



Geographical Indications: *PROTECTION OF DARJEELING TEA*



A presentation by Mr. Naba Kumar Das
Chairman, Tea Board India
Worldwide Symposium on GIs
9 – 11 July 2003, San Francisco

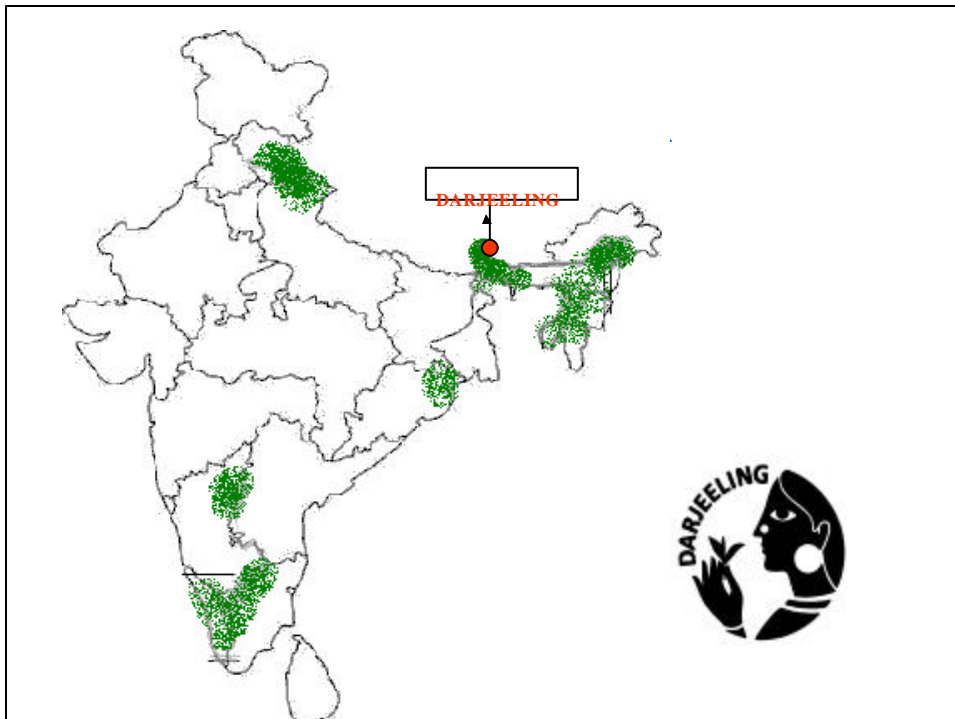
Tea Board of India, Govt. of India
14, BTM Sarani,
Kolkata 700001, India
91 33 2235 1411 (Telephone)
91 33 2221 5715 (Facsimile)
E-mail: teaboard@teaindia.org



- Commercial tea cultivation and production began in the 19th century
- Today, **India is the world's largest grower of tea** with a total production of about 826 Million kilograms (2002). Nearly all the production is black tea (both of the orthodox and CTC variety)
- India is also the **world's largest consumer of tea**



- The district of **Darjeeling** is situated in the province (state) of West Bengal, India
- Tea has been cultivated, grown and produced in tea gardens geographically located in these areas for the last **150 years**
- The gardens are all located on the hills of Darjeeling
- Due to the unique and complex combination of agro-climatic conditions Darjeeling tea has a **distinctive and naturally-occurring quality and flavour** which has won the patronage and recognition of discerning consumers all over the world for well over a century.
- **The combination of several factors have combined to give rise to teas that simply cannot be replicated elsewhere.**





The Geographical location

- Altitude - 700 to 2000 meters nestling in the shadow of the snow-clad Kanchenjunga peak
- Latitude - 26°31' and 27°13' North
- Longitude - 87°59' and 88°53' East
- Rainfall - Minimum of 50" to 60" p.a.
- Humidity - Very high
- Soil - Rich and loamy soil.
- Gradient of slope - 60° to 70°
- Temperature - 1.7 to 11.1°C a maximum of 20°C
- Flavor - 'Muscatel'
- Spring Flush (May to June) - Leaf has purplish bloom.

