

## Urgency and Benefits of Protecting Iranian Carpets using Geographical Indications

Pardis Moslemzadeh Tehrani† and Nazura Abdul Manap

Faculty of Law, The National University of Malaysia (UKM), 43600 Bangi, Malaysia

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The objective of this paper is to analyse the effectiveness and sufficiency of current mechanisms in Iran to protect their carpet industry and the best way to improve current situation. In doing so, the existing treaties such as the Madrid Protocol, the Lisbon Agreement and the TRIPS Agreement and their differences are considered. This paper finds that the Lisbon Agreement and the Madrid Protocol are not sufficient to protect the Iranian carpet industry that encompasses Iranian traditions and skills transferred over centuries. The paper also points out some loopholes in the law of protection of geographical indication within the existing conventions vis-à-vis those Iran has not been given access to. It is argued that the geographical indication of Iranian handmade carpets that is left semi-protected should be protected through a more acceptable agreement such as the TRIPS Agreement to suit the needs of such products.

**Keywords:** Geographical indication, appellation of origin, traditional knowledge, handmade Iranian carpets

Handicrafts and handmade carpets are part of Iran's cultural heritage, which has been passed down through generations. Carpet weavers make hand-knotted carpets using techniques of hand-tied weaving which are several centuries old. Such carpets are unique and demand urgent and comprehensive protection.

It is necessary in Iran, as in other countries, to protect its intellectual property and its traditional knowledge, since it brings great benefits to producers and consumers alike. Furthermore, it stimulates rural development, and has a positive effect on various aspects of economic and socio-cultural characteristics of the country, and improves its reputation in the international arena, while increasing the marketability and value of Iranian carpets.<sup>1</sup> A particular geographic identity of a product, which is derived from its special characteristic, quality and reputation, can increase the marketability and the number of consumers. The aim of geographical indications (GIs) is to protect a distinctive product which has built goodwill in a certain region over a period of time.<sup>2</sup>

The growing awareness of the importance of GIs ultimately resulted in the 1994 Agreement on Trade-related Aspects of Intellectual Property (TRIPS Agreement)<sup>2</sup>, which provided protection for GIs.

However, Iran has acceded only to the Lisbon, Madrid and Paris conventions and not to the TRIPS Agreement yet.

Most GI products are not innovation intensive, and countries ranging from least developed countries to developing countries and developed countries are rich in traditional knowledge that has evolved over generations. Such traditions have the potential to become an important product; therefore, countries are sufficiently motivated in preserving their traditional knowledge to enhance their economic structure.<sup>3</sup> Most of them attempt to register these products at a global level to protect them in the best possible manner. Unfortunately, handmade Iranian carpets have not been registered globally as yet. Exports of Iranian carpets decreased from US\$ 517 million in 2002 to US\$ 406 million in 2006. In 2001, exports were approximately US\$ 389 million. There are several reasons for this decrease in exports, including the internal economic problems of Iran, United States' embargo on Iran, and the wage increase demands by weavers. Most of the weavers have abandoned their jobs due to the lack of protection and low wages. In addition, the export of Iranian carpets has decreased due to the dollar crisis and domestic inflation. Besides, imitation of Iranian carpets by other countries has led to Iranian carpet production being jeopardized. Several countries have profited from

†Corresponding author: Email: pmt\_80@yahoo.com

Iran's economic situation by imitating Iranian carpet design and weaving processes and then selling their products at lower prices.

This paper analyses the need to protect geographical indications, particularly, Iranian handmade carpets in Iran. It also examines whether Iran's current mechanism is sufficient and proposes appropriate suggestions in order to improve the current position.

### **GI Protection in Iran: Current Law and its Weaknesses**

Iranian carpets use techniques that are centuries old and have been passed down from one generation of weavers to the next. The process of design and weaving involves different skills and it may take months to complete each carpet. Every carpet is a unique piece of handmade artistic work that is weaved based on a design on graph paper, which is called *Nakhsheh*. The weaver places this design onto the loom, reads it the same way as a sheet of music, and weaves the carpet. Each carpet may utilize more than 500 or 1,000 different colours, and best-quality wools that come from sheep reared in Iran.<sup>4</sup>

Among its unique features, Iranian carpets boast of knots and designs. However, these knots and designs depend on the location where the carpet is made. For instance, in Iran there exist more than 30,000 places where carpets are woven in a professional manner by the inhabitants of particular areas. The major centres of carpet weaving in Iran include Mashhad, Tabriz, Esfahan, Turkmen, Nain, Kashan, Kerman, and Torbat Heidarieh. Of these regions, Tabriz carpets have a prominent position due to their fine weaves and vividness.

