

Geographical Indications and Intellectual Property Rights: Challenges and Opportunities for Small-Scale Producers

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Abstract

Geographical indications are crucial aspect of intellectual property law, designed to protect products originating from specific geographic regions, acknowledging their unique characteristics, quality and heritage. Geographical indications not only serve as intellectual property rights but also act as vehicles for promoting sustainable agriculture, rural development, and cultural diversity. However, the application of geographical indications in the context of small-scale producers poses several challenges. Small-scale producers often found in rural and remote areas, struggle distinctive challenges and opportunities in utilizing geographical indications and intellectual property rights for their products. The research paper addresses by providing a fundamental concept of geographical indications, exploring their legal framework, and elucidating their significance in safeguarding the distinct characteristics of products closely linked to particular location. A central theme of this research is the identification of challenges that small-scale producers face in utilizing geographical indications to protect their products. These challenges encompass legal complexities, financial constraints, and capacity limitations, which often impede their ability to employ the potential benefits of geographical indications protection. In addition to challenges, the research paper also highlights the opportunities that geographical indications present for small-scale producers. Furthermore, the paper reveals the broader socio-economic impacts of geographical indications on small-scale producers, examining the potential for increased market access, product value enhancement, and rural development. Overall, the research paper underscores the need for comprehensive policy frameworks that empower small-scale producers to engage with geographical indications and intellectual property rights effectively.

Keywords: Geographical Indications, Challenges, Opportunities, Characteristic, Reputation, Quality

Introduction

Geographical indications often abbreviated as GIs, refer to a form of intellectual property rights (IPRs), have emerged as a potent tool to protect and promote products deeply rooted in the traditions and landscapes of specific regions. The research paper aims to explore the multifaceted relationship between geographical indications and intellectual property rights, with a specific focus on the challenges and opportunities they present to small-scale producers in the global landscape. Small-scale producers often located in rural or economically disadvantaged areas, play a pivotal role in preserving traditional production methods, protecting local biodiversity, and contributing to the cultural fabric of their regions. However, these producers also face challenges, including limited resources, lack of awareness about intellectual property laws. GIs offer opportunities for these producers to assert their unique identities, preserve traditional knowledge and access new markets. To provide a comprehensive analysis, the paper will adopt a multi-dimensional approach, considering legal, economic, social and cultural aspects. Additionally, the research will explore potential policy recommendations and strategies for mitigating these challenges and maximizing the benefits of GIs for small-scale producers. By associating a product with its geographical origin, GIs enable consumers to make informed choices and establish a link between quality, reputation

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and the geographical context in which the product is produced. In recent years, the recognition and protection of GIs have expanded globally, with various international agreements and national legislations aimed at safeguarding products that derive their uniqueness from their geographical origins. By comprehensively analyzing the challenges and opportunities posed by GIs and IPRs, the research paper aims to inform policymakers, legal practitioners and small-scale producers themselves about the ways in which the interplay of these concepts can be connected to support sustainable development, preserve cultural heritage and foster economic growth.

Material and Methods

This research paper uses the desk review method for existing issues and related conventions, enacted laws, legal norms and case study for design to be a descriptive, comparative and analytical academic research.

Definition of Geographical Indications

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods. For example, agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.¹

Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights defines geographical indications as, for the purposes of this Agreement, 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. According to the Section 2(o) of the Trademark Law, Myanmar (2019) provides that - geographical indication means any indication which identifies goods as originating in the territory of a country or a region or a locality in that territory, where a given quality, reputation or other characteristics of the goods is essentially attributable to its geographical origin.

So, geographical indications refer to signs or symbols that identify a product as originating from a specific geographical location and possessing qualities, reputation, or characteristics that are essentially attributable to that place of origin. This concept has gained immense significance in the realms of trade, economic and culture, and it stands as a powerful tool for safeguarding the rights and interests of small-scale producers.

