PLACE-BASED INTELLECTUAL PROPERTY STRATEGIES FOR TRADITIONAL AND LOCAL AGRICULTURAL PRODUCTS: ACTING LOCALLY TO PARTICIPATE GLOBALLY IN A RIGHTS-BASED APPROACH

*Teshager W. Dagne**

I. INTRODUCTION

The use of place-based intellectual property strategies is a recent but growing development in the agricultural economy of indigenous peoples and local communities, mainly in developing countries. Place-based intellectual property strategies are strategies to adapt intellectual property-related protection to specific regions or territories with a focus on their positive attributes.[1]

---

* Teshager W. Dagne obtained his LL.B. at Addis Ababa University (Ethiopia); LL.M. at the University of Calgary (Alberta, Canada); and J.S.D. at the Schulich School of Law, Dalhousie University (Nova Scotia, Canada). He is currently an Assistant Professor, Faculty of Law at Thompson Rivers University, Kamloops, B.C., Canada.

Place-based mechanisms mainly constitute the use of geographical indications (GIs) rights. GIs are forms of intellectual property rights amenable to agricultural and other products that have distinct quality, characteristics, or reputation on account of natural and human factors in a location.[2] These mechanisms are most often adopted in the hope of ensuring fair and equitable participation of indigenous and local communities (ILCs) in international trade through increased market access for their distinctive agricultural products which are mostly based on traditional and region-specific methods of production.[3] Well known examples of GIs throughout the world, associated with specific products of a certain reputation, quality, and high value commercial denominations, include Darjeeling tea (India), Antigua coffee (Guatemala), Parmesan cheese (Parma, Italy), Roquefort cheese (France), Blue Mountain Coffee (Jamaica), Montserrat Hills Cocoa Beans (Trinidad), Bordeaux wine (France), Port wine (Porto, Portugal) Sea Island Cotton (United States), Ceylon tea (Sri Lanka), and Tequila (Mexico).[4]

GIs are well entrenched in European historical, cultural, and legal traditions.[5] Recently, however, ILCs discovered the benefits of GI designations. Entrepreneurs in developing countries are beginning to use GIs to protect traditional knowledge-based agricultural products.[6] Fair trade and environmental labeling are familiar strategies of differentiation for agricultural products from developing countries. GI classification serves a similar, but distinct role from these more common forms of characterization. The discussion in this Article demonstrates that GIs present a more favorable opportunity than fair trade and ecological labeling schemes in numerous respects.

The discussion starts with an overview of global economic pressures that necessitate the use of strategies for differentiating and capturing the value of local agricultural products in international trade. A range of conceptual frame-

---

1. *See* Cerkia Bramley et al., *The Economics of Geographical Indications: Towards a Conceptual Framework for Geographical Indication Research in Developing Countries*, *in* WORLD INTELLECTUAL PROP. ORG., THE ECONOMICS OF INTELLECTUAL PROPERTY: SUGGESTIONS FOR FURTHER RESEARCH IN DEVELOPING COUNTRIES AND COUNTRIES WITH ECONOMIES IN TRANSITION 109, 109 (2009), *available at* http://www.wipo.int/export/sites/www/ipdevelopment/en/economics/pdf/wo_1012_e.pdf.

2. *About Geographical Indications*, WORLD INTELL. PROP. ORG., http://www.wipo.int/geo_indications/en/about.html (last visited Dec. 21 2012).

3. O'CONNOR & CO., AGRITRADE, GEOGRAPHICAL INDICATIONS AND THE CHALLENGES FOR ACP COUNTRIES, 13 (2005), *available at* http://agritrade.cta.int/en/content/view/full/1794 (follow "Download PDF" hyperlink).

4. *Id.* at 3.

5. *See, e.g.*, Council Regulation 2081/92, 1992 O.J. (L 208/1) (EC); *see also* O'CONNOR & CO., *supra* note 3, at 3.

6. *See, e.g.*, SIDAMO, Registration No. 3,381,739 (granting the government of Ethiopia a trademark for Sidamo coffee).

works and practical insights will be discussed to understand changing trends in the global economic system that affect the local context of agricultural production in developing countries. The analysis evaluates weaknesses, impacts, and outcomes of the dominant value-adding strategies through a look at the features and attributes that distinguish GIs. As the analysis indicates, GIs are more attuned to social concerns than strategies of fair trade and environmental labeling in their potential to integrate economic considerations with the preservation of local knowledge and the strengthening of local traditions. The Article concludes with observations as to economic benefits and other policy objectives that can be derived from GIs in light of diverse ecological and cultural considerations.

II. TRADITIONAL AGRICULTURAL PRODUCTS IN GLOBAL MARKETS

"Globalization" has a range of connotations; in its various definitions, the term has encompassed a wide range of economic, legal, and socio-political contexts.[7] In a global economic frame of analysis, the term can be understood in a broad and general view, which perceives the phenomenon of globalization as "an integratory process in which economic inputs, including, *inter alia*, capital, labor, production and distribution, are interrelated across borders to create global opportunities for commerce and industry."[8] In this sense, the process of globalization is understood as "cut[ting] across borders to achieve a degree of interdependence and/or inter-relatedness that increases transnational flows of goods, services, information . . . and problems."[9]

Beyond the debates about the imprecise nature of the phenomenon, much of the controversy regarding globalization centers on its effects on the different actors in the global economy. While a growing chorus of critics maintain that globalization has merely accentuated global economic inequalities, making the

---

7. It goes beyond the purpose of this Article to fully explore the mega issues raised by the term "globalization." Knowledge of the phenomenon of "globalization" is needed, however, to provide context for this discussion. *See generally* Doris Estelle Long, "*Globalization": A Future Trend or a Satisfying Mirage?*, 49 J. COPYRIGHT SOC'Y U.S.A. 313 (2001) (discussing "globalization" in the intellectual property context); Marie-Christine Renard, *The Interstices of Globalization: The Example of Fair Coffee*, 39 SOCIOLOGIA RURALIS 484 (1999) (describing the opportunities fair trade coffee presents to small producers); Angela R. Riley, *Indigenous Peoples and the Promise of Globalization: An Essay on Rights and Responsibilities*, 18 KAN. J.L. & PUB. POL'Y 101 (2009) (discussing the challenges indigenous communities face in protecting rights to traditional knowledge in a globalized world); Daniel Drezner, *Globalizers of the World, Unite!*, 21 WASH. Q. 209 (1998) (book review) (reviewing selected literature on social and economic impacts of globalization).

8. Doris Estelle Long, "*Democratizing" Globalization: Practicing the Policies of Cultural Inclusion*, 10 CARDOZO J. INT'L & COMP. L. 217, 226 n.25 (2002).

9. *Id.*

rich richer and the poor poorer,[10] Amartya Sen reframed the debate about the effect of globalization on global inequalities, stating the proper question is not whether the poor are getting poorer, but whether "the poor are actually getting a fair share of the benefits of economic interrelations and the potential rewards from global interaction."[11] In this sense, globalization is most accurately evaluated by assessing the influence of globalization on the ability of indigenous peoples and local communities from the developing world to participate in the market for their tradition-based agricultural products.

The following section explores major components of the global economic system influencing the fair participation of indigenous people and local communities in selling traditional agricultural products on the international market. In international trade, agricultural products suffer from two phenomena that are related to globalization: consolidation of agricultural markets and volatility of international price.[12] The former relates to the increasing globalization of the market for agri-food supply, while the later refers to the diminishing of prices for traditional knowledge-based agricultural products (TKBAPs).[13] The diverse impact of the two in the political economy of traditional farmers has far-reaching consequences.

A. *The Consolidation of Agricultural Markets*

Facilitated by advancements in the technological and digital world, globalization in the agricultural sector has brought numerous challenges for indigenous peoples and local communities. In the agricultural sector, globalization is typically characterized by "increased interlinkage and concentration at almost all stages of the production and marketing chain" that solidifies the power of transnational corporations over consumers and agricultural producers.[14] As a result of agricultural globalization, a limited number of large-scale trade and retail agribusiness companies are "integrating backward to primary product handling and forward to retail distribution," thereby taking the market power away from agri-

---

10. *See* Helen Stacy, *Relational Sovereignty*, 55 STAN. L. REV. 2029, 2041–43 (2003) (identifying critiques of globalization).

11. Amartya Sen, Lecture at Santa Clara University: Globalization and Poverty (Oct. 29, 2002); *see also* Riley, *supra* note 7, at 103 (discussing Sen's address).

12. INT'L ASSESSMENT OF AGRIC. KNOWLEDGE, SCI. & TECH. FOR DEV., AGRICULTURE AT A CROSSROADS: GLOBAL REPORT 6 (Beverly D. McIntyre et al. eds., 2009) [hereinafter IAASTD]; Kym Anderson, *Globalization's Effects on World Agricultural Trade, 1960–2050*, 365 PHIL. TRANSACTIONS ROYAL SOC'Y B 3007, 3011 (2010).

13. IAASTD, *supra* note 12, at 6; Anderson, *supra* note 12, at 3011.

14. IAASTD, *supra* note 12, at 6.

cultural producers.[15] Consonant with the concentration of the supply of agricultural inputs at the production line, including pesticides, seeds, and crop genetic technologies, the consolidation across the chains of production, processing, and distribution has become a salient feature of the market side of agricultural products.[16]

The consolidation of markets in the hands of few corporations "reduces the range of opportunities for producers, [and] reduces their leverage," making it "difficult for [traditional agricultural producers] to participate equitably in the markets."[17] As aggregate chains become increasingly globalized, "the dominant players downstream in the supply chain capture more value and . . . increase entry barriers" for agricultural products from ILCs.[18]

B. *Diminishing Income in International Markets*

Corporate control of agricultural markets has a significant impact on international prices for agricultural products in different ways. Current supply of agricultural products is mainly conducted through supply networks, which are defined as "interconnected group[s] of entities through which agricultural based products move from production through consumption in a local or regional area."[19] Referred to collectively as the supply chain, these chains of networks include: input providers, producers, exporters, processors, distributors, wholesalers, retailers, and consumers.[20] The availability of supply chains, which can be contained within a single firm or divided among different firms, lends itself to the ability to add value at each stage of the agricultural supply chain, while at the same time reducing costs at all stages of agricultural production and distribution.[21] Corporations strategize on their marketing initiatives by adding values in the processing of agricultural products in a manner that responds to consumer demand.[22]

---

15. WORLD BANK, WORLD DEVELOPMENT REPORT 2008: AGRICULTURE FOR DEVELOPMENT 135 (2008).

16. *Id.* at 135.

