

[Student Essay]

A Study on Geographical Indications in Korea*

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Abstract

The Republic of Korea has a multi-layered system for protecting geographical indications (GIs), initiated with the Agricultural and Fishery Products Quality Control (AFPQC) Act in 1999. GIs in Korea are mainly protected through a registration system under the AFPQC Act as well as collective marks with GI and certification marks with GI under the Trademark Act. Additionally, the Unfair Competition Prevention and Trade Secret Protection Act includes provisions for safeguarding GIs, and Korea's Free Trade Agreements (FTAs), such as the Korea-EU FTA, provide further protection for GIs.

As of 2024, about half of the protected GIs in Korea were collective marks with GI. Furthermore, the overall number of new GI registrations has been declining. This trend may be attributed to the fact that many Korean specialties have already been registered as GIs, although the precise reason for this remains uncertain.

KEYWORDS: Geographical indications (GIs), Intellectual property rights, Korea-EU FTA, TRIPs, Collective marks with GI, Certification marks with GI

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I. Introduction

The legal framework governing the protection of geographical indications (GIs) exhibits considerable variation across different legal jurisdictions. European countries, such as France, have historically employed the sui generis system to safeguard GIs.¹⁾ Conversely, a number of countries, including the United States, have protected GIs through the instrument of trademark law, thereby avoiding the enactment of new legislative measures.²⁾ Other countries, such as South Korea and Japan, protect GIs through both sui generis systems and trademark laws.³⁾

Conflicting interests exist regarding the scope and level of protection for GIs. The European Union, representing the Old Continent, is a staunch proponent of GI protection.⁴⁾ In contrast, countries with shorter histories, smaller land masses, or products lacking distinctive regional characteristics suitable for export tend to be less inclined to implement stringent protection measures.⁵⁾ The relationship between trademark rights and rights to GIs also varies between countries. GI law is traditionally viewed as having a special relationship with trademark law in Europe, with GIs

1) In France, the protection of “Appellation of Origin (*Appellations d’origine*)” has its origins in Article 1 of the Law of August 1, 1905 on fraudulent acts. See Daeseung Yang, *Peulangseuui jilijeog pyosi bohokedoe gwanhan yeongu [Protection of Geographical Indications in France]*, 25 J. INDUS. PROP. 203, 203-04 (2008) (In Korean).

2) Bumsok Lee, *Jilijeogpyosiuui beobjeogboho banganegwanhan yeongu: jilijeogpyosigwongwa sangpyogwoneul jungsimleulo [A Study on the Legal Protection Method of the Geographical Indication: Focusing on the Geographical Indication Right and the Trademark Right]* 34-35 (Feb., 2018) (Ph.D. dissertation, Hanyang University) (In Korean).

3) In Japan, GIs are protected as “Local Group Trademarks” under Article 7-2 of the Trademark Law and GIs under the Geographical Indication Protection Act. For detailed information on Japanese GI protection system, see Chihyun Kwon, *Ilbonui jilijeogdanchesangpyogwongwa jilijeogpyosigwone gwanhan gochal [Consideration on Local Group Trademark and Geographical Indication in Japan]*, 28(4) J. LEGAL STUD. 87, 89-92 (2020) (In Korean).

4) Heonhui Lee, *Jilijeog pyosi liseuteu bangsigui bohoegwanhan sogo [A Study on the Protection of the Geographical Indication List Method]*, 67 J. INDUS. PROP. 369, 402 (2021) (In Korean).

5) Kyosook Choi & Jaewon Chang, *Jilijeog pyosi boholeul wihan bujeonggyeongjaengbangjibeob je3joui2e gwanhan sogo [A Study on Article 3-2 of the Unfair Competition Prevention Act for the Protection of GI]*, 17(2) J. INTELL. PROP. 259, 261 (2022) (In Korean).

taking precedence over trademarks. In contrast, countries such as the United States and Canada have resolved conflicts between the two rights under the “exclusivity of the prior right” doctrine.⁶⁾

As such, each country has shaped its protection system for GIs differently in terms of its legal framework, scope and level of protection, relationship with trademarks, etc. However, as cross-border trade continues to expand, the need for the international unification of GI protection systems has become increasingly apparent.⁷⁾ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), which entered into force on January 1, 1995, was the first multilateral agreement formally to use the term “Geographical Indications.”⁸⁾

The protection of GIs in Korea began with the enactment of the Agricultural and Fishery Products Quality Control Act (*Nongsusanmul pumjilgwallibeop* in Korean; referred to as the AFPQC Act in this article) in 1999.⁹⁾ In 2004, the Trademark Act (*Sangpyobeop* in Korean) introduced the “collective mark with GI,” and in 2011, it introduced the “certification mark with GI.” Furthermore, the Unfair Competition Prevention and Trade Secret Protection Act (*Bujeonggyeongjaengbangji mit yeongeopbimilbohoe gwanhan beomnyul* in Korean; referred to as the UCPTSP Act in this article) and other laws also contain provisions to protect GIs, as do bilateral and multilateral Free Trade Agreements (FTAs) with foreign countries.

Consequently, the protection of GIs in Korea is characterized by a multilayered approach.¹⁰⁾ Although this approach has the benefit of ensuring comprehensive GI protection, it also introduces complexity and potential issues of inconsistency between individual laws and regulations.¹¹⁾

6) Byungil Kim, *Han-EU FTAAeseoui jilijeog pyosi bohohedo gaeseone daehan yeongu* [A Study on Improving the Geographical Indications Protection System in the Korea-EU Free Trade Agreement], 64 J. INDUS. PROP. 333, 350 (2020) (In Korean).

7) Jiyoung Kim, *Jilijeog pyosi bohoe gwanhan yeongu* [A Study on the Protection of Geographical Indications], 4(1) J. INTEL. PROP. 1, 7 (2009) (In Korean).

8) GYOOHO LEE, *JIMYEONGPYOJANG BOHOBOEJJE: JILJEONG PYOSI POHAM* [PROTECTION LEGISLATION FOR GEOGRAPHICAL NAMES] 4 (2016) (In Korean).

9) Lee, *supra* note 2, at 27.

10) LEE, *supra* note 8, at 4.

11) Taeho Jung, *Gisulyunghabsidaee ttaleun jisigjaesan gwanlyeon beoblyuldeului jeochog munje haegyuele gwanhan gochal* [Study on Solving Conflict Problems of Laws Related to Intellectual Property in the Era of Technology Convergence], 11(1) SOGANG L.J. 331, 351-52 (2022) (In Korean).

The fact that GI protection is incorporated into several laws and regulations is sometimes perceived as creating confusion and legal uncertainty, especially for foreigners.¹²⁾

Furthermore, GIs are becoming increasingly important both domestically and internationally. In particular, in FTA negotiations on intellectual property protection, GIs are treated as important agenda items because of the conflicting interests of the parties, and a strategic approach is being taken by the United States and the European Union to protect GIs in Asian countries.¹³⁾ Therefore, even if there is a paucity of academic interest in GIs in Korea, with only a limited number of studies focusing exclusively on GIs and a similarly limited number of cases involving GIs¹⁴⁾ in practice,¹⁵⁾

12) Giulia de Bosio, *The Global Struggle between Europe and United States over Geographical Indications in Asia. The Korean Compromise* 149 (Mar., 2017) (M.A. thesis, Milyan University).

13) Recently, the EU has been leading the way in institutionalizing GIs and actively pursuing bilateral agreements with developing countries such as Vietnam, which includes a list of GIs. (Hyunjung Kim, *Yangjiahyeobjeongeul tonghan yuleobyeonhabui jilijeogpyosije hwagsan bunseog: EU-beteunam FTAleul jungsimeulo [An Analysis on the Expansion of Geographical Indication in the European Union through Bilateral Agreements: Focused on the EU-Vietnam FTA]*, 40(4) J. CONTEMP. EUR. STUD. 173, 185 (2022) (In Korean)). The United States, on the other hand, has repeatedly emphasized through APEC IPEG, Special 301 report, etc. that GI protection should not apply to “generic terms” that are already widely used for foodstuffs. (Kyosook Choi, *Asia taepyeongyang gyeongjehyeoblyeogche jisigjaesanjeonmunga geulubeseoui jisigjaesan nonuwa uliui daeung bangane gwanhan sogo [Discussion of Intellectual Property at Asia Pacific Economic Cooperation Intellectual Property Expert Group and Our Plan]*, 74 J. INDUS. PROP. 201, 219-22 (2023) (In Korean)). “Generic term” in this context means that the quality-related source of indication has shifted in meaning and is no longer used as an indication of the geographical origin of a good or service, but only as an indication of the type, quality, attributes, etc. of a particular good or service. “Italian salad”, “French fries”, “English muffin”, etc. are examples of Geographical Indications that have become generic. (Byungil Kim, *Jilijeog pyosiwabotongmyeongchinge gwanhan FTAhyeobsang daeungbangan yeongu [Study on FTA Negotiations on Geographical Indications and Generic Terms]*, 76 J. INDUS. PROP. 233, 236 (2023) (In Korean)).

