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**Unlocking the Geographical Indications Puzzle:
Navigating Legal Diversity through Objective-
Driven Transposition**

Lise Bernard-Apéré

European University Institute

Academy of European Law

European Society of International Law

Research Forum, Nicosia, April 2024

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Abstract

The European Union safeguards over 3,500 agri-food products within its territory, thanks to a comprehensive legal framework, through geographical indications (hereinafter, GIs), a label guaranteeing the origin and the European production. GIs offer numerous economic, cultural, social, and environmental benefits. However, internationally, the EU faces the misappropriation of many GIs, such as Champagne or Parmigiano Reggiano. Consequently, the EU aims to extend its *sui generis* protection system beyond the European market and ensure that many geographical indications are protected by its trading partners, to prevent unfair and parasitic competition. The EU is aware that many stakeholders, such as the USA and Australia, refuse to protect geographical indications, and are therefore reluctant to comply with European law. The EU acknowledges that its concept is very European, and little understood by other countries, which is why its goal is not to export its norms but to gain recognition for the protection of its products. Thus, the EU seeks to disseminate its standards without aiming for regulatory convergence since the transposition is objective-driven.

Faced with disappointing multilateral instruments, the EU has turned to regional trade agreements and association agreements. However, these agreements are contractual treaties based on compromises between the parties, harmonizing two systems of domestic law that did not initially coincide. Therefore, the EU has developed a strategy for choosing its trading partners. It works with selected partners, with whom it has negotiating leeway to gain recognition for the protection of some of its GIs. GI protection in trade agreements thus stems from different dynamics.

Consequently, there is a certain heterogeneity in the protection of European geographical indications on the world stage, resulting from normative transposition, sometimes deliberate, *de facto* or *de jure*, and sometimes more incidental. The choice of trading partners depends largely on the degree of legal interaction and integration. The study of the export of European geographical indications provides insight into the interconnections between domestic legal orders, EU law, and regional legal orders, on the global scene. Such a demonstration in the case of geographical indications is necessary, as this is an area where the EU cannot rely on its regulatory power (e.g. the Brussels effect). Indeed, in the case of geographical indications, the EU seeks recognition for a concept that is specific to it, but which lies outside its internal market. Therefore, the study of the interplay between different legal systems is of particular interest.

Keywords

Geographical indications, EU's external relations, Trade agreements, regional trade agreements, International Economic Law, EU Trade Policy, Extraterritoriality, Intellectual Property.

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Introduction

The European Union protects more than 3,500 agri-foodstuffs on its territory¹, thanks to a comprehensive legal framework, through geographical indications (hereinafter, GIs), a label guaranteeing the origin and the European production. For instance, Roquefort, Feta, Parma Ham, and Mozzarella di Bufala Campana are protected. Geographical indications are labels that “identify an agricultural product or foodstuff as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or another characteristic of

¹Représentation en France de la Commission européenne, "La Commission approuve la 3500e entrée dans le registre des indications géographiques: l'appellation d'origine protégée "Corrèze" de France", Europa (24 february 2023), online:<

the product is essentially attributable to its geographical origin”². Geographical indications can be attributed to agri-foodstuffs, wine, or spirits. Current discussions within the European Union also aim to integrate manufactured and artisanal products³.

GIs “are an intellectual property right (IPR) designed to promote fair competition amongst producers by preventing bad-faith uses of a name and fraudulent and deceptive practices”⁴. GIs are also a real guarantee of product authenticity for consumers, who can distinguish these products on the market, thus ensuring higher-value sales and exports⁵. The European Commission lists the following benefits: “[t]he average price of GI [...] products is twice as high as that of comparable non-GI [...] products; relatively lower price variability for GI products; fair competition for producers in the GI [...] value chain; diversification of on-farm activities, e.g. processing, new types of sales (direct sales, e-sales) and agritourism”⁶. GIs enable maintaining product diversity⁷, and availability⁸ as well as being an effective communication channel between producers and consumers⁹. In today's economy, where consumers are concerned about costs, provenance, and respect for human rights in the design of their consumer products, the guarantee of a fair income for producers¹⁰ is also a powerful argument. GIs enable consumers to make informed purchasing choices¹¹. Furthermore, GIs depend on human factors, which are associated with the production processes and *savoir-faire*¹². Hence, GIs encompass much more than just intellectual property rights; they can contribute to the protection of traditional knowledge¹³, cultural heritage, sociocultural development, rural poverty

²Comprehensive Economic and Trade Agreement, European Union and Canada, October 30 2016, art 20.16 (provisional entry into force September 21, 2017).

³Council of the EU (2022), Geographical indication protection for craft and industrial products: Council adopts position, Consilium, online: <<https://www.consilium.europa.eu/en/press/press-releases/2022/12/01/geographical-indication-protection-for-craft-and-industrial-products-council-adopts-position/>>.

⁴EU, *Proposal for a regulation of the European parliament and of the Council on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2017/1001 and (EU) 2019/787 and repealing Regulation (EU) No 1151/2012*, [2022] 134 final, p. 1 [EU, *Proposal for a regulation*].

⁵*Ibid.*

⁶*Ibid.* p. 5.

⁷EU, *Regulation (EU) N°1151/2012 of the European parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs*, [2012] OJ, L 343/1.

⁸*Ibid.*

⁹GianCarlo Moschini, Luisa Menapace and Daniel Pick, “Geographical Indications and the Competitive Provision of Quality in Agricultural Markets” (2008) 90:3 Am J Agri Econ 794 (QL).

¹⁰EU, *Proposal for a regulation*, *supra* note 4 p.5.

¹¹*Ibid.* p.17.

¹²Maryline Boizard, “La protection du patrimoine culturel sous l'angle des droits français et de l'Union des indications géographiques et des appellations d'origine protégées: état des lieux et perspectives” (2012) NS 1 Revue Juridique de l'Ouest 27 (QL).

¹³Michael Blakeney, “Protection of Traditional Knowledge by Geographical Indications” in Christoph Antons, ed, *Traditional Knowledge, Traditional Cultural Expressions, and Intellectual Property Law in the Asia-Pacific Region* Alphen aan den Rijn, Kluwer Law International, 2009.

reduction¹⁴, and the conservation of biodiversity, environment, and landscape¹⁵. These benefits are all the more important because they are accompanied by protection against the risk of usurpation and misappropriation of reputation, and even against the risk of disappearance¹⁶. Thus, many issues, both economic, cultural, and social surround GIs.

Those benefits explain the stringent legislation protecting those products within the EU. The modern protection of GIs to prevent counterfeiting dates to the early 20th century in France. Italy, Portugal, and Spain have all enacted legislation with similar objectives, inspired by the French system of *appellations d'origine contrôlée*, which emphasizes the safeguarding of wine integrity and quality¹⁷. Because of the national legal systems of those member states, the European Communities were compelled to create a harmonized regulatory framework. In 1992, the European Communities thus established a system to protect geographical indications and reformed European agricultural policy. The European Union has been a pioneer in the development, identification, and preservation of numerous geographical indications¹⁸. The EEC distinguishes the protection of agri-food products from wine products and spirit drinks¹⁹. Three regulations were enacted in 1991 and 1992, followed by further regulations in 2006²⁰ and 2023²¹, which reinforced geographical indications.

In the European market, the protection of geographical indications is based on two labels, inspired by French law: the Protected Designation of Origin (PDO) and the Protected Geographical Indication (PGI). These two labels are distinguished by the degree to which there is a more or less close relationship between the territory and the qualities of the product²². The PDO safeguards a unique product whose whole manufacturing process, including processing,

¹⁴Emilie Vandecandelaere, Filippo Arfini, Giovanni Belletti and Andrea Marescotti, "Linking people, places and products A guide for promoting quality linked to geographical origin and sustainable geographical indications", 2nd ed, Rome, Food and agriculture organization of the United Nations, 2010.

