

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 nineteenth and twentieth-century popes and kings drank Puerto Rican coffee.<sup>1</sup> Moreover, the Puerto Rican government’s investment in local businesses to export and build sustainable economic development helped procure these highly-regarded consumers.<sup>2</sup> However, current Puerto Rican laws that negatively impact economic growth on small and medium enterprises (SMEs) make this common knowledge seem like an urban legend. Notably, the “Law to Use the Mark DelPaís” (the DelPaís Law) represents one such law negatively impacting SMEs, and its impact requires a case study understanding its shortcomings and proposing solutions for its issues.

The DelPaís Law codified in 2016 the Puerto Rican geographic indicator (PRGI) DelPaís certification trademark (DelPaís Mark) created in 2002 by the Puerto Rican Department of Agriculture to: (1) respond to the Department of Agriculture’s inconsistent use, non-transparency and lack of accountability for DelPaís Mark; (2) increase local business revenues by using the DelPaís Mark to increase consumers’ willingness to buy local products; and (3) reduce Puerto Rico’s over-dependency on importing food from the United States.<sup>3</sup> However, despite the Department of Agriculture’s subsequent efforts, consumers question the DelPaís Marks’ effectiveness in reducing import dependency and increasing revenue.

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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 7* (2012), <https://grupocne.org/wp-content/uploads/2013/09/Coffee-Cultivation-and-Economic-Development-Final.pdf>.

<sup>2</sup> Edwin Irizarry Mora, *ENSAYOS PARA UNA NUEVA ECONOMÍA* 25–27 (Ediciones Callejon ed. 2017).

<sup>3</sup> *Id.* at 24–25.; *LEY PARA EL USO DE LA MARCA DELPAÍS*, 2016 PR LAW 195, 5 LPRA 4742 (2016).

When properly implemented, geographic indicators (GIs) can increase product commercialization, exports, and profits for local SMEs.<sup>4</sup> The Caribbean and Latin America have successfully used GIs to increase SMEs' revenues and the overall countries economic development.<sup>5</sup> However, Puerto Rico has failed to implement such GIs properly, and subsequent attempts at fixing its GI implementation have also failed.

This study examines the definition, functions, benefits, and legal implementation of GIs by examining Colombian Coffee, Hawaii Kona Coffee, Jamaica Blue Mountain Coffee, and Mexican Tequila's (tequila) use of GIs. The results of this study 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 and other PRGIs can become a new economic development strategy for Puerto Rico.

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<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), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/biplj7&div=12&id=&page=..>

<sup>5</sup> Daniele Giovannucci et al., GUIDE TO GEOGRAPHICAL INDICATIONS: LINKING PRODUCTS AND THEIR ORIGINS 10 (International Trade Centre (ITC) of the World Trade Organization (WTO) ed. 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).

## INTRODUCTION

GIs are source identifiers that can improve economic development through exporting and selling products in niche international markets. Unlike traditional GIs, the DelPaís Law differentiates local products sold only within Puerto Rico from imported products.<sup>6</sup> This theme arises from research showing that Puerto Ricans historically prefer United States products and services over Puerto Rican products and services.<sup>7</sup> The DelPaís Law intended to combat this preference but failed, resulting in continued over-dependence on imported products from the United States.<sup>8</sup> 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 that would maximize its benefit in helping SMEs.

This introduction briefly explores the Puerto Rican Congress's failure to implement GI policies protecting local products within the DelPaís Law. The introduction 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 describes policy recommendations, and provides a conclusion summarizing this study's findings.

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<sup>6</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, 2016 PR LAW 195, *supra* note 3..

