The Protection of Geographical Indications (GI): Generating Empirical Evidence at Country and Product Level to Support African ACP Country Engagement in the Doha Round Negotiations

Introduction to Geographical Indications (GIs)

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Outline of Presentation

I. What are GIs
II. Systems for the Protection of GIs
III. Establishing GIs
IV. Functions of GIs
    a. Attraction of premium prices
    b. Maintenance and development of industries
    c. Preservation of rural employment
    d. Preservation of rural landscapes/environment
    e. Protection of traditional knowledge (TK)

1. What are GIs? -TRIPS Agreement

Art.22.1 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 given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”.

2. Systems for the Protection of GIs TRIPS Agreement Art 22.2

Members [of the WTO] shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

Systems for the protection of GIs – Registration (sui generis protection)

Eg **Mauritius Geographical Indications Act 2002**

9(1) An application for the registration of a geographical indication shall specify—

(a) the name, address and nationality of the person filing the application, and the capacity in which the applicant is applying for registration;

(b) the geographical indication for which registration is sought;

(c) the geographical areas to which the geographical indication applies;

(d) the products for which the geographical indication applies; and

(e) the quality, reputation or other characteristic of the products for which the geographical indication is used.

Council Regulation (EC) No 510/06 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs

Art.4- Specification

- the name of the agricultural product or foodstuffs
- a description including the raw materials and principal physical, chemical, microbiological and/or organoleptic characteristics
- the definition of the geographical area ...
- evidence that the agricultural product or the foodstuff originates in the geographical area, within the meaning of Article 2(2)(a) ...
- a description of the method of obtaining the agricultural product or foodstuff and, if appropriate, the authentic and unvarying local methods;
- the details bearing out the link with the geographical environment or the geographical origin within the meaning of Article 2(2)(a) ...
- details of the inspection structures provided for in Article 10;
- the specific labelling details relating to the indication PDO ... or the equivalent traditional national indications;

EU Specification: Scotch Lamb

Description:

The product is derived from lambs born, reared throughout their lives, slaughtered and dressed in the designated geographical area.

Geographical area:

The area is defined as the mainland of Scotland, including the islands off the west coast, Orkney and Shetland.

Example: Scotch Lamb

Method of production:

Lambs are born and reared throughout their lives in the designated geographical area. The animals will have been produced and slaughtered in accordance with quality assurance schemes accredited to European Standard EN 45011 (ISO Guide 65) and having the same standards, assessments and assessment frequencies as those set by the applicant. They are slaughtered and dressed in the designated geographical area in accordance with the specifications.

Link:

Scotch Lamb has a quality and characteristics arising from extensive grazing on the characteristic pastures of Scotland.

Thailand - Nakornchaisri Pamelo

General geography : Basins flown by Ta Jeen River, without mountain in the districts of Nakorn Chaisri, Sampran, and Budhamonton which is suitable for growing pamelo.

Climate : Tropical area , annual rainfall 700 – 1500 mm.

Soil : Sticky and brown, slightly acidic to alkaline with 6.5 – 8.0 pH.

Phetchabun Sweet Tamarind

General geography : The province is characterised by hills, mountains and forests, with flat land at the centre of the province. The majority of the local population –80% of them—are farmers. Farm land covers 4.67 million Rais.

Climate : The province is located within the hot, tropical zone, with average annual rainfalls at 940-1,493 millimeters, average temperature of 40 C, to the lowest of 12 C. Average humidity level ranges from 21%-99% which makes a marked difference between daytime and nighttime.

Soil : Contains highly nutritious elements of phosphorous and potassium, suitable for cultivation of fruit tree especially sweet tamarid

Other methods for the protection of Gs Certification trade mark

eg Kenya Trade Marks Act, 2002, Part VII

40. (1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic from goods not so certified shall be registrable as a certification trade mark in Part A of the register in respect of those goods in the name, as proprietor thereof, of that person

Kenya Trade Marks Act, First Schedule

(5) The Registrar shall consider the application with regard to the following matters-

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;

(b) whether the draft regulations are satisfactory; and

(c) whether in all the circumstances the registration applied for would be to the public advantage;

Kenya Tea Board, Certification Mark No. 65335, 15 April 2009 classes 16 (printed matter), 25 (clothing and head gear) and 30 (tea)

- Tea packets and containers bearing the mark must contain 100% tea produced in Kenya.
- The Kenya tea branded with the mark of origin must be manufactured according to the Tea

The packets and containers bearing the mark of origin must be packed in premises registered by the Tea Board of Kenya.

