

CROSS-BORDER GI PROTECTION: CHALLENGES AND RAMIFICATIONS FOR BANGLADESH

Dr Mohammad Towhidul Islam*

Masrur Bin Ansari**

Abstract: With the adoption of the WTO TRIPS Agreement at the international level, the protection of geographical indications (GIs) gained momentum, with developing countries hoping to add value to geographical products, ensuring consumer interest and preventing unfair competition in the market place. However, the TRIPS-mandated GI regime suffers some inherent limitations, including the extended protection for only selected GIs and difficulties of obtaining protection in foreign jurisdictions. At the national level, due to the diverse legal and administrative practices to protect GIs, WTO members often face complications in obtaining effective protection for their cultural products beyond the national jurisdiction. Against this background, this paper analyses some of the legal and institutional challenges that confront countries like Bangladesh in ensuring cross-border protection of their GIs. The paper argues that due to the absence of any universal policy regime to ensure cross-border GI protection, the trading interests of a least developed country (LDC) like Bangladesh are seriously undermined in other neighbouring countries. In addition, the *sui generis* GI registration system of Bangladesh is still at a nascent stage, which is not sufficient to address this issue. The paper further argues that only a shared understanding between neighbouring countries, mutual consultations and political consensus would enable the maximum protection for GIs across borders. For this purpose, the paper proposes some plausible solutions, including within the existing regime, and new policies that may be used in bilateral or multilateral levels to protect GIs beyond national jurisdictions.

Keywords: Geographical Indications, TRIPS Agreement, cross-border GI protection, joint registration of GIs, homonymous GIs, *sui generis* GI registration system, WTO Dispute Settlement Panel.

1. INTRODUCTION

Due to the territorial nature of protection of industrial property, geographical indications (GIs), along with trademarks and other forms of industrial property, do not receive any 'automatic protection'. This means that the protection of a GI in a country usually requires the fulfilment of legal and administrative formalities of that country.¹ Ideally, any product which falls under the

definition of a GI in the country of origin must be protected as a GI in that country and then be eligible for protection in another WTO Member country. Bangladesh, which has historically enjoyed great diversity in areas of agriculture, natural resources, culture and traditions, has tended to be a rich location for various GIs. For its region-specific handicrafts, sweets, fruits, tea and other household and agricultural products, it offers GI protection to guard against misleading use or unfair competition within the country, enabling similar protection overseas.

It appears that, as neighbouring countries, both Bangladesh and India have shared many cultural GI products for centuries. However, some of the GI products, which are culturally and geographically associated with Bangladesh, are exclusively claimed by India, such as *Jamdani saree*, *Fazli* mangoes or *Nakshkantha* (embroidered quilt), through registering them under the Indian *sui generis* system of GI protection.² Thus, India's registration of some reputed Bangladeshi foodstuffs and handicrafts has posed a potential threat to GI protection in Bangladesh.³ In response, Bangladesh has also enacted a *sui generis* GI legislation, namely, the Geographical Indications of Goods (Registration and Protection) Act 2013, which provides a registration system for some of its reputed local and indigenous products.⁴

The Bangladeshi GI Act also provides equal protection for foreign GIs which are designated as such in the official notifications by the government. However, the Act remains silent as to the means and procedures for shared cross-border GIs. In the absence of any legislative provisions, bilateral or regional arrangements and mutual consensus between neighbouring countries, there exists a legal vacuum in cross-border GI protection in South Asia, especially between Bangladesh and India. This paper aims to analyse and explore some of the challenges that are associated with cross-border GI protection. This paper also aims to develop some policies in this regard to protect shared GIs under a mutually acceptable legal framework.

2. CROSS-BORDER GI PROTECTION AND ASSOCIATED DILEMMAS

Article 22 of the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) provides a broad definition of GIs, encompassing both indication of source and appellation of origin. According to this provision, GIs are defined as 'indications which identify a good as originating in the territory of a Member, or a

*Professor in the Department of Law at the University of Dhaka, Bangladesh.

**BCL Candidate in the Faculty of Law at the University of Oxford, UK.

¹ In common law jurisdiction, passing off action can be brought even if a GI is not registered in the territory.

² Geographical Indications of Goods (Registration and Protection) Act 1999 (Act No 48 of 1999) [hereafter Indian GI Act].

³ Mohammad Ataul Karim, 'Indian claims over Geographical Indications of Bangladesh: sustainability under intellectual property regime' (2016) 6(1) *Queen Mary Journal of Intellectual Property* 75.

⁴ Geographical Indications (Registration and Protection) Act 2013 (Act No LIV of 2013) [hereafter Bangladeshi GI Act].

region or a locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin'.⁵ The definition of GIs provided by TRIPS further expands the concept of 'appellation of origin', contained in Article 2 of the Lisbon Agreement,⁶ to protect goods which merely derive a reputation from their place of origin without possessing a given quality or other characteristics which are due to that place.

For example, *Jamdani saree* (Bangladesh) or *Basmati rice* (India) are GI products that are not place names and therefore do not possess a geographical denomination, but have a reputation due to their geographical origin. Thus, under the WTO regime on GIs, 'indication of source' has transcended beyond geographical names. It recognizes quality, reputation and other characteristics of indications of source to qualify as GIs.

