

GEOGRAPHICAL INDICATIONS

INFORMATION HANDOUT



SCARCITY MAKES VALUE

Geographical indications (GI) indicate the unique qualities of a product linked to its geographical origin.

Many companies apply voluntary standards and communicate their efforts through labels. One of those labels is the geographical indication label. This label conveys the unique features of a product linked to the specific geographical and human environment where it is produced.

All quality products, including GIs, tend to have the following common features:

- specifications detailing the rules that are applied;
- controls to ensure compliance with the specifications;
- a certification process, whereby products are guaranteed as complying with the specifications and granted the right to use the associated logo.

However, GIs stand out from the crowd by two further points:

- the freedom of producers to determine the content of the specifications;
- the nature of GIs as intellectual property rights.

As an intellectual property right, GIs guarantee, sometimes over centuries, consistent practices for the production of a product in a given territory. This ensures that consumers associate the product's features with the place where it is

produced. It is the preservation of this 'quality-origin' association in the mind of consumer which generates 'intangible property'. This scarcity is the true value of geographical indications.

You cannot get the same product elsewhere

GIs exist even before their recognition by the law. Rooibos tea, Coffee Kenya and Poivre de Penja were already recognised by consumers before they received legal protection.



Since there are often attempts to 'free-ride' on the reputations of GIs by using the same or similar names, GIs must be adequately protected.

In addition to the product's unique qualities, three factors condition the success of the GI: the collective governance, the quality control and the strong legal protection.



UNITY IS STRENGTH

Geographical indications: why use collective rights?

Collective farming is a type of agricultural production in which multiple farmers run their holdings as a joint enterprise. How does this idea apply in the context of a GI?

The product's unique qualities are often the result of a collective effort – undertaken by small and large farms that may otherwise struggle to compete with each other's similar products. As a consequence, the creation of a collective group is often an explicit pre-requisite to registering a GI. This collective reward system does not prevent producers at the individual level from carrying out a personal strategy on top of the GI value process (e.g. Champagne – Veuve Clicquot).

GI specifications; a product's identity card

Protecting a GI is defining the identity of a product. Therefore, the 'GI specifications' are at the basis of the value creation process. This document is not exactly a technical regulation. Rather it is a description of the practices to be complied with, or excluded, to reach the typical product and, thus the GI.

'Who's in and who's out?'

Exclusion is at the centre of any differentiation strategy, allowing businesses to gain competitive advantage by distinguishing who is in, who is out, what is in and what is out. GI specifications are no exception. The 'who is in' questioning is very much related to the 'what is in' the GI specifications.

The process of registering a GI calls for the practices that influence the product's unique qualities to be listed. Any lack of consensus at this point between the stakeholders might result in decisions that include only a minority, and could be seen as illegitimate by other stakeholders. For example, defining the exact boundaries of a GI can be politically and socially controversial. The definition of the GI area may exclude some producers who do not reach the characteristic end product, yet are willing to use the name.

Therefore, collective negotiation and good governance are essential for the adoption of GI specifications and this phase of consultation and deliberation inside the group becomes crucial.

Collective efforts...

The collective efforts may be implemented by any type of collective group, be it associations, consortia, cooperatives or the like. While some GI management groups maintain a low profile and have very limited responsibilities, others play a fundamental role for their members.

In many cases, the GI management group duties range from drafting the specifications and applying for protection to the broader promotion of the product and providing assorted support to members. This collective organisation may, after agreement by its members, be vested with: production services, management of the internal control system in order to guarantee the quality of the final product, management of the marketing of the product and coordination inside and outside the relevant field to establish partnerships with facilitators (State, NGOs, etc.).



...for collective benefits

The image value generated by the GI label

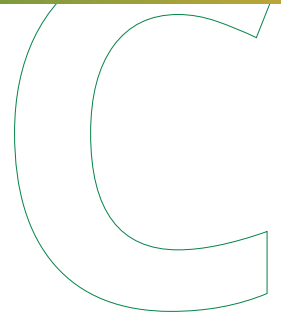
GIs bring a positive effect and increase the image of the product.

The premium price observed

Experience shows that the registration of GIs substantially increases the price of the product. Although the higher price obtained with the GI varies considerably depending on the product and on the market, in most cases it increases by between 20 % to 40 % (FAO-BERD publication).

Impacts on territorial development and tourism

Some indirect benefits may flow from establishing a GI: increased employment levels, tourism, income support and the preservation of the environment and biodiversity. GIs may sometimes contribute to the preservation of the environment by encouraging investment on endangered species (e.g. Argane-Morocco, Madd de Casamance-Senegal). Generally speaking, a GI improves the local economy by maintaining economic and social activities in less privileged areas, provided the promised quality is respected and controlled.



FREEDOM IS RESPONSIBILITY

Quality products rely on quality management systems to support their legitimacy.

How does the quality management system work for GIs?

Through GIs producers have a unique chance to define the standards of production for themselves. However, this freedom comes with responsibility.

Rules contained in the specifications must be respected to consolidate the trust of consumers, which has often taken years to establish.

Therefore, while drafting the GI specifications, producers must adopt a control plan. The control plan specifies how the rules applying to the GI will be checked, requirement by requirement.

For GIs, the control on the products apply to:

- the manufacturing process: the practices influencing the product's unique qualities that must be implemented by producers;

- the ability to ensure that the product originates from the defined geographical area; and
- the unique qualities of the final product (taste, shape, colour etc.).

