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Irene Calboli
Texas A&M University School of Law, irene.calboli@gmail.com

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ARTICLE

TIME TO SAY LOCAL CHEESE AND SMILE AT GEOGRAPHICAL INDICATIONS OF ORIGIN? INTERNATIONAL TRADE AND LOCAL DEVELOPMENT IN THE UNITED STATES

*Irene Calboli**

ABSTRACT

In this Article, I offer some considerations on a possible compromising solution for the controversy between the European Union (EU) and the United States (U.S.) on the regulation of geographical indications of origin (GIs) as part of the negotiations in the Transatlantic Trade and Investment Partnership (TTIP). Notably, I advocate that the EU and the U.S. consider adopting a solution similar to that adopted in the Canada and European Union Comprehensive Economic and Trade Agreement (CETA). In particular, I note that, even though CETA accepted several of the EU's requests to claw-back names that were not previously protected in Canada, it also includes important exceptions to balance the effect of this claw-back process with respect to several (highly contested) names at issue. Thus, the solution adopted in

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* Professor of Law, Texas A&M University School of Law; Lee Kong Chian Fellow, Visiting Professor, and Deputy Director, Applied Research Centre for Intellectual Assets and the Law in Asia (ARCIALA), Singapore Management University School of Law. I would like to thank the participants to the IPIL/Houston's Santa Fe Conference, May 29–30, 2015, for their comments, and Craig Joyce, Jacquie Lipton, Sapna Kumar, and Greg Vetter for their invitation and hospitality in Santa Fe. This Article builds on my ongoing research on the topic of geographical indications of origin (GIs). For insightful discussion on this topic I thank also the participants to the Conferences *Intellectual Property on the Internet: Is There Life Outside the Big Three?*, Victoria University of Wellington, November 2014, and *Geographical Indications of Origin at the Crossroads of Trade, Development, and Culture in Asia-Pacific*, Faculty of Law, National University of Singapore, March 26–27, 2015. I am grateful to Lori Shaw for her research assistance. The (certainly controversial) opinions expressed in this Article, and any mistake, remain my own.

CETA represents a win–win solution for Canada and the EU, and a similar solution could resolve the GI controversy in the TTIP.

My position in this Article is that, far from being just an "EU thing," an appropriate level of GI protection can promote local businesses, high(er) quality products, and more accurate consumer information about products everywhere, including in the U.S. Notably, a rigorous system of GI protection—one that is based on products grown and manufactured locally and where geographical names are protected against misuse from parties operating outside the geographical areas—would provide more accurate product information to U.S. consumers and could motivate U.S. producers to invest in and maintain high(er) quality local products. In turn, this could lead to more innovation in the U.S. food and agricultural sectors and higher quality products for U.S. consumers.

U.S. negotiators do not need to look outside the U.S. to prove the validity of this argument. Instead, they can simply refer to the protection that the U.S. has historically granted to appellations of origin for U.S.-produced wines. Wines produced in Napa, Sonoma, and over thirty U.S. geographical areas are protected under *sui generis* protection, are well known as high quality products, and are successfully sold worldwide. Thus, the current opposition of certain special interest groups should not deter U.S. negotiators from pursuing a CETA-type solution to resolve the GI controversy between the U.S. and the EU in the TTIP, as this solution is desirable and would benefit in the long term both U.S. producers and U.S. consumers.

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I. INTRODUCTION

In the spring of 2014, two large groups of Senators and an even larger group of Representatives wrote to the U.S. Secretary of Agriculture and the U.S. Trade Representative expressing concerns regarding the position advocated by the European Union (EU) on geographical indications of origin (GIs) as part of the negotiations for the Transatlantic Trade and Investment Partnership (TTIP).[1] In their respective letters, the Senators and Representatives urged the Honorable Thomas J. Vilsak and Ambassador Michael Froman to oppose the requests presented by the EU, namely any restrictions of the use of EU GIs in the United States (U.S.).[2] In general, the letters lamented that the EU was pressuring other countries to increase the protection of EU GIs in their territories through negotiations in free trade agreements (FTAs).[3] This strategy, the letter said, could negatively impact the U.S., as U.S. exports would be penalized "under the guise of protecting [EU] GIs" in these countries.[4] In reference specifically to the TTIP, the Senators expressed their concerns about the impact that would result from the EU's request on the U.S. dairy and meat industries, the two industries that would be most

1. *See* Letter from Fifty-Five U.S. Senators to Thomas Vilsack, Sec'y, U.S. Dep't of Agric., and Michael Froman, U.S. Trade Representative (Mar. 11, 2014), http://www.portman.senate.gov/public/index.cfm/files/serve?File_id=79c9296b-a7a7-482e-8c3f-60fd9bd77fa9 [hereinafter March 2014 Letter from Fifty-Five U.S. Senators to Vilsack and Froman]; Letter from Forty-Five U.S. Senators to Thomas Vilsack, Sec'y, U.S. Dep't of Agric., and Michael Froman, U.S. Trade Representative (Apr. 4, 2014), http://www.commonfoodnames.com/wp-content/uploads/Meat-GIs-EU-TTIP-Vilsack-and-Froman-April-2014.pdf [hereinafter April 2014 Letter from Forty-Five U.S. Senators to Vilsack and Froman]; Letter from 177 U.S. Representatives to Thomas Vilsack, Sec'y, U.S. Dep't of Agric., and Michael Froman, U.S. Trade Representative (May 9, 2014), http://www.commonfoodnames.com/wp-content/uploads/House-Dairy-TTIP-Letter.pdf [hereinafter May 2014 Letter from 177 U.S. Representatives to Vilsack and Froman].

2. March 2014 Letter from Fifty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; April 2014 Letter from Forty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; May 2014 Letter from 177 Representatives to Vilsack and Froman, *supra* note 1.

3. March 2014 Letter from Fifty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; April 2014 Letter from Forty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; May 2014 Letter from 177 Representatives to Vilsack and Froman, *supra* note 1.

4. April 2014 Letter from Forty-Five U.S. Senators to Vilsack and Froman, *supra* note 1.

affected by any change in the current GI policy in the U.S.[5] The Representatives echoed these concerns primarily with respect to the U.S. dairy industry.[6] They emphasized that the "EU's abuse of GIs threatens U.S. sales and exports of a number of U.S. agricultural products, but pose a particular concern to the use of dairy terms."[7]

Almost two years later, the controversy that prompted these letters has not subsided. To the contrary, trade negotiators on both sides of the Atlantic continue to argue about the extent of protection to be given to GIs in global trade negotiations.[8] In particular, EU negotiators continue to pressure U.S. negotiators for heightened protection for EU GIs as part of the TTIP, including the request for "clawing-back" terms that many argue are generic terms in the U.S.[9] In addition to pressure by the EU, U.S. negotiators are also facing the pressure of the U.S. agriculture and food industry—above all the dairy industry—which fiercely opposes any compromising solution between the U.S. and the EU with respect to the EU's requests.[10] Jaime Castaneda, the

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5. March 2014 Letter from Fifty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; April 2014 Letter from Forty-Five U.S. Senate to Vilsack and Froman, *supra* note 1.

6. March 2014 Letter from Fifty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; May 2014 Letter from 177 U.S. Representatives to Vilsack and Froman, *supra* note 1.

7. *See* May 2014 Letter from 177 U.S. Representatives to Vilsack and Froman, *supra* note 1.

8. Generally, for the U.S. position and documents on the TTIP, see *Transatlantic Trade and Investment Partnership*, OFF. U.S. TRADE REPRESENTATIVE, https://ustr.gov/ttip (last visited Nov. 20, 2015). For the EU position and documents on TTIP, see *Geographical-Indications*, EUR. COMMISSION, http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/ (last updated June 28, 2013). In contrast to the EU's position of making its TTIP negotiations and proposals public, the U.S. has revealed little to no information about its position during the negotiations. This secrecy has caused concerns. *See, e.g.*, Lydia DePillis, *The Catch-22 of Trade Deals Done in Secret*, WASH. POST (May 15, 2015), http://www.washingtonpost.com/blogs/wonkblog/wp/2015/05/15/the-catch-22-of-trade-deals-done-in-secret/.

9. *See* European Comm'n, *EU Position Paper on the Transatlantic Trade and Investment Partnership (TTIP): Towards an EU-US Trade Deal* (Mar. 20, 2015), http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153331.7%20IPR%20EU%20position%20paper%2020%20March%202015.pdf [hereinafter *EU Position Paper on GIs*]. For a general overview on the debate over terms that are considered generic in the U.S., see Justin Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications*, 58 HASTINGS L.J. 299, 323 (2006) (referring to a list released by the EU in 2003 of forty-one GIs that the EU wanted every WTO member to accept as non-generic, protected terms and highlighting how the list quickly became known as the "claw-back" list).

10. *See U.S. Congress Demands That U.S. Defend Common Food Names and Reject EU's Aggressive Abuse of Geographical Indications*, CONSORTIUM FOR COMMON FOOD NAMES (May 15, 2014), http://www.commonfoodnames.com/u-s-congress-demands-that-u-s-defend-common-food-names-and-reject-eus-aggressive-abuse-of-geographical-indications/ [hereinafter *U.S. Congress Demands*].

Executive Director of Consortium for Common Food Names, explicitly summarized this opposition in the following words: "[W]e emphatically reject the EU's abusive policy of pocketing common food names under the guise of fake geographical indications, plain and simple."[11]

The controversy between the EU and the U.S. on the regulation of GIs is not new. In fact, few topics have proven as controversial within the international community as a whole as the debate over the protection afforded to GIs.[12] This controversy started well before the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994, and has continued after the adoption of TRIPS.[13] Certainly, GI supporters (at that time, primarily the EU) scored an important victory with the adoption of TRIPS, as TRIPS imposes minimum standards for GI protection on all members of the World Trade Organization (WTO), including the U.S.[14] TRIPS also mandates that WTO members discuss further GI protection as part of TRIPS's built-in agenda,[15] even though the modalities of implementation of this agenda became a source of conflict almost as soon as TRIPS was finalized.[16] Ultimately, the impossibility of reaching a global consensus on GI protection has led to a forum shift, and today both pro- and anti-GI camps have turned to bilateral and plurilateral trade agreements to advance their

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11. *Id.*

12. The literature on the GI debate is extensive. *See, e.g.*, MICHAEL BLAKENEY, THE PROTECTION OF GEOGRAPHICAL INDICATIONS: LAW AND PRACTICE (2014); DEV GANGJEE, RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS (2012) [hereinafter GANGJEE, RELOCATING GIS]; DANIELE GIOVANNUCCI ET AL., GUIDE TO GEOGRAPHICAL INDICATIONS: LINKING PRODUCTS AND THEIR ORIGINS (2009); Rosemary J. Coombe & Nicole Aylwin, *Bordering Diversity and Desire: Using Intellectual Property to Mark Place-Based Products*, 43 ENV'T & PLAN. A 2027 (2011); Marco Ricolfi, *Geographical Symbols in Intellectual Property Law: The Policy Options*, *in* SCHUTZ VON KREATIVITÄT UND WETTBEWERB 231 (Reto M. Hilty, Josef Drexl & Wilhelm Nordemann eds., 2009). *But cf.* Tomer Broude, *Taking "Trade and Culture" Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 U. PA. J. INT'L ECON. L. 623, 626–30 (2005); Hughes, *supra* note 9, at 305; Kal Raustiala & Stephen R. Munzer, *The Global Struggle over Geographic Indications*, 18 EUR. J. INT'L L. 337, 359–60 (2007). For an excellent collection of works on this theme, see the first issue of the WIPO Journal in 2014, 6 WIPO J. 1–106 (2014). Additional relevant contributions are published in a special issue of the International Review of Intellectual Property and Competition Law in 2015, 46 INT'L REV. INTELL. PROP. & COMPETITION L. 755, 755–913 (2015).

13. *See* Hughes, *supra* note 9, at 311–14.

14. *See* Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 22–24, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS].

15. *See id.* arts. 23(4), 24(1).

16. *See* discussion *infra* Part II (analysing the differing views of WTO members on TRIPS's GI built-in agenda).

respective positions on GIs.[17] As I elaborate in Part II, the EU considerably strengthens its pro-GI policy in several non-EU countries, precisely through FTAs. However, this practice has increased the resentment of the U.S. industry against the EU, as noted by the U.S. Senators and Representatives in their letters. In turn, this resentment has further complicated the ongoing TTIP negotiations (and the GI debate in general).[18]

This situation is particularly unfortunate because GIs can serve as an important tool for local economic development[19] not only in the EU but also within the U.S., despite the opposition of certain industrial sectors. As I explain in this Article, the current opposition to GIs in the U.S. stems from both the fear of short-term relabeling costs for the affected products as well as the fear of long-term loss in market share for these products, both with respect to national sales and internationally.[20] Due to these fears, representatives of the negatively affected industrial sectors have voiced strong opposition to any change in current GI policy in the U.S., and have pressured Senators and Representatives to support their cause.[21] Unquestionably, these groups have influence in national politics, which has contributed to political pressure on the U.S. Trade Representative while negotiating with the EU. The result of this pressure is, however, detrimental to the U.S. and TTIP negotiations in general, as U.S. negotiators can no longer attempt to identify a mutually agreeable solution because any compromise between the U.S. and the EU necessarily requires

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17. *See infra* notes 74–86 and accompanying text (examining the post-TRIPS negotiations gridlock and the resulting push from the EU and the U.S. for bilateral and plurilateral agreements addressing GIs).

18. *See infra* notes 79–82 and accompanying text (discussing how the EU has been able to strengthen its pro-GI policy through one-to-one agreements and how these agreements will complicate the TTIP negotiations).

19. In this Article, I argue that GIs benefit economic development, particularly local and rural development. I previously made this argument in the following related publications: Irene Calboli, *Expanding the Protection of Geographical Indications of Origin Under TRIPs: "Old" Debate or "New" Opportunity?*, 10 MARQ. INTELL. PROP. L. REV. 181, 186, 200–01 (2006) [hereinafter Calboli, *Expanding the Protection of GIs*]; Irene Calboli, In Territorio Veritas*: Bringing Geographical Coherence in the Definition of Geographical Indications of Origin Under TRIPs*, 6 WIPO J. 57, 60 (2014) [hereinafter Calboli, In Territorio Veritas]; Irene Calboli, *Of Markets, Culture, and* Terroir*: The Unique Economic and Culture-Related Benefits of Geographical Indications of Origin*, *in* INTERNATIONAL INTELLECTUAL PROPERTY: A HANDBOOK OF CONTEMPORARY RESEARCH 433, 447–49, 457–62 (Daniel J. Gervais ed., 2015) [hereinafter Calboli, *Markets, Culture and* Terroir].

20. *See infra* notes 122–26, 133–37 and accompanying text (explaining that fear of market-share loss stems from the belief that if consumers were better informed they would actively choose to switch from U.S.-made products to authentic products made in the EU).

21. *See Say Bye Bye to Parmesan, Muenster and Feta: Europe Wants Its Cheese Back*, GUARDIAN (Mar. 11, 2014), http://www.theguardian.com/lifeandstyle/2014/mar/11/europe-trade-talks-cheese-back-parmesan-feta; *U.S. Congress Demands*, *supra* note 10.

some concession from the U.S. Instead, any concession is fiercely opposed by the negatively affected U.S. industries, and in turn U.S. politicians.[22] Still, a compromising solution on the issue is desirable, as it would benefit in the long term both U.S. producers and U.S. consumers.[23]

In this Article, I attempt to offer some considerations on a possible compromising solution in this respect. At this time, my considerations are directed primarily to TTIP negotiators and, more generally, to U.S. policy-makers.[24] Notably, I advocate that the U.S. consider adopting, as part of the TTIP negotiations, a solution similar to that adopted in the Canada and European Union Comprehensive Economic and Trade Agreement (CETA).[25] Under CETA, Canada has accepted several of the EU's requests to claw-back names that were not previously protected in Canada but are protected in the EU as GIs.[26] The EU's requests in CETA were essentially the same requests that the EU has advanced in the TTIP negotiations. However, CETA includes important exceptions to balance the effect of this claw-back process with respect to the names of several cheeses, namely "Asiago," "Feta," "Fontina,"

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22. *See* March 2014 Letter from Fifty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; April 2014 Letter from Forty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; May 2014 Letter from 177 U.S. Representatives to Vilsack and Froman, *supra* note 1.

