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Gaining Competitive Advantage through the Protection of Geographical Indications: An Analysis of the Tea, Sapphires and Cinnamon Industries of Sri Lanka



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Amrit Rajapakse

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99 St. Michael's Road, Colombo 3, Sri Lanka

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The views expressed are those of the authors and do not necessarily represent those of the Institute of Policy Studies.

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List of Abbreviations

ECJ	European Court of Justice
GI	Geographical Indication
GAP	Good Agricultural Practices
GMP	Good Manufacturing Practices
HACCP	Hazard Analysis and Critical Control Points
IGO	Indication of Geographical Origin
NAFTA	North American Free Trade Agreement
NGJA	National Gem & Jewellery Authority
TRIPS	Trade Related Aspects of Intellectual Property Rights
WTO	World Trade Organization
WIPO	World Intellectual Property Organization
WCO	World Customs Organization

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Executive Summary

Geographical indications (GIs) are a category of intellectual property that WTO Members are required to protect by the WTO TRIPS Agreement. Essentially, GIs are rights in names, signs or other indications that identify products originating in a country, region or locality, having special qualities, characteristics and/or reputation attributable to their geographical origin. A GI may be the name of a country, region or locality, such as Scotch whisky or Champagne wine, or it may be an invented name or symbol.

GI protection allows producers of the GI product to follow a strategy of product differentiation and niche marketing. As a result, such producers may be able to gain price premiums over and above the price of commodity products.

TRIPS sets out the basic scheme of protection that WTO Members are required to provide to GIs. However, it leaves the choice of how to implement the required protection to each Member. WTO Members protect GIs within their territories through a variety of approaches; i) laws focusing on business practices, i.e., to prevent unfair competition and provide for consumer protection, ii) trademark law, and iii) special means of protection.

As a result, however, individual national systems differ from each other in important respects. Therefore, obtaining GI protection abroad requires significant legal expertise, and should be based on a carefully planned strategy. In Sri Lanka, the Intellectual Property Act No.36 of 2003 provides for the protection of GIs under all three of the above approaches.

The costs of protecting include setting up an institutional framework to oversee the GI production process. This involves formulating a set of rules governing the right to use the GI, and subsequent monitoring to ensure that the rules are being complied with. Costs also have to be incurred in securing GI legal protection domestically and overseas. This comprises of the cost of registering (or obtaining recognition for) GIs, and the cost of taking enforcement action in the event of infringement.

Sri Lanka's tea, sapphire and cinnamon industries produce goods that have qualities, characteristics and reputations that are unique to their geographical origin. A legal–economic analysis of geographical indications in relation to the tea, blue sapphires and cinnamon sectors in Sri Lanka suggest that a GI strategy would be beneficial for all three sectors. The case for tea and sapphires differs slightly from that of cinnamon, in that the former two have regulatory bodies that reduce the institutional cost of implementation. The cinnamon industry unfortunately lacks such a body. Further, the cinnamon sector also is different in that its main competitive

challenge is from a rival product, cassia, which is passed off as cinnamon – the *species*, rather than as *Ceylon cinnamon* (the *GI*). Nevertheless, a GI strategy is still advantageous for this sector.

While we provide a sector-wise approach, the importance of niche marketing in the global context and the variety and variations in national systems of GI protection suggest the need to base the international protection of each GI on separate legal-economic cost-benefit analyses carried out for each individual key overseas market. An overall strategy would be to register the GIs in Sri Lanka first.

විධායක සමාලෝචනය

භූගෝලීය වශයෙන් පෙන්නුම් කරනු ලබන දේවල් (GI) යනු WTO TRIPS ගිවිසුම මගින්, WTO සාමාජිකයන් විසින් ආරක්ෂා කළ යුතුව තිබෙන බුද්ධිමය දේපළ වර්ගයක් වේ. අත්‍යාවශ්‍යක වශයෙන්, මෙම භූගෝලීය වශයෙන් පෙන්නුම් කරන දේවල් නම්, යම්කිසි රටක, ප්‍රදේශයක හෝ ස්ථානයක උපත ලබන නිෂ්පාදනවල අනන්‍යතාවය පෙන්වන නාමයන් සංඥා හෝ වෙනත් දර්ශකයන් පමණක් නොවේ. ඒවායේ භූගෝලීය උපතට විශේෂ ගුණාංග, ලක්ෂණ සහ/හෝ එවායේ භූගෝලීය උප ලක්ෂණයන්ගේ කීර්තියේද, අයිතීන් ලෙස සැලකේ. භූගෝලීය වශයෙන් පෙන්නුම් කරන්නේ, ස්කොච් විස්කි හෝ ෂැම්පේන් වයින් වැනි යම් රටක නමක්, පළාතක්, ප්‍රදේශයක් හෝ යොදාගන්නා ලද නාමයක් හෝ සංකේතයක් විය හැකිය.

භූගෝලීය දර්ශකවල (GI) නිපැයුම් සඳහා, භූගෝලීය දර්ශක ආරක්ෂා කිරීම තුළින්, නිෂ්පාදන විභින්නත්වය සහ සීමිත වෙළඳපොළ (niche marketing) ආශ්‍රිත ක්‍රමෝපායක් අනුගමනය කිරීමට ඉඩ සළසා ඇත. එහි ප්‍රතිඵලයක් වශයෙන්, එවන් නිෂ්පාදකයින්ට නිපැයුම් භාණ්ඩවල මිලට වඩා මිළ වාරිකයන්/අධික මිලක් ලබාගැනීමට අවස්ථාව සැළසේ.

භූගෝලීය දර්ශකයන් සඳහා WTO සාමාජිකයන් විසින් සැපයීමට නියමිතව ඇති මූලික ආරක්ෂිත ක්‍රියාපටිපාටියක් TRIPS විසින් ඉදිරිපත් කර ඇත. කෙසේ නමුත්, ඒ ඒ සාමාජිකයා හට අවශ්‍ය ආරක්ෂාව ක්‍රියාවට නැංවිය යුත්තේ කෙසේ ද යන වරණයක් එයින් ලැබේ. යොමුවිම් කිහිපාකාරයකින් තම ප්‍රදේශ තුළ භූගෝලීය දර්ශක මෙම WTO සාමාජිකයෝ ක්‍රියාත්මක කරති. i) ව්‍යාපාරික වැඩකටයුතු කෙරෙහි අවධානය යොමු කරන්නා වූ නීතීන්, එනම්, අසාධාරණ තරඟකාරීත්වය වැළැක්වීම සහ පාරිභෝගික ආරක්ෂාව සැළසීම, ii) වෙළෙඳ ලකුණ සම්බන්ධ නීතිය, සහ iii) විශේෂ ආරක්ෂා මාර්ග.

කෙසේ නමුත්, එහි ප්‍රතිඵලයක් වශයෙන්, වැදගත් අංශ සම්බන්ධව බලන කල, ප්‍රත්‍යෙක ජාතික ක්‍රම ගත් කල ඒ එකිනෙක වෙනස් වේ. මේ හේතුකොටගෙන, භූගෝලීය දර්ශක ආරක්ෂාව සම්බන්ධව විදෙස් රටවලදී වැදගත් නීතිමය ප්‍රවීණත්වයක් ඒ සඳහා අවශ්‍ය වන අතර, එය ප්‍රවේශමෙන් සැළසුම් කළ ක්‍රමෝපායක් මත පදනම් විය යුතුවේ. ශ්‍රී ලංකාවේ, ඉහත සඳහන් යොමුවිම් තුන සම්බන්ධව 2003 බුද්ධිමය දේපළ පනත අංක 36 යටතේ භූගෝලීය දර්ශක සඳහා ආරක්ෂාව සපයා ඇත.

භූගෝලීය නිෂ්පාදන ක්‍රියාදාමය පාලනය කිරීම සඳහා ආයතනික රාමුවක පිහිටුවීම සම්බන්ධව වියහියදම් ඇතුළත් වී ඇත. නීතිරීතිවලට එකඟ වන්නේ ද යන්න ගැන සහතික කිරීම පිණිස භූගෝලීය දර්ශක පාලනය කිරීමට ඇති අයිතියට බලපාන්නා වූ නීති පද්ධතියක් නිර්මාණය කිරීම ද මෙයට අදාළ වන අතර, ඉන්පසු එය "මොනිටර්" කරනු ලැබේ. ගාහ්‍ය සහ විදේශික වශයෙන් භූගෝලීය නීතිමය ආරක්ෂාව ලබාදීම සඳහා ද වියදම් වනු ඇත. මෙයට, ලියාපදිංචි වීමේ (හෝ භූගෝලීය දර්ශක සඳහා පිළිගැනීමක් ලබාදීම සඳහා) සහ උල්ලංඝනය කිරීමකදී බලාත්මක කිරීම සඳහා වියදම් ද ඇතුළත් වේ.

ශ්‍රී ලංකාවේ තේ, නිල් මැණික් සහ කුරුඳු කර්මාන්ත මගින් ගුණාත්මක, ලාක්ෂණික සහ පිළිගැනීමක් ඇති නිෂ්පාදන බිහිකරන අතර, එම නිෂ්පාදනවලට ආවේණික අද්විතීය භූගෝලීය ප්‍රභවයක් ද ඒවාට ඇත. ශ්‍රී ලංකාවේ තේ, නිල් මැණික් සහ කුරුඳු යන අංශවලට අදාළ භූගෝලීය දර්ශකයන් සම්බන්ධව නෛතික ආර්ථික විශ්ලේෂනයක් මගින් ඉඟි කරනුයේ, භූගෝලීය දර්ශකයක් මෙම අංශ තුනටම වාසිදායක බවයි. කුරුඳු ගත්කල, එය තේ සහ නිල් මැණික්වලට වඩා සුළු වශයෙන් වෙනසක් පෙන්නුම් කරයි. එයට හේතුව, තේ සහ නිල් මැණික්වලට, ක්‍රියාත්මක කිරීමේ ආයතනික වියදම් අඩුකරන්නා වූ නියාමන මණ්ඩල දෙකක් නිබීමයි. අවසානාවකට, එවන් මණ්ඩලයක අඩුපාඩුවක්, කුරුඳු කර්මාන්තයේ පවතී. තවද, කුරුඳු අංශය ගත් කල එහි තවත් වෙනසක් නිබේ එනම්, ලංකාවේ කුරුඳු (භූගෝලීය දර්ශකය) වෙනුවට එහි ප්‍රධානම තරඟකරුවන ප්‍රතිවිරෝධී නිෂ්පාදනය ලෙස සැළකෙන "කසියා", කුරුඳු නැමැති ජාතිය ලෙස සළකනු ලැබීමේ අභියෝගයට පැවතීම වේ. මේ කුමක් වුවත්, භූගෝලීය දර්ශකය ක්‍රමෝපාය මෙම අංශයට තවමත් වාසියක්ව පවතී.

අංශයක් වශයෙන් මෙහි ලා අප විග්‍රහයක් සැපයුවද, විශ්වමය අදහසකින් සීමිත වෙළඳපොලෙහි වැදගත්කම සහ භූගෝලීය දර්ශක ආරක්ෂාවේ ජාතික ක්‍රමවල විවිධත්වය සහ විචල්‍යත්වයන්වලින් ඉඟි කරනුයේ, ඒ ඒ ප්‍රධානම සහ ප්‍රත්‍යෙක ජාත්‍යන්තර වෙළඳපොල සම්බන්ධව කරන ලද නෛත්‍යක ආර්ථික පිරිවැය-ප්‍රතිලාභ විශ්ලේෂනයක් පදනම් කරගෙන විය යුතු වේ. සමස්ත ක්‍රමෝපායන් වනුයේ, ප්‍රථමයෙන්ම ශ්‍රී ලංකාවේ භූගෝලීය දර්ශකයන් ලියාපදිංචි කිරීම වේ.

நிறைவேற்று பொழிப்பு

புவியியல் குறிகாட்டல்கள் எனப்படுபவை உலக வர்த்தக அமைப்பின் TRIPS உடன்படிக்கையின் மூலம் பாதுகாக்குமாறு உலக வர்த்தக அமைப்பின் உறுப்பினர்கள் தேவைப்படுத்தப்படும் புலமைச் சொத்து வகுதியொன்றாகும். புவியியல் குறிகாட்டல்கள் என்பவை அத்தியாவசிய ரீதியாக விசேட தரங்களையும் குணவியல்புகளையும் அத்துடன் அல்லது நற்பெயரையும் கொண்டவைகளும் அவற்றின் புவியியல் ரீதியான அவற்றின் பிறப்பிடத்திற்கு கற்பித்துக் கூறப்படத்தக்க ஓர் நாட்டில் அல்லது பிராந்தியத்தில் அல்லது உள்நாட்டு அமைவிடத்திலிருந்து உருவாவதாகக் கண்டறியப்படுபவைகளுமான உற்பத்திப் பொருட்களை பெயர்களில் அல்லது அடையாளங்களில் அல்லது பிற குறிகாட்டல்களிலுள்ள உரிமைகளாகும். ஓர் புவியியல் குறிகாட்டல் என்பது ஸ்கொட்ச் விஸ்கி அல்லது சம் பேன்னவின் போன்ற நாடொன்றின் அல்லது பிராந்தியமொன்றின் அல்லது அமைவிடமொன்றின் பெயராகவிருக்கலாம் அல்லது புனையப்பட்ட பெயராக அல்லது குறியீடாகவிருக்கலாம்.

புவியியல் பாதுகாப்பானது புவியியல் குறிகாட்டல் உற்பத்திப் பொருளின் உற்பத்தியாளர்கள் உற்பத்திப் பொருள் வேறுபடுத்தல் மற்றும் சிறப்புக் குறுஞ் சந்தைப்படுத்தல் ஆகியவற்றின் திறமுறையொன்றை உற்பத்தியாளர்கள் பின்பற்றுவதை அனுமதிக்கின்றது. இதன் விளைவாக அத்தகைய உற்பத்தியாளர்கள் வியாபாரப் பண்ட உற்பத்திப் பொருட்களின் விலைக்கும் கூடுதலாக விலை உபரிப் பணத்தொகைகளை பெறக் கூடியவர்களாகவிருப்பர்.

புவியியல் குறிகாட்டல்களுக்கு உலக வர்த்தக அமைப்பின் உறுப்பினர்கள் வழங்கவேண்டுமெனத் தேவைப்படுத்தப்படும் பாதுகாப்பு அடிப்படைத் திட்டத்தை TRIPS விதித்துரைக்கின்றது. எனினும் அது தேவைப்படுத்தப்படும் பாதுகாப்பை எவ்வண்ணம் செயல்முறைப்படுத்த வேண்டுமென்பதை தெரிவு செய்யும் விருப்புரிமையை உறுப்பினர் ஒவ்வொருவரிடமும் விட்டுள்ளது. உலக வர்த்தக அமைப்பின் உறுப்பினர்கள் புவியியல் குறிகாட்டல்களைத் தங்களுடைய ஆட்சி எல்லைகளுக்குள் பல்வகை அணுகு வழிகள் மூலமாகப் பாதுகாக்கின்றனர். அவர்களின் அந்த அணுகுவழிகளாவன: (i) வியாபாரத் தொழில் முறைகள் மீது தீவிர கவனம் செலுத்தி அதாவது நியாயமில்லாத போட்டியைத் தடுப்பதற்கான அதாவது நியாயமில்லாத போட்டியைத் தடுப்பதற்கான வியாபாரத் தொழில் முறைமீது கவனம் செலுத்துகின்ற சட்டங்களைத் தயாரித்தல்; மற்றும் (ii) வியாபாரச் சின்னம் சம்பந்தப்பட்ட சட்டம் தயாரித்தல்; அத்துடன் (iii) பாதுகாப்பிற்கான விசேட வழிவகையை உருவாக்குதல். மேற்போந்த இந்த வழிவகைகள் மூலமே உலக வியாபார அமைப்பு உறுப்பினர்கள் புவியியல் வழிகாட்டல்களுக்கு பாதுகாப்பு வழங்குகின்றனர்.

எனினும் இதன் விளைவாக தனித்தனி தேசிய முறைமைகள் முக்கியமான விடயங்களில் ஒன்றிலிருந்து மற்றது வேறுபடுகின்றது. எனவே வெளிநாடுகளில் புவியியல் குறிகாட்டல்களுக்கு பாதுகாப்பு பெறுதல் என்பது குறிப்பிடத்தக்க சட்ட நிபுணத்துவத்தை வேண்டுகின்றதுடன் கவனமாகத் திட்டமிடப்பட்ட திறமுறையை அடிப்படையாகக் கொண்டிருத்தல் வேண்டும். இலங்கையில் 2003 ஆம் ஆண்டின் 36ஆம் இலக்க, புலமைச் சொத்துகள் சட்டமானது மேற்போந்த மூன்று அணுகு முறைகளின் கீழ் புவியில் வழிகாட்டல்களுக்கு பாதுகாப்பு வழங்குகின்றது.

பாதுகாப்பு வழங்கும் செலவுகள் புவியியல் குறிகாட்டல்கள் உற்பத்தி முறையை மேற்பார்வை செய்வதன் பொருட்டு நிறுவன ரீதியான கட்டுக்கோப்பொன்று நிறுவுவதையும் உள்ளடக்கியுள்ளது. இது புவியியல் குறிகாட்டல்களை பயன்படுத்தும் உரிமையை ஆட்சி புரியும் விதி தொகுதியொன்றை வகுக்கும் வேலையையும் அதன் பின்னர் இவ்விதிகள் கடைப்பிடிக்கப்படுவதை உறுதிப்படுத்துவதற்கான கண்காணிப்பு வேலையையும் சம்பந்தப்படுத்துகின்றது. புவியியல் குறிகாட்டல்களுக்கு உள்நாட்டிலும் வெளிநாடுகளிலும் சட்டப் பாதுகாப்பை பெறுவதற்கும் கூட செலவுகள் செய்யப்பட வேண்டியுள்ளது. இது புவியியல் குறிகாட்டல்களைப் பதிவு செய்வதற்கும் அல்லது அவற்றிற்கான அங்கீகாரத்தைப் பெறுவதற்கான செலவையும் தலையீடு செய்யப்படுமிடத்து அதற்கெதிராக வலியுறுத்தல் செயலை மேற்கொள்வதற்கான செலவையும் உள்ளடக்குகின்றது.

இலங்கையின் தேயிலை, இரத்தினக்கல், கறுவா கைத்தொழில்கள் சிறந்த தரங்களையும் குணவியல்புகளையும் நன்மதிப்பையும் கொண்ட பொருட்களை உற்பத்தி செய்கின்றன. இப்பொருட்கள் அவற்றின் புவியியல் பிறப்பிடத்தின் தனிச்சிறப்புத் தன்மையைக் கொண்டவைகளாக உள்ளன. இலங்கையிலுள்ள தேயிலை, இரத்தினக்கல், கறுவா துறைகளின் தொடர்பில் புவியியல் குறிகாட்டல்களின் சட்ட பொருளாதார ரீதியான பகுப்பாய்வானது புவியியல் குறிகாட்டல்கள் திறமுறையானது இந்த மூன்ற துறைகளுக்கும்

நன்மையளிப்பதாகவிருக்குமென ஆலோசனை வழங்குகின்றது. தேயிலைத் துறையும் இரத்தினக் கற்கள் துறையும் கறுவா துறையிலிருந்து சிறிய அளவில் வேறுபடுகின்றன. இது ஏனெனில் முன்னைய இரண்டு துறைகளும் நடைமுறைப்படுத்தலின் நிறுவன ரீதியான செலவைக் குறைக்கும் ஒழுங்குறுத்தற் சபைகளைக் கொண்டிருக்கின்றன என்பதனாலாகும். துரதிர்ஷ்டவசமாக கறுவாக் கைத்தொழில் அத்தகைய சபையொன்று இல்லாமலிருக்கின்றது. மேலும் கறுவா துறையானது அதன் அதன் பிரதான போட்டிகரமான சவாலை கறுவாவிற்கு பதிலாக முன்வைக்கப்படக்கூடிய கசியாவினால் (தாழ்ந்த கறுவா இனப் பட்டை) எதிர்நோக்குகின்றது. இருந்தபோதிலும் குறிகாட்டல்கள் திறமுறையானது இன்னும் இத்துறைக்கு அனுகூலமானதாகவே உள்ளது.

