

product was made using traditional methods. However, the law acts as a barrier to imitation.

GI have a limited role for protecting TM, if it is clear that certain medicines originate from a particular region. In order to make geographical indications an efficient (and accurate) form of protection there needs to be a high level of appreciation, both in the public and in the examining authorities. In the case of French food products, one could find such expertise widely. There is still a debate regarding the correct method of manufacture for American Indian arts and crafts. A very small group of specialists have knowledge of this area, and in order to make a definitive statement there would have to be a specially constituted committee. While buyers of art may be satisfied with certification by a retailer, the situation with drugs is more complicated. There needs to be a high level of organization to make protection feasible.

While at first sight protection using GI appears to be simple, it may be – in practice – very complicated. Committees to establish standards must be formed, and national laws must be made to enforce these standards. The system may be applicable to well established TM systems, such as in China, but may have limited coverage in other TM systems.

In addition, a patent protects an idea, not the products themselves. Patented TM could be made under license by a concern unconnected with the inventor. Even a group with limited production facilities could benefit from an invention if it held a patent. GI best suit a more extensive operation.

## IX. TRADEMARKS

Trademarks are, according to the TRIPS article 15: “Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings . . .” WTO members are required to protect trademarks via registration. In addition, TRIPS article 23 states that members must provide legal means for preventing registration of trademarks that mislead the public about geographical origin.

Trademarks are similar to GI. The US provides protection for GI though the trademark system, where they can be registered as a collective mark. A clear linkage with the place of origin must be demonstrated.<sup>147</sup> In the US there are hundreds of foreign GI’s protected through the GI certification system. Some examples are Colombian coffee and Darjeeling tea from India.<sup>148</sup> Both the GI’s and the trademarks are eligible for relief under the Federal Trademark Act.<sup>149</sup> In the EU, GI’s cannot be sold, but any producer in a certain region may use a specific GI. Individual companies are allowed to develop their own ‘sub brands’ within the system.<sup>150</sup>

147 Marianna Rubio & Elizabeth M. Williams, *Food, Geography & the Law*, 54 La. B.J. 12 (2006).

148 Bruce A Babcock & Roxanne Clemens, Geographic Indications and Property Rights: Protecting Value-Added Agricultural Products, Midwest Agribusiness Trade Research and Information Center (MATRIC), Briefing Paper 04-MBP 7. May 2004 at page 2.

149 15 U.S.C. §§ 1051, et seq.

150 See Babcock & Clemens, *supra* note 148, at 4.