

5 PROTECTION OF TRADITIONAL KNOWLEDGE AND BIODIVERSITY THROUGH A HIGHER PROTECTION OF GEOGRAPHICAL INDICATIONS: A REVIEW OF COLOMBIA'S POSITION AT THE WTO

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ABSTRACT

This article examines two crucial issues for Colombia concerning the amendment of the WTO TRIPS Agreement. Colombia supports the establishment of an obligation to disclose information related to the origin of genetic resources and traditional knowledge when filing a patent claim. This reflects Colombia's interest in ensuring the protection of biodiversity and traditional knowledge. Moreover, Colombia supports the proposal to extend to other products the higher protection given to wine and spirits under Article 23 of the TRIPS Agreement. The second section focusses on the lack of a WIPO or WTO international binding instrument aimed at protecting the natural resources and traditional knowledge of developing countries. It highlights the advantages of protecting plant varieties, biodiversity and traditional knowledge of local communities and indigenous peoples by geographical indications (GIs). The third section reviews the products that have been granted GI protection in the Colombian intellectual property system. Given the diversity of products that could benefit from GI recognition in Colombia, the fourth section focusses on the arguments in favour of extending the protection given to wines and spirits to other goods. Finally, some conclusions are proposed regarding the potential of GIs to contribute to the progress of rural areas in most developing countries. Geographical indications are described as mechanisms that are likely to be easily implemented in the developing world through public policies at the local and national government levels.

Key words: *Geographical indications (GIs), Traditional Knowledge (TK), biodiversity, plant varieties, development, Colombia*

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I. INTRODUCTION

One of the crucial issues for Colombia regarding the amendment of the TRIPS Agreement is the extension of the protection given to wine and spirits under Article 23 to other products. For Colombia there are other concerns such as the relationship between pharmaceutical patents and public health; the requirement for patent applicants to disclose information about the origin of genetic resources or traditional knowledge used in their inventions; and the protection of traditional knowledge and folklore.

In this respect, Colombia was a co-sponsor of documents IP/C/W/474¹ and TN/C/W/52² as part of the WTO Doha Round Negotiations. Colombia believes that an international binding instrument under the WIPO and WTO is required, in order to protect biodiversity and traditional knowledge. This explains why Colombia is in favour of the obligation to disclose information related to the origin of genetic resources and traditional knowledge used when filing a patent claim. Furthermore, Colombia is a staunch advocate of extending the higher protection given to wines and spirits under the TRIPS Agreement to other products, as an absolute necessity for developing countries.

Colombia provides protection for a variety of manufactured and agricultural products through denominations of origin (DOs), and has also sought to obtain the same treatment for its goods in other markets. For instance, in 2007, *Café de Colombia* was the first non-European product to obtain recognition as a protected geographic indication (PGI) in the European Union.

This article is in favour of GI protection of possessions frequently present in developing countries, such as the makings (known as traditional knowledge) of indigenous peoples and local communities, and biodiversity. Despite their use to protect mainly foodstuffs, GIs are described among intellectual property authors as an appropriate mechanism under current international intellectual property laws for protecting traditional knowledge and biodiversity.

¹WTO Doha Work Programme – The Outstanding Implementation Issue on the Relationship between the TRIPS Agreement and the Convention on Biological Diversity - Communication from Brazil, China, Colombia, Cuba, India, Pakistan, Peru, Thailand and Tanzania. Revised Documents WT/GC/W/564/Rev.2 TN/C/W/41/Rev.2 IP/C/W/474 dated 5 July 2006.

²WTO Trade Negotiations Committee – Draft Modalities for TRIPS-Related Issues - Communication from Albania, Brazil, China, Colombia, Ecuador, the European Communities, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group. Document TN/C/W/52 dated 19 July 2008.

To this end, the second section of this article focusses on the lack of an international binding instrument to protect the natural resources and traditional knowledge of developing countries. This section also discusses the advantages of protecting plant varieties, biodiversity and traditional knowledge-based products of local communities and indigenous peoples by GIs.

The third section focusses on the instruments for granting GIs in Colombia and the goods that have been protected under the Colombian intellectual property system. Given the diversity of products that could obtain GI recognition in Colombia, the fourth section of this article focusses on the extension to other goods of the protection provided in the TRIPS Agreement to wines and spirits.

