J Euro Eco His.
ISSN : 0391-5115
Volume 7, Issue 2 (2026)

THE JOURNAL OF EUROPEAN ECONOMIC HISTORY

Terroir and Trade: A Comparative Study of Geographical Indications Protection in India and the European Union

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Abstract
Geographical Indications (GI) occupy a unique position in the international order of intellectual property (IP). They are instruments of trade, custodians of cultural heritage and, depending on the legal system deployed, act as tools for 'community empowerment' or mechanisms for 'producer monopolies' over premium agricultural markets. The Agreement on TRIPS, under Articles 22 to 24, established the international minimum standard for GI–protection, yet it did so with a 'deliberate asymmetry' – i.e. an elevated protection for wines and spirits and general protection for everything else. What followed was a clear divergence. Nations started building frameworks that reflected not merely compliance with TRIPS but deeper philosophical commitments about what GI–protection was envisaged to be fundamentally meant for.

India enacted Geographical Indications of Goods (Registration and Protection) Act in 1999. The legislation established a 'single–tier' registration system administered through a dedicated GI Registry set up in Chennai, assigned a structurally distinctive role to State Governments as proprietors and oriented the GI–protection regime explicitly towards the welfare of producer communities i.e. authorised users. The European Union (EU), by contrast, developed a sui generis system of considerably greater doctrinal complexity – a bifurcated architecture distinguishing Protected Designations of Origin (PDO) from Protected Geographical Indications (PGI) on the basis of the degree of the link between the product's qualities and its geographical surroundings. EU's system is producer–driven, specification–intensive and anchored in the concept of terroir : the idea that place, soil, climate and traditional human practices together constitute a legally protectable productive identity.

This paper conducts a comparative doctrinal analysis of these two frameworks. It examines the registration systems, enforcement mechanisms and quality control architectures of both regimes, using Darjeeling Tea, Basmati Rice, Feta Cheese and Scotch Whisky Association's enforcement record as primary analytical anchors. The central argument is that the divergence between the Indian and EU systems is not merely technical. It rather reflects a 'foundational disagreement' about the very purpose of the intellectual property itself – a disagreement whose consequences are now visible in bilateral trade friction, ongoing negotiations on India–EU Free Trade Agreement (FTA) and the unresolved question of GI–reciprocity between two of the world's largest agricultural exporters.

Key Words: Geographical Indications; Agreement on TRIPS; Protected Designation of Origin (PDO); Protected Geographical Indications (PGI); GI Act of 1999; Terroir

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Introduction

A wheel of Feta Cheese made in Wisconsin carries no legal claim to its name in the European Union. However, a tea grown in the foothills of the Himalayas and falsely labelled "Darjeeling" in a London supermarket triggers a *civil action* under the Indian trademark and GI law iff the Indian Tea Board has the institutional capacity to effectively challenge and incessantly pursue it. These are not abstract doctrinal propositions but illustrations of a concrete and consequential gap : the gap between what a GI promises *in law* and what it delivers *in practice*, across the two of the world's most ambitious GI–regimes.

The international legal baseline has been set by the Agreement on Trade–Related Aspects of Intellectual Property Rights popularly known as TRIPS Agreement.[1] Articles 22 to 24 of the TRIPS Agreement (Section 3) define geographical indications as *indications which identify a good as originating in a territory where a given quality, reputation or some other peculiar characteristic is essentially attributable to its geographical origin*.[2] The framework is deliberately graduated. Article 23 extends a *higher standard of protection* – which does not require proof of 'consumer deception' or 'unfair competition' – to wines and spirits alone.[3] Everything else – from cheese to tea to rice – receives only the *general protection* under Article 22. The asymmetry was not inadvertent but the product of sustained lobbying by wine–producing countries, and it still remains one of the most contested features of the international intellectual property order.

India and the European Union responded to this baseline differently. The difference is equally structural and philosophical. India enacted a framework which was oriented towards collective producer welfare, rural development and formal recognition of community–based geographical identity, whereas EU constructed a system designed to protect the premium market value of regionally specific agricultural products, impose rigorous quality control standards on producers and enforce such standards with the coercive machinery of a supranational legal order. Both systems claim compliance with TRIPS but neither produces the same outcomes.