23. *See infra* Part IV (discussing the benefits of a GI compromise such as creating better informed consumers, promoting environmentally sustainable productions, and encouraging local development).

24. I also remain aware that, after some emotional moments in the U.S. Congress and Senate, a new Trade Promotion Authority bill was passed and signed into law at the end of June 2015, and that an agreement was reached over a final text of the Trans-Pacific Partnership (TPP) in October 2015—both of which indicate that the U.S. and the EU will continue and likely conclude negotiations in the TTIP. *See* Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub. L. No. 114-26, § 102(b)(3)(U), 129 Stat. 320, 323 (2015) (to be codified at 19 U.S.C. § 4201) ("The principal negotiating objective of the United States with respect to agriculture is to obtain competitive opportunities for United States exports . . . by . . . eliminating and preventing the undermining of market access for United States products through improper use of a country's system for protecting or recognizing geographical indications, including failing to ensure transparency and procedural fairness and protecting generic terms."); Jackie Calmes, *Trans-Pacific Partnership Is Reached, but Faces Scrutiny in Congress*, N.Y. TIMES (Oct. 5, 2015), http://www.nytimes.com/2015/10/06/business/trans-pacific-partnership-trade-deal-is-reached.html?_r=0. The final text of the Intellectual Property Chapter of the TPP was released by the Office of United States Trade Representative on November 5, 2015 (the text was previously leaked by Wikileaks on October 9, 2015). *See* Trans-Pacific Partnership, ch. 18, Intellectual Property, Oct. 5, 2015, https://ustr.gov/sites/default/files/TPP-Final-Text-Intellectual-Property.pdf [hereinafter TPP, Intellectual Property Chapter].

25. *See* Comprehensive Trade and Economic Agreement, Can.-EU, Consolidated CETA Text, ch. 22, Intellectual Property, Sept. 26, 2014, http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf [hereinafter CETA, Intellectual Property Chapter].

26. *Id.* arts. 7.4, 7.6(2), Annex I, pts. A–B.

"Gorgonzola," and "Munster."[27] Under CETA, Canadian businesses that are currently using these names would not be affected thanks to a grandfather clause for existing users.[28] Moreover, CETA establishes that these names could be used also by future users in Canada so long as they are accompanied by delocalizing terms such as "kind," "type," "style," "imitation," or the like.[29] This solution allows Canadian businesses, and generally businesses operating in Canada, to continue their existing activities, or plan future activities, with minor disruptions. CETA also provides exceptions for several other names and permits the use of several EU GIs in their English and French translations.[30] However, CETA accepts a long-term commitment to inform Canadian consumers about the accurate geographical origin of the products produced or distributed in Canada both with respect to Canadian and EU products.[31]

The solution adopted in CETA certainly represents a win–win solution for Canada and the EU.[32] Thus, a similar solution could resolve the GI controversy in the TTIP, despite the opposition of the U.S. dairy and meat industries. In this Article, I support this solution, but not in order to favor EU interests to the detriment of U.S. interests.[33] In fact, I criticize the expansionist approach to the protection and definition of GIs that the EU promotes as much as I criticize U.S. opposition to any change in GI protection in the

27. *Id.* art. 7.6(1)–(2).

28. *Id.* art. 7.6(2) (providing that the protection of geographical indications would not prevent the use of the indication by someone who had commercial use of the indication prior to October 18, 2013).

29. *Id.* art. 7.6(1). These names are also highlighted with an asterisk in Annex I, Part A. *Id.* Annex I, pt. A.

30. *See* CETA, Intellectual Property Chapter, *supra* note 25, art. 7.6(1)–(4), Annex I.

31. In a related publication, I develop further the argument that GI protection could motivate consumers to better appreciate geography on a broader scale. For example, in today's integrated world, citizens of every country should know that Napa Valley is a region of northern California, Darjeeling a region of northern India, Champagne a region of France, that Bologna is a city in Italy (and home to the oldest university in the Western world), and so on. Notably, GI protection facilitates the acquisition of information about accurate geographical origin, and thus geography in general, by consumers, and the public at large. *See* Irene Calboli, *Reconciling Tradition and Innovation: Geographical Indications of Origin as Incentives for Local Development and Expressions of a "Good Quality Life," in* INTELLECTUAL PROPERTY AND ALTERNATIVE REGIMES: IS THERE LIFE OUTSIDE THE BIG THREE? (Susy Frankel & Daniel Gervais eds., forthcoming 2016) (on file with author).

32. *See* discussion *infra* Part V (asserting that a system similar to CETA would be a win–win for the U.S. and the EU because it benefits both local developments and consumers on both sides of the Atlantic).

33. *See* discussion *infra* Part IV (arguing that GIs have many advantages, including fostering economic benefits and promoting higher quality local markets for countries implementing a rigorous GI-protection system).

U.S.[34] Instead, I support a CETA-style solution in the TTIP because I genuinely believe that a rigorous system of GI protection—one that is based on products grown and manufactured locally and where geographical names are protected against misuse from parties operating outside the geographical areas—can considerably benefit consumers in any country including the U.S. In particular, I believe that a rigorous system of GI protection can motivate producers to invest in and maintain high(er) quality local products. Certainly, a change towards a stricter policy on GIs will limit the ability of U.S. producers to copy EU names for their products. However, this could motivate U.S. producers to bring more innovation to the U.S. food and agricultural sectors rather than continuing to produce products that are, to a considerable extent, replicas of foreign GI-denominated products (frequently of a lower quality).[35] U.S. negotiators do not need to look outside the U.S. to prove the validity of this argument. Instead, they can simply refer to the protection that the U.S. has historically granted to appellations of origin for U.S.-produced wines.[36] Wines produced in Napa, Sonoma, and over thirty U.S. geographical areas are protected under *sui generis* protection.[37] Many of these wines are well known as high quality products and are successfully sold worldwide.[38]

Ultimately, my position in this Article is that, far from being just an "EU thing," an appropriate level of GI protection can promote local businesses, high(er) quality products, and more accurate consumer information about products everywhere, in the U.S. as much as the EU or any other country.[39] Perhaps this is not the type of public (trade and agricultural) policy objective that

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34. *See* notes 66–73, 162–82 and accompanying text (arguing that an expanded definition of GIs including products that do not fully originate from the regions goes beyond the original rationale for GI protection).

35. *See* Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 460 (making this argument with respect to GIs in general); *see also* Irene Calboli, *Intellectual Property Protection for Fame, Luxury, Wine, and Spirits:* Lex Specialis *for a Corporate "Dolce Vita" or a "Good-Quality Life"?*, *in* INTELLECTUAL PROPERTY AND GENERAL LEGAL PRINCIPLES: IS IP A *LEX SPECIALIS*? 156 (Graeme B. Dinwoodie ed., 2015) [hereinafter Calboli, *Dolce Vita*].

36. *See* discussion *infra* Part IV.

37. *See* discussion *infra* Part III (arguing that despite claims of irreconcilable differences, the EU's system of *sui generis* protection is similar to the U.S. system, as demonstrated by the protection for wine appellations in the U.S.).

38. *See* Dave McIntyre, *Amid the Colors and Critters, California's Legacy Winemakers Still Thrive*, WASH. POST, Oct. 16, 2013, at E5 ("California has become a world leader in winemaking technologies and environmental stewardship of vineyards, with more innovations to come . . . .").

39. *See* discussion *infra* Parts IV–V; *see also* Tim Josling, *Presidential Address, The War on* Terroir*: Geographical Indications as a Transatlantic Trade Conflict*, 57 J. AGRIC. ECON. 337, 351 (2006).

some members of the U.S. industry—including some businesses within the dairy and meat industries—would like to promote in the U.S. at this time due to the associated costs of this policy. Yet, a public (trade and agricultural) policy focused on increasing consumer information and promoting local development would certainly benefit consumers and local producers, and in turn local development in the U.S. Thus, the current opposition of certain special interest groups should not deter U.S. negotiators from pursuing a CETA-type solution to resolve the GI controversy between the U.S. and the EU in the TTIP.[40]

II. THE INTERNATIONAL FRAMEWORK AND THE CONTROVERSIAL DEBATE ON GEOGRAPHICAL INDICATIONS OF ORIGIN.

In this Part, I briefly review the international framework of GI protection as necessary background information. As indicated earlier, the adoption of TRIPS in 1994 brought global attention to the type of international protection granted to GIs. This turned into a relative victory for GI supporters, particularly the EU, in that they managed to introduce several GI-related provisions into TRIPS.[41] Prior to TRIPS, the most relevant sources for international GI protection were scattered in three separate agreements: the Paris Convention for the Protection of Industrial Property (Paris Convention),[42] the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (Madrid Agreement),[43] and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement).[44] An additional agreement, the International Convention on the Use of Appellations of Origin and Denominations of Cheeses (Stresa Convention), provided specific provisions with respect to GIs for cheeses.[45]

However, none of these agreements had a global significance comparable to TRIPS regarding GI protection. The Paris

40. *See* discussion *infra* Part V.

41. *See, e.g.*, TRIPS, *supra* note 14, arts. 22(1)–(3), 23(1), (4), 24(1); *see also* Hughes, *supra* note 9, at 301 (discussing how protection for GIs in TRIPS introduced GIs as the subject of broad-based multilateral agreements for the first time).

42. Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, *as revised* July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305 [hereinafter Paris Convention].

43. Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods, Apr. 14, 1891, 828 U.N.T.S. 163 [hereinafter Madrid Agreement].

44. Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, Oct. 31, 1958, *as revised* July 14, 1967, 923 U.N.T.S. 205 [hereinafter Lisbon Agreement].

45. International Convention on the Use of Designations of Origin and Names for Cheeses, June 1, 1951, JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], June 11, 1952, p. 5821.

Convention offers protection against the use of false or deceptive names used in the course of trade,[46] and protection when a use is "liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods."[47] Still, the protection offered by the Paris Convention is limited to acts of unfair competition and not specifically tailored to GIs.[48] The Madrid Agreement and the Lisbon Agreement offer more extensive and specific protection to GIs.[49] The Lisbon Agreement includes the creation of a system of international registration for appellations of origin.[50] However, both the Madrid Agreement and the Lisbon Agreement have few signatories,[51] and hence a limited international impact. In May 2015, a Diplomatic Conference was held to review the Lisbon Agreement under the auspices of the World Intellectual Property Organization (WIPO) and a revised text, the Geneva Act, was adopted.[52] Still, this revised text may not lead to a significant increase in the membership of the Lisbon Agreement due to the continuing division on the issue between WIPO members from the "New World" and "Old World."[53] The Stresa Convention is even narrower in scope and has less than ten signatories.

Compared with these predecessors, the impact of TRIPS's GI provisions has been much wider. Notably, TRIPS provides both a general floor of protection for all GIs against unfair competition

46. Paris Convention, *supra* note 42, art. 10(1).

47. *Id.* art. 10*bis*(3).

48. *See id.* art. 10*bis*.

49. *See* Lisbon Agreement, *supra* note 44, arts. 1–6; Madrid Agreement, *supra* note 43, arts. 1, 3–3*bis*.

50. Lisbon Agreement, *supra* note 44, art. 5.

51. As of October 2015, only thirty-six states are signatories of the Madrid Agreement. *See Contracting Parties, Madrid Agreement*, WORLD INTELL. PROP. ORG., http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=3 (last visited Nov. 20, 2015). Only twenty-eight states are signatories to the Lisbon Agreement. *See Contracting Parties, Lisbon Agreement*, WORLD INTELL. PROP. ORG., http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10 (last visited Nov. 20, 2015).

52. A diplomatic conference was convened in Geneva, Switzerland, in May 2015 to review the Lisbon Agreement. This continued the efforts by GI supporters to raise attention to GI protection and secure additional protection for GIs (also) at the multilateral level. *See Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration*, WORLD INTELL. PROP. ORG., http://www.wipo.int/meetings/en/details.jsp?meeting_id=35202 [hereinafter, Geneva Act of the Lisbon Agreement] (last visited Nov. 20, 2015); Daniel Gervais, *Irreconcilable Differences? The Geneva Act of the Lisbon Agreement and the Common Law*, 53 HOUS. L. REV. 339 (2015).

53. *See Compilation of Proposals by WIPO Member States for Amendments to the Basic Proposal for the New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications*, WORLD INTELL. PROP. ORG. (Mar. 3, 2015), http://www.wipo.int/edocs/mdocs/mdocs/en/li_dc/li_dc_7.pdf.

and enhanced protection for GIs identifying wines and spirits.[54] In particular, Article 22 of TRIPS mandates that all WTO members implement provisions directed at protecting GIs against uses that could "mislead[] the public as to the geographical origin of the good[s]" identified by GIs or that "constitute[] an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention."[55] Still, TRIPS does not mandate the means through which WTO members have to implement this protection, and individual countries remain free to turn to their preferred system—for example, a *sui generis* rights system like in the EU or a certification and collective trademarks system like in the U.S.[56] TRIPS also leaves countries free to resolve any potential conflicts between geographical names and existing trademark rights in their respective jurisdictions in different ways.[57] In particular, WTO members could decide to follow either the principle of "first in time, first in right" like in the U.S., or a system in which GIs are superior rights to trademarks and in which similar marks may be cancelled like in the EU. In this respect, TRIPS "grandfathers in" some existing trademarks, but only marks that were used, applied for, or registered in good faith in a WTO member country, as long as such use, application, or registration: (a) predates TRIPS's implementation in the WTO member country where the marks were used, applied for, or registered; or (b) predates the protection of the GIs at issue in the respective country of origin.[58]

Still, Article 24(6) of TRIPS states that terms which are deemed to be generic in a WTO country could continue to be used as generic terms in that country,[59] unless otherwise agreed upon by the country itself—for example, via FTAs. These names include many of the EU names that are hotly contested in the TTIP, such as "Feta," "Gouda," "Asiago," and "Fontina." As I note in Part V, the EU has successfully clawed-back several other names,

54. *See* TRIPS, *supra* note 14, arts. 22–23.

55. *Id.* art. 22(2).

56. *See id.* ("[Member countries] shall provide the legal means for interested parties to prevent [prohibited uses]."); *see also* discussion *infra* Part III (examining the "means" of implementations used by the EU and the U.S.).

57. Article 22(3) of TRIPS requires that WTO members "refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory" when the use of the GI can "mislead the public as to the true place of origin." TRIPS, *supra* note 14, art. 22(3). *But see id.* art. 24(5)–(6) (providing exceptions to this requirement).

58. *Id.* art. 24(5). In addition, TRIPS grandfathers pre-existing use of the same names in different regions of the world and also with respect to GIs "of another Member identifying wines or spirits in connection with goods and services" where the names have been used continuously for at least ten years prior to April 15, 1994, or where this use has been in good faith. *Id.* art. 24(4).

