



Worldwide Symposium on Geographical Indications

Lima, June 22-24, 2011

WIPO PUBLICATION

No. 798(E)

ISBN: 978-92-805-2223-5

WIPO 2012



WORLDWIDE SYMPOSIUM ON GEOGRAPHICAL INDICATIONS

ORGANIZED BY

THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO),

**THE NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE
PROTECTION OF INTELLECTUAL PROPERTY (INDECOPI) OF PERU**

AND

THE MINISTRY OF FOREIGN AFFAIRS OF PERU

LIMA, JUNE 22 – 24, 2011

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DISPUTE SETTLEMENT WITHIN THE LISBON SYSTEM

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INTRODUCTION

At its twenty-third (6th extraordinary) session held in Geneva from September 22 to 30, 2008, the Assembly of the Lisbon Union decided to establish a Working Group responsible for exploring possible improvements of the procedures under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as the “Lisbon Agreement”).

At its first session, which took place in Geneva from March 17 to 20, 2009, the Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as the “Working Group”) agreed, *inter alia*, that the International Bureau of the World Intellectual Property Organization (WIPO) should conduct a survey with a view to ascertaining how the Lisbon system might be improved, in order that the system would become more attractive for users and prospective new members of the Lisbon Agreement while preserving the principles and objectives of the Agreement. At its twenty-fifth (18th ordinary) session, the Assembly of the Lisbon Union, when renewing the mandate of the Working Group, took note of this initiative¹.

At its second session, which took place in Geneva from August 30 to September 3, 2010, the Working Group discussed the results of the survey on the Lisbon system². As to its future work, the Working Group agreed

“that, for its next session, the International Bureau prepare draft provisions on the various topics addressed under Questions 1 to 9 [of document LI/WG/DEV/2/2] taking into account all comments made in [that] ... session, in order for the work on the development of the Lisbon system to become more focused. These draft provisions should contain alternative versions and leave open the question as to the legal instrument by which they might be formalized, while preserving the principles and objectives of the Lisbon Agreement.”³

In addition, the Working Group also agreed

“to invite the Secretariat to prepare a study on the possibility of dispute settlement within the Lisbon system, as it might be useful to explore in which situations dispute settlement might be appropriate and in what form ... [and] ... that the study could also include information on the existing dispute settlement systems in the intellectual property area and the legislative history in that regard.”⁴

In response to the Working Group’s request for draft provisions, the International Bureau presented a document⁵ putting forward two sets of draft provisions. The first set of such proposals consisted of draft amendments to the current Regulations under the Lisbon Agreement (hereinafter referred to as the “Lisbon Regulations”)⁶. They concerned proposed

¹ LI/A/25/3

² LI/WG/DEV/2/2

³ LI/WG/DEV/2/4, paragraph 38

⁴ LI/WG/DEV/2/4, paragraph 39

⁵ LI/WG/DEV/3/2

⁶ LI/WG/DEV/3/2, Annex I

amendments to Rule 5(3) of the Lisbon Regulations (Optional Contents of the International Application) and to Rule 16(1) of the Lisbon Regulations (Notification of Invalidation to the International Bureau). At its third session, which took place in Geneva from May 23 to 26, 2011, the Working Group agreed that the International Bureau should submit the afore-mentioned proposed amendments to Rule 5(3) and Rule 16(1) of the Lisbon Regulations⁷ to the Assembly of the Lisbon Union, for adoption at its session to be held in September/October 2011. The second set of draft provisions⁸ concerned the following issues: (i) basis for protection and definitions, (ii) filing of international applications, (iii) accession criteria for intergovernmental organizations, (iv) international registration, (v) scope of protection, (vi) prior use and (vii) procedures in contracting parties prior to the issuance of possible refusals and for challenging refusals issued. With regard to this second set of draft provisions, which left open the question as to the legal instrument by which they might be formalized, the Working Group was invited⁹ to indicate its recommendations both in respect of content and the possible initiation of a process that might result in a revision of the Lisbon Agreement and/or the conclusion of a protocol or a new treaty supplementing the Agreement¹⁰. Following a discussion about the second set of draft provisions (which were contained in Annex II to the document in question), the Working Group agreed at its third session that the Assembly of the Lisbon Union be requested to take note, at its session to be held in September/October 2011, of the following:

“(i) that the Working Group had made considerable progress on the development of the Lisbon system and that work would continue with a view to further preparing a process that might result in a revision of the Lisbon Agreement and/or the conclusion of a protocol or a new treaty supplementing the Lisbon Agreement;

⁷ LI/WG/DEV/3/3, paragraph 13 and Annex

⁸ LI/WG/DEV/3/2, Annex II

⁹ LI/WG/DEV/3/2, paragraphs 5 and 8(iii)

¹⁰ An interesting option was presented by the “Draft Treaty on the Protection of Geographical Indications” prepared by the International Bureau for the second session of the Committee on the International Protection of Appellations of Origin and Other Indications of Source, which was held in Geneva from December 1 to 5, 1975. It would have provided for a two-tier system through allowing reservations to be made. “One feature of the Draft is that it provides for two types of protection. The first type is covered by Chapter I (supplemented by the common provisions in Chapter III) and amounts to a simplification and modernization of the system of the Madrid Agreement. The second type of protection is dealt with in Chapter II (also supplemented by the common provisions in Chapter III), which provides for a system of registration similar to that of the Lisbon Agreement, but with some important changes. There could be a provision to the effect that Chapter II may be subject to reservation. There would thus be two groups of Contracting States: the first group would consist of those which, having made the above-mentioned reservation, would not be bound by Chapter II and, in respect of the substantive provisions, would apply only those of Chapter I and III in their relations with all other Contracting States; the second group would consist of those which, not having made the above-mentioned reservation, would have to apply all the substantive provisions of the Treaty in their relations with the other States in this second group, but would only need to apply Chapters I and III in their relations with States of the first group. A system of this kind would afford the widest possible geographical scope to the Treaty, since it is extremely probable that certain States would have difficulty in acceding to the Treaty without the possibility of reservation”, TAO/II/2, paragraph 4. The working document of the International Bureau also described the effects of this two-tier system on the institutional and administrative provisions of the Draft Treaty. “In paragraph 4 of the Introduction to this document, mention was made of the possibility of providing for a reservation whereby any state, at the time of signing the Treaty or depositing its instrument of ratification or accession, could declare that it was not bound by the provisions of Chapter II. Contracting States having made such a declaration would not be bound by the provisions of Chapter II and the corresponding provisions of the Regulations. The inclusion in the Treaty of the possibility of such a reservation would imply some changes in other provisions. Thus, Article 19 (Assembly) would have to contain a provision to the effect that only States bound by Chapter II could vote on questions exclusively of interest to them. On the other hand, Article 21 (Finances) could provide that, should contributions be necessary because of expenses arising from the administration of Chapter II, the Assembly could decide to reduce the contributions due by states not bound by Chapter II. Lastly, Article 22 (Regulations) would have to state in paragraph (3) that only States bound by Chapter II had the right to vote in order to amend the Regulations”, TAO/II/2, Comments on Articles 19 to 32, page 50

(ii) that the Working Group had requested the Secretariat to prepare a draft new instrument containing the draft provisions set out in Annex II, as revised on the basis of comments made in ... [that third] session of the Working Group, as well as any further draft provisions the inclusion of which would be necessary for making the draft new instrument as complete as possible;

(iii) that further meetings of the Working Group would be convened and would be held more frequently, preferably twice a year.”¹¹

Although some of the draft provisions¹² in Annex II of document LI/WG/DEV/3/2 (hereinafter referred to as the “Draft Provisions”) did touch upon certain dispute settlement aspects, a separate, complete study on the possibility of dispute settlement within the Lisbon system was not presented by the International Bureau to the third session of the Working Group. It was understood that such a study would feature on the agenda of the next, fourth session of the Working Group. Against this background, the main purpose of this paper is to examine the possibility of dispute settlement within the Lisbon system in some more detail.

In this context, it is worth recalling that the issue of dispute settlement was already addressed in the survey on the Lisbon system. The working document prepared by the Secretariat on the results of the survey¹³ gave the following summary of the contributions on that particular issue:

“115. Several contributions suggest that the Working Group should consider the possible introduction of a mechanism for the settlement of disputes concerning issues related to the Lisbon system.

116. The contribution from a Lisbon Member State indicates that the ground on which a declaration of refusal is based may be a piece of legislation or an administrative decree of normative character. The same is true for the international registration itself, which may also be based on legislative or administrative provisions. As a result, a country notifying a declaration of refusal can easily find itself in an inter-State conflict with the country of origin over the protection of the appellation of origin in question. It is therefore suggested that a means for efficiently settling such disputes might be developed. Another Lisbon Member State suggests that disputes arising from the implementation of the Lisbon Agreement could be settled via the WIPO Arbitration and Mediation Center.

117. The intergovernmental organization that answered the survey’s questionnaire also suggests consideration by the Working Group of the need for an efficient way of settling disputes between Contracting Parties of the Lisbon system, for example through the WIPO Arbitration and Mediation Center. This view is shared by one of the non-governmental organizations that contributed to the survey.

118. The contribution from one of the academic institutions suggests that WIPO could be an international basis for the resolution of conflicts between appellations of origin or geographical indications and prior users of those names. One of the non-governmental organizations is also of the opinion that the possibility should be given to interested private parties to refer any dispute related to the application of the Agreement to mediation and/or arbitration (via the WIPO Arbitration and Mediation Center). [...]

¹¹ LI/WG/DEV/3/3, paragraph 14

¹² See in particular draft provisions F and G, and paragraphs 34-39 of that document.

¹³ LI/WG/DEV/2/2. See also LI/WG/DEV/2/5 Prov. 2, paragraphs 243-252

119. A Lisbon Member State indicates in its contribution that, if a contracting country finds that an international registration that is notified to it conflicts with an appellation of origin from its own territory, it can only notify a declaration of refusal with respect to its own territory; declarations of refusal do not have effect in other Member States. In respect of those other Member States, the only option that remains open is invalidation of the effects of the international registration in each of the other Member States separately and only to the extent that the law of such other Member State would provide for invalidation in the given circumstances.”

WHAT KIND OF DISPUTES – WHAT KIND OF SETTLEMENT?

Dispute settlement may seem a relatively broad concept. However, in current legal thinking it is primarily associated with either alternative dispute resolution¹⁴, or the dispute settlement mechanism of the World Trade Organization (WTO)¹⁵. Both customary meanings of the term may have relevance for dispute settlement within the Lisbon system. The WIPO Arbitration and Mediation Center offers Alternative Dispute Resolution (ADR) options¹⁶ for the resolution of international commercial disputes between private parties. There seems to be nothing in the statutes of the Center that would limit its competence to disputes concerning only certain intellectual property titles¹⁷. It extends to disputes involving any intellectual property title, including appellations of origin and geographical indications. In the WTO, to date there have been 29 cases under the TRIPS Agreement involving the application of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)¹⁸. Two of them

¹⁴ Alternative dispute resolution is defined as “procedures for settling disputes by means other than litigation; e.g. by arbitration, mediation, or minitrials. Such procedures, which are usually less costly and more expeditious than litigation, are increasingly being used in commercial and labor issues ..., and in other disputes that would likely otherwise involve court litigation.” See at <http://legal-dictionary.thefreedictionary.com/alternative+dispute+resolution>. See also the issues of the Journal of International Dispute Settlement, <http://jids.oxfordjournals.org>. There is also a piece of European Union legislation on this issue, namely Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3). It is important to note, however, that “the term alternative dispute resolution is to some degree a misnomer. ... [I]t is more accurate to think of litigation as the alternative and ADR as the norm. Despite this fact, the term alternative dispute resolution has become such a well-accepted shorthand for the vast array of nonlitigation processes that its continued use seems assured.” See at <http://legal-dictionary.thefreedictionary.com/alternative+dispute+resolution>

¹⁵ David Palmeter, Petros C. Mavroidis: Dispute Settlement in the World Trade Organization, The Hague, London, Boston, 1999, pages 1-313. John H. Jackson: Designing and Implementing Effective Dispute Settlement Procedures: WTO Dispute Settlement, Appraisal and Prospects, in: The WTO as an International Organization, ed.: Anne O. Krueger, Chicago, London, 1998, pages 161-180. Daniel Gervais: The TRIPS Agreement. Drafting History and Analysis, London, 1998, pages 246-252. See also <http://www.cid.harvard.edu/cidtrade/issues/dispute.html>, <http://www.economics-dictionary.com/definition/Dispute-settlement.html>, and <http://www.economics-dictionary.com/definition/Dispute-Settlement-Mechanism.html>.

¹⁶ The Center offers the following ADR options: mediation, arbitration, expedited arbitration, expert determination. For more details see <http://www.wipo.int/amc/en/center/wipo-adr.html>. A bibliography on intellectual property arbitration and mediation can be found at <http://www.wipo.int/amc/en/center/bibliography/general.html>.

¹⁷ “The Rules governing the WIPO dispute-resolution procedures contain features that are especially suitable for disputes involving intellectual property, such as licensing agreements or other forms of transaction relating to patents, trademarks, copyright or know-how. However, the Rules can be used for the resolution of all commercial disputes, including those not involving intellectual property.” See at <http://www.wipo.int/amc/en/center/faq/index.html>. “The subject matter of these proceedings includes both contractual disputes (e.g. patent and software licenses, trademark coexistence agreements, distribution agreements for pharmaceutical products and research and development agreements) and non-contractual disputes (e.g. patent infringement).” See at <http://www.wipo.int/amc/en/center/background.html>. It is to be noted that examples of both mediations and arbitrations conducted under the WIPO Rules include trademark coexistence disputes. See at <http://www.wipo.int/amc/en/mediation/case-example.html> and at <http://www.wipo.int/amc/en/arbitration/case-example.html>.

¹⁸ http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A26#selected_agreement

directly related to the protection of geographical indications¹⁹. At the same time, these two categories represent the two major types of dispute resolution: resolution of commercial disputes between private parties as an alternative to court litigation (usually but necessarily with an international dimension), and settlement of disputes between states (or other subjects of international law) concerning the application of a “government-to-government” agreement under international public law.

The application of the Lisbon Agreement may lead to various types of disputes. They may concern the eligibility of a given appellation of origin for protection under the Agreement, conflicts with earlier rights, and enforcement of the rights conferred by the protection of appellations of origin. They can be disputes between private parties, between a competent authority of a contracting country²⁰ and an interested (private) party, between contracting countries, and, in theory, even between the International Bureau and the competent authority of a contracting country. Disputes may arise and be settled under the Lisbon Agreement, or the law of the contracting country concerned, or both. These categories may not be separated from one another in a watertight manner, their contours may easily become blurred. This is particularly due to the fact that in the Lisbon system, the ground on which a refusal is based can directly be a piece of legislation or an administrative decree of normative character²¹. The same is true for the protection in the country of origin: it can also be based on legislative or administrative provisions²². Therefore, as it has been already pointed out, a country making a declaration of refusal can easily find itself in an inter-state conflict with the country of origin over the protection of the appellation in question, although, in principle, it is the interested party that may resort, in the country making a declaration of refusal, to all the judicial and administrative remedies open to the nationals of that country²³.

What follows is an outline of the “dispute settlement”²⁴ options available under the current legal regime of the Lisbon system with occasional attempts to provide an outlook for their further development. Substantive aspects of the various possible debates, such as the yardstick for genericness or the issue of the substantive rules that should apply to conflicts between earlier trademarks and appellations of origin, will not be addressed.

SETTLEMENT OF DISPUTES ARISING BEFORE THE INTERNATIONAL REGISTRATION OF AN APPELLATION OF ORIGIN

Under Article 5(1) of the Lisbon Agreement it is only the competent authority of the contracting country that can request the international registration of an appellation of origin²⁵, although, it can only do so in the name of those having the right to use the appellation:

¹⁹ European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, DS174, DS290, the report in both cases was adopted by a single Panel. See at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds174_e.htm and at http://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds174sum_e.pdf.

²⁰ Although there is wide support within the Working Group for opening up the Lisbon system to the accession of competent intergovernmental organizations (LI/WG/DEV/2/4, paragraphs 12-17), and a study (LI/WG/DEV/2/3) and a Draft Provision (LI/WG/DEV/3/2, Annex II, Draft Provision C, paragraphs 19-24) have been prepared on this issue, this paper sticks to the current terminology of the Lisbon Agreement and its Regulations.

²¹ See Rule 9(2)(iii) of the Lisbon Regulations

²² See Rule 5(2)(vi) of the Lisbon Regulations

²³ See Article 5(5) of the Lisbon Agreement

²⁴ In the broadest sense of this term.

²⁵ See also Rule 5(1) of the Lisbon Regulations, which provides, *inter alia*, that “[a]n international application shall be presented to the International Bureau by the competent authority of the country of origin”.

“The registration of appellations of origin shall be effected with the International Bureau, at the request of the Authorities of the countries of the Special Union, in the name of any natural persons or legal entities, public or private, having, according to their national legislation, the right to use such appellations.”

In addition, it follows clearly from Article 1(2) of the Lisbon Agreement that protection of the appellation in the country of origin is a *sine qua non* condition of protection and international registration under the Lisbon Agreement²⁶. Whether or not a certain appellation of origin is granted protection in its country of origin is an internal decision of the country of origin²⁷. It is to be taken under the relevant legislation applicable in that country and there is no provision in the Lisbon Agreement that would interfere with that decision. The provisions of the Lisbon system only come into play once the appellation of origin has been granted protection in the country of origin and the competent authority has presented an international application to the International Bureau, requesting the international registration of the appellation. Concerning the decision whether or not the appellation of origin should be granted protection in its country of origin, the interested party or parties may have recourse to the administrative and judicial remedies open to them under the legislation of the country of origin²⁸. In that respect, contracting countries may have to comply with the requirements laid down by Articles 41.2, 41.3 and 62 of the TRIPS Agreement to the extent that the protection of the appellation is subject to that right being granted or registered²⁹. However, where protection is based on legislative or administrative provisions, those TRIPS Agreement requirements may not be regarded as applicable. What seems most important is that, pursuant to Article 62.5 of the TRIPS Agreement, where the protection of appellations of origin is based on registration or any other administrative decision, the final administrative decision has to be subject to review by a judicial or quasi-judicial authority. For instance, in Hungary, the Hungarian Intellectual Property Office is responsible for registering (i.e. granting protection to) geographical indications (including appellations of origin) at the national level. Its decisions in those matters are reviewed, at the request of the interested party, by the Metropolitan Court of Budapest, whose decisions can also be appealed³⁰.

In this context, the question may arise whether the competent authority of the country of origin has a duty to initiate the international registration of an appellation of origin already protected in that country if the natural persons or legal entities having the right to use the appellation have requested that. As under the current provisions of the Lisbon system it is only the competent authority of the country of origin that can request the international registration and present an application for that purpose to the International Bureau, it may lead to a loss of right on the part of the holders of the right to use the appellation of origin if

²⁶ In accordance with this, Rule 5(2)(iii) of the Lisbon Regulations requires that [t]he international application shall indicate [...] the title and date of the legislative provisions, the judicial decisions or the date and number of the registration by virtue of which the appellation of origin is protected in the country of origin”. In addition, under Rule 5(3)(v), the international application may contain a copy in the original language of these provisions, decisions or registration. It is worth noting in this context that the Working Group, at its third session, recommended the Assembly of the Lisbon Union to adopt an amendment to Rule 5(3) whereby a new sub-paragraph would be added to it to the effect that the international application may also contain “any further information the competent authority of the country of origin wishes to provide concerning the protection granted to the appellation of origin in that country, such as additional particulars of the area of production of the product and a description of the connection between the quality or characteristics of the product and its geographical environment”. LI/WG/DEV/3/3, paragraph 13, and Annex, page 4

²⁷ The same goes for the issue of entitlement, i.e. who has the right to use the appellation of origin.

²⁸ It is also a matter for the legislation of the country of origin to determine whether and on what grounds applications for national protection of appellations of origin can be opposed by third parties such as holders of earlier trademark rights or geographical indications.

²⁹ Supposing, of course, that this kind of protection and the rights conferred do indeed fall within the scope of application of the TRIPS Agreement pursuant to its Articles 1 through 5, and that contracting countries do not wish to discriminate against their own nationals.

³⁰ See Articles 46/A(2), 77-93, 112(6) and 115 of Act XI of 1997 on the protection of trade marks and geographical indications.

the competent authority does not comply with their request and refuses to present an international application in their name. If, under the legislation of the country concerned, the competent authority has no discretionary powers whatsoever and cannot refuse to request the international registration of an appellation already protected in that country³¹, no particular problem may arise, as the interested parties (apart from extreme cases of administrative malpractice) can always have their “right” to seek international registration enforced. On the other hand, should the competent authority be empowered to exercise discretion and refuse to present an international application, Articles 41.2, 41.3 and 62 of the TRIPS Agreement might come into play, and the procedures within the country of origin concerning the presentation of an international application to the International Bureau might have to comply with the requirements following from those provisions, as there can be no doubt that what takes place before the International Bureau under the Lisbon Agreement is a registration procedure, and the request from the competent authority of the country of origin is a prerequisite of initiating that procedure in the absence of which a loss of right occurs on the part of the interested parties³².

The Working Group has already addressed the concerns that may arise in that regard³³. As a result, one of the Draft Provisions discussed at its third session includes an option that would allow an international application to be presented directly to the International Bureau by the “beneficiaries” of the geographical indication or appellation of origin, or by a federation representing them. However, even under that option, the existence as well as the particulars of national protection in the country of origin would have to be certified by the competent authority of that country³⁴.

No inter-state conflict seems likely to arise prior to the international registration of an appellation of origin. However, disputes might occur between the competent authority and the International Bureau as to whether the international application is regular or not. Failure to correct the irregularity found by the International Bureau may eventually lead to the rejection of the international application³⁵. There is no remedy against such a decision of the International Bureau. The same goes for the case where the international application is not considered as such³⁶. However, neither of these decisions prevent the competent authority from presenting later on a regular international application to the International Bureau concerning the same appellation of origin. It is also presumed that, in correcting any irregularity of the international application, the competent authority and the International Bureau cooperate with each other constructively and in good faith.

³¹ This is the case e.g. under Hungarian law. Under Article 116/F(2) of Act XI of 1997 on the protection of trade marks and geographical indications “[w]here the application does not comply with the [applicable] requirements [...], the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities. Failing to comply with the said invitation, the application shall be forwarded to the International Bureau as filed by the applicant.” However, it is to be noted that, under Article 116/E(3) of the same Act, if the international application is filed before the national registration of the appellation of origin, the date of that registration of the appellation of origin has to be considered the date of filing an international application with the International Bureau through the Hungarian Intellectual Property Office as the competent authority of the country of origin.

³² See footnote 29.

³³ LI/WG/DEV/3/2, Annex II, paragraph 17.

³⁴ Draft Provision B, Option 2 reads as follows: “(3) (a) Such an international application shall be presented to the International Bureau by the entity, notified as the competent authority for this purpose under the procedures of the Agreement by the Contracting Party concerned or, in the case of paragraph 5 of [Draft Provision A], the Contracting Parties concerned. (b) Alternatively, the international application may be presented directly to the International Bureau by the holder or holders of the right to use the geographical indication or appellation of origin in question, or a federation or association having legal standing to assert such rights, provided that the application is accompanied by a document signed by the competent authority referred to in sub-paragraph 3(a) certifying that the particulars specified in the international application correspond to the particulars in the legislative or administrative act, judicial decision or registration referred to in paragraph 2 above.” LI/WG/DEV/3/2, Annex II, page 7

³⁵ See Rule 6(1) of the Lisbon Regulations.

³⁶ See Rule 6(2) of the Lisbon Regulations.

SETTLEMENT OF DISPUTES ARISING AFTER THE NOTIFICATION OF THE INTERNATIONAL REGISTRATION OF AN APPELLATION OF ORIGIN

The competent authorities of the contracting countries that have received notice of the registration of an appellation of origin have the right to refuse to protect it in their territory, in part or in whole. Such a refusal of protection has to be the subject of a declaration to that effect, which has to meet two requirements. The first is a time requirement: the refusal has to be notified to the International Bureau within a period of one year from the date of receipt by that contracting country of the notice of registration. The second is a requirement regarding content: the declaration of refusal has to specify the grounds for refusal³⁷. Article 5(3) of the Lisbon Agreement and Rule 9(2)(ii) of the Lisbon regulations require an indication of the grounds for a declaration of refusal if the competent authority of the contracting country declares that it cannot ensure the protection of an appellation of origin whose international registration has been notified to it, but neither the Agreement, nor the Regulations specify the grounds on which a declaration of refusal can be based. In principle, refusal can be based on any situation of fact or law. However, grounds for refusal cannot be entirely “fancy”, they have to be somehow related to a *de facto* or *de jure* situation that would prevent the grant of protection³⁸. For instance, a contracting country may refuse to protect an appellation of origin because it considers that the appellation has already acquired a generic character in its territory in relation to the product to which it refers or because it considers that the geographical designation does not conform to the definition of an appellation of origin in the Lisbon Agreement. It also happens in practice, and it seems broadly accepted, that an internationally registered appellation of origin is, and can be, denied protection in a contracting country to the Lisbon Agreement because existing prior rights would conflict with that appellation. This seems to be the only way³⁹ contracting countries to the Lisbon Agreement can apply the mandatory exceptions provided for in Articles 24.5 and 24.8 of the TRIPS Agreement concerning prior good faith trademark rights, and the right to use, in the course of trade and without misleading the public, a person’s name⁴⁰. They cannot, for that purpose, invoke Article 5(6) of the Lisbon Agreement as it

³⁷ LI/WG/DEV/1/2 Rev. Annex II, paragraphs 16 and 18

³⁸ “Specific grounds on the basis of which protection could be refused that have been mentioned in contributions include: (i) absolute grounds of refusal, such as ‘the denomination/indication does not meet the definition’, the denomination/indication is ‘generic’ or the denomination/indication lacks distinctiveness; (ii) relative grounds for refusal, such as ‘the denomination/indication conflicts with a trademark or other prior right’; (iii) other grounds for refusal, such as ‘the denomination/indication has a deceptive character’ or ‘the denomination/indication breaches public order’.” LI/WG/DEV/2/2, Annex, paragraph 71. See also Christophe Geiger, Daniel Gervais, Norbert Olszak, Vincent Ruzek: CEIPI Answer to the Survey of the WIPO on the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, Strasbourg, February 2010, page 11, at http://www.wipo.int/export/sites/www/lisbon/en/submissions/pdf/ceipi_e.pdf

³⁹ But *cf.* Article 4 of the Lisbon Agreement.

⁴⁰ “[T]he relationship between geographical indications/appellations of origin and prior rights should be defined in greater detail (for example, as to the date of priority of each right, the order of precedence, the validity of rights or for the evaluation of whether an application was filed in good faith). One of the academic institutions that contributed to the survey has indicated that the question whether precise substantive rules should be introduced as to the conditions for determining whether an appellation of origin/geographical indication registered under the Agreement can be refused or invalidated, requires a nuanced response. Although it might be useful to list such grounds, it is equally important to ensure flexibility in their implementation, so as to allow the different national legal systems and practices and cultures to find their place within the Lisbon system. It is well known that the problem of the grounds for the refusal of protection and invalidation are the subject of huge differences on the global scene. As such, a consensus on the matter may appear illusory, specifically on the question of the definition of the generic character of a denomination or indication and perhaps even more on that of the relationship between appellations of origin/geographical indications and prior rights. On the latter issue, certain national systems deny protection of a denomination or indication if it interferes with third parties’ prior trademark rights in the country where protection for it is sought, while other domestic systems do not necessarily deny protection of an appellation of origin/geographical indication in such situations. In this connection, the contribution specifically refers to the domestic law of the European Union, under which registration is refused if this would conflict with prior rights to a famous trademark, but under which, in respect of prior trademarks that

would only provide for a phasing-out period of two years, at most, for interested parties to terminate the use of prior trademarks and/or names conflicting with a protected appellation.

Therefore, there can be a number of interested parties holding earlier rights or having other legitimate interests for whom it could be quite material to ensure that their competent authority does indeed notify a declaration of refusal to the International Bureau. In view of this, Draft Provision G(3) would provide that:

“Interested parties shall be afforded a reasonable opportunity to file petitions for the competent authority to issue a refusal [...]”

The wording of this Draft Provision closely resembles that of Article 15.5 of the TRIPS Agreement. Such a provision would appear justified as, in the absence of a declaration of refusal based on their rights or legitimate interests, the only option left to holders of earlier rights and other interested parties is to seek invalidation of the effects of an international registration in the contracting country concerned. A similar provision exists under Hungarian law. While the Hungarian competent authority does carry out a substantive examination with respect to the international registration (including whether it conflicts with earlier geographical indications and certain earlier trademarks⁴¹), there is still a possibility for any person to file an observation with that authority to the effect that the appellation of origin constituting the subject matter of the application or the application itself does not comply with one or more of the applicable requirements⁴². The EU’s legislation on geographical indications also establishes procedures for objecting to the EU-wide registration of a given indication at both, national and European, levels⁴³. At the national level, any natural or legal person having a legitimate interest and established or resident in the Member State concerned may lodge an objection to the application. At the European level, any Member State or third country, and any natural or legal person having a legitimate interest, established or resident in a Member State other than that applying for the registration or in a third country may object to the proposed registration.

No inter-state conflict seems likely to arise directly prior to the notification of a declaration of refusal. However, cases may occur where consultations are launched between the countries concerned as to whether and how a declaration of refusal should be issued concerning a given international registration of an appellation of origin. In fact, consultations of this kind were among the factors triggering a review of the Lisbon system and the setting up of the Working Group⁴⁴. Under the provisions of Rule 10 of the Lisbon Regulations concerning irregular declarations of refusal, it is highly unlikely that, in that regard, any dispute might occur between the competent authority and the International Bureau that would require some sort of “settlement”.

do not have a particular reputation, a conditional coexistence mechanism has been created. The contribution, therefore, suggests a balanced approach that could consist of laying down a general exhaustive list of the criteria on which invalidation or refusal of protection could be based and encouraging Member States to implement administrative and judicial procedures capable of guaranteeing that account is taken of the different interests at stake (notably the legitimate interests of holders of prior rights), while still leaving Member States a certain flexibility in the implementation of the criteria in question, within the spirit of the relevant provisions of the TRIPS Agreement.” LI/WG/DEV/2/2, Annex, paragraph 69

⁴¹ Article 106(1)(c) of Act XI of 1997 on the protection of trade marks and geographical indications provides that “[a] geographical indication shall be excluded from protection [...] if it is identical with or similar to an earlier trade mark and its use – due to the reputation, renown or lasting presence on the market of the trade mark – would result in a likelihood of confusion on the part of public”.

⁴² See Articles 116/K(1)-(2) of Act XI of 1997 on the protection of trade marks and geographical indications

⁴³ See Articles 5(5) and 7 of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 93, 31.3.2006, p. 12).

⁴⁴ LI/A/23/1, in particular paragraphs 3 and 4, and LI/A/23/2

SETTLEMENT OF DISPUTES CONCERNING DECLARATIONS OF REFUSAL

Most of the calls for exploring the possibility of introducing mechanisms for settling disputes within the Lisbon system seem to relate directly to disputes over declarations of refusals. In that context, there are basically two sorts of dispute settlement mechanisms: one of them is expressly provided for in the Lisbon Agreement itself and is open to the “interested party”, while the other one is not explicitly provided for by the Agreement itself but it is still inherent in the system established by the Agreement and is mainly open to the contracting countries.

Under Article 5(5) of the Lisbon Agreement

“[t]he interested party, when informed by his national Authority of the declaration [of refusal] made by another country, may resort, in that country, to all the judicial and administrative remedies open to the nationals of that country”.

What that Article provides for is a “normal” remedy for private applicants/right holders similar to those that are available when a patent or trademark application is refused by an IP office⁴⁵. The requirements following from Articles 41.2, 41.3 and 62 of the TRIPS Agreement⁴⁶ seem applicable to those remedies at least in those cases where the refusal is based on an individual administrative or court decision. However, in the Lisbon system, the ground on which the refusal is based can directly be a piece of legislation or an administrative decree of normative character. It is not entirely clear how refusals based on such grounds can be challenged by the interested (private) party within the legal system of the country concerned.

Even with respect to the “normal” remedies open to private parties, a number of concerns were raised in the course of the survey on the Lisbon system. There was a suggestion that Article 5(5) of the Lisbon Agreement should be amended to introduce a minimum time-limit for the interested parties to resort to judicial remedies, as the time-limits under certain laws are so short that recourse to the remedies is virtually impossible⁴⁷ (which might be regarded as not being fully compliant with Articles 41.2, 41.3 and 62 of the TRIPS Agreement). Another contribution highlighted the fact that the consideration of a possible withdrawal of a refusal based on objections or oppositions from holders of earlier rights or other parties having a legitimate interest in denying the appellation of origin protection in the country concerned may directly affect the rights and interests of these parties. Therefore, their involvement in the procedures that might lead to a withdrawal of a declaration of refusal may certainly be called for:

“in respect of refusal notices that had been based on a domestic objection/opposition procedure, Member States should establish appropriate domestic procedures to ensure that third parties who had participated in the objection/opposition procedure be given advance notice if the country in question intends to withdraw the refusal: the withdrawal should only be effected if it has been established through a final and binding decision that protection has been granted.”⁴⁸

However, these concerns are not directly dealt with in the Draft Provisions, which may be partly due to the fact that the Working Party, at its second session, concluded that, concerning declarations of refusals and the subsequent procedures, no amendment of the current legal framework was necessary⁴⁹. Nevertheless, Draft Provision G(5) seems to fulfill the wishes of those advocating arbitration or mediation. That provision would provide that

⁴⁵ *c.f. e.g.* Article 5(3) of the Madrid Agreement Concerning the International Registration of Marks

⁴⁶ See paragraph 13 of this paper.

⁴⁷ LI/WG/DEV/2/2, Annex, paragraph 74

⁴⁸ LI/WG/DEV/2/2, Annex, paragraph 77

⁴⁹ LI/WG/DEV/2/4, paragraph 29

interested parties would have to be afforded a reasonable opportunity to negotiate the withdrawal of a refusal⁵⁰. The comment of the International Bureau on that draft provision is that

“the Working Group might wish to address the question as to whether the provision should also specify that interested parties would, alternatively, have the opportunity to resort to arbitration or mediation.”⁵¹

Although it is not crystal clear what “negotiations” between the interested parties on the withdrawal of a refusal can exactly mean in this context and how this concept is related to the idea of arbitration or mediation, it can be assumed that the main purpose of the Draft Provision in question would be to provide for alternative dispute resolution between interested (private) parties concerning a declaration of refusal and its eventual withdrawal. Such debates are most likely to arise where the refusal was based on objections or oppositions from holders of earlier rights or other interested parties. There seems to be nothing in either the current legal framework, or in the Draft Provisions that would prevent the parties to such a debate from referring their case to the WIPO Arbitration and Mediation Center for mediation, arbitration, expedited arbitration, or expert determination⁵². To what extent the competent authority is required to take into account the results of alternative dispute resolution is primarily a matter for national legislation.

Concerning the resolution of disputes between contracting countries over a declaration of refusal, the Acts of the Diplomatic Conference provide some guidance⁵³:

“A refusal must be accompanied by the grounds on which the country decides not to grant protection. These grounds constitute a possible basis for discussion for the purpose of reaching an understanding.”

This passage from the Acts of the Lisbon Conference shows that the “Founding Fathers” of the Lisbon system have envisaged some sort of dispute settlement (in their words: discussion for the purpose of reaching an understanding) to take place between the contracting countries concerned following a notification of refusal. According to this approach, a notification of refusal is not necessarily the end of the registration procedure but may rather serve as a starting point for another stage in that procedure. That stage may result in the withdrawal of the declaration of refusal or in a statement of grant of protection following a refusal under Rules 11 and 11^{bis}(2), respectively, of the Lisbon Regulations. The doctrine of exhaustion of local remedies by private parties⁵⁴ does not seem to apply to discussions between contracting countries for the purpose of reaching an understanding on a refusal or its withdrawal. These inter-state discussions can be launched irrespective of whether the interested party has already exhausted all the judicial and administrative remedies in the country that issued a declaration of refusal, or whether he has at all resorted to these remedies. Still, it goes without saying that these different processes can easily be interlinked and can mutually affect each other. Furthermore, it is not inconceivable that a refusal under the Lisbon Agreement may eventually lead to dispute settlement between the countries concerned under the WTO DSU if such a refusal is also challenged on the ground that it amounts to a failure to comply with obligations under the TRIPS Agreement, and that

⁵⁰ LI/WG/DEV/3/2, Annex II, page 24

⁵¹ LI/WG/DEV/3/2, Annex II, paragraph 39

⁵² See paragraph 8 and footnote 17 of this paper

⁵³ See LI/WG/DEV/1/2 Rev., Annex II, paragraph 18, footnote 9, Acts of the Lisbon Conference, p. 817. See also Daniel J Gervais: Reinventing Lisbon: The Case for a Protocol to the Lisbon Agreement (Geographical Indications), *Chicago Journal of International Law*, Vol. 11 No. 1, Summer 2010, pages 95-96

⁵⁴ David Palmetier, Petros C. Mavroidis: *Dispute Settlement in the World Trade Organization*, The Hague, London, Boston, 1999, page 30

the settlement of the dispute in the WTO may eventually lead to the withdrawal of the declaration of refusal or to a statement of grant of protection following a refusal under the relevant provisions of the Lisbon system.

It is worth noting that the draft treaty on the protection of geographical indications, prepared by the International Bureau of WIPO in 1974-75, contained a provision [Article 17(5) of the draft treaty] on the settlement of disputes through diplomatic channels:

“The Contracting States shall endeavor to settle through diplomatic channels all cases of violation of this Treaty brought to their notice.”⁵⁵

In addition, in the late 1990s various efforts were made in the WTO’s Council for TRIPS to establish a multilateral register of geographical indications for wines and spirits under Article 23.4 of the TRIPS Agreement. Proposals from both the European Communities and their Member States⁵⁶, and Hungary⁵⁷ extended to the establishment of opposition/challenge procedures. Hungary suggested the establishment of a special arbitration system in which final and binding decisions would have been taken with *erga omnes* effects⁵⁸. However, since then no agreement has been reached in the WTO on the establishment of a multilateral register under Article 23.4 of the TRIPS Agreement, although, as part of the Doha Round, a compromise proposal was submitted in 2008 with the support of more than 100 WTO Members⁵⁹.

No particular debate is likely to arise between the International Bureau and the contracting countries (or their competent authorities) over a withdrawal of a declaration of refusal or a statement of grant of protection following a refusal.

SETTLEMENT OF DISPUTES CONCERNING INVALIDATIONS

Rule 16(1) of the Lisbon Regulations provides for the invalidation of the effects of an international registration:

“Where the effects of an international registration are invalidated in a contracting country and the invalidation is no longer subject to appeal, the invalidation shall be notified to the International Bureau by the competent authority of that contracting country.”

This provision, which was introduced in 2002, seems to apply to invalidation through administrative or judicial decisions. This is what can be deduced from the condition that the invalidation be no longer subject to appeal. Furthermore, as notification of invalidation as well as its entry in the International Register and its communication to the competent authority of the country of origin are to be based on a final administrative or judicial decision, there seems to be room for neither a provision similar to that in the second sentence of

⁵⁵ TAO/II/2, page 47

⁵⁶ IP/C/W/107, 28 July 1998

⁵⁷ IP/C/W/234, 11 December 2000

⁵⁸ Admittedly, such *erga omnes* effects could only be conceived where the decision relates to compliance with the definition of the geographical indication or to its misleading nature. This is how the Hungarian proposal was refined later on: “Geographical indications successfully challenged on the basis of Article 22.1 or Article 22.4 of the Agreement on TRIPS shall not be registered. Geographical indications successfully challenged on the basis of Article 24.4, Article 24.5 or Article 24.6 of the Agreement on TRIPS shall be registered and the registration shall refer to the successful challenge. Participating Members shall not refuse protection for registered geographical indications. A successful challenge made on the basis of Article 24.4, Article 24.5 or Article 24.6 of the Agreement on TRIPS shall justify the refusal of protection only in respect of the Member or Members which successfully challenged registration.” IP/C/W/255, 3 May 2001, Annex, proposal for Part D, paragraphs 3-5

⁵⁹ TN/C/W/52, 19 July 2008. This proposal envisages no opposition/challenge procedure whatsoever. For the current developments, see http://www.wto.org/english/news_e/news11_e/trip_ss_03mar11_e.htm.

Article 5(5) of the Lisbon Agreement, nor informal discussions between the contracting countries concerned about the invalidation. Withdrawal of a notification of invalidation is not foreseen, either.

It is worth noting in this context that the Working Group, at its third session, recommended the Assembly of the Lisbon Union to adopt an amendment to Rule 16(1) whereby a new subparagraph (v) would be added to it to the effect that the notification of invalidation also has to contain the grounds on the basis of which the invalidation was pronounced⁶⁰. Indication of the grounds for invalidation in those notifications may serve a number of useful purposes. However, within the current legal framework, the grounds indicated in notifications of invalidation are not likely to constitute a possible basis for discussion for the purpose of reaching an understanding between the countries concerned in the same manner as with respect to grounds for refusal.

That makes a contracting country's internal procedural framework for invalidations even more important, in particular for interested (private) parties. In view of their administrative and/or judicial nature, these procedures seem to fall under, and have to comply with, Articles 41.2, 41.3 and 62 of the TRIPS Agreement. In that regard, a number of concerns were also raised in the course of the survey on the Lisbon system. There was a suggestion

“that the Agreement should be amended so as to require Member States to establish appropriate rules and procedures in their domestic law allowing for invalidation of the effects of an international registration in their territory, in particular, when such effects would conflict with prior rights or the requirements for protection are not fulfilled”⁶¹.

However, it was noted at the second session of the Working Group that

“most delegations did not believe that the rules and procedures allowing for invalidation of the effects of an international registration at the national level had to be dealt with in the Agreement itself and took the view that the rules and procedures in question had to be dealt with at the domestic level.”⁶²

The Draft Provisions do not address this issue.

No particular debate is likely to arise between the International Bureau and the contracting countries (or their competent authorities) over a notification of invalidation.

SETTLEMENT OF ENFORCEMENT DISPUTES

Contracting countries of the Lisbon Agreement are under the obligation to ensure protection against any usurpation or imitation of the appellation of origin⁶³. It seems that, just like under the provisions of the TRIPS Agreement⁶⁴, this may take the form of either civil judicial procedures initiated by right holders, or enforcement by administrative action (be it upon request or *ex officio*). Article 8 of the Lisbon Agreement provides that

“Legal action required for ensuring the protection of appellations of origin may be taken in each of the countries of the Special Union under the provisions of the national legislation:

⁶⁰ LI/WG/DEV/3/3, paragraph 13, and Annex, page 4

⁶¹ LI/WG/DEV/2/2, Annex, paragraph 98

⁶² LI/WG/DEV/2/4, paragraph 35

⁶³ See Article 3 of the Lisbon Agreement

⁶⁴ *c.f.* *e.g.* Articles 22.2, 23.1 and 42 of the TRIPS Agreement and the footnote to its Article 23.1

1. at the instance of the competent Authority or at the request of the public Prosecutor;
2. by any interested party, whether a natural person or a legal entity, whether public or private.”

These procedures are regulated by the national legislation of the contracting country (in accordance with its international obligations such as those flowing from the TRIPS Agreement). Under this provision of the Lisbon Agreement, disputes occur between those committing usurpation or imitation and either the authority taking administrative action, or the interested party. These disputes might take on an inter-state dimension, too (*e.g.* where the interested party is unable to ensure protection for the appellation of origin due to deficiencies in the national law or administrative/judicial practice, or where the competent authority fails to take the necessary administrative action against usurpation or imitation). The draft treaty of 1975 did foresee settlement of disputes through diplomatic channels in this regard, too⁶⁵.

The survey on the Lisbon system did not extend to enforcement-related issues. The Draft Provisions do not deal with them, either.

As the International Bureau has no role to play in the implementation of Article 8 of the Lisbon Agreement, no dispute can arise between the Bureau and any contracting country in that regard.

⁶⁵ See paragraph 28 of this paper.

GEOGRAPHICAL INDICATIONS NEWS FROM LATIN AMERICA

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BACKGROUND

Before the approval of the WTO TRIPS Agreement in 1994, most legislation in Latin American countries only used the term “appellations of origin” to refer to signs identifying products with a certain quality or characteristics due or linked to their geographical origin. The definition of “appellations of origin” included in Latin American legislation corresponds to that which appears in the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement).¹

The TRIPS Agreement introduced the concept of geographical indication. While this is based on the Lisbon Agreement concept of “appellation of origin”, it differs in two significant ways:

- a) rather than granting protection to the “name” of a place, it awards protection to the “indication” that identifies a product as being from the territory of a country, region or area of that country. The term “indication” means a sign that is used as an indicator;
- b) in order to establish the link between the “indication” and the territory where the relevant product is from, there are three separate criteria: the quality of the product, the characteristics of the product (already provided for in the Lisbon Agreement) and the reputation of the product.

Furthermore, the TRIPS Agreement did not establish the same protection standard for all “geographical indications” or create a multilateral notification and registration system for such indications. These issues have therefore been on the negotiating agenda within WTO and in bilateral agreements.

BILATERAL NEGOTIATIONS

Agreements with the United States of America

The United States of America has free trade agreements that are in force with seventeen (17) countries, of which nine (9) are in Latin America: Mexico (1994); Chile (2004); El Salvador, Guatemala, Honduras and Nicaragua (2006); Dominican Republic (2007); Costa Rica and Peru (2009). The country has also concluded agreements with Colombia and Panama, which are pending approval but will be analyzed in this document. Except for the agreement negotiated with Mexico, which predates the TRIPS Agreement, all the others include provisions that seek to clarify the scope of commitments on “geographical indications” undertaken by WTO Members. All of the agreements retain the definition of “geographical indication” provided for in Article 22.1 of the TRIPS Agreement.²

¹ In Article 2 of the Lisbon Agreement, “appellation of origin” means 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.

² In the TRIPS Agreement, “geographical indications” are defined as those 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.

The first issue addressed in free trade agreements with the United States of America relates to signs that can be a geographical indication, and it should be pointed out that any sign or combination of signs, in any form, can constitute a geographical indication.³ The FTA with Chile also includes a list of examples of signs, along the same lines as Article 15.1 of the Section on Trademarks in the TRIPS Agreement.

The second issue relates to the possibility of registering a geographical indication as a mark. Given that the TRIPS Agreement does not define the system for the protection of geographical indications, WTO member countries may protect them using various legal means, ranging from a special registry to approaches based on the trademark system or the application of unfair competition provisions. As a result, all agreements negotiated with the United States of America indicate that Parties may include “geographical indications” within the signs that may be protected as marks in their territory, to the extent that these “geographical indications” make it possible to identify a product as originating from the territory of a Party, or a region or area within the territory, when a specific quality, reputation or other characteristic of the product or service is essentially attributable to its geographical origin.

Given that marks are also used to identify services, in agreements concluded with Chile, the Central American countries and Dominican Republic, it is stated that “geographical indications” may identify goods or services, although the definition of geographical indication clearly establishes that such signs only identify products.⁴ This issue was negotiated in a similar way in the Trade Promotion Agreement with Panama, but it was drafted more clearly in the agreements with Colombia and Peru, by stating that signs that can be used in trade as “geographical indications” may constitute collective marks or certification marks, without referring to what may be identified by a mark.⁵

In terms of the class of marks that can be constituted by a geographical indication, only the agreements with Colombia and Peru state that they must be collective marks or certification marks, while for the Dominican Republic and Central American countries, national implementation laws do specify the type of marks permitted.

The third issue tackled in agreements concluded with the United States of America refers to means of protection for “geographical indications” and their characteristics. As stated previously, the TRIPS Agreement does not oblige Parties to establish a specific protection system for “geographical indications” and neither do agreements negotiated with the United States of America. In the agreement with Chile and the CAFTA-DR, however, Parties are obliged to set up the legal means to apply for protection of the “geographical indications”. As mentioned above, one of those legal means can be the system for (collective and certification) marks.

³ See Article 17.4 of the FTA with Chile; Article 15.3 of the CAFTA-DR (concluded with the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua); Footnote No. 4 of Article 16.2.2 of the Trade Promotion Agreement with Peru; Footnote No. 4 of Article 16.2.2 of the Free Trade Agreement with Colombia; and Article 15.2.1 of the Trade Promotion Agreement with Panama.

⁴ See footnote No. 3 of Article 17.2 and Article 17.4 of the Free Trade Agreement with Chile; and Articles 15.2.1 and 15.3 of the CAFTA-DR.

