

# 15.0 No 'Lemons' No More: A Sketch on the 'Economics' of Geographical Indications

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## (A) Introduction

One of the most recent entrants into the growing pantheon of intellectual property rights (IPRs), Geographical Indications (GIs) continues to raise deeply fundamental questions. At one end of the spectrum are those who question their very legitimacy as IPRs (Stern 2007). In contrast, there are others who see in GIs a variety of normative possibilities like valorising the rights (actually, products) of rural communities, indigenous groups and holders of traditional knowledge (Bérard and Marchenay 1996). Even in terms of the relationship between its closest family members in the pantheon, trademarks, there are those who seek a departure from the 'language of trumps', and read in the <sup>World Trade Organization</sup> (WTO) dispute <sup>the</sup> on this matter a nuanced approach towards legitimate possibility of co-existence (Gangjee, 2008). The

Discussed in this volume by Vivas and Oliva.

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negotiations on GIs speak to some to some of these concerns as well and go well

beyond.<sup>2</sup> It is also the case that GIs are increasingly figuring in other forums as well, the Food and Agriculture Organization the World Intellectual Property Organization such as at (FAO) in terms of commodity prices, petty agriculture producers, at (WIPO)

as one amongst other instruments to protect traditional knowledge and also at the United Nations Environment Programme (UNEP) in terms of biopiracy. GIs are often presented with these multiple policy

objectives including: protecting the environment, promoting sustainable development, securing rural livelihoods, protecting and rewarding holders of traditional knowledge and developing niche markets.

D It is in this growing terrain about GIs that the chapter seeks to dwell on the negotiations concerning GI-extension. Rather than track the various submissions and juridical merits of interpreting TRIPS<sup>3</sup>, the chapter seeks to step back and consider the nature of GIs and how its subject matter is constructed. In doing so, I suggest that in the normative justifications for GIs, there is an appreciation of the historical rights and reputation that accumulate to a peoples and place for stabilising a particular cultural repertoire. This cultural stabilisation generates a certain local specialisation, which, if we agree <sup>it</sup> is deserving of protection, then generates rights that are locally embedded; thus, generating locational immobility and denying licensing of the indication to producers located elsewhere. Like other distinctive signs, such as trademarks, GIs depend on the integrity of information channels.

The chapter by Kasturi Das provides an overview of outstanding implementation issues.

<sup>3</sup> In this volume, Kasturi Das (ibid) provides a brief discussion of the submissions. I earlier covered this in Rangnekar (2003) and more recent scholarly works are available in Silva (2005) and Raustiala and Munzer (2007).

Unlike other distinctive signs, GIs also depend on the integrity of producers in the identified geography. It is in this prism of information and location that I locate my argument on GI-extension.

The chapter begins with a discussion on the economics of information and distinctive signs. Reflecting on how economists have approached their rationalisation of the protection of trademarks, I argue that similar precepts can be found in the case of distinctive signs like GIs. In doing so, I also reflect that the collectivity of GIs generates other concerns. The second section seeks to explicate the nature of GIs. It reflects on contributions from anthropology and geography, where ideas of localised specialisation have been used to consider the intellectual object that constitutes a GI. It is here that I suggest that the nature of locational specificity is responded to by constructing locational immobility in the rights in a GI. The final section takes the challenge of using these ideas to analyse the case for GI-extension.

## **The economics of information and distinctive signs**

The search for information is a ubiquitous feature of our everyday <sup>ies</sup> lives that include the purchase (or sale) of daily grocery to finding ways to receive (or send) <sup>an</sup> money order and from deciding on which school to send one's children to or where to go for a medical procedure to deciding on an enjoyable watering hole to quench one's <sup>we</sup> thirst. As anyone's personal experience would testify, mobilising information to take these decisions is difficult, time consuming and

fraught with many contingencies. We have come to rely on a variety of sources and practices which includes experience, family and friends, rumour and talk, experts and elders, trade and consumer magazines, and public advisory bureaus and advertisements. Of course, the habits of practice generate and sustain their own social dynamic and networks.

□ Economists approaching the subject focus on the information asymmetries that exist between buyers and sellers. For instance, Stigler ([1961] 1970, p. 62) finds it <sup>fruits</sup> "fruitless" to explain all price dispersion on the basis of product heterogeneity and seeks an explanation in the 'level of ignorance' in the market. The latter is a manifestation of the information asymmetries between buyers and sellers.

Consequently, if price dispersions are large relative to the costs associated with information search, a buyer would find it profitable to continue searching. To state this differently, expected savings are positively related to the level of price dispersion, <sup>and</sup> thus, influence consumer choice and firm investments (Akerlof 1970; Nelson 1970).

□ <sup>Take</sup> Using the market for used cars as an example, where buyers suspect that a certain proportion of cars are 'lemons' (that is, bad cars), Akerlof (1970) focuses attention on the quality-related information asymmetries between buyers and sellers. The buyer cannot observe the quality of a used car with any significant surety, whereas the seller has more reliable information about it. In such a situation of information asymmetry, good and bad used cars would tend to sell at comparable prices.

Dynamically, this leads to a situation where 'bad cars drive out good cars': the common price between good and bad cars presents sellers with perverse incentives

motivating the withdrawal of good used cars. To explain, the seller does not receive a price mark-up for good used cars reflecting <sup>their</sup> ~~its~~ superior quality in comparison <sup>with</sup> ~~to~~ bad used cars. Consequently, as these cars are withdrawn from the market, equilibrium is achieved at lower levels of quality. For the result to hold, it is necessary that a common price exists for both types of cars and that the seller does not differentiate between good and bad used cars. Akerlof recognises that buyers form a more accurate idea of the car upon purchase and subsequent use. This indicates that information asymmetries are temporal and contingent on the nature of the good.

Taking <sup>their</sup> cue from this, other economists have classified goods on the basis of how information is accessed by and/or conveyed to consumers (Nelson 1970; Darby and

Karni 1973).

- (list)*

*it's not unclassified*

• Search goods: These are goods where consumers develop a robust notion of quality prior to purchase through either inspection and/or research.
- Experience goods: These are goods where quality is known through use and experience, which then guides future consumer decisions.
- Credence goods: These are goods where neither prior inspection nor subsequent use is sufficient <sup>to</sup> ~~for~~ developing a robust notion of quality.

It would be obvious to cultural theorists and anthropologists that patterns of purchase and use generate and sustain social networks of consumption that inhere their own institutions of trust. Durable goods and goods that foist prestige are also purchased upon deliberation that uses a variety of informational resources that act as arbiters of quality and authenticity.

