



DIFFERENT PERCEPTIONS ON THE PROTECTION OF GEOGRAPHICAL INDICATIONS

¹Cristiane Toniolo Dias, ²Suzana Leitão Russo and ³Marina Bezerra da Silva

¹Maste and student of the Program of Postgraduate in Intellectual Property Science,
Federal University of Sergipe, São Cristóvão, SE, Brazil

²Professor of the Program of Postgraduate in Intellectual Property Science,
Federal University of Sergipe, São Cristóvão, SE, Brazil

³Master of the Program of Postgraduate in Intellectual Property Science,
Federal University of Sergipe, São Cristóvão, SE, Brazil

ARTICLE INFO

Article History:

Received 02nd March, 2018
Received in revised form
18th April, 2018
Accepted 06th May, 2018
Published online 28th June, 2018

Key Words:

Perceptions,
Geographical
European Union.

ABSTRACT

Associated certifications of Geographical Indications is the traditional knowledge and food traditions, considering that studies on this subject are important objective to conduct a review of the literature on the laws and regulations on geographical indication. It is observed that international treaties the Member countries do not follow the same line of reasoning related to protection of geographical indications, the United States leads the group who believe in collective trademark registration is more suitable for such protection than the traditional conceptions and bureaucratic brought by the European Union, as international treaties allow Member follow local laws as long as they are in accordance with the information contained in the treaties, each signatory Member can choose to their traditions.

Copyright © 2018, Cristiane Toniolo Dias et al. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: Cristiane Toniolo Dias, Suzana Leitão Russo and Marina Bezerra da Silva, 2018. "Different perceptions on the protection of geographical indications", *International Journal of Development Research*, 8, (06), 20699-20703.

INTRODUCTION

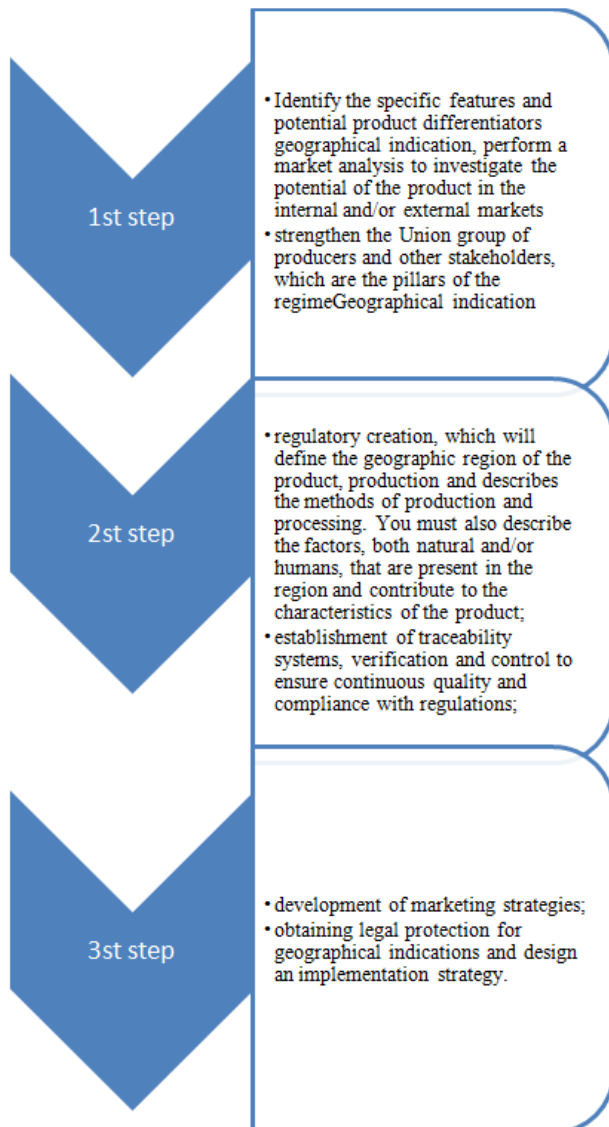
The main significance of a geographical indication is that represents a stamp or registration used in products that have a specific geographical origin and/or who have qualities or reputation arising of such origin (WIPO, 2015). Agricultural products are those that have the largest number of protection for geographical indications (IG), but are not the only ones. With the agricultural products can usually easily be associated with qualities that derive from your place of production and are influenced by specific local geographic factors such as climate and soil, these notable features for registering an geographical indications. However, the use of geographical indication protection if not delimits agricultural products because a geographical indication may be registered when specific qualities of a product which are due to human factors,