<sup>7</sup> Dr. Myrna Comas Pagán, PLAN ESTRATÉGICO INTEGRAL AGRÍCOLA PARA PUERTO RICO 3 (2016), <https://drive.google.com/file/d/1xhh11tnAGFw-HYWJlkXmyBxyVW2SI-k0/view>; Dr. Myrna Comas Pagán, PLAN DE SEGURIDAD ALIMENTARIA PARA PUERTO RICO 3–9 (2013), <https://drive.google.com/file/d/1Ceqouae-IBUTvmX-N0004uNqjQJ49Jrv/view>; Gladys M González & Alexandra Gregory, ECONOMIC DEVELOPMENT PLAN FOR THE AGRICULTURE SECTOR 2–3 (2017), <http://jp.gobierno.pr/LinkClick.aspx?fileticket=ywwUp7PPac0%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, 306–308 (1993), <https://www.jstor.org/stable/45197336>; MARXUACH, *supra* note 1 at 64..

<sup>8</sup> Giovannucci et al., *supra* note 5 at 10..

## I. Problem Statement

In the United States, robust intellectual property laws and proper enforcement of those laws have boosted sustainable economic development.<sup>9</sup> However, 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 GIs, have created a hindrance.

This study addresses the impact of existing PRGI laws on economic development in Puerto Rico, principally on Puerto Rican SMEs. The DelPaís Law is a prime example of such a law that requires a case study understanding its failure and propose solutions thereto.<sup>10</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 is intended to protect nor provide explicit standards for the DelPaís Mark's use.

This study's methodology analyses the successful Colombian Coffee and Hawaiian Kona Coffee GI Laws, offering excellent PRGI implementation and formulation guidance.<sup>11</sup> The

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<sup>9</sup> Kamil Idris, *Intellectual Property: A Power Tool for Economic Growth* 27–28, 34, 41, (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); Carlos Primo Braga, Fink Carten & Claudia Paz Sepúlveda, INTELLECTUAL PROPERTY RIGHTS AND ECONOMIC DEVELOPMENT 13, 31 (The International Bank for Reconstruction, The World Bank ed. 2000), [https://www.researchgate.net/publication/5077786\\_Intellectual\\_Property\\_Rights\\_and\\_Economic\\_Development](https://www.researchgate.net/publication/5077786_Intellectual_Property_Rights_and_Economic_Development); Jorge Mario Martínez-Piva, KNOWLEDGE GENERATION AND PROTECTION: INTELLECTUAL PROPERTY, INNOVATION AND ECONOMIC DEVELOPMENT, 29–31, 118–119 (Jorge Mario Martínez-Piva ed., 2009), <http://hdl.handle.net/11362/2006>; Irene Calboli & Daniel J Gervais, *Socio-Economic Aspects of Geographical Indications*, in WORLDWIDE SYMPOSIUM ON GEOGRAPHICAL INDICATIONS, BUDAPEST 39, 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 CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE , 22 (Irene Calboli & Ng-Loy Wee Loon eds., Irene Calboli&Wee Loon Ng-Loy, ed. 2017), <https://www.cambridge.org/gb/academic/subjects/law/intellectual-property/geographical-indications-crossroads-trade-development-and-culture-focus-asia-pacific?format=HB#LX5hiK9JGI0jtWKj.97>; 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 (2015), <http://link.springer.com/10.1007/s40319-015-0394-0> (last visited Jun 23, 2020).

<sup>10</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, 2016 PR LAW 195, *supra* note 3.

<sup>11</sup> Giovannucci et al., *supra* note 5 at 177–183 & 197–203; Yanis Rosana Blanco Santiago, *La Protección de las Indicaciones Geográficas en el Comercio Internacional: Recepción y Efectividad en el Ordenamiento Jurídico Puertorriqueño*, 442-46, 2015, <https://eprints.ucm.es/43210/>.

contrasting cases Jamaica Blue Mountain Coffee and Mexican Tequila, two failed GI systems, illustrate practices that PRGIs should avoid. The analysis helps formulate recommendations for the DelPaís Law's policy while accounting for Puerto Rico's unique circumstances, challenges, and opportunities. The study recommends changes necessary to make the DelPaís Law a new economic development strategy for Puerto Rico. The proposed solutions' methodology is also applicable to other PRGI laws in Puerto Rico suffering from 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 DelPaís Mark's value.<sup>12</sup> Implementing the recommendations in this study would improve citizens' quality of life, develop tourism, and increase intangible assets' value in Puerto Rico.