Concept of Geographical Indications

Geographical indication indicates that particular goods originate from a country, region or locality and has some special characteristics, qualities or reputations, which are attributable to its place of origin. These special characteristics, qualities or reputation may be due to various factors, e.g. natural factors such as raw materials, soil, regional climate, temperature, moisture etc., or the method of manufacture or preparation of the product such as traditional production methods, or other human factors such as concentration of similar businesses in the same region, specialization in the production or preparation of certain products and the

¹ WIPO, Intellectual Property for Agri-food Small and Medium Enterprises, 2015, p-154

maintaining of certain quality standards.² In order to work as a geographical indication, a sign must identify a product as originating in a given place. In addition, the qualities or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a link between the product and its original place of production.³

The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products such as specific manufacturing skills and traditions. The place of origin may be a village or town, a region or a country.⁴ Most commonly, a geographical indication consists of the name of the place of origin of the goods such as Jamaica Blue Mountain or Darjeeling.⁵ GIs are more than just a name or a symbol. A geographical indication's reputation is a collective, intangible asset. If not protected, it could be used without restriction and its value may be diminished and may be eventually lost.⁶

A geographical indication tells consumer that a product is produced in a certain place and has certain characteristics that are due to that place of production.⁷ Consumers pay increasing attention to the geographical origin of products, and care about specific characteristics present in the products they buy. In some cases, the "place of origin" suggests to consumers that the product will have a particular quality or characteristic that they may value. Often, consumers are prepared to pay more for such products. This has favored the development of specific markets for products with certain characteristics linked to their place of origin.⁸

A geographical indication right enables those who have the right to use a geographical indication prevent its unauthorized use, not only to avoid losing business, but also, in the longer term, to ensure the geographical indication is used only in relation to products that possess the qualities or characteristics to which it owes its reputation.⁹ For example, in the jurisdictions in which the Darjeeling geographical indication is protected, producers of Darjeeling tea can exclude use of the term Darjeeling for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the geographical indication.¹⁰

GIs recognized as one of the intellectual property rights (IPRs), is a sign used on goods that have a specific geographical origin. Intellectual Property Rights which is defined as ownership of any creation by the human intellect resulting from ingenuity, creativity, and inventiveness which is legally guaranteed by a state or another authority and give the creator an exclusive right over the use of the creation for a certain amount of time.¹¹ Products identified by a geographical indication are often the result of traditional processes and knowledge carried forward by a community in a particular region from generation to generation.

² ASEAN, Guidelines on Protection of Geographical Indication in ASEAN Member States, 2020, p-2

³ WIPO, Geographical Indications: An Introduction, WIPO Publication, 2nd edition, 2021, p-7

⁴ WIPO, What is Intellectual Property?, WIPO Publication, first published, 2004, p-14

⁵ WIPO, Geographical Indications: An Introduction, Ibid

⁶ WIPO, Intellectual Property for Agri-food Small and Medium Enterprises, 2015, p-154

⁷ WIPO, What is Intellectual Property?, Ibid, p-15

⁸ WIPO, Geographical Indications: An Introduction, Ibid, p-13

⁹ WIPO, Geographical Indications: An Introduction, Ibid, p-21

¹⁰ WIPO, Intellectual Property for Agri-food Small and Medium Enterprises, Ibid, p-155

¹¹ <https://repository.unair.ac.id/98997/2/10%20THE%20PROTECTION%20OF%20GEOGRAPHICAL%20INDICATION%20FOR%20AGRICULTURAL.pdf>

Similarly, some products identified by a geographical indication may embody characteristic elements of the traditional artistic heritage developed in a given region known as traditional cultural expression. This is particularly true for tangible products such as handicrafts, made using natural resources and having qualities derived from their geographical origin. In addition, certain traditional cultural expressions such as indigenous and traditional names, signs and symbols may also be protected as geographical indications despite their having no direct geographical meaning.¹² GIs ownership is collective which cannot be owned and not restricted to a single producers, therefore it will be difficult to internally and externally manage and control the use of GIs over the producers, including maintain the quality of products.

