

# THE “LAW TO USE THE MARK ‘DELPAÍS’,” ACT 195-2016: A CASE STUDY OF PUERTO RICO’S ATTEMPT TO USE GEOGRAPHIC INDICATIONS FOR ECONOMIC DEVELOPMENT

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## ABSTRACT

Among Puerto Ricans, it is common knowledge that 19<sup>th</sup> and 20<sup>th</sup>-century popes and kings drank Puerto Rican coffee.<sup>1</sup> This maximum expression of consumer preference was achieved by the Puerto Rican government's intensive investment in local businesses to export and build sustainable economic development.<sup>2</sup> However, current Puerto Rican laws that negatively impact economic development, above all, on small and medium businesses (SMEs) make this common knowledge seem like an urban legend. Notably, the “Law to Use the Mark ‘DelPaís’” (hereon “the DelPaís Law”) represents such a failure and requires a case study to understand why it failed and propose solutions thereto.<sup>3</sup>

DelPaís is a Puerto Rican Geographic Indicator (PRGI) certification trademark created in 2002 by the Puerto Rican Department of Agriculture to increase local business revenues and exports. When properly implemented, Geographic Indicators (GIs) can increase product commercialization, exports, and profits for local SMEs.<sup>4</sup> For example, the Caribbean in general and Latin America have successfully used GIs to increase SME's community participation to meet political, economic, and cultural needs. However, Puerto Rico has failed to properly implement such GIs and subsequent attempted fixes have also failed.

In 2016 the Puerto Rican Congress enacted the DelPaís Law in response to the Department of Agriculture's inconsistent use of the DelPaís Mark, non-transparency, lack of accountability, and creating other marks with duplicate purposes. Additionally, the DelPaís Law intended to reduce Puerto Rico's historical over-dependency on the United States for economic development and food.<sup>5</sup> Despite the Department of Agriculture's subsequent efforts, the DelPaís Law and other similar laws suffer from incomplete supporting infrastructures, causing consumers to question the marks' effectiveness.

This case study examines the theoretical aspects of a GI's definition, functions, benefits, legal policies, and the implementation of the Colombian Coffee GI and the Hawaii Kona Coffee GI as potential GIs to model. The results provide specific strategies for improving the DelPaís Law's structure, funding, quality standards, marketing plan, and profit distribution along supply chains. With such modifications, the DelPaís Law, along with other PRGIs, can become a new economic development strategy for Puerto Rico.

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<sup>1</sup> DR. LUIS O'NEILL PUMARADA & ARQ. RAFAEL PUMARADA, *Contexto Histórico: Industria Cafetalera en Puerto Rico 1736-1969* 56 (1989), [https://www.academia.edu/15588299/Contexto\\_histórico\\_del\\_café\\_en\\_Puerto\\_Rico\\_1736-1969](https://www.academia.edu/15588299/Contexto_histórico_del_café_en_Puerto_Rico_1736-1969); SERGIO M MARXUACH, *Coffee Cultivation and Economic Development In the Castañer Region*, POLICY PAPER 7 (2012), <https://grupocne.org/wp-content/uploads/2013/09/Coffee-Cultivation-and-Economic-Development-Final.pdf>.

<sup>2</sup> EDWIN IRIZARRY MORA ET AL., ENSAYOS PARA UNA NUEVA ECONOMÍA: DESARROLLO ECONÓMICO DE PUERTO RICO 25–27 (Ricardo Ramírez Fuentes ed., 2 ed. 2017).

<sup>3</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, 2016 PR LAW 195, 5 LPRA 4742–4784 (2016)

<sup>4</sup> Philip Matthews, *Increasing Revenue In Developing Nations through Intellectual Property Rights: Why a Diversified Approach To Intellectual Property Protection With A Focus on Geographical Indications Is The Best Method*, 7 BUFFALO INTELLECTUAL PROPERTY LAW JOURNAL 201, 205–206 (2010).

<sup>5</sup> IRIZARRY MORA ET AL., *supra* note 2 at 23.

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## I. LIST OF ABBREVIATIONS AND ACRONYMS

GI(s)	Geographic Indications
PRIDCO	Puerto Rico Development Company or Compañía de Fomento de Puerto Rico
The DelPaís Law	“Law to Use the Mark ‘DelPaís’”
PDO	Protected Denomination of Origin
PGI	Protected Geographic Indication
AOC	Appellations of Origin
IOS	Indication of Source
SMEs	Small and medium businesses
PRGI	Puerto Rican Geographic Indication
PROMESA	Puerto Rico Oversight, Management, and Economic Stability Act

FIDA	Fondo de Innovación para el Desarrollo Agrícola or Fund for the Innovation in Agricultural Development
PRTR	Puerto Rico Trademark Register
Superintendence	Colombian government's Superintendence of Industry of Commerce
FEDCAFÉ	Federación Nacional de Cafetaleros Colombia or National Federation of Coffee Growers Colombia
TRIPS	Agreement on Trade-Related Intellectual Property Rights
WTO	World Trade Organization
Colombian Coffee Brand	Café de Colombia
OECD	Organization for Economic Co-Operation and Development
Commission of Agriculture	Commission of Agriculture, Food Security, and Sustainability of the Mountain and South Regions of Puerto Rico
PROCAFÉ	Productores de Café de Puerto Rico or Coffee Producers of Puerto Rico
U.S or United States	The United States or the United States of America

## II. GLOSSARY DEFINITIONS AND ABBREVIATIONS

- 1) **Intellectual Property Laws** are a “group of rights and protections recognized on an author’s work known as copyrights, trademarks, and patents.”<sup>6</sup>
- 2) **Geographic Indicator (GI)** is a type of intellectual property used as a source identifier for goods and services. It requires a consumer to associate a product to a location known as “product-origin attribution.”
- 3) **Sui Generis** is the central legal treatment system for GIs in Europe. It entails GIs having a separate register, governmental agencies, and legal recognition from the rest of intellectual property.
- 4) **Trademark (TM):** name, phrase, logo, or symbol where rights to the registered name first applicant basis.<sup>7</sup> The current legal treatment of the United States considers GIs a subset of trademarks; in other words, grouped within the diverse types of intellectual property.
- 5) **Denomination of Origin (DO)** is a GI that needs a product-origin-quality link (known as “terroir”) where one agricultural product with consistent high quality is linked to the location.

<sup>6</sup> Ivette Pérez Vega, *La Necesidad De Armonizar La Legislación Sobre Derechos Morales De Autor En Los Estados Unidos Y Canadá Para El Desarrollo Del Comercio Relacionado Con La Propiedad Intelectual: El Posible Papel De Puerto Rico*, 47 INTERAMERICAN UNIVERSITY OF PUERTO RICO LAW REVIEW JOURNAL 333, 334 (2012–2013).

<sup>7</sup> Bryan A. Garner, *Trademark*, BLACK’S LAW DICTIONARY (11 ed. 2019).

- 6) **Indication of Source (IOS)** is a statement indicating where a product comes from with no product-origin-quality link nor product-origin attributions.
- 7) **Collective Mark:** A producer's association creates a trademark to use in their products.
- 8) **Certificate Mark:** The owner certifies that the applicant to use the trademark has products that follow the standards the owner created.
- 9) **United States:** Refers to the Mainland United States excluding Puerto Rico and other territories
- 10) **Puerto Rico:** refers to the archipelago of Puerto Rico which includes Puerto Rico, Vieques, Culebra, Mona, Caja de Muertos (Coffin Island), and other islets and keys.

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## PROPOSED OUTLINE

### **Cover page**

- **Title:** Simple, clear, and descriptive title
- **Information:** Author, committee, academic advisor, and thesis mentor

**Abstract:** Basic design and approach; expectations; problems; and justification or importance.

**Acknowledgments:** Thanking those who have supported and contributed to the dissertation.

**Table of Contents:** Detailed and organized by heading and subheadings.

- I. **List of Abbreviations and Acronyms**
- II. **Definitions**
- III. **List of Figures**
- IV. **List of Tables**

### **Introduction**

- I. **Overview:** Summary of the problem statement, methodology, and the introduction.
- II. **Problem statement:** General problem, study's focus and purpose, and inquiry framework.
- III. **Brief History:** The role of Puerto Rico's history in the creation and failure of the DelPaís Law and trademark
- IV. **Current DelPaís Profile:** DelPaís Law and trademark programs and economic impact
- V. **Roadmap:** Brief explanation of each chapter's contents
- VI. **Methodology**
  - A. **Thesis Statement:** This dissertation's core argument
  - B. **Aims:** A list of the questions and goals
  - C. **Research Approach:** Explaining the framework, structure, and justification.
  - D. **Study Design:** Designing this dissertation's chapters and analysis procedures.
  - E. **Data collection and Analysis:** Explains the resources to interpret data collected.
    1. **Resources:** Detailing the materials needed to conduct the study.
    2. **Interventions:** Interviews with experts or groups of people.
  - F. **Study Boundaries and limitations:** Scope, presuppositions, assumptions, and limitations.
    1. **Why perform a Case study Puerto Rican Geographic Indicator Laws?**
    2. **Why perform a case study of the DelPaís Mark and law?**
    3. **Why Colombia and Hawaii as successful case study examples?**
  - G. **Future Research:** Post-dissertation projects
  - H. **Work Plan:** Excel spreadsheet of this dissertation's timeline

**Literature Review:** Each chapter will have substantive and methodological critique and findings.

### **Chapter 1 Geographic Indication:**

- I. **Definition:** Current definition established by TRIPS and short interpretation
- II. **GI Legal Policies:** Sui Generis and Trademark system
  - A. **Sui Generis:** European legal policy system, brief discussion on each GI tool: Protected Denominations of Origin, Appellations of Origin, Protected Geographic Indications, and Indications of Source
  - B. **Trademark System:** United States policy system, more detailed discussion on each Geographic Indication tool work: Regular trademarks, Collective, Certification and Common law
- III. **Conclusions**
  - A. **Summary**
    1. **Table:** Differences between Sui Generis and Trademark System
    2. **Table:** Differences between different GI tools

B. **Takeaways:** Application to Puerto Rico

**Chapter 2 Geographic Indication Policy Factors**

- I. **Geographic Indication:** Reasons for Implementation
  - A. **In general**
  - B. **Economic Development:** What is it and who it benefits?
- II. **What determines the success and failure of a Geographic Indication system?**
  - A. Main factors that make Geographic Indication policies successful
    - 1. **Product Definition:** Clear definition with product-origin-quality link. Components: Product description, Geographical area, and Qualification standards
    - 2. **Effective Organization:** Procedures with a sound Structure
    - 3. **Legal and institutional framework:** support and collaborative government management and appropriate legal protection
    - 4. **Marketing efforts:** a detailed strategic plan of the government and organization
    - 5. **Economic impact**
  - B. Summarizing GI policy factors
- II. **Successful Geographic Indication implementation case studies**
  - A. **Colombia:** Interview with Carmen Alamo about Colombian Coffee GI model
    - 1. Product Definition: Café de Colombia
    - 2. Effective Organization: FEDCAFÉ organizational structure
    - 3. Legal and institutional framework: financial support and registrations
    - 4. Marketing efforts: Juan Valdez marketing strategy
    - 5. Economic impact
  - B. **Hawaii:** Interview with Jefferey Caraballo about Kona Coffee issues
    - 1. Product Definition: Kona Coffee
    - 2. Effective Organization
    - 3. Legal and institutional framework: Dual legal protection for pure and blended Kona
    - 4. Marketing efforts
    - 5. Economic impact

III. **Conclusion**

A. Summary

B. **Takeaways:** List opportunities to improve products under DelPaís Law

**Results:** Applying the literature review to the Case Study

**Chapter 3 Case Study Why the DelPaís Law failed?**

- A. **Background:** There are several economic development plans, dissertations, and other legal scholar literature that which briefly discuss the DelPaís Mark and law. Interviews will help in filling in details that are not covered in the literature.
  - A. **Puerto Rico's Agricultural Economic Development**
  - B. **DelPaís beginnings before becoming a trademark and law**
- B. **Policy Factor Evaluation:** Interviews with Manuel Cidre, Carmen Alamo, Christian Cortes, for additional analysis, background, and context of policy issues within DelPaís Law.
  - A. **Marketing**
    - 1. A new administration, new marketing strategy
    - 2. Place of origin not obvious in logo
    - 3. Made in Puerto Rico and United States rivals: Interview with Liliana Cubano ex-president of Associations of Products of Puerto rico
  - B. **Table 9**
    - 1. Product Definition
      - a) Law protects multiple products

- b) No product-origin-quality links
- c) Geographical area data is outdated
- d) No qualification standards (Code of Practice)
- 2. Effective Organization
  - a) Multiple organizations
  - b) No effective organization
  - c) Limited users because of unknown benefits

**C. Legal and Institutional**

- 1. Multiple owners, and filings
- 2. Dormant and incomplete product-specific GIs
- 3. Inactive nationalization plan
- 4. Current investigations focus on coffee
- 5. Financial support

**D. Current Economic Impact:** No published statistics nor reports

C. Where is DelPaís situated when compared to Café de Colombia and Kona Coffee?

D. Conclusion: Summary

## Chapter 4 Recommendations

**I. Previous Considerations before implementation**

- A. Political and Individual Interest
- B. Supremacy and Commerce clause
- C. PROMESA's additional bureaucracy
- D. International shipping limited to using United States Boats
- E. Uncertainty with indirect representations
- F. DelPaís Classification: Identification of DelPaís within the GI policy systems

**II. Identified takeaways:** Feasibility analysis of Takeaways from Colombia and Hawaii

**III. Proposed Changes:** Recommendations will change throughout the course of making this dissertation. Interviews will help identify recommendations and determine their feasibility.

**A. Product Definition:**

- 1. Associations must formulate a code of Practice
- 2. Department of Agriculture updates and published geographical data
- 3. Law protects multiple products and has no product-origin links

**B. Effective Organization:**

- 1. Encourage enforcement of Code of Practice
- 2. Create a DelPaís Association with bylaws structuring the organization
- 3. Divulge DelPaís legal and trademark benefits

**C. Legal and Institutional:**

- 1. Increase financial support and funding
- 2. Product-specific GIs Laws
- 3. Inconsistent use and multiple owners

**D. Marketing:**

- 1. Investment
- 2. Study for domestic and export market
- 3. Nationalize DelPaís Mark
- 4. Logo Redesign

**IV. Implementation**

**A. Municipal Approach**

- 1. **Pilot Program:** Options considered for the moment
  - a) Lechonera Certificada Cerdo 100% de Puerto Rico
  - b) Law that creates the Office for Puerto Rican Coffee

- c) Law to recognize the roasted pig as cultural patrimony
  - d) Other laws
  - 2. **Product-specific laws:** Interview with Christian Cortes can shed some light about which products can become potential GIs.
  - 3. **Amending DelPaís Law**
    - a) All definitions
    - b) Just referencing
    - c) Derogate
  - 4. **Administrative Laws to complement specialized laws and/or DelPaís Law**
- B. **Domestic Approach**
- C. **Export Plans**
1. United States
    - a) Nationalize DelPaís Mark
    - b) Register DelPaís Mark in the USPTO
  2. International: Free Trade Zone Agreements, DR-CAFTA, NAFTA, TRIPS, and Paris Convention
- D. **Implementation Timeline:** Disclosures and cautions if necessary
1. 2020
  2. 2021
  3. 2022
  4. 2023
  5. 2024-forward

## V. Economic Impact

- A. **Cost-Benefit Analysis of Proposed changes**
- B. **Forecast:** Implications and Contributions: Effects of recommendations
1. Strengthens DelPaís GI system
  2. Stimulates local networks
  3. Social welfare for small artisanal firms
  4. Updates and valorize results of amending the DelPaís law and trademark
  5. SME's generate and adopt current technology
  6. Food security for Puerto Rico's population

**Conclusion:** Summary of study findings

- A. Chapter 1
- B. Chapter 2
- C. Chapter 3
- D. Chapter 4

## Appendix

- I. Bibliography and references
- II. Interview questions and answers

## INTRODUCTION

Geographic Indicators (GIs) are source identifiers that can improve economic development through exporting and selling products in niche international markets. Puerto Rico's "Law to Use the Mark 'DelPaís'" (hereon the DelPaís Law) contrasts from traditional GIs, differentiating local products sold only within Puerto Rico from imported products.<sup>8</sup> Research shows that Puerto Ricans historically prefer United States (hereon United States) products and services over Puerto Rican products and services.<sup>9</sup> The DelPaís Law intended to combat this preference but failed, resulting in continued over-dependence on imported products from the United States. This over-dependence permeates beyond consumer preferences to the point that it contributes to Puerto Rico's current economic crisis. This study recommends policy changes to the DelPaís Law maximizing its benefit in helping small and medium businesses (SMEs).

This chapter starts by briefly exploring the Puerto Rican Congress' failure at implementing GI policies protecting local products within the DelPaís Law. The chapter then delineates this dissertation's roadmap of its four subsequent chapters: Chapter I discusses GIs; Chapter II details GI policy factors and illustrates their implementation in Colombian and Hawaiian Coffee; Chapter III explains the DelPaís Law's history and its reasons for failure; and Chapter IV delineates policy recommendations, and a conclusion summarizing the study findings. Chapter I ends by delineating the study boundaries, substantiating reasons for scrutinizing the PRGI policy in the DelPaís Law, and justifying why Colombian and Hawaiian Coffee GIs were chosen for studying.

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<sup>8</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, *supra* note 3.

<sup>9</sup> DR. MYRNA COMAS PAGÁN, *Plan Estratégico Integral Agrícola para Puerto Rico*, PLAN ESTRATÉGICO INTEGRAL AGRÍCOLA PARA PUERTO RICO 69 3 (2016), <https://drive.google.com/file/d/1xhh11nAGFw-HYWJlkXmyBxyVW2SI-k0/view>; DR. MYRNA COMAS PAGÁN, *Plan de Seguridad Alimentaria para Puerto Rico*, PLAN DE SEGURIDAD ALIMENTARIA PARA PUERTO RICO 3–9 (2013), <https://drive.google.com/file/d/1Cequae-IBUTvmX-N0004uNqjQJ49Jrv/view>; GLADYS M GONZÁLEZ & ALEXANDRA GREGORY, *Economic Development Plan for the Agriculture Sector*, PLAN DE DESARROLLO ECONÓMICO PARA PUERTO RICO 2015 82 2–3 (2017), <http://jp.gobierno.pr/LinkClick.aspx?fileticket=ywwUp7PPac%3D&tabid=277&portalid=0&mid=1487>; Martin J Collo, *Capital Imports and Endogenous Productive Capacity: A Proposal for Agrarian Development in Puerto Rico*, 10 JOURNAL OF THIRD WORLD STUDIES 306–308 (1993); MARXUACH, *supra* note 1 at 64.

## I. PROBLEM STATEMENT

In the United States, many robust intellectual property laws and proper enforcement have boosted sustainable economic development.<sup>10</sup> Despite being part of the United States, Puerto Rico has not fully participated in such economic boosts because local intellectual property laws, specifically those relating to geographic indications (GIs), have created a hindrance.

This study addresses the problem of the existing Puerto Rican Geographic Indication (PRGI) laws on economic development, principally on SMEs. The “Law to Use the Mark ‘DelPaís’” (hereon the DelPaís Law) is a prime example of such a failed law and requires a case study to understand the reasons for its failure and proposed solutions thereto.<sup>11</sup> In theory, the DelPaís Law should have improved the Puerto Rican economy by differentiating local and imported products, but implementation fell short as it did not define the products it intends to protect nor provide clear standards of use for the DelPaís Mark.

This study’s methodology compares the DelPaís Law against successful GIs such as the Colombian Coffee, and Hawaiian Kona Coffee GI Laws, which offer excellent guidance on the implementation and formulation of PRGI policy.<sup>12</sup> This comparison recommends improvements to the DelPaís Law’s policy while accounting for Puerto Rico’s unique status within the United States, which creates challenges and opportunities for Puerto Rico. The study recommends changes necessary to make the DelPaís Law a new economic development strategy for Puerto Rico. The methodology used to generate the proposed solutions is also applicable to other PRGI

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<sup>10</sup> KAMIL IDRIS, INTELLECTUAL PROPERTY: A POWER TOOL FOR ECONOMIC GROWTH 27–28, 34, 41, (Press Release PR/2003/337 ed. 2003), [https://www.wipo.int/pressroom/en/prdocs/2003/wipo\\_pr\\_2003\\_337.html](https://www.wipo.int/pressroom/en/prdocs/2003/wipo_pr_2003_337.html); 412 CARLOS PRIMO BRAGA, FINK CARTEN & CLAUDIA PAZ SEPÚLVEDA, INTELLECTUAL PROPERTY RIGHTS AND ECONOMIC DEVELOPMENT 13, 31 (2000); JORGE MARIO MARTÍNEZ-PIVA, KNOWLEDGE GENERATION AND PROTECTION: INTELLECTUAL PROPERTY, INNOVATION AND ECONOMIC DEVELOPMENT, 29–31, 118–119 (2009); Irene Calboli & Daniel J Gervais, *Socio-Economic Aspects of Geographical Indications*, From the SelectedWorks of Irene Calboli TEXAS A&M UNIVERSITY SCHOOL OF LAW, 12–20 (2015), [https://works.bepress.com/irene\\_calboli/113/](https://works.bepress.com/irene_calboli/113/); Irene Calboli, *Geographical Indications between Trade, Development, Culture and Marketing: Framing a Fair(er) System of Protection in the Global Economy*, in GEOGRAPHICAL INDICATIONS AT THE CROSROADS OF TRADE DEVELOPMENT AND CULTURE 1, 22 (Irene Calboli & Ng-Loy Wee Loon eds., 2017); Irene Calboli, *Geographical Indications of Origin at the Crossroads of Local Development, Consumer Protection and Marketing Strategies*, 46 IIC - INTERNATIONAL REVIEW OF INTELLECTUAL PROPERTY AND COMPETITION LAW 760, 766–771 (Issue 7) (2015), <http://link.springer.com/10.1007/s40319-015-0394-0> (last visited Jun 23, 2020).

<sup>11</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, *supra* note 3.

<sup>12</sup> DANIELE GIOVANNUCCI ET AL., GUIDE TO GEOGRAPHICAL INDICATIONS: LINKING PRODUCTS AND THEIR ORIGINS 177–183 & 197–203 (2009), [https://www.origin-gi.com/images/stories/PDFs/English/E-Library/geographical\\_indications.pdf](https://www.origin-gi.com/images/stories/PDFs/English/E-Library/geographical_indications.pdf); Yanis Rosana Blanco Santiago, *La Protección de las Indicaciones Geográficas en el Comercio Internacional: Recepción y Efectividad en el Ordenamiento Jurídico Puertorriqueño*, 2015–2017, (Published Ph.D. Dissertation at Universidad Complutense de Madrid Facultad de Derecho: Departamento de Derecho Internacional Público y de Derecho Internacional Privado) <https://eprints.ucm.es/43210/>.

laws in Puerto Rico, as they suffer from many of the same issues as the DelPaís Law. Upon implementation, the recommended changes will help SMEs increase commercialization quality and exports, build recognition of Puerto Rican goods and services, provide scalability to other PRGIs, and strengthen the value of PRGIs, such as the DelPaís Mark.<sup>13</sup> Overall, the recommendations will improve the quality of life, develop tourism, and increase intangible assets value in Puerto Rico.

## II. BRIEF HISTORY

In the 19<sup>th</sup> and 20<sup>th</sup> Century, Puerto Rican Coffee was a hot commodity among the higher classes internationally.<sup>14</sup> For more than a century and even during dire times, consumers have enjoyed the Puerto Rican rums Bacardi, Don Q, and Ron del Barrilito.<sup>15</sup> Moreover, one of the main attractions that Puerto Rico offers is its traditional food and culture. However, current PRGI laws give inadequate and inconsistent protection and when used as a promotional branding tool, the PRGIs change too often, disappear, or work improperly.<sup>16</sup>

Since 1493, Spanish colonial times, to the present date (over 500 years), Puerto Rico has been a “tax haven.”<sup>17</sup> Legal scholars suggest that Puerto Rico’s status as a tax haven came about as a combination of depending on Spain and the United States to implement laws activating economic activity and local regulations having an “industrialization by invitation” approach.<sup>18</sup>

For instance, in 1941, the governmental agency Puerto Rico Development Company

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<sup>13</sup> Stalin Ballesteros García & Jorge Bulla de la Hoz, *Incidencia de la Propiedad Intelectual en el Desarrollo Nacional y Empresarial en el Contexto de Globalización Actual (Impact of Intellectual Property in National and Business Development Under the Context of the Current Globalization)*, Jul-Dic 2016 REVISTA LA PROPIEDAD INMATERIAL 5, 7,12-13 (Issue 22) (2016), <https://search-ebscohost-com.proxyiub.uits.iu.edu/login.aspx?direct=true&db=fua&AN=121527036&site=eds-live&scope=site>. Acesso em: 17 abr. 2020 (last visited Feb 24, 2020).

<sup>14</sup> O’NEILL PUMARADA AND PUMARADA, *supra* note 1 at 56; MARXUACH, *supra* note 1 at 7. (See Footnote 40)

<sup>15</sup> Distilleries like Don Q and Bacardi making hand sanitizer to combat COVID-19: Mike Pomranz, *Distilleries Around the Globe Are Helping Produce Hand Sanitizer During the Coronavirus Pandemic*, FOOD & WINE, March 25, 2020, <https://www.foodandwine.com/news/distilleries-make-hand-sanitizer-alcohol>. Distilleries like Ron del Barrilito, Don Q and Bacardi produced “Alcoholado”, a liquid ointment for muscle pain made with the same ingredients to make rum, during the prohibition era: José Enrique Pérez Montes, *Ideas anti-alcohólicas y representaciones de los sujetos alcoholícos antes y durante la Prohibición en Puerto Rico*, REVISTA TRASUNTO DEL DEPARTAMENTO DE ESTUDIOS HISPÁNICOS DE LA UNIVERSIDAD DE PUERTO RICO DE RÍO PIEDRAS, 12 (2016), <https://revistatrasunto.com/2016/03/28/ideas-anti-alcohólicas-y-representaciones-de-los-sujetos-alcoholicos-antes-y-durante-la-prohibicion-en-puerto-rico/>.

<sup>16</sup> IRIZARRY MORA ET AL., *supra* note 2 at 23.

<sup>17</sup> Diane Lourdes Dick, *U.S. Tax Imperialism in Puerto Rico*, 65 AM. U. L. REV 86, 53–68 (Issue 1) (2015); EMILIO PANTOJAS GARCÍA, CRÓNICAS DEL COLAPSO: ECONOMÍA, POLÍTICA Y SOCIEDAD DE PUERTO RICO EN EL SIGLO VEINTIUNO 86–89 (3rd ed. 2015); SILVERIO PÉREZ, LA VITRINA ROTA O ¿QUÉ CARAJO PASÓ AQUÍ? 43–67 (3rd ed. 2018).

<sup>18</sup> SUSAN M. COLLINS, BARRY P. BOSWORTH & MIGUEL A. SOTO-CLASS, THE ECONOMY OF PUERTO RICO: RESTORING GROWTH 18 (2006), <https://ebookcentral.proquest.com/lib/iub-ebooks/detail.action?docID=3004459>; IRIZARRY MORA ET AL., *supra* note 2 at 28.

(PRIDCO or Compañía de Fomento de Puerto Rico) implemented an “industrialization plan,” so local businesses could specialize in the manufacturing industry.<sup>19</sup> This plan obligated local businesses to buy staple items such as shoes, leather products, paper, boxes, and PVC tubes from PRIDCO’s manufacturing facility.<sup>20</sup> However, local businesses quickly rejected the plan due to its socialist undertones.<sup>21</sup>

On the other hand, laws such as Section 931, Section 936, Law 20, and Law 22, give a 90-100% tax exemption to foreign and United States corporations to establish sugar, manufacturing, pharmaceuticals, or professional service operations on Puerto Rico.<sup>22</sup> The laws intended to create economic development for Puerto Rico, but they created economic growth for the United States as the local government had limited administrative tools for retaining generated revenues, enabling companies to transfer the vast majority of revenues back to the United States.<sup>23</sup>

Moreover, when the United States derogated Section 931 and Section 936, United States companies left the Puerto Rican Treasury without money.<sup>24</sup> The Treasury tried resolving the debt by issuing loans, slowly becoming a habit until getting out of hand when the governor at the time, Ricardo Rosselló, Sr., ordered the construction of a costly train, convention center and, concert colosseum.<sup>25</sup> With the 2008 economic crisis, the Puerto Rican Treasury slowly sunk \$75 billion in debt until its breaking point in 2016.<sup>26</sup> During 2016, the Secretary of the Treasury, Juan C. Zaragoza Gómez, advised the governor at the time, Alejandro García Padilla, to declare bankruptcy.<sup>27</sup> However, in *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938 (2016),

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<sup>19</sup> IRIZARRY MORA ET AL., *supra* note 2 at 27–29.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> IRIZARRY MORA ET AL., *supra* note 2 at 31.

<sup>23</sup> *Id.* at 30.

<sup>24</sup> COLLINS, BOSWORTH, AND SOTO-CLASS, *supra* note 18 at 18.

<sup>25</sup> PÉREZ, *supra* note 17 at 158–161.

<sup>26</sup> Dick, *supra* note 17 at 78–83; PANTOJAS GARCÍA, *supra* note 17 at 83–85; PÉREZ, *supra* note 17 at 157–177.

<sup>27</sup> José Cabranes, *3 main reasons why Puerto Rico can't declare bankruptcy*, THE WASHINGTON POST, 2015, <https://www.businessinsider.com/3-main-reasons-why-puerto-rico-can-t-declare-bankruptcy-2015-7>; Bruce Wilson, *United States: PROMESA: A Summary Of The Puerto Rico Oversight, Management, and Economic Stability Act*, MONDAQ (2016), <https://www.mondaq.com/unitedstates/fiscal-monetary-policy/530862/promesa-a-summary-of-the-puerto-rico-oversight-management-and-economic-stability-act>; AP, *Acreedores demandan al banco gubernamental de Puerto Rico*, CHICAGO TRIBUNE, 216AD, <https://www.chicagotribune.com/hoy/ct-hoy-8591779-acrededores-demandan-al-banco-gubernamental-de-puerto-rico-story.html>.

the Supreme Court of the United States determined that Puerto Rico could not do so. In response, the United States Congress passed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which imposes a supervisory board in charge of negotiating the national debt with Puerto Rico's government.