நாம் துறைவாரியான அணுகுமுறையை வழங்குகின்றபோதிலும் உலகளாவிய ரீதியில் சிறப்புக் குறுஞ் சந்தைப்படுத்தலினதும் புவியியல் குறிகாட்டல்களின் தேசிய முறைமைகளின் பாதுகாப்பின் பல்வகைமையும் வேறுபாடுகளும் புவியியல் குறிகாட்டல் ஒவ்வொன்றினதும் சர்வதேச பாதுகாப்பை வெளிநாட்டுச் சந்தையிலுள்ள அதிமுக்கியமான தனிப்பட்டவர் ஒவ்வொருவருக்குமாக வெளிநாட்டுச் சந்தையில் செய்யப்படும் சட்டச் சிக்கனச் செலவு நன்மைப் பகுப்பாய்வு அடித்தளத்தின்மீது செய்யப்பட வேண்டிய தேவை பற்றி ஆலோசனை வழங்குகின்றது. முதலில் இலங்கையில் புவியியல் குறிகாட்டல்கள் பதிவு செய்யப்படுவதே எல்லாவற்றையும் உள்ளிட்டவொரு திறமுறையாகவிருக்கும்.

1. Introduction

Is an intellectual property-based approach the optimal strategy for developing Sri Lanka's tea, sapphire and cinnamon industries? By exploiting a reputation for quality based on geographic origin, could the promotion and protection of "Ceylon tea," "Ceylon Sapphires" and "Ceylon Cinnamon" marks, lead to dynamic growth in these sectors? This may be achieved by obtaining a premium price for these quality-differentiated products, once market recognition is achieved. This reputation for quality may be guarded by the protection of "geographical indications" (GIs).

Geographical indications (GIs) are a category of intellectual property protected under the World Trade Organization's (WTO) 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), alongside other categories of intellectual property such as copyrights, trademarks and patents. GIs are distinctive signs or expressions that serve an identifying function, and are used to distinguish goods having certain properties or a reputation attributable to a particular geographic area, be it a WTO member country or a region within a country. The specific qualities of the product may be due to local geographic factors (such as climate and soil) and/or to human factors present at the location (such as a traditional manufacturing method or any particular manufacturing technique).

They differ from a trademark, in that a trademark identifies the supplier firm of a good, and can also be transferred or licensed freely. GIs may be used by all firms within the specified geographic area, but cannot be transferred or licensed to firms outside the geographic area. They are also different from service marks which identify the suppliers of services, and collective marks which protect a specific sign that identifies goods produced by members of an association. On the other hand, GIs have some similarities with certification marks, or guarantee marks, which protect a sign that belongs to a legal entity supervising or laying down standards for goods or services. Certification marks indicate that goods or services have met the owner's standards, though the owner cannot use it. Certification marks can certify a geographic origin or quality standard.

Geographical indications may be subsumed under the convenient shorthand "indications of geographical origin" (IGOs), which include related protected designations such as "indications of source" and "appellations of origin." GIs differ from standard "indications of source" (e.g. "made in Sri Lanka") in the sense that the latter are not intended to identify any element of quality or reputation. Although GIs are more similar to "appellations of origin,"[1] they differ in that to be protected by an "appellation of origin" the actual quality and characteristics of the product have to be attributable to the geographic origin (reputation alone is insufficient). Further, appellations of origin often have to be direct names of geographic spaces, and cannot be simply a sign or symbol.

The basic feature of GIs is rooted in the beginnings of trade from the time of antiquity, when certain areas in the world were reputed for producing certain goods. Some traditional examples of such geographical

[1] The term "indications of geographical origin" (IGOs) is adopted as a common denominator in the WTO Secretariat's Summary paper (IP/C/W/253) for ease of reference only, and is not a term recognized or defined in the applicable legal instruments (see WTO, 2003). "Indications of source" and "appellations of origin" are returned to in section 3.1 of the present report.

areas, and their related goods, through the ages, are China (silk), Persia (carpets), Sheffield (cutlery), Switzerland (watches, chocolates), Cheddar (cheese), Scotland (whisky), Champagne (sparkling wine) and Cuba (cigars). The reputation these geographical areas (which encompassed countries, regions and localities) had received for these products became a valuable asset as a marketing tool for the local producers, as it enabled them to charge a higher price and/or increase their market share. This depended crucially on there being some means of identifying the goods to their geographical origin. This led to the entering into use of various indications of geographical origin (IGOs) in relation to goods. Such IGOs included fanciful words and signs (such as guild marks and heraldic symbols) as well as direct use of names of countries, regions and localities (for example Scotch whisky, Champagne, Cognac).

This study evaluates the costs and benefits of pursuing protection of Sri Lankan GIs, in Sri Lanka and abroad, with particular reference to the tea, sapphires and cinnamon industries. Section 2 presents the economic benefits of protecting GIs. Section 3 shows how they are protected multilaterally while Section 4 covers their national implementation in Sri Lanka. Section 5 discusses the costs involved in GI protection. Sections 6, 7 and 8 provide sector-wise analyses of the appropriateness of GI protection for the tea, sapphires and cinnamon industries, respectively. Section 9 provides a way forward strategy on GI protection.

2. Economic Rationale of Protecting GIs

Producer Profits: The economic value of GIs leads to the need for legal protection. The economic benefits of GIs for producers are similar to the benefits of protecting trademarks and patents. It rewards producers from a geographic area that have developed a quality product through investment and a long-time tradition, and prevents outside producers and producers from the geographic area who do not meet the production requirements from "free riding" on this reputation. Therefore, the use of GIs facilitates product differentiation and niche marketing. This represents today a counter-reaction to the increasing de-localisation and product homogenisation that has been taking place in the agri-food industry since the mid-twentieth century, prompted by the expansion of global trade (Rangnekar, 2002). Sales of agricultural products and foodstuffs under European protected designations of origin (a type of IGO) are reported to have grown at a rate of 5-10 per cent per year, to have reached Euro 7.7 billion in 2001 (Correa, 2002).

Producers receive increased profits by achieving price premiums for their geographically specific, high quality product. Examples of such premiums include the 20 per cent price premium that Italian "Toscano" (i.e., from the Tuscany area) olive oil receives over standard Italian olive oil, the market price for Bresse poultry in France that is four times that of regular poultry meat, the 10 per cent premium for milk used to produce French Comté cheese (Babcock and Clemens, 2004), and the premium of up to 50 per cent that Parma ham receives over other hams in European stores (Gumbel, 2003).

However, there are obvious limits to the size of such markets. In the 1990s, locally produced foodstuffs accounted for 10.6 percent of the total foodstuffs market in France, 10.7 per cent in Italy, 6.7 per cent in

Spain and 5.2 per cent in Portugal (Rangnekar, 2002). In addition, success depends on consumers recognizing the link between the GI and the specific product characteristics, and placing a value on those characteristics - which in turn depends on effective marketing.

Consumer Protection: As the products traded under a GI become commercially successful, rival producers often respond by trying to pass off their own products as those sold under the GI, or at least try to "free-ride" on the goodwill of the GI. Thus protection of GIs benefits consumers by protecting them from false and deceptive use of geographic identities for products. Such action hurts both consumers as well as genuine producers. In the case of false use of GIs, as stated by the World Intellectual Property Organization (WIPO, 2006),

> "The former are deceived and led into believing they are buying a genuine product with specific qualities and characteristics, while they in fact get a worthless imitation. The latter suffer damage because valuable business is taken away from them and the established reputation for their products is damaged."

This is also true in the case of deceptive use of GIs, where the GI may be literally true but consumers are led to believing that the goods originate from some place other than their true source. An example would be where there are two places with the same name, but only one of them is famous for using that name in relation to a certain product. The use of that name in relation to similar products originating in the other place would be literally true, but mislead consumers to believing that the goods are from the famous place.

Industry Investment: The existence of effective legal protection also encourages investment in the GI-protected sector. Producers (or potential producers) of a GI good would have little incentive to invest in building up a differentiated product, if outside producers were free to appropriate the associated economic returns. Such appropriation could take place not only by false or deceptive use of GIs, which misleads consumers, but also by "free-riding" off the GI's reputation, such that consumers are not deceived, but the geographical based reputation is used by outsiders indirectly. Examples are the use of the GI with qualifying words such as "kind," "type," "like," "make" or "imitation", as in the case of "Champagne-like Californian Sparkling Wine." This hurts the genuine producers because it dilutes the goodwill associated with the genuine product, erodes their market share, and also creates the danger of the GI being rendered generic.

Rural Development: Apart from protecting genuine producers and consumers, GIs can importantly promote rural development. Many of the products covered (or potentially covered) by GIs are agricultural products and products which tend to display a rural bias in location. As a result, through successful product differentiation, GIs can help to alleviate rural unemployment and stimulate rural incomes (see the case of Comté cheese, below). This is particularly relevant for Sri Lanka where both the incumbent government and the opposition have emphasized the need to spread employment outside the Western Province, to reduce poverty. Although the main GIs considered in this report are "national" GIs (apart

from the speciality tea GIs) and do not refer to a particular region in Sri Lanka, they would promote non-urban incomes because of the nature of the products being considered.[2] However, whether consumer price premiums will actually benefit producers and workers through higher prices and wages, or stay in the hands of exporters or middlemen, depends on the distribution of bargaining power in the value chain. Where there is an imbalance of bargaining power, regulatory intervention may be necessary to ensure the equitable distribution of the GI product's profits.

Box 2.1
GIs and Rural Development – The Case of Comté and Emmental

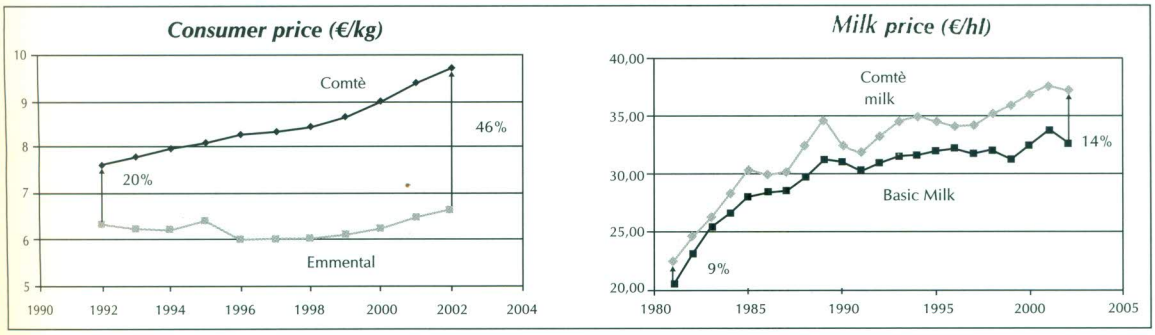
Comté is a French cheese originating in the Franche-Comté region, which also used to produce French Emmental cheese. However, the producers of Comté decided to follow a GI-based strategy for their product, whereas the producers of French Emmental decided to follow an industrial strategy. As a result, Comté production has remained in the region as an upmarket product, whereas most of Emmental production shifted to other parts of France where labour was cheaper, and become a basic product. Between 1992 and 2002, the consumer price of Emmental stagnated while the consumer price of Comté steadily increased (see chart left).

The success of Comté's GI strategy has brought several benefits to its region. In particular, the consumer price premium has led to price premiums throughout the production chain. Thus, even local milk producers who supply the milk for making Comté receive a premium above the price of basic milk (see chart right). Further, because of the localized nature of production due to the GI approach, the size of manufacturing units is smaller, and more labour intensive. The combination of increased farm profitability and labour intensity has helped to mitigate the rural exodus. Between 1988 and 2000, the number of milk farm closures in the Comté GI area was almost half that of the rest of Franche-Comté, and also well below the national figure. Another, indirect benefit has been an increase in tourism to the GI area, as a result of the fame of Comté.

Traditional Knowledge: GIs may also provide a strategy to protect the traditional knowledge of indigenous communities in the production of food, medicines, handicrafts and other products that have evolved over time. These collective traditions may be secured for the developers of this traditional collective knowledge. In this case, GIs are more appropriate than other intellectual property instruments because they are owned and utilized collectively, and do not expire like a patent. Examples of such cases are Murano glass from Venice and Mysore rosewood inlay from India.

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[2] Poverty among the estate sector is considered the highest relative to the rural and urban sectors, while much of the cinnamon industry is located in the southern region where poverty is high, and many cinnamon farmers remain affected by the 2004 Asian Tsunami. In the sapphire industry, most of the gem pits are located in the Sabaragamuwa Province where the poverty rate is over 30 per cent. Therefore, vital and thriving tea, cinnamon and sapphires industries would be very important for rural incomes and development.



Source: Cotier (2005).

Promoting value addition: GI protection might be a means of promoting greater domestic value addition, by requiring local value addition in the conditions for the use of the GI. For example, under the Sri Lanka Tea Board's licence conditions, the Ceylon Tea lion logo trademark may only be affixed on value-added tea exports, packed by domestic packers. Through its concurrent registrations abroad, foreign packers are prevented from affixing the lion logo on their packs. However, it should be noted that GI protection may not grant exclusive rights in respect of the entire value chain. This depends on the nature of the product, as illustrated in two cases concerning GIs, Rioja wine and Parma ham, described in the box below.

Box 2.2
Limits of GI Protection in the Industry Value Chain – Rioja wine and Parma ham

"Rioja" is a wine from the region of the same name in northern Spain. It is a protected GI under European law. However, the Spanish rules limit the right to affix the GI to wine bottled in cellars in the Rioja region itself. Therefore, other countries cannot import the wine in bulk and bottle it in their territories, and describe it as "Rioja." Belgium brought a case against Spain in the European Court of Justice (ECJ), arguing that these rules were detrimental to the free movement of goods under European law. The ECJ rejected Belgium's claim. It held that Spain's requirement that the wine should be bottled in the region itself was aimed at *safeguarding the quality of the product*, and consequently, the reputation of the GI. The Court held that the rules were a *necessary and proportionate* means of upholding the reputation enjoyed by the Rioja designation of origin.

"Parma" is a protected GI for ham originating in the Parma region in Italy. Italian rules restricted the use of the "Parma" GI to ham sliced and packaged in the Parma region itself. Some UK supermarkets imported the ham from Italy and sliced and packaged it in the UK and sold it as "Parma ham." The Italian Parma ham consortium filed cases in the UK courts, alleging passing off and breach of European law. Both actions were dismissed by the UK courts. With respect to the passing off action, the UK Court of Appeal held that there was no misrepresentation as to the nature of the product being sold. In the action based on EU law, the British judge held that the Italian rules did not have direct effect in the UK. In appeal, the ECJ held that the ham must be packed and sliced in Parma itself in order to use the Parma GI. Following its previous ruling in the Rioja case, the ECJ held that the conditions relating to Parma ham were aimed at safeguarding the quality and authenticity of the product and associated GI, and were necessary and proportionate means for attaining this objective.

Source: Lucatelli, 2000; Padayachee, 2003.

3. The International Legal Regime for GI Protection

The international legal regime for GI protection is contained in TRIPS. However, the implementation of the TRIPS regime is through the national legal systems of WTO Members. Therefore, the interface between TRIPS and national laws is very important. In addition, at the international level TRIPS also interfaces with a number of other legal regimes dealing with IGOs. This section will first briefly refer to these international regimes, followed by a detailed discussion of the TRIPS regime and its interface with national law.

3.1 The Road to TRIPS

Apart from TRIPS, there are several other international treaties protecting different kinds of IGOs, ranging from multilateral treaties to regional and bilateral agreements. The main multilateral treaties are the 1883 Paris Convention for the Protection of Industrial Property (last revised 1967 and amended 1979) and the 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (last revised 1958), which include provisions for the protection of "indications of source," and the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (last revised 1967 and amended 1979), which deals with the protection of "appellations of origin." Each of these treaties is administered by the WIPO. Appendix Table 1 provides a comparison of these regimes with the TRIPS GI regime.

In addition to the multilateral treaties, provisions related to GIs are contained in regional agreements such as the North American Free Trade Agreement (NAFTA), and various bilateral agreements such as a number of bilateral agreements concluded by the EC. Such agreements often grant greater protection than TRIPS for GIs originating in the territories of the parties, for example by agreeing to grant protection to GIs that had been considered to have become generic.

3.2 The TRIPS GI Regime

The TRIPS GI regime has two elements - the eligibility requirements for protection, and the scope of protection once the eligibility requirements have been met. The eligibility requirements comprise of positive and negative requirements. The positive requirement is that the indication, to be protected, must fall within the TRIPS definition of a GI. According to TRIPS (Art. 22.1),

> "Geographical indications 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."

Three key elements of this definition are, that a GI is: i) an "indication," ii) that the indication links the good and its geographic origin, and iii) that the good has some distinctive features or reputation arising from its origin. "Indication" is a very broad term and can be the name of a country, region, or locality, a

fanciful name or a symbol (such as a depiction of the Statue of Liberty for the USA). Thus the word "Ceylon" may be considered an indication even though the country name changed to Sri Lanka in 1972.

The negative requirement is that, the indication should further not fall within any of the exceptions set out in TRIPS. Two general exceptions are set out in Article 24. Firstly, a GI may not receive protection if it has become the common name for the type of goods it is associated with, in the country where protection is sought (Art. 24.6) - in this case it no longer fulfils its function of identifying a product as originating in a particular geographical area, and is said to have become a "generic term." Examples of GIs that have become generic and lost their right to protection are Cheddar cheese and Dijon mustard, which are now made in many regions of the world.

The second exception is where the GI is not protected, or has fallen into disuse, in its country of origin (Art. 24.9). Unlike the previous exception, which depends on the situation in the country where protection is sought, this exception relates to circumstances within the GI's direct sphere of activity. Therefore it is of fundamental importance for countries and producers seeking to penetrate international markets with their GI-based products to ensure that the GI is protected under their domestic law. In view of the importance of this requirement, the Sri Lankan domestic legal framework for GI protection will be discussed in detail after this section.

Having met the eligibility requirements, the second element of TRIPS is the scope of protection granted. TRIPS provides two main levels of protection for GIs, depending on the type of product.

Article 22 applies to all GIs, and they are protected against the following kinds of use:

- use that misleads the public as to the origin of the goods
- acts of unfair competition as defined in the 1967 Paris Convention[3]
- use in a trademark with respect to goods not originating in the territory indicated by the GI, if the public can be misled as to the origin of the goods.

However, Art. 24.5 specifically permits the continued use of a trademark consisting of a GI that has been applied for or registered in good faith prior to TRIPS becoming applicable in that country, or prior to the GI being protected in its country of origin - again highlighting the importance of protecting a GI at home.

Article 23 provides additional protection for GIs relating to wines and spirits. Such GIs are entitled to protection against use even if the true origin of the goods is indicated, or the GI is used in translation, or accompanied by expressions such as "kind," "type," "style," and "imitation." They are also protected against being used in a trademark for the same goods, which do not have the origin associated with the GI, even if the public cannot be misled (subject to the same exception in the case of prior trademarks applied for or registered in good faith). GIs for wines are entitled to two further rights - to receive protection for

[3] See Appendix Table 1.

homonymous indications (where the same GI is used by more than one area), and to have negotiations in the TRIPS Council for the establishment of a multilateral system of GI notification and registration.[4]

3.3 Interface between TRIPS and National Laws

Although TRIPS lays down the protection that WTO Members must provide to GIs, it is through member countries' national legal systems that this protection has to be implemented. Since TRIPS notably does not specify how the requisite protection should be implemented nationally, in terms of legal and institutional structures, WTO Members enjoy wide discretion in this matter, and a variety of different approaches have been used.