In economic term, GIs can be commercially valuable because they essentially permit producers to increase profit based on product differentiation.¹³ In the market place, these origin-linked products can secure price premiums, provided they are clearly differentiated and identifiable to consumers.¹⁴ Many countries see an opportunity to commercialize GI products in the market due to their unique cultural and physical attributions in order to create economic welfare and sustainable development to their originated localities. On the other hand, GIs could also be a tool for promoting local community's branding, which in turn generates income and enhances the local sustainable development.¹⁵

GIs are an important aspect of intellectual property rights, designed to protect products originating from specific geographical areas. This concept helps preserve the reputation and quality of products tied to their place of origin, benefiting both producers and consumers. However, the implementation of GI rights can be complex and sometimes controversial, as it involves legal and trade considerations, making it a crucial topic in the global intellectual property landscape.

Legal Framework for Geographical Indications

A number of treaties administered by World Intellectual Property Organization provided for the protection of geographical indications, most notably the Paris Convention for the Protection of Industrial Property of 1883 and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958).¹⁶ Article 1(2) of the Paris Convention recognizes "indications of source" and "appellations of origin" as subject matter for industrial property.¹⁷ The Lisbon Agreement was established to facilitate the protection of appellations of origin at the international level.¹⁸ The specific regulations concerning GIs are addressed in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.¹⁹ Under TRIPS, all member countries of World Trade Organization (WTO) have a mandatory responsibility to recognize and protect GIs as intellectual property.²⁰ The TRIPS Agreement becomes the most powerful multilateral agreement on the protection of GIs because every

¹² WIPO, Geographical Indications: An Introduction, WIPO Publication, 2nd edition, 2021, p-7

¹³ <https://repository.unair.ac.id/98997/2/10%20THE%20PROTECTION%20OF%20GEOGRAPHICAL%20INDICATION%20FOR%20AGRICULTURAL.pdf>

¹⁴ UNIDO, Market Access for Origin-linked Products & Geographical Indications: An integrated approach, p-2

¹⁵ ASEAN, Guidelines on Protection of Geographical Indication in ASEAN Member States, 2020, p-2

¹⁶ WIPO, What is Intellectual Property?, WIPO Publication, first published, 2004, p-16

¹⁷ WIPO, Geographical Indications: An Introduction, Ibid, p-24

¹⁸ Ibid, p-37

¹⁹ <https://www.card.iastate.edu/publications/dbs/pdffiles/04mbp7.pdf>

²⁰ <https://www.kashishipr.com/blog/geographical-indications-for-food-products/>

WTO member has to accept the terms and conditions of the TRIPS Agreement.²¹ The European Union is engaged in both multilateral and bilateral efforts to strengthen the safeguarding of geographical indications and to bolster intellectual property enforcement mechanisms in order to prevent the unauthorized use and abuse of geographical indications on a global scale.

Registration is the most common legal tool to define the circle of legitimate users and ensure protection for GIs.²² The registration of a geographical indication shall if valid, give to the registered proprietor and the authorized users or users the right to obtain relief in respect of its infringements.²³ Countries are thus free to regulate the protection of geographical indications at national level, provided it complies with the minimum standards set by TRIPS Agreement.²⁴ Many countries have enacted laws regarding geographical indications to safeguard indigenous products, encompassing handicrafts, agricultural items, as well as natural and industrial products that originate from specific regions. To protect these products, national legislations are essential to defend small-scale producers from counterfeit, imitation, and unjust competition. Consequently, producers can secure comprehensive legal protection for their products as geographical indication products.