Although the magnitude has decreased over the years, Iran still leads globally in terms of carpet exports. In the current situation, Iran should utilize the provisions of the conventions that it has already acceded to register its intellectual property (IP). The Lisbon Agreement and the Madrid Convention regulations can be exploited in order to protect IP in the international arena. In doing so, Iran must also consider other international agreements that it can accede to effectively protect its IP.

The first carpet which was registered belonged to the Esfahan region and was registered nationally because, according to the Lisbon Agreement, the first step in protecting an intellectual property is to protect it within the national borders and register it within

national borders. Besides, the Lisbon Agreement mandates Member States to enact national legislation based on the Agreement.

Iran has a long history of protection of its industrial property rights. The first act pertaining to protection in the industrial and commercial segment was adopted in 1925. It included mere registration and protection of trademarks. However, a more comprehensive act was adopted in 1931 called the Iranian Trademark and Patent Registration Law, and it extended protection to patents as well.<sup>5</sup> Geographical indications can be protected as collective marks and this protection is accompanied by civil sanctions. Local producers and even exporters have benefited from collective marks and trademarks. However, the registration of a GI product as a collective mark cannot prevent it from being becoming generic. Furthermore, to be allowed the continued use of a collective mark, it must be renewed every ten years. A newer draft act for patents, industrial designs and marks was later passed, in which the issue of collective marks has been described in more detail. Accordingly, registration of a trademark requires authentication from an authorized person. The quality standards of the production are supervised by guilds, whose members, although they do not have to actually use the collective marks, benefit from them.

The organization that has the authority to register trademarks, including collective marks, is the Industrial Property Office. The new law was adopted in 2007 and called the Law of Trademark, Patent and Industrial Design. Under this law, it is possible to protect geographical indication as a collective mark in Iran.<sup>6</sup> The new law replaced the former regulation while protecting industrial design for the first time. It is consistent with accepted standards and international issues and the country's development needs. In this act, the issues of collective marks are dealt with in more detail. The owners of collective marks can prevent unauthorized use of their collective marks by goods that do not originate from the same location as the corresponding GIs, or fail to comply with the requisite qualitative standards.<sup>7</sup> According to the Paris Convention and the national statutes of Iran, geographical indication can be protected under collective marks and the entity which owns the right prohibits a non-member from using that GI. Collective marks play an important role in preventing a consumer from being confused or misled because, the collective mark is registered as a label and trade

name of the producer's mark affixed on the reverse side of the carpet, in terms that have sufficient conformity with standards and principles of registered application. However, if the mark is inconsistent with the abovementioned standards, it could confuse consumers.<sup>8</sup> According to this law, although registration of GIs is not mandatory, an indication of registration is in line with the GI definition. However, such dual protection as GI and collective marks of GIs in Iran may pose a number of problems.

In 2004, another law was passed on the protection of geographical indication and came into force in 2005, providing an appropriate legal protection for such products. Prior to the enactment of this legislation, Iran did not have any legislation to protect its geographical indication, although Iran was obliged to protect appellation and geographical indication after having acceded to the Paris Convention in 1959. This Act enacted 16 provisions. However, due to the legal gap that existed in this field, goods with specific quality and reputation attributed to special origin could not be protected against misappropriation inside and outside the country. During these years, the Iranian carpet and other GIs in Iran were exploited in different ways and their economic benefits and even cultural identities were lost.<sup>6</sup>

#### **The Law of Protection of Geographical Indications**

This law was passed in 2005 with 16 provisions and an executive regulation. The first article defines geographical indication, as 'an indication that attributes the product's origination to region, locality, or region of the country in terms that quality, reputation of the product essentially being able to be attributed to the geographical origination' (Article 1 of the law). The definition of GI in this act appears to be stricter in contrast to the Madrid Protocol, but at the same time broader than the Lisbon Agreement. It is similar to the definition of GI in the TRIPS Agreement. In contrast to the Lisbon Agreement, this definition encompasses not only qualification and characteristic, but also reputation and other characteristics of products that may be protected under GI if they are attributable to geographical origin. Whereas, according to the Lisbon Agreement, qualification and characteristic must exclusively have originated from geographical environment – such as human and natural – and the term 'reputation' is not used as a distinctive criterion. Article 3 of the Iranian law protecting GI conforms to the definition of GI stipulated in Article 1 of the same law. At the same

time, the protection does not include products that use Iran as their place of origin but have actually a different source of origin.

