Increasing Revenue in Developing Nations through Intellectual Property Rights: Why a Diversified Approach to Intellectual Property Protection with a Focus on Geographical Indications Is the Best Method

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INCREASING REVENUE IN DEVELOPING NATIONS THROUGH INTELLECTUAL PROPERTY RIGHTS: WHY A DIVERSIFIED APPROACH TO INTELLECTUAL PROPERTY PROTECTION WITH A FOCUS ON GEOGRAPHICAL INDICATIONS IS THE BEST METHOD.

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I. INTRODUCTION

Have you ever wondered why the French Champagne you drink costs more than sparkling wine, even though the two are similar, or why a cup of Ethiopian Sidamo coffee from Starbucks costs more than a can of Folgers? Producers would have you think it's only because of taste and quality, especially because of traits inextricably linked to their land of origin, but the secret lies with intellectual property rights. On the market today several goods are protected by intellectual property designations such as trademarks, certification marks, collective marks, and geographical indications. These property rights increase the price of IP right holder products through distinguishment, which in turn, creates monopolistic competition. What does that mean? Essentially, it is all about branding and control. When consumers believe a good possesses a certain desirable trait which others do not, and the producer of this good owns a monopoly over said good and thereby trait, control of this good can be used to increase demand, thus driving the price up. For example, consumers believe that Jamaican Blue Mountain Coffee tastes better than other coffees. Jamaica claims that the taste is directly linked to an inalienable trait found in the Jamaican Blue Mountain soil, and thereby acquires a geographical indicator. This geographical indicator status then limits the name Jamaican Blue Mountain Coffee to only coffees grown in the Blue Mountain region of Jamaica, granting a monopoly to growers from that region. Now, with this status, growers from the Blue Mountain region can demand higher prices for their coffee due to the limited supply of the name, so long as demand for the coffee exists.

A geographical indication is a tool for revenue. Developing nations struggling to increase revenue can use this tool to assist their development. However, potential road blocks exist in the form of international registration and enforcement. There are currently several approaches to
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geographical indications. The United States, European Union, and World Trade Organization (via the Trade Related Aspects of Intellectual Property Rights agreement, or TRIPS agreement), all take different approaches. Despite these different approaches, developing nations have succeeded in enforcing their intellectual property rights.

Two nations highlighted in this article are Ethiopia and Jamaica. Ethiopia asserted its rights to certain coffee names through trademarks, while Jamaica asserted its rights to the name Jamaican Blue Mountain Coffee through a diversified approach of trademarks, certification marks, and geographical indications. This article posits that despite the intellectual property road blocks which can hinder developing nations, geographical indications serve as the best intellectual property tool they can use to increase the value of their goods. Although a geographical indication is the best tool, it may not be practical to use it exclusively. The most practical approach for a developing nation is to embody the diversified approach Jamaica took with Blue Mountain Coffee.

II. AN INTRODUCTION TO GEOGRAPHICAL INDICATIONS

A. Geographical Indications in General

A geographic indication (GI) is a tool in intellectual property which serves as a source identifier, a trademark-like form of protection of the integrity, specialty, and commercial value of products whose uniqueness is incidental to their geographic origin and customary process of manufacture. GIs can constitute a trademark when they “serve[] to distinguish goods in the market.” GIs hold strong historic and ongoing support in Europe, and their recognition by Europe predates the World Trade Organization TRIPS agreement, as explained below.

1 See Irene Calboli, Expanding the Protection of Geographical indications of Origin Under TRIPS: Old Debate or New Opportunity?, 10 MARQ. INTELL. PROP. L. REV. 181, 184 (2006) (exploring different definition of GI and proffering her own definition as “names that identify agricultural or other products as originating from the specific geographical regions in which these products are grown and manufactured, and from which they derive their qualities and reputation”).


3 Calboli, supra note 1, at 187-197. See also Bendekgey supra note 2 (noting that longer established industrialized nations in Europe and former Soviet Union have vested
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22 states that a GI is an “indication which identifies a good as originating in the territory [of a member] where a given quality, reputation or other characteristics of the good are essentially attributable to its geographic origin.”

The World Intellectual Property Organization holds that GIs may also “highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions.” A GI can apply to a specific region within a state, or in some cases the entire state, such as Greek “feta” or “Swiss Made” watches originating from Switzerland.

B. Conditions on Registration

Generally, a GI must satisfy two conditions. First, the GI must be linked to a specific territory which makes the product clearly distinguishable from competitors from other regions. This specificity derives from geographical characteristics and/or traditional processing methods. The European Union takes this requirement a step further than TRIPS by requiring that typicity be proved in relation with tradition and historicity. Second, the reputation must be acknowledged by consumers who link the product name with a specific quality or characteristic that comes from its origin. This reputation must exist before registration for the GI is sought. Consumer acknowledgement can be established by surveys.

