

Nepal's Industrial Property Bill 2082 and TRIPS Compliance: A Comparative Analysis of Geographical Indications Provisions

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Abstract

Nepal is in the phase of getting its sui generis geographical indications law. The drafting of the Industrial Property Bill, 2082 BS (2025 AD), is evidence of it. The bill was registered in the House of Representatives on 23 February 2082 by the Ministry of Industry, Commerce, and Supplies. Being party to "The Paris Convention for the Protection of Industrial Property, 1883" and to the "Agreement on Trade-Related Aspects of Intellectual Property, 1994," Nepal has the obligation to make its laws compatible with these international instruments. Furthermore, it is expected to graduate from a developing country by 2026 AD, and it must make its laws compatible with TRIPS by 2034 AD. Presently, there is the Patent, Design and Trademark Act, 2022 BS, which does not incorporate the geographical indications (GI). Also, the Collective Marks Directive 2067 BS exists, but it does not integrate the GI. The law of Nepal is not compatible with the TRIPS Agreement to date; however, upon comparing the bill with the TRIPS provisions, it is found that the provision is not in line with the provisions of Article 22(3) of the TRIPS. The bill addresses the coexistence of GIs and trademarks that were registered before the enactment of this bill. In contrast, TRIPS states that any trademarks that mislead the public about the true origin of the goods shall not receive protection for such goods. Hence, before materializing the bill into an Act, Article 22(3) of the TRIPS should be incorporated into the laws.

Keywords: *Geographical Indications, Industrial Property, Intellectual Property, Nepal, Sui Generis*

I. Introduction

Intellectual Property (IP) incorporates all rights resulting from intellectual activity in the scientific, artistic, literary and industrial fields.¹ It includes copyright and industrial property.² According to the Copyright Act, 2059 BS, copyrights encompass copyright and neighboring rights, as well as patents,

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¹ G.B Reddy, *Intellectual Property Rights and the Law*, Gogia Law Publications, Hyderabad, 11th edition, 2016, p.12.

² Bal Bahadur Mukhia, *Intellectual Property Law*, Mission Legal Service Pvt. Ltd., Kathmandu, 2015. p.27.

designs, and trademarks, which are classified as industrial property under the Patent, Design, and Trademark Act, 2022 BS.³ According to the Industrial Property Bill 2082 BS, industrial property encompasses patents, trademarks, utility models, industrial designs, traditional knowledge, trade secrets, layout designs of integrated circuits, well-known marks, and geographical indications.⁴

There is no separation of the IP in the “Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994 AD”, an international convention under the “World Trade Organisation (WTO),” “It incorporates copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs (topographies) of integrated circuits, protection of undisclosed information and control of anti-competitive practices in contractual licenses⁵ as intellectual property.” Although there are several significant differences between the various forms of IP, “one factor they share is that they establish property protection over intangible things such as inventions, ideas, information, and signs.”⁶ This is the first multilateral instrument to use the term “geographical indications” (GIs). It has been stated that there are two types of GIs, along with two ways of protection for those types: goods with general protection⁷ and wines and spirits with special protection.⁸

Before the TRIPS, “The Paris Convention for the Protection of Industrial Property, 1883, uses the words indication of source and appellations of origin.” Similarly, the “Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891” uses the word indication of the source.” Likewise, “The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958,” defines the word ‘appellation of origin’.⁹ Finally, the “Agreement on Trade-Related Aspects of Intellectual Property, 1994,” has used the world’s geographical indications¹⁰ and globalised GIs and their protection, mandating the government to take action to protect it.¹¹ It is also found that another name is also used instead of GIs; to mention a few are ‘Geological Indications’, referring to terms like ‘Geological Sign’, ‘Signs of Source’, Country of Origin, Food Sociology & Anthropology.¹²

There are four ways of protecting GIs. They are by obtaining protection directly in the jurisdiction concerned; by taking advantage of a bilateral agreement established between countries; “through WIPO’s Lisbon system for the international registration of an appellation of origin,”¹³ and for the international registration of the marks by “The Madrid system.”¹⁴

³ *Patent, Desing Trademark Act, 2044* (Patent, Desing and Trademark Act 2022), Nepal.

⁴ Bill (n 4), s.2(f).

⁵ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Compilation of Multilateral Treaties, p.411, Government of Nepal, 2024.

⁶ Lionel Bently & Brad Sherman, *Intellectual Property Law*, 4th edition, Oxford University, 2003

⁷ TRIPS (n 5) art. 23

⁸ Ibid, p. 411.

⁹ Laxmi Sapkota, Evolution of geographical indication in Nepal: A way forward. *Nepal Bar Council Journal*, volume 20, pp. 384- 396, 2021.

