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**RESEARCH ARTICLE**

## An Overview of Afghanistan's Geographical Indications Protection System

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### ABSTRACT

Geographical indications are labels used to identify goods or products that originate from a specific place, possess distinctive qualities and have a reputation associated with those characteristics. Afghanistan possesses valuable products such as agricultural, industrial, and handicraft resources that require protection due to its distinctive geography. Therefore, Afghanistan needs to standardize its established legal framework that regulates the recognition and protection of products as geographical indications both domestically and internationally. Since 2015, Afghanistan has implemented a specialized model for geographical indications. A suitable system for the protection of geographical indications in Afghanistan can be beneficial for promoting exchanges and cooperation between Afghanistan and international markets. It can help Afghanistan's economic growth, avoid misuse of the products, and conversely develop the quality of the products. This study adopts a comprehensive approach to evaluate Afghanistan's current geographical indication protection system. A thorough review of existing laws and related articles, as well as an examination of Afghanistan's legal documents on geographical indications, including the Geographical Indications Law and Regulation, Trademark Registration Law, etc. This involves analyzing the definition of geographical indication, application for registration, review procedures, objections, and cancellation criteria outlined in these documents.

### KEYWORDS

Afghanistan's geographical indications, intellectual property, protection system, trademark.

### ARTICLE INFORMATION

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### 1. Introduction

Intellectual property rights (IPRs) play a pivotal role in promoting the high-quality development of international trade and economics. The International intellectual property (IP) law places great emphasis on Geographical indication (GI) protection (Xinhua, 2021). GI is one of the important components of the legal system of IPR. As an intangible property, geographical indication has authenticity, territoriality, specificity, and relevance, and involves the interests of all producers and operators in a specific geographical area. The protection system of GI is closely related to the traditional agricultural and trade economy. France implemented the first law in May 1919 aimed at protecting GIs by creating a specific classification within industrial property called "appellations of origin" (*WIPO Intellectual Property Handbook*, 2004). In the market, a product's quality can be associated with its geographical origin (Xinhua, 2022), and consumers trust food products bearing GI tags because of their high quality, thereby encouraging them to purchase these products even at higher prices (Agostino & Trivieri, 2014).

Afghanistan is a landlocked country with the potential to serve as a vital hub for trade and transportation in Central and South Asia, owing to its strategic location at the crossroads of the Silk Road (Hashimy, 2021). According to the United Nations, Afghanistan has been classified as one of the Least Developed Countries (LDCs) among the 46 nations with the lowest socioeconomic indicators since 1971 (*List of Least Developed Countries*, 2023). The production of food or handicrafts by local communities in LDCs can facilitate international trade growth and achieve development goals. In recent years, the "Belt and Road" has been promoted more deeply and is gradually moving towards the road of high-quality development. As a country along the

"Belt and Road", Afghanistan takes agriculture and animal husbandry as the main pillar of its national economy. Its unique soil and water nourish the famous Afghan pine nuts, saffron, pomegranate, and other agricultural products which are closely related to the unique geographical environment of Afghanistan, and these agricultural products are well known in the world. China and Afghanistan even take the pine nuts trade as an opportunity to promote friendly cooperation through the establishment of the "pine nuts air corridor".

To protect local producers and operators, and in line with the trend of international trade and intellectual property protection, Afghanistan has gradually established a legal protection system for GIs since 2015. The Food and Agriculture Organization (FAO) and the Afghan Ministry of Agriculture, Irrigation, and Livestock have developed Afghanistan's first GI system project with financial support from the European Union (*Making Its Mark – FAO and EU Support the Development of Afghanistan's First Geographical Indication System*, 2019) to protect GIs in Afghanistan. The project had two phases. The FAO completed the first phase of the project, which reviewed the Afghan GI legal framework, developed a national GI control scheme, created a GI examiner manual, and established three inclusive GI inter-professional associations for Herat Bastan saffron, Khost Musakhil pine nut, and Kandahar Arghandab pomegranate. The second phase of the project was expected to start in 2020–2021 to concentrate on improving market access, raising consumer awareness of Afghan GI, and boosting the income of smallholder farmers and agribusinesses through the creation of two pilot GI value chains. Afghanistan is a country that recently started protecting GIs therefore it faces multiple challenges and only three products have been registered as GIs so far. However, due to the lack of effective protection of GIs for agricultural products, some competitors have taken advantage of the reputation of Afghan products to sell them under their names, thus overstepping the economic interests of Afghan producers and operators. Afghanistan is renowned for its rich historical heritage, which encompasses a wide range of goods, such as agricultural products, precious stones, handicrafts, and others that are eligible for GI status, thereby enhancing their value in both domestic and international markets and safeguarding their authenticity (*Making Its Mark – FAO and EU Support the Development of Afghanistan's First Geographical Indication System*, 2019). Strengthening the protection of Afghanistan's GI system will help protect the legitimate rights and interests of specific Afghan producers and operators in the process of trade and economic cooperation.

