



ARMENIA: Geographical Indication as a legal tool to promote agricultural products: its role and unique features Subtitle

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Introduction

Intellectual Property (IP) field in the Republic of Armenia (RA) has been developing since its independence declared at the beginning of 1990th. Currently, almost all of IP-related legislation is in conformity with the internationally recognized principles and rules.

IP legal acts regulate two main IP fields: (i) *copyright* which governs the rights of the owners of the artistic and literary works on the one hand and (ii) *industrial property* which regulates the rights of the beneficiaries of industrial property branch such as businesses, inventors, etc. IP related articles are also prescribed by the RA Civil Code, Section 10.

In general, IP could be defined as an intangible financial asset which plays a major role in conducting businesses and promoting products and goods and serves as a branding tool for businesses. Every business enterprise has its own Trademark (TM), which is in one way or another is designed (colors, shape, images used) to make own products easily recognizable among numerous products available in the market. TM helps the consumers to differentiate between similar products/goods offered. As a rule, TM usually belongs to one producer or a group of producers (collective mark). Overall, TM as a sub-branch of IP field is regulated by the RA Law on Trademarks (July 1, 2010).

Geographical Indicationⁱ (GI), as another IP sub-branch, is a unique lever to commercialize agricultural products and goods, which are produced in a defined geographical area and have a close link thereto (human skills, natural specific conditions, soil, special knowledge, etc.).

The aim of this paper is to present Armenian GI legislation, analyze the current situation, provide recommendations on how to tackle GI registrations in Armenia and initiate discussions

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among potential producers of agricultural products.

In addition, a separate part on the International GI protection as well as the best international practices is also presented for consideration.

Armenian Legal Framework

Prior to the adoption of a separate RA Law on GIs in Armenia, products eligible to GI protection had been regulated by the RA Law on TMs, Service Marks and Appellations of Origin (20.03.2000). Overall, the law consisted of the main three parts; the second one was entitled the *Appellations of Origin* (Chapters 7 to 10).

Currently, the new law governs the GI filed. In particular, the RA Law on Geographical Indications (the Law on GIs) is in force since July 1, 2010. It consists of the five chapters as follows: *Chapter I* - Basic Provisions; *Chapter II* - Legal protection; *Chapter III* - The process of registering geographical indication, designation of origin and guaranteed traditional product; *Chapter IV* - Appeal against the decisions and Contradiction with other rights. Supervision; *Chapter V* - Transitional provisions and entry into force of the law. The law is in conformity with the provisions found in the international legal acts.

In accordance with the RA Law on GIs the following three categories of GI products are identified, namely:

1. Geographical Indication (Article 8(1));
2. Designation of Origin (Article 8 (2));
3. Guaranteed Traditional Product (Article 9)

Each of the prescribed categories has its own specifics and differences, which are clearly defined by the respective provisions.

Furthermore, in support to the RA Law on GIs, the Procedure for filling out, submission, presentation, and consideration along with the forms for GI and DO applications was approved by the RA Government (Decree N 310-Ն, March 10, 2011).

International Legal Framework: Best practices

International community possesses a substantive knowledge and has a considerable experience in protection and enforcement of GI rights.

In particular, GI products are regulated by the relevant articles and provisions prescribed by the several international treaties, namely:

- the Agreement on Trade-Related Aspects of Intellectual Property Rights (Armenia is a signatory party)
- the Paris Convention for the Protection of Industrial Property (Armenia is a signatory party)
- Lisbon Agreement for the Protection of appellation of Origin (Armenia is not a signatory party to this treaty).

In addition, GIs are protected by the bilateral agreements concluded between states, as a result of which the lists of the GI products are exchanged and mutually protected within the territory of respective states. (e.g. DCFTA)

European Union

In the European Union, the GI system is regulated by the legal acts applicable to the separate categories of goods and products which fall under the category of agricultural products and foodstuff.

In particular, three separate EC Regulations govern GI system, which is operational within the borders of the European Union, namely: (i) on *agricultural products and foodstuff* (EC Regulation 1151/2012); (ii) *wines* (EC Regulation 479/2008); (iii) *spirits* (EC Regulation 110/2008). In addition, a number of other EC Regulations are

also designed for a particular product (e.g. winesⁱⁱ).

All of the regulations contain detailed provisions on the products eligible to GI protection. In addition, separate databases on each product type are available for wines, sprits and agricultural GI productsⁱⁱⁱ.

It shall be noted that the EU GI system is comprised of the three categories of GI products such as (i) Protected Designation of Origin; (ii) Protected Geographical Indication; and (ii) Traditional Specialties Guaranteed.^{iv}

Furthermore, a number of the EU GI agricultural products presented below could serve as an example for realizing the usefulness and practicability of the proper and workable GI system in countries with no GI system (or non-implementation of the existing GI legislation).

