



# BRAZIL

## MERCOSUR IPR SME Helpdesk IP Country Factsheet

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## 1. THE FACTS: Business in Brazil for EU SMEs



#### SIZE of the market:

- GDP in 2012: € 1.650 trillion (Source: World Bank)
- Annual growth rate in 2012: 1.0% (Source: World Bank)
- EU export in goods in 2012: € 39.6 billion
- EU import in goods in 2012: € 37.3 billion
- EU export in services in 2012: € 12.7billion
- EU import in services in 2012: € 7.0 billion

#### TIPS and WATCH-OUTS

The EU is Brazil's number one trading partner, accounting for 20.8% of its total trade. Brazil is the EU's eighth trading partner, accounting for 2.2% of total EU trade (2012). This shows the strength of the trade relationship between these two regions.

#### Key INDUSTRY SECTORS

EU imports from Brazil are dominated by primary products, in particular agricultural products (44%) and fuels and mining products (28%). But manufactured products such as machinery, transport equipment and miscellaneous manufactured products are also important: they represent around one fourth of Brazilian exports to the EU.

## 2. IPR in Brazil for SMEs: BACKGROUND

### Intellectual Property Rights for SMEs: Why is this RELEVANT to you?

Intellectual Property (IP) refers to all creations of the mind, such as images used in commerce or music. IP is usually divided into two branches, namely Industrial Property, which relates to inventions, designs or signs used in commerce; and Copyright (or 'author's right', according to some non English definitions), which relates to literary and artistic works.

Intellectual Property Rights (IPRs) are exclusive rights. They confer a temporary monopoly over creations on the right holders, granting them exclusivity on the use and exploitation of their intellectual creations and also the right to prevent any unauthorized use by third parties.

Therefore, this protection system allows creators or owners to benefit from their own intellectual work or investments in creations and innovations, as well as to protect their moral and economic interests resulting from the authorship of scientific, literary or artistic productions.

The following IP rights are further developed throughout this factsheet, focusing on Brazilian features: Copyright and related rights, Patents, Industrial Designs, Trademarks and Geographical Indications.

All the aforementioned examples of IP features are considered "intangible assets", together with other IP-related terms such as licences, trade secrets or know-how. All intangible assets are defined by a lack of physical substance and the ability to generate future economic benefits. They all may be subject to valuation.

Due to its capability to generate innovation, IP is a key tool for competitiveness in the global economy and an effective instrument to attract investors and to ensure a return on investment in innovation. As a result, SMEs have at their disposal the means to protect their rights on innovations. Furthermore, IP may become an important source of cash-flow, through licensing products and selling IP. It is also clear that a strong patent portfolio helps innovative SMEs to achieve their business goals.

This is particularly relevant for SMEs seeking to internationalise and operate in countries such as MERCOSUR and Chile. Both in there and in the EU, SMEs are relevant for the economy: in Brazil, they are responsible for about 57 million jobs –60% of the total of Brazilian jobs– and generate some 20% of the GDP.

### How does Brazil's IP legal framework compare to INTERNATIONAL STANDARDS?

Brazilian IP legislation is in line with the main international treaties, such as the Paris Convention, the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Patent Cooperation Treaty (PCT), the UPOV Convention (1991), and the Convention on Biological Diversity (CBD).

However, it is noteworthy that Brazil is not party to the WTC and WPPT in the copyright field, nor the Hague Protocol or Singapore Treaty for trademarks.

Brazil, as most of the signatories of international treaties on Intellectual Property, operates under a 'first-to-file system'. This means that, as a general principle, the first person to apply for IP rights in Brazil shall become the holder of the right, after the application is approved.

Brazil is a member country of the Paris Convention. Consequently, applicants who file an application for IPRs (such as patents, trademarks or industrial designs) in one of the signatory countries may benefit from the right to use the filing date of the first application when applying for the same right in Brazil (to determine the "priority date"). Priority must be claimed within the time limits established by law (for example, in the case of patents, priority may be claimed within 12 months from the first application, while in the case of designs, the time limit is 6 months from the first application).

Finally, it is also worth highlighting that the Brazilian National Institute of Industrial Property (INPI) is the competent authority for the registration of Industrial Property Rights. However, due to its role as an International Search Authority (ISA) under the Patent Cooperation Treaty (PCT), it is also competent for conducting state of the art searches and providing patentability opinions for international patent applications through International Search Reports.

In light of the foregoing, Brazil offers reasonable standards of IPR protection and there is an increasing engagement of local authorities domestically.

Despite the efforts made over the past years (restructuring of national IP Office and recruitment of examiners), there is a backlog in the registration of trademarks due to the delay in the ratification of the Madrid Protocol. The same backlog exists in the registration of patents. This is particularly the case of pharmaceutical patents, which are subject to additional requirements set out by Health Authorities to be granted.

Furthermore, there are also some deficiencies in the fight against counterfeiting and piracy. These are caused by a slow legal system and a lack of harsh penalties. Additionally, there is a lack of judges with sufficient knowledge of IP.