Where a right over a geographical indication is obtained in one jurisdiction, it is protected there but not abroad. In other jurisdictions, the geographical indication would face the risks usually associated with lack of protection. In order to protect a geographical indication abroad, there may be requirements to first protect the geographical indication in the country of origin.²⁵ Protection may be requested by a group of producers of the product identified by the GI. The producers may be organized as an entity, such as a cooperation or association, which represents them and ensures that the product fulfills certain requirements. In some jurisdictions, protection may also be requested by a competent national authority (for example, a local government authority).²⁶ A further possibility of international protection of geographical indications is the conclusion of bilateral agreements between two states. A number of countries have entered into such agreements.²⁷

In the case of *Comite Interprofessionnel Du Vin De Champagne V. M/S Chinar Agro Fruit Products* (2017) in the High Court of Delhi, the plaintiff, *Comite Interprofessionnel*, accused the defendant, *Chinar Agro Fruit Products*, a food and beverage manufacturer, of violating its registered geographical indication. The plaintiff, a public service body established by an Act of the French Parliament, is responsible for safeguarding the name "CHAMPAGNE," a geographical indication associated with naturally sparkling wine exclusively produced in the Champagne region of France. The defendant used the name "CHAMPAGNE" for non-alcoholic sparkling drinks manufactured in India, misleading consumers into believing that these products came from the Champagne region. This misrepresentation was deliberate and intended to capitalize on the name's reputation, constituting infringement under Section 22(3) of the Geographical Indication Act, India. The court issued a permanent injunction preventing the defendant from manufacturing, selling, or advertising any product bearing the name "CHAMPAGNE". This case underscores the

²¹<https://repository.unair.ac.id/98997/2/10%20THE%20PROTECTION%20OF%20GEOGRAPHICAL%20INDICATION%20FOR%20AGRICULTURAL.pdf>

²² <https://www.fao.org/fileadmin/user-upload/foodquality/fichefiles/en/c6.1.pdf>

²³ <https://www.legalserviceindia.com/articles/geoind.htm>

²⁴ <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-1012-chapter4.pdf>

²⁵ WIPO, *Geographical Indications: An Introduction*, WIPO Publication, 2nd edition, 2021, p-33

²⁶ <https://www.kashishipr.com/blog/geographical-indications-for-food-products/>

²⁷ WIPO, *WIPO Intellectual Property Handbook*, WIPO publication, 2nd edition, 2008, p-129

significance of protecting geographical indications and intellectual property rights, especially in the context of products associated with specific regions. The court's decisions highlighted that the use of "Champagne" in connection with products not from the Champagne region could mislead consumers and dilute the value of the geographical indication.

In *Tea Board of India V. Mitsui Norin KK, Japan* (2000) case, the Tea Board of India opposed Mitsui Norin KK's application for the trademark "Divine Darjeeling" in Class 30 (related to Darjeeling tea, coffee, and cocoa produced in Darjeeling, India). The opposition was based on three main arguments: (i) The term 'divine' was considered laudatory, making the 'Darjeeling' mark non-distinctive; (ii) 'Divine Darjeeling' was seen as misleading, especially regarding coffee and cocoa, which were not produced in the Darjeeling district; (iii) Darjeeling tea was a geographical indication under international conventions like TRIPS, and it should be protected in Japan as well. The Japan Patent Office (JPO) Opposition Board rejected the Tea Board of India's challenge, primarily on the grounds that the "Divine Darjeeling" mark, as a whole, was not misleading or descriptive of the goods' quality. This case illustrates the Tea Board of India's struggles to safeguard the 'Darjeeling' and Darjeeling logo in Japan, facing numerous obstacles and threats in the process.

In Myanmar, geographical indications are protected under Trademark Law, 2019. This law came into effect on 1st April, 2023. Any legal entity representing the persons of the locality in which the relevant goods is produced, desirous of registration a geographical indication shall apply to the Intellectual Property Office of Myanmar for registration in conformity with the stipulations. In order to implement the provisions of geographical indication, a separate geographical indication rule will be drafted and implemented. The role of geographical indication will be able to raise the value of domestic products which are the mainstay of the country's economy. Since 2015, the Department of Intellectual Property has been carrying out awareness activities related to the geographical indication and have carried out cooperation with international organizations.

