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The Starbucks/Ethiopian Coffee Saga

Geographical Indications as a Linchpin for Development in Developing Countries

A coalition of Ethiopian coffee producers and the Ethiopian Intellectual Property Office (EIPO) set up a programme to acquire trademarks in important export markets, with a view to increasing the profits on these brands for the producers. In March 2005, the Ethiopian government filed its first US trademark applications for three contested coffee names. After 15 months the United States Patent and Trademark Office (USPTO) agreed that the name Sidamo was generic and therefore could not be trademarked. This led to an outcry by some commentators, including NGOs and Intellectual Property Rights professionals. Yet, the arguments in favour of protecting indigenous knowledge under international trade rules as a linchpin for economic development and poverty eradication has been forcefully put forward by African countries and other developing countries in both regional trade negotiations and at the World Trade Organization. With the Ethiopian and Starbucks dispute in mind, James Watson and Jeremy Streatfeild eloquently explain in this piece how geographical indications can be used to enhance the capacity of farmers and economic development in Africa and other least developed countries.

Introduction

The recent intellectual property rights dispute between Ethiopia and Starbucks placed renewed attention on the difficulties developing countries encounter when enforcing their own intellectual property rights on their exported products. The dispute arose from the Ethiopian government's attempts to file applications for trademarks for three of its most famous brands of coffee – Yirgacheffe, Sidamo and Harar – with the United States Patent and Trademark Office (USPTO).[1] The applications for two of these names were refused after Starbucks mobilised the National Coffee Association (NCA), a group of major US coffee retailers, to block the applications. This may seem like a lopsided dispute between a large multinational enterprise and a least developed country (one of the five poorest in the world), but the dispute also played out the bigger argument regarding how best to protect products that originate in developing countries. This brief examines the possibility that geographical indications (GIs) can be used to support economic development in developing and least developed countries (LDCs).

This brief will also consider the context of the development of GI provisions in international trade law. The negotiations relating to the TRIPS Agreement under the Doha Development Agenda (DDA), and the negotiations of the European Union (EU) with African, Caribbean and Pacific (ACP) countries' Economic Partnership Agreements (EPAs) all cover the application of GIs and the development of their role in International Intellectual Property Rights Law. In the EPA negotiations detailed sections on intellectual property have been proposed by

1. In fact the Ethiopian government had submitted the application for trademarks some 15 months prior to the dispute arising.

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both the EU and the ACP configurations, including specific obligations targeted at GIs. In the DDA the EU and some developing countries have been proposing, amongst other GI related suggestions, a register of goods to be covered by GI protection (European Commission 2007). It appears that the role played by GIs in international trade law could be about to expand.

Even though GIs are covered by the WTO Agreements, they are only really enforced for certain wines and spirits – coffee, for example, would not be relevant for such protection. However, the use of GIs could have far-reaching benefits for farmers in developing and LDC countries.

Background to the Starbucks Dispute

A coalition of Ethiopian coffee producers and the Ethiopian Intellectual Property Office (EIPO) set up a programme to acquire trademarks in important export markets, with a view to increasing the profits on these brands for the producers. In March 2005, the Ethiopian government filed its first US trademark applications for three contested coffee names. After 15 months the USPTO agreed that the name Sidamo was generic and therefore could not be trademarked. This led to an outcry by some commentators, including Non-Governmental Organisations (NGO)s and IPR professionals.[1] Ron Layton, Chief Executive of Light Years IP, stated:

> Intellectual property ownership now makes up a huge proportion of the total value of world trade but rich countries and businesses capture most of this. Ethiopia, the birthplace of coffee, and one of the poorest countries in the world, is trying to assert its rights and capture more value from its product. It should be helped, not hindered.[2]

These types of comments were echoed through the press and through the NGOs. Starbucks continued to oppose the trademark petition. They proposed a geographical certification model instead (basically the same as GIs), arguing that this would help the farmers receive a higher price for a better quality of coffee. The Ethiopian coalition argued that the trademarks would add more value for the producer. The question of trademarks or geographical indications as the best form of protection is discussed in this brief.

