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SOME NOTES ON THE PROTECTION OF APPELLATIONS OF ORIGIN
IN COUNTRIES WITH EMERGING ECONOMIES :
THE ANDEAN COMMUNITY

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I. THE IMPORT OF PROTECTION SYSTEMS AND THE RELEVANT LAWS

It is a fact that the most significant development of the appellation of origin concept and its technical and legal regulation has taken place in Europe. Gislaine Legendre points out that “the custom of designating products with the name of the place in which they are

manufactured or harvested is very ancient. La Dinanderie, for instance, from the name of Dinant in Belgium, lent distinction to the working of brass in the twelfth century. Roquefort acquired notoriety under its appellation of origin from the fourteenth century onwards, and was the subject of a Royal Warrant granted by Charles V, known as the Wise, to the inhabitants of Roquefort.”¹

Throughout the history of man's economic and commercial development, the fact of physically establishing themselves and their trades or businesses (including local trade guilds) in a particular place, and the supply of raw material to the actual place of manufacture, have compelled artisan to identify their products with marks, generally consisting of the geographical name of the place of manufacture, those marks being of often the property of all manufacturers of a particular product from one and the same town or region.

In the course of this economic evolution it was however necessary not only to identify and differentiate products, but also to establish machinery for their protection and organization, so that conflicts might be settled between “those who want to retain a right acquired by virtue of the particular climatic conditions, the type of soil and the manner of cultivating or manufacturing the products, and on the other hand those who, without either reason or right, sought to take undue advantage of usurped appellations and thereby make an unlawful profit.”²

It is interesting to note what the first signs of protection in Spanish law were; one precursor is to be found in the Regional Archive of Galicia, file 26.362 No. 31, referring to the 1564 Win e of Ribadavia :

“The wine of Ribadavia has to be from the Ribadavia vineyard up to San Clodio spring, divided into the following parts: first the parish of Sampayo, San Andrés de Camporredondo, Esposende, Pozoshermos, until the said San Clodio spring reached, the whole bank of the Avia river and from there back down, Vieyte, Beade, etc.

“Besides, marketing wine in this town that is from places where it is not properly made causes prejudice and inconvenience because, in the guise of a good wine, traders are being sold another that is not good, and thereafter the purchasers are deceived, and the wine is not one that may be shipped across the sea.”³

The first Spanish enactment to provide for appellations of origin was the Wine Statute passed by decree dated September 8, 1932, and elevated to the rank of law by that of May 26, 1933. This text provides for the institution of the Regulatory Council. Later Law 25/1970 of December 2, 1970, called the “Wine Statute. Wines and Spirits” was enacted. The latter is now the applicable framework for the legal treatment of appellations of origin.

¹ LEGENDRE Gislaine, “Appellations of Origin in France and the National Institute of Appellations of Origin (INAO),” First International Seminar on Appellations of Origin, Buenos Aires, 1995.

² *Ibidem.*

³ HERRERO Luis, “The Protection of Appellations of Origin in Spain,” WIPO Seminar on the Legal Protection of Appellations of Origin, Lima, 1997 (document WIPO/AO/LIM/97/3).

The new Statute introduces two new protection concepts, namely generic and specific appellations, the possibility of applying the appellations provided for in the Law to other, different wine products, and INDO, as the autonomous body incorporating the Regulatory Councils responsible for the monitoring and promotion of appellations of origin, both specific and generic.

In fact it was in France, in the 1300s, that the first regulatory provisions were enacted to prevent wines from a given region from being given a name that was not that of the place in which they were produced. In 1905 the first legal provisions for the protection of appellations of origin were adopted, and it was eventually by the Decree -Law of July 30, 1935, that the “controlled appellation of origin” concept was created together with the body responsible for regulation and control, namely the National Committee of Wines and Eaux -de-Vie, which in 1974 became the National Institute of Appellations of Origin or INAO.