¹⁰ Laxmi Sapkota, Necessity of Sui generis Geographical Indication Laws in Nepal, volume 16, *Nepal Judicial Academy Journal*, p. 125, 2022.

¹¹ William Van Caenegem & Jen Cleary, *The importance of place: Geographical indications as a tool for local and regional development*, p. 28, Springer, 2017.

¹² Ibid, p. 182.

¹³ Laxmi Sapkota, Intellectual Property as the Fundamental Right: Widening Scope and Changing Dimension of Ownership of Intellectual Property, volume 12:1, *Journal of Global Research*, p.28, 2023.

¹⁴ Laxmi Sapkota, Significance of Geographical Indications Laws in Nepal: A Comparative Study of Bhaktapur ‘Juju Dhau’ and Greece ‘Greek Yogurt’, volume 11:1, *Kathmandu School of Law Review*, p. 60, 2022.

The TRIPS Agreement is a framework convention that advises protecting the GIs, although it does not state the ways of GI protection. Generally, there are three ways to protect GIs, one of which is to obtain protection directly from the jurisdiction concerned. They are safeguarded through the trademark system (collective marks, certification marks, also known as guaranteed marks), the *sui generis* system (making its kinds of GI laws), and laws focusing on business practices.

This paper examines whether Nepal's proposed Industrial Property Bill 2082 aligns with the TRIPS Agreement's requirements for the protection of geographical indications. The paper conducts a comparative legal analysis between Nepal's Industrial Property Bill 2082 and TRIPS provisions through a doctrinal study, adopting primary sources of authority, such as laws, and secondary sources of authority, including books, articles, and journals.

II. Legal Frameworks of GI Law in Nepal

The history of IP law in Nepal is relatively short. Before the development of specific copyright law, copyright provisions were arranged in the Muluki Ain, 1910 BS (1854 AD). Any publication must obtain prior permission from the "*Gorkha Bhasa Prakashan Samitee*."¹⁵ Similarly, the history of industrial property begins with the "Patent, Design and Trademark Act 1993 BS (1937 AD)." The act protected IP only for Nepali nationals. Later, the act was replaced by the "Patent, Design and Trademark Act, 1965 AD (2022 BS)," which extended industrial protection to foreign nationals only after they registered industrial property in Nepal.¹⁶ The laws related to IP is governed by various laws of Nepal discussed below:

A. Constitution

The Constitution of Nepal, in its explanation clause of Article 25, states that 'property' means any form of property, including both movable and immovable property, and encompasses intellectual property.¹⁷ Likewise, Schedule 5 of the Constitution of Nepal has given a list of federal powers, of which number 24 states that the Federal government has the power over intellectual property (including patents, designs, trademarks, and copyrights).¹⁸ Schedule 5 has given the intellectual property right to the Central Level, as it should only be made a concurrent power to the local level. The Constitution promises to establish legal provisions for implementing the rights conferred by it within three years of its coming into force.¹⁹ The Legislation Management Committee has presented a report titled A Study Report on Pending Laws to be Drafted According to the Constitution of Nepal, stating that 111 out of 151 laws have been passed.²⁰ However, laws related to fundamental rights, essential for implementing federalism, have yet to be drafted, including those concerning intellectual property and the incorporation of geographical indications. The study reports demonstrate that Nepal should draft laws to enforce the fundamental rights outlined in Article 25.²¹

¹⁵ *Muluki Ain*, art. 31 (a) of the Chapter on Miscellaneous of the Code, 1910.

¹⁶ Mukhia n (2).

¹⁷ *Nepalko Sambidhan* (Constitution of Nepal), art.25.

¹⁸ *Ibid*, sched 5.

¹⁹ *Ibid*, art. 4(7).

²⁰ Legislation Management Committee, Study Report on the Laws yet to be made in according with the Constitution of Nepal, p.12, Committee Legislation Management 2023.

²¹ *Ibid*.

B. The Muluki Civil Code, 2074

The Muluki Civil Code, 2074, listed intellectual property as movable.²² Furthermore, it states that the property gained or increased from IP or royalty is a person's private property;²³ the person can do with it as they please.²⁴ The code does not include GIs as a type of IP. The sui generis GIs are considered community property; this also presents a challenge for a country that views its IP as private property, as the scope of IP widens to encompass community property once the government introduces *sui generis* GIs laws.²⁵

The primary statute of industrial property is the Patent, Design, and Trademark Act of 1965. The act does not include GI and does not recognise collective marks. However, the Collective Marks Registration Related Directive, 2067, states that some of the provisions of the trademarks, like the registration provision of trademarks, are also applied to the registration of collective trademarks. The PDTA Act must be repealed and revised. How could the directives register the different types of IP and collective marks? Similarly, the Directive requires the registration of collective marks, and these collective marks do not include provisions for the inclusion of GIs.