Examples of Foreign GIs Protected In the U.S.

"Thai Hom Mali Rice"

- Owned by Dep't of Foreign Trade, Ministry of Commerce of Thailand, U.S. Reg. No. 2,816,123
- [The certification mark and design] certifies that the rice is THAI HOM MALI RICE harvested in Thailand per the standards set by the Ministry of Commerce of Thailand in "Regulations of the Department of Foreign Trade Re: Usage of the Certification Mark of Thai Hom Mali Rice."

Examples of Foreign GIs Protected In the U.S.

"Darjeeling"

- Owned by Tea Board of India U.S. Reg. No. 2,685,923
- Word Mark (Word "DARJEELING")
- "As used by authorized persons, certifies that the tea contains at least 100% tea originating in the Darjeeling region of India and that the blend meets other specifications established by the certifier."

"JAMAICA BLUE MOUNTAIN COFFEE"

- U.S. Trademark Registration No. 1,414,598
- For "Coffee"
- "The certification mark…certifies that the coffee in respect of which the mark is used is grown in the Blue Mountain Area of Jamaica by a person registered to grow coffee in that area pursuant to the coffee industry regulations 1953 of Jamaica…"

European (OHIM) Registration

Applicant: Lobelia Farms Limited

ID No: 435077

Address:

Meru/Nanyuki Road, Ngushishi Settlement Scheme 4

Timau, Kenya

Filing date 09/11/2010

Nice classification

Classes 21, 31, 35, 39, 44.

Establishing GIs – Sarawak Case Study

Rice mixtures in the field

Adulteration of traditional varieties

- **Local mixed varieties of varying qualities**
- **Results in low consumer confidence**
- **Department of Agriculture initiated Bario Rice Certification Scheme in 2003**
- **Rice grown in pristine environments with minimum chemical inputs**
- **Earned a reputation due to its smooth, glossy texture**
- **Commands a premium price in Sarawak**

Bario Rice Certification Scheme Objectives

- **Increase productivity and farmers' income without damaging environment and biodiversity**
- **Protect Bario rice and prevent its extinction**
- **Recognize Bario rice as a premium grade rice**
- **Upgrade production protocols to achieve 'organic' standard**

