



Research Paper

An Overview of the Protections for Geographical Indications in the United States and the European Union

Definition of a Geographical Indication

A geographical indication is an indicator associated with a particular product, which is usually found on a packaging under the form of a name or sign. A geographical indication is used to identify that the product originates from a particular geographical location and that it has unique features or reputation originating from the geographical location. There must be a connection between the name of the product and its geographical origin.

A geographical indication is generally used to identify agricultural products, but it can also be used to identify non-agricultural products, such as handicrafts or industrial products.

More importantly, a geographical indication protects the name of the geographical territory in which the product originates along with the territorial uniqueness of the product against usurpation or misuse of the product. This protection is secured upon registration of the geographical indication with the relevant national authority.

For instance, Champagne is protected as a geographical indication in the European Union. Champagne is a sparkling wine produced from grapes grown in the French region of Champagne following a specific process of blending and fermentation. The European Union and French domestic law grant legal recognition to the name and provide that sparkling wine produced outside of the Champagne region cannot be called Champagne.¹

The Protection of Geographical Indications at a Multilateral Level

The protection of geographical indications in the international market is governed by three significant international agreements: the World Trade Organization (WTO) Agreement on Trade-Related Aspect of Intellectual Property (TRIPS agreement);² the Lisbon Agreement for the Protection of Appellations

¹ *eAmbrosia*, European Commission <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/details/EUGI00000002663> (last visited Sep. 14, 2022).

² TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement].



of Origin and their International Registration (Lisbon agreement);³ and the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Geneva Act).⁴

1. The TRIPS agreement

The purpose of the TRIPS agreement, signed in April 1994, is to further the importance of intellectual property rights in international trade and business and to provide for uniform rules applying to a series of intellectual property rights, including geographical indications.

The agreement provisions became effective on January 1, 1995,⁵ and apply to all WTO members, including the United States,⁶ with articles 22, 23, and 24 providing basic principles for the protection of geographical indications.

a. Article 22

Article 22 describes geographical indications as indicators "... which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin"⁷ and requires members of the agreement to provide legal protection to geographical indications against usurpation, fraud and unfair competition.⁸ The language in article 22, however, is not specific with respect to how members should choose to ensure such protection.⁹

A WTO member may "refuse or invalidate" the registration of a trademark – other than a certification or collective mark – for a product whose name contains a geographical indication, but which does not originate from the area indicated by the geographical indication.¹⁰

In addition, article 22 addresses geographical indications with identical spelling and/or pronunciation and clarifies that in the event where the use of a geographical indication is "literally true" as to the place of origin of the good, it may not be used if it is likely to mislead consumers as to the origin of the good.¹¹ For example, the French cheese Munster, produced in the Alsace-Lorraine regions of France and registered as a geographical indication, is written the same way as the German-produced and unregistered cheese Münster Käse, which can confuse consumers as to the origin of the cheese product.¹²

³ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, Oct. 31, 1958, 923 U.N.T.S 205 (1974) [hereinafter Lisbon Agreement].

⁴ Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, WIPO (May 20, 2015), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_239.pdf [hereinafter Geneva Act].

⁵ Frequently Asked Questions about TRIPS, WTO, https://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm#Who'sSigned (last visited Sep. 14, 2022).

⁶ The United States is a member of the World Trade Organization since January 1, 1995.

⁷ See TRIPS Agreement art. 22.1.

⁸ See TRIPS Agreement arts. 22.2(a), 22.2(b).

⁹ *Id.*

¹⁰ See TRIPS Agreement art. 22.3.

¹¹ See TRIPS Agreement art. 22.4.