C. Statute Explicitly States about GIs

Different statutes, such as the Industrial Enterprises Act, 2076 BS, have defined geographical indications in relation to industrial property.²⁶ It states “intellectual property” means intellectual properties, including design, patents, trademarks, trade secrets, service marks, and geographical indications, and the term includes matters defined as copyrights by the prevailing law. Similarly, the Export and Import (Control) Act, 2013 BS has included GI as IP and states that, if the Government of Nepal considers that it is necessary to prohibit or control the exportation or importation of any goods for the protection of IPR such as patents, trademarks, copyrights, industrial designs, GIs and protection of undisclosed information.

D. Statute Implicitly States about GIs

The Local Governance Operation Act, 2074 BS (2017 AD) has implicitly stated about the GIs. It states that local intellectual property protection, promotion, and recording fall under municipalities' works, duties, and rights.²⁷ Some countries protect their GIs through Consumer protection. The Consumer Protection Act of 2075 BS implicitly talks about GIs. It prohibits anyone from engaging in unfair trade and business activities, including selling goods by misrepresenting their actual quality, making false or misleading advertisements, or selling goods that are misrepresented as possessing any special quality or characteristic.²⁸ While these laws have provisions against unfair competition, they are not specific to goods of origin. These laws have not forbidden anyone from using terms in their products that indicate that the goods possess characteristics that are by-products originating from a specific location, i.e. the rules are

²² *Muluki Devani Samhita 2074*, (The Muluki Civil Code 2017), Nepal, s.254.

²³ *Ibid*, s.256 (1) (e).

²⁴ *Ibid*, s.256(2).

²⁵ Laxmi Sapkota, Intellectual Property as the Fundamental Right: Widening Scope and Changing Dimension of Ownership of Intellectual Property, volume 12:1, *Journal of Global Research*, p. 28, 2023.

²⁶ *Audhögik Byabasai Ain 2076*, (Industrial Enterprise Act 2020), Nepal, s.2(k).

²⁷ *Sthaniya Sarkar Sanchalan Ain 2074*, (Local Governance Operation 2018), Nepal, s. (2)(j)

²⁸ *Ibid*, s.16.

not GI specific.

Other laws have recognise IP but not GIs as IP including the Competition Promotion and Market Protection Act, 2063 BS, the Customs Act, 2064 BS (2006 AD), the Right to Food and Food Sovereignty Act, 2075 BS (2018 AD), guarantees farmers' rights stating they have right to make choices of local seeds, technology, tools, and agro-species and obtain the protection of intellectual property.²⁹ Some countries protect their GIS through certification marks, but the Standard (Certification Mark) Act, 2037 BS, does not protect GIs. It certifies the goods that meet a standard.

E. Collective Mark Registration-Related Directive 2067 BS

The Collective Mark Registration-Related Directive 2067 BS is a directive solely regarding the registration of collective marks. It has incorporated the provision for collection mark registration in Nepal. Under this Directive, 17 collective marks have been registered, including Changrya Pashmina (class 24), Changrya Pashmina (class 25), Sindhuka (class 29, 30, 35), Everest Big Cardamom (class 30), Himalayan Nepalese Carpet (class 27), Swadeshi (Lebal) of (class 2, 6, 16, 19, 21, 24,26) and Juju Dhau. Some countries, like the US, register their GIS through the collective marks, but in Nepal, it does not include that GIs shall be registered as the CM.

The main act, PDTA, does not recognise the provisions of the collective marks. According to the Legislation Act, a directive is issued if there is involvement of more than one office in the communication or administration of matters of a similar nature. The federal law may make provisions to confer authority to issue directives with a view to delineating and coordinating the interrelationship of responsibilities among such offices, determining standards or functional jurisdictions based on the subject matter concerned, ensuring uniformity in procedural parts, and, where necessary, prescribing a detailed framework, norms, standards, and hierarchical structure for the effective execution.³⁰ Second, it has already been 15 years, but has registered only 17 GIs, including different classes: Changrya Pashmina, Sindhuka, Everest Big Cardamom, Himalayan Nepalese Carpet, Swadeshi (Lebal), and Juju Dhau. It has just six collective marks without class classification.

There might also be questions about whether Nepal could make GIs laws. It offers options such as protection through *sui generis* GIs laws, collective marks protection, certification marks protection, or laws focusing on business. However, a debate exists between the North-South (US and EU) perspectives on GIs. TRIPS is open to various ways of protecting GIs. Nepal can also opt for collective marks protection, but the Directive does not state that it shall protect the GIs through collective marks. The work of the Directive is to make the work conduct easier and to it can register the separate IP. However, the Directive registering the Collective Marks only registers the collective trademarks. It has not been stated that it shall register the GIs. Other benefits of registering GIs through collective marks or *sui generis* GIs could be different points. We have the collective trademarks laws, not the GIs laws.