Against this historical background, we can see that countries, like ours, with less experience in the development and promotion of geographical indications have to import, schemes and legal systems for their protection and recognition, sometimes under pressure but sometimes voluntarily. Success lies in adopting legal machinery and above all practical experience that is sufficiently compatible with the domestic realities of the country concerned and above all with the convictions of its citizens.

We are sure that the only manner in which intellectual property, as an integral system, can be understood and respected in poor countries is by bringing about a situation where the system becomes a tool enabling the man in the street to generate wealth for his own benefit and for the benefit of his community.

The challenge lies in the creative and ingenious development of machinery with which to incorporate intellectual property in everyday life, and in making the citizen perceive it as a necessity.

II. HISTORICAL DEVELOPMENT OF COMMUNITY LEGISLATION ON APPELLATIONS OF ORIGIN IN THE ANDEAN COMMUNITY

The legal treatment that the Andean Community gave to the concept of geographical indications up to 1994, when Decision 344 of the Commission of the Cartagena Agreement came into force, was that of “indirect protection,” namely protection by way of the provisions on trademarks and unfair competition.⁴

Decision 85⁵ of the Commission of the Cartagena Agreement, enacting Regulations for the Implementation of the Provisions on Industrial Property, provided in its Article 59 that

⁴ It is important to make clear that the countries making up the Andean Community, alongside the evolving Community legislation, have always had their own domestic legislative arrangements for the protection of their appellations of origin.

⁵ Decision 85 of the Commission of the Cartagena Agreement was approved at the Thirteenth Period of Extraordinary Sessions of the Commission (May 25 to June 5, 1974). The Decision has not come into force for a number of member countries, which have not written it into their

“wherethemarkconsistsofawordinaforeignlanguageorageographicalname,thereshall beamentionatitsfoot,invisibleandclearlylegibleform,oftheplaceofmanufactureofthe product.”

Similarly,bothDecisions311⁶andDecision313,⁷enactingCommonProvisionson IndustrialProperty,alsoprovidedindirectlyforgeographicalindications.Amongthe absoluteprohibitionscontainedinArticle72ofthelattertext,subparagraph(j)providedthat thosesignsmightnotberegisteredasmarksthatreproducedorimitatedaprotected appellationoforigin,consistedofanationalorforeigngeographicalindicationliableto cause confusionwithregardtothegoodsorservicestowhichitapplied,orwhichwhenusedmight misleadthepublicastheorigin,source,qualitiesorcharacteristicsofthegoodsforwhich themarkswereused.

Article75providedmoreoverthat,wherethetrademarkconsistedofageographical name,theproductcouldnotbemarketedwithoutavisibleandclearlylegiblementionthereon oftheplaceofmanufactureoftheproduct.

WiththeentryintoforceofDecision344⁸oftheCommissionoftheCartagena Agreement,AndeanCommunitylegislationadoptedanewregimeforappellationsoforigin, introducingasystemthatparalleledtheonefordistinctivesigns.

InitsChapterVII,itgrantedexclusive rightsingeographicaldenominationstopersons (bothenaturalpersonsandlegalentities)residentindulyapprovedgeographicalareas.More specifically,Article130oftheDecisionprovidedthat“theuseofappellationsoforiginin connectionwithnatural,agricultural,craftorindustrialproductsoriginatinginmember countriesshallbereservedexclusivelyforproducers,manufacturersandcraftsmenwhohave theirproductionormanufacturingestablishmentsinthelocalityorregionofthemember countrythatisdesignatedinorevokedbythesaidappellation.”

Thisnewlegalregimebroughtwithitasystemfortherecognitionofappellationsof origin,andalsomachinerywherebyusecouldbemadeofthemoncetheyhadbeengranted recognition.

Forsuchusetotakeplace,theDecisionlaiddowntherequirementoftheappropriate “authorizationofuse”issuedbythecompetentnationalauthority;⁹thatusewasreserved exclusivelyforthoseengagedintheextraction,productionorprocessingoftheproducts identifiedbytheappellation,apartfromwhichevertheactivityhadtotakeplaceontheterritory

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domestic legislation. In the case of Peru, it was approved by virtue of Decree -Law 22532 of May 15, 1979.