Nevertheless, several actions to remove these obstacles have been taken. Among them, the creation of the EU-Brazil IPR Dialogue, that holds an annual meeting, and the establishment of IPR as a priority in the EU-Brazil Joint Action Plan and in all bilateral trade meetings.

Also, it is to be noted that Brazil has not signed the Hague Agreement Concerning the International Registration of Industrial Designs. Therefore, it is not possible to register a design in Brazil through the single international application.

**TIPS and WATCH-OUTS**

TIPS and WATCH-OUTS In order to apply for IPRs in Brazil, non-resident natural or legal persons must have a registered domicile in the country. Otherwise, they shall appoint a duly qualified agent residing in Brazil, empowered to act as an administrative and legal representative and to receive court summons, such as an IP attorney.

### 3. IP Rights in Brazil: THE BASICS

#### A. Copyright and related rights

##### WHAT are Copyright and related rights?

Copyright protects the rights of authors on their intellectual works. Any artistic, literary or scientific work (if original and creative) is subject to protection by copyright, regardless of its form of expression. Related rights, such as those of film producers, performers or broadcasting organisations also benefit from protection, as established by law.

##### Copyright in BRAZIL: What you need to know

Copyright confers exclusive moral and economic rights on the author.

Moral rights are the personal rights of the author. They are inalienable and irrevocable, and thus cannot be sold or transferred. They grant the author the right to:

- Claim authorship of the work at any time and to cause his/her name, pseudonym or conventional sign to appear or be announced as that of the author when the work is used;
- To keep the work unpublished and
- To ensure the integrity of the work by either withdrawing the work from circulation or suspending any kind of use, as well as objecting to any modifications or actions that may have an adverse effect on the work or be prejudicial to the author's reputation or honour;
- To have access to the sole or a rare copy of the work that is lawfully in a third party's possession.

Economic rights are the exclusive rights of the author authorising the exploitation and remuneration for the use of the intellectual work. They allow the author to use and dispose of his/her literary, artistic or scientific work. The duration of these rights is established by law.

Economic rights also allow the author to transfer or licence his/her work and exploit it economically as desired. Therefore, the express and prior authorisation of the author of a literary, artistic or scientific work is required for any kind of use thereof, such as the reproduction (in whole or in

part), publication, adaptation, setting to music (or any other transformation), translation into any language, and incorporation in a phonogram or audiovisual production.

**TIPS and WATCH-OUTS**

With regard to economic rights, the author has the right to collect a minimum of 5% of any gain in value that may be achieved in each resale of an original work of art or manuscript that he has disposed of.

In the case of anonymous or pseudonymous works, economic rights belong to the person who publishes the work.

Copyright is automatically recognised by law to the author by the act of creation of the work, no registration is needed. Therefore, copyright registration is voluntary.

**Copyright protection is legally acquired by the author by the act of creation of the intellectual work.**

In this sense, documents such as confidentiality agreements or publications that contain the detailed information of the work will serve the holder of a non-registered copyright as a proof of authorship and ownership.

**Nevertheless, the registration of the work offers many benefits for the protection of the rights, for it ensures greater legal certainty about the authorship.**

The registration of the work certifies the exact creation date and its contents. Furthermore, the registration is also a presumption of authorship granted by the government.

**TIPS and WATCH-OUTS**

In order to prove ownership of computer programs, Brazilian legislation requires proof of authorship of the work, which may consist of either a publication or other means of evidence (always subject to further requirements of the Court). Computer programs protection does not depend on registration but, by registering the computer program before de [INPI](#), the author is in a best position to enforce it, because registration creates a (rebuttable) presumption of authorship and, thus, ownership.

Intellectual works subject to protection by copyright are the following:

- Literary, artistic and scientific works
- Cinematographic and audiovisual works

- Musical compositions; photographic works
- Drawings, paintings, sculptures
- Computer programmes
- Software source code (in original written form);
- Preparatory material (notes, flow charts, diagrams);
- Manuals (texts and graphics)

### How LONG does legal protection last?

Economic rights shall be protected for a period of 70 years as from January 1<sup>st</sup> of the year following the author's decease.

The term of protection of economic rights in case of anonymous or pseudonymous works is 70 years from January 1<sup>st</sup> of the year following the first publication. On the other hand, economic rights on audiovisual and photographic works shall be protected for a period of 70 years from January 1<sup>st</sup> of the year following their disclosure.

As for computer programmes, the term of protection is 15 years from January 1<sup>st</sup> of the year following their publication or creation. By not signing up to the WCT, Brazil limits computer programme protection to 15 years. In signatory states, protection is equivalent to Art. 2 of the Berne Convention at 70 years after the death of the author.

### HOW do I register?

The main competent authorities in Brazil for the registration of Copyright are the following:

- National Institute of Industrial Property (INPI) for software source codes
- Copyright Office (EDA) at the National Library for literary works, drawings and music (lyrics and scores)
- Federal Council of Engineering, Architecture and Agronomy for works of engineering, architecture and urbanism
- School of Arts of the Federal University of Rio de Janeiro for visual arts
- School of Music of the Federal University of Rio de Janeiro for musical works.