59. *Id.* art. 24(6).

particularly GIs for wines, with ad hoc agreements with several countries, including the U.S. This strategy has been loudly opposed and criticized by opponents of GI protection.[60]

In addition to the floor protection for all GIs provided for in Article 22 of TRIPS, Article 23 establishes a system of enhanced protection for GIs related to wines and spirits. Notably, Article 23 prohibits any use of GIs identifying wines and spirits when the products do not "originat[e] in the place indicated by the geographical indication," regardless of whether the use of the GIs can mislead the public as to the geographical origin of the products.[61] This includes instances when "the true origin of the goods is indicated" on the products (in addition to the GIs) or when "the [GI] is used in translation or accompanied by expressions such as 'kind[,'] 'type[,'] 'style[,'] 'imitation' or the like."[62] The fact that TRIPS members from both the "Old World" and "New World" camps have considerable interests in the wine and spirit industries—as shown in Part III with respect to the U.S.—has undoubtedly contributed to the double standard accepted under TRIPS, which explicitly favors GIs identifying wines and spirits against other types of GIs. With respect to GIs for wines and spirits, however, TRIPS does not mandate that WTO members recognize GIs over existing registered trademarks.[63] More specifically, Article 23(2) provides that members may refuse or invalidate trademark registrations containing or consisting of GIs identifying wines or spirits, including instances where the use of the mark does not create confusion for consumers in the marketplace.[64] The ongoing multinational legal war between Anheuser-Busch and Budějovický Budvar, over the use of the name "Budweiser" to identify their respective beer products, is one of the most famous examples in this respect.[65] Still, the implementation of this provision remains optional, and WTO members can again choose to resolve conflicts between GIs identifying wines or spirits and trademarks based on the "first in time, first in right" principle like in the U.S. and several other countries.

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60. *See* discussion *infra* Part V; *see also* Agreement Between the European Community and the United States of America on Trade in Wine, E.C.-U.S., Mar. 10, 2006, 2006 O.J. (L 87) 2 (EC), http://ttb.gov/agreements/us-eu-wine-agreement.pdf [hereinafter 2006 Wine Agreement]; *infra* notes 79–81 (referencing FTAs negotiated by the EU and other countries).

61. TRIPS *supra* note 14, art. 23(1).

62. *Id.*

63. *See id.* arts. 23(2), 24(5).

64. *Id.* art. 23(2).

65. *See* Christopher Heath, *The Budweiser Cases: A Brewing Conflict*, *in* LANDMARK INTELLECTUAL PROPERTY CASES AND THEIR LEGACY 181 (Christopher Heath & Anselm Kamperman Sanders eds., 2011).

Besides these two layers of protection, TRIPS comprehensively defines what constitutes a "GI" within the meaning of TRIPS. Article 22 states that GIs are "indications which identify a good as originating in the territory . . . 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."[66] As I noted in another article, this definition is considerably broader than the original definition of "appellation of origins" in the Lisbon Agreement.[67] In particular, the definition in Article 22 of TRIPS includes the concept of "reputation" as an element qualifying for GI protection in addition to the qualities or characteristics of a product.[68] It also permits a product's quality, reputation, or other characteristics to be "essentially" attributable—rather than "exclusively" attributable—to the GI-denominated *terroir*. In comparison, under the original definition in the Lisbon Agreement, protected appellations of origin should "exclusively or essentially" originate from the relevant geographical area.[69] Yet, the 2015 Geneva Act revisions of the Lisbon Agreement also include a definition of "geographical indications" origin similar to the definition in TRIPS. Namely, the Geneva Act includes the concept of "reputation" in the new definition and requires that "the quality, reputation or other characteristic of the good" are only "essentially attributable" to the relevant geographical area.[70]

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66. TRIPS, *supra* note 14, art. 22(1).

67. Prior to TRIPS, the Lisbon Agreement defined "appellations of origin" as the "geographical name[s] of a country, region, or locality, which serve[] to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors." Lisbon Agreement, *supra* note 44, art. 2(1); *see* Calboli, In Territorio Veritas, *supra* note 19, at 61–62 (criticizing the shift towards a less strict link with the territory in TRIPS compared to the Lisbon Agreement).

68. TRIPS, *supra* note 14, art. 22(1); *see* GANGJEE, RELOCATING GIS, *supra* note 12, at 214 ("[A] number of countries now use the TRIPS definition as the basis for their national legislation on geographical indications, thus establishing it as a common denominator in this field of law." (quoting Standing Comm. on the Law of Trademarks, Indus. Designs and Geographical Indications, 9th Sess., *The Definition of Geographical Indications*, at 2–3, WIPO Doc. SCT/9/4 (Oct. 1, 2002))); *see also* Calboli, In Territorio Veritas, *supra* note 19, at 61.

69. Lisbon Agreement, *supra* note 44, art. 2(1).

70. The revised text of Article 2(1) of the Lisbon Agreement includes a differentiation between the following types of GIs: i) geographical "denominations," which "designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, *and which has given the good its reputation*;" and ii) geographical "indications," those "consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is *essentially* attributable to its geographical origin." *See* Geneva Act of the Lisbon Agreement, *supra* note 52, art. 2(1)(i), (ii) (emphasis added).

Ultimately, as I criticize in Part IV, this loose(r) definition of "territorial linkage" between the products and GI-denominated regions allows GI producers to partially "de-territorialize" the production of GI-denominated products—and thus take advantage of decreasing tariffs in an increasingly "free" trade-based global marketplace. This, in turn, may allow producers to increase product quantity and perhaps save costs on raw materials and labor compared to the costs of having to produce locally.[71] Yet, this partial "delocalization" runs against the very rationale for GI protection—the linkage between the products and the *terroir*[72]—despite the fact that supporters of this expansion claim that it is the "human factor" (the key local factor) that defines the authenticity of the GI-denominated products more so than the products' ingredients and raw materials.[73]

Finally, TRIPS mandates the continuation of multilateral discussion over GI protection with the opportunity to increase protection across WTO member countries.[74] WTO members also committed to considering a multilateral system of notification and registration of GIs for wines and spirits.[75] In an attempt to advance TRIPS's built-in GI agenda, discussions on GI protection were introduced in 2001 as an action item pursuant to the agenda of the Doha Development Round under the Doha Ministerial

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71. *See infra* notes 158–68 (arguing that a looser definition of "territorial linkage" transforms GI protection into a disguised barrier, an exclusive right to use and evoke not fully accurate geographical names, and that a stricter definition does not prevent competition, but instead promotes creativity in the marketplace and provides accurate information to consumers).

72. *See* Calboli, In Territorio Veritas, *supra* note 19, at 63–66 (stating that the "geographical link" is the very essence of GIs and the sole reason GIs need protection); *see also* Michelle Agdomar, Note, *Removing the Greek from Feta and Adding Korbel to Champagne: The Paradox of Geographical Indications in International Law*, 18 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 541, 572 (2008). ("Members of the old world justify their desire to recognize the link between region and product in the notion of *terroir*."); Margaret Ritzert, Note, *Champagne is from Champagne: An Economic Justification for Extending Trademark-Level Protection to Wine-Related Geographical Indicators*, 37 AIPLA Q.J. 191, 212–20 (2009).

73. *See* Delphine Marie-Vivienne, *The Protection of Geographical Indications for Handicrafts: How to Apply the Concepts of Natural and Human Factors to All Products*, 4 WIPO J. 191, 197, 199 (2013) (highlighting the role of human factors in GIs identifying handicrafts and reviewing the existing academic debate on the issue). Commentators have also supported that the concept of *terroir* is not exclusively a geographical (in terms of territorially based) concept, and that tradition and human factor should be equally weighed in the definition of *terroir*, and in turn legal protection of GIs. *See* GANGJEE, RELOCATING GIS, *supra* note 12, at 83–93 (reviewing several different views on the interpretation of the concept of *terroir*).

74. TRIPS, *supra* note 14, art. 24(1).

75. *Id.* art. 23(4); *see also* Justin M. Waggoner, Note, *Acquiring a European Taste for Geographical Indications*, 33 BROOK. J. INT'L L. 569, 578 (2008) (noting that TRIPS requires members to negotiate a multilateral system of notification and registration for GIs and how to establish it).

Declaration.[76] The agenda hoped to reach a consensus on the creation of a multilateral registry for GIs of wines and spirits (and possibly for all GIs) as well as the extension of enhanced GI protection by the end of 2003.[77] However, no agreement on these items was reached at the October 2003 WTO meetings in Cancun. Rather, parties on the opposite side of the debate disagreed so passionately about the issue that the multilateral GI negotiations have been gridlocked ever since.[78]

Because of the difficulty in reaching an agreement at the multilateral level, supporters of enhanced GI protection (primarily the EU) have started a one-to-one approach in order to convince other countries to accept an enhanced protection of GIs. For instance, the EU introduced GIs as an item for discussion in the FTAs that the EU has concluded with, *inter alia*, Peru, Colombia, Canada, Singapore, South Korea, and Vietnam.[79] Provisions on GIs are also part of the current negotiations between the EU and, *inter alia*, India, Malaysia, and Japan.[80] The EU has additionally discussed GI protection in the stand-alone agreement on GIs between the EU and China.[81] In these various fora, the EU has

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76. World Trade Organization, Ministerial Declaration of 14 November 2001, WTO Doc. WT/MIN(01)/DEC/1, ¶ 18 [hereinafter Doha Declaration]. For a detailed analysis of the Doha Declaration, see *TRIPS: Issues, Geographical Indications*, WORLD TRADE ORG., http://wto.org/english/tratop_e/trips_e/gi_e.htm (last visited Nov. 20, 2015).

77. *See* Doha Declaration, *supra* note 76, ¶ 18.

78. For more details, see *TRIPS: Geographical Indications, Background and the Current Situation*, WORLD TRADE ORG., http://wto.org/english/tratop_e/trips_e/gi_background_e.htm (last updated Nov. 2008); *see also* General Council for the Trade Negotiations Committee, *Issues Related to the Extension of the Protection of Geographical Indications Provided for in Article 23 of the TRIPS Agreement to Products Other than Wines and Spirits and Those Related to the Relationship Between the TRIPS Agreement and the Convention on Biological Diversity*, WTO Doc. WT/GC/W/633 (Apr. 21, 2011), https://www.wto.org/english/tratop_e/dda_e/chair_texts11_e/dg_trips_e.doc (confirming WTO members' diverging positions).

79. *See* EU-Vietnam Free Trade Agreement, EU-Viet., Aug. 5, 2015, http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153674.pdf; CETA, Intellectual Property Chapter, *supra* note 25, ¶ 41; EU-Singapore Free Trade Agreement, EU-Sing., Sept. 20, 2013, http://ec.europa.eu/trade/policy/countries-and-regions/countries/singapore/; EU-Colombia-Peru Free Trade Agreement, Colom.-EU-Peru, June 26, 2012, http://trade.ec.europa.eu/doclib/html/147704.htm; EU-South Korea Free Trade Agreement, EU-S. Kor., Sept. 16, 2010, 54 O.J. (L 127) 1, 46–47, http://eur-lex.europa.eu/legal-content/en/ALL/?uri=OJ:L:2011:127:TOC. In July 2014, negotiations were concluded for the accession of Ecuador to the Trade Agreement between the EU, Colombia, and Peru. *See EU and Ecuador Publish Text of Trade Agreement*, EUR. COMMISSION (Sept. 23, 2014), http://trade.ec.europa.eu/doclib/press/index.cfm?id=1156.

80. For details on the FTAs currently negotiated by the EU, see *Geographical-Indications*, *supra* note 8; *Countries and Regions*, EUR. COMMISSION, http://ec.europa.eu/trade/policy/countries-and-regions/ (last visited Nov. 20, 2015).

81. *See EU-China Geographical Indications — "10 plus 10" Project Is Now Completed*, EUR. COMMISSION (Nov. 30, 2012), http://europa.eu/rapid/press-release_IP-12-1297_en.htm (discussing the pilot program between the EU and China and listing the ten GIs to which

succeeded in advancing its requests by exchanging other trade concessions with the negotiating parties.[82] Similarly, opponents of enhanced GI protection—especially the U.S., Australia, and New Zealand—have promoted their anti-GI agenda as part of FTA negotiations. For example, GI-related provisions in favor of the principle of "first in time, first in right" have been adopted in the Trans-Pacific Partnership (TPP)—a plurilateral agreement between the U.S., Canada, Mexico, Chile, Australia, New Zealand, and several other countries in the Pacific region, including Malaysia, Singapore, and Vietnam.[83] Despite opposition in many countries, including the U.S.,[84] the TPP was finalized in October 2015. However, the final text of the TPP does not forbid individual TPP members from implementing enhanced GI protection.[85] Moreover, several TPP member countries are simultaneously negotiating, or have recently concluded, FTAs with the EU, in which they accept, at least in part, the EU's requests to claw-back certain terms.[86] Not surprisingly, these multilayers levels of negotiations have further complicated TTIP negotiations and added to U.S. resentment for each point the EU has scored in FTAs with foreign countries.

III. UNMASKING THE TRUTH: IS THE CONTROVERSY BETWEEN THE EUROPEAN UNION AND THE UNITED STATES JUST MARKET ACCESS?

In this Part, I outline the current system of GI protection in the EU and the U.S. and note that, despite the claims of irreconcilable differences, the two systems are closer than what

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both sides committed to register and protect); *Geographical Indications*, EU-CHINA TRADE PROJECT (II), http://www.euctp.org/index.php/en/agriculture-food-safety/geographical-indications-gi.html (last visited Nov. 20, 2015) (supporting GI registration in the EU and China).

82. *Geographical-Indications*, *supra* note 8 (stating that the EU has concluded multiple FTAs that contain important GI protections).

83. *See, e.g.*, TPP, Intellectual Property Chapter, *supra* note 24, arts. 18.30–18.36.

84. *See, e.g.*, Margot E. Kamisky, *Don't Keep the Trans-Pacific Partnership Talks Secret*, N.Y. TIMES, Apr. 14, 2015, at A23 (stating that the secrecy of the negotiations have led other countries to press for more transparency); *Trans-Pacific Partnership Agreement*, ELECTRONIC FRONTIER FOUND., https://www.eff.org/issues/tpp (last visited Nov. 20, 2015) (arguing that the TPP risks certain fundamental rights that are due to citizens).

85. *See* TPP, Intellectual Property Chapter, *supra* note 24, art. 18.36 (coordinating GI-related obligations to which TPP members must adhere under the TPP and other international agreements).

86. Such member countries include Singapore, Vietnam, and Malaysia. Singapore and Vietnam have recently concluded FTAs with the EU. *See* EU-Vietnam Free Trade Agreement, *supra* note 79; EU-Singapore Free Trade Agreement, *supra* note 79. And Malaysia is currently negotiating its FTA with the EU. *See Countries and Regions*, *supra* note 80.

both camps contend. This statement is directly supported by the fact that both the U.S. and the EU protect certain types of GIs—specifically the appellations of origin for wines—with *sui generis* protection. In particular, I demonstrate that, rather than an ideological controversy, the GI debate is primarily a controversy about market access, namely a fight for market shares between EU and U.S. products in their respective national markets and internationally.

Notably, the EU protects GIs through a system of EU-wide registration, which includes EU GIs as well as non-EU GIs that comply with necessary requirements. Once registered in the EU, GIs are protected in the territory of EU member states.[87] The EU system of GI protection originates in the law of several EU member states, which already protected appellations or denominations of geographical origin before the adoption of EU-wide laws—for example, Italy, France, and Spain.[88] To date, GI protection in the EU is still limited to GIs identifying agricultural-related products—foodstuff and products derived from the soil—as well as GIs identifying wines and spirits.[89] However, at the time this Article goes to press, the EU is considering expanding GI protection to artifacts and artisanal products.[90] If this expansion of GI protection would be approved

87. *See* sources cited *infra* notes 91–93.

88. *See, e.g.*, Hughes, *supra* note 9, at 306–07 (discussing French law that was the first to combat fraudulently labeled wines). For the current national laws on GIs in France, Italy, and Spain, see the database organized and managed by the WIPO including all national laws of WIPO Members States on GIs, *WIPO Lex*, WORLD INTELL. PROP. ORG., http://www.wipo.int/wipolex/en/ (last visited Nov. 20, 2015).

89. *See, e.g.*, sources cited *infra* notes 91–93 (limiting their scope of application to products intended for human consumption).

