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**Geographical Indications and the EU
Legal and Policy Discourse:
A Pursuit of Legitimacy?**

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Declaration

This thesis is the author's own work, and it has never been submitted for a degree elsewhere.

Some of the material in this thesis has been presented by the author at conferences, but none has been published.

Abstract

This thesis examines the EU system of protection of Geographical Indication and raises the questions of how and why the EU justifies its application, despite external opposition on the grounds that it is a barrier to free trade. The thesis does so by focusing on the EU legal and policy discourse, analysing the various strands of an institutional narrative that has been constructed since the early 1990s. The enquiry is divided into the following sub-questions: How have GIs and their legislations emerged? What is the EU legal and policy discourse around GIs and how has it developed? How has the academic literature challenged or contributed to this EU discourse on GIs? Is the EU legal and policy discourse around GIs justified by evidential bases? And if not, why is the EU furthering this system of protection? Based on its findings, the thesis argues that the EU legitimises the protection of GIs within the EU by deploying an institutional multifunctional legal and policy discourse that treats as self-evidently true claims regarding a range of socio-economic benefits of GIs. The thesis demonstrates, however, that the EU presumes rather than evidences these claims in an attempt to establish an authoritative and unquestioned narrative. It, therefore, seeks to avoid the accusations that the protection of GIs is a way of satisfying the purely economic and trade interests of the Union. In the absence of another plausible explanation, the thesis suggests that the EU does this to entrench a form of socio-economic protectionism and further its legitimacy as a body representing the best interests of its various constituencies, from Member States to individual businesses and consumers. The thesis concludes that the EU will need to provide significantly more evidence for its multifunctional claims if the EU GI system is to gain more acceptance internationally.

Abbreviations

AIPPI	Association Internationale pour la Protection de la Propriété Industrielle or International Association for the Protection of Intellectual Property
BIRPI	United International Bureaux for the Protection of Intellectual Property
CAP	Common Agricultural Policy
CDS	Critical Discourse Study
CETA	Comprehensive Economic and Trade Agreement
DSB	Dispute Settlement Body
DSU	WTO Understanding on Rules and Procedures Governing the Settlement of Disputes
EAP	Environmental Action Programme
EC	Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community
ECJ	European Court of Justice
EEC	European Economic Community
EESC	European Economic and Social Committee
EFNCP	European Forum on Nature Conservation and Pastoralism
EU	European Union
ETEPS	European Techno-Economic Policy Support
FAO	Food and Agriculture Organisation
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GMA	Grocery Manufacturing Association
GI	Geographical Indication (or Indicator) of Origin
IP	Intellectual Property
IPDEV	Intellectual Property Impacts on Sustainable Development
MEP	Member of the European Parliament
MS	Member States
OECD	Organisation for Economic Co-operation and Development

PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
PS	Product Specification
SEA	Single European Act
TEU	Treaty on European Union
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSG	Traditional Speciality Guaranteed
US	United States
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Chapter 1: Introduction

The Geographical Indication (GI) system of protection, as an element of Intellectual Property (IP) Law, has been the subject of numerous disputes—from what this system is, how far it should extend, what products it should protect, as well as whether it should exist at all.¹ This thesis will look in particular at the questions surrounding the validity and legitimacy of this system of protection at the European Union (EU) level. More specifically, it will ask: How and why does the EU justify the existence of GIs?

This research contributes to the existing literature on GIs by carefully exploring the use of discourse by the EU in law and policy. In doing so, it argues for an alternative and more nuanced explanation for the EU's rationale for developing and defending its GI system despite the strong pushback from some countries such as the US.

This introductory chapter will, in Section 1, define GIs and demonstrate that their definition is generally homogeneous. Section 2 will highlight the sources of the conflicts around GI which range from differing protections to issues of trade. Section 3 will set out the thesis proposition and key research questions. Then, the core concepts employed in, and necessary components of, the thesis will be explored and defined in Section 4. Section 5 will outline the method of discourse analysis which is used in order to investigate the thesis questions. Finally, Section 6 will provide a chapter outline for the thesis.

1. What are GIs?

GIs are recognised both at the international level—in the World Trade Organization (WTO)'s Agreement on Trade-Related Aspects of Intellectual

¹ Kal Raustiala and Stephen R Munzer, 'The Global Struggle over Geographic Indications' (2007) 18 *European Journal of International Law* 337, 338.

Property Rights (TRIPS)²— and at the EU level, in EU regulations. The definition of GIs at the EU and WTO levels are very similar, despite the EU definition being more detailed, reflecting the higher complexity of the EU system in contrast with the WTO system. The latter needs to remain broad as a means to give member countries flexibility in implementation.

At the WTO level, Article 22(1) of TRIPS defines GIs as follows:

Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

As explained by Dev S Gangjee, the purpose of the TRIPS definition of GIs was for WTO countries to be able to refer to the same concept in their debates on the issue.³ Indeed—as will be highlighted in this thesis—GIs were already controversial before becoming a distinctly defined idea.⁴ This single definition established by TRIPS was effective as it was widely adopted.⁵

At the EU level, the system is of greater complexity, as agricultural products, wines, aromatised wines, and spirits are protected under distinct regulations.⁶ Nevertheless, the system of GIs is best defined under the current regulation of agricultural products, which states,

² Agreement on Trade-Related Aspects of Intellectual Property Rights 15 April 1994, in the Marrakesh Agreement Establishing the World Trade Organization, Annex 1C (1994) (hereinafter referred to as TRIPS Agreement).

³ Dev S Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012) 214.

⁴ See Chapter 2 on the history of GI protection.

⁵ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 214.

⁶ See Chapter 3, Section 3 for a diagram outlining these different regulations.

For the purpose of this Regulation, ‘designation of origin’ is a name which identifies a product: (a) originating in a specific place, region or, in exceptional cases, a country; (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and (c) the production steps of which all take place in the defined geographical area.⁷

And that,

For the purpose of this Regulation, ‘geographical indication’ is a name which identifies a product: (a) originating 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.⁸

These EU definitions represent the two types of designations accorded to agricultural products, which have different levels of attachment to the geographical area, as will be explained in greater detail in Section 2 below. Both fall under the general term of ‘Geographical Indications’, and so unless stated otherwise, the discussion of ‘GIs’ in this thesis will not distinguish between these two types of designations.

A common aspect used in both the TRIPS and EU definitions is the idea of ‘quality’—an idea key to GIs and discussed throughout this thesis. As expressed in these definitions, an important facet of GIs is the establishment of a link between the location of production, and the quality and characteristics of the product itself.⁹

⁷ European Parliament and Council Regulation (EU) 1151/2012 of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1 (hereinafter referred to as Regulation 1151/2012) Article 5(1).

⁸ *ibid* Article 5(2).

⁹ See Chapter 2, Section 3, for a discussion of the dual meanings of quality; see Chapter 3 for a more in-depth analysis of the evolution of the EU definition of GIs—which has remained broadly the same throughout the 1992, 2006, and 2012 regulations on GIs.

The academic literature in the area of GIs tends to adopt definitions closely related to the WTO and EU formal definitions.¹⁰ Similarly, for the purpose of this thesis, these widely accepted definitions for GIs will be followed, and the GI protection system will be defined as a labelling system which allows the distinction of a good as being produced in a specific geographical region, thereby maintaining that the characteristics of the good are linked to the place from which it originates. Examples of GIs are Champagne, Cornish pasties, and Parmigiano Reggiano.¹¹

There is therefore little dispute as to how GIs are defined. This is likely because TRIPS provide a clear—though relatively broad—definition of GIs, to which WTO member countries have adhered and to which the EU has added in complexity. As we will see, however, this is one of the very few aspects of GIs that remains generally undisputed.

2. The GI Disputes: From Protection to Trade

Although there is a commonly agreed definition, GIs have been the subject of significant disputes. These stem from two main problems. The first is that there is no single internationally recognised protection system. As will be shown in subsection (a) below, the TRIPS Agreement does not impose one way of regulating GIs. It merely requires them to be protected in some way. Gangjee explains that “[t]he TRIPS Agreement focuses on outcomes” and therefore the

¹⁰ See for example Giovanni Belletti, Andrea Marescotti and Jean-Marc Touzard, ‘Geographical Indications, Public Goods, and Sustainable Development: The Roles of Actors’ Strategies and Public Policies’ (2017) 98 *World Development* 45, 45; Raustiala and Munzer (n 1) 338; Irina Kireeva and Bernard O’Connor, ‘Geographical Indications and the TRIPS Agreement: What Protection Is Provided to Geographical Indications in WTO Members?’ (2010) 13 *The Journal of World Intellectual Property* 275, 275.

¹¹ European Commission, ‘EAmbrosia – the EU Geographical Indications Register’ (*Europa*, 6 October 2021) <<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>> accessed 29 October 2021.

mode of protection itself is not specified.¹² Under TRIPS, GIs can, in other words, be protected in numerous ways, such as under existing IP legislation—for example through a certification mark system which recognises the achievement of a certain product standard as is done in the US¹³—or through tort law protection.¹⁴ In contrast, at the EU level, GIs are protected under what is referred to as a *sui generis* system of protection,¹⁵ because the EU has created a unique system of protection specifically for GIs. The EU *sui generis* system is where the principal investigation of this thesis lies, and it will therefore be outlined in more detail in subsection (b) of this section.¹⁶ The second issue from which GIs disputes emerge is that countries have different trade interests and approaches to free trade, to which GIs can be said to be an exception. This will be further explored in subsection (c) of this section.

a) Legislation at the International Level

GIs are protected under the TRIPS Agreement in Articles 22 to 24.¹⁷ This protection is the latest of numerous international agreements, including the Paris Convention of 1883. While the Paris Convention’s original version already afforded protection—such as seizing—against fraudulent uses of indications of origin,¹⁸ its latest 1979 version requires signatory countries to protect “indications of source or appellations of origin” (Article 1(2)), from unfair competition and

¹² Gangjee, *Relocating the Law of Geographical Indications* (n 3) 184–185.

¹³ Michael Blakeney, ‘Proposals for the International Regulation of Geographical Indications’ (2001) 4 *The Journal of World Intellectual Property* 629, 640; United States Patent and Trademark Office, ‘Certification Mark Applications’ (*USPTO*, 2020) <<https://www.uspto.gov/trademarks-getting-started/trademark-basics/certification-mark-applications>> accessed 23 June 2020.

¹⁴ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 185.

¹⁵ Benjamin Farrand, ‘Two Continents, Divided by Deep Philosophical Waters?: Why Geographical Indications Pose a Challenge to the Completion of the TTIP’ (2016) 7 *European Journal of Risk Regulation* 269, 269.

¹⁶ See Chapter 3 for a more in-depth evaluation of the legislative development around GIs at the EU level.

¹⁷ TRIPS Agreement Articles 22-24.

¹⁸ Paris Convention for the Protection of Industrial Property 20 mars 1883 (original translation) Article 10.

requires for them to seize goods with false indications (Articles 10 and 10bis).¹⁹ The TRIPS Agreement also drew on the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods 1891²⁰—which was a response by some signatories from the 1883 Paris Convention for a more comprehensive agreement for the protection of indications of origin—nevertheless the agreement failed to attract important trading countries.²¹ Finally, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 1958,²² distinguished appellation of origin from indication of source and established a protection of terms against genericity after registration.²³ All of these instruments culminated to the eventual construction of the TRIPS approach to GIs, in 1994.²⁴

Now considering the TRIPS Agreement itself, the main provision relating to protecting GIs appears in Article 22(2) and states that,

In respect of geographical indications, Members shall provide the legal means for interested parties to prevent: (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; (b) any use which constitutes an act of unfair

¹⁹ Paris Convention for the Protection of Industrial Property of March 20, 1883 as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979 Articles 1(2), 10, and 10bis; Blakeney (n 13) 637.

²⁰ Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Nice on June 15, 1957, and at Stockholm on July 14, 1967, and as amended on September 28, 1979.

²¹ Blakeney (n 13) 638.

²² Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 31 October 1958.

²³ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 128.

²⁴ See Chapter 2, Section 4 for more details on this.

competition within the meaning of Article 10bis of the Paris Convention (1967).

In addition to this general protection, Article 23(1) provides stricter protection for wines and spirits:

Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

In other words, under TRIPS, although GI denominations for foodstuff can be used on non-GI products when accompanied by expressions like ‘type’, ‘style’, etc., the same is not true for wine and spirit GI denominations, which cannot appear on a non-GI-protected product—even if it is simply intended to refer to a method of production. As such, a product bearing the name or description ‘Champagne-type wine’ is not permitted under TRIPS.

Gangjee identifies this provision as particularly controversial. He states that “Article 23 is harder to explain”, and “the negotiating record contains no normative guidance for this bifurcation”.²⁵ He suggests that this is the result of EU pressure and attempt to put forth the argument of *terroir*—a French term which encompasses environmental factors of land²⁶—and climate, and adds that despite this argument not being present in negotiation documents, the matter has appeared in commentaries.²⁷ Indeed, Jacques Audier in a 2000 official publication of the European Communities states that this special protection for wines,

²⁵ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 238.

²⁶ For more on the concept of *terroir*, see *ibid* 83–93.

²⁷ *ibid* 239.

doubtless stems from the recognition that their characteristics, identity and uniqueness are bound up with their geographical indications. Such is their link with history, culture and economic interest that general rules are difficult to apply to them.²⁸

As will be seen later in the thesis, these elements, mentioned by Audier, differentiating wines as needing particular protection, are characteristics which the EU discourse also associates with GIs for foodstuff under its system.²⁹ This article 23(1) is, therefore, a particular ground for dispute around GIs.³⁰

From this WTO protection, member countries are required to implement their own legislation to ensure that relevant parties can protect GI names. This is what the EU has done, even though its system was in place prior to the TRIPS agreement. The fact that each WTO member country has the freedom of protecting GIs in the manner that it considers most suited is the source of some of the tension around GIs. The only requirement is that the WTO member countries do not set their GI legislation below the TRIPS minimum standard outlined in the above rule. While countries may have adopted this minimum standard of protecting wine and spirits GIs more strictly than foodstuff GIs, the EU Member States (MS), under EU regulation, have gone further than the TRIPS protection as will be outlined in subsection (b) of this section. These different levels of protection lead to complex international trade disputes regarding what names can be used for which products.

²⁸ Jacques Audier, *TRIPS Agreement: Geographical Indications* (Office for Official Publications of the European Communities 2000) 26; as seen in Gangjee, *Relocating the Law of Geographical Indications* (n 3) 239.

²⁹ See Chapter 3.

³⁰ The TRIPS Agreement also has an Article 24 on GIs which simply provides a number of exceptions and points relative to international negotiations.

b) Legislation at the EU Level

At the EU level, GIs for foodstuffs were first protected in 1992 under Regulation 2081/92.³¹ After repealing this regulation due to its discriminatory scope—this regulation did not allow non-EU-based producers to benefit from the same level of protection as EU-based producers³²—the EU drafted Regulation 510 of 2006 on the Protection of Geographical Indications,³³ which has now been replaced by Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs,³⁴ and is accompanied by the Regulation 1308/2013 for the protection of wine GIs,³⁵ Regulation 251/2014 for aromatised wine GIs,³⁶ and Regulations 110/2008 and 2019/787 for spirit drink GIs.³⁷ This thesis focuses GIs for foodstuffs for the purpose of tracking the EU institutional narrative. The GI protection for agricultural products and foodstuffs is more contested than for

³¹ Council Regulation (EEC) 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1992] OJ L208/1 (hereinafter referred to as Regulation 2081/92).

³² See Chapter 3, Section 4 for more details on this.

³³ Council Regulation (EC) 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2006] OJ L93/12 (hereinafter referred to as Regulation 510/2006).

³⁴ Regulation 1151/2012.

³⁵ European Parliament and Council Regulation (EU) 1308/2013 of 17 December 2013 establishing a common agricultural organisation of the markets in agricultural products and repealing Council Regulations (EEC) 922/72, (EEC) 1037/2001 and (EC) 1234/2007 [2013] OJ L347/671.

³⁶ European Parliament and Council Regulation (EU) 251/2014 of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) 1601/91 [2014] OJ L84/14.

³⁷ European Parliament and Council Regulation (EC) 110/2008 of 15 January 2008 on the definition, description, presentation, labelling and the protection geographical indications of spirit drinks and repealing Council Regulation (EEC) 1576/89 [2008] OJ L39/16; European Parliament and Council Regulation (EU) 2019/787 of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) 110/2008 [2019] OJ L130/1.

alcohol, due to the different level of protection at the EU and WTO levels.³⁸ This is not to say that the issues around alcohol GIs are irrelevant to assessing the value of the multifunctional narrative.

As briefly seen in Section 1, two types of protected labels fall under the category of GIs in the EU: Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). In order to be awarded a PDO label, all steps of production, processing, and preparation of a product need to be completed in the protected region.³⁹ In contrast, for PGI labels, only one step of the production, processing, and preparation needs to be completed in the protected region.⁴⁰ The latter label is therefore less restrictive and more widely accessible. The difference in protection can be identified by a difference in the logo used on the packaging of protected products, with PDO products bearing a red logo, while PGI products bear a blue logo. These labels must also be distinguished from Traditional Speciality Guaranteed (TSG), which means that a specific and traditional method of production and recipe is followed.⁴¹ Although TSGs are covered in the same EU Regulation as GIs, the former will not be discussed further in this thesis, as they are a different instrument and do not depend on a link being established with a region. The distinction between PGI and PDO is again something which is specific to the EU system of protection and thus differs from other WTO member countries' approaches to GIs.

The EU Regulation 1151/2012 differs from the TRIPS Agreement. Under Article 23 of TRIPS, strict GI protection is specific to wines and spirits. In contrast, under EU regulations, this equivalent strict protection applies to all protected products, including wines and spirits, but also agricultural products and foodstuffs.⁴² This EU stricter restriction on foodstuff remains a key cause for international disputes.

³⁸ See Chapter 3, Section 3 for a more detailed explanation of the thesis' focus on agricultural products and foodstuffs GI Regulation.

³⁹ Regulation 1151/2012 Article 5(1).

⁴⁰ *ibid* Article 5(2).

⁴¹ *ibid* Article 17.

⁴² *ibid* Article 13(1)(b).

The fact that the EU protection of GIs goes beyond the TRIPS minimum standard of protection explains why the EU has also been concluding numerous Free Trade Agreements (FTAs) with clauses on GIs. These agreements are sometimes called ‘TRIPS-Plus’ agreements, as they generally go beyond the TRIPS Agreement minimum standard. In 2012 the European Commission stated,

Besides this economical [sic] importance, it should be recalled that GI’s [sic] carry a strong political weigh [sic] in international negotiations, in particular for certain Member States who see it as a crucial offensive interest. For this reason, today, it would not be conceivable to negotiate a Free Trade Agreement (FTA) without an appropriate chapter on GIs.⁴³

These TRIPS-Plus Bilateral Agreements on GIs allow the EU to ensure that its trade partners are also implementing extended protection of GIs on both alcohol and agricultural products, in a manner that goes further than the TRIPS minimum standard. The EU defined its objectives when involved in international negotiations as follows: (1) to ensure that EU GIs are protected; (2) to ensure extended GI protection for foodstuffs; (3) to reach an agreement in terms of priority between GIs and trademarks; and (4) to ensure both administrative protection of GIs, as well as court remedies.⁴⁴ The EU claims that it does not aim, through FTAs, to simply impose its system on third countries with which it negotiates, but that it aims to “add value compared to TRIPS”,⁴⁵ and that it “adapts its policy, and actions for Developing Countries”.⁴⁶ Nevertheless, the list of points that the EU says it aims to achieve through these FTAs results, for third countries, in an obligation to protect certain EU GIs under the same conditions as under the EU *sui generis* system.⁴⁷ This is particularly evident, for example, in the

⁴³ Directorate-General for Agriculture and Rural Development, ‘Advisory Group International Aspect of Agriculture: Meeting of 25 June 2012 - DG AGRI Working Documents on International Protection of EU Geographical Indications: Objectives, Outcome and Challenges’ Ares (2012) 669394 4.

⁴⁴ *ibid* 5.

⁴⁵ *ibid* 8.

⁴⁶ *ibid* 10.

⁴⁷ *ibid* 8–9.

detailed GI protection outlined in the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU.⁴⁸

c) *The GI Trade Dispute*

A second facet of the dispute around GIs is rooted in WTO countries' differing approaches to free trade, which some countries argue is restricted by GIs.⁴⁹ Indeed, one of the main GI controversies revolves around the dispute, between what has been academically referred to in this context as the 'New World' (such as the United States (US) and Australia) and the 'Old World' (the EU), on whether GIs should be protected at all, and if so, how this protection should operate.⁵⁰ It must be said here that although these terms of 'New World' and 'Old World' have been used in literature in this area, they are not representative of the situation. As Tomer Broude writes,

Of course, from a critical standpoint, there is something offensive about this approach—the New World is not new, and there existed a thread of indigenous traditional human interaction with its terroir in many locales before European domination either brutally cut it or shifted its course.⁵¹

Nevertheless, in the context of GIs, the principal opponents of the EU approach to GIs—or at least the most vocal ones—are the US and Australia. In this dispute, the EU's perspective sees GIs as necessary to preserve culture and tradition, and

⁴⁸ See Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part [2017] OJ L11/23 Articles 20.16-20.23.

⁴⁹ Bertil Sylvander, Anne Isla and Frédéric Wallet, 'Under What Conditions Geographical Indications Protection Schemes Can Be Considered as Public Goods for Sustainable Development?' in André Torre and Jean-Baptiste Traversac (eds), *Territorial Governance: Local Development, Rural Areas and Agrofood Systems* (Physica-Verlag HD 2011) 187.

⁵⁰ Tomer Broude, 'Taking "Trade and Culture" Seriously: Geographical Indications and Cultural Protection in WTO Law' (2005) 26 *University of Pennsylvania Journal of International Economic Law* 623, 652; Farrand (n 15) 269.

⁵¹ Broude (n 50) 652.

they remain an important aspect of the EU's agricultural policy.⁵² As will be discussed later,⁵³ the EU promotes a multitude of other benefits of GIs. Bertil Sylvander, Anne Isla, and Frédéric Wallet state that “the European strategy is supported by some countries around the world but is also the subject of criticism by countries with a more ‘liberal’ approach to their economies”.⁵⁴ From the US perspective, GIs as protected by the EU are seen as a form of market protectionism, and therefore simply an anti-competitive and discriminatory tool used by the EU in the context of trade.⁵⁵ The US and others challenge the EU perspective with alternative principles, such as the private property of other origin labels, the right for migrant individuals to produce products from their cultural heritage, as well as the idea of free trade, which they argue GIs limit.⁵⁶ Sylvander, Isla, and Wallet also argue that countries supportive of the EU approach to GIs associate them with public goods while more liberal countries consider GIs to be marketable private goods.⁵⁷ Alongside this distinction, it is worth considering that the purpose of IP is to privatise inventions and creations which have public good qualities. This divergence in perspectives regarding the role of GIs stands at the centre of the dispute.

David M Higgins has argued that it is the TRIPS Agreement, and its global nature, which gave rise to conflicts in relation to the different GI protection systems which, beforehand, had coexisted relatively harmoniously.⁵⁸ Specifically, Higgins identifies two rounds of disagreements that occurred between the EU and the US and Australia. The first, which occurred between 1999 and 2005, involved a WTO dispute where the US and Australia petitioned the Dispute Settlement Board against the EU's protection system for GIs.⁵⁹ The relevant EU law at the

⁵² *ibid* 655; Farrand (n 15) 270.

⁵³ See Chapter 5.

⁵⁴ Sylvander, Isla and Wallet (n 49) 186.

⁵⁵ Farrand (n 15) 271.

⁵⁶ Sylvander, Isla and Wallet (n 49) 186–187.

⁵⁷ *ibid* 187.

⁵⁸ David M Higgins, *Brands, Geographical Origin, and the Global Economy: A History from the Nineteenth Century to the Present* (Cambridge University Press 2018) 205.

⁵⁹ *ibid*.

time was the 1992 Regulation, and the dispute was in part associated with this legislation.⁶⁰ The second point of disagreement began in 2003 when the EU sought to amend TRIPS and TRIPS Plus agreements in a quest to ‘claw back’ GI names that, according to the US approach, were generic, and to extend the strict system of protection applied to wines and spirits to foodstuffs.⁶¹

There are numerous controversies around GIs between various countries. Despite the WTO’s efforts to impose a minimum standard of protection for this system, the lack of a unified approach remains an important source of conflict, leading to trade disputes and questions of legitimacy around this system of protection. From this, however, emerges the puzzling issue of why the EU is so attached to protecting this GI system.

3. The Thesis Outlined

Given the above-mentioned controversies around GIs, this thesis will seek to understand the underlying reasons for the EU’s attachment to this system of protection. It will argue that the EU legitimises the protection of its MS’ GIs using an institutional multifunctional legal and policy discourse that, through the repetition of statements regarding a range of socio-economic benefits, treats these as self-evidently true. The EU, however, appears to presume rather than evidence these claims, in an attempt to establish an authoritative and unquestioned narrative. In doing so, it seeks to avoid the accusations that the protection of GIs is a way of satisfying the purely economic and trade interests of the Union. In the absence of another reasonable explanation, the thesis suggests that the EU does this as a means to convey socio-economic protectionism and further its legitimacy as a body representing the best interest of its constituencies.

This thesis will therefore explore this GI system of protection in the context of the EU legal and policy discourse. More specifically, the main thesis question is as

⁶⁰ See Chapter 3, Section 4.

⁶¹ Higgins (n 58) 205; It must be noted that a term considered generic can no longer be protected as a valid GI, see Regulation 1151/2012 Article 6.

follows: How and why does the EU justify the existence of Geographical Indications? Indeed, so long as we do not understand why the EU is protecting this system, there will be a perpetuation of the dispute around GIs and confusion in international trade relations. The enquiry will therefore be divided into the following sub-questions: How have GIs and their legislations emerged? What is the EU legal and policy discourse around GIs and how has it developed? How has the academic literature challenged or contributed to this EU discourse? Is the EU discourse on GIs justified by evidential bases? And if not, why is the EU furthering this system of protection?

4. Concepts

The hypothesis outlined above engages with various concepts that require explanation. The idea of institutional discourse will first be explained as a concept, in subsection (a), as it contrasts with the discourse analysis method used for this thesis, which will be outlined later on in Section 5. The idea of multifunctionality will also be explored here, in subsection (b), as a descriptor of the discourse used in relation to GIs. Then, legitimacy will be discussed in subsection (c), socio-economic protectionism in subsection (d), and finally evidence in subsection (e), as they are key notions used in this thesis, which require an in-depth introduction.

These concepts are all central to the argument this thesis advances. They are crucial to understanding how and why the EU has justified its system of GI protection.

a) Institutional Discourse

This thesis uses the term ‘discourse’ in two distinct manners. First, as explained in more detail below, discourse is a key concept and subject of study, with the EU legal and political discourse being of primary interest here. Second, the idea of discourse is also used in the context of the research method, as the thesis question

is explored by adopting a discourse analysis methodology, discussed further in Section 5 of this chapter.

Discourse in this thesis is regarded as a tool that the EU utilises to legitimise the protection of its MS' GIs. More specifically, institutional discourse is the communication—be it written, spoken, or expressed in other ways—of ideas, purposes, aims, and rationales from the institution—in this case the EU. This definition is similar to Vivien A Schmidt's explanation of public discourse as,

the sum of political actors' public accounts of the polity's purposes, goals and ideals which serve to explain political events, to justify political actions, to develop political identities, to reshape and/or reinterpret political history, and, all in all, to frame the national political discussion.⁶²

This thesis argues that EU uses repetition in its discourse around numerous GI benefits to convey an unquestioned narrative and avoid accusations of trade or economic protectionism from countries such as the US.⁶³ As such, the EU's institutional discourse is seen here as a 'myth' created by a 'good discourse'—it is convincing and effective but simplified and without any real evidentiary substance presented with it. Eve Fouilleux highlights the notion of a good discourse as a discourse that may not be true, but that is convincing to political partners and the public.⁶⁴ The use of discourse to build a myth can also assist in establishing the legitimacy of policy. Vincent Della Sala, in examining the role of myth across the EU, has argued that “[o]ne of the central purposes of political myth, then, is to generate legitimacy for political rule”.⁶⁵ Furthermore, leading literary theorist and semiotician Roland Barthes states in his seminal discussion of myths and speech that,

⁶² Vivien A Schmidt, 'Democracy and Discourse in an Integrating Europe and a Globalising World' (2000) 6 *European Law Journal* 277, 279.

⁶³ See Section 2(c) of this chapter.

⁶⁴ Eve Fouilleux, 'CAP Reforms and Multilateral Trade Negotiations: Another View on Discourse Efficiency' (2004) 27 *West European Politics* 235, 236.

⁶⁵ Vincent Della Sala, 'Political Myth, Mythology and the European Union' (2010) 48 *Journal of Common Market Studies* 1, 5.

Myth does not deny things, on the contrary, its function is to talk about them; simply, it purifies them, it makes them innocent, it gives them a natural and eternal justification, it gives them a clarity which is not that of an explanation but that of a statement of fact.⁶⁶

In the same vein, in the political context, Della Sala argues that “myths need to be told and re-told in an organic fashion, seamlessly becoming political discourse and setting the normative parameters of the nature of political authority and its use in a political community”.⁶⁷ The EU discourse around the benefits of GIs is simple, making repeated statements of facts about elements such as quality, consumer transparency, and tradition. It is this simplicity of discourse iterating ‘statements of fact’ and normalising the myth that presents this discourse as an unqualified good discourse.

As previously stated, Fouilleux’s definition of a good discourse is a discourse that is convincing but not necessarily true. In addition, Barthes himself argues that myths are not about truth, but about use.⁶⁸ Taking a similar approach in her analysis of European agricultural policy, Isabelle Garzon has argued that,

[T]he role of discourse and ideas is essential in influencing policy change. Policy discourse can help change perceptions of problems and trigger acceptance of the solution proposed. It serves to present the problems, values and solutions surrounding the issue concerned, and aims at communicating this ideational dimension to the public.⁶⁹

It is this idea of good discourse, as one conveying the incontrovertible nature of a policy that has particular relevance for this thesis. Indeed, it will be argued that

⁶⁶ Roland Barthes, *Mythologies* (Annette Lavers tr, Noonday Press 1991) 143.

⁶⁷ Della Sala (n 65) 3.

⁶⁸ Barthes (n 66) 143.

⁶⁹ Isabelle Garzon, *Reforming the Common Agricultural Policy: History of a Paradigm Change* (Springer 2006) 7.

the EU has constructed a good discourse around GIs, building the public's trust in the system based on claims which are believed and reproduced, despite the lack of transparency and evidential bases.

It is important to recognise too, that any discourse, to have influence, must fit in the political context in which it is being produced. Fouilleux suggests that “arguments acknowledging the importance of civil society or of citizens’ interests will count a good deal for the Commission, which has to address a structural legitimacy deficit”.⁷⁰ The act of disseminating a discourse around the benefits of GIs for all actors in society—consumers, producers, and regions⁷¹—as the EU does, could help legitimise the policy itself and its place within EU legislation. This thesis will demonstrate that the development of the GI discourse follows the evolution of the EU Treaty objectives,⁷² as well as that of other EU policies.⁷³ In the same vein, in the context of the European Common Agricultural Policy (CAP), Marko Lovec states that “[c]hanges in discourses on CAP can be considered as a way of giving legitimacy to the policy changes”.⁷⁴ This issue of legitimacy lies at the core of this thesis’ enquiries and will be developed further in subsection (c) of this section.

The discourse approach and the importance of the idea of the legitimacy of the EU are intertwined. At the EU level, Fouilleux argues that Commission papers “are filled with arguments repeating and demonstrating the good job done and how the Commission is consistent, impartial, rational and attentive to public expectations”.⁷⁵ She adds that “the Commission, more than any other actor, has constantly to [sic] ensure its legitimacy and justify its positions and powers in the European political system”.⁷⁶ Della Sala also highlights that the European

⁷⁰ Fouilleux (n 64) 237.

⁷¹ See Chapter 3 and Chapter 5.

⁷² See Chapter 3.

⁷³ See Chapter 6.

⁷⁴ Marko Lovec, *The European Union's Common Agricultural Policy Reforms: Towards a Critical Realist Approach* (Springer Berlin Heidelberg 2016) 6.

⁷⁵ Fouilleux (n 64) 238.

⁷⁶ *ibid* 239.

Commission has always sought to build myths to generate support for its policies, and for the EU more generally.⁷⁷ This is something which is also reflected in the analysis of the EU Commission discourse on GIs in this thesis.

It is within this construction of good discourse and mythmaking by the EU that the use of the concept of multifunctionality, considered in the next section, has particular relevance.

b) *Multifunctionality*

In this thesis, multifunctionality will be used as a descriptor of the type of discourse used by the EU in order to legitimise GI protection. It is said that the term ‘multifunctionality’ emerged at the international level for the first time at the 1992 Rio Earth Summit.⁷⁸ Multifunctionality points to the multiple benefits of agriculture, beyond the agricultural products themselves; an approach that the EU has also adopted when justifying GIs. Indeed, the EU refers to GIs as a system of protection with multiple benefits.⁷⁹ A multifunctional discourse also allows the EU to avoid accusations, such as those from the US, that GI is a market protectionist system, as discussed in Section 2 (c) above.

More specifically, the late 1990s to early 2000s CAP reforms led to a recognition that agriculture produces more than its food outputs; it has other socio-economic benefits and was therefore labelled a multifunctional sector.⁸⁰ Clive Potter and Jonathan Burney explain that “[s]upporters of multifunctionality point to the contribution of agriculture in terms of food security, rural development and environmental protection”.⁸¹ The Organisation for Economic Co-operation and

⁷⁷ Della Sala (n 65) 9.

⁷⁸ Guido van Huylenbroeck and Isabel Vanslebrouck, *Landscape Amenities* (Springer 2005) 2.

⁷⁹ See Chapter 3.

⁸⁰ Stephan Hubertus Gay and others, ‘Recent Evolution of the EU Common Agricultural Policy (CAP): State of Play and Environmental Potential’ (Institute for European Environmental Policy 2005) MEACAP WP6 D4b 4.

⁸¹ Clive Potter and Jonathan Burney, ‘Agricultural Multifunctionality in the WTO—Legitimate Non-Trade Concern or Disguised Protectionism?’ (2002) 18 *Journal of Rural Studies* 35, 35.

Development (OECD) similarly states that “multifunctionality refers to the fact that an economic activity may have multiple outputs, and by virtue of this, may contribute to several societal objectives at once”.⁸² Multifunctionality is, in other words, a description for the various justifications which have been attached to the value of agriculture as an activity worthy of special treatment, support, and protection.

Multifunctionality remains controversial in so far as it may be interpreted as a smokescreen behind which lies the simple objective to justify special and substantial agricultural assistance contrary to standard free trade norms.⁸³ Gail M Hollander suggests that the concept emerged as a defence against pressures for trade liberalisation brought forth by the WTO.⁸⁴ In WTO negotiations, multifunctionality was used by the EU to argue that agriculture was in part decoupled from production and therefore not trade-distorting, meaning that state assistance should not be subjected to multilateral sanctions.⁸⁵ This was an attempt to defend its CAP.⁸⁶ Multifunctionality is therefore at the core of the debate on whether agriculture can be considered a public good and thus a non-trade concern.⁸⁷

Giovanni Belletti et al. have already noted that GIs have also been justified through the multifunctionality method. They argue that “GI products are considered as an expression of multifunctional agriculture and, at the same time,

⁸² OECD, *Multifunctionality Towards an Analytical Framework: Towards an Analytical Framework* (OECD Publishing 2001) 11.

⁸³ Clive Potter and Mark Tilzey, ‘Agricultural Policy Discourses in the European Post-Fordist Transition: Neoliberalism, Neomercantilism and Multifunctionality’ (2005) 29 *Progress in Human Geography* 581, 584; Gail M Hollander, ‘Agricultural Trade Liberalization, Multifunctionality, and Sugar in the South Florida Landscape’ (2004) 35 *Geoforum* 299, 301.

⁸⁴ Hollander (n 83) 302.

⁸⁵ *ibid.*

⁸⁶ Karmen Erjavec and Emil Erjavec, ‘Changing EU Agricultural Policy Discourses? The Discourse Analysis of Commissioner’s Speeches 2000–2007’ (2009) 34 *Food Policy* 218, 221.

⁸⁷ van Huylenbroeck and Vanslebrouck (n 78) 11.

as a tool for preserving it”.⁸⁸ As will be shown, the EU discourse used to justify GIs is highly multifunctional in nature and echoes some of the general arguments of multifunctionality in agriculture mentioned above. In addition, the lack of conclusive evidence—at least amongst the accessible evidence—to support the creation of GI protection,⁸⁹ indicates a need to justify it in a way that will legitimise it. The multitude of benefits of GIs which the EU puts forward fits with preconceived ideas, such as the importance of cultural heritage and tradition, attaching GIs with key welfare values relevant to various actors such as GI producers, consumers, and the protected regions more broadly. The need for legitimisation relates also to the fact that GIs and their geographical restriction of the use of names remain disputed, especially in the US. As such, multifunctionality is an attempt by the EU to avoid accusations of having a purely economic motivation for upholding the GI system.

The EU discourse on GI benefits carries through the elements of the agriculture multifunctional discourse which emerged over 20 years ago in the context of the CAP and which have remained relevant since, as shown by Karmen Erjavec and Emil Erjavec in their analysis of EU Agricultural Commissioners’ speeches.⁹⁰ Lovec also states that “ideas such as ‘quality’, ‘competitiveness’ or ‘environmental sustainability’ have no concrete reference but, rather, are used to authorize certain actions”.⁹¹ As will be shown, this mirrors some of the strands of EU discourse that can be observed around GIs, and in the same way, these quality and sustainability claims seem institutionally accepted, without much reference to evidential bases. This is not to say that the evidential bases do not exist, but simply that there is a lack of transparency as to what they are or where they can be found.

⁸⁸ Giovanni Belletti and others, ‘Linking Protection of Geographical Indications to the Environment: Evidence from the European Union Olive-Oil Sector’ (2015) 48 *Land Use Policy* 94, 95.

⁸⁹ See Chapter 5.

⁹⁰ Erjavec and Erjavec (n 86) 223–224.

⁹¹ Lovec (n 74) 37.

The multifunctional discourse adopted by the EU in the context of agriculture, therefore, may also describe the EU discourse around GIs designed to legitimise the EU's identification and protection of GIs, and counter external critiques of this system. This begs the question as to the meaning of 'legitimacy' in the context of this thesis, discussed further below.

c) *Legitimacy*

The idea of 'legitimacy' may be considered relevant for this thesis in two ways. First, it is argued that the EU multifunctional discourse has been used to legitimise GIs as a protection system. As a term originally used in the context of the CAP, Garzon says that "multifunctionality was the best synthesis found by European policy makers to give a renewed legitimacy to agricultural policy".⁹² In this sense, this thesis uses the idea of legitimacy in the context of the validity of *policy*. However, it also uses the idea of legitimacy when it argues that the EU's attempt to convey socio-economic protectionism is a way to reinforce its legitimacy as a *governing institution*.

As such, there is a need here to distinguish the relevance of legitimacy at two different levels in the EU. At the macro-level is the need to legitimise the EU as a whole. This legitimacy relates to why citizens and MS should accept and comply with laws being produced at the EU level, and why they should accept the EU institutions acting purportedly for them. The second level operates at the policy level. The question of legitimacy here pertains to whether the policies adopted by the EU are legitimate in themselves, regardless of whether the EU is a wholly legitimate governing institution in the first place. Indeed, even if the EU was said to be illegitimate because of a democratic deficiency, for instance, its development and dissemination of policies that lead to some general public good (the protection of human rights, for example), might still be considered legitimate in their own right. Good policy outcomes, and more specifically the fact that the policy itself is efficient, effective, financially relevant, and not corrupt, may legitimise the policy at some public level.

⁹² Garzon (n 69) 136.

The macro-level legitimacy is therefore relevant in this thesis as a motivator for the EU to convey objectives of socio-economic protectionism to its constituencies. Indeed, portraying a concern for EU MS and citizens' welfare is one of the ways in which the EU can encourage them to accept its supremacy or simply its existence as a governing institution in certain areas. The policy level legitimacy is also relevant given that the multifunctional discourse employed by the EU is used to demonstrate that the GI policy is effective, efficient, financially relevant, and overall 'good', by pointing out the multiple benefits of GIs. In this sense, the EU multifunctional discourse legitimises the GI policy. The fact that evidential bases are difficult to find may be irrelevant because the EU legal and policy discourse around GIs has led this discourse to gain a foothold and reproduce itself in official documents and academic literature, thus gaining further legitimacy through multiple repetitions.⁹³ Indeed, the academic literature reproducing the EU discourse is an integral part of the legitimising process by allowing the creation of new non-empirical expert evidence that can then be pointed to as the basis for a (mythical) evidenced-based policy.

It is within the macro-level legitimacy that the notion of socio-economic protectionism has specific relevance.

d) *Socio-economic Protectionism*

The concept of socio-economic protectionism in this thesis is used as a qualifier for the protection that the EU is trying to convey to its constituencies through the upholding of the GI system. To further its legitimacy as a body representing the best interests of its constituencies, the EU conveys socio-economic protectionism to EU MS and citizens, while on the other hand, having to reject claims of its purely market protectionist approach from countries such as the US. The legitimacy discussed here, therefore, operates at the macro-level—that is the legitimacy of the EU itself as an existing governing body—rather than the legitimacy of its policies. It should also be noted that the EU's socio-economic

⁹³ See Chapters 3, 4, and 5.

protectionism approach is conveyed through multifunctional discourse, which itself purports the socio-economic benefits of GIs. In simpler terms, the EU seeks to convey positive economic and social outcomes of GIs.

As an attempt to gain EU citizens' trust and support and improve the legitimacy of its institutions, the EU seeks to demonstrate that it is protecting their interests by conveying socio-economic protectionism. To expand on this concept and demonstrate the link between the EU's socio-economic protectionism and legitimacy in subsection (ii), it must first be established what is meant by 'EU constituency' in subsection (i).

(i) EU Constituency

Although it is accepted that—like much of the literature on the EU suggests—the EU's accountability could be improved further,⁹⁴ it will be argued that there is nevertheless a link between the EU and its citizens as the EU sees itself as acting in the interests of these citizens. It is also accepted that this link between EU citizens and EU institutions differs depending on the institution, with the EU Parliament being directly elected by EU citizens and the European Council composed of elected heads of states being accountable in a more evident manner.⁹⁵ Andrew Moravcsik argues that this is enough for the EU to be seen as an accountable body and states that,

⁹⁴ See for example Mark A Pollack, 'Theorizing EU Policy-Making' in Helen Wallace, William Wallace and Mark A Pollack (eds), *Policy-making in the European Union* (5th ed, Oxford University Press 2005) 42; Vernon Bogdanor, 'Legitimacy, Accountability and Democracy in the European Union' (The Federal Trust for Education & Research 2007) 5; Vivien A Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"' (2013) 61 *Political Studies* 2, 16; Jeremy Richardson, 'The EU as a Policy-Making State: A Policy System Like Any Other?' in Jeremy Richardson and Sonia Mazey (eds), *European Union: Power and Policy-making* (4th edn, Routledge, Taylor & Francis Group 2015) 15.

⁹⁵ Andrew Moravcsik, 'Reassessing Legitimacy in the European Union' (2002) 40 *Journal of Common Market Studies* 603, 612; Directorate-General for Communication, *How the European Union Works: Your Guide to the EU Institutions* (Publications Office of the European Union 2014).

Constitutional checks and balances, indirect democratic control via national governments, and the increasing powers of the European Parliament are sufficient to ensure that EU policy-making is, in nearly all cases, clean, transparent, effective and politically responsive to the demands of European citizens.⁹⁶

Nevertheless, this thesis goes further and maintains that other law-making EU institutions—such as the European Commission—remain accountable, in the eyes of the EU, although perhaps not equally to all. Indeed, the EU claims that it accounts for the interests of the citizens of the EU because it sees the people of the EU MS as its citizens. As an institution, since the establishment of the Coal and Steel Community, it claims to be concerned with the living standards of people in its MS.⁹⁷ Similarly, evidence has been found that the majority of EU constituencies, in the early 2000s, felt themselves to be ‘EU citizens’, in addition to their national citizenships.⁹⁸ It must be noted, however, that this sense of allegiance to the EU has fluctuated over time, and differed from one MS to another.

The idea of EU constituency has been reinforced by the fact that the EU seeks to present itself as a rightful authority—with MS having surrendered some of their sovereignty to the EU—and it is the EU who legislates in specific areas through regulations and directives. There is also an understanding that the EU will be there to protect these citizens from their national government if it does not suitably interpret or apply these laws. As David Beetham and Christopher Lord state,

⁹⁶ Moravcsik (n 95) 605.

⁹⁷ Treaty establishing the European Coal and Steel Community [1952] (hereinafter referred to as ECSC Treaty) Article 2.

