Protecting Darjeeling Tea in International Markets

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Abstract

*This paper is an attempt to unravel the various hindrances on the way of ensuring adequate protection to Darjeeling tea as a Geographical Indication ("**GI**") in international markets and builds a case for securing the same It is divided into five parts. The first part will discuss a brief history of the origin of Darjeeling Tea and as to why despite gaining worldwide popularity the benefits have not trickled down to the plantation workers. The second part will discuss the measures used to protect Darjeeling Tea in India and other countries before the introduction of Geographical Indications Act, 2003("**GI ACT**"). The third part will talk about the legal challenges that Darjeeling Tea has faced in the Indian and International markets. Further, the fourth part will discuss the changes that need to be undertaken to provide adequate protection to Darjeeling Tea in the international markets. Finally, in the last section, the authors along with the concluding remarks, will discuss the steps that need to be undertaken to secure adequate protection to Darjeeling Tea in international markets.*

Keywords: Darjeeling Tea, Geographical Indication, International Markets.

1. Introduction

Tea is the most widely consumed beverage in the entire world next to water. India is currently the second largest consumer of tea but is only the fourth largest exporter of tea. It is preceded by Kenya, Sri Lanka and China. Indian tea is preferred worldwide and a tea which is appreciated, demanded and cherished all over the world is grown in the Darjeeling district of the state of West Bengal. Darjeeling Tea is a superior quality tea having unique features of quality and flavour which brings it global repute. Tea Scientists say that the rare flavour of Darjeeling Tea results from a host of factors[1] such as plant genes, temperature, precipitation, soil chemistry etc which are unique to the hilly regions of Darjeeling[2]. Moreover, tea cultivation in Darjeeling has been going on for generations. The locals in the Darjeeling district are skilled workers who possess traditional knowledge of tea cultivation. The jobs on these tea estates are inherited within the family, and the know-how and techniques have become family traditions. Thus, a blend of unique soil and environmental conditions present in the region along with the production practices and traditional knowledge of the locals makes Darjeeling Tea distinctive from any other tea around the world[3]. Further, it has been claimed by experts that since this unique combination of factors is not found anywhere, the flavour of Darjeeling

[1] Kasturi Das, *International Protection of India's Geographical Indications with Special Reference to "Darjeeling Tea*", 9 THE JOURNAL OF WORLD INTELLECTUAL PROPERTY 459-495, 23 (2006).
[2] *Ibid.*
[3] Adarsh Dubey, *An Analysis of the Challenges Faced by India in the Protection of and Enforcement of Geographical Indication through the Case Study of Darjeeling Tea*, 3 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & Humanities 819-833, 824 (2020).

tea cannot be replicated[4]. Therefore, the geography of Darjeeling region has an impact on the flavour of Darjeeling Tea which qualifies it for acquiring protection as Geographical Indication ("**GI**"). The Darjeeling district is known for the production of its unique and distinct tea. However, in the previous months, the economic uncertainty induced by the covid-19 pandemic took a toll on the production of Darjeeling Tea as well. The sales of Darjeeling Tea fell drastically during the initial period of the pandemic and are also expected to fall by 15% in 2021. Now, the industry is trying to increase its sale and presence in the traditional markets and are exploring the possibility of entering the markets of the United States of America ("**USA**") and China, among other countries. These steps are necessary for the economic prosperity of people whose livelihood depends on Darjeeling Tea. It will also help establish India a global presence in the field of tea. Before understanding the evolution of the methods and rules that protect Darjeeling Tea and the legal challenges that comes with it, it is pertinent to discuss the socio-economic challenges that the Darjeeling tea plantations workers continue to experience. The task of plucking tea leaves and working in Darjeeling tea plantations have been romanticized through advertisements pushed by the very companies who exploit these workers.

2. Socio-economic conditions of garden labourers in Darjeeling

The unique aroma and exemplary taste of each cup of Darjeeling Tea does not convey the misery and agony of the marginalized Darjeeling Tea plantation workers. The tea plantations in Darjeeling which are known to produce the finest quality tea are spaces with most brutal and harsh working conditions. The tea plantation sector provides employment to the highest number of people in the formal sector but it provides the least amount of wages across industries[5]. The wage is less than even the prescribed minimum wage for unskilled workers in West Bengal i.e., Rs 244.[6] Such conditions exist because the colonial relic of having a family-based employment system is still prevalent. The workers are not employed from an open market and are descendants of labourers who migrated to Darjeeling at the inception of tea industry. Thus, these workers are permanent and life-long members of tea plantations who not only work but also live in the villages of tea plantations. This system serves to maximise profit and subjugate workers who are coerced to work in favour of management's interest. They bring huge profits for the owners but the workers remain oppressed and marginalized[7]. Further, the degrading state of affairs in tea gardens has resulted in low productivity and frequent shut down of tea gardens have worsened the conditions of labourers as they are left with no alternative means of livelihood[8].