90. On January 20, 2015, the European Commission published a report examining the preliminary results of a public consultation evaluating the opportunity to extend GI protection for non-agricultural products. *See Results of the Public Consultation and Public Conference on Making the Most Out of Europe's Traditional Know-How: A Possible Extension of Geographical Indication Protection of the European Union to Non-Agricultural Products*, at 36–37, COM (2014) 469 final (Jan. 20, 2015), http://ec.europa.eu/docsroom/documents/10565/attachments/1/translations/en/renditions/pdf (finding strong support for application of GIs to non-agricultural products while questioning whether the system should resemble the existing EU GI protection of agricultural products). This report followed a study on the topic commissioned by the EU Commission. *See* Insight Consulting et al., *Study on Geographical Indications Protection for Non-Agricultural Products in the Internal Market* (2013), http://ec.europa.eu/internal_market/indprop/docs/geo-indications/130322_geo-indications-non-agri-study_en.pdf. On September 22, 2015, the European Parliament also considered the issue in a plenary session following the opinions of several of its committee, and called "on the Commission to propose without delay a legislative proposal with the aim of establishing a single European system of protection of geographical indications for non-agricultural products." Comm. on Legal Affairs, *Report on the Possible Extension of Geographical Indication Protection of the European Union to Non-Agricultural Products*, EU Doc. A8-0259/2015, at 6/26 ¶ 3 (2015),

(or rather when it will be approved considering the strong internal support in the EU), the existing protection for GIs would extend to non-agricultural products qualifying for protection in the EU. This would include EU-based non-agricultural GIs (for example, Bohemia crystal and Murano glass) and non-EU-based GIs complying with registration requirements.

Still, to date, the following EU Regulations establish the existing system of GI protection, which is exclusively focused on agricultural goods, foodstuff, wines, and spirits. These regulations have been amended and updated in the past two decades and today are: Council Regulation (EU) No. 1151/2012 (Agricultural Products and Foodstuff Regulation),[91] Council Regulation (EC) No. 479/2008 (Wine Regulation),[92] and Council Regulation (EC) No. 119/2008 (Spirits Regulation).[93] Under these regulations, the EU protects two separate types of GIs, which nonetheless enjoy the same level of protection across all EU Member States. These two distinct types of GIs are: "designation of origin" (PDOs) and "geographical indication" (PGIs),[94] which differ based on their respective linkage between the products that they identify and the geographical areas from which the products originate. In particular, PDOs are types of GIs that identify products produced entirely in the relevant geographical area,[95] even though some limited exceptions apply with respect to certain products in specific PDO cases.[96] On the other hand, PGIs are GIs that are

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http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//NONSGML+REPORT+A8-2015-0259+0+DOC+PDF+V0//EN.

91. Regulation 1151/2012, of the European Parliament and of the Council of Nov. 21, 2012 on Quality Schemes for Agricultural Products and Foodstuff, 2012 O.J. (L 343) 1 [hereinafter EU Agricultural Products and Foodstuff Regulation].

92. Council Regulation 479/2008 of Apr. 29, 2008 on the Common Organization of the Market in Wine, Amending Regulations 1493/1999, 1782/2003, 1290/2005, 3/2008 and Repealing Regulations (EEC) 2392/86 and 1493/1999, 2008 O.J. (L 148) 1 [hereinafter EU Wine Regulation].

93. Regulation 110/2008, of the European Parliament and of the Council of Jan. 15, 2008 on the Definition, Description, Presentation, Labeling and the Protection of Geographical Indications of Spirits Drinks and Repealing Council Regulation (EEC) 1576/89, 2008 O.J. (L 39) 16 [hereinafter EU Spirits Regulation].

94. *See* EU Agricultural Products and Foodstuff Regulation, *supra* note 91; EU Wine Regulation, *supra* note 92, art. 34(2), at 18.

95. EU Agricultural Products and Foodstuff Regulation, *supra* note 91, art. 5(1), at 8; EU Wine Regulation, *supra* note 92, art. 34(1)(a), at 17. In addition, Article 34(2) of the EU Wine Regulation includes in the definition of "designation" certain "traditionally used names" provided that they "a) designate a wine; b) refer to a geographical name; c) meet the requirements referred to in paragraph 1(a)(i) to (iv) [of Article 34(1)(a)]; [and] d) undergo the [relevant] procedure conferring protection on designations of origin and geographical indications." EU Wine Regulation, *supra* note 92, art. 34(2), at 18.

96. *See* EU Agricultural Products and Foodstuff Regulation, *supra* note 91, art. 5(3), at 8–9. For example, the specification of the PDO "Prosciutto di Parma" permits that the

used to identify products that "(a) originat[e] in a specific place, region or country; (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and (c) at least one of the production steps of which take place in the defined geographical area."[97] In other words, PGIs are names that do not guarantee a product's origination entirely from a particular geographical area.

Both the Agricultural Products and Foodstuff Regulation as well as the Wine Regulation protect PDOs and PGIs. In comparison, the Spirits Regulation only protects PGIs.[98] Applications for both PDOs and PGIs for products located in a geographical area in an EU Member's State are first submitted to, and approved by, the relevant national authorities of that EU Member State. Once the national stage of the application has been completed, the application is submitted to the EU Commission—specifically, the Directorate-General for Agriculture, the authority in charge of registering PDOs and PGIs. Each application includes a detailed specification of the GI-denominated product for which the application is filed, the relevant geographical area where the products are made, the proof of the link between the GI-denominated products and the geographical area, and the authorities that are in charge of supervising the compliance of the quality of the GI-denominated products with the quality requirements listed in the specification.[99] Once received by the Commission, the application is published and can be opposed for a period of three months. Once registered, both PDOs and PGIs are protected against any use of the terms with respect to similar products,[100] as well as against evocative, descriptive, and

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pigs used for the final products, the Parma ham, originate from outside the Parma region, precisely from eleven different regions of Italy. Notably, "[t]he raw material comes from a geographical area that is larger than the production area, and which includes the administrative districts of the following Italian Regions: Emilia-Romagna, Veneto, Lombardy, Piedmont, Molise, Umbria, Tuscany, Marche, Abruzzo and Lazio (Italy)." *See* Specification and Dossier Pursuant to Article 4 of Council Regulation 2081/92 of 14 July 1992 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 1992 O.J. (L 208) 1, http://www.prosciuttodiparma.com/pdf/en_UK/disciplinare.28.11.2013.en.pdf.

97. EU Agricultural Products and Foodstuff Regulation, *supra* note 91, art. 5(2), at 8; *see* EU Wine Regulation, *supra* note 92, art. 34(1)(b), at 18 (establishing comparable requirements for wine PGIs).

98. *See* EU Spirits Regulation, *supra* note 93, art. 15, at 21 (referring only to geographical indications and making no reference to designations of origins).

99. *See* EU Agricultural Products and Foodstuff Regulation, *supra* note 91, arts. 7–11, at 9–11; EU Wine Regulation, *supra* note 92, arts. 35–41, at 18–20; EU Spirits Regulation, *supra* note 93, art. 17, at 22.

100. For example, the GI "Aceto Balsamico di Modena" is protected against the use of the name Modena with respect to any *aceto balsamico* (balsamic vinegar) products. *See* Commission Regulation 583/2009 of July 3, 2009, Entering a Name in the Register of

comparative uses of the GIs. This includes protection against instances where the terms are accompanied by expressions such as "style," "type," "method," "as produced in," "imitation," and the like, as well as the use of GIs in translations.[101]

On the other side of the Atlantic, the U.S. protects GIs primarily under its trademark system, primarily as certification and collective trademarks.[102] To a large extent, these marks offer a system of protection similar to a *sui generis* GI regime, even though critics of this system support that only a *sui generis* system can guarantee a sufficiently thorough system of registration and certification of GIs. Still, similar to *sui generis* GIs, neither collective nor certification marks can be owned by private owners, but instead must be owned and managed by a specific entity or group.[103] In particular, certification marks are generally owned by a standards-setting or certification entity, which allows a group of producers to use the mark as long as they meet certain standards of product quality and, in this case, geographical origin.[104] Well-known examples of registered U.S. geographical certification marks from the U.S. and the EU include "Grown in Idaho" for potatoes,[105] "Florida" for citrus fruit and juices,[106] "Roquefort" for

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Protected Designations of Origin and Protected Geographical Indications [Aceto Balsamico di Modena (PGI)], 2009 O.J. (L 175) 7.

101. EU Agricultural Products and Foodstuff Regulation, *supra* note 91, art. 13, at 11; EU Wine Regulation, *supra* note 92, art. 45, at 21; EU Spirits Regulation, *supra* note 93, art. 16, at 22.

102. Lanham Act § 45, 15 U.S.C. § 1127 (2012). For a detailed summary of the GI controversy and GI regulation in the U.S., see 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 14:1–1.50 (4th ed. 2015); *see also* Stacey D. Goldberg, Comment, *Who Will Raise the White Flag? The Battle Between the United States and the European Union over the Protection of Geographical Indications*, 22 U. PA. J. INT'L ECON. L. 107, 135–39 (2001) (outlining the current debate between the U.S. and the EU over geographical indications); Peter Harvey, Geographical Indications: The United States Perspective (unpublished manuscript) (on file with author) (discussing the history, economics, and politics underlying the U.S. position on GIs). For the changes in U.S. trademark law with respect to the protection of geographical marks, see generally Robert Brauneis & Roger E. Schechter, *Geographic Trademarks and the Protection of Competitor Communication*, 96 TRADEMARK REP. 782 (2006) (discussing the various changes in U.S. trademark law from 1905 to the present day); Mary LaFrance, Innovations *Palpitations: The Confusing Status of Geographically Misdescriptive Trademarks*, 12 J. INTELL. PROP. L. 125 (2004) (examining the amendments to the Lanham Act that occurred after the execution of GATT and NAFTA).

103. *See* Eleanor Meltzer, Worldwide Symposium on Geographical Indications, *Geographical Indications and Trademarks: Intellectual Property Any Way You Slice It*, WIPO Doc. GEO/SFO/03/3, at 11–13 (June 30, 2003), http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_sfo_03/wipo_geo_sfo_03_3-main1.pdf [hereinafter Meltzer, *Geographical Indications and Trademarks*].

104. *Id.*

105. GROWN IN IDAHO, Registration No. 2,914,307.

106. FLORIDA, Registration No. 1,200,770.

cheese,[107] and "Parma" for hams.[108] In addition to registered certification marks, the U.S. recognizes that certification marks can be protected under the common law—that is, when these designations are used in commerce but not registered.[109] Collective marks, on the other hand, are generally owned by collective associations (not standards-setting or certification entities) that generally do not sell goods, but rather promote the goods sold by their members.[110] Members of collective associations can use the group mark in addition to their individual marks to identify their products.

But the U.S. does not protect GIs only under its trademark system. Perhaps unknown to many, the U.S. provides additional *sui generis* protection to GIs identifying appellations of origin for wine. U.S. laws provide this protection both at the federal and state levels.

At the federal level, the Treasury Department's Alcohol and Tobacco Tax and Trade Bureau (TTB)—until 2003, the same function was performed by the Bureau of Alcohol, Tobacco, and Firearms[111]—grants applicants the permission to indicate that a certain wine originates from a particular geographical area of the U.S.[112] As part of the application process for appellations for wine, applicants also have to indicate that the wines meet specific requirements. In particular, the geographical areas that can be covered by appellations of origin for wines include the entire U.S., no more than three states which have contiguous boundaries, a single state, a county, or a location established by a "viticultural area."[113] To date, the TTB has approved over 130 viticultural areas

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107. ROQUEFORT, Registration No. 571,798.

108. PARMA, Registration No. 2,014,627.

109. Famous disputes granting common law rights in the U.S. involve the terms "Cognac" and "Darjeeling." *See* Tea Bd. of India v. Republic of Tea Inc., 80 U.S.P.Q.2d (BNA) 1881, 1888–96 (T.T.A.B. 2006); Inst. Nat'l Des Appellations d'Origine v. Brown-Forman Corp., 47 U.S.P.Q.2d (BNA) 1875, 1885–86 (T.T.A.B. 1998); *see also* Daniel Gervais, *A Cognac After a Spanish Champagne? Geographical Indications as Certification Marks*, *in* INTELLECTUAL PROPERTY AT THE EDGE: THE CONTESTED CONTOURS OF IP 130 (Rochelle Cooper Dreyfuss & Jane C. Ginsburg eds., 2014). Still, U.S. courts found the term "Fontina" and "Chablis" to be generic. *See* Institut Nat'l Des Appellations D'Origine v. Vintners Int'l Co., 958 F.2d 1574, 1582 (Fed. Cir. 1992); *In re* Cooperativa Produttori Latte E Fontina Valle D'Aosta, 230 U.S.P.Q. (BNA) 131, 134 (T.T.A.B. 1986).

110. Meltzer, *Geographical Indications and Trademarks*, *supra* note 103, at 11.

111. *See* 6 U.S.C. § 531(c)(2), (d) (2012).

112. 27 U.S.C. § 205; 27 C.F.R. § 4.25 (2015); *see* 2 MCCARTHY, *supra* note 102, § 14:19.50, at 14-69 to -70 (reconstructing the history of protection of appellations of origin for wine in the U.S.); *see also* Michael Maher, Comment, *On* Vino Veritas? *Clarifying the Use of Geographic References on American Wine Labels*, 89 CALIF. L. REV. 1881, 1887–99 (2001).

113. 27 C.F.R. § 4.25(a)(1); 2 MCCARTHY, *supra* note 102, § 14:19.50, at 14-70.

in thirty-two states.[114] In addition, federal regulations (similar to the Wine Regulation with respect to EU PGIs for wines) require that at least 75% of local grapes be used in order to label a wine with the name of the respective U.S. locality.[115] Still, a loophole allows marks in use before 1986 employing the geographical name to continue to be used on wines that utilize less than 75% of local grapes, so long as the label of the wine discloses the true source of the grapes.[116] However, states like California have passed ad hoc legislation against this loophole. In particular, California legislated that the terms "Napa" and "Sonoma" could not be used in association with wines not following the 75% local grapes rule.[117] Interestingly, these measures safeguard the quality of U.S.-denominated wines against the possible dilution that could be derived from subpar, and less authentic, products—which is the same concern expressed by the EU against U.S. use of EU GIs.

This *sui generis* protection for appellation of origin for wines is also directly administered at the state level. To date, several states have adopted ad hoc regulations on the use of geographic names for wines.[118] These regulations require that producers in the relevant wine regions use the region names to identify their wines. Notably, some states adopt stricter regulations than others with respect to the percentage of local grapes that need to be used by wine-makers to lawfully use the appellations for wine.[119]

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114. *See Wine Appellations of Origin*, ALCOHOL & TOBACCO TAX & TRADE BUREAU, http://www.ttb.gov/appellation/index.shtml (last updated Oct. 16, 2015).

115. 27 C.F.R § 4.25(b)(1). There are higher percentage requirements, however, in the case of multi-state, multi-county, and viticultural area appellations of origin. To meet the requirements for a multi-state appellation of origin, 100% of the grapes (or any other agricultural input) for the wine must be grown in the states on the label. In addition, the wine must be fully finished in one of the labeled states, and the percentage of grapes used from each state must be displayed on the label. *See Wine Appellations of Origin*, *supra* note 114. To qualify for a multi-country appellation of origin, 100% of the grapes composing the wine must be from the labeled counties of a single state, and the percentage of wine derived from grapes from each county must be indicated on the label. *Id.* The requirements for a viticultural appellation of origin are: (1) not less than 85% of the wine's volume is derived from grapes grown in the labeled viticultural area, (2) the wine is fully finished in one of the states in which the viticultural area is located, and (3) the labeled area is an American viticultural area approved under U.S. regulations. *Id.*

116. 2 MCCARTHY, *supra* note 102, § 14:19.50, at 14-72.

