

# Pisco: An endless conflict for its geographical indication or an opportunity for international collaboration?

## *Pisco: ¿un eterno conflicto a propósito de su indicación geográfica o una oportunidad para la colaboración internacional?*

JORGE TISNÉ NIEMANN<sup>1</sup> 

### ABSTRACT

Pisco is a brandy produced from the distillation of wine, which is indissolubly linked to the history and national identity of Chile and Peru. The rivalry over the pisco's geographical indication (GI) has a long history, mainly grounded on political claims rather than practical reasons. The article examines the historical background of the animosity, the arguments of each party to support their position and the impacts of the current international GI protection of the product (both from a financial and legal perspective). We conclude that a cross-border protection, allowing a joint binational exploitation of the spirit's GI, is the best commercial strategy to increase the recognition and value of pisco in the international markets, which in turn, would benefit local economies and producers and notably encourage the cultural integration of both nations.

**Keywords:** Pisco – Geographical Indication – Joint binational exploitation

### RESUMEN

El pisco es un brandi producido mediante la destilación de vino, el cual está indisolublemente ligado a la historia e identidad nacional de Chile y Perú. La rivalidad por la indicación geográfica (IG) del pisco tiene una larga historia, basada principalmente en fundamentos de carácter político más que en razones prácticas. El artículo examina los antecedentes históricos de la animosidad, los argumentos de cada parte para respaldar su posición y los impactos de la actual protección internacional de la IG del producto (tanto desde una perspectiva comercial como legal). Concluimos que una protección transfronteriza, que permita una explotación binacional conjunta de la IG del aguardiente, es la mejor estrategia comercial para incrementar el reconocimiento y valor del pisco en los mercados internacionales, lo que a su vez, beneficiaría a los productores y economías locales e incentivaría notablemente la integración cultural de ambas naciones.

**Palabras clave:** Pisco – Indicación Geográfica – Explotación conjunta binacional

<sup>1</sup> Doctor en Derecho, Magíster en Investigación Jurídica y Licenciado en Ciencias Jurídicas; todos en Universidad de los Andes, Chile. Law Master (LLM) in Innovation, Technology and the Law, Universidad de Edimburgo, Escocia. Asociado Senior en el área de Tecnología de la Información, Medios y Protección de Datos en Jara del Favero Abogados. Correo electrónico: jorge.tisne@gmail.com

## 1. Introduction

A traditional gift of Chileans or Peruvians is a bottle of pisco. This apparent coincidence reveals, in fact, a historical rivalry between both countries over the origin and ownership of the grape brandy called Pisco. In this line, extensive academic works have been published addressing historical and legal backgrounds to support the ownership claims of each country<sup>2</sup>.

Pisco has been claimed as the traditional drink of both Latin American countries, and as such, intense and costly international disputes concerning its geographic indication (GI) have been taking place for decades. The latest debates have been located in India and Thailand.

In the case of India, in 2005 Peru filed a GI request before the Geographical Indications Registry in Chennai. In 2007 Chile filed an opposition to the Peruvian presentation, and 2 years later (2009), the Registry granted Peru the name “Peruvian pisco”. Not satisfied with the result, Peru filed an action before India’s Intellectual Property Appellate Board (IPAB) to be recognized as the sole owner of the pisco’s GI. In November 2018 (this is 9 years after the first GI request), the IPAB accepted Peru’s application. However, the dispute is not yet finalized, since it is likely that Chile will file an appeal to the High Court of India requesting the pisco’s GI.

Regarding Thailand, litigation over the intellectual property rights of the grape brandy begun in 2007. In September 2019, the Court of First Instance on Intellectual Property and International Trade (CFIIPIT) ruled in favour of Chile regarding the use of the Denomination of Origin (DO) of pisco. Since initially the Thai Registry of Industrial Property had recognized exclusive rights to Peru, the decision of CFIIPIT meant that both countries could legally sell and merchandize their product within the local market, as long as the name of the country of origin was expressly mentioned with the word pisco. Peru appealed the decision, escalating politics concerns, as the Chilean government publicly announced financial aid to support the legal standpoint of local producers in the Thailand dispute. Lately, and after a dispute that lasted for 13 years, on the 8<sup>th</sup> of April 2021, the Court of Appeals of Thailand ruled in favour of Chile, accepting the arguments of the Chilean local producers association, confirming the registration of the DO Pisco Chile requested in that country (Pisco Chile)<sup>3</sup>.

The latest involvement to the conflict by the Chilean Government, has been raised as a new precedent of the national political interest on the pisco international debate, since traditionally the government had been reluctant to intervene<sup>4</sup>. On the contrary, the Peruvian government has provided national producers legal and financial support for many years to achieve international market positions and to debate the Chilean product on different domestic and international courts<sup>5</sup>.

Even though the rivalry has a long-lasting history, unfortunately, it does not seem to be ending soon. In light of the current situation of the product’s GI, and the need of both countries to face the XXI century’s challenges with a novel and pragmatic standpoint, a new approach to the conflict that overcomes past and current resentments makes more sense than ever.

---

<sup>2</sup> In the case of Chile see Cortés (2005) pp. 42-81; Lacoste (2016). In the case of Peru see Huertas (2004) pp. 44-61; Gutiérrez (2003) pp. 245-298.

<sup>3</sup> Chilean Ministry of Foreign Affairs (2021).

