



Programme:	<i>Technical Assistance to the Integration to the Multilateral Trading System and Support to the Integrated Framework</i>
Country/Region:	Madagascar
Project title:	Supporting the creation of Geographical Indications for specific Madagascar's agricultural products.
Source of Financing:	Third Programme Estimate - Activity n° 088-13

ANNEX II: TERMS OF REFERENCE

1. BACKGROUND INFORMATION

1.1 Beneficiary

Republic of Madagascar's private sector

1.2 Contracting Authority

The Contracting Authority for this project is the Programme Management Unit (PMU) of the ACP MTS PROGRAMME on behalf of the Regional Authorising Officer for the European Development Project N°2013/318-040.

1.3 Geographical Indications in Developing Economies

Promotion of high added value products on local, regional and foreign markets remains a challenge; even more so for developing countries.

Geographical indications (GIs) are increasingly perceived as an economic opportunity for developing countries. GIs, which are covered by the WTO Agreements (specifically the TRIPS), serve to identify a good as originating in a specific territory, region, or locality, where a given quality, reputation or characteristic of the good is attributable to its geographic origin. In other words, unique physical and cultural attributes of goods are translated into product differentiation. These physical and cultural assets form the basic value-giving characteristics upon which GIs are built.

The use of geographical indications as one of the intellectual property tools used in the marketing of agricultural products and wines and spirits has a long history in the EU. By this means, producers have gathered together in collectives to set and maintain product quality standards and to engage in the joint marketing of their products to secure premium prices. An incidental effect of the establishment of artisanal niche markets is also to maintain rural employment and the preservation of rural landscapes. For this reason GIs are the embodiment of 'glocalization' i.e. products and services participating in global markets and at the same time supportive of local cultures and economies. Apart from the unauthorised use of popular brand names, the GI registration will also offer a better price for growers, traders and exporters.

Geographical indications are a subject of protection in the TRIPS Agreement and in the Lisbon Agreement administered by WIPO. The TRIPS Agreement provides for the 'additional protection' of wines and spirits and for the establishment of a multilateral system for the registration of geographical indications used in relation to wines and spirits. The African Group has argued that there is no logical reason why the privileged position for wines and spirits should not be extended to other products such as agricultural products and handicrafts. Empirical data concerning the potential in African countries concerning the use of geographical indications to protect their products remains elusive.

Establishing GIs may prove a major challenge for developing countries. In fact, setting up a successful GI involves the following elements:



(1) Strong organizational and institutional structures to maintain, market, and monitor the GI.

These structures will work in:

1. identifying a GI and fairly demarcating its geographical coverage
2. organizing existing practices and standards and
3. establishing a plan to protect and market the GI.

This requires building local institutions and management structures with a long-term commitment to participatory methods of cooperation.

2. Equitable participation among the producers and enterprises in a GI region. In this context, equitable means that the participating-residents of a GI region share not only costs and benefits but also control and decide on the use of their assets.
3. Strong market partners committed to promote and commercialize over the long term. Many of the GI market successes are the result of mutually beneficial business relations via which consistent market positioning and effective commercialization have led to a long-term market presence.
4. Effective legal protection including a strong domestic GI system. Carefully chosen protection options will permit effective monitoring and enforcement in relevant markets to reduce the likelihood of fraud that can compromise not only the GI's reputation but also its legal validity.

1.4 The Potential of GIs for Madagascar

Madagascar's GDP in 2009 was estimated at US\$ 8.6 billion, with a per capita GDP of US \$438. Approximately 69 percent of the population lives below the national poverty line threshold of one dollar per day. The agriculture sector constituted 29 percent of Malagasy GDP in 2011, while manufacturing formed 15 percent of GDP. Madagascar's sources of growth are tourism, agriculture and the extractive industries.

Madagascar's natural resources include a variety of unprocessed agricultural and mineral resources. Agriculture, including raffia, fishing and forestry, is a mainstay of the economy. Madagascar is among the world's principal suppliers of vanilla, cloves and ylang-ylang. Other key agricultural products include coffee, leeches and shrimp. Exports formed 28 percent of GDP in 2009. Most of the country's export revenue is derived from the textiles industry, fish and shellfish, vanilla, cloves and other foodstuffs.

Madagascar's export figures are partly due to the world-class quality of its spices. The world market for imported spices and culinary herbs is large, valued at around US\$ 4 billion. Least developed countries (LDCs) such as Madagascar, earn a substantial part of their foreign exchange from spice exports. The main spices exported by Madagascar are vanilla, cloves and cardamoms. Other major developing country exports are black pepper, ginger, paprika, coriander, cumin, cinnamon, turmeric, etc.