Neither do goods fall neatly into any one of the three categories nor are individuals identical in their preferences or reception of a particular good. For example, even in the instance of a 'mundane' and everyday bag of coffee beans, there are differences. For some it could easily be a 'search good', where price is adequate in representing product attributes. For some others, it could be an experience good to the extent that other attributes (for example, flavour and aroma) are given importance. Finally, there will be a group of individuals who consider the same bag of coffee as a credence good and enquire about attributes of the production process (for example, workers' pay, use of pesticides, etc.). Cultural theorists remind us that the meaning of things to peoples is rarely ever unitary, not only is meaning mediated and different in different social settings, but that we seek such difference. If any of this filters into economics, it is in terms of recognising multiplicity in preferences, market segments and firm strategies of product differentiation.

It is in this world of asymmetric information that social institutions like reputation, often communicated through networks and congealed in distinctive signs, <sup>acquire</sup> ~~come into~~ importance as devices signalling provenance, <sup>albeit</sup> ~~though~~, with all the complications of suggesting a certain quality, a certain origin and authenticity. Distinctive signs, economists argue, are signalling devices of a certain level of quality that consumers learn to expect. By maintaining this level of quality, the distinctive sign economises search costs for consumers; thus, the willingness of consumers to pay a premium (Stigler [1961] 1970, p. 79). As reputation is communicated through distinctive signs, consumers can retaliate by curtailing future purchases if quality does not meet expectations (Akerlof 1970, p. 500). Shapiro (1982) suggests that a firm's

decision to invest in developing quality products is dynamic: the returns from (current) investments in producing high-quality products occur in the future, following repeated purchases on account of the firm's reputation for high-quality products. It is through repeated purchases that a link is established between a firm's current investments in maintaining quality and consumer's perceptions of the firm's reputation. It is when consumers learn about the reputation through past purchases, experience and other information channels that it becomes economically meaningful for firm's to invest in producing high-quality (reputable) products. There are contesting views on the role of advertising in this respect.

It is within this general frame that the economic and legal rationale for the protection of distinctive signs like trademarks is largely presented. It is the shared view in the trademark literature that two interrelated objectives underlie the protection of trademarks: protection of the investments undertaken to develop brand names and associated reputation and safeguard the informational role of trademarks as indicator of source (see, Landes and Posner 1987; Economides 1988;

In this regard, advertising, an institution that Stigler ([1961] 1970, p. 73) characterises as an "immensely powerful instrument for the elimination of [market-based] ignorance", is of importance. No doubt, others see advertising differently. Some note the market power that advertising sustains and how it generates barriers to entry into a market (Scherer and Ross 1990) or sustains a monopolistic market structure (Chamberlin 1969, chapter 4; Schmalensee 1979). Useful narratives are also found in the work of anthropologists studying the power of brands and the contested nature in which they inhabit our everyday lives (Coombe, 1998).

Grossman and Shapiro 1988a, 1988b; Cornish 1999).<sup>6</sup> Interestingly, according to some practitioners, the primary purpose of trademark protection is to enable appropriation of investments in brand name and the informational role of trademarks (Cratchley 2000). On the other hand, there are scholars who seek a closure to this debate, and thus present a new orthodoxy in terms of search costs: "Firms with strong trademarks will command higher prices for their brands not because of market power but because the search costs associated with their brand are lower" (Landes and Posner 2003, p. 176).<sup>7</sup> Others seek to tread the thin line between these various functions of trademarks: "In many markets, sellers have much better information as to the unobservable features of a commodity for sale than the buyers. Unobservable features, valued by consumers, may be crucial determinants of the total value of the good. However, if there is a way to identify the unobservable qualities, the consumer's choice becomes clear, and firms with a long horizon have an incentive to cater to a spectrum of tastes for variety and quality, even though these product features may be unobservable at the time of purchase" (Economides 1988, p. 526).

<sup>6</sup> This should not be read as suggesting that the debate on trademark protection is settled.

By way of example, Cornish opens up an enquiry into deciding the appropriate extension of legal protection of trademarks in terms of either emphasising the signalling of origin/quality or protecting investment (Cornish 1999, pp. 614-16).

<sup>7</sup> This is reminiscent of Schechter's characterisation of trademark's primary role as the "creation and retention of custom, rather than the designation of source" (Schechter 1927, p. 825).



Trademarks are indicators of source enabling consumers to overcome, to some extent, the information asymmetries in the market. In this manner, trademarks are intrinsically associated with the buying and selling of products (Cornish 1999, p. 619). It is this role of 'channel of information' that allows trademarks to lower search costs, protect consumers from fraud and assist in consumer decision making<sup>8</sup>. However, to achieve the economies in 'search', <sup>that is, to</sup> be an efficient information channel, a trademark must meet certain conditions: the trademark must be distinct and differentiated from previously existing trademarks (Landes and Posner 2003). Article 15.1 of the TRIPs Agreement has the following definition for trademarks: "Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark." This is a remarkably generous definition in allowing a wide variety of signifiers. More significant is the change in focus from identifying source to enabling differentiating source; thus, there is no requirement that for the sign to identify a particular undertaking as the source of goods or services. Even in terms of 'words', the possibilities include words or combination of words such as family names <sup>for example,</sup> (e.g. Ford, Chevrolet, Dodge), fanciful words that mean <sup>for example,</sup> nothing (e.g. Exxon and Kodak), and also suggestive or geographically descriptive names when they have acquired secondary meaning <sup>for example,</sup> (e.g. Mont Blanc). Also possible

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<sup>16 pr</sup>  
<sup>4 pr</sup> Here note that a single trademark can and is invariably used across a number of products <sup>1 pr rule</sup> that might fall within a category (for example, microwaves) or a broader aggregation of products (for example, home appliances). A variety of information channels exist to provide product-related information: advertising, product labels, consumer magazines, friends, etc. Trademarks, as a distinctive sign, help in linking these different information sources.

are images, figures, symbols, logos, monograms and insignias. However, the emphasis is on the sign (word, phrase, symbol) being distinctive so as to enable

consumer to differentiate a firm's goods and services from those of other firms. In

the absence of distinctness, closely similar signs would generate unnecessary

confusion and a waste of resources. In lieu of this, the TRIPs Agreement offers

trademarks a scope of protection that includes 'identical and similar signs' (Article

16).

Brand development requires investments in maintaining a certain minimum level of quality and advertising and promoting distinctive signs, names and logos. These investments are sunk or fixed costs that are substantially irreversible upon product launch and market entry (Scherer and Ross 1990, for a detailed discussion).