In other words, there can be a conflict between two GIs, which are registered or non-registered. This article is adopted from Article 22(4) of the TRIPS Agreement. Article 3 of the Law of Geographical Indication provides protection over registered as well as non-registered products. Most parts of this legislation are adopted from the TRIPS Agreement, except for the section allocated to the registration process detailing national penal and criminal codes. Article 4 of the Act is adopted from Article 23(3) of the TRIPS Agreement regarding homonymous GI of wine. According to this Article, member parties shall establish practical terms with equal and fair treatment, and prevent consumers from being misled. In fact, there is no need for protection of a geographical indication that is not protected in the country of origin, or whose protection has ceased, or has been abolished in their country of origin.

In this context, the application for registration of geographical indication can be put forward by any person or entity to the Industrial Property Office with specific conditions. Prior to this, the abovementioned standard quality of the product has to be approved by the relevant guilds. Particularly with reference to Iranian carpets, certain gaps in the law are pertinent as follows:

- (1) Iran as a historic country with great heritage and cultural diversity should provide protection to its traditional knowledge. Iranian carpets for instance, need to be protected under this traditional knowledge category.
- (2) There is no provision to protect the traditional knowledge involved in the weaving process of handmade carpets.
- (3) The said law does not recognize the right of communities.
- (4) The registration process in general is very slow and needs to be expedited in the national and international arena, before the goods become generic in other countries. Once generic, third parties cannot be excluded from their use.
- (5) The statutes do not define the special characteristic of Iranian carpets like the methods of their production, preparation and weaving.
- (6) Since a great number of producers exist in various regions of Iran, it would be better to establish an executive regulation exclusively for the GIs of Iranian

carpets. Since the carpets lack a regional organized production mechanism, the statutes should determine the main region where the carpet is woven. In addition, it would be better to establish a special association or body that is authorized to recognize the characteristics and quality standards of handmade carpets. To make it effective, a distinct mechanism for quality control should be set up.

(7) It would also be beneficial for Iran to establish a special trademark to establish the geographical and legal identity of the Iranian carpets. This would convey the message that this logo is certified by a certifier or experts, and has been examined and checked by the certifier. Simultaneously, it would guarantee a certain quality to the consumers. Experts should be delegated to determine if the product meets the prescribed standard previously determined by statute. Moreover, they can provide certification for carpets to be exported; that the given carpet complies with specified criteria and meets the prescribed standards.

Despite suffering from legal gaps, there is no doubt that the intention to enact the new law was to improve the legal position of Iran as regards to the protection of its goods. The previous laws while seemingly practical, were deficient in providing international protection. This was because they were bound by the Paris, Madrid and Lisbon Agreements and thereby their regulations were applicable only to a few countries. These agreements, particularly, the Paris Convention failed to create new guidelines pertaining to the protection of GIs. For instance, GI protection according to the Lisbon Agreement was based on individual application, not through the government.

#### **International Treaties on Geographical Indication: Implications to Protect Iranian Carpets**

Iran has acceded to three international conventions relating to GIs, including the Paris Convention for Protection of Industrial Property (in 1959), the Madrid Agreement for Repression of False or Deceptive Indications of Source on Goods (in 2003) and the Lisbon Agreement for Protection of Appellations of Origin and their International Registration (in 2006). These international agreements protect products that have a specific geographical origin and can be attributed to a specific region, so long as such protection is recognized and proclaimed under State legislation. Prior to the enactment of the new legislation pertaining to GI,

Iranian carpets were protected within the above laws, although the above agreements failed to provide adequate protection covering all aspects of Iranian carpet production.

#### **Geographical Indication Protection in the TRIPS Agreement**

The TRIPS Agreement, which is binding on all World Trade Organization (WTO) members, sets forth standards for intellectual property rights protection.<sup>9</sup> Geographical indications, as defined in Article 22, 'are, for the purposes of this Agreement, 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.' Nevertheless, there is no universally and uniformly accepted definition for GIs.<sup>10</sup>

