

## 1. THINKING OUTSIDE THE BOX: THE LEGAL AND NON-LEGAL OBJECTIVES OF GEOGRAPHICAL INDICATIONS

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### ABSTRACT

This paper discusses the legal and non-legal objectives of geographical indications (GIs) as an intellectual property right, and introduces the issue of GI management in Brazil in terms of laws and policies. The author presents some approaches adopted by Brazilian GI holders, and highlights their successes and failures. The author argues that GI holders must rethink their strategies to achieve success and further development. Finally, the author suggests specific policy changes focusing on the non-legal objectives of GIs, and the provision of access to a coordinated quality support and advice service.

**Keywords:** *geographical indications, development, policy, law, Brazil*

### 1. INTRODUCTION

Geographical indications (GIs) are a contentious topic worldwide. They are more than just an intellectual property (IP) right, especially after the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) in 1994. They are currently seen, for example, as: (a) a factor in development; (b) differentiation tools in marketing strategies; and, (c) a way to preserve traditional knowledge and cultural expressions.<sup>1</sup>

For these reasons, GIs have attracted increasing attention from policymakers and trade negotiators, as well as producers, lawyers and economists across the world, interested in both international and local GI issues. This is

also due to the TRIPS Agreement's section on GIs, which involves almost the entire world in GI protection.<sup>2</sup> In the previous framework, GI issues were restricted to only the countries that have traditionally protected and promoted GIs (eg France, Italy, Portugal, and Spain).

While there are several aspects in the TRIPS Agreement that need improvement, many countries have begun to build or develop GI protection frameworks based on its agenda, regardless of the nature of protection. There are *sui generis* systems, such as the European Union (EU) and Brazil; collective and certification marks, eg the United States and Australia; and laws focusing on business practices, often used in conjunction with one of the previous options.

Developing nations are pursuing how to best achieve their community and social expectations.<sup>3</sup> They view GIs not merely as a type of IP, but also as means to provide very real benefits to rights holders. In this sense, GI-related success stories demonstrate that, if well managed, GIs can be intangible assets with an interesting potential for product differentiation, creation of added value, and have incidental effects in areas related to the primary product for which the GI is known.

Therefore, there is a stronger call for attention to be paid to the relationships between quality products or services, the environment, territories, cultural heritage, and communities.<sup>4</sup> Those aspects should be part of the whole process; otherwise, the GI register is just a piece of paper. However, it is not easy to achieve legal and public policy maturity as well as development, and many challenges remain, particularly in developing countries<sup>5</sup> such as Brazil. In this context, taking into consideration international rules, the Brazilian legislation, and available

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<sup>1</sup> Suelen Carls, 'Proteção Jurídica Das Indicações Geográficas E Desenvolvimento: O Regulamento de Uso E as Estruturas de Gestão E Controle' (2016) <<http://tede.ufsc.br/teses/PDPC1267-T.pdf>> accessed 10 October 2017; Suelen Carls, 'O

Aproveitamento Da Indicação Geográfica Na Promoção de Desenvolvimento Regional: O Caso Dos Cristais Artesanais Da Região de Blumenau' (2013) <[http://www.bc.furb.br/docs/DS/2013/352885\\_1\\_1.PDF](http://www.bc.furb.br/docs/DS/2013/352885_1_1.PDF)> accessed 10 October 2017.

<sup>2</sup> Daniel Gervais, 'Geographical Indications under TRIPS' in Dev S. Gangjee (ed), *Research Handbook on Intellectual Property and Geographical Indications* (Edward Elgar 2016).

<sup>3</sup> Sarah Bowen, 'Embedding Local Places in Global Spaces: Geographical Indications as a Territorial Development Strategy' (2010) 75(2) *Rural Sociology* 209.

<sup>4</sup> Dev Saif Gangjee, 'Geographical Indications and Cultural Rights: The Intangible Cultural Heritage Connection?' in Christophe Geiger (ed), *Research Handbook on Human Rights and Intellectual Property* (Edward Elgar 2015).

<sup>5</sup> Cerka Bramley and Estelle Bienabe, 'Developments and Considerations around Geographical Indications in the Developing World' (2012) 2(1) *Queen Mary Journal of Intellectual Property* 14.

policies, the Brazilian scenario should be investigated to see whether GIs are achieving stated goals.

Part II of the paper will provide an overview of the legal and non-legal GI goals, with theoretical emphasis on development issues, relying on well-known examples from the GI world. Part III will deal with the Brazilian context, relevant in terms of law and policies, bringing examples from the reality of the national GIs. In Part IV, the author will argue that the producers must rethink their management strategies, as well as highlight the need for policy changes.