17. BRYAN LEWIN ET AL., AGRIC. & RURAL DEV., WORLD BANK, DISCUSSION PAPER 3, COFFEE MARKETS: NEW PARADIGMS IN GLOBAL SUPPLY AND DEMAND 34 (2004).

18. *Id.*

19. 7 C.F.R. § 4284.902 (2012).

20. *Id.*; *see also* Michael D. Boehlje et al., Value Chains in the Agricultural Industries 9–10 (Purdue Univ. & Ag Educ. & Consulting, LLC, Staff Paper #99-10, 1999), *available at* http://www.centrec.com/articles/value_chain_ag_industry/value_chains_in_ag_industry.pdf.

21. Boehlje et al., *supra* note 20, at 5.

22. *Id.* at 3–4.

The income that farmers receive for their products continues to fall even while consumer prices rise, because the actual price of agricultural products reflects only those values that are added when these products enter external markets.[23] Non-monetary values imputed to agricultural products in the course of traditional agricultural production, values which contribute to the typicality of TKBAPs, are not recognized in the market.[24] Biodiversity-rich communities cannot convert their agricultural resources into economic value recognized in the market due to a lack of mechanisms to assign value to their distinctive agricultural products.[25]

Distinctive agricultural products from traditional communities are, without their own unique supply network, relegated to commodity chain markets as any other bulk product; processed, value-added agri-food products, on the other hand, enjoy premium prices.[26] Consumer food prices are projected to continue to rise in international markets, largely because of added-value in later stages of production.[27] The income for traditional farming communities has been in decline, however, because traditional agricultural products receive lower prices in commodity markets.[28] This phenomenon follows from the widespread effort by

---

23. CULTURAL AND SPIRITUAL VALUES OF BIODIVERSITY 12 (Darrell Addison Posey & Oxford Centre for the Env't, Ethics, & Soc'y eds., 1999).

24. *Id.*

25. *Id.*

26. A "commodity chain" is defined as "a network of labor and production processes whose end result is a finished commodity." Terence K. Hopkins & Immanuel Wallerstein, *Commodity Chains in the World-Economy Prior to 1800*, 10 REVIEW 157, 159 (1986). It is important to note that the concept of commodity chain differs from value chain in that the latter exhibits value creation beyond first stage production of raw materials. Gary Gereffi, *The Global Economy: Organization, Governance, and Development*, *in* THE HANDBOOK OF ECONOMIC SOCIOLOGY 160, 168 (Neil J. Smelser & Richard Swedberg eds., 2d ed. 2005) (explaining that value chain is preferred to commodity chain because it "focuses on value creation and value capture across the full range of possible chain activities and end products (goods and services), and because it avoids the limiting connotations of the word *commodity*").

27. INTERAGENCY AGRIC. PROJECTIONS COMM., USDA, AGRICULTURAL PROJECTIONS TO 2016, at 66 (2007), *available at* http://www.ers.usda.gov/media/197549/oce20071_1_.pdf (finding that "projected price increases are generally strongest for more highly processed foods . . . related more to processing and marketing costs than to farm-level prices"); *see also* PATRICK CANNING, ECON. RESEARCH SERV., USDA, REP. NO. 114, A REVISED AND EXPANDED FOOD DOLLAR SERIES: A BETTER UNDERSTANDING OF OUR FOOD COSTS 9 (2011), *available at* http://www.ers.usda.gov/media/131100/err114.pdf (showing that on average over eighty-four cents of every dollar spent on food goes to the food supply chain industries involved in post-farm activities while only sixteen cents stays with the farmer).

28. *See, e.g.*, Alexia Garamfalvi, *Ethiopian Coffee Trademark Dispute with Starbucks Runs Hot and Cold*, LEGAL TIMES, Mar. 8, 2007, http://www.law.com/jsp/law/index.jsp (search "Ethiopian coffee"; then select "Ethiopian Coffee Trademark Dispute with Starbucks Runs Hot and

global agribusiness to, in Vandana Shiva's words, "take over food processing by making fresh, locally produced food appear backward, and stale food clothed in aluminum and plastic appear 'modern.'"[29]

Additionally, producers of traditional agricultural products face long-term downward trend in prices as biotechnology-supported global supply outpaces demand.[30] The provision of economic subsidies by industrialized countries to large-scale agricultural producers results in overproduction of agricultural food products.[31] As a recent study notes, "[t]he progressive expansion of commercial-industrial relations in agriculture has put further strain on many small-scale farmers in developing countries who must also contend with direct competition from production systems that are highly subsidized and capital intensive, and thus able to produce commodities that can be sold more cheaply."[32]

Large-scale production, government subsidized farming, and technological intervention all significantly contribute to an increased global supply of agricultural product in international trade, thereby influencing low prices for commodity products.[33] As a result, commodity prices for agricultural products in the central market do not remotely reflect the actual environmental and social costs of the products produced by local farming communities.[34]

Cold") (describing the disparity in profit margins between coffee resale companies and coffee farmers).

29. Vandana Shiva, *War Against Nature and the People of the South*, *in* VIEWS FROM THE SOUTH: THE EFFECTS OF GLOBALIZATION AND THE WTO ON THIRD WORLD COUNTRIES 91, 100 (Sarah Anderson ed., 2000).

30. *E.g.*, Yiching Song & Jingsong Li, *China Case Study—Participatory Maize Breeding & Protection of Farmers' Rights*, *in* PROTECTING COMMUNITY RIGHTS OVER TRADITIONAL KNOWLEDGE: IMPLICATIONS OF CUSTOMARY LAWS AND PRACTICES 9, 9 (2009). In a recent study in southwest China, for example, it was revealed that "traditional staple crop income has decreased from about 35% in 1995 to only 15% in 2007" in conjunction with the spread of modern, high yielding varieties. *Id.*

31. MILLENNIUM ECOSYSTEM ASSESSMENT, ECOSYSTEMS AND HUMAN WELL-BEING: BIODIVERSITY SYNTHESIS 12 (2005).

32. IAASTD, *supra* note 12, at 7.

33. *Id.* at 8–9; FOOD & AGRIC. ORG., THE STATE OF FOOD INSECURITY IN THE WORLD 2005: ERADICATING WORLD HUNGER—KEY TO ACHIEVING THE MILLENNIUM DEVELOPMENT GOALS 27 (2005) [hereinafter FOOD INSECURITY].

34. IAASTD, *supra* note 12, at 8–9; MARCEL MAZOYER, FOOD & AGRIC. ORG., PROTECTING SMALL FARMERS AND THE RURAL POOR IN THE CONTEXT OF GLOBALIZATION 6–13 (2001). The price for wholesale commodities in the central market system is mainly determined through the buying and selling companies in New York and London. *See, e.g.*, Christopher L. Gilbert, *Value Chain Analysis and Market Power in Commodity Processing with Application to the Cocoa and Coffee Sectors*, *in* FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, COMMODITY MARKET REVIEW 2007–2008, at 5, 10 (2008). The price fixed in the international level influences the local auction prices through which most TKBAPs are sold. *See* Awudu Abdulai, *Spatial Integration and Price Transmission in Agricultural Commodity Markets in Sub-Saharan Africa*, *in*

III. ADDING VALUE TO AGRICULTURAL PRODUCTS AND THE GLOBAL KNOWLEDGE ECONOMY

The term "knowledge economy," which stands in counterpoise to "economy of goods," describes the system of knowledge management, generation, and exchange using "the help of computer-driven digital technologies in the spheres of economic, research, administration, service delivery and diverse industrial activities, often with special interest in data mining and biotechnology or biological/genetic engineering."[35] In the economic model of global knowledge economy (GKE), intangible assets of knowledge and information replace raw materials, labor, and capital as major factors of production.[36] In short, the formation of the GKE signifies "an epochal transformation" of an economic model from one founded on physical labor to a new model founded on "knowledge and intellectual capabilities."[37]

In the GKE, the intellectual property value of products "has overtaken the physical value [of products] as the main source" of income.[38] Major actors in the GKE produce and sell most IP-based products, while the economically-disadvantaged countries depend on products identified as "raw products and commodities."[39] Rural development strategies in developing countries continue to rely on boosting agricultural production in a bid to overcome intense competition with high-yield and technology-based agricultural producers, by producing and selling products with shrinking value.[40] As a consequence, the economic

---

AGRICULTURAL COMMODITY MARKETS AND TRADE: NEW APPROACHES TO ANALYZING MARKET STRUCTURE AND INSTABILITY 163 (Alexander Sarris & David Hallam eds., 2006) (noting the connection between markets in undeveloped countries and outside markets). *See generally* RANDY SCHNEPF, CONG. RESEARCH SERV., RL33204, PRICE DETERMINATION IN AGRICULTURAL COMMODITY MARKETS: A PRIMER (2006) (describing commodities futures markets).

35. Chidi Oguamanam, *Beyond Theories: Intellectual Property Dynamics in the Global Knowledge Economy*, 9 WAKE FOREST INTELL. PROP. L.J. 104, 131 (2009) (citing PETER F. DRUCKER, THE AGE OF DISCONTINUITY: GUIDELINES TO OUR CHANGING SOCIETY 263–86 (1969)); *see also* Husain Nazish Irshad, Emergence of Knowledge Economy 3 (2007) (unpublished manuscript), http://works.bepress.com/nazish_husain/1/ (select "Download").

36. Richard Florida & Martin Kenney, *The New Age of Capitalism: Innovation-Mediated Production*, 25 FUTURES 637, 638 (1993).

37. *Id.*

38. RON LAYTON ET AL., LIGHT YEARS IP, DISTINCTIVE VALUES IN AFRICAN EXPORTS: HOW INTELLECTUAL PROPERTY CAN RAISE EXPORT INCOME AND ALLEVIATE POVERTY 4 (Marian Wiseman ed., 2008) ("In 1982, 62% of the market value of Standard & Poor's 500 companies could be attributed to tangible assets and 38% to intangibles. By 1998, only 15% of their assets were tangible, while 85% were intangible.").

39. *See* Interview by Thierry Meyssen with Mohamed Siala, Deputy Foreign Minister, in Libya (July 4, 2011), http://www.voltairenet.org/article170725.html.