<sup>4</sup> See Chilean Ministry of Foreign Affairs (2019).

<sup>5</sup> Armaza (2020).

In this article, it will be examined the origins of pisco, the country's main historical and legal grounds to support their claims, the problem of the GI recognition on a global scale, the exportation revenues of both countries and the current situation of the GI in some main markets, such as United States, the European Union and the United Kingdom (post-Brexit). With all these facts, the analysis concludes a cross-border protection, of the GI would economically benefit both nations, representing an outstanding recognition of their common cultural identities and a powerful step towards a collaborative future.

## 2. Background of the conflict

Pre-colonial settlements within the territories of modern Chile and Peru spoke Quechua. Pisco comes from the Quechua word *Pisqu* that means bird. During the Spanish colonization, both countries were located in the administrative jurisdiction of the Viceroyalty of Peru. During this time wine production began in the colonies, using as main ingredient the European grape Muscat. Yet a derivative alcoholic drink was also obtained, which eventually was known as Pisco. After the independence of Latin American countries, Chile and Peru continued with their traditional production of the product. Hence, Pisco is rooted and indissolubly connected to the birth of both nations and their cultural identities<sup>6</sup>.

Chile claims that the first historical written evidence of the word Pisco goes back to 1733 (corresponding to colonial times), when in the heart of the Elqui Valley, in the Chilean Region of Coquimbo, a Spanish notary took note of the existence of three bottles of “pisco” in the *La Torre* farm.<sup>7</sup> From then on, Pisco began to be used as the official denomination for the grape-based brandy produced locally in the Elqui valley and its surroundings, all located in the north of Chile<sup>8</sup>. Furthermore, a recent study has proven the existence of official records in the Chilean National Archive, demonstrating written evidence of jars of pisco even earlier than originally thought, going back to 1717, and being especially relevant because the records were related to a farm located in the central area of Chile. This new antecedent would prove that the production of pisco was a common practice in the country, years before than estimated, and not limited to the northern territory of Chile<sup>9</sup>.

From a legal point of view, and with the purpose to protect the history and tradition of northern pisco makers, in 1931 the Decree-law N° 181 granted a GI to the Pisco produced in the Atacama and Coquimbo regions, through distillation of specific grape varieties (specifically in the valleys of Copiapó, Huasco, Elqui, Limarí and Choapa)<sup>10</sup>. It has been argued that this protection “represents the most successful GI in the Southern Cone of America, with positive social and territorial effects”<sup>11</sup>.

Currently the GI of pisco is granted by law N° 18.455 of 1985 (art. 28) and Decree N° 521 of the Ministry of Agriculture (1999), which establishes the regulation of the pisco's GI<sup>12</sup>. Moreover, Decree N° 464 of the Ministry of Agriculture (1994) declares a viticultural zoning scheme and introduces the names of each zone as the appellation of origin for wines produced and bottled in those areas.

<sup>6</sup> Mitchell and Terry (2011), 524-525.

<sup>7</sup> This document is stored in the Chilean National Archive.

<sup>8</sup> Productores de Pisco AG (2019).

<sup>9</sup> Cofré & Stewart (2020).

<sup>10</sup> Jiménez (2014), 72-89.

<sup>11</sup> Lacoste et al. (2014), 47.

<sup>12</sup> Errázuriz (2010), 225-226.

On the other hand, Peru claims that the production of pisco began in their territory<sup>13</sup>. Likewise, in the first official map of the country (1574) the port of Pisco was mentioned. Such port eventually was declared a city (1898) and afterward the province of Pisco was created (1900). The port of Pisco has historically been related to the production and exportation of the grape brandy<sup>14</sup>. Perú also claims that the modification of a northern town denomination from “La Unión” to “Pisco Elqui” by means of Law N° 5.738 of 1936, was an instrumental and artificial move of the Chilean Government to provide a geographical standpoint and legitimacy for its international claim related to the usage of the name pisco for the local brandi<sup>15</sup>.

Moreover, since 1925 several regulations for production, taxation and commercialization of wines and its derivatives were published in Peru. Yet, it was only in 1990 (60 years later than Chile), that the GI for Pisco was officially granted exclusively to those brandies produced in the coast of the province of Lima, Ica, Arequipa and Moquegua, and also, the ones produced in the valleys of Locumba, Sama and Caplina located in the province of Tacna (Supreme Decree N° 023-90)<sup>16</sup>.

### 3. The recognition of GI at a global scale

Due to the different ways GI protection has evolved in national and international regulations, a general agreement on its definition has not been achieved<sup>17</sup>. However, the concept started to be commonly used since the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994. The TRIPS agreement describes GI as:

Indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin (article 22)<sup>18</sup>.

The relevance, and the main reason why GI are disputed at international waters, is because they are strategic for marketing and commercial purposes. The GI adds value to the products, based on its geographical origin, quality or characteristic. Additionally, it is a product's differentiator since it enables customers to distinguish the products by linking it to positive features such as authenticity and traceability, and as the reputation of the product increases, so does its commercial value. As the GI gives the product a special place in the markets, it indirectly benefits the local communities that usually produce them, not just by fomenting jobs and preserving traditional knowledge and traditional cultural expressions, but also by stimulating touristic attention to a specific region<sup>19</sup>. Some examples of successful GIs with worldwide recognition are Champagne, Cognac, Roquefort, Chianti, Porto, Tequila, Darjeeling, Feta and Prosciutto di Parma.