Geographical Indications

The concept of protecting intellectual property associated with the origin and production method of a good has been around for some time. In the modern era the TRIPS Agreement has been the main international tool for the protection of GIs. GIs are not owned by one person or organization, but by a collection of producers from a certain region, which does not accord with the standard view of intellectual property. As a result, GIs are not applied evenly across the globe. The US has been slow to recognize them in their own territory, since under the rules of the WTO, countries can provide protection for most of these products on an individual basis as long as it is applied in a way that the consumer is not deceived and which does not lead to unfair competition.

There are many definitions of GIs in international law, the TRIPS Agreement gives the following definition:

> 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.[3]

This essentially means that the GI represents a designation of quality and suggests a higher standard of product. The suggestion is that GIs improve the perception of the quality of a product therefore making it more marketable and more desirable to consumers. The EU made a comparison of the value of GI protection in relation to Comte cheese produced in the Jura region of France (Agency for International Trade Information and Cooperation 2005). The Comte cheese was GI protected in 1993, at the time the cheese enjoyed a 20% price differential over Emmenthal produced in Switzerland, which is not GI protected. By 2003 this had risen to 46% and production of Comte had risen by 3% a year. These are important facts that developing country producers and governments should take note of.

Geographical Indications in International Law

As mentioned above the WTO TRIPS Agreement does contain limited reference to GIs. However, only 3 Articles out of 73 relate to GIs in the TRIPS Agreement. The protection afforded by the agreement is limited and only wines and spirits have any real protection. In Article 23 of the TRIPS Agreement, the protection afforded to GIs on wines and spirits stops other producers of similar products from using the GI, even with the caveats 'like', 'kind', 'type', 'style', or 'imitation' included in the product description (WTO 2004, Article 23 pp. 329–30). Member states must provide legal means (or administrative enforcement) to prevent misuse of GIs on wines and spirits. This could be seen as the correct standard of protection for GIs.

In the TRIPS Agreement there are loopholes in the protection of GIs, which allow producers to continue using a name that should be protected by a GI. These loopholes are: the pre-registration of a product name in a country before TRIPS came into force; the use of GIs names that have become generic may also be pro-

1. See Oxfam 2006 and Gallu 2006.
2. Light Years IP are representing Ehtiopia in the trademark dispute, quote taken from Oxfam 2006.
3. WTO 2004, Article 22, p. 329. For further definitions see Botha 2005 and www.geographical indications.com.

duced outside of the recognised geographic area and those products whose names have been used in good faith for 10 years prior to TRIPS.

These loop holes have led the EU and some developing countries to request that the rules relating to GIs be reformed and that international law be re-configured. Under the DDA negotiations the EU has put forward three main reforms that would be a means to address the loop holes. It is worth noting that many developing countries support these proposals. These reforms include creating a global register for GIs; extension of the Article 23 protection for wines and spirits to other products; and ensuring market access for GI products by removing prior trademarks and granting protection for the real GIs that were previously used or were generic. These moves could be beneficial for products such as specialty coffee produced in Africa.

Geographical Indications in Developing Countries

Developing countries have not been able to recognize the value of GIs or to use them (Grant 2005:9). However, there are some notable examples of valuable GIs in developing countries. The Jamaican government set up the Yallahs Valley Land Authority (YVLA) in the 1950s to help develop the eastern part of the island. The YVLA took over management of Blue Mountain coffee production. This project achieved a sevenfold output increase between 1951 and 19661 and today, Blue Mountain coffee is one of the world's most expensive and sought-after coffees. It is estimated that the Blue Mountain coffee GI has increased the value of production and the stake of the farmers working on the production, so that 45% of the final price goes to the Blue Mountain farmers (Gallo 2006).

Blue Mountain coffee is grown by five producers in Jamaica licensed by the Jamaican government. The indication is recognised by the EU and the USA and therefore only coffee produced in the Blue Mountain Region of Jamaica qualifies for the protection. The Jamaican government plays a key role in the protection of the GI and passed a Coffee Industry Regulation Act 1953 determining the area of the Blue Mountains, as well as the producers who qualify for the GI protection (Coffee Industry Board 2002). In this example the producers and the government have consistently worked together to guarantee the quality of the product. In short, Jamaica has shown that developing countries can protect a regional name to a similar extent as luxury food products from Europe, through a network of government, farmer and monitoring agencies.