BRSC – selected panicles for good seeds

Genetic profiling by Microsatellite Markers to differentiate Bario Rice

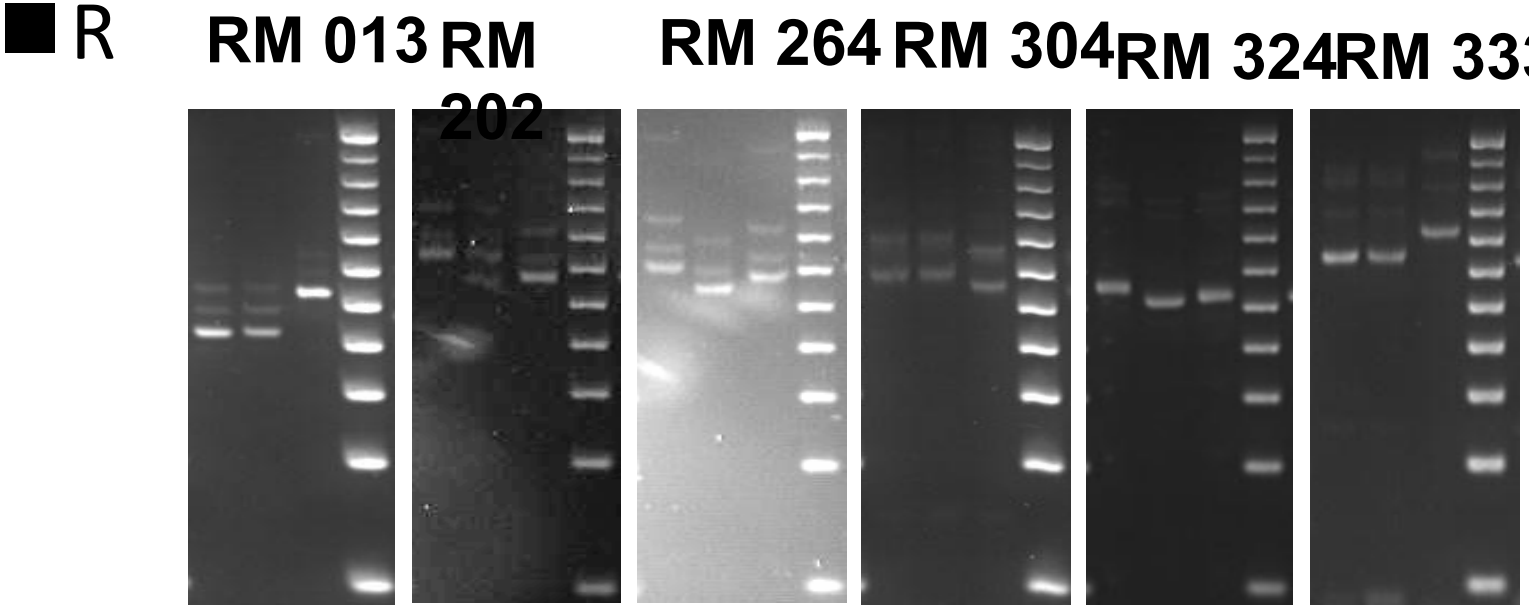


Figure 1. Microsatellite polymorphisms for local Bario rice varieties using rice markers RM013, RM202, RM264, RM304, RM324 and RM333. Lane 1-3 (Start from Left) : Adan Halus, Adan Sederhana, and Padi Tuan. Lane: 3: 25 bp DNA step ladder Markers.

Essential elements of GI

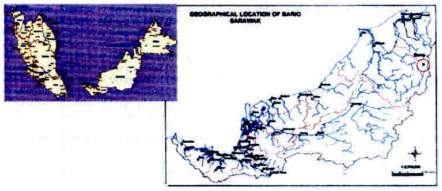
- Name of the territory or region eg Bario,
- Quality , reputation or other characteristics of the goods
- Fine finishing
- Taste
- Workmanship
- Superior quality

Perbadanan Harta Intelek Malaysia
Intellectual Property Corporation of Malaysia

GEOGRAPHICAL INDICATIONS ACT 2000
GEOGRAPHICAL INDICATIONS REGULATIONS 2001

CERTIFICATE OF REGISTRATION
[Subregulation 29(3)]

BARIO RICE



Geographical Indication No.	:	**GI08-00001**
Class	:	3
Name of Registered Proprietor	:	Department of Agriculture Sarawak
Registered From	:	10th day of March 2008
Expiry Date	:	9th day of March 2018
Goods	:	In respect of the following goods

BARIO RICE

Quality, Reputation or Other Characteristic

Bario Rice (Padi Adan) originated in the Kelabit Highlands, also known as Bario in Sarawak, Malaysia. The Kelabit Highlands where the rice is cultivated, is over 1,000m above sea level and has cool day temperatures ranging from 19-22° Celsius.

Bario Rice is a traditional tall rice variety with strong stems. It is tolerant to pests and diseases and is very efficient in extracting nutrients from the soil. It takes about 6 months to mature and only one crop can be planted per year. During the fallow period, buffaloes live in the fields where they eat the weeds and fertilise the soil thus, minimising the use of chemical fertilisers and herbicides. The animals are also used to plough the fields and transport goods.

Bario Rice is classified as medium grain and is marble white in colour. There are no machines in the Kelabit Highlands and the rice is handcrafted using age old traditional methods to ensure its excellent taste and texture. It possesses all the fine attributes of naturally farmed 'organic' rice with a refreshing flavour and unique taste because it is grown in cool, pristine and natural environments.

Bario is not accessible by road and Bario rice is air-flown to faraway destinations. Bario rice is known for its soft and slightly sticky texture, fine grains and gastronomical experience. Bario rice is famous in Sarawak and highly appreciated in fine Malaysian cuisine. It has earned a name for itself and it is regarded as one of the finest rice grains in the world.

