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Geographical Indications policy and system under Decision 486 of Andean Community

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AGENDA

- **GI under Decision 486 (the Law)**
- **How are protected GI in the Andean Community?**
- **The GI Dilemma in LA: PISCO**
- **Some relevant issues still under discussion**

GI under Decision 486 (The Law)



APELLATION OF ORIGIN as a GI in D. 486

Decision 486 Article 201. – “An appellation of origin shall be understood to be a geographical indication consisting of the name of a particular country, region, or locality, or of a name which, without being that of a particular country, region, or locality, refers to a specific geographical area, which name is used to identify a product originating therein, the qualities, reputation, or characteristics of which are exclusively or essentially attributable to the geographical environment in which it is produced, including both natural and human factors.”

APELLATION OF ORIGIN as a GI in D. 486

Decision 486 Article 203. –

“The declaration of protection of an appellation of origin shall be made ex officio or at the request of persons who are able to prove a legitimate interest, such being natural persons or legal entities directly engaged in the extraction, production, or processing of the product or products to be covered by the geographical indication, as well as associations of producers.”

INDICATION OF ORIGIN as a GI in D. 486

Decision 486. Article 221. –

“An indication of origin shall be understood to be a name, expression, image, or sign that indicates or evokes a particular country, region, locality, or place.”

INDICATION OF ORIGIN as a kind of GI in D. 486

Decision 486 Article 222. –

“An indication of origin may not be used in the course of trade for a good or service where that indication is false or misleading or where its use is likely to cause confusion in the public as to the origin, source, quality, or any other characteristic of the good or service in question.”

