An Overview of Geographical Indications in Brazil

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A geographical indication (GI) is a certification that generates competitive advantage and adds value to the product and region in which it originates. Brazil, as a major exporter of agricultural products, presents significant potential for this type of protection taking into account cultural diversity, ecosystems and typical gastronomy. However, the GIs are little known and exploited in the country. This paper aims to present an overview of the geographical indications in Brazil, including aspects of legislation, actions being implemented, and the potential of the country to protect GIs.

Keywords: Geographical indication, intellectual property, certification, collective mark

A geographical indication (GI) is an intellectual property asset which consists of ‘a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin’. This type of protection reflects efforts of collective defence and management of intellectual property rights (IPR), involving an explicit concept of collectivism. According to the Brazilian Statute, to obtain a certificate of GI, it is necessary that producers are organized and represented by a legal entity representative of a community.

A certificate of GI helps to protect producers against unfair competition and counterfeiting and it is an important tool to add value and gain competitive advantage. Products with controlled and guaranteed origin typically have higher price in the market because of the consumers’ trust in the characteristics and origin of the product. Study developed by the European Commission showed that 43 per cent of the European consumers would pay up to 10 per cent more to buy products with certificate of GI; 8 per cent would pay up to 20 per cent more; and 3 per cent would pay up to 30 per cent more.

Besides the higher value of products, other benefits gained with the certificate of GI, which enhance regional economic development, are: increasing competitiveness in international markets; customer loyalty; growth of profits; strengthening of production chains (greater supply of jobs in the field, industry, tourism and services); improvement in the definition of marketing strategies; valuation of rural properties located in the geographical area with certification of GI; and increase of negotiating power at the international level.

Despite the strong potential that Brazil provides for GIs (the country is the world’s largest producer of coffee and sugar from cane sugar, and one of the largest producers of soybean products, orange juice, cocoa, beef, tobacco and cotton), this protection is still little known and explored locally. The country currently has only eight national GIs granted, an insignificant number considering factors such as Brazilian cultural diversity, its vast territory and its peculiarities.

The amount of certificates of GI in Brazil is well below that of most European Union countries as well as developing countries like India, Mexico and China, which have been improving the legal framework in order to protect and enhance important traditional goods. China, for example, after signing a technical cooperation agreement with France, introduced more than 300 GIs for traditional goods. Mexico had, until recently, protected 11 articles including ‘Tequila’ which is its more traditional product.

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India also has made progress on issues relating to protection of GIs. In 1999, the Geographical Indication of Goods (Registration and Protection) Act was established. It was the first Indian Act to provide for registration and better protection of GI relating to goods. More than a hundred Indian products have been registered as GIs since this Indian Act came into force, including a number of world renowned GIs such as Darjeeling tea, Coorg orange, Kashmiri Kani, Pashmina and many more.

The Brazilian agribusiness exports registered a total inflow of US$ 94.59 billion in 2011, a value 24 per cent higher than the previous year. The share of agribusiness in Brazilian exports was 37.9 per cent in 2010 (ref. 14). The agricultural products exported, however, are characterized as commodities with low added value. Although the country is recognized in the international market for its production capacity, characterized by low costs and high technology, there are several criticisms about the low ability to add value and poor merchandising skills in promoting products. Therefore, GIs may be an effective strategy to differentiate and increase the competitiveness of Brazilian agribusiness in the global market.

The importance of the use of GIs in Brazil as a mechanism to promote local development from specific territories is reinforced by another argument: the registration of a GI is a way to allow participation of small production units, with low production scale, in the national and international markets providing differentiated and authentic products for specific segments of consumers. This is an important aspect because the family farm agriculture, consisting of small and medium producers, represents the vast majority of rural producers in Brazil and plays an essential role in the economy of small cities. There are about 17.7 million people working in the field in the Brazilian agribusiness and the increased competitiveness through GIs may improve the quality of life, employability and income of this population.