## 2. THE LEGAL AND NON-LEGAL OBJECTIVES OF GEOGRAPHICAL INDICATIONS

IP, in all its forms, has proved to be an invaluable tool to generate social, cultural and economic growth and development. That is because “intellectual property (IP) comprises not only the valuable economic assets of private firms, but also the social and cultural assets of society”, which is the scenario where GIs are readily found.<sup>6</sup>

In considering GIs among all types of IP rights (IPRs), it is remarkable that having the geographical name protected is not enough—this is just the beginning. A GI represents a unique blend of intellectual and cultural property, embodied in traditional knowledge, pride, local customs and traditions; these are valued forms of expression for a community. When all those things are brought together and managed in a consistent manner, there will be opportunity for development of the community around the GI.

“The potential impact of intellectual property assets is so great that it is certain to have a considerable effect on national and international economic development in the future.”<sup>7</sup> Therefore, IP needs to achieve much more than just its legal expression, *ie* the registration certificate. The certificate formally ensures that the IP owner has the right to prevent others from making illegal use of the protected intellectual asset, both directly and indirectly, and especially with regards to unfair competition and counterfeiting.

Formal GI registration is also reputed to work on behalf of development objectives, helping producers to add value and gain competitive advantage, since:

They exist in a broader context as an integral form of (...) development that offers a valuable framework for powerfully advancing commercial and economic interests while potentially integrating local needs that are anchored in cultural tradition, environment and broad levels of participation. GIs may be as close to a comprehensive, equitable and market-oriented (...) development package (...).<sup>8</sup>

GIs are a good example of what the literature calls “glocalization,”<sup>9</sup> a term that refers to certain products or services that are present in global markets, and that are concurrently supporting local culture and economies. Therefore, besides a legal function, GIs are market-oriented tools. They may work as an upmarket brand, because GIs usually meet emerging trade demands by quality and food safety standards, which are subject to traceability.

As a function of trade demand, GIs might produce positive impacts on the entire supply chain: they promote the originating territory as a “basket” where the consumer may find other products and services related to the one protected by the GI. The consumer appeal of the territory means that there would be a corresponding increase in the pool of activities among the producers and their families in the area, with the consequent growth of the territory’s income through higher consumer activity.<sup>10</sup>

GIs have the power to reunite a collection of characteristics, such as traditional methods of production and processing known by the community, and special flavours of the raw material. That distinctiveness creates a higher level of desirability for GI products, and provides them with a valuable competitive advantage that is difficult to erode when compared to non-GI similar products that have no commitment to specific quality and food safety standards.

GIs also contribute to comprehensive development. This occurs when a GI generates measurable economic benefits for the greatest possible number of people directly or indirectly involved in its existence, and concurrently improves (or at least refrains from compromising) the social, cultural and environmental conditions of the region in question.<sup>11</sup> In this regard, the

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<sup>6</sup> Yo Takagi et al, *Teaching of Intellectual Property: Principles and Methods* (Cambridge University Press 2008).

<sup>7</sup> *ibid.*

<sup>8</sup> Daniele Giovannucci et al, ‘Guide to Geographical Indications: Linking Products and Their Origins’ (International Trade Centre, 2009) <[http://www.origin-gi.com/images/stories/PDFs/English/E-Library/geographical\\_indications.pdf](http://www.origin-gi.com/images/stories/PDFs/English/E-Library/geographical_indications.pdf)> accessed 17 October 2017.

<sup>9</sup> *ibid.*

<sup>10</sup> Bernard Pecqueur, ‘Qualité et Développement Territorial: L’hypothèse Du Panier de Biens et de Services Territorialisés’ (2001) 261 *Économie Rurale* 37 <[http://www.persee.fr/doc/AsPDF/ecoru\\_0013-0559\\_2001\\_num\\_261\\_1\\_5217.pdf](http://www.persee.fr/doc/AsPDF/ecoru_0013-0559_2001_num_261_1_5217.pdf)> accessed 10 October 2017.

<sup>11</sup> Giovannucci et al (n 8).

interpretive scope of sustainable development of the Our Common Future Report presupposes economic development for the achievement of development in other spheres of life.<sup>12</sup>

A good example of a GI that has achieved development—the non-legal GI goal—is the well-known French cheese Comté. This product generates economic, social and environmental benefits to the relevant area, and has continued to do so. For comparison purposes, Comté will be contrasted with Emmental cheese (which is not under GI protection) in terms of development issues and local community benefits.

Comté cheese, produced since the 12<sup>th</sup> century, is a French Appellation d'Origine Contrôlée (AOC) and was the first GI to be recognised in France in 1958, where it is also protected as a national cultural heritage. At the EU level, it was recognised in 1996.<sup>13</sup>

Presently, Comté production is the most significant among the GI cheeses in France, and has shown continuous growth for the past 20 years. It is well-connected to the EU Common Agricultural Policy (CAP), where the dairy sector is one focus of the common internal market strategy.<sup>14</sup>

The Comité Interprofessionnelle de Gruyère de Comté (CIGC) successfully manages milk producers, cheesemakers, and people responsible for the cheeses' maturation, in addition to others involved in the production of Comté, such as suppliers, distributors, and tourism agents.<sup>15</sup> It is a professional network that comprises intermediaries, economic, political, administrative and academic partners, and represents an association of producers, cooperatives and private companies, linked by history, culture and economic interdependence.<sup>16</sup>