---

<sup>13</sup> See a detailed historical description in Oakes (2019).

<sup>14</sup> INDECOPI (2017). See also Andina (2019a).

<sup>15</sup> Gutiérrez (2003).

<sup>16</sup> For a full description of Peruvian regulation see Gutiérrez (2003), 258-263.

<sup>17</sup> Blakeney (2012).

<sup>18</sup> Similarly, the Geneva Act (2015) defines geographical indication as “Any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin” (article 2).

<sup>19</sup> World Intellectual Property Organization (2019).

Even though both Chile and Peru have granted GIs to pisco within their own territories, such regulations do not have extraterritorial effects. Therefore, to obtain international protection, GI needs to be recognized by foreign countries either by free trade agreements, regional systems of protections, complying with multilateral obligations under international treaties (such as the TRIPS agreement), international common registries (as the Lisbon Agreement) or by local *sui generis* protection.

In relation to pisco, it should be noted that the debate sometimes swifts from the application for Denomination, Designation or Appellation of Origin (hereinafter indistinctly DO) and GIs. Both concepts are related but not the same. Both are intellectual property rights, being DOs a type of GI. As described by scholars, “DOs form a category of GIs, and serve to designate a product originating in a country, region or locality when the quality or characteristics of that product are due exclusively or essentially to the geographical environment, including natural and human factors. DOs consider more requirements to be granted and, therefore, tend to offer greater protection than GIs in the legal systems in which both are protected. What distinguishes DOs are the natural and human factors, which are present in them, but lack the simple geographical indications”<sup>20</sup>.

In this article we will focus mainly on GIs, as usually has been the focus of debate between both nations. However, DOs will be observed and analyzed when applicable to the parties claims or legal instruments.

The international position of both Latin American countries towards the protection of the products have been notoriously different. As evidenced by its position at international level, Chile does not oppose “Peruvian Pisco” to be sold within the same markets as long as it is differentiated from “Chilean Pisco”. Therefore, Chile is open to share or negotiate the benefits to use the word pisco. A remarkable example has been the statement of a Chilean lecturer at the Symposium on the International Protection of Geographical Indications (Uruguay, 2001) when he stated that “Pisco is a legally recognized geographical indication in Chile, and any conflict existing with the equivalent Peruvian denomination should be settled by appropriate negotiations within the framework of the rights and obligations laid down in international law”<sup>21</sup>.

Peru has adopted a much more aggressive standpoint, arguing they are the only and sole producers and claiming the exclusive ownership and intellectual rights over the product, and therefore, not subject to be negotiated<sup>22</sup>. Some scholars relate the hard Peruvian standpoint to the resentments created during the Pacific War (1879-1884), where Chile acquired former Peruvian and Bolivian territories<sup>23</sup>. As a matter of fact, Peru currently bans the importation of Chilean pisco into its territory, although Chile has not enforced an equivalent policy regarding the importation of the Peruvian product<sup>24</sup>.

As an example of its international position, in 2005 Peru became a member of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (treaty in which Chile is not a party).

Consequently, Peru requested and was granted in 2006 the DO for Pisco (registry N° 865), protecting the product in all countries party to the Lisbon Agreement, except for those where a refusal, invalidation

<sup>20</sup> Errázuriz (2010), 210.

<sup>21</sup> Mekis (2001).

<sup>22</sup> Mitchell & Terry (2011), 528.

<sup>23</sup> Op. Cit., p. 525.

<sup>24</sup> However, this open policy may change over the next years since on 2019 bill N° 12517-01 was presented to the Chilean Parliament with the purpose of impeding the importation of any foreign spirit under the name pisco to the Chilean territory.

or renunciation for the international registry is effective. In this line, the contracting parties that refused or withdraw the Peruvian appellation were Costa Rica, Mexico, Czech Republic, Italy, France, Hungary, Slovakia, Iran and Bulgaria<sup>25</sup>. Most of the countries grounded their decisions on former bilateral agreements signed with Chile.

With this registry, Peru was able to obtain international recognition of its exclusive rights over the DO of pisco, even though the Lisbon system has a limited impact on a global scale as only 32 countries are contracting parties<sup>26</sup>. Hence, it seems clear that the registry was a political move sought to raise awareness of Peru's international standpoint rather than have a significant impact on a global basis.

#### 4. The conflict from a financial perspective

As the conflict has a long-lasting history, it may be illustrative to examine its financial background to understand the real impact of such rivalry on local economies. In this line, during 2019, the main destinations of Peruvian pisco were Chile, the United States and Spain. It is worth noting that 40% of the Peruvian exportation was dispatched to Chile<sup>27</sup>. In the same year, the main destinations of the Chilean brandy were United States, Spain and Germany<sup>28</sup>.

During the year 2018, the total Peruvian pisco export worth USD 9,746,000<sup>29</sup>, while Chile's worth in the same year was USD 2,806,000<sup>30</sup>. Even as the Peruvian export seems notoriously higher than the Chilean, it becomes relevant to notice that 43% of the Peruvian exportations came from the Chilean demand (USD 4,155,000)<sup>31</sup>, while the Chilean product is banned from the Peruvian market.