⁹⁸ David Beetham and Christopher Lord, ‘Legitimacy and the European Union’ in Michael Nentwich and Albert Weale (eds), *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship* (Routledge 2003) 20–21.

EU law impacts directly on citizens, as producers, employees, consumers, etc., and requires their acknowledgement of it as binding on them, and therefore their recognition of the EU as a rightful source of valid law.⁹⁹

The acknowledgement of an EU citizenship and the legal relationship between the EU and its constituencies—through the EU presenting itself as a legitimate law-making body—establishes that the EU considers itself accountable to the people living within the region. This idea of accountability for its citizens' welfare is highlighted in the Treaty of Lisbon, which states in its second article that, “[t]he Union's aim is to promote peace, its values and the well-being of its peoples”,¹⁰⁰ and that “[i]n its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizen”.¹⁰¹ The EU, therefore, places itself in a position whereby it needs to show protection of its constituencies and to demonstrate that it seeks to ensure their socio-economic welfare.

The EU constituencies can be divided into various groups in the context of GIs, and include consumers, producers, retailers, the industrial level, the corporate level, lobbyists, environmental organisations, and even national governments themselves to some extent. Through its multifunctional discourse on GIs, the EU is addressing the interests of as many of these constituencies as possible, thus conveying socio-economic protectionism for everyone in the EU.

(ii) Conveying Socio-economic Protectionism

To retain or improve its legitimacy, the EU institutions may therefore be driven to please their constituencies. In the context of GIs, it is arguable that the EU does this by projecting its role as a socio-economic protectionist body for the benefit of

⁹⁹ *ibid* 17.

¹⁰⁰ Treaty of Lisbon Amending the Treaty of European Union and the Treaty Establishing the European Community [2007] OJ C306/01 (hereinafter referred to as Treaty of Lisbon) Article 2(1).

¹⁰¹ *ibid* Article 2(5).

all, including producers, consumers, and states. Through its multifunctional discourse, the EU can convey the different benefits of GIs. Socio-economic protectionism is here the idea projected by the EU to its constituencies: that EU policies are designed in a manner that economically and socially protect the welfare of those constituencies.

This is not an idea that is necessarily limited to the EU's behaviour in the context of GIs. It mirrors Cory Blad's approach which deems socio-economic protectionism a necessary behaviour for nation-states to gain legitimacy.¹⁰² This idea of socio-economic protectionism highlights first and foremost the dual aspect to EU policy: one that is protecting social welfare and the other protecting economic interests. Similarly, Danielle Gallo also distinguishes two aspects to the EU model, with, on the one hand, the existence of social goals—which Gallo also calls “extra-commercial” goals—and on the other, economic goals.¹⁰³ In the same vein, Chiara Agostini and David Natali discuss socio-economic protectionism as a type of structural reform. They identify two main types of structural reforms, “one focused on investment in productive capacities (to increase the country's competitiveness); the other on protection (against market forces)”.¹⁰⁴ Agostini and Natali further argue that these two approaches can be mixed to obtain various sub-types of structural reforms.¹⁰⁵ They offer socio-economic protectionism as one of these sub-types, comprising an increase in protection and a decrease in investment. More specifically, they define it as,

¹⁰² Cory Blad, 'Faustian States: Nationalist Politics and the Problem of Legitimacy in the Neoliberal Era' in Vincenzo Mele and Marina Vujnovic (eds), *Globalizing Cultures: Theories, Paradigms, Actions* (Brill 2016) 112.

¹⁰³ Daniele Gallo, 'On the Content and Scope of National and European Solidarity Under Free Movement Rules: The Case of Golden Shares and Sovereign Investments' (2016) 1 *European Papers* 823, 826.

¹⁰⁴ Chiara Agostini and David Natali, 'Structural Reforms in Europe: A Comparative Overview' in Theodoropoulou Sotiria (ed), *Labour Market Policies in the Era of Pervasive Austerity: A European Perspective* (Policy Press 2018) 19.

¹⁰⁵ *ibid.*

[A]n increase or stability in the protection of social standards for some categories and in some economic sectors (those related to the old industrial economy) even at the cost of lower investment. This reform path aims at improving growth through domestic demand and to safeguard social peace.¹⁰⁶

Thus, in this thesis, socio-economic protectionism may describe the EU's approach to those demands for welfare, while also protecting economic concerns that emerge from its various constituents. The need for socio-economic protectionism is key for the EU to further its legitimacy vis-à-vis its constituencies, in particular, due to a rise in pressures to liberate the market. Indeed, Blad argues that a state which is not answering the demands for protectionism or the economic interest will lose legitimacy.¹⁰⁷ So, if direct financial protection is not possible, then conveying socio-economic protection can take its place. Pressures and criticism on the EU regarding market protectionism, especially in the agricultural sector,¹⁰⁸ mean that conveying strong socio-economic protectionism to its constituencies could prevent a lowering of citizens' content with the EU and ensure a continued improved legitimacy.

Blad asks, “[h]ow to meet national popular demands for social protection from the adversities created by an increasingly unregulated capitalism, while at the same time being either unwilling or unable to meet these demands through economic means?”¹⁰⁹ In the context of GIs, this thesis will explore to what extent the EU's answer to this question is a socio-economic protectionist approach. Blad's perspective is that “[s]tate parties and actors seeking legitimacy while also confronting the market fundamentalism inherent in neoliberal ideology, are encouraged to employ alternative (i.e. non-economic) means of meeting countermovement demands”.¹¹⁰ Both social protectionism and economic

¹⁰⁶ *ibid* 20.

¹⁰⁷ Blad (n 102) 117.

¹⁰⁸ Laurie Buonanno and Neill Nugent, *Policies and Policy Processes of the European Union* (Palgrave Macmillan 2013) 172.

¹⁰⁹ Blad (n 102) 116.

¹¹⁰ *ibid*.

protectionism could therefore be necessary aspects of a functioning governing body like the EU.

As discussed, the importance is for the EU to create the perception of socio-economic protectionism, with less concern as to what extent GIs benefit farmers and consumers in practice. This also encompasses the idea of ‘myth’ and ‘good discourse’ discussed in subsection (a) above, as a convincing discourse can form the basis of a self-justifying belief system. Similarly, Blad argues that “the reduction in actual or *perceived* capacity to satisfy economic protectionist demands can certainly have a diminishing effect on the national legitimization of offending state actors and institutions” [*emphasis added*].¹¹¹ In addition, the EU multifunctional discourse has the potential to create a perceived socio-economic protectionist approach for farmers and consumers, thus reinforcing its legitimacy. It will therefore be shown in the following six chapters that the EU, at least partly, engages in socio-economic protectionism for its own advantage, and uses a multifunctional language of benefits which conveys to its constituencies the socio-economic protection of farmers and consumers of GIs, as a means to reinforce its legitimacy.

The EU reinforces and conveys this socio-economic protectionism through discourse around GI benefits, but this thesis critiques the lack of transparency and reference to evidential bases for such claims. As such, the final subsection of this section will explain the position this thesis takes regarding evidence and evidence-based policymaking.

e) Evidence

Paul Cairney defines evidence as “an argument or assertion backed by information”.¹¹² This thesis will take this definition one step further and say that the information used to support evidence must be verified through some sort of scientific—natural or social—means. It will argue that evidence is and should be

¹¹¹ *ibid* 112.

¹¹² Paul Cairney, *The Politics of Evidence-Based Policy Making* (Springer 2016) 3.

an important aspect of policy rationales and supporting discourses. In other words, although this thesis will not take a strong stance in the complex debate of evidence-based policymaking, it will nevertheless maintain that policymakers should be transparent and ground their policy rationales and discourses on evidential bases. Furthermore, this thesis argues that the mere creation and dissemination of a widely accepted discourse, cannot be relied upon as the ‘evidence’ itself.

As is highlighted by Cairney, evidence-based policymaking is a highly debated concept, with numerous critics often pointing to the naivety of anyone who suggests that policymaking needs to be based on scientific evidence.¹¹³ Although policymaking entirely based on scientific evidence may be a delusion, this thesis argues that evidence should at least form the base of discourse claims for policy rationale. Whilst the policy itself may be grounded in rationales beyond scientific evidence, there should be transparency as to the nature of these rationales. Moreover, if and when evidential claims are referred to in policymaking discourses, there needs to be clarity as to the source of such evidence. This is therefore about the process of law-making.

As will be discussed, the evidence supporting the rationale of the various benefits of GIs are not easily accessible and thus not transparent. This raises the question of whether the purpose of this GI policy lies elsewhere than the benefits for farmers and consumers which the EU discourse points to. Indeed, Gangjee states that “IP rights are fundamentally exclusionary and need clear justifications [...]”.¹¹⁴ Otherwise, they remain vulnerable to allegations of protectionism and the selective favouring of certain interests”.¹¹⁴ It also raises the question of whether the discourse strands on the benefits of GIs are based in evidence at all or are simply self-supporting due to their prominence.

The question of the value of evidence arose, for this thesis, from the fact that in the course of the research, it emerged that there is a paucity of accessible

¹¹³ *ibid* 1–2.

¹¹⁴ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 8.

conclusive evidence supporting the benefits of GIs. The next section will outline precisely what method was used to investigate the problems around the EU discourse on GIs.

5. Method: Discourse Analysis

This thesis adopts a desk-based primary document analysis. The main empirical research is based in law and policy, and uses primary EU documents—including regulations, European Commission papers, preparatory documents, and transcripts of EU parliamentary debates. The Commission documents are particularly featured and relevant to the research due to the Commission's role as a policymaking and legislation-drafting body at the EU level.

The document analysis employed was, more specifically, a discourse analysis. The starting point was the EU regulations on GIs—specifically GIs for agricultural products and foodstuff. The discourses in the three versions of the relevant regulations were rigorously analysed and compared, with a particular focus on the preambles, which convey the story of what the Commission was trying to implement with each new regulation. From there emerged a need to understand the changes in the regulations. This was achieved by closely reading and identifying the key discourse trends of all available preparatory documents. Some stages of the preparatory process—in particular, for the 1992 Regulation—were however not available. This included certain debates and the opinion of a few EU bodies which at the time were not published online. An attempt was made to find hard copies of these documents, but these were not found. This did not impede the results of this thesis as this research is more concerned with public discourses than internal ones. Indeed, it is these public discourses that are used as a means of obtaining legitimacy within the EU constituencies and vis-à-vis trading partners who challenge GI protection. Furthermore, the documents available, and the context of the EU policy evolution more generally, were overall sufficient to construct an understanding of the changes in the regulations.

However, the document discourse analysis did not stop there. From this analysis, main discourse strands were distinguished.¹¹⁵ To gain a greater understanding of the supporting evidence for these strands and claims, any key documents referred to or referenced in the preparatory documents were then sought. These formed the evidential basis for the claims made in the preparatory documents, which themselves formed the basis for the GI policy and regulations. At this stage, a relatively low proportion of the documents sought were easily accessible online. Numerous document links were broken with web pages no longer active. Some documents relative to a 2008 Green Paper contribution from external actors were requested directly from the European Commission, who responded that Directorate-General for Agriculture does not have these documents on file. In the end, some of these were only obtained by directly contacting the contributing organisations. Even then, some organisations refused to share the requested document. For this research, every effort has been made to access documents but there may be more available.

Through the discourse analysis of these various EU documents, this thesis, therefore, notes the disjuncture which exists between the EU legal discourse and the evidence that is readily available to support it. In addition, this thesis tests the content of the EU discourse against research on GIs from various relevant disciplines. To do this, it draws from GI research and literature from different fields, such as law, but also sociology, geography, ecology, and economics. In addition to exploring what claims and evidence of GI benefits are available, this thesis also uses this analysis of literature to consider potential negative consequences of the GI protection system, as well as to what extent the literature reproduces the strands of EU regulatory discourse without providing new data or evidence. This thesis is therefore looking for trends based on what is available and accessible.

As was discussed in Section 4 (a) on institutional discourse, the notion of discourse is conceptually essential to exploring the main thesis questions. As will be shown, discourse analysis is also an appropriate method for this thesis.

¹¹⁵ See Chapter 3.

The type of discourse analysis which will be used here considers discourse as the expression of ideas in context and examines the dynamics of discourse. This can be contrasted with a discourse analysis approach which only focuses on particular words or phrases. Indeed, one might identify two types of discourse study: one that focuses on specific micro uses of language and the other that considers the more general societal interaction, whether verbal or not.¹¹⁶ This latter approach to discourse analysis—which Ruth Wodak and Michael Meyer call ‘Critical Discourse Study’ (CDS)—is one which developed between the mid-1960s and early 1970s, and which seemed particularly relevant to fields such as social sciences and humanities.¹¹⁷ Wodak and Meyer encompass this method as follows:

CDS is therefore not interested in investigating a linguistic unit per se but in analysing, understanding and explaining social phenomena that are necessarily complex and thus require a multidisciplinary and multi-methodical approach.¹¹⁸

Critical discourse analysis emphasises the use of language and its social influence.¹¹⁹ Similarly, for this thesis, investigating the grammatical details and word choice would overlook the importance of the political and social context in which the EU legal and policy discourse around GIs operates, as well as the impact of this discourse.

The use of discourse analysis is a relevant choice for a research question pointing to policy analysis. Fouilleux states that “discourse is a crucial part of the picture

¹¹⁶ Johannes Angermuller, Dominique Maingueneau and Ruth Wodak, ‘The Discourse Studies Reader: An Introduction’ in Johannes Angermuller, Dominique Maingueneau and Ruth Wodak (eds), *The Discourse Studies Reader: Main Currents in Theory and Analysis* (John Benjamins Publishing Company 2014) 2.

¹¹⁷ Ruth Wodak and Michael Meyer, ‘Critical Discourse Studies: History, Agenda, Theory and Methodology’ in Ruth Wodak and Michael Meyer (eds), *Methods of Critical Discourse Studies* (3rd edition, SAGE Publications 2016) 2.

¹¹⁸ *ibid.*

¹¹⁹ *ibid.* 5.

for anyone interested in analysing public policy and understanding policy change”.¹²⁰ However, Fouilleux adds that as discourse can be volatile and ever-changing, the context of its use and the role of the actor who uses it must be considered.¹²¹ This contributes to explaining the approach of this thesis: to consider discourse analysis in context, rather than taking a micro approach to discourse considering word uses, grammar, and sentence structures. This is not to say that words are not important. This thesis will still consider the use of particular words and phrases, but it will do so in a manner that considers the repetition of certain words and strands of discourses. Indeed, this discourse analysis focuses on identifying recurrent patterns in order to identify discourse trends and being able to assert that these trends exist at the EU level more generally—without necessarily always differentiating between different actors, as Fouilleux suggests, unless relevant.

Through the use of a macro discourse analysis of the EU legal and policy discourse found in primary documents, as well as through the exploration of the literature on GIs from various disciplines, this thesis, therefore, seeks to establish how and why the EU justifies the existence of GIs. The next and final section will outline the chapters of this thesis, and thus demonstrate how this study will answer this overarching research question.

6. Chapter Outline

To sustain the thesis proposition and answer its questions, the chapters are organised as follows.

Chapter 2 follows the historical development of the GI system. By going back to the early French laws on GIs and examining their transition into the current EU protection system, it will consider the unclear emergence of certain aspects of the system such as its emphasis on quality. It also explores early international debates on GI protection.

¹²⁰ Fouilleux (n 64) 235.

¹²¹ *ibid* 235–236.

Chapter 3 will then investigate the discourse of the EU through the development of regulations on GIs. By aligning the emergence of GI regulation with the development of treaty objectives, as well as through a close reading of preparatory works which have led to the introduction and reforms of the EU GI regulations for foodstuff, the chapter will propose that a multifunctional discourse has gradually emerged from these regulatory developments.

Chapter 4 will examine academic commentaries on the EU GI regime. More specifically, the chapter will refer to the salient academic commentaries accepting the EU discourse on GIs and contrast these with examples of academic commentaries challenging the EU discourse. It will submit that academic commentaries have overall, contributed to the EU discourse on the benefits of GIs, despite being generally more nuanced. In particular, it will suggest that the EU multifunctional discourse constructed is being reproduced in the literature.

Chapter 5 will explore the evidence proposed by the EU—focusing particularly on the evidence mentioned in the 2010 Impact Assessment justifying the current 2012 Regulation—and evaluating the conclusiveness of this evidence. It will then propose that although some work has been done to support the EU discourse on the socio-economic and environmental benefits of GIs, the evidence available is overall inconclusive. As such, the EU treats these socio-economic and environmental GI benefits as self-evidently true, rather than establishing a clear line of evidential bases.

Chapter 6 will then scrutinise other possible justifications for the EU's insistence on protecting GIs. It will explore how the EU conveys socio-economic protectionism to its constituencies by highlighting the benefits of GIs and by upholding this system. It will examine the claim that the EU thus furthers its legitimacy as a body representing the interests of its constituencies.

Finally, Chapter 7 will provide a brief evaluation of a 2021 EU report on GIs, assessing how the discourse has evolved to the moment of completion of this thesis. It will also offer a summary of its findings and an assessment of the value

of the thesis. More specifically, the chapter will conclude that the GI system enables the EU to convey socio-economic protectionism to its constituencies, which can help in legitimising it as a ruling institution. It will demonstrate that this thesis has contributed to the existing literature by exploring the reasons behind the EU's strong attachment to this system of protection. Finally, this final chapter will also situate the significance of this thesis in highlighting the need for transparent EU policymaking processes and the importance of legislation and policy taking some of their source in evidential bases.

Chapter 2: The History of Geographical Indications of Origin and its Discourse

This chapter explores the emergence and historical developments of the system and discourse of Geographical Indications of Origin. It unveils the purpose and nature of GI legislation as European Union mythmaking—created through the legal protection of GIs itself as a means to give the system value, and through the introductions of a multifunctional discourse to describe them. The lack of clarity of the GI system, and certainty as to what is being protected and why, is rooted in part in its history and has led to this multifunctional discourse. It has thus been seen by outsiders, like the United States, as objectionable.

Before exploring the evolution of GIs, it is useful here to briefly outline the terms which will appear in this chapter. This list is far from exhaustive; in fact, Dev S Gangjee refers to the diversity of terminology and abbreviations in the field as an ‘alphabet soup’.¹²² Firstly, ‘trademark’ refers to a mark indicating the identity of the producer. Trademarks have to be formally registered and used in order to be valid—although in English law the tort-based protection of ‘passing off’ is also used to protect trademarks. Secondly, the terms ‘mark/indication of source/origin’ are used to indicate where or by whom a good has been made, but do not require a link between the product characteristics and the location or manufacturer. The variation in terms between mark or indication, and source or origin, stem from the interchangeable uses of these terms in the documents that will be discussed. These terms reflect a period of uncertainty and varying approaches as to how products should be protected. Nevertheless, these combinations of terms broadly refer to the origin of the production of the good, whether geographically or in relation to the producer. Thirdly, ‘appellation’ is the French ancestor of GIs—originating from the French ‘Appellations d’Origine Controlées’—, but is also borrowed and used in international agreements, and indicates a link between location and product characteristics. Finally, ‘Geographical Indications’, as already defined in

¹²² Gangjee, *Relocating the Law of Geographical Indications* (n 3) 2–3.

Chapter 1, are goods that can hold a certain name due to their place of production. There is a link between location and product characteristics. GIs have to be differentiated from indications of origin because this link with the place was an aspect that early GI proponents in Europe, particularly insisted on as the reason for this protection to be special—especially in relation to wine protection.

The chapter comprises four sections and will follow historical developments at both the EU and international levels. The first section will look at early GI-like product protection as the root of the contemporary GI system, in order to uncover some of the original purposes of such protection. Section 2 gives an insight into the emergence of French appellations raising the question of what their rationales were. Section 3 will discuss the appellations from the 19th century and the use of the term ‘quality’. It will question the significance of this term and its wavering meaning in legislations of the time. Finally, Section 4 will look at the development of GIs in international agreements. More specifically, it will continue to follow the use of the term ‘quality’, enquiring how the narrative around this term has evolved in international agreements.

1. The Early Types of Protection

The acts of signalling and protecting product origin—may they be foodstuff, drinks or handicrafts—have much historical precedent.¹²³ Similar forms of protection have emerged in different parts of the world at very different periods in time. This section will touch upon some of these early developments, but later sections will focus on tracing the historical *legal* development of GIs, from the 19th century in Europe, when a system of protection resembling the GI system of today began to appear. It will thus be shown that the legal field takes over from an originally more practical field, as the GI system emerges from the practice of organised protected marks such as guild marks.

¹²³ Karl Moore and Susan Reid, ‘The Birth of Brand: 4000 Years of Branding’ (2008) 50 *Business History* 419, 430; Higgins (n 58) 36.

Before assuming their contemporary form, GIs underwent conceptual and legislative development through the ages. Archaeological finds from the Indus Valley suggest the existence of marks indicating the origin of manufacture dating from as early as 2600 BC.¹²⁴ Square seals representing animals or geometric designs were found on pottery and appear to have been used by the manufacturers to mark the origin of production.¹²⁵

More concrete evidence of indications of origin date from the 12th century.¹²⁶ In Europe at that time, terms linked to place such as ‘Worsted from Ipswich’ and ‘Malines-style cloth’ were already used by guilds, and indicated both quality as well as origin.¹²⁷ Sheilagh Ogilvie defines guilds as “an association of people who share some common characteristic and pursue some common purpose [...] but most guilds were formed around shared economic activities”.¹²⁸ These merchants would mark their products with designs representing animals or local figures, and indicate the place of origin of the goods to commercially benefit from the desirability of certain locations as well as to guarantee quality.¹²⁹ As Michael Blakeney states, “the reputation of local goods was attributable to the skills and technology of local artisans”.¹³⁰

The first laws adopted in this area set out to prevent the tarnishing of the quality of local goods or misrepresentation of them, through the introduction of formal systems of marking, thus providing some protection to local artisans or guilds.¹³¹ This included laws punishing the adulteration of certain products.¹³² As such,

¹²⁴ Moore and Reid (n 123) 422–424.

¹²⁵ *ibid.*

¹²⁶ Higgins (n 58) 29–30.

¹²⁷ *ibid.*; Gary Richardson, ‘Brand Names Before the Industrial Revolution’ (National Bureau of Economic Research 2008) Working Paper 13930 22.

¹²⁸ Sheilagh Ogilvie, *Institutions and European Trade: Merchant Guilds, 1000-1800* (Cambridge University Press 2011) 19.

¹²⁹ Michael Blakeney, *The Protection of Geographical Indications* (Edward Elgar Publishing 2019) 4.

¹³⁰ *ibid.* 5.

¹³¹ *ibid.* 4.

¹³² *ibid.*

guilds were given local monopolies of production, as this protection became financially beneficial to the local tax authorities, and the guild service marks used by guild members emerged.¹³³

Controlling product quality was a key aspect of the craft guilds,¹³⁴ and regulations were also put in place by occupational guilds themselves to ensure that a certain quality was achieved. For example, according to the rules of the London Cutlery Guild, only sterling silver could be used for the embellishment of knife handles.¹³⁵ The guilds went further than simply drafting rules on quality, also having their own system of enforcement. They hired individuals to search for products holding the guild's mark, but which were of low quality, as such products were said to negatively impact the reputation of the guild in question.¹³⁶ This was accompanied by severe sanctions in the case of fraud, determined by the guild courts.¹³⁷

Guaranteeing quality through a mark—while associating a location with reputation and know-how in order to increase economic gain, identify origin to consumers, and protect reputation—is, therefore, something which stems from

¹³³ *ibid* 5.

¹³⁴ Steven A Epstein, *Wage and Labor Guilds in Medieval Europe* (The University of North Carolina Press 1991) 125–129; as seen in Higgins (n 58) 34; Stephan R Epstein and Maarten Roy Prak, *Guilds, Innovation, and the European Economy, 1400-1800* (Cambridge University Press 2008) 13.

¹³⁵ Higgins (n 58) 34.

¹³⁶ *ibid* 35.

¹³⁷ *ibid* 35–36; This approach is much like the one taken in the context of GIs today, where local organisations and producers take it upon themselves to control quality in order to identify any potential fraudsters, as they believed that another product—even if made safely and with the same traditional method of production—could damage their reputation if it was not produced in the GI region; see Comité Champagne, 'Missions du Comité Champagne protection de l'AOC Champagne protéger l'AOC Champagne' <<https://www.champagne.fr/fr/comite-champagne/qui/les-missions-du-comite-champagne>> accessed 8 November 2018; Comité Champagne, 'Lutter contre les contrefaçons et usurpations AOC Champagne, protection de l'appellation' <<https://www.champagne.fr/fr/terroir-appellation/defense-appellation/contrefacon-usurpations>> accessed 8 November 2018.

very early on in European history. It is an idea from which the laws protecting trademarks and GIs take their source. This explains why the two concepts are sometimes considered under the same umbrella:¹³⁸ they share common roots. Delphine Marie-Vivien and Estelle Biénabe also make this link between guilds and GIs.¹³⁹

With the decline of guilds through the dismantling of their organisations—starting from the mid-15th century until the 19th century in some parts of Europe—marks said to indicate origin and quality were threatened.¹⁴⁰ Indeed, in the 19th century debates over the role of intellectual property law and monopolies surfaced,¹⁴¹ thus challenging the nature of guilds. Other approaches to guarantee quality and indicate location emerged. For example, in France, a system of occupational licenses replaced the guilds.¹⁴² This system gave licenses to skilled producers or sellers to practise their trade so that the consumer would have the guarantee that the product was genuine.¹⁴³ However, this meant that quality was no longer inspected.¹⁴⁴ The decline of guilds also led to the privatisation of marks of origin as well as the rise of a distinction between marks of origin which indicate a location of production and a simple trademark registering a brand.¹⁴⁵

Although the system of guilds in Europe illustrates the early emergence of a system with parallel rationales to that of GI protection, the more pertinent ancestor legislation to the current EU GI regulations can be found in the French system for ‘Appellations d’Origine Controlées’ or simply ‘appellations’.

¹³⁸ The United States protects GIs under the U.S. Trademark Act.

¹³⁹ Delphine Marie-Vivien and Estelle Biénabe, ‘The Multifaceted Role of the State in the Protection of Geographical Indications: A Worldwide Review’ (2017) 98 *World Development* 1, 3: They state that “[p]rotection of geographical origin in Europe dates from medieval times, when guilds [...] were granted monopolies by governments to regulate industries”.

¹⁴⁰ Higgins (n 58) 32–33 and 37.

¹⁴¹ Marie-Vivien and Biénabe (n 139) 3.

¹⁴² Michael P Fitzsimmons, *From Artisan to Worker: Guilds, the French State, and the Organization of Labor, 1776-1821* (Cambridge University Press 2010) 59.

¹⁴³ *ibid* 59–60.

¹⁴⁴ *ibid* 60.

¹⁴⁵ Higgins (n 58) 41–42.

2. The Emergence of the French Appellations: Commerce and Trade Rationales

The early emergence of French appellations hints at early rationales rooted in market and commercial advantages. Roquefort cheese and Bordeaux wines illustrate this.

Lawrence W Pollack highlights that legal reference to Roquefort, named after the French town of the same name, can be found in a law from the Parliament of Toulouse adopted on 31st August 1666, stating Charles VI and Francis I of France had granted the right to use the term ‘Roquefort’ only for cheeses matured in the caves in Roquefort.¹⁴⁶ The law stated that “the only genuine Roquefort comes from the cellars in the town bearing its name”.¹⁴⁷ Pollack states, however, that in literary references, the cheese can be traced back to ancient Rome.¹⁴⁸

Nevertheless, more formal legal protection of the appellation was only introduced in the 1920s.¹⁴⁹ Julien Frayssignes argues that this was “a result of the desire of local actors to stabilize the market”, as cheese producers wanted a regional monopoly and local milk producers wanted a delimited area in which the milk could be sourced.¹⁵⁰ In the end, a 1925 law emerged as a compromise between these actors who cooperated to define the rules framing the protection.¹⁵¹

Although the records of this early history are not extensive, Frayssignes’ research suggests that the decision to start protecting Roquefort was market-related.

¹⁴⁶ Lawrence W Pollack, “‘Roquefort’ - An Example of Multiple Protection for a Designation of Regional Origin under the Lanham Act’ (1962) 52 *The Trademark Reporter* 755, 755.

¹⁴⁷ Elizabeth Marie Williams and Stephanie J Carter, *The A-Z Encyclopedia of Food Controversies and the Law* (ABC-CLIO 2011) 35.

¹⁴⁸ Pollack (n 146) 755.

¹⁴⁹ Julien Frayssignes, ‘System IV: Roquefort Cheese (France)’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011) 177.

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*; Loi du 26 juillet 1925 ayant pour but de garantir l’appellation d’origine du fromage de Roquefort (30 juillet 1925) *Journal Officiel de la République Française* 7190.

On Bordeaux wines, Blakeney found that law forming the source of GI regulation is usually traced back to the Middle Ages in France.¹⁵² At the time, the South-West region of France (where Bordeaux is located) prohibited the consumption of wines produced outside of the region.¹⁵³ The Bordeaux wines were additionally protected by two distinct privileges: *le privilège de la descente* and *le privilège de la barrique*.¹⁵⁴ The former *privilège* limited greatly the time of the year when wine producers from outside the Bordeaux region were allowed to travel down the river to Bordeaux to sell their wines in the Bordeaux port.¹⁵⁵ This gave Bordeaux wine producers a monopoly to sell to the Dutch and English markets for most of the year, as boats would supply themselves in the Bordeaux port biannually in spring and in autumn.¹⁵⁶ Other wines were allowed passage after mid-November—this was later pushed back to after Christmas—when trading ports were often frozen over.¹⁵⁷ The latter *privilège* related to the type of barrel which was used exclusively for Bordeaux wines.¹⁵⁸ This allowed these wines to be easily differentiated, but the barrels were also bigger—allowing for lower transport costs which were set per barrel—and made of better wood than standard barrels—allowing for better travel of the wine itself, and thus higher quality upon arrival.¹⁵⁹ An *Arrêt de la Court du Parlement concernant la police des vins* in 1764 further required wine makers to add a red brand on their barrels and indicate their name and the parish where the wine was produced to prevent fraudulent wines trying to pass off as originating from Bordeaux.¹⁶⁰

¹⁵² Blakeney (n 129) 5.

¹⁵³ William van Caenegem, ‘Registered Geographical Indications: Between Intellectual Property and Rural Policy-Part II’ (2003) 6 *The Journal of World Intellectual Property* 861, 861–862.

¹⁵⁴ Blakeney (n 129) 5.

¹⁵⁵ van Caenegem (n 153) 862.

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*

¹⁵⁹ *ibid.*

¹⁶⁰ Blakeney (n 129) 5–6.

A decree from 1789, abolished feudalism and with it the Bordeaux privileges—as well as other similar privileges throughout France.¹⁶¹ In response to this, Bordeaux argued that its lands deserved special protection as its composition was almost solely suited to viticulture.¹⁶² For Blakeney, this “foreshadowed the modern debate around sui generis GIs systems where they are justified for the purposes of rural development and the maintenance of rural populations”.¹⁶³

Robert C Ulin also suggests that this history of Bordeaux wines highlights the idea of invented tradition in order to create product differentiation and economic benefit, especially as Bordeaux wines did not have a particularly good reputation prior to this adopted narrative.¹⁶⁴ As Henri Enjalbert has stated,

[T]he Bordeaux vineyard has been the greatest vineyard from the 13th to the 18th century, not because the local climate is favourable to the vines, but because the people from Bordeaux knew better than others how to organise their sales to northern [European] countries.¹⁶⁵ [*translation by the author*]

The type of beliefs, such that genuine Roquefort has to be linked to specific caves and that the name of the parish on Bordeaux barrels will avoid fraud, are still part of the discourse around GIs today.¹⁶⁶ Nevertheless, tracing the early developments of these appellations sheds light on the importance of commercial and trade advantages in the protection of these products. IP law itself is rooted in the idea of protecting ownership as well as in ensuring that creators benefit financially from their creation—through IP rights—to encourage future innovation. Current EU discourses, which highlight the cultural and quality preservation of GIs, accept

¹⁶¹ *ibid* 6.

¹⁶² *ibid*.

¹⁶³ *ibid*.

¹⁶⁴ Robert C Ulin, ‘Invention and Representation as Cultural Capital: Southwest French Winegrowing History’ (1995) 97 *American Anthropologist* 519, 519–521.

¹⁶⁵ Henri Enjalbert, ‘Comment naissent les grands crus: Bordeaux, Porto, Cognac (Première partie)’ (1953) 8 *Annales* 315, 319.

¹⁶⁶ See Chapter 4, Section 4 discussing claims of GIs helping avoid fraud.

that one of the purposes of signalling the product's quality to consumers is to ensure that the producers' profit is not compromised by unfair competition occurring through misrepresentation. However, the examples of the emergence of protections for Bordeaux wines and Roquefort cheese appellations support the idea that their core rationale was to give producers commercial and trade advantages, rather than to protect any specific quality or culture. It is simply the legal protection of these products which have given them their mythical quality and, therefore, their value.

3. Appellations from the 19th Century in France: What is 'Quality'?

The legal history of appellations and GIs from the 19th century onwards becomes easier to trace—due to archival sources—and leads us to the idea of GIs today, although not without significant political struggles in the process. A key element that emerged within this history, which remains relevant today, is the idea of 'quality'.

Although Blakeney argued that appellations take their source from French middle-ages laws, as previously discussed, other authors recognise the first 'true' signs of the French appellation system to have appeared much later, in the 1900s.¹⁶⁷ David M Higgins—who has explored the evolution of different indications of geographical origins from their emergence to their adjustment to today's global market—traces the first sign of a formal law on appellations slightly earlier.¹⁶⁸ He finds that France enacted a law in 1824 stating that the name of the place can be used to indicate origin only when the good was produced in that place.¹⁶⁹ Indeed, Article 1 of the law of 28 July 1824 on alteration of names on manufacturer objects states that anyone adding or changing a producer's name other than the

¹⁶⁷ Justin Hughes, 'Champagne, Feta, and Bourbon: The Spirited Debate about Geographical Indications' (2006) 58 *Hastings Law Journal* 299, 306–307; Norbert Olszak, *Droit des appellations d'origine et indications de provenance* (Technique & Doc 2001) 6; as seen in Blakeney (n 129) 6.

¹⁶⁸ Higgins (n 58) 38.

¹⁶⁹ *ibid.*

real producer, a factory other than the real manufacturing factory, or the name of a place other than where the object was made would be sanctioned.¹⁷⁰ Now repealed, this would have been one of the early French laws on misrepresentation. Higgins found that court decisions had also stated that the individuals who live within the formal boundaries of a town are the only ones who hold the exclusive rights to use the place's name to indicate origin.¹⁷¹

Although the 1824 legislation was not specifically applicable to wines as it referred more generally to 'objects', the Champagne syndicate was already protective of the name in the 19th century. In *Chapin et Cie v Le Syndicat du Commerce des Vins de Champagne* 1892, it successfully contested genericity claims for the term.¹⁷² Although not present in the 1824 law itself, the term 'quality' appeared in the court's judgment, which stated that "Champagne wines, purely natural, like the wines from Bordeaux and from Bourgogne, hold their *quality* both from the soil and from the mode of manufacturing" [*translation by the author; emphasis added*].¹⁷³ Although this undefined term 'quality' was used in court, it was not immediately adopted in law.

Nonetheless, in 1905, France passed a law on the fraud and falsifications of agricultural products and foodstuffs.¹⁷⁴ This law, along with a few decrees which followed between 1907 and 1912, established the concept of appellations in

¹⁷⁰ Loi du 28 juillet 1824 relative aux alterations ou suppositions de noms sur les produits fabriqués; as seen in Roger Hodez, 'La protection des vins de champagne par l'appellation: chapitre premier' (*Grandes Marques & Maisons de Champagne*, 2020) <<https://maisons-champagne.com/fr/encyclopedies/bibliotheque-umc/ouvrages-historiques/la-protection-des-vins-de-champagne-par-l/premiere-partie-l-appellation-champagne-en-france/article/chapitre-premier>> accessed 6 October 2020.

¹⁷¹ Higgins (n 58) 38.

¹⁷² *Chapin et Cie v Le Syndicat du Commerce des Vins de Champagne* (Cour d'Appel de Paris, 1ere Chambre, 18 Novembre 1892, reported in *Propriété Industrielle* [1893] 111).

¹⁷³ *ibid.*

¹⁷⁴ Loi du 1er août 1905 sur la répression des fraudes dans la vente des marchandises et des falsifications des denrées alimentaires et des produits agricoles (5 August 1905) *Journal Officiel de la République Française* 4813.

France.¹⁷⁵ The 1905 law is of interest here due to the appearance of the concept of ‘qualities’. Article 1 stated,

Anyone who deceived or attempted to deceive the other party to the contract: Either on the nature, *the substantial qualities*, the composition and the content, in principle useful, of any goods; Either on their kind or their origin when, based on the convention or the usages, the designation of the kind or of the origin falsely attributed to the goods, will have to be considered like the principal cause for the sale; Either on the quantity of things delivered or on their identity by the delivery of a good other than the thing determined which is the object of the contract; Will be punished of imprisonment, during three months at least, a year at most, and of a fine of a hundred francs (100 fr.) at least, of five thousand francs (5000 fr.) at most, or of either of these two penalties only.¹⁷⁶ [*translation by the author; emphasis added*]

The use of the term ‘quality’ is here present in its plural form ‘qualities’ and used in the phrase ‘substantial qualities’—which in French contract law refers to principal characteristics of the good or thing that is the object of a contract¹⁷⁷—referring presumably to the key characteristics of the product.

As outlined by Eugène Pouillet, the 1905 law was followed by decrees to ensure its application, such as the 1907 decree on wines, sparkling wines, liquors, and spirits.¹⁷⁸ In its second Article, this decree also made reference to ‘substantial qualities’ stating that “the manipulations and practices that have for objective to modify the natural state of the wine, with the aim of tricking the buyer on the *substantial qualities* or the origin of the product, are considered fraudulent”

¹⁷⁵ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 98–99.

¹⁷⁶ Loi du 1er août 1905 Article 1.

¹⁷⁷ ‘Qualité substantielle : Lexique juridique et fiscal’ (*Choné & Associés Notaires*)

<<https://www.bruno-bedaride-notaire.fr/lexique-juridique-et-fiscal-de-bedaride-notaire-d-affaires/mot/qualite-substantielle.html>> accessed 24 November 2021.

¹⁷⁸ Eugène Pouillet, *Traité des marques de fabrique et de la concurrence déloyale en tous genres* (6th edn, Marchal et Godde 1912) 578.

[translation by the author; emphasis added].¹⁷⁹ A project of law of 1911 attempting to reform the 1824 law also used the language of “substantial qualities” in its main provision.¹⁸⁰ None of the other decrees of the time outlined by Pouillet made reference to ‘quality’ in the singular form of the word either.¹⁸¹ What is observed from these developments is the recurring use of the term ‘substantial qualities’ invoking the idea of characteristics, as opposed to the use of the word ‘quality’ as a value-based concept.

However, on 6 May 1919, France passed another law, specifically on appellations d’origine.¹⁸² This 1919 law was introduced in an attempt to correct some of the criticisms of the 1905 legislation, as it was said that the 1905 law was unclear on the delimitation of regions and link between place and quality,¹⁸³ an issue which Higgins states “was, and remains fundamental”.¹⁸⁴ The concept of ‘qualities’ disappeared completely from the 1919 law,¹⁸⁵ introducing instead the protection of goods with usages which are “local, loyal, and constant”.¹⁸⁶ Furthermore, as Gangjee interprets it,¹⁸⁷ the 1919 law also “incorporated a more elaborate formula for determining the place of origin and shifted the power to make these determinations from administrative authorities to the judiciary, on a case-by-case basis”.¹⁸⁸ At the time, specific laws also emerged to protect specific products. As mentioned in the previous section, one of the first agricultural—non-alcoholic—

¹⁷⁹ *ibid* 578–579.

¹⁸⁰ *ibid* 586.

¹⁸¹ See details of other decrees in *ibid* 578–584.

¹⁸² Loi du 6 mai 1919 relative à la protection des appellations d’origine (8 May 1919) *Journal Officiel de la République Française* 4726.

¹⁸³ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 102; Higgins (n 58) 41.

¹⁸⁴ Higgins (n 58) 41.

¹⁸⁵ Loi du 6 mai 1919.

¹⁸⁶ *ibid* Article 1.

¹⁸⁷ For further analysis of the 1919 Law see Gangjee, *Relocating the Law of Geographical Indications* (n 3) 102–108.

¹⁸⁸ *ibid* 102.

products to be protected was Roquefort,¹⁸⁹ but this law made no reference to the ideas of ‘quality’ or ‘qualities’.¹⁹⁰

Then came the 1927 law to modify and complete the 1919 law,¹⁹¹ although still without explicit mention of quality. It was followed by the law of 1935 and decree of 1947.¹⁹² Gangjee identifies the introduction of these two latter laws as “a new regime [...] conceived as a system for guaranteeing both origin and quality”.¹⁹³

The most significant change brought by the 1935 law was the introduction of a national committee—le Comité National des Appellations d’Origine de vins ou eaux-de-vie¹⁹⁴—to establish the conditions to be fulfilled for a wine or liquor to be protected as appellations “controlées”.¹⁹⁵ And for the first time in the series of legal developments of appellations in France, the 1935 law refers to the idea of ‘quality’ rather than ‘substantial qualities’. This indicates a reference to the actual value of the product rather than its characteristics, although it is unclear in the writing of the law itself.¹⁹⁶ Even the two single-article laws introduced a few months earlier regarding specific regional wines did not mention the idea of ‘quality’.¹⁹⁷

¹⁸⁹ *ibid* 111.

¹⁹⁰ Loi du 26 juillet 1925.

¹⁹¹ Loi du 22 juillet 1927 tendant à compléter la loi du 6 mai 1919 relative à la protection des appellations d’origine (27 July 1927) *Journal Officiel de la République Française* 7762; for further analysis of the 1927 Law see Gangjee, *Relocating the Law of Geographical Indications* (n 3) 106.

¹⁹² Again, a more detailed discussion of these legal texts can be found in Gangjee, *Relocating the Law of Geographical Indications* (n 3) 108–115.

¹⁹³ *ibid* 108.

¹⁹⁴ Décret-loi du 30 juillet 1935 relatif à la défense du marché des vins et régime économique de l’alcool (31 July 1935) *Journal Officiel de la République Française* 8314, Article 20.

¹⁹⁵ *ibid* Article 21.

¹⁹⁶ Décret-loi du 30 juillet 1935.

¹⁹⁷ Loi du 6 avril 1935 tendant à protéger les appellations d’origine des vins récoltés en Bourgogne délimitée (8 April 1935) *Journal Officiel de la République Française* 3981; Loi du 30 avril 1935 tendant à protéger les appellations d’origine des vins récoltés dans les départements du Haut-Rhin, du Bas-Rhin et de la Moselle (2 May 1935) *Journal Officiel de la République Française* 4754.

Although the 1935 law listed various concrete factors such as the grape varieties, the degree of alcohol, and the yield per hectare as the conditions for protection, it also stated that the law would protect appellation d'origine "that, by their *quality* and their notoriety, will be considered by the national committee as deserving to be classified amongst the appellations contrôlées" [*translation by the author; emphasis added*].¹⁹⁸ Although the committee has a very specific set of criteria for awarding the protection, they are therefore also given an important level of interpretation as to which additional products deserve the appellations contrôlées protection, based on the ambiguous idea of quality. The 1947 decree primarily established the composition of the national committee, renaming it the 'Institut National des Appellations d'Origine des vins et eaux-de-vie'.¹⁹⁹

It must also be noted here that the ministers listed as holding duties in the enforcement of these two legislations included the Minister of Agriculture, the Minister of Home Affairs, the Minister of Justice, the Minister of the National Economy, the Minister of Foreign Affairs, and the Minister of Finances.²⁰⁰ This confirms the relevance of this domain in agricultural and national matters, but also its relevance for trade, commerce, and the national economy more broadly. The title of the 1935 law reinforced this interpretation, as it is called the 'Law relating to the protection of the wine market and of the economic regime of alcohol'.

After this, the next relevant legal development for appellations occurred in 1990 with the introduction of a law extending the appellation protection to all agricultural products. The commission of economic affairs of the time was heavily involved in the preparatory works of this law, submitting reports on the proposals,²⁰¹ and commenting on the sociological, cultural as well as economic

¹⁹⁸ Décret-loi du 30 juillet 1935 Article 21.

¹⁹⁹ Décret n° 47-1331 du 16 juillet 1947 fixant la composition du comité national des appellations d'origine (19 July 1947) Journal Officiel de la République Française 6948 Article 5.

²⁰⁰ Décret-loi du 30 juillet 1935; Décret n° 47-1331 du 16 juillet 1947.