14) To date, only a limited number of cases have addressed GI rights as the primary issue. The so-called “Jeong-eup Oat Case” (Teugheobeobwon [Patent Ct.], Oct. 13, 2017, 2017Heo2024 (S. Kor.)), in which the court upheld the refusal of registration on the grounds that the characteristics of Jeong-eup Oat are not related to the geographical factors of the region, was one of such few cases. However, recently, the Patent Court has handed down two significant rulings. The first concerns the invalidity of the registration of “Gwangcheon Kim (seasoned seaweed)” (Teugheobeobwon [Patent Ct.], June. 30, 2023, 2022Heo5713 (S. Kor.)) and the second concerns the cancellation of registration of the same mark (Teugheobeobwon [Patent Ct.], Nov. 8, 2023, 2022Heo5690 (S. Kor.)). The latter was concluded, but the former is the subject of an appeal and awaits a definitive judgment from the Supreme Court. The rulings will be elucidated subsequently in this article.

it is anticipated that the country will see an increase in the prevalence of GI-related issues, which will, in turn, lead to a growth in interest in the topic.

To gain a comprehensive understanding of Korea's GI protection regime, it is necessary to consider not only the relevant regulations but also its evolution and recent registrations' status. This article therefore (i) defines GI in Korea and provides an overview of its history; (ii) discusses the GI protection system under the AFPQC Act, the Trademark Act, and the UCPTSP Act, as well as FTAs, which include the protection of GIs; and (iii) describes the status of GI registrations.

II. The Concept of GIs and Their History in Korea

A. The Concept of GIs

GIs are typically conceptualized as “signs used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.”¹⁶⁾ This can be understood as a superordinate concept that encompasses both “indication of source” and “appellation of origin.”¹⁷⁾ The indication of source is further categorized into two distinct types: “mere indication of source” and “indication of source related to quality.” The former refers to the ability to indicate the origin of a particular product, regardless of its quality, while the latter has the ability to guarantee a specific level of quality.¹⁸⁾ An appellation of origin is defined as a “word, symbol, or device that indicates a product's geographical origin,” provided

15) Junseok Park, *Yeongeobbimil gongdongboyujauui dongui eobsneun jagisayongeun chimhaehaengwiinga? – gongyu jomun heumgyeole daehan haeseoglon modelui jesi [Is the Self-use by One Co-owner of Trade Secrets Without the Consent of the Others an Infringement? – Proposal of Interpretation Process Model to Fill the Gap of Co-ownership Provisions]*, 64(1) SEOUL L.J. 297, 334-35 (2023).

16) WORLD INTELL. PROP. ORG., *GEOGRAPHICAL INDICATIONS – AN INTRODUCTION* 6 (2d ed. 2021).

17) Byungil Kim, *Han-EU FTAEseoui jilijeogpyosi bohajaengeom [Contending Issues of Korea – EU FTA in the Field of Geographical Indications Protection]*, 26 J. INDUS. PROP. 77, 79 (2008) (In Korean).

18) Kim, *supra* note 6, at 336.

that the product's quality is based on a geographical environment.¹⁹⁾

In accordance with the TRIPs Agreement, GIs are defined as "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."²⁰⁾ However, the TRIPs Agreement does not provide any methodology or criteria for verifying the definition of "essentially attributable," which is the underlying concept of GIs.²¹⁾

The concept of a GI, as used in the Korean Trademark Act, is almost identical to the definition set forth in the TRIPs Agreement. In the context of trademark law, a GI is defined as "an indication used to identify goods produced, manufactured, or processed in a specific area in cases where a certain quality, reputation, or other characteristic of goods has essentially originated from such specific area."²²⁾

Similarly, the AFPQC Act recognizes GIs in much the same way under the TRIPs agreement. The Act defines a GI as "where the reputation, quality and other distinctive features of agricultural and fishery products or processed agricultural and fishery products referred to in subparagraph 13²³⁾ fundamentally result from the geographical characteristics of a specific region, an indication describing that the relevant agricultural and fishery products or processed agricultural and fishery products have been produced, made or processed in the specific region."²⁴⁾ This is based on the reputation, quality, and other distinctive features of such products or

19) *Id.* at 337.

20) Agreement on Trade-Related Aspects of Intellectual Property Rights art. 22 para. 1, Apr. 15, 1994, 1869 U.N.T.S. 299.

21) Byungil Kim, *Jilijeogpyosi bohoui beobjehwa-e gwanhan yeongu [The Study on Protection System for Geographical Indications]*, 13 J. INDUS. PROP. 201, 206 (2003) (In Korean).

22) Sangpyobeob [Trademark Act] art. 2 para. 1 subpara. 4 (S. Kor.). In this article, all statutes not otherwise indicated are those of South Korea.

23) The term "processed agricultural and fishery products" means the following products: (a) A processed agricultural product: Any product processed with agricultural products as raw materials or materials; (b) A processed fishery product: Any product processed with fishery products according to the standards of the percentage of use or ingredient content of raw materials or materials prescribed by Presidential Decree.

24) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act] art. 2 para. 1 subpara. 8 (S. Kor.).

products undergoing processing that have their foundation in the geographical characteristics of that region.

B. History of GIs in Korea

The history of GIs in Korea is closely tied to the Framework Agreement for Trade and Cooperation between Korea and the EU, which was signed in October 1996. This agreement marked a pivotal moment for Korea, as it paved the way for the introduction of a GI system.²⁵⁾ In the course of negotiating the agreement, the EU requested that Korea provide details of the measures it would take to fulfill its obligations under the TRIPs Agreement with regard to the protection of GIs.²⁶⁾ The Ministry of Agriculture and Forestry then promoted the enactment of its own GI protection law in response to the EU's request and the necessity of protecting GIs at the international level. However, there was an argument that the benefits of introducing a separate legal instrument would be limited.²⁷⁾ Consequently, in lieu of enacting a discrete legislative measure pertaining to GIs, the Ministry of Agriculture and Forestry initially introduced a GI registration system in January 1999 as an integral component of the AFPQC Act. This act was promulgated through the consolidation of pertinent provisions derived from extant legislative instruments.²⁸⁾

At the time of the registration system's introduction, GI was regarded as a quality control system, as evidenced by the fact that GIs were protected by a separate system under the AFPQC Act rather than as collective marks under the Trademark Act.²⁹⁾ In the meantime, the subject of GIs in the AFPQC Act was limited to "agricultural and fishery products or processed agricultural and fishery products."³⁰⁾ This was the analogous form of GI

25) Lee, *supra* note 2, at 27.

26) *Id.* at 28.

27) Jung, *supra* note 11, at 351-52.

28) *Id.* at 352.

29) Lee, *supra* note 2, at 28.

30) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act], amended by Act. No. 6191, Jan. 21, 2000, art. 2 subpara. 5 (S. Kor.).

safeguarded in the European Union at that time for “agricultural products and processed products with GIs,” as defined by the pertinent legislation, given that it both required products to be produced or processed in that region and excluded handicrafts.³¹⁾

The former AFPQC Act, which was amended on June 9, 2009, was the first to explicitly define GI rights as a form of intellectual property rights. Article 2 Subparagraph 9³²⁾ stated that “the term ‘GI right’ refers to the intellectual property right to exclusively use a GI (including a homonymous GI) registered under this Act.” This introduced a new category of intellectual property rights, designated as “GI rights,” which elevated the status of GIs previously protected by the Act.³³⁾

On December 12, 2004, another significant revision was made to South Korea’s GI system. The scope of GI protection in Korea was expanded with the introduction of the “collective mark with GI” as a result of amendments made to the Trademark Act. In contrast to the AFPQC Act, the Trademark Act does not impose any restrictions on the types of goods, including handicrafts, that can be protected. In other words, the Trademark Act stipulates that all kinds of goods can be registered as GIs. The introduction of a collective mark with GI in trademark law was driven by two key objectives: (i) to revitalize local economies through the protection of local specialties and (ii) to actively engage in international discussions on strengthening the protection of GIs.³⁴⁾

In response to the Korea–US FTA negotiations, the Trademark Act was amended on December 2, 2011, to allow for the registration of certification marks, including the “certification mark with GI.”³⁵⁾ This amendment enabled entities such as local governments, who had previously been unable to become owners of GIs due to their lack of legal status as entities

31) Kim, *supra* note 21, at 222.

32) In the current Agricultural and Fishery Products Quality Control Act, it is stipulated in art. 2 para. 1 subpara. 10.

33) Park, *supra* note 15, at 335.

34) KOREAN INTELL. PROP. OFF. [hereinafter KIPO], 2004 GAEJEONG SANGPYOBEOB HAESEOL [COMMENTARY FOR 2004 REVISED TRADEMARK ACT] 59 (2004) (In Korean).

35) Youngju Lee, *Sangpyobeobsang jeungmyeongpyojange uihan jilijeog pyosuii boho gochal* [A Study on Protection of GI by Certification Marks Under Trademark Act], 17(2) J. COMPAR. PRIV. L. 403, 416 (2010) (In Korean).

established by the producers of the good, to become owners of GIs.

III. Protection of GIs in Korea

In Korea, a multilayered system of protection is in place for GIs. This encompasses other legislative instruments not previously mentioned, including the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry Act and the Liquor Tax Act.

However, the primary legislation pertaining to GIs in Korea's legal system includes the Trademark Act, the AFPQC Act, and the UCPTSP Act. Consequently, this chapter focuses on these three pieces of legislation, as well as the protection provided by FTAs.

A. *The Protection of GIs Under the Trademark Act*

1. *Collective Mark With GI*

a. Definition

The GI protection system under the Trademark Act is divided into two categories: "collective mark with GI" and "certification mark with GI." In the Trademark Act, a collective mark with GI is defined as a "mark intended for use directly by a corporation, which is comprised of individuals engaged in the production, manufacture, or processing of goods on which a GI may be used, or is intended for use by its members."³⁶ Consequently, for a mark to qualify as a collective mark with GI under trademark law, it must meet the definition of GI. To satisfy the criteria for a GI, the following four conditions must be fulfilled.³⁷

First, the mark must relate to goods. It should be noted that the Trademark Act does not impose any restrictions on the type of goods that may be protected. Consequently, this encompasses manufactured goods,

36) Sangpyobeob [Trademark Act] art. 2 para. 1 subpara. 6 (S. Kor.).