¹² Council Regulation No. 1842/2004, 2004 O.J. (L 322/8), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004R1842&from=LV> (French producers argued that German producers benefited from the reputation associated with the cheese name "Munster" when marketing their product and should not have been allowed to use that name. In October 2004, the European Commission allowed the coexistence of the registered name "Munster" and the unregistered name "Münster Käse" for a period of fifteen (15) years provided that the label for "Münster Käse" indicates Germany as the country of origin in a clear and visible manner).



b. Article 23

Article 23 offers a higher level of protection, compared to article 22, for geographical indications identifying wine and spirit beverages. As in article 22, WTO members are required to legally protect geographical indications for wines and spirits, but they do not have to show that their use could mislead consumers as to the origin of the product or constitute unfair competition.¹³ Again, as in article 22, WTO members are allowed to “refuse or invalidate” the registration of a trademark containing a geographical indication for wine or spirit, regardless of whether such use could mislead consumers or constitute unfair competition.¹⁴

In addition, article 23 allows the coexistence of homonymous geographical indications so long as WTO members can distinguish the geographical indications from each other and the interests of producers are well respected.¹⁵

Article 23 directs WTO members to negotiate on the elaboration of a multilateral system of notification and registration of geographical indications for wines and spirits;¹⁶ however, according to a recent report from the Council for Trade-Related Aspects of Intellectual Property Rights, these negotiations have stalled due to a lack of engagement and “persistent disagreements” between the members.¹⁷

c. Article 24

Article 24 provides for some exceptions to the protection of geographical indications. WTO members do not have to protect geographical indications when the names they protect become generic terms in their countries.¹⁸ A generic term is a common name referring to the nature or class of a product and must be understood as such by the public.¹⁹ Anyone can use a generic term because it has no distinctiveness.²⁰ For example, even though it was originally produced in the southwestern county of Somerset, England, the cheese name Cheddar virtually lost its association with the region and became a generic term in the United States used to describe a type of hard cheese produced from cow milk.²¹

Additionally, article 24 specifies that the customary name of a grape variety identical to a geographical indication identifying the product of the vine may be used if the name of the grape variety was already used prior to the date of entry into force of the WTO agreement.²²

Another exception is that the protection of geographical indications cannot conflict with trademark rights that have been previously acquired in good faith either prior to the agreement provisions becoming effective in the member country or prior to the geographical indication being granted

¹³ See TRIPS Agreement art. 23.1.

¹⁴ See TRIPS Agreement art. 23.2.

¹⁵ See TRIPS Agreement art. 23.3.

¹⁶ See TRIPS Agreement art. 23.4.

¹⁷ Chairman Ambassador Alfredo Suescum (Panama), *Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits*, WTO (Nov. 15, 2021),

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/TN/IP/30.pdf&Open=True>.

¹⁸ See TRIPS agreement art 24.6.

¹⁹ Frequently Asked Questions: Geographical Indications, WIPO,

https://www.wipo.int/geo_indications/en/faq_geographicalindications.html (last visited Sep. 14, 2022).

²⁰ *Id.*

²¹ TMEP § 1209.03(y), https://tmap.uspto.gov/RDMS/TMEP/current#/current/ch1200_d33465_1da6c_2a3.html (last visited Sep. 14, 2022).

²² See TRIPS Agreement art. 24.6.



protection in its country of origin.²³ There is also no obligation to protect geographical indications that have lost their registered status or that have ceased to be used.²⁴

2. The Lisbon agreement

Initially adopted in 1958, the Lisbon Agreement developed a “special union” between members to the agreement for the purpose of safeguarding the manufacturing of certain goods that are typical of certain regions of the world.²⁵ The agreement specifically called for the protection of Appellations of Origin (AOC), which identify the denomination of a geographical area used on goods with specific features that are entirely or inherently attributable to the geographical area of origin.²⁶

The Lisbon agreement established an international register for protected AOCs, and any AOC must be registered with the International Bureau of the World Intellectual Property Organization (WIPO).²⁷ Every member of the agreement must protect all AOCs – not only the ones the member country registered, but also those registered by other member countries.²⁸ They must be protected against usurpation or imitation, even if the true origin of the product is indicated on the packaging or the protected AOC is translated or followed by the terms “kind,” “type,” “make,” “imitation,” or any similar terms.²⁹

The Lisbon agreement became effective on September 25, 1966, and was later revised in July 1967 and amended in September 1979.