Liquor is mellow and amber in color with a fruity (grapey) flavor called Muscatel.



Processing:

The harvesting of green leaf is done exclusively by hand, mainly by women.....only the most tender of the two leaves and a bud are picked.

Processing - Orthodox method yielding whole leaf teas (as opposed to the CTC – crushing, tearing, curling method).

Darjeeling Tea is mainly "black tea" with small quantities of "green tea" & "oolong tea". The leaves are oxidized for 2 to 4 hours.

The tea has a brownish-black, well-twisted appearance and contains a lot of golden 'tip'. Incidentally, certain morphological characteristics of the leaf have been found to be associated with the quality of tea. One of them is 'tipping' – 'tip' in tea coming from hairy buds and leaves of the plant which the Darjeeling variety is well endowed with.



The Grades

SFTGFOP - means Special Finest Tippy Golden Flowery Orange Pekoe. The other leafy grades are FTGFOP, TGFOP.

Broken - FTGBOP, TGBOP, BPS

Fannings - TGOF, GOF, FOF

Dust - D, PD

Tippy refers to the golden tips of the buds.



Why is Darjeeling tea a geographical indication ?

The tea produced in the aforesaid region and having the said special characteristics, is and has for long been known to the trade and the public in India and abroad as “Darjeeling” tea it has acquired domestic and international reputation.

This reputation has a history of well over 100 years. Any member of the trade or public in India or abroad ordering Darjeeling tea or seeing tea advertised or offered for sale as Darjeeling will expect the tea so ordered, advertised or offered for sale, to be the tea cultivated, grown and produced in the district of Darjeeling, province (state) of West Bengal in India and having the aforesaid special characteristics.



Why is Darjeeling tea a Geographical Indication ?

- It is this well-known flavour and quality which is special to Darjeeling Tea.....
- *The quality, reputation and characteristics of the tea is essentially attributable to its geographical origin and cannot be replicated elsewhere*



- The first commercial tea gardens planted in Darjeeling were in 1852. Darjeeling was then only a hill resort used by the elite
- By 1866, Darjeeling had 39 gardens producing a total crop of 21,000 kilograms of tea. In 1870, the number of gardens increased to 56 to produce about 71,000 kilograms of tea harvested from 4,400 hectares. By 1874, there were 113 gardens with approximately 6,000 hectares of plantations.
- **The annual production of Darjeeling tea is about 10.73 Million kilograms (2002) from 87 gardens**



The Darjeeling tea industry at present employs over **52,000 people on a permanent basis - a further 15,000 persons** are engaged during the plucking season which lasts from March to November. A unique feature of this work force is that more than **60 percent are women** and the employment is on a family basis.

The income of a garden worker is half in the form of cash and the other half by way of perquisites which have over the years effectively provided a cushion against the impact of inflation and scarcities, - the workers are provided with free accommodation, subsidised cereal ration and free medical benefits. Gardens also have primary education facilities.





Geographical Indications registration and protection would ultimately benefit the plantation worker. Better protection would ultimately result in better prices, better economic health of the industry, sustainable educational and health systems resulting in a better quality of life.



•All Darjeeling teas possess a ***unique brightness and aromatic flavour that set them apart and above from all other teas***

•However,there are subtle variations across plantations and across the seasons:

- *First Flush Darjeeling*
- *Second Flush Darjeeling*
- *Monsoon flush*
- *Autumn flush*

Flush	Time	Description
First flush	Late February- Mid April	These are springtime teas. The young leaves yield a light green tea with a liquor that is light, clear, bright and imparts a pleasant brisk flavour. 
Second flush	May- June	This flush is famed for its prominent quality. The leaf has a purplish bloom. The liquor is bright, the taste full and round with a fruity note. 
Monsoon Flush	July - September	During this period the nature of the liquor changes, becoming stronger, yet retaining brightness and character 
Autumn Flush	October - November	These autumn-harvested Darjeeling are characterized by large leaves that give a round taste and coppery liquor. 