A 2001 WTO survey (revised in 2003 - WTO, 2003) found that Members use three broad types of legal regimes to protect GIs -

- laws focusing on business practices i.e., to prevent unfair competition and provide for consumer protection
- trademark law
- special means of protection

The first relates to laws which are not concerned with the protection of GIs as such, but have the broader objective of regulating business practices that are unfair and/or detrimental to competitors or consumers. Examples are laws relating to unfair competition, consumer protection, trade descriptions, food standards, and the common law action for passing off. They can provide a basis for GI protection when the misuse of a GI in a particular case falls within the conduct regulated by such laws. For example, the false use of a GI that misleads consumers as to the origin or qualities of the goods would be actionable.[5]

Protection under **trademark law** encompasses two aspects. The first aspect is that GIs are normally protected against being registered as individual trademarks. Since a trademark is used to identify the particular enterprise producing the goods in question, while GIs identify goods originating from a particular geographical area, a GI cannot be a trademark because it will not distinguish the goods of the trademark owner from those of other producers in the same area. An exception provided under some national systems is where the relevant circles of consumers or traders have come to associate the GI with a *particular firm*, and not a geographical area. Here, the GI is said to have acquired a *secondary meaning*.[6]

The second aspect of GI protection under trademark law is that a GI may be registered as a *special category* of trademark, granting exclusive rights of control and use. Various trademark laws include special categories referred to as collective marks, certification marks and guarantee marks. Subject to the conditions laid

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[4] Apart from receiving additional protection, GIs for wines and spirits are also subject to further exceptions to protection, which do not apply to other GIs – see Appendix Table 1, "Limitations on Protection."

[5] The common law action for passing off is analysed in section 4.

[6] An example of an IGO used in this way is "Oxford" in the registered trademark "Oxford University Press" (Blakeney, 2001).

down, a GI is allowed to be registered as any of these marks. Their distinguishing characteristic is that, in the case of collective marks, the mark identifies an enterprise belonging to a group of enterprises, such as union of producers in a particular area, and in the case of certification and guarantee marks the mark identifies the goods of an enterprise that meet certain standards or have certain qualities, such as a particular geographical origin. While any of these three categories could be used to protect a GI, certification or guarantee marks are the most suitable because they can underpin the requisite product origin and quality and/or characteristics that are embodied in the GI product.

Typically a collective mark is owned by the association of enterprises, while a certification or guarantee mark is owned either by an association of enterprises or by a separate entity. In order to avoid a conflict of interest, it is usually provided that the owner of a certification or guarantee mark may not itself use the mark or carry on a business in the kind of goods or services certified. Registration as any of the three marks has to be accompanied by registration of the conditions governing the eligibility of interested parties to use the mark. In return for the exclusive rights granted to a GI by such registration, any interested party meeting the registered conditions should be permitted by the mark owner to use the mark. The mark owner is also normally obliged to monitor compliance with the conditions of use by mark users.

The third system of GI protection found in countries refers to provisions for the **special protection** of GIs, whether contained in a dedicated law (referred to as a sui generis system), or as part of other laws such as trademarks, marketing and labelling laws (WTO, 2003). The product coverage of such systems varies between countries. In many common law countries (for example Australia, UK and USA), special protection is used to protect GIs for wines and spirits, and trademark law and laws dealing with business practices are used to protect other GIs. In civil law countries, such as continental Europe, special protection is more widely used. Most systems require prior registration or recognition of a GI as a condition of protection. Where this is not required, protection depends on establishing the specific eligibility criteria in each particular case.

Where a special system requires prior recognition or registration, the necessary criteria to be satisfied include the definition of the geographical area, the link between the geographical area and the product (e.g. that all stages of production, or particular stages, take place in the particular area), the link between the geographical area and a particular quality, reputation or other characteristic of the product, and inspection requirements. In addition, the applicant should be able to demonstrate that it has a legal interest in the GI, or is in a position to control the use of the GI. The applicant may be a public or private entity (WTO, 2003).

In practice, WTO members have most often adopted a combination of all three types of systems, as seen in Appendix Table 2. Each of the three regimes of GI protection differ from each other in important respects in terms of eligibility requirements for protection, and scope of protection.[7] However, differences are also evident between countries in the use of the same type of system. The implication is that **interna-**

[7] See further, Appendix Table 3.

tional protection of GIs depends on meeting differing requirements in each of the countries where protection is sought. This makes international legal protection a costly affair involving significant legal expertise. As a result, protection of GIs abroad should be based on a carefully thought-out strategy.

Finally and importantly, national GI systems also sometimes differ from the TRIPS regime, in some cases with eligibility requirements and/or scope of protection being more generous under national law than under TRIPS. For example, protecting a GI abroad through that country's trademark system does not require that the GI be already protected in the country of origin. Similarly, some countries' special systems grant the higher protection that TRIPS grants to GIs for wines and spirits only, to GIs for all products. On the other hand, if national GI protection falls short of TRIPS obligations, redress has to be sought at the WTO.[8]

4. Systems for Protecting GIs in Sri Lanka

The Sri Lankan legal framework for protecting GIs includes all three types of system identified above.

4.1 Laws focusing on Business Practices

GIs may be protected in Sri Lanka in one of four ways, under this head:

- under the unfair competition law
- under the consumer protection law
- under the false trade descriptions law
- through an action for passing-off under the common law

The **unfair competition law** is contained in section 160 of the Intellectual Property Act, No. 36 of 2003 (hereafter referred to as the IP Act 2003). It prohibits (among others) any act or practice carried out or engaged in, in the course of industrial or commercial activities, that -

- is contrary to honest practices (sec.160(1)(a)); or
- misleads, or is likely to mislead, the public with respect to the geographical indication of products or services (sec.160(4))

Accordingly, any use of a GI that is either contrary to honest trade practices, or likely to mislead the public, is actionable. Any person, enterprise or association of producers, manufacturers or traders aggrieved by unfair competition is given standing to sue. Remedies include a court order prohibiting the continuance of the unfair competition (injunction) and damages for losses incurred.

The **consumer protection law** is contained in the Consumer Affairs Authority Act, No. 9 of 2003. This Act provides that no trader shall, in the course of a trade or business -

[8] For example, the USA initiated dispute settlement proceedings in the WTO against the EC, on the ground (among others) that the EC Regulation protecting GIs for agricultural products and foodstuffs did not grant national treatment to US GIs as required by TRIPS. See USPTO, 2005.

- engage in any type of conduct that is misleading or deceptive or is likely to mislead or deceive the consumer or any other trader (sec. 30)
- represent that goods or services have characteristics they do not have [sec. 31(c)]

Standing to sue is vested in the State and the Consumer Affairs Authority. Where the use of a GI contravenes either of the above prohibitions, an interested party may initiate proceedings by lodging a complaint with the Consumer Affairs Authority. The penalties include fine and/or imprisonment.

The **false trade descriptions** law is contained in section 186(1)(d) of the IP Act 2003. According to this section, any person who applies a false trade description to goods, subject to the other provisions of that Part of the Act, commits an offence unless he proves that he acted without intention to defraud. A false trade description includes any indication as to the origin of any goods, their mode of manufacturing or production, or their performance or behaviour, which is false or misleading in a material respect in relation to the goods to which it is applied. Therefore, false or misleading use of a GI would be covered by this provision. An interested party will have to complain to the prosecution authorities to initiate proceedings. The penalties comprise fine, imprisonment and/or order for the destruction or forfeiture of the offending goods.

An **action for passing off** under the common law is based on principles established in decided cases in common law jurisdictions. The elements of the action are as follows (Reckitt & Colman v. Borden (1990))

- the claimant has goodwill;
- the defendant has made a "misrepresentation" that is likely to deceive the public; and
- the misrepresentation damages the goodwill of the claimant

In a series of decided cases, UK courts have protected GIs in actions brought under passing-off. Some notable cases are the Champagne case (*Bollinger* v. *Costa Brava* (1959)), Sherry case (*Vine Products Ltd* v. *Mackenzie & Co* (1969)), Scotch Whisky case (*John Walker & Sons Ltd* v. *Henry Ost & Co Ltd* (1970)) and Elderflower Champagne case (*Taittinger v. Allbev* (1994)). The claimants in each case were associations of producers in the area denoted by the GI. The same legal principles would be applicable in Sri Lanka. The remedy is an injunction and/or damages for loss.

4.2 Trademark Law

The Sri Lankan law includes both aspects of protection under this system, discussed in the previous section. Firstly, a GI is protected against being registered as an individual trademark. Section 103(1) of the IP Act 2003 provides that a mark shall not be registered which -

- consists exclusively of a sign or indication which may serve, in the course of trade, to designate, among others, the kind, quality, or place of origin of the goods or services concerned [sec. 103(1)(b)]

- is likely to mislead trade circles or the public as to the nature, source, geographical indication,[9] manufacturing process or characteristics of the goods or services concerned [sec. 103(1)(f)]
- is, according to its ordinary signification, a geographical name [sec. 103(1)(h)]

Section 103(2) provides for the exception where a mark consisting of a GI may be registered as an individual trademark if it has acquired a secondary meaning (become distinctive).

The second aspect of GI protection under trademarks law, as a special category of mark, is provided for in the recognition of GIs as **certification marks** or **collective marks**. The relevant legal provisions on certification marks are contained in section 142 of the IP Act 2003, while those relating to collective marks are contained in sections 138-141 of the same Act. As an exception to the normal rule in the case of trademarks, the Act allows a geographical name / GI to be registered as a certification mark or collective mark. An application for registration of a certification mark or collective mark should be accompanied by a copy of the conditions governing the use of the mark. The owner of the mark is bound to observe, or secure observance of, these conditions, and failure to do so is grounds for removing the mark from the register. The owner of a certification mark may not carry on a business involving the supply of the goods or services of the kind certified. There is no such restriction in the case of collective marks.

The registration of a collective mark or certification mark grants the registered owner the exclusive right to use the mark. It is further provided that third parties may not do either of the following acts without the consent of the mark owner -

- "any use of the mark, or of a sign resembling it in such a way as to be likely to mislead the public, for goods or services in respect of which the mark is registered or for similar goods or services in connection with which the use of the mark or sign is likely to mislead the public" [sec. 121(2)(a)]
- "any other use of the mark, or of a sign or trade name resembling it, without just cause and in conditions likely to be prejudicial to the interests of the registered owner of the mark" [sec. 121(2)(b)]

However, the above rights are subject to certain limitations, which have a particularly important bearing on the use of this category of rights for the protection of GIs -

- the registration of a certification mark or collective mark that consists of a sign or indication "which may serve to designate the geographical origin of the goods or services" shall not prevent use of the sign or indication by a third party that is "in accordance with honest practices in industrial or commercial matters, *and in particular by a person who is entitled to use a geographical name*"[10]

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[9] The Act adopts the TRIPS definition of a GI, and extends it to include services as well as goods (sec. 101).

[10] Emphasis added. See sec. 142 (3) (certification mark) and sec. 138(3) (collective mark).

- the registration of a mark shall not confer on the registered owner the right to prevent other parties from using in good faith *a geographical name*, or exact indication, concerning the place of origin of their goods or services (sec. 122(a), emphasis added)

It can be seen that the above exceptions would apply to a GI that consists of *a geographical name*. As a result, a GI that does not consist of a geographical name (for example, a symbol, or an invented name) receives *higher* protection from registration as a certification mark or collective mark, than a GI that consists of a geographical name. This can be illustrated by comparing two GIs in the tea industry, Ceylon Tea and Nuwara Eliya Tea.

Nuwara Eliya is a geographical name of a district in Sri Lanka. Therefore, if "Nuwara Eliya" is registered as a collective or certification mark for tea, it nonetheless cannot prevent other tea originating in Nuwara Eliya from being described as "Nuwara Eliya Tea," *even if such tea does not meet the requisite quality or characteristics set by the mark owner as a condition for the use of the registered mark*. This is an important drawback. On the other hand, "Ceylon" is no longer a geographical name, being the former name of Sri Lanka. Therefore, if "Ceylon" is registered as a collective or certification mark for tea, third parties *cannot use it without authorisation*. In this case, third parties will only be entitled to use the term "Sri Lankan Tea" to indicate geographical origin.

The same remedies available to individual trademarks are available in the case of infringement of a collective mark or certification mark, viz., injunction, damages, destruction of infringing goods and any other relief the court considers "just and equitable," and potential criminal penalties for wilful infringement.

4.3 Special System

These provisions are contained in Part IX, Chapter XXXIII of the IP Act 2003. This adopts the TRIPS definition of "geographical indications" (sec. 161(5) read with sec. 101), and extends it to also include services. The Chapter guarantees the same basic protections that all GIs are entitled to under TRIPS. However, it then goes *further than TRIPS* to extend the higher level of protection granted by TRIPS to GIs for wines and spirits, to GIs for *all products*. Protection for homonymous indications is also made available to all GIs, which under TRIPS is only requested for GIs for wines. Any "interested party" is given standing to file action under this Chapter. The relief available includes injunction, damages and destruction of infringing goods.

Notably, unlike most countries' special systems of GI protection, the Sri Lankan system *does not provide for the registration / prior recognition of GIs*. Protection is based on establishing the statutory eligibility criteria in the particular action that has been brought. However, section 191(b) of the IP Act 2003 provides that "any person who makes a false declaration in respect of [a] geographical indication inclusive of Ceylon Tea and Ceylon Cinnamon" shall be guilty of an offence. By this indirect route, the legislature has specifically recognised that Ceylon Tea and Ceylon Cinnamon are GIs. It would follow that in a case of

misuse of either the Ceylon Tea or Ceylon Cinnamon indication, the provisions of the GI Chapter would apply without having to establish the eligibility criteria.

The system of special protection contained in Part IX, Chapter XXXIII of the IP Act 2003 applies generally to GIs for any product. In addition, legislation regulating particular industries or sectors often confers power on the relevant Minister or statutory Authority to adopt ***regulations*** for the purpose of carrying out the objects and purposes of the legislation. This can provide a means for implementing a special system of protection for GIs *in the particular industry or sector* covered by the legislation. This is the approach being considered by the Sri Lanka Tea Board to protect specific GIs in the tea sector. Table 4.1 compares the main features of a special system established under general regulation making power, with GI protection available under the IP Act 2003.

Table 4.1
GI Protection under IP Act 2003 versus through System Established by Regulation

IP Act 2003	System established by regulation
Lays down a scheme of rights and limitations applicable to all GIs.	Can provide stronger protection than that under the IP Act 2003. For example, exclusive rights can be made not subject to limitations.
Remedies for infringement are civil and criminal, including injunction, damages, destruction/forfeiture, fine and/or imprisonment.	Contravention of regulations entails criminal punishments (fine and/or imprisonment).
There is a special system of enforcement in the case of civil remedies, involving fewer courts and appeals.	No special system of enforcement. Prosecution will have to be instituted in Magistrate's Court, with normal appeals.
Registration of GI as collective mark / certification mark has to be renewed periodically.	Protected GIs need not be subject to renewal.
Registered marks are subject to administrative opposition / cancellation procedures.	Protection conferred by regulation will have to be challenged in the courts.

The principal advantage of a special system established by regulation is that it can provide a higher level of protection than that available under the IP Act 2003. On the other hand, the principal benefit of the IP Act is the availability of civil remedies and its enforcement procedure. However, the two regimes are not entirely mutually exclusive. The special GI regime of the IP Act automatically applies to all GIs, subject to satisfying the eligibility criteria for a GI. On the other hand, the certification / collective mark approach has certain limitations in relation to GIs that consist of geographical names. Therefore, it will be preferable to protect such GIs under a special system established by regulation, than by registration as a collective or certification mark. Then, where necessary, interested parties may still have recourse to the special GI provisions of the IP Act, to file civil action or obtain enforcement.

5. Economic Costs of GI Protection

The costs of protecting a GI in a foreign country comprise of three categories -

- the cost of obtaining registration or recognition for a GI
- where protection depends on public awareness of the GI, marketing expenditure
- the cost of enforcing the GI

Each of these costs differs between countries, depending on the national systems of GI protection followed. Appendix Tables 4 and 5 provide information on the official fees for registration or recognition in a sample of countries, gathered by the WTO (WTO, 2003).

In general, protecting GIs as a special category under trademarks law involves the payment of fees, while it seems the protection of GIs under special systems does not require payment of fees. However, in the latter case, the grounds for recognition or registration have to be established to the satisfaction of the national authorities, which can impose onerous requirements. For example, EC Regulation 2081/92, which provides community-wide protection to GIs for agricultural products and foodstuffs, requires that the quality and/or characteristics that determine the GI product should be verified through a third party inspection system. Therefore, this role cannot be performed by the GI owner.

Registration costs may escalate beyond basic administrative fees structures when the registration or recognition of a GI is opposed by interested parties. This is usually the case when traders located in that country are benefiting from unauthorised use of the GI sought to be protected. Protection for the GI represents a potentially serious loss of business to such users, who as expected would mobilise their strength to oppose the granting of protection. This could then entail costly legal battles, depending on the opponents' strength. For example, it took the Italian Parma ham consortium 10 years and US$ 1 million in legal fees to register Parma as a certification mark in the USA, amidst strong opposition from domestic producers who had been using the mark (Gumbel, 2003).

The other category of costs relates to the costs of enforcing a GI when an act of infringement occurs. As a general principle, court costs have to be incurred in civil proceedings taken to enforce GIs. The losing party may be required to pay the costs of the winning party, which may include lawyer's fees (WTO, 2003). On the other hand, where enforcement action is by the national law initiated ex officio, there appears to be no costs for private parties (WTO, 2003). This is usually the case in relation to the infringement of consumer protection or fair trading laws.

6. Sector-wise Analysis: The Tea Industry

6.1 Introduction

Since it was introduced to the Island by the British in 1867, tea has long been Sri Lanka's major agricultural crop. Tea became the country's principal export in the post-independence era, and since the mid 1990s

has been the second most important export after garments. In the process, tea became interwoven with the national identity, and "Ceylon Tea" has become a household name in tea-drinking regions of the world. In 2005, Sri Lanka's tea sector contributed 1 per cent to GDP and tea exports earned US$810 million, approximately 13 per cent of total export revenues. In addition, it sustains around one million people in employment, directly and indirectly.

6.2 Industry Structure

The structure of the tea industry in Sri Lanka can broadly be divided into 3 levels - producers, intermediaries and buyers. The producers mainly comprise of the corporate sector and the tea smallholders.[11] The corporate sector comprises 20 regional plantation companies, each owning around 25 tea estates. Each estate usually has its own factory to manufacture its leaf. Some factories that have excess capacity also buy leaf from other producers.

Smallholders are those who own less than 50 acres,[12] and over recent years have become a major force in the industry, representing 60 per cent of total tea area and contributing 65 per cent to the national tea production (Sri Lanka Tea Board, 2005). They produce green leaf but usually don't have their own manufacturing facilities. This need is fulfilled by the private factory owners, who purely manufacture tea out of bought leaf.

The main product of the tea factory is bulk black tea.[13] There are two methods of producing black tea - the orthodox method and CTC method (cut, tear and curl). The orthodox method involves a high degree of skilled human intervention, for example in the withering and processing stages, and is the predominant method used, accounting for 95 per cent of total production in Sri Lanka. The CTC process is highly mechanized, with little human intervention. The particle size of the tea produced by CTC is also very small.