⁶ Decision 311 was published in the *Official Gazette* of December 12, 1991, replacing Decision 85. It had a very short life of just two months before being replaced by Decision 313.

⁷ This was published in the *Official Gazette* of February 14, 1992, replacing Decision 311.

⁸ Decision 344 of the Commission of the Cartagena Agreement entered into force on January 1, 1994, repealing Decision 313.

⁹ According to the sole final provision of Decision 344, the competent national office is understood to be the administrative body responsible for the registration of industrial property.

specified in the declaration of recognition, and specific requirements laid down by the authority of each member country had to be met.¹⁰

Finally, Decision 344 incorporated in its Article 142¹¹ important machinery for the protection of national appellations of origin by other countries of the Andean Community.

This machinery has been used by Peru for the recognition and protection of its Pisco appellation, which has gained full recognition from Ecuador, Bolivia, Venezuela and Colombia.

III. GEOGRAPHICAL INDICATIONS AND THE NEW DECISION 486 OF THE ANDEAN COMMUNITY

Continuing with the analysis of legislative development in the countries of the Andean Community, Decision 486¹² became the new Common Provision on Industrial Property, entering into force on December 1, 2000.

The new Decision adopts the system whereby the category of geographical indication is divided into two legal concepts, namely indications of source and appellations of origin.¹³ That approach, as mentioned by professor Manuel Arean Lalín,¹⁴ corresponds to both French and Spanish law, while in fact the division has also established itself at the international level (Paris Union Convention for the Protection of Industrial Property, TRIPS Agreement, Council Regulation (EEC) No. 2081/92 of July 14, 1992).

In the light of these considerations, it will be understood that appellations of origin and indications of source are two elements of industrial property that are closely related and combine to constitute geographical designations and perform a distinguishing role on the market.

Decision 486 defines an appellation of origin in its Article 201 as *“a geographical indication consisting of the name of a country, region or place, or a name which, without being that of a particular country, region or place, refers to a particular geographical area,*

¹⁰ For instance, in the case of the Pisco appellation, the producers of the grape eau-de-vie belonging to the demarcated area had to prove the conformity of their product to Peruvian Technical Standard (NTP) 211.001.

¹¹ “142. Competent national offices may declare the appellations of origin of countries of the subregion protected where an application is filed by the country’s producers, extractors, manufacturers or craftsmen who have a legitimate interest, or by the public authorities of those member countries. In the case of countries outside the Community, the competent national office may declare protection insofar as it is provided for in a treaty to which the member country is party, or the other country grants reciprocal treatment. For such protection to be applied for, the appellations of origin must have been declared such in their countries of origin. Appellations of origin protected in other countries shall not be considered common or generic for distinguishing any product for as long as that protection subsists.”

¹² Decision 486 of the Commission of the Andean Community replaced Decision 344 of the Commission of the Cartagena Agreement.

¹³ Title X II of Decision 486 relates to geographical indications and its Chapters I and II to appellations of origin and indications of source respectively.

¹⁴ AREAN LALÍN Manuel, “Definición y protección jurídica de las Indicaciones Geográficas,” *Actas de Derecho Industrial* (1991 - 1992).

and is used to designate a product originating therein the quality, reputation or other characteristics of which are exclusively or essentially due to the geographical environment in which it is produced, including both natural and human factors.”

The appellation of origin concept defined above is the same as the one that applied when Decision 344 was in force, which was itself inspired by Article 2 of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

As for the actual subject matter protected it is understood, in accordance with the appellation of origin concept written into the Decision, that only those products will be recognized whose characteristics are essentially or exclusively due to the geographical environment with its natural and human factors, and the production, transformation and processing of which take place within the demarcated geographical area.

In the presence of this naturalistic conception,¹⁵ it should be made clear that the Andean Community provisions do not impose the obligation to use appellations of origin only for products connected with agriculture or livestock breeding.

This is borne out by the provisions of Article 212, which provides that “the use of appellations of origin in connection with *natural, agricultural, craft or industrial products* originating in member countries shall be reserved exclusively *for producer s, manufacturers and craftsmen* who have their production or manufacturing establishments in the locality or region of the member country that is designated in or evoked by the said appellation.”

