GIs, colonised countries and trade agreements: (un)fair use versus economic interests

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Through the history, European people have left their home to colonise new pieces of land, taking with them traditions, know-how, and names related to certain products. They then started to produce a range of goods far from the homeland with the available raw materials, and in a different environment. Nevertheless, they tended (still do) to name them after the original product, which, most of the times, were/are not generic names, but geographical names recognised as GIs in the origin country. If there was a time when this situation was not an issue, the whole picture has now changed, turning it into a major concern. Among the facts that have contributed to that in the last decades, it can be pointed out: import market opening and presence of the GIs in the TRIPS agreement, stating them as important as any other IPR in the trade relations, increased personal intercontinental travelling, and the Internet. It has created a scenario where is more critical than ever to protect and preserve the prestige, trust, taste, and tradition related to those GIs products. At the same time, it emerges the question about the (un)fairness of the use of those geographical names by those third countries. This issue has been proved to be a key point in the international negotiations between the European Union and colonised countries, such as Mexico (which agreement was recently signed) and Brazil (along with other Mercosur members). EU demands the protection of certain GIs that are being used in those countries as generic terms and/or to indicate the type of product. As the public consultation opened in those countries, many considerations have arisen on the topic and it seems that there is not an easy way out: economic interests and (un)fair use, which are the particularities on those this paper focuses on, are in play to resolve the negotiations and sign such type of agreement.

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