(KAMEL MOHAMAD)
Registrar of Geographical Indications
MALAYSIA

Date: 30 December 2008

GI Certificate

Bario

10 March 2008 to 9 March 2018

Branding of Bario Rice

- Vacuum packed 1 kg bag with labeling
- Price RM 10 /kg

Pre-registration Procedures

Study to determine candidates for GIs protection

Draft Specification and Production Standards

- Production standard
- Boundary setting
- Linkage Between Product and Boundary
- Production standard

Legal Registration

GI Control Mechanisms

Promotional strategy for the GI

GIs Activities

(1) GI area meeting

(2) Study visit

(3) Drafting application

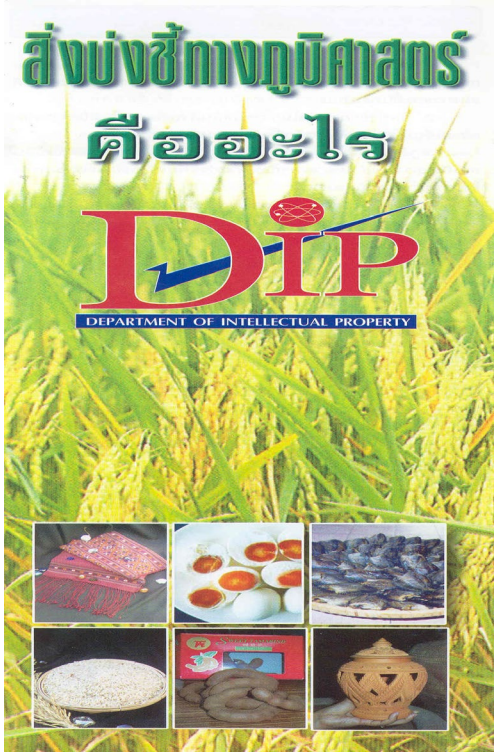
(4) Focus group meeting

Control System

- Producer Manual
- Registration of Producers
- Internal Control Plan
- External Control Plan
- Promotional Strategy

Promotional Activities

- Advertising and news stories- radio, TV and print media
- Exhibitions : IP fairs, Expositions
- Brochures



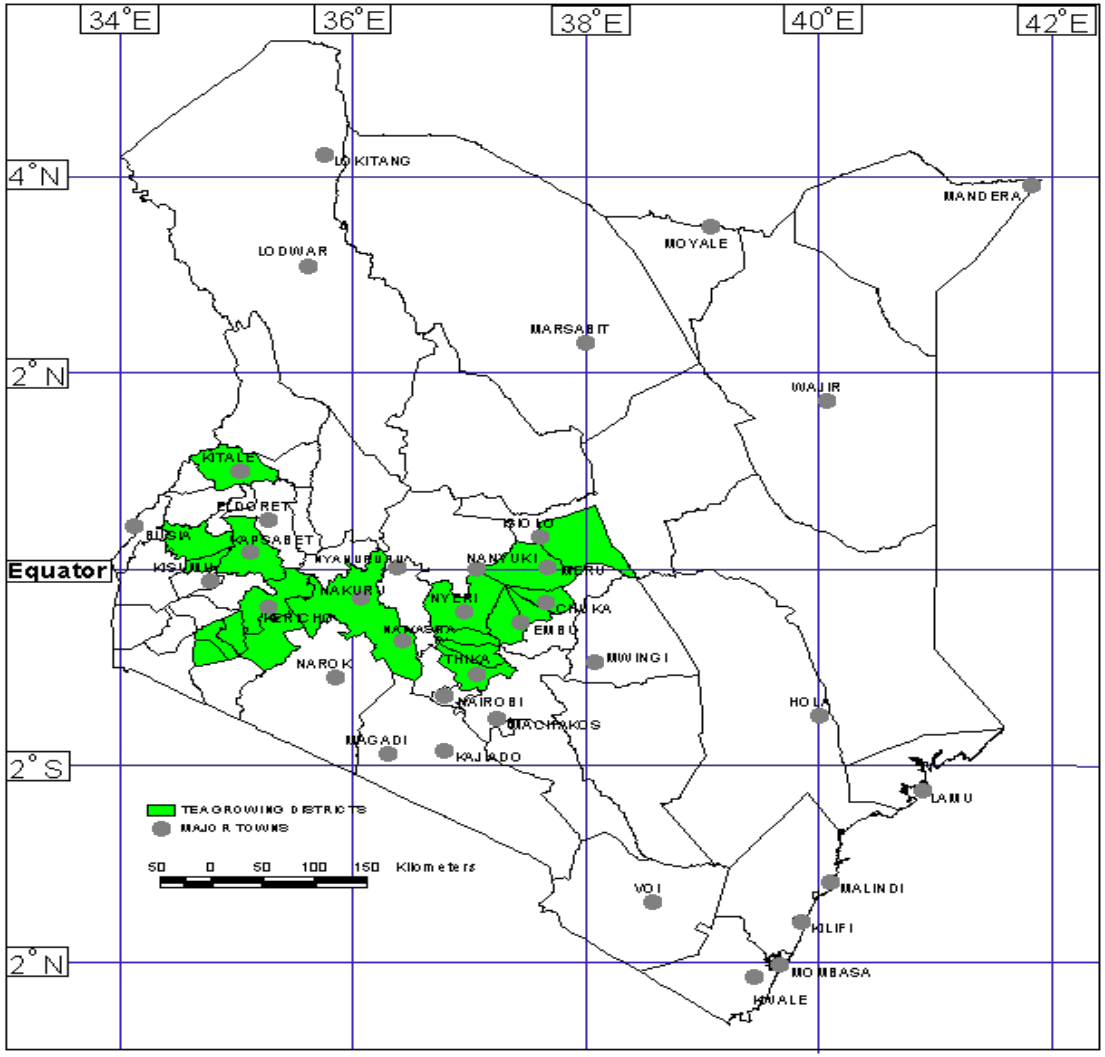
IV. GIs to Maintain Significant Industries eg **Kenyan Tea**