Geographical indication legislation is a mechanism that holds the potential to enhance the prospects of small-scale producers. After the registration of a geographical indication, only products produced within the designated area in accordance with the established Code of Practice can use the geographical indication name. This safeguards the creators of registered products from unauthorized use of the name and, consequently, prevents the infringement of their intellectual property by unregistered entities. Geographical indication recognition fosters consumer's trust and product quality distinction, while simultaneously enhancing producers' (including small-scale producers) marketing opportunities.

Opportunities for Small-Scale Producers

Geographical Indications and intellectual property rights can offer several opportunities and benefits for small-scale producers. Some potential opportunities and benefits for small-scale producers are summarized. A geographical indication holder have an exclusive right to use the GI and to prevent its use by third party whose products do not originate from the same geographical area or do not conform to the certified standards of production.²⁸ Once a product garners the protection offered by the GI status, it can positively differentiate itself from other similar products in the market which do not have that reputational link to a geographical location.²⁹ GIs enhance the reputation and value of local products and support local businesses. All producers operating in a geographical area covered by a GI and that comply with the GI's

²⁸ WIPO, *Geographical Indications: An Introduction*, WIPO Publication, 2nd edition, 2021, p-15

²⁹ Jamaica Intellectual Property Office, *Geographical Indication Manual*, 2015, p-6

standards of production (as established by producers within the region) can benefit from a registered GI. Since these goods enjoy an enhanced reputation of quality, producers, many of which are small-scale producers, can sell them for a higher price.

With a GI, the small-scale producers that produce GI-certified products can build consumer confidence and secure a good return on their investment. GI-certified products provide consumers with information about their origin and method of production and also enable GI certified producers to demonstrate their commitment to broader societal issues, for example, by adopting environmental, health, and labor-friendly policies. Often, the strong link between the products and their geographical origin focuses attention on the need to preserve local natural resources without which long-term production would be impossible.³⁰ GIs also benefit geographical regions by recognizing their unique characteristics and aid in the promotion of regional tourism thereby encouraging small-scale producers and producers to maintain high quality levels in order to foster increased production and sales.³¹ People who buy GI-certified products are often interested in visiting the places they come from.³²

Consumers' perception is key in the decision-making process and many consumers look to a product's origin when determining the quality and reasonableness of the purchase price. Many consumers were willing to pay more for GI products than for non-GI products. This shows the benefit to the producers of goods that are protected by GIs.³³ GI may facilitate small-scale producers upgrading by stimulating diversification into new, higher margin products or markets, for example entering downstream activities like processing or retailing, or broadening into auxiliary activities such as farm tourism generated from visitors drawn to an area by a product's reputation.³⁴ GIs may bring value to a region not only in terms of jobs and higher income, but also by promoting the region as a whole. In this regard, geographical indications may contribute to the creation of a "regional brand".

GIs can also contribute to development in rural areas and the creation of increased and better quality employment in the area.³⁵ Communities including small-scale producers may benefit as GIs can reward the holders of indigenous knowledge of traditional and artisan skills as valued forms of cultural expression.³⁶ Preventing usurpation of origin-based products and protecting the reputation of these products could potentially have a strong developmental impact through an improved income effect. Ultimately this could contribute to increased employment and improved livelihoods.³⁷

If there are various unique products in a locality or region, it will attract investors to establish related businesses in these regions, thus increasing the growth of investments in agro-industry since investment in GIs product tends to be from the rural and agricultural. Generating new employment opportunities, boosting local revenue, adding economic value to products, bridging the income gap between the rural and urban areas, preventing local people migration and positively impacting income distribution will be the positive contribution of investment for local economic growth. GIs does not only benefit to the producer and small-scale producers