⁵ See Article 16.2 in both agreements.

In the CAFTA-DR, the obligation includes the establishment of the “legal means to identify” such signs, which means providing a system that enables applicants to provide information on the quality, reputation or other characteristics of the requested geographical indication.⁶ The provisions of the Trade Promotion Agreement with Panama are similar. In the agreements with Colombia and Peru, on the other hand, the obligation was eliminated to leave just a few aspects that protection systems must feature when they are regulated in the national legislation of Parties. and these are similar in all agreements:

- (a) regulations for the system must be available to the public;
- (b) there can be no requirement that applications be filed by Parties on behalf of the people concerned;
- (c) applications must be processed with a minimum of formalities. Although the term “formalities” is not defined in the agreements, it should be understood as referring to regulatory requirements that are not directly related to the substantive criteria for protection;
- (d) applications must be published for the purposes of opposition, although it is not stated who would have the right to submit an opposition;
- (e) the opposition procedure must be provided for in national legislation;
- (f) the grounds for refusing protection or registration of a geographical indication must include the following:
 - (i) the geographical indication is confusingly similar to a pending trademark registration application, filed in good faith, or registered trademark; and
 - (ii) the geographical indication is confusingly similar to a pre-existing mark, for which rights were acquired under the legislation of the Party where protection or registration of the geographical indication is being sought.⁷

The CAFTA-DR and the Trade Promotion Agreement with Panama clarify that, for the purposes of refusing protection or registration of a geographical indication, the Parties are understood also to have established similar reasons within the grounds for refusing registration of a mark. This means: (1) that the mark is confusingly similar to a registered geographical indication; and (2) that the mark is confusingly similar to a pre-existing geographical indication for which rights were acquired in accordance with the Party’s law.⁸

As for the content of the right associated with the recognition or registration of a geographical indication, the agreements concluded with the United States of America contain no specific provision, such that the minimum required under Article 22.2 of the TRIPS Agreement should apply. This means preventing uses of “geographical indications” considered to mislead the public concerning the geographical origin of the product; or that constitute acts of unfair competition, under the terms of Article 10bis of the Paris Convention.

Agreements with the European Union

The protection regime for “geographical indications” is one of the main areas that the European Union includes in its trade negotiations. The importance of this protection corresponds to the value added that these signs generate for the products they identify, which gives producers a comparative advantage on international markets. The European Union’s objectives for “geographical indications” are: (a) establishing a multilateral register;

⁶ See footnote No. 8.

⁷ See Article 17.4.10 of the Free Trade Agreement with Chile; Article 15.3.7 of CAFTA-DR; Article 16.3.2 of the Trade Promotion Agreement with Peru; Article 16.3.2 of the Free Trade Agreement with Colombia; and Article 15.3.7 of the Trade Promotion Agreement with Panama.

⁸ See footnote No. 9 of Article 15.3.7 of CAFTA-DR and footnote No. 10 of Article 15.3.7 of the Trade Promotion Agreement with Panama.

(b) extending the additional protection under the TRIPS Agreement to products other than wines and spirits; (c) removing prior trademarks that consist of Community GIs; and, where possible, (d) protecting “geographical indications” that have become generic in other countries or, at least preventing them from becoming generic.⁹

In 2007, the European Union began negotiations with Andean Community countries (Plurinational State of Bolivia, Colombia, Ecuador and Peru) and Central American countries to establish Association Agreements with both regions. The Association Agreements had three components: political dialogue, cooperation and trade. During the negotiations, the European Union and Andean Community countries agreed to a flexible framework negotiating agreement involving both blocs, so that Andean countries may progress at their own pace based on their possibilities. For the Central American countries, negotiations culminated in a regional agreement between the two blocs. Both sets of negotiations (for Central America and the Andean countries) ended in 2010 and are very similar in terms of regulations concerning the trade pillar, although there are some differences in how “geographical indications” were negotiated. In any event, both Agreements reaffirm the rights and obligations of the Parties established in Part II, Section 3 of the TRIPS Agreement.

Definition

The agreement negotiated with Central America retains the same definition of geographical indication as the TRIPS Agreement. The definition included in the agreement with Colombia and Peru has the following differences: (1) “Geographical indications” are defined as consisting of the name of a given country, region or area or the name that, without being that of a specific country, region or place, refers to a defined geographical location. The term “indication” would therefore appear to be limited to names, rather than including any signs; (2) The geographical environment – which determines the quality, reputation or characteristics of the product – is specified to include natural and human factors, which are not mentioned in the definition in the TRIPS Agreement but which are referred to in the definition of “appellation of origin” in the Lisbon Agreement and European legislation.

Recognition in the country of origin

Both agreements establish that, for a geographical indication to be protected in the territory of the other Party, it must have been recognized and declared as protected in the country of origin (Article 243.2 of the Association Agreement with Central America and Article 207(b) of the Agreement with Colombia and Peru). Owing to the fact that the TRIPS Agreement has no specific procedure for such recognition, this obligation applies to “geographical indications” recognized by Parties, independently of the system used for their recognition, provided that the application for recognition contains the information required by the national legislation of the country where the request is filed.

Given that Article 24.9 of the TRIPS Agreement establishes no obligation to protect “geographical indications” that have ceased to be protected in their country of origin, or that have fallen into disuse in that country, once the geographical indication has been recognized in a country different from the place of origin of the sign, the protection of the indication is not independent because it will be determined by the fact that it remains protected in the country of origin. The Agreement with Colombia and Peru specifies that the Parties are obliged to notify when a geographical indication ceases to be protected in its country of origin (Articles 210.3 and 212.2).

⁹ See Why do Geographical Indications matter to us?
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/03/160&format=HTML&aged=1&language=en&guiLanguage=en>

The Association Agreement with Central America does not contain a similar provision, but this does not prevent Parties from being able to cease applying protection when they find out that the geographical indication is no longer protected or has fallen into disuse in its country of origin.

Characteristics of the protection system

While Article 22.2 of the TRIPS Agreement establishes the scope of protection of “geographical indications” by listing the misleading uses that must be prevented, it does not define how this obligation must be met, leaving member countries free to choose the appropriate mechanism. As a result, the way in which WTO member countries protect “geographical indications” varies from a sui generis system incorporating a central registry of “geographical indications”, as in the European Union, to approaches based on the trademark system (particularly collective or certification marks), or on the application of legal or customary principles relating to unfair competition. In the agreements concluded with the United States, Latin American countries agreed that “geographical indications” could be protected using the trademark system. In other words, this may be one of the mechanisms used, but not the only one.

In the Agreement with Colombia and Peru, no reference is made to the system that Parties must implement to protect “geographical indications” or to their characteristics, except for a provision in the general rules, which states that the specifications of a product, including any amendment, must be those approved by the authorities of the Party in whose territory the product originates (Article 212.3).

In contrast, the Association Agreement with Central America establishes the obligation of setting up a sui generis system whose characteristics are defined in the Agreement as follows:

(a) The system must include an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the Parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. It is worth mentioning that, as a result of the approval of CAFTA-DR, Central American countries included the definition of geographical indication in their legislation, while also establishing that “appellations of origin” were a class of “geographical indications”. In terms of the registration system, the provisions for “appellations of origin” were retained, as this had been included from before the approval of the TRIPS Agreement, and it was also stated that “geographical indications” could be registered as collective or certification marks. However, when “geographical indications” are registered as marks, the procedure does not provide for verification that the quality, characteristics or reputation of the product are due to its geographical origin. Nevertheless, it should be stated that, to date, no geographical indication has been registered as a mark.

(b) a registered name shall correspond to a specific product or products for which product specifications are laid down, which can only be amended by due administrative process.

(c) the system must have control provisions applying to the production of the good or goods. The system for the recognition and registration of “appellations of origin” in most Central American countries refers almost exclusively to the procedure for recognizing the name that constitutes the “appellation of origin”. It does not establish control mechanisms to ensure the quality of products in accordance with set specifications.

- (d) the system must include the right for any operator established in the area of the geographical indication to use the protected name, provided that:
- (i) the producer applies to the control body of the geographical indication, and
 - (ii) the product conforms to the corresponding specification

(e) lastly, the system needs a procedure for the publication of the GI protection application that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account. Although the requirement of publishing applications for opposition purposes was provided for in CAFTA-DR, the Association Agreement with Central America clarifies who would have the right to oppose, including previous users of the name, provided that they have a legitimate interest, even if this is not the result of an intellectual property category.

The challenge of this commitment for Central America is to harmonize what has been agreed with the European Union with the agreements in CAFTA-DR.

Type of products that may be protected by a geographical indication

The TRIPS Agreement does not state that “geographical indications” are limited to a specific class of products, and neither do agreements negotiated with the European Union. However, as these agreements have higher standards than those provided for by WTO, the Agreement with Colombia and Peru clarifies that the procedure provided for in the Agreement shall only apply to agricultural and food products, wines and spirits. Products other than those mentioned may be protected in accordance with the laws and regulations applicable in each Party. The Association Agreement with Central America does not contain a similar provision.¹⁰

Recognition for existing “geographical indications”

Another issue addressed in both Agreements is the commitment to afford protection to “geographical indications” recognized by the Parties. In the Agreement with Colombia and Peru, this commitment refers to names that are included in Appendix 1 of Annex XIII (List of Geographical Indications).¹¹

In order to comply with this commitment, the national authorities of each Party shall examine the “geographical indications” of the other Party to determine whether they comply with the criteria established in national legislation, and will publish the applications to enable opposition to be brought by any third party with a legitimate interest in the name to be registered. Once the opposition and examination procedure has been completed, the Parties will protect the “geographical indications” of the other Party, as agreed. The Agreement with Colombia and Peru does not mention when that procedure should begin.

For Central America, the Agreement has two Annexes:

- (a) Annex XVII, which has a list of 225 EU geographical indications and 10 Central American indications to be applied for protection as “geographical indications” in the territory of the Parties; and

¹⁰ See Article 207(c) and (d) of the Agreement with Colombia and Peru.

¹¹ The list of geographical indications contains 189 EU geographical indications and 4 Andean geographical indications. The list does not include the “appellations of origin” recognized by Colombia and Peru for the following craft products: Guacamayas spiral basketwork (Colombia), traditional Ráquira ceramics (Colombia) and Chulucanas ceramics (Peru). The geographical indication “Café de Colombia” does not appear either, as it is already recognized in the European Union.

(b) Annex XVIII, which will include the “geographical indications” protected by Parties once the procedures provided for in national legislation have been completed.

In terms of the names included in Annex XVII, Parties will initiate national procedures for recognition before the entry into force of the Agreement, which means that Central America must: (1) prepare the information required by European legislation for its “geographical indications” to be protected; and (2) where necessary, make changes to legislation to comply with the specifications agreed on for the protection system.

The Agreement also determines the level of progress that must be made in national procedures to recognize the “geographical indications” of Parties. For instance, by the time of the entry into force of the Agreement, the period for the submission of oppositions must be over, with the files at various stages depending on whether any opposition was brought:

(a) where there was no positive commitment for national authorities to have finalized examination procedures to determine whether the geographical indication can be protected or not; also with respect to those geographical indication applications that were not opposed or for which an opposition was rejected due to formal reasons;

(b) if indications were opposed, and the oppositions were found to be prima facie meritorious in the course of national registration proceedings, there is no need to have completed the examination to determine whether or not the geographical indication can be protected;

(c) when the national authorities have completed the examination and the application accepted, the “geographical indications” that have been granted protection must be protected according to the level of protection established in this Agreement. The Association Council at its first meeting shall adopt a decision including in Annex XVIII all names from Annex XVII that have opted for protection and have been protected as “geographical indications”.

Footnote No. 35 to Article 245 clarifies that the obligation shall be considered fulfilled if:

(a) the national authorities reject the registration of the name, or

(b) the administrative decisions are challenged under the instances established in each Party’s domestic legislation.

The list of “geographical indications” protected by both Parties can be added to while the Agreements are in force, in which case the date on which protection is applied for shall be the data of transmission of the request to the other Party, subject to compliance with the formal requirements of national legislation.¹²

Level of protection

The Agreement with Colombia and Peru and the Agreement with Central America both establish the level of protection that they will provide to “geographical indications” protected by Parties while the Agreement is in force.

The Agreement with Andean countries states that “geographical indications” recognized by Parties will be protected against:

a) any commercial use of the geographical indication for identical or like products not compliant with the specifications of the geographical indication or that exploit the reputation of a geographical indication;

b) any other unauthorized use of “geographical indications” other than those identifying wines or spirits that creates confusion for the consumer, including even in cases

¹² See Article 247.2 of the Association Agreement with Central America and Article 209.3 of the Agreement with Colombia and Peru.

where the name is accompanied by indications such as “type”, “style”, “imitation” and other similar ones. In this case, it is clarified that if one of the Parties amends its legislation in order to protect geographical indications to a higher level than what the present Agreement lays down, it shall extend the said protection to the “geographical indications” listed;

c) in case of “geographical indications” that identify wines and spirits, any misuse, imitation or evocation of the geographical indication, even if the true place of origin of the product is indicated or if the protected name is translated, transcribed, transliterated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavor’, ‘like’ or similar;

d) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging or advertising material relating to the product concerned, liable to convey a false impression as to its origin;

e) any other practice liable to mislead the consumer as to the true origin of the product.

The Association Agreement with Central America defines the standard of protection by following the language of Articles 22.2 and 23.1 of the TRIPS Agreement. Therefore, protection does not cover similar products to those protected by the geographical indication, but does extend to all products the protection provided for wines and spirits.

Both Agreements state that, while “geographical indications” are protected in their country of origin, they will not be considered as the common or generic name for the product they identify. This provision refers exclusively to the “geographical indications” of one Party that have been recognized by the other Party in accordance with the agreed procedure (Article 207(h) of the Agreement with Colombia and Peru and Article 246.2 of the Association Agreement with Central America).

Protection of homonymous “geographical indications”

The TRIPS Agreement enables member countries to prevent the use of a geographical indication that, although it may be literally true in terms of the territory, region or area of origin of the products, could give the public a false impression that they are from another territory. The Agreement with Colombia and Peru states that, when one Party is in negotiations with a third country that proposes the protection of a geographical indication homonymous to a geographical indication from another Party, that Party must be informed and have the opportunity to submit comments before the name can be protected (Article 210.2). The Association Agreement with Central America does not contain similar provisions.

Generic terms

The Association Agreement with Central America establishes that, when an indication contains a name that is considered generic in one Party, the use of the generic name in that Party shall not be considered to infringe the protection standard provided for in the Agreement (Article 246.3). This provision was introduced because some words from protected “geographical indications” are considered generic in some countries. Examples include the word “mortadela” included in the geographical indication Mortadella Bologna, the word “mozzarella” from the geographical indication Mozzarella di Bufala Campana, or the word “whisky” included in the Scotch Whisky geographical indication.

Grandfather clause

The Association Agreement with Central America also states that, for products other than wines and spirits, none of the Agreement’s provisions shall be interpreted as obliging one Party to prevent the continued and similar use of a geographical indication that has been used before the entry into force of the Agreement, in good faith and continuously, for the

same products or services or for related products or services, whether by nationals of that Party or people domiciled in its territory (Article 246.4). This clause differs from the one in the TRIPS Agreement in that it does not establish a minimum time period to consider that there has been a continuous use of the geographical indication. The incorporation of this clause does not exclude the clause provided for in the TRIPS Agreement for wines and spirits.

Right to use geographical indications

The use of geographical indications for products originating in the territory of one Party shall be exclusively reserved for producers, manufacturers and craftsmen whose production establishments are within the area or region referred to in the geographical indication (Article 207, paragraph c) of the Agreement with Colombia and Peru and Article 249 of the Association Agreement with Central America).

Relationship between “geographical indications” and marks

The Agreement with Colombia and Peru and the Association Agreement with Central America both establish the obligation to refuse registration of a mark that may be misleading in terms of the true geographical origin of a product, when there is an attempt to use the mark for products that are the same as or similar to those identified by the geographical indication. This obligation is applicable to mark applications filed after the request for protection of the geographical indication.

The Agreements also state that Parties shall not be obliged to protect a geographical indication, when, in the light of a well known mark, protection is likely to mislead the public about the true identity of the product (Article 211 of the Agreement with Colombia and Peru and Article 248, paragraphs 1 and 2 of the Association Agreement with Central America).

The Association Agreement with Central America also adds that Parties will maintain legal means to enable any natural person or legal entity with a legitimate interest to request the cancellation or invalidation of a mark or geographical indication (Article 248.3).

Cooperation and transparency

Lastly, the Agreement with Colombia and Peru includes a commitment from Parties to provide information requested on compliance with the specifications of the products protected by geographical indications. Parties may also make this information, or a summary thereof, available to the public (Article 213). The Association Agreement with Central America does not contain such a provision.

CONCLUSIONS

Trade agreements concluded by Latin American countries have served to clarify some aspects of “geographical indications” that are vague in the TRIPS Agreement.

In the agreements with the United States of America, for instance, the following aspects are clarified:

- (a) “geographical indications” can be formed by any sign or combination of signs, and not only by geographical names;
- (b) collective and certification marks can be used to protect “geographical indications”. In other words, the trademark system can be one of the mechanisms provided for in legislation to protect these signs;
- (c) irrespective of the system used to protect “geographical indications”, the system must:

- (i) be transparent;
 - (ii) require the minimum number of formalities;
 - (iii) allow applications for protection to be filed by interested parties, without the intervention of governments;
 - (iv) provide for applications to be published; and
 - (v) include procedures for opposition to the recognition of geographical indications.
- (d) rights acquired previously, either associated with a mark or geographical indication, take precedence over subsequent applications for recognition of a geographical indication.

In the agreements with the European Union, the following aspects are expanded upon:

- (a) the characteristics that a dedicated protection system for “geographical indications” must have;
- (b) the standard of protection that must be afforded to “geographical indications”;
- (c) the people who have the right to use a protected geographical indication.

APPELLATIONS OF ORIGIN IN PERU

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APPELLATION OF ORIGIN:

To define conceptually the notion of appellation of origin, we must first state that it is a distinctive sign, in other words an element that, much like trademarks, trade names and so on, is used by operators in trade activity.

The peculiarity of the appellation of origin, in comparison with the other distinctive signs, lies in the fact that (a) it is a distinctive sign that includes a geographical place name, and (b) it applies to those products that have special characteristics that are precisely due to being extracted or produced in that geographical location.

It is thus clear that the appellation of origin is a distinctive sign that reflects the close connection between the product and the geographical place of production or extraction. This connection exists because the characteristics of the product are essentially due to the place of production or extraction, and the name of that geographical place is therefore used to designate the product.

We can also state that not every sign that includes a geographical place name can be considered an appellation of origin. The prerequisite has to be the presentation of the above-mentioned link between the product and the geographical location in question.

It should not be forgotten that, as with other distinctive signs, this notion has a legally defined conceptual outline and scope. In that sense, each country's legislation establishes what is to be understood by appellation of origin¹, and the concept may vary from one legislation to the next. Here we will go on to explain how the appellation of origin is regulated in the legislation in force in Peru.

APPELLATION OF ORIGIN IN PERU:

Legislative framework– general considerations

Peru is a member of the Andean Community, along with Ecuador, Colombia and the Plurinational State of Bolivia, and it is therefore Andean Community legislation that governs industrial property in those four countries.

The Community rule in force is Decision 486 of the Andean Community Commission, establishing the Common Regime on Industrial Property. This rule has a supranational character, in other words it has direct and immediate application in the four Andean Community countries, and also takes precedence over the domestic legislation of member countries.

In accordance with the Andean Community Legal Integration System, member countries may include in their domestic legislation provisions that complement the Community rule. In Peru, the national legislation on industrial property is Legislative Decree No. 1075, which approves Provisions Complementary to Decision 486 of the Andean Community Commission

¹ It is also each country's legislation that establishes, inter alia, the protection mechanisms, requirements for recognition and scope of protection.

establishing the Common Regime on Industrial Property. This rule, which came into force on February 1, 2009, was issued in the framework of the legislative implementation of commitments undertaken in the United States of America – Peru Trade Promotion Agreement (TPA), and in full compliance with Decision 689 (Adequacy of certain articles of Decision 486 – Common Regime on Industrial Property, to allow the development and deepening of Industrial Property Rights through the internal regulation of the Member States).

It should also be mentioned that, since 2004 there has been a national regulation on Regulatory Boards, in the form of Law No. 28331, Framework Law on Regulatory Boards for Appellations of Origin. The main aspects of this regulation will be explained later.

At the international level, as a member of the World Trade Organization, Peru is party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Since May 16, 2005, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration has also been in force in Peru.

Peru has also been intensely active in terms of bilateral trade agreements, having concluded treaties including the topic of industrial property and specifically provisions on geographical indications or appellations of origin. Examples include the United States of America– Peru Trade Promotion Agreement (TPA), the Trade Integration Agreement with Mexico, and also Free Trade Agreements with Canada, Singapore, People’s Republic of China, countries of the European Free Trade Association (EFTA), European Union, Japan, Costa Rica and Panama, as well as with the Republic of Korea.

Definition – elements and functions of appellations of origin

Definition and elements

The definition of appellation of origin in Decision 486 is based on the Lisbon Agreement. Article 201 of this Decision states that:

“An appellation of origin [denominación de origen] shall be understood to be a geographical indication consisting in the name of a particular country, region or place or a name which, without being that of a particular country, region or place, refers to a particular geographical area, and is used to designate a product originating therein the quality, reputation or other characteristics of which are exclusively or essentially due to the geographical environment in which it is produced, including both natural and human factors”.

This Decision contains some of the following elements that Peruvian legislation uses to define appellation of origin:

- Geographical location

The sign for which protection as an appellation of origin is sought must include the name of a geographical location. The legislator is, however, flexible enough to state that the name may be the term used on maps of the country in question, or may also be an unofficial name that is nonetheless used to refer to a given place.

It should also be borne in mind that Andean legislation includes the possibility for an appellation of origin to take the form of a country name, and not just the name of a region, province or area within a country.

- The geographical name is used to identify a product

The appellation of origin is a distinctive sign that identifies products, unlike other distinctive signs, which may designate products or services.

It is also relevant to mention that, under the legislation in force in Peru, the appellation of origin may be applied to any type of product. This range has made it possible for Peru to recognize “CHULUCANAS” ceramics, for instance, as an appellation of origin (see below).

In addition, to constitute an appellation of origin the product in question must be known or called by the name of the geographical location of extraction or production. In other words, it must be proven that within the trade of the relevant sector, the name of the geographical location is used to refer to that product.

- The product has special characteristics that are due to the area

It is not enough for the name of the geographical location to be used to refer to the product, but it must also be established that the product in question has special characteristics that differentiate it from others of its kind, and that these characteristics are “exclusively or essentially” due to that geographical area - including both natural and human factors - where it is extracted, grown or produced.

In other words, the product identified by the appellation of origin must be a unique product, with characteristics unlikely to be replicated if the product were to be extracted or produced elsewhere.

We can thus conclude that establishing a possible appellation of origin is not simply a question of the existence of a product that is known or called by the name of a geographical location, but there must be a close link between the product and the geographical location. It is therefore important to carry out a technical study to demonstrate that the special characteristics of the product are due to the area in question, including not only natural factors (such as soil and climate), but also human factors (traditional preparation or production methods, for instance). This technical basis is a requirement for filing the application for a declaration of the protection of an appellation of origin in Peru, as will be explained below.

Registration procedure

The procedure regulated by Decision 486 is the procedure for filing the application for a declaration of the protection of the appellation of origin, which has a very similar structure to the procedure for registering marks.

The procedure thus begins with an application filed with the INDECOPI Office of Distinctive Signs. Applications may be filed by natural persons or legal entities directly engaged in the extraction, production or processing of the product or products to be covered by the appellation of origin, and also by associations of producers. State, departmental, provincial or municipal authorities shall likewise be entitled to file an application where the appellations of origin refer to their own areas of concern.

Besides the formal requirements, one central aspect of the application is the “technical file”, which must contain the technical grounds for the special characteristics of the product identified by the appellation of origin, and for the link between these characteristics and the geographical environment of production, extraction or processing.

Once the formal requirements have been checked, the Office of Distinctive Signs will issue a publication order, which consists of an excerpt of the application, so that it may be published once by the applicant at his or her expense in the Official Gazette El Peruano. The purpose of this publication is to inform third parties of the application, so that they may oppose the application should they wish to.

Irrespective of whether any oppositions are filed, the Office of Distinctive Signs will have to analyze whether the application complies with the substantive requirements, namely whether the sign applied for matches the legal definition of an appellation or origin, and whether any of the established prohibitions on registration applies.

Should the procedure yield a favorable result, the protection of the appellation of origin shall be declared and arrangements made for its registration, the validity of which will be determined by the continuation of the conditions that gave rise to the declaration of protection of the appellation of origin. This means that the Office of Distinctive Signs may declare the validity period terminated if those conditions were not to be maintained².

It should also be stated that the declaration of protection of the appellation of origin can be amended at any time if any of the elements that make up the appellation changes. The amendment shall be subject to the procedure provided for the declaration of protection, where applicable.

Ownership and protection regime

In accordance with the contents of Legislative Decree No. 1075, the owner of appellations of origin is the State, which awards authorizations of use to producers, through the competent office, which in Peru is the INDECOPI Office of Distinctive Signs. This entity is also responsible for monitoring the appropriate use of the appellation of origin.

Authorizations of use

Producers wishing to use the appellation of origin have to follow an administrative procedure involving the INDECOPI Office of Distinctive Signs. This procedure begins with the filing of an application that must contain the following:

- (a) name and address of applicant;
 - (b) such powers of attorney as may be necessary;
 - (c) documents attesting to the existence and representation of the applicant legal entity;
 - (d) the appellation of origin for which use is requested;
 - (e) certification of place or places of exploitation, production or processing of the product. Accreditation will be achieved by means of an inspection visit carried out by an authorized agency;
 - (f) certification of the characteristics of the product that is to be discerned by the appellation of origin, including its components, methods of production or processing and ways in which it is linked to the protected geographical area; this will be accredited with the inspection visit and certification carried out by an authorized agency;
 - (g) certification of compliance with Peruvian Technical Standards, where appropriate;
- and
- (h) proof of payment of the corresponding charges.

² In accordance with Decision 486, the persons concerned may apply for renewal of the declaration of protection of the appellation of origin where they consider that the conditions on which protection was based have been restored, without prejudice to the administrative appeals provided for in the domestic legislation of each member country.

If the Office of Distinctive Signs establishes that some requirement has not been met, it will notify the applicant so that he or she may rectify the matter within a period of 15 working days.

Once all the requirements have been met, the Office will award authorization to use the appellation of origin in question. This authorization for use will be valid for 10 years, and can be renewed for equal periods, following the same renewal procedure as for marks.

Auditing actions

The Office of Distinctive Signs is authorized to hear proceedings on the enforcement of distinctive signs. In this sense, it is authorized to protect the appropriate use of appellations of origin and penalize unauthorized use, by means of a procedure called “action for infringement of industrial property rights”. Such an action may be brought ex officio or by the owner of the right. Given that the State is the owner of appellations of origin in Peru, however, actions are brought ex officio, with INDECOPI representing the interests of the State.

In the framework of enforcement jurisdiction, the Office of Distinctive Signs is authorized to carry out inspections and order precautionary measures that may consist of cessation of use, seizure of the alleged infringing products, withdrawal of advertising material, among others. Should the grounds for infringement action be declared established, these measures may become permanent, and may be supplemented by the application of financial penalties or administrative fines.

In the case of appellations of origin, actions may be brought against those using the appellation without relevant authorization, as well as those who are authorized to use it but are doing so on products that do not possess the characteristics established for that particular appellation of origin.

Regulatory Boards

In order to have market success with an appellation of origin, it is important to develop strategies based around product quality as a lynchpin. This is a major challenge, as the sign is for collective use. It is therefore important for producers to be properly organized, and to have a system of self-regulation and quality control for the products designated by the appellation of origin.

With this in mind, in 2004 Peru implemented Law No. 28331, Framework Law on Regulatory Boards for Appellations of Origin, which created Regulatory Boards as bodies formed by producers themselves, with the main function of product quality control and representing the interests of the beneficiaries of the appellation of origin.

Indeed, that Law states that Regulatory Boards are organizations established as nonprofit civil associations registered on the relevant register - Register of Legal Entities - and that their sole purpose is the administration of an appellation of origin.

These civil associations are made up of natural persons or legal entities directly engaged in the extraction, production or processing of (a) product(s) protected by the appellation of origin that choose to belong to such associations. As such, they could be members of public and private entities that are directly related to products with a protected appellation. However, private-sector representatives must form the majority in these associations.

It should be emphasized that a civil association wishing to operate as a Regulatory Board for a given appellation of origin must request relevant authorization from the INDECOPI Office of Distinctive Signs, which will grant authorization subject to an administrative procedure in which proof must be provided of compliance with the following requirements:

- (a) the aim of the civil association is the administration of a specific and recognized appellation of origin.
- (b) the data provided to the Office, and obtained by it, show that the civil association meets the conditions necessary to ensure compliance with the legal provisions and guarantee effective administration of recognized appellations of origin.
- (c) the proposed Rules and Regulations for the appellation of origin are attached, for approval by the Office of Distinctive Signs.

Once compliance has been checked with the above-mentioned requirements and the necessary conditions for representing beneficiaries of the appellation of origin to be administered, the INDECOPI Office of Distinctive Signs will authorize the functioning of the Civil Association as a Regulatory Board, by means of a duly reasoned resolution that will subsequently be published in the legal rules bulletin of the Official Gazette El Peruano.

Once authorized, the Regulatory Board will have, inter alia, the following functions:

- (a) Draft proposals to amend the Rules and Regulations specific to the appellation of origin, with a view to their approval by the INDECOPI Office of Distinctive Signs.
- (b) Guide, monitor and check the production and preparation of the products protected by the appellation of origin, verifying compliance with the technical standard or regulations, as the case may be, with a view to guaranteeing the origin and quality thereof for their commercialization on the domestic and international market.
- (c) Preserve the prestige of the appellation of origin on the domestic market and abroad, in coordination with the other public and private sectors, as appropriate.
- (d) Act with legal capacity to represent and defend the general interests of the appellation of origin.
- (e) Exercise the powers delegated by the INDECOPI Office of Distinctive Signs
- (f) Draw up a list of beneficiaries of the appellation of origin.
- (g) Exercise control over the annual production of the product or products covered.
- (h) Take the necessary steps to preserve the prestige and ensure the proper use of the appellation of origin administered.
- (i) Guarantee the origin and quality of a product, establishing a relevant quality control system that includes analytical (physical, chemical and bacteriological, inter alia) and organoleptic examinations, as necessary.
- (j) Establish and apply sanctions to its members for non-compliance with the Statutes, in accordance with the provisions thereof.

The INDECOPI Office of Distinctive Signs shall monitor the Regulatory Boards, may impose sanctions in cases of failure to carry out functions or damage to the interests of the appellation of origin, and may even cancel the operating authorization.

Legislative amendments resulting from bilateral trade agreements concluded by Peru

The only bilateral trade agreement to have involved legislative amendments relating to appellations of origin is the United States of America – Peru Trade Promotion Agreement (TPA).

As a result of the commitments undertaken in this Agreement, our legislation now includes two prohibitions on registration applicable to appellations of origin, besides those provided for in Decision 486. These prohibitions are regulated in Article 89 of Legislative Decree No. 1075, which states the following:

“Article 89 – Estoppel

In addition to the provisions of Article 202 of Decision 486, appellations of origin may not be declared where:

(a) this is likely to cause confusion with a mark filed for registration in good faith or already registered in good faith;

(b) this constitutes a complete or partial reproduction, imitation, translation, transliteration or transcription of a well-known mark whose holder is a third party regardless of the goods or services to which the sign is applied, where its use would be likely to cause a risk of confusion or association with that third party or with his goods or services; the unfair use of the prestige of the mark; or the dilution of its distinctive power or its commercial or advertising value.”

Peru’s experience with appellations of origin:

Peru currently has eight appellations of origin, six of which have been awarded in the past five years. Here is a brief description of each³:

Pisco: identifies a grape liquor that has been made since Spanish colonial times along the coast that is now covered by the Departments of Lima, Ica, Arequipa, Moquegua and Tacna (specifically the valleys of Locumba, Sama and Caplina). The product is the result of combining vines from Europe and a soil well suited to growing them on the south coast of Peru, and processing techniques developed in the area.

Maiz Blanco Gigante Cusco: refers to the giant white maize species (Paraqay sara), and the geographical area defined for its cultivation and production is the Provinces of Calca and Urubamba, in the Department of Cusco.

Chulucanas: applies to a type of ceramic made in the district of Chulucanas, Province of Morropón, Department of Piura. These attractive ceramics are the result of an interaction between natural factors (including clay and mango leaves) and human factors (ancestral techniques inherited from the area’s former inhabitants: the Vicus).

Pallar de Ica: identifies a type of sweet-tasting bean with a thin shell that takes on a smooth and creamy texture once cooked. The geographical area defined for its cultivation and production includes the Provinces of Chincha, Pisco, Ica, Palpa and Nazca, in the Department of Ica.

Café Villa Rica: denotes green coffee beans of the variety *Coffea arabica*, produced in the district of Villa Rica, Province of Oxapampa, Region of Pasco, which is in the centre of Peru. It is a high-altitude gourmet coffee.

Loche de Lambayeque: identifies a fruit with a pleasant aroma and a distinctive flavor, which has great gastronomical value. This fruit is the result of an interaction between environmental factors converging on the area of Lambayeque (Provinces of Chiclayo, Lambayeque and Ferreñafe) and human factors in the agronomical management and knowledge of ancestral practices such as those relating to crop management.

³ Information from www.indecopi.gob.pe.

Café Machu Picchu-Huadquiña: refers to green coffee beans (*Coffea arabica* L. variety), produced in the Caserío Huadquiña (ex-hacienda Huadquiña), in the District of Santa Teresa, Province of La Convención, Department of Cusco. This geographical area is near the valleys of the Historical Sanctuary of Machu Picchu and close to the snowcapped mountains of Salkantay, Sacsarayoc and Humantay.

Maca Junín-Pasco: identifies a root produced in the regions of Junín and Pasco, characterized by organoleptic features such as sweetness, flavor, aroma and color. It is known as an energizing and invigorating product. The following two appellations of origin currently have an INDECOPI authorized Regulatory Board: Chulucanas and Pisco.

Protection of Peruvian appellations of origin abroad

In order to protect its appellations of origin abroad, Peru has mainly followed two paths: (i) applying for registration directly through the respective procedure involving the relevant authority of the country concerned, and (ii) using the Lisbon System to obtain protection in countries that are parties to the Agreement.

Challenges and outlook

In recent years, Peru has experienced considerable development in appellations of origin. However, much remains to be done to ensure that the recognition of appellations of origin actually represents an effective tool for boosting existing businesses.

Along this path, it is vital for the public and private sectors to work together, with organized producers as the key players, and working within properly controlled quality standards.

It should not be forgotten that the appellation of origin is a tool for competing in the market, as are marks and other distinctive signs. What is more, as the appellation of origin is a sign for collective use, key elements for its successful business use are association and quality of the products it identifies. In that sense, any strategy to promote the use of appellations of origin in our country must be based around these lynchpins.

THE ECONOMICS OF PROTECTED GEOGRAPHICAL INDICATIONS

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INTRODUCTION

A major structural change took place in world agricultural trade during the last two decades. The share of high-value products in the trade value increased substantially whereas the share of traditional commodities diminished. Thus, the question has been raised in many developed and developing countries whether and how the export revenues from high-value foods can be further stimulated. It is of interest, too, which characteristics of traded agricultural and food products are regarded as indicators of a high product quality. In this context, the regional origin or, as wine economists put it, the “terroir” on which high-quality foods and beverages are produced, has emerged as an important quality signal. The economic and political discussion on regional origin is booming. Consumers seem to value the origin of high-quality foods. The protection of geographical indications (GIs) has become an important instrument of food policy in some industrialized countries such as the European Union. Similarly, producer groups and governments in developing countries have become increasingly interested in the protection of GIs as part of their efforts to improve the marketing potential of their high-quality products and to decommodify their exports. Decommodification means that a country tries to move successfully from the production and exports of raw commodities to an increased production and export of processed or “high-value” commodities. An important objective of the strategy is to gain a higher value-added for producers within a marketing chain.

In the following, an introduction to the economics of protected geographical indications (PGIs) is provided. The rationale for the protection of GIs is presented and the instruments of GI protection in individual countries are sketched with a special focus on the policies in the European Union (EU). Important contributions in the literature on the willingness to pay for the regional origin of high-quality foods are reviewed. It will be discussed which costs and benefits can be expected from the protection of GIs for producers, consumers and the society as a whole.

MOTIVATION AND ECONOMIC RATIONALE FOR THE PROTECTION OF GEOGRAPHICAL INDICATIONS

The motivation of producers, producer groups and governments to engage in the protection of GIs is to strengthen the market position of domestic high-quality products which contain a link between the geographical origin and the product quality. This motivation is closely related to changes in food policies in industrialized and developing countries.

In the EU, there is a move away from traditional instruments of the Common Agricultural Policy, and it has become increasingly important for the agricultural and food sector to improve its competitiveness on domestic and international markets and to earn market income rather than relying on political support. The European Commission introduced its food quality policy which is seen as a major element of European rural development policy. Within the European food quality policy, the protection of its high-quality foods with regional origin is one major instrument besides organic certification and quality assurance schemes (Becker 2009).

For developing countries, it was a typical pattern of external trade over decades to export commodities and to import manufactured goods. As a consequence of this trade pattern and the characteristic features of commodities and manufactured products, several empirical studies elaborated that a secular deterioration in the terms of trade between primary commodities and manufactured goods occurred in line with the Prebisch/Singer hypothesis (e.g. Zanas 2005). Given this background, more and more developing countries strive to decommodify their exports and to move towards the export of high-quality foods like fruits and vegetables or fish products (Aksoy 2005) or towards niche markets of specialty foods. High-quality specialty foods associated with a specific geographical origin are one option to decommodify agricultural exports. Hence, producer associations and policy-makers in developing countries have become increasingly interested in the protection of the geographical origin of their products (Bramley, Biénabe and Kirsten 2009).

The question arises whether there is an economic rationale for the protection of geographical indications from the society's point of view apart from the understandable interest of producers and producer groups in this policy instrument. An economic argument can be put forward on the basis of Akerlof's analysis of quality uncertainty and asymmetric information. In his famous example of the used-car market, Akerlof (1970) derived that high product qualities may be crowded out by the low qualities, i.e. the so-called lemons. If there is asymmetric information, combined with quality uncertainty and incomplete information on the buyers' side, it may happen that high and low qualities are sold at the same price. It may then become unattractive to offer high qualities and a market failure may occur. The market failure could possibly be avoided through the collection of additional information by buyers on product quality, i.e. screening, or through the provision of additional quality information by sellers, i.e. signalling. It may also be, however, that market imperfections remain and that governmental intervention is needed in order to reduce quality uncertainty and imperfect information.

If the geographical origin is a quality cue buyers are looking for, the protection of geographical indications against fraud may avoid the market failure. With a functioning legal protection and an associated origin label, the geographical origin will turn from a credence to a search characteristic for consumers. The protection of the region-original label will then reduce search costs of buyers and may, thus, raise consumer welfare. For producers, the legal protection secures an intellectual property right. High-quality producers get a reputation premium. Imitators and non-original producers are kept away from the market and, thus, the market income of high-quality producers rises. From an economic policy point of view, the protection of geographical indications may be consistent with various rural policy objectives. The instrument may raise farmers' income and benefit remote regions and rural development. In redistributing income towards poorer regions, the protection of GIs may also foster economic cohesion.

EXISTING REGULATIONS FOR THE PROTECTION OF GEOGRAPHICAL INDICATIONS

There are two major legal systems in industrialized countries towards GIs (Ibele 2009; Geuze 2009). The first one is valid in the United States (US), in Canada and Australia, where GIs are covered within the countries' trademark systems. The regional origin of a product can either be registered as a certification mark or a collective mark as can other product characteristics. Under the second legal system, GIs are treated as a separate intellectual property right and, thus, the protection of GIs goes beyond that under the trademark system. This approach is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Such a sui-generis treatment of GIs is applied in the EU. The legal protection of origin-labelled foods was established separately from the trademark system as a major element of the European food quality policy. Regulations 510/2006 and 509/2006 provide the legal basis. According to Regulation 510/2006, origin-labelled foods may be protected as either (i) protected geographical indications (PGIs) or (ii) protected designations

of origin (PDOs). In both cases, the regional origin has to be causal for the high quality of the product. PDOs go further than PGIs in the sense that all stages of the production channel - i.e. production, processing and preparation - have to take place in a given geographical area, whereas one stage is sufficient for PGIs. Regulation 509/2006 is the legal basis for the production, manufacture and distribution of agricultural products and foodstuffs that constitute traditional specialities guaranteed (TSGs). TSGs under Regulation 509/2006 shall “either be produced using traditional raw materials or be characterised by a traditional composition or a mode of production and/or processing” (Art. 4). As the number of applications and registrations have been much higher for PDOs and PGIs than for TSGs, we concentrate here on the first two types of GI protection. Figure 1 illustrates the respective requirements of PGIs and PDOs.

Figure 1: PGI, PDO and the Respective EU Requirements

 Protected Geographical Indication (PGI)	 Protected Designation of Origin (PDO)
Production in a given geographical area	
and/or	and
Processing in a given geographical area	
and/or	and
Prepared in a given geographical area	

Source: Own compilation

Figure 2 summarizes the labels of selected origin-labelled foods which have been accepted as PDOs or PGIs under the European law. 1) Such well-known regional products like Parmigiano Reggiano, Comté cheese, Prosciutto di Parma, Serrano ham or Vidalia onions are included, which all have the PDO status, or Charolais du Bourbonnais and Café de Colombia as PGIs. The case of Café de Colombia illustrates that country-of-origin labels may also be covered under the European rules as well as products from non-EU countries. There are more non-EU regional products in the application process, as PGIs like Moroccan Argan oil or as PDOs like several regional foods from China.

Figure 2: Logos of Selected PDOs and PGIs Under the European Law



Source: Own compilation

Stated general objectives of the European food quality policy are to improve farmers' income and to retain the rural population in the respective areas. The mechanism by which these objectives shall be realized is that a collective brand is created with either a PDO or a PGI. If the creation of that so-called club good is successful, participants in the PDO or PGI will receive a price premium by initiating this "club good" or by securing it. Policy measures associated with the protection of geographical indications are an EU subsidy for advertisements and a co-financing rule between the EU, its member states and provinces for defined costs of the PDOs and PGIs.

POTENTIAL BENEFITS AND COSTS OF PROTECTED GEOGRAPHICAL INDICATIONS FOR PRODUCER GROUPS AND THE SOCIETY

There is a growing interest of EU countries and regions in the protection of their regional high-quality foods and a lively discussion on the pros and cons of participating in PDOs and PGIs. The economic literature centres around three main questions:

- a) Will there be a price premium as a consequence of the protection and promotion of geographical indications (GIs)?
- b) Are producers better off by participating in a protected collective brand?
- c) How can the legal protection of GIs be assessed from the society's point of view?

Is There a Willingness to Pay and a Price Premium for the Regional Origin?

European Evidence

There is empirical evidence from European consumer studies that the place of origin affects product evaluation and that a positive impact of this type is product-specific (Van Ittersum, Candel and Meulenberg, 2003). Regional-origin foods with an established reputation are perceived as high-quality products and that a willingness to pay for the regional origin does exist under certain conditions. Methodologies on which the analyses are based include (i) consumer surveys and contingent-valuation studies, (ii) econometric demand models and (iii) hedonic price analyses. Figure 3 summarizes results from a few selected studies and their results. More comprehensive surveys are provided by Verlegh and Steenkamp (1999) and Herrmann and Teuber (2011). It is striking that a marginal willingness to pay does exist for the product characteristic "regional origin" of some regional foods with high reputation.

Van Ittersum et al. (2007) surveyed 1232 consumers in three European countries, i.e. Greece, Italy and the Netherlands, who had consumed selected regional products marketed under the PGI label. The products included were Ipiros feta cheese, Zagora apples, Parmesan cheese, Parma ham, Noord-Hollandse Edam cheese and Opperdoezer Ronde Potatoes. The authors find that the consumers “have a favourable image of a regional certification label” (ibid., p. 13). In their structural-equation model, they derive that a better attitude towards the region of origin and a better image of a regional certification label affect the relative attitude of consumers towards the protected regional product positively. Thus, improvements in the attitude and image will raise the willingness to buy the regional product as well as the willingness to pay for it and will lead to less negative reactions in demand due to price increases. Van Ittersum et al. detect that consumers distinguish two major dimensions of regional certification labels: (i) the quality-warranty dimension and (ii) an economic-support dimension. Due to this distinction made by consumers direct and indirect effects arise on attitudes towards the PDO label. The economic-support dimension affects the relative attitude towards the label directly, but the quality-warranty dimension influences the perceived quality of the product and, thus, the relative attitude towards the label indirectly.

Many other studies confirm that the economic-support dimension plays an important role when consumers value traditional foods of their own region. Teuber (2011), e.g., surveyed 741 German consumers concerning their attitudes towards Hessian apple wine, a regional product which received a PGI label recently. In this case, the economic-support rather than the quality-warranty dimension was the driving force for an increasing willingness to pay for a PGI label. The analysis revealed additionally that the consumers’ knowledge of GIs seemed to be very limited. Apparently, consumers in non-Mediterranean EU countries are much less aware of the PDO and PGI labels than consumers in countries such as Italy, France and Spain with their long tradition in terms of origin-labeled foods.

Interesting additional evidence is presented in individual econometric studies of demand for PDO compared to non-PDO products. Hassan, Monier-Dilhan and Orozco (2011) provided recently such an analysis. Although they see their price elasticities of demand as counterintuitive, they are actually not and complement the results by Van Ittersum et al. (2007) in a consistent way. Hassan, Monier-Dilhan and Orozco argue, like Van Ittersum et al., that high-quality regional products with a PDO label should exhibit low price elasticities of demand in absolute terms. This would imply that the reaction in demand to a price increase would be limited in the case of a strong brand. But this statement is related to aggregate market demand, not to demand for a brand at the point of sale, i.e. at the level of individual retailing firms. At the point of sale, demand for food brands may be highly price-elastic even if market demand is price-inelastic. Econometric studies with scanner data have shown for major national brands of foods that consumers tend to react starkly to price changes - in particular to price discounts - at the store level. This is exactly what Hassan, Monier-Dilhan and Orozco (2011, p. 10) reported. Based on firm data, they calculated price elasticities of demand for French cheeses which were clearly above unity in absolute terms and often higher for PDO than non-PDO cheeses. The elasticities were as high as -4.73 for Roquefort, -3.72 for PDO Camembert, -2.91 for PDO Brie and -2.08 for Comté. A one-percent price decline would raise demand at the point of sale by clearly more than one percent. The high values of the price elasticity of demand for Roquefort or Comté cheese indicate that these high-value regional-origin foods have become important collective brands. Like for the most important private brands, price actions would stimulate strong reactions of demand.

Figure 3: Perceptions of Consumers Concerning the Regional Origin of Foods: Selected Results

Authors/method	Subject	Results
Van Ittersum et al. (2007)/survey and structural-equation modeling	PDO products from Italy, Greece and the Netherlands	Consumers of the regional products value the regional certification label; the attitude towards the regional origin and the image of regional certification labels increase the willingness to pay and to buy
Teuber 2011/survey and binary logit	Hessian apple wine	Willingness to pay exists; rises if consumers expect support for local economy; limited knowledge about GIs
Hassan, Monier-Dilhan and Orozco 2011/demand-system analysis	French cheese market. PDO versus non-PDO products	PDO demand is more price-elastic than non-PDO demand; PDOs are clearly high-quality products; ϵ^D : -2.08 (Comté); -2.91 (PDO Brie); -3.72 (PDO Camembert); - 4.73 (Roquefort)
Loureiro and McCluskey 2000/hedonic analysis	Galician veal	PGI label causes a price premium on high-quality cuts of meat, up to a certain quality level

Source: Own compilation

A further important branch of the literature utilizes hedonic price analysis. The method, which is explained in more detail below, has also been applied to analyses of how the regional origin of products affects the market price. In an often-cited study on Galician veal, Loureiro and McCluskey (2000) reported an ambiguous result concerning the price premium for the product characteristic “regional origin”. The authors derive that a price premium does exist for the PGI label but not for all quality levels. There was an additional willingness to pay for Galician veal at the medium quality level, but not at the highest and the lowest analyzed levels of meat cuts. There are also mixed results on the question whether a price premium does exist for the regional origin of quality wines. Costanigro and McCluskey (2011), e.g., show that the regional origin does matter for the market prices of red quality wines but they elaborate, too, that the price premium paid for a certain origin varies strongly across market segments.