These numbers could explain the economical background of the conflict, but when contrasted with the countries' annual gross domestic product (GDP), those values are marginal. As such, Peruvian pisco exportation represented only 0,004% of the country's GDP in 2018, and Chilean pisco exportation represented only 0,0009% of the country's GDP for the same year<sup>32</sup>.

Therefore, the conflict seems not to be based merely on the current economic revenues at an international level. The reason may be found and explained bearing the national expectations related to the product's value on foreign markets at a middle-long term, covered or based on national prides. As such, it is relevant to examine if the controversy among the pisco's GI has a practical impact within the current and potential exportation main markets of the product (United States, the EU and the UK).

---

<sup>25</sup> WIPO IP Portal.

<sup>26</sup> Albania, Algeria, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cambodia, Congo, Costa Rica, Cuba, Czech Republic, Democratic People's Republic of Korea, Dominican Republic, European Union, France, Gabon, Georgia, Hungary, Iran, Israel, Italy, Mexico, Montenegro, Nicaragua, North Macedonia, Peru, Portugal, Republic of Moldova, Samoa, Serbia, Slovakia, Togo and Tunisia.

<sup>27</sup> American Retail (2019).

<sup>28</sup> Durán (2019).

<sup>29</sup> Andina (2019b).

<sup>30</sup> Productores de Pisco AG (2019), 16.

<sup>31</sup> Andina (2019).

<sup>32</sup> Peru's GDP 2018: USD 225,366,000,000.- Chile's GDP 2018: USD 298,180,000,000. Values obtained at [www.countryeconomy.com](http://www.countryeconomy.com) [accessed 4 June 2020].

## 5. The regulation of Pisco in the main common markets of exportation

### 5.1. Pisco under the scope of United States

Following the Chilean open economy policies, in 2003 the United States and Chile signed a free trade agreement aimed to encourage trade between the countries. Concerning pisco, the agreement states in article 3.15. (Distinctive Products) that the United States recognizes *Pisco Chileno* as a distinctive product of Chile<sup>33</sup>. Therefore, only the concept of *Pisco Chileno* has been protected and does not ban “Peruvian Pisco” from the market.

It should be noted that in 2009, the United States and Peru entered a Trade Agreement in which only “Pisco Perú” (and not Pisco) is recognized as a distinctive product of the country. As such, article 2.12 (2) expressly states:

“The United States shall recognize ‘Pisco Perú’ as a distinctive product of Peru. Accordingly, the United States shall not permit sale of any product as ‘Pisco Perú’, unless it has been manufactured in Peru in accordance with the laws and regulations of Peru governing Pisco”.

### 5.2. Pisco under the scope of the EU

Regarding the European Union and its Member States, after several rounds of negotiations, a Chile – European Union Association Agreement was signed in 2002. Within Appendix I, pisco is listed as one protected designation for spirit drinks originating in Chile<sup>34</sup>.

In 2009 Peru applied for the registration of Pisco as a GI, in relation to Annex III to Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of GIs of spirit drinks (Regulation). Peru claimed Pisco was a fruit spirit drink traditionally produced in Peru, from the fermentation and distillation of grapes. On October 30, 2013, the European Commission issued a resolution accepting that the name pisco should be included in Annex III of the Regulation.

As both decisions may apparently be contradictory, the European Commission resolved pragmatically the issue of having on one hand the 2002 Chile-EU agreement and on the other hand the acceptance of the GI under Peru’s name. In this line the Commission authorized the coexistence of both products in the EU market in the following terms:

According to the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, approved by Council Decision 2002/979/EC (3), ‘Pisco’ is a protected designation for spirit drinks originating in Chile. Therefore, it should be clarified that the protection of the geographical indication ‘Pisco’ for products originating in Peru does not hinder the use of such denomination for products originating in Chile<sup>35</sup>.

<sup>33</sup> U.S.-Chile Free Trade Agreement. Full article 3.1.5 states: “2. The United States will recognize *Chilean Pisco*, Pajarete and Vino Asoleado, which are authorized in Chile to be produced only in Chile, as distinctive products of Chile. to be produced only in Chile, as distinctive products of Chile. Accordingly, the United States will not the sale of any product as *Chilean Pisco*, Pajarete or Vino Asoleado, unless they have been produced in Chile in accordance with Chile in accordance with the laws and regulations of Chile governing the production of Chilean Pisco, Pajarete or Vino Asoleado. Chilean Pisco, Pajarete and Vino Asoleado”.

<sup>34</sup> Durán (2019).

<sup>35</sup> Commission Regulation (EU) No 1065/2013, (2013).

From the cited paragraph, it is possible to observe that Chilean pisco is classified as a protected designation of origin (PDO) and Peruvian pisco has the protection of geographical indication (GI). Even with different classification, from a practical perspective, both products may be sold in the EU market and have equivalent protection.

### 5.3. Pisco under the scope of the UK post Brexit

As a Brexit's consequence, the Association Agreement between the European Union and its Member States and Chile is no longer binding for the UK. The Brexit's withdrawal agreement sets out that the UK will continue to be covered by EU-third country trade agreements until 31 December 2020. Hence, a new association agreement was entered by the UK and Chile in January 2019, and has been enforced since January 1, 2021<sup>36</sup>.

Regarding pisco, the new association agreement between the UK and Chile sets out a joint statement:

The United Kingdom will recognise the denomination of origin Pisco for the exclusive use of products originating in Chile. This shall in no way prejudice the rights that the United Kingdom may recognise in addition to Chile, exclusively to Peru<sup>37</sup>.