F. Policies/ Plans, and Strategy of the Government of Nepal

Some policies, like Industrial Policy 2067 BS, concern IP. The Trade Policy 2072 BS encourages,

²⁹ *Kbaddhya adbhikar tatha kbaddhya samprubhuta sambandhi ain 2075*, (Right to Food and Food Sovereignty Act 2018), Nepal, s.12(2)(d)

³⁰ *Bidhayan Ain 2081*, (Legislation Act 2025), Nepal, s.18(1)

supports, and coordinates the registration and protection of IP, including GIs for exportable goods,³¹ in the international market. The National Intellectual Property Policy 2073 BS aims to develop a new legal framework or revise the existing ones for other forms of IP, including geographical indications. The policy mentions the provisions for the GI policy.³² The policy states about identifying and promoting GIs and other forms of IP.³³ It further mentioned that the maximum use of GIs shall be done using IPs for national development.³⁴ The policy states about identifying and promoting GIs and other forms of IP.³⁵ It states that the maximum use of GIs can be done using IPs for national development.³⁶ It states that identifying national and human-made goods,³⁷ could be done. The logo and names could be used to show the differences between such goods³⁸ It also states that the forest products, agricultural goods, handicrafts, foodstuffs, wine, spirits, and industries shall be recognised for market access through collective marks or GIs.³⁹ The provisions like GIs shall be protected through the *sui generis*⁴⁰ The marks registered as certification marks shall not get GI's registration.⁴¹ The goods protected by GIs shall not be protected by trademarks, and goods protected under trademarks shall not receive GI protection.⁴² And, the rights of the GIs are non-transferable.⁴³

The sixteenth plan has the provision that Nepal shall make legal arrangements for the protection of GI and develop the capacity of related organisations for implementation.”⁴⁴ Also it has been stated that a self-regulated mechanism with legal and institutional powers protects IPR, eventually resulting in the increment of several IP, including GI, registered from Nepal in the worldwide database of the WIPO.⁴⁵ Then, the sixteenth plan incorporates, “As a transformative strategy in the development of quality infrastructure and intensive inter connectivity, the government shall adopt a policy of utilising resources and traditional skills and knowledge available at the local level, and establish IPR that helps in the transfer of knowledge from generation to generation and upgrade it.”⁴⁶

The Nepal Trade Integration Strategy (2079/80 BS – 2084/85 BS)⁴⁷ has prioritised export potential sectors. The categories of agro-based products, forest sectors, craft and manufacturing products, small and cottage industries, and even services, which are also included in the export category, are listed.

³¹ Ibid, s. 10 (9) (3).

³² *Raastriya Baudhik Sampati Niti 2073*, (The National Intellectual Property Policy, 2017), Nepal, no. 8(2)(c)

³³ *Raastriya Baudhik Sampati Niti 2073*, (n 32) no. 8(1) (2).

³⁴ Ibid, no. 8(1) (4).

³⁵ Ibid, no. 8(1) (2).

³⁶ Ibid, no. 8(1) (4).

³⁷ Ibid, no. 8(2) (15).

³⁸ Ibid, no. 8(2) (15).

³⁹ Ibid, no. 9(1) (6).

⁴⁰ Ibid, no. 9(1) (3).

⁴¹ Ibid, no. 9(2) (i).

⁴² Ibid, no. 9(2) (h).

⁴³ Ibid, no. 8(2) (16).

⁴⁴ Nepal Government, National Planning Commission, The Sixteenth Five-Year Plan, p.224, 2025

⁴⁵ Ibid, p.36 & 43.

⁴⁶ National Planning Commission (n 44), p.115

⁴⁷ Ministry of Commerce, Nepal Trade Integration Strategy, 2016.

III. International Obligations of Nepal

Nepal is a party to “The Paris Convention for the Protection of Industrial Property, 1883 AD” in 2001 AD and the “Trade-Related Aspects of Intellectual Property Rights, 1995 AD” in 2004 AD. As per the Nepal Treaty Act, 2047 BS, Nepal must abide by international laws. The act has legal provisions implementing such treaties or agreements.⁴⁸ Section 9 of the act gives equal importance to the provisions of applicable treaties, such as Nepali laws.⁴⁹ The treaty is enforceable according to Nepali law.⁵⁰ Further, Nepal is also a party to the “Convention for the Safeguarding of Intangible Cultural Heritage, 2003.” The convention defines traditional craftsmanship as an intangible cultural heritage. And traditional craftsmanship is GIs. Being party to the international laws, Nepal must protect its intangible cultural heritage, GIs, and traditional craftsmanship.