²⁰¹ Bernard Barbier, 'Rapport fait au nom de la Commission des affaires économiques et du plan (1) sur le projet de loi relatif aux appellations d'origine contrôlée des produits agricoles et alimentaires bruts ou transformés' (Sénat, 2 May 1990) n°270; Bernard Barbier, 'Rapport fait au nom de la Commission des affaires économiques et du plan (1) sur le projet de loi, modifié par

relevance of passing such a law.²⁰² The idea of ‘quality’ did not play an important role in this 1990 law as it was only mentioned in the context of the right of syndicates for appellations to be able to cease administrative authority if construction plans in the protected region might impact the appellation’s image, production or quality.²⁰³

It can therefore be seen that the idea of ‘quality’ became increasingly present during the development of appellations in France. But is it clear what is meant by the idea of ‘quality’? In French and English, ‘quality’ is a term with at least two meanings. On the one hand, the quality of a product can refer to a characteristic of that product. On the other, quality can also refer to the high value or superiority of a product, which is a lot vaguer as a concept as it is not necessarily defined what this superiority is relative to. Looking at the use of ‘quality’ in the legislative discourse of the French appellation system, the lack of definition of the term throughout its uses poses a problem of possible misinterpretation of these laws. In the same manner, the use of the word ‘quality’ is undefined in both the current EU regulation protecting GIs and in the Agreement on Trade-Related Aspects of Intellectual Property Rights protecting GIs at the World Trade Organization level, making it unclear which meaning of the word is intended.²⁰⁴ In contrast to the uncertainty as to the meaning of ‘quality’ in the context of appellations, it will be seen in the next chapter that the EU discourse, outside the strict text of the regulation, does allude to ‘quality’ as a value judgement of the GI products, thus helping perpetuate a mythical characteristic to these products.

l’assemblée nationale, relatif aux appellations d’origine contrôlée des produits agricoles et alimentaires bruts ou transformés’ (Sénat, 13 June 1990) n°376.

²⁰² Barbier, ‘Rapport fait au nom de la Commission des affaires économiques et du plan (1) sur le projet de loi relatif aux appellations d’origine contrôlée des produits agricoles et alimentaires bruts ou transformés’ (n 201) 23.

²⁰³ Loi n° 90-558 du 2 juillet 1990 relative aux appellations d’origine contrôlées des produits agricoles ou alimentaires, brut ou transformés (6 July 1990) Journal Officiel de la République Française 7912.

²⁰⁴ See Chapter 3 for more on the use of the word quality in EU GI regulations.

Finally, it is worth noting that regarding the evolution of the laws around appellations, Gangjee observes and demonstrates that the ‘human factor’ in production is increasingly prominent,²⁰⁵ thus reducing the importance of any mythical links to the soil and climate.

Analysing the development of the French legal system around appellations has thus highlighted three important points which are still problematic with GIs today: (i) the economic importance of appellations is rooted in its evolution which was demonstrated both in this Section and in Section 2; (ii) the use of the term ‘quality’ in French appellation laws lacks a clear definition of what it means, making it difficult to understand whether it refers to product characteristics or whether it is a value judgement for products; (iii) the link between quality and place—in particular soil and climate—can be said to have a mythical facet, in part due to the lack of a clear definition for the term ‘quality’. However, the legal development on French appellation transitioned from a focus on soil and climate to one promoting the more concrete—and perhaps believable—importance of know-how.

The next section will explore how GIs have gained significance and explain this leap between the protection, in a national French Law, of appellation d’origine to GIs gaining international importance. It also highlights that GIs—and their early forms of protection—have always been a controversial and disputed idea, and that the change in discourse from ‘qualities’ to ‘quality’ may be simply due to a lack of attention and understanding of this dual meaning.

4. GIs in International Agreements

Marks indicating product origin became particularly significant in the late 19th century with the rise of international trade.²⁰⁶ Numerous jurisdictions then shaped their own national law regimes to protect these types of marks, but the genesis of a global trade system at the end of the century made the creation of an

²⁰⁵ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 112.

²⁰⁶ Higgins (n 58) 14.

international system of protection more necessary.²⁰⁷ A rise in competition and the need for producers to distinguish themselves accompanied this development. Giving consumers information about product origin, therefore, became more important than ever.²⁰⁸ This is not to say that there was a lack of importance prior to this period, as was seen in Section 2 in relation to the history of Bordeaux wines, but simply that globalisation exacerbated this. Furthermore, as an increasing number of products were coming from all over the world, one can argue that the need for consumers to know the geographical origin of what they were buying and consuming became more relevant. In addition, the packaging and labelling were not bound by the extensive rules that exist today,²⁰⁹ and thus stating the place of origin of a product through its name would have been an easy way to communicate such information. Whether it was a means for states to protect consumers or for the traders to distinguish themselves, this emergence of global trade made marks indicating the origins of products particularly appealing.

In terms of marks indicating a product's origin, these were protected at the international level under the Paris Convention for the Protection of Industrial Property 1883. As expressed by Gangjee, the Paris Convention was “an early landmark in international intellectual or industrial property”.²¹⁰ Beyond establishing key IP concepts such as the national treatment principle and the idea of a minimum standard of protection, the Paris Convention also established United International Bureaux for the Protection of Intellectual Property (also known as BIRPI), which was the predecessor of the World Intellectual Property Organization (WIPO).²¹¹

The formal recognition and protection of marks indicating a product's origin at the international level was key, due to this internationalisation of trade mentioned

²⁰⁷ *ibid* 15–16.

²⁰⁸ *ibid* 30–32.

²⁰⁹ Alan Turner, ‘Prepacked Food Labelling: Past, Present and Future’ (1995) 97 *British Food Journal* 23, 23; Richard Milne, ‘Arbiters of Waste: Date Labels, the Consumer and Knowing Good, Safe Food’ (2012) 60 *The Sociological Review* 84, 86.

²¹⁰ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 23.

²¹¹ *ibid* 24; Higgins (n 58) 193.

previously. Although certain nations or regions already protected such indications of origin through local rules, as was seen with the example of Bordeaux wines and with the 1824 French law, this would not be sufficient nor applicable to an international market. For international protection, Article 9 of the Paris Convention stated that products using a certain production or commercial mark illegally would be seized on import, and Article 10 stated that,

- (1) [Article 9] shall apply to any goods which falsely bear as an indication of source the name of a specified locality, when such indication is joined to a trade name of a fictitious character or used with fraudulent intentions.
- (2) Any manufacturer or trader engaged in the manufacture of or trade in such goods and established in the locality falsely indicated as the source shall be deemed an interest party.²¹²

Articles 9 and 10 are said to originate from French law, and more specifically, from an 1857 law protecting “indications of name and or of place of a French factory” [*translation by the author*].²¹³

Debates quickly arose regarding these articles, however. During the Conference for the International Union for the Protection of Industrial Property in 1925, Article 10 was criticised for only applying regarding a locality and not for false indications referring to the name of a country.²¹⁴ The Union argued that the article was also only applicable when the indication was associated with a fictitious trade name or when it was assumed with an intention to be fraudulent, meaning that it

²¹² Paris Convention for the Protection of Industrial Property 20 mars 1883 (original translation) Articles 9 and 10.

²¹³ Loi du 23 juin 1857 sur les marques de fabrique et de commerce Article 19; as seen in Jean Bapstiste Henri Duvergier, *Collection complète des lois, décrets, ordonnances, règlements, et avis du Conseil d’Etat*, vol 50 (A Guyot et Scribe 1857) 194; Gangjee, *Relocating the Law of Geographical Indications* (n 3) 33–34.

²¹⁴ Union internationale pour la protection de la propriété industrielle, *Actes de la conférence réunie à la Haye du 8 octobre au 6 novembre 1925* (Bureau de l’Union internationale pour la protection de la propriété industrielle 1926) 250.

did not simply apply to product holding a false indication.²¹⁵ Furthermore, the article did not apply to fictitious locality names.²¹⁶

The difficulties and disagreements regarding amendments to the Paris Convention led to the creation of the Madrid Agreements, as will be discussed below. However, in the meantime, aspects of the Paris Convention (as it was then) were incorporated in the UK in the Merchandise Marks Act 1887,²¹⁷ until the UK later allowed the registration of indication of origin in the Trade Mark Act 1905.²¹⁸

The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891—almost 30 years before the 1919 French laws explicitly referring to appellations d’origine—was significant in the development of the GI system at the international level. The Madrid Agreement was said to be a key contributor to the development of the early French laws on appellation d’origine.²¹⁹ The original contracting parties for the Madrid Agreement were France, Spain, Switzerland, Tunisia, and the UK.²²⁰ Brazil, Guatemala, and Portugal were original signatories but did not ratify it in June 1892, although Brazil and Portugal ratified it a few years later.²²¹ One of the weaknesses of this agreement was the small number of contracting parties in comparison with the

²¹⁵ *ibid* 251.

²¹⁶ Union internationale pour la protection de la propriété industrielle, *Actes de la conférence réunie à Londres du 4er mai au 2 juin 1934* (Bureau de l’Union internationale pour la protection de la propriété industrielle 1934) 196–197.

²¹⁷ Howard Payn, *The Merchandise Marks Act 1887 with Special Reference to the Importation Sections and the Customs Regulations & Orders Made Thereunder* (Stevens 1888) 10.

²¹⁸ Higgins (n 58) 47.

²¹⁹ Études Générales, ‘La question des fausses indications de provenance et l’arrangement de Madrid’ (1920) 36 *La Propriété Industrielle* 40, 43.

²²⁰ World Intellectual Property Organization, ‘Contracting Parties: Madrid Agreement (Indications of Source)’ (*WIPO*, 2020)

<https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=3> accessed 8 October 2020.

²²¹ *ibid*.

Paris Convention, but the most contentious aspect of the agreement was its Article 4.²²²

Article 4 was contentious because, unlike for other appellations, national tribunals could not exempt wine—or “products of the vine”—appellations from protection.²²³ Portuguese delegate Joaquim Pedro de Oliveira Martins and French delegate Michel Pelletier introduced this differentiation for wines—during the International Conference for the Protection of Industrial Property of 1890—as both argued that wine quality was dependent on nature and its local characteristics.²²⁴ Oliveira Martins distinguished non-agricultural appellations from agricultural ones, stating that “the appellations of agricultural products, for which counterfeiting is general, always correspond to particular conditions of climate and terroir which cannot be changed or transported” [*translation by the author*].²²⁵ The Norway, Sweden, and Great Britain delegates objected, and so Pelletier stepped-in to narrow Oliveira Martins’ statement. Pelletier suggested the restriction should apply to products for which sole natural conditions determine their characteristics, even without human know-how being involved, and argued that in this situation, products of the vine are the relevant ones. This perspective from the French delegate was, at the time, in line with the French emphasis on quality being linked to soil and climate, before its later introduction of local know-how as a more impactful factor for this link with quality. Oliveira Martins approved this perspective, and so did the representatives for Brazil, France, Guatemala, Switzerland and Tunisia. The inclusion of the restriction on products of the vine was subsequently approved by a majority of six against five.²²⁶

²²² Higgins (n 58) 164.

²²³ *ibid* 165.

²²⁴ Conférence internationale pour la protection de la propriété industrielle 1890, *Procès-verbaux de la Conférence de Madrid de 1890 de l’Union pour la protection de la propriété industrielle, suivis des actes signés en 1891 et ratifiés en 1892* (Jent et Reinert 1892) 87–88.

²²⁵ *ibid* 87.

²²⁶ *ibid* 88; This was arguably the beginning of the special protection for wines and spirits, which can be found in Article 23 of the TRIPS Agreement today.

Here again in the International Conference for the Protection of Industrial Property of 1890, the term ‘quality’ of wines being linked to soil and climate can be interpreted with either meaning. The word could mean a superior quality of the wine or simply the attributes of the wine, may they be assessed as good or bad, for example depending on alcohol strength or a particular taste—not that taste is any less vague a criterion unless very clearly defined.

This establishment of protection for wine outlined in Article 4 of the Madrid Agreement was, however, met with criticism and the US were particularly reluctant to accept this idea that the national court would not get primacy over determining whether wine appellations are generic.²²⁷ Commissioners appointed to revise statutes in the US stated, concerning the Madrid Agreement: “[w]e are of the opinion that the United States should make use of this agreement before the names of certain of her products become generic, as, for example, champagne has become the great loss of the champagne districts of France.”²²⁸ Although the US demonstrated an intention and interest in joining, this was a clear refusal to accept the non-genericity of certain European wines, such as Champagne. The disagreement around the terms of the Madrid Agreement was arguably one of the starting points of the conflict between the EU and the US concerning GIs. Indeed, while the US was a signatory of the Paris Agreement due to its limited GI protection, it refused the more extensive protection of the Madrid Agreement.²²⁹

On the other hand, the fact that the Madrid Agreement was only providing extensive protection to wines (or products of the vine), rather than to all appellations, was also heavily criticised. While Article 4 gave special treatment for wines, Article 1 referred to the need to protect “all goods”.²³⁰ Higgins finds

²²⁷ Higgins (n 58) 169.

²²⁸ Senate, *Report of the Commissioners Appointed to Revise the Statutes Relating to Patents, Trade and Other Marks, and Trade and Commercial Names, under Act of Congress Approved June 4, 1898*, vol 20 (Government Printing Office 1900) 46.

²²⁹ Stacy D Goldberg, ‘Who Will Raise the White Flag? The Battle between the United States and the European Union over the Protection of Geographical Indications’ (2001) 22 *University of Pennsylvania Journal of International Economic Law* 107, 112–113.

²³⁰ Higgins (n 58) 165.

that Swiss jurist Richard Iklé argued that Article 4 should be extended to all products whose reputation is linked to the soil, and British industrial property expert Robert Burrell argued that Article 4 should cover all indications of origin which lead to the product having a superior value compared with a comparable good.²³¹ This latter argument does not, however, consider the possibility that the very protection of a product contributes to its superior value, as it provides it with a mythical quality. The Association Internationale pour la Protection de la Propriété Industrielle (AIPPI or International Association for the Protection of Intellectual Property in English), created in 1897, also supported this proposal of extending Article 4 to other appellations. In 1937, AIPPI reiterated that the protection accorded to products of the vine should be extended to all products whose characteristics are linked to soil or climate.²³² It was then further argued during the 1938 AIPPI Prague conference that, beyond climate and soil, the quality of products also depended on local know-how.²³³ However, this extension of protection to other agricultural products was not adopted until after 1945,²³⁴ likely due to the Second World War changing reform priorities.

Once the wine-producing countries had had this trade advantage, it was difficult for them to accept their products being brought back on the same footing as other appellations. Indeed, it was reported at the 1958 Lisbon Conference that the French delegation at the Washington Conference in 1911, referring to Article 4 of Madrid, stated that,

This clause, accepted by a considerable number of countries, implies such a large advantage for wine producing countries that they refuse to deal with the issue of indications of origins as a whole in a clause of the [Paris] Convention, if this one does not expressly treat appellation for product of

²³¹ *ibid* 168.

²³² *ibid* 171.

²³³ *ibid*.

²³⁴ *ibid* 168.

the vine in the same way as the [Madrid] Agreement.²³⁵ [*translation by the author*]

Wine-producing countries were, at this point, reluctant to accept a provision protecting all appellations under the Paris Convention, unless special protection remained for wine appellations, due to the advantage they enjoyed at that time. What was once claimed to be about the link between the product and the soil, was now openly a trade dispute about which products should have the highest commercial advantages.

From 1945 onwards, the rules around appellations and indications of origin increased in complexity, due to the introduction of several organisations dealing in part with IP law—including the Organisation for European Economic Cooperation and the World Health Organization (WHO) in 1948, and the Council of Europe in 1949—as well as the incorporation of appellations and indications of origin (or of source) within trade negotiations, with paradoxical promotions of freer trade but stricter protection.²³⁶

Higgins argues that a major weakness of the Madrid Agreement was its lack of definition of appellations and indications of source.²³⁷ It was not until 1957, during a meeting in Oslo, that the AIPPI defined ‘indication of source’ and ‘appellation’, thus highlighting the difference between the two concepts, which was previously blurred.²³⁸ This was reinforced by the similar distinction discussed at the 1958 Lisbon Conference.²³⁹ It was clarified that ‘indications of source’ was “the geographical designation simply indicating the place of production, of manufacturing, of extraction, or of gathering in order to identify the goods”

²³⁵ Union internationale pour la protection de la propriété industrielle, *Actes de la conférence réunie à Lisbonne du 6 au 31 octobre 1958* (Bureau de l’Union internationale pour la protection de la propriété industrielle 1963) 777.

²³⁶ Higgins (n 58) 185 and 187.

²³⁷ *ibid* 184.

²³⁸ *ibid* 193.

²³⁹ Union internationale pour la protection de la propriété industrielle, *Actes de la conférence réunie à Lisbonne du 6 au 31 octobre 1958* (n 235) 771.

[*translation by the author*] and related to issues of unfair competition as well as buyer-seller relationship. In contrast, ‘appellations’,

[d]escribes all geographical designations corresponding to a country, a region, a county or another place serving as an appellation to these products which are originally from there and which present [...] *qualities* typical and renowned due exclusively or essentially to the place and the method of production and of manufacturing, of extraction or of gathering of these products.²⁴⁰ [*translation by the author, emphasis added*]

This definition is similar to today’s TRIPS and EU Regulation definitions.²⁴¹ The word “qualities” in its plural form—and thus probably referring to a product’s characteristics—was used in this 1958 definition, when it had not made a clear appearance since the 1911 French law regulating appellations.

The Lisbon Conference in 1958 and the resulting Lisbon Agreement of the same year brought other significant changes. The agreement created a union of signatories which vowed to protect appellations in their territories.²⁴² Article 10 of the Paris Convention was finally modified and brought more in line with rules on unfair competition—however, France remained firmly against the modification of Article 4 of the Madrid Agreement, which still gave an advantage to products of the vine, so this one remained unchanged.²⁴³

Although the idea of ‘qualities’ was principally used to discuss and define appellations in the Lisbon Conference as seen above, the final definition in the Lisbon Agreement (Article 2(1)) provided,

²⁴⁰ *ibid.*

²⁴¹ See these definitions in Chapter 1, Section 1.

²⁴² Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 31 October 1958 Article 1.

²⁴³ Higgins (n 58) 191–192.

In this Agreement, “appellation of origin” means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the *quality* or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.²⁴⁴ [*emphasis added*]

This change from ‘qualities’ to ‘quality’ occurred in a seemingly coincidental manner. Indeed, the Conference discussion around qualities emerged from a proposition of revision for Article 4 stating that,

The tribunals of each country will have to decide which are the geographical denominations which, due to their generic characteristics, escape the [...] Agreement, the appellations regional of origin of the products of the vine and of the products drawing their *natural qualities* from the soil and from the climate, which are recognised as characteristics by the relevant authority of the country of origin [...].²⁴⁵ [*translation by the author, emphasis added*]

However, the union countries debated, not the plurality of the use of the term ‘quality’ in this proposition, but the idea that these products had to be linked to soil and climate. The debate then led to a discussion about the definition of appellation of origin for the Lisbon Agreement, and it was stated that,

The Commission unanimously decided to include the definition below at the indentation 1 of article 2.

“We hear by appellation of origin in the sense of the current Agreement the geographical denomination of a country, of a region, or of a locality serving to designate or to qualify a product which is originally and of

²⁴⁴ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 31 October 1958 Article 2 (clause unchanged since 1958).

²⁴⁵ Union internationale pour la protection de la propriété industrielle, *Actes de la conférence réunie à Lisbonne du 6 au 31 octobre 1958* (n 235) 797.

which the use correspond to *qualities* or to a nature particular to this product, due exclusively to the place and the method of production, of manufacturing or of extraction of these products”.²⁴⁶ [*translation by the author, emphasis added*]

Nevertheless, it was also stated that “[t]he editorial Committee of the Fourth Commission brought certain other modifications”,²⁴⁷ and the final definition in Article 2(1) became what has been stated above, referring to ‘quality’ in its singular form. The difference between ‘qualities’ and ‘quality’—and thus the difference between the idea that appellations are products with specific qualities linked to the area of production and today’s idea that GIs are of high quality—is the result of seemingly insignificant edits. Today’s definition for GIs is almost identical to that of the Lisbon Agreement.²⁴⁸

In addition to Article 2(1)’s similarities with the current definition for GIs, and the expansion of the protection to both wines and agricultural products, the Lisbon Agreement also reminds of the current approach to GI protection in its third article. Article 3 of the Lisbon Agreement states that “[p]rotection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as “kind,” “type,” “make,” “imitation”, or the like”. This resembles, and thus formed the basis for the absolute protection now afforded in the EU, as well as the protection accorded to wines and spirits under TRIPS.²⁴⁹

Nevertheless, the Lisbon Agreement was still criticised by some countries—for the definition of appellation being too narrow, and for not including the grounds on which registration could be rejected—thus preventing them from becoming signatories.²⁵⁰ This is to be expected since the GI system of protection is a very

²⁴⁶ *ibid* 833.

²⁴⁷ *ibid*.

²⁴⁸ See Chapter 1, Section 1.

²⁴⁹ See Chapter 1, Section 2 (a).

²⁵⁰ Higgins (n 58) 195.

contentious aspect of IP law, on which nation-states struggle to find common ground.

As a way to remedy this disconnect between nations on GIs, in the early 1970s, WIPO issued a survey to countries to try and understand how interests could be brought together and negotiated in one agreement.²⁵¹ This was eventually interrupted by the possibility for the Paris Convention to be revised, and in the end, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications that was adopted in 2015.²⁵² However, the Geneva Act did not come into force until 26th February 2020, after the accession of the EU.²⁵³ In the meantime, the EU (through its *sui generis* system) and the WTO (through TRIPS) had already enacted what are some of the main standing legislations regulating GIs today.²⁵⁴ In the absence of being able to please every nation, Gangjee explains that GIs were a consensus between indications of source and *appellation d'origine*, and that TRIPS was a consensus to appropriately protect such indications.²⁵⁵

5. Conclusion

It is evident from the above account that indications of origin and appellations steadily developed through the 19th and 20th centuries, with French legal history being an influential factor of this development. The significance of these indicators was particularly renewed in the mid-20th century in the post-war era, as an increase in the manufacturing industry and a decrease in the agricultural sector

²⁵¹ *ibid* 199.

²⁵² *ibid* 200; Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and Regulations Under the Geneva Act of the Lisbon Agreement of May 20, 2015 2015.

²⁵³ World Intellectual Property Organization, 'Geneva Act of WIPO's Lisbon Agreement Enters into Force' (*WIPO*, 26 February 2020)

<https://www.wipo.int/lisbon/en/news/2020/news_0001.html> accessed 15 May 2020.

²⁵⁴ See Chapter 1, Section 2 (a) and (b).

²⁵⁵ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 213.

led to poverty, unemployment, and depopulation at the regional level.²⁵⁶ This, along with increased globalisation of trade, explains the amplified political benefit of GIs.

Although demonstrating the EU political interest in communicating socio-economic protectionism through the GI system will take more than this historical account of the development of GIs, this chapter nevertheless has conveyed three important points contributing to this thesis: (i) the economic—commercial and trade—aspects of GIs is one of the central reasons and purposes for the emergence of formal legal protection; (ii) the idea that these products are quality products has emerged from a simple lack of consistency of language, rather than a studied and conscious claim; and (iii) the value of these products which are protected by law, stems from the very laws that protect them. This is suggestive of the system of appellation having been promoted and developed through mythmaking. Indeed, it is because these products have claimed to need protection due to their mythical quality and link to place, that they have been able to truly distinguish themselves as such. Law gives it a formal seal of approval, and when it adopts terms that relate to those products, like ‘quality’, there is a circular justificatory system that comes into play. This chapter, therefore, raises further questions about the nature and purpose of this justification once GIs were protected under the EU Regulatory system.

The next chapter, in exploring the EU policy and legal discourse of GIs, will show the continued relevance of the ideas of economic benefits and quality. Alongside this, a multifunctional discourse will emerge adding claims of an array of benefits for both producers and consumers.

²⁵⁶ Higgins (n 58) 219.

Chapter 3: The Discourse of the EU through the Development of GI Legal Rules

Having outlined the emergence and early development of Geographical Indications in Europe (and in international trade law), this chapter will return to the main focus of the thesis: the legal rules and discourse that have developed in the European Union around GIs. This chapter will explore: What is the EU legal and policy discourse around GIs and how has it developed? What form has it taken and how has it addressed the concerns about the protectionist aspects of the GI system? Answering these questions will assist in understanding exactly how the EU justifies the existence of GIs in its regulations and in the discussions leading to their development. It will also indicate what justifications need to be explored in the succeeding chapters, in order to understand how and why the EU justifies GIs.

To accomplish this, the chapter will first, in Section 1, explore the evolution of the EU Treaties upon which EU regulations are based. Section 2 will briefly outline the emergence of a harmonised EU GI system. Section 3 will then outline the various EU regulations protecting GIs. Despite EU harmonisation of the system, it will be seen that a high level of complexity remains as the whole system comprises a web of regulations and reforms regulating different types of GI products. Then, using the relevant and available preparatory documents for GI EU regulations, the chapter will explore the development of the 1992, 2006, and 2012 regulations on the protection of agricultural products and foodstuffs in Sections 4, 5, and 6 respectively, and analyse the changes in the EU discourse throughout. More specifically, these three sections will examine the EU regulatory discourse and to what extent it is in line with the increasingly socio-economic narrative that the EU is presenting through its treaty developments. It will also observe any parallel with the idea of multifunctionality—a concept which itself advances that agriculture brings forth a number of socio-economic advantages.

1. Outlining the Treaty Evolution

Before analysing the language and development of each regulation independently, it is important to consider how the purposes of the EU Treaties evolved over the course of the history of these GI regulations. Understanding the evolution of language in the treaty can assist in better understanding the direction of EU GI regulations.

Starting from the beginning, the first European treaty—after the Treaty establishing the European Coal and Steel Community, signed in Paris in 1951²⁵⁷—was the Treaty establishing the European Economic Community (EEC or Treaty of Rome), signed in Rome in 1957. The EEC Treaty’s preamble focused on creating a “closer union”, ensuring “economic and social progress”, with an “improvement of the living and working conditions”, as well as “balanced trade and fair competition” and “development”, especially for the “less favoured regions”.²⁵⁸ There is, therefore, in this first treaty an important focus on growth and the economy. After all, the EU started as an economic community, as the name of this 1957 Treaty indicates. Nevertheless, this language also prompts the consideration of social interests in EU policymaking.

This 1957 EEC Treaty included a title on ‘Agriculture’—Articles 38 to 47—as well as a chapter on ‘Commercial Policy’—Articles 110 to 116. The title on agriculture concerned rules around agriculture in the common market, and more specifically, Article 39 established a “common agricultural policy”. The focus of the policy at the time revolved around “agricultural productivity”, “technical progress”,²⁵⁹ a “fair standard of living for the agricultural community”, “increasing individual earnings”,²⁶⁰ “stabilize[d] markets”,²⁶¹ the “availability of

²⁵⁷ ECSC Treaty.

²⁵⁸ Treaty establishing the European Economic Community [1958] (hereinafter referred to as EEC Treaty).

²⁵⁹ *ibid* Article 39(1)(a).

²⁶⁰ *ibid* Article 39(1)(b).

²⁶¹ *ibid* Article 39(1)(c).

supplies”,²⁶² and “reasonable prices”.²⁶³ In addition, subsection 2 of the article stated that the CAP needed to consider the social and economic aspects of agriculture and the “natural disparities between the various agricultural regions”.²⁶⁴ In addition, the chapter on commercial policy focused on the harmonisation of trade and the lowering of customs barriers within the union.²⁶⁵ Nonetheless, despite the desire to introduce freedom of movement of goods throughout the EEC, Article 36 allowed restrictions if,

justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.²⁶⁶

The possibility of protecting certain interests, which as we will see is reflected in the GI regulatory development, was therefore acknowledged within this ‘common market’ scheme.

The EEC was then amended by the Single European Act (SEA), signed in Luxembourg in 1986. The main theme of this treaty’s preamble was cooperation, with emphasis on “democracy”, “freedom, equality, and social justice”, the “need for new developments” and most importantly, an aim to “act with consistency and solidarity”, to collaborate on a “foreign policy”, and “to improve the economic and social situation by extending common policies and pursuing new objectives”.²⁶⁷ As with the EEC, the SEA put economic and social progress at the forefront of the principal aims for the EU.

²⁶² *ibid* Article 39(1)(d).

²⁶³ *ibid* Article 39(1)(e).

²⁶⁴ *ibid* Article 39(2).

²⁶⁵ *ibid* Article 110.

²⁶⁶ *ibid* Article 36.

²⁶⁷ Single European Act [1987] OJ L169/1 (hereinafter referred to as SEA).

In terms of changes to relevant provisions, the SEA did not introduce significant changes regarding the CAP. However, it did mention the “protection of the environment” alongside the other exceptions to free movement principles outlined in Article 36 of the EEC, in the treaty chapter on the approximation of laws.²⁶⁸ More notably, the SEA introduced an entire Title regarding the environment, introducing provisions on environmental protection.²⁶⁹

Six years later, the Treaty on European Union (TEU or Maastricht Treaty) was signed in Maastricht in 1992. The TEU emerged from the momentum created by the SEA of 1986, and the conclusions of a committee and intergovernmental conference on economic and monetary union.²⁷⁰ In this treaty, a real broadening of EU policy interests was adopted. Although the TEU preamble reiterated some of the previously addressed themes, such as the importance of “liberty, democracy and respect for human rights and fundamental freedoms”, of “economic and social progress”, and of promoting “peace, security and progress in Europe”, it also introduced the idea of facilitating the “free movement of persons”, as well as the importance of “respecting [people’s] history [...] culture and [...] traditions”, of “reinforcing the European identity”, and to “reinforce cohesion and environmental protection”.²⁷¹ With the TEU, the EU introduced an important new focus for the Union from being principally an economic community towards a Union which was economically strong but also prioritised other important socio-economic goods, such as culture, traditions, the environment, and people’s identity. This discourse around history and tradition, developed at the treaty level, opened doors for interested parties to argue for the need for EU-wide regulations around GIs.

²⁶⁸ *ibid* Article 18(4).

²⁶⁹ *ibid* Article 25.

²⁷⁰ Paul Craig, ‘Development of the EU’ in Catherine Barnard and Steve Peers (eds), *European Union Law* (2nd edn, Oxford University Press 2017) 20.

²⁷¹ Treaty on European Union [1992] OJ C191/1 (hereinafter referred to as TEU).

Although there was, therefore, a relevant shift in the EU language and aims through the TEU, it did not introduce important changes concerning agricultural or commercial policies.²⁷²

The TEU was followed by the Treaty of Amsterdam, signed in 1997, and the Treaty of Nice, signed in 2001.²⁷³ These brought smaller and more targeted changes—mainly procedural ones regarding the functioning of the EU institutions. While both Treaties did not have their own preamble, as previous treaties did, the Treaty of Amsterdam did provide a few amendments to the preamble of TEU. It incorporated a recital on the importance of knowledge and education, for example,²⁷⁴ but most importantly added the idea of “sustainable development” to its seventh recital.²⁷⁵

Six years later in 2007, the Treaty of Lisbon, or Lisbon Treaty, was signed. This remains the most recent treaty revision. Some of the wording of the Lisbon Treaty is almost identical to that introduced in the Treaty establishing a Constitution for Europe in 2004, which failed to pass the ratification stage.²⁷⁶ Most of the proposed changes were therefore introduced through the Treaty of Lisbon instead. The Treaty of Lisbon again had no preamble but introduced small revisions to the existing preamble. Its main revision was the introduction of the idea of “drawing

²⁷² The commercial policy was updated, but these changes are not of significance for the current discussion. For example, references to the ‘transition period’, relevant during the EEC introduction, were removed.

²⁷³ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C340/1 (hereinafter referred to as Treaty of Amsterdam); Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [2001] OJ C80/1 (hereinafter referred to as Treaty of Nice).

²⁷⁴ Treaty of Amsterdam Article 2.

²⁷⁵ *ibid* Article 1(3).

²⁷⁶ European Parliament, ‘Draft Treaty Establishing a Constitution for Europe’ (*Europarl*, 2018) <<https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe>> accessed 29 January 2020; Treaty establishing a Constitution for Europe [2004] OJ C310/1 Article I-3.

inspiration from the cultural, religious and humanist inheritance of Europe”,²⁷⁷ thus putting further emphasis on the idea of culture and heritage.

Considering these various treaty developments, it can be seen that the EU’s interest has gone beyond the economic to encompass a more social and political dimension. From the above analysis of the treaty preamble developments, it is clear that the TEU, in 1992, introduced important changes to the European project by taking on an increasingly socio-economic character.

A bridge must now be built between the historical emergence of GIs (a concept originating first in France)—explored in the previous chapter—and the creation of an EU GI system. The following section will thus investigate the origins of the idea of an EU GI protection system within the context of the treaty developments outlined above.

2. The Emergence of a Harmonised EU GI System

The idea of a common system for the protection of GIs took root in the judgement of the European Court of Justice (ECJ) in the case *Cassis de Dijon* in 1979. In this case, the limited liability company Rewe-Zentral AG requested authorisation from Bundesmonopolverwaltung für Branntwein—the Federal Monopoly Administration for Spirits—to import certain spirits from France, including 15 to 20% alcohol ‘Cassis de Dijon’ liqueur.²⁷⁸ The Bundesmonopolverwaltung informed Rewe that no authorisation was necessary, but that Cassis de Dijon could not be sold in Germany due to its alcohol content being lower than 32%.²⁷⁹ Rewe brought an action against the Bundesmonopolverwaltung when it refused to derogate on the matter. The questions raised with the ECJ for this case were: (i) whether rules on minimum alcohol content are against Article 30 of the EEC Treaty as a measure having an effect equivalent to quantitative restrictions on

²⁷⁷ Treaty of Lisbon Article 1(1)(a).

²⁷⁸ Case 120/78 *Rewe-Zentrale AG v Bundesmonopolverwaltung für Branntwein* (*Cassis de Dijon*) [1979] ECR 649 651.

²⁷⁹ *ibid.*

imports; and (ii) whether this rule fell under Article 37 of the EEC Treaty regarding discrimination as to the conditions of marketisation of goods between nationals of Member States.²⁸⁰ The ECJ decided that Article 37 EEC was irrelevant to the dispute,²⁸¹ but answered the first question by ruling that the limit on alcohol content violated Article 30 EEC.²⁸²

This case raised important issues regarding product standardisation, labelling, and the protection of consumers, and led the Commission to “undertake a general study relating to the compatibility with Article 30 of the EEC Treaty of national rules relating to the composition, quality and designation of foodstuffs and, more particularly, alcoholic beverages”.²⁸³ Therefore, although the case did not directly address a need for an EU protection for GIs, it can be seen as a stepping stone towards its emergence. Although the German limitation regarding the minimum alcohol content was seen by the court as a measure having equivalent effect to quantitative restriction under Article 30, the introduction of the GI system deviated from this free movement of goods rule.²⁸⁴ The question of national rules and their compatibility with Article 30 were recurrent in case law at the time.²⁸⁵

In 1985, the Commission introduced a number of Green Papers for consultation on various matters. These did not address GIs directly, but they are relevant to the introduction of the first GI foodstuffs regulation at the EU level. The first Green Paper was published on 15 July 1985 and concerned new perspectives for the

²⁸⁰ *ibid* 652.

²⁸¹ *ibid* 662.

²⁸² *ibid* 665.

²⁸³ *ibid* 658.

²⁸⁴ However, this rule was created to prevent restrictions between Member States, not EU-level restrictions like GIs.

²⁸⁵ For examples, see: Case 249/81 *Commission v Ireland* (Buy Irish) [1982] ECR 4005; Case 16/83 *Criminal Proceedings against Karl Prantl* [1984] ECR 1299; Case 286/86 *Ministère public v Gérard Deserbais* (Deserbais) [1988] ECR 4907; Case C-10/89 *SA CNL-SUCAL NV v HAG GF AG* [1990] ECR I-3711; Case C-3/91 *Exportur SA v LOR SA and Confiserie du Tech SA* (Exportur) [1992] ECR I-5529.

European CAP.²⁸⁶ The Green Paper clearly states that it was introduced as a result of the new Delors European Commission taking office that same year.²⁸⁷ In this document, the Commission looked to the future and possible development options for the CAP;²⁸⁸ its perspective was undeniably highly market focused. Amongst a few other topics, the Green Paper's sections focused on economics, budget, income and employment, and external trade.²⁸⁹ This economic perspective is in line with the tone of the Treaties at the time, as seen in the previous section. However, a few more aspects of the Green Paper also pointed to socio-economic concerns, specifically in relation to the CAP. For example, in the paper, the Commission discussed the "need for regional development",²⁹⁰ the "promotion of practices friendly to the environment",²⁹¹ and the need for a new economic approach which "implies that more attention should be paid to the demands of consumers in terms of quality (as well as quantity) of food at reasonable prices".²⁹² Later, the Commission further suggested that one of the "necessary adjustments of the CAP" in order to encourage certain products was the "creation of the legal framework needed for the harmonization of the quality standards for these products, to facilitate their marketing and consumer information (e.g. labelling)".²⁹³ Although the concept of an EU GI system is not explicitly discussed, this discourse demonstrates an inclination towards such a system, and reminds of the language used in the preamble of GI regulation, as will be seen below.

²⁸⁶ European Commission, 'Perspectives for the Common Agricultural Policy' COM (85) 333 final.

²⁸⁷ *ibid* I.

²⁸⁸ *ibid* 10.

²⁸⁹ *ibid* 1–2.

²⁹⁰ *ibid* 53–55.

²⁹¹ *ibid* 51–53.

²⁹² *ibid* IV.

²⁹³ *ibid* 32.

In the 8 November 1985 Green Paper on the internal market and community legislation on foodstuffs,²⁹⁴ the Commission, more specifically, looked at new methods of EU harmonisation in the context of food legislation, stating *Cassis de Dijon* as one of its bases for this new direction.²⁹⁵ At first, the perspective of the Commission was that the principles developed in *Cassis de Dijon* pointed the EU towards a system of food legislation only regulating necessary aspects that are relevant for the general interest, such as public health, consumer information, and fair trade.²⁹⁶ Concerning consumer information, the Commission further stated that the desirable approach was the provision to consumers of “information on the nature and composition of foodstuffs”, rather than “detailed regulations on the composition and manufacturing characteristics of each foodstuff”.²⁹⁷ The Commission stated that,

[I]t is neither possible nor desirable to confine in a legislative straitjacket the culinary riches of ten (twelve) European countries; legislative rigidity concerning product composition prevents the development of new products and is therefore an obstacle to innovation and commercial flexibility; the tastes and preferences of consumers should not be a matter for regulation.²⁹⁸

These arguments about food legislation stand in significant contrast to the rationales, since offered, for GIs, some of which were encountered in Chapter 2, and which will be further explored in the rest of this thesis. Justifications for GIs include the protection of specific products for the preservation of cultural heritage and, as will be seen in Section 4 below, the idea that consumers have been placing higher importance on the quality of their foods. These stand in opposition to the above justification for this 1985 approach to foodstuff regulation.

²⁹⁴ European Commission, ‘Completion of the Internal Market: Community Legislation on Foodstuffs’ COM (85) 603 final.

²⁹⁵ *ibid* 5.

²⁹⁶ *ibid* 5–6.

²⁹⁷ *ibid* 8.

²⁹⁸ *ibid* 9.

It must however also be noted that, although the Commission claimed that it did not agree with the criticism that “the lack of Community compositional rules would automatically lead to a reduction in quality”,²⁹⁹ it stated that it would nevertheless enter into consultation with “departments responsible for food legislation” in order,

to determine whether and, if so, how the Community should encourage industry to adopt an active quality policy for foodstuffs. If this is found desirable, the need for a Community system for the mutual recognition of labels or other quality marks and for the relevant checks and certification will then have to be examined.³⁰⁰

The 1985 approach by the Commission led to a number of criticisms from various MS, such as France, Germany, and Italy, who argued that *Cassis de Dijon* would lead to a reduction in foodstuff quality.³⁰¹ Indeed, Onno Brouwer explains that, as a result of the Commission’s position, on 11 January 1988, the French government sent a Memorandum to the Commission in response to its Green Paper.³⁰² France asked the Commission to continue the harmonisation of laws on foodstuff and more specifically for the implementation of regulations to certify quality foods, to protect, across the member countries, names of regional specialities, as well as to “ensure Community-wide protection of registered designation of origin for foodstuffs”.³⁰³ This French initiative was followed by Memoranda from Germany, the Benelux countries and Italy; it was only opposed by the UK.³⁰⁴ Once again, France took the lead in pushing for a recognition and protection of GIs, which aligns with the country’s focus on protecting its agricultural industries. It must also be noted that it was in the interest of countries

²⁹⁹ *ibid* 12.

³⁰⁰ *ibid* 13.

³⁰¹ Onno Brouwer, ‘Community Protection of Geographical Indications and Specific Character as a Means of Enhancing Foodstuff Quality’ (1991) 28 *Common Market Law Review* 618.

³⁰² *ibid*.

³⁰³ *ibid*.

³⁰⁴ *ibid* 618–619.

who already had national GI regulations, such as France,³⁰⁵ to push for an EU level regulation whereby their product names would be protected not only within France but within the EU as a whole, as well as within territories of EU trading partners.

As a result of this, on 24 October 1989, the Commission published a ‘Communication on the free movement of foodstuffs within the Community’ contradicting the view offered four years earlier and stating that “[t]he Commission also believes that there is a need for quality-linked, across-the-board protection of geographical indications, also covering origin designations, for other food products”.³⁰⁶ A year later, a proposal for a regulation on foodstuffs was presented, since which various instruments have been introduced. This will be the focus for the remainder of the chapter.

3. The EU Regulations on GIs: A Brief Overview

In the EU today, different types of GIs are protected under different regulations all of which have their own historical development. There are five main EU regulations: (i) Regulation 1151/2012 for agricultural products and foodstuffs;³⁰⁷ (ii) Regulation 1308/2013 for wines;³⁰⁸ (iii) Regulation 251/2014 for aromatised wines,³⁰⁹ and (iv) Regulation 110/2008 and Regulation 2019/787 for spirit drinks.³¹⁰

For the purposes of this chapter, the detailed analysis of the regulatory development will focus on the agricultural products regulations (1992, 2006, and 2012 Regulations), as they are the most referred to and relevant when discussing the existence of GIs. As was discussed in the previous chapters, the international

³⁰⁵ See Chapter 2, Section 3.

³⁰⁶ Communication on the Free Movement of Foodstuffs within the Community [1989] OJ C271/3, Section 4(a).

³⁰⁷ Regulation 1151/2012.

³⁰⁸ Regulation 1308/2013.

³⁰⁹ Regulation 251/2014.

³¹⁰ Regulation 110/2008.

disputes over EU generated protection for GIs have principally emerged with regard to the different levels of protection accorded to foodstuffs. This is because the Agreement on Trade-Related Aspects of Intellectual Property Rights minimum standard for wines and spirits is stricter than that of agricultural products, in contrast with the stricter standard being used for *all* GIs under EU regulations. Although there are controversies around wines and spirits GIs—Champagne is at the centre of the United States fight for the genericity of certain GI products³¹¹—this thesis does not allow the space to do this development justice, and therefore prioritises foodstuff regulation as it is more relevant to the discussion at hand. This is not to say that the issues of alcohol GIs are irrelevant to assessing the value of the multifunctional narrative, and some examples of alcohol GIs will be used in this thesis. A summary of the development of these regulations has been included in the figure below (Figure 1).

³¹¹ See Chapter 6, Section 1.