### Required information and documents

The documents required to apply for copyright protection are the following:

- Duly completed application form
- Copy of the identity documents of the applicant (such as ID card, passport, certificate of residence)
- Original receipt of payment of the fees
- One copy of the intellectual work (all the pages must be numbered and duly signed)
- Power of attorney, mandatory if the author is under the age of 18. If the registration is applied for by a representative, the application must be accompanied by the original power of attorney that includes the complete address, the representative's identity documents and the information about the author

- Companies must submit a copy of the memorandum and articles of association, the company's incorporation number, and the bylaws
- In case of transfer of rights, a copy of the transfer agreement must be submitted

### TIPS and WATCH-OUTS

Applications for computer programme registrations must include formal and technical documents. Formal documents include the information related to the author and the owner of the computer programme, their identity documents, and the description of the computer programme. Technical documents refer to the sections of the programme (source code) and any other information that serves to identify the computer programme and characterise its originality.

For lyrics or score specific registrations, please follow the procedures established on the [National Library website](#).

For software specific registrations, please follow the procedures established on the [INPI website](#).

### WHO can register?

Copyright registrations can be applied for by the author himself/herself or by an authorised representative. However, since authors can transfer their economic rights to third parties, the right to register intellectual works also includes the assignees (the so-called 'owner') of a creative work that has been permanently transferred. The assignee must mention the authors when applying for the registration of the work.

### Which LANGUAGES can I use?

Procedures are conducted in Portuguese.

### How much does it COST?

The cost of Copyright registrations carried out electronically on the National Library website ranges from € 6 for individuals to € 80 for companies. The registration applications for computer programmes may range from € 76 to € 361. The [up-to-date prices](#) for software registrations are available on the INPI website.

## B. Patents

### WHAT are patents?

Brazilian IP system provides for Patents and Utility Models to protect technical innovations. This system grants patent holders a temporary monopoly on their inventions. Therefore, they obtain exclusive rights to use and exploit their innovations and to prevent any unauthorised use by third parties. These rights are granted under condition that the information regarding the invention is disclosed in the patent or utility model application. Patents consist of a technical solution to a technical problem. The requirements to be met by an invention to be patented are rigorous.

On the other hand, Utility Models are a sort of 'minor patent'. They consist of a functional improvement introduced on already existing products. The requirements for their registration are less demanding.

### Patents in BRAZIL: What you need to know

Inventions are patentable if they meet three basic requirements: Novelty, inventive step and industrial application.

Inventions are considered as new if, prior to application, they have not been worldwide published or disclosed to the public. Brazilian law considers the so-called "grace period". This means that any disclosure of the invention occurring within 12 months prior to the date of filing or the date of priority of the application will not pose a novelty bar to the application.

Besides this, patents are considered to involve an inventive step if, i.e. not to clearly derive from the state of the art for a person skilled in the art. Inventions are also required to be subject to industrial applicability, and thus capable of being reproduced.

Utility Models consist of a functional improvement introduced in the use or production of an already existing object resulting in a new object of practical use. A Utility Model is also patentable if it complies with the abovementioned requirements. In this regard, it must involve an inventive step but with a lesser degree of inventiveness.

***Brazil operates under a 'first-to-file' system. Therefore, it is important to apply for the patent as soon as possible.***

However, as regards pharmaceutical patents, the Ministry of Health (ANVISA) currently has a power of veto in the granting procedure. This "pre-screening" system is a controversial issue that is still to be resolved. It is currently before the Supreme Court.

### HOW do I register?

Patents or Utility Models may be applied for as indicated below:

1. By means of the electronic filing system for patents, available on the INPI website ([e-Patentes](#))
2. By submitting the application in person at the INPI or any of the units of the INPI (in other states).

### Required documents and information

The required documents are the following:

- Application Form FQ001
- Certificate of Addition (if applicable).
- Descriptive report, set of claims, drawings (if applicable)
- Biological Sequence listed in an electronic form (if applicable)
- Summary
- Proof of Payment

### How LONG does legal protection last?

Patent protection lasts for 20 years, while Utility Model protection lasts for 15 years. Both terms of protection are calculated from the filing date.

Considering that in some cases the process of granting a patent may be long, Brazilian law establishes that the term of protection shall not be less than ten (10) years for patents and seven (7) years for utility models, calculated from the date on which they were granted. An exception to this rule is made when the INPI is unable to conduct an in-depth examination of the patent application for compelling reasons, for instance, a pending litigation.

### WHO can apply for a patent?

Any natural or legal person or duly authorised representative may apply for a patent. The right to file a patent application can be also the result of an inheritance, a succession, a transfer, a contract of employment or a service contract.

According to Brazilian law, the applicant is presumed to be the legitimate right holder.

