



TBT PROGRAMME
OVERCOMING TECHNICAL BARRIERS TO TRADE



ACP-EU TBT Programme

“Promotion of Quality Standards and Certification for Handicrafts from Ghana and Sierra Leone”

“International and EU Intellectual Property Rules”

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October 20, 2016

International and EU Intellectual Property Rules

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1. Definition of Handicrafts

- ❑ Handicrafts are also known as:
 - artisanal products
 - craft products
 - traditional creative crafts
 - works of artistic traditional craftsmanship
- ❑ No internationally agreed definition of handicrafts.
- ❑ In 1997, a definition of “artisanal products” was adopted by the UNESCO/ITC Symposium:
 - **“Artisanal products are those produced by artisans, either completely by hand, or with the help of hand tools or even mechanical means, as long as the direct manual contribution of the artisan remains the most substantial component of the finished product. These are produced without restriction in terms of quantity and using raw materials from sustainable resources. The special nature of artisanal products derives from their distinctive features, which can be utilitarian, aesthetic, artistic, creative, culturally attached, decorative, functional, traditional, religiously and socially symbolic and significant”.**
 - The definition highlights the main characteristics of handicrafts.
 - The definition does not make any distinction between handicrafts (which are not traditional in nature) and traditional handicrafts.
 - The main feature that distinguishes traditional handicrafts is that **they are associated with an indigenous or local community that has preserved the tradition and transmitted it from generation to generation.**



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2. Protection of Handicrafts

□ Why protecting handicrafts?

- Handicrafts are cultural assets: help promote cultural identity and preserve the values of communities
- Handicrafts are economic assets: play an essential role in economic development through job creation, trading and export opportunities **if exploited and protected properly**.
 - Cost vs Reward
- The economics of handicrafts can be threatened **by imitation, misappropriation and other illicit exploitation of the genuine products** at regional and international levels.



A common practice in African countries: Producers/ Artisans copy their neighbours' works or cultural heritage.



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2. Protection of Handicrafts (cont'd)

□ How to protect handicrafts?

- Protecting handicrafts from misuse and other illicit exploitation through:
 - Intellectual Property (IP) laws:
 - ✓ sui generis systems
 - ✓ unfair competition law
 - ✓ consumer protection law
 - Non-IP laws, such as trade practices and labelling laws, use of contracts, customary and indigenous laws and protocols, cultural heritage preservation laws and programs, common law remedies such as unjust enrichment, rights of publicity, blasphemy, and criminal law.
 - The non-IP laws are **complementary** to existing IP and unfair competition laws.



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3. International Instruments related to handicrafts

- ❑ WIPO Conventions
- ❑ WTO TRIPS Agreement
- ❑ UNESCO Conventions



International and EU Intellectual Property Rules

3. International Instruments related to handicrafts

□ WIPO Conventions on IP

- WIPO administers 26 treaties including the Convention establishing WIPO.
- IP protection treaties define internationally agreed basic standards of IP protection in each country
 - **Industrial Property** → Paris Convention for the Protection of Industrial Property of 1883 (as amended on September 28, 1979)
 - **Copyright** → Berne Convention for the Protection of Literary and Artistic Works of 1886 (as amended on September 28, 1979)
 - Madrid Agreement for the Repression of **False or Deceptive Indications of Source** on Goods (Additional Act of Stockholm (1967))
 - Global IP Protection System (including Agreements that ensures that one international registration or filing will have effect in any of the relevant signatory States).
 - ✓ The services provided by WIPO under these treaties simplify and reduce the cost of making individual applications or filings in all the countries in which protection is sought for a given IP right



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3. International Instruments related to handicrafts

- Protection of TCEs (expressions of Folklore) and TK
 - The protection of Handicrafts that are traditional cultural expressions (TCEs) or "expressions of folklore" in their design, appearance and style, or embody traditional knowledge (TK) in the form of the skills and know-how used to produce them is being discussed under **WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)** and is negotiating international legal protection of Traditional cultural expressions (TCEs).
 - The IGC was established in 2000 and has made to date substantial progress in this regard.