For example, the following famous products are protected under GI system: Feta (cheese), Proscutto (meat product), Champagne, Parmiggiano Regiano (cheese), Scotch Whiskey (spirit), Roquefort Cheese, Darjeeling Tea, Val di Non apples, Basmati rice, etc.

Russian Federation

In the Russian Federation, the separate part of the Civil Code governs the field of Intellectual Property in general. It was adopted on December 28, 2006 and entered into force on January, 2008. In particular, the 4th part of the Civil Code is entitled “Intellectual Property” and consists of many chapters related to different branches of IP such as Copyright (Chapter 70), Related Rights (Chapter 71), Trademark (Chapter 76), etc. Chapter 69 “General Provisions” (Articles 1225-1254) deals with the main principles and notions of IP: exclusive rights, license agreements, transfer of exclusive right.^v

Furthermore, Chapter 76, paragraph 3 “Designation of a place of origin” defines the subject matter of protection of “all kinds of goods including foodstuffs and handicrafts”^{vi}.

Therefore, products which fall under the category are the following: meat and milk productions, agricultural products and fish, alcoholic beverages and pastries, mineral waters and beer, poultry and jewelry, ceramics and small-size sculptures, decorative goods made of wood, Russian fur, etc.

Analysis and Recommendations

GI legal tool as a separate form of protection, (which, for practical reasons, herein serves as a cumulative term for all of the three GI categories mentioned in the above section), has its own specific features and is different from a TM protection. Both TM and GI tools provide strong protection to any product; both of them are workable legal mechanisms. However, there are differences which could be enumerated as follows: terms of protection, enforcement, genericness, public vs private rights, etc.

The owners of businesses shall be involved in discussions to understand the benefits and/or differences between TM protection, which they are usually use to identify own production, and the GI protection.

If TM belongs to a private owner/s and is enforced privately, the GI products are under the permanent State Control (Specialized Body). That is why GI products always assure quality and implies unique characteristics of a product originated in a particular area.

GI tool used by business owners tells consumers more than mere information about the producer of goods produced under any TM. GI tool, on the one hand conveys additional information about the product by assuring high quality of a product originated in a particular area and acts as a unique way to preserve knowledge passed on from generation to generation on the other. All in all, GI tool adds value to such agricultural products.

Registered GIs in Armenia

Currently only one international GI product is registered in the GI Registry of Armenia, namely, Parmiggiano-Regiano (Italian Cheese).

In addition, another name (document) is found on the RA IP Agency's website.^{vii} In particular, the application of ARARAT mineral water registered as an Appellation of Origin^{viii} in 2008, which is available at the GI database section.

Is it a technological mistake/ website maintenance issue or, indeed, a new registration made at the RA GI Registry?

In order to answer the question, it is relevant to analyze this finding step by step. The following arguments could be presented:

- In accordance with the RA Law on GIs, Article 1 (2), this law applies to agricultural products “... *except for natural and mineral waters*”. Thus, in one way or another, ARARAT mineral water cannot be protected by this law by default.
- The RA Law on GIs, Article 44 (1), “... *Registered designations of origin of goods shall be in force....no longer than December 31, 2010*”. It means, that posted document is invalid according to the Article 44 (2) “...*from January 1, 2011*”
- Only applications which are still under the examination “...*shall be carried out in compliance with the requirements defined by this Law*” (Article 44(3))
- A separate line on the terms which lasted until 13.03.2018 is mentioned.
- As a matter of fact, all of mineral waters in the RA are excluded from GI protection and, therefore, protected by the RA Law on TM (or Collective Mark).

TM is granted for a specified period of time. In Armenia the term of protection constitutes 10 years which is subject to renewal (The RA Law on TM, Article 18 and Article 19).

According to the RA Law on GIs, GI products are “...*in force since the filing of the application, without limitation of term*” (Article 13 (1)). However, the rights to use protected GI/DO “*shall be entitled for a period of 10 years*” with the subsequent right of renewal of the term (Article 13 (2)). The product specifications of any registered GI shall be approved beforehand and be under the permanent control performed by the State Authorized Body.

The latter does not imply the functions of the RA IP Agency, which is authorized to perform the state registration of any industrial property right (including GI). It implies the specialized (professional agricultural) body which would have enough expertise to deal with the product specifications of all of agricultural products and foodstuff to determine and/or approve as a result of consultations and close cooperation with the specialized food associations/unions. Finally, based on all of documentation prepared by designated professional body, the RA IP Agency shall perform the registration.

To the best of our knowledge, no such professional body has been formed in the RA yet (it could be in the process of formation).

Which name to use for GI products: geographical name or any name?

Usually, people think that GI products shall bear the geographical name of a particular area where it is produced only. The answer to the above question is found in the Article 8 (3) of the RA Law on GIs, which specifies:

“Traditional geographical or non-geographical names of the product.....can also be protected as geographical indications or designation of origin”.