¹⁵Ministère de l'Agriculture et de la Pêche et INAO, "Appellations d'Origine Contrôlée & Paysages" (2006), online: < https://agriculture.gouv.fr/sites/default/files/documents/inaoetpaysage_0207.pdf>.

¹⁶Valérie Boisvert and Armelle Caron, "La conservation de la biodiversité: un nouvel argument de différenciation des produits et de leur territoire d'origine" (2010) 12:3 *Géographie, économie, société* 307 (QL).

¹⁷Sofie Joosse, Pepijn Olders and Wiebren Boonstra, "Why are geographical indications unevenly distributed over Europe?" (2021) *Br Food J* 123:13, 490–510.

¹⁸Daniele Giovannucci et al., "Guide des indications géographiques faire le lien entre les produits et leurs origines" (2009) Centre Com Intl (QL).

¹⁹The protection of geographical indications for wine products and spirit drinks is governed by a specific regulation: EU, *Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine*, [1999] OJ, L179. Since EU, *Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999* [2008] OJ, L148.

²⁰EU, *Council regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs*, [2006] OJ L 93/12 [EC, Council regulation (EC) No 510/2006].

²¹EU, *Proposal for a regulation*, *supra* note 4.

²²Tilman Becker, "European Food Quality Policy: The Importance of Geographical Indications, Organic Certification and Food Quality Assurance Schemes in European Countries" (2009) 10:1 *Estey J of Intl L & Trade Pol'y* 111 (QL).

takes place in a specific geographical area and cannot be duplicated elsewhere. As for the PGI, a product is given this designation if “at least one stage of production is carried out in a geographical area, which gives it its specificity”²³. The latter is more reliant on the product's history and reputation, which give it unique characteristics. This system of protection is said to be *sui generis*, it is a particular system of protection, specific to the European Union, which differs from other intellectual property rights, such as trademark law. Indeed, GIs are a collective right, and not private, and their protection is valid unless the registration is cancelled, as opposed to time restriction for many trademarks. Outside of Europe, this protection is frequently misunderstood, even unknown, if not outright ignored in favor of trademarks, as is the case, for example, in the United States.

That is why, abroad, in the absence of protection for its products, many European GIs face unfair competition. In Russia, the United States and Asia, the names of wines and spirits are often usurped. For example, the protected name “Champagne” has been the subject of much dispute as the countries of the United States, Russia²⁴, Belarus and Haiti have refused to recognize the name. This geographical indication is therefore subject to reputational abuse and parasitism²⁵. In the food industry, cheese is also subject to usurpation and other counterfeiting. The recognition of designations sometimes leads to geopolitical challenges, as seen in the “Parmesan War” between Italy and Russia. This “war” led to questions about the recognition of Crimea, for the sole purpose of maintaining exports of “Parmigiano Reggiano”²⁶. Many other names, such as Gruyere²⁷, Mozzarella, Mascarpone, Ricotta, Morbier²⁸, Roquefort, Mont d'Or, Munster, Comté²⁹ and Camembert³⁰ are greatly usurped abroad.

²³Ministère de l'agriculture et de la souveraineté alimentaire de la République française (2022) AOC/AOP, IGP: tout savoir sur les signes officiels de l'origine, online: <<https://agriculture.gouv.fr/aop-igp-tout-savoir-sur-les-signes-de-qualite-europeens>> (last accessed 15 march 2024).

²⁴Alexander Nemenov, “Appellation champagne en Russie: Paris espère obtenir un moratoire sur la loi russe”, *Le Monde* (23 September 2021), https://www.lemonde.fr/economie/article/2021/09/23/appellation-champagne-en-russie-paris-espere-obtenir-un-moratoire-sur-la-loi-russe_6095721_3234.html (last accessed 15 march 2024).

²⁵Dorothee Franjus-Guigues, *Nature et protection juridiques des indications géographiques: l'avènement d'un droit à l'épreuve de sa mise en œuvre* (PhD Private Law, Aix-Marseille University, 2012) at p. 57.

²⁶Kirill Zykov, “Russian Cheese King to Italy: Recognize Crimea to Export Parmesan Again”, *The Moscow Times* (29 March 2021).

²⁷Saskia O'Donoghue, “Cheesed off: US denies exclusive gruyère rights to Switzerland and France”, *Euronews* (7 March 2023).

²⁸Michel Desilets, “Imitation du Morbier: une ligne bleue à ne pas franchir”, *Le Tout Lyon* (14 June 2021).

²⁹La voix de Alain, “Le Comté copié par le Komté russe, la filière contre-attaque”, *La voix de Alain* (17 march 2022).

³⁰Guillaume Le Du, “Camembert AOP: vers une bataille judiciaire », *Ouest France* (8 march 2022) (last accessed 15 march 2024).

Therefore, to combat counterfeiting and abusive trademark registration³¹, and “to prevent usurpations and misuse of EU GIs worldwide”³², the EU wishes to export its *sui generis* protection system outside the European market and have many geographical indications protected by its trading partners. The EU is engaged both multilaterally and bilaterally in efforts to enhance the safeguarding of geographical indications and strengthen intellectual property enforcement frameworks. The EU negotiates GI protection under trade agreements or specific “standalone” agreements on geographical indications³³, as is the case with China or India. However, as will be demonstrated, all these agreements are subject to concessions with the trading partner. Each agreement is therefore unique, leading to heterogeneity in the protection and recognition of European GIs on the international stage. With over thirty agreements in place³⁴, the various provisions on geographical indications create a puzzle that needs to be solved.

Thus, this paper intends to illustrate how this transposition explores interactions between legal orders by revisiting various types of interactions and examining how they emerge and operate. First, it will be demonstrated that the EU is trying to disseminate its standards, without aiming for regulatory convergence, since the transposition is objective-driven, and explain the need for such an approach (Part 1). Then, it will be explained that to gain recognition for its geographical indications, the EU is adopting a pragmatic, *intuitu personae* approach (Part 2).

Part 1 – EU endeavors to propagate standards: prioritizing objectives over regulatory convergence

This section delves into how the EU prioritizes objectives above regulatory convergence, explaining that geographical indications are an example of unique extraterritoriality (A). It also explores the role of geographical indications in EU trade policy (B) and examines the specific standards advocated by the EU to defend them (C). The potential impact of soft power on the global recognition of geographical indications is also scrutinized (D).

A. Geographical indications as an example of specific extraterritoriality

Although the EU was not originally intended to become a standard-setting power³⁵ beyond the single market, it has nonetheless taken on the role of the regulator beyond Europe's

³¹Ministère de l'agriculture et de la souveraineté alimentaire (France), Press release, “La France salue la signature de l'accord entre l'Union européenne et la Chine sur les indications géographiques” (14 september 2020), online: <<https://agriculture.gouv.fr/la-france-salue-la-signature-de-laccord-entre-union-europeenne-et-la-chine-sur-les-indications>>.

³²European Commission, “Geographical indications”, online: <https://policy.trade.ec.europa.eu/enforcement-and-protection/protecting-eu-creations-inventions-and-designs/geographical-indications_en>.

³³DG Trade, Press release, “Counterfeit remains top priority for EU's efforts in intellectual property protection” (28 April 2021), online: <https://policy.trade.ec.europa.eu/news/counterfeit-remains-top-priority-eus-efforts-intellectual-property-protection-2021-04-28_en>.

³⁴European Commission, Press Release, “Geographical Indications – a European treasure worth €75 billion” (20 april 2020), online: Europa <https://ec.europa.eu/commission/presscorner/detail/fr/IP_20_683>.