Part II of this paper examines India's GI Act of 1999, its registration architecture, role of state governments, enforcement mechanisms that the statute provides and the experience of Darjeeling Tea reveals. Part III analyses the EU's *sui generis* system under Regulation (EU) No. 1151/2012 dissecting the PDO/PGI distinction and the scope of protection that Article 13 and the ex–officio obligation generate. Part IV conducts comparative analysis contrasting single–tier and two–tier systems, quality control architectures and the philosophical divergence between developmental IP and agricultural trade monopoly, taking Basmati Rice and Scotch Whisky Association's enforcement record as primary comparative anchors. Part V synthesises the analysis and situates the bilateral divergence within the broader context of the India–EU Free Trade Agreement negotiations on GI–reciprocity.

Ii. The Indian Legislative Architecture : The Gi Act Of 1999

[1] Agreement on Trade–Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].
[2] TRIPS Agreement, *supra* note 2, art. 22(1).
[3] *Id.* art. 23(1) ("Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question . . . even where the true origin of the goods is indicated.").

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A. The Statutory Framework and Registration System

India's entry into the international GI–order was not the spontaneous legislative act. It was a ‘compliance response’. The Geographical Indications of Goods (Registration and Protection) Act, 1999 was enacted to discharge India's obligations under TRIPS and it came into force on September 15, 2003, i.e. *nine years* after the Marrakesh Agreement and nearly a decade after the deadline for TRIPS–compliance by developing countries had passed.[4] The delay was not without consequence. In the intervening period, Indian GIs were appropriated, diluted and registered as trademarks in foreign jurisdictions with little domestic legal recourse available.

The Act defines geographical indication as *an indication which identifies goods as originating from a definite geographical territory where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin*.[5] This definition tracks Article 22(1) of TRIPS almost verbatim. The GI Registry – established in Chennai under the Registrar of Geographical Indications – administers the GI–registration system.[6] Applications may be filed by any association of persons, producers or any organisation or authority established by or under any law for the time being in force representing the ‘interests of the producers’.[7] The scope is deliberately wide. A cooperative society, department of a state government or an NGO representing artisans can all, in principle, apply.

Registration confers a suite of rights. The registered proprietor or the applicant acquires the right to the GI as against the whole world. Importantly, the Act contemplates a second layer of registration : *Authorised Users*.[8] An ‘authorised user’ is a producer of goods in respect of which the GI has been registered and who is entitled to use the GI in connection with such goods.[9] This two–level structure – *proprietor* and *authorised user* – is the Indian Act's functional substitute for the EU's ‘producer consortium model’, though the analogy is imperfect in ways that Part IV herein will examine.

B. The Authorised User System and the Role of State Governments

State Governments occupy a position in the Indian GI–framework that has no equivalent in the system EU follows. Under the Act, State Governments may register themselves as *proprietors* of GIs originating within their respective territories, which they frequently do.[10] The rationale is protective : where producers are *too dispersed*, *too poor* or *too institutionally weak* to organise a formal application, the State steps in as an ‘effective custodian’ of the GI. The State of Karnataka registered Mysore Silk. The Government of West Bengal holds GI for Darjeeling Tea as a *co–registrant* alongside the Tea Board of India. Chhattisgarh registered Bastar Dhokra – an ancient lost–wax metal craft of tribal artisans who would otherwise have had no ‘legal vehicle’ for its registration at all.

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[4] The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999, (India) [hereinafter GI Act 1999]. The Act received Presidential assent on December 30, 1999, but came into force on September 15, 2003. *See* Geographical Indications of Goods (Registration and Protection) Rules, 2002, S.O. 999(E) (India).
[5] GI Act 1999, *supra* note 5, s. 2(1)(e).
[6] *Id.* s. 5.
[7] *Id.* s. 11(1).
[8] *Id.* s. 17.
[9] *Id.* s. 2(1)(b).
[10] The role of state governments as applicants and proprietors is not expressly mandated by the Act but flows from the broad definition of eligible applicants under s. 11(1), which includes "any organisation or authority established by or under any law for the time being in force."

