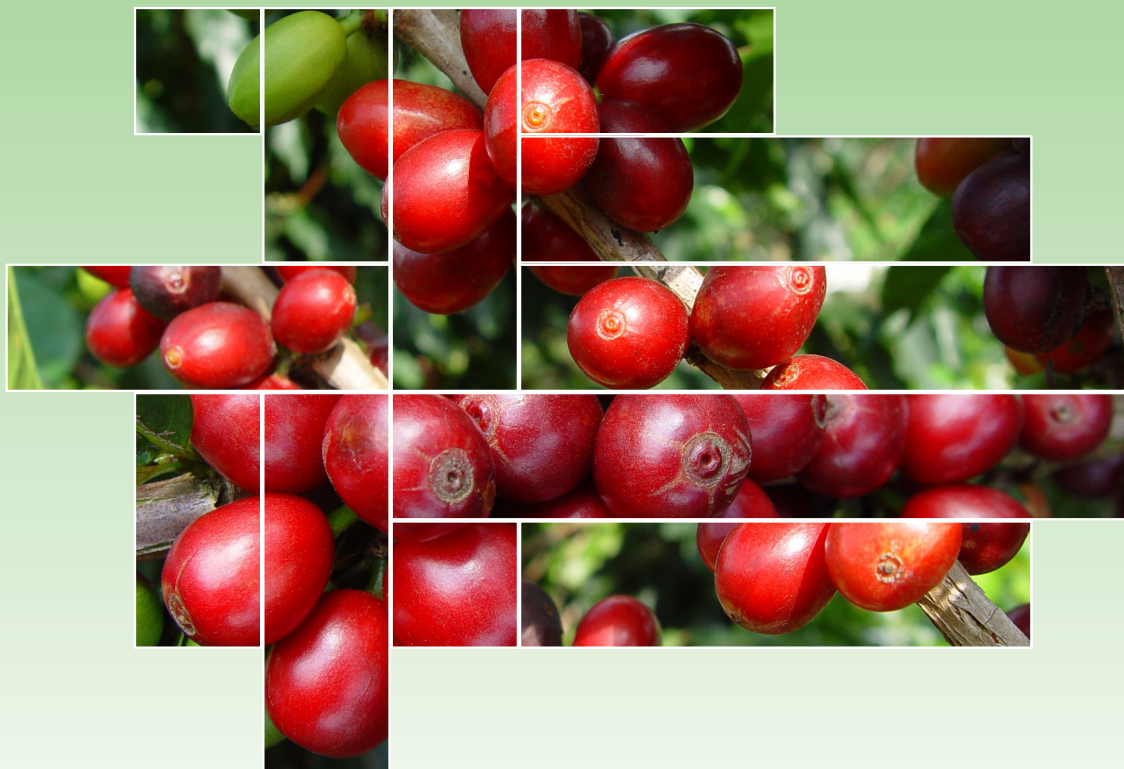


# Practical Manual on Geographical Indications for ACP countries



oriGIn

Organization for an International  
Geographical Indications Network

# Practical Manual on Geographical Indications for ACP Countries

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# Practical Manual on Geographical Indications for ACP Countries

A publication by CTA and oriGIn

Monique Ngo Bagal  
Massimo Vittori





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## Foreword

The context of international agricultural trade is resulting in increased global competition on the major export markets with emerging countries (Brazil, India, Thailand, etc.), and in instability in these markets. This intensification of competition, with regard to both the price and quality of products, obliges agricultural producers to achieve greater product differentiation in order to stand out from competitors, position themselves on more profitable market segments, and secure their market share. As part of a range of differentiation tools and approaches, geographical indications (GIs), which link the quality/reputation of a product to a given location, offer a promising avenue that can contribute to enhancing the value of local products.

Over the past few years, GIs have stimulated increased interest among producers, policy-makers, non-governmental organizations (NGOs) and academia in African, Caribbean and Pacific (ACP) countries. Building on this growing interest, CTA, in collaboration with oriGIn, Centre de Coopération Internationale en Recherche Agronomique pour le Développement (CIRAD) and Agence Française de Développement (AFD), organized the first ACP-EU technical workshop on GIs in March 2009, in Montpellier, France. This event gathered together high-level experts and GI practitioners, as well as ACP farmers, researchers and policy-

makers, and triggered a series of follow-up activities including an electronic forum that disseminated a series of information modules on key aspects of the GI approach.<sup>1</sup> With more than 300 members, the forum has been greatly appreciated, and the decision was taken by CTA and oriGIn to build on the modules disseminated and prepare this Practical Manual on Geographical Indications for ACP Countries. This publication aims to serve as a practical tool to assist interested stakeholders (mainly producers and policy-makers) in ACP countries to grasp the GI scheme. Intended to be understood by non-specialists, the manual explores the key issues concerning GIs, from the most important definitions needed in order to understand the overall approach to the legal options that are available at the national level to protect GIs; and from the main international agreements on GIs to the operational aspects of establishing and developing sustainable GIs. Throughout this manual, specific emphasis is placed on the interests and needs of ACP countries. References are provided to more specialized and detailed publications.

We hope that this manual will prove to be a useful tool for ACP countries interested in acquiring the basic knowledge needed to embark on the “GI adventure”.

**Michael Hailu** | Director, CTA

**Massimo Vittori** | Managing Director, oriGIn

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1 For the ACP-EU dialogue on geographical indications, see <http://dgroups.org/Community.aspx?c=0b58ef7b-28aa-4a86-8b58-1243728a6101>

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## Acronyms and abbreviations

<b>ACP</b>	African, Caribbean and Pacific
<b>AFD</b>	Agence Française de Développement
<b>AIPO</b>	African Intellectual Property Organization
<b>AMIGHA</b>	Association Marocaine de l'Indication Géographique de l'Huile d'Argane
<b>AO</b>	Appellation of Origin
<b>CARIFORUM</b>	Caribbean Forum
<b>CIRAD</b>	Centre de Coopération Internationale en Recherche Agronomique pour le Développement
<b>CNRA</b>	Centre National de Recherche Agronomique (Côte d'Ivoire)
<b>CTA</b>	Technical Centre for Agricultural and Rural Cooperation ACP-EU
<b>DO</b>	<i>denominación de origen</i>
<b>DTA</b>	Darjeeling Tea Association
<b>EC</b>	European Community
<b>EPA</b>	Economic Partnership Agreement
<b>EU</b>	European Union
<b>FNC</b>	Federación Nacional de Cafeteros de Colombia
<b>GAP</b>	good agricultural practice
<b>GI</b>	geographical indication

<b>INAO</b>	Institut National de l'Origine et de la Qualité
<b>INRA</b>	Institut National de la Recherche Agronomique
<b>ISO</b>	International Organization for Standardization
<b>NGO</b>	non-governmental organization
<b>OJEU</b>	<i>Official Journal of the European Union</i>
<b>oriGIn</b>	Organization for an International Geographical Indications Network
<b>PDO</b>	Protected Designation of Origin
<b>PGI</b>	Protected Geographical Indication
<b>SICA</b>	Sistema de Información de Cafetero
<b>TBI</b>	Tea Board of India
<b>TRIPS</b>	Trade-Related Aspects of Intellectual Property Rights
<b>UMR</b>	<i>unité mixte de recherche</i>
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>WIPO</b>	World Intellectual Property Organization
<b>WTO</b>	World Trade Organization

# PART 1:

# Setting the Scene

## 1.1 Introduction to Geographical Indications

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**GEOGRAPHICAL** indications (GIs) are names that are used to identify and commercialize natural agricultural products and foodstuffs, wines and spirits, as well as other traditionally made products such as handicrafts. Examples include Argane, Café de Colombia, Pochampally ikat, Champagne, Darjeeling tea, Parmigiano Reggiano, and Pisco. These products are deeply rooted in a given geographical and cultural environment. The unique qualities and characteristics of such products depend fundamentally on their geographical origin by virtue of the climate, soil composition, human and other factors.

Through GIs, products are differentiated based on their geographical origin. As markets become more and more globalized and trade regulations shift toward traceability, producers around the world are viewing the GI scheme with increasing interest. Because GI products are the result of decades (sometimes centuries) of hard labor, and require investment (costs associated with abiding by strict production rules, ensuring quality, etc.), state authorities ensure a monopoly right over the commercial use of these geographical names. Moreover, states implement mechanisms to ensure the standards set forth by GIs are respected. This is done with various degrees of involvement and effectiveness, depending on the legal system chosen to protect GIs at national level (see section 2.2).

Meanwhile, consumers worldwide increasingly seek transparency and information on the quality of the goods they wish to purchase, as well as the production techniques and health effects, among other qualities. Because the GI scheme responds to such needs, consumers are ready to pay a premium price for origin products.

### GIs: A Unique Opportunity for Producers to Define the Standards of Production Themselves

While international trade witnesses a proliferation of “voluntary standards” (Fairtrade, Rainforest Alliance, organic farming, good agricultural practice

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2 On voluntary standards, see Barjolle et al. (2010) “Certification schemes and sustainable rural development”.

(GAP), etc.; see Figure 1)<sup>2</sup> that are used by producers to provide consumers with information concerning certain qualities of products and the way they are produced, over the past few years the GI scheme has been raising particular interest, especially in developing countries. In addition to guaranteeing that the product originates in a given terroir and that its qualities are due to its geographical origin, GIs allow producers a unique chance to define the standards of production for themselves. In many cases, these standards are linked to ancient or ancestral local traditions. As a result, GIs represent a flexible tool that can be easily adapted to local needs.

Another key feature that characterizes GIs and distinguishes them from other voluntary standards is the public policy element. Contrary to the large majority of voluntary standards, GIs are regulated by national laws. Public authorities fix and oversee the conditions under which a GI is conferred, maintained, and protected against imitations and appropriation. Public authorities also oversee the framework that ensures quality control, again with various degrees of involvement and effectiveness depending on the legal system chosen to protect GIs at national level. For consumers, this represents an additional guarantee that the quality set forth by a given GI is effectively reflected in the final product.

**FIGURE 1 |** Some examples of voluntary standards.





## 1.2 Key Concepts for Understanding GIs

### Various Definitions Underlying a Common Concept

Although there are a number of different definitions of GIs, the concept underlying each of them depends on the identity and uniqueness of products that are rooted in well defined geographical and cultural areas.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO)<sup>3</sup> provides the first internationally accepted definition of GIs. They are defined as “[...] indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”. Another definition of GIs can be found in the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration<sup>4</sup>, adopted in 1958 under the auspices of the World Intellectual Property Organization (WIPO). According to Article 2 of the Agreement, an “Appellation of Origin” (AO) is “the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”.

While the concept of an AO as provided in the Lisbon Agreement is narrower than that of GIs contained in the TRIPS Agreement, the underlying idea is the following: they are geographical names used to identify goods that can only be produced in a given geographical and cultural zone. The environment, by virtue of its soil composition, climate, biodiversity, local know-how and other human factors, confers specific characteristics on these products that make them unique.

