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**GEOGRAPHICAL INDICATIONS OF ORIGIN, ECONOMIC
DEVELOPMENT, AND CULTURAL HERITAGE:
GOOD MATCH OR MISMATCH?**

*Irene Calboli**

Abstract

In this article, I propose that geographical indications (GIs) carry important economic benefits. First, GIs are essential instruments to facilitate investments in high-quality products and niche markets, and promote local trade and development. Second, GIs offer an additional layer of information for consumers about the geographical origin and quality of the products they identify, in turn reducing the information asymmetries between producers and consumers. Third, because of this information function, GIs can assist in rewarding or holding producers accountable for their products based on the additional information they convey to the market. Yet, GIs can also protect culture-related interests and not only trade. Specifically, in this article, I suggest that protecting GIs can promote local products and their associated knowledge as cultural expressions. In particular, GIs could contribute to preserving cultural heritage and existing traditions, and in turn could promote the recognition of the heritage and traditions nationally and internationally. In the past decade, discussions over the recognition of

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culture-related concerns have led to the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage under the patronage of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2003. A few years later in 2005, another relevant convention, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, was adopted by the UNESCO General Conference. Even though neither the 2003 nor 2005 UNESCO Conventions refer to intellectual property or GIs, GIs seem well-suited to also protect culture-based interests under the framework established by these Conventions.

INTRODUCTION

In this article, I address the following question: can geographical indications of origin (GIs) function as viable instruments to promote and protect both trade-related and culture-related interests under the current legal framework that is in place to protect GIs? As the reader will soon discover, my answer to this question is “yes”, GI protection can indeed promote and protect trade and cultural heritage, particularly intangible cultural heritage. In my opinion, GIs are, in fact, one of the best legal instruments currently available to promote these interests.¹ However, this answer is not widely accepted amongst legal

¹ I have endorsed this position in my previous writings in this area. See I. Calboli, *Geographical Indications of Origin at the Crossroads of Local Development, Consumer Protection, and Marketing Strategies*, 46 INT’L REV. OF INTELL. PROP. AND COMPETITION L. 760 (2005) [hereinafter, I. Calboli, *GIs at the Crossroads*]; I. Calboli, *Of Markets, Culture, and Terroir: The Unique Economic and Culture-Related Benefits of Geographical Indications of Origin*, in RESEARCH HANDBOOK IN INTERNATIONAL INTELLECTUAL PROPERTY 433 (Daniel Gervais ed., Edward Elgar, 2015) [hereinafter I. Calboli, *The Benefits of GIs*]; I. Calboli, *In Territorio Veritas? Bringing Geographical Coherence into the Ambiguous Definition of Geographical Indications of Origin*, 6 WIPO J. 57 (2014) [hereinafter I. Calboli, *In Territorio Veritas*]; I. Calboli, *Expanding the Protection of Geographical Indications of Origin Under TRIPs: “Old” Debate or “New” Opportunity?*, 10 MARQ. INTELL. PROP. L. REV. 181 (2006) [hereinafter I. Calboli, *Expanding the Protection of GIs*].

experts, and my position would prove controversial in the eyes of many scholars.²

That GIs are a controversial topic is certainly not news as most aspects of the debate surrounding GIs are riddled with controversy – not only amongst scholars but also by national governments and businesses.³ Proponents of GI protection have traditionally advocated that GIs should be protected because they identify unique product qualities and characteristics linked to the specific *terroir* where products are grown, processed, or manufactured. Against this position, opponents of GIs have argued that most products today can be replicated almost anywhere thanks to modern agricultural and manufacturing techniques. In addition, producers from the “new world” countries have argued that many GIs have been generic terms in their countries for a long time.⁴

The adoption of the International Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS) in 1994 established a minimum standard for protecting GIs for all member countries of the World Trade Organization (WTO).⁵ Moreover, it requires the implementation of a national system for

² For recent discussions over the arguments in favour or against the protection of geographical indications [hereinafter GIs], see D. GANGJEE, RESEARCH HANDBOOK ON INTELLECTUAL PROPERTY AND GEOGRAPHICAL INDICATIONS (2016) and 46 7 INT’L REV. OF INTELL. PROP. AND COMPETITION L., (2005). See also Dev Gangjee, *Relocating the Law of Geographical Indications*, 44 INT’L REV. OF INTELL. PROP. AND COMPETITION L. (2012) [hereinafter Gangjee, *Relocating GIs*]; DANIELE GIOVANNUCCI ET AL., GUIDE TO GEOGRAPHICAL INDICATIONS: LINKING PRODUCTS AND THEIR ORIGINS (2009); K. Raustiala, S.R. Munzer, *The Global Struggle Over Geographic Indications*, 18 EUR. J. OF INT’L L. 337, 359-360 (2007); J. Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications*, 58 HASTINGS L. J. 299, 305 (2006); B. O’CONNOR, THE LAW OF GEOGRAPHICAL INDICATIONS (2004).

³ For a summary of this controversy, see I. Calboli, *The Benefits of GIs*, *supra* n. 1, at 438-442.