*Corresponding author: Cristiane Toniolo Dias,

Adjunct Professor, Department of Statistics and Actuarial Sciences, PhD student of Program of Postgraduate in Intellectual Property Science, Federal University of Sergipe, São Cristóvão, Brazil

such as know-how, traditions passed from generation to generation in certain places modifies the products, making it the only region related (BRUCH, 2008). It is common to report a record for a geographical indication to an idea of a collective mark, however, marks and geographical indications are distinct protections, a record by geographical indication refers to information of the product linked to the origin of a good or service, to Acquiring a product with the label of geographical indication transmits to the consumer a certain quality (specific characteristic pertaining to origin) that when buying goods registered by trade mark will not necessarily transmit to their Consumers, the relationship with the trade mark is given the quality of the product linked to a certain company. So the geographical location does not identify a certain brand of a certain company (ALMEIDA *et al.*, 2014). The registration of a brand can be carried out by anyone, anywhere in the world, can make use even of fancy names, because the brand is linked to a specific company. In the case of geographical indications can be used by persons linked to the area of origin, related to production or construction of well according to the specified

standards (ALMEIDA *et al.*, 2014). Geographical Indication protection preserves "the know-how" of a region or community, protect the traditional knowledge passed down from generation to generation. Therefore, producers who manage the registration for a geographical indication does not transfer traditional processes of their products to something less costly to streamline production, but lower the quality of the products.



Source: Prepared by the author

Figure 1. Procedures to be performed in the process of execution of a geographical indication

The protection by geographical indication is of collective relevance, it covers the reputation and quality of the product and also of the region in which it is linked. Potential products that do not carry out the protection by geographical indication are likely to be used without restriction which makes them public domain and with this the devaluation of the product (LOCATELLI, 2007). The agreement on trade-related Intellectual property aspects (TRIPS), approved in 1994, within the framework of the World Trade Organization, defines geographical indications as being a well originating from a certain region, locality or territory, which It has a certain quality, reputation or other characteristic derived from its geographical origin (Rock FILHO, 2009). Countries that have the protection of geographical indications generally have

regional legislation for the specifications of the geographical indications certifications, but the United States does not part with the laws of the geographical indications of its system of Marks, which contradicts the intellectual property rights that distinguishes collective mark and geographical indications, this shows that they are governed by divergent systems (GOLDBERG, 2001). In this context, the following hypothesis is formulated, H1: countries linked to international treaties have the same mode of protection for geographical indications. The main objective of this article is to compare the basic rules and procedures necessary for obtaining a geographical indication describing the most striking ideas of the international agreements related to the theme.

Literature Review

There is a need for a pre-revision of the literature regarding the themes that make up this research. The protection of geographical indications international aspects Of international agreements involving the protection of intellectual property, five address the geographical indication: the Paris Convention, the Madrid agreement, the Stresa Convention, the Lisbon agreement and the TRIPS Agreement. With the need to reformulate the protection of products and inventions, government representatives met in 1873 at the Congress of Vienna, and the discussion on the subject follows seeking unified legislation worldwide on the rights of the property Intellectual, so in 1880 the International conference in Paris, known as the Paris Union Convention (CUP), established in 1883, Brazil joined as a member in 1884 (BOLOS, 2011). In the Paris convention, considered the first international agreement addressing the protection of geographical indications, it is important to register, that in this agreement the terms of geographic indication, indication of origin or designation of source are not defined. , the terms are only quoted, but not conceptualized. One of their approaches is to delimit the borders of their protected assets so that false indications are not allowed. As it is only the limitations of the protection of geographical indications, this broad view allowed the United States to be among the signatories, the Paris convention prevents only the importation of goods containing false indications of origin (KIREEVA, 2011).