### Quality, Characteristics and Reputation

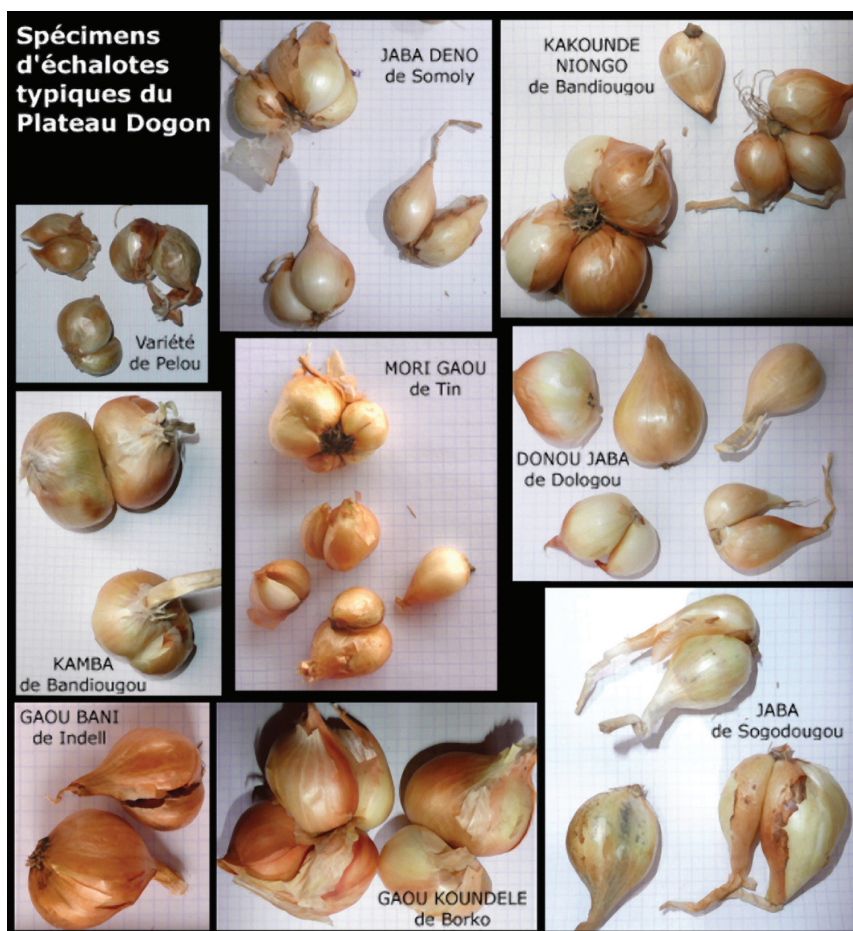
The quality and characteristics linked to the geographical origin of a product must be sufficiently specific to differentiate it from other goods. The concept of quality can be defined in relation to the product’s nutritional properties, flavor, appearance, or the process and raw materials used to produce it. The product’s characteristics can be determined by various standards, such as physical/chemical and/or organoleptic traits. Reputation refers to the opinion consumers have of a given product; this generally requires a substantial period of time to be formed.

Natural factors such as climate, soils, local breeds and plant varieties, and traditional equipment, as well as human factors such as know-how and traditional knowledge, play a key role in forming the quality, characteristics, and reputation of origin products.

3 [www.wto.org/english/tratop\\_e/trips\\_e/t\\_agmO\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agmO_e.htm)

4 [www.wipo.int/lisbon/en/general/](http://www.wipo.int/lisbon/en/general/)

FIGURE 2 | Common shallot varieties from the Dogon plateau



### Geographical Area and “Terroir”

Defining the relevant geographical area or zone is a fundamental process in setting up a GI. The geographical area has to be substantiated by relevant considerations such as historical, economic and/or cultural data (e.g. ecological setting, know-how, history of production, production stages, social

networks, existing administrative zoning).<sup>5</sup> Those arguments are normally used to prove the uniqueness of a GI. The processing and elaboration of a given product may also take place within the geographical area, thereby contributing to the GI's uniqueness.

While the notion of terroir does not necessarily correspond to the geographical area

<sup>5</sup> See Vandecandelaere et al. (2009) *Linking People, Places and Products*, p. 63.

of a given GI, the concept is relevant in the context of origin products. Over time, interactions between the physical and biological environment, combined with human factors, produce specific conditions and knowledge that confer specificity and reputation on locally produced goods in certain geographical areas. Such interactions are reflected in the concept of *terroir*. According to the definition proposed by the working group of the Institut National de la Recherche Agronomique (INRA) and the Institut National de l'Origine et de la Qualité (INAO), *terroir* is "a delimited geographical area defined from a human community which builds along its history a set of distinctive features, knowledge, and practices based on a system of interactions between the natural environment and human factors. Those interactions result in original and specific products and services that can

be easily recognized. Those factors affect as well the people leaving in that area. The *terroirs* are living and evolving places that cannot be associated exclusively to elements related to tradition."<sup>6</sup>

## Product Specification

A GI requires a product specification, or code of conduct, which is a document containing the key information concerning the product at stake. Each country is free to determine the basic criteria needed to establish a product specification, according to its traditions and the needs of producers. That said, elements justifying the link between the characteristics of the product and its geographical environment, as well as a description of the production process, are a crucial element of a GI's credibility. For example, at the

**FIGURE 3 | Plot of land**



European Union (EU) level, a product specification for an agricultural food product should be composed of at least the following elements (see section 2.3).

- Name of the product.
- Description of the product.
- Definition of the geographical area.
- Evidence that the product originates in the defined geographical area.
- Description of the method of obtaining the product.
- Details bearing out the link between the quality or characteristics of the product and the geographical environment, the link between a specific quality, the reputation or other characteristic of the product and the geographical origin.
- The name and address of the authorities or bodies verifying compliance with the provisions of the specification and their specific tasks.
- Any specific labeling rules for the product in question.

## 1.3 Costs and Benefits of the GI Approach

### How Do Producers and Consumers Benefit from GIs?

By utilizing GIs, producers market geographical origin through differentiation. In exchange for the required investment (the production of quality products is more expensive than that of “generic” ones), public authorities ensure a monopoly right over the relevant geographical names used to commercialize origin products.

A GI is a peculiar type of intellectual property right. The monopoly over a geographical name is not an exclusive right over a certain category of products. The producers of “Colombian Coffee” are not entitled, nor do they wish, to prevent others from producing coffee. The right conferred by the GI is limited to banning competitors outside the defined geographical area (or inside the geographical area for those not respecting the product specification) from using the name “Colombian” in connection with coffee. GIs present limited risks of reducing market competition and instead have the potential to promote competitive behaviors among producers keen to differentiate their goods through improved quality.

In a global market context, consumers are increasingly demanding in terms of quality. Thanks to GIs, consumers benefit from a wider range of choice and diversity, increased market transparency, and reduced transaction costs in their search for “niche products”.

### Specific Advantages for Developing Countries

Unlike other methods of intellectual property rights protection, such as patents and trademarks, which require innovative knowledge and a technology capable of industrial application, GIs are generally based on traditional knowledge generated and transmitted over generations. Appropriate use of the GI scheme can help producers in developing coun-

tries transform this knowledge into marketable products.

As international trade regulations have been shifting towards traceability, the GI scheme represents a valuable tool for producers in developing countries to respond to such requirements and reach international markets. Moreover, developing countries have a competitive advantage in labor-intensive sectors such as agriculture and handicrafts. Through GIs, producers of commodities can turn into exporters of high-quality agribusiness and handicraft products.

Another advantage for developing countries is the opportunity offered by GIs to prevent the delocalization of production. A GI can be produced only in a given area that confers specific characteristics on the product. As a result, large corporations are prevented from “capturing” the added value of origin products and related methods through the appropriation of these techniques and production outside the geographical area.

Finally, GIs have the potential to generate positive effects on the overall economy of a country in the form of employment in other sectors, such as tourism, as well as by preventing rural exodus, protecting the environment, and preserving traditional knowledge and biodiversity. These issues are strategic for developing countries. For instance, following

several studies, the United Nations Conference on Trade and Development (UNCTAD) Biotrade Initiative concluded that GIs, more than other major types of intellectual property, have features that respond to norms for the use and management of biological resources and traditional knowledge that are characteristic of the culture of many indigenous and local economies.<sup>7</sup> GIs also have the potential to contribute to the protection of the environment.

For example, it is worth mentioning the GI Argane, an oil used for nutritional and cosmetic purposes that originates in south-west Morocco (the Souss-Massa Draâ and Essaouira regions). As a result of the process of establishing the GI, its exportation appeal has increased significantly, from about 40 tons in 2003/04 to more than 320 tons in 2007/08.<sup>8</sup>

In addition, activities linked to the production of argane oil represent between 25% and 45% of the local population's income, determined by the area of production.<sup>9</sup> According to the figures presented by the High Commissioner for Waters and Forests and Against Desertification, the aggregated production of argane oil constitutes an equivalent of 7 million working days for families each year.<sup>10</sup> In 2006, about 100 female cooperatives existed, of which 93% were traditional. These cooperatives had more than 3000 members and reached an

7 See UNCTAD's *BioTrade Initiative*, [www.biotrade.org](http://www.biotrade.org)

8 Association Marocaine de l'Indication Géographique de l'Huile d'Argane (AMIGHA), [www.argane-igp.org](http://www.argane-igp.org)

9 See Argane Product Specification, page 22: [www.argane-igp.org/cahier%20des%20charges1.pdf](http://www.argane-igp.org/cahier%20des%20charges1.pdf)

10 HCDEFLCD, 2006, cited in Argane Product Specification, *ibid*.



estimated average production of 125 liters per woman.<sup>11</sup>

Other sectors, such as infrastructure, have also benefited from the GI process. Recently, “touristic roads” have been developed for argane, and include tasting sessions. Also, further up the value chain, NGOs are trying to increase literacy among women working in the production cooperatives.<sup>12</sup> And finally, from an ecological point of view, the classification of the area of production as a “Réserve de Biosphère” is also beneficial as it requires local populations to manage resources better. Thus far, the exploitation of the wild and endemic argane tree remains a barrier to desertification.

In the case of coffee in Colombia, the differentiation and positioning on the market of coffee on the basis of its geographical origin has proven to be successful. The price paid to producers (in dollars) has increased over the past few years, from \$0.52 per lb in 2000–04 to \$0.75 per lb in 2005–09.<sup>13</sup> Despite the drop in coffee prices on the international market, the price differential of “Café de Colombia” vis-à-vis non-certified coffee has been preserved. The Federación Nacional de Cafeteros de Colombia (FNC) estimates that, since it started its differentiation

strategy, the additional revenues obtained surpass over US\$3.3 billion.

The establishment of the Café de Colombia GI has had positive social spillover effects in rural development, the fair distribution of revenues, and peace and stability in the area of cultivation. In this context it should be noted that presently numerous indigenous communities in the area (including Cauca, Narino, Caldas and Sierra Nevada) produce coffee bearing the GI “Café de Colombia”. In terms of jobs generated, around 4 million people work directly or indirectly in the coffee sector, which employs 35% of the total Colombian farming sector workforce. The development of the coffee industry has also had positive effects on related industries including transportation, finance and tourism.

For Darjeeling tea, it is estimated that some 10,000 tons are produced annually, of which 70% is eventually exported.<sup>14</sup> The profits deriving from exported tea are valued at up to US\$30 million and have an important impact on the Indian economy.<sup>15</sup> Furthermore, the Darjeeling tea industry employs more than 52,000 people on a full-time basis and an additional 15,000 people during harvesting season. Thus Darjeeling tea production

11 *Ibid.*, page 22.

12 For more information regarding this alphabetization initiative and the NGOs involved in it, see Association Ibn Al Baytar, [www.association-ibnalbaytar.com](http://www.association-ibnalbaytar.com)

13 See Agritrade (2009) *Coffee: Trade Issues for the ACP*; also see El Benni and Reviron (2009) *Geographical Indications: Review of Seven Case-studies World Wide*, p. 28, Fig. 2.