- Kenya tea is free of pests and/or diseases, produced without use of any agrochemicals, other than fertilizer
- Equatorial location - tea receives 12 hours of sunlight throughout the year.
- Grown between 1500-2700 metres above sea level, receiving 1200-1400mm of rainfall annually, which is spread throughout the year. This makes the supply of Kenya tea consistent throughout the year both in quantity and quality.
- Rich in anti-oxidants.
- Over 90% is hand-picked, only the finest top two leaves and the bud are used for tea production. This explains the excellent cuppage and aroma of Kenyan teas.

GIs Mapping of Kenyan Tea

- Technical Committee on GIs (Tea Board of Kenya ,Ministry of Agriculture, Ministry of Trade, Kenya Tea Development Agency Ltd, Kenya Industrial Property Institute and East Africa Tea Trade Association (EATTA) reviewing the chemical, agronomical and meteorological properties to build a GIs profile.
- Thus far, seven different tea growing regions identified, Eg:
- Nyambene- Mineral rich soils, ample climate well-endowed rainfall producing a distinctive mellow flavour.
- Meru- NE slopes Mt Kenya, moderate cold weather patterns, ample distribution of rainfall, mineral rich soils produce a range of teas from full-bodied to moderate.
- Embu- Eastern slopes of Mt Kenya, upper region close to peak. Medium cup depth with smooth round characteristics medium body liquors with a predominantly reddish tint and mild flavour.

TEA GROWING DISTRICTS OF KENYA



Tea Board Certification Mark

- Tea packets and containers bearing the mark must contain 100% tea produced in Kenya.
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Maintaining Industries in Decline

- Both sugar (Mauritius) and cloves (Zanzibar) were the principal industries in each country but have been in a state of decline.
- Each country has developed strategic plans to deal with the situation of decline, but GIs have not been considered in either Government's plans.

Mauritius –Sugar Strategy

- With the termination of ACP-EU Sugar Protocol on 30 September 2009, the basic guaranteed price for raw sugar declined in Mauritius' European market from 448.80 euros per metric ton in 2009 to 335.20 euros per metric ton in 2010.
- At the same time the euro declined from 44.41 MUR to 38.44MUR in May 2010
- Multi Annual Adaptation Strategy (MAAS) 2006-2015 for sugar seeks to ensure the long term viability of the sugar industry through the production of ethanol,; closure of 7 out of 11 factories to realise economies of sale; reduction of the area under sugar cultivation; and a voluntary retirement scheme for those currently involved in the sugar industry. In other words the central focus of the MAAS is cost reduction.

Sugar Strategy and GIs

- Absent from the MAAS is any proposal to maintain the demand for sugar or for capturing a premium price for Mauritian sugar through marketing or product differentiation.
- The development of a GI for Mauritius Demerara sugar offers the opportunity for market diversification.
- The development of a sugar GI would support the maintenance of rural employment, preservation of traditional landscapes (relevant for the development of tourism) and sustainable environmental practices.