³⁵Read more, Zaki Laïdi, *La norme sans la force - L'énigme de la puissance européenne*, Paris, Presses de Science Po, 2008 (QL).

borders. Since 2006³⁶, the EU has expressed its desire to strengthen the external dimension of its internal market on the world stage³⁷. The EU's stated objectives are now to “reinforce Europe's leading role and its vocation to set global standards, through a strong program for free and fair trade”³⁸. Even more recently, the European Commission has positioned itself as a global leader, and “standard setter”³⁹. This assertive position is part of the EU's foreign policy, as defined in Articles 3(5) and 21(1) of the TEU⁴⁰, which aims to shape the world around it⁴¹ by asserting and promoting its values and interests⁴² through the rule of law. Thus, the promotion of European values goes hand in hand with the external reach of EU legal standards⁴³. The EU's role as a promoter of norms comes as no surprise, given that its very existence is based on international treaties. This normative aspect distinguishes the EU as a unique international actor, as it seeks self-definition through legal means and utilizes law as a tool for engaging with the global community⁴⁴.

When the EU successfully exports its standards to legal frameworks beyond European borders, it contributes to the establishment of an extraterritorial situation. According to Brigitte Stern, “the application of a norm or decision is extra-territorial when all or part of its application process - from enactment to material realization - takes place outside the territory of the State that issued the norm or decision”⁴⁵ [our translation]. The doctrine sometimes prefers the broader notion of territorial extension, which occurs when the EU uses the existence of a territorial link to influence conduct that takes place outside European territory⁴⁶. This principle is also sometimes equated with the external projection of rules or transposition⁴⁷. The EU relies on the law to carry out its actions, including its various participation in extraterritoriality.

³⁶EU, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Global Europe: Competing in the World*, [2006] 567 final.

³⁷See also EU, *The external dimension of the single market review - Accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A single market for 21st century Europe*, [2007] 725 final.

³⁸Ursula von der Leyen, *A Union that strives for more, My agenda for Europe: political guidelines for the next European commission 2019-2024*, Luxembourg, Publications office of the EU, 2019 (QL).

³⁹EU, *Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the regions, Commission work programme 2024 delivering today and preparing for tomorrow*, [2023], 638 final.

⁴⁰*Treaty on European Union*, 7 february 1992, art 3 at para 5 et 21 (entry into force: 1st november 1993).

⁴¹Marise Cremona, “Extending the reach of EU law: The UE as an international legal actor” in Marise Cremona and Joanne Scott, eds, *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law*, Oxford, Oxford University Press, 2019, 64.

⁴²Cécile Rapoport, “L’extraterritorialité du droit de l’union européenne: quelle(s) singularité (s) ?” in Alan Hervé and Cécile Rapoport, eds, *L’Union européenne et l’extraterritorialité, acteurs, fonctions, réactions*, Rennes, Presses Universitaires de Rennes, 2023, 57 [Rapoport, “Singularités”].

⁴³Cremona, *supra* note 41.

⁴⁴*Ibid.*

⁴⁵Brigitte Stern, “Quelques observations sur les règles internationales relatives à l’application extraterritoriale du droit” (1986) 32 AFDI 49 at p 9.

⁴⁶Joanne Scott, “The new EU ‘extraterritoriality’” (2014) 51: 5 CML Rev. 1343 (QL).

⁴⁷Lire en ce sens: Jean-Frédéric Morin et Edward Richard Gold, “An Integrated Model of Legal Transplantation: The Diffusion of Intellectual Property Law in Developing Countries” (2014) 58: 4 International Studies Quarterly 781 (QL).

Simultaneously, the EU consistently strives to ground its stances in international legality, utilizing it as a foundation of legitimacy in the view of third-party states⁴⁸. Its aim is also to project an exemplary image, helping to ensure “European exceptionalism”⁴⁹.

The EU is careful to comply with the requirements laid down by the Permanent Court of International Justice in the *Lotus* case⁵⁰. This case asserts that, in principle, states cannot exercise extraterritorial jurisdiction unless there is a specific provision indicating otherwise⁵¹. The Court of Justice of the European Union (hereinafter CJEU) helps to maintain respect for the principle of territoriality, which is universally recognized in public international law⁵². EU law is often regarded as a tool capable of promoting European values and interests by binding them to third countries. This constraint is based on compliance with economic and extra-economic⁵³ rules and standards that reflect a European economic, political, and social model⁵⁴. Besides the components of the EU's trade policy, its aspiration to exert external influence through its domestic legislation needs to be understood in the context of the ongoing WTO crisis⁵⁵. The deadlock within this multilateral body is compelling the EU to explore alternative methods for upholding specific values or standards it cherishes. As Zaki Laïdi points out, “there is an obvious porosity between European and global governance, quite simply because both seek to resolve problems that states can no longer resolve on their own”⁵⁶[our translation].

When considering geographical indications, however, the focus is on exporting a European concept outside the European market, without any connection to the domestic market. Essentially, the EU aims to gain recognition for safeguarding its names, thereby reserving specific terminology to protect its market share. The EU therefore wishes to “export” its concepts and, in return, “have them recognized” by third countries. Recognition implies acceptance and reception of the GI concept. However, for ease of writing, the two terms export and recognition will frequently be used interchangeably. On the other hand, it is important to distinguish between “normative” export and “protection” export. The EU would like to export standards, in the sense that it would like its standards to be accepted and replicated abroad. However, an external projection of the European GI system, a total transposition, is not conceivable. This is due to the complexity of the European system, as well as the fact that it would entail directly transplanting the *sui generis* European GI protection system into the

⁴⁸ Rapoport, “Singularités”, *supra* note 42.

⁴⁹ Loïc Robert, “L’extraterritorialité au prisme de l’exceptionnalisme européen” in Alan Hervé and Cécile Rapoport, eds, *L’Union européenne et l’extraterritorialité, acteurs, fonctions, réactions*, Rennes, Presses Universitaires de Rennes, 2023, 153.

⁵⁰ *The case of the S.S. “Lotus” (France v. Turkey)* (1927), PCIJ (ser A) n°10 at p 19.

⁵¹ *Ibid.*

⁵² CJEU, *A. Ahlström Osakeyhtiö and others v Commission of the European Communities*, 89, 104, 114, 116, 117 and 125 to 129/85 [1988] ECR 447.

⁵³ For example, human rights, production standards, the environment, protection of personal data, etc.

⁵⁴ Joanne Scott, “Extraterritoriality and Territorial Extension in EU Law” (2013) 62:1 Am J Comp L 87 at p. 90 (QL).

⁵⁵ Alan Hervé, “Néo-unilatéralisme et extraterritorialité: quelques observations à l’aune de l’agenda législatif de la Commission van der Leyen” in Alan Hervé and Cécile Rapoport, eds, *L’Union européenne et l’extraterritorialité, acteurs, fonctions, réactions*, Rennes, Presses Universitaires de Rennes, 2023, 75.

⁵⁶ Laïdi, *supra* note 35, at pp. 63-93.

internal legal framework of a third country without any adjustments to suit its culture or market. Nonetheless, GIs serve as carriers of cultural values, making it crucial to tailor the terms of protection to fit each market.

Therefore, the signing of these agreements is part of the EU's global strategy to promote its GI protection standards⁵⁷. Indeed, the EU is aware that many stakeholders, such as the USA and Australia, refuse to protect geographical indications, and are, therefore, reluctant to comply with European law. The EU acknowledges that its concept is very European, and little understood by other countries, which is why its goal is not to export its normativity, but to gain recognition for the protection of its products. Indeed, the main objective of the EU is “recognition [of the] system of protection of geographical indications”⁵⁸.

