

A STUDY OF THE BASMATI CASE (INDIA-US BASMATI RICE DISPUTE): GEOGRAPHICAL INDICATION PERSPECTIVE

INTRODUCTION

Following the Agreement on Trade related aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization (WTO), most countries are committed to the provision of certain minimum standards for the protection of intellectual property. Such intellectual property rights (IPRs) raise crucial issues for the future development of agriculture and are particularly important for a developing country like India. These issues are being extensively debated in India and have contributed to the preparation of legislation on IPRs with respect to plant variety protection, patents and geographical indications. Basmati Case was an eye-opener for India, in the sense that it brought into spotlight an instance of gross exploitation of developing country rights.

Geographical Indications are relatively new instruments which are gaining rapid popularity in the trade and economic scenario, which recognize the heritage of a country in certain specialized goods and seek to protect the same. GI indicates the special protection that particular goods enjoy by the virtue of their geographical origin which renders them special and peculiar quality.

THE FACTS

Originally from India and Pakistan, Basmati became a controversial 'issue' after RiceTec, a Texas-based company, in 1997, patented some types of rice they developed as "American basmati".

- ✓ RiceTec Inc, had been trying to enter the international Basmati market with brands like "Kasmati" and "Texmati". Ultimately, the company claimed to have developed a new strain of aromatic rice by interbreeding basmati with another variety. They sought to call the allegedly-new variety as Texmati or American Basmati.
- ✓ RiceTec Inc, was issued the Patent number 5663484 on Basmati rice lines and grains on September 2, 1997.
- ✓ This was objected to by two Indian nongovernmental organizations (NGOs) — Centre for Food Safety, an international NGO that campaigns against biopiracy, and the Research Foundation for Science, Technology and Ecology, an Indian environmental NGO who filed

legal petitions in the United States. The Centre for Scientific and Industrial Research also objected to it.

- ✓ They sought trade protection for basmati rice of the Indian subcontinent and jasmine rice of Thailand. They demanded amendment of U.S. rice standards to specify that the term “basmati” can be used only for rice grown in India and Pakistan, and jasmine for the Thai rice.
- ✓ The Indian government, after putting together the evidence, officially challenged the patent in June 2000.

THE ISSUES

Various issues have been raised following the controversy, the answers to which are hoped to be answered through the emerging law of patents and geographical indications. Some of the major issues are:

- ? Whether the term ‘basmati’ is a generic one to describe aromatic rice, or does it refer specifically to the long aromatic rice grown in India and Pakistan?
- ? Whether the strain developed by RiceTec is a novelty?
- ? Whether RiceTec is guilty of biopiracy?
- ? Whether US government’s decision to grant a patent for the prized Basmati rice violates the International Treaty on Trade Related Intellectual Property Rights (TRIPS)?
- ? Whether the basmati patent should be revoked in the light of protests from India?

Importance of Basmati in India and Pakistan Economy

Rice is an important aspect of life in the Southeast and other parts of Asia. For centuries, it has been the cornerstone of their food and culture. During this period, farming communities throughout the region developed, nurtured, and conserved over a hundred thousand distinct varieties of rice to suit different tastes and needs.¹ It is for this reason that patenting of Basmati by RiceTec Inc. is perceived as not only intellectual property and cultural theft, but it also directly threatens farm communities in Southeast Asia. According to Dr Vandana Shiva, director of a Delhi-based research foundation which monitors issues involving patents and biopiracy, the main aim for obtaining the patent by RiceTec Inc. is to fool the consumers in believing there is no difference between spurious Basmati and real Basmati. Moreover, she

¹ K.C. Kailasa, *Law of Trade Marks & Geographical Indications* (Wadhwa, Nagpur, 2003).

