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**Can Certain Intellectual Property Rights both Protect  
and Promote Unique Traditional Products and Cultural  
Heritage from Developing Countries for Economic  
Benefit?  
The Case of Georgia**

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# **Can Certain Intellectual Property Rights both Protect and Promote Unique Traditional Products and Cultural Heritage from Developing Countries for Economic Benefit?**

## **The case of Georgia**

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### **Abstract**

This paper is focused on traditional products that include agricultural goods such as wines, spirits and cheeses as well as tangible and intangible cultural heritage and sometimes linked to the manufacture of the product. The aims are: firstly to assess the current context of International Economic Law (IEL) and how Georgia is using IEL legal frameworks to protect its traditional products and heritage; secondly, how effectively its own national treatment and policy environment are functioning; and finally, to make preliminary observations and arguments on the impact and potential of Intellectual Property (IP) systems, Geographical Indications (GIs), Traditional Knowledge (TK), Traditional Cultural Expressions (TCE) and Genetic Resources (GR), on the economic development of regions and communities. The local-global dynamic of IEL is contrasted with Georgia's own economic and developmental realities. Against this backdrop, the question emerges as to whether the relevant Intellectual Property (IP) systems can not only provide the necessary 'defensive' legal protection against misappropriation, misuse, theft and bio-piracy, but also support 'positive protection' – meaning incentives and opportunities for technological innovation, entrepreneurial endeavor and community development. The main conclusion is that is that the positive aspects of protection need more policy development and action.

**Key words:** Geographical Indications; Traditional Knowledge; Traditional Cultural Expressions; Genetic Resources; International Economic Law; defensive protection; positive protection

### **Introduction**

For developing countries such as Georgia, the IP issues differ significantly to those of developed countries that tend to be more concerned with protecting scientific inventions and innovations made by their multinational companies. In general, most developing countries, lacking the scientific know-how and capital, have been seeking less restricted access to technology as well as protection for TK and opportunities for their own traditional products, including, but not limited to, agricultural products incorporating also GR, such as medicinal plants, as well as art forms and cultural heritage. Concerning the protection of agricultural products using geographical names, there has been some convergence of opinion between groupings of developed and developing countries in the WTO around discussions on GIs as well as deliberations, albeit slow, at the World Intellectual Property Organization (WIPO) on a future global agreement for protection of TK and traditional TCE. This paper traverses the current situation in IEL on GIs, TK, TCE and GR as well as the current debate among IP and

trade experts on the appropriateness of linking GIs with TK. As a developing country and post-Soviet transitional economy, Georgia provides a compelling laboratory for study since it has a rich repository of TK, TCE and GR as well as a range of distinctively traditional and unique agricultural products. The interplay and overlap between distinctiveness, history, tradition, culture and agriculture highlights the need for ‘defensive’ protection as well as greater support for cooperative organization; marketing and branding; and stimulation of entrepreneurship as key features of ‘positive protection’.

### **Georgia’s Economic and Political Environment**

The country has experienced rapid economic growth, currently averaging 7.5% per annum, since the Rose Revolution in 2004 that brought a more strongly reformist government into power and turnaround from a near failed state status<sup>1</sup>. Yet despite the reforms, notably highly liberalized trade and investment policies, the country’s economic performance has not achieved a trickle-down effect. In particular, agricultural potential is under-performing considering that Georgia, an essentially an agricultural country, was the main supplier of wines, fruits and vegetables for the former Soviet Union. A constraining factor has been the 2008 Russo-Georgian war and Russian boycott of Georgian goods that had previously enjoyed brand recognition and guaranteed markets in the former Soviet space. Russia’s recent accession to the World Trade Organization (WTO), however, may improve the business environment – at least concerning trade restrictions – and new opportunities should be afforded by free trade agreements under negotiations with the USA and EU – touted as ‘deep and comprehensive’. The EU particularly has shown in other bilateral negotiations that GIs are an offensive trade interest, but evidence suggests that this should also be an offensive trade interest for Georgia. Georgia’s trade agreement with the USA has already shown benefits in the successful opposition to misappropriation of the name of *khvanchkhara* wine.

