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LEAST DEVELOPED COUNTRIES AND GEOGRAPHICAL INDICATIONS:
HOW CAN UGANDA POSITION ITSELF TO BENEFIT FROM
GEOGRAPHICAL INDICATIONS?

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Isaiah 25:1

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LIST OF ABBREVIATIONS

CORBANA	Corparación Bananera Nacional
DDA	Doha Development Agenda
EU	European Union
FNC	Federación Nacional de Cafeteros
GDP	Gross Domestic Product
INTA	International Trademarks Association
LDC	Least Developed Country
MS	Madrid System
NARO	National Agricultural Research Organisation
PCT	Patent Co-operation Treaty
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
TRIPS	Trade Related Aspects of Intellectual Property
UBOS	Uganda Bureau of Statistics
UNBS	Uganda National Bureau of Standards
URSB	Uganda Registration Services Bureau
US	United States
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

ABSTRACT

The primary objective of this thesis is to determine how Uganda can optimally benefit from geographical indications. This objective is achieved by focusing on the current negotiations at the World Trade Organization concerning geographical indications. The main issues in contention are the extension of a higher level of protection to other products, besides wines and spirits, and the establishment of a multilateral register for wines and spirits. In the discussion of these issues, each proposal is examined in light of Uganda's interests.

The thesis also focuses on how geographical indications can be turned into development tools at the national level. It considers Uganda's legislation, the Geographical Indications Act 8 of 2013, and highlights the provisions that might deter the establishment of a successful geographical indications system in the country. The thesis then identifies other factors that Uganda must address in order for geographical indications to become development tools.

It is concluded that in order to establish a successful geographical indications system, Uganda needs to continue its support for the Modalities Proposal in the international negotiations. Furthermore, at the national level, there are various factors that must be addressed, beyond the law, before geographical indications can become development tools, and these include the formation of producer organisations, marketing strategies and the sensitisation of stakeholders.

Keywords: Intellectual Property Rights, Trade Related Aspects of Intellectual Property, Geographical Indications, Least Developed Countries, Uganda.

CHAPTER ONE

1. INTRODUCTION

1.1 Background

The Agreement on Trade Related Aspects of Intellectual Property (TRIPS) is a treaty that resulted from the Uruguay Round of trade negotiations. The aim of this agreement is to provide minimum standards for the protection of intellectual property rights with which the members of the World Trade Organisation (WTO) have to comply.¹ TRIPS provides standards for intellectual property rights such as copyright and related rights, trademarks, industrial designs, patents, protection of undisclosed information and geographical indications.²

Geographical indications refer to a type of intellectual property provided for under section 3 of the TRIPS agreement. Article 22 (1) defines geographical indications to mean ‘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

Long before the advent of TRIPS, France became the first country to protect geographical indications of source in 1824.⁴ Since the signing of the TRIPS agreement, member states have gone ahead to provide for the protection of geographical indications using different tools such as certification marks, appellations of origin, trademarks and *sui generis* laws.⁵ Some of the member states that have adopted *sui generis* protection of geographical indications include: India, Jordan, Chad, Mali and Guinea Bissau. Uganda has recently joined these countries

¹ Agreement on the Trade-Related Aspects of Intellectual Property Rights, (1994 TRIPs Agreement) in force 1 January (1995); 33 ILM 81.

² Ibid.

³ Ibid.

⁴ SD Goldberg ‘Who will raise the white flag? The battle between the United States and the European Union over the protection of geographical indications’ (2001) 22 *The University of Pennsylvania Journal of International Economic Law* 107 at 108.

⁵ J Hughes ‘Coffee and chocolate – can we help developing country farmers through geographical indications’ *A report prepared for the international Intellectual Property Institute*, (2009) Washington, D.C. at 4.

with the passing of the Geographical Indications Act 8 of 2013.⁶

In November 2001, the Doha Round of the WTO negotiations was launched at the fourth Ministerial Conference, and its aim is to ‘achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules’.⁷ The declaration resulting from this conference provided the mandate for negotiations relating to intellectual property, among other issues.⁸ Under the Doha Round, also semi-officially known as the Doha Development Agenda (DDA), the members of the WTO agreed to work on the implementation of the present agreements, which includes the TRIPS Agreement.⁹

In relation to geographical indications, there are two issues that are currently under debate. The first issue is the creation of a multilateral system of notification and registration of geographical indications for wines and spirits eligible for protection in the member states participating in the system.¹⁰ In respect to the creation of a multilateral system of notification and registration of geographical indications for wines and spirits, four main proposals have been presented namely, the “Joint Proposal”¹¹, the “Modalities Proposal”¹², the Hong Kong - China Proposal¹³, and the International Trademark Association Proposal (INTA)¹⁴. The main areas of contention around this issue concern participation, examination, legal effects of registration, and the necessary fees.

⁶ Geographical Indications Act 8 of 2013.

⁷ World Trade Organization (WTO) The Doha Round, available at http://www.wto.org/english/tratop_e/dda_e/dda_e.htm, accessed on 26 April 2014.

⁸ Ibid.

⁹ World Trade Organization (WTO) Understanding the WTO: The Doha Agenda, available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/doha1_e.htm, accessed on 8 April 2014.

¹⁰ Article 23 (4) of the TRIPS Agreement.

¹¹ World Trade Organization (WTO) Proposed Draft Trips Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits [WTO Doc TN/IP/W/10/REV.4 (31 March 2011)], available at <http://docsonline.wto.org/Doc2FE/Pages/FormerScriptedSearch/directdoc.aspx?DDFDocuments/t/t/tn/ip/w10r4.doc>, accessed on 2 April 2014.

¹² World Trade Organization (WTO) Draft Modalities for TRIPS Related Issues. [WTO Doc TN/C/W/52- 19 July 2008], available at http://www.wto.org/english/tratop_e/trips_e/ta_docs_e/5_1_tncw52_e.pdf, accessed on 2 April 2014.

¹³ World Trade Organization (WTO) Multilateral System of Notification and Registration of Geographical Indications under Article 23.4 of the TRIPS Agreement. [WTO Doc TN/IP/W/8- 23 April 2003], available at https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/5_1_tnipw8_e.pdf, accessed on 2 April 2014.

¹⁴ International Trademark Association (INTA) Establishment of a Multilateral System of Notification and the Registration of Geographical Indications for Wines and Spirits pursuant to TRIPS Article 23 (4), available at http://www.wto.org/english/forums_e/ngo_e/inta_e.doc, accessed on 1 July 2014.

The second issue also stems from Article 23 of the TRIPS Agreement that provides for a higher level of protection to wines and spirits. Article 23 grants wines and spirits a higher level of protection than that accorded to other products under Article 22, because it prevents the use of geographical indications of wines and spirits on other wines and spirits which do not originate from that designation, whether or not the use amounts to an act of unfair competition or the public has been misled by such use.

Regarding the extension of the higher level of protection of wines and spirits to other products, some proponents argue that, the current TRIPs provision creates an advantage for the countries that already have established wines and spirits industries. Arguments have been made that the higher level of protection granted to spirits and wines should be extended to other products in a bid to even out the playing field by providing the same level of protection to products that are not in the wines and spirits category. This thesis considers the above proposals regarding the multilateral register for wines and spirits, and examines the arguments for and against the extension of a higher level of protection to other products, and the impact of all positions on Uganda as a least developed country (LDC).

At a national level, geographical indications are of interest to countries like Uganda because they are considered development tools.¹⁵ The thesis therefore discusses what Uganda needs to do to ensure that it enjoys the social and economic benefits of geographical indications. The national legislation governing geographical indications, the Geographical Indications Act of Uganda,¹⁶ is also discussed, and some of its provisions are highlighted. Finally, the thesis recommends what needs to be in place for Uganda to position itself, both internationally and nationally in order to optimally benefit from geographical indications.

¹⁵ Hughes op cit (n5) 6.

¹⁶ Geographical Indications Act Cap 8 of 2013.

1.2 Purpose of the Study

The discussion of geographical indications in relation to LDCs, with specific reference to Uganda is crucial because of the possible socio-economic development that results from the optimal utilisation of geographical indications. Geographical indications do not only relate to the region from where the product originates, but also to the tradition and practices of producing a product in a particular way.¹⁷ Therefore, they present an opportunity for the global south to maximize the benefits of intellectual property, just as developed countries have taken advantage of patents and trademarks, among other types of intellectual property. This is because the conventional forms of intellectual property rights are better suited to the more technologically developed global north¹⁸, while geographical indications are well suited to agricultural countries, which include those in the global south.

According to studies done by the World Intellectual Property Organisation (WIPO), it has been established that African countries have products that have reputation and goodwill at the international market, and whose distinctive and unique characteristics are attributed to the geographical origin of the products.¹⁹ In fact, geographical indications are viewed as development tools for agriculture in developing countries.²⁰ According to Bowen²¹, ‘geographical indications have been conceptualized as a form of “development from within”, and provide an alternative development strategy that prioritizes local autonomy and broad community development goals.’

In addition to using geographical indications as a development tool, other benefits of geographical indications are the protection of traditional knowledge, protection against counterfeiting and free riding on the reputation of products, and the

¹⁷ Goldberg op cit (n4) 108.

¹⁸ C Oguamanam and T Dagne ‘Geographical indication (GI) options for Ethiopian Coffee and Ghanaian cocoa’ in J de Beer et al (eds) *Innovation & intellectual property – collaborative dynamics in Africa* (2014) 79.

¹⁹ G Mengiste ‘Managing geographical indications in Africa-opportunities, experiences and challenges’ WIPO Symposium 27-29 March 2013, WIPO/GEO/BKK/13/INF/4, available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=262878, accessed on 14 September 2014.

²⁰ Hughes op cit (n5) 6.

²¹ S Bowen ‘Development from within? The potential for geographical indications in the global south’ (2010) 13 *The Journal of World Intellectual Property* 231 at 232.

promotion of tourism.²²

Uganda is a largely agricultural country, with agriculture contributing 24.2 per cent to the Gross Domestic Product (GDP)²³, and agriculture as a sector contributing 80 per cent of total exports.²⁴ Most of the success of geographical indications has been in relation to agricultural products or goods whose quality is attributed to an agricultural product. Examples of geographical indications include ‘basmati’ for rice from India and ‘champagne’ for sparkling wine from France. Some of Uganda’s major agricultural products are coffee, which contributes 22 per cent to exports, tea, cotton and fish. Some of the products that may be eligible for geographical indication protection in Uganda are coffee, vanilla, tea, cotton, Uganda Waragi (a traditional Ugandan liquor), Apple Bananas, and Nile perch (a type of fish).

The fact that Uganda has a wide range of products that would qualify for geographical indication protection justifies the intention of this research. The gains to be made are numerous, but they will not be realized if the requisite importance to the legal, economic and cultural implications to geographic indication protection in Uganda are not taken into consideration.²⁵ It is therefore important to understand the implications of the negotiations concerning geographical indications taking place at the international level, and at the same time, it is also important to discuss how at a national level, Uganda can fortify its geographical indication protection system to ensure that the socio-economic benefits are fully realised.

1.3 Research Question

The central research question is; How can Uganda position itself internationally and nationally to ensure optimal benefits from geographical indications?

The subsidiary questions are:

1. What are the issues currently under international debate in regard to geographical indications?

²² C Ngokkuen and U Grote ‘Challenges and opportunities for protecting geographical indications in Thailand’ (2012) 19 *Asia-Pacific Development Journal* 93 at 94.

²³ Uganda Economy Profile 2014, *Index Mundi*, available at http://www.indexmundi.com/uganda/economy_profile.html, accessed on 26 April 2014.

²⁴ ‘Uganda Exports 1993-2015’ Trading Economics, available at <http://www.tradingeconomics.com/uganda/exports>, accessed on 26 April 2014.

²⁵ Goldberg op cit (n4) 108.

2. What is the implication of the different positions held under the debate on Uganda, as a Least Developed Country?
3. What is the state of the law on geographical indications in Uganda?
4. What are the limitations of the law on geographical indications?
5. What can Uganda do beyond the law to ensure that the country benefits from geographical indications?