Moreover, in many product categories the evidence suggests that a substantial promotional budget is necessary <sup>(N)</sup> a sort of threshold level <sup>(P)</sup> before information reaches the consumer. The objective of these promotional efforts is to help

consumers identify and differentiate the product from the vast array of similar

As noted earlier, some economists recognise that advertising can act as a barrier to entry

into a market. For example, in oligopolist markets, intensive advertising by incumbents reinforces existing consumer preferences and substantially raises the minimum level of promotional expenditures required by potential entrants to launch a product. The barriers to entry are on account of several reasons: (a) entrants have to incur disproportionately high advertising outlays per unit sales to win patronage, (b) economies of scale in advertising favour firms with a sizeable market presence, and (c) the absolute advertising expenditures for effective entry, <sup>that is,</sup> a threshold level, is higher when seller concentration ratios are high (Scherer and Ross 1990, pp. 430-50).

products in the same category. Given the unobservable characteristics of the product, the identification and differentiation of the product occurs through information captured in a brand name: "This information is not provided to the consumer in an analytic form, such as an indication of size or listing of ingredients, but rather in summary form, through a symbol which the consumer identifies with a specific combination of features. Information in an analytic form is a complement to, rather than a substitute for, trademarks" (Economides 1988, pp. 526-27). <sup>It is</sup> Through its function of signalling certain quality standards that induce consumers to return and purchase new products that a trademark becomes an asset of the firm, embodying its accumulated goodwill" (Grossman and Shapiro 1988a, p. 60).

It is thus suggested that protecting trademarks generates incentives for firms to make investments in maintaining a certain level of quality. Apart from confusing consumers, the misappropriation of trademarks through the production of counterfeit goods is said to harm firms by diluting their reputation and market power (Grossman and Shapiro 1988a, 1988b). Here, consider the presence of counterfeit goods in a market where consumers cannot readily observe the characteristics of the good and only learn about the quality/authenticity of the good one <sup>period</sup> later. Only when the product does not match the quality claims made by the firm does the consumer feel that either the (legitimate) firm has "shaved its quality" or that a counterfeit has been inadvertently purchased.

Assuming consumer rationality, <sup>that is,</sup> i.e. they play safe, believing that a cheating firm will continue to 'shave quality', it is suggested that consumers will transfer their loyalty to another firm in the next period.

D Reality is no doubt more complicated. And, unfortunately, any *doubts* about unilateral strengthening of intellectual property protection are received in prejudiced terms. Writing on copyright law, Justice Laddie expresses this evocatively: "There is no trade union of copyright infringers. Support for any limitation on copyright is easily portrayed as support for pirates" <sup>(the usual pejorative global expression for infringers)</sup>. It is depicted as support for the parasites of industry" (Laddie 1996, p. 259). However, consider the situation of consumers *knowingly* purchasing a fake of a 'status good'. These consumers buy-in the 'snob value' associated with the status good without paying the premium price asked by the original. Here, deception is not <sup>that</sup> of the purchaser but <sup>of</sup> observers <sup>who</sup> sees the good being consumed and [are] duly (but mistakenly) impressed" (Grossman and Shapiro 1988b, p. 82). The brand-owner's market power is diminished by expansion of the market of 'status goods', which also deprives consumers of the good's snob value as prestige is contingent on a small network of exclusive consumers. However, the wider social welfare effects of faking in this instance are ambiguous and in certain instances prohibiting the fake might result in adverse welfare results.<sup>11</sup>

This example is from Grossman and Shapiro (1988b), who define status goods as those goods for which the mere use or display of a particular branded product confers prestige on their owners, apart from the utility deriving from their function" (ibid., p. 82). The status or snob-value of these goods is a result of investments in advertising, high price, and controlled retail outlets.

<sup>11</sup> Grossman and Shapiro (1988b) also acknowledge that the welfare implications of stronger trademark protection, wherein counterfeiting is eliminated, are ambiguous. While there is

little dispute <sup>about</sup> on the benefits of eliminating counterfeiting to trademark owners, the negative

While the discussion has largely been either in general terms of 'distinctive signs' or specifically directed at 'trademarks', it is the case that it applies equally to GIs.<sup>12</sup>

Distinctive signs indicating geographical origin are the earliest type of trademarks, with evidence in pre-industrial periods for a variety of products like minerals, simple manufactured goods and agricultural products (Schechter 1927). Yet, ironically as Stephen Ladas notes, this avatar of IP 'was [the] last to be recognized and

protected by the municipal law of different countries' (Ladas 1975, p. 658). The

irony is that the normative elements of GIs have existed in the customary practices

and the trading and marketing strategies of craftsmen, artisans, petty commodity

producers, agriculturalists and manufacturers for a substantively long period of

time. For instance, Egyptians are noted for stamping wine jars to indicate vintage

and provenance. There is evidence in the 12th century of the use of IGOs and seals

of quality to indicate city-origin by tapestry manufacturers from central Europe and

clothiers in England (Schechter 1927). A variety of goods were traded under marks

that indicated their geographical origin either through the depiction of local animals

(panda beer), landmarks (Mt. Fuji sake), buildings (Pisa silk), heraldic signs (fleur de

lys butter) or well-known personalities (Mozart chocolate) (Blakeney 2001). Many of

our everyday commodities are known by names that suggest a certain provenance;

thus, the term china for porcelain is transparent of China and coffee is indicative of

impact on consumers who knowingly consume the counterfeit and to counterfeit producers

raise complications.

<sup>12</sup> There are significant differences between the two types of distinctive signs and for a discussion see Rangnekar (2004) and Gangjee (2008) for a discussion of the WTO dispute concerning trademarks and GIs.

its geographical origin in Ethiopia's Kaffa province. Naturally, geographical or geographical-like distinctive signs have various connotations, as is evidenced by the kiwi-fruit and Bermuda shorts<sup>(~)</sup> both suggestive of a geography of commerce rather than a geography of origin in the GI<sup>✓</sup> sense. The use of place names in the case of carpets has been complicated by the influences of the 'lore of the dealer' and the displacement of the weaver (Spooner 1988). For instance, certain place names, such as Bukhara, emerge<sup>a</sup> as term of provenance in the mid-18<sup>th</sup> century<sup>12</sup> indicative of the biography of carpet and its entry<sup>through</sup> into trade channels into Western markets, rather than a reflection of the carpets type (Spooner, *ibid.*).