37) For detailed information on the following four conditions, see KIPO, GUIDELINE FOR TRADEMARK EXAMINATION 70407-70409 (2024).

such as handicrafts, in addition to agricultural/fishery products and their processed derivatives. This represents a notable distinction from the GIs set out in the AFPQC Act, which are limited to agricultural and fishery products and their processed products.³⁸⁾

Second, a product must possess a level of quality, a reputation, a production method, or other distinctive features that set it apart from products produced, manufactured, or processed in other regions. In this case, quality, reputation, and other distinctive features are acquired not only by natural conditions, such as climate, soil, and topography, but also by human conditions, such as traditional production methods.³⁹⁾

Third, the quality, reputation, production method, or other characteristics of a product must have an intrinsic connection to a region. This implies that the difference from other products must be based on the natural conditions (climate, soil, topography, etc.) or human conditions of the region. For instance, the distinctive flavor profile of *Boseong green tea*, which includes five distinct flavors, such as astringent and bitter notes, is attributed to the influence of warm temperatures and foggy conditions resulting from the proximity of the sea and rivers and the well-drained sandy loam soil of *Boseong Si*.⁴⁰⁾ This serves as an exemplar of the intrinsic correlation between the quality of a product and its geographical environment.

Fourth, the mark must indicate the name of the region in which a product is produced, manufactured, or processed. A region does not necessarily correspond to an administrative area; rather, it is defined by geographic circumstances, such as climate, soil, and topography. Additionally, it may encompass foreign territories.

b. Eligibility of the Applicant

To qualify as an applicant for a collective mark with a GI, the applicant

38) Taeho Jung, *Jilijeog pyosi danchepyojangjedoui munjejeomgwa haegyeolbangane gwanhan gochal* [A Study on Problems and Solutions of Them in Collective Mark System for a Geographical Indication], 27(4) J. L. RSCH. 39, 42 (2011) (In Korean).

39) *Id.* at 43.

40) Loc. Fin. Ass'n, *Boseongnogchaui jilijeog pyosije deungloge ttaleun beulaendeu gachiui jego - jeonlanamdo boseonggun* [Enhancing Brand Value by Registering Boseong Green Tea's GIs - Boseong-gun, Jeonlanam-do], 2004(6) Loc. Fin. 63, 63-77 (2004) (In Korean).

must be a corporation comprised of persons who produce, manufacture, or process goods on which such a GI may be used.⁴¹⁾ Accordingly, an unincorporated association or a corporation formed by a single individual is not eligible to register a collective mark with GI.⁴²⁾ It is not necessary that the members of a corporation be involved in these activities on a full-time basis.⁴³⁾

However, it is not required that all members of a corporation be involved in the production, manufacture, or processing of goods. An applicant may be eligible to file an application even if the members of the corporation include persons who are not engaged in the production, manufacture, or processing of the geographically designated goods.⁴⁴⁾ Prior to the 2018 amendments to the Trademark Act, only persons engaged in the production, manufacture, or processing of goods were eligible to become members.⁴⁵⁾ However, the Trademark Act was amended to allow persons not engaged in the production, manufacture, or processing of goods (e.g., sellers of goods) to become members. However, if they are members, the scope of persons who may use GIs must be specified in the articles of association.⁴⁶⁾

c. Protected Products

As previously stated, a collective mark with GI under trademark law affords protection for “goods,” with no limitations on the type of goods. Goods in this context are the same as those defined in the Trademark Act. Consequently, goods in this context are defined as “goods that have an exchange value and are an object of independent commerce”⁴⁷⁾ or “goods

41) Sangpyobeob [Trademark Act] art. 3 para. 2 (S. Kor.).

42) LEE, *supra* note 8, at 167.

43) KIPO, *supra* note 37, at 70410 3.1.4.

44) *Id.* at 70409 3.1.5.

45) For example, In the case of the collective mark with GI application for “*Sancheong-gun persimmon*”, the IPTAB (Intellectual Property Trial and Appeal Board) determined that the “Sancheong-gun Agricultural Association” was not eligible to serve as the applicant because, according to the articles of association, membership in the association is open to all farmers in the designated area. (Teugheosimpanwon [Intell. Prop. T. A. B.], Jan. 2, 2015, 2014Won262 (S. Kor.)).

46) KIPO, *supra* note 37, at 70410 3.1.5.

47) Daebeobwon [S. Ct.], June 25, 1999, 98Hu58 (S. Kor.).

that can be transported in a fluid medium that is repeatedly traded in a trading society.”⁴⁸⁾

Therefore, not only agricultural and fishery products and their processed products but also manufactured goods (especially handicrafts) that have an exchange value and are the object of independent commerce or that can be transported in a fluid medium that is repeatedly traded in a trading society are protected.⁴⁹⁾

d. Registration Requirements

To register a collective mark with GI, a number of additional requirements must be satisfied. These requirements are mainly as follows: (i) whether the collective mark with GI meets the definition of a GI, (ii) the adequacy of the articles of incorporation or rules, (iii) the characteristics of the goods and their geographical environment, and (iv) the adequacy of the geographical area of the GI.⁵⁰⁾

First, the mark must meet the criteria for a GI—namely, that it is intended for use by or for the use of members of a corporation established jointly by persons who produce, manufacture, or process the goods covered by the GI. To examine this, the production and manufacturing status of the goods in question and the qualifications of the applicant to represent the producers, manufacturers, or processors of the GI in the region are taken into account.⁵¹⁾

Second, the articles of incorporation must include the following: matters relating to (i) the specific quality, reputation, or other characteristics of the goods; (ii) the essential link between the geographical environment and the specific quality, reputation, or other characteristics of the goods; (iii) the geographical area covered by the GI; and (iv) the self-management standards and measures to maintain the specific quality, reputation, or other characteristics of the goods.⁵²⁾ However, if the applicant is a foreign

48) KIPO, SANGPYOBEOB JOMUNBYEOL HAESEOLSEO [COMMENTARY BY ARTICLE OF THE TRADEMARK ACT] 16 (2023) (In Korean).

49) Jung, *supra* note 38, at 42.

50) LEE, *supra* note 8, at 89-94. For more detailed information on the following four conditions, see KIPO, *supra* note 37, at 70411-70415.

51) Jung, *supra* note 38, at 41-45.

52) KIPO, *supra* note 37, at 70412 4.2.1.

corporation, notwithstanding the absence of the above provisions in the articles of incorporation, equivalent documentation, such as the minutes of the board of directors, may be deemed to have the same legal effect as the articles of incorporation.⁵³⁾ The most common reason for refusal to register is the absence of documentation pertaining to the articles of incorporation.⁵⁴⁾

Third, there must be a quality, reputation, or other characteristic of the goods that distinguishes them from goods originating in other regions. In this case, the quality or other characteristics of the goods naturally entail reputation. Therefore, in principle, the documents concerning the quality or other characteristics of the goods and the documents concerning their reputation are submitted and examined together.⁵⁵⁾ In this regard, the “quality” is to be examined on the basis of whether the goods possess a self-identifying characteristic that indicates a significant difference from the quality or other characteristics of goods of the same kind in general or of goods of the same kind in the specific region to be compared. In the absence of comparable goods in other regions of Korea, the characteristics of the goods may be determined on the basis of the production, manufacturing, and processing methods used.⁵⁶⁾ An examination of the “reputation” of the goods in question should take into account historical evidence of their reputation, as well as their recognition at home and abroad, the awards they have received, the acquisition of domestic and foreign certifications (e.g., quality and standards), and consumer awareness surveys.⁵⁷⁾

Fourth, the quality, reputation, or other characteristics of the product must be closely linked to the GI. There must be an intrinsic link between the geographical environment and the characteristics of the product; that is, the social rule of thumb must be that without one or more of the natural or human factors, the quality, reputation, or other characteristics of the GI

53) *Id.* at 70413 4.2.4.

54) Jung, *supra* note 38, at 54.

55) KIPO, *supra* note 37, at 70416 4.5.10.

56) *Id.* at 70415 4.5.6.

57) *Id.* at 70416 4.5.7.

would not be likely to have a significant effect.⁵⁸⁾⁵⁹⁾

e. Application and Registration Process

The registration process for a collective mark with GI is generally the same as for other trademarks under the Trademark Act. The application is first examined by a single examiner and then published. If there is no opposition to the application, a decision on registration is made. If an opposition is filed, a panel of three examiners examines the application and makes a decision regarding registration.

f. Effect of the Right to a Collective Mark With GI

The owner of a collective mark for a mark with GI is granted an exclusive right to the collective mark on the designated goods.⁶⁰⁾ However, a collective mark may be used on the designated goods not only by the corporation that is the owner of the mark but also by its members.⁶¹⁾ In addition, the term of a collective mark with GI is 10 years, with the possibility of renewal every 10 years thereafter.⁶²⁾

Infringement occurs when a mark that is identical or similar to a collective mark with GI is used for goods “recognized as identical” to the designated goods.⁶³⁾ This is a more limited scope of passing off than that of a common trademark, which is infringed when an identical or similar mark is used for “identical or similar goods.” This is due to the fact that even if the mark in question is identical or similar to a registered collective mark with GI, if the designated goods are not identical, there will be no misidentification of or confusion about the origin.⁶⁴⁾

58) *Id.* at 70415 4.5.2.