IV. Judicial Interpretations

There are cases decided by the Department of Industry, including Advocate Ramchandra Subedi, on Behalf of Apex Law Chamber, authorised by Scotch Whisky Association, UK v. Mohini Hygiene Productions,⁵¹ and Advocate Ranju Basnet on behalf of Apex Law Chamber, Scotch Whiskey Association UK, Quatermile 2 v. Binod Maharjan on Behalf of Scot & Scot Pvt. Ltd (Nepal).⁵² The GIs issues are not addressed or discussed in all cases. Similarly, in the High Court Patan, the three cases are found; the first is Tea Board of India v Modern Tea Industries Pvt. Ltd, Nepal,⁵³ there were indications of the GIS that Assam tea is a GIs of Assam of India. Similarly, in the case of Advocate Anju Uprety Dhakal, on behalf of the Scotch Association v. Dhanusha Distillery Pvt. Ltd and Others,⁵⁴ mentioned that the mark "Highland" is not just a trademark but is a geographical indication that originates from a place called the Highlands of Scotland. Likewise, in the case of Scotch Whiskey Association V. Highland Distillery Pvt. Ltd,⁵⁵ there was an issue that the mark “Highland” is not just a trademark but a geographical indication that originates from the Highlands of Scotland. The high court did not mention the GIS. Similarly, in the case of "Advocate Anju Uprety Dhakal, on behalf of The Scotch Whiskey Association of Scotland UK v. Department of Industry, Tripureshwor and Others,”⁵⁶ the Supreme Court refused the revision of the case, stating that it does not satisfy the provisions of section 12 of the Administration of Justice Act, 2073 BS. The court could give precedence on the issues of the GIs. As precedent is also a source of law, the court makes a landmark case by entertaining the case in the Supreme Court.

⁴⁸ *Nepal Sandhi Ain 2047*, (Nepal Treaty Act 1990), Nepal, Preamble.

⁴⁹ Nabin Kumar Subba, Domestication of International Laws in Nepalese Context, *Nepal Bar Council Law Journal*, p. 246, 2020.

⁵⁰ *Nepal Sandhi Ain 2047*, (n 48), s. 9(1).

⁵¹ *Advocate Ramchandra Subedi, on Behalf of Apex Law Chamber, authorised by Scotch Whisky Association, UK v. Mohini Hygiene Productions*, Department of Industry, Nepal, Decision No. 70.

⁵² *Advocate Ranju Basnet on behalf of Apex Law Chamber Scotch Whiskey Association UK, Quatermile 2 v. Binod Maharjan on Behalf of Scot & Scot Pvt. Ltd*, Department of Industry, Nepal, Decision No. 74.

⁵³ *Tea Board of India v Modern Tea Industries Pvt. Ltd.*, High Court, Patan, 2077, Case No. 076-DP-1030, Decision No. 169

⁵⁴ *Advocate Anju Uprety Dhakal, The Scotch Association v. Department of Industry, Tripureshwor*, High Court, 2073, Case No. 071 DP- 2096, Decision No. 124.

⁵⁵ *Scotch Whiskey Association V. Highland Distillery Pvt. Ltd*, High Court, Patan, 2076, Case No. 076-DP-0292, Decision No. 97.

⁵⁶ *Advocate Anju Uprety Dhakal, on Behalf of The Scotch Whiskey Association of Scotland UK v. Department of Industry, Tripureshwor and Others*, Supreme Court, 2079, Case No. 073-RI-2437, 2079/12/24

V. Analysis of Other Existing Provisions

Annual Foreign Trade Statistics Book 2079-80 shows that significant export destinations of Nepal include India, the USA, Germany, and China. The major commodities exported to China in FY 2079/80 include carpets, other textile floor coverings, medicinal plants, and handicraft paintings, also considered potential GI-capable goods of Nepal. Similarly, primary Nepali goods exported to the United States in fiscal year (FY) 2079/80 are woollen carpets, readymade garments, pashmina and handmade paper. Handmade paper, garments, carpets, and pashmina shawls are the primary exported goods to the UAE. The primary impact is on Nepal's carpet and apparel exports to the EU, the UK, and Canada.⁵⁷ Likewise, Japan makes its currency, the Yen, from the Lokta paper imported from Nepal. Such Lokta papers could be registered as Nepali GIs.⁵⁸