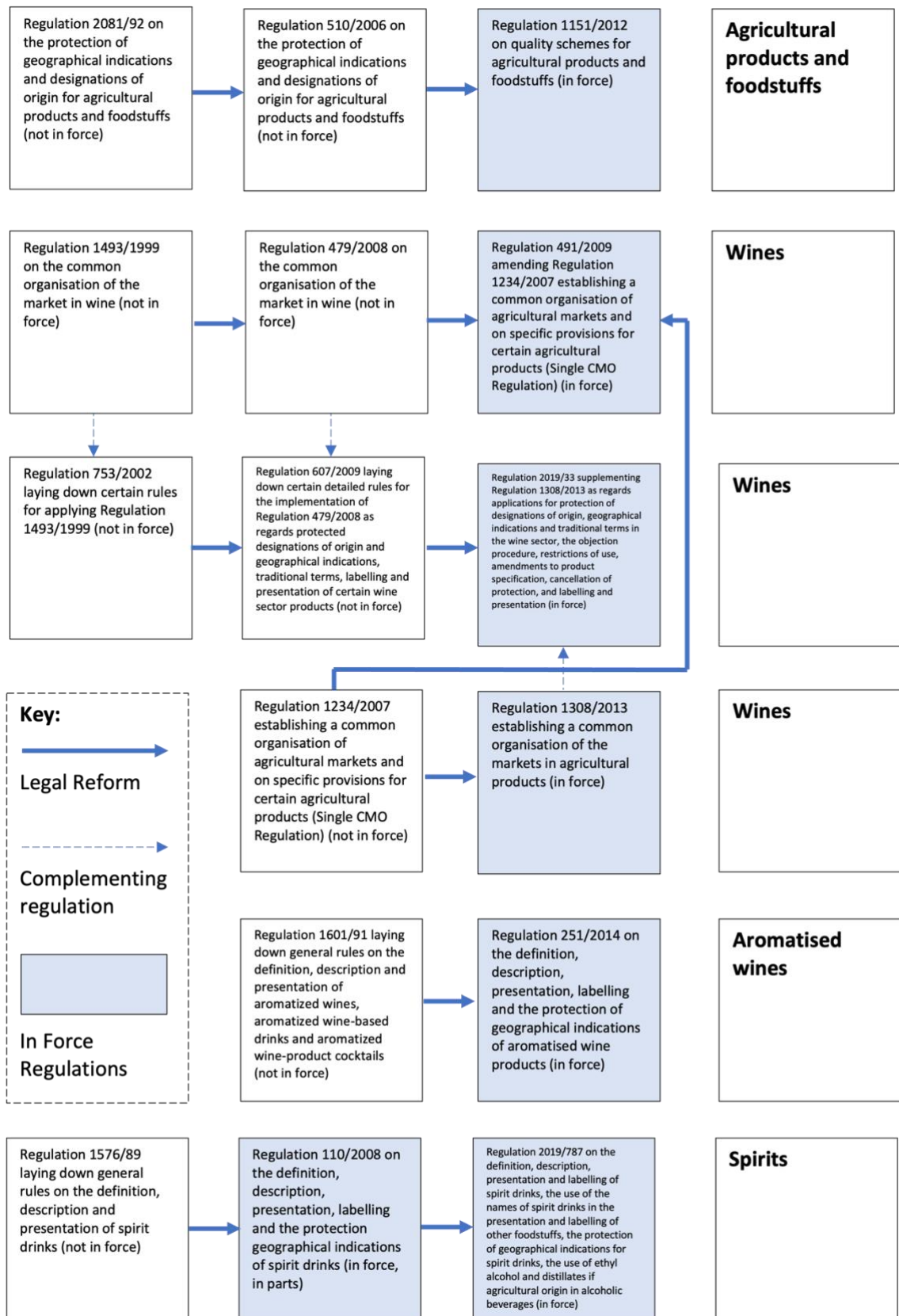


Figure 1: EU GI Regulations by Product Type

As seen in Chapter 2, EU GI regulations have numerous ancestors, such as legislation for French appellations of origin, for example.³¹² Although the EU regulations have taken inspiration from these various legal frameworks, created both at the national and international level, they find their legal grounding in the EEC Treaty itself.

As discussed in Chapter 1 and illustrated in Figure 1, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs has two contentious ancestors. First, the EU repealed Regulation 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs,³¹³ due to its discriminatory scope, as it favoured EU-based producers in comparison with producers from third countries. The EU thus drafted Regulation 510/2006, of the same name.³¹⁴ The 2006 Regulation was then replaced by the current 2012 Regulation, in order to implement a deeper reform of the GI system.³¹⁵

4. The 1992 Regulation

Regulation 2081/92 was the first in the EU to protect agricultural GIs. The economic relevance of this regulation is clear. The first recital of the Preamble of the 1991 Proposal for Regulation explicitly stated: “[w]hereas the production, manufacture and distribution of agricultural products and foodstuffs play an important role in the Community economy”,³¹⁶ a wording which was retained in the final 1992 Regulation.³¹⁷

³¹² See Chapter 2, Sections 1 and 2.

³¹³ Regulation 2081/92.

³¹⁴ Regulation 510/2006.

³¹⁵ These ideas will be explored further in the following sections.

³¹⁶ European Commission, ‘Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ SEC (90) 2415 final, recital 1.

³¹⁷ Regulation 2081/92 recital 1.

The regulation was linked closely to the CAP. The CAP—which, since the 1960s, was based on price and production support for farmers—was reformed in 1992 to reduce price support for main product groups, and to introduce instead compensation based on historical levels of support and production.³¹⁸ Until 1992, prices were guaranteed by first setting minimum prices for agricultural goods and second through the EU buying any surplus food to maintain this minimum price. There were also export subsidies in order to offset competition due to imports.³¹⁹ Although the shift to direct payments increased the income of some farmers, this was unequally distributed throughout the agricultural sector. The income supports were based on historical production, which thus benefited large farms more.³²⁰ Therefore, the emergence, the same year, of the EU regulation protecting agricultural GIs had an important relevance. The new protection—branded in its preamble as being “of considerable benefit to the rural economy, in particular to less-favoured or remote areas, by improving the incomes of farmers and by retaining the rural population in these areas”³²¹—was likely appealing to smaller farmers, contributing to the EU’s quest to convey socio-economic protectionism.³²² David M Higgins states that “the creation of [Protected Designation of Origin (PDO)] and [Protected Geographical Indication (PGI)] in 1992 was part of a comprehensive strategy designed to enhance the competitiveness of European agriculture, reduce dependence on subsidies, and prevent rural depopulation”.³²³

The CAP is evidently key to the context of GIs. The preparatory work for the 1992 Regulation indicated that its legal basis stemmed from two main sections of the EEC Treaty—Articles 43 and 113, in the Common Agricultural Policy title

³¹⁸ Lovec (n 74) 1 and 23.

³¹⁹ Elmar Rieger, ‘Agricultural Policy’ in Helen Wallace, William Wallace and Mark A Pollack (eds), *Policy-making in the European Union* (5th ed, Oxford University Press 2005) 171.

³²⁰ *ibid* 179.

³²¹ Regulation 2081/92 recital 2.

³²² See Chapter 6 for more on this.

³²³ Higgins (n 58) 16; See Chapter 1 Section 2 (b) for an explanation of the difference between PDO and PGI.

and Commercial Policy chapter respectively.³²⁴ Article 43 of the EEC Treaty—originating from the Rome Treaty and unchanged by the SEA and Maastricht Treaty—dealt with the implementation of the CAP at the EU level, and required that directives and regulations be enacted to consolidate the CAP. The final 1992 Regulation took on this role of consolidation, using Article 43 as a basis, and stated that “[w]hereas, as part of the adjustment of the common agricultural policy the diversification of agricultural production should be encouraged so as to achieve a better balance between supply and demand on the markets”.³²⁵ The language had economic relevance, as it concerned the balancing of ‘supply and demand on the markets’. The link between the CAP reform and the emergence of the 1992 Regulation is further strengthened by the Secretary-General’s Report of 1992, which discussed the introduction of GI protection as one of the decisions which helped supplement the 1992 CAP reform.³²⁶

The inclusion of the GI regulation legal basis within the CAP begins to explain the emergence of a multifunctional discourse around GIs—as is common with the CAP. The choice for this legal basis is reinforced by case law, as several years later, in the case *Ravil*, the Advocate General Alber confirmed the validity of the Article 43 EEC—which shortly after became Article 37 of the Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community (EC Treaty)³²⁷—legal basis and the relevance of GI regulation in relation to the CAP.³²⁸ He stated,

³²⁴ European Commission, ‘Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 316).

³²⁵ Regulation 2081/92 recital 2.

³²⁶ General Secretariat of the Council of the European Union, *40th Review of the Council’s Work: (The Secretary General’s Report): 1 January to 31 December 1992* (Office for Official Publications of the European Communities 1994) 22.

³²⁷ Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community [2002] OJ C325/01 (hereinafter referred to as EC Treaty) Article 37.

³²⁸ The same is repeated by the Advocate General Alber in an opinion delivered the same day for the *Conorzio* case: Case C-108/01 *Conorzio del Prosciutto di Parma and Salumificio S Rita SpA v Asda Stores Ltd and Hygrade Foods Ltd* (Conorzio) [2003] ECR I-5121 Opinion of AG Alber, para 97.

[I]t is, however, necessary at this point to discuss the general tendency of legislation to bring out the quality of products within the framework of the common agricultural policy, in order to promote their reputation. The means used for this purpose include designations of origin. That tendency is borne out by the second to sixth recitals in the preamble to Regulation No 2081/92. The legal basis for that regulation is, logically, Article 37 EC, which is in the agriculture chapter of the treaty. The legislature is thereby concerned not only with protecting the quality of agricultural products but, as is shown by the second recital in the preamble to the regulation, above all also with matters of structural policy. The promotion of rural areas is sought by improving farmers' income and retaining the rural population in those areas.³²⁹

The second relevant EEC Treaty provision, Article 113, appeared under the Economic Policy title of the treaty, in the Commercial Policy chapter, and related to the trade principles that the common commercial policy should be based upon. Despite the EU not always explicitly listing the commercial aspect of GIs as one of the purposes for the system's existence, this reference in the proposal demonstrates the close connection between GIs and EU economic interests. However, while the proposal preamble for the Council Regulation published in 1991 stated "having regard to the Treaty establishing the European Economic Community, and in particular Article 43 and 113 thereof",³³⁰ the adopted 1992 version of the Regulation made no mention of Article 113.

There do not seem to be accessible records explaining the omission of Article 113 EEC in the final legal basis for 1992 Regulation. Article 113 of the Rome Treaty was not changed by the SEA, but small changes were made to the Article through

³²⁹ Case C-469/00 *Ravil SARL v Bellon import SARL and Biraghi SpA* (Ravil) [2003] ECR I-5053 Opinion of AG Alber, para 92.

³³⁰ European Commission, 'Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs' (n 316).

the Maastricht Treaty—signed in 1992 before the passing of the 1992 Regulation—such as the inclusion of a reference to Article 228 on the procedure for agreements between the Community and third parties. This, nevertheless, does not justify the removal of Article 113 as a legal basis. As Article 43 EEC already requires a unanimous vote from the Council, the removal of Article 113 EEC—which requires a qualified majority vote—would not change the procedure, and thus not generate an instrumental issue. Looking at the content of Article 113, however, it is possible that this commercial policy article—relating to the uniformity of trade and trade measures—simply did not align with the concept of GIs, which can be conceptualised as an exception to free trade measures.

The proposed Regulation on GIs, once adopted by the Commission, was transmitted to the Council of the European Union in December 1990 and to the Parliament in February 1991. On 3 July 1991, the European Economic and Social Committee (EESC) submitted an opinion. In the Committee’s Opinion on the proposed regulation, the rationale for GIs was illustrated as twofold: (1) “to satisfy the requirements of increasingly discerning consumers”, and (2) “to raise producers’ incomes by bringing more added value to the sector”.³³¹ As will be seen, this idea of the GI system existing for the benefit of producers and consumers is a recurrent strand of EU discourse, and further exemplifies the emergence of multiple justifications for GI protection.

The EESC also voted on the proposal, but was short of a majority, on the inclusion of the clarification that protected foodstuffs should refer to agricultural products or products which have undergone only a ‘first transformation’.³³² It was argued that only those first transformation products could be deemed to be influenced by their geographical environment and that the protection should not apply “[f]or processed foods such as 'Quiche Lorraine', 'Alpine Milk Chocolate', 'Scotch Eggs', etc. and that they should therefore be excluded from the proposal to

³³¹ They do not provide a definition for ‘first transformation’. Opinion on the proposal for a Council Regulation (EEC) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1991] OJ C269/62, 1.1.1.

³³² *ibid* Appendix.

prevent abuse.”³³³ If the basis of the GI system is the link between product quality and locality, then a highly transformed product is unlikely to display a strong quality link with place through soil or climate for example. Although these three particular examples given in the Opinion of the EESC do not currently hold protection, other processed products such as Cornish pasties do—even if the protection afforded to Cornish pasties is the less strict PGI label rather than PDO protection. Nevertheless, despite the important difference in the link to locality between PGI and PDO, these two types of GIs were—and still are, as will be seen later—treated together in the EU discourse, as well as being dealt with under the same Regulation.

The Committee on Budgets, Committee on the Environment, Public Health and Food Safety, and Committee on Agriculture and Rural Development also submitted opinions on single readings between September and October 1991. On 19 November 1991, the European Parliament approved the proposed Regulation with amendments,³³⁴ several of which were rejected by the European Commission—such as the inclusion of the word ‘traditional’ within the definition of GIs, stating that GI product “quality or characteristics are essentially or exclusively due to particular geographical environment with its inherent *traditional*, and human components” [*emphasis added*].³³⁵ Nevertheless, the word ‘traditional’ was ultimately added in various sections of the final 1992 Regulation. After the European Parliament’s amendments and the European Commission’s partial agreement, the amended proposal was transmitted to the Council of the European Union and the European Parliament, to be finally adopted on 14 July 1992 by the Council of the European Union.

As previously mentioned, Article 113 was removed as a stated legal basis for the 1992 Regulation which came into force. A number of other sections of the proposed regulation preamble did not appear either. Amongst them, a recital allowing MS who share a GI name to both use it, and two recitals relating to the

³³³ *ibid.*

³³⁴ The European Parliamentary debates on the matter are not accessible.

³³⁵ Minutes of Proceedings of the Sitting of Monday 18 November 1991 [1991] OJ C326/01 35.

EU financial contribution in order to help promote GIs, were also omitted.³³⁶ The language regarding the former omitted recital refers to “any Member State sharing a geographical name with another Member State”,³³⁷ thus assuming MS’ ownership of the GI, rather than ownership by the regional producers’ organisations. This was not in line with the rest of the EU GI discourse in this preamble which was, as previously mentioned, focused on the EU ‘Community economy’ more generally, with special reference to ‘less-favoured or remote areas’. It was also particularly out of alignment with the definitions of PDO and PGI, which stated in Article 3 of the proposal and still stated in Article 2 of the final regulation that GIs mean “the name of a region, a specific place *or, in exceptional cases, a country*” [*emphasis added*].³³⁸

Keeping the recital allowing numerous MS to use a GI could have opened litigation regarding the fact that such rules should not be limited to MS sharing GI names, but also to a third country and an EU Member State sharing a GI name, under the World Trade Organization national treatment rule, which will be further discussed below. This would have meant that non-EU countries could compete with an EU country on the same products, thus defeating one of the suggested purposes of the rise of GIs, as explored in the previous chapter: the protection of commerce and trade. Although this remains conjecture, one can see how the removal of such a rule was necessary for the EU to maintain the exclusivity of GIs.

The significant references to the economic aspect of GIs remained in the preamble of the adopted 1992 Regulation. In her paper on the EU-US dispute around GIs, Stacy D Goldberg notes that “[w]ithin the boundaries of the European Union, regulations like Regulation 2081/92 are economic in nature primarily because

³³⁶ European Commission, ‘Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 316).

³³⁷ *ibid*, recital 14.

³³⁸ *ibid* Article 3(1) and (2); Regulation 2081/92 Article 2(2)(a) and (b).

agricultural products and foodstuffs play an important role in the Community economy and in the CAP”.³³⁹

The preamble of the 1992 Regulation also mentioned the idea of quality—which was a prevalent idea in the emergence of the GI system. Recital 3 stated that “it has been observed in recent years that consumers are tending to attach greater importance to the quality of foodstuffs rather than to quantity”.³⁴⁰ Having seen in Chapter 2 that the idea of signposting an arguably mythical quality for consumers existed since the Middle Ages, the claim that consumers have more recently developed an interest in quality is flawed and particularly unconvincing due to the absence of evidence offered to substantiate this. This recital already existed in the 1991 Proposal for Regulation,³⁴¹ and the idea of increased interest in quality was highlighted by the EESC.³⁴² This recital also contradicts the 1985 Commission idea that consumer taste and preferences are not relevant for regulation, as seen in Section 2. This demonstrates that the myth of quality, discussed in Chapter 2, was adopted through the development of EU regulations, without any evidenced-based justification being provided.

No reference was made to an environmental advantage of GI production—despite being mentioned in the context of the CAP, as was seen in the July 1985 Green Paper—nor were there direct references to the idea of preserving tradition or cultural heritage. These two concepts first appeared in the preamble of the TEU signed in Maastricht the same year, under the wording “respecting [people’s] history, their culture and their tradition” and “reinforced [...] environmental protection”.³⁴³ Nevertheless, the lack of prominence of these two ideas in the 1992

³³⁹ Goldberg (n 229) 144.

³⁴⁰ Regulation 2081/92 recital 3.

³⁴¹ European Commission, ‘Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 316), recital 3.

³⁴² Opinion on the proposal for a Council Regulation (EEC) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1991] OJ C269/62, 1.1.1. and 1.1.2.

³⁴³ TEU recitals 4 and 7.

Regulation implies that these policies had not yet been fully established in every branch of the EU discourse. As will be seen below in the development of the 2012 Regulation, this later changed. In the meantime, the word ‘traditional’ in the 1992 Regulation was only used in the body of the Regulation, and simply as an adjective: “traditional geographical or non-geographical names”,³⁴⁴ “traditional character”,³⁴⁵ “equivalent traditional national indications”,³⁴⁶ “having regard to traditional fair practice”,³⁴⁷ and “local and traditional usage”.³⁴⁸ The term was not used to make any claims on the role of GIs in protecting tradition or traditional agriculture within the EU. These two strands of the multifunctional discourse on tradition preservation and environmental protection are rationales that are nowadays used to justify the protection of GIs,³⁴⁹ and yet, their absence in this early regulation demonstrates that they were not considered when the foundations of the system were established.

The 1992 Regulation provoked much opposition internationally. In particular, the US felt that Regulation 2081/92 went against General Agreement on Tariffs and Trade (GATT) 1994, Article III:4 on national treatment, which says that,

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.³⁵⁰

On 1 June 1999—through Article 4 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and based on Article 64 of TRIPS incorporating GATT—the US requested a consultation with the EU to

³⁴⁴ Regulation 2081/92 Article 2(3).

³⁴⁵ *ibid* Article 2(6).

³⁴⁶ *ibid* Articles 4(2)(h) and 8.

³⁴⁷ *ibid* Article 7(5)(b).

³⁴⁸ *ibid* Article 12(2).

³⁴⁹ See Chapter 4, Section 3 and Chapter 5, Section 4.

³⁵⁰ General Agreement on Tariffs and Trade 1994 (hereinafter referred to as GATT 1994).

challenge the 1992 Council Regulation.³⁵¹ This consultation occurred on 9 June of the same year, but did not resolve the dispute, so on 4 April 2003, the US asked for another consultation, which also failed on 27 May 2003.³⁵² The US, joined by Australia, therefore asked the WTO Dispute Settlement Body (DSB) to establish a panel, which the Director-General duly did.³⁵³

Throughout the WTO dispute, the US claimed that the 1992 Regulation was in breach of this clause because it did not accord the same level of protection to products from outside the EU as those within.³⁵⁴ The US claimed that further conditions were required of countries outside the EU for GI protection.³⁵⁵ More specifically, according to the US's written submission, the 1992 Regulation imposed on third countries—unlike EU MS—conditions of 'reciprocity' and 'equivalence' in order to benefit from the registration, which is prohibited under the national treatment rule in GATT.³⁵⁶ Overall, the US insisted that the EU was using the regulation as a way to obtain an economic advantage in the agricultural market.³⁵⁷

The manner in which Regulation 2081/92 was drafted tended to support the assertion that its priority was to benefit EU countries. The wording of the regulation focused primarily on 'Member States' and made little reference to other countries. The only exceptions were the brief acknowledgement in the preamble that the "provision should be made for trade with third countries offering equivalent guarantees for the issue and inspection of geographical indications or designations of origin granted on their territory" and, in Article 12(1), which stated that,

³⁵¹ World Trade Organization, 'European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs: Complaint by the United States - Report of the Panel' (WTO 2005) WT/DS174/R 1.

³⁵² *ibid.*

³⁵³ *ibid.*

³⁵⁴ *ibid.* 61.

³⁵⁵ *ibid.*

³⁵⁶ *ibid.* A-29.

³⁵⁷ *ibid.* 62.

Without prejudice to international agreements, this Regulation may apply to an agricultural product or foodstuff from a third country provided that: — the third country is able to give guarantees identical or equivalent to those referred to in Article 4, — the third country concerned has inspection arrangements equivalent to those laid down in Article 10, — the third country concerned is prepared to provide protection equivalent to that available in the Community to corresponding agricultural products for foodstuffs coming from the Community.³⁵⁸

It must, however, be noted here that Regulation 2081/1992 was subjected to a few minute amendments, including one in 1997,³⁵⁹ but more importantly another in 2003,³⁶⁰ during the period of this WTO dispute. One of the reasons for the introduction of the 2003 Amending Regulation was to include vinegars and exclude mineral waters from GI protection.³⁶¹ Additionally, it added an indent in Article 12(1) of the 1992 Regulation stating that “the third country concerned has inspection arrangements and a right to objection equivalent to those laid down in this Regulation”,³⁶² and stated that, if a third country requests it, the Commission would examine whether it “satisfied the equivalence conditions and offers guarantees within the meaning of paragraph 1 as a result of its national legislation”.³⁶³ It also incorporated a detailed procedure for third countries to fulfil the equivalence condition.³⁶⁴ Although this regulation clarified the procedure for

³⁵⁸ Regulation 2081/92 Article 12(1).

³⁵⁹ Council Regulation (EC) 535/97 of 17 March 1997 amending Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1997] OJ L83/3, which related to the transitional period from national systems of GI protection to the EU GI system.

³⁶⁰ Council Regulation (EC) 692/2003 of 8 April 2003 amending Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2003] OJ L99/1.

³⁶¹ *ibid* recitals 1 and 2.

³⁶² *ibid* Article 1(9).

³⁶³ *ibid* Article 1(10).

³⁶⁴ *ibid* Article 1(11).

determining whether third countries would be granted registration, it did not resolve the dispute as the condition of equivalence for third countries remained.

In response to the US submission, the EU argued that the 1992 Regulation did not breach the principle of national treatment.³⁶⁵ It did so by disputing the meaning of the word ‘national’ in this context, stating that the conditions for GI registrations were not based on nationality *per se*, but simply upon the place the person was established.³⁶⁶ The EU also responded to the US claim that the 1992 Regulation was less favourable to third countries due to Article 12(1), by stating that it was not, as it had included the wording ‘without prejudice to international agreements’.³⁶⁷ Nevertheless, in interpreting Article 12(1), the DSB Panel, in its considerations, stated that products from WTO countries—as opposed to those from EU countries—had the additional challenge of requiring the approval of the European Commission on whether they met the equivalence and reciprocity conditions laid out in that Article.³⁶⁸

The US also argued that the 1992 Regulation gave priority to GIs over trademarks; if the trademark was valid and registered prior to the GI application, both the trademark and the GI stood, but if the GI was registered and the trademark application was filed afterwards, the latter would be rejected.³⁶⁹ This was in direct contradiction with the US system, which protected GIs as a certification mark under the trademark umbrella, and abided by the principle of ‘first in time, first in right’.³⁷⁰ The EU stated that it did not share the US notion of priority of trademark,³⁷¹ and that, in any case, this notion did not have a basis in

³⁶⁵ World Trade Organization, ‘European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs: Complaint by the United States - Report of the Panel’ (n 351) B-176.

³⁶⁶ *ibid.*

³⁶⁷ *ibid* B-178.

³⁶⁸ *ibid* 64.

³⁶⁹ Regulation 2081/92 Article 14.

³⁷⁰ Higgins (n 58) 206.

³⁷¹ The EU has continued to disagree with the US approach of protecting GIs under the trademark system as it stated in 2012 that, “when GIs are registered as Trade mark they do not benefit from

TRIPS.³⁷² It added that it did not see GIs as trademark-like, and thus disagreed with this US approach.³⁷³

In its final report, the DSB Panel concluded that the US made the case that the equivalence and reciprocity conditions of Article 12(1) of the 1992 Regulation apply to third countries, which the EU failed to rebut.³⁷⁴ It further concluded that the 1992 Regulation was on this ground, therefore inconsistent with Article 3.1 of TRIPS and Article III:4 of GATT relating to national treatment.³⁷⁵ The panel thus recommended that the 1992 Regulation be brought in line with TRIPS and GATT 1994.³⁷⁶ As will be seen, this led to the EU introducing a new GI regulation in 2006.

5. The 2006 Regulation

Regulation 510/2006 was proposed on the same basis as the original 1992 instrument; namely, Article 43 of the EEC Treaty—which by then had become Article 37 of the EC Treaty.

A new Proposal for a Council Regulation on the protection of geographical indications and designation of origin for agricultural products and foodstuffs was first adopted by the Commission on 23 December 2005—only nine months after the Report of the Panel regarding the WTO dispute—and transmitted to the

an appropriate enforcement and necessitate a costly monitoring activity by the trade mark owner which cannot be supported by small GIs producer groups”; Directorate-General for Agriculture and Rural Development, ‘Advisory Group International Aspect of Agriculture: Meeting of 25 June 2012 - DG AGRI Working Documents on International Protection of EU Geographical Indications: Objectives, Outcome and Challenges’ (n 43) 8.

³⁷² World Trade Organization, ‘European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs: Complaint by the United States - Report of the Panel’ (n 351) B-321.

³⁷³ *ibid.*

³⁷⁴ *ibid* 165.

³⁷⁵ *ibid* 165–166.

³⁷⁶ *ibid* 168.

European Parliament and Council of the European Union that same day. In January 2006, the proposal underwent four corrigenda. The proposal's explanatory memorandum stated that its main purpose was to comply with the WTO dispute reports, which concluded that Regulation 2081/92 was incompatible with Article 3.1 of TRIPS and Article III:4 of GATT.³⁷⁷ With this new regulation, the EU thus aimed to comply with the WTO ruling.³⁷⁸ The memorandum also stated that a second significant change was the clearer definition of the MS and Commission's responsibilities in the context of GIs.³⁷⁹

On 15 March 2006, the Proposal was debated at the European Parliament.³⁸⁰ Various matters emerged from this discussion. Firstly, some Members of the European Parliament (MEPs) accepted a change in regulation, more inclusive in its protection of third countries, not by choice, but rather under pressure from the WTO due to the EU dispute with US and Australia. Neelie Kroes, Member of the European Commission when introducing the Proposal to the MEPs, stated that,

The conclusions of the recent WTO panels on cases brought by the US and Australia *impose on us the obligation* to open the Community scheme to direct applications and objections from individuals in third countries. [...] in order to avoid any risk of a new complaint at WTO level, the procedure

³⁷⁷ European Commission, 'Proposal for a Council Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs' COM (2005) 698 final/2 2–3.

³⁷⁸ See European Commission, 'Commission Proposes Improved Rules on Agricultural Quality Products' (2006) EC Press Release IP/06/2 <http://europa.eu/rapid/press-release_IP-06-2_en.htm?locale=en> accessed 20 May 2019; European Commission, 'European Commission Bulletin' (2005) Bulletin EU 12-2005 1.3.113; Council of the European Union, '2720th Council Meeting Agriculture and Fisheries' (2006) Press Release C/06/70 8 <http://europa.eu/rapid/press-release_PRES-06-70_en.htm?locale=en> accessed 21 May 2019.

³⁷⁹ European Commission, 'Proposal for a Council Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs' (n 377) 3.

³⁸⁰ European Parliament, 'Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs' (2006) CRE 15/03/2006-14.

for third-country and EU denominations should be as similar as possible.³⁸¹ [*emphasis added*]

This demonstrated some reluctance from the European Commission to bring forth a new regulation opening up the system and protecting non-EU actors and products on the same ground as EU ones. Concerns were also raised that EU goods would potentially lose some distinctions, in particular with the use of the GI logos which included parts of the EU flag, therefore confusing consumers over whether non-EU registered GIs were from the EU.³⁸² Nevertheless, Dutch MEP Jan Mulder provided a contrasting view, by arguing that if the EU was asking third countries to recognise its GIs, then it was fair that EU recognised their products.³⁸³

Secondly, the economic function of GIs remained evident in the context of this 2006 Parliamentary debate. Kroes highlighted that the 700 registered GIs and 300 applications in progress demonstrated the “success of this system”.³⁸⁴ But the emphasis on quantitative success was simplistic: while it demonstrated that the system was being used by producer organisations, it did not demonstrate that the system was effectively protecting producers and consumers. The Special Rapporteur Friedrich-Wilhelm Graefe zu Baringdorf’s statement that GIs are “no trifling matter, it is a billion-euro business”,³⁸⁵ clearly suggested that the economic value of GIs mattered. Graefe zu Baringdorf was not wrong: a few years later in 2010 the worldwide sales value of GIs in the EU was 54.3 billion euros, a growth of 12% since 2005.³⁸⁶ In 2017, the value had grown to 74.8 billion

³⁸¹ *ibid* Neelie Kroes.

³⁸² *ibid* Giuseppe Castiglione, María Esther Herranz García.

³⁸³ *ibid* Jan Mulder.

³⁸⁴ *ibid* Neelie Kroes.

³⁸⁵ *ibid* Friedrich-Wilhelm Graefe zu Baringdorf.

³⁸⁶ Tanguy Chever and others, ‘Value of Production of Agricultural Products and Foodstuffs, Wines, Aromatised Wines and Spirits Protected by a Geographical Indication (GI): Final Report’ (ANT-International and European Commission 2012) TENDER N° AGRI-2011-EVAL-04 4.

euros.³⁸⁷ Graefe zu Baringdorf's statement is particularly ironic, in light of his closing observation that,

For some obscure reason, the Council has introduced a provision that any natural or legal person having a legitimate interest can have a registration of a designation of origin or of a special quality indication cancelled. Indeed, since we are talking about added value here, the desire to transform this into trademarks will naturally arise. *To show that we are not carrying out a commercial activity here*, we have tabled a joint amendment.³⁸⁸ [*emphasis added*]

Here, the Special Rapporteur referred to the Parliament's amendment, suggesting adding a paragraph in Article 12(2) stating that “[t]he interested parties within the Member State concerned shall be consulted in respect of any application for cancellation”.³⁸⁹ In its justification for the amendment, the Parliament suggested that GI cancellations should not be taken lightly, as it argued that considering the potential value of PDOs and PGIs, the interested parties should be able to share their points of view. These statements by the Special Rapporteur represent a conviction that GI protection is a significant economic matter, but also that GIs are not solely about commercial and trade advantages.

As various MEPs discussed how GIs should be protected, Polish MEP Witold Tomczak proposed a contrasting perspective in the debate:

³⁸⁷ AND-International, *Study on Economic Value of EU Quality Schemes, Geographical Indications (GIs) and Traditional Specialities Guaranteed (TSGs): Final Report* (European Commission 2019) 2.

³⁸⁸ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) Friedrich-Wilhelm Graefe zu Baringdorf.

³⁸⁹ European Parliament legislative resolution on the proposal for a Council regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (COM(2005)0698 – C6-0027/2006 – 2005/0275(CNS)) [2006] OJ C291/E/393 Amendment 33.

Would it not be better to give up the idea of regulating local delicacies? If we turn delicacies into mass products, they will no longer be delicacies. Let them remain a natural attraction of particular places or regions, but without the support of the European Union.³⁹⁰

Although it may at first seem surprising that a Polish representative took this position—considering that Poland, as a nation, relies economically more heavily on agriculture in comparison to other EU countries such as France or Italy³⁹¹—one must look into the past to understand this perspective. As a relatively new member of the EU in 2006—having joined the EU in 2004—Poland would have not been benefitting from the protection of many GI names, in comparison to other older countries like France and Italy. The position would likely be different today, as Poland benefits from 35 registered agricultural GIs.³⁹² It is also worth mentioning that Tomczak was a member of the Eurosceptic Independence/Democracy political party. Tomczak’s perspective was mostly ignored and given little if any support by other MEPs. Despite disagreement on how to go about protecting GIs, it was nonetheless clear that protecting them was still a priority for most MEPs.

Finally, the idea of the quality of GIs was omnipresent in the discussion, showing further development of a multifunctional discourse around GIs. This is despite—as will be evidenced later—this idea becoming more prominent only in the text of the subsequent 2012 Regulation. The European Parliament did not actually have much of a say in this 2006 Regulation, which explains that its interest in quality did not translate in the final draft of the regulation. This is despite its co-legislating power introduced in the Maastricht Treaty in 1993 and extended

³⁹⁰ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) Witold Tomczak.

³⁹¹ World Bank, ‘Agriculture, Forestry, and Fishing, Value Added (% of GDP) - European Union, Poland, France, Italy’ (*The World Bank Data*, 2020) <<https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?end=2018&locations=EU-PL-FR-IT&start=1984>> accessed 20 May 2020.

³⁹² European Commission, ‘EAmbrosia – the EU Geographical Indications Register’ (n 11).

further in the Treaties of Amsterdam and Nice, in 1999 and 2003 respectively, which meant that the Parliament—and Council—should have a say in legislative procedures.³⁹³ Graefe zu Baringdorf protested about the fact that this debate in the European Parliament was happening even though everything had already been decided, and he added,

We considered referring this matter back to committee out of pure annoyance, because, once again, we have been overlooked and our expert work is being ignored. However, we believe that this would project an outward lack of unity on our part in the WTO proceedings, and enable others to say: aha, they are not even agreed among themselves.³⁹⁴

Applause for Graefe zu Baringdorf’s speech was recorded in the debate transcript, demonstrating the MEPs’ discontent with being overlooked in the shaping of this regulation, but also highlighting the importance of image and perceived strength in such situations of conflict with other competing economies. The discontent remains unsurprising, considering the general power struggle between the Commission and European Parliament over the treaty developments, and the Parliament’s political control over the appointment and dismissal of Commission members.³⁹⁵

The word ‘quality’ was nonetheless used and discussed repeatedly throughout the debate, demonstrating the increasing emphasis of this idea. Graefe zu Baringdorf, again, argued that although 1992 was the start of the legislative process for GIs, “that was not the start of high-quality production in the areas that were protected

³⁹³ European Union, ‘The European Parliament: Historical Background’ (*Europarl*, February 2020) <<https://www.europarl.europa.eu/factsheets/en/sheet/11/the-european-parliament-historical-background>> accessed 21 May 2020; Steve Peers, ‘The EU’s Political Institutions’ in Catherine Barnard and Steve Peers (eds), *European Union Law* (2nd edn, Oxford University Press 2017) 52.

³⁹⁴ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) Friedrich-Wilhelm Graefe zu Baringdorf.

³⁹⁵ Peers (n 393) 52.

at that time”.³⁹⁶ Any doubt of whether the use of the term ‘quality’ was being discussed to mean products with certain characteristics or products of a certain value,³⁹⁷ is erased here. Graefe zu Baringdorf further clarified this, as he stated that GIs are one of the “only two areas within agriculture that are designated ‘quality’”, with organic farming being the other,³⁹⁸ although he later drew back in part on this statement, when Mulder disagreed with him.³⁹⁹ He also explained how GIs helped protect this ‘quality’, because the link with a region ensured that producers did not try to make the same products with cheaper imported raw materials, thus undermining the quality of the product.⁴⁰⁰

Spanish MEP María Isabel Salinas García added to this discussion of ‘quality’, stating: “I believe that quality is European agriculture’s greatest asset”, and that this was how European products distinguished themselves in the global market.⁴⁰¹ French MEP Robert Navarro also argued that defence of labels was the only way European products could compete in the global market,⁴⁰² therefore identifying quality as a strategic tool.

In terms of this discussion on quality, the related idea of ‘health’ was also introduced by MEPs, adding to the developing multifunctional institutional narrative connected to GIs. Polish MEP Janusz Wojciechowski stated,

Most of all, however, it is good news for consumers as these products are made according to traditional recipes and using methods that go back

³⁹⁶ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) Friedrich-Wilhelm Graefe zu Baringdorf.

³⁹⁷ See Chapter 2, Section 3 for the discussion on the double meaning of ‘quality’.

³⁹⁸ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) Friedrich-Wilhelm Graefe zu Baringdorf.

³⁹⁹ *ibid* Jan Mulder.

⁴⁰⁰ *ibid* Friedrich-Wilhelm Graefe zu Baringdorf.

⁴⁰¹ *ibid* María Isabel Salinas García.

⁴⁰² *ibid* Robert Navarro.

generations and are healthier and better than mass-produced goods. [...] We should be clear on this matter. We want to consume products that are healthy, varied and produced using traditional, regional methods, and we do not want to be forced to consume food products made using methods that cheat nature.⁴⁰³

Jan Tadeusz Masiel, non-inscrit Polish MEP at the time, added that “designations of origin and traditional specialities will favour farmers who produce healthy and tasty produce”,⁴⁰⁴ contrasting with Tomczak’s perspective on GIs. As will be demonstrated in Chapter 4, this discourse on health is one that is now regularly associated with the GI system of protection, but again one whose source remains unclear. Giusto Catania, Italian MEP at the time, stated that “Europe must be in a position to guarantee and protect the quality of its agricultural and food production” and that “[w]e need to protect products in order to have a real impact on improving food safety and prevent the homogenisation of flavour”,⁴⁰⁵ adding a further dimension to the meaning of the word ‘quality’.

These different perspectives and references to ‘quality’ in the debate indicate that many MEPs agreed that quality was an important aspect of GIs that should be protected, and yet they were not quite in agreement as to what quality meant. This is reflected in the fact that no definition of ‘quality’ in the context of GIs was provided in the regulation itself.

On 16 March 2006, the European Parliament submitted its opinion on a single reading. Amendments from the Parliament included the publication of GI-protected names on an online register, and the use of different coloured logos for the two types of designations (PGI and PDO).⁴⁰⁶ It also proposed amending

⁴⁰³ *ibid* Janusz Wojciechowski.

⁴⁰⁴ *ibid* Jan Tadeusz Masiel.

⁴⁰⁵ *ibid* Giusto Catania.

⁴⁰⁶ European Parliament legislative resolution on the proposal for a Council regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (COM(2005)0698 – C6-0027/2006 – 2005/0275(CNS)) [2006] OJ C291/E/393; European Commission, ‘European Commission Bulletin’ (2006) Bulletin EU 3-2006 1.17.4.

Recital 3, which was changed from “*Some consumers tend to attach greater importance to the quality of foodstuffs in their diet rather than to quantity*” to “*A constantly increasing number of consumers attach greater importance to the quality of foodstuffs in their diet rather than to quantity*”.⁴⁰⁷ This change of wording is significant because it implied that research was available evidencing an increase in consumers’ interest in quality. However, no such research was referenced. Although there have inevitably been studies prior to 2006 considering consumers’ interest in quality,⁴⁰⁸ it remains unclear whether this amendment was based on the analysis of such evidence, or whether the language was exaggerated to heighten the importance of quality. In addition, some of the evidence available can result from the GI myth of quality itself. For example, Efthalia Dimara and Dimitris Skuras observed an increase in the demand for quality food and stated that “[c]onsumption of quality, regionally denominated food and drink satisfies a current “nostalgia” for “real”, “healthy”, “authentic” and “wholesome” way of life and an expression of cultural identity”.⁴⁰⁹ Firstly, the authors themselves outline that they surveyed “consumers of *quality* wine” [*emphasis added*].⁴¹⁰ Secondly, an increasing number of consumers are likely to look for quality if prominent EU discourses tell them that it is what is important. Despite this ‘constant increase’ in consumers’ interest in quality to which the European Parliament referred, still no steps were taken to define the meaning of ‘quality’, a word used in most GI regulations from very early on in the legislative development in the area as was seen.⁴¹¹

⁴⁰⁷ European Parliament legislative resolution on the proposal for a Council regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (COM(2005)0698 – C6-0027/2006 – 2005/0275(CNS)) [2006] OJ C291/E/393 Amendment 1.

⁴⁰⁸ A Gracia and LM Albisu, ‘Food Consumption in the European Union: Main Determinants and Country Differences’ (2001) 17 *Agribusiness* 469; Efthalia Dimara and Dimitris Skuras, ‘Consumer Demand for Informative Labeling of Quality Food and Drink Products: A European Union Case Study’ (2005) 22 *Journal of Consumer Marketing* 90.

⁴⁰⁹ Dimara and Skuras (n 408) 97.

⁴¹⁰ *ibid* 90.

⁴¹¹ See Chapter 2.

The increasingly repeated use of the word ‘quality’ by the EU is further evidence of the emergence of multinational characteristics to its discourse. The lack of a definition for the term allows further multifunctionality, as ‘a quality product’ can therefore have many different meanings at once and can be used as a flexible justification for GIs. From the analysis so far, the closest attempt to defining ‘quality’ was made only a year prior, in 2005, when Advocate General Ruiz-Jarabo Colomber delivered an opinion on the *Feta II* case. *Feta I* and *Feta II* represent two major ECJ judgements in the GI field.⁴¹² In these cases, it was argued by several MS that Feta is generic, as it is a term which has been used by various Balkan countries.⁴¹³ In *Feta II*, Advocate General Ruiz-Jarabo Colomber stated that the qualitative link requirement “is designed to ensure that the product possesses a certain quality or attributes which distinguish it from other products of the same type and are due to the particular conditions of the area of origin, such as the climate or the vegetation”.⁴¹⁴ Even then, this definition mostly repeats the definition of GIs and does not address the true question of what constitutes ‘quality’.

In the end, only four of the thirty-nine European Parliament amendments were agreed by the Commission. Most of the amendments aimed at adding further details and specifications on procedure and definitions,⁴¹⁵ but the majority of these were rejected, suggesting the Council wanted to retain a certain vagueness to the regulation. On 20 March 2006, the Council adopted the 2006 Regulation by a qualified majority, with only the Netherlands voting against it.⁴¹⁶

⁴¹² Joined Cases C-289/96, C-293/96 and C-299/96 *Kingdom of Denmark, Federal Republic of Germany and French Republic v Commission of the European Communities* (*Feta I*) [1999] ECR I-1541; Joined Cases C-465/02 and C-466/02 *Federal Republic of Germany and Kingdom of Denmark v Commission of the European Communities* (*Feta II*) [2005] ECR I-9115.

⁴¹³ *Feta I* (n 412) 1580; *Feta II* (n 412) 9197–9199.

⁴¹⁴ *Feta II* (n 412) Opinion of AG Ruiz-Jarabo Colomber, para 36.

⁴¹⁵ European Parliament legislative resolution on the proposal for a Council regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (COM(2005)0698 – C6-0027/2006 – 2005/0275(CNS)) [2006] OJ C291/E/393.

⁴¹⁶ Council of the European Union, ‘2720th Council Meeting Agriculture and Fisheries’ (n 378) 8; Council of the European Union, ‘Addendum to Draft Minutes on 2720th Meeting of the Council of the European Union (Agriculture and Fisheries)’ (2006) 7702/06 ADD 1 3.

The Council stated in its press release, referring to the 2006 GI Regulation (as well as another regulation on traditional specialities guaranteed) that:

These two proposals were dealt with under the consultation procedure (Article 37 of the Treaty) and therefore the Opinion of the European Parliament is not legally binding. The European Parliament formally adopted its Opinion on both of these proposals on 16 March 2006 with minor changes, and many of the amendments went along with the changes agreed at technical level within the Council. According to the Commission representative, a number of items suggested by Parliament had been included in the Regulations, while others will be addressed in the context of the planned future policy review.⁴¹⁷

Once again, the rivalry and struggle for power between the institutions deciding on this matter were evident. Not only did the statement seem to exaggerate the extent to which Parliamentary amendments were adopted, but it also insisted that the Parliament's opinion did not have any real legal significance.

The 1992 Regulation was repealed, and the final Regulation 510/2006 was introduced in March 2006 thus complying with the WTO deadline requiring the EU to make the necessary changes by 3 April 2006.⁴¹⁸ Even so, the Commission was already discussing its intention to undertake a policy review of the GI system and of this new regulation, in order to assess how to develop or reform the GI system.⁴¹⁹ The 2006 Regulation was therefore perceived by the EU as an interim measure.

The most important change between the 1992 and 2006 regulations was the emphasis on “Member State or third country”, as opposed to a simple focus on

⁴¹⁷ Council of the European Union, ‘2720th Council Meeting Agriculture and Fisheries’ (n 378) 8.

⁴¹⁸ European Commission, ‘Council Adopts Improved Rules on Agricultural Quality Products’ (2006) EC Press Release IP/06/339 <http://europa.eu/rapid/press-release_IP-06-339_en.htm?locale=en> accessed 21 May 2019.

⁴¹⁹ Council of the European Union, ‘Addendum to Draft Minutes on 2720th Meeting of the Council of the European Union (Agriculture and Fisheries)’ (n 416) 4.

‘Member States’ in the 1992 Regulation.⁴²⁰ For example, the inclusion of third countries in Article 7 of the 2006 Regulation gave them the right to object to a GI registration alongside EU MS. The language of the 2006 Regulation was also more tempered: 1992 Regulation recitals stating “consumers *must*”, “the scope of this Regulation *is* limited”, and “an indication *must* meet certain conditions”, became for the 2006 Regulation recitals “the consumer *should*”, “[t]he scope of this Regulation *should* be limited”, and “a description *should* meet certain conditions” [*emphasis added*].⁴²¹ Furthermore, the requirement that third countries must offer “equivalent guarantees” was replaced by a softer approach, saying that third countries could benefit from the protection if the GIs applied for were also protected in their country of origin.⁴²² These subtle but important changes in language are deliberate as they are also observable in the French versions of the regulations. The 2006 Regulation also made compulsory the use of PDO and PGI labels for products using protected names,⁴²³ to take effect in May 2009.⁴²⁴

The regulatory changes between the 1992 and 2006 Regulations were rapid and occurred first and foremost to comply with the WTO ruling. However, as will be demonstrated in the following section, the Commission wanted an in-depth reform of the GI system and therefore engaged in a call for consultation and impact assessment of the system.