59) LEE, *supra* note 8, at 181-82.

60) Sangpyobeob [Trademark Act] art. 89 (S. Kor.).

61) In principle, the owner of a collective mark is not identical to the individual who is entitled to utilize it. However, the Trademark Act was amended in 2004 to permit corporate entities to employ collective marks directly. This was done with the objective of reinvigorating the collective mark system, thereby enabling corporate entities that are the rightful owners to advertise on behalf of their members. (LEE, *supra* note 8, at 211.)

62) Sangpyobeob [Trademark Act] art. 83 para. 1-2 (S. Kor.).

63) *Id.* art. 34 para. 1 subpara. 8.

64) LEE, *supra* note 2, at 154.

In the event of an infringement, criminal penalties may include a maximum of 3 years' imprisonment with labor or a fine of up to 30 million won for false display⁶⁵⁾ and a maximum of 7 years' imprisonment with labor or a fine of up to 100 million won for infringement of collective marks with GI.⁶⁶⁾ Civil remedies are also available under general civil law.

Article 90 Paragraph 2 of the Trademark Law addresses instances in which the right to a collective mark for GIs is not applicable. One such instance is a trademark commonly used on goods deemed identical to the designated goods of the registered collective mark with GI. In such cases, the collective mark for GIs is deemed ineffective.⁶⁷⁾

The owner of a collective mark with GI is bound by law to oversee the GIs in a reactive manner. Notwithstanding the absence of a provision for *ex-officio* deregistration, failure to perform the requisite follow-up management may result in the registration being canceled by a third party.⁶⁸⁾ In this regard, the Korean Patent Court has recently taken the unprecedented step of canceling the registration of a collective mark with GI for the first time since the collective mark system was implemented.⁶⁹⁾ The GI in question, Gwangcheon Kim (seaweed), was registered for "seasoned roasted seaweed" by the Gwangcheon Kim Association. In accordance with the articles of incorporation, Gwangcheon Kim was required to utilize "sesame oil made from domestic sesame seeds" and to be produced in Gwangcheon-eup.

The court found that the collective mark had grounds for cancellation for the following reasons. First, some members of the association used identical or similar marks to the collective mark at issue on goods similar to the designated goods, causing consumers to be misled about the quality of the goods, and the association failed to pay due attention to the supervision of its members (Article 119, paragraph 1, subparagraph 2 of the Trademark Act). Second, some members of the association violated the articles of

65) Sangpyobeob [Trademark Act] art. 233 (S. Kor.).

66) *Id.* art. 230.

67) *Id.* art. 90 para. 2 subpara. 2.

68) Article 119, Paragraphs 1 and 7 of the Trademark Act provide grounds for the cancellation of collective marks, and Article 119, Paragraph 1, Subparagraph 8 provides grounds for the cancellation of the registration of collective marks with GIs.

69) Teugheobeobwon [Patent Ct.], Nov. 8, 2023, 2022Heo5690 (S. Kor.).

association (by using foreign salt and sesame seeds), causing consumers to be misled about the quality of the goods, and the association failed to pay due attention to the supervision of its members (Article 119, paragraph 1, subparagraph 7, item 1 of the Trademark Act). Third, the association knowingly took no action, even though it was aware that a nonmember was using the organization's mark (Article 119, paragraph 1, subparagraph 7, item 3 of the Trademark Act).

However, the court ruled that there was no reason for invalidation of the registration of the same mark, as follows.⁷⁰⁾ First, although it does not appear that Gwangcheon Kim has a traditional production method or unique processing method, the reputation of Gwangcheon as a place for the distribution and sale of conventional seaweed and the active promotion activities of merchants in Gwangcheon based on this reputation have led to the reputation of Gwangcheon as a seasoned seaweed production area, which constitutes a human factor in the geographical environment of Gwangcheon. Second, even if a person who is not qualified to be a member is enrolled as a member, such circumstances do not constitute a reason for the invalidity of the registration of the collective mark in this case, regardless of whether such circumstances constitute a reason for canceling the registration of the collective mark in this case.

2. Certification Mark With GI

a. Definition

A certification mark with GI is defined as a mark used by a person who commercially certifies a GI to certify that the goods of others meet specified geographical characteristics.⁷¹⁾ In other words, a certification mark with GI is a mark that can be registered by an individual, a corporation, or any kind of entity whose business is to certify rather than by the producer or processor. The certification mark serves to safeguard consumer interests by conferring the right to utilize the certification mark upon those who can

70) Teugheobeobwon [Patent Ct.], June 30, 2023, 2022Heo5713 (S. Kor.). The ruling is the subject of an appeal and a definitive judgment is yet to be issued from the Supreme Court.

71) Sangpyobeob [Trademark Act] art. 2 para. 1 subpara. 8 (S. Kor.).

demonstrate the capacity to rigorously substantiate quality.⁷²⁾ In contrast to a certification mark, the primary purpose of a trademark is to distinguish products associated with a particular business from those produced by other entities. While trademarks may serve a limited quality certification function, certification marks are designed to provide enhanced quality assurance.⁷³⁾

b. Eligibility of the Applicant

Only those engaged in the business of certifying and managing GIs are eligible to apply for a certification mark with GI. In contrast to collective marks with GI, certification marks with GI may be registered by noncorporate entities. Furthermore, since the owner of a certification mark does not have to produce the product themselves, local governments are also eligible as applicants.

Nevertheless, an individual is precluded from registering a certification mark with GI if it is intended to be used on goods related to their business.⁷⁴⁾ Moreover, an individual who has submitted an application for or received registration of a trademark, collective mark, or business mark is prohibited from registering a mark that is identical or similar to the trademark as a certification of a GI.⁷⁵⁾ The applicant of a certification mark is prohibited from using the mark directly in connection with their own business in goods or services. This is because granting the right to use the mark to the owner of a certification mark would result in significant challenges to the management and control of the quality of the mark, ultimately rendering it indistinguishable from a regular trademark.⁷⁶⁾

c. Application and Registration Process

The registration of a certification mark with GI is determined by the

72) Ho-jin Son, *Han mi FTA deunge ttala saelo doibdoen sangpyojedo – soli naemsaesangpywa jeungmyeongpyojangjedoui gaegwaljeog gochal* [A Study on the Changes of the Trademark System According to KOR-US FTA – Focused on Sound-Smell Trademarks and the Induction of the Certification Mark], 3(1) SCI. TECH. & L. 133, 151-52 (2012) (In Korean).

73) Lee, *supra* note 2, at 161-62.

74) Sangpyobeob [Trademark Act] art. 3 para. 3 (S. Kor.).

75) *Id.* art. 3 para. 4.

76) Son, *supra* note 72, at 161.

general principles of the Trademark Act. The same GI cannot be registered as a certification mark when it is already registered as a collective mark with GI, and vice versa.⁷⁷⁾

The other registration requirements and procedures for a certification mark with GI basically apply the regulations on collective marks with GI.⁷⁸⁾ An individual seeking registration of a certification mark with GI is required to submit the relevant articles of incorporation (in the case of an applicant that is a legal entity) or rules (in the case of an applicant that is not a legal entity) and any other pertinent documents that prove the applicant is capable of certifying and controlling the quality, origin, method of production, or other characteristics of the goods to be certified.⁷⁹⁾

The applicant for registration of a GI is also obliged to provide documentation attesting to the specific quality, reputation, or other characteristic of the goods in question. This documentation must also substantiate the essential connection between the geographical environment and the aforementioned quality, reputation, or other characteristics. Additionally, the applicant must present documentation delineating the geographical area covered by the GI.⁸⁰⁾

The application is initially evaluated by a single examiner and subsequently published. In the absence of opposition or grounds for refusal, a decision on registration is rendered. In the event that an opposition is filed, a panel of three examiners examines the application and issues a decision regarding registration.⁸¹⁾ A person seeking registration of a certification mark with GI must submit the relevant articles of incorporation (if the applicant is a corporation) or rules (if the applicant is not a corporation) and any other pertinent documents that prove the applicant is capable of certifying and controlling the quality, origin, method of production, or other characteristics of the goods to be certified.⁸²⁾

77) Lee, *supra* note 35, at 418.

78) Sangpyobeob [Trademark Act] art. 2 para. 4 (S. Kor.).

79) *Id.* art. 36 para. 4.

80) Lee, *supra* note 2, at 159.

81) Sangpyobeob [Trademark Act] art. 62 para. 1 (S. Kor.).

82) *Id.* art. 36 para. 4.

d. Effect of the Right to a Certification Mark With GI

The protection of a certification mark with GI is limited to registered designated goods, and anyone who complies with the certification standards can be authorized to use the certification mark with GI for designated goods. Unlike collective marks, users of a certification mark with GI can use it without joining an association, but the certification mark owner themselves cannot use the mark.⁸³⁾

The owner is granted exclusive rights for a period of 10 years, with the option of renewal for subsequent 10-year periods.⁸⁴⁾ Furthermore, the owner of a certification mark is entitled to file an anti-infringement claim or a claim for damages against an infringer. Nevertheless, an individual authorized to utilize a certification mark with GI is precluded from asserting a claim for noninfringement or damages.