## **2. Definition of geographical indications**

Article 3(1) of Afghanistan's GI law specifies that GIs are "signs identifying the products of a specific production region or area to indicate the specific attributes, quality, reputation, and other characteristics of the products produced in that region or area" (*Law on Geographical Signs of Production Points of Afghanistan*, 2015). Afghanistan's GI law definition is similar to Article 22 of the TRIPs agreement. The definition contains three notions to protect a good as geographical indication; quality, reputation, and other characteristics attributed to its geographical origin. Article 9 of Afghanistan's GI law specifies the following geographical indications to be protected: (1) GIs registered by the provisions of this law; (2) GIs related to the origin or a part of origin which is associated with another protected GI; and (3) GIs related to the region or area of production of the goods. According to this article, protecting GI means confirming and preserving the connection between products or services and their place of production. This includes informing consumers about the origin and the quality of the product or services and preventing misuse of GI products. According to this definition, there must be a link between the product, its specificities, and the requested geographical name.

## **3. The legal framework of GI protection in Afghanistan**

### **3.1 National legal framework**

Afghanistan's geographical indications adopt a specialized law. Trademark law of Afghanistan also mentions geographical indications along with specialized law. The "Trademark Registration Law," "Geographical Indication Law," and "Geographical Indication Regulation" constitute the current institutional framework for protecting GIs in Afghanistan, which protects the international trade of Afghanistan, especially agricultural products.

### **3.2 Trademark Registration Law**

Afghanistan's Trademark Registration Law came into force on September 1, 2009 for implementation. Few provisions may indirectly impact GIs or geographical trademarks. Article 6(8) of this law, even without mentioning GI, can possibly be employed to prevent the registration of trademarks that include a registered or protected GI name. As can be seen, the relevant provisions of the Trademark Registration Law on the protection of GIs are very simple. The sub-article 10 of this article refers to "Marks which may mislead the public or which contain false or deceptive information as to the origin, source, or any other characteristics of the goods, products, or services, as well as marks containing an imaginary, imitated, or forged trade name" cannot be registered. Even though it does not explicitly mention GIs, this clause could still be utilized to prevent trademarks that feature registered or protected GI names from being registered. Article 21(1) of this law stipulates that "where a specific geographical area has been registered as part of the trademark, the owner thereof shall be obligated to manufacture goods and products or render services in the same geographical area". This clause is very related to GI without mentioning the name "Geographical Indication" directly. As per this article, here is a rule that allows geographical names to be registered as specific trademarks. However, there is no

document available that clarifies this provision. Concerning GI, Article 22 of this law stipulates that individuals or organizations may descriptively use GIs unless they are found to be misleading, and Article 27 stipulates that misuse of geographical indications is subject to liability. However, this law does not define the meaning of a GI or whether it can be registered as a collective or certification mark.

When applying for a trademark that includes a geographical name, the examiner needs to be aware of the area associated with it. However, there are currently no specific regulations or guidelines to follow during the application process. Individuals and companies need to use the geographical area correctly to avoid any potential confusion. This type of trademark is designed to protect the use of the trademarked geographical area reference (including the address) for similar products.

### **3.3 Law on Geographical Signs of Production Points/ Geographical Indication Law**

Afghanistan's GI law, which is officially called "The Law on the Geographical Signs of Production Points," is Afghanistan's first specialized law on the protection of geographical indications. This law was based on Articles 11 and 13 of Afghanistan's constitutional law (*Law on Geographical Signs of Production Points of Afghanistan*, 2015). The initial draft of Afghanistan's GI law, aiming to govern and safeguard the associated rights and responsibilities, was formulated and officially submitted on November 12, 2012. Subsequently, it underwent enforcement and became effective on July 15, 2015 (*REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN*, 2015). The draft of the "Geographical Indications Law" was approved by a joint committee of the National Assembly, consisting of four members from each Jirga, in three chapters and twenty-one articles (*Law on Geographical Signs of Production Points of Afghanistan*, 2015). The enactment of Afghanistan's GI law laid the foundation for the protection of GIs and established a framework integral to the country's economic landscape. This legislation marked a significant milestone as it provided comprehensive regulations specifically tailored to safeguarding and regulating geographical indications, thereby contributing to the overall economic structure of Afghanistan (*The Law of Islamic Republic of Afghanistan Draft Law on Geographical Indications*, 2015). Afghanistan's GI law provides a system of application for the registration of geographical indications, its examination, response to objections, invalidation, deletion, etc., which lays down the legal basis for protecting geographical indications in Afghanistan.