14 See Rangnekar (2010) “The use and application of geographical indications: the case of Darjeeling tea”.

15 *Ibid*, note 43.

brings benefits to the entire region, economically as well as socially. Many studies indicate that additional positive spillover effects on employment can be anticipated in sectors directly or indirectly linked to the tea industry.<sup>16</sup>

## GI Potential in Terms of Income Distribution

GIs do not confer individual rights (as is the case with patents and trademarks), but rather “collective rights”. In this case, the right to use a geographical name belongs not to a single company, but to all producers respecting the product’s specifications in a given geographical area. This type of rights has tremendous potential in terms of income distribution, and fits particularly well within the social structures of developing countries, where the community often plays an essential role.

A collective approach among producers and various actors in the value chain is needed to create and develop a GI. They must define production standards, set up a common platform for the GI management, agree on governance rules of the association of producers, deal with quality control issues, and elaborate common marketing strategies. This generates economies of scale that are beneficial for producers, especially for small organizations that do not have the critical mass to carry out such activities on their own.

## Costs Involved in Establishing a GI

There are, of course, costs associated with setting up a GI. Firstly, producers have to identify, and provide evidence for, the existence of a product’s specific qualities. Defining the boundaries as well as the product specifications may impose additional costs and investments for producers. The credibility of a GI also depends on the enforcement of control measures in the product specification, acting as a proof of compliance with the established rules by the producers and thereby guaranteeing authenticity of the GI product. Certification bodies are authorized to establish control procedures to ensure producers follow the established codes of practice. In order to protect the rights of consumers, this process must be driven impartially. Therefore both internal and external controls are a requirement in most jurisdictions. Typically, qualified certification bodies are accredited according to international standards and, although some are government agencies, they are increasingly private organizations. According to ECOCERT, a French control and certification body working in several developing countries<sup>17</sup>, in 80% of cases certification costs range from 0.6% to 0.8% of the turnover (this excludes organizational costs).<sup>18</sup>

For a GI to be successful, the enforcement of legal protection is a necessity,

<sup>16</sup> *Ibid*, note 43.

<sup>17</sup> For further information on ECOCERT, see [www.ecocert.com](http://www.ecocert.com)

<sup>18</sup> See presentation by J.C. Pons (2010), a founding member of ECOCERT.

and this enforcement requires resources. While costs linked with legal registry may not be excessive, depending on the system of protection, maintaining protection of local and remote markets results in high monitoring costs. Where governments do not provide this service, it is common practice to employ private firms in order to avoid fraud and misuse of the GI denomination.

Profits made by the stakeholders will determine the sustainability of the GI process. Acknowledged criteria include the ability to cover the costs of production,

physical proximity of production and consumption areas, and promotional activities in order to gain visibility on the market. Effective collective initiatives increase benefits and reduce costs because they assume the administrative and technical financial implications linked to the protection of GIs. This collective approach works thanks to equitable financial contributions by members of the GI organization; for example, their financial contribution might be based on volumes produced.





# PART 2: Main Legal Issues Concerning GIs

**THE OBJECTIVE** of Part 2 is to provide key information concerning the main international agreements on GIs, as well as the legal options available for policy-makers to protect GIs at the national level. Part 2 also covers two examples of sui generis systems of particular interest for ACP countries: the EU system and that of the African Intellectual Property Organization (AIPO).

## 2.1 The International Dimension

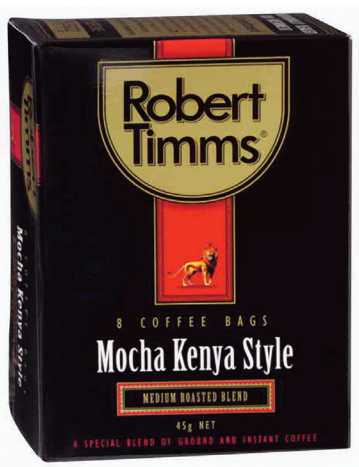
### 2.1.1 The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

#### The Minimum Level of Protection for all GIs

The TRIPS Agreement establishes minimum standards of intellectual property protection to be adopted by each Member of the WTO in their respective territories. With regard to GIs, according to TRIPS Article 22.2, Member States must provide the legal means for interested parties to prevent the use of geographical names corresponding to GIs in WTO Member States in a manner which misleads the public as to the true geographical origin of the product or con-

stitutes an act of unfair competition. Such a system is based on the risk of confusion for consumers which encourages the use of GIs by illegitimate parties in conjunction with expressions such as type, kind, style, etc. These expressions are also called “delocalizers”. For example, “Mocha Kenya Style”, a kind of coffee sold through an Australian website (see Figure 4), would not automatically be in violation of Article 22.2 of the TRIPS Agreement, even if it was proven that it does not correspond to the qualities set forth by the legitimate Kenyan producers. As the burden of proof lies on the GI producers, they would have to bring the case before a national tribunal and prove that such a label misleads the public. This has major implications in terms of costs and time. Moreover, as the test for consumer confusion is different in each country, there is no guarantee of winning such cases in a foreign jurisdiction based on TRIPS Article 22.2.

**FIGURE 4** Robert Timms Coffee Bags “Mocha Kenya Style”<sup>19</sup>



19 <http://dynamicon.com.au/productdetail.aspx?name=Robert-Timms-Coffee-Bags-Mocha-Kenya-Style-Pk18>

## Additional Protection for Wines and Spirits

Article 23 of the TRIPS Agreement confers additional protection for GIs identifying wines and spirits. By virtue of Article 23.1, each WTO Member must provide interested parties with the legal means to prevent the use of GIs identifying wines or spirits that do not originate from the place indicated by the relevant GI. For wines and spirits with a GI, the protection does not depend on demonstrating a risk of confusion for consumers. Article 23 ensures meaningful protection even when the true origin of the goods at stake is indicated on the label, or if the GI is used by illegitimate parties in translation or accompanied by delocalizers (expressions such as style, kind, type, etc.).

## Exceptions

Article 24 concerns the exceptions to the protection of GIs. A WTO Member State is not required to protect a GI from another Member if:

- such a GI is in conflict with a trademark registered in good faith in its jurisdiction before the adoption of TRIPS or before the GI was protected in its country of origin (Article 24.5);
- such a GI is considered generic in its

country, in other words, the term corresponding to the GI has become customary in common language as the common name for such a product (Article 24.6).

## Ongoing Negotiations of the WTO Doha Round

Two main issues affecting GIs are currently being negotiated within the WTO Doha Round: the establishment of a multilateral registry to facilitate the protection of GIs within WTO Members, and the extension of TRIPS Article 23 to all products.

Since 2008, a coalition of 108 countries (two-thirds of the WTO membership),<sup>20</sup> including the Group of ACP countries and the Group of African countries, supports the establishment of a multilateral register that would be open to all GIs and binding for all WTO Member States, as well as the extension of Article 23 to all products. These countries also support a proposal concerning the disclosure of the origin of genetic resources in patent applications. Such proposals – contained in a document presented in July 2008<sup>21</sup> – are in line with the strategic interest of ACP countries, which have great potential in high-value agricultural and handicraft products.

20 Albania, Brazil, China, Colombia, Ecuador, the European Community, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group.

21 “Draft Modalities for TRIPS related issues”, TN/C/W/52 (WTO Trade Negotiations Committee, 2008).

## 2.1.2 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

### Introduction

The Lisbon Agreement was adopted in 1958 and is administered by WIPO. Twenty-seven States are currently parties to this Agreement.<sup>22</sup>

### International Registration via the Lisbon System

To make an international registration via the Lisbon System, an AO must first be protected in its country of origin. Following this, producers can turn to the competent authority in their country for an international registration, which must be filed with the WIPO Secretariat. The AO is then published and made available on the WIPO website,<sup>23</sup> and the WIPO Secretariat notifies all parties to the Lisbon Agreement.

### Principle of Tacit Acceptance

After receiving notification, contracting parties have the opportunity within a year to declare their refusal to give protection to the AO at issue in their territory. In case of refusal, justification must be provided. For example, a contracting party might refuse to grant protection because it considers that such an AO has already acquired a generic meaning within its territory. When the WIPO Secretariat receives a refusal, it informs the competent authority in the AO's country of origin.<sup>24</sup>

Following expiration of the one-year timeframe, contracting parties that have not made a declaration of refusal (as well as those that, instead of waiting for the deadline to expire, have made a declaration of protection) must protect the AO at issue in their territory against any usurpation or imitation, even if the true origin of the product is indicated, the appellation is used in a translated form, or it is accompanied by terms such as kind, type, make, imitation, or the like. An AO that has been granted protection

22 Algeria, Bulgaria, Burkina Faso, the Democratic Republic of the Congo, Costa Rica, Cuba, Czech Republic, France, Gabon, Georgia, Haiti, Hungary, Iran, Israel, Italy, Mexico, Montenegro, Nicaragua, Peru, Portugal, Republic of Moldova, the Democratic People's Republic of Korea, Serbia, Slovakia, The Former Yugoslav Republic of Macedonia, Togo and Tunisia.

23 See "Lisbon System for the International Registration of Appellations of Origin", [www.wipo.int/lisbon/en/index.html](http://www.wipo.int/lisbon/en/index.html)

24 In such a case, the competent authority in the country of origin should inform the interested parties (association of producers, AO). They can then launch judicial or administrative proceedings against the pronounced refusal.

in one contracting party cannot, in that country, be deemed to have become generic, as long as it is protected in the

country of origin.<sup>25</sup> See Box 1 for more detail on the procedure.

## BOX 1 | The Lisbon Agreement Procedure

- i. Protection of an AO in the country of origin (in accordance with national laws and procedures).
- ii. International application at WIPO (producers cannot do that by themselves, but have to go through the national competent authority).
- iii. WIPO sends the international application to the national competent authorities in contracting parties.
- iv. One-year timeframe for national competent authorities in contracting parties to make a declaration of refusal of protection concerning the AO for which protection has been requested.
- v. If no refusal is issued by a given national competent authority (or a declaration of protection is issued) within one year, the AO for which protection has been requested must be protected within the territory of such contracting party of the Lisbon Agreement.
- vi. If a refusal is issued by a given national competent authority, the AO producers of the country of origin can challenge the refusal before a tribunal in the country where the refusal was issued and/or the two countries at issue can negotiate the withdrawal of the refusal.

### 2.1.3 Other Approaches to Secure the Protection of GIs

#### Bilateral and Regional Agreements

Regional or bilateral trade agreements represent another instrument to confer protection to GIs in foreign jurisdictions.

Within the framework of a bilateral agreement, countries normally prepare lists of GIs that will be given protection in the other country's jurisdiction. The EU is proactive in negotiating a set of bilateral agreements on GIs with key trade partners. For a long time, such agreements only covered wines and/or spirits (e.g. South Africa, Chile). Current agreements, however, cover all GIs (e.g. South Korea).<sup>26</sup>

<sup>25</sup> It should be noted in this respect that a range of improvements to the Lisbon System are currently under discussion at WIPO; see "Protection of Appellations of Origin and their International Registration (Lisbon)", [www.wipo.int/meetings/en/topic.jsp?group\\_id=45](http://www.wipo.int/meetings/en/topic.jsp?group_id=45)

As for regional agreements, it is worth mentioning the Economic Partnership Agreements (EPAs) that have been signed, or are in the process of being negotiated, between EU and ACP regions. In the CARIFORUM-EU EPA signed in 2008, both parties agreed on a “rendez-vous” clause according to which, no later than 1 January 2014, CARIFORUM and the EU will establish a system of protection for GIs.<sup>27</sup>

## 2.2 The National Dimension: An Evaluation of the Legal Options Available to National Policy-makers to Protect GIs

### 2.2.1 Laws on Trade Practices

#### Unfair Competition and Passing Off

National legislation dealing with trade practices provides an effective remedy against unlawful and dishonest business practices. The main actions in this respect are unfair competition and passing off. Generally, these means of protection are used in parallel with others; in other words, they are non-exclusive means of protection.