The brief history in the next section explains sociological circumstances under which the Puerto Rican government decided to create DelPaís Law and subsequently failed to implement the law. The DelPaís Law contravenes the Puerto Rican government's standard method to stimulate economic development through tax incentives inviting foreign and United States companies.

## II. Brief History

There are some famous foods and products that people associate with Puerto Rico. Puerto Rican Coffee was a hot commodity among the higher classes internationally in the nineteenth and twentieth centuries.<sup>13</sup> For more than a century and even during dire times, consumers have enjoyed

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<sup>12</sup> Stalin Ballesteros García & Jorge Bulla de la Hoz, *Incidenca 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 (2016), <https://search-ebSCOhost-com.proxyiuub.uits.iu.edu/login.aspx?direct=true&db=fua&AN=121527036&site=eds-live&scope=site>. Acceso em: 17 abr. 2020 (last visited Feb 24, 2020).

<sup>13</sup> O'Neill Pumarada and Pumarada, *supra* note 1 at 56; Marxuach, *supra* note 1 at 7.

Puerto Rican rums, including Bacardi, Don Q, and Ron del Barrilito.<sup>14</sup> Moreover, one of the main attractions that Puerto Rico offers is its traditional food and culture. The Puerto Rican government created PRGIs to help agricultural businesses market their products because these businesses lacked the skills to do so correctly, having only informal and spontaneous marketing without any structure.<sup>15</sup> However, current PRGI laws give inadequate and inconsistent protection, and when used as a promotional branding tool, they change too often, disappear, or work improperly.<sup>16</sup> PRGI laws for marketing local products have never taken center stage in economic development because the government neglects the effective organization required for such laws.<sup>17</sup> The government neglects the agricultural industry because it is “no longer conceived as a pillar of the economy, but implicitly viewed as an obstacle to growth rather than a resource to be rescued.”<sup>18</sup> The DelPaís Mark, a PRGI enacted in 2002, represents the Puerto Rican government's failure to take agriculture seriously as an industry that can promote Puerto Rican culture for tourism and increase food

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<sup>14</sup> Distilleries like Don Q and Bacardi are making hand sanitizer to combat COVID-19. Mike Pomranz, DISTILLERIES AROUND THE GLOBE ARE HELPING PRODUCE HAND SANITIZER DURING THE CORONAVIRUS PANDEMIC (News ed. 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 used to make rum during the prohibition era. José Enrique Pérez Montes, *Ideas anti-alcohólicas y representaciones de los sujetos alcohólicos antes y durante la Prohibición en Puerto Rico*, REVISTA TRASUNTO DEL DEPARTAMENTO DE ESTUDIOS HISPÁNICOS DE LA UNIVERSIDAD DE PUERTO RICO DE RIO PIEDRAS, 12 (2016), <https://revistatrasunto.com/2016/03/28/ideas-anti-alcoholicas-y-representaciones-de-los-sujetos-alcoholicos-antes-y-durante-la-prohibicion-en-puerto-rico/>.

<sup>15</sup> Jaime Olivieri Barrios, Katiria Figueroa Medina & Maribel Ortiz Soto, *Estrategias de Mercadeo Utilizadas por Empresas Sociales Establecidas Puerto Rico*, 2 ICSB WORLD CONFERENCE PROCEEDINGS 0\_1,1-26, 22–23 (2013), <https://proxyiub.uits.iu.edu/login?url=https%3A%2F%2Fwww.proquest.com%2Fconference-papers-proceedings%2Festrategias-de-mercadeo-utilizadas-por-empresas%2Fdocview%2F1617794927%2Fse-2%3Faccountid%3D11620>.

<sup>16</sup> Irizarry Mora, *supra* note 2 at 23.