### Which LANGUAGES can I use?

The application form and other required documents must be submitted in Portuguese.

### How much does it COST?

Depending on whether the application is submitted electronically or in paper, the cost ranges between € 21 and € 31 for national Patents or Utility Models.

Applications for technical examination of patents cost € 41 (up to 10 claims). From the 11th claim, an amount ranging from € 12 per claim (up to 15 claims) to € 61 per claim (more than 30 claims) will be charged. The [up-to-date prices](#) can be found on the INPI website.

### TIPS and WATCH-OUTS

Brazilian law establishes a 'grace period' for Patents and Utility Models. This means that innovations that have been disclosed within twelve (12) months prior to the filing date or priority date of the application are still considered as new if such disclosure is made: by the inventor, by a third party on the basis of the information obtained from the inventor or from his/her acts, or through an official publication of a patent application by the INPI that has been filed without the consent of the inventor based on information obtained from him/her or his/her acts (Article 12, Sections I, II and III of Law 9.279/96).

However, in these cases, the INPI may require the inventor to make a declaration on the disclosure or to submit the corresponding proof. This rule also applies for Industrial Designs. The process of granting a patent in Brazil takes 6-7 years. Nevertheless, patents may be exploited and licensed before they are granted.

## C. Industrial Designs

### WHAT are Industrial Designs?

Industrial Designs protect ornamental forms, such as lines and colours, applied to an object, as long as they provide the product with a new and original appearance and are subject to industrial application.

The features, dimensions, materials or manufacturing processes of an object are excluded from protection.

Industrial Design protection grants the holders a temporary monopoly, which means that the holders have the **exclusive** right to exploit and use their designs. This also means that they also have the right to prevent third parties from using and exploiting commercially products with their protected design without their prior authorisation.

### Industrial Designs in BRAZIL: What you need to know

Industrial Designs must be new and original in order to be subject to effective protection.

An Industrial Design is new if it is not included in the state of the art. The state of the art comprises everything that has been made available to the public before the filing date, either in Brazil or abroad. Industrial Design applications are included in the state of the art from the first filing date, even if they have not been published yet.

### How LONG does legal protection last?

Industrial Designs may be protected for a maximum of 25 years. They are initially protected for 10 years from the filing date. This protection can be extended until three times for 5 more years each.

### HOW do I register?

Industrial Design applications must be filed in person at the INPI. A new [online tool](#) has been recently released to track the application status.

### Required information and documents

Application forms for Industrial Designs are available in the [Forms Section](#) of the INPI website.

### WHO can apply for an Industrial Design?

Brazilian law presumes the natural or legal person that applies for the Industrial Design to be the right holder.

Industrial Designs may be applied for by the creator or by a duly authorised and qualified representative.

### Which LANGUAGES can I use?

The application form and documents must be filed in Portuguese.

### How much does it COST?

The application for an Industrial Design costs around € 235 for companies and around € 95 for individuals, SMEs and Universities. Up-to-date prices are available on the [INPI website](#).

### TIPS and WATCH-OUTS

The application for the renewal of an Industrial Design must be filed during the last year of legal protection, accompanied by proof of payment of the corresponding fee.

The deadline to request the cancellation of an Industrial Design through administrative channels at the INPI is five years from the date on which it was granted.

## D. Trademarks

### WHAT are Trademarks?

Brazilian legislation establishes that a trademark is any distinctive sign that can be represented graphically. Trademarks are signs with distinctive character that identify and distinguish goods and services on the market, and certify that they comply with certain standards or technical specifications.

Trademark registrations grant the owner the exclusive right to use the trademark, to exploit it for an economic activity at a national level, and to prevent any unauthorised use thereof by third parties.

The exclusive right to exploit the trademark is granted for a specific geographical territory. This right may also be licensed, thus allowing a third party to sell goods or services under the holder's trademark in exchange for royalties.

### Trademarks in BRAZIL: What you need to know

The requirements for a sign to be registered as a trademark are the following:

- Graphic representation: They must be visually distinguishable. Therefore, hearing, tactile, taste and olfactory marks *cannot* be registered.
- Distinctiveness: They must be original and/or inventive. Consequently, generic or descriptive signs indicating the name, qualities or characteristics of the goods or services to which they refer may not be registered as a trademark.
- Non-deceptive: They must not deceive consumers regarding the ownership or the origin of the goods and services.
- Availability: Signs must not be identical or similar to already existing trademarks.

There are different types of trademarks:

- Word marks: signs that consist of letters, names or words

- Figurative marks: signs that consist of drawings, logos or devices
- Complex marks: signs that are a combination of the previous ones (denominative component plus a device or drawing)

**Trademarks must be visually distinguishable in Brazil. Therefore, hearing, tactile, taste and olfactory marks cannot be registered**

From the point of view of the company origin, reference is to be made to collective trademarks. Collective trademarks are signs used by the members of an entity, such as an association, cooperative, or organisation of producers, to identify their goods or services. These marks indicate that a good or a service has a determined origin and/or that a member of the aforementioned entities renders the service.

