

## LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS

**Jumambetov Rasul Jengisbaevich**

PhD student at Tashkent State Law University

**Abstract :** Indications of geographical origin are used as a means of establishing a link between the quality and other aspects of a product and a geographical area. The link between a product and an area, especially if it is different from similar products, allows producers of such products to differentiate their products and implement specific marketing strategies. Geographical indications are one of the earliest types of trademarks and were created to distinguish products with a specific quality. This quality may be due to environmental factors, processing methods or production skills.

**Key words:** geographical origin, environmental factors, processing methods, Property rights, geoclimatic characteristics.

### INTRODUCTION

Property rights to such goods are often claimed on the basis that they are produced in a geographical area with specific geoclimatic characteristics and using traditional skills. This adds unique value to the product and makes it impossible to recreate it in other regions. Geographical indications are defined as: “an indication that a good originates in a specific geographical area or territory of a Member State or a village, town or locality located in such an area, and a certain quality, reputation or other characteristic of the good is essentially due to its geographical origin”.

According to the first part of Article 4 of Law No. ZUR-878, “Legal protection of geographical indications shall be carried out on the basis of their registration in accordance with the procedure established by this Law, as well as in accordance with international treaties of the Republic of Uzbekistan”. According to the general procedure, legal protection of GIs officially begins after the issuance of the relevant certificate. Therefore, a certificate registered in Uzbekistan is issued as a means of personalization of the GI, and the holder of the certificate acquires the right to use this GI. This indicator may be a name, a sign or other signs identifying these goods, indicating the origin of the products from a certain region and their quality or reputation.

Geographical indications entered the field of international intellectual property law with the inclusion of the TRIPS Agreement. The TRIPS Agreement is based mainly on two international conventions, namely: the Paris Convention (Paris Convention for the Protection of Industrial Property), the Berne Convention (Berne Convention for the Protection of Literary and Artistic Works). Given the great commercial importance of geographical indications, their legal protection plays an important role in commercial relations at the national and international levels. Without such protection, geographical indications are at risk of being illegally used by unscrupulous entrepreneurs or companies.

Such persons can take advantage of the commercial influence associated with geographical indications to mislead consumers and gain illegal profits. This can not only lead to significant revenue losses for the original producers, but also to the loss of prestige associated with geographical indications in the long term.

### MAIN BODY

Countries that are members of the World Trade Organization (WTO) are obliged to protect geographical indications under the TRIPS Agreement. In order to move towards WTO

membership, Uzbekistan adopted the Law “On Geographical Indications” in 2022, which was adopted to ensure the registration and protection of geographical indications. Two main aspects of this Law are emphasized: 1) protecting producers from counterfeiting and misleading trade; 2) ensuring a balance between the protection of trademarks and geographical indications.[1]

According to the law, once a geographical indication has been registered, any person claiming to be the producer of the goods designated by that indication may apply for registration as a “legitimate user.”

The process of registering geographical indications is managed by the Intellectual Property Department of the Ministry of Justice for Patents, Industrial Designs and Trademarks, which also acts as the Registrar of Geographical Indications. Registration is valid for a period of ten years and can be extended for further ten-year periods. If a registered geographical indication is not renewed, it is removed from the register. The protection of geographical indications has been one of the most contentious issues in the field of intellectual property rights within the framework of the World Trade Organization for many years.

In particular, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – an integral part of the WTO agreement concluded in Marrakesh in April 1994 with the participation of 117 countries – establishes norms and standards for the protection of geographical indications and six other types of intellectual property rights.[2] According to the Paris Convention, protection against the unlawful use of misleading indications of geographical origin applies equally to both appellations of source and indications of source, in which case the name may be directly written or indirectly indicated by symbols and emblems.

The Madrid Agreement expands the scope of this doctrine to include “misleading” indications of source. Misleading indications are indications that are in fact accurate but nevertheless mislead consumers. For example, two different geographical areas may have the same name, but only one of them has been traditionally used as the source of a particular product. If the consumer is led to believe that products from the second area are from the first area, using the same name would be misleading. The TRIPS Agreement provides for protection against unlawful and misleading use of geographical indications.[3]

For wines and spirits, a higher level of protection is provided: it is not required to prove that the consumer has been misled, but rather that the indication cannot be used at all if the product does not come from the geographical area indicated.

The Lisbon Agreement applies this doctrine even more strictly, that is, it provides for protection against usurpation or imitation, even if the true origin of the product is indicated, or if it is used in conjunction with additional words such as “type”, “form”, “producer”, “imitation” and the like.

Recent trends in the world market show that consumers, especially in developed countries, are increasingly paying attention to the quality and authenticity of the products they buy and are giving preference to environmentally friendly and socially responsible products. Therefore, geographical indications are becoming an important tool in this kind of marketing. Because the information provided by geographical indications allows responding to new consumer demands, allowing products to be identified with added value and specific qualities linked to their origin. Beyond their economic and commercial benefits, geographical indications also serve to express the cultural identity of a nation, region or locality, and add a human dimension to goods that are increasingly subject to standardized production for mass consumption.