Further, although the definition of GIs provided by TRIPS presumes the exclusive territoriality of a GI within the territory of each member, it is possible that the area of origin of a GI may cover regions from two or more countries. In that scenario, the issue of cross-border GI protection comes into question. For the purposes of this paper, a cross-border GI may be defined as a GI which originates from an area that covers regions, territory or locality of two or more countries where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin extending over those countries. This proposition is drawn from the language of Article 22 of TRIPS. Further, TRIPS does not explicitly prohibit the protection of cross-border GIs. Rather, the underlying object of the inclusion of GIs within the purview of TRIPS is to ensure the adequate protection for GIs within a member and in other member jurisdictions.⁷

In addition, although the majority of GIs are essentially located within the territory of a state, there are also a number of GI products across the world that have originated from the territory of two or more countries. For instance, the famous *Basmati rice* is a product originating from both India and Pakistan; there are cross-border GIs in the EU in the spirits sector, such as *Irish*

whiskey, which comes from Ireland and Northern Ireland, and *Ouzo* comes from both Greece and Cyprus.⁸

However, the dilemma regarding the definition of GIs, as envisaged under TRIPS, lies in the fact that there is no clear cut provision to determine the exact legal status of geographically or culturally shared cross-border GIs. Besides, TRIPS remains silent as to the way out for the determination of the precise geographical origin of a GI where two or more countries have competing claims over the GI. In that situation, Member countries may depend on historical and geographical evidence, objective legal requirements and shared cultural understandings to substantiate their claims over GIs across borders. In the EU as well, there is no standard towards the delimitation of the GI area, and each of the 27 Member States has its own methods and procedures to define the area. However, as a general rule, the geographical area is defined in a detailed, precise way based on evidence relating to historical, geological, agronomical or climatic conditions.⁹

Further, except for a few legislative provisions in the EU to protect cross-border GIs,¹⁰ international practices in this regard are quite heterogeneous. Most of the states with any cultural products establish a national system to protect their national GIs in the form of *sui generis* law, certification or collective marks, passing off action or other labelling system. Thus, the area of cross-border GI protection does not get much attention at bilateral or regional levels. The recognition and enforcement of shared GIs across the borders should definitely attract more attention - due to its economic value - in the multilateral trading system. But attaining such cross-border protection of GIs is a very challenging task for any country. As an LDC, Bangladesh is still grappling with issues related to IPR protection in general. Consequently, attaining shared cross-border protection for Bangladeshi GIs is not a very easy policy issue.

Given that Bangladesh has a comparative advantage in various cultural and natural products essentially attributable to its territory; it concentrates more on the national protection of GIs. In addition, where the geographical origin of a product is in doubt but both the neighbouring countries carry a shared understanding over its protection, the question of effective cross-border GI regime deserves serious consideration.

⁵ Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 ILM 1197, art 22.1 [hereafter TRIPS].

⁶ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 1958, art 2(1) defines 'appellation of origin' as the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

⁷ Peter K Yu, 'The objectives and principles of TRIPS Agreement' in Carlos M Correa (ed), *Research Handbook on the Protection of Intellectual Property under WTO Rules: Intellectual Property in the WTO*, Vol-1 (Edward Elgar 2010) 146.

⁸ David Thual and Fanny Lossy, *Q&A Manual European Legislation on Geographical Indications* (EU-China IPR2 Project, February 2011) 34

⁹ *Ibid.*

¹⁰ e.g., [Regulation 1151/12](#) of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, OJ L 343/1, art 49; [Regulation 479/2008](#) of the European Parliament and of the Council of 29 April 2008 on the Common Organization of the Market in Wine, OJ L 148/1, art 37.

3. CHALLENGES FOR BANGLADESH IN CROSS-BORDER GI PROTECTION

There are many challenges for Bangladesh in seeking to protect GIs that are also claimed by its neighbouring country, India.

3.1 Identifying cross-border GI products

The economic rationale of GIs is somewhat different from that of other forms of intellectual property protection. The main trade-off for GI protection is to protect a reputation associated with a quality attributable to a geographical area and prevent consumer confusion.¹¹ The essence of a GI is that the geographical name indicates quality, taste or other related attributes to the consumer. Consequently, the consumers heavily rely on the correlation between the geographical region and the quality attribute of a product, without which a GI would mislead the consumer and create unfair competition.¹²

Secondly, the potential financial gain and market value of GI products always prompt the manufacturers to establish exclusive sovereignty claims over such products through their government, although it may be possible to show geographical linkage between the product and the location from another country.¹³ In this scenario, it becomes a tricky issue to determine the actual place of origin of a GI product. For instance, India claims *Nakshikanta* as its own GI, but it is in no way the sole property of India. Bangladesh has also a common legacy in this regard. As India and Pakistan have made a joint claim to the GI in *Basmati* rice, Bangladesh and India can jointly claim GI in *Nakshikantha*.¹⁴

Thirdly, a *sui generis* GI legislation always tends to favour the national manufacturers of GIs given the economics and politics behind the GI protection, although the exact geographical linkage may be uncertain. Since the TRIPS definition requires members to protect GIs of goods where the quality, reputation or other characteristic of goods are attributable to their geographical origin, it is an international obligation of each WTO Member to ensure that the alleged GI product originates from the territory of that member. In case of confusion regarding the geographical location, the concerned Members may seek a mutually agreed solution.

¹¹Kal Raustiala and Stephen R Munzer, 'The Global Struggle over Geographic Indications' (2007) 18(2) *European Journal of International Law* 337.

¹² Tim Josling, 'What's in a Name? The economics, law and politics of Geographical Indications for foods and beverages' Institute for International Integration Studies (IIIS) Discussion Paper No 109 (Trinity College, Dublin, 11 November 2005) 3.

¹³ Michael Blakeney, *Geographical Indications and TRIPS*, University of Western Australia-Faculty of Law Research Paper No 2012-09, 7.

¹⁴ Mohammad Towhidul Islam and Md. Ahsan Habib, 'Introducing Geographical Indications in Bangladesh' (2013) 24(1) *Dhaka University Law Journal* 51.

3.2 Doha Extension Debate

Since the adoption of the controversial Article 23 of TRIPS on the additional protection for wine and spirits, the proponents of the GI extension are arguing that the level of protection provided by Article 22 of TRIPS for geographical indications of products other than wine and spirits is not sufficient.¹⁵ They further argue that there is no substantive justification for providing two different levels of protection for geographical indications in TRIPS. Besides, the geographical origin, from a commercial point of view, has the same importance for all products.¹⁶

However, the opponents to the proposals for an extension of the protection of GIs for wines and spirits under TRIPS to all products argue that the advantages of Article 23 protection were overstated and that the proposals insufficiently addressed the costs and burdens of this extension. It has also been asserted that 'these new costs and burdens include administration costs, trade implications for producers, increased potential for consumer confusion, potential producer conflicts within the WTO Members and a heightened risk of WTO disputes.'¹⁷ The resulting debate finds an important development when an understanding was reached in which the question of GIs was included within the Doha Ministerial Declaration adopted on 14 November 2001.¹⁸ But to date, no compromise has been reached on the extension of the protection under Article 23 and the Members of the WTO remain divided on this issue.