6. The 2012 Regulation

In October 2008, the European Commission published a Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes, in order to open a call for consultation on the matter, which included questions about organic farming, traditional products, marketing

⁴²⁰ For example, see Regulation 510/2006 recital 17 and Articles 7 and 8.

⁴²¹ See Regulation 2081/92 recitals 4, 9 and 11; Regulation 510/2006 recitals 4, 8, and 10.

⁴²² Regulation 2081/92 recital 15; Regulation 510/2006 recital 13.

⁴²³ Regulation 510/2006 Article 8(2).

⁴²⁴ *ibid* Article 20.

standards, but also GIs.⁴²⁵ The Commission received 560 contributions from within the EU and internationally, and published its general findings in the form of questions and answers.⁴²⁶ In its conclusion to the Green Paper, the Commission highlighted calls amongst some respondents for clarifications regarding actors' rights and duties,⁴²⁷ an extension of the protection both in the EU Regulation and TRIPS,⁴²⁸ better communication regarding the scheme and symbols,⁴²⁹ better protection in third countries, and the harmonisation of agricultural products, wines, and spirits systems.⁴³⁰

The Green Paper and its conclusions demonstrated mixed opinions amongst respondents on the GI system. Some of these issues were further explored by a Commission Impact Assessment on Geographical Indications on the current situation for GIs, published on 10 December 2010, which discussed potential options for a reform of the system.⁴³¹

The Impact Assessment document started by stating that the aims of the GI policy were: (1) to allow producers to communicate to consumers information about the origin of their products and how its quality links to this, and (2) to offer intellectual property law protection to product names which fit the definition of GIs in order to guarantee to the consumer that only producers manufacturing the product within the defined rules will be able to use the GI name.⁴³² Overall, these aims portrayed a strong focus on the benefits for consumers and producers, thus further developing an EU multifunctional discourse in relation to GIs. This was

⁴²⁵ European Commission, 'Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes' COM (2008) 641 final 5.

⁴²⁶ European Commission, 'Conclusion from the Consultation on Agricultural Product Quality' VC D (2009).

⁴²⁷ *ibid* 11.

⁴²⁸ *ibid* 11–12.

⁴²⁹ *ibid* 12.

⁴³⁰ *ibid* 15.

⁴³¹ European Commission, 'Impact Assessment on Geographical Indications' (Commission Staff Working Paper) SEC (2010) 1525.

⁴³² *ibid* 3.

mirrored in the approach adopted by the ECJ in *Alberto Severi v Regione Emilia Romagna*, which affirmed (without any other apparent evidence than the regulation preamble itself) that the GI system “meets both the requirements of consumer protection [...] and the need to maintain fair competition between producers”.⁴³³

In contrast with its stated aims, European Commission evaluated the GI policy’s success by concentrating on the number of GI names registered under the regime and the value of GIs at the wholesale level in 2008.⁴³⁴ Similar to the European Parliament debate on the 2006 Regulation, there was no mention of whether the aims of transparent communication between consumers and producers were truly achieved. As such, there was a gap between what the European Commission said it wanted to achieve with the system, and what it considered the success of the system to be. This discussion—associating the benefits of the system almost solely with economic aspects—continued in the section of the Impact Assessment on ‘the importance of PDO/PGI scheme in Europe’.⁴³⁵ Once again, the measure was principally economic, rather than an analysis of the customer recognition of the product, or of the socio-economic benefits for example—although the Impact Assessment did include a section on ‘the environmental approach of PDO/PGI scheme in Europe’.⁴³⁶

The 2010 Impact Assessment reveals other ways in which it appeared that factors such as economic rationales and development goals guided the Commission’s understanding of GI regulation’s objectives, rather than consumer and producer protection, or even cultural protection and quality preservation. Although the GI system was presented as a tool developed to protect *existing* traditional products from fraud,⁴³⁷ the 2010 Impact Assessment also suggested that certain

⁴³³ Case C-446/07 *Alberto Severi v Regione Emilia Romagna* [2009] ECR I-8041 para 53: This case concerned the use of the name ‘Salame Tipo Felino’ on sausages produced by Grandi Salumifici Italiani SpA and whether this was an infringement of GI regulation.

⁴³⁴ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 3.

⁴³⁵ *ibid* 12–15.

⁴³⁶ *ibid* 15.

⁴³⁷ See Chapter 2.

geographical areas were—and possibly still are—encouraged to develop *new* products which have the potential to be GI protected. It stated that “the problem of the viability of agriculture in rural areas was to be partly addressed by encouraging that production, through so-called “quality schemes”, including geographical indications system”.⁴³⁸ It also acknowledged that this problem was tackled by introducing GIs and that the system of protection would allow producers from those areas to have a “competitive advantage”.⁴³⁹ This reinforces the above-mentioned idea that GIs had an important role to play in supporting rural areas in the transition towards less protective agricultural subsidies, under a post-1992 CAP. The account of the core purpose of GIs differed from other ideas that the EU promoted, including ideas of tradition, quality, or social benefits.⁴⁴⁰

The Impact Assessment also clearly stated that there were challenges with the system, in terms of consumer knowledge and understanding of GIs, as well as producers—in particular small ones—lacking knowledge and interest in the system, which was bureaucratic and expensive.⁴⁴¹ GI registration at the EU level could take between two and four years,⁴⁴² and cost the producers from 3,000 to 40,000 euros to prepare an application for registration.⁴⁴³ This was already mentioned during the debate on 15 March 2006, as MEP James Hugh Allister argued that “the process of application is unduly burdensome and bureaucratic”.⁴⁴⁴ This is, therefore, an idea which was brought forth at least four years before the Impact Assessment, but which nevertheless remained an unresolved issue by 2010. The cumbersome process of GI registration, and the high costs associated with it, also means that large multinationals are in a privileged position in comparison to independent farmers and producers.

⁴³⁸ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 8.

⁴³⁹ *ibid.*

⁴⁴⁰ See Chapter 5.

⁴⁴¹ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 13–14.

⁴⁴² *ibid.* 22.

⁴⁴³ *ibid.* 9.

⁴⁴⁴ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) James Hugh Allister.

Multinationals have more time and resources to engage in the lengthy and complex registration process.⁴⁴⁵ In addition, as the Impact Assessment indicated, if multinationals are the ones engaging in the process of registration, they can have some influence over the exact Product Specifications (PSs) according to what suits them. For example, they might decide to allow the use of pasteurised milk in cheese production or set a specific fat content for the milk. This, therefore, alienates small farmers, who may not have the technology or resources to abide by some of the criteria—for example, to measure the exact fat content in the milk.⁴⁴⁶

In terms of language, the Commission’s reference to producers as “farmers”, in the Impact Assessment,⁴⁴⁷ was misleading, considering that an important portion of GI products are produced by multinationals.⁴⁴⁸ Despite an emerging multifunctional discourse from the EU, at this stage—when claiming that GIs benefit producers—a clear distinction needs to be made between different types of producers, and who benefits in reality. If the multinational producers are truly the ones benefiting, then discourses on quality and tradition need to be reviewed. While the EU seeks to convey socio-economic protectionism for all parties, it is not clear how these parties benefit in practice.⁴⁴⁹

Regarding the claimed value-added of GIs, the Impact Assessment stated that PDO cheeses had a premium of 3.31€ per kilo, and PGI one of 2.85€ per kilo.⁴⁵⁰ However, one must question whether this really is an advantage when considered within the context of potentially pricier production methods. It is likely that small farmers and producers are using more laborious, time-consuming, and costly manual techniques, and would therefore have smaller margins than large industrial producers. The Impact Assessment did note that farmers get higher prices for their GI-protected products, but also that the production costs are

⁴⁴⁵ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 23.

⁴⁴⁶ *ibid.*

⁴⁴⁷ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431).

⁴⁴⁸ See Chapter 5, Section 1 (c) for an example on the French cheese industry.

⁴⁴⁹ See Chapters 5 and 6 for more discussion on this.

⁴⁵⁰ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 14.

higher, therefore not necessarily meaning profit margins are higher.⁴⁵¹ This raises the question of whether such an issue falls outside the EU's concern, and whether the general increase in economic production is considered a sufficient success of the system, regardless of challenges faced by smaller producers.

Another aspect noted by the Commission in the Impact Assessment was the fact that although preambles of Regulations 510/2006 for foodstuff, Regulation 479/2008 for wines, Regulation 110/2008 for spirits, and Regulation 1601/1991 for aromatised wines had the aim to increase diversification, the scheme had not had a notable impact in this area.⁴⁵² This was because it was reported that producers had merged their previously diverse products, and now focus on one GI product instead.⁴⁵³ The energy and financial commitments that GI products require—both at the registration level, but also throughout production in order to comply with the label while competing with large producers that also use the label—explain the lack of ability for small producers and farmers to diversify.

Although, as seen above, the Commission stated in the Impact Assessment that one of its aims for GIs was to benefit consumers by ensuring that they are receiving information about the products they buy, the Commission itself lacked clarity as to what GIs represent. In the Impact Assessment, the European Commission claimed that it “created the PDO/PGI scheme in order to provide consumers with guaranteed information on an important qualitative aspect”.⁴⁵⁴ However, it is again not clear whether the word ‘qualitative’ refers to a product attribute or superior value. It is difficult to see how information can be guaranteed given that ‘quality’ is not defined, despite the EU building an entire ‘quality scheme’ policy around this concept.

Additionally, the Commission identified a very low recognition of the GI logo from European consumers—only eight per cent of people—and thus identified a

⁴⁵¹ *ibid* 20.

⁴⁵² *ibid* 18–19.

⁴⁵³ *ibid* 19.

⁴⁵⁴ *ibid* 20.

need to take action.⁴⁵⁵ As will be seen in Chapter 5, this is a rare case of the Commission stating and referencing an accessible study; the study itself will be evaluated further in the same chapter. The Commission suggested as a solution that the logo language be based on the country it is sold in.⁴⁵⁶ In addition, one of the most significant statements concerning the consumer misunderstanding made in the Impact Assessment is that,

[A]bout a quarter of survey respondents erroneously believed that the PDO or PGI symbol referred to a product being produced in an environmentally friendly way (a characteristic of Organic products), or using a traditional recipe and distinguishing features (a characteristic of Traditional Specialty Guaranteed products).⁴⁵⁷

This misunderstanding both confirms the vagueness of the Commission's approach to GIs but also illustrates the impact of the EU's developing multifunctional discourse in relation to agriculture in general and to GIs more specifically. This multifunctionality can lead consumers to believe that EU agricultural logos, in general, protect many 'good' things, without having a clear idea of the distinction between them. The environmental advantage was further mentioned in the Impact Assessment:

Even if environmental protection is not a primary motivation in GI protection schemes, some studies have shown that certain practices under PDO-PGI specifications have some link to environmentally relevant farming practices by requiring certain animal feeding systems or maximum stocking densities.⁴⁵⁸

⁴⁵⁵ *ibid* 20–21.

⁴⁵⁶ *ibid* 21.

⁴⁵⁷ *ibid*.

⁴⁵⁸ *ibid* 15; The Commission here made a footnote reference to a Green Paper consultation response which is no longer made available by the EU. Nevertheless, it will be shown in Chapter 5, Section 4 (a) that the document referred to was found, and that this claim made by the Commission is an oversimplification of what the consultation response actually argues.

The Commission also stated that some GIs are produced in standard agricultural practices, and therefore bear similar environmental impacts.⁴⁵⁹ The Impact Assessment went on to discuss how “[p]ositive environmental effects concern mainly PDO schemes, for which specifications include farming practices”,⁴⁶⁰ and when discussing ‘Option D’ for a GI system reform, stated “PDOs can better favor local development because of their strong link to origin and thus contributing to environment and biodiversity”.⁴⁶¹

The Commission noted that environmental protection is not a specific objective of the 2006 Regulation.⁴⁶² However, by referring back to its 2008 Green Paper which stated that sustainability criteria can contribute to the idea of ‘quality’ and align with consumer expectation,⁴⁶³ the Commission suggested that sustainability criteria could be introduced, but that the responses to the Green Paper on this matter were divided.⁴⁶⁴ The approach from the Commission towards sustainability, reflected a desire to use the environmental protection factor as another justification for GIs, and thus adds another strand to its multifunctional discourse.

The Impact Assessment did claim to show, through a study of the Intellectual Property Impacts on Sustainable Development (IPDEV) project, that GIs could have some advantages regarding biodiversity and cultural landscapes.⁴⁶⁵ However, this raises the question of whether this constitutes an environmental benefit of the system as a whole, or simply whether it highlights some specific positive

⁴⁵⁹ *ibid.*

⁴⁶⁰ *ibid.* 16.

⁴⁶¹ *ibid.* 42.

⁴⁶² *ibid.* 15.

⁴⁶³ European Commission, ‘Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes’ (n 425) 13.

⁴⁶⁴ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 15.

⁴⁶⁵ *ibid.*

consequences of the system, in certain instances. As regards the IPDEV study,⁴⁶⁶ the Impact Assessment confirmed that these environmental benefits were often indirect consequences.⁴⁶⁷ One should also balance these potential positive consequences with other arguably negative consequences of the system, such as the exportation of GIs, potential soil erosion, or any potential shortcut that GI producers can be pressured to take, due to the highly competitive market.⁴⁶⁸ The Commission in the Impact Assessment did nuance its position by stating that some GI productions have negative environmental impacts as do the productions of any non-GI products.⁴⁶⁹

Overall, in terms of environmental impact, the Commission made it clear that “while there may be coincidences between PDO-PGI production and environmental values, the PDO-PGI instrument is not an environmental tool”—although it also says that it has the potential to be one, as additional rules of PSs could be introduced.⁴⁷⁰

Regarding the idea, mentioned in the Impact Assessment, that consumers believe that GIs use a “traditional recipe and distinguishing features”,⁴⁷¹ an explanation for this can be found in the regulations themselves. All three foodstuff regulations—1992, 2006, and 2012—highlight this idea of ‘tradition’, and define GIs as products with a particular quality or characteristic linked to the region. The idea of a certain ‘method’ of production being used is also recurring. It is therefore not difficult to see how the consumer may understand the GI system in

⁴⁶⁶ Mariano Riccheri and others, ‘Workpackage 3: Assessing the Applicability of Geographical Indications as a Means to Improve Environmental Quality in Affected Ecosystems and the Competitiveness of Agricultural Products’ (IPDEV Project 2007).

⁴⁶⁷ See Chapter 5, Section 4 for an in-depth discussion of this.

⁴⁶⁸ See Chapter 4, Section 3 for more discussion on this.

⁴⁶⁹ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 15.

⁴⁷⁰ *ibid* 16.

⁴⁷¹ *ibid* 21.

such a way. The European Commission did not clarify these ideas in the 2012 Regulation.⁴⁷²

In the Impact Assessment itself, the multifunctional discourse around the quality aspect of GIs was repeated throughout. It stated that the price premium on GIs is necessary to “guarantee quality and origin of the product”.⁴⁷³ The idea of ‘quality’ was not only highly recurrent but also discussed as if it were based on firm evidence, despite the absence of a definition or explanation as to its meaning. For example, the Commission stated that “[f]or small, specialist shops and traders who specialise in distributing certain types of product the PDO/PGIS are more important. The most important benefit is the enhancement of reputation from being associated with high quality products”.⁴⁷⁴

The purpose of the Impact Assessment was to justify a reform of the GI system. To contextualise this reform, the Impact Assessment came back to the CAP. It stated that “[t]he European Union's general objectives in relation to Geographical Indications scheme can be linked to the basic objectives of the CAP set out in the Treaty on the Functioning of the European Union, as shaped by successive reforms”.⁴⁷⁵ As discussed in Section 2, the CAP played an important role in the creation of the GI system. More specifically, this GI reform was further influenced by the 2009 CAP Health Check, which according to the Impact Assessment required the EU agriculture to “play to its strengths” by “emphasizing quality of different kinds, including that linked to geographical origin”, and to do so “[i]n order to respond effectively to increasing competition on domestic as well as global markets”.⁴⁷⁶ The European Parliament in the 2009 CAP Health Check had indeed stated that “the strengths, and the future, of European agriculture are to be found in regional, traditional and other recognised high quality products and value-added products” and that it,

⁴⁷² The two aspects—tradition and environmental preservation—will be explored further in Chapter 4, Section 1 and 3, in particular in relation to the academic discourse around GIs.

⁴⁷³ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 24.

⁴⁷⁴ *ibid* 25.

⁴⁷⁵ *ibid* 27.

⁴⁷⁶ *ibid* 28.

[c]alls, therefore, on the Commission to present a comprehensive plan for improving the marketing of high quality European products at home and abroad, e.g. by means of information and promotion campaigns, support for the formation and development of the activities of producer organisations or other forms of sectoral organisation and introducing targeted labelling which sets out, in particular, the origin of the agricultural raw materials used and that is clearer and more transparent for consumers.⁴⁷⁷

The language used in the 2009 CAP Health Check, therefore, contributes to explaining the sudden increase in the multifunctional characteristics of the Commission's discourse on GIs, with a particular focus on producer and consumer protection. Additionally, the 2006 Council of the European Union Guidelines for Rural Development, had stated that "Europe's agricultural, forestry and food-processing sectors have great potential to further develop high-quality and value-added products that meet the diverse and growing demand of Europe's consumers and world markets".⁴⁷⁸

Overall, it can be seen, therefore, that the 2010 Impact Assessment illustrates the emergence and consolidation of an EU multifunctional discourse around GIs. At the same time, there is a discernible disjuncture between this discourse—of how GIs benefit consumers and producers socially—and the EU's assessment of success based on the commercial value of GIs. This contributes to the idea proposed in this thesis that the EU is determined to convey a socio-economic protectionism message to its constituencies, with regards to GIs, and that it does so through the repetition of a multifunctional discourse.

⁴⁷⁷ European Parliament resolution of 12 March 2008 on the CAP 'Health Check' (2007/2195(INI)) [2009] OJ C66/E/9 paras 90 and 92.

⁴⁷⁸ European Commission, 'Impact Assessment on Geographical Indications' (n 431) 28; Council Decision 2006/144/EC of 20 February 2006 on Community strategic guidelines for rural development (programming period 2007 to 2013) [2006] OJ L55/20 3.1.

On the same day that the European Commission published the Impact Assessment in December 2010, the Commission also adopted a proposal for reform of the GI system and transmitted it to the European Parliament and Council of the European Union.⁴⁷⁹ This suggests that part of the role of the Impact Assessment was to justify the changes in the proposed regulation, rather than to actually open a discussion around a possible reform. A few days later, on 13 December 2010, discussions within the Council of the European Union and its preparatory bodies ensued, followed by further discussions on 14 April 2011. On 4 May 2011, when the proposal then reached the Committee of the Regions for its opinion, the policy recommendations from the Committee came through with the appearance of quite an aggressive economic and trade strategy. Amongst other things, the Committee of the Regions suggested that the EU “step up its effort to ensure improvements in the protection of geographical indications (PGI and PDO) in WTO negotiations and within WIPO”,⁴⁸⁰ but also stated that the Article 23 protection for wines and spirits under TRIPS be extended to agricultural foodstuffs,⁴⁸¹ that the EU conclude bilateral agreements with third countries, for recognition of “all registered PDOs and PGIs”,⁴⁸² while at the same time ensuring that these do not result in the arrival of non-EU GIs in the EU market, which do not meet EU standards.⁴⁸³ The intimidating and economically-driven approach came across as a battle cry to impose this system on the rest of the world. This type of discourse explains the reluctance of some countries—in particular, the US—to submit to such schemes. The Committee also claimed without hesitation that quality schemes are part of the EU’s cultural heritage,⁴⁸⁴ an aspect which remains in the final 2012 Regulation.⁴⁸⁵

⁴⁷⁹ European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on Agriculture Product Quality Schemes’ COM (2010) 733 final.

⁴⁸⁰ Opinion of the Committee of the Regions on ‘Towards an ambitious European policy for agricultural quality schemes’ [2011] OJ C192/28 II(C)(21).

⁴⁸¹ *ibid* II(C)(22)(a).

⁴⁸² *ibid* II(C)(22)(c).

⁴⁸³ *ibid* II(C)(23).

⁴⁸⁴ *ibid* I(A)(3).

⁴⁸⁵ Regulation 1151/2012 recital 1.

The same types of discourses, although differently framed, reappeared in the Opinion of the EESC on 12 May 2011, which mentioned the importance of getting international recognition for GIs.⁴⁸⁶ The approach was, however, significantly less strongly worded than the one taken by the Committee of the Regions, as it simply pointed out the importance of the relevant European products being recognised on the external market.⁴⁸⁷ The EESC, however, did agree with the various socio-economic and environmental benefits of GIs—despite still not referring to any specific evidence—as it stated,

The EESC recognises the contribution made by these agricultural products to *maintaining traditional production methods and safeguarding the environment*, with the ensuing *benefits not only for producers and processors, but also for consumers*. Recognising these quality schemes also contributes to the *development of the rural areas concerned*, by helping the local population to remain, *improving their living conditions and quality of life, consolidating and promoting job and business opportunities*, while encouraging the profitable use of natural resources.⁴⁸⁸ *[emphasis added]*

In October 2012, the European Parliament submitted its opinion on a first reading, which was agreed by the Commission and later by the Council of the European Union. Finally, on 21 November 2012, the Presidents of the European Parliament and the Council of the European Union signed the draft regulation.

The 2012 Regulation approach differs greatly from both previous regulations (1992 and 2006)—in particular in terms of rationale. Suddenly, in the 2012 Regulation, there is a strong emphasis on cultural heritage and preservation of tradition, which logically follows from what appeared in the preparatory

⁴⁸⁶ Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes’ [2011] OJ C218/114 1.2.

⁴⁸⁷ *ibid.*

⁴⁸⁸ *ibid.* 4.1.2.

documents and the CAP Health Check as previously discussed. In the first recital, it is stated that the “Union’s agricultural, fisheries and aquaculture is [...] making a major contribution to its living *cultural and gastronomic heritage* [...] due to the skills and determination of Union farmers and producers who have kept *traditions alive*” [*emphasis added*].⁴⁸⁹ The second recital, which in the 1992 and 2006 Regulations discussed consumers attaching importance to quality, now also adds “as well as traditional products”.⁴⁹⁰

The environmental impact claim was also addressed in the 2010 proposal explanatory memorandum, in which the Commission argued that “studies show that some PDO and PGI products come from low intensity farming systems associated with high environmental value”.⁴⁹¹ Once again, the Commission’s claim for this potential benefit of GIs remained vague, and it is difficult to dig deeper, as the ‘studies’ it alludes to are not referenced. The memorandum also remained vague on the social implications suggested in the Impact Assessment, as it stated that “[i]n social terms, the designations of PDO, PGI and TSG were found to contribute to the continuation of traditional forms of production to the benefit of both producers and consumers”, but it did not expand on this, nor discuss employment benefits more specifically.⁴⁹² This further exemplifies the EU multifunctional discourse, without explicitly stating the basis of these claims. The memorandum did mention the difficulty for small-scale producers to adhere to the protection scheme, even though they are the ones associated with artisanal products, and assured that further studies will explore this aspect.⁴⁹³ No evidence of such studies was cited in this memorandum and, although Chapter 5 of this thesis closely analysed available EU studies on GIs for existing evidence of GI benefits, no evidence of EU studies focusing on the difficulty of small-scale GI producers was found at the time of writing.

⁴⁸⁹ Regulation 1151/2012 recital 1.

⁴⁹⁰ *ibid* recital 2.

⁴⁹¹ European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on Agriculture Product Quality Schemes’ (n 479) 6.

⁴⁹² *ibid* 7.

⁴⁹³ *ibid*.

The 2012 Regulation is also suddenly extremely insistent on this notion of ‘quality’. The word ‘quality’ has even been added in the regulation title which—as previously mentioned—reads “Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs”. The word ‘quality’ also appears more frequently in the text of the regulation itself. While in the 1992 and 2006 Regulations the word ‘quality’ (or ‘qualities’) appears six and seven times respectively, the word appears 82 times, including once in the title, in the 2012 Regulation. There is therefore clearly an added emphasis on the word ‘quality’ in the latest regulation on GIs. This is particularly because this regulation arose amid the formation of a quality policy by the European Commission, called the ‘Quality Package’. A press release on a 2011 Council of the European Union meeting on agriculture and fisheries, explains that the Quality Package,

consists of a set of proposals designed to put in place a coherent agricultural product quality policy aimed at assisting farmers to better communicate the qualities, characteristics and attributes of agricultural products to consumers, on the basis of the Council conclusions of 22 and 23 June 2009 on agricultural product quality.⁴⁹⁴

This policy was based on a multifunctional discourse similar to the GI discourse, as the GI regulation was one of the elements of this policy, alongside a proposal to streamline marketing standards and new guidelines on voluntary certification best practices.⁴⁹⁵ The Quality Package was thus presented as “[a]n enhanced EU policy to help better communicate the quality of food products”.⁴⁹⁶ This demonstrates a general EU shift with an increased focus on quality—an aspect

⁴⁹⁴ Council of the European Union, ‘3084th Council Meeting Agriculture and Fisheries’ (2011) Press Release PR/CO/24 <http://europa.eu/rapid/press-release_PRES-11-103_en.htm?locale=en> accessed 25 January 2019.

⁴⁹⁵ European Commission, ‘An Enhanced EU Policy to Help Better Communicate the Quality of Food Products’ (2010) EC Press Release IP/10/1692 <https://ec.europa.eu/commission/presscorner/detail/en/IP_10_1692> accessed 9 December 2020.

⁴⁹⁶ *ibid.*

which was in any case already present in the EU discourse around GIs,⁴⁹⁷ but which gained in importance.

As seen in Chapter 1, the new EU Regulation 1151/2012—like its predecessors—differs from the TRIPS Agreement in the sense that the stricter protection provided for wines and spirits under Article 23 of TRIPS applies to all protected products under the current EU GI regulation.⁴⁹⁸ The EU, however, does not deny that such protection is very strict. The European Commission Directorate-General for Agriculture and Rural Development states in a report—which, it must be noted, precedes the passing of the 2012 Regulation enacted later that same year—that “EU legislation provides for high level of protection of designations of origin and geographical indication in respect of agricultural products and foodstuffs, but also for wines and spirits”.⁴⁹⁹ This suggests a certain pride in the stringency of the EU legislation around this system of protection.

7. Conclusion

This chapter has revealed the importance of French pressure—followed by a few other MS—in the development of an EU regulation to harmonise GIs. In parallel, it has also suggested that the 1992 Regulation was welcomed as a way to mitigate the changes in agricultural subsidies provided to farmers, due to the CAP reform of the same year. Despite the removal of Article 113 of the EEC on commercial policy and trade as a treaty basis, the regulation and its preparatory work demonstrated an important focus on benefitting the EU and its economy, although strands of discourses around ‘quality’ and ‘tradition’ also emerged. This demonstrated that the EU GI discourse started to develop multifunctional characteristics. Taking its legal basis from the CAP, it is not surprising that a similar multifunctional discourse was adopted for GIs.

⁴⁹⁷ As was seen in the analysis of previous regulations.

⁴⁹⁸ Regulation 1151/2012 Article 13(1)(b).

⁴⁹⁹ Directorate-General for Agriculture and Rural Development, ‘Advisory Group International Aspect of Agriculture: Meeting of 25 June 2012 - DG AGRI Working Documents on International Protection of EU Geographical Indications: Objectives, Outcome and Challenges’ (n 43) 1.

However, the EU focus on benefiting its economy and agriculture through GIs was criticised by the US and Australia at the WTO level. The following 2006 Regulation was then pushed through rapidly, as a means of complying with a WTO ruling. This regulation was rushed, being passed by the EU in fewer than four months in total. Nevertheless, discourses occurring in parliamentary debates, for example, remained multifunctional, and illustrated an overall fondness for the system, with a particular focus on its economic benefits, intertwined with praises for the fact that GIs help to protect quality, and therefore benefit both producers and consumers.

Finally, the European Commission decided it wanted to reform the system, most likely due to critics from stakeholders, which the Commission was able to gather through its 2008 Green Paper call for contributions. This was followed by an Impact Assessment, through which the Commission carefully assessed the issues associated with the system, but within which the EU multifunctional discourse—including narratives on socio-economic advantage, cultural protection, quality, as well as the potential for environmental protection which will be considered more closely in Chapter 4—was significantly heightened. When it came to the 2012 Regulation, although the European Commission in its Impact Assessment had recognised the disadvantages of the previous regulations for small farmers in comparison with large producers, the reform did not seem to directly address this. Instead, the Commission introduced a strong focus on the idea of ‘quality’, a word which it still did not define, and which can therefore mislead consumers. Although the EU, in its legal discourse, had focused on the benefits of GI protection for producers and consumers, the system which resulted was very far from this ideal outcome. Instead, the system of protection was excessively justified. These justifications not only lacked consistency, clear evidence, and transparency, but they also varied depending on the speakers and audiences.⁵⁰⁰

Overall, examining the evolution of the regulations on GIs, and the EU legal and policy discourse which emerged from these, it is clear that the discourse adopted

⁵⁰⁰ This will be further evidenced in the following chapters.

by the EU has developed multifunctional characteristics, which became increasingly prevalent as new regulations were introduced. The fact that such a multifunctional discourse is used and deemed necessary suggests that there is not one justification strong enough to substantiate GIs. As will be progressively more evident throughout this thesis, the EU uses GIs as a tool to convey socio-economic protectionism, and so numerous justifications for the system of protection are necessary in order to avoid further challenges from the US or Australia, such as those which emerged in the WTO dispute after the 1992 Regulation. The strands of the EU multifunctional discourse, on GI benefits, identified here will be explored further in the next chapter, which will question how the academic literature has challenged or contributed to this discourse.

Chapter 4: The Academic Reproduction of the EU Discourse

As was seen in Chapter 3, the discourse on Geographical Indications has been enriched by various strands throughout the legal development of the European Union regulation on GIs for foodstuff. Discourse strands revolving around culture and tradition, quality, environmental, and socio-economic advantage were particularly prominent in the lead up to the 2012 Regulation, highlighting an EU discourse with multifunctional characteristics.⁵⁰¹

Having now considered the EU regulatory discourse on GIs—rather than looking at the application of the law itself—the purpose of this chapter is to chart the academic literature to explore how it has contributed to or challenged the EU official discourse. It will consider what the academic commentary has had to say about these EU justifications for GIs and how it has, at times, approached this uncritically. This will be done by chronologically—in parallel to the development of the regulations on agricultural products—considering examples of literature that supports each discourse strand identified in Chapter 3. Each section will then, chronologically again, offer examples that challenge these discourse strands. The examples used are representative of the different positions as they are prominently cited works contributing to the EU academic discourse on GIs. The main purpose of this chapter is to consider how academic commentary engages with the institutional discourse and can contribute to its development. Even critical literature may provide implicit support for the underlying and unevidenced presumptions promoted by the EU.

The chapter will therefore be divided into the following sections addressing the approach to the four main strands of the multifunctional discourse. First, Section 1 will consider the cultural heritage argument promoted for GIs. It will highlight its presence and reproduction in academic literature and challenge the argument by

⁵⁰¹ See Chapter 3, Section 6.

questioning whether culture can be separated from people and communities and principally attached to places. Section 2 will then look at the quality (and related health) argument and will offer some examples of challenges for the argument which could nuance claims made in academic commentaries in support of it. Section 3 will discuss the environmental argument—which, as was seen in Chapter 3, the EU has been less resolute about—and propose some unaddressed issues concerning the sustainability of the GIs system as a whole. Finally, Section 4 will consider the socio-economic argument for GIs in academic literature and contemplate some discussions which the literature might have raised in this context. This final section is more extensive due to it encompassing a number of sub-arguments, including arguments around GI benefiting rural development and preventing consumer confusion.

1. The Cultural Heritage Argument

The idea that GIs help preserve the cultural heritage of a protected region is a recurring theme in the academic discourse surrounding GIs. This was suggested early on in 1996—so a few years after the entry into force of the 1992 GI Regulation—by Albrecht Conrad in an extensive journal article on GIs. In the article, he stated that regions that hold protected GIs are concerned about their “cultural heritage” and not only the economic gain behind it.⁵⁰² Conrad, in his article critical of Agreement on Trade-Related Aspects of Intellectual Property Rights but looking favourably upon GIs as a concept, advanced this argument by citing a presentation by the Deputy Director of France's National Institute of Appellations of Origin at the time. Although not a prominent GI commentator, Conrad's article has been cited numerous times by EU academics over the years. Nevertheless, the reference to cultural heritage, in this case, was minimal and he did not offer any further analysis nor explanation of how this preservation of culture justifies GI protection being restricted primarily to geographical areas as opposed to opened to various individual enterprises or producers regardless of location.

⁵⁰² Albrecht Conrad, ‘The Protection of Geographical Indications in the TRIPs Agreement’ (1996) 86 *The Trademark Reporter* 11, 13.

Felix Addor and Alexandra Grazioli, Chief Legal Officer and Legal Advisor at the Swiss Federal Institute of Intellectual Property, in their 2002 journal article calling for further and better protection of GIs, stated that,

GIs indeed convey the cultural identity of a nation, region or specific area. They make it possible to add value to the natural riches of a country and to the skills of its population, and they give local products a distinguishable identity.⁵⁰³

Although this defines well what GIs seek to do according to the EU discourse, no source or study here was cited to justify the claim.

After the 2006 Regulation was introduced, the claims of GI protection preserving cultural identity became more prominent in academic commentaries, but again no clear evidence of a link between cultural identity and locality was given to support EU assertions. Rhonda Chesmond, in her 2007 article on GIs and culture, acknowledged critiques of the cultural argument but overall defended this argument. She explained what she thought culture meant in the context of GIs, stating that “the “culture” sought to be protected by GI expansion is culture in the wider sense concerning elements of national history, identity, expression, traditions and beliefs”.⁵⁰⁴ Chesmond also stated that “the most persuasive cultural protection argument in the GI debate lies with the ability of food sources and products to play an important role in the construction of national identities”.⁵⁰⁵ She further argued that “[c]ulture is an essential component of a group’s identity, cohesion and expression and as such, any genuine claim to protection of intellectual property rights on that basis is a valid one”.⁵⁰⁶

⁵⁰³ Felix Addor and Alexandra Grazioli, ‘Geographical Indications Beyond Wines and Spirits’ (2002) 5 *The Journal of World Intellectual Property* 865, 865.

⁵⁰⁴ Rhonda Chesmond, ‘Protection or Privatisation of Culture? The Cultural Dimension of the International Intellectual Property Debate on Geographical Indications of Origin’ (2007) 29 *European Intellectual Property Review* 379, 382.

⁵⁰⁵ *ibid* 382–383.

⁵⁰⁶ *ibid* 388.

There are, however, a few difficulties with Chesmond's arguments. Firstly, it is important to remember that GIs are often regional. It would therefore be more accurate to discuss regional identity rather than solely national identities. For example, it is relatively imprecise to speak of 'Italian food' as a cuisine, as local food changes drastically from one region of Italy to another.⁵⁰⁷ Milanese and Sicilian cuisines, for instance, are very different, reflecting two very distinct regional identities. This is perhaps accentuated in Italy where there is a disparity between Italy as a state and the shared regional identities.⁵⁰⁸ In the same manner, if the protection of a regional GI product helps protect the culture associated with it, this cultural protection would be regional, regardless of any national boundaries that region crosses.

Secondly, Chesmond did not discuss the link between cultural heritage protection and GIs. She justified the protection of GIs and the protection of culture for the benefit of 'a group's identity'. Although Chesmond's commentary openly furthers the cultural argument, it does not seem to do so on the grounds of locality, despite GIs being attached to specific geographical areas. There is therefore a disconnect between the cultural argument and the functioning and rules framing the GI system.

Although some authors have developed their explanation of the cultural argument, ideas from the EU discourse such as 'tradition', 'the link to the locality', 'producer know-how', and 'rural development' tend to be reiterated without reference to empirical evidence being offered. For example, María Fonte and

⁵⁰⁷ 'Cuisine of the 20 Regions of Italy' (*The Italian Tribune*, 1 October 2015)

<<http://www.italiantribune.com/cuisine-of-the-20-regions-of-italy/>> accessed 29 May 2018; 'The Biodiversity Behind Italian Food' (*Eataly*, 14 April 2018)

<https://www.eataly.com/us_en/magazine/culture/italian-biodiversity/> accessed 29 May 2018; 'Regional Italian Cuisine' (*Academia Barilla*) <<http://www.academiabarilla.com/the-italian-food-academy/regional-italian-cuisine/default.aspx>> accessed 29 May 2018.

⁵⁰⁸ Rudolf Lewanski, 'Italy: Environmental Policy in a Fragmented State' in Kenneth Hanf and Alf-Inge Jansen (eds), *Governance and Environment in Western Europe: Politics, Policy and Administration* (Revised, Routledge 2014) 131.

Claudia Ranaboldo, in their journal article on rural development and cultural identities, argued that GI protection results in the protection of local culture and of agricultural biodiversity due to their links to know-how, tradition, locality, regional characteristics, and the fact that GIs highlight some of the best practices of farmers knowledge and use of their lands.⁵⁰⁹ However, further empirical evidence for this claim are not clearly provided.

Similarly and still in 2007, Michelle Agdomar published a now widely cited article about the World Trade Organization dispute between the EU and the US,⁵¹⁰ and about the GI system at the international level.⁵¹¹ She first stated that her article examined “some of the reasons for the divide between historical allies” and that “[t]he answer is partially nestled in the fact that this debate is as much about free and transparent trade as it is about cultural preservation”.⁵¹² Once again, Agdomar justified the cultural arguments with terms which have been observed in the EU legal discourse and previous academic commentaries but also—like Chesmond—insisted on the contribution of the producer, rather than locality, in the preservation of cultural heritage. She stated that,

A unique feature of the geographical indication is that the producer or manufacturer of the product is a collective, a group that has some unifying inherent characteristic, trait or quality that it is trying to protect. This can be referred to as the cultural component. [...] However, it is this cultural component that makes the topic of geographical indications unique—it is a tale about the struggle of the preservation of culture.⁵¹³

⁵⁰⁹ María Fonte and Claudia Ranaboldo, ‘Desarrollo rural, territorios e identidades culturales. perspectivas desde américa latina y la unión europea’ (2007) 7 *Revista Opera* 9, 27.

⁵¹⁰ See Chapter 3, Section 4.

⁵¹¹ Michelle Agdomar, ‘Removing the Greek from Feta and Adding Korbel to Champagne: The Paradox of Geographical Indications in International Law’ (2007) 18 *Fordham Intellectual Property, Media and Entertainment Law Journal* 541.

⁵¹² *ibid* 557.

⁵¹³ *ibid* 560.

So according to Agdomar, not only do producers contribute to cultural heritage protection, but they are also the actors benefiting from the protection. She stated that,

Right holders of cultural products should not have to fight to protect their goods on case-by-case basis, but rather through an integrated approach. International geographical indication protection has the potential to protect against such acts of biopiracy. Thus, it immediately becomes easier to understand how the geographical indication, for many, morphs into a cultural guardian.⁵¹⁴

Agdomar's academic voice thus falls within the realm of contributions to the EU multifunctional discourse. Although she acknowledged—and mostly rejected—the argument that a GI extension “is a disguise for European trade protectionism”, Agdomar argued that “[g]eographical indications are an opportunity for emerging economies to use intellectual property rules to improve their living standards by generating wealth for their communities, preserving their cultural heritage and landscape”.⁵¹⁵

After 2007, the cultural argument continued to develop. This was in parallel with the increasingly multifunctional EU discourse rising from the need to justify GIs after the WTO challenges from the United States and Australia. An example is Daniela Giovannucci, Elizabeth Barham, and Richard Pirog who argued in their 2010 article that “GIs are recognized for their ability to foster market-based support for local traditions and cultures”.⁵¹⁶ As a justification for this, Giovannucci, Barham, and Pirog cite Fonte and Ranaboldo's 2007 article mentioned previously, which itself does not provide nor refer to empirical evidence for this claim.

⁵¹⁴ *ibid* 562.

⁵¹⁵ *ibid* 605.

⁵¹⁶ Daniele Giovannucci, Elizabeth Barham and Richard Pirog, ‘Defining and Marketing “Local” Foods: Geographical Indications for US Products’ (2010) 13 *The Journal of World Intellectual Property* 94, 103.

As the cultural argument became more anchored in the EU discourse after the 2012 GI Regulation, it also became more common in prominent academic commentaries on GIs. The argument also rose to be more accepted as self-evidently true, often mentioned in passing, as if it is an obvious and uncontested fact.

For example, in 2013, Oana C Deselnicu et al. conducted a meta-analysis of empirical literature to identify the factors determining the level price premium for GIs.⁵¹⁷ The study questioned which types of GI products and markets carry the highest price premium. Deselnicu et al., however, also mentioned that the stricter Protected Designation of Origin can indicate increased benefits to consumers, such as through “stronger cultural and heritage connection” thus increasing their willingness to pay a premium.⁵¹⁸ To support this mention of ‘cultural heritage’, Deselnicu et al. simply referred to a 2011 edited book chapter by Roland Herrmann and Ramona Teuber, stating that Herrmann and Teuber argued that “GIs reveal and represent some sort of authenticity, cultural heritage, or the ability to trace food choices to their origins”.⁵¹⁹ However, the Herrmann and Teuber chapter only very briefly mentioned cultural heritage when it stated that “[a]uthenticity and cultural heritage have become important product characteristics in food demand, at least for certain consumer segments” and focused mainly on origin as a quality cue for consumers.⁵²⁰ This example illustrates once more the problem of academic commentaries on GIs citing other academic commentaries, neither of which rely on convincing justifications for the claim. This results in the reproduction of the EU institutional discourse into academic discourse, thus providing support for the EU multifunctional claims,

⁵¹⁷ Oana C Deselnicu and others, ‘A Meta-Analysis of Geographical Indication Food Valuation Studies: What Drives the Premium for Origin-Based Labels?’ (2013) 38 *Journal of Agricultural and Resource Economics* 204.

⁵¹⁸ *ibid* 215.

⁵¹⁹ *ibid* 206.

⁵²⁰ Roland Herrmann and Ramona Teuber, ‘Geographically Differentiated Products’ in Jayson L Lusk, Jutta Roosen and Jason F Shogren (eds), *The Oxford Handbook of the Economics of Food Consumption and Policy* (Oxford University Press 2011) 812.

without introducing new empirical evidence. By the time the 2012 GI Regulation came into force, the cultural heritage argument had manifestly become a recognisable and widely accepted aspect of GIs and thus had acquired a mythical quality, which did not require further explanation or validation.

Delphine Marie-Vivien, et al. mentioned, in their 2017 paper on the changes in the functioning of GI protection in France, that “PDO/PGIs [...] are associated with local culture and represent a collective intellectual right, as they protect an intellectual creation, the creation over time of a reputation of a place based on local shared practices”.⁵²¹ This was not a statement made as a core argument in the discussion of the article, but rather a claim made in passing in the conclusion. The significance of this claim for this chapter, however, is precisely the fact that this is a passing statement, aiming to remind us of the assumed nature and purpose of GIs. The statement was not evidenced by any further sources but simply reproduced the discourse of the Commission when justifying the existence of GIs. Such a discourse is evidently widely accepted. Furthermore, associating GIs’ reputation with ‘shared practices’ here implies that GIs are linked to individuals and know-how. Yet, as was seen in previous chapters, the legal definition of GIs ties them firstly with a locality and the natural characteristics of that locality. Although know-how plays a part, the boundaries of GI protection are first and foremost geographical.⁵²² While one of the EU rationales behind GIs is their protection of cultural heritage through a products’ connections with the land, some academic commentaries reinforce the cultural argument but instead focused principally on human factors. This, in turn, leads to a reproduction of the EU discourse of GIs protecting cultural heritage but fails to directly evidence the EU argument.

In the same manner, and in the same special issue, experts on GIs Delphine Marie-Vivien and Estelle Biénabe stated that GI products “convey the cultural

⁵²¹ Delphine Marie-Vivien and others, ‘Are French Geographical Indications Losing Their Soul? Analyzing Recent Developments in the Governance of the Link to the Origin in France’ (2017) 98 *World Development* 25, 32.

⁵²² See particularly the definition of GIs in Chapter 1, Section 1.

identity of a place”, but then added that this is “the result of the skills and know-how of local people in producing the good”.⁵²³ While the commentary is supporting the cultural argument, it remains misaligned with the idea that the GIs system restricts the use of GI names to a geographical location specifically and does not grant GI protection for skilled producers located outside the defined region. Marie-Vivien and Biénabe did explain the link between GIs and culture, as they stated that,

The institutionalization of GIs, by regulating the commercial use of names rooted in the cultural diversity of a country, identifies intangible cultural entities and helps protect them from increasing risk of dilution and misappropriation linked with the internationalization of culture.⁵²⁴

Arguably, however, the arrival of non-GI-experts or multinationals in the protected territory to produce GI products can also lead to dilution.

