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Extended Protection of Wines and Spirits under TRIPS Agreement: Need, Nature and Implication

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ABSTRACT

This paper examines the need for and implications of extended protection for wines and spirits under Article 23 of the TRIPS Agreement. It analyzes the rationale behind this enhanced protection, the nature of safeguards provided, and the broader implications for international trade and cultural heritage preservation. Through a comprehensive analysis, the paper highlights the significance of geographical indications in identifying products' origin and unique characteristics. It discusses the debate surrounding the exclusive protection of alcoholic beverages and the negotiation process leading to Article 23's insertion. Furthermore, the paper explores the practical implications of GI protection on wines and spirits, emphasizing economic significance and consumer protection. Case studies of iconic products illustrate the economic and cultural value associated with geographical indications. Overall, the paper underscores the importance of balancing IP rights protection with promoting innovation and cultural preservation in the global marketplace.

Keywords: *Wines and spirits, Geographical Indications, TRIPS, Article 23.*

I. INTRODUCTION

The protection of intellectual property ("IP") rights, particularly concerning geographical indications ("GIs"), has emerged as a crucial issue in the realm of international trade. Within this landscape, the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") Agreement, established on January 1st, 1995, under the auspices of the World Trade Organization ("WTO"), plays a pivotal role in setting baseline standards for IP protection across member countries. Among the various categories of IP, geographical indications, especially concerning wines and spirits, have garnered significant attention and debate due to the enhanced protection they receive under Article 23[3] of the TRIPS Agreement.

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[3] Article 23, TRIPS. https://www.worldtradelaw.net/document.php?id=uragreements/tripsagreement.pdf&mode=download.

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This paper delves into the intricacies surrounding the need for and implications of the extended protection accorded to wines and spirits under the TRIPS Agreement, particularly focusing on the provisions of Article 23. Through a comprehensive analysis, the research aims to address fundamental questions such as why wines and spirits necessitate additional protection, the nature of the protection offered by Article 23, and the broader implications of such protection. The analysis begins by contextualizing the TRIPS Agreement within the framework of the WTO and delineating its scope and provisions regarding IP protection. It elucidates how geographical indications, including those pertaining to wines and spirits, are safeguarded under Articles 22[4] and 23 of the Agreement, respectively, highlighting the distinctions and implications of each provision.

Furthermore, the research explores the concept of geographical indications, elucidating their significance in identifying products based on their specific geographical origin and the unique characteristics associated with their production locales. It examines the international recognition of geographical indications and the implications of the TRIPS Agreement's provisions on the broader landscape of IP protection. The debate surrounding the need for heightened protection for wines and spirits, as opposed to other products, is thoroughly examined, shedding light on the underlying concerns and justifications driving this discourse. Additionally, the paper analyses the nature of protection conferred by Article 23, elucidating the legal mechanisms and implications thereof for both producers and consumers. Moreover, the research delves into the practical implications of extending geographical indication protection to wines and spirits, emphasizing its economic significance and potential ramifications on global trade dynamics. By considering various perspectives and empirical evidence, the paper aims to provide a nuanced understanding of the subject and offer insights into potential policy implications and future directions in the realm of IP protection.

A. Research Questions

a. Why is there a need to provide extra protection to wines and spirits under the umbrella of Geographical Indication?

b. What is the nature of protection conferred under Article 23 of TRIPS Agreement to wines and spirits?

c. What are the implications of extending this protection onto wines and spirits?

[4] Article 22, TRIPS. https://www.worldtradelaw.net/document.php?id=uragreements/tripsagreement.pdf&mode=download.

II. ANALYSIS

A. WTO and TRIPS Agreement

The Trade-Related Aspects of Intellectual Property Rights Agreement, or TRIPS Agreement, was founded on January 1st, 1995. The intergovernmental organisation called the World Trade Organisation is in charge of regulating and promoting global commerce. The WTO's efforts resulted in the TRIPS agreement, which lays out a set of baseline requirements for safeguarding IP that all member countries must follow. All of WTO's members are covered by this international agreement. However, it also gives nations the choice to enact stronger intellectual property rights protection if they so desire. The term 'Intellectual Property' is defined in 'Article 1.2 of the TRIPS agreement'[5] to include all categories of IP covered in Sections 1 through 7 of Part II. This means that the TRIPS Agreement also covers copyright and related rights, trademarks, patents, industrial designs, geographical indications, layout designs of integrated circuits, undisclosed information, anti-competitive practises in contractual licences, and other rights as listed under IInd Part.