Unfair competition can be defined as any act of competition contrary to honest practices in industrial or commercial matters. States are responsible for estab-

lishing rules for the fair functioning of the market and for declaring as unlawful a certain number of commercial practices that mislead (or are likely to mislead) the public. The great majority of countries have provisions for unfair competition. For example, Australia, in its Trade Practices Act (1974), has a general rule forbidding trade acts that mislead the public. Article 53 of the same act forbids the use of geographical designations likely to mislead the public.<sup>28</sup>

Passing off is common in countries following the common law tradition. In this context, passing off is often considered as the basis of protection against dishonest business competitors. The passing off action can be described as a legal remedy for cases in which the goods or services of one person are represented as being those of somebody else, thereby damaging the trade, the reputation or the good faith of the latter.

#### Scope of Protection

Protection against unfair competition and passing off serves to protect traders and producers from the unauthorized use of geographical names by third parties, instead of creating intellectual property rights over those names. It is a legal instrument that aims to ensure the fair functioning of trade rather than guaranteeing the authenticity of the product.

26 On EU bilateral agreements on GIs, see the European Commission website: Trade > Creating opportunities > Bilateral relations, <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations>

27 See Fautrel *et al.* (2009) “Les indications géographiques pour les pays ACP: solution ou mirage?”

28 [www.accc.gov.au/content/index.php/html/itemId/3653](http://www.accc.gov.au/content/index.php/html/itemId/3653)

From a procedural point of view, to sue successfully on the grounds of unfair competition and passing off in order to stop the misuse of a geographical name, the plaintiff must prove that the products for which the GI is regularly used has a market (clients) and an established reputation, and that the use of the geographical name by the non-authorized entity confuses the public and causes (or risks causing) prejudice. The burden of proof is on the plaintiff. Protection accorded to GIs following a lawsuit based on passing off or unfair competition is effective only between the parties to the procedure. The entitlement to protection of a given GI has to be demonstrated every time enforcement is sought.

## 2.2.2 Pros and Cons of Protection via Trademarks

### General Features

Article 15.1 of TRIPS defines a trademark as “any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark”. A trademark provides its owner with an exclusive right to designate products and services with that trademark or to authorize another entity to use it. While the length of protection might be different from one country another (normally it lasts for ten years), a trademark can be renewed indefinitely. To qualify for trademark protection, a sign must be distinctive (i.e. able to distinguish the goods and services for which it is sought) and non-deceptive (i.e. must not generate confusion among consumers).

It is crucial in the field of GIs to recall the implications deriving from the basic principles of trademark law. On one hand, the “first in time, first in right” principle prevents producers from seeking trademark registration for a geographical name if another party has already registered such a name in good faith. In these cases, producers have only two options: they can launch proceedings to obtain cancellation of the registered trademark on the grounds that it lacks distinctiveness or is deceptive; or they can enter into negotiation with the owner of the trademark in order to buy it. Both actions can be expensive. On the other hand, in most countries trademarks are protected not only if they are registered, but also if they are used.

### Trademarks to Protect Geographical Names

Insofar as a geographical name cannot contain just the place where the product is made (descriptive name), a trademark cannot be used to protect a geographical name. However, under certain conditions, a geographical name can be registered as a trademark, for instance if the trademark has acquired a “secondary meaning” (e.g. *Schwartauer*, which refers to various products originally from a city in northern Germany), or when the mark has acquired a fanciful meaning (e.g. *Mont Blanc* for pens).

### Certification Marks and Collective Marks

Certification marks are the main tool to obtain GI protection in the USA. Certification marks indicate that the products or

services for which they are used have particular characteristics (a given geographical origin, for instance). In this regard, the certification mark can be descriptive and can be used to protect a GI without the need to prove a secondary meaning. The owner of a certification mark, who may be a private or public entity, must ensure the goods or services for which the certification mark is used possess the certified quality. To carry out this certification role in a neutral and impartial manner, the owner of the certification mark has to file, along with the application for registration of the certification mark, a detailed regulation that prescribes, *inter alia*, the characteristics certified by the mark, the authorized users, and details concerning certification and control. Every entity that complies with the standards of production as defined by the owner of the certification mark has the right to use that mark. In many jurisdictions, the owner of the certification mark does not have the right to use the mark. In principle, an action against the infringement of a certification mark is initiated by the owner of the mark. This is of the utmost importance, because the owner has to make sure the products carrying the mark have the certified qualities.<sup>29</sup> Examination of the validity of certification marks by trademark offices concerns exclusively the capacity of the owner to carry out their

certification role; there is no examination of the standard to be certified.

Collective marks indicate that given products or services were produced or commercialized by the members of an identified group.<sup>30</sup> Therefore collective marks are owned by a collective body, such as a trade association or an association of producers or manufacturers. Collective marks serve to indicate that the person who uses the collective mark is a member of that collective body. Membership in the association that owns the collective mark is, generally speaking, subject to compliance with certain rules, such as the geographical area of production of the goods for which the collective mark is used, or standards of production of such goods. In contrast to the common rule for certification marks, the owner(s) of a collective mark may use it. An action for infringement may be brought by the owner(s) of the collective mark. Here again, there is no examination of the rules of use of the trademark by the public authorities, and such rules might be very basic.

## Scope of Protection

Trademarks, collective marks and certification marks ensure the protection of geographical names based on a private initiative. In countries that have

29 As an example, the American Lanham Act of 1946 (§ 14) states that lack of control over the mark is a cause of cancellation by the Federal Trade Commission. Law cases decided that the owner “must take reasonable steps, under all the circumstances of the case, to prevent the public from being misled” (*Midwest Plastic Fabricators v. Underwriters Labs*, 1990).

30 Section 1127 of Lanham Act (USA) defines the collective mark as “used by the members of a cooperative, an association, or other collective group or organization [...] that have a bona fide intention in using the mark.”



adopted trademark legislation, GI producers must pay attention to the scope of protection. Generally, the registration of a geographical name through a mark does not necessarily prevent a third party from using it in a translated version in another language, or from using the same name with a delocalizing expression (with terms such as style, kind, type, etc).

Trademark protection requires important financial resources, mainly linked to the registration fees. This registration formality must be renewed periodically (generally every ten years). Finally, as a private mechanism, the costs of enforcement through trademarks are covered entirely by the owners. For each case of alleged violation of their rights, the owners must prove consumer confusion. The costs linked to the trial or, upstream, to the monitoring of compliance with the defined standards are covered entirely by the owners.

### 2.2.3 “Ad hoc” Laws: *Sui generis* systems

#### How are the Rights Established?

In contrast to the general means of protection described in sections 2.2.1 and 2.2.2, the third option concerns laws aimed specifically at protecting GIs. Generally speaking, protection is based on compulsory registration. However, some countries, such as Singapore, do not provide for registration: the 1998 Geographical Indications Act gives the GI automatic

protection.<sup>31</sup> This is called passive or non-registration protection. Any interested party may bring an action before the court against misleading indications.

In cases where registration is required, often a substantive examination of the product specification is carried out by public authorities.

#### Scope of Protection

Generally, under *sui generis* laws, protected names benefit from a solid legal framework. They are protected against the direct commercial use of a GI, even when the indication of origin is used with a mention of the true geographical origin or with delocalizing expressions. They are also protected against imitation and evocation.

#### How are the Rights Administered and Enforced?

Most of the *sui generis* systems that require a registration procedure provide controls for the product specification. With regard to enforcement, countries generally provide an *ex parte* framework. In other words, in a case of an alleged violation of the rights deriving from a GI, protection is provided at the request of an interested party (producer groups, associations, etc.). In some cases, public authorities have the obligation to intervene to ensure the rights are respected (*ex officio* protection is available in the EU and Switzerland). See Table 1 for a comparison of trademark and *sui generis* systems.

31 [www.wipo.int/wipolex/en/details.jsp?id=3695](http://www.wipo.int/wipolex/en/details.jsp?id=3695)

**TABLE 1 | Trademark versus *sui generis*: a comparative view**

TRADEMARK	SUI GENERIS
Need of secondary meaning to register a name (except collective and certification marks)	No need of secondary meaning to register a name
“First in time, first in right”	Possible coexistence or cancellation of previous trademark
Individual right (except collective and certification marks)	Collective right
Ten-year protection, renewal and need to use	Indefinite protection, no need for renewal
Name not shielded from “genericity”	Registered names do not become “generic”
Protection: likelihood of confusion approach	Protection: no consumer confusion test; protection against translation, imitation, evocation, etc.
Registration costs	No registration costs/single fee
Private enforcement	Private and public enforcement

## 2.3 Sui generis Laws of Particular Interest for ACP Countries

### 2.3.1 The Protection of GIs in the EU

#### The Protection of GIs for Agricultural Products and Foodstuffs

Some 1000 GIs other than wines and spirits are currently protected within the EU. With a market of 27 countries and a system that is open to foreign GIs, the EU represents an interesting market for third-country producers, including producers from ACP countries.

Council Regulation EC No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and

foodstuffs (EC, 2006) is the main legal instrument in this respect.<sup>32</sup> Regulation 510/2006 applies to agricultural products intended for human consumption listed in Annex I of the Treaty establishing the European Community. Annex I establishes an exhaustive list of foodstuffs eligible for Protected Designation of Origin (PDO)/Protected Geographical Indication (PGI) protection: beers, beverages made from plant extracts, bread, pastry, cakes, confectionery and other bakers' wares, natural gums and resins, mustard paste, pasta, and salt. Other products, including essential oils, cork, cochineal (raw product of animal origin), flowers and ornamental plants, wool, wicker, scutched flax, and cotton are also covered as they are mentioned in Annex II.<sup>33</sup>

Two definitions of GIs are provided for by Regulation 510/2006: PDOs and PGIs (see Table 2).

32 Wines with GIs are protected in the EU through Regulation (EC) No. 1234/2007 (EC, 2007b), and spirits with GIs through Regulation (EC) No. 110/2008 (EC, 2008a).

33 Salt and cotton were added to the list of eligible products following Regulation 417/2008 (EC, 2008c).

**TABLE 2 | Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs)**

<p>PDO = geographical name + product originating the geographical area + qualities/characteristics essentially linked to the geographical environment + production, processing and preparation in the geographical zone</p>	
<p>PGI = geographical name + product originating the geographical zone + quality/characteristics attributable to the geographical environment + production or processing or preparation in the geographical zone</p>	

## The Registration Procedure

Only a group is entitled to apply for registration. The “group” refers to any association of producers or processors concerned with the same agricultural product or foodstuff. For European applications, the group must introduce its request through national authorities. Third countries’ GI groups can send their application directly to the European Commission without involvement of their competent

national authority, the only requirement being the previous protection of the GI in the country of origin. In this case, the application can be submitted electronically on the European Commission website.<sup>34</sup> If third countries’ groups decide to submit an application through their national authority (this might make the overall dossier more solid), they should refer to the body regulating GIs in their country. This is generally the ministry of agriculture or the trademark office.