Herein, a well-known *Feta cheese* of Greek origin could be brought as a good example of GI product with a non-geographical name.

What are the reasons of the absence of any Armenian local product which could qualify as GI product?

The main reasons are the following:

- the Armenian communities have no knowledge on the usage and importance of this legal branding tool
- Producers of agricultural products and foodstuff are unaware of the existence and usability of Geographical Indication legal system
- Business owners/potential GI producers have no knowledge on GI importance and are not introduced to the procedures necessary for registration.

In addition, it shall be noted that for registering GI products and having fully functioning GI system for agricultural products and goods, the following important functions should be analyzed, in particular:

- The role of the Ministry of Agriculture, as a state body, to promote agricultural GI products
- The existence of the authorized control body to keep control over the GI products.
- The role of the IP Agency as authorized state body to register GI products in conformity with the procedure adopted
- The role of professional unions and association/groups to promote own production (cheese, meat, fruits, etc.)

Hereinafter, another question arises on: Which products could be protected as GIs?

The answer is: any agricultural products (raw, processed, dried, etc...) which originate in a particular area, produced as a result of knowledge passed from generation to generation, specific geographical features and human skills.

In Armenia, business owners/producers may consider several products to be registered as GIs such as: Basturma (meat product); Lori, Chanakh, Horatz (kinds of cheese); Armenian fruits and vegetables; Alcoholic beverages; Pastries; Etc.

Practical relevance of GI system is obvious and shall be promoted by all of possible means and available instruments. First of all, it could be considered the adoption of a National Strategy on GI promotion with the furthermore involvement in the whole preparatory process of all of the stakeholders.

No functioning GI system as well as non-registration and non-protection of potential GI products could be seen as a lost opportunity to represent Armenia and Armenian delicious foodstuff both on local and international levels.

Taking into account all of above mentioned, it shall be noted that GI system is not properly developed in Armenia yet. Mere existence of the Law on GIs and the Procedure on the registration of GIs is not enough for the functioning of the whole system in Armenian territory. More extensive and close approach is necessary to conduct.

Conclusion

To sum up the above mentioned, it shall be highlighted the importance of the Geographical Indication (GI) as a legal tool to protect, commercialize and promote national/local products and foodstuff by preserving traditional knowledge of a particular nation. Developed GI system helps to create a strong community identity, attracts tourists, promotes national/local production, etc.

Armenia is an ancient country with traditions, cuisine, foodstuff and specific human skills passed to the current generation. This baggage of knowledge shall be wisely commercialized by transforming into large output. GI could serve as an appropriate tool to do it. Armenia is rich of a

number of agricultural products which could be produced and promoted worldwide.

Geographical Indication as a market tool shall be introduced to Armenian producers/businesses without any delay. Geographical Indication (GI) shall be considered and realized by the local manufacturers/businesses of agricultural products. As an important market device, GI could serve as a catalyst for a strong and

sustainable rural development in Armenia, a country with the economy in transition.

Producers should not miss a chance to manufacture and export indeed high quality national products and gain profit therefrom. Without any doubt, unique and delicious Armenian products protected under GI system would get international recognition and find their own places in different markets.

ⁱ *Note:* herein, the Geographical Indication(GI) is used as an umbrella term for all of types of GI (each of them have special characteristics, but are not subject of this article)

ⁱⁱ *Note:* Regulations applicable to the wine sector: EC Regulation 479/2008, EC Regulation 606/2009, EC Regulation 436/2009, EC Regulation 479/2008, EC Regulation 607/2009, etc.

ⁱⁱⁱ *Note:* **DOOR** register for agricultural PDOs, PGIs, TSGs; **E-Spirit**; **E-Bachhus** (for wines)

^{iv} *See:* <http://ec.europa.eu/agriculture/quality/schemes/> accessed on December 10, 2013

^v *See:* <http://www.rupto.ru/rupto/portal/a42d38d2-47e7-11e1-48db-9c8e9921fb2c#1531> accessed on 2 December, 2013.

^{vi} Daria Kim, article "Protection of Geographical Indications in Russia: Is Russian Vodka a

Protected GI?" <http://www.ip-watch.org/2012/08/31/protection-of-geographical-indications-in-russia-is-russian-vodka-a-protected-gi/> , accessed on 2 December, 2013

^{vii} *See:* <http://aipa.am/en/data-bases/>; https://docs.google.com/viewer?url=http%3A%2F%2Faipa.am%2Fu_files%2Ffile%2FGI%2FArarat_ENG1%2520.pdf accessed on 2 December, 2013

^{viii} *Note:* While identifying GI products, different terms are used in international treaties, in particular: Paris Convention uses the following terms: *appellation of origin* and *indication of source*; the TRIPS Agreement uses *Geographical Indication*. Overall, there are differences in conditions of protection thereof.