D Information inhabits the various signs used to mark things<sup>(~)</sup> and this, as cultural theorists will remind us, mean<sup>3</sup> different things to different people. What is the informational content of a GI<sup>2</sup>. Here it is necessary to follow van der Ploeg (1992, p. 20) who uses the expression *art de la localité* to capture the cultural stabilisation of particular practices: "[E]very location acquired, maintained and enlarged (through among other things, the exchanges mentioned), its own cultural repertoire: its own norms and criteria that together established the local notion of 'good farming'<sup>ce</sup>".<sup>)))</sup> Thus, societies curate their surroundings and actively engage in the creative generation of their habitat and the various artefacts that constitute their surroundings. This idea that things have a *signature* reflective of place and peoples is captured in the French term *terroir*.<sup>13</sup>

<sup>13</sup> For a discussion on *terroir*, see Moran (1993) and Barham (2003). Political and economic geographers have used the term differently. Sack (1983, p.59) defines *terroir* as 'the attempt to affect, influence, or control actions and interactions (of people, things, and relationships) by asserting

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[INSERT TABLE ABOUT HERE]

⓪ This localised specialisation is apparent in a number of products as evidenced by

data of appellations protected under the Lisbon Agreement (Table <sup>15.1</sup>~~XXX~~). Cuba <sup>15.1</sup>~~15.1~~ <sup>per cent</sup> <sup>2</sup>

accounts for all the protected appellations for cigarettes and the Czech Republic

<sup>for</sup> <sup>per cent</sup> <sup>2</sup> 93% of the appellations in beers and malt, while France holds over 80% <sup>per cent</sup> <sup>2</sup> of the wine

and spirit appellations. Regional specialisation within product categories is also

reflected in the EU data (Rangnekar 2004, p. 14). For that matter, this

specialisation is observable at lower levels of aggregation: for example, despite <sup>2</sup>

widespread distribution (internationally and within nations) of the species *Vitis*

<sup>2</sup> *vinifera*, the major production areas are highly localised and each grape variety has

its own distinctive geographic pattern (Moran, 1993). These distinctive geographic <sup>2</sup>

patterns aren't illusory as quality characteristics are strongly associated with

habitat and local practices. For example, an examination of Basmati varieties that

include traditional cultivars from India and Pakistan and the varieties bred by

RiceTec, an American seed company, with claims of Basmati-like properties, found

that the latter fail to exhibit either the genetic structure of Basmati or the full range

of agronomic attributes (Bhattacharjee et al. 2002; Kamath et al. 2008). GIs can be

considered as the juridical reification of these culturally settled norms of good

farming and the specifications that constitute the GI are its core informational

component. In this respect, Torre (2006) adopts the useful metaphor of 'social

<sup>16pr</sup> <sup>4pr</sup> <sup>9/10 pr</sup> and attempting to enforce control over a geographic area'. Moran (1993) adopts this notion to narrate

a compelling account of the stratification of wine appellations in France and how this is implicated in

generating and sustaining rent differentials in wine-growing areas. <sup>1pr rule</sup> <sup>2</sup>

construction of compromise' to invite an analysis of the collective action dilemmas that accompany the making of and adherence to rules.

It is associations between names, things and places that come to constitute the notion of Gls. And, such associations <sup>U</sup>varying, temporal and contingent <sup>U</sup>Fl contribute to the reputation of the name. An expression of this relationship is the case brought by the *Comité Interprofessionnel du Vin de Champagne*, the consortium representing Champagne producers, to the courts of New Zealand. In passing

judgement in favour of the Champagne producers, Judge Gault<sup>14</sup> noted that:

"Champagne is a geographical name. When used in relation to wine the primary significance it would convey to persons who know that would be as the geographical origin of the product. If the name conveys something of the characteristics of the wine it is because those familiar with wine sold by reference to the name associate those characteristics with it. For suppliers the attracting force in the name constitutes a part of the goodwill of their business. [.] That goodwill will be damaged if someone else uses the name in relation to a product in such a manner as to deceive purchasers into believing the product has the characteristics of products normally associated with the name when it does not." Integral <sup>to</sup> in this quote are networks of reputation and information <sup>U</sup> and the next section explicates this in terms of Gls.

*Wineworths Group Ltd. v. Comité Interprofessionnel du Vin de Champagne*, 2 NZLR 327

[1991].



## (A) The construction of geographical indications

Despite the shared economic rationale and legal principles and the fact that it's all about buying and selling, there are important differences between GIs and trademarks.<sup>15</sup> At a fundamental level, there is the difference in terms of what is being signified. Trademarks identify <sup>the</sup> goods of an enterprise; thus suggesting provenance in terms of commercial enterprise. In contrast, 'geography is at the heart' of GIs and it is provenance in terms of a particular territory that is being signified. TRIPS defines GIs in Article 22.1 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<sup>2</sup>". Clearly, GIs are not limited to any particular enterprise and are available for use by all enterprises within the demarcated geographical area that qualify for use of the indication. Again, contrasting with trademarks, GIs should be visualised as a form of collective right that defines who can make a particular product, where the product is to be made, and what ingredients and techniques are to be used so as to satisfy 'authenticity' and 'origin'.

D) <sup>16</sup> The nature of this collectivity is difficult not to emphasise. Apart from the exceptions of single enterprise GIs, there is an entire social supply chain of producers and enterprises to be considered. Specifications implicate the entire supply chain right down to raw materials and, if relevant, the land used for

<sup>15</sup> This and the next paragraph are based on Rangnekar (2004).

cultivation. Moreover, firms that are legally and economically distinct units are engaged in the production of the very same product, while also competing with each other. Firms at identical stages on the supply chain compete with each other for market shares, Whereas, firms that are at contiguous stages of the supply chain compete with each other for shares in the product's value. This competition matrix must be appreciated in its social setting, where firms are collectively implicated in the specifications. As such, the reputation embedded in the indication is collectively on account of and simultaneously accrues to the entire geographical region identified in the indication. This interdependence makes possible a social construction of a compromise around culturally shared 'norms of good farming'.

The construction of GIs, by definition, prohibits the possibility of assigning or licensing the indication to anyone outside the demarcated geographical territory. The scope of protection does not include the 'right to assign' an indication (a right that exists for trademarks (Article 20) and patents (Article 28.2) within the TRIPS Agreement. Some may consider this as circumscribing the scope of protection to GI-holders, whereas others, like Stern (2007), consider this as excluding GIs from the family of IPRs. However, this feature of the rights in GIs corresponds with its collective ethic and its relationship to geography. Quite simply, transferring and/or licensing a GI defeats the very essence of a GI which requires the product to originate in a particular geography. This is the fulcrum of GIs with the specifications spelling out the relationship to a particular geography, which then generates the indication's reputation. WIPO articulates this interweaving of information and reputation neatly: "Geographical indications are understood by consumers to denote

the origin and the quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use of geographical indications by unauthorised parties is detrimental to consumers and legitimate producers. The former are deceived and led into believing to buy a genuine product with specific qualities and characteristics, while they in fact get a worthless imitation. The latter suffer damage because valuable business is taken away from them and the established reputation for their products is damaged<sup>2</sup> (WIPO/2002).

