

# Understanding Geographical Indications

## I. What is a geographical indication?

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics 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 clear link between the product and its original place of production.

## II. What rights does a GI provide?

A GI right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards. For example, in the jurisdictions in which the Darjeeling is protected as GI, 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.

However, a protected GI does not enable the holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a GI is obtained by acquiring a right over the sign that constitutes the indication.



Colombian coffee. Source: [www.cafedecolombia.com](http://www.cafedecolombia.com)

GIs are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products. There are various examples of GI's from around the world. The more popular ones include:

- *Parmesan Cheese and Parma Ham* (named after the producing areas near Parma, Italy);
- *Roquefort Cheese* (Roquefort des Corbières a village located in the south of France);
- *Cuban Cigars* (Rolled from tobacco leaves found throughout Cuba);
- *Champagne* (produced from grapes grown in the Champagne region of France);
- *Cognac* (named after the town of Cognac in France);
- *Scotch Whisky* (malt whisky or grain whisky made in Scotland);
- *Tequila* (made from the blue agave plant, primarily from the city of Tequila, Mexico);
- *Colombian Coffee* (The coffee produced in Colombia has been recognized worldwide as having high quality and distinctive taste because of the region and its climate);
- *Florida Oranges* (It is said that the soil, climate and process of producing Florida oranges is distinct);
- *Idaho Potatoes* (The weather and elevation in the state of Idaho, America makes conditions ideal for growing potatoes.).

### Generic GIs

Generic terms are names which, although they denote the place from where a product originates, have become the term customary for such a product. An example of a GI that has become a generic term is Camembert for cheese. This name can now be used to designate any camembert-type cheese. In contrast, *Camembert de Normandie* is a French appellation of origin for a cheese produced only in Normandy.

## ***Homonymous GI***

Homonymous GIs are those whose spelling or pronunciation is the same, but which identify products originating in different places, usually in different countries. In principle, these indications should coexist, but such coexistence may be subject to certain conditions. For example, it may be required that they be used only together with additional information as to the origin of the product in order to prevent consumers from being misled. A GI may be refused protection if, due to the existence of another homonymous indication, its use would be considered potentially misleading to consumers with regard to the product's true origin.

For example, a true place name is correctly identified on a product, but could mislead the consumer into thinking that the product comes from a much better-known place bearing the same name. An illustrative example of this would be a wine produced in Paris, Illinois, USA and not in Paris, France.

## **III. What rights do I have with a registered GI?**

GI right holders have exclusive rights to prohibit any misleading and unfair competition acts by third person in the use of the protected GI.

## **IV. Protection of GIs**

In Seychelles, GIs are protected through a special regime of protection. Once a geographical indication is registered, it is protected indefinitely as long as the specific characteristics, quality or reputation which have been the basis for the grant of the protection, exist.

### ***Who can request protection for a GI?***

- a group of producers within a region that form an incorporated association in order to register and manage the GI
- a local or state authority with the power to preserve the right of all producers in the GI region and protect against misuse of the GI.

If forming an incorporated association, the producers in the relevant region need to agree on standards and collaborate in order to develop, maintain and promote the GI. Before drafting the rules, producers should determine:

- the geographic boundaries for production
- the techniques and standards that apply
- how to promote the GI.

### ***Who grants protection for GIs?***

Protection for a GI is granted by the national IP Office of Seychelles.

### ***What conditions must be met to obtain geographical indication protection?***

A sign must qualify as a geographical indication under the applicable industrial property law and not be subject to any obstacles to registering a GI (e.g., contrary to public order and morality; GIs that are not protected in their country of origin or cease to be protected in their country of origin, or which have fallen into disuse in Seychelles). An important requirement under the definition, is that the good identified by the GI needs to have a link to the geographical origin. This link may be determined by a given quality, reputation or other characteristic essentially due to the geographical origin. A single criterion attributable to geographical origin is sufficient, be it a quality or other characteristic of the product, or only its reputation.

### Who can use a protected GI?

The right to use a protected GI belongs to producers in the geographical area defined, who comply with the specific conditions of production for the product.