VI. Comparison of the Industrial Property Bill, 2082 BS with the TRIPS Provisions on GI

A Bill Made to Amend and Consolidate the Laws Related to Industrial Property (Industrial Property Bill, 2082). The bill includes the term 'geographical indication' in the definition of industrial property.⁵⁹ Furthermore, the GI is defined as the sign, map, geographical name, or a combination of all these for the goods produced in a particular place or area; such goods have the quality, reputation, and other characteristics associated with being made in that place.⁶⁰ The bill has incorporated the provision of application for the registration of the GI,⁶¹ the provision that should be incorporated along with an application, management of the conflict between the GIs and trademarks of the similar goods,⁶² the provisions which states GI shall not be registered as trademark,⁶³ the provisions when the GIs protections is not available, provisions relating to homonyms GIs,⁶⁴ the things which is considered as the just use of the GIs,⁶⁵ provisions about preliminary investigation relating to GIs,⁶⁶ substantive investigation in regards to GI,⁶⁷ the certificate of the GI,⁶⁸ provisions relating to amendment and quashed of the GI,⁶⁹ provisions relating to national logo of the GI,⁷⁰ rights of the GI owner,⁷¹ and special provision relating to GI.⁷²

⁵⁷ National Planning Commission, LDC Graduation Status of Nepal, Available at https://www.unescap.org/sites/default/d8files/event-documents/Session%20I%20-%20Nepal_1.pdf, Accessed on 5th March 2025.

⁵⁸ Laxmi Sapkota, Necessity of Geographical Indications Law, *Kantipur Daily Newspaper*, Kathmandu, Nov. 5, 2024, p.5.

⁵⁹ Bill (n 4), s. 2(f) (2025).

⁶⁰ Ibid, s.2(u).

⁶¹ Ibid, s. 52.

⁶² Ibid, s.52.

⁶³ Ibid, s.53.

⁶⁴ Ibid, s. 54.

⁶⁵ Ibid, s. 56.

⁶⁶ Ibid, s. 58.

⁶⁷ Ibid, s. 59.

⁶⁸ Ibid, s. 60.

⁶⁹ Ibid, s. 61.

⁷⁰ Ibid, s. 62.

⁷¹ Ibid, s. 63.

⁷² Ibid, s. 64.

The agreement between WIPO and WTO came into force in 1996 to provide cooperation between the two bodies in implementing the TRIPS.⁷³ The contribution of the Uruguay Round (1986-1994) introduced IP rules into the multilateral trading system for the first time.⁷⁴ TRIPS is an international agreement that aims to harmonise international standards on IP property to ensure a minimum level of knowledge of IPR in developing and poor countries.⁷⁵ It also protects globally and provides a mechanism for resolving disputes among WTO member states. It sets out the minimum standards member countries must follow regarding IPR, including GI.⁷⁶ It mandates that all participating nations establish their domestic legal systems for GIs, albeit with significant variations across countries.⁷⁷

Nepal is a party to the TRIPS agreement on 23 April 2004. Being a party, it must fulfil its obligations as per the TRIPS agreement.⁷⁸ TRIPS has provided 10 10-year transitional period for LDCs to implement the minimum IP rules into their national law.⁷⁹ The given period was extended four times by the TRIPS Council.⁸⁰ On 29 June 2021, the Members agreed on a 13-year extension of the then transition period for LDC until 1 July 2034.⁸¹ Hence, Nepal could implement minimum IP rules until 1 July 2034. Further, the questions and answer session in WTO 22 years ago, in 2002, Nepal stated that it was preparing a new draft of the industrial property law, including GI, in 2003 and planned to endorse that legislation in July 2005.⁸²

The Industrial Property Bill 2082 is registered in the House of Representatives on 2082/02/23 BS by the Ministry of Industry, Commerce and Supplies. The bill is distributed to the members of the House of Representatives on 2082/02/23. Further, it is presented in the House on 2082/03/29 BS. Likewise, the general discussion on the bill took place on 2082/04/04 in the House. Then the bill was discussed in the committee on 2082/05/05. The promptness of the bill suggests that the government plans to enact laws on industrial property as soon as possible. The compatibility of the Bill with TRIPS is given below:

A. Term Geographical Indications

In comparing the Industrial Property Bill with the TRIPS provisions on GI, the bill states that GI is industrial property,⁸³ which is also expressed by TRIPS,⁸⁴ which means the provisions of

⁷³ Davis Jennifer, *Intellectual Property Law*, 4th edition, Oxford University Press 2012.

⁷⁴ Kumar Innam, *International Trade and Business Law*, Lex and Juris Publication Pvt.Ltd, 2024, p.356.

⁷⁵ Ibid.

⁷⁶ Davis Jennifer, *Intellectual Property Law*, 4th edition, Oxford University Press, 2012

⁷⁷ Xiomara F. Quiñones-Ruiz et al., Collective Action Milieus and Governance Structures of Protected Geographical Indications for Coffee in Colombia, Thailand and Indonesia, volume 15, *International Journal of the Commons*, p.329, 2020, Available at <https://www.jstor.org/stable/27016569>, Accessed on 17th April 2024

⁷⁸ Laxmi Sapkota, Necessity of Geographical Indications Law. *Kantipur Daily Newspaper*, 2024, November 6, p.5.