3. The Geneva Act

The Geneva Act, adopted in May 2015, extends the protection granted under the Lisbon agreement to geographical indications.³⁰ Together with the Lisbon agreement, the Geneva Act intends to provide a higher level of protection to geographical indications, and is wider in scope, than the TRIPS agreement.³¹

The Geneva Act distinguishes an Appellation of Origin (AOC) from a geographical indication³² and defines the latter as an indicator used on goods originating from a specific geographical area whose quality, characteristic, and reputation is essentially attributable to that geographical area.³³ The Geneva Act requires each member country to protect AOCs and geographical indications that are registered in another member country³⁴ and provides that an AOC or geographical indication registered in one member country cannot become a generic term in other member countries.³⁵

In addition, the Geneva Act provides that AOCs and geographical indications must be registered through a single registration procedure filed with the International Bureau of the World Intellectual

²³ See TRIPS Agreement art. 24.5.

²⁴ See TRIPS Agreement art. 24.9.

²⁵ See Lisbon agreement art. 1(1).

²⁶ See Lisbon agreement art. 2.

²⁷ See Lisbon agreement art. 5.

²⁸ See Lisbon Agreement art. 1(2).

²⁹ See Lisbon Agreement art. 3.

³⁰ *Main Provisions and Benefits of the Geneva Act of the Lisbon Agreement*, WIPO (2015), https://www.wipo.int/edocs/pubdocs/en/wipo_lisbon_flyer.pdf.

³¹ *Id.*

³² See Geneva Act art. 2(1).

³³ See Geneva Act art. 2(1)(ii).

³⁴ See Geneva Act art. 11.

³⁵ See Geneva Act art. 12.



Property Organization.³⁶ Member countries are free to decide how they wish to protect AOCs and geographical indications, through a *sui generis* system – meaning specifically crafted legislation – trademark laws, or any legal systems, provided their legislation follow the requirements set forth in the Geneva Act.³⁷

Another important provision of this Act allows intergovernmental organizations to join the Geneva Act, provided at least one member country of that intergovernmental organization is party to the Paris Convention.³⁸

Many European countries as well as the European Union are members of the Lisbon agreement and Geneva Act,³⁹ however, this is not the case for the United States, which has long been opposed to the Geneva Act arguing that it undermines international trade.⁴⁰

The Protection of Geographical Indications in the United States

In the United States, geographical indications identifying agricultural products are protected as a type of trademark under Section 4 of the Lanham Trademark Act of 1946.⁴¹ The U.S. Patent and Trademark Office (USPTO) is the federal agency responsible for regulating geographical indications and allowing their registration as certification or collective marks.⁴²

The Alcohol and Tobacco Tax and Trade Bureau (TTB) grants special protection to geographical indications identifying alcohol beverages, including wine, spirit, and malted beverages, under Section 205(e) of the Alcohol Beverage Labeling Act of 1988.⁴³ The TTB protects certain foreign geographical indications for alcohol beverages and provides for standards of identity and mandatory requirements for the labeling and advertising of these beverages.⁴⁴ Foreign and domestic alcohol beverages may still be registered and protected in the U.S. as certification marks.⁴⁵

1. Certification Marks

A certification mark may take the form of a name, sign, or logo on a product packaging and certify that the product meets specified standards,⁴⁶ either determined by the owner of the certification mark, the government, or a research entity.⁴⁷ It shows to consumers that a product originates from a specific geographical area and that the product meets certain standards with respect to quality, production method, professional skills, etc.⁴⁸

³⁶ See Geneva Act arts. 5, 6.

³⁷ See Geneva Act art. 10(1).

³⁸ See Geneva Act art. 28(1)(iii).

³⁹ *WIPO-Administered Treaties*, WIPO Lex, https://www.wipo.int/lisbon/en/legal_texts/ (last visited Sep. 14, 2022).

⁴⁰ U.S. Mission Geneva, *U.S. Statement on the adoption of the Geneva Act of the Lisbon Agreement*, U.S. Mission to International Organizations in Geneva (May 20, 2015), <https://geneva.usmission.gov/2015/05/20/u-s-statement-on-the-adoption-of-the-geneva-act-of-the-lisbon-agreement/>.