34 See the European Commission website: Agriculture and Rural Development > Quality policy, <http://ec.europa.eu/agriculture/quality>

The product specification is the key element of an application.<sup>35</sup> In addition, the application must mention the name and address of the applicant group and a document summarizing the product specification. Within 12 months following the application, the Commission analyzes the request and assesses whether it complies with European rules. If this is the case, the request for protection is made public in the Official Journal of the European Union (OJEU). Within six months of the date of publication in the OJEU, any person having a legitimate interest established in a Member State other than that applying for the registration, or established in a third country, can send the Commission duly substantiated objections to the registration. Once a GI is registered, there is no need for renewal. However, the Commission, or any person with a legitimate interest, may request cancellation of the registration on the grounds that, for example, compliance with the conditions of the specification is no longer ensured.

### Extensive Protection: The Rights Conferred

Regulation 510/2006 prohibits the direct or indirect commercial use of a

registered name with respect to products not covered by the registration, and also prohibits the misuse, imitation or evocation by an unregistered product. This prohibition is extended to the use of expressions such as style, type, method etc., even if the true origin of the product is indicated or if the protected name is translated.

### Enforcement by State Members' Authorities: *Ex officio* Protection

Member States should act on their own initiative (*ex officio*) in cases of violation of a GI. In this context, Member States have two obligations, as follows.

To designate the authorities responsible for the controls (public authorities or certification bodies), which must be subject to accreditation and approval certification in order to guarantee their independence and impartiality. Their role is to ensure respect for the product specification before placing the products on the market (Article 10).

To provide for legal means and notably dissuasive measures, proportional to the infringement and effective for the above-mentioned control bodies (Article 54 and 55 of Regulation 882/2004

35 According to Article 4 of Regulation 510/2006 (EC, 2006), the product specification must include at least the following information: the name of the agricultural product or foodstuff, a description of the product, a definition of the geographical area, evidence that the product originates in the defined geographical area, a description of the method of obtaining the agricultural product or foodstuff, the link between the quality or characteristics of the product and the geographical environment, the name and address of the authorities or bodies verifying compliance with the provisions of the specification, any specific labeling rule for the product in question, and any requirements laid down by Community or national provisions.

on official controls performed to ensure the verification of compliance with feed and food law, animal health, and animal welfare rules).

Because it is up to Member States to adopt measures to prevent the misuse of GIs, discrepancies may exist regarding the quality of national laws or the efficiency of their implementation from one state to another. Moreover, the frequency of official controls varies from one state to another, and from one product to another.

### 2.3.2 Protection of GIs in the African Intellectual Property Organization<sup>36</sup>

#### Introduction

Through the AIPO, which was established under the Bangui Agreement of 2 March 1977<sup>37</sup>, a uniform system of intellectual property protection was created among the AIPO Member States.<sup>38</sup> The AIPO administers and manages the protection of intellectual property, including GIs, within the territory of these States.

#### Definition of GI

Annex VI, Title I, Article 1 of the Bangui Agreement gives a very broad definition of GIs as indications that serve to identify

a product as originating from a territory or a region, or a locality within that territory, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin. Any natural, agricultural, craft or industrial product may qualify for GI protection.

#### Which Names are Excluded from Protection?

The AIPO law excludes from registration as a GI those indications that:

- do not correspond to the definition of GI as provided for in the Bangui Agreement;
- are contrary to morality or public order;
- are liable to deceive the public as to the nature, source, manufacturing process, characteristic qualities, or suitability for their purpose of the goods concerned.

#### Who Can Make a Request for Protection?

Annex VI, Title I, Article 1 stipulates that “Any producer of agricultural products or any other person exploiting natural products, any manufacturer of products of handicraft or industry, and any trader dealing in the said products” may apply for GI protection. Provided that they fulfill the conditions, foreign producers can obtain GI protection within the AIPO.

36 On the AIPO law, see Bagal and Vittori (2010) *Preliminary Report on the Potential for Geographical Indications in Cote d'Ivoire and the Relevant Legal Framework*.

37 [www.wipo.int/wipolex/en/other\\_treaties/details.jsp?treaty\\_id=227](http://www.wipo.int/wipolex/en/other_treaties/details.jsp?treaty_id=227)

38 Benin, Burkina Faso, Cameroon, Congo, Côte d'Ivoire, Gabon, Guinea-Bissau, Guinea-Conakry, Equatorial Guinea, Mali, Mauritania, Niger, the Central African Republic, Senegal, Chad and Togo.

## How to File an Application

Applications must be filed at the AIPO, and must specify the geographical area to which the indication applies and the products for which the indication is used, as well as evidence of the quality, reputation or other characteristics of the products. Finally, proof of payment of the filing fee must be provided.

## When is a GI Considered Registered?

After scrutiny by the organization of compliance with the registration conditions, if admissible by the AIPO, the registration is published in a Special Register created for GIs. This publication allows any interested party to oppose registration by giving a written statement of the reasons for their opposition. These reasons must be based on infringement of the conditions of the Agreement. Any interested third party may exercise this right within six months of publication. In such circumstances, the organization sends the statement of opposition to the applicant, who may reply, setting out their reasons. If the applicant's reply does not reach the organization within three months, their application for registration is deemed null and void. The registration is also cancelled if the organization deems the opposition to be well founded.

The organization's decision is appealable by the applicant or the opponent to the High Commission of Appeal within a period of three months starting from the notification of the decision to the interested par-

ties. In the absence of opposition within a period of six months, the GI is registered in the Special Register and receives the protection provided for in Title IV, Article 15.

## What about Irregular Applications?

Irregular requests are treated differently from inadmissible requests. An inadmissible request is rejected immediately upon filing. This is the case if the applicant is not qualified to apply for registration or if the registration was requested without meeting the filing fee requirement (Title III, Articles 9 and 10). The application is irregular if the file submitted is incomplete concerning the geographical area to which the indication applies, its products, and/or the quality and reputation ascribed to them. An irregular request will not be rejected without giving the applicant the opportunity to correct the irregularity.

## What are the Effects of GI Protection within AIPO?

GI protection is granted as an exclusive right to the group of producers using the name for commercial purposes. As a result, a GI cannot be used by third parties even if the true origin of the product is indicated or the GI is used in translation or accompanied by delocalizing expressions such as kind, type, style or imitation.

## What is the Relationship between Trademarks and GIs?

The Bangui Agreement provides that registration of a trademark containing a GI or constituted by an indication shall be refused

or invalidated if the use of an indication in the trademark for such products is liable to mislead the public as to its true place of origin. The Agreement also provides that the registration of a GI (even if literally exact with respect to the territory, region or locality from which the products originate) shall also be refused or invalidated if it suggests to the public that the products originate from a different territory.

### How Long does the Protection Last?

The Bangui Agreement does not set a time limit on protection, and there is no provision for renewal of a registered GI. That said, it is possible that registration may be cancelled or amended.

### What Happens if there is a Request to Cancel or Amend a GI?

Any interested party, competent authority or Member State may call for cancellation of a registration, provided the reasons are well founded. Likewise, one of these persons or bodies may request amendment of the registration to amend the criteria of the geographical area or the statement on products for which the indication is used, or to amend the statement about the quality, reputation or any other characteristic, that they can show should be modified. Each of these requests will be notified to the applicant, who may put forward a defense within a period set by the Court.



# PART 3:

# Operational Aspects of Establishing and Developing Sustainable GIs

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**THE OBJECTIVE** of Part 3 is to identify a number of criteria inherent to the success of the GI scheme. Without pretending to define a comprehensive and exhaustive method of setting up and developing sustainable GIs, and looking mainly at the way GIs work in practice, we have selected the following criteria:

- clear identification of links between the product and its geographical area;
- a collective approach adopted by the various stakeholders;
- ensuring quality and delivering on expectations raised by the GI;
- effective legal protection and a proactive marketing strategy.

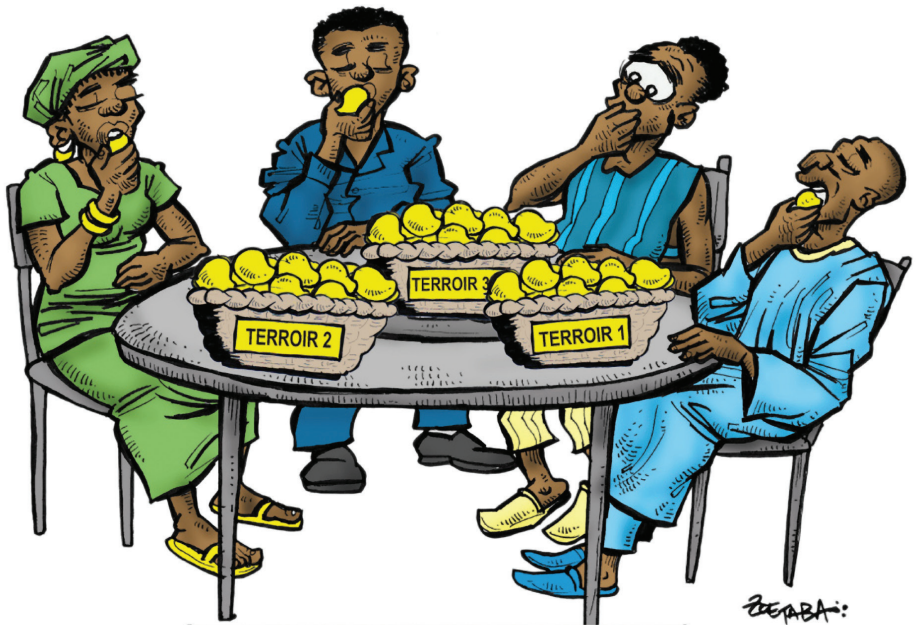
Case studies are included here for each criterion to illustrate key features from the producers' perspective.

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## 3.1 Identifying Links Between the Product and its Geographical Area

### Scarcity Makes Value

As indicated in Part I, a GI is a tool signaling a link between a given product and its geographical area. Consequently, the feasibility of a GI is determined by the clear identification of such a link. Numer-



The product of terroir 2 is truly unique,  
such a taste cannot be obtained  
anywhere else



ous facts (notably quality, characteristics and/or reputation) could be put forward to justify it. On this matter, it should be noted that GIs are not mere marketing

tools; the assessment of a genuine relationship between a product and its geographical area remains of critical importance for the overall process.

The quality and characteristics that give a product its specificity may result from the natural local resources used (climate, soils, local breeds and plant varieties, traditional equipment, etc.). These attributes confer a specificity that may be assessed from a visual, gustatory or symbolic point of view. For example, black pepper from Lampung (Indonesia) is grown in rich soils from the Lampung region, where the pepper plant is adapted to the climatic conditions. The natural factors are supplemented by the use of ancestral farming practices (shade growth, the use of organic

fertilization, the ancestral taking of cuttings) that give taste to the product. Consequently, certification of this product by a GI is currently anticipated.<sup>39</sup>

Sensory analysis is a useful tool in the field of GI to characterize one or more products (sensory profile). This characterization can provide an objective basis for claiming the originality of a product, contributing to its zoning, verifying its conformity and establishing a common vocabulary among producers, processors, traders and consumers (see Box 2).