³⁰ <https://www.wipo.int/ip-outreach/en/ipday/2022/toptips/geo-indications.html>

³¹ Jamaica Intellectual Property Office, Geographical Indication Manual, Ibid

³² <https://www.wipo.int/ip-outreach/en/ipday/2022/toptips/geo-indications.html>

³³ Jamaica Intellectual Property Office, Geographical Indication Manual, Ibid

³⁴ Angela Tregear, Aron Torok, Matthew Gorton, Geographical indications and upgrading of small-scale producers in global agro-food chains: A case study of the Mako Onion Protected Designation of Origin, Environment and Planning A, Vol. 48(2), 2016, p-439

³⁵ WIPO, Geographical Indications: An Introduction, WIPO Publication, 2nd edition, 2021, p-15

³⁶ <https://edepot.wur.nl/171656>

³⁷ Angela Tregear, Aron Torok, Matthew Gorton, Geographical indications and upgrading of small-scale producers in global agro-food chains: A case study of the Mako Onion Protected Designation of Origin, Ibid

but also creates income and employment opportunities to other sectors such as hotel services for accommodation, gift shops and restaurants, therefore this will substantially contribute to the local economic development.³⁸

Small-scale producers frequently have a crucial impact on production and processing by contributing their distinct expertise. The development of Geographical Indication can serve as a localized strategic catalyst for achieving gender quality, empowering smallholder entrepreneurs, and fostering sustainability across economic, environmental and social aspects. In particular, administrative legal mechanisms of GI support the potential to raise incomes for all participants in local value chains, encompassing both small-scale producers such as farmers and processors, thereby enhancing their well-being and securing their resilience.

Challenges faced by Small-Scale Producers

The challenges faced by small-scale producers in relation to geographical indications and intellectual property rights can be numerous and multifaceted. Some key challenges that could be explored in this research. Small-scale producers, often referred to as smallholders or micro-enterprises, are individuals or entities engaged in the production of goods or services on a limited scale, typically characterized by factors such as a small workforce, modest capital investment, and relatively low production volumes. These producers may operate in various sectors, including agriculture, manufacturing, handicrafts, etc. They may have limited resources, infrastructure and production capacity compared to large-scale commercial producers. They are usually rooted in local communities and play a significant role in preserving cultural heritage and traditions associated with the products they create.

Small-scale producers are often vulnerable to economic and competitive pressures, making it essential to protect their rights and interests, particularly in the context of geographical indications and intellectual property rights. These producers are deeply connected to specific geographical regions and their products may have unique qualities or characteristics attributed to the local environment, culture or traditions. Each country may have its own definition and legal framework for recognizing and protecting geographical indications and the rights of small-scale producers. These definitions can often be found in national intellectual property laws or specific regulations related to geographical indications.

Small-scale producers face high transaction costs and insufficient ability to deliver the production volume and control systems demanded by multiple retailers.³⁹ Even if a GI is successfully registered, enforcing intellectual property right protection can be a challenge for small-scale producers. They may lack the legal means and financial resources to take legal action against unauthorized users of their GI, which can lead to dilution or misuse of their product's reputation both domestically and internationally.⁴⁰ Quality is a prerequisite for successful market access and increasing revenues, but meeting technical requirements is often a challenge for small-scale producers.⁴¹

The technical challenge arises because of lack of institutional organization and mechanism to administer GIs protection. Practically, the GIs registration process is the most critical obstacle for achieving GIs protection since GIs registration is complex, costly, time consuming and requiring many stakeholders involvement. Most applicants cannot understand

³⁸<https://repository.unair.ac.id/98997/2/10%20THE%20PROTECTION%20OF%20GEOGRAPHICAL%20INDICATION%20FOR%20AGRICULTURAL.pdf>

³⁹ <https://www.researchgate.net/publication/282619049-Geographical-Indications-and-upgrading-of-sm>

⁴⁰ <https://www.kashishipr.com/blog/geographical-indications-for-food-products/>

⁴¹ UNIDO, Market Access for Origin-linked Products & Geographical Indications: An integrated approach, p-8

the complex procedures, thus government organizations have duty to provide necessary information.⁴² Furthermore, there are monetary expenses related to the establishment of the GI, the price of raw materials and of consulting and laboratory analysis to verify products' characteristics. There are also costs related to participation fees and quality inspections.