Feasibility of Mauritius Demerara Sugar as a GI

The production of Demerara as a special sugar is being trialled on an experimental basis and no view has yet been formed about the premium prices in sales to be achieved

Zanzibar - Cloves

- In the mid-19th Century Zanzibar was responsible for over 90% of the world production of cloves. Today that figure is closer to 12%.
- clove output - average of 12,408 tons during the 1950/51-1959/60 declined to an average of 4,805 tons in the 1990/91-1999/2000 period

Clove Plan

- 2002 the RGZ commissioned a report on how the clove industry could be revitalized : Economic Research Bureau, University of Dar es Salaam, *Study on the Zanzibar Clove Industry* for the Zanzibar Revolutionary Government, Ministry of Finance and Economic Affairs, January 2003

Clove Plan

- provide an enabling environment for private sector participation
- improve market infrastructure for both internal and external markets
- streamline export procedures
- The report makes no reference to the improvement of trade promotion techniques (eg GIs) , although it concedes that the “marketing of cloves as is currently carried out in Zanzibar has not sufficiently demonstrated the attributes of an economy facing the realities of a fast globalizing world”. Report, para 7.1.4.

V. Feasibility for GIs Protection
Distinctive Features of Zanzibar Cloves

- Distinctive aroma- makes it particularly appealing for use in cooking and for the production of essential oils.
- Unique flavour- “bitter sweet” enhances its appeal for use in cooking
- Attractive appearance- the brown reddish colour of the Zanzibar clove makes it particularly appealing to the Indian spice market.
- Distinctive Size- more slender than others enhancing its appeal to consumers, particularly for use in cooking.
- Organically produced-
- Low oil content- suitable for the production of kreteks Indonesian (clove cigarettes)

GIs and Industrial Recovery

- Eg Tanzanian Sisal (*The Guardian* (Dar es Salaam) Feb.17, 2011-interview with Acting DG of Tanzania Sisal Board)
  - 1964 - 95% of world production (234,000 tons)
  - 1998 – 8% of world production (23,228 tons)
- Kilimo Kwanza initiative
  - Aimed at developing the agricultural sector of the country and elevating small-scale farmers
  - A role for GIs in promoting Tanzanian sisal?

Use of GIS to develop new markets and to balance declining markets

- Mauritius - **Piment Rodrigues**
- UNDP project establishment of a chilli village in Baladirou

Mauritius **-Bois Cheri Tea**

- C19 tea plantation started at Chamarel.

Mauritius - **Saint Aubin Rhum**

Sugar cane introduced by the Dutch in 1638 for the production “arrack”, a precursor to rum. From 1850 distillation of rum at St Aubin, which was a sugar plantation from1819

Mauritius - **Rodrigues Limes**

- Rodriguans have developed exclusive recipes of green pickled lemons ground with chillis and ‘aigre–doux limon’.
- Pickled limes are identified as having good marketable potential in Europe.

Mauritius – Exotic Fruits

- The climatic and soil conditions of Mauritius allow the growth of up to 50 fruit species, with minimal chemical inputs and can be exploited as bio-fruits
- Pineapple and litchi, already enjoy a good name on the European market.
- The tourist industry constitutes a significant domestic market for fresh fruits, fruit juices and processed fruits.
- Many fruit species are already growing with minimal for niche/ethnic markets or for innovative processed products.
- A number of Mauritian fruits have been identified as being not only as a good source of vitamins but also of anti-oxidants; some also with medicinal properties e.g jamoon (jamblon); guava; passion fruit, star fruit

Use of GIS to develop new markets and to balance declining markets

- Zanzibar – **Bungo Fruit**

Currently consumed as a fruit, but also used as a juice with a taste between a mango, an orange and a pineapple. Currently, consumption is within Tanzania or Tanzanian expatriate communities, but the possibility of exporting the juice is mentioned by stakeholders

Preservation of Rural Landscapes eg Mauritius

IV. GIs and the protection of Traditional Knowledge (TK) and the protection of Traditional Cultural Expressions (TCEs)

- the term “traditional knowledge” refers to the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities,... and may include agricultural, environmental and medicinal knowledge, and any traditional knowledge associated with cultural expressions and genetic resources
- WIPO/GRTKF/IC/17/5 The Protection of Traditional Knowledge: Revised Objectives and Principles

Review of Existing Intellectual Property Protection of Traditional Knowledge, IGC Secretariat, WIPO/GRTKF/IC/3/7 May 6, 2002.