Another example of coffee that has been protected by GIs, creating economic development, is that of Jamao coffee from the Dominican Republic. It has risen in price from $0.67 per lb to $1.07 per lb since its protection under a GI scheme (Agency for International Trade Information and Cooperation 2005). These examples show how GIs can be used to improve the economic well being of a group of farmers in the developing world.

GIs can be found across the globe, India and Pakistan have sought GI rights for basmati rice in the WTO and have also unsuccessfully proposed a registry to protect a number of developing country products. In fact both India and Pakistan belong to the group of developing countries who support improving the provisions of the WTO TRIPS Agreement to protect GIs. Other countries include – Kenya, Mauritius, Nigeria, Sri Lanka, and Thailand.

General Indications in Economic Partnership Agreements and the Trade Development and Cooperation Agreement

Two further specific trade and development treaties, with relevance for developing countries, under negotiation with the EU are the Economic Partnership Agreements (EPAs) and the EU – South Africa Trade, Development and Cooperation Agreement (TDCA). The EPAs are the new trade regime between the EU and the ACP countries, for the purposes of this brief the Eastern and Southern Africa (ESA) region text will be examined. Taking the TDCA first it may be possible to predict the likely position of the EU on the issue of GIs in the EPA.

The TDCA was signed with South Africa in 1999 and contained a section on the use of GIs in South Africa and the EU – Article 46.7 of the main text, and also more detailed requirements under the Agreements on Trade in Wine and Trade in Spirits. Article 47.6 calls on the parties to recognise each others GIs. The further requirements of the Agreements on Trade in Wine and Spirits have controversial requirements:

Article 5 of the TDCA states: "For certain spirits the use of traditional EU names by South African producers must be stopped within five years for any export marketing…within twelve years the use of the EU GI protected products names within South Africa's domestic market must end".

Article 4 of the TDCA states: "For spirits the use of the names Grappa, Ouzo, Korn, Kornbrand, Jägertee, Jagertee, Jagatee and Pacharan may continue during a transitional period of five years but must then be stopped" (Rudloff and Simons 2004).

The products covered had been produced and trademarked in both the EU and South Africa. The agreement gave the power to the EU to use the GIs of these products, arguably reflecting the power of the EU in bilateral trade negotiations with smaller parties (Greenberg 2000). The EU whilst supporting developing countries in the debate on GIs at the global level also acts in its own interests in negotiating agreements with developing countries at a bilateral level. The TDCA clearly demonstrates this. This is a lesson

1. See Floyd 1970 for a full description of the origins of this undertaking.

that can be learned for the negotiation of EPA and the likely GI related desires of the EU.

For other ACP developing countries and LDCs the EPAs to be signed with the EU will also include GI provisions. As mentioned previously in the paper, the Eatern and Southern Africa (ESA) group of countries has proposed a draft text for their EPA on intellectual property. There are five articles relating to intellectual property and one directly referring to GIs within the draft text.[1] In this text under the objectives of cooperation in intellectual property the following paragraphs appear:

A. To provide support for the development and research to identify geographical indications on products of ESA countries.

B. To grant legal protection to geographical indications identifying products of ESA countries in both the Community and among ESA countries.

The text appears to support the use of GIs to protect the ESA countries' products in trade with the EU. This would support the Ethiopian coffee producers in acquiring a GI for their speciality coffee, at least in the EU market. However, the text also appears to give equal treatment to the EU GIs and this could have a negative impact on producers of equivalent products in the ESA region. For example, in Ethiopia there is a product called 'Shampagne'. Undoubtedly this would have to be phased out over time and could lead to some negative impacts on the producers of certain types of products (such as wines, spirits and cheeses) in Ethiopia and ESA.

It will be imperative for the ESA countries to determine whether there are more benefits in gaining acceptance for their GIs in the EU market, than negative effects in giving up their imitation or generic products based on EU GIs. Of course, a healthy phase out period would be expected, if for example it is 12 years in the TDCA, for the much poorer LDCs of the ESA region it could be expected to be in the region of 15 – 20 years. This would reduce the impact of the loss of production and allow more time for economic readjustment to produce other products.