As previously indicated, Comté is often compared to the non-GI Emmental cheese. They share geographical origin and are similar with respect to the final product. Comté, however, opted for a strategy of local development and protection of cultural heritage based on GI. Meanwhile, Emmental follows an industrial production line, without name protection and without geographical link, being produced in several regions in France and abroad, wherever the price of milk is more attractive.<sup>17</sup>

At the microeconomic level, the Comté GI-based strategy offers added value to the production chain. Milk producers for Comté and the dairy sector in the region have a constant increase in profitability, which averages 30% more than for similar products in the Franche-Comté region outside of the GI area.<sup>18</sup> Comté producers can set higher prices for the product and are paid by consumers; this avoids information asymmetry, as well as the risk of buying products with unsecured quality.<sup>19</sup> Also, in the case of Comté, the increase applies to the entire production and supply chain, whereas in the case of Emmental, price increases only benefit the retailers.<sup>20</sup>

With regard to the meso-economic aspects, Comté plays an important role in attracting tourists to the region, contributing to the development of the hotel and food chain, as well as developing the rural properties involved in tourist activities.<sup>21</sup> The "Comté route" leads the tourist through beautiful landscapes and points of reference connected to the cheese. It is an important project for the cultural identity of the region, its products and its way of life.<sup>22</sup>

The strategies adopted by Comté (GI) and Emmental (industrial production) also have different effects on the generation and maintenance of jobs. The former generates five times more jobs per litre of milk

<sup>12</sup> World Commission on Environment, 'Our Common Future: Report of the World Commission on Environment and Development' (UN, 1987) <<http://www.un-documents.net/our-common-future.pdf>> accessed 11 October 2017.

<sup>13</sup> Astrid Gerz and Franck Dupont, 'Comté Cheese in France: Impact of a Geographical Indication on Rural Development' in Petra Van De Kop, Denis Sautier and Astrid Gerz (eds), *Origin-based Products: Lessons for pro-poor market development* (KIT Publishers 2006) <[http://www.mamud.com/Docs/originbasedproducts\\_full.pdf](http://www.mamud.com/Docs/originbasedproducts_full.pdf)> accessed 10 October 2017.

<sup>14</sup> Pierre Colinet et al, 'Comté Cheese in France' (European Communities, 2006) <[http://agrillife.jrc.ec.europa.eu/documents/Casestudies\\_3-Comte.pdf](http://agrillife.jrc.ec.europa.eu/documents/Casestudies_3-Comte.pdf)> accessed 10 October 2017.

<sup>15</sup> Gilles Fumey and Pascal Bérion, 'Dynamiques Contemporaines D'un Terroir et D'un Territoire: Le Cas Du Gruyère de Comté' (2010) 119 *Annales de Géographie* 384 <<http://dx.doi.org/10.3917/ag.674.0384>> accessed 10 October 2017.

<sup>16</sup> Gerz and Dupont (n 12).

<sup>17</sup> Franck Dupont, 'Effects of Geographic Indications' (Promoting Agricultural Competitiveness through Local Know-How workshop, June 7-10 2004); Colinet *et al* (n 13); Hailey P Grohman, 'Semi-Firm, Aged Gold: Rural Economic Effects of AOC Comté and Their Implications for Vermont Agricultural Policy' (2015) UVM Honors College Senior Theses 92 <<http://scholarworks.uvm.edu/hcoltheses/92>> accessed 10 October 2017.

<sup>18</sup> Dupont (n 16).

<sup>19</sup> Sophie Révion and Jean-marc Chappuis, 'Geographical Indications: Collective Organization and Management' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011).

<sup>20</sup> MAAPAR, *Impact D'une Indication Géographique Sur L'agriculture et Le Développement Rural: Le Fromage de Comté* (Ministère de l'agriculture, de l'alimentation, des pêches et des affaires rurales 2004).

<sup>21</sup> *ibid.*

<sup>22</sup> Gerz and Dupont (n 12).

throughout the entire production chain than the latter.<sup>23</sup> Registered migration is also half that in the same region, but where the GI is not in use; so the GI allows the development of more lucrative businesses in the same area of land.<sup>24</sup>

Regarding the environment, Comté's production rules limit the intensification of agriculture, which results in a more restricted use of fertiliser and pesticide inputs, and a more protected environment.<sup>25</sup>

This example shows that a GI strategy, if well managed by the holders, with a coherent legal policy, and support able to ensure the proper law enforcement, is able to generate a comprehensive development (in the EU case, the legal framework is the CAP).

### 3. THE SCENARIO RELEVANT TO BRAZIL

Before joining the World Trade Organization (WTO) and signing the TRIPS Agreement, Brazil did not cover the topic of GIs in its legislation. However, the TRIPS Agreement demanded that WTO members had GI protection in their laws. In 1996, the 1945 Brazilian Code of Industrial Property was replaced by new legislation, the Law of Industrial Property (Law n. 9,279 from 1996, also known as LPI).