claims the “*theft involved in the Basmati patent is, therefore, threefold: a theft of collective intellectual and biodiversity heritage on Indian farmers, a theft from Indian traders and exporters whose markets are being stolen by RiceTec Inc., and finally a deception of consumers since RiceTec is using a stolen name Basmati for rice which are derived from Indian rice but not grown in India, and hence are not the same quality.*”² In fact, Basmati rice has been one of the fastest growing export items from India in recent years. In the year to March 1997, India exported more than half a million tonnes of Basmati to the Gulf, Saudi Arabia, Europe and the United States, a small part of its total rice exports, but high in value. More substantively, Indian farmers export \$250 million in Basmati every year and U.S. is a target market. RiceTec Inc. had attempted to sell its long-grain rice in Europe under such brand names as ‘Texmati’ and ‘Kasmati’ but not as Basmati. However, if the patent is not revoked, RiceTec Inc., can now sell its rice under the brand name Basmati which will definitely cut into India’s and Pakistan’s global market share, especially as the rice grown in the US could be sold cheaper than the Indian and Pakistani varieties.³

CASE ANALYSIS

RiceTec has got a patent for three things: growing rice plants with certain characteristics identical to Basmati, the grain produced by such plants, and the method of selecting rice based on a starch index (SI) test devised by RiceTec, Inc.⁴

- ★ The patent was challenged on the fact that the plant varieties and grains already exist as a staple in India.⁵ 75 percent of U.S. rice imports are from Thailand and that the remainder is from India and Pakistan and both varieties are rice that cannot be grown in the United States. The legal theory is that the patent is not novel and for an invention that is obvious, being based on rice that is already being imported in the United States, therefore it should not have been granted in the first place.

² <http://www.rediff.com/business/1998/mar/12rice.htm> visited on 10.09.2007.

³ <http://www.american.edu/TED/basmati.htm> visited on 01.09.2007.

⁴ *Basmati Rice: US Firm Withdraws Patent Claim*, The Hindustan Times (September 28, 2000) at <http://www.hindustantimes.com/nonfram/280900/fryNAT05.asp> visited on 07.10.2007.

⁵ Dr. Vandana Shiva, *Basmati Biopiracy: Ricetec Must Withdraw All Patent Claims For Basmati Seeds And Plants*, The Hindustan Times (November 20, 2000) at <http://www.vshiva.net/Articles/Basmati%20Biopiracy.htm> visited on 07.10.2007

- ★ India's attorneys also seek to challenge the use of the term 'basmati' in conjunction with the patent and in marketing of the rice.⁶Such use of the term creates confusion as to geographic origin and usurps the goodwill and recognition established with basmati rice grown and sold from India.

As a result of the re-examination application filed by the Indian government, RiceTec agreed to withdraw several of the claims. In January 29, 2002, the United States Patent and Trademark Office issued a Reexamination Certificate canceling claims 1-7, 10, and 14-20 (the broad claims covering the rice plant) out of 24 claims and entered amendments to claims 12-13 on the definition of chalkiness of the rice grains⁷

- ★ Trademark law could also be a basis for challenging the use of basmati. RiceTec and to prevent it from marketing basmati rice in a way that creates confusion with the Indian product. But, in order to be successful on such a claim, the Indian government would have to show likelihood of confusion among consumers.⁸ RiceTec did not trademark the term 'basmati' and it has been careful in marketing its product so as not to use the term basmati as an indication of source. For example, in the United Kingdom, RiceTec markets the product as Texmati rice, since British law protects the use of the term basmati to refer to rice coming from India and Pakistan. RiceTec also uses Texmati in its U.S. sales, but does use the term basmati in its packaging. The Indian government could argue that this use of the term basmati is what creates confusion among consumers. The term basmati need not be federally registered as a trademark for India to raise the claim.⁹ However, RiceTec could have a counter argument that India cannot bring an infringement action because 'basmati' could not be protected as a trademark, it really being a descriptive mark; the word means fragrant and hence describes a major attribute of the product.¹⁰ Descriptive marks are protected only if they have secondary meaning; that is, the term makes the ordinary consumer recognize the source of the product as opposed to the product itself.¹¹ In this vein, RiceTec could also argue that

⁶ *Ibid.*

⁷ Re-examination Certificate C1 (4525th)(Jan. 29, 2002).