3. The 'Why' and 'How': Protecting Darjeeling Tea as GI.

[4] *Supra note 1*.
[5] Pramod Giri, *Financial packages for tea garden workers brew a poll issue in Darjeeling*, THE HINDUSTAN TIMES (7 February 2021), https://www.hindustantimes.com/india-news/financial-packages-for-tea-garden-workers-brew-a-poll-issue-in-darjeeling-101612675768904.html
[6] *Ibid*
[7] Rajeshwi Pradhan, *Exploitation of Labour in Darjeeling Tea Plantations*, 4 INTERNATIONAL JOURNAL OF LAW MANAGEMENT& HUMANITIES, 1958-1971, 1958-1967 (2021)
[8] Production down, *Darjeeling tea industry in 'bad shape': Planter's body*, THE ECONOMIC TIMES (Oct 25th, 2021, 6:00 PM).

3.1.Pre-1999 Status

The rights of Darjeeling Tea producers have long been jeopardized due to the prevalence of unethical trade practices. There is a sale of 50 million kg of Darjeeling tea in the world market whereas the total production remains at roughly 9 million kg[9]. This demonstrates the grave extent to which free-riding takes place on the reputation and goodwill of this high-quality tea. The countries involved in such practices include Nepal, Kenya and Sri Lanka. They sell their tea around the world either in the name of Darjeeling Tea itself or come up with different names such as 'Hamburg Darjeeling', Lanka Darjeeling etc[10]. The supply of these inferior quality tea as Darjeeling tea began hampering the reputation of Darjeeling Tea in the International market and as a result, a need for protection was felt. There existed no separate legislation prior to the enactment of Geographical Indications of Goods (Registration and Protection) Act[11], 1999 ("**GI Act**") Therefore, the misuse of GIs was prevented in the pre-existing legal regime of the country in three alternative ways. One, through passing-off actions in courts[12], second, under the consumer protection laws[13] and lastly, through certification trademarks[14]. In 1953, the Tea Board of India was constituted under the Tea Act of 1953 to protect the authenticity of Darjeeling tea. It is a statutory body which regulates and supervises all the stages of tea production such as cultivation, processing and even the sale of Darjeeling tea[15]. Its key responsibilities involve improving tea quality, market promotion, taking welfare measures for plantation workers and implementing all regulations and policies relating to tea production in India[16]. The following were the objectives behind having such an institution for protecting Darjeeling tea:

- To avoid the use of word "Darjeeling" for other varieties of tea sold across the world
- To ensure that commercial benefits of brand "Darjeeling" trickle down to the legitimate cultivators of Indian tea industry.
- To ensure the authenticity in delivery of Darjeeling tea.

3.2.Steps taken by the Tea Board

The Tea Board has taken several important steps towards protecting the international reputation of Darjeeling Tea. The first significant step came in in 1983, when a Darjeeling logo was created and provided certification trademark[17] under the Indian Trade and Merchandise Marks Act,1958[18]. In the same year, the logo was also registered in several other countries such as

[9] Vimal Khawas, *Not brewing right: Tea in the Darjeeling hills is losing its flavour*, DOWN TO EARTH (Oct 25th, 2021, 7:00 PM) https://www.downtoearth.org.in/coverage/not-brewing-right-8182.
[10] *Supra* note 1.
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid*
[15] Tea Board, Ministry of Commerce and Industry, Government of India (Oct 25th, 2021, 7:00 PM, https://commerce.gov.in/about-us/autonomous-bodies/commodity-boards/tea-board/.
[16] *Ibid.*
[17] *Supra* note 1.
[18] Section 71, Indian Trade and Merchandise Act