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3. International Instruments related to handicrafts

□ WTO TRIPS Agreement

- TRIPS adopts requirements of previous multilateral conventions in both copyright and industrial property (in particular the Berne and Paris conventions) and make their standards mandatory for WTO members.
- As IP became more important in trade, new internationally-agreed trade rules along with a binding system for enforcement of IPR were incorporated in the TRIPs Agreement.
- The main features of the Agreement are the following:
 - **Standards:** In respect of each of the main areas of IP, TRIPS establishes minimum standards of protection to be provided by each WTO member.
 - **Enforcement:** The Agreement provides for a detailed set of provisions on enforcement of IP in the country and at the borders which include civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures.
 - **Dispute Settlement:** The Agreement makes disputes between WTO Members about the respect of the TRIPS obligations subject to the WTO's dispute settlement procedures. It also allows for trade sanctions towards WTO members that do not comply with TRIPS obligations.
 - **Non-discrimination rules:** The Agreement provides also for the fundamental rules on national treatment and most-favoured-nation treatment of foreign nationals, which are common to all categories of intellectual property covered by the Agreement.



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3. International Instruments related to handicrafts

- WTO TRIPS Agreement: Non-discrimination rules (cont'd)
 - **The principle of National Treatment:** Treating nationals and foreigners equally
 - **The national treatment clause forbids discrimination between a Member's own nationals and the nationals of other Members:** Each Member to the TRIPS Agreement shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property (subject to existing exceptions in previous IP Conventions).
 - National treatment only **applies once a product, service or item of intellectual property has entered the market.** Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.
 - **The Most Favoured Nation (MFN) Treatment:** treating other people equally
 - **The MFN treatment clause forbids discrimination between the nationals of other Members:** With regard to the protection of intellectual property, any advantage, favor, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members.

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3. International Instruments related to handicrafts

□ UNESCO Conventions

- UNESCO is an additional international source for handicrafts protection.
- The definition of “Artisanal Products” was adopted by the UNESCO/ITC Symposium "Crafts and the international market: trade and customs codification" - Manila, 6-8 October 1997.
- UNESCO initiated several programs/ projects aiming at developing and preserving the crafts sector.
- UNESCO administers a number of conventions to protect culture and creativity in particular the following:
 - The Universal Copyright Convention (Ghana not a member)
 - Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention.
 - Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms.
 - Convention for the Safeguarding of the Intangible Cultural Heritage.
 - Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.
 - Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
 - Convention on the Protection of the Underwater Cultural Heritage.
 - UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.



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4. EU legislation related to handicrafts

□ EU countries are parties to:

- Paris Convention for the Protection of Industrial Property,
 - Berne Convention for the Protection of Literary and Artistic Property
 - WTO that includes the TRIPS Agreement.
 - The EU countries are hence bound by the agreements' principles on national treatment and most-favoured-nation treatment.
 - EU countries are required to accord to the nationals of other parties the same rights to copyright and industrial property that they accord to their own nationals. Moreover, trade-related privileges granted by EU countries to one country (even if not a WTO Member) must also be granted to all WTO Members including Ghana and Sierra Leona, which are both members to WTO since 1995.
- The protection of handicrafts is not harmonized in the EU.
- The protection differs from one EU country to another.



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4. EU legislation related to handicrafts

- ❑ Most handicrafts are eligible for protection by copyright and/ or industrial designs
- ❑ Handicrafts with geographical indication origins can be protected by Trademark Law, Law on Unfair Competition, law on Geographical Indications, Consumer Protection Law, the Penal Code and Marketing Law in addition to specific or sui generis legislation.



Solingen Knives
German Collective TM



Marseille Soap
French GI



Scottish Tartans
Burberry TM



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4. EU legislation related to handicrafts

□ Protecting Handicrafts through Intellectual Property Rights (IPRs or IP)

- The **external appearance** or design of handicrafts can be protected **by copyright or industrial designs**.
- The **reputation** of handicrafts can be subject to protection **by trademarks (including collective and certification marks), geographical indications or unfair competition**.
- The **know-how** or the knowledge used to create the handicrafts can be protected **by trade secrets**.
- When the Handicraft constitutes or includes an **invention**, this can be protected **by patent**.
- In case of **dishonest or fraudulent practices**, the **rules on unfair competition** are used to restrain any act of competition contrary to honest practices in industrial or commercial matters.