The LPI does not define GIs, but establishes that they can be found as (i) an indication of source (IS) or (ii) as a denomination of origin (DO).<sup>26</sup> Both types of GI enjoy the same legal protection according to the federal legislation, but there are a few differences between them. While the first is directly related to the reputation of the

geographical area, the second is associated with the natural and human factors of the given geographical area.

The different features of the two types of GI offer a significant flexibility in terms of recognition strategies for Brazilian producers, although the IP characterisation might allow it to be seen as just an indication of source, not an IPR. Furthermore, Brazilian legislation grants GI protection not only to agricultural products but to all sorts of goods, from handicrafts to industrialised products. The scope of GI protection even includes services, as in Peru and Switzerland.

The law also contains three articles dealing with "crimes against geographical indications and other indications."<sup>27</sup> The penalties for the three crimes are the same: imprisonment of one to three months, or a fine.

In 1999, three years after the LPI came into force, the first recognition request was made by Região do Cerrado Mineiro for coffee, and in 2000, Vale dos Vinhedos for wines. The first was granted six years later, and the second, two years later. Until 2010, the number grew slowly but has been noticeably increasing since then.

Besides the eight foreign GIs recognised in Brazil—all with DO status—there are currently 55 registered Brazilian GIs, being 10 DO and 45 IP, as can be seen from Table 1. Immediately obvious is the wide variety of these GIs: while 30 are related to agriculture and foodstuff, in particular wines and coffee, GIs have also been registered for handicrafts and service.

**Table 1. Registered national geographical indications up to October 2017**

GI	Product/Service	Status	State	Year of recognition
Vale dos Vinhedos	Wines	IP/DO	Rio Grande do Sul	2002/2012
Região do Cerrado Mineiro	Coffee	IP/DO	Minas Gerais	2005/2013
Pampa Gaúcho da Campanha Meridional	Beef	IP	Rio Grande do Sul	2006
Paraty	Spirit	IP	Rio de Janeiro	2007
Vale dos Sinos	Leather	IP	Rio Grande do Sul	2009
Vale do Submédio São Francisco	Grapes and mangoes	IP	Pernambuco/Bahia	2009
Pinto Bandeira	Wines	IP	Rio Grande do Sul	2010
Litoral Norte Gaúcho	Rice	DO	Rio Grande do Sul	2010

<sup>23</sup> Giovannucci *et al* (n 8).

<sup>24</sup> Dupont (n 16).

<sup>25</sup> Gerz and Dupont (n 12).

<sup>26</sup> Law No. 9,279 of 14 May 1996 (Brazilian Industrial Property Law)

<[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=125397](http://www.wipo.int/wipolex/en/text.jsp?file_id=125397)> accessed 10 October 2017.

<sup>27</sup> *ibid*.

Região da Serra da Mantiqueira de Minas Gerais	Coffee	IP	Minas Gerais	2011
Costa Negra	Shrimp	DO	Ceará	2011
Região do Jalapão do Estado do Tocantins	Golden grass handcrafted pieces	IP	Tocantins	2011
Pelotas	Sweeties	IP	Rio Grande do Sul	2011
Goiabeiras	Claypot cooker	IP	Espírito Santo	2011
Serro	Cheese	IP	Minas Gerais	2011
São João del Rei	Tin handcrafted pieces	IP	Minas Gerais	2012
Franca	Leather shoes	IP	São Paulo	2012
Vales da Uva Goethe	Wines	IP	Santa Catarina	2012
Canastra	Cheese	IP	Minas Gerais	2012
Pedro II	Opals and handcrafted opals jewellery	IP	Piauí	2012
Região Pedra Carijó Rio de Janeiro	Rock	DO	Rio de Janeiro	2012
Região Pedra Madeira Rio de Janeiro	Rock	DO	Rio de Janeiro	2012
Região Pedra Cinza Rio de Janeiro	Rock	DO	Rio de Janeiro	2012
Cachoeiro de Itapemirim	Marble	IP	Espírito Santo	2012
Norte Pioneiro do Paraná	Coffee	IP	Paraná	2012
Manguezais de Alagoas	Red propolis and red propolis extract	DO	Alagoas	2012
Linhares	Cocoa beans	IP	Espírito Santo	2012
Paraíba	Natural coloured cotton textiles	IP	Paraíba	2012
Região de Salinas	Spirit	IP	Minas Gerais	2012
Porto Digital	Digital services	IP	Pernambuco	2012
Altos Montes	Wines	IP	Rio Grande do Sul	2012
Divina Pastora	Handcrafted lace	IP	Sergipe	2012
São Tiago	Cookies	IP	Minas Gerais	2013
Alta Mogiana	Coffee	IP	São Paulo	2013
Mossoró	Melons	IP	Rio Grande do Norte	2013
Cariri Paraibano	Handcrafted lace	IP	Paraíba	2013
Monte Belo	Wines	IP	Rio Grande do Sul	2013
Piauí	Cajuína (non-alcoholic beverage)	IP	Piauí	2014
Rio Negro	Ornamental fishes	IP	Amazonas	2014
Microrregião Abaíra	Spirit	IP	Bahia	2014
Pantanal	Honey	IP	Pantanal	2015
Farroupilha	Wines	IP	Rio Grande do Sul	2015