B. GIs as an offensive in EU trade policy

Since 2009, when the Lisbon Treaty came into force, geographical indications have come under the exclusive competence of the European Union, under Article 3(1)(e) of the Treaty on the Functioning of the European Union. Geographical indications fall within the scope of the common commercial policy referred to in Article 207(1) TFEU, as regards the commercial aspects of intellectual property⁵⁹.

Since then, “adequate protection and enforcement of geographical indications (GIs) at international level is of key interest in the EU's trade agenda”⁶⁰. Valdis Dombrovskis, Executive Vice-President and Commissioner for Trade argues that: “strengthening the protection and enforcement of EU Intellectual Property Rights in third countries is a European Commission priority”⁶¹. Indeed, “[p]rotecting intellectual property such as [...] geographical indications is critical for the EU's economic growth and our ability to encourage innovation and stay competitive globally [...]”⁶². Janusz Wojciechowski, EU Commissioner for Agriculture, continues: “It is important to [...] protect [GIs] at both EU and global level, in order to guarantee their authenticity and preserve their reputation. These agreements will contribute to achieving this objective, while strengthening our trade relations, in the interests of the agri-food sector and of [foreign] and European consumers”⁶³.

It has been pointed out on several occasions that “[t]he GI protection system is one of the strengths on which the European Union can rely and must be considered as a so-called

⁵⁷Ministère de l'agriculture et de la souveraineté alimentaire (France), *supra* note 31.

⁵⁸*Ibid.*

⁵⁹EU, *Council Decision (EU) 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications*, [2019] OJ, L271/13 at p 3.

⁶⁰European Commission, « Geographical indications », *supra* note 32.

⁶¹DG Trade, Press release, “Counterfeit”, *supra* note 33.

⁶²European Commission, Press release, “European Commission steps up protection of European intellectual property in global markets” (9 January 2020), online: <https://policy.trade.ec.europa.eu/news/european-commission-steps-protection-european-intellectual-property-global-markets-2020-01-09_en>.

⁶³European Commission, Press release, “EU and China sign landmark agreement protecting European Geographical Indications” (14 September 2020), online: <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1602>.

“offensive”, to be defended within the framework of free trade agreements”⁶⁴ [our translation]. Indeed, “[t]he Commission stressed that progress on GIs is essential to score a positive outcome on [...] negotiations”⁶⁵. This protection of GIs through a free trade agreement (hereinafter, FTA) is seen as a *sine qua non* condition⁶⁶. This position is shared by partners such as the New Zealand Government, which states that “negotiations should aim at providing a broader framework for the recognition and protection of GIs beyond wine and spirits. This is in line with the EU’s position that the protection of EU GIs in New Zealand will be an essential part of any final agreement”⁶⁷. The ambition for worldwide recognition of GIs is thus explicitly recognized⁶⁸.

GIs constitute a subject on their own, which partially explains why they have often been allocated an entire chapter in the FTAs negotiated by the European Commission⁶⁹. Indeed, the European Affairs Committee considers that “geographical indications are a strategic and determining aspect of European agriculture, and as such, their recognition in free trade agreements is crucial”⁷⁰. Therefore, it considers that the European Commission should persist in its endeavours to gain recognition for geographical indications in all ongoing free-trade agreements. Furthermore, it advocates that the indispensable diversity of agricultural production should steer the European Union’s trade policy, just as cultural diversity does⁷¹.

C. Standards requested by the EU to protect its geographical indications

Besides these aspirations, it is crucial to examine the specific content of the protection sought by the EU during negotiations to comprehend the reasons for potential variations in provisions from one agreement to another. The Commission states that “the symbols, terms and abbreviations identifying a registered geographical indication, and the rights to them in the

⁶⁴France, Assemblée Nationale, Commission des affaires européennes, *La protection des indications géographiques (IG) dans le cadre du projet de partenariat transatlantique de commerce et d’investissement (TTIP)*, by Yves Daniel and Philippe Armand Martin, Report N°3869 (22 juin 2016).

⁶⁵European Commission, “Report on the eighth round of negotiations for a Trade Agreement between the European Union and New Zealand” (22 June 2020), online: <https://web.archive.org/web/20220715204352/https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc_158860.pdf>.

⁶⁶Gabriele Gagliani, “Indications géographiques et dénominations génériques en droit du commerce international: une *conditio sine qua non* ?” (2020) XXXIV: 2, RIDE 155 at p 174 (QL).

⁶⁷New Zealand Foreign Affairs and Trade, “Previous consultation on framework for protection of GIs”, online: <<https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-european-union-free-trade-agreement/geographical-indications/previous-consultation-on-framework-for-protection-of-gis/>>. [New Zealand Foreign Affairs and Trade, “Previous consultation”].

⁶⁸DG Trésor, Press release, “La signature de l’accord de coopération et de protection des indications géographiques, une étape fondamentale pour conforter les intérêts européens en Chine” (16 septembre 2020), online: <<https://www.tresor.economie.gouv.fr/Articles/2020/09/16/la-signature-de-l-accord-de-cooperation-et-de-protection-des-indications-geographiques-une-etape-fondamentale-pour-conforter-les-interets-europeens-en-chine>>.

⁶⁹ France, Assemblée Nationale, *supra* note 64.

⁷⁰*Ibid.*

⁷¹*Ibid.*

Union, should be protected in the Union and in third countries, to ensure that they are used for genuine products and that consumers are not misled as to the qualities of the products”⁷².

Thereby, the FTAs aim to “significantly improve GI protection in the territory of the trade partner at a level comparable to that of the EU”⁷³. In the context of negotiations, the EU acknowledges its aim to establish a “high level of protection”. It therefore wishes to guarantee a level of protection higher⁷⁴ than or equivalent⁷⁵ to that provided for in Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as TRIPS) concerning wines and spirits⁷⁶.

It is specified that the “negotiations will aim to ensure greater protection and recognition, through [an] agreement, of EU GIs, in a manner that is based on and complements TRIPS, taking into account the link with their prior use in the market [...] to resolve existing conflicts in a satisfactory manner”⁷⁷. In the negotiations with New Zealand, it appears that the EU “would likely require New Zealand to adopt a registration regime for protecting foodstuff GIs to ensure that domestic foodstuff GIs (in addition to just wines and spirits) are given the standard of protection being sought by the EU”⁷⁸. Thus, the discussion revolves around the recognition of protection standards rather than the replication of European legislation. This demonstrates that the EU remains committed to adjusting its product recognition according to its partners.

Looking at the provisions of recent trade agreements and the content of published negotiations, the standards of protection demanded by the EU are similar. In summary, the EU is proposing that the partner “should not be required to protect a name as a GI if that name conflicts with the name of a plant variety or animal breed and, as a result, is likely to mislead consumers as to the true origin of the product”⁷⁹. The EU also proposes “that homonymous

⁷²EU, *Proposal for a regulation*, *supra* note 4.

⁷³DG Trade, Press release, “Counterfeit”, *supra* note 33.

⁷⁴New Zealand Foreign Affairs and Trade, “Discussion paper EU-NZ Free Trade Agreement Negotiations: Protection of Geographical Indications in New Zealand” (December 2019), online: <<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/EU-NZ-FTA-Geographical-Indications-framework-discussion-paper.pdf>> [New Zealand Foreign Affairs and Trade, “Discussion paper”].

⁷⁵Such is the case with the agreement with New Zealand. European Commission, “New Zealand. Report on the 11th round of negotiations for a Trade Agreement between the European Union and New Zealand” (28 June – 8 July 2021), online: <https://web.archive.org/web/20221002070905/https://trade.ec.europa.eu/doclib/docs/2021/july/trado_c_159741.pdf>.