The aspect of ownership or “property” of appellations or origin is of the utmost importance to their development and promotion; it is also of interest to national governments.

Experts on the subject and also various laws state that “... the appellation is a public good, it belongs inalienably and imprescriptibly to the national or regional community, as the case may be, and its protection is usually the responsibility of the public authorities or the State. The appellation of origin is considered part of the national heritage, and ultimately under State control.”¹⁶

Also, in the case of Peru,¹⁷ Legislative Decree 823, the law on industrial property, provides in its Article 218 that the Peruvian State is the owner of Peruvian appellations of

¹⁵ Cf. “The International Protection Regime for Geographical Indications,” document WIPO/AO/LIM/97/1, Lima 1997. The naturalistic conception places greater emphasis on the natural factors of the product’s origin than on the human factors that are involved in its production.

¹⁶ Cf. “El Régimen Internacional de Protección de las Indicaciones Geográficas” (Note 14), R. Tinlot and V. Game.

¹⁷ It is interesting to note that the legal provision by virtue of which the Peruvian State is the “dueño” (owner or holder) of appellations of origin was influenced by various practical and social considerations: in the Andean countries, products that potentially can use an appellation of origin generally come from the ground (agricultural products) or are rare processed or produced by craftsmen who more often than not belong to native or rural communities. The products, the production and extraction activities and also the designations (geographical or product names) are in some cases ancestral and go back to thousands of years. All this implies that the villager who would be the beneficiary of the appellation of origin fail to apply for authorization

origin and grants authorizations for their use. That provision, and indeed the whole system of authorizing use, was originally taken from Mexican legislation.

Decision 486 provides for a system under which an appellation of origin comes into being by virtue of a "declaration of protection," which is actually made by the State, acting through its competent national office. ¹⁸ The declaration of protection may be made either *ex officio* or at the request of a party demonstrating a legitimate interest. ¹⁹

Once the recognition of the appellation of origin has been declared, the process will go into the next stage, which is that of actual use of the appellation.

Authorization to use a protected appellation of origin may only be applied for by persons who :

- (a) are directly engaged in the extraction, production or processing of the products identified by the appellation of origin ;
- (b) conduct that activity within the demarcated geographical areas specified in the declaration of protection ;
- (c) comply with other requirements imposed by competent national offices.

One important aspect of the new Andean regime in this area has been the introduction of the option whereby the administration of the right of use is not only in the hands of a public body (the competent national office), but may also be taken care of by private entities representing the beneficiaries of the appellations of origin where national legislation so provides.

This provision represents significant progress towards the proper handling of appellations of origin in the countries of the Andean Community, as private participation is the central element on which the whole system should hinge. For instance, Peruvian experience has shown that the reason for there having been no substantial progress in the development of new appellations of origin, or appropriate, optimum administration of Pisco, the only recognized appellation of origin, is that there has been no private-sector participation in the system.

With regard to the unauthorized use of the appellation of origin, or instances of qualifying terms being used such as variety, type, imitation and others which create confusion

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touse of an appellation that he considers his own and that of his ancestors, not that of the State. In this connection see the case of Chirimoya Cumbe, INDECOPI Report 1992 -1999, Lima, Peru.

¹⁸ Like its predecessor, Decision 486 provides its Article 273 (Final Provisions) that "... competent national offices shall be taken to mean the administrative bodies possible for the registration of industrial property."

¹⁹ The following have a legitimate interest : "... natural persons or legal entities directly engaged in the extraction, production or processing of the product or products to be covered by the appellation of origin, and also associations of producers. State, departmental, provincial or municipal authorities shall likewise be considered interested where the appellations of origin refer to their own areas of concern."

in the mind of the consumer, the Andean text has declared such acts to be infringements of industrial property rights.