<sup>17</sup> Mario Carvajalino-Arevalo, *Agricultural Marketing and Economic Development: An Annotated Bibliography with Special Reference to Latin America*, GRADUATE RESEARCH MASTER’S DEGREE PLAN B PAPERS, 1 & 8 (1966), <http://ageconsearch.umn.edu/record/11105>.

<sup>18</sup> Katia Raquel Avilés-Vázquez, *Farming And Resistance: Survival Strategies Of Smallholder Farmers In Puerto Rico*, 2014, (Published PhD Department of Geography and the Environment University of Texas), <http://hdl.handle.net/2152/34046>.

security for locals.<sup>19</sup>

Tax incentives are of central importance in Puerto Rico's economic development. From Spanish colonial times, beginning in 1493, to the present day, Puerto Rico has been a "tax haven."<sup>20</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>21</sup> Dependency is also present in the agricultural industry, as the Spanish heavily encouraged large companies to move to Puerto Rico to establish sugar, coffee, and tobacco harvests by purchasing land and prohibiting local citizens from buying it.<sup>22</sup>

From 1940 to 1950, the government noticed that agriculture was generating income slowly, not enough to cover for the fast-paced lifestyle that was desired. In response, the government decided to invest in industrializing the island.<sup>23</sup> In 1941, the governmental agency Puerto Rico Development Company (PRIDCO or Compañía de Fomento de Puerto Rico), implemented an "industrialization plan" so local businesses could specialize in the manufacturing industry.<sup>24</sup> The plan obligated local companies to buy shoes, leather products, paper, boxes, and PVC tubes from PRIDCO's manufacturing facility.<sup>25</sup> However, local businesses rejected the plan due to socialist

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<sup>19</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, 77 (2002), [www.jstor.org/stable/25613372](http://www.jstor.org/stable/25613372).

<sup>20</sup> Diane Lourdes Dick, *U.S. Tax Imperialism in Puerto Rico*, 65 AM. U. L. REV 1, 53–68 (2015), <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2120&context=aulr>; Emilio Pantojas García, CRÓNICAS DEL COLAPSO: ECONOMÍA, POLÍTICA Y SOCIEDAD DE PUERTO RICO EN EL SIGLO VEINTIUNO 86–89 (Libros El Navegante Ediciones El Callejón, 3rd ed. 2015); Silverio Pérez, LA VITRINA ROTA O ¿QUÉ CARAJOS PASÓ AQUÍ? 43–67 (Ediciones Callejón Libros El Navegante, 3rd ed. 2018).

<sup>21</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, *supra* note 2 at 28.

<sup>22</sup> Carro-Figueroa, *supra* note 19 at 80.

<sup>23</sup> *Id.* at 83–84.

<sup>24</sup> Irizarry Mora, *supra* note 2 at 27–29.

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

undertones.<sup>26</sup>

From 1950 to 1970, Puerto Rican food prices increased to the point that the United States and Puerto Rican governments implemented a food stamp program.<sup>27</sup> Instead of making local food products more affordable, food stamps caused eighty to ninety percent of the Puerto Rican population to prefer imported foods.<sup>28</sup> The Industrial Incentive Act, Section 931 and Section 936, gave ninety to one-hundred percent tax exemptions to foreign and United States corporations to establish manufacturing, pharmaceuticals, and professional service operations in Puerto Rico.<sup>29</sup> These laws intended to create economic development for Puerto Rico, but instead they spurred economic growth for the United States because the local Puerto Rican government had limited administrative tools for retaining generated revenues, enabling companies to transfer the most revenues back to the United States.<sup>30</sup> The Industrial Incentive Act, Section 931 and Section 936, had a devastating effect on agriculture because they took away land, labor, and capacity for Puerto Rico's citizens to produce food.<sup>31</sup> When the United States derogated Sections 931 and 936, United States companies left the Puerto Rican Treasury without money.<sup>32</sup> The Puerto Rican Treasury tried to resolve the debt problem by issuing loans.<sup>33</sup> This practice became a habit until it got out of hand when the Puerto Rican Governor, Ricardo Rosselló, ordered the construction of a costly train, convention center, and concert stadium.<sup>34</sup>

From 1990 to mid-2000, the Puerto Rican government shifted away from its abandonment of agriculture, taking more paternalistic participation in reforming the industry as then-Secretary

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

<sup>27</sup> Carro-Figueroa, *supra* note 19, at 84–85.

