



OPPORTUNITY ANALYSIS FOR USING GEOGRAPHIC NAMES FOR AGRICULTURAL PRODUCE PRODUCED IN CENTRAL ASIA

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Introduction

The Central Asian region, with its vast capacity for producing fresh and dried fruit and vegetable products in the conditions of globalization and increased demand for food, is to address many complex issues associated with diversifying the traditional markets and locating new destinations for selling its fruit and vegetable produce.

Fruit and vegetable production is of great social and economic value for the region, as it allows engaging substantial labor resources in productive work. The fresh and dried fruit and vegetable industry in the region is mainly export-oriented, which increases the countries' ability to address their social and economic issues.

Today most of the events aimed at diversifying the markets and finding new destinations for Central Asian produce, both at the national scale and at the Central Asian level, are aimed at adoption of international standards and encouraging local producers to comply.

However, despite some success in implementing international standards, regional products still are not very popular in the global market.

According to the experts, building national and regional brands is one of the most efficient instruments in increasing demand and competitiveness of agricultural produce in the global market.

Important elements of a brand are trademarks and geographical names, often called "unique selling propositions", or USP.

Agricultural products usually have certain properties depending on the place of production and specific local geographic factors (such as climate and soil conditions). This is why geographic names are often used worldwide to identify agricultural produce, food, wine and alcohol.

One of the best examples of geographical names used for branding purposes is the experience of European countries, where this instrument is used as a potent marketing driver to promote products, services and territories.

"Switzerland" is probably the best example of efficient branding promoting competitive advantage of goods and services sold at a premium against comparable goods and services from other countries (Swiss products can generally be sold at up to 20% higher prices than similar goods from other countries).

The idea of promoting regional produce using geographical names as brand customization instruments was greeted with enthusiasm in the Central Asian countries.

To clarify the issues related to using geographical names for promoting goods and services in the Central Asian countries and identify key measures for activating the use of geographical names for local goods and services, an express study of geographical naming of agricultural

produce grown in the Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan) was conducted.

The practice of geographical brand development and usage in the Central Asian countries is virtually non-existent.

One relevant study is the FAO Synthesis Report “An overview of legal and institutional frameworks and opportunities, challenges and recommendations for geographical indication products in Armenia, Georgia, Kyrgyzstan, the Republic of Moldova and the Russian Federation”, available at <http://www.fao.org/3/CA1002EN/ca1002en.pdf>, which contains, *inter alia*, an assessment of the practice of using protected geographical names in Kyrgyzstan.

This document contains summary findings and recommendations on the measures aimed at promoting geographical indications as an instrument in building national and regional brands.

I. Availability of national regulations restricting the registration and usage of geographical indications in Central Asia

Key international norms regulating protection of the means of personalization are:

- Paris Convention on the Protection of Industrial Property (1883);
- Madrid Agreement Concerning the International Registration of Marks (1891);
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958);
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1970);
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) between WTO member states (1994);
- Geneva Act of the Lisbon Agreement (2015).

It is universally accepted that TRIPS Agreement was the first to introduce the new term “geographical indication” as a variety of geographic naming, which is different from the earlier term “Appellation of Origin of Goods”. Appellation of Origin is historically the first type of geographic indication accepted at the international level. Appellation of Origin, according to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, is understood as the “geographic name of a country, region or area used to denote the products of the same origin, the quality and properties of which are determined exclusively or substantially by the geographical environment, including natural and ethnographic factors.”

Means of personalization protected by TRIPS are trademarks (service marks) and geographic indications.

Geographic indications, according to Article 22 of the Agreement are understood as “an indication identifying goods from certain geographical territories, regions or areas.” At the same time, certain qualities of the products, their reputation with the consumers and other product qualities are substantially related to their geographical origin.

TRIPS Agreement is quite flexible and does not limit what product groups geographic indications can be applied to; this means these indications can be applied to both industrial and agricultural products. The only limitations are on unfair competition, when geographical indications point to an area different from the actual origin of the product, misleading the buyers.

TRIPS Agreement allows every member state to decide how broad legal protection of geographical indications can be.