While there is certainly evidence of infrastructural development and foreign investment, particularly revealed in the new hotels and casinos in Tbilisi and Batumi, there are continuing high levels of poverty in both urban and rural areas. According to Jones (2013), the Georgian economy, despite progress in budgetary discipline, and growth in financial services, telecommunications and construction, shows little sign of raising the majority of the population out of poverty with, at a conservative estimate, 38,5% living below the poverty line. On the plus side, this state of affairs can be contrasted with positive reforms, including the streamlining of government agencies, that have resulted in Georgia obtaining a high ranking in the International Finance Corporation’s and World Bank’s ease of doing business rankings (9<sup>th</sup> out of 185 countries). The indicators that Georgia scores particularly well on are ‘starting a business’, ‘getting credit’ and protecting investors.’<sup>2</sup> The improvements made were the most by any country across three or more indicators. Yet, these reforms have not resulted in significant growth of local entrepreneurial start-ups when compared with much more obvious larger-scale foreign investments. One explanation is that the regulatory reforms over-emphasize supply side economics without the necessary state support and creation of an enabling environment for bottom-up business initiatives. On the ground in Georgia, ‘getting credit’, although improved, clearly remains a constraint for fledgling start-ups that will be faced with high interest payments.

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<sup>1</sup> National Bank of Georgia macroeconomic indicators March 2012

<sup>2</sup> [www.doingbusiness.org/rankings](http://www.doingbusiness.org/rankings)

The growing economic inequality in Georgia may have been a contributing factor to the election defeat of the ‘United National Movement’ government of President Mikheil Saakashvili in October 2012, although a human rights issue seems to have been a final tipping point. Prior to the election, the opposition critique included attacks on government for over-promoting big business and lack of support for small business, which in the Georgian context, would be a key poverty alleviating initiative. Available statistics, albeit unreliable, suggest that just over 62,1 % of employed citizens work in big business, 14,7 % in medium-sized businesses and 23,1 % in small business. In this regard, Nodar Khadauri, the new Finance Minister and academic economist, called for greater support for small business creation arguing that agriculture, family businesses and tourism are priority areas in the Georgian context.<sup>3</sup> The combination of rural poverty and unrealized agricultural and tourism potential buttresses these arguments; it also highlights the fact that ‘positive protection’ of unique and distinctive Georgian products provides important marketing, promotional and value chain upgrading elements. Encouragingly perhaps, indications are that the government will adopt more interventionist economic policies, including incentives to encourage and stimulate the development of small business.

### **A Rich Agricultural Tradition and Cultural Heritage**

In the case of wines of spirits, Georgia has about 500 wine species native to the country of which 40 are used in commercial wine production. The tradition of wine making is ancient in a country occupied by *homo sapiens* for tens of thousands of years. Grain cultivation, cattle raising, wine making and metalworking began as early in Transcaucasia as anywhere on earth (Rayfield, 2012). Notable examples of Georgian wines from towns and villages with the same name as the wine are *Kvkhanchkhara* and *Mukuzani* (red wine); further discussed in this paper, and *Tsinindali* (white wine). Similarly, there are long traditions in cheese making: *sulguni* is a well-known and distinctive cheese from Samagrela (or Mingrelia, in English); and, *imeruli* is an authentic local cheese from the Imereti region of Georgia. Besides wines and cheeses, *churchkhela* is sweet made from grapes and walnuts that is currently being developed as an Appellation of Origin in the Georgian IP system; and *borjomi* mineral water, which already enjoys a degree of protection in IEL under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. Related to traditional knowledge of wine making, Georgia is also pursuing another form of protection for intangible cultural heritage from UNESCO for the ancient style of making wine in *kevri* clay pots – a traditional Georgian method for making distinctive wines such as *rkatsiteli* and *saperavi*. Apart from these examples, there are other unique traditional products, including *teka*, a traditional technique for making artistic wool products and *menankari*, an intricate form of micro mosaic jewelry. The country also has a vibrant folk culture characterized by such internationally famous TCE as Georgian dance and polyphonic singing. The Georgian tradition encompasses not only unique agricultural products, but also developing industries associated with TK and TCE and growing interests in trade in the creative industries.