⁴ *Id.*

⁵ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C; Legal Instruments – Result of the Uruguay Round vol. 31, 33 I.L.M. 81 (1994) [hereinafter “TRIPS”].

enhanced protection of GIs identifying wines and spirits.⁶ WTO member countries have also agreed to participate in future negotiations to expand this enhanced protection granted to GIs identifying wines and spirits and also to GIs in general, even though these negotiations have never achieved any concrete results, at least until today.⁷ Still, discussions over GIs have continued and have intensified over the past few years, especially during negotiations for free trade agreements (FTAs).⁸

In my scholarship, I have highlighted the benefits of GI protection and advocated for the acceptance of enhanced GI protection across all WTO members.⁹ In my view, GIs are valuable instruments to facilitate investments in high-quality products and niche markets, thus promoting local trade and development. GIs also provide an additional layer of information for consumers about the geographical origin and quality of the products they identify, in turn assisting in rewarding or holding producers accountable for their products. In this piece, I repeat this argument but additionally stress that GIs can also protect culture-related interests.¹⁰ Specifically, I support that protecting GIs can promote local products and their associated knowledge as cultural expressions. In this respect, GI protection could contribute to preserving cultural heritage and existing traditions, and also promote recognition of the same at national and international levels. In the past decade, discussions over the recognition of culture-related concerns have led to the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage under the patronage of the United Nations Educational, Scientific

⁶ See *infra* Part. II.

⁷ *Id.*

⁸ *Id.*

⁹ I. Calboli, *Expanding the Protection of GIs*, *supra* n. 1, at 181.

¹⁰ See also I. Calboli, *The Benefits of GIs*, *supra* n. 1, at 452-57.

and Cultural Organization (UNESCO) in 2003.¹¹ A few years later in 2005, another relevant convention, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, was adopted by the UNESCO General Conference.¹² Even though neither the 2003 nor the 2005 UNESCO Conventions refer to intellectual property or GIs, GIs seem well-suited to also protect culture-based interests under the framework established by these Conventions.

Based on this premise, the remainder of this article is structured as follows. In Part II, I summarise the protection currently granted to GIs. In Part III, I consider the unique benefits that GI protection provides for the economic development of the nations and the groups operating in the GI-denominated regions, as well as for the marketplace in general. In Part IV, I elaborate on the role of GIs in protecting cultural heritage and promoting cultural diversity. In this part, I argue that the debate over GI protection should explicitly recognise the cultural interests that can be promoted as part of a comprehensive policy on GIs and how this culture-related component needs to become a fundamental pillar in the ongoing discussions on GIs.

THE INTERNATIONAL FRAMEWORK FOR THE PROTECTION OF GEOGRAPHICAL INDICATIONS OF ORIGIN

Prior to TRIPS, GI protection was scattered in several international agreements and implemented only in a few countries. The most relevant sources for international protection of GIs were found in three separate international agreements. In particular, the 1883 Paris Convention for the

¹¹ Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, Oct. 17, 2003, in force Apr. 20, 2006, 2368 U.N.T.S. 1 [hereinafter “UNESCO ICH Convention”].

¹² Convention on the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO, Oct. 20, 2005, 45 I.L.M. 269 [hereinafter “UNESCO CD Convention”].

Protection of Industrial Property (Paris Convention),¹³ offered protection against the use of GIs as “false, fictitious, or deceptive trade names”¹⁴ and when such use was “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.”¹⁵ However, this protection was limited to unfair competition and not specifically tailored for GIs. Instead, the 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (Madrid Agreement),¹⁶ and the later adopted 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement)¹⁷ offered more extensive and specific protection to geographical indicators. The Lisbon Agreement also included the creation of a system of international registration for indications of origin.¹⁸ Hence, both the Madrid Agreement and the Lisbon Agreement had only a few signatories – probably due to their high level of protection – and thus, their international impact was generally limited.¹⁹

Therefore, the adoption of TRIPS in 1994 marked a milestone in advancing the GI protection agenda worldwide. In particular, under TRIPS, all WTO

¹³ Paris Convention for the Protection of Industrial Property, opened for signature Mar. 20, 1883, 21 U.S.T. 1583, 828 U.N.T.S. 305 (revised 1967) [hereinafter “Paris Convention”].

¹⁴ *Id.*, Art. 10(1).

¹⁵ *Id.*, Art. 10bis (3).

¹⁶ 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”].

¹⁷ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, Oct. 31, 1958, 923 U.N.T.S. 205 [hereinafter “Lisbon Agreement”]. *See also* International Convention on the Use of Appellations 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 [hereinafter “Stresa Convention”].

¹⁸ Lisbon Agreement, *supra* note 17, Art. 5.

¹⁹ As of 2021, fifty five States are signatories to the Madrid Agreement. *See Contracting Parties, Madrid Agreement*, WIPO, https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=21. Similarly, only thirty States are signatories to the Lisbon Agreement. *See Contracting Parties, Lisbon Agreement*, WIPO, http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10.

Members have to provide the “legal means” to prevent the use of GIs that “misleads the public as to the geographical origin of the goods,”²⁰ or that “constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.”²¹ Even though TRIPS did not mandate any specific means to achieve these objectives, Article 22 requires that 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 indicated” when the use of the GI “is of such a nature as to mislead the public as to the true place of origin.”²²

Additionally, TRIPS establishes a system of higher protection for GIs relating to wines and spirits, requiring Members to protect those GIs against “usurpation,” regardless of consumer confusion or unfair competition.²³ Article 23 encapsulates this higher protection by prohibiting the use of terms similar or identical to GIs related to wines and spirits when products do not “originat[e] in the place indicated by the geographical indication” including when “the true origin of the goods is indicated or the [GI] is used in translation or accompanied by expressions such as ‘kind’, ‘type’, ‘style’, ‘imitation’, or the like.”²⁴ Article 23 also provides that Members may refuse or invalidate trademark registrations containing or consisting of GIs identifying wines or spirits.²⁵

Still, Article 24 of TRIPS grandfathers the existing rights for trademarks that were in use or had been registered in good faith before the date of the implementation of TRIPS in the Member country where the mark was

²⁰ TRIPS, *supra* note 4, Art. 22.

²¹ *Id.*, Art. 22(2).

²² *Id.*, Art. 22(3).

²³ *Id.*, Art. 23(1).