1.4 Research Methodology

The researcher used the desk research technique, relying mainly on documentary research on the subject of geographical indications. The documentary sources of information included legislation, textbooks, treatises, journal articles and research papers. The Internet was also used as a source of information, with the WTO and WIPO websites being the most consulted online resources.

1.5 Chapter Outline

Chapter two proceeds by providing a brief history of geographical indications as intellectual property. It also contains a discussion on the international law on geographical indications and the current issues under debate under the DDA. Under this section, there is a discussion of the arguments for and against the extension of a higher level of protection to other products besides wines and spirits, and the proposals on the multilateral registration system for wines and spirits. The impact of all positions is also examined.

Chapter three highlights the provisions of Uganda's geographical indications law, discusses its shortcomings, and includes recommendations on what still needs to be done to ensure that geographical indications are successfully implemented in Uganda.

By way of conclusion, chapter four covers the recommendations and deductions regarding how Uganda can best position itself to benefit from geographical indications, both at the international and national level.

CHAPTER TWO

2. GEOGRAPHICAL INDICATIONS AT THE INTERNATIONAL LEVEL

2.1 Background

Historically, geographical indications have been described as having led a ‘shadowy or subterranean existence, rarely emerging in solid form’.²⁶ Merchants used signs to indicate the geographical origin of their goods and as international law developed, it was evident that certain products were more marketable than others because of their superior quality. This superior quality was often attributed to ‘natural geographic advantages, such as climate and geology (for example Seville orange) or indigenous manufacturing skills (for example Korean celadon ware)’.²⁷ This led to the establishment of systems of marking approved goods and certifying their origin, as well as the development of guilds, that granted guild members monopolies for a certain quality of goods.²⁸ These marks functioned as guarantees of quality of the goods in respect of which they were used. For example, linen bearing the mark of the town of Osnabrück was sold at a price 20 per cent higher than other Westphalian linens in England.²⁹ The protection of marks on products signalling their origin developed principally in Europe into systems for the protection of geographical indications.³⁰

In International law, the concept of geographical indications can be traced as far back as the Paris Convention for the Protection of Industrial Property of March 20, 1883. Article 1(2) of the Paris Convention included ‘appellations of origin’ and ‘indications of source’ as some of the objects of the protection of industrial property. Article 10 of the Convention is to the effect that Article 9 shall apply in cases of ‘direct or indirect use of a false indication of the source of goods or the identity of the producer, manufacturer or merchant.’ Article 9 (1) provides that, ‘all goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal

²⁶ G Evans and M Blakeney ‘The international protection of geographical indications yesterday, today and tomorrow’ in G Westkamp *Emerging Issues in Intellectual Property: Trade Technology and Market Freedom* (2007) 262.

²⁷ M Blakeney ‘Geographical indications and TRIPS’ in M Pugatch (ed) *The Intellectual Property Debate: Perspectives from Law, Economics and Political Economy* (2006) 296.

²⁸ Ibid.

²⁹ Evans op cit (n26) 263.

³⁰ Blakeney op cit (n27) 296.

protection'. Article 10*bis* provides minimum standards of protection against unfair competition.

The Paris Convention did not offer sufficient protection of geographical indications because it did not succinctly define the conditions of protection. It did not, for example, provide for instances where there are two geographical locations with the same name in different countries. Use of that geographical name would be confusing despite the fact that such use would not be considered 'false' use under the Convention.

The Madrid agreement for the Repression of False or Deceptive Indications of Source of Goods of April 14, 1891 sought to remedy this lacuna in the Paris Convention. This remedy is found in article 1(1) of the Madrid Agreement which provides that, 'all goods bearing a false or deceptive indication by which one of the countries to which this agreement applies, or a place situated therein, is directly or indirectly indicated as being the country of origin shall be seized on importation into any of the said countries.' However, the established vintners of Europe, that wanted a higher level of protection of geographical indications, were not able to get the backing of strong trading nations such as the USA, Germany and Italy.³¹

The Lisbon Agreement for the protection of Appellations of Origin and their International Registration of October 31, 1958 was another attempt at a more effective system of protection for geographical indications. The Lisbon Convention provided protection for appellations of origin, which is a kind of indications of origin. Appellations of origin are defined in article 2(1) of the agreement to mean, 'the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors'. Once again this agreement did not attract a lot of support, as it was criticized as being 'highly protectionist'³² in nature.

³¹ Evans op cit (n26) 268.

³² Evans op cit (n26) 269.

Most of the ideas that were developed in these treaties were incorporated into TRIPS.³³ The TRIPS agreement was as a result of the Uruguay round of trade negotiations, and it was the first time that intellectual property was included as an important part of worldwide trade negotiations.³⁴ The section of the agreement that dealt with geographical indications was especially challenging to negotiate as it caused a clash between the interests of Europe and the interests of other developed countries, particularly North America and Australia.³⁵

2.2 TRIPS and Geographical Indications

The TRIPS agreement provides for geographical indications under Articles 22 to 24. As earlier defined, geographical indications are ‘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.’³⁶ This definition broadens the definition in the Lisbon agreement by including the aspect of the reputation of a good.

Article 22.2 requires that, ‘members shall provide the legal means for interested parties to prevent the use by any means in the designation or presentation of a good that indicates 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 goods’. The agreement does not provide for the means that a member must use to protect geographical indications, and as a result, members have employed a wide variety of legal means to protect geographical indications: ranging from *sui generis* protection to Trade mark law, consumer protection laws, and common law³⁷. The final part of Article 22.2 provides that members shall provide the legal means to prevent any use, which constitutes unfair competition within the meaning of Article 10*bis* of the Paris Convention.

³³ World Trade Organization (WTO) ‘TRIPS: Geographical Indications-Background and the current situation’, available at http://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm, accessed at 26 April 2014.

³⁴ J Keon ‘Intellectual property rules for trademarks and geographical indications: important parts of the new world trade order’ in A A Yusuf and C M Correa (eds) *Intellectual property and international trade-the TRIPS agreement* (2008) 149.

³⁵ Ibid at 151.

³⁶ Article 22.1 of TRIPs op cit (n1).

³⁷ World Trade Organization (WTO) ‘TRIPS: Geographical Indications-Background and the current situation’, available at http://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm, accessed at 26 April 2014.

Article 23.1 accords geographical indications for wines and spirits a higher level of protection. It provides that, 'each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like'. The level of protection under this provision is higher than that granted under Article 22 because it prevents the use of geographical indications of wines and spirits on other wines and spirits which do not originate from that designation, whether or not the use amounts to an act of unfair competition or the public has been misled by such use.

Article 23.3 further provides for the protection of homonymous geographical indications, and requires that each member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

Article 23.4 deals with the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those members participating in the system, in order to facilitate the protection of geographical indications for wines.

Article 24 provides exceptions to the obligations under Articles 22 and 23. These exceptions have been categorized into three groups, namely 'continued and similar use of geographical indications for wines and spirits, prior good faith trade mark rights, and generic designations'.³⁸

Article 24.4 states that a Member shall not be required to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member,

³⁸ Evans op cit (n26) 273.

either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

In regard to prior good faith trade mark rights, Article 24.5 provides that where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either before the date of application of these provisions in that Member; or before the geographical indication is protected in its country of origin; measures adopted to protect geographical indications shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication’.

The exception concerning generic designations provides that a member shall not be required to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member.

2.3 Geographical Indications: Issues Under Debate

In November 2001, the declaration of the fourth ministerial conference in Doha, Qatar, provided the mandate for negotiations on a broad range of issues.³⁹ In relation to geographical indications, the main issues under debate are the establishment of a multilateral register for wines and spirits; and the extension of the higher level of protection to other products beyond wines and spirits.

The mandate to negotiate the two issues is found in paragraph 18 of the Ministerial declaration, which is to the effect that the members agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference, with a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of

³⁹ World Trade Organization (WTO) ‘The Doha Declaration Explained’, available at http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm, accessed on 25 June 2014.

Article 23.4.⁴⁰ In the same paragraph, members note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of the declaration.⁴¹

Paragraph 12 of the Doha declaration provides that where a specific negotiating mandate is provided in this Declaration, the relevant implementation issues shall be addressed under that mandate; and the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee, established under paragraph 46, by the end of 2002 for appropriate action.

2.3.1 Establishment of a Multilateral Register for Wines and Spirits

The first issue to be discussed is the matter of the multilateral register for wines and spirits. This discussion is of particular importance to Uganda because the wines and spirits industry is steadily growing, with an increasing number of wines and spirits being locally produced. As of 2013, the Uganda National Bureau of Standards (UNBS) had certified two local wine makers and four distillers.⁴² Noteworthy is Uganda Waragi, a gin of international repute that has been produced in Uganda since 1965.⁴³ The Ugandan industry, albeit incomparable to the European and American industries, will therefore be affected by whatever agreement will be reached on the registration system.

The negotiations on this issue started in 1996, and they have been conducted in both formal and informal meetings to present.⁴⁴ There has been a lot of disagreement regarding the operationalization of the register, and this is evidenced by the different proposals submitted by members. The fifth session of the Ministerial

⁴⁰ World Trade Organization (WTO) Doha WTO Ministerial 2001: Ministerial Declaration, WT/MIN (01)/DEC/1-20 November 2001, available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#trips, accessed on 25 June 2014.

⁴¹ Ibid.

⁴² Uganda National Bureau of Standards, available at <http://www.unbs.go.ug/index.php/resources/downloads/category/1-general-downloads>, accessed on 14 June 2014.

⁴³ East African Breweries Limited, available at <https://www.eabl.com/our-brands/spirits-inner#ugandawaragi>, accessed on 1 July 2014.

⁴⁴ D Gervais *The TRIPS Agreement: Drafting history and analysis* (1998) 208.

Conference took place in Cancun, Mexico in 2003, but the members were still unable to reach an agreement on the multilateral register for wines and spirits.⁴⁵

What follows is a discussion of the main proposals that have so far been submitted in the WTO negotiations. This is followed by a discussion of the implications of each proposal for the Ugandan government, as well as the impact on the other stakeholders.

The four main proposals are:

- The “Joint Proposal”⁴⁶
- The “Modalities Proposal”⁴⁷
- The Hong Kong - China Proposal⁴⁸
- The International Trademark Association Proposal (INTA)⁴⁹

2.3.1.1 The “Joint Proposal”

The Joint Proposal was first submitted in 2005, and has since then been revised. The advocates of this proposal include the United States (US), South Africa, Israel and Japan.⁵⁰ According to the Joint Proposal, participation in the system is strictly voluntary, and in order to participate in the system, a member makes a written notification to the WTO Secretariat of its intention to participate.⁵¹

The proposal provides for two categories of information contained in the written notification. The first category is the mandatory information required, and under this section, the notifying member must identify itself. The notification must also identify the geographical indication as it appears on the wine or spirit originating in the member’s territory. The territory, region or locality from which the wine or spirit

⁴⁵ World Trade Organization (WTO) Members ‘not ready to move forward yet’ on wines and spirits register negotiations, available at www.wto.org/english/thewto_e/minist_e/min03_e.htm, accessed on 30 June 2014.

⁴⁶ WTO op cit (n11).

⁴⁷ WTO op cit (n12).

⁴⁸ WTO op cit (n13).

⁴⁹ International Trademark Association (INTA) op cit (n14).

