# Post-Cotonou and Innovation? Lessons Learned from Intellectual Property provisions on Geographical Indications in the EU-ACP Economic Partnership Agreements

**By:**

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Within the framework of the Economic Partnership Agreements (EPA) between the European Union (EU) and three African, Caribbean and Pacific (ACP) regions – namely, the Southern African Development Community (SADC), the Caribbean Forum (Cariforum) and the East African Community (EAC) – there are provisions on Geographical Indications (GIs). These GIs are place names – or words associated with a place – that are used to identify the origin, quality, reputation, and are included as 'trade-related issues of innovation and intellectual property' (IP) under the EPA. The legal protection afforded to GIs

can bring 'added-*socio*-*economic*-value' to local products, benefiting local communities, rural development and traditional knowledge. It can also protect against fraudulent use of names, which in turn benefits the consumer and raises awareness of the cultural and biological specificities of products. The inclusion of GIs in the EPAs raises several issues, which are significant for the future ACP-EU relationship.

Historically, the EU has been offensive in pushing for ACP countries to protect GIs in the EPAs (externally), while maintaining a defensive approach to the protection of EU GIs internally. Understanding the EU's own motivations as an attempt to apply its own system of IP protection extraterritorially via the implementation of the EPAs is key because it demonstrates the potential for the EU's framework to become the benchmark for ACP countries in the future relationship. Furthermore, there is no consensus on the trade-development nexus of GIs globally. In other words, there is no consensus on the potential of GIs to add value to third country agricultural products based on cost-benefit analyses. Nevertheless, GIs are increasingly seen as an important development tool and, in the EPA negotiations, some 'developing' countries were keen to protect their agricultural products.

South Africa, for example, is the only ACP country to list three agricultural GIs in the EU-SADC EPA. The three non-wine agricultural products added to the Protocol and afforded GI protection are Karoo Meat of Origin, Rooibos and Honeybush. From a socio-economic perspective, this protection is intended to ensure that local producers reap the benefit of the value associated with the quality of their product, while also guaranteeing that EU producers cannot market their goods under the same name. There is scope under the SADC-EPA for South Africa to add a further 30 GI products and the process is currently underway to identify products. Additionally, both the Cariforum EPA and the EAC EPA also contain provisions on GIs, and the former is also establishing a list to be annexed to that agreement. It is noteworthy that while South Africa listed 3 GIs, the EU listed 105 under the EU-SADC EPA. This demonstrates the asymmetry between the EU and ACP in the use of GIs which is being perpetuated through the EPA framework under the banner of 'innovation and IP'. This *de facto* imbalance in competence on GIs in particular, but also IP and innovation in general, is linked to the EU's own historic *acquis* in this area and

its role in defining the rules of the game of trade. Indeed, this does not fundamentally shift the nature of the partnership in a post-Cotonou context closer to the infamous adage of to a 'partnership of equals'. Yet, if we focus on the development-friendly aspirations of the EPA, these provisions on GIs would need to be accompanied by several other measures. In this regard, we can imagine three scenarios:

In the first scenario, ACP regions would continue to depend on EU financing, technical assistance and capacity building to develop their GIs through targeted trainings and pilot projects – indeed, this is already underway following the African Union (AU) - EU Summit 2017 and the development of the 'African Union Continental strategy for Geographical Indications (GIs) in Africa 2018-2023'. This would create '*GI darlings'* that inevitably use the EU's GI benchmark. In the second scenario, ACP regions may adopt a reactive approach and pursue international litigation in cases where the GI of agricultural products originating in the ACP have been registered in foreign jurisdictions. One such example is the South African rooibos dispute that was settled out of Court after a French company attempted to file a trademark application in 2013, which also follows from a similar case in the US in 2005. Or, equally, the Dutch case of the invalidation of teff – the main ingredient of the Ethiopian staple, injera – under Dutch law in 2014. In the third scenario, ACP regions drag their feet on implementation unless there is a drive from private sector with cash injections and public sector incentives to boost trade in GIs. This is where the shift toward blended finance may become significant. However, without incentives, both external (EU) and internal (ACP), GIs risk being another component absorbed into the broader frame of slow implementation of the EPAs embroiled into legal controversies on provisional implementation of the agreement, arising from that lack of ratification by all signatory parties' national parliaments.

Above and beyond the EU-ACP framework, the ACP group as part of a coalition of 108 countries at the World Trade Organisation (WTO) have been explicit in their call for the establishment of a binding multilateral register open to all GIs, and the extension of Article 23 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS, currently just covers wines) to all products. Such reforms would enable the ACP regions to leapfrog in the domain of innovation and IP, *inter alia*, through the development of coherent, fine-tuned and

sustainable GI strategies as part of a broader IP and industrial strategy.

Post-Cotonou approaches to innovation require the technocrats to go beyond the jargon of ‘partnership of equals’ and change their own *modus operandi*: the future relationship must be based on co-production and the case of GIs is a testing ground for this. This would involve dedicating technical teams to work co-productively with farmers’ groups – women, youth, community-based – to understand the local issues that will impact any GI scheme in the regions. But it also means looking at new and novel products, such as cannabis, especially given the drive to legalise cannabis and in particular ‘medical marijuana. By extension, it means recognizing the importance of a development focused approach to the ACP and extending the scope of GIs beyond its current remit which has long-been defined by European values.

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