²⁴ *Id.*

²⁵ *Id.*, Art. 23(2).

registered, or before the GI was protected in its country of origin.²⁶ Furthermore, because of the existence of similar names of regions in the world, Article 24 exempts Member countries from having to “prevent continued and similar use of a particular [GI] of another Member identifying wines or spirits in connection with goods and services” where the GI has been used “in a continued manner with the same or related goods or services” in the territory of that Member for at least ten years prior to April 15, 1994 (the date on which TRIPS was formally concluded), or where this continuous use has been in good faith.²⁷ Moreover, according to Article 24, terms that have entered the lexicon as the generic names of a type of product in a Member country can also continue to be used as such in the territory of that Member.²⁸ The ongoing disputes over the use of words like Champagne, Parmesan, or Feta between Europe, North American countries, Australia, New Zealand are relevant examples of the impact of this exception and likely the reason behind the adoption of this provision.²⁹ Finally, Articles 23 and 24 of TRIPS mandate that Members engage in further negotiations to consider enhancing GI protection, namely: a) to establish a multilateral system of notification and registration of GIs for wines and spirits that would facilitate their enforcement and prevent their illegal use;³⁰ and b) to consider extending the protection of individual geographical indications under Article 23 to all GIs.³¹ In 2001, the Doha Ministerial Declaration directly placed the protection of GIs on the agenda of the Doha

²⁶ TRIPS, *supra* note 4, Art. 24(5).

²⁷ *Id.*, Art. 24(4).

²⁸ *Id.*, Art. 24(6).

²⁹ On this point, see the detailed discussion in I. Calboli, *Time to Say Local Cheese and Smile at Geographical Indications? International Trade and Local Development in the United States*, 53 HOUS. L. REV. 373 (2015) [hereinafter, I. Calboli, *Say Local Cheese*].

³⁰ TRIPS, *supra* note 4, Art 23(4). See also J.M. Waggoner, *Acquiring A European Taste for Geographical Indications*, 33 BROOK. J. INT’L L. 578 (2008).

³¹ TRIPS, *supra* note 4, Art 24(1).

“Development” Round of WTO negotiations in an attempt to promote these negotiations.³² The Doha mandate included negotiations over: (a) creation of a multilateral register for wines and spirits (and possibly for all GIs); and (b) extension of the higher level of protection provided by Article 23 beyond wines and spirits.³³ Even though both issues were supposed to be debated by the end of 2003 at the WTO meeting in Cancun, Mexico,³⁴ in the October of 2003, WTO members could not overcome the disagreements between the supporters and the opponents of GI protection. Almost a decade later, in 2011, the Director General of the WTO again confirmed that the WTO Members’ positions on GIs continued to diverge sharply,³⁵ and no common ground has been found as part of WTO negotiations. In 2015, a glimpse of hope appeared when a revised text of the Lisbon Agreement was adopted after a Diplomatic Conference held in Geneva under the auspice of WIPO. Still, the adoption of the Geneva Act was marred by controversy, and the gridlock on multilateral GI negotiations will likely continue for the next several years.³⁶

³² See Ministerial Declaration, WTO Doc. WT/MIN(01)/DEC/1, adopted in Doha, Qatar, Nov. 14, 2001 [hereinafter “Doha Declaration”]. For a detailed analysis, see *TRIPS: Issues, Geographical Indications*, WTO (2015), http://wto.org/english/tratop_e/trips_e/gi_e.htm.

³³ *Id.*, para 18.

³⁴ Details about the WTO negotiations in Cancun are available at http://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm.

³⁵ *Id.*, at 4. See WTO, Document No. TN/C/W/61, Apr. 21, 2011,

“*Status of Play*—Delegations continued to voice the divergent views that have characterized this debate, with no convergence evident on the specific question of extension of Article 23 coverage: some Members continued to argue for extension of Article 23 protection to all products; others maintained that this was undesirable and created unreasonable burdens.”

³⁶ A diplomatic conference was convened in Geneva, Switzerland, in May 2015 to review the Lisbon Agreement. See *Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement – The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications*, WIPO (2015), http://www.wipo.int/meetings/diplomatic_conferences/2015/en/. The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, May 20, 2015, <http://www.wipo.int/wipolex/en/details.jsp?id=15625>. [hereinafter “Geneva Act”]. As of February 2017, only fifteen States are signatories to the Geneva Act. See *Contracting Parties, Geneva Act*, WIPO, <http://www.wipo.int/treaties/en/registration/lisbon/>.

As a result, discussions over GI protection have continued primarily under the umbrella of bilateral or plurilateral FTA negotiations in the recent years. In these smaller fora, pro-GI and GI-skeptic advocates have continued to promote their positions in favor of, or against GI protection.³⁷ To date, however, pro-GI advocates (particularly the EU) seem to have had better fortune in several of these negotiations. In particular, the EU has succeeded in obtaining protection for a long list of EU GIs and “clawing back” several terms that are protected as GIs in the EU³⁸ in FTAs concluded with Canada, South Korea, Singapore, Vietnam, and several South American countries.³⁹ Additional negotiations are currently ongoing between the EU and, *inter alia*, Japan, Malaysia, New Zealand, Australia, and the U.S.⁴⁰ GI-skeptic countries such as the U.S., Australia, and New Zealand have also negotiated provisions defending their marks against EU GIs as well as the terms that they consider generic. This is reflected primarily in the GI provisions of the Trans-Pacific Partnership (TPP).⁴¹ Still, because of the diverging interests of some TPP members – Mexico, Japan, Chile, Vietnam, and Malaysia have stronger interest in GIs as compared to Canada, the U.S., Australia, and New Zealand – and the desire of TPP members to remain free to enter other FTAs, the final

³⁷ See, e.g., D.J. Gervais, *Irreconcilable Differences? The Geneva Act of the Lisbon Agreement and the Common Law*, 53 HOUS. L. REV. 339 (2016).