⁷⁶European Commission, “Report of the First round of negotiations on geographical indications between the European union and India” (27 June – 1 July 2022), online: <https://www.asktheeu.org/es/request/11642/response/39121/attach/6/Annex%20%20Report%20of%20round%201.pdf?cookie_passthrough=1>.

⁷⁷France, Assemblée Nationale, *supra* note 64.

⁷⁸New Zealand Foreign Affairs and Trade, “Discussion paper”, *supra* note 74, at para 61: “The EU has proposed New Zealand should provide protections for wine, spirit and foodstuff GIs that are largely the same as the protections provided in the EU”.

⁷⁹*Ibid.*

names that mislead consumers into believing that a product comes from another territory shall not be protected even if the name is accurate as far as the actual territory, region, or place of origin in question is concerned. If the homonymous name is misleading, it cannot be protected". The EU specifies that these conditions should be "mutually decided" by the EU and the partner⁸⁰. "In general terms, the EU has proposed that a person should not be able to register a trademark that is like a protected GI. In other words, the protected GI should take precedence over the trademark application"⁸¹. Finally, "the EU [proposes] that no fees should be payable for any GIs protected under the [...] FTA"⁸².

In addition to the "[r]ules guaranteeing an appropriate level of protection for EU Geographical Indications"⁸³, among the "key substantive objectives that would guarantee an appropriate protection of GIs" is the intention to implement "administrative enforcement [against misuse of EU Geographical Indications⁸⁴], including measures at the border, on top of judicial action"⁸⁵. The main objective is to have an "administrative process to verify that a GI identifies a good as coming from a geographic area where a given quality, reputation or other characteristic is essentially attributable to its geographic origin"⁸⁶.

In addition to rules and principles, the agreements include lists of GIs to be protected directly through the agreement at the level and with the type of enforcement foreseen in the agreement⁸⁷. During negotiations, the EU and its partner discuss, "objections to EU GIs and possible solutions for each name exploring the concepts of phasing-out, grandfathering, homonymous GIs, use in translation, plant varieties and compound terms"⁸⁸. Finally, the EU foresees the possibility of implementing "specific arrangements in case of specific GI names"⁸⁹.

D. A recognition through soft power?

As part of its strategy to gain recognition for its European products abroad, the EU also uses "soft power", which is no longer a matter of commercial negotiation. It implements promotion campaigns about EU farm products "designed to open up new market opportunities for EU farmers and the wider food industry"⁹⁰. These campaigns are run by European trade or inter-trade associations and co-financed by the EU; or run directly by the EU itself, such as

⁸⁰*Ibid.*

⁸¹*Ibid.*

⁸²*Ibid.*

⁸³European Commission, "The European Commission Paper on Geographical Indications (GIs) in the EU-U.S. Transatlantic Trade and Investment Partnership" (March 21 2016), online: <<https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/d7c66b2e-c4f5-4482-bef3-f3d3810dd516/details?download=true>>.[European Commission, "The European Commission Paper TTIP"].

⁸⁴*Ibid.*

⁸⁵DG Trade, Press release, "Counterfeit", *supra* note 33.

⁸⁶New Zealand Foreign Affairs and Trade, "Discussion paper", *supra* note 74.

⁸⁷European Commission, "The European Commission Paper TTIP", *supra* note 83.

⁸⁸European Commission, "New Zealand. Report on the 11th round", *supra* note 75.

⁸⁹European Commission, "The European Commission Paper TTIP", *supra* note 83.

⁹⁰European Commission, "Promotion of EU farm products", online: <https://agriculture.ec.europa.eu/common-agricultural-policy/market-measures/promotion-eu-farm-products_en>.

diplomatic offensives by the Commissioner in non-EU countries to develop agri-food trade, or participation in fairs and communication campaigns⁹¹. It is interesting to note that the content of these campaigns is adapted to each country, depending on its market and gastronomic culture.

For instance, such campaigns were carried out in Vietnam⁹², Singapore⁹³, and China⁹⁴, albeit with varying arguments. In Vietnam, for example, the EU is capitalizing on local gastronomy, touting the introduction of “new dishes and experience a trendy fusion of cuisines by engaging with both European chefs and local chefs”⁹⁵. Chinese people have a special bond with food; believing that food not only needs to be nutritious but must also look appealing, colorful, and vibrant. This EU campaign aims to promote the excellence and great variety of EU agricultural produce in China⁹⁶. Here, the campaign aims “to ultimately increase the market share of EU agricultural produce in the target market”, targeting very specific products, different from those targeted in Vietnam. In Singapore, however, the main objective is “to increase demand, imports and sales of EU agricultural products from specific categories”⁹⁷. Here, the strategy appears to be aimed more towards distributors and food professionals⁹⁸. From these examples of communication policies directed toward Asian business partners, it is evident that the objectives and their implementation vary significantly. This disparity arises due to differences in the market, legal systems, and gastronomic cultures, which vary in their sensitivity to European labels. Consequently, to secure recognition for the protection of its products, the EU has no alternative but to engage in bilateral negotiations.

Part II – The EU's pragmatic *intuitu personae* approach

In its pursuit of recognition for geographical indications, the EU is taking a pragmatic, *intuitu personae* approach. The protection of geographical indications within regional trade agreements is more of a clash between domestic laws than genuine international law. This approach is reflected in the voluntary transposition of GI protection under the neighborhood policy (A). However, regarding trading partners, it will be explained how the EU is succeeding in exporting its concept of geographical indications *de facto*, but also *de jure* (B).

⁹¹*Ibid.*

⁹²European Research Executive Agency, “‘The Perfect Match Vietnam’ - EU promotion campaign in Vietnam” (14 January 2022), online: <https://rea.ec.europa.eu/projects/perfect-match-vietnam-eu-promotion-campaign-vietnam_en>.

⁹³European Research Executive Agency, “‘More than Food Singapore’ - EU promotion campaign in Singapore” (14 January 2022), online: <https://rea.ec.europa.eu/projects/more-food-singapore-eu-promotion-campaign-singapore_en>.

⁹⁴European Research Executive Agency, “‘Colours by Europe. Tradition of Excellence’ – EU promotion campaign in China” (3 January 2023), online: <https://rea.ec.europa.eu/projects/colours-europe-tradition-excellence-eu-promotion-campaign-china_en>.

⁹⁵*Ibid.*

⁹⁶*Ibid.*

⁹⁷European Research Executive Agency, “More than Food Singapore”, *supra* note 93.

⁹⁸*Ibid.*

A. The voluntary transposition of GI protection within the framework of the neighborhood policy

Frequently, it seems that the few inclusions of GI-related provisions in national legal orders stem from domestic law, without this insertion being the direct object of the European Union. These states express their desire to act following European law. Indeed, states applying for EU membership harmonize their domestic law before becoming candidates, to demonstrate their good faith and ability to implement European legislation. This is not imposed by the EU; these states choose for themselves to harmonize or mimic their legislation on the protection of geographical indications.

These states will typically refer directly to European regulations and incorporate them into their national laws without modification. The aim of the European dialogue in drawing up these regulations was initially not to grant them extraterritorial scope. However, the result is a direct reference to European Law⁹⁹, i.e. a direct and voluntary transposition of European law without any direct action on the part of the European Commission.

This adoption can be readily understood within the framework of neighborhood policy. Ukraine, Moldavia and Georgia are all candidates for EU membership. As part of the accession process, candidate countries must align with and adopt the EU *acquis* before becoming EU members¹⁰⁰. The *acquis* of the European Union is the body of common rights and obligations which constitute the corpus of EU law and is incorporated into the legal systems of the EU member states¹⁰¹.

