



On Raising Competitiveness of Serbian Products in International Trade Through a System of Protecting Geographical Indications

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THE INCREASE OF COMPETITIVENESS OF SERBIAN PRODUCTS IN INTERNATIONAL TRADE THROUGH A SYSTEM OF PROTECTING GEOGRAPHICAL INDICATIONS

ABSTRACT

*This Article analyzes harmonization of regulations adopted by the Republic of Serbia in the field of protecting geographical indications with the EU relevant regulations. Full harmonization with the *acquis communautaire* should create a possibility for Serbia to sell its products on the World Market and to protect these brands legally.*

Serbia is rich in natural, agricultural and food products produced in undeveloped rural areas. However, unlike European producers, producers in Serbia have not sufficiently recognized their economic interest to protect their products with geographical indications and are less likely to use this type of protection.

Therefore, we believe that an adequate system of protection harmonized with European and International Standards represents a significant economic potential for developing rural areas and can provide competitiveness of Serbian products labeled with geographical indications both on European and International Market.

INTRODUCTION

In contemporary Global economy geographical indications represent valuable Marketing tools. From the earliest days in Europe products labeled with geographical indications have been regarded by consumers as products of special quality that other products of this type do not possess. Especially, some European countries that have a long history of producing certain products in a traditional way with the said products originating from specific localities where the given quality, reputation or other products characteristics may be basically accredited to their geographical indications, insisted on a Developed system of protecting geographical indications.

Modern market competition exerts constant pressure on producers and service providers and urges them to continuously improve the quality of their products and services and reduce their prices.

As one of the main reasons why the protection of geographical indications has been legally regulated is the fact that products and services with specific geographical indications, create to their consumers an idea of having better quality compared to the same type of products and services that are not labeled with geographical indications.

Hence, it should not be surprising that geographical indications gain increasing importance especially in the EU.

LEGAL FRAMEWORK FOR PROTECTING GEOGRAPHICAL INDICATIONS AND THEIR HARMONIZATION WITH THE EUROPEAN UNION ACQUIS COMMUNAUTAIRE

At the International level, there is no unified system of protection of geographical indications and, between the states, there are large differences in the way how to guarantee protection of geographical indications.¹

¹ Detail analyses of geographical indications protection system in 160 member states of WTO is described in the Study "Geographical indications and TRIPs: 10 Years Later... A Roadmap for EU GI holders to get protection in other WTO Members", available at http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_135088.pdf (10.3.2013).

In principle, two systems of protection prevail.

The first system of protection is achieved by applying regulations on disloyal competition on the market. The second system of protection has been regulated by specific regulations referring to protection of geographical indications.

TRIPS, as the most important multilateral agreement that regulates the subject area, anticipates protection of geographical indications as *sui generis* of Industrial property rights.

However, States Parties are allowed to choose the most suitable form for the Agreement implementation which leads to substantial differences in National legislations.²

The fundamental distinction among the laws relates to the distinction between registration or non-registration systems.³

Like in many other countries in the world, and in Serbia this matter was originally regulated by applying regulations on disloyal competition, while *sui generis* protection of geographical indications was first introduced in Serbia in 1981.

Existing Serbian Law on Appellations of origin⁴ in 2010 fully implements the relevant provisions of the TRIPS, in particular those referring to the implementation of measures for protecting geographical indications.⁵

In the last few years in Serbia, in terms of legislation, considerable attention has been paid to the area of Intellectual Property Rights, so that regulations in this area fully harmonize with International and European Legislation. One of the goals that should be achieved by harmonizing National Legislation with International Legislation is to increase the quality and competitiveness of Serbian products (mainly agricultural) in order to reach the European Market more easily.

However, certain provisions of the Law on Appellations of origin should be amended and updated in order to fully harmonize with the *acquis communautaire*, i.e. with the provisions of the EU Regulation 510/2006.⁶

First, we want to emphasize that the Law on Appellations of origin has a wider range of application compared to the Regulation 510/2006 as applied to agricultural and foods products, natural and industrial products, domestic products and services.⁷

We must point out that the Law provides that geographical indications can protect services as well, which especially benefits the spa resorts that are many in Serbia.