Non-European Evidence: The Case of Coffee

Most of the studies cited above refer to European foods protected either as PGOs or PDIs on the EU market. There are other quantitative analyses which focus more on non-European products. The study by Teuber (2010) applies hedonic price analysis to answer the question whether consumers are willing to pay a price premium for the regional origin of high-quality coffees. She used internet auction data from the “Cup-of-Excellence” website where coffees of various producer countries and regions and a wide variety of prices and product characteristics are sold. The methodology of hedonic price analysis can be briefly sketched as follows. According to the so-called characteristics models, consumers buy goods on the basis of product characteristics that are incorporated in the goods. It is not the quantity consumed but rather the characteristics of products that generate consumers’ utility (Lancaster 1966). Products consist basically of a bundle of characteristics and those characteristics determine the subjective quality of goods as perceived by consumers. Characteristics contained in products not only influence the demand function but also the supply function: They determine marginal costs, too. Therefore, product prices are a function of the characteristics which the products contain:

$$(1) \quad p = p(z_1, z_2, \dots, z_n)$$

with z_i = quantity of characteristic i in one unit of a product. Equation (1) is a hedonic price function. If we apply the idea to coffee, we can formulate:

$$(2) \quad \text{Coffee price } p = p(\text{score, rank, } \underline{\text{regional origin}}, \text{ coffee variety, certification, year})$$

It is typical that hedonic price studies come up with the implicit of product characteristics. It holds that

$$(3) \quad \partial p / \partial z_i = \hat{p}_i$$

with \hat{p}_i = implicit price of characteristic i .

The following Table 1 gives an impression of results from a hedonic price study. The analysis by Teuber (2010) explains the magnitude of high-quality coffees on internet auctions by various coffee characteristics and by the observed years in order to take the time component of coffee prices into account.

It is interesting in our context that reputation premia are observed for several countries of origin compared with the benchmark country Honduras. The reputation premium is highest for Guatemala, followed by Bolivia, Brazil, Colombia, El Salvador and Nicaragua. Other major results of Table 1 are that price premia are associated with either a first, second or third rank in an auction as well as with an increasing quality score at the auction. Additionally, a particularly low coffee area for a variety raises its price. This can be regarded as a scarcity premium, and it indicates that the marginal willingness to pay for the origin of a product is supply-determined, too.

The results allow an interesting interpretation of the value a country or region may draw from the origin of its high-quality foods. There are countries which have already an established reputation premium on the specialty coffee market like Guatemala. Other countries do not have such a reputation yet. Those countries, e.g. Honduras, have to acquire higher prices first by reaching an improved export assessment of their coffee qualities (Teuber 2010). By this, they can eventually pave the way for a future reputation premium.

Donnet, Weatherspoon and Hoehn (2007) utilize e-auction prices for specialty coffee, too, and derive basic management strategies from their hedonic price analysis. The authors distinguish various quality segments, in which coffee attributes are valued differently by consumers. They stress the importance of the country of origin and that participation in the Cup-of-Excellence auctions "has a significant promotion effect for both roasters and growers" (ibid., p. 12).

Table 1: Hedonic Price Function for the Cup-of-Excellence Internet Auction Data for Coffee¹

Independent Variable	Dependent variable: Log(Price)	
Score	0.072***	(0.000)
1st Rank	0.889***	(0.000)
2nd Rank	0.323***	(0.000)
3rd Rank	0.258***	(0.000)
Log (lot size)	-0.390***	(0.000)
Log (coffee area)	0.028**	(0.007)
Coffee variety		
<i>Reference: Bourbon</i>		
Catuai	0.013	(0.747)
Caturra	0.049	(0.086)
Pacamara	0.007	(0.926)
Typica	0.051	(0.564)
Others	0.048	(0.366)
Origin		
<i>Reference: Honduras</i>		
Bolivia	0.488***	(0.000)
Brazil	0.409***	(0.000)
Colombia	0.311***	(0.000)
Costa Rica	-0.083	(0.162)
El Salvador	0.226***	(0.000)
Guatemala	0.559***	(0.000)
Nicaragua	0.168***	(0.000)
Certification		
<i>Reference: No certification</i>		
Organic	0.237**	(0.002)
Rainforest Alliance	-0.054	(0.203)
Year		
<i>Reference: 2003</i>		
2004	0.134**	(0.004)
2005	0.113**	(0.009)
2006	0.275***	(0.000)
2007	0.584***	(0.000)
Adj. R squared	0.71	
F-value	92.58	
n	736.00	

Source: Teuber (2010).

¹ ***, **, * indicates statistical significance at the 99.9 %-, 99 %- and 95 %-levels. p-values in parentheses.

Field studies from individual developing countries seem to confirm that a price premium does exist on specialty markets. Wollni and Zeller (2007) detect in their study for two coffee-growing regions in Costa Rica that farmers benefit from participation in specialty markets and cooperatives. Farmers do at least receive higher prices in the specialty coffee segment than those who participate in the traditional coffee market. Specialty markets, according to Wollni and Zeller, include premium coffee markets that may be characterized by specific production technologies like organic or shade-grown, by the terroir of the producing region or by quality signals consumers value like fair-trade coffee. The authors conclude that the choice of specialty markets may be a viable option for some farmers and that cooperatives can be an effective instrument in order to include small farmers in this development (ibid., p. 248).

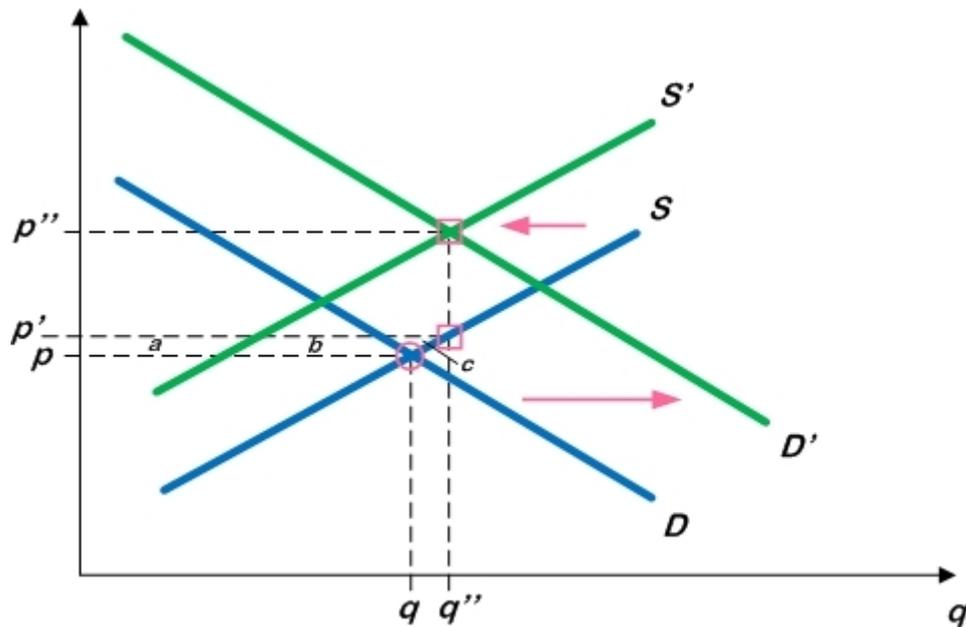
WILL PRODUCER INCOME RISE DUE TO PROTECTED GEOGRAPHICAL INDICATIONS?

We can conclude from the literature that there is a willingness to pay for the regional origin of foods with a good quality reputation. The existence of such a price premium is often seen as a pre-condition for a producer gain by participation in the production of high-quality products. One definition of a specialty product, e.g., is the following: "Specialty food and drink products should be differentiated from mainstream or commodity products". They should "target niche markets and command a price premium" (DTZ Pieda Consulting, 1999). Accordingly, regional specialties should receive a price premium for their characteristic regional origin. In Figure 4, this situation can be illustrated by distinguishing the market of the high-quality product and the mass market. As marginal costs can be expected to range above those of the low-quality product, the price on the high-quality market definitely has to range above the price on the mass market in order to be attractive for producers.

A positive price difference between the premium and the mass market is only a necessary condition, however, and not a sufficient one for realizing producer gains. Income gains will arise if this price difference is larger than the additional marginal costs arising from participation in the premium market. Only if the net price - after incorporating additional costs of production, quality control and marketing on the premium market - is higher than the price on the mass market, producers will gain.

The following Figure 4 illustrates these arguments. Suppose that market supply is S and market demand is D initially for a regional product which cannot be differentiated from the mass product. With protection and promotion of a geographical indication, demand rises from D to D' . As the production under the GI rules will be more costly due to, e.g., additional costs for control and/or promotion, supply shifts too from S to S' . It can be seen that producers are better off due to GI regulation if the demand curve shifts more than the supply curve. Then, the price will rise for consumers from p to p'' . The increase in marginal costs, i.e. the vertical difference between S' and S , has to be deducted from p'' and a new net price p' remains for the producers under GI regulation. Thus, producers receive a price premium due to GI regulation which is $(p' - p)$, i.e. the difference between the new and the old producer price. Since the price premium, as defined here, was already corrected for additional marginal costs, it is associated with a welfare gain. Producer surplus increases by area $(a + b + c)$ due to GI regulation.

Figure 4: Effects of Protected Geographical Indications on Producer Price and Producer Income



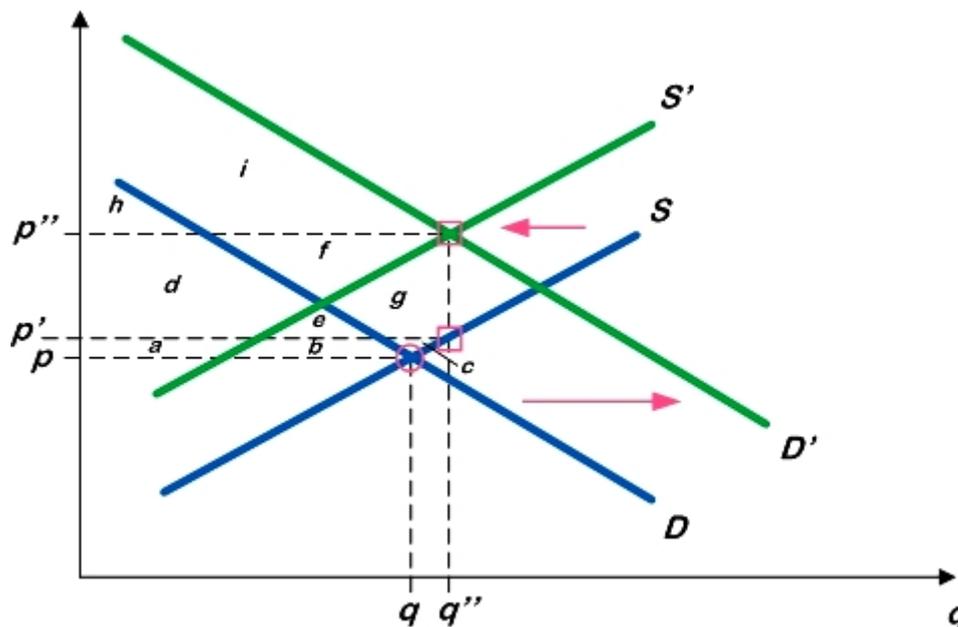
Source: Own presentation.

Although many case studies on PDIs and PGOs do exist, rigorous analyses on additional costs and benefits from producers' participation in GI regulation are rare. One exception is the study by Bouamra-Mechemache and Chaaban (2010). These authors elaborate for the French Brie cheese industry how the adoption of the PDO label affects the revenues and costs of participating agro-food firms compared to non-participation. The authors estimate that PDO brie production costs are raised by 40% above those for non-PDO brie production. However, they derive that the PDO price premium overcompensates these additional production costs.

Will Economic Welfare for the Society Rise with Protected Geographical Indications?

The welfare impacts of GI regulation on the demand side are difficult to evaluate. As the market imperfection is due to quality uncertainty and incomplete information, according to Akerlof's lemon case, the impacts of regulation depend on whether GI regulation provides the correct and full information consumers need, whether the information changes preferences and whether it is implemented efficiently (Just, Hueth and Schmitz, 2005, Chapter 11). If we can assume that PGI regulation works perfectly and the origin information reduces search costs to zero, demand is shifted from the pre-PGI demand curve D to the post-PGI demand curve D' under full and correct information. Consumer surplus is then $(a+b+d+e+h)$ prior to the introduction of GI regulation and $(h+i)$ afterwards. The impact of PGI regulation on consumer surplus is thus $(i-a-b-d-e)$. Consumer surplus may rise or fall, as the positive impact due to a reduction of search costs may be higher or lower than the negative impact due to the increasing market price. When impacts of PGI regulation on consumer and producer surplus are aggregated, total welfare changes by $(i-d-e)$. Under our assumption that search costs are reduced to zero, this welfare impact of PGI regulation is positive as $i > (d+e)$.

Figure 5: Price and Welfare Effects of the Protection and Promotion of Geographical Indications



Source: Own presentation

Empirical case studies are needed which may answer the question whether the promotion and protection of geographical indications improve social welfare. The policies may or may not be welfare-improving. What we may conclude is that protected origin labels have the potential to contribute to various economic policy objectives. If properly implemented, they may reduce quality uncertainty for consumers and they may lead to a price premium for producers of the GI product and secure their intellectual property rights. Thus, GI protection and promotion may raise income in rural areas and improve economic cohesion.

PROTECTED GEOGRAPHICAL INDICATIONS AS AN ISSUE OF OPTIMAL REGULATION

Although PGIs may improve welfare in principle, as shown in Section 4.3, there is no doubt that substantial risks are involved in the advancement of PDOs and PGIs, too. They may have anticompetitive effects by fostering market power. It may well be that the protected “producer clubs” exclude more efficient competitors. The question arises, too, whether PDOs and PGIs provide solely true information that reduces search costs. And, last but not least, third countries refer to the possibility that PDOs and PGIs are basically new protectionist trade policies.

These issues have been widely neglected in the economic literature on GIs and rigorous empirical case studies are lacking, e.g., on whether producer cooperatives under PGIs lead to anticompetitive effects. One exception is the recent study by Mérel (2009). Mérel analyzes the French Comté cheese market within a new empirical industrialization framework. He investigated whether the supply control scheme, that is in place under the PDO for French Comté cheese, is associated with sellers’ market power. His estimate of the market power coefficient is small and statistically insignificant. The hypothesis of perfect competition could not be rejected in the empirical analysis, whereas monopolistic pricing could. The findings suggest that the supply control scheme does not “allow the Comté cheese industry to exert significant market power” (Mérel 2009a, p. 47).

In another recent and growing branch of the economic literature, PGIs or more generally high-quality foods are analyzed with models of vertical product differentiation. Incentives for producers or producer groups to market their geographically differentiated products collectively are examined and welfare implications of various regulation schemes are elaborated (Lence et al. 2007, Zago and Pick 2004). It is derived that GIs can be an “effective certification tool for high-quality products” (Moschini, Menapace and Pick 2008, p. 809) to deal with imperfect quality information as introduced in Akerlof’s lemon example. Lence et al. (2007) showed that different regulation schemes for geographically differentiated products may raise social welfare as long as the instruments of supply control “cover the fixed costs associated with the introduction of differentiated products” (ibid., p. 947). Mérel (2009b) extended the analysis and derived that “when the producer group is allowed to control quota levels, an input quota policy entails a smaller absolute deadweight loss than an output quota policy” (ibid., p. 642).

SUMMARY AND CONCLUSIONS

There is a high and growing interest in protected geographical indications for high-quality foods in developed and developing countries. In the European Union, producers and producer groups seem to expect welfare gains from the protection of the European origin labels. The so-called DOOR database of the EU indicated in May 2011 that 1031 PDOs, PGIs and traditional specialties guaranteed (TSGs) were registered already. The majority of these originate in Italy (228), France (183) and Spain (148), but the high growth (47 requests in 2009 and 46 in 2010) takes place in other EU countries as well.

A broad literature on country-of-origin labeling and region-of-origin labeling does exist already as well as a high and increasing number of studies on GI regulation. Many of these studies provide a rich set of information on the experience with these instruments in different regions (see, e.g., Arfini, Albisu and Giacomini 2011 for the European Union and Sautier, Biénabe and Cerdan 2011 for developing countries) and for a wide variety of products. Most of the studies give some indication that producer prices for high-quality regional-origin foods are higher than those for a - more or less comparable - mass market. What is lacking, however, is a consistent empirical evidence for several PDOs and PGIs that a price premium remains for the high-quality foods after accounting for the additional costs of quality control and certification that are associated with the protection and promotion of GIs. This, however, is the crucial question in order to substantiate that producer income is raised by PDOs and PGIs. Even more scarce is the empirical evidence on welfare impacts of GI regulation. An overall assessment makes it necessary to elaborate whether and how information on the region of origin of high-quality foods reduces quality uncertainty and search costs and, thus, consumer surplus. Moreover, empirical evidence is lacking for many PDOs and PGIs on whether the producer clubs actually raise market power and, by this, cause welfare losses for the society.

A general result of the theoretical analysis is that PDOs and PGIs may raise economic welfare but the reverse is also possible. The challenge for future empirical work is to quantify the theoretical impacts outlined in Section 4 for many more empirical case studies. This would allow to assess GI regulation with more confidence than is possible today.

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A REVIEW OF THE SOCIO-ECONOMIC IMPACT OF GEOGRAPHICAL INDICATIONS: CONSIDERATIONS FOR THE DEVELOPING WORLD

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INTRODUCTION

The introduction of geographical indications (GIs) into the WTO TRIPS agreement has resulted in unprecedented recognition of the intellectual property (IP) right internationally. Its protection has however been controversial in many respects and the means and scope of protection strongly contested. Within the broader debate on whether TRIPS has the ability to bring about balanced and equitable economic benefits (see for example Chon, 2006; Correa, 2000) a large body of literature has developed on the justification for and rationale behind GIs. While the EU has come out strongly in WTO fora on the point that GI protection can be bring about benefits worldwide, particularly in developing countries, consensus has yet to be reached on the actual impact of GIs and the extent to which the potential benefits can be harnessed in a developing country context.

In this context, the paper provides a review of the potential socio-economic benefits as discussed in the international literature. The paper then proceeds in the second part with some guidelines in interpreting the theoretical dimension in section 1. It explores in this respect difficulties in empirically measuring the impact of GIs. It also highlights some challenges that GIs in developing countries are likely to face and which could impede their ability to harness the proposed benefits. It is expected that the discussion will contribute to the understanding of the potential but also the challenges of GIs in the developing world.

THE SOCIO-ECONOMIC IMPACT OF GIS: A REVIEW OF THE INTERNATIONAL LITERATURE

Quality signalling in support of consumer and producer welfare

GIs in its simplest form are signs that recognise the link between a product's reputation, quality or some other characteristic and its geographical origin. Environmental attributes and/or local knowledge used in the production of these products give rise to unique product characteristics that are signalled through the GI. The justification for protecting these distinctive signs results, as in the case of trademarks, from the economics of information and reputation. These theories highlight the impact of information asymmetry on product quality and the role of reputation in preventing the negative consequences of this for both producers and consumers. Nelson (1970) has identified three categories of goods, depending on the ease with which consumers can access information on the product's quality:

Table 1: Classification of goods based on access to information

Search goods	Consumers can determine quality before purchase by means of inspection and/or research.
Experience goods	Consumers can determine quality only after purchase through use and experience.
Credence goods	Neither inspection nor use enables an assessment of quality.

Source: Nelson (1970)

From this it is clear that consumers can in many instances not fully assess product quality and can only identify product attributes after search or experience. The producer conversely has full information on the product qualities, an imbalance which gives rise to the problem of asymmetrical information (OECD, 2000). This information asymmetry negatively impacts on the market in that certain producers may be inclined to lower the quality supplied. The producers that continue to supply the high quality goods are exposed to unfair competition and free riding from those that have lowered their quality but continue to sell their goods at the same price.

As pointed out by Stiglitz (1989) and Tirole (1988), reputation can assist in addressing the market failure that results from asymmetry of information. In his model on reputation, Shapiro (1982 and 1983) explains a firm's choices regarding the quality level of its production with a view to maximizing profits in a situation where it is assumed that markets are perfectly competitive but information is imperfect (OECD, 2000). He explains that in these instances producers will be tempted to reduce quality as the lack of tools by which to identify them creates no incentive to maintain higher quality levels. In this respect, reputation provides a socially transmitted device that allows producers to signal certain quality levels to consumers. Shapiro's analysis thus highlights the dynamics between the following three elements: the seller's choice of product quality, consumer learning and business reputation (OECD, 2000). Both producers and consumers harness reputation as a coping device in the presence of asymmetry of information. Consumers revert to the making of repeat purchases, developing a strong sense of brand loyalty and a willingness to pay a premium for reputation. In response, producers adopt strategies for creating reputation in their products.

Belletti (1999) points out however that reputation can only improve market efficiency by avoiding the impact of information asymmetries, if it is protected through a process of "institutionalisation of reputation". This institutionalisation takes place by way of legal instruments (such as GIs) that formalise the nexus between a product's attributes and its region of origin. In agricultural markets that are characterised by search, experience and credence goods (Rangnekar, 2003) which create a high risk of adverse selection, GIs act as a signalling device. It transmits information on quality, reducing consumers' search costs and supporting the building of reputation. Unlike trademarks, GIs signal the collective reputation of the group that participate in the production of the product and which is taken forward through tradition over time (Marty, 1998). Moschini et al (2008), in commenting on the impact of GIs on consumer welfare, finds that before the introduction of a GI, mixed qualities or only the low quality goods are supplied as per Shapiro's model on reputation. After the introduction of a GI consumer welfare improves for those consumers purchasing the high quality product while those consumers who purchase the low quality goods remain unaffected. Zago and Pick (2004) confirms the welfare enhancing impact of GIs also for producers, in instances of imperfect information and high quality differences. For a producer, the possibility to signal quality and thus reputation means that a GI becomes a commercial asset for the firm, as in the case of trademarks (Grossman and Shapiro, 1988) and a valuable offensive marketing tool.

Through a qualification process, GIs confer the right of exclusive use to those producers within the demarcated region who comply with the production practices. The GI qualification process transforms the resources that give rise to the products specific qualities into a "collective intellectual property" (Tregear et al, 2004). Legal recognition of the collective IP provides an exclusion mechanism that averts usurpation of the product's reputation. This defensive role of GIs in protecting reputation has become increasingly important in recent years, as instances of usurpation and misappropriation of origin based names have risen significantly. This is confirmed by Belletti et al (2007) who finds that prevention of name usurpation is one of the key considerations for the use of GIs on international markets. Internationally there are a number of important cases of misappropriation of regional names such as the Basmati case, around which there has been more than 100 trade mark

infringement cases in over 30 countries (Adlakha (unknown) as cited by Jena and Grote 2010). The US and Japan in particular have seen an aggressive increase in the trade marking of regional names. The widespread abuse of origin based product names alludes to the commercial potential of these names with respect to market access and potential price premiums, as further explored below. These unfair business practises not only impacts negatively on the producers through loss of revenue¹ (Das, 2009) and dilution of reputation but also on the consumers that are misled in their purchasing decisions. As a result, the role of GIs as an instrument for institutionalising collective reputation has become increasingly important in protecting the consumer (through addressing information asymmetries and quality) and the producer (by protecting reputation as an asset) (OECD, 2000).

Improved market access through differentiation and value creation

In a context of increased competition on commodity markets, decreasing market prices and changing consumer preferences, it has become necessary to find an alternative approach to the production and marketing of agri-food products. Producers are devising ways to escape commodity markets where they are price takers and to enter more lucrative niche markets where they are price makers, liberating them from the price fluctuations associated with commodity markets (Hayes et al, 2003). With the demand for GIs based on the economics of product differentiation (Moschini et al 2008), this institutional tool affords producers a valuable opportunity for the creation of territorially-differentiated niche markets.

The ability of GIs to support place-based differentiation derives from the GI product's strong link with the territory. The GI captures the local resources, transforming territory into an attribute (Pacciani *et al*, 2001). Where territory takes on the characteristics of an attribute and a link is established between the product's place of origin and quality, origin becomes a basis for a "socially constructed" differentiation which is validated by external actors. The economics of product differentiation rests on market segmentation and the creation of monopolistic competition. GIs segment the production market and establish barriers to entry for producers located outside and within the designated area. The monopoly formation observed in GI supply chains is the result of institutional barriers which limit entry in two ways. Firstly only producers within the demarcated area qualify for participation and secondly, of these producers, only those who comply with the code of practice qualify for participation. In this way, GIs impose a monopolistic market structure with respect to those producers that fall outside the demarcated region or who do not comply with the product specification. It's a monopoly which has its foundations in the causal link between a product and its origin which results in a proprietary right for those entitled to use it and which is not unlike the monopoly creation permitted under trade mark laws.

This proprietary right is the exclusion mechanism of GIs by which the differentiation is sustained. The institutional framework in support of GIs provides a legal instrument for producers to achieve property rights to the differentiated product, thereby preventing other producers from entering the market. Erosion of the niche market created through this differentiation is further prevented due to the fact that GIs control supply, both through exclusion and limiting yields. GIs furthermore enable collective production and marketing that provides the required scale to justify the cost of creating and marketing the differentiated product image. Enabling the achievement of economies of scale is an important dimension, as the majority of GIs are artisanal products which derive from small scale production. Devising a common marketing strategy which allows these producers to reach a scale of production large enough to justify the investment in the differentiated product image, increases these products chances of success (Barjolle and Chappuis, 2000)

¹ See Origenandino (2008) who gives an indication of monetary losses due to counterfeiting of origin based products.

In exploring the conditions for successful differentiation, Hayes et al (2003) confirms reaching a scale of production sufficient to justify the expense of establishing and maintaining the differentiated image among consumers and preventing imitation of the differentiated product, as crucial elements for any instrument of differentiation. In this he also finds that in order to capture any profits that result from the differentiation, producers must own the rights to the differentiated product. By meeting these criteria, GIs thus provide a valuable differentiation tool, eliminating competition from similar products produced elsewhere and improving market access for those producers entitled to use the designation.

By improving market access, GIs can lead to higher incomes through increasing the volume of goods sold. But GIs have a further potential income effect through its collective process of value creation (Barjolle & Sylvander, 2000) that could lead to the capturing of a premium. This GI embedded value is a mixture of economic, cultural and social values which derive from locality. In marketing terms this value increases the “immaterial dimension of food consumption” for consumers, leading to a potential increased willingness to pay and consumer premium (Reviron et al 2009). A number of studies provide evidence of price premiums for GIs from developed countries. These studies include willingness to pay surveys which have found that 43 percent of consumers in the EU are willing to pay a 10% premium for a product with GI labelling, while 8% of EU consumers have indicated a willingness to pay a 20% premium (Berenguer, 2004). Reviron et al (2009) observes that developing country GI products are in many instances sold at large premiums in European supermarkets. They raise the possibility of this happening also in developing countries itself due to urbanisation. That there is demand for GI products in developing countries which could lead to higher prices is confirmed by Tran (2005) who finds that for 265 products, urban consumers in Vietnam regard place of production as an indication of higher quality. The ability of GIs to lead to value creation thus allows actors to pursue a valorisation strategy whereby intellectual property is harnessed in an attempt to appropriate these values which allow for the extraction of rent. Importantly, the embedded value does not in all instances give rise to a price premium, with factors such as the size of the market, the existence of substitutes, consumer perceptions about the linkage of an indication with product attributes and demand elasticity (Correa, 2002) all impacting on a GI's ability to capture a premium.

Rural development dynamics

It is widely articulated that protected GIs may contribute to rural development (see for example Van de Kop et al, 2006; Rangnekar, 2003). GIs have for many years been the main pillar of the European Union's agricultural product quality policy and is seen as strong development tool for lagging rural economies. The EU's perspective on GIs has been described as “a legal and commercial basis for development of rural areas, the preservation of cultural heritage [and] the promotion of small and medium firms in the rural economies context” (Sylvander and Allaire, 2008 as cited by Hedges, 2009). In line with endogenous development theory, GIs' ability to give rise to rural development processes derives from its link with the territory. GIs reflect by definition a strong association between a product and its territorial origin in that the product derives its characteristics from the region's unique environment, including climatic and human factors. This ability of GIs to strongly express locality (Pacciani et al (2001) leads to positive rural development dynamics.

GIs potentially impact rural development in two ways. Firstly, through its remuneration of specific assets directly involved in the production process. In this regard, the link between an origin labelled product and its area of origin allows for the creation of rents based on the “qualities” of the product, allowing for the remuneration of the specific assets used in the production process. The GI qualification process itself, by defining product standards and signalling territorial values embedded in the GI product, increases as explained above, the ability of capturing price premiums. Also, by preventing the diversion of income from

misappropriation, GIs enable producers to potentially enjoy larger income flows from their origin based production processes. In this way GIs lead to a more equitable distribution of value for local producers and communities (Zografos, 2008).

GIs secondly impact rural development through bringing an inclusive territorial benefit to all actors within the region. This relates to the indirect benefits which may flow from establishing a GI for certain regional products. Sylvander (2004) observes in this respect that the assessment of the impact of GIs on rural development should consider the multi-dimensional nature of the instrument, taking into account also indirect development impacts. So for example the legal certainty created by protecting the GI gives rise to increased investment and land values (Zografos, 2008; Passeri, 2007). Révion and Paus (2007) similarly argue that a GI can positively impact rural development through diverse aspects including employment, agro-tourism and environmental spin-offs. It has for example been found that the Comte GI and the increase in demand for the product have improved the agricultural employment opportunities in the region (ETEPS, 2006 as cited by Requillart, 2007).

These indirect impacts that flow from the GI give rise to linkages that have the potential to strengthen and reinforce the development impact of a GI. In this way the promotion of agro-tourism around a GI could serve the added purpose of promoting the GI through the strengthening of brand image (Das, 2009). The potential inter linkages are well illustrated in the case of Boseong green tea in South Korea. Suh and MacPherson (2007) states that in the 6 years following the introduction of the GI, in addition to promoting the product image, doubling production and increasing tea prices with 90%, the number of tourists to the Boseong region has tripled. These linkages could be strategically exploited in support of rural development. It should be noted also that the production of GI products not only represents an economic activity but is also an important cultural expression for local communities. By enabling communities to continue producing their traditional products instead of finding alternative means for survival outside their traditional activities, GIs contribute to the preservation of cultural heritage, a factor which strengthens regional identity and again reinforces the inter linkages in support of rural development. The GI qualification process may similarly lead diverse participants to engage on important aspects of natural and cultural resources, improving awareness of locality and possibly leading to the creation of new organisational links (Tregear et al, 2004). The creation of these networks is likely to further deepen rural development dynamics.

Looking at the profile of communities that generally engage in GI related production, it is evident that they are often located within marginal or lagging regions in terms of productivity, at least for GIs in developed countries (Larson, 2007). A study by Parrot et al (2002) as cited by Bowen (2010), finds that in excess of 70% of all registered GIs in the EU are linked with economically lagging regions. GIs are therefore likely to support rural development in regions that are in most need of it. The unique characteristics of GI products are usually also the result of conditions that exclude the possibility of conventional large scale agriculture in these regions (Murdoch et al, 2000). Linked to this, Downes and Laird (1999) finds that GIs show the greatest potential to benefit local producers where traditional small scale production is still present. The majority of GIs in the developing world are agricultural and artisanal products, highlighting the importance of the potential rural development impact of GIs for these countries as a large portion of their people depends on these sectors for their livelihoods.

The GI itself however does not automatically give rise to rural development dynamics. Sylvander (2004) cautions that the institutionalisation of the resource origin does not *per se* set the conditions for development. Instead, he argues that it depends on how this process is developed and on the effectiveness of the valorisation strategies built upon it. Pacciani et

al (2001) highlights a number of factors that influence the development dynamics of a GI, including the ability of local actors to capture the rents and the strength of the link between the product, the region and the local community. Section 3.2 highlights some considerations on factors that could influence the actual development impact of GIs in a developing country context.

Preservation of traditional knowledge

The protection of GIs as defined in TRIPS is conditional on the “quality, reputation or other characteristic” of the good being linked to the territory. As these attributes of many GIs derive from traditional practices transmitted through time, this IP right could arguably contribute to the preservation of traditional knowledge (Gopalakrishnan et al (2007)) (see for example also Panizzon, 2006). It is argued (see for example UNDP (2007)) that the unique characteristics of GIs make it more appropriate for the protection of traditional knowledge than other forms of IPR. GIs are firstly collective rights and are therefore more appropriate than trade marks for the protection of community held traditional knowledge in that it cannot be assigned as the link with the territory needs to be maintained (Babcock and Clemens, 2004). Secondly, as GI protection involves the codification of traditional practices into rules that fall within the public domain, it prevents both entities and individuals from gaining absolute control over the knowledge entrenched in the protected indication. Thirdly, rights in a GI can potentially be held for an unlimited period of time, provided the product/origin/quality link is upheld and the indication does not become generic. The duration of the protection is however dependant on the design of the particular registration system and whether the designation is protected domestically, a factor which determines whether it will enjoy protection internationally under the TRIPS agreement (Escudero, 2001).

GIs however do not protect traditional knowledge as such but rather, as explained earlier, the collective reputation of an origin based product. It cannot prevent the appropriation of traditional knowledge embedded in the GI. It does however, by valorising the products which draw on traditional knowledge in its production, allow for the traditional knowledge to be recognised and for the knowledge holders to benefit from its commercialisation. GIs thus reward producers that utilise traditional knowledge based processes and therefore indirectly encourage the continued use and preservation of the associated traditional knowledge. It is therefore not the traditional knowledge as such which is protected, only its continued existence through the GI’s role in enabling “people to translate their longstanding, collective and patrimonial knowledge into livelihood and income” (Berard and Marchenay, 1996). It is therefore more appropriate to view GIs as a method of preserving rather than protecting traditional knowledge. Huges (2009) emphasises however that the valorisation of the traditional knowledge is the result of a successful GI based marketing strategy and not the introduction of the legal protection as such.

It should be noted that the impact of GIs on traditional knowledge is ambiguous as the GI may in some instances adversely affect traditional knowledge. Huges (2009) mentions the Parmaggiano-Reggiano case, where the GI marketing strategy has proven so successful that the pressure to increase production may actually lead to an adverse impact on the use of traditional knowledge. GIs may also in the case of undisclosed traditional knowledge work against the preservation of traditional knowledge. Gopalakrishnan (2007) point out in this respect that, at least in terms of the Asian legislative frameworks analysed, legislative provisions dealing with quality control require GI applicants to provide details regarding the nature and quality of the product and how this will be maintained. They warn that this could in some instances oblige the disclosure of previously undisclosed traditional knowledge, a concern which can be circumvented through the creation of legislative exceptions (Gopalakrishnan (2007)).

Preservation of biodiversity

Biodiversity preservation is not a direct objective of GI protection. It has been argued however that it may in some instances be an outcome of the GI process. Larson (2007) shows that a GI can promote biodiversity conservation both directly, as production may derive from the use of specific natural resources and indirectly, through the design of a code of practice that accounts for biodiversity considerations and which is codified in the product specification. Where, for example, GIs create production limits, this is likely to impact positively on natural resource sustainability and on biodiversity conservation. In this way the GI can give rise to “rational land use strategies” (Guerra, 2004). The Rooibos industry in South Africa which is located in an environmentally sensitive area has, in designing its product specification, considered biodiversity concerns and has aligned its code of practices with existing biodiversity initiatives (Bienabe et al, 2009). Lybbert et al (2002) explains that resource commercialisation further leads to increases in the price of the harvested product which raises the local communities’ valuation of their resource. By increasing the value of the resource, a GI thus increases the value of conserving the resource. The impact of this may however be placed at risk as a result of the “tragedy of the commons” (Reviron et al, 2009).

Again it should be noted that GIs do not automatically give rise to positive environmental dynamics such as biodiversity preservation and that the impact is likely to vary from case to case. GIs may lead to a significant increase in demand for the product which could place pressure on fragile eco-systems. In order to avoid the detrimental impacts of this, GI product standards should include sustainable production guidelines (Downes and Laird, 1999). GIs may further lead to “genetic erosion” in those instances where the GI product is derived from a specific resource to the exclusion of other species (Boisvert, 2006). As in the case of rural development, biodiversity dynamics around GIs are highly dependent on the GI’s specific local dynamics and on the policy environment. In designing the latter Boisvert (2006) highlights that a participatory approach is crucial and that economic and conservation considerations cannot be separated. The potential environmental impact of GIs, including its role in biodiversity preservation, remains one of the least studied GI dynamics and it may thus be premature to draw definitive conclusions in this respect.

CONSIDERATIONS FOR INTERPRETING THE SOCIO-ECONOMIC BENEFITS OF GIS

Measuring the socio-economic impact of GIs

The discussion above has identified a positive socio-economic impact associated with GIs. It should be noted however that no consensus exists among researchers as to the extent of the actual benefits of GIs, especially in the context of developing countries, with much of the work on the impact of GIs being conceptual in nature or based on anecdotal evidence without empirical foundation. The lack of empirical evidence is particularly pronounced in the case of developing country GIs².

Furthermore, whereas some empirical evidence indicates the possibility to earn a premium, the costs are often underestimated, leading to a skewed interpretation of the net benefits. Costs linked with traditional production methods and with attaining and ensuring the product quality are often not taken into consideration in calculating the total cost (Kerr, 2006). Grote (2009) points out in this regard that evidence on the actual cost of GIs is even scarcer than on the benefits. Difficulties in measuring the actual costs implications and net benefits of GIs

² A notable exception to this is the Mexican GI Tequila and the Indian Basmati GI. See for example Bowen (2010) and Jena and Grote (2010).

clearly complicate inferences on increases in producer welfare and impacts around rural development, aspects that are crucial for developing countries in making the decision on whether to commit scarce resources to this.

A further important void is empirical studies on the distribution of rents in GI supply chains. While the EU regulation specifically states the raising of farm incomes as a goal, there is very little empirical work on whether farmers actually benefit from price premiums (Requillart, 2007). The ETEPS (2006) report provides some insights into this for the Comte, Parmiggiano Reggiano and Baena Olive Oil industries in France, Italy and Spain respectively (as cited by (Requillart, 2007)). While this study indicates that farmers could in some instances earn a premium as a result of the GI, no empirical studies of this nature exist for developing country products. Jena and Grote (2010) also refers to the lack of empirical evidence on how price increases are "filtered" down to producers at the bottom of the value chain. Requillart (2007) lists Chatellier et al (2006) and Sckokai et al (2007)) as some of the very few empirical studies that exist on how rents are distributed to the producer and processors in GI supply chains.

Hudges (2009) explains that there are essentially two methods for empirically evaluating the impact of a GI. Firstly a "diachronic" evaluation" which entails a comparison of the position of a product before and after enhanced GI protection and/or origin based marketing and secondly "synchronic" evaluation" which compares two similar products, where one of the products is protected and/or marketed as a GI and the other is not. These methods clearly highlight the difficulties in empirically evaluating the impact of a GI in those countries where GI protection has only recently been introduced or lack completely. Barjolle et al (2009) explains that diachronic and synchronic measurements are objective measures that compare two situations. They go further in saying that there are also subjective measures that measure opinions on the impact of GIs. These methods include use of the Likert scale and surveys.

These empirical methods are however complicated by factors that constrain the empirical evaluation of GIs including a lack of data (OECD, 2005) as well as difficulty in defining a point of reference and relevant set of indicators (Barjolle et al, 2009). A further difficulty is separating the impact of GIs from that of other factors such as technological advances, quality control, advertising and policy dynamics. Jena and Grote (2010) lists as an important consideration in the measurement of GI impacts, the choice of the product as a crucial factor. They explain this with reference to the diversity in the size and scope of GIs which prevents generalisation and cautions that only if the chosen product meets some of the important attributes of a GI, will a form of generalisation be possible.

Despite difficulties in empirically measuring the economic, social and environmental impact of GIs, the arguments in favour of origin based marketing schemes are supported by significant studies, especially from European countries, that have concluded that it is in most instances possible to measure a positive impact from the use of GI labelling. A review of these studies is presented in Réviron and Paus (2006). Looking at the little empirical research available on developing country GIs, the study by Bowen and Valenzuels (2009) finds that despite a successful increase in sales volumes, the introduction of the Mexican Tequila GI has not significantly benefitted the local community or environment. In contrast, Jena and Grote (2010) conclude with certain caveats that, after empirically testing the income effect of the Basmati GI, the adoption of a GI does enhance household welfare. The lack of empirical studies on a broader diversity of GI products however clearly limits definitive conclusions on the socio-economic impact of GIs.

Challenges for developing countries in harnessing the socio-economic benefits of GIs

The EU has come out strongly in WTO fora on the point that GI protection can be implemented successfully worldwide, particularly in developing countries. The discussion above indicates that there are significant socio-economic benefits associated with GIs that could address developing country concerns. But harnessing these benefits is by no means an easy process and developing country GIs face particular challenges that arise from their environment. Das (2009) mentions in this respect how 106 GIs have been granted protection in India since the enactment of the Indian Geographical Indications of Goods Act in 2003. He points out however that despite legal recognition, these right holders face significant challenges in harnessing the potential benefits of GIs. In this context, the following section explores some considerations for achieving the socio-economic benefits of GIs in developing countries. It highlights the necessity of appropriate legal protection but goes further in listing factors that generally pose a challenge to right holders in developing countries and which should be taken into consideration when assessing the potential socio-economic impact of GIs.

Hudges (2009) warns that although appropriate legal protection is absolutely necessary for successful GI marketing strategies, the “piling up of laws” should not be confused with the “accumulation of reputational capital”. It is really in the latter where the benefits for developing countries lie and the introduction of stronger laws is only one step in achieving this “decommodification”. Bowen (2010) analyses the impact of the Tequila GI in Mexico. In the discussion she observes that GIs are legally defined in an almost identical manner under Mexican law as it is in France, a country which is seen as having the most sophisticated GI system in the world. She points out however that despite this, and although sales volumes have increased significantly, the introduction of the Tequila GI has largely failed to benefit the local community and environment. Stricter laws do therefore not in itself give rise to the potential socio-economic dynamics of GIs. Developing countries should furthermore guard against merely duplicating legal systems in place in developed countries as they do not take into consideration environment specific dynamics. Boisvert (2006) highlights in this respect that transplanting institutions is likely to be as problematic as the transfer of technology. It is thus crucially important that the institutional framework in developing countries be adapted for the local dynamics of the developing country context (Giovanucci et al, 2009).

As mentioned above, GIs is a collective instrument of value creation. Legal protection and the collective nature of this IP right is however no guarantee that the value created through the GI process will be fairly distributed within the collective (Reviron et al, 2009). In this, Moschini et al (2008) finds that producers do not automatically benefit from a GI. Reviron et al (2009) similarly shows that in the European context, not all GIs share price premiums with producers. In discussing the challenges faced by producers of Indian GIs, Das (2009) highlights difficulties in ensuring that the producers receive a fair share of the benefits of the GI. This is confirmed by Gopalakrishnan et al (2007) who finds that in India, where GI protection has recently been introduced, it is the traders and not the producers that capture the largest share of the economic benefits that flow from the GI. Kaplinsky and Fitter (2001), in analysing differentiation in the coffee sector, similarly finds that price premiums are more likely to be captured by traders and distributors than by the actual producers.

While GIs clearly have the potential to improve the livelihoods of producers in developing countries, this is highly dependent on how equitably the actual benefit is distributed along the supply chain. The importance of this is emphasised by Jena and Grote (2010) who finds that the actual impact of GIs critically depends on whether producers share in the benefits. Jain (2009) points out in this respect that to judge the actual benefit of a GI, it is necessary to look at the supply chain as a whole. Disparity in the economic and bargaining power of the different supply chain actors are likely to impact on the distribution of value. Resource poor

producers with limited power often receive very little of the benefit, a factor which is clearly important in a developing country context (Reviron et al, 2009). As GIs are likely to lead to an upscale of the supply chain, new power relations will emerge, especially where the GI leads to lengthening of the supply chain and embeds itself in larger networks (Hinrichs, 2003). Bowen (2010) highlights the importance of considering this change in power within the supply chain which may flow from the introduction of a GI.

The distribution of benefits is also tied to who has the right to use the GI. Distinction should be made between who can own versus who can use the GI. In their comparative analysis of the Asian legal frameworks for GI protection, Gopalakrishnan et al (2007) find that although there are many differences regarding who can own the GI in these systems, most of the laws limit the right to use the GI to the actual producers and traders of the product. The authors point out that the intention behind this is that the socio-economic benefits should flow to the actors within the region and not to external intermediaries. They find however that the flow of socio-economic benefits that reach the producer will be improved if the right to use the GI is limited to the actual producers who can then license downstream actors to use the indication. In this respect, Huges (2009), in referring to Africa's troubled history with centralised agricultural schemes, cautions that if the control of a GI rests with central authorities, there is a real risk that any premiums will be extracted by the government. Reviron et al (2009) further states that the distribution of value derives to a large extent from the quality of supply chain governance and cites Barjolle et al (2007) in saying that the efficiency of the collective organisation and the cohesion between the operators are crucial in achieving a fair distribution of value. GIs are a fairly new concept in developing countries, triggered by legal obligations under TRIPS. Unlike in European countries where GI protection was given in response to demands from producers, it is thus externally imposed on developing country producers, and in most instances do not flow from an actual expressed need (Dwijen Rangnekar as cited by Mara (2009)). Boisvert (2006) warns in this respect against a "too centralised" GI system and highlights the importance that the process should evolve from "local initiatives". Reviron et al (2009) points out that in the EU GI collectives are created in most instances by actors personally involved in the supply chain. He contrasts this with the situation in developing countries where it is in most instances the government or NGOs that start the process for the creation of the GI collective. This highlights a difficulty for developing countries in that the processes that lead to the creation of the GI collective are in many instances externally imposed. This, coupled with the characteristic lack of cooperation between many actors in developing countries leads to collective action problems, a significant concern for developing countries as it has been shown that coordination is an important condition for success of GI products (Chappuis and Sans, 2000).

The fact that the development impact of GIs will be limited in instances where the monetary benefits is not shared equitably by all participants, makes a strong argument, as pointed out by Das (2009), in favour of stronger public intervention. But so does the potential indirect GI impacts such as biodiversity preservation. Whereas public support is an important element in the European GI system this is not always the case in developing countries. Bowen (2010) emphasises the importance of this and calls for "explicit intervention" from governments in support of rural development and resource poor producers. In the context of inequality an argument can be made that government has an oversight function in order to assess the control exercised by powerful actors and to intervene in support of a more equitable distribution of benefits. Jena and Grote (2010) states that institutions play an important role in ensuring that producers receive a fair share of the benefits which flow from the GI. Governments have a role to play in providing an appropriate and enabling institutional context. Larson (2007) points out in this respect that developing countries face particular challenges due to a "weaker institutional context" and that a GI's success is as much dependant on its institutional environment as it is on factors such as reputation and quality management. CIRAD (2009) also identifies weak institutions as an impediment to

developing country GIs and states that institutional considerations around GIs go further than the provision of regulatory mechanisms to include also policies that support the “emergence and promotion” of GIs, including financial support. Bowen (2010) states that state support should at least give producers access to the minimum of information and resources needed to organise effectively. She continues to say, in the context of the increased withdrawal of government from agriculture, that “sustainability and equity” cannot be pursued if producers do not receive “institutional and organisational” instruments that can facilitate the organisation required by GI supply chains.

In discussing the challenges faced by producers of Indian GIs, Das (2009) further highlights the need for effective marketing. Alavoine-Mornas (1997) states that for territorial differentiation to be successful, consumers need to recognize its value. This highlights the fact that in some instances, origin based niche marketing may require an extensive awareness campaign in order to capture the benefits associated with territorial differentiation. This is explained also by Reviron et al (2009) in referring to Chamberlin’s (1933) theory which shows that differentiation can only lead to an increase in demand if consumers are made aware of it through the provision of information, an aspect which is likely to lead to an increase in marketing costs. This crucial aspect thus often proves challenging and expensive for resource poor stakeholders. Even more so on international markets where the GI may not as yet enjoy a reputation (Das, 2009). In this, Suh and MacPherson (2007) conversely argue that as GIs often utilise territorial names that are well-known, the initial marketing costs may not be that high. Zografos (2008) contradicts this however in stating that developing country GIs, with the exception of a few, are relatively unknown on international markets. In an environment of changing consumer demands, expensive marketing strategies are high risk investments (Yeung and Kerr, 2008) for any firm, but even more so for resource poor producers. A careful consideration of the GI’s potential success is thus needed to prevent the inefficient use of scarce resources. Marketing difficulties also extend to decisions around distribution, an important consideration for developing countries, as the choice of distribution channel impacts on economic power within the supply chain. As discussed earlier, this could significantly influence the producers’ ability to benefit from the GI.