Despite the above academic commentaries overall agreeing with the argument that GIs have the ability to protect cultural heritage—although favouring the idea that culture is linked to human know-how rather than locality—the rest of this section will demonstrate that the cultural argument has also been rejected by some academic critiques.

For example, in his widely cited 2005 article, scholar Tomer Broude argued that culture, as a justification for the expansion of GI protection, is insufficient for the simple reason that GI protection itself is insufficient to protect culture,⁵²⁵ and further stated that most GIs embody “invented traditions” which are pursued for economic reasons.⁵²⁶ Broude argued that “[t]he “award” of a GI provided an

⁵²³ Marie-Vivien and Biénabe (n 139) 2.

⁵²⁴ *ibid* 8.

⁵²⁵ Broude (n 50) 626–627.

⁵²⁶ *ibid* 674.

incentive to invent tradition” and that “the effects on the real tissue of local culture, however, are unknown”.⁵²⁷ Broude concluded that,

If, however, culture is to be taken seriously as a justification for trade-restrictive policies, it must first be proven that these policies do indeed contribute to the protection and promotion of local culture and to the safeguarding of cultural diversity.⁵²⁸

It must be noted that although some of the proponents of the cultural argument, noted above in this section, engaged with Broude’s article, they generally used the article in support of the cultural argument, without reference to the significant critiques of the argument which Broude highlighted. The most prominent example of this is Agdomar’s 2007 article, which cited Broude when stating that “Geographical indications protection also contributes to the preservation of cultures of consumption, not just production”.⁵²⁹ However, no engagement with Broude’s critique of the cultural argument were highlighted.

Furthermore, Kal Raustiala and Stephen R. Munzer, two US proponents of GI protection but critical of the GI legal system identified in their 2007 article a link between the cultural argument and the increase in globalisation. They stated that GIs are “intellectual property rights that aim to protect both farmers and heritage”,⁵³⁰ and “are also signifiers that aim to halt cultural appropriation by outsiders – a concern that resonates strongly in an increasingly globalized world”.⁵³¹ They also stated that “[t]o assert the necessity of GI protection is, in part, to assert the importance of local culture and tradition in the face of ever-encroaching globalization”.⁵³²

⁵²⁷ *ibid* 677.

⁵²⁸ *ibid* 691.

⁵²⁹ Agdomar (n 511) 590.

⁵³⁰ Raustiala and Munzer (n 1) 365.

⁵³¹ *ibid* 345.

⁵³² *ibid* 339.

Raustiala and Munzer nevertheless highlighted the absurdity of the current GI system being linked to locality and of the cultural argument.

If a long-standing producer moves to a new, geographically very similar region in another state or across the globe, why should he or she lose community-member status? If the notion here is that the personality of the community is projected into its products and this projection justifies legal protection via property rights, then it is again hard to see why community members who move just outside the borders of a GI region cannot still avail themselves of the GI. Yet there is another, equally fatal objection. It is hard, if not harder, to see why a perfect stranger from a far-away community can move *into* the region and thus avail him or herself of the GI. Yet this is precisely what current GI law permits.⁵³³

In addition, leading GI expert Dev S Gangjee in his 2012 book argued that the definition of the protected GI regions is both contentious and political, often resulting in large areas being protected, in turn contradicting the idea that the product speciality is linked to the specific characteristics of a small area.⁵³⁴

In his journal article of the same year focusing specifically on the idea of cultural heritage in the context of GIs, Gangjee qualified the cultural heritage argument as a “relatively recent development”.⁵³⁵ He provided a balanced view arguing on the one hand that, amongst other pitfalls, the cultural heritage argument results in the “invention of romanticised and insulated origin stories for products” but on the other hand that it acknowledges the role humans play in the resulting characteristics of GI products—as opposed to simply natural factors being relevant.⁵³⁶ Gangjee also later stated in a 2017 paper that “[t]he guarantee of provenance is somewhat tentative, since different stages of production or raw

⁵³³ *ibid* 359.

⁵³⁴ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 96.

⁵³⁵ Dev S Gangjee, ‘Geographical Indications and Cultural Heritage’ (2012) 4 *The WIPO Journal* 92, 92.

⁵³⁶ *ibid* 102.

materials may be sourced from outside the defined geographical region”,⁵³⁷ thus highlighting a further limitation of the cultural argument. These examples, clearly highlight the shortcomings of the EU cultural argument for GI protection as a justification for the existence of this system.

As was seen, an important part of academic commentaries accepts and reinforces this aspect of the multifunctional EU discourse that cultural heritage protection is a central element of GIs. This literature does so without challenging the lack of EU evidence for the GI protection of cultural heritage—perhaps due to the wide acceptance of the cultural argument—nor does it justify the link of GI protection to location rather than to know-how. In other words, the paradox of the argument that GIs protect cultural heritage, observed in the EU legal and policy discourse, despite GI rules being principally based on geographical restriction rather than attached to specific individuals or groups, is not convincingly clarified by academic commentaries. The association is also contrary to other IP law rights which protect individuals or entities. This divergence calls for further justification or critiques from academia.

2. The Quality (and Health) Argument

Another recurring EU argument concerning GIs is that they are indications of superior quality and thus healthy or healthier products. These two terms of quality and health are discussed together because, in this context, ‘quality’ can encompass ideas of taste and health.⁵³⁸ In addition, as will be seen, ‘health’ is often mentioned in parallel to the idea of product quality.

⁵³⁷ Dev S Gangjee, ‘Proving Provenance? Geographical Indications Certification and Its Ambiguities’ (2017) 98 *World Development* 12, 20.

⁵³⁸ Environmental and social aspects, which Boisseaux and Barjolle also argue can fall under the concept of quality, will be discussed in separate sections; Stéphane Boisseaux and Dominique Barjolle, *La bataille des A.O.C. en Suisse: les appellations d’origine contrôlées et les nouveaux terroirs* (Presses polytechniques et universitaires romandes 2004) 60.

As was seen in Chapter 2, the idea of quality associated with GIs existed before the creation of the 1992 EU GI Regulation protecting agricultural GIs.⁵³⁹ Lori E Simon when discussing the controversy of French GI ancestor, *appellation d'origine*, in her 1983 journal article, stated that the “process of differentiation through identification with distinct trade names [...] encourages production of high quality products”.⁵⁴⁰ Simon used the idea of quality to distinguish appellations from indication of source stating that “[a]n appellation of origin is a title of quality that certifies the legitimacy of a certain type of production's location. An indication of source may refer to a location that does not have any particular reputation for distinctive quality”.⁵⁴¹ Simon finally concluded that,

Protection of appellations of origin is necessary because these appellations encourage production of quality products, distinguish similar products from one another, protect the interests of producers and consumers against unfair competition and deception, and encourage improvement and acceptance of national products in world markets.⁵⁴²

Later, after the 1992 GI Regulation, Conrad, in his 1996 article also contributed to this discourse of quality, stating that “[g]eographical indications therefore serve not only as a statement of origin but also as a guarantee of quality and certain characteristics”, basing this assertion on the fact that this is the purpose of the EU regulation.⁵⁴³ There is once again a reaffirmation of the regulation without any intention to question it. Conrad also argued that GIs are mentioned in laws relating to advertising, food labelling, but also health.⁵⁴⁴

In 2007, thus after the 2006 GI Regulation on agricultural products, Agdomar spoke of quality in relation to the economic benefit argument—which will be

⁵³⁹ See Chapter 2, Section 3.

⁵⁴⁰ Lori E Simon, ‘Appellations of Origin: The Continuing Controversy’ (1983) 5 *Northwestern Journal of International Law & Business* 132, 133.

⁵⁴¹ *ibid* 139–140.

⁵⁴² *ibid* 156.

⁵⁴³ Conrad (n 502) 18.

⁵⁴⁴ *ibid* 14.

discussed in Section 4—when she stated that “an asymmetry of information between producers and consumers gives rise to market failure” but that,

[G]eographical indications could be a solution to this problem as they signal quality and expertise. The geographical indication enables the consumer to distinguish between premium quality products and low end products.⁵⁴⁵

Once again, in Agdomar’s perspective, the signalling of quality is simply a part of what it means to protect GIs, comparable to trademarks which she also sees as indications of quality rather than the simple protection of ownership. She stated that “[t]he geographical indication and the trademark both protect source identifications and are also often indicators of quality”.⁵⁴⁶ Despite the extensive claims Agdomar makes regarding GIs indicating superior quality, she does not raise the question of what is meant by the term ‘quality’.

Although ‘health’ under the idea of the quality benefit of GIs had already appeared in some academic commentaries—exemplified above when discussing Conrad’s discourse—this idea gained in momentum after the 2012 GI Regulation. As discussed in Chapter 3, this regulation, still in force today, saw the EU multifunctional discourse grow significantly. In addition, the concept of quality specifically, became much more prominent in the 2012 Regulation.⁵⁴⁷

IP expert, Irene Calboli, is one of the main proponents of the idea that GIs can help consumers select healthier products. In her 2014 article, Calboli discussed the health aspect of GIs.⁵⁴⁸ She argued that the use of the GI denomination on non-protected products could negatively impact the reputation of the protected ones if safety or health issues resulted in relation to the non-protected product of a

⁵⁴⁵ Agdomar (n 511) 588.

⁵⁴⁶ *ibid* 577.

⁵⁴⁷ See Chapter 3, Section 6.

⁵⁴⁸ Irene Calboli, ‘In Territorio Veritas: Bringing Geographical Coherence in the Definition of Geographical Indications of Origin under TRIPS’ (2014) 6 *The WIPO Journal* 57, 59.

lesser quality.⁵⁴⁹ There is here an underlying assumption that GI products are of superior quality and could not lead to any safety or health-related concerns in contrast to non-GI substitutes. This argument is problematic in the sense that health and safety rules in the EU food industry apply to all food products—and therefore to both GI protected and non-GI protected products equally—and the possibility for GI protected products to run into some unforeseen health and safety issues is not non-existent. For example, while casu marzu—a cheese derived from Pecorino which is fermented by incorporating fly larvae into the cheese—was argued to be a traditional local speciality of Sardinia, it was banned on the grounds that it was dangerous for health and safety reasons.⁵⁵⁰ Cases of salmonella contamination in protected GI cheeses are also not uncommon.⁵⁵¹ Tradition, therefore, does not guarantee quality, health, nor safety. Indeed, due to our constantly growing knowledge and advancement in technology, more modern production techniques could arguably have less chance of leading to the production of foodstuff with health and safety risks. For example, G W Gould discusses new and improved methods to preserve food to increase quality and safety, while trying to satisfy consumer demand for fresher, healthier, and more natural food.⁵⁵²

⁵⁴⁹ *ibid.*

⁵⁵⁰ Emmet Livingstone, ‘New EU Rules Put Insects on the Menu’ *POLITICO* (14 January 2018) <<https://www.politico.eu/article/eat-insects-new-eu-rules-menu/>> accessed 22 May 2018.

⁵⁵¹ Aurore Jarnoux, ‘Contamination aux salmonelles: des lots de roquefort de la marque Société retirés de la vente’ *France Bleu* (3 August 2019) <<https://www.francebleu.fr/infos/societe/contamination-aux-salmonelles-des-lots-de-roquefort-de-la-marque-societe-retires-de-la-vente-1564833599>> accessed 28 May 2020; Daniel Despin, ‘Salmonelle, des reblochons retirés de la vente à Fillinges en Haute-Savoie’ *France 3 Auvergne-Rhône-Alpes* (25 November 2018) <<https://france3-regions.francetvinfo.fr/auvergne-rhone-alpes/haute-savoie/salmonelle-reblochons-retires-vente-fillinges-haute-savoie-1581031.html>> accessed 28 May 2020.

⁵⁵² GW Gould, *New Methods of Food Preservation* (Springer Science & Business Media 2012) xv–xvi.

In a later 2015 article Calboli alluded, albeit less strongly, to the idea that GI protected products represent a healthy—or at least healthier—food choice.⁵⁵³ However, there is still a lack of clarity regarding the link between health and GI products. It is true that if a certain protected product’s method of production excludes, for example, the use of certain artificial additives, this may be ‘healthier’—or rather more natural—than a similar product not protected by the GI which does contain such additives. However, associating GI protection with health in a direct manner can be misleading, as GI protection simply ensures that a particular ‘traditional’ method of production is followed and not that the product is particularly healthy or healthier than other alternatives. Not only does the GI system often protect products such as alcohols, cheeses, and cured meats—which are not necessarily the type of foods that might be recommended to stand at the core of a healthy diet—but some non-protected alternatives to protected GIs might also be produced with less sugar or saturated fats and would therefore be what one might consider a healthier option. For example, the product specifications for Brie de Meaux requires that it has a minimum of 45% fat,⁵⁵⁴ while an average non-GI protected simple brie from the French brand Président only has 31% to 32% fat.⁵⁵⁵ Furthermore, cured ham such as Jambon de l’Ardèche requires curing for 7, 9 or 12 months—depending on the weight—as well as an optional smoking process.⁵⁵⁶ As Véronique Bouvard et al. state, referring to the International Agency for Research on Cancer’s findings: meats which are processed are “carcinogenic to

⁵⁵³ Irene Calboli, ‘Geographical Indications of Origin at the Crossroads of Local Development, Consumer Protection and Marketing Strategies’ (2015) 46 *International Review of Intellectual Property and Competition Law* 760, 767.

⁵⁵⁴ Décret du 29 décembre 1986 relatif à l’appellation d’origine ‘Brie de Meaux’ (1 January 1987) *Journal Officiel de la République Française* 37 Article 2.

⁵⁵⁵ Président, ‘Président Plain Foil Brie Wedge’ (*President Cheese*, 2021) <<https://presidentcheese.com/products/brie-cheese/president-plain-foil-brie-wedge/>> accessed 14 July 2021; ‘Président Brie’ (*Waitrose*, 2017) <<https://www.waitrose.com/ecom/products/president-brie/484216-68373-68374>> accessed 14 July 2021.

⁵⁵⁶ Publication of an amendment application pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs [2015] OJ C330/3.

humans”.⁵⁵⁷ They also clarify that processed meats include ones which have been cured, salted, fermented or smoked.⁵⁵⁸ As a result, the GI protection for this product does not make it intrinsically healthy or healthier than a non-processed meat alternative.

Consumer studies literature has also provided an explanation for the focus on quality and health. For example, Wim Verbeke et al.—basing their argument on a study about consumers’ willingness to pay for origin labels⁵⁵⁹—argued that consumers will be more likely to purchase certain products from specific regions if they believe that it is healthier or safer.⁵⁶⁰ This is supported by Zisimos Likoudis et al.’s 2016 study, in which it is argued that an important aspect of a consumer decision to buy a product is the notion of trust, which is itself associated with “safety and perceived risk, as well as nutritional and health attributes”.⁵⁶¹ This might help explain, in parts, the relationship between GIs and quality and health. There is an assumed belief and trust from the consumer’s side that the product’s status means it is more safe, healthy and overall, of better quality. Furthermore, the Likoudis study suggests that consumers do not have a clear understanding of the meaning of the Protected Designation of Origin and Protected Geographical Indications labels.⁵⁶² This lack of knowledge could also, therefore, explain the uninformed belief that these labels represent quality and a healthy alternative.

⁵⁵⁷ Véronique Bouvard and others, ‘Carcinogenicity of Consumption of Red and Processed Meat’ (2015) 16 *The Lancet Oncology* 1599, 1600.

⁵⁵⁸ *ibid* 1599.

⁵⁵⁹ Maria L Loureiro and Wendy J Umberger, ‘Estimating Consumer Willingness to Pay for Country-of-Origin Labeling’ (2003) 28 *Journal of Agricultural and Resource Economics* 287, 294.

⁵⁶⁰ Wim Verbeke and others, ‘Consumers’ Awareness and Attitudinal Determinants of European Union Quality Label Use on Traditional Foods’ (2012) 1 *Bio-based and Applied Economics* 213, 215.

⁵⁶¹ Zisimos Likoudis and others, ‘Consumers’ Intention to Buy Protected Designation of Origin and Protected Geographical Indication Foodstuffs: The Case of Greece’ (2016) 40 *International Journal of Consumer Studies* 283, 284.

⁵⁶² *ibid*.

This idea was also picked up by other GI academic commentaries as Getachew Mengistie and Michael Blakeney discussed GIs in the context of transparency, product quality, and traceability, suggesting that the label can reassure consumers about what they are buying and that this means they are willing to pay higher prices.⁵⁶³

There has therefore been significant support for the quality argument for GIs in academic literature, whereby this concept of ‘quality’—very prominently mentioned in the EU regulations⁵⁶⁴—has been repeatedly reiterated and used as a self-evident and core aspect of GIs. This in turn has reinforced the EU multifunctional discourse. For example, Marie-Vivien and Biénabe argue that “GIs are progressively addressing more social considerations, as reflected in the rapidly growing literature linking local food systems and GI to social vibrancy, improved environmental sustainability, and healthier food”.⁵⁶⁵ But this growing literature is often basing itself on other unsupported literature or EU claims associated with its GI regulations. This leads to the reproduction of the discourse without concrete empirical evidence to support it.

The rest of this section will highlight that some experts, however, remain cautious about such a multifunctional discourse phenomenon and have criticised the quality argument supporting GIs.

Onno Brouwer argued in 1991 that,

It seems fair to conclude therefore that protection of origin is in the first place used as a marketing tool, rather than as a means of enhancing the quality products. In other words, the emphasis is on the distinguishing and advertising function, rather than the quality function. It provides producers

⁵⁶³ Getachew Mengistie and Michael Blakeney, ‘Geographical Indications in Africa - Opportunities, Experiences and Challenges’ (2016) 38 *European Intellectual Property Review* 290, 290.

⁵⁶⁴ See Chapter 3.

⁵⁶⁵ Marie-Vivien and Biénabe (n 139) 4.

with an extra means of distinguishing their products from similar (competing) products”.⁵⁶⁶

Brouwer thus at the time—when the first EU GI regulation was still in a development phase—adopted a very US-centred approach to EU protectionism.

On the health aspect, Dominique Barjolle, Bertil Sylvander, and Erik Thévenod-Mottet have simply highlighted that certain schools of thought have rejected GI protected products on the ground of public health, with issues such as alcoholism, fatty diets, and food safety at its core, in particular concerning wine and spirits, as well as dairy products and raw milk cheeses.⁵⁶⁷ Even if evidence were to demonstrate that some of these products were not as ‘unhealthy’ as one might think, there is no clear evidence supporting the rationale that GI protection helps consumers select particularly healthy foods. Non-processed alternatives such as fruits and vegetables are generally not as commonly protected and widely considered as most ‘healthy’. Even for the fruits and vegetables which are protected, the reason behind their health benefit is not the GI protection itself, but rather simply their nature as fruits and vegetables.

Gangjee also notes that numerous associations are being made by consumers themselves, in relation to GIs, such as quality, safety, and health, which highlights the unclear messages about what the logos convey.⁵⁶⁸

Finally, although Marie-Vivien and Biénabe also recognise an association between GIs and quality, as they discuss “the ability of GIs to differentiate products as origin-based quality standards”,⁵⁶⁹ they nevertheless acknowledge that there are diverging opinions on this link between GIs and quality,⁵⁷⁰ and raise the

⁵⁶⁶ Brouwer (n 301) 631.

⁵⁶⁷ Dominique Barjolle, Bertil Sylvander and Erik Thévenod-Mottet, ‘Public Policies and Geographical Indications’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011) 100.

⁵⁶⁸ Gangjee, ‘Proving Provenance?’ (n 537) 18.

⁵⁶⁹ Marie-Vivien and Biénabe (n 139) 2.

⁵⁷⁰ *ibid.*

matter of GIs being “socially constructed as quality standards”.⁵⁷¹ There is therefore here an appreciation of this strand of discourse, but also of the fact that this is a social construction, rather than an evidenced fact that GI protected products are intrinsically and normatively higher in quality due to their link to the land. This perspective that GIs’ quality is constructed is contradictory to the EU perspective, but also to the very basis of the GI protection since the products’ qualities attributable to geography is one of the rationales behind this system of protection.

Despite a lack of clarity as to the link between quality or health and GIs, the claim that GI products are healthier or of superior quality has been accepted and reproduced by much of the academic discourse. This reproduction occurs despite the numerous ways in which this discourse could be challenged, as outlined above.

3. The Environmental Argument

The environmental argument is probably the least prominent for GIs in the academic literature. It is also the weakest in the EU multifunctional discourse, appearing late in the development of the EU discourse on GI regulation.⁵⁷²

The majority of the references of GIs being helpful for environmental purposes emerged after the 2012 GI Regulation, although a few authors alluded to it beforehand. For example, in her influential and widely cited 2003 article, rural sociologist Elizabeth Barham argued that GIs allow for links between food production and culture, society, and the environment, fostering an “increased responsibility to place”.⁵⁷³ In addition, in 2007, Jorge Larson mentioned in a commissioned study, that “[t]he production practices and the work involved in GI value chains may be less ‘efficient’ than industrial production of ‘equivalent’

⁵⁷¹ *ibid* 8.

⁵⁷² See Chapter 3, Section 6.

⁵⁷³ Elizabeth Barham, ‘Translating Terroir: The Global Challenge of French AOC Labeling’ (2003) 19 *Journal of Rural Studies* 127, 129.

goods but they provide environmental, social and cultural benefits”.⁵⁷⁴ It may be true that the method required by a GI sometimes requires more manual labour, and may therefore be less efficient than the manufacturing of similar products, but if the PSs do not require the GI to be produced in an environmentally friendly manner, then the use of pesticides, for example, might be directly comparable to a non-GI protected product. Furthermore, modern technologies sometimes allow for more environmentally friendly ways to produce than traditional methods of production developed at a time where the world was not concerned with issues of climate change. For example, Joyce I. Boye and Yves Arcand argued that “[o]ne of the most promising technological approaches to reduce environmental footprint in food processing is the use of enzymes”.⁵⁷⁵ They added that beyond the sustainable advantage of introducing enzymes to food production, it could also lead to better texture and appearance of food, as well as extend its shelf life.⁵⁷⁶

Post-2012, the main proponents of this idea of the environmental benefit of GIs were Giovanni Belletti et al. who argued in their 2015 article ‘Linking protection of geographical indications to the environment: Evidence from the European Union olive-oil sector’, that,

[M]any arguments – relying in particular on concepts of multifunctionality, terroir and ecological embeddedness – support the hypothesis that protection of GIs exerts favourable effects on the environment, although they may not constitute an environmental tool per se.⁵⁷⁷

Unlike much of the academic commentary which has so far been discussed, Belletti et al. supported their arguments with some empirical studies—even if the

⁵⁷⁴ Jorge Larson, ‘Relevance of Geographical Indications and Designations of Origin for the Sustainable Use of Genetic Resources’ (Global Facilitation Unit for Underutilized Species 2007) 6.

⁵⁷⁵ Joyce I Boye and Yves Arcand, ‘Current Trends in Green Technologies in Food Production and Processing’ (2013) 5 Food Engineering Reviews 1, 9.

⁵⁷⁶ *ibid.*

⁵⁷⁷ Belletti and others (n 88) 95.

conclusiveness of a number of them will be brought into question in the next chapter.⁵⁷⁸

In their article, Belletti et al. supported Barham's argument about producers' responsibility to a place as they suggested that individuals involved in the production of the local GI become more conscious of the environmental impact of their production.⁵⁷⁹ This, however, omits to acknowledge that without strict environmental requirements, the producers' responsibility effect could clash with the normal pressures of product competition and profit maximisation, encouraging producers to produce rapidly and cheaply. For example, Le Comité Interprofessionnel du Vin de Champagne—created by the French legislator to regulate the GI⁵⁸⁰—estimates that there are 320 houses of Champagne and 16,000 winegrowers who are part of the Champagne Trade Association for the region.⁵⁸¹ There is, therefore, a steep competition between Champagne producers but also between the grape growers—who have their own smaller productions—and the Champagne houses.⁵⁸² In other words, if the GI protection is not dependent on an environmentally friendly production, it will be difficult for producers to compete with the other producers in the same region, who may not employ environmentally friendly techniques. Although this is conjecture, it is simply unclear from the GI environmental argument how competitive pressures to produce more and at lower costs would not be at the expense of environmentally friendly techniques. Furthermore, this argument of responsibility to a place is founded on the idea that GI producers are unable to move their production beyond the relevant region and so have a vested economic interest in protecting the

⁵⁷⁸ See Chapter 5, Section 4.

⁵⁷⁹ Belletti and others (n 88) 95.

⁵⁸⁰ Comité Champagne, 'Comité Champagne CIVC défense et protection de l'appellation Champagne' <<https://www.champagne.fr/fr/comite-champagne/qui/le-comite-champagne>> accessed 27 February 2018.

⁵⁸¹ Comité Champagne, 'Vignerons et Maisons de Champagne des métiers différents au service de l'AOC Champagne' <<https://www.champagne.fr/fr/comite-champagne/vignerons-maisons/vignerons-et-maisons-de-champagne>> accessed 27 February 2018.

⁵⁸² Stephen Charters and others, 'Value in the Territorial Brand: The Case of Champagne' (2013) 115 *British Food Journal* 1505, 1509.

environment within which they operate. It is however questionable that non-GI producers of foodstuffs have any greater ability to move production elsewhere. Although such producers may not be directly tied to their area due to such protection, agriculture is broadly a local undertaking, which requires large amounts of land. It is reasonable to assume that non-GI farmers may also be reluctant to relocate and therefore have just as much interest in the protection of their land as GI producers.

Belletti et al. also suggest that PSs play a key role in using GI protection as a tool for sustainable development.⁵⁸³ This is because environmental requirements could be added to the PSs of GIs. Belletti et al. thus see the potential for GI protection to be used as a policy instrument. Once again, although it may make sense to incorporate further environmental rules for GIs products whose production is already regulated, such rules could arguably be incorporated and required for the production of any agricultural products more generally. Belletti et al. argue that national and regional authorities regulating GIs should request that the link between the GI protected product and its territorial and environmental characteristics be provided voluntarily by producers using the GI,⁵⁸⁴ but there is then no reason that such an approach could not instead apply more widely to all food production. This is particularly relevant because Belletti et al. make it clear that, under this scheme, there is a risk of producers giving up their GI label if the environmental requirements are too strict and complex.⁵⁸⁵ This would not be an issue if environmental requirements were not conditional on the use of the label, but rather something which must be enforced throughout the agricultural sector, at the national level—or regional level in the case of the EU.

In 2015, Irene Calboli stated in an IP edited book chapter on the unique benefits of GIs:

⁵⁸³ Belletti and others (n 88) 96.

⁵⁸⁴ *ibid* 105.

⁵⁸⁵ *ibid*.

I will conclude that, when it is carefully weighted and monitored, GI protection, including at the anti-usurpation level, could contribute to the promotion of investments in local production, niche-markets, and product quality, *which in turn can benefit sustainable development, the environment, localized and high-skilled labor, and also public health and human rights.*⁵⁸⁶ [*emphasis added*]

Calboli argued that GIs can help consumers identify food “made with traditional or environmental-friendly manufacturing techniques.”⁵⁸⁷ She further advanced that the system of protection would reward the environmentally conscious producers and hold accountable the ones who are not because any cost to the local environment will impact the producers themselves.⁵⁸⁸

As was seen above in the context of the quality and health argument for GIs,⁵⁸⁹ Marie-Vivien and Biénabe, in their 2017 article on the role of the state in GI regulations, included ‘environmental sustainability’ in the list of social considerations that GIs are addressing, ‘as reflected in the rapidly growing literature’.⁵⁹⁰ As such, they confirmed that the environment discourse strand around GIs is accepted as valid in the academic literature. Looking at the literature cited by Marie-Vivien and Biénabe concerning the environmental argument in the article, they referred to work already discussed in this section, as well to a study jointly produced by the Food and Agriculture Organisation (FAO) and Siner-GI which also reiterated the idea of GIs and environmental sustainability as it stated that, “origin-linked products are often linked to traditional production systems and extensive practices with lower environmental impacts compared to modern

⁵⁸⁶ Irene Calboli, ‘Of Markets, Culture, and Terroir: The Unique Economic and Culture-Related Benefits of Geographical Indications of Origin’ in Daniel Gervais (ed), *International Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar 2015) 446.

⁵⁸⁷ *ibid* 450.

⁵⁸⁸ *ibid* 451.

⁵⁸⁹ See footnote 565 above.

⁵⁹⁰ Marie-Vivien and Biénabe (n 139) 4.

techniques and inputs”.⁵⁹¹ However, this study did not produce empirical evidence for the positive environmental impacts of GI products compared to non-GI ones, but rather also focused on the *potential* of GIs as an environmental tool.⁵⁹² Furthermore, the mention of a link between ‘local food systems and GIs’ and ‘environmental sustainability’ is problematic as, although GIs may be produced in one locality, they are not necessarily consumed locally.

There is indeed a tendency to focus on the environmental aspect of the production phase rather than considering the system as a whole. For example, as many people from all over the world want to buy ‘Champagne’, and as the GI protection means that the production for such a product can only occur within the Champagne region of France, this unsurprisingly leads to important mass exportation of the product and that is environmentally harmful. Stephen Charters et al. show that exports for Champagne have been steadily increasing since the Second World War, and were estimated to be 140 million bottles in 2008.⁵⁹³ In 2020, the Comité Interprofessionnel du Vin de Champagne measured that over 130 million bottles were exported outside of France—a decrease which may be due to the Covid 19 crisis—for an export value of 2.6 billion euros.⁵⁹⁴ More generally, it was estimated that 22% of the sales value of EU GIs were from extra-EU exports, in 2017.⁵⁹⁵

An additional point that goes against the environmental argument is that numerous protected GIs are red meats and dairy products, and such products have been said to have a greater carbon footprint than others such as fruits and

⁵⁹¹ Emilie Vandecandelaere and others, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* (2nd edn, FAO and Siner-GI 2010).

⁵⁹² *ibid* 83–87.

⁵⁹³ Charters and others (n 582) 1508–1509.

⁵⁹⁴ Comité Champagne, ‘The Economy of Champagne: Champagne Key Market Statistics’ (2020) <<https://www.champagne.fr/en/champagne-economy/key-market-statistics>> accessed 14 September 2021.

⁵⁹⁵ AND-International (n 387) 19.

vegetables,⁵⁹⁶ making these less sustainable to consume. In this perspective, environmental sustainability is difficult to justify or at least presents as questionable.

Although the environmental strand of discourse was introduced much later and is weaker than the other strands of the multifunctional discourse on GIs, some academic critics do point to the failures of the argument. The remainder of this section will provide examples of academic critiques for the environmental argument. These critiques are also mainly concentrated to post-2012 when the environmental argument grew in significance.

Although Belletti et al. have been one of the main advocates of the environmental argument, as seen in this section, it must be noted that they do, nevertheless, consider some negative environmental impacts of GIs, stating that GI production could negatively impact genetic erosion or create pressure on limited resources.⁵⁹⁷ They argue, however, that evidence concerning these negative impacts remains inconclusive.⁵⁹⁸ This is something which will be considered in more detail in the next chapter,⁵⁹⁹ but it is not surprising that intense production of a single product or crop in a single geographical area could lead to issues of soil erosion, in particular when known that common agricultural practices encourage the rotation of crops for soil recovery and fertility.⁶⁰⁰

Thévenod Mottet, in a chapter for Lockie and Carpenter's 2010 edited book on agro-ecology, also argued that GI PSs can lead to monoculture, but also that PSs

⁵⁹⁶ Christopher L Weber and H Scott Matthews, 'Food-Miles and the Relative Climate Impacts of Food Choices in the United States' (2008) 42 *Environmental Science & Technology* 3508, 3512; Henk Westhoek and others, 'Food Choices, Health and Environment: Effects of Cutting Europe's Meat and Dairy Intake' (2014) 26 *Global Environmental Change* 196, 201.

⁵⁹⁷ Belletti and others (n 88) 95.

⁵⁹⁸ *ibid.*

⁵⁹⁹ The next chapter will also show that evidence in favour of the environmental argument is often inconclusive.

⁶⁰⁰ DG Bullock, 'Crop Rotation' (1992) 11 *Critical Reviews in Plant Sciences* 309, 309.

could be more flexible to allow a wider diversity of production techniques or raw material which may, in turn, enhance biodiversity.⁶⁰¹

Additionally, Calboli in her book chapter mentioned previously, despite numerous points supporting the environmental argument, features in a footnote a study by Sarah Bowen demonstrating that the Tequila GI has not positively impacted local populations nor the environment.⁶⁰² This is however not prominently drawn on in the discussion.

Overall, this section has highlighted that the EU multifunctional discourse on environmental protection of GIs has been reproduced in some academic literature, especially after 2012, even if it is not as widespread as other arguments. This is in line with the prominent introduction of the environmental strand of discourse around GIs in the Impact Assessment published with the 2012 GI Regulation.⁶⁰³ The section also showed that there is a focus on the environmental sustainability of the production and a lack of challenges on the sustainability of the consumption of GIs, such as the mass export of GI products. Finally, the arguments which justify the potential of GIs to protect the environment are no different to the potential of any agricultural product to do the same.

4. The Socio-Economic Argument

A final and broader strand of the EU multifunctional discourse around GIs is the socio-economic benefits of GIs. This argument ranges from the claims that GIs help rural development and increase wealth, to the idea that they ensure a reduction in consumer confusion. As will be demonstrated in this section, these

⁶⁰¹ Erik Thévenod-Mottet, 'Geographical Indications and Biodiversity' in Stewart Lockie and David Carpenter (eds), *Agriculture, Biodiversity and Markets: Livelihoods and Agroecology in Comparative Perspective* (Earthscan 2010) 207.

⁶⁰² Sarah Bowen, 'Embedding Local Places in Global Spaces: Geographical Indications as a Territorial Development Strategy' (2010) 75 *Rural Sociology* 209, 211; as seen in Calboli, 'Of Markets, Culture, and Terroir' (n 586) 451.

⁶⁰³ See Chapter 3, Section 6.

claims are increasingly reproduced in academic literature. Some challenges to this narrative will also be provided.

From the first EU regulation in 1992, relating to the protection of agricultural GIs, the economic aspect of GIs was evident, as the rationale for the regulation highlighted in the preamble referred to “the Community economy”, “rural economy”, and “improving the incomes of farmers”.⁶⁰⁴ This thesis will not contest the financial importance of GIs. It was indicated in a report from AND International and the European Commission, that in 2017, the sales value of GIs worldwide equated €74.8 billion, and €77.1 billion if including Traditional Specialities Guaranteed.⁶⁰⁵ GIs and TSGs together represented a 7% share of the food industry across the EU Member States.⁶⁰⁶ Furthermore, it was estimated that GI products are on average sold 2.11 times the price of the same amount of non-GI alternatives—a reduction since 2010—although it must be noted here that this value does not take into consideration whether the production costs of the GI products were higher to start with.⁶⁰⁷ The financial advantage of GIs may be evident, however, the EU socio-economic claims around GIs reproduced by the academic literature is an aspect which will be questioned further.

As with other discourse strands, the early socio-economic argument for GIs were rather minor claims. For example, prior to the 1992 GI Regulation, citing the International Association for the Protection of Intellectual Property, Simon in her 1983 article stated that “geographic designations may play a role in protecting producers and consumers from unfair competition and deception”.⁶⁰⁸

After the 1992 Regulation, this idea of consumer protection dominated the socio-economic argument for GIs. The logo was argued to give a sense of transparency to the consumers. Barham argued in her 2003 paper that “the presence of the GI

⁶⁰⁴ Regulation 2081/92 Preamble.

⁶⁰⁵ AND-International (n 387) 16.

⁶⁰⁶ *ibid* 20.

⁶⁰⁷ *ibid* 101–102.

⁶⁰⁸ Simon (n 540) 133.

on the label carries specific messages to the consumer about the process of production, as opposed to information on the inherent qualities of the product alone (ingredients, etc.)”.⁶⁰⁹ There is here, however, an important assumption that the consumer understands and knows about the manufacturing processes behind the GIs they purchase. Although consumers might recognise that one cheese does not hold the GI logo, while the other does, it is unlikely that the consumer fully understands the real underlying differences in terms of production, ingredients, and origin between the two types of cheeses.⁶¹⁰ These details are present in full in the formal decrees awarding the GIs to which consumers do not have immediate access when buying the product. Therefore, the notion that consumer confusion is avoided through the use of GI labels is a highly idealistic argument that assumes consumers understand the concept of GIs in the first place.⁶¹¹

The socio-economic argument quickly increases in academic commentaries after the 2006 Regulation. This is in line with the EU discourse on regulations, as the EU developed this narrative in defending the GI system from US critiques in the WTO dispute, as was seen in Chapter 3. The socio-economic justifications referred to in academic commentaries became multiple and varied.

In her 2007 article, Agdomar concluded that “[e]xtended protection for geographical indications has the potential to serve many purposes: a) protection for producers and source communities; b) protection for consumers; and c) increased quality and production standards”.⁶¹² The same year, Raustiala and Munzer stated, “[w]e argue that GI protection in international law is justified for many of the reasons that trademark protection is justifiable: primarily, to protect consumers against confusion”.⁶¹³

⁶⁰⁹ Barham (n 573) 129.

⁶¹⁰ GIs may avoid a very general level of confusion by preventing a food product type that is very different from the protected GI from using the protected name—e.g., ensuring that parmesan is known broadly to be a fresh cheese—but it does not ensure the actual understanding of what the GI products contain nor how they are produced.

⁶¹¹ This is also likely true for other types of protected food labels.

⁶¹² Agdomar (n 511) 606.

⁶¹³ Raustiala and Munzer (n 1) 340.

This aspect of the EU socio-economic argument for GIs, as a way to avoid consumer confusion, is a common one. In her 2009 study questioning the economic benefits of raising trademark and GI protection for Champagne—often cited by EU IP experts such as Calboli—US-based researcher Margaret Ritzert stated that “[a]lthough other parts of a wine label—brand and grape varietal most significantly—also provide consumers with information about the wine, the GI conveys the most specific information about the wine”.⁶¹⁴ However, Ritzert makes this claim by citing Michael Maher who, in his 2001 article, highlighted the issues of non-conforming geographical terms, without quite advancing the same, but who stated that a goal of GIs is “the assurance to the consumer of the authenticity of products bearing that identifier.”⁶¹⁵ He bases this claim on a short 1995 guide by Jean-François Gautier on wines and frauds.⁶¹⁶ The point here is that there is a trend whereby these GI arguments, when they are referenced, are based on other academic commentaries, without referring directly to any concrete empirical evidence supporting these claims. This creates a circularity of justifications with claims that are so prominently embedded in the discourse that it becomes unclear what empirical support exists for them.

Along with the other GI arguments which have been explored in this chapter, Delphine Marie-Vivien in 2010 also mentioned the socio-economic benefits, when she stated that,

There are multiple objectives behind the protection of GIs: first, protection of consumers against fraud; second, protection of the producer of the good; third, territorial, local, regional and rural development; and, fourth,

⁶¹⁴ Margaret Ritzert, ‘Champagne Is from Champagne: An Economic Justification for Extending Trademark-Level Protection to Wine-Related Geographical Indicators’ (2009) 37 *AIPLA Quarterly Journal* 191, 207.

⁶¹⁵ Michael Maher, ‘On *Vino Veritas*? Clarifying the Use of Geographic References on American Wine Labels’ (2001) 89 *California Law Review* 1881, 1885.

⁶¹⁶ Jean-François Gautier, *Le vin et ses fraudes* (Presses universitaires de France 1995).

conservation of the biological resources, biodiversity and cultural diversity.⁶¹⁷

Marie-Vivien referenced a 2005 conference paper by Gilles Allaire et al. for this claim. However, as it is a conference paper, the citations are limited and where such arguments of environmental and socio-economic advantages of GIs are referenced, they are based on statements by the French Economic and Social Council,⁶¹⁸ and the strategy of the UK Department for Environment, Food & Rural Affairs.⁶¹⁹ Both of these countries have adopted agricultural strategies in line with the EU level, so the reproduction of that discourse is to be expected. Once again, the claims do not lead to clear empirical evidence.

Again in 2010, Giovannucci, Barham and Pirog argued that GIs produce “equitable rural development at the regional level”,⁶²⁰ and that consumers in the EU seem to be able to recognise GIs due to the strict prevention on the use of ‘style’, ‘type’, ‘method’ etc. associated with the name,⁶²¹ as per Article 13.1(b) of Regulation 510/2006.⁶²² Firstly on the reference to rural development, Giovannucci, Barham and Pirog refer to Daniele Giovannucci et al.’s ‘Guide to Geographical Indications’. The later book is very comprehensive and makes various references to the idea of rural development and GIs but once again only cites other academic claims as evidence for this.⁶²³ This is another example of an academic commentary basing claims on others’ claims in relation to GIs. Regarding the second statement by Giovannucci, Barham and Pirog that

⁶¹⁷ Delphine Marie-Vivien, ‘The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India’ (2010) 13 *The Journal of World Intellectual Property* 121, 121.

⁶¹⁸ Gilles Allaire and others, ‘Les dispositifs français et européens de protection de la qualité et de l’origine dans le contexte de l’OMC: justifications générales et contextes nationaux’ (Symposium International de l’INRA, Lyon, March 2005) 11.

⁶¹⁹ *ibid* 17.

⁶²⁰ Giovannucci, Barham and Pirog (n 516) 103.

⁶²¹ *ibid* 107.

⁶²² Regulation 510/2006.

⁶²³ Daniele Giovannucci and others, *Guide to Geographical Indications: Linking Products and Their Origins* (International Trade Centre 2009).

consumers seem to be able to recognise GIs, only the 2006 Regulation is cited as a source for this. It would be beneficial for these various claims to provide more explanation as to the evidence supporting these statements.

The literature reproduces the EU discourse but, as will be seen in the next chapter, the evidential bases of the EU's claims are by no means clear either. Even if it can be demonstrated that consumers recognise the GI names, this would not show a real understanding of what the GI label truly signifies. There is some consensus in the literature on the idea that GIs help avoid consumer confusion but some further clarity on what 'preventing consumer confusion' means in this context and how this is assessed would be beneficial. Some more survey evidence, for example, should be expected to support these claims.

In addition, Bilge Dogan and Ummuhan Gokovali in their 2012 article on the rural development potential of GIs and its application to Turkey, insisted on the idea that GIs increase employment, explaining that "[c]onsidering the fact that GIs are mostly originated from relatively less developed rural areas, protection of GI would benefit directly to the producers of the region by providing income and employment opportunities".⁶²⁴ Their rationale is that GIs boost local economies, but they do not provide new empirical evidence regarding this argument. They principally base this claim on the idea that GI protection comes with a price premium and boosts tourism activity in the protected area.⁶²⁵ Both of these recurring justifications are challenged in the next chapter of this thesis.

The socio-economic argument for GIs became prominent after the WTO dispute but continued to be relevant after the 2012 Regulation as well. By then, it had become an accepted part of the EU multifunctional discourse. In her 2015 article, Calboli stated that she agreed GI protection is economically beneficial for

⁶²⁴ Bilge Dogan and Ummuhan Gokovali, 'Geographical Indications: The Aspects of Rural Development and Marketing Through the Traditional Products' (2012) 62 *Procedia Social and Behavioral Sciences* 761, 762.

⁶²⁵ *ibid* 763–764.

producers, consumers, and national economies linked to GI products.⁶²⁶ In addition, she argued that GIs are necessary to avoid consumer confusion with regards to the provenance and quality of certain products, to encourage producer investment in GI-protected regions, and to avoid GI protected names becoming generic.⁶²⁷ The chief problem with this recurring idea of consumer confusion is that there can only be a reduction of consumer confusion if the consumer understands what the GI labels and denomination mean. There is generally an important risk of miscommunication to the consumer in the context of foodstuff, which is in particular due to the numerous labels and schemes associated with foods—this includes GIs and standards for food safety but also labels such as ‘organic’, ‘non-GMO’, and ‘sustainable’.⁶²⁸

Mixed messaging around food is not a new issue. Whether confusions about health, safety, or quality, consumers’ understanding of food has often been a struggle—most likely due to misinformation and the blurred line between independent information and marketing—making it particularly challenging to communicate science-based information on food to consumers.⁶²⁹ On this point, Likoudis et al.’s study concludes that there is a “need for better consumer education on the special characteristics of PDO/PGI products, which could lead to more informed decisions when buying these products”.⁶³⁰ The GI PSs are very complex and will differ from one GI protected product to another. The GI logo or name cannot, therefore, eradicate consumer confusion as is regularly claimed. All the logo does is point the consumer to that product with the sole rationale that it must be trusted to be ‘better’ in quality, health, etc. because it holds the logo. It may arguably be disadvantageous to the GI producers if consumers had a real

⁶²⁶ Calboli, ‘Geographical Indications of Origin at the Crossroads of Local Development, Consumer Protection and Marketing Strategies’ (n 553) 766.

⁶²⁷ *ibid* 761.