⁴¹ The Lanham Trademark Act, Pub. L. 79-489 (1946) (codified at 15 U.S.C. § 1051 et seq.).

⁴² United States Patent and Trademark Office (USPTO), <https://www.uspto.gov/trademarks> (last visited Sep. 14, 2022).

⁴³ Federal Alcohol Administration Act, 27 U.S.C. § 205(e) (2006).

⁴⁴ *Labeling Laws and Regulations*, U.S. Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) (Sep. 21, 2021), <https://www.ttb.gov/labeling/laws-and-regulations>.

⁴⁵ Organization for an International Geographical Indications Network (oriGIn), *Analysis of the Relevant US Legislation for the Protection of GIs & Recommendations for Compromise Solutions on GIs in the TTIP Negotiations*, Ministry of Economic Development, 9 (Oct. 6, 2015), https://www.origin-gi.com/wp-content/uploads/2012/12/Study_GIs_US_final.pdf.

⁴⁶ 15 U.S.C. § 1127 (2012).

⁴⁷ TMEP § 1306.03(b) (July 2022), <https://tmept.uspto.gov/RDMS/TMEP/current#/current/TMEP-1300d1e1.html>.

⁴⁸ 15 U.S.C. § 1127 (2012).



For example, Roquefort – a French blue cheese originating from the community of Roquefort – and Parmigiano Reggiano – an Italian cheese made from cow’s milk and produced exclusively in the neighboring regions of Parma and Reggio – are registered as certification marks in the United States.⁴⁹

A certification mark is generally owned by a trade company or association. For instance, the certification mark Roquefort is owned by the Confédération Général des Producteurs de lait et de brebis et des industriels de Roquefort. The owner of a certification mark has exclusive control over its use. Only authorized users may use the certification mark provided they comply with the product’s standards.⁵⁰ The owner of a certification mark is required to approve any license application for a product that meets the specified standards⁵¹ and is not allowed to use the mark for its own benefit to avoid conflicts of interests or bias.⁵²

2. Collective Marks

Collective marks may take the form of a sign, logo, word, or group of words.⁵³ Collective marks indicate membership in a collective entity, such as union, association, or any other type of organization, and may be used solely by the members of the collective entity to identify the geographical origin, quality, or production methods of their products compared to those that are non-members.⁵⁴

For example, Italian cheese Pecorino Romano is registered as a collective mark in the U.S. and is owned by the Consorzio per la Tutela del Formaggio Pecorino Romano.⁵⁵

Unlike a certification mark, a collective mark cannot be owned by one entity or producer.⁵⁶ It is owned by the entire collective and can be used exclusively by its members.⁵⁷ The collective entity, however, does not itself have the right to sell the products bearing the collective mark and is merely allowed to advertise the collective mark as well as products sold by its members.⁵⁸

The Protection of Geographical Indications in the European Union

Even though the European system of protection for geographical indications is similar to the U.S. trademark system in that they both identify the origin of a product, they do differ. The European system is considered more protective than the U.S. trademark system because the European Union and most of EU member states are part of the Lisbon Agreement and Geneva Act, which provide a higher level of protection to geographical indications, and are both wider in scope, than the TRIPS agreement.

Unlike the United States, the European Union does not protect geographical indications through a trademark system, but through specifically crafted regulations.

⁴⁹ Trademark Electronic Research System (TESS), Registration No. 4680603; Registration No. 3256272, <https://www.uspto.gov/trademarks/search> (last visited Sep. 14, 2022).

⁵⁰ 15 U.S.C. § 1064 (2006).

⁵¹ 15 U.S.C. § 1064 (2006).

⁵² *Id.*

⁵³ 15 U.S.C. § 1127 (2012).

⁵⁴ *Id.*

⁵⁵ Trademark Electronic Research System (TESS), Registration No. 1341101, <https://www.uspto.gov/trademarks/search>.