Canada, UK, Japan, Egypt, US and some other European Countries as a trademark/certification trademark[19]. The word "*Darjeeling*" was also registered under the Indian Trade and Merchandise Marks Act,1958 in class 30 in the name of Tea Board[20], Kolkata. Further, the word Darjeeling was registered in several other jurisdictions by the Tea Board. For instance, the word Darjeeling was registered by the UK Trade Registry under the Trademarks Act 1994[21]. Similarly, United States also registered Darjeeling as a certification trademark[22]. The Tea Board in 1998, also hired 'Compumark', an international agency to keep a vigil over any attempt to register the word Darjeeling as GI around the world[23]. The Tea Board, in order to ensure the authenticity of Darjeeling tea being exported, also introduced a compulsory system of certification under the Tea Act 1953[24], which mandates all dealers in Darjeeling tea to procure a license with the Tea Board by paying an annual fee. The terms and conditions of such an agreement requires that all licensees should furnish information pertaining to production of Darjeeling tea, its manufacture and sale[25]. This enables the Tea Board to effectively monitor the quantity of Darjeeling tea being produced and sold in a given period. Additionally, the tea board also issues certificate of origin to export consignments which ensures that there is no adulteration in the quality of tea by blending[26]. Finally, with the advent of the GI Act, the Darjeeling term and logo were registered in 2004 as India's first ever GI[27]. Even though the CTM registration existed, still there was need for an additional protection under GI as many jurisdictions like France did not accept CTM registration[28].

3.3.Why was additional protection under GI required when CTM registration existed?

The Tea Board has enumerated the following reasons for providing an additional protection to Darjeeling tea as GI:

- There are many jurisdictions which do not accept CTM registration, for instance France
- The registration of GI is imperative to obtain reciprocal protection of a mark mandate under the EU Regulation[29] .
- Registration provides a clear status to a GI recognizing its direct link with geographical origin[30].

[19] *Ibid.*
[20] *Ibid.*
[21] *Ibid.*
[22] *Ibid*
[23] *Ibid.*
[24] *Ibid*
[25] *Ibid.*
[26] *Ibid.*
[27] Rachel Lopez, *I am not sure that the GI has helped Darjeeling Tea, says Tea Board Chairman*, THE HINDUSTAN TIMES (Oct 25th, 2021, 12:00PM), https://www.hindustantimes.com/lifestyle/art-culture/im-not-sure-that-gi-has-helped-darjeeling-tea-says-tea-board-chairman-101634379859615.html.
[28] S.C Srivastav, *Protecting the Geographical Indication for Darjeeling Tea*, WORLD TRADE ORGANIZATION (Oct 26th,2021, 11:00 AM), https://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm.
[29] *Ibid.*
[30] *Ibid*

Further, the GI Act has been enacted in India in order to comply with its obligation under the Agreement on Trade-Related Aspects of Intellectual Property Rights[31] (TRIPS), which requires WTO members to have in place appropriate legislation for implementing GI.

4. Legal Challenges faced by Tea Board of India in protecting Darjeeling Tea

The Tea Board has taken various steps to protect and enforce the GI regarding Darjeeling Tea, in both the domestic and international markets. As previously mentioned, the Tea Board of India have appointed Compumark, a world-wide watch agency, which keeps a regular watch on unauthorized use of the Darjeeling Tea's 'logo' and even the word 'Darjeeling'. India has filed several cases against various countries for infringement of GI regarding Darjeeling Tea. Before discussing the international cases, it is essential to discuss the recent case of ***Tea Board of India vs. ITC Ltd[32].*** In this case, the parties locked horn over the word "Darjeeling". The Tea Board filed a suit in Calcutta High Court against ITC Ltd. for naming one of their lounges as "Darjeeling Lounge". The Tea board contended that ITC was using the name 'Darjeeling' with a malicious intention to suggest its customers that the goods sold in the lounge are coming from Darjeeling[33]. They further alleged that such use of the word Darjeeling not only threatened the commercial activities of those associated with tea business but also disregarded its standard as a GI tag[34]. The Court, however, rejected the contentions put forth by the Tea Board and held that there was no infringement under the GI Act as the defendant's lounge is not related to the goods[35]. The court made a distinction between Section 28 and Section 29 of the Trademarks Act,1999[36] and held that the plaintiff only has a certification mark and not a trademark by virtue of which it has the authority to only certify the tea from Darjeeling region and here the defendant is dealing with service[37]. Further, it observed that there was no unfair competition as the business area of plaintiff and defendant are totally different. The defendant was also not found using the logo depicting a woman holding two leaves and a bud[38]. Thus, the claims of bad faith, fraud or wrongful use were found baseless. Accordingly, the suit was dismissed and the plaintiff was not entitled to any relief.

