



# **Advantages, constraints and key success factors in establishing origin- and tradition-linked quality signs: the case of Darjeeling Tea, India**

**Case study on quality products linked to geographical origin in Asia  
carried out for FAO**

**by**

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The views expressed in this information product are those of the author and do not necessarily reflect the views of the Food and Agriculture Organization of the United Nations (FAO)

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## Acronyms

C	Celsius/Centigrade
DTA	Darjeeling Tea Association
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
GI	geographical indication
GI Act	India's 1999 Geographical Indications of Goods (Registration and Protection) Act
ha	hectare
HACCP	hazard analysis and critical control points
ISO	International Organization for Standardization
kg	kilogram
NGO	non-governmental organization
Rs	Indian rupees
TRIPs	Trade-Related Aspects of Intellectual Property Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
US\$	United States dollar
WTO	World Trade Organization

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**Abstract:**

India enacted its Geographical Indication of Goods (Registration and Protection) Act in 1999 in compliance with Article 24 of the TRIPs Agreement in order to protect indications connected with geographical origin. More than 100 products are currently registered under the act, including Darjeeling tea, which was the country's first GI product.

The quality, reputation and characteristics of Darjeeling tea are essentially attributable to its geographical origin. As a result of a favourable geo-agro-climatic situation, specific soil characteristics, plantation conditions, traditional human practices and a skilled local workforce, it possesses a specific flavour and a very high quality, distinguishing it from tea grown elsewhere in the world. Darjeeling tea is grown in the region of the Darjeeling hills in 87 gardens at various elevations up to 2 000 metres. The GI production area has been clearly defined by the Tea Board of India.

Darjeeling tea benefits from a world-wide reputation and has no problem over market access. The entire production is sold every year, mainly for export. The main objective of all the actors in the supply chain, including the Tea Board of India and the Government of India, is to protect the name "Darjeeling", which has been misused in various ways in various countries. The name, reputation and logo of this tea are now protected by various legal tools (certification mark, collective mark, geographical indication etc.), depending on the institutional context of each country. Despite these efforts, misappropriation of the name is still harming its market potential. Collective action, with greater involvement of all supply chain stakeholders, is advisable in order to increase the positive economic and social impact of GI registration at the local level.

## **Introduction**

Darjeeling is a small district in the extreme north of India's West Bengal State in the Himalayan foothills. Darjeeling tea is famous and popular throughout the world for its high quality, with a reputation based on its aroma, brightness and taste – all attributable to its geographical origin and impossible to replicate. In 2004, Darjeeling tea became the first product in India to be registered under the Geographical Indications of Goods (Registration and Protection) Act of 1999 (hereafter referred to as the GI Act).

In the present report, the findings of a research study on Darjeeling tea are presented in sections detailing the following aspects: the institutional context, the geographical zone and its specific resources, the product and its market, the stakeholders and their collective organization, and, in conclusion, an analysis of the impact on rural development of establishing a quality sign.

The report has been prepared using currently available information and literature on Darjeeling tea and also incorporates the views of stakeholders involved in the supply chain regarding GI registration, as emerged from personal interviews and focus group meetings. These stakeholders include producers, processors, traders, auctioneers, exporters, public and collective bodies, and domestic consumers. Information from the organizational level in the supply chain was also gathered by organizing five focus group meetings in Kolkata and Darjeeling.

### **1. Institutional context**

India is one of the founder members of the World Trade Organization (WTO) and one of the signatories of the General Agreement on Tariffs and Trade (GATT) negotiations (Uruguay round), of which the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement is a part. Section 3 of the TRIPs Agreement contains three articles concerning geographical indications (GIs): Article 22 provides for the protection of GIs and Article 23 for additional protection for GIs for wines and spirits, while Article 24 is concerned with international negotiations and exceptions – all articles of immense importance to India in this context. India joined with various other countries in calling for the same protection for other products as that envisaged for wines and spirits in the TRIPs Agreement.

India enacted its GI Act in 1999 and formulated its Geographical Indications of Goods (Registration and Protection) Rules in 2002 for the protection of goods in the domestic market. The act came into force in September 2003.

The main objective of the Indian Government is to develop the production of GI products, leading to increased trade through the creation of new markets for these products. The second objective is to provide a legal framework to protect both products and consumers from fake, false or reproduction products, thereby ensuring fair competition and promoting rural development.

In India, the Ministry of Commerce and Industry, the Ministry of Agriculture and Patent and Regional Centres are in charge of GIs. The legal framework applies mainly to agricultural products, processed products, and wines and spirits. Protection is primarily provided by provisions in the 1999 Trademarks Act and the 1999 GI Act. The tools of identification and protection are a collective or certified trademark with geographical indication, appellation or designation of origin, a protected geographical indication, a general quality sign linked to particular area(s), and a sign relating to a general quality linked to a specific country or region of production.

The GI Act stipulates that an application for GI registration should contain (see in Annex 1):

- a statement as to how the GI serves to designate the goods as originating from the area in question;
- the class of goods to which the GI shall apply;
- a map of the area in which the goods originate or are manufactured;
- particulars regarding the appearance of the GI logo, whether it is comprised of words or figurative elements or both;
- a statement of such particulars by the producers of the concerned goods.

More than 100 products have so far been registered in India under the GI Act, but Darjeeling tea was the first. The Tea Board of India is the owner of the Darjeeling tea registered quality sign, while the producers, processors, traders, blenders, packers, brokers, exporters etc. in the supply chain are its users. The Tea Board has prepared and now enforces specific rules and regulations concerning use of the quality sign and its labelling by stakeholders.

## **2. Geographical zone and specific resources**

### **General context**

#### ***Location***

Darjeeling is a small town in the Himalayan foothills, lying at an altitude of 2 130 metres above sea level and known as the Queen of the Hills. It is located in Darjeeling District in the extreme north of West Bengal State in the east of India. The district extends from tropical plains at about 91 metres above sea level to an altitude of 3 658 metres on the Sandakfu-Phalut ridge.

The strategic location of Darjeeling is very important, bordering Sikkim to the north, Bhutan to the east and Nepal to the west, thus forming an international and inter-state border area.

#### ***Population***

According to the most recent census (2001), the population of the district was 1.6 million, with 33 percent living in the three hill towns of Darjeeling, Kurseong (1 482 metres above sea level) and Kalimpong (1 249 metres above sea level).

Darjeeling town has an additional average floating tourist population of 20 500 to 30 000. The population density of the town is 10 173 per square kilometre. The literacy rate in the district is 81 percent for men and 64 percent for women.

### ***Economy and agriculture***

The two main economic activities in the region, generating the most employment and revenue, are tea manufacturing and tourism. However, tourism is confined to several tourism spots and is seasonal (from April to June and from September to October): tourists prefer to avoid the area in the rainy season because of frequent landslides. The economic benefits of tourism reach only a small proportion of the population.

Tea is thus more important than tourism. It is the main crop in the region and is grown over a vast area of hilly land, covering 17 542 hectares divided into 87 estates. After the first 3 commercial tea estates were established at Tukvar in 1852, the area under tea expanded gradually to 39 estates in 1866, 56 in 1970 and 113 in 1874. Today there are 87 tea plantations in and around Darjeeling town, producing superfine Darjeeling tea. The average yield is very low – 400 to 450 kilograms per hectare, compared with the national average of 1 800 kilograms per hectare. (Between 20 000 and 21 000 two-leaves-and-one-bud shoots weigh 1 kilogram.)



*Two leaves – one bud of Tea Darjeeling*

The tea estates are located on hilly terrain at various altitudes, covering hundreds of hectares. The tea-growing zone has reached saturation point and there is little scope for further expansion. Other cash crops grown in non-tea hilly areas include potatoes, oranges, cardamom, ginger, maize and various vegetables. Small quantities of certain medicinal plants are also grown, while floriculture is expanding in some non-tea areas. Farming on terraced slopes is a major source of livelihood for rural inhabitants, supplying neighbouring towns with fruit and vegetables.

### ***Ownership patterns***

All the tea estates are permanently owned by the West Bengal State Government, which leases the land to the growers on a fixed-rent basis for a minimum of 30 years and a maximum of 99 years, renewable after expiry of the lease. These leases can be transferred or sold.

## ***Workers and social welfare***

Traditional tea cultivation on steep, hilly terrain has brought economic betterment and well-being through improvement in the local inhabitants' employment situation. The majority of employees on Darjeeling's tea estates are women. An average of more than 700 people are employed permanently on each estate, receiving half their pay in cash (Rs 62.50 per day per worker) and half in kind, in the form of free accommodation (bedroom, kitchen and toilet with free water supply), subsidized cereal rations (Rs 0.47 per kilogram of rice or wheat), free made tea and free medical benefits for all members of their families. In addition, producers build and maintain primary school buildings for free education, provide free crèche facilities with free milk for workers' babies and children, pay festival and other allowances, and supply umbrellas, blankets and shoes in various seasons, firewood for daily use and lime for whitewashing houses each year. Some estates also provide small farmers in the estate area with farm implements to grow such crops as ginger, cardamom, turmeric and oranges, and hives to promote beekeeping. An infants' nutrition programme has also been introduced by building cowsheds and providing workers with cows free of charge. Sports and inter-village cultural competitions are organized to promote cultural activities, especially among young people and children. Religious sites such as old temples, monasteries and churches are renovated for the convenience of local devotees.

Almost 60 to 70 percent of the estates' total expenditure is accounted for by workers' wages and welfare measures. Fringe benefits are provided under the provisions of the Indian Plantation Labour Act, while wages, bonuses and annual increments are determined by collective bargaining through tripartite meetings each year within the framework of the same act.

## **Delimitation of the zone**

### ***Administrative boundaries***

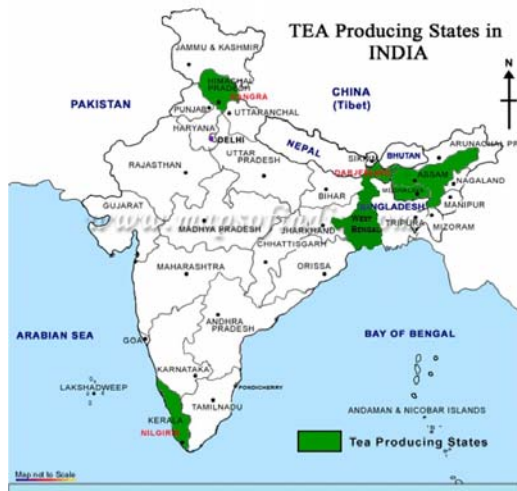
The entire tea-growing zone – 17 542 hectares spread over 87 tea estates – is under the administrative jurisdiction of Darjeeling District. The estates are located in three subdivisions of the district – Sadar, Kurseong and Kalimpong – under the provincial administration of the West Bengal State Government.

The Tea Board of India defines Darjeeling tea as follows:

Tea which has been cultivated, grown, produced, manufactured and processed in tea gardens:

- in the hilly areas of Sadar Subdivision,
- only in the hilly areas of Kalimpong Subdivision comprising Samabeong Tea Estate, Ambikok Tea Estate, Mission Hill Tea Estate, and Kumai Tea Estate and Kurseong Subdivision excluding the areas in jurisdiction list 20, 21, 23, 24, 29, 31, and 33 comprising Subtiguri Subdivision of New Chumta Tea Estate, Simulbari and Marionbari Tea Estate of Kurseong Police station,
- in Kurseong Subdivision of Darjeeling District.





**WEST  
BENGAL**



### *Geographical boundaries*

The demarcated area is the hilly part of Darjeeling District.

The Tea Board of India has identified 87 tea estates and demarcated their boundaries.



*Darjeeling notified tea estates.*



*Darjeeling delimited tea zone*

Each estate in the delimited tea zone has its own factory, as required under the definition of Darjeeling tea provided by the Tea Board:

Tea which has been cultivated, grown, produced, manufactured and processed in tea gardens in the hilly areas ... of the district of Darjeeling in the State of West Bengal, India. Tea which has been processed and manufactured in a factory located in the aforesaid area, which, when brewed, has a distinctive, naturally occurring aroma and

taste with light tea liquor and the infused leaf of which has a distinctive fragrance.

Leaves from the few tea estates that do not have their own factories are processed on neighbouring estates. The leaves have to be delivered to the factory for weighing and withering immediately after picking, because the tender two-leaves-and-one-bud shoots are easily perishable. Otherwise the quality of the picked leaves may deteriorate, affecting the final quality of the made tea. The factory must therefore be located in the production area, either on the estate or nearby. For obvious reasons, the production and processing zones must therefore be identical.

## **Specific resources**

### ***A suitable zone for quality tea production***

The Darjeeling tea zone benefits from suitable terrain and environmental conditions for the cultivation of tea, where it has been grown continuously since 1835. The tea estates are all located in seven valleys at altitudes ranging from 200 metres to more than 2 000 metres above sea level. The gradient of the slopes is very steep – 60° to 70°. The very high rainfall spread over various months is a boon for tea cultivation. Rainfall, humidity, evaporation rate, wind speed, hours of sunshine, mist, cloud and fog are also important factors in developing the unique quality of Darjeeling tea.

In terms of soil, the average carbon level of soil in Indian tea-growing areas other than Darjeeling is less than 1 percent, while it is much higher in the Darjeeling area.

The physical characteristics of the tea estates are summarized in Table 1.

*Table 1: Physical characteristics of Darjeeling tea estates*

Altitude	200 metres to more than 2 000 metres above sea level
Latitude	26°31' to 27°13' north
Longitude	87°59' to 88°53' east
Rainfall	Average annual rainfall ranging from 1 700 to 2 500 millimetres
Humidity	Very high, with fog, mist and occasional snow
Soil	Rich and loamy: in the uplands it is usually red, gritty and residual, i.e. derived from the weathering of underlying rocks and rich in organic matter from the surrounding forest cover
Slope	Gradient of 60° to 70°: these steep slopes provide natural drainage for the generous rainfall received in the seasonal monsoons
Temperature	1 °C to 11 °C with a maximum of 20 °C
Sunshine	Average of 2 to 4 hours per day
Tea-growing areas	Seven valleys, facing the Himalayas



*Tea estate in Darjeeling area*

### ***History and culture***

Darjeeling started as a hill station 175 years ago in 1835 and was a tea distribution centre with only 20 families in 1839. Seeds of *Camellia sinensis* var. *sinensis* were brought from Kumeon, and as a result of successful cultivation in the area, nurseries were established by the British Government in 1847. The number of tea estates and the size of the area under tea gradually increased over the years.

The name Darjeeling is believed to be derived from two Tibetan words, *dorje* meaning “thunderbolt” and *ling* meaning “place” or “land”, which, in combination, mean “the thunderbolt land”.<sup>1</sup>

### ***A specific tea variety***

One of the specific features of Darjeeling tea is that the bushes grown here belong to the small-leaved Chinese variety, *Camellia sinensis* var. *sinensis*, and not to the large-leaved Assam variety, *Camellia sinensis* var. *assamica*. This Chinese hybrid is found almost nowhere in the world outside China and Japan, except for Darjeeling and the Caucasus. It is easily identifiable because of its smaller leaves. Its roots are more than 1 metre long, which is helpful for soil conservation, and it can withstand a cold climate.



*Tea bush*



*Tea flower*

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<sup>1</sup> Legend has it that the thunderbolt of Lord Indra (King of Heaven in Hindu mythology) fell at the place where the Observatory Hill now stands. The name, however, could bear some reference to climatic elements, inasmuch as higher areas and hilltops are very often covered with cloud, mist and fog, with frequent thunderstorms.

### ***Traditional know-how***

Tea has now been cultivated in the area for a long time, so that there are skilled people, know-how and traditions. Jobs on tea estates are handed down within families, so that such work becomes a traditional family profession.

More than 70 percent of the workers are women, engaged mainly in tea picking, which is highly specialized work and requires a great deal of care. The women workers consider tea bushes extremely sensitive and perform the job very efficiently. The technique is a traditional skill handed down from generation to generation. The picking of two-leaves-and-one-bud shoots has to be followed here, unlike other tea-growing areas in India.



*Women picking Darjeeling tea*

### ***Concept of terroir***

The concept of *terroir* is applicable to Darjeeling. *Terroir* – a delimited geographical area with specific soil and climatic conditions, combined with the traditional production practices and know-how of local inhabitants – differentiates Darjeeling's hilly areas from other tea-growing areas in India and elsewhere in the world. Altitude, intermittent cloud and sunshine, soil characteristics, temperature, rainfall, fog, mist, moisture and wind, combined with the human factors (know-how and culture) and the use of Chinese hybrid tea bushes: all these factors contribute to make Darjeeling tea a unique and inimitable product.

The quality, reputation and characteristics of Darjeeling tea are essentially attributable to its geographical origin. It possesses a flavour and quality that distinguish it from tea grown anywhere else in the world, giving it the stature of a fine wine and winning it the patronage and recognition of discerning consumers worldwide for more than a century. Any member of the trade or public ordering or purchasing Darjeeling tea expects the tea to have been cultivated, grown and produced in a well-defined hilly region in Darjeeling District and to have the special characteristics associated with such tea (Tea Board of India).



## **Constraints and other issues in the zone**

### ***High production costs***

The slopes of Darjeeling's tea estates are so steep that ploughing can be done only manually, thereby increasing production costs. The hilly terrain also increases input costs: higher procurement costs for workers' rations, maintenance of supply lines, higher fuel costs, frequent power cuts, high costs for transporting the picked leaves from the plantation to the factory, then for transporting the made tea from the processing site in the hills to warehouses in Kolkata.

The low yields of Darjeeling tea compared to yields in other parts of India is another important factor contributing to high costs. The average Darjeeling yield per hectare is very low – 400 to 450 kilograms, compared with the national average of 1 800 kilograms.

Moreover, during the unproductive four months of winter from November to February, the idle workforce is still paid, which is a heavy burden on estate owners.

Taking all these factors into account, production costs at estate level (according to estate sources) amount to Rs 200 to 225 per kilogram. In addition, Rs 100 to 125 per kilogram is spent on administrative costs, including the payment of various taxes.