The Doha Round agenda for extension of additional protection of GIs to products other than wines and spirits has already been translated into the GI Act of Bangladesh.¹⁹ But, to ensure a uniform and clear

¹⁵ See, for example, WTO, Council for Trade-Related Aspects of Intellectual Property, Proposal from Bulgaria, Cuba, the Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela, IP/C/W/247/Rev1, 3-4.

¹⁶ *ibid.*

¹⁷ See WTO, Council for Trade-Related Aspects of Intellectual Property Rights, Implications of Article 23 Extension, Communication from Australia, Canada, Guatemala, New Zealand, Paraguay, the Philippines and the United States, IP/C/W/360, 2-7.

¹⁸World Trade Organization, Ministerial Declaration, Adopted on 14 November 2001, Wt/Min(01)/Dec/1 (20 November 2001, Doha) 4, Paragraph 18 provides: With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this declaration.

¹⁹ Bangladeshi GI Act, s 28(d) provides 'A registered geographical indication shall be infringed by a person if he, not being an authorized user thereof:..... uses any other geographical indication to such goods not originating in the

mandate from other members, conducting negotiations on extension is a pivotal aspect for providing cross-border GI protection across the world since TRIPS requires Members to follow non-discrimination principles. Besides, the ongoing negotiation on extension may be used by the Members to bring a plausible solution to the cross-border GI issues although the Doha Declaration did not expressly mandate such agenda. Due to the lack of a multilateral forum for negotiation on this aspect of GIs, Doha Round may bring this issue within the purview of its agenda. However, Members are yet to reach consensus on whether to extend special protection regime under TRIPS Article 23 beyond wines and spirits. So, these controversial issues need further clarification at the WTO.

3.3 Relationship between GIs and Trademarks

Drawing a harmonized relationship between trademarks and GIs for the purpose of cross-border GI protection is a pivotal aspect. Although TRIPS sets certain standards of protection for GIs, it is up to Members to implement them in a way they deem suitable. This leads to conflicting views on how to implement GI protection between the EU and the US. The EU follows a *sui generis* approach to favour a more extensive GI protection than the US.²⁰ In the US, protection of GI is fundamentally different from that practiced by the EU and the same GIs are instead protected under the trademark law.²¹ Thus the US does not recognize GIs as a separate class of intellectual property but provides protection mainly through certification marks or collective marks established under the trademark law. This conflicting approach may sometimes make it difficult to seek GI protection in foreign jurisdiction where the same GI is treated as prior trademark.

In *European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*,²² the panel elaborately discussed the relationship between prior trademarks and GIs and found that under TRIPS regime both GI and trademarks may co-exist or enjoy exclusivity depending on the facts and circumstances of the case. In this ruling, the panel affirmed TRIPS classification of GIs as an independent intellectual property right and endorsed the European principle of coexistence between trademarks and GIs with all but the most famous of prior trademarks having

place indicated by such other geographical indication or uses other geographical indication to such goods even indicating the true origin of such goods or uses other geographical indication to such goods in translation of the true of origin or accompanied by expression such as “kind”, “style”, “imitation” or the like expression.’

²⁰ See, e.g., Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs; Regulation (EEC) No 2082/92 on traditional recipes.

²¹ See Lanham Act 1946 [US].

²² *European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs* WT/DS174/R, 15 March 2005; see pages 115-141 of the ruling for detail discussion [hereinafter EC- GI Dispute].

rights. The panel also found that Article 14(2) of the EU Regulation was a ‘limited exception’ permitted by Article 17 of TRIPS because it only allows use by those producers who are established in the geographical area of products that comply with the specification.²³ Thus, the panel categorically recognized the superiority of the prior trademarks in relation to GIs so far as TRIPS is concerned.

Upon the consideration of this case scenario and the subsequent ruling of the panel, it is not clear whether pre-existing GIs which, although not formally recognized by law, but practised for ages, should be overtaken by trademarks solely on the ground that such individual rights are recognized by law prior to these collective cultural rights. In addition, GI jurisprudence is highly sound and compatible with moral and philosophical institutions since the proposition of community or collective rights builds in the idea of ‘personal but unselfish’ property rights within the community, which advance the common good.²⁴ This is an important ethical question which needs to be answered before placing any issue on cross-border GI protection.

On the other hand, having a separate GI registration system in place may give rise to disputes concerning the registration or use of trademarks which are in conflict with the existing or registered GIs. For example, in Bangladesh, the registration of trademarks can be opposed if it can be shown that the trademark contains or consists of a GI.²⁵ Thus, in *Scotch Whisky Assn v Glenora Distillers International Ltd*,²⁶ the Canadian Federal Court considered the issue where the Scotch Whisky Association filed a statement of opposition against the application by the Glenora Distillers International to register the trademark ‘GLEN BRETON’ for single malt whisky in Canada. The Scotch Whisky Association contended that the word ‘GLEN’ is of Scottish origin and when used in association with whisky, would connote the Scotch whisky, which has been registered as a GI in Canada. It further asserted that such

²³ Ibid.

²⁴ Mohammad Ataul Karim and Mohammad Ershadul Karim, ‘Protection of ‘handicraft’ as geographical indications under municipal law, TRIPS and BTAs vis-à-vis CETA: ‘Bangladeshi Jamdani’ as case study’ (2017) 7(1) *Queen Mary Journal of Intellectual Property* 49, 51.

²⁵ Bangladeshi GI Act, s 21 reads as follows: (1) notwithstanding anything contained in the Trademarks Act, 2009 (Act No. XIX of 2009), the registrar may, *suo-moto* or on the request of an aggrieved party or any party having interest therein, refuse or invalidate the registration of a trademark, if (a) the trademark containing or consisting of a geographical indication with respect to goods or services related thereto, not originating in the territory of a country, or a region or locality in that territory for which such geographical indication is being utilized; and (b) such use of geographical indication in the trademark, for such goods or services, is of such a nature so as to confuse or mislead the people as to the actual place of origin of such goods or services; (2) The Government may, by notification in the Official Gazette, provide additional protection to some goods specifying their names.