Like trademarks, geographic indications are afforded protection because “they are a valuable marketing tool in the global economy.” Not only do they indicate geographic origin, but they also inform consumers of interest in establishing origin specific brand recognition.

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8 See, Joined Cases C-465 & C-466/02, Fed. Republic of Germ., Kingdom of Den. v. Commis’n, 2005 E.C.R I-9115 (ruling bars other EU producers from using the word ‘feta’ despite the fact that feta is not a place in Greece, or anywhere else).


10 Reviron, supra note 5, at 6-7.

the good’s quality by letting them know the good comes from an area where “a given quality, reputation, or other characteristic of the goods is essentially attributable to their geographic origin.”

C. Importance of Geographical Indications in Developing Nations

In a globalized market, with businesses constantly looking for new ways to make a profit, GIs are becoming an increasingly important asset for developing countries. This important asset has been described as an economically significant monopoly right that beneficiaries aggressively police. Of India’s current GI regime, Madhavi Sunder states that “the turn to intellectual property for the poor is not simply another instance of a misguided ‘if value, then right’ mentality . . . poor people’s turn to property is surely about economics, but is about social and cultural values as well. . . . People, rich and poor alike, want recognition of their creativity and contribution to science and culture.” Embodying this, GIs have real significance to empower local communities that produce coffee, tea, fruits, and other agricultural products. This empowerment may be derived from monopolistic competition.

D. Economic Impact of Geographical Indications in Developing Nations

The principle of “Monopolistic Competition” explains that when a product is differentiated, therefore absolving generic qualities, it becomes a tightly controlled commodity, for which some consumers “express a preference and a willingness to pay a higher price.” Essentially, a GI can be a way for a developing nation to own a monopoly on a desired product. If used correctly and depending on demand, this monopoly allows the developing nation control of the supply of the product and can be a great source of revenue when used correctly. Although a GI can be an intellectual property asset, differentiation can take time and money. The


16 Reviron, supra note 5, at 11.
seller must provide information about the GI product to create a greater demand for the attribute it embodies. This is otherwise known as marketing, or the sales and advertising costs.\textsuperscript{17}

However, it appears that the cost of marketing can be passed on to licensees who then sell the good. For example, Starbucks wants to use the various trademarked names owned by Ethiopia. After Starbucks acquires a license to use the Ethiopian names, it places the trademark on its packaging and in its advertising material without charging the Ethiopians. This type of licensing seems to provide the potential for excellent advertising at no cost to the trademark or GI holder.\textsuperscript{18}

\textbf{E. Impact of Premiums Paid by Consumers}

A prime example of a product commanding a premium price is specialty coffee. In the last few years origin has become an important image attribute for coffee. Specialty coffees are typically "sold by origin to a public of 'connoisseurs' at a very high price compared [to] conventional coffees."\textsuperscript{19} This commercial value explains why, similar to trademarks, their names and designs are so often copied by competitors. Such a price increase is typical when an item is protected as intellectual property. Other examples of GIs from developing countries which have generated significant revenue are Habanos cigars from Cuba, Argon Oil from Morocco, Black Chocolates from Ecuador, Madagascar and Cuba, and Rooibos teas from South Africa.\textsuperscript{20}

Europe is a prime example of how the enforcement of GIs has had a positive effect. GIs protect producers and users against the fraudulent use of geographic names. Within the EU the price of a product afforded GI protection may be as much as 40% higher than that of a similar non-GI product.\textsuperscript{21}

\textbf{F. Certification as a Quality Signal and Guarantee for Consumers}

Critics of GIs have stated that even if a GI is obtained for a product from a certain location, quality may vary. As a solution, it has been suggested that writing a code of practices and quality, defining what is

\textsuperscript{17} Edward Hastings Chamberlin, \textit{The Theory of Monopolistic Competition: A Re-orientation of the Theory of Value} (1st ed. 1933).
\textsuperscript{18} Id. at 17-20.
\textsuperscript{19} Reviron, supra note 5, at 13.
\textsuperscript{20} Id. See also Astrid Gerz & Estelle Bienabe, \textit{Rooibos Tea, South Africa: The Challenge of an Export Boom}, in 372 Origin-Based Products: Lessons for Pro-Poor Market Development 53 (Paul Mundy & Bergisch Gladbach eds., 2006).
\textsuperscript{21} Vincent Fautrel et al., \textit{Protected Geographical Indications for ACP Countries: A Solution of a Mirage?}, \textit{Trade Negotiations Insights}, Aug. 2009, at 8.
accepted and what is not, is necessary to ensure a quality monopoly, which in turn secures a steady price for the GI product. This is done because competition between producers of the GI product is eliminated due to all producers acting in concert. Certification of a GI’s quality is another mechanism that can be used to show that not only is a given product a true GI product, but that its quality is also top-notch. Certification can create a caste system within a GI regime to increase premiums. An example of this is Jamaican Blue Mountain Coffee, as discussed later in this paper.