Ortigueira	Honey	DO	Paraná	2015
Maracaju	Sausages	IP	Mato Grosso do Sul	2015
Região de Mara Rosa	Saffron	IP	Goiás	2016
Região das Lagoas Mundaú-Manguaba	Embroidery	IP	Alagoas	2016
Carlópolis	Guava	IP	Paraná	2016
Região de Pinhal	Coffee	IP	São Paulo	2016
Região da Própolis Verde de Minas Gerais	Green propolis	DO	Minas Gerais	2016
Região São Bento de Urânia	Yam	IP	Espírito Santo	2016
Marialva	Grapes	IP	Paraná	2017
São Matheus	Mate herb	IP	Paraná	2017
Oeste do Paraná	Honey	IP	Paraná	2017
Cruzeiro do Sul	Cassava flour	IP	Acre	2017

Source: Based on INPI website information (2017).

Brazil is formally divided into 26 states plus a federal district, where the federal government is based. However, not all of them have registered GIs and there are many that hold just one granted GI, such as Santa Catarina and Tocantins, for example.

Having the legal protection available is obviously not enough. Public policies are needed to allow for the full use of this IPR. Within the national context, a wave of optimism has been felt since the enactment of the LPI. It has proven especially useful to target potential benefits of using GI recognition strategies to intensify the given goods' appeal, and at the same time, to provide protection to the relevant productive activities that are proven to have and preserve a distinct reputation, quality or another relevant characteristic due to the geographical area.

In spite of the lack of a unified federal policy—in Brazil there is nothing like the CAP, which could put all the relevant government bodies and issues together—there are some initiatives that deserve credit at the federal level. Those actions come from (i) MAPA, the Brazilian Ministry of Agriculture, Livestock and Food Supply; (ii) Embrapa, the Brazilian public agricultural research corporation; (iii) INPI, the Brazilian National Institute of Industrial Property; and, (iv) Sebrae, the Brazilian Micro and Small Business Support Service, which is “a non-profit private entity with the mission of promoting the sustainable and competitive development of small businesses.”<sup>28</sup>

Because of Brazil's remarkable agricultural importance and variety of products, including coffee, sugar, soybean, orange, cocoa, beef, tobacco, and cotton, more protection is traditionally given to food products, even though the legislation offers protection for all kinds of goods. This is the case for Embrapa and MAPA actions.

Embrapa has driven initiatives directed towards the animal feeding, soil, climate and vegetation analyses needed for the provenance of the distinct characteristics of the GI-protected geographical areas. Embrapa has offices in each state, and has a distinct specialisation in each region. For example, in the state of Rio Grande do Sul, it focuses on grapes and wines, which is decisive for this state's wine GIs; in the state of Santa Catarina, the institution is focused on swine and birds, and is currently supporting studies for a pig and sausage GI.<sup>29</sup>

MAPA has done similar work, but has its own IP and agricultural technology department that deals with all relevant kinds of Intellectual Property Rights (IPRs), including patents, plant variety, and GIs. The ministry promoted various introductory and GI-specific courses in the area of IP and innovation in agribusiness from 2009 to 2015. These courses were introduced to build competencies for understanding and implementing IPRs in the agricultural sector, using a distance education platform with participants from all over the country. The courses proved to be an effective way to spread information on IPRs' potential and possible uses in the

<sup>28</sup> Sebrae, 'Sebrae. Small Business Experts' <[https://www.sebrae.com.br/sites/PortalSebrae/canais\\_adicionais/sebrae\\_english](https://www.sebrae.com.br/sites/PortalSebrae/canais_adicionais/sebrae_english)> accessed 10 October 2017.

<sup>29</sup> Embrapa, 'Unidades - Embrapa No Brasil - Portal Embrapa' <<https://www.embrapa.br/embrapa-no-brasil>> accessed 10 October 2017.

agribusiness world, and this written material is still used as a reference in Brazil.

Sebrae specialises in small businesses, and does not have restrictions in regard to the kind of good or service. Therefore, it helps various producers, including non-foodstuff ones. It works through a network of accredited consultants, who mainly help producers to prepare the necessary documentation for GI registration. The organisation depends on public funding and producers' financial remuneration for the services.

INIPI, the national body responsible for evaluating requests for GI protection, has developed a strategy of sending its collaborators to GI events across Brazil to spread the GI requesting process, explaining the law requirements more easily to a wider audience.