²⁶ (2008) 65 CPR (4th) 441.

a connotation had existed in Canada for over a hundred years.

At the first instance, the lower court ruled against the Scotch Whisky Association as there was insufficient evidence to show that Canadian users and purchasers of whisky have been educated to associate the word 'GLEN' solely with the Scotch whisky. However, on appeal to the Federal Court, the decision was overturned and the opposition to the registration of the trademark succeeded.

Therefore, considering the above jurisprudence, it can be said that ensuring cross-border protection of GI in countries where the same GI is protected as a trademark, collective or certification mark is very difficult. So, the resolution of conflicts between trademark protection and GI protection in the cross-border market place is very crucial.

3.4 Developing, Registering and Enforcing Cross-Border GIs

Ensuring adequate legal means to protect and enforce cross-border GIs is the greatest challenge for countries like Bangladesh. Devising an appropriate policy and its implementation depends on the political and economic considerations of the concerned states. Besides, the overall implementation and enforcement of IPRs regime and institutional capacity of a particular country is closely associated with the cross-border GI protection. This cross-border protection for any IPR intrinsically involves a challenging process. It also involves huge administrative costs and represents a huge enforcement burden for the concerned states.²⁷

For countries like Bangladesh, ensuring national implementation of the GI registration system and its international recognition and enforcement is a daunting task. This protection standard has to be read with other relevant provisions of TRIPS, such as the basic principles on trademarks, on procedures for the acquisition and maintenance of rights and on enforcement. For example, in respect of GIs, members have to respect the requirements of national and MFN treatment, in the same way as for other categories of IPRs. The WTO panel has confirmed that those obligations apply in respect of the availability of GI protection, including application and opposition procedures.²⁸ The rules of TRIPS on GIs reflect this diversity and complexity of systems, as seen in the language used in certain provisions of the GI Section.²⁹

Secondly, under the TRIPS regime, Members are free, but not obliged, to implement stricter enforcement procedures and remedies, provided that they are TRIPS-

consistent.³⁰ Members are also free to determine the appropriate method of implementing TRIPS within their own legal system and practice. Because of this standard setting, at the national level, different mechanisms are followed by countries to protect GIs including *sui generis* system, trademarks, certification marks, collective marks or unfair competition law.³¹ This creates inconsistencies between the modes of protection of GIs within the countries of the WTO. In order to protect cross-border GIs within and across borders, a more uniform, consistent and flexible enforcement system is required.

4. EXISTING LEGAL MEANS FOR CROSS-BORDER GI PROTECTION

4.1 Scenarios in conflicting cross-border GI claims

The traditional process of GI protection is that any product that falls under the definition of GI in the country of origin must be protected as GI in that country. This protection in the home country gives the product formal recognition and makes it eligible to get protection in other countries. Further, Members of TRIPS must give 'legal means' to interested parties to protect and defend GI of their products against any misleading use and unfair competition.³² Members are also required, either ex officio or at the request of interested parties, to refuse or cancel trademark registration containing GI if the impugned registration or application for registration gives false origin or attribution.³³ So, in a given situation where two or more countries seek exclusive right over any GI, such country, after getting GI registration at home, has to make an application for the cancellation of competing GI protection under the domestic legal structure of a foreign country.

For instance, against the Indian registration of *Uppada Jamdani saree* of the tiny fishery village Uppada in Andhra Pradesh as a GI product, a state owned corporation, namely, the Bangladesh Small and Cottage Industries Corporation (BSCIC) – the recipient of GI for *Jamdani saree* in Bangladesh,³⁴ has to make an application under Section 27 of the Indian GI Act of 1999 for the cancellation of *Uppada Jamdani* from the official register in India³⁵ since the name *Jamdani* is exclusively

³⁰ TRIPS Agreement, art 1.1.

³¹ Islam and Habib (n 14) 51.

³² TRIPS, art 22.2.

³³ TRIPS, art 24.3.

³⁴ *Jamdani* has already been registered as first ever GI product in Bangladesh; see Geographical Indication (GI) Journal No 01, March 2016, Published on 4 August 2016, Department of Patents, Designs and Trade Marks, Government of Bangladesh.

³⁵ Indian GI Act, s 27 reads as follows: (1) on application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a geographical indication or authorized user on the ground of any contravention, or failure to observe the condition entered on the register in relation thereto; (2) any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient

²⁷ TW Dange, 'Harnessing the Development of Potential Geographical Indications for Traditional Knowledge Based Agricultural Products' (2010) 5(6) *Journal of Intellectual Property Law & Practice* 441, 445.

²⁸ EC –GI Dispute.

²⁹ Antony Taubman, Hannu Wager and Jayashree Watal (eds), *A Handbook on the WTO TRIPS Agreement* (CUP, 2012) 77.

being claimed by Bangladesh and is also recognised by the UNESCO as the heritage of Bangladesh.³⁶ The decision of the Registrar of Geographical Indications of India will determine further administrative and legal battles to delist *Uppada Jamdani* from the official register. If either party chooses to appeal the decision of the Registrar then, according to Section 31 of the Indian GI Act, the appeal shall go to the Appellate Board constituted under the Act. Since civil courts are barred from jurisdiction to entertain further claims, the decision of the Appellate Board shall be final.³⁷

When the remedies are exhausted in such foreign jurisdictions and if the stakeholders still believe the dispute involves a violation of trade rules, it may be a matter for them to resort to the WTO's dispute settlement system.³⁸ However, interest holders who are mainly private parties have no standing in the WTO procedures; for this matter they must rely on their government to bring or defend an action, or to intervene as a so-called 'third party' – a Member of the WTO who is not a party to the dispute but 'has a substantial trade interest in the matter at dispute.'³⁹ In the above scenario, after the Appellate Board's decision, if *Uppada Jamdani* still remains registered as a GI, the Bangladeshi stakeholder i.e. BSCIC – the state owned corporation can resort to the WTO's dispute settlement system through the Government of Bangladesh.⁴⁰

4.2 Scenario in Trans-Boundary Shared GI

The recent Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications which was adopted in 2015 extends the Lisbon system of appellation of origin to GIs and such protection extends

cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

³⁶ Decision of the Intergovernmental Committee: 8.COM 8.4 <<https://ich.unesco.org/en/decisions/8.COM/8.4>> accessed 03 June 2017.