Around 90 per cent of the total tea production is sold in the weekly Colombo tea auctions, which records the highest volume among the international tea auction centres. In 2005 there were 653 registered factories in operation, and there are over 400 registered buyers. The seller relies on an intermediary - the tea broker (also known as selling agent). The seller selects one out of 9 broking firms, who fulfil the task of bridging buyer and seller. The broker's duties encompass warehousing the tea, drawing and distributing samples (to the potential buyers), cataloguing, canvassing buyers, advising the seller on the needs of the market, etc. On average, 6-7 million kgs of tea, covered by 9,000-10,000 lots/invoices are sold each week at the Colombo auction.

Of the buyers, 150-180 are fairly large buyers who buy for the export market, domestic market, or both. They usually operate regularly at the auctions. Most of the tea is bought for supplying packers overseas, or

[11] Around 4 per cent of tea area is in the State sector, accounting for 1.7 per cent of total tea production.

[12] Definition of Tea Small Holders Development Authority. The Tea Board definition is less than 10 acres.

[13] A minute fraction of green tea is also produced. In 2005 this amounted to 0.8 per cent of total tea production (2.4 million kgs).

domestic processing into value-added forms for overseas brands. Only a few exporters directly market overseas. The proportion of value-added tea exports (tea packets, tea bags, instant tea) is somewhere around 40-50 per cent of the total volume of tea exports.

In addition to the locally produced tea, a small quantity of tea is imported for blending with local teas and re-export. Importation is restricted to CTC teas and speciality types that are not produced in Sri Lanka. In 2005 the total quantity imported amounted to about 2 per cent of the local production. Of the re-exported tea, 81 per cent was in value added form and 19 per cent was blended bulk (Sri Lanka Tea Board, 2005).

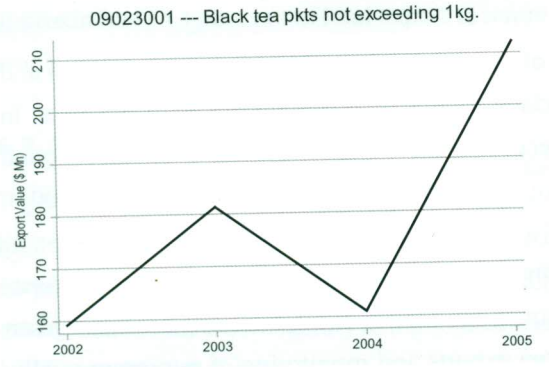
The Sri Lanka Tea Board exercises regulatory supervision of the tea industry. Among its regulatory functions are the registration of tea manufacturers and the factories operated by them, licensing dealers in green tea leaf, registration of tea exporters, authorisation of tea exports and monitoring of minimum quality standard of made tea at the point of sale. In addition, the Tea Board conducts promotion activities for Sri Lankan tea, locally and overseas.

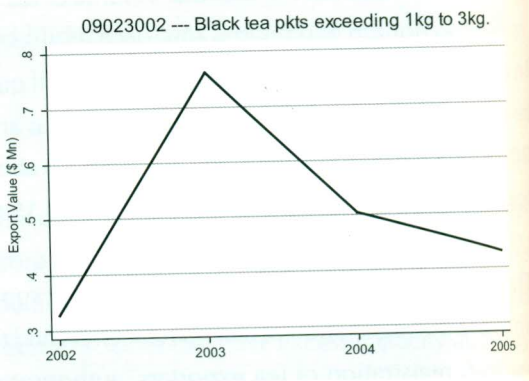
6.3 Global Competitive Environment

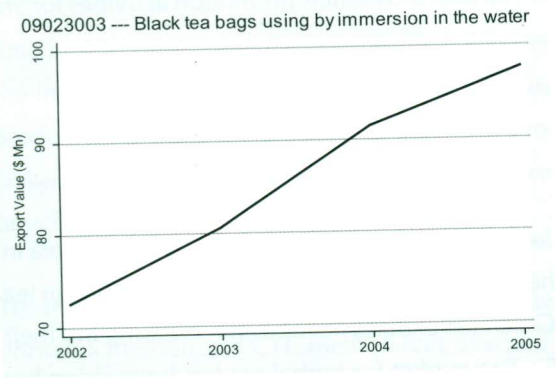
The dominant and growing tea products exported are black tea in bulk (HS code 09024001), black tea in packets below 1 kg and black tea bags. In recent years there has been an increase in exports of foreign tea blended with Ceylon black tea (HS code 09024002). Green tea exports have been increasing but their overall export value is only about $15 million in 2005. The market for herbal tea has been rising but exports of instant tea have been on a declining trend.

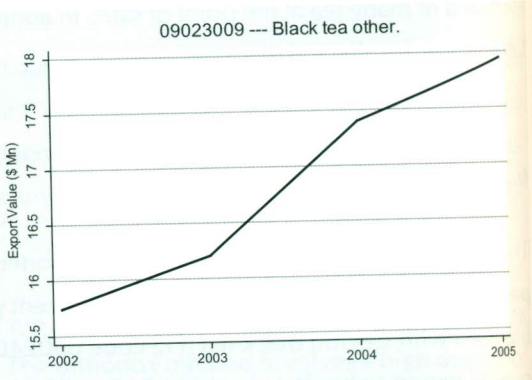
Sri Lanka ranks third behind China and India in world tea production, (closely followed by Kenya), as well as in terms of global tea area. In terms of volume of tea exports, in recent years Sri Lanka and Kenya have occupied the top two positions, with Sri Lanka edging out Kenya to be the world's leading exporter between 1996 and 2003. Sri Lanka is the leader in terms of value-added exports. Whereas Sri Lanka is predominantly producing tea by the orthodox method, Sri Lanka's rival Kenya predominantly produces CTC tea, which is purchased in bulk by large multinational companies, to produce their branded blends. Although in terms of world export share by volume there is not much difference between Sri Lanka and Kenya, in terms of export value Sri Lanka earned US$ 790 million in 2005 whereas Kenya earned only US$ 430 million (Table 6.1a and 6.1b). The main producers of green tea, instant tea and herbal tea are in appendix Table 6.

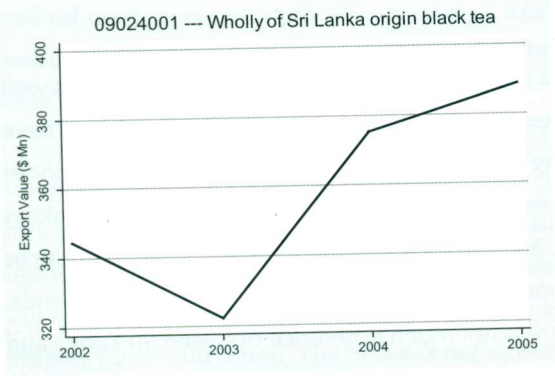
Figure 6.1
Tea Exports of Sri Lanka at the 8 Digit HS Code Level, 2005

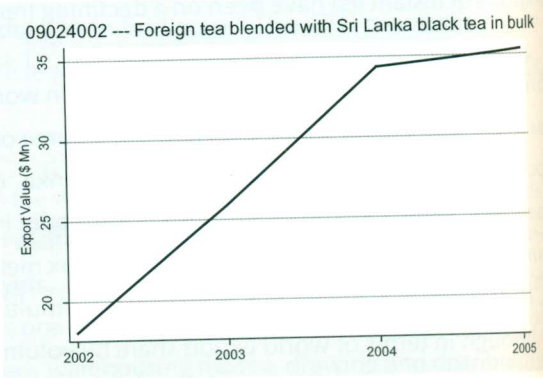


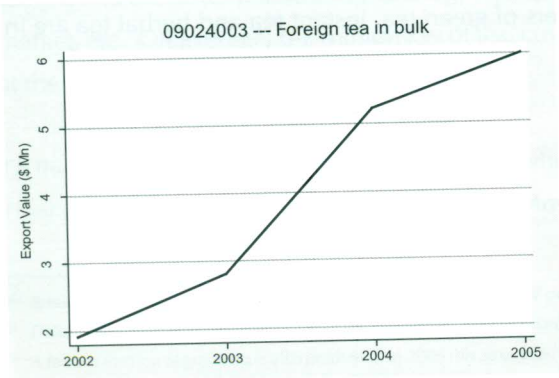


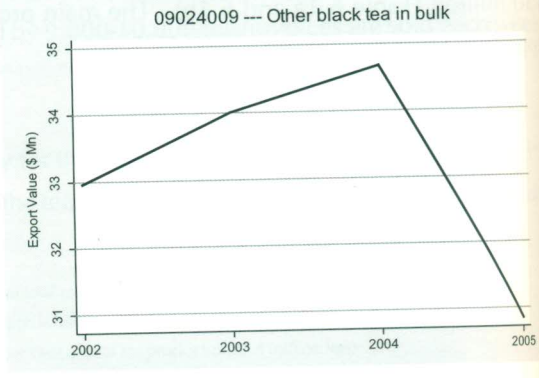


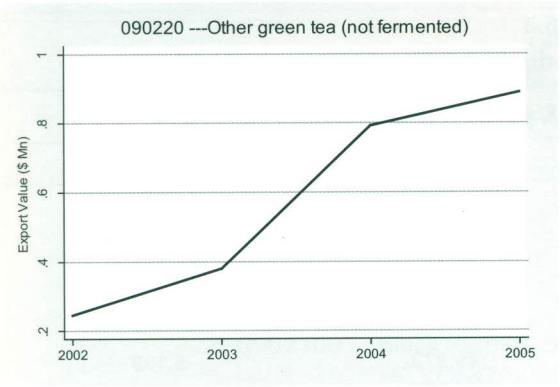


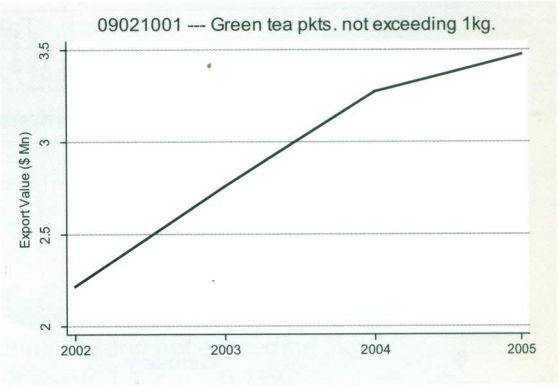


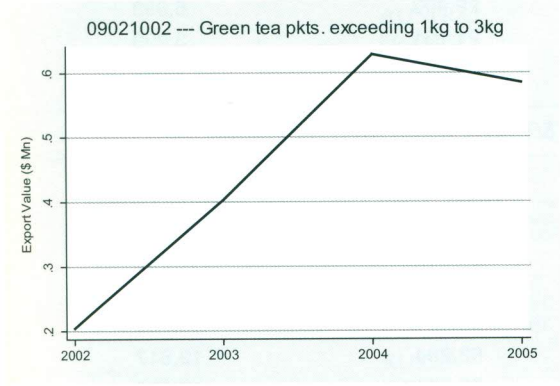


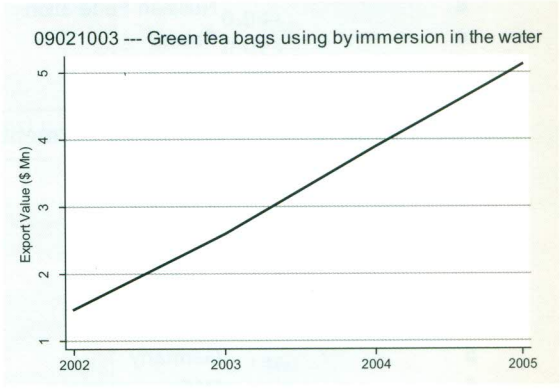


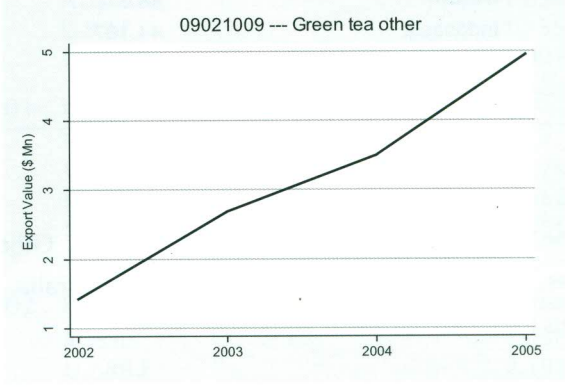


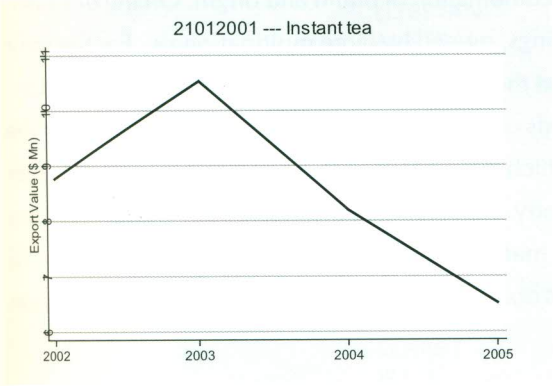


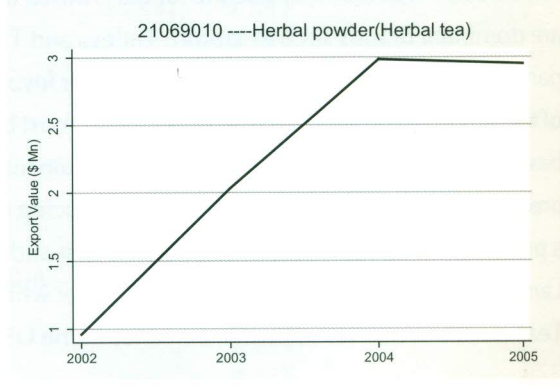












Source: Sri Lanka Customs.

Table 6.1
Top 10 Exporters of Each Tea Product at 6 Digit HS Code 2005

HS Code 090230 **Tea, black (fermented) & partly fermented tea – pkts/bags**

	Country	Value ($Mn)	Weight (Tons)
1	Sri Lanka	328.033	109,475
2	United Kingdom	180.715	19,492
3	UAE	90.473	13,575
4	India	73.707	25,996
5	Indonesia	54.166	50,407
6	Germany	48.273	5,139
7	Belgium	45.578	4,744
8	Russian Federation	29.403	5,993
9	Poland	21.761	3,299
10	France	21.582	1,352

HS Code 090240 **Tea, black (fermented) & partly fermented tea – bulk**

	Country	Value ($Mn)	Weight (Tons)
1	Sri Lanka	460.640	195,584
2	Kenya	423.819	244,902
3	India	292.373	131,062
4	China	86.584	56,159
5	Germany	62.294	13,517
6	UAE	50.881	17,530
7	Malawi	49.317	44,492
8	Indonesia	44.197	42,356
9	Argentina	43.994	66,921
10	Viet Nam	40.052	39,921

Source: ITC Trade Map.

The main market of Ceylon tea in bulk, packets and tea bags is Russia. Other important markets in 2005 were United Arab Emirates, Iran, Syria, Turkey, Libya, Jordan and Australia, all exports exceeding US$10 million. The main markets for green tea are in Appendix Table 7.

The international marketing scene for tea is based on a combination of brand and origin. On the one hand are dominant brands such as Lipton, Tetleys and Twinings, owned by large multinationals. For the most part, these famous brands command customer loyalty on their own account, as opposed to considerations of the origin of the teas. On the other hand, most brands outside the famous brands are marketed on the basis of origin. On the basis of origin, Sri Lankan tea, which is marketed as "Ceylon Tea," receives a higher premium on average than any other tea producing country. Accordingly, the indication "Ceylon Tea" has a premium value in the important Middle East and CIS markets which are the leading destinations for Sri Lankan tea, and less so in the European market which is dominated by the multinational brands. "Ceylon Tea" also does not have popular currency in the USA.

Although Sri Lankan tea and the Ceylon Tea brand enjoy a premium, in the late 1990s the local tea industry decided to re-position itself to cater to niche markets for speciality teas. The speciality tea

Table 6.2
Sri Lanka's Top 5 Markets at 8 Digit HS Code Level-2005

1. 09023001 Black tea pkts not exceeding 1 kg

COUNTRY	VAL($ Mn)
RUSSIA	37.302
U.ARB.E	27.435
LIBYA	20.103
SYRIA	19.952
JORDAN	16.530

2. 09023002 Black tea pkts exceeding 1kg and not exceeding 3kg

HG KONG	0.229
SYRIA	0.045
AUSTRAL	0.041
FRANCE	0.025
GREECE	0.024

3. 09023003 Black tea bags (4grms) using by immersion in the water

RUSSIA	19.872
AUSTRAL	13.207
POLAND	5.816
U.S.A.	5.609
JORDAN	4.711

4. 09023009 Black tea other

RUSSIA	3.146
POLAND	1.737
AUSTRAL	1.333
U.S.A.	1.155
U.ARB.E	1.007

5. 09024001 Wholly of Sri Lanka origin Black tea

RUSSIA	61.420
U.ARB.E	57.798
IRAN	49.681
SYRIA	40.962
TURKEY	23.509

6. 09024002 Foreign tea blended with Sri Lanka black tea in bulk

RUSSIA	15.563
U.ARB.E	2.195
UKRAINE	2.009
UZBETAN	1.832
AUSTRAL	1.796

7. 09024003 Foreign tea in bulk

RUSSIA	3.047
UKRAINE	0.368
U.ARB.E	0.341
TURKEY	0.326
KAZKTAN	0.242

8. 09024009 Other black tea in bulk

TURKEY	8.589
U.ARB.E	5.839
IRAQ	4.873
RUSSIA	4.840
IRAN	1.143

Source: Sri Lanka Customs.

industry is booming in countries like USA and Japan, as well as around the world generally, and offers the potential to capture a larger share of value in the international tea market. Whereas the Sri Lankan tea industry had previously been geared to the mass market and competing for volume, producing small volumes of higher priced speciality teas for niche markets allows the industry to actualise this potential. It is underpinned by the fact that Sri Lanka is ideally placed to produce a wide range of speciality teas. There are six distinct agro-climatic tea growing regions in the country, each imparting distinctive characteristics to the tea grown there - Nuwara Eliya, Dimbula, Kandy, Ruhuna, Uva and Uda Pussellawa. These regions may be further subdivided into 38 sub-districts, again providing for further differentiation. Furthermore, tea can be produced in 24 different grades of particle size, and each tea factory presently produces at least 10 grades. Therefore there is a readymade capacity to produce a large array of speciality products.

The speciality branding campaign of Ceylon Tea was launched in 2000 in the USA, and has since expanded, as a joint undertaking of the Sri Lanka Tea Board and the Colombo Tea Traders' Association, the umbrella industry association. Its purpose was to create awareness that Ceylon Tea represents a diversity of speciality teas, beginning with the six agro-climatic regions. While the branding campaign has been judged a success in furthering awareness, as a concomitant process, the securing of *legal* protection for the regional indications has floundered. As a result, as the speciality teas gain goodwill in the relevant markets, the door is open for forgeries and free riding on that goodwill to occur.

6.4 Position of Industry IGOs

The indication "Ceylon Tea" identifies tea originating in Sri Lanka, which possesses a distinctive quality and reputation essentially attributable to its geographical origin. Accordingly, "Ceylon Tea" would meet the definition of a GI in terms of TRIPS. Similarly the names of the six main agro-climatic tea growing regions and the sub-districts also qualify as GIs because tea originating in those regions or localities display distinct qualities, reputation and other characteristics that are essentially attributable to the said geographical origin.

