

THE ESTABLISHMENT OF REQUIREMENTS TO REGISTER THE AGRICULTURAL PRODUCT AS GI AND A NEW CONCEPT TO GI (Type: indication of source)

Bivanilda Almeida Tapias
Coordinator of Incentive to the Geographical Indication for Agricultural Products
Ministry of Agriculture, Livestock and Food Supply
Brazil

ABSTRACT

This article provides an overview of the Brazilian legislation and explains the importance of an appropriate concept to GI, under Brazilian law, as a powerful tool for competition. It alerts also to the fact that, while several legal measures have already been adopted to promote the venture capital market in Brazil, a more developed culture of intellectual property must be spread over the Brazilian investment agenda.

Important modifications are taking place in the structures required for the consolidation of agricultural products as GI in Brazil.

The number of Brazilian GI applications filed per year is not very encouraging either, and reflects certain lack of perception of the necessity and the utility of promoting the protection of agricultural products, which contributes, to a large extent, to the relatively slow evolution of the Brazil in this area.

Brazil has only 4 GI: Vale dos Vinhedos/2002 (wines), Cerrado Mineiro/2005 (coffee), Pampa Gaúcho da Campanha Meridional/2006 (meat) and Paraty/2007 (spirits). As it can be seen, GI is so recent and the economical informations don't still exist on its benefits.

CONTEXT AND MARKET SITUATION

The development of Brazil - in terms of creation of new job opportunities, the increase of income, in food supply, and of stabilization of the balance of payment – is dependent on the increase of its agricultural production. As a consequence, Brazil has to face the challenge of always improving its agricultural sector in a dynamic way, as the same time it has to improve the quality of the products.

The Geographical Indication can be an important instrument in this way, since the characteristic qualities of the product on the place of production, a specific "link" exists between the products and their original place of production. Thus, last year it was created in this Ministry a specific area to improve the protection of agricultural products by the GI.

Nonetheless, such objective cannot be fully met without a strong legislation. And it is our problem. Brazil doesn't have a law that establishes the correct process to improve it such as in France or in other European countries. Even with domestic efforts to transform internal structures, by means of policy and institutional changes, the distortions caused by this legislation are an impediment to developing a dynamic domestic agricultural sector.

The Brazilian policy is not based on subsidies to agricultural products. But since 2006, the Ministry of Agriculture, Livestock and Food Supply- MAPA is responsible for the public

policies to aim at supporting the GI systems, while the National Institute of Industrial Property- INPI shall establish the conditions for registration of geographical indications. The collective organisation, mainly at coop form is strong only in some regions of Brazil. The agricultural products are sold by supermarkets mainly (package d and labelled). The food labelling regulations are defined by MAPA. The are processed food linked with traditional preserving techniques in dairy, meat, fish and other ones. There is a naming specific food as coming from specific geographical areas: coffee, cheese. And the consumers value the origin of certain products.

BRAZILIAN SYSTEM FOR GI

Brazil does have a specific registration system for GI's, in accordance with chapter XI, title IV, of the Brazilian Industrial Property Law in force, Law n. 9.279/96, sections 176 to 182 (please refer to the WIPO Collection of laws for electronic access at http://www.wipo.int/clea/docs_new/en/br/br003en.html).

There are two main institutions foreseen in the statute. The first one, "indication of source" (in Portuguese, "*indicação de procedência*") requires the presentation of elements that prove that a geographical name has become known as a center of extraction, production or manufacture of the good; the presentation of evidence concerning a control system over the producers who are legitimated to use the referred "indication of source", as well as over the products distinguished by them; the presentation of elements that prove that the producers are established in the delimited geographical area and are, effectively, producing the good.

A second kind of GI "*denomination of origin*" ("*denominação de origem*" in Portuguese) requires, in addition to the two conditions mentioned above, the description of the quality and characteristics of which are due exclusively or essentially by geographical environment, including natural and human factors.

They are two several registrations, with implications and different juridical and economic consequences.

The use of the geographical indication is restricted to those producers and service providers who are established in that locality, and it is also demanded, concerning denominations of origin, that the quality requirements be satisfied.

The INPI is the agency responsible for the registration of GI (it shall establish the conditions for registration of geographical indications. The INPI made them through the Resolution n. 75/2000).