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This is not how the EU conceives of GI–registrations. It is not how TRIPS imagined it either. It is a distinctly Indian solution to a distinctly Indian problem : the translation of 'community–based geographical identity' into an intellectual property right in a context where the community itself lacks the 'institutional capacity' to bind those rights. State Government *being the proprietor* of GI, in doctrinal terms, is a big anomaly. In developmental terms, it is the system's most important feature. The 'authorised user registration' under Section 17 of the Act requires a separate application – a declaration of the applicant's status as a producer and payment of prescribed fee.[11] Only an authorised user may institute infringement proceedings – a restriction that has generated criticism *because* unregistered producers – who are equally entitled to use the GI and would be adversely affected by any infringement – cannot enforce it without first completing the authorised user registration formality.[12]

C. Enforcement Mechanisms and Limitations : Darjeeling Tea Experience

Infringement of a registered GI is defined under Section 22 of the Act.[13] The *prohibited acts* in terms of the Act include using GI on goods not originating from the 'registered area', using GI in a manner which misleads the public as regards the geographical origin itself and using GI in translations or with qualifying expressions such as 'style', 'kind', or 'imitation'.[14] The remedies – injunction, damages or account of profits and 'delivery up' of infringing goods – mirror the remedies available in trademark infringement actions.[15]

The enforcement architecture, in practice, is considerably weaker than what the statute provides. The Act makes provision for an 'inspection body' – to be formed by the applicant group/association of producers at the time of registration and tasked with verifying *that the goods bearing the GI conform to the applicable standards*.[16] In practice, these inspection bodies are often under–resourced, operationally inconsistent and without any mandatory audit obligation imposed by the Registrar. The contrast *vis a vis* the EU's product specification compliance regime is stark and will be examined in Part IV.

Darjeeling Tea is both the Act's proudest success and its most instructive cautionary tale. The Tea Board of India secured GI–registration for Darjeeling Tea in 2004, making it the first Indian product to be registered under the Indian GI Act.[17] The Tea Board also registered "Darjeeling" as a certification trademark in over forty countries – a defensive strategy born of bitter experience wherein the name "Darjeeling", in 1990s, had been appropriated on tea products in Japan, Egypt, Russia and the United Kingdom, whereas none bore any connection to the Darjeeling district of West Bengal.[18] The Board estimates that global annual sales of tea marketed under the name "Darjeeling" historically exceeded the district's total annual

[11] GI Act 1999, *supra* note 5, s. 17(1); Geographical Indications of Goods (Registration and Protection) Rules, 2002, r. 59.
[12] *See* GI Act 1999, *supra* note 5, s. 22(2) (restricting the right to institute infringement proceedings to registered proprietors and authorised users).
[13] *Id.* s. 22.
[14] *Id.* s. 22(1)(a)-(b).
[15] *Id.* s. 27.
[16] Geographical Indications of Goods (Registration and Protection) Rules, 2002, r. 32 (requiring the application to include details of the inspection body proposed to verify that the goods conform to the applicable standards).
[17] Tea Board of India, Darjeeling Tea GI Registration No. 1 (GI Registry Chennai, Oct. 2004).
[18] *See* Dev Gangjee, *Relocating the Law of Geographical Indications* 192–94 (Cambridge University Press 2012) (documenting the pre-registration misuse of the Darjeeling name in international markets).

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production by a factor of several times – a commercial absurdity made possible entirely by the absence of enforceable GI–rights in foreign markets.[19]

Enforcement, in India, has improved. The international enforcement however remains largely dependent on Tea Board's 'institutional capacity' to immediately challenge and vehemently pursue *passing–off actions* and *trademark opposition proceedings* in each foreign jurisdiction *individually* – a costly, slow and *'tactically reactive'* approach that a strong multilateral recognition framework would always prefer to avoid or eliminate. A notion – *that* Darjeeling Tea requires this level of *ad hoc* international litigation to defend a GI registered under a statute enacted precisely to protect it – reveals, with uncommon clarity, a macroscopic *extraterritorial reach problem* existing at the core of the Indian GI–framework.

Iii. The European Union *Sui Generis* System : Pdo And Pgi

A. The PDO/PGI Distinction : Structure and Philosophy

The European Union's GI–framework did not emerge from a single legislative moment. It evolved over a period of time. The original Council Regulation (EEC) No. 2081/92 on the protection of 'geographical indications' and 'designations of origin' for agricultural products and foodstuffs established the foundational architecture for PDO/PGI. Subsequent revision produced Regulation (EC) No. 510/2006. EU's current governing instrument on quality schemes for agricultural products and foodstuffs – Regulation (EU) No. 1151/2012 of the European Parliament and of the Council – represents the consolidation of two decades of legislative refinement and judicial interpretation.[20] The architecture that emerged from this process is built on a single philosophical premise that the geographical origin is *not a uniform legal category*. The relationship between a 'product' and 'its place of origin' exists on a spectrum and the law should reflect such spectrum with precision.