There is thus clearly a range of complexities around the marketing, promotion and distribution of GI products. Albisu (2002) observes however that efforts are usually channelled toward production activities, with marketing a weakness of GI supply chains. This is confirmed by CIRAD (2009) who, in its study on GIs in ACP countries, highlights a lack of knowledge around market aspects as a significant weakness of developing countries. Developing countries would have to devise means of addressing this weakness, including stronger state support as discussed above, in order to improve the likelihood of capturing the benefits which could potentially flow from GIs.

As in the case of trademarks, building the image of the GI product and benefitting from the collective reputation depends crucially on achieving and maintaining a consistent level of quality. The purpose of reaching consensus on the product specification is to arrive at an agreed quality standard for the product which needs to be maintained by compliance with the code of practice. This is a fundamental part of the GI process as the agreed standards should protect the unique quality of the GI product. The collective action problems that plague developing countries in particular, as discussed above, complicates the process of reaching consensus on quality standards (Das, 2009). The quality dimension of GIs requires once again that developing countries address concerns around collective action and organisation.

Addor and Grazioli (2002) points out that the dynamics which take place when implementing a GI have the advantage of structuring production methods and marketing in order to

guarantee a product with consistent and specific quality. In agreeing on the quality standards actors should however take care not to arrive at standards that are so rigid that it impedes potential innovation processes. It has been observed in this respect that rigidity in the French wine industry is to blame for many of the difficulties faced by the industry, including its inability to adapt to a changing market environment. Where demand increases for emerging products there is the risk that producers will move away from traditional production practises to more mechanised processes which may change the intrinsic quality of the product. Bowen (2010) states in this respect that moving from local to “extralocal” markets can significantly change the way production is organised and the characteristics of the product. The need to adapt the production process may relate to transport requirements or flow from differences in consumer tastes in new markets. Changes in the production process brings with it a risk that the product may lose its specificity, a crucial element in the success of a GI (Barjolle and Sylvander, 2002). The challenge for developing country operators entering new markets will lie in finding a balance between delivering a product with consistent quality attributes in support of product specificity whilst allowing for the needed innovation to move from localised to “extralocal” and potentially international supply chains.

The collective dimension of GIs requires that exclusion mechanisms be put in place to deal with non-compliant operators that risk the collective reputation by not meeting the quality specifications. This requires an effective quality control mechanism. TRIPS itself does not provide any prescribed form of quality control although the obligation to provide for it in national systems is implicit in the reading of article 22(2) (Gopalakrishnan, 2007). Ensuring quality is approached differently in national systems. The EU has for instance decided that control should be carried out by “a competent public authority or accredited certification body”. Das (2009) states that quality control should preferably rest with an independent body. The weak institutional environment in developing countries together with high levels of corruption is likely to pose a challenge to quality control mechanisms in developing countries. CIRAD (2009) adds to this in raising the lack of certification bodies as a concern for quality control in ACP countries.

WIPO (2008) points out that, in addition to successful marketing, the efficient management of intellectual property depends on the right holders’ ability to monitor and enforce its IP. Pacciani et al (2001) points out that the rural development potential of GIs is strongly dependant on the ability of local actors to create institutional processes that can regulate the use of the GI. This extends beyond quality enforcement as discussed above to include regulating the use of the name to prevent counterfeiting. The effective enforcement of protected GIs, both on domestic and export markets, entails significant monitoring and administrative costs as well as knowledge capital, posing a further challenge for developing country GIs. Notably, international protection under the TRIPS agreement is dependent on the GI being protected domestically³. National laws thus need to be amended, a process which is likely to entail additional costs. In the absence of a mandatory international register, protecting GIs in foreign territories with *sui generis* systems further entails complying with complicated territory specific legal requirements in each jurisdiction it seeks protection. Wagle (2007) as cited by Das(2009) estimates for example the cost of applying for registration in the EU at US\$20 000. Depending on the type of system in place in the foreign jurisdiction, the burden of proof may rest on the infringed party. This often necessitates costly consumer surveys to prove distinctiveness. The enforcement in foreign territories is thus potentially a costly and uncertain process for GI right holders from developing countries. Das (2009) finds in this respect that the lack of public support significantly hampers Indian right holders’ enforcement in international markets.

The costs associated with GIs remain one of the biggest challenges to developing countries (CIRAD, 2009). In addition to costs related to the institutional framework, development of the

³ See article 24.9 of the TRIPS Agreement.

production chain, promotion and enforcement costs, there is likely also to be costs linked to achieving and maintaining the unique qualities of the product. These include costs in defining the product specification, establishing producer organisations and control costs. CIRAD (2009) finds that costs related to quality control generally fall on the producer in developing countries and Hughes (2009) cautions in this respect that a GI will not result in an economic rent if any potential premiums go into expensive quality control. This raises again the need for developing countries to carefully estimate the net benefit of GIs through an empirical calculation of the cost of protection and profitability, bearing in mind also the indirect GI benefits and policy objectives.

Finally, optimising the potential socio-economic impact of GIs necessitates a consideration of the broader policy environment. It is important not to approach GIs merely as intellectual property rights. GIs form part of a much wider policy context and focussing only on one of its potential dimensions is likely to curtail its positive impact. Bowen (2010) mentions in this respect how the Mexican GI system has been implemented to protect Mexican products from usurpation and that no attention has been given by the Mexican government to broader policy objectives. Barjolle et al (2009) mentions that where economic benefits are the only concern in implementing a GI system, there are likely to be threats to the other potential GI dynamics such as rural development and sustainability. This emphasises the need to consider the broader territorial and social objectives. Bowen (2010) mentions that the new legislation introduced in developing countries is often not supported by clear policy objectives. She explains how this lack of a coherent policy approach leads, especially in the context of lengthening supply chains, to an increased risk of outside actors capturing the benefits of the GI dynamics. Developing country governments should be clear on the policies behind GI strategies and ensure that these are in coherence with and support the broader policy objectives. The role of institutions and the procedures of the GI system should be aligned with these objectives (Barjolle et al, 2009). In this Addor and Grazioli (2002) cite Vivas-Egui (2001) in saying that “developing countries need to draw a clear action plan at the national and international level in order to consolidate the benefits of their own GIs”.

CONCLUSION

The paper reviewed the international literature on the socio-economic impact of GIs. It explored the benefits associated with GIs from a quality signalling, market access and rural development perspective. It went on to identify traditional knowledge and biodiversity as potential objectives which can be pursued through a GI system. The review highlights the significant benefits which could potentially flow from this IP right. The discussion is qualified however by considerations around interpreting the potential GI dynamics. It is shown in this respect that the discussion on the potential socio-economic benefits is to a large extent conceptual, given the lack of empirical evidence. Methodological difficulties in the empirical measurement of these impacts were briefly explored. The lack of empirical measurement remains the biggest hurdle to conclusions on the socio-economic impact of GIs. The discussion further cautions that there are particular challenges to harnessing the potential socio-economic benefits in a developing country context. It shows that, as emphasised by Hedges (2009), GI laws do not by itself lead to the potential socio-economic benefits. The challenges faced by developing country GIs emphasises that, in addition to suitable legal protection which considers the dynamics of the local context, the GI process needs the support of appropriate institutions and policies.

In summary, it is undisputed that there are significant benefits attached to GIs. Achieving these dynamics is however not a simple process and is dependent on how the process is implemented, protected and exploited. This requires concerted efforts by both governments and producers. Developing countries should take note that the socio-economic dynamics of

GIs are highly context specific and that the impact of GIs is likely to vary from country to country and from product to product. This is confirmed by Grote (2009) who, in discussing environmental labelling schemes in general, finds that the results of impact studies vary greatly depending on the production process and that the impacts are highly heterogeneous across countries, regions and sectors. Therefore, while GIs present an interesting policy tool with potentially significant benefits, it is left to countries to undertake careful analysis of the expected benefits and costs in their particular environment and for their particular products. As shown, GIs are multi-dimensional instruments and any impact assessment would need to account for the broader territorial impact thereof, including all potential economic, social and environmental impacts. Informed policy decisions around GIs should therefore beyond economic considerations also take into account the potential social and environmental benefits. It should be kept in mind however that GIs are in the first instance IPRs that protect the goodwill and reputation of these differentiated products. Additional socio-economic impacts may flow from its introduction and protection but are likely to require policies in support of these additional objectives.

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SOCIO-ECONOMIC RATIONALE UNDERLYING THE DEVELOPMENT OF
GEOGRAPHICAL INDICATIONS:
COMBINING ECONOMIC AND PUBLIC GOOD DIMENSIONS TO CONTRIBUTE TO
SUSTAINABLE TERRITORIAL DEVELOPMENT

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INTRODUCTION

A geographical indication does not simply identify a *quality, reputation or characteristic of a product*, but rather it refers to the entire production system rooted in a territory and associated with local stakeholders. This makes geographical indications (GI), or rather the “GI process” a tool for local and sustainable development. Besides its “intellectual property” dimension, it also provides many other stimuli for social and economic development.

To illustrate this, it is helpful to begin by reviewing the meaning of “origin linked” from a conceptual point of view, using examples taken from FAO support activities in Latin America (case studies and a regional project in Argentina, Brazil, Chile, Peru and Costa Rica).

In terms of this sustainable local development perspective, it is then important truly to identify and take account of the key success factors relating to local conditions and means of development. Indeed, as with any tool, the effectiveness of the results of the GI process will depend on how it is used. Technical aspects concerning the establishment and management of a geographical indication are crucial elements, and this is why FAO provides support to member countries in such matters.

THE GI PROCESS AS A TOOL FOR SUSTAINABLE LOCAL DEVELOPMENT

The GI process: an economic and public good approach

From the definition of a geographical indication (GI) as an intellectual property right, we can say that a GI strategy is, for its users, first and foremost an economic strategy aimed at protecting the identifying feature of their product of a specific quality, which has a value that may be enhanced: its reputation.

Indeed, registering a GI has a significant economic impact: it makes it possible to combat usurpation and imitations, thereby ensuring profits from use are received only by authorized users. Such an economic differentiation strategy places the product in a market segment for which consumers, once they have recognized the specific nature linked to the origin (hence the importance of the “GI” or “AO” label as a sign of quality), show a willingness to pay for such a feature.

However, why would a consumer choose a GI product over another? What is the attraction? It is mainly its link with the origin, or its *quality, reputation or other characteristic of the good ... essentially attributable to its geographical origin*, as defined in the TRIPS Agreement or the Lisbon Agreement, and what FAO generally calls “origin-linked quality”. This specific quality is more or less explicitly sought by consumers for its objective dimension (particularly organoleptic criteria linked to form, color, texture, taste

and so on) and its subjective dimension (identity, landscape, ethics, social image and so forth) (Allaire, 2011; Bérard & Casabianca, 2003; Barjolle, Boisseaux & Dufour, 1998; (Bérard & Marchenay, 2007, 2008; Van der Ploeg, 2002).

What does this link with a given origin consist of? How is origin-linked quality built? This is the essential role played by producers located in a given territory who have built, over time and by interacting with their environment and its physical resources (and constraints), the reputation, quality or characteristics of the product as reflected in the GI.

Behind the GI (registered or unregistered), there is therefore a system with three intrinsically linked dimensions: *product, territory and local actors*. This system gives the IG process a heritage and public good dimension (Sylvander, Isla and Wallet F., 2011):

- *The product with a specific quality*: bearer of quality linked to the origin and the associated GI and the result of know-how rooted in local history;
- *Territory* is the defined space with the local resources that give the product its specific quality or reputation: these may be specific human or cultural (know-how, practices, traditions), genetic (local variety or species) or physical (climate, temperature, altitude, soil and so on) resources that give the product its typical nature and have a strong component of heritage and public good;
- *Local actors*: guardians of the specific nature of the product – their collective actions define in a participatory way their protection strategy based on definition and recognition of their product.



Thanks to its foundation in a particular territory and its link with local resources, the GI process has a strong collective component and a public good dimension, through the cultural and natural heritage involved in identifying it, adding value and, where appropriate, preserving it.

This is why, alongside the economic stakeholders using the GI strategy for its business interest, public and civil society stakeholders often take action to support the process as it has significant impact in terms of public good and heritage.

This can be seen at the national level in an increasing number of countries, where some explicitly mention heritage objectives in their legislation, which explains the process to identify and register GIs that has begun in many countries (Barjolle et al., 2011).

Origin-linked quality is thus at the heart of the attempt to add value to products and GIs. We will now consider some examples from Latin America.

Some examples from Latin America

There are many examples in Latin America, particularly among the nine case studies carried out by FAO in conjunction with the Inter-American Institute for Cooperation on Agriculture (IICA), and through pilot cases of the regional project developed in Argentina, Chile, Brazil, Peru, Ecuador and Costa Rica. As it was not possible to provide an exhaustive overview, the three examples below are the first GIs registered in Chile, Argentina and Ecuador, and illustrate how the GI process contributes to the economic and public good dimensions described earlier.

	Economic aspects	Heritage preservation/promotion	Stakeholders involved
<p><i>Northern Neuquén Criollo kid (Chivito criollo del Norte Neuquino)</i> First Argentine AO, 2010</p>	<p><i>Development of a formal circuit for the superior quality category of the GI product, through the organization of a control system in the local slaughterhouse being built up, and potentially the creation of new jobs for direct trade.</i></p>	<p><i>The territory is the arid and isolated mountains of Patagonia, where the Gauchos population lives off pastoral farming by raising goats for meat and wool; their aim was to be able to pass on this way of life to their young people. In relation to the local genetic specificity and its identification and recognition, the GI process has added value to the culture, as the official recognition has strengthened self-esteem and bargaining power, as well as the power to protect the rights of producers on their land.</i></p>	<p>The economic strategy of breeders, who were accompanied by the local Institute for Agricultural Research and Development at all stages of the process. Public stakeholders at the provincial and federal levels then became involved in the official recognition and registration of the GI.</p>

<p>Arriba Cacao <i>First AO in Ecuador, 2006</i></p>	<p>The aim of the process in economic terms is to maintain the specific quality and international reputation of Arriba fino de aroma cacao, and strengthen its position and differentiation on the very competitive international market.</p>	<p>The economic process is intrinsically linked to the issue of preserving the varieties of the “national complex”, which are from endemic varieties that guarantee the specific aromas of cacao that are under threat of disappearing with the use of more productive varieties.</p>	<p>The initiative involves all stakeholders around a national strategy for this emblematic product of Ecuador, both in terms of the distribution chain, with the National Cacao Federation, and the public authorities, particularly the Ministry of Agriculture for production, export promotion agencies and the Intellectual Property Office for the registration.</p>
<p>Limón de Pica, <i>First AO in Chile, 2010</i></p>	<p>The main aim is to combat the very common usurpation of this Pica lemon GI (used by lemons that look similar), so as to redistribute locally the benefits of its reputation.</p>	<p>Pica is a village in the middle of the Atacama desert in northern Chile, where farming revenue is essentially from lemon production. The village gives its name to the lemon, which is its emblem, at the centre of local culture and one of the resources used for tourism.</p>	<p>Strategy initiated by the producers cooperative in Pica, who were able to use public funds to carry out studies into the potential of the product and support their organization. They were also accompanied throughout the long process of recognition.</p>

Source: FAO case studies, www.foodquality-origin.org.

These three GI processes illustrate the importance of public-private coordination, between economic approach and public good approach, as well as the importance of support for agricultural and rural development, as a contribution to territorial development and the preservation of such resources.

These examples focus on two major types of approach in developing a GI:

- Territorial approach for a product rooted in a highly restricted place (isolated, low yield, high production costs) and adding economic value in the local or national market in general: the heritage element is very strong and the recognition of the traditional system through the GI is an important driver for the involvement of local stakeholders, given their links to identity;

- National distribution chain approach for a country's "flagship" product to add value on the export markets: the initial motivation in general is an economic one to differentiate the product at the international level, and the GI process may introduce a more sustainable dimension with consideration given to natural and heritage resources.

By combining a market approach (adding economic value) with a heritage approach (social, environmental and cultural dimensions), the GI process can therefore contribute to food security¹ and sustainable development by means of adding value to and preserving local resources.

What are the contributions to local and sustainable development?

There are many contributions to local and sustainable development, as illustrated in many publications and case studies (FAO & Siner-GI, 2009; Barjolle *et al.* 2008. Barjolle *et al.*, 2009; Belletti *et al.*, 2003; Belletti & Marescotti, 2002, 2011; Bérard & Marchenay, 1995, 2007, 2008, Van der Ploeg, 2002; Proddig, 2009). For example, the studies into mountain cheeses show very interesting effects in economic terms (prices, market access, production volume management), social terms (redistribution of benefits, added value and job creation) and environmental terms (biodiversity, landscape) (Barjolle *et al.*, 2007, Frayssignes J., 2007, Jeanneaux *et al.*, 2009; De Roest *et al.*, 2000).

Although there are few examples of empirical studies to assess the net benefits of establishing a GI by comparing GI systems and non-GI systems, a recent study on Basmati rice concluded, however, that there was more profit in the GI rice thanks to higher family revenues in the GI process compared with the others (Jena & Grote, 2010).

The contributions of the GI process to sustainable development can be divided into four main categories, based on the three pillars of territorial sustainable development involving the consumer approach:

- Economic impact: protection against usurpation, access to niche markets, value added, stable prices, redistribution of the value added throughout the distribution chain, return of benefits to the production area, production volume management and economies of scale. These factors result in higher income for producers, the maintenance or development of economic activities in isolated areas, and a boost for other economic activities that benefit from the GI reputation.
- Environmental impact: reproduction (preservation or even improvement) of natural resources, including landscapes, contribution to wild and cultivated biodiversity; traditional techniques that tend to be more environmentally friendly.
- Social impact: preservation of cultural heritage, ways of life, development or strengthening of a social and professional network, development of a territorial vision that helps to create synergies with other local activities (products and services) around the image of a basket of goods (Bérard *et al.*, 2006; Mollard *et al.*, 2007). This social element includes a human dimension (pride of producers encourages them to value and

¹ Food security exists when all populations at all times have physical and economic access to healthy and nutritious food to meet their nutritional needs and food preferences for an active and healthy life (FAO, 2002, *The State of Food Insecurity in the World*).

- protect their product and its production system better, as seen in the case of Chivito criollo del Norte Neuquino) and social and political representation, with the creation of the GI association responsible for managing the sign of quality.
- Consumer well-being: preservation and diversity of food, labeling of a specific quality to improve choice, transparency and traceability, guaranteed level of quality and specific characteristics thanks to certification.

It should, however, be pointed out that these effects are not automatic: entering a GI in an intellectual property register is not enough suddenly to push up product prices, preserve biodiversity and add value to local knowledge. It all depends on the conditions of implementation and management. What is more, the initiative could have more effect on certain dimensions than others, depending on local conditions and implementation arrangements - particularly the motivation and collective strategy of stakeholders (Barjolle & Sylvander, 2002). It must also be emphasized that the impacts are in the long term, and can rarely be seen immediately, particularly in terms of social and environmental aspects. Lastly, in some cases, the means of development result in weak or even negative impacts. One such example is reduced (domestic) biodiversity if a single variety is included in the code of practice, or the internal diversity of products within a territory if the quality standards are too restricted or the halting of necessary developments or, conversely, the alteration of a traditional system towards an export-based system (Bowen, de Master, 2011). The main pitfall is when the initiators unjustifiably exclude other apparently legitimate producers from the process.

SO HOW CAN THIS TOOL BE USED TO OPTIMIZE ITS IMPACT ON SUSTAINABLE DEVELOPMENT?

On the basis of case studies, technical projects and seminars held in various world regions, FAO has established a number of findings and has used expert input to formulate certain methodologies and recommendations to support the creation of conditions conducive to GI processes that have a positive impact on sustainable development.

Cross governance

One of the main points is to consider the GI system set up around a product and its stakeholders as a series of cross coordination actions among:

- local level (production system) and national level (official recognition)
- the sectors involved:
 - public/private: the GI strategy is a market strategy and a voluntary process led by economic stakeholders: and the system is unlikely to be viable without them. It is up to the distribution chain to define its product characteristics and set the type of associated standards. It falls to the public authorities to ensure the legitimacy of all aspects (mainly legal and technical) of the registration application and, where appropriate, guarantee the proper functioning of the regulatory and institutional framework for the protection of producers and consumers.
 - Within the public sector and associated institutions: coordination is necessary among sectors relating to production and development (agriculture, food or crafts) and intellectual property in terms of registration, as well as other sectors that may play a role, such as environment, tourism, culture and so on.

	Local	National (and international)
Private sector Distribution chain (voluntary standard)	<ul style="list-style-type: none"> • Collective mobilization for product qualification • Marketing and reputation management (system of guarantees, promotion) 	National (and international) association of producers
Public sector <ul style="list-style-type: none"> • In charge of production (agriculture, food, crafts and so on) and intellectual property • Also other relevant sectors: tourism, environment, culture and so forth 	Territorial support policy, research, development and extension services etc.	<ul style="list-style-type: none"> • Assessment of applications for recognition and registration • Protection • Development support

Key factors for establishing and managing a GI

The best ways of using the GI tool can be divided into three main categories:

- technical factors at the basis of the process
- coordination processes
- rules of the game that will help or hinder the first two, namely the regulatory framework.

In terms of the rules of the game, membership of WTO and accession to the TRIPS Agreement imply that members use means of protecting GIs without specifying which legal means, so governments must therefore define an appropriate system based on their objectives and resources. Beyond protection in the strict sense of the word, an increasing number of countries are including GIs in a more general policy of heritage conservation and economic development, and thus define tools to support the development of sustainable GIs (Barjolle et al., 2011).

As this paper is more concerned with the technical aspects, we will not analyze the legal dimension in much detail. What is important from a technical point of view is that the rules are clear and easily accessible for users and consumers, so that GIs may play all their roles, and in particular as a sign of market quality.

In terms of the other two categories, we are particularly concerned with their local dimension.

As for the technical aspects of defining a GI, they are the essential foundations for the existence and recognition of the GI and its protection. Otherwise, how could a right of ownership that reserves the right of use for certain producers, while excluding others, be justified? The demonstration of a link with the origin is at the heart of this justification: what is this origin-linked quality (“*quality, reputation, characteristic*”) and in what way is it *essentially due to the territory*? Some technical studies may be necessary (study of the reputation, studies on the link to natural resources and know-how, analysis of product composition and so on) to determine whether or not the product does have origin-linked quality, as not all products may be registered as GIs. Subsequently, these technical aspects will define what the GI product is, by differentiating it from other products in the same category. This will form its code of practice, protocol or production standard. The code of practice is therefore essential for several reasons:

- demonstrating that the GI product has origin-linked quality and differentiating it from others
- providing transparency for customers and forming the basis of a system of guarantees (requirements of the code of practice are checked), both for consumers and producers (against fraud)
- facilitating possible reproduction of local resources (natural, genetic and human) depending on how they are registered.

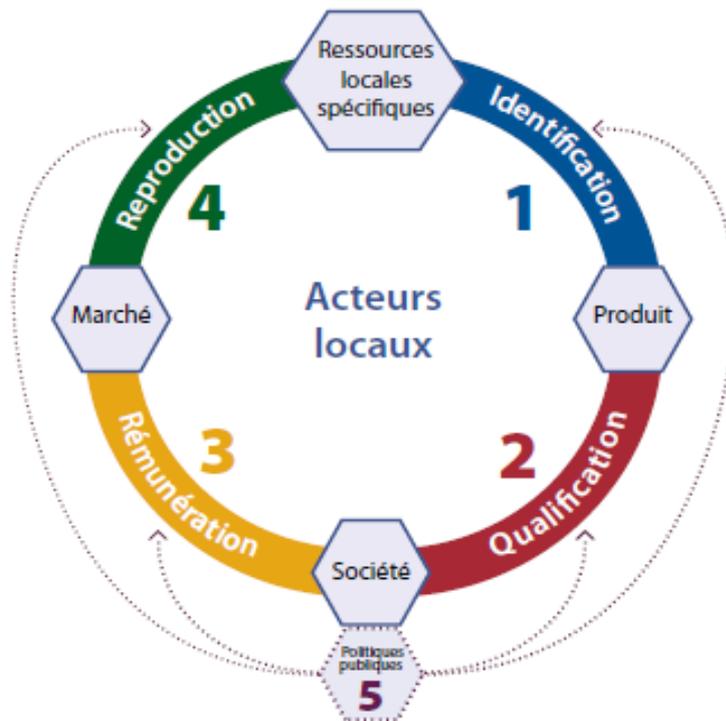
As far as key factors linked to the process are concerned, as stated previously, collective action is at the heart of this initiative, as the GI is a collective good involving all the territory's producers. To ensure that all relevant producers are included in the process and avoid unjustified exclusions, it is vital to adopt a participatory approach to producing the code of practice. Furthermore, only an endogenous process or one with ownership by the producers will ensure the viability of the process and the sustainability of the GI. Indeed, the GI is a voluntary process that must be desirable to and defined by producers.

Another key element is the organization in charge of managing the GI: whether it is called an association, consortium, inter-branch organization or defense and management group, what is important is that it brings together all GI producers and involves all relevant parties to define the GI strategy and represent all users in dealings with public authorities and civil society. The organization manages the collective promotion of the GI as it relates to the territory and its inhabitants, for instance by disseminating the logo and leaflets, organizing consumer visits or celebrating the product, potentially in conjunction with other local stakeholders, and so on. The organization also plays an essential role in the system of guarantees provided to producers and consumers through the internal control system. Lastly, such an organization may play a crucial role, especially for small-scale producers, in terms of production and marketing, in particular thanks to the advantages of economies of scale and strengthened bargaining power of its members. The organization can also provide mediation, to facilitate dispute management and improved redistribution of benefits to primary producers.

To promote the consideration of these key technical factors in the process to add value and origin-linked quality, FAO has developed a practical step-by-step guide to clarify the concepts involved and above all illustrate them using many real different cases.

Practical methodology for adding value to and preserving origin-linked quality– the GI process

The virtuous circle of origin-linked quality is based on four major stages to ensure the inclusion of all the key elements for a territorial process to add value to a local product in a way that creates economic value and preserves associated natural and cultural heritage.



Identification

This first stage is essential, as it identifies potential for developing a GI, and not every product can have a GI. This potential relates to the product (does it have origin-linked quality?), the territory (what resources are involved?) and the stakeholders (are they motivated by this process? Are they mobilized or do they at least have capacity for mobilization?). In the case of a process launched by those outside the territory, this is also about producers becoming aware of the richness of their production system, and this phase is essential for them to take ownership of the process. The demonstration of a link between the specific nature of the product and the geographical origin can then be established on the basis of the above-mentioned results.

Product qualification

This phase consists in setting local rules for the production of the origin-linked quality product, based on a definition shared by producers. In other words, this is the drafting of the code of practice and the associated control plan. This is largely based on the results of identification, and requires a participatory approach from all producers in agreeing on the set criteria and the corresponding geographical area. The contents are crucial for the reproduction of resources and the viability of the system. Disputes are common, but this also reflects true mobilization of stakeholders, and differences can be resolved by developing a common vision based on the well-being of the territory as a whole. Although this process may take a long time, such a long period makes it possible to build solid foundations for the GI.

Remuneration

This phase is to analyze and define the role of the GI organization, which can be established at the product qualification stage. Its coordination role is essential internally, among producers and within the distribution chain, externally *vis-à-vis* society, and throughout the quality circle, particularly in terms of rewarding the value of the GI system through the market (promotion and marketing) or other non-market systems where

relevant (such as remuneration for environmental services). The GI market strategy has a vital collective element (promotion and sometimes marketing), although this does not replace the individual strategy of each producer.

Reproduction of local resources

This phase takes the form of a regular assessment over time that local stakeholders must carry out to ensure the sustainability of the system by checking the effects of the process in economic, social and environmental terms, thereby arranging for any adjustments or developments. The reproduction of local resources is valid for the entire territory and therefore for all stakeholders and activities involved. The quest for an increasingly sustainable process leads to the development of an extended territorial strategy. This strategy consists in extending the benefits of the reputation to all activities and creating synergies, for instance through local tourism and its impact on direct sales.

Public policies

Throughout the cycle, local and national public policies provide the legal and institutional framework for creating the conditions conducive to the development of GIs, encouraging their positive impact on local development and strengthening environmental or social sustainability.

CONCLUSION

Geographical indications (including appellations of origin) reflect a system of production anchored to a territory and its local resources, and as such they can contribute to a process of adding value to the origin and its impact in terms of local sustainable development, by combining the economic and heritage dimensions. This involves considering a number of technical factors to implement and manage this at the local level.

Given that this is a significant but relatively new development for many countries, FAO is developing support tools such as its guide "Linking people, places and products"² or a soon-to-be-published inventory methodology for potential products, as well as technical references through case studies from all continents. In addition, FAO also responds to country requests to accompany stakeholders in their projects.

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“BRANDING GEOGRAPHICAL INDICATIONS”
BUILDING DENOMINATIONS OF ORIGIN THAT CONNECT WITH CONSUMERS

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The Colombia Coffee Growers Federation has a main priority: Ensure the well being of more than 500.000 coffee producing families. Delivering a high quality product to the market and maintaining a consistent reputation that generates added value for coffee producers is one of the most important tools to achieve this objective. This is a complex goal to be achieved, but the PGI serves as a relevant instrument in its overall strategy.

The Federation has found that just protecting the origin of the products it is not enough to contribute to the well being of their producers, which is why Geographical Indications have a big challenge behind them.

First of all, the actions taken by the organizations should be directed to make origin relevant to consumers as well as promoting the recognition of the producer's hard work and quality; that is why PGIs should be managed not only as legal instruments but as brands. The PGI also needs to connect with consumers, who identify among available alternatives, those products that best fulfill their value promises.

The Colombian Coffee origin promotion, defense and implementation strategy started since the 60's when the Federation introduced among producers policies of product homogeneity in order to assure the quality and distinction of the Colombian Coffee.

Nowadays Café de Colombia has obtained a number of legal instruments, such as: Geographical Indication in the European Union, Denomination of Origin in the Andean Community Countries and Certification Marks in U.S and Canada, as well as a trademark in over 140 countries worldwide.

Colombian Coffee DO's¹ strategy has follows the Bordeaux example for its Regional Denominations of Origin. In 2006 the Federation began to work on the viability of a regional DO Strategy establishing the possibility of having six or seven Regional Denominations of Origin that needed to be deeply evaluated based on their sufficient distinctiveness, and also require legal protection to be marketed individually as PGIs.

CAFÉ DE NARIÑO CASE

The Nariño Coffee Region is situated in southeast Colombia on the border with Ecuador. The Andes mountain range, which begins in southern Chile and Argentina, enters Colombia through Nariño and crosses the country from south to north making the Coffee Region of Nariño a relatively remote area, where 99.07% of their 33.340 coffee growing families own farms with less than 5 hectares and use very traditional methods of coffee production.

¹ Please note that as Colombian legislation does not distinguish between PDOs and PGIs, the terms are used as if they were the same.

To obtain and maintain legal PGI status as a Denomination of Origin for “Nariño”, the Federation has had to sort out a number of steps:

1. Objectively define the geographic region.
2. Define and characterize product in terms of its essential characteristics.
3. Establish the relationship between product quality and production environment.
4. Develop demand sustainability – global strategy for promotion.
5. Implement the strategy and guarantee its defense.

For establishing the relationship between product quality and its production environment was needed an exhaustive field work. To assure the project success, the field work planning was coordinated with the Federation’s Regional Coffee Growers Committees and socialized among the coffee growers through its extension service. The producer’s participation was a vital instrument to achieve the expected results for collecting appropriate samples. The result of combining product variables and environmental variables for several harvests resulted in being able to link over 1,200 variables to each sample, leading to a new way of defining a region of origin and linking it to a given product quality.

Cenicafé, the coffee research and study center of the Federation, has been a key component of this strategy, applying advanced science and new tools, such as the Near-Infrared Spectroscopy (NIRs), to demonstrate the differences between coffees coming from Nariño and those from other neighboring coffee regions (see Figure 1 and 2).

Figure 1: NIRS PCA for 5 different Regions

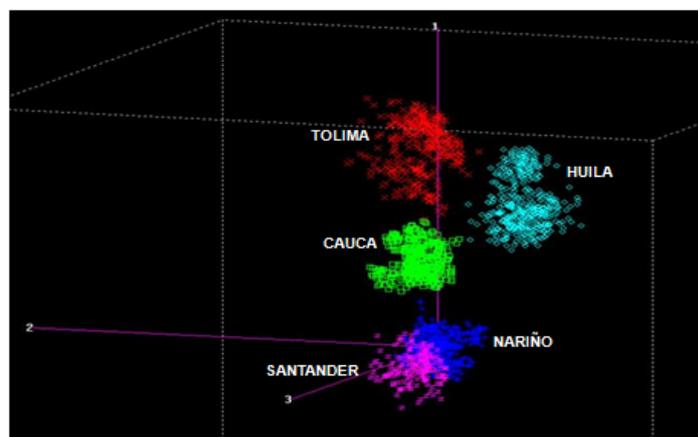
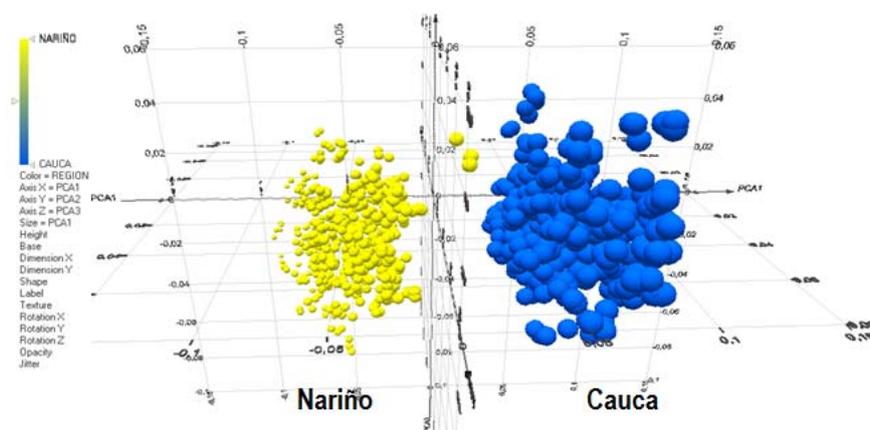


Figure 2: Cauca and Nariño Principal Component Analysis



Laboratories specialized in coffee quality analysis –Almacafé–, contributed with a network of knowledgeable personnel to help ensuring that authorized PGI producers fulfill their quality and traceability obligations. All this work provided the necessary tools not only to apply for a DO, but also to defend it against infringers in the future.

Once the defined domain and product description for Café de Nariño was established, the Federation prepared all the detailed legal requirements and documents to be presented as a dossier to Superintendencia de Industria y Comercio, the government entity that granted the Café de Nariño Denomination of Origin in February 2011.

Nonetheless, the origin protection strategy does not concludes with the recognition of the PGI; the challenge started long before when facing to promote the product and making it widely recognized for its unique flavor and distinctive characteristics, which reputation nowadays distinguished Café de Nariño and manage to provide a premium-priced product.

The global communication environment that surrounds us offers new technologies and opportunities to implement a global strategy for promotion and sustainability for the PGI Products among industrials and consumers.

The Federation constantly works on developing new communication platforms based on web technology. One of the most outstanding on-line initiatives to promote coffee origins is Virtual Trips to Origin® (For living the experience visit <http://viajenarino.cafedecolombia.com>).

These virtual trips brings the opportunity to take each member of the audience to the region where the coffee is grown and harvest, and make available through edutainment methodology to teach to the traveler relevant information regarding what gives the coffee it uniqueness flavor.

Finally, we invite you to visit our web site www.cafedecolombia.com and explore the on-line Colombian Coffee World that we have prepared for you.

GEOGRAPHICAL INDICATIONS (GIs) AND SCIENCE AS A TOOL FOR COMPETITIVENESS: THE CASE OF COLOMBIAN COFFEE¹

Andrés Lozano, Luis Fernando Samper and Julián García²

INTRODUCTION

Many producers of agricultural goods such as corn, rice, coffee, soy and sugar are currently facing a real-term fall in product prices owing to a deterioration in terms of trade over the long term, a phenomenon that has attracted the attention of various economists over the past few decades (MADR- *Ministry of Agriculture and Rural Development*), DNP - National Planning Department), 1990; Bejarano, 1998; Jaramillo, 1998; Ocampo & Parra, 2003; Reina, Silva, Samper & Fernández, 2007; MADR, 2010). In order to be able to continue operating in the agricultural sector, producers, whose profit margins are becoming ever narrower, have directed their efforts towards cutting production costs through the implementation of new technologies or economies of scale when acquiring inputs and selling their produce. One example of this approach is the adoption of differentiation strategies allowing producers to add value to their products in order to increase their incomes. Such alternatives are usually associated with commercial agricultural operations. However, in the light of this situation, agricultural production by small, family-run concerns, which are restricted in terms of the possibilities for mechanization or crop-diversification, is destined to disappear or, should the producers have no other alternative means of subsistence outside of the agricultural and livestock sector, to be maintained at the cost of cuts in family income that will lead to increased poverty.

At the same time, over the past few decades the agri-business sector in general and the coffee sector in particular have been reshaped by various trends linked to the production, processing and marketing of commodities, which have increased the pressure on producers in terms of their competitiveness. (Reardon, Codron, Busch, Bingen & Harris, 2001; Jaffee & Henson, 2005; Humphrey, 2006; Humphrey, 2006a). Producers have had to face up to major challenges in order to avoid being excluded from the most lucrative markets. On the one hand the market has become more sophisticated for producers, with consumers adding the criteria of safety or quality to their demands, as well as compliance with social, economic and environmental standards (Hatanaka & Bain, 2005; Henson & Humphrey, 2010). On the other hand, buyers have evermore requirements in the fields of logistics, traceability, transport, storage and distribution, necessitating increased capacity in terms of management, technologies and organization that did not exist in the past when the products on the market were homogenous (Economic Commission for Latin America and the Caribbean (ECLAC), 2008).

Thus economic globalization has given birth to a generation of new business strategies that have transformed relationships in terms of the production, processing and sale of products (Gereffi, Humphrey, Kaplinsky & Sturgeon, 2001; Carmen Bain, Deaton, & Busch, 2005; ECLAC, 2008; Gibbon, Bair & Ponte, 2008; Bair, 2009). Transnational firms have established global production systems through new methods of organization and coordination that have led to the progressive expansion of global value chains (GVCs) (ECLAC, 2008; Kasacoff & Lopez, 2008). As a result, a small number of actors located in

¹ We wish to thank José Luis Londoño and Stefan Ortiz for their valuable contributions with regard to the preparation of this paper. Any errors or omissions are the sole responsibility of the authors.

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the final links of the chain - global buyers, large distribution firms and supermarkets - have increased their power and have consequently been able to create horizontal efficiencies and economies of scale, as well as introducing barriers blocking the entry of new participants. It is these operators who define what must be produced, how, for whom, in what quantity and when (Gereffi, Humphrey & Sturgeon, 2005). Therefore, small producers are limited in their capacity to upgrade within the GVCs of the agri-business sector and innovate in order to gain advantages related to new consumer trends. Indeed, their capacity in this regard depends on a number of factors, in particular the issue of access to product markets dominated by large firms (Gereffi, Humphrey, Kaplinsky & Sturgeon, 2001).

Against this background, there is renewed interest in the potential contribution to economic development of the various differentiation strategies that agricultural and livestock producers in developing countries have recently begun to employ (World Bank, 2007; Rodríguez & Alvarado, 2008; Auld, 2010). In many countries, producers have embarked upon various projects designed to differentiate their products with the aim of positioning them “outside the commodity box” (Lewin, Giovannucci & Varangis, 2004). This approach has been adopted in order to adapt to new consumer demands and expectations, counteracting lower prices and deteriorating terms of trade, but above all promoting social or political economy objectives (Menapace, Gregory, Grebitus & Facendola, 2009).

Geographical indications³ (GIs) have become a recurring theme at the international level whenever the issue of the alternatives available to producers wishing to access high-value agricultural and livestock product markets is discussed. Such indications make it possible to associate a product with its place of origin and act as a tool for differentiation of products possessing specific quality characteristics. Therefore, GIs can offer producer communities significant benefits which go beyond better prices, creating barriers to entry regarding the production of the commodity in question and reshaping relationships in terms of power with traders, roasters and distributors by improving negotiating terms. GIs also give producers an identity on the global markets, to the extent that consumers value the particular characteristics of the commodity and associate them with a specific origin. Although GIs make it possible to protect and differentiate commodities produced in countries with traditions going back centuries, such as France and Italy, where the attributes of products are closely linked to the customs of a particular locality, the history of many developing countries is different. As to agricultural goods requiring a low level of preparation, small farmers attempting to achieve minimum standards collectively are also faced with shortcomings at the institutional level. In this context, it is worth reflecting on the possibilities open to small-scale producers in developing countries wishing to obtain a GI and to benefit from new consumer niches in the market made up of customers willing to pay a premium for quality attributes.

With the above points in mind, the aim of this paper is to present GIs as an instrument for sustainable rural development that may be used to increase incomes and improve the living conditions of small-scale agricultural producers in developing countries. More specifically, the case of Colombia’s coffee producers is examined, along with their efforts to obtain GIs through the use of science and technology to demonstrate a link between the quality and characteristics of a product and its region of origin. Thus, the aim is to cast light on a

³ A Geographical Indication is a distinctive sign consisting of a specific geographic name used to identify products originating from said origin, the quality of which is directly linked to that origin. In order to achieve the recognition and protection offered by a GI, applicants must do more than simply submit a request to the authorities in the country in which protection is being demanded. Such requests must be accompanied by a whole series of data, information and documents demonstrating the link between the origin of a product and its quality. As a result, not every product with a specific origin is granted a GI. In this paper, the term Geographical Indication (GI) and that of Appellation of Origin (AO) are used as equivalent concepts, although under certain legislative systems they have different connotations.

differentiation strategy originating from the producers and their institutions - "branding from below" (Humphrey, 2006a). This strategy is designed to ensure the upgrading within the value chain of quality agricultural goods caught in the commodities trap.

This approach involves the reconfiguration of the distribution of the resources invested by the consumers, from the traders and distributors to the producers. In this regard, there is little evidence regarding the experiences of developing countries in this field and the way in which the various collective policy decisions, supported by institutions, can affect the relationships in terms of power with those actors focusing entirely on the processing or marketing of a product. It is the latter group which has traditionally been responsible for implementing commercial strategies - "branding from above" (Humphrey, 2006a).

The case of Colombian coffee is of interest to the extent that it is an example of the opportunities that may be afforded to small rural landowners by collective action. Like most farmers across the developing world, the majority of Colombian coffee-growers own only small plots of land. Over 500,000 families are involved in this activity in Colombia, owning on average less than five hectares of land, a little over 1.5 hectares of which is planted with coffee bushes. Owing to the reduced size of the plots of land and the difficult conditions affecting the Colombian rural sector, individual families do not have the capacity to increase their competitiveness effectively at a time when they are faced with a "race to the bottom" in terms of prices and quality. Moreover, when attempting to compete on the international market, Colombian producers - like their counterparts in other regions of the world - face limitations in terms of the local topography and climate which make mechanization of farming difficult and render this activity highly dependent on manual labor. In order to address these issues, Colombia's coffee growers decided to implement differentiation strategies. This process involved the development of a Geographical Indications (GIs) strategy, an approach which in itself gave rise to additional challenges that needed to be faced. Thus, there was a need to demonstrate the link between the quality and origin of the product through the intensive use of new technologies. Fortunately, the interests of the coffee producers were represented by strong institutions all along the coffee value chain, although, on occasions, the agents of those institutions have diverging interests. In this regard, the experience of the Colombian producers facing these challenges highlights a possible path that could be followed by other producers.

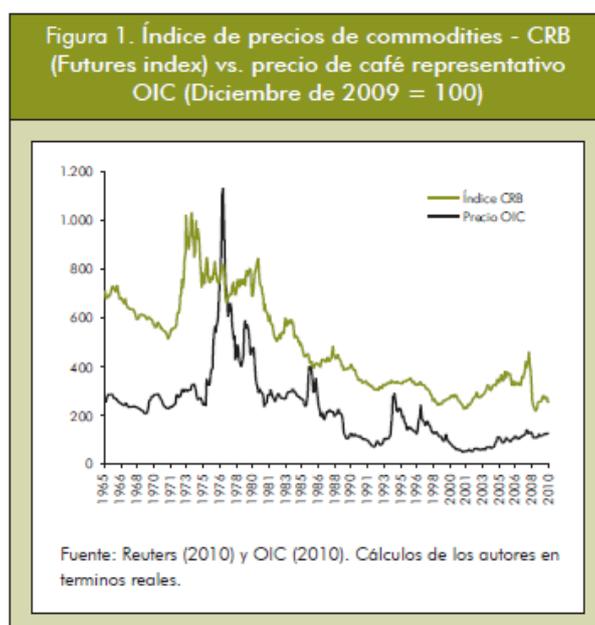
In this paper, GIs are presented as an instrument similar to trademarks in the private sphere, allowing small agricultural producers to face up to the difficulties inherent in the international agricultural goods market by breaking into new segments of the value chain in which they can operate from a better position with regard to distributors, roasters and wholesalers. Within this strategy, science and the development of technologies provide vital support to GIs, rather than representing elements that dissociate the product from its place of origin. This paper is made up of seven sections, the first one being the present introduction. In the second section we present the trend towards lower prices and the reduced level of market sophistication inherent in agricultural activity in general within a context of strengthened global value chains, painting a clear picture of the significant challenges facing small agricultural producers in terms of value appropriation. The third section deals with general aspects and specific limitations of the Colombian coffee-growing sector. In the fourth section we introduce the concept of GIs as an alternative which allows producers to increase value capture. The fifth and sixth sections focus on the specific case of the GI of Colombian Coffee. In those sections we make clear the need for collective action and highlight the importance of science and technology with regard respectively to knowledge about and protection of the product. Finally, the seventh section highlights the main challenges that the Colombian coffee sector must face up to in this field, along with a number of closing remarks.

THE CHALLENGE OF VALUE APPROPRIATION: THE CASE OF AGRICULTURAL COMMODITIES WITHIN GLOBAL VALUE CHAINS

Over the past few years, the view has taken hold that the trend of rising prices for raw materials is a consequence of the accelerated growth of the economic capacity and spending power of a large number of inhabitants of the planet, residents of developing countries with high growth rates such as the member countries of the BRIC or CIVET groups⁴. This new wealth is also no doubt reflected in the increased demand for agricultural goods, which rose from USD\$243 billion in 1980-1981 to USD\$467 billion in 2000-2001 (Ataman Aksoy & Beghin, 2005). This trend has generated expectations concerning rapid price rises and improvements in terms of income and living standards for thousands of small agricultural producers.

However, attempts to analyze these phenomena often overlook two important facts. Firstly, there is a large body of evidence that points to the existence of a downward trend in terms of the price of commodities in the long term, although temporary fluctuations have an effect. This trend can be seen in Figure 1 which shows two price indices in real terms for a group of commodities and coffee between 1965 and the first half of 2010.

Figure 1. Commodity price index –Commodity Research Bureau (CRB) (Futures Index) vs representative coffee price - International Coffee Organization (ICO) (December 2009 = 100)



Índice CRB - CRB Index
Precio OIC - ICO Price

Source: Reuters (2010) and ICO (2010). Calculations made by the authors in real terms.

CRB commodity index prices fell by 50 per cent and coffee prices fell by 55 per cent between the periods 1965 to 1969 and 2005 to 2009. The latter reduction is related to the inflation associated with production and the development of the value of the currency in which commodities are traded on the international commodities market, frequently the United States (US) dollar. To the extent that this currency loses value, as has occurred over the

⁴ The member countries of the BRIC group are Brazil, Russia, India and China. The CIVET group is made up of Colombia, Indonesia, Viet Nam, Egypt and Turkey.

past few years, and costs are tied to the fluctuations in local prices, producers, despite having obtained better prices in nominal dollar terms, may not necessarily be able to make up for higher costs in terms of local currency.

It is therefore debatable whether these higher prices mean higher real incomes for agricultural producers and whether this situation will counteract the effect of the so-called commodity trap⁵ in which most agricultural products are caught (Prebisch, 1986; Radetzki, 2008).