- Naturally, the specifications/information raise certain obligations on enterprises that seek to use the indication<sup>3</sup> (they must adhere to the *art de la localité* and sustain it them. In this respect, consider the predicament confronting *Newcastle Brown Ale* when, in 2005, closing<sup>4</sup> their landmark Tyne Brewery after more than 100 years of operation to expand production at an alternative site (Kerr 2005). Citing "operational difficulties" and recognising a move to another site means that "the specification is not any longer respected in relation to the delimited geographical area" originally stipulated<sup>5</sup> thus requested<sup>6</sup> for cancellation of the GI<sup>16</sup> which was accepted in 2007.<sup>17</sup> A similar predicament of expansion<sup>8</sup> faced the producers of *Bleu de Bresse*, which was subsequently licensed for production

<sup>16</sup> Cancellation request according to Article 12(2) and Article 17(2), 'NEWCASTLE BROWN ALE', EC No<sup>9</sup> UK/017/0372/16.08.2004, OJ C-280/13, 18 November 2006.

<sup>17</sup> Commission Regulation (EC) No 952/2007 of 9 August 2007 cancelling a registration of a name in the Register of protected designations of origin and protected geographical indications (Newcastle Brown Ale (PGI)), OJ L 210, 10 August 2007.

outside the designated geographical region, though only after surrendering<sup>of</sup> their rights (Rangnekar 2004, p. 18).<sup>18</sup> These predicaments are also suggestive of the tension between different values and how, at times, the value of commerce prevails.

However, the construction of GIs, within a cultural frame of 'notions of good

farming', is <sup>very</sup> considerably different. In particular, the nature of the intellectual object is predicated on establishing 'locational specificity'; thus, the law responds by

<sup>build</sup> constructing 'locational immobility' into the rights in GIs.

□ One way of appreciating the locationality of GIs is to consider a set of normative justifications often articulated in terms of honouring GIs that are transparent in the French approach. The French body responsible for organising the protection of appellations, the *Institut National des Appellations d'origine* (INAO), expresses the normative justifications in terms of rights acquired by sustaining a certain practice:

✗ "This protection constitutes a legitimate safeguard of rights acquired by generations of producers of a region who have imposed on themselves a certain number of rules and disciplines in order to put a unique and original product on the market".<sup>19</sup> The honouring of these historical rights with their locational immobility is part of a wider process of cultural and endogenous development (Ploeg 1992),

<sup>16 pr</sup> <sup>4 pr</sup> <sup>9/10 pr</sup> <sup>18</sup> Caenegem (2003, p. 718) raises that complicated question, while noting *Bleu de Bresse*, as to what restricts the licensing of the indication and production elsewhere when the only requirement is sourcing a raw material from a particular geography. <sup>1 pt rule</sup>

<sup>19</sup> INAO (1987), *La Protection Internationale des Appellations d'Origine des Vins et Eaux-de-*

*Vie*, Paris: Institut National des Appellations d'origine des Vins et Eaux-de-Vie (quoted in Moran 1993).

Making GIs a meaningful policy intervention <sup>that es c</sup> enabling "people to translate their long-standing, collective, and patrimonial knowledge into livelihood and income" (Bérard and Marchenay 1996, p. 240).

There remains a duality in these normative justifications for GIs. On the one hand it relates to sustaining a certain historical practice that relates to place and peoples (the specifications) and valorising the rights in the market place through protection of the indication (the goodwill of the indication). This duality is evident in case law at the European Court of Justice where the courts had to consider the significance of the grating of Grana Padano cheese<sup>20</sup> and the slicing and packing of Parma ham.<sup>21</sup> Even while these procedures occur close to the retail end they are stipulated in the specifications submitted for registration under Council Regulation EC 510/2006. The court had to decide whether they constitute an exclusive right that is also directly enforceable. In both instances, the court agreed that the rules are an exclusive right that is also enforceable. It concluded that <sup>a</sup>specifications <sup>c</sup>determines both the extent of the obligations to be complied with for the purposes of using the PDO [i.e. Protected Designation of Origin] and, as a corollary, the extent of the right protected against third parties by the effect of registration of the PDO.<sup>22</sup> For those who adhere to the norms, the right to use the GI exists,

<sup>20</sup> Case C-469/00, *Ravil SARL v Bellon Import SARL and Biraghi SpA*, 2003 E.C.R. I-05053.

<sup>21</sup> Case C-108/01, *Consorzio del Prosciutto di Parma and Salumificio S. Rita SpA v Asda Stores Ltd and Hygrade Foods Ltd* 33, 2003 E.C.R. I-05121.

<sup>22</sup> Case C-469/00, *Ravil SARL v Bellon Import SARL and Biraghi SpA*, 2003 E.C.R. I-05053 at

whereas those not abiding by these norms are prohibited from using the GI. It is in this duality that Carol Rose's (1986) notion of 'limited common property' makes pertinent sense for characterising GIs: <sup>s</sup>property held as commons amongst the member of a group, but exclusively vis-à-vis the outside world<sup>2</sup>. To clarify, adherence to the specifications sustains the informational integrity and content of the GI and prohibiting use of the indication by non-adherents ensures that neither are the information channels disturbed and nor that there will be a dilution of the reputation of the indication.

### (A) An attempt to extend the debate on GI-extension

One of the sore <sup>point</sup> issues concerning GIs, and there are many, is the hierarchy in protection on account of the differential treatment between wines and spirits through Article 23 and other goods through Article 22. Beginning with submissions to the Seattle Ministerial in 1999, a number of WTO members from the Global South have sought to expand the scope of application of Article 23 to products other than wines and spirits and thus remove the hierarchy in Section 3 of the TRIPS Agreement.<sup>23</sup> This issue highlights other remarkable features of GIs in TRIPS. First,

By way of short-hand, this issue of demanding extension of the scope of application of Article 23 to products other than wines and spirits is referred to <sup>as</sup> 'GI-extension' and an analysis of the issues is available in Rangnekar (2003). The chapter by Kasturi Das in this Handbook <sup>issue</sup> volume discusses this briefly along with other outstanding issues concerning GIs. The curious

the hierarchy establishes an unlikely <sup>instance</sup> ~~moment~~ of a succeeding multilateral IP treaty (viz. TRIPS) providing a narrower scope of application and rights than its predecessor (viz. Lisbon) (Rangnekar 2003, p. 22). Second, equally unlikely, is the presence of a large number of Global South countries as *demandeurs* for stronger protection. While commentaries on GI-extension emphasise the contested nature of the debate, few have concerned themselves with paying attention to certain shared understandings. And, as Taubman (2008) recently notes, none has taken the analysis forward by offering economic analysis of the significance of the hierarchy. The remainder of the chapter concerns itself with these two challenges.