Therefore, the UK has confirmed the DO of pisco, previously granted by the EU. Aligned with the decision of the European Commission, the UK has not banned Peru to request and sell its pisco within its market. On the contrary, a special clause has been established to ensure that potentially both products could be granted recognition and protection on the market to be merchandised as pisco.

### 5.4. Overall worldwide scenario regarding the GI at an international level

In general terms, until 2019 Chile and Peru could access equally the market of 41 countries<sup>38</sup>. This means that those countries did not make any difference between the national origins of the goods. On the other hand, only 4 countries recognized exclusive GI rights to Chile<sup>39</sup>, while 30 others recognize them to Peru<sup>40</sup>.

The difference between the number of countries that recognize exclusive rights to Peru has to do with the successful Peruvian strategy of positioning their national pisco worldwide, registering the GI in all possible domestic and common registries, independently of the economic value of those destinations for the spirit drink's exportations.

Yet, it seems relevant to notice that the main current and potential markets for the product's exportation are among those countries that allow the importation of both Latin American spirits under the name pisco (including the United States, Canada, UK, Member States of the EU, China, México and Japan)<sup>41</sup>.

<sup>36</sup> UK Government (2020).

<sup>37</sup> Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile (2019).

<sup>38</sup> Austria, Belgium, Bulgaria, Canada, China, Cyprus, Costa Rica, Croatia, Denmark, El Salvador, Slovakia, Slovenia, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Lithuania, Luxembourg, Japan, Malaysia, Malta, México, Netherlands, Poland, Portugal, UK, Czech Republic, Rumania, Singapore, Spain, South Korea, Switzerland, Thailand, United States, EU and Vietnam,

<sup>39</sup> Australia, Brunei, New Zealand and Turkey.

<sup>40</sup> Angolia, Bolivia, Bosnia and Herzegovina, Burkina Faso, Colombia, Congo, Cuba, Dominican Republic, Ecuador, Gabon, Georgia, Guatemala, Haiti, Honduras, India, Indonesia, Israel, Laos, Macedonia, Moldavia, Montenegro, Nicaragua, North Korea, Panama, Serbia, South Africa, Togo, Tunisia, Ukraine and Venezuela.

<sup>41</sup> El Comercio (2019).



## 6. Examining a cross-border GI protection

The rivalry between both nations on the pisco's GI is well known internationally. In this line, it has been outlined that “many geographic regions extend beyond national borders, giving rise to potential conflicting claims. The most famous may be the dispute between Chile and Peru regarding the right to use the term ‘pisco’ in connection to particular liquor”<sup>42</sup>.

Chile has offered Peru on several times a joint solution for the use of the GI of pisco. The last occasion occurred in March 2019 when the Chilean Ministry of Agriculture offered the proposition to the Peruvian Minister of Culture. Unfortunately, historically Peru has been reluctant to accept the offer. Heavily based on old nationalist resentments, Peru considers Pisco to be a national emblem not subject to be shared (or surrendered) to Chile. Therefore, its defence responds to a political act, considering pisco to be an iconic product of the exclusive cultural heritage and identity of the country<sup>43</sup>.

Yet, scholars have suggested that the GI should actually be shared because “producers of the two countries contributed to the origin and consolidation of this product”<sup>44</sup>. As such, “Pisco would not exist without the participation of both of them. Therefore, the two countries have co-ownership rights since they are co-founders”<sup>45</sup>.

In the same line, and as outlined above, the main common markets recognize and allow the importation of both national piscos. Foreign customers may currently differentiate the products and choose their favourite one, being irrelevant the existing rivalry between the countries of origin. It seems that there is no real practical ground for the conflict to continue if the customers of the main export destinations do not discriminate the spirits based on national origins.

However, cross-border GI protection remains as a novel area of practice and research. This may be explained because GIs have traditionally relied on a national (geographical) component, that disincentive their collaborative exploitation among different countries. As scholars state, “the area of cross-border GI protection does not get much attention at bilateral or regional levels. The recognition and enforcement of shared GIs across the borders should definitely attract more attention - due to its economic value - in the multilateral trading system”<sup>46</sup>. Furthermore, there is a significant level on uncertainty in relation to cross-border protection, and the applicable rules depend highly on the region involved and the relevant legal instruments applicable for each product.

As seen in article 22 of the TRIPS agreement, GI are intrinsically linked and identified with goods originated (culturally or geographically) in the territory of a Member State. Moreover, due to the financial benefits expected from GIs, *exclusive sovereignty claims* are the most common practice. But it is perfectly conceivable that goods may be attributable to an area that extends over two or more national territories. The quality, reputation or other characteristic of a good may precede the delimitation of current borders. In fact, the TRIPS agreement does not prohibit a cross-border protection, but neither has an express provision on the matter.

---

<sup>42</sup> Long (2014), 114.

<sup>43</sup> Nudman (2007), 2-3. Also see Mitchell & Terry (2011), 530.

<sup>44</sup> Lacoste, et. al. (2013), 424.

<sup>45</sup> Op. Cit., 424.

<sup>46</sup> Towhidul & Bin Ansari (2017), 22.