⁷⁹ TRIPS (n 5), art. 66

⁸⁰ Pratyush Nath Upreti, The Battle for Geographical Indication Protection of Basmati Rice: A View from Nepal, volume 54, *International Review of Intellectual Property and Competition Law*, p.713, 2023, Available at <https://link.springer.com/content/pdf/10.1007/s40319-023-01323-w.pdf?pdf=button%20sticky>, Accessed on 5th June 2025

⁸¹ *World Trade Organization, Extension of the Transition Period Under Article 66.1 for Least Developed Country Members*, WTO Doc. IP/C/W/668, Oct. 1, 2020, Available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q%3A/IP/C/W668.pdf&Open=True>, Accessed on 5th June 2025

⁸² World Trade Organization, Working Party on the Accession of Nepal, *Accession of the Kingdom of Nepal: Legislative Action Plan Revision*, WT/ACC/NPL/9/, 15th October 2001, available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/NPL9.pdf&Open=True>, Accessed on 14th November 2025

⁸³ Bill (n 4) s.2(f), 2025.

⁸⁴ TRIPS (n 5) art.3

the bill and TRIPS are compatible.

B. Definition of GIs

According to the Bill's definition of GIs, the goods must originate from a specific geographical place, possess quality, reputation, or other distinctive features, and these characteristics must be associated with that particular place.⁸⁵ This definition is compatible with the TRIPS provision.⁸⁶ The bill is broader on this part and incorporates that GI includes a name, a map or a combination in the form of an indication.

C. Legal Means

There should be legal means for protecting GIs as per the TRIPS.⁸⁷ However, it has not specified the methods of protection, and the Bill has also outlined the legal means to protect the GI. The legal means to protect the GI mentioned in the Bill⁸⁸ are compatible with the TRIPS agreement.

D. Prevention of the Misleading Use of GI

TRIPS states that there shall be legal means to prevent misleading designation, indicating that a product was made somewhere and mentioning that it was made there. Similarly, the bill states that no one shall use any GI indication that goods originate in a territory where they do not come from.⁸⁹ Thus, the provision of the bill is compatible with the provisions of the TRIPS agreement.⁹⁰

E. Unfair Competition

The bill states about unfair competition. It prohibits the use of GIs for commercial gain that mislead or exploit the GI's reputation.⁹¹ Furthermore, it bans imitation packaging, marketing, or any actions that mislead consumers, even if they do not constitute a direct false representation.⁹² And it prohibits unfair commercial practices, deception, and wrongful attributions.⁹³ TRIPS states the legal means to prohibit unfair competition, as mentioned in "Article 10 bis of the Paris Convention."⁹⁴ The provisions mentioned in the bill are compatible with the TRIPS provisions.

F. Coexistence v. Invalidation

Regarding the provision of GI and TM, TRIPS provisioned that the "member country must refuse or invalidate a trademark that includes a GI, for goods not originating from the indicated region, ex officio or at request, if use of the mark misleads the public about origin."⁹⁵ Whereas the bill provides under section 53 that GIs registered under this act shall be registered as trademarks.

⁸⁵ Bill (n 4), s.2(u), 2025.

⁸⁶ TRIPS (n 5), art.22 (1)

⁸⁷ Ibid. at art.22 (2)(a).

⁸⁸ Bill (n 4), s.56 (a), 2025.

⁸⁹ Ibid.

⁹⁰ TRIPS (n 5) art.22 (2)(a)

⁹¹ Bill (n 4), s.56 (b) (2025).

⁹² Ibid, 56(c).

⁹³ Ibid, 56(d).

⁹⁴ TRIPS (n 5) art.22 (2)(b)

⁹⁵ Ibid, 22 (3).

Provided that if TM is registered before this act is used, then both receive protection until the time the TM protection ends.⁹⁶ The bill talks about the coexistence of earlier trademarks and later GIs, even if there is confusion in the public about the goods. Furthermore, the bill does not provide a refusal for the misleading use, as Article 22(3) has done. This provision is incompatible with the TRIPS.

G. Prohibition of Misleading GIs

The TRIPS agreement states that even if the use of GI is actual but misleads the public about origin, then it must be prohibited.⁹⁷ Section 56 (a) of the bill prohibits any use of GIs that mislead consumers about the true geographical origin, even if the name of the place is correct.

H. Equal Treatment and National Treatment

TRIPS has incorporated the provision of equal and national treatment. Similarly, the bill has also incorporated the provision of equal treatment of foreign IP (GI) as domestic, as mentioned in the Paris Conventions.⁹⁸ Similarly, equal protection and treatment for TRIPS contracting parties⁹⁹ are stated.