□ From an early stage in the debate on GI-extension there were shared perceptions.<sup>24</sup>

For instance, both groups agreed that there is no juridical basis to or rationality in the hierarchy. While it would be obvious for *demandeurs* to argue against the differential treatment, it is remarkable to read the following candidness from countries opposing GI-extension: "If the extension discussion were purely one of intellectual property policy, it would make sense to treat all products in the same manner legally" (WTO 2002, paragraph 3). In an associated sense, both groups of countries also agree that the peculiar structure of Section 3 on GIs is <sup>the</sup> an outcome of the last-minute trade-offs struck during the Brussels Ministerial (WTO 2001,

reader is directed to the overview prepared by the WTO Secretariat paper (WTO, 2005b) and to Silva (2005) and Raustiala and Munzer (2007).

<sup>24</sup> This is obviously based on material in Rangnekar (2003).

paragraph 9; WTO 2000b, paragraph 6).<sup>25</sup> Yet, they disagree on whether there was a juridical basis within TRIPS, such as the built-in agenda of Section 3, for negotiating GI-extension or whether a fresh mandate<sup>wa</sup> is necessary. The mandate has since been agreed in the Doha Ministerial Declaration, where GI-extension exists as *Tiret 87* in the Compilation of Outstanding Implementation Issues<sup>26</sup> and is part of the negotiations in the TRIPS Council. Subsequently, <sup>it has been</sup> reiterated in the Hong Kong Ministerial Declaration, where in paragraph 39 the WTO Director General is asked to <sup>redouble</sup> intensify his consultative efforts on the issue of "extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits"<sup>2</sup> (WTO 2005a, paragraph 39).<sup>c</sup>

<sup>A</sup> The more remarkable point of consensus concerns the shared appreciation of the commercial value of GIs which surprisingly goes unnoticed in the plethora of papers focussing<sup>3</sup> on the 'old' world and 'new' world tussle <sup>ver</sup> on GIs. In an early submission, Bulgaria, with a group of *demandeurs* (in support of the GI-extension), acknowledged the <sup>c</sup> "considerable potential for commercial use <sup>~</sup> [as having stimulated] awareness of the need for more efficient protection of geographical indications" (WTO 2000b, paragraph 2). A more nuanced statement on the commercial value of

<sup>16 pr</sup> <sup>4 pr</sup> <sup>9/10 pr</sup> <sup>25</sup> For that matter, spirits were added to Article 23 (paragraphs 1 and 2) towards the end of negotiations (Gervais, 1998, p<sup>h</sup> 30). Consequently, some suggest that TRIPS provides a three-level hierarchy in the level of protection for GIs (see<sup>c</sup> Escudero 2001, pp. 27-30).<sup>~</sup>

<sup>26</sup> This compilation was set up on the basis of paragraph 13 of the Ministerial Decision on Implementation-related Issues and Concerns, adopted at Doha on 14 November 2001, WTO document WT/MIN(01)/17.



'distinctiveness' comes from Australia, a country opposing GI-extension, (WTO

2000a, p. 2): "tea is more valuable than undifferentiated bulk tea in the market-

place if it is sold as Darjeeling tea, more valuable still if it bears the distinctive

certification mark "Darjeeling" (The Tea Board's Seal of Approval", and potentially

yet more valuable again if it bears a distinctive trademark and is packed in

distinctive packaging." These points of consensus are perplexing only to the extent

that one remains wedded to a faith in the rationality of trade negotiations and

hopeful that a good argument is all it takes to complete a round of negotiations

(Steinberg 2002).

0 In analysing the hierarchy between Article 22 and Article 23, it might make sense to

explicitly state the obvious: there is a hierarchy between the two. This much is clear

from the title of Article 23 (N) 'Additional protection for Geographical Indications for

Wines and Spirits'. It would be quite disturbing to imagine the theoretical possibility

of no difference given the political and negotiating capital that has been expended in

securing this hierarchy in the Uruguay Round and now in eliminating the hierarchy.

The juridical element of the difference arises from the prohibitions on the use of

indications for wines and spirits "even where the true origin of the good is indicated

or the geographical indication is used in translation or accompanied by expressions

such as "kind", "type", "style", "imitation" or the like" (Article 23.1). Indications

under Article 22 are offered protection against the misleading use of the indication

(Article 22.2(a)), deceptive use (Article 22.4), and use which might be considered

unfair competition (Article 22.2(b)).<sup>27</sup> It has been suggested that the difference between the provisions stems from establishing misleading use and acts of unfair competition (Addor and Grazioli 2002; Rangnekar 2003, pp. 25-27). <sup>(N)</sup> ~~The World~~ <sup>(S)</sup> ~~Intellectual Property Organisation~~ (2000, paragraph 44) suggest that invoking these doctrines require the mobilisation of substantial resources and the need arises each and every time that a GI is to be enforced. Lacking the "higher level of dilution style infringement" protection that wines and spirits benefit from is the shortcoming (Evans and Blakeney 2006, pp. 581-82). There is veracity in this point which also relates to the structural logic of GIs. For an indication to be considered valid it must necessarily be perceived to be so in that jurisdiction; thus, not ~~be~~ considered generic (Article 24.6). It is quite possible that certain indications are considered generic in some jurisdictions whilst perceived as valid indications elsewhere and of course in <sup>the</sup> ~~its~~ home jurisdiction. Consequently, as Taubman (2008, pp. 260-65) notes, bilateral bartering has brought sectoral interests to the fore through which stronger protection for old world GI<sup>s</sup> are traded for more permissive market access for new world producers.<sup>28</sup> Thus, precluding the functioning of either the rationality of law or acknowledging the perceptions of consumers.

<sup>16pt</sup> <sup>9pt</sup> <sup>9/10pt</sup> <sup>27</sup> The construction of Section 3 on GIs means that wines and spirits also benefit from this general protection, whilst exclusively benefiting from the 'additional protection'. There are other elements to the hierarchy as well. For instance, provisions for the multilateral register in Article 23.4 are directed exclusively at wines and were later extended to include spirits.

<sup>28</sup> In this context, he draws attention, among others, <sup>things</sup> to the 2005 US-EU bilateral treaty, which saw the upgrading of the legal status of 17 semi-generic indications into full GIs.