To encourage the cooperation between countries, the Geneva Act of the Lisbon Agreement establishes an international system of registration and protection for both appellations of origin and GI (2015). Article 5(4) provides the possibility of a joint-application for GI between adjacent countries which could help solve the problem between Chile and Peru. However, Chile is not a contracting party of the Geneva Act of the Lisbon Agreement, and therefore the provision will not be suitable to settle the dispute between both countries.

The TRIPS Agreement of the WTO on the other hand, is currently the most comprehensive multilateral agreement on intellectual property, and both Peru and Chile are contracting parties. Although this treaty does not provide regulations for cross-border GIs, article 23.3 offers a different alternative:

In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

Hence, the provision allows two or more Members to use a homonymous GI for wines and spirits, ensuring the differentiation between each other's products. This means that "Pisco Chile - Chilean Pisco" could be used to differentiate the spirit from "Pisco Peru - Peruvian Pisco". The solution is similar to the historical position sustained by Chile and has being raised as the best way to proceed<sup>47</sup>. Yet, since Peru is unwilling to renounce to their exclusive claim for the pisco's GI, the provision will remain unused.

According to the described uncertainty regarding international cross-border GI protection (especially when it involves countries outside the EU), it has been stated that the best way forward would be to negotiate agreements "at bilateral levels through amicable and friendly discussion in diplomatic, ministerial or commercial forums"<sup>48</sup>. However, such attempts are deemed to be difficult. The same concerns that have been raised for the South Asian context could be extrapolated for the Latin American countries, since "due to the lack of social, political and diplomatic consensus in a cross-border scenario in South Asia, the concept of joint registration of GI seems to be quite challenging. For example, both India and Pakistan have been aware of the need for joint registration of Basmati rice to protect it from the foreign conglomerates, but to date they have failed to arrive at any consensus in this regard"<sup>49</sup>.

Yet, it is mandatory to remember that there are successful multinational efforts to protect and register common products in the EU geographical indications register, including food, wines and spirits drinks<sup>50</sup>. Those examples are vital testimonies to argue that with the adequate political willingness, an international cross-border protection for Pisco is possible.

The first transnational PDO was granted to Lithuania and Poland who jointly bid for the PDO of the honey 'Miód z Sejneńszczyzny / Łódzkiej / Łazdiję krašto medus' (2012). Continuing with food products, currently Slovenia and Croatia share the PDO of the Istrian prosciutto 'Istarski pršut'/'Istrski pršut' (2015) and the extra virgin olive oil 'Istra' (2019). Spain and France share the GI of the fresh meats 'Ternera de los Pirineos Catalanes / Vedella dels Pirineus Catalans / Vedell des Pyrénées Catalanes' and

<sup>47</sup> Courtney (2009), 18.

<sup>48</sup> Towhidul & Bin Ansari (2017), 28. In the same line, see Food and Agriculture Organization of the United Nations (2018), 23.

<sup>49</sup> Towhidul & Bin Ansari (2017), 28-29.

<sup>50</sup> All mentioned examples may be find at eAmbrosia - the EU geographical Available at <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/#> [Date of consultation: 19.7.2020].

‘Rosée des Pyrénées Catalanes’ (2016). Czech Republic and Slovakia share the Traditional Specialities Guaranteed (TSG) for the meat products ‘Tradiční Špekáčky / Tradičné Špekačky’, ‘Spišské párky’, ‘Tradiční Lovecký salám / Tradičná Lovecká saláma’ and ‘Liptovská saláma / Liptovský salám’ (2011).

In the area of wines, Belgium and Netherlands share the PDO for the wine ‘Maasvallei Limburg’. Closer to the pisco’s issue, there are plenty of examples of GIs granted to two or more Member States in relation to spirits drinks. As such, Netherlands, Belgium and Germany registered ‘Genièvre aux fruits / Vruchtenjenever / Jenever met vruchten / Fruchtjenever’ (2008). Belgium, Netherlands, France and Germany registered “Genièvre / Jenever / Genever” (2008). Netherlands and Belgium registered Oude jenever / oude genever’ (2008) and ‘Jonge jenever / jonge genever’ (2008). Cyprus and Greece registered ‘Ouzo / Ούζο’ (2008). France, Belgium, Netherlands registered ‘Genièvre de grains / Graanjenever / Graangenever’ (2008). France and Italy registered ‘Génépi des Alpes / Genepi delle Alpi’ (2008). Germany, Belgium, Austria registered ‘Korn / Kornbrand’ (2008). Hungary and Austria registered ‘Pálinka’ (2008). Ireland and the United Kingdom registered ‘Irish Cream’ (1989), ‘Irish Whiskey / Uisce Beatha Eireannach / Irish Whisky’ (1989) and ‘Irish Potteen / Irish Poitín’ (2008).

These cases of successful multinational GIs and PDOs, especially regarding spirit drinks, demonstrate that a cross-border protection for pisco is technically feasible, and encourage seeking a new political direction to solve the conflict. Such effort would not be exempt of critics because “while cooperation including sharing the indication would appear to be the obvious way forward, agreeing on common specifications and regulations may prove difficult”<sup>51</sup>.