In 2017, when Hurricane María struck, Governor Ricardo Rosselló Nevares, Jr. and his Cabinet inadequately managed governance as aid disappeared, supplies went abandoned, people were left to live under tarps, and deaths went unreported.<sup>28</sup> In 2019, controversial text message conversations revealed to the world the rampant corruption that occurred during the hurricane.<sup>29</sup> More recently, earthquakes and disease have intensified the crisis; however, tragedy has united inhabitants to focus on economic development and the reinventing of local businesses.<sup>30</sup>

This study claims that when implemented properly, Geographic Indicators (GIs) afford protection and promotion to local agriculture. An economically and culturally successful GI is a source identifier that maintains a balance between protecting local practices and products while increasing a producer's commercialization and remuneration. Nevertheless, the current implementation of the DelPaís Law, creates a designation of origin for products in Puerto Rico, but fails to afford such an essential balance in a well-functioning GI policy.<sup>31</sup> This dissertation proposes changes by using the DelPaís Law as a case study. With the proper legal protections and promotion for Puerto Rican products, like coffee, plantains, and honey, local farmers and SMEs will profit from increased incomes and decreased costs.

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<sup>28</sup> PANTOJAS GARCÍA, *supra* note 17 at 363–365.

<sup>29</sup> *Id.* at 363–365.

<sup>30</sup> Daniel Edgardo Adorno-Cruz, *Terremoto en Puerto Rico demuestra que el gobierno no puede manejar una crisis*, OPENDEMOCRACY, January 15, 2020, <https://www.opendemocracy.net/es/democraciaabierta-es/terremoto-en-puerto-rico-demuestra-que-el-gobierno-no-puede-manejar-una-crisis/>.

<sup>31</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, *supra* note 3.

### III. CURRENT DELPAÍS MARK AND LAW PROFILE



- **Owner:** Fondo de Innovación para el Desarrollo Agrícola (Fund for the Innovation in Agricultural Development or FIDA) of Puerto Rican Department of Agriculture
- **Puerto Rico Trademark Register (PRTR) Registrations:**
  - **Abandoned:** 2002, 2011, 2013
  - **Active since 2016:** 226720-29-1; 226720-30-1 AND 226720-31-1
  - **TYPE:** GRAPHIC
- **USPTO:** none
- **Social media:** <https://www.facebook.com/DelPaisPR>
- **Website:** <https://www.agricultura.pr/>

The DelPais Mark was established in 2002 and revived various times in 2011, 2013, and 2016 by its owner, the Puerto Rican Department of Agriculture.<sup>32</sup> More specifically, the Department's sub-agency FIDA currently manages both the DelPais Law and Mark's programs. The DelPais Law immortalizes the original 2002 certification trademark attempting to guarantee consumers high-quality local products distinguishable from imported products.<sup>33</sup> Most products under the mark sell in the Department of Agriculture's sponsored farmers markets; however, some products sell in private farmers markets and supermarkets within Puerto Rico, available to outsiders via producer's websites.<sup>34</sup>

The DelPais Law's explanatory statement declares that its implementation was to combat consumer preference and the over-dependence on imported products from the United States and elsewhere.<sup>35</sup> The statement illustrates that the effects of such preferences generate an average \$6 billion in net income for imported products, while the local industry makes only \$920 million in

<sup>32</sup> Vivian Carro-Figueroa, *Agricultural Decline and Food Import Dependency in Puerto Rico: A Historical Perspective on the Outcomes of Postwar Farm and Food Policies*, 30 INSTITUTE OF CARIBBEAN STUDIES, UNIVERSITY OF PUERTO RICO RIO PIEDRAS CAMPUS 77, 101 (2002), www.jstor.org/stable/25613372.

<sup>33</sup> Ley para el Uso de la Marca DelPais, 2016 PR LAW 195: Hearing on 2016 PR HB 2791 Before the Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña y de la Región Sur 17th Senate 2nd Session, 44547 (2016), (presented by Ramón Ruiz Nieves Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña).

<sup>34</sup> Departamento de Agricultura, *Mercado Familiar*, CALENDARIO MERCADO DE AGRICULTORES, 2019, <https://www.agricultura.pr/calendario-mercados>. Farmers Market of the Department are in: North: San Juan, Bayamón, Carolina, Canóvanas, Guaynabo and Caguas; West: Mayagüez and Aguadilla; and South: Ponce and Guayama. Sabrosía Puerto Rico, *SuperMax crea Colaboración para Promover Productos Agrícolas Locales*, ACTIVOPR, 2019, <https://activopr.com/enterate/2019/12/04/supermax-crea-colaboracion-para-promover-productos-agricolas-locales.html>; Dennis Costa, *Delpais Strengthens Supply of Fresh Products*, CARIBBEAN BUSINESS, 2016, <https://caribbeanbusiness.com/delpais-strengthens-supply-of-fresh-products/?print=print>.

<sup>35</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, *supra* note 3.

net income; representing in terms of percent 80% and 20% respectively.<sup>36</sup>

This statement aligns with several legal scholar studies and governmental economic development plans reasoning that consumer preferences for imported products stem from:

- 1) Puerto Ricans consider foreign and United States brands as superior to local brands.<sup>37</sup>
- 2) Consumers buy imported products for their extended durability and low prices compared to domestic products.<sup>38</sup>
- 3) Puerto Rican farmers, due to the climate, are unable to produce the products that consist the “Puerto Rican diet” such as rice, cereals, beans, oils, and beef.<sup>39</sup>

The DelPaís Law’s explanatory statement indicates that over-dependence on imported products causes food security concerns such as those during Hurricane María when supermarkets had no supplies resulting in food rationing. However, the “public policy elevates the DelPaís Mark into a law” because the mark would reduce information asymmetry between local and imported products. This statement aligns with the studies mentioned above explaining that:

- 1) Products using PRGI trademarks, such as Made in Puerto Rico have 65% higher recognition among Puerto Ricans than products that do not use the mark.<sup>40</sup>
- 2) When products with the DelPaís Mark were introduced, consumers were willing to pay 15 to 45% more for local products.<sup>41</sup>
- 3) There are some products produced locally which compose the “Puerto Rican diet” that if identified properly as “locally produced” incline consumers to buying them:<sup>42</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> Edwin Irizarry Mora, *Ensayos Para Una Nueva Economía*, 4 PERPECTIVAS, 63–66 (2017); Carro-Figueroa, *supra* note 32 at 77,80 & 83; Rafael Ramírez, *Un Nuevo Enfoque para el Análisis del Cambio Cultural en Puerto Rico*, 9 REVISTA DE CIENCIAS SOCIALES 339, 345–349 (Issue 4) (1964), <https://revistas.upr.edu/index.php/rccs/article/view/9331/0>; José A. Flecha, María De los M. Santos-Corrala & Sandra Mena-Candelaria, *El Efecto de la Autocongruencia en un Sello de Denominación de Origen: El Sello Hecho en Puerto Rico*, 35 ESTUDIOS GERENCIALES 292, 294 (2019), [https://www.icesi.edu.co/revistas/index.php/estudios\\_gerenciales/article/view/3263](https://www.icesi.edu.co/revistas/index.php/estudios_gerenciales/article/view/3263) (last visited Mar 12, 2020).

<sup>38</sup> Janellie Banuchi Santos & Jessica Reyes Rosario, *Preferencias del Consumidor en la Toma de Decisión de Compras entre las Tiendas Multinacionales y Tiendas Locales Radicadas en el Área Sur de Puerto Rico*, 2008, (Presented at the Interamerican University of Puerto Rico Ponce Campus); Mildred Cortés, *Ánálisis Descriptivo de las Preferencias de los Consumidores de Raíces y Tubérculos en Puerto Rico*, 93 J. AGRIC. UNIV. P.R. 273, 276 (Issue 3-4) (2009); Mildred Cortés & Leticia Gayol, *Preferencia de los Consumidores de Frutas del País en Puerto Rico*, 307 BOLETÍN DE LA ESTACIÓN AGRÍCOLA UNIV. PUERTO RICO, 2 (2013); Nicolás Cartagena-Romero, *Gustos y preferencias de los consumidores de carne de res de Puerto Rico*, 100 16, 228 (2016); Cortés and Gayol, *supra* note at 2; JORGE GONZÁLEZ, *Estudio de Gusto y Preferencias de Quesos en la Regiones de Arecibo, Aguadilla y Mayagüez y Ponce* 1–2 (1992).

<sup>39</sup> COMAS PAGÁN, *supra* note 9 at 10.

<sup>40</sup> Flecha, Santos-Corrala, and Mena-Candelaria, *supra* note 37 at 294.

<sup>41</sup> Jaime Santiago, “*Cosecha y Crianza*”: A New Approach to Market Local Agricultural Products, 40 CARIBBEAN BUSINESS 18 (Issue 36) (2012), <https://search-ebscohost-com.proxyiub.uits.iu.edu/login.aspx?direct=true&db=b9h&AN=79967716&site=eds-live&scope=site>; Jaime Santiago, “*Cosecha y Crianza*” Marketing Campaign Harvests Interest in Puerto Rico Foods, 39 CARIBBEAN BUSINESS 72 (Issue 46) (2011), <https://search-ebscohost-com.proxyiub.uits.iu.edu/login.aspx?direct=true&db=b9h&AN=67736209&site=eds-live&scope=site>.

<sup>42</sup> COMAS PAGÁN, *supra* note 9 at 78–83; *Id.* at 10.; Cortés and Gayol, *supra* note 38 at 1; *Id.* at 273.; GONZÁLEZ, *supra* note 38 at 1–4; Cartagena-Romero, *supra* note 38 at 222–223; Katarina Labajova, *Posicionamiento de productos agropecuarios locales versus importados: un estudio de los consumidores de carne de pollo, huevos y carne de cerdo del Municipio de Mayagüez*, Puerto Rico, 2004, (Presented at University of Puerto Rico Mayagüez Campus).

- a. Fruits: oranges, papaya, mandarin, pineapple, banana, lemons, and coconut
- b. Roots and Tuberclles: yautia, yam, yucca, and sweet potatoes
- c. Milk not including derivatives like cheese and yogurt (these local products are new to the industry)
- d. Meats: poultry, eggs, and pork. Local beef has limited distribution and market in Puerto Rico.
- e. Vegetables: pumpkin, lettuce, tomato, and cabbage.

#### IV. ROADMAP

This dissertation's literature review starts in **Chapter I**, defining GIs and distinguishing the main GI legal treatments practiced in Europe and the United States. The chapter finishes by differentiating GIs, trademarks, Appellations of Origin, Denomination of Origins, and Indications of Source.

**Chapter II** confirms that GI policies are an excellent tool for developing countries' economic growth as they increase employment and diversify income streams. However, for a GI policy to successfully boost economic development it should address five factors: 1) product definition, 2) collective organization, 3) legal and governmental structure, 4) marketing, and 5) economic impact. These, in turn, are the criteria used to evaluate the DelPaís Law as a case study in Chapter IV. This chapter closes presenting how Colombia and Hawaii implemented specific policy factor strategies making their Coffee GI policies successful.

**Chapter III** applies the literature review to the DelPaís Law's history and formulation to analyze the reasons for its failure. For instance, the fact that there are no public codes of practice, lack of economic impact statistics, unclear product-origin-quality links, a disorganized marketing strategy, and strong rivals mimicking the purpose of the DelPaís Mark. The investigation results point to the policymaker's failure to address each factor in the previous chapter.

**Chapter IV** details the suggested recommendations attached to each GI policy factor,

discussed in Chapter III, and their viability within the scope of the Puerto Rico-United States relationship. Recommendations promote the active collaboration of the Puerto Rican Department of Agriculture and associations to build an export marketing strategy under the DelPaís Law to increase the detail of the policy's contents concerning protected products and constructing practice manuals with higher traceability and accountability guarantees. The chapter ends by analyzing the recommendation's implications and obstacles arising from Puerto Rican legislator's reluctance to implement change or disinterest from local producers assuming that the recommendations are too cumbersome. Also discussed are the anticipated roadblocks include shipping restrictions, lack of international self-representation, and trademark limitations imposed by the United States Constitution's Supremacy and Commerce Clause. Lastly, this dissertation concludes summarizing the study findings.

## V. METHODOLOGY

### A. THESIS STATEMENT

Existing Puerto Rican laws have a negative impact on economic development, particularly on small and medium businesses. The “Law to Use the Mark ‘DelPaís’,” Act 195-2016, represents such failed laws and requires a case study to understand the reasons for its failure and proposed solutions thereto.

### B. AIMS

- 1) Explain geographic indicators, their main legal systems and different GI tools existing within these legal systems
- 2) Identify why GIs are implemented for economic development, specific GI policy factors, and specific strategies on what makes GIs successful in Colombia and Hawaii Coffee GI law.
- 3) Delineate DelPaís Law's history, implementation, and why it represents a failure.
- 4) Recommend policy formulation and enforcement suggestions within the legal constraints created by the Puerto Rico-United States relationship.

### *C. RESEARCH APPROACH*

This dissertation is a case study approach to Puerto Rico's DelPaís Law based on geographic indications (GIs) policy factors and case evaluation of Colombia and Hawaii GI Coffee Laws to change the DelPaís Law for better implementation and enforcement. Therefore, the theory and practice of GI legal policy guide the qualitative evaluation that helps address the problems in Puerto Rico's DelPaís Law in its value-adding potential to local products. These recommendations are theoretical, a scholarly application to their macro-economic impacts, but also have a practical application tailored to Puerto Rico's legal limitations and sociological realities.

### *D. STUDY DESIGN*

The major work that validates my dissertation's study design is: Yanis Rosana Blanco Santiago, *La Protección de las Indicaciones Geográficas en el Comercio Internacional: Recepción y Efectividad en el Ordenamiento Jurídico Puertorriqueño* (The Protection of Geographical Indications in International Trade: Reception and Effectiveness in the Puerto Rican Legal System), 2015–2017, (Published Ph.D. Dissertation at Universidad Complutense de Madrid Facultad de Derecho: Departamento de Derecho Internacional Público y de Derecho Internacional Privado) <https://eprints.ucm.es/43210/>.

Santiago's dissertation focuses on why the Puerto Rico-United States relationship limits the compliance of international treaties in PRGI's as their formulation limits the scope of protection to function within Puerto Rico. Santiago examines: Law to create the Association of Products of Puerto Rico, Law 178 of 2010 (Rums of Puerto Rico Law), Law to create a National Mark, Law to create a Denomination of Origin for Products of Puerto Rico and Law to Create a Denomination of Origin for Coffees of Puerto Rico.

My investigation's case study approach and study design stem from other dissertations

following this same approach.<sup>43</sup> My dissertation groups and analyzes repeated themes familiarized throughout the literature review. The first section groups and analyzes literature to explain the definition of GIs and the difference between the GI tools existing in the Sui Generis (European) and Trademark (United States) systems. The second section, discusses the reasons as to why GIs polices are implemented, mainly arising from three main theories:<sup>44</sup>

- 1) Akerlof's theory, where information asymmetry, the fact that consumers have less information than producers, creates a market failure.
- 2) Shapiro's firm reputation model proves a circular relationship where the producer invests in quality to output a return on investment and increase reputation.
- 3) Ostrom's collective theory, where GIs are “club goods” in which their GI system depends on coordinated and collaborative collective action. In other words, collective action is what makes or breaks the GI system’s success. (A GI system is understood as “all GI producers and supply chain actors, government, associations and other institutions linked to the GI product.”<sup>45</sup>)

These theories apply to this dissertation’s case study because the Puerto Rican Department of Agriculture created the DelPaís Mark to reduce information asymmetry by distinguishing between imported and local products. One of the successes in the implementation of DelPaís Mark

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<sup>43</sup> Santiago, *supra* note 12; Cristina Errázuriz Tortorelli, *Indicaciones Geográficas y Denominaciones de Origen: Propiedad Intelectual en Progreso*, 37 REVISTA CHILENA DE DERECHO 207 (Issue 2) (2010), [http://www.scielo.cl/scielo.php?script=sci\\_arttext&pid=S0718-34372010000200002&lng=en&nrm=iso&tlang=en](http://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0718-34372010000200002&lng=en&nrm=iso&tlang=en) (last visited Mar 25, 2020); Marsha Simone Cadogan, *Geographical Indications and Development in the Third World: Towards a Strategic Approach of Intellectual Property Rights in Jamaica - The Case of Blue Mountain Coffee*, 2016, (Published Ph.D. Dissertation at York University) <http://digitalcommons.osgoode.yorku.ca/phd/29/>; Jesus Boes-Lazo, *Geographical Indications: A Great Opportunity to Foster Trade and Development under the Transatlantic Trade and Investment Partnership and the TRIPS Agreement: The Case of Belizean Bananas*, 2017, (Published Ph.D. Dissertation at Washington College of Law of American University) [Do Geographical Indications Promote Sustainable Rural Development?: Two UK Case Studies and Implications for New Zealand Rural Development Policy, 2008, \(published Ph.D. dissertation at the Department of Environmental Management, Lincoln University\) <https://hdl.handle.net/10182/585>; Sarah Bowen & Ana Valenzuela Zapata, \*Geographical indications, terroir, and socioeconomic and ecological sustainability: The Case of Tequila\*, 25 JOURNAL OF RURAL STUDIES 108 \(Issue 1\) \(2009\), <https://linkinghub.elsevier.com/retrieve/pii/S0743016708000454> \(last visited Apr 11, 2020\); Emilia Vandecandelaere et al., \*Economic Impacts of Geographical Indications: Worldwide Evidences from Nine Case Studies\*, 1 13TH EUROPEAN IFSA SYMPOSIUM 18 \(Issue 5\) \(2018\), \[https://www.researchgate.net/publication/334315797\\\_Economic\\\_Impacts\\\_of\\\_Geographical\\\_Indications\\\_Worldwide\\\_Evidences\\\_from\\\_9\\\_Case\\\_Studies\]\(https://www.researchgate.net/publication/334315797\_Economic\_Impacts\_of\_Geographical\_Indications\_Worldwide\_Evidences\_from\_9\_Case\_Studies\); Nadja El Benni & Sophie Reviron, \*Geographical Indications: Review of Seven Case-Studies Worldwide\*, Working Paper 15 NCCR TRADE REGULATION: SWISS NATIONAL CENTRE OF COMPETENCE IN RESEARCH \(2009\), \[https://www.researchgate.net/publication/265618582\\\_Geographical\\\_Indications\\\_review\\\_of\\\_seven\\\_case-studies\\\_world-wide\]\(https://www.researchgate.net/publication/265618582\_Geographical\_Indications\_review\_of\_seven\_case-studies\_world-wide\); GIOVANNUCCI ET AL., \*supra\* note 12.](https://dra.american.edu/islandora/object/uislandora%3A68600?solr_nav%5Bid%5D=6e7a120543b985b68f45&solr_nav%5Bpage%5D=3&solr_nav%5Boffset%5D=3&solr_nav%5Bsize%5D=3)

<sup>44</sup> Boes-Lazo, *supra* note 43 at 30–34; DR. DWIJEN RANGNEKAR, *The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe* 9–11 (2004), [https://unctad.org/en/PublicationsLibrary/ictsd2004ipd8\\_en.pdf](https://unctad.org/en/PublicationsLibrary/ictsd2004ipd8_en.pdf); CERKIA BRAMLEY, ESTELLE BIÉNABÉ & JOHANN KIRSTEN, *The Economics of Geographical Indications: Towards a Conceptual Framework for Geographical Indication Research in Developing Countries*, THE ECONOMICS OF INTELLECTUAL PROPERTY: SUGGESTIONS FOR FURTHER RESEARCH IN DEVELOPING COUNTRIES AND COUNTRIES WITH ECONOMIES IN TRANSITION 115 & 119 (2009), [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1012-chapter4.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1012-chapter4.pdf); DR. DWIJEN RANGNEKAR, *Demanding Stronger Protection for Geographical Indications: The Relationship between Local Knowledge, Information and Reputation*, UNITED NATIONS UNIVERSITY INSTITUTE FOR NEW TECHNOLOGIES DISCUSSION PAPERS 26–27 (2004), [https://www.researchgate.net/publication/4777995\\_Demanding\\_Stronger\\_Protection\\_for\\_Geographical\\_Indications\\_The\\_Relationship\\_between\\_Local\\_Knowledge\\_Information\\_and\\_Reputation](https://www.researchgate.net/publication/4777995_Demanding_Stronger_Protection_for_Geographical_Indications_The_Relationship_between_Local_Knowledge_Information_and_Reputation).

<sup>45</sup> Marguerite Paus, *Collective agro-food initiatives and sustainable rural development: Articulation between internal governance and rural governance illustrated by geographical indications from Switzerland and Serbia*, 2010, at 1 Band, <http://hdl.handle.net/20.500.11850/29576> (last visited Sep 3, 2020).

is that it creates a higher quality reputation compared to more famous marks because the Department decided to invest in technical assistance programs for farmers to create quality controls. However, one of the culprits of the DelPaís Law's failure is inadequate and disorganized uniformity and continuity in their marketing programs.

Moreover, the second section identifies and defines policy factors and their components to then illustrate their application through Colombia and Hawaii's GIs implementation strategies. This section stems from multiple legal scholar's case studies about GI laws in developing countries such as Jamaica, Ethiopia, India, and Colombia and developed states like Hawaii, proving with statistical data the theory that using such a tool leads to economic growth.<sup>46</sup> Such a theory that GIs lead to economic growth stems from Schumpeter's Innovation Theory stating that innovation drives economic development.<sup>47</sup> This theory is the base of this dissertation's recommendations, if implemented the innovation of the DelPaís Law along with other similar laws, can drive economic development.

These legal scholars' case studies identified specific criteria for the success in GI policy formulation and enforcement in producing economic development, these are: 1) clear product definition, 2) an effective collective organization, 3) detailed marketing efforts, 4) supportive legal and governmental framework, and 5) positive economic impact.<sup>48</sup> The first four criteria are the independent variables, and the last is the dependent variable, as the former has a cause and effect

<sup>46</sup> Benni and Reviron, *supra* note 43; Bowen and Zapata, *supra* note 43; Cadogan, *supra* note 43; Suparna Karmakar, *Protecting Indigenous Knowledge through Geographical Indications: A Case Study of the Textile Industry in India*, in INTELLECTUAL PROPERTY FOR ECONOMIC DEVELOPMENT (Sanghoon Ahn, Bronwyn Hall, & Keun Lee eds., 1st ed. 2014); Vandecanelaere et al., *supra* note 43; Williams, *supra* note 43; Dominique Barjolle et al., *The Role of the State for Geographical Indications of Coffee: Case Studies from Colombia and Kenya*, 98 WORLD DEVELOPMENT 105–119 (2017), <https://linkinghub.elsevier.com/retrieve/pii/S0305750X16305605> (last visited Mar 29, 2020); Carlos M Correa, *Protection of Geographical Indications in CARICOM Countries*, CARIBBEAN REGIONAL NEGOTIATING MACHINERY TECHNICAL PAPERS (2002), [https://www.researchgate.net/publication/265104739\\_Protection\\_of\\_Geographical\\_Indications\\_in\\_Caricom\\_Countries/citations](https://www.researchgate.net/publication/265104739_Protection_of_Geographical_Indications_in_Caricom_Countries/citations).

<sup>47</sup> Adam Szirmai, Wim Naudé & Micheline Goedhuys, *Entrepreneurship, Innovation, and Economic Development: An Overview*, in ENTREPRENEURSHIP, INNOVATION, AND ECONOMIC DEVELOPMENT A STUDY PREPARED FOR THE WORLD INSTITUTE FOR DEVELOPMENT ECONOMICS RESEARCH OF THE UNITED NATIONS UNIVERSITY (UNU-WIDER) AND MAASTRICHT ECONOMIC AND SOCIAL RESEARCH INSTITUTE ON INNOVATION AND TECHNOLOGY (UNU-MERIT) , 1.2.3 (Adam Szirmai, Wim Naudé, & Micheline Goedhuys eds., 1st ed. 2011), <https://www.oxfordscholarship.com.proxylib.iu.edu/view/10.1093/acprof:oso/9780199596515.001.0001/acprof-9780199596515>.

<sup>48</sup> *Supra* note 13; see also: UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *Why Geographical Indications for Least Developed Countries?* 14, 53–56 (2015), [https://unctad.org/en/PublicationsLibrary/aldc2015d4\\_en.pdf](https://unctad.org/en/PublicationsLibrary/aldc2015d4_en.pdf); GIOVANNUCCI ET AL., *supra* note 12 at 89–106; GIOVANNI BELLETTI ET AL., *The Effects of Protecting Geographical Indications: Ways and Means of their Evaluation* 5, 12, 20 (2011); EMILIE VANDECANELAERE ET AL., STRENGTHENING SUSTAINABLE FOOD SYSTEMS THROUGH GEOGRAPHICAL INDICATIONS: AN ANALYSIS OF ECONOMIC IMPACT 21–30 (2018), <http://www.fao.org/3/a-i8737en.pdf>.

relationship with the latter.

This study illustrates how Colombia and Hawaii implemented each policy criterion leading to sustainable economic development. I chose Colombia because other Latin American and Caribbean countries follow their model, and scholars consider it in their studies as the control country. I chose Hawaii because even though it is a state, it has a lot of political, social, and cultural similarities to Puerto Rico.

The third section applies the policy factors to the DelPaís Law to enumerate its policy problems. This section describes the DelPaís Law's formative history, purpose, and design layout. Here, I evaluate the DelPaís Law using the established criteria, explaining why the legislation failed in bringing economic development.

The last section proposes suggested changes for each policy factor that will lead to the DelPaís Mark having a strong economic impact. This final section is a prescriptive approach, building suggestions for each criterion within the normative legal constraints of the Puerto Rico-United States' relationship, which creates challenges and opportunities for Puerto Rico.<sup>49</sup> For instance, PRGI policy recognition and legitimacy extension are limited to Puerto Rico and the United States because their relationship limits international treaty compliance.<sup>50</sup>

#### *E. STUDY BOUNDARIES AND LIMITATIONS*

##### **1) Why Perform a Case Study of PRGI policies?**

Both the United States and foreign scholarly GIs literature, in general, investigate Europe, the United States, Canada, India, and Asia.<sup>51</sup> Although, extensive investigations about Latin America and the Caribbean on intellectual property types such as copyrights, patents, and other

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<sup>49</sup> Santiago, *supra* note 12 at 364–393.

<sup>50</sup> *Id.* at 13.

<sup>51</sup> Dr. Dwijen Rangnekar, *Indications of Geographical Origin in Asia: Legal and Policy Issues to Resolve*, in INTELLECTUAL PROPERTY AND SUSTAINABLE DEVELOPMENT: DEVELOPMENT AGENDAS IN A CHANGING WORLD (Ricardo Meléndez-Ortiz & Pedro Roffe eds., 2011); Szirmai, Naudé, and Goedhuys, *supra* note 47; Karmakar, *supra* note 46.

trademarks exist, there is limited data on GIs in Latin America and the Caribbean.<sup>52</sup> Even then, the limited literature lack extensive discussion about Puerto Rico and exclude it for several reasons. First, studies comprise only independent countries in the region that have sufficient data.<sup>53</sup> Second, studies evaluation of the United States only comprises the fifty states, excluding territories.<sup>54</sup> Third, studies do not segregate data showing Puerto Rico's information alone.<sup>55</sup> Lastly, legal scholars are unaware of Puerto Rico's existence, even if known, they are confused as to Puerto Rico's exact relationship with the United States.

Puerto Rican legal scholarly literature, in general, proposes reforming education, taxes, business permits, and labor laws. However, some are more relevant than others, given Puerto Rico's current circumstances. For instance, education reforms starting agricultural courses in public schools, are more urgent than fiscal reforms increasing tax credits, reserves, and subsidizing duty taxes for research and development in SMEs.<sup>56</sup> Even more urgent matters are convenient access to legal services and the efficiency of the business startup process.<sup>57</sup> More complex plans reform permit processes, eliminate Maritime Law restrictions, and strictly enforce the "Law to Invest in the Local Industry" obligating all Puerto Rican government departments to buy local products.<sup>58</sup> However, these recommendations are beyond the scope of this study.

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<sup>52</sup> Fabio Montobbio & Valerio Sterzi, *International Patenting and Knowledge Flows in Latin America*, in INTELLECTUAL PROPERTY FOR ECONOMIC DEVELOPMENT (Sanghoon Ahn, Bronwyn Hall, & Keun Lee eds., 1st ed. 2014); Jorge Cabrera, *Innovation and Public Research in Central American Countries*, in INTELLECTUAL PROPERTY AND SUSTAINABLE DEVELOPMENT: DEVELOPMENT AGENDAS IN A CHANGING WORLD (Ricardo Meléndez Ortiz ed., The International Center for Trade and Sustainable Development ed. 2009).

<sup>53</sup> Shows map where Puerto Rico is shown to have insufficient data: GIOVANNUCCI ET AL., *supra* note 12 at 50. Excludes certain countries in the Caribbean for not having sufficient data, does not mention Puerto Rico: MARTÍNEZ-PIVA, *supra* note 10 at 146. Includes countries in Latin United States and the Caribbean with sufficient data. Puerto Rico is not mentioned: Sharon B. Le Gall, *Introduction*, in INTELLECTUAL PROPERTY, TRADITIONAL KNOWLEDGE AND CULTURAL PROPERTY PROTECTION: CULTURAL SIGNIFIERS IN THE CARIBBEAN AND THE AMERICAS (1st ed. 2014).

<sup>54</sup> Richard Mendelson & Zachary Wood, *Geographical Indications in the United States: Developing a Preliminary List of Qualifying Product Names* 10–41 (2013), [https://www.origin-gi.com/images/stories/PDFs/English/papers/Geographical\\_Indications\\_in\\_the\\_United\\_States\\_-\\_Supporting\\_Memo\\_FINAL\\_WEB.pdf](https://www.origin-gi.com/images/stories/PDFs/English/papers/Geographical_Indications_in_the_United_States_-_Supporting_Memo_FINAL_WEB.pdf).

<sup>55</sup> The study is about United Nations Economic Commission for Latin United States and Caribbean (ECLAC) where Puerto Rico is a member but the tables and analysis presented do not segregate Puerto Rico's data: MARTÍNEZ-PIVA, *supra* note 10 at 59; 412 BRAGA, CARTEN, AND PAZ SEPÚLVEDA, *supra* note 10 at 40.

<sup>56</sup> Proposes to eliminate Maritime law and impose agricultural classes in public school curriculum: David Rivera López, *Jornada Hostos: Algunas Consideraciones Históricas y Actuales de la Agricultura en Puerto Rico*, RED BETANCES: INFORMACIÓN SOBRE PUERTO RICO Y SUS LUCHAS (2012), <http://www.redbetances.com/columnas/51-en-portada/980-david-rivera-lopez.html>; IRIZARRY MORA ET AL., *supra* note 2 at 63–66. Proposes Research and Development subsidies and tax incentives for Small Businesses in Puerto Rico: Antonio García-Padilla, *Research, Economic Development, and The Role of the University of Puerto Rico*, 26 PUERTO RICO HEALTH SCIENCES JOURNAL 177 (Issue 3) (2007); Antonio García-Padilla, *Researchers and Small-Scale Entrepreneurship*, 5 LAW AND DEVELOPMENT REVIEW 155, 165–166 (Issue2) (2012); Carlos R. Baralt Suárez, *Promoting Knowledge-Based Economy Activities Through Personal Income Tax Incentives*, 80 REVJURUPR 583, 601–602 (2011).