In the case of the Ceylon Tea indication, the Sri Lanka Tea Board has registered "Ceylon Tea - Symbol of Quality" accompanied by a logo of a lion, as a trademark under the Intellectual Property Act, No. 36 of 2003. Registered packers may apply to the Tea Board for permission to affix the trademark to their products, which is granted in terms of the Tea Board's licence conditions. In terms of the Tea Board's conditions, the mark may only be affixed on retail containers (value-added teas). Its use is not permitted on bulk tea packaging. The tea should also be packed in Sri Lanka. In addition, the tea should be 100 per cent Ceylon Tea above ISO 3720 standard, and conform to an additional quality standard established for each export market by the Tea Board. The Tea Board monitors compliance with the licence conditions by random testing of samples, and through its regulatory activities over the industry. In addition, section 191(b) of the IP Act 2003 specifically recognises Ceylon Tea as a GI, entitling it to the protection provided by Chapter XXXIII of the IP Act 2003. Accordingly, "Ceylon Tea" and the Ceylon Tea indication satisfy the domestic protection criterion giving rise to the right to protection under TRIPS, and which is a prerequisite for extending GI protection abroad under most countries' special GI systems.

The Tea Board has also registered the Ceylon Tea mark as a trademark in around 80 countries to which the tea is exported. However, current trademark protection falls short of protecting the GI "Ceylon Tea." Typically a geographically descriptive name[14] cannot be registered under the trademark system as an individual trademark, only as a certification mark, guarantee mark or collective mark. The exception is where the name has acquired a *secondary meaning* in that market, so that consumers *do not believe the name to denote a geographical origin*, which is clearly self-defeating in the case of a GI, and not true in the case of Ceylon tea. This has led to the result that in many markets, registration has only been permitted of the lion logo *without* the accompanying words "Ceylon Tea," *or* with the accompanying words but *without exclusive rights in respect of their use*. As a result, the Tea Board does not have the right to prevent third parties using the words "Ceylon Tea" in those markets. Therefore, various "Ceylon Tea" blends can be marketed abroad by foreign packers, and the words "Ceylon Tea" even included in trademarks, without being subjected to the Tea Board's quality requirements that are applied to domestic exporters.

In the case of the six agro-climatic GIs and their sub-districts, there is no positive domestic recognition of these GIs in Sri Lanka. The special GI system contained in the IP Act 2003 extends protection to indications that fall within the definition of a GI, without any requirement (or provision) for prior registration. As a result, protection via this system is potentially available for these GIs. In addition, the domestic remedies under the laws relating to unfair competition, consumer protection and passing off are also potentially available to vindicate these GIs. The issue is, whether this could satisfy the TRIPS requirement (which is also a part of many countries' special GI systems), that a GI should be "protected" in its country of origin. Third country authorities that impose this requirement are likely to require a *positive* act conferring protection in Sri Lanka. Such a positive act could be an IP registration or an administrative, regulatory or court decision.

As a result, the Sri Lanka Tea Board is considering adopting a special system to protect these GIs under the general regulation-making power conferred on the Tea Board by its constituent Law. Section 25(1) of the Sri Lanka Tea Board Law provides that "the Board may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Law." Section 4(1) of the Law provides that "the objects of the Board shall be the promotion, *by such measures as it thinks fit*, of the development of the tea industry in Sri Lanka" (emphasis added). Read together, these provisions provide a basis for a special system of protection for the GIs of the six agro-climatic regions and sub-districts. This approach also avoids the limitations, highlighted in section 4.2, of using the certification mark / collective mark approach to protect GIs consisting of *geographical names*.

Protecting GIs as a special category under foreign trademark systems does not require protection at home. Therefore, the agro-climatic region and sub-district GIs could be registered as collective or certification marks abroad even before they are protected in Sri Lanka, so long as the *rules* that will govern the right to use the GI are registered. In addition, the owner of the mark is under an obligation to monitor compliance

[14] "Ceylon" is *geographically descriptive* of tea originating in Sri Lanka. See section 3.3.

with these rules by the mark users. However, because of the limitations of the trademark system in the case of GIs comprising of geographical names, it would be preferable, where the choice is available, to register these GIs under a special system.

6.5 Costs and Benefits of GI Protection

The standard benefits and costs discussed in sections 2 and 5 respectively, apply in terms of securing GI protection for Ceylon Tea and the agro-climatic regions and sub-districts. The benefits relate to the ability to exclude false or misleading use, free riding and the dilution of the goodwill of those GIs. In addition, GIs can promote quality by setting the minimum standards for use of the GI. In a scenario where much of Sri Lanka tea is packed abroad, it is important to protect the Ceylon Tea brand effectively in foreign markets, and prevent corruption of its respected reputation.

The main costs relate to putting in place and running a system to ensure that the criteria for eligibility are being satisfied, and securing legal protection domestically and overseas. In the case of the Ceylon Tea GI, the costs are mitigated by the fact that the Ceylon Tea brand is well known globally and therefore advertising costs may be lower than if the product did not already have a respected reputation. Administrative and institutional costs are also reduced since the Tea Board already has a system of monitoring and control in place, as a result of its regulatory responsibilities in respect of the industry.

The additional costs to be incurred for this GI relate to the costs of securing legal protection. Although the Tea Board has already obtained trademark protection in Sri Lanka for its Ceylon Tea lion logo, as well as specific GI protection under the IP Act 2003, its trademark protection strategy abroad has failed because the brand recognition for tea from Sri Lanka is the words "Ceylon tea" (which cannot be protected under the trademark strategy) and not the Lion logo.

The cost of securing GI protection abroad for the Ceylon Tea GI and the GIs of the agro-climatic regions will depend on the level of opposition from foreign packers. This in turn will depend on the rules adopted by the Tea Board to govern the use of the respective GIs. Under the Tea Board's present rules on the right to use its lion logo mark, only domestic packers are entitled to use the mark. However, foreign packers freely use the words "Ceylon Tea," which are not protected. Therefore, if Ceylon Tea is going to receive GI protection which includes the right to the exclusive use of "Ceylon Tea," and the same condition is applied, i.e., that only Sri Lankan packers may use the GI "Ceylon Tea," it is certain to be resisted very strongly by foreign packers. This could be avoided if the Tea Board is willing to allow foreign packers to use the GI, provided they meet similar quality criteria to those applied to domestic packers. This would entail the expenditure of carrying out inspection activities on those foreign packers. However, the cost can be fully recovered by licence fees imposed on users. This should also be weighed against the losses being incurred from the current uncontrolled use of the Ceylon Tea GI.

In the case of the GIs for the agro-climatic regions and sub-districts, as discussed in the previous section, the Tea Board's approach is to protect these GIs under a special system created by regulation under the Tea Board Law. Although such a system will have to be devised, including subsequent monitoring, by beginning with the six agro-climatic regions first, this could be accommodated within the existing regulatory and quality system, with some changes.

With respect to registering protection abroad for the agro-climatic regions, opposition from foreign packers is likely to be low since these GIs have not yet been widely taken up by them. However, since these teas are less well- known, a continued marketing campaign will be necessary to arouse consumer interest in the products.

7. Sector-wise Analysis: The Sapphire Industry

7.1 Introduction

Sri Lanka's gem and jewellery industry dates back to antiquity. Sri Lanka was internationally renowned for gems, and one of the island's ancient names was "Ratnadvipa" - the Island of Gems. It has been estimated that 90 per cent of Sri Lanka is potential gem bearing land. Sri Lanka is one of the five most important gem bearing nations in the world, the others being Brazil, South Africa, Myanmar and Thailand, and is second only to Brazil in the variety of gemstones it contains.[15] The most important gem found in Sri Lanka is the blue sapphire, which accounted for 40 per cent of the value of Sri Lankan gem exports in 2005.[16] The overall gem and jewellery industry directly employs around 150,000 persons, as well as a substantial number indirectly.

7.2 Industry Structure

The overall gem and jewellery industry value chain can be divided into gem mining, gemstone heating, cutting and polishing, jewellery manufacturing, and retailing. The sources of rough gemstones for Sri Lanka's industry are Sri Lankan mined stones and imported stones. Diamonds are the most important variety that is imported, in value terms. Re-export of cut and polished diamonds in 2005 was over three times the corresponding value of Sri Lankan gem exports, and diamond jewellery exports accounted for a quarter of the value of total jewellery exports.[17] The domestic value addition on other re-exported imported stones represented around 6 per cent of the total value Sri Lankan gem exports.

Gem mining is mainly in the hands of private individuals. Around 85,000 persons are officially engaged in gem mining, and it is estimated that a further 20,000 are engaged in illicit mining. Mining is concentrated in the Sabaragamuwa Province and in a few other areas. Gem mining operations are small scale and rely on traditional mining methods. Heat treating is done to enhance the value of some gems, mainly those of the corundum (sapphire) group such as geuda (milky corundum). By heat treating, geuda changes

[15] National Gem and Jewellery Association, 2002a.

[16] National Gem and Jewellery Authority, 2005.

[17] National Gem and Jewellery Authority, 2005.

from an unattractive cloudy gray-white to a stable bright sparkling blue, or can also be pink, yellow or white. This process creates a value addition up to 300 per cent. However, due mainly to financial constraints, there is a shortage of heat treaters in Sri Lanka, who presently number around 200. As a result, most rough geuda is exported to Thailand for heat treating and subsequent value addition. The Sri Lankan blue sapphire is one of the rare sapphires that can be sold without heat treating.

Gem cutting consists of free size gemstones, calibrated gemstones and diamonds. Calibrated stones are cut to precise standards, usually according to universally standard specifications or, sometimes, set by the buyer. Free-size stones are not cut to specific dimensions. Usually, smaller sized stones are calibrated while larger stones are traded as free-size. Both types are mainly used for jewellery manufacture. Generally, about 50 per cent of the production of calibrated stones is made for stock, while the balance is accounted for by prior orders. Most of Sri Lankan sapphire exports take place through direct buyer-seller contact, while another important forum is trade shows. There are around 20,000 cutters in Sri Lanka, of which about 4,000 are engaged in diamond cutting. There are some large companies in this sector. However, a number of cutters idle from time to time as a result of unavailability of orders.

The jewellery industry employs about 20,000 persons. Around 60 per cent of jewellery workshops and craftsmen are located in rural areas, mainly in the Southern and Central Provinces and in certain areas of other provinces. About 30 per cent of the workshops are located in suburban areas and the remaining 10 per cent are in urban areas.[18] Trade in jewellery occurs when either the sellers go to the market with jewellery designs and look for orders, or when the buyer approaches a seller with required manufacturing specifications. There are only around 10 companies in Sri Lanka which do mass production of jewellery.

The State has been regulating the gem industry since the early 1970s, when it established the State Gem Corporation. In 1993 the National Gem and Jewellery Authority (NGJA) was established to succeed the State Gem Corporation, bringing both gems and jewellery within its regulatory purview. Gem mining, cutting and polishing, gem auctions, and dealing in cut and uncut gems, whether mounted or unmounted, are activities requiring a licence from the NGJA. In addition, all exports of gems and jewellery have to be channelled through the NGJA, where their value and description are checked by a panel of NGJA and Customs gemmologists. With the exception of geuda, rough gemstones are not allowed to be exported. In addition to its regulatory functions, the NGJA also undertakes promotional activities, locally and abroad.

7.3 Global Competitive Environment

The most valued blue sapphires in the world are Kashmir sapphires, followed by Burma sapphires. Sri Lankan blue sapphires follow at third. However, Kashmir sapphires are not being produced any more, and the production of Burma sapphires is very limited. Therefore, considering quantity, per carat size and quality all together, Sri Lanka is the most significant producer of quality blue sapphires in the world. While other sapphires such as Australian sapphires and Thai sapphires are generally considered to be

[18] National Gem and Jewellery Association, 2002b.

inferior to Sri Lankan sapphires, the recently discovered Madagascar sapphires have very similar characteristics to Sri Lankan sapphires. Sri Lankan exports of blue sapphires have been on the rise since 2001, reaching over US$ 40 million in 2004, although declining to US$ 31 million in 2005 (Figure 7.1). The USA, Thailand and Hong Kong are presently the main markets for Sri Lankan blue sapphires, as seen in Table 7.1. The USA alone accounted for 40 per cent of the total value of blue sapphire exports in 2005. Sri Lanka's main competitors in the global market exporting sapphires are listed in Table 7.2 and include Switzerland, the USA and Thailand. Sri Lanka is the fourth largest exporter in the rubies, sapphires and emeralds category, mainly accounted for by sapphire exports, as Sri Lanka does not produce emeralds, and production of rubies is not very significant.

Figure 7.1
Sri Lankan Exports of Blue Sapphires, 2001-2004

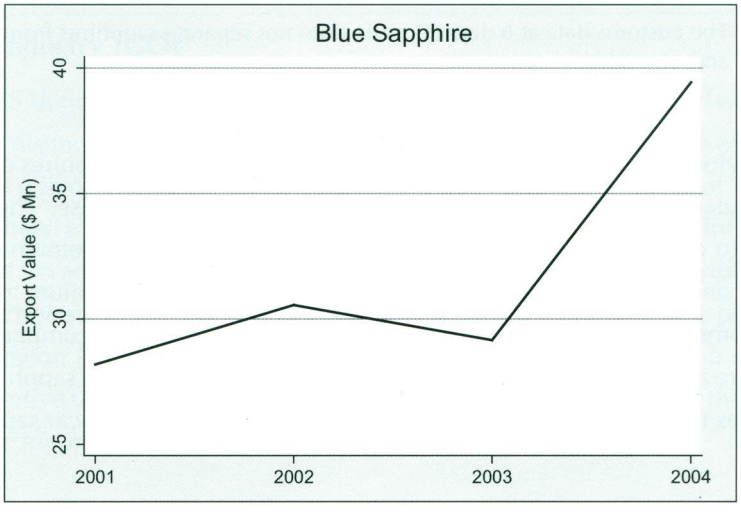


Table 7.1
Sri Lankan Exports of Blue Sapphires (2005)

Country	Lots	Pieces	Weight(carats)	Value (US$ Mn)
USA	350	12,443	55,748.49	12.5
Thailand	266	19,066	77,842.31	7.2
Hong Kong	45	1,686	27,635.05	3.0
France	16	1,241	6,049.84	1.3
Singapore	30	4,107	14,482.38	1.2
Switzerland	3	2,798	2,433.03	1.1
Japan	23	1,935	908,370.07	1.0
UK	32	1,494	6,816.62	0.6
Belgium	3	188	1,379.08	0.5
Germany	37	747	5,357.39	0.5

Source: National Gem and Jewellery Authority, 2005.

Table 7.2
Top Ten Global Exporters of Rubies, Sapphires and Emeralds, 2005
(HS code 710391)

	Country	Value ($Mn)
1	Switzerland	251.638
2	USA	150.853
3	Thailand	122.919
4	Sri Lanka	98.506
5	India	94.801
6	United Kingdom	79.463
7	China, Hong Kong SAR	72.015
8	Colombia	69.977
9	France	56.072
10	Germany	40.856

Note: The customs data at 6 digit HS code does not separate sapphires from rubies and emeralds.

Source: ITC Trade Map.

The expression "Ceylon Sapphire" is used in the trade to refer to both blue sapphires of Sri Lankan origin, as well as to a particular colour. Hitherto, it has been used more in the latter sense. Thus, "Ceylon-colour" is sometimes used to describe sapphires from Madagascar, Tanzania and Vietnam. Presently, buyers distinguish Kashmir and Burma sapphires from other sapphires, and pay a premium for them. Sri Lankan sapphires receive some premium over the remaining origins, but it is small in comparison. Furthermore, buyers do not require an origin certification other than for Kashmir and Burma sapphires. Therefore, the local industry alleges that some foreign dealers pass off the cheaper Madagascar sapphires as "Ceylon" sapphires.

The jewellery industry has a major role to play in any attempt to increase the domestic share of the gem and jewellery value chain. However, at present, most of the quality gems found in Sri Lanka are being exported for jewellery manufacturing abroad. The domestic jewellery industry is below its potential due to several factors. In the market for generic jewellery (i.e., as opposed to branded jewellery) Sri Lanka faces serious price competition from India and China. Because of their very low labour costs, it is not viable to compete against these countries in that market. Therefore, the jewellery industry needs to reorient itself to produce higher value products. However, this requires a significant improvement in jewellery designing skills and manufacturing capacities. The industry has also been deterred by some inconsistent government policies.[19] Meanwhile, countries such as Thailand, Hong Kong, Singapore, UAE and China have in the past several years invested heavily in their lapidary and jewellery industries, and have moved far ahead of Sri Lanka in those areas.

The government and local industry have taken several steps in response to these competitive conditions. In 2003 the industry together with the government export promotion agency, the Export Development Board,

[19] For example, an 18% value-added tax was imposed on imports of precious metals, which was subsequently withdrawn, but then a 2.5% Ports and Airports Development Levy was introduced.

embarked on a strategy to make use of the worldwide reputation of Ceylon Sapphires to re-position Sri Lankan jewellery to the international high-end market. An internationally renowned jewellery designer was engaged to design a collection of branded Ceylon Sapphire jewellery for the high-end market, which would be produced in Sri Lanka by a consortium of jewellery manufacturers and marketed overseas. The collection was produced, but its intended 2005 launch has still not taken place due to the government treasury not releasing the approved funds for the promotion activities. In addition, the government has adopted a liberalized policy on imports of raw materials, consumables, machinery and tools for the gem and jewellery industry with the object of turning Sri Lanka into a regional gem and jewellery hub. Under this policy rough gemstones are allowed to be imported duty free.[20] Investment has also been made in the provision of training, and a modern gemstone testing laboratory capable of issuing internationally accepted certificates is under way, although the expected benefits are yet to be realized due to some implementation issues.

7.4 Position of Industry IGOs

Applying the TRIPS definition, the term "Ceylon Sapphire" identifies sapphires which originate in Sri Lanka, which have distinct qualities, reputation and/or other characteristics that are essentially attributable to the geographical origin. Therefore "Ceylon Sapphire" qualifies as a GI in terms of TRIPS. However, the indication has not been affirmatively registered or recognised as a GI or any other intellectual property, in Sri Lanka or abroad. In addition, Sri Lanka has no control over the use of the description "Ceylon-colour" that is used to describe sapphires of other origins. This allows free riding to take place on the goodwill associated with Ceylon (Sri Lankan) blue sapphires. More seriously, it creates a real risk of "Ceylon" becoming a descriptive term for any sapphire of that particular shade of blue. If this takes place, the GI may not be eligible for protection under national legal systems.

In addition to the "Ceylon Sapphire" indication, there could be a potential GI for Sri Lankan jewellery, based on the use of traditional craft techniques in jewellery manufacturing. A GI for traditional jewellery has the potential to benefit the large number of rural artisans practicing these techniques. However, Sri Lankan jewellery has not received the same reputation enjoyed by Sri Lankan gemstones, and there is a gap between buyers' tastes and traditional jewellery manufacturing. Therefore, either buyers' tastes will have to be changed to create a demand for traditional jewellery, or the traditional industry designs will have to change to produce what the buyers want. Either would involve significant investment. The high-end branded sapphire jewellery collection is going to be marketed under a separate trademark, rather than on the basis of a GI.

7.5 Costs and Benefits of GI Protection

The benefits of GI protection flow, as elaborated in section 2, from the ability to prevent false or misleading use, free riding and the dilution of the goodwill associated with Sri Lankan sapphires. This will encourage and complement investment in branding Ceylon Sapphire to extract a premium price. This

[20] The 2.5% Ports and Airports Development Levy is however applicable, which poses a constraint.

would mostly apply to free size stones, but may also be possible for calibrated stones, depending on the success of marketing. A successful GI strategy may also lead to expanding present capacities in heat treating and in modern jewellery design and manufacturing, thus increasing the domestic share of the gem and jewellery value chain. It would also help increase rural incomes in the high- poverty Sabaragamuwa Province, where much of the gems are located.