Moreover, commodities do not have any distinctive characteristics linked to their source that might be valued by the consumer. Their ability to generate a differentiation platform is limited by difficulties in terms of the ability of consumers to recognize the quality of a product. In general, the attributes of commodities are difficult to recognize, inevitably leading buyers to choose the product with the lowest price tag. In this struggle, low-quality products are practically given away, pushing those products with superior characteristics out of the market, with adverse selection taking precedence (Akerlof, 1970). Thus, the laws of the market encourage a fall in prices, regardless of the quality of the goods and the cost involved in producing them. Consequently, better-quality goods, which have higher production costs, will not obtain the price that they should and their producers are not compensated for their efforts by the price paid and will be forced to abandon production. In many cases, the result is a market dominated by low-quality, relatively homogenous goods produced at lower costs⁶.

The scenario described has major implications for small producers whose incomes depend on agricultural and/or livestock production. Their ability to remain in business depends on their capacity: to adjust their income – i.e. reduce it; to increase efficiency – in conditions in which increases in productivity and economies of scale are not always favorable, or; to adopt differentiation strategies that allow them to add value to and promote their products. The first case may arise when there is no alternative way of obtaining an income. The second case scenario is linked to the capacity of producers to adopt new technologies that increase their productivity and their opportunities in terms of access to the financial sector, competitively-priced inputs and distribution channels. The third option is associated with the achievement of price increases as a result of operators taking advantage of the emergence of a major trend towards differentiation in the agri-business sector. This approach involves the generation of quality controls and positioning strategies that necessarily require economies of scale which are difficult to attain individually. The present paper will focus on this final option.

Differentiation trends have given rise to higher value agriculture that has opened significant windows of opportunity for agricultural producers who might otherwise have had to leave the sector, been forced into poverty or even to migrate to the cities (Ataman Aksoy & Beghin, 2005; World Bank, 2007; ECLAC, 2008). On the one hand, this movement has been driven by the retail sector and the supermarkets in response to major changes concerning lifestyle and the willingness to pay of certain consumer segments in countries with medium and high incomes. On the other hand, again in response to those same phenomena in terms of demand, trends have also emerged which arise from the producers themselves, or interest groups (producers' associations, NGOs or certification bodies) which, through the

⁵ The constant fall in prices, known as the commodities trap, has been attributed to technological innovations in the field of production that, with time, lead to reduced costs and lower sales prices (Prebisch, 1986). A number of other factors contribute to the downward trend in terms of the relationship between commodity prices and the prices of other goods and services, such as lower income demand elasticity, increased capacity to differentiate based on the quality and sophistication of the goods manufactured, the fall in costs linked to transport, or lower barriers to entry into the production of commodities (Radetzki, 2008).

⁶ One specific example, regarding the development of the coffee market in Germany, is described in Reina et al. (2007).

“demassification” of production, have embarked upon upgrading strategies involving the creation of “branding from below”. This approach makes it possible to reconfigure the distribution of wealth towards the producer countries (Anholt, 2003; Duguid, 2004; Humphrey, 2005). Unlike the strategies involving the introduction of “branding from above” adopted by distributors and supermarkets, “branding from below” can help to halt the long-standing secular decrease in commodity prices and the deterioration of their terms of trade arising from the entry of new competitors or technical progress (Gibbon, 2001; Henson & Reardon, 2005; Humphrey, 2006).

This strategy of differentiation from conventional products destined for mass consumption is, in part, based on the growing importance attributed to goods which meet various criteria in terms of credence (Reardon, Codron et al., 2001; Humphrey, 2005; Ponte & Gibbon, 2005; Henson & Jaffee, 2006; Humphrey, 2006). These are goods the quality characteristics of which cannot be easily verified objectively and the transactions for which are based on trust as a competition strategy. Thus it is possible to differentiate regular goods from those with credence characteristics, associated as much with their intrinsic quality as with their extrinsic qualities, which may be related, for example to their environmental or social impact, and to use these attributes as a form of brand that distinguishes the goods from their competitors in the eyes of the consumers (Henson & Reardon, 2005). On the other hand, exclusively differentiating said extrinsic characteristics without referring to the origin of the product may give rise to situations that are undesirable from the point of view of producers, such as competition between the various verification seals and importance being attached to the seals, rather than to the quality of a product or the efforts made by the farmer when producing it.

In this context, these strategies have significant implications in terms of the configuration of power relationships and the structure of governance within the global value chains in the world of agri-business (Carmen Bain, Deaton & Busch, 2005). To the extent that credence attributes are linked to a specific origin, the goods produced by farmers have an identity on the world markets. Furthermore, barriers to entry are created that not only allow farmers to increase their bargaining power when faced with agents in links further along the chain, such as exporters, retailers and distributors (Duguid, 2004; Humphrey, 2005; Humphrey, 2006), but also to generate rents which are the product of innovation and which increase producers' incomes (Kaplinsky & Fitter, 2004). Thus, it is vital to take into account the fact that quality or differentiation based on certain attributes will not, in themselves, lead to an increase in profits and sustainable incomes as long as there is no access to the markets for these goods in terms of distribution. Therefore, it is also necessary to have allies in the distribution sector, channels which are often dominated by a handful of large firms which invest enormous sums of money in brands, advertising and research and development (Gereffi, Humphrey, Kaplinsky & Sturgeon, 2001; Kaplinsky & Morris, 2008).

The theoretical focus of the analysis of global value chains (GVCs)⁷ provides an analytical framework for the examination of the possibilities open to economic agents with regard to their participation in the new globalized markets and to increasing their share in the income generated by consumers. This analytical structure has been used over the past decade by many donors and international organizations seeking to study the level of competitiveness of firms and the results obtained by those sectors which have adopted differentiation strategies (Gereffi, Humphrey & Sturgeon, 2005; ECLAC, 2008; Gibbon, Bair & Ponte, 2008; Alvarez, 2009; Bair, 2009; Bolwig, Ponte, du Toit, Riisgaard & Halberg, 2010).

⁷ A global value chain may be defined as the whole range of activities necessary when steering a product or service from conception or design, through the different phases of production, to strategies to ensure delivery to end consumers and ultimately final disposal after use (Gereffi et al. 2001; Kaplinsky and Morris, 2001). In its simplest form, a global value chain is divided into three stages that make up the “life cycle” of a product: design, production and marketing (Kaplinsky, 2000).

The analysis of GVCs is centered on the study of the relationships in terms of power between the economic agents within the chains and in particular how those relationships influence the development processes of the economies within which the agents operate (Kasacoff & Lopez, 2008), especially those agents wishing to gain access to chains dominated by increasingly concentrated global firms (Humphrey, 2006a). This analysis framework highlights issues concerning the links between firms, the coordination of their activities and their role in determining what goods will be produced, how and for whom (Humphrey, 2005).

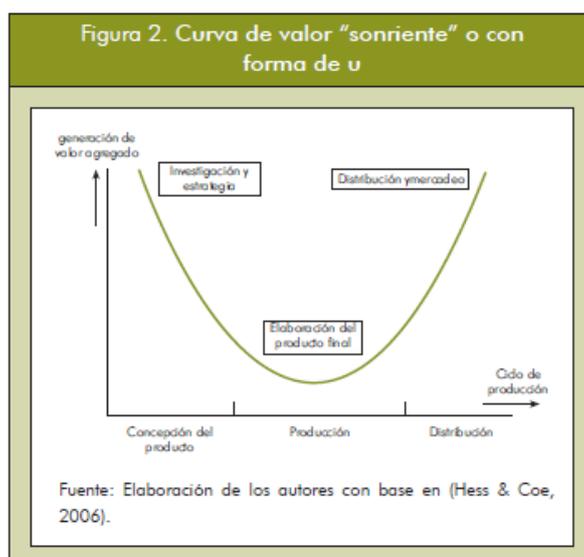
Two concepts are central when answering these questions: the outline or structure of the governance imposed by firms in order to dominate the chains and the innovation or upgrading undertaken by groups of firms in order to position themselves competitively in said chains (Gereffi, Humphrey, Kaplinsky & Sturgeon, 2001; Gereffi, Humphrey & Sturgeon, 2005). The concept of governance refers to the various ways in which the leading firms coordinate and exercise control over activities all along the chain and how this allows them, not only to set conditions concerning access for other firms and/or individual producers to the international markets and their capacity to innovate, but also to determine the returns arising from this process⁸ (Gereffi & Korzeniewicz, 1994; Humphrey & Schmitz, 2001; Gereffi, Humphrey & Sturgeon, 2005; Petkova, 2006; ECLAC, 2008). As to the concept of upgrading, this refers to the various types of effort which are undertaken by businesses and firms with the aim of improving their competitive position and modifying relationships in terms of governance within the value chains (Humphrey & Schmitz, 2001; Kaplinsky, 2004; Petkova, 2006) and which depend on the technological capacities successfully developed by countries in various productive sectors (ECLAC, 2008). As will be pointed out in the third section, these capacities fall into four categories, the first three of which apply to the analysis of agricultural/livestock product value chains.

The distribution of the value obtained from a product from its conception to its distribution can be described using a U-shaped⁹ graph, such as that reproduced in Figure 2. The shape of the curve shows the stages during which most of the final value is obtained, that is to say at the beginning and at the end. The conception cycle includes a major research and/or design component. The product distribution cycle, within which marketing is carried out, involves the implementation of strategies designed to build customer loyalty. Furthermore, within this cycle, work is undertaken to find distribution channels and post-sale service is provided. It is at these two points that the barriers to entry can clearly be seen and introduced through patents, copyright and trademarks, among other things. For want of such barriers, the level of competition at the intermediate stage is high, pushing prices down and creating the commodity trap previously described. This trap affects not only agricultural products but also manufactured goods with a low level of differentiation (Kaplinsky, 2000).

⁸ Initially, in the literature on value chains, chain governance models were divided between producer-driven chains and buyer-driven chains (Gereffi and Korzeniewicz, 1994). There are currently five types of governance: hierarchy, captive, relational, modular and markets, depending on the complexity of the transactions, the ability to codify transactions and capabilities in the supply base (Gereffi et al. 2005).

⁹ Over the past two decades the concept of the smile curve has gained in popularity. This model is linked to the potential for added value at the various stages of the life cycle of a product and was the brainchild of Stan Shih, who founded the Taiwanese firm Acer at the beginning of the 1990s.

Figure 2. “Smile” or U-shaped value curve



Generación de valor agregado – Generation of added value
 Investigación y estrategia – Research and strategy
 Distribución y mercadeo – Distribution and marketing
 Elaboración del producto final – Preparation of the final product
 Concepción del producto – Product conception
 Producción – Production
 Distribución – Distribution
 Ciclo de producción – Production cycle

Source: Prepared by the authors based on Hess & Coe, 2006

It is for this reason that various firms tend to outsource goods-production processes to various countries, while maintaining control over marketing and patents within the production processes. Thus, parent companies are able to focus on design development, quality control and the distribution of their products with their own brand, stages at which the most profits are obtained. For their part, intermediary manufacturers make their profits from the efficiencies achieved in the preparation of the goods, in competition with other producers. Thus, those who successfully innovate, either through new technologies or designs, or those who are capable of differentiating their products with the consumers in mind, using distinctive signs or efficient distribution networks, have better competitive options. From this point of view, it is easy to understand why the intellectual property issues linked to the protection of innovation (patents, copyright) or to distribution (trademarks and geographical indications) generate so much interest during talks concerning free trade agreements.

In the case of those commodities normally used as inputs for the manufacture of other goods, their producers are usually economic agents positioned in the intermediate stage of the value curve, the stage with the least value. These agents generate inputs for the preparation of goods, the nature of which, in many cases, they are unaware, and they have no control whatsoever over the final use of those inputs, since it is possible to replace their products with those of other producers in the same field. Owing to the fact that they cannot easily be differentiated, commodities are processed, transformed and camouflaged with the consumer in mind, as a part of the final product. Thus, consumers generally have no idea which products have been used in the manufacture of goods. In this regard, in most cases the link between the end consumer and the producer of a component is even weaker than it would be in a situation involving a custom manufacturer. The link with the product's origin is destroyed.

The above situation is not encouraging for agricultural producers, in particular for the smallest farmers, who often lack the institutional support required to face up to the challenges linked to increases in productivity, or who simply face topographical limitations or climatic cycles when attempting to adapt improvements in terms of production technologies. One alternative for millions of small farmers across the globe wishing to escape from the commodities trap is to link the origin of their product to its quality and in that way to capture a larger share of the total value that more sophisticated consumers are prepared to pay for the end product. This alternative not only involves seeking out a collective differentiation linked to quality, for which coffee has an enormous amount of potential (Fitter & Kaplinsky, 2001), but also means that producers must face up to challenges related to increased governance within the value chain, such as the creation of standards, rules and bargaining processes that build their capacity to obtain better prices.

In Colombia, coffee producers with small coffee plantations averaging barely more than 1.5 hectares in size adopted an approach involving GIs as an alternative to upgrading within a global value chain overwhelmingly governed by agents from outside the agricultural sector, with a view to limiting the risks associated with a fall in the value of their harvests. Given that agriculture remains the main source of income for poor families in the rural sector (World Bank, 2007, p. 3), the case study of the Colombian experience with GIs as a mechanism for upgrading and differentiation with a view to adding value to agricultural products, as well as the use of science and technology to drive this process, is useful and reveals an enormous amount of potential in terms of improving the living conditions of millions of small producers living in, or at risk of falling into, poverty.

UPGRADING WITHIN THE VALUE CHAIN: A NECESSARY MOVE FOR COLOMBIAN COFFEE- GROWERS

The coffee industry represents an estimated USD\$80 billion in trade a year (Avery, 2007), a sum that makes coffee one of the most traded goods at the global level (Hughes, 2009; Alvarez, Pibeam, & Wilding, 2010). Coffee is produced in more than 70 countries (Potts, Fernandez & Wunderlich, 2007), with around 25 million families depending on it for their livelihood, most of whom work on small plantations (Lewin, Giovannucci & Varangis, 2004). In addition, another 125 million people depend in part on the production, marketing and processing of coffee beans to make a living (May, Mascarenhas & Potts, 2004). In fact, coffee exports are linked to economic development success stories such as those of Brazil at the end of the nineteenth century, Costa Rica and Colombia during the 1920s, or Kenya and Côte d'Ivoire later on in the 1960s and 1970s (Daviron & Ponte, 2005).

The coffee market has developed in a dynamic fashion, owing to the decisions taken in terms of economic policy in both consumer and producer countries, as well as to changes in coffee drinkers' habits (Baffes, Lewin & Varangis, 2005). The main changes to the sector occurred once the economic clauses of the International Coffee Agreement (ICA) ceased to be applied in 1989 (Lewin, Giovannucci & Varangis, 2004). As a result, the structure of the sector's global value chain underwent profound changes that have not only altered its governance, and with it the distribution of the returns received by producers from the total income generated along the coffee chain, but also the ability of producers to innovate and upgrade with the aim of increasing the rents generated by the production and marketing of coffee (Fitter & Kaplinsky, 2001; Kaplinsky & Fitter, 2004; Petkova, 2006).

From a producer's point of view, the sector has undergone significant changes over the past few decades, the first one being the disappearance of many of the most representative producers' associations – with the exception of Colombia, Ethiopia and, to a lesser extent, Côte d'Ivoire, Kenya and Tanzania (Baffes, Lewin, & Varangis, 2005). The reduced capacity of producers to communicate with one another led to the elimination of outreach services and

price-support programs, as well as the appearance of a large number of buyers who take advantage of producers' needs in terms of cash-flow. In addition, the increased volatility of domestic and international prices and a better understanding of the structural changes to consumer markets produced opportunities in terms of rents for intermediaries, exporters and traders, to the detriment of the producers.

Secondly, significant technical changes occurred regarding cultivation which, together with the appearance of new producer countries and the increase in productivity associated with large-scale plantations in other countries, led to increased competition (Reina, Silva, Samper & Fernández, 2007). Thirdly, producers are now aware of how the upper links in the chain not only exercise their power through oligopolies or even monopolies in terms of marketing, processing and distribution, but also have witnessed how they have taken over the domestic markets of many producer countries (Ponte, 2004). Local exporters have either disappeared from such markets, or have been forced to bow down to the power of the capital of the largest international traders with whom they have had to form close working relationships (Giovannucci & Ponte, 2005; Neilson, 2008). This has led to the traders being directly involved with the farmers. Fourthly, producers have seen demand rise again, in particular in terms of quality (Ponte, 2002) and information concerning the production environment. This means that, in order to access those markets which offer the best prices, producers must deal with a growing number of private standards linked to social and environmental issues that can increase production costs. Such standards can also operate as barriers to the entry of the smallest producers if they do not receive the necessary assistance from governments, producers' associations or international sources (Byers, Giovannucci & Liu, 2008), or if the standards have been designed for different regions or environments.

These dynamics all help to explain the changes in the share of the total income generated along the coffee chain gained by coffee-growers. It was Talbot (1997) who first noted these changes, using the focus of value chains, followed by Kaplinsky & Morris (2001), Ponte (2004) and Daviron & Ponte (2005), among others. They all point to the growth in the power of those multinationals involved in roasting coffee and of the distributors since the breakdown of the International Coffee Agreement (ICA). Under the ICA, consumers spent around USD 30 billion, approximately a third of which went to the producers. This share fell to around 15 per cent, that is to say between USD\$14 and 15 billion a year, despite the notable increase in production and exports (Lewin, Giovannucci & Varangis, 2004; Daviron & Ponte, 2005; Kaplinsky & Morris, 2008). Talbot (1997) demonstrates how the roasters capture between 80 and 88 per cent of the total income generated along the coffee chain owing to the fact that they own previously-established brands and distribution chains, and despite the fact that, in many cases, they do not carry out particularly complex industrial processes, or processes requiring high levels of cutting-edge technology. In addition, the margin obtained through marketing and transport also fell, with the percentage of the final value retained in the consumer countries rising from 55 per cent to 78 per cent for the two periods referred to.

In that regard, it has been argued that, on the contrary, the fall in the share is due to the fact that only around half of the production costs of a roaster are accounted for by the Free On Board (FOB) price of coffee (Gilbert, 2006). However, most of the evidence indicates that it is the producers who have been most affected, while the traders, roasters and distributors at the end of the chain, located in consumer countries, have been better placed to overcome price cycles, sustain income growth and remain profitable over the past few decades (Kaplinsky & Morris, 2008)¹⁰. Moreover, the ability of certain brands and distributors to capture the majority of the added value of coffee through the control of symbolic or abstract aspects of production, such as services or the atmosphere in coffee shops, has also been highlighted (Talbot, 1997; Daviron & Ponte, 2005).

¹⁰ Hughes (2009, p. 38) cites, for example, that oddly enough, United Nations statistics show that Germany exports more coffee than Colombia, USD 2.3 billion and USD 1.8 billion worth of exports respectively.

Thus it is the roasters, along with the traders and distributors, who are the dominant agents in the value chain (Daviron & Ponte, 2005, p.122). With regard to coffee-producing areas, small producers in distant regions are faced with a reduced number of buyers and cannot easily find sufficient competition for their product in their places of residence, facing, as they do, high transaction costs and lower margins¹¹. Buyers at the various levels in the chain have greater access to cash-flow and information, giving them greater power at the bargaining table and thus forcing down the prices obtained by producers. At the international level, as pointed out by Reina et al. (2007, p. 47), at the beginning of the first decade of this century, five firms controlled 48 per cent of the trade in coffee beans, with another five firms controlling 55 per cent of the roasting market. These firms are positioned at those stages in the chain that capture the most value and bring in the highest returns, with green coffee being roasted, packed and distributed for sale, usually bearing its own brand. Roasters, for example, devise products based on a portfolio of brands and blends of coffees from different regions that dominate the market (Kaplinsky & Fitter, 2004). This allows the roasters, but not the producers, to establish their own identities in the eyes of the consumers, given that the properties of the coffee are no longer linked to their origin but rather become attributes associated with the brand. This situation also allows roasters to optimize their costs and protect themselves from possible variations in the relative prices of coffees of different origins by altering the proportions of coffees of different origins used in the blend, while striving to maintain as far as possible the consistency of the product in as much as it is perceptible to the end consumer in the short term (Kaplinsky & Fitter, 2004).

Undoubtedly, the better consumers get at recognizing the beans used as inputs to a blend, the more difficult it becomes for roasters to replace a high cost coffee with a less expensive one (Kaplinsky & Fitter, 2004; Rangnekar, 2004). Therefore, roasters do not always find the strategy of highlighting a coffee's origin and helping consumers to distinguish between products an attractive one. On the one hand, such an approach makes roasters less flexible when it comes to reducing costs through the blending of coffee but, on the other hand, results in the origin, which is not appropriable, sharing in the symbol perceived by the consumers as giving value to the product. In adopting such an approach, roasters would be transferring a portion of the value space they have gained with their brands to the origin. Therefore, the origin is diluted as a result of decisions made by roasters in the consumer countries, who have successfully obtained higher rents by using the image of coffee products (Kaplinsky & Fitter, 2004). It is not, therefore, surprising that many of the brands of coffee marketed throughout the world describe their products as blends of coffees of various origins, thus avoiding having to make a commitment to a single origin in front of their consumers.

Against this background, Colombia's coffee-growers and their institutions have decided to face up to these kinds of challenges by adopting a strategy that includes various types of upgrading that allow them to obtain higher rents as a result of innovation in various areas of production, processing and marketing of the product. However, owing to the structural characteristics of the Colombian coffee-growing sector, the country faces a wide range of difficulties in its bid to be competitive. The topography and climate of Colombia make mechanization of coffee-growing difficult, making this activity highly dependent on manual labor, the unit cost of which in dollars is increasing.

In addition to the economic challenges and competitiveness linked to the coffee industry, this product is also highly sensitive to developments in terms of social policy and rural stability. Coffee-growing is essential to Colombia's economic development and plays a vital role in

¹¹ In Colombia, producers have drawn up a policy known as the purchase guarantee which is designed to correct these imbalances in the market at the local level, as well as to optimize the transfer of the international price to the domestic market (Reina et al., 2007; FNC, 2011).

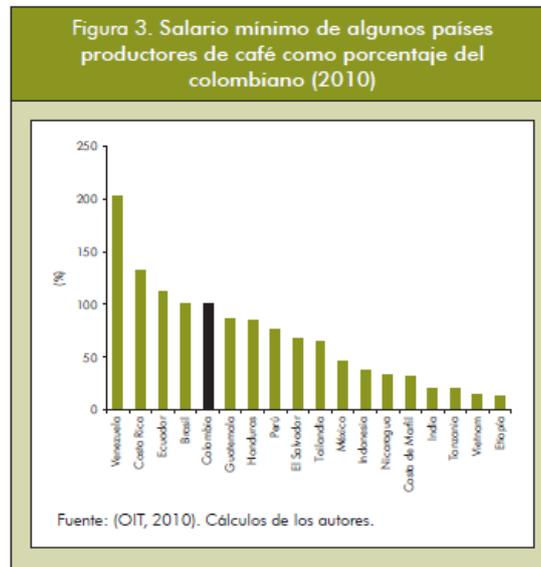
that field. With annual production reaching around nine million 60 kg bags, in 2010 Colombia was ranked fourth in terms of the countries with the highest volume of production in the world and was the main exporter of mild Arabica coffees (ICO, 2011). Bean exports, 90 per cent of which are carried out when the beans are still green¹², generated around USD\$2.4 billion in income in 2010 (FNC, 2010). Over 500,000 families are involved in this activity (FNC, 2011), constituting a group of over two million people, i.e. around 20 per cent of Colombia's rural population (DANE – *National Administrative Department of Statistics*), 2005). Small-holdings are common in the coffee-growing sector, with 95 per cent of coffee plantations being smaller than five hectares. Like the rest of Colombia's rural sector, the members of the coffee-growing community are vulnerable to fluctuations in prices which affect their living standards (Center for Regional Coffee and Business Studies (CRECE), 2002), and therefore the downward trend in terms of real prices of coffee beans has a direct impact on their quality of life. The capacity of this activity to compete on the international markets will be directly reflected in the well-being of the coffee-growing community and the dynamism of the rest of the rural economy, with direct consequences on stability and peace in countries which, like Colombia, face major challenges in terms of the consolidation of their institutions.

Topography is one of the most important aspects to be taken into consideration when examining the case of Colombian coffee. The coffee plantations are located the length of the Colombian section of the Andes mountains, a region more than 1000 km long and which covers around three million hectares. Difficulties in terms of mechanization are explained by the fact that, in Colombia, coffee is grown on the slopes of the Andes and the Sierra Nevada de Santa Marta mountain range. Furthermore, irregular flowering cycles, linked to the tropical mountain climate and Colombia's location under the inter-tropical convergent zone, give rise to different ripening cycles for the fruits, meaning that it is common for the same branch of a coffee bush to bear flowers and fruits which are going through different ripening cycles (FNC, 2006). This characteristic means that beans must be selected with care before being harvested and contributes to the creation of differentiated quality, but also increases the time and effort required during the harvesting stage, as well as the cost. Thus, compared to other countries, coffee-growing in Colombia is expensive in terms of manual labor, putting Colombia at a disadvantage regarding other origins¹³. This situation is worsened by the fact that the minimum wage in Colombia is up to five times higher than those of certain coffee-producing countries in Latin America, Africa and Asia (Figure 3).

¹² A large proportion of the exports from coffee-producing countries are of green beans, while, for many countries, exports of processed coffee (roasted and instant coffee) are less important in terms of volume and value.

¹³ In Brazil the process of watering and harvesting crops has, in many cases, been mechanized but in Colombia it is more difficult to adopt such technologies because the best farm-land is located in mountainous regions.

Figure 3. Minimum wage in certain coffee-producing countries as a percentage of the Colombian minimum wage (2010)



Source: ILO, 2010. Authors' own calculations

Based on the above points, it could be argued that Colombia's coffee producers are not only located midway along the value curve but that, from the point of view of their production costs, they are operating in one of the zones most at a disadvantage compared to their counterparts in other producer countries. Against this background, it is important to evaluate the opportunities in terms of increasing the competitiveness of Colombian coffee on the international market and the way in which producers can access other links in the value chain and thus increase their share of income.

How can this immense challenge for small rural producers be addressed? The literature on value chains refers to four kinds of upgrading (Gereffi, Humphrey, Kaplinsky & Sturgeon, 2001), three of which the coffee-growers of Colombia have implemented with a certain level of complementarity and which, in some cases, involve an industrial process designed to add value. Firstly there is an approach which involves the upgrading of processes, under which the productive process is reorganized through the introduction of new technologies in areas related to the cultivation of coffee beans and their processing following harvesting. Innovations include, for example, the introduction of good practices in terms of cultivation, harvesting of ripe beans and wet and dry processing. Secondly, there is the upgrading of products linked to the addition of value and the development of the application of science, as a result of which it is possible to introduce new crop varieties that optimize production costs and generate lower unit values through increases in crop productivity and efficiency. Thirdly, there is the upgrading of functions or "upgrading within chains", which has enabled producers to seek price increases thanks to the fact that they have acquired new functions in the chain. This approach has involved not only the incorporation of marketing services in the fields of logistics, storage, traceability and the development of a range of specialized green coffees, among other things, as well as in the processing segment and the segment covering direct sales of the product in supermarkets and coffee shops. Strategies based on segmentation and differentiation, in which brands and indications of source play a fundamental role, have also been employed. Moreover, there is a fourth type of upgrading, which has not been used by the coffee-growers in Colombia, known as "intersectoral innovation". This approach involves the possibility of using skills acquired in one chain in another sector.

Obviously each of these strategies does not necessarily need to be implemented completely separately from the efforts being undertaken in other fields. The development of niches for special coffees and production protocols for those niches, for example, is complemented by a trade policy that ensures that the increased value generated is actually transferred to the producer, rather than being appropriated by other links in the chain. In general, the upgrading of these strategies, which involve a large number of producers and the collective appropriation of the value generated, to the level of regions or countries, is without a doubt a major challenge. As to segmentation strategies, such as those linked to GIs, there is a need to develop intimate knowledge of the production zone and the product in order to develop a credible differentiation and protection strategy that will generate collective benefits. This alternative will be explored in more detail in the next section.

GIs AS AN ALTERNATIVE WAY FOR SMALL AGRICULTURAL/LIVESTOCK PRODUCERS TO CAPTURE VALUE

Much work has been carried out to develop trademarks and geographical indications as instruments for differentiation. While trademarks are useful in helping consumers to identify the origins of a product in terms of the firm behind it, GIs have emerged into an environment in which buyers have no direct relationship with the tens, hundreds or thousands of individual producers and, therefore, cannot easily link the product to its place of origin, or to the techniques used in its preparation, among other things. Both trademarks and GIs allow consumers to minimize their search costs given that they can easily distinguish those products, the quality of which they recognize and seek, selecting the product most in line with their preferences (Fink & Smarzynska, 2002).

In the case of producers of agricultural/livestock goods, these instruments are especially relevant when differentiation through the promotion of a product's credence attributes (Reardon, Codron, Busch, Bingen & Harris, 2001) represents a more appropriate competition strategy than the reduction of prices and mass production. In that regard, trademarks and GIs fall within the sphere of marketing and distribution in the value chain, with farmers having the opportunity to get across the message regarding their products and generate increased opportunities to capture value (Duguid, 2004; Daviron & Ponte, 2005). Thus, producers can also aspire to change the relationships in terms of power within the chain (Humphrey, 2005) given that, by generating barriers to entry for generic products or imitations, they increase their bargaining power (Kaplinsky & Fitter, 2004).

By using GIs as an instrument of intellectual property law which allows communities that produce goods which have gained recognition and a reputation linked to their origin to obtain greater protection against those attempting to present consumers with confusing or deceptive information with a view to benefitting from that reputation (Fink & Smarzynska, 2002; Hughes, 2009), producers are employing the same tools as those used by firms supplying sophisticated goods and services. Consequently, GIs are a collective instrument for differentiation which allow producers to increase their competitiveness in a globalized world and which generate opportunities for small producers to move to the right in the value curve. Furthermore, GIs make the preservation both of quality processes associated with local tradition and of the techniques used in the preparation of a product more feasible. The continuity of techniques could well be threatened by the appearance of imitation products, prepared under different conditions and at a lower cost (Josling, 2006). The separate identity and reputation of original products can be affected in this way, leading, over time, to their names becoming generic terms.

When individual annual production volume does not reach quantities that are commercially viable on the international markets, as is the case with coffee, GIs are frequently the most feasible differentiation tool when dealing with traders and consumers. Generally, producers do not have a trademark, nor do they carry out all the processes leading up to the

preparation of the end product. Moreover, producers do not have the financial capacity to launch a trademark and defend it in different territories. The fact that a GI has been obtained as an instrument of collective differentiation does not remove the capacity of producers to market their products individually and, incidentally, lessens the need to compete exclusively through costs. In such cases, GIs become an alternative way for the producer of the primary product to capture value on a collective basis, not unlike the model of trademarks in the private sphere.

When viewing GIs as a useful instrument that allows groups to adopt an upgrading strategy that alters relationships with its buyers and enables producers to move towards either end of the value chain, it is important to understand the steps and requirements involved in taking this path. In that regard, three fundamental conditions must be met. Firstly, GIs, as an alternative way of differentiating products in a collective manner, require the adoption of standards accepted by the producers that guarantee uniform quality characteristics that are valued by the consumer and that are associated with the product's region of origin. The adoption of said standards necessarily requires the creation of representative organizations that will generate and contribute to the monitoring of the rules established (Giovannucci, Josling, Kerr, O'Connor & Yeung, 2009). Consequently, the act of obtaining a declaration to the effect that a GI is protected implies that the producers benefitting from that GI have organized themselves and established, on the basis of a consensus, rules designed to be implemented on a permanent basis. The bargaining power of individuals can be increased through the establishment of a collective with defined objectives, a move which also increases the social capital of a region.

Secondly, the relationship between the origin and the quality of a given product must be demonstrated. The adoption of rules must therefore strengthen the attributes differentiating the product, which may include geographical and environmental elements and traditional production processes that preserve the quality of the end product. In this regard, by making the link between production technologies and the location in which production is carried out perfectly clear, along with the unique properties this relationship bestows upon the product, producers can allocate rational differentiation attributes to their products in the eyes of the consumer. Thus, the place of origin becomes an essential part of the product and introduces barriers to entry for its competitors.

Thirdly, GIs must emphasize the visibility of the product from the point of view of the consumers, providing information allowing them to distinguish the product from similar competitors on the shelves. Thus, producers capture the imagination of consumers, encouraging them to rate the product more highly. There is therefore no point in obtaining a GI in the country of origin and in those countries where the product is marketed unless efforts are made to reinforce the legitimacy and reputation of the product in the eyes of consumers. A GI, the scope of application of which is limited to traders, rather than consumers, will not help the product to enter the final stage of the value curve, the phase during which consumer loyalty to a product and its origin is generated.

Any attempt to develop a consistent and coherent GI strategy must include, not only institutional and legal processes, but also business and competitiveness planning processes. These are collective processes and the main obstacle to developing a GI is undoubtedly the task of reaching the minimum required consensus in their regard. As Giovannucci et al. (2009, p. 19) point out, although there are over six million trademarks worldwide, there are only around ten thousand GIs, about 144 of which originate from developing countries. Therefore GIs represent barely one per cent of the total number of trademarks. This enormous gap may be explained by the reasons listed above, as well as by the fact that trademarks are more versatile than GIs. GIs do not necessarily apply to all types of goods and tend to be more effective in the case of products that require traditional and specialized

processes (Fink & Smarzynska, 2002). Moreover, commercial trademarks may be bought and sold and have commercial value.

From the point of view of the evaluation of the competitive options of a sector or community, one of the key elements to be taken into consideration when adopting the GI approach is the structure of production costs of the product in question. This element can be another determining factor when weighing up the advantages and disadvantages of adopting GIs. Clearly, those products which can obtain economies of scale, thanks to new technologies that distance them from traditional production processes, are probably not ideal candidates. In that regard, goods with high variable production costs - normally associated with a significant direct human intervention component that is not easy to replace without affecting the quality of the product - may well be the best candidates because it is more difficult to attain economies of scale with regard to their production. An additional issue which sometimes arises is the difficulty involved in conclusively demonstrating a link between product quality and the region of origin in the case of goods based on credence attributes (Reardon, Codron, Busch, Bingen, & Harris, 2001), in particular when the product in question originates from small plantations which produce on a reduced scale that makes export at an individual level impracticable.

For most producers seeking to prove credence attributes for their goods, developing the capacity to demonstrate the link between origin and quality, as well as ensuring monitoring and verification of the origin from the farm to the shelves of the supermarkets and shops, is an enormous challenge (Humphrey, 2005). The challenge is even greater for “new GIs”, that is to say those GIs originating from communities with traditions which are not hundreds of year old and which cover wider regions and larger numbers of producers. “Traditional” GIs, from countries such as Italy, France or Spain, and even some GIs from Asia, arise from products prepared in specific regions using techniques linked to centuries-old traditions. The rules of production for such products have, in some cases, been subsequently imposed by local authorities and have become legitimate and accepted traditions.

According to the literature available in this regard, anyone wishing to obtain a GI for a product must have the capacity to carry out verification and monitoring to ensure the traceability of the product as it moves along the length of the chain. This capacity is fundamental in the case of products for which a GI is being sought in order to obtain recognition from the consumers regarding their origin and to ensure the sustainability of the products in the face of the threat of the appearance of other goods which seek to imitate them despite not sharing the same origin and production techniques (Giovannucci & Easton-Smith, 2009; Giovannucci & Samper, 2009; Schroeder, 2009; Schroeder & Guevara, 2009). However, the process of demonstrating the link between quality and region of origin for New World GIs is not always a simple one, in particular given the difficulties involved in demarcating the locations of origin of the goods in the absence of historical and political processes comparable to those present in the Old World. It is for this reason that it is vital to develop intimate knowledge of the product and to upgrade within chains, as well as to foster cooperation and coordinated action between the various agents the length of the value chain, when developing this type of product and attempting to preserve its characteristics (Humphrey, 2005).

It would be fair to conclude that recognition of various GIs belonging to agricultural producers in developing countries is an alternative in terms of moving towards the ends of the value chain that involves tackling new challenges. Geographical indications are not a one-size fits all solution for products and communities. In cases in which the necessary elements exist from the point of view of strategy and structure in terms of costs, institutions and legislation, GIs can act as an instrument that makes it possible to consolidate a product's quality attributes and to associate it with a place of origin. This collective benefit is important because it allows producers to increase their visibility in the eyes of the consumer who, on

evaluating the origin of the product in a way that complements the trademark, develops loyalty to the product. Thus barriers are generated to the entry of competitors seeking out the agricultural product with a view to benefitting from its reputation. Moreover, producers dealing with traders and distributors see their bargaining power increase, bringing benefits in terms of small farmers' incomes and making rural communities sustainable.

THE GI OF COLOMBIAN COFFEE AS AN INSTRUMENT FOR COLLECTIVE ACTION AND INNOVATION WITH A VIEW TO DIFFERENTIATION

In order to benefit from a GI, the origin of a product and the attributes associated with that origin must be recognized by consumers, as well as being reflected in prices which cover the production costs and which generate greater value for the families involved in production. Some authors suggest that GIs are extremely useful as market mechanisms that allow coffee-growers to increase the value captured for their product (Neilson, 2007; Teuber, 2007); Menapace, Gregory, Grebitus, & Facendola, 2009). However, if a GI is to be converted into a successful market instrument then it requires more than just a legal structure to protect it. It is also vital that products should have a well-established reputation (Hughes, 2009) and successfully incorporate both intrinsic quality attributes and those symbolic traits associated with its production in their price. Once they have secured customer recognition and loyalty, producers are able to improve their commercial position and increase their presence in the part of the chain devoted to marketing and distribution, where the highest rents are generated (Anholt, 2003; Duguid, 2004; Humphrey, 2005). In that context, Colombian Coffee is a classic case of a product capable of obtaining a GI thanks to its global recognition and a differentiation strategy embarked upon five decades ago (Deshpande & de Royere, 2001; Lozano, 2002; Teuber, 2007; WIPO, 2007; Hughes, 2009; Juglar, 2009).

As previously stated, in order to obtain a GI, a cooperation framework must first of all be set up between the beneficiaries, involving a set of basic rules that must be observed by the various agents in the value chain. In this regard, Colombia's coffee producers have built up a strong institutional framework under the Colombian Coffee Growers Federation (FNC)¹⁴. This federation represents the producers and provides various goods and public services to coffee-growers in order to improve their competitiveness and well-being. The FNC also provides the infrastructure and services required for the implementation and protection of a GI system for Colombia. The Federation enjoys widespread legitimacy, based on 15 departmental committees and 364 municipal committees made up of producers elected by their peers in the so-called *elecciones cafeteras* (coffee elections). Likewise, the FNC gradually set up a research center (the National Coffee Research Center – CENICAFÉ), an outreach service with over 1,500 technicians, coffee storage warehouses and a quality control system for all coffee placed on the market. In addition, the FNC works closely with coffee-growing cooperatives that operate more than 500 sales points across the country. This institutional development has been fundamental in the transformation of the FNC into a valid actor in terms of discussions with other interested groups, including the Government of Colombia, national and international cooperation organizations working to implement various social investment projects¹⁵, multilateral bodies and other actors in the coffee marketing and distribution chain.

Thus, with regard to Colombian Coffee, the challenge of generating institutional mechanisms for collective action, one of the main barriers to the creation of a GI, was overcome prior to the establishment of the GI. The existence of a producers' organization with a strong

¹⁴ Further information may be found at www.federaciondecafeteros.org.

¹⁵ For further information on this issue see *Sostenibilidad en Acción (Sustainability in Action) 1927-2010* (FNC, 2011).

institutional framework (Thorp, 2000; Giovannucci, Leibovich & Pizano, 2002; Baffes, Lewin & Varangis, 2005) gave rise to conditions that allowed for the development of a collective product differentiation strategy. This strategy made it possible to implement a series of actions constituting an origin support system unique in the world of coffee that could not have been implemented by individual producers. Likewise, efforts were made to develop legal, scientific and technical capacities that made it possible to implement a GI strategy for a product with a high variable costs content. Moreover, work was carried out to develop the capacity to communicate with other actors in the chain, allowing for such strategies to be implemented.

It is important to remember that the way in which an organized network of beneficiaries is established is crucial to the appropriation of the value generated among the various value chain actors involved in a GI-centered strategy. Opportunities for farmers to benefit are, to a great extent, determined by the institutional framework that represents them, the level of importance of producers within the decision-making bodies and the likelihood of local actors with varying interests and facing different challenges being taken into account. Any organization in which farmers are not appropriately represented may well end up generating greater benefits for other actors at the expense of the producers. As a consequence, such an organization may not stand the test of time. Likewise, while taking into account the legitimate interests of traders and distributors, strategies must be designed in such a way as to generate end consumer loyalty towards the place of origin where the producers' collective that gives the product its unique character is located. In Colombia, there is an economic and political arrangement in place that guarantees that producers of mild Colombian coffee are the first actors in the value chain to benefit from the various coffee policies, although without excluding or sidelining other agents.

One of the FNC's main concerns ever since its creation in 1927 has been consumer recognition of origin. The first attempts to sell 100 per cent Colombian Coffee on the international market date back to 1930. However, in 1960 work began in earnest to achieve the aforementioned objective and to distance Colombian Coffee from the blends market. It was in that year that the fictional character Juan Valdez¹⁶ was first launched. The aim of this move was to transmit the culture and values of the producers to consumers across the world, as well as to inform the public about the production characteristics of Colombian coffee beans and the various attributes that make them a quality product. Subsequently, in 1981, an ingredient brand logo¹⁷ was developed consisting of a triangular logo above the slogan "Café de Colombia" or "100% Colombian Coffee". The logo was designed to be printed on packets of roasted 100% Colombian Coffee (Figure 4). The aim of this approach is to ensure that consumers identify the contents of the packet of coffee they are buying, as well as their geographical origin. In this regard, the logo has become a trademark that confirms the indication of source of the product packaged as coffee.

¹⁶ Further information may be found at www.juanvaldez.com.

¹⁷ Ingredient brands allow the consumer to identify products contained in other products. One clear example is Intel, a company that places its stickers on computers manufactured using Intel components. This allows the consumer to see clearly that the computer that he is about to buy contains this ingredient. Other examples of ingredient brands include Lycra, Dupont and Nutra Sweet.

Figure 4. Logos for the Colombian Coffee ingredient brand



The FNC's efforts to differentiate the Colombia origin have not only been noteworthy, but have also gained global recognition (WIPO, 2007; Hughes, 2009; Juglar, 2009) and allowed producers to obtain rents through the promotion of the virtues, both symbolic and in terms of quality, offered by Colombian Coffee. As pointed out by Reina et al. (2007, pp. 178-181), the premium paid for Colombian Coffee compared to other mild coffees increased by 33 per cent in real terms between the periods 1927 to 1959 and 1960 to 1990. In the United States of America, the market on which most attention is focused, perception of Colombia as the country producing the best coffee in the world rose from 49 per cent to 66 per cent and imports of 100 per cent Colombian Coffee brands rose by almost one million bags of green coffee to two million bags between 1990 and 2006, representing 18 per cent of exports of Colombian coffee in said year. Thanks to that strategy, reliable demand for Colombian coffee has been developed independently of the product's price cycles. As a result, by the end of 2010, around 500 100% Colombian Coffee products were being marketed with third party trademarks on all continents by 93 authorized roasters.

To a great extent, in the case of Colombia, the ingredient brand logo as an indication of source is a precursor of GIs and fulfills a similar role: guaranteeing consumers that the contents of the packet of coffee they are buying come entirely from Colombia and meet specific quality standards. The logo also links the concept of the product to its origin, rather than to the particular coffee blend produced by the roaster. Thus, the production of GIs would appear to be the natural outcome of the establishment of an organization capable of channeling the collective action carried out and the progress made regarding the 100% Colombian Coffee program and its ingredient brand. However, this very same situation could make the need to obtain a GI for the Colombian coffee bean seem redundant.

A number of basic differences that exist between commercial trademarks and GIs need to be cleared up with regard to this last point. Although GIs and trademarks belong to the same intellectual property rights family (Fink & Smarzynska, 2002), their differences are rooted in their public or private nature, their reference to a specific location and to the verification of a quality standard. Commercial trademarks are private in nature and can therefore be transferred to anyone, while the quality to which they are linked may vary given that no specific parameters have to be observed except for those commercial standards imposed by the regulations of each country. For their part, GIs display a number of necessary distinctive characteristics associated with quality standards that legitimize the claims made regarding a product's origin in the eyes of consumers across the globe. Far from being private or individual property, GIs are by their very nature collective, being owned by public bodies or by the actual producers of the product who are also the beneficiaries of these instruments.

The right to use a GI is related to the place of origin and the manufacturing techniques (Rangnekar, 2004) and therefore its quality characteristics and parameters are verified through appropriate systems and are not consequently ever subject solely to the opinion of a specific producer.

For the abovementioned reasons, GIs can provide consumers with greater reassurance concerning lasting stability in terms of the properties of the product they are buying and their identification with certain production characteristics and customs linked to a specific locality. To this extent, GIs can be more effective than trademarks in terms of the promise of quality and specific product characteristics that they provide. In the case of Colombian Coffee, the ingredient brand offers a number of attributes similar to those of a GI in terms of its beneficiaries, the region of production and the quality parameters it provides. However, GIs are more permanent in nature because they cannot be alienated and therefore offer an implicit guarantee in terms of the quality of the product, as well as providing certainty in the eyes of international clients and consumers. Moreover, from the producers' point of view, commercial trademarks can take on different roles within a brand architecture that is developing and cannot or must not necessarily be limited to the role of ingredient brand in a specific product.

However, given that legislation varies from country to country and intellectual property law incorporates the principle of territoriality, the strategy of adopting a policy involving ingredient brands, certification marks and GIs must be assessed depending on the instruments available in different jurisdictions (Fink & Smarzynska, 2002). Brand ingredients, like trademarks, do not require a major legal effort in terms of implementation but they do require substantial investment in communications if they are to acquire value and attract customers. For their part, certification marks also require that control and follow-up be demonstrated, while GIs require greater effort in terms of application but also generate a higher level of protection. Should they be available, GIs are the ideal instrument.

Over the past few years, GIs have been spreading at an unprecedented rate, in particular in countries with a large agricultural/livestock sector which are seeking to promote the unique character of their products (Giovannucci, Josling, Kerr, O'Connor & Yeung, 2009). Colombian Coffee has led the way among developing countries with its move to obtain the protection offered by GIs (Giovannucci & Samper, 2009; Juglar, 2009) and obtained recognition in Colombia as an Appellation of Origin in 2005, becoming the first non-European agri-food product to be awarded protected geographical indication status in the European Union in 2007 (WIPO, 2007; Juglar, 2009). During that period, the Member Countries of the Andean Community of Nations, including Peru, Ecuador and Colombia, also backed this move towards recognition. Alongside these initiatives, efforts are being made to obtain certification marks in markets which are of key importance to Colombian coffee, such as the United States of America and Canada, where the legal option of *sui generis* GIs is not yet available.

Nevertheless, as previously pointed out, one basic difference between trademarks and GIs lies in the fact that, in order to obtain GIs, a link must be demonstrated between the origin and the quality of the product. Anyone wishing to obtain a GI associated with products from the New World, an area where historical production processes are more recent than those of other regions, clearly demonstrating this link, as well as demarcating the region of origin, is always a complex matter and can lead to high levels of tension between the various institutional bodies. In the absence of centuries-old traditions, new criteria must be applied which offer sufficient support to GIs from a technical point of view. Science and technology play a vital role in this process and can even be used to offer support to GIs in terms of protection against possible infringements. This issue will be addressed in the next section of this paper.

SCIENCE AND TECHNOLOGY ACTING TO COMPLEMENT GI POLICIES AND AS AN ELEMENT OF VALUE CAPTURE

Science and technology are usually considered to be elements hostile to GIs, given that they are rivals to traditional techniques used in the manufacture of products. However, science and technology are also useful when building up a detailed picture of the attributes of a product and documenting the fulfillment of the requirements established regarding obtaining recognition in the form of a GI, as well as when seeking to offer consumers a guarantee that the packaged product they have bought is linked to its origin. Scientific advances have also contributed to the identification of factors explaining the difference between goods produced in one locality using specific preparation techniques for other goods which do not share those same qualities. To that extent, science and technology can also be extremely useful in helping to protect products with GIs from imitation goods.

The issue of imitation and misappropriation of reputation is one of importance. The Organization for an International Geographical Indications Network (oriGIN¹⁸) frequently records cases of the abuse of GIs in various markets. One example of such a case is the existence of imitation cheese and ham products, marketed in various countries as having specific Italian origins. In this regard, science and technology make it possible to strengthen the arguments supporting a product's distinct identity and to distinguish between legitimate products originating from a specific region and other products not from that region which could endanger the good name of the genuine products (Giovannucci & Samper, 2009). As a result, it is possible to avoid depending exclusively on costly and laborious document-based traceability schemes.