This is the extent of Brazil's national actions. Unlike the EU, there is no quality policy to drive GI matters. However, the country's continental dimension and the regional products' diversity (due to the distinct natural environments and influence from various periods of European colonisation) provide abundant grounds for GI strategies.

An indirect stimulus to the traditional production can be found in the policy initiatives for family farming, a reality in many parts of the country. These policies play a role in introducing products in public procurement, mainly in the case of school lunches. For the producers, it represents income without accessing new markets, in a country that has no federal tradition of GI-style protection.<sup>30</sup> For traditional production, however, the policies are an option that does not allow for the cultural and historical spread that could work with GI.

The scenario is slowly changing, and nowadays there is a genuine concern for quality and food security standards. This was not present in the older movements supporting family farming, which sought mostly the promotion and consolidation of agrarian reform settlements.

Several distinct but convergent factors have driven attention to the need for institutional support for the GI strategy in Brazil. Embrapa, for instance, is making a difference in the Rio Grande do Sul state, where the institution is specialised in viticulture. The state houses six of the seven national wine GIs. This area is the location of the first Brazilian GI, Vale dos Vinhedos.

GI strategy plays a relevant role in the evolving Rio Grande do Sul wine sector. It highlights quality and reputation associated with origin to face the global transformations occurring in the market, through a GI label that is recognised worldwide.

However, in most cases, there is still not enough information about GIs' impact on development, though research is in progress. In any case, the lack of a comprehensive policy is pointed out by scholars and producers as a concern.

In 2007, empirical research was conducted as part of a doctoral thesis aimed at evaluating the development in Vale dos Vinhedos based on the following indicators: (i) in the political-institutional field, the level of social participation; socioeconomic indicators such as the level of cooperation or competition; the existence of information dissemination mechanisms and technical cooperation between the different enterprises, and the level of social exclusion; (ii) in the field of ecology, the implementation (if any) of the principle of ecological precaution in local institutional mechanisms; and (iii) in the cultural aspect, the definition of identity related to geographical limits, as well as the level of valorisation of products associated with local identity.<sup>31</sup>

At that time, when GI protection was five years old and there was barely any local experience using the protection, the research concluded that for a developmental continuity scenario, it was necessary to strengthen social capital through the valorisation of cultural heritage, aiming to intensify the social relations networks and their ties. By this valorisation process, the problem of weakening the sense of belonging to the territory could be avoided. Therefore, a rescue of community relations would be achieved.<sup>32</sup>

While this GI project started out based on an external market target, the researcher concluded that it was changing, and "the future trajectory of the Vale dos Vinhedos has in the internal behaviour of its social groups a decisive factor, which concerns the possibility of these groups to adequately address the challenges related to the search for cooperation, solidarity, and social participation."<sup>33</sup>

Six years later, more empirical research found that quality was being endogenously determined, following a bottom-up process, and attention was carefully paid to the influence of the region's historical, social, cultural,

<sup>30</sup> John Wilkinson, Claire Cerdan and Clovis Dorigon, 'Geographical Indications and "Origin" Products in Brazil – The Interplay of Institutions and Networks' (World Development, 1 October 2017) 82 <<https://doi.org/10.1016/j.worlddev.2015.05.003>> accessed 30 October 2017.

<sup>31</sup> Murilo Xavier Flores, 'Da Solidariedade Social Ao Individualismo: Um Estudo Sobre O Desenvolvimento Do Vale

Dos Vinhedos Na Serra Gaúcha' (July 2007) <<https://repositorio.ufsc.br/xmlui/bitstream/handle/123456789/89811/242483.pdf?sequence=1&isAllowed=y>> accessed 10 October 2017.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

economic, human, natural and environmental context, implying that value was added not only to products but also to the territory. The result has been the identification of a quality of fine wines, and the dynamics of a new level of development for the micro-region.<sup>34</sup>

Presently, 15 years after GI protection was introduced, it is possible to recognise development benefits for the whole community in the Vale dos Vinhedos region. Besides the strengthening of the wine sector, the tourism sector is continuously growing, along with the restaurants, hotels, and even handcrafted or homemade goods such as cookies, which benefit from being produced in that region. They have now achieved the basket goods offer model.

While the collective engagement was an issue in the initial years of existence for Vale dos Vinhedos when community participation was not a constant, it is not a concern in Região de Corupá, where producers have made a request for a GI for bananas.