At the international level, Central Asian countries accept the means of personalization provided by international agreements, as they are members of WAOG and parties to these agreements. Literally all countries of the region have a certain regulatory framework for intellectual property and laws regulating the usage of trademarks and geographical indications.

National legislation of Central Asian countries is harmonized with the existing international norms, mainly with the provisions of Paris Convention on the Protection of Industrial Property (1883), Madrid Agreement Concerning the International Registration of Marks (1891), TRIPS Agreement and, to a lesser extent, with the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958) and Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1970).

Key documents determining the ability to use geographical indications in the countries of the region include Minsk Agreement “On Measures for Prevention and Suppression of Using False Trademarks and Geographical Indications”, signed by the CIS member states on 4 June 1999. In 2018, the International Council on the Issues of Legal Protection and Intellectual Property Protection (MGSIS) decided to prepare a new edition of the aforementioned Agreement.

The definition of geographical indications used in Minsk Agreement is virtually similar to the definition provided in Article 22 of the TRIPS Agreement. However, many Sections in the Agreement refer to the international conventions, which means each country must develop internal regulations concerning the protection of geographical indications.

National legislation of the Central Asian countries:

Kazakhstan

The Civil Code of the Republic of Kazakhstan (1999) and the Law of the Republic of Kazakhstan “On Trademarks, Service Marks and Geographical Indications of the Origin of Products” No.456-1 of 26 July 1999, include definitions of “Appellation of Origin of Goods” (AOG).

According to the legislation, AOG is an indication naming the country, region, residential area, location or other geographical name, or a derivative of that name, which became known as a result of its usage for a product, its special property, quality, reputation or other features related mainly to its geographical origin, including particular natural conditions and/or other natural or human factors.

Legal protection of AOG is subject to its registration or by virtue of an international agreement ratified by the Republic of Kazakhstan.

Kazakhstan passed the Concept for Protection of Intellectual Property Rights (2001), which only focuses on improving copyright issues and protecting industrial property rights.

Kyrgyzstan

The Civil Code of Kyrgyz Republic (1998) and the Law of Kyrgyz Republic “On Trademarks, Service Marks and Geographical Indications of the Origin of Products” No.7 of 14 January 1998 also provide legal protection to AOG. According to the Law, “Appellation of Origin of Goods is the name of a country, residential point, area or other geographical object used to denote a product that has peculiar features determined exclusively or substantially by the natural conditions or human factors peculiar to that geographical object, or both natural conditions and human factors acting simultaneously.”

For practical implementation of the Law, the Government of Kyrgyzstan passed a decree “On Protecting the Appellation of Origin of Goods” (2001), which authorizes key ministries to determine and control peculiar properties, certain qualities and other features of products of specific geographical origin. However, the government decree focuses primarily on products of mineral origin.

Tajikistan

Legal protection of geographical indications is provided by a special regulatory document – the Law of the Republic of Tajikistan “On Geographical Indications” No.236 of 5 March 2007. According to the Law, a geographical indication is understood as the name denoting a product originating from a certain country, region or area, where certain quality, reputation, and other features of the product are largely related to its geographic origin. According to the Law, the definition of a geographical indication includes the term AOG and origin of the product.

The law defines AOG as the name of a country, residential area, locality or other geographical object used to denote a product of the same origin, which has peculiar properties determined exclusively or substantially by natural conditions or other factors, or combination of natural conditions and those factors. An AOG can represent a historical name of the geographical object. Origin of the product is a name directly or indirectly pointing to the place of actual origin or manufacture of the product. Origin of the product can be indicated as the name of a geographic object or a picture.

The difference between the two terms is that origin of the product only indicates geographic origin of the product and that it was produced and/or manufactured in that geographical area. Meanwhile, products with the Appellation of Origin of Goods acquire specific properties not just thanks to their geographical origin but also due to natural and other factors.

Uzbekistan

The Civil Code of the Republic of Uzbekistan (19 January 2017) and the Law of the republic of Uzbekistan “On Trademarks, Service Marks and Appellation of Origin of Goods” No.267-II of 30 August 2001 define Appellation of Origin of Goods as the name of a country, residential area, location or other geographical object used to indicate a product that has peculiar properties determined exclusively or substantially by the natural conditions or other factors peculiar to that geographical object, or a combination of natural conditions and those factors.

