
9 The EU trade policy on geographical indications and the missing link with development

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The vigorous EU policy on Geographical Indications (GIs) is notorious both in World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) circles. The negotiations in WIPO leading to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications² have seen once again the EU and the US at loggerheads, with a number of developing countries and Least Developed Countries (LDCs) as bystanders. The same Geneva protocol has been the object of contention among the EU and its member states about the competence to sign. The European Court of Justice finally solved this dispute.³ The Geneva protocol is now open for accession.

Many LDC delegations in Geneva are insufficiently aware of the trade and development aspects of GIs, the importance of actively participating in WTO/WIPO deliberations, and the possible inclusion of GIs protection in free trade agreement (FTA) negotiations as a development tool to promote their traditional products. Nonetheless, there has been a quiet but steady increase in interest on the part of developing countries, including LDCs, towards adoption of GIs. Some, like Thailand, have adopted extensive GI policies to promote their agricultural products. The potential positive role of GIs for rural development has been well recognised by international organisations such as the International Trade Center (ITC), the Food and Agricultural Organization (FAO) and the United Nations Conference on Trade and Development (UNCTAD). The ITC produced one of first most comprehensive reports on GIs (Giovannucci et al. 2009); FAO has laid down the foundations of the linkage between rural development and territory

1 The views expressed in this chapter are those of the authors and do not necessarily reflect those of the United Nations. This contribution draws in part on Inama (2017).

2 For further details, see WIPO (2018).

3 The ruling of the European Court of Justice of 25 October 2017 in Case C-389/15 - Commission v Council - stated that the EU has exclusive competence for the Geneva Act of the Lisbon Agreement.

(Vandecandelaere et al. 2010), emphasising the “different steps of the origin-based quality virtuous circle”; while UNCTAD has defined a clear trade and development vision of GIs (UNCTAD 2016).

The economic development literature has shown that GIs can be considered as an opportunity to:

- protect local species that serve as raw material (e.g. ingredients) for potential GI products;
- jointly build codes, practices, or product specifications aimed not only at increasing process or product quality but also at creating symbolic quality in-person service attributes (Daviron and Ponte 2005), as a way to design rules to locally build awareness regarding environmental protection in the areas;
- support collective management (e.g. of the forest), and
- boost local cohesion among potential GI users and consumers.

In light of these findings, several international agencies, including FAO, UNCTAD and WIPO, have joined forces to promote the development of GIs in developing countries through various channels.

One of the major initiatives is the recent development of the Continental Strategy for Geographical Indications in Africa 2018-2023 mandated by the African Union (AU) and developed by the FAO:

“The continental strategy process relies on the involvement of key African players, at continental and regional levels, among which the African Union member States and the regional organizations specialized in GIs, OAPI and ARIPO.”⁴

The document “A continental strategy for Geographical Indications in Africa” was endorsed by the Second Ordinary Session of the Specialized Technical Committee (STC) on Agriculture, Rural Development Water and Environment in October 2017, with the following outcomes:

- *Outcome 1: An African vision on GIs as a tool contributing to sustainable rural development and food security and a GIAfrican approach are developed and shared.*
- *Outcome 2: Enabling a legal and institutional framework at the national and regional levels for the protection of GIs.*

4 See the African Union document on a continental strategy for GIs: <https://au.int/en/documents/20190214/continental-strategy-geographical-indications-africa-2018-2023>

- *Outcome 3: The development and registration of GI products as pilots and drivers for rural and sustainable development are supported, to provide learning and demonstrative effects.*
- *Outcome 4: Market development for GI products is promoted through innovative approaches on local markets, through regional trade among the RECs and on export markets.*
- *Outcome 5: Research, training programs and extension are encouraged to ensure the identification, development and diffusion of the best African tailored practices and to contribute to the African approach, in a context of climate change.*
- *Outcome 6: Awareness of all stakeholders, including consumers, is created, communication among stakeholders and information to a wider audience are insured.*

An action plan for the implementation of the strategy has been discussed among the African Union, the Organisation Africaine de la Propriété Intellectuelle (OAPI), the African Regional Intellectual Property Organization (ARIPO), the European Commission, FAO, WIPO and the Agence française de développement (AFD). However, more than a year after the approval of the AU Continental strategy on GIs, no funding has been disbursed yet for the direct implementation of the action plan; only projects having limited geographical scope and funding are ongoing.⁵

Overall this lack of resource mobilisation for GI initiatives is rather striking. This holds true also for LDCs that have been at the centre of a strategy to limit migration, where GIs could potentially be an additional tool for rural development preventing rural exodus. In particular, lack of funding has been conspicuously visible in Niger, where rural communities took the initiative jointly with the government to develop, with their own funds, the books of specifications for four potential GIs and submitted them to the OAPI. However, without further technical support, the GI committee and rural communities are likely to face unsurmountable obstacles to obtaining GI registration.