As a trans-national reality, such endeavour would involve negotiating several elements, and both countries would need to be open to give up some of their own claims for the common good of both nations, and specially, for the local people who produce the product. Those discussions would at least include defining and agreeing on areas of cultivation, links to specific geographical areas, production methods, description of the product, physical and chemical characteristics, recognition of cultural practices, amending local and international regulations, registries and commercial agreements, and perhaps examine a new binational denomination to enhance the prestige of both national products. Furthermore, the countries would need to agree on a shared and common historical understanding of the product, which in fact, might be one of the most challenging points of the debate, considering the historical hostility between both nations<sup>52</sup>.

In order to explore this solution, scholars have noticed that a first step towards a mutual agreement and understanding is to assemble a permanent binational committee of experts to study, define and address the main points of debate, outline a set of areas, schedules and milestones on which to structure a productive discussion<sup>53</sup>.

## 7. Conclusions

Pisco is a grape brandy geographically and culturally embedded in the identity of Chile and Peru, with an historical background that goes back to colonial times (before current borders were defined). The rivalry over the ownership of the product and its GI has confronted both nations since their very independence.

<sup>51</sup> Dutfield (2011), 31.

<sup>52</sup> Rangnekar & Kumar (2010) pp. 221-222.

<sup>53</sup> In line with the suggestions of Towhidul & Bin Ansari (2017), 28.

The animosity has been tested in the last decades within international waters, as both countries have claimed the product's GI. This has meant extensive and expensive judicial procedures.

However, from a legal and financial perspective, it seems clear that the conflict has been sustained only on political motives. Accordingly, the efforts of the countries have been leaned to struggle for the GI rather than to acquire and maintain relevant positions on overseas markets, preventing national producers and local economies to flourish under the light of such reputable brandy. This, in fact, may be the reason why such a traditional and notable brandy is still generally unknown for most customers in the world and has lacked the international prestige it deserves.

Even though this paper has evidenced that the main current and potential markets for the product's exportation are among those countries that allow the importation of both Latin American spirits under the name pisco, a bi-national agreement for a cross-border protection enabling a joint exploitation of the GI or PDO is not foreseeable in the short term. In other words, the main foreign markets show a pragmatic approach to the issue, allowing both brandies to be commercialized under the name pisco, but unfortunately this objective fact has not found reception on political grounds for the benefit of both nations.

Yet, it would be convenient that sooner than later Chile and Peru change their mindsets and leave their differences behind. As two leading countries in Latin America, instead of highlighting rivalries dating back at least to the XVIII century, political efforts should aim to enhance their common history and mutual interests, to pavement a stronger regional position and allocate financial resources towards the challenges of the XXI.

A joint-exploitation of pisco, perhaps in relation with an homonymous indication, would represent a challenging (but not impossible) effort from a legal, political, technical and social perspective. Being the spirit drink rooted to the countries' cultural identities, a commercial agreement for a cross-border GI protection makes sense from an economic, social and historical perspective. Encouraged by successful international examples of shared GIs and DOs for spirit drinks, and the pragmatic approach of the main exportation markets on the matter, a binational committee of experts to address a possible cross border solution would be a novel and positive initiative. Unquestionably, such initiative would encounter significant opposition but the intention to move forward on this direction would symbolize a remarkable step towards the cultural integration and common future of both nations.

## Cited bibliography

- American Retail (2019): "Perú: Estos son los principales países importadores de pisco peruano". Available at <https://bit.ly/3EAu8t9> [Date of consultation: 1.7.2020].
- Andina (2019a): "Por estas razones 70 países del mundo reconocen el origen peruano del pisco". Available at <https://bit.ly/3FNMEPW> [Date of consultation: 5.7.2020].
- Andina (2019b): "Día del pisco: exportaciones registraron expansión de 8% el 2018". Available at <https://bit.ly/3pAKEff> [Date of consultation: 3.7.2020].
- Armaza, Christian (2020): "Hacienda dispone de recursos para defender al pisco en Tailandia". Available at <https://bit.ly/3z6mgOK> [Date of consultation: 15.8.2020]