### ***Lack of infrastructure***

Poor infrastructure, such as roads and bridges, results in a loss of workdays and a deterioration in the quality of the tea. The transportation of goods is highly time-consuming and costly because of the poor condition of the narrow roads due to lack of maintenance. Furthermore, weight restrictions on traffic on the hilly roads – for example, vehicles with loads of more than 5 tons are not allowed to use the hilly roads of the Darjeeling area – represent another impediment to the cost-effectiveness of the tea industry.

### ***Climate change***

The vagaries of nature caused by global warming may in due course bring sustained monsoons and heavier rainfall, leading to considerable losses for the estates. Rainfall has already become irregular and the distribution pattern has also changed, but with no reduction in quantity; indeed, rainfall has increased and is now concentrated in six to seven instead of eleven months. As a result, irrigation water is not available throughout the year and even drinking water has become scarce. The erratic rainfall pattern causes frequent landslides in the hilly terrain, causing huge damage and heavy losses to the estates. When a landslide occurs in a particular area, workers are wary of working there during heavy rains for fear of further landslides, so that a great deal of valuable picking time is lost in the process.

### ***Lack of land for expansion, or a reduction in land for tea cultivation***

Additional land is rarely available for expansion or the establishment of new plantations, inasmuch as available land beyond tea estates is forest cover. Restrictions

on the expansion of the area under tea are mainly a result of topographical factors, irrigation problems, lack of an economy of large-scale production and a prohibition on forest clearing. Moreover, during agitation for a separate state, when many tea estates were closed for indefinite periods, some plantation workers took advantage of the situation, unlawfully and forcibly occupying a portion of land on each estate. If this forcibly occupied land is liberated, it could significantly increase the tea area. However, no initiative is being taken in this regard. Moreover, natural disasters and frequent landslides are seriously affecting tea estates, causing a shrinkage in area.

### ***Environmental issues***

The steepness of the slopes has made the area very prone to environmental hazards in the form of regular soil erosion and occasional landslides. Soil fertility is reduced as a result of the erosion of topsoil, while the massive use of chemical fertilizers and pesticides in the past has reduced topsoil quality and fertility, further affecting the overall natural and environmental condition of the area.

Moreover, the population growth rate is very high, and Darjeeling and the surrounding area face deforestation as a result of the increasing demand for fuelwood and timber to build houses. Deforestation has led to desertification, causing serious environmental problems, which are further aggravated by the air pollution caused by increasing vehicular traffic.

## **3. The product and its specific quality**

### **Product specific quality**

The specific quality of Darjeeling tea is linked particularly to the first two levels of production – the fields and the processing unit. The main factors affecting the specific quality are thus:

- genetic features of tea bushes of the Chinese variety *Camellia sinensis* var. *sinensis*;
- environmental factors: altitude, gradient, climatic conditions and soil composition: owing to the specific natural conditions described above, the metabolic (photosynthetic) rate of Darjeeling tea bushes is much lower than that of any other tea bushes grown elsewhere; this stunts the growth of the leaves and increases the concentration of the natural chemical elements that are mainly responsible for the specific quality of Darjeeling tea (Tea Board of India);
- agronomic factors: farm management, tea picking technique (two-leaves-and-one-bud shoots), application of various types of fertilizer and pesticide (organic and/or chemical);
- factory practices: processing conditions, techniques and machinery at all levels from withering to tasting, sorting and grading;
- marketing factors: packaging for the prevention of moisture absorption, storage in good conditions, transporting with proper covering and due care etc.

The other actors in the supply chain (traders, auctioneers, exporters, blenders and packers) affect the specific quality of the product to a lesser degree (mainly through the quality of storage and transportation facilities).



*Made tea leaves*

### ***Taste and appearance***

The specific qualities of Darjeeling tea lie in its physical appearance and taste, giving the following characteristics:

- *stylishness*: a neat, well twisted, even sized, wiry leaf appearance;
- *tippy appearance*: the unopened buds on the tea bush are turned into silvery particles called tips, which give the made tea an attractive appearance;
- *bloom*: a silken sheen on the tea – greyish green in the spring flush, purplish brown in summer and blackish brown in the autumn flush;
- *brightness*: a lively colour with a hue varying from delicate lime green in the spring flush to bright copper purple in the second flush and pale brown in autumn;
- *nose point*: the fragrance exuded by the infused leaf – the aroma or bouquet – can be evocative of certain flowers or fruit, or have a muscatel character;
- *evenness*: uniformity of colour and size of the infused leaf.

The specific qualities of the infused tea are:

- *colour*: varying from pale lemon to rich amber according to the season; cups are said to have varying degrees of visual brightness, depth and body;
- *flavour*: a fragrance and a complex, pleasing taste and aftertaste with attributes of aroma, bouquet and point;
- *taste*: mellow, smooth, round, delicate, mature, sweet, lively, dry, brisk etc.

## **Darjeeling Tea**



*Spring Summer Rain Autumn*

*Various colours of liquor*

For made tea, quality identification and assessment are carried out through an organoleptic procedure of tasting – a subjective but highly expert job. Tea and wine are indeed the only two products for which the quality is judged through organoleptic evaluation.

### ***Reputation***

Darjeeling tea is a unique product of international fame, sometimes known as the champagne of teas. Its excellent reputation is associated with its world-famous aroma and unique cup characteristics. The Tea Board of India defines Darjeeling tea as follows:

*Tea produced in the said [Darjeeling hilly] region has the distinctive and naturally occurring organoleptic characteristics of taste, aroma and mouth feel which have won the patronage and recognition of discerning consumers all over the world.*

*(Geographical Indication Journal, 1, July 2004)*

It is a unique product and has been famous throughout the world for more than a century. There is therefore no need to reinforce its reputation, although the marketing strategy does require periodic updating in order to retain consumers' loyalty through appropriate market promotion.

Local stakeholders have been very conscious of the reputation, specific qualities and uniqueness of Darjeeling tea from the early days and have thus optimized their product.

### ***Consumer perception***

At least 70 percent of the Darjeeling tea produced is exported to international markets (see Table 4 below), so that most of its consumers are overseas. No market studies for Darjeeling tea have so far been carried out either within the country among domestic consumers or abroad among overseas consumers.

However, in the course of the present study, a pilot market study was undertaken among a small group of consumers of Darjeeling tea in and around the city of Kolkata<sup>2</sup> in order to measure the importance of reputation to consumers.

The survey found that Darjeeling tea is much appreciated on the domestic market. Historically, it has had a very positive image because of its excellent quality, reputation and characteristics. Its consumers belong to a higher segment of society in terms of social status, culture and financial resources. The majority of consumers use “fannings”, “breakens” and “mixed tea”, and few use pure leaves. Most buyers purchase tea in loose form and have no problem over paying higher prices for Darjeeling tea.

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<sup>2</sup> A pilot study on consumer behaviour was conducted in July-August 2009 in Kolkata and surrounding areas. The samples encompassed both male and female respondents belonging to various sectors of society, age groups, professions and localities.



Tea is drunk between one and four times a day. Consumers derive major satisfaction from the cup qualities of Darjeeling tea: 32 percent of domestic consumers have a very high appreciation of Darjeeling tea, 56 percent a high appreciation and 12 percent a moderate appreciation. Domestic consumers at present pay prices 25 to 300 percent higher than for Assam or Dooars tea, and 92 percent of consumers are ready to pay higher prices for Darjeeling tea to satisfy their preference.

It is interesting to note that most consumers are unfamiliar with the GI logo or the GI process and are convinced only by the name Darjeeling, the retail shop and the seller. Most have trust in the seller or shop where they regularly purchase Darjeeling tea. None of them bothers, however, to verify the GI logo when buying loose or packaged tea from known shops. They simply purchase it in good faith and on the basis of the image of the shop and seller.

### **Product specifications: requirements for GI registration**

#### ***Description of the sign obtained***

Darjeeling tea is a very high-quality product and has become the flag-bearer of Indian tea abroad. In order to identify its extraordinary qualities, it has been linked to a quality sign by creating a logo that indicates and confirms its origin and quality, and protects it from the manipulation, contamination and misrepresentation practised by many dishonest traders worldwide.



*Some classic instances of misuse/abuse of the Darjeeling logo and name  
(Source: Darjeeling Tea Association)*

The Darjeeling logo and the name Darjeeling have been registered twice by the Tea Board of India under the GI Act – as certification mark and as GI. The aim is to prevent misuse of the name Darjeeling for tea that is sold worldwide, thereby protecting consumers by ensuring that they receive the genuine product (100 percent Darjeeling tea) and enabling the commercial benefit of the brand to reach the whole supply chain, including plantation workers. The Tea Board of India and the Darjeeling Planters' Association developed this logo a long time ago.

The Logo is described by the Tea Board of India as -a stylized representation of an Indian woman holding tea leaves in a roundel. The woman design element has a stylized circular ear ring and a nose stud. The word mark “Darjeeling” skirts the left portion of the roundel. All these elements blend together to constitute the Darjeeling logo [TBI].



#### ***GI requirements***

Darjeeling tea stakeholders have to meet the following requirements in order to be legitimate users of the Darjeeling tea GI:

- Each stakeholder in the supply chain must be licensed by the Tea Board of India through a mandatory contract. On the basis of this contract, the Tea Board can take action against any infringement of regulations.
- Each producer must have a certificate of origin from the Tea Board. In order to obtain this certificate, he or she must comply with all the required criteria – production zone, quality of final product, competence, processing method as described in the standard operating procedures etc. The certificate of origin is delivered only after verification of compliance with all the requirements. (More details in this regard are given in the subsection “Certification and control devices” below.)
- Each producer must have his or her own growing unit (estate or garden) within the defined region of Darjeeling, along with a processing unit within the same region (close to the plantation).
- The product must be manufactured in accordance with provisions laid down in the Prevention of Food Adulteration Act. It must satisfy the required quality and safety tests, which are important components in obtaining the certificate of origin. The hazard analysis and critical control points (HACCP) certification process ensures the safety of the product, while ISO 22000 is concerned with hygienic factory conditions.
- No tea of any origin other than the delimited Darjeeling tea zone may be sold under the name Darjeeling and no blend of Darjeeling tea with tea of non-Darjeeling origin is permissible.
- The tea produced and sold must undergo an organoleptic evaluation process by expert tea tasters who are competent to evaluate it on behalf of the proprietor of the GI, i.e. the Tea Board of India.
- Exporters of Darjeeling tea must collect the certificate of origin from the Tea Board of India.

### ***Standard operating procedures***

Basic rules of production for the entire Darjeeling tea zone are laid down in the standard operating procedures, which are subscribed to by all Darjeeling tea producers and manufacturers. These rules concern cultivation (good agricultural practices) and processing (good manufacturing practices) and are intended to ensure and maintain the quality of Darjeeling made tea.

The manual of standard operating procedures includes all the procedures that are implemented and monitored in order to produce a guaranteed quality of Darjeeling tea. It is the basis for the control points regarding production and processing. Observation of all these practices ensures that traditions and specific features, including food safety and quality, are maintained. Every worker is actively involved and aware of the standard operating procedures of orthodox<sup>3</sup> Darjeeling tea, so that preventive or corrective action can be taken whenever any deviation is noted.

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<sup>3</sup> Orthodox tea refers to either hand-processed tea or tea that is rolled with machinery in a manner that mimics hand-rolling. Most specialty tea is made with orthodox production methods (the opposite CTC (crush, tear, curl), which is machine-processed in a way that chops the leaves into uniformly-sized bits that are typically used for low-grade teabags.

The following paragraphs present a synthesis of the main steps in the production and manufacture of Darjeeling tea, as found in the standard operating procedures manual.

*Transportation.* After picking, the leaves are taken to the estate factory by van, jeep or tractor-trolley, or (on a very few estates) along ropewalks. Green leaf transportation is a very important factor in the quality and aroma of the tea. If there is any delay in transporting the leaves from the picking or weighing point, some portion of the flavour is lost. The fresher the leaves, the higher the quality and aroma will be, so that the transportation time from garden to factory should be as short as possible.



*Ropeway*

Once the green leaves reach the factory, they undergo various processes for conversion into “made tea” according to the “orthodox manufacturing art” of processing as evolved through traditional practice over time.

*Withering.* In this phase, the green leaves are spread evenly in wooden troughs, where they are withered to remove 60 to 65 percent of their moisture, either by atmospheric cold air or by artificial dry air created by heating the natural air with a coal-fire heater and blowing it over the leaves in a regulated manner for a period of 14 to 18 hours.



*Leaves on withering troughs*

*Rolling.* Next, the withered leaves are taken for weighing and then loaded into cast-iron rollers for mechanical processing. The purpose of rolling is twofold: first,

physical – to twist the leaf to obtain the desired grade; and, second, chemical – to rupture the cells in order to speed up fermentation so that enzymes can act as catalysts in achieving the most prized flavour and colour. This process takes between 20 and 65 minutes depending on the quality of the leaves, the season, atmospheric conditions etc. The control point here is that the leaves should not be over-heated; otherwise the quality of the tea will deteriorate. The heat is measured by feeling it with the hand.

*Sifting.* In this process, properly unrolled leaves are sorted through sifters for a second roll lasting for another 15 to 20 minutes, mainly for the second leaf of the shoot, which is a little larger and coarser.

*Fermentation.* When rolling is over, the twisted and ruptured leaves are spread on long concrete platforms or the floor in a cool, humid room in very thin layers for a length of time ranging from less than 1 to a maximum of 4 hours, depending on various climatic and physical factors, in order to achieve the required quality. The purpose is to extract the flavour from the ruptured leaves. This phase, also called oxidation, is the natural process whereby a unique flavour, aroma and colour are developed. It is the most critical point in the manufacture of tea, inasmuch as various characteristics of Darjeeling tea depend on this particular phase. During the process, flavour, aroma and other characteristics are achieved. In hot weather, the fermenting time decreases, whereas in cold, moist weather it increases. During this stage, the leaves are constantly checked by sniffing in order to avoid under- or over-fermentation. If under-fermented, the colour will be brownish and the tea will be brittle. If over-fermented, the colour will be black, the sheen will be lost and the leaves will become flat without any specific quality. Another very important point is that no outside smell should enter the factory in order to protect the original aroma of the tea.



*Fermentation of Tea Darjeeling*

*Drying.* When the desired smell is achieved in the fermentation stage, the leaves are sent for drying. The drying process starts in order to stop enzymatic mellowing by pushing the leaves through dryers and reducing the moisture by 2 to 3 percent. The dryer temperature is kept at 110 °C to 115 °C and run-through time is roughly 23 minutes, differing from dryer to dryer depending on the altitude and the estate. The

control point here is that the difference between the drying inlet and outlet temperatures should be 32 °C.

*Sorting.* Dried leaves are sorted into grades with the help of sifters with various sized meshes. Leaf size and volume are very important in grading. A larger leaf corresponds to a higher grade.

*Storing.* After sorting and grading, tea has to be stored in bins for a certain period. However, tea is hygroscopic and may absorb moisture during such storage. Before final packaging, moisture therefore has to be reduced to the right level through a process known as gapping. This is carried out with a special dryer with a low inlet temperature known as a dehumidifier. Tea is then finally packed for dispatch from the factory.

*Packing.* After grading, the sorted tea is packed into specially designed moisture-repellent foil-lined packages. A moisture meter is used to test the moisture level of made tea before packing. The standard required minimum moisture level in made tea is 3 percent. A higher level will cause a loss of quality and aroma, while a lower level will impart the capacity to retain aroma and quality for longer. There are therefore two requirements here: speedy transportation of made tea from estate factory to warehouse, and packaging material developed in such a way as to be moisture-repellent (innovation required) or at least to prevent moisture from penetrating the pack and affecting the tea. Moreover, there is the possibility of grade-breakage due to over- or under-packing in paper sacks, and this can lead to a loss in cup quality, colour etc.

*Dispatching.* Tea packages are then dispatched from factory to warehouse in Matador vans or small trucks in the hilly region as far as Siliguri, from where they are transported to Kolkata in large trucks. Improper loading and faulty covering may cause breakage or moisture damage, leading to a decline in cup quality. It is therefore vital to avoid over- or under-loading and to ensure that waterproof material is used to cover the load.

### ***Food safety aspects***

The processing of tea in all Darjeeling factories is subject to various sanitary and hygienic certification systems, ensuring that the tea is certified and guaranteed as safe for consumption in accordance with the provisions of the Prevention of Food Adulteration Act. The production norms of the Sanitizing Standard Operating System are observed on the tea estates for the production of tea under good hygienic and sanitary conditions. The HACCP certification process (compulsory for Darjeeling tea) ensures that the product is safe for consumption – a necessary criterion for all food processing. ISO 22000 (with compulsory observation) certifies hygienic factory conditions under the quality assurance scheme.

### **Links with other quality schemes and labels**

Darjeeling tea packages may also bear other labels, such as “certified organic tea”, “fair-trade certified tea” or “environmentally friendly tea”.



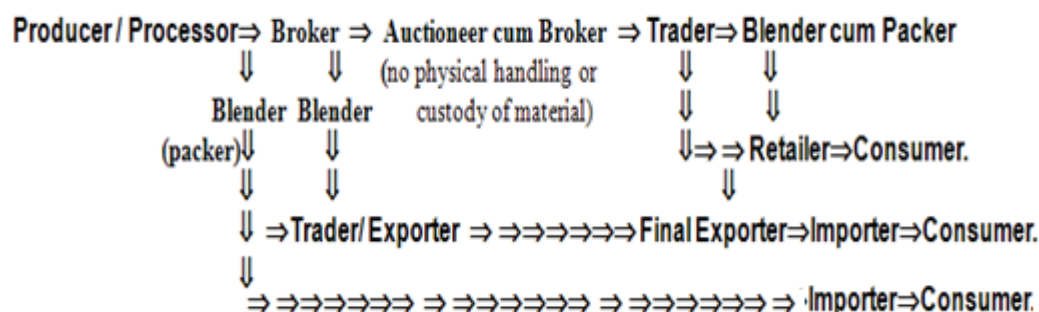
However, such labels are added as extra “feathers”, enabling the product to fetch a higher price and meet customers’ preferences. Darjeeling tea is linked to other quality assurance schemes, which are mutually complementary.