## BOX 2 | Examples of the use of sensory analysis for product characterization

### **Bali: zoning homogeneous areas through coffee tasting – the case of Kintamani coffee**

As part of preparations for the establishment of the GI coffee Kintamani Bali (Indonesia), 100 samples were tasted. Statistical analysis of sensory, cross-agro-environmental and satellite data (mapping of production) shows that there are three categories:

- i. acid and green – traditional shade-grown coffee (forest species);
- ii. acid and fruity (preferred on average) – high altitude, variety HT (Hybrid of Timor) over-represented, under shade of citrus, plants generally looking strong;
- iii. bitter and full-bodied – low altitude.

(Source: Aguilar et al., 2011)

### **Mali: the case of Bandiagara versus Niono shallots**

In Mali, Bandiagara shallots grown on the Dogon plateau (Bandiagara being the capital of this region) is competing with Niono shallots (grown in the irrigated area of the Office du Niger). A GI project is trying to take advantage of the good reputation of Bandiagara shallots. A sensory analysis was carried out, and demonstrated a significant difference in taste and texture.

(Source: Meyer, 2011)

39 For more information on the product, see Fournier *et al.* (2009) “Le développement des indications géographiques au sud”.

Reputation can derive from local know-how applied to production, traditions and competencies that has been passed from generation to generation. Reputation may be asserted by consumer surveys. For example, Kampong Speu palm sugar has been produced for a long time in the Kampong Speu province of Cambodia, and over time it has acquired a reputation on the market. At the GI settlement stage, the know-how of producers was simply formalized in the product specification.<sup>40</sup>

Practical experience shows that scientific or historical assessments help justify the links between the quality, characteristics

and reputation of a given product and its geographical area, and turn intuitive particularities into authentic specificities. In this context, the assistance of agricultural research institutions plays an important role. For example, since its creation in 1998, the National Center for Agricultural Research of Côte d'Ivoire (Centre National de Recherche Agronomique, CNRA) has carried out various research studies, some of which determine the specific quality of agricultural resources in Côte d'Ivoire. Research institutions play an active role in demonstrating the unique features of a GI (e.g. INRA, France) or acting through international cooperation programs (e.g. CIRAD).

### BOX 3 | Two handicrafts GIs (India) - links between the product and its geographical area

#### Kancheepuram silk

One of the most highly reputed Indian GIs in the domain of textiles, the only non-agricultural GI quoted during parliamentary debates on the GI Bill is “Kancheepuram silk”. It designates silk woven in the ancient, royal town of Kancheepuram, famous for its temples, situated in Tamil Nadu, south India. Kancheepuram saris are in great demand for marriages. The GI application describing the production technique consists of ten pages of densely written script. The production method is characterized by the use of thick silk yarn, which gives the fabric its heavy weight and bright colors. One of the characteristics is the contrasting colors between the body of the sari and the approximately 10 cm top and bottom borders. The color of the pallu, the part of the sari embellished with sophisticated motifs that hangs behind the shoulder, is the same as that of the borders. The specificity of Kancheepuram sari also lies in the use of silver, gold and red silk threads called zari, which determine the cost of the sari. To obtain different colors for the body and the borders, a special technique is used that involves using two extra shuttles on each side of the loom, in addition to the shuttle used for the main body of the sari. In order to distinguish a real Kancheepuram sari from a fake, one has to check behind the sari where the threads change color at the border and look for

40 See Vandecandelaere et al. (2009) *Linking People, Places and Products*, p. 100, case study no. 2.

the clearly visible knots/loops between threads. It is generally agreed that fake Kancheepuram saris are made of thinner silk yarn, have only one border instead of two, and the zari does not contain gold.

Today, there are 23 silk cooperative societies (and 51 cotton cooperatives societies), of which about 18 are very large. Most of these societies are now run under the control of the Government of Tamil Nadu. The first one was a symbol of fight for freedom under communism doctrine. Out of 40,000 weavers involved in Kancheepuram silk, 15,000 are silk weavers. Around 90% of weavers work for government cooperatives, which help them to get the raw material and sell the product. Around 13,000 weavers (of both silk and cotton) get continuous employment from cooperatives. The Department of Textiles of the Government of Tamil Nadu has local representation in Kancheepuram to help producers. Also, a weaver service center there, financed by the Government of India (through the Central Silk Board), gives technical help to weavers and employs designers who create new designs for the weavers. The private independent weavers (10,000 both cotton and silk) work for 200 manufacturers, who provide them with materials and later sell their products.

[Source: Delphine Marie-Vivien, Researcher, CIRAD, L'Unité Mixte de Recherche (UMR) Innovation, France]

### **Pochampally ikat**

Pochampally ikat is a fabric made by a process of tying and dyeing the yarn prior to weaving, and is mainly cotton, silk, or a combination of both. It originates in the geographical region of the Nalgonda and Warangal Districts in the State of Andhra Pradesh in India. These products have single, combined or double ikat<sup>41</sup> in several variations, ranging from the use of diamond or chowka (a diamond within a square) designs, diagonal or square grids in which geometrical, floral figurative motifs are woven, as well as striped or chevron forms and other abstract variations.

The uniqueness of Pochampally ikat is epitomized in the design,<sup>42</sup> which is usually a chowka or a derivative thereof. Special human skills are exemplified in the design and the traditional dyeing method, which entails several processes and involves meticulous and precise teamwork; human skill is one of the important links of this product to its geographical location. These processes include: tying warp threads and dyeing them as per the visualized pattern; loading the loom with dyed warp thread; marking off the pattern for the tying and dyeing

41 The term “ikat” stems from the Malay-Indonesian expression *mangikat*, meaning to bind, knot or wind around.

42 The various patterns can be observed at [www.pochampally.com](http://www.pochampally.com)

of weft threads; and reeling and loading the dyed weft thread into fly shuttles for weaving into the visualized pattern. This makes the product unique, and it is the first product in the traditional sector to be granted a GI in India.

The Pochampally Handloom Weavers' Co-op Society Ltd, an autonomous society registered under the Societies Act 1860, and Pochampally Handloom Tie & Dye Silk Sarees Manufacturers' Association are the two conspicuous bodies responsible for the production and marketing of Pochampally ikat. There are currently 30,000 weavers<sup>43</sup> engaged in the tie-and-dye process. The total sales value is ₹15.5 million, with 1 million unit products per year. Cotton saris are priced at ₹25-30 per sari; silk saris are ₹40-120 per sari. Dress materials in silk are priced at ₹7-10 per meter.

(Source: K. Subodh Kumar, GI consultant, India)

## 3.2 A Collective Approach

### Unity is Strength

While a collective organization is not a requirement set forth by the international agreements on GIs, in practice it is a key factor for the success of GIs. This applies not only to the relations among internal stakeholders directly involved in the process (horizontal cooperation), but also to their relations with external actors (vertical cooperation).

### Horizontal Cooperation

Once the links between quality and terroir are identified, the credibility of the GI process relies on identification of the community in charge of the rights and duties associated with the use of a GI, as well as on good governance within that community.<sup>44</sup>

Organizations of producers, associations, consortiums, cooperatives, trade union congresses, interprofessional associations, and agricultural professional organizations are a few illustra-

43 Overall, there are three types of weaver in Pochampally: those working under a cooperative society, or under a master weaver, and independent weavers.

44 Governance is defined as a neutral "concept referring to the complex systems covering mechanisms, processes, relationships and institutions through which individuals and groups articulate their interests, exercise their rights and obligations, and mediate their differences" (Vandecastelaere *et al.*, 2009, *Linking People, Places and Products*, p. 187).





tions of a collective capacity to manage the GI process.<sup>45</sup> These structures may include stakeholders at different stages of the chain, including producers, raw

material providers, primary and secondary processors, and, should the case arise, middlemen and distributors. For example, the Tea Board of India is a

<sup>45</sup> In 2001, Kintamani coffee (Indonesia) was selected as a pilot product for certification in Indonesia. A group of defence for the GI was created to handle the GI process. The official request was introduced in 2007 and the GI Kintamani coffee has been officially protected in Indonesia since 2008 (example from Fournier *et al.*, 2009, "Le développement des indications géographiques au sud").

“Statutory Commodity Board” attached to the Ministry of Commerce. It is termed “statutory” as it was established under law at the time when India attained independence to effectively develop and promote tea. The Tea Board is managed by a committee comprising representatives from Central and State Government ministries, Members of Parliament and various professionals (farmers, producers, etc.); these members are appointed by the Central Government. Regardless of its form, the sustainability of the collective organization should be ensured to create the capacity to manage the GI product efficiently. To this end, the internal actors need to secure:

- a widely acknowledged decision-making process;
- the establishment of dues, the amount of which should be democratically defined – good practice consists in differentiating membership fees (low and unique) from payment for services (proportional to the volumes produced);
- conflict-resolution mechanisms.

In this way, the producers do not lose their decision-making power by discharging the management duties of the GI product.<sup>46</sup>

Good governance is of particular importance when the product specification is

being drafted. The specification defines the product through the standards that are to be shared and enforced by the whole group of users, yet each stakeholder has a specific view of the product and its evolution. Therefore the motivations of each actor involved should be considered in order to reach consensus.<sup>47</sup> The product specification incorporates at least the chosen geographical name; the description of the product; the demarcation of the area of production;<sup>48</sup> the description of the process; the proof of specific qualities; and the characteristics and/or reputation linked to its origin. Any lack of consensus between the different beneficiaries during the writing of the product specification might result in decisions integrating only a minority, and could be seen as illegitimate by other stakeholders.<sup>49</sup>

Thus, because the codification process exposes legitimate beneficiaries of the GI to potential exclusion, it should focus on the aspects that determine the specificity and originality of the product. Collective negotiation is essential for the adoption of the product specification; it requires a crucial phase of consultation and deliberation inside the group. This phase is important as the code of specification determines the possibilities to

46 The FAO guide proposes a practical index on potential conflicts and solutions enforced to resolve them (Vandecastelaere *et al.*, 2009, *Linking People, Places and Products*, p. 93).

47 The FAO guide proposes a practical index on forecasting the expectations of the different protagonists (Vandecastelaere *et al.*, 2009, *Linking People, Places and Products*, p. 47).

48 Note that the defined area is not necessarily an administrative limit. This demarcation allows relevant differentiation between the area of production of the GI and the adjoining zone.

49 There are examples of political or even social conflicts that have occurred due to geophysical or capacity-related exclusion of some producers from a GI.



improve the quality of the product and to adopt innovative practices. For example, the FNC (Colombian Coffee Federation) provides each member with a fair voting right: one producer = one vote.<sup>50</sup>

## Vertical Cooperation

It is an essential step to establish partnerships with external actors such as national authorities, cooperation organizations (national or international), NGOs, etc. Those partners may cover many areas, including legal expertise, impact studies, management, training of members of the GI organization, and quality issues.

National public authorities (e.g. states, local governments) may play an important role in the promotion of suitable legal and institutional frameworks for the protection of GIs.<sup>51</sup> Their interest in the GI process derives from the capacity of GIs for a positive influence on the country/region and, as a consequence, to allow the expansion of industries such as tourism. It is important that public entities encourage projects for the settlement of GIs, modernize their

national institutions, and initiate inventories of potential GI products. For example, in Cambodia, following the initiative of the government and notably that of the Ministry of Trade,<sup>52</sup> GIs have expanded rapidly. Interestingly, the government has settled on a project for the development of GIs in Cambodia in relation to its accession to the WTO in 2004. The national strategic development plan for 2006 to 2010 defined sectoral strategies implemented by different ministries. In April 2010, this government initiative has allowed for the adoption of two GIs in Cambodia.<sup>53</sup>

International and regional organizations can facilitate the GI process. The more cohesion there is among producers, the more efficient will be the results produced through the work of external partners. For example, following a seminar organized in 2000 by WIPO in collaboration with the Government of Guinea, a pilot project for the promotion and protection of GIs has been approved for eight products originating in four African countries.<sup>54</sup> This project was initiated by AIPO in partnership with WIPO, the French National Industrial Prop-

50 Example from El Benni and Reviron (2009) *Geographical Indications: Review of Seven Case-studies World Wide*, p. 33.

51 Positive results have been achieved when the settlement of a GI is done through a National Support Plan for GIs. Additionally, the settlement of a national board (like the members of AIPO, such as the Inter-ministerial Commission for the Promotion and the Protection of GIs in Côte d'Ivoire) has proven to be efficient in terms of representing public and private interests that may come into conflict in the context of GIs.