In an attempt to fix problems and establish more specific rules found at the Paris conference, in 1891 the Madrid agreement was held for the repression of false or misleading indications of commodity origin. This agreement has been modified several times, this has not added much to the protection already given by the Paris convention, but has extended the protection to deceptive indications of origin, and false indications. Brazil became a member in one of its modifications in the year 1925, the agreement aims primarily at border measures for geographical indications in broad terms, due to the high level of protection given the geographical indications the United States does not They will become signatories (JOSLING, 2006). In Stresa, Italy, in the year 1951 the International Convention on the use of denominations of origin and cheese denominations was signed, this document lays down the rules for the designation of the product concerned and its specific characteristics that differ of the others. The Lisbon Agreement for the protection of designations of origin and its international registration was promulgated in 1958 as an attempt to achieve effective and feasible protection for geographical indications. However, as of 1996, only seventeen countries signed the Lisbon

agreement, Brazil is not a member of this agreement, nor the United States, England, Germany, Greece and Switzerland (MARIE-VIVIEN, BIÉNABE, 2017). In 1994 the TRIPS Agreement was signed (trade-related Aspects of Intellectual property rights, translation Agreement on trade-related intellectual property rights) negotiated at the end of the Uruguay Round in the general Tariff and Exchange Agreement (GATT) became effective on 1 January, 1995, all 140 members of the World Trade Organization are members of the TRIPS Agreement. With such a wide range of countries in this agreement, it becomes an important tool for the internationalization of the protection of intellectual property (Belletti *et al.*, 2015). The creation of the TRIPS Agreement was carried out in the intention of promoting technological innovation and for the transfer and dissemination of technology, for the mutual benefit of producers and users of knowledge. With the principle that member countries can formulate amendments as long as they are in agreement with trips contributes to the economic development and to international transfer of Technology (GURGEL, 2006). On the geographical indications, in the TRIPS Agreement, all its terms are respected, in this agreement, articles that provide the international protection of geographical indications. These topics were not approved without controversial debate, so that there was approval, the European Union presented a project in 1990 which served as a model for the provisions aimed at international protection. The United States, contrary to the European position, responded with a project based on the law of trademarks, the American system of protection. The real point of conflict was the attempt to prevent geographical indications, especially wines and spirits, making them generic terms (BELLETTI *et al.*, 2015; GIOVANNUCCI, 2010).

The European Union's vision for the TRIPS Agreement

The proposal presented by the European Union was known as trips-plus for the establishment of a multilateral system for the notification and registration of geographical indications for wines and spirits, with the aim of adding substantial impetus. The negotiations, the main characteristics of the EU proposal for the registration of geographical indications are: presentation of geographical indications to be registered; Legal effects; and registration change. The European Union proposes that members will voluntarily be able to use the registration system by presenting a list of geographical indications, which are already recognized and protected as such in their country of origin. Members have one year to examine the request for geographical indication, and any member may oppose the basis and reasons within the context of trips, the grounds for refusal to protect include: The geographical indication does not correspond with the definition in article 22 of trips; There is no protection of the geographical indication in the country of origin; The geographical indication is considered to be generic. One year after notification by the secretariat of the World Trade Organization, geographical indications will become indefinitely and fully protected in all WTO members (GOLDBERG, 2001; HÄRTEL, 2018). The registration system also attempts to create law internationally, even with the fact that each member has different law systems to protect geographical indications within their own countries. A global multinational law could protect geographical indications without the need for each country to alter or abandon its own existing laws or practices. The EU proposal establishes that the registration system would not require countries of origin to change their system of local laws. The EU proposal provides

for a continuously open record where members can apply for the certification of new geographical indications or re-examine an entry at any time (ENGELHARDT, 2015).

The view of the United States for the TRIPS Agreement

The United States responded to the proposal of the European Union with a counter-proposal after some member countries, including Australia, Japan, the Republic of Korea, Canada, Chile and Hong Kong expressed concern about the proposal. The US proposal is neither detailed nor accurate as the EU proposal, succinctly the proposal states as a system would be and what it would not do. The US proposal needs details and could not be defined as a model for the negotiations of an international registration system. According to this proposal, the WTO would publish a list of the geographical indications provided by the member countries that are being protected internally, for each of these explains the terms of the protection under their laws (LE GOFFIC, 2017).