<sup>57</sup> Kenneth Rivera Robles, *Dibujando El Camino a la Cima de un Mejor País*, EL NUEVO DÍA, November 17, 2019, at 38, <https://www.doingbusiness.org/en/data/exploreeconomies/puerto-rico/>; Carmen Correa Matos, *Legislación Protectora y Promotora de MIPYMES en Puerto Rico (2009-2016)*, 22 FE 23–76, 66–68 (Issue 1) (2017), <http://journals-ojs3.upr.edu/index.php/forumempresarial/article/view/11931> (last visited Feb 24, 2020).

<sup>58</sup> Propose more holistic reforms to the government which include reforming education, transportations, agriculture, employment, permit processes, taxation, and stricter legal enforcements: COLLINS, BOSWORTH, AND SOTO-CLASS, *supra* note 18 at 189–254, 319–398, 566–588; IRIZARRY MORA ET AL., *supra* note 2 at 63–66, 99–101, 113–163. LEY PARA LA INVERSIÓN EN LA INDUSTRIA PUERTORRIQUEÑA, 2004 PR LAW 14, 3 LPRA 930 (2004).

## 2) Why Conduct a Case Study of the DelPaís Mark and Law?

Puerto Rico's historical strategy for economic development is overdependent on local and the United States fiscal policies. Even currently, the Puerto Rican Congress and even some legal scholars, as expressed above, attempt reviving nostalgic times where fiscal policies made the economy thrive. However, other Puerto Rican legal scholars agree that fiscal policies no longer function in Puerto Rico nor in developing countries as they exacerbate public debt.<sup>59</sup> These scholars propose an economic development plan that implements policies in line with the trends of the United States, the Caribbean, and Latin America using GIs for economic development. In other words, arguing the government should learn to move forward, to try more successful strategies like GIs.

The United States and foreign legal scholars have proven a theory, applying to all types of intellectual property, including GIs, which is that strong intellectual property regulations lead to robust, sustainable economic development.<sup>60</sup> Such is the case of the United States, but not the case of Puerto Rico, which despite having laws that mirror the United States, strong intellectual property regulation does not necessarily correlate to strong economic development in Puerto Rico. Existing Puerto Rican laws have a negative impact on economic growth, particularly on SMEs. The DelPaís Law is representative of failed laws as it lacks transparency and accountability, has inconsistent use, and other marks are duplicating its purposes. Such issues arise from the DelPaís Law's content lacking specific definitions, representative organization, marketing platform, and limited economic impact.

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<sup>59</sup> COLLINS, BOSWORTH, AND SOTO-CLASS, *supra* note 18 at 18–30; Rivera López, *supra* note 56; PANTOJAS GARCÍA, *supra* note 17; IRIZARRY MORA ET AL., *supra* note 2; PÉREZ, *supra* note 17 at 215–225.

<sup>60</sup> ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *Enquiries Into Intellectual Property's Economic Impact* 41 (2015), <http://www.oecd.org/sti/ieconomy/KBC2-IP.Final.pdf>; Oreste Montalvo, *¿Propiedad Intelectual es Igual a Desarrollo Económico?*, 36 PASAJES: PROPIEDAD INTELECTUAL UN DEBATE CRUCIAL 29, 29 (2011), <https://www.jstor.org/stable/41445949>; IDRIS, *supra* note 10 at 39; Kamil Idris, *La Propiedad Intelectual al Servicio del Crecimiento Económico*, Enero-Febrero 2003 REVISTA DE LA OMPI, 2003, [https://www.wipo.int/export/sites/www/wipo\\_magazine/es/pdf/2003/wipo\\_pub\\_121\\_2003\\_01-02.pdf](https://www.wipo.int/export/sites/www/wipo_magazine/es/pdf/2003/wipo_pub_121_2003_01-02.pdf); Moises Figueroa & Alexandra Reiya, *Entrevistas al Ledo. Eugenio Torres Oyola*, <https://open.spotify.com/episode/1SLRuTIVtRQy3nZv7QAhab>; Szirmai, Naudé, and Goedhuys, *supra* note 47 at 20; Correa Matos, *supra* note 57 at 28–29; Michael Steven & John Pearce, *The Need for Innovation as a Rationale for Government Involvement in Entrepreneurship*, 21 ENTREPRENEURSHIP & REGIONAL DEVELOPMENT 285, 294–295 (2009); ICC COMMISSION ON INTELLECTUAL PROPERTY, INTELLECTUAL PROPERTY: POWERHOUSE FOR INNOVATION AND ECONOMIC GROWTH 12–17 (Business Action to Stop Counterfeiting and Piracy ed. 2011), <https://cdn.iccwbo.org/content/uploads/sites/3/2011/02/Intellectual-Property-Powerhouse-for-Innovation-and-Economic-Growth.pdf>; BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 114.

However, Puerto Rican legal scholars' literature about GI policy for Puerto Rico's economic development does not supply enough details concerning a strategic plan. Therefore, this study tries to fill the gaps, contributing a detailed strategic plan with legal structure recommendations, specifically to the DelPaís Law. A strategic plan limited to one law cannot solve the over-dependency on the local government, the United States, and fiscal policies as it entails a holistic reform to laws out of the scope of this study. Still, this study is a starting place on changing such a mindset as the methodological framework can change other PRGI law's legal structure. For instance, this study does not include, due to time and scope restrictions, individualized recommendations for laws such as the "Law Creating the Association of Products of Puerto Rico."<sup>61</sup>

### 3) Why Colombia and Hawaii as Successful Case Study Examples?

The majority of legal scholars that argue that GIs lead to positive macro-economic effects on development, use case studies on multiple products like apples, tea, tequila, ham, cheese, meat, fish, and many other regional foods.<sup>62</sup> These legal scholars consider Jamaican, Colombian, Hawaiian, and Ethiopian GI Coffee laws the most successful GI policies because they produce both macro- and micro-economic growth.<sup>63</sup> However, this dissertation acknowledges the literature from legal scholars stating that robust intellectual property nor GIs are not a magical solution; in other words, it will not invariably spur economic development in all economies in all circumstances. For instance, Hughes and Caboli's work criticizes overselling stricter GIs

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<sup>61</sup> LEY DE DERECHOS MORALES DE AUTOR DE PUERTO RICO, 2012 PR LAW 55, 31 LPRA 1401 j-ff (2012); 1913 PR LAW 50, *Protección de los Productos de Puerto Rico*, 10 LPRA 208–212 (1913); PARA RECONOCER Y DECLARAR EL LECHÓN ASADO PUERTORRIQUEÑO COMO PATRIMONIO CULTURAL, , 180 PR LAW (2019); LEY DE LA "OFICINA DE CAFÉ DE PUERTO RICO," 2019 PR LAW 78, 5 LPRA 323 a-h; LEY DEL LOGO DE PESCADO PUERTORRIQUEÑO (LAW TO CERTIFY FISH CAUGHT IN PUERTO RICO AS "PUERTO RICAN FISH") 2019 H.B. 2152 18TH HOUSE 5TH SESSION, (2019), (presented by Franqui Atiles and Ortiz Lugo); PARA DECLARAR LA ABEJA COMO PATRIMONIO CULTURAL DE PUERTO RICO 2018 S.B 0974 18TH SENATE 3RD SESSION, (2018), (presented by Cruz Santiago Commission of Agriculture).

<sup>62</sup> Maria Cecilia Mancini, *Geographical Indications in Latin America Value Chains: A "Branding from Below" Strategy or A Mechanism Excluding the Poorest?*, 32 JOURNAL OF RURAL STUDIES 295, 296 (2013), <https://linkinghub.elsevier.com/retrieve/pii/S0743016713000600> (last visited Apr 11, 2020); Cadogan, *supra* note 43 at 7–8; Williams, *supra* note 43 at 10–11; GIOVANNUCCI ET AL., *supra* note 12 at 8; Aliou Baguissa Diallo, *Evaluation of the Economic Impact of Geographical Indications: Three Case Studies*, March, 2019, (Published Ph.D Dissertation at the Université Clermont Auvergne, Department of Economic Science) <https://tel.archives-ouvertes.fr/tel-02061549>; Boes-Lazo, *supra* note 43 at 44–45; Correa, *supra* note 46 at 15.

<sup>63</sup> GIOVANNUCCI ET AL., *supra* note 12 at 2; Cadogan, *supra* note 43 at 6–7; VANDECANDELAERE ET AL., *supra* note 48 at xi; Baguissa Diallo, *supra* note 62 at 84.

regulations for developing countries as an absolute guarantee to economic growth.<sup>64</sup> Hughes offers a more realistic argument that GI systems require heavy reputational capital and not necessarily making policies stricter.<sup>65</sup>

**Colombia's** model for GI policy is the one followed by most developing countries, and it is so successful that it is deemed the “control country” by legal scholars.<sup>66</sup> For example, this study excludes evaluating Jamaica’s GI Coffee law, even though legal scholars view its Coffee GI policy as an excellent model for its practices that made the product one of the most expensive in the world, as it follows Colombia’s model.<sup>67</sup> Legal scholars reason that Colombia’s GI policy success is that the government was well “aware of its social and economic issues” and “actively applied the best lessons of good practices” in other countries.<sup>68</sup> For instance, the Colombian government’s Superintendence of Industry of Commerce (hereon Superintendence) “used participatory local decision-making to ensure social inclusion and appropriate market-oriented standards.”<sup>69</sup> This led to the creation of the Federación Nacional de Cafetaleros de Colombia (National Federation of Coffee Growers of Colombia or FEDCAFÉ). Countries following the “Colombian model” did not copy policies haphazardly, tailoring implementation to their unique sociological circumstances toward rendering the maximum economic development impact.<sup>70</sup> FEDCAFÉ has had GI policies since the 1950s and was the first Latin American country to register a “non-wine and alcohol” GI

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<sup>64</sup> Justin Hughes, *The Spirited Debate Over Geographic Indications*, 20 LAW REVIEW 14, 62–63 (2003), <https://www.cadenagro.org/images/Descargas/articuloswilson/the%20spirited%20debate%20over%20gi.pdf>; Justin Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications*, 58 HASTINGS L.J. 299, 386–373 (2006); Justin Hughes, *The Limited Promise of Geographical Indications for Farmers in Developing Countries*, in *GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE DEVELOPMENT AND CULTURE* 61, 66 (Irene Calboli & Ng-Loy Wee Loon eds., 2017); Justin Hughes et al., *Panel II: That's a Fine Chablis You're Not Drinking: The Proper Place for Geographical Indications in Trademark Law* 48, 958–959; Irene Calboli & Delphine Marie-Vivien, *One Size Does Not Fit All: The Roles of the State and the Private Sector in the Governing Framework of Geographical Indications\**, in *THE CAMBRIDGE HANDBOOK OF PUBLIC-PRIVATE PARTNERSHIPS, INTELLECTUAL PROPERTY GOVERNANCE, AND SUSTAINABLE DEVELOPMENT* 308–330, 324 (Margaret Chon, Pedro Roffe, & Ahmed Abdel-Latif eds., 1 ed. 2018), [https://www.cambridge.org/core/product/identifier/9781316809587%23CN-bp-14/type/book\\_part](https://www.cambridge.org/core/product/identifier/9781316809587%23CN-bp-14/type/book_part) (last visited Aug 12, 2020); Calboli, *supra* note 10 at 15–22.

<sup>65</sup> Hughes, *supra* note 64 at 62–63; Hughes, *supra* note 64 at 386–373; Hughes, *supra* note 64 at 66; Hughes et al., *supra* note 64 at 958–959; Calboli and Marie-Vivien, *supra* note 64 at 324; Calboli, *supra* note 10 at 15–22.

<sup>66</sup> Baguissa Diallo, *supra* note 62 at 84; GIOVANNUCCI ET AL., *supra* note 12 at 2; Cadogan, *supra* note 43 at 6–7; VANDECANDELAERE ET AL., *supra* note 48 at xi–xii; JUSTIN HUGHES, *Coffee and Chocolate – Can We Help Developing Country Farmers Through Geographical Indications?*, INTERNATIONAL INTELLECTUAL PROPERTY INSTITUTE 60–61 (2010), <http://www.ssm.com/abstract=1684370> (last visited Apr 11, 2020).

<sup>67</sup> Cadogan, *supra* note 43 at 407–413; Baguissa Diallo, *supra* note 62 at 83–84; GIOVANNUCCI ET AL., *supra* note 12 at 177–183; BELLETTI ET AL., *supra* note 48 at 56, 86–90.

<sup>68</sup> GIOVANNUCCI ET AL., *supra* note 12 at 2 & 95.

<sup>69</sup> *Id.* at 2 & 95.

<sup>70</sup> Baguissa Diallo, *supra* note 62 at 83–90.

in the European Union.<sup>71</sup> For these reasons, the study focuses on Colombia's GI policy implementation.

When evaluating countries to contrast with Colombia, the criteria was to choose a country similarly situated to Puerto Rico, such as the other United States territories, the Canary Islands, or Greenland.<sup>72</sup> I created a table called:

**Table 1: “Similar Countries To Puerto Rico Analysis For Study Inclusion Or Exclusion”**

This table consists of an extensive search validated by several research assistants at the Wells and Jerome Library. The results show that the majority of countries do not have GI laws, and if they do so, there is scarce information about the subject. For example, the Canary Islands have a GI law protecting plantains, but there is insufficient information. There are some countries, similar to Puerto Rico, governed by local and “mainland” legal systems, where GI legislation uses either or both; but, results did not show such instances. For instance, Greenland does not have a local GI law, but even though the government can create one through Denmark’s legal system, there are no existing GI laws. Thus, this dissertation evaluates Hawaiian Kona Coffee’s case.

In the case of **Hawaii**, legal scholars are very divided, while some consider it a model to emulate, others find warning sign to avoid.<sup>73</sup> Hawaii is remarkably similar to Puerto Rico concerning its legal treatment and sociological factors such as culture, politics, economy, and society. For instance, the Hawaiian Department of Agriculture created three programs, similar to the DelPaís Mark and differentiating local and foreign (including mainland United States) products at the domestic market level. These are “Made in Hawaii with Aloha Branding Program,” “Hawaii

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<sup>71</sup> VANDECANDELAERE ET AL., *supra* note 48 at 79; GIOVANNUCCI ET AL., *supra* note 12 at 62.

<sup>72</sup> See in Appendix: *Similar Countries to Puerto Rico Analysis for study inclusion or exclusion* (2020).

<sup>73</sup> Favor developing countries to follow Hawaii’s model: VANDECANDELAERE ET AL., *supra* note 48 at 83; GIOVANNUCCI ET AL., *supra* note 12 at 178. Favor Puerto Rico to follow Hawaii’s model: Carmen Alamo González, *Indicaciones Geográficas y la Diferenciación del Café por País de Origen*, AGROTEMAS DE PUERTO RICO: DE AHORA 16–17, 16 (2016), [https://issuu.com/luisa.curbelorodriguez/docs/agrotemas\\_feb\\_2016](https://issuu.com/luisa.curbelorodriguez/docs/agrotemas_feb_2016); Luis E. Méndez & Mildred Cortes, *Industria del Café en Puerto Rico – Dra. Carmen Alamo* (2013), <https://www.uprm.edu/desdelaeaa/2013/09/23/industria-del-caf-en-puerto-rico-dra-carmen-alamo/>; Luis E. Méndez & Mildred Cortes, *Las Implicaciones en la Diferenciación del Café* (2014), <https://www.uprm.edu/desdelaeaa/2014/05/27/las-implicaciones-en-la-diferenciacion-del-caf/>; Santiago, *supra* note 12 at 490. Favor developing countries to follow Hawaii’s coffee classification system but not its dual legal structure: Vandecandelaere et al., *supra* note 43 at 10.

Seal of Quality,” and “Island Fresh, buy local it matters.”<sup>74</sup> Moreover, Puerto Rico’s Department of Agriculture P.R. Regs. DA REG. 7145, which creates a grading hierarchy for Puerto Rican Coffees, follows the famous Kona Coffee grading system. Therefore, this study focuses on Colombia and Hawaii, as they are models, that Puerto Rican scholars agree, provide feasible GI solutions to the issues encountered in PRGIs.

#### *F. DATA COLLECTION*

This study uses law books, both scholarly and practical, newspaper articles, law journals, and congressional hearings from reputable sources in the United States including Puerto Rico and Hawaii, Europe, and Colombia. I also contacted the research assistants and librarians at the Wells and Jerome library to create the tables, figures, and better explain the recommendation’s implications. Various sources were translated from Spanish into English for reference in the text. In conducting a comprehensive inquiry, I compiled sources to give context to this study’s issues and their implications. Lastly, if necessary, I explain why some policies described in policy recommendations were modified or disregarded.

I contacted experts for initial feedback to assess interest and viability of this study; among them: 1) four professors, one from each specialization: corporate entrepreneurship, social entrepreneurship, intellectual property, and global studies; 2) the leading incubator CEOs of Puerto Rico: Parallel 18, Piloto 151 and Guayacán; 3) intellectual property and the community development clinic directors in the Law School at the University of Puerto Rico Rio Piedras Campus; and 4) the USPTO Pro Bono director. These meetings are the product of my initiative along with Prof. Hedges and Janis’ interest in potentially expanding services of the Maurer Law School Intellectual Property Clinic at the Indiana University Bloomington to Puerto Rico. For instance, in December, I organized a meeting with the incubator CEOs to establish their

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<sup>74</sup> State of Hawaii Agricultural Development Division, *Marketing Development Branch: Marketing Program*, HAWAII DEPARTMENT OF AGRICULTURE, <http://hdoa.hawaii.gov/add/md/> (last visited Apr 7, 2020).

perceptions of intellectual property and talk about this dissertation. Also, I postponed planned meetings with the USPTO Pro Bono Director and Arts and Business Council of Miami directors as a result of the COVID-19 pandemic.

Furthermore, I plan to conduct interviews with various experts and stakeholders along the product supply chain covered in the DelPaís Law as some statistical information is not available on the internet in electronic format. This information is crucial for an in-depth breakdown of DelPaís Law's history, its current economic impact, legislative willingness for implementing the suggested recommendations, and accurately calculate the study recommendations' potential impact. I designed the questions to gather current and past activities related to the DelPaís Law and Mark, such as financial and technical assistance programs, suggested recommendations, and personal opinion on how the law has failed. I chose persons who represent every major stakeholder interested or involved in the DelPaís Law, such as municipal legislators, association leaders, producers, farmers, scientists, lawyers, business owners, and government employees. The meetings were and will continue with:

1. Jorge Ochoa, Ochoa Poultry Farm's former owner, a business specialized in egg production and distribution.
2. Manuel Cidre, the famous landmark business owner in Puerto Rico, called "Los Cidrines" Bakery and Restaurant and former president of the Association of Products of Puerto Rico
3. Jeffery Caraballo, farmer, Ph.D., and his dissertation about pest control in Hawaiian Kona Coffee.
4. Carmen Alamo Ph.D., the director of "Designing an Integrated Model for a Coffee Denomination of Origin in Puerto Rico."
5. Christian Cortés-Feliciano, Esq., Municipal Legislator working on creating specialized laws like the DelPaís Law.
6. Erica Reyes, a coffee barista knowledgeable of coffee denomination of origins;
7. Navel Torres Colberg, Esq., a lawyer, specialized in geographic indications.
8. Myrna Comas Secretary of Puerto Rican Department of Agriculture in 2016.

9. Salvador Ramirez and Saritza Aulet, personnel in charge information of DelPaís in 2002 and Amarilis De Jesus Lora in charge from 2016 to present day.
10. Lilian Cubano, Ex-President of Association of Products of Puerto Rico, and Carmen Ramírez current president of the Association.
11. Agnes Crespo, Esq. who specializes in the legal technical aspects of economic development and worked at the Department of Economic Development and Commerce of Puerto Rico;
12. The Business Administration Graduate Program of the University of Puerto Rico that works in collaboration with the Association of Products of Puerto Rico creating analysis and reports about the economic impact of the Hecho en Puerto Rico Mark.
13. Economist Heriberto Martínez
14. Economist Juan Lara
15. Economist José Israel Alameda
16. Joaquin Villamil, who manages the commissioned reports and studies relating to economic impact.
17. Yanis Rosana Blanco Santiago, Esq. Ph.D. major work cited for my dissertation study design, professor, and president of the Agricultural Commission of the Association of Lawyers of Puerto Rico.

*G. TABLE 2 WORK PLAN*

This table presents a timeline for the estimated completion of this dissertation, the SJD program and the dissertation steps. I will record all meetings related to this dissertation, detailing: date, persons, and subject of meetings here: [Administrative Diary](#)

*H. FURTHER RESEARCH*

I intend to create a five to ten-page white paper to present to interested parties consisting of several Puerto Rican policymakers, members of the Puerto Rican Department of Agriculture, the Puerto Rico Farm Bureau, and researchers mentioned herein. Furthermore, I will write continuations to this dissertation, analyzing broader concepts such as entrepreneurship and intellectual property, briefly discussed here. “Hecho en Puerto Rico” (Made in Puerto Rico), excluded from this study, needs further research because it can be an excellent tool for economic development in domestic markets if elevated to a GI. This same idea can be applied to currently dormant, specialized Puerto Rican laws, such as laws recognizing pigs and honey as a cultural patrimony that this dissertation does not discuss in-depth. Lastly, further research can examine Jamaica, Cuba, Mexico, and Costa Rica’s GI policies as they may also be excellent laws for Puerto Rico to emulate.

## LITERATURE REVIEW CHAPTER I GEOGRAPHIC INDICATIONS

This chapter defines Geographic Indications (GIs), differentiates the legal policy types, and segregates GIs from trademarks, denomination of origin, and indications of the source.

### I. DEFINITION OF GEOGRAPHIC INDICATIONS

This section only discusses the most recent definition for GIs provided in international treaties. Appropriately defining the term GI is essential for the policy recommendations to protect goods and services originating from Puerto Rico. Also, having a clear definition helps readers understand why policymakers failed at formulating and implementing the DelPaís Law.

There is no uniform definition of the term GI, as it varies among international agreements and governments; still, the one defined in the Agreement on Trade-Related Intellectual Property Rights (TRIPS) by the World Trade Organization (WTO) is the most accepted version. The WTO states:

***“Geographical indications are, for the purposes of this Agreement, **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 characteristics** of the good is essentially **attributable to its geographic origin.”<sup>75</sup>***** (emphasis provided)

When interpreting the definition, legal scholars agree that GIs are a type of intellectual property serving as a goods and services source identifier.<sup>76</sup> Additionally, they can attribute a good or service to human processes found in cultural traditions (known as traditional knowledge).<sup>77</sup> GIs tell the consumer the link between the producer of the good or service and qualities associated with their geography (product-origin attribution or product-origin-quality link). Here, a GI conveys to the consumer information only known by the producer about intangible characteristics consisting of reputation, authenticity, quality, traceability, and food

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<sup>75</sup> GIOVANNUCCI ET AL., *supra* note 12 at 6.

<sup>76</sup> *Id.* at 55.; VANDECANDELAERE ET AL., *supra* note 48 at 3; BELLETTI ET AL., *supra* note 48 at 6; Santiago, *supra* note 12 at 33; Alamo González, *supra* note 73 at 16; Errázuriz Tortorelli, *supra* note 43; *Id.* at 222.

<sup>77</sup> Matthews, *supra* note 4 at 203; BELLETTI ET AL., *supra* note 48 at 1; GIOVANNUCCI ET AL., *supra* note 12 at 15.

safety.<sup>78</sup> If it were not for the GI, a consumer could only determine such characteristics by searching for any available information.

A source identifier works in a circular function where a consumer's decision-making process creates and maintains a producer's potential for commercialization.<sup>79</sup> Here, visual perceptions, brand loyalty, and social responsibility form the basis for consumer buying preferences towards local businesses where they see the origin identifying labels and create an association between the product and the experience. If the experience is of high quality, then consumers' willingness to pay increases.

On the producer's side, not using a GI would create a higher propensity for unfair competition from lower quality products.<sup>80</sup> In turn, GIs reduce information asymmetry between producer and consumer because the mark helps the producer convey reliable information, so the consumer has more buying power confidence.<sup>81</sup> In turn, the producer increases profits if they convey to the consumer that the product is authentic to a geographical area, which produces the exclusive consumption experience.

Usually, the GI mark's owners are the government's department of agriculture or a collective organization of producers. However, in Europe's Sui Generis system, for trademark recognition as a GI, the mark must already exist and have a product-quality-origin link or product-origin attribution.<sup>82</sup> The governmental department and the collective organization's role are essential for creating a GI policy that stipulates uniform quality standards, protects the good's integrity, and uniqueness of the geographical area. With this legal recognition, producers can

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<sup>78</sup> LUISA MENAPACE ET AL., *Consumer Preferences for Country-of-Origin, Geographical Indication, and Protected Designation of Origin Labels*, 8 EUROPEAN REVIEW OF AGRICULTURAL ECONOMICS 147 3–7 (Issue 2) (2011), [https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=1146&context=econ\\_las\\_workingpapers](https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=1146&context=econ_las_workingpapers); BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 124.

<sup>79</sup> MENAPACE ET AL., *supra* note 78 at 14–18.

<sup>80</sup> BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 115.

<sup>81</sup> RANGNEKAR, *supra* note 44 at 9.

<sup>82</sup> Id.

utilize the policy for commercialization, which in turn, leaves more money, through taxes, to the government's treasury. In sum, a GIs functions are to guarantee the quality, integrity, specialty, commercial value, and offer product uniqueness by linking them to their origin.<sup>83</sup>

An example is Basmati Rice, in which the unique climate and processing in India differentiate it from other rice with its nutty flavor, multiple colors, and spicy fragrance.<sup>84</sup> Without GI protection, Basmati Rice would be just another commodity item with no noticeable characteristics for consumers giving room for competitors to copy and grow the product outside the geographical area.<sup>85</sup>

## II. GEOGRAPHICAL INDICATION LEGAL POLICIES: SUI GENERIS AND TRADEMARK SYSTEM<sup>86</sup>

When considering legal treatments for product protection, there are three alternatives: policymakers can either treat a GI as “Sui Generis” or refer GIs as trademarks.<sup>87</sup> The distinction is crucial to understanding the GI legal system in Puerto Rico as it mirrors that of the United States. However, in-between Sui Generis and trademarks, TRIPS provide a third alternative to protecting already existing GIs over similar trademarks, which is beyond the scope of this dissertation.

This section briefly illustrates GIs within the Sui Generis system: Appellations of Origin (AOC), Protected Denominations of Origin (PDO or DOC), Protected Geographic Indications (PGI) and Indications of Source (IOS). This dissertation’s emphasis is on the trademark system, which covers regular trademarks, certification marks, collective marks, and common law protected marks. This chapter concludes with two tables comparing the Sui Generis and trademark system, and the other compares each GI tool.

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<sup>83</sup>Matthews, *supra* note 4 at 203.

<sup>84</sup> Alexandra Grazioli & Felix Addor, *Geographical Indications beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement*, 5 THE JOURNAL OF WORLD INTELLECTUAL PROPERTY 865, 897 (Issue 6) (2002).

<sup>85</sup> Errázuriz Tortorelli, *supra* note 43 at 211.

<sup>86</sup> Lledo Ramón Luis Nieves, *Hacia Una Reforma Del Derecho De Marcas De Fabrica en Puerto Rico*, 30 REVISTA DE DERECHO PUERTORRIQUEÑO 81, 86–87 (1990); Andrea Zappalaglio, Flavia Guerrieri & Suelen Carls, *Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task?*, 51 IIC - INTERNATIONAL REVIEW OF INTELLECTUAL PROPERTY AND COMPETITION LAW 31–69, 32–38 (Issue 1) (2020), <http://link.springer.com/10.1007/s40319-019-00890-1> (last visited Mar 31, 2020); Santiago, *supra* note 12 at 292–310.

<sup>87</sup> UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 9; GIOVANNUCCI ET AL., *supra* note 12 at 55.

#### A. *SUI GENERIS OR A THING OF ITS OWN*

If a GI is “**Sui Generis**,” the laws and regulations have a more protectionist approach, rather than the open market approach of trademarks. Sui Generis is more protectionist as it entails having an exclusive register, governmental agencies, and legal system. Historically Sui Generis systems limit GI protection to food products; however, current negotiations have expanded protection to non-food artisanal artifacts.<sup>88</sup> In Sui Generis, the rights are non-transferable (users cannot sell their rights), and owners cannot eliminate the product-quality-origin link (known as delocalizing).<sup>89</sup> In this system, GI is an umbrella term that covers AOC, PDO, PGI, and IOS.

An **Appellations of Origin (AOC)** is the oldest GI tool, created by the French legal system in 1824 and internationally recognized in the Paris Convention of 1883. The Madrid Agreement of 1891’s distinguished AOCs from indications of source (IOS) and the Lisbon Agreement gave AOCs a formal definition in 1958. The Lisbon Agreement defines AOC as a:

“**Geographical name designated origin of the product** can refer to country, region, or locality... **Production, processing, and preparation must take place** in geographical area. **Quality and characteristics are exclusive to geographical area and human factors.**”<sup>90</sup>

An **Indication of Source (IOS)** is a simple “expression or sign used to indicate that the product originates from a country” with nothing more accompanying the expression; in other words, the trademark does not convey anything special respect to quality, reputation, or characteristics.<sup>91</sup> For example, labels in clothing, in general, indicating “made in X country,” are an IOS because a consumer does not value the fact that the product comes from a precise geographical area, but instead notices that it came from a particular country.<sup>92</sup> In other words, there is no product-origin attribution nor product-origin-quality link.<sup>93</sup> IOS eligibility standards

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<sup>88</sup> Zappalaglio, Guerrieri, and Carls, *supra* note 86 at 36.

<sup>89</sup> *Id.*

<sup>90</sup> The Appellation of Origin in the Lisbon Agreement, , in RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS 127–180, 127–180 (Dev Gangjee ed., 2012), <https://www.cambridge.org/core/books/relocating-the-law-of-geographical-indications/appellation-of-origin-in-the-lisbon-agreement/A648BCE579A841389C23E2A086CDE887>.

<sup>91</sup> GIOVANNUCCI ET AL., *supra* note 12 at 6.

<sup>92</sup> *Id.* at 6, 92.

<sup>93</sup> Errázuriz Tortorelli, *supra* note 43 at 215.

are low, loose, and broad when compared to PDOs or PGIs.