The distinction between Protected Designation of Origin (PDI) and Protected Geographical Indication (PGI) is the legal expression of that very premise. A PDO requires an essential and exclusive link.[21] Under Article 5(1) of Regulation (EU) No. 1151/2012, a name qualifies for the status of PDO where the qualities or the characteristics of a product are *essentially* or *exclusively* due to a particular 'geographical environment' associated with its inherent natural and human factors *and* all stages of production, processing and preparation take place in such a defined geographical area.[22] The word 'essentially' is not rhetorical. It is rather a threshold. A PDO product must owe its defining qualities to the place itself – to the soil, the microclimate, the water, the centuries of localised human practices that have shaped the product into what it is! Roquefort Cheese, Parmigiano Reggiano, Champagne are not the products which happened to come from a particular location. They are instead the products which, in any meaningful sense, *could not have come* from anywhere else.

PGI operates at a lower register of 'geographical dependency'. Article 5(2) provides that a name qualifies for PGI status where a specific quality, reputation or some other peculiar characteristic of a product is 'attributable' to its geographical origin and *at least one* of the

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[19] Tea Board of India, Annual Report 2003–04, at 12 (noting the discrepancy between district production and global "Darjeeling" labelled sales).

[20] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L 343) 1 [hereinafter Regulation 1151/2012]. This Regulation repealed and replaced Council Regulation (EC) No 510/2006, 2006 O.J. (L 93) 12, which had itself replaced Council Regulation (EEC) No 2081/92, 1992 O.J. (L 208) 1.

[21] Regulation 1151/2012, *supra* note 21, art. 5(1).

[22] *Id.*

stages of production, processing or preparation takes place in the *defined geographical area*.[23] Attribution, not exclusivity. One stage, not all stages. A PGI product must have a genuine connection to its place of origin and the connection need not be constitutive of the essential character of the product. Scotch Whisky is distilled and matured in Scotland. It carries a PGI. The designation protects the *reputation* of the product and the *integrity* of its production claim without asserting that the flavour profile of Scotch Whiskey could not theoretically be approximated anywhere else. The legal protection flows from the *geographical claim*, not from a *metaphysical insistence on uniqueness*.
This distinction matters enormously. It is not an administrative taxonomy. It determines the scope of protection, the rigour of the product specification and the degree to which competitors can invoke 'generic–name defence.' The EU's willingness to maintain this distinction and litigate it up to the European Court of Justice (ECJ), whenever necessary, is the single most significant structural feature separating the EU's GI–framework from that of India.

B. Registration Procedure and the Product Specification
Registration under Regulation (EU) No. 1151/2012 proceeds in two stages. The applicant must be a *group of producers* of the product concerned. In exceptional circumstances, notwithstanding, a single natural or legal person may apply. The application is to be first submitted to the designated competent authority of the member State in which the 'geographical area' is located.[24] The member State conducts its own scrutiny, publishes the application *nationally* so as to allow for any opposition and, if satisfied, forwards the application to the European Commission.[25] The Commission then examines the application for compliance with the Regulation, publishes it in EU Official Journal, and opens a three–month opposition period during which any natural or legal person with a legitimate interest may file objections, if any.[26]

The *product specification* is the technical and the legal core of the registration process. Article 7 prescribes its mandatory contents : the *name* to be protected; a *description* of the product including the raw materials involved; the *definition* of the geographical area; *evidence* that the product originates in the given territory; a description of the *method* of obtaining the product; the details establishing the *link* between the qualities or characteristics of the product and the geographical environment; and the name and contact details of the *applicant group*.[27] For a PDO, the specifications must also demonstrate the 'essential link' between the product quality and the geographical environment – a requirement that demands scientific, historical and agronomic evidence of a kind that few applicants find themselves capable of producing without expert assistance.

The product specification is not merely a registration document. It is an ongoing 'compliance instrument'. Once registered, authorised producers must conform to the 'requirements of the specifications' or lose the right to use the designation. Member States are required to designate competent authorities responsible for carrying out 'compliance checks' which must be

[23] *Id.* art. 5(2).
[24] *Id.* art. 49(1). The exceptional single-person application is permitted where that person is the only producer willing to submit an application and the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas.
[25] *Id.* art. 49(4)-(5).
[26] *Id.* arts. 50(1), 51(1).
[27] *Id.* art. 7(1)(a)-(i).

