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Designations of origin and geographical indications as an element of economic development: The Ecuador Case

Denominaciones de Origen e indicaciones geográficas como elemento de desarrollo económico: El Caso Ecuador

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ABSTRACT: The denominations of origin and geographical indications, as distinctive signs, occupy a prominent place as an element of the impulse to the economic development of a given territory, since through them the development and marketing of high-quality products and differentiation, which in turn, allows reaching significant levels of commercial and tourist positioning for the place or region of its origin, as well as the generation of new sources of direct and indirect employment, increasing foreign exchange income from exports, the increase of State tax collection, among other socio-economic benefits. Thus, designations of origin and geographical indications are considered elements of economic development within the productive policy of a State. Therefore, the purpose of this work is to analyze the denominations of origin and

geographical indications as a specialized category within the field of Trademark Law and Intellectual Property Law. It is relevant for a better understanding of how these concepts developed in Ecuadorian legislation. While for determining the options presented by the local legal framework promoting its development and use. Moreover, as those elements that the State should consider for taking advantage to promote national growth. Then the exegetical-critical method has been used, through is introduced a doctrinal and normative approach.

KEYWORDS: Designations of origin, geographical indications, intellectual property rights, trademarks.

RESUMEN: Las denominaciones de origen e indicaciones geográficas, en su calidad de signos distintivos, ocupan un lugar destacado como elemento de impulso al desarrollo económico de un territorio determinado, ya que por medio de los mismos se favorece la elaboración y comercialización de productos de alta calidad y diferenciación, lo que a su vez, permite alcanzar importantes niveles de posicionamiento comercial y turístico para el lugar o región de su procedencia, así como también la generación de nuevas fuentes de empleo directo e indirecto, crecientes ingresos por divisas por exportación, el incremento de la recaudación tributaria del Estado, entre otros beneficios socio-económicos. De esta forma, las denominaciones de origen y las indicaciones geográficas son consideradas elementos de desarrollo económico dentro de la política productiva de un Estado. En tal virtud, el propósito de este trabajo es analizar las denominaciones de origen e indicaciones geográficas como una categoría especializada dentro del campo del Derecho Marcario y del Derecho de la Propiedad Intelectual, con el objeto de comprender de qué manera se han desarrollado estos conceptos en la legislación ecuatoriana, a la vez de además determinar las opciones que presenta el marco jurídico vigente en el país para propiciar su desarrollo y utilización, así como también los elementos que el Estado deberá considerar para aprovechar de mejor manera estos elementos a favor del crecimiento nacional. Para hacerlo, se ha empleado el método exegético-crítico, a través del cual se realiza una aproximación doctrinaria y normativa del tema.

PALABRAS CLAVE: denominaciones de origen, indicaciones geográficas, derecho de propiedad intelectual, marcas

INTRODUCTION

Intellectual Property Law as a legal branch seeks to protect creations of human nature, characteristic of the creativity and work of each person. These creations must be worthy of a legal recognition that grants validity, trust and quality certification to others. Thus, within the Intellectual Property Law is the Industrial Property Law, which in turn contains the distinctive signs, such as brands, trade names, trade slogans, geographical indications and designations of origin. The distinctive signs, in general terms, allow to differentiate a product or service from other similar ones, as well as to identify its business, industrial or geographical origin.

In Ecuador and the countries of the Andean Community of Nations-CAN (2000), Andean Decision 486, Common Industrial Property Regime, is in force, which in its articles from 143 to 236, classifies the distinctive signs into the following:

- i) Trademarks
- ii) Trade names
- iii) Business slogans
- iv) Commercial signs or banners
- v) Appellations of origin
- vi) Indications of origin
- vii) Well-known signs

It is necessary to mention that the regulatory regulations for distinctive signs, in all its provisions, and especially those related to registration procedures, absolute and relative prohibitions, protection, management and sanctions, make consideration of very close similarity among all the distinctive signs. However, this study will specifically address designations of origin and geographical indications.

Then, at the outset it should be noted that the appellations of origin and geographical indications are a type of distinctive sign that creates a unique qualitative link between the product or service offered, with the place or region where it has been produced or provided, respectively; In addition to the appellations of origin, the knowledge and the different skills that the inhabitants of this geographical place possess, for the elaboration of the product or the provision of the service that has been registered under this very particular brand.

For identifying the geographical origin of the products, the appellations of origin and geographical indications consist of the name of the place or region where a product has been produced and, eventually, where a service has been provided. The names of certain beverages such as Tequila, Champagne or Pisco are taken as typical examples of these specialized brands, which are recognized worldwide for their exquisiteness and particular characteristics. Thus, the European and Latin American evolution regarding this category of specialized brands shows the interest at an economic and social level that it has achieved through its application, in addition to the regulatory adaptation towards a legal framework that adequately protects the designations of origin and geographical indications present in each state.

In this way, one of the possible mechanisms of development and generation of opportunities for a country is to promote its products through designations of origin and geographical indications. For example, in Ecuador, the first designation of national origin was granted in 2008, called “Cacao de Arriba”. This registration guarantees the consumer the highest possible quality, and the industrialists benefit from specific characteristics in the products they make with this cocoa (e.g. chocolates, cocoa drinks, among others). In exchange, cocoa producers obtain legal protection against the production or processing of such products in other areas.

On the other hand, current regulations in Ecuador show that both at the constitutional level and in secondary laws, if the use and application of these innovative instruments to promote development is promoted. However, in practice, both

the central and local governments need to increase their efforts to promote the knowledge, development and implementation of a more significant number of designations of origin and geographical indications in all regions of the country, which would undoubtedly constitute a high impulse (from the State) in favour of a sustainable social and economic development for the country.