<sup>28</sup> *Id.* at 85–6.

<sup>29</sup> IRIZARRY MORA, *supra* note 2, at 31.

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

<sup>31</sup> Avilés-Vázquez, *supra* note 18, at 89.

<sup>32</sup> COLLINS, BOSWORTH, AND SOTO-CLASS, *supra* note 21, at 18.

<sup>33</sup> PÉREZ, *supra* note 20, at 158–161.

<sup>34</sup> *Id.* at 158–161.



of Agriculture had a significant food security concern.<sup>35</sup> The secretary implemented production nucleolus (dividing the agricultural sector into sectors per crop or animal) to organize agriculture by subsectors to increase coordination for each agricultural sector and increase incentive programs to subsidize the industry heavily.<sup>36</sup> The effects of such a decision caused the industry to be highly dependent on tax incentives and subsidies to the point that it may not survive without them.<sup>37</sup> Moreover, the government to this day faces allegations from farmers that the government distributed money to insiders and large corporations rather than to local Puerto Rican agriculturalists.<sup>38</sup> From 1990 to 2000, the most successful initiatives (compared to the rest of the programs implemented at the time) were the School Lunch Program and this dissertation's case study, the DelPaís Law.<sup>39</sup> With the 2008 economic crisis, the Puerto Rican Treasury slowly sunk to \$75 billion in debt until its breaking point in 2016.<sup>40</sup>

In 2016, the Secretary of the Treasury, Juan C. Zaragoza Gómez, advised the governor at the time, Alejandro Garcia Padilla, to declare bankruptcy.<sup>41</sup> Nonetheless, in *Puerto Rico v. Franklin Cal. Tax-Free Trust*, the United States Supreme Court determined that Puerto Rico could not do so.<sup>42</sup> In response, the United States Congress passed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), implementing a supervisory board to negotiate the national debt with Puerto Rico's government.<sup>43</sup> In 2017, Hurricane María struck,

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<sup>35</sup> Carro-Figueroa, *supra* note 19, at 100.

<sup>36</sup> *Id.* at 100.

<sup>37</sup> Avilés-Vázquez, *supra* note 18, at 188.

<sup>38</sup> Carro-Figueroa, *supra* note 19, at 101.

<sup>39</sup> *Id.* at 101–102.

<sup>40</sup> Dick, *supra* note 20, at 78–83; PANTOJAS GARCÍA, *supra* note 20, at 83–5; PÉREZ, *supra* note 20, at 157–177.

<sup>41</sup> David Skeel, *Reflections on Two Years of PROMESA*, 3 REVISTA JURIDICA UPRRP 862, 862 (2018), <http://revistajuridica.uprrp.edu/wp-content/uploads/2018/06/09-2-years-of-PROMESA-1.pdf>.

<sup>42</sup> *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 (1938).

<sup>43</sup> 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>.

and Governor Ricardo Rosselló Nevares, Jr. inadequately managed governance as aid disappeared, supplies went abandoned, people lived under tarps, and deaths went unreported.<sup>44</sup> In 2019, controversial text message conversations revealed the rampant corruption that occurred during the hurricane.<sup>45</sup> More recently, earthquakes and disease intensified the Puerto Rican crisis; however, tragedy has united inhabitants to focus on economic development by reinventing local businesses.<sup>46</sup> Finally, the COVID crisis has put food insecurity front and center even though many Puerto Rican scholars have warned about the issue for the last twenty years.<sup>47</sup>

Literature suggests that PRGI laws marketing local products should have a more significant development role in development plans.<sup>48</sup> This literature claims that to solve food insecurity and economic development; the Puerto Rican government should reform the agricultural sector to sell differentiated food at niche markets. Puerto Rican scholars agree with the United States and Latin American literature that GIs could achieve such a goal. When appropriately implemented, GIs provide protection and promotion to local agriculture. An economically and culturally successful GI balances protecting local practices and increasing producers' revenue. However, Puerto Rican scholars do not detail how to implement GIs in Puerto Rican agricultural development.