The challenge here is to anticipate an agreement on the controls.

Controls are applied based on the control plan by the producer (auto-control), by the GI management group (internal control) and by an external control and certification body that, ideally, should be transparent and impartial.

Compliance with the specifications is rewarded with official logos, which indicate that the origin and the process are controlled and ascertained. Phrases such as 'made in' or 'produced in' can be easily applied to any products but this does not provide any guarantee of quality. What does provide a guarantee of quality is a certified geographical indication.





BETTER SAFE THAN SORRY

What exactly do geographical indications protect? A category of product, a process or a name?

The exclusive right over a GI is an exclusive right over a geographical or traditional name – and not a right over a category of product.

The great majority of African GIs are not yet registered and, as a consequence, are exposed to misuse, evocation and other forms of dilution of their renown, and sometimes even the loss of association between the quality of the product and the quoted geographical origin (i.e. they can become generic). In fact, not registering GIs may give the wrong impression by implying that no exclusive intellectual property rights apply to the names and they are available for ‘good faith’ uses. Now is the time to put the national and international legal options to protect GIs to good use.

Protection of GIs without registration

National legislation covering unfair competition and passing off can provide a remedy against unlawful and dishonest business practices. In the absence of registration, most African GIs would have to rely on this option to stop their misuse.

Some administrative protection mechanisms can also offer a degree of protection when authorities regulate the use of indications on a product at the national level.

However, because this option does not create an exclusive right for the GI holders, they will have to sue each and every time it is deemed necessary. This option is costly and may be risky.

Protection through registration

The trade mark option to protect GIs

Certification and/or collective trade marks are options to protect GIs (if available at the national level).

Certification trade marks indicate that the products for which they are used have particular characteristics (a given geographical origin, for instance). In Kenya, ‘The Finest Kenyan Tea’ and ‘Coffee Kenya, So Rich So Kenyan’ were registered as geographical certification trade marks.

Collective trade marks indicate that certain goods or services were produced or commercialised by the members of an identified group. ‘Taita Basket’, is geographical collective trade mark in Kenya.

However, the registration of a geographical name through a collective or a certification trade mark ONLY protects the names as far as they may be confused by the consumer.

Protected collective and certification trade marks may obtain protection on international markets through the Madrid agreement concerning the international registration of marks, and in the jurisdictions of countries that are parties to this agreement. This option is available for any national of a country member of this international agreement. In Africa, ARIPO (African Regional Intellectual Property Organization) and OAPI (Organisation Africaine de la Propriété Intellectuelle) have recently accessed this agreement administered by the World Intellectual Property Organization (WIPO) and 'Coffee Kenya, So Rich So Kenyan' was registered in this system in 2015.



The *Sui generis* system of protection

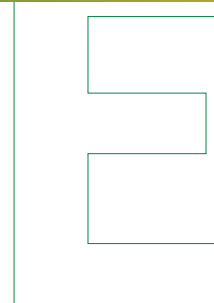
A sui generis system of protection is a legal system that exists independently of other categorisations of intellectual property. Typically, a sui generis system of protection would offer protection of the name 'as such'. Therefore, it is the considerably more powerful protection than the ones previously mentioned.

The ambition of the sui generis system is to tackle the various creative ways in which free-riders operate:

- translation of GI names: e.g. 'Penja pepper' instead of Poivre de Penja;
- use of modifiers: e.g. 'Coffee type Kenya', instead of Coffee Kenya-So Rich So Kenyan;
- deceptive uses: rooibos from another country than South Africa;
- and others: use of the names as ingredients of products, etc.

Argane, Poivre de Penja (Cameroon), Oku white honey (Cameroon), Café Zياما Macenta (Guinea-Conakry), and Ananas Pain de sucre du plateau d'Allada (Benin) are examples of African names registered within a sui generis system.

GIs that are protected in the country of origin may enjoy international protection and registration through the WIPO Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (May 2015). It is the most recent and most protective agreement on GIs worldwide. The register is open to GIs protected as trade marks or within a sui generis system in their country of origin.



AfriPI and Geographical indications

'Spaghetti bowl' of legal provisions on GIs in Africa

The options to protect GIs at the national level vary from one country to another on the African continent. Discrepancies in the scope of protection for geographical names in Africa create legal uncertainty for the operators of these labels.

In 2016, the African Union initiated an important milestone with the Continental Strategy for Geographical Indications in Africa 2018–2023 to enforce convergent rules and practices at a continental level to encourage trade and improve the positioning of African products.

The entry into force of the African Continental Free Trade Area (AfCFTA, 2019) gives geographical indications a dynamic angle. Article 4 of the AfCFTA agreement prescribes the cooperation of state parties on, inter alia, intellectual property rights, including GIs, and

should focus on eliminating the existing discrepancies in how African Union members protect GIs.

In this context, the AfriPI project, funded and directed by the European Union, aims to boost the continental economic integration through strengthening and improving the systems for creating, protecting, utilising, administrating and enforcing intellectual property rights (IPR), including GIs.

AfriPI is an international cooperation project, co-founded and implemented by the European Union Intellectual Property Office (EUIPO). It has a duration of 5 years starting from February 2020.

By the end of this 5-year project (2020–2025) it is expected that many African GIs will be circulating within the African continental free trade area.





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AFRICA project, funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)