- Blakeney, Michael (2012): “Geographical Indications and TRIPS” University of Western Australia, Faculty of Law Research Paper N° 2012-09: pp. 1-30. Available at <https://bit.ly/3etjs50> [Date of consultation: 7.7.2020].
- Chilean Ministry of Foreign Affairs, Subsecretary of International Economic Relations (2019): “Tribunal de Comercio Internacional falla a favor del Pisco chileno”. Available at <https://bit.ly/3ECwyYi> [Date of consultation: 15.12.2021].
- Chilean Ministry of Foreign Affairs, Subsecretary of International Economic Relations (2021): “Corte de Apelaciones de Tailandia desestima recurso peruano y reconoce denominación de origen nacional del pisco chileno”. Available at <https://bit.ly/3pAu5td> [Date of consultation: 01.5.2021].
- Cofré, Cristian & Stewart, Daniel (2020): “Vineyard, Stills and Twenty Five Earthen Jars of Pisco. Alhué, 1717”. *Revista RIVAR*, vol 7, N° 20: pp. 88-107.
- Cortés Olivares, Hernán (2005): “The origin, production and trade of Chilean pisco, 1546-1931”. *Revista Universum*, vol 20, N°2: pp. 42-81.
- Courtney, Harrell (2019): “Pisco. Por la razón o la fuerza. El debate entre Perú y Chile sobre la denominación de origen del pisco y sus implicaciones”. Available at <https://bit.ly/3pzQWoF> [Date of consultation: 20.4.2021].
- Durán, José Joaquín (2019): “La disputa del pisco: Las cifras de la industria chilena que aumentó sus exportaciones en un 183% en 10 años”. Available at <https://bit.ly/3pyqRpQ> [Date of consultation: 27.5.2020].
- Dutfield, Graham (2011): “Intellectual property tools for products based on biocultural heritage. A legal review of geographical indications, trademarks and protection from unfair competition”. Available at <https://bit.ly/314Jng6> [Date of consultation: 10.7.2020].
- El Comercio (2019): “Pisco: ¿cuántos países reconocen la denominación de origen a Perú?” Available at <https://bit.ly/32FqlgQ> [Date of consultation: 1.6.2020].
- Errázuriz, Cristina (2010): “Geographical indications and appellations of origin. Intellectual property in progress”. *Revista Chilena de Derecho*, vol. 37, N° 2: pp. 207-239.
- Food and Agriculture Organization of the United Nations (2018): “Geographical indication schemes in Croatia, Hungary and Poland”. Available at <https://bit.ly/3z4iMMO> [Date of consultation: 19.7.2020].
- Gutiérrez, Gonzalo (2003): “El pisco, denominación de origen peruana”. *Agenda Internacional*, año 10, N° 19: pp. 245-298.
- Jiménez, Diego (2014): “The consolidation of Pisco Appellation of Origin (1931): a review from the parliamentary discussions and their international models (1901-1931)”. *Revista RIVAR*, vol. 1, N° 2: pp. 72-89.
- Huertas Vallejos, Lorenzo (2004): “Historia de la producción de vinos y piscos en el Perú”. *Revista Universum*, vol 19, N° 2: pp. 44-61.
- Lacoste, Pablo (2016): *The Pisco was born in Chile* (Santiago, Ril Editores).
- Lacoste, Pablo, Briones, Felix, Jiménez, Diego and Rendón, Bibiana (2014): “Pisco Denomination of Origin in Chile: some national and international matters”. *Revista IDESIA (Chile)*, vol. 32, N° 2: pp. 47-56.
- Lacoste, Pablo et. al. (2013): “A bi-national appellation of origin: Pisco in Chile and Peru”. *Chilean Journal of Agricultural Research*, Vol. 73, N° 4: pp. 424-429.

- Long, Long (2014): “Branding the land: creating global meanings for local characteristics” en Irene Calboli & Edward Lee (editors), *Trademark Protection and Territoriality Challenges in a Global Economy* (Cheltenham, Edward Elgar Publishing Limited), pp. 100-124.
- Mitchell, Jerry & Terry, William (2011): “Contesting Pisco: Chile, Peru, and the politics of trade”. *Geographical Review*, Vol. 101: pp. 518-535.
- Mekis, Fernando (2001): “Appellations of origin position of Chile’s vineyards in the concert of the new world, and in relation to the negotiations with the European Union”. Available at <https://bit.ly/3z5nLwT> [Date of consultation: 1.3.2021].
- Nudman, Verónica (2007): *Protección internacional de la denominación de origen pisco chileno* [online] Memoria de Prueba para optar al grado de Licenciado en Ciencias Jurídicas y Sociales. Santiago: Universidad de Chile. Available at <https://bit.ly/3z4iVQm> [Date of consultation: 20.7.2020].
- Oakes, Pamela (2019): “Pisco Liqueur Dispute between Chile and Peru”. *Trade Environment Database Case Study* N° 145. Available at <https://bit.ly/3EAvEeP> [Date of consultation: 15.7.2020].
- Productores de Pisco AG (2019): “Pisco. Patrimonio histórico, social, cultural y productivo de todos los chilenos” Available at <https://bit.ly/3EAvEeP> [Date of consultation: 3.6.2020].
- Rangnekar, Dwijen and Kumar, Sanjay (2010): “Another Look at Basmati: Genericity and the Problems of a Transborder Geographical Indication” *Journal of World Intellectual Property*, vol. 13, N° 2: pp.202-230.
- Towhidul, Mohamed and Bin Ansari, Masrur (2017): “Cross-border GI protection: Challenges and ramifications for Bangladesh” en WIPO-WTO Colloquium Papers: 2017 Asian Edition, pp. 22-31. Available at <https://bit.ly/3FDEvxw> [Date of consultation: 10.7.2020].
- UK Government (2020): “Guidance. Summary of the UK-Chile association agreement” Available at: <https://bit.ly/3EALICN> [Date of consultation: 20.5.2020].
- World Intellectual Property Organization (2019): “Geographical Indications. An Introduction” N° 1. Available at <https://bit.ly/3evW2vF> [Date of consultation: 5.7.2020].
- WIPO IP Portal “(AO 865) Pisco”. Available at <https://bit.ly/32KK5iY> [Date of consultation: 6.7.2020].

## Cited provisions

- INDECOPI (2017): *Resolution N° 13880-2017/DSD-INDECOP*. Available at <https://bit.ly/3pADgK8> [Date of consultation: 03.7.2020].
- Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part* (2002) Available at <https://bit.ly/3z92TVf> [Date of consultation: 20.5.2020].
- Commission Regulation (EU) No 1065/2013* (2013) Available at <https://bit.ly/3FCSeVu> [Date of consultation: 20.7.2020].
- Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile* (2019). Available at <https://bit.ly/3FBuHEv> [Date of consultation: 20.5.2020].