### Are there any obstacles to protecting a GI?

From a legal point of view, potential obstacles to successfully registering a GI may include the following:

- Conflict with a prior trademark.
- Generic character of the term that constitutes the GI.
- The existence of a homonymous GI, the use of which would be considered potentially misleading as to the product's true origin.
- The indication's name is same with that of a plant variety or animal breed.
- The lack of protection of the GI in its country of origin.

### Can I obtain GI protection that is valid in multiple countries?

GI rights are territorial. And are limited to the country (or region) where GI protection is granted. There is no "international" GI right. At global level, the *WIPO's Lisbon System for the International Registration of Appellations of Origin* offers a means of obtaining protection for an appellation of origin already protected in one member state in the territories of all other members. This can be done through a single registration called "an international registration".

### Examples of successful GI registered in Africa

#### Registration of Tete Goat as GI In Mozambique, first Geographical Indication of an ARIPO member state

On 15 June 2020, Tete Goat (Cabrito de Tete) was registered as a Geographical Indication in Mozambique, with the support of WIPO and FAO. It is the first GI registered at an ARIPO member state. Cabrito de Tete is a local goat breed, from Tete province in Mozambique. The province of Tete has a goat population estimated in about 300 thousand animals, which has been increasing over the last years, and is classified as the first goat producer in this country.



Source: <https://africa-gi.com/en/pan-african-gi/news/registration-tete-goat-gi-mozambique-first-geographical-indication-aripo-member>

#### Rooibos tea

Rooibos tea, one of South Africa's most famous exports, has been granted GI status in the European Union.

Source: <https://www.worldipreview.com/>



## V. How are GI rights enforced?

Like all intellectual property rights, the rights to GI are enforced in a court of law. The right to take action could rest with a competent authority or with any interested party, whether a natural person or a legal entity, whether public or private. The sanctions provided for in national legislation are civil (injunctions restraining or prohibiting unlawful acts, actions for damages, etc.) and criminal.

## VI. Differences between GIs and other IP rights

### *GIs and trademarks*

GIs identify a good as originating from a particular place. By contrast, a trademark identifies a good or service as originating from a particular *company*.

A trademark often consists of a fanciful or arbitrary sign. In contrast, the name used as a GI is usually predetermined by the name of a geographical area.

Finally, a trademark can be assigned or licensed to anyone, anywhere in the world, because it is linked to a specific company and not to a particular place. In contrast, a GI may be used by any persons in the area of origin, who produces the good according to specified standards, but because of its link with the place of origin, a GI cannot be assigned or licensed to someone outside that place or not belonging to the group of authorised producers.

### *GIs and traditional knowledge (TK)*

Products identified by a GI are often the result of traditional processes and knowledge carried forward by a community in a particular region from generation to generation. Similarly, some products identified by a GI may embody characteristic elements of the traditional artistic heritage developed in a given region, known as “traditional cultural expressions”. This is particularly true for tangible products such as handicrafts, made using natural resources and having qualities derived from their geographical origin.

GIs do not directly protect the subject matter generally associated with TK, which remains in the public domain under conventional IP systems. However, GIs may be used to indirectly contribute to protection of TK, for instance, by preserving TK for future generations. This can be done, for example, through the description of the production standards for a GI product, which may include a description of a traditional process or traditional knowledge.

## VI. Geographical indications and business

### *How are GIs relevant to my business?*

Consumers are paying increased attention to the geographical origin of products. In some cases, the “place of origin” suggests to consumers that the product will have a particular quality or characteristic that they may value. GIs function as product differentiators on the market, by enabling consumers to distinguish between products with geographical origin-based characteristics and others without those characteristics. Geographical indications can thus be a key element in developing collective brands for quality-bound-to-origin products.

### *What are the advantages to my business of obtaining protection for a GI?*

Protecting a GI enables those who have the right to use the indication to take measures against others who use it without permission and benefit from its reputation (deter free-riders). A geographical indication's reputation is a valuable, collective, and intangible asset. If not protected, it could be used without restriction and its value would be diminished and eventually lost.

Protecting a GI is also a way to prevent registration of the indication as a trademark by a third party and to limit the risk of the indication becoming a generic term.

In general, GIs, backed up by solid business management, can bring with them:

- Competitive advantage
- More added value to a product
- Increased export opportunities
- A strengthened brand.



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