³⁷ Indian GI Act, s 32 specifically bars the jurisdiction of civil courts in this regard.

³⁸ For a detail analysis of the WTO dispute settlement system in cross-border GI disputes, see Mohammad Towhidul Islam, 'Protecting Jamdani with Geographical Indications' *The Daily Star* (Dhaka) 6 November 2014 <<http://www.thedailystar.net/protecting-jamdani-with-geographical-indications-48901>> accessed 26 April 2017.

³⁹ Understanding on Rules and Procedures Governing the Settlement of Disputes, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 33 ILM 1197, art 10.

⁴⁰ The dispute settlement process has three phases. In the first phase, Members must enter into a mandatory consultation which lasts at least sixty days. If it fails, in the second stage the complaining Member may request the Dispute Settlement Body (DSB) to establish a 'Panel', which is conventionally comprised of three members who are not citizens of the contending parties. A party to the dispute may appeal to the Appellate Body, if it is unhappy with the panel's decision. Third phase is implementation of the Panel or Appellate Body's decision by the DSB.

further over trans-border geographical area of origin. Article 2.2 of the Geneva Act provides-

A geographical area of origin as described in paragraph (1) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, or a part thereof.

For this purpose, Article 5.4 of the Act lays down the procedure for joint application in the case of a trans-border geographical area. It provides that 'in case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority.' Thus, the recent modification of the Lisbon Agreement paves the way for a single registration of trans-border GI under the auspices of the Lisbon Union. However, this Act is yet to come into force.

At the domestic level, as in force in Bangladesh and India, any potential cross-border GI, such as *Fazli* mango, has to be protected with separate and independent registration both in Bangladesh and India. Under this procedure, each country would register *Fazli* as a GI under its respective domestic law, which would result in separate GI in the name of 'Bangladeshi *Fazli*' and 'Indian *Fazli*'. But this separate application process is quite lengthy, costly and cumbersome. In addition, it may make the GI product semi-generic in other countries leading to losing the protection in those countries.⁴¹

Most importantly, the laws of both India and Bangladesh recognize the concept of homonymous GIs.⁴² A homonymous GI carries a similar nomenclature which is spelled or pronounced alike, but may otherwise be qualified to get independent protection.⁴³ So, for

⁴¹ Dwijen Rangnekar and Sanjay Kumar, 'Another Look at Basmati: Genericity and the Problems of a Transborder Geographical Indication' (2009) *Journal of World Intellectual Property* 1.

⁴² India GI Act, s 10 reads as follows: Subject to the provisions of Section 7, a homonymous geographical indication may be registered under this Act, if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indications and the need to ensure equitable treatment of the producers of the goods concerned, that the consumers of such goods shall not be confused or misled in consequence of such registration; similarly Bangladeshi GI Act 2013, s 7 provides: (1) A homonymous geographical indication of goods may be registered under this Act; (2) In case of registration of homonymous geographical indication for the same class of goods, an equitable treatment and protection to every producer of such goods shall be accorded for each indication.

⁴³ Bangladeshi GI Act, s 2(16) provides: homonymous geographical indication means the geographical indication of such goods which bear similar name.

instance the word *Fazli* in both countries is pronounced alike for mangoes of a specific quality and taste. Therefore, it may be protected under both the countries as a homonymous GI with the condition that the consumers will not be misled by such use and it must fulfil the required elements of a GI.⁴⁴ But the system of homonymous GI registration is a very intricate one since the same quality, characteristics and other attributes of the product may not be available in both GIs. Further, the consumers may be confused by such use which would create unfair competition in the market.

5. RAMIFICATIONS FOR BANGLADESH IN CROSS-BORDER GI PROTECTION

Article 24.9 of TRIPS categorically provides that ‘there shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.’ So, to invoke a violation of TRIPS, a Member concerned must first protect its GI, whether under a *sui generis* law or otherwise. Alternatively, anyone can use a GI if it is not legally protected in its country of origin, or it has become generic or otherwise ‘has ceased to be protected’ in its country of origin. For example, India could not approach the WTO Dispute Settlement System or any member of the WTO in the absence of protection in India of *Basmati* rice as a GI.

In Bangladesh, GI registration is not compulsory.⁴⁵ An unregistered GI holder can bring an action for passing off to protect a GI against a misleading or fraudulent GI, as is the case in other common law jurisdictions.⁴⁶ However, where there is a legal question regarding the cross-border protection of GIs where a country confers protection to unregistered GIs through the common law doctrine of passing off,⁴⁷ another competing country’s claim over such GI in the former country may present certain challenges. Since the competing country may argue that such GIs are not protected or have ceased to be protected in their country of origin, or have fallen into disuse in that country, such unregistered GI may lose its protection. Besides, the remedy under passing off action is not beneficial to the litigant because of its cumbersome process of proof and legal uncertainty.⁴⁸

⁴⁴WIPO, *Geographical Indications an Introduction* <http://www.wipo.int/edocs/pubdocs/en/geograp_hical/952/wipo_pub_952.pdf>34, accessed 24 May 2017.

⁴⁵ Bangladeshi GI Act, s 6.

⁴⁶ *Ibid*

⁴⁷*Reckitt & Colman Prods Ltd v Borden Inc* [1990] RPC 341 (HL) 406, the essential elements of a traditional passing off claim as laid down in this case are: (1) goodwill- that refers to the consumer’s desire to purchase goods because of their association with a mark, (2) misrepresentation as to source, and (3) a likelihood of damage to goodwill as a result of the misrepresentation.