1. CONCEPTUALIZATION OF GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OF ORIGIN

For specialized international organizations, a geographical indication is: “(...) a sign used for products that have a specific geographical origin and whose qualities, reputation and characteristics are mainly due to their place of origin. Generally, the geographical indication consists of the name of the place of origin of the products.” (WTO I, 2018, p. 1)

An excellent example of what has been said is observed in agricultural products, which have certain intrinsic qualities generated by the characteristics of the geographical place of production of the same, such as the climate (e.g. temperature of the place, level of rainfall and level of humidity, among others) and the terrain (e.g. soil type, fertility, level of erosion, among others).

On the other hand, appellations of origin are a particular type of geographical indication that allow us to identify the country, region or place of provenance of a specific product, added to a conjunction of natural factors and human factors in the production, manufacturing and processes or extraction thereof, thus obtaining specific characteristics that differentiate it from other similar products on the market. It is the primary function of a designation of origin, which facilitates the worldwide commercial positioning of the products it protects, enhancing their unique characteristics and prestige, beyond pure geographical origin.

For Latin American doctrine, the designation of origin is “a distinctive sign that refers to a locality, city, country,

region, that is, the geographical area in which a notorious product has been collected, transformed or manufactured.” (Castro, 2009, p. 194) In other words, the fact that an area possesses an absolute natural, soil, climatic, geographic, and especially human characteristics, means that the products made in it are capable of having, in turn, a particular reputation or qualities not possible to be obtained by being made in a different geographical area. It fully justifies the protection of designations of origin, since they constitute an instrument of everyday utility, which provides benefits to a plurality of human groups, including producers, consumers, tourists, in addition to scientific, technological and economic development. of the territory, among others. This position of strength, capable of contributing to the growth and prestige of a country within the current globalized and competitive world, is particularly useful when planning local development in each of the national states that have these types of highly recognized international brands.

Based on the preceding, and as a doctrinal synthesis, it can be said that both geographical indications and designations of origin are trademarks of worldwide scope, representing products of high international prestige, boosting trade and transactions in protected goods under its registration. With practical effect, it should be borne in mind that the geographical indication is the most widespread species, which includes the designation of origin, the latter being a more specific and defined species than the former.

In the normative field, at the level of the Nadina Community of Nations-CAN (2000), Decision 486, in its Article 201, conceptualizes appellations of origin as follows:

Denomination of origin shall be understood as a geographical indication constituted by the name of a country, a region or a specific place, or constituted by a name that, without being that of a country, a region or a specific place, refers to a specific geographical area, used to designate a product originating from them and whose quality, reputation or other characteristics are exclusively or mainly due to the geographical environment in which it is produced, including natural and human factors. (p. 47)

In Ecuador, the Organic Code of the Social Economy of Knowledge, Creativity and Innovation (2016), defines the appellations of origin reproducing the conceptualization above of Decision 486, which is entirely subsumed, by saying that:

It will be understood by the denomination of origin the geographical indication constituted by the denomination of a country, a region or a certain place, or constituted by a denomination that without being that of a country, a region or a determined place refers to a determined geographical area, used to designate a product originating from them, when a certain quality, reputation or other characteristics of the product is exclusively or essentially attributable to the geographical environment in which it is produced, extracted or processed, including natural and human factors. (p. 10)

However, the national norm contributes to the legal construction of the issue, by providing below that:

In the case of homonymous designations of origin, protection will be granted to each one. The Regulations will establish the conditions to differentiate among themselves the indications or homonymous names in question, taking into account the need to ensure that the products concerned receive equal treatment and consumers are not misled. (Ingenios Code, 2016, p. 111)

This last paragraph incorporated by the national norm is critical since it highlights the need to regulate the granting of designations of origin, ensuring the adequate legal protection of all of them within the national territory by the State, as well as ensuring the proper use thereof in favour of protected products, their producers and consumers, preventing their misuse or confusion, allowing the possible appearance of acts of unfair competition.

1.1 Brief origin and evolution of appellations of origin and geographical indications

Throughout the world there are certain regions or countries that have unique geographical characteristics and traditional ways of making some specific products, which implies their authenticity as they are generally considered to be characteristic or traditional of the area; This allows these products to occupy a special place in the preferences of consumers, which helps to create a competitive advantage regarding price and originality.

It will have to consider that in its beginning, the geographical indications and the denominations of origin were born from the widespread custom of putting certain agrarian and craft products, the same name of the geographical place of their elaboration. In this way, human settlements in specific geographic areas and the natural use of the raw materials available in these sites, led to people (farmers and artisans, at first), beginning to produce processed foods (e.g. liquor, wine, cheese, sprinkles, among others) and various products for human use (e.g. clothing), which were branded with the names of the geographical places where they lived and produced, is evident the use of these brands collectively and shared with the other inhabitants of the city, province or region, who generally also made the same products.

For Errazuriz (2010), in its evolution, “the use of geographical indications and designations of origin is the natural consequence of quality products that have a good reputation” (p. 208), a situation that has multiplied thanks to the human talent existing throughout the world, for what the indications of geographical origin (within which the designations of origin are located), “were born with the custom of designating the products with the name of the place of their production or manufacture.” (Errázuriz, 2010, p. 208)

As an excellent example of a global geographical indication, we can mention the renowned Roquefort cheese, made in the town of Roquefort-sur-Soulzon, department of Aveyron, France. It happens that in the fourteenth century, King

Charles VI granted the inhabitants of the canton of Roquefort permission for the exclusive use of this name, in order to distinguish cheese made from goat's milk and matured in the caves that exist in the region. As another good example, there is the fact that later, in the same fourteenth century, France promulgated the first rules to regulate the use of geographical indications, prohibiting the name of another region from being produced in a specific region different from the one in which it had been produced, (Schiavone, 2003, p. 17) with the apparent purpose of protecting national spirits, avoiding confusion and abuse in their marketing.