The EPA is still under negotiation and there is no guarantee that the text as it stands will be accepted as the final text of the agreement. Nevertheless it is useful to analyse the draft text as it shows a willingness to negotiate on GIs and recognition of the importance of GIs to countries in ESA. It also shows that compromise could be possible with the EU in the case of the ESA countries and a better deal could be secured than that under the TDCA. Of course the real caveat to the inclusion of GIs in the EPA is that the text reflects the development needs of the ESA countries, like Ethiopia who can benefit from better protection and acknowledgement of their GIs.

1. The draft text of the ESA EPA is available online at www.bilaterals.org/article.php#id_article=6014

Criticisms of the Use of Geographical Indications

In relation to the Ethiopia-Starbucks case there have been a number of commentaries on the role of IPR in development. Some of these have been highly critical of the use of GIs as a means to protect Ethiopian coffee. Four main arguments against the use of GIs have been put forward (Holt 2007):

1. That the purpose of the GI is not aligned with the goal of the Ethiopian coffee sector – getting a better price for their coffee;
2. Secondly that GIs are designed to defend valuable intellectual property, not to develop economic value;
3. Thirdly that GIs would be extremely costly to govern; and finally that
4. GIs are unnecessary.

The first argument suggests that GIs are only aimed at protection against copycats and against counterfeits; interestingly such an argument could also be put forward for trademarks. It goes on to state that GIs would not give commercial control of coffee brands to the Ethiopian farmers, thus failing to enhance the producers' power to improve their profits. However, in the example of the Blue Mountain coffee growers it has been demonstrated that a GI does give power to the coffee farmers. The practical application of the GIs in Jamaica clearly demonstrates that GIs can work for the benefit of coffee producers.

The second argument is made on the basis that producers have to have direct access to consumer markets and have already established valuable brands. The example of French cheese is cited and how supermarket chains up the price to the consumer, whilst simultaneously negotiating with the supplier a lower price. However, in the case of Comte cheese it has been demonstrated that farmers in France benefited from the instigation of a GI, with the value being paid to farmers increasing, thus improving, their profit margins. As to whether brands have to be already established there is little evidence to support this. In fact historically it has been the instigation of GIs that has indicated quality and helped establish the product as a valuable resource.

The third argument suggests that Ethiopian farmers grow coffee in hard to reach areas, with thousands of farmers on tiny parcels of land. This would be difficult to certify without huge taxation increases and this burden would be placed on the coffee farmers. Firstly there is no guarantee that any tax increase would be borne by the coffee producers, it could come from other areas of fiscal collection, so there is an inherent assumption in this argument that is not necessarily true. Secondly the EIPO and the coffee coalition attempting to gain trademarks for the coffee represent a fraction of these thousands of farmers. Only certain co-operatives are in the coalition, therefore not all farmers will benefit from the trademark. Trademarking could leave the majority of farmers worse off as they could only sell to

one official government buyer rather than the market. GIs would be applicable to all farmers in an area and therefore all could benefit from the value a GI brings. Finally in relation to certifying the GI, it is possible for developing countries to set up the means to do so – as Blue Mountain coffee has proved.

The final argument is that certification is unnecessary as the coffee retailers already certify their brands. The only purpose for a GI would be to neutralise counterfeiting, and the cost will be borne by the poor farmer for no tangible benefit. It is true that Starbucks and other retailers label their coffee in certain ways, but all the profit gained from these schemes currently goes directly to Starbucks rather than the Ethiopian coffee farmer. The idea of the GI is to help the producer gain more money and leverage over the retailer. Therefore there is a very real tangible benefit in GIs for farmers' income.

Indeed there are arguments put forward against the use of GIs, but the fact remains that developing country governments continue to support their use and introduction on products of export importance to them. These governments are not acting against their own interests, simply because the process of trade marking all their export products is much more expensive than the idea of creating a schedule of GIs that should be protected under international IPR law. Therefore the value of GIs is apparent in developing countries.