INDICATION OF ORIGIN as a GI in D. 486

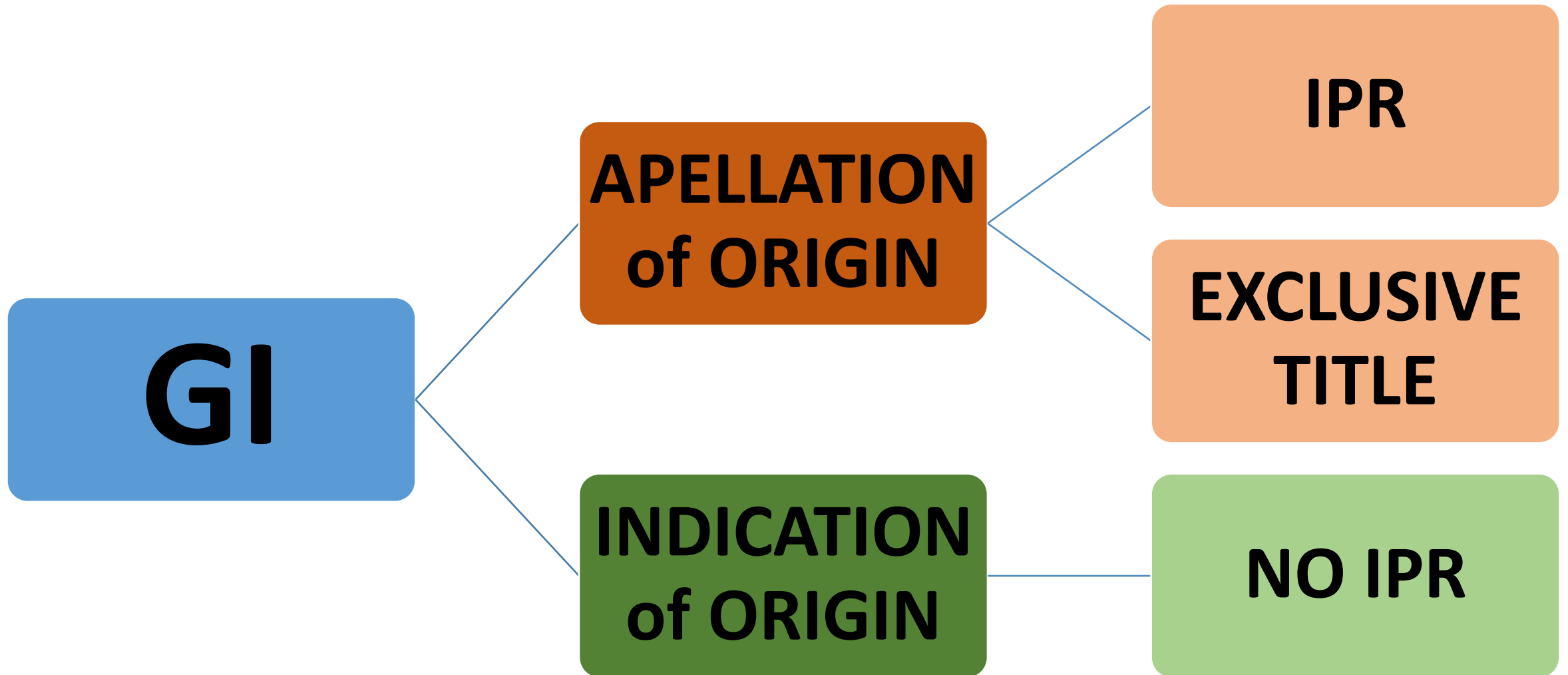
Decision 486. Article 223. –

“Persons may state their names and domiciles on the goods they market, even if those products come from another country, provided that the country or place where those goods are manufactured or produced is specifically and clearly stated also, together with any other indications that may be needed to avoid mistaking their true origin.”

How are protected GI's in the Andean Community



GI under D. 486



GI under D. 486

In Colombia, Peru, Ecuador and Bolivia “Geographical Indications” are a general category of IP embracing two subcategories:

1. Appellation of Origin (AO), and
2. Indications of Source (IS).

AO confers an specific IPR that must be declared and granted by Patent and Trademark Office, requested by an interested parties or ex-officio by government authority for certain period of time.

IS do not confer proper exclusive rights and are instead conceived as mere indications of the geographical origin of the goods, subject to the general obligation not to convey misleading information to consumers.

PURPOSE OF PROTECTION OF GI

- GI's is a collective IPR rather than individual or corporative IPR
 - They do not require novelty or lack of previous disclosure or secrecy in order to be protected
 - Require tradition, well-known and traditional knowledge of a region or country applied to a specific product and its quality and distinctive characteristics
 - GIs one of the most suitable IP rights for agricultural-food and craftsmanship SMEs.
 - Examples:
 - TEQUILA (MX)
 - MEZCAL (MX)
 - PISCO (PE and CL)
 - CAFÉ DE COLOMBIA (CO)
 - CLAVEL DE COLOMBIA (Carnation from CO)
 - CACAO ARRIBA (Cocoa in EC)
 - MONTECRISTI (Hats EC)
-

Examples of GI in Andean Community and LA

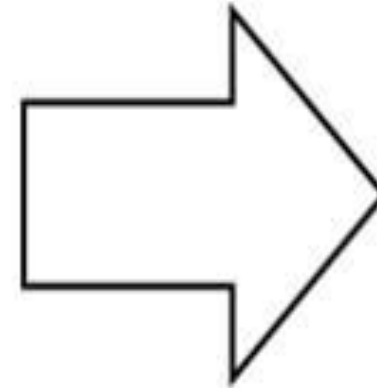


Examples of GI in Andean Community and LA

Carnations



Sello Anterior



Nuevo Sello



PERUVIAN PISCO



CHILEAN PISCO





Montecristi Hat



GI Declaration and Registration as IPR

PTO in both declare the existence of a GI and register the right. The basic steps for registering a GI are:

- 1) Identify the specificity of the product, which may derive from its quality, one of its characteristics or its reputation.
- 2) Define the place, territory or region within which the product presents the specificity.
- 3) Identify the specific conditions of the geographical environment existing in the defined place, territory or region and check that the singularity of the product is essentially or exclusively due to those conditions.
- 4) Define and describe in detail the product and its method of production.
- 5) Register the GI and enjoy the protection granted in the territory for which it has been registered.

INTERNATIONAL GI PROTECTION IN LA

1. TRIPS Section 3 part II, articles 22, 23 and 24
2. Lisbon System: Applicant may obtain protection in several countries (provided those countries have signed the relevant international agreement) by means of a single application filed with the International Bureau.
3. Only few countries in LA signed the Lisbon Agreement. In Latin America only Cuba, Costa Rica, Nicaragua, Mexico and Peru are members of the Lisbon System
4. Bilateral agreements concluded between the EU and certain Latin American countries establish mutual recognition of existing GIs in each contracting party.
5. Particularly relevant because of the impact of protection in LA for GI, the EU has concluded agreements for mutual recognition of agricultural GIs with Chile, Colombia, Peru, Mexico, Costa Rica, El Salvador, Guatemala and Honduras.