To access a GI, it is necessary to meet certain requirements collectively, which means that producers must interact with each other. However, the lack of a representative organization or the existence of organizational problems is frequently seen as one of the challenges for GI's success.⁴³ In developing countries, many production and supply chains are small in scale and lack resources such as capital, technology and know-how. This makes it difficult to achieve economies of scale and may limit their market access because of their inability to comply with the increasingly present public and private standards required by more developed markets.

The institutional structures and legal frameworks are different in developing countries than they are in developed countries.⁴⁴ GI producers have increasingly faced new issues such as marketing and promotion of newly created GIs, rapidly changing markets, technical innovations, and adaptation to climate change etc.⁴⁵ A few other constraints, that challenged for small-scale producers are output decreasing constraints, natural resources constraints, economic constraints, political constraints and technological constraints etc.⁴⁶

Many small-scale producers may not be aware of the benefits of GI protection or may not fully understand the legal aspects of it or how to go about securing it. And small-scale producers often need assistance in understanding the benefits and procedures associated with GIs and intellectual property right. Capacity-building programs and education can be lacking in many regions. Once a GI is established, small-scale producers may face increased competition from larger well-funded producers who may attempt to capitalize on the GI's reputation. In some cases, regulatory barriers, unfair trade practices and market access restrictions can make difficult for small-scale producers to export their GI-protected products to international markets.

Small-scale producers often lack the financial and legal resources required to operate the complex GI registration and intellectual property right protection processes. This can make it difficult for them to establish and protect their products' geographical indications. The costs associated with the registration process, including legal fees and administrative expenses, can be prohibitive for them. Often, small-scale producers are vulnerable to counterfeiting and misuse of their GI. Unauthorized producers may falsely claim to produce products with the same GI, which can undermine the integrity and reputation of their genuine products. The sale of counterfeit products can lead to income losses for producers.

Findings and Recommendation

Many small-scale producers are lack of awareness and understanding of the potential benefits of geographical indications and intellectual property rights. They may not be aware of how these mechanisms can protect their products and help them differentiate themselves in the

⁴²<https://repository.unair.ac.id/98997/2/10%20THE%20PROTECTION%20OF%20GEOGRAPHICAL%20INDICATION%20FOR%20AGRICULTURAL.pdf>

⁴³ <https://doi.org/10.1017/S174217052200031X>

⁴⁴ <https://edepot.wur.nl/171656>

⁴⁵ <https://gi2021.sciencesconf.org/?forward-action=index&forward-controller=index&lang=en>

⁴⁶ <https://edepot.wur.nl/171656>

market. It is evident that strong institutions such as government and relevant organizations, international organizations and industry associations are a fundamental requirement for the development of geographical indications, whether through official means i.e. geographical indication legislation, codes of conduct, or formal practices or informal guidelines (like collaborative agreements, respect for local traditions, fair practices). These institutions should provide training and educational programs to small-scale producers about the benefit of geographical indications and intellectual property rights. This should include information on how to operate the registration process. Capacity building programs can also empower small-scale producers to protect their products effectively. Governments and international organizations should offer financial support, grants or subsidies and technical assistance to small-scale producers to help cover the costs associated with geographical indication and intellectual property registration. The difficulties faced by small-scale producers include exporting machinery, equipment, packaging materials and raw materials through outsourcing, as well as addressing legal enforcement and protection issues. To handle these challenges, respective laws and policies have been put into place in confrontational areas. International cooperation should foster to protect GIs, as many products have cross-border significance. In order to get enough strong safeguard for GI, international cooperation is vital action including bilateral agreements and participation in international organizations. In Myanmar, small-scale producers of micro, small and medium-sized enterprises (MSMEs) are confronted with various constraints that hinder their future growth and development of business. These challenges encompass insufficient financing, a shortage of skilled labor, limited technological advancement etc. To support the growth of MSMEs, it is necessary to establish fundamental infrastructure, favorable regulations and business conditions, equitable and sufficient access to capital, and responsive market demand.