117. CAL. BUS. & PROF. CODE § 25241 (West 2015) (regarding the term "Napa"); *id.* § 25242(b) (regarding the term "Sonoma"); *see also id.* § 25246(a) (stating that wineries in designated areas of Sonoma County must add "Sonoma County" to their labels).

118. *See* Bronco Wine Co. v. Jolly, 95 P.3d 422, 440–41 (Cal. 2004); Maher, *supra* note 112, at 1913–14.

119. For example, to qualify for the appellation of origin "California," California law requires that 100% of the wine's volume be derived from grapes within California. CAL. CODE REGS. tit. 17, § 17015 (2015). Oregon requires that 95% of grapes used in the production of wine labeled "Oregon," the name of only Oregon counties, or the name

Accordingly, despite the emotional rhetoric on the topic, it is fair to say that the EU and the U.S. do not diverge so radically on their views of GI protection, regardless of what the pro- and anti-GI camps may otherwise say.[120] Instead, the views of the U.S. and the EU are remarkably similar when their respective national interests align, as in the case of GIs for wine.[121] In contrast, the EU and the U.S. views on GIs diverge sharply when their respective national interests do not align, like in the current case of names regarding cheese or cured meat products.[122] In these cases, U.S. producers (and politicians) oppose the protection of EU GIs in the U.S., fearing that such protection will undermine national interests and the sales of domestic products.[123] As alluded to earlier, however, this opposition rests primarily on reasons related to market access—that is, fear of an immediate loss of market share due to the costs of relabeling U.S. products and the deeper concern of losing long-term market share. Notably, U.S. producers fear that, due to the additional information that GIs offer to consumers, better informed consumers could decide to switch from the U.S.-made version of European cheeses and meats to products made in the EU[124]—in turn this would affect the sales of U.S. products.

The fact that the GI debate is essentially a "trade war" between the U.S. and the EU is additionally reflected in the EU's requests to the U.S. to cease the use of EU GIs, even with

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of an American Viticultural Area wholly within Oregon be from within the defined boundaries of that appellation of origin. OR. ADMIN. R. 845-010-0920 (2015).

120. *But see* Dev Gangjee, *Quibbling Siblings: Conflicts Between Trademarks and Geographical Indications*, 82 CHI.-KENT L. REV. 1253, 1267 (2007) (analyzing the difference between EU GIs and the U.S.'s preferred method of protection, trademarks); *see also* Annette Kur, *Quibbling Siblings: Comments to Dev Gangjee's Presentation*, 82 CHI.-KENT L. REV. 1317, 1321 (2007) (noting skepticism that the informing effects of protected GIs on consumers actually accomplish the desired result that the EU is seeking, namely to increase sales of the protected products).

121. *See U.S. Dairy Industry Drives Home Concerns on Geographical Indications and Common Food Name Issues During TTIP Stakeholders Forum*, CONSORTIUM FOR COMMON FOOD NAMES (Feb. 4, 2015), http://commonfoodnames.com/u-s-dairy-industry-drives-home-concerns-on-geographical-indications-and-common-food-name-issues-during-ttip-stakeholders-forum/ (relating the dairy industry opposition to EU pressure for protection of geographical indications) [hereinafter *U.S. Dairy Industry Drives Home Concerns on Geographical Indications*].

122. *See id.*

123. *See Say Bye Bye to Parmesan, Muenster and Feta: Europe Wants Its Cheese Back*, *supra* note 21.

124. To compare with GMO labeling of food products, see Michelle Ye Hee Lee, *Would GMO Labeling Requirement Cost $500 More in Groceries per Family a Year?*, WASH. POST (Apr. 6, 2015), http://www.washingtonpost.com/blogs/fact-checker/wp/2015/04/06/would-gmo-labeling-requirement-cost-500-more-in-groceries-per-family-a-year/ (finding that giving consumers knowledge of genetically-modified ingredients could cause them to not buy those products, forcing companies to switch ingredients to prevent decreased demand).

delocalizers such as "type," "like," "style," etc.[125] Obviously, without strong GI protection, the EU would no longer enjoy the competitive advantage that EU names (still) seem to command in the global marketplace for cheese and cured meats due to a long tradition in manufacturing these products in the EU.[126]

Moreover, despite the finger pointing between the two camps and claims that the opposite position may result in confusion for their respective national consumers, both the U.S. and the EU are ready to accept a considerable degree of "geographical inaccuracy" when it best suits their respective trade interests, regardless of the resulting consumer misinformation. Certainly, in a world with diminishing agricultural subsidies, increased protection for geographical names (especially when these names are well known like Chianti, Champagne, Napa, or Sonoma) offers producers in agriculture-intensive sectors an important alternative to national subsidies.[127] However, when GI protection attaches to products not entirely originating from the relevant GI-denominated regions, GIs become a marketing tool for certain producers without a sound basis for this protection. Moreover, GIs can become vehicles for consumer confusion and deception.[128] In particular, the EU does not hesitate to protect PGIs, which identify products that originate only in part from PGI-denominated regions.[129] Likewise, neither the U.S. nor the EU formally objects to the fact that, in certain instances, the percentage of local grapes used for wines labeled as originating from a specific geographical area is less than 100%.[130] Yet, consumers in the EU as much as in the U.S. do rely on the geographical names of these products as a source of origin, and most often believe that the origin reflected in these names

125. *See* Raustiala & Munzer, *supra* note 12, at 342 (noting that GI protection is a method for the EU to protect their agricultural sector from external, low-cost competition).

126. *See* European Comm'n, *Final Report on Value of Production of Agricultural Products and Foodstuffs, Wines, Aromatised Wines and Spirits Protected by a Geographical Indication (GI)* 71 (Oct. 2012), http://ec.europa.eu/agriculture/external-studies/2012/value-gi/final-report_en.pdf (revealing that GI products were sold 2.23 times as high as the same quantity of non-GI products); *EU Geographical Indications Worth About €54 Billion Worldwide*, EUR. COMMISSION (Apr. 3, 2013), http://ec.europa.eu/agriculture/newsroom/106_en.htm (showing the importance of GIs to the EU by revealing that EU GIs are valued at €54.3 billion worldwide); *see also* European Commission Press Release MEMO/13/163, Q&A: European Commission Study on the Value of EU GIs (Mar. 4, 2013), http://europa.eu/rapid/press-release_MEMO-13-163_en.pdf (listing the benefits of GIs for the producers of protected products).

127. *See, e.g.*, Hughes, *supra* note 9, at 345 (highlighting that the means to gain added revenue when agricultural subsidies are decreasing is to move toward high-end products that are controlled in order to "cultivate and maintain consumer demand").

128. *See* Calboli, *Markets, Culture, and* Terroir, *supra* note 19, at 458–59.

129. Hughes, *supra* note 9, at 324–25 (observing that PGIs have a relaxed *terroir* requirement).

130. *See* 27 C.F.R. § 4.25(b) (2015); EU Wine Regulation, *supra* note 92, art. 34(1)(b), at 18.

indicates the actual and accurate geographical origin of the products as a whole, including their ingredients and various manufacturing steps.[131] In addition, consumers frequently purchase these products *precisely* because of their geographical origin, which conveys (or should convey) certain guarantees regarding product quality and characteristics.[132] Many consumers, including this Author, also want to support local producers, and rely on GIs as indicators of local places.

Besides accepting these convenient degrees of "geographical inaccuracy," both the U.S. and the EU are also guilty of inaccurate "rhetorical exaggerations" as part of the GI debate. Notably, the U.S. tends to exaggerate the "genericness" of certain (not surprisingly, foreign) geographical names in their national territory. In this respect, U.S. producers regularly exaggerate the claims of "genericness" of EU names in order to avoid the risk of relabeling their products.[133] Furthermore, U.S. producers—and in turn U.S. politicians under the pressure of U.S. producers—tend to overstate the argument that the relabeling of products carrying those names could lead to consumer confusion, as consumers would suddenly not recognize the products under new names, or be confused about the products' origin.[134] In reality, no convincing evidence has been collected, as of today, to prove (or disprove) that consumers would truly be confused if products were relabeled in order to identify their actual geographical origin. Likewise, it remains unclear and no evidence indicates that consumers would ultimately care if products in the U.S. were relabeled, as long as consumers are provided with accurate information about the products' origin and access to the same types of products. As I support below, contrary to the claim that relabeling may lead to confusion, consumers could in fact benefit from relabeling, as they would have access to more accurate information about the products they purchase. But the U.S. is not the only camp liable of exaggerating its claims in the GI debate. On its side, the EU also exaggerates the possible risk of consumer confusion

131. *See* Ritzert, *supra* note 72, at 208.

132. *See id.* at 195.

133. For example, the U.S. and the EU have battled for decades over the use of the term "Champagne," and U.S. producers still can use the word "Champagne" as "American Champagne." The producers of Champagne did not bring claims only against the use of champagne in the U.S. In 1960, French Champagne producers won their suit against Spanish sparkling wine producers in the United Kingdom, where the court held that the producers were allowed to prevent the sale of Champagne. PETER J. GROVES, SOURCEBOOK ON INTELLECTUAL PROPERTY LAW 710, 720 (1997) (citing J. Bollinger v. Costa Brava Wine Co. Ltd. [1960] 1 All ER 561 as the first recognition of goodwill attaching to "Champagne").

134. *See* April 2014 Letter from Forty-Five U.S. Senators to Vilsack and Froman, *supra* note 1; *see also Say Bye Bye to Parmesan, Muenster and Feta: Europe Wants Its Cheese Back*, *supra* note 21 (quoting Kraft spokesman Basil Maglaris).

or tarnishment to the reputation of EU products that could occur if EU GIs are used by U.S. producers with delocalizers such as "type," "style," kind," "imitation" or the like.[135] The EU also regularly exaggerates the fears that the use of EU GIs with delocalizers could lead to the genericide of EU GIs. Here again, no evidence has ever been gathered to indicate whether consumers would be confused or EU products would be tarnished so that consumers would no longer purchase them. Instead, I would argue that delocalizing terms explicitly clarify that the products do not originate from GI-denominated regions and provide better information for consumers. Hence, the current EU position is primarily focused on maintaining absolute control of EU GIs—no one shall use EU GIs in any context, including to evoke comparison with the EU![136] Moreover, denying U.S. competitors the possibility of using EU GIs to compare or describe generic-type products amounts to both an unreasonably anticompetitive request and possibly a violation of the freedom of commercial expression principle in the U.S.[137]

In summary, the GI debate within the TTIP negotiations remains primarily about national trade interests and market access. Of course, as I have argued in my scholarship, ideological differences remain important in the GI debate,[138] and it is undeniable that concepts such as "tradition" and "authenticity"—the core theoretical values of GI protection—are not equally relevant in both the EU (a continent rooted on tradition) and the U.S. (a continent rooted on innovation). But again, the story of U.S. wine protection does show how these concepts can be important in the U.S. as well, to the point that California has restricted the ability to use the name "Napa" and "Sonoma" in order to guarantee the authenticity of these names. More generally, tradition and authenticity are important concepts also in the U.S., increasingly so with respect to food and agricultural-related products.

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135. *See* Hughes, *supra* note 9, at 381 (positing that consumers would likely not be confused when a product is labelled with "-style" or "-like").

136. *See* Kur, *supra* note 120, at 1321 (commenting that the European regime prohibits any competitive challenge to a protected GI product either directly or indirectly).

137. *See infra* notes 177–80 and accompanying text (positing that unlimited GI protection is an unjustified barrier to entry and conflicts with the U.S. Supreme Court's test for misleading commercial speech).

138. Calboli, *Dolce Vita*, *supra* note 35, at 166–71 (summarizing the various positions on GIs in the "New World" and the "Old World").

IV. THE (STILL) RELEVANT ROLE OF GEOGRAPHICAL INDICATIONS AS INCENTIVES FOR LOCAL DEVELOPMENT (ALSO IN THE UNITED STATES)

As mentioned previously, the controversy that dominates the current GI debate is unfortunate because it prevents the adoption of a compromising solution, which is especially desirable considering the unique economic benefits that GIs can provide for U.S. producers and consumers. In this Part, I outline these benefits. I also note that GI protection should nonetheless be limited in order to avoid unnecessary barriers to competition and freedom of expression.

The first argument in support of GI protection is that GIs promote the establishment of GI-denominated local markets within the general market for type-level products—for example, Napa or Sonoma as a local market within the general market for wines.[139] Moreover, not only do GIs promote local markets, they also generally promote higher quality markets. Based on the U.S. wine experience, as well as the experience of many EU GI-denominated products, it is accurate to say that GI-denominated markets frequently specialize in high-end products compared to the general markets for type-level products.[140] Accordingly, GIs can assist in motivating a group of regional producers—such as wine-makers from Napa and Sonoma, and cheese-makers from Wisconsin, Michigan, Vermont, and other states—to meet, and maintain, particular production standards originating from the area. In other words, GIs can facilitate first the establishment and later the conservation of these high(er) quality markets through geographical names.[141] These names identify the geographical area from which the products originate and reflect the social capital (and thus the goodwill) that is invested in the creation and maintenance of the quality of the products.[142] Moreover, GIs facilitate the promotion of GI-denominated products in all markets—at the local, national, and international level. In this respect, GIs are essential tools for the promotion of local products in the global market in that they

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139. *See* Ritzert, *supra* note 72, at 212–20; *see also* Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 448.

140. Ritzert, *supra* note 72, at 212–20; *see also* Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 449–51.

141. *See* Gangjee, *supra* note 120, at 1267 (observing that GIs recognize investments in production methods that have evolved over time to create "specific standards of quality").

142. *See* GANGJEE, RELOCATING GIS, *supra* note 12, at 266. ("Since consumers are willing to pay more for such goods, this encourages farmers to invest in making the transition from producing undifferentiated bulk commodities towards producing higher quality niche products.").

allow producers to capitalize on people's desire to choose products from a certain region and with certain characteristics[143]—in the U.S., for example, wine from Napa, potatoes from Idaho, bourbon from Kentucky, cheese from Wisconsin, etc. In summary, GIs promote the idea of "geographical identity" in the larger context of global trade and permit producers to promote GI-denominated products as "originally" and "authentically" originating from a certain geographical area.[144]

To fully capture the value offered by GIs, however, GI producers need to protect the association that consumers create between the GI-denominated products and their respective GI-denominated regions of origin.[145] Accordingly, GI producers need legal protection against confusing uses of terms identical or similar to their GIs, lest the consumers could associate confusingly similar products with their regions. GI producers also need legal protection against diluting uses of their GIs by unrelated parties because these uses can affect the association with, and the

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143. *See* Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 449–51; *see also* Jane Black, *The Geography of Flavor*, WASH. POST, Aug. 22, 2007, at F1 (citing products that take advantage of demand for products from specific regions with specific characteristics); Jocelyne Fouassier, *Promoting Food and Lifestyle: The French Experience*, *in* OECD STUDIES ON TOURISM, FOOD AND THE TOURISM EXPERIENCE: THE OECD-KOREA WORKSHOP 155, 159 (2012) (asserting that an indication of origin can invoke an idea of quality that encompasses concrete and abstract elements associated with a geographical location that cannot be duplicated elsewhere).

144. *See* Sarah Bowen, *Embedding Local Places in Global Spaces: Geographical Indications as a Territorial Development Strategy*, 75 RURAL SOC. 209, 210 (2010) (recognizing that local producers can benefit from global trade when their products are connected with the unique characteristics of their region and production practices); *see also* Coombe & Aylwin, *supra* note 12, at 2027–30 (opining that the unique characteristics of the geographical region should be used in marketing to enable regional producers to compete in global trade); *cf.* Margaret Chon, *Slow Logo: Brand Citizenship in Global Value Networks*, 47 U.C. DAVIS L. REV. 935, 966 (2013) (suggesting that, through increased transparency, producers in the fashion industry can capitalize on consumer demand for socially responsible product development). *But see* Rosemary J. Coombe, Sarah Ives & Daniel Huizenga, *Geographical Indications: The Promise, Perils and Politics of Protecting Place-Based Products*, *in* THE SAGE HANDBOOK OF INTELLECTUAL PROPERTY 207, 213–15 (Matthew David & Deborah Halbert eds., 2014) (suggesting that the idea of a unified geographical identity espoused by GIs is more imagined than real); Doris Estelle Long, *Branding the Land: Creating Global Meanings for Local Characteristics*, *in* TRADEMARK PROTECTION AND TERRITORIALITY CHALLENGES IN A GLOBAL ECONOMY 100, 103 (Irene Calboli & Edward Lee eds., 2014) (arguing that the use of geographical designators does not necessarily assure the development of viable niche markets and that without domestic laws assuring quality control, the designation may actually contribute to consumer confusion).