Furthermore, the Law on Appellations of origin, in harmonization with the Regulation 510/2006 acknowledges the name and geographical indications and defines them in the same manner as it has been regulated by the EU legislation.

Thus, the name of the product origin is defined as a geographical name of a country, region or locality which means a product originating therein; whose quality and special properties are essentially or exclusively due to the geographical environment, including natural and human factors and where the production, processing and preparation in general take place at a certain geographical area.⁸

² See more in: Popovic, Dusan, *Kriticki osvrt na Sporazum o trgovinskim aspektima intelektualne svojine (TRIPS)*, Uskladjivane poslovnog prava Srbije sa pravom EU, Faculty of Law, University of Belgrade, 2011, p.357.

³ See more in: O Connor, Bernard, *Sui generis protection of geographical indication*, Drake Journal of Agricultural Law, vol.9, 2004. p. 364.

⁴ Law on Appellations of origin, Official Gazette of RS, No. 18 /2010.

⁵ Serbia is not a member of WTO yet, but it has almost fully completed the process of reforming National Intellectual Property Rights in accordance with the provisions of TRIPS.

⁶ Council Regulations (EC) No. 510/2006 of March 2006 on the protection of Geographical indications and Designations of origin of agricultural products and foodstuff.

⁷ This law shall not apply to wine and spirits and other alcoholic beverages in segments where the protection system, and the rights of use of geographical indications on these products are regulated by special legislation.

⁸ Article 3, Law on Appellations of origin.

We can see that the Serbian Law on Appellations of origin, unlike the Regulation 510/2006⁹, prescribes quality and special properties of products as cumulative conditions for protecting the name of origin. Based on the Law on Appellations of origin, geographical indications is a label that identifies a particular product as a product originating in the territory of a particular country, region or locality, where a specific quality, reputation or other characteristics of the product are essentially attributable to its geographical origin and whose production either/or preparation take place at a certain limited area¹⁰.

Unlike the Law on Appellations of origin, where it has been defined as “label”, the Regulation 510/2006 defines geographical indications as a name of the region, locality or, in special cases, country. One of the most disputable issues related to harmonization of the Serbian Law on Appellations of origin and the Regulation refers to the applicant who submits the application for recognition of geographical indications.

It has been prescribed by Serbian regulations that an application for recognition of geographical indications may be submitted by: domestic natural or legal person, who, in a particular geographical area produces products that are designated by the name of that geographical area or their associations of persons*, chambers of commerce, consumers associations and government bodies interested in protecting the designations of origin, either/or geographical indications in the framework of their activities, as well as foreign natural and legal persons i.e. foreign associations, if the name of origin or geographical indication is recognized in the country of origin, when it derives from international agreements.¹¹

If we consider the fact that geographical indications are the collective right of all participants in the production chain of a particular product that originates from a specific geographic location, a logical question should be raised as to the reasons which led Serbian legislator to prescribe such a legal solution.

In fact, it is extremely important that data on the specific characteristics of the product (Specification) are made to reflect the real situation in a particular area, which is possible only if all participants in the production chain define and set rules that concern the specific properties of the product.

Therefore, we believe that such a legal solution creates a risk of developing specifications that suit the interests of an individual producer and that is not applicable to other producers of a specific area who have the right to acquire the status of authorized users of geographical indications.

Logically this would lead to establishing the monopoly of the applicant who submits the application for recognition of geographical indications, since other producers would not be able to fulfill conditions prescribed in the specifications, which is in collision with the very nature of geographical indications as a collective right of all producers from the specific area who produce in a customary manner.

We think that the above mentioned legal solution should be renewed and harmonized with the Regulation 510/2006, taking into account specific circumstances and tradition in Serbia where the producers themselves are not motivated enough for joining cooperatives.

This Regulation 510/2006 anticipates the possibility to object to the registration of geographical indications.¹²

The Serbian law has not anticipated this institute which prevents the participation of all interested persons that could potentially be authorized users in the process of verifying requirements for recognition of geographical indications.¹³

⁹ Article 2, EU Regulation 510/2006.

¹⁰ Article 4, Law on Appellations of origin.

¹¹ Article 18, Paragraph 2, Law on Appellations of origin.