There are various accreditation agencies that certify Darjeeling tea to be organic, fair trade etc. They charge high certification fees after a lengthy process of investigation, verification and auditing at the estate level. Fair trade is certified by the Ethical Tea Sourcing Partnership, while environmental and ecofriendly aspects are certified by the Green Forest Alliance and organic tea is certified by various international agencies accredited by the Tea Board of India. However, all these types of certification are voluntary.

In Darjeeling, 35 percent of the estates have already received organic certification and 15 to 20 percent, perhaps more, are in the process of doing so. Moreover, on the remaining conventional estates, the use of chemicals, both fertilizers and pesticides, has been significantly reduced in accordance with good agricultural practices.

#### 4. Stakeholders and the qualification process

The supply chain, from production to marketing – from primary producer to ultimate wholesale buyer, final exporter and first overseas handler – is illustrated in the diagram below.



As can be seen, there are three main distribution channels for orthodox Darjeeling tea from primary producer to consumer.

#### Actors in the supply chain and collective organization

##### *Producers*

There are 87 estates of sizes ranging from 23.20 to 506 hectares according to a Tea Board of India source, and from 113 to 580 hectares according to the producers. The total area under tea is 19 500 hectares on the 87 estates, so that the average estate size is 224.14 hectares. The average production of each estate is approximately 136 300 kilograms of made tea according to the Tea Board of India.

Each estate is equipped with a processing unit or factory where green leaves undergo various stages of processing to prepare “made tea”. There are various categories of worker from leaf-pickers to factory workers. The current workforce in the industry exceeds 55 000 people employed on the 87 estates on a regular basis, while a further 15 000 are employed on a casual basis for nine months during the tea picking season (from March to November) (see [http://darjeelingnews.net/tea\\_facts.html](http://darjeelingnews.net/tea_facts.html)). Table 2 gives a more detailed picture from 1991 to 2008 in this regard.

*Table 2: Estimated average number of permanent workers on Darjeeling tea estates from 1991 to 2008*

Year	Number of workers	Share in % wrt 1999	% fewer or more than 1999
1993	46 568	91.41	- 8.59
1994	58 814	115.40	+ 15.40
1995	58 887	115.55	+ 15.55
1996	n.a.	n.a.	n.a.
1997	49 783	97.67	- 2.33
1998	n.a.	n.a.	n.a.
1999	50 964	100.00	0.00
2000	51 515	101.08	+ 1.08
2001	51 938	101.91	+ 1.91
2002	52 671	103.35	+ 3.35
2003	52 547	103.11	+ 3.11
2004	53 363	104.71	+ 4.71
2005	53 412	104.80	+ 4.80
2006	53 492	104.96	+ 4.96
2007	n.a.	n.a.	n.a.
2008	55 000	107.92	+ 7.92
2009	61 397	120.47	+20.47

(Source: Tea Board of India up to 2008; estimated for 2009 on the basis of the Report of the Committee on the Competitiveness of Indian Tea [Government of India, 2009])

There are three categories of producer and enterprise that lease tea estates within the defined tea zone in Darjeeling District:

- proprietors-cum-partnership houses (registered under the Company Law and controlled and managed by the individual owner or partners, directly involved with micro-level management);
- public-sector undertakings (controlled and managed by the government under the Department of Public Enterprise, with no role in micro-level management being played by the head of the company);
- corporate (registered as private corporations under the Company Law, controlled and managed by a board of directors, with officers deputed for micro-level management, and the chairman or managing director playing a role at policy level only).

### ***Processors***

Producers are often also processors, with cultivation and processing carried out by the same producer. There is a processing unit or factory on 72 of the 87 estates, while the remaining 15 have their leaves processed by arrangement with a neighbouring estate within the specified Darjeeling tea zone.

They can also purchase leaves from other estates located within the delimited Darjeeling tea zone, processing them in their own unit. However, the processing unit is not independent of the estate. The manager of a tea estate is the person who supervises tea cultivation on the estate and also tea processing in the processing unit under the name of the estate.

The other important function of processors is disposal of tea produced on the estate, using three distinct sales channels:

- direct export under forward contracts through personal contact;
- private sale from estate to third-party exporters for export and to domestic dealers;
- auction sale (confined to organizational tasks).

### ***Collective organization***

The Tea Board of India, under the Ministry of Commerce and Industry, is very much involved in various activities for the development and prosperity of Darjeeling tea. It was established in 1954 under the Tea Act of 1953, long before the quality process started.

Collective action was undertaken by producers through formation of the Darjeeling Planters' Association long ago to support development and benefit tea producers. This organization was then renamed the Darjeeling Tea Association (DTA), which is the collective organization of the supply chain stakeholders and is thus primarily an association of producers, processors, traders and exporters. The association has an elected executive council headed by a chairman. The secretary or principal officer looks after all matters pertaining to Darjeeling tea, including the execution of day-to-day work and regular contacts with the Tea Board of India. DTA has its head office in Kolkata and its only branch office in Darjeeling.

One major function of the Darjeeling branch office is to collect daily data from member estates on the quantity of leaves picked, processed and dispatched, and then pass this information on to the Kolkata office, which in turn delivers it to the Tea Board of India. On this basis, the Tea Board issues a certificate of origin to exporters and importers.

Efforts are being made to bring the few non-member producers under DTA's umbrella in order to strengthen any relatively weak points of the organization, such as estate-level collection of more accurate data by some specialized body. This would help to prevent the infiltration into the Darjeeling tea zone of leaves or made tea from any other area inside or outside the country. Member estates are prohibited from purchasing Nepal leaves or made tea.

DTA informs members of any developments concerning Darjeeling tea, such as legal provisions, agricultural operations, research findings, training courses, seminars, government grants, the market situation, GI prospects, matters pertaining to the Tea Board and developments on any specific estate. The association updates members on a regular basis by email and post, providing information on any of the above aspects.



DTA also actively participates, together with the State Labour Department and the Workers' Union, in tripartite meetings and negotiations to fix workers' wages, bonuses and gratuities. The association also intervenes in the case of any problem that arises between workers and the local estate management on any matter, trying to resolve it effectively.

DTA and the Tea Board work together for the collective generic promotion of Darjeeling tea.

### **Objectives of the actors regarding GI registration**

The basic objective of all the stakeholders in the supply chain is to share in the benefits of the quality sign. On this purpose, they have to comply with certain trade restrictions, especially the prohibition on blending non-Darjeeling tea with Darjeeling tea under the GI. Initially this has been considered a trade risk by the few traders and blenders in the Darjeeling tea supply chain who followed this practice before the regulations came into force. However, all the producers and the majority of the traders, brokers and exporters in the supply chain feel that the restrictions imposed by the Tea Board will protect Darjeeling tea on the domestic and international markets, and thereby protect their present and future interests.

The major objectives of the various actors in the supply chain are summarized below.

#### ***Primary objectives***

- The first objective of all local stakeholders is that of protecting the name Darjeeling from misuse in various countries in various ways. Misappropriation of the name is a major problem. More than 20 years ago, Darjeeling tea producers claimed that  
... an estimated 40 to 50 million kilograms of tea is sold worldwide as 'Darjeeling tea' to credulous customers, when the actual exports of genuine Darjeeling tea from India are no more than 8 or 9 million kilograms! ... However, the output of Darjeeling tea has declined steadily over the past three decades, and the vacuum on the world market has been exploited by unscrupulous blenders in the West. They have happily passed off Kenyan or Sri Lankan tea as Darjeeling tea (Dasgupta, 1987).
- A major objective of traders, exporters, blenders, packers etc. is that of improving market access.
- An objective of all the stakeholders in the supply chain has been that of differentiating Darjeeling tea from other teas in order to increase its added value.
- An objective of producer-exporters and trader-exporters is that of escaping the adverse effects of fluctuations in the international market in order to achieve a strong, stable position on both domestic and international markets.

- An objective of both producers and the Government of India is now that of supporting a collective dynamic in favour of rural development. GI registration will protect the product in the market, so that all the actors in the supply chain, especially producers, expect prices on the domestic and international markets to rise, since consumers will be receiving a genuine product. A significant share of the increased price will come to producers, while the government will receive increased revenue. The increases may bring about rural development in three ways: a sizeable amount from the producers' extra sales income will be spent directly on workers' welfare by undertaking suitable projects; a portion of this extra income could be spent by producers to pay workers in cash, in the form of enhanced wages, bonuses etc., thus increasing their purchasing power and their families' well-being; and the extra revenue the government earns from the increased price may allow it to spend more money for civic development of the estates and adjacent rural areas.
- An objective of producer-processors and the Tea Board (i.e. the Government of India) is that of maintaining the local population by providing employment and such other opportunities as civic, educational and medical facilities within the locality. It should be mentioned here that 70 percent of the total population of 1.6 million are directly or indirectly associated with the tea industry in various capacities.
- An objective of the Tea Board, producers and processors is that of facilitating the respect of various norms, such as those regarding labelling, sanitary standards, traceability and combating fraud.

### *Secondary objectives*

- An objective of producers and processors in general is that of preserving biodiversity on the estates and in the general locality by protecting various animal species and endangered plant species, enhancing soil fermentation etc. There is a high international demand for organic products, for which purchasers pay a higher price, although national purchasers are less aware in this connection. In the Darjeeling delimited zone, 55 or 60 percent of estates have already converted their estates to organic and biodynamic certified production or are in the process of doing so, while others are on the verge of starting the process. This conversion to organic and biodynamic production will preserve the biodiversity of the area. GI registration will thus have an indirect impact in terms of preserving and protecting biodiversity in Darjeeling, although the GI production rules do not intervene directly in the matter.
- An objective of all the actors in the supply chain is that of preventing biopiracy.
- An objective of producers, processors, the Tea Board and exporters has become that of preserving the traditional know-how of Darjeeling tea manufacturing.
- An objective of local workers, producers and the government is that of preserving the local cultural heritage.

## **History of the registration process**

The process of promoting origin-linked quality came from producers and processors of Darjeeling tea through their collective organization (DTA), working jointly with the Tea Board of India. A core group was formed for registration and protection of the logo, including the name Darjeeling.

The Tea Board's attempt to protect Darjeeling tea dates back to 1986, several years before registration of Darjeeling tea in 2004 under the GI Act. However, the logo and the name were developed even earlier, in 1983, by the Darjeeling Planters' Association.

The board took the first steps to protect genuine Darjeeling tea from fakes within the country more than 20 years ago and was successful in obtaining "home protection" by registering the Darjeeling logo and name first as a certified trademark in 1986 under the Indian Trade and Certification Marks Act of 1958, and then as an artistic work under the Copyright Act of 1957. The Trade and Certification Marks Act was later replaced by the Trademarks Act of 1999. The Darjeeling logo and the name Darjeeling have therefore been registered as a certified trademark under the new act. Lastly, the logo and the name were registered as a GI mark under the GI Act of 1999.

The Tea Board has provided active support and cooperation to DTA in endeavouring to obtain legal protection in India and other countries. The Darjeeling logo has been legally accepted as a certified trademark in many countries, but Darjeeling tea has so far been recognized for protection as a GI product in very few countries. Applications have been filed with all the necessary documents in many countries, including those of the European Union, but they are still pending. Delays in granting protection are preventing eligible stakeholders from enjoying the benefits of GI registration.

In the initial stage, the stakeholders and their organization (DTA) had to depend on the Tea Board for the establishment and protection of the quality sign (through various procedures and mechanisms under the provisions of applicable laws and regulations). However, in the long run the Tea Board would prefer gradually to hand over responsibility to DTA. Producers are to have autonomy regarding production, inasmuch as they can decide everything in their own way. However, for the establishment and protection of the quality sign and for any kind of subsidy, they are to depend on the Tea Board. A large sum of money was involved in registration of the quality sign under the GI Act in India, and DTA did not have sufficient funds to pay for it, but had to depend on the Tea Board – and the situation is similar for registration of the quality sign in other countries.

## **Support of stakeholders external to the supply chain**

External support is considered immensely important to the stakeholders in the supply chain for improvement of the Darjeeling tea industry through the establishment of a quality sign. Such support may come from the public sector, for example the Tea Board of India, a development agency or a research institution.

### ***Administrative support***

The Tea Board provides administrative guidance and advice as required, and also makes physical contributions when required through the introduction and implementation of various schemes in this connection.

### ***Financial assistance***

Financial assistance in the form of term loans or subsidies is required for many purposes: replanting, rejuvenation, creation of irrigation facilities and drainage systems, purchase of vehicles, factory modernization, capacity augmentation, value addition, purchase of cleaning machines for made tea, conversion to organic production, fees of certifying agencies etc. The Tea Board provides limited subsidies to stakeholders on various accounts.

### ***Integration into a network***

Support in this connection is considered important from the viewpoint of monitoring. Integration of all the stakeholders into a network is important for the industry as a whole for establishment of the quality sign and ensuring that it functions more effectively. Some kind of network integration is carried out by DTA, but international networking will also be required after global recognition of the GI. The services of the Organization for an International Geographical Indications Network (oriGIn) may be useful in establishing such links.

### ***Research and training***

Research on various aspects of tea cultivation, processing, packaging and marketing, including protection of the quality sign, are required by the stakeholders with a view to product and market development. The Tea Research Association and the Darjeeling Tea Research and Development Centre play important roles in this connection, undertaking scientific and technical research so as to provide producers with solid results.

Training is also provided in order to update the knowledge of staff and managers at estate level, through the joint organization – by DTA and the Darjeeling Tea Research and Development Centre – of seminars and training programmes.

In the training courses, field workers and staff of all levels are provided with training on such subjects as:

- working in harmony with nature (preserving biodiversity and the ecosystem);
- enhancing individual and group efficiency within the traditional cultivation system (estate operation);
- producing the best possible quality under the traditional manufacturing system (factory operation).

Training is carried out regularly by the Tea Board of India and DTA in collaboration with the Tea Research Association through the organization of workshops, training programmes, seminars and refresher courses on new technologies and quality development in order to meet the quality requirements of the world market. The Tea Research Association also publishes a quarterly bulletin covering every aspect of tea production and management, and the practices to be followed in the ensuing quarter.

The bulletin is distributed to estate managers well in advance of each quarter to provide statistical and other relevant information regarding necessary action.

Such action is needed in order to obtain the best results from staff of every level – administrative, field, specialized etc. – through the adoption of new techniques and methods that have been developed through intensive research by the Tea Research Association, of which Darjeeling producers are members. Each member must pay an annual subscription, plus a pro rata contribution (approximately Rs 0.088 per kilogram) to fund research.

### ***Material contributions***

Material support is required for the establishment of new factories, machinery, factory certification, conversion to organic production etc. The Tea Board always takes the initiative in this respect, acting on behalf of the Ministry of Commerce and Industry. Contributions are also received from the country's banking sector and such national and international development agencies as the National Bank for Agriculture and Rural Development and the International Development Agency.

## **Problems and weaknesses in the qualification process**

### ***Initial difficulties***

The Tea Board of India had to face various obstacles and difficulties regarding the registration process for the Darjeeling tea quality sign.

In the initial stage, when attempts were made to register a certified trademark under the Trade and Certification Marks Act of 1958 and the Trademarks Act of 1999, and again under the GI Act of 1999, the traders, packers, blenders and exporters were all reluctant to follow the regulations for trading in Darjeeling tea. The main reasons for their opposition were the prohibitions on passing off non-Darjeeling tea as Darjeeling tea, or on blending or mixing non-Darjeeling tea with Darjeeling tea, the requirement for a licence from the Tea Board etc. Even some of the large companies joined in the opposition. However, the resistance was cleared up through prolonged discussions and meetings with the reluctant stakeholders to explain the effectiveness of the system and the benefits they would derive from it. The larger companies that initially opposed the move now see it as beneficial to them and have therefore supported the registration process in their own interests.

### ***Exclusion of certain producers***

Producers and processors in the Darjeeling zone have very similar levels of mechanization, technical innovation etc., so that all the 87 estate-owners are able to follow the rules laid down in the standard operating procedures and comply with the requirements for obtaining a certificate of origin from the Tea Board. They are thus all part of the action programme within the Darjeeling tea zone.

Some international buyers have been included – together with producers, traders, brokers, auctioneers and exporters – in the action programme regarding the Darjeeling tea quality sign.

A few traders engaged in the retail trade in Darjeeling tea have not yet been brought into line with the GI Act. They are not members of DTA and are still reluctant to comply with all the GI requirements.

## **5. Effective protection of the GI**

### **GI registration to prevent misappropriation of the name**

Collective action launched by DTA and the Tea Board of India is aimed specifically at protecting Darjeeling tea (see the subsection “History of the registration process” above). In the 1980s, the Tea Board was appraised of the seriousness of this problem. In order to protect consumers’ interests in general and also to fetch a higher and fairer price for producers of world-reputed Darjeeling tea, it therefore decided to launch a massive awareness campaign in the United Kingdom. This campaign ran uninterruptedly for three years, with advertisements and popularization of a generic logo for Darjeeling tea by appointing the world-famous advertising agency Saatchi and Saatchi in 1988. At that time, GIs were not a generally familiar concept.

In the more than two decades since then, the GI concept has been introduced, the GI Law has been enacted, GI rules and regulations have been formulated, and Darjeeling tea has been registered as a GI product. Nevertheless, the problem of misuse and misbranding still exists. Mere registration of the quality sign under the appropriate law or act in a given country does not end the story. After registration, the quality sign has to be protected from piracy worldwide in accordance with the provisions of the law or act. It is a very hard task to operate as a watchdog all over the world, monitoring the conflicting marks that are found and taking appropriate action against misuse of the Darjeeling name and quality sign anywhere in the world. It also requires major expenditure and DTA is incapable of bearing such a load, so that it depends on the Tea Board. More than 100 cases of misuse have been identified, 75 percent of which have been settled through negotiation and 25 percent through a court sentence, all in favour of Darjeeling tea, while only one case is still pending settlement.