Finally, from the point of view of the degree of recognition among the public, trademarks can be divided into two types:

**Highly reputed mark:** a registered trademark which is popular among the general public. This type of trademark is subject to **special protection in any field of activity**. So as to obtain the status of “highly reputed mark”, the owner must apply for it at the INPI.

If granted, the trademark will be considered as “highly reputed” for a period of 10 years; renewable if the holder submits evidence that suggests that this status persists. Highly reputed marks can prevent similar or related signs from being registered and used, regardless of the goods or services that they identify.

**Penalties for the infringement of highly reputed marks may be 33%-50% higher than penalties for standard trademark infringements.**

The requirements to request the status of ‘highly reputed mark’ are the following:

- The trademark registration must have been granted
- There must be consistent evidence showing that the trademark is broadly known throughout the Brazilian territory in all fields. This evidence may consist of opinion surveys, publicity, sales turnover in the last five years, amount invested in publicity, evaluation of the trademark by an independent institute, among others.

**Well-known mark:** a trademark that is well known among the public in the market sector to which the identified service or product belongs. This type of trademark is subject to special protection, regardless of whether they have been applied for or registered in Brazil, or not.

#### TIPS and WATCH-OUTS

There are no legal criteria to determine if a trademark is “well-known”. In practice, such status is related to unfair competition.

Brazilian Courts may consider the reputation of a trademark as a factor to decide on infringement cases related to unfair competition, particularly to free riding and likelihood of confusion. Nevertheless, it is a good practice to avoid relying on a well-known mark and, if possible, register your trademark at the INPI.

Additionally, the company registration at the State Board of Trade (Junta Comercial) grants special protection for the name of the company. It is not a trademark per se, but it is also important for the distinction of the business.

#### How LONG does legal protection last?

Trademark protection lasts for 10 years from the filing date and can be renewed indefinitely for consecutive periods of ten years.

#### HOW do I register?

There are two ways to submit an application for a trademark registration at the INPI in Brazil:

- By means of the electronic system [e-Marca](#), available 24 hours a day, seven days a week.
- By means of a paper application - available for printing in the [Forms Section](#) of the INPI website - to be submitted in person at any of the units of the INPI office.

#### Required information and documents

The application for a trademark registration shall be accompanied by the following documents:

- Trademark application form (available on the [INPI website](#)) signed by the applicant, his/her legal representative, that shall be resident in Brazil; or a duly qualified attorney
- Labels, which must classify the trademark as either figurative, complex, or three-dimensional
- Proof of payment of the fees
- Power of attorney, if the applicant does not personally apply for the trademark
- In the case of priority claims: proof of the trademark application or registration in the country of origin, along with the corresponding translation and consular legalisation. Priority can only be claimed at the filing date of the application.

*Note: If priority documents are not submitted in the INPI when claiming priority at the filing date, there is a period of 4 months to deliver them. Otherwise priority right shall disappear.*

### WHO can register?

Trademark registrations may be applied for by either natural or legal persons.

Natural persons can only apply for trademark protection in relation to the economic activity that they effectively and lawfully carry out, whether directly or through subsidiary companies. If this condition is not met, the use of a trademark may face legal penalties.

### Which LANGUAGES can I use?

The application form and the required documents must be filed in Portuguese.

### How much does it COST?

Electronic applications and requests conducted by companies cost around € 109. In the case of SMEs, there is a discount and it only cost around € 43. Paper application and requests conducted by companies cost around € 163. In the case of SMEs, the discounted price is around € 63.

#### TIPS and WATCH-OUTS

Considering that Brazil operates under a 'first-to-file' system, it is very important to register your trademark as soon as possible. This is a good way to reduce the risk of finding previously registered trademarks that are similar or identical to yours and also the risk that your trademark is previously registered in 'bad-faith' by someone else.

The process for a trademark registrations takes from 24 to 36 months. The recently released online tool e-Marcas is supposed to speed up the registration process, considerably reducing the backlog.

## E. Geographical indications

### WHAT are GIs?

Under the Brazilian law, Geographical Indications relate to products or services that have a specific geographical origin. They refer to the name of a country, city, region or location which is known for being the centre of extraction, production or manufacture of a given product or the centre of provision of a given service.

Their registration acknowledges the reputation, qualities and characteristics that are related to the place of origin. As a result, they convey the idea that a certain region is specialised and has the capacity to produce a differentiated product with a standard of excellence. (Source: INPI)

An example of Brazilian GI is "Pedro II". It refers to precious opals and handmade jewellery made in such location.