B. GIs Under the AFPQC Act

The protection of GIs under the AFPQC Act is the *sui generis* system of GI protection in Korea. It is mainly compared to the collective mark with GI under the Trademark Act,⁸⁵⁾ which differs in terms of the purpose, scope, effect, etc., of protection.⁸⁶⁾ Nevertheless, the provisions of the AFPQC Act regarding GIs are also largely similar to those of the Korean Patent Act. In particular, in the registration procedure (Article 41) and appeal procedure (Article 50), the Patent Act is applied.

1. Definition

GI, as defined in the AFPQC Act, refers to “where the reputation, quality, and other distinctive features of agricultural and fishery products or processed agricultural and fishery products fundamentally result from the geographical characteristics of a specific region, an indication describing

83) This is known as the “anti-use by owner rule” for certification marks. See Lee, *supra* note 35, at 420.

84) Sangpyobeob [Trademark Act] art. 83 para. 1-2 (S. Kor.).

85) Lee, *supra* note 2, at 136.

86) Daeseung Yang, *Jilijeog pyosi jedoleul tonghan jeontongmunhwapyohyeonmului beobjeog boho* [Legal Protection of Traditional Cultural Expressions with Geographical Indications System], 19(1) J. COMPAR. PRIV. L. 309, 317-18 (2012) (In Korean).

that the relevant agricultural and fishery products or processed agricultural and fishery products have been produced, made or processed in the specific region."⁸⁷⁾

The objective of the GI protection system, as outlined in the AFPQC Act, is to enhance the quality of agricultural and fishery products or processed agricultural and fishery products with geographical characteristics, stimulate the growth of local specialized industries, and safeguard the interests of consumers.⁸⁸⁾

2. Eligibility for Registration

A GI may be registered only by a corporation comprised of persons who produce, manufacture, or process agricultural and fishery products or processed agricultural and fishery products that have geographical characteristics in a specific region.⁸⁹⁾ Nevertheless, if only one person produces or processes a specific agricultural or fishery product or processed agricultural or fishery product that has geographical characteristics, such a person may apply solely for registration thereof.⁹⁰⁾

Consequently, the entities eligible for GI registration under the AFPQC Act can be classified into two categories: (i) a corporation composed of individuals engaged in the production, manufacture, or processing of agricultural products or agricultural products with geographical characteristics within a specified geographical area and (ii) a single producer or processor of agricultural and fishery products or agricultural products with geographical characteristics in the absence of a legal entity formation due to the absence of multiple producers or processors of agricultural products or agricultural and fishery products with geographical characteristics.⁹¹⁾

87) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act] art. 2 para. 1 item. 8 (S. Kor.).

88) *Id.* art. 32 para. 1.

89) *Id.* art. 32 para. 2.

90) *Id.* art. 32 para. 2.

91) Lee, *supra* note 2, at 145.

3. Protected Products

GIs may be registered for agricultural and fishery products or processed agricultural products.⁹²⁾ In this context, a “processed fishery product” is defined as a processed product that uses more than 50% of fish as a raw material or ingredient.⁹³⁾ Conversely, a “processed agricultural product” is defined as a product that is processed using agricultural products as a raw material or ingredient, regardless of the percentage of raw materials used.⁹⁴⁾

In addition, according to the AFPQC Act, agricultural products should be considered to include forest products.⁹⁵⁾ However, it should be noted that the GIs of agricultural products and the GIs of forest products are registered and managed separately by separate government organizations.⁹⁶⁾

4. Registration Requirements

The registration requirements for GIs under the AFPQC Act are set forth in the Ministry of Agriculture, Food and Rural Affairs (MOFA) Notification⁹⁷⁾ and the Ministry of Oceans and Fisheries (MOLF) Notification,⁹⁸⁾ as well as the Act and its enforcement decree⁹⁹⁾. The

92) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act] art. 2 para. 1 item. 8 (S. Kor.).

93) Nongsusanmul pumjilgwanlibeob sihaengnyung [Enforcement Decree of the Agricultural and Fishery Products Quality Control Act] art. 2 (S. Kor.).

94) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act] art. 2 para. 1 subpara. 13 (S. Kor.).

95) *Id.* art. 2 para. 1 (S. Kor.); Nongeob · nongchon mich sigpumsaneob gibonbeob [Framework Act on Agriculture, Rural Community and Food Industry] art. 3 para. 6 (S. Kor.).

96) The authority for agricultural products GI is delegated to the Director General of the National Agricultural Products Quality Management Service, and the authority for forest products GI is delegated to the Minister of the Korea Forest Service.

97) Nongsanmului jilijeogpyosi deunglog mich gonggo yolyeong [Guidelines for Registering and Notifying GIs of Agricultural Products] app. art. 3 para. 1 subpara. 1 (S. Kor.) (hereinafter Guidelines for RNGIAP detailed documents).

98) Susanmului jilijeogpyosi deunglog mich gonggo yolyeong [Guidelines for GI Registration and Notification of Fishery Products] app. art. 2-3 (S. Kor.) (hereinafter Guidelines for RNgIFP detailed documents). The structure and content are nearly identical to the Guidelines for RNgIAP detailed documentation.

99) In regard to this, there is a view that registration requirements should be enshrined in law. See LEE, *supra* note 8, at 92-94.

registration requirements are as follows.

First, the products must have distinctive geographic characteristics that distinguish them from identical goods produced or processed in other regions.¹⁰⁰⁾

Second, the characteristics must be associated with a specific geographical region.¹⁰¹⁾ In other words, the product must have a unique reputation, a level of quality, and characteristics that differ from those of other regions due to geographical and human factors. In this context, “geographical and human factors” encompass a range of elements, including cultivation, ownership, and production characteristics. These may include aspects such as terrain and soil characteristics, climate, and traditional processing methods, which collectively influence the quality of the product.¹⁰²⁾

Third, the product must be widely recognized for excellence, either nationally or internationally, and must have a long history of production.¹⁰³⁾¹⁰⁴⁾ An applicant for registration of a GI must provide evidence that the product is a famous specialty. This can be done through objective data, such as awareness surveys.¹⁰⁵⁾ To demonstrate the historicity of an item, it is possible to draw upon research, literary sources, or media reports that illustrate the ways in which its reputation has been established over time.¹⁰⁶⁾

Fourth, the scope of the geographical area covered by the GIs should be a geographical administrative area that allows for an explanation of the causal relationship between the geographical factors affecting the characteristics of the goods and their quality. However, it should be noted that the geographical area does not necessarily have to coincide with the

100) Guidelines for RNGIAP detailed documents art. 3.

101) Nongsusanmul pumjilgwanlibeob sihaengnyung [Enforcement Decree of the Agricultural and Fishery Products Quality Control Act] art. 14 para. 3 (S. Kor.).

102) Guidelines for RNGIAP detailed documents art. 5 item. a.

103) Nongsusanmul pumjilgwanlibeob sihaengnyung [Enforcement Decree of the Agricultural and Fishery Products Quality Control Act] art. 15 item. 2-3 (S. Kor.).

104) This is specified in the Enforcement Decree as a condition as grounds for refusal, but it can also be considered a condition for registration.

105) Guidelines for RNGIAP detailed documents art. 4. item. a.

106) *Id.* 4. item. b.

administrative region.¹⁰⁷⁾ Furthermore, as a special case, the entire country should be considered as one geographical area for ginseng and kimchi.¹⁰⁸⁾¹⁰⁹⁾

Fifth, the applicant must describe in the articles of incorporation the quality standards and management plan for the item, the obligations of members to comply with these standards,¹¹⁰⁾ and the role of the corporation.¹¹¹⁾ However, if the obligations of members and the role of the corporation are included in documents other than the articles of incorporation, such as the quality management plan, these documents may be used in lieu of the articles of the corporation.¹¹²⁾

5. Registration Process

Anyone wishing to register a GI must submit the required documents to the heads of the relevant government organizations.¹¹³⁾ Upon receipt of an application for registration, the subcommittee responsible for deliberating on the registration of GIs initiates its assessment. In the absence of grounds for refusal, a notice of application for registration is published. Prior to the publication of the application for registration, the commissioner of KIPO issues an opinion on whether the proposed GIs infringe the trademarks under the Trademark Act (including collective marks with GIs under the

107) *Id.* art. 6. item. a.

108) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act] art. 34 para. 3 (S. Kor.); Nongsusanmul pumjilgwanlibeob sihaengnyung [Enforcement Decree of the Agricultural and Fishery Products Quality Control Act] art. 12 (S. Kor.).

109) The Supreme Court held that even if a company sold red ginseng products under the name of the ginseng processing region, but actually used ginseng from other regions, it could not be punished for violating GIs of Origin because (i) processed agricultural products are permitted to use the name of the region where they were processed, (ii) according to the AFPQC Act, ginseng is not treated as an agricultural product attributable to the geographical characteristics of a specific region, and (iii) criminal laws must be interpreted and applied strictly according to their text. (Daebeobwon [S. Ct.], Apr. 9, 2015, 2014Do14191 (S. Kor).)

110) Guidelines for RNIAP detailed documents art. 1. item. a.

111) *Id.* art. 1. item. b.

112) *Id.* art. 1. item. c.

113) Director General of the National Agricultural Products Quality Management Service, the Minister of the Korea Forest Service (KFS) for forest products, and Director General of the National Fisheries Products Quality Management Service for marine products.

Trademark Act).¹¹⁴⁾

Any interested party may file an opposition to the publication of the registration application within a period of 2 months from the date of publication.¹¹⁵⁾ In the event that an opposition is filed, it shall be deliberated by the subcommittee for deliberation on the registration of GIs.¹¹⁶⁾ In addition, the “first-to-file principle” applies in relation to GIs under the Trademark Act.