4.1. The misuse of Darjeeling 'name' and 'logo' in Japan

There are three major cases fought by the Tea Board against the unauthorized use and registration of Darjeeling name and logo in Japan. The first case was in year 1996, the Tea Board filled an invalidation action against a Japanese Company called International Tea KK for registering the Darjeeling logo mark wherein a woman from Darjeeling was 'serving coffee/tea/cocoa/juice/soft drinks with the patent office of Japan'[39]. The registration in question

[31] *Ibid.*
[32] (2019)1CALLT538(HC)
[33] Tarun Khurana, Tea Board, India v. ITC Limited, Khurana and Khurana, (2020) https://www.khuranaandkhurana.com/2020/03/20/tea-board-india-v-itc-limited/
[34] *Ibid.*
[35] *Ibid.*
[36] *Supra* note 3
[37] *Supra* note 27
[38] Supra note 3.
[39] *Ibid.*

came about despite the pre-existence of a registration in Japan by the Tea Board of India of the identical Darjeeling logo mark[40]. Additionally, a non-use cancellation action was also filled by the Tea Board[41]. Consequently, the impugned registration was invalidated by the Japanese Patent Office ("**JPO**") Board of Appeal and the appeal regarding non-cancellation action was also allowed.

In the second case, the Tea Board opposed the application filled for registering "Divine Darjeeling" in class 30 dealing with coffee, tea and cocoa grown in Darjeeling in India[42] The dissent was based on three grounds (1) The "divine" term is merely complimentary and thereby the mark for which protection is sought remains "Darjeeling" which is non-distinctive[43], (2) The use of term "Divine Darjeeling" for cocoa and coffee grown in Darjeeling is misleading as Darjeeling does not produce either of them[44]. (3) Darjeeling tea passes as a GI under international instruments like TRIPS and thus Japan is obligated to protect it by virtue of being a member state[45]. The JPO opposition board dismissed the invalidation act as they opined that the Divine Darjeeling mark was not misleading as it wasn't illustrative of the quality of products. However, the non-use cancellation action succeeded as the registered proprietor could not furnish adequate evidence to support the use of mark[46].In the third case, an invalidation action was brought by the Tea Board against the Japanese Trademark registration of "Darjeeling Tea" with an Indian map in class 30[47]. Although, the claim of Tea Board was yet again rejected but the non-use cancellation action succeeded. These cases clearly demonstrate as to how the JPO failed to take into account the Tea Board's contention regarding TRIPS agreement[48], which mandates member countries to provide the legal means to prevent use of GI for goods originating in a geographical area which is not the actual place of origin.

4.2.Some other instances of defending "Darjeeling" as GI by the Tea Board

France: The French law does not allow opposition to a trademark application similar to GI if the goods under question are different from those protected by the GI[49]. As a result, the term Darjeeling has been misappropriated as a trademark there in respect of several goods involving clothing, headgear, shoes etc[50]. Now, although the examiner in France appreciated evidence in favour of Tea Board such as (1) ample proof showing usage of 'Darjeeling' tea in France (2) the unethical copying of the name "Darjeeling" in its application by the applicant[51]. It held that since the goods in question are not of the same nature, function and use, the applicant's mark could be adopted without jeopardizing the Tea Board's right in the name Darjeeling[52]. Yet, in another case, where application was filed against the use of Darjeeling logo by Dor Francois

[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid*
[44] *Ibid*
[45] *Ibid.*
[46] *Ibid.*
[47] *Ibid*
[48] *Ibid.*
[49] *Supra* note 23.
[50] *Ibid*
[51] *Ibid.*
[52] *Ibid.*

Marie by the Tea Board. The Examiner observed that due to the different nature of the goods in question, the Tea Board's prior mark or logo could be used as trademark[53]. Thus, France has clearly failed to accord the same level of protection to Indian GIs as India does to French GIs.

Russia: The Tea Board of India had filed an application against a company for unauthorized use of word 'Darjeeling'[54]. To which there was an objection raised that the application conflicted with an identical word called 'Akros' registered earlier by the company[55]. The Russian Patent Office however rejected this contention and allowed the Tea Board's application for the word Darjeeling[56].