145. *See* Hughes, *supra* note 9, at 352–53, 356; Agdomar, *supra* note 72, at 586–87 (noting that granting property rights through geographical indications allows producers to control the quality of their goods in order to build consumer confidence). *But see* Raustiala & Munzer, *supra* note 12, at 352–54, 361–64 (critiquing the argument that GIs protect the valid interests of producers or protect consumers from confusion).

desirability of, GI-denominated products.[146] Even though uses of GIs leading to dilution may not be confusing to consumers, these uses may still severely affect the ability of GI producers to promote their products in the long term. In particular, GI producers bear the cost of developing and maintaining the reputation of GI-denominated products, and thus are vulnerable to reputational "free riders" who identify their product by unduly evoking the GIs' names (for example, for use on unrelated products or products made with different ingredients). In contrast, free riders are not part of and do not contribute to sustaining GI-denominated markets.[147] Thus, free riders do not share the same concerns with respect to the impact of subpar products on the long-term reputation of GI-denominated products and markets.[148] Yet, subpar products could easily impact the market for GI-denominated products.[149] These considerations apply to any replicas of EU GI-denominated products produced anywhere outside the relevant GI-denominated region, including replicas of U.S. products in markets outside the relevant regions in the U.S. For example, wine-makers from Napa have sought and obtained protection for the name "Napa Valley" under *sui generis* protection for GIs in China after a decade of challenges in preventing the use of the name "Napa" in China, specifically due to fears of dilution of the name in Asia and the global marketplace in general.[150] Napa Valley is also a registered GI in Thailand.[151]

The second, and perhaps even more important, argument in support of GI protection is that GIs convey important information to consumers. Notably, GIs are distinctive signs that allow consumers to identify the geographical origin of the products. As such, GIs convey a host of information about GI-denominated products that goes along with the geographical origin, including the quality of the raw materials, ingredients, methods of production, and so forth.[152] In this respect, the argument in favor of GI protection is that GIs reduce the information asymmetries between producers and consumers and

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146. *See* Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 448–49.

147. Ritzert, *supra* note 72, at 214–20.

148. *See* Agdomar, *supra* note 72, at 586–87 (summarizing the impact of counterfeit products on source communities); Ritzert, *supra* note 72, at 214–17.

149. Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 448–49; Ritzert, *supra* note 72, at 212–20.

150. *See* Sasha Paulsen, *China Agrees to Protect Napa Valley Wine Name*, NAPA VALLEY REG. (Oct. 11, 2012), http://napavalleyregister.com/news/local/china-agrees-to-protect-napa-valley-wine-name/article_0c4f86e8-142e-11e2-942f-001a4bcf887a.html.

151. Press Release, Napa Valley Vintners, Napa Valley Vintners Announce GI Status Approval in Thailand (Nov. 29, 2011), http://napavintners.com/press/press_release_detail.asp?ID_News=3421052.

152. Agdomar, *supra* note 72, at 577, 586–87; *see* Hughes, *supra* note 9, at 352.

enable consumers to distinguish between products of different quality and characteristics, or simply between products of similar quality and characteristics, within the same generic-type product[153]—for example, Chianti wine versus Napa wine or red wine produced in Iowa. Moreover, GIs can offer useful information about the "health-related" quality and other important aspects of the GI-denominated products. For example, by offering relevant information about the ingredients and/or practices that go into making the products as part of the products' origin, GIs can play an important role in the selection process that drives consumers to choose certain products over others.[154] In this respect, GIs can identify (and potentially reward) those producers who invest in friendly environmental, health, and labor-related policies. GIs also hold producers accountable for environmental, public-health-related, and other types of damages to a region, country, or larger community.[155] In particular, GIs can assist in reducing possible "contagion effects" due to accidents in a given geographical market—for example, consumers could avoid contaminated cured meat or cheese from a given area, as was the case with the contaminated "mozzarella" scandal in Campania (Italy) several years ago.[156] Ultimately, GIs may contribute to the creation of environmentally sustainable production methods as GI producers realize the importance of maintaining the well-being of the region—the land, water, air, and the like.[157]

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153. Agdomar, *supra* note 72, at 588; *see* Angela Tregear & Georges Giraud, *Geographical Indications, Consumers and Citizens*, *in* LABELS OF ORIGIN FOR FOOD: LOCAL DEVELOPMENT, GLOBAL RECOGNITION 63, 66–67 (Elizabeth Barham & Bertil Sylvander eds., 2011) (suggesting that overcoming this information asymmetry can be a boon for buyers). Asymmetrical information places consumers in a weaker position because consumers cannot optimize their choices due to the lack of a full set of information. GIs constitute methods of improving communication as they signal quality and expertise and enable consumers to distinguish between premium quality products and low-end products. Tregear & Giraud, *supra*, at 66–67; Agdomar, *supra* note 72, at 588.

154. Agdomar, *supra* note 72, at 590 (observing that wine connoisseurs rely heavily on source identification to select the wine they drink); *see* Luisa Menapace et al., *Consumers' Preference for Geographical Origin Labels: Evidence from the Canadian Olive Oil Market*, 38 EUR. REV. AGRIC. ECON. 193, 209–10 (2011) (concluding that Canadian consumers are willing to pay a premium for olive oil with geographical indication).

155. Elizabeth Barham et al., *Geographical Indications in the USA*, *in* LABELS OF ORIGIN FOR FOOD: LOCAL DEVELOPMENT, GLOBAL RECOGNITION 122, 126–27 (Elizabeth Barham & Bertil Sylvander eds., 2011); Agdomar, *supra* note 72, at 588.

156. *See* Michael McCarthy & John Phillips, *Italy's Toxic Waste Crisis, the Mafia—and the Scandal of Europe Mozzarella*, INDEPENDENT (Mar. 22, 2008), http://www.independent.co.uk/news/world/europe/italys-toxic-waste-crisis-the-mafia-ndash-and-the-scandal-of-europes-mozzarella-799289.html (explaining that many Italians linked the high levels of pollutant chemicals found in buffalo milk to a waste management crisis in Campania, a province in Italy renowned for buffalo milk production).

157. *See* Sarah Bowen & Ana Valenzuela Zapata, *Geographical Indications,* Terroir, *and Socioeconomic and Ecological Sustainability: The Case of Tequila*, 25 J. RURAL STUD.

Based on these premises, offering adequate protection to GIs does translate into protecting producers' ability to offer correct information to consumers. In contrast, not protecting GIs or offering a weak protection to GIs—protection that would tolerate confusingly similar or diluting uses of geographical terms—could lead to the erosion of the GIs' ability to signal the origin of GI-denominated products.[158] This, in turn, could lead to consumer confusion as to the actual origin and quality of the GI-denominated products. It could also lead to GI genericide, as the GIs would lose their distinctive meaning of "geographical area" and "geographical origin." Ultimately, offering weak GI protection would deprive consumers of important sources of information about the qualities associated with geographical origin and the manufacturing process of the GI-denominated products.[159] As I noted in Part III, the EU has raised these arguments in the defense of EU GIs outside the EU. Notably, the EU has repeatedly argued that the use of EU GIs outside their accurate EU geographical context could dilute the distinctiveness of the names and lead to their genericide. Yet, as noted above, it should also be said that, to a certain extent, the EU exaggerates the claim that EU GIs may become generic when these terms are used along with delocalizers such as "type," "style," "like," and so on. Moreover, it should not be forgotten that, under the EU PGI scheme, EU producers themselves are allowed to partially delocalize the production of PGI-denominated products and still retain the (exclusive) right to use the geographical term to identify the products.[160] Thus, the EU claims are driven not only by the concern that unauthorized users would dilute the distinctiveness of EU GIs (when these GIs are used inaccurately), but also (and primarily in the cases of PGIs) by the desire to maintain the exclusive control over any use of the terms that are registered as EU GIs. Ultimately, these terms remain an instrumental marketing tool for EU producers in securing a competitive advantage in the global market due to the

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108, 117–18 (2009); Dwijen Rangnekar, *Indications of Geographical Origin in Asia: Legal and Policy Issues to Resolve*, *in* INTELLECTUAL PROPERTY AND SUSTAINABLE DEVELOPMENT: DEVELOPMENT AGENDAS IN A CHANGING WORLD 273, 293 (Ricardo Meléndez-Ortiz & Pedro Roffe eds., 2009).

158. *See* Marie-Vivienne, *supra* note 73, at 194 (noting that the EU has promulgated newer, stricter regulations in order to strength GI protection of agricultural products); Agdomar, *supra* note 72, at 545–46 (explaining that the appellation of basmati rice does not receive GI protection in the U.S.).

159. Ricolfi, *supra* note 12, at 239.

160. Hughes, *supra* note 9, at 324–25 (showing that the 2006 Origins Regulation requires PGI-labeled products to be produced, processed, or prepared in the geographical area but need not be sourced from the geographical area); Agdomar, *supra* note 72, at 580–81 (discussing the EU's argument that weak GI protection under TRIPS permits free riding and risks genericide).

tradition that these terms carry with them—a tradition that is often associated with authenticity and high quality.[161]

Moreover, even though GIs can serve an important role for local development and offer important information to consumers, this should not cloud the reality that GI protection can easily be abused, just like other types of intellectual property rights. Once again, such abuse can arise (and does arise, as I just noted) primarily when GI protection attaches to products that are not fully originating from GI-denominated areas.[162] Unfortunately, international intellectual property agreements have drifted towards an interpretation of GIs that is less "purely" connected to the geographical area from which the products actually originate. As I noted in Part II, the definition of GIs under Article 22 of TRIPS,[163] and now also under the revised text of the Lisbon Agreements,[164] have moved away from a strict territorial requirement for the recognition of exclusive right in GI names. Instead, it seems to be the norm today that GI-denominated products can lawfully originate, in part, from outside their (often widely acclaimed and advertised) GI-denominated regions. The same consideration applies to the definition of PGIs under the aforementioned EU Regulations,[165] and even with respect to the requirements in the regulation of appellations of origin for wine under U.S. laws.[166] In other words, GI-denominated products can be partially made with ingredients and/or labor from outside GI-denominated regions, or one or more production steps in the overall manufacturing of these products can also occur outside these regions. However, as I supported before, this development is inconsistent with the rationale of GI protection.[167] In particular, when GIs identify products that do not fully originate from the regions, GI protection seems to transform into a disguised barrier, an exclusive right to use and evoke geographical names even when these names are not fully accurate to the products they identify.

161. *See* discussion *supra* Part III (describing the EU's interest in regaining exclusive control over EU GIs in order to safeguard global market share of EU GI-labeled products by maintaining EU GIs' affiliation with authenticity and quality).

162. *See* Michael Blackeney, *Geographical Indications: What Do They Indicate?*, 6 WIPO J. 50, 50–51 (2014) (noting that pigs used in the production of Parma ham may originate from countries outside of central Italy); Calboli, In Territorio Veritas, *supra* note 19, at 61–62.

163. TRIPS, *supra* note 14, art. 22(1).

164. *See* Geneva Act of the Lisbon Agreement, *supra* note 52, art. 2(1)(i), (ii).

165. EU Agricultural Products and Foodstuff Regulation, *supra* note 91, art. 5(2), at 8; EU Wine Regulation, *supra* note 92, art. 34(1)(b), at 18; EU Spirits Regulation, *supra* note 93, art. 15(1), at 21.

166. 27 C.F.R. §§ 4.26(b), 4.39(i)(1)–(2) (2015).

167. *See, e.g.*, Calboli, In Territorio Veritas, *supra* note 19, at 63.

This goes beyond the original rationale for GI protection, as the very rationale of this protection rests on the link with the *terroir* (intended as a deep connection between the land and the characteristics and qualities of the products).[168] Thus, the primary condition for the coherent protection of GIs is a strict *terroir*-based approach, which is reflected in a narrow interpretation of the "essentiality" (ideally the "exclusivity") of this territorial linkage.

On the other hand, when the territorial linkage between the products and GI-denominated regions is enforced, and GIs identify products effectively coming from GI-denominated regions, then GIs can effectively promote local development and offer accurate information to consumers.[169] Moreover, against critics' arguments that GIs are anti-competitive and disguised subsidies to agriculture and food-related sectors,[170] it should be noted that GIs do not prevent competition in the market for similar products.[171] Recognizing GIs simply prevents producers outside the GI-denominated region from using GIs to identify their own products. Still, these producers can produce the same types of products (red wine, blue veined cheese, balsamic vinegar, etc.) and market those products under trademarks or perhaps different regional names.[172]

In this respect, rather than foreclosing competition, GIs can promote competition between GI producers and producers in non-GI- denominated regions. In turn, this can promote innovation and creativity in the market for the generic-type products—for example, in the wine markets. As I noted in another article, it was not until after Australia conceded to EU pressure and ceased its use of several terms protected as GIs in the EU that the Australian wine industry truly grew, because producers began to invest in their own local names, which became symbols of excellent wines worldwide.[173] Producers in non-GI-denominated regions could even decide to register their own GIs. This is precisely what has happened in several regions in the EU with respect to similar products. And it is

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168. *See, e.g.*, Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 438–42; Hughes, *supra* note 9, at 352; Raustiala & Munzer, *supra* note 12, at 368–73.

169. Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 460.

170. *See, e.g.*, Raustiala & Munzer, *supra* note 12, at 351, 362 (admitting that GI protection could be accepted within the limits of confusion under the general provision in Article 22 of TRIPS).

171. Gangjee, *Quibbling Siblings*, *supra* note 120, at 1268; Agdomar, *supra* note 72, at 591.

172. Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 459–60; Agdomar, *supra* note 72, at 590–91 (noting that in 2002, Kraft had to change the name of its grated cheese from "Parmigiano-Reggiano" to "Pamesello Italiano" but was still able to produce the same style cheese).

173. *See* Calboli, *Expanding the Protection*, *supra* note 19, at 200–01.

what has happened in the U.S. with respect to viticultural areas. These trends confirm that GI protection is not necessarily an anti-competitive tool but rather an instrument to distinguish products based on geographical origin and in turn provide additional information to consumers about this origin and the associated quality.[174] In addition, protecting GIs does not erase regional competition between producers in the same region.[175] For example, the recognition of "Napa" or "Sonoma" as a protected term does not eliminate competition between the local producers of wine in the Napa or Sonoma regions.[176]

Still, as I noted earlier, accepting the importance of a system of GI protection should not translate into prohibiting all unauthorized uses of GIs. In particular, GI protection should not prohibit reference to GIs by unauthorized parties describing and comparing their generic products with GI-denominated ones[177]—for instance, comparing sparkling wines with Champagne. Were it otherwise, GI protection would essentially become an unjustified barrier to entry for competitors. Moreover, a system of unlimited GI protection would conflict with the right to commercial speech and, more generally, the freedom of expression. For example, unlimited GI protection would not be compatible with the test established by the U.S. Supreme Court[178] for non-misleading commercial speech,[179] nor with the principle of freedom of

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174. I am grateful to Reto Hilty for insightful conversation on this point and for suggesting that a more extended empirical research targeted at surveying the existence of different GIs for similar products in different regions and countries could further strengthen this argument. *See also* Felix Addor, Nikolaus Thumm & Alexandra Grazioli, *Geographical Indications: Important Issues for Industrialized and Developing Countries*, IPTS REP., May 2003, at 24, 26 (remarking that GI protection only prevents manufacturers from other regions from selling the same product using the same GI but does not prevent other regions from selling the same product).