**Protected Denominations of Origin (PDO) and Protected Geographic Indications (PGI)** created by EC 2081-92 only have reciprocity in the European Union and TRIPS member countries who ratified TRIPS provisions. A **PGI** usually protects a single type of product made in the country and for its specific region.<sup>94</sup> Similarly, to PGI, a PDOs required linkages between origin, product, and quality limit protection to one type of product, producer, and geographical area. In contrast, a **PDO** usually involves a product-origin-quality link (known as terroir); this means that the product's whole supply chain must take place in the geographical area that gives its unique characteristics.<sup>95</sup> The entire supply chain entails the product-making process of: raw product sourcing, elaboration, final production, and packaging. Thus, a PDO is stricter than a PGI, as a PGI simply attributes characteristics to a place irrespective of the location of raw materials and elaboration.<sup>96</sup>

For example, “Champagne is the most famous and oldest PDO in history, existing since 1887.”<sup>97</sup> Its reputation and quality are created by the specific types of grapes, vines, practices for cultivation, and wine pressing tied to the geographical area.<sup>98</sup> With the PDOs legal protection, the French legal system has been able to implement stringent prohibitions from other products, irrespective of being in the sparkling wine industry, from free-riding the name.<sup>99</sup>

#### B. TRADEMARK SYSTEM

A **trademark** is a name, phrase, logo, or symbol where rights to the registered name are first-come-first-served (first-used or -filed basis).<sup>100</sup> This name, phrase, logo, or symbol can indicate a product’s origin if the application for protection complies with the legal requirements

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<sup>94</sup> Zappalaglio, Guerrieri, and Carls, *supra* note 86 at 32–38.

<sup>95</sup> GIOVANNUCCI ET AL., *supra* note 12 at 60; Santiago, *supra* note 12 at 451.

<sup>96</sup> Santiago, *supra* note 12 at 451.

<sup>97</sup> Errázuriz Tortorelli, *supra* note 43 at 209.

<sup>98</sup> *Id.* at 209.

<sup>99</sup> Hughes, *supra* note 64 at 347–348. Citing landmark case Yves St. Laurent Parfums S.A. v. Institute National des Appellations d’Origin Cour d’appeal Paris 1994 E.C.C 385 (Dec. 15, 1993) (Determining that Yves cannot not use the word “Champagne” in a perfume)

<sup>100</sup> *Id.*

stipulated by the country. Therefore, unlike Sui Generis GIs, trademarks are not limited to a territorial link.<sup>101</sup>

Business entities, individuals, collectives, or particular governmental department may own and transfer trademarks.<sup>102</sup> The protection, use, and quality are private; thus, the owner has the burden of maintaining the mark, unless open to qualifying users, which means that the owner does not use the mark, but instead used by any person producing a good or service that satisfies the owner's requirements.<sup>103</sup>

The main benefit of considering a GI a trademark is that there are no additional governmental administrative costs in creating a separate legal system from the one already existing within trademarks. However, there are weaker ties between origin, quality, and product, allowing a mark to protect a variety of goods and producers in a geographical area, thus, making protection more accessible to GIs under the trademark system.<sup>104</sup>

The laws that govern GIs in the United States use the trademark system, meaning that their protection is within the existing intellectual property system. Often GIs are unregisterable under this system as they are generic, merely descriptive, widely used terms for a category of goods.<sup>105</sup> Although, there are three exceptions: a GI is either a collective mark, certification mark, or protected under common law.

**A certification mark** conveys that the owner certified or verified that a product or process meets with the eligibility standards delineated by the owner for trademark use. Usually, the owner is a governmental department specialized in the particular trademark's purpose, and users are producers who qualify with the specified criteria.<sup>106</sup> For instance, trademarks for agricultural

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<sup>101</sup> RANGNEKAR, *supra* note 44 at 15.

<sup>102</sup> Garner, *supra* note 7; GIOVANNUCCI ET AL., *supra* note 12 at 55; UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 9.

<sup>103</sup> Id.

<sup>104</sup> Errázuriz Tortorelli, *supra* note 43 at 214–217.

<sup>105</sup> Id. at 214–217.

<sup>106</sup> Garner, *supra* note 7.

products, the owner is the department of agriculture, while for non-food artisanal products, the owner is the institute of culture.

A **collective trademark** is used by an association, union, or other groups to identify their products, services, or signify membership.<sup>107</sup> The association's members, "unlike certification marks, use marks for their goods or products."<sup>108</sup> However, associations cannot own the part containing geographical names due to anti-monopolistic laws.<sup>109</sup>

Both collective and certification marks protect a GI if they comply with four requirements. First, the trademark must acquire "secondary meaning"; in other words, consumers associate the good with a specific source.<sup>110</sup> Second, the mark must have a primary significance of a generally-known geographic location, meaning that the particular source is a geographical area.<sup>111</sup> Third, goods and services originate in the location, and purchasers believe the products and services originate from such location.<sup>112</sup> Lastly, it is prohibited "materially misrepresenting" the consumer with misleading information in the product.<sup>113</sup> Some certification and collective mark examples are Idaho Potatoes, Florida Sunshine Trees, and Vidalia Onions, registered by farmer's associations who wanted to maximize product reputation and quality regulation.<sup>114</sup>

"**Common law protection marks**" mean that a court recognizes a GIs legal protection despite no registration. Such protection is rare as it demands exclusive control by one seller of both the local and international markets.<sup>115</sup> An example is the landmark case *Brown-Forman* where the court deemed "Cognac" as "a word generally understood by consumers to refer to

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<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> Delaware & Hudson Canal Co v. Clark, , 80 US 311 (1871) (Court determined that the parties could not exclusively own the word "Lackawanna" as it would give them monopolistic rights to a name of a geographical area known as the Lackawanna Valle in Pennsylvania).

<sup>110</sup> Santiago, *supra* note 12 at 224.

<sup>111</sup> 15 U.S.C. 1052 and TMEP 1210

<sup>112</sup> Id.

<sup>113</sup> Id.

<sup>114</sup> Santiago, *supra* note 12 at 307, 427 & 444; Hughes, *supra* note 64 at 309. See footnotes 47 Idaho Potato US Trademark Registration No. 2,403,069 (filed Mar. 17, 1997) and footnote 55 Florida Sunshine Tree US Trademark Registration No. 932,033 (filed Oct. 14, 1970)

<sup>115</sup> Cadogan, *supra* note 43 at 248–250.

brandy from the Cognac region and not to a generic form of product produced elsewhere.”<sup>116</sup>

### III. CONCLUSION

#### A. SUMMARY

As the dissertation develops, this section will have two tables presenting the Differences between Sui Generis and Trademark system and the Differences between GI tools: Protected Denominations of Origin, Protected Geographic Indications, GIs (TRIPS), Indications of Source and Appellations of Origin.

**Table 3:** Differences between Sui Generis and Trademark system

**Table 4:** Differences between GI tools

#### B. APPLICATION TO PUERTO RICO

The trademark system for GI legal treatment is most suitable for Puerto Rico as it mirrors United States law. Generally, an individual or corporation cannot exclusively own GIs; however, there are a few exceptions which are pertinent to this study: collective and certification marks. As seen later, Puerto Rico does have GI laws, like the DelPaís Law, that reduce information asymmetry, but there is no cost reduction and there are limited plans to sell product outside Puerto Rico.

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<sup>116</sup> Bruce A Babcock & Roxanne Clemens, *Geographical Indications and Property Rights: Protecting Value-Added Agricultural Products*, 4 MATRIC BRIEFING PAPER 51, 4 (2004), <https://www.card.iastate.edu/products/publications/pdf/04mbp7.pdf>; Hughes, *supra* note 64 at 310. Citing *Brown-Forman*, 47 U.S.P.Q. 2d at 1885

## CHAPTER II GEOGRAPHIC INDICATION POLICY CONSIDERATIONS AND SUCCESSFUL CASES

This chapter justifies that Geographic Indications (GIs) are excellent tools for developing community's economic growth, such as this study's focus, Puerto Rico. Then, the chapter pinpoints the five main factors making a GI policy successful as: 1) clear product definition, 2) effective organization, 3) supportive legal and institutional framework, 4) detailed marketing efforts, and 5) positive economic impact. The chapter ends, illustrating how Colombia and Hawaii implemented each factor, chosen for their well-structured, collaborative, and detailed Coffee GI policies.

### I. GEOGRAPHIC INDICATIONS: REASONS FOR IMPLEMENTATION

#### A. *IN GENERAL*

In many developing countries, there is unawareness about intellectual property, and for this reason, their governments might not have institutions in place to manage and work GIs (products, systems, and policies).<sup>117</sup> Also, governments and citizens might not have the interest to export internationally to niche markets because they are more interested in domestic markets nor have access to enter foreign markets.<sup>118</sup>

Hughes points out that GI laws for economic development are exceptions to the rule, as their main appeal is: 1) trade and competition regulations, 2) control supply of agricultural markets, and 3) protection of traditional knowledge.<sup>119</sup> For instance, in the case of unfair competition, if GI policy requirements are too broad, "free-riders" damage the GI, causing reputation and quality dilution.<sup>120</sup> Free-riders are producers who fraudulently sell misleading products, engage in illegal activities, and cut corners in quality and practices. On the other hand, if the requirements are too

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<sup>117</sup> BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 130.

<sup>118</sup> *Id.* at 130.

<sup>119</sup> Dominique Barjolle, Bertil Syvander & Erik Thévenod-Mottet, *Public Policies and Geographical Indications*, in *LABELS OF ORIGIN FOR FOOD: LOCAL DEVELOPMENT, GLOBAL RECOGNITION* , 92 (Elizabeth Barham & Bertil Sylander eds., 2011).

<sup>120</sup> Míra de Lima Medeiros, Cláudia Souza Passador & João Luiz Passador, *Implications of geographical indications: a comprehensive review of papers listed in CAPES' journal database*, 13 RAI REVISTA DE ADMINISTRAÇÃO E INOVAÇÃO 315, 315–316 & 325 (Issue 4) (2016), <http://linkinghub.elsevier.com/retrieve/pii/S1809203916310713> (last visited Feb 24, 2020).

narrow and stringent, the effects are counterproductive to economic growth, excluding small producers for not following standards nor being located in the protected area.

Hughes states that the GI protection correlates to, not necessarily cause, a price premium as the GI label and law “by themselves do not create commercial value.”<sup>121</sup> He adds that non-GI products produce the same effects as a GI product when producers decide to invest in marketing, design, packaging, and other value-adding procedures.<sup>122</sup> The reason behind this is that “the final product price that incorporates intellectual property is a poor indicator of the value of the intellectual property itself and “seeking to quantify a GI’s value (and impact) is an extremely difficult task.”<sup>123</sup> Moreover, GIs are costly because of their lengthy and complicated infringement claims, which unattended can result in increased illegal products.<sup>124</sup> Also, a GI creates a monopoly that might cause an uneven wealth concentration; in other words, no wealth distribution beyond the mark’s users, and thus, decrease the GI’s social impact.<sup>125</sup>

Nevertheless, without any legal remedies, a GI would be considered a public good, left to the whims of governmental officials trying to win votes or large companies influencing policymakers to change the law in their favor. No legal protection leads to producers bearing high governmental administrative costs and consumers buying products at exorbitant prices.<sup>126</sup> Furthermore, if GIs are not regulated, remedies for infringement and appropriation fall to any applicable intellectual property regulations.<sup>127</sup> In sum, no protection harms the product’s quality, name, and income.<sup>128</sup>

## *B. ECONOMIC DEVELOPMENT IN GEOGRAPHIC INDICATION TOOLS: WHAT IS IT AND WHO IT BENEFITS?*

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<sup>121</sup> Hughes, *supra* note 64 at 66.

<sup>122</sup> *Id.* at 67–68.

<sup>123</sup> *Id.* at 67–68.

<sup>124</sup> de Lima Medeiros, Souza Passador, and Passador, *supra* note 120; BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 120.

<sup>125</sup> BELLETTI ET AL., *supra* note 48 at 6–8.

<sup>126</sup> BELLETTI ET AL., *supra* note 48; Matthews, *supra* note 4 at 205.

<sup>127</sup> de Lima Medeiros, Souza Passador, and Passador, *supra* note 120.

<sup>128</sup> *Id.*

**Economic Development**, for this dissertation, is defined as a process of creating an overall territories wealth as well as improvements in health, education, culture, community, and living standards.<sup>129</sup> When using GI tools for economic development, individual and agricultural small and medium enterprises (SME) benefit from improved wealth and well-being.<sup>130</sup> Moreover, when referring to **sustainable economic development**, economists define it as “development meets the needs of the present without compromising future generations.”<sup>131</sup> Legal scholars agree with this definition, emphasizing that a GI policy must ensure the balance between growth and protection of the environment and social aspects that compose the GI system.<sup>132</sup> Usually, economists use changes in Gross Domestic Product (GDP) to measure economic growth; however, some legal scholars consider other indicators for measuring a GI policy’s impact on economic development; these are:<sup>133</sup>

- Price premium or a consumer’s willingness to pay more for a product
  - Domestic and exported product value
- Per Agricultural SME
  - Production yields
  - Gross net income
  - Have they created new technology and adopted it?
  - Are they expanding?
  - How many products do they have on the market?
- Number of people benefiting from the program
  - Number of new SMEs
  - Number of individuals
  - Number of individuals or SMEs with financial assistance
  - Number of established marketing plans, business plans, and code of practice
  - Number of investigations
- Number of new agricultural business administration courses
  - Number of enrolled people

<sup>129</sup> MICHAEL TREBILCOCK & MARIANA MOTA PRADO, ADVANCED INTRODUCTION TO LAW AND DEVELOPMENT 1.5 (2014).

<sup>130</sup> GIOVANNUCCI ET AL., *supra* note 12 at 32–34; Williams, *supra* note 43 at 10 & 14; Cadogan, *supra* note 43 at 344.

<sup>131</sup> TREBILCOCK AND MOTA PRADO, *supra* note 129 at 1.4.

<sup>132</sup> Williams, *supra* note 43 at 14; VANDECANDELAERE ET AL., *supra* note 48 at xvii; Leonardo Cei, Edi Defrancesco & Gianluca Stefani, *From Geographical Indications to Rural Development: A Review of the Economic Effects of European Union Policy*, 10 SUSTAINABILITY 3745, 5 (Issue 10) (2018), <http://www.mdpi.com/2071-1050/10/10/3745> (last visited Apr 11, 2020).

<sup>133</sup> COMAS PAGÁN, *supra* note 9 at 45–49; GIOVANNUCCI ET AL., *supra* note 12 at 150, 158, 168, 173, 179, 187, 200, 206; VANDECANDELAERE ET AL., *supra* note 48 at xvii.

- Professional and technical courses
- Number of new GIs established
  - Number of incentive programs accompanying the GI policy
    - How many SMEs have received an incentive for adding value and marketing to the product?
    - How easy is it to manage the SMEs business with the new GI?
    - Number of activities, events, and other benefits
- Number of considered and approved governmental projects or public-private agreements that involve the use of the GI.

The Organization for Economic Co-Operation and Development (OECD) identified two main ingredients for rural businesses to enter into niche markets and successfully boost economic development as market access and product differentiation.<sup>134</sup> The rural community's market access entails selling their products beyond their community into broader domestic and international markets. GI policy supplies such ingredients to rural communities if their contents are inclusive to those communities. For instance, when implementing GI laws, Jamaica, Colombia, Hawaii, and other communities experienced a significant return on investment with double or triple prices and income to farmers.<sup>135</sup>

Implementing GIs has the main advantage of increasing producer propensity for commercialization, production, employment, and profits due to amplified product interest.<sup>136</sup> Also, the stakeholders along the product supply chain will benefit from the GI as it obligates following a uniform set of production standards to maintain the product's quality.<sup>137</sup> In turn, GIs create a more robust supply chain, improving regional cooperation among its stakeholders and the government to facilitate market access (entering the industry) for newcomers.<sup>138</sup> Interestingly, GIs

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<sup>134</sup> BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 114.

<sup>135</sup> Matthews, *supra* note 4 at 205–206; GIOVANNUCCI ET AL., *supra* note 12 at 2; VANDECANDELAERE ET AL., *supra* note 48 at 30.

<sup>136</sup> *Id.*

<sup>137</sup> GIOVANNUCCI ET AL., *supra* note 12 at 19; BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 110 & 112–114; de Lima Medeiros, Souza Passador, and Passador, *supra* note 120 at 326; BELLETTI ET AL., *supra* note 48 at 1.

<sup>138</sup> GIOVANNUCCI ET AL., *supra* note 12 at 19; BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 110 & 112–114; de Lima Medeiros, Souza Passador, and Passador, *supra* note 120 at 326; BELLETTI ET AL., *supra* note 48 at 1.

also diversify products along the supply chain in other complementary industries and safeguard different income streams during times when the protected product is not produced.

## II. WHAT DETERMINES SUCCESS OR FAILURE OF A GEOGRAPHIC INDICATION SYSTEM?

Legal scholars ascertain various elements relevant to the GI tools mentioned in Chapter I

that are crucial for GI policy success:<sup>139</sup>

- Name: Reference to geographic place, physical features, or raw material
- GI System Definition:
  - Consensus on quality, reputation, history, and other characteristics
  - Environmental and social issues
- Geographical Area:
  - Size of the territory
  - Criteria and methods to determine boundaries
- Product:
  - Type: Natural, agricultural, hand-crafts, textile or manufactured.
  - Method of production: Traditional, chemical, construction, or other.
  - Description: Specific plant variety, animal, or genetic material.
  - Inventory of necessary raw material or ingredients.
  - Reproduction of resources (sustainability of the GI system).
- Protection:
  - Type: Standard, special, additional, or limited, and the duration of protection,
  - Scope: Domestic or foreign
  - Specifications stipulated in code of practice: Monitoring, controls, qualifications, and guarantee system.
  - Policy and legal framework
  - Registration
- Link:
  - Reference to physical, geographical, processing, aesthetic, and other symbolisms;
  - Technical standards for goods, location, and production;
  - Proof of origin using scientific evidence.
  - Identify resources and roles between product, people, place, and local resources
- Marketing: Strategy for marketing plan and marketing mix to consumers

<sup>139</sup> Delphine Marie-Vivien & Erik Thevenod-Mottet, *Legal Debates Surrounding Geographical Indications*, in LABELS OF ORIGIN FOR FOOD: LOCAL DEVELOPMENT, GLOBAL RECOGNITION , 23 (Elizabeth Barham & Bertil Sylander eds., 2011); GILLES ALLAIRE ET AL., LINKING PEOPLE, PLACES AND PRODUCTS: A GUIDE FOR PROMOTING QUALITY LINKED TO GEOGRAPHICAL ORIGIN AND SUSTAINABLE GEOGRAPHICAL INDICATIONS 3–6 (2 ed. 2010); VANDECANDELAERE ET AL., *supra* note 48 at 22–23; Ai Tashiro, Yuta Uchiyama & Ryo Kohsaka, *Internal processes of Geographical Indication and their effects: an evaluation framework for geographical indication applicants in Japan*, 5 JOURNAL OF ETHNIC FOODS 202–210, 204–207 (2018), <https://linkinghub.elsevier.com/retrieve/pii/S2352618118301276> (last visited Aug 12, 2020); Hristos Vakoufaris et al., *Protected Geographical Indications and the landscape: towards a conceptual framework*, 4–5 (2014), <http://rgdoi.net/10.13140/2.1.4473.7282> (last visited Aug 12, 2020).

- Supply chain stakeholders: Who is the applicant group? Single individual, association, corporation, or government?
- Structure of the collective association (organization and governance)
- Horizontal and vertical distribution of benefits
- Respective approaches to the above to build a comprehensive strategy

In this dissertation, the elements are organized as five factors, four independent and one dependent factor:<sup>140</sup>

- 1) **Product Definition:** Independent variable; protected product has unique differentiating qualities that include its process-making.<sup>141</sup>
- 2) **Collective Organization:** Independent variable; in charge of representing a product supply chain, and this group works collaboratively to benefit each member and the association as a whole.<sup>142</sup>
- 3) **Supportive Legal and Institutional Framework:** Independent variable; compels community participation in the law-making process and program implementation to ensure economic and non-economical business accessibility.<sup>143</sup>
- 4) **Marketing:** Independent variable; detailed effort for publicity and seeking protection in both domestic and international markets to maximize profits.<sup>144</sup>
- 5) **Economic Impact:** Dependent on the previous elements inputs to have a positive outcome involving higher-income retention for SMEs, an increase in jobs, and competitive advantage.<sup>145</sup>

Moreover, legal scholars note that when policymakers address each factor, their assessment must go beyond economic matters and consider sociological circumstances such as politics, society, and culture, essential in defining the protected goods or services.<sup>146</sup> A GI mark protects intangible characteristics established by sociological circumstances, turning these into quantifiable profit-making assets that deliver income to rural communities often forgotten or underrepresented

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<sup>140</sup> GIOVANNUCCI ET AL., *supra* note 12 at 93–95; UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 18; VANDECANDELAERE ET AL., *supra* note 48 at 28.

<sup>141</sup> Id.

<sup>142</sup> Id.

<sup>143</sup> Id.

<sup>144</sup> Id.

<sup>145</sup> Id.

<sup>146</sup> RANGNEKAR, *supra* note 44 at 16–18; Sarah Bowen, *Geographical Indications: Promoting Local Products in A Global Market*, 2008, (Published Ph.D. at University of Wisconsin-Madison) <https://www.semanticscholar.org/paper/Geographical-indications-%3A-promoting-local-products-Bowen/ef5a300160664badcee9450a05fa52d212a905f8#citing-papers>; BELLETTI ET AL., *supra* note 48 at 5, 34, 54–55.

in developing countries.<sup>147</sup> In sum, considering sociological interests is useful for setting standards that represent all the supply chain; still, it is harmful when standards represent the interest of stakeholders who have more market power.<sup>148</sup>

What determines that a GI policy “failed” is the “inability of internal and external parties to apply the indication effectively” but does not necessarily mean that the product is a market failure.<sup>149</sup> In other words, as Hughes and Calboli argue, GI systems become a “double edge sword” where big business interests push out those who can’t keep up with the fast-paced growth in production and create their quality control programs to substitute the government’s lack of infrastructure; thus, exploiting raw material resources and negatively affecting the economy.<sup>150</sup> Such is the case of the Tequila GI, where big companies established the policy factors to their favor.<sup>151</sup> For instance, tailoring quality, product definition and characteristics to make products more appealing to the general public and industrial processing, rather than the authentic traditional and cultural taste and processing of Mezcal (umbrella term for all Agave-based alcohol which includes Tequila).<sup>152</sup> Moreover, the big Tequila producers are overpowering in that they not only control the Tequila industry but also overshadow other Mezcal production.<sup>153</sup> Therefore, any economic wealth is not for “all social categories and not for the entire GI production area.”<sup>154</sup>

#### A. MAIN FACTORS THAT MAKE GEOGRAPHIC INDICATION POLICY SUCCESSFUL

##### 1) Product Definition: Product-Origin-Quality Link For Clear Product Differentiation

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<sup>147</sup> Amanda Budde-Sung, *The Invisible Meets the Intangible: Culture’s Impact on Intellectual Property Protection*, 117 JOURNAL OF BUSINESS ETHICS 345, 345–346 (Issue 2) (2013), <http://link.springer.com/10.1007/s10551-012-1524-y> (last visited Mar 10, 2020); RANGNEKAR, *supra* note 44 at 16–18.

<sup>148</sup> BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 18 & 25.

<sup>149</sup> Thanasis Kizos et al., *The governance of geographical indications: Experiences of practical implementation of selected case studies in Austria, Italy, Greece and Japan*, 119 BRITISH FOOD JOURNAL 2863, 2866 (Issue 12) (2017), <https://www.emerald.com/insight/content/doi/10.1108/BFJ-01-2017-0037/full/html> (last visited May 11, 2020).

<sup>150</sup> Calboli, *supra* note 10 at 22.

<sup>151</sup> *Id.* at 22.

<sup>152</sup> *Id.* at 22.

<sup>153</sup> *Id.* at 22.

<sup>154</sup> *Id.* at 22.

This section illustrates a product definition's components: product description, delimited geographical area, and the qualification standards.<sup>155</sup>

Policymakers must formulate GI policies with a clear definition of what product, geographical area, and quality standard to protect.<sup>156</sup> To start, the standard to determine the exact product is that it is produced enough quantities and has such unique characteristics that merit legal protection.<sup>157</sup> The product definition must include its physical and origin-related characteristics that differentiate the product from the rest. For instance, altitude, flora, fauna, raw materials, flavor, processing methods, food safety standards, and authentic features.<sup>158</sup>

Precise quality standards and geographical areas ensure that the product characteristics are uniform. The scope of both is highly dependent on social construction; in other words, their creation and consistent maintenance are contingent on culture, tradition, politics, economic rights, and the interests of all supply chain actors.<sup>159</sup>

## 2) Effective Organization: Producers With A Sound Structure

Conceptualizing GIs as a “common good” stems from Ostrom’s Theory of collective action, where the creation of the GI system depends on well-structured interdisciplinary coordination.<sup>160</sup> Legal scholars agree that the best way for policymakers to determine a clear definition is involving a collective organization representing the community and stakeholders involved in making the protected product.<sup>161</sup> To maximize a GI’s economic impact and performance, legal scholars prefer collective organizations owning the mark because they ensure

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<sup>155</sup> UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 14; VANDECANDELAERE ET AL., *supra* note 48 at 21; GIOVANNUCCI ET AL., *supra* note 12 at 90; BELLETTI ET AL., *supra* note 48 at 64–65. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 14, 53–56; GIOVANNUCCI ET AL., *supra* note 12 at 89–106; BELLETTI ET AL., *supra* note 48 at 5, 12, 20; VANDECANDELAERE ET AL., *supra* note 48 at 21–30.

<sup>156</sup> Id.

<sup>157</sup> Id.

<sup>158</sup> Id.

<sup>159</sup> BRAMLEY, BIÉNABE, AND KIRSTEN, *supra* note 44 at 18 & 25.

<sup>160</sup> GIOVANNUCCI ET AL., *supra* note 12 at 96; VANDECANDELAERE ET AL., *supra* note 48 at 21–22; BELLETTI ET AL., *supra* note 48 at 65; UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 11. Xiomara F Quiñones-Ruiz et al., *Can origin labels re-shape relationships along international supply chains? – The case of Café de Colombia* 24, 422–424.

<sup>161</sup> UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 14; GIOVANNUCCI ET AL., *supra* note 12 at 90; BELLETTI ET AL., *supra* note 48 at 64–65; VANDECANDELAERE ET AL., *supra* note 48 at 21.

fair returns, uniform protection, and clear information disclosure.<sup>162</sup> Organizations charged with managing a GI consist of stakeholders who belong to the product supply chain.<sup>163</sup> In other words, stakeholders are people benefited or affected by GI regulation; in the case of agricultural products, these are: suppliers, farmers, intermediaries, wholesalers, retailers, and exporters.<sup>164</sup>

For a collective organization to be effective, there must be a code of practice that delineates the organizational structure and operation, guarantee system, control plan and criteria, and methods to maintain transparency and accountability. Moreover, a code of practice facilitates organization's control on equitable participation and distribution.<sup>165</sup> Equitable participation and distribution allow for transparency, accountability, sharing benefits and costs, increased bargaining power and market strength, stricter enforcement, and facilitating economies of scale.<sup>166</sup> Lastly, organizational diversity in the supply chain, size, and member composition prevent the exclusion of SMEs.<sup>167</sup> As the dissertation progresses, this section will have:

Figure 1: Illustrates A Gi System Supply Chain With Its Territory And Resources.

### **3) Marketing Efforts: Detailed Strategic Plan Of The Government And Organizations**

The government and collective organization must delineate a strategic marketing plan by first determining the target market, product perception, demand, and market structure.<sup>168</sup> Second, they must evaluate if consumers are willing to pay the premium price for the product quality and its characteristics; in other words, the product is recognizable and marketable. Lastly, producers identify if production volume will supply current and new target markets. As the dissertation progresses, this section will have:

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<sup>162</sup> Id.

<sup>163</sup> Id.

<sup>164</sup> Id.

<sup>165</sup> GIOVANNUCCI ET AL., *supra* note 12 at 96; VANDECANDELAERE ET AL., *supra* note 48 at 21–22; BELLETTI ET AL., *supra* note 48 at 65; UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 11.

<sup>166</sup> Id.

<sup>167</sup> Id.

<sup>168</sup> UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 18; GIOVANNUCCI ET AL., *supra* note 12 at 89–92; BELLETTI ET AL., *supra* note 48 at 68; VANDECANDELAERE ET AL., *supra* note 48 at 24–26.

Table 5: Marketing Plan Components: Product, Distribution, Communication, And Price.

**4) Legal and Institutional Framework: Supportive and Collaborative Government Management and Appropriate Legal Protection**

Implementing a successful GI policy usually entails going through legal reform, changing regulations, and standards from problematic to supportive.<sup>169</sup> The main goal is filtering out “free-riders” to prevent unfair competition. Also, GI legal reforms usually compel institutions to keep registers, statistics, and reports for investors and future users. Moreover, GIs increase and diversify financial support like subsidies, tax incentives, royalties, and funds from registration fees, rents, and penalties.

In the legal reformation process, it is crucial to integrate community participation in policymaking, enforcement, monitoring, and training about GI’s non-economic benefits. Training is essential for both collective organizations and the government to be knowledgeable about what GIs are and their functions to ascertain well formulated and implemented policies. Overall, governments, along with cooperative associations, must have a well-organized structure as “weak institutional frameworks hinder economic development.”<sup>170</sup>

**5) Economic Impact**

The most immediate economic impact is an increase in income due to rising prices.<sup>171</sup> Also, there is a cost reduction when the GI system eliminates intermediaries retaining gains corresponding to producers, in turn strengthening coordination and communication within the value chain. Furthermore, individuals and SMEs using GIs broaden income streams by diversifying product offerings. Moreover, GIs improve product reputation and differentiation with more reliable guarantees in quality and traceability. Lastly, long-term impacts can include more

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<sup>169</sup> GIOVANNUCCI ET AL., *supra* note 12 at 95–97; BELLETTI ET AL., *supra* note 48 at 65; VANDECANDELAERE ET AL., *supra* note 48 at 26–27; UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 18.

<sup>170</sup> UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 53; GIOVANNUCCI ET AL., *supra* note 12 at 90; PATRICK MARTENS & TEDDY SOOBRAMANIE, *Fostering Development of Local Communities Through the Protection of Traditional Knowledge and Origin Products*, 2016/12 3 (2016), [https://www.thecommonwealth-ilibrary.org/commonwealth/trade/fostering-development-of-local-communities-through-the-protection-of-traditional-knowledge-and-origin-products\\_5jm26c5slbjh-en](https://www.thecommonwealth-ilibrary.org/commonwealth/trade/fostering-development-of-local-communities-through-the-protection-of-traditional-knowledge-and-origin-products_5jm26c5slbjh-en) (last visited Apr 11, 2020); VANDECANDELAERE ET AL., *supra* note 48 at 2.

<sup>171</sup> GIOVANNUCCI ET AL., *supra* note 12 at 27–30; VANDECANDELAERE ET AL., *supra* note 48 at 28–30; UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 48 at 9 & 18.

jobs and easier market access to the industry.