### **Medicinal and Herbal Plant Resources**

Further, Georgia possesses GR in the form of a longstanding folk medicine tradition that is centered on herbal treatments based on traditional knowledge. The historical aspects

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<sup>3</sup> ‘Why the development of small business is vital for Georgia.’ Finchannel.com, Wednesday November 21 2012.

exemplified by the compilation by ZaZa Panaskerteli-Tsitishvili in the 1480s of a book of medical treatment, fusing Galenic and Sumerian medicine with Georgian folklore (Rayfield, 2012). The collection of herbs and medicinal plants is a common practice with 45 varieties collected in mountainous regions of the country.<sup>4</sup> However, as an industry, the herbal and medicinal plant sub-sector remains underdeveloped and unregulated in Georgia. Only a handful of tightly controlled family owned companies have aggregated production and developed unique products such as skin ointments; such as *turmanidze* and *kolhuri*, which have acquired a reputation and have been used by international pharmaceutical companies. These companies have their own IP protection strategies and the Georgian owners of *kolhuri* ointment, for example, have a patent registered in the European patent register. However, study of the sub-sector clearly shows that there is a need for improved national regulation, including on prior consultation and benefit sharing – as, for example, instructed by the Nagoya Protocol, further discussed in this paper – in combination with support for entrepreneurship and innovation. This argument is underscored by the large number of rural poor families involved in herbal and medicinal plant collecting in the value chain.

### **The Foundations of Protection in International Economic Law and Georgian Realities**

The position of Intellectual Property Rights in IEL, especially the WTO system, is controversial and seen by many trade and development economists to be working against the interests of developing countries by placing unfair constraints on them. Ha Joon Chang, for one, has stressed the costs to developing countries of introducing irrelevant and unsuitable national laws that restrict their access to technologies and knowledge (Chang, 2002). In general, IPRs have been associated with rich country interests: notably, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement') imposed on all countries, including Least Developed Countries, IP rules which were formulated in developed countries. Article 7 of the TRIPS agreement, however, did provide promise for developing countries in that technological innovation should be promoted to the mutual advantage of producers and users of traditional knowledge. This potential was taken further at the Seattle Ministerial Conference by seven developing countries that sought an “appropriate means of recognizing and protecting TK as the subject matter of intellectual property rights.” Subsequently, at the Doha Ministerial in November 2001, the issue of TK as an intellectual property right again came to the fore. As Clause 19 of the Doha Declaration spells out:

“the Council for TRIPS, in pursuing its review programme ‘to examine, *inter alia*, ....the protection of traditional knowledge’ and to be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and...take fully into account the development dimensions.”

The question of TK protection under the international IP regime was referred to in Clause 19 of the Doha Ministerial Declaration whereby the protection of traditional knowledge was to be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement. In the absence of an internationally recognized legal system for the protection of TK, existing legal systems such as patent law and plant breeder's rights law may have roles. Article 22 of the TRIPS Agreement though provides a reasonably wide definition of GIs through use of the term “other characteristic” that could be applied to other forms of TK:

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<sup>4</sup> Herbs and Medical Plants Sub-Sector Overview 2011, PowerPoint Presentation by the Georgian National Investment Agency.

“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.”

Aside from arguments on interpretation of IEL regarding the definition of GIs, there are also the important Doha Ministerial outcomes that mandated firstly, negotiation of a multilateral system of notification and registration for wines and spirits by the next ministerial meeting; and secondly, discussion of the possible extension of the protection of GIs to include products other than wines and spirits. The latter has given rise to debate in IEL circles as to whether or not GIs can also be used to protect TK and TCE associated products from developing countries. Although Georgia is among a number of developing countries supporting the extension of the definition, there is no unanimity and a number of developing countries, particularly Latin American countries are opposed. The proposed multilateral register of wines and spirits would certainly work in Georgia’s interests considering, for example, the wide variety of unique grape varieties and other agricultural products linked to the country itself and micro-regions.