Within the legal field, this evident need to regulate the use of geographical indications began with the appearance of the first protective norms for geographical indications and designations of origin. In this regard, it was not until the 19th century that the appellations of origin were established in France, constituting a certainly late regulatory development, since it came after the destruction of French vineyards by the phylloxera plague in 1870 and the shortages that followed it. (Schiavone, 2003, p. 17). It is the reason why large quantities of wines were made through fraudulent practices, through which some vineyards in the south of the country usurped famous names such as Bordeaux or Burgundy, this not being its origin. After the appearance of these first French regulatory standards to avoid chaos in the use of geographical indications, it also began to be done in other European countries, such as Spain, Italy and Portugal. (Álvarez, 2001, p. 93 -94)

About the appellations of origin, France was also a pioneer. Thus, the first designation of origin to be granted worldwide (the year 1887) was the name Champagne, granted in favour of the Union of the Grand Marquises de Champagne, to identify the exclusive ownership of this name for sparkling wines from that region. (Orozco, 2008, p. 391)

It is necessary to clarify that within the direct geographical indications, the following legal terms are used interchangeably: indication of origin, geographical indication, the designation of origin, protected designation of origin, and protected geographical indication. It is for this reason that, in the

opinion of European doctrine, there is the absence of a uniform legal concept and universal validity in this regard, which means that the question of the definition must be addressed concerning the particular legal text that has. (Botana, 1994, p. 79) Under this, this research uses the terms' denomination of origin' and 'geographical indication' in a general way, since the current legal framework in Ecuador uses the mentioned terms.

1.2 Main differences between geographical indications and designations of origin

At the discretion of the World Intellectual Property Organization-WIPO, the fundamental difference is that the link with the place of origin is closer in the case of a designation of origin.

In this way, the quality or characteristics of a product protected by a designation of origin must be exclusive or unique, as a consequence of its geographical origin. Therefore, this means that the raw materials must come from the place of origin and that the production of the product should also take place there.

On the other hand, in the case of geographical indications, a single criterion attributable to its geographical origin is sufficient, be it a quality or other characteristic of the product, or even its reputation alone. (WTO, 2018)

In order to have a different point of view, which contrasts with the previous one regarding the purported 'clear differences' between the designation of origin and geographical indication, the Institute of Industrial Property of Chile-INAPI (2018), thinks that this difference "is very subtle and not it always appears clearly", because both the geographical indication and the denomination of origin constitute industrial property rights that identify a product as originating in a specific country, region or locality, where the quality, reputation or other characteristics of the same are attributable to its geographical origin. However, the designation of origin also considers other natural and human factors that affect the characterization of the product. In this way, the appellation

of origin is a particular type of geographical indication, being included within the concept of geographical indications.

Using the positive Law, the Lisbon Agreement, relative to the Protection of Denominations of Origin and their International Registration, places the geographical indication as well as the denomination of origin in the same trademark category, when in its Art. 2, num. 1), gives them the following definition:

Denomination of origin, within the meaning of this Agreement, is understood as the geographical denomination of a country, region or locality that serves to designate a product originating from it and whose quality or characteristics are exclusively or primarily due to the geographical environment, including natural factors and human factors. (WTO, 1979, p. 1)

In this way, and for what is exposed in the WIPO doctrine and the strict regulations in force, and considering that both geographical indications and appellations of origin share the same trademark category, in this investigation they are given standard treatment, limiting themselves only to highlight specific functional differences between them, when necessary.

1.3 Main functional uses of geographical indications and appellations of origin

Within international trade, it is relevant to cite the point of view of the World Trade Organization-WTO, as well as the Agreement on Trade-Related Aspects of Intellectual Property - TRIPS -, regarding geographical indications.

Thus, the WTO (2017) itself explains the function of a geographical indication within the commercial sphere, as follows:

The quality, reputation or other characteristics of a product can be determined based on where they come. Geographical indications are place names (in some countries they are also words associated with a place) that are used to identify products that come

from certain places and have certain characteristics (for example, 'Champagne', 'Tequila' or 'Roquefort').

The geographical indication is an expression or sign used to indicate origin; that is, that a product or service has its origin in a particular country or group of countries, region or locality. About the functions of geographical indications, these are classified into qualified and straightforward geographical indications. (Larraguibel, 1995, p. 119)

a. Simple geographical indications. - They are those that refer to the physical place recognized as the centre of production or transformation of products. In this case, its function is only to indicate the place of origin, geographically referencing the product with this geographical site, without trying to link this origin with its quality or with some specific characteristics.

b. Qualified geographical indications.- These are related to the geographical names that designate a product originating from that specific territory (country, province, canton, parish), fulfilling the function of informing the public, regarding certain qualities or characteristics of the product, which could increase their fame or reputation, and that is fundamentally attributable to their geographical origin, including natural and human factors.

In this second class, according to Schiavone (2003) the appellations of origin are located, which in turn register three subclasses, namely: i) controlled appellations of origin (subject to regulation and control by the authority); ii) registered appellations of origin (subject to registration); and, iii) qualified and guaranteed designations of origin (which refer to more excellent quality and control of the product). (p. 19)

1.4 Examples of geographical indications and designations of origin

In Ecuador and other countries of the Andean Community of Nations-CAN:

a. Ecuador.- For the National Service of Intellectual Rights-SENADI (ex IEPI), the designation of origin, duly used,

constitutes a powerful tool to generate social and economic development within, through promoting its products that have the various regions or geographical areas thereof, preventing the cultural heritage and geographical advantages of the country from being lost.

Example of this loss, we have it in the case of the famous hats made from toquilla straw and known worldwide as 'Panama Hat' (Panama hat). This unique and exceptional product, given its name, is thought to be produced in Panama, when it is made in Ecuador. This situation of confusion, present for more than a century, has generated a loss in the image and positioning of the product, of its right manufacturers and of the country of origin (Ecuador), in the world market for articles to complement clothing.