The costs involved in registering and protecting the quality sign are very high, which is why the Tea Board of India and not collective action on the part of the industry has been responsible for registration of Darjeeling tea under the GI Act in India. The Tea Board also pays the fees of the supervisory agency and the costs of any necessary legal action. The Government of India then compensates the board as part of its market promotion endeavours. The external support received from the Tea Board for the legal protection of the quality sign has been very important, and the board has to stay vigilant because misappropriation is frequent. It is still required to play a very significant role in this aspect of the quality sign process in order to obtain the greatest benefits for stakeholders and promote rural development.

## **Certification and control devices**

The effectiveness of protection also lies in the control and certification system, which ensures that the Darjeeling tea GI is used only by legitimate stakeholders who comply with GI requirements. The control and certification system also provides guarantees to consumers regarding the origin and quality of Darjeeling tea.

### ***Darjeeling certification practices***

Certification is carried out in two ways – either by a public body (the Tea Board), or by a third party or accredited agency:

- The genuineness and origin of Darjeeling tea is certified by the Tea Board through the issuance of a certificate of origin, which acts as a guarantee that the tea is cultivated and processed within the delimited geographical zone of Darjeeling.
- Other certificates regarding quality, food safety, organic or ecofriendly production etc. are issued by third-party agencies accredited (in the case of organic production) by the Tea Board by virtue of the authority vested in it by the Ministry of Commerce and Industry in 2001.

However, there is no third-party certification for the Darjeeling tea GI. The Tea Board works in collaboration with DTA to exercise direct control over the GI regulations formulated by the board. The stakeholders in the supply chain have to comply with the regulations and conditions in order to obtain a certificate of origin from the board:

- Tea must grow on one of the 87 tea estates identified by the Tea Board within the delimited Darjeeling tea zone.
- All tea estates must be registered with the Tea Board.
- Tea estates must follow the single set of agricultural practices (laid down in the standard operating procedures) that has been developed and used for more than 150 years to sustain the growth of shoots and maintain the bush heights required for traditional picking by hand.
- Each estate must have a processing unit or factory within the estate and picked green leaves must be processed in this factory. Tea estates lacking their own factory must have their leaves processed in the nearby factory of another estate within the delimited Darjeeling tea zone.
- The tea leaves must be processed by the traditional rolling method, in which human effort and traditional knowledge are involved at every stage, as laid down in the standard operating procedures.
- No estate shall purchase picked green leaves from any estate outside the delimited Darjeeling tea zone. The estates may, however, purchase leaves from any of the 87 estates located within the delimited zone.
- The drying, sorting, grading and packing of tea must take place only in estate factories within the notified tea estates.
- No tea grown outside the delimited Darjeeling tea zone shall qualify or be treated as Darjeeling tea. Darjeeling tea must not be blended with any other tea and no tea grown outside the Darjeeling tea zone shall be processed in any factory within the zone.

- When the tea is tested by expert tasters from the Tea Board, it has the distinctive and naturally occurring taste, aroma and mouth-feel typical of tea cultivated, grown and manufactured in the delimited Darjeeling zone.
- All sellers of Darjeeling tea must be registered with the Tea Board of India.
- All producers must submit daily reports to the Tea Board of India through DTA, listing all production figures (estate invoices), picking and manufacturing figures (field and factory records), figures for green leaves purchased or transferred and all sales information apart from auction sales (private sales records).



*The various stages of organoleptic tasting of Darjeeling tea on a tea estate.*

### ***Certification and control costs***

The Tea Board of India charges no additional fee for issuing the certificate of origin for Darjeeling tea. Producers and other actors in the supply chain simply have to be registered with the Tea Board against payment of a fixed amount (Rs 15 000 – approximately US\$325). The registration must then be renewed each year by paying a small amount (Rs 500 – approximately US\$10.75). The certificate of origin is the only guarantee required by buyers regarding the origin of Darjeeling tea. Since a certificate is very inexpensive, there is no reason for free-riding and it is not worth any Darjeeling tea producer's while to try selling tea without one.

However, for the other certification systems (regarding food safety and such voluntary standards as organic production and fair trade), the costs appear to be a major problem, since they are high for all such labels or standards. The main drawback of the system is that there is no worldwide standardized food safety and food quality certification. A number of different norms are therefore maintained in order to cater to different countries, entailing inspection, examination and certification by a variety of agencies, which charge very high certification fees. Different countries have different preferences regarding certifying agencies. Each estate thus has to obtain several certificates from several agencies for the same purpose, incurring major expenditure.

## **6. Markets**

There is currently no problem of market access for Darjeeling tea. All the tea produced each year has a ready market, which means that its position is strong and stable.



## Overview of Darjeeling tea production

In the delimited zone, tea is cultivated on 87 estates on 17 542 hectares of hilly terrain out of a total grant area of 34 800 hectares. The provisional estimate for production of made tea in 2008 was 11 586 000 kilograms. Yearly figures since 1991 are given in Table 3 below.

According to DTA, the average annual production of Darjeeling tea is 10 million kilograms.

*Table 3: Tea estates, area, production and average yield of Darjeeling tea, 1991–2008*

Year	Number of tea estates	Area under production (ha)	Total production (thousand kg)	Average yield (kg per ha)
1991	102	20 085	13 932	694
1992	102	19 309	12 355	640
1993	102	19 324	13 026	674
1994	88	19 280	11 092	575
1995	83	18 932	11 298	597
1996	80	17 551	10 614	605
1997	80	17 760	10 054	566
1998	85	17 830	10 253	575
1999	85	17 604	8 653	492
2000	85	17 228	9 281	539
2001	85	17 453	9 841	564
2002	85	17 463	9 180	526
2003	85	17 580	9 582	545
2004	85	17 522	10 065	574
2005	85	17 539	11 312	645
2006	85	17 542	10 854	619
2007	85	17 818	10 007	562
2008	85	17 818	11 586	650

(Source: Tea Board of India)

## Growth

The growth of tea estates, area, production and yields over the past 20 years is shown in the graphs below.

- As can be seen, the number of tea estates in the delimited Darjeeling tea zone fluctuated in the early and mid-1990s but has been stable since 1998.
- The tea zone also shows mixed trends, declining from 1991 to 1996, then fluctuating until 2008, but showing a slow rising trend.

The Tea Board estimates that the area under tea has declined by nearly 3 000 hectares and production by 3 million kilograms over the past ten years. The reasons for reductions from 1991 levels are identified as poor labour management, entrepreneurial indifference, injudicious use of funds, lack of technical know-how etc.

(*Status paper on tea*). The situation was aggravated by a prolonged, violent political campaign in the 1980s, in which many tea estates were closed and workers took advantage of the situation to occupy some tea land by force. The same type of political movement has been relaunched recently, again causing serious production and revenue loss to producers, satisfaction loss to purchasers and utility loss to consumers. If this situation continues for very long, it could pose a serious threat to implementation of the GI process.

On the other hand, the quantity of production and yields declined steadily from 1991 to 1999, but increased from 2000 to 2008. The stability of estates and the increase in area, production and average yields since 1999 are indicators of the good health of the Darjeeling tea sector. The reason for the positive growth may be attributed to GI implementation.

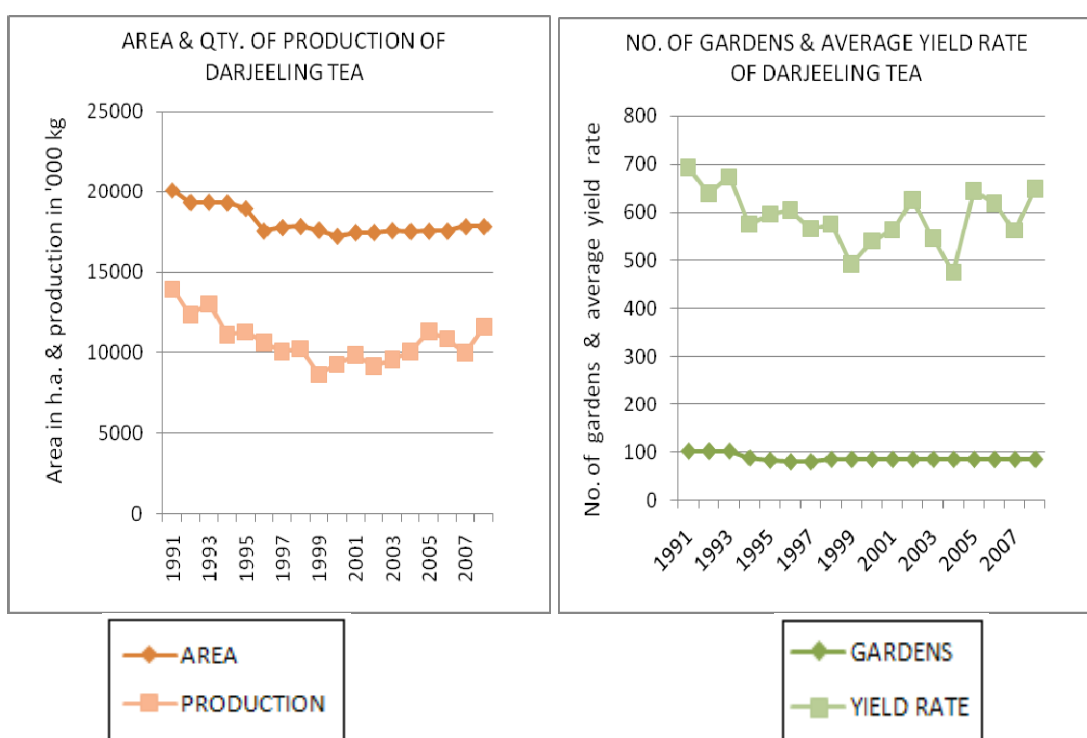


Figure 1: Evolution of the area, quantity of production, number of estates and average yield rate of Darjeeling tea (between 1991 and 2008).

### Types of market, current and aspired to

The main problem with Darjeeling tea is that it is still sold as a commodity and not a product. As a commodity, it is sold in bulk in large packs directly or at auction. Darjeeling tea has been classified as a speciality tea because of its inherent high value, so that it has found outlets in gourmet shops, especially in western countries. To obtain the best possible price, it needs to be sold in smaller packets.

The sale of Darjeeling tea in smaller packets and its promotion in western countries require large-scale expenditure, but the non-availability of the necessary funds has been a major constraint to successful marketing with a view to obtaining the best

possible price. Moreover, there is still a problem in establishing consumers' preference for estate-packed packets of Darjeeling tea.

### ***Local market***

A high-quality, high-value product such as Darjeeling tea is not consumed by consumers in local rural markets within the country for many reasons. First, Darjeeling tea liquor is very light in colour, and rural inhabitants tend to prefer a hard black tea liquor, such as Assam black tea, after a hard day's work. Second, rural inhabitants' income is too low for them to afford the high price of Darjeeling tea. Third, Assam black tea and other teas are available in the local rural markets of West Bengal, so that there is no problem in obtaining people's preferred brand at a low price in rural areas. Local markets are thus not the proper outlets for such a sophisticated product as Darjeeling tea, and no effort is therefore made to develop local markets for Darjeeling tea on behalf of the producers, traders, public body (the Tea Board) or collective body (DTA). However, the workers, officers and managers of the estate and factory are given made tea (a fixed quantity per head) for their own consumption.

### ***Domestic market***

The profile of domestic consumers indicates that most of them reside in the metropolitan city of Kolkata. At the national level, metro-cities are therefore considered potential markets for Darjeeling tea, depending on various criteria – on the one hand, the consumers' economic condition, cultural background, taste preference, habit and social status, and, on the other, easy availability in retail outlets. Efforts are thus being made to develop metro-markets for Darjeeling tea.

### ***International market***

Darjeeling tea production is mainly export-oriented, with 70 percent being exported (see Table 4 below) to 43 countries. Efforts are being made to develop markets in many countries where Darjeeling tea is not yet being sold, and also to explore new markets in countries where it is already being sold. To this end, the Tea Board of India and DTA are organizing product exposure at trade fairs, exhibitions, seminars etc.

*Table 4: Quantity of Darjeeling tea produced and exported from 2004 to 2008*

Year	Total production (kg)	Quantity exported (kg)						Total no. of countries
						Total share		
		Pure	(%)	Blended	(%)	Quantity	(%)	
2004	10 065 000	3 767 194	37.13	3 278 306	32.57	7 045 500	70.00	35
2005	9 634 364	4 144 382	43.00	2 599 603	27.98	6 743 985	70.00	40
2006	9 770 929	4 340 416	44.42	2 499 234	25.58	6 839 650	70.00	39
2007	8 813 113	4 445 349	50.44	1 723 830	19.56	6 169 179	70.00	40
2008	9 487 793	3 814 371	40.20	2 840 316	29.94	6 654 687	70.14	43
Total	47 771 199	20 511 712	42.94	12 941 289	27.10	33 453 001	70.04	

(Source: DTA)

In 2005, the Government of India declared the Darjeeling tea-growing zone an agri-export zone. The number of export destination of Darjeeling tea rose from 35 countries in 2004 to 43 countries in 2008 after GI registration, including France, Germany, Iran, Japan, the Netherlands, the United Arab Emirates, the United Kingdom and the United States. In 2008, exports were being made to 12 new destinations – Armenia, Bulgaria, Croatia, the Czech Republic, Estonia, Greece, Kazakhstan, Latvia, the Russian Federation, the Seychelles, Ukraine and countries of the former Yugoslav Republic – although exports to Finland, Kuwait, Malaysia and Mauritius had stopped.

Once Darjeeling tea has been established and recognized as a GI product on the international market, customers' satisfaction and acceptance of the authentic "origin" of Darjeeling tea will be enhanced in increasing numbers of countries, so that the international market will expand. This expansion will put pressure on producers to increase production and improve quality through greater investment in production, processing units, research and development etc.

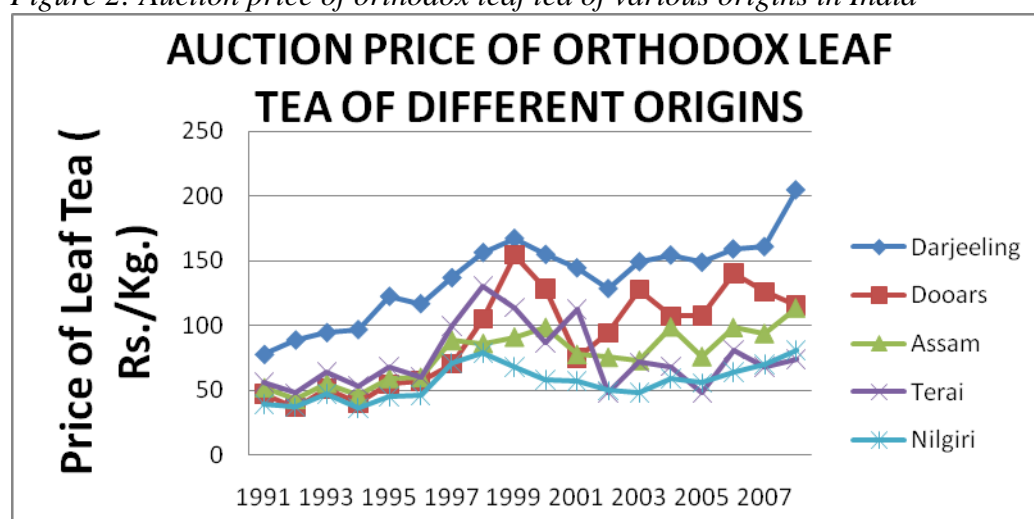
### ***Competition***

The trade faces domestic competition from Assam and international competition from Nepal, Sri Lanka, China, Kenya, Indonesia and Vietnam.

### ***Price***

The auction price of Darjeeling leaf tea saw a steady upward movement between 1991 and 1999, then a downward movement between 2000 and 2002, but again increased significantly over the years to 2009.

*Figure 2: Auction price of orthodox leaf tea of various origins in India*



### **Distribution and trade**

There are two modes of disposal of Darjeeling tea or two ways of physical access to domestic and international markets: auction (in bulk in Kolkata); and private sale

directly from the estate to the merchant exporter or direct export by the producer to the customer.

### ***Auction sale***

A sizeable quantity is sold through auctions held every Monday in Kolkata by J. Thomas & Co., attended by brokers and traders. As can be seen from Table 5, an average of half of total production is sold through auction. The table gives details of auction sales from 1991 to 2008.

*Table 5: Share of direct sale and auction sale of Darjeeling tea since 1991 (before and after GI registration)*

Year	Auction sale		Direct sale	
	Quantity (Tons)	Share (%)	Quantity (Tons)	Share (%)
1991	6 139	44.06	7 793	55.94
1992	7 616	61.64	4 739	38.36
1993	6 365	48.86	6 661	51.14
1994	6 604	59.54	4 488	40.46
1995	5 537	49.00	5 761	51.00
1996	6 084	56.98	4 530	43.02
1997	5 879	58.47	4 175	41.53
1998	5 135	50.08	5 118	49.92
1999	5 260	60.79	3 393	39.21
2000	5 206	56.09	4 075	43.91
2001	4 651	47.26	5 190	52.74
2002	5 244	57.12	3 936	42.88
2003	5 295	55.26	4 287	44.74
2004	5 543	55.07	4 522	44.93
2005	5 527	48.86	5 785	51.14
2006	6 108	56.27	4 746	43.73
2007	5 461	54.57	4 546	45.43
2008	5 401	46.61	6 185	53.39

### ***Direct sale***

Many producers prefer to sell directly to large buyers on domestic and international markets by establishing a personal relationship with them. The buyers come to the estate to observe the cultivation and manufacturing processes, verifying hygienic and other aspects, and checking production, manufacturing and hygiene certificates. If they are fully satisfied, they make contracts to purchase tea. Bulk quantities are sold directly, as can be seen from Table 5. Many producers nowadays prefer to sell directly, avoiding auction on both domestic and international markets, but this requires their involvement and investment in marketing activities, such as exhibition on supermarket shelves, demonstrations and even the linking of marketing to tourism and overseas communities.