United States of America: An application was launched by the Tea Board against the registration of "Darjeeling Nouveau" in the United States pertaining to products and services such as clothing, coffee and internet services[57]. The position of Tea Board was upheld by the Trademark trail and appeal board who not only upheld the Tea Board's opposition but also refused to entertain any counterclaim for nullifying the Darjeeling certification mark on grounds of genericness[58].

4.3.The infamous case of Tea Board of India v. Delta Lingerie SA of Cachan

The French Company Delta Lingerie SA of Cachan has used 'Darjeeling' as a trademark for their lingerie since 1995. The Tea Board's resistance to such registration and use of the name Darjeeling has failed on previous occasions on grounds that there was no scope for confusion[59]. Later, when Delta applied for registration of Darjeeling as trademark in Israel, the Tea Board raised opposition on the following grounds: (1) The use of Darjeeling as a trademark for lingerie would deceive public and amount to unfair competition under Sec 11(6) of the Trademarks Ordinance 1972[60]. (2) Under Sec 11(11) of the trademark ordinance, Delta's mark was indecipherable for registration as its ordinary meaning is geographical[61]. However, the registrar rejected the Tea Board's opposition and allowed for registration of the mark observing that since the nature of goods and marketing channels are of different nature[62], there was no scope for confusion pertaining to origin of goods. Further, the Supreme Court also affirmed the registrar's decision.

5. Securing adequate protection for Indian GIs in International Markets.

5.1.The issue of Extension and Multilateral register

[53] *Ibid.*
[54] *Supra* note 3
[55] *Ibid*
[56] *Ibid.*
[57] *Ibid.*
[58] *Ibid.*
[59] Sonia Shnyder, *Supreme Court refuses to reconsider decision in Darjeeling Case*, WORLD TRADEMARK REVIEW (Oct 26th, 2021, 7:00 PM https://www.rcip.co.il/wpcontent/uploads/2008/05/05.08_DARJEELING_TM.pdf.
[60] *Ibid*
[61] *Ibid.*
[62] *Ibid.*

The GI regime of TRIPS can be neatly divided into four categories. The first is the definition clause, which defines Geographical Indication. Second, universal protection for all GIs. Third, special or extra protection to wines and Spirits. The fourth category contains unresolved problems to be solved through future negotiations and exceptions.[63] The two issues that were debated during the Doha rounds were creation of the Multilateral register and extension of the higher protection under Article 23. Even though both the issues are discussed independent of each other but as per many countries both these issues are related.[64] First, we will discuss the issue of extension and then discuss the multilateral register under TRIPS. Darjeeling Tea is protected by Article 22 which provides a general protection to all the GIs. The controversial article here is Article 23 which provides enhanced protection to wines and spirits without providing any concrete reasons or justification for the same. Countries like European Union, India etc. want to extend extra protection under Article 23 to goods other than wines and spirits. However, these requests have been opposed by USA, Australia and other nation. The opponents contend that the measure provided in Article 22 are sufficient and increased protection to all the goods would disturb the current market practices and also would be an additional burden on the whole machinery. The brunt of this disparity is born by the developing nations.[65] The contentious issue of the extension of protection under Article 23 to the goods covered under Article 22 was also debated in the Doha programme of 2001 but could not reach any conclusion. In the previous years, over 100 Members of the WTO have submitted a formal request to provide the additional protection, being provided to wines and spirits, be extended to all the products covered by Article 22.1.[66] An enhanced protection to all goods will reduce the enforcement costs and ease the burden of small traders and developing nations. These costs can be reduced significantly by extending the enhanced protection to all the GIs. Therefore, India, along with other like-minded countries, should keep pushing the agenda of discussion of the issue of extension to demand the extended protection for all GIs, including Darjeeling Tea. Since the issue of extension and multilateral register are considered to be interlinked by various countries, it warrants a discussion of the multilateral register at this stage.