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration administered by the World Intellectual Property Organization (WIPO) also provides for the protection of Appellations of Origin – in effect GIs – and at the same time recognizes the TK aspect. Article 2(1) of the Lisbon Agreement defines an “appellation of origin” as “the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”. Article 2(2) defines the “country of origin” as “the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin that has given the product its reputation”. The text provides a noteworthy element: “geographical environment is determined on the one hand by a set of natural factors (such as soil and climate), and on the other hand by a set of human factors – for instance the traditional knowledge or know how used in the place where the product originates.” The effectiveness of the Lisbon Treaty as a legal instrument, however, is constrained by the limited number of signatories (26). Other former Soviet Union countries, notably Russia, where Georgian products enjoy brand recognition, are not signatories. Georgia though, is a signatory of the Lisbon Agreement and has obtained protection for *borjomi* water a well-known bottled mineral water from the town of Borjomi that has an Appellation Original (AO) designation and protection under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

Over and above the reference to TK in the definition Appellations of Origin, WIPO is continuing efforts to reach a global agreement of protection of TK, TCE and GR through the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. As yet however, after lengthy deliberations, no global agreement exists. The slow pace of reaching an international agreement has prompted a number of developing countries to enact *sui generis* legislation or, in some cases in Africa and the Pacific region, adopt regional treaties on the protection of TK, TCE and GR (for example, the African Regional Intellectual Property Organization’s Swakopmund Protocol). As Deere has noted, these measures are primarily defensive and designed to protect owners of TK, TCE and GR against unauthorized use, failure to obtain prior consent and lack of compensation (Deere, 2009). By contrast, there is little in the way of ‘positive protection’ in existing such stand-alone laws whereby the aims are to promote development and entrepreneurial industry.

Georgia is an active participant in the global IP system and certainly stands to benefit from proposed changes such as the multilateral GI register and extension of the definition of GIs beyond wines and spirits, although its IP management strategy can at this stage be characterized as mainly defensive.

Besides WIPO, the other important international institution impacting on developing countries' traditional knowledge and products is the Convention for Biodiversity (CBD). Recent developments concerning protection of genetic resources have provided further encouragement to the development cause. The Nagoya Protocol on Access and Benefit Sharing, adopted by the Conference of the Parties to the Convention on Biological Diversity on 29 October 2010, aims to share benefits in from the utilization of genetic resources in a fair and equitable way. Article 16 of the Nagoya Protocol instructs that:

“each party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities...”<sup>5</sup>

The CBD has also been instrumental in calling for benefit sharing should multinational companies obtain access to GR and TK from developing countries. The Nagoya Protocol would certainly seem to be a step forward for a more development-friendly global IP system, although there are doubts about enforceability. Georgia of course is an interested party in terms of its wealth of herbal and medical plant resources, in particular. Certainly, benefit sharing, if handled correctly, not only provides opportunities for local owners and producers further up the value chain, such as the *Turmanidze* company, to form international partnerships, but also better protection for less well-off actors in the value chain – such as plant collectors.