According to the definition in the TRIPS Agreement, GI can be applied to any product which is designated to be from a certain country, origin or locality.<sup>11</sup> The notion of GI was first recognized within the TRIPS Agreement.<sup>12</sup> Geographical indication concentrates on the general concept of the quality and reputation or other characteristic of the good being essentially attributable to its geographical origin as proposed under TRIPS. It is used as a collective term to refer to all indications of geographical origin, defined by national law.<sup>13</sup> While, according to the Lisbon Agreement, the appellation of origin is related to geographical indication. According to Article 2(2) of the Lisbon Agreement, 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.' In other words, reputation under the Lisbon Agreement is derived from quality and characteristics, whereas reputation under the TRIPS Agreement is included as a separate parameter. According to definition of GIs in the TRIPS Agreement, a GI product does not cover just indications of source, because it is not only required to merely originate from a specific geographical place, but also to have quality, reputation and other characteristics, which are only attributable to a certain geographic origin.<sup>14</sup>

Geographical indication as it is defined in the TRIPS Agreement covers a broader scope than the appellation of origin term used in the Lisbon Agreement. This is because it extends to indications

‘that confer only ‘reputation’, but not necessarily ‘quality and characteristics’ to the goods to which they are affixed’.<sup>11</sup>

The growing concerns relating to geographical indication from the late nineteenth century onwards, led to many bilateral and multilateral agreements. Nevertheless, by 1930, this process had created a complex situation among European countries. In order to correct these imbalances in world trade, the WTO formulated the TRIPS Agreement in 1994 (ref. 2). The TRIPS Agreement enforces a two-tier system to protect GIs. The first tier is protection according to Article 22.2 that provides GIs protection for products other than wines and spirits ‘from any kind of misuse of its name which tends to mislead the general public or amounts to an act of unfair competition’.<sup>2</sup> It is crucial that the characteristics and quality of the product must be derived from the place of origin only.<sup>10</sup>

Some scholars believe that the plain language of Article 22 articulates that the GI be confined to agricultural goods, natural goods or manufactured goods. However, in a carpet which is produced by specific skills; the wool used in them must originate from a specific country, locality or region in order to be distinctive according to the definition of GI. The given quality, reputation or other characteristics of such goods must essentially be attributable to their geographical origin. Article 22 would have thus, done better to encompass traditional knowledge as well. In fact, developed countries in the international fora attempted to divert the attention of WTO members to their own interests, such as computer programs, or wine, spirits and value-added food products. GIs which have also been described as the ‘intellectual property of the poor’ can be used to protect the traditional knowledge associated with carpet making as well.<sup>15</sup>

Article 23 for wines and spirits offers the second-tier protection without requiring any test of confusion or likelihood of deception. It clearly prohibits the use of translations of GIs or attachment of expressions such as ‘kind’, ‘type’ and ‘style’ to products not originating from the place indicated, even where the true origin is indicated. This additional protection enables the possibility of protecting GIs even when there is confusion.

The TRIPS Agreement does not specify any certain method for WTO members to protect their GIs. They can implement protection either through trademark

and certification, or through a *sui generis* GI protection regime. It only obliges WTO members to implement its provisions in their national laws. While registration is compulsory for the protection of GIs through national law, countries can use a wide variety of methods for the same.<sup>13</sup> Article 10bis of the Paris Convention binds the member countries to provide effective protection against unfair competition. The TRIPS Agreement extends the Paris Convention Article 10bis(3); therefore, member countries must prohibit the use of a geographical indication, which seems ‘in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods’. This is specified in the TRIPS Article 22(2)(b). However, the registration system must be an international one that takes into account the interests of both consumers and producers to provide positive protection and does not compel the member states to alter their national laws. Such a registration system will effectively promote the sustainability and stability of a multilateral convention which is fundamental in multilateral trade conventions.<sup>16</sup>

Another issue which arises for GI is the distinction that exists between these two terms: GI and trademark. A GI product must originate from a specific geographical area. Thus, a geographical indication acts as a means to gain differentiation between similar products in the marketplace, while a trademark product’s origin may vary over place and time.<sup>17</sup> Products that benefit from GI rights prohibit competitors outside the defined GI sphere from the using the product’s name, design or special characteristics. As such, Iranian carpets will be conferred special design, skill, characteristics and quality, if protected under GI, preventing competitors from the using the its unique features.<sup>3</sup> This was one of the reasons (besides complying with TRIPS requirements) why the new laws pertaining to GI protection were enacted, since complete protection over Iranian carpet production could not be offered under previous legislation.