- GIs as defined by Article 22.1 of TRIPS …rely not only on their geographical connotation but also, essentially on human and/or natural factors (which may have generated a given quality, reputation or other characteristic of the good).

Review of Existing Intellectual Property Protection of Traditional Knowledge, IGC Secretariat, WIPO/GRTKF/IC/3/7 May 6, 2002.

- In practice, human and/or natural factors are the result of traditional, standard techniques which local communities have developed and incorporated into production. Goods designated and differentiated by geographical indications, be they wines, spirits, cheese, handicrafts, watches, silverware and others, are as much expressions of local cultural and community identification as other elements of traditional knowledge can be.

WIPO/GRTKF/IC/17/4The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles

Art.1.1 definitions

(d) tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), wooden carvings, sculptures, mouldings, pottery, terracotta, mosaic, woodwork, metalware, jewelry, baskets, food and drink, needlework, textiles, glassware, carpets, costumes, works of mas, toys, gifts and; handicrafts; musical instruments; stonework, metalwork, spinning and architectural and/or funeral forms.

Common Features of GIs and TK/TCEs

GIs	TK/TCEs
Products produced by a number of different producers	Products produced by a community
Products based on traditional formulas or processes	Products made according to traditional methods
Goodwill transmitted from one generation to the other	Know how transmitted from one generation to the other
Relationship to the land, local resources and environment	Link to traditional methods or conditions used in a specific place
Many years required to produce the link between the product and the geographic origin	Element of time
Value of the product linked to its origin	Value of the product linked to the certification that it was created by a particular community

Ugandan Bark Cloth
From the Mutaba Tree

UNESCO proclamation in December 2005 of the art of bark cloth making in Uganda as a masterpiece of the world's intangible heritage as well as recognition of the indigenous textile production skills of Ugandan craftsmen.


Final
Product

Other Products

Cushion Covers

Laptop Sleeves

Ghana –Kente Cloth

Kente – GIs Potential

- Kente is labour intensive, (typical sole entrepreneurship-firms employing between 5-20 persons with approximately 100,000 persons deriving livelihood from this commodity chain process)
- There has been a decline in earnings from this trade (peaking of $US14 million in 2001, which has fallen to $US3 million in 2010). The decline is attributed to the rise of cheaper synthetic versions from China and Vietnam
- GIs identified as a means for preserving and promoting kente.

Kenya -Kisii Soapstone

Handicrafts produced from Kisii soapstone have a long tradition. Handicrafts have a typical style. There is a local association of soapstone producers KISII Soapstone Carvers Cooperative Society Ltd (KISCO-cop) reportedly with 100 female and 300 male producers. Soapstone processing the main source of revenues in the Kisii region.

Kenya -Kiondo

“Kiondo” is a handbag made from Kenyan sisal, by the Kikuyu (mainly from the southern and western sides of the Mount Kenya) and Kamba (based in the Eastern Province of Kenya). Traditionally, used to hold staple foods, such as beans and maize. Now they have evolved into fashion bags. There is a current campaign for the inclusion of Kiondo in the UNESCO world heritage list of cultural items

Tanzania - Zanzibar - Doors

Zanzibar - Doors

- A number of informants suggested that the Zanzibar doors which can be found on houses in the Stonetown district of Zanzibar City, a UNESCO World Heritage site could be protected as a GI.
- These wooden doors are a fusion of Swahili, Omani and Indian styles. Internet searches indicate that there is a significant international trade in these doors.
- For example one Russian site indicates that “We can export our Zanzibar Door to Canada, Brazil, Denmark, Australia, Tunisia, Jordan, Latvia”. http://www.openrussia.ru/catalogitems/3947/Zanzibar-Door.htm.

Mexico

Two protected appellations of origin for craft products

- Talavera
- Olinalá

Portugal

Madeira Embroidery

Ajrak cloths from the Sindh

Tokelau- Fine mat weaving

Yalibu baskets PNG- Southern Highland Province

Tapa Tonga

Pandanus Fibre- Micronesia

Extending the Protection of Geographical Indications. Case Studies of Agricultural Products in Africa,
Edited by Michael Blakeney, Thierry Coulet and Marcellin Tonye Mahop,
London, Earthscan, 2012