### **3.4 Regulation of Geographical Signs of Production Points/ Geographical Indication Regulation**

The regulation of geographical signs of production points was drafted by the Committee on Cabinet Laws of Afghanistan and was prepared by the Afghanistan Central Business Registry and Intellectual Property (ACBR-IP) of the Ministry of Industry and Commerce based on Article 20 of the GI law, which was approved and implemented on July 11, 2021. The Ministry of Commerce and Industry of Afghanistan has prioritized the registration of geographical indications for the country's distinctive products. The regulation aims to regulate the registration, rejection, and removal of GIs, management of application procedures, evaluation, and decision-making processes. Additionally, it regulates the support and management of registered GIs, controls and supervises the productions, and delegates national marks for GIs, ensuring their protection (*The procedure for regulating geographical indications of the place of production*, 2022).

### **3.5 Afghanistan's commitments to international conventions on geographical indications**

International treaties exist to protect geographical indications, with the World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) having an important role in the process. Considering Afghanistan's geographical location, it can benefit significantly from integration into the global economy through WTO membership (Mobariz, 2016). Afghanistan is a party to such treaties, including those for intellectual property and better protection of GI. On September 13, 2005, Afghanistan joined the WIPO as the first international organization, with the accession became effective on December 13, 2005 (*REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN*, 2015). Afghanistan applied to join the WTO in April 2003 and officially submitted its application in November 2004. A working party was established by the WTO General Council on December 13, 2004, to examine Afghanistan's application to accede to the WTO (*REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN*, 2015). On July 29, 2016, Afghanistan officially became the 164th member of the WTO (Sadat Nasiri & Wasiq, 2023; Sulaiman bin shah, 2021). As a WTO member, Afghanistan has made high-quality accession commitments under various WTO regulations (Dr. Ngozi Okonjo-Iweala, 2021), which support state and institution-building in protecting GIs. Afghanistan signed the Paris Convention for the Protection of Industrial Property on April 22, 2016, which covers designs, marks, and patents. This treaty, along with the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, provides general standards of protection administered by WIPO (*Afghanistan UNFCCC*, 2023; *International Treaties - Geographical Indications*, 2023). Afghanistan became the 101st member after joining it on June 26, 2018 (*Afghanistan Joins Madrid System for International Trademark Registrations*, 2018; *Madrid Agreement Concerning the International Registration of Marks*, 2023).

After admitting to WIPO and WTO, Afghanistan needs to fulfill its commitments by reforming its legislation to IP law to conform to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. The TRIPS Agreement came into force in 1995, and

it covers all parts of intellectual property rights(IPR)(*Overview: The TRIPS Agreement*, n.d.). Articles 22 to 24 of the TRIPS agreement work under the framework of the WTO to address the international protection of GIs. Afghanistan follows international rules on IPR but needs to improve its recognition and protection of GI. Afghanistan's GI law follows the TRIPS agreement, fulfilling most of the requirements for registration, protection, objection, etc.(Dr. Ngozi Okonjo-Iweala, 2021; *REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN*, 2015).

#### **4. Application for geographical indication registration and protection**

##### **4.1 Subject of application/ responsible authority**

Geographical indications are recognized and protected by ACBR-IP/Central Registration Office, which can be applied by a responsible authority (responsible authority can be one person too) and a legal representative. ACBR-IP/central registration office is responsible for unified trademark affairs and GIs management. According to Article 3(2) of GI law, the central registration office is established within the Ministry of Commerce and Industry (MoCI) to manage the application for registration of GIs(*Law on Geographical Signs of Production Points of Afghanistan*, 2015).