III. GEOGRAPHICAL INDICATIONS ENFORCEMENT AND PROTECTION

A. Current Avenues of Registration and Enforcement

An oft-disputed area of intellectual property law is whether a trademark provides better protection than a GI. Trademark protection is as extensive, if not more extensive, than GI protection, but the two designations protect different things. While similar, trademarks inform the consumer of the particular source from whence the good came, but a GI informs the consumer of the geographic region from which the good originates. This means that a GI is connected to an inalienable attribute of its origination, whereas a trademark only tells you the company/producer from which the product originated, which may embody attributes inferred by the consumer.

GI protection exists at the international, regional, and national level. For example, ‘Tuscany’ for olive oil produced in a specific area of Italy, or ‘Roquefort’ for cheese produced in France” is protected in the European Union under regulation (EC) No. 2081/92 and in the United States under US Certification Registration Mark No. 571.798. An example of a regional agreement to protect GIs is the African Intellectual Property Organization (OAPI – Organisation Africaine de la Propriete Intellectuelle) which, within the framework of the Bangui Agreement on Intellectual Property, allows for official recognition of GIs and protection of appellations of origin products simultaneously within its 16 member states. Penalties for intentional unlawful use of a registered geographical

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22 Raustiala, supra note 6, at 342-43. See also O’Connor, supra note 9, at 112-114.
indication under the agreement are not less than three months to no more than one year imprisonment, and a fine from one million to six million CFA francs, or only one of these penalties. However, it must be noted that no GI has been formally registered. The effectiveness of the Bangui Agreement may be disputed, but it stands as a testament that relatively poor developing nations have the power to band together and create agreements which promote their national interests.

The EU has signed several bilateral and multilateral agreements with Australia, Mexico, and South Africa to phase out names of European wines being used by producers from these countries. Although effective, implementing a GI regime in a developing country is a difficult and complex process. This is because GI implementation is capital intensive, requiring a sophisticated structure to facilitate control of market power through advertising, sales, and enforcement. To ameliorate these costs and offer organized protection, multilateral intellectual property agreements such as TRIPS exist today.

The WTO TRIPS intellectual property regime is the largest multilateral agreement of its kind. Members of the treaty are generally split into two sides, the United States (New World) on one, and the European Union (Old World) on the other. The United States took a pro-protectionist approach to TRIPS. It staunchly opposed the inclusion of geographical indication protection. This opposition stems from the lesser amount of GIs the United States owns as opposed to its counterpart European nations. Alternatively, the European Union pushed extensively for GI protection under TRIPS, especially for wine. After intense debate, an agreement to protect GI status for wines and spirits was struck.

B. TRIPS

The current largest international agreement covering the use of GIs is the Trade Related Aspects of Intellectual Property Rights agreement

Guinea-Bissau, Ivory Coast, Mali, Mauritania, Niger, Senegal, and Togo).

26 Fautrel, supra note 21, at 8.
27 RIS Policy Briefs, Cancun Agenda: Geographical Indications and Developing Countries, No. 07 (July 2003).
28 Sunder, supra note 14, at 302.
29 Christine Haight Farley, Conflicts Between U.S. Law and International Treaties Concerning Geographical Indications, 22 Whittier L. Rev. 73, 75 (2000). See also, Staten, supra note 11.
30 Farley, supra note 28, at 74.
(TRIPS), originating from the World Trade Organization (WTO). Section three of Part II of TRIPS deals with GIs. Related articles are twenty-two to twenty-four of the agreement on TRIPS.\footnote{Cancun Agenda, \textit{supra} note 26, at 1.} International agreements predating TRIPS are inextricably linked to the constraints on GIs included in the TRIPS agreement: first, the Paris Convention for the Protection of Industrial Property (Paris Convention)\footnote{Paris Convention for the Protection of Industrial Property, \textit{art.} 1, \textit{Mar.} 20, 1883, as revised at Stockholm, \textit{July} 14, 1967, 21 \textit{U.S.T.} 1583, 828 \textit{U.N.T.S.} 305, amended \textit{Sept.} 28, 1979 (“The protection of industrial property has as its object... trademarks, service marks, trade names, indication of source or appellations of origin, and the repression of unfair competition.”).}; second, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (Madrid Agreement)\footnote{Madrid Agreement for the Repression of False or Deceptive Indication of Source on Goods, \textit{Apr.} 14, 1891, as revised at Lisbon, \textit{Oct.} 31, 1958, 828 \textit{U.N.T.S.} 165.}; and third, the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (Lisbon Agreement).\footnote{Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, \textit{Oct.} 31, 1958, as revised at Stockholm, \textit{July} 14, 1967, 923 \textit{U.N.T.S.} 197.} These agreements, however, did not directly address the protection of GIs. Rather, these agreements addressed particular needs, gaps, and challenges in cross-border trade in goods which provided a foundation for the WTO-TRIPS agreement.