The region includes four cities in the north of Santa Catarina state. In 1994, the Associação dos Bananicultores de Corupá (ASBANCO) was established, a producers' association to deal with banana growers' needs. People were moving away from the rural areas, because of the very low prices and the devaluation of the activity by the other members of the region's society.<sup>35</sup>

Since then, ASBANCO has developed many social and cultural activities in addition to supporting production on a daily basis, including the collective purchase of inputs, for example.<sup>36</sup> At the time ASBANCO was created, bananas from Corupá were seen as a lower quality product because of their appearance, which could have small black spots due to the climate conditions, but were perfect inside.<sup>37</sup>

The association did good work regarding the producers' and the region's community, and in 2006, during the XVII Reunión Internacional da Asociación para la Cooperación en Investigación de Banano en el Caribe y en América Tropical (ACORBAT), they were informed by renowned specialists that the time that the bananas take to be ready for consumers in Corupá – 14 months, almost twice

as long as in the rest of the world – gives them an unparalleled sweetness.<sup>38</sup>

This distinctiveness was later proven by Epagri, the Santa Catarina State Agricultural Research and Rural Extension Agency.<sup>39</sup> Based on this, ASBANCO started to pursue GI recognition in 2014, in conjunction with the producers and the community.<sup>40</sup>

Currently, the level of collective engagement is high. The whole local community, not only banana producers, is involved in the project and understands what a GI means for the people and for the bananas, and are looking forward to the grant. That level of awareness is thanks to the work of more than 20 years of the association. And now if the producers are questioned why the price of their bananas is the same or even higher than the outside perfect ones, they promptly answer, "But mine is sweeter!"<sup>41</sup>

Another problematic situation in the GI establishment is compliance with the code of practice. This was a sensitive issue for the only wine GI outside the Rio Grande do Sul. In Santa Catarina, the GI Vale das Uvas Goethe (for wines), is currently the only registered GI in the whole state.

Here, producers could not comply with the code of practice requirements when the first crop after the recognition was harvested, because it had been written in a way disconnected from the reality of daily work. As a result, they needed to seek governmental financial support and university-level technical knowledge to adapt the rules to the reality.

This is a common issue in Brazilian GIs. When the project starts, the producers want their products to be the best in the world and establish rules that will not be met in the future, precisely because they do not match the reality. They forget that the original product is the one that has a distinct reputation, quality or other characteristic due to the geographical origin, and so qualifies for GI recognition.

The same has happened with the Pampa Gaúcho da Campanha Meridional GI for beef. Producers faced issues

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<sup>34</sup> Gisele Trindade Molinari and Domingos Padula Antônio, 'A Construção Social Da Qualidade Na Microrregião Do Vale Dos Vinhedos' (2013) 51(1) RESR 183 <<http://www.scielo.br/pdf/resr/v51n1/10.pdf>> accessed 10 October 2017.

<sup>35</sup> Adolar Behnke, *Asbanco E O Papel Do Associativismo Em Corupá* (ASBANCO 2017).

<sup>36</sup> *ibid.*

<sup>37</sup> Eliane Cristina Müller, *A Experiência Da ASBANCO E a Banana Da Região de Corupá: Impactos Nos Produtores E Na Comunidade* (ASBANCO 2017).

<sup>38</sup> *ibid.*

<sup>39</sup> Outside the federal level, there are pro-GI institutions in charge of the states' needs. In Santa Catarina, that institution is Epagri. Besides the only Santa Catarina state recognised GI – the Vale das Uvas Goethe, for wines, Epagri is supporting other initiatives, like Região de Corupá, for bananas and Campos de Cima da Serra, for artisanal cheese, both with registration requested made. A third is almost ready to ask for the registration – Planalto Norte Catarinense, for mate herb, and there are others in initial stages.

<sup>40</sup> Eliane Cristina Müller, *A Experiência Da ASBANCO E a Banana Da Região de Corupá: Impactos Nos Produtores e Na Comunidade* (ASBANCO 2017).

<sup>41</sup> *ibid.*



regarding the exclusion of a large part of the region's available breeders, because the code of practice was over-demanding and had been drafted unrealistically. Like in Vale dos Vinhedos, the project started with a focus on external demand, based on internal market segmentation, or even European markets, but without preparing the producers and community.<sup>42</sup>

A different situation occurred in Minas Gerais state with Cachaça de Salinas GI. There, since the beginning of the project, the code of practice was treated as critical to the GI's success. The drafting of the production rules was carefully thought out, and when the GI was granted, the producers already knew how to comply with the standards, which had been established with a solid basis on the daily routine of historical production.<sup>43</sup>

Another relevant matter, related to the code of practice compliance, is the non-existence of a public body in charge of production inspection. This exists in other countries, such as the French Institut national de l'origine et de la qualité (INAO) or the Instituto dos Vinhos do Douro e do Porto, in Portugal.

In Brazil, producers are free—but obliged—to choose among a self, internal or external control, and they need to bear all the resulting costs. The first two are particularly sensitive in terms of assurance, since they are performed by the producers or by a group of people close to the producers. This works when producers are committed, but this is not always the case. Some actions have been taken by MAPA, especially after the first Brazilian GI achieved registration at EU level, but it is still a work in progress.