¹² Article 7, EU Regulation no.510/2006.

¹³ Serbian legislator has also failed to implement this institute into Trademark Law. Namely, Trademark Law in the Republic of Serbia (2009) does not rely on opposition proceedings as a phase in the process of trademark registration and a tool that would ensure that only those trademarks that fulfill the necessary conditions are granted

The institute announces null and void the decision on granted geographical indications and procedure for announcing null and void; in Serbian law they are regulated in a different manner compared to the Regulation.

Namely, the Law on Appellations of origin prescribes the announcement of geographical indications null and void if it has been determined that at the period when it was adopted the conditions for its recognition were not fulfilled.¹⁴

Therefore, the status of authorized user of geographical indications, according to Law, may be null and void if the person with the granted status stops producing designated product at a particular geographic area, i.e. if the product does not possess the necessary quality, specific characteristics or reputation in line with the information on specific characteristics of the product.¹⁵

On the other hand, the Regulation 510/06 prescribes that Commission can null and void previously registered geographical indications if it is found out that the product protected by such a label no longer meets conditions given in the Specification,¹⁶ which brings us to the conclusion that the institute of declaring null and void stated in the Regulation in fact corresponds to our institute of declaring null and void properties of the authorized user of geographical indications. The Regulation does not deal with declaring null and void the decision on the grant of geographical indications.

In our opinion, the Serbian Law on Appellations of origin is largely in line with the relevant EU regulations in this area, where certain regulations analyzed above require further analyses and harmonization with *acquis communautaire*, with respecting specific circumstances and tradition of the Republic of Serbia in the area of producing products of protected geographical indications.

SITUATION AND PERSPECTIVES IN SERBIA

Geographical indications represent important marketing tools, contribute to commercial value of products and facilitates their product placement on the market.

Thus, legal protection of geographical indications contributes to products market development.

An adequate system of protecting geographical indications, harmonized with European and International standards, is a significant economical and commercial potential for developing rural areas in Serbia.

Complete harmonization of Serbian regulations in this field should create possibilities for Serbia to place its goods on International market and to protect these brands legally.

In line with this, Serbia in mid-2011 adopted the Strategy of development of intellectual property for the period from 2011 to 2015 that anticipates measures aiming to, completely, harmonize protection of geographical indications with the EU legislation.¹⁷

legal protection. Intellectual Property Office examines the so-called relative grounds for trademark registration refusal but does so *ex officio*, thus preventing the holders of trademark rights from benefiting from a relatively inexpensive and effective opposition procedure regarding the registration of a second trademark which violates their previously established rights. In contrast to our trademark laws, EU Council Regulation 207/2009 on Community Trademarks of February 26, 2009 (CTMR - Community trade mark regulation) enforces opposition proceedings as the most important phase in the process of trademark registration. European experience shows that opposition proceedings carry significant benefits for the process of trademark application. First of all, they allow the holders of previously established trademark rights to avoid long and costly court proceedings whose purpose is to dispute trademarks that violate the owner's rights. Also, state agencies authorizing in trademark approval no longer need to monitor registered trademarks. Videti vise u : Vasic, Aleksandra, Regarding the benefits of introducing appeals in trademark application in Serbian legislation, Proceedings of the Faculty of Law in Nis, No. 68, 2014., p. 727.

¹⁴ Article 62, Law on Appellations of origin

¹⁵ Article 32, Law on Appellations of origin

¹⁶ See the Regulation!!

¹⁷ This Strategy identifies the Republic of Serbia as a country that understands the role of development and importance of intellectual property as it has been regulated in the European Strategy for smart, sustainable and inclusive growth– EUROPE 2020. Text available at:

This document anticipates to help financing protection of geographical indications of traditional and specific products, in the sense that competent ministries should finance certain projects of protecting geographical indications of the products suggested by agricultural and foodstuffs producers.

It is undisputable that Serbia has a traditional production and local producers follow certain Production Standards to ensure the reputation of geographical indications. However, the practice shows that Serbian producers do not sufficiently use the advantages of establishing geographical indications for their products. Sixty seven products have been protected with geographic indications in Serbia so far, while in the EU the protection of the same will be discussed during the accession years.