³⁸ I. Calboli, *Say Local Cheese*, *supra* note 29, at 408–18 (discussing the EU’s strategy as part of CETA and suggesting a compromising solution for the TTIP negotiations).

³⁹ *Id.*

⁴⁰ For details on the FTAs concluded by the EU and other countries, or currently under negotiation, see EUROPEAN COMMISSION, *European Commission’s Trade Policy Portal*, <http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/>.

⁴¹ See Trans Pacific Partnership Agreement, Chp. 18: Intellectual property, <https://ustr.gov/sites/default/files/TPP-Final-Text-Intellectual-Property.pdf> [hereinafter “TPP”]. The TPP members are: Australia, Brunei Darusalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the U.S., and Vietnam. However, the U.S. has officially withdrawn from the TPP in January 2017. See *The United States Officially Withdraws from the Transpacific-Partnership*, Office of the United States Trade Representative (USTR), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/january/US-Withdraws-From-TPP>.

draft of the TPP leaves signatories free to partially “negotiate around” TPP provisions should any of the signatories enter into an FTA with a non-TPP member.⁴² Moreover, for the time being, the fate of the TPP is far from certain due to recent events in international politics, particularly in the U.S.⁴³

THE ECONOMIC-RELATED BENEFITS OF GEOGRAPHICAL INDICATIONS OF ORIGIN

As I have supported before, despite the opposition of the GI-skeptics, it seems certain that GIs can offer unique economic benefits to both, the producers, in terms of economic incentives, and to the consumers, in terms of product information.⁴⁴ As such, GIs are an important instrument to promote trade-related interests of local communities, and in turn regional and national governments, in the marketplace.

In particular, granting exclusive rights on GIs can translate to incentivising and promoting local and rural development. This is the strongest argument in support of GI protection which rests on the proposition that granting exclusive rights on GIs can motivate groups of regional producers to invest in the production of certain types of products that traditionally originate from the region.⁴⁵ Notably, GIs are not individual, but rather collective rights, as the right to use a GI to identify products is granted to a group of producers as a whole. Accordingly, GIs necessarily promote collaboration between the various members of the group, as local producers need to co-ordinate the

⁴² *Id.*, Art. 18.36. Several TPP members—Vietnam, Malaysia, and Singapore—have concluded, or are discussing, FTAs with the EU. See EU-Vietnam Free Trade Agreement, EU-Viet., Aug. 5, 2015, http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153674.pdf; EU-Singapore Free Trade Agreement, EU-Sing., Sept. 20, 2013, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/singapore/>.

⁴³ See USTR, *supra* note 41.

⁴⁴ See, e.g., M. Agdomar, *Removing the Greek From Feta and Adding Korbelt to Champagne: The Paradox of Geographical Indications in International Law*, 18 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 541, 577–80 (2008) [hereinafter “M. Agdomar”].

⁴⁵ See I. Calboli, *The Benefits of GIs*, *supra* note 1, at 447–52 (summarizing the economic arguments in favor of GI protection).

process of GI registration collectively. As a part of this process, producers should also identify and agree on selected product standards for the GI products along with setting up *ad hoc* quality control authorities to certify and monitor the quality of the products in the marketplace.⁴⁶ Notably, the agreed upon product standards are then recorded in the GI specifications setting rules for all GI producers to follow in order to be entitled to the right to use the GI at issue. This serves as a guarantee for the consistency of the quality and characteristics that consumers expect to find in all GI-denominated products identified by that GI.⁴⁷ Post-GI registration, GIs incentivise the same groups to continue to invest in the quality of the products when GI products become established in the marketplace as a symbol of product quality. In other words, GIs facilitate both creation and maintenance of social capital for an entire group, which in turn may also benefit the localities where these producers operate—not only by directly benefiting GI producers, but also other economic operators in the GI-denominated area.⁴⁸

In addition to incentivising local development, GIs provide consumers with important information about the products, namely the physical location and

⁴⁶ This is a very important step in the process of GI registration, which traditionally sees the involvement of the state, as a certifying public authority, and the selection of private, yet independent, bodies for quality control. For example, the quality control body for Parmigiano Reggiano is the Organismo di Controllo Qualità Produzioni Regolamentate. See ORGANISMO DI CONTROLLO QUALITÀ PRODUZIONI REGOLAMENTATE, <http://www.ocqpr.it/>. The quality control body for Prosciutto di Parma is Institution Parma Qualità. See INSITUTO PARMA QUALITÀ, <http://www.parmaqualita.it/> (last visited Feb. 1, 2017).

⁴⁷ For examples, all European GIs for agricultural products and food stuff are registered in the online database “DOOR,” which is available at *DOOR*, EUROPEAN COMMISSION, <http://ec.europa.eu/agriculture/quality/door/list.html>. Moreover, the websites of many registered PDO and PGI indicate the specifications and quality control related to the products.

⁴⁸ See Gangjee, *Relocating GIs*, *supra* note 2, at 266 (“Since consumers are willing to pay more for such goods, this encourages framers to invest in making the transition from producing un-differentiated bulk commodities, towards producing higher quality niche products.”). See also M. Agdomar, *supra* note 44, 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 2, at 352–54, 361–64 (critiquing the argument that GIs protect the valid interests of producers or protect consumers from confusion).

other associated characteristics of the products.⁴⁹ As such, GIs offer to consumers, including retailers purchasing GI-denominated products for resale, information that may serve to reduce the product information asymmetries that consumers usually face as compared to the GI-producers at the time of sale. In particular, GIs offer additional information about the product quality and characteristics which can empower consumers to make informed decisions about their purchase.⁵⁰ This includes important details of the practices that go into making the products, their safety and the health,⁵¹ the impact of these manufacturing and other practices on the environment, and even information about the labor practices in relation to human rights.⁵² Again, this set of information could assist consumers in identifying potentially healthier foods for their individual needs, or even artefacts made with traditional or environmental-friendly manufacturing techniques.