6. *Effect of the Right to a GI*

A corporation or person who has been granted a GI registration under the AFPQC Act is entitled to utilize the GI on registered goods. The owner is granted exclusive rights to utilize the GI on the products.¹¹⁷⁾ Unlike trademarks, GIs under the AFPQC Act concentrate all their power in the hands of the right owner. GIs under the AFPQC Act are different from other intellectual property rights, such as patents, as they do not recognize the sharing of GI rights.¹¹⁸⁾

The AFPQC Act does not specify the duration of the term, so unlike GIs under the Trademark Act, GIs under the AFPQC Act can be used indefinitely.¹¹⁹⁾

7. *Adjudication of GIs*

The Adjudication Committee on GIs is responsible for the adjudication and review of GIs. This includes adjudications to nullify and cancel GIs and adjudications on appeals against rejection, etc., of applications for registration.¹²⁰⁾¹²¹⁾

114) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act] art. 32 para. 4 (S. Kor.).

115) *Id.* art. 32 para. 6.

116) *Id.* art. 32 para. 7.

117) *Id.* art. 34 para. 3.

118) Park, *supra* note 15, at 334-36.

119) Lee, *supra* note 2, at 149.

120) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act] art. 42 (S. Kor.).

121) No lawsuit against matters on which adjudication may be requested shall be brought unless it pertains to a decision (Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery

Adjudications to nullify GIs can be requested by stakeholders or subcommittees and have no time limit. It can be requested when a GI has been registered, even if it falls under the grounds for the rejection of registration or when the protection of such a GI is suspended or not in use in the country of origin.¹²²⁾

The request for an adjudication to cancel a GI may be submitted by anyone, provided that it is submitted no later than 3 years after the date on which the facts that constitute the grounds for cancellation have ceased to exist. The grounds for revocation are as follows: (i) the owner of the GIs has prohibited others from joining the organization or has permitted membership of the registered organization to persons who are not entitled to use the GIs and (ii) the owner or a member of the organization has misused the GIs, causing a mistake of quality or confusion of origin.¹²³⁾

Adjudication on appeals against rejection, etc., of application for registration may be requested by a person who has been notified of a rejection of registration or whose registration has been canceled within 30 days of such notification.¹²⁴⁾

C. The Protection of GIs Under the UCPTSP Act

1. Protection Through Article 2, Paragraph 1 of the UCPTSP Act

Article 2, paragraph 1 of the UCPTSP Act also stipulates that the act of causing misunderstanding through false GIs is a type of unfair competition. Article 2, subparagraph 1, items 4 and 5 of the UCPTSP Act provides indirect protection for GIs by defining unfair competition in relation to the use of another's prominent geographical name or indication.¹²⁵⁾¹²⁶⁾ However,

Products Quality Control Act] art. 54 para. 5 (S. Kor.). In the so called “*Ansung beef*” case, the Daegu District Court issued a dismissal decision in a case in which a person who wished to file an appeal against a registration decision could only appeal against the decision by first filing a mandatory appeal to the Board and then filing an appeal against the decision to the Court. (Daegu Jibangbeobwon [Daegu Dist. Ct.], Aug. 12, 2016, 2016Guhap20717 (S. Kor.)).

122) Nongsusanmul pumjilgwanlibeob [Agricultural and Fishery Products Quality Control Act] art. 43 (S. Kor.).

123) *Id.* art. 44.

124) *Id.* art. 45.

125) This includes the following: “an act of falsely assuming another person's goods or an

there is a view that this is not an effective remedy because it does not confer rights but only legal status, and it is not easy to prove whether the designation is false or misleading.¹²⁷⁾

2. Protection Through Article 3-2 of the UCPTSP Act

Article 3-2 of the UCPTSP Act explicitly prohibits the use of GIs that are protected under FTAs. Paragraph 1 of the article prohibits any individual lacking legitimate authority from utilizing a GI protected under an FTA. The protection of GIs under Article 3-2 of the UCPTSP Act was introduced subsequent to the signing of the Korea-EU FTA.¹²⁸⁾ This provision was enacted on June 30, 2011, concurrently with Article 34, paragraph 1, subparagraph 19¹²⁹⁾ of the Trademark Act.

The main objective of the legislation was to prohibit the utilization of GIs protected under the FTA to reflect the agreements of the FTA between the Republic of Korea and the EU and its member states. Moreover, the legislation aimed to safeguard the rights of GIs by establishing remedial procedures, including prohibition, prevention, and damages for the

act of advertising any goods or making a mark in any manner of leading the public to misunderstand their quality, content, manufacturing process, usage, or quantity, in latter goods or advertisement thereof, or selling, distributing, importing or exporting goods using such method or mark" (Bujeonggyeongjaengbangji mich eongeobbimilbohoe gwanhan beoblyul [Bujeonggyeongjaengbangjibeob] [Unfair Competition Prevention and Trade Secret Protection Act] art. 2 subpara.1 item. 4 (S. Kor.)); and "an act of using a trademark, without good cause, on goods identical or similar to the designated goods of the trademark, or an act of selling, distributing, exporting; or importing goods with such trademark; by an agent or a representative of the owner of the trademark that is identical or similar to a trademark registered in any of the following countries or by a person who was an agent or a representative within one year of the date of such act" (*id.* art. 2 subpara. 1. item. 5).

126) Lee, *supra* note 2, at 141.

127) Byungil Kim, *Han-EU FTAAi gugnae ihaenggwa jilijeog pyosijedo* [A Study on the Arrangement Scheme of Geographical Indications Regimes in Light of the Negotiation for the FTA Between the Republic of Korea and the European Union], 14(1) J. KOREA INFO. L. 1, 28 (2010).

128) Choi & Jang, *supra* note 5, at 263.

129) Sangpyobeob [Trademark Act] art. 34 para. 1 subpara. 19 (S. Kor.) ("Notwithstanding Article 33, none of the following trademarks shall be registered: 19. Any trademark which is identical or similar to a GI of another person protected in accordance with a bilateral or multilateral free trade agreement which has come into effect, concluded by the Republic of Korea with a foreign country or foreign countries, or which consists of or contains such GI, used on goods deemed identical to the goods using such GI.").

infringement of GIs.¹³⁰⁾

Paragraph (1) of the article prohibits any individual lacking legitimate authority from utilizing a GI protected under an FTA concluded by the Republic of Korea. This prohibition extends to the use of a translation or transliteration of a GI,¹³¹⁾ and the utilization of a GI accompanied by expressions such as “kind,” “type,” “form,” or “imitation.”¹³²⁾

Paragraph 2 of the article governs the practice of transferring, delivering, or displaying products for sale and importing or exporting products bearing GIs without proper authorization.¹³³⁾ Furthermore, the legislation prohibits the delivery or display of goods bearing GIs in a manner that contravenes the stipulations set forth in Article 2, subparagraph 1, items 4 and 5.¹³⁴⁾

Nevertheless, there are instances in which a trademark may be continuously used based on the principle of prior use. In such cases, the individual who utilized the trademark prior to the commencement of the protection of a geographic mark may continue to use the trademark on the goods in question, provided that the trademark is recognized as the one indicated on the goods of a particular individual.¹³⁵⁾

It is important to highlight that in contrast to other forms of unfair competition, GIs, as defined in Article 3-2, do not necessitate evidence that the protected item possesses economic value that could be sought to be infringed upon by others. Consequently, to be afforded protection under 3-2, a GI needs only be protected under an FTA and does not need to be widely recognized within the country in question.¹³⁶⁾

130) Choi & Jang, *supra* note 5, at 263.

131) Bujeonggyeongjaengbangji mich yeongeobbimilbohoe gwanhan beoblyul [Unfair Competition Prevention and Trade Secret Protection Act] art. 3-2 para. 1 subpara. 2 (S. Kor.).

132) *Id.* art. 3-2 para. 1 subpara. 3.

133) *Id.* art. 3-2 para. 2.

134) *Id.* art. 3-2 para. 2 subpara. 2.

135) *Id.* art. 3-2 para. 3.

136) Choi & Chang, *supra* note 5, at 261-67.

D. The Protection of GIs Through FTAs

1. The Ways GIs Are Regulated in FTAs

In the context of FTAs, GIs are typically regulated in one of two ways. The first approach involves the establishment of procedural rules for the protection of GIs.¹³⁷⁾ The second approach entails the attachment of a list of GIs, which can be further divided into two categories: those finalized at the time of the agreement and those that allow for the addition of items to the list.¹³⁸⁾

GIs protected by the list are reflected in the Korea–Chile, Korea–EU, Korea–Peru, Korea–Turkey, Korea–UK, and Korea–Canada FTAs.¹³⁹⁾ The GIs listed in these FTAs are protected in Korea through the Trademark Act and the UCPTSP Act.¹⁴⁰⁾ Furthermore, the Korea–EU, Korea–UK, and Korea–Peru FTAs provide for the addition of lists after the exchange of lists.¹⁴¹⁾

The list method offers a considerable degree of GI protection, particularly if it permits the incorporation of new elements into the list. In certain instances, it serves to guarantee legal protection for the GI, even for names that are in relatively common use.¹⁴²⁾

With regard to the subject of GIs in the context of FTAs, the principal challenge pertains to the safeguarding of GIs in the form of lists.