Does the hierarchy really matter? The answer that is provided here is more normative in its style; though suggesting that the difference matters. The rights that are granted in GIs consist of a collective right to a sign; however, through its logistical immobility there are *de facto* implications of this right into the realm of 'things'. Consequently, the difference between Articles 22 and 23 reside<sup>s</sup> in how the close to the 'borders' of the sign can a competing enterprise's sign be located without the competing enterprise actually translocating to the identified geography. Under Article 23, to labour the point, the 'borders' to the sign are quite clear and wide: the competing enterprise's sign has to be quite distant to not be considered infringing if it has failed to translocate to the identified geography. Under Article 22, the 'borders' to the sign are permeable as translated and delocalising uses are possible even when translocation by the competing enterprise has not occurred. Now, moving from the world of signage into the world of things, the issue relates to the integrity of signs as channels of information and by extension how 'things' are marked by signs. When 'things' from elsewhere start bearing confusingly similar signs, we are moving into a 'market for lemons' scenario where quality will be compromised.

Take the market for teas as an example.<sup>29</sup> As noted in the previously cited submission by Australia, the market can be differentiated into a number of segments. At one level, this occurs on the basis of the type of leaf (e.g. black, oolong, green and white) <sup>for example,</sup> and then <sup>but</sup> it also occurs on the basis of blends (e.g. English <sup>for example,</sup>).

<sup>29</sup> The discussion on Darjeeling tea in the following paragraphs is based on Rangnekar (2009, forthcoming).

for example,  
 x breakfast) and additives (e.g., Jasmine, Earl Grey). All this apart, tea is also sold by  
 y indications of origin (e.g., Darjeeling, Longjin, Ceylon), brand names of packing and  
 x blending companies (e.g., Twinning, Brook Bond, Tata Tea), and retailers' own-brand  
 for example,  
 x (e.g., Tesco, Sainsbury). Tea also bear a variety of socially generated signs indicating  
 for example,  
 conditions of origin (e.g., fair trade and organic). No doubt, there are examples of  
 teas with a range of these overlapping signs.<sup>30</sup> Another way of putting the point is  
 that the market for teas is substantially distributed across a number of overlapping  
 but also separate segments (based both on characteristics and price.<sup>31</sup> More  
 significantly, the collectivity of GIs means that a number of different enterprises are  
 able to (legitimately) display the Darjeeling logo. The exclusivity is really not that  
 exclusive and competition pretty stiff.

Competitive pressures on commodities like tea are quite compelling (Oxfam 2002).

While there is no single indicative price for tea, the FAO composite international tea  
 price has registered over 20% decrease between 1980 and 1990s itself  
 (Intergovernmental Group on Tea 2006). A number of interrelated factors have

been identified: growing export-entry of new producers (Indonesia, Vietnam, Kenya,  
 etc.), some large exporters with minimal domestic uptake (e.g., Kenya), changing

An example that this author cherishes is the worker's cooperative, EqualExchange's,

Organic Darjeeling Leaf Tea

(<http://www.equalexchange.co.uk/products/product.asp?id=70&pn=Darjeeling%20Leaf%20>

Tea; last visited 5<sup>th</sup> April 2009), carrying the Darjeeling GI logo, which is certified organic, and  
 bears the World Fair Trade Organisation's (IFAT) label as well.

Without complicating the scenario further, it is possible to consider a bigger aggregation:  
 the market for caffeine-based beverages and thus include coffee!

consumption patterns, and stagnating demand in some key markets (e.g. Russia). A

continuing concern is the growing accumulation of market/economic power at

particular points of the supply chain by blending/packing companies, auctioneers

and retailers. A World Bank study of the 1990s estimates that a mere 7 (TNCs)

control over 90% of the tea market in the West (cited in OXFAM 2002). As Das

(2003, p. 7) comments: "Except for 'single-estate' teas, Darjeeling tea is sold under

the brand name of the foreign blender/packer". Indicative of this accumulation of

economic power towards the retail end is how the price of tea is distributed across

the supply chain. One estimate is that roughly 3% of the price returns to the

labourer, while 15% is accounted for by the plantation and factory work, and 80%

is absorbed by exporters, traders, blenders and retailers (OXFAM 2002).

Trade journals report that around 40,000 tonnes of tea is sold as 'Darjeeling', while domestic data in India accounts for 10,000 tonnes of Darjeeling tea. Surely,

someone somewhere is selling something else. Starting in the 1980s, the Tea Board

has sought to register its rights in Darjeeling, developing a logo in 1983 and

registered it domestically and in a number of overseas jurisdictions (such as UK,

USA, Canada, Japan, Egypt and a number of European countries). With over 70% of

Darjeeling tea production being exported, the latter is an imperative. Domestic

protection was initially through the Trade and Merchandise Mark Act, 1958, which

led to protection of the 'logo' and the word 'Darjeeling'. However, with the

enactment of the Geographical Indications of Goods (Registration and Protection)

Act, 1999, it became possible to directly protect Geographical Indications in India

and Darjeeling tea was registered in October 2004 as the first domestic GI. Various

overseas registrations have been acquired, which includes certification mark no. 1632726 for the Darjeeling logo in the US, certification marks 1307518 (for the Darjeeling logo) and 2162741 (for Darjeeling word) in the UK, among others. The efforts to enforce IPRs in Darjeeling Tea can be <sup>categorised</sup> broadly grouped into two groups: (a) preventing trade in tea which is not drawn from the licensed plantations or those teas which are blends of non-Darjeeling and Darjeeling teas to sell under the name and/or logo of Darjeeling and (b) action against registration or use of the term/logo Darjeeling with respect to tea and/or any other product. In 1998, the Tea Board hired an international watch agency, the Belgium based Compumark, and retained Denton Wilde Sapte, a leading UK law firm, to help with the administration of the Darjeeling certification system worldwide. A number of actions have been initiated in the following countries: Bahrain, Belarus, Bangladesh, Canada, Estonia, France, Germany, Israel, Japan, Kuwait, Latvia, Lebanon, Lithuania, Norway, Oman, Russia, Sri Lanka, Taiwan, <sup>the</sup> UK and <sup>the</sup> USA. These include several instances of misuse and attempted registrations, domain name cancellations, and other third party misuses of Darjeeling. In India itself, over 20 legal notices have been served and 15 oppositions have been filed. These efforts at enforcing rights do not come cheaply: in four years (1998-2002), the Tea Board spent US\$200,000 on legal and registration fees and fighting infringement in overseas jurisdictions<sup>32</sup>. At the time of research (in 2007), many of the cases were still pending and where completed, the results have been mixed.