There are also additional benefits that may be obtained from greater knowledge of the product. For example, specific health benefits resulting from the consumption of the product may be identified. Moreover, intimate knowledge of a product's properties shall make it possible to document its differentiation attributes, which may in turn be transformed into rational benefits for the consumer¹⁹ once a convincing case has been made regarding the superior quality of the product. These attributes, complemented by the emotional attributes derived from the origin, the community and the sustainability processes linked to the rural environment, can lead to consumers attributing symbolic features to a GI, fostering greater loyalty and willingness to pay. Science and technology can play a key role in the "conceptualization of the product" and the systematic application of knowledge can lead to progress within the value chain that brings with it greater benefits for the producers (Kaplinsky & Fitter, 2004).

Over the past few years, Colombia has made significant progress concerning the development of methodologies for the identification of the specific characteristics of the beans produced in the various regions of Colombia (Giovannucci & Samper, 2009). This systematic application of knowledge has made it possible to distinguish Colombian Coffee from products of other origins, as well as to differentiate the product originating from the source regions from beans produced in the Colombian interior. Thus, science and technology provide support in the process of obtaining value, as well as complementing the definition of the quality of the product linked to the territory in which it is produced, its place of origin and the associated community, but not to other productive processes developed by third parties.

¹⁸ Further information may be found at www.origin-gi.com.

¹⁹ According to marketing specialists, a brand can generate rational benefits (for example, quality or convenience) and emotional benefits (for example, identification in terms of status, social conscience or age).

This new knowledge of Colombian Coffee and coffees originating from specific regions in the interior of the country, which, as well as fulfilling the general Colombian Coffee guidelines, possess detailed relevant characteristics, constitutes a strategic tool that facilitates the generation of “sub-denominations” capable of filling specific niches in the market. Colombia has recently made progress in this regard by following the model provided by Bordeaux wine in terms of the segmentation of GIs²⁰. This wine, originating from the Bordeaux Valley, is recognized and valued as an Appellation of Origin (AO) by a large number of consumers, both in France and worldwide. However, the specificities of certain wines produced in a number of tributary valleys along the Garonne and Dordogne rivers were not necessarily emphasized when the AO was established and therefore “sub-denominations” were generated that meet both the conditions associated with the Bordeaux Valley and those associated with the specific sub-denominations. Based on these concepts and working methodologies, the FNC adopted its GI policy with the additional aim of seeking recognition for regional denominations such as Café de Nariño – Colombia, or Café de Cauca - Colombia.

In order to obtain said recognition, the Federation had to carry out complex studies involving the analysis of samples and links between quality and origin, which, as well as assisting in the task of documenting the legal processes, also make it possible to obtain greater knowledge of the product (Oberthür et al., 2011). Efforts have only recently begun to develop techniques to map out the environment influencing the quality of the coffee. Work to verify scientifically not only correlations but also elements of causality between the environmental variables and the quality attributes is shedding light on what it is that actually makes a product different. The link between quality and geographical origin, a necessary requirement for the recognition of a GI, is verified at the same time. Moreover, this information is extremely valuable because it fosters the relationship with clients and consumers who understand and value that link, strengthening the case for differentiation all along the chain. Thus, intimate knowledge of the product is reinforced, that is to say, the move is made into the first phase of the value curve and additional elements are constructed which facilitate the positioning of the product and which can be actively communicated to the consumer through specialized Internet microsites²¹.

The above strategy was implemented thanks to the work carried out by the National Coffee Research Center (CENICAFÉ), in cooperation with other bodies²², to describe the specific characteristics of Colombian Coffee associated with both its geographical and botanical origins (Giovannucci & Samper, The Case of Café Nariño, Colombia, 2009). This Center has led the way in terms of research employing various methodologies to build up intimate knowledge of the Colombian Coffee product and its possible variations, identifying chromatographic profiles, the contents of compounds and chemical elements in green coffee and roasted coffee with different roasting levels and curves. Work was also carried out to design and implement a methodology for the characterization of the quality of coffee based on sensory analyses and analyses of the contents of chemical compounds. CENICAFÉ employs the Near Infrared Spectroscopy technique, alongside prediction equations for various chemical compounds including caffeine, trigonelline and total chlorogenic acids, in order to obtain information on chemicals. Atomic absorption and inductive plasma mass techniques are used to determine mineral element content (Bertrand, Villarreal, Laffargue, Posada, Lashermes & Dussert, 2008; Posada, Ferrand, Davrieux, Lashermes & B, 2009; Villarreal, Laffargue, Posada, Bertrand, Lashermes & Dussert, 2009). Some of these methodologies have made it possible to identify the source of coffee through objective procedures, without resorting to the services

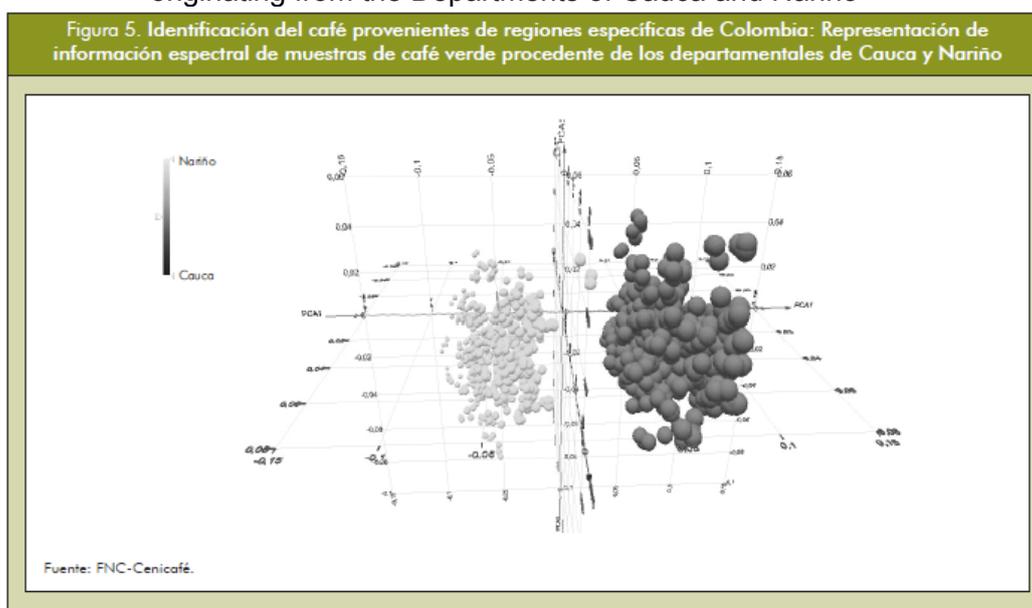
²⁰ See <http://www.bordeaux.com> for example.

²¹ See <http://narino.cafedecolombia.com/> or <http://cauca.cafedecolombia.com/> for example, both accessible from www.cafedecolombia.com.

²² See www.cenicafe.org. The International Center for Tropical Agriculture (CIAT) was involved in the early stages of the work - www.ciat.cgiar.org.

of expert tasters. For example, the analyses of samples originating from the neighboring Departments of Cauca and Nariño have generated spectral information and chemical characteristics for each of those specific regional origins within Colombia (Figure 5). Thus, the application of science and technology makes it possible to detect infringements of future GIs, not only for Colombian Coffee in general, but also for specific regional coffees.

Figure 5. Identification of coffee originating from specific regions of Colombia: Representation of spectral information for samples of green coffee originating from the Departments of Cauca and Nariño



Source: FNC-Cenicafé.

The identification of differences originating in the environment of the production zone²³ contributes to the traceability and identification of coffee, one of the most laborious and complicated tasks given the high number of imitation products and the long chain of custody of coffee which stretches from the plantation to the consumer's cup. Thus, even though coffee is normally exported in its green bean form from the place of origin and undergoes a roasting process in the country where it will finally be sold, the producers acquire the necessary tools to defend their origin in other countries, including in the case of different presentations of the product. This approach not only contributes to the detection of "infringements of origin", but also demonstrates them objectively to the competent authorities. It is clear that the more successful the value proposition for a single origin coffee, the higher the price premium will be compared to coffees of other origins. This, in turn, creates incentives within the marketing chain to mix the single origin coffee with coffees from other regions and to sell the resulting blend as legitimate single origin coffee. Colombian Coffee, as well as coffees from Hawaii, Jamaica, Antigua (Guatemala) and certain regions of Colombia, have fallen victim to such practices. Each country therefore tries to exercise control over production in various different ways (Giovannucci & Easton-Smith, 2009; Schroeder, 2009; Schroeder & Guevara, 2009). In the case of Antigua, the volume of fraudulent coffee marketed as originating from this region may, according to certain authors, be four to eight times greater than that of legitimate origin (Rangnekar, 2004, cited in Schroeder & Guevara, 2009). This situation may lead to a fall in the price that consumers are willing to pay for the product in the future, given that the consistency of the

²³ It should be pointed out that Colombian coffee-growers only produce Arabica coffee and that the plant varieties grown in the country display very low genetic variability.

attributes that attract consumers to the product is placed in danger. It is clear that both the origin and the producers concerned lose out in terms of value and reputation in such cases.

In conclusion, intimate knowledge of a product gained through the use of science and technology is a significant new element in the success of a GI. The existence of objective elements that make it possible to separate knowledge based on anecdotal evidence or local myths from reliable and verifiable scientific information means that GIs can be developed that are capable of standing the test of time. Furthermore, this information enables the actors concerned to document rational differentiation attributes and provides elements for the defense of the origin before third parties.

CONCLUSIONS, DIFFICULTIES AND CHALLENGES FOR THE FUTURE

In recent reports, the International Fund for Agricultural Development (IFAD) (2010), the World Bank (2007) and the Economic Commission for Latin America and the Caribbean (ECLAC) (2008) highlighted the importance of continuing to position agriculture as a mechanism for poverty reduction in rural zones, areas in which needs in terms of living conditions are most pressing. However, this approach is problematic given the long-term downward trend in terms of prices of commodities in local currencies and the difficulties faced by producers wishing to adapt to new market trends. Thus, opportunities for millions of small farmers across the world to increase their incomes are cast into major doubt.

Unlike the markets for uniform products that reigned supreme under the quota agreements for commodities, the current trend sweeping the agro-industrial markets has been towards the differentiation of a proportion of production, involving more technologically sophisticated processes (Lewin, Giovannucci & Varangis, 2004; ECLAC, 2008). Moreover, the shift in the buying habits of consumers towards products with higher intrinsic quality, which also meet social, economic and environmental standards in terms of quality, together with new requirements imposed by buyers regarding logistics, traceability, transport and distribution, has introduced additional pressures for producers to be competitive beyond the volatility and secular reduction of the prices of their products, or the oligopolistic power of traders, roasters and distributors (Daviron & Ponte, 2005; Jaffee & Henson, 2005; Ponte & Gibbon, 2005).

One criticism of the agricultural production model implemented on small farms is that the advantages in terms of efficiency offered by this kind of operation over those offered by larger scale operations do not necessarily translate into reality in a globalized world in which there are ever more rural and urban links (Schejtman, 1999; Ashley & Maxwell, 2001). It is worth remembering therefore that business models must also provide a basis for economic, social and environmental stability for hundreds of thousands of rural communities. The new dynamics of rural areas should not necessarily be viewed as an obstacle to the competitiveness of small farm-based agriculture. On the contrary, the production conditions and effective supervision of crops on such farms can generate advantages in terms of the production of better quality agricultural goods, which also offer the consumer emotional benefits and symbolic attributes alongside their intrinsic features and which provide producers with higher incomes. It should be added that, in countries where the rural population is subject to significant social tensions and where farmers work in areas with a complex topography, it is vital to ensure that the activities of small producers are economically viable if peace and stability are to be achieved in rural areas.

This paper was written with the aim of contributing to the literature on experiences in terms of differentiation and the addition of value to agricultural products in developing countries by presenting the progress made in Colombia concerning the development of GIs for Colombian Coffee. There is currently very little evidence describing the experiences of a developing country attempting to implement a value chain upgrading strategy for quality agricultural products caught in the commodities trap. Unlike the “branding from above” strategies

employed by distributors and roasters, GIs that are the result of initiatives launched by the producers and their institutions constitute “branding from below” (Humphrey, 2006a). Such GIs can not only change the relationship in terms of power with the actors located in the higher links of the value chain who process and market the product, but can also reconfigure the distribution of wealth towards the producer countries (Duguid, 2004). In that context, Geographical Indications (GIs) may be viewed as an instrument that can potentially help rural communities to move along the value curve, capturing greater rents with differentiated products.

In this context, this paper presented GIs as an instrument for sustainable rural development that has the potential to increase the incomes and improve the living conditions of small agricultural producers whose production has a high variable cost component. The paper also examined the case of Colombian Coffee, for which a GI was obtained as a collective instrument of intellectual property law. GIs, conceived as instruments of competitiveness, have become a model for differentiation of products on the basis of their quality which makes it possible to upgrade within the value chain. Thus, the use of GIs generates barriers to the entry of competitors seeking to imitate the product, or to benefit unduly from its reputation, thereby increasing the bargaining power of producers when dealing with traders and roasters. Furthermore, the development of intimate knowledge of a product strengthens efforts in terms of marketing and distribution, areas in which the greatest benefits are obtained. Moreover, the emphasis on origin as an element of differentiation makes it possible to develop those attributes associated with the quality of the product and the efforts made by the farmer when producing it. In that sense, there are many social and environmental standards which are not linked to origin. Such standards divert consumer loyalty away from producer communities and are therefore not necessarily the best alternative for producers.

The use of science and technology is vital to efforts to achieve intimate knowledge of a product and to develop mechanisms for the protection of origins. This approach contributes to the process of documenting the link between the origin and the quality of a product, a necessary requirement for recognition through the granting of a GI. Furthermore, science and technology can provide proof of the existence of the factors that differentiate such products in the eyes of clients and consumers. In this regard, science and technology may be viewed as elements which complement local traditions by making the link between quality and region of origin patently clear. Moreover, the capacity to differentiate products generated by science does not necessarily involve segmentation that could confuse the consumer, or limit the strategic route defined. In the Colombian case, various regional GIs were developed as the result of a strategy which enjoyed broad support and which was designed to achieve the basic objective of generating consumer loyalty to Colombian Coffee as a whole, thus capturing greater value for the producer. However, GI strategies which include partial territories or a large number of producer regions run the risk of confusing consumers if presented in an unclear fashion, with dozens of origins that are not explicitly differentiated from one another and from the rest of the chain.

It is also vital to take into account the difficulties and challenges involved in using GIs as a mechanism for rural development in communities of small producers. Such difficulties include obstacles linked to the creation of representative and legitimate producers' collectives. The existence of unions such as the FNC is not the norm in the rest of the world. The Federation's experience regarding the development of trademarks and cooperation with roasters allowed it to build up significant experience prior to becoming a recognized actor in the field of GIs. Furthermore, the process of demonstrating the link between quality and region of origin in the case of New World GIs is not always simple. In order to be successful, GIs must reach out to the end consumer, generating rational and emotional attributes for the origin that encourage loyalty and the willingness to pay for said GI. Thus, it is vital to have

real dialogue and to achieve cooperation and coordinated action involving the various agents throughout the value chain if such products are to be developed and their characteristics preserved.

Finally, it should be pointed out that the harmonization of the various national legal systems in different countries regarding GIs would be a step forward and would allow small agricultural producers to use such indications. GIs should be viewed as a designation and a right awarded to a collectivity as the result of an associative process that encompasses self-regulation, or the self-imposition of standards governing quality and practice which, when linked to a specific geographical area, clearly differentiate the product from its competitors. It could be argued that it is this same collective that is responsible for defending and implementing the policies governing the application of its own GI. However, there are various legal requirements in place governing the holding of GIs. There are also a number of legal instruments enshrined in legislation which are designed to protect GIs and which have the effect of keeping the numbers of such indications low. Therefore, it is very much in the interests of the producers to have unified systems for the protection and identification of ownership of rights, under which the representatives of the producers would be the right-holding actors par excellence.

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QUALITY CONSORTIA
THE KEY TO INCLUSIVELY AND SUSTAINABLY ADDING VALUE TO TYPICAL
PRODUCTS WITH A GEOGRAPHICAL INDICATION

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QUALITY CONSORTIA

The reputation of the typical product as a competitive advantage

As a reaction to the rapid changes generated by globalization, more and more consumers are seeking authenticity and are prepared to pay a premium for traditional products that retain the same quality as always and that are well rooted in the popular culture of their territories of origin. When a typical product is well known in the market for “housing” history, customs and its land of origin, it has a unique competitive advantage.

For traditional producers in rural areas, this new trend is a great opportunity, as it frees them from having to compete on price with generic products. What is more, it rewards them for doing even better at what they have always done: using traditional methods to produce a given typical product with age-old charm. Breathing new life into the region’s historical, cultural and ecological heritage thus becomes the starting point for boosting local development.

The challenge for a region’s producers who produce the same popular product lies in strengthening the typical product’s reputation in the marketplace. It is only if consumers inextricably relate the price to the region of origin and see it as exclusive, that they can develop a preference for the product based on the history, rich landscapes, purity, goodness and simplicity of past times associated with it.

Quality consortia – the key to improving the reputation of a typical product

Many typical products are forgotten or have a reputation as traditional products that are special but with limited economic value. It thus becomes an absolute priority to reinvent commodities as regional products that are distinctive enough in customers’ eyes to make them pay a premium.

In this context, often the main concern of the stakeholders involved is quickly to obtain a geographical indication for their traditional original product¹. However, too often they ignore the fact that a geographical indication only serves to identify and protect a product with special characteristics and thus enhance its marketing; but it is certainly not a miracle means in itself, which can add quality to the traditional product, or create a market demand for it out of nothing.

In fact, what has enabled some typical products to conquer the markets has primarily been the tireless collective value-adding strategy developed within economic operators’ associations (“quality consortiums”) (see box 1). Geographical indications have certainly

¹ In this document, the term Geographical indication is used in its broadest sense, and refers to any type of distinctive sign of collective use for identifying traditional products from a specific geographical area, irrespective of whether that particular country’s legal framework considers the distinctive sign of collective use as a collective mark, certification mark, geographical indication or appellation of origin.

contributed to the success of these typical products but can hardly be held ultimately responsible for it. Too often, geographical indications are ascribed benefits that have nothing to do with the legal instrument itself, but rather with the collective territorial projects that strive for differentiation that helped obtain it, and which then continue over time.

Box 1: Quality consortium - Definition

Quality consortia are voluntary alliances of individual producers, companies or cooperatives from the same region whose aim is jointly to add value to a traditional local product. Consortia may bring together economic operators from one or more links in the same territorial value chain.

The consortium is not usually commercially active; therefore members can maintain their financial and legal independence and preserve their freedom of commercial, technical and administrative action, insofar as this does not affect the good reputation of the product and the success of the joint strategy to add value.

Source: UNIDO, 2011.

To improve the reputation of a typical product and increase its market value, the region's economic operators involved in its production must carry out the following four types of activity:

- (a) improving the average quality of the typical product at the regional level, to satisfy the expectations of a demanding customer base
- (b) developing a marketing strategy based on the typical product at the regional level to "sell it" as a niche item
- (c) increasing the visibility of the typical product at the regional level thanks to partnerships with public and private third parties,² so that consumers can "live and experience" the product in the territory of origin
- (d) using the registration of geographical indication and certification processes to ensure that only those products that honor the good reputation of the typical product may use its name.

Successfully implementing the above activities requires high levels of coordination among the region's producers, influence and lobbying capacity, as well as major investment in terms of money and time that is not necessarily within reach of individual and small-scale economic operators. However, coordinating efforts and pooling resources within a quality consortium make it possible to accumulate the human productive, financial and technological capital needed to implement the joint value-adding strategy (see box 2).

Thanks to the considerable economies of scale that arise in a consortium in terms of finance and know-how and the reduction in transaction costs within a consortium, even before the increase in the good reputation of the typical product itself is fully measurable, associated producers experience a rise in their individual competitiveness – an achievement that encourages other producers who are not yet consortium members to overcome their reluctance and join the collective action.

² Third parties include municipalities and other public entities, hospitality sector, souvenir shops, universities, local schools, artists, museums, rural tourism promoters, cultural associations, media and so on.

**Box 2: Process to improve the reputation of the local product – examples
 of activities carried out by quality consortia**

Category of activity	Examples of activities carried out by quality consortia
Quality	Collectively setting production standards; joint training programs; regional quality competitions; systems of classification and pricing based on quality among linkages; joint purchases of modern machinery; R&D
Marketing	Joint design of marketing mix; joint product promotion (leaflets, website, advertising campaigns, trade fairs and so forth); public relations (media)
Visibility	Collaboration with third parties including municipalities and other public entities, hospitality sector, souvenir shops, universities, local schools, artists, museums, rural tourism promoters, cultural associations, media and so on for tourism promotion activities based on the local product; road signs to promote the product; promotion of the development of new products related to the local item
Legal protection of reputation	Registration and occasionally management of the geographical indication; protection and checks on use; coordination of certification process

Note 1: Some activities listed can be classified in more than one category.

Note 2: The list is open and not exhaustive.

Source: Authors' own compilation.

Quality consortia - the key to inclusively and sustainably adding value

The successful creation of a differentiated image for the typical product and enjoying a prime position in the mind of the consumer are not in themselves sufficient to increase the income of local producers, stabilize regional sales and boost rural development. All too often, the increased reputation of a product with a geographical indication does not go hand in hand with a broad improvement in the living conditions of local economic operators.

The race to the bottom in terms of prices among such local operators, excess production of the typical product at the regional level, high costs of an optimized production process that offset the benefits of rising prices, prohibitively expensive certification system for the region's less competitive producers, overexploitation of natural resources and the intensification of production processes that damage the environment and ruin the landscape, the arrival of large enterprises that take massive shares of the market away from native producers and the full absorption of higher earnings by distribution and processing links to the detriment of the primary link are all examples of problematic developments that prevent increased market competitiveness of the typical product from resulting in tangible benefits for most local economic operators, and thus the region (see Marescotti, 2003).

The scope of the benefits that regional producers can obtain from participating in the joint value-adding project depends largely on the dynamics of cooperation and internal functioning of the quality consortium. It may act as a platform for the fair and balanced coordination of interests and efforts at the regional level, thus performing functions that would be difficult to replace simply with market transactions between a large number of economic operators (see box 3). The fair redistribution of profits along the same value chain, the fixing of a reference sale price, control of production volumes to remain collectively in an upper market segment and the institutionalization of production practices that respect tradition and the environment are examples of aims that cannot be achieved without a basic structure for agreement (see Barjolle et al., 2000).

Box 3: Inclusively and sustainably adding value to local products – examples of activities carried out by quality consortia

Aim of the activity	Examples of activities carried out by quality consortia
Upper market sales	Coordination and drafting of model contracts to avoid underproduction and overproduction; fixing of reference sale prices;
Broad inclusion of producers	Formulation of inclusive production standards; implementation of affordable certification systems; redistribution of certification costs based on the competitiveness of various local economic operators; promoting exchange of best practices among producers and collective training;
Benefits for native producers	Registration of a collective mark on behalf of the consortium to control type of user; promotion of direct sales to consumers to achieve better profit margins; support for producers to benefit from rural tourism (restoration of rural houses, inclusion on gastronomic routes); regulated definition and allocation of geographical areas for the supply of raw materials for each enterprise processing the local product to avoid disproportionate market shares and the of large companies;
Fair distribution of benefits	Dissemination of information on prevailing market prices; collective negotiation of model contracts - to be used in trade relations between the various links of the production chain - to set minimum purchase prices for raw materials based on the sale price of the final typical product;
Protection of cultural and ecological heritage	Establishment of production standards that respect traditions and the environment; collective lobbying of public authorities to achieve legal exemptions from production standards that contradict traditions; formulation of joint marketing strategies to inform distributors and consumers about the particular characteristics of the typical product (seasonality, lack of standardization, short shelf life)

Note 1: Some activities listed can be classified in more than one category.

Note 2: The list is open and not exhaustive.

Source: Authors' own compilation.

UNIDO program for the promotion of quality consortia

For almost 20 years, the United Nations Industrial Development Organization (UNIDO) has been carrying out technical assistance projects on associations throughout the world. Over the years, various specific methodologies have been developed to promote local clusters,³ cooperative associations, export consortia or small supplier networks.

To respond to the growing interest among public institutions, SMEs⁴ and producers in associative strategies specifically focused on adding value to typical products, in 2010 the program for promoting “quality consortia” was born. Since then, UNIDO has organized several international training courses and has begun technical assistance activities to promote such consortia in Peru (see box 4), Bolivia (Plurinational State of), Ecuador, Morocco and Egypt.

Box 4: Case study – Jewelry from Catacaos (Peru)

There is a long tradition of producing silver filigree jewelry in the small Peruvian city of Catacaos. Jewelry making in the region goes back to before the birth of Christ. Nowadays, 450 craft workers still produce this type of jewelry by mixing age-old production techniques with modern designs. Given that the craft workers cannot afford to buy modern machinery, the jewelry is still made by hand. However, what could seem to be a weakness has turned out to be a real strength. The silver filigree jewelry of Catacaos is well known and highly appreciated by tourists visiting the area. The jewelry was even recently declared part of Peru’s cultural heritage. The growing reputation of the product, however, has not just brought advantages. Industrial copies from other cities have appeared on the local market, and are being sold more cheaply than the authentic jewelry.

In order to add value to this distinguished typical product, in 2007 UNIDO began to collaborate with PeruCámaras¹, the Peruvian Ministry of Production, the Ministry of Foreign Trade and Tourism and the Center for Technological Innovation in Jewelry (CITE) in Catacaos² to support two small enterprises and three jewelry associations of 70 workers in establishing a consortium.

Initially, consortium members received technical assistance to develop a plan for the collective promotion of their filigree jewelry. Then, in conjunction with other international cooperation programs, various training schemes were organized to improve the quality and design of the silver products. In 2010, the decision was taken to go further and begin the process of registering a distinctive sign for collective use to tackle the increasing unfair competition faced by the craft workers of Catacaos. The collective mark “Joyas de Catacaos” was registered in 2011 on behalf of CITE, following joint production of a set of conditions to ensure quality and the continuation of tradition. The distinctive sign can be used by all the city’s jewelers whose products honor the reputation of the renowned filigrees.

Note 1: PeruCámaras= National Chamber of Commerce, Production and Services.

Note 2: The Catacaos Center for Technological Innovation in Jewelry (CITE) is a center with which local jewelry makers, a university and the local municipality are all associated.

Source: Authors’ own compilation.

³ Sets of specialized enterprises and producers by sector and their support institutions concentrated in a given territory.

⁴ SMEs = small and medium-sized enterprises.

In order to encourage sustainability and promote inclusive impacts, UNIDO activities to create quality consortia are governed by the following three guidelines:

- establishment of stable and structured quality consortia to enable equitable management of the various social and economic interests present throughout the production chain
- assistance for quality consortia in developing joint activities to improve the reputation of the product
- linking quality consortia with third parties from the territory's public and private sectors that might be interested in adding value to typical products (municipalities and other public entities, hospitality sector, souvenir shops, universities, local schools, artists, museums, rural tourism promoters, cultural associations, media and so on) to encourage synergy, positive externalities and local development.

The defining characteristics of the UNIDO approach to promoting quality consortia emphasize the following:

- creation of trust among members of the quality consortium (role of a professional facilitator)
- undertaking of clear financial and time commitments by all members of the consortium
- rapidly achieving results to motivate current members of the consortium and third party producers who are still reluctant to join (for instance, prioritizing joint marketing activities before improving quality at the regional level; prioritizing quality improvements before certification; prioritizing the award of a collective mark before the institutionalized geographical indication⁵, and so on)
- raising awareness among and informing all the region's economic operators on progress in the process of adding value, irrespective of whether they are currently members of the consortium, in order to encourage gradual activation and inclusion of more and more producers in the initiative
- planning of remedial and safeguarding measures to protect the region's cultural and environmental heritage throughout the process to add value
- institutional capacity building at the national level in beneficiary countries to promote quality consortia (see box 6).

UNIDO projects to add value to typical products in various countries have two components:

- establishment of pilot quality consortia to be used as examples to be replicated (see box 5)
- creation of national capacities to promote quality consortia (see box 6)

5 Institutionalized Geographical Indication = subcategory of geographical indications registered in a given country under a specific legal system for this type of intellectual property rights (*sui generis*).

Box 5: UNIDO logical framework of intervention for setting up quality consortia

Global objective	Improving social and economic conditions of the producers of the typical product and contributing to inclusive and sustainable local development
Level 2 impact	<ul style="list-style-type: none"> (a) Improved income for producers of the typical product (b) Better job opportunities and a halt to rural exodus in the region (c) Region's environment and landscapes preserved
Level 1 impact	<ul style="list-style-type: none"> (a) Improved reputation for the typical product (b) Increased competitiveness of quality consortium members (c) Higher sales of the typical product (stability, price, volumes)
Result	Quality consortium supports its members in an inclusive and equitable way for the ecologically sustainable production and marketing of a quality traditional product of origin and helps to improve the reputation of the product while contributing to inclusive local development
Outcomes	<ul style="list-style-type: none"> (a) Established and fully functioning quality consortium (b) Improved average quality of the product at the regional level (c) Marketing strategy for the local product introduced at the regional level (d) Increased visibility of local product in the region (e) Reputation of the product protected by a geographical indication
Activities	<ul style="list-style-type: none"> • Technical assistance for the establishment and operation of a quality consortium* • Technical assistance to the quality consortium and its members to achieve Outcomes II-V*
Base line	A region produces an uncompetitive local product. Producers receive low income through selling the product.

* Technical assistance includes specific measures to promote inclusive and sustainable impacts and involve third parties (municipalities and other public entities, hospitality sector, souvenir shops, universities, local schools, artists, museums, rural tourism promoters, cultural associations, media and so on)

Source: UNIDO.

Box 6: Institutional capacity-building at the national level

To promote the sustainability of its activities, as part of national projects to promote consortia, UNIDO regularly provides training to representatives of chambers of commerce and industry, ministries of agriculture, trade and industry, SME promotion agencies, universities, non-governmental organizations working in rural development, and so on. Through the training program, these professionals acquire the necessary skills to act as facilitators and accompany groups of producers throughout the process of setting up a consortium.

Furthermore, UNIDO supports national counterparts in setting up an appropriate system of financial and technical incentives and a regulatory framework conducive to the creation of consortia.

In collaboration with SELA/IBERPyme¹ and ITCILO,² UNIDO also offers annual part-time courses in Latin America to promote quality consortia.

Note 1: SELA/IBERPyme= Ibero-American Program of Institutional Cooperation for Small and Medium-Sized Enterprise Development (IBERPyme) implemented by the Latin American and Caribbean Economic System (SELA)

Note 2: ITCILO= International Training Centre of the International Labour Organization in Turin (Italy)

Source: Authors' own compilation.

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□ *Further reading:*

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CONTRIBUTION OF COLLECTIVE ORGANIZATION TO THE SUCCESS OF THE
PROTECTED APPELLATION OF ORIGIN "COMTÉ"

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The experience of protected appellation of origin is based in a particular territory, and therefore is a unique and non-transferable experience. Having said that, it is extremely interesting and enriching to discover how men and women who work the land in other countries have been able to manage the natural obstacles and difficulties they have faced. I therefore thank the organizers of these exchanges and also all those who have contributed to our welcome today.

Firstly, I should like to describe briefly the Protected Appellation of Origin I represent: Comté. It is a pressed cooked cheese that comes in 40 kg rounds. It is made using unpasteurized milk, which gives it its typical features and strong flavor, and this does not hinder its circulation on the world market, as its production process is very safe in terms of health standards.

As is often the case for the large cheeses of this type, Comté arose out of a need in the Jura mountains: the long (seven months), cold and wet winter in these mountain regions made it impossible to grow crops, and cheese represented a "store cupboard" for the winter as far back as 1,000 years ago.

This is the first feature of Comté: it was created out of a vital necessity in the Jura mountains, as a human way of adapting to a difficult environment, and survives to this day to represent a determining factor in land planning in that mountainous region in 2011.

The second feature of Comté is also linked to history: to obtain the 400 liters of milk needed to produce a round, the farmers, who had only one or two cows each, gathered in small-scale village dairies called "fructeries", which would process the milk of the community on a daily basis. The cheese made on one day was therefore given to the farmer where the milk had been collected. The following day, all the village milk would be used to make cheese on the property of another farmer, and so on. This collective organization, which is at the heart of our meeting today, did not emerge in one day, but has very deep and ancient roots. We will see that this is still the key to our organization today. The small "fructerie" dairies of yesteryear have become today's modern "fruitière" dairies. There are 160 of them in our territory, and 80 per cent are cooperatives, which means they are managed by the farmers themselves. They process the milk from 2,750 farms and produce a total of 1.2 million white cheese rounds that are matured for two to three weeks then delivered to about 15 *affineurs* (maturers) who look after the cheese during its long maturation process of between four months and two years or more in cellars. Overall, Comté provides 7,000 direct jobs in the Massif du Jura, plus the indirect jobs linked to other services and suppliers within the Comté distribution chain.

The protection for the geographical name provided by the PAO is valuable, as it protects the geographical place name. It is the old province of Comté that gives its name to Comté cheese, and it is fair that the product name has not escaped to outside its region of origin. The protection has a second advantage: protecting the value added created by the product in its region of origin. Comté has had considerable economic success for the past 20 years. Sales have grown from 29,402 tons in 1990 to 47,670 tons in 2010. This growth in volumes has been accompanied by an average annual increase of two per cent in the retail price of the cheese. The result is that producers of milk for Comté get paid on average 20 per cent

more for their milk than the national average. Thanks to the PAO protection of the name, this success creates a virtuous circle: young farmers set themselves up in business, cheese dairies are modernized and *affineurs* invest in new maturation cellars and new commercial networks.

The prerequisite for this success is unquestionably the Comté Code of Practice, which ensures the excellence of the product and creates confidence for the consumer. However, this Code of Practice is not imposed on us from outside, but rather it is the choice of producers, processors and *affineurs* themselves, and this is where the collective momentum that runs through the Comté chain really comes into its own.

As I stated earlier, the emergence of Comté bore the hallmark of collective organization. Farmers 1,000 years ago had the obligation but also the intelligence to bring together each person's milk to produce a large round of cheese that would feed the population during the long winter months. Over the centuries that followed, the collective organization was strengthened, the principle of alternating production was accompanied by a specialization in which one farmer became the cheese maker. Then, in the nineteenth century, production became organized in a specialized place - the *fruitière* or dairy. What is remarkable about our region is that the wave of individualism that has swept the world over the past century has not called into question this organization: today we still have 160 *fruitières*, which are village dairies spread throughout the territory based on solidarity and a sense of responsibility among all producers. This custom of working together naturally led to the idea of unifying all producers around product protection. From 1930 onwards, the region had a gruyère union (at the time our product was known as “Comté gruyère”), and 1934 saw the creation of the identification mark Comté gruyère. In 1945, the Comté Gruyère Defense Union was created, and its first action was to protect the name. Initially it achieved this in 1952 by means of a judgment of the court of Dijon, and then subsequently in 1958 by obtaining recognition from the public authorities in the form of a decree on the AOC Comté or Comté gruyère AOC. It was therefore a collective mobilization over many decades that led to this first and essential step – protecting the name.

This protection is a necessary but not sufficient condition. For it to be reflected in terms of economic and land-management success, there must be a Code of Practice worthy of such a name. Producing or renewing a Code of Practice is an ambitious task, as it involves long negotiations among all the operators in the distribution chain. It is important that the production disciplines adopted by the chain come from the collective in its entirety. This is because application of and respect for the Code of Practice will increase all the way along the line in direct proportion to the democratic nature of the drafting process. This internal negotiation process to produce the Code of Practice lasts for many years, and provides an opportunity to ask fundamental questions about the future, the product's image and expectations of society and consumers. It also allows individuals to see beyond the issue of short-term product profitability. This creates a virtuous momentum and a fighting spirit. Producing a Code of Practice is an investment in the future and should mobilize a maximum number of operators. I will briefly review some key elements of the Comté Code of Practice: It is demanding on production in terms of upper limits for inputs (concentrates, fertilizer), GMO ban, silage ban, upper limit on dairy productivity per hectare. It is demanding on dairy processing and ripening, with the obligation to use unpasteurized milk in copper vats, a ban on any additive or colorant, traditional milk inoculation, limited dairy size and collection areas, a long maturing process and so forth.

It is thus partly thanks to the demands of the Code of Practice that the Comté chain has been able to build the economic success of the past 20 years. However, for success to be translated into real collective progress that trickles down to the entire territory, there must also be a fair distribution of added value. The collective involvement guarantees success from this viewpoint. In 1969, following a major crisis, all of the operators in the chain, milk

producers, cheese makers and *affineurs* sat round a table to negotiate a contractual system that has since been called the CIGC contracts (after the name of the interprofessional committee).

Rather than describing the contracts in technical detail, I will simply emphasize three main principles:

(a) remuneration is provided for unripened cheese (handed over to the *affineur* after an average of two weeks) based on its quality at the four-month stage. Each month, the producers in charge of the cheese dairy visit the *affineur* and they classify the cheeses together. Depending on whether they are classified as A, B or C, the indexing factor on the average price will be very different. The CIGC contract is therefore a great motivator of quality

(b) under the contracts, the *affineur* pays for the cheese not on the basis of the monthly sales price, but based on the average price in the distribution chain each month. This average price is known as the Weighted National Average (MPN in French). Remarkably, this comes from monthly sales statements from companies: declaration is not compulsory, but over 95 per cent of tonnage sold is declared. The accuracy of the figures is checked by a firm of chartered accountants. In this payment system, the virtuous logic encourages all *affineurs* to increase the sale price, as they will pay for the unripened cheese on the basis of the overall average, rather than their own sale price.

(c) there is a contracts commission that meets each month for a very constructive exchange between producers and companies. When the market conditions have changed, the contracts commission is the place for parties to negotiate how the value added can be shared out in a new way. Technical adjustments to these contracts are common, and at times benefit some parties, and at times others. The contracts commission is the valuable collective area for such negotiations.

The Comté distribution chain has been building itself up for decades, and must regularly adapt to major changes in the environment. This was the case in 1995, when the success of Comté made production soar, and the maturing cellars were dangerously full. The Comté Interprofessional Committee (CIGC) therefore introduced a crisis-prevention instrument called the "country plan", based on the principle that each year cheese makers are authorized a certain production growth and the inclusion of new operators, while ensuring that growth is limited solely in order to avoid crises. This is not a Malthusian instrument, and is therefore completely compatible with the right to competition and strengthens the collective buoyancy of the distribution chain.

As suggested in the preceding paragraphs, the collective momentum of the Comté distribution chain is based on a unifying structure that brings all parties together: the Comté Gruyère Interprofessional Committee (CIGC). It was created by decree in 1963, soon after the PAO was obtained, and its mission was to manage this part of the French heritage as well as possible. Following almost four decades of operation, the Comté Interprofessional Committee has grown in size and has a budget of 6.5 million euros, and is above all backed by the support of all stakeholders that, in order to be more effective together, entrust it with a large number of tasks in research, technical expertise, advertising, legal protection and oversight. The Committee brings together all Comté distribution chain operators, regardless of whether they are small-scale producers or large dairy groups, and represents a permanent forum for debate. The rule that decisions must be taken "unanimously" guarantees a functioning that enables all concerns to be taken into account, particularly when it comes to drafting the Code of Practice.

With its sophisticated collective organization, the Comté distribution chain thus performs a significant land-management function, and fulfils its primary function of living within its local area.

This success can be measured in terms of **jobs**, and I will give a few figures to illustrate this:

(a) dairies in the Comté area are 32 per cent more profitable in economic terms than dairies in the same region but outside the Comté area;

(b) thanks to the small size of village dairies (*fruitières*), the number of full-time jobs for every 100,000 liters collected is 1.5 in the Comté area, compared with an average of just 0.76 for France as a whole;

(c) there is limited rural exodus in the Comté PAO area, with almost half the number of departures as in the non-PAO area of the same region.

The attractiveness of the Comté distribution chain is also reflected in terms of high visitor numbers to the region. In 2009, for instance, 203,000 visitors were reported by the four maturing cellars, the 90 dairies (*fruitières*) and the 21 farms open to the public. The tourist service "Comté Routes" was created in 2002 to create a collective buzz that associated Comté sites with other locations in the Jura mountains to do with food and agriculture (chocolate, wine and cured meats), as well as restaurants, hotels, farms-inns, and so on.

The success of the Comté distribution chain is also a result of the environment. Even in the mountains at 1,000 meters, farming is dynamic: young farmers set up business, landscapes remain open and the land is not left fallow. The typical geographical heritage of the Jura mountains, known as wood pasture, and the local breed of cow, Montbéliarde, remain the living regional emblem that we are all attached to, because we love our region and want to carry on living there. We know that the only option is to act collectively and in solidarity.

TEQUILA: MEXICO'S GIFT TO THE WORLD

*prepared by María Bertha Becerra Ríos,
Tequila Regulatory Council, Jalisco, Mexico*

Tequila is a regional alcoholic beverage obtained from the agave tequilana weber, blue variety. Its production and marketing are subject to compliance with an Official Mexican Standard: NOM-006-SCFI-2005, Alcoholic Beverages-Tequila-Specifications.

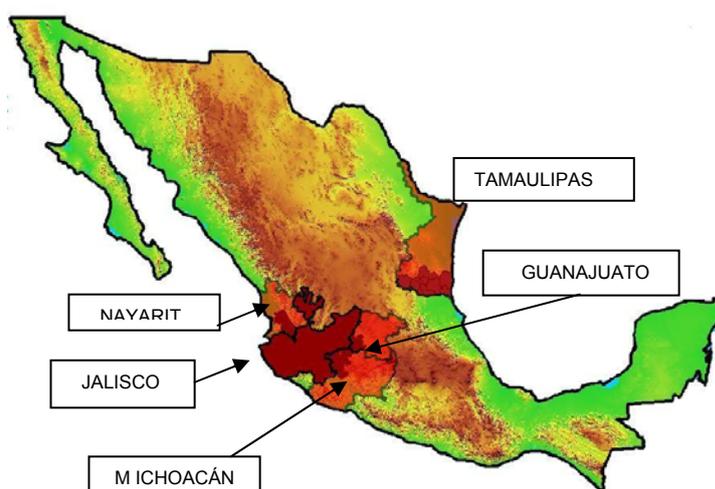
It must be verified and certified (compulsory standard) by the CRT.

It is protected as an Appellation of Origin.

What is an Appellation of Origin?

It is the geographical denomination of a region of the country that 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.

STATES COVERED BY THE TEQUILA APPELLATION OF ORIGIN



The Tequila Appellation of Origin (TAO) includes 181 municipalities from five states in Mexico: Jalisco and its 125 municipalities, Nayarit with eight, Guanajuato with seven, Tamaulipas with 11 and Michoacán with 30 municipalities. ¹

1 NAYARIT – Ahuacatlán, Amatlán de Cañas, Ixtlán del Río, Jala, Jalisco, San Pedro de Lagunillas, Santa María del Oro, Tepic.
JALISCO – 125 municipalities.
TAMAULIPAS – Aldama, Altamira, Antiguo Morelos, Gómez Farías, González, Llera, Mante, Nuevo Morelos, Ocampo, Tula, Xicontécatl.
GUANAJUATO – Abasolo, Ciudad Manuel Doblado, Cuerámano, Huanimaro, Pénjamo, Purísima del Rincón, Romita.
MICHOACÁN – Briseñas de Matamoros, Chavinda, Chilchota, Churintzio, Cotija, Ecuandureo, Jacona, Jiquilpan, Maravatío, Nuevo Parangaricutiro, Numanán, Pajacuarán, Peribán, La Piedad, Regules, Los Reyes, Sahuayo, Tancítaro, Tangamandapio, Tangancicuaro, Tanhuato, Tinguindín, Tocombo, Venustiano Carranza, Villa Mar, Vista Hermosa, Yurécuaro, Zamora, Zináparo, Marcos Castellanos.

Only in those municipalities can the raw material agave tequilana weber, blue variety, be used to produce Tequila.

The agave tequilana weber, blue variety, is the heart and soul of Tequila. It is a plant of the amaryllidaceae family, with long spiky green/blue leaves and the usable heart in the middle.

TEQUILA PRODUCTION PROCESS

Harvest

The harvest of the agave tequilana weber, blue variety, is the first step of the Tequila production process and involves separating the agave leaves from the hearts or heads, which are the raw material for Tequila.

Cooking Or Hydrolysis

This is the process whereby heat breaks up the complex carbohydrates of the agave into simple sugars that can be fermented and turned into alcohol.

Extraction

Before or after cooking, the carbohydrates or sugars from the juice of the agave hearts must be separated from the fiber. This process produces the sugary liquid or basic wort for fermentation.

Formulation

This is the stage prior to fermentation when the worts or juices obtained from extraction are prepared for subsequent fermentation.

Fermentation

This is the transformation of the plant sugars, by yeast, into ethyl alcohol and carbon dioxide, with the formation of other compounds that will contribute to the final sensory characteristics of Tequila.

Distillation

Distillation is the separation and purification by heat of the various liquid components of the mix to obtain the alcohol from the fermented worts and eliminate the unwanted components.

Ageing

This is the slow transformation of Tequila that enables it to acquire additional sensory characteristics such as fragrance, color and texture thanks to physical and chemical processes that occur naturally while the liquid is stored in oak or Encino oak barrels or containers. Aged or Extra-aged Tequilas must be aged in containers of no more than 600 liters.

Bottling

This is when the Tequila is placed in containers to conserve it and protect its physical and chemical stability until it is marketed. Tequila must be bottled in new containers authorized by the health authorities. The alcohol content allowed by the Tequila Standard ranges from 35 per cent to 55 per cent alcohol volume. Both categories of Tequila may have sweeteners, colors, and flavorings added where these are allowed by the Mexican Department for Health.

TEQUILA CLASSIFICATION

CATEGORIES AND CLASSES OF TEQUILA	
Official Mexican Standard (NOM-006-SCFI) establishes two categories: 100 per cent Agave Tequila and Tequila, as well as five classes in each: White, Young, Rested, Aged and Extra-aged.	
CATEGORIES	CLASSES
A. 100 per cent AGAVE TEQUILA Made with 100 per cent sugars from <i>Agave tequilana weber</i> , blue variety BOTTLED IN MEXICO	1. White 2. Young/gold 3. Rested (min. two months) 4. Aged (min. one year in barrel) 5. Extra-aged (min. three years)
B. TEQUILA Made with minimum 51 per cent sugars from <i>Agave tequilana weber</i> , blue variety, and 49 per cent other sugars MAY BE BOTTLED IN OTHER COUNTRIES	1. White 2. Young/gold 3. Rested (min. two months) 4. Aged (min. one year in barrel) 5. Extra-aged (min. three years)

TEQUILA REGULATORY COUNCIL

The Tequila Regulatory Council (CRT) is a non-profit civil association (AC) that is the basis for protecting the Tequila Appellation of Origin in Mexico and throughout the world. It has five offices in Mexico and four international offices in the United States of America, Switzerland, Spain and China, to ensure that only certified Tequila brands use the TEQUILA name.

The CRT is approved by the Directorate General for Standards of the Ministry for Economy and accredited by the Mexican Accreditation Body A.C. to carry out its functions as a Verification Unit, Testing Laboratory and Certification Agency. In the interests of ensuring the quality and reliability of its services, since 1999 the CRT has held international quality certification ISO-9001.