Even thought the European Union (EU) and the United States (US) apply protection for GIs in different fashion, and often take different positions on the level of protection which GIs should be afforded, there is some consensus that the protection of GIs is rooted in similar concerns underlying trademark law. This concern is for the prevention of consumer deception as to the origin of a product, and to a lesser degree for the prevention of unfair competition.\footnote{Bendegyey \textit{supra} note 2, at 765-66.} However, the movement to expand international GI protection for agricultural products is generally seen as an effort by the Old World to secure legal protection against the New World.\footnote{F. Addor & A. Grazioli, \textit{Geographical Indications Beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement,} 5 \textit{J. World Intell. Prop.} 865 (2002). For instance Australia, though a major wine producer, did not have any legislation dealing expressly with GI's until TRIPS. See Tony Battaglene, \textit{The Australian Wine Industry Position on Geographic Indications}, Worldwide Symposium on Geographic Indications, 27-29 (\textit{June} 2005), available at: www.wipo.int/meetings/en/2005/geo_pmf/presentations/doc/wipo_geo_pmf_05_battaglene.doc, (last visited \textit{November} 1, 2009).}

The protection of GIs under TRIPS was one of the most difficult topics to negotiate during the Uruguay Round, when the agreement was signed. Provisions relating to GIs are in section 3 of Part II, articles 3, 4 and 5, Part III on enforcement, Part IV, and Part V. TRIPS at this time
protects GIs for wines and spirits.

Probably the most important article impacting GIs is 22.2, laying out the protections which must be available for all GIs. Available protections are “legal means” to prevent the use of GIs in a deceptive manner as to geographic origin and acts of “unfair competition.” While these legal means must be in place, latitude is granted to each member country in deciding how to create and enforce them.38

C. United States

The United States offers no direct protection for GIs, but it does not reject GI protection altogether, as evidenced by the approximately 150 GIs the US protects on a regular basis, such as the “Mississippi Delta” wine growing region.39 Other well known US GIs include: “Florida”40 for oranges, “Idaho”41 for potatoes, and “Washington State”42 for apples. The most evident difference between the New World and the Old World is the New World generally opposes the extension of absolute protection to new food products, as well as entrenching the absolute standard in international law.43 Although absolute protection for GIs is not favored, the United States Patent and Trademark Office claims protection of foreign and domestic GIs dating from 1946.

The United States GI system uses the trademark structure already in place. Similar to trademark protection, the US allows GI owners the exclusive right to prevent its use by unauthorized parties when consumer confusion, mistake, or deception regarding source would result. The United States promotes its GI-trademark regime further by stating that its trademark regime “is already familiar to businesses, both foreign and domestic. Moreover, no additional commitment of resources by governments or taxpayers is required to create a new GI registration or protection system. A country’s use of its already existing trademark regime to protect geographical indications involves the use of resources already committed to the trademark system for applications, registrations, oppositions, cancellations, adjudication, and enforcement.”

For GIs which are descriptive, but have not obtained secondary

40 U.S. Trademark No. 1200770 (issued July 6, 1982).
42 U.S. Trademark No. 1528514 (issued March 7, 1989).
43 Raustiala & Munzer, supra note 39, at 341.
meaning the US offers a certification mark registration process. "A certification mark is any word, name, symbol, or devise used by a party or parties other than the owner of the mark to certify some aspect of the third party goods or services." The three types of certification marks are: (1) regional, (2) material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services, and (3) work or labor was performed by member of a union. The same mark can be used to cover more than one characteristic of the good or service. A certification mark differs from a trademark in two ways: (1) the owner does not use it, and (2) it does not indicate commercial source or distinguish the goods or services.

The United States also offers collective marks as a method of protection for GIs too. There are two types: (1) collective trademarks or service marks, and (2) collective membership marks. A collective trademark is registered and owned by a "collective" for use only by its members. The "collective" itself never sells the goods bearing the mark, but it may advertise, or promote the goods and/or services of collective members.44

GIs can be protected by common law without registration with the USPTO. This method provides no presumption of validity. An example of a GI protected by US common law is "Cognac."45

Arguably, developing nations could be grouped under the title of New World. The multifaceted approach of trademark, certification mark, and collective mark could be beneficial for developing nations because of the variety of choices. For example, if a developing nation has a geographically linked product it would like to register in the US, but it does not qualify under trademark, the nation could still acquire protection for the good as a certification or collective mark. Alternatively, it would be easier if a country could just register its geographic good as a GI instead of navigating through the intellectual property options provided by the US.