52 The public institutions mobilized for GI projects vary from one country to another. Principally, these are the ministries of intellectual property; of agriculture; of economic affairs; of craft industries; and of health. At the infra-state level, local government may play a role.

53 Anon (2010) *Les Indications Géographiques Protégées au Cambodge*, pp. 1, 4.

54 These types of pilot project allow the implementation and evaluation of the GI plan to be used as a model for other local processes.

erty Institute (Institut national de la propriété industrielle), INAO and CIRAD. Within this framework, INAO has provided a technical index describing products potentially eligible for GI status in 2001, and the AFD has mobilized a total amount of €1 million to carry out the activities over a four-year period.<sup>55</sup>

In conclusion, this collective approach is of particular interest for isolated producers and small organizations that do not enjoy enough critical mass to manage the GI process themselves. Consensus between producers increases the credibility of the process when it comes to soliciting partnerships with external actors. In this context, collective rules should be perceived not as a constraint, but as a condition for efficiency; their benefits will be highlighted at the stage of creating and distributing the added-value price within the field. The value created through marketing activities should be distributed fairly in the field and between the different actors involved in production, transformation, and commercialization in order to pay each stakeholder according to their contribution to the value-creation pro-

cess. In theory, the development of a collective approach should increase the chances of fair redistribution of the premium price generated by the GI. For example, The FNC (Colombian Coffee Federation) buys from producers, processes the coffee, sells it to the domestic market, and acts as an exporter. If producers are registered for a Specialty Coffee Program, a mark-up is paid to them when they deliver coffee to the sales points. To stabilize producers' incomes, the FNC has created a National Coffee Fund, which determines the domestic price for coffee. Financial resources accumulated during times of high world prices are used to support domestic prices when world prices are low.<sup>56</sup>

Finally, the differentiation of the product based on a GI exposes it to usurpation by non-authorized subjects willing to take advantage of the product's reputation and to "intercept" part of the premium price. The effective enforcement of legal protection ensures the return of the added value to the legitimate producers.

55 For more information, see Edou-Edou (2008) "La protection des indications géographiques et des appellations d'origine en Afrique", pp. 30-31.

56 See El Benni and Revirón (2009) *Geographical Indications: Review of Seven Case-studies World Wide*, p. 34.

## BOX 4 | Argane oil (Morocco) - strong engagement of stakeholders

Argane oil comes exclusively from the fruits of the argane tree (*Argania spinosa*), which is endemic to Morocco. It is processed by women in the south-west of Morocco (the Souss-Massa Draâ and Essaouira regions) according to precise methods of crushing, roasting and pressing the fruits that derive from ancestral know-how. Historically, the oldest known documentation of the tree dates back to the 13th century (Ibnou Redouane and d'Ibnou Al Baytar, 1248).

Argane oil is produced within the argane tree forest that covers some 820,000 ha. In 1998, this area was listed as a "Réserve de la Biosphère Arganeraie" by the State of Morocco and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Administratively, it encompasses rural as well as urban municipalities distributed around Taroudant, Essaouira, Tiznit, Agadir-ida outanane, Inezgane-Ait melloul, Chtouka ait baha, Safi, Chichaoua and Guelmim. The entire list of eligible municipalities is included in the product specification of Argane.

Argane oil is essentially used for human consumption and cosmetics. The cooperatives' production reflects two different schemes for processing, depending on the nature of the final product; the handcrafted oil (made with a granite grinding stone) is extracted from roasted almonds; non-roasted oil is extracted from raw almonds. Contemporary research has shown that argane oil possesses, among other properties, the ability to fight rheumatism, preserve the skin's vitality, moisturize and prevent aging.<sup>57</sup>

In 1996, the first cooperative for the production and commercialization of argane oil, Amal (literally translated as "hope"), was created. From then on, many more cooperatives have started appearing. The different units were first gathered into "Groups of Economical Interests", and later into Unions of Cooperatives, before being included within the framework of an interprofessional structure, Association Marocaine de l'Indication Géographique de l'Huile d'Argane (AMIGHA).<sup>58</sup> This association, which originally was only in charge of accessing the PGI "Argane",<sup>59</sup> grew out of necessity to effectively enforce the code of conduct and handle the certification procedures.

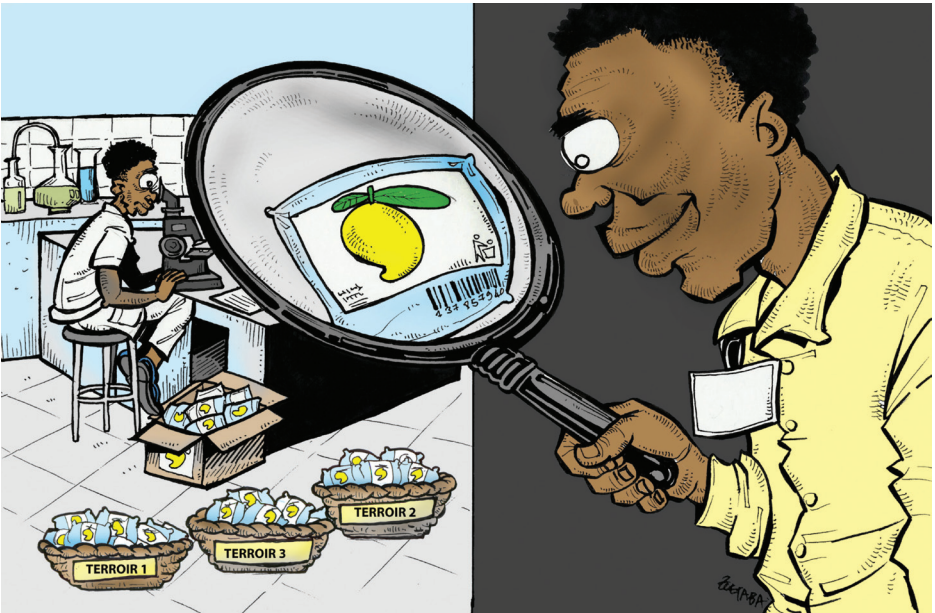
57 Charrouf, Z.; Adlouni, A. (2008) *Atlas de l'arganier et de l'arganeraie*.

58 AMIGHA website, [www.argane-igp.org](http://www.argane-igp.org)

59 See Argane Product Specification, page 10: [www.argane-igp.org/cahier%20des%20charges1.pdf](http://www.argane-igp.org/cahier%20des%20charges1.pdf)

### 3.3 Ensuring Quality and Delivering on Expectations Raised by the GI

Freedom = Responsibility



As noted in Part 1, GIs represent a flexible tool that can be easily adapted to local needs. Through GIs, producers have a unique chance to define the standards of production for themselves, but such freedom comes with responsibility; rules contained in the product specification must be respected. If they are not, the trust of consumers, which takes years to be established, will be lost.

Therefore the issue of controls is crucial. While drafting the product specification, producers might adopt a control plan.<sup>60</sup> Primarily, this concerns the establishment of simple tools to count the number of stakeholders involved in the process. This first step, the so-called “self-control phase”, represents discipline that producers impose on themselves. Secondly, trained members (internal inspectors) carry out internal control of

<sup>60</sup> The control plan is defined as “a specific, adaptable document that lays down how compliance with the various rules in the CoP is to be checked. It is a management tool identifying the control points constituting the critical stages in the production process and the means of verifying their conformity with CoP requirements”. See Vandecandelaere et al. (2009) *Linking People, Places and Products*, p. 186.

the enforcement of the code of specification by GI users. The importance of the collective approach appears clearly in this context, as it implies that the operators accept this control and, in case of violation of the rules, comply with the collectively defined sanctions. These sanctions may be economic (e.g. fines, prohibition on using the collective denomination, downgrading of the product) or social (e.g. exclusion from the group). The internal control conditions influence, on the one hand, producers' respect for and maintenance of the adopted standards, and on the other hand, the reliability of the quality expected by consumers.<sup>61</sup> In Cambodia, the control and traceability tools put in place have allowed producers of pepper of Kampot to reclaim market shares from intermediaries who had used the name "pepper of Kampot" on pepper from an undetermined origin.<sup>62</sup>

Finally, assuming the structure has enough financial capacity, the GI organization may appeal to an external control body that should be independent and impartial (that is, accredited through the International Organization for Standardization's standard ISO 65, delivered by accreditation bodies).<sup>63</sup> This impartiality gives the external control body the last word regarding monitoring of the product specification and allows for corrective measures if needed. It should be noted that the enforcement of external control is required in some territories. This is the case for the European legislation, which requires that control of the enforcement of the product specification is done, before accessing the market, by one or more public authorities appointed in the territory where the GI originates, and/or by one or more certification bodies complying with the ISO 65 standard (Article 11 of Regulation 510/2006).<sup>64</sup>

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61 For an example of a control plan see *ibid.*, p. 78.

62 Anon (2010) *Les Indications Géographiques Protégées au Cambodge*, p. 8.

63 These bodies may exist nationally (for example, the South African Bureau of Standards); or accredited according to the ISO Standard by an international organization for accreditation (for example, the International Accreditation System). For more information on accreditation bodies, see Bureau International des Poids et Mesures: Organismes d'accréditation, [www.bipm.org/fr/practical\\_info/useful\\_links/accr.html](http://www.bipm.org/fr/practical_info/useful_links/accr.html)

64 If no national control body exists, it is still possible to resort to external certification and control bodies, which may be costly. Therefore an internal control structure is of the utmost importance for producers. In Côte d'Ivoire, the body in charge of control is "Codinorm", created in 1992. For more information see the ISO website, L'ISO > Membres de l'ISO > Côte d'Ivoire (CODINORM), [www.iso.org/iso/fr/about/iso\\_members/iso\\_member\\_body.htm?member\\_id=1674](http://www.iso.org/iso/fr/about/iso_members/iso_member_body.htm?member_id=1674)

## BOX 5 | Darjeeling tea (India) – a compulsory system of inspection and monitoring

The initiative to use the Indian subcontinent as a plantation is ascribed to the British colonialists of the early 19th century. According to records, the first commercial tea plantations in Darjeeling were established in 1852. Over time, tea from Darjeeling, which is cultivated in the mountainous area of the Darjeeling region in the Indian State of West Bengal (17,500 ha of production), has acquired a worldwide reputation.

The geographical environment and processing methods give the Darjeeling tea a high origin-related quality and a unique character. The particular environmental factors of the Darjeeling region – very high humidity in the plantation areas, extensive rainfall (3000 mm per year), loamy soils, the temperature range, and the steep drainage gradient of the plantations – all contribute to the tea's features. Authentic processing of the tea involves manual harvest of green leaves before sunrise and use of the so-called “orthodox method” (also known as the “CTC method”: crushing, tearing and curling).