* * *

Regulations of the countries of Central Asian region protecting intellectual property, namely the usage of means of personalization of the products (AOG) have similar terms, contents and structure.

Many provisions are harmonized and unified with the requirements of the international law.

It should be noted that protection offered to means of personalization in the Central Asian countries, like in many other countries with transitional economies, is mainly limited to protection of registered names against misuse and/or unauthorized use. Protection of AOG and geographical indications in the countries of the region is performed by filing complaints against violation of intellectual property rights to the court or, depending on the nature of the conflict, to the respective administrative bodies (Patent agencies, customs authorities and anti-monopoly services).

Despite common trends in the legislation and the essence of legal protection of the means of personalization, each Central Asian country has different composition of protected items related to geographical indication. Only in Tajikistan the law defines the term of geographical

indication (the law includes indication of the product origin and AOG; a separate law regulates the usage of trademarks).

The laws in other countries of the region only define Appellation of Origin of Goods (AOG). The term “geographical indication” is not mentioned.

Regulation of geographical indications in these countries (Kazakhstan, Kyrgyzstan) is also necessary in the context of meeting the countries’ obligations under WTO (TRIPS Agreement only applies to protection of geographical indications). Bringing the legislation in harmony with the WTO norms is particularly relevant for Uzbekistan in light of its entrance to WTO.

It is also important to consider the trends being observed in the EAEU space with regards to harmonization of national laws of the Union member states and creating a multilateral regional system for registration and use of AOG and geographical indications (Article 89 Paragraph 2 Item 4 of the Agreement on Eurasian Economic Union of 29 May 2014, sections VII and VIII of the Protocol on Protection and Enforcement of Intellectual Property Rights – Annex 26 to the EAEU Agreement). The Laws of the Union stipulate establishment of a Common Union AOG Register and issuing certificates confirming the right to use and protect the Union AOG in the territories of all member states (Kazakhstan, Kyrgyzstan).

Another trend developing in the EAEU is the definition of a branding strategy for the products. The EAEU branding concept under discussion (successfully progressing in Russia) boils down to using geographical indications, as the use of AOG implies heavier restrictions on registration and use compared to geographical indications (GI), which is a simplified term to promote regional brands.

Relaxing the terms of geographical indication usage, according to experts, will help stimulate economic development and make the region more attractive for the tourists.

II. Geographical indication registration procedures in Central Asia

Legal protection of AOG in Central Asia is exercised subject to their registration with the government authorities responsible for protection of intellectual property rights, namely:

- National State Enterprise “National Institute of Intellectual Property” under the Ministry of Justice of the Republic of Kazakhstan;
- State Service for Intellectual property and Innovations under the Government of Kyrgyz Republic (KyrgyzPatent);
- National Patent and Information Center under the Ministry of Economic Development and Trade of the Republic of Tajikistan;
- Agency for Intellectual property of the Republic of Uzbekistan.

Two key criteria must be met for AOG registration: the producer must have manufacturing facilities in the respective geographical region, and the product manufactured must have special specific properties.

Table 1. Registration procedures by country

Procedures	Kazakhstan	Kyrgyzstan	Tajikistan	Uzbekistan
1	2	3	4	5
Application for registration	One AOG per application	One AOG per application	One AOG per application	One AOG per application
Who must apply		Individual or legal entity (one or more)	Individual or legal entity (one or more)	Individual or legal entity
Expert review of the application	Conducted	Conducted	Conducted	Conducted
Expert review of the designated appellation	Conducted	Conducted	Conducted	Conducted
Deadline for application review	30 business days	30 days	60 days (or 2 months)	30 days
Legal protection	Indefinite, from application date	Indefinite, from application date	Indefinite, from application date	Indefinite, from application date
Certificate validity (extension possible)	10 years	10 years	10 years	10 years
Assignment of the title to GI	Not permitted	Not permitted	Not permitted	Not permitted
Entry in the State Register and mandatory publication in the Newsletter	Required	Required	Required	Required
Right to register AOG in other countries	Available	Available	As per international treaty provisions	As per international treaty provisions

AOG registration procedures in the Central Asian countries are generally unified (particularly within EAEU for Kazakhstan and Kyrgyzstan). At the same time, despite the unification of legal norms, AOG registration requires separate application to the patent agencies in each specific country.