All Darjeeling teas, though, possess the lightness of flavour and fine colouring that set them apart and above from all other teas.



- The major buyers of Darjeeling tea are Germany, Japan, the U.K., the U.S.A. and other E.U. countries such as the Netherlands, France etc.
- The majority portion of Darjeeling Tea is exported.



Auction.....and retail prices

- The difference between the international retail price and the auction price for Darjeeling tea is from 500% to 1000% and goes up to 5000% for select Darjeeling tea. In Japan, for example, while auction prices are at \$ 3.5 per kg and private sales \$5.5 per kg, Darjeeling tea can retail at \$ 300 per kg.
- Better value realisations from the international market would facilitate better developmental work in the plantations.



THE PROTECTION OF DARJEELING TEA - THE INDIAN EXPERIENCE

Objectives

- To **prevent misuse** of the word "Darjeeling" for tea sold world-wide
- To deliver the correct product to the **consumer**
- To enable the **commercial benefit** of the equity of the brand to reach the Indian industry and hence the plantation worker



Role of the Tea Board of India

- The tea industry is under private enterprise but statutorily regulated by the Government right from 1933 under various enactments culminating in the Tea Act, 1953.
- The Tea Board in India is a Board set up under the same Act of Parliament.
- The Tea Board is vested with the authority for all stages of tea cultivation, processing & sale of the tea industry, including the Darjeeling segment through various “control orders”.
- The Board, which is headed by a Chairperson, has diverse members representing owners of tea estates, the provincial governments, workers’ representatives, exporters, packers, internal traders and consumers. Three Members of Parliament also sit on the Board.
- The Tea Board has been working in close cooperation and help of the Darjeeling Planters’ Association, which is the sole producers’ forum for the Darjeeling region.



Major initiatives by the Tea Board

The Tea Board had taken the first measures to protect Darjeeling as a Geographical Indication about 15 years ago by developing a “Darjeeling” logo. The logo was created & registered under Trade mark laws in 1986 in various jurisdictions including UK, USA, Canada, Japan, and Egypt and some European countries as a Trade mark/Certification Trade Mark.





•The Tea Board has obtained “**home protection**” by registering a Darjeeling logo and also the word “Darjeeling” as a **Certification Trade Mark under the Indian Trade and Merchandise Marks Act, 1958**

• The **Indian Geographical Indication of Goods (Registration & Protection) Act 1999** is a specific Act covering the registration and protection of Geographical Indications. The Rules relating to this Act have only recently been notified in 2002 and the Registry will soon be functional. The Tea Board would file for registration of Darjeeling tea as a “GI” once the Registrar becomes functional.

Country	Property	Nature & subject matter of registration	Status
U.K	Darjeeling logo Darjeeling word	Certification Trade Marks	Valid registration as CTM
Germany, France, Austria, Spain, Portugal, Italy, Switzerland, former Yugoslavia	Darjeeling logo	Collective Mark	Valid registration
U.S.A.	Darjeeling logo Darjeeling word	Certification Trade Mark	Valid registrations
Japan	Darjeeling logo	Trade mark	Valid registration
Egypt	Darjeeling logo	Trade mark	Valid registration

Country	Property	Nature & subject matter of registration	Status
India	Darjeeling logo Darjeeling word	Certification Trade Marks	Valid registrations
Canada	Darjeeling logo	Certification Trade Mark	Valid registration
Russia	Darjeeling logo Darjeeling word	Trade Mark	Pending application for logo dated April 1999. Word recently accepted for registration
Belgium, Netherlands, Luxembourg	Darjeeling logo	Collective Mark	Valid registration



Why GI when CTM registration exists ?

- When CTM registration not accepted in a jurisdiction where protection is sought, e.g. France for Darjeeling
- Where GI registration necessary to avail for the reciprocity mandate under EU 2081/92
- Gives clear status to a GI indicating a direct link with geographic origin
- GI registration would mean cessation of multiple registrations



Why is extension of protection required under Article 23 for products other than wines and spirits ?