### ***Advantages and disadvantages of direct and auction sales***

*Advantages and disadvantages of direct sale.* The sale of Darjeeling tea through direct contact with both domestic and international buyers, bypassing auctions, is known in tea circles as the “unique selling proposition”. The main advantage here is that the name Darjeeling arouses interest among buyers. Each tea estate has individual tea buyers familiar with it. The fame and image of the estates are associated with the buyer’s perception, which is what makes the direct sale method successful. The strengths of the direct marketing system are that the mark-up is minimized, the level of buyer confidence is higher and a larger proportion of the final market price goes to the producer – a part of which can be used for workers’ welfare. The only disadvantage of direct sale is that not everybody can carry out direct marketing through personal contact, while production quantities are much lower than world demand, so that not all buyers can be satisfied.

*Advantages and disadvantages of auction sale.* The advantage of the auction system is that it is a confirmed, traditional, systematic disposal method, in which producers have an assured outlet for their product without any extra trouble or any changes in the system. Bulk quantities of Darjeeling tea are therefore still sold through auction. Many producers who lack a good individual marketing network prefer auction sale in order to dispose of their product. For them, sale at auction to both domestic and international buyers is therefore easier and safer. The disadvantage of the auction system is that the very high mark-up between auction price and retail price means that producers receive a smaller proportion of the final market price and therefore have less money for workers’ welfare. Many producers selling their produce at auction find that they receive only a small proportion of the price paid by end consumers. Ferguson (2002) estimates that producers receive only 32 to 37 percent of the consumer price, while the average mark-up between auction price and retail price is 192 percent. In the case of auction sale, the lion’s share of the consumer price thus goes to non-producers in the value chain.

### ***Business relationship***

Business relationships in the supply chain are maintained through direct interfaces with buyers, particularly those with establishments on estates. Meetings between buyers and sellers are organized, and buyers are invited to visit the estate, at which time producers extend all possible hospitality. All decisions regarding marketing are taken here – a type of one-on-one marketing. Contracts are normally signed for one year, but occasionally for longer.

Alliances with other organizations are also formed in order to obtain better prices, for example links with such international organizations as the Ethical Tea Sourcing Partnership and the Rainforest Alliance.

Trade is very secret and very competitive. The Tea Board of India also helps to organize buyer-seller meetings, both within the country and abroad, so that marketing policy can be formulated and decisions reached. Nobody knows about the discussions and decisions at these meetings.

### ***Distribution of value***

It is the producer-processor who decides on the definition of the product, quality and grade on the basis of established traditional norms, with the assistance of tea tasters. Decisions regarding the price of raw materials, for example green leaves, are taken by the estate manager on behalf of and in consultation with the producer.

Prices and margins are formed along the supply chain by the participants in each link through mutual agreement. In the process of price determination, the final point buyers are the price-makers, while the first point sellers, i.e. the producers, are the price-takers. The marketing decision is taken by the producer. Other rules regarding the distribution of value along the chain concern compliance with GI requirements for direct export and the obtaining of an export licence from the Government of India.

## **7. Impact of registration of under the GI Act**

### **Stakeholders' perception**

In terms of the primary objectives described in the subsection “Objectives of the actors regarding GI registration” above, stakeholders are to a large extent satisfied over the fulfilment of certain objectives, although there is also dissatisfaction over the non-fulfilment of others.

The first objective was that of *protecting the name Darjeeling from misuse in various countries in various ways*. It was expected that prevention of the misuse of the name would protect the original product – Darjeeling tea – by placing legal barriers to the entry of fake or false “Darjeeling tea” onto the market, so that the market would receive 100 percent genuine Darjeeling tea cultivated and manufactured within the delimited zone. In fact, however, the protection of the name is a never-ending task, requiring constant surveillance and considerable financial outlay. However, the ambitious verdicts of the Court of Appeal in France in the Dusong case and the Trademark Trial and Appellate Board in the United States in the Darjeeling Nouveau case in favour of the Tea Board of India made the board more optimistic, inasmuch as its success in these cases could send a strong message to improper users of the name, discouraging them from such misuse in the future. As a result, greater awareness concerning the quality sign has been created within the trade (including international trade) and some large-scale packers are now following GI norms and complying with quality sign requirements. Stakeholders have observed this success of the Tea Board with satisfaction.

The second objective was that of *improving market access*, and stakeholders could see this as another success of the quality sign process. The improvement in market access has been reflected to a certain extent in events: during the period from 1999/2000 to 2005/06, when the entire Indian tea industry suffered a recession, leading to severe price falls and a reduced demand for tea, Darjeeling tea showed little of these negative effects. Since 2002, the average auction price of Darjeeling orthodox leaf tea has seen a regular upward movement – from Rs 128.52 per kilogram in 2002 to Rs 205.00 in 2008. The highest average price in 2009 was Rs 229.18, reported by J. Thomas & Co. of Kolkata. The Darjeeling tea GI may have helped to protect it and be responsible for

the increase in average price each year since 2002 – as was not the case for tea grown elsewhere in India (see Figure 1 above, giving auction prices).

The third initial objective of the stakeholders – *differentiating Darjeeling tea from other teas in order to increase its added value* – has thus been fulfilled to some degree of stakeholders' satisfaction.

Darjeeling tea has achieved the fourth objective of the stakeholders, that of *escaping the adverse effects of fluctuations in the international market in order to achieve a strong, stable position on the domestic and international markets*, partly by making more direct exports through forward contracts, but also by making personal contact with buyers, leading to better prices and better brand imaging than is the case with export through merchants.

Another objective that has been fulfilled through the quality sign process is that of *supporting the local population by providing employment and other opportunities such as civic, educational and medical facilities within the locality*. Out of a total population of 1.6 million in the Darjeeling hills (Census of India, 2001), roughly 1.12 million, or 70 percent, are directly or indirectly associated with the tea industry, while between 45 and 60 percent of total industry expenditure goes on workers and their benefits. The objective of keeping the population within the locality has also been successfully met.

*Secondary objectives.* The four secondary objectives (see Section 4, “Stakeholders and the qualification process” above) – to preserve biodiversity on estates and in the locality by protecting various animal species and endangered plant and insect species, enhancing soil fermentation possibilities etc.; to prevent biopiracy; to preserve the traditional know-how of Darjeeling tea manufacturing; and to preserve the local cultural heritage – should be achieved along with fulfilment of the primary objectives and the conversion of conventional estates to organic production. It is important to note that 55 to 60 percent, or perhaps more, of the estates in Darjeeling are already organic or in the process of conversion. The present traditional method of cultivation and manufacture, using age-old bushes, preserves traditional know-how and the local cultural heritage. Details are given in the subsections “Culture and tradition” and “Environmental impact” below.

### ***Limitations***

However, the stakeholders feel there have been some failures in the quality sign process.

- The lack of change in the price situation on the international market and the delay in registering Darjeeling tea as a GI product in the European Union and various other countries mean that the economic benefits of the GI process are yet to be received.
- Little progress has yet been achieved in terms of rural development. Workers have been employed here generation after generation for more than 150 years. Over time, their dwelling areas have taken the shape of villages inside the estates. Although producers do undertake various measures from time to time to improve



these dwelling areas, including houses, it is hoped that once they obtain economic benefits from GI registration, the process of rural development will be accelerated.

- Misappropriation of the name is still taking place. In the absence of adequate regular monitoring, Nepalese tea is entering India both in processed and unprocessed form, flooding Indian markets. Nepalese tea resembles Darjeeling tea and is sold under the name Darjeeling, thereby receiving the benefits of the reputation of genuine Darjeeling tea.
- Domestically, compliance with GI norms within the tea trade is still poor. Some domestic intermediaries in the tea trade, including traders and retailers, are not yet registered with the Tea Board of India, so that they are not obliged to sell tea according to the GI requirements. Some consumers are thus not obtaining genuine Darjeeling tea, despite paying a high price. The compliance of the domestic tea trade with the GI requirements should be enhanced so that domestic consumers also obtain GI benefits.

## Economic impact

### *Economic effects of GI registration*

The economic impact has been analysed in terms of various indicators (number of tea estates, area under tea, quantity of production, yield, price on domestic markets, price fluctuations, export development, quantities sold at auction etc.), comparing the figures for the years from 1991 to 2007/08, i.e. before and after GI registration. The results of analysis regarding five major variables are summarized in Table 6 below.

*Table 6: Impact of GI registration on five variables*

Variables	Before GI	After GI
<u>Number of tea estates</u>	<p>102 in 1991</p> <p>80 in 1997</p>	<p>85 from 1998 to 2009</p>
<u>Area under tea</u>	<p>20 085 ha in 1991</p> <p>17 228 ha in 2000</p>	<p>17 818 ha in 2008</p>
<u>Quantity of production</u>	<p>13.93 million kg in 1991</p> <p>9.18 million kg in 2002</p>	<p>11.59 million kg in 2008</p>
<u>Yield per hectare</u>	<p>694 kg/ha in 1991</p> <p>492 kg/ha in 1999</p>	<p>650 kg in 2008</p>

Price	<p><u>Rs 128.52/kg in 2002</u></p> <p><u>Rs 77.50/ kg in 1991</u></p>	<p><u>Rs 204.88/kg in 2008</u></p>
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The table shows the positive economic impact of GI registration on five variables – number of tea gardens, tea-production area, production quantity, yield and price. In this context, the growth and price charts given in Section 6 above (Figure 1 and 2 in part “Markets”) are also relevant.

### ***Quality improvement***

Quality improvement started before the GI process, with a move toward adoption of good agricultural and manufacturing practices.

Since 1999, it has been mandatory to follow good agricultural and manufacturing practices in order to obtain GI registration. However, the GI process has itself further encouraged quality improvement, inasmuch as there is some assurance that high-quality tea will be protected from fake or false Darjeeling tea in domestic and international markets, which in turn may increase the price of the genuine article.

GI registration prevented the massive use of chemicals. Many conventional estates have discontinued the practice altogether and converted to organic cultivation and production. Quality has been further improved by the introduction of a more precise two-leaves-and-one-bud picking method instead of the previous less precise method. This improvement in quality started slowly in 1994/95, and then accelerated from 2000 onwards after the start of the GI process – although it was not a factor in GI definition.

The improvement in quality is reflected in a growing demand for Darjeeling tea on domestic and international markets, involving steadily increasing numbers of countries.

## **Impact on rural development, economic and social aspects**

### ***Evolution in producers’ income***

Although the price of Darjeeling tea has not yet risen and no impact on producers’ income has yet been observed, the price has resisted the generalized global fall in tea prices better than other teas. It is expected that in the post-depression period, when the quality sign is recognized in all the countries to which it is exported, there will be considerable improvement in the economic situation of Darjeeling tea producers, enabling them to make further investment in rural development.

### ***Evolution in employment***

Employment on tea estates is based on a very high fixed land-labour ratio, with 3.5 workers per hectare (Government of India Report, 2009). The livelihoods of approximately 70 percent of the total population of the Darjeeling hilly zone where 87 estates are located depend directly or indirectly on the tea industry. Although there is very little possibility of expansion in the area under tea, it is hoped in the industry that once the Darjeeling tea quality sign obtains recognition in European and other importing countries, the marketing situation will improve to such an extent that blending, packing and packaging will be carried out in Darjeeling, leading to employment for another 10 percent of local inhabitants.

### ***Deceleration in the rural exodus***

Earlier, when the tea estates were not functioning efficiently, some estates were closed, wages were not paid and workers left the estates in search of better jobs in other towns and cities in India. However, since GI registration, no estate in Darjeeling has been closed for economic reasons for the past seven or eight years. There are now sufficient job opportunities on tea estates, providing good wages and multiple fringe benefits. No one is migrating to the plains any more. In the entire Darjeeling tea-growing zone, the rural exodus is therefore practically nil. Most of the workers who left the estates earlier have returned and others are still returning.

### ***Induced effect on tourism***

Darjeeling is a major tourism destination and tourism is a source of considerable revenue. The area is famous for a variety of reasons:

- the Toy Train, recognized as a UNESCO World Heritage Site and preserved as such;
- the city itself, known as the Queen of the Hills, with more than 30 interesting tourism sites for visitors;
- the tea gardens, encircling the town on all sides.

Many tea buyers and other people from various places in India and the world, including tourists, visit Darjeeling every day from March to November, staying in hotels and eating in restaurants. With increasing numbers of tourists (including tea tourists), this sector will create more job opportunities for local people and generate a greater inflow of money, leading to more development.

Tourists in Darjeeling now want to visit tea gardens and observe the manufacturing process, so there are good prospects for tea tourism. However, the sector still requires development, and recent efforts have been made to popularize it in the area. Some estate owners are thinking of opening their gardens to tea tourists on an experimental basis. Tourists will be able to stay in the traditional garden bungalows, mostly built by the original British owners but with modern amenities, in order to enjoy the serene atmosphere of the gardens. Thus they can view the lush tea gardens on their sloping land, discover the unique garden culture, trek along the raised grit roads and obviously taste the world-famous Darjeeling tea.



*Bungalow for tea tourism*

This approach could:

- develop and consolidate Darjeeling tourism by generating tourist satisfaction;
- enable tea producers to earn additional income from tourists (rental of accommodation and direct sale of made tea and other local products);
- promote tea marketing with the creation of an individual brand image;
- enable state and local governments to obtain more revenue from tourism;
- generate a positive awareness of the Darjeeling tea GI.

However, legal barriers are currently preventing estates from being opened to tourism. All the estates are leased, and the contracts with the state government do not provide for tourism activities within the properties. Since tea tourism has huge economic prospects, a few estates have already started it on an experimental basis under the existing set-up, with limited capacities and resources. However, until contracts are amended to accommodate this activity, there is little possibility of its achieving success. For example, existing contracts do not allow lessees to build any new constructions within the prescribed area for any purpose. The unused portion of estates should be used for tourism purposes with the permission of the state government.

### ***Development of infrastructure***

In order to meet the full development needs of the Darjeeling tea industry, the Ministry of Commerce and Industry has declared the tea-production zone an agri-export zone with a view to necessary development under the Agricultural and Processed Food Product Export Development Agency. The memorandum of understanding is yet to be signed by the Tea Board of India, the West Bengal State Government and the Darjeeling Tea Association for development of this agri-export zone with the required infrastructure for tea promotion and export, with an expenditure of Rs 2 126.5 million. As part of this programme, the infrastructure for packing and packaging will be developed in the Darjeeling tea-production zone, along with development of estate roads and the communications network, and establishment of a Darjeeling Tea Park in Kolkata for the promotion of exports. Details of the agri-export zone scheme are available from the Agricultural and Processed Food Product Export Development Agency website ([www.apeda.com](http://www.apeda.com)).

### ***Development of relations and joint actions by producers and other actors in the supply chain***

The quality sign process has brought all the stakeholders together, and most of the producers, processors, traders, direct exporters and merchant exporters are now under the DTA umbrella and are registered with the Tea Board of India. Such registration is compulsory for those who intend dealing in Darjeeling tea under the GI sign. The DTA members meet from time to time to exchange their views on the GI process and also undertake collective action on various issues, ranging from production to sanitation to GI certified exports, thereby developing a collective sense of responsibility.

Relationships have further developed because the GI process has increased buyers' awareness and they are coming from abroad to visit estates in order to select the estate of their choice before purchasing tea. These micro-level relationships may be commercial, but they have developed mainly because of the GI process.

### **Culture and tradition**

People linked to the tea estates in any way are proud of being associated with the Darjeeling tea industry, in particular in the case of economically sound, stable estates. This sense of pride has developed among employees and their children because of the quality sign of Darjeeling tea and has increased steadily since registration of the quality sign.

### **Environmental impact**

Good practices for the production of safe, high-quality food (for example good agricultural practices and good manufacturing practices) on conventional estates and bio-organic or biodynamic estates to a large extent take environmental and natural resource protection into account.

### ***Soil erosion and landslides***

Soil erosion and landslides are two important factors that have a profound effect on tea estates in Darjeeling's hilly areas.



*Landslide on Monteviot tea estate (close view)*



*Landslides on tea estates (distant view)*

However, the China variety of tea cultivated in Darjeeling, with its sideways-spreading, deep-rooted system, is an excellent soil conserver. Soil conservation is also ensured by planting saplings of leafy plants indigenous to the region each year. In addition, construction of a drainage system, green crop cultivation before planting tea bushes, mulching, organic cultivation and stone riveting are some of the measures adopted in Darjeeling in accordance with good agricultural practices to prevent soil erosion, that represents one of the main environmental hazards in Darjeeling's hilly areas.

Biodiversity has also been preserved to a large extent through the reduction in applications of chemical fertilizer and pesticide on conventional tea estates in accordance with good agricultural practices, while a significantly greater contribution has been made by the conversion of estates from conventional to organic production. With organic cultivation, the number of different types and varieties of friendly insects, birds and animals is gradually increasing. In addition, increasing quantities of cow dung are needed for use as organic manure, so that the cattle population is steadily increasing with the conversion of more and more estates to organic production. Wild shrubs and herbaceous plants are also cultivated on various gradients within tea estates for animal fodder.

## **Costs**

### ***Production, manufacturing and marketing costs***

Various costs are incurred at various stages from production to marketing – cultivation, picking, processing, sorting, packing and packaging, and dispatch – in order to maintain and improve the quality of Darjeeling tea. The average production cost has been estimated at Rs 300 to 325 per kilogram of made tea, with estate-level cultivation and processing costs amounting to Rs 200 to 225 per kilogram, and administrative costs, including office establishment and taxes, amounting to Rs 100 to 125 per kilogram.