TRIPS has called for negotiations to create a multilateral register, for notification and registration of GIs of Article 23 goods.[67] The developments surrounding the multilateral register began in the TRIPS Council as early as in 1997 and eventually subsumed as part of the Doha Declaration.[68] Article 23.4 mandates such a register to facilitate the process of registration and notification in all the member countries. This multilateral register will facilitate the registration of only wines and spirits. However, such a protection should also be extended to other types of products even under Article 22 as it would prevent free-ridding and unintentional appropriation of GI[69]. It would also allow the GI holders to be on timely notice

[63] DEV GANGJEE, RELOCATING THE LAW OF GEOGRAPHICAL INDICATION, 286-287 (Cambridge University Press, 2012)
[64] The discussion regarding whether the issue of the extension and the multilateral register are independent or not has been debated. However, this debate is beyond the mandate of the current paper. See: https://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm
[65] D. RANGNEKAR, *The Socio-Economics of Geographical Indications – A Review of Empirical Evidence from Europe*, UNCTAD-ICTSD Issue Paper No. 8 (2004), 1; Lang, 'On the Need to Expand Article 23', 497.
[66] *Supra* note at 63
[67] Article 23.4, Agreement On Trade-Related Aspects Of Intellectual Property Rights, 1996
[68] Kasturi Das, *The Protracted WTO Battle over a Multilateral GI Register: What Lies Beneath?* JOURNAL OF WORLD TRADE, 2015
[69] Mas Rahmah, *The Extension of Geographical Indication Protection: Necessary for Developing Country*, MIMBAR HUKUM Volume 26, Nomor 3, October 2014, Halaman 505-517.

of these GIs, who could then take appropriate measures such as denying trademark registration requests for trademarks containing registered GIs pursuant to Article 23.2[70]. Moreover, as GI's reputation requires significant investment and labour, timeliness in GI disputes is critical and thus, the timely notice offered by the multilateral register would benefit. The notice would also cut down costs of the producers of infringing goods as it would help them avoid making the mistake of investing in marks which would be eventually discontinued[71]. With no register in place, a member might unwittingly register a conflicting trademark and force the legitimate holder of the GI to undo the damage in court[72]. The register would therefore ensure a better protection to foreign GIs and the holders of these GIs wouldn't have to go out of their way in preventing others from issuing infringing marks or to litigate such infringement[73]. Thus, having a multilateral register would greatly benefit not only Darjeeling Tea but also all other Indian GIs and hence India along with other developing nations should definitely press for the same.

5.2.India and the Geneva Act of Lisbon

The adoption and enactment of Geneva Act of Lisbon took place due to reformation of the Lisbon Agreement on the Protection of Appellations of Origin and their International Registration ("Lisbon Agreement"). Geneva Act of Lisbon was adopted in May, 2015. As of now, Geneva Act of Lisbon is in force in 33 countries including 27 member countries of the European Union. Currently, India is not a member of it. However, India is a member of the Paris Convention and therefore fulfils the criteria to be eligible to join. India has multiple reasons to consider acceding to the Geneva Act of Lisbon. After becoming a member, India, through a single application, would be able to afford protection to all its GIs in all the member countries. Even though Darjeeling Tea is already registered as a Protected Geographical Indication in the European Union, India should still consider acceding. Recently, Ghana has joined the Geneva Act of Lisbon, and it is likely that more countries might accede to it in the coming years. Then, there will not be any need to go through the cumbersome process of registering it, at least, in the member countries. It will also help GI bodies who are not flushed with cash and cannot take measures to enforce their respective GIs. India is a celebrated diversity and is home to numerous GIs. India has 361 registered GIs and more than 200 are still pending for approval. Acceding to the Geneva Act of Lisbon will certainly provide Darjeeling Tea, among other GIs, better protection and increased commercial gains.

5.3.Protection by means of Bilateral Agreements

Bilateral agreements protecting GIs comprise a mutual recognition between two states for protection of their respective GIs in the contracting states[74]. One of the first such agreements

[70] 3 European Communities, *Negotiations Relating to the Establishment of a Multilateral System of Notification and Registration of Geographical Indications—Issues for Discussion at the Special Session of the TRIPS Council of 28 June 2002—Informal Note*, Paper JOB (02)/70, June 24, 2002, Paragraph 22
[71] *Supra* note 72.
[72] *Ibid.*
[73] *Ibid.*
[74] D. Marie -Viven, E. Bienabe, D. Sautier, *Bilateral agreements for geographical indications: the evaluation 'of the local by the local*, RESEARCH GATE (Nov 9th, 2021, 1:00 PM), https://www.researchgate.net/publication/260312146_Bilateral_agreements_for_geographical_indications_the_evaluation_'of_the_local_by_the_local.