⁴⁸ Mary LaFrance, ‘Passing Off and Unfair Competition: Conflict and Convergence in Competition Law’ (2011) *Scholarly Works*,

Moreover, the ever expanding horizon of globalization is now affecting the claimed source of traditional practices and indigenous lifestyles. Protection of traditional knowledge through GIs should therefore be considered to be an important mechanism to prevent bio-piracy and similar unfair practices. The GI Act of Bangladesh gives new impetus to this policy advocacy to protect domestic GIs. Besides, section 20 enunciates special provisions for WTO Member countries. This provision obliges the Bangladesh government, by notification in the official gazette, to accord to citizens of any Member country similar privileges as granted to its own citizens in respect of registration and protection of geographical indication of goods only if that country provides the same privileges to citizens of Bangladesh.⁴⁹ The Government may, by notification in the Official Gazette, declare such a country as Paris Convention State in order to comply with the treaty, convention or arrangements made with the country. This provision incorporates the national treatment principle and provides equal protection for foreign GIs. From the language of section 20 of the Act, although it is not clear whether the Act seeks national treatment or the reciprocity principle so far as the protection of foreign GIs is concerned; the subsequent GI Rules 2015 made it clear that the provision of section 20 ensures national treatment for foreign GIs.⁵⁰ Since the GI Rules made specific provisions for the registration of foreign GIs in line with the provisions of TRIPS, the requirement of the section regarding the official notifications by the government seems not to offend the national treatment principle of TRIPS.

However, the Act does not lay down the procedure for obtaining registration for the shared cross-border GI. For Bangladesh, an LDC with a strong agricultural sector, artistry and traditional knowledge, the GI Act can be an extremely important public policy tool for economic development and the livelihood of farmers.⁵¹ Besides, some traditional cultural expressions (TCEs), such as handicrafts may also be protected by geographical indications.⁵² So, in the absence of separate law to protect TCEs, indigenous and traditional tangible cultural

Paper 784, 1415 <<http://scholars.law.unlv.edu/facpub/784>> accessed 22 April 2017.

⁴⁹ Bangladeshi GI Act, s 20 reads as follows: If any country which is a member of Paris Convention or World Intellectual Property Organization (WIPO) accords to citizens of Bangladesh similar privileges as granted to its own citizens in respect of registration and protection of geographical indication of goods, the Government may, by notification in the Official Gazette, declare such country as Paris Convention State in order to comply with the treaty, convention or arrangement made with the country.

⁵⁰ GI Rules 2014, r 5 provides for the procedure of foreign GI registration in Bangladesh. In case of foreign GI applications, an accredited certificate, stating that such GI has been duly registered in a foreign country, must be accompanied with the GI application.

⁵¹ Dwijen Rangnekar ‘The Law and Economics of Geographical Indications: Introduction to Special Issue of The Journal of World Intellectual Property’ (2010) 13(2) *Journal of World Intellectual Property* 77–80.

⁵² See WIPO, Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions, WIPO/GRTKF/IC/5/3, 52.

expressions like handicrafts may also be protected as geographical indications under this Act.

Therefore, to boost the national economy through efficient GI regime, Bangladesh needs to adopt appropriate provisions in its GI regime to accommodate cross-border issues. In addition to improving its GI regime, Bangladesh can join the recent Geneva Act of the Lisbon Agreement which provides for a uniform registration system for appellations of origins and GIs.

6. CROSS-BORDER GI PROTECTION: ONE WAY FORWARD

The current legal scenario across the world seems to be quite uncertain for protecting cross-border GIs. Therefore, considering the above challenges and ramifications with regard to cross-border GI protection, there is a pressing need to outline an appropriate policy and/or legislative guidelines for countries like Bangladesh. In this regard, the following policy options may be recommended in light of the relevant international practices.

6.1 Introducing joint ownership in cross-border GIs

So far as the protection of cross-border GI is concerned, recognizing joint ownership of competing claims of two or more countries over any GI product under an institutional mechanism is the most viable option to ensure joint protection of GIs and accelerate the commercialization in third countries. The EU, following this approach, provides a system for cross-border GI registration for agricultural products and foodstuffs⁵³ and for wines⁵⁴, but not for spirits.⁵⁵ In such a case, several groups within different territories may lodge a joint application within the EU centralized system. Now under the EU system, GI registrations can be obtained on

⁵³Regulation 1151/12 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, OJ L 343/1, art 49 provides: applications for registration of names under the quality schemes referred to in Article 48 may only be submitted by groups who work with the products with the name to be registered. In the case of a 'protected designations of origin' or 'protected geographical indications' name that designates a trans-border geographical area or in the case of a 'traditional specialties guaranteed' name, several groups from different Member States or third countries may lodge a joint application for registration.

⁵⁴ Regulation 479/2008 of the European Parliament and of the Council of 29 April 2008 on the Common Organization of the Market in Wine, OJ L 148/1, art 37 reads as follows: 1. Any interested group of producers, or in exceptional cases a single producer, may apply for the protection of a designation of origin or geographical indication. Other interested parties may participate in the application; 2. Producers may lodge an application for protection only for wines which they produce; 3. In the case of a name designating a trans-border geographical area or a traditional name connected to a trans-border geographical area, a joint application may be lodged.

⁵⁵Regulation 1151/12 is not applicable to spirit drinks; see art 2.2 of the Regulation.

the basis of an application filed with the EU Commission via the competent national authorities.⁵⁶ The application must include a product specification which describes all relevant factors for the GI such as the territory, the product and its raw materials, the methods used etc.⁵⁷

The African Regional Industrial Property Organization (ARIPO) has also adopted a protocol for protection of cross-border traditional knowledge and expressions which may be used as a guideline for cross-border GI protection at regional level. The ARIPO Swakopmund Protocol of 2010, in Article 24, provides a useful option to protect traditional knowledge and expressions at regional level which may be used in cross-border GI protection.⁵⁸ Under this formula, the holders of a foreign traditional knowledge shall enjoy same level of protection as holders of national traditional knowledge if it corresponds with the customary laws and protocols applicable to the traditional knowledge and expressions of folklore of that region.