Geographical indications are often also linked to other social interests, such as the protection of traditional knowledge and the rights of communities. The consequences of different approaches to protection in terms of requirements, effectiveness and costs are unclear. The lack of a single

or agreed international approach to geographical indications, and even the lack of a common register, makes it difficult to protect them in foreign markets.[3]

In addition, protection systems at the national level are often fragmented, conflicting and unclear. The 167 countries that actively protect geographical indications as intellectual property rights fall into two main groups: 111 countries have a system of special or sui generis geographical indication laws, and 56 countries prefer to use their own trademark protection systems. The main markets for geographical indication products – including the European Union and the United States – value the legitimacy of geographical indications, but their marketing and protection systems are designed quite differently. Many geographical indications have had valuable reputations for centuries, and if they are not adequately protected, they can be misrepresented by commercial operators. The illegal use of geographical indications by unauthorized parties harms both consumers and legitimate producers. Without protection, anyone can sell a product as originating in a particular region, even if it does not actually come from there.

In this case, the consumer is deceived into thinking that he has purchased a genuine product with certain qualities and characteristics, but in fact he receives a worthless counterfeit product. The Law on Geographical Indications, adopted in 2002, is the main law adopted to register and ensure better protection of geographical indications related to goods.[4]

It defines a geographical indication as follows: “an indication that agricultural products, natural products or industrial products originate in a given country, region or locality within that country. A certain quality, reputation or other characteristic of these products is essentially due to their geographical origin. In the case of industrial products, at least one of the production, processing or preparation processes must have taken place in that country, region or locality.”

The Department of Intellectual Property under the Ministry of Justice of Uzbekistan is the “Registrar of Geographical Indications” and is responsible for implementing and supervising this law and its related regulations. Geographical indications act as source indicators, as they help consumers identify the region of origin of a product, as well as provide indications related to the quality, reputation and other distinctive characteristics of the product.

The use and imitation of geographical indications by unauthorized persons causes serious harm to both consumers and legitimate producers. In this case, the consumer may mistake the counterfeit product for the real thing, trust its quality and characteristics, and buy a cheap imitation product.

At the same time, manufacturers also suffer losses in relation to their products, as their valuable business and the reputation they have built up over the years are damaged. Advantages of registering geographical indications: 1) It creates legal protection for geographical indications in Uzbekistan, which in turn stimulates exports; 2) It prevents the unauthorized use of the registered geographical indication by others; 3) It increases the economic well-being of producers of goods produced in the geographical area; 4) It serves the interests of consumers, providing them with goods of high prestige and quality.[5]

Most of the geographical indications registered in Uzbekistan relate to food products, and mainly small producers operate in these areas. Even so far, the experience of registering food products such as Gijduvan shashlik, “Chiyal yakhna kheta”, “Guzar tandoori kheta” and others has shown that the protection provided by registration as a geographical indication has helped to significantly increase the economic income of producers. Therefore, Uzbekistan continues to strive to include all products with geographical indications in the register. Including products in the register of geographical indications is only the first step towards realizing their economic potential. In fact, this itself has caused serious difficulties. Many worked in small enterprises,

although located in the same region. Persuading them to unite in an association to apply was often a great difficulty.

In addition, it was necessary to create standards and inspection mechanisms to ensure quality. However, these problems are obstacles encountered in the initial stage of setting up the system, and later, when the system is fully operational, it will be able to manage itself. The second step will be to develop appropriate marketing strategies, especially from an export perspective. This will include obtaining legal protection for Uzbek geographical indications in key markets around the world. Small producers are further disadvantaged because they do not have the resources to hire lawyers to study the legal systems in foreign countries. They also do not have the marketing resources to create demand for their products as high-end premium products.

This is in contrast to the situation in the wine and spirits industry in developed countries. The initial registration of a geographical indication and the registration of an authorized user are valid for ten years. However, both may be extended for a further ten years by paying the prescribed state fee and submitting an application for extension before the expiry date, and this period may be extended from time to time. If the extension is not made within the prescribed period, the geographical indication or the name of the authorized user, as the case may be, shall be removed from the register. At the same time, the restoration of the registration is also envisaged. Registration of geographical indications confers the following rights:

1. The registered user has the exclusive (sole) right to use the goods to which the geographical indication is applied. However, this exclusive right is subject to the conditions and restrictions established upon registration.
2. The registered owner of the geographical indication and its authorized users have the right to legal protection against infringement.

A brief analysis of the various rules related to registration shows that geographical indications can be registered by a group of persons, but any person who is a producer of a product also has the right to register as an authorized user in a separate procedure.[6]

## CONCLUSION

Summarizing the above, it can be said that the owner of a geographical indication is essentially the producer of the product, but it is necessary to make additions to the Law in accordance with the provisions of the Federal Law, for example: "Any producer of a product who has received a certificate for the use of a geographical indication is its owner." In terms of disposal, the right of the producer of goods to sell, donate, or otherwise transfer the geographical indication along with the entire property complex, in compliance with all quality requirements, in a specified geographical area, can be enshrined in the law.

It is also necessary to distinguish the following concepts: a registered geographical indication that has been entered into the state register by state bodies but does not belong to any entity, and a geographical indication that has become the property of the applicant after obtaining a certificate through an application. That is, a registered geographical indication may exist even if an application is not filed, but a geographical indication for the use of which an application has been filed and a certificate has been obtained may belong to multiple owners, subject to compliance with the requirements of the law.

It is very important to clearly define and strengthen the owner in the law, as this will strengthen the legal protection of the individualization of goods as a means of geographical indication and create an effective mechanism for preventing its infringement. In this way, the owner is assigned additional rights and obligations, which helps to improve the quality of the product and its reputation in the international market. In general, property relations cannot exist without

the owner. Taking into account Uzbekistan's efforts to join the World Trade Organization, it is very important and necessary to pay attention to this institution.

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