⁵⁰ Other countries include Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Korea, Mexico, New Zealand, Nicaragua, Paraguay, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

⁵¹ WTO op cit (n46) Section A.

originates must also be clearly identified in the notification. It must also be specified in the notification whether the geographical indication refers to a wine or a spirit.⁵²

The second category of information is optional information that the notifying member may include in the notification. The notifying member may provide information concerning the date on which the geographical indication received protection in the territory of the notifying member, as well as information relating to how the geographical indication is protected in the territory.⁵³

Once the notification is received the WTO Secretariat will enter the geographical indication on the Database of Geographical Indications for Wines and Spirits. The database will be accessible on-line by all WTO members and the public at large. The notifying members are allowed to amend and withdraw their notifications at will.⁵⁴

Once the notification is registered, the participating members commit to consult the database when making decisions regarding the registration or protection of trademarks and geographical indications for wines and spirits. Non- participating members are also encouraged to consult the database when making the same decisions.⁵⁵

The Joint Proposal includes a section on special and deferential treatment regarding transitional time periods and technical assistance for LDCs. According to Section E of the proposal, participating LDCs will be given a certain number of years before they can amend their procedures to include the requirement to consult the database. LDCs will also be able to access technical and/ or financial assistance from participating developed countries, on request and mutually agreed terms and conditions. This assistance may also be given during the transitional period.⁵⁶

A representative of one of the main advocates of the voluntary system, the US, submitted that the system should, ‘... be voluntary; be simple and inexpensive; preserve the existing balance of rights and obligations in the TRIPS Agreement; respect the principle of territoriality; and allow members

⁵² Ibid Section B.2.

⁵³ Ibid Section B.3.

⁵⁴ Ibid Section C.

⁵⁵ Ibid Section D.

⁵⁶ Ibid Section E.

to continue to determine for themselves the appropriate method of implementing the provisions of the TRIPS Agreement within their own legal systems and practices.’⁵⁷

In regard to Uganda, a voluntary system would, on the face of it, seem advantageous because it would not create additional burdens. Proponents of this system have supported the voluntary participation aspect as being explicit from the language of paragraph 4 of Article 23 of the TRIPS Agreement, and that voluntary participation is a feature compatible with all existing legal systems in international law.⁵⁸ This proposal is also advantageous to Uganda because it does not involve significant implementation costs.⁵⁹

Uganda would benefit from the provisions relating to special and deferential treatment. As stated above, section E of the proposal allows Uganda a transitional period before it is required to commit to consulting the database when making decisions regarding the registration or protection of trademarks and geographical indications for wines and spirits. During this time, the proposal also provides that participating developed countries shall provide technical and/or financial assistance to LDC members. Should Uganda choose to participate in this system, the participating developed countries are obliged to provide assistance relating to institutional capacity building, experience sharing, and advice on the development of administrative procedures. This would be of great benefit to Uganda because it would be able to use the time to adequately prepare itself for participation in the system, and the effects of such participation. Uganda is also able to terminate its participation in the system at any time.

However, this proposal has certain disadvantages. The first is that the proposal advocates for a database as opposed to a register. This is a weakness because databases are often for transparency and record keeping purposes, and do not often

⁵⁷ World Trade Organization (WTO) Special Session of the Council for TRIPS. WTO Doc TN/IP/16-26 July 2006 paragraph 18, available at <http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/tn/ip/16.doc>, accessed on 2 April 2014.

⁵⁸ World Trade Organization (WTO) Minutes of Meeting WTO Doc TN/IP/M/16-19 May 2006 paragraph 13.

⁵⁹ D Vivas-Eugui ‘Negotiations on geographical indications in the trips council and their effect on the WTO agricultural negotiations—implications for developing countries and the case of Venezuela’ (2001) 4 *The Journal of World Intellectual Property* 712.

have legal significance.⁶⁰ A second and related disadvantage is that subscription to the system does not provide any real legal protection of the geographical indications on the database, as inclusion on the database does not result in the presumption that a right exists. Uganda would only “commit to consult” the database when making decisions regarding the registration of trademarks and geographical indications relating to wines and spirits. Therefore the legal effects arising from the voluntary approach are limited.⁶¹

Thirdly, it is important to note that the proposal does not provide for any sort of examination of the notifications submitted, formal or substantive. This is problematic because it means that any geographical indication can be included on the database. This will cause confusion and will, in the long run, render the database an unreliable and ineffective tool.

The other issue is that the register is only for geographical indications relating to wines and spirits. There are few LDCs that produce significant amounts of wines and spirits for export. According to the list of products certified by the Uganda National Bureau of Standards (UBOS) in 2013⁶², there were only two local wine makers and four distillers that had been certified. This is an indication that the industry is still small, and therefore Uganda would benefit more from a system that is not restricted to only wines and spirits.

In spite of the fact that the system is low-cost, voluntary, caters to the interests of LDCs and it does not create additional burdens to the administrative bodies, in light of the shortcomings, it is difficult to identify the actual value it adds to the protection of geographical indications in Uganda. Whereas it does not impose significant additional burdens on the participating members, it is merely informative and it does not provide the incentive of legal protection acquired through participation. The lack of actual legal protection would be a disincentive for stakeholders to participate in the system. Such a system would most likely favour developed countries that have well established and internationally reputed wines and spirits industries. However,

⁶⁰ Ibid.

⁶¹ T Kongolo *Unsettled International Intellectual Property Issues* (2008) 125.

⁶² Uganda National Bureau of Standards op cit (n42).

for Uganda, this system would not be beneficial as the main interest should be to acquire international legal protection for its geographical indications.

2.3.1.2 The “Modalities Proposal”

The Modalities Proposal is also known as the “Binding Registration System Approach”⁶³ or the “EU led Proposal”⁶⁴. The African group, of which Uganda is a member, is one of the proponents of this proposal.⁶⁵

Pursuant to this proposal, every member of the WTO is obliged to provide, in its domestic procedures, for the consultation of the register when making decisions regarding registration and protection of trademarks and geographical indications.⁶⁶ In contrast with the Joint Proposal, even if submission of geographical indications is voluntary, the obligation to consult the register is not limited to participating members. All WTO members are required to protect the geographical indications on the register.⁶⁷ Under this proposal, the register is considered *prima facie* evidence that, in that member state, the registered indication meets the definition of a geographical indication under Article 22 of TRIPS.⁶⁸

There is a lot of debate as to whether the binding system approach is within the spirit of paragraph 4 of Article 23. A representative of the European Communities⁶⁹ stated that the fact that the members of the WTO were working under a mandate to establish a multilateral system of notification and registration, within a WTO context, meant that the agreement had to be binding upon all members. According to the representative, the ‘voluntary’ aspect only relates to the freedom to include a member’s geographical indications on the register, and once a geographical indication is included on the register, protection should be facilitated in all members

⁶³ Kongolo op cit (n61) 121.

⁶⁴ JM Cortes ‘A Critical Appraisal of WTO Negotiations to Establish a Multilateral Register for Geographical Indications’ (2011) 90 *SSRN* 111, available at <http://ssrn.com/abstract=1969763>, accessed on 12 June 2014.

⁶⁵ Other advocates of this system are: Albania, Brazil, China, Colombia, Ecuador, the European Communities, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, and the ACP Group.

⁶⁶ WTO op cit (n12).

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ WTO op cit (n57) paragraph 25.

because the system is supposed to be multilateral.⁷⁰ In support of this view, Goldberg convincingly argues that whereas the meaning of the phrase, ‘...eligible for protection in those Members participating in the system’ is unclear, the interpretation under this proposal is only logical because a voluntary system would defeat the purpose of the negotiations that aim at increasing the protection of individual geographical indications under Article 23.⁷¹

The question is whether a binding system is the best option for Uganda, as an LDC. Such a system would *prima facie* be beneficial to Uganda because once the government or a private entity has registered its geographical indications, all members of the WTO are obliged to protect such indications. This system therefore provides actual legal protection of the geographical indications on the register as opposed to the Joint Proposal.

The second advantage of this proposal is that it also advocates for the extension of the multilateral register to other products, beyond wines and spirits. This is highly beneficial to Uganda because, as earlier mentioned, Uganda is a largely agricultural country, with agriculture contributing 24.2 per cent to the GDP⁷², and agriculture as a sector contributing 80 per cent of total exports⁷³. In the event that the register is extended to other products, some of the products that would most likely be registered include: vanilla, tea and coffee. Therefore, an international multilateral register granting protection to Ugandan geographical indications, beyond wines and spirits, would become extremely relevant to the owners of such geographical indications.

However, there remain important questions concerning the practicability of implementing such a system in Uganda. The first issue is how Uganda would manage the administrative and financial burdens that will come with this system. It is important to note that a lot of the agricultural activity in Uganda is subsistence agriculture, and the agricultural activity on a commercial level is a small fraction. In 2006/07, UBOS reported nearly 400 officially registered commercial farms, employing 28,000 workers.⁷⁴ Most of these businesses were quite small, with half

⁷⁰ Ibid.

⁷¹ Goldberg op cit (n4) 129.

⁷² Index Mundi op cit (n23).

⁷³ ‘Uganda Exports 1993-2015’ op cit (n24).

⁷⁴ Uganda Bureau of Statistics 2012 Statistical Abstract, available at

employing 5-9 workers, about 60 were large farms employing 50 or more workers, and only a few of the farms employed a mean number of 70 workers.⁷⁵

Based on the statistics above, it is reasonable to foresee the costs of registering geographical indications on the multilateral register as being prohibitive to majority of farmers in Uganda. However, there are various solutions to the issue of prohibitive fees. One of the most practical solutions is the formation of producer organisations such as cooperative unions, an issue that is discussed in length in chapter 3. Issues regarding the ownership of the geographical indications, formation of co-operative unions, protection of farmers from exploitation by the government and larger companies, among other issues will also affect the practicability of the multilateral register in Uganda. It is therefore imperative that such issues are keenly addressed in Uganda, before the adoption of the multilateral register.

In regard to the administrative burdens, in a study⁷⁶ of institutions responsible for the administration and enforcement of intellectual property rights in Uganda, some of the challenges facing the Registrar General's office (currently the Uganda Registration Services Bureau - URSB), among other institutions that were identified include the lack of the requisite financial and human resources, and appropriate institutional and infrastructural capacity. These challenges will remain impediments to the effective adoption of the multilateral register, especially if it is extended to other products, beyond wines and spirits. It is therefore important for Uganda to acknowledge that if these issues remain unaddressed, the multilateral register for geographical indications will not serve Ugandan farmers, as the main beneficiaries, as an effective tool for the protection of geographical indications.

The proposal also provides for special and deferential treatment for developing countries, and in particular LDCs. As stated by the former chair, Ambassador Clarke of Barbados, special and differential treatment should be provided through precise and effective provisions targeting developing countries and LDCs, including those

<http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/2012StatisticalAbstract.pdf>, accessed on 7 July 2014.

⁷⁵ D Gollin and W College 'Agriculture, Roads, and Economic Development in Uganda' (2010), available at <http://www.nber.org/chapters/c13433.pdf>, accessed on 7 June 2014.

⁷⁶ S Wangwe 'Country case study for study 9: institutional issues for developing countries in IP policy-making, administration and enforcement', available at http://www.iprcommission.org/papers/text/study_papers/sp9_Tanzania_case_study.txt, accessed at 7 July 2014.

that wish to benefit from participating in the system.⁷⁷ Uganda needs to ensure that the terms of the special and differential treatment for LDCs are not only clear, but also that they are not superficial. In the event that the binding approach is agreed upon, it is imperative that Uganda and other LDCs ensure that they get the most favourable special and deferential terms. Important terms relate to the length of transition period, and the extent and nature of financial and technical assistance to be received from developed countries.

2.3.1.3 The Hong Kong- China Proposal

This proposal was an attempt at finding a middle ground between the Modalities Proposal and the Joint Proposal. However, it differs from the Joint Proposal in only a few aspects. According to the Hong-Kong Proposal, participation is voluntary, and the obligation to give legal effect to registrations under the system will only be binding upon participating members.⁷⁸

Under this proposal, once the administrative body has received notifications from the participating members, the administering body conducts formal examination of the notifications to ensure that the documents are in order.⁷⁹ If the administrative body is satisfied that the notifications contain the necessary information, then the geographical indication is recorded in the register. The effect of registration under this proposal is that registration on the register is admissible as *prima facie* evidence to prove ownership of the indication, that the indication satisfies the definition in Article 22.1 of the TRIPS agreement, and that the indication is protected in the country of origin.⁸⁰

The Hong Kong – China Proposal also includes a provision for the review of the notification and registration system after four years from the establishment of the

⁷⁷ Talks on GI register should focus on "practical" issues Published in SUNS #6859, 9 February 2010, available at <http://www.twinside.org.sg/title2/wto.info/2010/twninfo100207.htm>, accessed on 7 June 2014.