Finally, like the earlier Decision, and indeed as I mentioned earlier regarding the recognition of non-national appellations of origin, the Andean provision is as follows:

- (a) competent national offices may recognize appellations of origin protected in another member country where an application is filed by its producers, extractors, manufacturers or craftsmen who have a legitimate interest, or by the public authorities of that member country.
- (b) In the case of appellations of origin or geographical indications that are protected in other countries, the competent national offices may accord them protection where it is provided for in any treaty to which the member country is party. In order to apply for such protection, the appellations of origin have to have been declared such in their countries of origin.

IV. FROM THE COMING INTO BEING TO THE PROTECTION OF APPELLATIONS OF ORIGIN

While at Andean Community level there has indeed been a state of legislative developments in connection with appellations of origin, that is not really a true reflection of the facts, as at present there are only four appellations of origin that have been recognized nationally (Pisco, Singani, Chuao, Cocuy Pecayero), and one at Community level (Pisco).

If we make an analysis of the reasons or causes, we might come across useful information that could be used to reverse the situation, which seemingly is not peculiar to the countries of the Andean Community but shared with many countries of Latin America.

(a) It is necessary for our countries to move on from an economy in which we have concentrated on “comparative advantages” (natural deposits, climate) to an economy of “competitive prosperity advantage,” as it is not so much the resources that we have that are important but rather the manner in which we use them; in other words we have to make productive use of our resources.²⁰

(b) In spite of the fact that our Andean countries have an abundant supply of natural, historic and prehistoric resources — there are more than 2,000 toponyms in the Peruvian Amazon forest alone — what we have to do is develop strategies based on competitiveness and quality culture. Appellations of origin are an excellent means of bringing about such a change.

(c) There is a high degree of State reliance on the private sector; the role of the State should be reformulated into a more promotional one.

²⁰ PORTER, Michael, “Construyendoun Perú competitivo: hacia una agenda nacional.”

(d) Recognition of appellations of origin should not be advocated solely as a means of defense against the appropriation of the names and reputation of our original products.²¹

(e) Before embarking on a system of appellations of origin, it will be necessary first to assess the “involvement potential” of the private sector concerned; it is necessary to learn to work as a team. In some cases the use of collective marks can be very useful.²²

(f) The administration of appellations of origin has to focus on organizational entities in the nature of “control boards” or associations of producers, which are necessary for the proper functioning of the system. What is required is direct participation of the beneficiaries, administration and supervision “by ourselves,” preservation of origin and quality, homogenization of the product according to our own standards, and a degree of corporate vision.

The following are the appellations of origin currently recognized and protected in the countries of the Andean Community:

²¹ On acquiring a reputation that goes beyond the borders of their place of origin, such products come up against imitations and the appropriation of their names, even that of their actual origin. In terms of their nature, the methods most commonly used to take the undue advantage referred to focus directly on the names of the goods. Recent experience has shown us that products originating in Peru are constantly preyed on by persons who apply abroad for and in certain cases obtain trademark registrations for the names of the products with a view to exclusive exploitation. In other cases Peruvian appellations have even won recognition as foreign appellations of origin.

²² Cajamarca is a department of Peru located over 3,000 meters above sea level. Its geographical location and natural attributes have enabled it to build up a substantial production activity based on its livestock. It is famous for its cheeses, yoghurts, blancmange and butter among other things; the name Cajamarca is associated with that activity. The problem that arises is that this production activity is in the hands of small farmers and breeders who lack corporate vision. Their products are sold in the area (the city), in mini-markets and through travellers. However, many of the products are of very high quality and have won fame. This fame is inducing producers from cities elsewhere in the country to make use of the Cajamarca name to market their products, thus improperly making use of the reputation of Cajamarca products, and indeed in many cases detracting from the prestige of the name, as the products in question are of mediocre quality. After an intense campaign in the area, 80 producers of milk products were successfully convened, and they worked out the following common objectives:

The possibility of marketing the product in Lima (the ideal market) and distributing it on the main retail network (Wong);

The possibility, one day, of exporting;

The preservation of the quality associated with the Cajamarca origin, and the prevention of third-party exploitation of the name.