Finally, the article concludes that GIs can indeed contribute to the economic progress of poor areas in most developing countries. The article regards GIs as an effective mechanism for enhancing development around the globe if implemented through public policies at the local and national government levels. Developing countries should therefore continue lobbying for TRIPS Agreement protections that grant to all goods the same protection given to wines and spirits, in order to protect intellectual creations which are currently unprotected.

II. ADVANTAGES OF PROTECTING PLANT VARIETIES, TRADITIONAL KNOWLEDGE AND BIODIVERSITY THROUGH GEOGRAPHICAL INDICATIONS

No international binding instrument provides protection for plant varieties, traditional knowledge and biodiversity. Such goods are of considerable importance for developing countries. Despite the efforts from the developing world in international forums such as the Convention on Biological Diversity and in international organizations, including the WTO, WIPO, WHO, FAO, UNESCO and UNCTAD³, an international legal instrument has yet to be developed. Consequently, we need to consider the advantages of other intellectual property rights such as GIs in ensuring protection of these makings and goods.

The proposal described above has been called into question. There are indeed drawbacks to GIs and they are not suitable to protect all plant varieties and

traditional knowledge expressions such as folklore and medical procedures.

A. PLANT VARIETIES

Plant varieties are currently protected by plant breeders' rights under the International Convention for the Protection of New Varieties of Plants 1978 and 1991 (UPOV Conventions). Plant varieties can also be protected by patents under the TRIPS Agreement.

One of the problems with these rights is that they are not conceived to protect plant varieties created through artisanal breeding techniques. Plant varieties produced by most indigenous peoples and local communities within the developing world do not qualify for patents or plant breeders' rights. Plant breeders' rights and patents benefit big corporations that develop new plant varieties through biotechnology or costly genetic engineering processes.

Whereas plant breeders' rights and patents over plants provide protection for their right holders by limiting the breeder's exemption and the farmer's privilege under UPOV 1991⁴, plant varieties developed by indigenous and local farmers remain unprotected. This trend towards enhancing protection generates other problems, as pointed out by Mohammad Towhidul Islam⁵, such as increased farming costs.

In order to reduce starvation and extreme poverty among indigenous and traditional farmers, an adequate tool needs to be developed that will enable them to continue producing plant varieties and growing crops according to their own traditional methods.

In order to obtain new varieties adaptable to their environment and needs, these traditional methods involve collective work, rather than individual research. This has been well illustrated by Salazar, Louwaars and Visser, who argue that traditional farmer-breeders 'provide material to their communities and often need the involvement of their fellow farmers since they do not possess sufficient land and time to manage the trials on their own farm'.⁶

³ Carlos Correa and others, 'Chapter 4 Traditional Knowledge and Geographical Indications' in 'Integrating Intellectual Property Rights and Development Policy: Report of the Commission on Intellectual Property Rights' (3rd edn, Commission on Intellectual Property Rights 2003) 75.

⁴ Laurence R Helfer, 'Intellectual Property Rights in Plant Varieties. International Legal Regimes and Policy Options for National Governments' (FAO 2004) 28.

⁵ Mohammad Towhidul Islam, 'Protection of Public Interests through a Human Rights Framework in the TRIPS Agreement: Realities and Challenges' (2009) 4 *Journal of Intellectual Property Law and Practice* 579.

⁶ Rene Salazar, Niels P Louwaars and Bert Visser, 'Protecting Farmers' New Varieties: New Approaches to Rights on

Moreover, Helfer calls attention to the inconvenience of utilizing seeds developed and commercialized by new plant breeders, instead of the plant varieties produced by traditional methods. Whereas, the former has uniform genetic characteristics and could have adverse effects on the biodiversity of most developing countries, the latter is suitable for local growing conditions.⁷

Governments have the obligation to guarantee the rights of its less favoured groups. Geographical indications are presented as an alternative due to the advantages they offer, given the lack of mechanisms for protecting plant varieties obtained through traditional breeding techniques developed by indigenous peoples and local communities, which are transmitted from generation to generation as traditional knowledge. For instance, Dagne discusses the suitability of GIs for protecting traditional knowledge-based agricultural products (TKBAPs)⁸, which lack the novelty requirement needed for protection as plant breeders' rights under the 1978 and 1991 UPOV Conventions, and also for obtaining a patent under the TRIPS Agreement.⁹