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conducted strictly in accordance with Regulation (EU) No. 882/2004 on 'official controls'.[28] Third–party certification bodies accredited under the relevant European standard may also perform these functions. The system, in short, is a quality management framework dressed up in IP–clothing and that is precisely what it has been designed to be.

C. The Scope of Protection and the Ex–Officio Mandate

Article 13 of Regulation (EU) No. 1151/2012 defines the scope of protection conferred by the registration. It prohibits *four categories* of the conduct : *direct or indirect commercial use* of the registered name in respect of the products not covered by the registration where the products are comparable or where the use exploits the reputation of the protected name; *misuse, imitation or evocation* of the name even where the true origin of the product is indicated or the name is accompanied by a qualifying expression; any *false or misleading indication* as to the provenance of the product; and any other *practice liable to mislead the consumer* as to the true origin of the product.[29] The fourth category is capacious. An 'evocation' – i.e. the use of a name, image or presentation that calls the protected product to a consumer's mind – is prohibited even without any direct reference to the registered GI. This is a broader prohibition than anything the Indian Act contemplates.

Article 36 imposes an ex–officio protection obligation on member States : registered names are protected against the prohibited acts listed in Article 13 without any need for the right–holder to initiate enforcement proceedings.[30] Customs authorities, trading standards officers and food safety regulators are all, in principle, obligated to act upon. The contrast with India's system, where enforcement is entirely initiated by the *registered proprietor* or *authorised user*, is structural rather than merely operational.

The litigation as regards Feta Cheese before the European Court of Justice (ECJ) is the definitive judicial expression of the PDO's *exclusivity principle*. Germany and Denmark challenged the Commission's registration of 'Feta' as a PDO for Greek Cheese arguing that the name had become 'generic' – a common designation for a style of white brined cheese produced across Europe and beyond.[31] ECJ rejected the argument in entirety. Upholding the Commission's registration, the Court held that a name cannot be considered generic where the product it designates retains a *sufficiently strong geographical connotation* in the minds of the relevant consumers.[32] Feta, the Court found, was associated with Greece by the consumers throughout the European Union with its climate, its ovine and caprine milk traditions, and its centuries of cheese–making practice. The registration withstood. Danish and German producers were required to cease using the name.[33]

The enforcement practices of Scotch Whisky Association (SWA) under the EU–framework illustrate the ex–officio mechanism operating at scale. The SWA – working in conjunction with

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[28] *Id.* art. 37(1); *see also* Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on Official Controls Performed to Ensure the Verification of Compliance with Feed and Food Law, 2004 O.J. (L 165) 1.
[29] Regulation 1151/2012, *supra* note 21, art. 13(1)(a)-(d).
[30] *Id.* art. 36.
[31] Joined Cases C-465/02 and C-466/02, Germany and Denmark v. Commission (Feta), 2005 E.C.R. I-9115.
[32] *Id.* at ¶ 75 ("The fact that [a name] has been used for a long time does not necessarily mean that it has become generic where it still retains a geographical connotation in the mind of the consumer.").
[33] *Id.* at ¶ 101 (dismissing the actions and confirming the validity of Commission Regulation (EC) No 1829/2002 registering "Feta" as a PDO).

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customs and trading standards authorities of the member States of the EU – has pursued enforcement actions across the Union against the products using the terms 'Scotch', 'Scots', 'Scottish' and cognate expressions on whisky products not produced in Scotland and matured for the requisite minimum period.[34] These actions proceed *without the SWA being required to initiate individual civil proceedings in each jurisdiction* – a function discharged instead by the competent authorities of each member State acting in terms of their Article 36 obligations. The operational efficiency of this model *vis a vis* India's Tea Board's 'jurisdiction–by–jurisdiction enforcement strategy' for 'Darjeeling' requires no further elaboration.