The increasing attention given to GIs or other forms of protection for traditional products has gained increased awareness in developing countries and LDCs alike following attempts by multinational companies to capture the names of their traditional products. The dispute among the government of Ethiopia started when Starbucks applied for trademark protection for Shirikina Sun-Dried Sidamo coffee in the US. The Ethiopian government opposed it, but Starbucks insisted. After a public relations campaign by international NGOs (such as Oxfam) that generated about 90,000 complaints against Starbucks, the corporation reconsidered its position and entered into negotiations with Ethiopia

5 Source: FAO presentation at the executive workshop on Geographical Indications at the European University Institute, Florence, Italy, 9 October 2018.

(Hughes 2009, Mengistic 2012). After arduous and long negotiations, the government of Ethiopia, under the Ethiopian Coffee Trade Marking and Licensing Initiative, was able to file 36 trademark applications in Australia, Brazil, China, India, the US, Saudi Arabia, South Africa, Japan, and some EU countries.

However, this has not resulted in a victory for the Ethiopian coffee producers to successfully brand their coffee as a quality coffee rather than as a commodity. The trademark owned by the Ethiopian state is not successfully used by the producers to market their coffee since they are unable to establish an efficient organisation. The Ethiopian government is currently preparing to introduce a GI law, but at the time of this writing this has not yet happened.

So, how can farmers from LDCs access and protect their products given the different forms of protection? In the absence of progress at the multilateral level, the US and the EU will continue to try to tilt the balance in their favour when GIs are object of contention. Thus, developing countries and LDCs have to mature adequate ownership, protection, and labelling at the national level for their products through the adoption of *sui generis* protection taking on board the opportunities provided by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and progressively inform consumers about the nature and origin of their products.

The EU is one of the most important Aid for Trade (Aft) donors and the most vocal proponent of GIs. It is therefore counterintuitive that the EU is not investing more official development assistance (ODA) resources for the development and marketing of GIs in developing countries and LDCs. Much negotiating EU capital has been invested in inserting GI protection into EU FTAs with developing countries, including LDCs, with no corresponding efforts in providing assistance to these countries in developing their GIs. Where some progress has been recorded, it has been late and isolated. In addition, such progress was made possible thanks to funds provided by EU member states, not from the European Commission. This lack of coordination and vision by the European Commission among i) the agricultural aspects led by DG AGRI; ii) the trade aspects led by DG TRADE; and iii) the Aid for Trade funds, led by DG DEVCO, to promote the use of GIs in developing countries and LDCs is simply regrettable and short sighted.

By vigorously defending GIs in FTAs entered with developing countries and LDCs while not providing the necessary technical assistance to promote the potential GIs of the partner countries, the EU provides ammunition to those who perceive the EU policy on GIs, besides the rhetoric on cultural and gastronomic heritage, as reflecting a mercantilist intent to sell EU GI-protected products into developing country markets. As a proponent of GIs, the EU should considerably scale up Aft funds to assist partner

countries to develop their own GIs. Persevering on the current trend may nurture another reason for discontent towards EU institutions by EU citizens and consumers, and send the wrong message to the developing countries that are seeking to realise the potential of promoting and preserving their products through GIs or other *sui generis* systems.

What matters is to realise that third countries and their markets may ultimately determine the balance of power between the EU and the US over GIs. Making reference to their previous work in Ilbert and Petit (2009), Petit and Ilbert (2015) reiterated that “the emergence of many new players from the South could ‘change the balance of power on the GI issue’” and went even further when writing “[i]n the Development Round, it can be considered that the extension of protection is politically inevitable”. This, as acknowledged by the authors, did not happen nor there is evidence that the group of ‘friends of GIs’ is expanding at the desired pace even if there are encouraging signs towards GIs in a number of developing countries.

The scant attention given by the EU institutions to the promotion of non-EU GI products seems to be deeply rooted and profoundly self-defeating. Moreover, the previous EU law on GIs was found non-WTO compatible since it made it more difficult for non-EU GIs to be registered in the EU. If the EU institutions, policymakers, and civil society are really interested in and serious about making progress on GIs at the multilateral and bilateral levels, it is imperative to enlarge the vision and strategy beyond the promotion and protection of European GIs as “living cultural and gastronomic heritage”. It has to be recognised that such “living cultural and gastronomic heritage” also exists, albeit at different levels and in different forms, in developing countries and LDCs. This is the only way possible to generate the notion that GIs as much as traditional knowledge are part of IPRs and not a peripheral agricultural trade issue.

There must be a substantial scaling-up of aid policies to promote the use of GIs as rural development tools, and to this effect major coordination efforts by the European Commission among its different directorates – DG TRADE, DG AGRI and DG DEVCO – should be undertaken. Failure to do so will only further alienate the sympathies towards the EU stance on GIs from those developing countries and LDCs that may be interested in adopting GIs and will also widen the distance already existing between the EU consumers, citizens and the EU institutions. In order to be credible, especially *vis-à-vis* the recipient countries, this policy should be best carried out at multilateral level by supporting the initiatives launched by UN agencies and placed in the context of the Sustainable Development Goals (SDGs).

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