One must also consider that, besides enormous biodiversity, the traditional or typical products of Brazil are also numerous and varied. There are regional products (for example, products of the Amazon) as well as products tied to particular social groups as indigenous products, products of the settlers, products from family farms, etc. The strategy to encourage the protection of their products and traditional knowledge through GIs may be a way to stimulate and strengthen the social organization of these groups. The registration of GIs requires detailed discussions on issues of the notion of territorial identity and the definition of new territorialities which represent, in a geographical environment, the interaction determined by socio-cultural affinities, present or past, able to ensure a specific identity. The geography as defined by GIs is not bound by space or place. It is based on a socially constructed territory, physical and human, which is formed and transformed over a period of time due to interactions between social actors. The recognition of these new territorialities is essential for the establishment of practices and public policies aimed at local and sustainable development.

It should be noted, however, that Brazil still lacks the experience to be able to confirm the use of GIs as a tool for regional development. The protection through GIs is a recent phenomenon in the country (the first GI was granted in 2002) and is in the institutionalization phase. There is no consensus on the subject. Some national studies emphasize the potential and benefits of a GI while other studies focus on its exclusionary character serving the interest of economically privileged social groups.

Independent of these discussions, based on studies reporting the process of obtaining and the impacts of GIs granted in the country, it is possible to observe that several efforts have yet to be made so that the benefits of this intellectual property asset can be effectively exploited.

Considering the context presented, this paper aims to present an overview of the protection of geographical indications in Brazil, including aspects of legislation, actions being implemented, the potential in the country for protection of GIs, and a survey of the GIs applied and granted in the country.

The study was conducted in two stages. The first was based on bibliographical and documentary research. Legislation, sites of institutions that operate with GIs and other studies on this subject were consulted. In addition to bibliographic and documentary research, a survey was carried out of the GIs applied and granted in the country, covering the period from 1997 (when the new Brazilian Property Law came into force) until February 2011. The survey was conducted in the database of the National Institute of Industrial Property (INPI), during the month of February 2011, and covered the processes for registration of GIs in order to show: the situation of applications for registration of GIs (published,
pending, rejected, filed, granted, request for reconsideration or waiting publication); and the origin of the applicant – national or foreign – with the identification of the country, product, kind of protection, deposit date and grant date.

Protection of GIs

There are a variety of purposes related to the protection of GIs, which impact consumers, producers and the local environment. GIs protect consumers against fraud; protect producers of the good; facilitate market access for small producers; stimulate territorial, local, regional and rural development; and contribute to the conservation of the biological resources, biodiversity and cultural diversity, which is important to preserve the national identity of countries in facing the trend of globalization and internationalization of culture.23-26

Table 1 shows the evolution of GI protection in relation to its objective.

To ensure that rights are effectively conferred by GIs, protection needs to be beyond the borders of the national territory in which they originate. It is therefore essential to establish international institutions to define the legal procedures to be adopted, and at the same time for each country to make its own regulations for the protection of GI within its territory, independent of the international treaties.

GI Protection in Brazil

The protection of GIs in Brazil is in accordance with the following international treaties and agreements: Paris Convention for the Protection of Industrial Property, Madrid Agreement for the Protection of Appellations of Origin and their International Registration.

To bring the national legislation in terms with TRIPS, the Industrial Property Law (LPI – Law Nº 9.279 of 14 May 1996) was enacted, which regulates the rights and obligations relating to industrial property, including protection of GIs in Brazil.

The LPI does not present the definition of GI but establishes two types of protection that are characterized as GI: Indication of Source (IP) and Appellation of Origin (DO), which can also be used to certify service delivery, not just products. For IP or DO, it is possible to request nominative and/or graphic representations.

According to Article 177 of LPI, IP is related to the geographical name of country, city, region or locality of its territory, which has become known as a centre of extraction, production or manufacture of a specific product or specific service delivery. In the case of IP, the proof of reputation or fame of the region is critical for granting protection.

On the other hand, according to the Article 178 of LPI, Appellation of Origin refers to the geographical name of country, city, region or locality of its territory, which designates a product or service whose qualities or characteristics are exclusively or essentially related to the geographical environment, including natural and human factors. In this case, it is important to prove that the attributes, physical or sensory, of a specific good have effective links with local natural or human conditions.