There are also important non-economic benefits of GI protection. "Ceylon Sapphire" is an important symbol of national cultural heritage, and the loss of the right to this GI to non-nationals, or the GI becoming a descriptive term, would be the loss of a part of the national identity that goes back over 2,000 years. Therefore, the cost of GI protection must be weighed the cost of *not* protecting.

The costs of GI protection relate to the cost of registering the GI in Sri Lanka and other countries where protection is sought, as well as to the cost of establishing and implementing a system to regulate the use of the GI. One benefit is that there already exists an industry regulatory framework administered by a regulator, the NGJA. The incremental cost of implementing a system for the regulation of GIs is therefore much less than were this not the case. Similar to the Sri Lanka Tea Board's licence conditions for the right to affix the Ceylon Tea lion logo, the system would involve subjecting the right to use the GI to certain conditions, to ensure that only genuine Sri Lankan sapphires can use the GI. This could be achieved by two alternatives. One would be by implementing detailed traceability procedures through the entire value chain, starting at the mining stage. Alternatively, it could be based on laboratory-based gemstone certification at the stage of export. The latter would be the easier and cheaper option, which would enable the GI to be obtained for only those sapphires that demand it. This would be greatly facilitated by the establishment of the proposed modern gemstone testing laboratory in Sri Lanka. At present, stones have to be sent abroad for certification of origin, and as to whether they are treated or untreated.

Although industry insiders are familiar with "Ceylon sapphires", additional advertising costs will need to be incurred to promote "Ceylon Blue sapphires" to consumers in foreign markets, like the USA.

8. Sector-wise Analysis: The Cinnamon Industry

8.1 Introduction

Sri Lanka's association with the cinnamon trade goes back to the dawn of the Common Era. There are records of Ceylon cinnamon being traded in Roman times. Later, the trade was in the hands of Arab merchants, who kept the origin of the spice a closely guarded secret. The quest for spices was the reason for the European explorations of the fifteenth century onwards, which finally revealed Sri Lanka as the source of cinnamon. This led to the successive occupations by the Portuguese, Dutch and British, during which time cinnamon was progressively developed into a commercial cultivation. However, its importance ultimately declined under the British, and other crops such as tea became more important. Yet, cinnamon is presently the country's most important export crop after tea and coconut, and is the leading spice in terms of area under cultivation, volume, foreign exchange earnings and employment.

8.2 Industry Structure

The cinnamon industry in Sri Lanka may broadly be divided into three stages - landowners, collectors / middlemen and exporters. The landowners are mainly smallholders. Of an estimated 25,000 hectares under cinnamon cultivation (mainly along the coastal belt of the Southern and Western Provinces), it is estimated that around 75 per cent of the plots are of less than 2 hectares. The first stage of value addition takes place at the landowner stage, when cinnamon bark is peeled and made into quills. The process of quill preparation is labour intensive and is the basis of a tradition passed down from generation to generation. Sri Lanka is in fact the only country which produces cinnamon quills. Quills are graded according to their diameter, and the smaller the diameter, the higher the price. Most quills are exported in bales of 42 inch length and 45 kg weight. However, the industry is presently constrained by an acute shortage of peelers, as a result of the low social status that has been traditionally associated with this occupation.

Other domestic value addition mostly takes place at the exporter stage. These include cinnamon cut-pieces (typically 10 to 15 cm in length) in 1kg bulk packages, or in consumer packages (e.g. 50 g packs). These are more profitable than exporting bales, but depend on being requested by the buyer. Most buyers buy bales and perform their own bulk packaging. Another form is powdered or ground cinnamon, made from quillings (bits of cinnamon bark), chips (tiny branches that are too small to take the bark, which are dried) and featherings (a longer chip), and lower grade quills. Exporters are corporates, with the top ten exporters accounting for around 80 per cent of exports.

Processed exports of cinnamon are bark oil and leaf oil. Bark oil is extracted from chips, quillings and lower grades of quill, and is used mainly in the perfumes and pharmaceuticals industries. Leaf oil is used mainly in producing disinfectants and detergents. There are about five major local companies doing oil distillation, who have invested in modern distillation facilities. Some countries import quills from Sri Lanka and extract the oil themselves, such as India and France.

8.3 Global Competitive Environment

The variety of cinnamon grown in Sri Lanka is known as *Cinnamomum zeylanicum*,[21] whose synonym *Cinnamomum verum* means "true cinnamon." Sri Lanka supplies 90 per cent of the world export market of "true" cinnamon, with the balance mainly coming from Seychelles and Madagascar, where the Dutch and British introduced cinnamon from Ceylon. However, recently India has also begun to expand its cultivation of "true" cinnamon, which represents a potential threat to the market share of Ceylon cinnamon.

The primary export product is cinnamon quills, as seen in Figure 8.1. The main markets for Sri Lankan cinnamon (which is known as "Ceylon cinnamon") are Mexico, USA, Columbia, Spain, Ecuador, Peru, Bolivia and Guatemala. Mexico alone accounted for half the quantity of cinnamon exported in 2005, followed by the USA, accounting for 12 per cent. The Latin American countries mainly use cinnamon

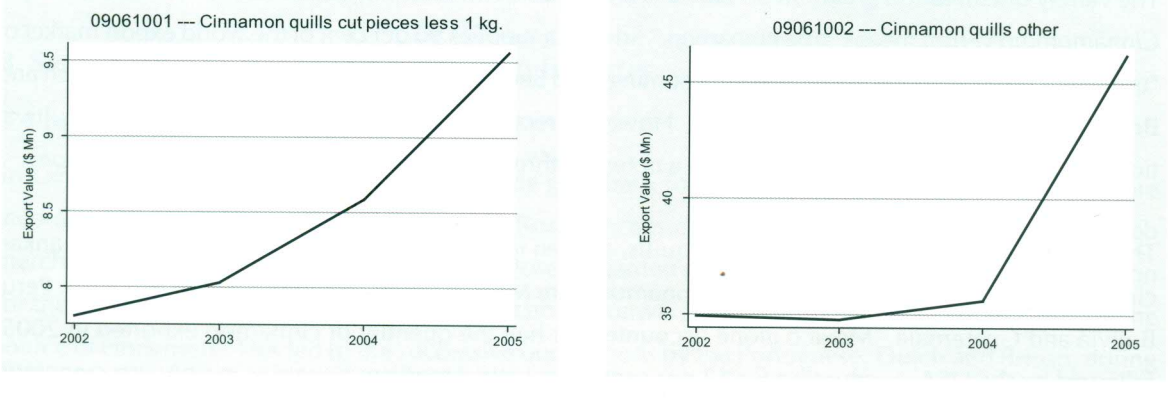
[21] *Zeylanicum* is itself derived from the former name of Sri Lanka.

quills to brew a beverage, in a similar manner to tea. In the USA cinnamon is mainly used to flavour bakery products. (See Table 8.1 for product-wise market penetration).

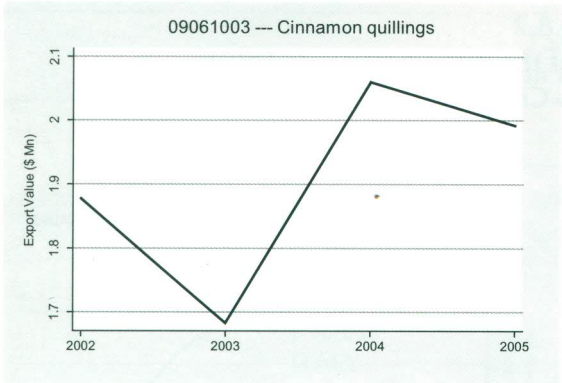
However, in the North American and European markets, "true" cinnamon has been displaced by *Cinnamomum cassia (syn. C. aromaticum)*, a much cheaper and inferior species of the same genus as "true" cinnamon. During the 19th century the cinnamon monopoly faded, and the more common cassia bark became acceptable to European consumers. In North America and Europe today, cassia has "become" "cinnamon" - what is sold as "cinnamon" in these markets is mostly cassia, or a blend of cassia with a small quantity of true cinnamon. The major producers of cassia are China, Vietnam, and Indonesia. Table 8.2 provides the top ten global exporters of cinnamon/cassia.

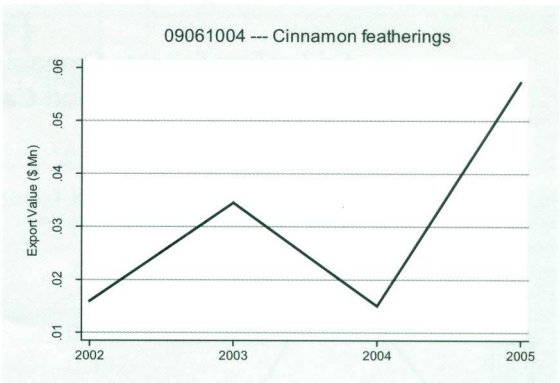
The Brussels Tariff Nomenclature adopted by the World Customs Organization (WCO) in the early 1960s (predecessor to the present Harmonized System of Tariff Nomenclature) categorized cinnamon (i.e., "true" cinnamon or *Cinnamomum zeylanicum*) and cassia under the same code number (090610). Following lobbying by the Sri Lankan government with the spice industry, the WCO has now adopted a separate HS Code number at six digit level recognizing "cinnamon" as *Cinnamomum zeylanicum*.[22] The change became legally effective on 1 January 2007. From then on, labelling laws in Western markets could prevent cassia from being imported as "cinnamon." Therefore, the Sri Lankan spice industry views this as an ideal opportunity to launch "Ceylon cinnamon" in those markets, as the only "true" cinnamon. It may be noted that true cinnamon has not been displaced by cassia in the main Latin American markets of Ceylon cinnamon, where consumers discern between the two varieties.

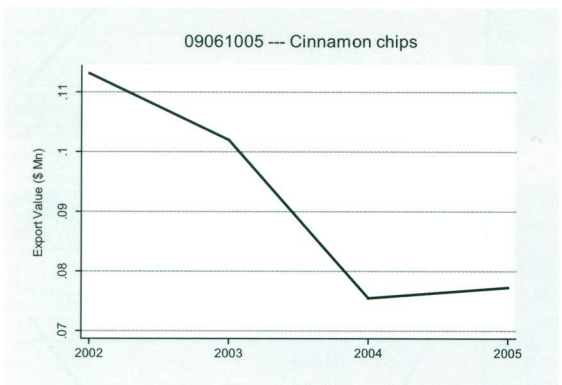
Figure 8.1
Sri Lankan Exports of Cinnamon at the 8 Digit HS Code Level, 2005
(090610 Cinnamon and Cassia – neither of crushed/ground)

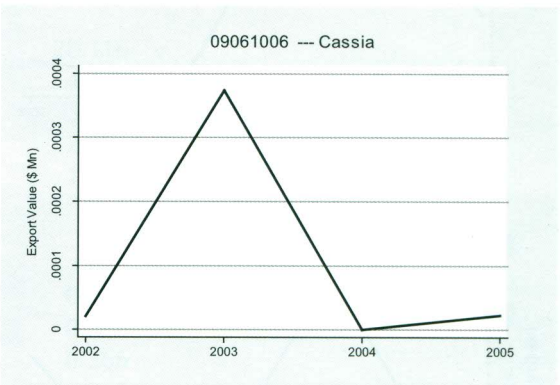


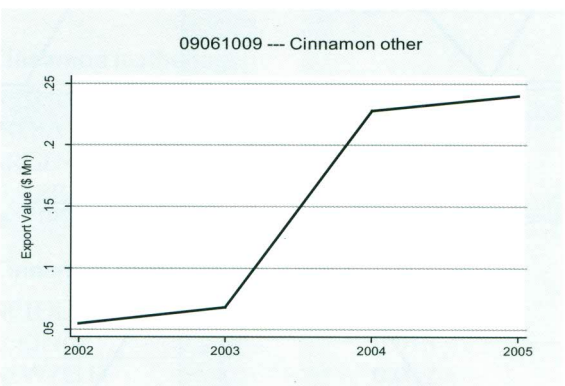
[22] The new HS codes are 090611 – Cinnamon (*Cinnamomum zeylanicum Blume*) and 090619 – Other. Therefore, cassia (*Cinnamomum cassia*) would belong to the "other" category.





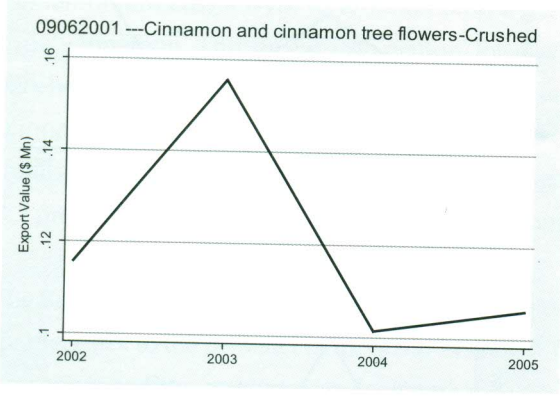


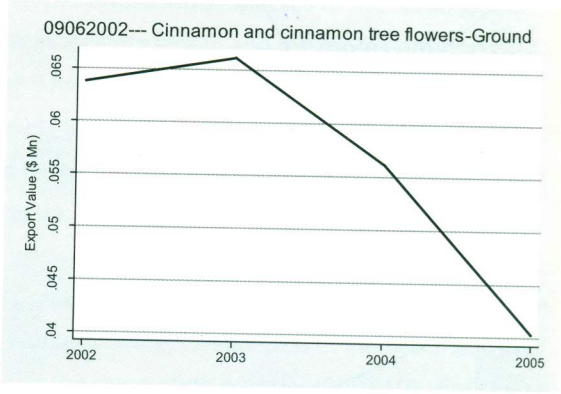


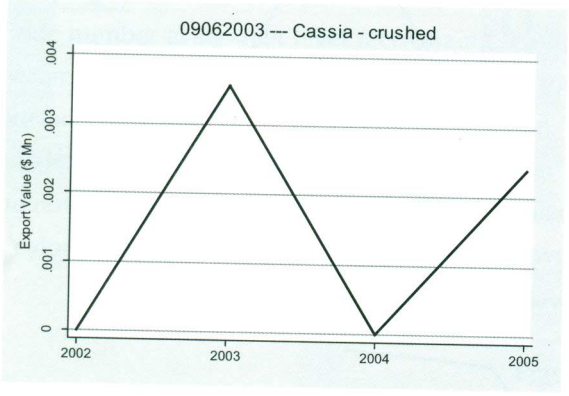


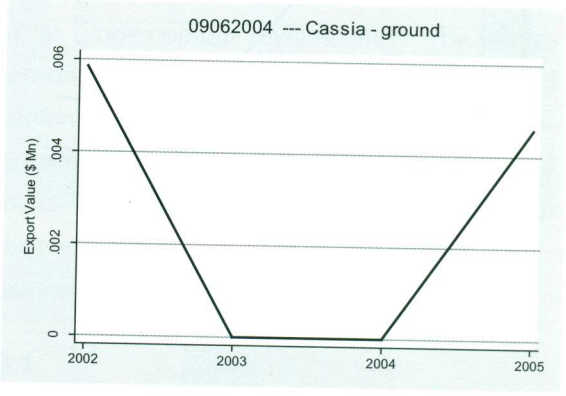
Source: Sri Lanka Customs.

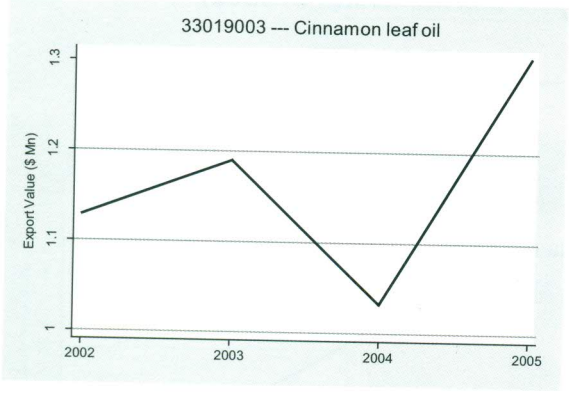
Figure 8.2
Sri Lankan Exports Cinnamon at the 8 Digit HS Code Level, (HS code 090620- Cinnamon and Cassia- Crushed/Ground and Cinnamon Oil)

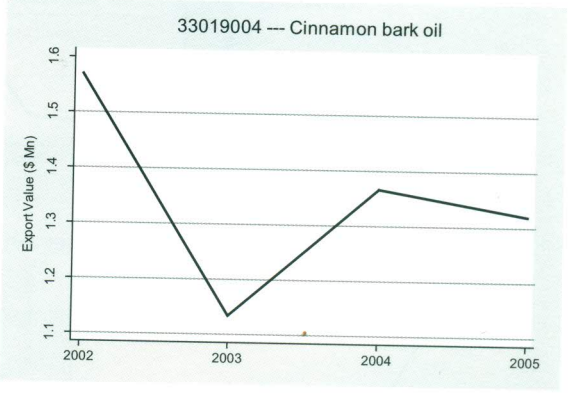












Source: Sri Lanka Customs.

Table 8.1
Sri Lanka's Main 5 Markets on Each Product at 8 Digit Level-2005

	COUNTRY	VAL($ Mn)
09061001	**Cinnamon quills cut pieces less 1 kg.**	
	U.S.A.	3.004
	MEXICO	2.383
	SPAIN	1.175
	INDIA	0.690
	ITALY	0.392
09061002	**Cinnamon quills -other**	
	MEXICO	28.116
	U.S.A.	4.161
	PERU	3.308
	COLOMB	2.581
	GUATMAL	1.991
09061003	**Cinnamon quillings**	
	MEXICO	0.487
	SPAIN	0.290
	GERMANY	0.266
	U.S.A.	0.265
	U.KING.	0.138
09061004	**Cinnamon featherings**	
	NETHLDS	0.032
	INDIA	0.016
	ARGENT	0.009
	U.ARB.E	0.000
09061005	**Cinnamon chips**	
	NETHLDS	0.029
	U.KING.	0.013
	NEWZELD	0.012
	S.AFRCA	0.010
	AUSTRAL	0.004
09061006	**Cassia**	
	JAPAN	0.000
09061009	**Cinnamon other**	
	ARGENT	0.056
	EQUADOR	0.046
	MEXICO	0.043
	EGYPT	0.019
	GERMANY	0.018

Continuation of Table 8.1

	COUNTRY	VAL($ Mn)
09062001	**Cinnamon and cinnamon tree flowers-Crushed**	
	AUSTRAL	0.065
	PERU	0.022
	NEWZELD	0.007
	U.KING.	0.005
	AUSTRIA	0.002
09062002	**Cinnamon and cinnamon tree flowers-Ground**	
	PERU	0.019
	SWITZLD	0.009
	AUSTRIA	0.008
	ITALY	0.001
	AUSTRAL	0.001
09062003	**Cassia-Crushed**	
	SPAIN	0.002
09062004	**Cassia-Ground**	
	U.S.A.	0.002
	U.KING.	0.002
	MALDIVE	0.00
33019003	**Cinnamon leaf oil**	
	U.S.A.	0.720
	U.KING.	0.115
	INDIA	0.115
	HG KONG	0.101
	FRANCE	0.070
33019004	**Cinnamon bark oil**	
	FRANCE	0.515
	GERMANY	0.433
	U.S.A.	0.120
	U.KING.	0.097
	SWITZLD	0.076

Source: Sri Lanka Customs.