The production costs of tea are higher in Darjeeling than in any other tea-growing zone as a result of:

- the high altitude of the estates;
- very low yields per hectare;
- very high labour costs due to tough working conditions on 60° to 70° gradients, coupled with a very precise and selective leaf-picking technique;
- the low per capita productivity of the workforce;
- transportation bottlenecks, with poor road conditions;
- high transport and fuel costs;
- unpredictable climatic conditions;
- frequent political agitation.

### ***Certification costs***

Certification is required to indicate the authenticity of the product with regard to such variables as genuineness, origin, practices, hygiene, ecology and fair trade. No fee is required for the certificate of origin issued by the Tea Board of India to producers,

processors, traders, exporters or others involved in the Darjeeling tea trade who are registered with the board and renew their registration regularly.

However, for other types of certification, the fees of the various accredited certifying agencies are very high. There is no worldwide standardized food safety and quality certification and different countries have different specifications and norms. Inasmuch as Darjeeling tea is an agro-based, manufactured, high-quality and mainly export-oriented product, certification from a number of agencies is required. Moreover, analysis and certification have to be carried out in importing countries, at considerable expense. Total certification costs are thus very high and represent a major constraint for the Darjeeling tea industry (for further details regarding certification, see Section 5, “Effective protection of the GI”, above).

### SWOT analysis

The inherent qualities of the product and its proper management at all stages of production (cultivation, manufacturing, marketing etc.), leading to value addition along the supply chain, are its internal strengths, while the certificate of origin issued by the Tea Board of India for identification of the genuine product and other types of certification issued for improved product quality are additional strengths. However, the industry also faces certain weaknesses and constraints.

<p><b>Strengths (internal)</b></p> <ul style="list-style-type: none"> <li>• High quality and worldwide reputation</li> <li>• Geo-agro-climatic conditions, with a favourable environment for tea production</li> <li>• Easy conversion to organic production</li> <li>• Skilled workforce of local people, with local traditions and know-how, as well as technical knowledge, a sense of belonging and self-esteem</li> </ul>	<p><b>Weaknesses (internal)</b></p> <ul style="list-style-type: none"> <li>• Erratic, unpredictable weather</li> <li>• Continuing misrepresentation and misappropriation, in particular unmonitored entry of Nepalese tea</li> <li>• Very high production costs: very low yields per hectare, a high land-labour ratio (1:3.5) and very high costs for such items as transport, energy, soil conservation, organic and biodynamic conversion and cultivation, and low productivity per labour unit</li> <li>• Very high costs of the overlapping certification of various accredited certifying agencies for food safety or environmentally friendly production (lack of standardization of food safety and quality certification)</li> <li>• Old age of tea bushes and their low replacement rate (2 percent per year)</li> <li>• Most domestic consumers’ lack of awareness of the quality sign or the Darjeeling tea GI</li> </ul>
<p><b>Opportunities (context linked)</b></p> <ul style="list-style-type: none"> <li>• Potential to increase production through an increase in the replacement rate for tea bushes from 2 to 10 or 12 percent per year in order to generate increased production in</li> </ul>	<p><b>Threats (context linked)</b></p> <ul style="list-style-type: none"> <li>• Ongoing misappropriation of the name Darjeeling in many countries, including India</li> <li>• Very high costs involved in</li> </ul>

<p>the future</p> <ul style="list-style-type: none"> <li>• Opportunities for market development through creation of new markets in countries where Darjeeling tea is not yet sold</li> <li>• Further opportunities to develop additional products or by-products of the tea industry with economic viability (for example, tea perfume from the flowers)</li> <li>• Opportunities for tea tourism development</li> </ul>	<p>registration and protection of the quality sign</p>
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## 8. Conclusions

### Lessons learned

Darjeeling's exceptional geo-agro-climatic situation has created unique conditions that are very suitable for growing a superfine quality of tea that cannot be replicated elsewhere. However, various constraints and weaknesses may jeopardize the future prospects of the industry unless due attention is paid and appropriate measures are taken in time.

Darjeeling tea faces both internal and external difficulties in both the production and the marketing spheres. Efforts are made to solve external problems and marketing difficulties through the GI process, but little attention is paid to solving internal problems and difficulties, which is essential if the GI process is to be successful. There is a high demand for Darjeeling tea on the international market. However, there is a large gap between demand and supply, so that tea of other origins in other countries is coming onto the market to fill the gap and being sold under the name "Darjeeling tea". Various measures have been taken to protect the genuine article from fake or false versions, including enacting of the GI Act in India and registration of the product under the same act. On the other hand, the area under tea in Darjeeling and the quantity of Darjeeling tea produced shrank strikingly over the years in the pre-GI period. Although the GI process is gradually improving the situation, the intervention of the appropriate authorities has become essential in order to increase the cultivation and production of this high-quality product.

Surprisingly, although legal measures are taken to protect Darjeeling tea against misappropriation, no measures are taken to increase the supply of the product on the domestic and international markets in order to reduce the shortfall between demand and supply by expanding the cultivated area, yields and quantities produced. Only 50.4 percent of the total area granted for tea cultivation is actually used for that purpose, while the remainder is used for various other purposes. There is therefore still some possibility of increasing production of Darjeeling tea.

Price increases over the years in sales at auction for the domestic market have been insufficient to offset the increased costs of production and marketing. With regard to the export price of Darjeeling tea, producers' experience is even worse. Export prices



have also stagnated for several years in terms of US dollars or euros. In such a situation, the survival of tea estates becomes moot. However, owing to fluctuations in the exchange rate between Indian rupees and US dollars or euros, tea exporters and producers obtain some respite, but not enough to satisfy them fully.

The extraordinarily fine qualities of Darjeeling tea are expressed through the quality sign of a logo registered under the Trademark Act of 1999 as a certified trademark and the GI Act of 1999 as the first Indian GI product after prolonged joint efforts by the Tea Board of India and DTA, with a view to preventing misuse of the name Darjeeling on domestic and international markets. Despite this, the precise quantity of fake and false Darjeeling tea available on international markets remains unknown to the Tea Board, DTA or the government. The quantity of “duplicate” Darjeeling tea still flowing onto the international market needs to be assessed. The name Darjeeling has been misappropriated in various countries for non-Darjeeling tea, creating confusion among consumers, damaging the reputation of Darjeeling tea and diluting its brand image. The Darjeeling tea quality sign as an indication referring to its geographical origin has not yet been registered in many importing countries, especially in the European Union, although in many countries it is recognized as a certified trademark, collective trademark etc.

The genuineness, safety and quality of Darjeeling tea are assured by the certification of various authorities, accredited agencies or NGOs. The certificate issued by the Tea Board confirms the origin of Darjeeling tea. Quality and safety aspects are maintained because the tea is produced under good hygienic and sanitary conditions in accordance with the Sanitizing Standard Operating System, good agricultural practices and good manufacturing practices under the provisions of the Prevention of Food Adulteration Act. The HACCP certification process ensures that the product is safe for consumption. Other quality schemes and labels – organic, fair trade, eco-fair trade etc. – are certified by various accredited agencies. The certification fees charged by various agencies and NGOs regarding food safety and quality norms are very high. However, compliance with these norms is compulsory for export to various countries. The high cost of all these overlapping types of certification has become a problem to stakeholders in the supply chain. A solution therefore needs to be found.

Tea tourism is a potential source of substantial revenue and also an important way of promoting the Darjeeling tea quality sign and the GI concept. However, due to legal complications and the absence of suitable modalities, it cannot be developed for the moment.

## **Recommendations**

### ***Recommendations for supply chain stakeholders and the Darjeeling Tea Association***

- *Market promotion, the development of new markets and stable product positioning within and outside India* are needed on the part of the Tea Board of India through the assurance of product quality and safety. Such action will help to improve quality and also encourage increased production. The use of various promotional tools is needed so that domestic consumers become aware of the

concept of the Darjeeling tea GI, thus increasing demand and allowing prices to keep pace with rising production costs.

- *The production and supply of this high-quality tea to the domestic and international markets should be increased* in order to reduce the shortfall between demand and supply: by increasing the area under cultivation and the yield, and by providing an appropriate environment to grow this precious product.
- *Tea tourism and other potential by-products should be developed.* However, some institutional obstacles need to be removed first (see the following recommendations for the Government of India and the West Bengal State Government).
- *For the boosting of collective action.* In order to boost collective action, DTA must take the necessary steps to bring the few non-member tea estates in the Darjeeling delimited zone under the DTA umbrella at the earliest possible date. These non-member estates should thus join DTA, settling their differences and reservations, if any, so that collective action can be stronger, more effective and result-oriented. As a collective body, DTA should ensure more transparency in the Darjeeling tea trade with regard to the total quantity exported, the quantities directly exported and exported through merchant exporters, the quality and grade of tea exported, and the average price on domestic and international markets for the various grades.
- *For value addition in the value chain.* Action is needed by the Tea Board of India, DTA and all producers to make Darjeeling tea a product instead of a commodity. Efforts are needed at all levels to popularize the concept of packet sales. The producer-level packing of tea into small packets of various sizes bearing the quality sign would definitely allow value addition. Producers should arrange individually or collectively for the necessary finance for this purpose by obtaining long-term loans at low interest rates from commercial banks in cooperation with the Tea Board of India under the central government guarantee system.
- *For strong integration in the supply chain.* The Tea Board of India should act in association with DTA to include all tea traders and large-scale retailers within the GI supply chain in order to boost the comprehensive character of the system.

#### ***Recommendations for the Tea Board of India, the Government of India and the West Bengal State Government***

The unique blend of geo-agro-climatic conditions in Darjeeling for tea production should be exploited to the full through efforts on the part of the Government of India, the West Bengal State Government and the Tea Board of India so as to obtain the maximum benefit.

- *For strict vigilance on the international market.* The Tea Board of India, which has been the main instrument in the registration of Darjeeling tea, should be more alert and vigilant in protecting all the various quality signs of Darjeeling tea on domestic and international markets, because misappropriation is still taking place

– according to the allegations of many producers. The Tea Board should also seek to assess and quantify the fake and false Darjeeling tea currently being sold on domestic and international markets even after the registration of Darjeeling tea under the GI Act.

- *For the introduction of a standardized certification system.* The Ministry of Commerce and Industry should take the necessary steps to introduce a standardized certification system through negotiations with various countries, in order to reduce the burden of costly overlapping certification.
- *For the promotion of tea tourism.* The West Bengal State Government, in association with DTA, should adopt the necessary steps to remove legal barriers and formulate suitable modalities for the promotion of tea tourism on Darjeeling tea estates with a view to generating income from tourists, both Indian and foreign, while making them aware of the concept of the Darjeeling tea GI through a proper campaign. Guidelines need to be formulated for sharing income from tea tourism among estate owners and the state or local government, and procedures laid down for the development of tourism infrastructures. The existing lease contracts between the state government and tea producers (which do not permit the latter to build any new construction within the prescribed area for any purpose) need to be amended to allow tea estates to build the necessary constructions to promote tea tourism.
- *For generic promotion of the quality sign and the GI.* The Ministry of Commerce and Industry must take any actions deemed necessary for worldwide recognition of the Darjeeling tea GI, using WTO as the appropriate forum. The Ministry of Commerce and Industry and the Tea Board of India should take appropriate steps through trade missions to end the long price stagnation of Darjeeling tea on international markets, especially in such countries as the United States, European Union countries, Australia, Japan, Iran and Sri Lanka for the survival and better performance of the industry.
- *For the maintenance of a congenial working environment.* The Government of India and the West Bengal State Government must come forward to protect this flagship of India's tea industry from external trouble during any political disturbance, including agitation for separate statehood (by taking appropriate measures to restore and maintain peace and a good working environment on tea estates). In more general terms, tea estates should be kept away from the effects of any political disturbance. The Government of India and the West Bengal State Government must take steps to ensure peace, tranquillity and a congenial working environment on Darjeeling's tea estates in order to save the world-famous industry from further economic and social disruption.
- *For the improvement of labour productivity.* The Labour Department of the West Bengal State Government should strive to inspire workers to enhance both the quantity and the quality of Darjeeling tea during tripartite negotiations for higher wages and bonuses, thus enhancing the work ethic on tea estates.
- *For technical innovation.* The outdated machinery in Darjeeling's tea factories occupies a great deal of space, runs by primitive methods with a huge

consumption of fuel and time, and needs to be replaced by more efficient, compact, time- and cost-saving machines that enhance aroma retention capacity and increase whole-leaf recovery. Packaging materials and systems must also be developed that can retain quality for longer periods. Such advances require innovative research at the Indian Institute of Technology and engineering colleges and institutions, including Jadavpur University and the Bengal Engineering and Science University.

- *For the development of infrastructure.* The West Bengal State Government must ensure a good infrastructure network in the tea plantation areas of Darjeeling, including remote villages, by providing good roads, an adequate water supply and a continuous power supply, and building the bridges needed for the regular flow of inputs and outputs to and from the estates, thereby enhancing the efficiency of the whole system. The installation of light-weight ropeways within tea estates for the speedy transfer of picked leaves from distant zones to the factory (currently available on only a few estates) has become essential with a view to increasing the quality of made tea and reducing primary transport costs. The Tea Board of India should collaborate with DTA and individual tea estates to explore the possibility of installing such ropewalks at a lower or subsidized installation cost. The West Bengal State Government should collaborate with the National Highway Authority to improve road conditions so that roads are made suitable for higher tonnage vehicles, which could then carry inputs and outputs at a lower cost. The district and local administrations should accord the necessary permission for the movement of high-capacity vehicles for tea estates. The concerned departments of the Government of India should ensure the availability of telecommunication and internet connections on each tea estate, which should be equipped with a computerized system and trained staff to work with various software packages. The concerned departments of the central and state governments should work with the Tea Board and DTA to provide the industry with the necessary technical and financial assistance to solve power problems through the development of hydroelectric, solar and wind power.
- *For miscellaneous assistance.* Various rural development schemes of the central and state governments should be made available to the Darjeeling tea industry for the improvement of rural areas and villages on tea estates, where workers' families live in traditional style, thereby to a certain extent reducing the burden of social costs borne by producers. Considering the future requirement of the industry for skilled staff, an appropriate package for human resource development should be introduced to impart ongoing training.
- *For research and development.* Research for tea estates on various cultivation and botanical aspects, including plant species, cloning etc., can be undertaken by agricultural universities and the Tea Department of the North Bengal University in association with the Darjeeling Tea Research and Development Centre, the Tea Research Association etc. Research and training on various aspects of management, export and marketing, including WTO and TRIPs, could be undertaken by institutions with expertise and resources, such as the Indian Institute of Management in Kolkata, leading to an over-all improvement in industry performance. The Tea Board of India should take the necessary initiative to fill currently vacant positions for scientists and researchers in the Darjeeling

Tea Research and Development Centre in order to increase the centre's efficiency and output. Research is also needed to develop a more efficient packaging system capable of retaining the quality of tea for a longer period. Initiatives may also be taken, initially on an experimental basis, to use the tea flowers that bloom in such abundance in September, October and November, with their light but attractive fragrance. If the experiments are successful, good-quality perfume could be prepared as a by-product of tea, after proper research and development on the subject, and could generate appreciable amounts of income.

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THE GAZETTE OF INDIA  
EXTRAORDINARY  
PART-II - SECTION 1  
PUBLISHED BY AUTHORITY

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Separate paging is given to this Part in order that it may be  
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MINISTRY OF LAW, JUSTICE AND COMPANY  
AFFAIRS  
(Legislative Department)  
*New Delhi, the 30<sup>th</sup> December, 1999/Pausa 9, 1921 (Saka)*

The following Act of Parliament received the  
assent of the President on the 30<sup>th</sup> December, 1999, and is  
hereby published for general information:-

THE GEOGRAPHICAL INDICATIONS OF GOODS  
(REGISTRATION AND PROTECTION) ACT, 1999  
No.48 of 1999

[30<sup>th</sup> December, 1999]

An Act to provide for the registration and better protection  
of geographical indications relating to goods.

BE it enacted by Parliament in the Fiftieth Year of the  
Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Geographical  
Indications of Goods (Registration and Protection) Act,  
1999.

Short title,  
Extent and  
Commencement.

(2) It extends to the whole of India

(3) It shall come into force on such date as the  
Central Government may, by notification in the Official  
Gazette, appoint, and different dates may be appointed for  
different provisions of this Act, and any reference in any  
such provision to the commencement of this Act shall be  
construed as a reference to the coming into force of that  
provision.

Definitions  
And  
interpretation

unless the context otherwise requires:-

(a) “Appellate Board” means the Appellate Board established under Section 83 of the Trade Marks Act, 1999;

(b) “authorised user” means the authorised user of a geographical indication registered under Section 17;

(c) “deceptively similar” A geographical indication shall be deemed to be deceptively similar to another geographical indication if it so nearly resembles that other geographical indication as to be likely to deceive or cause confusion;

(d) “district court” has the meaning assigned to it in the Code of Civil Procedure, 1908;

5 of 1908

(e) “geographical indication”, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Explanation:- For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;

(f) “goods” means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;

(g) “indication” includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies;

(h) “name” includes any abbreviation of a name;

(i) “package” includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;

(j) “prescribed” means prescribed by rules made under this Act;

(k) “producer”, in relation to goods, means any person who:-

- (i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;
- (ii) if such goods are natural goods, exploits the goods;
- (iii) if such goods are handicraft or industrial goods, makes or manufactures the goods, and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods

(l) “register” means the Register of Geographical Indications referred to in Section 6;

(m) “registered” [with its grammatical variations] means registered under this Act;

(n) “registered proprietor” in relation to a geographical indication, means any association of persons or of producers or any organisation for the time being entered in the register as proprietor of the geographical indication;

(o) “Registrar” means the Registrar of Geographical Indications referred to in Section 3;

(p) “tribunal” means the Registrar or, as the case may be, the Appellate Board before which the proceeding concerned is pending.

(2) Words and expressions used and not defined in this Act but defined in the Trade Marks Act, 1999 shall have the meanings respectively assigned to them in that Act.

