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## ► To cite this version:

Patricia Covarrubia, Kerry Purcell. Geographical Indications in South America: it's not all about the label. Cultural Factors and Social Network Theories. Worldwide Perspectives on Geographical Indications, Centre de Coopération Internationale en Recherche Agronomique pour le Développement [Cirad], Jul 2022, Montpellier, France. hal-03791862

**HAL Id: hal-03791862**

**<https://hal.science/hal-03791862>**

Submitted on 29 Sep 2022

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# Geographical Indications in South America: it's not all about the label. Cultural Factors and Social Network Theories

Patricia Covarrubia and Kerry Purcell<sup>1</sup>

**Abstract** – South America's variety of projects aimed to promote, protect, and boost traditional products continue to grow. National intellectual property offices keep supporting farmers, rural communities, and indigenous peoples by advising on the implementation and use of distinctive signs such as geographical indication (GI). Distinctive signs provide product differentiation in competitive markets and current literature discusses the advantages of GIs and collective marks for communities, cooperatives and or associations. However, there is a lacuna in the literature regarding how to support farmers, rural communities, and indigenous peoples in the pre-application practice. This paper will explore the potential of establishing a governmental network within the World Intellectual Property (WIPO) as the creator and host of the network. Within this, the paper will focus on a selection of cases from South America GIs and collective marks in the agricultural and handicraft folk (linked to the ecosystem) and consider if indeed this potential network governance can assist the agricultural and handicraft folk in the pre-application stage. In order to conclude the validity of such a network this paper seeks to utilise the psychology of influence to harness collective action to promote and support best practice in the pre-application stages of GI registration.

**Keywords** – networking, government, socio-cultural.

## INTRODUCTION

The World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a multilateral agreement on IP and thus, member states were obliged to protect GIs from unfair competition and imitation. Therefore, in South America, countries started to regulate GI as sui generis right or as part of the trade mark system. This has permitted micro enterprises and small communities or group of people to benefit from the IP system. Therefore, it seems that the current IP system is starting to play the field for smaller entities, including those who work through non-conventional channels.

For the last 20 years, the world economy has experienced significant growth, and although this mainly comes from the industrial sectors, the world has seen diversification in the export including the agriculture and natural resource-based sectors. (Dodd, 2013). The IP system helps in the economic development of a business and a country, including less-developed economies as it may boost rural development. (Navarra and Thirion, 2019).

Generally, the region shows straightforward legislation and processes to follow. Moreover, there are friendly campaigns run by many IP offices, but the

main question remains: why have there not been a floodgate of registrations in countries rich on agricultural products and handicraft that are unique to the region?

Firstly, paper aims to introduce GIs and the idea of a workable governance network structure that could accommodate the socio-cultural aspect of the respective communities. Secondly, it examines one of the main concerns of the communities which is trust in the respective governmental body. Finally, a vertical top-down trans governmental network hosted by WIPO is presented as a solution to supporting communities in the pre-application stage, with the overall aim of increasing the number of GIs registrations and potentially, boosting rural development.

## GEOGRAPHICAL INDICATION – LAYING THE GROUND

Distinctive signs help to develop the 'image' of a product or service. A GI signals a link between a product and its specific place, its unique production methods, and distinguishing qualities. For instance, traditional products in the agricultural sector and handicraft such as the Colombian coffee growers effectively use the GI 'Café de Colombia', and the trade mark 'Juan Valdez'; the Peruvian pottery, by the Consejo Regulador identifies its products by the GI 'Chulucanas'.

For a GI, there is a need to create a solid structure that would support it in the journey and future success (social, cultural, and economic). These include several steps: recognition, specifically identifying and codify the products characteristics such as methods, techniques, raw material; the negotiations between producers in defining boundaries (geographical area), and the internal and external quality control mechanisms, among others. For these steps to succeed, there must be a 'governance structure' that bring together the producers, and finally, there must be a set of governance rules to produce the GI and the implementation of internal control mechanisms to ensure that the GI product will consistently match the characteristics expected of it by consumers. (International Trade Centre, 2018).