As for international AOG registration procedures, they are stipulated by the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (31 October 1958). The Agreement does not apply to Central Asian countries as the region has not joined the Agreement.

It should be noted that a new international convention – Geneva Act of the Lisbon Agreement – was passed in 2015, which is intended to improve the existing international system for registering and protecting names indicating geographic origin of a product; the Central Asian countries have not joined this Act either. Unlike the Lisbon Agreement itself, which only applies to AOG, the Geneva Act provides for protection of AOG and GI. Under the Geneva Act of the Lisbon Agreement, AOG and GI owners can request protection in several countries at once by filing a single application and paying a single duty. A geographical indication is registered at the international level by filing an application to the International Bureau of the World Intellectual Property Organization (WIPO).

The Lisbon Agreement and the Geneva Act, which together form the Lisbon System, grant countries (including Central Asian states) a more comprehensive international mechanism for protecting geographical indications, which is relevant for the region in light of joint promotion of cross-border products of high social and economic value to the global markets (for example, apricots). The Geneva Act allows international organizations to join the process, which increases the capacity of EAEU (in case of Kazakhstan and Kyrgyzstan) as an international organization for regional economic integration.

The prospect of regional AOG registration (see paragraph above) for Kazakhstan and Kyrgyzstan is stipulated by the EAEU Agreement (2014), accompanied by the Protocol on Protection and Enforcement of Intellectual Property Rights. The Protocol provides for the ability to register “a name of the place of origin of goods in Eurasian Economic Union” and enforce it simultaneously in all member states. For the purposes of implementing the Protocol, an Agreement on Trademarks, Service Marks and Appellations of Origin was passed in 2016, which establishes an AOG registration system in EAEU, protected simultaneously in all member states of the Union. Registering an appellation of origin within EAEU is an equivalent of national registration.

III. A review of the registration of geographical indications and their applicability

According to the available statistics data for the Central Asian countries, the following numbers of objects with protected AOG have been registered:

Kazakhstan

65 geographical objects have been registered (30 for mineral water, 19 for wine, 2 for vodka, 2 for fermented dairy products, 2 for cheeses, 5 for beer, 1 for honey, 1 for fish, 1 for ice cream, 1 for black coal, 1 for therapeutic mud); of these, 32 objects are presented as local products. Currently registration is valid for 48 objects.

Kyrgyzstan

17 geographical objects have been registered; of these, only 5 objects (mineral water) are presented as local products.

Tajikistan

10 geographical objects have been registered; of these, only 4 objects (mineral water) are presented as local products.

Uzbekistan

4 geographical objects have been registered.

* * *

Despite being offered an opportunity to register protected geographical objects, not all countries of the region have exercised their right.

Overall, registration of geographical objects is not used for local agricultural produce and food items. Meanwhile, the region has the capacity to grow fruit and vegetable produce with specific properties related to their origin.

Experts say one problem is the lack of producers' interest, due to inadequate understanding and awareness of the advantages of geographical indications and lack of experience.

Another likely issue is the prohibitive cost for small and medium-sized enterprises, which represent the majority of the fruit and vegetable industry in the region.

Absence of a policy for promoting exports and branding to enjoy the advantages of AOG and GI has also affected the practice of GI usage.

IV. The need for Central Asian countries to promote a common regional brand under a shared geographical indication

The production of fruit and vegetable products in each individual country of the region is slow, unstable and too insignificant for the country to be able to compete in the global market.

Table 2. Exports

No.	Country/region	Exports
1.	USA	14,062,381
2.	Spain	9,058,300
3.	Chile	5,879,935
4.	Mexico	5,540,524
5.	China	5,484,752
6.	Italy	3,924,167
7.	Turkey	3,873,872
8.	Costa Rica	2,066,779
9.	Central Asian region	About 2,000,000

Meanwhile, countries of the region have an opportunity to promote their products, including regional products of cross-border origin (involving two or more countries of the region) with a story, with common properties, uniform varieties and high quality.