Iv. Comparative Analysis : Divergence In Registration And Enforcement

A. Single–Tier v Two–Tier : The Structural Fault Line

India's GI Act of 1999 registers all GIs within a *single legal category*. A *hand–knotted carpet* from *Bhadohi* – whose connection to its 'place of origin' is primarily one of 'skilled artisanal traditions' – receives the same legal designation as that of Darjeeling Tea, whose *flavour profile* is inseparable from the specific altitude, rainfall and soil composition of district Darjeeling of the state of West Bengal. The legal instrument does not distinguish between the two. Both are 'geographical indications' within the meaning of Section 2(1)(e) of the GI Act, 1999, both receive similar scope of protection, and both are enforced through the same mechanisms.[35]

This is not a drafting oversight. It rather reflects a considered 'legislative choice' *or* rather the 'absence of a choice' that the Indian legislature never felt compelled to make. TRIPS Article 22 required only a general minimum standard, and India met that 'minimum standard.' The EU, by contrast, treated the TRIPS baseline as a 'floor' instead of a 'ceiling.' India achieved 'the floor' whereas EU used the floor to reach 'the ceiling.' The PDO/PGI distinction operationalises a qualitative judgment that the Indian GI Act declines to make which is *that* the degree of 'geographical dependency' in a product's essential character is legally significant *and that* the law should say so explicitly.

The consequences for producers are naturally asymmetric. An Indian GI–registration confers the rights but says nothing about the strength of the underlying 'geographical link.' A French winemaker registered under PDO knows that the designation signals an exclusive, verifiable and legally enforceable connection to a specific terroir – a signal that commands premium pricing in global market. An Indian artisan registered under the GI Act receives protection against misuse but no legal instrument through which the market is told that the geographical link is 'constitutive' rather than 'incidental.' The premium–market signaling function that PDO performs is simply unavailable in the Indian GI–protection regime.

For consumers, this gap is concrete. EU consumers purchasing a PDO product gets a *legally guaranteed assurance* that every stage of production took place within the 'defined area' and in conformity with a verified product specification. Indian consumers purchasing a GI–registered product, whereas, have no equivalent assurance. The registration merely tells them that the product originates from a particular place. It does not tell the consumers that the product was produced in conformity with any *verified quality standards* simply because the statute does not

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[34] *See* Scotch Whisky Association, *Annual Report and Accounts 2022*, at 18–19 (documenting enforcement actions under Regulation 1151/2012 and the Scotch Whisky Regulations 2009 (SI 2009/2890) (UK) across EU member states and third-country markets).

[35] GI Act 1999, *supra* note 5, s. 2(1)(e); *cf.* Regulation 1151/2012, *supra* note 21, arts. 5(1)-(2) (establishing the qualitative distinction between PDO and PGI on the basis of the degree of geographical link).

require it. The registration and quality assurance, in Indian GI–framework, are conceptually distinct. In EU framework, they are one and the same.

B. Quality Control and Enforcement Architecture

Rule 32 of Geographical Indications of Goods (Registration and Protection) Rules, 2002 requires every application for GI–registration to include details of the 'inspection body' proposed to verify that the goods bearing the proposed GI–tag would conform to the applicable standards.[36] The requirement exists merely on paper. Its 'practical implementation' is something else because the rules impose on the registered inspection bodies no mandatory audit cycle, no accreditation requirement, no obligation to report to the Registrar and no mechanism for the Registrar to revoke the registration where an inspection body fails to perform its functions. The inspection body is 'applicant–established' and 'applicant–funded' which needs no further explanation as regards its efficacy. Its independence from the very producers it is supposed to inspect is, at best, *structurally flawed*.

On the contrary, EU's quality–control architecture operates on an entirely different platform. Compliance with the product specification is a 'serious condition' of the *right to use the designation*, not a post–registration aspiration. Verification is conducted by competent authorities designated by member States under Article 37 of Regulation (EU) No 1151/2012, or by third–party certification bodies accredited under European Standard EN 45011.[37] Checks are mandatory, periodic and externally verified. A producer found non–compliant loses the right to use the designation. The EU system treats quality control as the 'essence' of GI–protection, not an administrative annex.