In essence, by acting as identification links between regions and products, GIs incentivise producers to adopt long-term strategies to safeguard the well-being of the regions. This brings us back to the role of GIs in local and rural development. As the use of GIs is linked to a particular location, that is, the land and the human factor used in producing the GI-denominated products, the health of the land and resources of the region are crucial for the long-term success of GI producers. GIs are also “badges of accountability” for those producers who do not respect the GI specification standards, because these producers could be forbidden from using the GI to further identify their products. In this respect, GIs also reduce possible “contagion effects” due to negative incidents in a given geographical market for a certain type of

⁴⁹ M. Agdomar, *supra* n. 44, at 586–87.

⁵⁰ *Id.* (Highlighting the importance of GIs in reducing asymmetrical information as they signal quality and expertise and enable consumers to distinguish between premium quality products and low-end products).

⁵¹ *Id.* at 587–88.

⁵² *Id.*

product.⁵³ This was the case with the scandal of the contaminated “mozzarella di bufala campana,” a GI-denominated product from Italy.⁵⁴ In such a case, and other similar cases, consumers can use the information provided by the GI to know whether they can safely continue to purchase the same type of products – i.e., the generic product “mozzarella di bufala” – as long it does not originate from the GI-denominated area—the region of Campania, in that case.

Moreover, despite GI-critics’ argument that GIs are anti-competitive,⁵⁵ GIs can actually promote more competition in the marketplace, both between GI products and similar non-GI products, as well as between similar products that are identified by GIs. In this respect, it should first be noted that GIs secure exclusive rights only over the names of the products and not on the product themselves, hence, competitors can produce identical goods for identical markets. For example, cheese-makers are not prevented from making blue-veined cheese, but they simply should not call their products Gorgonzola or Roquefort because their products do not originate from the GI-denominated regions where Gorgonzola and Roquefort cheeses are respectively made.⁵⁶ Additionally, GI protection does not eliminate competition amongst GI producers of similar products from different regions – for example, red wines from Chianti, Rioja, and Bordeaux – and from the same regions, like Chianti wines from Frescobaldi, Antinori, and several

⁵³ See I. Calboli, *The Benefits of GIs*, *supra* note 1, at 447–52.

⁵⁴ 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. See M. McCarthy & J. Phillips, *Italy’s Toxic Waste Crisis, the Mafia—and the Scandal of Europe Mozzarella*, THE INDEPENDENT (Mar. 22, 2008), <http://www.independent.co.uk/news/world/europe/italys-toxic-waste-crisis-the-mafia-and-the-scandal-of-europes-mozzarella-799289.html>.

⁵⁵ See Hughes, *supra* note 2, at 357; Raustiala & Munzer, *supra* note 2, at 359.

⁵⁶ D. Gangjee, *Quibbling Siblings: Conflicts Between Trademarks and Geographical Indications*, 82 CHI.-KENT L. REV. 1253, 1268 (2007); M. Agdomar, *supra* note 44, at 591.

other producers.⁵⁷ Aside from the fact that GIs are not anti-competitive, GIs can also promote a higher number of high-quality products – a win-win for economic development and consumers. As I have noted many times, it was only after Australia ceased to use several terms protected as GIs in the EU, and developed its own GI protection scheme, that the wine industry in Australia boomed.⁵⁸ Similarly, the U.S., one of the notoriously anti-GI protection countries, has long protected its appellation of wines precisely through a *sui generis* system.⁵⁹ It is precisely this protection that has led to the success of Californian wines.

Finally, GI critics have expressed concerns over the language monopoly that GI producers can exercise. However, with the exception of GIs identifying wines and spirits, GI protection under TRIPS does not extend to the use of GIs in descriptive and comparative advertising settings, i.e., competitors can still promote their goods along with delocalising terms such as “style,” “like,” “type,” and similar. In my scholarship, I have consistently supported a change in the language of TRIPS to allow competitors to use GIs identifying wines and spirits with delocalising terms. Certainly, this change would be strongly opposed by GI beneficiaries, particularly in the EU, which currently provides

⁵⁷ I. Calboli, *Say Local Cheese*, *supra* note 29, at 407.

⁵⁸ See I. Calboli, *Expanding the protection of GIs*, *supra* note 1, at 200–01. For a review of the growth of the Australian wine industry, see K. Anderson & R. Osmond, *How Long Will Australia’s Wine Boom Last? Lessons From History*, 417 AUSTRALIAN AND NEW ZEALAND GRAPEGROWER & WINEMAKER 15, 15-18 (1998); K. Anderson, *Contributions of the Innovation System to Australia’s Wine Industry Growth*, Wine Economics Research Centre Working Papers No. 0310, https://www.adelaide.edu.au/wine-econ/papers/0310_Aust_Wine_RD_rev0210.pdf.