⁷⁸ WTO op cit (n13) paragraph 4 (viii) Section III.

⁷⁹ Ibid paragraph 4 (i) Section III.

⁸⁰ Ibid paragraph 4 (iv) Section III.

system. This provision particularly states that the question of scope of participation should be revisited, as part of the review.⁸¹

The proposal differs from both the Modalities Proposal and Joint Proposals because it includes an approximate costing for the establishment of the wines and spirits geographical indications register. The approximation is based on formality examination by the WTO secretariat (or a similar body) in Geneva, and no multilateral opposition proceedings.⁸² The approximate cost of registering an individual indication on the multilateral register is US\$180.

This proposal is not suitable for Uganda for a number of reasons. To begin with, participation is voluntary. As earlier discussed, a voluntary system does not add real value to the protection of geographical indications. Although participation in the registration system under this proposal has legal effects, in order for the system to be an effective tool of protection, it only makes sense that all members of the WTO are obliged to participate and protect the indications on the register.

Secondly, the cost of registering an indication under the Hong Kong - China system is prohibitive to the Ugandan wine maker or distiller. According to the approximation, the total cost of registering an individual geographical indication would be US\$180. The wines and spirits industry in Uganda is currently facing challenges of ‘competition from importation of foreign products, high taxes, high costs of imported inputs, counterfeits and the volatile macroeconomic conditions’.⁸³ It is therefore unlikely that the few local wine makers and distillers will spend an extra US\$180 on registering their relatively unknown geographical indications amidst the above challenges.

The other issue is that the register under debate is only for geographical indications relating to wines and spirits. The same argument against the Joint Proposal that only provides for a multilateral register for wines and spirits similarly

⁸¹ Ibid paragraph 4 (viii) Section III.

⁸² Ibid annex B.

⁸³ J Businge and J Akello ‘Wining but not winning’ *The Independent* 7 June 2013, available at <http://www.independent.co.ug/business/business-news/7878-wining-but-not-winning-yet>, accessed on 14 July 2014.

applies to the Hong Kong- China proposal. The wines and spirits industry in Uganda is not well established, with only two local wine makers and four distillers certified as of 2013.⁸⁴ Therefore, a multilateral register only for wines and spirits will not be beneficial to Uganda.

In conclusion, Uganda would not benefit from the Hong Kong – China proposal because of the reasons that have been discussed above.

2.3.1.4 The International Trademark Association (INTA) Proposal

INTA submitted a proposal on the issue of a multilateral register for geographical indications of wines and spirits. Even though Uganda has already associated itself with the Modalities Proposal, it is important that the INTA Proposal is considered in light of the important interconnection between geographical indications and trademarks. Gangjee⁸⁵ has referred to trademarks and geographical indications as ‘quibbling siblings’ because of their tempestuous history. Conflict often arises where there are different parties claiming entitlement to the exclusive use of a sign that is eligible for registration as a trademark and a geographical indication.⁸⁶ Another scenario giving rise to conflict is where the same sign is being used as a trademark and a geographical indication by different parties, and either the trademark or geographical indication is well known.⁸⁷

An example of such a conflict is the Torres case⁸⁸, in which the trademark TORRES, owned by a Spanish firm, Miguel Torres S.A., had been registered in a number of countries, and had been registered in Portugal in 1962. In 1981, the

⁸⁴ Uganda National Bureau of Standards op cit (n42), available at <http://www.unbs.go.ug/index.php/resources/downloads/category/1-general-downloads>, accessed on 14 June 2014.

⁸⁵ D Gangjee ‘Quibbling siblings: conflicts between trademarks and geographical indications’ (2007) 82 *Chi.-Kent. L. Rev.* 1253, available at <http://scholarship.kentlaw.iit.edu/cklawreview/vol82/iss3/6>, accessed on 15 July 2014.

⁸⁶ World Intellectual Property Organization (WIPO) Possible Solutions for Conflicts between Trademarks and Geographical Indications and for Conflicts between Homonymous Geographical Indications. Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications Fifth Session Geneva, September 11 to 15, 2000. [WIPO Doc SCT/5/3- June 8, 2000]. available at http://www.wipo.int/edocs/mdocs/sct/en/sct_5/sct_5_3.doc, accessed on 1 November 2014.

⁸⁷ Ibid.

⁸⁸ H Harte-Bavendamm ‘Geographical indications and trademarks: harmony or conflict’ WIPO Document WIPO/G EO/C PT/99/6, available at http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_sfo_03/wipo_geo_sfo_03_15.doc, accessed on 15 July 2014.

Portuguese government registered TORRES VEDRAS as a geographical indication for quality wines produced in a specific region. Wines from this region were not on the international market, and were even of a lower quality. This clash was later resolved by allowing for the co-existence of the two designations. The issues arising under unfair competition practices from this scenario are outside the scope of this thesis, but this case aptly illustrates the close and volatile relationship between geographical indications and trademarks. It is therefore important to discuss INTA's proposal on the multilateral register of geographical indications for wines and spirits.

INTA's major concern is that the protection of geographical indications must not prejudice other existing intellectual property rights. INTA also raises a valid concern about the prematurity of the establishment of the multilateral system. According to the proposal, the association suggests that the issue of a register should be approached carefully considering the fact that many member states are in the middle of the implementation of the TRIPS provisions on geographical indications, and are only becoming familiar with the concept of geographical indications and the best mode of their protection.⁸⁹

INTA recommends that the establishment of the multilateral system should be guided by existing systems: the Patent Co-operation Treaty (PCT) and the Madrid System (MS) for the International Registration of Marks. From these systems, INTA proposes key features and conditions that would facilitate the establishment of the register.⁹⁰

INTA makes the following recommendations⁹¹:

1. The international notification or registration system should be based on the existence of a national application or registration.
2. The notification should be facilitated through an international body.
3. The examination of whether the intellectual property right at issue meets the protection requirements should be carried out in the country where protection is sought.
4. Third parties may be able to challenge the application and/or registration

⁸⁹ International Trademark Association (INTA) op cit (n14).

⁹⁰ Ibid.

⁹¹ Ibid.

before the national offices and/or national courts in the country where protection is sought.’

INTA is also of the view that the multilateral register should be founded on the principles of territoriality and priority in dealing with conflicts with third-party rights. Uganda would benefit from insisting that INTA’s proposal is taken into consideration during the establishment of the multilateral register because it promotes the principles of territoriality⁹² and priority⁹³. According to the proposal, the domestic authorities are best placed to determine whether a designation constitutes a generic term or conflicts with a prior intellectual property right. These principles are important to Uganda because they ensure that the ultimate decision to protect geographical indications would remain with the relevant authorities in Uganda.

In conclusion, having considered the main proposals on the multilateral register for wines and spirits, the Modalities Proposal would benefit Uganda the most. This is mainly due to the fact that it supports the extension of the additional protection under Article 23 of TRIPS to other products other than wines and spirits. However, Uganda should also take into consideration the recommendations made by INTA.

2.3.2 Extension of a Higher Level of Protection to other Products Beyond Wines and Spirits

As earlier mentioned, the mandate to negotiate the extension of a higher level of protection to products other than wines and spirits is found in paragraph 18 of the Doha Declaration⁹⁴. The issue relating to the extension of protection was to be treated as a matter of priority in the TRIPS council’s regular meetings, and a recommendation for appropriate action should have been made by the end of 2002.⁹⁵

⁹² The principle of territoriality means that the ‘acquisition, existence, maintenance, validity, scope, and termination of the exclusive right are determined by the law of the state for which protection is sought.’ - H Ullrich ‘TRIPS: adequate protection, inadequate trade, adequate competition policy’ (1995) 4 *Pacific Rim Law & Policy Journal* 153 at 158.

⁹³ The right of priority means that, on the basis of a regular application for an industrial property right filed by a given applicant in one of the member countries, the same applicant (or its or his successor in title) may, within a specified period of time (six or 12 months), apply for protection in all the other member countries –World Intellectual Property Organization (WIPO) Intellectual Property Handbook: Policy, Law and Use, (2004) at 243, available: http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf.

⁹⁴ WTO op cit (n 40). http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#trips, accessed on 18 July 2014.

⁹⁵ World Trade Organization (WTO) Minutes of Meeting [WTO Doc TN/C/M/1-14 February 2002] ,available at <http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/tn/c/M1.doc>, accessed on 19 July 2014.

The main issue in contention is whether the higher level of protection granted to wines and spirits under Article 23 of TRIPS should be extended to other products.

Article 23 provides that, 'Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.'

Article 22 of the TRIPS Agreement has the effect that a geographical indication is only deemed misused if the use has 'misled the public as to the true place of origin of the good, or any use that amounts to an act of unfair competition as provided for in the Paris Convention.' The protection granted to wines and spirits under Article 23 is higher because it prevents the use of geographical indications of wines and spirits on other wines and spirits which do not originate from that designation, whether or not the use amounts to an act of unfair competition or the public has been misled by such use.⁹⁶

The higher level of protection granted to wines and spirits under Article 23 is a result of a 'last minute trade off' that was negotiated during the 1990 Brussels Ministerial Conference, in favour of wine producing countries, particularly the European Community.⁹⁷ Spirits were added to Article 23 at the end of the negotiations.⁹⁸

This issue is of particular interest to Uganda because of the variety of agricultural products that would get protection from the extension of Article 23 to other products besides wines and spirits. Ugandan vanilla, for example, is of high quality and is internationally considered to be one of the top three varieties.⁹⁹ Addor and Grazioli¹⁰⁰ argue that additional protection is of interest to developing countries because 'it provides better protection to legitimate producers and manufacturers

⁹⁶ Gervais op cit (n 44) 197.

⁹⁷ D Rangnekar 'Geographical Indications- Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits' (2003) 31.

⁹⁸ Gervais op cit (n 44) 196.

⁹⁹ According to Ugandan Vanilla, Light Years IP available at http://www.lightyearsip.net/scopingstudy/ugandan_vanilla.aspx, accessed on 19 July 2014.

¹⁰⁰ FAddor and A Grazioli 'Geographical indications beyond wines and spirits' (2005) 5 *Journal of World Intellectual Property* 882-883.

against the commercial maneuvers of competitors located outside the designated geographic area'. In addition to the above benefits, additional protection will promote tourism, protect traditional knowledge as well as reduce the costs of advertising at both the national and regional level.¹⁰¹

Advocates of the extension of protection¹⁰² under Article 23 to other products besides wines and spirits, also known as the 'Friends of Geographical Indications'¹⁰³ argue that there is no clear justification as to why the additional protection in Article 23 is only limited to wines and spirits.¹⁰⁴ This argument is based on the fact that section 3 of TRIPS provides only one definition for the subject matter, and it does not create product categories.¹⁰⁵

They also argue that Article 22 puts the burden of proof on the producer entitled to use the geographical indication to prove that undue use of the indication has misled the public and/or the use constitutes unfair competition.¹⁰⁶ Therefore extension of the protection under Article 23 will remove this 'burdensome and costly misleading test and/or proof of unfair competition' that is required under Article 22.¹⁰⁷ Extension of protection will further even out the playing field for geographical indications for all products, because Article 23 mostly benefits developed countries with their more established wines and spirits industries.¹⁰⁸

In support of the extension of protection, it is also argued that there are other products, besides wines and spirits, that have unique characteristics, quality and

¹⁰¹ Vivas-Eugui op cit (n 59) 716.

¹⁰² World Trade Organization (WTO) Geographical Indications the Significance of 'Extension' in the TRIPS Agreement and its Benefits for WTO Members. [WTO Doc TN/C/W/14/Add.2-15 July 2003] available at https://www.ige.ch/fileadmin/user_upload/Juristische_Infos/e/TN_C_W_14_Add-2.pdf, accessed on 23 July 2014.