The system of protection for geographical Indication in the United States is used in the structure of collective trademarks, the registration is carried out by the Patent and trademark Office of the United States (USPTO), that is, the Government of the United States does not recognize currently Geographical indication as a separate item of intellectual property. The United States does not protect terms that are generic, as well as a geographical term is considered "generic" can not be used for registration. Another characteristic of the American system of scoring is that it offers the owner less bureaucracy than the geographical Indication records and establishes the exclusive right to prevent the use of the mark by unauthorized persons thus avoiding misuse and deceit To the consumer (GIOVANNUCCI *et al.*, 2009; GIOVANNUCCI, BARHAM, PIROG, 2010).

The Brazil's vision for the TRIPS Agreement

Brazil is a signatory to the TRIPS Agreement, the National Congress approved the Agreement by decree Law No. 30 of December 15, 1994 and promulgated by Presidential Decree No. 1,355, of 30 December of the current year, coming into effect from 1 January 2000 (RODRIGU ES, MENEZES, 2000). In Brazil we have Law n ° 9.279/1996, which regulates the rights and obligations relating to the industrial property, which is the prohibition of the registration of geographical indication by trademark protection, it is verified in article 124 item IX, X and XI. (IX) which does not register as marking a geographical indication or something that is assimilated to a susceptible imitation which may cause confusion or falsely induce a geographical indication. The geographical indication definitions are laid down in articles 176 to 178, where it follows the provisions of the TRIPS Agreement, in this law it is defined that the municipality which will establish conditions for registration and certifications of geographical indications is the National Institute Industrial Property (INPI). It is also treated in articles 192 to 194 the crimes against geographical indications (LOCATELLI, 2007).

Analysis

The importance of geographical indication is more notorious in countries where agriculture is the strong economic factor. This appreciation improves exports and values the region. This idea is contrary to countries with a vision of brand protection.

Table 1. Reference between registration by geographical indication and trademarks

Between registration by geographical indication and trademarks	
Geographical Indication	Trademark
The length of time is granted as long as the geographical indication exists	The time of duration can be renewed periodically, according to the country's current legislation, in the case of Brazil, renewed every 10 years
The production of good or service must be rooted in the region, that is, not being able to be moved to another area or country	Production is not associated with a region, so products can be made in any geographical region
The control of the Registry is given in a collective way to ensure that the products conform to the specifications	The control is individual, to the author of the record
Relates the product or well to a specific geographical region	Does not relate to the origin of the product

Source: Produced by the authors based on the laws of trademark and geographical indication

The certification schemes of the United States (USA) and of the European Union (EU) are considered divergent, such as the EU regulation on the indication of origin and designation of source well defined in regulation 1151/2012, and they are absent in the US laws. Another differential is the requirement of detailed descriptions following rigorously the texts of specific laws of geographical indications in the EU, while for the registration of collective mark the specifications of the product for registration is left for the applicant Describe what you need (LE GOFFIC, 2017). The protection by geographical indication has as its core the agricultural policy of regulations in Europe. In a comprehensive way it can be observed that the importance of certifications of geographical indications in the European Community is due to the motivation of exports that bring a great economic return. In financial terms, of the EUR 5.4 billion of EU exports for sparkling beverages, 3.5 billion euros are related to these with a geographical indication label (KIREEVA, 2011). A differential between the Brazilian and European protection system are the visions of its consumers, in general Europeans are familiar with the products certified by geographical indication, while in Brazil few consumers who have the Knowledge of this so reputable and important record. In Brazilian regulations the products that may be protected by geographical indication are beverages such as the case of wines already registered, handicraft example of Irish income, food and services being the Digital port of Recife a case. In European laws the records are available only for certain agricultural products and no certification is permitted for non-agricultural products or industrial goods such as textile or glass products (KIREEVA, 2011).