⁵⁹ In particular, the U.S. grants protection to GIs identifying wines as appellations of origin for wine. This protection applies both at the federal and state level. At the federal level, it is 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) that grants applicants the permission to indicate that a certain wine, which meets specific requirements, originates from a particular geographical area in the U.S. See 27 C.F.R. 4.25, 4.25a; 27 U.S.C.A. § 201, § 205. See M. Maher, *On Vino Veritas? Clarifying the Use of Geographic References on American Wine Labels*, 89 CAL. L. REV. 1881 (2001).

enhanced protection for all GI products and has long advocated for this type of protection to be extended to all GIs under TRIPS.⁶⁰ However, this change towards accepting as legitimate the use of GIs accompanied by de-localisers as long as consumers are not confused as to the actual origin of the products could resolve the concerns that have been raised, with valid reasons, with respect to GIs as monopolies over expression.⁶¹

CULTURE-RELATED BENEFITS OF GEOGRAPHICAL INDICATIONS OF ORIGIN

In addition to representing incentives that can lead to important economic benefits, GIs are also important instruments to safeguard and promote another set of interests i.e., culture. GIs are important tools in protecting the cultural identity of the localities and regions that they identify, and with it, the culture of the communities living in these areas. By protecting local culture and identities, GIs are also excellent vehicles in promoting cultural diversity on a

⁶⁰ In the European Union, GI protection extends to the use of GIs with delocalizers, such as “type,” “like,” etc. See 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; 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) No 2392/86 and 1493/1999, 2008 O.J. (L 148) 1; 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. In addition, comparison between GI-denominated products and non-GI-denominated products is excluded under Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version) (Text with EEA relevance), 2006 O.J. (L 376) 21.

⁶¹ In the U.S., banning these uses would run against the test established by the Supreme Court in the *Central Hudson* case. *Central Hudson Gas & Electric Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557 (1980). In the EU, despite the additional protection granted to GIs, it could be argued that the same could give rise to a challenge under the principle of freedom of expression embodied in Article 10 of the European Convention on Human Rights. *Convention for the Protection of Human Rights and Fundamental Freedoms*, Art. 10(1), Nov. 4, 1950, 213 U.N.T.S. 222.

larger scale, both nationally and internationally.⁶² As prominent scholars have noted before, the cultural-protection argument parallels the market-diversity argument with respect to GI protection. This parallel argument is based on the assumption that granting exclusive rights as a reward for local production is needed to permit that a multitude of cultural products (which otherwise could be swept away by unscrupulous competitors from outside the region) are produced and offered for sale in the market. Likewise, GI-denominated products embody a cultural component related to local and traditional knowledge of the region where the products are made.⁶³ The protection of GI-denominated products could thus promote the continuation of traditional manufacturing techniques, which would otherwise succumb to the competition of mass production techniques.⁶⁴ Moreover, by encapsulating the uniqueness arising from the interplay between producers and the land where products are grown or made, GI protection can contribute to a system that rewards communities for becoming the custodians of traditional culture. In this respect, turning to intellectual property rights to protect culture-related interests is not something unheard of before. For example, the Philippines enacted a *sui generis* system, which grants property rights to indigenous

⁶² See, e.g., B. Hazucha, *Intellectual Property and Cultural Diversity: Two Views on the Relationship Between Market and Culture*, 28 INTELL. PROP. L. & POL'Y J. 39 (2010); A. Kamperman Sanders, *Incentives for Protection of Cultural Expression: Art, Trade and Geographical Indications*, 13 J. OF WORLD INTELL. PROP. 81 (2010); T. Kono, *Geographical Indication and Intangible Cultural Heritage*, in LE INDICAZIONI DI QUALITÀ DEGLI ALIMENTI (B. Ubertazzi and E.M. Espada (eds), Giuffrè, 2009); C. Antons, *Intellectual Property Rights in Indigenous Cultural Heritage: Basic Concepts and Continuing Controversies*, in INTERNATIONAL TRADE IN INDIGENOUS CULTURAL HERITAGE: LEGAL AND POLICY ISSUES (C.B. Graber, K. Kulprecht, J. Lai (eds), Edward Elgar Publishing, 2012) 144. See also the various contributions to the following collective works, GRABER, KULPRECHT, AND LAI, ABOVE; T KONO (ED.), INTANGIBLE CULTURAL HERITAGE AND INTELLECTUAL PROPERTY: COMMUNITIES, CULTURAL DIVERSITY AND SUSTAINABLE DEVELOPMENT (Intersentia, 2009).

⁶³ See, e.g., T.W. Dagne, *Harnessing the Development Potential of Geographical Indications for Traditional Knowledge-based Agricultural Products*, 5 J. INTELL. PROP. L. & PRAC. 441, 447 (2010).

⁶⁴ See T. Cottier, M. Panizzon, *Legal Perspectives on Traditional Knowledge: the Case for Intellectual Property Protection*, 7 J. INTELL. ECON. L. J. 371, 380 (2004).

communities over their traditional knowledge, including “controlling access to ancestral lands, access to biological and genetic resources, and to indigenous knowledge related to these resources.”⁶⁵ Similarly, Canada has extended copyright, industrial design, and GI protection to grant property rights to domestic and foreign cultural works such as “tradition-based creations including masks, totem poles and sound recordings of Aboriginal artists.”⁶⁶ In several countries, the potential of GIs as promoters of culture-related interests also expands beyond agricultural products and frequently concerns non-agricultural goods, namely handicrafts and local artworks. In recent decades, for example, countries like India, Indonesia, and Thailand have resorted to GI registrations to protect numerous locally made textiles and handicrafts.⁶⁷ In a similar fashion, Mexico has maintained valuable GI protection for Olinalá, a specific type of lacquered product, which uses an intricate technique that was developed and perfected over centuries in the Mexican city of Olinalá.⁶⁸ Many additional examples could be used, as the list of protected GIs for handicrafts and other artisanal products is very large, especially but not exclusive to developing countries.⁶⁹

⁶⁵ See Indigenous Peoples’ Rights Act of 1997 of the Philippines (Republic Act No. 8371 of 1997), <http://www.wipo.int/wipolex/en/details.jsp?id=5755>. See also Commission on Intellectual Property Rights, *Final Report*, Chapter 4: *Traditional Knowledge and Geographical Indications* (2002) 79, http://www.cipr.org.uk/papers/pdfs/final_report/Ch4final.pdf. The Commission is a forum set up by the British Government to examine the relationship between, and the integration of, intellectual property rights and development policies. See <http://www.cipr.org.uk/home.html>.