D. European Union

Nearly 90% of GI registrations in the EU directly relate to wines and spirits.46 The other 10% consists of various cheeses, meats, and other

46 Das, supra note 7, at 477 (percentages calculated are based on figures found in European Commission, Why do Geographical Indications Matter to Us? (July 30, 2003),
agricultural products. In 1992 the EU enacted pre-TRIPS regulation to protect GIs of EU producers. This law served to specifically protect the reputation of regional foods and eliminate unfair competition and misleading of consumers by non-genuine products which may be inferior in quality or a different flavor. The content of this regulation is largely about names, label terms, and oversight. The regulation has been described as more similar to the Paris Agreement and Lisbon Convention regimes than they are to the basic trademark regulatory structure used in the United States. In 2006, the current EU regulation (Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Food Stuffs (No 510/2006)) on GIs was passed. Another aspect of the EU’s GI push is the “EAT” Program (European Authentic Tastes). This program has run advertisements in local newspapers and magazines abroad building up the authenticity of true champagne and labeling other champagne style wines as imposters.

The EU’s approach to GIs has been described as the “epitome of a sui generis system” which puts it at odds with TRIPS regarding the breadth of GI coverage. Although GIs are especially beneficial to EU countries, bilateral agreements with other nations exist, such as the protection of wine with Australia in 1994, wines and spirits with Canada in 2003, wines and spirits with Chile in 2002, coffee in Columbia in 2007, spirit drinks with Mexico in 1997, and wines and spirits with South Africa in 2002. The EU countries of France, Portugal, Spain, Italy and Switzerland provide protection for other GIs which are sometimes referred to as


Echols, supra note 50, at 116.

appellations of origin. There is a long history of recognition of this type of GI in these nations, especially France. Appellations of origin refer to 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.”55 Appellations of origin relate to the quality and characteristics of a product, and are therefore protected under the TRIPS agreement too.56

E. How Enforcement Issues Impact Developing Nations

Developing nations both support and shy away from GIs. Among developing nations there is currently no movement of significant mass toward a United States, European Union, or TRIPS model. The countries which favor GI protection do so for their famous products, such as Mexico for Tequila and Mescal, and India for Basmati rice and Darjeeling tea.57 However, some developing nations abstain from exclusive GI protection because of the strings attached with policies of industrialized nations. Some of these policies are evident in the TRIPS agreement, which only provides GI protection for spirits and wines. At the national level where protection for a country’s GI is available, but its unauthorized use is exercised in another nation, in order to enforce rights TRIPS enforcement procedures must be available in the country concerned. However, in some countries ex officio action against an infringing party is available for public authorities policing their GIs. In other countries where the GI is owned by the state, the only action available may be by private parties through civil or criminal proceedings.58 “Enforcement proceedings regarding the misuse of geographical indications may be initiated ex officio by administrative or other public authorities, either spontaneously or on the basis of a complaint brought to their attention, but there are also private rights of action.”59 At the multilateral level “in situations where a geographical indication does not enjoy protection in a WTO Member contrary to the provisions of Articles 22, 23 or 24, or those of Part I, Part III or Part IV of the Agreement, the country of origin has the right to take the matter up under the WTO Dispute Settlement Understanding.”60 As of 2001, in regard to alleged non-

55 Id. at 25.
56 Id. at 167.
57 Id.
59 Id. at 10.
60 Id. at 11.
compliance with provisions of the TRIPS Agreement, the WTO dispute settlement system had been invoked 24 times. Ironically, the US, a country which has traditionally opposed GIs, is the only country to invoke a proceeding for GI enforcement. Even more ironic, the proceeding was against the European Commission (EC), among other parties. So far the majority of intellectual property infringement complaints for TRIPS violations have been from developed nations, many of them with success.\(^6\)

An example of such a success is an arbitration case brought under the DSU between Ecuador and the EC in which the WTO’s Dispute Settlement Body authorized Ecuador to retaliate *inter alia* in the TRIPS area given the EC’s failure to comply with panel and Appellate Body rulings in the so-called Bananas dispute, in which the EC was found to be violating various WTO agreements in the areas of trade in goods and trade in services.\(^6\)

GI development and enforcement is expensive. Expenses result because of the costs associated with litigation, dispute settlement, and negotiations. Cash strapped developing nations may have difficulty establishing the international product or service recognition which accompanies a strong GI. Product recognition takes marketing and sales. Marketing and sales require man power, advertising, and pushing products onto distributers and sellers. These costs are transcendent among all goods or services which enjoy GI protection already, or for which GI protection is sought. The Starbucks Ethiopia conflict and Jamaican Blue Mountain Coffee are two shining examples of how developing nations have spent the time and money already mentioned, and now have outstanding intellectual property regimes in their traditional coffee products.

**IV. PRACTICAL EXAMPLES**

· *A. The Starbucks and Ethiopia conflict*

1. *Introduction*

Coffee is claimed to be one of the most valuable agricultural commodities on the international market, with Ethiopia as the birth place for Arabica coffee.\(^6\) Coffee plays a major role in Ethiopia; it produces

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\(^6\) *Id.* at 12.

\(^6\) *Id.* at 12-13.

approximately 5% of world production and more than 30% of Sub-Saharan Africa's. Over one million small scale producers produce 95% of the output and more than 10 million Ethiopians are a part of coffee production directly or indirectly.