40. *See* FOOD INSECURITY, *supra* note 33, at 27.

policy of many developing countries has proven to be ecologically unsustainable.[41] In fact, "it is estimated that .25% of the world's biodiversity is lost to extinction each year due to tropical deforestation alone, at which rate up to 10% of the world's species will be extinct within 25 years."[42]

In the GKE, intangible assets in the form of "intellectual capital" play a critical role in economic development.[43] In the U.S. alone, for example, the output of the IP-intensive industries, such as computers, pharmaceuticals, and entertainment industries, accounted for 34.8% of the gross domestic product (GDP) in 2010.[44] The dominant forces of the global agricultural market (such as multinational corporations) utilize IPRs as a mechanism of "valorising (i.e., adding value) to GR [genetic resources]-TK at the final stage of the innovation process."[45] Their IP-based products receive premium price in international trade while the products of indigenous peoples and local communities, which are at the initial stage of the global supply chain, receive low prices.[46]

Agricultural knowledge of indigenous peoples and local communities has been classified as "raw material of innovation—ancient, static, and *natural*" for too long.[47] In the agricultural economy of many traditional communities, land still remains the key resource while the biotechnology industry increasingly relies on knowledge protected by modern IPRs.[48] As Drahos and Braithwaite observe,

---

41. Charles R. McManis, *Intellectual Property, Genetic Resources and Traditional Knowledge Protection: Thinking Globally, Acting Locally*, 11 CARDOZO J. INT'L & COMP. L. 547, 550 (2003); *see also* UNITED NATIONS ENV'T PROGRAMME, GLOBAL ENVIRONMENT OUTLOOK 3, at 121 (2002), *available at* http://www.grida.no/geo/geo3/english/pdfs/chapter2-4_biodiversity.pdf.

42. McManis, *supra* note 41, at 551 (citing UNITED NATIONS ENV'T PROGRAMME, GLOBAL BIODIVERSITY ASSESSMENT (Vernon H. Heywood & R.T. Watson eds., 1995)).

43. Popularized by Thomas A. Stewart, "intellectual capital" refers to the ownership and commercial value of intangible assets such as licenses, brand names, patents, trademarks, and copyrights. THOMAS A. STEWART, THE WEALTH OF KNOWLEDGE: INTELLECTUAL CAPITAL AND THE TWENTY-FIRST CENTURY ORGANIZATION 11–18 (2001). *See generally* Cristina Chaminade & Bino Catasús, *Intellectual Capital: Paradoxes and Expansions*, *in* INTELLECTUAL CAPITAL REVISITED 1, 1–7 (Cristina Chaminade & Bino Catasús eds., 2007) (discussing development of intellectual capital concept).

44. ECON. AND STATISTICS ADMIN. & U.S. PATENT AND TRADEMARK OFFICE, INTELLECTUAL PROPERTY AND THE U.S. ECONOMY: INDUSTRIES IN FOCUS 3 (2012), *available at* http://www. uspto.gov/news/publications/IP_Report_March_2012.pdf.

45. *See* Unai Pascual et al., *Bioprospection Beyond Intellectual Property Rights: The Kani Model of Access and Benefit Sharing*, AGECON SEARCH 4 (2006), http://ageconsearch.umn.edu/bitstream/25377/1/cp060786.pdf.

46. *See id.* at 4–5.

47. Madhavi Sunder, *The Invention of Traditional Knowledge*, 70 L. & CONTEMP. PROBS. 97, 100 (2007).

48. PETER DRAHOS & JOHN BRAITHWAITE, INFORMATION FEUDALISM 11–12 (2002).

large companies now own more intellectual property, especially in the areas of agriculture, plants, and food, than at any other point in human history.[49]

Recent trends indicate a shift in outlook, however—an outlook that understands the imperatives of harnessing economic factors as a means by which the local and cultural integrity of traditional communities may be sustained.[50] Many traditional craftspeople and artisans are becoming more attuned to market dynamics than in the past.[51] Traditional farming communities and their advocates have started experimenting and utilizing various mechanisms of "adding" value to their products.[52] Conventional methods of "adding value" to traditional agricultural products typically relied upon systems of differentiating these products in international markets.[53] Historically, these systems mostly included non-legal and non-rights forms of differentiation strategies rather than IP strategies. Recently, the use of rights-based methods of differentiation has increased under the legal framework of GIs, in part, amid efforts to improve the short-comings of non-legal strategies of differentiation.

The following section examines the nature, structure, and implementation of non-intellectual property, and mostly non-legal strategies of differentiation that have been widely adopted with a purpose to improve the socio-economic condition of ILCs practicing agricultural in developing countries. The overall impacts, challenges, and shortcomings of implementation of these strategies are explored in order to understand backgrounds and imperatives for the emergence of GIs.

IV. DIFFERENTIATION STRATEGIES FOR TRADITIONAL AGRICULTURAL PRODUCTS

Various schemes have been suggested to support producers of traditional agricultural products. A growing lobby of non-governmental organizations (NGOs) and international development advocates, concerned with the social impact of the increasingly integrated and expansive global reach of corporate players in the agri-food sector, have actively campaigned for mechanisms to ensure opportunities for product differentiation are incorporated into global structures of

---

49. *Id.* at 9.

50. Johanna Gibson, *Markets in Tradition – Traditional Agricultural Communities in Italy and the Impact of GMOs*, 3 SCRIPT-ED 243, 246, 248 (2006).

51. *See id.* at 246.

52. *See id.*

53. John Humphrey & Olga Memedovic, *Global Value Chains in the Agrifood Sector* 5 (United Nations Indus. Dev. Org., Working Paper, 2006).

agri-food markets and trading practices of large corporate buyers.[54] These mechanisms are generally intended to earn incremental value for traditional agricultural products through either higher prices or expanded markets.[55] The bases for differentiation in these strategies usually include "attributes such as geographical location, environmental stewardship, food safety or functionality."[56]

Through differentiation, smallholder farmers seek to develop a more direct relationship with consumers to promote their traditional knowledge-based speciality products. Differentiation strategies constitute "part of a strategy to move 'outside of the commodity box' as a means of adding value to agricultural commodities and offsetting declines in prices."[57] Opposite of commoditization, "differentiation" involves the differentiation of goods along key features of production to distinguish traditional small scale production from conventional production—where little or no information is given regarding place or conditions under which the product was produced.[58]

Differentiation techniques offer producers direct control over their products and closer relationship with buyers, and thus, they provide producers with "more pricing power and even a degree of monopoly."[59] Producers do not have these advantages when a product is traded in bulk or via commodity markets.[60] With growing adoption of these strategies, "previously fringe niches are quickly moving toward mainstream credibility and earning substantial revenues along the way."[61] Typical strategies through which producers differentiate their products include fair trade initiatives and green-labeling schemes.[62] Detailed discussion of

---

54. *See* Anne Tallontire, *The Development of Alternative and Fair Trade: Moving into the Mainstream*, *in* ETHICAL SOURCING IN THE GLOBAL FOOD SYSTEM 35, 35 (Stephanie Barrientos & Catherine Dolan eds., 2006) [hereinafter ETHICAL SOURCING] (describing the organic and fair trade movement's role in challenging the conventional global food system).

55. STEVE STEVENSON & RICH PIROG, VALUES-BASED FOOD SUPPLY CHAINS SHEPHERD'S GRAIN 13 app. A (2009).

56. *Id.*

57. Humphrey & Memedovic, *supra* note 53, at 5 (citing LEWIN ET AL., *supra* note 17, at 94).

58. *See* LEWIN ET AL., *supra* note 17, at 94–95.

59. Wenjing Shang et al., *Applying CRM in Information Product Pricing*, *in* 2 RESEARCH AND PRACTICAL ISSUES OF ENTERPRISE INFORMATION SYSTEMS II 1407, 1408 (Li Xu et al. eds., 2007).

60. *See* LEWIN ET AL., *supra* note 17, at 99.

61. *Id.* at 12.

62. *See, e.g.*, *Retail Products*, FAIRTRADE FOUND., http://www.fairtrade.org.uk/products/retail_products/default.aspx (last visited Dec. 21, 2012) (listing a variety of products covered under fair trade schemes); *Types of Eco Label*, ECO-LABEL.ORG.UK, http://www.ecolabel.org.uk/files/labels/labels.html (last visited Dec. 21, 2012) (listing green labeling schemes); *see also* David Croft, *Corporate Social Responsibility from a Supermarket Perspective: Approach of the*

the socio-economic implications and significance of these instruments are beyond the scope of this Article.[63] Basic description of the structural and functional features of these instruments is warranted, however, in light of the close semblance and equivalency in purpose these strategies have with systems of GIs.

A. *Fair Trade Initiatives*

Fair trade schemes emerged from the "solidarity and charity movements of the mid 20th century and largely focus[] on providing support for small producers marginalized by the global trading system."[64] In response to the depressed income of small producers due to adverse effects of globalization, NGOs looked for alternative trading channels whereby traditional farmers could reach "socially conscious consumers" through direct access to big markets in industrialized countries.[65]

In broader terms, "fair trade" refers to both a movement and a set of business initiatives that arose from a critique of the conventional trade policy and practice.[66] The widely accepted definition of "fair trade," endorsed by the fair trade umbrella organization FINE,[67] posits that:

Co-operative Group, *in* ETHICAL SOURCING, *supra* note 54, at 63, 67–70 (discussing related strategies, such as ethical trade, that go beyond purpose and scope of this Article).

63. *See generally* LAURA T. RAYNOLDS, POVERTY ALLEVIATION THROUGH PARTICIPATION IN FAIR TRADE COFFEE NETWORKS: EXISTING RESEARCH AND CRITICAL ISSUES (2002) (providing an overview of the fair trade economy); Michael K. Goodman, *Reading Fair Trade: Political Ecological Imaginary and the Moral Economy of Fair Trade Foods*, 23 POL. GEOGRAPHY 891 (2004) (discussing the "moral economy" associated with fair trade); Anne Tallontire, *Top Heavy? Governance Issues and Policy Decisions for the Fair Trade Movement*, 21 J. INT'L DEV. 1004 (2009) (discussing governance approaches to fair trade).

64. Stephanie Barrientos & Catherine Dolan, *Transformation of Global Food: Opportunities and Challenges for Fair and Ethical Trade*, *in* ETHICAL SOURCING, *supra* note 54, at 1, 3–4.

65. *Id.* at 4, 7.