⁶⁶ Commission on Intellectual Property Rights, *supra* note 65, at 79 (including additional national examples).

⁶⁷ For several examples in this respect, see the various contributions in I.CALBOLI & NG-LOY W.L. (EDS), *GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE: FOCUS ON ASIA-PACIFIC* (Cambridge University Press, 2017).

⁶⁸ See S. Scafidi’s remarks in J. Hughes, L. Beresford, A. Kur, K. Plevan and S. Scafidi, *That’s a Fine Chablis You’re Not Drinking: the Proper Place for Geographical Indications in Trademark Law*, 17 *FORDHAM INTELL. PROP. MEDIA & ENT. L. J.* 933, 958 (2007) [hereinafter ‘Fine Chablis’].

⁶⁹ See contributions in CALBOLI & NG-LOY, *supra* note 67.

Based on these examples, it seems that, by linking the cultural practices used in producing certain products with the right to identify the products with the geographical area where they originate from, GIs may directly promote the conservation of cultural practices and greater product diversity. This is particularly helpful in an economy where third parties would otherwise copy traditional techniques and products. In turn, this would lead to sales of increasingly similar products across many countries without any relation to the actual traditional origin of the goods. Tomer Broude summarised this phenomenon very well when he wrote: “[I]t is often asserted that the devastation of local cultures is the product of a triumph of cultural hegemony or cultural imperialism on the ideological battleground of culture. The result of which ... is westernisation or ‘Americanisation.’”⁷⁰ In addition to “Americanisation” of culture, this author may add that the de-localisation of product manufacturing (frequently to save costs in manufacturing, assembling, and packaging the products) led to the “Chinanisation” or “South Asia-nisation” of product manufacturing, as outsourcing focuses on promoting mass production, mass distribution, and uniformity of products across various countries and internationally. Though the effects of the “Americanisation,” “Chinanisation” or “South Asia-nisation” theories may have been exaggerated in many circles,⁷¹ it seems clear that “globalisation ... does (...) produce (...) changes in local cultures and traditions,”⁷² when it does not eliminate them completely, due to economic pressures of efficiency and maximum exploitation.⁷³

⁷⁰ T. Broude, *Taking “Trade and Culture” Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 U. PA. J. INT’L ECON. L. 623, 634-653 (2005 [hereinafter Broude, *Trade and Culture*]).

⁷¹ See T. Broude, *Conflict and Complementarity in Trade, Cultural Diversity and Intellectual Property Rights*, 2 ASIAN J. WTO & INT’L HEALTH L. & POLICY 345, 348-9 (2007).

⁷² Broude, *Trade and Culture*, *supra* note 70, at 635.

⁷³ UNESCO ICH Convention, *supra* note 11.

In this context, GIs can contrast this business model of uniformity and standardisation as they are expressions of local *terroir*. As such, GIs can offer incentives for the preservation of culture as embodied in the traditional methods of production, which stem directly from the use of the natural resources and the traditional yet evolving knowledge of the geographical region that is identified under the GI in question.⁷⁴

Even though it does not directly refer to GIs, the legal framework that has been building up as part of two international conventions adopted in the first decade of the 2000s under the auspices of UNESCO also confirms the suitability of GIs (and similar legal instruments) in protecting and promoting culture-related interests. In particular, in 2003, UNESCO adopted the Convention for the Safeguarding of the Intangible Cultural Heritage.⁷⁵ This Convention, which entered into force in 2006, defines “intangible cultural heritage” in Article 2(1) as “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage.”⁷⁶ More specifically, Article 2(2) refers to a non-exhaustive list of five “domains” in which intangible cultural heritage is revealed: (1) oral traditions and expressions (including language); (2) performing arts; (3) social practices, rituals, and festive events; (4) knowledge and practices concerning nature and the universe; and (5) traditional craftsmanship. In this context, GIs can certainly include and be used to protect any of these five “domains,” as any of these domains can be included within, and constitute a part of the required

⁷⁴ See D. Gangjee, *Geographical Indications and Cultural Heritage*, 4 WIPO J. 92, 99 (2012) [hereinafter Gangjee, *GIs and Cultural Heritage*].

⁷⁵ UNESCO ICH Convention, *supra* note 11.

⁷⁶ *Id.* Art. 2(1). Cf. T. Voon, *UNESCO and the WTO: A Clash of Cultures?*, 55 635 INT’L COMP. L. Q. (2006).

processes and techniques to produce the GI products.⁷⁷ In other words, the impact of GI protection can certainly extend to the “culture component” embodied by GIs. As Tomer Broude has highlighted before, there are three dimensions of culture that can be relevant within GIs, namely: a) “the culture of production” which is the knowledge and techniques that are needed in order to create the GI products; b) “the culture of consumption” which is, the experience related to the consumption of the GI products;⁷⁸ and c) “the culture of identity” since GIs refer to products that are representative of the regions’, and thus the communities’ cultural identity.

The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is also relevant in this context.⁷⁹ This Convention, which came into effect on March 18, 2007, aims at addressing persistent concerns about cultural diversity in cultural industries and refers to the importance of cultural diversity as a “defining characteristic of humanity.”⁸⁰ In particular, the Preamble to the Convention states that “cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value.”⁸¹ Article 4 then specifies that “cultural diversity” refers to

the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and

⁷⁷ UNESCO ICH Convention, *supra* note 11, Art. 2(2).