Since the value of geographical indications relies on consumers' belief that products thus marked have specific characteristics and quality; it affects the increased demand and has a significant economic effects.

Products with geographical indications are products with specific properties and characteristics that derive from their geographical origin, so clearly they can be placed on International market where there is no competition due to the fact that there are no similar products or replacements.

There is a great number of products in Serbia known by their origin and method of processing or cultivation. Brands such as Leskovac ajvar, Futog cabbage, Arilje raspberry and others, speak enough about unique agricultural, economic and cultural context that influence the quality of products they refer to.

However, a great number of well- known products of Serbian geographic origin do not have geographical indications granted and therefore are not subjected to any legal protection.

This is the reason why, in practice, it happens that foreign legal persons register as International trademarks our well-known products with geographical origin, as it was the case with ajvar or sljivovica. Due to this our domestic economy suffers huge economic losses.¹⁸

On the other hand, when it comes to established geographical indications, in practice it happens that for some of them there are no authorized users.

As one of the reasons for this situation we can surely mention the general impoverishment of the society where the consumers are not able to afford products protected with geographical indications, which are, as a rule, always more expensive than unprotected products of the same type.

Another reason lies in the specific tradition of Serbia where small producers are not motivated to cooperate together.

Namely, geographical indications, as tools for developing business, should be a driving force for creating local, rural cooperation not only of producers but dealers, distributors and exporters as well.

Having in mind that geographical indications represent a collective right and national resource, it would be logical that producers and other persons who had invested funds into protection and development of a specific product with geographical indications adopt a mutual management platform taking care of quality issues, and creating joint marketing strategies and similar.¹⁹

In our opinion, specific traditional and typical products and their producers who are mainly small producers, and for undeveloped and remote regions which are many in Serbia, development and

http://rpkn.com/images/stories/ekologija/strategija_razvoja_is.pdf (10.5.2013.)

¹⁸ In 2007 the Czech Republic in the EU as a product of geographical origin protected its plum brandy in Moravia, known as "slivovice". Serbia will, when it wants to do it at the EU level, face problems and will probably be granted the protection of its plum brandy as "srpska sljivovica". More information at:

<http://voiceofserbia.org/content/international-economic-review-step-closer-eu>

¹⁹ Evans, G.E., Blakeney, M.: The Protection of Geographical Indications After Doha: Quo Vadis?, *Journal of International Economic Law*, <http://gaileevans.com/EvansGIsAfterDohaJIEL06.pdf>

protection of products with geographical indications often represent the only possible strategy of economic development.²⁰

Generally, the biggest market for products with geographical indications is local and national market, while for Serbian products abroad, our Diaspora around the world should be primary target group, where the products might be sold through chains of specialized shops and restaurants. Indeed, Serbia is rich with traditional local products that should be as soon as possible acknowledged through the system Global trade.

A continuous education of producers about the importance of geographical indications should also be provided and help when funding the protection of geographical indications of traditional products.

CONCLUSION

Since Serbia is predominantly an agricultural country, we think that more attention should be paid to protection of geographical indications.

The Law on Appellations of origin (2010), is largely harmonized with the relevant EU regulations governing this area, while some of its provisions require further analyses and harmonization with the EU law, with respect to specific circumstances and tradition of the Republic of Serbia in the field of producing products protected with geographical indications.

Only a system that is harmonious with the system of protection of geographical indications of the EU will ensure competitiveness of Serbian products on the Global market.

Therefore, we think that Professional public in the country should devote considerable attention to this topic in order to meet Legal protection trends of geographical indications at International level on time. Particular attention should be paid to trends that in the area of Intellectual Property Rights have been dictated by the EU and USA and to the experience of these countries in the light of changes that will be brought by the new Transatlantic Trade and Investment Partnership (TTIP), which will, no doubt, reflect Serbia as a future member of the EU.

²⁰ Swiss Government financed in Serbia a three-year Project in the field of Intellectual property rights aiming to protect geographical indications and to improve the system referring to this area. Experts focused on the specific work with producers of selected products who have the potential or already have geographical indications (Four products have been selected: Sjenica sudzuk, Leskovac ajvar, Zlatar cheese and Srem kulen)