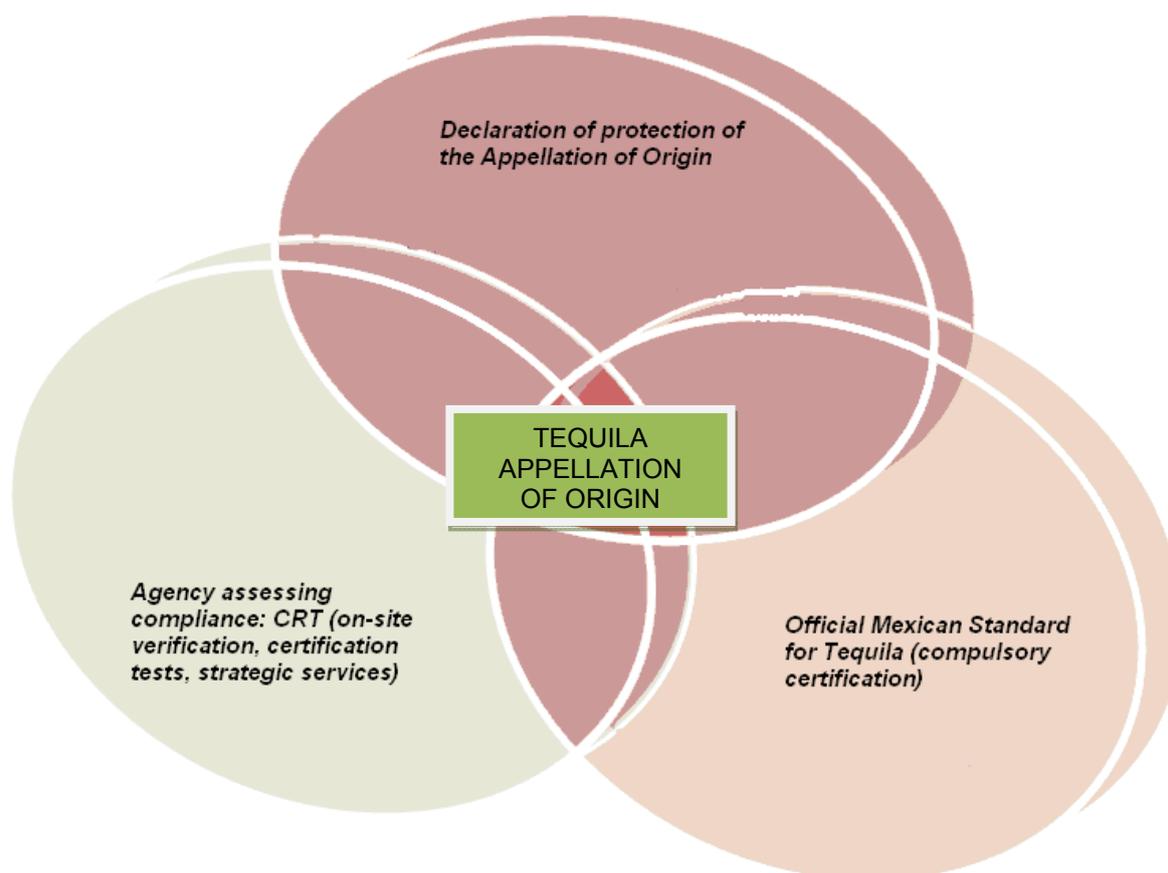
With a view to ensuring that all sectors of the Agave-Tequila production chain are involved in the CRT's decisions, its Management Board is made up of four sections:

- (a) Tequila producers
 - Divided by size on the basis of their liter production:
 - Micros (1 to 300,000)
 - Small (300,000 to 1,000,000)
 - Medium (1,000,000 to 3,000,000)
 - Large (3,000,000 upwards)
- (b) Agave producers
- (c) Tequila bottlers and traders
- (d) Authorities and other departments.

CRT was set up in 1994 with the following main objectives:

- (a) Verifying and certifying compliance with the Official Mexican Standard (NOM)
- (b) Protecting the Appellation of Origin in Mexico and abroad
- (c) Guaranteeing the authenticity of Tequila for the consumer
- (d) Producing relevant, accurate and useful information for the Agave-Tequila production chain

PRINCIPALES ELEMENTOS PARA LA PROTECCIÓN A LA DENOMINACIÓN DE ORIGEN TEQUILA



LEGAL FRAMEWORK

- NOM-006-SCFI-2005 Alcoholic beverages-Tequila-Specifications
- Federal Law on Metrology and Standardization and the implementing regulations thereunder
- Law on Industrial Property and the implementing regulations thereunder
- General Health Act
- NMX-EC-065-IMNC-2000, Certification Agencies
- NMX-EC-17020-IMNC-2000, Verification Units
- NMX-EC-17025-IMNC-2006, General competency requirements for testing and calibration laboratories.

TEQUILA VERIFICATION, CERTIFICATION AND CONTROL

The verification and certification of Tequila is carried out by a detailed system of ongoing on-site control, which determines compliance with applicable standards and the efficiency of each of the operations that form part of the process and their overall yield.

If we ask what in relation to the Tequila is verified in order to achieve certification, the answer is as follows:

1. AGAVE: Compulsory registration, characteristics (species), location, age, phytosanitary condition, inventories, inputs, use.
2. FORMULATION AND FERMENTATION:
Exclusive use of agave sugars or minimum 51 per cent share of agave sugars, inventories, inputs, distilled wort, alcohol content (percentage of alcohol to wort volume), efficiency.
3. DISTILLATION:
Distilled wort, Tequila produced, inventories of Tequila in bulk by category and class, efficiency by unit operation and entire production process, checks on outgoing bulk tequila for export, and yield.
4. AGEING CHECKS:
By category, sealing of barrels, checks on ageing period using logs.
5. CHECKING BOTTLED TEQUILA: Tequila inventories by: category and class, brand, capacity, batch and alcohol content. Checks on outgoing bottled Tequila for the national and export markets, packaging materials, capacity, trade information.
6. QUALITY CONTROL: Quality system that ensures traceability of products and testing activities through accredited testing laboratories.
7. GOOD PRODUCTION PRACTICES: (NOM- 251- SSA1): Health and safety of operating staff, physical installations, raw materials, materials being processed and the finished product.
8. PROCESS CONTROL LABORATORY: Approved testing methods, qualified staff, appropriate facilities, records checked, good manufacturing practices.

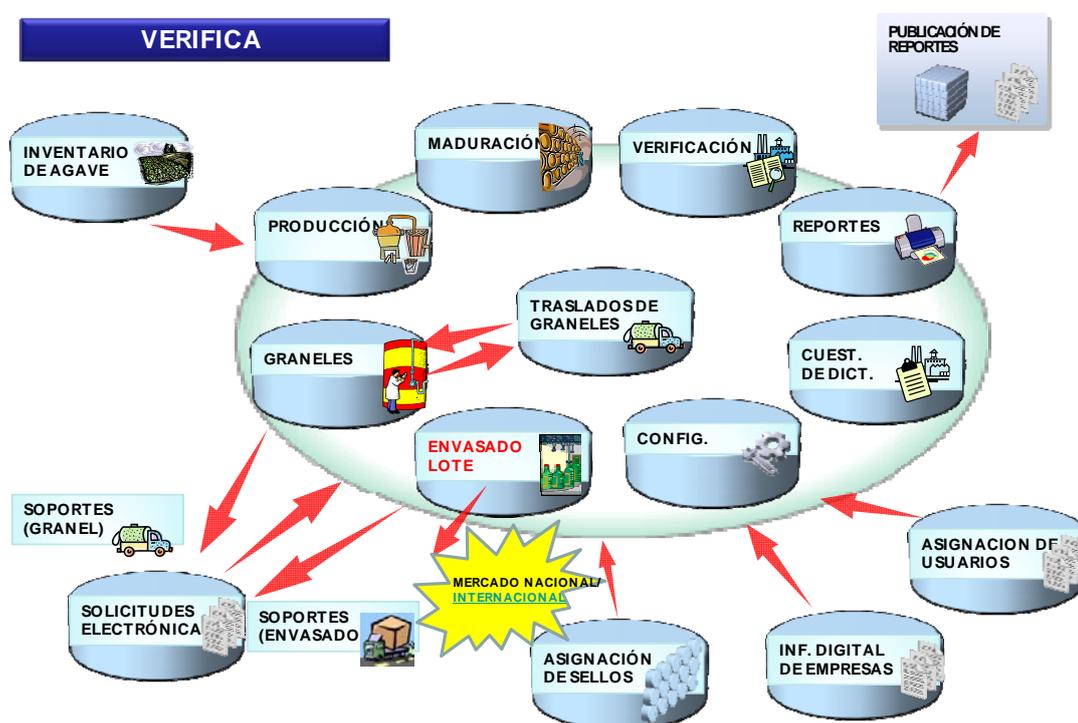
Constant on-site verification is used to check compliance with the Official Mexican Standard for Tequila for the award of certification.

CERTIFICATION is obtained once it has been ensured that the Tequila complies with the OFFICIAL MEXICAN STANDARD FOR TEQUILA.

Control, follow-up and authenticity of the Tequila production process are therefore checked mainly in the following ways:

- Physical check on 100 per cent of the process: Ongoing verification of each operational unit, including into the nature of raw materials.
- Document review: Documents on accounting, trade information, good hygiene and production practices, quality system and traceability.
- Laboratory tests: Sampling, measurement and material weighting.

ESQUEMAS DE CONTROL



ACTIVITIES RELATING TO TEQUILA VERIFICATION, CONTROL, CERTIFICATION AND TRACEABILITY

VERIFICATION UNIT

- Issue of trade information reports
- Verification of follow-up to certification:
 - 165 enterprises
 - 288 verification points
 - 11,569 samplings
 - Use of accredited laboratories
 - Simultaneous packaging endorsement
 - Agave harvest verification
 - Customs monitoring
 - Verification of products subject to ageing
 - Verification of marketing of Tequila.

Generation of statistics on production, use of raw material, yield and efficiency to requesting enterprise or industry.

Newly created Tequila production enterprises must comply with minimum requirements to begin operations, so as to maintain essential conditions that ensure compliance with the applicable standards in terms of quality, control, safety, hygiene, good manufacturing practices, traceability, non-toxicity, infrastructure, laboratory, facilities and qualified staff, among others.

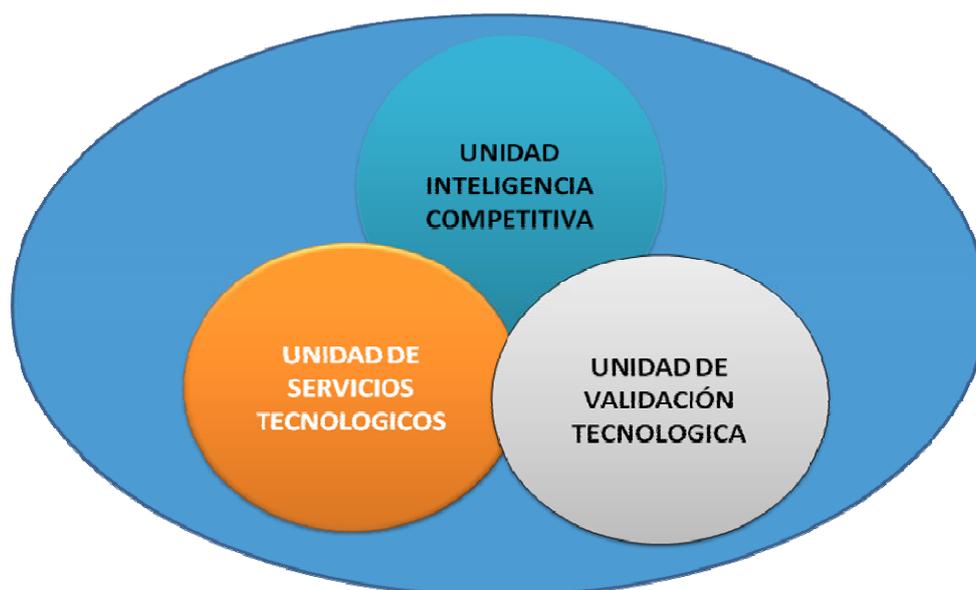
CERTIFICATION AGENCY

- Technical Instructions on how to produce Tequila and products containing Tequila
- Verification Services:
 - On-site verification request
 - Factories
 - Validation of facilities and equipment
- Certificates of compliance with NOM 006
- Certificates of compliance with NMX 049
- Export certificates
- National sales certificates
- Proof of certified product
- Registration numbers for NOM countermark
- Registration on the list of packaging facilities
- National and international marks
- Licenses to use marks
- Joint responsibility agreements
- List of packaging facilities (quarterly reports).

CROP AREA

- Registration of plantations of agave tequilana weber, blue variety
 - Transfers of plantations
 - Updates (results or data)
 - Registration of new plantations
 - Check of plantation registrations
- Manuals on transporting agave
- CRT monitors
- Proof of plantation existence
- Information on number of plants in the Tequila Appellation of Origin
- Availability forecasts for the raw material (Agave)
- Plantation management recommendations.

CRT AGAVE-TEQUILA REFERENCE CENTER



COMPETITIVE INTELLIGENCE UNIT

Information center

- Modern physical and virtual library
- Information portal
- Access to scientific and specialized journals
- Remote on-line access to the library archives
- Industry-related theses
- Statistics, productions, use, market patterns, yield, cartography, diagrams
- Remote links to various locations
- General Inventory and Disease Monitoring for agave tequilana weber, blue variety
- Availability forecasts for the raw material (Agave) by year of planting, state, municipality and area
- Level of incidence and severity of the main diseases, by state, municipality, plantation age, area or region
- Geographical Information System for agave plantations with the Tequila Appellation of Origin
- Training
- Qualified personnel
- Work placements
- Knowledge networks
- Conferences
- Seminars

TECHNOLOGICAL SERVICES AND TECHNOLOGICAL VALIDATION UNIT

- Physical and chemical analysis laboratory for alcoholic beverages
- Water and heavy metals analysis laboratory
- Microbiological laboratory
- Molecular biology, agronomical (soil analysis) and phytopathology laboratory



CRT FINISHED PRODUCT ASSURANCE

- Verification and surveillance of tequila and alcoholic drinks at point of sale.
- Coordination with authorities and their departments for monitoring products.
- Dissemination and promotion of Tequila culture through various training schemes.

FINISHED PRODUCT ASSURANCE AT CUSTOMS

- Coordinating actions with customs authorities to prevent, avoid and protect against any risk affecting Tequila exports by customs.
- Exclusive customs for Tequila exports.

INTERNATIONAL AREA OF CRT

- Registration of Tequila Appellations of Origin and marks at the international level.
- Monitoring and follow-up to Tequila worldwide to combat the sale of fake products.
- Dissemination of Tequila culture at the international level.

RESULTS OF CONTROL SYSTEMS

- Reliable platform for our clients to declare information on their processes, while also identifying ways of improving processes through the assessment of that information.
- Improving efficiency of service processes.
- Guaranteeing confidentiality and objectivity of information generated by the industry.
- Developing a comprehensive database for the real-time analysis of information to enable us to make decisions in a more timely way.
- Streamlining the decision-making process to strengthen the Agave-Tequila production chain.
- Developing protection models at the national and international levels.
- Guaranteeing consumers safe (non-toxic) and reliable products, by means of mechanisms that monitor product flow.
- Assessing product compliance.

- Constant, updated maintenance and ongoing improvement of records.
- Strengthening national and international competitiveness of Tequila and other products.
- Identifying and combating adulterated or fake products in any market.

TEQUILA REGULATORY COUNCIL: TAKING RESPONSIBLE CARE OF OUR DRINK

THE DEVELOPMENT OF THE PERUVIAN APPELLATION OF ORIGIN PISCO

*prepared by Gonzalo Gutiérrez Reinel,
Ambassador, Permanent Representative of Peru to the
Office of the United Nations, New York*

In order to discuss how the Peruvian appellation of origin Pisco has developed, it is relevant to review what has been the legislative approach to the protection of this expression of Peruvian culture for more than a century. It is also useful to analyze the characteristics of the international standing of this appellation of origin, before concluding with reflections on the prospects for the road ahead and the priority policies and actions, in the private and public sectors, that must be undertaken to consolidate this heritage of Peru.

PERUVIAN LEGISLATION

For a long time, it was commonly stated in Peru that protection for the Pisco national appellation of origin had been abandoned, and that it was only very recently that the country had begun to legislate on the matter. In reality, this perception is inaccurate. As far back as the late nineteenth century, legislative precedents began to be established in order to protect this type of Peruvian product.

Perhaps one of the most interesting developments was the treaty signed in Lima, in October 1896¹, between the Peruvian Minister of Foreign Affairs, Enrique de la Riva Agüero, and Minister Plenipotentiary of France, Raoul Wagner, in which the two countries undertook mutually to protect their respective signs or names that may be used "...to indicate that the products from one trade, or items from a given trade are distinguished from other products of the same kind, as well as trade names, trade signatures, titles or names of firms, names of places of production, provenance or origin..."

We can infer from the text of this international instrument that, as early as the end of the nineteenth century, there was awareness that appellations or indications specifically designating a product had a value and represented prestige, and that they should therefore be protected against misuse. It is particularly striking that, in this case, the treaty was negotiated and signed in Lima, which clearly indicates that Peru was already glimpsing the importance of this type of protection.

Treaty between Peru and France to
protect marks and appellations,
1896



¹ Alfredo Benavides and Diez Canseco, Convention on the ownership of factory and trade marks concluded with the French Republic, Lima- 1896. Colección de Actos Internacionales celebrados por la República del Perú. Nro.- 42

More specifically, domestic legal protection for the “Pisco” appellation materialized in Peru in the 1930s. It was in this period that rules started to emerge aimed at limiting the use of the appellation and protecting the quality and traditional production method of this liquor.

It is worth quoting the many relevant provisions that show the concern in Peru for both the use and protection of the appellation and its production, as well as for the quality of the drink:

Law No. 5102, of May 18, 1925, exempted those wines and grape alcohols produced in the south of Peru from the alcohol tax increase for one year, and authorized a one-year extension of the measure if the original causes continued.

Supreme Resolution No. 52, of April 20, 1932, stated that the classification of “grape spirit” shall only be used by spirits from Pisco, Ica, Locumba, Moquegua, Majes or Lunahuaná.

The Supreme Decree of September 21, 1932, establishing the compulsory consumption of national wines and liquors in all official ceremonies, bans the Controller General of the Republic - as was customary at the time - from endorsing any form for the purchase of foreign wines or liquor. This Supreme Decree has a very long life, as it was reintroduced by Law No. 26426, of December 29, 1994, with the inclusion of some other aspects.

Six years later, Law No. 8710 of August 4, 1938, exempted from all taxes — for the years 1938 and 1939— country estates and all country properties in the district of Locumba in the province of Tacna, and until 1944 for land where vines were being planted for the first time. The Law also states that wines and liquors from exempted estates were also exempt from any taxes. This measure was enacted because of the natural disasters that struck that year, as well as a surge in the “*Filora vastratriz*” pest.

The Ministerial Resolution of May 1940 bans the entry of sugar cane alcohol into the vitiviniculture zone of Pisco. The aim of the rule was to avoid the adulteration of the pure grape liquor produced in that area. This was a clear demonstration of the wish to maintain a traditional process to preserve the high quality of the product.

Resolution 1207 of December 20, 1940 deals with the appellations for pisco, grape liquor and others.

Supreme Resolution 151, of April 3, 1941, expands on the 1932 Resolution, as it establishes the limited use of certain terms, such as “Pure”, “Italia” and “Moscatel”, that are applicable only to grape liquors.

Ministerial Resolution 1206, of 1946, officially states that “only the product obtained exclusively from the distillation of liquid from the fermentation of pure grape juice prepared and distilled using known procedures shall bear the appellation Pisco followed by the name of the place of origin”. This rule distinguishes between pure Pisco (produced from non-aromatic grape varieties); green must (from grapes that are not totally fermented); varieties made using aromatic grapes such as Moscatel or Albilla; and lastly Pisco flavored with fruit.

Some years later, the Directorate Resolution of March 13, 1963, was issued to set times and dates for the annual distillation of liquors.

The Supreme Decree of June 10, 1963, approved the Health Code and stated in Article 731 that Pisco is the product obtained from the distillation of fermented grape must, adding that the term “pure” is added when it is from non-aromatic grape varieties, such as Quebranta, Common Black, Mollar, Albilla or Grenache. This concept is fairly close to what is currently recognized as the precise definition of Pisco in Peru, although it does not include the geographical area.

The following year, Law No. 15101, of July 18, 1964, includes national vermouths, sparkling wine, grape pisco and wines in the tax exemption established by Law No. 14729.

In the light of a more developed sense of the need for Pisco to be protected, on April 7, 1988, Departmental Resolution No. 179 was issued by the National Institute for Culture, declaring the Pisco appellation of origin as “Cultural Heritage of the Peruvian Nation”.

Subsequently, Supreme Decree No. 071-88-PCM established the third Sunday in May each year as “Pisco Day”, and stated that on that day activities should be planned to disseminate the features and quality of Pisco and reaffirm the Peruvian origin of the appellation. Later, Ministerial Resolution No. 055-99 ITINCI/DM established the fourth Sunday in July as National Pisco Day.

Supreme Decree No. 023-90-ICTI/IND extended the areas of coverage of aspects relating to industrial property to include the concept of appellation of origin, while also designating the Peruvian State as owner and establishing the procedure to apply for the relevant usage license.

The modern definition of Pisco, which is the one in force in Peruvian legislation, was introduced by Directorate Resolution 072087 of December 12, 1990, in which the Institute for Industrial Technology Research and Technical Standards (ITINTEC) declared Pisco as a Peruvian appellation of origin for products obtained from the distillation of liquid resulting from the exclusive fermentation of ripe grapes, produced on the coast of the Departments of Lima, Ica, Arequipa, Moquegua and the valleys of Locumba, Sama and Caplina in the Department of Tacna, in accordance with the provisions of National Technical Standard No. 211-001. This directorate level rule was subsequently elevated in status when all of its contents were ratified in Supreme Decree No. 001-91-ICTI/IND of January 17, 1991.

On December 29, 1994, the Peruvian Congress enacted Law No. 26426, which gave legislative status to Supreme Decree 001-ICTI/IND of January 1991 and, as previously stated, updated the provisions of Supreme Decree 100 of September 1932, relating to the official consumption of Peruvian beverages. The Law also established that the Executive must ensure, by all means, that international law gives precedence and definitive recognition to the Pisco appellation of origin for Peru. It therefore bans the import of foreign drinks that bear the name Pisco, and states that Peru must be a member of the International Vine and Wine Office (OIV). The latter provision proved irrelevant because, when the Law was enacted, Peru had been accepted as a member of the organization.

By means of the Industrial Property Law approved by Legislative Decree No. 823 of April 23, 1996, Peruvian legislation retains the concepts included in the definition of appellation of origin² contained in the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, of the World Intellectual Property Organization (WIPO).² According to Article 219 of the aforementioned Legislative Decree, in Peru “Appellation of origin shall mean an appellation that uses the name of a region or geographical location within the country that serves to designate a product originating therein, the quality or characteristics [of which] are exclusively or essentially attributable to the natural and human factors specific to the said region or location”.

In addition, in Decision 486 of September 14, 2000, the Andean Commission approved the “Common Regime on Industrial Property”. Title XII of the Regime details the concepts of “Appellation of Origin” and “Indication of Source” and establishes the mechanisms through

² Article 2.1: ...“appellation of origin” means 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”.

which Andean countries may implement protection of geographical indications. This subregional community basically uses the legal definition of the “appellation of origin” concept from the WIPO Lisbon Agreement. It is also relevant to mention that this rule is not the first on the matter to be approved by the Andean Community, as there have been other subregional provisions, such as Decision 344, replaced by Decision 486, which had previously legislated on geographical indications in exactly the same way. It was Decision 344 that initially introduced a new protection system for appellations of origin into the Andean scheme, by granting exclusivity rights in such appellations for people established in protected geographical areas. This meant they could be applied to natural, agricultural, craft or industrial products from Andean countries, and reserved for producers, manufacturers or craftsmen who have production or manufacturing establishments in the area or region of the Andean country designated by or mentioned in the appellation³.

On November 6, 2002, the National Institute for the Defense of Competition and Intellectual Property (INDECOPI) published a new Technical Standard (NTP 211.001.2002 Alcoholic beverages. Pisco. Requirements) that specified, inter alia, that the alcohol volume of Pisco may vary between 38 per cent and 48 per cent. Similarly, the Standard also classified the three types of pisco that may be produced: Pure Pisco, obtained from pisco grape varieties; Green Must, resulting from the distillation of incompletely fermented fresh must; and Pisco Acholado, or half-breed pisco from the distillation of completely fermented fresh must, which is a mixture of various varieties of aromatic and non-aromatic pisco grapes. The recognized varieties of aromatic pisco grapes are: Italia, Moscatel, Albilla and Torontel. The non-aromatic grape varieties are: Quebranta, Mollar, Common Black and Uvina. This technical Standard clearly determines the three main characteristics that define Pisco in Peru and distinguish it from any other beverage:

- (a) It is the product of the distillation of fresh must specifically made for the production of Pisco, and not from previously fermented and aged must or wine
- (b) Distillation takes place in discontinuous stills, in order to conserve the essential constituent elements; and
- (c) It is not possible to add water to reduce the alcohol content following distillation.

The following year, on January 24, 2003, INDECOPI Resolution No. 0602-2003/OSD- was published, in which the Office of Distinctive Signs, the competent national office for appellations of origin, designated the National Metrology Service as responsible for issuing certification of compliance with the Peruvian Technical Standard for Pisco and for certifying the place or places of product exploitation.

A few months later, on May 28, 2003, the Ministry of Production issued Supreme Decree D.S. No. 014-2003-PRODUCE setting up the National Commission for Pisco - CONAPISCO, which is in charge of supporting the development of Pisco production activities, by means of normative proposals, promotion and dissemination actions and technical assistance, with a view to boosting the competitive advantage of its quality, as well as supporting the national and international promotion of Pisco as Peru’s flagship beverage.

On November 12, 2006, INDECOPI Resolution No. 0091-2006/ was published with the new Peruvian Technical Standard NTP 211.001.2006 on Alcoholic Beverages – Pisco – Requirements, in which the Technical and Commercial Regulations Commission establishes the types of Pisco and grape varieties, as well as the procedures for its production.

³ Luis Alonso García Muñoz-Najar, “Some Notes on the Protection of Appellations of Origin in Countries with Emerging Economies: the Andean Community”. Symposium on the International Protection of Geographical Indications, Montevideo, Uruguay, November 2001. Doc. WIPO/GEO/MVD/01/6., p. 4.

More recently, on July 9, 2009, Supreme Decree D.S. No. 23-2009-PRODUCE was published to amend Article 1 of Supreme Decree D.S. No. 14-2003-PRODUCE, stating that CONAPISCO will audit the certification of quality of those products authorized to use the Pisco appellation of origin, in accordance with Peruvian Technical Standard 211.001-2006 for the sale thereof.

INTERNATIONAL RECOGNITION OF THE PERUVIAN APPELLATION OF ORIGIN PISCO

With the gradual growth of the export sector, it became increasingly obvious that there was an urgent need for the heritage represented by an appellation of origin also to be protected abroad. Initial efforts towards international recognition of the ownership of the Pisco appellation therefore began in the mid-1990s.

One aspect that was the subject of in-depth reflection was the means to be used to achieve international recognition for the Peruvian appellation. Some sectors were in favor of exclusively promoting unilateral recognition in the various national registers, based on the historical, legal and geographical credentials attesting to the Peruvian nature of the liquor. However, it was decided that this perception could be excessively restrictive, as not all countries had a register of appellations of origin or geographical indications. It was also taken into account that other countries were using trade negotiation mechanisms to obtain, in parallel, recognition for their appellation claims, with no basis of any kind for the legal legitimacy of their aspiration. In addition, Law 26426 of 1994 established the obligation to ensure by any means that international law gave precedence and definitive recognition to the Pisco appellation of origin for Peru.

In the light of the above, it was decided to use all available instruments to achieve recognition for the Peruvian appellation. In other words, all available options – from registration in national registers, bilateral negotiations, participation in multilateral instruments or the inclusion of recognition clauses in trade agreements – were valid ways of achieving international protection for the Peruvian appellation of origin for Pisco.

ANDEAN COUNTRIES

By virtue of the precepts enshrined in Andean legislation, in October 1997 the Peruvian authorities filed with the Industrial Property Office of the Ministry of Economic Development of the Plurinational State of Bolivia an application requesting the protection of the Pisco appellation as an appellation of origin from Peru. In January 1998, a Resolution was issued⁴ in which the Bolivian Industrial Property Office resolved to establish protection for Pisco as an Appellation of Origin of Peru throughout Bolivian territory.

Subsequently, the Ministry of Foreign Trade, Industrialization and Fisheries of Ecuador, also in January 1998 through a Resolution⁵ from its National Directorate of Industrial Property, stated that, in accordance with Article 142 of Decision 344 and considering that the Pisco appellation had been protected as an appellation of origin in Peru, it was therefore declaring the Pisco appellation as a protected appellation of origin of Peru in Ecuador.

As for the authorities of the Bolivarian Republic of Venezuela, in March 1998 they also issued a Resolution⁶ stating that the Autonomous Service of the Industrial Property Registry (SARPI) resolves to declare Pisco as a Peruvian appellation of origin, thus granting it all the

⁴ Resolution No. OPIB/D.O. 001/98. Industrial Property Office, Vice-Ministry of Industry and Internal Trade of the Ministry of Economic Development, Plurinational State of Bolivia, January 5, 1998.

⁵ Resolution No. 0962384 of the National Directorate of Industrial Property, Ministry of Foreign Trade, Industrialization and Fisheries of Ecuador, January 15, 1998.

⁶ Resolution No. 0354, Venezuelan Ministry of Industry and Trade, Autonomous Service of the Industrial Property Registry (SARPI), March 9, 1998.

protection that such a status implies. In Colombia, in 1999 the Superintendence of Industry and Commerce, through its Division of Distinctive Signs, issued a Resolution⁷ along similar lines.

CENTRAL AMERICA AND THE CARIBBEAN

In Guatemala, because of the interest of certain companies from a third country in registering the Pisco appellation for themselves, in a series of trade marks, the Peruvian Embassy filed an opposition to the registration, using the argument that those marks included the name of an appellation of origin belonging to Peru. The Peruvian opposition was analyzed by the Guatemalan Industrial Registry, which eventually issued two statements⁸. In both rulings, the Guatemalan Registry stated, in June 1998, that the word Pisco is an appellation of origin that covers and protects a beverage from Peru, and that it therefore cannot be registered as being from another country.

Recognition in Costa Rica was sought by means of filing an application for regular registration in 1999. That country's Intellectual Property Registry issued a certificate⁹ that unreservedly registered Pisco as an appellation of origin that distinguishes and protects a beverage from Peru. However, this registration would prove to be one of the most controversial, as in 2001 five Central American countries concluded a Free Trade Agreement with Chile, in which they agreed that each party would recognize and protect the geographical indications and appellations of origin of the other party. This protection was granted without prejudice to recognition that parties may give to homonymous geographical indications and appellations that may legitimately belong to a country that is not party to that agreement¹⁰. On the basis of this agreement, in March 2005, the Government of Chile applied to the Costa Rican Industrial Property Registry to register "pisco" as a Chilean appellation of origin. Although the Peruvian Government filed an opposition to this claim, in 2007 the Costa Rican Registry accepted the Chilean application to register the "Pisco Chile" appellation of origin as a homonym of the Peruvian one, thus rejecting the opposition filed by the Peruvian Government.

In response, Peru filed a motion for revocation of judgment with supplementary appeal to reverse the decision of the Industrial Property Registry, which was rejected by the Registry Administrative Tribunal. This meant that administrative means had been exhausted, leaving just ordinary legal channels for reversing the recognition of the Chilean appellation of origin as a homonym.

In 2005, as we will see later, Peru acceded to the Lisbon Agreement, of which Costa Rica was also a member, and applied for the recognition of Pisco. In July 2006, Costa Rica submitted to WIPO a statement of partial refusal of the Peruvian appellation of origin Pisco, thus tacitly admitting the coexistence of both appellations of origin, from Peru and Chile. In response to this, the Peruvian Embassy in Costa Rica filed a motion for revocation of judgment with supplementary appeal against the statement of partial refusal of protection for the Pisco appellation of origin in favor of Peru. The Registry declared the motion for revocation to be without grounds, and accepted the appeal against the statement of partial refusal, while referring the case to the Registry Tribunal of Costa Rica. In May 2007, the Tribunal ruled in favor of Peru on the appeal and ordered the Industrial Property Registry to

⁷ Resolution No. 01529 of the Division of Distinctive Signs of the Colombian Superintendence of Industry and Commerce, February 1, 1999.

⁸ Files 2801-97 and 2802-98, Industrial Property Registry, Guatemalan Ministry of Economy, June 12, 1998.

⁹ Mark Registration Certificate, Registration No. 114662, Volume 448, Folio 82. Intellectual Property Registry, Costa Rican Ministry of Justice and Grace, July 2, 1999.

¹⁰ Free Trade Agreement between Chile and Central America, Chapter III, Article 3.12.

communicate officially to WIPO the revocation of the statement of partial refusal of the Pisco appellation of origin in favor of Peru, which was duly carried out by the Costa Rican authorities.

In November 2007, the Association of Chilean Pisco Producers brought legal proceedings against the State of Costa Rica before the Court of Administrative Disputes, in order to challenge and cancel partially or completely the vote of the Administrative Registry Tribunal of Costa Rica, as well as all the notifications issued by the WIPO Industrial Property Registry internationally recognizing the protection of the Pisco appellation of origin as Peruvian. Two years later, however, proceedings were dropped as they were satisfied with the recognition by the Industrial Property Registry in December 2007 (Pisco Chile), based on the provisions of the Free Trade Agreement between Chile and Central America.

Currently, the Costa Rican Industrial Property Registry therefore has the Peruvian State as the permanent owner of the “Pisco” appellation of origin, by virtue of the recognition of July 2, 1999, as well as its inclusion in the International Registry of the Lisbon Agreement. Equally, Chile has been the owner of the appellation of origin “Pisco Chile” in Costa Rica since January 31, 2008, thanks to the provisions of the Chilean-Costa Rican Free Trade Agreement.

A similar approach to that applied in Costa Rica was followed by the Peruvian Embassy in Panama in 1999. As a result of efforts made, Panama’s Directorate General of the Industrial Property Registry issued a ruling¹¹ stating that Pisco is an appellation of origin of the Republic of Peru.

Applying the same strategy as in the previous cases, also in 1999 the Peruvian Embassy in Nicaragua filed a registration application with that country’s authorities. As a result of the application, the Nicaraguan Industrial and Intellectual Property Registry registered the Pisco appellation of origin¹² as being of Peruvian origin, and referring to a grape liquor in international class 33, reserving its exclusive use in any size and the color, arrangement or style to be used in any way, painted, printed, stenciled, engraved, embossed or in any usable form, applied to the products themselves or their packaging, boxes, wrapping and promotional material.

As a result of the multiple option approach described above, in October 2000 an agreement was concluded between Cuba and Peru, under the provisions of the TRIPS Agreement of the World Trade Organization. In the agreement, the Ministers of Foreign Affairs of both countries agreed on the mutual protection of their respective appellations of origin. This agreement has very significant characteristics, as it is not a “political” agreement, but incorporates specific elements of intellectual property law, such as the legal definition of appellation of origin, which must be fully satisfied if the product is to deserve mutual protection. In that sense, there is an emphasis on the geographical element as the main basis for the appellation.

Another Caribbean country to recognize the Peruvian appellation is the Dominican Republic, which on September 17, 2004, by means of Resolution No. 000281 of the National Industrial Property Office, accepted the registration of the Pisco appellation of origin as Peruvian, with permanent validity.

¹¹ Edict No. 1628, Directorate General of the Industrial Property Registry, Ministry of Trade and Industries of Panama, Ruling No. 8871, July 27, 1999.

¹² No. 41.983, Volume CXL, Folio 78, Mark Registration Book, Industrial and Intellectual Property Registry, Ministry of Development, Industry and Trade of Nicaragua, September 1, 1999.

As for Honduras, in October 2006 the Directorate General of Intellectual Property of the Institute of Property of Honduras issued a certificate of registration for the Pisco appellation of origin for Peru, with permanent validity.

Within the same above-mentioned approach, actions by the Peruvian Embassy in El Salvador resulted in the Pisco appellation of origin being registered for Peru in El Salvador's Intellectual Property Registry on June 10, 2004. In late 2007, however, following the signing of the Free Trade Agreement between Chile and Central America, including a clause on recognizing the Chilean liquor, the Chilean product was registered. This prompted Peru to bring several opposition proceedings at the administrative level, although these were rejected.

In January 2008, Peru brought administrative dispute proceedings before the Supreme Court of Justice to contest the Resolution issued by the Intellectual Property Directorate of the National Registry Center to grant Chile the right to use the Pisco appellation of origin. This case is currently in its final stages.

SOUTH EAST ASIA AND OTHER COUNTRIES

Based on the policy of unilateral recognition actions, in August 2004 the Peruvian Embassy in Thailand submitted to the country's intellectual property authorities the registration of Pisco as a Peruvian appellation of origin. The novelty of this procedure was demonstrated by the fact that the registry had just been introduced, which meant that Peruvian Pisco was the first product recognized as a foreign appellation of origin in Thailand, with Publication Number 01, of Year 1, of Volume 001, dated July 1, 2005.

Through a regular registration process, in July 2005, the Patent Office of Israel awarded the certificate of Registration of Appellation of Origin No. 865 for Pisco to the Peruvian State.

As part of the pragmatic vision of achieving recognition by additional means, similar to the process developed with Cuba a few years previously, in August 2007 the "Bilateral Agreement between the Government of the Republic of Peru and the Government of the Democratic People's Republic of Laos on Cooperation and Protection of Intellectual Property" was concluded, by means of which appellations of origin identified by each country are protected. Peru registered for protection the appellations of origin for Pisco, Giant White Cusco Corn and Chulucanas.

The Peruvian Embassy made considerable efforts in Thailand, Laos and Viet Nam. In relation to the latter, in May 2007 the Peruvian Embassy in Hanoi, Viet Nam, received the original Certificate of the Pisco appellation of origin. This was supplemented by the

Registration of Pisco Geographical Indication in Thailand



กรมทรัพย์สินทางปัญญา
กระทรวงพาณิชย์

ปีที่ 1 เล่มที่ 1 เลขที่ประกาศ 01
วันที่ประกาศโฆษณา 1 กรกฎาคม 2548

ประกาศโฆษณาการรับขึ้นทะเบียนสิ่งบ่งชี้ทางภูมิศาสตร์

เลขที่คำขอ	47200001	วันที่ยื่นคำขอ	27 สิงหาคม 2547
สิ่งบ่งชี้ทางภูมิศาสตร์	PISCO (พิสโก)		
รายการสินค้า	สุรา		
ผู้ขอขึ้นทะเบียน	รัฐบาลสาธารณรัฐเปรู		
ที่อยู่	ลิมา สาธารณรัฐเปรู		

1. คุณภาพ ชื่อเสียง คุณสมบัตินี้ หรือคุณลักษณะเฉพาะของสินค้า

คำนิยาม

PISCO (พิสโก) หมายถึง สุราที่ได้จากการต้มกลั่นน้ำองุ่นสดของ "องุ่นพิสโก" ที่หมักเสร็จใหม่ๆ ตามวิธีการเพื่อให้ได้คุณภาพตามหลักประเพณีที่ถือปฏิบัติสืบต่อกันมาในพื้นที่ที่เพาะปลูกได้ตามชายฝั่งของลิมา อิก้า อารีกิยา โมเคกัว และหุบเขาโคคุมบัส ซามา และคาบิลนา แห่งหังดา ทางใต้ของสาธารณรัฐเปรู

ลักษณะของสินค้า

- (1) พันธุ์องุ่น : พันธุ์ไวน์ไวท์ Vitis Vinifera L. ไวน์
 - พันธุ์ที่ไม่มีกลิ่นหอม คือ คิวบรันตา (Quebranta) คอมมอนแบล็ค (Common Black) มอลลา (Mollar) และลูวินา (Luvina)
 - พันธุ์ที่มีกลิ่นหอม คือ อิตาลี (Italia) มอสคาเทล (Moscatel) อัลบิลลา (Albilla) และโทรอนเทล (Torontel)
- (2) ประเภทของพิสโก
 - พิสโกบริสุทธิ์ (pure Pisco) ได้จากผลองุ่นพิสโกพันธุ์เดียวเท่านั้น
 - พิสโกสีทอง (golden must Pisco) ได้จากการต้มกลั่นน้ำองุ่นพิสโกสด ซึ่งยังคงมีไม่เสร็จ
 - พิสโกโคโลราโด (พิสโกผสม) (Pisco acholado (half-breed)) ได้จากการต้มกลั่นน้ำองุ่นพิสโกสดพันธุ์ต่างๆ ทั้งที่มีกลิ่นหอมและไม่กลิ่นหอมผสมกัน ซึ่งหมักเสร็จแล้ว โดยการผสมกันก่อนการหมักหรือหลังการต้มกลั่นก็ได้
- (3) ลักษณะทางกายภาพ
 - มีลักษณะใส ไม่มีสี มีกลิ่นแอลกอฮอล์เล็กน้อย และปราศจากการแต่งสี กลิ่น และรสชาติที่แปลกออกไป อันเกิดจากการปนเปื้อน หรือสารสังเคราะห์ซึ่งไม่ใช่ลักษณะของวิสกี้ตามปกติ

2. กระบวนการผลิต

การปลูก

- (1) การเลี้ยงองุ่นเริ่มในเดือนกรกฎาคม
- (2) การเริ่มถึงเริ่มระหว่างต้นเดือนสิงหาคม และตัดหม้อองุ่น
- (3) เมื่อเก็บเกี่ยวผลองุ่นแล้ว จะนำออกจากไร่ไปโรงบ่มองุ่น เพื่อหมักอย่างช้าๆ ให้ได้น้ำผลไม้หรือหมักในวันที่ยังมีน้ำค้าง

publication in Official Gazette No. 231 of Viet Nam of Registration No. 008/2007 recognizing the Pisco appellation of Peru. According to the authorities of Viet Nam, even if efforts are made to seek recognition for Chile as part of a trade agreement between the two countries, Viet Nam will be careful to respect the official registration of the Pisco appellation of origin awarded to the Peruvian State by the Intellectual Property Office.

The initiative to obtain recognition in South east Asia also included Malaysia, where in November 2009 the Intellectual Property Corporation issued the registration of the Pisco geographical indication to Peru, under number GI08-00004. It should be pointed out that, in accordance with Malaysian law, the registration owner is obliged to use the geographical indications or marks registered. Failure to use them for three years from the date of registration may result in the risk of cancellation for that geographical indication or mark. Despite this step forward, the negotiation of a trade agreement between Chile and Malaysia could make it impossible to rule out a situation similar to that experienced with El Salvador or Viet Nam.

LISBON AGREEMENT

Notification of Peru's accession to the Lisbon Agreement

An important milestone in the development of the Pisco appellation of origin was Peru's accession to the WIPO Lisbon Agreement. In February 2005, the authorities published Supreme Decree 037-2005-RE, by means of which Peru acceded to this international instrument. Soon afterwards, States Parties were informed of Peru's accession by means of notification No. 28.

Recognition of the Pisco appellation of origin under the Lisbon Agreement was not a simple or speedy process. On the contrary, many countries party to the Agreement were members of the European Union, which had a prior trade agreement with Chile and had given bilateral recognition of the appellation to Chile. This led to a negotiation process that resulted in recognition that introduced the idea of homonyms.



LISBON Notification No. 28

LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

Accession by the Republic of Peru

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and has the honor to notify him of the deposit by the Government of the Republic of Peru, on February 16, 2005, of its instrument of accession to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised at Stockholm on July 14, 1967, and amended on September 28, 1979.

The said Agreement will enter into force, with respect to the Republic of Peru, on May 16, 2005.

The list of the States party to the Lisbon Agreement (status on February 16, 2005) is reproduced on the reverse side of this Notification.

February 16, 2005

Pisco has now been recognized as a product originating from Peru - although not necessarily exclusively, due to the consideration of this homonym element - in 25 of the 26 member countries: Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, Democratic People's Republic of Korea, France, Gabon, Georgia, Haiti, Hungary, Israel, Italy, Mexico, Montenegro, Morocco, Nicaragua, Peru, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Spain, Togo, Tunisia and Turkey. Iran, which is a member of the Agreement, rejected the recognition by stating that alcoholic beverages are banned in Iran.

BILATERAL AND MULTILATERAL TRADE AGREEMENTS

From 2004, with the advent of comprehensive trade negotiations, variously termed free-trade, deep-integration or trade-liberalization agreements, Peru began to include the issue of recognition for the Pisco appellation of origin when negotiating international trade access. It is worth emphasizing that this process was initiated after a similar process had been started by Chile a few years previously, which gave that country an advantage when it came to negotiating recognition for liquor appellations of origin within trade liberalization agreements.

The first trade agreement to which Peru was party, and which also includes recognition for Pisco, was the Free Trade Agreement with the United States of America. It is particularly important to bear in mind that, although in international trade negotiations, the United States of America consistently refused the inclusion of the category of appellation of origin or geographical indication, the country did accept to include protection for Pisco under its classification as a “distinctive product”. The Agreement therefore contains the following provision: “The United States of America shall recognize “Pisco Perú” as a distinctive product of Peru. Accordingly, the United States of America shall not permit sale of any product as “Pisco Perú,” unless it has been manufactured in Peru in accordance with the laws and regulations of Peru governing Pisco.”

In the trade agreement concluded with Singapore, the protection of the regulations of the TRIPS Agreement of the World Trade Organization is used to recognize Pisco for Peru, under Article 22.1 of that Agreement, as a geographical indication in the category of spirit drinks. This trade agreement also includes recognition for the indications Giant Cusco Corn and Chulucanas.

As for the trade agreement signed with Canada, Annex 212 of Chapter 2 on geographical indications for wines and spirit drinks states that Peru shall permit protection of the indications “Canadian Whisky” and “Canadian Rye Whisky”, as well as “Whisky Canadiense” and “Whisky Canadiense de Centeno”, and that Canada shall permit protection of the indication “Pisco, Perú”, with the latter being the appellation of a spirit drink originating from the territory of Peru, in which the quality, reputation and other characteristics of the spirit drink are essentially attributable to its geographical origin, and which is protected as a geographical indication under the terms of Article 22.1 of the TRIPS Agreement, in accordance with Peruvian legislation.

The same protection approach based on the TRIPS Agreement was used in the trade agreement signed with the People’s Republic of China. According to the agreement, the appellations included on the Peruvian List (Geographical Indications): Pisco Perú, Chulucanas Ceramics, Giant White Cusco Corn and Pallar de Ica, constitute geographical indications in Peru under the terms of Article 22, paragraph 1, of the TRIPS Agreement and that, subject to the national laws and regulations of China, such appellations shall be protected as geographical indications on Chinese territory.

The same pattern was followed to negotiate the Free Trade Agreement with the Republic of Korea, in which the importance of the protection of geographical indications is recognized, and in which each party commits to establish a system for protecting geographical indications in accordance with Section 3, Part II, of the TRIPS Agreement, and to protect the other country’s geographical indications in accordance with national legislation. It is stated that this Article will not affect the rights and obligations established in trade agreements that each party may have concluded previously with a third country that is not a member of the trade agreement. As with China, the following were considered to be Peruvian indications: Pisco Perú, Chulucanas Ceramics, Giant White Cusco Corn and Pallar de Ica.

Peru's most recent free trade agreement, which was signed in 2010 and also includes social, environmental and human rights aspects, was the Integration Agreement concluded with the European Union. According to the Agreement, each party shall protect geographical indications for agricultural and food products, wines, spirit drinks and aromatized wines listed in appendices. The Peruvian products protected by the provision are Pisco, Giant White Cusco Corn and Pallar de Ica. This Agreement has a greater level of precision than previous ones, as it explicitly recognizes that parties will protect the respective indications against any unauthorized commercial use. In the case of geographical indications that identify wines, aromatized wines or spirit drinks, the Agreement also prohibits any misuse, imitation or evocation, even if the true origin of the product is indicated or the protected appellation is used in translation or accompanied by an expression such as 'like', 'type', 'style', 'made', 'flavor', 'imitation' or any other similar term.

Lastly, it is important to mention the Trade Agreement that Peru signed with Mexico, on April 6, 2011, and which is still undergoing some minor amendments before entering into force. In the Agreement, Mexico recognizes the "Pisco" appellation of origin for its exclusive use on products originating from Peru. As a result, Mexico states that it will not allow the import, production or sale of products under that appellation of origin, unless they have been produced and certified in Peru, in accordance with the Peruvian legislation applicable to such products. Nevertheless, the Agreement states that the recognition provided for is without prejudice to the rights that Mexico has exclusively recognized in terms of appellations of origin within other trade agreements previously signed with other countries.

It is also worth mentioning that in 1994, Article 23.4 of the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) included the establishment of a multilateral notification and registration system for geographical indications for wine, and that in the Doha Ministerial Meeting spirit drinks were added. This mandate has, however, remained pending for many years. It is only recently that the negotiating process on the registration system has been reopened in Geneva.

There are currently three very different stances on such matters: the first, shared by Peru, promotes a compulsory system of geographical indication registration, which each national authority must consult before awarding the registration of new indications. Inclusion on this registry will constitute *prima facie* proof that the geographical indication in question complies with the requirements laid down in the TRIPS Agreement. The second stance aims to create a strictly voluntary registration system simply for information purposes, with no compulsory participation for WTO members. The third stance is put forward by Hong Kong Special Administrative Region, China, and involves a voluntary register that would nevertheless be binding on those that choose to take part, and whose status can be amended after a period of four years.