⁵⁶ TMEP § 1303, <https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1300d1e347.html> (last visited Sep. 14, 2022).

⁵⁷ *Id.*

⁵⁸ *Id.*



The European Parliament and Council adopted Regulation No. 1151/2012⁵⁹ and Regulation No. 1308/2013,⁶⁰ respectively in November 2012 and December 2013 establishing quality schemes for agricultural products and wine. Regulation No. 1151/2012 only applies to agricultural products intended for human consumption.⁶¹ Wine and spirits are not included within the scope of agricultural products under this regulation. Both regulations provide for the registration of geographical names for agricultural products and wine under two quality schemes: the Protected Designation of Origin (PDO) and the Protected Geographical Indication (PGI).⁶² PDO and PGI are labels granted by the European Commission or the national competent authority and are affixed on any product conforming with the quality scheme standards.

A PDO may be granted to any agricultural or food product or wine whose quality or characteristic is essentially or exclusively due to a particular geographic environment in addition to its natural and human factors.⁶³ Every step of the production, processing, and preparation must take place in the same geographical area.⁶⁴ A PGI may be granted to any agricultural or food product or wine whose quality, characteristic, and reputation is essentially attributable to the geographical area and where at least one of the stages of production, processing, or preparation takes place in the area.⁶⁵

The main difference between a PDO and PGI is that a PDO is more restrictive as the product must be produced, transformed, and prepared in one geographical area while a PGI can be produced, transformed, or prepared in more than one area.

Regulation No. 2019/787, adopted in April 2019, applies to spirit drinks⁶⁶ and Regulation No. 251/2014, adopted in February 2014, applies to aromatized wines.⁶⁷ Both regulations require the registration of geographical names for spirits and aromatized wines under the PGI quality scheme.⁶⁸ These regulations have been transposed in each Member State's domestic law and each of them have the authority to protect the registered product names within their jurisdiction.⁶⁹ A name of product registered in one EU Member State receives protection across all the European Union.⁷⁰

⁵⁹ Regulation 1151/2012, on quality schemes for agricultural products and foodstuffs, 2012 O.J. (L 343/1) (EU).

⁶⁰ Regulation 1308/2013, on establishing a common organisation of the markets in agricultural products, 2013 O.J. (L 347/671) (EU).

⁶¹ Commission Regulation 1151/2012, on quality schemes for agricultural products and foodstuffs, 2012 O.J. (L 343/1) (EU).

⁶² *Geographical indications and quality schemes explained*, European Commission, https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en#geographicalindications (last visited Sep. 14, 2022).

⁶³ *Geographical indications and quality schemes explained*, European Commission, https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en#geographicalindications (last visited Sep. 14, 2022).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Regulation 2019/787, on the definition, description, presentation and labelling of spirits drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008, 2019 O.J. (L 130/1) (EU).

⁶⁷ Regulation 251/2014, on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91, 2014 O.J. (L 84/14) (EU).

⁶⁸ *Geographical indications and quality schemes explained*, European Commission, https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en#geographicalindications (last visited Sep. 14, 2022).

⁶⁹ *Id.*

⁷⁰ *Id.*



The Social and Economic Value of European Geographical Indications

The protection of geographical indications within and outside the European Union is considered as both a preservation tool of local tradition and a way of promoting regional identity and sustainable development. In a Eurobarometer study published in October 2020, the European Commission reported that more and more European citizens and consumers may favor the purchase of regional and local products,⁷¹ which are often considered higher in quality.⁷²

The study showed that some eight (8) in ten (10) respondents felt that the geographical origin of a food product, the presence of a quality label on the product, and the knowledge that a product was produced respecting local traditions are determining factors in their decisions whether to buy a food product.⁷³ In addition, at least nine (9) in ten (10) respondents considered that being “part of a short supply chain,” with direct access to agricultural products and fewer intermediaries, is paramount.⁷⁴ As a result, there has been over the years a growing demand for agricultural and food products with a local or regional identity.⁷⁵