An interesting and possibly rather unique aspect of Georgia's IP protection management concerns the links between a quintessential GI product – Georgian wine – and traditional knowledge associated with its production. While Georgia wine producers use modern technology, they also continue to use traditional methods, in particular *kvevri* – where wine is made in large clay pots buried underground. Efforts are currently underway to inscribe *kvevri* as an element of intangible cultural heritage in the Convention for the Safeguarding of Intangible Cultural Heritage administered by UNESCO. Although inscription would bring a number of safeguarding provisions such as technical assistance, training and international cooperation, Article 3 (b) of the Convention instructs that this would not have affects on other international instruments relating to IP and it is not clear how cases of misappropriation or misuse would be addressed. Nevertheless, recognition of unique cultural heritage hand-in-hand with protection of geographically named products could serve as a 'positive protection' and spur for the development of agricultural and tourism sectors. An important aspect of this concerning use of *kvevri* in wine production would be deepening the revival of an ancient craft, technological enhancements of the method and improved prospects for niche marketing as well being a tourist attraction *per se*. It is noteworthy, for example, that Schuchmann wines, a producer established in the Kakheti wine region by a German investor, has invested in the production and international promotion of *kvevri* wines and received an international award for their *kvevri saperavi*<sup>6</sup>. The UNESCO cultural heritage system may

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<sup>5</sup> Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. Secretariat of the Convention on Biodiversity, Montreal.

<sup>6</sup> See <http://www.schuchmann-wines.com/en/index>



therefore have potential for a country such as Georgia with rich antiquities and historical traditions and supplements existing IEL and national laws. At present three sites in Georgia have Cultural Heritage Sites status and Georgian polyphonic singing has been inscribed as Intangible Cultural Heritage.

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) carries strong aspects of positive protection with recognition of the asymmetric trade relations between developing and developed countries. It is a legally-binding international agreement that ensures artists, cultural professionals, practitioners and citizens worldwide can create, produce, disseminate and appreciate a broad range of cultural goods, services and activities, including their own. It was adopted because the international community understood the urgency for the implementation of international law that would recognize the distinctive nature of cultural goods, services and activities as carriers of identity, values and meaning; and that while cultural goods, services and activities have important economic value, they are not mere commodities that can only be regarded as objects of trade. Article 16 gives developing countries preferential treatment and further instructs that cooperation should support sustainable development in developing countries through actions, including capacity building of human resources, *inter alia* through strengthening strategic and management capacities; policy development and implementation; the use of technology and skills development; the promotion and distribution of cultural expressions; and, small, medium and micro-enterprise development. Georgia's current trade negotiations with the EU and USA are asymmetric and should seek not only enhanced protection and improved market access for their cultural goods and services; but also, technical assistance and financial support for such vital initiatives as organization of cooperatives, marketing and small business development.<sup>7</sup>

### **Can GIs protect TK and TCE?**

Notwithstanding the GI-TK/TCE linkages in IEL regimes discussed above, there is current debate as to whether GI laws can be a means of protecting certain forms of TK, TCE and GR given that the broad aims are to protect the rights of local communities and promote development. The reason for this is that GIs and TK both aim to protect localized traditions that have resulting benefits to local communities. The situation concerning TK and TCE is more complex, although it has been argued that GIs are traditional knowledge because of the uniquely traditional and heritage aspects associated with the name and the region (Blakeney, 2009). TK and TCE, in contrast, has a broader meaning focusing on the content or substance of traditional knowledge, innovations, environmental knowledge, medicinal knowledge as well as TCEs such as cultural heritage, handicrafts, art, songs, dances, chants, narratives, motifs and designs, for example Georgian dance and polyphonic music. In this sense, TK and TCE when applied to traditional communities, may indeed refer to traditionally made goods, but are also holistic and all-encompassing reflecting all aspects of life and society in such communities. Moreover, the commercial potential of TK and TCE derived products has been well demonstrated in important sectors such as medicine and agriculture as well as in the creative industries (Downes, 2000).

One key difference between GIs and TK as legal and economic constructs is that GIs protect names linked to a geographically designated products, while TK has wider applicability to a unique system of knowledge or way of doing things that may also be