175. *See* Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 460.

176. *See, e.g.*, Patricia Stone, *2013 "Top 10" Napa Valley Wineries*, GLOBAL ADVERTURESS, http://www.globaladventuress.com/2013-top-10-napa-valley-wineries/ (last visited Nov. 20, 2015) (listing the top 10 out of 400 wine producers in Napa Valley: Robert Sinskey Vineyards, Quintessa, Joseph Phelps, Castello di Amorossa, Schramsberg, Anomaly, Cliff Lede, Palmaz, Venge, Duckhorn, Viader, Artesa, and Domaine Carneros); *13 Sonoma County Wineries You Should Know*, SONOMA COUNTY, http://www.sonomacounty.com/articles/13-sonoma-county-wineries-you-should-know (last visited Nov. 20, 2015) (listing the following wineries: Rodney Strong Vineyards, Paradise Ridge Winery, Buena Vista Winery, Fort Ross Vineyard and Tasting Room, Joseph Phelps Freestone Vineyards, Ferrari-Carano Vineyards & Winery, Truett-Hurst Winery, Matanzas Creek Winery, St. Francis Winery & Vineyards, Ram's Gate Winery, Korbel Champagne Cellars, Lynmar Estate, and Francis Ford Coppola Winery).

177. This argument is a staple argument in my position towards GI protection. *See* Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 460–61.

178. Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n, 447 U.S. 557, 566 (1980).

179. Harry N. Niska, Note, *The European Union Trips Over the U.S. Constitution: Can the First Amendment Save the Bologna That Has a First Name?*, 13 MINN. J. GLOBAL TRADE

expression in Article 10 of the European Convention on Human Rights.[180] As I elaborate in the next Part, these concerns could be resolved, with respect to the TTIP negotiations, by adopting a system of protection that permits the unauthorized use of GIs when referring to products by appending "style," "like," or "type."[181] Naturally, GI supporters tend to dislike any unauthorized use of GIs and oppose these descriptive and comparative uses, as is the case in the EU Regulations, which explicitly prohibit such uses. In particular, under EU law, GIs cannot be used with any delocalizers even when consumers are not confused as to the actual geographical source of the products.[182] However, as I noted before, permitting the use of GIs by competitors or third parties to describe similar products or to compare these products to GI-denominated ones remains a critical component of a truly balanced system of protection of GI protection, in which GIs are protected based on their public functions as local incentives and conveyers of information to consumers.

V. TIME TO SAY LOCAL CHEESE? CRAFTING A CANADA-STYLE WIN–WIN SOLUTION FOR LOCAL DEVELOPMENT AND INTERNATIONAL TRADE

In this Part, I advocate in favor of adopting a compromising solution on GIs as part of the TTIP negotiations, namely a solution similar to that adopted in CETA—the FTA recently concluded between the EU and Canada. Canada is a country that has historically adopted a position on GIs similar to the U.S.—that is, Canada has traditionally opposed the EU approach on GIs. The solution on GIs reached in CETA represents a win–win solution both for Canada and the EU. Thus, the U.S. could adopt a similar solution as a viable model in the TTIP. In turn, this solution would improve local developments and the accuracy of information offered to consumers on both sides of the Atlantic.

413, 440–41 (2004); *see* Piazza's Seafood World, LLC v. Odom, 448 F.3d 744, 752–53 (5th Cir. 2006) (affirming a lower court's application of the *Central Hudson* test to determine that the labelling of Chinese catfish as "Cajun" was not inherently misleading commercial speech).

180. Convention for the Protection of Human Rights and Fundamental Freedoms art. 10(1), Nov. 4, 1950, 213 U.N.T.S. 222.

181. This position is compatible with TRIPS. *See* TRIPS, *supra* note 14, art. 24. *But see id.* art. 23 (forbidding GI use for wines and spirits with these "de-localizers"). As I have advocated before, the current text of Article 23 could be changed in favor of also permitting descriptive and comparative uses of GIs identifying wines and spirits. *See* Calboli, *Markets, Culture and* Terroir, *supra* note 19, at 460.

182. *See, e.g.*, EU Agricultural Products and Foodstuff Regulation, *supra* note 91, art. 13, at 11; EU Wine Regulation, *supra* note 92, art. 45, at 21.

The EU's requests to the U.S. as part of the TTIP are summarized in a Position Paper published by the EU.[183] On a general level, the EU is requesting that the U.S. guarantee "an appropriate level of protection for EU GIs" and provide a system of "[a]dministrative enforcement against the misuse of EU GIs."[184] The requests do not include that the U.S. adopt *sui generis* GI protection like the EU—as long as the U.S. grants protection to several EU GIs "directly through the agreement."[185] As part of the system requested by the EU, this protection would be based on the principle of reciprocity and would "include both European and American GI names."[186] As has been the case in CETA, however, the current list of GIs under consideration includes exclusively EU GIs. Still, the Position Paper highlights how clawing-back certain EU GIs is highly problematic for the U.S. These GIs include those names that the U.S. deems generic and are used by U.S. businesses (or by those doing business in the U.S.),[187] such as several cheese names such as "Feta" and "Asiago." For these names, the EU proposes "[s]pecific arrangements"[188] between the EU and the U.S., like those negotiated in CETA. Finally, the EU is seeking added protection—that is, "exclusive" protection—for a series of names for wines "included in Annex II of the EU and U.S. Agreement concluded in 2006 on 'trade in wine.'"[189] In this agreement, the EU and the U.S. agreed on the terms of protection of several EU GIs for wines in the U.S. Still, the EU is now requesting additional protection for these names. Moreover, the EU is seeking "[p]rotection for additional EU GI spirits names," hoping to reach a similar agreement on spirits.[190]

Overall, the requests advanced by the EU in the TTIP are largely the same requests presented to other countries as part of

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183. *See EU Position Paper on GIs*, *supra* note 9.

184. *Id.*

185. *Id.*

186. *Id.*

187. In this respect, it should be noted that (unfortunately) EU companies also take advantage of the non-protection of EU GIs in the U.S. to market products using EU names (such as "Feta"), even though the products do not originate from EU GI-denominated areas. This demonstrates another contradiction in the GI debate and illustrates how the GI controversy remains essentially about market access and sales. For example, the French company, Président, sells "Feta" cheese in the U.S. due to the lack of protection for the "Feta" term in the U.S. *See* PRÉSIDENT, http://presidentcheese.com/cheese/products_feta.php (last visited Nov. 20, 2015). Yet, the term "Feta" has been a protected PDO under EU law since 2002. *See DOOR, Denomination Information*, EUR. COMMISSION http://ec.europa.eu/agriculture/quality/door/registeredName.html?denominationId=876 (last visited Nov. 20, 2015).

188. *See EU Position Paper on GIs*, *supra* note 9.

189. *Id.*

190. *Id.*

their bilateral or plurilateral FTA negotiations. This includes FTAs between the EU and countries in Asia, Africa, and South America.[191] In exchange, the EU has offered facilitated access to the EU market for several products from these countries. The EU would certainly offer similar facilitations to the U.S. as part of the TTIP. For example, the EU could facilitate the imports of U.S. agricultural products and other products (for example, hormone-free beef), and at the same time reduce certain certification requirements or tariffs for U.S. products (for example, on dairy products).[192] The EU and the U.S. reached a similar trade-off as part of the 2006 Agreement on Trade in Wine, in which the U.S. consented to clawing-back several names of EU GIs for wines, and the EU accepted in exchange the imports of wines made with U.S. winemaking practices that were previously not accepted under EU standards.[193]

Not surprisingly, however, the EU's requests on GI protection in the TTIP have so far been met with fierce resistance by some U.S. industries, primarily the dairy and meat industries. In particular, the U.S. Consortium for Common Food Names has strongly opposed and emphatically contested the EU's request to claw-back names that are, in the view of the Consortium, common names in the U.S.[194] As demonstrated by the letters sent by U.S. Senators and Representatives discussed in the Introduction, this

191. *See* TPP, Intellectual Property Chapter, *supra* note 24 (providing instruction to TPP members in navigating the murky depths of endless, potentially contradictory international agreements governing GI protection). For comprehensive information and reference to legal documents regarding EU FTAs, see *Trade Agreements*, EUR. COMMISSION, http://ec.europa.eu/trade/policy/countries-and-regions/agreements/index_en.htm#_europe (last visited Nov. 20, 2015).

192. This observation remains my speculation, based on trade concessions in other FTAs, and in the 2006 Wine Agreement, *supra* note 60.

193. *Id.* art. 6(1) (allowing the sale of U.S.-produced wines in the EU, even though such sales were previously not permitted in the EU, in exchange for "seeking to change the legal status" of several quasi-generic, wine-related indications). Article 6(1) of the Agreement outlines the terms of U.S. commitment, which is further detailed in ALCOHOL & TOBACCO TAX & TRADE BUREAU, U.S. DEP'T OF THE TREASURY, INDUSTRY CIRCULAR NO. 2006-1, IMPACT OF THE U.S./EU WINE AGREEMENT ON CERTIFICATES OF LABEL APPROVAL FOR WINE LABELS WITH A SEMI-GENERIC NAME OR RETSINA (2006), http://www.ttb.gov/industry_circulars/archives/2006/06-01.html.

194. *See Threats to Common Food Names More Widespread in EU Trade Deals and Other Geographical Indications Policies*, CONSORTIUM FOR COMMON FOOD NAMES (Mar. 19, 2015), http://www.commonfoodnames.com/threats-to-common-food-names-more-widespread-in-eu-trade-deals-and-other-geographical-indications-policies/ (stating that the CCFN has taken action in twenty countries to protect common foods names from efforts by the EU to claw-back now generic names such as "parmesan," "feta," and "bologna"); *U.S. Dairy Industry Drives Home Concerns on Geographical Indications*, *supra* note 121 (opposing the EU's approach to GI protections because it would cause U.S. producers and others to relinquish their right to use generic food names like "fontina," "muenster," and "gorgonzola").

resistance has translated into political opposition against the EU's requests.[195] In addition, the U.S. dairy industry has vocally opposed the possibility of reaching a CETA-type solution in the TTIP—a solution that has been mentioned as a possibility and an example by EU negotiators—arguing that this solution would benefit the EU more than the U.S. In February 2015, the Brussels Representative for the U.S. Dairy Export Council, Ms. Maike Moellers, publicly stated that,

> Since the conclusion of the EU-Canada agreement, we have heard from the EU side again and again that the agreement with Canada on GIs could be a model for the TTIP. This is a notion that we absolutely reject . . . [because] U.S. producers as well as others in the world [would need to] relinquish[] their right to use long-standing generic food names, such as "asiago," "feta," "fontina," "munster" and "gorgonzola."[196]

The U.S. dairy industry's fierce opposition to the EU's request with respect to GI protection has also led U.S. diplomats and trade representatives to suggest that the discussion over GIs should be removed from the TTIP negotiations altogether.[197] Naturally, the EU opposes such suggestions as it is in the best interest of the EU to address GI protection in the U.S. as part of a larger package of trade-related issues. In this larger context, the EU has better leverage to obtain more protection for EU GIs from the U.S. in exchange for concessions in other areas.

Still, despite the vocal opposition against a CETA-type solution in the TTIP, a close analysis of the GI provisions in the recently concluded intellectual property chapter in CETA indicates that a similar solution in the TTIP could be a suitable and desirable solution. For example, when Ms. Moellers publicly opposed a CETA-type solution in the TTIP, she went on to state

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195. *See* discussion *supra* Part I (stating that U.S. Senators and Representatives have written to the Secretary of Agriculture and U.S. Trade Representative, urging opposition to EU requests, namely restrictions on the use of EU GIs in the U.S.); *see also* Alan Matthews, *Geographical Indications (GIs) in the US-EU TTIP Negotiations*, CAP REFORM (June 19, 2014), http://capreform.eu/geographical-indications-gis-in-the-us-eu-ttip-negotiations/ (summarizing the debate in the TTIP and offering a detailed account of the negotiations between the EU and Canada in CETA). It is also relevant to note that CETA covers exclusively agricultural products and foodstuffs, and that GIs for wines and spirits are outside the scope of CETA. These GIs are already protected under the 2004 EU-Canada Wines and Spirits Agreement, which is similar to the 2006 Wine Agreement between the U.S. and the EU. *See* Agreement Between the European Community and Canada on Trade in Wines and Spirit Drinks, Can.-EU, Feb. 6, 2004, 2004 O.J. (L35) 3; *see also* 2006 Wine Agreement, *supra* note 60.

196. *U.S. Dairy Industry Drives Home Concerns on Geographical Indications*, *supra* note 121.

197. *See id.* (noting a dairy representative's suggestion that GI negotiations should be moved to a separate forum).

that the U.S. "believe[s] that products with a very specific geographic designation included in their compound name, such as 'Gouda Holland', can be protected . . . while the single word 'gouda' clearly remains unrestricted and in free usage."[198] Yet, perhaps Ms. Moellers did not read the GI provisions in CETA before her speech, as the word "Gouda" does indeed remain free to use for Canadian businesses and everyone else under CETA. Notably, Canada agreed to protect only the terms "Gouda Holland" and not the single term "Gouda."[199] Accordingly, rather than categorically reject the idea of a CETA-type solution, Ms. Moellers could have used CETA as an example of what the U.S. could obtain in terms of exceptions and limitations to the protection of EU GIs in the TTIP. In other words, Ms. Moellers and other U.S. industry representatives could review the GI provisions in CETA more closely and realize that these provisions are less EU friendly than what they, and other GI opponents, believe the provisions to be.

In addition to the term "Gouda," CETA provides that other selected terms related to names of cheeses remain free to use for Canadian businesses. These terms are: "Brie," as only the combination "Brie de Meux" is protected in CETA, and "Edam," as only the combination "Edam Holland" is protected.[200] Similarly (much to the despair of this author who is born in the beautiful city of Bologna and cringes any time she hears the word Bologna associated with products not originating from Bologna), the terms "Mortadella" and "Bologna" are not protected in CETA with respect to cured meat—only the combination "Mortadella Bologna" is protected.[201] Several more exceptions apply. For example, Canada and the EU have agreed that Canada will not protect the term "Noix de Grenoble." Likely a concession to Budweiser, Canada will also not protect the name "Budejovicke," a registered EU GI,[202] which prevents any conflicts with the registered mark "Budweiser" in Canada. Moreover, CETA permits the free use of several other beer names in their English and French translations. For instance, the terms "Munich beer" and "Bavarian beer" are not protected under CETA.[203] CETA additionally carves out the possibility to freely use the following French and English translations for non-beer products that are protected as GIs in the EU: "Valencia oranges," "Tiroler bacon," "Parmesan," and

198. *Id.*

199. CETA, Intellectual Property Chapter, *supra* note 25, art. 7, Annex I.

200. *Id.*

201. *Id.*

202. *See id.*

203. *See id.*

"Blackforest Ham."[204] Only the original terms in Spanish, German, and Italian are protected and Canadian businesses cannot use these original terms. Finally—a traditional concern for "new world" business with respect to any GI-related new law—the protection offered in CETA does not undermine the validity of existing Canadian trademarks. In brief, CETA explicitly respects existing trademark rights, regardless of the fact that these marks may be registered EU GIs, and embraces the principle of "first in time, first in right."[205]

Certainly, Canada does commit to protect a long list of EU GIs—173 names to be exact—under CETA (even though, in principle CETA grants the same protection to both "EU and Canadian GIs").[206] CETA also requires that signatories protect these terms "even where the true origin of the product is indicated or the geographical indication is used in translation or accompanied by expressions such as 'kind[,'] 'type[,'] 'style[,'] 'imitation' or the like."[207] This principle represents one of the most relevant victories for the EU in CETA and aligns with the protection of GIs under the EU Regulations. However, Canada secured a number of important exceptions to this protection with respect to several terms that are commonly used in North America to identify certain types of cheese, even though these terms are registered EU GIs. Notably, specific exceptions apply to the following names under CETA: "Asiago," "Feta," "Fontina," "Gorgonzola," and "Munster."[208] In particular, Canadian businesses that are currently using these names are grandfathered in and can continue using these terms without any changes to their existing products.[209] Future users will also be able to use these terms so long as these terms are "accompanied by expressions such as 'kind[,'] 'type[,'] 'style[,'] 'imitation' or the like."[210]

Ultimately, the GI provisions in CETA demonstrate that both the EU and Canada were willing to compromise on several issues relating to GIs in order to reach a mutually convenient solution in their FTA. In particular, even though Canada certainly accommodates several of the EU's requests, CETA is far from the result of an absolute capitulation by Canada to the EU. Instead, the provisions adopted in CETA explicitly demonstrate that the

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204. *Id.* art. 7.6, Annex II(a).