***The Brazilian law does not provide for names that are not strictly geographical names. This is contrary to the TRIPS Agreement which is in force in Brazil.***

Anyway there are a few cases of registered Brazilian GIs that do not refer to geographical locations and have been granted protection, namely "Cachaça". But this treatment is not available for non-residents and therefore EU GIs like "Feta" or "Scotch Whisky" could not be protected. Geographical Indications also include "Appellations of Origin" in the Brazilian law and they are defined as follows:

An Appellation of Origin is a geographical name (a country, city, region or location) which designates a product or service, whose quality or characteristics are due exclusively or essentially to the geographic environment in which they are produced or provided, including natural and **human factors**. The production process must be entirely performed in the place of origin indicated. Therefore, so as to obtain protection as an Appellation of Origin, it must be proved that the unique characteristics of the product are the consequence of a specific geographical environment.

There are a few European AO already [registered](#) in Brazil, namely "Cognac" from France. It is registered for the product "Wine or spirits distilled from wine".

### GIs in BRAZIL: What you need to know

When applying for a Geographical Indication, it must be proved that the geographical name has become popular as a centre of extraction, production, manufacture or provision of the product or service. A description of the qualities of the product shall also be provided. Such description must specify the distinct product or service characteristics that make it exclusive and different compared to others of the same category.

### How LONG does legal protection last?

There is no time limit for the duration of Geographical Indications. GIs are considered as valid as long as the reasons for their registration persist.

### HOW do I register?

Geographical Indications can be applied for at the INPI or at the office units in other states. It is also possible to send an application by post, attested by an acknowledgement of receipt.

### Required information and documents

In order to file an application for a Geographical Indication, a completed application form must be submitted. This application form must include:

- Applicant's information, the indication of the type of GI requested

- Name of the GI
- Specific area of application
- Information about the product.

Other necessary documents to apply for a Geographical Indication are the following:

- Proof of the admissibility and merits of the application
- Copy of the Certificate of Incorporation of the Organisation of Producers that is applying for the GI
- Copy of the applicant's identity documents along with the registration number of the authorised representative of the Organisation
- Regulation of use of the geographical name
- Delimitation of the geographical area
- Description of the product or service
- Description of the characteristics of the product or service
- Labels, if the Geographical Indication can be graphically or figuratively represented
- Evidence that the producers or service providers work in the area of application and perform the economic activity that they seek protection for. There must be a controlled structure of the producers or providers that have the right to use the Geographical Indication.

Additionally, the corresponding fees must be paid.

#### WHO can register?

Registrations may be applied for by Organisations of producers, such as associations, groups, consortiums and cooperatives of producers, as well as public entities.

#### Which LANGUAGES can I use?

The application form and other required documents must be submitted in Portuguese.

#### How much does it COST?

The cost to request protection for Geographical Indications is around € 182 and around € 661 for Appellations of Origin.

#### TIPS and WATCH-OUTS

Over the years, several cities or regions become popular because of their products or services. If the quality and/or traditional features of a particular product or service are attributed to its origin, the Geographical Indication (GI) emerges as a key factor to guarantee their protection and market differentiation in Brazil. There are several [GIs and AOs](#) both national and international applications in process or already granted in Brazil.

## D. Trade Secrets

### WHAT are Trade Secrets?

Trade Secrets consist of sensitive business knowledge that confers a competitive advantage on a company over its competitors.

*Sensitive information, such as business models, lists of suppliers, technical know-how, and information about new products, special techniques, formulas and customers are subject to protection as a Trade Secret.*

An **example** of a trade secret is the improvement in uranium enrichment. This is an expensive and capital-intensive process whose costs may be significantly reduced by applying new improvements. Therefore, each country develops this process under maximum secrecy. Brazilian legislation does not specifically define Trade Secrets. However, it does specify their characteristics and elements.

In order to be protected as a Trade Secret, this sensitive knowledge has to meet two basic requirements:

- It must be confidential, i.e. it cannot be in the public domain or be obvious to a worker skilled in the sector
- It must have been subject to reasonable measures to keep it secret.

Since Trade Secrets are 'unregistered rights', there is no formal registration system. However, they can be protected privately by parties through contracts, as well as voluntarily registered before a notary public.

### Trade Secrets in BRAZIL: What you need to know

Protecting trade secrets is an important part of the business strategy of any company. They can be protected through 'confidentiality agreements' (Please have a look for further specific information in the [Factsheets Section](#) in our website). This type of agreement binds the parties not to disclose and to keep confidential the sensitive information contained therein.

*Confidentiality agreements are an important tool for SMEs to make sure that their Trade Secrets remain confidential.*

Therefore, SMEs can use said agreements as a very convenient tool before entering into business relationships with other companies or third parties. They are specially useful if they need to exchange information for the development of new products. These agreements should be signed prior to starting conversations about trade secrets by the companies and other actors involved.

Confidentiality agreements, however, can also be used by SMEs at an internal level within the company to bind employees to not to disclose the sensitive information that they handle during their employment relationship, even after their contracts of employment end. Calculating damages for breaches of confidentiality is very difficult. Therefore, it is advisable to establish a pre-estimate of damages in the agreement in the event of a breach of contract. Also, it is a good practice to exchange information only on a 'need to know' basis.

#### TIPS and WATCH-OUTS

The Brazilian legal system establishes civil and criminal actions and punishment for breaches of trust concerning trade secrets.