Candidate countries are required to integrate the *acquis* into their national legal frameworks by the date of their accession to the EU, and they must enforce it from that moment onward. Essentially, European GI legislation needs to be integrated into the national legal system to achieve mutual recognition. In this context, the EU does not need to struggle to gain recognition for its GIs. Instead, it is the political and commercial partner that amends its domestic legislation with the aim of attaining EU membership. This facilitates the creation of joint GI lists with countries whose legal systems permit mutual recognition. The agreement with Georgia encompasses a 219-page appendix of protected European products, while the agreement with Moldova consists of 159 pages, and the EU-Ukraine agreement covers 146 pages. The Moldovan, Ukrainian, and Georgian cases exemplify this trend, where a vast majority of European products are safeguarded, with minimal reservations from these states.

A comparable dynamic exists within the European Economic Area, particularly with Norway and Liechtenstein. This is because, similarly, as part of their membership in the European Economic Area, these participating countries have had to embrace the EU *acquis* pertaining to the sectors included in the agreement. Consequently, they are required to integrate specific EU regulations into their domestic laws.

⁹⁹The Stabilization and Association Agreements between the European Communities and, respectively, Montenegro (art 33), Kosovo (art 35) and Bosnia (art 31), all refer to EU regulations.

¹⁰⁰DG NEAR, « Chapters of the *acquis* », online: <https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en?prefLang=fr>.

¹⁰¹Publications Office of the European Union, 2022, *sub verbo* « *acquis* », online: <<https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=LEGISSUM:acquis>>.

As for Switzerland, it aligns with the EU's approach to geographical indications and has implemented similar regulations. The Swiss regulations regarding PDOs and PGIs were heavily influenced by the European regulations, aiming to foster reciprocal recognition between the European and Swiss registries¹⁰². Consequently, a mutual recognition agreement between Switzerland and the EU was established in 2011¹⁰³.

In addition to this neighborhood policy, the EU seems to have developed a strategy for choosing its trading partners.

B. A strategic approach to partner selection in the context of third countries

In the context of third countries, the EU must juggle with partners who are in favour of GIs, and who therefore accept *de facto* inclusion of the GI concept in their national law (1). On the other hand, the EU's main strategy is to export its product protection *de jure*, through trade agreements (2).

1) EU's push for *de facto* exportation: navigating partner dynamics

The concept of European geographical indications integrates *de facto* into the national legislation of trading partners, sometimes because they fully embrace the concept (a), or because the protection of specific GIs is viewed as a goodwill gesture before finalizing an agreement (b).

a) The *de facto* integration of the European GI concept into the national legislation of supportive partners

Some states comply with EU law on their own initiative, in which case the transposition is *de facto*. This scenario arises when certain countries highly value geographical indications and seek to safeguard their products in the European market. Several non-EU countries are actively striving to have their products acknowledged by the European Commission. This is notably the case with Pakistan and India, as they endeavour to gain recognition for their basmati rice within the European Union. This enthusiasm for GIs is also reflected in national legislation. Indeed, a certain *de facto* transposition of GI protection appears to have occurred, as these countries have established *sui generis* GI protection systems.

In some areas, the legislation is even more thorough than what is seen in European regulations, particularly in the realm of craft and manufactured goods. Therefore, it is conceivable that the GI system existing in Europe could be adopted by countries like Pakistan and India. However, it is premature to assert that the GI protection outlined in the EU-India agreement, which is still being negotiated, will be highly comprehensive. Nonetheless, studying this model in the future will be intriguing.

¹⁰²Association suisse des AOP-IGP, "AOP-IGP en Europe" (2024), online (blog): <<https://www.aop-igp.ch/fr/au-sujet-des-aop-igp/aop-igp-en-europe>>.

¹⁰³Le Conseil fédéral, Press release, "Suisse–UE: accord sur la protection des appellations d'origine" (17 december 2009), online: <<https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-30794.html>>.

In addition to a genuine interest in GIs, this protection of European products through national legislation can also be interpreted as a gesture of goodwill before concluding an agreement that entails incorporating the protection of a European product into their national legislation.

- b) The protection of punctual GIs as a gesture of goodwill before the conclusion of an agreement

During the FTA negotiations, various states agreed to protect a few specific GIs, as a gesture of goodwill during further negotiations. For example, India, Japan, and Thailand have incorporated European GI protections into their domestic legislation in anticipation of a future FTA with the EU.

In Japan, for example, in 2017, before the signing of the EU-Japan partnership, Prosciutto di Parma, which enjoys a PDO in the EU, was enshrined in Japanese national legislation. Thailand is also recognizing various protected products, such as Parmigiano Reggiano in 2016 and Grana Padano in 2019¹⁰⁴. India, meanwhile, has been protecting various European products as GIs in its national legislation since 2010¹⁰⁵.

In this respect, consortiums play a very important role. They are the ones who engage with governments to secure protection for their products, thereby influencing changes in national legislation. As a result, it may no longer be possible to designate a particular product as generic. We can imagine that the consortiums lobbied these states to insert protection for their products, which was accepted by the national government to demonstrate the good faith of the state and its ability to enforce a European appellation. Since then, the EU concluded an Economic Partnership Agreement with Japan in 2018, and free trade agreements are now being negotiated for India (since 2021) and Thailand (Partnership and Cooperation Agreement in 2022 and negotiation of an FTA as early as March 2023). In these countries, it appears that EU law has influenced the direction of the third country's national law, either through the Commission or lobbying efforts. This alignment ultimately leads to the negotiation and conclusion of agreements in the GI domain.

Furthermore, in the context of negotiations with the EU, it's noteworthy that in non-EU countries, two opposing dynamics are at play: a "top-down" and a "bottom-up" dynamic. In simpler terms, the aspiration to establish GI protection sometimes originates from the government, which mandates it in national law, while at other times, it stems from producers who advocate for the adoption of a *sui generis* protection framework by lobbying the government. This does not mean, however, that this *ad hoc* protection in national legislation will systematically translate into acceptance of GI protection in a trade agreement in the future.

¹⁰⁴Adele Marchal and Munif Chaipanya, "An overview of geographical indication protection in Thailand" (25 May 2022), online (blog): <<https://www.tmp-ip.com/geographical-indication/>>.

¹⁰⁵IP India, "Registration details of geographical indications", online: <https://ipindia.gov.in/writereaddata/Portal/Images/pdf/GI_Application_Register_List_14-07-2022.pdf>.

However, the role of lobbies remains fundamental. Indeed, in the absence of agreements protecting GIs, the sole avenue to secure any form of protection is for cooperatives, unions, or other consortia to lobby¹⁰⁶ within the states utilizing their designations. Lobbyists advocating for European appellations of origin often register their names as trademarks in foreign countries where effective GI legislation is lacking. By doing so, European players adhere to domestic legislation to secure recognition for their products and, at the very least, prevent the existence of homonymous or generic products. Massimo Vittori, Director of oriGIn, the global coalition of Geographical Indications states: “the activities of monitoring and enforcing the rights of geographical indications in international markets require increasingly significant economic efforts for the consortia. Therefore, the support of national and regional authorities in enforcement matters is crucial” [our underlining]¹⁰⁷. By way of example, the Asiago PGI consortium recently obtained protection for its appellation in Brazil and Chile¹⁰⁸. Chile also recognizes Gorgonzola as a 100% Italian cheese, thanks to the action of the consortium¹⁰⁹, bringing the number of countries with a legal recognition of Gorgonzola PDO to 95 countries¹¹⁰.