The states which subscribe to the TRIPS Agreement are bound to incorporate GI protection into their national laws. Therefore, member states must provide appropriate legislation that can prevent the misleading use of indications conferring a false place of origin, as well as preventing any use of GI that establishes an act of unfair competition.<sup>18</sup>

### **The Madrid Agreement**

The Madrid Agreement was created in 1891 for the Repression of False or Deceptive Indications of Source on Goods.<sup>12</sup> Article 1.1 of the Madrid Agreement defined elements of the term 'indication of source' and stated: 'All goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries'. Indication of source serves the geographical region where the product originates. Nevertheless, it indicates directly the origin of the product, such as the name of the country or city, or even symbols or emblems that indirectly evoke the geographic origin of the product. It does not specify any special characteristic, quality or reputation attributable to the place of origin. It is therefore not a GI.

A good which is registered under the Madrid Agreement must be renewed every ten years.<sup>1</sup> The legal effect of acceding to this Agreement is the extension of protection to countries other than the country of origin. However, the product must have certain requirements to be eligible under the Madrid Agreement. The product must neither be generic, nor have any trademark right prior to this registration. It is obvious that the product must be protected in the country of origin as a GI in order to be eligible to be protected in other countries and internationally as well.

### **The Lisbon Agreement**

The Lisbon Agreement was created in 1985 for the protection of appellations which is defined in Article 2.1 of the Lisbon Agreement. It states: 'In this Agreement, 'appellations of origin' means the 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 geographical environment, including natural and human factors'. The definition extends beyond an indicator of source, since such products must have specific term, other than a specific place, such as indigenous characteristics and qualities that reflect the unique geography, and natural and human factors that are not found elsewhere.<sup>11</sup> Under the Madrid Agreement, in contrast, it is sufficient for a product to have a special geographical indication; it does not require any other special characteristics. The definition of appellation of

origin requires a stricter prerequisite. It requires a specific characteristic for a certain product, rather than mere reputation. This characteristic is distinct from quality and reputation. It derives from any 'element that contributes to the typicality of the product', as well as requiring natural and human factors, which particularly originates from 'terroir'.<sup>1</sup> Moreover, it must have specific geographic names of countries or origin; a mere symbol that references to a particular region is not sufficient. According to the TRIPS Agreement, 'quality, reputation, and other characteristics are each in their own right a sufficient but indispensable condition for the existence of a GI'.<sup>11</sup>

The member parties to the Lisbon Agreement are obliged to protect against 'any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as 'kind', 'type', 'make', 'imitation', or the like' (Article 3). The mere use of an incorrect nomination is prohibited under the Lisbon Agreement. Thus, when the product is shown to originate from a region or locality, and that good is usually associated with that name and does not originate from that place, a remedy must be provided. The notion of appellation merely covers names, whereas indication comprises drawings, photos, national emblems, flags or even symbolism. The overall scope of 'indication' is wider than the 'name' notion.<sup>12</sup>

It is for the member countries to determine their laws to protect appellation. They are allowed to provide their own judicial and administrative procedures. In order to protect a product under the Lisbon Agreement, first the appellation is required to be protected in its country of origin and within its own borders; and then registered by the World Intellectual Property Organization (WIPO). It is subject to a one-year waiting period so that other countries may if necessary declare their inability to enforce protection of the appellation of origin notified by the origin country [Article 5(3)].

Considering the definition of 'appellation of origin', some would argue this Agreement provides a very broad protection. However, the member states' ability to object to a notified appellation, the compiled list of all protected appellations of origin published by WIPO, and notice by members who claim translation for protection, are advantageous to a member in defining obligations vis-à-vis other members.

Furthermore, the scope of rights is limited by Article 3 of the Agreement, which impedes the absolute protection of the appellation, since the appellation would not be required for all goods, and just retains a reputation over goods with certain characteristics. Nevertheless, the only absolute protection in Article 3 'is the prohibition on use of the exact appellation or notified translation on the exact goods for which the appellation has a reputation'.<sup>19</sup> In practice, the Lisbon Agreement has been less successful, because a number of countries do not have any registration system, and therefore cannot benefit from this convention. This is because, according to the Lisbon Agreement, countries must first protect and register their GIs within their own national borders.

Iran acceded to the Lisbon Agreement and implemented it on 9 March 2006. According to this Agreement, Iranian carpets are protected on the basis of appellation of origin, reputation, quality and characteristics. Before this Agreement, there was much confusion in this area and this affected the economy and cultural identity of the country. As the Lisbon Agreement protects those products that can be traced to specific origins with a certain amount of reputation and quality, Iranian carpets are eligible.