66. *See id.* at 3–4. The term "fair trade" is distinguished from the trademark "fairtrade" (one word). *Fairtrade Label and Other Fair Trade Initiatives*, CBI, 1, http://www.cbi.eu/?pag=85&doc=5792&typ=mid_document (last updated Dec. 2010). The latter refers to the specific labeling scheme controlled by Fairtrade Labelling Organizations International (FLO) and its member organizations. *Id.*; *see also About Us*, FAIRTRADE INT'L, http://www.fair trade.net/about_us.html (last visited Dec. 21, 2012).

67. *WFTO-Europe*, WORLD FAIR TRADE ORG. EUROPE, http://www.wfto-europe.org/lang-en/wfto-europe.html (last visited Dec. 21, 2012). FINE is an acronym derived from the initials of four main Fair Trade networks that created an informal association in 1998: Fairtrade Labelling Organizations International (FLO); International Fair Trade Association, now the World Fair Trade Organization (WFTO); Network of European Worldshops (NEWS!) and European Fair Trade Association (EFTA). *Id.*

> Fair Trade is a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers—especially in the South. Fair Trade organizations, backed by consumers, are engaged actively in supporting producers, awareness raising and in campaigning for changes in the rules and practice of conventional international trade.[68]

Fair trade is currently conducted under two divergent approaches: "fair/alternative trade organizations (ATOs) and Fairtrade labelling initiatives."[69] Under the ATO approach, charity and humanitarian organizations are involved in establishing alternative trade links with producers and producer organizations from numerous developing countries.[70] A growing number of alternative trade organizations, mostly located in Europe or North America, devise fair-trade strategies, typically working with small-scale producers in developing countries.[71] Alternatively, "[l]abelling is used as a means of communicating information about the social or environmental conditions surrounding the production of goods or provision of a service" in the general marketplace.[72] In fair trade labeling initiatives, a number of organizations "offer an independent service, setting the standard for a particular sector or commodity, and overseeing the development accreditation and certification processes."[73]

B. *Green Labeling and Eco-Certification Schemes*

Like fair trade initiatives, green labeling and eco-certification initiatives arose only recently.[74] The aim of the two movements, green labeling and eco-certification on one hand and fair trade initiatives on the other, is different; the former is concerned with ecological condition of production, whereas the latter is targeted at social conditions of production.[75] Unlike fair trade, ecological stand-

---

68. WORLD FAIR TRADE ORG. & FAIRTRADE LABELLING ORGS. INT'L, A CHARTER OF FAIR TRADE PRINCIPLES 6 (2009) [hereinafter CHARTER OF FAIR TRADE PRINCIPLES].

69. Barrientos & Dolan, *supra* note 64, at 7.

70. *Id.*

71. *See id.* at 7–9; CHARTER OF FAIR TRADE PRINCIPLES, *supra* note 68, at 7–8 (discussing the core principles and strategies underlying fair trade).

72. Mick Blowfield, *Ethical Trade: A Review of Developments and Issues*, 20 THIRD WORLD Q. 753, 761 (1999).

73. *Id.*

74. MAGNUS BOSTRÖM & MIKAEL KLINTMAN, ECO-STANDARDS, PRODUCT LABELLING AND GREEN CONSUMERISM 18 (2008).

75. *See id.* at 28; CHARTER OF FAIR TRADE PRINCIPLES, *supra* note 70 (focusing on social problems in drafting their core principles).

ards emerged as a "new form of regulation in modern globalized life, alongside traditional legislation and normative community."[76]

Despite differences in their origins, the fair trade and green labeling movements are forging common ground as useful policy tools to address inequalities in the global economy.[77] In a broader understanding of the concept, a number of ecological and environmental schemes may fall within the scope of green labeling. These include eco-certifications, organic certifications, the so-called green trademarks, stewardship certificates, and green mutual funds.

C. *Challenges and Impacts of Differentiation Schemes*

All of the above-mentioned methods of product differentiation are aimed at addressing global inequality in the course of building markets outside the conventional supply chains for agricultural producers from developing countries. Most initiatives represent attempts at building consumer trust and, thus far, have proved successful in attracting consumer interest towards products that they differentiate. Concrete evidence suggests that fair trade initiatives and environmental labeling schemes have brought significant marketing opportunities in the global market for traditional agri-food products.[78] The market for the fair trade products in the United Kingdom was estimated to be €1.5 billion in 2011 ($1.92 billion).[79] "Sixty-four percent of those familiar with the FAIRTRADE Mark associate it with helping farmers and workers in poor countries escape poverty" according to a 2011 survey,[80] an increase from earlier estimates of 51% in 2005

---

76. BOSTRÖM & KLINTMAN, *supra* note 74, at 27 (citing A WORLD OF STANDARDS (Nils Brunsson & Bengt Jacobsson eds., 2000)).

77. *See generally* Laura Raynolds, *Organic and Fair Trade Movements in Global Food Networks*, *in* ETHICAL SOURCING, *supra* note 54, at 49 [hereinafter Raynolds, *Organic and Fair Trade Movements*] (analyzing the utility of fair trade standards, environmental labeling, and eco-certifications); Peter Leigh Taylor, *In the Market but Not of It: Fair Trade Coffee and Forest Stewardship Council Certification as Market-Based Social Change*, 33 WORLD DEV. 129 (2005) (discussing Fair Trade coffee and Forest Stewardship Council Certification).

78. *Compare* FAIRTRADE LABELLING ORGS. INT'L, SHOPPING FOR A BETTER WORLD: ANNUAL REPORT 2003–04, (2004) (showing growth of sales generated by fair trade labeling between 1997–2003), *with* FAIRTRADE INT'L, FOR PRODUCERS, WITH PRODUCERS: ANNUAL REPORT 2011–12, at 10, 12 (2012) (showing most recent estimates of fair trade labeling sales); *see also* Barrientos & Dolan, *supra* note 64, at 17.

79. FAIRTRADE INT'L, *supra* note 78, at12. For comparison, estimates of the value of fair trade goods in the United States in 2011 were €1.03 billion ($1.32 billion). *Id.*

80. *Fair Trade is Most Widely Recognized Ethical Label Globally*, FAIRTRADE INT'L (Oct. 11, 2011), http://www.fairtrade.net/single_view1+M533a992acd9.html. The fairtrade symbol also received 57% recognition among all consumers in 2011. *Id.*

and 42% in 2004.[81] Awareness of the fair trade concept in France increased from 9% to 74% between 2000–2005.[82] In the United States, importation of fair trade coffee demonstrated a 32% increase between 2010 and 2011 bringing annual import totals to 138,569,409 pounds.[83] Consumer appetite for agricultural products from tradition-based agricultural producers may continue to grow in the future, if a lack of confidence and trust as to the health and safety of biotechnology products in the market, in addition to concerns associated with conventional farming systems, such as "risk of chemical drug residues, transfer of antibiotic resistance from animal to human through animal derived foods," and potential environmental risks.[84] Though the positive impact of fair trade and its role in serving social policy objectives is not disputed, there remain bottlenecks in the full pursuit of the objectives it is meant to serve.[85]

The fair trade scheme is aimed at transferring "greater control of the agro-food system to producers in developing countries."[86] Such initiatives were originally intended to increase the bargaining power of producers vis-à-vis buyers, to tackle producers' socioeconomic problems, to provide them with capacity-building assistance, and to help producers acquire access to necessary finance.[87] Current events leave serious doubt as to whether the fair trade system can fulfill its designated objectives.

---

81. *Fairtrade Foundation Awareness Research 2005*, IPSOS-MORI (May 25, 2005), http://www.ipsos-mori.com/researchpublications/researcharchive/460/Fairtrade-Foundation-Awareness -Research-2005.aspx (highlighting data from a survey taken for Fairtrade Foundation, the United Kingdom member of Fairtrade International).

82. JEAN-MARIE KRIER, FAIR TRADE IN EUROPE 2005: FACTS AND FIGURES ON FAIR TRADE IN 25 EUROPEAN COUNTRIES 44 (2005), http://www.fairtrade.net/uploads/media/FairTradeinEurope2005.pdf.

83. FAIR TRADE USA, 2011 ALMANAC 15 (2012), http://www.fairtradeusa.org/sites/default/files/Almanac%202011.pdf. Producer organizations received $16.96 million in premium payments in 2011 from fair trade coffee imports into the United States. *Id.* at 14.

84. Cletos Mapiye et al., *Potential for Value-Addition of Nguni Cattle Products in the Communal Areas of South Africa: A Review*, 2 AFR. J. AGRIC. RES. 488, 490 (2007) (citing Simon Anderson, *Animal Genetic Resources and Sustainable Livelihoods*, 45 ECOLOGICAL ECON. 331 (2003); John Paull, *China's Organic Revolution*, 2 J. ORGANIC SYS. 1 (2007)).

85. *See, e.g.*, Sununtar Setboonsarng, *Discussion Paper No. 115, Can Ethical Trade Certification Contribute to the Attainment of the Millennium Development Goals? A Review of Organic and Fair-trade Certification*, ADBINSTITUTE, 16 (2008), http://www.adbi.org/files/2008.08.organic.fairtrade.certification.pdf (explaining that high certification costs have limited the poverty-reduction potential of fair trade); *see also* DANIEL JAFFEE, BREWING JUSTICE: FAIR TRADE COFFEE, SUSTAINABILITY, AND SURVIVAL (2007) (evaluating the successes and failures of fair trade marketing).

86. Karen Ellis & Jodie Keane, *A Review of Ethical Standards and Labels: Is There a Gap in the Market for a New 'Good For Development' Label?* 10 (Overseas Dev. Inst., Working Paper 297, 2008) (citing Raynolds, *Organic and Fair Trade Movements*, *supra* note 77, at 49).