- Necessary where no legal platform exists to register a GI or a CTM which is a TRIPS obligation e.g. Japan
- With additional protection it would not be necessary to establish the credentials/ reputation of a GI before fighting infringement of similar “types”, “styles”, “lookalikes” in certain civil law countries
- Additional protection would rectify imbalance caused by special protection of wines and spirits.



•Tea Board since 1998, has hired the services of “Compumark”, an International Watch Agency that keeps Tea Board informed of all attempts to register the word “Darjeeling” worldwide

•Pursuant to the watch agency being appointed, several instances of attempted registrations have been found. Some of these have been challenged through oppositions & cancellations and some through negotiations.

•Marks opposed include those relating to diverse goods and services such as clothing, lingerie,telecommunication and internet services, coffee, cocoa etc.

} Of the last 15 instances, 5 have been successfully concluded in countries such as Japan, Sri Lanka, Russia etc. 6 oppositions were unsuccessful and 4 are still pending decision

Darjeeling Certificate of Origin Procedure

- Implemented since February 2000, it is the statutorily compulsory system of certifying the authenticity of the Darjeeling tea being exported under provisions of the Tea Act, 1953
- The system envisages all dealers in Darjeeling tea to compulsorily enter into a License Agreement with the Tea Board India against an annual License Fee. Licensees would furnish information relating to production of Darjeeling tea, manufacture and sale of such tea through auction or otherwise.
- Under this process, 170 Companies dealing with Darjeeling tea have registered with the Tea Board. 76 are Producer Companies and 94 are Trader/ Exporter Companies
- Export of each consignment of Darjeeling tea is authenticated by issue of the **Certificates of Origin** by cross-checking the data base and garden invoice numbers. This ensures the **sale-chain integrity of Darjeeling tea until consignments leave the shores of India.**
- The Customs authorities in India have, by circular, instructed all customs points to check for Certificates of Origin accompanying Darjeeling Tea consignments and not allow the export of any tea as “Darjeeling” without this certificate



Cost of Protection

- Last four years, Tea Board has spent approx. Rs 9,400,000/- (US \$ 200,000/-) – (Rs 47/- to a US\$) on legal and registration expenses, costs of hiring an international watch agency and fighting infringements in overseas jurisdictions.
- Does not account for administrative expenses including manpower working on the job in Tea Board, cost of setting up monitoring mechanisms, software development costs and costs to Industry.
- *It is not possible for every GI right holder to incur such expenses for protection.*



Steps that need to be taken....

TRIPS Agreement

- India being a founder member of the World Trade Organization, Articles 22 to 24 of the TRIPS agreement relating to Geographical Indications is of importance
- India, along with several other countries is advocating the same protection to other products as envisaged for “wines and spirits” in the TRIPS agreement. The Doha Ministerial Declaration under paragraphs 12 & 18 provides the mandate for the issue of providing a higher level of protection to Geographical Indications to products other than “wines and spirits”



Steps that need to be taken.....

International assistance and help from “best practices”

There is need to obtain the help of WIPO and to build up a **partnership with other producers’ organizations** and bodies to obtain assistance on the administrative procedures followed

Promotion measures

There is a need to promote Darjeeling Tea and its protection where it has been registered under respective legal systems and laws and to **increase consumer awareness** as to what Darjeeling tea signifies. The Tea Board is planning to launch major media campaigns in important consuming countries beginning with Germany.



Steps that need to be taken.....

Legal measures

Tea Board to strongly oppose attempts at individual registration in case of private labels (or incorporate disclaimers as deemed fit) or misuse in specific overseas jurisdictions.

ORGN

Tea Board India supports the newly formed Geographical Indications Network. In fact in terms of initiatives required by the Board, this would help international networking and understanding of “best practices” in various countries.



Protection to other Indian IPRs with respect to Tea

Tea Board and the Ministry of Commerce, Government of India has been also been active in seeking protection for Nilgiri Tea , Assam Tea and India Tea. Developments in this area include registration of the said IPRs in various jurisdictions.

Aside from being the world’s largest producer of Tea, India producers the widest variety of teas from different parts of the country which have their own distinct characteristics, flavour, cup quality etc.



Thank you