Ideally, the issue of joint registration should be implemented at bilateral levels through amicable and friendly discussion in diplomatic, ministerial or commercial forums. So far as the institutional mechanisms are concerned for cross-border GI protection, an inter-governmental body may jointly take initiatives to register GIs. Alternatively, a joint commission of two countries may seek legal protection in third countries. However, the actual implementation of this system in the South Asian context is very difficult since it requires two or more countries to arrive at a shared cultural notion of a GI and to deal with GI rights in third countries. Due to the lack of social, political and diplomatic consensus in a cross-border scenario in South Asia, the concept of joint registration of GI seems to be

⁵⁶ Peter Munzinger, 'Blue jeans and other GIs: an overview of protection systems for geographical indications' (2012) 7(4) *Journal of Intellectual Property Law & Practice* 283-290.

⁵⁷ibid.

⁵⁸Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization (ARIPO), Adopted by the Diplomatic Conference of ARIPO at Swakopmund (Namibia) on August 9, 2010, art 24 reads as follows: 24.1. Eligible foreign holders of traditional knowledge and expressions of folklore shall enjoy benefits of protection to the same level as holders of traditional knowledge and expressions of folklore who are nationals of the country of protection, taking into account as far as possible the customary laws and protocols applicable to the traditional knowledge or expressions of folklore concerned; 24.2. Measures should be established by the national competent authority and ARIPO Office to facilitate as far as possible the acquisition, management and enforcement of such protection for the benefit of the holders of traditional knowledge and expressions of folklore from foreign countries; 24.3. ARIPO may be entrusted with the task of settling cases of concurrent claims from communities of different countries with regard to traditional knowledge or expressions of folklore; to this end, ARIPO shall make use of customary law, local information sources, alternative dispute resolution mechanisms, and any other practical mechanism of this kind, which might prove necessary.

quite challenging. For example, both India and Pakistan have been aware of the need for joint registration of *Basmati* rice to protect it from the foreign conglomerates, but to date they have failed to arrive at any consensus in this regard.

6.2 Protection through bilateral or regional agreements

Like other sectors, IPR protection is also rapidly evolving in Free Trade Area agreements (FTAs) to become WTO-plus or in this case TRIPS-plus.⁵⁹ To cope with the wave of FTAs, Bangladesh has also signed bilateral investment treaties (BITs) with other countries keeping in mind its developmental needs.⁶⁰ Thus, mutual recognition of national GIs may be encouraged through bilateral or plurilateral agreements notified to the WTO. This would make the shared GI protection much easier in both the countries. These agreements may be open to expansion to other Members.

Besides, in the case of conflict, Member countries of these agreements may avail themselves of an independent arbitration system. This system would bring uniformity within the framework of GI protection across borders. For instance, the EU GI Regulation on agricultural products and foodstuffs extends the protection of GIs to the EU and other foreign countries adopting the national treatment principle.⁶¹ Under the Regulation, non-EU producers may also apply for protection in the EU jurisdiction without the reciprocity of protection in their national jurisdiction. Following this Regulation, Thailand has already secured the registration of its *Jasmine* rice in the EU.⁶²

Further, Bangladesh and the USA signed the Trade and Investment Cooperation Framework Agreement (TICFA) in 2013, to explore and strengthen mutual trade and investment bilaterally. The Agreement specifically recognizes that both states will be obliged to protect and enforce IPRs as protected by their domestic laws and shall be bound to follow the norms set by international treaties like TRIPS.⁶³ Although Bangladesh and the US protect their GIs in different ways – the former through a *sui generis* system and the latter through the trademark law – Bangladesh may reap the benefits for GIs under the TICFA since both the countries are obliged to protect IPRs of each other in their respective

jurisdictions.⁶⁴ However, the enunciation of IPRs protection within the TICFA can be used by the IPRs maximalist USA to exert pressure on Bangladesh to maximize IPRs protection which may have TRIPS-Plus negative impact on Bangladesh in sectors like food, agriculture and public health.⁶⁵

6.3 Conferring cross-border GI protection under the existing regime

The recent modification of the Lisbon Agreement paves the way for a single registration of trans-border GI under the auspices of the Lisbon Union. It extends the protection over GIs in addition to appellation of origins. So, without any further arrangement, Bangladesh may confer and obtain protection to cross-border GI by acceding to the Lisbon Agreement. The Lisbon System offers a means of obtaining protection for an appellation of origin or GIs in the contracting parties to the Lisbon Agreement through a single registration.

The Lisbon System established under the Agreement, is the counterpart of the Madrid and also administered by the WIPO. Article 3 of the Lisbon Agreement contemplates wide protection for appellation of origin enumerating that “protection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as “kind,” “type,” “make,” “imitation”, or the like.” So if an LDC like Bangladesh becomes a party to it, a single registration would protect Bangladeshi GIs across the Lisbon umbrella. This would be tremendously helpful for Bangladeshi GIs to be protected in foreign jurisdictions which would otherwise be difficult for Bangladesh due to cost and other relevant factors.

As a Member of the WTO, Bangladesh is bound to follow the national treatment and most-favoured nation principles as adopted in the GI Act of Bangladesh which makes it possible to confer cross-border GI protection across borders. For this purpose, the Act needs to provide a detailed procedure for obtaining registration of shared cross-border GI. Alternatively, it can also enter bilateral or plurilateral arrangements with neighbouring countries with regard to shared GIs in order to confer and secure GI protection in third countries.

7. CONCLUSION

Cross-border GI protection requires maintaining an appropriate balance between national sovereignty-based policy considerations and a non-discriminatory approach with regard to foreign rights holders. Due to the fact that the minimum standards of protection for GIs applicable to all products under TRIPS fails to mention cross-border protection - and nor does the

⁵⁹ Sell defines ‘TRIPS-Plus’ as “provisions that either exceed the requirements of TRIPS or eliminate flexibilities in implementing TRIPS”. Susan K Sell, ‘TRIPS-Plus free trade agreements and access to medicines’ (2007) 28(1) *Liverpool law review* 41-75.

⁶⁰ See generally, Trade and Investment Co-operation Framework Agreement (TICFA) between Bangladesh and USA; the Cooperation Agreement between the European Community and the People’s Republic of Bangladesh.

⁶¹ EC Regulation 510/2006, a detailed application procedure is enumerated in article 5 of the Regulation.

⁶² Chuthaporn Ngokkuen and Ulrike Grote, ‘Challenges and Opportunities for Protecting Geographical Indications in Thailand’ (2012) 19(2) *Asia-Pacific Development Journal* 93, 101.