Another international development bearing on the industry is the increasing stringency of product standards in export markets. In 2007 the EU is due to enforce standards on HACCP (Hazard Analysis and Critical Control Points) for agro-industry products exported to the region, which will require the local industry to adopt the necessary procedures in order to be compliant. Apart from this, in 2004 a few consignments of cinnamon from Sri Lanka were blocked in Italy and Germany due to sulphur residue. Prior to being exported, cinnamon is traditionally fumigated with sulphur dioxide, which leaves residues. Sulphur residues are recognized as a food additive by the international food standards organization, the Codex Alimentarius Commission. Codex standards specify maximum residue limits (MRLs) for all kinds of food additives. However, until 2006 there was no Codex standard for sulphur residues in cinnamon, leaving it to the vagaries of national regulations. Following lobbying by the Sri Lankan government in the wake of this incident, in July 2006 the Codex Commission adopted a sulphur MRL for cinnamon.[23]

[23] The Codex Alimentarius Commission adopted a maximum level of use of 150 mg/kg for sulphites (including sulphur dioxide) in food category 12.2.1 "Herbs and spices" of the Codex General Standard for Food Additives (GSFA).

Table 8.2
Top 10 Exporters of Each Product at 6 Digit Level-2005

	Country	Value ($Mn)	Weight (Tons)
090610	Cinnamon & cinnamon-tree flowers, neither crushed/ground		
1	Sri Lanka	58.062	12,276
2	China	25.697	34,634
3	Indonesia	18.899	35,356
4	Viet Nam	5.759	6,287
5	Singapore	3.148	2,495
6	UAE	2.051	2,294
7	Netherlands	1.873	1,491
8	Germany	0.781	439
9	Belgium	0.553	569
10	Poland	0.539	10
	Country	**Value ($Mn)**	**Weight (Tons)**
090620	Cinnamon & cinnamon-tree flowers, crushed/ground		
1	Brazil	3.445	-
2	Netherlands	2.797	1,192
3	USA	1.925	880
4	Viet Nam	1.815	1,312
5	Germany	1.547	439
6	Indonesia	1.434	1,836
7	Sweden	0.832	108
8	Poland	0.744	86
9	China	0.479	465
10	Canada	0.463	125
18	Sri Lanka	0.153	96

Source: ITC Trade Map.

Meanwhile the government export promotion agency, the Export Development Board, and some international NGOs have partnered with the industry to promote Good Agricultural Practices (GAPs) and Good Manufacturing Practices (GMPs) in the industry value chain. GAPs and GMPs can help to meet HACCP requirements, as well as eliminate the need for sulphur fumigation. Presently there is a GMP-certified model cinnamon processing facility in Galle District in the Southern Province. Wide scale adoption of GAPs and GMPs requires significant attitudinal change over the traditional ways of doing things.

8.4 Position of Industry IGOs

"Ceylon cinnamon" has a reputation for quality in the Latin American countries where it is the leading export over cassia. It doesn't have such a reputation in the USA and European countries, where cassia has become known as "cinnamon." However, the cinnamon grown in Sri Lanka has a characteristic flavour profile, influenced by the domestic soil and climatic conditions. Therefore, in terms of the TRIPS definition, "Ceylon cinnamon" identifies cinnamon originating in Sri Lanka, which has a quality, reputation and/or other characteristics essentially attributable to its geographical origin. Accordingly, "Ceylon cinnamon" can be considered to be a GI.

According to section 191(b) of the IP Act 2003, Ceylon Cinnamon is recognised as a GI. Therefore, it is eligible for protection under Chapter XXXIII of the IP Act and would satisfy the TRIPS condition, also required in most countries' special GI systems, of protection in the country of origin. However, recognition or registration under most national GI systems also requires that there should be a system in place in the GI's country of origin to regulate the essential qualities and/or characteristics of the GI product. This is a condition for the registration of a GI as a certification mark, collective mark or guarantee mark, as well as for registration or recognition under special systems. Presently there is no such system in place in Sri Lanka. Recently steps were initiated to register "Ceylon Cinnamon" as a certification mark. The Spice Council, a body incorporated in 2003 with representatives of the industry and government agencies, has been the focal agency of these efforts. However, so far little progress has been made, especially in formulating the requisite system of standards of use and inspection procedures. There is also some difference of opinion between the private and public sector stakeholders as to who should own the mark (and thereby the right to control it).[24]

The whole issue has urgency with the impending coming into effect of the HS Code bifurcation of "true" cinnamon and cassia on 1 January 2007.

Within "Ceylon cinnamon" are a number of different types of cinnamon based on bark pungency, grittiness of the bark and leaf structure, such as (by their local names) *pani kurundu* (sweet), *pani miris kurundu* (sweet and hot), *rasa kurundu* (tasty), *suwanda kurundu* (fragrant), *titta kurundu* (bitter) etc. As in the case of the speciality tea GIs, if a link can be established between the qualities and characteristics of each of these varieties and their geographical environment, they can also be GIs, under an indication which links them to their geographical area. In addition, the method of producing cinnamon quills is also unique to Sri Lanka. As a result there is also a potential, independent GI for cinnamon quills.

8.5 Costs and Benefits of GI Protection

As in the case of Sri Lanka's tea and sapphires, the benefits of GI protection flow from the ability to prevent false or misleading use, free riding and the dilution of the goodwill associated with Sri Lankan cinnamon. However, unlike in the cases of tea and sapphires, Sri Lankan cinnamon presently faces only insignificant competition from other producers of the same product. Instead, the major competition is from cassia, a substitute product. The passing off of cassia as "cinnamon" in the USA and Europe is not an infringement of the Ceylon Cinnamon GI, but a passing off of "true" cinnamon, the species. It may be argued that a passing off of "true" cinnamon is also a passing off of "Ceylon" cinnamon, because of the fact that Ceylon cinnamon is the predominant source of true cinnamon. This is however a dangerous argument. Mixing up Ceylon cinnamon (a GI) with true cinnamon (a kind of product), will lead Ceylon cinnamon to become a generic appellation for true cinnamon, losing all claims for GI protection. The local industry has to be mindful to guard against this, when trying to gain market share from cassia.

Therefore, the benefits of GI protection are less straightforward in the case of Ceylon cinnamon than in the cases of Ceylon Tea and Ceylon Sapphires. GI protection can prevent use of the appellation "Ceylon

[24] As discussed in section 3.3, foreign GI systems recognise both public bodies and associations of producers as eligible to register a GI. It may be also noted that registration of a GI may be cancelled if the registered owner fails to comply with its responsibilities or is acting in an oppressive manner.

cinnamon" other than for cinnamon originating in Sri Lanka meeting established criteria. This could be important if as a result of a successful marketing campaign for Ceylon cinnamon in USA and Europe, third parties attempt to pass off or free ride on the goodwill of Ceylon cinnamon. Such a case would be if Indian cinnamon tried to pass off as Ceylon Cinnamon. However, having a GI will not make a difference if cassia is being passed off simply as "cinnamon" or as "true cinnamon." As mentioned before, the remedy against such use under the laws relating to misleading labelling, advertising etc. is independent of GI protection.

As discussed in the other sections, the cost of GI protection relates to the cost, on the one hand, of setting up and administering a system governing the right to use the GI, and on the other, the cost of affirmative GI registration / recognition in Sri Lanka and foreign countries. Unlike in the case of the tea and gem and jewellery sectors, the cinnamon sector in Sri Lanka is marked by the absence of a regulatory framework and of an industry regulator with overarching responsibility for the sector. Presently a number of state agencies are involved in different areas of the value chain, resulting in a somewhat fragmented situation. Therefore, the system would have to be essentially devised from scratch. Alternatively, developments such as HACCP and other export market standards have committed the industry to a path of increasing standardisation across the entire value chain. In this light, the GI system could very easily be built into a system of industry-wide quality control and assurance standards mandated by HACCP and other export market requirements. For example, the right to use the GI "Ceylon Cinnamon" could be linked to the adoption of GAPs and GMPs. This has the added advantage of being able to eliminate the need for separate monitoring / inspection to some extent.

9. An Agenda of Action

A legal-economic analysis of geographical indications in relation to the tea, blue sapphires and cinnamon sectors in Sri Lanka suggest that a GI strategy would be beneficial for all three sectors. The case for tea and sapphires differs slightly from that of cinnamon, in that the former two have regulatory bodies that reduce the institutional cost of implementation. The cinnamon industry unfortunately lacks such a body. Further, the cinnamon sector also is different in that its main competitive challenge is from a rival product, cassia, which is passed off as cinnamon - the *species*, rather than as *Ceylon cinnamon* (the *GI*). Nevertheless, a GI strategy is still useful for the cinnamon industry in maintaining the market share of Ceylon cinnamon as against potential rival producers of true cinnamon, as well as against possible false or deceptive use or "free riding" on the reputation of Ceylon Cinnamon.

It should be noted, for all the three industries, that generally GI *registration* (whether under the trademark law (as certification marks, collective marks or guarantee marks) or a special system of protection) provides more effective protection. In this regard, it is important to bear in mind that obtaining GI registration abroad is cheaper, and the protection obtained is more effective, if it is obtained *before* the GI has become commercially successful or acquired a reputation in the market concerned.

All three sectors - first priority is to protect their GIs in Sri Lanka …

- Non-protection in the GI's home country is a ground for refusing to protect a GI under TRIPS, and some national GI laws. In addition, rights in trademarks acquired *before* a GI is protected in the home country may be valid against the GI.
- The requirement of domestic protection implies a *positive* act of recognition or protection. This could be an IP registration, judicial decision or by way of a legislative decree.
- In addition to protecting the GI name, the *right* to use the GI has to be regulated by rules, and compliance must be *enforced* by an independent body or entity.

Presently, only Ceylon Tea and Ceylon Cinnamon are protected in Sri Lanka (by the IP Act 2003 and the Ceylon Tea trademark registration), and only Ceylon Tea has rules governing its use (the Tea Board's trademark license conditions).

… then protect the GIs abroad

- The markets where GI protection is most urgent should be prioritized. The following factors should be taken into account -
  - where the GI is being pirated / infringed
  - where the GI is at risk of becoming generic or descriptive
  - where the GI has high future potential
- In these markets, protection should be under the special GI law (which usually gives the highest protection), failing which as a certification mark or collective mark.
- Along with the GI name, it is advisable to include a symbol (like the Ceylon Tea lion logo) with the registration - in case exclusive rights to the name are refused due to prior use or opposition.
- The pros and cons of allowing foreign processors who meet the GI quality standards to use the GI should be considered -
  - Pros - reduced opposition to GI registration, earn licence fees
  - Cons - reduces incentive for domestic value addition
- In addition to the above, it is recommended to include a chapter on GI protection in Sri Lanka's bilateral and regional trade agreements, including lists of GIs to be *guaranteed protection in each others' territories*. This could obviate the legal expenses that would have to be incurred to protect GIs under national law.

The specific policy recommendations for the individual sectors are

Policy Recommendations - Tea Sector

- Need to register "Ceylon Tea" as a GI under special GI law, or failing that, as a certification mark or collective mark, in the strategic markets, in place of the present individual trademark registrations.
- Appropriate GI protection is required not only in our main export markets, but also in the primary export markets of our competitors like Kenya, and in markets where Ceylon tea is re-exported by foreign packers.
- Mitigate the expected opposition for GI registration abroad from foreign packers of Ceylon Tea, by extending the possible use of the GI to foreign packers. However, domestic value-addition should be encouraged and as such the licence fees charged from foreign packers should be substantially higher than for local packers, such that it more than covers all inspection and monitoring costs incurred abroad and creates an incentive to add value in Sri Lanka.
- Alternatively, pursue *one* registration for "Ceylon Tea - Symbol of Quality" and Lion Logo *without* exclusive rights to "Ceylon Tea" and a *separate* registration for exclusive right to the words "Ceylon Tea." Licence the "Ceylon Tea" GI to foreign processors who meet the requisite quality standards; retain the Ceylon Tea Lion Logo mark for domestic value-added exports only (as present).
- For the six agro-climatic regions and sub-districts, positive protection of these GIs in Sri Lanka and abroad should be pursued. First, the Tea Board and tea industry need to urgently agree on the rules that would govern the use of each of the GIs for the speciality teas.
- When the rules have been formulated and the monitoring system established, the speciality GIs should be registered or recognised as GIs under the applicable national systems in Sri Lanka and in the main overseas markets. Because of the limitations of the trademark system in the case of GIs comprising of geographical names, wherever the choice is available, the speciality GIs should be registered under the special GI system. In Sri Lanka, the speciality GIs should be protected by regulations under the Tea Board Act.
- A marketing campaign for the six areas should continue so as to provide name recognition in the particular foreign markets where the specialty teas may be popular, such as the USA. In this context, from a cost perspective it would not be appropriate to market particular sub-districts at this time.

Policy Recommendations - Sapphires Sector

- Need to urgently pursue GI protection for "Ceylon Sapphire" before the term becomes a descriptive name for a colour of sapphire.

- First, NGJA and Industry should work together to adopt a set of rules for the right to use the "Ceylon Sapphire" indication. Specifically, the rules will need to provide a means of verifying Sri Lankan origin, as sapphires are also being imported for domestic value adding and re-export. Laboratory-based gemstone certification at export stage would be the best option, since it enables GI to be obtained only for those gemstones that want it.
- For Ceylon Sapphire, registration as a certification mark would be the best course. NGJA should register "Ceylon Sapphire" and the conditions governing its use as a certification mark under the Sri Lankan IP Act 2003. NGJA is also best placed to oversee compliance.
- NGJA should also register "Ceylon Sapphire" as a certification mark or GI, as the case may be, in the key markets for Sri Lankan sapphires.
- A marketing campaign should be launched in the key markets emphasizing that "Ceylon Sapphire" signifies *origin in Sri Lanka*.
- For potential *jewellery* GI, Sri Lankan jewellery doesn't have significant distinguishing *qualities* compared with e.g. Indian jewellery. Therefore jewellery GI will have to be based on creating a unique reputation about Sri Lankan jewellery, through marketing.

Policy Recommendations - Cinnamon Sector

- The government and industry should work together to formulate a set of rules governing the right to use the indication "Ceylon cinnamon." As far as possible, the rules should include the necessary requirements for compliance with GAP/GMP and any important export country requirements.
- The government and industry should agree on an entity that would register the GI and be responsible for overseeing the system. The Spice Council or the Export Development Board may fill this role.
- Once the system is in place, "Ceylon cinnamon" together with the rules should be registered as a GI in Sri Lanka. Under the present domestic system, this is best accomplished through a certification mark registration under the IP Act 2003.
- In N. America and Europe, marketing needs to emphasize the difference between cassia and "true" cinnamon, and that "Ceylon Cinnamon" is the premier origin of "true" cinnamon." **Care should be taken to always distinguish "Ceylon Cinnamon" (the GI) from "True Cinnamon" and C. zeylanicum (the species) in promotion activities - failure could result in the GI becoming a generic term and losing all claims to protection.**

While we provide a sector-wise approach, the importance of niche marketing in the global context and the variety and variations in national systems of GI protection suggest the need to base the international protection of each GI on separate legal-economic cost-benefit analyses carried out for each individual key overseas market.

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Appendix

Table 1
Overview of International Regimes for Protection of GIs/IGOs

	Paris Convention	Madrid Agreement	Lisbon Agreement	TRIPS Agreement
1. Category of IGO covered	"Indications as to the source of goods"	"Indications of source on goods"	"Appellations of origin"	"Geographical indications"
2. Legal definition	Not defined	Not defined	"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"	"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"
3. Scope of protection	Seizure on importation of goods bearing false indications as to their source (Art. 10);	Seizure on importation of goods bearing a false or deceptive indication of origin (Art. 1);	Protection against any usurpation or imitation of an appellation of origin, 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 (Art. 3)	Provision of legal means for interested parties to prevent– (a) use of a GI that misleads the public as to the geographical origin of the good (includes both false use of GI, and use that is *literally true* but misleading), and
	Provide protection against acts of "unfair competition," which includes prohibiting the use of indicators liable to mislead the public as to the nature and characteristics of a good (Art. 10*bis*)	Prohibition of publicity material capable of deceiving the public as to the source of the goods (Art. 3*bis*)	An appellation of origin may not be deemed to have become generic in any contracting state so long as its protection continues in its country of origin (Art. 6)	(b) any use which constitutes an act of unfair competition under the Paris Convention (Art. 22.2) Refusal/invalidation of registration of a trademark containing or consisting of a GI with respect to goods not originating in the area indicated, if it can mislead the public (Art. 22.3) In the case of GIs for ***wines and spirits***, these are entitled to the higher level of protection provided in the Lisbon Agreement (Art. 23.1), and to have the registration of a trademark for wines or spirits containing or consisting of a GI refused/invalidated with respect to wines/spirits

Continuation of Table 1

	Paris Convention	Madrid Agreement	Lisbon Agreement	TRIPS Agreement
				having that origin (Art. 23.2) In the case of GIs for ***wines only,*** they are entitled to – (a) protection to each homonymous GI for wines, provided that there is no misleading of the public (Art. 23.3), (b) mandatory negotiations on a multilateral system of notification and registration (Art. 23.4)
4. Preconditions for protection	Not stipulated	Not stipulated	Appellation should be recognized and protected "as such" (i.e. as an appellation of origin as defined in Art. 2) in its country of origin and registered at the International Bureau of Intellectual Property of the WIPO (Art. 1(2)) (a registration fee applies)	The GI should be used, and protected, in its country of origin (Art. 24.9)
5.Limitations on protection	Not stipulated	National courts may decide whether an indication has become generic, thereby denying it protection. However, regional appellations concerning the source of products of the vine are excepted (Art. 4)	Contracting parties may declare, within one year of receiving notification of the registration, that they will not protect an appellation of origin that has been registered with the International Bureau (Arts. 5(3) and 5(4)). Contracting parties are required to notify the international Bureau if the effects of an international registration are subsequently invalidated in their territory (Rule 16, Lisbon Regulations)	Protection may be denied to indications that have become a generic term for identifying the products they are associated with (Art. 24.6) "Grandfather rights" exceptions for – (a) GIs for wines or spirits that have been used in the Member's territory for either 10 years preceding 15 April 1994, or in good faith preceding that date (Art. 24.4) (b) Rights in relation to trademarks applied for, registered or acquired in good faith before the application of the TRIPS Agreement for that Member, or before the GI is protected in its country of origin (Art. 24.5)
6. Number of signatories (States)	169	34	26	150
7. Is Sri Lanka a signatory	Yes	Yes	No	Yes

Source: Authors' analysis.

Table 2
Type of Systems in Use for GI/IGO Protection Among Selected Countries

	Laws Focusing on Business Practice[P]			Trade Mark Law			Special Protection	
Member	*Focus on Unfairness vis-à-vis Competitors*	*Focus on Misleading of Consumers*	*Protection against Passing Off*	*Protection against Registration Trademarks*		*Collective, Certification, Guarantee Marks*	*Prior Recognition Requirement* [Z]	
				Any IGO	*Certain IGOs* [Q]		*No*	*Yes*
Australia	X	X	X	X	X		X	X
Bulgaria	X	X			X			X
Canada	X	X	X		X			X
Cuba				X			X	X
Czech Rep.	X	X	X	X	X[1]			X
Ecuador	X	X						X
Estonia	X	X		X	X			X
EC/MS [a]	X	X		X	X			X
Austria	X			X	X	[1]		X
Belgium	X	X		X	X			X
Denmark	X	X		X	X	X		
Finland	X	X		X	X			
France	X	X		X	X			X
Germany	X	X		X		X	X	X
Greece				X	X			
Ireland				X	X			
Italy					X			X
Luxembourg	X	X		X	X			
Netherlands	X	X		X	[1]	X	?	
Portugal	X				X			X
Spain		X		X	X			X
Sweden		X			X	X	X	
UK		X	X	X	X	X		X
Hong Kong, Ch.		X	X	X		X		
Hungary	X			X	X			X
Iceland	X?	X		X	X			
Japan	X			X	X			X
Korea	X	X		X	X		X	X
Liechtenstein	X	X		X	X	X	X	X
Lithuania	X			X	X			
Mexico	X	X		X				X

[P] The first column is meant to reflect information relating to provisions addressing acts which concern rather the establishment, the goods, or the industrial or commercial activities of a *competitor* and the second column provisions addressing acts rather relating to misleading allegations concerning the goods of *the person who makes the allegations*. In respect of this distinction, see also the guide to the application of the Paris Convention by Prof. G.H.C. Bodenhausen, in particular pages 145 and 146.