87. *Id.*

While the founding principles of fair trade remain oriented towards small and marginalized producers—mostly producers of traditional agricultural products—large-scale producers often capitalize on the marketing opportunity opened by the fair trade schemes through their own fair trade strategies.[88] These strategies are often criticized as "an attempt to cash in on a growing market," rather than a business model that privileges the ethical values of social responsibility.[89] Originators of the fair trade movement express their concern that small-scale producers—the intended beneficiaries of the movement—would be displaced by larger producers as these corporate-controlled fair trade "look alike" initiatives facilitate purchases "from larger commercial farms or 'plantations.'"[90] Thus, tension between the commercial competitiveness and the social aims for fair trade continue to encourage division between traditional agricultural producers, whom the fair trade initiation aspires to assist, and large corporations that are already integrated in the existing global agri-food supply chain—challenging the goals of economic fairness the fair trade schemes were created to promote.[91]

Secondly, like some of the green labeling schemes, fair trade is targeted at empowering agricultural producers in developing countries so that they acquire greater and more independent control of the agri-food market.[92] The objective of providing financial and material support for the implementation of these initiatives is to help small-scale producers to eventually expand into non-fair trade markets on their own.[93] Mostly reliant on foreign standards and certifying bodies, the system of certification in fair trade and eco-labeling incorporates expensive procedures of rigorous inspection and certification that can often only be fulfilled through financial support from "charitable donations, donor support, government funding and funding from social lending institutions."[94] The associated expenses with certification may cause producers to seek alternative labeling options.[95]

---

88. Barrientos & Dolan, *supra* note 64, at 17–19.

89. Press Release, Statement by WDM on Nestlé Fairtrade Partner's Blend Coffee (Oct. 7, 2005).

90. Barrientos & Dolan, *supra* note 64, at 24; *see* Laura T. Raynolds & Douglas L. Murray, *Fair Trade: Contemporary Challenges and Future Prospects*, *in* FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION 232, 232 (Laura T. Raynolds et al. eds., 2007).

91. Barrientos & Dolan, *supra* note 64, at 24–26; Raynolds & Murray, *supra* note 90, at 232.

92. *See* Raynolds, *Organic and Fair Trade Movements*, *supra* note 77, at 49.

93. *See* Raynolds & Murray, *supra* note 90, at 225 (suggesting fair trade efforts are attempting to "grow the market for the benefit of producers").

94. Ellis & Keane, *supra* note 86, at 10.

95. *Id.* at 11.

In some cases, "the methodology, criteria setting and conformity assessment in some eco-labelling schemes . . . are very subjective and lack uniformity, making their attainment an impossible challenge."[96] The problem becomes much more acute when the green certification standard is based on the adoption of expensive environmental-friendly technologies, which cannot be met with the financial capacity of most indigenous peoples and local communities.[97] Also, the absence of local certification and inspection capacity has become a major constraint in the development of these mechanisms.[98] In those cases when the fair trade initiative is conducted through ATOs instead of certification organizations, producer groups heavily depend on very few outlets for the provision of their products to consumers.[99] Fair trade and green labeling schemes have, therefore, created a level of dependency and vulnerability in spite of the promise of market independence and producer empowerment.[100]

Thirdly, even though differentiation schemes have proven to be successful instruments to improve market access to agricultural products in the international market, the actual benefits to small scale producers of traditional agriculture are mostly minimal. The fair trade scheme is intended to "shorten supply chains," bringing powers into closer contact with the processors of farmers' products, and cutting out middle men who otherwise would take their own cut of profits from a supply chain.[101] A World Bank study on "fair trade coffee" reveals, however, that "the costs and margins for coffee sold through Fair Trade are high, and that intermediaries, not farmers, receive the larger share of the price premium."[102] A study on the effect of "fair trade" bananas in the Dominican Republic also points out that "prioritizing the exigencies of the Fair Trade market in the North (over the needs and challenges in the South) fostered a situation in which Fair Trade bananas were being sold and social premiums were being paid largely without the participation of the 'certified' farmers."[103] The gaps in this scheme are, in large part, attributable to the absence of harmonized standards for

---

96. JESSICA JONES ET AL., RAPID TRADE AND ENVIRONMENT ASSESSMENT (RTEA): NATIONAL REPORT FOR NAMIBIA 42 (2009).

97. *Id.* at 41.

98. *Id.*

99. *See* Graham Young, *Fair Trade's Influential Past and the Challenges of Its Future*, KING BAUDOUIN FOUND., 9 (2003), http://www.kbs-frb.be/uploadedFiles/KBS-FRB/Files/EN/PUB_1337_Fair_Trade.pdf (critiquing the dependency created by reliance on a single market outlet in contrast to the desired access to mainstream markets).

100. *Id.*

101. Croft, *supra* note 62, at 69.

102. WORLD BANK, *supra* note 15, at 133.

103. Christy Getz & Aimee Shreck, *What Organic and Fair Trade Labels Do Not Tell Us: Towards a Place-Based Understanding of Certification*, 30 INT'L J. CONSUMER STUD. 490, 497 (2006).

certification, as well as the non-existence of legal framework to control and regulate the use of genuine certification labels.

Consumer interest in products with ecological integrity presented greater opportunity for corporations and corporate-driven groups to develop their own differentiation schemes that dilute the attractiveness of TKBAPs from developing countries. Along with a realization that environmental concerns could be translated into a market advantage for certain products, a number of environmental declarations and claims have emerged on and in association with TKBAPs.[104] The impacts of green trademark schemes and in-house corporate certifications (labeled products earning market credibility based on a company's own prescriptive criteria) have been revealed at great length through widespread instances of "greenwash" techniques.[105] According to Greenpeace, greenwashing techniques are strategies through which "transnational corporations (TNCs) . . . are preserving and expanding their markets by posing as friends of the environment and leaders in the struggle to eradicate poverty."[106] Many superficially "green" companies have adopted greenwashing tactics and "self-made promises" in the form of self-styled environmental symbols or through claim statements, such as "environmentally friendly" and "safe for the environment," as marketing strategy solely for profit purposes.[107]

Finally, and most importantly, the differentiation techniques seem to focus entirely on fulfilling economic ends for farmers in traditional agriculture. Although many scholars have propounded the use of differentiation schemes to exploit the commercial potential of TKBAPs for producers, few have questioned the extent to which certification and related schemes "affect[] nonmaterial ends for farmers in these 'value chains.'"[108] The adverse effects on "nonmaterial" ends of market-driven differentiation strategies, identified as "the political and social effects of certification at the point of production," may sometimes outweigh the benefits that can be derived from improved price in the international market.[109]

---

104. These include, for example, the use of Smithsonian Institute's Bird Friendly coffee label, or the VeriFlora certified flowers label on flowers produced in Kenya. *See Migratory Bird Center*, SMITHSONIAN NATIONAL ZOO, http://nationalzoo.si.edu/scbi/migratorybirds/coffee/ (last visited Dec. 21, 2012); *Scientific Certifications Systems*, VERIFLORA, http://www.veriflora.com/index.php (last visited Dec. 21, 2012).

105. *See* KENNY BRUNO, GREENPEACE, THE GREENPEACE BOOK OF GREENWASH 1 (1992); JED GREER & KENNY BRUNO, GREENWASH: THE REALITY BEHIND CORPORATE ENVIRONMENTALISM 11 (1996) (discussing the concept of "greenwash").

106. GREER & BRUNO, *supra* note 105, at 11.

107. *See generally id.* (providing examples of companies that make environmental claims often contradicted by the environmental records of these companies).

108. Getz & Shreck, *supra* note 103, at 491.

109. *Id.*

In this regard, Tad Mutersbaugh identifies a problem prevalent to most certification systems: that the standards of certification "introduce bureaucratic costs that rest heavily on producer organizations *and* disrupt or differentially affect . . . economic management within producer organizations and villages."[110] While certified agricultural products may fetch an improved price in the consumer market, "overwhelming costs of certification" are solely borne at the point of production.[111]

Also, the "formalization and standardization of certification practices" do not accommodate the "varied and complex ecological, economic and socio-cultural contexts" producers experience.[112] Concerns about smallholder cultural and economic independence grow as requirements for certification by international certification organizations continue to focus on homogenous set of certification practices that sometimes deviate from local realities.[113] These circumstances necessitate important qualifications to the promise by fair trade and green labeling schemes that producers may "trade on their own terms,"[114] and that these systems empower small scale farmers to "achieve control of their own economic lives and communities."[115]

In sum, the opportunity that fair trade and green labeling schemes bring, in terms of deriving economic benefits to traditional communities, is undeniable. The gaps they leave in allowing corporate strategies, as well as the constraints evident in their implementation, however, necessitate a choice of better instruments in pursuit of the socio-economic goals they are meant to serve. Drawbacks in the implementation of the differentiation strategies pose challenges to their effectiveness in their use for traditional agricultural products. GIs emerged, in part, as alternative strategies that may cater to the needs and desires of traditional agricultural communities in developing countries in ways fair trade and green labeling may not.

---

110. Tad Mutersbaugh, *The Number Is the Beast: A Political Economy of Organic-Coffee Certification and Producer Unionism*, 34 ENV'T & PLAN. 1165, 1166 (2002).

111. *Id.* at 1166, 1168, 1181.

112. Getz & Schreck, *supra* note 103, at 491, 493 (citing Julie Guthman, *Regulating Meaning, Appropriating Nature: The Codification of California Organic Agriculture*, 30 ANTIPODE 135, 142–43 (1998)).

113. *See* Tad Mutersbaugh, *supra* note 110, at 1171.

114. *Id.* at 1181.

115. Dana Frank, *Where Are the Workers in Consumer-Worker Alliances? Class Dynamics and the History of Consumer-Labor Campaigns*, 31 POL. & SOC'Y 363, 365 (2003).

V. GEOGRAPHICAL INDICATIONS AS MODELS OF THE RIGHTS-BASED APPROACH TO DEVELOPMENT

The rights-based approach to development is a conceptual framework that emerged in policy debates and academic discourse in recent times.[116] In the context of IP, the idea of a rights-based approach to development is understood in the broad terms of expanding human capabilities.[117] The idea of development as capacitation gained widespread acceptance after publication of Amartya Sen's work discussing capacities and entitlements.[118] The enlargement of peoples' choices is the core definition of development in the Human Development Reports of United Nations Development Program (UNDP).[119] In this view, the purpose of human development is, above all, enabling people to make their own choices.[120] Amartya Sen notes that life is about more than making a living, development is "a process of expanding the real freedoms that people enjoy."[121] Amartya Sen's entitlement approach capitalizes on "those things that a person is in control of, or has command over, in life" to eventually contribute to the expansion of human autonomy and choice.[122] Thus, proper development is measured based on indi-

---

116. *See* Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

117. Stephen P. Marks, *The Human Rights Framework for Development*: *Seven Approaches*, *in* REFLECTIONS ON THE RIGHT TO DEVELOPMENT 23, 32–35 tbl.1.2 (Arjun Sengupta et al. eds., 2005) (citing Martha Nussbaum, *Non-Relative Virtues: An Aristotelian Approach*, *in* THE QUALITY OF LIFE 242–69 (Martha Nussbaum & Amartya Sen eds., 1993)).