Article 3(3) of the GI law and GI regulation stipulates the subject of application as "qualified legal persons or other organizations, such as associations, enterprises, governmental agencies, trade unions, cooperatives, chambers of commerce, etc." these authorities must have oversight, control, and utilization rights within a specific area(*Law on Geographical Signs of Production Points of Afghanistan*, 2015). This means that both government and private entities can serve as responsible authorities, setting conditions for producers to be registered. The scope of the subject of GI application is relatively wide, as long as the two conditions of "sole producer and submitting the application" and "the applied GI is in conformity with the law" as stipulated in Article 14 of the GI regulation of Afghanistan are met, any production unit (producers themselves) can apply for GI protection.

A legal representative can be appointed to apply for the registration of the geographical indication at the central registration office. Article 16 of the GI regulation provides that the responsible authority or the applicant simultaneously introduces its legal representative to the registration authority. The representative must be introduced to the registration authority and provide their name, address, telephone number, and identification documents along with a document containing the same information for the responsible authority. The agent can only carry out the agency activities after completing the documents listed before and confirmed by the central registration office. According to Article 17, if a legal representative does something wrong, the responsible authority or the applicant will be held responsible.

##### **4.2 Application for geographical indication and products to be protected**

As per Afghanistan's GI law, GI offers support and protection to both goods and products. In particular, Article 2(5) emphasizes that this protection covers a wide range of manufactured items, such as things related to agriculture, animals, food, handicrafts, and industrial products. In simple terms, it means that the law helps protect and support different types of things made or produced in specific areas(*Law on Geographical Signs of Production Points of Afghanistan*, 2015). Article 3(5) within the producer's definition also includes engagement in the production of agricultural, animal, and food products, as well as the manufacturing and production of industrial tools and handicrafts. This provision broadens the scope to encompass involvement in creating items related to agriculture, animals, and food, along with the crafting and manufacturing of industrial tools and handicrafts(*Law on Geographical Signs of Production Points of Afghanistan*, 2015). According to these provisions, five types of goods can be registered as GIs: agricultural, animal, food, industrial, and handicrafts. However, some developing countries like China created separate laws to protect agricultural GI products.

Articles 4 to 7 of GI law stipulate matters related to the application of the registration process, including "electronic preservation and maintenance of documents related to the registration of GIs," "contents of materials required for the registration of the application," "submission of attachments other than the application for the registration of GIs," and "the content of the application for the registration of GIs". Among them, Article 6(3) specifically stipulates the consideration of "the nature, quality, reputation, and characteristics of the product of geographical indication," which is used as the basis for the substantive examination of the application for geographical indication in Article 8. GI law provides clarification on establishing the quality, reputation, or characteristics of the products and categorizes these factors into two main groups: natural factors (soil and climate) and human factors (which relate to the establishment or reinforcement of customary practices and professional methods within a specific region, significantly impacting the production and preparation of goods). In addition, further details of the registration application can be implemented under the GI regulation.

#### **5. Geographical indication registration process**

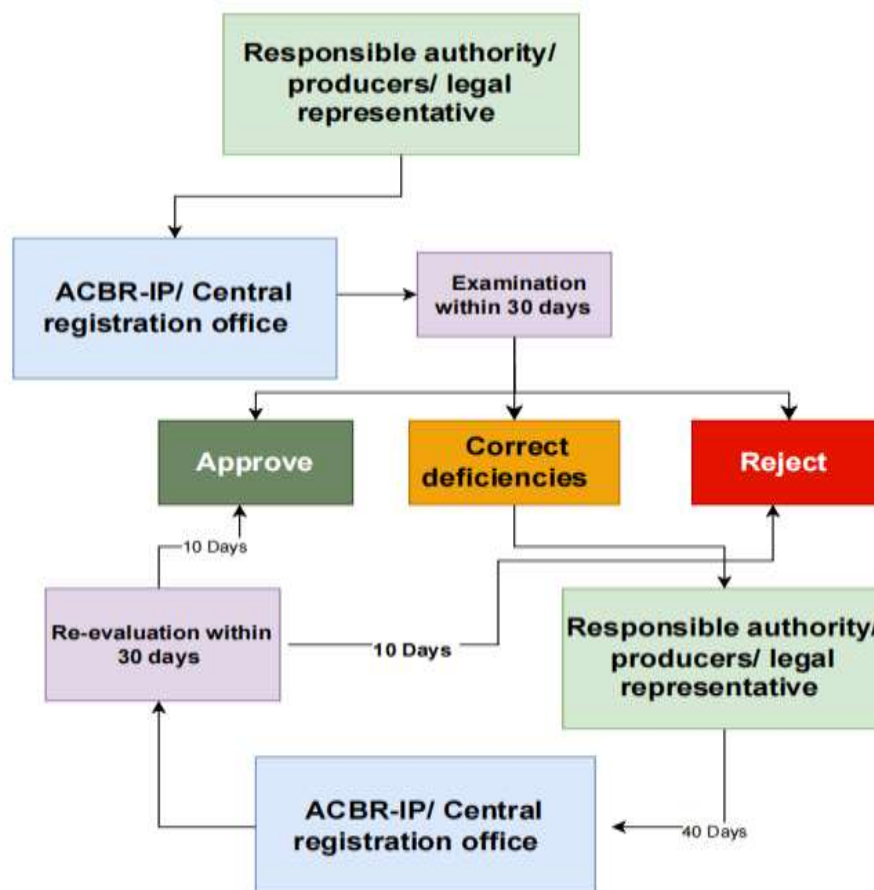
##### **5.1 Registration and evaluation of geographical indications**