Even though the tea industry is governed by the private sector, it is statutorily regulated by various legislations that culminated in the Tea Board Act of 1953. This regulatory framework established the Tea Board of India (TBI), which administers all stages of tea cultivation, processing and commercialization. The TBI controls and manages all the tea that is produced in India. It wields considerable regulatory power, and is involved in every aspect of production, including pricing, marketing and quality control on a non-trading body, and operates on a not-for-profit basis. It falls under the jurisdiction of the Ministry of Commerce and Industry, and its members are nominated by the Indian Government. The members consist of representatives from the entire industry. Tea estate owners, workers, exporters, packers, and internal traders are all represented, in addition to the prescribed members from central and provincial governments, and the three Members of Parliament.

The TBI ensures that all tea sold under the “Darjeeling tea” GI is cultivated, grown or produced in one of the 87 gardens within the defined geographical area that have been registered with the TBI. The tea must also have been processed and manufactured in a factory located in the defined geographical area, in accordance with certain stipulated methods. When expert tea tasters later taste it, it must have the distinctive and naturally occurring organoleptic characteristics of typical Darjeeling tea in terms of taste, aroma and mouth feel. Alongside the TBI, tea producers have united and established their own forum, the Darjeeling Tea Association (DTA),<sup>65</sup> which focuses on the legal protection

65 See the website of the Darjeeling Tea Association, [www.darjeelingtea.com](http://www.darjeelingtea.com)

of the geographical name. The Darjeeling tea plantations are structured as commercial enterprises and managed by “planters” who are members of the DTA (formerly known as the Darjeeling Planters Association). In 2006, DTA's membership comprised 67 planters spread over 83 plantations. All the planters are in the process of becoming members, which will boost the effectiveness of the association, especially with regard to land issues, as the farmers do not own land that is leased from the State.

In 2004, Darjeeling tea became the first protected Indian GI under the scope of the Geographical Indication of Goods Act (1999). In order to prevent trading of tea that does not originate in any of the 87 licensed plantations, the TBI has established a compulsory system of inspection and monitoring of the supply chain, which precedes granting of a right to use the GI Darjeeling tea. Within the framework of this compulsory certification system, the origin and authenticity of the tea is examined. This procedure parallels that of the Tea Control Order of 2000, under which certificates of origin are put on tea exports.

Moreover, since 1998, an agency called Compumark has been responsible for global monitoring of conflicting use of the word “Darjeeling”, by appointment of the TBI. This initiative is of the utmost importance because, while genuine Darjeeling tea enjoys a favorable international reputation, trade in non-genuine Darjeeling tea blends severely risks destroying the legitimacy and distinctiveness of the GI. A request to register Darjeeling tea as a PGI in Europe has been filed, and protection under certification and collective trademarks has been obtained in various countries where the product is exported.

### 3.4 Effective Legal Protection and Proactive Marketing Strategy

#### Better Safe than Sorry

Obtaining protection at the national level is an important step, and allows GI producers to invoke the international protection provided by the TRIPS Agreement. In addition, protection in leading export markets brings a supplementary and important guarantee. For example, the Coffee Industry Board of Jamaica has engaged in the registration of Jamaica Blue Mountain coffee in

almost 51 countries, which reduces the risks of misuse.

Despite obtaining a title deed on a given territory, monitoring the market remains necessary for products that export significant volumes. To this end, some groups have hired international monitoring bodies. Initially, bilateral agreements are negotiated between the State where the GI originates and another State or group of States. These treaties may be a window of opportunity for solving the aforementioned





issues, or for granting greater protection on a given export market. Because of this, it is important to consider their existence.

Market analyses help to classify consumers by category (e.g. age, profession, purchasing power) and to define the appropriate marketing operation for each of these categories. It is possible that niche markets will be discovered at this stage.<sup>66</sup> In practice, this leads to adaptation of the product to contemporary ways of consumption, and to achieving a memorable position in consumers' minds

by the use of a logo and special packaging that is associated with the certification. It also leads to appraisal of the cost-quality ratio, and agreement on the places where the product should be marketed. Nothing prevents operators from elaborating their marketing strategy before protection of the GI is officially granted at the national level. Indeed, adopting a common marketing strategy, which would define the common identity of the GI, presents a great opportunity for producers in common economies of scale in developing countries.

66 Defined as a "small but profitable segment of a market suitable for focused attention by a marketer. Market niches do not exist by themselves, but are created by identifying needs or wants that are not being addressed by competitors, and by offering products that satisfy them" ([www.businessdictionary.com/definition/market-niche.html](http://www.businessdictionary.com/definition/market-niche.html))



## BOX 6 | Café de Colombia (Colombia) - a producers' group proactive about marketing and legal issues

The Jesuits began growing coffee in the Santander region of Colombia in 1732, and later extended the culture to the southern parts of the country. By the mid-1800s, coffee cultivation had also reached the western part of Colombia. Today, approximately 500,000 producers cultivate 900,000 ha of coffee.<sup>67</sup> Only the Arabica species is cultivated in the Colombian Andes. The quality and reputation of the coffee grown in Colombia derive not only from natural factors, but also from the tireless efforts of generations of coffee growers to maintain and improve their production methods. Colombian coffee obtains its quality from the Arabica varieties used; the particular geographical location of the trees; the altitude at which they are grown; the average temperature and climate conditions; and the soil. All these factors help confer on the final product its specific physical and organoleptic properties. Moreover, the natural conditions compel farmers to harvest manually and in a selective manner, because flowering and rains are not regular. Each tree is harvested several times a year. Once harvested, the coffee undergoes a number of processes on the individual farms, including depulping, washing and drying. As a result of these processes, an outstanding coffee is obtained that is described as mild, of a clean cup, with a medium to high acidity and body and a pronounced and complete aroma. It is a balanced coffee with a sensory profile of excellent quality.<sup>68</sup>

The product specification defines the geographical area in two ways. Administratively, the geographical zone covers certain enumerated departments.<sup>69</sup> The regions concerned also have to meet required conditions in terms of longitude, latitude and altitude.<sup>70</sup> The product commercialized under the protected GI "Café de Colombia" in Europe must originate 100% from the defined growing zone, be produced from the approved Arabica varieties, harvested

67 Information from Vandecandelaere *et al.* (2009) *Linking People, Places and Products*, p. 73, case study no. 7.

68 See the code of conduct of Café de Colombia, submitted to the European Commission and available at the DOOR database website, European Commission website: Agriculture and Rural Development > Agriculture and food > DOOR > Denomination Information, <http://ec.europa.eu/agriculture/quality/door/registeredName.html?denominationId=176> (also at [www.cafedecolombia.com](http://www.cafedecolombia.com))

69 The following departments are included: Antioquia, Arauca, Boyacá, Caidas, Caqueta, Casanare, Cauca, Cesar, Chocó, Córdoba, Cundinamarca, la Guajira, Huila, Magdalena, Meta, Nariño, Norte de Santander, Putumayo, Quindío, Risaralda, Santander, Tolima and Valle.

70 1°00' to 11°15' north and 72°00' to 78°00' west, at altitudes ranging from 400 to 2500 m above sea level; see Agritrade (2009) *Coffee: Trade Issues for the ACP*.

through selective methods, wet milled in post-harvest processes, and comply with minimum quality regulations to be exported.

In 1927, the Federación Nacional de Cafeteros de Colombia (FNC) was created to organize the producers and promote the quality of coffee through research, enforcement of quality standards, and common efforts to improve the processing. Today, around 500,000 coffee farmers are represented by the FNC. The FNC remains essential for the sector, in particular because of its promotional activities, as well as its efforts to monitor all stages of production until the coffee reaches the domestic market or is exported. This ensures the legal protection of the geographical name.

Quality control begins with Cenicafé, the FNC's research center, where all botanical varieties and post-harvest processes are evaluated. This knowledge is transferred to coffee growers through a 1500-strong extension service. Once farmers, whose data are kept in the "Sistema de Información de Cafetero" (SICA), reach over 500 purchase points operated by cooperatives, their coffees are analyzed for their physical and sensory characteristics. Through dry milling, coffees are tested again to make sure they comply with export standards. These are verified by Almacafé, the body in charge of approving every export lot. Almacafé operates with ISO accreditations for competence (ISO 17025) and impartiality (ISO 065). The FNC is also involved in promotion efforts, including the marketing campaign related to "Juan Valdez".<sup>71</sup>

In December 2003, the FNC filed a request to protect the name Café de Colombia as a *denominación de origen* (DO) in Colombia. By its Decision No. 4819 of 4 March 2005, the Superintendencia de Industria y Comercio (Trade and Industry Monitoring Body) approved the application. To fight usurpation more effectively, numerous entities assist the FNC in monitoring the use of the DO on the market, including SICA.

Given its high reputation, Café de Colombia is protected in various foreign jurisdictions where the product is exported. Café de Colombia is registered as a certification mark in the USA and as a PGI in the EU. In fact, it was the first non-European GI registered within the EU.<sup>72</sup>

71 See [www.juanvaldez.com](http://www.juanvaldez.com)

# CONCLUSIONS

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What are the main conclusions to be kept in mind by producers and policy-makers in ACP countries who are interested in the GI scheme?

- First, the link between a product and its geographical origin is among the most important factors in the GI system. From this link arise many of the unique qualities and characteristics given to it by the local environmental and human factors. Without such a link, there cannot be a GI.
- From generation to generation, knowledge about cultivation and production is passed down, protected and improved. It is these people, with a deep connection to the product, who elaborate the product specification and formalize their knowledge to obtain official GI status. Without such collective cooperation, it will be hard to establish a viable GI.
- In addition to a link with a specific geographical area and a collective organization, the establishment of a GI requires a means of ensuring the requirements in the product specification are met in order to deliver an authentic product to consumers. This can be done through monitoring bodies. It takes years to build up a good reputation - but it can be destroyed in a matter of minutes.
- The product must also be marketed to viable buyers so that producers can be adequately remunerated for the added costs of maintaining a GI.

All of these prerequisites for a GI must be achieved in a sustainable way so that it is possible to continue making the product well into the future.

Legal protection for GIs varies, depending on where the product is produced and sold, and the international trade treaties in place between the concerned countries. To ensure adequate legal protection for GIs, the involvement of national public authorities is crucial. It is clear that more solid protection is ensured in those countries where a certain level of involvement of national authorities in the protection of GIs is required by law. In this respect, practice demonstrates that sui generis systems to protect GIs respond much more to the needs of producers than legal frameworks based on trademarks (including certification and collective marks).

Finally, GIs can be defined as a voluntary standard, in the sense that they allow local producers to convey valuable information to consumers concerning the product and its traceability. However, contrary to other private voluntary schemes, where standards are generally defined by the buyers/retailers, GIs allow producers to continue traditional practices of production in ways they have chosen for themselves. Not only does the GI scheme provide a customizable approach that can be adapted to the particular conditions

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of each product, respecting traditional methods and preserving important environmental resources, it also plays on the strengths of developing countries in the areas of agriculture and handicrafts. Consumers, too, are guaranteed a product of the highest quality, while the producing country as a whole benefits from the associated boost in tourism and development.

While GIs in ACP countries might be seen as being still in an embryonic stage, recent initiatives show that producers and governments in several ACP countries are strongly engaged. It is hoped that this manual will encourage other ACP stakeholders to explore further the challenges and opportunities of the GI approach.

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oriGIn is a global alliance of producers of geographical indications, representing some 250 associations and over 2 million producers from more than 40 countries.



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