Thus, to remedy in some way the loss of national identity mentioned above, by request made by the Union of Artisans of Montecristi in February 2005, the former Ecuadorian Institute of Intellectual Property-IEPI (current SENADI), dated 15 June 2009 granted the denomination of origin 'Sombrero de Montecristi' (second denomination of origin in the country), to identify the hat made from toquilla straw by the inhabitants of the Jipijapa and Montecristi cantons in the province of Manabí, which allowed IEPI's own words, "to preserve its tradition and tell the world that its unique fabric originates from Montecristi, Ecuador." (Crónica, 2014)

Regarding this product, it is worth mentioning that even before obtaining the designation of origin, it was inscribed in 2012 on the Representative List of the Intangible Cultural Heritage of Humanity, of the United Nations Educational Organization, Science and Culture -UNESCO. (UNESCO, 2012)

Apart from the Montecristi Hat, in Ecuador there are other designations of origin, among which stand out:

i) 'Cacao Arriba', the first national designation of origin, granted by the IEPI on March 24, 2008, to identify high-quality cocoa grown in the provinces of Santo Domingo de los Tsáchilas, Pichincha, Manabí, Los Ríos, Cotopaxi, Guayas, Bolívar, El Oro, Napo, and Sucumbíos. As it is known, for its quality, Ecuadorian

cocoa is the best in the world, which is why the products made with this raw material have also reached this high place; An example of this is the Pacari Chocolate brand¹, created in 2002, and which for several consecutive years has been awarded by the International Chocolate Awards, as the best chocolate in the world in various categories, currently accumulating 128 international awards conferred by various specialized events, using the blind tasting modality. (Pacari, 2018)

ii) ‘Café de Galápagos’, the designation of origin granted on September 29, 2015, by the IEPI, to identify coffee is grown in the Galapagos Archipelago, variety Arabá Bourbon Antiguo, 100% organic, ecological and cultivated in the volcanic mountains of the archipelago, which has unique characteristics due to its geographical conditions, among which stands out is the second archipelago with the highest volcanic activity on the planet. These conditions have given its soils “properties unlike any other part of the world, to be a place where coffee is produced in combination with the cold of the highlands and the sea breeze”. (El Comercio, January 22, 2015)

b. Colombia.- In this Andean country, a member of the CAN, there is a significant example to mention on the subject in question; It is the geographical indication ‘Café de Colombia’, which has achieved worldwide fame and recognition. This brand is the property of the National Federation of Coffee Growers of Colombia-FNC; According to records from the World Intellectual Property Organization-WIPO, in December 2004 the FNC submitted a request to the Colombian Government to recognize Colombian Coffee as a geographical indication, and to the European Union-EU in 2005, the first time that He was submitting such an application for a product from a non-EU country.

In September 2007, the formal recognition of Colombian Coffee as a Protected Geographical Indication under the EU system was made official. (WTO, 2017) Regarding the United States, the FNC has registered the ‘Juan Valdez’ mark before the United States Patent and Trademarks Office-USTPO since

1 *Pacari* means ‘nature’ in the Quechua language, originally from the Andes of Ecuador, Peru and Bolivia.

1960, and the '100% Colombian coffee " mark since 1969. At the moment, Café de Colombia has eleven recognized protected geographical indications; Of these, which four have been granted as appellations of origin by the Superintendency of Industry and Commerce of Colombia

c. Peru - Chile. - In this case, Peru (a member of the CAN) is mentioned, along with Chile, due to the dispute between the two nations for the ownership of the designation of origin 'Pisco'. In this regard, these two countries consider this designation of origin as their own national identity, each arguing that it is the first where this distilled drink from fermented grape must have started to be produced, during the period of Spanish rule in South America.

In the case of Peru, on December 12, 1990, the ITINTEC Industrial Property Directorate declared that the PISCO designation is a designation of Peruvian origin, for products obtained by distilling wines derived from the fermentation of fresh grapes, on the coast of the departments of Lima, Ica, Arequipa, Moquegua, and the valleys of Locumba, Sama and Caplina in the department of Tacna. (Regulatory Council of the Denomination of Origin Pisco, n.d.) Later, in 2011, the Regulatory Council of the Denomination of Origin Pisco was created, through a resolution issued by the National Institute for the Defense of Competition and Intellectual Property - INDECOPI, with the purpose, to administer the Pisco Denomination of Origin and to care for and defend the quality of Pisco. (Regulatory Council of the Denomination of Origin Pisco, n.d.)

For its part, in the case of Chile, in modern times, Law 18455 of November 11, 1985, established the rules for the production, processing and marketing of ethyl alcohols, alcoholic beverages and bottles of vinegar (currently in force), which determines in its Art. 28. a), that the designation of origin pisco, "is reserved for brandy produced and packaged, in units of consumption, in Regions III and IV, made by distillation of genuine drinking wine, from the varieties of vines determined by the regulations, planted in said Regions". (Law 18455, 1985, p. 17)

Subsequently, the Regulation of the Pisco Denomination of Origin (issued by Decree 521, of May 27, 2000), defined pisco, Art. 2. b), as the “brandy produced and packaged, in consumption units, in Regions III and IV of the country, made by distillation of genuine drinking wine, from the grape varieties that are determined in this regulation, planted in said regions”. (Decree 521, 2000, p. 17) It is worth mentioning that the Chilean Pisco Zone includes the Atacama and Coquimbo regions. Finally, in 2003, the Association of Producers of Pisco A.G. of Chile, as a representative of the interests of the industry and promoter of the historical, social, cultural and productive heritage value of pisco, under the umbrella of its Denomination of Origin. (Pisco Chile Asociación Gremial, n.d.)