118. JAN NEDERVEEN PIETERSE, DEVELOPMENT THEORY: DECONSTRUCTIONS/ RECONSTRUCTIONS 7 (2d ed. 2010); AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999) [hereinafter SEN, DEVELOPMENT AS FREEDOM].

119. UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2001: MAKING NEW TECHNOLOGIES WORK FOR HUMAN DEVELOPMENT 9 (2001), *available at* http://hdr.undp.org/en/media/completenew1.pdf.

> [H]uman development shares a common vision with human rights. The goal is human freedom. And in pursuing capabilities and realizing rights, this freedom is vital. People must be free to exercise their choices and to participate in decision-making that affects their lives. Human development and human rights are mutually reinforcing, helping to secure the well-being and dignity of all people, building self-respect and the respect of others.

Id.

120. *Id.*

121. SEN, DEVELOPMENT AS FREEDOM, *supra* note 118, at 3.

122. Paul Gready & Jonathan Ensor, *Introduction* to REINVENTING DEVELOPMENT? TRANSLATING RIGHTS-BASED APPROACHES FROM THEORY INTO PRACTICE 1, 19 (Paul Gready & Jonathan Ensor eds., 2005); *see* SEN, DEVELOPMENT AS FREEDOM, *supra* note 118 (discussing the role of development in regards to human rights and freedoms).

viduals' ability to choose and achieve a desired lifestyle through a choice of freedoms which range from "basic needs, such as the right to life and health, to more expansive freedoms of movement, creative work, and participation in social, economic, and cultural institutions."[123] On this reasoning, rights-based development requires the recognition of "[r]ights to take part in cultural life, to enjoy the benefits of progress in the arts and sciences, to have minority and indigenous cultures protected, and to preserve and protect cultural heritage are given new attention."[124]

One way IP policy-making may contribute to development based on the capabilities rationale is by creating mechanisms that enable indigenous peoples and local communities to recognize and market their own knowledge production so that they "need not be seen primarily as passive recipients of the benefits of cunning development programs."[125] The protection of local and regional products through GIs may enhance the power of traditional agricultural producers to sell their distinctive products in a global marketplace at improved prices. The rewarding income from GIs will, in this case, be one of the few ways to provide the greater choices that Amartya Sen shows to be key factors in successful poverty alleviation.[126] Sunder, for example, discusses the implementation of the Indian GI Act, adopted in 1999, as an example of IP policy that can empower local communities who may, as a result, "continue to commercialize their products without fearing displacement by global mass production."[127]

As stated in the WTO 1995 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), GIs 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."[128] The use of GIs to protect agricultural products is often raised in the context of legal protection for "traditional knowledge" (TK).[129] An increasing number of academics and indigenous peo-

---

123. Sunder, *supra* note 47, at 121 (citing SEN, DEVELOPMENT AS FREEDOM, *supra* note 118).

124. Nicole Aylwin et al., Intellectual Property, Cultural Heritage and Rights-Based Development: Geographical Indications as Vehicles for Sustainable Livelihoods 6 (2010) (unpublished manuscript), http://www.yorku.ca/rcoombe/forthcoming_articles/GI_Human_Rights_Development_Paper.pdf.

125. SEN, DEVELOPMENT AS FREEDOM, *supra* note 118, at 11.

126. *See id.* at 10.

127. Sunder, *supra* note 47, at 123. *See generally* The Geographical Indications of Goods (Registration and Protection) Act, No.48 of 1999, INDIA CODE (1999).

128. Agreement on Trade-Related Aspects of Intellectual Property Rights art. 22(1), Apr. 15, 1994, 1869 U.N.T.S. 299, 328; 33 I.L.M. 1197.

129. In its submission to the World Intellectual Property Organization (WIPO), the African Group defines TK as:

ples' interest groups actively push the agenda forward toward better protection for GIs at the regional, national, and international levels as a means of protecting TK.[130] Terri Janke, an indigenous solicitor, reflects that "[g]iven that Indigenous peoples' cultural expression reflects their belonging to land and territories, this may allow some scope for Indigenous people to use geographic indications for their clan names, and language words for regions."[131] Brad Sherman and Leanne Wiseman of the Australian Centre for Intellectual Property in Agriculture argue that "the regimes used to protect geographical indications could be used as a model for a *sui generis* scheme to protect Indigenous knowledge."[132]

In international IP law-making, many countries demand the review of the TRIPS agreement in a manner that recognizes higher international standards of GI protection, on the ground that GIs would help in the preservation of traditional

---

> [K]nowledge which is held by members of a distinct culture and/or sometimes acquired "by means of inquiry peculiar to that culture, and concerning the culture itself or the local environment in which it exists" . . . [TK] is thus the totality of all knowledge and practices, whether explicit or implicit, used in the management of socio-economic and ecological facets of life.

Intergovernmental Comm. on Intellectual Prop. & Genetic Res., Traditional Knowledge & Folklore, World Intellectual Prop. Org. [WIPO], *Proposal Presented by the African Group to the First Meeting of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, Annex, ¶¶ 1.2–.3, WIPO/GRTKF/IC/1/10 (May 1, 2001) (emphasis omitted) (quoting *Traditional Forest-Related Knowledge and the Convention on Biological Diversity*, Annex 2, UNEP/CBD/COP/3/Inf.33 (Sept. 28, 1996)).

130. *See, e.g.*, *General Description*, ORIGIN FOOD, http://www.origin-food.org/2005/base.php?cat=20 (last visited Dec. 21, 2012) ("The objective of the Strengthening I[n]ternational Research on Geographical Indications (SINER-GI) project is to build and share a coherent scientific basis world-wide, regarding economic, legal, institutional and socio-cultural conditions of success of GIs . . . ."); *Why OriGIn*, ORIGIN, http://www.origin-gi.com/index/php?option=com_content&view=article&id=189&itemid= 111&Lang=en (last visited Dec. 21, 2012) (representing approximately 350 producer organizations promoting traditional products from more than forty countries); Wagdy Sawahel, *New Arab Group Aims at Protecting Local Products with Geographical Origins*, INTELL. PROP. WATCH (Oct. 27, 2008), http://www.ip-watch.org/weblog/2008/10/27/new-arab-group-aims-at-protecting-local-products-with-geographical-origins (describing the Arab Society for Geographical Indications (ASGI) objectives to "protect and promote Arab heritage and local products as well as encourage[e] Arab countries to develop GI laws and regulations, and join[] international treaties related to geographical indications and update[] and moderni[ze] the existing geographical indications laws in the Arab countries").

131. TERRI JANKE, WORLD INTELLECTUAL PROP. ORG., MINDING CULTURE: CASE STUDIES ON INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS 36 (2003), *available at* http://www.wipo.int/tk/en/studies/cultural/minding-culture/studies/finalstudy.pdf.

132. Brad Sherman & Leanne Wiseman, *Towards an Indigenous Public Domain?*, *in* THE FUTURE OF THE PUBLIC DOMAIN: IDENTIFYING THE COMMONS IN INFORMATION LAW 259, 275 (Lucie Guibault & P. Bernt Hugenholtz eds., 2006).

cultures of production.[133] In some developing countries, GIs are instruments that may contribute "to a remunerative marketing of an agricultural production based upon traditional cultivation methods."[134] In a wave of interest, many developing countries, including Brazil, Panama, Peru, and Portugal, adopted *sui generis* systems of GI legislation.[135]

The World Intellectual Property Office's (WIPO) review of the existing intellectual protection of TK singles out Venezuela and Vietnam as countries that protect TK through GIs.[136] WIPO continues to work on its "development agenda" through projects to support developing and least-developed countries in the appropriate use of IP, particularly in the use of geographical indications in product branding.[137] Countries such as India and Pakistan have registered GI protections in other jurisdictions over diverse goods of immense export value, after a widely publicized dispute involving Basmati rice.[138]

In support of its proposal for an extended protection of GIs,[139] the EU points to India as an example of a country in favor of GI protection, because its economy is based upon its distinct culture, with exports ranging from saris (traditional dress worn primarily by Hindu women) and textiles (Kashmire), to specialty teas (Darjeeling, Assam), to rice varieties (such as Basmati).[140] Similarly, the

---

133. Council for Trade-Related Aspects of Intellectual Prop. Rights, *The Extension of the Additional Protection for Geographical Indications to Products Other than Wines and Spirits,* secs. II, IV, IP/C/W/353 (June 24, 2002) [hereinafter *Extension of Protection*].

134. Marion Panizzon, *Traditional Knowledge and Geographical Indications: Foundations, Interests and Negotiating Positions* 26 (NCCR Trade Regulation, Working Paper No. 2005/01, 2006).

135. Intergovernmental Comm. on Intellectual Prop. & Genetic Res., Traditional Knowledge & Folklore, WIPO, *Composite Study on the Protection of Traditional Knowledge*, paras. 54–60, WIPO/GRTKF/IC/5/8 (April 28, 2003).

136. Intergovernmental Comm. on Intellectual Prop. & Genetic Res., Traditional Knowledge & Folklore, WIPO, *Review of Existing Intellectual Property Protection of Traditional Knowledge*, para. 13, WIPO/GRTKF/IC/3/7 (May 6, 2002) (noting that products protected as geographical indications include "'Cocuy the Pecaya', a liquor made from the agave, in Venezuela, and 'Phu Quoc', fish soya sauce, and 'Shan Tuyet Moc Chau', a variety of tea, in Viet Nam").

137. *See* Comm. on Dev. and Intellectual Prop., *Project on Intellectual Property and Product Branding for Business Development in Developing Countries and Least-Developed Countries (LDCS)*, annex, CDIP/5/5 (Mar. 2, 2010).

138. Teshager Worku Dagne, *The Application of Intellectual Property Rights to Biodiversity Resources: A Technique for the South Countries to Maintain Control over the Biodiversity Resources in Their Territories?*, 17 AFR. J. INT'L & COMP. L. 150, 157 (2009); Saritha Rai, *India-U.S. Fight on Basmati Rice Is Mostly Settled*, N.Y. TIMES, Aug. 25, 2001, http://www.nytimes.com/2001/08/25/business/india-us-fight-on-basmati-rice-is-mostly-settled.html?pagewanted=print&src=pm.

139. *Extension of Protection*, *supra* note 133, sec. II.