The dispute pertaining to Basmati Rice illustrates India's extraterritorial enforcement gap. On September 2, 1997, a Texas–based American Company namely RiceTec Inc. was granted US Patent No. 5,663,484 titled 'Basmati Rice Lines and Grains' covering novel rice lines described as 'Basmati' and methods of breeding them.[38] Patent's claim to the name 'Basmati' – a name associated with aromatic long–grain rice cultivated for centuries in the Indo–Gangetic plains of India and Pakistan – provoked immediate diplomatic and legal protest from the Indian Government. RiceTec ultimately agreed to narrow its claims before the US Patent and Trademark Office (USPTO) and several claims were cancelled following re–examination.[39] The episode ended in partial victory. What it exposed, however, was the 'structural absence' of any 'proactive international protection mechanism' available to India. There was no multilateral 'GI Register' to which India could look at to prove her case. There was no 'automatic recognition framework' under which Basmati's Indian origin would have been presumptively protected in the US market. India fought that dispute through diplomatic channels and USPTO re–examination proceedings, not through any established GI–enforcement instruments, and it was because no operative instrument was available at all which could have been relied upon.[40]

[36] Geographical Indications of Goods (Registration and Protection) Rules, 2002, r. 32.
[37] Regulation 1151/2012, *supra* note 21, art. 37(1); *see* European Standard EN 45011, General Requirements for Bodies Operating Product Certification Systems (ISO/IEC Guide 65:1996) (establishing the accreditation standard for third-party GI compliance verification bodies).
[38] U.S. Patent No. 5,663,484 (filed Feb. 4, 1994) (issued Sept. 2, 1997) (RiceTec, Inc.).
[39] *See* U.S. Patent and Trademark Office, Ex Parte Reexamination of U.S. Patent No. 5,663,484 (2001) (cancelling claims 1-7 and 10-12 following reexamination proceedings initiated in response to protests filed by the Government of India and third parties).

[40] *See* Dwijen Rangnekar, *The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe*, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No. 8, at 22-24

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C. The Philosophical Divide : Developmental IP v Agricultural Trade Monopoly

At the deepest level of analysis, the divergence between the Indian and EU GI–regimes is not a technical disagreement about *registration categories* or *enforcement procedures*. It is a disagreement about what the intellectual property is precisely meant for.

India's GI–framework is 'developmental' in its orientation. The Statute's extension of applicant standing to State Governments, cooperative societies and organisations representing 'producer communities' reflects a legislative intent that the GI–protection is primarily a 'vehicle' for rural economic empowerment – i.e. an instrument for translating the *geographical identity of the marginalised producers* into 'market recognition' and 'income security'.[41] The intent is to use GI as 'social policy instrument.' Chanderi *Sarees,* Kolhapuri *Chappals,* Kondapalli toys are not the products seeking premium–market positioning in EU's sense. These are rather the products whose producers require protection from 'commercial misappropriation' and whose communities require 'legal recognition' of a 'cultural and economic heritage' that the market would otherwise extinguish.

The EU GI–regime encodes a fundamentally different set of priorities. Terroir, in EU–framework, is not merely a descriptive term for the 'environmental conditions' of the production of a GI–product. It is a 'commercial ideology.' The PDO designation is explicitly designed to create and protect 'producer monopoly' over a product category to enable a consortium of producers in a defined geography to exclude all competitors from using a name, regardless of the quality or character of the products. Producers of *Parmigiano Reggiano* do not merely want the protection against fraud. They want the legal authority to prevent any other Italian cheese manufacturer from using the name 'Parmesan' in EU markets, even if the competing product is produced to an equivalent or superior standard.[42] The GI–designation, in this conception, is an 'agricultural trade–monopoly' in the guise of a 'quality assurance mechanism.'

Neither characterisation is entirely fair to the system it stands to describe. India's 'developmental orientation' does not preclude premium–market GIs : Both Darjeeling Tea and Kanchipuram Silk are taken as premium products in international trade. EU's 'monopoly orientation' does not eliminate the aspect of 'genuine quality assurance' and the requirement as regards the 'product specification' is a *meaningful compliance instrument*. The divergence is one of primary orientation, not exclusive purpose. Having said that, the primary orientation shapes every design–choice downstream and these choices have produced two systems that are *structurally incompatible* in their treatment of reciprocal GI–protection.

The 'incompatibility' as explained above sits at the centre of the negotiations on India–EU Free Trade Agreement as regards the GI–reciprocity. The EU has been consistently pressing for India to grant EU GIs – *particularly wines, spirits and dairy products* – the protection equivalent

(2004) (analysing the Basmati dispute as illustrative of the enforcement asymmetry between countries with and without formal multilateral GI recognition frameworks).