Article 8 of the GI law provides the main rules of the GI registration process. Articles 12 and 13 of the law and according to Articles 24 and 25 of the GI regulation, the examination of the application by the ACBR-IP is divided into formal and substantive

examinations(*The procedure for regulating geographical indications of the place of production*, 2022). Formal examination consists of the following: (1) The ACBR-IP is required to evaluate the application for geographical indications formally within the specified time frame after receiving it. If it does not meet the conditions outlined in law and regulation, it must inform the applicant in writing to resolve the issue. (2) The applicant must complete and resubmit the application to the ACBR-IP within 10 working days. (3) If the applicant fails to resubmit the application within the specified time frame, the ACBR-IP will not accept the application and will inform the applicant. (4) Once the formal requirements have been fulfilled, the ACBR-IP issues a document to the applicant, which contains the date of the application submission and the ACBR-IP seal.

Substantive examination encompasses several key elements. Firstly, the ACBR-IP must evaluate applications for GI registration within the specified timeframe stipulated by relevant laws and regulations, informing the applicant of the outcome. Secondly, a specialized technical committee appointed by the ACBR-IP must conduct a thorough examination of the application based on the governing laws and regulations, as well as the provisions outlined in the Procedure. After the examination, the ACBR-IP can make any of the 3 decisions: approve the application, ask the applicant to correct deficiencies, or reject the application. The applicant has 40 days to answer unless the application is rejected.

According to Article 26 of the GI regulation, if the application fulfills the conditions outlined in Articles 6 and 7 of the laws and regulations, the ACBR-IP will proceed with the registration process. If the application is deemed incomplete, the ACBR-IP will notify the applicant in writing of the deficiencies and request that they be rectified or reject the application with a detailed explanation. If the applicant addresses the identified deficiencies, the ACBR-IP must re-evaluate the application within 30 working days of receiving the response and decide within 10 working days. The ACBR-IP is legally bound to register the geographical indication if it confirms the validity of the reasons provided by the applicant in their reply. If the applicant's response fails to meet the ACBR-IP requirements, the application will not be accepted, and the registration fee paid will not be refunded. The schematic representation of the registration and evaluation process is given in Figure 1.



**Figure 1:** Registration and evaluation of Afghanistan's geographical indication protection process

### **5.2 Objection procedures**

Articles 10 and 11 of GI law state about the objection and a response system to objections, respectively. According to Article 31 of GI regulation, "a GI which does not conform to its definition and interpretation" and "the conditions of GI at the point of production do not conform to the conditions stipulated by the law and the Procedure" are the grounds for objection.

The relevant GI law does not have any restriction on the scope of the subject of the objection, but it needs to be filed with the Central Registry within 40 days from the date of approval of the application for a GI and obliges the Central Registry to convey the objection to the applicant within 10 days. It is also clearly stipulated that the opposition should contain the relevant name and address as well as the reasons for the objection. In response to the objection, the applicant for a GI is obliged to submit a written response to the objection to the Central Registry within 20 days and forward it in writing to the opposition. The Central Registry may, at the request of any party, extend the deadline by another 30 days for further preparation of materials. If the applicant for a GI fails to prepare and submit the documents within the prescribed period, his or her application for a geographical indication will be rejected, and the Central Registry will notify the applicant and the opposition in writing. Afghanistan has made more detailed provisions on the response to objections, but it has not clarified the mechanism of consultation between the two parties and the adjudicating authority after the consultation fails, so the relevant provisions should be further improved.