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<sup>7</sup> See <http://www.unesco.org/new/en/themes/cultural>

geographically determined; put differently, TK is not necessarily a tangible product associated with a geographical name, although in a number of cases it may well be. Arguably, an advantage of GI protection for TK is that GIs can be held in perpetuity, for as long as a community maintains the practices that guarantee the distinctive quality of a local product. This overcomes the limited terms of protection conferred by other forms of IP protection. (Blakeney, 2010). Therefore the possible inclusion of products other than wine and spirits as GIs has opened the way for GIs to be used to protect TK since other IP systems do not easily accommodate community ownership. In sharp contrast, Frankel has argued that the GI system is only superficially linked to TK and does not adequately meet the protection needs of TK owners from developing countries; while TK may be linked to the land, it differs significantly from the narrower definition of GIs that have been used by European farmers, in particular, to protect names associated with regions and the distinctive products produced there (Frankel, 2011). In this view there is danger in seeing GIs as a protection mechanism for TK which is a much more diverse concept. Furthermore, GIs produce wealth mainly for existing businesses in the GI region, but do not create innovative opportunities within what is an essentially static system.

Georgia's IP system mostly follows the characteristic EU GI model whereby well-known names of niche agricultural products are protected and pursued as an offensive trade interest in bilateral and multilateral trade negotiations. Although there is no move to use GIs for GR, TK and TCE associated products other than wines and specialty foods, arguably there is a need for more effective regulation as evidenced by the situation regarding herbal and medicinal plants and interest in the safeguarding protection for TCE provided by the UNESCO system. The Georgian *kvevri* wine-making techniques and cultural heritage provides an emerging and important link between TK, TCE and GIs, as well as an innovative return to deep traditions that can both strengthen the traditions, enhance brand names through *kvevri* labeling and promote wine tourism. Furthermore, at the fifth session of the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore,<sup>8</sup> the statement was made that TCEs that are qualified as goods, such as handicrafts, can also be protected by GIs. As Kamperman Sanders has argued, in this instance a GI can be affixed to a product that is made from natural resources or through knowledge held by an indigenous group (Kamperman Sanders, 2009). The key point being that added protection of the '*kvevri* labeled' wines, as well as the geographical name protection, would strengthen the marketing of Georgian wines in a fuller sense. In this respect, GIs need not act as constraints to technological innovation, but draw on old and new knowledge to further develop the strength of the brand name and the ancient traditions relating to the product itself.

### **National treatment, Trade Negotiations and Local Capacity**

The Georgian IP office, '*Sakpatenti*,' oversees Appellation of Origin legislation for 34 products, including unique wines, spirits, cheeses and specialty foods and has concentrated its efforts and resources on protection against serious problems with counterfeiting and misappropriation of well-known Georgian names; it has also established an efficient registration and specification system for GIs and Appellations of Origin<sup>9</sup>. The working of *Sakpatenti* shows a generally effective IP office in the sense of supporting a defensive

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<sup>8</sup> WIPO Document: WIPO/GR TKF/IC/5/3, 52.

<sup>9</sup> See [www.sakpatenti.org.ge](http://www.sakpatenti.org.ge)

protection of Georgian names and products. In early 2012 Georgia commenced negotiations for a Deep and Comprehensive Free Trade Agreement (FTA) with the EU. The domestic registration system for Appellations of Origin is certainly a vital institution to have in place prior to the negotiations enabling a mutual reciprocity of recognition of GIs given that the EU will be expected to negotiate hard for its own offensive GI interests as has been more than shown in other bilateral negotiations such as the Trade and Development Cooperation Agreement (TDCA) with South Africa and Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific countries. Georgia, however, should benefit economically from its own GI, TK and TCE resources by obtaining mutual recognition. Concerning the latter, Georgia has opportunities and incentives to negotiate on issues such as easier market access for performing artists and protection of unique art forms, such as jewelry design, dance and music. The Cariforum-EU Economic Partnership Agreement provides useful experience of asymmetric trade negotiations to learn from. Notably, Caribbean negotiators were able to achieve gains on issues such as legally binding relaxed visa rules and work permits for providers of entertainment services.