This study fills the gap proposing changes by using the DelPaís Law as a case study. The current implementation of the DelPaís Law creates a designation of origin for products in Puerto

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<sup>44</sup> Pantojas García, *supra* note 20, at 363–65.

<sup>45</sup> *Id.* at 363–65.

<sup>46</sup> Daniel Edgardo Adorno-Cruz, TERREMOTO EN PUERTO RICO DEMUESTRA QUE EL GOBIERNO NO PUEDE MANEJAR UNA CRISIS (2020), <https://www.opendemocracy.net/es/democraciaabierta-es/terremoto-en-puerto-rico-demuestra-que-el-gobierno-no-puede-manejar-una-crisis/>.

<sup>47</sup> Dr. Myrna Comas Pagán, *Vulnerabilidad de Las Cadenas de Suministros, El Cambio y El Desarrollo de Estrategias de Adaptación: El Caso de Las Cadenas de Suministros de Alimento de Puerto Rico*, 36-7, 2009, (Dissertation for Ph.D in Philosophy in Business Administration Published 2009 International Commerce Program at University of Puerto Rico Mayagüez Campus), <http://academic.uprm.edu/mcomas/HTMLobj-159/tesis.pdf>; Comas Pagán, *supra* note 7 at 1–9; González and Gregory, *supra* note 7, at 2 & 68; Carro-Figueroa, *supra* note 19 at 100–102.

<sup>48</sup> Carvajalino-Arevalo, *supra* note 17, at 1 & 8.

Rico but fails to afford such an essential balance in a well-functioning GI policy.<sup>49</sup> 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.

### III. Current DelPaís Mark and Law Profile

- **Owner:** Fondo de Innovación para el Desarrollo Agrícola (Fund for the Innovation in Agricultural Development or FIDA)
- **Puerto Rico Trademark Register (PRTR):**
  - **Abandoned:** 2002, 2011, 2013
  - **Active since 2016:** 226720-29-1; 226720-30-1 and 226720-31-1<sup>50</sup>

**Website:** <https://www.agricultura.pr/>; <https://www.facebook.com/DelPaisPR>

The DelPaís Mark was established in 2002 and revived in 2011, 2013, and 2016 by its owner, the Puerto Rican Department of Agriculture.<sup>51</sup> More specifically, the Department's sub-agency, Fondo de Innovación para el Desarrollo Agrícola (Fund for the Innovation in Agricultural Development or FIDA), currently manages both the DelPaís Law and Mark's programs.<sup>52</sup> The DelPaís Law codified the 2002 DelPaís Mark certification trademark in an attempt to guarantee consumers high-quality local products distinguishable from imported products.<sup>53</sup> Most products under the mark sell in local family markets, supermarkets, and farmers' markets, available to non-

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<sup>49</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, 2016 PR LAW 195, *supra* note 3.

<sup>50</sup> Puerto Rico Trademark Register

<https://prtmfiling.flhst.com/Transaction/Actions?t=2&mid=126919&cid=764235>

<https://prtmfiling.flhst.com/Transaction/Actions?t=2&mid=126920&cid=764236>

<https://prtmfiling.flhst.com/Transaction/Actions?t=2&mid=126921&cid=764237>

<https://prtmfiling.flhst.com/Transaction/Actions?t=2&mid=6310&cid=6880>

<https://prtmfiling.flhst.com/Transaction/Actions?t=2&mid=126921&cid=764237>

<https://prtmfiling.flhst.com/Transaction/Actions?t=2&mid=88465&cid=99650>

<https://prtmfiling.flhst.com/Transaction/Actions?t=2&mid=88465&cid=99650>

<sup>51</sup> Carro-Figueroa, *supra* note 19, at 101.