⁸ 15 USC § 1114(a)-(b) (specifying likelihood of confusion as an element of trademark infringement claim).

⁹ 15 USC § 1125(a) (allowing claims for confusing or deceptive marks even if the marks are not registered).

¹⁰ 15 USC § 1052(e)(1) and 15 USC § 1052(f) (statutory limits on registrability of descriptive marks absent showing of secondary meaning),

the term basmati has become a generic term for a particular category of rice and hence cannot be protected.¹² However, now it is much a settled position that geographical indicators need not necessarily indicate the place of origin, it could signify the product itself as long as it is known to possess certain qualities by the virtue of its belonging to certain place.¹³

If India loses the fight against RiceTec, the issue remains of what India can strategically do to protect its rights in basmati rice. U.S. trademark law does not offer a successful avenue for India. The TRIPS agreement expressly protects 'indicators of geographic origin' and permits legal recourse through the WTO process to discontinue use of misleading geographic indicators. The problem with relying on TRIPS is the 'basmati' is not a geographic indicator; the word literally, describes the scent of the rice, not its geographic source. One tactic that the government has recently pursued is to enact its own law granting protection to marks that indicate geographic origin. Basmati is arguably protected under these recently enacted provisions. One argument that the Indian government made in challenging RiceTec's patent is that basmati should be treated like 'champagne' and 'burgundy'. The TRIPS agreement expressly forbids trademark protection for geographic indicators as applied to wine and spirits. The United States has amended its trademark law to reflect this prohibition. The Indian government sought the same protection for rice and other agricultural products, as accorded to wines and spirits. Unfortunately, there is no basis in treaty or statute for this treatment. However, the government's enactment of laws designed to protect geographic indicators demonstrates one step to accord the same protection to agricultural products as currently given to wine and spirits. The strategy is that once terms like basmati gain protection domestically, pressures may arise to accord protection internationally. However, this is at best a long term strategy.¹⁴

The Importance of Geographical Indication

¹¹ 5 USC § 1052(f);

¹² Shubha Ghosh, *Traditional Knowledge, Patent and New Mercantilism*, 85 J. Pat. & Trademark Off. Soc'y 885.

¹³ Jayashree Watal, *Intellectual Property Rights in Agriculture*, Indian Council for Research on International Economic Relations.

¹⁴ *Ibid.*

A geographical indication is a geographical name signifying that a product originates in a country or a specific locality where it has been traditionally produced. While a trademark is a matter of private law, a geographical indication would be under public law and cannot be owned by a single group of individuals; anyone who produces the said goods in that region can use the geographical indicator for the product.¹⁵ In recent years, geographical indication (GIs) has emerged as one of the most important instrument of protecting quality, reputation or other character of goods essentially attributable to their geographical origin.¹⁶ Like trademark, geographical indication is valuable to providence. It is a 'source identifier' and indicator of quality'. It helps to promote goods of particular region or country and "eligible for relief from acts of infringement and/or unfair competition".¹⁷ The concern shown by the World Intellectual Property Organization (WIPO) and World Trade Organization (WTO) gave new impetus to protection of GIs. However, according to the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications "a geographical indication is best protected under trademark and unfair competition law. Trademark having acquired in good faith had to be protected against conflicting geographical indications."¹⁸ GIs associated with products originating from a country, region or locality where the quality, reputation or other characteristics of the product are essentially attributable to its geographical origin. Most geographical indications relate to agricultural products or those derived from them, as in the case of wines and spirits. Protection of such marks prevents third parties from passing off their products as those originating in the given region. Famous examples are 'Champagne' for sparkling wine and 'Roquefort' for cheese from areas of these names in France or 'Darjeeling' for tea from this district in India. It is not necessary for these indications to be geographical names as in the case of 'Feta' for cheese from Greece or 'Basmati' for rice from India and Pakistan as there are no places, localities or regions with these names. Plant varieties developed with traditional knowledge and associated with a particular region can also be protected as geographical indications. The advantage in such protection is that it is not time-limited, unlike the case of

¹⁵ *Temporary Reprieve*, Economic and Political Weekly, September 1, 2001.