On EU-Georgian trade relations, it should, however, be noted that the current trade balance is skewed towards the EU: Georgia's trade with the EU amounts to 26.1% of its total trade while Georgia's percentage of overall EU trade is only 0,1%. It is further stated on The EC web site that a Deep and Comprehensive FTA is about closer economic integration, including "increased protection of intellectual property – to improve in particular enforcement of legislation and bring the level of IP protection on a par with the EU."<sup>10</sup> The question of "IP protection on a par with the EU" does, however, pose certain capacity-related challenges and would not be the only impediment considering Georgia's own offensive interests: for one, the EU's trade partners are confronted with onerous Technical Barriers to Trade (TBT) in getting their products into the EU market, especially Sanitary and Phytosanitary procedures (SPS). The capacity constraints are not limited to technical trade issues and trade negotiations. Another major issue concerns weak marketing, brand recognition and business development, because while the Russian trade boycott has had an unintended consequence of stimulating greater innovation and higher quality standards as producers were forced to seek and adapt to new markets, Georgian wines and spirits, despite the high potential, as yet occupy a very small niche in the EU; other agricultural products face even more difficulties with standards. Mutual recognition of GIs in a Deep and Comprehensive FTA itself would not be a magic wand for building up brand names in the EU; at best they should provide a confidence-building base for community and business development and innovation. The situation concerning Russia, particularly, and the former Soviet Union countries is rather different because Georgian products, such as wines, spirits, mineral water and other agricultural products do enjoy brand recognition, albeit weakened since the 2008 war; and further, have been subject to cases of name misappropriation. The loss of Georgia's main trading partner following Russia's trade boycott has been keenly felt and underlies the new Georgian government's aims to recommence dialogue with incremental steps starting with the restoration of trade and economic relations.<sup>11</sup>

Georgia's geo-political situation is complex as it looks towards Europe, possesses a similarly agricultural 'GI profile' to a number of EU countries, but has to cope with a powerful neighbor, Russia, which as espoused aims to create a new 'Eurasian Union' as a

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<sup>10</sup> See <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/south-caucasus/>

<sup>11</sup> Interview with first Deputy Minister of Foreign Affairs, David Zalkaliani. Reported in 'Georgia Today', November 23 – 29, 2012.

putative rival regional bloc to the EU. Russian policies toward Georgia show that it does not agree with Georgia's own aspirations to be part of the West. Nevertheless, Russia's recent WTO accession with the international commitments that it brings, including agreement with Russia on international monitoring of the flow of goods between the disputed territories of Abkhazia and South Ossetia and Russia, does perhaps augur well for the future. Clearly, a more positive business environment in the region, including free movement of goods and people and improved entrepreneurial incentive and opportunity, would have some positive 'soft power' effects on the frozen conflicts with the breakaway territories as well as investor confidence.

### ***Khvanckhara* – case study of a unique region**

*Khvanckhara* wine, named after a local village, is a blend of *alexandrouli* and *mujuretuli* Georgian grape varieties from a small appellation controlled area, on the banks of the Rioni river in the Racha-Lechkumi region of Northern Georgia. Famously, the wine was enjoyed by Churchill, Roosevelt and Stalin at the Yalta conference in 1945<sup>12</sup>. The region is located on the slopes of the Caucasus mountain range far away from the main Kakheti wine-growing region of Georgia. There is considerably less infrastructural development and investment than in the Kakheti region despite obvious potential for tourism. In statistical measures of entrepreneurial activity in Georgia, the Racha-Lechkumi region has by far the lowest output and turnover of all regions in the country – respectively 0,1 and 0,2% of total output and turnover in the country.<sup>13</sup> Restaurant and hotel turnover rates – useful indicators of tourism activity – are, tellingly, the lowest and second lowest in the country. Despite the Appellation of Origin designation, in effect a GI in the Georgian IP system, there is little spin-off effect on local business and tourism development. Apart from artisanal producers, lacking a cooperative organization, there is only one established winery located in the region, dating back to the Soviet period, and in need of renovation. A number of Kakhetian wine producers own vineyards in *Khvanckhara* region, but transport the grapes to Kakheti and other Georgian regions for maturation and bottling.<sup>14</sup> The Appellation of Origin for *Khvanckhara* wine, while serving to define the geographical area and product standards, has visibly neither brought about a localized organization of producers nor aggregated knowledge to further strengthen the brand name and promote innovation. Thus, a key consequence of the European GI system – community prosperity – at this stage seems remote, even in a region of outstanding scenic beauty. What is clear is that regional development policies and strategies, building on the foundation created the appellation GI protection, are needed. Producers in the region though were well aware of the cases of misappropriation of the name and appreciated the necessity for the defensive nature of the GI system. *Sakpatenti* achieved a significant defensive result in legal action in the USA against the registration of a trademark, taken by a Russian citizen, for the name *khvanckhara*. However, the positive aspects of the protection system, especially concerning wine tourism, small business and community development, need stimulation and support.