<sup>52</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, 2016 PR LAW 195, *supra* note 3.

<sup>53</sup> *Id.*

citizens of Puerto Rico (living outside the island) via producers' websites.<sup>54</sup> The DelPaís Law's explanatory statement declares that the DelPaís Mark combats consumer preference and the over-dependence on imported products from the United States and elsewhere.<sup>55</sup> To put things in perspective, due to consumer preferences, imported products generate \$6 billion in average net income, while the local industry makes only \$920 million in net income, representing eighty percent and twenty percent, respectively.<sup>56</sup> Legal scholars and economic development plans clarify consumer preferences for imported products stem from:

- Puerto Ricans consider foreign and United States brands as superior to local brands.<sup>57</sup>
- Consumers buy imported products for their extended durability and low prices as compared to domestic products.<sup>58</sup>
- Due to the climate, Puerto Rican farmers cannot produce the products that make up the “Puerto

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<sup>54</sup> DEPARTAMENTO DE AGRICULTURA, MERCADO FAMILIAR (2019), <https://www.agricultura.pr/calendario-mercados>. (Farmers' Markets 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 (2019), <https://activopr.com/enterate/2019/12/04/supermax-crea-colaboracion-para-promover-productos-agricolas-locales.html>; DENNIS COSTA, DELPAÍS STRENGTHENS SUPPLY OF FRESH PRODUCTS (2016), <https://caribbeanbusiness.com/delpais-strengthens-supply-of-fresh-products/?print=print>.

<sup>55</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, 2016 PR LAW 195, *supra* note 3.

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

<sup>57</sup> Irizarry Mora, *supra* note 2 at 63–66; Carro-Figueroa, *supra* note 19 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 (1964), <https://revistas.upr.edu/index.php/rscs/article/view/9331/0>; José A Flecha, María De los M. Santos-Corrada & 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>58</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*, 19-21, 2008, (Dissertation for Masters in International Business Administration and Marketing Presented at the Interamerican University of Puerto Rico Ponce Campus), [http://ponce.inter.edu/cai/Tesis\\_Graduado/Janellie-Jessica/index.pdf](http://ponce.inter.edu/cai/Tesis_Graduado/Janellie-Jessica/index.pdf); Mildred Cortés, *Análisis Descriptivo de las Preferencias de los Consumidores de Raíces y Tubérculos en Puerto Rico*, 93 J. AGRIC. UNIV. P.R. 273, 276 (2009), <https://revistas.upr.edu/index.php/jaupr/article/view/5475>; Nicolás Cartagena-Romero, *Gustos y preferencias de los consumidores de carne de res de Puerto Rico*, 100 J. AGRIC. UNIV. P.R. 16, 228 (2016), <https://revistas.upr.edu/index.php/jaupr/article/download/12732/10475/>; JORGE GONZÁLEZ, ESTUDIO DE GUSTO Y PREFERENCIAS DE QUESOS EN LA REGIONES DE ARECIBO, AGUADILLA Y MAYAGÜEZ Y PONCE 1–2 (1992), <https://vivo.uprm.edu/vivo/display/n22914>.

Rican diet,” such as rice, cereals, beans, oils, and beef.<sup>59</sup>

- Due to bad governmental planning with land, erosion, and contamination, Puerto Rico does not have the capacity to produce all goods consumer’s demand.<sup>60</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 ran out of food, resulting in food rationing.<sup>61</sup> Moreover, “public policy elevates the DelPaís Mark into a law” because the mark would reduce information asymmetry between local and imported products.<sup>62</sup> Scholars explain that:

- Products using the “Made in Puerto Rico” mark have a sixty-five percent higher consumer recognition (consumers recognize and buy more often) among Puerto Ricans than products that do not use the mark.<sup>63</sup>
- Consumers were willing to pay fifteen to forty-five percent more for local products with the DelPaís Mark.<sup>64</sup>
- These local products composing the “Puerto Rican Diet,” if appropriately identified as “locally produced,” encourage consumers to buy them:<sup>65</sup>

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<sup>59</sup> Comas Pagán, *supra* note 7, at 10.