140. *See* insight Consulting et al., *Study on the Protection of Geographical Indications for Products Other Than Wines, Spirits, Agricultural Products or Foodstuffs*, EUR. COMMISSION

African Group—an influential negotiating bloc of African countries—has openly supported the extension of GIs protection to agricultural products.[141] In its submission in 1999, it stated that GI protection should be extended "to other products recognizable by their geographical origins," including handicrafts and agro-food products.[142]

The growing interest in GIs by representatives of developing countries, indigenous peoples, and local communities has sparked creative interest in crafting GI protection regimes outside the traditional forums of law and policy for IP, such as WIPO and WTO. The Food and Agricultural Organization (FAO) is increasingly interested in GIs as possible instruments of policy intervention to remedy inequities in global commodity markets.[143] Similarly, the United Nations Development Programme focuses on the rural development potential of GIs through its technical cooperation activities and financing schedule.[144] Most NGOs have also recently turned their attention to GIs in the wake of the "proliferation of socially generated appellations that are suggestive of different moral economies of concerns related to the conditions of production in distant locations," or in other words, initiatives such as fair trade.[145] Among other IPRs that only protect "real" innovations in the final stage of the commodity supply chain, GIs are employed as a marketing tool for adding value to agricultural products.[146]

DIRECTORATE-GEN. FOR TRADE, 97–100, 142–48 (2009), http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147926.pdf (detailing current protections for non-agricultural GI products within specific countries but urging broader protections at an international level); *Geographical Indications*, EUR. COMMISSION DIRECTORATE-GEN. FOR TRADE (Sept. 1, 2011), http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/geographical-indications/.

141. *See, e.g.*, Trade Negotiations Comm., World Trade Org. [WTO], *Draft Modalities for TRIPS Related Issues*, para. 1, TN/C/W/52 (Jul. 19, 2008) (calling for the registration of GIs for wines and spirits).

142. Gen. Council, WTO, *Preparations for the 1999 Ministerial Conference: Communications from Kenya on Behalf of the African Group*, para. 27, WT/GC/W/302 (Aug. 6, 1999).

143. *See generally* EMILIE VANDECANDELAERE ET AL., FOOD & AGRIC. ORG. & SINER-GI, LINKING PEOPLE, PLACES AND PRODUCTS: A GUIDE FOR PROMOTING QUALITY LINKED TO GEOGRAPHICAL ORIGIN AND SUSTAINABLE GEOGRAPHICAL INDICATIONS 161–71 (2d ed. 2009), *available at* http://www.fao.org/docrep/013/i1760e/i1760e.pdf (discussing geographical indications and development).

144. *See generally* SWARNIM WAGLÉ, UNITED NATIONS DEV. PROGRAMME, GEOGRAPHICAL INDICATIONS AS TRADE-RELATED INTELLECTUAL PROPERTY: RELEVANCE AND IMPLICATIONS FOR HUMAN DEVELOPMENT IN ASIA-PACIFIC (2007) (outlining the policy issues related to GIs).

145. Dwijen Rangnekar, *The Law and Economics of Geographical Indications: Introduction to Special Issue of* The Journal of World Intellectual Property, 13 J. WORLD INTELL. PROP. 77, 78 (2010).

146. BRUCE A. BABCOCK & ROXANNE CLEMENS, MIDWEST AGRIBUSINESS TRADE RESEARCH AND INFO. CENTER, MATRIC BRIEFING PAPER 04-MBP 7, GEOGRAPHICAL INDICATIONS

The wave of interest in GIs arises, to a large extent, from frustration with problems associated in the implementation of the labeling schemes. Therefore, at this juncture it is appropriate to inquire what justifies the preference of GIs over fair trade and ecological labeling initiatives.

VI. THE BENEFITS OF GEOGRAPHICAL INDICATIONS OVER LABELING STRATEGIES

GIs are clearly distinguished from fair trade and environmental labeling. GIs are similar to labeling schemes in their role of differentiating specialty agricultural products in the market from commodity products.[147] Both categories of designations are often deployed to achieve the same policy objective of rural agricultural development under a market-based approach.[148] The two instruments, however, have clear distinctions, which are important to consider in order to address identified problems and to pursue defined objectives. Development strategists and IP policy-makers face the challenge of selecting instruments that allow indigenous peoples and local communities to capture the market value of their local resources and knowledge. This challenge materialized, for example, in the context of a recent dispute between the Ethiopian government and Starbucks as to whether GIs or other labeling schemes should be applied to indigenous coffee varieties from the regions of Sidamo, Harar, and Yirgacheffe in Ethiopia.[149]

Besides cultural importance, coffee has an important place in the Ethiopian economy. Ethiopia is the claimed birthplace of coffee and is positioned as Africa's leading producer of arabica coffee.[150] Despite reputation of the different coffee varieties for their unique and distinctive qualities, the international coffee price significantly dropped between 1997 and 2002,[151] remaining depressed for

---

AND PROPERTY RIGHTS: PROTECTING VALUE-ADDED AGRICULTURAL PRODUCTS 2 (2004), *available at* http://www.card.iastate.edu/publications/dbs/pdffiles/04mbp7.pdf.

147. U. Grote, *Environmental Labeling, Protected Geographical Indications and the Interests of Developing Countries*, 10 ESTEY CENTRE J. INT'L L. & TRADE POL'Y 94, 95 (2009).

148. *See id.* at 96, 101.

149. JAMES WATSON & JEREMY STREATFIELD, NORDISKA AFRIKAINSTITUTET, POLICY NOTES NO. 3, THE STARBUCKS/ETHIOPIAN COFFEE SAGA: GEOGRAPHICAL INDICATIONS AS A LINCHPIN FOR DEVELOPMENT IN DEVELOPING COUNTRIES 1 (2008).

150. *See* RUTH MAYNE ET AL., OXFAM INT'L, CRISIS IN THE BIRTHPLACE OF COFFEE: THE COFFEE CRISIS IN KAFA PROVINCE OF ETHIOPIA 2 (2002).

151. NÉSTOR OSORIO, INT'L COFFEE ORG., THE GLOBAL COFFEE CRISIS: A THREAT TO SUSTAINABLE DEVELOPMENT 1–2 (2002), *available at* http://dev.ico.org/documents/globalcrisise.pdf.

the next few years, due mainly to global economic pressures.[152] Besides this price decline, Ethiopian coffee farmers often collect only about ten percent of the profits from their coffees; the rest goes to industry players in the coffee market that control the retail price—international importers, distributors, and roasters like Starbucks.[153] The Ethiopian Intellectual Property Office (EIPO) launched initiatives to control the market distribution of its specialty coffee varieties with the support of its development partners.[154] The giant coffee company Starbucks opposed EIPO's strategy of registering trademark-based GI protection, on the ground that certification models similar to those used by Jamaican Blue Mountain Coffee, for example, are better suited.[155] Despite its initial application to register trademarks on the coffee name Sidamo in the U.S. Patent and Trademark Office and at the Canadian Intellectual Property Office, Starbucks refused to acknowledge Ethiopia's rights to trademark its coffee varieties in any form, on the ground that the geographical names have acquired generic status.[156]

After worldwide lobbying activities and much negotiation efforts, Starbucks finally agreed to recognize Ethiopia's right to control the use of its specialty coffee names.[157] The ability of different instruments to solve the problem that coffee producers faced by Starbucks' challenge stands pivotal among the many

---

152. *See* INT'L COFFEE ORG., COMPOSITE AND GROUP INDICATOR PRICES, http://www.ico.org/historical/2000-09/PDF/HIST-PRICES.pdf (listing world coffee prices from 2000–2009).

153. OSORIO, *supra* note 151, at 1.

154. *See* Garamfalvi, *supra* note 28.

155. *Id.*; *see also* Fiona Rotstein & Andrew F. Christie, *Sidamo: A Teaching Case for WIPO*, INTELL. PROP. RESEARCH INST. OF AUSTL., 12–13 (2009), http://www.wipo.int/academy/en/ipacademies/educational_materials/cs4_sidamo.pdf (describing Ethiopia's opposition of Starbucks' Shirkina Sun-Dried Sidamo trademark application).

156. SIDAMO, Registration No. 3,381,739 (Ethiopia's U.S. trademark); U.S. Trademark Application Serial No. 78,431,410 (filed June 8, 2004) [hereinafter U.S. Trademark Application] (Starbucks' application for U.S. trademark, abandoned July 8, 2006); Can. Trademark Application Serial No. 0916800 (filed June 10, 2005), *available at* http://www.ic.gc.ca/ app/opic-cipo/trdmrks/srch/bscSrch.do?lang=eng (search "Sidamo"; then follow "Trademarks: SIDAMO, Advertised, 0916800" hyperlink) (Ethiopia's Canadian trademark status, stalled at advertisement stage); Can. Trademark Application Serial No. 1219525 (filed June 8, 2004), *available at* http://www.ic.gc.ca/app/opic-cipo/trdmrks/srch/bscSrch.do?lang=eng (search "Sidamo"; then follow "Trademarks: SHIRKINA SUN-DRIED SIDAMO, Abandoned - Voluntary, 1219525" hyperlink) (Starbucks' Canadian trademark application, abandoned July 12, 2006); Garamfalvi, *supra* note 28; *The Coffee War: Ethiopia and the Starbucks Story*, WIPO, http://www.wipo.int/ipadvantage/en/details.jsp?id=2621 (last visited Dec. 21, 2012).

157. *The Coffee War*, *supra* note 156; *see also* U.S. Trademark Application, *supra* note 156; Can. Trademark Application No. 1219525, *supra* note 156. In an aggressive lobbying effort spearheaded by Oxfam, over 100,000 consumers expressed support for the coffee farmers. *Ethiopia: Starbucks Campaign (Anatomy of a Win)*, OXFAM INT'L (Nov. 2007), http://www.oxfam.org/en/development/ethiopia-starbucks-campaign-anatomy-win.

implications of this dispute and subsequent resolution.[158] In what might be considered a self-serving position, Starbucks urged the use of non-proprietary options in the form of "geographic identification" through certification-based labeling.[159] The problem on table for Ethiopian farmers was not, however, lack of recognition of the high quality of their coffee in the market. Instead, producers of coffee are concerned with the low price they get for what they grow, despite high reputation and high consumer prices for the coffee in the market.[160] What is needed is a system that would capture more of the retail value of Ethiopia's coffee within the country. This will most likely be achieved through instruments that would strengthen the power of coffee producers in international trade law by elevating them to a better bargaining position vis-a-vis international importers, distributors, and roasters. Without getting into a discussion of whether the chosen strategy of trademark registration and licensing is a proper strategy to achieve this purpose,[161] it is noteworthy that the distinction between GIs and other labeling schemes has important relevance in this setting.