There are some peculiarities in relation to the concepts of IP and DO. The IP does not guarantee a specific and different quality, characteristic or means of production, it just makes sure that the product comes from a region or well known locality. The DO, as compared to the IP, is more restrictive as a result of its wider requirements. In addition to ensuring the geographical origin, this protection certifies a typicality of the good that is due mainly to the geographical environment conditions. This means that the consumers not only recognize the product or service as originating from a specific location, but also identify a particular quality or characteristic that differentiates it from other, creating an inevitable link between the product or service and the geographical environment.3

Table 1 — The evolution of GI protection

<table>
<thead>
<tr>
<th>Generation</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st generation</td>
<td>To protect consumers, offering reliable information about the goods they buy</td>
</tr>
<tr>
<td>2nd generation</td>
<td>To protect consumers against unfair competition and ‘reputation theft’</td>
</tr>
<tr>
<td>3rd generation</td>
<td>Extension of the concept for the rural landscape: if GI could be used to protect producers, GI could be used for rural development</td>
</tr>
<tr>
<td>4th generation</td>
<td>Recently: extension of the concept to the environment and to the cultural and biological diversity associated with the production</td>
</tr>
<tr>
<td>5th generation?</td>
<td>What remains to be seen is whether and how GIs can have impact on the management and conservation of the cultural and biological diversity associated with products</td>
</tr>
</tbody>
</table>

Source: Based on Garcia et al.27
Another difference is that the granting of IP requires that geographical environment has a reputation and recognition resulting from the extraction, production or manufacture of a particular product or service. The Brazilian legislation, however, does not establish the same requirement for granting of DO. Although the DO does not require proof of fame or reputation for its grant, the quality or characteristic of the good linked to the geographical environment provides significant level of recognition in the market, especially when the product becomes certified.28

In Brazil, the INPI, the local authority under the Ministry of Development, Industry and Foreign Trade (MDIC), is the agency responsible for considering the request, granting the right of protection and defining the conditions for registration of GIs. In accordance with its mandate, the INPI established the Resolution nº 75 (of 28 November 2000), which defines procedures and conditions for registration of GIs.

Besides the evidence of recognition or fame of a region associated with a product or service (as in the case of IP) and identification of natural factors and traditional expertise of the geographical region of origin which guarantee certain regional characteristics and/or qualities to the product or service (as in the case of DO), there are other requirements for obtaining a certificate of GI.

It is necessary, for example, that the producers organize themselves through an association or legal entity representative of the community; the boundaries of the geographical area be defined; a nominative and/or graphic representations be created; and the ‘rules of use and control structure’ be elaborated.

The elaboration of ‘rules of use and control structure’ is a critical phase for the certification of GI. Into this documentation should be included with detailed information about production conditions, which are essential for the registration and continued use of the GI, such as:

- Description of the goods, including raw materials and the main physical, chemical, microbiological or organoleptic characteristics according to type of product;
- Elements that substantiate the geographical origin of the goods;
- Description of the method of obtaining goods; and
- Description of the method of control

For a producer to make use of a certificate of GI, it is necessary to comply with all the rules established. Table 2 lists the steps for obtaining the certificate of GI in the INPI.

<table>
<thead>
<tr>
<th>Table 2 — Steps to obtain a certificate of GI in the INPI</th>
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<tbody>
<tr>
<td><strong>Step</strong></td>
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<td>1</td>
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<td>3</td>
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<td>7</td>
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<tr>
<td>8</td>
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<tr>
<td>9</td>
</tr>
</tbody>
</table>

Source: INPI

Initiatives to Encourage Protection of GIs in Brazil

Brazil, as a major exporter of agricultural products, has a high potential for registration of GIs. However, this potential will only be realized if there is a policy to encourage the protection of GIs, including the involvement of governments, producers and institutions representing the productive sectors. According to the Institute for International Trade Negotiations (ICONE), the European experience suggests that the benefits resulting from protection of GIs are related to the capacity of coordination of the producers and the government, since it is the formation of supply chains that meet the predefined specifications, until strategies are in place for promotion and distribution of the products in different markets.29