¹⁰³ M Schaeli 'Perspectives for geographical indications: Extension of the protection of Article 23 of the trips agreement to all products: a promising solution for developing an appropriate international legal framework for the protection of geographical indications' at 3, International Symposium on Geographical Indications, 26-28 June 2007, available at http://www.wipo.int/meetings/en/fulltext_mdocs.jsp?q=wipo%2fgeo%2fbei%2f07%2f11, accessed on 23 June 2014.

¹⁰⁴ Ibid.

¹⁰⁵ Rangnekar op cit (n 97) 31.

¹⁰⁶ World Trade Organization (WTO) Proposal from Bulgaria, Cuba, The Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela. WTO Doc IP/C/W/247/Rev.1- 17 May 2001], available at https://www.ige.ch/fileadmin/user_upload/Juristische_Infos/e/ip_c_w_247_rev1_e.pdf, accessed on 12 December 2014.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

reputation which are closely tied to given geographical location, and in order to enhance fair trade to all producers, all products that qualify for geographical indication protection must be treated equally.¹⁰⁹

In further support of extension of protection, other forms of intellectual property rights such as trademarks, patents and designs do not discriminate the kind of products that are protected, so there is therefore no basis for geographical indications to provide different levels of protection depending on the kind of product.¹¹⁰

On the other hand, opponents of the extension are of the view that there is no mandate for the discussions of extension of protection under Article 23 to other products, and that the statement ‘individual geographical indications under Article 23’ expressly refers to the goods covered under that Article, that is wines and spirits.¹¹¹ In response to this argument, proponents argue that Articles 24.1 and Article 24.2 can be interpreted to provide a mandate for the negotiation of the extension of protection under Article 23.¹¹² According to Gervais, in order to ensure that the negotiations did not come to a standstill, it was agreed that there would be further talks to resolve the uncertain issues.¹¹³

The opponents of the extension are concerned that the effect of extension of protection will result into a “roll-back protection”¹¹⁴, and also warn of the prohibitive administrative and legal costs associated with the extension¹¹⁵.

In regard to Uganda, extension of protection under Article 23 to other products will be highly beneficial to both the government and the private sector. The private sector will be more enticed by the more effective protection under Article 23, and this will consequently encourage investment in agriculture and foster industrial

¹⁰⁹ J Otieno-Odek ‘The way ahead-what future for geographical indications?’ Worldwide Symposium on Geographical Indications, Ministry of Productive Activities of Italy and World Intellectual Property Organization (WIPO) at Parma, Italy June 27th to 29th 2005. available at http://www.wipo.int/meetings/en/2005/geo_pmf/presentations/doc/wipo_geo_pmf_05_otieno-odek.doc, accessed on 14 November 2014.

¹¹⁰ Ibid.

¹¹¹ D Vivas-Engui and C Spennemann ‘The evolving regime for geographical indications in WTO’ in *Intellectual property and international trade- the TRIPS agreement* (2008) 178.

¹¹² WTO op cit (n106).

¹¹³ Gervais op cit (n 44) 137.

¹¹⁴ Schaeli op cit (n103) 4.

¹¹⁵ Rangnekar op cit (n97) 37.

development.

However, there are a few issues that will arise as a result of the extension of protection that the government and private sector must deal with. The private sector will have to deal with the effect of the extension on trademarks and generic names, rebranding, relabeling and the renaming of companies. The government will also have to deal with the increased burden of amending the laws and regulations, and thereafter enforcement, monitoring and dispute resolution mechanisms.¹¹⁶

Despite the legal, financial and administrative issues, the extension of protection under Article 23 to other products will be more beneficial to Uganda than detrimental. The advantage that Uganda has, as an LDC, is that the potential agricultural geographical indications are not yet as internationally recognized in comparison to those originating from the EU and the US. This is an advantage because it will not have to deal with a lot of cases concerning the conflicts between geographical indications and generic terms, as was the case in the EU regarding “feta” for cheeses not originating from Greece.¹¹⁷ Therefore the infancy of Uganda’s industry is an advantage, and the government has the chance to sensitise the public sector, especially farmers’ groups to ensure that they understand the implications and benefits of the extension of protection. This will encourage innovation and development in the country and the promotion of Ugandan geographical indications.

2.4 Conclusion

In light of the above proposals, Uganda should continue to support the Modalities Proposal because, of all the proposals, it best serves the interests of the country as discussed above. The extension of additional protection to other products besides wines and spirits, and a multilateral register that provides for products beyond wines and spirits are the main advantages of the proposal. As earlier stated, the recommendations made by INTA should also be taken into consideration.

¹¹⁶ International Trademark Association (INTA) "Doha's Impact on TRIPS: Balancing Geographical Indications (GIs) Protection" 1 May 2002, available at https://www.wto.org/english/tratop_e/dda_e/summary_report_doha_impact_trips.doc, accessed on 24 July 2014.

¹¹⁷ See Joined cases C- 465/02 AND C-466/02 Germany and Denmark v Commission judgment of 25.10.2005, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62002J0465>, accessed on 15 December 2014.

CHAPTER THREE

“Coffee is simply an export crop to be consumed elsewhere. A major exception is when quality is embedded in a geographical origin (national, regional, local, or single-estate). When this is the case, producers and their cooperatives, associations or governments create symbolic attributes. It is not only the material coffee that is sold, but also a place, a story, sometimes a sense of exoticism.”

Daviron & Ponte¹¹⁸

3. NATIONAL IMPLEMENTATION OF GEOGRAPHICAL INDICATIONS

3.1 Introduction

As earlier stated, geographical indications are of great importance to Uganda because being a predominantly agricultural country; it has a wide range of agricultural products with a certain quality or characteristics that are attributable to their areas of origin. Besides having products that qualify for geographical indication protection, geographical indications are also of interest to Uganda because they have the potential to increase the market price of Uganda’s agricultural exports. This is because it has been established that intellectual property protected goods receive premium prices, while African agricultural products receive relatively low prices because of the low value addition.¹¹⁹ In fact, forty per cent of consumers would pay a ten per cent premium for origin-guaranteed products.¹²⁰

Geographical indications are also considered a development tool,¹²¹ and as an LDC, Uganda can use them to stimulate development especially in the rural areas. Rural development is a major issue in Uganda because of the steady increase of the urban population that is putting a strain on service delivery. According to UBOS, the

¹¹⁸ B Daviron and S Ponte *The coffee paradox – global markets, commodity trade, and the elusive promise of development* (2005) 129 cited in J Hughes ‘Coffee and chocolate- can we help developing country farmers through geographical indications?’ (2009) –Report prepared for the International Intellectual Property Institute (IPI).

¹¹⁹ Oguamanam op cit (n 18) 79.

¹²⁰ World Trade Organization (WTO) World Trade Report 2004: Exploring the linkage between the domestic policy environment and international trade, (2004) 84, available at http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report04_e.pdf, accessed on 12 December 2014.

¹²¹ Bowen op cit (n21).

urban population was at 5 million, which is approximately 16.5 per cent of the total population.¹²² Uganda can therefore use geographical indications to achieve the goal of rural development that will consequently lead to countrywide development.

Besides rural development, some of the other benefits of geographical indications include higher economic returns from increased market access, protection of traditional knowledge, the fostering of tourism, and protection against counterfeiting and free riding on the reputation of geographical indication protected products.¹²³

In light of the numerous benefits, considering that the country already has products that qualify for geographical indication protection, there are certain issues that must be properly addressed before the benefits can be fully realised. It is these issues that are the focus of this chapter. This chapter begins by highlighting some of the main provisions of Uganda's Geographical Indications Act,¹²⁴ and identifies the inadequacies of the legislation, if any. Thereafter the chapter discusses the other factors that Uganda must address in order to fully take advantage of geographical indication protected goods.

3.2 Geographical Indications Act No 8 of 2013

As indicated earlier, Article 22. 2 of the TRIPS Agreement requires member states to provide legal protection for geographical indications, but does not specify what kind of protection must be adopted. As a result, members have adopted different tools such as certification marks, appellations of origin, and *sui generis* laws.¹²⁵ In accordance with TRIPS, Uganda opted for a *sui generis* tool for the protection of geographical indications by enacting the Geographical Indications Act¹²⁶ in October 2013. The objectives of the Act are: (a) to provide for the protection and registration of geographical indications; (b) to provide for the duration of the protection of geographical indications; (c) to provide for the appointment of a registrar; (d) to provide remedies for infringement or prohibited use of geographical indications: and for related matters. This section briefly highlights the provisions of this law, and discusses the issues arising therefrom.

¹²² 'Uganda Exports 1993-2015' op cit (n 24).

¹²³ Ngokkuen and Grote op cit (n22).

¹²⁴ Geographical Indications Act 8 of 2013.

¹²⁵ Hughes op cit (n5) 4.

¹²⁶ Geographical Indications Act 8 of 2013.

The Act adopts a definition of geographical indications similar to the definition in the TRIPS agreement. The interpretation section, section 2, provides that a geographical indication means ‘any indication which identifies goods as originating in a particular country, region or locality where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographic origin’. Under the same section, the categories of goods protectable under the Act are natural, agricultural products, animal products or products of handcraft or industry.

Section 2 provides for a number of other definitions, but noteworthy are the definitions of the terms ‘substantially similar’ and ‘use’. Substantially similar is defined to mean the existence of common or similar elements with a protected geographical indication to the extent that it leads to confusion of the public or that portion of the public concerned with the product.¹²⁷ Use is defined to include any transaction, trade, advertisement or any other related activity.¹²⁸

Section 4 gives a geographical indication owner protection against misleading use of the indication, use that constitutes unfair competition or use in translations or accompanied by the expressions such as “kind”, “type”, “style” or “limitation”.¹²⁹ Section 4 (2) further prohibits the use of a geographical indication to create confusion with the establishment, the goods, or the industrial or commercial activities of a competitor; false allegations that are of such a nature as to discredit the establishment, the goods or the industrial or commercial activities of a competitor; and the use of geographical indications that is likely to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quality of the goods.

The Act excludes certain indications from registration as geographical indications, and these include indications that are contrary to public order or morality; indications that are contrary to the public interest, in particular national security, nutrition, health, environmental conservation, or the development of other vital sector of the national economy; and a name which conflicts with the name of a

¹²⁷ Ibid section 2.

¹²⁸ Ibid.

¹²⁹ Ibid section 4 (1).

plant variety or an animal breed and as a result is likely to mislead the consumer as to the origin of the product.¹³⁰ The provision also incorporates the exclusions under Article 24 of TRIPS such as generic names, homonymous names and prior good faith trademarks.

The Act establishes the office of the registrar of geographical indications and other officers under section 6, and the register of geographical indications is provided for under section 7. Section 7 (2) outlines the criteria for a geographical indication to be entered on the register. The indication must identify the goods to which the indication relates, and identify the goods as originating in a particular country, region or locality; a given quality, reputation or other characteristics of the goods is essentially attributable to its geographic origin; the indication does not contravene the provisions of the Act as it is applied to the goods; and lastly that an application for registration is filed with the registrar.

The right to apply for the registration of a geographical indication is restricted to a legal entity carrying on an activity as producers, farmers, artisans in the geographical area specified in the application, with respect to the product specified in the application; a group of representative producers; or a competent authority in respect to an indication with national authority.¹³¹

In order to register a geographical indication in Uganda, an application is filed in accordance with sections 8 (1) and (2), which require that the prescribed fee is paid, and that the application contains the details of the applicant, the geographical indication for which registration is sought, the geographical area to which the indication applies, the goods to which the geographical indication applies and the quality, reputation or characteristics of the goods.

Once all this information has been provided in the application, it is examined in accordance with section 9. The registrar ensures that the application complies with the requirements under section 8. If the application satisfies the requirements, the registrar shall accept the application. An applicant may be called upon to amend or

¹³⁰ Ibid section 5.