Be that as it may, most countries in the world have accepted to recognize as a designation of origin, both pisco from Peru and from Chile, thus granting equal rights to the two nations, to exercise peaceful co-ownership of the same tacitly, a situation that, of course, benefits the two interested parties, and above all, the consumers of this unique drink around the world, who have at their disposal a broader offer to choose and delight.

1.5 Legal framework and current situation of appellations of origin and geographical indications as a tool for economic development in Ecuador

For the European Commission, geographical indications are becoming useful for developing countries due to their potential to add value and promote rural socio-economic development. (European Commission, 2013) Thus, from this perspective, geographical indications (and their specialized derivation, designations of origin), can help create new job opportunities in the area where the good is produced since higher demand requires an increase in production, which offers the possibility of benefiting from the protection not only of small groups but of the entire community. On the other hand, geographical indications can also help preserve traditional knowledge and traditional cultural expressions, which are the process, knowledge and artistic heritage developed by a community in a given region, and which have been passed down from generation to generation, which is especially crucial for

handicrafts, at the discretion of the World Intellectual Property Organization-WIPO. (WIPO, n.d.)

Thus, being clear that geographical indications and appellations of origin constitute a precious intangible asset, capable of providing various advantages for rural communities and small producers in the world, it is essential to mention that they are still underestimated in many countries such as This is the case of Ecuador, where its main export products (banana, cocoa, coffee and roses, among others) are not protected by these intellectual property instruments.

In the scope of this legal protection, at an international level, and concerning geographical indications, most industrial property rights are guided by the principle of territoriality, which establishes that the protection and exploitation of an industrial property asset only it is granted in the territory where it has been recognized, that is, it does not extend beyond the borders of the country where the right has been given. In this regard, the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, maintains that “geographical indications are territorial, therefore the principle of territoriality, which is generally associated with the protection of intellectual property rights, it also logically applies to the field of geographical indications”. (WIPO, 2002, p. 2) Thus, geographical indications are protected or denied legal recognition, according to the internal laws and regulations of each country.

Now, in addition to local protection, industrial property assets deserve international protection that prevents any usurpation or imitation. In this regard, some countries have signed several international treaties for this purpose, which has been a very complicated task for the differences between legal concepts in many countries. (Palau & Pacón, 2012, p. 280) These treaties have somewhat regulated the application of designations of origin and geographical indications, to unify criteria, one of the main ones being the Lisbon Agreement, which entered into force in 1966 and is administered by the International Office of the WIPO. One of the advantages of being contracting parties to this Agreement is to ensure the

protection of the name without the need for renewal, while the name is protected as such in the country of origin. Also noteworthy are the 1883 Paris Union Agreement, the Madrid Agreement of 1891, and the 1995 Agreement on Trade-Related Aspects of Intellectual Property-TRIPS.

Among the advantages granted by the aforementioned legal protections, in addition to the reputation and the economic and competitive benefits derived from such fact, a negative right is indicated, which is the right to prevent other people from using the distinctive sign of which they are beneficiaries, or that they register as a trademark the same distinctive sign protected with the denomination (Pachón, 1986, p. 3); that is to say, using this registration, the capacity is reached that a designation of origin can prevent “other people from offering products that reach the degree of quality that such origin has made known”(Pérez de la Cruz, 2008, p. 53), or that brands with similar signs that may generate confusion in the market.

Under this situation, the existence of quality control systems is implicitly required to continually examine whether the collective benefit is fulfilling its purposes and whether access to authentic and original products is being guaranteed to the consumer.

Regarding the procedure for the recognition of an Andean or third country designation of origin to operate, the application must be submitted by producers, manufacturers or artisans who have a legitimate interest, or by the competent authorities of the place, where the denomination comes. It is also necessary for recognition in another Andean country that the designation of origin is protected as such in a country. In Ecuador, the Organic Code of the Social Economy of Knowledge, Creativity and Innovation, from Art. 428 to Art. 458, provides the necessary regulations for the recognition, registration and protection of designations of origin and geographical indications², indicating the requirements to grant legal recognition thereof.

2 These can be assimilated to the so-called ‘guaranteed traditional specialties’, named in the latter way by the already mentioned Organic Code of the Social Economy of Knowledge, Creativity and Innovation.

Thus, an appellation of origin will be protected from the declaration that it grants, and that has been issued by the competent national authority on intellectual rights (Art. 430). In this regard, the declaration of protection of a designation of origin will be made *ex officio* or at the request of those who demonstrate that they have a legitimate interest, understood as such to natural or legal persons who are directly engaged in the production, extraction or elaboration of the product or products that are intended to designate with the designation of origin, as well as the associations made up of said persons (Art. 431). It is important to note that, according to the law, the public authorities of the decentralized central or autonomous administration will also consider themselves interested, in the case of appellations of origin of their respective constituencies, which allows national and local governments to be able to effectively take advantage of this legal framework to support the promotion of economic development in their respective territorial jurisdictions.

On the other hand, it is necessary to observe that according to the law, the term of validity of the declaration as mentioned above of protection of an appellation of origin is indefinite, being determined only by the subsistence of the conditions that motivated it, in the opinion of the authority competent national in the field of intellectual rights (Art. 433). As an example of what has been said, one can consider, among many others, geographical conditions such as temperature or humidity level of the environment; and human conditions such as the existence (verifiable) in the population of the determined geographic place, of the ancestral knowledge to elaborate a finished product.

If such conditions have not been maintained, the competent authority may decide on the term of the declaration. However, and without prejudice to the legal remedies that may arise against the said resolution, the interested parties may request the declaration of protection again when they consider that the conditions for their protection have been restored.