The aim is therefore to lay the foundation for the people who produce, and or create the product. Therefore, while IP awareness campaigns are welcomed, there is an urgent need to illustrate to the potential users of GI the importance of a harmonised governance. The rationale is that in principle, a GI needs organisation and cooperation among all actors involved in the GI product production. Consequently,

collective action is needed to address collective problems.

GIs are considered private goods which are 'excludable' in which defined property rights are attributed. Such rights include how, when, and by whom a private good is enjoyed. (Kaul, 2015). Through the collective action and support contained within the proposed network governance recommended in this research, registration of GIs would enhance these rights within the network as it may bring rivalry. (Navarra, 2019).

### CONVENTIONAL WISDOM – TRUST AND COOPERATION

There are countries where lack of trust between citizens and state occurs. In Latin America, this is mainly based on high levels of corruption. (Rodriguez, 2019). Therefore, while a network governance (association or federation or any other) is the one that registers the GI, the GI is either controlled by the government and or owned by the state; consequently, the network governance has only the right to 'use' it. (Covarrubia, 2016).

The below data, from the Worldwide Government Indicators, provides an overview of 4 countries in South America [Colombia, Ecuador, and Peru (multiparty trade agreement with the EU); and Brazil, as the only country in the region that is part of the BRICS]. France, as the host country, is selected for comparison.

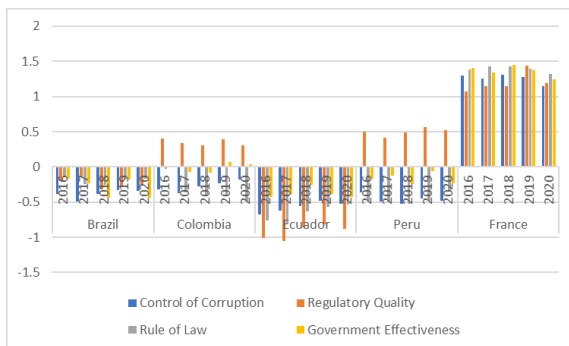


Figure 1. Governance Indicators

IP systems are regulated by the respective governments, and to establish trust, the proposition of a vertical top-down governmental network established and hosted by WIPO, seeks to address this issue. One potential solution could be delegation of individual governing authority of GI registration to WIPO within the network; should delegation of individual governing authority be unsuitable, the notion of 'transnational operation' be employed as a tool within the network. Transnational operation involves the appointment of network officials to ensure that governments implement and cooperate in a similar manner. In terms of facilitating the collective action of the proposed network in terms of building trust, these network officials could be tasked with the role of collating and distributing the information needed by policy makers in a collaborative ongoing relationship. (Dehousse, 1997).

### NETWORK CREATION

The establishment of governmental networks within a traditional international organisation such as WIPO is proposed as 'breathing new life and power into the organisation itself'. (Slaughter, 2017). By hosting such a network, WIPO engages at a higher level with policy makers by the fostering of relationships that drive cooperation, harmonisation, and best practice within international standards. Subsequently, demonstrating that transgovernmentalism and intergovernmentalism can work in a co-efficient manner. Network design is imperative to its successful operation; the notion of GIs reflects the socio-cultural context of the jurisdictions in which products are created. Consequently, any network established for the treatment of GIs in terms of cooperation, harmonisation, and best practice, must be able to accommodate the diversity in socio-cultural attitudes. There are numerous structural compositions in which networks can adopt. However, given the issues discussed below, this paper will recommend that a vertical top-down network is the most viable solution. Such a network would not obtain a coercive power akin to international criminal matters. Rather, the network's power would derive through cooperation and compliance with best practice set by WIPO. The power of the network would be harnessed by social psychology in which network members (individual policy makers) are positively influenced by other group members. (Cialdini, 2007; Slaughter, 2017).

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