### C. SUMMARIZING GEOGRAPHIC INDICATION POLICY FACTORS

As the dissertation progresses, this section will have a figure illustrating the Interactions of all

GI Policy Factors:

Figure 2: Demonstrates The Interactions Of All GI Policy Factors

Factors that make GI policies successful and are essential to evaluate the DelPaís Law case study are the following:

- 1) **Product Definition:** Clear product differentiation with an accompanying description of its product-origin-quality link or product-origin attribution is essential. For example, the definition for “Kona Coffee” is: green beans coming from cherry berries cultivated in volcanic soil at altitudes of 250-750 meters located in the Hualalai and Manua Loa mountain slopes in North and South Kona District, Hawaii (West-Central), handpicked during August-January, processed through a pulper within 24 hours, fermented for 12 months and maintaining a moisture of 9-12% levels.<sup>172</sup>
- 2) **Effective Organization:** Effective organizations control the equitable distribution of revenue, add value to the supply chain, and improve the well-being of members.<sup>173</sup> In Jamaica, Colombia, Ethiopia and other countries with a robust GI policy, collective organizations have played an essential role in forming a code of practice and conduct.<sup>174</sup>
- 3) **Legal and Institutional Framework:** Similarly, to the previous factor, in countries with a robust GI policy, the government supports the GI industry by creating funds, incentives, municipal and regional committees, training association members, and investing in research and development in university facilities. For instance, the Colombia’s Superintendence

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<sup>172</sup> Haw. Admin. Rules (HAR) § 4-143-3, § 4-143-6 and § 4-143-11

<sup>173</sup> Id.

<sup>174</sup> GIOVANNUCCI ET AL., *supra* note 12 at 93; Matthews, *supra* note 4 at 20; VANDECANDELAERE ET AL., *supra* note 48 at 45.

recognized FEDCAFÉ as having political legitimacy to promote and regulate coffee in the international market, and now all coffee sales taxes fund the institution.<sup>175</sup> A successful legal framework example is the grading hierarchy for classifying Hawaiian Kona Coffee as prime, specialty, extra fancy, select, or off-grade.<sup>176</sup>

- 4) **Marketing Efforts:** Marketing policy must have a detailed strategic plan for commercialization. For example, FEDCAFÉ built coffee shops selling specialty premium coffee to “de-commodify” the product, and the Hawaiian Tourism Department sells coffee to tourists visiting farms to promote tourism and enter niche markets.<sup>177</sup>
- 5) **Economic Impact:** An excellent strategic plan results in increased jobs and income to rural communities. For example, in both Colombia and Hawaii, small producers have better profits due to increased prices, diversified revenue streams, and other industries like tourism have improved by adding more attractions, entertainment, and activities.<sup>178</sup>

### III. SUCCESSFUL GEOGRAPHIC INDICATION IMPLEMENTATION CASE STUDIES

#### A. *CAFÉ DE COLOMBIA*

##### 1) **Product Definition**

The product definition in the “Colombian Coffee” GI policy states that the coffee is from green beans growing between 400-2,500 meters in altitude within a 18-22°C temperature range in the Andes, Nariño region, which produces a sweet drink with medium-high acidity.<sup>179</sup> Constructing this definition cost the Colombian government’s Superintendence several years of scientific research and millions in technology to justify that the Andes, Nariño region was the precise physical boundary that produces the distinct Colombian Coffee.<sup>180</sup>

First, the Superintendence established the non-profit FEDCAFÉ in 1927 to organize

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<sup>175</sup> VANDECANDELAERE ET AL., *supra* note 48 at 59–60.

<sup>176</sup> *Id.* at 26.

<sup>177</sup> *Id.* at 25.

<sup>178</sup> *Id.* at 61 & 88.

<sup>179</sup> *Id.* at 56.

<sup>180</sup> GIOVANNUCCI ET AL., *supra* note 12 at 22 & 97.

cultivation and production practices as a “code of uniform quality standards,” published in 1932.<sup>181</sup> Then, during the 1950-1960s, they created the “Juan Valdez Logo” as a product differentiator in the domestic market and some international markets.<sup>182</sup> In the 1980s, due to its enormous success in de-commodifying Colombian Coffee, the government created the “Café de Colombia” (Colombian Coffee Brand) to position the product in niche markets demanding specialty coffee.<sup>183</sup> In 2004 the brand became a National Denomination of Origin, and with this registration, FEDCAFÉ was able to register the mark the first “non-wine and alcohol” GI in Europe in 2007.<sup>184</sup> The investment paid off as it found a balance between keeping the product’s quality and ameliorating administrative costs and resistance of bordering regions.<sup>185</sup>

## 2) Effective Organization

FEDCAFÉ is the leading collective organization in Colombia, comprised of growers, farmers, and exporters that help the government with inspection, certification, market regulation, and authorizing new members.<sup>186</sup> Since Colombian Coffee is known for small quantity production, cooperatives and other intermediaries help collect enough coffee for exporters.<sup>187</sup>

FEDCAFÉ has various intuitions such as: farmer cooperatives, the National Coffee Fund regulating the market; ALMACAFÉ performing inspection; CENICAFÉ guarantee traceability; and CAFECERT certifying members and monitoring the mark’s use.<sup>188</sup> As the dissertation progresses, this section will have:

Figure 3: The FEDCAFÉ Organizational Structure

## 3) Legal and Institutional

Colombia implemented three protections: a trademark, a GI, and a Denomination of Origin

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<sup>181</sup> Barjolle et al., *supra* note 46 at 108; VANDECANDELAERE ET AL., *supra* note 48 at 56–57.

<sup>182</sup> Id.

<sup>183</sup> Barjolle et al., *supra* note 46 at 108; VANDECANDELAERE ET AL., *supra* note 48 at 56–57.

<sup>184</sup> Id.

<sup>185</sup> GIOVANNUCCI ET AL., *supra* note 12 at 22 & 97.

<sup>186</sup> VANDECANDELAERE ET AL., *supra* note 48 at 56.

<sup>187</sup> GIOVANNUCCI ET AL., *supra* note 12 at 219.

<sup>188</sup> VANDECANDELAERE ET AL., *supra* note 48 at 58–59.

(DO), to increase commercial quantities, differentiate the product, and offer producer incentives.<sup>189</sup>

One GI and DO cover all coffee produced in the country, and other GIs and DOs cover each Colombian region's coffee.<sup>190</sup> Likewise, there is a certification mark for coffee in general and for each region.<sup>191</sup> Each has its market, the GI and DO for European buyers, in particular the Swiss, and the trademark for their Latin American buyers, in particular Peruvian, Ecuadorians, and Bolivians.<sup>192</sup> As the dissertation progresses, this section will have:

Table 6: Interactions And Roles Between The Colombian Government And Fedcafé

Table 7: GI And Do Registrations For Café De Colombia In Chronological Order

#### 4) Marketing Efforts

Since the 1960s, Colombian Coffees sell under the brand “Juan Valdez” and slogan “only extraordinary efforts produce an extraordinary coffee.”<sup>193</sup> The government uses these in a “de-commodification strategy” that aggressively markets the product and seeks legal protection in countries where the product is most consumed.<sup>194</sup> The government has used the brand and slogan consistently in both local and international events as a participant and sponsor in competitions, expos, and sporting activities.<sup>195</sup>

#### 5) Economic Impact

In Colombia, from 2008 to 2012, the price paid to growers from domestic sales increased from \$1.23-\$1.81 per pound and international sales from \$0.68 to \$0.85.<sup>196</sup> However, when FEDCAFÉ decided to implement the GI legal system in 2011, the coffee industry experienced a “short term 33% decrease in production (from 12 to 4 million stacks)”; still, by 2013, it quickly recovered to the average production volume.<sup>197</sup> The cause in decreased production was that the

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<sup>189</sup> Santiago, *supra* note 12 at 442–443; Benni and Reviron, *supra* note 43 at 26–38.

<sup>190</sup> Benni and Reviron, *supra* note 43 at 26–28.

<sup>191</sup> *Id.* at 26–28.

<sup>192</sup> VANDECANDELAERE ET AL., *supra* note 48 at 57.

<sup>193</sup> Baguissa Diallo, *supra* note 62 at 75.

<sup>194</sup> *Id.* at 75–76.

<sup>195</sup> *Id.* at 71 & 75.

<sup>196</sup> VANDECANDELAERE ET AL., *supra* note 48 at 60.

<sup>197</sup> *Id.* at 55.

fertilizer and labor increased costs by 28% and the decrease in retained value to 10%.<sup>198</sup> Moreover, the overall GDP experienced deflation due to the 2008 economic crisis.<sup>199</sup>

### *B. HAWAII'S KONA COFFEE*

#### **1) Product Definition**

In Hawaii, a counterfeiting scandal with a trader in the mid-1990s triggered Kona Coffee's legal protection.<sup>200</sup> This led to aggressive efforts by the Hawaiian Department of Agriculture to create in 2000 the "100% Pure Kona Coffee" certification mark.<sup>201</sup> The Haw. Admin. Rules 4-143-3 to 4-143-11 contain similarities to the Colombian Coffee Law, such as the definitions and classifications for coffee according to the grading hierarchy system specifying grain defects according to smell, fermentation, and size. However, the grading hierarchy system directly clashes with Hawaii-Grown Coffee Law, §486-120.6, HRS created in 2002 by the Department of Agriculture, as it permits coffee companies to market their products as "Kona-type" if at least 10% of coffee by volume was Kona. The law balances out commercial speech restrictions found in the same law that prohibits labeling a coffee from several geographic origins as "100% Pure Kona Coffee."<sup>202</sup> Thus, there are two simultaneous legal structures, one protects pure coffee, and the other allows "coffee blends" as long as there is clear disclosure.

#### **2) Effective Organization**

Hawaii has two groups with very divided interests, one being "the purists" and the other favoring blends. The Kona Coffee Farmers Association are purists which allege that blends are deceptive and mislead consumers with no discernable difference in flavor by adding Kona Coffee.<sup>203</sup> Meanwhile, "Blenders" allege that their brands state how much Kona Coffee their

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<sup>198</sup> *Id.* at 55.

<sup>199</sup> OECD, OECD REVIEW OF AGRICULTURAL POLICIES: COLOMBIA 2015 27 (2015), [https://www.oecd-ilibrary.org/agriculture-and-food/oecd-review-of-agricultural-policies-colombia-2015\\_9789264227644-en](https://www.oecd-ilibrary.org/agriculture-and-food/oecd-review-of-agricultural-policies-colombia-2015_9789264227644-en) (last visited Jul 9, 2020).

<sup>200</sup> VANDECANDELAERE ET AL., *supra* note 48 at 84–85.

<sup>201</sup> *Id.* at 84–85.

<sup>202</sup> Jason Foscolo, *The Kona Coffee Archetype: A Case Study in Domestic Geographic Indication*, 5 KENTUCKY JOURNAL OF EQUINE, AGRICULTURE, & NATURAL RESOURCES LAW 199, 208 (Issue2) (2012).

<sup>203</sup> *Id.* at 207–208.

products contain, thus presenting truthful information to consumers preferring milder tastes.<sup>204</sup>

### 3) Legal and Institutional

Legal scholars consider Hawaii's Coffee grading hierarchy system a great policy strategy because it recognizes and protects long-established practices in the supply chain.<sup>205</sup> However, these same scholars argue that having two legal systems is a "failure" since it collides and undermines the intricate supply chain and grading system.<sup>206</sup> Hawaii's Department of Agriculture provides both pure and blended coffee brands technical support and funding towards marketing to enter into niche markets.<sup>207</sup> The Department is expanding funds to cover litigation, labeling, and business costs, as they are steep in Hawaii.<sup>208</sup> As the dissertation progresses, this section will have:

Figure 4: Hawaii's Grading System And Criteria.

### 4) Marketing Efforts

Hawaii's Department of Agriculture invests in farm tourism marketing strategies where visitors can buy coffee directly.<sup>209</sup> "Purist" producers implemented procedures similar to Colombian Coffee, to enter into niche markets of their biggest buyers, the United States and Japan.<sup>210</sup> On the other hand, "Blenders" market the coffee's exoticness and scarcity to crank up the prices and have a competitive advantage to free-ride on the Pure Kona Coffee industry.<sup>211</sup> As the dissertation progresses, this section will have:

Figure 5: Illustrates Hawaii's Distinct Domestic And International Market Value Chains.

### 5) Economic Impact

100% Kona Coffee production volumes slowly increased from 1,000 to 3,500 tones from 1995 to 2005 and then in from 2011 to 2014 from 2,080 to 4,040 tones.<sup>212</sup> From 2000-2008 in

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<sup>204</sup> *Id.* at 207.

<sup>205</sup> Vandecandelaere et al., *supra* note 43 at 10; GIOVANNUCCI ET AL., *supra* note 12 at 178; VANDECANDELAERE ET AL., *supra* note 48 at 84–85.

<sup>206</sup> *Id.*

<sup>207</sup> GIOVANNUCCI ET AL., *supra* note 12 at 178–179.

<sup>208</sup> *Id.* at 179.

<sup>209</sup> Vandecandelaere et al., *supra* note 43 at 10.

<sup>210</sup> Sanjeev Agarwal & Michael J Barone, *Emerging Issues for Geographical Indication Branding Strategies*, 5 MATRIC RESEARCH PAPERS 25, 2 (Issue9) (2005), [http://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=1007&context=matric\\_researchpapers](http://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=1007&context=matric_researchpapers).

<sup>211</sup> VANDECANDELAERE ET AL., *supra* note 48 at 86.

<sup>212</sup> *Id.* at 88–89.

Hawaii, Kona Coffee grower's average income increased from \$10.17 to \$20.30 million. This was due to the 100% Kona Coffee increase in prices and a slight reduction in production costs. During a survey taken in 2004, Kona Coffee average price premium was at 190%, and retail prices increased from \$3.25 in 1978, to \$6.98 in 1989 and \$16.70 in 2007.<sup>213</sup> Farmers receive from 11% to 148% of this price premium, in other words, an average of \$9.67 out of \$16.70.<sup>214</sup> With such an income increase, farmers became more independent of the cooperative structure and Kona Coffee grower's lands increased in value.<sup>215</sup>

#### IV. CONCLUSION: KEY TAKEAWAYS TO APPLY TO PUERTO RICO

##### A. SUMMARY

When examining Colombia and Hawaii's efforts, Puerto Rico can implement their strategic plans concerning GIs as long as there is the willingness of the government and associations to invest in the work required to amend the DelPaís Law. For instance, in GI policy making it is necessary not only to have a well-constructed law but to have stakeholder interest and activities aligned to fulfill the law's purpose. Stakeholders include formal and informal institutions as the government and associations; these must collaborate toward the collective interest of improving the well-being of all members. If not done, policymakers can create a perfect law and not see the corresponding economic impact.

##### B. TAKEAWAYS: APPLICATION FOR PUERTO RICO

As the dissertation develops, this section will list what strategies permeate Colombia, Hawaii, and both GI legal systems.

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<sup>213</sup> GIOVANNUCCI ET AL., *supra* note 12 at 179–180.

<sup>214</sup> *Id.* at 179–180.

<sup>215</sup> VANDECANDELAERE ET AL., *supra* note 48 at 87; GIOVANNUCCI ET AL., *supra* note 12 at 180.

## RESULTS

### CHAPTER III CASE STUDY OF PUERTO RICO'S DELPAÍS LAW

This chapter answers the question as to why the “Law to use the mark DelPaís” failed at each Geographic Indication (GI) policy factor delineated in the previous chapter. This chapter includes interviews with the following people:

- Jorge Ochoa,
- Manuel Cidre,
- Jeffery Caraballo,
- Carmen Alamo Ph.D.,
- Christian Cortés-Feliciano,
- Erica Reyes,
- Navel Torres Colberg,
- Myrna Comas Ph.D.,
- Salvador Ramírez,
- Saritza Aulet, and
- Amarilis De Jesús Lora

#### I. BACKGROUND

##### A. PUERTO RICO'S AGRICULTURAL ECONOMIC HISTORY

During Spanish colonial times in Puerto Rico, 1830 to 1898, agriculture was the main focus for economic development with coffee, tobacco, and sugar cane monocultures.<sup>216</sup> When Puerto Rico passed to the United States, economic development changed to industrialization with Operation Bootstrap, which caused a decline in agriculture.<sup>217</sup> However, agriculture at the time, from 1941-1950, presented 17.5% GDP and 36% of the population worked in the industry.<sup>218</sup> Today, “agriculture is practically non-existent because policies respond to crisis and emergencies”, representing only 1% GDP and 2% of the population works in the industry.<sup>219</sup>

##### B. AGRICULTURAL ECONOMIC DEVELOPMENT PLANS

How do the Puerto Rican economic development plans address agriculture, in terms of importance, recommendations, and issues discussed? If agriculture is not important to the

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<sup>216</sup> GONZÁLEZ AND GREGORY, *supra* note 9 at 2–3.

<sup>217</sup> *Id.* at 2–3.

<sup>218</sup> *Id.* at 2–3.

<sup>219</sup> *Id.* at 2–3.

government, what are the reasons? What are the common themes and are GIs included in any plans?

Agriculture is not a subject of importance in **Economic Development Plans** as the focus is on manufacturing and resolving what have been considered in the past more pressing matters such as labor, health, or security. However, recent national emergencies have placed agriculture as a priority. The majority of the Economic Development plans dedicated to Agriculture discuss the following themes:<sup>220</sup>

- Food security: substitution of imports for local products.
- Increase agricultural production to export.
- Improve supply distribution and resource management.
- Land planning and preservation.
- Coordination between the Department of Agriculture and Associations.
- Nature Preservation.
- Food Prices and Nutrition.
- GIs are merely referenced as an option, but not discussed in-depth.
  - Denominations of Origin for Puerto Rican Coffees referenced a total six times in the “Coffee Cultivation and Economic Development Plan” and “Economic Development Plan for the Agriculture Section.”
  - Made in Puerto Rico referenced a total of four times in the “2004 Economic Development Plans” and the “Coffee Cultivation and Economic Development Plan.”

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<sup>220</sup> ECONOMIC DEVELOPMENT ADMINISTRATION, *Overall Economic Development Plan for the Commonwealth of Puerto Rico* (1967); Werner Baer, *Puerto Rico: An Evaluation of a Successful Development Program*, 73 THE QUARTERLY JOURNAL OF ECONOMICS 645 (Issue 4) (1959), <https://academic.oup.com/qje/article-lookup/doi/10.2307/1884309> (last visited Aug 6, 2020); GONZÁLEZ AND GREGORY, *supra* note 9; JUNTA DE PLANIFICACIÓN DE PUERTO RICO, *Proyecto Puerto Rico 2005* (1992); RAFAEL PICÓ, *Diez Años de Planificación en Puerto Rico* (1952); HON ANÍBAL ACEVEDO VILÁ, *Plan de Desarrollo Económico y Transformación de Gobierno para Puerto Rico* (2006); PUERTO RICO 2025 STEETING COMMITTEE, *Stakeholders' Plan for Achieving the Puerto Rico 2025 Vision*, PUERTO RICO 2025 (2004); OFICINA DEL GOBERNADOR, *Agricultura, NUEVO MODELO DE DESARROLLO ECONÓMICO* (1994); LUIS HON. FORTUÑO, *Modelo Estratégico para una Nueva Economía* (2009); NATHAN KOENIG, *A comprehensive agricultural program for Puerto Rico* (1953); INTERAGENCY STUDY GROUP ON THE PUERTO RICAN ECONOMY, *Agriculture, Food, and Rural Living* (1979).

- Economic Development Plan for the Agriculture Sector, 2015 is the only one that mentions DelPaís Law and Mark.<sup>221</sup>

**There are also some consumer preference studies which present the following findings:**<sup>222</sup>

- Although most were conducted before the existence of the DelPaís Mark and Law, they shed light on the importance of building a complete infrastructure for identifying local products because such labels change consumer behavior to buy more local produce. *Posicionamiento de Productos Agrícolas Locales versus importados: Un Estudio de los Consumidores de Carne de Pollo, Huevos y Carne de Cerdo del Municipio de Mayagüez, Puerto Rico* (Positioning of Local versus Imported Agricultural Products: A Consumer Study of Chicken Meat, Eggs and Pork from the Municipality of Mayaguez, Puerto Rico) is the only one that mentions the DelPaís Mark when implemented in 2002.
- Although, place of origin is not a determinant factor among consumers, they state that if labels indicated Puerto Rican products, they would prefer them and be unquestionably loyal to those brands.
- The majority of consumers place price as the determining factor in their buying decisions but are undecided when it comes to paying a price premium for local products. However, when the Department of Agriculture implemented “Cosecha and Crianza” (Harvest and Upbringing of Puerto Rico), consumers were willing to pay more for local products because they perceived such products as having a higher quality and freshness.
- Labeling efforts are viewed as only a “promotional campaign with governmental support” with not much else added into the infrastructure. Only one study recognizes that labeling should have other activities related to the image, quality, freshness, and taste.

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<sup>221</sup> GONZÁLEZ AND GREGORY, *supra* note 9 at 62.

<sup>222</sup> Santos and Rosario, *supra* note 38 at 1–11; Cortés, *supra* note 38 at 273; Cartagena-Romero, *supra* note 38 at 227–230; GONZÁLEZ, *supra* note 38 at 27–33; Cortés and Gayol, *supra* note 38 at 2; Labajova, *supra* note 42 at 28–29, 38–43.

### C. HISTORY OF DELPAÍS MARK AND LAW

**Interviews help answer the questions presented below:**

- Did a specific GI model inspire the DelPaís Mark and Law? If not, what events or issues sparked its creation?
- Is the DelPaís Mark and Law contemplated within any economic development plans? Are there any specific recommendations and issues concerning the DelPaís Mark and Law?
- What were the efforts of associations, farmers, and the Department of Agriculture to achieve trademarking and legislation?
- What are the roles and interactions of the leading stakeholders?
- Why are the DelPaís Mark and Law's benefits unknown to the general public, to agricultural professionals, investors, and other interested stakeholders?

#### 6) “DelPaís” wording: Beginnings Before Becoming A Trademark And Law

- a) **Publication from Agricultural Experimental Station, 1974:** “[T]here was some preference for small eggs and cream-colored shell or reddish, these eggs were known as “*Del País*.<sup>223</sup> (translation provided)
- b) **Puerto Rican Linguistic Studies, 1999:** “For agricultural products, it is frequented the use of the phrase “*del país*”, “de la tierra” (from this earth), or “de aquí como el coqui” in local products in opposition to imported products” (translates to: from here like the coqui. The coqui is an autochthonous Puerto Rican frog that makes a “coqui” sounding croaks.)<sup>224</sup>
- c) **Evidence of previous use to the mark and law: still used, might be original design.**



<sup>223</sup> MANUEL ROJAS, *Publicación—Universidad de Puerto Rico, Estación Experimental Agrícola* 4 & 166 (1974).

<sup>224</sup> AMPARO MORALES, *ESTUDIOS DE LINGÜÍSTICA HISPÁNICA: HOMENAJE A MARÍA VAQUERO* 423 (1999). The coqui is an autochthonous Puerto Rican frog that makes a “coqui” sounding croaks.

**7) Current Literature referring to DelPaís Mark and Law**

- a) **Newspapers 2002-19:** the majority simply resort to announce the implementation of either the DelPaís Mark, Law, and “Cosecha y Crianza”, while some are about the trademark and laws impact in individual businesses related to the Walmart agreement.<sup>225</sup>
- b) **Economic Development Plan for the Agriculture Sector, 2015:**<sup>226</sup> is the only economic development plan that discusses the DelPaís Mark and Law’s origins from 2002 to the present day. The discussion about the origins is brief and offers no recommendations to improve either of them. With no analysis nor reasoning, the authors conclude that the trademark is “generic” (in the sense that its nothing special, not in the trademark sense of genericness), its trajectory sends mixed signals and confuses consumers both domestic and foreign consumers.
- c) **Dr. Myrna Comas Food Security Plans and Ph.D. dissertation, 2016:** Integrates the use of the DelPaís Law and Mark within a public-private company alliance agreement between the Department of Agriculture and Walmart.<sup>227</sup> The participants using the DelPaís Mark under contract had priority rights benefits for placing products at the best-selling aisles in the grocery store. Within its first year, the plan failed because of the lack of communication, disorganization to meet with the magnitude of the project, and lack of infrastructure to deal with the demanding delivery schedules.

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<sup>225</sup> Andrea Martínez, *Cargada Agenda En El Agro*, EL NUEVO DÍA, January 29, 2012, at 2, <https://advance.lexis.com/api/permalink/balf8de0-ab63-473d-9d89-00c63acdc158/?context=1000516>; Santiago, *supra* note 41; Santiago, *supra* note 41; Aura Alfaro, *Huevo importado golpea al boricua*, EL NUEVO DÍA, 2009; Aura Alfaro, *Banco de Desarrollo Económico busca fomentar creación de agroempresas; El BDE pone su semilla en el agro*, EL NUEVO DÍA, 2008; Aura Alfaro, *Crean nueva agroempresa porcina en Corozal; Nace agroempresa porcina en Corozal*, EL NUEVO DÍA, 2008; Aura Alfaro, *Estímulo al agro local*, EL NUEVO DÍA, 2008; Aura Alfaro, *Industria agrícola puertorriqueña registra crítico 2008; Golpea el 2008 a la industria agrícola puertorriqueña*, EL NUEVO DÍA, 2008; Aura Alfaro, *Wal-Mart acuerda estimular sector agrícola local; Estímulo al agro local*, EL NUEVO DÍA, 2008; Aura Alfaro, *Wal-Mart inicia venta de productos agrícolas locales; Wal-Mart inicia venta de farináceos del País*, EL NUEVO DÍA, 2008; Aura Alfaro, *Wal-Mart expande alianza con productores agrícolas; Walmart expande alianza agrícola; Wal-Mart inicia venta de carne de cerdo producida en Puerto Rico; Debuta la carne de cerdo del País en Wal-Mart*, EL NUEVO DÍA, 2009; Caribbean Update, *Puerto Rico*, 18 CARIBBEAN UPDATE 20 (Issue 5) (2002), <https://proxyiub.uits.iu.edu/login?url=https%3A%2F%2Fsearch.proquest.com%2Fdocview%2F195475228%3Faccountid%3D11620>; Costa, *supra* note 34.

<sup>226</sup> GONZÁLEZ AND GREGORY, *supra* note 9.

<sup>227</sup> COMAS PAGÁN, *supra* note 9; Dr. Myrna Comas Pagán, *Case Study: Wal-Mart Puerto Rico: Promoting Development Through a Public-Private Partnership*, Case&Teaching Notes IVEY MANAGEMENT SERVICE, RICHARD IVEY SCHOOL OF BUSINESS, UNIVERSITY OF WESTERN ONTARIO, CANADA (2010), <https://www.iveycases.com/ProductView.aspx?id=38641>; COMAS PAGÁN, *supra* note 9.

## II. POLICY ISSUES

### A. MARKETING

#### 1) A New Administration, New Marketing Strategy

The Department of Agriculture in collaboration with farmers from the Puerto Rico Farmers Bureau created the DelPaís Mark in 2002 to encourage Puerto Ricans to buy local products by easing product identification in its marketing and labeling.<sup>228</sup> However, the Department abandoned the mark in 2004 when a fiscal crisis hit, and the Secretary of the Department of Agriculture resigned.<sup>229</sup> During 2011 the mark was replaced by “Cosecha y Crianza de Puerto Rico” under the “Law to Ensure Food Security for Puerto Rico” used by the Department of Agriculture as a marketing campaign quite successfully for four years.<sup>230</sup> The campaign used various logos:



- **Owner:** Autoridad de Tierras (Land Authority) sub-agency of the Department of Agriculture
- **PRTR registrations:** 76396; 76974; 76400; 76553; 76973 ALL ABANDONED 2011
- **TYPE:** DESIGN/GRAFIC
- **USPTO:** None
- **Videos:** <https://www.youtube.com/watch?v=p3wzJx5jks4>;  
[https://www.youtube.com/watch?v=cn0mI\\_Iij34](https://www.youtube.com/watch?v=cn0mI_Iij34);  
<https://www.youtube.com/watch?v=snEX0rP60qc&t=4s>

In 2013, the Commission of Agriculture, Food Security, and Sustainability of the Mountain and South Regions of Puerto Rico (here on, Commission of Agriculture) with the Department of Agriculture and Department of Consumer's support, presented the Senate Project 952 to create a “Denomination Origin for products of Puerto Rico.” This law and trademark had the same

<sup>228</sup> Ley para el Uso de la Marca “DelPaís”, 2016 PR LAW 195, *supra* note 33 at 44547.

<sup>229</sup> Carro-Figueroa, *supra* note 32 at 101.

<sup>230</sup> Ley: Para establecer la política pública de Seguridad Alimentaria para Puerto Rico y el desarrollo de un plan de producción agropecuario de acuerdo a los censos federales poblacional y agrícola y así abastecer las necesidades presente y futura de los alimentos básicos de las familias puertorriqueñas: Hearing on 2012 S.B 1294 Comisión de Agricultura 17th Senate 7th Session, 44736 (2012), (presented by Luis Berdil Rivera Comisión de Agricultura).

purposes as DelPaís Law and Mark.<sup>231</sup> However, the project never passed to law because it obligated the Department of Agriculture to comply with the Lisbon Agreement, and contents lacked definitions, criteria, and standards.<sup>232</sup>

From 2011-2014, according to findings using the Way Back Machine, the Department of Agriculture started a tourism program called “La Ruta del Lechón” (Pork Tourism Route), comprising of a website that had a map of the “route” where visitors could find certified restaurants.<sup>233</sup> These restaurants displayed this “new” trademark shown below, which “revived” the DelPaís original mark; in other words, it is a variation of the original 2002 DelPaís logo.



- **Owner:** Fondo Fomento Industria Carne de Cerdo (Pork Meat Industry Development Fund)
- **Website:** <http://rutadellechon.com/>; <https://www.facebook.com/FFICCP/>
- **PRTR registrations:** 205502-35-1 ABANDONED 2014  
**TYPE:** GRAPHIC/DESIGN
- **USPTO:** None

Finally, in 2016 the Senate Project 2791, now the “Law to Use the Mark DelPaís,” Act 195-2016, formalized the collaboration between the Department of Agriculture and the Puerto Rico Farmers Bureau with the support of the Commission of Agriculture and the Department of Agriculture to immortalize the DelPaís Mark.<sup>234</sup>



- **Owner:** FIDA
- **Puerto Rico Trademark Register (PRTR) Registrations:**
  - **Abandoned:** 2002, 2011, 2013
  - **Active since 2016:** 226720-29-1; 226720-30-1 AND 226720-31-1
- **TYPE:** GRAPHIC/ DESIGN
- **USPTO:** none

<sup>231</sup> Santiago, *supra* note 12 at 448–457; Ramón Ruiz Nieves, *Ley de Denominación de Puerto Rico: Hearing on 2014 S.B. 951 the Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña y de la Región Sur 17th Senate 3rd Session* 13122 13122 (2014), (Presented by Ramón Ruiz Nieves Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña); Ley de Denominación de Origen del Café Puertorriqueño, 2015 PR LAW 232, Hearing on 2015 S.B. 951 Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña y de la Región Sur 17th Senate 5th Session, 30154–30170 (2015), (Presented by Ramón Ruiz Nieves Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña); Ley de Denominación de Origen de Puerto Rico, Hearing on 2014 S.B. 951, Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña y de la Región Sur 17th Senate 5th Session, 21401–21406 (2014), (Presented by Ramón Ruiz Nieves Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña).