The contribution of these committees is therefore necessary to safeguard European appellations in states that are not inclined to conclude a GI protection agreement with the European Union. Lobbyists' efforts are crucial in paving the way for the protection of other specific GIs. It is hoped that through this incremental approach, more GIs will eventually gain recognition. Indeed, the only form of protection against states reluctant to respect GIs is the prohibition of exporting these imitations from foreign countries to the Old Continent¹¹¹. In the absence of an agreement guaranteeing express protection for GIs, it remains highly uncertain whether these names can be obtained and adequately safeguarded. This emphasizes the necessity of trade agreements to protect GIs, as they represent the sole means of ensuring genuine and effective protection.

¹⁰⁶William Andureau and Pierre Breteau, "Tafta: pourquoi les Etats-Unis peuvent produire mozzarella, chablis ou champagne", *Le Monde* (17 février 2016), online: <https://www.lemonde.fr/les-decodeurs/article/2016/02/19/pourquoi-les-etats-unis-ou-la-russie-peuvent-produire-mozzarella-jambon-de-bayonne-ou-chinon_4868565_4355770.html>.

¹⁰⁷Asiago Cheese, Press release, "Double Victory for the Asiago Cheese Protection Consortium in Brazil and Chile" (January 18 2024), online: <<https://asiagocheese.it/wp-content/uploads/2024/01/Double-Victory-for-the-Asiago-Cheese-Protection-Consortium-in-Brazil-and-Chile.pdf>>.

¹⁰⁸*Ibid.*

¹⁰⁹Gorgonzola, Press release, "Il Cile riconosce la DOP Gorgonzola: è un formaggio 100% italiano!" (25 september 2023), online: <<https://www.gorgonzola.com/news/il-cile-riconosce-la-dop-gorgonzola-e-un-formaggio-100-italiano/>>.

¹¹⁰Italian Food, "Chile grants official recognition to Gorgonzola PDO" (26 september 2023), online (blog): <<https://news.italianfood.net/2023/09/26/chile-grants-official-recognition-to-gorgonzola-pdo/>>.

¹¹¹Andureau and Breteau, *supra* note 106.

2) *De jure* recognition through trade agreements as the EU's primary strategy

De jure recognition is attainable through contractual treaties (a) with specific countries (b).

a) Contractual treaties as a vehicle for *de jure* recognition

Unlike many other areas, the EU does not seem to favour multilateral instruments as its preferred approach. Given the shortcomings of multilateral instruments, the EU's preferred method to secure recognition for its GIs is through trade agreements.

The EU reaches a compromise and exports its GI concept through the compromise achieved with its partner, thus achieving a *de jure* export of protection for its products. Inexorably, regional trade agreements are contract-treaties, founded on compromises between the involved parties. These contract-treaties are the outcome of harmonizing two distinct systems of domestic law that were initially divergent.

For a long time, states forged trade relations through “treaty-laws”, ensuring the uniqueness and harmonization of relations between WTO members. However, with the organization facing a crisis, there is a pressing need for members to modernize their economic relations. The notion of treaty-contract, pioneered by German-speaking legal scholars such as Lauterpacht, Berghlom and Triepel¹¹², has thus resurfaced. The United Nations International Law Commission defines this concept as “a treaty that generates subjective legal situations, with the contracting parties stipulating reciprocal benefits as in a private contract”¹¹³. Relations between states are contractual in nature¹¹⁴. However, to reach such agreements, states must share the same vision of trade liberalization and similar objectives¹¹⁵. Consequently, as Richard Ouellet points out, treaty-contracts are only concluded with “like-minded countries” as opposed to “won't-do countries”¹¹⁶.

This partly explains why the EU has managed to conclude an agreement with Canada or New Zealand, but not with the USA or Australia. Recent regional agreements aim to “ensure reciprocity and balance between the differentiated benefits of each Party”¹¹⁷, not to establish, “general and objective rules that apply uniformly”¹¹⁸. DG Agri specifies that the agreements are “an exchange and deals are balanced. Calibrated offers are made during the

¹¹²Sir Hersh Lauterpacht, *Private Law sources and analogies of international law: With Special Reference to International Arbitration*, New York, Longmans, Green and Co., 1927 at p 157.

¹¹³International Law Commission, *Liste provisoire de termes juridiques se rapportant aux travaux de la Commission*, Doc off ILC UN, 1998, vi, TERM/49.

¹¹⁴Richard Ouellet, “La nouvelle génération de partenariats et accords économiques entre “like-minded countries”: une résurrection du concept de traité-contrat”, in Christian Deblock and Joël Lebullenger, eds, *Génération TAFTA- Les nouveaux partenariats de la mondialisation*, Rennes, Presses universitaires de Rennes, 2018, 153 at p 154 [Ouellet, Ouellet, “Like-minded”].

¹¹⁵*Ibid.*

¹¹⁶*Ibid.*

¹¹⁷Richard Ouellet, “L’ACEUM: un révélateur de la vraie nature du processus d’intégration économique en Amérique du nord”(2022) Special Edition March RQDI 95 at p 100 (QL).

¹¹⁸ *Ibid.*

negotiations”¹¹⁹. As part of the European Union-New Zealand Free Trade Agreement negotiation, New Zealand underlines that “the impacts of the EU’s GI proposals for any sector need to be considered in light of any other costs or benefits under the wider FTA that will impact that sector”¹²⁰. Under CETA, the agreement between the EU and Canada, reciprocal benefits of various kinds have been granted. The EU was able to include protection for its GIs in the agreement, in return for which Canada imposed quotas on cheese and beef¹²¹, but also, for example, included provisions to protect SMEs and encourage inclusive trade¹²². This type of treaty is perfectly suited to the EU’s desire to impose its GIs on Canadians. This would never have been possible with a treaty-contract. This type of agreement clearly illustrates that the EU aims for an objective-driven transposition, rather than a mere duplication of its national law. The exchange of benefits has taken precedence over the development of common standards, as is the case in the multilateral framework of the WTO. Contractual treaties “constitute a means for each of these parties to achieve its objective”¹²³ since it is permissible for benefits to differ from one actor to another. Contractual treaties enable governments to “better envisage the gains for their respective economies”¹²⁴. Indeed, contractual treaties unite contracting parties willing to make substantial concessions in terms of their benefits¹²⁵.

At times, such as in the case of China, the EU has effectively exported its model by negotiating a bilateral agreement focused solely on GIs as both parties recognized the advantages of protecting specific products in each other’s territory. The other side of the coin is that the EU must, in turn, recognize the appellations of other countries¹²⁶. These are veritable treaty-contracts.

Hence, through trade agreements, the treaty parties advocate for a solution tailored to the specific dynamics of the relationship between the European Union and the third-party partner. Consequently, the content of these agreements inherently takes on variable geometry, as it reflects the compromises reached between two divergent systems of domestic law.

b) Agreements with selected countries to ensure better recognition of GIs

¹¹⁹ European Commission DG Agri, “Meeting of the civil dialogue group international aspects of agriculture” (6 May 2022), online: <https://agriculture.ec.europa.eu/system/files/2022-07/cdg-international-aspects-2022-05-06-minutes_en.pdf>.

¹²⁰New Zealand Foreign Affairs and Trade, “Previous consultation”, *supra* note 67.

¹²¹Ouellet, “Like-minded”, *supra* note 114.

¹²²Global Affairs Canada, “Report CETA trade and gender workshop” (1st april 2019), online: Government of Canada <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/2019-12-23-report-rapport.aspx?lang=eng>>.

¹²³Ouellet, “Like-minded”, *supra* note 114.

