

Geographical Indications: How can East African agriculture benefit more?

The TRIPS Agreement provides for the protection of Geographical Indications (GIs). Since all the EAC countries are contracting parties to the TRIPS, they are responsible to make available a GI protection system for the registration of products. So far in the EAC only Burundi, Rwanda and Zanzibar have a *sui generis* GI system in place and only very few products have been registered as GIs, even though numerous benefits may arise from the registration, such as important value addition within the region.

What are GIs?

GIs are defined as signs/names, which identify a product originated in a specific geographical area. They require the product to have certain characteristics and reputation that are essentially linked to its geographical origin. The principal application of GIs is to agricultural products, foodstuffs and beverages as well as other cultural products, such as textiles and handicrafts.

The TRIPS agreement provides for two levels of GI protection. First, all goods can be protected in order to prevent their designation or presentation misleading the public about their geographical origin or to avoid a use which constitutes an act of unfair competition. Second, wines and spirits benefit from a higher level of protection and can thus be protected, regardless of whether a misuse would cause the public to be misled about their geographical origin.

← QUICK FACTS

» In the EAC, Burundi, Rwanda and Zanzibar already have a legislation that provides for the protection of GIs.

» Only three EAC products have been registered as GIs, whereas India has 193 registered GIs and France has a total of 1416 products protected as GIs.

» A draft set of modalities with the following suggestions has been proposed to the WTO:

- (1) establishment of a multilateral GI register;
- (2) extension of the high-level GI protection to all products;
- (3) requirement to disclose the origin of genetic resources or traditional knowledge used in patent applications

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Many EAC agricultural products could be protected as GIs, such as Kenyan tea and coffee, Zanzibar cloves (Tanzania), Kakira sugar (Uganda), Kivu coffee (Burundi) etc.

GI Negotiations at the WTO

Two key GI related issues are currently discussed and negotiated in the WTO, namely the establishment of a multilateral register for wines and spirits and the extension of the higher level of protection to products other than wines and spirits. From these negotiations a draft set of modalities was proposed by, amongst others, the European Communities, China, Brazil, India, Switzerland, the ACP Group and the African Group. This proposal seeks to address in parallel a multilateral GI register, the extension of high-level GI protection to all products and the requirement to disclose the origin of genetic resources or traditional knowledge used in patent applications.

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Why should EAC countries be interested in GIs?

The main interest in the enforcement of GI protection is to ensure that the characteristics of a product and its reputation are adequately priced in the market as well as to avoid fraud, consumer confusion and the misuse of GIs. A premium price that takes the reputation and qualities of a product into account, may lead to a better distribution of revenues throughout the income chain. Furthermore, as production is tied to the geographical area, delocalization can be prevented and hence there will be a creation of value added within the region. Thus, the producers will no longer export generic goods, but will rather seek to produce and export high-quality agriculture and handicraft products. Furthermore, GI protection may also allow promotion and protection of traditional knowledge and production methods.

There are many products produced in the EAC countries that could be protected as GIs. For example Kenyan tea and coffee, Rwanda mountain tea, Zanzibar cloves (Tanzania), Kakira sugar (Uganda), Kivu coffee (Burundi) and many more.

However, there are also challenges arising from the protection of products as GIs. For example, it is unclear how the benefits will be distributed within the value chains, the increase in prices may harm access of poor locals to essential food and cultural products and other genetic resources as well as producers of goods not protected as GIs may be marginalized.

The current situation of the EAC

For a GI to be eligible for registration in a third country under the TRIPS Agreement, it first has to be registered in the country of origin. Currently, only Burundi, Rwanda and Zanzibar have legislative frameworks for the registration and protection of GIs. In Kenya a GI Bill was prepared in 2007, but has not come into force yet. However, in Kenya, Tanzania and Uganda GI protection can be obtained through certification or collective trademarks. Nevertheless, even though all countries have a fair legal basis for the protection of GIs, only three EAC country products have been registered so far (Kenyan tea and coffee is registered in Kenya through the law on certification marks, Rwanda coffee is registered as an individual mark).

What needs to be done?

❶ **Adoption of nation GI systems:** Countries where no *sui generis* GI system is in place (Kenya, Tanzania and Uganda), should register products temporarily as trademarks. However, the governments should simultaneously work on the implementation of a GI system. In this regard, Kenya especially should go about the enactment of its Draft GI Bill. Countries that already have a *sui generis* GI system (Burundi,

Rwanda and Zanzibar) should register their products directly as GIs.

❷ **Government support:** In order to enhance the registration of products, the government has to provide support to industries and producers with potential capacity of registering their products as GIs. The ministries in charge of this are the following: Ministry of Commerce and Industry (Burundi); Ministry of Cooperative Development and Marketing (Kenya); Ministry of Trade, Tourism and Industry (Uganda); Ministry of Trade and Industry (Rwanda); Ministry of Industries, Trade and Marketing (Tanzania).

❸ **Mutual protection of GIs in the EAC:** The EAC countries can take advantage of their Common Market Agreement which provides the mandate to develop a common *sui generis* GI system. Within such a system, the EAC countries can automatically provide protection to all GIs registered in another EAC country. Moreover, with such an EAC *sui generis* GI system in place, the countries can act jointly to obtain registration of EAC GIs in third countries.

❹ **Leveraging the African Regional Intellectual Property Organization:** Another possibility is to approach the African Regional Intellectual Property Organization (ARIPO), whose aim is to pool the resources of its members – English-speaking African countries – in industrial property matters together in order to avoid duplication of financial and human resources. ARIPO is currently developing a common *sui generis* GI system among all contracting parties with the support of the European Communities.

❺ **WTO negotiations:** EAC countries should promote the suggested extension of the scope of GI protection to other products under the TRIPS Agreement.

❻ **Technical assistance:** The LDC countries of the group should make use of their status and request technical and financial assistance from the TRIPS Council. Be it for the implementation of a GI regulatory framework or for the domestic registration and protection of GIs. Moreover, the EAC countries can also request specific support measures for the improvement of GI protection within the Aid for Trade programme.

USEFUL RESOURCES



oriGIn (2011). Practical Manual on Geographical Indications for ACP countries

A practical tool to assist non-specialists in ACP countries to grasp the GI scheme. It explores the key issues concerning GIs, from the most important definitions to the legal options available to protect GIs and the operational aspects of setting-up sustainable GIs. ► <http://bit.ly/1a2ctKg>