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GROUP: GROUP 7

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**QUESTION:**

**1) You have been recently appointed as a special adviser to the Minister for Agriculture in Nigeria. One of his key goals, during his tenure, is the excessive drive for promotion of the exportation of Nigerian agricultural products. He asked you to write a report from a legal perspective on how to achieve this goal. Write an advisory to the Minister on the use of geographical indications and plant breeders’ rights to protect and promote agricultural products emanating from Nigeria in the international market.**

**PROMOTION OF THE EXPORTATION OF NIGERIAN AGRICULTURAL PRODUCTS**

**GEOGRAPHICAL INDICATIONS AND PLANT BREEDERS RIGHTS, THE KEY**

**-AN ADVISORY OPINION BY GROUP 7 (INTELLECTUAL PROPERTY, 400 LEVEL)**

**AFE BABALOLA UNIVERSITY, ADO-EKITI**

**10TH April, 2020.**

 **MINISTER OF AGRICULTURE**

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1. **INTRODUCTION**

Agricultural products have been proved to be a strong base of the Nigerian economy, supplying food not only for Nigerians, but also to other countries as well. These days, the agricultural sector faces different challenges, while still developing rapidly. There are two (2) main groups of Agricultural products in Nigeria;

* Products for National Consumption
* Products for export

It is to be noted that the main agricultural products in Nigeria are rice, Cassava, Ginger, Cocoa and Nuts. However, in recent years, the country has lost its place as one of the largest exporter of Cocoa and Palm Oil. According to the U.S Department of State Country Commercial Guide, Nigeria’s total Agricultural Income is estimated to be US $1.6 Billion per year[[1]](#footnote-1). Hence, it can be agreed that there is need for a re-evaluation of our agricultural sector, especially the area of exportation .This advisory therefore proceeds to outline in concise and precise terms; the problems and Limitations associated with the exportation of agricultural products and the solutions, if any.

1. **NIGERIAN AGRICULTURAL PRODUCTS**
	1. **Problems and Limitations Associated with the Exportation of Nigerian Agricultural Products.**

Some identified constraints include:

* **Logistic Challenges At The Ports:** Nigeria's two major ports. A survey conducted in 2018 showed that Nigeria loses about $10 billion on non-oil exports due to gridlock at the port. The gridlock has led to refusal by buyers to renew contracts and in dire cases, outright cancellation of contractual agreements.
* **Inadequate Storage Facilities and Poor Distribution Network:** Lack of adequate modern storage facilities for agricultural produce has led to significant post-harvest losses on account of produce perishability.
* **Poor Quality of Agricultural Products for Exports:** This is due to poor handling of agricultural products, disease and pests attacks on crops and excessive use of pesticides for preservation purpose. The Nigerian Agricultural Quarantine Services needs to put in place appropriate risk management measures.
* **Low Value-Addition to Agricultural Goods:** Lack of value-addition to agricultural goods exported has resulted to significant loss in earnings accruable to the country. According to the Food and Agriculture Organization (FAO), Nigeria's value-added per capita in agriculture, has risen by less than 1% annually, over the last 2 decades.
* **Rural Infrastructure and Extension Services:** These are constraints to exports and output. Lack of basic rural infrastructure, especially roads, raises the cost of farm inputs for smallholders and reduces output prices paid to them.
	1. **Solution and Promotion of Exportation** **Of Nigerian Agricultural Products**

The Nigerian Export Promotion Council encourages Nigerian industrialists, businessmen and agriculturalists to export more agricultural products, which are highly profitable and yield good return on investment[[2]](#footnote-2). There are various ways to promote the exportation of agricultural products in Nigeria such as;

* **Use of Agro-Standards:** The use of standards can be used to improve the economy of Nigeria. Standard processing and storage of agricultural products should be encouraged by the Nigerian government to promote exportation of agricultural products to other countries.
* **Better Storage, Processing and Transportation Methods:** Technologyhas encouraged the transportation of farm products from one part of the country to another. An example is the transportation of fish and meat using refrigerated trucks. Chemicals are also used as a means of preserving harvests. Thus, this helps in promoting the exportation of the agricultural products produced[[3]](#footnote-3)
* **Transformation of the agricultural sector**: Any agricultural revolution requires access of farmers to modern agricultural inputs, especially fertilizers and seeds.
* **Standardized price control:** Unstable prices can disrupt the marketability of farm produce. This can make people not settle down into agriculture is an occupation. Better standardized price measures should be introduced to stabilize the price of agricultural products being exported.
* **Packaging and preservation standards:** Better packaging and preservation standards will promote the market both within and outside Nigeria. There is improvement in yields as a result of more farmers exchanging information on modern methods of practicing agriculture.