¹⁶ United States Patent and Trademark Office, available at <http://www.uspto.gov/web/offices/dcom/olia/globalip/geographicalindication.htm>

¹⁷ *Ibid.*

¹⁸ Draft Report of the International Bureau of WIPO, Geneva 13-17 July, 1998, p 2.

plant patents or plant breeders' rights. However, needless to say, commercial benefits can be derived from the protection of geographical indications only when the name becomes reasonably famous.¹⁹

LEGAL PROCEDURES

Prior to 1999 there was no specific legislation to regulate geographical indication. It was in the year 1999 that India in compliance with its obligation under TRIPS Agreement enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999. This act seeks to provide for registration and better protection GIs relating to goods. It excludes unauthorized persons from misusing GIs. This would protect the interest of producers, manufacturers and thereby consumer from being deceived by the falsity of geographical origin to economic prosperity of the producer of such goods and promote goods bearing GIs in export market. Unless a geographical indication is protected in the country of its origin, there is no obligation under the agreement under Article 22 of the TRIPS Agreement on for other countries to extend reciprocal protection. It is in this context that the act was enacted.²⁰ The act provides registration in two parts Part A is related to the registration of GIs; Part B relates to the registration of authorized users/proprietors such as names, addresses and descriptions are indicated.

The Indian judiciary has played a significant role, particularly in the absence of any enforced legislation, in protecting GIs. They have entertained petitions in cases of infringement of GIs that misleads the consumer as to the place of origin or constitutes unfair competition. India has also taken legislative measures by enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999 along with the Geographical Indications of Goods (Registration and Protection) Rules, 2002 which on implementation would go a long way to protect GIs and provide a model for other countries to follow.²¹

¹⁹ Jayashree Watal, *Intellectual Property Rights in Agriculture*, Indian Council for Research on International Economic Relations. WORKING PAPER NO.44 available at www.icrier.org/pdf/jayashreeW.PDF

²⁰ Statement of Objects and Reasons of the Geographical Indications (Registration and Protection) Bill.

²¹ Suresh C. Srivastava, *Geographical Indications and Legal Framework in India*, Economic and Political Weekly, September 20, 2003

In *Imperial Tobacco Co v. Registrar, Trademarks*²² the Calcutta High Court explained to the following concept of “geographic term” namely:

Geographical terms and words in common use designate a locality, a country, or a section of country which cannot be monopolized as trademarks; but a geographical name not used in geographical sense to denote place of origin, but used in an arbitrary or fanciful way to indicate origin or ownership regardless of location, may be sustained as a valid trademark A geographical name according to its ordinary signification is such mark inherently or otherwise incapable of registration subject to minor exceptions.

Section 2(e) of the [Indian] Geographical Indications of Goods (Registration and Protection) Act, 1999 defines ‘GIs’ in relation to goods to mean:

An indications which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of 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.

REGISTRATION

Section 9 prohibits the registration of GIs (i) the use of which is likely to deceive or cause confusion, or (ii) the use of which would be contrary to any law for the time being in force, or (iii) which comprises or contains scandalous or obscene matter, or (iv) which comprises or contains any matter likely to hurt the religious feeling of any class or section of citizens of India, or (v) which would otherwise be disentitled to protection in a court, or (vi) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in the country of origin or which have fallen into disuse in that country, or (vii) 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. The registration of a GIs shall be for a period of 10 years or for a period till the date on which the registration of geographical indication in respect of which the authorized users is registered expires, whichever is earlier. After the registrar accepts an application for registration the GIs will be registered. Registration is a prima facie evidence of the validity of the GIs. No person shall be entitled to institute any proceeding to prevent or recover

²² AIR 1977 Cal 413 at 422,

damages for the infringement of unregistered GIs. It also provides that nothing in this act shall be deemed to affect the right of action against any person for passing off goods as the goods of another person.²³ A registration of GIs shall, if valid, give to the registered proprietor and all authorized user whose name has been entered in the register, the right to obtain relief in respect of infringement of the GIs. However, authorized users alone shall have the exclusive right to the use of the GIs in relation to the goods in respect of which the GIs are registered. This right is subject to the conditions and limitations to which the registration is subject. Two or more authorized users of a registered GIs shall have co-equal rights.