¹²⁴Richard Ouellet, “La nouvelle génération de partenariats et accords économiques entre “like-minded countries”: une résurrection du concept de traité-contrat”, International conference on “Les partenariats Transatlantique et Transpacifique à l’heure de l’interconnexion” delivered at the University of Quebec in Montreal, 16 november 2016 [unpublished], online: IEIM <https://www.ieim.uqam.ca/IMG/pdf/richard_ouellet_-_la_nouvelle_generation_de_partenariats_et_accords_economiques_entre_like-minded_countries_une_resurrection_du_concept_de_traite-contrat_.pdf>.

¹²⁵Ouellet, “Like-minded”, *supra* note 114.

¹²⁶Adrien Cahuzac, “Appellations: la bataille des origines”, *L’usine nouvelle* (25 february 2010), online: <<https://www.usinenouvelle.com/article/appellations-la-bataille-des-origines.N126942>>.

The EU has succeeded in exporting its *sui generis* GI protection system to numerous trading partners when it has had some room for maneuver in negotiations. Generally, the EU notes that “the geographical and thematic priorities for the EU action to protect intellectual property rights are based on the level of economic harm to EU companies”¹²⁷. However, we view it more as a strategic decision by which the EU chooses partners with whom it has negotiating power to obtain recognition for the protection of certain geographical indications. Often, these partners are emerging commercial players on the international scene. Otherwise, it can be difficult to negotiate, as was the case with Mexico¹²⁸. and Australia¹²⁹. These two states hold significant influence on the global stage, making it challenging to reach a compromise if both sides remain steadfast in their positions. The EU may find it more difficult to compel the other party to accept its GIs protection system.

Overall, however, “the European policy of defending and promoting geographical indications is a huge success”¹³⁰. The EU has succeeded in making the protection of geographical indications, which were protected only in Europe in the 1990s, a recognized concern in most of the world's countries in just 15 years¹³¹. The EU diligently promotes maximum GI protection in bilateral trade agreement negotiations with its partners¹³², for example with Central American countries, Peru, Colombia, Ecuador, South Africa, Morocco, the African-Caribbean-Pacific countries, Ukraine, Moldova, Georgia, Iceland, and others. Increasingly, the EU is succeeding in securing protection for some of its GIs from major players in world trade such as China, Vietnam, Singapore, Japan, and South Korea. This export of GI recognition is therefore a success with several players.

Moreover, the EU not only exports its GI protection system through trade agreements, but also through framework agreements and strategic partnership agreements. The EU has included the need for GI protection in its agreements with Vietnam, South Korea, Japan, the Philippines, Australia, New Zealand, and Malaysia. For trade agreements still under negotiation, the EU is confident of being able to export its GI protection system. The 2013 framework agreement between the EU and Mongolia states that “the parties agree to conclude, as soon as possible,

¹²⁷ DG Trade, “European Commission steps up protection of European intellectual property in global markets”, *Europa* (9 January 2020), online: <https://policy.trade.ec.europa.eu/news/european-commission-steps-protection-european-intellectual-property-global-markets-2020-01-09_en>.

¹²⁸ Jorge Valero, “Mexico wins ‘cheese war’ over Europe in trade deal”, *Euractiv* (23 April 2018), online: <<https://www.euractiv.com/section/economy-jobs/news/mexico-wins-cheese-war-over-europe-in-trade-deal/>>.

¹²⁹ Gagliani, *supra* note 66, and Mark Davison, Caroline Henckels and Patrick Emerton, “In vino veritas? The Dubious Legality of the EU’s Claims to Exclusive Use of the Term ‘Prosecco’” (2019) 29: 3 *Austl Intell Prop J*, 110 (QL).

¹³⁰ Mouvement Européen France, “Est-ce que les accords commerciaux de l’UE signifient la mort des indications géographiques ?”, *Mouvement européen* (blog), online: <<https://mouvement-europeen.eu/uedecryptee-est-ce-que-les-accords-commerciaux-de-lue-signifient-la-mort-des-indications-geographiques/>>.

¹³¹ *Ibid.*

¹³² Zakaria Sargho, *Protection des dénominations géographiques dans l’Union européenne efficacité et analyse des effets sur le commerce* (PhD Dissertation, Laval University, 2014) [unpublished].

a bilateral agreement on geographical indications”¹³³. Concrete negotiations to this end began in 2021¹³⁴. Champagne, for example, will be recognized as a GI by Mongolia¹³⁵. Such negotiations have also recently started with the Republic of Kazakhstan¹³⁶.

The EU meticulously chooses its partners based on strategic, political, and commercial considerations, as well as their capacity to establish a GI recognition system. Indeed, “the requirements, effectiveness and cost of each must be carefully assessed before opting for one mode of protection rather than another”¹³⁷. To ensure effective protection for GIs, the partner must possess sufficient financial and material resources. As evidenced, this protection can only be successful if the partners are truly committed to cooperating and making every effort to ensure the success of GI protection measures. Canada¹³⁸ and New Zealand¹³⁹, for example, have agreed to consolidate their border security arrangements to combat counterfeiting¹⁴⁰. It is the responsibility of customs authorities to implement new border security measures aimed at preventing the entry of foodstuffs and wines that do not comply with the newly recognized geographical indications¹⁴¹.

In light of all these elements, it is clear that the EU's export strategy works remarkably well with carefully chosen partners. This underscores the remarkable effectiveness of the European GI strategy.

Conclusion

In conclusion, the protection of European geographical indications on the global scale reveals a significant heterogeneity stemming from various normative transpositions, whether deliberate, *de facto*, or *de jure*, as well as occasional fortuitous occurrences. The EU's quest

¹³³*Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part*, 30 april 2013, OJ L 326 art 27 at para 1 (entry into force: 1st November 2017).

¹³⁴EU, *Recommendation for a Council decision authorising the opening of negotiations on an agreement between the European Union and Mongolia on geographical indications*, [2020] 697 final.

¹³⁵Comité Champagne, Press release, “La Mongolie reconnaît l'indication géographique Champagne” (15 october 2014), online: <https://www.champagne.fr/assets/files/communiqué_presse/protection_ig_champagne_mongolie.pdf>.

¹³⁶EU, *Recommendation for a Council decision authorising the opening of negotiations on a Protocol between the European Union and the Republic of Kazakhstan on the protection of Geographical Indications for agricultural products and foodstuffs, wines and spirits, amending the Enhanced Partnership and Cooperation Agreement between the European Union and the Republic of Kazakhstan*, [2023] 104 final.

¹³⁷Giovannucci et al., *supra* note 18 at p 14.

¹³⁸Alexandra Mendoza-Caminade, “L'accord économique et commercial global entre le Canada et l'Union européenne: les apports d'un accord de libre-échange bilatéral au droit de la propriété intellectuelle” (2016) 28:1 CPI 205 at p 219 (QL).

¹³⁹New Zealand Foreign Affairs and Trade, “Discussion paper”, *supra* note 74.

¹⁴⁰Mendoza-Caminade, *supra* note 138.

¹⁴¹May Cheng, “Les fruits de l'AECG: les indications géographiques pourraient modifier notre façon de voir les pêches” (17 June 2019), *Osler*, online: <<https://www.osler.com/fr/ressources/transfrontaliers/2019/les-fruits-de-l-aecg%C2%A0-les-indications-g%C3%A9ographiques-pourraient-modifier-notre-fa%C3%A7on-de-voir-les-pec>>.

for recognition of its geographical indications beyond its internal market reflects a complex landscape.

The extent and nature of this recognition abroad are predominantly influenced by the strategic choices of trading partners. Consequently, the efficacy of this protection hinges upon the level of engagement and legal integration of these partners with the European market. This study of the export dynamics of European geographical indications highlights the intricate interplay between national, Community, and regional legal frameworks globally. The analysis of interactions between legal systems is particularly compelling given the EU's limited regulatory influence in this domain, contrasting with phenomena such as the Brussels effect.