¹³¹ Ibid section 8 (3).

supplement an application that does not fully meet the requirements. The registrar shall enter the geographical indication on the register if the application has not been opposed in accordance with section 10, or if an opposition has been decided in favour of the applicant in accordance with section 9 (4). Section 11 gives an applicant the right to appeal to the court in the event that the registrar has rejected an application. A geographical indication is granted protection for a period of ten years, and there is no limit on how many times an application for renewal can be made.¹³²

The owner of the indication has the right to use it in accordance with section 16, which provides that the rights holder can use the indication on goods, in advertisements, packaging or any other commercial use. However, the rights holder is prohibited from licensing or assigning the use of the indication, and can only transfer the registration subject to certain conditions. The conditions are that the transfer is in writing, and a request to transfer the registration must be filed with the registrar. The transfer shall then be reviewed to ensure that all material conditions remain unchanged except for the identity of the entity producing the goods that are subject to the registration, and where no differences are noted, the transfer will be recorded.¹³³

In regard to trademarks, section 18 of the Act prohibits the registration of trademarks that consist exclusively of a geographical name, unless the mark is determined to be distinctive by the registrar of trademarks or by the court. The Act also provides that certification marks shall be subject to the protection provided for geographical indications, and that an application to register a certification mark may be converted to an application to register a geographical indication, upon the request of the applicant.¹³⁴

The Act specifically forbids the importation and exportation of goods that bear false geographical indications. Infringement of an indication is a criminal offence punishable by a fine not exceeding two thousand currency points (a currency point is

¹³² Ibid section 15.

¹³³ Ibid section 17 (2).

¹³⁴ Ibid section 19.

equivalent to twenty thousand shillings- approximately USD 7.21) or imprisonment not exceeding ten years or both.¹³⁵

On the whole, the law achieves its objectives as earlier stated. However, there is one critical issue that must be addressed in order to ensure that the law does not become a barrier to the achievement of the objectives, as discussed above.

The issue that must be addressed is the aspect of ownership. Section 8 (3) of the Act provides that a competent authority can apply for registration of a geographical indication in respect to indications with national character. The provision for government bodies to apply for the registration of indications raises the question of whether the producers will be able to enjoy their full share of the premiums.

One of the main features of geographical indications that distinguish them from other intellectual property rights is the fact that they are ‘essentially owned and exercised collectively’.¹³⁶ It is important that the Act maintains the aspect of collective ownership of geographical indications by excluding government involvement. This is important because collective ownership plays a crucial role in ensuring that farmers enjoy the economic benefits from geographical indications. This is because collective ownership gives farmers more negotiating power and eases the marketing of their products. Babcock and Clemens¹³⁷ concur by stating that, ‘the system of regionalized ownership is a key factor in ensuring that the economic benefits of geographical indication protection are spread along the supply chain, including to the producers who supply the raw materials.’

Another reason why the government should not control geographical indications is the failure of most governments of developing countries and LDC to perform their functions in critical sectors like health, infrastructure, education, water and sanitation. There is also a concern that government ownership will result in ‘profits ending up in the pockets of politicians and middle men’¹³⁸, and this is a valid concern

¹³⁵ Ibid section 23.

¹³⁶ Addor and Grazioli op cit (n100) 894.

¹³⁷ B Babcock and R Clemens ‘Geographical indications and property rights: protecting value-added agricultural products’ *MATRIC Briefing Paper* (2004), available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.352.4480&rep=rep1&type=pdf>, accessed on 18 November 2014.

¹³⁸ Hughes op cit (n5) 105.

because of the prevalence of corruption and lack of transparency in these countries, and Uganda is no exception. It has indeed been the experience of countries such as Ethiopia and Jamaica that farmers did not access their full share of profits as a result of government control of geographical indications, and government bodies that were in between them and the market place.¹³⁹ Therefore, government involvement in the ownership of geographical indications would most likely become a barrier to the farmers' economic benefits. The issue of ownership should be restricted to groups of farmers or their representatives in order to ensure that the economic benefits are proportionately spread along the supply chain, with the farmers being one of the main beneficiaries.

The third reason as to why governments should not own geographical indications is the fact that producer organisations have illustrated the capacity to manage their own geographical indications. In the EU for instance, producer organisations have successfully owned and managed geographical indications, with minimal government interference. Only a group or, subject to certain conditions... a natural or legal person, is entitled to apply for registration of a geographical indication.¹⁴⁰ A group is defined to mean 'an association, irrespective of its legal form or composition, of producers and/or processors working with the same agricultural products or foodstuff'.¹⁴¹ Some of the duties of these groups are, 'to contribute to ensuring quality, reputation and authenticity of their products by monitoring the use of the product name in trade; to develop activities related to ensuring compliance of a product with its specification; and to take measures to enhance the value of products and, where necessary, take steps to prevent or counter any measures which are, or risk being, detrimental to the image of those products'.¹⁴² The fact that the success of geographical indication implementation is attributed to these groups,¹⁴³ illustrates the importance of ensuring that they remain collectively owned, with the producers as the main beneficiaries.

¹³⁹ Hughes op cit (n5) 67.

¹⁴⁰ Article 5 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

¹⁴¹ Ibid.

¹⁴² Regulation (EU) No 1151/2012 of the European parliament and of the council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

¹⁴³ V Fautrel et al 'Protected Geographical indications for ACP countries: A solution or mirage' (2009) 8 *Trade Negotiations Insights*, available at <http://www.ictsd.org/bridges-news/trade-negotiations-insights/news/protected-geographical-indications-for-acp-countries-a>, accessed on 22 September 201.

This is not to mean that the government should be entirely excluded from the geographical indications system. The role of government should be to ensure that there is an efficient framework within which geographical indications can be implemented, and to create a legal, political and economic environment that will foster the success of the geographical indications system. Whereas Ugandan farmers cannot be said to have the same capacity as the producer organisations in the EU, the success of the EU groups illustrates the potential that well organised farmers have if they are operating within a political and socio-economically favorable environment.

The second related issue is the criteria of an ‘indication with national character’. Section 8 (3) (c) provides that a competent authority shall file an application for the registration of an indication of national character. The Act has not defined what an indication of national character is, and the Regulations are not yet in place to shed more light on the issue. Whatever the definition, it is still possible for the producers of such goods that are produced throughout the country to organize themselves into cooperatives or any other form of organisation, and apply for the registration of their geographical indication. The competent authorities that the regulations will provide for can simply provide oversight, and let the producers own and control their indication.

On the whole, the Act achieves its objectives as it mainly provides for procedural issues and formalities such as the establishment of the office of the registrar, the register, remedies for unlawful use, and the application and appeal processes.

It has, at times, been erroneously believed that the enacting and/ or strengthening of geographical indication laws will substantially benefit developing and LDCs. However, it is not enough to have national legislation, as the existence of a law does not guarantee the success of geographical indications. The mechanisms through which the benefits of geographical indications will be maximally achieved are diverse and go beyond the law. The law only provides a foundation, while the success of geographical indications largely depends on other factors. These factors include the organizational structures adopted by the farmers, selection of goods for geographical indication protection, research and development, marketing strategies, control and verification processes, infrastructure, an institutional framework and the

sensitization of stakeholders.

3.3 Organisational Structures

The realization of the objectives of geographical indications largely depends on how well the producers are organised. It therefore follows that Ugandan farmers can only fully enjoy their share of profits if they are properly organised. With approximately 1,500 producer organisations as of 2004¹⁴⁴, the EU provides the best example of the significance of producer organisations, and the role they play in ensuring that the geographical indications' system is efficient. The success of the EU system has been attributed to the 'dynamic and well-organized' producer organisations, among other factors.¹⁴⁵ These organisations take the form of cooperatives, groups of individuals or companies, and are primarily funded by their members.¹⁴⁶ The EU producer organisations are involved in quality control of their products, marketing, research and development for value addition, and development of the product specifications relating to their origin and quality.¹⁴⁷ Some of the benefits of producer organisations include; 'group product marketing and branding, joint purchasing of farm inputs, negotiating better contractual terms and conditions, and improved co-ordination of production activities'.¹⁴⁸

In light of the benefits of producer organisations, it is important that Ugandan farmers adopt some sort of organisational structure. The most viable option is the formation of cooperative unions. Ethiopia, for example, has integrated 265 coffee cooperatives into nine cooperative unions. This has been advantageous because it has shortened the supply chain in the market, which has consequently removed the middlemen who reduce the income that the farmers' receive from their products.¹⁴⁹

Cooperative unions are the most practical option because the country already has a legal framework and organizational structure that supports such organisations

¹⁴⁴ J Maria et al 'Producer organizations in the EU: policy issues' 2007, available at http://ec.europa.eu/agriculture/fruit-and-vegetables/producer-organisations/index_en.htm, accessed on 22 September 2014.

¹⁴⁵ Fautrel op cit (n143).

¹⁴⁶ Ibid.

¹⁴⁷ Regulation (EU) No 1151/2012 op cit (142).

¹⁴⁸ National Farmers Union of England and Wales, 'A Guide to producer organisations in the dairy sector', available at <http://www.nfuonline.com/assets/6571>, accessed on 10 October 2014.

¹⁴⁹ Oguamanam op cit (n18) 85.

under the Cooperative Union Societies Act¹⁵⁰, and the National Cooperative Policy of 2010¹⁵¹. The structures under the Act include Uganda Cooperative Alliance (UCA), Uganda Cooperative Savings & Credit Union Limited (UCSCU), Uganda Cooperative Transport Union Limited (UCTU), and Uganda Cooperative Insurance.

In fact in Uganda, 55 per cent of the total number of registered cooperatives are agricultural marketing cooperatives. Although discussing the mandate of the above structures is outside the scope of this thesis, it is important to highlight the fact that the structure of co-operatives has been underutilized, and this is why they have been referred to as Uganda's 'sleeping economic giants'.¹⁵² The Uganda Cooperative Alliance (UCA) is an especially important body that has a wealth of experience in the areas of cooperative education, training, monitoring and evaluation, agri-business development, and farmers' empowerment.¹⁵³ This is a framework that can be used to deal with the ownership and management of geographical indications.

Citing, a World Bank report, Wanyana¹⁵⁴ highlights the fact that cooperatives can potentially play a big role in development only if they are 'disentangled from the state, restructured and run on business principles in line with the then emerging economies'. This is a true and valid observation, but to begin with, it is important that ownership is managed through structure, and being an LDC it will only make sense for the country to make use of existing infrastructure and resources. Then, with time, the cooperative societies can adopt a model similar to the one Wanyana suggests. This would save time and finances, as there is already in existence the necessary institutional framework for cooperative organisations, and the human resource to cater for capacity development training needs. Utilizing the structure of cooperative societies, and not creating producer organisations from scratch also maximizes the country's already limited resources. The farmers can adopt this

¹⁵⁰ Cooperative Union Societies Act Cap 112 of 1991.

¹⁵¹ LM Kyazze 'Cooperatives: the sleeping economic and social giants in Uganda' (2010) Working paper 15-Cooperative Facility for Africa, available at <http://www.ilo.org/public/english/employment/ent/coop/africa/download/wpno15cooperativesinuganda.pdf>, accessed on 20 September 2014.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ F Wanyama 'Encountering the evidence: co-operatives and poverty reduction in Africa' (2008) 3 *Journal of Co-Operative Studies* 16-27 at 16, available at <http://www.ingentaconnect.com/content/ukscos/jcs/2008/00000041/00000003/art00004>, accessed on 20 September 2014.

structure, and define the roles of the cooperatives within the geographical indication system.

3.4 Selection of Goods for Geographical Indication Protection

According to the definition of geographical indications under Art 22.1 of TRIPS, a number of countries have products that qualify for protection. Geographical indications are best suited to agricultural products because such products or their quality can easily be connected to their places of origin.¹⁵⁵ This is the reason why it is easy for an agricultural country like Uganda, to identify products whose quality can be linked to their places of origin. However, the best course of action for a country that is only just setting up a geographical indication system is to identify those products that already enjoy a certain regional or international reputation. Fautrel further advises that protection should be limited to only specific products that can find new markets at a fair price, and that have existing producer organisations that can initiate the process.¹⁵⁶

In selecting the products that should be granted protection, as stated above, priority should be given to those products that already enjoy regional or international reputation so as to avoid or reduce the investment that goes with extensive marketing of products. The selection of a few products ensures the efficient allocation of resources to the value addition, quality control, research and development, and the marketing and branding of the selected products. Beginning with a few products is also advantageous because through monitoring and evaluation of the system, it can easily be established whether the geographical indication system is practical, sustainable and the best option of protection for Uganda's agricultural produce. This is preferable to investing in the protection of a wide range of products, only for the whole system to be found unfeasible.