The fundamental difference between GIs and other labeling initiatives centers on the nexus of control the two instruments offer to the communities who embrace them. GIs are unique types of intellectual property. As such, they grant their owners all attributes of property ownership, including the essential sticks in the bundle of rights of an owner: the power to control the resource, the right to determine what use is made of it and under what conditions, and most importantly, the right to exclude others from it.[162] GIs provide their owners better leverage

---

158. *See* Dagne, *supra* note 138, at 161.

159. Garamfalvi, *supra* note 28. In response to Oxfam's campaign, Starbucks argued,

> [W]ere trademarks to be implemented—roasters might shy away from buying the coffees for fear of becoming embroiled in complicated legal disputes. Or worse, they may buy the coffees and just market them without the trademarked names. Letting the high quality beans go to market without a geographic identification would completely undermine the value of the brand.

Joshua Gallu, *Starbucks, Ethiopia, and the Coffee Branding Wars*, SPIEGEL ONLINE INT'L (Nov. 16, 2006), http://www.spiegel.de/international/a-hot-cup-of-money-starbucks-ethiopia-and-the-coffee-branding-wars-a-448191.html (describing Starbucks' position on this dispute).

160. Garamfalvi, *supra* note 28.

161. Given the conceptual and technical limitations of the trademark system to serve as a proprietary tool, it is hardly possible to believe that the Ethiopian trademark and licensing initiative would, in the manner it was implemented, achieve the purpose it is meant to serve. *See generally* Thitapha Wattanapruttipaisan, *Trademarks and Geographical Indications: Policy Issues and Options in Trade Negotiations and Implementation*, 26 ASIAN DEV. REV. 166 (2009) (comparing the policy issues related to trademarks and geographical indications).

162. *See* C. Bramley & J.F. Kirsten, *Exploring the Economic Rationale for Protecting Geographical Indicators in Agriculture*, 46 AGREKON 69, 79–80 (2007).

to bargain for improved prices for their products by putting power into their hands. In short, GIs "permit the aggregation of market power by small farmers to enable collective action by producer collectives in relation to the promotion and marketing of their products and in dealing with intermediaries."[163] The power of control of use and access enables traditional farming communities and their representatives to defensively protect TKBAPs.

The fair trade and environmental labeling schemes are means of providing information to consumers. GIs, as well as labeling schemes, may serve the same purpose as trademarks in signaling critical information that affects the decision of consumers whether or not to buy a particular product. The totality of the information the two communicate is, however, different. Labeling schemes appeal to consumers willing to pay improved price in consideration of the socio-economic condition of agricultural producers, or in consideration of the environmental friendliness of the methods of production.[164] GIs, however, appeal to consumers that are also attracted to the quality, reputation, or other distinctive characteristics of the product itself.[165]

Due to the fundamental distinction between the two, GIs and labeling schemes fall in distinct regimes. GIs mostly fall under the IP regime of different jurisdictions.[166] Fair trade and environmental labeling schemes are generally voluntary initiatives and do not fall within a particular legal regime.[167] Some labeling organizations, like the Fairtrade Labeling Organizations (FLO), for example, have registered their labels as trademarks in order to achieve a higher level of protection.[168] In such cases, labeling schemes conflate with trademarks, and as

---

163. MICHAEL BLAKENEY, INTELLECTUAL PROPERTY RIGHTS AND FOOD SECURITY 186 (2009).

164. *See, e.g.*, Getz & Shreck, *supra* note 103, at 490.

165. DANIELE GIOVANNUCCI ET AL., INT'L TRADE CENTRE, GUIDE TO GEOGRAPHICAL INDICATIONS: LINKING PRODUCTS AND THEIR ORIGINS 7 (2009).

166. *See id.* at box 1.1.

167. Organic certification schemes are exceptions in this regard, as they are institutionalized through national legislation. Organic certification is generally overseen by governments, and producers cannot use the term "organic" without proper certification. *See, e.g.*, Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501–6523 (2006 & Supp. V 2011); Council Regulation 834/2007, 2007 O.J. (L 189); Organic Products Regulations (Canada Agricultural Products Act), SOR/2009-176 (Can.). Internationally, multilateral efforts for the harmonization of standards for organic certification are underway through the International Federation of Organic Agriculture Movements (IFOAM). *IFOAM Programs and Projects*, IFOAM, http://ifoam.org/partners/projects/index.html (last visited Dec. 21, 2012).

168. *See, e.g.*, FAIRTRADE, Registration No. 3,811,009; FAIRTRADE, Registration No. 4,148,319; FAIRTRADE, Registration No. 3,366,053; U.S. Trademark Application Serial No. 79,097,476 (filed Apr. 21, 2011).

such, the distinctions between labeling schemes and GIs parallel the distinctions between trademarks and GIs.[169]

Despite the distinction between GIs and the other differentiation schemes, rural development strategists often suggest convergence between GIs and the fair trade and eco-label initiatives to promote successful rural development.[170] GIs are often aligned with fair trade initiatives as a means of conveying "attributes of reliability, quality and food safety to the consumer."[171] Given high interest from consumers in fair trade schemes—due to advocacy networks, campaigns, and social movements—the association of GIs with fair trade and other labeling initiatives may improve the market for GI-protected goods.[172]

VII. CONCLUSION

The global knowledge economic order is typically characterized with the value of intangible assets and information as major factors of production and marketing. Knowledge and intellectual capabilities constitute the principal sources of value for economic goods in the current economy. In these settings, agricultural development strategies among indigenous peoples and local communities should be targeted at facilitating their participation in international trade with their products. For distinctive agricultural products that have unique qualities and characteristics linked to a place, GIs offer a potential instrument for recognizing the knowledge and cultural inputs in the production stage.[173] GIs may serve as a differentiation tool for traditional knowledge-based agricultural products of indigenous peoples and local communities.

In contrast to the widely adopted strategies of differentiation, such as fair trade and environmental labeling, the use of GIs allows ILCs to establish IP rights over their resources. As such, GIs may consolidate the power of producers to control their products and to have a say in the price determination process for their productions.[174] GIs may be used to protect distinctive agricultural products

---

169. *See generally* Dev Gangjee, Comment, *Geographic Indications and Trademarks: Quibbling Siblings: Conflicts Between Trademarks and Geographical Indications*, 82 CHI.-KENT L. REV. 1253 (2007) (discussing the conceptual distinction between GIs and trademarks); MARY M. SQUYRES, GEOGRAPHICAL INDICATIONS IN THE TRADEMARK ARENA (2007) (discussing various frameworks for protection of geographical indications in mutual coexistence with trademark protections); Lindsey A. Zahn, Note, *Australia Corked Its Champagne and So Should We: Enforcing Stricter Protection for Semi-Generic Wines in the United States*, TRANSNAT'L L. & CONTEMP. PROBS. (forthcoming) (discussing GI and labeling issues as they relate to wine in the United States).

170. *See* VANDECANDELAERE, *supra* note 143, at 112.

171. GIOVANNUCCI ET AL., *supra* note 165, at 25.

172. BLAKENEY, *supra* note 163, at 51–52.

173. GIOVANNUCCI ET AL., *supra* note 165, at 7.

174. *See* discussion *supra* Part VI.

and thereby empower ILCs to optimize value for their products so they can meaningfully participate in commercial transactions over TKBAPs.[175] Thus, a GI model creates equitable power relations between outside commercial entities, namely intermediaries, and ILCs, so that the latter can engage in the sale of TKBAPs on their own terms.[176]

Given their value and potential commercial viability, place-based distinctive agricultural products such as basmati rice, manoomin rice, and Antigua coffee may be targets of adulteration and falsification by, for instance, multinational companies that have modern and sophisticated marketing power.[177] In such cases, the protection of TKBAPs through GIs in the interest of ILCs may also protect the products against misappropriation by global actors that aim to capitalize on the added-value of products originating from geographical regions with a recognized quality or distinct characteristics. Unlike the often-used fair trade and environmental labeling models, a properly crafted GI system allows ILCs to control TKBAPs, determine what use is made of the products, and decide the conditions for the provision of their products in the market.[178]

As previously discussed, fair trade and environmental labeling strategies introduce a homogenous set of certification practices that sometimes deviate from local practices and norms.[179] GIs differ from the differentiation strategies of fair trade and environmental labeling in that the custodial responsibilities of ILCs, such as the "social custom of selecting, saving, swapping, and replanting seeds from year to year," may be incorporated in GI regulations as recognized methods of production.[180] The conditions for the protection of GIs may include, among others, criteria that incorporate market-attractive standards, such as preferences for environmentally sensitive methods of production, production without genetically engineered seeds, and maintenance of production conditions free of chemical pesticides and contaminants.[181] The regulation of production methods through GI protection ensures that the attributes of traditional agricultural production that are essential for biodiversity conservation and ecological protection

---

175. GIOVANNUCCI ET AL., *supra* note 165, at 89.

176. *See id.* at 54.

177. *See Intellectual Property*, EUR. COMMISSION DIRECTORATE-GEN. FOR TRADE (Nov. 9, 2012), http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/index_en.htm.

178. Bramley & Kirsten, *supra* note 162, at 79–80.

179. *See* discussion *supra* Part IV.C.

180. *See generally* BREWSTER KNEEN, THE TYRANNY OF RIGHTS 67–75 (2009) (discussing the importance of incorporating and protecting traditional knowledge in an IP regime).

181. Rosemary J. Coombe, *Legal Claims to Culture in and Against the Market: Neoliberalism and the Global Proliferation of Meaningful Difference*, 1 L. CULTURE & HUMAN. 35, 47 (2005).

are maintained even when the product acquires a broader market share.[182] Economic benefits derived from GI protection of agricultural products may incentivize ILCs to embrace and recognize the value of biodiversity, its conservation, and maintenance.

In an increasingly globalized world, efforts to support the development needs of developing countries should aim at strategies that enable indigenous peoples and local communities to resist the impacts global economic pressures have on local production and global distribution of their products. The use of GIs as instruments of differentiation for distinctive agricultural products allows ILCs to derive improved prices for their products and to prevent the exploitation of commercially significant agricultural products by large-scale commercial producers. In light of the imperatives for the economic revitalization of traditional agricultural economies, GIs can be used to derive greater economic benefits for traditional agricultural producers and to promote other policy objectives through ecological and cultural considerations during their implementation.

182. *See id.*