(3) In this Act, unless the context otherwise requires, any reference:-

- (a) to the use of a geographical indication shall be construed as a reference to the use of a printed or other visual representation of the geographical indication.
- (b) to the use of a geographical indication in relation to goods shall be construed as a reference to the use of the geographical indication upon, or in any physical or in any other relation whatsoever, to such goods;
- (c) to a registered geographical indication shall be construed as including a reference to a geographical indication registered in the register;
- (d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of Section 3;
- (e) to the Geographical Indications Registry shall be construed as including a reference to any office of the Geographical Indications Registry.

## CHAPTER II

### THE REGISTER AND CONDITIONS FOR REGISTRATION

3. (1) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of Section 3 of the Trade Marks Act, 1999, shall be the Registrar of Geographical Indications.

Registrar of  
Geographical  
indications

(2) The Central Government may appoint such officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act, as he may from time to time authorise them to discharge.

4. Without prejudice to the generality of the provisions of sub-section (2) of Section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either *de novo* or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either *de novo* or from the stage it was so transferred.

Power of Registrar to Withdraw or Transfer cases etc.

5. (1) For the purpose of this Act, there shall be established a Registry which shall be known as the Geographical Indications Registry.

Geographical indications Registry and offices thereof

(2) The head office of the Geographical Indications Registry shall be at such place as the Central Government may, by notification in the Official Gazette, specify, and for the purpose of facilitating the registrations of geographical indications, there may be established at such places as the Central Government may think fit branch offices of the Geographical Indications Registry.

(3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Geographical Indications Registry may exercise its functions.

(4) There shall be a seal of the Geographical Indications Registry.

6. (1) For the purposes of this Act, a record called the Register of geographical indications shall be kept at the Head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorised users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.

Register of Geographical Indications

(2) Notwithstanding anything contained in sub-section (1) it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies or diskettes or in any other electronic form, subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly in computer floppies or diskettes or in any other electronic form under sub-section (2), any reference in this Act to any entry in the register shall be construed as the reference to the entry as maintained on computer floppies or diskettes or in any other electronic form, as the case may be.

- (4) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.
- (5) Subject to the superintendence and direction of the Central Government the register shall be kept under the control and management of the Registrar.
- (6) There shall be kept at each branch office of the Geographical Indications Registry a copy of the register and such other documents mentioned in Section 78 as the Central Government may, by notification in the Official Gazette, direct.

Part A and Part B  
of the Register

7. (1) The register referred to in Section 6 shall be divided into two Parts called respectively Part A and B.
- (2) The particulars relating to the registration of the geographical indications shall be incorporated and form part of Part A of the register in the prescribed manner.
- (3) The particulars relating to the registration of the authorised users shall be incorporated and form part of part B of the register in the prescribed manner.

Registration to be  
in respect of  
Particular goods  
And area

8. (1) A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.
- (2) The Registrar shall classify the goods under sub-section (1), as far as may be, in accordance with the International classification of goods for the purposes of registration of geographical indication.
- (3) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods referred to in sub-section (2).
- (4) Any question arising as to the class within which any goods fall or in the definite area as referred to in sub-section (1) in respect of which the geographical indication is to be registered or where any goods are not specified in the alphabetical index of goods published under sub-section (3) shall be determined by the Registrar whose decision in the matter shall be final.

Prohibition of  
Registration of  
certain  
geographical  
indications

9. A geographical indication:
  - (a) the use of which would be likely to deceive or cause confusion; or
  - (b) the use of which would be contrary to any law for the time being in force; or
  - (c) which comprises or contains scandalous or obscene matter; or
  - (d) which comprise or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or
  - (e) which would otherwise be disentitled to protection in a court; or
  - (f) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or

- (g) which although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be, shall not be registered as a geographical indication.

Explanation 1: For the purposes of this section, “generic names or indications” in relation to goods, means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.

Explanation 2: In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

10. Subject to the provisions of Section 7, a homonymous geographical indication may be registered under this Act, if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indications and the need to ensure equitable treatment of the producers of the goods concerned, that the consumers of such goods shall not be confused or misled in consequence of such registration.

Registration of  
homonymous  
geographical  
indications

### CHAPTER III

#### Procedure for and duration of registration.

11. (1) Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

Application for  
registration

(2) The application under sub-section (1) shall contain-

- (a) statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical, environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;

- (b) the class of goods to which the geographical indication shall apply;
- (c) the geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured;
- (d) the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;
- (e) a statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and
- (f) such other particulars as may be prescribed.

(3) A single application may be made for registration of a geographical indication for different classes of goods and fee payable therefor shall be in respect of each such class of goods.

(4) Every application under sub-section (1) shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indication relates is situated:

Provided that where such territory, region or locality as the case may be, is not situated in India, the application shall be filed in the office of the Geographical Indications Registry within whose territorial limits the place mentioned in the address for services in India as disclosed in the application, is situated.

(5) Every applications under sub-section (1) shall be examined by the Registrar in such manner as may be prescribed.

(6) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.

(7) In the case of refusal or conditional acceptance of application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at this decision.

12. Where, after the acceptance of an application for registration of a geographical indication but before its registration, the Registrar is satisfied,

- (a) that the application has been accepted in error, or
- (b) that in the circumstances of the case the geographical indication should not be registered or should be registered subject conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

Withdrawal of  
acceptance

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

Advertisement of  
application

THE GEOTECHNICAL ENGINEERING ACT, 1987

13. (1) When an application for registration of a geographical indication has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in such manner as may be prescribed.

(2) Where after advertisement of an application-

- (a) an error in the application has been corrected; or
- (b) the application has been permitted to be amended under section 15,

the Registrar may, in his discretion cause the application to be advertised again or instead of causing the application to be advertised again, notify in the prescribed manner, the correction made in the application.

Opposition to  
registration

14 (1) Any person may, within three months from the date of advertisement or readvertisement of an application for registration or within such further period, not exceeding one month, in the aggregate, as the Registrar, on application made to him in such manner and on payment of such fee as may be prescribed allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in such manner and within such time as may be prescribed to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counterstatement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceeding before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.



7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

15. The Registrar may, on such terms, as he thinks just, at any time, whether before or after acceptance of an application for registration under Section 11, permit the correction of any error or in connection with the application or permit an amendment of the application.

Correction and  
Amendment

Provided that if an amendment is made to a single application referred to in sub-section (3) of Section 11 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

16.(1) Subject to the provisions of Section 12, when an application for registration of a geographical indication has been accepted and either =

Registration

- (a) the application has not been opposed and the time for notice of opposition has expired; or
- (b) the applicant has been opposed and the opposition has been decided in favour of the applicant.

The Registrar shall, unless the Central Government otherwise directs, register the said geographical indication and the authorised users, if any, mentioned in the application and the geographical indication and the authorised users when registered shall be registered as of the date of the making of the said application and the date shall, subject to the provisions of Section 84, be deemed to be the date of registration.

(2) On the registration of a geographical indication, the Registrar shall issue each to the applicant and the authorised users, if registered with the geographical indication, a certificate in such form as may be prescribed of the registration thereof, sealed with the seal of the Geographical Indication Registry.

(3) Where registration of a geographical indication is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or on obvious mistake.

17. (1) Any person claiming to be the producer of the goods in respect of which a geographical indication has been registered under section 16 may apply in writing to the Registrar in the prescribed manner for registering him as an authorised user of such geographical indication.

Application for  
registration  
as authorised  
user

(2) The application under sub-section (1) shall be accompanied by a statement and such documents of facts as may be prescribed and required by the Registrar to determine as to whether such person is the producer of the goods referred to in that sub-section and such fee as may be prescribed.

(3) The provisions of this Chapter relating to-

- (a) the filing and examination of the application;
- (b) the refusal and acceptance of registration;
- (c) withdrawal of acceptance of application;
- (d) advertisement of application;
- (e) opposition to registration;
- (f) correction or error in an amendment of the application and
- (g) registration.

Shall apply in respect of the application and registration of authorised users referred to in sub-section (1) in the same manner as they apply for the application for registration and registration of the geographical indication.

Duration,  
renewal,  
Removal and  
Restoration  
Of  
registration

18. (1) The registration of a geographical indication shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The registration of an authorised user shall be for a period of ten years or for the period till the date on which the registration of the geographical indication in respect of which the authorised user is registered expires, whichever is earlier.

(3) The Registrar shall, on application made in the prescribed manner, by the registered proprietor or by the authorised user and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the geographical indication or authorised user, as the case may be, for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as the expiration of the last registration).

(4) At the prescribed time before the expiration of the last registration of a geographical indication or the authorised user, as the case may be, the Registrar shall send notice in the prescribed manner to the registered proprietor or the authorised user, as the case may be, of the date of expiration and the conditions as the payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the geographical indication or the authorised user, as the case may be, from the register.

Provided that the Registrar shall not remove the geographical indication or the authorised user, as the case may be, from the register, if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, and shall renew the registration of

geographical indication or the authorised user as the case may be, for a period of ten years under sub-section (3).

(5) Where a geographical indication or authorised user, as the case may be, has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just to do so, restore the geographical indication or the authorised user, as the case may be, to the register and renew registration of the geographical indication or authorised user, as the case may be, either generally or subject to such condition or limitation as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

19. Where a geographical indication has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another geographical indication during one year, next after the date of removal, be deemed to be a 'geographical indication already on the register, unless the tribunal is satisfied either-

Effect of  
Removal from  
Register for  
Failure to  
Pay fee for  
renewal

- (a) that there has been no bona fide trade use of the geographical indication which has been removed within the two years immediately preceding its removal; or
- (b) that no deception or confusion would be likely to arise from the use of the geographical indication which is the subject of the application for registration by reason of any previous use of the geographical indication which has been removed.

## CHAPTER IV

### Effect of Registration

20. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.

No action  
For infrin-  
gement of  
unregistered  
geographical  
indication

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

21. (1) Subject to the other provisions of this Act, the registration of a geographical indication shall, if valid, give,-

Rights  
conferred  
by  
registration

(a) to the registered proprietor of the geographical indication and the authorised user or users thereof the right to obtain relief in respect of infringement of the geographical indication in the manner provided by this Act;

(b) to the authorised user thereof the exclusive right to the use of the geographical indication in relation to the

goods in respect of which the geographical indication is registered.

(2) The exclusive right to the use of a geographical indication given under clause (b) of sub-section (1) shall be subject to any condition and limitation to which the registration is subject.

(3) Where the two or more persons are authorised users of geographical indications, which are identical with or nearly resemble each other, the exclusive right to the use of any of those geographical indications shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by anyone of those persons as against any other of those persons merely by registration of the geographical indications, but each of those persons has otherwise the same rights as against other persons as he would have if he were the sole authorised user.

22. (1) A registered geographical indication is infringed by a person who, not being an authorised user thereof,-

(a) uses such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or

(b) uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.

Infringement  
Or registered  
geographical  
indications

Explanation 1:- For the purposes of this clause, “act of unfair competition” means any act of competition contrary to honest practices in industrial or commercial matters.

Explanation 2:- For the removal of doubts, it is hereby clarified that the following acts shall be deemed to be acts of unfair competition, namely:-

(i) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;

(iii) geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;

(b) uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.

(2) The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in

the Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.

(3) Any person who is not an authorised user of a geographical indication registered under this Act in respect of the goods or any class or classes of goods notified under sub-section (2), uses any other geographical indication to such goods or class or classes of goods not originating in the place indicated by such other geographical indication or uses such other geographical indication to such goods or class or classes of goods even indicating true origin of such goods or uses such other geographical indication to such goods or class or classes of goods in translation of the true place of origin or accompanied by expression such as “kind”, “style”, “imitation”, or the like expression, shall infringe such registered geographical indication.

(4) Notwithstanding anything contained in this section, where the goods in respect of which a geographical indication has been registered are lawfully acquired by a person other than the authorised user of such geographical indication, further dealings in those goods by such person including processing or packaging, shall not constitute an infringement of such geographical indication, except where the condition of goods is impaired after they have been put in the market.

Registration to  
Be prima facie  
Evidence of  
validity

23.(1) In all legal proceedings relating to a geographical indication, the certificate of registration granted in this regard by the Registrar under this Act, being a copy of the entry in the register under the seal of the Geographical Indications Registry, shall be prima facie evidence of the validity thereof and be admissible in all courts and before the Appellate Board without further proof or production of the original.

(2) Nothing in this section shall be deemed to be affect of the right of action in respect of an unregistered geographical indication.

Prohibition  
Of assignment  
Or transmission,  
Etc.

24. Notwithstanding anything contained in any law for the time being in force, any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement;

Provided that on the death of an authorised user his right in a registered geographical indication shall devolve on his successor in title under the law for the time being in force.

## CHAPTER V

### Special Provisions Relating to Trade Marks and Prior Users

25. Notwithstanding anything contained in the Trade Marks Act, 1999, the Registrar of Trade Marks referred to in Section 3 of that Act, shall, suo motu or at the request of an interested party, refuse or invalidate the registrations of a trade mark which-

Prohibition  
Of registration  
Of geographical  
indication  
as trade mark

(a) contains or consists of a geographical indication with respect to the goods or class or classes of goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates, if use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods;

(b) contains or consists of a geographical indication identifying goods or class or classes of goods notified under sub-section (2) of Section 22.

26. (1) Where a trade mark contains or consists of a geographical indication and has been applied for or registered in good faith under the law relating to trade marks for the time being in force, or where rights to such trade mark have been acquired through use in good faith either-

- (a) before the commencement of this Act; or
- (b) before the date of filing the application for registration of such geographical indication under this Act;

nothing contained in this Act shall prejudice the registrability or the validity of the registration of such trade mark under the law relating to the trade marks for the time being in force, or the right to use such trade mark, on the ground that such trade mark is identical with or similar to such geographical indication.

(2) Nothing contained in this Act shall apply in respect of a geographical indication with respect to goods or class or classes of goods for which such geographical indication is identical with the term customary in common language as the common name of such goods in any part of India on or before the 1<sup>st</sup> day of January, 1995.

(3) Nothing contained in this Act shall in any way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to confuse or mislead the people.

(4) Notwithstanding anything contained in the Trade Marks Act, 1999 or in this Act, no action in connection with the use or registration of a trade mark shall be taken after the expiry of five years from the date on which such use or registration infringes any geographical indication registered under this Act has become known to the registered proprietor or authorised user registered in respect of such geographical indication under this Act or after the date of registration of the trade mark under the said Trade Marks Act subject to the condition that the trade mark has been published under the provisions of the said Trade Marks Act, 1999 or the rules made thereunder by that date, if such date is earlier than the date on which such infringement became known to such proprietor or authorised user and such geographical indication is not used or registered in bad faith.

Protection  
To certain  
Trade marks

## CHAPTER VI

## Rectification and Correction of the Register.

27. (1) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a geographical indication or authorised user on the ground of any contravention, or failure to observe the condition entered on the register in relation thereto.

Power to cancel or vary registration and to rectify the register.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2)

(5) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Correction  
Of register

28. The Registrar may, on application made in the prescribed manner by the registered proprietor or the authorised user -

(a) correct any error in the name, address or description of the registered proprietor or the authorised user, as the case may be, of a geographical indication, or any other entry relating to the geographical indication on the register;

(b) enter any change in the name, address or description of the association of persons or of producers or any organisation or authority, as the case may be, who is registered as proprietor of a geographical indication on the register;

(c) cancel the entry of a geographical indication on the register;

(d) strike out any goods or class or classes of goods from those in respect of which a geographical indication is registered from the register, and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.

Alteration of  
Registered  
geographical  
indications

29. (1) The registered proprietor of a geographical indication may apply in the prescribed manner to the Registrar for leave to add to or alter the geographical indication in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of the opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the geographical indication as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

Adaptation of  
entries  
in register  
to amend  
or substitute  
classification  
of goods

30. (1) The Registrar shall not make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a geographical indication is registered (whether in one or more classes) immediately before the amendment is to be made or antedating the registration of a geographical indication in respect of any goods:

Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance therewith would involve complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be brought to the notice of the registered proprietor and every authorised user of the geographical indication affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

## CHAPTER VII APPEALS TO THE APPELLATE BOARD

31. (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder, may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

Appeals to  
the  
Appellate  
Board



(3) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and such fees as may be prescribed.

32. No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section (1) of section 31.

Bar of jurisdiction of courts, etc.  
Procedure Of the Appellate Board

33. The provisions of sub-sections (2), (3), (4), (5), (6) of section 84, section 87, section 92, section 95 and section 96 of the Trade Marks Act, 1999, shall apply to the Appellate Board in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Trade Marks Act, 1999.

34. (1) An application for rectification of the register made to the Appellate Board under section 27 shall be in such form as may be prescribed.

Procedure For application for rectification etc., before Appellate Board

(2) A certified copy of every order or judgment of the Appellate Board relating to a registered geographical indication under this Act shall be communicated to the Registrar by the Appellate Board and the Registrar shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

35. (1) The Registrar shall have the right to appear and be heard –

Appearance of Registrar in legal proceedings

(a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Geographical Indications Registry is raised;

(b) in any appeal to the Board from an order of the Registrar on an application for registration of a geographical indication or authorised user –

(i) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Registrar considers that his appearance is necessary in the public interest, and the Registrar shall appear in any case if so directed by the Board.

(2) Unless the Appellate Board otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Geographical Indications Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

Costs of  
Registrar  
In proceedings  
Before Appellate  
Board

**36.** In all proceedings under this Act before the Appellate Board the costs of the Registrar shall be in the discretion of the Board, but the Registrar shall not be ordered to pay the costs of any of the parties.

## CHAPTER VIII

### Offences, Penalties and Procedure

Meaning of  
applying  
geographical  
indications.

**37. (1)** A person shall be deemed to apply a geographical indication to goods who-

- (a) applies it to the goods themselves; or
- (b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or
- (c) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a geographical indication has been applied; or
- (d) uses a geographical indication in any manner reasonably likely to lead to the belief that the goods in connection with which it is used are designated or described by that geographical indication; or
- (e) in relation to the goods uses a geographical indication in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial documents and goods are delivered to a person in pursuance of a request or order made by reference to the geographical indication as so used.