⁷⁸ Broude, *Trade and Culture*, *supra* note 70, at 640.

⁷⁹ UNESCO, CD Convention, *supra* note 12. *See also*, J. BLAKE, INTERNATIONAL CULTURAL HERITAGE LAW (2015); L. R. HANANIA, CULTURAL DIVERSITY IN INTERNATIONAL LAW: THE EFFECTIVENESS OF THE UNESCO CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS (2014); J. SHI, FREE TRADE AND CULTURAL DIVERSITY IN INTERNATIONAL LAW (2013); S. BORELLI & F. LENZERINI, CULTURAL HERITAGE, CULTURAL RIGHTS, CULTURAL DIVERSITY: NEW DEVELOPMENTS IN INTERNATIONAL LAW (2012); T. VOON, CULTURAL PRODUCTS AND THE WORLD TRADE ORGANIZATION (2007).

⁸⁰ UNESCO, CD Convention, *supra* note 12.

⁸¹ *Id.*, Preamble.

*among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.*⁸²

The same provision defines “cultural activities, goods and services” as “those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have.”⁸³ This is even more on point with respect to the GIs which identify products that are offered for sale in the market.

Clearly, the value of GIs as vehicles to protect and promote both cultural identity and also cultural diversity at large becomes obvious when reading the text of both the 2003 and the 2005 UNESCO conventions. Hence, several concerns have been raised by scholars as to the ability of GIs to effectively act as tools to promote and protect cultural heritage. Notably, some scholars have argued that a cultural approach to justifying GIs would basically amount to disguising economic protectionism with culture-related interests.⁸⁴ Furthermore, other scholars have underscored that incorporating heritage and culture narratives into intellectual property rights poses the danger of

⁸² *Id.*, Art. 4.

⁸³ *Id.*

⁸⁴ See, e.g., T. Voon, *Geographical Indications, Culture and the WTO*, LE INDICAZIONI DI QUALITÀ DEGLI ALIMENTI 300, 311 (B. Ubertazzi and E. M. Espada eds., Giuffrè, 2009) (arguing that “the cultural justification for GI protection is largely subsumed within the broader purposes of preventing unfair competition and consumer confusion” and that a cultural argument would essentially be reduced to protectionism interests). See also the well-reconstructed discussion in this respect by Gangjee, *GIs and Cultural Heritage*, *supra* note 74, 100–1.

oversimplifying the notion of culture.⁸⁵ Even supporters of cultural protection have warned that “[a]ssimilation’ of the value of intellectual property within Western notions of property is an inadequate and often destructive means by which to protect traditional knowledge.”⁸⁶

Scholars have also questioned the ability of GIs to preserve cultural heritage since “local traditions and cultures of production ... change when markets cause them to, and remain constant when markets cause them to.”⁸⁷ However, as a response to these critiques, it should be pointed out that, like production requirements, cultural practices also naturally evolve. Notably, as recognised in the UNESCO definition of intangible cultural heritage,⁸⁸ culture is a dynamic rather than a static concept, and GIs can facilitate the protection of cultural knowledge even in a dynamic context, where natural changes may prompt product variations—for example, sweeter wine due to changes in the quality of the local grapes due to warmer seasons, different colors used for traditional saris, and so forth. Similarly, GIs can promote the type of cultural diversity that is precisely at the core of the UNESCO 2005 Convention. As the 2005 Convention directly states, economic and cultural interests almost necessarily merge today in a variety of contexts. This includes the products that are produced under the framework of GI protection and identified by GIs. Ultimately, despite skepticisms, the value and suitability of GIs to promote both economic and cultural interests can no longer be understated in our society today. Moreover, it is virtually impossible to separate cultural interests from economic interests in this debate, as both sets of interests are deeply

⁸⁵ J. Gibson, *Knowledge and Other Values—Intellectual Property and the Limitations for Traditional Knowledge*, in EMERGING ISSUES IN MODERN INTELLECTUAL PROPERTY: TRADE, TECHNOLOGY, MARKET FREEDOM, ESSAYS IN MEMORY OF HERCHEL SMITH 309, 312 (G. Westkamp (ed), Edward Elgar Publishing, 2007).

⁸⁶ *Id.*

⁸⁷ For a further discussion on counter arguments to the “cultural heritage rationale” for GI protection, see Broude, *Trade and Culture*, *supra* note 70, at 663.

⁸⁸ UNESCO ICH Convention, *supra* note 11, Art. 2(1).

intertwined and relevant with respect to the conservation and management of culture.

CONCLUSION

In a previous draft, this piece was titled “Can GIs Link Trade and Culture?” In the Introduction, I asked the same question but in a longer format: can geographical indications of origin function as viable instruments to promote and protect both trade-related and culture-related interests under the current legal framework that is in place to protect GIs? As I anticipated in the Introduction, the answer to this question is, in my view, “yes”. In other words, GIs represent perfectly suitable vehicles to link trade and culture-related interests. In particular, GIs represent legal instruments that can offer unique benefits both in terms of economic incentives to local communities, as well as with respect to the protection and promotion of the cultural identity of the same communities. Namely, GI protection may promote the development of niche-markets and incentivise investments in high-quality products. GIs also contribute to creating a mechanism of rewards and accountability for producers, thus potentially supporting more sustainable development. Moreover, by promoting local products, GIs safeguard and promote the cultural expressions that are associated with these products. Ultimately, GIs can not only contribute to preserving cultural heritage and existing traditions — but they can also (re)affirm cultural identities and promote these identities nationally and internationally.