PROTECTION

Among *criminal remedies*, the Geographical Indications of Goods (Registration and Protection) Act, 1999 contains penal provision for violation of various provisions relating to GIs given below–

- (i) Falsifying and falsely applying GIs to goods.²⁴
- (ii) Selling goods to which false GIs is applied.²⁵
- (iii) Falsely representing a GIs as registered.²⁶
- (iv) Improperly describing a place of business as connected with the GIs registry.
- (v) Falsification of entries in the register.

Civil remedies: The suit for infringement has to be filed in court not inferior to that of a district court having jurisdiction. In any suit for infringement of GIs the defendant pleads that registration of the

GIs relating to plaintiff is invalid, the court trying the suit shall:

- (i) If any proceedings for rectification of the register to the GIs relating to plaintiff or defendant are pending before the registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

²³ S. 58. of the GI Act.

²⁴ S. 38 and 39 of the GI Act.

²⁵ S. 40 of the GI Act.

²⁶ S. 42 of the GI Act.

- (ii) If no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the GIs 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.²⁷

INTERNATIONAL INTELLECTUAL PROPERTY LAW REGIME

The GIs originates from the Paris Convention, 1983. Even though the Convention did not use the said expression Article 1(2) of the Convention used the expressions 'appellation of origin' and 'indications of source'. The scope of the aforesaid expression has been delineated in Lisbon and Madrid agreement. The former delineates the appellation of origin to mean²⁸:

geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors

The country of origin is the "country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation"²⁹.

The latter defines the expression 'indications of source' to mean³⁰:

Goods bearing a false or deceptive indications by which one of the countries to which this agreement applies, or a place situated therein, directly or indirectly indicated as being the country or place of origin.

However, the expression 'GIs' under in the TRIPS Agreement has been defined as

"a good originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin."

²⁷ S. 57 of the GI Act.

²⁸ Article 2(1) of the Paris Convention.

²⁹ Article 2(2), *Id.*

³⁰ Article 1(2), *Id.*

'Geographical indications' (GIs) as an instrument of intellectual property protection are very much an invention of the TRIPS Agreement. TRIPS Article 22.1 defines geographical indications more broadly as

indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

A careful reading clarifies the broadness of the notion³¹:

- ♣ GIs are to be understood as a general concept that point to the 'geographical origin' of a product in a given country, region or locality: in other words, the notion now focuses on 'indications which identify a good'. Denominations that are not 'direct geographical names' (such as Basmati) are also feasible.
- ♣ 'Reputation' is an additional element constituting the notion of GI, thus going beyond the Lisbon Agreement's focus on 'quality and characteristics' of a product.

Articles 22 to 24 of Part II, Section III the TRIPS Agreement prescribes minimum standards of protection of GIs that WTO members must provide. Article 23 of the TRIPS Agreement, which grants higher status only to wines and spirits and excludes other goods and products out of its purview, has generated considerable resentment. This discrimination or imbalance in protection has led to demands for additional protection to other goods and products from a number of countries including India.³²

EMERGING CONCERNS

Domestic Legislation

In the wake of the problems with patents that India has experienced in recent years, the importance of enacting laws for conserving biodiversity and controlling piracy as well as intellectual protection legislation that conform to international laws has been realized. There is a widespread belief that RiceTec Inc., took out a patent on Basmati only because of weak, non-existent Indian laws and the government's philosophical attitude that natural products should not be patented. According to some Indian Experts in the field of genetic wealth,

³¹ Agriculture Trade and Food Security: Issues and Options in the WTO Negotiations from the Perspective of Developing Countries, FAO, 1999.

³² Suresh C. Srivastava, *Geographical Indications and Legal Framework in India*, Economic and Political Weekly, September 20, 2003.