Geographical indications could serve to protect plant varieties improved through time on the basis of traditional knowledge which become nationally or even internationally known due to their special qualities or reputation, and could be associated with a specific community or indigenous people or a geographical location. Even though GIs might not be an ideal tool to protect plant varieties, they could be useful until an appropriate scheme is established in the international arena. In this regard, GI protection is comparable to the suggestion made by Salazar, Louwaars and Visser, for the establishment of an alternative system that focusses on recognition and protection, rather than property.¹⁰

Collective Innovations in Plant Genetic Resources' (2006) CAPRI Working Paper #45 18-19.

⁷ Helfer (n 5) 16.

⁸ This author states that 'the expression "Traditional Knowledge-based agricultural products"' (TKBAPS) refers to the resources among indigenous people and local communities engaged in agricultural production who utilize traditional means of production.' Teshager Worku Dagne, 'Harnessing the Development Potential of Geographical Indications for Traditional Knowledge-Based Agricultural Products' (2010) 5 Journal of Intellectual Property Law and Practice 441- 42.

⁹ Ibid 447; Helfer (n 5) 26-27, 71.

¹⁰ These authors called this alternative scheme of protection 'origin recognition rights', based on the principle of declaration of origin and farmers' registers. Salazar, Louwaars and Visser (n 7) 25.

B. TRADITIONAL KNOWLEDGE

Given that GIs protect goods, they are not adequate to protect processes, techniques or cultural expressions such as dances and poetry. However, many of the forms in which traditional knowledge is expressed are goods such as plant varieties, food products, and handicrafts. Considering their characteristics, these forms of traditional knowledge could well be protected by GIs,

As mentioned above, GIs are helpful in protecting plant varieties such as TKBAPs. In addition, governments often protect handicrafts and artistic creations of indigenous peoples through GIs. For instance, Colombia has granted protection, under appellations of origin (AOs), to several products manufactured by indigenous communities, including ceramic works and sewing¹¹; likewise, India has granted protection to cultural products such as saris, the traditional dress used by Hindu women.¹²

Geographical indications serve to protect the creations of indigenous peoples and local communities based on traditional knowledge, because they do not confer a monopolistic right to an individual; instead, they confer a collective right that could benefit an entire population. Therefore GIs constitute an intellectual property right that is perfectly adaptable to the particularities of indigenous communities, since most of them consider that all their assets belong to the group as a whole¹³, or even go further by denying any form of private property, including the collective one.

Additionally, GIs do not grant a time limitation. The protection lasts while the special characteristics associated with the product subsist. For this reason and those listed above, GIs are well suited to protect TKBAPs and artisanal works, so long as these goods preserve the quality and reputation associated with them, as required in most GI systems.

C. BIODIVERSITY

There are some plants and natural resources that are original and exclusive to a country or region. These natural resources can be distinguished from other similar products by particular characteristics that make them more appreciated and valuable. Consequently, it can be said that these biodiversity products, characterized by their 'uniqueness',

¹¹ Superintendencia de Industria y Comercio, 'Productos con Denominación de Origen'

<<http://www.sic.gov.co/drupal/productos-con-denominacion-de-origen>> accessed 10 June 2014. The appellations of origin in Colombia will be enumerated in the following section of this paper.

¹² Dagne (n 9) 445.

¹³ Ibid 446, 451.

deserve special protection. As a result, GIs are an appropriate tool for protecting goods such as basmati rice (from the Punjab State in India and the Punjab State in Pakistan)¹⁴ or jasmine rice¹⁵, the argan tree from Morocco, or white giant maize from Peru, among others. In these cases, the goods or products involved could not only obtain the protection provided for by Article 22 of TRIPS, but the stronger one for wines and spirits under Article 23 of this instrument.

Protecting plants, animals and other resources originating from particular areas prevents foreign companies from patenting them to monopolize their commercialization, a practice known as biopiracy.¹⁶ Collective trademarks or GIs could grant this protection.

