

PRODUCT CLASSIFICATION SYSTEM FOR THE PROTECTION OF GEOGRAPHICAL INDICATIONS

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Abstract

Until present, there is no single classification system regarding Geographical Indications worldwide. Differently, there are Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, Strasbourg Agreement concerning the International Patent Classification, and Locarno Agreement establishing an International Classification for Industrial Designs.

This paper would explore and discuss about whether a special classification system for Geographical Indications is necessary. Qualitative data would be obtained by online research. Legal methods, especially descriptive analysis and comparison study would be used to explain and analyze the data and comprehend the topic.

This paper argues that classification system of products for Geographical Indications is worth to be considered to make the protection of Geographical Indications less debatable, simpler, and able to reach various types of products.

Keywords: classification, product, geographical indication.

INTRODUCTION

Until present, there is no single classification system regarding Geographical Indications (GIs) worldwide. Differently, international Intellectual Property (IP) protection systems have special agreements establishing single classification systems for other IP regimes, those are: Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement), Locarno Agreement establishing an International Classification for Industrial Design (Locarno Agreement), Strasbourg Agreement concerning International Patent Classification (Strasbourg Agreement).

On the 15th of April 1994, when WTO-TRIPs Agreement was signed and introduced GIs as one of IP regimes to the world, several outstanding issues were still highlighted in the TRIPs built-in agenda for further negotiation. One of them was whether the extension of GIs' additional protection for wines and spirits in article 23 of TRIPs, also known as the GIs' second level protection, could be extended to other products. Until present, TRIPs' article regarding the GIs' second level protection for wines and spirits has not been amended. However, various countries, whose primary products are not wines and spirits, have made the extension available in their national laws. This initiative does not jeopardize their full compliance to TRIPs Agreement because article 22.2 of the agreement gives a flexibility for member countries to establish their own legal means regarding GIs protection system, as long as all GIs provisions in TRIPs are accommodated as a minimum standard protection.

In other countries, the variation of products that have successfully gained GI protection also significantly increases. Recently, other than agricultural products and foodstuffs, GI regime also protects herbal products, non-eatable agricultural products, non-agricultural products including clothes and handicrafts, industrial products, wild products, organic products, mountain products and aquatic products, in the same as well as different level of protections.

In practice, considering the growing variation of GIs products, the question is, does GIs system also need a specific classification system like trademarks, industrial design, and patent?

IP CLASSIFICATIONS IN OTHER IP REGIMES

NICE AGREEMENT

Nice Agreement is an international agreement on the classification of goods and services for the purposes of registration of marks. This agreement was concluded on 15 June 1957, revised at Stockholm in 1967 and Geneva in 1977, and regularly updated every 5 years.

Until present, the latest version of Nice Agreement divides marks into 45 classes. These classes are further divided into 34 classes of goods and 11 classes of services, of which each class has its own sub-classes.

LOCARNO AGREEMENT

This agreement was signed at Locarno on 8 October 1968 and amended on 28 September 1979. Locarno Agreement establishes the classification system for industrial design.

Locarno Agreement provides 32 classifications for various registered industrial designs. Each classification has its own sub classes. Similarly with Nice system, a design should have been classified according to the Locarno classification system before the application is submitted to the registrar.

STRASBOURG AGREEMENT

Strasbourg Agreement is an agreement about international patent classification. This agreement was concluded on 24 March 1971 and amended on the same date with Locarno Agreement, on 28 September 1979. Patent classification consists of 8 general classes and sub classes.

DISCUSSION

Nice, Locarno and Strasbourg Agreements share the same natures and objectives. *Firstly*, the classification systems are solely of an administrative character. Non of them are used to pass the substantive examination about distinctiveness on trademarks, newness on industrial designs, or novelty on patents. *Secondly*, each member of the agreements can use the classification as a principal

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or subsidiary system. *Thirdly*, the usage of the classifications by national offices simplifies the application procedures to a single classification system of each regime, internationally. *Fourthly*, although the classifications are administrative, they limit the substantive examinations of trademarks, industrial designs, and patents to be conducted in the relevant class only.

In regard to GI, Geneva Act of the Lisbon Agreement (Lisbon system) allows the international registration of GI in addition to Appellations of Origin (AO). However, it does not regulate GI's classification system.