Furthermore, it is normatively essential to keep in mind that according to the law mentioned above, once a protection application has been admitted for processing, the procedure provided for the registration of trademarks will be applied, where appropriate. (Ingenios Code, 2016, Art. 432)

The normative evolution in the matter is not exclusive to our country; In this way, several Latin American countries and others worldwide have been adapting their legal system progressively and in constant evolution towards a legal framework that covers the recognition, protection and control of designations of origin and geographical indications, from a harmonized approach and according to the public policies of each country.

On the other hand, it is necessary to highlight that the proactive and flexible approach currently held by intellectual property regulations, to promote the protection of designations of origin and geographical indications, is a crucial element to follow in order to expand trade at the local level, being endorsed globally by the standards of the World Intellectual Property Organization and the World Trade Organization.

Although Ecuador already contemplates the corresponding procedures for the registration of designations of origin in the aforementioned Organic Code of the Social Economy of Knowledge, Creativity and Innovation, the need to incorporate more control into the quality of the products that they already enjoy of a designation of origin or geographical indication is essential, which is why the simultaneous creation of Regulatory Councils of each designation of origin or geographical indication is necessary, as collective entities in charge of the functions of monitoring, evaluation and control, of the excellent use of designations of origin and registered geographical indications. However, this type of council has not yet been created in the country, despite being a figure present in the various legislations that have chosen to incorporate these legal protection figures normatively, these functions currently being assigned to the National Service of Intellectual Rights (SENADI). However, it is essential to highlight that this public body already has multiple functions to fulfil within the

field of intellectual property in the country. For this reason, it would be desirable for the creation of regulatory councils in the coming years, as specific spaces for dialogue and technical supervision of geographical indications and appellations of origin that arise in Ecuador, contributing to their multiplication and strengthening.

As an essential step towards achieving this objective, dated February 21, 2019, the Secretary of Higher Education, Science, Technology and Innovation (Senescyt); the National Service of Intellectual Rights (Senadi); the Ministry of Production, Foreign Trade, Investments and Fisheries (Mpceip); and, the Ministry of Agriculture and Livestock (MAG) signed an agreement for the promotion and protection of the so-called National Denomination of Origin System. The signing of this agreement will allow the participating institutions to carry out an articulated and coordinated work to boost the production and quality of Ecuadorian products, considering that a designation of origin makes grow economically, not only to producers but to their entire environment. (National Secretariat for Higher Education, Science, Technology and Innovation, 2019)

No doubt developing countries are at a disadvantage in achieving the protection of appellations of origin and geographical indications against developed countries, due to the limited budgets available to cover the costs of the registration and maintenance processes of these, as well as due to the still weak public policies of state support (central and local), which despite the multiple benefits for economic development already mentioned throughout this document, still maintain a low level of interest in support the emergence of new designations of origin and geographical indications in their territories.

In this respect, public support has become a fundamental piece in the consolidation of the specialized brands (appellations of origin and geographical indications) of the country (e.g. through the financing of regulatory councils), considering that in reality, initially Of all these processes, state support is deficient, being solved in many cases thanks to international cooperation. However, it should not be lost sight that the State and the different national organizations

are the calls to guarantee the continuity and consolidation of the designation of origin or geographical indication, the sustainability and improvement of production, its homogeneity, and in general, the equitable socio-economic development of all the inhabitants of each region or territory benefited by this type of specific brand.

In developed countries, it has been observed that the key to properly developing appellations of origin and geographical indications is to promote an adequate public-private productive coordination, in which on the one hand, the productive agents of the territory themselves participate, whom they know in detail the characteristics of the traditional products that they possess and are feasible to be registered. On the other hand, the central and local State participates, who has the knowledge of the legal and technical requirements and procedures that must be followed in case of requesting their registration, as well as the resources to carry out prior market studies and pay for the promotion costs. Commercial and positioning (/ inside and outside the country) of the appellations of origin and registered geographical indications.

In the particular Ecuadorian case, although the first actions in this area have already begun, there is still a long way to go; There are regulatory tools that facilitate the promotion of new designations of origin and geographical indications. However, state support is still deficient in this process, the possibility of potentiating national economic development through these legal instruments not being adequately exploited.

Finally, it is essential to mention that the international (and local) legal framework in force makes possible the fact that, at the same time, a geographical indication and a designation of origin can coexist on the same product, and therefore the same product may have “double protection “. An excellent example of this is the case of French Champagne, which is registered as a geographical indication and as a designation of origin.

1.6. Considerations regarding the expansion of the legal protection of geographical indications and designations of origin, in Ecuador

It should be remembered that the use of appellations of origin and geographical indications is the natural consequence of traditional products of high quality and that enjoys an excellent reputation within and outside its geography, constituting for a territory “endogenous” driver of its development. Here is the importance of protecting them legally, in order to ensure that their beneficial effects are long-lasting and stable in the long term.

An aspect of particular importance also to remember, especially for developing countries such as Ecuador, is that the use of geographical indications is not limited to agricultural products, since it may also serve to highlight the specific qualities of a product as a result of human factors specific to a place or region (e.g. skills based on ancestral knowledge), making this place or region more attractive to foreign investment and tourism.

Let us remember that in our country, for example, artisanal products have been protected in this way, in which specific knowledge and manufacturing skills acquire particular relevance, such as the Montecristi as mentioned earlier hat (registered only in 2008), concerning which the state’s inaction to promote its registration (a century ago) and the confusion caused by world consumers when acquiring this high-quality product made in Ecuador, but named with the emblem of another country (Panama Hat), has meant significant economic losses for the country, along with a regrettable more significant, indeterminable and unrecoverable loss: national identity.

This example reflects the need for the State to take action on the matter promptly, concerning promoting the registration of appellations of origin and geographical indications; and besides, that through dissemination campaigns, the interest of the country’s citizens in protecting traditional products from their habitat is motivated. However, it is undoubtedly

regrettable to recognize that, perhaps mired in ignorance of its many benefits, most of the country's inhabitants have indeed not shown an interest in protecting the rich cultural heritage and rich traditions present in the different geographical regions of the country.