was signed between France and Germany in 1960 and Spain and France in 1973 when there existed no global international agreement for the protection of appellation of origin or GIs[75]. There were also many specific agreements on the protection of GIs for wines and spirits concluded from 1994 onwards by EU with other key wine and spirit producing countries such as Australia, Mexico, Chile, South Africa, Canada and USA[76]. These bilateral agreements not only provide mutual recognition but also phase-out the use of specific wine and spirit terms of European origin which had acquired a 'generic' status in the partner countries[77]. Fighting legal battles drains the pockets of any GI owner and worst victims of such battles are the developing nations. Thus, India also needs to adopt such a proactive approach in protecting its GIs in international markets by entering into bilateral agreements. Such agreements will also help in reducing litigation costs. Small traders may not even be interested in pursuing any legal recourse at international level as these litigations are expensive and only parties with deep pockets view this as a viable option to enforce it GIs. For Darjeeling Tea alone, the Tea Board spent over Rs. 14 crores in a period of 4 years and this expenditure does not even account for administrative costs, such as people working for the Tea Board, software costs, etc.[78]

6. Conclusion

India is still recovering from the damage caused by the politically motivated protest which occurred in 2017, which lead to shutting down of 89 Darjeeling Tea plantations for 108 days.[79] The strikes led to a shortage in supply. Such an event of supply shortage makes way for other substandard tea to occupy the market. It also led Japan, along with various international buyers, to stop their purchases due to the uncertainty over the availability. At present, Indian government, along with the Tea Board, needs to aggressively promote Darjeeling Tea in the global market. The Tea Board of India has although made important advances towards protecting Darjeeling tea as a GI in international market, there still remains a long way to achieve the end goal. This is primarily also because of the fact that the protection under Article 23 of the TRIPS is also restricted to wines and spirits. Thus, as mentioned above, India along with other WTO members must strive towards securing this additional level protection for other GIs as well. As discussed above, pushing towards creation of a multilateral register for all the GIs, entering into bilateral agreements and acceding to the Geneva Act of Lisbon agreement would further immensely help India in securing adequate protection for Darjeeling tea as well as other GIs in the International markets. India has been ahead of its neighbours in the enforcement and protection of its GIs. India should further this by being the first country in its region to accede to the Geneva Act of Lisbon.

It is also pertinent for the bodies to realize that getting a registration for GI is not the end goal but means to reach the end. The efforts of the GI owners and other stakeholders should not stop post registration. Even though Darjeeling Tea has been registered as Trademark and a GI in

[75] *Ibid.*
[76] Bernard O'Connor & Laura Richardson, *The legal protection of Geographical Indications in the EU's Bilateral Trade Agreements: moving Beyond TRIPS*, RIVISTA DI DIRITTO ALIMENTARE (Nov 9th,2021, 1:00 PM), http://www.rivistadirittoalimentare.it/rivista/2012-04/OCONNOR.pdf
[77] *Ibid.*
[78] S.C. Srivastava, *Protecting the Geographical Indication for Darjeeling Tea*, Managing THE CHALLENGES OF THE WTO PARTICIPATION, https://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm
[79] Sambit Saha, *Darjeeling Tea Suffers Price Erossion*, TELEGRAPH INDIA, 2021, https://www.telegraphindia.com/business/darjeeling-tea-suffers-price-erosion/cid/1692705

various countries, there is vehement need for the stakeholders to push for its promotion in the global markets. India has been lagging behind in the export of Darjeeling Tea as it has not leveraged its GI tag in a proper manner. India has been using the GI tag over the past years for the purpose of threat and legal sanctions but has not paid any attention to utilize it for promotion of Darjeeling Tea. The government should thus provide adequate funding to the Tea Board for the promotion and should themselves also indulge in promotional campaigns in various countries and further spread awareness amongst the local population regarding the presence of counterfeit products in the markets. India should be fierce in its enforcement and promotion of Darjeeling Tea in the markets where it already has a good presence such as Japan, United Kingdom, USA, Malaysia etc. For instance, In China, tea is considered as an essential part of the culture and is thereby a booming market for the supply of Darjeeling Tea. Therefore, India needs to take a visionary approach towards protecting its coveted Darjeeling Tea and other GIs. It is certain that with the right strategy and combination of enforcement, protection and promotion, India can reap more economic, social and cultural benefits from Darjeeling Tea.