As opposed to collective trademarks, GIs link products to their quality and reputation and contribute to maintain traditional procedures and production methods that make goods distinguishable from their equivalent, such as environmental, moral, and ethically based standards established within a community. Geographical indications grant protection to certain goods produced by a community and could help to promote compliance with those 'sustainable' standards, while preserving biodiversity.¹⁷

In the absence of adequate protection for these valuable natural resources, biopiracy is more likely, as in the case of India with Basmati rice, which was patented by an US company¹⁸, or Rooibos tea from South Africa, registered as a trademark in the same market.¹⁹ However, in both cases the original producers have recovered their rights. 'Rooibos' benefits from strong protection since 2013.²⁰ Furthermore, lack of protection can result in

overexploitation of a biodiversity resource and its consequent extinction, whereas its protection under a GI that is adequately managed by a local community or indigenous people, can contribute to its conservation.

In addition to the arguments discussed above, all these goods (plant varieties obtained through traditional methods, traditional knowledge and biodiversity resources) are a source of livelihood for populations in developing countries in remote and rural areas. Therefore, those goods need to be adequately protected, in order to allow the developing world to take advantage of international intellectual property regimes. Intellectual property rights are currently reaching only a handful of companies and private organizations from developed countries, those who monopolize the trade in patented goods and trademarks.

The effectiveness of GIs in boosting development in a particular region is notable. They are directly related to enhancing commercial opportunities for local producers. For instance, they contribute to activities related to the production of protected goods such as tourism, investment in infrastructure and the creation of new jobs.²¹ Additionally, as stated by Banerjee and Majumdar, they help to protect 'the region's agricultural, artisanal, and culinary heritage, as well as protecting consumers from deceptive geographic misdescriptions of goods'.²²

Finally, as opposed to other forms of intellectual property, in the Colombian Intellectual property System, GI protection can be claimed by local authorities such as the mayor of a municipality or the governor of a department. In these cases, it is necessary to demonstrate the legitimate interest of the requesting authority according to Section 7.1.2.1.2 of Resolution 57530 (2012).²³

Accordingly, obtaining GI protection for renowned goods produced locally could serve as a public policy mechanism to promote development in rural or remote areas. This policy should be designed and

¹⁴ Ibid 454.

¹⁵ Ritika Banerjee and Mohar Majumdar, 'In the Mood to Compromise? Extended Protection of Geographical Indications under TRIPS Article 23' (2011) 6 *Journal of Intellectual Property Law and Practice* 660.

¹⁶ As defined by the Action Group on Erosion, Technology and Concentration (ETC Group) and cited by Correa and others, biopiracy is the 'appropriation of the knowledge and genetic resources of farming and indigenous communities by individuals or institutions seeking exclusive monopoly control (usually patents or plant breeders' rights) over these resources and knowledge'. Correa and others (n 4) 74.

¹⁷ Dagne (n 9) 451.

¹⁸ Banerjee and Majumdar (n 16) 661.

¹⁹ María Paola Rizo, 'La Protección de Las Indicaciones Geográficas' (2011) 10 *Perspectivas Rurales*. Nueva época 51.

²⁰ Andre van der Merwe, 'South and Southern Africa—Recent Developments in the Legal Protection of Traditional Knowledge and Traditional Cultural Expressions' (2014) 9 *Journal of Intellectual Property Law and Practice* 416-17.

²¹ Superintendencia de Industria y Turismo, 'Manual de Denominaciones de Origen' (2013)

<http://www.sic.gov.co/drupal/recursos_user/documentos/denominacion_de_origen/cartilla_manual_denominaciones_de_origen.pdf> accessed 27 October 2014 8.

²² Banerjee and Majumdar (n 16) 658.

²³ Superintendencia de Industria y Comercio, 'Resolución 57530 de 2012 'Por la cual se adiciona el Capítulo VII, titulado Denominaciones de Origen, al Título X sobre Propiedad Industrial de la Circular Única de la Superintendencia de Industria y Comercio''. <http://www.sic.gov.co/drupal/sites/default/files/normatividad/get_file%3Fuuid%3D254248f9-0c32-41e4-84f5-56194d3907cf%26group%3D10157_0.pdf> accessed 15 October 2014.

managed by the government authorities, reducing the costs associated with obtaining protection, which most indigenous and local communities in developing countries cannot afford.