The strategy adopted was to work under a collective marks scheme. Eventually 37 producers registered the collective mark as an association of producers, and they are now working on marketing aspects before the market launch. The interesting feature is that they are already realizing that industrial property has been of great assistance to them, as they have involved themselves in the subject and the strategy adopted is obliging them to work together on matters regarding the quality and homogenization of the product.

EIPisco:Peru²³

By Directorial Resolution No. 072087 of December 12, 1990, the Republic of Peru, acting through its competent body ITINTEC, declared the PISCO denomination to be an appellation of origin for products derived from distillation of liquors from the exclusive fermentation of ripe grapes, processed in the coastal areas of the Departments of Lima, Ica, Arequipa, Moquegua and the valleys of Locumba, Sama and Caplin in the department of Tacna, in accordance with the production rules contained in Peruvian Technical Standard 211.001.

“Pisco is a Quechua word that has given a name to a valley, a seaport and the famous *au-de-vie* of Peru. To speak of Pisco is to speak of many things, but all of them come from the same thing and culminate in an intoxicating result. The name “Pisco,” in the rich, sonorous language of the Incas, means “Greetings.” However, apart from etymological considerations, there would be a historical path to follow before the toponym establishes itself. When the Incas came down from the Cordillera with their armies in order to gain control of the coast, they did so following the path of the condor — passing through Ticrapoor Hauytará — and because of that gave the name of Cuntur, or condor, to the valley that opened itself up to them. So the condor is the giant bird that gave the valley its first name. It continued with that name for a number of centuries, but for some linguistic reason that identified the condor with the great Andean bird, the Yunga Indians of the area, already sufficiently immersed in Quechua ways, took to calling it “Pisco,” extending the word to encompass the many land birds and seabirds of the region...”

“The Valley: at that time — we are in 1620 — the *Pisqueño* valley was already known for its vines, sugar plantations, cereals — corn and wheat — and fruit — melons, pomegranates, quinces and figs, not to mention the fish, the turtles and the river prawns. The most important business, however, was the wine production...”

“The Port... Pisco was then no more than a community with no greater claim to fame. In 1687, however, an earthquake partly destroyed it, and the tidal wave that followed left it completely in ruins. Recently it was these circumstances that brought about the birth of the new town... The port in turn was full of lighters and sailing barges and even three-masted frigates, all of them craft that had three jobs to do: shipping guano from the Ballesta and Chinchaislands, loading silver from the mines inland and most especially transporting the

²³ EIPisco has received the following international recognition as a Peruvian appellation of origin:

Bolivia, Resolution No. OPIB/DO/001/98, dated January 5, 1998.

Ecuador, Resolution No. 0962384 of the National Directorate of Industrial Property of Ecuador, dated January 15, 1998.

Colombia, Resolution No. 01529 of the Directorate General of Industrial and Commerce, dated February 1, 1999.

Venezuela, Resolution No. 0345 of the Industrial Property Registry, dated May 8, 1998.

Panama, Edict No. 1628 of the Directorate General of the Industrial Property Registry, by which Resolution No. 8871 of July 27, 1999, was issued.

Guatemala, final resolutions issued on June 12, 1998, by the Registry of Industrial Property.

Nicaragua, Resolution No. 2911435 of the Ministry of Development, Industry and Commerce, Industrial and Intellectual Property Registry, dated September 1, 1999.

Costa Rica, Registry No. 114662 of the Intellectual Property Registry, dated July 2, 1999.

Cuba, Agreement between governments on mutual recognition, dated October 10, 2000.

rich wines from the valley... The port of Pisco had discovered its *raison d'être*, which was to export jugs and pitchers full of the sweet liquor from its grapes.

“El Pisco. This was the path that the grape opened up until a new drink was created. It involved a process that was completed gradually and by all accounts at the price of two wars in the course of the eighteenth century. This new product was the Peruvian “Pisco,” engendered, created and produced in Peru. This is why, before the eighteenth century, there was no “Pisco” anywhere else on earth.”²⁴

Singani: Bolivia

Under the Law of May 4, 1992, the Republic of Bolivia recognized Singani as an appellation of origin, as it was a legitimate, exclusive product of Bolivian agroindustrial activity.

