministerial Conference slated to be held from December 13 to 18, 2005 refers to the still unresolved issue of extension of Article 23 type protection to geographical indications relating to all products. A group of developing countries (including India) along with the European Union have been arguing for extension of Article 23 protection to all GI products and not merely wines and spirits. Another group of countries including the United States are arguing against the extension and believe that the status quo should be maintained.

Objectively viewed, it is rather peculiar that an agreement like the TRIPS Agreement which was sought to minimize the disparities of global trade has different provisions for the protection of two types of products falling in the same category. This disparity is all the more glaring because most wine producing countries are developed countries. On the contrary, majority of the geographical indications owned by developing countries are agricultural products and products of handicraft. India with its abundant handicraft and agricultural products is a classic example.

So in effect, the agricultural products and products of handicrafts from developing countries protected as geographical indications in their home country do not have a level playing field in international markets under the current regime of the WTO as given in the TRIPS Agreement. If there is a violation or misappropriation of the property and goodwill in these names in a foreign jurisdiction, their hapless owners will have to shell out thousands of dollars to defend their rights and establish their reputation in that jurisdiction a la the TEXMATI battle in the UK.

So will someone plead India's case in Hong Kong? It is high time that the members of the WTO get intentional about paragraph 18 of the Doha Declaration reflected now in paragraph 21 of the draft text of Hong Kong Ministerial. Else, Kenchayyas of India will have to live under the fear of someone pirating their traditional knowledge in a foreign land and even appropriating the goodwill in the unique names attached to these.