III. GEOGRAPHICAL INDICATIONS GRANTED BY COLOMBIA'S IP AUTHORITIES

International laws govern Colombia in certain matters. As a member of the Andean Community, Colombia, together with Ecuador, Peru and Bolivia, has a common intellectual property regime. The Andean intellectual property regime is contained in Decision 486 of 2000 issued by the Andean Commission. This Decision follows the guidelines established under the TRIPS Agreement. In addition, Colombia has national laws related to intellectual property, such as the Commercial Code and a variety of laws, decrees, resolutions and circulars from the Ministry of Trade, Industry and Tourism and its Superintendence of Industry and Trade (SIC, by its name in Spanish). The SIC is the authority responsible for the management and enforcement of industrial property law, competition and consumer rights law.

Andean Decision 486 of 2000 regulates two different kinds of GIs under Title XII thereof²⁴: appellations of origin (AO) (called denominations of origin (DO) in Colombia's intellectual property system)²⁵, similar to appellations of origin under the Lisbon Treaty and protected designations of origin (PDOs) in the European System.²⁶ These appellations of origin or denominations of origin link the quality and reputation of any product or good (not only agricultural products) to a particular location or community. The other type, indication of source (IS)²⁷, is comparable to indications of origin (IO) of the European Union, which simply designate the place where a product comes from, without making any association with its characteristics.

In order to obtain a denomination of origin under Colombian legislation, a good shall be linked to a quality or characteristics associated with a specific geographical environment, pursuant to Article 201 of the Andean Decision 486, which provides:

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.

A geographical environment is understood not only to be a particular place or geographical location, but also to contain human factors, which in turn incorporate the qualities or characteristics into the product that is claimed to deserve protection as a denomination of origin.

From 2005 to 2014, the Superintendence of Industry and Trade granted protection to 20 different products covering agro-food and handicrafts, in compliance with the stated requirements. The table below sets out a list of existing denominations of origin in Colombia, including the applicants and the resolution that granted the protection:

²⁴ Commission of the Andean Community, 'Decision 486 Common Intellectual Property Regime (non official translation)' [2000] <<http://www.comunidadandina.org/INGLES/normativa/D486e.htm>> accessed 6 September 2014.

²⁵ *Ibid* Arts 201-20.

²⁶ Patricia Covarrubia, 'The EU and Colombia/Peru Free Trade Agreement on GIs: Adjusting Colombian and Peruvian National Laws?' (2011) 6 *Journal of Intellectual Property Law and Practice* 334.

²⁷ Articles 221-23.

Table 5.1. Denominations of Origin (DOs) granted in Colombia by the Superintendence of Industry and Trade			
AGRO-INDUSTRIAL PRODUCTS			
	Denomination of Origin	Applicant	Declaration
1	<i>Café de Colombia</i> (Colombian Coffee)	<i>Federación Nacional de Cafeteros de Colombia</i> (Colombian National Federation of Coffee Growers)	Resolution 4819 4 March 2005
2	<i>Café de Cauca</i> (Coffee of Cauca)	Colombian National Federation of Coffee Growers	Resolution 43536 21 December 2007
3	<i>Café de Nariño</i> (Coffee of Nariño)	Colombian National Federation of Coffee Growers	Resolution 4819 4 March 2005
4	<i>Café de Huila</i> (Coffee of Huila)	Colombian National Federation of Coffee Growers - National Coffee Fund	Resolution 23115 20 April 2012
5	<i>Cholupa del Huila</i> (<i>Passiflora maliformis</i> L of Huila)	<i>Gobernación del Huila – Secretaría de Salud Departamental</i> (Governor of Huila - Department of Health)	Resolution 43536 21 December 2007
6	<i>Queso del Caquetá</i> (Caquetá Cheese)	<i>Comité Departamental de Ganaderos del Caquetá</i> (Departmental Committee of Livestock of Caquetá)	Resolution 68463 30 November 2011
7	<i>Queso Paipa</i> (Paipa Cheese)	<i>DTS Alcaldía Municipal de Paipa</i> (Municipality of Paipa)	Resolution 70802 6 December 2011
8	<i>Bizcocho de Achira del Huila</i> (Achira of Huila)	<i>Gobernación del Huila</i> (Governor of Huila)	Resolution 23115 20 April 2012
9	<i>Clavel de Colombia</i> (Carnations of Colombia)	<i>Asociación Colombiana de Exportadores de Flores (ASOCOLFLORES)</i> (Colombian Association of exporters of flowers)	Resolution 53956 10 May 2010
10	<i>Crisantemo de Colombia</i> (Chrysanthemum of Colombia)	Colombian Association of exporters of flowers	Resolution 12071 29 February 2012
11	<i>Rosa de Colombia</i> (Rose of Colombia)	Colombian Association of exporters of flowers	Resolution 12076 21 April 2010
HANDICRAFTS			
12	<i>Cerámica del Carmen de Viboral</i> (Ceramic of Carmen de Viboral)	<i>Alcaldía del Municipio del Carmen de Viboral</i> (Municipality of the Carmen de Viboral)	Resolution 71791 12 December 2011
13	<i>Cerámica Artesanal de Ráquira</i> (Handmade Ceramic of Ráquira)	<i>Acción de Artesanos Muisca de Ráquira-Asomuisca</i> (Action of Muisca Artisans of Ráquira)	Resolution 66272 29 November 2010
14	<i>Tejeduría Zenú</i> (Zenú's Weaving)	<i>Resguardo Indígena Zenú de San Andrés de Sotavento</i> (Zenu indigenous reservation of San Andrés de Sotavento)	Resolution 71097 29 February 2012