⁶³ Trade and Investment Cooperation Framework Agreement (TICFA) 2013, preamble and art 5.

⁶⁴ Ataul Karim and Ershadul Karim (n 24) 62.

⁶⁵ Mohammad Towhidul Islam and Md. Ahsan Habib, ‘TICFA and Intellectual Property Rights: Implications and Challenges for Subsistence Needs in Bangladesh’ (2013) 24(2) *Dhaka University Law Journal* 49.

controversial provision on extended protection for GIs for wines and spirits- there exists legal uncertainty in GI protection across borders. In order to ensure a comprehensive and efficient cross-border GI protection regime, there seems to be a need for further negotiations and mutual discussions. The present article shows that under the existing framework, it is possible to confer cross-border GI protection by complying with the traditional non-discrimination principle of the WTO. The article has argued that the extension of additional protection of TRIPS to all products is a pressing need to enunciate a uniform and flexible legal regime for GI protection.

Although there exists variety in the approaches of GI protection across the world, WTO Members should come under the shared notion of consumer protection against unfair competition through the use of deceptive or misleading GIs. Similarly, the wide range of traditional and cultural products should be given GI protection in order to reap the maximum economic benefits from the multilateral trading regime. To serve this goal, there needs to be a balanced and effective cross-border GI protection regime. In this regard, the paper has tried to devise some additional ways and practices which may work as guidelines in the future policy development for appropriate legal regime for cross-border GI protection especially in countries like Bangladesh.

BIBLIOGRAPHY

Blakeney, Michael, *Geographical Indications and TRIPS*, University of Western Australia-Faculty of Law Research Paper No. 2012-09.

Dange, TW, 'Harnessing the Development of Potential Geographical Indications for Traditional Knowledge Based Agricultural Products' (2010) 5(6) *Journal of Intellectual Property Law & Practice* 441.

Geographical Indication (GI) Journal No 01, March 2016, Published on 4 August 2016, Department of Patents, Designs and Trade Marks, Government of Bangladesh.

Islam, Mohammad Towhidul and Md. Ahsan Habib, 'Introducing Geographical Indications in Bangladesh' (2013) 24(1) *Dhaka University Law Journal* 51.

Islam, Mohammad Towhidul, 'Protecting Jamdani with Geographical Indications' *The Daily Star* (Dhaka, 6 November 2014) <<http://www.thedailystar.net/protecting-jamdani-with-geographical-indications-48901>> accessed 26 April 2017. Islam, Mohammad Towhidul and Md. Ahsan Habib, 'TICFA and Intellectual Property Rights: Implications and Challenges for Subsistence Needs in Bangladesh' (2013) 24(2) *Dhaka University Law Journal* 49.

Josling, Tim, 'What's in a Name? The economics, law and politics of Geographical Indications for foods and

beverages' Institute for International Integration Studies (IIIS) Discussion Paper No 109 (Trinity College, Dublin, 11 November 2005).

Karim, Mohammad Ataul and Mohammad Ershadul Karim, 'Protection of 'handicraft' as geographical indications under municipal law, TRIPS and BTAs vis-à-vis CETA: 'Bangladeshi Jamdani' as case study' (2017) 7(1) *Queen Mary Journal of Intellectual Property* 49.

Karim, Mohammad Ataul, 'Indian claims over Geographical Indications of Bangladesh: sustainability under intellectual property regime' (2016) 6(1) *Queen Mary Journal of Intellectual Property* 75.

LaFrance, Mary 'Passing Off and Unfair Competition: Conflict and Convergence in Competition Law' (2011) *Scholarly Works*, Paper 784, 1415 <<http://scholars.law.unlv.edu/facpub/784>> accessed 22 April 2017.

Mukherjee, Utsav, 'A Study of the Basmati Case (India-US Basmati Rice Dispute): The Geographical Indication Perspective' available at SSRN <<https://ssrn.com/abstract=1143209> or <http://dx.doi.org/10.2139/ssrn.1143209> > accessed 20 April 2017.

Munzinger, Peter, 'Blue jeans and other GIs: an overview of protection systems for geographical indications' (2012) 7(4) *Journal of Intellectual Property Law & Practice* 283.

Ngokkuen, Chuthaporn and Ulrike Grote, 'Challenges and Opportunities for Protecting Geographical Indications in Thailand' (2012) 19(2) *Asia-Pacific Development Journal* 93.

Rangnekar, Dwijen and Sanjay Kumar, 'Another Look at Basmati: Genericity and the Problems of a Transborder Geographical Indication' (2009) *Journal of World Intellectual Property* 1.

Rangnekar, Dwijen, 'The Law and Economics of Geographical Indications: Introduction to Special Issue of The Journal of World Intellectual Property' (2010) 13(2) *Journal of World Intellectual Property* 77.

Raustiala, Kal and Stephen R Munzer, 'The Global Struggle over Geographic Indications' (2007) 18(2) *European Journal of International Law* 337.

Sell, Susan K, 'TRIPS-Plus free trade agreements and access to medicines' (2007) 28(1) *Liverpool law review* 41.

Taubman, Antony, Hannu Wager and Jayashree Watal (eds), *A Handbook on the WTO TRIPS Agreement* (Cambridge University Press, Cambridge 2012).

Thual, David and Fanny Lossy, *Q&A Manual European Legislation on Geographical Indications* (EU-China IPR2 Project, February 2011).

UNCTAD-ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press 2005).

WIPO, Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions, WIPO/GRTKF/IC/5/3.

WTO, Council for Trade-Related Aspects of Intellectual Property Rights, Implications of Article 23 Extension, Communication from Australia, Canada, Guatemala, New Zealand, Paraguay, the Philippines and the United States, IP/C/W/360.

WTO, Council for Trade-Related Aspects of Intellectual Property, Proposal from Bulgaria, Cuba, the Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela, IP/C/W/247/Rev1.

Yu, Peter K, 'The objectives and principles of TRIPS Agreement' in Carlos M Correa (ed), *Research Handbook on the Protection of Intellectual Property under WTO Rules: Intellectual Property in the WTO*, Vol-I (Edward Elgar 2010).