In addition, the European Commission stresses that protecting geographical indications may contribute to strengthening the European economy and support local sustainable development.⁷⁶ According to the Commission, there is a real advantage for farmers and producers to benefit from a system where a geographical name is limited to those who respect specified standards of quality and production and thus, where competition remains fair.⁷⁷ This way, farmers and producers should be able to receive a better sale price for their products – almost twice as much as the price of a conventional product.⁷⁸ Furthermore, geographical indications have the potential to promote traditional production in often rural and/or remote areas and bring these regions local economic growth through increasing employment and tourism.⁷⁹

The European Commission published another study dated February 2020 illustrating the total monetary impact of geographical indications to the European Union.⁸⁰ The Commission reported that the total sales value of geographical indications for the year 2017 was estimated at EUR 74.8 billion. Wines represented slightly more than half of this value, agri-food products about 35% of this value, spirit drinks about 13%, and aromatized wine products about 0.1%.⁸¹

The study also showed that the total sales value of geographical indications has steadily increased by 37% from 2010 to 2017, equaling to an amount of EUR 20.2 billion.⁸² Cheese in 2017 accounted

⁷¹ European Commission Directorate-General for Communication, *Europeans, Agriculture and the CAP*, Special Eurobarometer 504 (Nov. 2020), <https://europa.eu/eurobarometer/surveys/detail/2229> [hereinafter Special Eurobarometer 504].

⁷² Marie-Laure Augère-Granier, *Short food supply chains and local food systems in the EU*, European Parliament (Sep. 2016), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586650/EPRS_BRI\(2016\)586650_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586650/EPRS_BRI(2016)586650_EN.pdf).

⁷³ See Special Eurobarometer 504, 26 (Nov. 2020).

⁷⁴ *Id.*

⁷⁵ See § 2 of Regulation 1151/2012, on quality schemes for agricultural products and foodstuffs, 2012 O.J. (L 343/1) (EU).

⁷⁶ Q&A: *European Commission study on the value of EU GIs*, European Commission (Mar. 4, 2013), https://ec.europa.eu/commission/presscorner/detail/en/MEMO_13_163.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Directorate-General for Agriculture and Rural Development, *Study on economic value of EU quality schemes, geographical indications (GI) and traditional specialties guaranteed (TSG)*, European Commission (Feb. 12, 2021), <https://op.europa.eu/en/publication-detail/-/publication/a7281794-7ebe-11ea-aea8-01aa75ed71a1/language-en> [hereinafter European Commission study].

⁸¹ See European Commission study, 2.

⁸² See European Commission study, 16.



for a third of the total EU sales value for agri-food products bearing geographical indications.⁸³ The sales of cheese with geographical indications increased by 43% since 2010 and contributed to the European agri-food sector growth of 32%.⁸⁴

The study further revealed that, in 2017, the sales and exports of products bearing a geographical indication to countries outside the European Union, including the United States, were worth EUR 1,682 million in 2017 compared to EUR 1,038 million in 2010.⁸⁵ Cheese in 2017 accounted for 44% of total exports from the European Union to non-European countries and contributed to the growth in export values of 44% between 2010 and 2017.⁸⁶ For comparison purposes, meat products with geographical indications accounted for only 10% of the total exports to non-European countries and represented merely 5% of the growth.⁸⁷

The Impacts of European Geographical Indications on the U.S. Dairy Sector

In recent years, the United States and overall U.S. food industry strongly opposed the European Union's restrictive approach on the protection of geographical indications, including its impacts on dairy trade – both in direct trade between the United States and the European Union as well as in trade between the United States and other trading partners, which also trade with the European Union.