Conclusion

It has been shown that different countries have different approaches to GIs and that there is no global consensus on their use. Indeed even the EU that promotes GIs and their economic benefits has also used GIs against South Africa to limit its production of certain wines and spirits. Therefore the way the GIs are used and the format under which the rules relating to them are negotiated is very important. Nevertheless given the economic arguments in favour of GI protection this brief supports the notion of greater recognition of GIs in the current DDA round of negotiations under TRIPS. The inclusion of GI co-operation and rules could also be beneficial to the countries signing an EPA.

The creation of a WTO registry of developing country products would help lower enforcement costs by, for example, codifying the rights of producers into international law. The WTO has been very effective in protecting GIs for wines and spirits, the extension of the protection under Article 23 from wines and spirits to other products would support the economic development of the agricultural producers of those products.

The improvement of protection for GIs in international law can be used as a tool to support the betterment of rural lives in developing countries. This depends upon the way in which protection is agreed for developing country GIs, with the emphasis needing to be clearly on development rather than protectionism. The continuing debate in the DDA WTO negotiations will go a long way to determining the outcome of the possibility of using GIs as a development tool. For countries like Ethiopia the EPA with the EU will also determine how GIs can be harnessed in those countries to support development. This brief has recommended the inclusion of GIs for certain products in EPAs and an extension of TRIPS Article 23 protection to all products, especially those produced in the developing countries, as a means to promote development in those countries.

List of Acronyms

ACP	African, Caribbean and Pacific
DDA	Doha Development Agenda
EIPO	Ethiopian Intellectual Property Office
EPA(s)	Economic Partnership Agreement(s)
ESA	Eastern and Southern Africa
EU	European Union
GI(s)	Geographical Indication(s)
IP	Intellectual Property
IPR	Intellectual Property Rights
LDC	Least Developed Countries
NCA	National Coffee Association
NGO	Non-Governmental Organization
TDCA	Trade Development and Cooperation Agreement
TRIPS	WTO Agreement on Trade-Related Intelectual Property Rights
USPTO	United States Patent and Trade Mark Office
WTO	World Trade Organization
YVLA	Jamaican Yallahs Valley Land Authority

References

Agency for International Trade Information and Cooperation (2005) "Geographical Indications: Protecting Quality or Markets?" online http://www.acici.org/aitic/documents/notes/note35_eng.htm

Bilaterals.org (no date), "US–Chile" http://www.bilaterals.org/rubrique.php3?id_rubrique=20

Botha, L. (2005) "Multilateral Issues Relating to Geographical Indications", www.tralac.org, 5 October.

Coffee Industry Board (2002) "Role and Functions" online http://web.archive.org/web/20020206165040/www.jamaicancoffee.gov.jm/role&func.html

European Commission (2007) "Why do Geographical Indications matter to us?", online http://www.ec.europa.eu/trade, 11 June.

Floyd, B. (1970) "Agricultural Innovation in Jamaica: The Yallahs Valley Land Authority", *Economic Geography,* Vol. 46, No. 1, pp 63–77.

Gallu, J. (2006) "Starbucks, Ethiopia and the Coffee Branding Wars", *Der Spiegel* online, 12 November.

Grant, C. (2005) *GIs and Agricultural Products: Investigating their relevance in a South African context MCOM thesis in the Department of Agricultural Economics.* University of Pretoria.

Greenberg, S. (2000) "Raw Deal: South Africa–European Union Trade Pact", *SAR,* Vol. 15, No. 4, May.

Holt, D.B. (2007) "Is Starbucks 'Coffee That Cares?", Said Business School, Oxford University, 25 January.

Oxfam, "Starbucks opposes Ethiopia's plan to trademark specialty coffee names that could bring farmers an estimated $88million annually", Press release, 26 October, online www.oxfam.org

Rudloff, B. and Simons J. (2004) "Comparing EU free trade agreements: Agriculture". *ECDPM InBrief 6A.* Maastricht.

WTO (2004) *The Legal Texts. The Results of the Uruguay Round of Multilateral Trade Negotiations*. Cambridge University Press.

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