On the other hand, it should be said that within the legal field, over time, the legal basis of protection for geographical indications and appellations of origin has been defined and perfected. Thus, a short time ago (early 20th century), its protection was incorporated exclusively into the field of consumer rights and defense against unfair competition. However, it has evolved rapidly, and in the current 21st century, this protection is definitively recognized within the specific field of industrial property, and therefore all the pertinent legal regulations are applicable, at national and international level.

Concerning this last point, it is worth mentioning that two protection systems coexist at the international level: i) the European one, where the tendency is for geographical indications and appellations of origin to be defined and granted through legal systems highly controlled by the State (or from the groupings of countries, such as those belonging to the European Union); and, ii) the North American, where the issue of geographical indications and designations of origin has been treated as a matter related to the field of trademarks, which allows its greater diffusion in the population and privileges its commercial use over the centralized protectionism. Thus, in the United States, the registration of collective or certification marks is used as a legal mechanism for the protection of geographical indications and designations of origin.

In this sense, at the international level the need to generate agreements that harmonize the different existing legal positions has become visible, and in this way, be able to advance in the construction of regional or international economic integration processes, through the development of legal commitments specific on intellectual property issues, with jurisdiction over the territory of the countries subscribing to these agreements. An example of this is the Agreement

on Trade-Related Aspects of Intellectual Property-TRIPS, promoted by the World Trade Organization.

In the Ecuadorian case, it is necessary to incorporate into the various efforts that the country makes to achieve trade agreements of international scope (such as the Trade Agreement with the European Union -in force from January 1, 2017- or the possible similar agreements with the United States or other countries), a shared vision regarding the protection and promotion of national designations of origin, at the level of the various state agencies participating in these negotiation processes, to harmonize criteria and join efforts.

In this sense, it will also be necessary to consider that the current national legal framework based on the Organic Code of the Social Economy of Knowledge, Creativity and Innovation, facilitates the protection of geographical indications and designations of origin, by registering them, considering for this purpose, a relatively new particular regulatory framework, which allows its assimilation to the trademark registration regime already in force in Ecuador for many years and with which we have extensive experience.

It is also necessary to say that, having a specific registry system for designations of origin and geographical indications, can be considered as a strength for Ecuador, since it allows dynamically and democratically, that any person (natural or legal) or Human group that is interested in the protection of a geographical indication or denomination of origin, can request it directly, without having to previously 'negotiate' with someone this action, and without the need to modify the existing legal framework. Besides, the system provided for in the Organic Code of the Social Economy of Knowledge, Creativity and Innovation, grants over time greater security and solidity to the various plans, programs or projects of local economic development that are designed and implemented, since that guarantees both the inhabitants of the place, the potential investors and the state organisms that promote these actions, that the registration is granted indefinitely.

On the other hand, this registry system has the advantage of being able to promote only those appellations of origin that are really of interest to Ecuador, avoiding unnecessary saturation with countless applications for the registration of appellations of origin, lacking real possibilities of commercial success. This situation constitutes a *sine qua non*-requirement for the long-term success and self-sustainability of these specialized brands.

CONCLUSIONS

Over time, geographical indications and designations of origin are elements of transcendental importance in the protection of the cultural heritage of humanity, through the protection of ancestral knowledge applied in the elaboration of various products, such as food, beverages and textiles, as well as the particular geographical conditions of the place where its producers live, allowing them to become known and position themselves worldwide as exclusive holders of high-quality and prestigious products.

Based on the legal regulations in force overtime, and currently, present at international and local levels, geographical indications and designations of origin are considered instruments of intellectual property law, capable of promoting the economic development of a determined locality, territory or country, thus favouring the appearance of positive endogenous and exogenous factors, such as the generation of sources of employment, the capture of direct productive investment (national and foreign), the generation of sustained tourist flows, the increase of the currencies that enter a nation through exports, more significant capture of fiscal income for the national states, among others.

The legal framework in force in Ecuador made up of international (e.g. TRIPS, Decision 486) and national laws (Organic Code of the Social Economy of Knowledge, Creativity and Innovation), enables the development of initiatives of national and local scope, that promote the protection of new designations of origin and geographical indications, for the

benefit of the economic development of the country and its inhabitants.

It is necessary for the Ecuadorian State, through the central and local governments, to develop plans, programs, and projects aimed at spreading knowledge regarding designations of origin and geographical indications in the country.

It is relevant to motivate a greater use of them, in all-natural regions, provinces and cantons of Ecuador, which will help protect local cultural heritage, strengthen national identity, and benefit more significant and better opportunities for productive employment and sustainable income for large segments of the population.

REFERENCES

- Álvarez, C. (2001). *Derecho del Vino. Denominaciones de Origen*. Santiago: Ed. Jurídica de Chile.
- Botana Agra, M. (1994). *La protección de las Marcas Internacionales*. Madrid: Marcial Pons.
- Castro, J. (2009). *La propiedad industrial*. Bogotá: Universidad Externado de Colombia.
- Comunidad Andina de Naciones. (2000). *Decisión 486, Régimen Común sobre Propiedad Industrial*. Lima.
- Consejo Regulador de la Denominación de Origen Pisco. (n.d.). ¿Qué es el CRDO?; Retrieved from: <http://www.consejoreguladordelpisco.pe/que-es-el-crdo/>
- Consejo Regulador de la Denominación de Origen Pisco. (n.d.). *Normativa histórica sobre la denominación de origen pisco*. Retrieved from: <http://www.consejoreguladordelpisco.pe/normativa-historica/>

