

*In the context of the agreements with the EU:
Progress in Latin America in the application of geographical indications
and appellations of origin*

- *The experience of the countries of Latin America in this area has been complex and controversial.*
- *Geographic indications and appellations of origin identify the origin of goods, further differentiate them and make them more competitive.*

Geographical indications (GI) and appellations of origin (AO) have been very clearly defined and developed by the European Union (EU). Their use has extended to other regions such as Central America and the Andean countries thanks to the negotiation of Association Agreements with the EU. Furthermore, the growing participation of products in international markets has made it necessary to use distinctive signs, which offer producers competitive advantages and add value to their products, especially when they are linked to specific regions and to specific traditions in certain territories.

The protection of GI and AO benefits civil society and local communities, as well as producers and consumers. It offers society several benefits: GI and AP have indirect positive effects on tourism (“gourmet tourism”), contribute to raising incomes in the local economies, promote the creation of a regional identity and encourage the preservation of traditional knowledge applied in preparing both products with natural ingredients or raw materials that are indigenous to a place, and products made by hand using traditional methods or ancestral techniques indigenous to certain regions.

As for the benefits of GI and AO for local communities, they stimulate rural and economic development and promote an appreciation of the

sociocultural and agroecological characteristics of a given place. They help, in this way, to foster the production of traditional goods to which consumers can develop an emotional attachment, and which have greater commercial value.

With regard to the benefits for producers, GI and

AO promote the commercial differentiation of products, increase incomes, thanks to the greater quality of and higher prices paid for products, and preserve traditional knowledge.

Protection of geographical indications and denominations of origin benefits civil society, local communities, producers and consumers.

Finally, in the case of consumers, GI and AO guarantee the acquisition of unique high-quality products; make consumers appreciate the quality and special characteristics of the products, especially traditional agricultural, food and handicraft products; and help to develop consumers who are more demanding and better informed vis-à-vis the origin and quality of products.

The present document is intended to report on the experiences in the countries of the region,

specifically as regards the process of negotiating and applying AO and GI, and the lessons they have learned as a result.

The member states of the World Intellectual Property Organization (WIPO) have engaged in important discussions on the difference between IG and AO. Article 2 of the Lisbon Agreement defines an AO as **“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.”** Article 22.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) states that geographical indications are indications **“which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”** In light of the above, an AO can be considered as a special category of GI.

The experience of Central America

Prior to the negotiation of the Association Agreement between Central America and the European Union (AA EU-CA), the countries of Central America had little experience in the area of GI.

The initial position of the Parties was to include GI in a chapter on intellectual property (IP). The regulatory provisions were set out in a specific article of the AA EU-CA, and the lists of products of interest for Europe and Central America in the annexes. At that time, the EU had 3,000 GI, while in Central America only three had been properly registered.

At least five critical issues arose during the negotiation of the AA EU-CA. The **first** was that the countries of Central America had to adhere to the multilateral provisions established in the TRIPS Agreement, which turned out to be relatively easy to resolve. The **second** was that the Parties had to abide by the terms of the Free Trade Agreement

Geographical indications registered by Central America

- ✓ Central America has registered the following GI: Café Marcala Coffee (Honduras) and banano de Costa Rica (Costa Rica).
- ✓ In addition, negotiations are at an advanced stage to register Queso Turrialba (Costa Rica), coffee (from seven areas of Costa Rica), red beans (Nicaragua) and black beans (Guatemala).
- ✓ In addition, negotiations are at an early stage to register GI for coffee from ten areas of Costa Rica and for Teca jaspeada Guanacaste (Costa Rica).
- ✓ Lastly, the GI of coffee from 25 areas of Costa Rica may be registered.

between Central America and the Dominican Republic and the United States (DR-CAFTA), which the EU could not accept because the agreement was with the United States

The **third** critical issue was the coexistence of brands and GI, which is not allowed by the EU, while in Central America the “first to file” principle was prevalent. In other words, if a brand is registered first, it prevails over the GI because IP rights are territorial. A case in point was the “mozzarella cheese” registered as a brand in Costa Rica by the Dos Pinos Dairy Producers Cooperative and the “mozzarella cheese” that is a GI in the EU, both with important differences in terms of the composition of the final product. However, the most serious problem occurred when the names involved are more emblematic for the Europeans, as in the case of a brand registered in El Salvador for an alcoholic beverage “Cola Champaña,” not recognized by the EU.

A **fourth** critical issue for negotiation was the handling of generic names which, even though they were not registered in Central America, were widely

used in the region. For example, the countries of Central America wanted to keep distinctive signs such as “grated parmesan cheese” or “bologna sausage,” but the EU requested their eventual elimination.