<sup>232</sup> Santiago, *supra* note 12 at 448–453.

<sup>233</sup> Way back machine: website saved one time in 2011, trademark abandoned 2014 [http://web.archive.org/web/2011\\*/http://rutadellechon.com/](http://web.archive.org/web/2011*/http://rutadellechon.com/)

<sup>234</sup> Ley para el Uso de la Marca “DelPaís”, 2016 PR LAW 195, *supra* note 33.

The DelPaís Law's goal was for the Puerto Rican Congress to give recognition to the DelPaís Mark that would add value through diversification of products and ensure equal and fair competition with big corporations.<sup>235</sup> The presence of products under the current DelPaís Mark began in farmers' markets and then was slowly introduced in supermarkets.

In conclusion, all name changes came unannounced, confusing consumers and sending mixed signals. Ever since the current DelPaís Mark's inception, the Puerto Rican Department of Agriculture has managed the mark inconsistently and in a disorganized way. Unlike "Hecho en Puerto Rico's" consistent 110-year record, the DelPaís Mark has a 12-year history: four years from 2002-2006, three years from 2011-2013 as "Cosecha y Crianza" and the five years of current use from 2016-present.<sup>236</sup>

## **2) Place Of Origin Is Not Obvious In The Logo**

The DelPaís Mark does not necessarily need an explicit indication of geographical origin in its brand name for it to be a GI. Such cases of names not indicating origins are prominent in Sui Generis systems protecting cheeses such as feta cheese (Feta) and mozzarella (Mozzarella) where a regular consumer associates the products to Greece and Italy, but not its specific place of origin within the country.<sup>237</sup> Here, Feta, even though disputed by many to be generic, does not lose protection because its GI systems maintain its product-origin-quality attribution to Greece. Unlike Sui Generis, in trademark systems, it is more common to state the product's origin, like Florida Oranges, Maine Lobster, and Idaho Potatoes. The DelPaís Mark would have protection in both Sui Generis and trademark systems as long as the general consumer perceives, associates, or attributes the product to the place.

The DelPaís Mark full name is "Productos DelPaís Puerto Rico" (Products of the country

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<sup>235</sup> *Id.* at 44535–44536.; LEY PARA EL USO DE LA MARCA DELPAÍS, *supra* note 3.

<sup>236</sup> Martínez, *supra* note 225; Andrea Martínez, *Dice Adiós el Secretario de Agricultura*, EL NUEVO DÍA, January 7, 2012,

<https://advance.lexis.com/api/permalink/a206df71-a3f1-4f0e-a3b8-005747373b58/?context=1000516>; Santiago, *supra* note 41; Santiago, *supra* note 41.

<sup>237</sup> Dev Gangjee, *Genericide: The Death of a Geographical Indication?*, in RESEARCH HANDBOOK ON INTELLECTUAL PROPERTY AND GEOGRAPHICAL INDICATIONS , 2–5 (2016), <http://www.elgaronline.com/view/9781847201300.xml> (last visited Aug 6, 2020).

Puerto Rico); however, the brand name's most prominent text is “DelPaís” as seen here in these advertisements and products:



The fact that the logo does not prominently display the product's geographical origin confuses consumers in the overall. For instance, if the product were exported and sold in Latin America, consumers would find it difficult to discern the product's origin to Puerto Rico. Moreover, due to the multiple name changes, the majority of locals associate the DelPaís Mark as a “Department of Agriculture’s marketing program,” and a few locals associate the label with an indication of source.

The inactive Project of the Camera 1257 of 2017 attempted to rename the DelPaís Mark to “Products of Puerto Rico” to “resolve” the name issue; however, this new name causes confusion with Hecho en Puerto Rico, as it is not obvious from their names that one is for agricultural products and the other for agricultural derivatives and manufactured products. Although, the DelPaís Mark is not confused with Hecho en Puerto Rico, it is confused with the “Law to create a National Mark”, since their titles use similar wording in Spanish, as seen here: Ley para crear la marca DelPaís (The DelPaís Law) and Ley para el Desarrollo de una Marca País (Law to create a National Mark).

### 3) Agricultural Businesses Inconsistently Use Logo

While doing some research online and in person in Puerto Rican supermarket stores, I

noticed that many agricultural businesses package their products in a way that they use the

DelPaís Mark inconsistently. Here are instances of current use:

DelPaís Mark	Cosecha y Crianza	"Personalized" DelPaís Mark
From Granja La Cabaña 	Zetas de Puerto Rico 	Granja Cinderella 

### 4) Private Marks Due To Governmental Distrust

To counteract governmental enforcement inefficiencies, many private companies compensate

creating their own GIs Marks or Indications of Source. Such are the cases of “Lechonera Certificada Cerdo 100% de Puerto Rico” (Certified restaurants serving 100% roasted pork from Puerto Rico), “Rums of Puerto Rico,” “Brands of Puerto Rico,” “Marca Muu,” (Muu Brand for Beef) among others.<sup>238</sup> However, these marks have lower standards than those stipulated by DelPaís Law, similar to those specified in Hecho en Puerto Rico.

### 5) Domestic and the United States Rivals

#### a) *Hecho En Puerto Rico (Made in Puerto Rico)*



- **Owner:** Association of Products of Puerto Rico
- **Established:** law created in 1913
- **Goal:** Identifies local products
- **Social media:** <https://www.facebook.com/hechoenpr>
- **Website:** <https://hechoenpr.com/>
- **Forms:** <https://hechoenpr.com/como-ser-socio/>
- **PRTR:** not found, registered in 1967
- **USPTO:** serial No. 72396552; registration No.: 0943033
- **Type:**

<sup>238</sup> Lechonera Certificada Federal TM Reg. No. 88655570, Rums of Puerto Rico Federal TM Reg. No. 4145104, Marca Muu Federal TM Reg. No. 87356372, Hecho en Puerto Rico Federal TM Reg. No. 7239552 and Brands of Puerto Rico (no register found)

The “Act 50-1913, Law to create the Association of Products of Puerto Rico” authorized the non-profit Association to create a collective mark guaranteeing all products made in Puerto Rico, known today as Hecho en Puerto Rico.<sup>239</sup> The Association has used the trademark for 110 years as the seal in compliance with this law.<sup>240</sup> The mark’s primary purpose prevents fraudulent use, false claims, and substitute products. In the Association’s bylaws, eligible users of the trademark are:

***“All individuals or corporations rendering services, actively representing local government or communities in Puerto Rico that: 1) pay members fees, 2) manufacture products with more than 35% value-added and 3) have substantial activity in Puerto Rico.”***<sup>241</sup> (emphasis and translation provided)

When analyzing these requirements, two terms stand out: value-added and substantial activity. These two terms are undefined and have no specific criteria of what they encompass, leaving room for many products to qualify irrespective of where its supply chain process took place.<sup>242</sup> As a result, even products only packaged on Puerto Rico qualify if they follow the eligibility standards. The DelPaís Law’s raw material requirement allows for a GI “product-origin attribution” to exist, meaning a high consumer recognition of the product’s origin, despite products still predominantly sold in farmers’ markets. Moreover, the DelPaís Law’s domicile requirement creates a filter that excludes commercial activates of non-local companies in Puerto Rico, while Hecho en Puerto Rico’s substantial activity includes them.

In contrast to Hecho en Puerto Rico, the DelPaís Law has stricter standards requiring a specific amount of raw material and domicile, rather than Hecho en Puerto Rico’s ambiguous “value-added” and “substantial activity” requirements.<sup>243</sup> However, to regard the DelPaís Mark

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<sup>239</sup> PROTECCIÓN DE LOS PRODUCTOS DE PUERTO RICO, 1913 PR LAW 50, 10 LPRA 208-212.

<sup>240</sup> Joaízabel González & Marian Díaz, *Diversa la Gama de Ayuda Para “Startups,”* EL NUEVO DÍA, October 20, 2018, at 9, <https://advance.lexis.com/api/permalink/094a6db7-4426-49c0-88dd-1f67fae4b17a/?context=1000516>.

<sup>241</sup> Asociación Productos de Puerto Rico, *Reglamento “Bylaws”* (2019), <https://hechoen.pr/wp-content/uploads/2019/03/Reglamento-APPR-rev.-marzo-2019.pdf>.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

as a traditional GI, the law can only legally protect one type of product which, to maximize its economic impact, sells in the domestic and foreign market.

Thus, despite being a famous mark more recognizable than the DelPaís Mark, Hecho en Puerto Rico is a mere indication of the source. The mark is not a denomination of origin because there is no establishment of a product-origin-quality link, nor is it a GI because products eligible under the mark have characteristics that are not necessarily attributable to Puerto Rico. Thus, the Hecho en Puerto Rico's strength is weak because it is generic, descriptive, does not have legal legitimacy being public property, with limited recognition to general public acceptance and years of usage in Puerto Rico.

Lastly, having the two marks, Hecho en Puerto Rico and the DelPaís Mark in the same line of goods and services certifying designation of origin for products in Puerto Rico dilutes efforts for the DelPaís Mark to acquire reputation.<sup>244</sup> These efforts become harder to achieve when Hecho en Puerto Rico's notoriety minimizes the DelPaís Mark's proliferation.

*b) Issues with United States Competitors*

Governmental interests favoring United States companies that “save a particular industry” severely affect a product’s quality, eligibility requirements and brands. For instance, Pan American Grain and Puerto Rico Coffee Roasters have been accused of alleged free-riding because natural disasters provoked meeting demands by mixing domestic and imported coffee and monopolizing the industry because they own 90% of local brands.<sup>245</sup>

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<sup>244</sup> Agarwal and Barone, *supra* note 210 at 5 & 11; Irene Calboli, *Time to Say Local Cheese and Smile at Geographical Indications of Origin? International Trade and Local Development in the United States*, 53 HOUSTON LAW REVIEW 48, 401–402 (Issue 2) (2015), <https://houstonlawreview.org/article/3942-time-to-say-local-cheese-and-smile-at-geographical-indications-of-origin-international-trade-and-local-development-in-the-united-states>; Babcock and Clemens, *supra* note 116; Boes-Lazo, *supra* note 43 at 149–150.

<sup>245</sup> Puerto Rico Coffee Roasters LLC v. Pan American Grain Manufacturing, Inc., 2015 U.S. Dist. LEXIS 166585 (2015); Cynthia López Cabán, *Coffee Farmers Celebrate Judicial Order*, THE WEEKLY JOURNAL, February 19, 2020, [https://www.theweeklyjournal.com/business/coffee-farmers-celebrate-judicial-order/article\\_fd38be30-528d-11ea-8460-fb14882ab86b.html](https://www.theweeklyjournal.com/business/coffee-farmers-celebrate-judicial-order/article_fd38be30-528d-11ea-8460-fb14882ab86b.html). (Court dismissed Pan United States Grains allegation that PR Coffee Roasters was free riding by selling misleading products); Perfect Daily Grind, *La Industria de café de Puerto Rico: Después de Huracán María*, PERFECT DAILY GRIND, November 8, 2017, <https://www.perfectdailygrind.com/2017/11/la-industria-de-cafe-de-puerto-rico-despues-de-huracan-maria/>; Eliván Martínez Mercado, *Le Cambian el Sabor a Nuestro Café Comercial*, CENTRO DE PERIODISMO INVESTIGATIVO, February 1, 2016, <http://periodismoinvestigativo.com/2016/02/le-cambian-el-sabor-a-nuestro-cafe-comercial/>. (News reports cover the damage made to coffee plantations and how some companies are using imported coffee to meet consumer demand. In turn, changing the flavor of the local coffee.) López Cabán, *supra* note. (Puerto Rico Coffee Roasters and Pan United States Grain own 90% of brands in the Puerto Rico. Puerto Rican Department of Agriculture was estopped by judicial order from prohibiting these making coffee blends)

**Table 8: Product Definition and Effective Organization Issues**

This table 9 in the next pages was created to build the discussion of the issues found for **product definitions and effective organization** policy factors in the DelPaís Law. This table answers the following questions: Does the DelPaís Law cover all products produced in Puerto Rico? If not, do they have a product-specific law and/or regulation? Does each product have a collective organization with a code of practice?

<b>Products</b>	<b>Under DelPaís</b>	<b>Active Associations</b>	<b>Code of Practice</b>	<b>Specialized laws and regulations similar to GIS</b>
Beef	yes	Cooperative of Beef Producers (Cooperativa Muu)	Association's code of practice not publicly available	<p>PR Regs DA REG 5930 establishes criteria for labeling meat as "fresh" does not necessarily guarantee meat is 100% from Puerto Rico as it requires meat temperatures.</p> <p>Laws regulating inspection, adulteration, and misleading labels: 1965 PR LAW 120 and 1969 PR LAW 120;</p> <p>1994 PR LAW 238 to Create the Office to monitor and promote de Industry of Beef in Puerto Rico</p>
Coffee	Maybe under ornamental plants	PROCAFE and The Coffee Growers of PR	Regulations derived from Manuals by Carmen Alamo	<p>Ley de Denominación de Origen del Café Puertorriqueño, 2015 PR LAW 232, 10 LPRA 4201–4212 (2015). (Law creating the Denomination of Origin for Puerto Rican Coffee) certifies coffee is 100% from Puerto Rico.</p> <p><b>Replaced by:</b> Ley de la “Oficina de Cafés de Puerto Rico,” (Law to create the Puerto Rican Coffee Office) 2019 PR LAW 78, 5 LPRA 323 a-h.</p>

Eggs	yes	Puerto Rico Farm Bureau	Regulations are the code of practice	1964 PR LAW 118: Requires eggs produced in Puerto Rico to have the words "Del País"  PR Regs DA REG 5926: Establishes criteria for eggs from PR
Fish	yes	Association of Fishermens of Canovanas, Puerto Rico (PR)	Regulations are the code of practice	Ley del Logo de Pescado Puertorriqueño (Law to certify fish caught in Puerto Rico as "Puerto Rican Fish") 2019 H.B. 2152 18th House 5th Session, (2019), (presented by Franqui Atiles and Ortiz Lugo)  PR Regs DA REG 7949: Establishes code of practice for fishing in PR and for considering fishes from PR
Fruits	yes	Fruits and Vegetable Cooperative of the Center of PR	none	none
Grains	Maybe under starches	Puerto Rico Farm Bureau	Association's code of practice not publicly available	none
Honey	yes	Puerto Rico Beekeepers	Association's code of practice not publicly available	Ley para Prohibir la Rotulación, Promoción y Venta Ilegal de la Miel y sus Productos Derivados, 2015 PR LAW 128, 5 LPRA 3081–3085 (2015). (Law to prohibit the illegal labeling, promotion, and sale of counterfeit honey and derivatives: Certifies that the product is 100% honey)  Para Declarar La Abeja Como Patrimonio Cultural de Puerto Rico 2018 S.B 0974 18th Senate 3rd Session (2018). (Project of the Senate to Recognize the Bee as Puerto Rican Cultural Patrimony)

				PR Regs DA REG 687: Establishes as a requirement to identify source of honey
Milk	yes	Industria Lechera de PR (INDULAC) Milk Producers Cooperative	INDULAC establishes code of practice and certificate of milk from PR; not published	P.R. Regs. DA REG. 8657: Established that for a milk producer to be considered "fresh" the business has to be in Puerto Rico.  1957 PR LAW 34: Establishes office to regulate the industry.  Various regulations establish standards for transportation and sale
Ornamental Plants	Yes	Plantas de la isla de Puerto Rico	Association's code of practice not publicly available	Tax exemptions: 1971 PR LAW 54, 1995 PR LAW 225 and 2011 PR LAW 80;  Law 2015 PR LAW 140: Regulates cultivation practices
Pig	Maybe under meats	Association of Pig Farmers	Association's code of practice not publicly available	Para Reconocer y Declarar el Lechón Asado Puertorriqueño Como Patrimonio Cultural, 2019 PR LAW 180 (Law to Recognize and Declare the Roasted Pig as Cultural Patrimony)  PR Regs DA REG 6834 establishes a certification for pig farmers in Puerto Rico  Law regulating inspection, adulteration, and misleading labels: 1969 PR LAW 120 and 1965 PR LAW 120
Plantains	Maybe under starches	Association of Plantain Farmers	Association's code of practice not publicly available	Various regulations place strict marketing and labeling requirements on imported plantains
Poultry	Maybe under meats	Puerto Rico Farm Bureau	Association's code of practice not publicly available	2013 PR LAW 179: Standards do not necessarily guarantee that the poultry is 100% from Puerto Rico

				2013 PR LAW 179: Regulates what is considered fresh poultry by supermarkets;  Laws regulating inspection, adulteration, and misleading labels: 1965 PR LAW 120 and 1969 PR LAW 120
Rum	no	Rums of PR	"The Rum Standard" not published	2011 PR LAW 248, 13 LPRA 32483 (2011). (Law for Rums of Puerto Rico: regulations to consider Rum "Puerto Rican")
Spices	yes	Puerto Rico Farm Bureau	Association's code of practice not publicly available	Laws regulating inspection, adulteration, and misleading labels: 1965 PR LAW 120 and 1969 PR LAW 120
Vegetables	yes	Fruits and Vegetable Cooperative of the Center of PR	none	none

*B. PRODUCT DEFINITION:*

**1) The DelPaís Law Covers Multiple Products**

Eligibility standards in the DelPaís law state: “All products must be cultivated, produced, processed, and packaged in Puerto Rico; Products must contain ***at least 65% local raw material;*** Obligatory ***domicile*** in Puerto Rico for users of the mark; Eligible products are: ***fruits, milk, honey, meat, eggs, fish, ornamental plants, spices, vegetables, and starches.*** (translation provided)

These eligibility standards make the DelPaís Law different to traditional GIs, as GIs usually cover only one product and not multiple products. Although, DelPaís Law covers only agricultural products, leaving out any product derivatives such as cheese and yogurt made in Puerto Rico.

**2) The DelPaís Law Does Not Have The Required Product-Origin-Quality Links**

The DelPaís Law has no specific definitions for each product with its corresponding quality standards and geographical area. For instance, there is no definition of the particular types of ornamental plants, starches, and meats covered under the law; as pointed in the table, it is unknown

to an interested producer, if coffee, poultry, beef or rice are eligible unless they ask the Department of Agriculture. Moreover, the lack of definitions leaves to the Department of Agriculture the power of discrepancy to reject an eligible producer even though they have a qualifying product.

When examining the reasons for leaving out specific definitions, there is no explanation found in the statement of purpose, legislative history, or assembly diary.<sup>246</sup> However, one argument is that since products like coffee, pig, honey, and fish have specific laws, it is implicit that the policymakers intended to leave any individual definitions to be determined by such laws. In other words, the DelPaís Law leaves the burden of creating the product-origin-quality link on any current or future legislation that protects specific products.<sup>247</sup> However, this argument quickly fails when discovering that products like fruits, spices, and vegetables have no exact rules nor code of practice.<sup>248</sup> Thus, the all-encompassing DelPaís Law and the “Law to Regulate the Agricultural Industry of Puerto Rico” are the only legal protection and institutional structure for such products.<sup>249</sup> While it is true that the products mentioned that have exclusive laws are “legally protected,” the law’s contents lack the required code of practice and quality, traceability, and accountability standards.<sup>250</sup> These laws can only be an indication of the source because there are no product-origin attributions nor product-origin-quality links. Thus, the only plausible argument to explain the absence of product-origin-quality links is that policymakers left this task to the discretion of the associations of farmers that control the supply chain for each product.

### 3) No Qualification Standards (Code of Practice)

Not all associations have a code of practice, and those associations that do have a code

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<sup>246</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, *supra* note 3; Ley para el Uso de la Marca “DelPaís”, 2016 PR LAW 195, *supra* note 33.

<sup>247</sup> LEY DE DENOMINACIÓN DE ORIGEN DEL CAFÉ PUERTORRIQUEÑO, 2015 PR LAW 232, 10 LPRA 4201–4212 (2015); Ruiz Nieves, *supra* note 231; Ley de Denominación de Origen del Café Puertorriqueño, 2015 PR LAW 232, Hearing on 2015 S.B. 951 Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña y de la Región Sur 17th Senate 5th Session, *supra* note 231; Ley de Denominación de Origen de Puerto Rico, Hearing on 2014 S.B.951, Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña y de la Región Sur 17th Senate 5th Session, *supra* note 231.

<sup>248</sup> *Identification of Specialized laws and coverage under DelPaís for products made in Puerto Rico* (2020); *Analysis of Specialized Laws in Puerto Rico* (2020).

<sup>249</sup> LEY PARA EL ORDENAMIENTO DE LAS INDUSTRIAS AGROPECUARIAS DE PUERTO RICO, 1996 PR LAW 238, 5 LPRA 3051-3061.

<sup>250</sup> Santiago, *supra* note 12 at 457–461; Miguel Díaz, *Falta de Rigor en Medida que Exalta el Lechón Asado como Patrimonio Nacional*, ES NOTICIA, December 24, 2019, <https://esnoticiapi.com/falta-de-rigor-en-medida-que-exalta-el-lechon-asado-como-patrimonio-nacional/>.

rarely have it publicly available. A notable exception is the Cafetaleros de Puerto Rico, who made “easy to read” manuals for farmers with extremely detailed step by step instructions as to production, export, and storage. The publicly available manuals are called: “Manual Gráfico para la Producción de Café de Alta Calidad, Desde la Semilla hasta la Taza” (Illustrated Manual for The Production of Specialty Coffee, From the Seed to The Cup) and “Marketing Analysis: An Action Plan for Puerto Rican Coffee Producers”.<sup>251</sup>

#### **4) Geographical Area Data Is Outdated**

Concerning the establishment of each product’s geographic area, only recently, the Puerto Rico Department of Agriculture updated its website to present a map with product cultivation areas in Puerto Rico created by the United States Department of Agriculture Climate Hub of Agricultural Statistics. However, geographical regions of products cannot be accurately determined when the map only has statistics from 2013 to 2016.<sup>252</sup>

### *C. EFFECTIVE ORGANIZATION*

#### **1) Multiple Products, Multiple Organizations**

Since the DelPaís Mark includes diverse categories of products, the Puerto Rican Department of Agriculture had to form a multitude of collaborations with various product associations. The associations are the following:<sup>253</sup>

- Cooperativa de Porcicultores de Puerto Rico (Association of Pig Farmers of Puerto Rico)
- Puerto Rico Beekeepers (Association for honey producers in Puerto Rico)
- Asociación de Agricultores de Puerto Rico (Puerto Rico Farm Bureau): covers all farmers.
- Asociación de Productores de Plátanos (Association of Plantain Farmers)
- Asociación de Pescadores de Canóvanas, PR (Association of Fishermen of Canóvanas, PR)
- Cooperativa MUU (Cooperative of Beef Producers)

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<sup>251</sup> Luis E. Méndez & Mildred Cortes, *Manual Gráfico para la Producción de Café de Alta Calidad, Desde la Semilla Hasta la Taza* (2018), <https://www.uprm.edu/desdelaeaa/2018/11/05/manual-grafico-para-la-produccion-de-cafe-de-alta-calidad-desde-la-semilla-hasta-la-taza/>; CARMEN ALAMO GONZÁLEZ, *Marketing Analysis: An Action Plan For Puerto Rico Coffee Producers* (2007), [https://issuu.com/bibliotecacea/docs/manual\\_para\\_la\\_produccion\\_y\\_exporta](https://issuu.com/bibliotecacea/docs/manual_para_la_produccion_y_exporta).

<sup>252</sup> United States Department of Agriculture & Puerto Rico Department of Agriculture, *Agricultural Statistics Island Level Search All Crops*, USDA CARIBBEAN CLIMATE HUB (2020), [https://caribbeanclimatehub.org/estadisticasagricolas/?page\\_id=2372&lang=en](https://caribbeanclimatehub.org/estadisticasagricolas/?page_id=2372&lang=en).

<sup>253</sup>, *supra* note 248; , *supra* note 248.

- Cooperativa Frutas y Vegetales del Centro (Fruit and Vegetable of the Center of Puerto Rico Cooperative) and Cooperativa Madre Tierra (Mother Earth Cooperative)
- Rums of Puerto Rico
- Plantas de la Isla de Puerto Rico (Plants of the Puerto Rico of Puerto Rico)
- Industria Lechera de Puerto Rico (Indulac) and its Cooperativa de Productores de Leche (Milk Industry Corporation of Puerto Rico and its Cooperative for Milk Producers)
- Los Cafetaleros de Puerto Rico (The Coffee Growers of Puerto Rico) and Productores de Café de Puerto Rico PROCAFÉ (Coffee Producers of Puerto Rico)

The fact that there are numerous organizations has its pros and cons. On the one hand, there is a potential advantage to create the necessary product-origin-quality definitions in the law for each product. Furthermore, associations ease bureaucracy when managing registers, enforcement, formulation, and maintenance of the mark. For instance, a collaboration between Puerto Rican Department of Agriculture and Association of Pig Farmers created “Lechonera Certificada 100% Cerdo de Puerto Rico, Cerdo Rico,” which charged the association to guarantee that all pigs are 100% raised, fed, processed, and roasted in Puerto Rico.<sup>254</sup>

## 2) No Effective Collaboration

Almost all qualifying products have an association registered as a non-profit corporation, except for poultry, eggs, spices, and grains, which are under the Puerto Rican Farm Bureau. However, their members and leaders have agendas separate from the one stipulated for the Association. Moreover, not all organizations are active, not all organizations are participating in the programs of the Department of Agriculture, nor users of the DelPaís Mark, nor all farmers are members of an organization.

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<sup>254</sup> Pedro Santiago, *Cooperativa de Porcicultores presentan su marca; Cerdo Rico 100% de Puerto Rico*, INFORME AGRÍCOLA: PORTAL DIGITAL DE NOTICIAS AGRÍCOLAS EN PUERTO RICO, 2017, <https://www.informeagricola.com/cooperativa-porcicultores-presentan-marca-cerdo-rico-100-puerto-rico/>.

### **3) Limited Users Because Of Unknown Benefits**

Hecho en Puerto Rico’s “Association of Products of Puerto Rico” has effective organizational strategy to attract local businesses into joining. The Association ensures the public display of membership benefits, accomplishments, events, activities, registration process. Whereas, the Department of Agriculture strategy with the DelPaís Mark is quite secretive in the sense that the Department’s website has no information about how to apply, benefits, nor who is in charge. Moreover, the website implies that any published events, activities, and accomplishments are from users of the DelPaís Mark. This creates the following situations:

- Disinterested farmers because there is no information available.
- A “guessing game/fishing expedition” situation where a farmer would have to call or go to the Department where the employee might not know how to assist the farmer.
- Once the farmer gets information about the program, its administrative procedures might deter the farmer from pursuing the use of the DelPaís Mark.

## *D. LEGAL AND INSTITUTIONAL*

### **1) Multiple Owners And Filings In The PRTR**

When verifying the DelPaís Mark’s history in the PRTR, results point to multiple filings and owners each for different goods and services. Various filings usually happen when the person who files registration does not consider expanding the mark to other products and services. However, such multiplicity is odd when the law, legislative history, and general assembly diary contemplate all uses detailed in the three entries; therefore, with no reasonable explanations, the multiple filings are just inefficient and unnecessarily costly.<sup>255</sup>

Moreover, according to the PRTR records, FIDA is the current owner of the DelPaís Mark, but its previous owners were Department of Agriculture’s sub-agencies, ASDA from 2002-2004

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<sup>255</sup> SANTIAGO ET AL., *supra* note 139; LEY PARA EL USO DE LA MARCA DELPAÍS, *supra* note 4; Puerto Rico Trademark and Tradename Register Presentation No. 226720-29-1, 226720-30-1 and 226720-31-1

and Land Management from 2011-2013. There is no explanation other than “blaming arbitrary political changes” for such switch, since all agencies exist in the present day and had the same delegated duties to “create a marketing campaign and administrate the mark.”<sup>256</sup>

Table 10: Registration Of The DelPaís Mark And Cosecha And Crianza In Chronological Order

<b>Mark</b>	<b>Presentation/ Registration No.</b>	<b>Use in commerce</b>	<b>Goods and services</b>
<b>DELPAÍS (Graphic)</b>	36239/ 53779	2002 CANCELED	Juices, nectarines, soda drinks, water
	36237/ 52797	2002 ABANDONED	Coffee, rice, and grains
	44012/ 52010	2002 CANCELED	Products elaborated, processed, frozen, prepared, and packaged: meat, poultry, eggs, milk, game, rabbit, fruits, vegetables, grains, legumes.
<b>COSECHA Y CRIANZA (Graphic)</b>	76396	2011 ABANDONED	None
	76974	2011 ABANDONED	Managed care services, namely, utilization review and pre-certification services.
	76400	2011 ABANDONED	None
	76553	2011 ABANDONED	None
	76973	2011 ABANDONED	None
	76401	2011 ABANDONED	None
<b>DELPAÍS (Graphic)</b>	226720-29-1	2018 ACTIVE	Meat, fish, poultry, and game Dairy products excluding ice cream, ice milk, and frozen yogurt
	226720-30-1	2018 ACTIVE	Coffee: ground, beans, roasted; Empanadas, Honey, Cocoa
	226720-31-1	2018 ACTIVE	Raw Fresh and Unprocessed: herbs, fruits, vegetables, citrus, eggplants, ginger, onions, potatoes, Fresh pumpkins, quince, sweet potatoes, wheat, grains for eating, and watermelon

<sup>256</sup> GONZÁLEZ AND GREGORY, *supra* note 9 at 62; Labajova, *supra* note 42 at 43.

## 2) Dormant And Incomplete Product-Specific Geographic Indications

There are some laws such as 2013 PR LAW 179, PR Regs. DA REG. 5930 and PR Regs.

DA REG. 8657, classified in their purpose statement as “indication of source” as they establish temperature standards to label poultry, pig, and beef as “fresh” to distinguish imported from local products.<sup>257</sup> However, temperature standards do not guarantee products are 100% Puerto Rican when there have been many instances of imported products misleadingly sold as fresh.<sup>258</sup>

Other laws and regulations protect eggs (1964 PR LAW 118 and PR Regs DA REG 5926), rum (Law 218-2011), and honey (PR Regs DA REG 6871) establishing strict standards prohibiting misleading labels, adulteration, and processing to consider products as “originating from Puerto Rico.”<sup>259</sup> The rule set in the laws allow for a product-origin attribution because consumers associate the product as coming from Puerto Rico, but their recognition is limited to the domestic market.<sup>260</sup> However, these GI laws are dormant, meaning there has been no governmental action concerning implementation; these include:

- Law 180-2019: Recognizes all 100% made in Puerto Rico roasted pig as cultural heritage.<sup>261</sup>
- “Law that creates the Office for Puerto Rican Coffee”: Establishes a denomination of origin for coffee 100% made in Puerto Rico.<sup>262</sup>
- The Project of the Senate 974: Recognizes all 100% made in Puerto Rico honey as cultural patrimony.<sup>263</sup>
- The Project of the Camera 2152: Certifies all native fish caught in Puerto Rico as “Puerto Rican Fish.”<sup>264</sup>

Moreover, the laws suffer from the same issues as the DelPaís Law such as:<sup>265</sup>

<sup>257</sup>, *supra* note 248; , *supra* note 248.