Conclusion

In the first negotiations of the TRIPS Agreement it becomes clear the opposing views between the European Union and the United States, Europe's point of view is to make the protection of the most comprehensive geographical indications related to all agricultural products and including wines and spirits, in the opposite position the United States opposed such a proposal arguing that geographical indications can be incorporated into the trademark rights. It is understood that the countries signatory to international treaties involving protection by geographical indication follow different standards, with different ideologies. A comparative analysis of Brazilian legislation and norms, with the USA and the EU, suggests that Brazil is based on regulations similar to the procedures

advocated by Europe, bureaucratic procedures with required specifications, differentiating in some Aspects, the European public incentive for new geographical indications does not occur in Brazil, another fact is that the Brazilian regulation of protection by geographical indication allows to register products from regional handicrafts and services.

Acknowledgements

The authors would like to thank the support of FAPESSE.

REFERENCES

- Almeida, S. C., Dörr, A. C., Guse, J. C., Rossato, M. V., Sidali, K. L., & Marchese, A. 2014. Approach to the brazilian and european legislation on geographical indication. *Electronic Journal of Management, Education and Environmental Technology (REGET)*, 18, 47-56.
- Barbosa, P. M. D. S., Lage, C. L. S., & Fernandes, L. R. R. D. M. V. 2016. Marcas versus as denominações de cultivares presentes em duas indicações geográficas brasileiras para café.
- Belletti, G., Marescotti, A. and Vakoufaris, H. 2015. Linking protection of geographical indications to the environment: *Evidence from the European Union olive-oil sector*. Land Use Policy, 48, 94-106.
- Boloş, M. D. 2011. Legal sources of trademarks and geographical indications. Bulletin of the Transilvania University of Braşov. Series VII• Vol, 4(53).
- Bruch, K. L. 2008. Indicações geográficas para o Brasil: problemas e perspectivas. Propriedade intelectual: gestão do conhecimento, inovação tecnológica no agronegócio e cidadania. Florianópolis: Fundação Boiteux.
- Engelhardt, Tim. 2015. Indicações geográficas no âmbito dos recentes acordos comerciais da UE. CII - Revista Internacional de Propriedade Intelectual e Lei da Concorrência, v. 46, n. 7, p. 781-818.
- Goldberg, S. D. 2001. Who Will Raise the White Flag--The Battle between the United States and the European Union over the Protection of Geographical Indications. U. Pa. J. Int'l Econ. L., 22, 107.
- Giovannucci, D., Josling, T., Kerr, W., O'Connor, B., & Yeung, M. 2009. Guide to geographical indications: Linking products and their origins (summary).
- Giovannucci, D., Barham, E. and Pirog, R. 2010. Defining and marketing "local" foods: Geographical indications for US products. *The Journal of World Intellectual Property*, 13(2), 94-120.
- Gurgel, V. A. 2006. Aspectos jurídicos da indicação geográfica. Valorização de produtos com diferencial de qualidade e identidade: indicações geográficas e certificações para competitividade nos negócios, 45.
- Härtel, I. and Zhong, L. 2018. The Right of Geographical Indications of Agricultural Products and Food. In Handbook of Agri-Food Law in China, Germany, European Union (pp. 611-641). Springer, Cham.
- Josling, T. 2006. The war on terroir: geographical indications as a transatlantic trade conflict. *Journal of agricultural economics*, 57(3), 337-363.
- Kireeva, I. 2011. How to register geographical indications in the European Community. *World Patent Information*, 33(1), 72-77.
- Le Goffic, C. and Zappalaglio, A. 2017. The Role Played by the US Government in Protecting Geographical Indications. *World Development*, 98, 35-44.

- Locatelli, L. 2007. Indicações geográficas: a proteção jurídica sob a perspectiva do desenvolvimento econômico. Juruá.
- Marie-Vivien, D. and Biénabe, E. 2017. The multifaceted role of the state in the protection of geographical indications: A worldwide review. *World Development*, 98, 1-11.
- Rocha Filho, S. D. A. 2009. Indicações geográficas: a proteção do patrimônio cultural brasileiro na sua diversidade.
- RODRIGUES, M. A. C., & MENEZES, J. C. S. 2000. A proteção legal à indicação geográfica no Brasil. *Revista da ABPI*, 48, 3-21.
- WIPO, World Intellectual Property Organization. 2013. Geographical indications: An Introduction. Accessed 12 November 2017. http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.pdf