Many of these trade issues do not revolve around the United States and the European Union having different approaches to regulating and protecting geographical indications. According to the United States, the issue has to do with the scope of protection that is provided to geographical indications and the fact that the European Union is using its own system of protection to register names that are considered generic terms in the United States.⁸⁸

As mentioned earlier in this paper, anyone can use a generic term because it has no distinctiveness, and this even applies if the generic term relates to a specific geographical location. For example, Brie, Provolone, and Ricotta are cheese names that are generic terms in the United States and, even though not currently registered as geographical indications in the European Union, are not exempt from one day being differently interpreted by the European Union and its Member States. It is reminiscent of the cheese Gruyère case, which sparked an intense debate between the U.S. dairy industry and the European Union over whether it is considered a generic term.⁸⁹

The issue for U.S. producers is that some of these food names have been used for generations and became common names for certain types of food, such as Cheddar or Gouda. Some of these common names also became part of brand names. For example, Tillamook Medium Cheddar or Sargento Shredded Mozzarella. If a common name becomes a geographical indication, U.S. food producers would have to change their entire branding name and strategy, which could be financially harmful to them, especially for small producing companies.

⁸³ See European Commission study, 27.

⁸⁴ *Id.*

⁸⁵ See Table 36 of the European Commission study, 44-45.

⁸⁶ See Table 37 of the European Commission study, 45.

⁸⁷ *Id.*

⁸⁸ The Office of the United States Trade Representative, *2021 National Trade Estimate Report on Foreign Trade Barriers*, USTR (2021), <https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf>.

⁸⁹ *Du Gruyère v. United States Dairy Exp. Council*, 575 F. Supp. 3d 627 (E.D. Va. 2021) (the U.S. District Court found “overwhelming evidence” confirming that cheese purchasers and consumers in the U.S. understand the term *gruyère* as a generic term and therefore concluded that the geographical name *gruyère* could not be eligible for a registration as a certification mark).



In November 2018, a report prepared for the U.S. Dairy Export Council revealed that European restrictions over geographical indications – if implemented in the United States – would significantly limit the use of common cheese names and would dramatically reduce consumption of U.S.-produced cheese subjected to these restrictions.⁹⁰ Such restrictions also would reduce demand for U.S. cheese exports while U.S. imports of European cheese labeled as geographical indications would increase by 13%.⁹¹

In addition, the report highlighted some of the adverse effects of European restrictions on common cheese names in the U.S. dairy sector, including a sharp decline in total U.S. milk equivalent consumption and lower farm-gate margins; therefore, resulting in a significant decrease in dairy herd size and a loss of farm income estimated at some \$71.8 billion.⁹² According to the report, these adverse effects would be felt beyond the cheese manufacturing sector and would affect the butter and cream, and milk power manufacturing sectors.⁹³

The United States also criticizes the European Union for trying to impose its system of protection for geographical indications in other countries through bilateral trade agreements; thus, making it even more complicated for the United States to engage in foreign trade deals.⁹⁴ The U.S. food industry sees European restrictions negotiated in bilateral agreements as a conscious move to repossess the use of common food names and prevent other producers from marketing their products using those names.⁹⁵ The U.S. food industry fears that these bilateral agreements could have the impact of restricting future sales to other countries of U.S. exported products bearing common names.⁹⁶

Conclusion

The purpose of a geographical indication is to provide protection to the geographical origin and know-how of a product; however, the scope of this protection differs from one region of the world to another, and this difference can sometimes result in direct and indirect trade issues. The U.S. and European system of protection for geographical indications is a very good example of this.

The European system of protection for geographical indications is more protective than in the United States, particularly relating to the use of common food names. In that regard, one of the major challenges faced by the U.S. food – and more specifically dairy – industry is the European Union’s ongoing effort to restrict the use of common names in the United States, most of which have been used for generations, and the inevitable disruption to foreign trade activity.

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⁹⁰ Agribusiness Consulting, *Assessing the Potential Impact of Geographical Indications for Common Cheeses on the U.S. Dairy Sector* (Nov. 2018), https://www.fb.org/files/Informa_GI_Report_12-29-18.pdf.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ The Office of the United States Trade Representative, *2021 National Trade Estimate Report on Foreign Trade Barriers*, USTR (2021), <https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf>.

⁹⁵ *Id.*

⁹⁶ *Id.*



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CENTER MISSION AND BACKGROUND

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information.

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U. Ed. PSL 23-15