Some of the products that should be given priority in Uganda include: Uganda Waragi (a locally brewed gin), coffee and vanilla. Ugandan vanilla, grown in East and Central Uganda, actually has the highest vanillin content, and as a result, it

¹⁵⁵ World Intellectual Property Organization (WIPO) 'Geographical Indications: An Introduction', available at http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.pdf, accessed on 14th September, 2014.

¹⁵⁶ Ibid.

enjoys high demand at the international market.¹⁵⁷ According to a regionally well-known publication called the East African, ‘farmers sell green vanilla beans to firms that cure and export them at about \$8 per kilogram while the cured pod beans sell at about \$25 per kilogram’.¹⁵⁸ It is such products that should be focused on, and then once the reputation of Ugandan products grows, some of the previously unknown products can slowly be introduced onto the market. Granting protection to a wide range of products simply because they satisfy the legal requirement, without taking into consideration whether they already enjoy a certain reputation would be counterproductive.

3.5 Branding and Marketing Strategies

It is not enough to register a product as a geographical indication protected good, it is important that the product is branded and extensively marketed. Marketing is of extreme importance to goods protected by geographical indications because of recent, it has been established that consumers are more inclined to buy origin - connected products.¹⁵⁹ Consequently, producers of such goods have the opportunity to enter more lucrative niche markets.¹⁶⁰ It is therefore important that the government and producer organisations in Uganda employ effective and efficient marketing strategies to ensure that there is increased demand for their products within the country and the region. The recommendation, as discussed above, that farmers can organize themselves into cooperative societies is also a marketing strategy, as it would create marketing opportunities for the farmers and give them more negotiating power for better prices.¹⁶¹

¹⁵⁷ ‘Ugandan Vanilla’, *Light Years IP* available at

http://www.lightyearsip.net/scopingstudy/ugandan_vanilla.aspx, accessed on 11 October 2014.

¹⁵⁸ The East African, ‘Stable prices see Uganda vanilla exports rise’, 31 May 2014, available at <http://www.theeastafrican.co.ke/business/Stable-prices-see-Uganda-vanilla-exports-rise/-/2560/2332654/-/e6lmkdz/-/index.html>, accessed on 11 October 2014.

¹⁵⁹ World Intellectual Property Organization (WIPO) ‘Geographical Indications an Introduction’, available at http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.pdf, accessed on 11 October 2014.

¹⁶⁰ C Bramley et al ‘The economics of Geographical Indications: towards a conceptual framework for geographical indication research in developing countries’ (2009) *The Economics of Intellectual Property* 109.

¹⁶¹ Wanyama op cit (n154) 20.

Branding is one of the most powerful tools that can be used to strengthen the marketing power of products, however farmers and producers in LDCs lack the capacity to brand their products.¹⁶² According to Prof. Kur,

“Irrespective of the actual quality of goods grown or produced in developing countries, such goods will only be economically successful if they are in demand on the market in countries where consumers are willing to pay (more) for them. [M]arket success needs to be fostered in the same way as it would have to be done for trademarks, i.e. by launching marketing campaigns – and that is usually very costly. The promises made to developing countries tend to disregard that point.”¹⁶³

Marketing campaigns are indeed costly, as stated by Prof Kur above, but an economically successful geographical indication system must come at a cost. Due to the disparities in resources, it may, to a larger extent, be impractical to suggest that an LDC like Uganda should adopt some of the marketing strategies used within the EU. In the case of branding and marketing, Uganda can borrow a leaf from Colombia’s approach to the marketing of its coffee.

Colombia provides an example of the importance of investing in marketing and branding. In the 1950’s, the Federación Nacional de Cafeteros de Colombia-FNC (National Federation of Coffee Growers of Colombia) hired a New York based advertising agency to market its coffee.¹⁶⁴ The advertising agency created Juan Valdez, a character representing the typical Colombian coffee farmer. As a result of successful branding and marketing, among other factors, the demand for Colombian coffee grew worldwide, and in 2007, Colombia became the first non- EU country to register its geographical indication in the EU. According to the Intellectual Property Director of the FNC, the advertisements based on the Juan Valdez character have been instrumental in the selling of Colombian beans around the world.¹⁶⁵

This is not to imply that Uganda must adopt a similar strategy. The main lesson

¹⁶² World Intellectual Property Organization (WIPO) Project on Intellectual Property and Product Branding for Business Development in Developing Countries and Least-Developed Countries (LDCs). [WIPO Doc CDIP/5/5-March 2, 2010], available at http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_5/cdip_5_5.pdf accessed on 20 September 2014.

¹⁶³ K Annette ‘Quibbling Siblings-Comments to Dev Gangjee’s Presentation’ (2007) 82 *Chicago-Kent Law Review* 1317 at 1323.

¹⁶⁴ World Intellectual Property Organization (WIPO) ‘Making the Origin Count: The Colombian Experience’ available at <http://www.wipo.int/ipadvantage/en/details.jsp?id=2617>, accessed on 31 November 2014.

¹⁶⁵ *Ibid.*

to learn from Colombia is that marketing and branding is vital to the success of a geographical indication. To a larger extent, majority of Ugandan farmers, individuals or their groups, lack the capacity and resources to launch marketing campaigns on the scale required to build a strong regional and international reputation. However, it is important that all stakeholders appreciate the relevance of marketing and branding. Beyond the registration of products that are protected by geographical indications, Uganda needs to develop serious marketing strategies for its protected goods through the relevant government agencies in collaboration with all stakeholders like farmers' groups. This is why it is important that farmers get organized into well-defined structures such as cooperative unions. It will then be easier for them to collaborate with the government in the marketing of their products. This can be done under different arrangements including public-private partnerships.

3.6 Research and Development

In addition to investing in marketing, the government and farmers' groups will need to invest in research and development in order to understand how the geographical area contributes to the quality of the product, improvement of production techniques, and how this knowledge can contribute to ensuring that the quality of the products is maintained or even improved.

Costa Rica can be used to support this point because it is one of the countries that have extensively invested in the research and development of its bananas. The National Banana Corporation, Corporación Bananera Nacional (CORBANA), has a department solely dedicated to research in bananas.¹⁶⁶ The department is divided into four units: soils and drains, environmental protection and entomology, plant pathology, and a section on plant physiology.¹⁶⁷ The results of the research conducted by this department are disseminated to the producers through conferences, publications, press releases and the media.¹⁶⁸ The funding for these dissemination activities comes from voluntary contributions from the producers themselves, and

¹⁶⁶ World Intellectual Property Organization (WIPO) 'GIs and Rural Development: A Case of Bananas', available at <http://www.wipo.int/ipadvantage/en/details.jsp?id=3111>, accessed on 6 October 2014.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

through these contributions, investment in research and development has increased from US\$ 1 million in 1981 to US \$ 12 million in 2006.¹⁶⁹

The geographical indication for the Costa Rican banana (Banano de Costa Rica) was first registered in 2010, and as a result of the focus on research and development, the Costa Rican farmers have been able to improve their farming skills, enhance farming practices and develop sustainable and environmentally friendly agricultural processes.¹⁷⁰ At an international level, the increased investment has led to the ‘consolidation of the Costa Rican bananas’ market position, increased its competitiveness and created new commercialization opportunities’.¹⁷¹

Uganda has already made some progress in the area of agricultural research under the National Agricultural Research Organisation (NARO), and its research institutes. NARO is a public institution that is charged with coordinating all agricultural research activities in the national agricultural research system¹⁷². Some of its research institutes include the National Coffee Research Institute and the National Agricultural Research Laboratories.¹⁷³ However, like most government institutions in Uganda, NARO faces challenges of resource mobilization, inadequate infrastructure, and the lack of sufficient human resource.¹⁷⁴

Despite the challenges, the already existing human resource and infrastructure at NARO can be used to focus on the products that will be granted protection. NARO can also enter into partnerships with producer organisations, international organisations and members from the private sector in order to raise the funds required to focus on research and development of the products that will be granted protection.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² National Agricultural Research Organisation (NARO) ‘About NARO’, available at <http://naro.omni-techsolution.com/Default.aspx>, accessed on 31 October 2014.

¹⁷³ Ibid.

¹⁷⁴ National Agricultural Research Organisation (NARO) Strategic Plan: 2007–2011 (First Draft), 02 December 2006, available at <http://docs.mak.ac.ug/sites/default/files/%5BFwd%20RE%20RE%20NARO%20Strategic%20Pl.doc>, accessed on 25 November 2014.

3.7 Official Control and Verification Process

The issue of quality control is important in a geographical indications system, because the goods are associated with a certain quality and reputation. It is therefore essential that there is a functional system in place to ensure that the quality of these goods is maintained. An appropriate example of a functional system is the EU verification and inspection process. In the EU, quality control is done at two levels. The first is quality control at the internal level whereby the applicants identify an independent body to ensure that the specifications of the geographical indications are complied with.¹⁷⁵ The applicant group has to collectively define the relevant product by achieving consensus as to its characteristics and the delimitation of the production area, before the first level of internal verification is done.¹⁷⁶

The second level is verification of compliance by a public authority and or a product certification body.¹⁷⁷ Product certification bodies must be accredited in accordance with European standard EN 45011 or ISO/IEC Guide 65 (General requirements for bodies operating product certification systems).¹⁷⁸ This system ensures that the geographical indication protected goods maintain a certain quality that is attributed to the geographical area of origin.

Currently in Uganda, UNBS is the statutory body mandated to formulate and promote standards, and assure the quality of locally manufactured products to enhance the competitiveness of exports in regional and international markets.¹⁷⁹ It would however be beneficial for the producers to establish an independent and transparent internal system of quality control like the EU system such that the public authority provides the external verification process. The advantage of this system is that it would increase the scrutiny of compliance with the standards set by both the producers' groups and UNBS, which would consequently ensure that only products that meet the standards enjoy protection.

¹⁷⁵ I Kireeva 'European Legislation on Protection of Geographical Indications-overview of the EU Member States' Legal Framework for Protection of Geographical Indications' EU-China IPR2 project available at <http://ipr2.org/document-centre/document.php?id=270>, accessed on 22 September 2014.

¹⁷⁶ Bramley op cit (n160) 109.

¹⁷⁷ Kireeva op cit (n175) 7.

¹⁷⁸ Ibid.

¹⁷⁹ Section 3 of the Uganda National Bureau of Standards Act Cap 327.

This will however require a lot of co-operation with the Uganda Registration Services Bureau (URSB) that is in charge of registration of geographical indications. It will also necessitate capacity trainings such that the producers are able to describe the products, define the processes involved in production, specify the geographical area and the product labeling rules in a bid to contribute to the establishment of quality standards.

3.8 Flexible and Effective Institutional Framework

The importance of a flexible and effective institutional framework for the management of geographical indications cannot be underestimated. Larson¹⁸⁰ argues that ‘the fact that European Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) regulation requires an existing organization that oversees compliance with product description is evidence that geographical indication implementation requires organizational development.’ He is of the view that the most important aspect of implementation of the geographical indications system is the existence of government structures that ‘organize the value chain to reach the market, invest in the intrinsic quality of the product and defend its values in trade’.

It is therefore important for Uganda to ensure that there is an effective institutional framework in place in order to maximize the benefits of geographical indications. Establishing an effective system requires co-operation because geographical indications cut across issues of intellectual property, agriculture, trade and development, so it is imperative that all institutions concerned with these matters co-operate with the producer organisations in ensuring that the objectives, such as rural development are achieved. This means that the URSB, which is the registering body, must co-operate with UNBS, in ensuring that all registered geographical indications meet the prerequisite quality standards. The UNBS must work with the Ministry of Agriculture and the necessary government parastatals concerned with agriculture. The Ministry of Agriculture also has to work with the Ministry of Finance, Planning and Economic Development. All responsible institutions must co-

¹⁸⁰ J Larson ‘Relevance of geographical indications and designations of origin for the sustainable use of generic resources’ Global Facilitation Unit for underutilized Species (2007) Rome, Italy, available at http://www.underutilized-species.org/Documents/PUBLICATIONS/gi_larson_lr.pdf, accessed on 25 September 2014.

operate.