***Lisbon Agreement: Drawbacks and Recommendations***

- (1) The Lisbon Agreement should be revised and new provisions drafted, notably definition, scope of protection, the application process for trans-border AO and GI, in order to widen the coverage of topics.
- (2) One-third of the Lisbon Agreement Members who signed the Agreement did so after the conclusion of the TRIPS Agreement in 1994. The goal of the Lisbon Agreement is to globalize GIs; however, the Agreement has not been totally successful because only 27 countries have joined it, as of December 2011. Most of these countries are Mediterranean countries. It seems that developed countries think that the Lisbon Agreement is not sufficient.
- (3) A dispute settlement mechanism should be established within the Lisbon Agreement to settle any conflicts.
- (4) As the Lisbon Agreement provides strict protection, many countries refuse to sign the Agreement since (i) the Agreement obliges its members to change their laws; and (ii), the term 'appellation of origin' is considered a generic term in some countries.

(5) The Lisbon Agreement does not mandate member parties to choose a specific procedure in their national law and allows them freedom in choosing their desired detailed procedures, which results in a lack of uniformity in both definitions and administrative practices. Members protect GIs through various kinds of regulations. Some protect it under trademarks, other under various *sui generis* statutes.

**The Paris Convention**

The Paris Convention was created in 1883 for the protection of industrial property. It is known mostly for its provisions on patents and trademarks. Despite Article 1 of the Convention on 'indication of source and appellations of origin', these topics remain undefined and introduced at a very general level.<sup>20</sup> The Convention in its Article 10bis(3) prohibits 'indications or allegations the use of which throughout trade is liable to mislead the public as to the nature, the manufacturing process, or the characteristics' of the goods. This provision is a launching point for the TRIPS Agreement in protection of GI. Iran acceded to the Paris Convention in 1959 and because it includes provisions regarding collective right, Iranian handmade carpets belonging to various geographical territories may be protected through the said Convention.

The Paris Convention, beyond collective marks, provides protection for indication of source but not appellation of origin. However, since appellation of origin is a part of geographical indication, this regulation can be applied to appellation of origin as well. It protects products against any direct or indirect false indication of source or identity as well as against any act of unfair competition through the use of an indication. Again, this Convention, while requiring the member states to implement appropriate legal measures against unfair competition, leaves the details and standards to each country. According to Article 9(1), the civil sanctions apply to goods unlawfully bearing false indication, trademark or trade name. Accordingly, countries were banned from introducing carpets with Iranian appellation of origin. As per the Paris Convention provisions, the unlawful false indication need not be present on goods, because even an indirect use of false indication can be prosecuted legally and any consignment of such imported goods can be seized by countries.

Some countries such as the United States protect GIs through the trademark system comprising

collective rights and certification marks. Some of these products use the GI despite the fact that it does not originate from the indicated origin. But European countries disagree with this system because they believe that this system prevents producers from accessing a market since the products are already identified by trademark. Furthermore, they believe that extending the protection of Article 23 to other products such as handicrafts, agriculture and artisanal items 'would lead to a satisfactory and balanced international minimal level of protection of GIs for all products'.<sup>11</sup> According to Article 15.1 of the TRIPS Agreement, a trademark is used to distinguish the products of one producer from another. A trademark need not be descriptive; whereas, a GI must be descriptive. The geographic name of the GI must imply the geographical origin of the product it identifies. The trademark system in the United States is used by individuals or corporations. If a trademark is infringed, a corporation is treated as an individual and must defend its own rights before a court.<sup>11</sup> Most IP rights are protected individually, but some of them such as traditional knowledge and GIs are collective rights and it is not proper to protect them as individual rights.<sup>21</sup> Generally, GIs are used by communities, since they are based on the collective right concept.

In some countries collective marks cannot be protected as GIs under the Paris Convention. In other countries, it is difficult to sufficiently prove the special characteristics of a carpet from a specific geographical region, in order to stop exploitation. According to the Paris Convention, Iran is under obligation to protect its carpets as GI, but it had previously failed to do so. However, with the passing of the new legislation, namely the Law of Protection of Geographical Indication in Iran, protection has now been provided. The law provides complete protection by necessitating international registration consequent to domestic protection.