#### 4. RETHINKING STRATEGIES

To achieve the GIs' non-legal objectives and the level of development as expressed by the Our Common Future report is not easy. Field research and literature reviews point out that, for a GI to be successful and to consequently generate development, four components are essential. First, a "[strong] organizational and institutional structures to maintain, market, and monitor the GI," including high commitment to the geographical area demarcation, a fair organisation of the real practices and standards into the code of practice, and a long-term cooperation.<sup>44</sup>

Second, "[equitable] participation among the producers and enterprises in a GI region." Third, "[strong] market partners committed to promote and commercialize over the long term", since most of the successful market GIs

"(...) are the result of mutually beneficial business relations via which consistent market positioning and effective commercialization have led to a long-term market presence."<sup>45</sup>

Finally, "[effective] legal protection including a strong domestic GI system" to "(...) permit effective monitoring and enforcement in relevant markets to reduce the likelihood of fraud that can compromise not only the GI's reputation but also its legal validity."<sup>46</sup>

When those circumstances are favourable it is easier to achieve success. However, this is not the situation found in Brazil. From the 55 recognised GIs, only a small proportion are sufficiently capable of managing this IPR in such a way as to collect benefits, due to the lack of a relevant strong and comprehensive system.

As mentioned, there is some support being offered by a few institutions, but the scenario is characterised by a lack of coordination among them. When envisioning a single program of regulation, support, and promotion, collective commitment is not seen.<sup>47</sup>

That is also critical when it comes to the information asymmetry as to the notion of a GI, which varies among producers, policies, and consumers. Authorities must be in control of those questions. They should establish policies that are suited to the realities of production.

It is obvious that, in terms of policy, the necessary changes should be related to the need for coordination among the institutions that develop actions in regard to GIs. There is also need for more involvement of other public bodies, especially for the non-foodstuff GIs; protection is offered, but there is no public agency committed to such coordination.

From the producers' point of view, it is evident that there are difficulties in: drafting the code of practice and controlling the production; sharing the project with the community and making them feel part of it; drawing a coherent and lasting market strategy; making partnerships; achieving a situation where the whole chain gains; and having the financial capacity to meet all goals.

Producers who are already GI holders or are seeking to have a GI recognised need quality advice and support to achieve that, and to rethink the less promising or already unsuccessful strategies. In a scenario where there is not enough on offer from the public agencies, they should rely on each other, building a cooperation network to help them to achieve the non-legal objectives of GIs.

<sup>42</sup> Claire Cerdan *et al*, 'SINER-GI Gaúcho Pampa Da Campanha Meridional Meat' (*Food and Agriculture Organisation of the United Nations*, 2007) <[http://www.fao.org/fileadmin/templates/olq/documents/documents/gaoucho\\_da\\_pampa\\_meridional\\_meat.pdf](http://www.fao.org/fileadmin/templates/olq/documents/documents/gaoucho_da_pampa_meridional_meat.pdf)> accessed 10 October 2017.

<sup>43</sup> Nivaldo Gonçalves das Neves and Eilton Santiago, *Associação Dos Produtores Artesanais de Cachaça de Salinas* (APACS 2014).

<sup>44</sup> Giovannucci *et al* (n 8).

<sup>45</sup> *ibid*.

<sup>46</sup> *ibid*.

<sup>47</sup> Cerdan *et al* (n 41).

In the end, it is not all a rosy picture. GIs are neither easy nor are they cheap to establish. There might be high costs not only for organisational and institutional structures, but also for upcoming operational needs such as marketing promotion and legal enforcement.

Especially in developing countries like Brazil, it is imperative that GIs are based on good products or services; otherwise, a project could be damaging to the community and may not benefit it at all. When a GI is poorly structured because its foundation is weak, it can be detrimental to the people involved, their traditions and the environment.

From the producer's side, success requires a good project and commitment a product that has distinct features, and a community that is engaged and feels part of it. From the legal and policy side, success requires not only commitment to the legal objectives of the GI protection, but even more, to the non-legal.

## 5. CONCLUDING REMARKS

GIs are often perceived as a path to development. In truth, they are capable of working towards this achievement. However, this requires a strong institutional environment, as well as producers who fully understand the requirements of a successful GI.

The Brazilian institutional environment needs to be strengthened. On the one hand, although the Brazilian GI legislation, in general, offers enough to achieve the GI protection legal goal, a certain greater depth would be welcomed. This is especially so because there is a need for more wide-spread action connected to the definition and request process, and there is also need for more awareness of the possibility of crime.

On the other hand, in terms of policies, the institutional reality is weak and needs to be strengthened, particularly with regard to the coordination of policy initiatives and full coverage of the GI process. There is a call for the policymakers to pay attention to the non-legal objectives of GIs, in a way that provides those interested in GIs with the best information and advice on how to prepare the projects as a whole. This needs to cover each stage from the very first step of production, to delivery to the consumer, thereby providing support for the development of GI holders.

However, those interested in GIs and GI holders should bear in mind that public institutions change slowly, so the key is **collaboration**. They need to help each other to avoid committing unnecessary mistakes. By rethinking strategies, they can mirror the successes and avoid the failures of their peers, and, consequently, enjoy the full potential of this IPR.

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