Considering that a large section of Uganda's geographical indications would be used in relation to agricultural products, it is important that the institutional framework is also complemented by favourable agricultural and rural development policies. These policies should, among other issues, focus on increasing the productivity levels of agricultural products such that there is a surplus that is able to satisfy both internal and regional markets.

This institutional co-operation must extend from the national level to the regional level, and be able to support regional co-operation¹⁸¹. This is an appropriate time for regional co-operation because of the on-going East African Community Regional integration. Regional co-operation is important because the benefits of geographical indications are best appreciated in the context of trade, and that is why during the integration process, the countries in the East African Community must emphasize the significance of institutional co-operation. Co-operation at the regional level would even enable the LDCs in the region to optimally make use of the technical and financial assistance available under TRIPS to establish a regional geographical indications regulatory framework. The government should play a key role in ensuring effective co-operation between the state agencies and the private sector with the aim of maintaining functionality of the regulatory framework.¹⁸²

However, cognizance must be taken of the fact that Uganda, as an LDC is plagued by the problems concisely captured by Hughes¹⁸³, who states that,

‘We must ask if any state too weak to provide a reasonable transportation and communications infrastructure, any state too feeble to constrain “rent seeking behaviour by politicians, bureaucrats, criminals and the private sector” is a state capable of putting in place the kind of geographical indication system seen for geographical indication products in Europe or the viticulture sectors in Australia, South Africa and the United States’

In light of these challenges, it is imperative to point out that geographical indications will not economically impact an LDC like Uganda unless the interrelated issues of

¹⁸¹ Addor and Grazioli op cit (n100) 893.

¹⁸² A Deppeler, H Stamm et al ‘Why evaluate the effects of GIs?’ in ‘*The effects of protecting geographical indications-ways and means of their evaluation*’ Swiss Federal Institute of Intellectual Property, Publication No.7 (2011) 5.

¹⁸³ Hughes op cit (n5).

governance, corruption and infrastructure are addressed. The importance of communication and transportation infrastructure is especially crucial to the realization of the objective of rural development in Uganda. For example in Western Uganda, one of the most agriculturally fertile parts of the country, poor roads and poor road networks have been and still are barriers to farmers accessing markets.¹⁸⁴ Therefore, whether farmers form producer organizations, verification and control bodies are established, or marketing strategies made, the success of geographical indications will largely depend on good governance and strong infrastructure.

3.9 Sensitization and Capacity Building of Stakeholders

As is the case for all other Intellectual Property Rights in LDCs, there is still need for sensitization and capacity building in regard to geographical indications. The government of Uganda must engage in extensive sensitization and capacity building exercises for all stakeholders. The concept of geographical indications has not yet been fully appreciated, hence the need for all stakeholders to be made aware of the role this form of intellectual property rights can play in economic development, what each of their roles and responsibilities are, and how they can work together to ensure that geographical indications achieve their objectives. Sensitization of stakeholders should cover producer awareness, consumer awareness, and information awareness.¹⁸⁵

Producer awareness should cover the general meaning of geographical indications and the appreciation of concepts such as logos, marketing and branding at all levels of the production chain, right from the farmers to the entities dealing with processing of these products and the exporters.¹⁸⁶

Belletti and Marescotti¹⁸⁷ have stated that, ‘consumer knowledge and trust in the geographical indication as a “quality sign” is of paramount importance in the

¹⁸⁴ A Bainomugisha et.al, Local Government Councils’ Performance and Public Service Delivery in Uganda: Mbarara District Council Score-Card Report 2012/13. ACODE Public Service Delivery and Accountability Report Series No.32, (2014).

¹⁸⁵ G Belletti and A Marescotti ‘Monitoring and evaluating the effects of the protection of geographical indications- a methodological proposal’ in ‘*The effects of protecting geographical indications-ways and means of their evaluation*’ Swiss Federal Institute of Intellectual Property, Publication No.7 (2011) 52-54.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

functioning of the geographical indications system'. They are also of the view that a geographical indications framework should be directed at enhancing consumer awareness and information of the quality properties of goods exchanged on the market.¹⁸⁸ This means that consumers must be helped in understanding the meaning of what geographical indication protection is, and the effect it has on the quality of the products.

Information and awareness of the framework involves making the stakeholders aware of the scheme, the necessary procedures in order to get protection, and what the socio-economic benefits of the scheme are.¹⁸⁹

The country has to be prepared to spend a lot of time and finances on the sensitization exercise, and ensure that it will not be a one off training. As an LDC, Uganda can get financial and technical assistance for this exercise from developed countries under the TRIPS agreement. The exercise must be structured in such a way that it will be repeated after a certain period of time, and that there is a mechanism in place to monitor and evaluate the general appreciation of geographical indications amongst the relevant stakeholders. It is outside the scope of this paper to discuss in detail, the design of a monitoring and evaluation tool, but some of the indicators that can be taken into consideration are the impact on social issues such as gender involvement in the scheme; environmental issues like the use of environmental-friendly practices in the production process; rural development indicators, number of abuses of the scheme, real and expected use of the registered geographical indication, and the number of applications for geographical indications.¹⁹⁰

In order for these exercises to be effective, some of the preliminary issues that have to be dealt with are the identification of the relevant stakeholders, sources of funding, issues of sustainability of capacity building, setting of timelines, identification of resource persons or organizations, and the identification of priority goods and priority areas.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid 57–60.

Some of the stakeholders include law enforcement agencies, the relevant ministries and parastatals, farmers at all levels, producers, exporters and members of the private sector for example marketing firms and manufacturers that will be involved in the value addition processes.

3.10 Conclusion

In conclusion, geographical indications present Uganda with the opportunity to use intellectual property rights to stimulate development. As discussed above, Uganda is a largely agricultural economy, with a wide range of products that would qualify for protection. However, having a national legislation that provides for the protection of geographical indications and products that are protectable under the law is not sufficient for the realization of the objectives of geographical indications. A legal regime is important but, beyond the law, there are other factors that must be addressed before the objectives of protection can be fully realized.

The Geographical Indications Act needs to readdress the issue of government involvement in the ownership of geographical indications to ensure that ownership is limited to the farmers or their representatives. Outside the law, the other issue that must be addressed is the aspect of governance. Unfortunately, the Ugandan government has failed to adequately address the prevalent issues in critical sectors like health, education, and transport and communication infrastructure. The inadequacies in the above-mentioned sectors are due to a number of factors, but high on the list are poor governance and the lack of political will. Good governance and political will are also central to the realisation of the socio-economic benefits from a well-managed geographical indications system.

Besides governance, successful implementation will also require, among other factors, restriction of ownership to farmers' organisations, high levels of cooperation between stakeholders; producers will need to organize themselves and get directly involved in the management of their geographical indications; the establishment of an effective verification and control system; and the sensitization of all stakeholders. If the issues discussed in this chapter are taken into consideration and properly addressed, then Uganda will be on its way to enjoy the social and economic benefits of effective and efficient management of geographical indications.

CHAPTER FOUR

4. RECOMMENDATIONS AND CONCLUSION

4.1 Recommendations

The main objective of this thesis was to answer the question, ‘How can Uganda position itself internationally and nationally to ensure optimal benefits from Geographical Indications?’ The background and justification for this inquiry was provided in chapter one.

Chapter two focused on the international debate on geographical indications concerning the establishment of a multilateral register for wines and spirits, and the extension of a higher level of protection of wines and spirits to other products. In regard to these two issues, the main proposals were discussed, and the extent to which each proposal suited Uganda as an LDC, was also considered.

The main recommendations that arise from this chapter are that Uganda would benefit the most from the Modalities Proposal, also known as the EU-led Proposal or the binding registration system approach.¹⁹¹ Despite the fact that Uganda is part of the African group that is one of the advocates of this proposal, it was still of importance to examine each of the proposals and determine which one would best serve Uganda’s interests, as an individual country, outside the interests of the African group.

First, and foremost, this proposal is the most beneficial to Uganda because the proponents advocate for the extension of the multilateral register to other products, beyond wines and spirits. This is an advantage because, as earlier discussed, Uganda is an agricultural country with a wide range of products that would qualify for geographical indication protection. It is therefore in its best interest that the multilateral register caters for other products besides wines and spirits.

The second advantage of this proposal is that all members of the WTO, both participating and non-participating, would be required to protect all the geographical

¹⁹¹ Kongolo op cit (n61) 125.

indications entered on the multilateral register. All members must consult the register when making decisions concerning the registration and protection of geographical indications and trademarks. This would enable Uganda to internationally protect its geographical indications.

In regard to the second issue, it is recommended that Uganda supports the extension of a higher level of protection to other products beyond wines and spirits. The effect of this proposal is that the owners of geographical indications that have been misused will not have to prove that the use amounts to an act of unfair competition or that the public has been misled by such use.

In respect to the national level, it is recommended that section 8 (3) of the Geographical Indications Act of Uganda is amended to delete subsection (c) that makes provision for a competent authority to apply for the registration of a geographical indication. The purpose of this recommendation is to limit the ownership and control of geographical indications to the farmers and producers, and exclude government ownership of geographical indications.

Secondly, Ugandan farmers and producers should form cooperatives in order to efficiently manage their geographical indications. Cooperatives are the recommended form of organisation because they will make use of the existing legal and institutional framework.

It is also recommended that only the goods that already enjoy a certain regional or international reputation are selected in a bid to ensure substantial investment in research and development, marketing and branding and value addition of these products. This is also advisable because it will test the efficiency of the system and determine whether indeed geographical indications are the best mode of protection for Uganda's origin-connected goods.

Another recommendation is that all stakeholders, both in the government and the private sector must invest in the branding and marketing of their products, in order to increase consumer awareness in regional and international markets.

Research and development of the selected products should also be a key area of focus. This is an important recommendation because research and development would generate knowledge that would then contribute to the improvement or maintenance of the quality of the products protected by geographical indications, and improve the farmers' cultivation techniques. Stakeholders can form partnerships with NARO to seek funding for research in the products selected for geographical indication protection.

Producer organisations need to establish an independent and transparent internal system of quality control before the Uganda Bureau of Standards does the official control and verification process. This will add an extra layer of quality control and will ensure that all products protected by geographical indications are of a certain and uniform quality.

The government should ensure that there is a flexible and effective institutional framework within which the geographical indications system can operate. The framework should facilitate the cooperation of all stakeholders at the national and regional level. The framework will need to be complemented by agricultural and rural development policies that are focused on the realization of the objectives of geographical indications.

The last but not least recommendation is the sensitization and capacity building of all stakeholders. The government, in partnership with stakeholders in the private sector needs to design a sensitization programme that will cut across all stakeholders, from the farmers at the grassroots level to the policy makers. The programme should run in such a way that sensitization and capacity building activities are repeated after a certain period of time. This must be coupled with an effective monitoring and evaluation mechanism to ensure that the concept of geographical indications is being appreciated at all levels.

4.2 Conclusion

In conclusion, geographical indications are a form of intellectual property rights that are well suited for an LDC like Uganda, and if properly and effectively managed, they can substantially contribute to the development of the country. However, there

is need for the country to push for the Modalities Proposal that best suit its interests at the WTO debates, and at every point consider the individual interests of the country, outside the African group. This is important because whereas there was a strategic justification for the alliance of the African group, the interests of the African countries are not the same.

Furthermore, at a national level, the above recommendations must be taken into consideration and implemented in order for geographical indications to have the anticipated social and economic impact. Otherwise, the enactment of a geographical indications law will not magically turn geographical indications into development tools. There must be a deliberate and concerted effort from all stakeholders before the country can fully enjoy the benefits of geographical indications.

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