It is defined as a *neue de-vie* obtained by distillation of natural wines made from fresh grapes produced in the original production areas, in which distillation and bottling also take place.

“The history of Singani started during the Spanish conquest with the Augustinian missionaries, who pioneered Bolivian wine growing between 1550 and 1570. Winemaking in Bolivia started on religious grounds in Mizque, Cochabamba, one of the few archiepiscopal sees of the New World. The sixteenth century had already started when other production areas were opened up in the valleys to the South of Potosí. Potosí was the focal point for the exchange of wines developed by missionaries and Spaniards. The climate, altitude and other distinctive characteristics of Potosí led to the development and production of liquors with a higher alcoholic content. Those liquors were perfected over the years and took the name of a Potosí village called Singani. Singani is thus a genuinely Bolivian drink, different from any other in the world. Modern Singani is a clear spirit with an alcoholic strength of 40 degrees, made solely with Moscatel grapes from Alejandría. The central valley of Tarija is the only region in the world where the vine is grown. While it does have certain similarities to other recognized wine growing regions, Bolivia, situated in the heart of the Andes, is the second highest country in the world after Nepal, which means that the vineyards of Bolivia are the highest in the world. The altitude is not just a noteworthy fact, however: it makes a real difference to our products. At 1,700 - 2,800 meters above sea level, the grapes receive more intense ultraviolet radiation from the sun than other regions where grapes are grown. This makes for the development of a richer aromatic content in the fruit, leading to a distinctive taste and quality characteristic of Bolivian wines and Singani.”²⁵

The Cacao of Chuao: Venezuela

By Resolution No. 2006 of November 14, 2000, published in Industrial Property Bulletin No. 443 of November 21, 2000, the Republic of Venezuela, acting through its

²⁴ Extracted from José Antoni del Busto Duthurburu, preface, “Crónica y Relaciones que se refieren al origen y virtudes del PISCO,” Banco Latino, Lima, 1990.

²⁵ Singani, Cuatrocientos Años de Experiencia: <http://www.casa-real.com/mainxsingani.html>

Autonomous Intellectual Property Service (SAPI), recognized Chuao as an appellation of origin for cacao from the area named.

“Chuao was one of the first villages founded in Venezuela in the middle of the sixteenth century. Its first inhabitants, belonging to the greater Carib family, were almost entirely wiped out in the early years of Spanish colonization. They did however leave an abundant archeological testimony to their rich cultural diversity, which lay dormant as a long-term record in the subsoil of the region. The other ethnic groups, Spaniards, Africans and their descendants, then dominated and the dominators, converged as the economic, social and cultural configuration of this legendary community evolved. From 1658 onwards, Chuao was enriching and establishing its natural and cultural heritage, and today it represents one of the places with the most specific profile as a community unique in the world.

The “Chuao miracle” or “Chuao phenomenon” consists in its cacao business, where the evidence of an enslaved past merges with a present that is almost a carbon copy in terms of customs, beliefs and typology, suggesting a culture that has remained almost unchanged to the present day. It is still considered the producer of the “best cacao in the world,” and the title is one that has been earned and maintained in the judgement of the industry worldwide; we cannot separate Chuao from its industry because it would lose its identity; the people live through the industry. A microscopic part of its almond production still goes on in Chuao; the whole output goes to the markets of Europe, where it commands a very special price.”²⁶

Cocuy Pecayero: Venezuela

By Resolution No. 0287 of May 22, 2001, published in Industrial Property Bulletin No. 445, Volume VI, of June 1, 2001, the Republic of Venezuela, acting through its Autonomous Intellectual Property Service (SAPI), recognized Cocuy Pecayero as an appellation of origin.

Cocuy is a traditional alcoholic beverage that comes from the Cocuy Agave (Agave Cocui Trelease).