The law provides for imprisonment or fines for those who disclose, exploit or use trade secrets or confidential information without the consent of their owner. This applies to sensitive knowledge and information unlawfully used in any industry, commercial transaction or service.

## 4. ENFORCING your IP

IPRs in Brazil are subject to administrative, civil and criminal protection. IP Laws establish criminal penalties in case of infringement. There are specialised Intellectual Property courts. The holder of the rights may also turn to arbitration to solve the dispute.

### Administrative Actions

Administrative measures in Brazil must be applied for at the INPI (e.g. proceedings for the invalidation of an industrial design or trademark registration).

### Civil Litigation

Civil litigation is used in Brazil in cases of claims for damages, unfair competition and free-riding. Civil proceedings may result in protective measures and compensations for damages.

Judges may request or grant different types of protective measures, such as seizure of goods, corrective advertising and inspection of industry processes supposedly infringing a patent. These measures may only be obtained if they are urgently needed and if the applicant proves his/her rights on the good and the existence of a potential irreversible damage.

As to compensations for damages, it is to be noted that compensations and economic losses for *material damages* are easily calculated, since this type of damages can be quantified economically. However, it may take longer to establish *moral damages* due to their non-material nature.

In fact, they must be thoroughly examined on a case-by-case basis by the judge, who will establish the most suitable method for calculating their economic value and, finally, give a judgment.

After judgment is given against them, infringers may be required to pay damages, and cease the sale or destroy the counterfeited products.

### Criminal Prosecution

Criminal prosecutions are usually considered as the most cost-effective method of enforcement available for IPR holders. Penalties available under criminal law consist of fines and imprisonment. The infringement of a registered trademark in Brazil may result in penalties of up to one year's imprisonment. Brazilian legislation considers the exploitation of a patent or utility model without the permission of its holder as both a civil wrong and a criminal offence. Said acts of exploitation include:

- the manufacture of a product that is the subject-matter of a patent
- the use of a process that is the subject-matter of a patent
- products exported, sold, exhibited, offered for sale, hold in stock, concealed or received to be used for commercial purposes
- the import of a product that is the subject matter of a patent
- the supply of a component of a patented product, or the supply of material or equipment for carrying out a patented process, where the final use of the component, material or equipment will cause the infringement of a patent

As well as this, the infringement of a registered trademark is committed in the following cases:

- when reproducing a registered trademark or imitating it in a way that may cause confusion
- when altering the registered trademark of a third party already affixed to a product placed on the market
- when importing, exporting, selling, offering, exhibiting for sale, concealing or keeping in stock:
  - a product bearing a trademark of a third party which is unlawfully reproduced or imitated, in whole or in part
  - a product of your own company that is contained in a vessel, container or

packaging bearing the legitimate trademark of a third party

- when reproducing or imitating, in whole or in part, official armorial bearings, coats of arms, or decorations, whether national, foreign or international, applied to a trademark, the name of a company, a trade name, an insignia or an advertising sign, or when using such reproductions or imitations for commercial purposes without authorization in a manner that may mislead or cause confusion.

#### TIPS and WATCH-OUTS

The Brazilian Federal Court of Appeals for the Second Region, where the INPI is located, has two specialised panels for cases related to Intellectual Property. Additionally, some states also have State Courts, which decide on cases related to intellectual property.

However, in general, judicial process is slow and expensive and the judiciary's knowledge of IP not extensive.

## 5. Using CUSTOMS to block counterfeiting

### WHAT are customs?

The Customs Administration is the authority that supervises and controls foreign trade through national customs. It is promoted by the Brazilian Secretariat of Federal Revenue ([Secretaria da Receita Federal do Brasil](#), SRF), overseen by the State.

Customs inspection comprises two steps: the issuance of documents related to the clearance of goods and the physical inspection of goods. The main tasks of Customs authorities are to check if the goods have the necessary authorisations concerning health and safety conditions for consumers and to verify if they comply with the import and export rules. The Customs Administration must also confirm that imports comply with all the corresponding obligations (including tax payments). Other tasks performed by Customs Administration are identification of the importer, physical examination the goods to correct any information regarding their nature, tax classification, quantification and valuation.

#### TIPS and WATCH-OUTS

In 2004, the National Council to Combat Piracy and Crimes against Intellectual Property ([Comitê Nacional do Cerimonial Público](#), CNCP) was created. The CNCP is a governmental entity composed of representatives of the public and private sectors. The main purpose of the CNCP is to develop and apply the National Plan for Combating Piracy, which aims to eliminate the supply of pirated goods, through repressive measures, and the demand of said goods, through educational and economic measures.