Since 2004, Ethiopia has led an international initiative to trademark several of its coffee brands. Ethiopia has registered trademarks for Yirgacheffe, Sidamo, and Harar (Harrar); it then licenses importers and distributors of these coffees. So far, trademarks for Yirgacheffe, Sidamo and Harar have been registered in more than 28 countries. Current pending registrations are in Brazil, Saudi Arabia, China, India, South Africa, and Australia. The registrations are owned by the Ethiopian government's Intellectual Property Office (EIPO). By trademarking several Ethiopia-based coffee brands, the goal of the Ethiopian government is to separate the coffees from the volatile New York commodity price, thus creating "greater stability and predictability in the selling price that farmers and distributors within Ethiopia will receive." So far, the vehicle for this initiative has been the single fee royalty free license. This goal has not yet been realized even though a high retail price for the trademarked coffee exists. The coffee farmers receive as low as 2% of the export price, barely enough to cover costs, and as a result some coffee farmers are pulling up their plants to sell narcotics for a greater profit instead. In 2007, it was reported that Ethiopian specialty coffees such as the Sidamo brand fetched approximately $26 dollars per pound (16oz) at Starbucks because of their reputation, while Ethiopian coffee farmers received approximately $1.35 per pound for the beans. Currently, Ethiopian Sidamo coffee sells for $15 per 8oz. on the Starbucks website. In comparison, $17.34 will purchase a three pack of 8oz. jars of Folgers Brand coffee.
2. The Conflict

In 2004, the EIPO launched its Trademarking and Licensing Initiative. The initiative received preliminary funding from the United Kingdom’s Department for International Development. Since 2007, more than 60 companies have signed licensing agreements with Ethiopia.\(^7\)

In March 2005, Ethiopia applied to the United States Patent and Trademark Office (USPTO) for trademark registration of the names Sidamo, Yirgacheffe and Harar coffees. At this same time Starbucks had already filed an application to register as a trademark “Shirkina Sun-Dried Sidamo.” Starbucks refused to withdraw its application.\(^7\) Upon appeal to the USPTO from Ethiopia regarding possible trademark infringement on common law rights Starbucks withdrew its application in July of 2006, but continued to use the marks Ethiopia sought to register. A public campaign by Oxfam America ensued, resulting in news coverage from NPR, BBC, CNN, Time, Fortune, and the Wall Street Journal.\(^7\) In addition to the news coverage, nearly 100,000 people contacted Starbucks regarding the issue of infringing on Ethiopian trademarks.

3. The Solution

Due to this pressure, in June 2007 Starbucks penned a licensing agreement with Ethiopia.\(^7\) Ethiopia had won the IP rights to its geographic specific coffee names. Ceasing production would have been a loss of both investment and profit. Because Ethiopia does not ask for royalties from its licensing agreements, and only charges a flat fee, depending on the cost of the license, the coffee can be sold at a cheaper price, or licensees will have a greater profit margin.\(^7\)

4. Why a Geographical Indication Would Have Been Better

“The main advantage of geographical indicators as a means of protection for informal innovation is the ‘relative impersonality’ of the right, i.e. the protected subject matter is related to the product itself (its
attribute or definition) and is therefore not dependant on a specific right holder.” For this very reason, a GI offers more opportunity for local producers to control their product and make a profit. Although a trademark may add value, depending on the level of demand for the good, the GI gives the IP right to the producer. In theory, the producer will own a greater link to the buyer, therefore reaping a greater reward. The producers of the Ethiopian coffee bearing the trademarks Sidamo, Harrar, Harar, and Yirgacheffe do not own the intellectual property rights. These trademarks are registered to the “Government of Ethiopia National Government ETHIOPIA Sudan Street, P.O. Box...” not to the individual farmers who grow the crops, and prepare them for sale on the open market. Logically one could argue the government represents the people, but without going into Ethiopian politics and government corruption, the Ethiopian bureaucracy still holds title to the names, and the Ethiopian government decides to whom it will grant licenses.

**B. Jamaican Blue Mountain Coffee**

1. *Introduction*

Jamaica chose to use GIs and certification marks to protect Jamaican Blue Mountain Coffee instead of the trademark route Ethiopia followed. This was done because a GI provides a specific link between the coffee grown and the Blue Mountains of Jamaica. Some of the benefits realized because of this are stronger brand protection, stronger protection of price premium, more affordable protection, a greater ability to fight counterfeit products, consumer protection, and preservation of indigenous products and processes.