India needs to formulate a long-term strategy to protect its bio-resources from future bio-piracy and or theft.³³ India and Pakistan have agreed to tackle the crisis jointly to have a strong case against RiceTec Inc. British traders are also supporting India and Pakistan. According to Howard Jones, marketing controller of the UK's privately owned distributor Tilda Ltd, "True Basmati can only be grown in India or Pakistan. We will support them in any way if its necessary."³⁴The Middle East is also showing support by only labeling Indian or Pakistani rice as Basmati. Following the Basmati rice crisis, India formulated legislation in the form of the Geographical Indications of Goods (Registration and Protection) Act, 1999, however, the law in the regard is yet to solidify and form a strong foundation. Also, training is required to equip emerging and new lawyers in the legal fraternity with tools to combat these pressing issues.

Two-tiered Protection in TRIPS

Under the current provisions of the TRIPS Agreement, geographical indications for wines and spirits are afforded near-absolute protection while geographical indications for all other goods are only protected where the geographical indication fails the so-called 'misleading test' or constitutes an act of unfair competition.³⁵ Accordingly, under the current TRIPS Agreement framework, use of the word "Darjeeling" to describe a type of tea from India is entitled to a lower standard of protection than use of the word 'Tennessee' to describe whiskey from that U.S. state.³⁶ The two-tiered system of protecting geographical indications under the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights has been the subject of increasingly heated debates within the World Trade Organization over the past two years. Despite protests by the United States and other WTO Members, a vociferous group of WTO Members at the November 2001 WTO Ministerial Conference in Doha, Qatar succeeded in improving the prospects that the current system of geographical

³³ <http://www.rediff.com/business/1998/mar/23rice.htm> visited on 10.09.2007

³⁴ <http://www.business-standard.com/98apr07/economy4.htm> visited on 10.09.2007.

³⁵ TRIPS Agreement, Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Art. 22; WTO Secretariat, Proposal from Bulgaria, Cuba, the Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela, IP/C/W/247/Rev.1 at 1 (May 17, 2001)

³⁶ WTO Secretariat, Communication from Argentina, Australia, Canada, Chile, Guatemala, New Zealand, Paraguay and the United States, IP/C/W/289 at 4 (June 29, 2001)

indication protection will be revised.³⁷ Proponents of extended protection argue that the TRIPS Agreement should be amended so that all goods receive the higher standard of protection currently accorded geographical indications for wines and spirits.³⁸

³⁷ World Trade Organization Ministerial Conference, Ministerial Declaration, WT/MIN(01)/DEC/1 (Nov. 20, 2001), <http://www.wto.org>

³⁸ WTO Secretariat, Communication from Bulgaria, the Czech Republic, Egypt, Iceland, India, Kenya, Liechtenstein, Pakistan, Slovenia, Sri Lanka, Switzerland and Turkey, IP/C/W/204/Rev. 1 at 2 (Oct. 2, 2000).

CONCLUSION

RiceTec has been forced to give up the title of its patent, it has been forced to give up 15 of its 20 claims, including those with the most far-reaching implications related to biopiracy. The surviving claims now need to be challenged as part of the larger movement against patents on life and patents on rice. The campaign against patent on rice is now being launched by the Research Foundation against patents held by Monsanto and Novartis, including patents on "Golden Rice". Geographical Indications as a concept and as a subject of legislation is relatively new in India and therefore it is required that the arena is well-researched upon and academically as well as practically delved into so as to ensure that we are better equipped to address such instances of violation more promptly in future.

Geographical Indications signify a core instrument in protecting the rights relating to the culture and heritage of several manufacturers and producers of goods which have been of traditional importance. Also in international trade scenario they are of vital importance since they indicate specialization in natural resource and open new scope for several countries which might be otherwise lacking in technologically updated resources. The layered structure of the TRIPS agreement in this aspect has become a subject of major debate and needs to be addressed as soon as possible with opinion being taken equally from the developing and the developed world. Procedural and protective provisions have to be highlighted such that the laws of the different countries are in conformity with each other.