Further, in some countries that are party to the Paris Convention or the Madrid and Lisbon Agreements, there is no specific centralized body to handle the submission and following up of applications for protection. Thus, there are citizens of these countries who have, without authorization, exploited the Iranian appellations of origin or indications of source in favour of their carpets. They have, misleadingly or deceptively, through the practice of unfair competition, passed off their own carpets in international markets as Iranian. What is more, there

are a few countries which are main competitors of Iran as far their carpet market share is concerned, but are not members of the Madrid or Lisbon Agreements. No feasible action can be taken against unauthorized use of GIs of Iranian carpets in these countries. It is timely that the new laws of Iran are strengthened in terms of GI protection, particularly Iranian carpets in the complete sense.

### **Protecting Iranian Carpets as Traditional Knowledge under Geographical Indication**

It is impossible to confer an exclusive and precise definition of traditional knowledge (TK), because it is so broad and any attempt to give a complete definition remains impossible. However, the best definition seems to have been proposed by WIPO: 'tradition-based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names, and symbols; undisclosed information, and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary, or artistic fields'.<sup>22</sup> The GI protection over TK is proper, since GI confers collective rights on the producers. Therefore, given that TK is community-based, and GI is a collective right, it is plausible to protect Iranian handmade carpets as a TK under GI.

The production of handmade carpets is based on skill, knowledge and experience. The weaving process is based on traditional knowledge, and carried out by trained professional weavers who follow precise instructions. The special design, wool and weaving process of Iranian handmade carpets can qualify to be protected under GI as TK.

Traditional Knowledge should fulfill some prerequisites in order to be eligible to be protected under GI. First, it must be identified as a good. Second, the 'knowledge' in the good must be associated with a certain geographical area. Third, it must specifically enjoy a commercial reputation. Iranian handmade carpets have all such prerequisites to be protected as traditional knowledge under GI. Apart from the special wool from sheep that are reared in the diverse climate of Iran, the other distinctive feature of the weaving of the carpets is the human factor and this involves a considerable degree of human skill.

Certain features of Iranian carpets that need protection include: design, artistic design, plan,

weaving process, material, motifs, styles, colours and historical background or traditional knowledge in knot weaving. In fact, there are many features of Iranian carpets that distinguish them from other types of carpets. The most significant features are the design and the plan of Iranian carpets. These are embedded in traditional Iranian art and architecture. Expert designers are trained in such designs. In addition, certain materials and weaving processes also play a significant role. Specific types of weaving are applied and the carpets are woven by specific delicate methods, which distinguish them completely from other types of carpets.

The protection of TK is usually defined and framed based on either *sui generis* law or existing intellectual property laws. Some countries have adapted existing intellectual property systems to the needs of TK holders through *sui generis* measures. As such, the distinctive sign, special design, colour, wool and the style of weaving derived from specific regions of Iran and unique characteristics from indigenous resources of these localities comprise the traditional knowledge in Iranian carpets. This traditional knowledge can be protected either through the GI law in Iran (i.e., using existing intellectual property laws), or by adapting existing intellectual property laws through *sui generis* measures such as in India, which has amended its Patent Act to clarify the status of TK. Iran may focus its efforts on evolving a suitable *sui generis* system, by fulfilling specific policy needs, which would lead to the establishment of a distinct system for protection of Iranian handmade carpets.

### **Suggestions to Improve the Iranian Law of Geographical Indications**

It is true that Iran has legislated new laws for the protection of GIs, but the problem is that Iran has not acceded to the necessary international agreements such as the WTO and TRIPS. Iran needs to adapt its domestic laws according to the TRIPS Agreement in order to become a formal member of the WTO. Currently, Iran cannot obtain international protection of its GIs through the TRIPS Agreement, since it shall not be accepted by the WTO as a formal member till its legislation does not conform to WTO regulations. The aim of the TRIPS Agreement is to achieve free competition. The TRIPS Agreement has no regulations for the protection of producers since the Berne Convention has provided sufficient protection for the rights of producers. Therefore, most of the

TRIPS regulations have concentrated on the procedures of such protection, since the Berne Convention has remained silent on this matter. Although TRIPS does not mandate that its members should be members of the Berne Convention too, it is necessary that they accept the commitments of the Berne Convention. Iran has not acceded to the Berne Convention either.