Some challenges are organizing producers in a developing nation so that they have productive business units. However, if organized these business units provide better planning, monitoring, data collection, agricultural technology, and marketing. Other challenges are training of producers in the GI system, training of lawyers and judges in the GI system (civil vs. common law concepts), educating government, and providing

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77 See Rotstein, *supra* note 74, at 18.
79 *Id.* at 21.
Currently there are 7,600 coffee farmers, with 92% of them working on five acres of land or less.\textsuperscript{81} A one pound (16oz.) bag of roasted Jamaican Blue Mountain Coffee is selling for about $50 per pound.\textsuperscript{82}

2. Methodology

In 1948 the Coffee Industry Board of Jamaica was formed to oversee the production of coffee within the country. The goals of this board are to develop the coffee industry, promote the welfare of industry workers, and make recommendations to the government. The board is actively engaged in distribution of coffee plant seeds to nurseries, registration and monitoring of nurseries, registration of coffee farmers, monitoring farms, training coffee farmers and processors, and regulating licenses, processors, and dealers. Aside from the responsibilities already mentioned, the board takes physical custody of the coffee for export, ensures residue testing of coffee, certifies and grades the coffee, packs the coffee for export, and actually exports the coffee. All of these services come at a price; they are funded by a tax placed on each major step of the coffee production process (unprocessed coffee, processed coffee, roasted coffee).

As of 2004, under the Protection of Geographical Indications Act, Jamaican Blue Mountain Coffee can enjoy protection as a Geographical Indicator. Today, Jamaican Blue Mountain Coffee enjoys 61 registrations worldwide (certification marks and trademarks). These marks are becoming progressively harder to obtain worldwide due to costs associated with registration and enforcement. This brand of coffee represents an excellent example of how an impoverished nation has taken a valuable commodity and turned it into a success.

Opponents of GIs in Ethiopia cite circumstantial differences that separate it from the method used to protect Jamaican Blue Mountain Coffee. They argue that because Ethiopia has more growers, and more products to manage, lower profits to farmers would result because of increased administrative costs.\textsuperscript{83} Although costs may increase, as already noted, the plots of land which producers in Jamaica use are also small. It is very possible that implementing the Jamaican system on a larger scale may

\textsuperscript{80} Id. at 23-24.
\textsuperscript{81} Id. at 5.
take more time, but the increased costs would feasibly be recouped by the increased price a GI or certification mark would garner. A pound of Jamaican Blue Mountain Coffee sells for almost four times the price of a pound of Ethiopian coffee.

It is important to note that Jamaican Blue Mountain Coffee and the Ethiopian brands are sold in different markets. This may explain why the Ethiopian specialty coffees are sold at a much lower price than their Jamaican counterpart. Most of Ethiopia’s coffees are sold as a commodity and are priced according to the London Exchange. Because they are sold as a commodity the farmers do not have the ability to negotiate the price they receive for their coffees. Alternatively, specialty coffee producers such as Jamaican Blue Mountain establish a relationship with the end distributor or roaster directly; therefore, they can negotiate for a higher price, which generates higher revenue for the producer.  

C. Lessons Other Developing Nations Can Learn From the Ethiopian and Jamaican Experiences

The first lesson developing nations can take away from this conflict is not to fear big business. Ethiopia, a poor and underdeveloped third world country, asserted its IP rights without losing Starbucks as one of its most influential customers. Recently, Ethiopia was the poster country for the Specialty Coffee Association of America (SCAA) 20th Annual conference and exhibition, which took place in 2008. Even if the current Ethiopian trademark initiative is unsuccessful, other countries can look to Ethiopia for valuable information that may aid them as they develop their own IP systems. Ethiopia is designing its IP system to specifically meet the political, economic and cultural needs of its people. For example, all land in Ethiopia is owned by the government. Thus, the government has primary control over how the land is used. Therefore, an IP scheme that first focused on land-use, specifically, agricultural crops, was one that was within the government’s control. Other tradition-based practices, including medicinal therapies and how Ethiopia can protect IPRs in them, will be addressed in the future.

For developing nations an adoption of the Jamaican Blue Mountain Coffee model is appropriate. However, each nation must apply this model in a flexible manner that best fits its economy and people. On the most basic level the Jamaican model consists of (1) legal recognition in the form of laws which protect a good as a GI or certification mark, (2) a consortium (organization) which connects growers with buyers, performs quality control and sets standards for production, and (3) means by which the consortium is funded.

V. CURRENT MEASURES BEING DEVELOPED TO ASSIST DEVELOPING NATIONS IN PROTECTING THEIR GEOGRAPHICAL INDICATIONS

There is currently a push by the European Commission, as well as developed and developing nations, large and small, to expand TRIPS Article 23 to include agricultural products. In 2000, a paper was submitted to the TRIPS Council by Bulgaria, Czech Republic, Iceland, India, Liechtenstein, Slovenia, Sri Lanka, Switzerland, and Turkey urging extension of TRIPS Article 23 to goods other than spirits and wines. Other supporters include Cuba, Egypt, Georgia, Hungary, Kenya, Kyrgyz Republic, Moldova, Mauritius, Nigeria, Pakistan, and Venezuela. These countries hold that the WTO Membership already agreed at the Singapore Ministerial Conference that proposals on the scope of the product coverage under Article 23 of the Agreement are allowed, and take the view that Article 24.1 provides an avenue for such proposals. Alternatively, Argentina, Australia, Canada, Chile, Guatemala, New Zealand, Paraguay, and the United States oppose expansion of Article 23. In their view, extension of the scope of Article 23.1 to products other than wines and spirits goes beyond the mandate contained in Article 24.1 and could only be negotiated in the context of a new Round. According to them, the negotiating mandate in Article 24.1 concerns only “individual geographical indications,” not whole product areas, focusing on those geographical indications in respect of which a country is applying an exception under Article 24, for the purpose of exploring the scope of discontinuing the