Table 5.1. Denominations of Origin (DOs) granted in Colombia by the Superintendencia de Industria y Comercio			
15	<i>Sombreros de Sandoná</i> (Hats of Sandoná)	<i>Gobernación de Nariño</i> (Governor of Nariño)	Resolution 69304 30 November 2011
16	<i>Sombrero Aguadeño</i> (Aguadeño Hat)	<i>Alcaldía Municipal de Aguadas</i> (Municipality of Aguadas)	Resolution 69302 30 November 2011
17	<i>Tejeduría San Jacinto</i> (<i>San Jacinto's Weaving</i>)	<i>Alcaldía de San Jacinto-Bolívar</i> (Municipality of San Jacinto-Bolivar)	Resolution 70849 6 December 2011
18	<i>Cestería en Rollo de Guacamayas</i> (Roll baskets of Guacamayas)	Creatividad Artística Cooperativa de Guacamayas (CREARCOOP LTDA) (Cooperative Artistic Creativity of Guacamayas)	Resolution 30000 19 June 2009
19	<i>Tejeduría Wayuu</i> (<i>Wayuu's Weaving</i>)	Gobernación de la Guajira (Governor of Guajira)	Resolution 71098 7 December 2011
20	<i>Mopa Mopa Barniz de Pasto</i> (Mopa Mopa Varnish of Pasto)	Alcaldía de Pasto (Municipality of Pasto)	Resolution 70002 30 November 2011

Note: Translation, Superintendencia de Industria y Comercio, 'Productos con Denominación de Origen' <<http://www.sic.gov.co/drupal/productos-con-denominacion-de-origen>> accessed 10 September 2014.

Two features are to be noted from the list above. First, in many cases, the request for protection came from a public office or local authority.²⁸ This demonstrates the existing link between GIs and the public interest, as the protected products constitute the main economic activity conducive to the development of the region. Second, it shows the existing relationship between GIs and the collective efforts among the members of a local community. As indicated before, the collective nature of GIs makes inapplicable other forms of intellectual property, which confer exclusive rights to individuals or companies. Therefore, GIs are ideal to protect collective works and traditional knowledge associated with communities.

In fact, 11 out of the 20 denominations of origin granted are related to traditional knowledge; seven of them belong to traditional knowledge of indigenous peoples²⁹, while four are linked to communities from particular locations that have transmitted their artisanal heritage from generation to generation.³⁰ One of the denominations of origin is a biodiversity product (*Cholupa* of Huila [*Passiflora maliformis* L]) from Colombia, which grows

²⁸ Consistent with Section 7.1.2.1.2 of Resolution 57530 of 2012 (n 24).