One example of cross-border production is the production of apricots in the Fergana Valley (Kyrgyzstan, Tajikistan, Uzbekistan), which has every prerequisite for choosing a shared GI and building a regional brand.

It must be taken into account that the region currently has great opportunities for producing apricots in fresh and dried form (the gardens and industrial enterprises are being constantly renovated in the recent years, implementing standards meeting foreign market requirements, and individual elements of a common regional delivery chain are being introduced), which could help the local products to occupy a sustainable niche in the global market, given a little unified branding effort.

The peculiarities of dried products manufactured in the region are reflected in UNECE Commercial Standard DDP-15 for Dried Apricots (the current standard has been amended to reflect the peculiar properties and quality of the apricots produced in the Fergana Valley of Central Asia). The properties of this product are presented in the standard as a separate group.

V. The possibility of negotiating common geographical indications for the Central Asian countries

The right to use AOG and GI is of local nature, i.e. the rights are restricted to a single country (or region) offering protection. For today, four key methods of enforcing protection of a geographical indication abroad are known¹:

Obtaining the protection directly in the country of origin (many jurisdictions require a geographical indication to be protected in the country of origin before they would enforce this protection in their territory). Once the GI is protected in the country of origin, protection can be enforced in other jurisdictions in accordance with their practices).

Obtaining the protection based on bilateral agreements: bilateral agreements are usually signed between two states on a reciprocal basis. These can be limited to certain economic sectors or products, such as wines and hard liquors, or be part of broader trade relation agreements.

Obtaining the protection under the Lisbon International AOG Registration System operated by WIPO: the Lisbon system allows protecting an appellation of origin registered in a single member state within all other member states. This is ensured by a single registration mechanism called “international registration”.

Obtaining the protection under the Madrid Agreement Concerning the International Registration of Marks (i.e. based on a collective or certification mark): to avoid the need to apply for registration in each country where a trademark needs to be protected, WIPO Madrid System provides for an opportunity to file a single international application.

Countries of the region can register trademarks under the Madrid System, which applies to all countries of the region. Today building regional and national brands based on geographical indications is not possible without complementing the geographical indication with certification marks.

The prospect of building common AOG also exists under EAEU framework (the common AOG protection system built by EAEU reflects the modern trend for developing international registration systems and building shared AOG lists: the system stipulates mutual acceptance of AOG, simplifying registration and protection of AOG within the EAEU territory, eliminating conflicts between national systems for protecting appellations of origin of goods for Kazakhstan and Kyrgyzstan. This options remains outstanding for other countries of the region (Tajikistan and Uzbekistan), which are not EAEU members.

¹ https://www.wAOG.int/geo_indications/ru/faq_geographicalindications.html

The most efficient method to ensure legal protection of AOG and GI spanning all Central Asian countries, according to experts, is an agreement for joint protection of geographical indications.

All countries of the region might also opt to join the Geneva Act of the Lisbon Agreement, which stipulates the opportunity to register cross-border AOG and geographical indications spanning the territories of several adjacent states.

VI. Roadmap

The practice of leading European countries demonstrates the positive role played by geographical indications in the branding strategy and product personalization in the market, enabling the consumers to differentiate products with excellent quality due to its geographical origin from products that do not have such properties.

In addition to protecting the product name, geographical indications are an important marketing tool to promote these products in the foreign markets, helping generate added value.

Recognizing the geographical indication in the Central Asian countries through registration and protection is not enough to ensure actual economic benefit from using the geographical indication.

This requires conducting a series of institutional (structural and information) transformations.

At the same time it should be noted that geographical indications will not yield positive effect quickly without a comprehensive approach to branding.

The proposals are generated after reviewing expert opinions and findings by various organizations, including FAO:

1. Legislation

Central Asian countries have very similar legislation pertaining to the use of geographical indications and appellations of origin of goods. Kazakhstan and Kyrgyzstan, as EAEU member states, have a bigger choice of options to register regional AOG. At the same time, the legislation of regional countries must be improved by introducing another object of intellectual property into the legal framework – geographical indication.