### **5.3 Deletion of geographical indication**

Article 14 of the GI law pertains to deleting GI. If the GI has been registered before fulfilling the registration conditions mentioned in this law, the central registration office itself, or at the request of an interested party, may delete them from the central registration office. The central registration office will inform the responsible authority about the reasons for the deletion of GI and may grant them a period for the preparation of supporting documents, if necessary, following the relevant procedures. If the responsible authority fails to provide a written response to the central registration office within a specified period after receiving the notification, the decision of the central registration office regarding final deletion is accepted, and the central registration office will promptly communicate the result to the responsible authority in writing.

The GI regulation specifies the process for the deletion of GI in Articles 46 to 52. To initiate the deletion request, the requester must pay a specified fee to the central registration office. Upon receipt of the request, the office handles it and informs both the requester and the responsible authority. Interested parties can lodge multiple deletion requests, and the central registration office is committed to handling them promptly and in compliance with the law. If the requester wishes to withdraw their request, they can do so by providing a written notice. The responsible authority has 40 working days to respond to the deletion request. If no response is received within this time frame, the central registration office will delete the GI and inform both the requester and the responsible authority. If the parties fail to reach an agreement, the Central registration office may convene a hearing session. The office is required to inform the parties of its decisions within 7 working days of making the decision.

### **5.4 Cancellation of geographical indication**

Paragraph 2 of Article 12 of GI law stipulates, "The Central Registry shall refrain from registering any geographical indication for goods that are falsely attributed to geographical origin or mislead the public regarding the true origin of the goods. Any beneficiary can request the cancellation of the registration of such GI from the court". This law doesn't give any further information about the cancellation processes of the GI. In 2012, the ACBR-IP took over intellectual property registration responsibility from the commercial court; the cancellation process of GI is also related to the ACBR-IP.

### **5.5 Use and prohibition of geographical indications.**

Article 3(6) of GI law stipulates that "the registered GIs can be used in dealings, purchases and sales, offers of sales, gifts, exchanges, imports, exports and advertisements, goods, containers, packages or labels, or any related documents." Article 18 states that the orders of this law should not hinder the exercise of certain rights. These rights include trademarks that have been registered or are being registered according to the provisions of the Trademark Registration Law, trademarks for goods or services similar to the commonly recognized names of goods and services in Afghanistan, and the use of a specific or prior name in the trade as long as it does not confuse the public. Any unauthorized use of GIs by other parties would be considered a violation. Article 19 of the GI law states that those who abuse other provisions of the enforcement and preventive measures of this law will be subject to civil, administrative, and criminal liability following relevant provisions. Article 21 of the GI regulation states that certain types of GIs cannot be registered by the Registry. These include GIs that conflict with laws and regulations, go against Islamic religion, recognized customs, public order, or international conventions. Additionally, generic signs, misleading indications, those that conflict with the names of plant varieties or animal breeds, defamatory or derogatory indications, and those that have the same name as a registered GI cannot be registered.

## **6. Conclusion**

In conclusion, the findings of this study highlight the critical importance of establishing a robust and comprehensive system for the protection of geographical indications in Afghanistan. After carefully examining the legal frameworks and mechanisms, it is

clear that progress has been made since the creation of the law and the signing of the GI project. However, it is also apparent that there are still certain areas that require further improvement and refinement. The dual-track approach, the specialized GI law, represents a proactive step towards safeguarding Afghanistan's unique cultural and economic assets. However, to fully join the potential benefits of geographical indication protection and identification of the current system, it is critical to strengthen procedures for handling objections, violations, and cancellations, improve the transparency and usability of the application and review procedures, and promote more cooperation between local and foreign parties. The resilience and competitiveness of Afghan products in the international market can also be increased by funding capacity-building programs and educating local producers and communities on the value of GI protection. The establishment of a strong system for protecting GIs has the potential to not only safeguard Afghanistan's abundant agricultural resources and rich cultural legacy but also to stimulate sustainable economic growth and promote more global collaboration. Afghanistan can maintain the integrity and authenticity of its native products while projecting itself as a major force in the world market by bringing its legislative frameworks into compliance with best practices and international standards. The creation of a thorough and efficient system of protection for GIs in Afghanistan is a critical step toward the country's realization of its economic potential, preservation of its cultural identity, and creation of long-lasting relationships with the international community.

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