<sup>258</sup> CyberNews, *La batalla del pollo con congelado vs el fresco*, NOTICENTRO (2011), [https://www.wapa.tv/noticias/locales/la-batalla-delpollo-congelado-vs-el-fresco\\_-20110523151358.html](https://www.wapa.tv/noticias/locales/la-batalla-delpollo-congelado-vs-el-fresco_-20110523151358.html).

<sup>259</sup>, *supra* note 248; , *supra* note 248.

<sup>260</sup> Santiago, *supra* note 26 at 427; See Appendix: *Identification of Specialized laws and coverage under DelPaís for products made in Puerto Rico* (2020).

<sup>261</sup> PARA RECONOCER Y DECLARAR EL LECHÓN ASADO PUERTORRIQUEÑO COMO PATRIMONIO CULTURAL, *supra* note 61.

<sup>262</sup> Ley de la “Oficina de Cafés de Puerto Rico”, 2019 PR LAW 78, LEY DE DENOMINACIÓN DE ORIGEN DEL CAFÉ PUERTORRIQUEÑO, 2015 PR LAW 232, 10 LPRA 4201

<sup>263</sup> Notiséis 360, *Buscan Convertir la Abeja de Puerto Rico Como Parte de Nuestro Patrimonio*, WIPR, January 17, 2019, <https://www.wipr.pr/buscan-convertir-la-abeja-de-puerto-rico-como-parte-de-nuestro-patrimonio/>; PARA DECLARAR LA ABEJA COMO PATRIMONIO CULTURAL DE PUERTO RICO 2018 S.B 0974 18TH SENATE 3RD SESSION, *supra* note 61.

<sup>264</sup> Ayeza Díaz Rolón, *Aprueban la Ley del Logo del Pescado Puertorriqueño*, EL VOCERO, February 13, 2020, [https://www.elvocero.com/gobierno/aprueban-la-ley-del-logo-del-pescado-puertorriqueño/article\\_a48051d0-4ea6-11ea-9d9d-e802f78b953.html](https://www.elvocero.com/gobierno/aprueban-la-ley-del-logo-del-pescado-puertorriqueño/article_a48051d0-4ea6-11ea-9d9d-e802f78b953.html); LEY DEL LOGO DE PESCADO PUERTORRIQUEÑO (LAW TO CERTIFY FISH CAUGHT IN PUERTO RICO AS “PUERTO RICAN FISH”) 2019 H.B. 2152 18TH HOUSE 5TH SESSION, *supra* note 61.

<sup>265</sup> Díaz, *supra* note 250; Notiséis 360, *supra* note 263.

- No specific administrative steps concerning quality control standards
- No assignment of funds
- No detailed procedures concerning cultivation and processing practices; however, when stated, standards are loose and vague.
- No supply chain traceability and accountability
- No mode of practice
- Laws are created for other purposes that are not for economic development, such as preservation of species and unfair competition; however, when attempting to specify how to ameliorate unfair competition or preserve a species, the laws are vague.
- Geographical maps and register have no function other than adding administrative work. Moreover, the product's geographic area is not delimited.
- Agencies have the burden to create regulations that address the gaps in the laws.
- No step by step process for the GI registration, approval, appeal, and other administrative processes. For instance, laws do not detail who applies for legal protection; in general, it is the agency on behalf of the collective organization.

### **3) Inactive Plans to “Nationalize” the DelPaís Mark**

Despite the claims made in the DelPaís Law’s explanatory statement and Department of Export and Commerce’s declaration on November 21, 2016, Senate Hearing to “nationalize the mark” to export products, these plans are currently dormant and likely to stay this way for a long time.<sup>266</sup> Reasons for this situation are that the Department of Agriculture’s efforts maintain the DelPaís Law’s true intentions of targeting local consumers. Moreover, Puerto Rican Congress derogated the “Law to create a National Mark, Act 70-2013,” creating a committee charged with nationalizing the DelPaís Mark and the Puerto Rican Congress transferred the petition to the Department of Export and Commerce, which to date, has made no efforts to address the issue.<sup>267</sup>

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<sup>266</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, *supra* note 3; Ley para el Uso de la Marca “DelPaís”, 2016 PR LAW 195, *supra* note 33 at 44549.

<sup>267</sup> LEY PARA LA PROMOCIÓN DE PUERTO RICO COMO DESTINO, 2017 PR LAW 17, 23 LPRA 6982 (2017); LEY PARA EL DESARROLLO DE UNA MARCA PAÍS, 2013 PR LAW 70, 2013 PR H.B. 4, 16ta Asamblea Legislativa—6ta Sesión Ordinaria AVANCES LEGISLATIVOS DE PUERTO RICO ; José Villamil, *La Marca País*, 4 PERSPECTIVAS (2013), <http://www.estudiostecnicos.com/pdf/perspectivas/2013/abril2013.pdf>; Dra. Ivette Soto Vélez, *La Imagen de Marca de Puerto Rico y su Relación con el Turismo*, RRPPnet PORTAL DE RELACIONES PÚBLICAS, <http://www.rppnet.com.ar/imagenpais.htm>.

Lastly, legal practitioners justify Puerto Rico’s general disinterest in intellectual property to the general opinion that it is something for the long term, registration adds no value, and the limited market strength and visibility to export.<sup>268</sup>

#### **4) Current Research Investigation Only Relates to Coffee**

In preparation for implementing the “Law for a Denomination of Origin for Puerto Rican Coffees,” the Puerto Rican Department of Agriculture invested \$154 million to increase labor rates to \$9.50, plant 6 million trees, and conduct six investigations by the University of Puerto Rico Mayagüez Campus.<sup>269</sup> Among these investigations, Prof. Carmen Alamo, Ph.D., leads “Designing an Integrated Model for the Coffee Denomination of Origin,” which helped create a forum discussing potential economic development of GIs.<sup>270</sup> This investigation is still ongoing, and all information is only available through Carmen Alamo, Ph.D.

#### **4) Financial Support: Assistance, Incentives, and Tax Exceptions**

Concerning financial support, Puerto Rico has historically implemented regulations with an “industrialization by invitation” approach favoring foreign and United States corporations.<sup>271</sup> However, the DelPaís Mark users qualify for more than fifteen tax exemptions catering to small and medium enterprises, young entrepreneurs, research and development, creative industries, tourism businesses, and agriculture.<sup>272</sup>

Moreover, farmers can apply for loans, securities, and grants, receive training, buy land, participate in research and development investigations, and other financial support programs.<sup>273</sup> However, users of the DelPaís Mark have access to some exclusive benefits. Also, farmers can

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<sup>268</sup> Figueroa and Reiya, *supra* note 60; Coral M. Vera Rodríguez, *Las Ideas Son Nuestras y De Nadie: Alternativas a la Propiedad Intelectual y Su Acceso*, 86 REVJURUPR 945, 960–966 (2017).

<sup>269</sup> Alamo González, *supra* note 73; Tribuna, *Senado propone denominación de origen para el café puertorriqueño.pdf*, TRIBUNA PUERTO RICO, May 9, 2014, <https://tribunapr.com/2014/05/09/senado-propone-denominacion-de-origen-para-el-cafe-puertorriqueño.html>; Departamento de Agricultura de Puerto Rico, *Inversión en la investigación agrícola*, INFORME AGRÍCOLA: PORTAL DIGITAL DE NOTICIAS AGRÍCOLAS EN PUERTO RICO, March 30, 2017, <https://www.informeagrícola.com/inversion-en-la-investigacion-agrícola/>. Locals refer to the University of Puerto Rico Mayagüez Campus as the “Colegio.”

<sup>270</sup> Alamo González, *supra* note 73.

<sup>271</sup> IRIZARRY MORA ET AL., *supra* note 2.

<sup>272</sup> Christian Reeves, *A Detailed Analysis of Puerto Rico’s Tax Incentive Programs*, PREMIER OFFSHORE, August 5, 2017, <https://premieroffshore.com/detailed-analysis-puerto-ricos-tax-incentive-programs/>.

<sup>273</sup> Departamento de Agricultura, *Nosotros: Autoridad de Tierras, Laboratorio Ecológico, Fondo de Innovación para el Desarrollo Agrícola de Puerto Rico, and Corporación de Seguros Agrícolas*, DEPARTAMENTO DE AGRICULTURA (2020), <https://www.agricultura.pr/nosotros>.

apply to other marks such as Hecho en Puerto Rico, SMEs (PYMES) certification, and the specialized certifications for eggs, meat, poultry, pig, and rum. In sum, regulations bring excellent financial support for producers under the DelPaís Mark.

When comparing tax exemptions for foreign and local corporations, benefits for both are the same; however, it is easier for international corporations to apply due to their higher income, critical mass in production volume, and access to legal services. However, the Department of Agriculture provides to all licensed users training for best management, entrepreneurship, and agricultural practices; exclusivity in department-sponsored markets, providing food to schools and food basket programs; and incentives to increase production.<sup>274</sup>

*E. CURRENT ECONOMIC IMPACT: LIMITED STATISTICS AND REVENUE REPORTS ABOUT THE DELPAÍS LAW AND MARK*

There is limited data about statistics, reports about the DelPaís Mark and Law. The Department of Agriculture has no electronically published records about current and past statistics for agricultural impact, supermarket and farmer's revenue, number of the DelPaís Mark users, and other information because they are unpublished internal reports. I contacted the employees in charge of the DelPaís Mark and Law Programs, Salvador Ramírez, Saritza Aulet and Amarilis De Jesus Lora to get access to such information.

The Economists Heriberto Martínez, Jose Israel Alameda, and Juan Lara informed me that the Department of Agriculture commissions the Puerto Rican Department of Commerce and Export in collaboration with Institute of Statistics to do all reports and statistics related to the economic impact of the DelPaís Mark and Law programs. The economists indicated that the limited information is due to the fact the law is recent and that both the Department of Commerce and the Institute of Statistics are currently undergoing reorganization.

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<sup>274</sup> GONZÁLEZ AND GREGORY, *supra* note 9 at 62.

As an alternative, Martínez referred me to: Juaquin Villamil who manages the commissioned reports and studies relating to economic impact; Agnes Crespo Esq. who specializes in the legal technical aspects of economic development and worked at the Department of Economic Development and Commerce of Puerto Rico; and the Business Administration Graduate Program of the University of Puerto Rico that works in collaboration with the Association of Products of Puerto Rico creating analysis and reports about the economic impact of the Hecho en Puerto Rico Mark.

There are some newspaper articles discussing the economic impact in isolated instances, in other words, particular supermarkets decide to give priority and promote products under the DelPaís Mark and Law (arranged chronological order):

- **Aug 2008:** Wal-Mart Public-Private Agreement with the Department had \$2.4 million invested, 20 farmers, \$2.3 million in sales, 40 participating Wal-Marts, \$11.7 million in production volume and the agricultural industry valued at \$15 million.<sup>275</sup>
- **Dec 2008:** The Agreement expanded to 40 farmers and the Department invested \$10 million.<sup>276</sup>
- **2009:** The Agreement expanded to 9 Sam's Clubs and 31 Amigos Supermarkets (owned by Wal-Mart) which represented in an increase to 150 farmers and \$4.8 Million in sales.<sup>277</sup>
- **2011-2013:** “Cosecha y Crianza” generated in its first year \$855,000 in income in the leading shop located in the biggest mall in Puerto Rico.<sup>278</sup> By 2012 sales were at \$1 million in the leading shop and \$2.4 million in 11 farmer's markets.<sup>279</sup> Also, local product purchases in public schools increased from 29-46%, and users of the mark rose from 766-900.<sup>280</sup> The

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<sup>275</sup> Alfaro, *supra* note 225.

<sup>276</sup> Alfaro, *supra* note 225.

<sup>277</sup> Alfaro, *supra* note 225.

<sup>278</sup> Martínez, *supra* note 236.

<sup>279</sup> Asociación de Restaurantes de Puerto Rico, *Crecimiento, Oportunidad y Empleos: Plan de Desarrollo y Continuidad 9* (2012); Departamento de Agricultura, *Visitarnos en La Placita en PLAZA*, NOTICIAS, April 19, 2018, <https://www.agricultura.pr/post/visitarnos-en-la-placita-en-plaza>; Departamento de Agricultura, *supra* note 34.

<sup>280</sup> Primera Hora, *Estrenan iniciativa a favor de la agricultura*, PRIMERA HORA, 2011, <https://www.primerahora.com/noticias/gobierno-politica/notas/estrenan-iniciativa-a-favor-de-la-agricultura/>; Martínez, *supra* note 236.

Department of Agriculture invested \$4 million in 2012 and was looking to expand to \$5 million, with an added \$150,000 explicitly invested in young agricultural professionals. During the time of “Cosecha y Crianza,” the Department of Agriculture designated \$90 million to cafeteria school purchases.<sup>281</sup>

- **2016:** Department of Agriculture expanded public-private agreements to Kash N’ Karry supermarket (6 stores), having a \$4.4 million economic impact and increased demand by 30%, which means that with the use of DelPaís Mark increased sales by \$1.2 million.<sup>282</sup>
- **2017:** \$919 million value of the industry; USDA implements a “Local Food Promotion Program” and “Know Your Farmer, Know Your Food Initiative” to work directly with communities to build new farmers markets or promote existing ones as a way to “strengthen local food systems in Puerto Rico.”<sup>283</sup>
- **2019:** \$5.4 million sales in Selectos Supermarkets Franchise (35 stores at the time), which was a 20% increase (\$2.7 million) in sales from last year.<sup>284</sup> Today there are approximately 400 supermarkets in public private agreements with the Department.

Thanks to these agreements and collaborations, local products get priority for prominent display in the leading Puerto Rican supermarkets, such as Supermax and Econo.<sup>285</sup> The Department of Agriculture is currently using aggressive tactics for making products carrying the DelPaís Mark known, implementing a total of eleven farmers’ markets, most of them located in the northern Puerto Rico.<sup>286</sup> They are collaborating with the Association of Products of Puerto

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<sup>281</sup> Andrea Martínez, *Nueva Promoción para Productos de Aquí*, EL NUEVO DÍA, November 16, 2011, <https://advance.lexis.com/api/permalink/8420fdf7-e80b-4d32-90c1-183b72d59f13/?context=1000516>; Martínez, *supra* note 225.

<sup>282</sup> Costa, *supra* note 34.

<sup>283</sup> Ken Keck, *Puerto Rico Works with USDA to Strengthen Local Food Systems*, USDA, 2017, <https://www.usda.gov/media/blog/2015/11/03/puerto-rico-works-usda-strengthen-local-food-systems>.

<sup>284</sup> Antonio Gómez, *Nueva rotulación para resaltar el producto local*, EL NUEVO DÍA, 2019; News is my Business, *Agriculture Dept. to boost marketing of local products sold under “DelPaís” brand*, NEWS IS MY BUSINESS, 2019, <https://newsismybusiness.com/agriculture-dept-to-boost-marketing-of-local-products-sold-under-delpais-brand/>; Sabrosía Puerto Rico, *Se Renueva Colaboración para Promover Marca “DelPaís”*, SABROSIÁ, 2019, <https://www.sabrosia.pr/comida-saludable/2019/08/21/se-renueva-colaboracion-para-promover-marca-delpais.html>; Sabrosía Puerto Rico, *supra* note 34.

<sup>285</sup> Sabrosía Puerto Rico, *supra* note 34; Costa, *supra* note 34.

<sup>286</sup> Departamento de Agricultura, *supra* note 34. Farmers Market of the Department are in: North: San Juan, Bayamón, Carolina, Canóvanas, Guaynabo and Caguas; West: Mayagüez and Aguadilla; and South: Ponce and Guayama.

Rico and Cámara de Mercadeo, Industria y Distribución de Alimentos, (Chamber of Marketing, Industry, and Distribution of Food or MIDA) to participate in their private events. Among them: “The Month of the Puerto Rican Industry” in April, “Small Business Saturday,” “Hecho en Puerto Rico Week,” and MIDA’s expos.<sup>287</sup> The Department of Agriculture’s receives revenues from customs on both imported and domestic agricultural products, but a break down on these customs show that the majority are from imported products. The price premium for local products deters some consumers from buying them; however, recent events have led consumers to buy more local products at lower prices.

### 1) Where is the DelPaís Mark and Law Situated?

As the dissertation develops, this section will evaluate the situation of the DelPaís Law as compared the Café de Colombia and Kona Coffee.

Table 11: Summary Of Why The DelPaís Law And Trademark Failed

### III. CONCLUSION: SUMMARY

A GI helps local producers distinguish their products from imported products, justify a higher price, and compensate scarcity in critical mass production. In essence, buying local is a way to justify the price differential between domestic and imported products. The DelPaís Mark and Hecho en Puerto Rico are not traditional GIs as they come about to counteract local market dependencies on imported products and do not currently contemplate entering the international market.

The DelPaís Law’s purpose for promoting domestic product consumption is closer to the sociological than the economic reason for implementing a GI, meaning the imposition of the GI was to change consumer's cultural and historical preferences rather than increase commercialization through exports. It seems that the current efforts of the Puerto Rican

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<sup>287</sup> Id. See the News section in the Puerto Rican Department of Agriculture of Puerto Rico Website: <https://www.agricultura.pr/noticias>.

Department of Agriculture align with the DelPaís Law's purpose somewhat more than in the early days of the DelPaís Law. However, the DelPaís Law's platform is incomplete when considering the lack of export plans, collaborative efforts, an organization in economic plan structure, and overall uniformity in branding message.

## CHAPTER IV RECOMMENDATIONS

This chapter details the expected suggested recommendations to develop the DelPaís Mark and Law's potential for becoming a proper geographic indication (GI). As the dissertation develops the proposed recommendations, implementation, and export plans will expand or contract, but they initially prove that a systematic change to the DelPaís Law is viable. If during the process of further investigation there is no information or benefits, an explanation will be provided as to why the recommendations were disregarded and excluded.

### I. PREVIOUS CONSIDERATIONS BEFORE IMPLEMENTATION

#### A. *POLITICAL PARTIES AND INDIVIDUAL INTERESTS*

The recommendation's anticipate issues with the Puerto Rican Congress's willingness to implement them and keep the required continuity, enforcement, organization, and follow up crucial for a GI to be effective. For instance, the Puerto Rican Congress will be reluctant to implement recommendations that provide economic benefits if they do not provide political benefits. Another problem is the individualistic culture within Puerto Rico affecting the collective efforts to advance the goals of the GI law and associations. In other words, that there is a difference between the DelPaís Law's purpose, the association's intentions as a whole, of their leader and each member. For instance, there might be a disinterest for the producer to export because they only want to generate enough income to cover production costs; such interest goes against the traditional GI policy purposes to export.

#### B. *SUPREMACY AND COMMERCE CLAUSE LIMITATIONS*

The United States Constitution's **Supremacy** and **Commerce** Clauses have significant influence on the DelPaís Law. Although, Puerto Rico is not a State, it is treated like one. *Downes v. Bidwell* determined that for legal subject matters, Puerto Rico is a "State"; but politically speaking, it is an "unincorporated territory belonging but not a part of the United States."<sup>288</sup>

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<sup>288</sup> 182 U.S. 244 (1901); See Also: PÉREZ, *supra* note 17 at 34.

The **Supremacy Clause** states: “the laws of the United States under the authority of the United States, shall be the supreme law of the land.” With this Clause, the subject matter regulated by federal law preempts regulation in state law.<sup>289</sup> In the case here, Puerto Rico has a domestic Trademark and Moral Rights Act complementary to the United States counterparts, the Lanham Act, and Copyright Act. However, there is a restriction on regulating patents because it is a federally preempted subject.<sup>290</sup>

Puerto Rico’s Trademark Act is a mirror image of the Lanham Act, intending to protect names, logos, slogans, and symbols.<sup>291</sup> The main difference is that local law trademark registration requires use within Puerto Rico’s commerce, while federal law requires interstate commerce.<sup>292</sup> Thus, when registering a PRGI in Puerto Rico and the United States, it must be used in commerce in both places. The registering of a trademark in Puerto Rico gives a claimant access to local courts which helps avoid costly federal litigation as it provides exclusive statutory remedies such as injunctions, temporary restraining orders, and monetary damages.<sup>293</sup>

Moreover, the Puerto Rican Supreme Court’s interpretations are remarkably similar to those of the United States Supreme Court. For example, in the landmark case *Eneglotaria Medicine Co. v. Sosa López*, where parties using brands containing the words “Puerto Rico,” the court determined that companies cannot exclusively own a geographic term for its products.<sup>294</sup> A similar attempt is Hecho en Puerto Rico, which cannot be exclusively owned by the Association of Products of Puerto Rico, despite multiple attempts to do so in the Projects of the Senate 671 and 400.<sup>295</sup> In turn, the Association of Products of Puerto Rico is without any power to claim

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<sup>289</sup> Bordas Co. v. Secretario de Agricultura, 87 TSPR 534 (1963).

<sup>290</sup> Diego A. Ramos, *Software Protection in The Commonwealth of Puerto Rico*, 14 MARSHALL J. COMPUTER & INFO. L. 745, 745 (1996).

<sup>291</sup> Nieves, *supra* note 86 at 85.

<sup>292</sup> Ramos, *supra* note 290 at 757–759; Sebastián M. Torres Rodríguez, *The Convergence of Design Patent Law, Trademark Law and Copyright Law for Better Protection of Intellectual Property for Commercial Designs*, 5 UNIVERSITY OF PUERTO RICO BUSINESS LAW JOURNAL 122, 135 (2014); Pérez Vega, *supra* note 6 at 362–366.

<sup>293</sup> Ramos, *supra* note 290 at 758; Nieves, *supra* note 86 at 88–89.

<sup>294</sup> Eneglotaria Medicine Co. v. Sosa López, , 38 TSPR 604 (1928). Santiago, *supra* note 12 at 409; Nieves, *supra* note 86 at 86–87.

<sup>295</sup> *Para adoptar una nueva ley para regir a la Asociación de Productos de Puerto Rico, Inc. y derogar la Ley Núm. 50 de 13 de marzo de 1913 (1913 PRA LAW 50)*,

legitimacy and recognition of the mark.

Another example is *Cooperativa de Cafeteros de Puerto Rico v. F. Colón Colón*, 91 DPR 372, 1964 PR Sup. LEXIS 371 (P.R. 1964) where the Cooperative wanted to register “Café Rico,” but received a rejection because “Rico” is an unregistrable term that can either describe the coffee’s geographic origin or the coffee’s flavor; however, the court adopted the doctrine of secondary meaning to grant the term’s registration.

The second influence is the **Commerce Clause**, which states that: “Congress shall have power [t]o regulate Commerce with foreign Nations, and among the several States (including Puerto Rico).”<sup>296</sup> With this Clause, laws in Puerto Rico cannot substantially limit activities of commerce, channels of trade, or put an unreasonable burden on interstate commerce. For example, in *Commonwealth v. Northwestern Selecta, Inc.*, 185 TSPR 40 (2012) the Puerto Rican Supreme Court declared unconstitutional 1992 PR LAW 195 because the law “imposed tariffs to imported beef which monies went to a fund for the exclusive development of the Puerto Rican beef industry”.<sup>297</sup> In the case, Northwestern felt that the fund contravened with its economic interests as it violates the Commerce Clause of the United States Constitution. In other words, the Court declared that local Congress could not impose tariffs on imported products advancing local products.

Under some Sui Generis systems, a GI law needs a private fund to maintain system and product sustainability; however, in the case of this dissertation, if the Department of Agriculture creates a fund for the DelPaís Law, local product industry cannot exclusively benefit because it

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*disponer para la aplicación y vigencia de sus disposiciones y para otros fines relacionados 2013 S.B. 400 17th Senate 1st Session* (2013); Letter from Hon. Gilberto Rodríguez Valle, *Re:P. de la S. 400* (2013), <http://industrialespr.org/download/CongressionalTestimonies/PS%20400%20-%20Asoc.%20Productos%20PR.pdf>; Letter from Hon. Gilberto Rodríguez Valle, *P. de la S. 400* (2013), <http://www.camarapr.org/ponenciasFigueroa/P-S-400-abril-9-2013.pdf>; Letter from Hon. Gilberto Rodríguez Valle, *P. de la S. 671* (2013), <http://industrialespr.org/download/CongressionalTestimonies/PS%20671%20-%20Productos%20de%20PR%20final.pdf>.

<sup>296</sup> U.S. CONST. Art. I, Sec. 8 Cl. 3

<sup>297</sup> Commonwealth/ELA v. Northwestern Selecta, Inc., 185 TSPR 40 (2012). Commonwealth and Estado Libre Asociado are used interchangeably to refer to the political status of Puerto Rico

would go against the Supremacy and Commerce Clause; in other words, the fund, to be valid, would also have to benefit the imported product industry. Thus, recommendations must comply with the Supremacy and Commerce Clause of the United States Constitution.

### C. THE ADDITIONAL BUREAUCRACY OF PUERTO RICO OVERSIGHT, MANAGEMENT, AND ECONOMIC STABILITY ACT (PROMESA)

The difference between what the Puerto Rican government can and should do is even more relevant after the imposition of PROMESA's fiscal supervision board. As mentioned in the introduction, the case *Franklin Cal. Tax-Free Trust* addressed if the Puerto Rican government can declare bankruptcy using the local Bankruptcy Law called Ley para el Cumplimiento con las Deudas y para la Recuperación de las Corporaciones Públicas de Puerto Rico"(Puerto Rico Public Corporation Debt Enforcement and Recovery Act).<sup>298</sup> The Court declared the law preempted by the United States Bankruptcy Code as its Chapter 9 creates an exception to the Code's definition of "State" where Puerto Rico is not considered as such.<sup>299</sup> As a response to the Court, the Federal Congress imposed PROMESA, which created a board, whose members are designated by Federal Congress and the United States President to oversee and monitor the government's budget and start bankruptcy negotiations.<sup>300</sup>

Many legal scholars criticize PROMESA's impact, stating that the board has an enormous discretion concerning any local laws and decisions taken by the Puerto Rican Congress and Governor. They can approve, reject, or revert these with their recommended changes to keep a balanced governmental budget.<sup>301</sup> Thus, the board adds an unnecessarily bureaucratic process to lawmaking.

<sup>298</sup> Harvard Law Review, *Puerto Rico Public Corporation Debt Enforcement and Recovery Act*, 2014 PR Law Act No. 17, 128 HARV. L. REV. 1320 (2015), [https://harvardlawreview.org/2015/02/puerto-rico-public-corporation-debt-enforcement-and-recovery-act/#:~:text=On%20June%2028%2C%202014%2C%20Puerto,Enforcement%20and%20Recovery%20Act%20&text=\(Recovery%20Act\)%2C%20which%20allows,reorganization%20under%20the%20Recovery%20Act.;%20Cabranes,%20supra%20note%2027.%20PANTOJAS%20GARCIA,%20supra%20note%2017%20at%20330–331;%20PEREZ,%20supra%20note%2017%20at%20177–226%20and%20299.%20Santiago,%20supra%20note%2012%20at%20364;%20RUBEN%20BERRIOS%20MARTINEZ,%20FERNANDO%20MARTIN%20GARCIA%20&%20FRANCISCO%20CATAL%20OLIVERAS,%20PUERTO%20RICO%20NACION%20INDEPENDIENTE%20IMPERATIVO%20DEL%20SIGLO%20XXI%2018–46%20\(1%20ed.%202010\).](https://harvardlawreview.org/2015/02/puerto-rico-public-corporation-debt-enforcement-and-recovery-act/#:~:text=On%20June%2028%2C%202014%2C%20Puerto,Enforcement%20and%20Recovery%20Act%20&text=(Recovery%20Act)%2C%20which%20allows,reorganization%20under%20the%20Recovery%20Act.;%20Cabranes,%20supra%20note%2027.%20PANTOJAS%20GARCIA,%20supra%20note%2017%20at%20330–331;%20PEREZ,%20supra%20note%2017%20at%20177–226%20and%20299.%20Santiago,%20supra%20note%2012%20at%20364;%20RUBEN%20BERRIOS%20MARTINEZ,%20FERNANDO%20MARTIN%20GARCIA%20&%20FRANCISCO%20CATAL%20OLIVERAS,%20PUERTO%20RICO%20NACION%20INDEPENDIENTE%20IMPERATIVO%20DEL%20SIGLO%20XXI%2018–46%20(1%20ed.%202010).)

<sup>299</sup> Id.

<sup>300</sup> Id.

<sup>301</sup> PANTOJAS GARCIA, *supra* note 17 at 330–331; PÉREZ, *supra* note 17 at 177–226 and 299. Santiago, *supra* note 12 at 364; BERRIOS MARTINEZ, MARTIN GARCIA, AND CATALÁ OLIVERAS, *supra* note 298 at 18–46. David Skeel, *REFLECTIONS ON TWO YEARS OF P.R.O.M.E.S.A.*, 3 REVISTA JURIDICA UPRP 862, 880–884 (2018), <http://revistajuridica.uprp.edu/wp-content/uploads/2018/06/09-2-years-of-PROMESA-1.pdf>.

**D. INTERNATIONAL SHIPPING LIMITED TO USING BOATS OF THE UNITED STATES**

The United States in 1900 and 1917, passed two laws still in force today, called the Foraker

and Jones Acts, which state:

**Foraker (1900) Sec. 9.**:[T]he *coasting trade* between Porto Rico and the United States shall be regulated in accordance with the provisions of *law applicable to such trade between any two great coasting districts of the United States.*<sup>302</sup> (great coasting districts include “all districts, States or Territories, on the seacoast and navigable rivers between the eastern limits and the southern limits of Georgia to...the river Perido and western limits”.)

**Jones (1920) 46 USC § 50102:** “Ownership and operation of the *fleet by citizens of the United States* insofar as practicable.”<sup>303</sup>

Legal scholar interpretation state that “the statutes, among other things, require shipping between United States ports to be conducted by the United States flagged ships.” Thus, Puerto Rican products cannot be directly sent to Europe in a non-US international flagged ship.<sup>304</sup> Puerto Rican Products must be first transported in a United States flagged ship, make a stop in the United States, and then arrive to Europe; conversely, the same rules apply with any European products coming into Puerto Rico’s ports. Thus, any products imported or exported must make an extra stop in the United States and then land to Puerto Rico in a US flagged ship which increases costs to Puerto Rican products.