IV. VALUE GENERATION AS A STRATEGY FOR MAKING ECONOMIC ACTIVITIES COMPETITIVE IN EMERGING ECONOMIES

The entrepreneur, whether small, medium or large-scale, has to bear in mind that competitiveness entails the development and maintenance of comparative advantages over competitors, always looking to achieve a difference to one's own advantage with respect to the goods produced or services rendered, and adding to them more value than competitors do.

The competitiveness of a business is based on a choice of strategies:

²⁶ Los Pueblos de la Costa, CHUAO: <http://www.cacao.fundacite.arg.gov.ve/chuao.html>

Competing on cost. This is only possible when a favorable price ratio, an advantageous competitive environment and adequate volume are available.

Competing on differentiation. It has to be decided where and how competition should take place, on the basis of an analysis on one's own potential compared with that of the competition.

Nevertheless, Peru, like developing countries, is dependent on basic factors, and its companies compete mainly at the "commodities" level, making use of strategies based on advantages with respect to raw materials.

In spite of this, the Andean entrepreneur has excellent opportunities for competing on the basis of differentiation by type of product, by service, by capacity for innovation or other variables that have yet to be developed.

If we consider just two economic sectors or activities that are essential to regional or local development in our countries, *agro-business and handi craft*, it can be said that in Peru, as in other countries in the world, there are certain products that rely on more things than others: where do they come from? How are they manufactured? What is their secret? Since when have they existed?

Highlighting these elements properly, creatively and strategically has the effect of giving added value to the products, which would thus reach the market with a better chance of securing a clientele and a good position.

While there is a tendency for standardization of agro-food products, one should not lose sight of the fact that an important sector of the consuming public prefers the handmade, the local, and also particular tastes and smells.

And in many cases the price is not the factor that determines the decision to purchase: more importance is tending to be attached to aspects that previously were irrelevant, like the desire to please, the attraction of what is good-looking or agreeable, nutritious or natural, or exotic, among other things.

What has to be aimed at is a range of goods with an identity, with a soul.

It is necessary to incorporate the added-value chain and in the actual range certain devices that will help consumers notice the differences introduced.

And in this context, the added value associated with the differentiated product can only be realized if it is perceived and regarded as such by the consumer.

Consequently an excellent device that may be used to convey differentiation to the client or consumer is the appellation of origin:

- (a) It enables a difference to be appropriated as an intangible asset affording exclusive rights.
- (b) It gives legal security to differentiation (origin, quality, development, tradition, etc.).

(c) It has both national and international scope, backed up by a legal system.

The strategy should be based on the use of appellations of origin and designed with a view to making “commodities” into “specialities” on the basis of their origin, quality and other specific properties.

When distinctive signs are returned into an intangible asset recognized and rewarded by the consumer, the concepts of origin, quality, composition, development, etc. are internalized as remunerable assets.

In the case of handicraft, it is important to emphasize that craft production activity in our countries is tending more and more to take on special characteristics that have resulted in a very high percentage of exported handicraft being produced in capital cities and no longer in the original or historical localities (such as Chulcanas, Nazca and Ayacucho).

This fact alone shows that the localizing or originating character of ancestral cultures is gradually being lost.

The proposal to use appellations of origin in craft activity is intended to result in machinery being introduced that will directly preserve origin, culture, production, raw materials, qualities and specific properties, and indirectly encourage craft activity to remain in the place of its actual origin.

The main aim of the use of appellations of origin in this connection is to add value to the resulting product in relation to those similar to it, basically through the significance and content that may be represented by an appellation of origin used to distinguish handicraft; this would be without prejudice to any protection that might be derived from other intellectual property rights in the protected subject matter.

Finally, these are some of the main objectives that could be achieved through the development of appellations of origin:

- (a) Creation of economic value accruing to specific regional and local products.
- (b) Differentiation of products according to a perceived demand.
- (c) Promotion and development of family businesses.
- (d) Promotion of regional and local economies.
- (e) Promotion of exports and compliance with international standards with a view to the conduct of export activity, involving practice in working collectively according to common quality parameters.
- (f) Protection of the environment and preservation of local culture.
- (g) A legal system affording legal security.

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