### Customs in BRAZIL: What you need to know.

According to the Brazilian Industrial Property Law, if any good is detected to bear a counterfeited, altered or imitated trademark, or if its origin is wrongly indicated, it may be seized. The seizure may be either *ex officio* (at the initiative of Customs Administration) or at the request of the concerned person (i.e. the right holder) by the customs authorities while checking operations. Customs in Brazil has the authority to examine imported goods and to confiscate goods that infringe IP Rights. This can be done in two ways:

- Customs may take a proactive role and be aware of registered trademarks that are most susceptible of being counterfeited. They can confiscate for 10 working days any good suspicious of being counterfeited during import or export processes. After this, they must send a notification to the registered trademark holder, who can bring legal actions within 10 days to make sure that the goods are definitely confiscated before a judge. Otherwise, the goods will keep undergoing the regular clearance process and might be eventually dispatched. If necessary, these goods may remain confiscated for 10 more days, upon request, until legal action is taken.
- On the other hand, right holders -who have valid grounds for suspecting that the import or export of counterfeited goods may take place- may request the Customs authorities to seize goods, as long as they provide grounds for their suspicion.

This request shall contain:

- the trademark holder identification
- his/her domicile information
- proof of registration of the trademark
- the grounds for the suspect importation
- the seizure request.

Unfortunately, mechanisms for trademark registration before the Customs authorities are not clearly defined. Furthermore, forms cannot be electronically filled.

Customs authorities shall create a database that includes registered trademarks to be monitored during clearance processes. Cases of seizure are currently solved on a case-by-case basis. However, it is recommended to hire a local IP agent for representation purposes. This is important to guarantee a quick and correct notification monitoring.

Counterfeiting and piracy is still a big problem in Brazil, as counterfeit goods enter the numerous ports or across the border from Paraguay and digital piracy is rife.

#### TIPS and WATCH-OUTS

Besides registering IPRs at the INPI, non-residents must register their trademarks in the Integrated System for Foreign Trade of Services, Intangibles, and other Operations that produce Changes in Equity (Sistema Integrado de Comércio Exterior de Serviços, Intangíveis e Outras Operações que Produzam Variações no Patrimônio [SISCOSERV](#)). This registration must be conducted through natural or legal persons residing in Brazil. They shall become illegally empowered to carry out the registration on their behalf by means of a transfer of rights, a licence or any other.

## 6. RELATED LINKS and Additional Information

Find out more about IPR in Brazil, visit the Mercosur IPR Helpdesk website: [www.mercosur-iprhelpdesk.eu](http://www.mercosur-iprhelpdesk.eu)

Links to relevant websites and particular documents have been included throughout the text. The most relevant websites for further information on IP in Brazil are:

- Industrial Property Law in Brazil: [www.planalto.gov.br/ccivil\\_03/leis/l9279.htm](http://www.planalto.gov.br/ccivil_03/leis/l9279.htm)
- Instituto Nacional da Propriedade Industrial INPI - National Institute for Industrial Property: [www.inpi.gov.br](http://www.inpi.gov.br)
- Fundação Biblioteca Nacional National Library Foundation: [www.bn.br/portal](http://www.bn.br/portal)
- European Union, DG Trade, Market Access Database:

[www.madb.europa.eu/madb/barriers\\_details.htm?barrier\\_id=075074&version=23](http://www.madb.europa.eu/madb/barriers_details.htm?barrier_id=075074&version=23)

- Comitê Nacional do Cerimonial Publico, CNCP National Council to Combat Piracy: [www.cncp.org.br](http://www.cncp.org.br)
- Conselho Federal de Engenharia e Agronomia, CONFEA/CREA (Federal Council of Engineering, Architecture and Agronomy): [www.confea.org.br/cgi/cgilua.exe/sys/start.htm?tpl=home](http://www.confea.org.br/cgi/cgilua.exe/sys/start.htm?tpl=home)
- Escola de Belas Artes da Universidade Federal do Rio de Janeiro School of Arts of the Federal University of Rio de Janeiro: [www.eba.ufrj.br/index.php/servicos/direitos-autorais](http://www.eba.ufrj.br/index.php/servicos/direitos-autorais)
- Escola de Música da Universidade Federal do Rio de Janeiro School of Music of the Federal University of Rio de Janeiro: [www.musica.ufrj.br](http://www.musica.ufrj.br)
- Secretaria da Receita Federal do Brasil, SRF Brazilian Secretariat of Federal Revenue: [www.receita.fazenda.gov.br](http://www.receita.fazenda.gov.br)
- Sistema Integrado de Comércio Exterior de Serviços, Intangíveis e Outras Operações que Produzam Variações no Patrimônio, SISCOSERV Integrated System for Foreign Trade of Services, Intangibles, and other Operations that produce Changes in Equity: [www.receita.fazenda.gov.br/legislacao/legisassunt/o/siscoserv.htm](http://www.receita.fazenda.gov.br/legislacao/legisassunt/o/siscoserv.htm)

The postal addresses of the main IP Organisations in Brazil are:

**Instituto Nacional Da Propriedade Industrial (INPI)**

**(National Institute of Industrial Property)**

Rua Marquês de São Carlos, nº 9, 21º andar

- Centro - Rio de Janeiro.

CEP 20090-910.

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