**E. THE “UNCHARTED WATERS” OF INDIRECT TREATY PARTICIPATION**

Puerto Rico cannot participate directly in treaties, meaning that international treaties are applicable only if the United States ratifies them and does not expressly exclude Puerto Rico.<sup>305</sup> The effect on PRGIs policies is that they cannot subscribe entirely to the obligations by international treaties that protect internationally recognized GIs. For instance, Puerto Rico cannot partake in the Lisbon Agreement, which grants international protection and recognition to GIs

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<sup>302</sup> ORGANIC ACT OF 1900, *Foraker Act of 1900*, 1 LPRA Cap. 191 Stat. 77 9 (1900), <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/31/STATUTE-31-Pg77.pdf>. United States government and citizens had issues pronouncing the island’s name, often misspelling Puerto Rico as Porto Rico.

<sup>303</sup> MERCHANT MARINE ACT OF 1920, *Jones Act*, 46 USC 50102 (1920), <https://www.law.cornell.edu/uscode/text/46/50102>.

<sup>304</sup> BERRIOS MARTÍNEZ, MARTÍN GARCÍA, AND CATALÁ OLIVERAS, *supra* note 298; PÉREZ, *supra* note 17; PANTOJAS GARCÍA, *supra* note 17.

<sup>305</sup> Santiago, *supra* note 12 at 394–397.

because the United States is not a member.<sup>306</sup> Nevertheless, Puerto Rico can indirectly participate with United States membership in TRIPS, which prohibits misleading GI use.<sup>307</sup>

In the case of the DelPaís Law and Mark (or any other PRGI for that matter), they can comply with requirements established by TRIPS, but this may be at the expense of the conditions set by the Lanham Act and Puerto Rico Trademark Act. For instance, a trademark acting as a GIs can end up without protection if the name is contrary to the product's origin or products do not come from the stated origin. Moreover, Puerto Rico, due to its territorial status, is impeded from representing itself on an international stage and depends on the United States to do such a task. The implications are unknown, but legal scholars speculate that such indirect representation in any potential unfair competition, infringement, usurpation, and imitation litigation matter is extremely slow, bureaucratic, and complex.<sup>308</sup>

#### *F. DELPAÍS LAW AND MARK'S CLASSIFICATION BASED ON CHAPTER I DISCUSSION*

<b>Subject matter</b>	<b>Characteristics of DelPaís</b>
<b>Legal protection</b>	Lanham Act, Puerto Rican Trademark Law, Law to use the DelPaís Mark and TRIPS
<b>Ownership</b>	Puerto Rican Department of Agriculture; sub-agency FIDA Ownership non-transferable (not typical of a certification mark)
<b>Protected Products</b>	Specific group of agricultural products
<b>Product origin link</b>	<ul style="list-style-type: none"><li>▪ Name “Productos DelPaís Puerto Rico” (products of the country of Puerto Rico) designates origin of product, but logo dilutes such designation</li><li>▪ A good reputation within the island compared to its privately-owned equivalents</li><li>▪ Incomplete product-origin-quality attribution, although the products are attributable to Puerto Rico, the quality and characteristics are not because the law does not provide the specifications that make the product unique to the area.</li></ul>

<sup>306</sup> World Trade Organization (WTO), *Overview: the TRIPS Agreement*, WORLD TRADE ORGANIZATION (WTO) (2020).

<sup>307</sup> World Intellectual Property Organization (WIPO), *Summary of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958)*, WORLD INTERNATIONAL ORGANIZATION (WIPO) (2020), [https://www.wipo.int/treaties/en/registration/lisbon/summary\\_lisbon.html](https://www.wipo.int/treaties/en/registration/lisbon/summary_lisbon.html).

<sup>308</sup> Santiago, *supra* note 12 at 450–451, 457–458; Masaaki Kotabe, *Evolving Intellectual Property Protection In The World: Promises and Limitations*, 1 U. PUERTO RICO BUS. LJ 1, 3 & 6 (2010); Darryl C. Wilson, *The Caribbean Intellectual Property Office (CARIGO): New, Useful, and Necessary*, 19 MICHIGAN STATE UNIVERSITY COLLEGE OF LAW JOURNAL OF INTERNATIONAL LAW 551, 553 & 582 (2011); Amanda R. Collazo Ma, *Puerto Rico's Author's Moral Rights Law of 2012: A Model for Federal Recognition and the Protection of Authors' Moral Rights*, REVISTA DE DERECHO PUERTORRIQUEÑO 187, 191 (2011).

	<ul style="list-style-type: none"> <li>▪ Not all products have quality standards, traceability, qualifications, and code of practice established by governmental regulations; some quality standards established by producers.</li> </ul>
<b>Nature</b>	Private and collective, associations have power over product's supply chain
<b>Rights</b>	Belongs to qualifying producers

## II. IDENTIFIED TAKEAWAYS

As this dissertation progresses, this section will evaluate the feasibility (the advantages and disadvantages) of the listed takeaways from the Colombia and Hawaii Coffee GI laws.

## III. PROPOSED CHANGES

As this dissertation progresses, this section will evaluate, the preferred changes, alternatives, and examples for the DelPaís Law. Here, I present what I have found up to this moment.

### A. PRODUCT DEFINITION:

#### 1) Associations Must Formulate A Code Of Practice

Associations can use “Illustrated manual for the production of specialty coffee, from the seed to the cup” and “Marketing Analysis: An Action Plan for Puerto Rican Coffee Producers” as a model to create a code of practice. The examples are from the manuals, translated from English to Spanish. They are merely an illustration of what a code of practice entails. Each association can tailor the code to the needs and supply chains of their products.

#### Code Delineates:

##### ▪ Eligibility

Examples: “Farmers must be resident and domiciled in the areas of: Lares, Jayuya, Utuado, Yauco, Maricao, Ciales, San German and Mayagüez. (Puerto Rico’s center-west municipalities)”<sup>309</sup>

##### ▪ Quality standards

Example: “Specialty high-quality coffee must come from berries that are at a midpoint between completely red and green. Defects (having over or under-ripe berries) must not surpass 1/20; if so, it will affect the flavor of the coffee, giving it an astringent flavor.”<sup>310</sup>

<sup>309</sup> José E. Ramos López et al., *Procesos Esenciales para Beneficiar un Café Especial y de Alta Calidad*, in IMPROVING QUALITY PRACTICES KNOWLEDGE TO ACCESS SPECIALTY COFFEE MARKETS (2017), <https://drive.google.com/drive/folders/1Qli-BrPA-IA55IW5VnygCxdpb0pEEftJ?usp=sharing>.

<sup>310</sup> José E. Ramos López et al., *Recolección de Café Especial y de Alta Calidad*, in IMPROVING QUALITY PRACTICES KNOWLEDGE TO ACCESS SPECIALTY COFFEE MARKETS (2017), <https://drive.google.com/drive/folders/1Qli-BrPA-IA55IW5VnygCxdpb0pEEftJ?usp=sharing>.

- Cultivation and processing practices  
Example: “The steps the following: 1) picking, 2) weighting, 3) floating (for classification and removal of foreign material), 4) fermentation, 5) de-pulping 6) cleaning 7) machine or sundry, 8) storage 9) toasting 10) grinding.”<sup>311</sup>
- Raw material sources  
Example: “Specialty high-quality coffee use Typical Arabica or Bourbon, for lower grades use Caturra, Catuai, Pacas, Limani and Foton.”<sup>312</sup>
- Geographical area  
Example: “Mountainous area at 1,200 altitudes, a 50% inclination, 75°F temperatures, consistent rain and at least 8-13 sun hours, and 70-85% humidity.”<sup>313</sup>
- Product description  
Example: “Roasting will determine the body, aroma, acidity, flavor, and sweetness; for instance, as toasting increases, the more acidic it becomes.”<sup>314</sup>
- Supply chain actors  
Example: “Coffee supply chain actors are farmers, beneficiaries (processors), roasters.”<sup>315</sup>
- Inspection and monitoring verification system  
Example: “Farmers, processors, and roasters must watch for defects: black, pruned, broken, eaten, slightly orange color, fungus-infected, wrinkled, cut and coach shaped beans.”<sup>316</sup>
- Institutional structure and operation  
Example: Each step in the cultivation and processing practices has a group that works together to get products to the supermarket. When coffee was the main motor of the economy, the structure was horizontal, but now the only way to generate revenue is to integrate vertically. Thus, farmers have become beneficiaries and roasters.<sup>317</sup>
- History and reputation  
History Example: “Coffee is one of the most important agricultural products for the Puerto Rican economy since the 18th century. Imported in 1736, then to rapidly conquer the European market by the 19th century as a highly requested item among the higher economic classes even after it disappeared from foreign markets in 1969.”<sup>318</sup>  
Reputation Example: “Puerto Rican coffee is one of the best coffees in the world by Corte Inglés, Wine Spectator, Harrods London, and various world-renowned coffee sommeliers.”<sup>319</sup>

<sup>311</sup> Ramos López et al., *supra* note 309.

<sup>312</sup> José E Ramos López et al., *Factores Ambientales y Prácticas Agronómicas para Establecer una Siembra de Café de Calidad*, in IMPROVING QUALITY PRACTICES KNOWLEDGE TO ACCESS SPECIALTY COFFEE MARKETS 1 (2017).

<sup>313</sup> *Id.*

<sup>314</sup> José E Ramos López et al., *Tueste y Empaque para Café Especial y de Alta Calidad*, in IMPROVING QUALITY PRACTICES KNOWLEDGE TO ACCESS SPECIALTY COFFEE MARKETS 1 (2017).

<sup>315</sup> Méndez and Cortes, *supra* note 73.

<sup>316</sup> José E Ramos López et al., *Identificación de Defectos en el Café Verde (Pilado) Arábica*, in IMPROVING QUALITY PRACTICES KNOWLEDGE TO ACCESS SPECIALTY COFFEE MARKETS 1 (2017).

<sup>317</sup> Méndez and Cortes, *supra* note 73; Méndez and Cortes, *supra* note 73; Méndez and Cortes, *supra* note 251.

<sup>318</sup> O’NEILL PUMARADA AND PUMARADA, *supra* note 1 at 6.

<sup>319</sup> ALAMO GONZÁLEZ, *supra* note 251 at 41.

- Marketing plans and target markets

Example: Coffee promotional programs target audience: “middle-high incomes between the ages of 18-24 who are Hispanic or Puerto Rican and live in Northeast and Florida, the United States.”<sup>320</sup>

**Goal:**

- Strengthen the mark, ensuring that product characteristics and quality are attributable to the geographical area.
- Puerto Rican Department of Agriculture uses collaborations with associations to expand services and pool resources.

**Mechanism:** The Department of Agriculture should collaborate with associations providing technical assistance such as training and providing capital for marketing, equipment, and overall operations.

**Result:**

- Department of Agriculture and associations should encourage all farmers to be users and members of a DelPaís Mark-related association, members of other associations, and use respective private marks.
- High-quality manuals made by field experts must be publicly available on each association website and that of the Department of Agriculture.

**2) Department of Agriculture Published Updated Geographical Data**

The Department of Agriculture should update geographical data with the research and statistics from a reputable institute such as the University of Puerto Rico Mayagüez Campus (also known as El Colegio).

**3) DelPaís Law and Mark protect multiple products and has no product-origin-quality links**

See implementation section, municipal approach.

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<sup>320</sup> *Id.* at 69–70.

*B. EFFECTIVE ORGANIZATION:*

**1) Encourage Code of Practice Enforcement**

**Goal:**

- Associations and the Department of Agriculture will change from an individualistic approach to a collaborative approach to increase economies of scale.
- The Department of Agriculture should reward producers for complying with codes and providing information to keep statistics up to date.
- Ensure traceability, accountability, pooling resources, and motivates farmers and producers to become members.

**Mechanism:** The Department of Agriculture should unite efforts with all associations, especially those with more experience, to enforce the code of practice by protecting, conserving, and transferring knowledge to improve the industry.

**Result:**

- Department of Agriculture and associations should be able to update administrative regulations and databases with the information provided by the associations.
- Department of Agriculture and associations help create strategic plans for expanding to new target markets, increase prices, and track the economic impact.
- Investors and interested parties are more willing to invest in Puerto Rico and associations.

**2) DelPaís Association with Bylaws to Structure the Organization**

The Department of Agriculture should encourage users of the DelPaís Mark to create an association.

*C. LEGAL AND INSTITUTIONAL:*

**1) Increase Financial Support And Create Funding**

**Goal:**

- Department of Agriculture can run inspections, monitoring, statistics, programs, and activities necessary for the program's continuity.

- Associations ensure financial existence of the GI system with their membership fees, getting professional or technical assistance and providing funds to agricultural businesses.

**Mechanism:**

- Department of Agriculture should petition the Puerto Rican Budget and Management Office for increased funding.
- Both the Department of Agriculture and associations should create a fund from fees, penalties, rents, and other remunerations to support implementation of programs created by the Department.

**Result:**

- The Department of Agriculture has more funds for grants, loans, and other incentives. The Department increases investments for local farmer's extension services.
- Public and private organizations such as the Department of Agriculture and associations can rent equipment, machinery, and facilities for processing.

**2) Product-Specific GI Laws**

See implementation section, municipal approach.

**3) Inconsistent Use and Multiple Owners**

The DelPaís Law should be explicit in establishing ownership of the DelPaís Mark, if it is a sub-agency of the Department of Agriculture, non-profit association, or both. If the Department decides to delegate to a non-profit, it must establish strict rules to prevent the loosening of requirements.

*D. MARKETING:*

**1) Investment**

**Goal:**

- Programs like the DelPaís Law have continuity and progress without being affected by political interests.

- Spread the message that Hawaii and Puerto Rico are the only United States jurisdictions that produce significant quantities of coffee.<sup>321</sup>

**Mechanism:** The Department of Agriculture should invest in updating programs on industries that render the most benefits and plan out a strategy for bettering programs that need more assistance.

**Result:**

- The Department's involvement goes beyond attending associations events or contacting associations during election periods.
- Representation of all products and farmers in the DelPaís Law and Mark programs.
- Small and medium enterprises receive necessary financing to increase production capacities, buy equipment, maintain quality, and improve supply volumes.
- Marketing and promotion to the United States and Europe, such as festivals and expos.

## 2) Marketing Study for export

**Goal:**

- Identify the target market's race, age, income, sex, gender, and place of residence.
- Identify the main supply chain actors for each product. For instance, the coffee industry has PROCAFE, Coffee Cooperative, Agro-Commercial Cooperative, and NUPCAY.<sup>322</sup>
- Identify where to sell the product, depending on business size. For instance, large coffee businesses (like Puerto Rico Coffee Roasters) receive most revenues from supermarket sales, whereas smaller companies (high-end coffee shops like Café Cuatro Sombras) receive revenues from online stores.<sup>323</sup>

**Mechanism:** Use “Marketing Analysis: An Action Plan for Puerto Rican Coffee Producers” as a model to undergo a study to identify which countries are the appropriate target markets to sell products.

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<sup>321</sup> *Id.* at 4.

<sup>322</sup> *Id.* at 8.

<sup>323</sup> *Id.* at 8.

**Result:**

- Sell in the United States and internationally to consumers and businesses that appreciate the work, history, and reputation of the producers.
- A better understanding of market opportunities and restrictions such as local industry-specific and federal agency (FDA and USDA) laws for licensing, transportation, labeling, invoicing, inspection, and export.<sup>324</sup>

**Example:** Puerto Rico exports about 56-76% of goods to the United States.

**3) Nationalize the DelPaís Law**

See implementation section, export plans.

**4) Logo redesign**

Here I suggest keeping the DelPaís Mark's Logo but making Puerto Rico more prominent, so Puerto Rico is readable to consumers.

**IV. IMPLEMENTATION PROJECTS TO THE PUERTO RICAN CONGRESS**

There are two approaches to implement the suggested changes in a way that not only improves the DelPaís Law's function and purpose but addresses the product-specific GI laws that suffer from the same issues. As a first step, the municipal and domestic approach favor implementing product-specific GI laws protecting one product as a quintessential requirement for proper product-quality-origin and/or attribution functioning. Then, implement changes for the DelPaís Mark and Law.

The recommendation's implications make the DelPaís Law's program platform more complete and instill accountability and responsibility to the law's initiative. Moreover, with approaches taking the Codes of Practice and expert opinion from associations into consideration in the amendments, it will ensure community participation in the legislative process. The amendments will have definitions and standards that are clear, strict, and kept up to date. This

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<sup>324</sup> *Id.* at 130–133.

results in actions taken by the Department of Agriculture and associations matching the DelPaís Law's mission, motivating all stakeholders to send a consistent message to investors, visitors, and any other interested parties. Most importantly, it will make producers less dependent on waiting for the local and United States governments to resolve economic issues.

*A. MUNICIPAL APPROACH:*

In 2005, the governing Popular Democratic Party was interested in implementing a sales tax to support waste management disposal, but wanted a municipal pilot program before implementing the tax throughout Puerto Rico.<sup>325</sup> The party pitched the idea to the mayor of Caguas, at the time William Miranda Marín, and the pilot was an enormous success and encouraged all municipalities to follow the model; then, implement the tax for the central government.<sup>326</sup> Thus, this approach would do the same thing as the sales tax. Here, this dissertation evaluates the pros and cons of each pilot program option: Lechonera Certificada Cerdo 100% de Puerto Rico, Act 78-2019, Law that creates the Office for Puerto Rican Coffee, Law 180-2019 to recognize the roasted pig as cultural patrimony or other laws; to justify preferring one over the other.

**1) Step 1: Choose a pilot program**

- a) *Option 1: "Lechonera Certificada Cerdo 100% de Puerto Rico" (Certified Roasted Pig Restaurant serving 100% pig from Puerto Rico)*

Lechonera Certificada Cerdo 100% de Puerto Rico is a private trademark owned and administered by the Association of Pig Farmers of Puerto Rico started as a collaborative effort between the Association and the Department of Agriculture. When compared to the options below, this initiative is far advanced in terms of active participation since local restaurants heavily display the logo. However, the association has no publicly available code of practice.

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<sup>325</sup> Noticel, *Del "Willie Tax" a la ineficiencia municipal por la que nos quieren hacer pagar*, NOTICEL, 2017, <https://www.noticel.com/ahora/20170129/del-willie-tax-a-la-ineficiencia-municipal-por-la-que-nos-quieren-hacer-p-2/>.

<sup>326</sup> *Id.*



- **Owner:** Association of Pig Farmers of Puerto Rico
- **Social Media:**  
<https://www.facebook.com/groups/1287201128029238/>  
<https://www.facebook.com/cerdoricodepuertorico>
- **PRTR:** 220669-29-1 registered 2017 Type: Graphic
- **USPTO:** Serial No.: 88655570; Registration No.: 6067500 registered 2019 Type: Graphic

*b) Option 2: "Act 78-2019, Law that creates the Office for Puerto Rican Coffee."*

The Law that creates the Office for Puerto Rican Coffee attempted to create the first protected Denomination of Origin for Puerto Rican Coffee since the coffee industry in Puerto Rico is heavily researched, invested, organized, and monitored. Moreover, it is the only one that has a publicly available code of practice and marketing study. However, it would require significant amendments similar to those for the DelPaís Law for this law to work like actual implementation, logo creation, register, and other GI system requirements.

*c) Option 3: "Law 180-2019 to recognize the roasted pig as cultural patrimony."*

Law 180-2019 to recognize the roasted pig as cultural patrimony has a very similar purpose to option 1, Lechonera Certificada Cerdo 100% de Puerto Rico, certifying roasted pig as 100% from Puerto Rico, it is more efficient to join efforts with the Association of Pig Farmers. This law would complement the option 1's mark, giving both more teeth in terms of legitimacy and recognition. However, for this option to work, the law needs the amendments mentioned above, since the law suffers from the same issues as the DelPaís Law: lack of funding, product-origin-quality links, traceability, and verification. Moreover, the website and map that created the "Ruta del Lechon"(Pig Restaurant Route) for the law need updating.

*d) Option 4: Other laws*

The "Law To Certify Fish Caught In Puerto Rico" and the "Law to declare the Bee as Cultural Patrimony of Puerto Rico." Similarly, like option 3, these laws require significant amendments to ensure their proper implementation.

**2) Step 2: Product-Specific Laws**

Each municipality or group of municipalities will have an applicable specialized law protecting an individual product. For instance, fruits, vegetables, and plantains which do not have existing laws require following an already running and a fixed pilot program to ease their implementation.

**3) Step 3: Amending DelPaís Law**

*a) Option 1: All Definitions*

DelPaís Law should include product definition, quality, and geographical area of all qualifying products. However, by doing this it will create repetitive content.

*b) Option 2: References*

If DelPaís Law refers to other PRGI laws, administrative regulations may be necessary **and** may impose a burden on regulations to act as laws to fill in the gaps. Regulations may be necessary to give more detail as to specific standards.

*c) Option 3: Derogate the DelPaís Law because product-specific laws act as substitutes.*

Derogating the DelPaís Law is not recommended since the other options encourage using the DelPaís Mark and municipal versions to strengthen each other's reputation and attribution.

**4) Step 3: Administrative regulations, if necessary.**

Caution should be taken with creating or re-organizing administrative regulations to fix the DelPaís Law to leave it and specialized laws as they are, in fixing one or the other, it might overlook the laws not being amended. Creating legislation that relies on administrative regulations is disfavored by legal scholars because it delegates to agencies the power of Congress.<sup>327</sup>

**B. DOMESTIC APPROACH**

The DelPaís Law is already applicable throughout Puerto Rico, but “municipal versions” would supplement, complement, and strength the DelPaís Law and trademark by creating attribution of individual products to municipalities. The difference between this approach and the

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<sup>327</sup> Santiago, *supra* note 12 at 451–450; Díaz, *supra* note 250; Ruiz Nieves, *supra* note 231; Ley de Denominación de Origen del Café Puertorriqueño, 2015 PR LAW 232, Hearing on 2015 S.B. 951 Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña y de la Región Sur 17th Senate 5th Session, *supra* note 231; Ley de Denominación de Origen de Puerto Rico, Hearing on 2014 S.B.951, Comisión de Agricultura, Seguridad Alimentaria, Sustentabilidad de la Montaña y de la Región Sur 17th Senate 5th Session, *supra* note 231.

previous is that there is no pilot program, immediate implementation throughout Puerto Rico. This approach would implement amendments to product-specific GI law and the DelPaís Law at the same time with any necessary regulations. As this dissertation progresses, I will explore the alternative of changes to the DelPaís Law to emulate the New York Grown and Certified Program Law.

*C. EXPORT PLANS*

**1) Step 1: Nationalize the DelPaís Mark**

**Goal:**

- Create an obligation to use the mark consistently and uniformly, both domestic and internationally.
- Add value to tourism campaigns and expand target markets to local products.

**Mechanism:** the Puerto Rican Department of Agriculture should work together with the Puerto Rican Department of Export and Commerce and the Department of Tourism to revive in the Puerto Rican Congress the “Law to Create a National Mark.” This law created a program to appoint the DelPaís Mark as the national mark for it to have international recognition and legitimacy, but no actions were implemented.

**Result:** Department of Export and Commerce, Agriculture, and Tourism are obligated to use the mark in a way that is not affected by changes in government.

**2) Step 2: Register the DelPaís Mark in the USPTO.**

**Goal:** Recognition and legitimacy of the mark beyond Puerto Rico.

**Mechanism:** The Department of Agriculture should register the DelPaís Mark to increase awareness and demand for products exported to the United States.

**Result:**

- Registration would require denying ownership of “Puerto Rico” portion of the name, since its unregistrable.

- Increase in sales of products and motivates non-users to register to use the DelPaís Mark and join the association.
- It is common for Puerto Ricans living in the United States who visit the family to return with a luggage full of food since they remain loyal to local brands. This would create more convenient access to local markets.
- Increase capacity and reach the critical mass necessary to compete with United States companies.

**2) Step 3: The advantage of United States Free Trade Zones and International Treaties**

As this dissertation progresses this section will look into what opportunities and challenges of Free Trade Zones and International Treaties present to Puerto Rico. The Free Trade Zone Agreement DR-CAFTA signed by United States, El Salvador, Honduras, Nicaragua, Guatemala, the Dominican Republic, and Costa Rica presents an opportunity for Puerto Rico. For instance, Puerto Rico and the Dominican Republic have excellent relations and the Free Trade Zone facilitates trade for agricultural businesses. Moreover, all these countries accept the US Dollar as currency, which facilitates business.

In the North American Free Trade Agreement, Canada, the United States, and Mexico decided to eliminate trade barriers between them; however, NAFTA met with significant opposition in Puerto Rico. Lastly, TRIPS and the Paris Convention provide protection and recognition of GIs in other countries.

*D. TIMING TO IMPLEMENT CHANGES:*

**1) 2020 November- December:**

- No anticipated interest from governing political party, the New Progressive Party (statehood favoring political party), in general, its members do not endorse such laws like the DelPaís Law.

- If another political party governs who favors helping local farmers, there might be some interest in hearing “pitches” to see their reaction to the recommendations presented above.

**2) 2021:**

- “Pitch” code of practice to associations leaders or industry leaders to see their reactions.

**Caution:** changes in association leaders might affect interests in implementing a code of practice.

**2) 2022:**

- Make necessary changes to proposed recommendations considering all the feedback.

**3) 2023:**

- Begin the process of presenting a project to the Department of Agriculture.
- Start an education program to train government and supply chain actors on using geographic indications and respective incentives. Also, if necessary, create a collaboration with a private law firm or incubator willing to sponsor this program.

**V. ECONOMIC IMPACT**

**A. FORECAST AND COST-BENEFIT**

As the dissertation progresses, this section will give a forecast and cost-benefit analysis of the proposed changes to forecast the economic impact of the changes the DelPaís Law. I will be using the economic development indicators listed in: Chapter II, Part I Section B Economic Development In Geographic Indication Tools: What Is It And Who It Benefits?

**TABLE 12:** Forecast Economic Impact

**B. CONTRIBUTIONS AND IMPLICATIONS**

There are several contributions and implications for Puerto Rico’s economic development if the implementation of recommendations occurs.<sup>328</sup> First, the DelPaís Mark as a GI would help target promotions to the most productive agricultural industries in Puerto Rico and even expand the product to other sectors like tourism. Second, the recommendation’s effects would create more

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<sup>328</sup> IRIZARRY MORA ET AL., *supra* note 2 at 63–113.

collaborations between the Puerto Rican Department of Agriculture and private organizations. Moreover, the results add value to agricultural products and cultural heritage so they can take part in economies of scale.

Therefore, there is more recognition of agricultural practices and, thus, helps increase subsidies, credits, and other programs for financial support. Recognition also helps farmers in inserting their work into the knowledge-based economy, meaning they are professionals supplying highly skilled services and, in turn, receive higher salaries. Most importantly, effects assure food security, increasing consistent, high-quality food supply, ameliorating overdependency on imports. Finally, as mentioned, this would increase exports of products to new target markets, such as Puerto Ricans living outside.

#### VI. CONCLUSION: SUMMARY

The efforts required for the DelPaís Law amendments center on: instilling a collective mindset in the relevant associations, create responsibility and accountability in the Department of Agriculture and use the Puerto Rico-United States relationship to Puerto Rico's advantage. Once done, then the Department of Agriculture can expand to exports in the strategic plan for economic development under the DelPaís Law and Mark. Due to the limitation imposed by the United States Constitution Commerce Clause, Puerto Rico cannot implement protectionist policies preventing United States manufacturers from selling products at lower prices compared to local products.

## CONCLUSION

This chapter will summarize the study findings.

### I. CHAPTER ONE

Defines geographic indicators (GIs) as tools that show a product's production origin. GIs reduce information asymmetry between consumers and producers but require a considerable investment to counter the costly legal system and detailed policy. The main GI policy structures are: Sui Generis and trademarks, the former being the most relevant to this dissertation's analysis.

### II. CHAPTER TWO

Identified the required factors for a GI policy to function appropriately. Defining product differentiation assures a product that stands out from the rest, justifying a higher selling price. An effective organization guarantees diverse representation, looking out for collective interest, and a concrete mission. Supportive legal and institutional framework positions the Puerto Rican Department of Agriculture in the active role of ensuring financial and non-financial aid gets to small and medium businesses. Detailed marketing efforts must consist of a detailed strategic plan that balances domestic and international preferences and needs. Finally, the affirmative economic plan compels that the Department of Agriculture and associations' activities are in line with the DelPaís Law's purpose to improve general wellbeing.

### III. CHAPTER THREE

Analyzed why the DelPaís Law lacks transparency and accountability, inconsistent use, and other marks are duplicating its purposes. The DelPaís Law is well-intentioned, but the general disorganization in the government, marketing, and supporting laws, clouds efforts to help small and medium agricultural businesses.

### IV. CHAPTER FOUR

The most straightforward implementation for product differentiation in the DelPaís Law is by getting input from associations specialized in each product and referring to specific laws.

Achieving an effective organization involves appointing a leader that inculcates a collaborative rather than an individualistic approach. However, the alignment of legal and institutional support with the DelPaís Law's domestic market purpose must happen first, to then expand to the international market. Marketing efforts should contemplate nationalizing the DelPaís Mark as it will instill an obligation to the Puerto Rican Department of Agriculture to take better care in broadcasting a consistent message to attract visitors to Puerto Rico. Lastly, achieving positive economic impact warrants exporting Puerto Rican products; that way, local producers can effectively and fairly compete with United States producers in Puerto Rico because of increased economies of scale created by additional exports.

## APPENDIX

### I. REFERENCES AND BIBLIOGRAPHY

As this dissertation progresses, this section will list all cited references in the footnotes.

### II. INTERVIEWS

#### A. *QUESTIONS TEMPLATE*

Date:

Person:

Position:

Source of information:

- 1) What was your involvement in the Law the use the DelPaís Mark? Researcher, policymaker, scholar, professor, business owner, or other position.
  - a. If you were not involved in the law where you involved in any of its predecessors and revivals such as: Laws revival in 2011, 2013 or 2016; “Cosecha and Crianza”; Law to create a denomination of origin for products of Puerto Rico; and Law to create a denomination of origin for Puertorican Coffee?
  - b. If you are not involved in any of the related specialized laws, such as recognizing honey, fish, and roasted pig as cultural patrimony?
- 2) When was this involvement, specific dates, current, past, or ongoing?
- 3) Do you have any knowledge of research for DelPaís Law? Did it take inspiration from other laws?
- 4) Do you have any knowledge of the current environment for geographic indications? Are the government and society willing to use them and see them in a good light?
- 5) What benefit, economic or non-economic does you as a stakeholder? For instance, as a farmer or business owner, do you receive training, financial support, exceptions, participate in events?
- 6) Do you know of any laws what laws support DelPaís Mark providing additional protection? Are there any other laws similar to DelPaís Law?
- 7) What is the role of the government and collective organization in terms of enforcement, statistics, register?
- 8) How is the structure of the organization and export strategies?
- 9) How accessible is the information about reports of this law?
- 10) What is your opinion about DelPaís Law, do you consider it good law, or could it be better?
- 11) Would you be willing to continue contact for any further questions?

#### B. ANSWERS

As this dissertation progresses, this section will present the answers to the interview

questions; identifying the interviewed person as below.