**Agricultural products are also protected and promoted by certain rights in the international market. These right(s) are classified as Intellectual Property rights.**

1. **Intellectual Property**

 Intellectual property refers to creations of the mind, which have both a moral and a commercial value.

* 1. **The Concept of Intellectual Property Right**

Intellectual Property Rights refers to the general term for the protection of property rights.it allows the holder to exercise monopoly over such property for a specified period.

It include the following; Patents, Copyright, Industrial design, Trademarks, **Plant Breeders Rights (PBR), Geographical Indications (GI)**, Trade Secrets. However, for the purpose of this advisory, the PBR and GI, as it relates to agriculture (plants) will be discussed.

* 1. **PLANT BREEDERS RIGHT (PBR)**

 PBR is a form of intellectual property right granted to the breeder of a new plant variety that gives the breeder exclusive control over the propagating material and harvested material of a new variety for a number of years.

 The PBR Program was first established in 1987[[4]](#footnote-4), which succeeded the current Act[[5]](#footnote-5). This right enables the breeder to choose to become the exclusive marketer of the variety, or to license the variety to others. The idea is that any person who creates or discovers and develops a plant variety may apply for plant Breeders Right. In order to qualify for these exclusive rights, a variety must be new, distinct, uniform and stable.

The breeder must also give the variety an acceptable "denomination", which becomes its generic name and must be used by anyone who markets the variety.

 Typically, plant variety rights are granted by national offices after examination. The seed is submitted to the plant variety office, which grow it for some seasons, to check that it is distinct, stable, and uniform. Exclusive rights are granted for a specified period; typically 20/25 years, or 25/30 years, for trees and vines. Annual renewal fees are required to maintain the rights.

Plant Breeders' Rights contain exemptions from infringement that are not recognized under patent law. Firstly, **section 1(4) (a)[[6]](#footnote-6)** Provides;

 ***Patents cannot be validly obtained in respect of-***

1. ***plant and animal varieties or essentially biological processes for the production of plants and animals (other than microbiological processes and other products)***

However, the case of ***Diamond v Chakrabarty[[7]](#footnote-7)*** stated that genetically modified plants and animals can be patented.

Secondly, there is an exemption for farm-saved seed.

Thirdly, there is also a breeders’ exemption that allows breeders to use protected varieties as sources of initial variation to create new varieties[[8]](#footnote-8), or for other experimental purposes[[9]](#footnote-9).

Fourthly, there is also a provision for compulsory licensing.

* + 1. **Legal Framework of the Plant Breeders Rights in Nigeria**

 Nigeria does not currently have a plant variety protection system. The only reference to plant variety protection (PVP) in Nigeria’s IP architecture is **Section 1.4(a)[[10]](#footnote-10)**. Nigeria is also not a party to any of two IP Organisations in Africa which have PVP instruments: the ***Organisation Africaine de la Properiete Intellectulle (OAPI),*** and ***the African Regional Intellectual Property Organisation (ARIPO).***

 Furthermore, as a founding member of the World Trade Organization (WTO), Nigeria has a pending obligation under ***Article 27.3(b)[[11]](#footnote-11),*** to protect plant varieties through a patent system, a sui generis system, or a combination of systems. However, ***Part 8[[12]](#footnote-12)*** made provisions to support plant variety development and for the protection of PBR, other parts as well, provide for seed production and marking, registration, release and certification of seeds and so on. The Act as well paved way for a new draft law known as the ***Plant Variety Protection Act*** which is set to provide legal intellectual property rights to plant breeders who develop new and improved seeds for increased crop production.

* + 1. **Plant Breeders Rights; the Protection and Promotion of Nigerian Products in the International Market**

The PBR offers various protections;

* Breeding companies achieve returns on their investment in breeding programs. The PBR system provides a legal framework that allows breeders to recover their investment and allows them to continue their breeding activities. They can also exploit the resulting new varieties. The right granted to plant breeders recognizes the real progress in breeding for the benefits of society which is a core goal of intellectual property rights in this field.
* **Licensing**

 PBR holders can develop a licensing strategy to reinforce their presence in the local market and expand their activities abroad by entering into partnership in foreign markets. Producers in Nigeria may protect their varieties and issue licenses for multiplying them and exporting the propagating material to foreign markets.