A **fifth** topic of discussion was the need for a common set of rules and regulations, given the fact that the countries of Central America did not have the necessary procedures in place to recognize GI, or regional rules and regulations for processing and registering IP rights. The EU requested a declaration of regional recognition, which would avoid the need to register names on a country by country basis. For example, the negotiations on handicrafts was controversial since Panama, Nicaragua and Guatemala applied protective measures that the EU did not support, alleging that in Central America there were not common regulations on the matter.

The final result was a rule negotiated in accordance with the obligations and rights indicated in article 22.1 of the TRIPS Agreement and annexes, under which the registration of 224 GI by the EU and 89 by Central America was accepted. In turn, the Association Agreement makes it possible to register GI in the future via a transitory and unilateral mechanism that enables the Central American countries to acquire GI which, at the time of the negotiations, were being processed.

The experience of the Andean Region

There is also little experience in the Andean Region in the area of GI and AO. The initial negotiating position was established, taking into account the Andean rules and regulations, based on Decision 486 of the Andean Community regarding the Common Industrial Property System, which is in full harmony with the TRIPS Agreement. The Europeans had no major objections to the proposal because Peru is a contracting party of the Lisbon System, by virtue of which **the EU agreed to negotiate bilaterally with Peru and Colombia rather than with all the countries of the Andean Region**. In this document, reference will be made only to the experience of Peru.

As a result of the negotiations, Peru obtained protection of products with AO and a zero tariff on all of them. In addition, a clause was included that makes it possible to add more products in the future. **One outstanding element to consider and take into account is that Peru does not distinguish between GI and AO.**

In Peru, the administration of GI is not considered to be a problem because of the existence of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI), an autonomous entity charged with all matters related to IP. The fact that it is autonomous, stable and has the necessary technical capacities, including a department dedicated to Distinctive Signs, makes it easier for it to apply the rules and regulations and provide support to the negotiation processes.

The Andean countries had to make some slight modifications to their legislation, in contrast to what is happening in Central America, where national legislation has had to undergo major changes.

Geographical indications registered by the Andean Region

- ✓ Currently, the Andean Region has registered the following GI: Café de Colombia (Colombia), Pisco (Peru), Maíz blanco gigante Cusco (Peru), Singani and quinua real (Bolivia), Chulucanas (Peru), Pallar de Ica (Peru), Café villa rica (Peru) and Loche de Lambayeque (Peru).
- ✓ Items still in the registration process are Cacao de Arriba (Ecuador), Sombreros de paja toquilla de Montecristo (Ecuador), Bocado velloño (Colombia) and Azúcar del Valle (Colombia).

The great challenge

In order to protect GI and AO, each country must prepare a list of products potentially eligible to obtain a GI, conduct assessments of the local and export markets, describe the product and its composition (raw materials, preparation process, etc.), establish the links between the product and a specific geographic area, organize producers to agree on a common goal vis-à-vis the AO and GI, promote the training of producers who are duly organized, provide them with technical assistance, disseminate up-to-date information and lobby the government to approve the legal framework for the protection of GI and AO and ensure that they are properly administered.

It is necessary to develop in producers the capacities they need to comply with all the requirements.

The great challenge is to reach agreement on a single set of regulations that can be used at the local, national and international levels, to be applied fairly and respecting IP rights previously acquired. These rights are multifunctional in nature because, on the one hand, they contribute to differentiating and adding value to products, which facilitates their placement on highly competitive markets, and on the other, they help to preserve traditional knowledge and promote rural development.

Another challenge will be to improve the capacities of some countries to manage GI and AO certification and protection systems because this responsibility is usually divided up among the Ministries of Economy, Trade, Agriculture and Environment. This makes the processes much

slower because both the oversight bodies and the control and certification systems operate less than effectively and the rules of use are deficient, and because there is limited knowledge of and little experience in the matter. In addition, these systems do not appear to be a priority in these countries, which pay attention to this topic only when a trade agreement requires that such systems be in place.

Lessons learned

One of the most important lessons was to discover that the interested parties were very keen on the idea of obtaining GI and AO, but had very little knowledge of the subject. Producers, for example, were highly motivated because of the benefits offered by the certifications, but were unaware of procedures, rules and regulations, and their implications.

In most cases, it was necessary to establish a partnership between a nongovernmental organization (NGO) and a government agency for the purpose of facilitating the preparation of studies on market potential and conditions.

In addition, the commitment of the producers to the process of obtaining the certifications was not very firm, inasmuch as a considerable number of them gave up, while others decided to postpone their participation due to the complexity of the process.

Another lesson learned was that once the brand has been defined, in order to have it certified, it is necessary to take into consideration all the aspects of the production process, which in many cases producers are not capable of doing. Therefore, producers need to develop the capacity to comply with all the requirements established to obtain certifications of GI or AO for their products.