137) All but six of South Korea's FTAs, listed below, protect GIs in this way. CPTPP(Comprehensive and Progressive Agreement for Trans-Pacific Partnership) and USMCA(United States-Mexico-Canada Agreement) also take this approach. See In-hye Lee, *Choegeun tongsangjoyageseo natanan jilijeog pyosi jaengjeom mich sisajeom [A Study on the Geographical Indication Issues and Implications in the Recent Trade Treaties]*, 25(2) EWHHA L.J. 622, 622-26 (2020) (In Korean).

138) Lee, *supra* note 4, at 372-73.

139) *Id.* at 372.

140) Choi & Chang, *supra* note 5, at 261.

141) The Korea–Chile FTA leaves open the possibility of adding additional GIs to the list within two years of the date of entry into force of the agreement (Free Trade Agreement, Chile–S. Kor., art. 16.4, Feb. 15, 2003, <https://www.customs.go.kr/engportal/cm/cntnts/cntntsView.do?mi=7307&cntntsId=2331#> [hereinafter Korea–Chile FTA]), but no consultations have been held to add additional GIs to the list within two years of the date of entry into force.

142) In Korea, sparkling wine has frequently been designated as “champagne” regardless of the geographical origin of the wine.

Consequently, this article undertakes an examination of the protection of Korea's GI list through the Korea-EU FTA, which serves as a prototypical illustration of list-based protection.

2. *GIs in the Korea-EU FTA*

a. Overview of the GIs in the Korea-EU FTA

The Korea-EU FTA provides for the recognition of GIs through the exchange of lists of reciprocal protection after the authorities of both parties have examined the fulfillment of the basic requirements set forth in their respective laws.¹⁴³⁾ Article 10.18 of the Korea-EU FTA provides for the protection of GIs on agricultural products and foodstuffs listed in Annex 10-A. With respect to agricultural products and foodstuffs, the EU initially included a total of 60 GIs in the agreement, including Feta cheese and Gorgonzola cheese, while Korea included a total of 63 GIs in the agreement, including Boseong green tea and Icheon rice.¹⁴⁴⁾ Subsequently, an additional 27 GIs from the EU and 40 GIs from Korea were added to the GI list, effective January 1, 2023.

For wines, aromatized wines, and spirits, a similar approach is taken for agricultural products and foodstuffs. According to Article 10.19 of the Korea-EU FTA, the parties are obliged to protect the list of GIs set forth in Annex 10-B. With respect to wines, aromatized wines, and spirits, the EU initially included 104 GIs in the agreement, including Irish whiskey, Champagne, and Tokai. However, following the withdrawal of the United Kingdom from the EU, Irish whiskey and Scotch whisky were subsequently excluded. Seventeen additional GIs from the EU and one from Korea were added to the GI list, which entered into force on January 1, 2023.

b. Level and Scope of Protection

The level of protection for GIs in the Korea-EU FTA is considered TRIPs plus,¹⁴⁵⁾ which provides a higher level of protection for GIs than the TRIPs

143) Kim, *supra* note 6, at 339.

144) Free Trade Agreement, EU-S. Kor., Annex 10-A, Sept. 16, 2010, https://www.fta.go.kr/webmodule/_PSD_FTA/eu/doc/Full_Text.pdf [hereinafter Korea-EU FTA].

145) "TRIPs-plus" can be understood in this context as requiring negotiators to provide

agreement. In the TRIPs agreement, there are different levels of protection for agricultural products, wines, and spirits. For example, the TRIPs agreement prohibits the use of expressions such as “kind,” “type,” “form,” and “imitation” in conjunction with the true designation of origin for goods other than GIs for wines and spirits but not for agricultural products.¹⁴⁶ However, the Korea-EU FTA provides agricultural products with the same level of protection as wines and spirits.¹⁴⁷ The agreement provides protection for GIs in Article 10.21, which provides the same level of protection for wines, aromatized wines, and spirits as it does for agricultural products and processed products. The FTA expanded protection to protect wine/spirits and other related GIs in the Korea-EU FTA, etc., without the likelihood of confusion/misidentification. This is a TRIPs plus approach to the level of protection for GIs.¹⁴⁸⁾¹⁴⁹⁾

The agreement prohibits the following types of behavior: (i) misrepresenting geographic origin that misleads consumers as to the geographical origin of the product¹⁵⁰; (ii) using GIs on like goods that do not originate from the place represented by the GI (even if there is no likelihood of confusion)¹⁵¹; and (iii) unfair competition under Article 10(2) of the Paris Convention for the Protection of Industrial Property.¹⁵²⁾¹⁵³⁾

It is important to note that exceptions to the protection of GIs exist. In the event that a national is engaged in business activities utilizing a name

baseline provisions for protection in addition to the minimum provisions required by TRIPs. See Ji-Hyun Park, *Hanmi FTA sogui TRIPs-Plus [TRIPs-Plus Provisions in the Korea-United States FTA]*, 53(2) KOREAN J. INT'L L. 85, 87 (2008) (In Korean).

146) Ji-Hyun Park, *TRIPs-plus-leul tonghan jilijeogyosiui boho [Protection of Geographical Indications Through TRIPs-Plus]*, 22(1) HANYANG L. REV. 275, 278 (2011) (In Korean).

147) *Id.* at 281-82.

148) Kim, *supra* note 6, at 345-46.

149) The TRIPs Agreement protects GIs of wines and spirits even if they are not likely to be mistaken, but only if they are likely to be mistaken for agricultural products and processed products (Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 22, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)), while the Korea-EU FTA protects GIs of agricultural products and processed products even if they are not likely to be mistaken.

150) Korea-EU FTA, art. 10.21, ¶ 1, (a).

151) *Id.* art. 10.21 ¶ 1, (b).

152) *Id.* art. 10.21 ¶ 1, (c).

153) Kim, *supra* note 6, at 345-46.

that has subsequently fallen within the scope of a GI protected under the FTA, or in the event that the GI is appended to a word such as “type,” “form,” and so forth, the Korea-EU FTA addresses this concern by establishing the right of first use for domestic nationals.¹⁵⁴⁾¹⁵⁵⁾

Furthermore, names that are not GIs by themselves, such as Camembert, Mozzarella, Emmental, Brie,¹⁵⁶⁾ etc., will continue to be allowed. For example, in the case of Camembert de Normandy, which is a GI for a cheese from France, the part of the name that corresponds to the geographical area is “Normandy,” and the word “Camembert” can still be used.¹⁵⁷⁾

c. Addition/Deletion of GIs for Protection

Korea and the EU have agreed to establish a GI working group to cooperate in setting more detailed standards for the protection of GIs and to further define the terms of reference and scope of the decision-making authority.¹⁵⁸⁾ This includes, among other things, the addition and deletion of new GIs. The agreement stipulates that new items may be incorporated into the lists of GIs in Annex 10-A and Annex 10-B through the GI Working Group. The parties are required to convene within 90 days of receipt of a request from either party. The principal responsibility of the working group is the amendment of the annexes; however, it may engage in discussions pertaining to any matter of mutual interest related to GIs.¹⁵⁹⁾

For the Korean government to add GIs from the EU to the lists set forth in Annexes 10-A and 10-B, it must first publish a list of the requested indications in the Official Gazette and on the internet. Following this

154) Korea-EU FTA, art. 10.21 ¶ 2.

155) In contrast to the Japan-EU Economic Partnership Agreement (hereinafter referred to as “EPA”), the Korea-EU FTA is distinguished by the absence of a time limitation for the recognition of prior use rights (only seven years from the date of exchange and protection of GIs in EPA).

156) Their protected names are “Camembert de Normandie”, “Mozzarella di Bufala Campana”, “Emmental de Savoie” and “Brie de Meaux”, respectively, and are registered for cheese as a product.

157) Kim, *supra* note 6, at 348.

158) *Id.* at 353.

159) Korea-EU FTA, art. 10.24.

publication, any interested party may file an objection to the list. To be considered, an objection must demonstrate that the GI in question does not meet the definition of a GI, is a generic name in Korea, or is identical or similar to the trademark of another party that has been filed or registered first.¹⁶⁰⁾ Nevertheless, there is a perspective that the opposition process, which is now codified in administrative rules, should be codified in legislation, given that the regulations are merely administrative rules and not legally binding.¹⁶¹⁾

Furthermore, the Korea-EU FTA is devoid of a procedure for canceling GIs. It has been argued that this is not an equitable solution, given that GIs registered directly by EU member states in Korea are subject to invalidation or revocation.¹⁶²⁾

IV. Status of Registered GIs in Korea

A. Collective/Certification Mark With GI

As of July 2024, 374 geographical collective marks with GI have been registered under the Trademark Act.¹⁶³⁾ The inaugural registration under the collective mark with the GI system was for Jangheung shiitake mushrooms, which was filed in October 2005 and registered in October 2006. Subsequently, until 2008, the number of new registrations remained relatively low, with fewer than 10 cases each year. However, in 2009, there was a notable increase in the number of new registrations. From 2009 to 2018, there were more than 20 new registrations per year, peaking in 2016, with 52 new registrations. However, in the 2020s, the number of new registrations once again reached a low-single-digit figure.

160) Tongsanghyeobjeongeul tonghae bohodoeneun jilijeog pyosiuui iuijegi jeolcha gyujeong [Regulations on the Opposition Procedure for Geographical Indications Protected by Trade Agreements] (S. Kor.).

161) Lee, *supra* note 4, at 394-95.

162) Kim, *supra* note 6, at 372-74.

163) Sangpyogeomsaek [Trademark Search], KOREAN INT'L. PROP. RTS. INFO. SERV., <http://kdtj.kipris.or.kr/kdtj/searchLogina.do?method=loginTM#page1> (In Korean) (last visited July 30, 2024).