[41] *See* Ministry of Commerce and Industry, Government of India, *Background Note on Geographical Indications* (2017) (articulating the developmental rationale for India's GI framework and the role of state governments in extending protection to community-based producers).

[42] *See* Case C-469/00, Ravil SARL v. Bellon Import SARL and Biraghi SpA, 2003 E.C.R. I-5053 (holding that the PDO "Grana Padano" precluded the use of the term "Parmesan" in circumstances liable to mislead consumers, and affirming the monopoly function of PDO designation in the EU's agricultural trade architecture).

J Euro Eco His.
ISSN : 0391-5115
Volume 7, Issue 2 (2026)
THE JOURNAL OF EUROPEAN ECONOMIC HISTORY

to *sui generis* standard available under Regulation (EU) No. 1151/2012.[43] India has resisted the move vehemently arguing that its single–tier system is TRIPS–compliant and that the EU's demand for 'elevated protection' reflects not a principled international standard but their *commercial interests in securing monopoly designations* for European agricultural exports into the Indian market.[44] Both positions are legally defensible. Neither is politically neutral. The FTA negotiations have repeatedly stalled on this point alone – a bilateral expression of the same asymmetry that the TRIPS wine and spirits carve–out institutionalised at the multilateral level three decades ago.

V. Conclusion

Two legal systems set out to protect the same thing – the relationship between a product and the place that made its existence possible. The 'divergence' between the two systems – India's and EUs – is the subject matter of this paper and its causes are now legible.

India's GI Act of 1999 is a statute of inclusion. It *extended* the protective reach of the intellectual property law to those communities who would otherwise have had no access to it, *assigned* the state a 'custodial role' where producers lacked institutional capacity and *treated* 'geographical identity' as a 'vehicle' for 'rural welfare' rather than a 'mechanism for market exclusivity.' These are defensible choices. They are also the choices that produced a framework with 'structural limitations' – a *single–tier registration system* that cannot signal the degree of geographical dependency underlying a product's character, an *inspection body mechanism* that lacks mandatory *enforcement teeth* and an *extraterritorial reach* that depends upon the Tea Board's litigation budget rather than any multilateral recognition instrument.

The EU's *sui generis* system made opposite choices with opposite consequences. The PDO/PGI distinction is analytically precise and commercially potent. The product specification requirement is a genuine quality management instrument. The ex–officio protection mandate converts GI–enforcement from a *right–holder's burden* into *an obligation of the State*. These features have made the EU–framework the most effective GI–protection system in the world by the metric EU cares about the most : *premium–market producer rents*. They have also made it an instrument of agricultural trade policy – one that the EU deploys in bilateral negotiations with the consistency and strategic patience of a major exporter protecting its most valuable designations.

The Feta judgement and the Darjeeling enforcement record together tells the same story from opposite ends. Greek producers hold an ECJ–confirmed monopoly over a name that non–Greek dairy farmers had used for decades. The Tea Board pursues jurisdiction–by–jurisdiction *passing–off litigation*s against the misuse of a name that defines one of India's most internationally–recognised agricultural products. The 'legal distance' between the two outcomes is not a function of the merits. It is a function of architecture.

What this comparison ultimately reveals is that TRIPS' Article 22 provision set *a floor* which satisfied none. The EU built a cathedral on it. India built a shelter. Both structures serve their

[43] *See* European Commission, *Trade Negotiations with India: EU Position on Geographical Indications* (2023) (setting out the EU's demand for sui generis-equivalent protection for EU GIs in India as a condition of FTA conclusion).

[44] *See* Ministry of Commerce and Industry, Government of India, *India's Approach to Geographical Indications in Trade Negotiations* (2022) (documenting India's position that TRIPS compliance constitutes a sufficient international standard and that demands for elevated GI protection reflect asymmetric commercial interests).

stated purposes. Neither resolves the question that the international GI–order has never answered : *whether geographical indications are fundamentally about 'protecting producers from fraud' or about 'constructing and defending market monopolies' in the name of 'cultural heritage.'* Until such question is answered or until India–EU Free Trade Agreement negotiations produce a 'reciprocity framework' that bridges the 'architectural gap,' the two systems will continue to generate friction at every point of contact and the products caught in between will continue to be *inadequately protected* in one market or the other. Harmonisation of GI–protection across the international trading order remains, in this sense, not merely an unfinished 'legal project' but an unresolved 'political approach.'

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