²⁹ Handmade Ceramic of Ráquira, *Zenu's Weaving*, Hats of Sandoná, *San Jacinto's Weaving*, Roll baskets of Guacamayas, *Wayuu's Weaving*, and Mopa Mopa Varnish of Pasto.

³⁰ Caquetá Cheese, Paipa Cheese, *Achira* of Huila and Aguadeño Hat.

exclusively in the north region of the Department of Huila. Finally, the remaining agricultural products such as varieties of coffee and flowers are goods which represent a considerable investment by their producers to improve their production methods and marketing. These goods are exported to Colombia's main trading partners.

IV. ARGUMENTS IN FAVOUR OF EXTENDING THE PROTECTION GIVEN TO WINES AND SPIRITS UNDER ARTICLE 23 OF THE TRIPS AGREEMENT TO OTHER GOODS

Articles 22 and 23 of the TRIPS Agreement govern the protection of GIs. Article 22 covers all products. This provision provides for a standard level of protection with the aim of preventing misleading consumers or unfair competition. Article 23, on the other hand, applies only to wines and spirits, providing a higher protection for these goods. The use of terms or names of wines and spirits have to be protected even when misleading consumers is improbable.

As noted by Banerjee and Majumdar, the protection given to GIs other than wines and spirits under Article 22 of TRIPS is inadequate. The additional protection of Article 23 through a multilateral registry should be granted to all kind of goods, since GIs not only apply to wines and spirits, but also to dairy products, plants, poultry, handicrafts, and many other commodities.³¹ Therefore, the two-tier

³¹ Banerjee and Majumdar (n 16) 659.

system accorded under the TRIPS Agreement is discriminatory.

Likewise, Evans and Blakeney³² called attention to the contradiction between the limited protection of Article 23 of the TRIPS Agreement and the objectives of the Doha Declaration, as expressed in paragraph 2 thereof³³:

International trade can play a major role in the promotion of economic development and the alleviation of poverty. We recognize the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates.

It is difficult to deny the manner in which the TRIPS Agreement has favoured the economic interests of intellectual property rights' holders in WTO Members within the developed world through patents, industrial designs, trademarks, copyrights and combinations of these systems. However, the benefits of this Agreement have not affected developing countries to the same extent.

India, Egypt and Kenya, countries well positioned in the world trade of commodities, support the wider scope of an additional protection under Article 23 of the TRIPS Agreement. These countries promote the potential positive effects in favour of developing countries.³⁴ The enhanced protection could benefit Colombia and other developing countries. Colombia has started to promote the protection, through GIs, of a wide range of domestically well-known products, ranging from foodstuffs and agricultural goods to handicrafts.

The advantages of GI protection are numerous. For instance, protecting a product's geographic origin, can serve as a mechanism for preventing biopiracy and the misappropriation of natural resources in developing countries.³⁵ On the other hand, protecting products in recognition of the human factors associated with them is an adequate measure to protect and raise the commercial value

of traditional knowledge of local communities and indigenous peoples.

In the short-term, GIs will help to preserve existing biodiversity and cultural heritage in the developing world, and help its sustainable development. In the long-term, this will necessarily contribute to a rise in the income of local communities and indigenous peoples, helping to alleviate poverty and food security problems, and meet their educational and health needs.

To that end, GIs used to protect biodiversity, and plant varieties and other goods produced through traditional knowledge should be combined with other forms of intellectual property protection, some of which have yet to be provided. Since GIs may only prevent others from using similar names for their products, combined strategies are needed to minimize the weaknesses of these intellectual property rights.

Protection by itself is not a sufficient strategy that automatically results in development. Development requires a well designed marketing and commercialization policy. The success in the market of a product granted a GI also depends on the consumer's willingness to pay a higher price for a protected product than for an unprotected one. This is one of the challenges for GIs. However, products granted a GI could be more attractive given their reputation for quality. This will ensure they are more successful in relation to other competitors when they are commercialized in foreign markets.