The WTO Agreement on 'Trade-Related Aspects of Intellectual Property Rights' covers protection of alcoholic beverages. While wines and spirits are given additional protection under Article 23 of the TRIPS Agreement, geographical indications are protected under Article 22 of the TRIPS Agreement. Indicators that place a product's distinctive qualities, reputation, or other traits primarily attributable to its geographic origin are covered by this article. These indicators may identify a product as coming from the territory of a certain Member or a specific location or locality within that region. Article 22 of this WTO Agreement establishes a minimum standard of protection for all geographical indications, ensuring their protection to avoid confusion and unfair competition.[6] While their misuse might not fool the public, Article 23 offers geographical markers used in wines and spirits even higher protection and mandates their protection without exception. Many nations seek to give other products like food and handicrafts this higher level of protection. The agreement specifies a few exclusions, like when a place name becomes a generic or common phrase, such as "Cheddar," which today refers to a particular kind of cheese regardless of its origin in Cheddar, UK. Additionally, if a term—such as "Parma" for ham in Italy—is already registered as a trademark, it might not be eligible for geographical indication protection in another nation, such as Canada, where it is a registered

[5] Article 1.2, TRIPS. https://www.worldtradelaw.net/document.php?id=uragreements /tripsagreement.pdf& m ode=download.

[6] Peter-Tobias Stoll, Jan Busche & Katrin Arend (eds), WTO—Trade-Related Aspects of Intellectual Property Right s(2009) pp. 407–417.

trademark. Based on data received from member countries, several legal processes are used to protect geographical indications, ranging from the application of trademark law, consumer protection law, and common law to specific geographical indicators statutes.

B. Geographical Indication

Geographical Indication ("GI") is a tag/sign/label designated to products/processes having a particular and special geographical connect.[7] Geographical indications are used to identify products and services based on their precise origin, which may be related to environmental, historical, social, or cultural characteristics. It is a label that designates a product's origin from a certain nation, area, or locality and indicates the distinctive features, reputation, or characteristics that are exclusive to that location. Because of the close ties that exist between a product and its locale, just mentioning the location instantly makes one think of the product and vice versa. Each product must be distinguished from others by its place of origin, and Geographical Indication takes this into account when evaluating the product's quality in connection to its origin or production region. It must be established that the product extracts its distinctive traits & reputation from that particular location in order to qualify for Geographical Indication registration and the related tags. When a product's distinctive quality, reputation, or other good traits are connected to a particular geographic region, it is marked with a geographic indication to show where it came from.[8] It limits the number of producers permitted to use a given trademark rather than granting the right to control a specific piece of information. Geographical Indications are a way to protect traditional knowledge as long as the shared cultural legacy is kept because they cannot be transferred between separate owners. In essence, geographic indication serves as a tool to safeguard and advance regionally specific traditional knowledge.

Geographical Indications are now recognised internationally as a significant form of IP thanks to the TRIPS agreement. Current international safeguard of GIs in general is still insufficient despite this acknowledgment. Other goods and services now have lower protections against abuse and exploitation as a result of this privileged treatment of geographical indications, which has raised controversy. As a result, the World Trade Organisation ('WTO') has given GIs a lot of attention with the exception of wines and spirits, which are given stronger protection under Article 23 of the TRIPS agreement.

[7] Biswas Meghna. (2021). *Trips Agreement and Extended Protection of Geographical Indications*. 4 (2) IJLMH

[8] Ahuja,V. Protection of Geographical Indications: National and International Perspective, journal of the Indian Law Institute, (2004), 46(2), 269-287.

C. Need for high level protection of wines and spirits

Intense debate and serious concerns have been raised about the subject of giving wines and spirits exclusive protection of geographical indicators while excluding other products. The TRIPs agreement takes a hierarchical approach to the levels of safeguard for a single category of subject matter, in contrast to other types of intellectual property. However, a large number of TRIPs member countries believe this choice is unreasonable and legally dubious. As a result, the discussion about this issue is still extremely heated. Article 23 of the TRIPs agreement itself raises concerns about why only alcoholic beverages are given prolonged protection. The use of translations or attachments that would imply a comparable kind, type, or imitation of geographical indications is prohibited by this article, which provides complete protection. Understanding the justification for the increased protection for wines and spirits requires an understanding of the negotiation process that resulted in the insertion of Article 23. It addressed long-standing European worries about labels being used incorrectly to identify copycat goods unconnected to the geographical location that the label designates. Most people agree that Article 23 was the product of a compromise made during the negotiations to take into account the interests of many parties, especially the US and the EU. A foundational level of protection is extended to other products and goods, while wines and spirits receive a higher level of protection. This distinction does not imply that wines and spirits are inherently separate products; rather, it reflects the outcome of negotiations where compromises were made to reach an agreement.