GI SUMMARY IN THE ANDEAN COMMUNITY COUNTRIES

| ANDEAN COUNTRY | NATIONAL AUTHORITY | REQUIREMENTS | COST |
|----------------|---|---|---------|
| PERU | Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI) | Certification of compliance with the Peruvian Technical Standards, where applicable | USD 125 |
| COLOMBIA | SIC | Where the applicant is an association of producers, disclosure of the total number of producers, manufacturers or extractors within the geographical area | USD 200 |
| ECUADOR | SENADI (former IEPI) | None | USD 0 |



**THE GI DILEMMA IN LA:
PISCO
IS IT A GI FROM PERU OR
FROM CHILE?**



PERUVIAN PISCO



CHILEAN PISCO



PISCO: THE DILEMMA

India granted to Peru a GI over Pisco despite of Chile objections (2009)

EU recognizes Chilean Pisco and Peruvian Pisco as GI. However, the protection granted to "Pisco" as a GI to Peru does not hinder the use of that name for products originating in Chile.

Malasia recognizes Pisco as a GI from Peru as well as Costa Rica
Chile and Nicaragua recognizes Pisco as a GI from Chile.

As of May 16, 2013, the TTB (Trade and Tax Bureau) of the United States recognized “Pisco Perú” as a distinctive product of Peru, and “Pisco Chileno” as a distinctive product of Chile.

PISCO: A GI FROM CL or PE?

Peruvian Pisco:

- Pisco may be produced in the Peruvian departments of Lima, Ica, Arequipa, and Moquegua, as well as the valleys of Locumba, Sama, and Caplina in the Department of Tacna.
- There are eight grape varieties authorized for use: The aromatic varieties are Italia, Moscatel, Albilla and Torontél, and the non-aromatic varieties include Quebranta, Negra Criolla, and Mollar.
- Peruvian Pisco is produced via pot still distillation.
- It must be bottled at the same level of alcohol as when it was produced. Thus, additives of any kind – including water and neutral spirits – are prohibited, so the distillation must be precise. The alcohol percentage must be between 38 and 48 percent.

Peruvian Pisco is not aged in wood. It is required to be aged for a minimum of three months in vessels made of copper, glass, stainless steel, clay, or other inert material

PISCO: A GI FROM CL or PE?

Chilean Pisco:

- It is produced in the Atacama and Coquimbo regions, two official A.O. (Apellation of Origin) wine-producing regions established in 1931. The Elqui Valley subregion of Coquimbo has emerged as the premier Pisco zone.
- The main grapes used for making Chilean Pisco include Pink Muscat, Muscat of Alexandria, Pedro Jiménez, and Torontél.
- Chilean Pisco is generally double-distilled via pot stills to a maximum strength of 73% alcohol by volume and the minimum alcohol by volume is 40%.
- All Chilean Pisco must rest for a minimum of 60 days before bottling.
- It is sometimes diluted with water, or cut with neutral spirits to alter the final alcohol content by volume.

**Cases and relevant issues
under discussion**



Main obstacles for obtaining registration of a GI in LA

- Pre-existence of registered Trademarks: Trademarks consisting of or containing the expression protected by the GI (in the country or territory of origin) may have been registered and/or used in connection with the same goods in third countries.
- IP Law in some countries in Latin America grants priority to those earlier trademarks, unless it is proved that earlier trademarks are deceptive or were applied in bad faith.

Main obstacles for obtaining registration of a GI in LA

- Generic nature of the GI: Geographical expressions that are protected in some country as GI (e.g. European Union) may be considered generic names in some other countries (i.e. names that identify a certain type of agricultural product). Thus, registration as a GI may be refused.
- In some cases, the name concerned is not only commonly used as a generic name in a third country but also governed by common foodstuffs legislation. This is the case of the Argentinian Food Code which assigns a generic nature to several GIs protected in the European Union, e.g.: “Queso Parmesano” (Parmesan cheese).
- Colombia: many European GIs for cheese were considered generic until both parties (the EU, on the one hand, and Colombia plus Peru, on the other) signed a Trade Agreement on 26 June 2012, providing for mutual recognition and protection in each territory of the other party’s GIs.

GI under the FTA Agreements with EU and USA

FTA of EC, PE and CO with USA:

1. Not recognition of the GI, as such (USA does not accept the GI)
2. GI transformed into a Certification Trademark in the US.
3. Law applicable for GI in the Andean Countries in the US: trademark law.
4. US TM Law ignore the advantages of a GI.

FTA of EC, PE and CO with EU:

1. GI is recognized for Parties in the FTA and Geographical Indication of Origin (as per TRIPS definition)
2. Fast track declaration and recognition of EU's and Andean Countries' GI in each territory
3. Economic advantage in the use and defense of the GI in each territory. E.g. Parmessan Cheese vs Queso Paipa (Paipa Cheese).

THANK YOU

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ご清聴ありがとうございました

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