The case of Café de Colombia is notable. Café de Colombia gained an important market share in Europe after its recognition as a GI within the EU market. This achievement was the result of a lengthy process initiated by the Colombian Coffee Growers Federation to offset the low prices of coffee, which had fallen sharply since the 1950s.³⁶ Moreover, in a globalized world, where consumers can access commodities from everywhere, they are prone to buy more quality products, distinguishable from the average commodities, as occurs with coffee.³⁷

Additionally, rights holders and governments from developing countries must be aware of potential misappropriations of their GIs in other countries through other intellectual property mechanisms such as trademark registries and patent claims. While enhanced protection of all GIs is achieved under TRIPS, developing country Members must direct their efforts to include registry obligations as a commitment in the free trade agreements they are subscribing with developed countries. As suggested

³² Evans and Blakeney, 'The Protection of Geographical Indications After Doha: Quo Vadis?' (2006) 9 *Journal of International Economic Law* 607.

³³ WTO Doha Ministerial Declaration, adopted on 14 November 2001.

³⁴ Evans and Blakeney (n 34) 607.

³⁵ In order to avoid patent claims issued outside the territory from which these products originate (as happened with some Indian plants such as Basmati rice, Jasmine rice, Neem, and Turmeric), as well as trademark registration of these geographical names as in Rooibos from South Africa. Some of these cases, mentioned by Evans and Blakeney (n 34) 607, were largely reported by Banerjee and Majumdar (16) 660, and Rizo (n 20) 51.

³⁶ WIPO (n 3) 16.

³⁷ Evans and Blakeney (n 34) 608.

by Correa, this could be the best way to move forward in the same direction at the main multilateral forums such as WIPO and the WTO.³⁸

It is important to mention that GIs are not merely a property-oriented intellectual property means that confers a local community with an economic asset. On the contrary, a GI is nothing but the recognition of the reputation, quality or value added of a product due to its geographic or human factors. Thus, international GI registries and the extension of the additional protection granted to wines and spirits to all goods will not necessarily contribute to the proliferation of undeserved recognition of GIs, because this intellectual property mechanism still has its specific requirements. In other words, as explained by Rizo, not every product is 'GI-able'.³⁹

Colombia and other such countries should become a signatory to the WIPO-administered Lisbon Treaty, and ratify it. This will allow reciprocal recognition of Colombia's GIs within the Contracting Parties' territories, which bodes well for the protection of its 20 denominations of origin and those forthcoming in the global market. The efforts in the main intellectual property and development forums should be ongoing until progress is made towards the protection of traditional knowledge, biodiversity, international registration of GIs and additional protection for all GIs.

V. CONCLUDING REMARKS

Geographical indications do not constitute the ideal mechanism for intellectual property protection of all creations and products. Plant breeders' rights provide effective protection for new varieties of plants, however, they do not protect plant varieties produced using traditional knowledge-based techniques and methods. Therefore local communities and indigenous peoples from developing countries lack an adequate tool to protect their creations. Geographical indications constitute such a tool, temporarily. As for biodiversity, GIs are a valuable alternative, where there is a lack of a proper instrument for this asset. Well managed GIs that are registered, advertised and commercialized could prevent the granting of patents and trademarks in foreign countries over natural resources, whose origin is from a different country. This could assist in preventing biopiracy and misappropriation of resources from developing countries, while enabling local communities and

indigenous peoples to continue protecting these resources as they have done for centuries.

In the same vein, GIs are undoubtedly suitable for artisanal works, handicrafts and foodstuffs, among others. However, they are not suitable for protecting intangible traditional knowledge such as dances, poetry and other forms of folklore.

Geographical indications are a valuable alternative or complementary means to protect some of the main intellectual property creations and assets from developing countries. In Colombia, where national and local public authorities are entitled to file a request for a GI, this mechanism could be used as a public policy instrument in order to achieve collective goals.

However, GIs are not a remedy to protect all traditional knowledge, plant varieties and biodiversity resources that come from developing countries. In a global market, GIs have to compete against similar unprotected goods with lower prices.

Protecting GIs from developing countries must be part of a wider intellectual property policy, accompanied by marketing and commercialization strategies in local and foreign markets. Under these conditions, GIs will contribute to an increase in income of poor populations from rural and remote areas, which accompanied by adequate policies, will be translated in their development.

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³⁸ This idea is attributed to Carlos Correa, 'Trade Related Aspects of Intellectual Property Rights' (6th edn 2007) 274, cited by Banerjee and Majumdar (n 16) 662.

³⁹ That is to say, protectable under a GI. Free translation for Rizo (n 20) 60.

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