Iran has recognized that among the conventions illustrated above, the best type of protection is provided by the TRIPS Agreement, both because of the number of countries that have acceded to the Agreement (above 150), and the wide prosecution offered under the Agreement for the breaching of geographical indications. However, such a protection under the TRIPS Agreement would not be available for Iranian products unless Iran joins the WTO. The new GI law is definitely a first step in the right direction. The advantages of Iran becoming a WTO member are many as illustrated below:

- (1) Many of the developed, developing and even least-developed countries around the world are actively working within the WTO to have the existing protection granted by the TRIPS Agreement to GIs for wines and spirits extended to cover all products.<sup>11</sup> This shall be advantageous to Iran in protecting its national heritage like Iranian carpets.
- (2) As Iran allows registration of GIs as trademarks and at the same time has in place a *sui generis* systems for their protection thereby, this may pose a number of problems in the use of geographic names. A trademark allows for multiple registrations, since it prohibits only identical signs and not similar signs.
- (3) It is better for Iran to establish a system that comprises a combination of TK and GI. Put simply, they can be mixed together, and protected according to both terms. The method, design, specific wool, weaving process and considerable degree of human skill which are invested in Iranian carpets qualify as traditional knowledge, and would be protected under GIs as discussed previously. Iran may use the *sui generis* system for the same.
- (4) It is highly recommended that Iran as a developing country, undertakes efforts to protect GIs as its natural wealth.
- (5) Legal protection under the TRIPS Agreement for GIs is granted for local territory; therefore, it is confined to the national jurisdiction, the same as for

many other IP rights. However, the international community established a remedy for these territorial features; wherein when a GI is recognized by a TRIPS signatory, other members of TRIPS, or any international community, will also recognize it. Given the large number of WTO members, Iran can only benefit since its GI can be protected over a larger geographical area.

(6) The Lisbon Agreement is the only major treaty that Iran has acceded to. However, the limited number of countries that have participated in the system reduces its effectiveness. Several factors brought about this situation. For instance, the definition of appellation of origin seems to be restrictive compared to the wider concept of geographical indication in the TRIPS Agreement. This is because it needs the cumulative requirements of quality and characteristics originating from a territory. Regardless of its reputation, the GI product would be protected once it complied with the constituting element/ protectable element of the product. However, WIPO's recent clarification stressing that, 'there is no cumulative requirement of quality and characteristics for an appellation of origin to qualify for protection under the Lisbon Agreement' may bring about a change in the scenario.<sup>3</sup>

(7) One benefit that Iran obtained by acceding to the Madrid and Lisbon agreements is that they include the international registration of signs; whereas the TRIPS Agreement does not include the same. However, due to the small number of members to the abovementioned agreements and the lack of a mechanism for resolving disputes arising from violations of rights in geographical signs, it seems that the most effective protection of geographical signs of Iranian goods, such as carpets and saffron, will be provided when Iran is officially a member of the WTO agreement. Consequently, Iran by joining WTO, can compel all WTO members to support their geographical signs, and simultaneously effectively prevent any unlawful use of its geographical signs through WTO's dispute resolution agency.

(8) Any delay by Iran in registering its specific carpet scheme shall include the risk of the relevant geographic names becoming generic.

## Conclusion

Iranian handmade carpets represent Iranian heritage and pride. Iran is the foremost exporter of these

valued carpets. A large number of handmade carpets in Iran can qualify to be registered as GIs. Also, the special designs, wools and weaving process can qualify to be protected under GI as traditional knowledge. In contrast to patents and trademarks, GIs and appellation of origin cannot gain international protection due to the variety of international conventions, as well as different legal systems and statutes in different countries. They have been less successful due to the large number of legal instruments. With the accession of Iran to the Paris Convention (with a substantial number of members), Lisbon Agreement and Madrid Agreement, Iran has had some success in providing protection to Iranian handmade carpets.

Initially, to a certain extent, being a member of the three relevant international conventions benefited Iran, particularly, in protecting Iranian carpets. However, previous Iranian laws derived from the conventions were not effective in safeguarding carpet production in Iran. Despite the superiority of Iranian carpets and of this fact being accepted by member states of these conventions, the legal interests in Iranian carpets remained at stake. The main reason being that these conventions were limited to only a small number of member states. It is clear that parties that did not fall within the ambit of these agreements threatened Iranian carpet production. Looking at developments both pre and post the new GI laws in Iran, it is seen that the effectiveness of legal protection before the enactment of the new law was substantially less. This failure in protection was mainly due to the lack of enforcement of the law at the international level, and this caused much economic loss for Iranian producers.

However, this protection is not complete. There is an urgent need to consider the position of Iranian carpets in the international arena. Iran should provide protection to the traditional knowledge involved in the carpet industry as well as attempt to accede to the TRIPS Agreement. For the time being, GIs in Iran are protected through both the law of geographic indication and collective marks. However, these legislations are not comprehensive enough, and such dual protection is likely pose a number of problems in future.

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