205. *Id.* art. 7.6(5).

206. *Id.* art. 7, Annex I (including exclusive terms from the EU).

207. *Id.* art. 7.4.

208. *Id.* art. 7.6(1)–(2).

209. *Id.* art. 7.6(2).

210. *Id.* art. 7.6(1), Annex I.

EU is willing to make exceptions to the level of protection that is traditionally offered to GIs under the EU Regulations as part of FTA negotiations with countries that oppose the same level of GI protection.[211] Accordingly, despite Ms. Moellers's emphatic opposition to a CETA-type solution in the TTIP, U.S. negotiators should pursue such a solution, as it represents a viable solution for the U.S.

Certainly, U.S. businesses will continue to strongly oppose additional GI protection and, above all, clawing-back terms that are protected as GIs in the EU but are currently free to use in the U.S. Still, this opposition should not distract negotiators from the possible benefit of a compromising solution in the TTIP. First, in the U.S. as much as it is in Canada, only a handful of names—primarily related to cheeses—are truly problematic from the perspective of U.S. businesses. These terms are "Asiago," "Feta," "Fontina," "Gorgonzola," and "Munster." Yet, as it has been negotiated under CETA, these terms could be granted specific exceptions in the U.S. as part of the provisions in the TTIP.[212] These exceptions could include the possibility of grandfathering in current users, as well as permitting future producers to use these terms accompanied by delocalizing expressions such as "like," "style," etc. Like in CETA, these exceptions would minimize the transaction costs of recognizing the validity of these terms as protected terms in the U.S. Existing businesses could go about their business as usual, and new businesses could still use the names to compare or describe their products—for example using labels such as "Gorgonzola-style" for blue veined cheese made in Wisconsin (or Michigan or California). Consumers would have additional choices: they could purchase the American-made (grandfathered) Gorgonzola, the new blue veined cheese Gorgonzola-style from Michigan, or the original Italian Gorgonzola. Equally important, consumers would have more accurate information about the origin of the products they purchase. For instance, consumers may learn (if they did not know, and if they are interested in knowing) that Gorgonzola is a cheese that was originally created, and traditionally originates from, a region of Italy. They may also learn that they can purchase the Italian cheese in the U.S. as well as similarly made cheese produced in the U.S. (or Australia, New Zealand, etc.).

Still, U.S. negotiators should not concede to the EU and accept the prohibition of the use of GIs in comparative advertising or in

211. *See* Matthews, *supra* note 195.

212. *See* CETA, Intellectual Property Chapter, *supra* note 25, art. 7.6(1)–(2) (granting specific exceptions to the terms "Asiago," "Feta," "Fontina," "Gorgonzola," and "Munster").

circumstances in which the names are accompanied by delocalizing terms such as "like," "type," "imitation," etc. Under CETA, only the most contested names, such as "Asiago," "Fontina," etc., are granted this exception. However, CETA accepts enhanced protection for GIs and prohibits comparative and descriptive uses as a general rule. This should not be accepted in the TTIP. As discussed before, providing for these exceptions remains crucial to safeguard competition in the marketplace and freedom of expression. Thus, U.S. negotiators should convince the EU to retain these exceptions for all and not just some EU GIs. In particular, U.S. negotiators should negotiate that the following unauthorized uses of GIs should be permitted: (a) the use of EU GIs in comparative advertising, including on product packaging, to indicate that the products that are being advertised and offered for sale are equivalent, also from quality standpoint, to the GI-denominated products that are produced outside the GI-denominated region; and (b) the use of EU GIs in comparative advertising, including on product packaging, to indicate that the products that are being advertised and offered for sale are similar in kind, although not equivalent in quality, with respect to the GI-denominated products.[213]

Similarly, U.S. negotiators should maintain that common terms such as "Gouda," "Parmesan," and "Brie" remain free to use as single terms by any users, presently or in the future, like it has been negotiated under CETA. The U.S. should agree to protect these terms only when they are accompanied by European geographical names, such as "Gouda Holland" and "French Brie."

Ultimately, despite the opposition of representatives of some U.S. industries, a CETA-type solution and a higher level of protection for GIs in the U.S. could considerably benefit both U.S. consumers and businesses. First, the recognition of GIs (also under a U.S. trademark-type system) will offer more information about the products to consumers and therefore permit them to make more informed decisions when purchasing products in the marketplace. Second, a renewed attention to GI protection in the

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213. I thank Ansgar Ohly for useful conversation on this point during the recent workshop *The Present and Future of GI protection in the EU*, Max-Planck-Institute for Innovation and Competition, Berlin, October 29–31, 2015. Professor Ohly listed three situations in which the unauthorized use of GIs should be permitted, also in the EU, with respect to the potential extension to GI protection to non-agricultural products: (1) when producers in the same area produce similar products but without following the product specification, as long as it is clear that these products are different than those produced by authorized GI producers; (2) when producers outside the area produce qualitatively identical products, as long as the actual origin of the products is clearly disclosed; (3) when producers outside the area produce substitute, yet qualitatively different, products, as long as the actual origin of the products is clearly disclosed.

U.S. will also enhance the role of "locality" and thus promote U.S. local businesses and local development. This could lead to a higher number of local products sold both nationally and internationally. Local producers will also invest more resources in the local economy and be motivated to create new varieties of local products to compete in the international market rather than copying existing EU products. For example, why couldn't Wisconsin (or Michigan, or Vermont, or California, etc.) cheese-makers develop local cheeses (and simply stop producing replicas of EU-denominated cheeses) and sell those in the local, national, and international markets? Cheese-makers should follow the example of wine-makers in the U.S. Notably, wine-makers in many regions, not only in Napa and Sonoma, invest in the quality of their local products and promote these products in the local, national, and (when possible) international markets. As a result, the status of U.S. wines has risen globally. In contrast, many cheese-makers in the U.S. seem to prefer to imitate existing European cheeses rather than focusing on developing and marketing local specialties. As a former resident of Wisconsin, I have been puzzled for a decade over why the U.S. "Dairy Land"[214] does not seem to market any local cheese within and outside the state of Wisconsin. The same observation applies to other states as local U.S. cheese-makers rarely market their products with an emphasis on their local U.S. origin and associated quality.[215] Yet, Wisconsin, Michigan, Ohio, etc., cheese-makers have the infrastructure to produce excellent local cheese. Why not incentivize local producers to innovate and create their own varieties of cheese and promote these cheeses in the local, national, and international marketplace? In addition, investing in local high quality products

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214. *See Wisconsin State Symbols, State Slogan*, WIS. HIST. SOC'Y, http://www.wisconsinhistory.org/Content.aspx?dsNav=N:4294963828-4294963805&dsRecordDetails=R:CS2908 (last visited Nov. 20, 2015) ("Between 1870 and 1900, dairying rose to a prominent place in Wisconsin agriculture. By World War I, Wisconsin ranked first in the nation in dairy production. In 1940, the Wisconsin Legislature promoted the 'Dairy State' reputation by placing the slogan, 'America's Dairyland,' on automobile license plates. Today, Wisconsin produces 15% of the country's milk, 25% of its butter, and 30% of its cheese.").

215. For a list of cheeses typically found in the U.S. (not specifically produced under any trademark), see *List of American Cheeses*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_American_cheeses (last visited Nov. 20, 2015). Interestingly, the U.S. does produce several types of local cheeses, yet these cheeses are not widely known in the international marketplace. Instead, U.S. businesses such as Kraft and other large corporations are known outside the U.S. for their industrially made cheese—such as Philadelphia cream cheese. *See* Heather Paxson, *Locating Value in Artisan Cheese: Reverse Engineering* Terroir *for New-World Landscapes*, 112 AM. ANTHROPOLOGIST 444, 445–47, 449, 451 (2010) (discussing American cheese-makers' efforts to redefine "American cheese" as a collection of locally produced artisan products in the face of U.S. local and global reputation as an industrial cheese producer).

could help supporting local workers in economic downturns, as local, higher quality, products could be less impacted because local purchasers may still continue to support local high quality products also in difficult economic time.[216]

Ultimately, consumers across the world are becoming aware of the importance of "place" and "quality" in the production of many products, especially food related products. To a large extent, U.S. consumers lead this trend.[217] Thus, a more rigorous system of GI protection also in the U.S. could promote better information for consumers, and in turn promote local businesses committed to high quality products. Naturally, providing added GI could add costs in the short term to some U.S. businesses, as they may no longer copying the name of European cheeses. But, in the long term, this additional protection, and the resulting drive toward (necessary) innovation and investment in local product quality could promote a culture of high quality in the cheese and meat industry also in the U.S. as it has been the case for long time in the wine industry. Obviously, change is hard to accept, even more so when it may involve even minor costs for existing businesses that are used to operating under an established business routine. Still change and innovation are beneficial for development, including in the U.S.

Moreover, pragmatically speaking, a CETA-type solution in the TTIP would grandfather in existing U.S. businesses; thus, existing businesses would not be affected by this solution and resulting changes. And, the costs of additional GI protection for new businesses would be offset in the long term by the success of local U.S. products both nationally and internationally.

Finally, one of the recurrent narratives against added GI-protection in the U.S. is that many products currently "under attack" by the E.U. are produced by immigrants that left the EU generations ago and took with them the local *savoir faire* to

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216. For example, Oscar Mayer's has recently announced the closing of seven of its plants, including one in Madison, Wisconsin. The company, currently a subsidiary of Kraft Heinz Food, is reducing plants in the attempts to save costs due to declining profits. *See* Todd Richmond, *Oscar Mayer's Madison Plant Among 7 Closing*, WASH. TIMES (Nov. 4, 2015), http://www.washingtontimes.com/news/2015/nov/4/oscar-mayers-madison-plant-among-7-closing/. The news has been greeted with sadness by Wisconsin politicians (as it should) due to the loss of many jobs. However, could these jobs have been saved if the company would have invested in higher-quality products made under local names?

217. U.S. members account today for a quarter of the worldwide membership of the "Slow Food" movement. *See About Us*, SLOW FOOD USA, http://www.slowfoodusa.org/about-us. Moreover, U.S. consumers are increasingly driven towards fresh and healthy food, including in supermarket choices. *See* Joan Voight, *As Americans Rush to Fresh Food, Supermarket Chains Follows*, CNBC (Oct. 8, 2012, 8:10 AM), http://www.cnbc.com/id/49101716.

replicated products in the "New World." In this respect, it is certainly true that many conflicts related to GIs between the U.S. (or Canada and other "New World" countries) and EU arise in the context of products produced and distributed in the "New World" by immigrant producers. Still, the number of anti-GI claims purportedly made by "immigrants" is frequently exaggerated by the anti-GI camp, as the immigrant narrative contributes to the emotional rhetoric that characterizes the GI debate. Instead, most of the businesses that produce replicas of GI products in the U.S. today are large businesses (perhaps once upon a time founded by an immigrant) or multinational corporations.[218] Accordingly, the legitimacy of these "immigrant" claims is frequently questionable. Nevertheless, a CETA-type solution would again leave intact the rights of any existing users—from the multinationals to the small businesses operated by immigrant producers.[219] Thus, despite its rhetorical appeal, the "immigrants" argument does not seem to be relevant for the TTIP negotiations.

Accordingly, considering that a CETA-style solution in the TTIP could leave the rights of existing businesses intact and still permit future users to use controversial names in association with delocalizing terms, why is the U.S dairy and cured meat industry so vehemently opposed to such a solution? Ultimately, it is clear that this opposition rests on special interests, and the fear that providing consumers with more accurate information may in turn result in declining demand for non-authentic (and generally lower-quality) products. Yet, these special interests do not serve the long-term benefit of U.S. consumers or producers, as they essentially oppose innovation and higher-quality products. Thus, U.S. negotiators and politicians should not bow to these special interests but consider the long-term gains that could derive from a more rigorous protection of GIs in the U.S. when they respectively negotiate and decide whether to support the TTIP with their votes.

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218. For a list of the companies that oppose EU GI protection in the TTIP, see Letter from Various U.S. Food & Agricultural Industry Organizations to Michael Froman, Deputy Nat'l Sec. Advisor for Int'l Econ. Affairs (May 20, 2013), http://www.arc2020.eu/wp-content/uploads/2013/07/Letter-of-US-farm-organisations-on-the-EU-US-FTA-2013-05-20-TTIP.pdf.

219. This Author (herself a first generation immigrant) finds much hypocrisy in the "immigrant argument" that is repeatedly raised against clawing-back geographical European terms. Moreover, when this argument is raised by "real" immigrants, she finds that claiming a right to use the names of localities that immigrants have voluntarily left (for many personal reasons) is problematic from a global justice standpoint. While immigrants should be able to use the knowhow that they took from their motherlands and produce similar (or even identical) products, they should not oppose (but in fact they should promote and respect, in the view of this Author) the accurate use of geographical names of the regions from which they and the products that they replicate originate.

VI. CONCLUSION

GIs are, and will continue to be, an item that can easily inflame trade debates at the national and international level. In this Article, I recounted the debate that is currently taking place between the U.S. and the EU as part of the TTIP negotiations and advocated for the adoption of a CETA-type solution in the TTIP. In particular, I advocated that the U.S. recognize and claw-back several EU GIs as long as U.S. businesses could continue to use these terms accompanied with expressions such as "kind," "type," "style," "imitation," and the like. In addition, I supported that the U.S. should negotiate grandfathering clauses for current U.S. producers of products identified with terms identical or similar to EU GIs. The U.S. should also carve out "free uses" for some truly generic terms (or terms for which a generic-type name does not exist, such as "Parmesan" in the view of this author) and for the English translation of terms that are protected GIs in their original language. This solution, I argued, represents a sensible middle ground both for the U.S. and the EU at this time, as is evidenced by the fact that Canada (a country that has also traditionally had a "skeptical" approach to GIs) and the EU found this solution acceptable as part of CETA. Equally important, this solution could represent a win–win solution both for international trade and local development in the U.S. despite the opposition of certain U.S. producers. The U.S. wine industry's success on a global scale proves beyond doubt that GI protection can benefit local development in the U.S. Thus, why should we allow special interests to continue stifling the GI debate in the U.S. for fear of short-term costs and resistance to change and innovation? These special interests are, in the long term, detrimental to economic development for U.S. producers in general and ultimately run against more accurate information for consumers about the actual geographical origin of the products offered for sale in the marketplace. Accordingly, U.S. Senators and Representatives should carefully consider the implication of their support (and their no-compromising rhetoric) for these special interests, as these interests do not promote the best interests for economic development, innovation, and consumer protection in the U.S. Instead, our Senators and Representatives should seriously assess the benefits that can derive both to U.S. consumers and producers from a more rigorous approach to the rules on the protection of geographical named in the U.S. In conclusion, it may be time to say "local cheese!" and smile at GIs also in the U.S. and agree to a compromising GI solution as part of the TTIP negotiations.