⁶²⁸ David A Wirth, ‘Geographical Indications, Food Safety, and Sustainability: Conflicts and Synergies’ (2016) 5 *Bio-based and Applied Economics* 135, 136.

⁶²⁹ Keith-Thomas Ayoob, Roberta L Duyff and Diane Quagliani, ‘Position of the American Dietetic Association: Food and Nutrition Misinformation’ (2002) 102 *Journal of the American Dietetic Association* 260, 260 and 263.

⁶³⁰ Likoudis and others (n 561) 288.

understanding of what GI label means. For example, a consumer understanding that ‘salad cheese’ and ‘feta’ are substitutes, although the latter was made in Greece and abided by predefined PSs and the former was produced, possibly in a very similar manner but outside of that geographical region, could change how much importance the consumer associates with the label.

It is also claimed that the development of GI systems stemmed from worries concerning issues of food fraud. Belletti et al. stated in their 2015 paper that “[p]rotection of GIs is conceived as a tool for protecting the legitimate users of geographical names in designating all kinds of goods – although generally referring to agri-food products – against imitations and frauds”.⁶³¹ In addition, in 2017, Marie-Vivien and Biénabe argued that “growing concerns over fraud concerning origins and public health” in the 19th century has encouraged the development of GIs.⁶³²

As the GI protection is adding significantly more value to these goods that were feared of being defrauded, this could increase the appeal for fraudsters to target these very same goods, as their commercial value has increased because of their protection. Robert C Ulin’s 1995 article explains that after the 1855 *grans crus* label was created, there was an increase in fraudulent behaviour by producers wanting to exploit the protected wine’s reputation in order to benefit from their success.⁶³³ This possibility of increased fraud will be discussed further towards the end of this section.

GIs are therefore seen as multifunctional by literature as well as by the EU discourse on regulations. This includes the perception of multiple socio-economic benefits. Marie-Vivien and Biénabe argue that these benefits include reducing unemployment, lowering poverty, and improving production, development, and trade, and that “given their potential ability to fulfil numerous public objectives, GIs are not only considered as an [intellectual property right] but also as a policy

⁶³¹ Belletti and others (n 88) 95.

⁶³² Marie-Vivien and Biénabe (n 139) 1.

⁶³³ Ulin (n 164) 522.

instrument”.⁶³⁴ Marie-Vivien and Biénabe make these claims by citing some of the literature which has already been explored in this chapter. However, what this section in particular has shown is that this reliance on earlier literature means that there is a loss of the source of the claim. When one follows this trail of literature, the endpoint tends to be either EU claims based on EU regulations or a lack of justification due to the wide acceptance of this prominent discourse around GIs.

While academic commentaries do highlight the socio-economic benefits of GIs, some also provide counterclaims to this idea.

Firstly, it has been criticised in the academic literature that GIs are mainly economic rather than social. For example, US IP law expert, Justin Hughes—in his 2006 article on the US-EU debate around GIs—argued that,

Although terroir and a claim for a unique communications function for geographical indications is the European Union’s public rhetoric, this Article concludes that the European Commission has a simpler goal: control of geographic words for their *evocative value in the marketplace*. The monopoly rents available from exclusive control of this evocative value drive the EU position in the debates over geographical indications.⁶³⁵

Hughes’ perspective, therefore, aligns with the US critique that GIs are a market protectionist tool.

Another critique is that GIs’ socio-economic advantages only relate to certain producers. From a geographer’s perspective, Matthew J Rippon argued in 2014 that GI protection discriminates against farmers outside the region who wish to make similar products.⁶³⁶ EU discourse and academic commentaries focus on the advantage for producers protected by the GI, which implies that other producers—

⁶³⁴ Marie-Vivien and Biénabe (n 139) 2.

⁶³⁵ Hughes (n 167) 305.

⁶³⁶ Matthew J Rippon, ‘What Is the Geography of Geographical Indications? Place, Production Methods and Protected Food Names’ (2014) 46 *Area* 154, 154.

in non-GI protected regions—are at a disadvantage by not having access to the protection.

Third, in their 2015 economic analysis of GIs, Antonella Di Fonzo and Carlo Russo argued that producers of GIs could themselves commit fraud by not following the outlined requirements of GI production, and that command and control in this sector is therefore insufficient.⁶³⁷ They posit that although some of the main aims of GI are to support farmer’s income, to protect the environment, and to prevent fraud, these are contradictory due to the different stakeholders’ interests;⁶³⁸ a farmer might want to cut corners in the production methods to maximise profit, regardless of the environmental or consumer impacts.⁶³⁹ As with the environmental argument, merely because producers can use GI protected names, does not remove profit maximisation and competitive pressures. In 2017, some Italian producers of the GI Parma Ham were found trying to breed their pigs with non-Italian breeds—which is contrary to the PSs—to obtain leaner meat, and therefore more ham out of each animal.⁶⁴⁰ Graham Dutfield, a researcher at the University of Leeds told Politico that “[a] successful GI is one where there is a high price and good demand. But the high demand can also give rise to corruption [...] There is no real formal system of examination. Europeans have to put their faith in national governments”.⁶⁴¹ This further highlights that GIs themselves are not shielded from fraud; such premium products can be more appealing than others to fraudsters.

Finally, Gangjee in 2017 addressed the argument regarding the consumer recognition of GIs. He made the important distinction between product name and symbol or meaning recognition, stating that,

⁶³⁷ Antonella Di Fonzo and Carlo Russo, ‘Designing Geographical Indication Institutions When Stakeholders’ Incentives Are Not Perfectly Aligned’ (2015) 117 *British Food Journal* 2484, 2484.

⁶³⁸ *ibid* 2491.

⁶³⁹ *ibid* 2493.

⁶⁴⁰ Simon Marks and Giulia Paravicini, ‘Parma Ham Probe Shakes Confidence in EU Gourmet Labels’ *POLITICO* (8 June 2017) <<https://www.politico.eu/article/parma-ham-probe-shakes-confidence-in-eu-gourmet-labels/>> accessed 22 May 2018.

⁶⁴¹ *ibid*.

While individual GI products are well known, the formal certification system is relatively invisible. Despite the passage of two decades, the majority of consumers remain unaware of the existence of PDO and PGI symbols, or are unfamiliar with their specific meaning.⁶⁴²

Consumers may recognise the registered name of a GI—such as Parma Ham, Champagne, Parmigiano Reggiano, or Cornish pasty—without an understanding of the GI protection system nor what it means in relation to these products.

As the above discussion illustrates, academic literature on GIs tends to reproduce the EU discourse strand on the socio-economic benefits of GIs to the region, to producers, and to consumers. Regarding the benefits of GIs to the producers, it is here questioned whether producers truly do benefit from GIs despite the burden of additional PSs requirements. It is also argued that the benefit to producers could be discussed in the context of the damage or loss of opportunity to other producers outside of the protected region, which is often overlooked. In the context of consumers, the source of the idea that GI denomination and logo is a way to protect them against confusion is not questioned enough. Not only would further explanation as to how this has been measured be beneficial, but the complexity of the meaning behind the GI logo makes it very unlikely that consumers will fully understand these labels. Rather, it is more likely that consumers will purchase the GI protected products precisely because of their lack of understanding and because of their belief that they must be better due to their reputation.

5. Conclusion

This chapter—divided under the various strands of the EU multifunctional discourse as the cultural, quality, environmental and socio-economic arguments—has demonstrated that the EU discourse on regulations identified in Chapter 3 has been reproduced in academic commentaries. It has also raised various challenges

⁶⁴² Gangjee, ‘Proving Provenance?’ (n 537) 20.

to this academic discourse, suggesting that there is reason to contest both the EU discourse justifying protection of GIs and some of the academic commentary which analyses this. However, it is unsurprising that EU academic literature has substantially adopted the EU legal multifunctional discourse around GIs as self-evidently true. Its appearance in the legislation itself gives it a form of legitimacy.

The purpose of this chapter has been to show that the academic commentary is important to the EU GI discourse, as it often anchors the multifunctional justifications for GIs by simply reiterating them rather than questioning these very arguments. It indicates that academic writing can become part of, and has relevance with regards to, the institutional discourse, as it incorporates the narrative both of official regulations and EU institutions on GIs. Authors may not be questioning certain GI claims, because these are not the key objective of their article. This however still creates a reproduction of the discourse and myth around any unevidenced GI benefits, in turn providing a strong underpinning for supporting the system.

The next chapter will consider these strands of discourse in more depth and examine the evidence available in studies and reports that might support the protection of GIs in the EU. As such, it will enquire whether the EU's discourse is substantiated and, if so, what are these evidential bases and how transparent are they.

Chapter 5: Assessing the Extent of the Evidential Foundations of GIs' Socio-economic and Environmental Benefits

The previous two chapters demonstrated that the European Union has adopted a multifunctional discourse around Geographical Indications that relies on various assumptions and which the dominant academic literature has not sufficiently challenged. In particular, too little scrutiny has been applied to the evidence that might support the multiple claims of benefits deriving from GIs. This chapter now asks the question: how and to what extent the multifunctionality of the EU discourse on GIs is justified?

The chapter will examine the key claims put forth by the EU—especially through its 2010 Impact Assessment⁶⁴³—in support of GI socio-economic and environmental benefits, giving an overview of each purported benefit and assessing the strength of the evidential foundations for these claims. It will do so by considering each party that is said to benefit from GI protection in turn—i.e. farmers and producers in Section 1, consumers in Section 2, and the regions in Section 3—then considering the environmental aspect in Section 4. The chapter will assess whether these claimed socio-economic and environmental benefits of GIs are evidenced. It will also observe whether the negative consequences of this system of protection are considered. As will be seen, these consequences can range from the exclusion of small producers from the system to exacerbated consumer confusion due to the lack of clarity on the system of protection. This analysis will highlight any disjuncture between the EU discourse on GIs and the evidence available to support this discourse. Any such disjuncture would highlight a process issue as it would suggest that policy and regulation making was not based on the available evidence. It must be noted that the chapter will primarily

⁶⁴³ European Commission, 'Impact Assessment on Geographical Indications' (n 431): Chapter 3 demonstrated that the EU assessed the different aspects of the GI system in this Impact Assessment in order to shape its 2012 Regulation. This impact assessment details the EU's policy approach for the current regulation and the evidence with which it justified this approach.

focus on studies published up to 2012⁶⁴⁴—in particular, ones referenced in the 2010 Impact Assessment—as they represent the available evidence used by the EU when drafting and bringing into force the latest GI regulation on foodstuff.⁶⁴⁵

1. Advantages for Farmers and Producers

Various EU actors have claimed that GIs have numerous advantages for farmers and producers.⁶⁴⁶ This includes (a) an increase in employment rates in the protected region, (b) an increase in incomes, as well as (c) a competitive advantage. However, when these are examined closely, the evidence is not as clear as it may seem and overlooks some other issues.

a) *Increase in Employment*

As was discussed in the previous chapter, the claim that GIs lead to increased employment is repeated in academic literature.⁶⁴⁷ Similarly, in a 2006 Parliamentary debate on the GI Regulation for agricultural products, Bogdan Golik, a Member of European Parliament at the time representing the Party of European Socialists, stated that this type of regulation will “[increase] employment outside of the farming sector”.⁶⁴⁸ This argument is generally discussed in the context of GIs being a tool for rural development and economic

⁶⁴⁴ Although very interesting studies may be available for other parts of the world, this chapter focuses on studies within the EU, especially studies that have explicitly been relied on by the EU when drafting policy around GIs.

⁶⁴⁵ See Chapter 3, Section 6 for details on the 2012 EU GI Regulation. In addition, Chapter 7, Section 1 will evaluate the evidence provided by the latest EU report on GIs.

⁶⁴⁶ The EU often discusses farmers and producers together as beneficiaries of GIs. This is because both may benefit from a label in the supply chain but also because some GI agricultural products may be unprocessed (e.g. protected fruit and vegetable varieties) while others may require more processing (e.g. hams and cheeses).

⁶⁴⁷ See Chapter 4, Section 4.

⁶⁴⁸ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) Bogdan Golik.

growth.⁶⁴⁹ Three pre-2012 key publications, which have also made prominent claims about the links between GIs and employment growth, will be discussed. Two of these studies were referred to in the 2010 EU Impact Assessment on GIs,⁶⁵⁰ and a third publication was issued the following year in 2011.⁶⁵¹ These three publications were either funded by the European Commission or had the Commission taking part in their production.⁶⁵²

The GI 2010 Impact Assessment stated that “case studies on the PDO/PGI Evaluation provide qualitative evidence of improvement in conditions for development, benefit to the regional economy, and employment growth based on the perception of respondents and experts”.⁶⁵³ Despite the Impact Assessment claiming that GIs have provided improvement in employment from the ‘perception of respondents and experts’, the Commission nevertheless stated in the Impact Assessment that “regarding employment in the region, the effect of the PDO/PGI scheme has been low”.⁶⁵⁴ Although the Commission referred to ‘qualitative evidence’, the footnotes did not provide further details of the study in question. Nevertheless, there are two central studies referred to elsewhere in the

⁶⁴⁹ As this thesis focuses on the EU, potential employment, or other benefits of GIs in the global south is beyond the scope of this discussion.

⁶⁵⁰ European Techno-Economic Policy Support Network with Administrative Arrangement from the European Commission, ‘Economics of Food Quality Assurance and Certification Schemes Managed within an Integrated Supply Chain: Final Report’ (Directorate-General, Joint Research Centre, Institute for Prospective Technological Studies 2006) Deliverable 5.6; London Economics, ‘Evaluation of the CAP Policy on Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI): Final Report’ (London Economics, ADAS, and Ecologic 2008); European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 4.

⁶⁵¹ David Thual and Fanny Lossy, ‘Q&A Manual: European Legislation on Geographical Indications’ (IP2R 2011).

⁶⁵² While the third study by Thual and Lossy was found through keyword searches for GI reports, the two studies referred to in the Impact Assessment were more difficult to find and identify. This is particularly true for the European Techno-Economic Policy Support Network with Administrative Arrangement from the European Commission study whose title is not actually listed in the Impact Assessment, although the pilot project and findings linked to it are mentioned. None of the three studies are listed in the reference list of the Impact Assessment document.

⁶⁵³ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 19.

⁶⁵⁴ *ibid.*

Impact Assessment which can be relevant for this claim: a 2006 study from the European Techno-Economic Policy Support (ETEPS) Network with Administrative Arrangement from the European Commission, which looked at qualitative data from case studies, and a 2008 study by London Economics, which compared GIs in 18 European regions.⁶⁵⁵ The third 2011 publication was a questions and answers document on GIs, which received assistance from the EU will then be considered.⁶⁵⁶

Firstly, the study by the ETEPS Network with Administrative Arrangement from the European Commission, which looked at various case studies of quality schemes (including both GIs and other certification products), concluded in its final report that these schemes more generally contributed to “creating/protecting on-farm employment as well as rural employment in nearby processing industries”.⁶⁵⁷ For example, the study found that the cheese protected by the Traditional Speciality Guaranteed—a form of quality schemes not protected based on a geographical area but protected based on a method of production and recipe—‘Boerenkaas’, benefits the producers in the protected area by creating on-farm employment.⁶⁵⁸ This has been observed with other types of labels too. For example the case study for the ‘Label Rouge’ chickens—although not a GI certification label—summarised in the ETEPS Network study, specified that since the label requires a five times more labour intensive production method than that applied to non-labelled chickens, this creates employment in rural areas and in particular for small-scale farmers.⁶⁵⁹ Similarly again, the ETEPS Network study’s final report also highlighted that the Interprofessional Gruyere and Comté

⁶⁵⁵ *ibid* 4.

⁶⁵⁶ Thual and Lossy (n 651).

⁶⁵⁷ European Techno-Economic Policy Support Network with Administrative Arrangement from the European Commission (n 650) III.

⁶⁵⁸ *ibid* 24.

⁶⁵⁹ Johannes Roseboom and Pascale Magdelaine, ‘Case Study: Label Rouge’ (Directorate-General, Joint Research Centre, Institute for Prospective Technological Studies 2008) Deliverable 5.3 30 This case study and others that are summarised in the ETEPS Network study were finalised after the Final Report was published.

Committee dealing with the GI ‘Comté’, mentions employment objectives,⁶⁶⁰ and that the protection’s obligatory twice daily cow milking increases labour demand and, thus, employment opportunities.⁶⁶¹ The report noted that increased demand for Comté cheese had also led to favourable development of agricultural employment in the protected area.⁶⁶²

However, a closer look at the ETEPS Network study suggests that the reported employment development, in the context of Comté, more likely resulted in lowering of the dairy farm closure rate in the protected region, as compared with the rest of France,⁶⁶³ rather than creating new jobs per se. It is thus suggesting a higher rate of retained employment rather than an actual increase in employment opportunities. Additionally, the study explained that the Comté GI, in its product specifications, requires the cheese producers to source their milk within a 25km radius around the production plant, therefore ensuring that large national milk producers do not dominate the market and that small producers are also solicited.⁶⁶⁴ Of course, one might argue that this does not stop large producers from relocating themselves within the required proximity of the cheese producers to benefit from the demand, although the complication of doing so may disincentivise such action. The study did, however, conclude that the real effect of the GI on employment rate would need to be confirmed by further studies.⁶⁶⁵

As the ETEPS Network study focused on quality schemes generally—not just GIs—, on qualitative data, and remained very conservative in its claims, it seems reasonable that the Commission’s claims on employment in the Impact Assessment were also restrained. As we have seen, the Commission stated in the

⁶⁶⁰ European Techno-Economic Policy Support Network with Administrative Arrangement from the European Commission (n 650) 45.

⁶⁶¹ *ibid* 74.

⁶⁶² *ibid* 76.

⁶⁶³ *ibid*.

⁶⁶⁴ *ibid*; Décret du 30 décembre 1998 relatif à l’appellation d’origine contrôlée ‘Comté’ (5 January 1999) Journal Officiel de la République Française 201 1999 202.

⁶⁶⁵ European Techno-Economic Policy Support Network with Administrative Arrangement from the European Commission (n 650) 76.

body of the Impact Assessment that the effect of GIs on employment was low. It is therefore misleading when the policy section of the Impact Assessment about GI reforms still concludes that “GIs tend to have a positive effect on the regional employment situation, although the overall quantitative impacts differ strongly between the cases”.⁶⁶⁶ This is a biased and simplified interpretation of the available evidence.

The second example is the London Economics 2008 EU-funded study looking at 18 European regions, which argued that a positive employment effect of GIs in the local areas was reported by some national authorities.⁶⁶⁷ This study claimed that more traditional methods translate into more labour force for production.⁶⁶⁸ It did, however, state that only the producer of one GI could provide employment growth data and that other claims on employment growth were purely based on the perception of the study’s respondents.⁶⁶⁹ It is worth noting that the establishment of any mythical benefits of GIs by the EU multifunctional discourse and by the regulatory framework which exists around GIs, can contribute to skewed perceptions. The London Economics study provides inconclusive evidence as to whether GIs *usually* contribute to employment growth, in comparison with other non-GI productions.

The third example is a 2011 questions-and-answers report published by consultants David Thual and Fanny Lossy with support from the EU—in the context of the EU-China IPR2 Project aiming to create intellectual property rights collaboration between the two regions. This report is not explicitly referenced in the Impact Assessment but is again EU-funded. In this study, Thual and Lossy argued that a GI production composed of small and medium-sized enterprises will lead to more job creation than an industrial production.⁶⁷⁰ The report based this observation on a conference paper by rural sociology scholar Jan Douwe van der

⁶⁶⁶ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 38.

⁶⁶⁷ London Economics (n 650) 166.

⁶⁶⁸ *ibid* 191.

⁶⁶⁹ *ibid* 236.

⁶⁷⁰ Thual and Lossy (n 651) 49.

Ploeg which included a comparison of the employment rate for the production of non-GI Friesland cheese in the Netherlands—employing 8,500 people—with GI Parmigiano Reggiano in Italy—employing 21,000 people.⁶⁷¹ Beyond the fact that Thual and Lossy’s representation of the case study was silent on the type of employment provided, the size of the market, and the demand for each cheese, which could explain such a difference in the number of workers, there was also an assumption that GI productions are, by definition, not industrial. The analysis of two kinds of cheese is also too little evidence to make such an important claim, especially as the conference paper cited in the 2011 report mainly refers to other studies from 2000—over ten years prior to the report.

Furthermore, in a different section of the questions-and-answers report, without providing any referencing, Thual and Lossy also discussed a ‘Lentilles vertes du Puy’ case study.⁶⁷² Despite the lack of citation, Thual and Lossy used, word for word, the text originally written in a report by Agritrade and O’Connor and Company.⁶⁷³ This Puy lentils case is regularly cited by academic literature as evidence for GIs benefiting employment,⁶⁷⁴ and yet it is misleading. In the discussion paper, O’Connor and Company argued that GIs help job creation, claiming that the number of producers of ‘Lentilles vertes du Puy’ had almost tripled between 1990 and 2002, more specifically going from 395 individuals in 1990 to 750 in 1996, and 1079 in 2002.⁶⁷⁵ While these figures highlight an increase in the number of producers over the years, it is deceiving to state that GI

⁶⁷¹ *ibid*; Jan Douwe van der Ploeg, ‘High Quality Products and Regional Specialities: A Promising Trajectory for Endogenous and Sustainable Development’ (OECD International Conference, Siena, July 2002).

⁶⁷² Thual and Lossy (n 651) 46.

⁶⁷³ Although now no longer easily accessible from the Agritrade website, this report was found by exploring web archives; O’Connor and Company, ‘Geographical Indications and the Challenges for ACP Countries: A Discussion Paper’ (Agritrade and CTA 2005) 3–4.

⁶⁷⁴ Teshager W Dagne, *Intellectual Property and Traditional Knowledge in the Global Economy: Translating Geographical Indications for Development* (Routledge 2014) 137; Michael Blakeney and Getachew Mengistie, ‘Geographical Indications and Economic Development’ in Michael Blakeney and others (eds), *Extending the Protection of Geographical Indications: Case Studies of Agricultural Products in Africa* (Earthscan 2012) 95.

⁶⁷⁵ O’Connor and Company (n 673) 3–4.

protection is responsible as the label of Appellation d'Origine Contrôlée—a type of French GI—was only awarded on 7 August 1996.⁶⁷⁶ Moreover, this case study actually demonstrated a lower rate of increase in producers after the GI protection—355 new producers between 1990 and 1996 (in 6 years) and later only 329 new producers between 1996 and 2002 (also in 6 years). Although for Puy Lentils the increase in job opportunities may have been due to the reputation of the variety of lentils and consumers' interest in this variety, there was no substantive evidence for the claim that it was due to the GI protection specifically, as the GI simply protects something which was already reputable or simply fashionable. O'Connor and Company also discussed an increase in production with an incorrectly calculated percentage, as they argued that the Puy lentils production increasing from 13,600 quintals in 1990 to 49,776 quintals in 2002 was a 273% increase when it, in fact, represents a 266% increase.⁶⁷⁷ With such an error in calculations coupled with a lack of context for the average increase in producers for Puy lentils at any other stages, this study cannot be regarded as reliable nor conclusive on the subject. As such, Thual and Lossy's use of this example to claim that GIs lead to “[a]n increase in production and the creation of local jobs” in answer to the question “What are the benefits of GI registration in the EU for a producer?” is highly dubious.⁶⁷⁸ In theory, GI does not award products with a reputation but rather aims to protect pre-existing reputational products. Although, as was seen in Chapter 2, the legal protection and mythical qualities associated with the GI label can play a part in inventing tradition.

In summary, three possible reasons are offered in support of the link between GIs and presumed increase in employment. Firstly, some GIs may require more manual and traditional production techniques, and therefore create the need for more manual labour within the protected regions. Secondly, an increase in the product demand may lead to an increase in employment due to the creation of new manufacturing plants or higher demand for raw materials from existing plants.

⁶⁷⁶ Décret du 7 août 1996 relatif à l'appellation d'origine contrôlée 'Lentille verte du Puy' (9 Août 1996) Journal Officiel de la République Française 12113 Article 1.

⁶⁷⁷ O'Connor and Company (n 673) 3–4.

⁶⁷⁸ Thual and Lossy (n 651) 45.

Thirdly, GI PSs which require the use of local raw material—as seen with the 25km rule for Comté—may help retain employment in the protected region.

While these reasons appear logical, there is a lack of studies that actually demonstrate that these different factors have the desired impact of increasing regional employment. It is also unclear whether the beneficial employment effects, in the context of a GI protected region or product, can lead to a negative impact on the employment rate of another region or in relation to other products. Given that food can be said to be substitutive to some extent, there is a possibility that those consumers who choose to have Comté on their cheese platter, may have done away with another cheese more local to them. Whether or not that is the case is unclear, as data on this was not found at the time of writing.

The scrutiny of studies claiming that GIs benefit employment has suggested that the evidence to support this is not convincing. On the contrary, in 2000, a study on Protected Designations of Origin and Protected Geographical Indications as regional speciality foods concluded that, in the UK, GIs have no benefits to farmers and small producers and almost no employment advantages in the protected regions.⁶⁷⁹ It is true that this study is 20 years old and that the UK only had 28 protected GIs at the time versus 79 nowadays.⁶⁸⁰ However, the 2008 London Economics study previously mentioned in this section, which looked at 18 cases of GIs in different European regions, similarly concluded that, “there is practically no evidence on the [regional employment] effect of the scheme with a notable impact on employment reported only in two case studies”.⁶⁸¹ Both of

⁶⁷⁹ Brian Ilbery and Moya Kneafsey, ‘Registering Regional Speciality Food and Drink Products in the United Kingdom: The Case of PDOs and PGIs’ (2000) 32 *Area* 317, 324.

⁶⁸⁰ European Commission, ‘EAmbrosia – the EU Geographical Indications Register’ (n 11); It was agreed, in the Withdrawal Agreement in relation to the UK’s exit from the EU, that existing UK GIs would retain their protection within the EU territory. For new GIs (registered from 1 January 2021), the UK will have access to the EU GI system of protection in the same manner as other third countries. See Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2019] OJ C1384/01 Article 54.

⁶⁸¹ London Economics (n 650) 243.

these studies are from the UK which suggests a particular perspective. Nevertheless, they further demonstrate that the EU claim of GIs increasing employment is not clearly justifiable through the available evidence it puts forward.

Overall, it appears that not a lot of work has been done on the question of whether GIs have a significant impact on employment in the EU, in part because there are difficulties in isolating GIs as an influencing factor.⁶⁸² That causality link has therefore not been clearly established, despite the EU discourse claiming the contrary. As was argued in Chapter 1, evidence should form the very basis of policymaking and rationales used to justify policy should be grounded in the same. Based on the above analysis, it is unclear what evidence could have formed the basis for the GI rationale on producer employment creation. Myths arise out of assumed and asserted ‘truths’ which when investigated do not appear based on empirical evidence. Nonetheless, the repetition of the assertion underpins the myth and perpetuates it.

However, it is important to emphasise that this section does not claim that GIs cannot have a positive impact on local employment, nor does it suggest that no other existing study has mentioned employment in the context of GIs. Instead, it has explored the studies that have played a role as evidence for EU policymaking on GIs. It has demonstrated that the evidence available, for the EU to claim that GIs do have a positive impact on employment, is inconclusive.

b) Increase in Income

Another claimed benefit of GIs is that they increase income for farmers and producers. In other words, it is claimed that farmers and producers are taking in more money for the sale of GI protected products than for non-GI equivalents. The second element of this assertion is that increase in demand means that farmers and producers will be able to raise their income due to selling larger

⁶⁸² *ibid* 242.

quantities of their production and/or at higher prices than if they were producing non-GI products.

For example, the 2010 European Commission Impact Assessment argued that GIs bring value-added in comparison to standard products,⁶⁸³ and that they contribute to improving farmers' incomes.⁶⁸⁴ The latter claim was also present in the 1992 and 2006 EU Regulations on GIs which stated that the promotion of GIs could contribute to "improving the incomes of farmers".⁶⁸⁵ This claim was absent in the 2012 Regulation which instead stated that "quality schemes are able to contribute to and complement rural development policy as well as market and income support policies of the common agricultural policy".⁶⁸⁶ This illustrates a shift from the need to gain acceptance of the 1992 CAP reform,⁶⁸⁷ to a more general focus on rural development. Claims about GIs increasing farming income can also be found in the academic literature,⁶⁸⁸ as examined in Chapter 4.⁶⁸⁹

For the claim that GIs give value-added and thus yield more income, it is important to distinguish 'income' from 'profit margin'. While the so-called 'value-added' means that GI products are generally sold at higher prices and therefore that the income from that sale is higher, there is also evidence that the production costs for the GI products are also higher.⁶⁹⁰ The 2006 Final Report of the ETEPS Network argued that the higher price of GIs should pay for the more costly production, but that in practice "[it] is not always the case, which means that in several [Quality Assurance Schemes] farmers seem to accept a lower

⁶⁸³ European Commission, 'Impact Assessment on Geographical Indications' (n 431) 14.

⁶⁸⁴ *ibid* 19.

⁶⁸⁵ Regulation 2081/92 recital 2; Regulation 510/2006 recital 2.

⁶⁸⁶ Regulation 1151/2012 recital 4.

⁶⁸⁷ See Chapter 3, Section 4 for more on this.

⁶⁸⁸ See for example Dogan and Gokovali (n 624) 762.

⁶⁸⁹ See Chapter 4, Section 4.

⁶⁹⁰ European Commission, 'Impact Assessment on Geographical Indications' (n 431) 20.

income per hour than their counterparts producing regular products”.⁶⁹¹ In particular, the study observed this in the case of Comté milk productions.⁶⁹²

Evidence of GI-related income effect was also presented in the 2008 London Economics study, which found that the gherkin producers’ group in Denmark reported increased incomes among its producers.⁶⁹³ Nevertheless, the study also explicitly stated that “[c]ontrary to the objective of the scheme to increase the incomes of rural farmers, there are two cases (Feta and Riz de Camargue) where farmers do not receive higher benefits”.⁶⁹⁴ It is clear then that this price premium does not apply for all products. Although post-2012, it is also worth mentioning a 2017 study by Katharina Gugerell et al. on Austrian Wachau apricots, which reported that despite 20 years of protection, respondents had found little or no price premium for the protected apricots in comparison with non-protected ones.⁶⁹⁵

Regarding the second claim that GIs lead to an increase in demand, researchers in the 2008 London Economics study were told by respondents that the increased exports, resulting from the GI scheme being introduced in Tuscany, had raised the incomes of farmers and producers in the regions.⁶⁹⁶ It may therefore be that some producers do see an increase in demand after receiving the GI protection. However, this Tuscany case study alone cannot be seen as conclusive evidence for this claim.

On top of these critiques must be added the highly volatile cost of preparing the GI for registration in the first place, which the EU itself stated producers have

⁶⁹¹ European Techno-Economic Policy Support Network with Administrative Arrangement from the European Commission (n 650) III.

⁶⁹² *ibid* 78.

⁶⁹³ London Economics (n 650) 239–240.

⁶⁹⁴ *ibid* 213.

⁶⁹⁵ Katharina Gugerell and others, ‘Do Historical Production Practices and Culinary Heritages Really Matter? Food with Protected Geographical Indications in Japan and Austria’ (2017) 4 *Journal of Ethnic Foods* 118, 122.

⁶⁹⁶ London Economics (n 650) 239.

quoted to be anywhere from 3,000€ to 40,000€. ⁶⁹⁷ The preparation for the GI certification is also extremely complex and time-consuming. Although the real burden of these costs may depend on the producers or farmers' incomes and sizes, these costs should be explicitly considered by the EU and EU-funded studies when arguing that GIs provide an increased income for producers. Claiming in the 2012 Regulation that GIs improve farmers' incomes is too simplistic.

The EU discourse about GIs and farm income is not in line with the uncertainty of study results on the subject, especially as the EU in the Impact Assessment recognises that producers perceive production methods and cost of setting up the GIs as expensive. ⁶⁹⁸ More links must also be established between the different claims of GI benefits. As we have seen in the previous section on GIs and employment, the traditional production method of GIs may require more labour costs in light of the intensive manual work that it necessitates. While the creation of these jobs may be beneficial, this labour will be another added cost to the producer and further cut into their new increased profit margins, due to price premium.

This section has shown that the EU sweeping claims of increased income for farmers and producers deserve much greater analysis than provided by the EU if they are to be convincing.

c) *Increased Fair Competitiveness*

The third benefit claimed for GI farmers and producers is that they make the products highly competitive on the market and that such competition is fair. For example, in the European Parliament debate on the 2006 Regulation, ex-Member of the European Parliament from the Independence/Democracy party, Witold Tomczak, argued that “[i]t is difficult not to support an increase in the income of farmers, fair conditions for competition and protection from fake copies of

⁶⁹⁷ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 9.

⁶⁹⁸ *ibid* 13.

original products”.⁶⁹⁹ Despite later in his speech questioning the need for the system, he still echoed this common rhetoric on competition. In addition, the EU 2010 Impact Assessment justified the creation of GIs stating that “[s]ome Member States and operators warned policy makers of competition distortions due to the free use of some notorious geographical names” but that “there was a clear aim to help producers in rural areas to advertise and market product with specific characteristics and/or farming attributes that they could produce having a competitive advantage and for which there was a consumer demand”.⁷⁰⁰ It also argued that the aim of the GI regulations had been to “[c]reate a system of protection on an EU-wide basis, ensuring fair competition between producers of products bearing geographical indications”.⁷⁰¹ No evidential bases are referenced, with regards to these Impact Assessment claims, concerning whether GIs do provide producers with a competitive advantage.

While the products with the GI logo and holding a GI name may get more attention from consumers and generate interest, this is not to say that each producer enjoys a significant competitive advantage. Competition is not necessarily fair, even within the community of the GI producers, as large industrials are able to capture a large part of the market and push out or buy out smaller producers.⁷⁰² For example, in the French cheese market, 70% of all PDO cheeses are industrially produced by a few large manufacturers.⁷⁰³ As large enterprises, they have the resources necessary to dominate the negotiations in the establishment of the criteria for the GI protection, thus imposing terms which benefit them. Nonetheless, where large manufacturers bear the research and

⁶⁹⁹ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) Witold Tomczak.

⁷⁰⁰ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 8.

⁷⁰¹ *ibid* 19.

⁷⁰² See for example: France 5, ‘Fromage AOP: Le Terroir Caisse?’, *Découverte* (14 October 2018) <<https://www.youtube.com/watch?v=N9znPD1wNas>> accessed 23 August 2019; France 2, ‘AOP: Des Fromages à la Chaîne’, *Envoyé Spécial* (12 October 2017) <<https://www.youtube.com/watch?v=BB5duO5Qoc8>> accessed 23 August 2019.

⁷⁰³ France 5 (n 702); France 2 (n 702).

registration costs of establishing a new GI, smaller farmers may only be left with the costs of demonstrating that they follow the GI PSs in order to be awarded the use of the logo.

Therefore, although GI protection can give producers a competitive edge over non-GI producers, the competition between GI producers themselves can be intense. For example, Reflets de France, Moulin de Carel, and Gillot all have the benefit of calling their products ‘Camembert de Normandie’, but still need to distinguish themselves from each other to compete in the market. This competition can be particularly ruthless since all the products protected by the same GI make claims to very similar characteristics, qualities, and production methods and are thus likely to be highly substitutive for one another.

On the other hand, one of the advantages identified for producers of GIs is that, being organised as a collective, they benefit from economies of scale,⁷⁰⁴ and have the ability to negotiate any premiums in price.⁷⁰⁵ This also means that there may be a temptation for producers to behave anti-competitively by controlling the supply of the GI product.⁷⁰⁶ These economies of scale bringing all producers of one GI together may create a false monopoly, at least in terms of setting price premiums. GIs nonetheless allow for collective organisation meaning that producers should, to some extent, benefit from pooling their resources.⁷⁰⁷ Collective organisation can offer the opportunity for small farmers to grow,⁷⁰⁸ but it is questionable whether these small farmers or producers truly have an ability to

⁷⁰⁴ Audrey Aubard, ‘Setting Up a GI: Requirements and Difficulties at the Producer Level’ in Michael Blakeney and others (eds), *Extending the Protection of Geographical Indications: Case Studies of Agricultural Products in Africa* (Earthscan 2012) 36.

⁷⁰⁵ GianCarlo Moschini, Luisa Menapace and Daniel Pick, ‘Geographical Indications and the Competitive Provision of Quality in Agricultural Markets’ (2008) 90 *American Journal of Agricultural Economics* 794; Aubard (n 704) 35.

⁷⁰⁶ Moschini, Menapace and Pick (n 705) 798.

⁷⁰⁷ Sophie Révillon and Jean-Marc Chappuis, ‘Geographical Indications: Collective Organization and Management’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011) 46.

⁷⁰⁸ *ibid* 48.

grow when they still have to compete with the large industrial actors producing the same (at least on paper) GI protected product in the same region.

Based on this analysis, it is reasonable to conclude that although the EU might have access to evidence regarding the GIs' advantages for farmers, the EU makes claims about the fairness of GI competitiveness without referencing studies to support this. Although it may be that GI producers have a competitive advantage compared to non-GI producers, the competition amongst GI producers remains intense and is controlled by multinational corporations. The claim that this GI competition is fair lacks a clear and conclusive evidential basis.

2. Benefits for Consumers

In the EU discourse, the GI label is presented as very beneficial for consumers as well as for producers. This 'mutual benefit' argument is a key part of the rationale for GIs. GI consultant, Audrey Aubard, introduces the different elements of this idea of benefits for consumers when she stated that,

[P]roducers need to take account of current requirements of markets, countries, consumers and citizens in relation to environment, health, traceability, origin, etc. GIs can meet some of these concerns.⁷⁰⁹

The claimed benefits for consumers are discussed below in three subsections dealing with (a) the idea that GIs provide consumers transparency about the product, (b) that they guarantee consumers a certain quality, and (c) that GIs are, for consumers, an indication of traditionally produced products.

a) Ensured Transparency

The EU has claimed that GI logos and names are very transparent and allow for consumers to get clarity on the products they are buying; in other words, GIs give consumers better information. In the 2011 Opinion of the Committee of Regions

⁷⁰⁹ Aubard (n 704) 36.

on quality schemes—which included the different types of GIs—when discussing the exclusion of genetically-modified organisms from quality schemes products, the Committee stated that doing so was necessary “for preserving the transparency and credibility of quality schemes amongst consumers”, implying that GIs were transparent in the first place.⁷¹⁰ Similarly, recital 18 of the 2012 Regulation stated that GIs were “providing clear information on products with specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices”.⁷¹¹

There is however a disjuncture between this claim from the 2012 Regulation and the Commission admitting, in the 2010 Impact Assessment, that transparency could be improved. Indeed, in the Impact Assessment, the Commission referred to a survey conducted by London Economics in their 2008 study which noted that only 8% of European consumers recognise the GI logo.⁷¹² In addition, the European Economic and Social Committee, in a 2008 opinion on GIs and designations, concluded that the “recognition of European certification schemes and their logos and labels is still inadequate and very patchy” and added that “[a]ccording to a report by the International Centre for Advanced Mediterranean Agronomic Studies [...] 80 % of European citizens have never heard of PDOs and 86 % have never heard of PGIs”.⁷¹³ The Committee further explained that people are more familiar with national designations.⁷¹⁴ This was further emphasised by a 2011 European Court of Auditors Report which highlighted the low consumer

⁷¹⁰ Opinion of the Committee of the Regions on ‘Towards an ambitious European policy for agricultural quality schemes’ [2011] OJ C192/28 H.53.

⁷¹¹ Regulation 1151/2012.

⁷¹² European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 20–21; London Economics (n 650) 154.

⁷¹³ Opinion of the European Economic and Social Committee on Geographical indications and designations [2008] OJ C204/57 para 3.1.8.1; The data in the International Centre for Advanced Mediterranean Agronomic Studies report in question was based on a European Commission survey from 1999, published in 2004, to access the report, see Mediterra, *Identity and Quality of Mediterranean Foodstuffs* (Bertrand Hervieu ed, International Centre for Advanced Mediterranean Agronomic Studies, Presse de Sciences Po 2007) 126.

⁷¹⁴ Opinion of the European Economic and Social Committee on Geographical indications and designations [2008] OJ C204/57 para 3.1.8.1.

recognition of the GI schemes as one of the key observations in their assessment of GIs.⁷¹⁵

In the Impact Assessment, the Commission also explored a number of options for a reform of the GI system. It suggested scenarios where the GI procedures and rules could be clarified and streamlined, such as the merging of the two GI logos. One option consisted of the four legislations regulating different GI products—wine, aromatised wines, spirits, and agricultural products and foodstuff—to be merged into one piece of legislation.⁷¹⁶ All reform options promised potential for greater simplicity of information and transparency at one point or another in the assessment.⁷¹⁷ However, such merging of logos and legislation has not occurred, and the 2012 Regulation still argued that GIs are providing consumers with ‘clear information’.

The above-mentioned options for reforms are consistent with the first ‘specific objective’ the Commission highlighted in the Impact Assessment: “Provide clearer information on specific product characteristics linked to geographical origin, enabling consumers making more informed purchase choices”.⁷¹⁸ More specifically, the Commission wanted to increase the consumer recognition of GI characteristics, from 8% in 2007 to 12% in 2015.⁷¹⁹ It wanted to assess GI perception and logo recognition with the help of a new survey in 2015.⁷²⁰ It is unclear if or when such a survey was conducted as results for a survey assessing consumer awareness of GIs were only published in the latest EU evaluation of the

⁷¹⁵ European Court of Auditors, *Do the Design and Management of the Geographical Indications Scheme Allow It to Be Effective? Pursuant to Article 287(4) Second Subparagraph, TFEU*, vol 11 (Publications Office of the European Union 2011).

⁷¹⁶ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 29–31.

⁷¹⁷ *ibid* 31, 40, and 45.

⁷¹⁸ *ibid* 28.

⁷¹⁹ *ibid*.

⁷²⁰ *ibid*.

GI schemes in 2021.⁷²¹ As will be seen in Chapter 7, the reach of the survey was limited, and the results demonstrate very varied levels of recognition across products and countries.⁷²² Regarding the values stated in the 2010 Impact Assessment, even a 12% logo recognition is low, not only in comparison with the recognition of other labels—estimated in the 2008 London Economics study to be of 22% for Fairtrade and 16% for organic⁷²³—but also when accompanied with the EU discourse that one of the key aims is to inform consumers.

It is true that GIs, if understood properly, will provide some guarantee regarding the protected product's places of origin and production techniques. However, it is unrealistic to argue that consumers are making a fully informed purchase when selecting GI products over non-GI ones. Often, it is likely that there is no real transparency when consumers are buying GI products, as the majority of consumers have little awareness and understanding of the GI symbols. Another example of this is Ramona Teuber's 2011 study on Hessian wine, in which she showed that 9.6% of respondents said they knew one of the two EU GI logos, but then that some of these respondents confused the GI label with other certification labels.⁷²⁴

In addition, it is unlikely that consumers have the time or resources to understand the real meaning of each GI's PSs. Antonio J Verdú Jover, Francisco Javier Lloréns Montes, and María del Mar Fuentes Fuentes stated that consumers are not experts in the winemaking process.⁷²⁵ This is true for other products too. Consumers do not necessarily know how their food is being produced. It is

⁷²¹ AND-international, ECORYS, and COGEA, *Evaluation Support Study on Geographical Indications and Traditional Specialities Guaranteed Protected in the EU: Final Report*. (European Commission 2021).

⁷²² See Chapter 7, Section 1 of this thesis for more analysis of the 2021 EU Evaluation of GIs.

⁷²³ London Economics (n 650) 259.

⁷²⁴ Ramona Teuber, 'Consumers' and Producers' Expectations towards Geographical Indications: Empirical Evidence for a German Case Study' (2011) 113 *British Food Journal* 900, 907.

⁷²⁵ Antonio J Verdú Jover, Francisco Javier Lloréns Montes and María del Mar Fuentes Fuentes, 'Measuring Perceptions of Quality in Food Products: The Case of Red Wine' (2004) 15 *Food Quality and Preference* 453, 454.

therefore difficult to expect consumers to understand the intricacies of the protected GIs and their characteristics. The argument that the GI name or logo serves to inform consumers is misleading, as it would take more than a name or logo to truly inform them. Furthermore, the few consumers who do recognise the logo could be basing their choice on the discourse that such a protection logo is better, rather than on a real understanding of the differences in the product they are purchasing. Consumers relying on the myth of GIs are arguably not better informed but rather are ‘slaves’ to this myth. For example, and relevant to the next subsection, they might have accepted the notion of quality with which GIs are associated, rather than actually having *experienced* this quality as something tangible and developed an opinion as to the quality on that basis.

A new database—eAmbrosia—was introduced by the European Commission in 2019, to simplify the search for information on GIs, which brings together information about wines, spirits, and foodstuff—previously stored on three separate databases.⁷²⁶ This may get the EU closer to its aims of increased transparency. Nevertheless, it is highly unlikely that consumers will consult the database to understand the characteristics of the cheeses they are buying at the supermarket.