To enhance the regionality and add value to national goods and services, mainly in foreign markets, Brazil has encouraged the protection of GIs. According to a study on GIs developed by CIRAD – Agricultural Research for Development, in partnership with Brazilian institutions, initiatives aimed at GIs have been characterized by three purposes related to social groups with particular needs: (1) large farmers who, with a focus on exports, seek to add value to the product and ensure aspects, such as distinction and food safety, considered increasingly important in international trade; (2) family farming, in which GI is conceived as a strategy for rural development and biodiversity.
conservation; and (3) traditional knowledge, closely associated with indigenous peoples, also seeking to preserve biodiversity. 19

Some studies report that GIs are still in the process of institutionalization in Brazil, requiring actions such as: (a) the definition of public policies that allow the GIs achieve defined goals and objectives; (b) the organization of the institutional arrangement related to the issue; seeking consensus among public and private actors in relation to the notion of GI; and (c) adequacy of legal instruments to protect traditional products. 19,21

There are currently some strategies being developed to encourage the protection of GIs. Regarding this, the efforts of the Ministry of Agriculture, Livestock and Food Supply (MAPA), the Brazilian Agricultural Research Corporation (EMBRAPA); the Brazilian Service of Support for Micro and Small Enterprises (SEBRAE), and the INPI are highlighted.

MAPA: This Ministry is responsible for the management of public policies to stimulate agriculture, agribusiness and the promotion of the regulation and standardization of services related to the sector. Its mission is to promote sustainable development and competitiveness of agribusiness for the benefit of Brazilian society. Policies formulated by the Ministry aim to allow agricultural products produced in the country to compete on price, quality and other attributes, desired by the market, with similar products produced abroad. Representatives of the MAPA participate in negotiations in bilateral and multilateral forums such as the World Trade Organization (WTO).

Within the MAPA, the Department of Intellectual Property and Technology of the Agribusiness is responsible for matters concerning protection of intellectual property linked to agribusiness. The Ministry is conducting a diagnostic to identify the potential of GIs in the country in order to obtain information for planning activities related to the recognition and protection of GIs for agricultural products. The ministry also invests features directly to associations of producers to structure the supply chain and support the preparation and filing of the registration of GI in the INPI. The actions of the Ministry provide support for small, medium and large farmers.

EMBRAPA: It is a government entity linked to the MAPA. It is the largest centre for agricultural research in the Latin America. Its mission is to enable solutions of research, development and innovation for sustainable agriculture for the benefit of Brazilian society. EMBRAPA coordinates the National Agricultural Research System that consists of federal public institutions, state public institutions, universities, private companies and foundations. These institutions, working cooperatively, conduct research in different geographical areas and fields of scientific knowledge.

On issues related to GIs, the institution has contributed to the recognition and qualification of new GIs. EMBRAPA works in partnership with educational organizations, INPI, associations representing producers, and MAPA, in order to build skills, internalize concepts, identify potential products and regions, and make possible the certifications of GIs.

SEBRAE: It is a private entity in public interest that supports the creation and expansion of small businesses. Its mission is focused on the development of Brazil by generating employment and income through entrepreneurship. SEBRAE operates in four areas considered key to the growth of micro and small firms: articulation of public policies that create a more favorable institutional environment; access to new markets; access to technology and innovation; and facilitation and expansion of access to financial services. The activities of the entity seek to support projects in the areas of trade and services, industry and agribusiness.

In relation of GIs, SEBRAE facilitates creating awareness about protection of this intellectual property asset and financing projects of Brazilian producers to obtain and exploit the use of GI certification.

INPI: This government agency aims to create an intellectual property system that encourages innovation, promotes competition and contributes to the technological, economic and social development of the country. It is the office responsible for registration and grant of industrial property rights in Brazil. Its activities cover registration of trademarks; grant of patents; official recordal of technology transfer and franchising contracts; registration of industrial designs, geographical indications, software, integrated circuits topography; and dissemination of intellectual property and technological information.

The Institute promotes partnerships and agreements with national and international entities and institutions to promote the use of industrial property. INPI acts in spreading the culture of industrial property and in the
training of qualified personnel through sponsorship and promotion of several events such as seminars, lectures, courses, and regional meetings. The Academy of Innovation and Intellectual Property of INPI offers a graduate course in intellectual property and innovation. The institution operates with the following target groups: companies, universities, research institutions; and the general public.