International and EU Intellectual Property Rules

4. EU legislation related to handicrafts

□ Copyright



- Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.
- The EU copyright legislation is a set of 10 directives, addressed to the EU Member States, which harmonize the rights of authors and holders of neighbouring rights.
- Many of the EU directives reflect:
 - Member States' obligations under international treaties/ conventions (such as the Berne Convention)
 - WTO TRIPS Agreement
 - Free trade agreements (FTAs) concluded by the EU with its trade partners.
 - ✓ The EU is negotiating an Economic Partnership Agreement (EPA) with Ghana and another EPA with ECOWAS to which Sierra Leone is a negotiating party.



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□ Industrial Designs

- An industrial design constitutes the ornamental or aesthetic aspect of an article. An industrial design may consist of three-dimensional features, such as the shape of an article, or two-dimensional features, such as patterns, lines or colour. Industrial designs are applied to a wide variety of products of industry and handicraft items: from packages and containers to furnishing and household goods, from lighting equipment to jewellery, and from electronic devices to textiles.
- In 1998, the EU adopted a Directive on the legal protection of designs.
 - The objective of the Design Directive is to harmonize the EU laws on designs and to ensure that right holders enjoy equivalent protection in all EU countries.
- In 2002, a unitary design right was established on Community design according to which it is possible to register an industrial design as a European Community design, which is valid in all EU Member States,
 - The registration procedure of such a design is carried out by the European Union Intellectual Property Office (EUIPO) – Formerly the Office for Harmonization in the Internal Market (OHIM)



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□ Trademark (TM)

- A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. A word or a combination of words, letters, and numerals can perfectly constitute a trademark. But trademarks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or colour shades used as distinguishing features – the possibilities are almost limitless.
- In the EU, trademark protection can be obtained:
 - at the national level under the laws of each Member State
 - at the regional level in the Benelux countries
 - at the EU level through a European Union trademark that is valid throughout the EU Member States.
- Within the EU, national and European Union trademark protection co-exist.



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□ Trademark (cont'd)

- In 2015, Directive (EU) 2015/2436 to approximate the laws of the Member States relating to trade marks, was published in the Official Journal.
 - EU trademarks are registered at the European Union Intellectual Property Office (EUIPO).
 - It is an all-or-nothing deal that means either one gets it for all Member States or one does not get it at all.
- The following international agreements to which EU Member States are parties affect the European Union trademark and Community design registration.
 - Paris Convention for the Protection of Industrial Property
 - Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, revised at Stockholm on July 14, 1967, and at Geneva on May 13, 1977, and amended on September 28, 1979
 - Locarno Agreement Establishing an International Classification for Industrial Designs. Signed at Locarno as amended on September 28, 1979
 - Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. Amended on October 1, 1985
 - Protocol adopted at Madrid relating to the Madrid Agreement concerning the international registration of marks
 - Agreement on Trade-related Aspects of IP rights
 - Trademark Law Treaty
 - Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs Adopted by the Diplomatic Conference
 - Singapore Treaty on the Law of Trademarks of Singapore



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4. EU legislation related to handicrafts

□ Collective marks

- Collective marks are signs that distinguish the geographical origin, material, mode of manufacture or other common characteristics of goods or services of different enterprises using the collective mark.
- The owner may be either an association of which those enterprises are members or any other entity, including a public institution or a cooperative.
- The owner of the collective mark is responsible for ensuring the compliance with certain standards (usually fixed in the regulations concerning the use of the collective mark) by its members.
- Collective marks are often used to promote products that are characteristic of a given region.
- Ghanaian producers and artisans may form groups or associations to register collective marks, if the products have a common origin or characteristics.



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4. EU legislation related to handicrafts

□ Certification marks

- Certification marks are usually given for compliance with defined standards, but are not confined to any membership.
- They may be used by anyone who can certify that the product involved meets certain pre-established set of rules and standards governing its use.
- An important requirement for certification marks is that the entity which applies for registration is considered "competent to certify" the products concerned.
- Certification marks may be used together with the individual trademark of the producer of a given good.
- The label used as a certification mark will be evidence that the company's products meet the specific standards required for the use of the certification mark.



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□ Geographical Indication (GI)

- A geographical indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.
- Geographical indications are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products.
- There are three main ways to protect a geographical indication:
 - Sui generis systems (i.e. special regimes of protection);
 - Collective or certification marks;
 - Methods focusing on business practices, including administrative product approval schemes.