<sup>60</sup> Sonia Isabel Martínez Rodríguez, *Exploratory Study On Import Promotion Services And How Those Services Could Benefit Puerto Rico’s Importers*, MASTER IN BUSINESS ADMINISTRATION, UNIVERSITY OF PUERTO RICO MAYAGÜEZ, 1 (2015), <https://scholar.uprm.edu/handle/20.500.11801/91>.

<sup>61</sup> LEY PARA EL USO DE LA MARCA DELPAÍS, 2016 PR LAW 195, *supra* note 3.

<sup>62</sup> Ley para el Uso de la Marca DelPaís, 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>63</sup> Flecha, Santos-Corrada, and Mena-Candelaria, *supra* note 57 at 294.

<sup>64</sup> Jaime Santiago, “Cosecha y Crianza”: *A New Approach to Market Local Agricultural Products*, 40 CARIBBEAN BUSINESS 18 (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 (2011), <https://search-ebSCOhost-com.proxyiub.uits.iu.edu/login.aspx?direct=true&db=b9h&AN=67736209&site=eds-live&scope=site>.

<sup>65</sup> Comas Pagán, *supra* note 7 at 78–83; *Id.* at 10.; González, *supra* note 58 at 1–4; Cartagena-Romero, *supra* note 58 at 222–23; Katarina Labajova, *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*, 1-15,

- Fruits: oranges, papaya, mandarin, pineapple, banana, lemons, and coconut
- Roots and Tubercles: yautia, yam, yucca, and sweet potatoes
- Milk not including derivatives like cheese and yogurt because they are new to the industry.
- Meats: poultry, eggs, and pork. Beef has a limited distribution market in Puerto Rico.
- Vegetables: pumpkin, lettuce, tomato, and cabbage.

#### IV. Roadmap

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

**Chapter II** analyzes GI implementation in four GI cases: Colombian Coffee (Café de Colombia), Hawaii Kona Coffee, Jamaica Blue Mountain Coffee, and tequila of Mexico. The former two are well-structured, collaborative, and detailed coffee GI policies, and the latter two are, in contrast, examples of formulation and implementation mistakes.

**Chapter III** reviews the DelPaís Law's history and formulation to analyze the reasons for its failure. There are no public codes of practice, no economic impact statistics, unclear product-

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2004, (Dissertation for Masters in Science Agricultural Economy Presented at University of Puerto Rico Mayagüez Campus), <https://proxyiub.uits.iu.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fdissertations-theses%2Fposicionamiento-de-productos-agr%C3%ADcolas-locales%2Fdocview%2F305368704%2Fse-2%3Faccountid%3D11620>.

origin-quality links, a disorganized marketing strategy, and strong rivals mimicking the DelPaís Mark's purpose. The investigation results point to the policymakers' failure to address each factor in Chapter II.

**Chapter IV** details the suggested recommendations attached to each GI policy factor, discussed in Chapter III, and their viability within the Puerto Rico-United States relationship's scope. Recommendations promote active collaboration of the Puerto Rican Department of Agriculture and actively participating agricultural associations to build an export marketing strategy under the DelPaís Law to increase its effectiveness concerning protected products and construct practice manuals with higher traceability and accountability guarantees. The chapter ends by analyzing the recommendations' implications and obstacles in their implementation; there are anticipated roadblocks, such as shipping restrictions, Puerto Rico's lack of international self-representation, and trademark limitations imposed by the United States Constitution's Supremacy and Commerce Clause.

This dissertation reflects whether the analysis answered the research questions to help Puerto Rico's economic development. Moreover, the conclusion details the following steps to present this dissertation: present white papers to the Puerto Rican Congress, Department of Agriculture, Commission of Agriculture, and farmers. Lastly, the conclusion emphasizes the contributions and implications of this study.