In Brazil, the register of a GI does not confer a strict sense property right, but it may be considered a collective good (being important to stress that the Brazilian law does recognize the existence of collective marks). The difference between a collective mark and a GI derives from the recognition of quality arisen from the production originated from that geographic region, previously to and independently from any formal and official GI recognition.

According to INPI Resolution n. 75/2000, section 7, paragraphs 1, "c" and 2, "d", the applicant of a GI must present elements that prove that the producers are established in the delimited geographical area and are, effectively, producing the good. Based on such

requirement it is possible to consider that "use" is somehow equivalent to "effective production" of the good.

The scope of protection of a GI in Brazil is heavily based on the unfair competition rules and, therefore, similar to the trademark protection, aiming the protection of producers and consumers, avoiding confusion concerning false and unfair indication of source or denomination of origin.

Brazilian Law does not provide guidance for specific use of elements of the GI, as well as does not provide a guideline for the differentiation between the scope of trademark and GI.

CONCLUSIONS

Be noticed that a product that enjoys the Indication of source will have the exclusive right of using the geographical name where it is manufactured. Even so, a product that stops the Denomination of Origin it won't announce, with exclusiveness, just the geographical name. The geographical name will denominate the product, as it happens, for example, with two products of France: the brandy manufactured in the area of Cognac is denominated "cognac", and the foamy white wine manufactured in the area of Champagne it is denominated champagne. The brandy manufactured in the area of Cognac shows off qualities and only, peculiar characteristics, differentiated of the other brandies manufactured in the world, characteristics these owed exclusive and essentially to that area, included the natural and human factors. Those factors are the soil and the climate, the knowledge, the technology, the way of doing peculiar, the pertinent wisdom, the practices, the tradition, the culture that gravitates around the activity and of the product. In the Denomination of Origin it is not enough that the geographical name is famous, that the place has if turned well-known as center of production certain product. Ally to the "natural and human" factors, another element is indispensable: the quality. But it is not just the "legal" quality, that is to say, that the product executes the specifications and demands of the law. If it be drunk, for example, it is not enough that it is just resulted of a certain production process, possess a certain chemical composition, have a certain jam, that its normal ingestion is not harmful, noxious or lethal to the health and the human life. This quality is not enough. That is as the politician to be honest. It doesn't pass of an obligation. The quality that differentiates and it denominates, for example, the drinks cognac and champagne are the sensorial quality, the superiority and excellence in the appearance, color, consistency, texture, aroma, flavor and digestibilidade. This sensorial excellence is checked by sensorial banking formed by professional tasters, for formed fitting room and trained that are attested that brandy fact in the area of Cognac it is really cognac or it doesn't happen of a simple brandy as so many others; if that foamy white wine done in the area of Champagne is champagne or it doesn't pass of a simple one foamy done in so many other places of the world.

Therefore, the definition of indication of source is a generic form of reference to categories of products without identification of specific qualities.

In function of these informations, it is recommended that the composition of the Resolution 75/00 of INPI is improved, in way the:

a) to suppress, of the caput of its art. 5o, the expression " in the quality of substitutes in the register process ", not only in function of the determination in the that article, but also by virtue of the fact of § 1o of this art. 5o to allow the registration for producer or outsource company, not being exact to speak in the hypothesis of processual substitution;

b) to add to § 1o of the art. 5o the following composition: " If to any moment, later on to the coming of the individual registration, other producers or outsource company appear equally legitimated for the exclusive use of the same geographical indication, they cannot the same ones to request the modification of the registration, for of him to do to consist the legitimated " collective;

c) to include, so much in the caput as in the alínea " the " of the interruption I of the art. 6o, after the expression " geographical " name, the object " expression or figurative sign that has acquired geographical " connotation, because the geographical indication not always it refers to a geographical name (cf. art. 179 of the Law 9.279/96;

d) to suppress the interruption III of the art. 6o, before the lack of clarity of the notion of " regulation of use of geographical " name and for the generality of the expression, that is applied faintly to indications of source and denomination of origin;

e) to suppress the alínea " b " of the art. 7o, § 1o, because the control structure foreseen in such device since it is not appropriate to the own nature of the origin indication, that releases any control structure on the producers or outsource company that are entitled to the use of the origin indication.

However, it blunts fundamental an imperious reflection on the theme in the national ambit, so that the knowledge are deepened on the institute of the geographical indication and its importance, so much for the Public Power as for the productive section, is always tended in mind that the regulation and the juridical safety are essential to the geographical indication and the pillars of its quality and prestige.