The funds come from, among other government sources, the Darjeeling Planters' Association, which has set up a dedicated 'Promotion and Protection Fund' (Rao, 2003).

While not yet protected in any of the home jurisdiction, the problems faced by Basmati are more telling.<sup>33</sup> To the relevant and knowing public, Basmati is distinguished by the grain's tall and slender shape, tapering at both ends but not bulging at the belly, its distinct aroma, the chalkiness of the grain and the grain's distinct elongation on cooking. In a number of export markets, the use of the term Basmati is exclusively reserved for particular long-grain aromatic rice from certain areas of India and Pakistan, such as Saudi Arabia (Bhattacharjee *et al.* 2002) and a particular testing-based system in the EU and the UK. This contrasts with the US, where Basmati (and Thai Jasmine rice) are treated as special varieties of rice (*Oryza sativa* L. scented) with no particular geographical origin (see, *General Regulations and Standards for Certain Agricultural Commodities*, § 868.213). A classification that withstood a petition filed by a coalition of civil society organisations at the US Federal Trade Commission (USFTC) and the US Department of Agriculture (USDA).<sup>34</sup> Thus, RiceTec, the company behind the failed patent application, has been able to domestically brand and sell a number of rice varieties with the names of Kasmati™ and Texmati™. An internet search identifies product imagery and brand names with

<sup>33</sup>The narration on Basmati is based on Rangnekar and Kumar (forthcoming), where the discussion extends beyond the issue of translated use and genericity to also map out the framework for a transborder system to protect Basmati. No doubt, the challenges for India and Pakistan to collectively act on Basmati are formidable on their own.

<sup>34</sup>The petitions were broader in requesting similar clarification for the term 'Jasmine'. Petitions are on file with the authors.

translated use of Basmati that evoke an association with India or Pakistan.<sup>35</sup> Building on association, an allusion between the product and South Asia is <sup>part</sup> (deliberate) of a strategy to capitalise on the reputation of Basmati.<sup>36</sup> The government of India raised these issues while challenging a series of trademarks acquired by RiceTec in the UK: Texmati™ and Kasmati™ (Nair and Kumar 2005, pp. 179-184). In challenging the Texmati™ trademark, it put together a 'mosaic of evidence' that included affidavits from culinary experts and from the London Rice Brokers. RiceTec surrendered its trademark (<sup>4</sup>*Ibid.*, p. 180). The Kasmati™ trademark is more telling, as the packaging of the rice includes a caricature of the Taj Mahal and uses the phrase 'Indian-Style

<sup>16pt</sup>  
<sup>4pt</sup> <sup>35</sup>The translated use of Basmati appears to be a constant refrain in the naming of brands or varieties in the US. In addition to <sup>the</sup> <sup>of</sup> examples <sup>to</sup> RiceTec's brands (discussed below), consider Calmati, a variety released by the California Rice Research Board in 1999, which is advertised as "California's first, early, basmati [sic] type, aromatic, long-grain variety" that will "permit grower entry into this market [and] compete in the market with basmati [sic] rice currently imported from India and Pakistan" (<<http://www.carrb.com/Variety/CM-201.htm>><sup>3</sup> [Accessed <sup>i</sup> on August 2008]).

<sup>36</sup> There is a particular construction to this labelling practice that emerges from the ECJ decision on Feta (discussed in Rangnekar and Kumar, *forthcoming*). In retaining Feta's GI status, the Commission argued that "adding text or drawings with a marked Greek connotation" is "deliberately suggested and sought as part of a sales strategy that capitalises on the reputation of the original product" [which] creates a real risk of consumer confusion". In agreeing with this view, the Court observed that "[T]he Danish legislation does not refer to 'feta' but to 'Danish feta', which would tend to suggest that in Denmark the name 'feta', by itself, has retained a Greek connotation".



Basmati'.<sup>37</sup> Again, RiceTec opted not to contest the challenge; thus, surrendering the registration and denying the possibility of a ruling. It is not easy to predict how a US court would respond to similar evidence; however, the generic status of Basmati is presently confined to that jurisdiction only.

Returning to the hierarchy between Articles 22 and 23, the issue is of location both in the space of signs and the space of geography. Recalling the 'logistical immobility' of GIs, any attempt to use the sign raises an obligation to adhere to the informational content of the indication. This establishes an obligation to 'locate' in the indicated geography to the extent that the specifications require certain production processes to occur in that geography. Permitting translated uses without an obligation to translocate is the crux of the hierarchy. The examples from Darjeeling and Basmati bear on this analysis though the problem of enforcing GIs in each instance is part of a larger problem.

## 1) Conclusion

The chapter presents another sketch on GIs by bringing together the economics of information and distinctive signs with contributions from anthropology and geography. It considers the construction of GIs and suggests an approach that appreciates its historicity and the manner in which locational specificity has emerged. This, I argue, is reflected in the construction of the rights in GIs being embedded in place: locational immobility. Thus, the GI-extension debate concerns

<sup>37</sup> For the curious-minded, a picture is reproduced in Nair and Kumar (2005, p. 181).

issues of how signs and place are reconstituted<sup>3</sup> in a sense, asking how close to a sign can another sign be located without necessarily locating in the identified geography?

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It is remarkable that *demandeurs* and detractors of GI-extension agree that there is neither a juridical basis for nor rationality in the differential treatment of wines and spirits and other products. Despite this agreement, there is no consensus on how to resolve the issue. The resolution itself is, not surprisingly, embroiled in the trading of interests and obligations that configure multilateral trade negotiations. The experience of Basmati and Darjeeling, briefly narrated here, indicates<sup>5</sup> the problems faced by producers seeking to enforce their GIs elsewhere. This is symptomatic of a deeper set of inequities in the global trade and legal regime. The growth of a series of socially generated appellations indicating conditions of origin seek to speak to some of these inequities. Thus, removing the hierarchy might also be a step in that direction.

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8/9 p<sup>2</sup>

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Table 15.10

Table 1

**Distribution of Lisbon Agreement Appellations**

Product	Registrations		Top Holder	
	Number	%age	Country	%age
Wines	470	61	France	81
Spirits	73	10	France	82
Agricultural Products	51	7	France	74
Cheeses	50	7	Czech Republic	65
Ornamental Products	33	4	Cuba*	100
Tobacco & Cigarettes	33	4	Czech Republic	82
Miscellaneous	25	3	Czech Republic	93
Mineral Water	17	2		
Beer and Malt	14	2		

Note: All percentages are rounded off.

\* Only cigarettes

Source: Assembled from data in Escudero (2001)