

GEOGRAPHICAL INDICATIONS – Much Expectation yet No Law in Sight for Kenya



Kenya's coffee is a preferred beverage of many worldwide. Kenya's tea is equally brewed in many households and restaurants all over the world. The sad news is that it appears to be quite some time before these major exports (among others), will be registered as Kenyan brands under what is known as geographical indications or simply GIs.

A geographical indication can be defined as “*a designation which identifies certain qualities or other characteristics or the reputation of a particular product to a specific geographical locality*”. Protection for GIs is provided under articles 22 to 24 the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Article 22 of the TRIPS Agreement defines GIs as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a give quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”. The Paris Convention and Lisbon Agreement also provide for protection of GIs. GIs are essentially used as a marketing tool. They are intended to

“designate product quality, highlight brand identity and preserve cultural traditions”.

In Kenya, the search for GIs legislation has been ongoing for a long time. From as early as the year 2001, proposals for draft GIs legislation have been debated by various stakeholders in the country. The Geographical Indications Bill 2007 is still pending. In January 2006, the Kenya Industrial Property Institute (KIPI) sent a proposal for a technical cooperation project in the field of GIs to the Swiss Federal Institute of Intellectual Property. After a feasibility study by an external consultant, the Board of Directors of the Swiss Federal Institute of Intellectual Property (IPI) approved a proposal for a technical cooperation programme between the two countries in December 2008. According to a memorandum of understanding between the two partners was signed in 2009, the project will be carried out in three (3) main phases.

It is hoped that the co-operation between the two countries will help overcome some of the problems developing and least developing countries (LDCs) face in setting up GIs. One challenge facing developing countries in setting up GIs is the cost element. There needs to be a careful balance between the costs of protection of a GI against its profitability. According to the Organization for an International Geographical Indications Network (OriGIn) Secretary General Massimo Vittori: “*there are costs involved in setting up a GI, notably to define specifications, and that would represent a cost for developing or least developed countries, which would need financial assistance, for example, to*

create producers associations.” Other challenges developing countries and LDCs face are in regard to costs of establishment of the link between origin and product characteristics, continuous marketing efforts, quality control, compliance with foreign sanitary requirements and GIs administrative systems.

Protection of GIs is a controversial subject, particularly within WTO. There are those who even question the notion that GIs on their own, can sufficiently provide significant incentives for building markets or even access to foreign markets. As debate rages within WTO; as to whether to extend the additional protection offered to the GIs of wines and spirits in Article 23 of the TRIPS Agreement to other products; such as foodstuffs and crafts, it is hoped that the TRIPS Council will speedily resolve the matter. In the meantime, the wait for Kenyan GI legislation continues.



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