- El Comercio. (January 22, 2015). Galápagos tendrá su propio café de origen. *El Comercio*. Retrieved from: <http://www.elcomercio.com/actualidad/galapagos-tendra-propio-cafe-origen.html>
- Errázuriz, C. (2010). Indicaciones Geográficas y Denominaciones de Origen. Propiedad Intelectual en progreso. *Revista Chilena de Derecho*, 37(2).
- European Commission. (2013). *Geographical-Indications*. Retrieved from: <http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographicalindications/>
- Government of Chile. (2000). Agricultural and Livestock Service, Agricultural Protection Division, Vines and Vineyards Sub-Department. [Decree N.- 521, Pisco Denomination of Origin]. Of May 27, 2000, Santiago de Chile.
- Instituto de Propiedad Industrial de Chile-INAPI. (2018). ¿Qué son las indicaciones geográficas y las denominaciones de origen? Retrieved from: <https://www.inapi.cl/portal/institucional/600/w3-article-750.html>
- Instituto Ecuatoriano de la Propiedad Intelectual-IEPI (currently SENADI). (2014). *CRÓNICA (Primera parte) Las Denominaciones de Origen a través de la historia. Historia de las denominaciones de origen*. Retrieved from: <https://www.propiedadintelectual.gob.ec/las-denominaciones-de-origen-a-traves-de-la-historia/>
- Larraguibel, S. (1995). *Tratado sobre la Propiedad Industrial*, volume 2. Santiago: Ed. Jurídica Cono Sur.
- Ministry of Agriculture of Chile. Geographical Indications (Alcoholic Beverages and Vinegars) [Law No. 18.455, Regulations on the Production, Processing and Marketing of Ethyl Alcohols, Alcoholic Beverages and Vinegars, and repealing Book I of Law No. 17.105]. (1985). Of October 31, 1985.

National Assembly of Ecuador. Organic Code of the Social Economy of Knowledge, Creativity and Innovation. (2016). R.O. 899 of December 16, 2016.

Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura-UNESCO. (2012). *Séptima reunión del Comité Intergubernamental (7.COM). Evaluación de las candidaturas para inscripción en 2012 en la Lista Representativa del Patrimonio Cultural Inmaterial de la Humanidad (punto 11 del orden del día). Tradicional tejido del sombrero de paja toquilla ecuatoriano*. Lista representativa: Referencia 729. Nota: Inscrito. Documento: 7 COM.11.12. Retrieved from: <https://ich.unesco.org/en/11-representative-list-00520>

Organización Mundial de la Propiedad Intelectual, Comité Permanente sobre el Derecho de Marcas, Dibujos y Modelos Industriales e Indicaciones Geográficas. (2002). *Las Indicaciones Geográficas y el Principio de Territorialidad*. Ginebra.

Organización Mundial de la Propiedad Intelectual-OMPI, Indicaciones Geográficas. (2018). *¿Qué es una indicación geográfica?* Retrieved from: http://www.wipo.int/geo_indications/es/

Organización Mundial de la Propiedad Intelectual-OMPI. (1958). Arreglo de Lisboa relativo a la Protección de las Denominaciones de Origen y su Registro Internacional. Promulgado el 31 de octubre de 1958, revisado en Estocolmo el 14 de julio de 1967 y modificado el 28 de septiembre de 1979, Lisboa.

Organización Mundial de la Propiedad Intelectual-OMPI. (2017). *La importancia del origen: la experiencia de Colombia*. Ginebra. Retrieved from: <http://www.wipo.int/ipadvantage/es/details.jsp?id=2617> con fecha 16 de diciembre de 2018.

- Organización Mundial de Propiedad Intelectual-OMPI. (n.d.). *Preguntas frecuentes: indicaciones geográficas, ¿cuál es la diferencia entre una indicación geográfica y una denominación de origen?* Retrieved from: http://www.wipo.int/geo_indications/es/faq_geographicalindications.html
- Organización Mundial del Comercio-OMC. (2017). *ADPIC, Indicaciones Geográficas, Antecedentes y Situación actual*. Retrieved from: https://www.wto.org/spanish/tratop_s/trips_s/gi_background_s.htm#general
- Orozco, I. (2008). Las denominaciones de origen en México. *Revista de Derecho Actualidad Jurídica*, Año 9(17).
- Pacari. (2018). *Nuestros Premios*. Quito. Retrieved from: <https://www.pacarichocolate.com/premios>
- Pachón, M. (1986). *Protección de los derechos de la propiedad industrial*. Bogotá: Temis.
- Palau, F. & Pacón, A. M. (2012). *La protección de las indicaciones geográficas y denominaciones de origen: Europa y Comunidad Andina*. Valencia: Tirant Lo Blanch.
- Pérez de la Cruz Blanco, A. (2008). *Derecho de la propiedad industrial, intelectual y de la competencia*. Madrid: Marcial Pons.
- Pisco Chile Asociación Gremial. (n.d.). *Tres siglos de historia en una botella*. Retrieved from: <http://piscochile.com/pisco/>
- Schiavone, E. (2003). *Indicaciones Geográficas, en Derechos Intelectuales: Indicaciones Geográficas, Competencia Desleal, Conocimientos Tradicionales, Invenciones Biotecnológicas, e-Commerce, Tratado de Cooperación en Materia de Patentes (PCT), Patentes y Protección de Datos en la OMC*. Buenos Aires: Ed. Astrea.

Secretaría Nacional de Educación Superior, Ciencia, Tecnología e Innovación. (2019). *Sistema Nacional de Denominaciones de Origen busca impulsar producción nacional*. Retrieved from: <https://www.educacionsuperior.gob.ec/sistema-nacional-de-denominaciones-de-origen-busca-impulsar-produccion-nacional/>

World Intellectual Property Organization. (n.d.). *Frequently Asked Questions: Geographical Indications*. Retrieved from: https://www.wipo.int/geo_indications/en/faq_geographicalindications.html Received: 20/03/2020

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