[Z] Some of these means provide *sui generis* protection for IGOs that relate to products with specifically defined characteristics or methods of production (see further Table II below); other means apply without such specific definitions.

[Q] Certain IGOs only or IGOs in respect of specific categories of products only.

[a] Information concerning EC instruments is reflected on the line of the EC and their member States and information concerning other instruments on the line of the member State in question.

	Laws Focusing on Business Practice		Trade Mark Law				Special Protection	
Member	*Focus on Unfairness vis-à-vis Competitors*	*Focus on Misleading of Consumers*	*Protection against Passing Off*	*Protection against Registration Trademarks*		*Collective, Certification, Guarantee Marks*	*Prior Recognition Requirement* [Z]	
				Any IGO	*Certain IGOs* [Q]		*No*	*Yes*
Morocco	X						X	X
New Zealand		X	X	X	X			[i]
Norway	X	X		X	X		X	
Peru	X			X	X		Y	X
Poland	X	X?		X	X		X	X
Romania	X			X	X			X
Slovak Rep.	X	X	X	X	X			X
Slovenia		X		X	X			X
Sri Lanka	**X**	**X**	**X**	**X**		**X**	**X**	
Switzerland	X	X		X	X	X	X	X
Turkey	X	X		X				X
USA	X	X	X?	X	X	X		X
Uruguay				X	X		X	X
Venezuela				X	X			X

Source: WTO (2003), except for Sri Lanka – authors' analysis.

[P] The first column is meant to reflect information relating to provisions addressing acts which concern rather the establishment, the goods, or the industrial or commercial activities of *a competitor* and the second column provisions addressing acts rather relating to misleading allegations concerning the goods of *the person who makes the allegations*. In respect of this distinction, see also the guide to the application of the Paris Convention by Prof. G.H.C. Bodenhausen, in particular pages 145 and 146.

[Z] Some of these means provide *sui generis* protection for IGOs that relate to products with specifically defined characteristics or methods of production (see further Table II below); other means apply without such specific definitions.

[Q] Certain IGOs only or IGOs in respect of specific categories of products only.

[a] Information concerning EC instruments is reflected on the line of the EC and their member States and information concerning other instruments on the line of the member State in question.

Table 3
General Features of the Three Broad Types of National Systems for GI/IGO Protection

	Laws Focusing on Business Practices	Trademark Law	Special Protection
1. Basis of protection	Laws relating to unfair competition, consumer protection, trade descriptions, food standards, etc; tort of passing off	As collective, certification or guarantee marks	Laws dealing exclusively with the protection of IGOs, or special provisions for IGOs contained in other laws such as trademarks, marketing, labelling and taxation
2. Prior registration / recognition requirement	No - the laws do not deal with IGOs as such	Yes	Yes, usually. Where there is no prior recognition, protection is based on satisfying the definition criteria laid down in the relevant law
3. Criteria for registration / recognition	N/A	The specific rules governing the use of the marks should be filed When the mark consists solely or essentially of a geographic term, necessary to demonstrate the authority of the applicant to control the use of the term The normal procedures for opposition / cancellation of trademarks will apply	(I.e., where recognition is necessary) • Legal interest/authority of the person initiating recognition procedure • Criteria employed to demarcate the area covered by an IGO (e.g. the types of terms for geographical units that may constitute an IGO) • Requirements to ensure that the products to which an IGO is attached actually come from the area designated • Requirements related to product characteristics (e.g. quality standards) • Link between characteristics and geographical origin • Sometimes involves consultation / opposition procedures prior to granting recognition
4. Need to be recognised as an IGO by the public / need to have acquired goodwill	Usually is necessary under laws relating to unfair competition, consumer protection, and passing off	Not at the point of registration, but registration may be subsequently cancelled for non-use of the mark without reasonable cause	Yes, in some cases (mainly where there is no provision for prior recognition of the GI/IGO)
5. Protection contingent on protection in the country of origin?	No	No	Under systems that require prior recognition, answer is usually yes. Conversely, where prior recognition is not required, the answer is generally no

Continuation of Table 3

	Laws Focusing on Business Practices	Trademark Law	Special Protection
6. Scope of protection against those not eligible/ authorized to use the GI/IGO	Protection against - • Acts contrary to "good practice" or "honest commercial practices" • Conduct liable to mislead or deceive the public, including in regard to the origin and characteristics of goods and services • False or incorrect claims, including in regard to the origin and characteristics of goods and services • Trading on the reputation or goodwill of the goods or services of another person, resulting in damage to the latter	The registered owner of the mark has the exclusive right to prevent the use of the mark by unauthorized parties when such use would likely cause consumer confusion, mistake or deception as to the source of the goods/service	Protection against - • Use of a recognized IGO by a person not eligible/authorized to use it, without any test as to the nature of that use • Use which is "false", "incorrect", or "does not correspond to the place specified" • Use which might mislead, deceive or create a false impression regarding the geographical origin of the products, in some cases even if the use of the IGO is factually correct but nevertheless liable to mislead • (In some systems) each of the above, even if the actual origin is indicated or if the geographical indication is used in a translation or together with delocalising expressions like "method", "type", "style", or "imitation"
7. Grounds for cancellation/ denial of protection	For unfair competition/consumer protection /passing off, if the public are not misled by the unauthorised user	Registration may be lost if the owner of the mark fails to enforce observance of the regulations governing the use of the mark by those who use it Non-use without reasonable cause (item 4 above)	If - • the conditions for the initial recognition of the IGO were not met, or have ceased to exist • the IGO is not used in accordance with the terms set out in the application • serious defects are established in relation to the product specification and the use of the IGO which cannot be remedied in another way • renunciation by all users • (in a few countries) non-use of the IGO • the GI/IGO is considered to have become generic • transitional/"grandfather" exceptions are applicable
8. Standing to initiate enforcement action	*Ex-officio* and private rights of action	Mainly by private rights of action. *Ex-officio* action is limited to enforcing criminal penalties for infringement	*Ex-officio* and private rights of action

Source: Based on information contained in WTO (2003).

Table 4
Recognition of IGOs: Information Provided by Members on Costs

Member	Recognition	Renewal	Authorization to Use an IGO
Australia	No fees	N.A.	N.A.
Bulgaria	Fees for registration and publication – State Gazette No. 53 of 4 July 1997	N.A.	Registration as user is subject to payment fees for registration and publication
Canada	Application fee - Can$ 450.00 (US$300)	N.A.	Matter for authority responsible for the IGO
Cuba	Both the application for and the granting of registration of a GI are subject to the payment of a fee.	$360 – if submitted 6 months prior to the expiry date of registration. $430 – is submitted within an additional 6 months after the expiry of the above period.	A document certifying the granting of the right to use a particular GI is issued upon payment of $170.
Czech Rep.	Fee for filing application - CZK 4,000.00 (US$100)	N.A.	Fee for registration of another user of a registered IGO – CZK 3,000 (US$75)
Ecuador	As per Ministerial Agreement No. 0106 1997[A]	No fees	As per Ministerial Agreement No. 0106 [A]
Estonia	Fee for filing application – EEK 1,600. Fee for the extension of the term for elimination of deficiencies in an application, or for the provision of explanations – EEK 400. Fee for amending registration data – EEK 500.	N.A.	No fees
EC/MS[B]	No fees	N.A.	No fees
Austria	No fees	N.A.	No fees
Belgium	No fees	N.A.	Fees fixed by Royal Decree
Denmark	No fees	N.A.	No fees
Finland	No fees	N.A.	N.A.
France	The trade makes financial contribution to the costs of applying and maintaining rights	N.A.	See under "Procedure for Recognition"
Germany		N.A.	N.A.
Greece	No fees	N.A.	No fees
Ireland		N.A.	No fees
Italy	Except usual administrative fees, no specific contributions linked to right to use IGO	N.A.	No fees
Luxembourg	No fees	N.A.	No fees
Netherlands	No fees	N.A.	No fees
Portugal	Application fees – Esc18,950 (US$85) Maintenance fees – Esc14,650 (US$65)	N.A.	See under "Procedure for Recognition"
Spain	No fees	N.A.	No fees, but there maybe parafiscal charges to maintain a Regulatory Authority [C]
Sweden	No fees	N.A.	No fees
UK	No fees for wines or spirits. For other products, applicants must meet the cost of inspections.		No fees for wines or spirits

[A] A new schedule of fees is to be established pursuant to Article 368 of the Intellectual Property Act.

[B] Information reflected on this line (EC/MS) is limited to "the Community level".

[C] (a) A percentage (maximum 1 per cent) of the product of the number of hectares registered in the name of each interested party and the average value in pesetas of the yield of one hectare for the area and the previous season; (b) a percentage (maximum 1.5 per cent) of the value obtained by multiplying the average unit price of the protected product by the volume sold; (c) as a maximum, 100 pesetas for each certificate or invoice and twice the cost for each seal.

Continuation of Table 4

Member	Recognition	Renewal	Authorization to Use an IGO
Hong Kong, Ch			
Hungary	Registration fee – Ft 100.000. Transmission for international registration – Ft 10.000 (US$35).	N.A.	Costs of examination of the product specification (agricultural products and foodstuffs)
Iceland	No fees	N.A.	No fees
Japan	No fees	N.A.	No fees
Korea	Application fee - 100,000 Won (US$77).	N.A.	N.A.
Liechtenstein	No fees	N.A.	
Lithuania	N.A.	N.A.	N.A.
Mexico	As per Article 15 of the Decree establishing tariffs for the services provided by IMPI	As per Article 15b of the Decree establishing tariffs for the services provided by IMPI [D]	
Morocco[E]	No fees	No fees	No fees
New Zealand	Application fee for determination of IGO (Surveyor-General). Registration fee (Registrar of Protected Geographical Indications). In addition to payment of prescribed fees, applicants will be required to pay the costs of publishing the application and reasonable costs of the Geographical Indications Committee in determining the application.[F]	N.A.	N.A.
Norway	N.A.	N.A.	N.A.
Peru	Application fee (administrative charges)	No fees	Examination fee
Poland	Filing fee – PLN 200 / Maintenance fee-PLN 500	N.A.	No fees
Romania	Registration - 2,400,000 lei or $400. Issue of a certificate of registration – 300,000 lei or $50.	Renewal – 2,400,000 lei or $400[D]	
Slovak Rep.	Application fee - 2,000 Slovak crowns (US$40)	N.A.	Fee for registration of another user – 2,000 Slovak crowns (for each user).
Slovenia	Application fee (agricultural products and foodstuffs, including wines)	N.A.	There are no specific fees for an application or authorisation to use a particular geographical indication. It is necessary to pay the costs of a required certification on the basis of a tariff.
Switzerland	No fees in respect of agricultural products and processed agricultural products other than wines).	N.A.	For wines and according to the canton, a fee is payable for monitoring. For other products, expenses incurred by a certification body
Turkey	Application fee – TL18,000,000 (US$30).	No fee for renewal [D].	Fee for inspection
USA	No fees (application American viticultural area)		
Uruguay	Application fee – 12 Adjustable Units for a single kind and 7 Adjustable Units for each additional kind.	No fee	In the case of a licence for use, this will be governed by the provisions of the civil law applicable to such contracts.
Venezuela	Fees as necessary for handling applications		

Source: WTO (2003).

[D] Renewal of authorization to use every 10 years.

[E] The costs of analysing samples submitted to the official laboratory for analysis and chemical research in Casablanca are borne by the producer.

[F] Regulations establishing these fees not yet adopted. Additional information provided by New Zealand in its comments to JOB(00)/5619, the preliminary version of the present summary paper.

Table 5
Registration Under Trademark Law: Information Provided by Members on Costs

Member	Application Procedure	Renewal	Authorization to Use
Australia			
Bulgaria			
Canada			
Cuba			
Czech Rep.			
Ecuador			
Estonia			
EC/MS[A]			
Austria			
Belgium			
Denmark			
Finland			
France			
Germany	Fee for filing a collective mark (covering three classes of goods or services) – DM 1,500 (US$690) plus DM 250 (US$115) for every additional class of goods or services	Renewal fee [a]– DM 3,000 (US$1380) (three classes of goods or services), plus DM 450 (US$205) for every additional class	Fee – the same as for filing application for the collective mark
Greece			
Ireland	Registration fee - £200.00 (US$230)	Renewal fee [a] - £200.00 (US$230)	No fees
Italy			
Luxembourg			
Netherlands			
Portugal			
Spain			
Sweden			
UK	Application to register a trademark (covering one class of goods or services) - £200 (US$300); fee for each additional class of goods or services; £50 (US$75)	Renewal of trade mark registration [a] - £200 (US$300); fee for each additional class of goods or services - £50 (US$75); additional fee for late payment - £50 (US$75)	The conditions of use, including fees, are a matter for the user and the owner of the mark
Hong Kong, Ch	Application fee - HK$ 1,400 (US$179) Registration fee - HK$ 2,000 (US$256)	Renewal fee - HK$ 4100 (US$525)	Whether a fee is charged for use of a certification mark depends on its owner and the regulations governing its use
Hungary			
Iceland			
Japan			
Korea			
Liechtenstein	Registration fee (for three classes) CHF 400.00 (US$230), not including the costs of the publication	As in the Ordinance of 1 April 1997 regarding the Collection of Fees under the Trademark Act	
Lithuania			
Mexico			
Morocco			
New Zealand			
Norway			
Peru			
Poland			
Romania			
Slovak Rep.			
Slovenia			
Switzerland	If registered as an established mark (for two classes of products) – CHF 800 (US$460)	Renewal fee (Article 10, LPM) [a]	No fees
Turkey			
USA	See 37 CFR §2.6(a)(1), et seq. or relevant State laws	"Reaffirmation" fee (between the 5th and 6th year) – US$100 per international class. Renewal fee [a]- US$300 per international class	Latest information can be checked on the Website of the US Patent and Trademark Office
Uruguay			
Venezuela			

Source: WTO (2003).

[A] Information reflected on this line (EC/MS) is limited to "the Community level".

[a] Every ten years.

Table 6
Top 10 Exporters of Each Tea Product at 6 Digit HS Code 2004

	Country	Value ($Mn)	Weight (Kg)
090210	Tea, green (not fermented), whether or not flavoured		
1	China	151.578	n.a.
2	United Kingdom	33.99	1445412
3	Sri Lanka	11.294	2146577
4	Japan	10.364	576162
5	Germany	10.318	645147
6	France	8.288	603378
7	USA	7.588	1602629
8	Belgium	5.071	1115662
9	Kenya	3.282	443023
10	Netherlands	3.048	454451
090220	Tea, green (not fermented), whether or not flavoured - other		
1	China	187.699	n.a.
2	Germany	13.934	2699955
3	Japan	5.254	296125
4	United Rep. of Tanzania	3.982	2604905
5	USA	2.919	740290
6	France	2.861	351976
7	India	2.471	929731
8	Belgium	2.288	101973
9	China, Hong Kong SAR	1.875	742827
10	United Kingdom	1.69	232282
16	Sri Lanka	0.793	202844
210120	Extracts, essences & concentrates. of tea/mate, & preparations		
1	Canada	55.759	49150783
2	USA	48.571	11701015
3	Mexico	36.983	68213803
4	Switzerland	34.213	67496832
5	Ireland	32.138	1907923
6	Netherlands	28.618	1431104
7	Germany	27.315	7797077
8	Austria	24.046	44833640
9	India	18.513	3614449
10	China	14.982	n.a.
15	Sri Lanka	8.234	1461719

Table 7
Sri Lanka's Top 5 Markets at 8 Digit HS Code Level-2005

	COUNTRY	VAL($ Mn)
1.	090220 Other green tea (not fermented)	
	Russia	0.225
	France	0.167
	Libya	0.094
	Kuwait	0.093
	Ukraine	0.053
2.	09021001 Green tea pkts not exceeding 1kg	
	Russia	1.668
	Ukraine	0.500
	Germany	0.158
	Japan	0.138
	Taiwan	0.110
3.	09021002 Green tea pkts exceeding 1kg but not exceeding 3 kg	
	Russia	0.265
	Italy	0.088
	Nethlds	0.068
	Libya	0.061
	France	0.035
4.	09021003 Green tea bags (4grms) using by immersion in the water	
	U.S.A.	1.676
	Russia	1.144
	France	0.474
	Ukraine	0.323
	Su.Arab	0.280
5.	09021009 Green tea other	
	Russia	1.652
	Taiwan	0.889
	U.Arb.E	0.670
	Ukraine	0.466
	Italy	0.214
6.	21012001 Instant tea	
	Ireland	4.889
	Japan	0.691
	Germany	0.335
	Nethlds	0.303
	Cook I.	0.170
7.	21069010 Herbal Powder (Herbal tea)	
	U.S.A.	0.571
	Russia	0.398
	Denmark	0.313
	Austral	0.181
	Canada	0.138

Table 8
List of Interviewees for the Sector Studies
(Names in alphabetical order; designations are as at interview date)

Tea

Mr. Tyeab Akbarally
Director
Akbar Brothers Ltd
Chairman, Colombo Tea Traders Association

Mr. Asoka Goonetilleke
Deputy Director (Technical)
Sri Lanka Tea Board

Mr. H. D. Hemaratne
Director-General
Sri Lanka Tea Board

Mr. David Janszé
Consultant
Ceylon Chamber of Commerce

Mr. R L Juriansz
Chairman
James Finlay & Co (Colombo) Ltd
Member and former Chairman, Colombo Tea Traders Association

Mr. Romesh Moraes
Managing Director
James Finlay Teas

Mr. Udugampola
Tea Commissioner
Sri Lanka Tea Board

Mrs. Manel Weerasuriya
Director
Tea Promotion Division
Sri Lanka Tea Board

Sapphires

Ms. Sharm Aboosally
Program Specialist
The Competitiveness Program

Ms. Chitranjali Dissanayake
Deputy Director
Sri Lanka Export Development Board

Mr. Chanaka Ellawala
Chairman
Ellawala Exports (Pvt) Ltd
Chairman, Sri Lanka Gem and Jewellery Association

Mr. Ajith Perera
Senior Manager (Export & Export Promotion)
National Gem and Jewellery Authority

Mr. Anil T. Ratwatte
Managing Director
Menik International Pvt. Ltd.

Mr. B. P. Withanage
Senior Development Manager
National Gem and Jewellery Authority

Cinnamon

Mr. Sarada De Silva
Managing Director
Intercom Ltd
Chairman, The Spice Council

Mr. Shanka Dharmapala
Sector Facilitator – Value Chain Promotion Component
GTZ

Dr. Nevil Goonewardena
Director
Sri Lanka Customs

Mrs. Gothami Indikadahena
Director of Commerce
Department of Commerce

Ms. Nalika Kodikara
Assistant Director
Sri Lanka Export Development Board

Mr. Alex Ponweera
Program Specialist
The Competitiveness Program

Mr. K. G. G. Wijesinghe
Research Officer In Charge
Cinnamon Research Station
Department of Export Agriculture
Palolpitiya, Thihagoda