There is no clear explanation for the recent decline in new registrations. However, one plausible explanation is that most regions have already registered their specialty products that deserve protection.¹⁶⁴⁾ If we add the number of GI registrations under the AFPQC Act to the number of collective marks with GI registrations under the Trademark Act, as of July 2024, there have been 565 GIs. Considering that the European Union, which has a longer history of GI and a larger population and land area than Korea, has had 3882 registered GIs as of July 2024¹⁶⁵⁾, there is room to believe that Korea has already registered a significant number of GIs.¹⁶⁶⁾

Table 1. Collective mark with GI registrations by year

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Count	1	8	7	20	37	29	23	41	48	34
Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Count	52	20	28	10	4	2	1	5	4	374

As of July 2024, a total of 23 certification marks with GI have been registered under the Trademark Act.¹⁶⁷⁾ The first mark was filed in October 2014 for Buan Rice and registered in June 2016. Unlike the collective mark with GI, the certification mark with GI had the highest number of new registrations in 2023, with seven. However, due to the short history of the

164) In 2017, KIPO stated that many specialty products in Korea have already been registered as collective marks with geographical indications, reducing the number of new collective marks. See *Jeonlanamdo jilijeogpyosi dancheopyojang gajang manhi deunglog [Jeonlanamdo Has the Most Registered Collective Marks with Geographical Indication]*, KIPO (Dec. 21, 2017), <https://www.kipo.go.kr/ko/kpoBultnDetail.do?menuCd=SCD0200618&ntatcSeq=16656%20&sysCd=SCD02&aprchId=BUT0000029> (In Korean).

165) *The EU Geographical Indications Register*, eAMBROSIA, <https://ec.europa.eu/agriculture/eambrosia/geographical-indications-register/> (last visited July 30, 2024).

166) In Japan, where GIs are protected separately under the trademark law as regional group trademarks and GIs in a way similar to Korea, 781 regional group trademarks are registered. See *Chiki dantai shōhyō tōroku anken ichiran [List of Projects for Registering a Regionally Based Collective Trademark]*, JAPAN PATENT OFFICE, <https://www.jpo.go.jp/system/trademark/gaiyo/chidan/shoukai/ichiran/index.html> (In Japanese) (last visited July 30, 2024). Also, 151 GIs were registered as of June 2024. See INFORMATION WEBSITE ON JAPAN'S GEOGRAPHICAL INDICATIONS, <https://pd.jgic.jp/en/register/> (last visited July 30, 2024).

167) Trademark Search, KOREAN INT'L. PROP. RIS. INFO. SERV., <http://kdtj.kipris.or.kr/kdtj/searchLogina.do?method=logintm#page1> (In Korean) (last visited July 30, 2024).

certification mark with GI and the small number of applications, there does not seem to be a clear trend in the number of new registrations by year.¹⁶⁸⁾

Table 2. Certification mark with GI registrations by year

Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Count	4	0	1	4	1	4	2	7	0	23

B. GIs Under the AFPQC Act

As of July 2024, there were 103 registered GIs for agricultural products.¹⁶⁹⁾ The inaugural GI was registered in 2002 for Boseong Green Tea. Thereafter, a number of new registrations were made in the late 2000s, peaking in 2007 and 2010, with 12 new registrations each. However, it dropped from 2014, with fewer than five new registrations each year. Even if a lack of a definitive explanation persists, there is room to believe that GIs under AFPQC, as with collective marks with GIs, have mostly been registered already and that the number of new registrations is decreasing.

Table 3. GIs for agricultural product registrations by year

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Count	1	1	1	8	11	12	9	6	12	6	5	7
Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Count	3	4	3	1	2	2	1	4	2	1	3	105

Registered GIs under the AFPQC Act are distinguished by the fact that the target areas are all domestic, in contrast to collective GIs under the Trademark Act. It should be noted, however, that the system does not require that only domestic regions be targeted.

The Jeolla region (comprising Jeollabuk-do and Jeollanam-do) accounts

168) This is in contrast to the situation in the United States, where certification marks with GIs are relatively well utilized. See Jae Eun Cheon & Yimei Xin, *Geographical Indication and Its Trade Practices in Europe, USA and China*, 54(4) *FOOD SCI. & INDUS.* 246, 251 (2021).

169) *Jilijeogyosi nongsanmul [Geographical Indication Agriculture Products]*, NAT'L AGRIC. PRODS. QUALITY MGMT. SERV., <https://www.naqs.go.kr/contents/relicList.do> (In Korean) (last visited July 30, 2024).

for approximately one-third of the targeted regions, with 36 cases. A further 21 cases are located in Gyeongsang-do (Gyeongsangbuk-do, Gyeongsangnam-do), representing one-fifth of the total. It is notable that there are no GIs targeting Seoul. Additionally, there are eight instances¹⁷⁰⁾ of GI agricultural products targeting the entire country.

Table 4. Target regions of GIs for agricultural products

Region	Gyeonggi-do	Gangwon-do	Chungcheongbuk-do	Chungcheongnam-do
Count	7	13	6	8
Region	Gyeongsangbuk-do	Gyeongsangnam-do	Jeollabuk-do	Jeollanam-do
Count	12	9	7	29
Region	Jeju-do	National	Incheon	Busan
Count	3	8	1	2
Total				
105				

A total of 26 GIs for fishery products have been registered.¹⁷¹⁾ The first GI registered for fishery products was Boseong beehive crawfish, which was registered in February 2009. The highest number of new registrations was recorded in 2009, with seven registrations. Since 2019, however, only one new registration has been recorded. Moreover, the target areas are all domestic, in alignment with the GI for agricultural products.

Table 5. GIs for fishery product registrations by year

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017
Count	7	2	2	4	1	3	1	1	2
Year	2018	2019	2020	2021	2022	2023	2024	Total	
Count	2	0	0	1	0	0	0	26	

170) These are all ginseng and kimchi related products.

171) *Jilijeogpyosi deunglohyeonhwang* [GEOGRAPHICAL INDICATION Registered Status], NAT'L FISHERY PRODS. QUALITY MGMT. SERV., <https://www.nfqs.go.kr/hpmsg/data/actionMarineGeographicForm.do?menuId=M0000230> (In Korean) (last visited July 30, 2024).

And as of 2024, a total of 60 GIs for forest products have been registered.¹⁷²⁾ The inaugural GI for forest products was Yangyang pine mushrooms, which was registered in March 2006. As with GIs for agricultural and fishery products, the target areas are all domestic.

Table 6. GIs for forest product registrations by year

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Count	8	5	5	7	5	6	5	2	5	0
Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
Count	2	2	1	0	1	1	2	1	2	60

V. Conclusion

Despite its relatively short history, the protection system for GIs in Korea has undergone significant evolution, leading to the protection of over 700 GIs. This multifaceted approach is anticipated to guarantee the quality of local specialties with historical significance as well as the interests of consumers.

In Korea, GIs are primarily safeguarded through a collective mark with GI as defined by the Trademark Act and the registration of GIs, as outlined in the AFPQC Act. It is important to note that there are notable differences in the scope of GIs protected by the two laws, the qualifications of applicants, registration requirements, and the effects of the protection afforded. The protection of GI under the UCPTSP Act may be underestimated, yet it constitutes an integral component of Korea's GI protection system. Furthermore, the protection of GIs under FTAs represents a significant aspect of GI protection in Korea, especially with the GI lists in some FTAs, such as the Korea-EU FTA.

Finally, it is imperative to revisit the contentious matters pertaining to the safeguarding of GIs in Korea. First, there might be an issue of harmonization between the Trademark Act and the AFPQC Act, which

¹⁷²⁾ *Imsanmuljilijeogpyosi [Geographical Indications for Forest Products]*, KOR. FOREST SERV., https://www.forest.go.kr/kfsweb/cop/bbs/selectBoardList.do?bbsId=BBSMSTR_1068&mn=AR01_05_01_04 (In Korean) (last visited July 30, 2024).

collectively form the two main pillars of GI protection. In particular, the operational aspects of the system, including the registration of GIs, are overseen by four governmental organizations, depending on the type of GI in question. In this regard, it is essential to prevent any potential jurisdictional issues.

Second, it is essential to respond in an appropriate and considerate manner to the method of listing GIs through FTAs. In particular, in the context of negotiations for the improvement of existing FTAs, amendments may be considered with a view to ensuring balance with the domestic system. This could include the establishment of provisions for the cancellation of GIs protected by the list.

Third, it would be advisable to consider the potential benefits of the certification mark with GI, which has the shortest history and the fewest number of registrations among GI protection measures in Korea. In particular, local governments that are not directly involved in the production of GIs may serve as the right owners, thereby supporting local producers.

Fourth, it is necessary to highlight the importance of post-registration management of GIs. The number of new GIs has been on a downward trajectory in recent times, potentially due to the existence of a sizable population of GIs already registered in Korea. Therefore, it is time to consider not only the encouragement of GI registration but also the subsequent management of these registrations. The recent Gwangcheon Kim case illustrates the importance of the post-registration follow-up of GIs.

Nevertheless, the significance and achievements of Korea's GI protection system should not be underestimated. Issues related to GIs extend beyond legal concerns; they are also political and not unique to Korea. The conflict between the right to use generic names and the exclusive right to use GIs is a universal challenge faced by many countries. Therefore, the issues regarding GIs in Korea require further consideration and discussion, and it is anticipated that resolutions to these issues will continue to evolve.