**(2)** A geographical indication shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

Falsifying and  
falsely applying  
geographical  
indications

**38. (1)** A person shall be deemed to falsify a geographical indication who, either, \_

(a) without the assent of the authorised user of the geographical indication makes that geographical indication or deceptively similar geographical indication; or

(b) falsifies any genuine geographical indication, whether by alteration, addition, effacement or otherwise.

**(2)** A person shall be deemed to falsely apply to goods a geographical indication who, without the assent of the authorised user of the geographical indication,-

- (a) applies such geographical indication or a deceptively similar geographical indication to goods or any package containing goods;
  - (b) uses any package bearing a geographical indication which is identical with or deceptively similar to the geographical indication of such authorised user, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the authorised user of the geographical indication.
- (3) Any geographical indication falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false geographical indication.
- (4) In any prosecution for falsifying a geographical indication or falsely applying a geographical indication to goods, the burden of proving the assent of proprietor shall lie on the accused.

**39. Any person who, -**

- (a) falsifies any geographical indication; or
- (b) falsely applies to goods any geographical indication; or
- (c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or
- (d) applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address; or
- (e) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under Section 72; or
- (f) causes any of the things above-mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakhs rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

**Penalty for applying false geographical indications.**

**40. Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things to which any false**

Geographical indication is applied or which, being required under section 71 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or without the indications so required, shall unless he proves,-

Penalty for selling goods to which false geographical indication is applied.

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the geographical indication or that any offence had been committed in respect of the goods; or

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakhs rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

**41. Whoever** having already been convicted of an offence under section 39 or section 40 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

**Provided** that the court may, for adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

Enhanced penalty on second or subsequent conviction

Penalty for falsely representing a Geographical indication as registered

**42. (1)** No person shall make any representation-

- (a) with respect to a geographical indication, not being a registered geographical indication, to the effect that it is a registered geographical indication; or
- (b) to the effect that a registered geographical indication is registered in respect of any goods in respect of which it is not in fact registered; or

(c) to the effect that registration of a geographical indication gives an exclusive right to the use thereof in any circumstances in which having regard to limitation entered on the register, the registration does not in fact give that right.

(2) **If** any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) **For the** purposes of this section the use in India in relation to a geographical indication of the words “registered geographical indication” or any other expression, symbol or sign like “R.G.I.” referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except-

(a) **where that word or other** expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference to registration as a geographical indication under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) Where that word is used in relation to a geographical indication registered under the law of a country outside India and in relation solely to goods to be exported to that country for use in that country.

Penalty for improperly describing a place of business as connected with the Geographical Indications Registry.

**43.** If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Geographical Indications Registry, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in the register.

**44.** **If** any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

No offence in certain cases.

**45.** **The provisions of sections 39, 40 and 41** shall in relation to a registered geographical indication or authorised user of such geographical indication, be subject to the rights created or recognised by this Act and no act or omission shall be deemed to be an offence under the aforesaid sections if,-

- (a) the alleged offence relates to a registered geographical indication and the act or omission is permitted under this Act; and
- (b) the alleged offence relates to a registered geographical indication and the act or omission is permitted under any other law for the time being in force.

Forfeiture  
of goods.

**46. (1)** Where a person is convicted of an offence under section 39 or section 40 or section 41 or is acquitted of an offence under section 39 or section 40 on proof that he acted without intent or defraud, or under section 40 on proof of the matters specified in clause (a) or clause (b) or clause (c) of that section, the court convicting or acquitting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

**(2)** When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

**(3)** When, a forfeiture is directed on acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the court to which in appealable cases appeal lie from sentences of the court which directed the forfeiture.

**(4)** When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

**47. Where** a person accused of an offence under section 39 proves,-

- (a) that in the ordinary course of his business he is employed on behalf of other persons to apply geographical indications, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making, geographical indications;
- (b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other things by way of profit or commission depend on the sale of such goods;
- (c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the geographical indication; and
- (d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf

Exemption  
of certain  
persons  
employed in  
ordinary  
course of  
business.

the geographical indication was applied,

he shall be acquitted.

**48. (1)** Where the offence charged under section 39 or section 40 or section 41 is in relation to a registered geographical indication and the accused pleads that the registration of the geographical indication is invalid, the following procedure shall be followed:-

- (a) if the court is satisfied that such defence is prima facie tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid;
  - (b) if the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification;
  - (c) if within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were valid.
- (2)** Where before the institution of a complaint of an offence referred to in sub section (1), any application for the rectification of the register concerning the geographical indication in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his geographical indication.

Procedure  
where  
invalidity  
of  
registratio  
n is  
pleaded by  
the  
accused.

Offences by  
companies

**49. (1)** If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the

commission of such offence

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or the officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section,-

- (a) “company” means any body corporate and includes a firm or other association of individuals; and  
(b) “director”, in relation to a firm, means a partner in the firm

Cognizance of certain offences and the powers of police officer for search and seizure.

**50 (1)** No court shall take cognizance of an offence under section 42 or section 43 or section 44 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Providing that in relation to clause (b) of sub-section (1) of section 42, a court shall take a cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered geographical indication has been represented as registered in respect of any goods in respect of which it is not in fact registered.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.

- (3) The offences under Section 39 or section 40 or section 41 shall be cognizable.

- (4) Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he satisfied that any of the offences referred to in sub-section(3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on the facts involved in the offence relating to geographical indication and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section(4), may, within fifteen days of such seizure, make an application to the



THE CHIEF JUSTICE OF THE SUPREME COURT OF INDIA  
Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the application and the prosecution, shall make such order on the application as he may deem fit.

**51. In any prosecution** under this Act, the court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties and the costs so awarded shall be recoverable as if they were a fine.

Costs of defence of prosecution

**52. No prosecution for an offence**  
Under this Act shall be commenced after the expiration of three years next after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first happens.

Limitation of prosecution

**53. An officer of the Government** whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act.

Information as to commission of offence.

**54. If any person, being within India,** abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetment in any place in India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Punishment for abetment in India of acts done out of India

## CHAPTER IX MISCELLANEOUS

**55. No suit or other legal proceedings** shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Protection of action taken in good faith.

**56. Every person appointed under this Act** shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons to be public servants.

**57. (1) where in any suit for infringement of a geographical indication the defendant pleads that registration of the geographical indication relating to plaintiff is invalid, the court trying the suit (hereinafter referred to as the court), shall,-**

Stay of proceedings where the validity of registration of the geographical indication is questioned, etc.,

**(a) if any proceedings for rectification of the register to the geographical indication relating to plaintiff or defendant are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;**

**(b) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the geographical indication relating to plaintiff or defendant is *prima facie* tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the**

Appellate Board for rectification of the register.

(2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the geographical indication concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the geographical indication.

(5) The stay of a suit for the infringement of a geographical indication under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

Application for rectification of register be made to Appellate Board in certain cases.

**58. (1) Where in a suit for infringement**

of a registered geographical indication the validity of the registration of the geographical indication relating to plaintiff is questioned by the defendant or where in any such suit the plaintiff questions the validity of the registration of the geographical indication relating to defendant, the issue as to the validity of the registration of the geographical indication concerned shall be determined only on an application for the rectification of the register and, notwithstanding anything contained in section 27, such application shall be made to the Appellate Board and not to the Registrar.

(2) Subject to the provisions of sub-section (1), where an application for rectification of the register is made to the Registrar under Section 27, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the appellate Board.

**59. Where a geographical indication has**

been applied to the goods on sale or in the contract for sale of any goods, the seller shall be deemed to warrant that the geographical indication is a genuine geographical indication and not falsely applied, unless the contrary is

Implied warranty on sale of indicated goods.

expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of goods on contract to and accepted by the buyer.

Powers of Registrar.

**60.** In all proceedings under this Act before the Registrar,-

(a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witness;

(b) the Registrar may, subject to any rules made in this behalf under section 87, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court;

(c) The Registrar may, on an application made in the prescribed manner, review his own decision.

Exercise of discretionary power by Registrar.

**61.** Subject to the provisions of section 64, the Registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

Evidence before Registrar.

**62.** In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

Death of party to a proceeding.

**63. If a person who is a party** to a proceeding under this Act (not being a proceeding before the Appellate Board or a court) dies pending the proceeding, the Registrar may, on request, and on proof to this satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

Extension of time

**64. (1)** If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in the Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly

**65.** Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

**66. (1) No suit,-**

(b)relating to any right in a registered geographical indication; or

Suit for  
infringeme  
nt, etc., to  
be  
instituted  
before  
district  
court

(2) For the purpose of clauses (a) and (b) of sub-section (1), a “district court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

**Explanation.-** For the purposes of sub-section (2), “person” includes the registered proprietor and the authorised user.

**67. (1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 66 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or account of profits, together with or without any order for the delivery-up of the infringing labels and indications for destruction or erasure.**

Relief in suit for  
infringement or for  
passing off.

**(2) The** order of injunction under sub-section(1) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:-

(a) for discovery of documents;

(b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

(3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) on account of profits in any case-

(a) where in a suit for infringement the defendant satisfies the court-

(i) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication of the plaintiff was on the register; and

(ii) that when he became aware of the existence and nature of the plaintiff's right in the geographical indication, he forthwith ceased to use the geographical indication in relation to good in respect of which it was registered; or

(b) where in a suit for passing off, the defendant satisfies the court-

(i) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication relating to the plaintiff was in use; and

(ii) that when he became aware of the existence and nature of the geographical indication relating to the plaintiff he forthwith ceased to use the geographical indication complained of.

**68. (1)** In every proceeding under Chapter VI or under section 31, every authorised user of a geographical indication to which such proceeding relate, who is not himself an applicant in respect of any proceeding under that Chapter or section, shall be made a party to the proceeding.

(2) Notwithstanding anything contained in any other law, an authorised user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding .

Evidence of entries in register, etc., and things done by the Registrar

**69.(1)** A copy of any entry in the register or of any document referred to in sub-section(1) of section 78 purporting to be certified by the Registrar and sealed with the seal of the Geographical Indications Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

**(2)** A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or he rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

**Registrar** and other officers not compellable to produce register, etc.,

**70.** The Registrar or any officer of the Geographical Indications Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

**Power to require goods to show indication of origin**

**71.(1)** The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of India and imported into India, or, which are made or produced within the limits of India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.

**(2)** **The** notification may specify the manner in which such indication shall be applied, that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say, whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

**(3)** No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in, or manufacturers, producers, or users of, the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry, as the Central Government may consider necessary.

(4) The provisions of section 23 of the General Clauses Act, 1897 shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Commissioner of Customs is satisfied at the time of importation that they are intended for exportation whether after transshipment in or transit through India or otherwise.

72. If in any legal proceedings for rectification of the register before the Appellate Board a decision is on contest given in favour of the registered proprietor or, as the case may be, authorised user of the geographical indication on the issue as to the validity of the registration of the geographical indication or the authorised user, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceeding in which the said validity comes into question the said proprietor or the authorised user, as the case may be, on obtaining a final order or judgement in his favour affirming validity of the registration of the geographical indication or the authorised user, as the case may be, shall unless the said final order or judgement for sufficient reason directs otherwise, be entitled to his full cost charges and expenses as between legal practitioner and client.

Certificate  
of validity

73.(1) Where a person, by means of circulars,

advertisement or otherwise, threatens a person with an action or proceeding for infringement of a geographical indication which is registered, or alleged by the first-mentioned person to be registered, or with some other like proceeding, a person aggrieved, may, whether the person making the threats is or is not the registered proprietor or the authorised user of the geographical indication, bring a suit against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the geographical indication is registered and that the acts in respect of which the proceedings were threatened, constitute, or, if done, would constitute, an infringement of the geographical indication.

Groundless  
threats of  
legal  
proceedings.

(2) The last preceding sub-section does not apply if the registered proprietor of the geographical indication or an authorised user thereof with due diligence commences and prosecutes an action against the person

threatened for infringement of the geographical indication.

(3) Nothing in this section shall render a legal practitioner or a registered geographical indications agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) A suit under sub-section (1) shall not be instituted in any court inferior to a district court.

74. An address for service stated in an application or notice of opposition shall, for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

Address  
for service

75. In any proceeding relating to a geographical indication, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant geographical indication legitimately used by other persons.

Trade usages, etc., to  
be taken into  
consideration.

76. Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is,-

Agents

(a) a legal practitioner, or

(b) a person registered in the prescribed manner as a geographical indications agent, or

(c) a person in the sole and regular employment of the principal.

77. There shall be kept under the directions and supervision of the Registrar,-

(a) an index of registered geographical indications,

(b) an index of geographical indications in respect of which applications for registration are pending,

(c) an index of the names of the proprietors of registered geographical indications, and

(d) an index of the names of authorised users.



Document  
s open to  
public  
inspection.

**78. (1)** The following documents, subject to such conditions as may be prescribed, be open to public inspection at the Geographical Indications Registry, namely:-

- (a) **the** register and any document upon which any entry in the register is based;
- (b) every notice of opposition to the registration of a geographical indication, application for rectification before the Registrar, counter-statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar;
- (c) the indexes mentioned in section 77; and
- (d) such other documents as the Central Government may, by notification in the Official Gazette, specify:

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print out of the relevant entry in the register so maintained on computer.

- (2) **Any** person may, on an application to the Registrar and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section(1).

Reports of Registrar  
to be placed before  
Parliament

**79. The** Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution by or under this Act.

Fees and  
surcharge

- 80. (1)** There shall be paid in respect of applications and registrations and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.
- (2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.
- (3) Where a fee is payable in respect of the filing of a document at the Geographical Indications Registry, the document shall be deemed not to have been filed at the registry until the fee has been paid.

Savings in respect of certain matters in Chapter VIII.

16 of 1908

**81.** Nothing in Chapter VIII shall-

- (a) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him, or
- (b) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

**82.** Notwithstanding anything contained in the Registration Act, 1908, no document declaring or purporting to declare any title of a person to a geographical indication other than a registered geographical indication shall be registered under that Act.

Declarations as to title of geographical indication not registrable under the Registration Act, 1908.

**83.** The provisions of this Act shall be binding on the Government.

Government to be bound.

**84.** (1) With a view to the fulfilment of a treaty, convention or arrangement with any country or a country which is a member of a group of countries or union of countries or Inter-Governmental Organisations outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organisations to be a convention country or convention countries for the purposes of this Act.

Special provisions relating to applications for registration from citizens of convention countries.

(2) Nothing contained in this Act or the Trade Marks Act, 1999 shall prevent a continued and similar use of geographical indication relating to a country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisations, as the case may be, notified under sub-section(1) identifying wines or spirits in connection with goods by any citizen or domiciliary of such country who has used that geographical indication in continuous manner with regard to such goods or any goods relating to such goods, as the case may be, in any part of the territory of that country either-

- (a) for at least ten years preceding the 15<sup>th</sup> day of April, 1994; or
- (b) in good faith preceding the date referred to in clause (a).

**85.** Where any country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of geographical indications as it accords to its own nationals, no nationals of such country or a country which is a member of a group of countries or union of countries or Inter-Governmental Organisations, as the case may be, shall be entitled-

Provisions as to reciprocity

- (a) to apply for the registration of, or be registered as the proprietor of geographical indications;
- (b) to apply for registration or be registered as an authorised user of a geographical indication.

**86.(1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Powers of Central Government to remove difficulties

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

**(2)** Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

**87.(1)** The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the provisions of this Act.

Power to make rules

**(2)** In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the matters to be included in the Register of Geographical Indications under sub-section(1), and the safeguards to be observed in the maintenance of such register in computer floppies or diskettes under sub-section(2) of section 6;
- (b) the manner of incorporation of particulars relating to registration of geographical indications in Part A under sub-section (2) and the manner of incorporation of particulars relating to the registration of the authorised users under sub-section(3) of section 7;
- (c) the classification of goods and the manner of publication of the alphabetical index of classification of goods and the definite territory or locality or region for the purpose of registration of geographical indications under sub-section(1) of section 8;

- (d) the form in which and the manner in which an application for registration of a geographical indication may be made and the fees which may accompany the application under sub-section (1) and the particulars to be made in the statement of producers of goods who proposes to be initially registered with the registration under clause (f) of sub-section (2) of section 11;
- (e) the manner publication of advertisement of accepted application, for registration of geographical indications, etc., under sub-section(1), and the manner of notifying the corrections or amendments made in the application under sub-section(2) of section 13;
- (f) the manner in which and the fee which may accompany an application and the manner of giving notice under sub-section(1) and the manner of sending counter statement under sub-section (2) and the manner of submissions of evidence and the time therefor under sub-section(4) of section 14;
- (g) the form of certificate of registration under sub-section(2) and the manner of giving notice to the applicant under sub-section(3) of section 16;
- (h) the manner of applying for registration as an authorised user under sub-section(1) and the manner of submitting statements and documents along with such application and the fee which may accompany such application under sub-section(2) of section 17;
- (i) the manner of making application, the time within which such application is to be made and the fee payable with each application, under sub-section (3) and the time within which the Registrar shall send notice and the manner of such notice under sub-section (4) and the form in which and the fee which may accompany an application for renewal to be made under sub-section(5) of section 18;
- (j) the manner of making applications under sub-sections (1) and (2) the manner of giving notice under sub-section(4) and the manner of service of notice of rectification under sub-section (5) of section 27;
- (k) the manner of making an application for correction, etc., under section 28;
- (l) the manner of making an application under sub-section(1), the manner of advertising an application under sub-section (1), the time and manner of notice by which an application may be opposed under sub-section(2)and (3) of section 29;
- (m) the manner of advertisement under sub-section(2) of section 30;
- (n) the form of making an appeal, the manner of verification and the fee payable under sub-section(3) of section 31;

**Annex:** Geographical Indication Act