Despite efforts by the Chair of the TRIPS Council to put forward a joint text that includes the various proposals as different options, there appears to be some way to go before a consensual solution is reached on achieving a system of registration for geographical indications within WTO.

FUTURE PROSPECTS

The effort to achieve international recognition for the Peruvian Pisco appellation of origin has undoubtedly had positive results. However, this process - which must continue - has only been the first step in an ongoing struggle that will also involve a process of internal consolidation of the appellation, as well as market penetration, based on protecting the recognition achieved. It is vital to engage in a constant fight against the

pernicious and illegal use of the appellation by unauthorized producers that fake the product and improperly benefit from the prestige associated with the quality product that respects and compiles with technical production standards.

Paradoxically, until recently counterfeiting had to be combated exclusively at the national level. However, as the recognition of Peruvian Pisco has become international, counterfeiting cases are also becoming increasingly global. There have already been cases of improper use of the appellation in several South American countries, although in recent years the phenomenon has begun to spread to other regions. A few weeks ago there was a case in the Russian Federation, and many grape producer groups in the United States of America have been marketing products they term “California Style Pisco” or that even use marks registered in Peru.

Fake Pisco in the Russian Federation, and Pisco imitation liquor produced in the United States of America.



Another risk within the country that has resulted from the success of the appellation of origin is the aspiration of other Peruvian regions, outside the area defined by the technical standards as the restricted zone for the liquor production: the coast of the Departments of Lima, Ica, Arequipa, Moquegua and the valleys of Sama, Locumba and Caplina in the Department of Tacna, to introduce legislative initiatives aimed at extending the Pisco production zone, in some cases to the entire territory of Peru. These initiatives could devalue the essence of the appellation of origin, as Peruvian territory is very diverse with no geographical or climatic unity, pisco grapes cannot be grown everywhere and, even more so, the traditional Pisco production methods are rooted on the southern coast of the country¹³. Should such initiatives succeed, they could run the risk of devaluing Pisco in Peru to a mere “indication of source”.

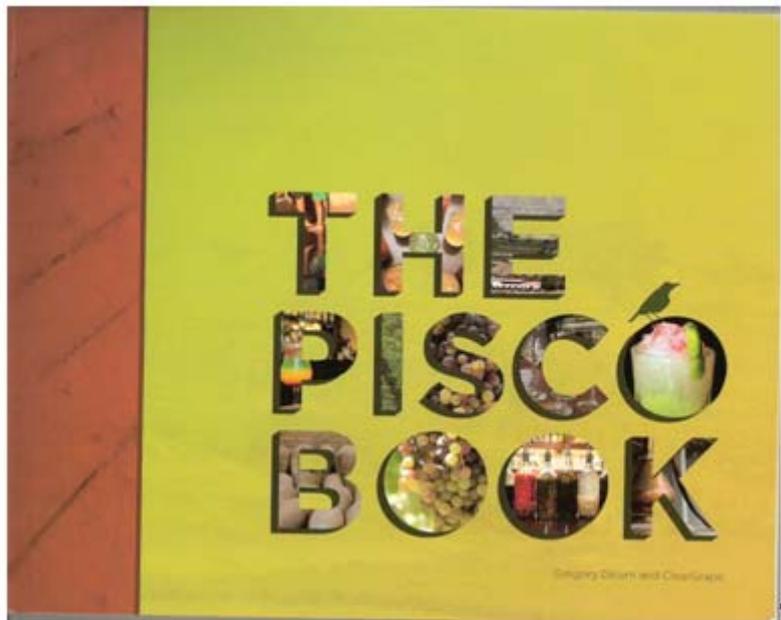
Nonetheless, the process of international market penetration of Peruvian Pisco is booming. By way of example, in the United States of America alone in February of this year, there were 233 Peruvian Pisco labels on the registry of marks approved for sale in that country. In contrast, there were only 20 from another country that exports a product using the appellation. The effort to register marks at the international level is an essential action that must be continued to protect the prestige of Peruvian liquor produced in accordance with national technical standards.

¹³ For more information, see the article “El Pisco es peruano, ¿pero de todo el Perú?”, in Legal Express, Year 3, No. 30, June 2003, p. 18.

Despite the fact that export sums still remain minimal compared with the magnitude of other spirit drinks, Peruvian Pisco exports have grown exponentially. In 2000 the sum was barely above US\$140,000, while in 2010 the figure was already in excess of US\$2,000,000. This does not take account of the surge in domestic consumption.

Special mention should be made of the considerable intellectual efforts into researching Pisco history and production, as well as the most emblematic Pisco cocktail, Pisco Sour. There are currently dozens of publications in Peru about the origin of the appellation, its spreading throughout the world and its production method. Works by Mariella Balbi, Lorenzo Huertas, César Ángeles, José Antonio Schiaffino, Guillermo Toro Lira, Johnny Schuler, Guillermo Vera, César Franco or Luciano Revoredo, to name but a few, are essential references for finding out about Pisco from Peru. These efforts have been added to by Gregory Dicum and the publication of his “Pisco Book” in the United States of America.

The Pisco Book



The development of the Peruvian appellation of origin “Pisco” is clearly very far from complete. It is vital to strengthen domestic legislation to encourage strict compliance with technical production standards, while at the same time protecting authorized producers and preventing fake products from entering the market. Efforts towards the recognition of the Peruvian appellation of origin at the international level must also continue, with the current approach of using unilateral registrations, mutual recognition agreements and multilateral or free trade agreements. Producers must reinforce their quality standards, as well as speedily carrying out the international registration of their marks and, with the State, stepping up promotion activities to broaden target markets by using the many forms of recognition currently available, as well as those to be obtained in the future.

VALE DOS VINHEDOS AND THE DEVELOPMENT OF GEOGRAPHICAL INDICATIONS IN BRAZIL

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THE PATH OF GEOGRAPHICAL INDICATIONS FOR WINES IN BRAZIL

Development periods of wine in Brazil

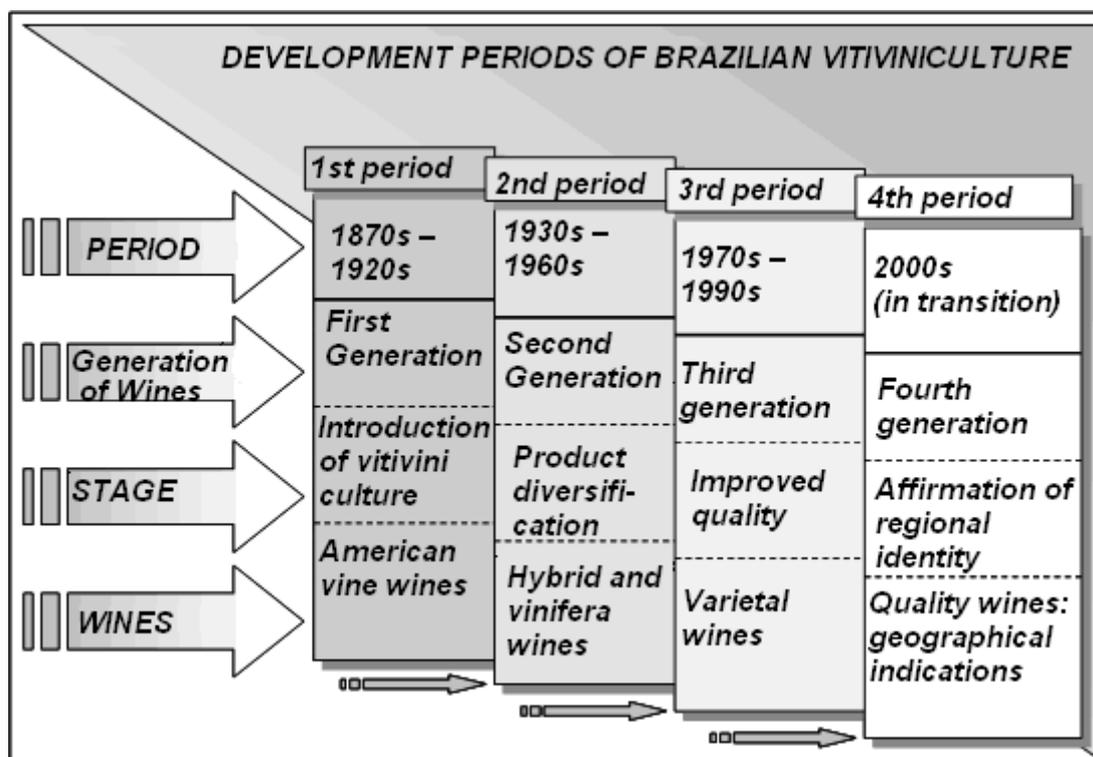
Although vines were first introduced to Brazil in the sixteenth century (Souza et al., 1996), the vitiviculture that became more important in social and economic terms in Brazil was developed at the time of Italian colonization after the second half of the nineteenth century in the region of Serra Gaúcha, state of Rio Grande do Sul, in the south of the country. Historically, this region has accounted for over 90 per cent of the country's wine production industry. The region is therefore a reference in terms of production and development of the Brazilian wine market.

Following three development periods ("First Generation" – "wines from American vines"; "Second Generation" – "wine diversification using hybrids and viníferas"; "Third Generation" – "varietal wines"), Brazil has just entered its fourth development period (Tonietto & Mello, 2001), which involves the production of quality wines with confirmed regional identity and the introduction of Geographical Indications (GIs) (see Figure 1). It should be emphasized that sustainable vitiviculture is now also beginning to become important.

Characterizing the terroir effect on Brazilian wines and the beginning of GI policy

In the early 1980s, our projects at the EMBRAPA Grape and Wine National Research Center were focused on the sphere of vitivicultural zoning. The aim of the projects was to improve wine quality in Brazil by finding new production zones. At the time, efforts were concentrated on assessing the vitiviculture potential of new regions in the state of Rio Grande do Sul. Using wine-growing and wine-making experiments, we aimed to identify the best region for quality wines. The results confirmed that the traditional region, la Serra Gaúcha, produced quality wines, but also identified the "Campanha" and "Serra do Sudeste" regions as suitable for quality wine production. Furthermore, the study also highlighted that each region was unique, producing original and typical wines based on the specific characteristics of climate and soil (Tonietto & Carbonneau, 1999). Indeed, the research had demonstrated the terroir effect on the wines of the Rio Grande do Sul regions.

Figure 1: Development periods of Brazilian vitiviniculture, historically based in the region of "Serra Gaúcha", in the state of Rio Grande do Sul: four generations of wines in Brazil up to GIs.



These findings led us to propose the concept of geographical indications to add value to the differentiation of wines based on their origin and terroir. As a result, in the early 1990s we published an article entitled "The concept of Appellation of Origin: an option for the development of the Brazilian vitiviniculture sector" (Tonietto, 1993). The appropriateness of developing a GI was discussed with producers. EMBRAPA's initial idea was to develop a GI for the entire area of the traditional Serra Gaúcha region. However, the proposal was not taken forward. In contrast, in 1995 a few producers from a subregion in the Serra Gaúcha, in the current Vale dos Vinhedos zone, became interested in the idea and formed a GI.

Industrial property for GIs in Brazil

The Industrial Property Law (LPI) in Brazil (Law No. 9.279, Brazil, 1996) opened the way for recognition and legal protection for geographical indications at the national level. Under this Law, geographical indications in Brazil can be classified as "Indicação de Procedência" (IP) (the indication of source can be the geographical name of the country, town, region or place of its territory, known as the centre of extraction, production or processing of a given product or provision of a particular service) or as "Denominação de Origem" (DO) (the appellation of origin can be the geographical name of the country, town, region or place of its territory, designating a product or service whose qualities or characteristics are exclusively or essentially due to the geographical environment, including natural and human factors). Resolution No. 075/2000 of the Brazilian National Institute of Industrial Property (INPI, 2000), Ministry of Development, Industry and Foreign Trade (MDIC), specifies the conditions for the recognition of geographical indications in Brazil.

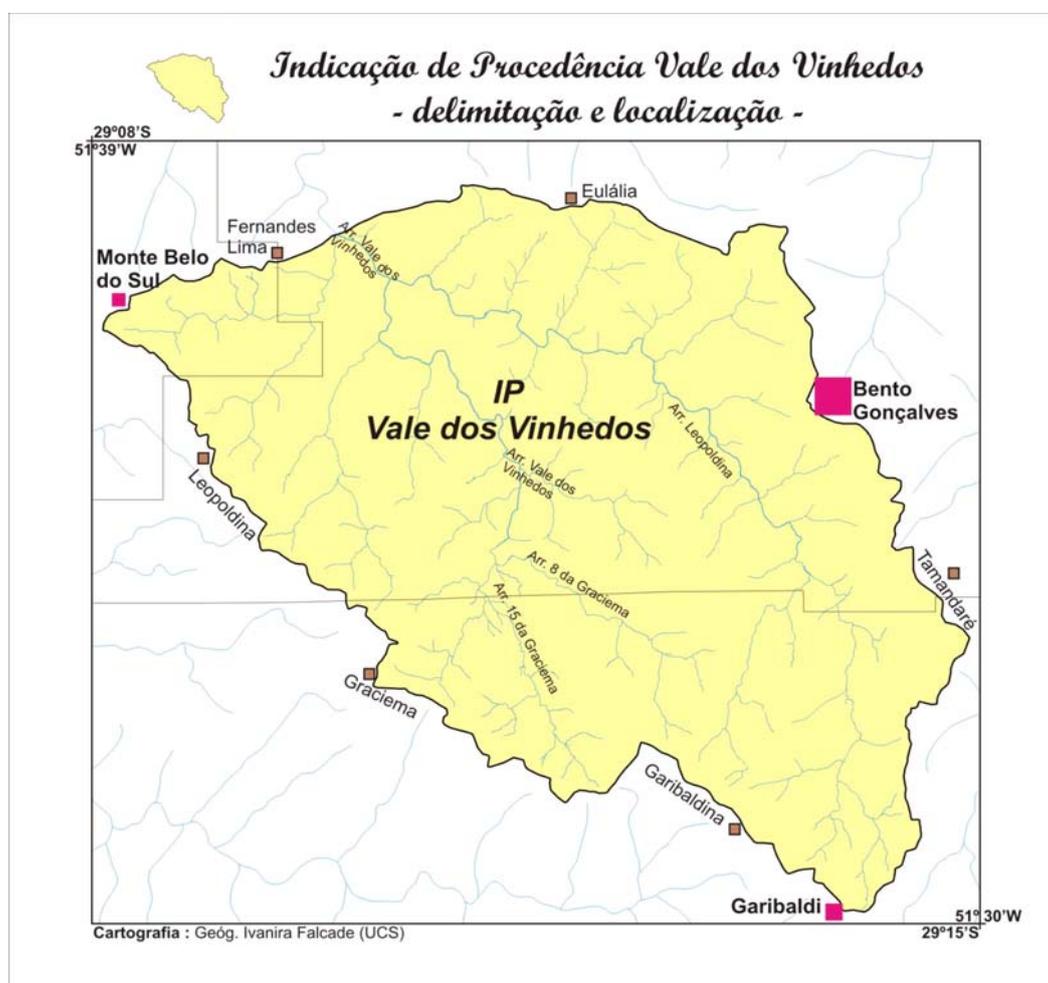
VALE DOS VINHEDOS: FIRST GEOGRAPHICAL INDICATION IN BRAZIL

The first Geographical Indication in Brazil was recognized by INPI in 2002. Under Brazilian law, it was classified as an "Indicação de Procedência" (indication of source). Its geographical name is Vale dos Vinhedos (Vineyards' Valley) and the owner is APROVALE (Association of Producers of Fine Wines of the Vale dos Vinhedos). The Vale dos Vinhedos IP includes a defined geographical area of 81.23 km² (see Figure 2) and protects vitiviculture products such as traditional sparkling and fine wines, among others.

Motivation of producers for a Geographical Indication policy

The 1990s heralded a paradigm shift in the production of and market for fine wines in Brazil. Increasing trade openness generated a new domestic market situation, where imported products gained a growing presence in the Brazilian market, in the form of good-quality wines at competitive prices.

Figure 2: Vale dos Vinhedos geographical indication delimited geographical area, Brazil (Falcade et al., 1999).



This new situation, and the EMBRAPA Grape and Wine National Research Center recommendation to develop GIs for wine, raised the awareness of a small group of producers from the Vale dos Vinhedos region. The main elements of the identity of the group at the time were:

- (a) cultural identity of Italian origin, as wine producers in the region since the end of the nineteenth century and, more recently, as small-scale wine producers;
- (b) wine producer-owners based in family businesses;
- (c) wishing to develop towards the production of quality wines;
- (d) wanting to see the region recognized as a quality producer of wines on site;
- (e) aiming to add value to their wines;
- (f) seeking the establishment of conditions for viability, in the medium to long term, of their competitiveness as wine producers;
- (g) adding value to the heritage of wine makers – land, vineyards, wine cellars, cultural values;
- (h) idea to develop a wine tourism project in the region.

Development stages of the GI

The main development stages of the Vale dos Vinhedos GI, implemented by producers initially motivated by the GI idea, are listed below in chronological order:

- (a) in 1995, creation of APROVALE (Association of Producers of Fine Wines of the Vale dos Vinhedos), with the main aims of developing a geographical indication for its wines and local wine tourism;
- (b) in the years that followed (1995-1999), a series of actions were planned for the development of a GI, including implementation of an R&D project (APROVALE – EMBRAPA – UCS) on vitivinicultural zoning, in order to characterize, quantify, qualify and define the area of the Geographical Indication for vine and wine production;
- (c) 1999-2000, definition of the Code of Practice and the control system for the Vale dos Vinhedos GI;
- (d) 2000-2001, creation of the Regulatory Board (Conselho Regulador) in APROVALE and validation of the GI Code of Practice: first IG wines produced for the 2001 vintage;
- (e) 2001, complete application file for recognition of the Vale dos Vinhedos GI filed with INPI;
- (f) in 2002, INPI recognition of the Vale dos Vinhedos IP, which introduced new ways of organizing production (Tonietto, 2002): a defined production area (see Figure 2); selection of authorized varieties; definition of a series of authorized wines; more stringent grape quality and chemical quality of wines compared with Brazilian vitiviniculture legislation; compulsory sensory assessment by experts on 100 per cent of wines; minimum 85 per cent of wine grapes produced in the defined geographical area; wine-making, ageing and bottling in the defined area; Regulatory Board (Conselho Regulador) set up within the protection body of the geographical indication (APROVALE);
- (g) 2002-2006, consolidation of the GI and development of wine tourism, with an increase in the region's reputation among consumers;
- (h) 2005, introduction of a research, development and innovation project that aimed to have the Vale dos Vinhedos IP recognized as an Appellation of Origin (AO);
- (i) 2007, the Vale dos Vinhedos GI was on that year's list of third countries with geographical indications for wine, in accordance with Article 54 (4) of Regulation (EC) No. 1.493/1999 of the European Union;
- (j) 2008 vintage, first wines made using the AO Code of Practice;
- (k) 2010, application for recognition of the Vale dos Vinhedos AO filed with INPI.

The upgrade from “Indicação de Procedência Vale dos Vinhedos” to “Denominação de Origem” (Appellation of Origin) is the result of about 15 years of development of the land, particularly in the period of the Vale dos Vinhedos IP.

Nowadays, all products have a quality and characteristics determined by natural and human factors in the territory. As a result, the producers have recently applied for the region to be recognized as an Appellation of Origin for its wines, with a new more restrictive Code of Practice to ensure the quality, originality and typicality of AO products.

Challenges to the development of the Vale dos Vinhedos GI

The success of the development of the Vale dos Vinhedos GI is thanks to the effort and determination of the producers organized within APROVALE.

In our opinion, the main difficulties on this journey have included the following:

- (a) raising awareness of producers about the value of the GI instrument as a policy to develop production and protection of wine products;
- (b) assimilation by producers of GI concepts and values in a country where there was no such tradition in this sector;
- (c) the need for structural changes to production (wine growing and wine making) and to management (joint decisions within APROVALE) to adapt production that was not historically structured to add value to products of origin;
- (d) GI concept unknown or little known among Brazilian consumers.

On the other hand, there have been the following plus points on the way to the Vale dos Vinhedos GI:

- (a) determination of producers to work towards recognition of a GI, and eventually considering an AO;
- (b) the support of several institutions for the APROVALE group: idea of the GI as a sectoral policy instrument; structuring and implementation of RD&I projects for the GI, developed by R&D institutions (EMBRAPA Grape and Wine, EMBRAPA Temperate Climate, EMBRAPA Forestry, UCS, UFRGS, FAPERGS, FINEP and SEBRAE), in coordination with APROVALE;
- (c) long-term support from EMBRAPA Grape and Wine through all stages of GI consolidation (development, recognition, consolidation and evolution over time): wine-tasting group, Regulatory Board (Conselho Regulador), analytical support for certification of GI wines and so on;
- (d) wine tourism developed by APROVALE, which has constantly added value to the GI and vice versa.

Vitiviniculture competitiveness and territorial development

The development of the Vale dos Vinhedos GI has resulted in progress in wine production and has also developed the defined territory (Tonietto, 2006).

There have been several economic, social and industrial property repercussions in terms of GIs (Yravedra, 1997) since the Vale dos Vinhedos GI. The impacts on the region include the following:

- (a) technological qualification (vineyards, wine-making equipment, staff) throughout the entire wine production process;
- (b) new investments: cellars, vineyards, territorial infrastructure;
- (c) construction of the region's reputation as a producer of quality wines;

- (d) attraction of new investors and professionals around vitiviniculture production: restaurants, hotels, craft workers and so forth;
- (e) surge in wine tourism;
- (f) increased value added to wines and/or improved wine sale facilities – direct sale, regional, national and international market;
- (g) affirmation of the quality and originality of certain wines, which is the basis for developing the Appellation of Origin;
- (h) legal means of checking counterfeit wines from the Vale dos Vinhedos GI.

There is currently a project under way to assess the economic, social and territorial impact of the Vale dos Vinhedos GI and describe and quantify changes due to the GI (implemented by EMBRAPA, Unicamp, USP and APROVALE).

VALE DOS VINHEDOS AS A REFERENCE FOR NEW GIs IN BRAZIL

Since the first evidence of the Vale dos Vinhedos GI having positive concrete results for vitiviniculture production, territorial organization, the development of the region's image and wine tourism, Brazil's wine producers have seen the initiative as a plus point for sectoral competitiveness.

Creation of Producer Associations for new wine GIs

In 2010, INPI recognized the IP for Pinto Bandeira wines, and its producer supervisory association ASPROVINHO. Pinto Bandeira is the second wine GI recognized in Brazil (Flores et al., 2005; Falcade et al., 2010).

There are now several other geographical indications for wines being developed in Brazil (Tonietto & Zanus, 2007) for official recognition, managed by their respective producer associations protecting and adding value to their wines (association acronyms in brackets): Monte Belo (APROBELO), Altos Montes (APROMONTES), Farroupilha (AFAVIN) and Submédio São Francisco (VINHOVASF) (see Figure 3).

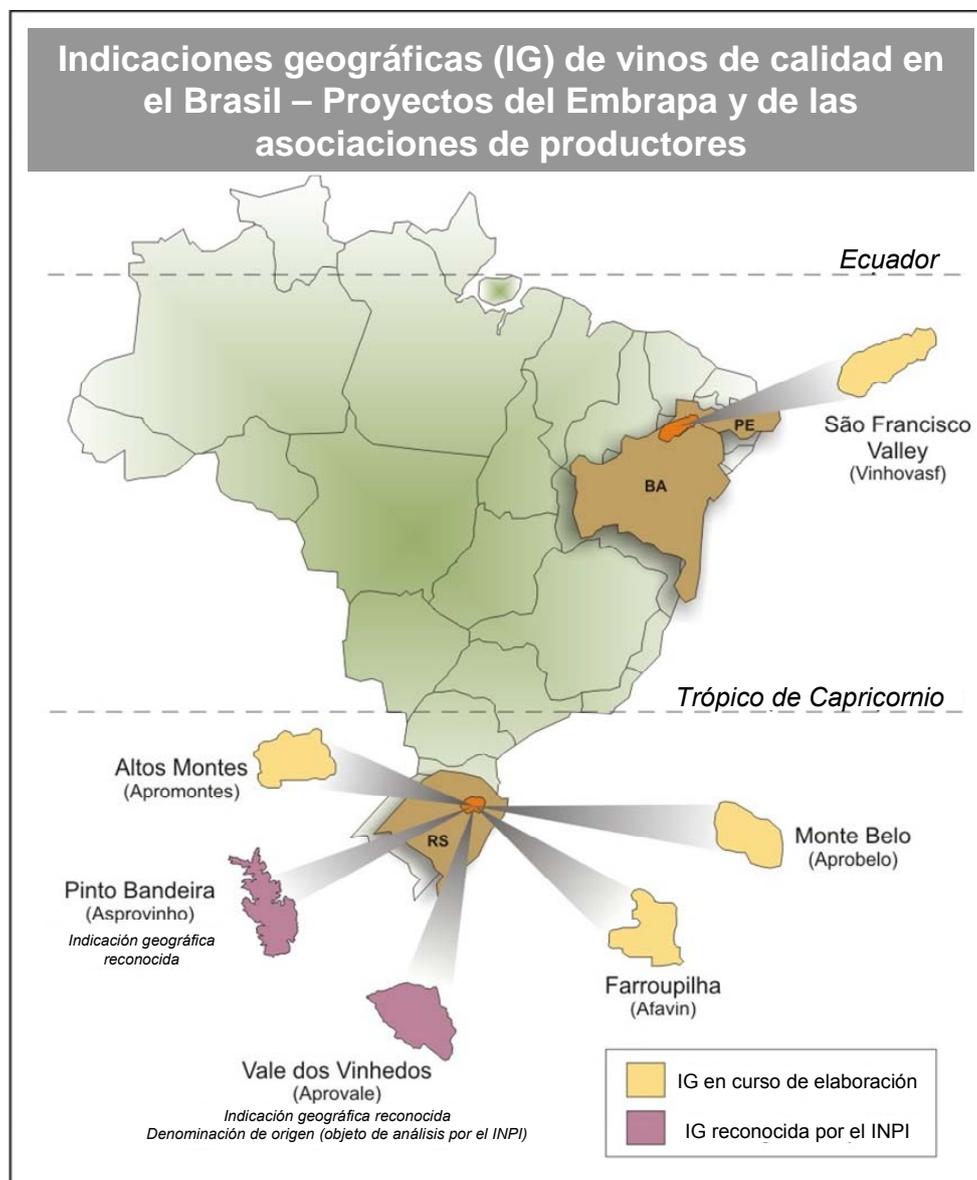
With this in mind, considerable research is being carried out into vitivincultural zoning, in order to help characterize the natural factors (soil mapping, climate zoning, relief, landscape, integrated GIS data analysis, definition of zones) and human factors (varieties, agroviticultural management, wine grape quality, chemical characteristics of the wine, sensory characterization and typicality elements of wines), as these form the basis for defining and drawing up the Code of Practice for geographical indications (Falcade et al., 1999; Flores et al., 2005; Tonietto, 2006).

In other new wine-growing regions in Brazil, such as Campanha, Serra do Sudeste and Planalto Catarinense, wine growers wish to move towards production with more regional identity and the possibility of developing geographical indications. A new EMBRAPA project is under way to develop a GI in the region of Campanha Gaúcha in Rio Grande do Sul (producers' association "Vinhos da Campanha").

Development of GIs for other "Products by Regions" in Brazil

Particularly from 2003 onwards, other institutions in Brazil have worked to disseminate and train people involved in GIs (SEBRAI, Brazilian Ministry of Agriculture, among others). Symposia and meetings have been held to mobilize the different states to identify potential products for geographical indications.

Figure 3: Recognized geographical indications Vale dos Vinhedos and Pinto Bandeira and others currently being developed in Brazil (Source: Luciana E.M. Prado & Jorge Tonietto – EMBRAPA Grape and Wine).



Alongside the process in the wine sector, a series of other GI projects have emerged in Brazil and have been recognized as GIs (coffee, cachaça, rice, fruits, beef, leather and so forth). The example of the Vale dos Vinhedos GI has always been emblematic: a case study to be used as a model or subject of discussion for GIs of other products.

There are currently a great number of applications for GI recognition filed with INPI, and dozens of projects are being developed in Brazil. The development of GIs in Brazil includes agricultural products, agroindustry products, crafts and precious stones, among others. Brazilian law even makes it possible to recognize services as GIs.

CONCLUSIONS

In the Fourth Development Period of Brazilian wine making, GIs are part of conceptual and structural change strategies to increase the competitiveness of Brazilian wines in the national and international market. Adding value to the different quality and typicality of products using recognized GIs is becoming a sectoral policy.

Vale dos Vinhedos was the first GI, and the successful example of this industrial property instrument in Brazil has encouraged other initiatives to add value to quality local products, be they wines or other products.

Today more than ever, many potential GIs are being developed throughout several regions of Brazil. Geographical indications may become a strong tool of development and competitiveness policy for Brazilian products on the national and international markets.

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GEOGRAPHICAL INDICATIONS IN THE AMERICAS
FLORIDA ORANGE JUICE

*prepared by Ken Keck,
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This presentation will demonstrate how an industry comprised of many small and medium-sized enterprises can increase the economic well-being of the owners, their employees and the larger economy through the use of intellectual property.

There are an estimated 8,000 growers of citrus in the state of Florida, U.S.A. The average size of these entities is 100 acres. Some entities have grown in size and revenues over the past century, and many tend to be family operations which are passed to succeeding generations.

Overall, the annual economic impact and multiplier effect of the citrus business in Florida is \$9 billion (source: Food and Resource Economics Department, University of Florida). Planted acreage is 570,000 acres, and nearly 80,000 jobs are dependent on citrus.

In 1935, the citrus growers petitioned the legislature of the state of Florida to establish a taxation and governing structure for the industry, which specifically would advertise and promote the quality and reputation of Florida citrus fruit in domestic and foreign markets.

The establishment of the Florida Citrus Commission (FCC, the twelve-member governing board) was remarkable because the growers asked for a mandatory tax to be applied to themselves. Entities which grew citrus, packaged citrus, or shipped citrus in Florida were all subject to the rules of the Florida Citrus Commission.

The Commission's rules focused on standards and quality. The FCC also conducted research into the health benefits of citrus.

The Florida Department of Citrus was eventually established in statutes as the state agency (a department of Florida government), with the FCC as the agency head.

The connection between promotions and certification marks was made early in the history of the Florida Citrus Commission. Indeed, other commodity regulation and promotion programs that have been established in the U.S. since were based on the Florida citrus model.

The Commission determined that equity could be built around Florida-specific identification promotional and marketing programs, so long as the quality of the citrus products produced in Florida remained of the highest order.

Thus began the FCC's acquisition and active protection of symbols, slogans and certified trademarks, and nearly 70 years of aggressively promoting Florida citrus products in national and international markets.

The FCC, utilizing rulemaking authority granted it by the legislature, establishes grade and quality standards for citrus and citrus products grown and placed into commercial channels of trade. In turn, the FCC establishes these rules for the use of trademarks and certification marks for which it grants licenses for use in commerce. Packagers of juice and shippers of fresh citrus are able to utilize these marks via license, alongside the trade promotions and slogan-based national advertising conducted by the Florida Department of Citrus.

The practical effect of the paradigm utilized in Florida is that the benefits of state ownership of marks accrue to any grower, packer, or processor whose products meet the standards of such marks.

Numerous studies have proven the value of the growers' investment in the promotional and advertising programs. Internal, external, industry and academic studies have all found positive per-dollar invested benefits. The range is \$2-\$5 for every dollar invested. (Sources: "FDOC Marketing Impact on Orange Juice Demand," Marketing Accountability Partnership, October 2009; "Financial Benefits of Florida Generic Orange Juice Marketing," Thomas & Canter, Agricultural and Resource Economics Review, November 2009; "Generic Promotions of Florida Citrus," Ward et al, April 2005; "Evaluating the Economic Impacts Associated with Advertising Efforts of the Florida Department of Citrus," Forecasting and Business Analytics LLC, May 2003.)

Enough cannot be said, indeed, it is impossible to overstate the importance of promotion programs. Merely establishing rules and acquiring intellectual property on behalf of agricultural commodity producers is not enough. Such certified products must be actively promoted in consumer markets on a sustained basis. Otherwise, consumers will not learn about the superior attributes for which they should pay a premium price over other like, yet inferior, commodities.

GEOGRAPHICAL INDICATIONS IN THE IMPLEMENTATION OF PUBLIC POLICIES

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First of all, I should like to thank WIPO and the Government of Peru for organizing this symposium on a subject that is so relevant and topical for the economic and social growth of all countries - industrialized and developing.

As we all know, under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, geographical indications refer to products originating from the territory of a WTO Member or a region or area within that territory, which have a certain quality, reputation or other characteristics that are essentially attributable to their geographical origin.

Within European legislation, GIs mainly take the form of the Protected Appellation of Origin (PAO) and Protected Geographical Indication (PGI) for agricultural and food products. For PAOs, the specific quality characteristics are essentially dependent on the territory: natural factors (climate or environmental aspects), human factors (long-standing traditional production techniques and know-how) or a combination of the two. Those characteristics lead to a product that cannot be reproduced outside the geographical production area. In the case of PAOs, production, processing and manufacturing all have to take place in a defined geographical area.

PGIs are for agricultural and food products that have a certain quality, reputation or other characteristic due to their geographical origin, and at least one phase of the production process must take place in the area of origin.

PAOs and PGIs must be based on a specific production discipline, in order to guarantee authenticity and uniformity of the product. Compliance with these production rules is enforced by specific control bodies.

What I have described so far is the European regime. Once the European Union (EU) has awarded the PAO or PGI, in Italy when at least two thirds of product producers have united around each appellation or indication, the Italian Ministry of Agriculture can authorize the formation of a consortium to represent the GI.

The consortium is an association of producers that also carries out public functions linked to the correct use of the PAO or PGI by raising the awareness of the legal authorities so that they adopt criminal and civil protection measures provided for in the Italian Penal and Civil Codes.

The Italian system functions very well. Italy is the world's top country for GIs, with almost 150 food PAOs, nearly 85 food PGIs, 390 wine PAOs and 120 wine PGIs. Most of the PAOs and PGIs are represented and protected by public production consortia set up by public decree of the Ministry of Agriculture, and any infringements are immediately prosecuted in the criminal and civil systems, as there are specific rules and sanctions, beginning with *ex officio* intervention.

The key to the Italian success is based on two factors. The first is that the country has food traditions and products that can become PAOs and PGIs. If there is a lack of products and traditions, the system cannot easily be implemented.

Secondly, and equally importantly, there is a protection system based on: control of production discipline by specific bodies, monitoring of the correct use of the appellation by consortia, and the existence and strengthening of criminal and civil legislation for GI protection.

For countries interested in the Italian system, I would advise making contact with the Organization for an International Geographical Indications Network (oriGIn), or with some of the Italian production consortia, including those for Prosciutto di Parma or Parmigiano Reggiano, in order to find out the specifications of the economic, productive and legal organization that regulate the Italian model.

This model is certainly successful, as the agrifood and wine business is the Italian economy's second largest export sector (and the country's economy is the sixth or seventh largest in the world), with exports of around 20 billion euros per year. Products with GIs represent at least 60 per cent of such exports.

It should be pointed out that, in Italy and the EU, GIs have proved to be an important means of economic growth for rural regions, including those untouched by global development. Products from GIs have a strong economic impact as a source of production investment in the region (which cannot be moved to another country). Besides being a source of job creation, GIs also contribute to tourist development. Rural tourism and food and wine tourism, together with other traditional regional forms of tourism, are constantly growing in Europe. Lastly, the model of Italian GI consortia is a model of associations of small and medium-sized enterprises (SMEs), rather than multinationals.

On the international front, the situation is much more complex. As we all know, the European model is not recognized by many other countries. There are problems relating to generic appellations and the use of appellations. For instance, several countries consider the 'parmesan' appellation to be generic, but this generalist phenomenon appears to be more the result of the success of the Parmesan appellation than of its supposedly generic traits.

Many Italian and European GIs cannot even be registered as trademarks in other countries, because the appellation has been used as a local mark there. The problem with GIs is that they are often in conflict with marks used in other countries, particularly in the context of the WTO TRIPS Agreement. This has also caused problems for the negotiation of the Anti-Counterfeiting Trade Agreement between the EU, United States of America, Japan and other countries.

In summary, I consider the European and Italian model for GIs to be the best, and it can provide a valuable example for other countries. In the absence of a new international agreement on GIs, many of the problems resulting from the lack of international recognition for new GIs could be resolved by the immediate filing of the equivalent collective or certification mark in third markets, before they become imitative local marks, and before the success of GIs becomes an argument in favor of their generalized nature..

OPINION OF THE ECTA ON THE DEVELOPMENT OF THE INTERNATIONAL
FRAMEWORK FOR PROTECTION OF GEOGRAPHICAL INDICATIONS

*prepared by Benjamin Fontaine,
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In the past few years geographical indications have become an essential element within the family of distinctive signs. This is evidenced by the interest generated by this Symposium, and more generally by the explosion in the number of protected geographical indications, especially within the European Union but also in Latin America and Asia.

As a result of this phenomenon the number of legal issues is increasing regarding the relationship between geographical indications and trademarks. As a consequence, within the ECTA, a body devoted to trademark law in Europe, a specific committee for geographical indications has been set up.

In relation to the subject under discussion, i.e. the development of the international framework for protection of geographical indications, much has been said at all the conferences held as to whether a sui generis system or a system of trademarks is preferable. Other speakers, and I refer in particular to the most interesting papers given by the representatives of Darjeeling Tea and Coffee of Colombia, have highlighted the virtues that both geographical indications and trademarks may possess.

This is the stance which is defended by our organization: we are not basing ourselves on a position of confrontation, or of choosing between different systems, but from the perspective of co-existence and complementarity. Geographical indications and marks are valuable titles which must co-exist and each of which has advantages. In other words, we prefer complementarity to the provision of alternatives. I will now try to explain this.

THE DEVELOPMENT OF THE PROTECTION FRAMEWORK FOR GEOGRAPHICAL
INDICATIONS MUST BE ESTABLISHED FOR THE BENEFIT OF THE INTERESTED
PARTIES:

Producers

- recognition of the quality of their products
- differentiation of their products
- higher margins in a very competitive environment

The public (in the broad sense: consumers and third parties)

- an intelligible message
- information on origin and production
- guarantee of quality

HOW TO ACHIEVE AN EFFECTIVE AND DYNAMIC SOLUTION

By combining the participation of the Public Administration and the free initiative of groups of producers.

THE ACTIVITIES OF THE PUBLIC ADMINISTRATION SHOULD BE TWOFOLD:

- development of the legal framework
- ex officio protection of geographical indications

Development of the legal framework

- in all sectors and in equal conditions (horizontal approach)
- at the supranational level (regional and/or global); TRIPS and/or LISBON?
- accessible and intelligible: an unfortunate example of the three geographical indications of the European Union, and with a fourth system for handicraft products currently being developed
- uniform?

Ex officio protection

- assistance for organizations in the defense of competition and battle against fraud, and assistance to customs
- verification of trademark applications

FREE INITIATIVE OF GROUPS OF PRODUCERS. ALSO TWOFOLD:

- development of specific protection through the collective and/or guarantee mark
- protection of geographical indications.

A trademark as supplementary protection

- very reasonable cost
- speed
- flexibility
- protection of achievements
- hierarchy within the framework of geographical indications
- easy protection against imitations

Protection of geographical indications

- assistance to the Public Administration
- claim of protection in keeping with the reputation of the geographical indication

THE VISION OF MARQUES ON GEOGRAPHICAL INDICATIONS AND THE
CURRENT INTERNATIONAL SITUATION

*prepared by Miguel Ángel Medina,
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First, on behalf of MARQUES I would like to thank WIPO, INDECOPI and the Peruvian Ministry of Foreign Affairs for giving us the opportunity to express our viewpoint in such a prestigious forum and raise questions on the development of an international legal framework for geographical indications, with a view to reaching a satisfactory solution for all market parties.

As a Spaniard, I would also like to say how pleased I am to be visiting Peru for the first time, as it is a country we feel very close to, as there are many bonds that link us.

To introduce the organization I represent, I should like to mention that MARQUES is the Association of European Trade Mark Owners that represents the interests of owners worldwide in terms of the protection, use and defense of marks, as well as their designs and other related industrial property rights, as essential elements of trade, in relation to the EU and national and international institutions and agencies.

Its members are owners of marks and professionals from the industrial property and legal fields, with currently over 750 associates from 84 countries covering all sectors of industry. Mark owners represented by the association own a total of more than two million marks, many of which are considered by consumers to be emblematic of quality products and services worldwide.

MARQUES was set up as a non-profit company, with no shareholders or dividends to distribute, and its directors are specifically forbidden from receiving remuneration for their services.

Its main objective is to promote the professional development and education of mark owners in selecting, managing, protecting and using their marks and related rights, and it also aims to provide an effective platform to represent those interests by promoting debates, participation in consultations and the development of professional networks and groups to protect their interests at the international level.

In this respect, MARQUES plays an active part in many events relating to geographical indications, and closely follows developments and discussions in this area. This applies to the World Trade Organization (WTO) and World Intellectual Property Organization (WIPO), where it has the status of official observer and takes part in the Working Group on the Development of the Lisbon System. It also applies to the European Union, where MARQUES is on the "Transparency Register" and makes an active contribution to processes to study and revise or amend Community regulations on geographical indications, as well as being accredited with the Office of Harmonization for the Internal Market (OHIM), where it has observer status on the Administrative Board and Budget Committee.

Turning to the MARQUES vision on the international legal framework for geographical indications (GIs), we see GIs, as with other industrial property rights, as instruments that can fulfill important functions in the market, by supplying information on qualities or characteristics of products related to geographical origin that may be very useful to consumers and contribute to a more balanced and fair distribution (although we heard

yesterday that it is not empirically proven always to be the case) of benefits throughout the production chain, as well as helping developing countries to improve their conditions and economies.

In the same way that a single product has trademark rights as well as industrial design, patent, copyright and other rights, together with different owners, so marks and geographical indications also often co-exist for the same product.

GIs and marks can also mutually complement each other and create a synergy. Just as mark holders can provide an additional guarantee for their products thanks to a given quality of geographical origin valued by consumers by having their mark used on products with the right to use a GI, so producers of GI products can see how consumer knowledge of their GIs, as well as sales and reputation, increase when they are used on products that bear marks with high market value because of their company origin.

Company origin and geographical origin can therefore both add value to a product in different ways.

In terms of GIs, some of the main concerns of MARQUES members are legal certainty, consumer protection against misleading use and confusion with other signs, as well as the avoidance of practices or regulations that – if not correctly applied – may lead to unfair competition that could harm consumers, producers and companies. It should not be forgotten that GIs are meant to guarantee a certain quality or characteristic relating to the origin, comply with certain objective parameters and have an authentic link with a geographical place, with all the implications that has. This is why GIs often benefit from institutional and economic support for promotion and prosecution of any violation or infringement, which gives them a market advantage compared with other competitors or players not authorized to use the GI (and we are not necessarily referring only to mark owners).

For these reasons, it is vital to have a balanced, fair and healthy co-existence in the market and - from the MARQUES point of view - this includes the following conditions:

- A clear definition of the concepts and requirements relating to GIs. In this sense, MARQUES recognizes the efforts made in recent work by WIPO and the European Union to use terminology in keeping with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, as using the same legal terms will facilitate understanding and coordination between different systems.

Nowadays, this is increasingly easy to carry out, as the different language versions and technical means facilitate the coherence needed across all language versions.

- Regular and effective checks are made to guarantee that products using a GI truly comply with the requirements laid down for its use. If there is no genuine and effective system to ensure produce traceability and check that products go through all parts of the process that authorizes them to use the GI, consumers would not therefore be receiving true information, and this could distort competition.

- In cases where products have the right to use a GI in which only one or some characteristics (not all) are due to the geographical location identified in the GI or only some stages of the process – production, manufacture or processing - have taken place in this geographical area, clear information should be provided to consumers to convey accurately

which specific characteristic or stage in the process is due to, or has taken place in, the geographical area in question. This situation arises in the European Union System for Protected Geographical Indications (PGIs) but not Protected Appellations of Origin (PAOs).

Otherwise, consumers could relate the GI with characteristics or stages that are not associated with that geographical origin and that play no essential role in the product quality, and thus they may make mistaken associations with the geographical name that could impact on consumers' freedom of choice.

In this regard, it is important to bear in mind that the publication of the essential characteristics of geographical indications in official journals or gazettes does not usually reach consumers, who tend to obtain information from product labels, packaging or advertising materials, and that these places would be the ideal means for conveying such information.

- Presence of intergovernmental organizations. It now appears essential for intergovernmental organizations to be part of any arrangement that seeks to be relevant at the worldwide level. This would not only sometimes involve the de facto accession of a significant number of States to the Arrangement, but this could also in principle help to resolve concerns over compatibility and the possible effects of the treaty in Member States of such organizations. There are currently different questions being asked about the compatibility and effects of the Lisbon Agreement in terms of Members from the European Union, given that the Union has an exclusive and exhaustive register of GIs that for many products at least only allows for community and not national registration. At the same time, having an intergovernmental organization as a treaty member would make it more attractive and user friendly for other countries that already have agreements with the intergovernmental organization on such matters.

- Harmonization is clearly a factor that helps to increase greatly the level of legal certainty within a system. In this sense, MARQUES considers that one option could be an international registration system along the same lines as the Lisbon System, with more detailed regulations in which, while still remaining flexible, sufficiently high levels of requirements are shared by contracting parties.

- Unification or harmonization of expressions, procedures and registrations, irrespective of product type (unlike the current European Community system) would be a desirable objective.

If we analyze the current legal framework and bear in mind some characteristics of the most widespread systems in terms of number of States involved, such as the European Union system and the Lisbon system (both involving 27 countries), and work currently being carried out to amend both, MARQUES sees the positive value of:

- simplifying the EU system by unifying under one set of regulations and using the same registration procedure for geographical indications (GIs) and appellations of origin (AOs) for crop and food products and traditional specialities guaranteed (TSGs),

In this sense, it would be ideal if the EU could soon produce a single regulation and a single register to bring together GIs and AOs for any product, as is the case with marks. The variety of registers and rules creates confusion, and it is not always easy to know where to find registration rights that may affect the market use of a sign.

- planning to include in the register those GIs and AOs protected by international agreements to which the EU is a party,
- shortening the registration procedure, particularly in terms of the decision-making procedure.

However, we consider that the Community opposition periods should not be reduced from six to just two months, as provided for in the current proposal. We feel that a minimum period of three months, which is the same opposition period for Community marks, would be more appropriate than two months.

- clarifying existing rules on the use of generic terms, such that generic names that are similar to or form part of a protected or reserved name or term are considered to maintain their generic character;

Along the same lines, we consider it advisable to introduce some rules to clarify situations that could turn out to be disputed and to help to avoid interpretations that could leave some market players unprotected, which was what happened in the case settled by the General Court of the European Union on May 11, 2010 (Case T-237/08), in which the geographical name PALOMAR was found to be protected by the Community regulation because another geographical name, VALENCIA, was protected as an Appellation of Origin and the national regulation of the AO for wines of VALENCIA stated that protection extended to many other specific geographical names mentioned therein, including PALOMAR, even though these had not been published as protected geographical indications in the Official Journal of the European Union. The Court specifically recognized that the way in which the information was published by the Commission seemed ineffective in ensuring that the public were fully informed, as the number of local administrative areas benefiting from the geographical indication did not appear in the list published by the Commission.

We also think that, as the EU proposal provides for clarification of the status of generic terms, a similar clarification could be introduced in this case - in EU regulations and other planned international arrangements in which this situation may arise - to state that the geographical indication protected shall only be that published in the Official Journal or appearing in the Registry or database provided for by the instrument in question. This would avoid surprises when reference is made to national regulations if such precautions have not been taken.

- introducing the possibility of canceling GIs due to non-use, meaning the failure to bring to market any product with that denomination or indication for at least five years. This would be in line with what happens with other industrial property rights.

Maintaining protection for rights that have not been used in the market for a reasonable period of time could hamper a regime of competition and third party rights.

- Effective and appropriate systems should be set up for the transitional phasing-out period for the assignment of use of trademark rights and other usage rights obtained in good faith before the protection of the geographical indication.

- It would be advisable to set up appropriate dispute-settlement mechanisms and specific rules to determine the legal jurisdiction, as occurs, for instance, in cases involving Community marks and designs where such situations are provided for.

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