In case of a contravention, an affected plant breeder may bring an infringement action against such an infringer. In such a case, he may recover damages.

**There are several ways Plant Breeders Rights promote agricultural goods emanating from Nigeria in the international market;**

1. Plant Breeders Rights helps in faster development of seed industry
2. Plant Breeders Rights leads to improvement of quality because of competition
3. Plant Breeders Rights is useful in procurement of good material on payment basis
4. Plant Breeders Rights helps in enrichment of genetic resource
	1. **GEOGRAPHICAL INDICATION**
		1. **The Concept of Geographical Indication (GI)**

 A GI is a name, sign or mark ascribed to certain products which point to a certain origin or geographical location. The GI in its indication of origin function acts as affirmation that such product has or possesses certain qualities, is made from a particular method or has a certain reputation due to its geographical origin. The concept underlying GIs is simple and is familiar to any shopper who chooses “Tequila” over “Cognac” or “Scotch”, as some of these product are well-known examples of product names associated throughout the world with products of a certain nature and quality, known for their geographical origin[[13]](#footnote-13). ***Article 22.1[[14]](#footnote-14)*** defines geographical indications as that which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or other characteristics of the goods is essentially attributable to its geographical origin.

* + 1. **Geographical Indication and Trademark**

GI and Trademarks are used to distinguish one product from another product in the marketplace. GI and Trademarks are similar, but are not the same.

A GI is defined in **Article 22.1 (supra)**[[15]](#footnote-15). A Trademark is defined by **Section 67[[16]](#footnote-16)**, to be a mark used in relation to goods to indicate, a connection between the goods and some person having the right either as registered user to use the mark whether with or without any indication of the identity of the person, The major difference however being that GI identify the origin of goods from a place, community, or association of producers.

* + 1. **Geographical Indication and an Appellation of Origin**

An appellation of origin is a subtype of GI where the method, quality and reputation of a good strictly originate from a delineated area defined under its intellectual property right registration. The term is used in the Paris Convention and defined in **Article 2**, where it defines appellations of origin as;

 ***‘(1)… the geographical denomination of a country, region or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors’.[[17]](#footnote-17)***

* + 1. **Geographical Indication; The Protection And Promotion Of Nigerian Products In The International Market**

The legal protection of goods through GI is of great importance. In the absence of legal protection, the competitors who do not have any legitimate rights on the GI might ride free on its reputation, and also misleads consumers

* **Geographical Indication Serve as a Great Differentiation Tool in Marketing Strategies; from Mere Source Indications to Brands**

 Consumers pay increasing attention to the geographical origin of products, and care about specific characteristics present in the products they buy. The place of origin may suggest to consumers that the product will or has a particular quality or characteristics that they may value, and this is why in most cases, consumers are willing to pay more for such products. Geographical Indications function as product differentiators and enables consumers to distinguish between products with geographical origin based characteristics and those without those characteristics. It also serves as a key element in developing brands.

* **Quality Control**

GI ensure that only standard products emanating from producers in Nigeria will be available in the international market thereby building the trust and goodwill of the purchasers of such products. Consumers are assured of product authenticity and quality, sustainability and consistency of both the product and incomes[[18]](#footnote-18). GI ensures that those who have the right to use the indication can take measures against free riders.

**There are several ways Geographical Indications promote agricultural goods emanating from Nigeria in the International Market;**

1. Geographical indication may bring value to a region not only in terms of jobs and income, but also by promoting the region as a whole.
2. It also has the value additional tool that grants the producers the bargaining power in the market place and furthermore helps curve a market niche for agricultural products.
3. They also have notable developmental characteristics as they uniquely emphasize local production and local characteristics. If properly harnessed, this leads to higher quality and unique products for consumers ensured and encouraged.[[19]](#footnote-19)
4. Geographical indications make branding possible in the global market. It cuts intermediaries and helps manufacturers raise profits.
5. It helps manufacturers of a local product earn a premium on their produce.
6. **EXECUTIVE SUMMARY AND CONCLUSION**

In light of the above, I recommend that there should be an indigenous plant Breeders Right which will be recognisable by the plant breeders in Nigeria. Also, in order for exportation to be carried out effectively bearing in mind the need to protect Nigerian products in the international market, there is a need for Geographical Indication to be properly monitored, and protected. There is also the need for the appropriate persons to be educated about these rights. GI preserve local cultural practices and is used to identify goods originating in the territory of a region. PRB basically protects persons who creates or develops a plant variety.

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