**Potential for GI Registration in Brazil**

According to the study conducted by the MAPA, there are several products already identified as potential candidates for GI registration. These products were selected on the basis of their social, cultural and economic importance locally. Table 3 lists the products which have the potential to be registered as GIs, located in various states of Brazil.

**GI s in Brazil: Applications and Grants**

A survey conducted in the INPI, covering the period from 1997 (when the LPI came into force) until February 2011, identified 55 applications for registration of GIs (17 foreign and 38 national).

Of these 55 applications, 12 were granted (4 foreign and 8 national); 30 were being analysed; 9 were filed; and 4 rejected. The status of these applications is detailed in Table 4.
Table 5 — Foreign GIs granted in Brazil

<table>
<thead>
<tr>
<th>GI</th>
<th>Status</th>
<th>Product</th>
<th>Country</th>
<th>Deposit date</th>
<th>Grant date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vinho Verde</td>
<td>DO</td>
<td>Wines</td>
<td>Portugal</td>
<td>19/09/1997</td>
<td>10/08/1999</td>
</tr>
<tr>
<td>Cognac</td>
<td>DO</td>
<td>Variety of brandy produced by doubly distilling the white wines</td>
<td>France</td>
<td>12/03/1998</td>
<td>11/04/2000</td>
</tr>
<tr>
<td>San Daniele</td>
<td>DO</td>
<td>Thighs of fresh pork, raw ham</td>
<td>Italy</td>
<td>20/10/1998</td>
<td>07/04/2009</td>
</tr>
<tr>
<td>Franciacorta</td>
<td>DO</td>
<td>Wines, sparkling wines, and alcoholic beverages</td>
<td>Italy</td>
<td>05/06/2001</td>
<td>21/10/2003</td>
</tr>
</tbody>
</table>

Source: Survey conducted in February 2011 in the INPI database

Table 6 — National GIs granted in Brazil

<table>
<thead>
<tr>
<th>GI</th>
<th>Status</th>
<th>Product</th>
<th>Deposit date</th>
<th>Grant date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Região do Cerrado Mineiro</td>
<td>IP</td>
<td>Coffee</td>
<td>28/01/1999</td>
<td>14/05/2005</td>
</tr>
<tr>
<td>Vale do Sinos</td>
<td>IP</td>
<td>Finished leather</td>
<td>14/09/2007</td>
<td>19/05/2009</td>
</tr>
<tr>
<td>Vale do Submédio São Francisco</td>
<td>IP</td>
<td>Table grape and mango</td>
<td>31/08/2007</td>
<td>07/07/2009</td>
</tr>
<tr>
<td>Pinto Bandeira</td>
<td>IP</td>
<td>Wines</td>
<td>07/10/2007</td>
<td>13/07/2010</td>
</tr>
<tr>
<td>Litoral Norte Gaúcho</td>
<td>DO</td>
<td>Rice</td>
<td>01/08/2008</td>
<td>24/08/2010</td>
</tr>
</tbody>
</table>

Source: Survey conducted by authors in February 2011 in the INPI

Table 5 lists the four foreign GIs granted in Brazil. These GIs were granted as DO (Appellation of Origin) and are mainly related to wines originating from Portugal, France and Italy.

Only eight certificates were granted for national GIs, which is a small number considering the enormous potential of the country. Almost all the certificates were granted for protection of IP, only one certificate was granted for DO. Table 6 lists the national GIs granted in Brazil.

Conclusion

GI is a certification that generates competitive advantage and adds value to the product and region from which it originates. Brazil, as a major exporter of agricultural products, presents strong potential for this type of protection taking into account cultural diversity, ecosystems and typical gastronomy.

However, GIs are little known and exploited in the country, with only eight certificates granted till recently. To increase this type of protection, the Brazilian government has established policies and mechanisms designed to identify products with potential for protection through GI registration, to raise awareness of society and to offer financial support for acquisition and exploration of new GIs.

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