D. Nature of protection under Article 23

WTO members are required to make sure that no misuse of any wine's GI tag is allowed and they are required to take appropriate legal action in order to prevent the same.[9] These legal actions would be undertaken even in cases where there is misrepresentation of origin/source of drink or if "type, "kind", "imitation" or "style" are used in reference to translated GIs. Further, under Article 23, the registration of a wine/spirit may be refused/invalidated if it is observed that the same is an attempt to identify with a certain GI tag without having the origin as that GI tag.[10] This can be done ex officio if WTO's Member's statutes allow it or upon an interested party's request. In instances where there are multiple geographical indications (GIs) sharing the same name for wines, each indication is entitled to protection under the TRIPS agreement, as outlined in Article 23. However, this protection is subject to the conditions specified in paragraph 4 of Article 22. Member countries are tasked with establishing practical measures to

[9] *Supra* Note 3.
[10] *Ibid.*

distinguish between these homonymous indications, considering factors such as equitable treatment of relevant producers and the prevention of consumer confusion. These measures aim to ensure that producers are fairly represented and that consumers are not misled regarding the origin and quality of wines bearing these geographical indications. Article 23 also provides for a mechanism regarding creation of multinational framework for registration of wine GIs in order to streamline the identification and protection process of these GIs.[11]

E. Implications of GI protection on wines and spirits

Globally, the wine industry occupies top spots in the list of most profitable businesses. The speciality and uniqueness of the raw/source material of these alcoholic beverages makes them a luxury product, valuing their markets in billions. The Champagne sparkling wine being an illustrative example where the source grapes are exclusively procured from Champagne region of France. This peculiarity has helped Champagne gain protection under the umbrella of Geographical Indication.[12] This GI tag protection conferred upon Champagne provides that only wines made within 160 kilometres of the Champagne region of France can employ the label of 'Champagne'. Other examples of GI protections include Scotch from Scotland and Tequila from Mexico.

The most practical implication of this protection under Article 23 is preventing/bypassing the need to prove that the public is mislead or there is unfair competition as is required under Article 22.[13] The interested party is permitted to prevent use of GI by products not having same origin, products used in conjunction with additional indication which indicates origin, use of translated GI, etc. without the cumbersome proof under Article 22.

III. CONCLUSION

In conclusion, the extended protection of wines and spirits under Article 23 of the TRIPS Agreement raises complex issues regarding intellectual property rights, international trade, and the preservation of cultural heritage. Through a comprehensive analysis, this paper has shed light on the need for and implications of such protection, addressing fundamental questions and exploring various facets of the debate.

The discussion surrounding the heightened protection afforded to wines and spirits vis-à-vis other products has highlighted divergent perspectives and concerns among WTO member

[11] *Ibid.*

[12] Taylor, Madeline. (2013). A Case of Champagne: A Study of Geographical Indications. Corporate Governance eJournal. 1. 10.53300/001c.6926.

[13] Jain Surbhi. (2009). Effects of the Extension of Geographical Indication: A South Asian Perspective. Asia-Pacific Development Journal, Vol. 16, No. 2, December. https://www.unescap.org/sites/default/files/apdj-16-2-3-Jain.pdf.

countries. While Article 23 offers robust safeguards against misuse and misrepresentation of geographical indications, questions persist regarding the rationale for conferring exclusive protection on alcoholic beverages. The negotiation process leading to the insertion of Article 23 underscores the delicate balance of interests and compromises inherent in international trade agreements.

Furthermore, the nature of protection under Article 23, coupled with the practical implications for producers and consumers, underscores the significance of geographical indications in preserving traditional knowledge and fostering economic development. The case studies of iconic products like Champagne, Scotch, and Tequila illustrate the economic value and cultural significance associated with geographical indications in the global marketplace.

Moreover, the implications of GI protection on wines and spirits extend beyond economic considerations to encompass broader issues of consumer protection, market competition, and international trade dynamics. By streamlining the identification and protection process of geographical indications, Article 23 facilitates market access for authentic products while mitigating the risk of consumer confusion and unfair competition.

In light of the foregoing analysis, it is evident that the protection of wines and spirits under the TRIPS Agreement serves as a catalyst for innovation, economic growth, and cultural preservation. However, ongoing discussions and collaborations among WTO member countries are essential to address remaining challenges and ensure equitable outcomes for all stakeholders involved in the production and trade of geographical indication products. Ultimately, the extension of protection to wines and spirits underscores the importance of safeguarding intellectual property rights while striking a balance between promoting innovation and preserving cultural heritage in the global marketplace. By navigating the complexities of geographical indication protection, policymakers can foster a conducive environment for sustainable development and equitable trade relations in the 21st century and beyond.

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