Conclusion

Geographical indications can act as powerful tools for preserving and promoting local traditions, cultures, and merchantable products. Small-scale producers can enlarge their market competitiveness and preserve their sustainable practices by obtaining geographical indication protection, enabling them to get premium prices for their products. Geographical indications provide small-scale producers with significant opportunities to succeed in selling their products in an open market economy. Small-scale producers, often operating within limited resources and constrained by lack of access to legal expertise, face significant challenges when it comes to leveraging GIs and IPRs. To address these challenges, policymakers, industry stakeholders and advocates must work collaboratively to create a supportive ecosystem for small-scale producers. This ecosystem should include financial assistance and technical support for GI registration, simplified legal procedures, and mechanisms to ensure that GIs benefit the communities from which they originate rather than being exploited by larger entities. By facilitating education and awareness campaigns to small-scale producers, they will become well-knowledge persons of the benefits of GIs. Public authorities at the local, national, regional and international levels have been significantly involved in identifying, registering, regulating, safeguarding, and overseeing geographical indications. In Myanmar, to seek geographical indication protection for local products, AFD (Agence Française de Développement) in France carried out a survey in 2018, which included products likes Myanmar Sein-Ta-Lone Mango, Thanakha, Ywar Ngan Coffee, Shwebo Paw San, Myanmar Tea Leaf and Bagan Yun De. Among these, Shwebo Paw San was initially selected. So, Shwebo Paw San produced in Sagaing Region is being designated as the first geographical indication product in Myanmar. When Shwebo Paw San can be designated as a GI product, it will be able to be recognized internationally as a Myanmar variety, and it will be more profitable for local producers and

expand the foreign market. The research paper serves as a catalyst for further exploration and action in this important field, fostering a more equitable and sustainable future for small-scale producers around the world.

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References

- Angela Tregear, Aron Torok, Matthew Gorton, Geographical indications and upgrading of small-scale producers in global agro-food chains: A case study of the Mako Onion Protected Designation of Origin, *Environment and Planning A*, Vol. 48(2), (2016).
- ASEAN, Guidelines on Protection of Geographical Indication in ASEAN Member States, (2020).
- Jamaica Intellectual Property Office, Geographical Indication Manual, (2015).
- Trademark Law (2019). Myanmar.
- UNIDO, Market Access for Origin-linked Products & Geographical Indications: An integrated approach.
- WIPO, Geographical Indications: An Introduction, WIPO Publication, 2nd edition, (2021).
- WIPO, Intellectual Property for Agri-food Small and Medium Enterprises, (2015).
- WIPO, What is Intellectual Property?, WIPO Publication, first published, (2004).
- WIPO, WIPO Intellectual Property Handbook, WIPO publication, 2nd edition, (2008).

Sources from Internet

- <https://www.researchgate.net/publication/282619049-Geographical-Indications-and-upgrading-of-sm>
- <https://www.kashishipr.com/blog/geographical-indications-for-food-products/>
- <https://doi.org/10.1017/S174217052200031X>
- <https://edepot.wur.nl/171656>
- <https://repository.unair.ac.id/98997/2/10%20THE%20PROTECTION%20OF%20GEOGRAPHICAL%20INDICATION%20FOR%20AGRICULTURAL.pdf>
- <https://gi2021.sciencesconf.org/?forward-action=index&forward-controller=index&lang=en>
- <https://www.wipo.int/ip-outreach/en/ipday/2022/toptips/geo-indications.html>
- <https://www.card.iastate.edu/publications/dbs/pdffiles/04mbp7.pdf>
- <https://www.fao.org/fileadmin/user-upload/foodquality/fichefiles/en/c6.1.pdf>
- <https://www.legalserviceindia.com/articles/geoind.htm>
- <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-1012-chapter4.pdf>