However, as a result of its recent political instability, Madagascar's economy remains very fragile and its capacity to absorb further shocks is severely constrained. Being an open economy, Madagascar is particularly vulnerable to global economic crisis.

In that context, the promotion of high added value products on local, regional and even more so foreign markets remains a challenge for Madagascar private sector. One alternative is to develop geographical indications inasmuch as these products may be characterised by their origin.

The subject of appellations of origin and/or geographic indications is of utmost importance for Madagascar. The country and its agricultural sector have high potential for GIs (for example on clover, black pepper, green pepper, vanilla etc).



GIs are one aspect of the IP protection in that context. Madagascar has not ratified the only international convention dealing with appellations of origin. Without a legal framework on GIs, no product can be protected. Consequently, to give a minimum protection to their products, businesses have to register their brand names.

As an illustrative example of the GI situation in Madagascar, a collective trademark of vanilla from Madagascar was recently registered. Vanilla has been cultivated in Madagascar since 1871 with the country's exports being considered world-class in quality. That makes it attractive to the food industry (unprocessed or as an ingredient). This quality is also a result of know-how, particularly of women who contribute to the pollination process. A GI could be an attractive instrument for this sector. Adoption of a GI on vanilla would enable the following results, namely:

1. the name "Madagascar" could be protected, and the high quality of this vanilla exploited and generate the receipt of higher prices;
2. the sector could be organised and a collective strategy defined, particularly for marketing purposes.

However, certain imponderables remain unresolved:

- (1) Definition of specifications: what gives this vanilla special quality? What is the defined geographical area? Which name should be used, Madagascar or Sava?
- (2) What resources will the professional associations have for protecting themselves?
- (3) What should be the marketing tool for the product beyond organic and fair trade?

2. AIM OF THE STUDY

The purpose of the project is to assist Madagascar develop a legal framework to promote the use of appellation d'origine for four of the country's main agricultural exports. These are cocoa, cloves, lychees and pepper. The study should define the legal, organisational and technical requirements required to establish appellation d'origine in the four enumerated agricultural products. The study should result in the emergence of a clear and documented roadmap with respect to the legal provisions required to be implemented in order for the country to benefit from the designation of appellation d'origine on the four identified products.

3. SPECIFIC INTERVENTIONS

1. review the legal framework in both Cameroon and Guinea that facilitated the recent emergence of GIs in those two African countries;
2. review the Madagascar legal framework with respect to protection of intellectual property, and the specific treatment of GIs;
3. draft a document detailing the feasibility of a comprehensive intervention for the development of appellations of origin or geographical indications for cocoa, cloves, lychee and pepper; and
4. outline recommendations in various areas of required specific interventions such as legal measures (e.g. draft legal parameters), institutional measures (e.g. organization of producers), trade capacity building measures (e.g. support of the establishment of product specification).

4. BUDGET

The ACP MTS Programme will contract the selected Expert with a Fee-based contract of a total value of EUR 19.800 (direct agreement).



5. TIME FRAME

The project will commence on signature of the contract, with delivery on January 20th, 2014 (estimated 8 weeks work)

6. DELIVERABLES

The expected results will be a technical report of between 20-25 pages delivered to the highest professional standards. The completed report should also include an executive summary (maximum 3-pages) that should allow for easy digestion by Malagasy stakeholders of the most salient issues.

7. REQUIRED PROFESSIONAL EXPERTISE

Qualifications and skills

1. Graduate degree in Law, International Trade, Economics, Business Administration, or equivalent (PhD or Masters);
2. Fluency in spoken and written French with excellent report writing and drafting skills in French;
3. Strong legal professional experience, with deep grasp of Madagascar's legal system and administrative procedures; and
4. Experience in reviewing and assessing laws and regulations and identifying changes to be made to meet international standards and/or best practices;

General professional experience

5. At least 10 years relevant professional experience in reviewing and updating trade policies;
6. Strong analytical command of international trade issues;
7. Strong understanding of African economic and trade policy environment; and
8. Significant experience in private sector development.

Specific professional experience

9. In-depth knowledge on the legal/policy implications of WTO Agreements, of the TRIPS would be an asset;
10. Strong experience in reviewing and drafting laws and domestic regulations on trade;
11. Knowledge of TRIPS is required, and in particular of geographical indications and appellation d'origine