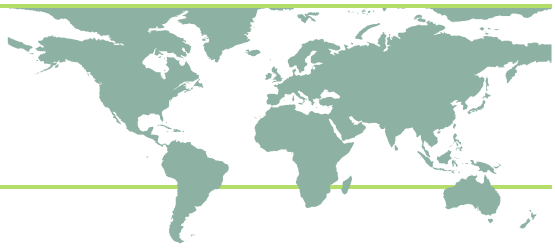


oriGIn Analysis of the Draft Mexican Industrial Property Law

With respect to the Mexican Draft Industrial Property Law oriGIn is concerned with the following issues:

i. The scope of protection of GIs and DO, in particular article 163 (paragraphs III, IV and V) of the draft law, which lists the grounds for refusal:

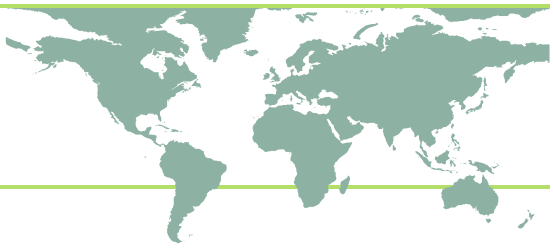
- Art. 163.III is not clear and does not add anything to art. 163.II (refusal based on genericity). According to the international rules (TRIPs Agreement), a GI/DO registration can be refused if the name has acquired a generic nature in the country where registration is sought. Art.163.III can only generate confusion.

- Art. 163.IV does not include any possibility of coexistence between GIs and trademarks. This possibility, as provided for by the Geneva Act of the Lisbon Agreement (art. 13.1) in line with the relevant WTO TRIPs case law, should be introduced as an element of flexibility. Likewise, the possibility of invalidating trademarks on absolute grounds (as provided in general terms by the Mexican trademark law) should be reaffirmed in the context of art. 163.

- Art. 163.VI is unclear and, again, does not have precedent in international and national GI legislation (the concept of "non-protectable designations" is extremely ambiguous). If a DO/GI is registered in Mexico, then it must be protected according to the law (art. 213.XXXI of the draft law includes translation and transliteration). If protection is refused (based on grounds in line with international rules), then there is no protection for the corresponding name, not for its translation or transliteration.

ii. The procedure to recognise foreign GIs (Chapter VI) does not include a transitory rule concerning the automatic recognition of the GIs already protected under the WIPO Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. Such a provision is crucial as the foreign GIs already protected in Mexico under the Lisbon Agreement do not need to be scrutinised again.

iii. In the framework of the procedure to recognise foreign GIs, art. 177 is extremely problematic and contradicts the very basis of internationally recognised intellectual property rights (IPRs) principles. Once protection is given to a given DO or a GI, any usurpations must be terminated (the concept of accepting a product's name infringing a protected DO/GI, legally introduced in the country" before protection is granted, is not compatible with well-established GIs rules and IPRs principles). **If Mexico had to implement such a provision, it would be in breach of its international obligations under the Lisbon Agreement (art. 3 and 5) and the TRIPs Agreement (Art. 22 and 23).**



iv. The management bodies (in Spanish “entidades de gestión”) of Designations of Origin and Geographical Indications, as provided for in Articles 165 BIS 32 and 165 BIS 35. According to these provisions, bodies in charge of controls cannot carry out management, recognition and protection activities related to Designations of Origin and Geographical Indications. These provisions will directly affect Mexican members of oriGIn. The experience shows that for several years some existing Mexican GI groups (“Consejos Reguladores”) have been carrying out successfully the above mentioned activities. Their representativeness, capacity as well as consolidated experience in those areas must be taken into account in the implementation of the law.