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<sup>12</sup> <http://www.gotocaucasus.com/Khvanckhara/Khvanckhara.html>

<sup>13</sup> 2011 Georgian National Statistics Yearbook

<sup>14</sup> Interview with Ruben Tkeshelashvili, *Khvanckhara* artisanal master wine maker.

## Conclusions: Can GIs, TK, TCE and GR be Vectors for Economic Development?

The increasing interest in GIs as IPRs that offer potentially viable strategies for developing countries is based on arguments that protection of origin-labeled products can promote rural and community development. This is based on proven success in Europe where GIs from developed regions such as Bordeaux, Roquefort and Parma have contributed to social wellbeing and economic prosperity. There are three aspects to this: firstly, GI labeled products can prevent misappropriation and counterfeiting by third parties attempting to gain from the added value of name recognition; second, traditional know-how passed down through generations in localized regions can be protected by a GI and used to enhance the sales potential of the product; and third, in the increasingly globalized trade arena, GIs can provide economic recognition to unique and high quality products linked to their region of origin. Within the EU, it has been estimated that the price of a product with a protected designation of origin may be as much as 40% higher than that of a similar non GI product (Fautrel, Soreau, Thirion and Vittori, 2009).

While most designated GIs are in Europe and tend to be associated with the cultural uniqueness of specific regions or *terroir*, there is growing awareness that products from developing countries have similar potential to benefit from this form of protection. Columbian coffee is an example of a developing country GI that has obtained recognition as a GI in the EU and India is currently in the process of obtaining GI designation in the EU for the well-known *darjeeling* tea. These cases are characterized by the existence of clear links between established brand names and distinct geographical areas. In poorer and less developed countries, however, products may be reasonably well known, but financial and other capacity limitations have constrained the establishment of recognizable brand names and added to the risks of misappropriation. Georgia, resembling European countries such as France and Italy in having a number of products, including wines and cheeses, named after the region of origin, fits the European GI system and can certainly obtain recognition of its GIs in the EU provided that the capacity challenges can be overcome. Georgia therefore is arguably better positioned to benefit from protection of its niche traditional products and cultural expressions than other developing countries increasingly seeking new product development in the competitive era of global trade and specialty foods. Protection of GIs, TK, and TCE can be a vector for development both by protecting and equitably rewarding local communities and indigenous peoples for their contributions and encouraging producers to become niche players in global markets. The protection of GR is more complex in Georgia given the industry structure of the sub-sector for medicinal and herbal plants. Nevertheless, there is a need for enhanced national regulation in the light of the benefit-sharing and prior consultation clauses of the Nagoya Protocol.

In general, the Georgian case, despite having close affinity with EU GI profiles, shows that defensive protection is more straightforward than positive protection. The latter requires *inter alia* development policies, collective organization of producers, investment and technical assistance for small business start-ups. Study of Georgian GIs such as *Khvanchkhara* wine has shown the GI designation, while providing an important defence against misappropriation, is by itself not a panacea or launching pad for wealth and for community prosperity. Further incentives and positive actions are needed with the whole community in mind. The IP protection and legal frameworks are therefore but one piece of an overall integrated community and entrepreneurship development strategy that binds uniqueness and distinctiveness with positive actions for economic development.

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