Experts unanimously agree that the existence of two terms describing the origin of goods may result in terminological ambiguity and can even cause issues with international legal protection

in cross-border relations; this can be avoided by switching from the use of appellation of goods to the use of geographical indications, since the latter has a broader meaning.

Experts also recommend joining the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which the countries of the region are currently not engaged in, for a number of reasons. Another important step for today would be to join the Geneva Act, which includes provisions of the Lisbon Agreement.

2. Institutions

The current approach of Central Asian countries to the development of AOG and GI is not aimed at improving the product quality and promoting it. The countries lack strategies and programs shaping government policy towards the development and promotion of geographical indications as a brand-building instrument.

Promoting geographical indications would require not just changes in legislation, but also expansion of the government agencies' functional responsibilities. Patent agencies are the only government bodies responsible for AOG and GI registration in the Central Asian countries.

Countries of the region lack strategies and programs determining directions related to export promotion taking into account appellations of origin of goods and geographical indications. One needs to engage the bodies responsible for development of the agricultural sector and export promotion to develop a new program (or amend an existing one) with an action plan on GI opportunities.

It is also important to define the functions of the government bodies related to organizing the promotion and use of AOG and GI. For example:

- Ministries responsible for general economic policy to integrate GI opportunities in the social and economic development strategies and programs as an instrument for export promotion;
- Ministry of agriculture, export support service and other similar agencies shall be made responsible for analyzing the advantages of the product and developing specifications (product descriptions, production methods, etc.);
- An important priority shall be given to establishing a state oversight system monitoring the preservation and support of high product quality, which determine the product reputation that is linked in the consumers' minds to the traditional geographical indication of the product's origin. This would require creating a new government authority to perform these functions.

To coordinate interdepartmental cooperation (between patent agencies, bodies responsible for economic policy, agricultural and industrial development, export promotion, etc.), it is necessary to create interdepartmental groups on issues related to GI promotion.

Likewise, it is advisable to create a similar workgroup at the regional level for discussing the cooperation between Central Asian countries in the promotion of a common brand for certain types of produce with identical properties and quality produced in cross-border territories (draft Protocol of Intention for Cooperation is attached).

3. Developing institutional opportunities

Identifying the objectives and involving the government into promotion of geographical indications as a tool in product branding will not yield positive results without additional measures, such as choosing unique product properties, coordinating a common approach to production, preparing product specifications, ensuring compliance of the product and production methods, certification, etc.

It is also important to determine key players who are willing and able to promote the goods under geographical indications. Partner relations and cooperation need to be established (combining the interests of all producers of the same product).

It should be noted that cooperation between producers in the region leaves much to be desired, with some countries just contemplating the cooperation process, others developing it actively, and some having already included cooperation into the agricultural policy but not finding too many strong key players.

It is important to boost cooperation between producers, which in turn requires additional institutional reforms in the agricultural sector (including division of responsibilities between the private sector and the government, clearly defined motivations and incentives, understanding the benefit of cooperation, etc.) Cooperation issues are of particular importance for Tajikistan and Kyrgyzstan.

4. Simplifying procedures

Countries of the region are not using the benefits of protected geographical indications. One reason mentioned by many experts is the complex procedure of AOG registration and usage for smaller agricultural producers. We suggest, on the one hand, to simplify the procedures, while recognizing GI in all countries of the region, which can be applied for with simplified procedures.

5. Insufficient understanding and knowledge of the benefit of geographical indications

Geographical indications are not demanded in the regional market by the producers, as clearly seen from the numbers of AOG registered.

One of the biggest problems in inadequate use of the benefit of protected geographical indications is the lack of interest among the producers, mainly due to low awareness (particularly among smaller farmers).

At the first stages, it is necessary to conduct information and education events of a general nature, in order to ensure the understanding of the government and the private sector of the advantages of geographical indications as an instrument in protecting and enforcing producers' rights, and as an instrument in promoting the goods. Doing so requires a small study of the advantages of registering products under geographical indications for the farmers, processors and exporter, showing a clear benefit and elements of added value from using the brand and product recognition.

It is also advisable to conduct targeted information and educational events aimed at identifying the producers interested in using geographical indications and capable of demonstrating their capacities.