VII. Analysis and Conclusion

The Constitution of Nepal has recognised IP as property, but it has not recognised GI. The Muluki Civil Code, 2074, does not include GIs as a type of IP. Various acts have recognised GIs as IP, such as the Export and Import (Control) Act, 2013 BS, and the Industrial Enterprises Act, 2076 BS (2020 AD). However, the “Patent, Design and Trademark Act, 2022 BS” (1965 AD), Nepal Standard (Certification Mark) Act, 2037 BS (1980 AD), Competition Promotion and Market Protection Act, 2063 BS (2007AD), Customs Act, 2064 BS (2006 AD), Local Governance Operation Act, 2074 BS (2017 AD), The Consumer Protection Act, 2075 BS (2018 AD), The Right to Food and Food Sovereignty Act, 2075 BS (2018 AD), have recognised IP but not GIs.

Collective Mark Registration-Related Directive 2067 BS (2010 AD) registers the collective marks in Nepal. There are 17 collective marks registered in Nepal under this act, including Changrya Pashmina (class 24), Changrya Pashmina (class 25), Sindhuka (class 29), Sindhuka (class 30), Sindhuka (class 35), Everest Big Cardamom, Himalayan Nepalese Carpet, Swadeshi (Lebal), Swadeshi (Lebal), Swadeshi (Lebal), and Juju Dhau. Nepal is party to TRIPS and the Paris Conventions. Similarly, the Industrial Bill is registered in the House of Representatives, incorporating the provisions of GI.

The first question could be: Why is there a compatibility test with the TRIPS agreement when there are no laws of GI in Nepal? WIPO has published World IP Indicators 2024, which shows data on GI protection in various countries. The protection mechanism includes ‘*sui generis*,’ ‘trademarks,’ ‘regional,’ ‘other national legal means,’ ‘agreements,’ and the ‘Lisbon system’.¹⁰⁰ This shows that there

⁹⁶ Bill (n 4), s.53 (2025).

⁹⁷ TRIPS (n 5) art.22 (4)

⁹⁸ Bill (n 4), s. 111.

⁹⁹ Ibid, s. 112.

¹⁰⁰ World Intellectual Property Organization, World Intellectual Property Indicators, Available at <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2024-en-world-intellectual-property-indicators-2024.pdf>, Accessed on 5th March 2025.

is no uniformity in the protection of GI worldwide. The categories demonstrate that a country must protect GI, but in what way? Is it at its discretion? In Nepal's context, it has the Collective Marks Registration Related Directive 2067, which registers collective marks. It has already registered 17 collective trademarks. Can these collective marks not be taken as GI?

The simple reason is that Nepal is safeguarding its collective marks through the directives, and the principal act (PDTA) has not recognised the collective marks. A provision could also state that the country's GI shall be protected through collective marks. However, the problem persists as the directive must be converted into law. In this context, Nepal could protect its GI through various means.

Nepal has registered the bill, but it has yet to come into effect as a law. Therefore, the existing law in Nepal regarding GI is not compatible with the TRIPS Agreement. However, the Industrial Property Bill, 2082 states that GI is industrial property, and the definition of the GI aligns with the TRIPS definition of GI. Furthermore, the bill's definition of the GI is broad. The bill also states that there should be legal means to protect GIs, aims to prevent the misleading use of GIs, and addresses unfair competition, all of which are compatible with the TRIPS provisions.

The bill mentions the coexistence of earlier trademarks and later GI, even if there is confusion in the public about the goods. Furthermore, the bill does not provide for the refusal of misleading use, as Article 22(3) does, which is incompatible with the TRIPS. In the event of a prohibition on misleading GI, the Bill does not mention it. The TRIPS agreement states that even if the use of GI is actual but misleads the public about origin, then it must be prohibited. But there are no such provisions in the bill. This provision is not explicitly mentioned.

Upon comparing Nepal's provisions on GIs with the TRIPS Agreement, it is found that Nepal's provisions are incompatible with those of the TRIPS Agreement. The PDTA 2022 does not address GIs or collective marks. Meanwhile, the Collective Marks Registration Directive 2067 includes provisions for collective trademarks, which do not align with the spirit of GIs. But the National Intellectual Property Policy, 2074 BS, has stated regarding the GI's policy. Some of the provisions stated in the policy align with the provisions of the TRIPS agreement. Recently, the Industrial Property Bill has been introduced in the House of Representatives, which is comparable to the TRIPS agreement. The provision of the bill is compatible with the TRIPS regarding Articles 22(1), 22(2), and 22(4), but not with Article 22 (3). Hence, it is suggested that the bill be made compatible with the TRIPS.