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□ Geographical Indication (cont'd)

- In Europe, GI protection is available for both agricultural and non-agricultural products.
- While agricultural products can enjoy unitary protection granted exclusively at EU level, non-agricultural GIs are protected only at national and regional levels, through various national legal frameworks.
- In 2011 the EU launched a “Study on geographical indications for non-agricultural products (mainly handicrafts) in the internal market”.
- In light of the results of the Study and the outcome of the public hearing that took place in 2013 to discuss the outcomes of the study, the Commission decided to pursue its analytical work through a Green Paper aiming at consulting with all stakeholders in the broadest possible manner on whether there is a need, in the EU, to increase GI protection for non-agricultural products, and if so what approach should be taken.



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□ Geographical Indication (cont'd)

- The Green Paper invited all interested parties to comment on the issues raised and respond to the specific questions listed.
- The result of the consultation will be taken into account by the Commission when it decides whether further action is appropriate at EU level.
- EU Countries are members of the following treaties on GIs Protection. According to these treaties, both agricultural and non-agricultural products are allowed a GI protection. The scope of the protection granted to GIs and other aspects of GI protection differ from one treaty to the other.
 - Paris Convention for the Protection of Industrial Property
 - Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.
 - WTO TRIPS Agreement (Articles 22 to 24)



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4. EU legislation related to handicrafts



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□ Unfair Competition

- Unfair Competition is any act of competition contrary to honest practices in industrial and commercial matters.
- The Unfair Commercial Practices Directive (Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market) lays down harmonized rules for the fight against unfair commercial practices.
 - It ensures that consumers are not misled or exposed to aggressive marketing and that any claim made by traders in the EU is clear, accurate and substantiated.
 - It seeks to enable consumers to make informed and meaningful choices.
 - It aims to ensure, promote and protect fair competition in the area of commercial practices.
- According to the Ghanaian Law on the Protection Against Unfair Competition (Act No 589/2000) the following constitutes acts of unfair competition:
 - Causing confusion to the goods and services of the competitor with respect to a trademark, whether registered or not, a trade name, presentation of a product or service, appearance of a product.
 - Dilution of goodwill or reputation of the competitor.
 - Misleading the public as to the nature, manufacturing process, quality, characteristics, geographical origin of the goods or services, and the suitability for their purpose.
 - Discrediting the goods, or the industrial or commercial activities of the competitor.
 - Disclosure of secret information that results from industrial or commercial espionage.



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4. EU legislation related to handicrafts

□ Free Trade Agreements with the EU

- Negotiations for a regional Economic Partnership Agreement (EPA) between West Africa and the European Union were concluded in 2014 with the initialling of an agreed text.
- The EPA was negotiated under a West Africa regional configuration comprised of the fifteen ECOWAS members States plus Mauritania.
 - To date, 13 out of 16 West African States have signed the Agreement.
 - The regional agreement covers trade in goods and development-cooperation.
 - It contains *rendez-vous* clauses for future negotiations on trade in services and other trade-related issues (such as IP).
 - EPA provides duty-free access to the EU market for an unlimited period for all imports originating in Ghana. In return, Ghana partially liberalize its imports from the EU over a period up to 20 years.
- An "interim EPA" was negotiated between Ghana and the EU in 2007 as a steppingstone towards the regional agreement.
 - In August 2016, the interim Agreement was ratified by Ghana's parliament.
 - The ratification of the agreement by Parliament will lead to the entry of a percentage of imports from Europe to Africa and vice versa, free of tariffs.



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□ Brexit???

- The UK is still a full member of the EU until the effective date of an exit
 - Ghanaian exporters can still take advantage of the duty quota on goods exported to the UK.
- From the date of the actual exit, EU law may cease to apply. This means the following:
 - A change in the VAT laws and regulations
 - A change in the EU Customs Code and regulations.
 - the UK will be free to set its own rates for each type of imported good
 - Given that Ghana has recently ratified, the Economic Partnership Agreement with the EU, the Brexit clearly means that the opportunities available under the EPA are not applicable to trade with the UK. Ghana and the UK will, therefore, have to negotiate a separate agreement if desirable.



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5. Sources

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Project funded by the EU at the request of the ACP Group