In light of the functions of classifications in other IP regimes, classification in GI regime is worth to be considered, because the variety of the GI protected products have been increasing. Furthermore, particular GI requirement may be applicable for certain type of products but not for all products. For example, strong natural factor is a requirement for agricultural product but not for handicrafts. For herbal product, a high degree of safety requirement may be important, but it is not the case for other products. GI classification that enables a specific substantial examination to be conducted between products in the same class only, would solve this problem.

POSSIBLE CLASSES IN GI PROTECTION SYSTEM

GIs protections in TRIPs and Lisbon systems denote that the protections are available for goods. However, several countries have expanded the scope to include products. It means that in theory, services, albeit no service has been protected as GI, is possible to be protected as a particular class of GI objects.

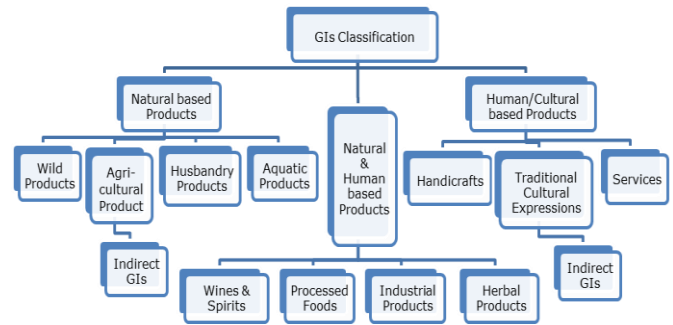
European Union probably has the most diverse classification of GIs products, that includes: wines, aromatized wines, agricultural products and foodstuffs, spirits, fresh meats, meat products (cooked, salted, smoked, etc.), cheeses, other products of animal origin (eggs, honey, various dairy products except butter, etc.), oils and fats (butter, margarine, etc.), fruits, vegetables, cereals fresh or processed, fresh fish including mollusks and crustaceans and products derived therefrom, beer, chocolate and derived products, bread, pastry, cakes, confectionary, biscuits and other baker's wares, beverages made from plant extracts, pasta, salt, natural gums and resins, mustard paste, hay, essential oils, cork, cochineal, flowers and ornamental plants, cotton, wool, wicker, scutched flax, leather, fur, and feather.

Since India protected Basmati Rice as a GI (Bansal, 2021), indirect GIs has become an issue, because 'Basmati' is not a name of a geographical origin, but a traditional name of a rice from a specific borderline area between India and Pakistan named Haryana. Yet, India recently is also known as a country with handicrafts as GI majority products.

In Southeast Asian countries, some countries use a simple classification for GI products consisting agricultural products, non-agricultural products, and handicrafts. However, each country has different details or sub classes. Singapore is a country in this region which has the most varied classification of GIs products: wines, spirits, beers, cheeses, meats, and meat products, seafoods, edible oils, fruits, vegetables, spices and condiments, confectioneries and baked goods, flowers and parts of flowers, and

natural gums. Indonesia attempts GI protection for herbal and traditional medicines.

From varied existing classifications across countries, the GI classification can be formed as follows:



This proposed GI Classification can have similar functions with other classifications in IP: *firstly*, the classification system will solely be of administrative character. *Secondly*, the system will be used by the national competent authority in countries and is publicly available on the official publication of the countries. *Thirdly*, it will form a single classification system internationally. *Fourthly*, it will enable the substantive examination to be conducted within the relevant class independently. *Fifthly*, each class can have more details of sub classes if necessary, subject to a regular update.

In implementing the fourth function, specific additional requirement can be added. For example, strongest protection, in accordance with the additional protection in TRIPs Agreement, can be applied specifically for the class of wines and spirits. Environmental sustainability can also be added as an additional requirement for classes under the natural based products. The class of herbal products can have an additional health and safety standard requirement. The class of traditional cultural expressions can be furtherly derived into sub classes such as traditional fabrics and ethnic goods. Likewise, indirect GIs and services will have a future in GI protection system.

CONCLUDING REMARKS

A classification system for GI is worth to be considered. It will decrease the complexity of varied national legal means in conjunction with the divergence of potential protected objects. It will also make the international cooperation to administer the protection of GIs easier to implement.

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