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88 Council for Trade-Related Aspects of Intellectual Property Rights, Communication from Argentina, Australia, Canada, Chile, Guatemala, New Zealand, Paraguay, and the United States, IP/C/W/289 (June 29, 2001). See also, De Sousa, supra note 58, at 8.
application of the exception with regard to a particular geographical indication.\textsuperscript{89}

Another controversial request by the EU has been for “claw back” provisions. For example, the EU has sought to invalidate 41 names of European originated foods such as Parmesan, Chablis, and Bologna by manufacturers who are not located within the regions of origin of these food products.\textsuperscript{90} This type of provision is mainly supported by the EU, and aims to “remove prior trademarks and, if necessary, grant protection for EU GIs that were previously used or have become generic so that [EU] GI products can gain market access.”\textsuperscript{91} The United States and other countries oppose the EU’s push for claw backs, and argue that the names which the EU seeks a claw back for are generic. If they are generic, the US contends that the EU cannot reclaim them for GI protection.\textsuperscript{92}

The 150 members of the WTO, and thereby TRIPS, represent approximately 95\% of world trade in goods and services.\textsuperscript{93} These countries sit at the helm of IP protection, and have the power to steer policy and law impacting geographical indicators. It is likely that if the TRIPS agreement were expanded to include agricultural GIs, this would set a precedent for the rest of the world to follow. This would benefit developing nations because they would then be able to protect many of their agricultural GIs through a larger organization, instead of being forced to create a piecemeal intellectual property regime of trademarks, certification marks, collective marks, and GIs.

\textbf{VI. CONCLUSION}

The essence of a GI which makes it different from other forms of intellectual property is that it is owned and exercised collectively based on collective traditions. GIs confer on producers who are located in the area identified by the GI and producing a particular product the exclusive right to use this unique designation. This available, but limited, intellectual


property right adds economic value for the producer. However, the current state of GI acceptance and recognition does not lend itself well to developing nations. This does not mean that a GI would not benefit a developing nation more than another intellectual property right. It means that current GI registration and enforcement opportunities on an international level are not yet at a point where a country or organization with limited resources could enforce their rights with reasonable measures. Rather, due to the great variance in international recognition for GIs, a developing nation would expend greater precious resources promoting and registering a GI internationally than it would, per se, a trademark. Although each country has its own trademark regime, acceptance of trademarked goods is more prevalent. This creates an advantage for the IP holder because enforcement may be easier.

For developing nations, the proper course would be to exercise a plan that involves both trademark and GI registration, similar to the approach Jamaica has taken with Jamaican Blue Mountain Coffee. This approach includes registration of GIs where they are widely accepted for spirits and agricultural products. An example of this would be to register a GI regionally, such as with the European Commission, and register that same GI as a trademark in the United States, which offers not only trademark protection, but certification options, too.

Ultimately, the IP benefit should be felt most by the seller. For agricultural products, this means the grower. This is best done by removing self-serving third parties, and placing the grower closer in connection with the buyer; in essence, handing over control of the IP right to the producer. The simplest form this may take is a GI recognition by which there is a direct link between the producer and the buyer. This may not be completely realistic for a developing nation because producers individually lack the capacity and means to place their product on the market such that a GI is warranted. The best solution is to switch government GI control to a recognized community organization consisting of the producers. This would give them collective bargaining power that they would not otherwise possess on an individual basis. Underlying this vehicle is the power of community, which breaks down the walls of a monolithic bureaucracy.

The Jamaican Blue Mountain Coffee example may best represent the course a developing nation should take. As already discussed, the model is relatively simple. Growers are put in connection with buyers through a consortium. The consortium sets standards for quality control and manages the coffee production process. This control, coupled with the quasi-monopolies created by GIs and trademarks, increases demand because of
"monopolistic competition"\textsuperscript{94} whereby a good is differentiated and absolved of its generic qualities. Revenue is not realized through licensing as in Ethiopia, but rather from the increased price the coffee itself demand on the open market. It is essential to ensure that when such a process is set up it is done in a way that maximizes returns for growers, which is an area in which Ethiopia still struggles.

\textsuperscript{94} Reviron, \emph{supra} note 5, at 11.