The overall claim that GIs improve transparency found in the 2012 Regulation is not in line with the available evidence the EU points to, which highlights that the vast majority of consumers do not actually recognise the GI logo. It may be that consumers know the GI names, but what they associate it with is the myth of GIs, rather than having a real understanding of the products and their production.

⁷²⁶ European Commission, ‘New Database for EU Geographical Indications Aims to Increase Transparency and Simplify Search’ (*Europa*, 1 April 2019) <https://ec.europa.eu/info/news/new-database-eu-geographical-indications-aims-increase-transparency-and-simplify-search-2019-apr-01_en> accessed 30 September 2019.

b) *Guarantee in Quality*

As we have seen throughout this thesis, ‘quality’ is a common term in the EU discourse. It has remained present with the evolution of the law around GIs, appearing in the early laws in France in the 1900s and remaining more prominent than ever in the 2012 EU Regulation.⁷²⁷ It has also been highlighted that the word ‘quality’ has held a prominent place in the EU discourse on GI regulations—be it in the European Parliament Debates or the 2010 Impact Assessment—as well as in academic literature, with various other connotations linked to health and food safety.⁷²⁸ The justification for the use of this term in the context of GIs, however, is less clear.

For example, in a 2003 World Trade Organization discussion to claw back GIs used by other countries as generics, the EU Trade Commissioner at the time Pascal Lamy stated that,

Geographical Indications offer the best protection to quality products which are marketed by relying on their origin and reputation and other special characteristics linked to such an origin. They reward investment in quality by our producers.⁷²⁹

It is not clear how quality is assessed for GI products. The EU has not defined the term despite using it extensively. Nevertheless, the EU nowadays principally uses quality as a value-based notion rather than a synonym for ‘characteristic’, even if at the inception of the French system of appellations, this was not the case.⁷³⁰ The use of this term is therefore misleading for consumers who are given no real guarantees or information that would justify the assumption of higher quality.

⁷²⁷ See Chapters 2, Section 3 and Chapter 3, Section 6.

⁷²⁸ See Chapters 3 and Chapter 4, Section 2.

⁷²⁹ European Commission, ‘WTO Talks: EU Steps up Bid for Better Protection of Regional Quality Products’ (2003) EC Press Release IP/03/1178
<https://ec.europa.eu/commission/presscorner/detail/en/IP_03_1178> accessed 11 December 2019.

⁷³⁰ See Chapter 2, Section 3.

While the EU insists that part of the GI quality are the characteristics linked to the protected area, it is argued by certain countries, such as the US and Australia, that a certain product's quality can be reproduced anywhere and that locality is not key, in particular, due to today's technological advancements and know-how.⁷³¹ Indeed, the lack of definition 'quality' by the EU makes it difficult to fully understand how they are justifying this link to the place, as well as how this quality might be recognised. This is particularly true in the context of PGI products which only require one step of production to occur in the protected region. In the UK case *Consorzio del Prosciutto di Parma v Asda Stores Limited and Others*—which questioned whether the designation Prosciutto di Parma can only be used if the slicing and packaging of the ham take place in the GI protected region—Lord Hoffmann stated that “[a] PGI is similar to a PDO except that the causal link between the place of origin and the quality of the product may be a matter of reputation rather than verifiable fact”.⁷³² Although Parma Ham is a PDO, the observation by Lord Hoffmann as to the difference between the two levels of GI protection raises questions about them being clubbed together under the EU discourse. It must be noted that this perspective also suggests that the causal link between place and quality for PDO is a ‘verifiable fact’. As seen in this thesis so far, the lack of clarity and definition of this link points to the contrary.

The ‘one step of production in the region’ requirement for PGI is as simple as the assembly of Cornish pasty needing to be completed in Cornwall—without any requirement for the ingredients to be sourced or processed there—to satisfy the protection.⁷³³ It is unclear how quality could be accrued in relation to the region when ingredients are simply put together in that locality. With the right know-how, the same Cornish pasty assembled outside Cornwall would arguably be of

⁷³¹ Gugereff and others (n 695) 119; Calboli, ‘Of Markets, Culture, and Terroir’ (n 586) 434.

⁷³² *Consorzio del Prosciutto di Parma v Asda Stores Limited and Others* [2001] UKHL 7 [8]: In this case, the ECJ confirmed that product specification of slicing and packaging within the protected region should be followed.

⁷³³ Cornish Pasty: EU No: UK-PGI-0105-01256 – 12.8.2014 [2015] OJ C199/13.

identical quality, especially if the quality is considered to have components of taste, health, and food safety.

Similarly, Onno Brouwer argued that “the origin or source function of protected designations of origin is, in reality, often rather arbitrary”.⁷³⁴ He exemplified this with an explanation of the productions of hams, stating that the meat for the Belgian ‘Jambon d’Ardenne’ comes principally from England, as the PGI legislation for this product does not require the ham to originate from Belgium.⁷³⁵ In fact, closer examination of the PSs for Jambon d’Ardenne reveals that only the salting and maturing of the meat needs to take place in Ardenne.⁷³⁶ The examples of Cornish pasty and Jambon d’Ardenne are indications of the flaw in the system, whereby the same benefits are claimed to exist for GIs generally, whatever their production requirements and link to place may be.

Concerning GIs in general, Gugerell et al. argue that “[b]y positioning traditional products in a global market, their industrialization and commodification could trigger the loss of the traditional quality that was protected in the first place”.⁷³⁷ Indeed, if there was a particular traditional quality which could be associated with those products, due to locality and ancient production methods, significantly increasing the scale of the production could have an impact on that quality. Traditional and local products, such as the types protected by GIs, are likely to be mostly locally consumed by the populations surrounding the local areas, as local specialities. Protecting them through a GI designation, in order for them to have a place in a larger global market, could also have implications on the amount that needs to be produced, and with that comes the need to adapt by growing and intensifying the productions in some way.

For example, as was seen above, the majority of French AOP for cheeses are produced by large multinationals. This not only means that there is an incentive

⁷³⁴ Brouwer (n 301) 631.

⁷³⁵ *ibid* 631–632.

⁷³⁶ Demande d’enregistrement du 25 janvier 1994 de l’IGP “Jambon d’ardenne” (93/1).

⁷³⁷ Gugerell and others (n 695) 119.

for profit—and so potentially the need to mechanise anything which can be made mechanical while still staying within the boundaries of the GI PSs—but also that there is a pressure to relax these PSs in the first place. This happened with ‘Camembert de Normandie’. Large multinational producers lobbied for the protected cheese, traditionally made with raw unpasteurised milk, to be allowed to be made with pasteurised milk.⁷³⁸ While unpasteurised milk cheeses are known for their stronger and more complex taste, pasteurised milk is more stable for storage and transport. Being allowed to produce Camembert with pasteurised milk would have meant that multinational producers have access to the international market, as some countries restrict the entry of raw milk products. In a 2020 vote, the producers against the move to Camembert being produced with pasteurised milk won by a very small minority with 53% of the votes.⁷³⁹ This nevertheless illustrates how the growth and international reputation of the GI product can lead to compromises on its quality. Although it is possible that the packaging could have indicated which type of Camembert—made from raw or pasteurised milk—is being sold, this is a distinction that is unlikely to be obvious to the average consumer.

Another aspect of this idea of quality is the notion of taste, and whether differences can truly be identified between GI protected products—which are generally associated with a price premium—and non-GI protected alternatives.

To understand whether prices are driven by quality and taste or by reputation, one can look at studies of Bordeaux wines. In a 1997 study, Pierre Combris, Sébastien Lecocq, and Michael Visser used a price method to analyse the relationship between the price and quality of Bordeaux wines.⁷⁴⁰ The study concluded that

⁷³⁸ David Schrieberg, ‘Why Your Genuine French Camembert Cheese Is In Danger’ *Forbes* (25 February 2018) <<https://www.forbes.com/sites/davidschrieberg1/2018/02/25/why-your-genuine-french-camembert-cheese-is-in-danger/>> accessed 4 October 2019.

⁷³⁹ Guillaume Le Du, ‘Guerre du camembert : le camembert AOP reste 100 % au lait cru’ *Ouest-France* (3 March 2020) <<https://www.ouest-france.fr/economie/agriculture/guerre-du-camembert-le-camembert-aop-reste100-au-lait-cru-6762917>> accessed 6 December 2021.

⁷⁴⁰ Pierre Combris, Sébastien Lecocq and Michael Visser, ‘Estimation of a Hedonic Price Equation for Bordeaux Wine: Does Quality Matter?’ (1997) 107 *The Economic Journal* 390, 390.

while the prices of the wines were dependent on the characteristics of the bottle label and while the quality—as graded by experts—was dependent on sensory characteristics, the quality was independent of—and therefore did not determine—the market prices of the wines.⁷⁴¹

In the same year, Stuart Landon and C E Smith published a study demonstrating that consumers will use reputation to assess the quality of a product when they do not directly have information on the product’s current quality.⁷⁴² In other words, these two studies demonstrate that the reputation and the visual aspect—such as labels—of a product have a strong impact on the consumer demand. In the context of GIs, this means that the reputation of the GI or the GI label is enough to encourage consumers to buy the protected GI, even if they do not have actual information about the product’s quality. In other words, consumers base their purchasing decision on the mythical quality of GIs, due to the lack of concrete information on their actual quality. This is particularly applicable in the context of GIs as Landon and Smith’s study also found that consumers place particular importance on “the government-determined regional designations and the industry determined ‘quality’ classifications”.⁷⁴³ This reinforces the idea that GI labels have a significant influence on consumers’ buying habits, and this should mean that there is a greater responsibility on the system to make explicit exactly what superior quality each product has if any.

Justin Hughes also argued that “[t]he larger the region, the less likely it is that production factors will be both (a) consistent across the region and (b) unique to that region.”⁷⁴⁴ For example, Feta is protected across Greece. It is therefore difficult to imagine how the local characteristics could be the same in the whole country but not beyond and could ensure a homogeneous and defined specific quality. National borders are, after all, socially and politically constructed.

⁷⁴¹ *ibid* 401.

⁷⁴² Stuart Landon and CE Smith, ‘The Use of Quality and Reputation Indicators by Consumers: The Case of Bordeaux Wine’ (1997) 20 *Journal of Consumer Policy* 289, 290.

⁷⁴³ *ibid* 314.

⁷⁴⁴ Hughes (n 167) 306.

In conclusion, the idea of ‘quality’, in the context of GIs, is used as a justification to stakeholders for the label and, more specifically, to consumers for inflated prices. However, the use of this word ‘quality’ in the EU discourse lacks evidential basis and clarity in its meaning and is thus misleading from the perspective of the consumer understanding.

c) *Indication of Tradition*

A final key claimed benefit of GIs for consumers is that they reflect the conservation of traditional products.⁷⁴⁵ This idea signals that the products are produced in a traditional manner by small independent farmers. For example, in the European Parliamentary Debate on the 2006 GI Regulation reform, Polish ex-MEP Janusz Wojciechowski from the Union for Europe of the Nation group stated that,

[W]e are of course talking about *traditional* products that have been on the market for a long time. The real future of Europe lies in supporting *traditional*, regional products which represent *the achievements of local communities*. [...] Most of all, however, it is good news for consumers as these products are made according to *traditional recipes* and using *methods that go back generations* and are healthier and better than mass-produced goods. [...] We want to consume products that are healthy, varied and produced using *traditional, regional methods*, and we do not want to be forced to consume food products made using methods that cheat nature.⁷⁴⁶ [*emphasis added*]

⁷⁴⁵ See Chapter 3.

⁷⁴⁶ European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (n 380) Janusz Wojciechowski.

Beyond the claim that these products are healthy, which has already been briefly mentioned in the previous subsection, there is also an insistence that GI products are all about tradition.

More recently, Regulation 2012 in its first recital stated that “the skills and determination of Union farmers and producers [...] have kept traditions alive while taking into account the developments of new production methods and material”.⁷⁴⁷ Recital 2 stated that “[c]itizens and consumers in the Union increasingly demand quality as well as traditional products”.⁷⁴⁸ Evidence supporting the claim that GIs are an indication of tradition and traditional production are not provided by the EU in these contexts.

This takes the discussion back to the question of how GIs are produced. Hughes argued that “[i]n many European regions both the scale and the methods of production are increasingly industrial”, pointing specifically at the mass manufacturing and selling of champagne wines as well as the low prices of protected Bordeaux wines available on the market.⁷⁴⁹ In an interview, Véronique Richez-Lerouge, author of a book on the cheese industry in France, stated that,

Out of 45 French PDOs, only 8% are from farm production – so about 1,315 producers – and 22% are from semi-industrial production. The rest are in the hands of four giants: [Lactalis, Sodial, Savencia, and Eurial] or large industrials.⁷⁵⁰ (translated by the author)

Although the EU portrays GIs as outcomes of traditional production methods, some GIs nowadays are manufactured in factories by multinational corporations. Dominique Denis argued that in many parts of Europe, local family farming productions of GIs was a “near caricature [...] that no longer corresponds to

⁷⁴⁷ Regulation 1151/2012 recital 1.

⁷⁴⁸ *ibid* recital 2.

⁷⁴⁹ Hughes (n 167) 340–341.

⁷⁵⁰ Corinne Bouchouchi, ‘Touche Pas à Mon Camembert! Peut-on se Fier aux AOP?’ *L’Obs* (25 February 2017) <<https://www.nouvelobs.com/economie/20170224.OBS5738/touche-pas-a-mon-camembert-peut-on-se-fier-aux-aop.html>> accessed 30 September 2019.

reality”.⁷⁵¹ The image of the small independent farmer using traditional techniques may be, in some cases, a picture given to consumers to make the product more appealing.

Gugerell et al., in their study of protected Austrian Wachau apricots, demonstrated that traditional GI production is not what one might expect. Even though the GI PSs were insisting on the idea of traditional cultivation techniques, this was relaxed in 2013 to make way for modern cultivation practices. The only notion of ‘tradition’ which remains is simply the variety of apricot which was first introduced in 1902.⁷⁵² This false image of tradition is something Gugerell et al. have observed in their four case studies which demonstrated that,

Historic provenance and traditional production methods, although prominently highlighted in the official GI documents of all four GIs, are eclipsed by commercial motivations for GI protection and current production practices.⁷⁵³

It is clear that this idea of tradition associated with methods and products is something that the EU and industrials believe the consumers want. Aubard, when discussing GIs, stated that,

Modern civil society is seeking new, more human, more sustainable, fairer values. This demand for sustainable values is reflected in a return to authenticity, to what is genuine, and in the concern for passing on these values to future generations.⁷⁵⁴

The implication that GIs production is a ‘return to authenticity’ illustrates the type of portrayal of GIs which fails to consider it could be misleading when

⁷⁵¹ Dominique Denis, *Appellation d’origine et indication de provenance* (Daloz 1995) 3; as seen in Hughes (n 167) 340.

⁷⁵² Gugerell and others (n 695) 122.

⁷⁵³ *ibid* 124.

⁷⁵⁴ Aubard (n 704) 36.

communicated to consumers. Once again, it builds on the myth around GIs and their benefits.

The overall idea of quality and tradition is encompassed by the assertion that GIs are ‘reputable’. Sophie Révion and Jean-Marc Chappuis argued that an important aspect of GIs is their reputation which, for more recent GIs, arises from consumers’ acknowledgement of this reputation, because the product meets their expectations.⁷⁵⁵ However, this is problematic. It infers that the reputation stems from meeting consumers’ expectations. But this expectation has to come from somewhere, and it arguably arises from reputation. If GI products’ reputation is simply based on the consumers’ acknowledgement of it, as suggested by Révion and Chappuis, then it means that this reputation is justified by itself. This, once again, links to the core idea of mythmaking.⁷⁵⁶ Here, the mythmaking is done through circularity of justification.

Reputation, by definition, is normally something that has developed over time, and so requires something to remain more or less constant. A product can build a good reputation if it remains the same and increases in consumers’ opinion. However, if a GI’s reputation is built on a traditional production method in small productions, and is then used to promote products manufactured industrially, this can be deceiving. Just as trademarks may use marketing techniques that associate a certain good with a specific attractive image⁷⁵⁷—for example, a celebrity associated with a brand of perfume—GIs could be said to use the image of the small traditional producer to appeal to consumers. In the case of GIs, however, this image is advocated by the EU legislation and policy itself, making it highly misleading to consumers.

The above suggests that the EU makes claims about GI indicating tradition to consumers without directly offering evidence. This subsection has shown that the

⁷⁵⁵ Révion and Chappuis (n 707) 46.

⁷⁵⁶ See Chapters 1, Section 4 (a).

⁷⁵⁷ Andrew Griffiths, ‘Quality in European Trade Mark Law’ (2013) 11 *Northwestern Journal of Technology and Intellectual Property* 621, 627.

EU justifications for those claims are far from clear or substantiated and has offered some concrete examples which counter them.

3. Gains for the Region

One strand of the EU discourse argues that GIs are extremely beneficial to the region in which the product is protected.⁷⁵⁸ Although not in the context of the EU specifically, Aubard highlighted some of the perceived benefits of GIs when she wrote that GIs provide value to the local region and community concerned.⁷⁵⁹ She mentioned in particular: the creation of jobs, the ability for producers to sell their product at a higher price by guaranteeing an origin, method of production and quality to consumers, a more general added value throughout the whole supply chain, and the benefit of building the region's reputation.⁷⁶⁰ Most of these claims have been discussed in the context of benefits to producers but this demonstrates that they can be seen as benefits for the locality more generally.

Certain strands of the EU discourse relate specifically to the benefits of GIs in the regions where they operate. In particular, these claims include (a) a surge in tourism—with an implied effect on employment and economic gains as a result—and (b) the protection of the cultural heritage of the protected area.

a) Surge in Tourism

A claimed benefit of GIs, for the region with which they are associated—which also links to Aubard's idea of building the reputation of the region—is a potential surge in tourism leading to increases in revenues in those regions. This is an argument that is generally made in the context of GI protection as providing opportunities for rural development of the protected area.

⁷⁵⁸ Thual and Lossy (n 651) 49.

⁷⁵⁹ Aubard (n 704) 37.

⁷⁶⁰ *ibid.*

In the 2008 EU-funded London Economics study, ‘regional development and tourism’ was listed, by three of the 88 producers interviewed, as one of the reasons to take up the GI scheme.⁷⁶¹ National authorities in two of the countries studied—Belgium and Italy—also stated increased tourism as one of the advantages of GIs.⁷⁶²

In 2009, the Commission, in its draft Impact Assessment, mentioned the impact of tourism but did so with caution. For example, by referring to a DG AGRI survey carried out in 2007, it stated,

Global effects on the region of production are more shaded. Nevertheless some respondents underlined positive impacts on revenue, tourism, employment, infrastructure creation and support to rural development.⁷⁶³

Once the EU reported this in the 2010 Impact Assessment, it stated that the “[i]ndirect positive effects on employment [of GIs] are also reported through the promotion of agro-tourism”,⁷⁶⁴ and in reference to small GI producers, the Commission stated that “[e]ven if such “micro GIs” are unlikely to benefit from sales beyond their own region, they are potentially useful in the development of agro-tourism”.⁷⁶⁵

However, looking into the London Economics 2008 study and into the DG AGRI 2007 survey on which the Commission based its claims, it is suggested that the extent of the evidence available remains too weak to state that GIs can be useful for agro-tourism. Firstly, the total mentions of tourism as a benefit of GIs adds up to three producers interviewed in the 2008 study as well as ‘some respondents’ in

⁷⁶¹ Although, as 17 of the producers interviewed did not take up the GI scheme, it can be interpreted that, in reality, three out of 71 producers mentioned tourism as a reason to take up GIs, see London Economics (n 650) 44 and 116.

⁷⁶² *ibid* 166.

⁷⁶³ European Commission, ‘Agricultural Product Quality Policy: Impact Assessment - Annex B: Geographical Indications’ (Commission Staff Working Paper 2009) Version 08-4-09 17.

⁷⁶⁴ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 38.

⁷⁶⁵ *ibid* 43.

the DG AGRI survey. The latter is particularly weak as this survey was not extensively reported, but simply summarised in the footnote of the 2009 Commission draft Impact Assessment. The Commission explained that,

DG AGRI carried out a survey among 600 producer groups of registered GIs in 2007. 143 answers have been received, from 134 PDO/PGI. Majority of respondents (88%) were producer groups answered to the questions, which were mainly on economic aspects of the scheme. Respondents were originating from 13 Member States, although 5 countries did concentrate the highest rate of responses: Italy, Greece, Portugal, Spain and France. Answers concern to 5 categories of products: olive oils, meat products, cheese, fruits and vegetables and meat.⁷⁶⁶

The results of this study are vague, and it is unclear how many respondents the Commission refers to when they state that ‘some respondents’ mentioned tourism.

Secondly, no distinction seems to be made regarding the type of GI product. There is therefore an assumption that any GI product has the potential to result in increased tourism. However, GIs will likely have the potential to attract tourism differently depending on their status and reputation. British Watercress may not have the same touristic appeal as French Champagne for example.

Thirdly, questions can be raised as to whether the lack of real consumer knowledge around many GIs would hinder this touristic appeal, or whether the different sizes in GI regions—for example, Feta extends to the whole of Greece—means that this touristic advantage will be more diluted. These questions remain. Although it is not unreasonable to speculate that GI protection may increase tourism, the evidence available is not robust enough to justify the GI system.

Matthew J Rippon argued not so much that tourism simply results from the GI protection, but that the exclusivity of the product and link with place can be used

⁷⁶⁶ European Commission, ‘Agricultural Product Quality Policy: Impact Assessment - Annex B: Geographical Indications’ (n 763) 17.

to actively generate tourism. He gave the example of the Melton Mowbray Pork Pie Association who used the GI as a springboard to name the protected area the ‘Rural Capital of Food’ and to organise a national pie award event every year.⁷⁶⁷ On the other hand, Elizabeth Barham argued that the risk with this type of intentional development of the regions by using GI protection as an instrument to encourage tourism is that,

[T]he countryside and the customs defined as consonant with it will undergo a process of “Disneyfication,” becoming living museums for visitors from the city, a kind of “rurality under glass” for the consumption of privileged consumers.⁷⁶⁸

There is a risk that this GI system, in part intending to protect cultural heritage—as will be discussed in the next subsection—will become synthetic and superficial. Taken to an extreme, this may even lead the GI products to lose the respect and reputation of authenticity that they may currently hold with consumers. Once again, how authentic and traditional can a mass-produced product with its own theme park really be?

Overall, hard evidence of a significant benefit of tourism on the GI regions is difficult to find. The 2008 London Economics study, referred to in the 2010 Impact Assessment, concluded that “[e]vidence on the impact of the scheme in terms of improvements in the conditions in the area of production conducive to the businesses performing well is limited and weak”.⁷⁶⁹ This statement confirms what the rest of this chapter has so far demonstrated: there is a difficulty in finding conclusive evidence for the various claimed benefits of GIs, therefore raising questions about the validity of the EU discourse in this context and indicating its mythical rather than evidenced nature.

⁷⁶⁷ Rippon (n 636) 160.

⁷⁶⁸ Barham (n 573) 132.

⁷⁶⁹ London Economics (n 650) 236.

b) Cultural Heritage Protection

GIs are often said to enable the protection of cultural heritage. This EU perspective argues that by protecting certain products based on locality, the cultural heritage of that region is protected. For example, it was stated in a 2010 EU Report on Agricultural Product Quality Policy, that the European Parliament,

[c]onsiders the protected designations of origin and geographical indications system to be one of the CAP instruments intended to support the development of rural areas, protect the cultural heritage of regions and foster the diversification of employment in rural areas.⁷⁷⁰

The 2010 Impact Assessment, once again with reference to the 2008 London Economics study, stated that the EU GI scheme “can be expected to continue to support the cultural heritage and value of the regions of production, as suggested by case studies”.⁷⁷¹

The assumption here is that cultural heritage is a fixed idea that GIs can protect. Similarly, Sarah Bowen and Kathryn De Master have argued that GIs can contribute to the view that culture and food history are fixed notions and in turn privilege older forms of culture over more recent ones.⁷⁷² But culture is not a fixed concept as it constantly evolves. Roland Barthes argued that “the myth of timelessness [...] is at the core of any appeal to an eternal ‘culture’”.⁷⁷³ Thus Barthes tells us that the idea of cultural preservation is a myth as culture is not one immobile idea. Some aspects of culture could originate from a thousand years ago, or from a few years ago, and often cannot be associated with a particular

⁷⁷⁰ European Parliament, ‘Report on Agricultural Product Quality Policy: What Strategy to Follow?’ (2010) 2009-2014 Session Document A7/2010/29 7–8.

⁷⁷¹ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 27.

⁷⁷² Sarah Bowen and Kathryn De Master, ‘New Rural Livelihoods or Museums of Production? Quality Food Initiatives in Practice’ (2011) 27 *Journal of Rural Studies* 73, 77; Gugerell and others (n 695) 119.

⁷⁷³ Barthes (n 66) 82.

date. GIs are registered all the time with no formal requirement for the product to have existed for a certain period to be protected.

The 2012 Regulation defined the term ‘traditional’ as “proven usage on the domestic market for a period of [...] at least 30 years”,⁷⁷⁴ but this refers to the context of ‘traditional specialities guaranteed’ which are protected under the same regulation but are based on principles that are different to that of GIs. So, although there is no express insistence from the EU and the GI system for culture to be fixed in the past, this aspect of the discourse creates a risk that the system of protection contributes to the notion that only past cultural aspects are significant. This comes back to Barham’s critique of ‘rurality under glass’,⁷⁷⁵ discussed in the previous subsection. Culture should not become a mythical entity to be fixed in time and protected without consideration for progress. Similarly, progress should not be seen as an enemy of culture. Historically, certain culturally significant and acceptable approaches and views have later been exposed as dangerous, discriminatory, or simply inappropriate in today’s society. In the context of GIs, a new method of production, for instance, could be more environmentally friendly, and adjusted PSs could make a product less high in saturated fats. It is important to be open to these adjustments and not regard historical decisions and practices as mythically perfect and unalterable.

Looking at current legislation, the 2012 EU GI Regulation’s Preamble opens with the following statement,

The quality and diversity of the Union’s agricultural, fisheries and aquaculture production is one of its important strengths, giving a competitive advantage to the Union’s producers and making a major contribution to its living cultural and gastronomic heritage.⁷⁷⁶

⁷⁷⁴ Regulation 1151/2012 Article 3(3).

⁷⁷⁵ Barham (n 573) 132.

⁷⁷⁶ Regulation 1151/2012 recital 1.

This highlights the importance of ‘heritage’ in the EU as well as the role that GIs play in contributing to this heritage. However, the EU’s approach in this regulation is that the heritage is ongoing and can be built upon, rather than existing as a fixed entity, as it refers to the Union’s ‘living cultural and gastronomic heritage’. In addition, the recital then mentions a certain balance between preserving tradition and new development.⁷⁷⁷ The EU, therefore, adjusts its discourse slightly within this regulation.

A second related issue—previously mentioned in Chapter 4—is that the EU does not answer, in its discourse, the question of how GI protection being based on locality can preserve cultural heritage. How can we speak of culture and tradition preservation when any somewhat knowledgeable individual, regardless of their cultural identity, can produce the product as long as they locate their production in the protected region? As Révion and Chappuis stated, “[e]ntry is open [sic] to any operator who is located within the territory limits and respects the code of practice”.⁷⁷⁸ The level of traditional knowledge of the individual producing the product thus appears irrelevant as long as they follow the PSs. This locality-based protection is also contradictory to the definition of PDO under the current EU regulation which refers to the importance of ‘human factors’.⁷⁷⁹

Finally, in terms of concrete evidence for the claim that GI preserve cultural heritage, the 2008 London Economics study stated,

[I]t is difficult to form an overall assessment of the impact of the PDO/PGI scheme on establishing cultural value in rural areas of production. Nonetheless, it is clear that the PDO/PGI scheme at least seems to reinforce the cultural heritage and value linked to the areas of production of the protected product names.⁷⁸⁰

⁷⁷⁷ *ibid.*

⁷⁷⁸ Révion and Chappuis (n 707) 46.

⁷⁷⁹ Regulation 1151/2012 Article 5(1); see in contrast definition for PGI at Article 5(2).

⁷⁸⁰ London Economics (n 650) 252.

Despite this, the study also admitted that the evidence is ‘limited’.⁷⁸¹ This study, widely cited by the European Commission in its 2010 Impact Assessment, was also funded by the European Commission itself who might have a vested interest in supporting the EU discourse. More specifically, the Impact Assessment stated that its sources include this study and other EU-funded studies, as well as the views of other stakeholders who were “consulted extensively”.⁷⁸² Nevertheless, a number of the Impact Assessment references to sources and websites providing details on the engagement with these stakeholders have moved or no longer exist. Only three of the ten footnotes, for the ‘Consultation of Stakeholders’ section of the Impact Assessment, lead to the information it refers to in the text. The remaining seven are broken links or do not link to cited information. This, again, adds to the difficulty of accepting that indisputable evidence supports the EU discourse on the benefits of GIs. Gugerell et al. argued that despite numerous authors exploring the link between GIs and culture, there is a lack of concrete empirical evidence to demonstrate this,⁷⁸³ and the same is concluded here.

This section has demonstrated that the GI benefit to the region is regularly part of the EU discourse. This is in line with the EU’s policy focus on the idea of rural development. In contrast, the next section will consider the EU’s claims around the environmental benefits of GIs—including environmental sustainability and biodiversity.

4. Environmental Benefits of GIs

As we have seen, the EU has claimed that environmental protection is another benefit of the GI system. But what is the substance of its claims in this respect?

⁷⁸¹ *ibid* 265.

⁷⁸² European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 4–5.

⁷⁸³ Gugerell and others (n 695) 119.

a) *The Wavering EU Discourse on the Environmental Benefits of GIs*

In 2008, the European Commission published a Green Paper on quality schemes, with one of the questions for consultation relating to whether sustainability criteria, such as environmental requirements, should be introduced for GIs.⁷⁸⁴ The current GI system does not explicitly mention any environmental requirement, and the European Commission thus questioned whether it should. The Green Paper referred to GI sustainability criteria's ability to contribute to quality and meet the expectation of some consumers who favour environmentally sustainable farming.⁷⁸⁵ The conclusion from the Green Paper consultation highlighted that the responses on this were divided but that some respondents argued that voluntary environmental criteria could be attached to the GI system of protection.⁷⁸⁶ They insisted that any requirement introduced should remain voluntary rather than compulsory. Understandably, some GI producers may not want additional constraints and standards to be applied to their GI production. The voluntary environmental criteria mentioned in the Green Paper conclusion were not implemented in the 2012 Regulation. Although the Commission, in the 2008 Green Paper, suggested the introduction of environmental criteria as an opportunity for GIs to be environmentally beneficial, it does not claim that GIs already serve that aim, in that document.

By contrast, in the Summary of the 2010 Impact Assessment, the European Commission stated that the GI schemes have “some limited environmental impacts, particularly where the quality attributes of the product are linked to environmental values”.⁷⁸⁷ The Commission did not expand further on what it meant by this. In the full 2010 Impact Assessment, environmental protection was

⁷⁸⁴ European Commission, ‘Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes’ (n 425) 13.

⁷⁸⁵ *ibid.*

⁷⁸⁶ European Commission, ‘Conclusion from the Consultation on Agricultural Product Quality’ (n 426) 13.

⁷⁸⁷ European Commission, ‘Summary of the Impact Assessment on Geographical Indications’ (Commission Staff Working Paper) SEC (2010) 1524 final 4.

not identified as one of the main objectives of the GI schemes.⁷⁸⁸ Nevertheless, the Commission argued that “some studies have shown that certain practices under PDO-PGI specifications have some link to environmentally relevant farming practices by requiring certain animal feeding systems or maximum stocking densities”, citing only the European Forum on Nature Conservation and Pastoralism (EFNCP) response to the 2008 Green Paper.⁷⁸⁹ Firstly, the Commission’s language of ‘some studies’ suggested a certain consensus over several formal studies, when all it cited was a response to its consultation in which the EFNCP stated that they had “examined examples of PDO products from France and Spain”.⁷⁹⁰

Secondly, considering the response of the EFNCP itself, it can be argued that it was largely simplified in the Impact Assessment. More specifically, the EFNCP stated that, after having considered a number EU protected GI, they “found that several PDO labels give no guarantee that the product comes from a particular farming system, or of a particular respect for environmental standards” and that in the context of animal feeding systems “some PDO labels have at least *some* link to relevant farming practices” but that “these are based on considerations of product quality and market management, rather than on nature-conservation criteria”.⁷⁹¹ The EFNCP further explains that “the EU system of geographical/traditional labels supports products from certain geographical areas that often have special environmental values, but it does not support the farming systems that conserve these values”, giving the example of Camembert de Normandie PDO and arguing that,

⁷⁸⁸ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 15.

⁷⁸⁹ *ibid.*

⁷⁹⁰ European Forum on Nature Conservation and Pastoralism, ‘EFNCP Response to the CEC - Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes COM(2008) 641 Final’ (EFNCP 2008) 5.

⁷⁹¹ This evidence was not made easily accessible by the Commission as the responses to the Green Paper are no longer accessible on the Europa website. After contacting the Commission for these responses and being told that the documents requested do not exist, the EFNCP response was found online as it was made available by the EFNCP itself. Other responses to the consultations were obtained by directly contacting the organisations that responded to the call. *ibid* 5–6.

[M]uch of the cheese carrying the label is from quite intensive farming systems and landscapes which have lost their nature value. Yet the image of the label and of the product is associated with a more traditional, low-intensity and generally [High Nature Value] farming system.⁷⁹²

The EFNCP referred to the potential for GIs to have some environmental benefits if environmental criteria are introduced as part of the scheme, but it did not claim an existing overall environmental benefit of the GI system.⁷⁹³ Its response is much more nuanced. The Commission in the Impact Assessment, therefore, has misinterpreted or miscited the evidence it refers to, regarding the environmental benefit of GIs.

In addition, the 2010 Impact Assessment also added that,

According to the findings of IPDEV study, GI products showed positive results in reference to conservation of biodiversity and distinctive cultural landscapes, and the regions of origin often include protected areas [...] IPDEV findings show also that whenever elements connected to the preservation of local environmental quality or biodiversity are a component of the product definition, then GIs may play a more important role in capturing extra revenues derived from these environmental attributes.⁷⁹⁴

Although this claim is present almost word for word in the IPDEV study,⁷⁹⁵ which will be explored later in this section, the IPDEV Workbook 3 Report is also more nuanced in its results, suggesting that both negative and positive environmental aspects for GIs were observed.

⁷⁹² *ibid* 6.

⁷⁹³ *ibid*.

⁷⁹⁴ European Commission, 'Impact Assessment on Geographical Indications' (n 431) 15.

⁷⁹⁵ Riccheri and others (n 466) 96.

The Impact Assessment, again, stated that “PDOs can better favor local development because of their strong link to origin and thus contributing to environment and biodiversity”, this time citing an academic study conducted by Ana G Zapata et al.⁷⁹⁶ Although the conclusion of the Zapata et al.’s study mentioned a potential for GIs to promote environmental and biodiversity functions, it also stated that this link to origin itself is not enough to ensure biodiversity.⁷⁹⁷

In the end, the Commission in the Impact Assessment concluded that the effect of GIs on environmental protection was uncertain and, as such, that GIs were not a direct tool for environmental protection.⁷⁹⁸ Despite these references to the benefits of GIs on the environment in the Impact Assessment, the Commission wavered, in its discourse, between GIs being environmentally beneficial and GIs being a potential tool for environmental sustainability. In the Impact Assessment, the Commission also stated that these benefits may be incidental.⁷⁹⁹

One aspect that the Impact Assessment did make clear, however, was the existence of the consumer perception that GIs are environmentally beneficial. According to the Commission’s Impact Assessment, a survey found that a quarter of respondents believed that GIs logos indicated the use of environmentally friendly production techniques.⁸⁰⁰ Once again, however, the exact details of the study which highlighted this data are unclear. While the Assessment referred to a study conducted by ‘ADAS’ and run by DEFRA in 2003, the digital link cited is broken, and no such study can be found online. However, ADAS also contributed to the 2008 London Economics study, which also claimed that a quarter of their survey respondents associate GI symbols with environmentally-friendly

⁷⁹⁶ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 42.

⁷⁹⁷ Ana G Zapata Valenzuela and others, ‘Conservación de la diversidad de cultivos en las regiones con indicaciones geográficas. Comparación del tequila y calvados’ (2004) 5 *Sociedades Rurales, Producción y Medio Ambiente* 7, 20.

⁷⁹⁸ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 16.

⁷⁹⁹ *ibid.*

⁸⁰⁰ *ibid.* 21.

farming.⁸⁰¹ The claim from the London Economics study is written almost word for word like the Impact Assessment, suggesting that it refers to the same set of data.⁸⁰²

The London Economics study also cited some evidence of environmental benefits from the case studies such as contribution to “natural beauty (landscape) of Jersey” in the case of Jersey potatoes and the preservation of plant and animal variety in Greece.⁸⁰³ Once again, the study nevertheless concluded that “[a]s no information was sought in the case studies about potential environmental costs of the scheme, it is not possible to pass judgement on the net environmental impact of the scheme”.⁸⁰⁴ The Commission’s evidence, therefore, amounts to inconclusive studies conducted by the same few actors, most of whom were funded by the Commission itself as was seen in previous sections.

Nevertheless—although inconclusive—the association between GIs and environmental benefits was accepted and reproduced within the EU discourse. In the 2010 Explanatory Memorandum for a Commission Proposal for the new GI Regulation, it was stated that,

Concerning environmental impacts, studies show that some PDO and PGI products come from low intensity farming systems associated with high environmental value. These PDOs and PGIs provide an economic underpinning to the environmental public goods. Under the options retained for analysis producers can include environmental conditions in appropriate cases.⁸⁰⁵

⁸⁰¹ London Economics (n 650) 160.

⁸⁰² Attempts to find an ADAS study were made without success, due to the very rudimentary information provided in the Commission’s citation and the broken link to the study pdf.

⁸⁰³ London Economics (n 650) 239 and 250.

⁸⁰⁴ *ibid* 253.

⁸⁰⁵ European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on Agriculture Product Quality Schemes’ (n 479) 6.

The Memorandum stated this by simply referring back to the Impact Assessment but without clarifying what studies this claim relied on. It tried to associate GIs with environmental protection but also suggested that this link is purely incidental as it simply stated that some GIs arise from low intensity farming. This is however not saying much as one could analogously suggest that some non-GI products arise from low intensity farming.

Similarly, in a 2011 Opinion by the EESC as part of the preparatory work for the 2012 Regulation on GIs, the Committee stated that it “recognises the contribution made by these agricultural products to maintaining traditional production methods and *safeguarding the environment*” [*emphasis added*].⁸⁰⁶ Finally, the 2012 GI Regulation in its twenty-third recital hints at this idea of environmental benefits stating that,

An agricultural product or foodstuff bearing such a geographical description should meet certain conditions set out in a specification, such as specific requirements aimed at protecting the natural resources or landscape of the production area or improving the welfare of farm animals.⁸⁰⁷

This is in addition to the first few recitals of the regulation highlighting the importance of the diversity of the EU agriculture, suggesting that GIs help maintain this diversity.⁸⁰⁸

This section, therefore, suggested that the EU discourse on the environmental benefits of GIs is wavering and indecisive as to the claims that it makes. It also demonstrated some misinterpretation and generalisation of the evidence available

⁸⁰⁶ Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes’ [2011] OJ C218/114 4.1.2.

⁸⁰⁷ Regulation 1151/2012 recital 23.

⁸⁰⁸ *ibid* recitals 1-4.

regarding the environmental benefits of GIs. This will be further examined in the following subsection.

b) *Exploring the Evidence of the IPDEV Study*

Mariano Riccheri et al., in the 2007 IPDEV study funded by the EU Commission and referred to in the Impact Assessment, illustrated the situation regarding the environmental benefits of GIs when they stated that,

Products protected under a GI are sometimes assumed to be more environmentally friendly than other products, due to their local reference, predominance of “low intensity” production methods (derived from small-scale, traditional processes) and their potential to mobilise and implicate local communities in the exploitation of local natural resources. [...] These assumptions have rarely been tested, which justifies a more detailed investigation.⁸⁰⁹

This further demonstrates that the environmental element of the EU’s discourse—although perhaps less prominent—was nevertheless present prior to its more obvious emergence around the time of the 2012 Regulation. As the EU Commission in the Impact Assessment relied principally on this IPDEV study with regards to its environmental benefits claims, this section will explore this study in more detail and discuss four central aspects of the environmental benefit argument which emerged in the study.

First, the association of GI products with a particular defined locality has been said to encourage producers to adopt sustainable productions due to increased responsibility to the place.⁸¹⁰ Riccheri et al. argued that “as local products are often, although not exclusively, consumed in local markets there is a higher probability that their supply chain will be shorter with smaller scales of

⁸⁰⁹ Riccheri and others (n 466) 49.

⁸¹⁰ See Chapter 4, Section 3.

production and less intense systems of production”.⁸¹¹ The use of the word ‘often’ is problematic as it was then acknowledged, in a footnote to this claim, that this referred to the majority of the products of this study but that many famous GIs have long international chains due to their worldwide demand.⁸¹² The national, if not worldwide, interest—which contributes to the economic importance—of some GI products would therefore arguably nullify any benefit based on locally sourced foods. For example, although not EU-produced GI products, the EU Commission stated in a 2013 report that 60% of Rooibos tea and 70% of Darjeeling tea is exported.⁸¹³ On the other hand, a 2012 study by Tanguy Chever suggested that the majority of GI foodstuffs are sold in the domestic market.⁸¹⁴ Statistics on the share of GI products sold within their region of production is difficult to find at the EU level.

Riccheri et al.’s acknowledgement that famous GIs—such as Roquefort, Champagne, and Darjeeling—may undergo more exports, highlights an important potentially negative consequence of GIs. The popularity of products from certain localities, and the discourse accompanying it which stresses that such products have characteristics that can only result from the production in those localities, means that these products no longer have close substitutes. Thus when someone in America wants Darjeeling tea, the GI protection system maintains that the only way to obtain the product is to import it from India and that the local alternatives with fewer food miles are not equivalent substitutes. Although certain products such as Darjeeling might be able to be transported easily by less polluting modes of transport, such as by ship, more perishable goods such as Roquefort need refrigeration,⁸¹⁵ or quicker and perhaps more polluting modes of transport. It may

⁸¹¹ Riccheri and others (n 466) 11.

⁸¹² *ibid.*

⁸¹³ Directorate-General for Agriculture and Rural Development, ‘Workshops on Geographical Indications: Development and Use of Specific Instruments to Market Origin-Based Agricultural Products in African-ACP Countries’ (European Commission 2013) 26.

⁸¹⁴ Chever and others (n 386) 62–63.

⁸¹⁵ For example, cargo websites have extensive guidelines about the transport of cheese, which includes information on specific temperatures, aeration, etc. to be respected during transport. See BTM, ‘Cheese’ (*Cargo Handbook*) <https://cargohandbook.com/Cheese#Storage_and_Transport>

still be maintained that some GI regions will receive environmental benefits from GI production, but there is little discussion on the overall environmental impact due to the mass exportation of the prestigious and non-substitutive GIs.

Second, Riccheri et al. also argued that, as the supply chain actors for most GIs are located in one identifiable region, the producers have a better knowledge of the area's environment and thus any dangers to it.⁸¹⁶ Although this may well be the case for PDOs—for which most of the production steps occur in the protected region—this is likely to be a lot less true for PGIs—requiring only one step of production to take place in the protected region. As mentioned previously, only the assembly of a Cornish pasty is required to happen in Cornwall. In this case, the knowledge of the Cornwall environment by workers assembling the pasties is unlikely to be relevant. Even if this only referred to PDO products, this argument about knowledge of the region and its environmental dangers is likely to apply to all producers in the region and not simply those who make products classified as GIs. It is also important to note that Riccheri et al. mentioned the risk of 'intensification of agriculture production' in the context of GIs, whose traditional aspect does not prevent this intensification.⁸¹⁷ As GIs are only protected in defined geographical areas, the land space will be limited and therefore producers may have to intensify production in order to expand it.

Third, Riccheri et al. argued that "the production of the studied products seem [sic] to contribute to landscape conservation in all cases".⁸¹⁸ However, for a number of the GI products that the study examined, this is referenced quite vaguely as "contribution to landscape maintenance".⁸¹⁹ For the PDO Sierra Mágina, the landscape benefits were explained as "[o]lives are part of the traditional landscapes/the principal economic activity of the region for

accessed 10 March 2021; Transport Information Service, 'Cheese' (*The German Insurance Association*, 2021) <https://www.tis-gdv.de/tis_e/ware/milchpro/kaese/kaese-htm/> accessed 10 March 2021.

⁸¹⁶ Riccheri and others (n 466) 11.

⁸¹⁷ *ibid* 12.

⁸¹⁸ *ibid* 56.

⁸¹⁹ *ibid* 54.

centuries”.⁸²⁰ It is unclear how the fact that these olives have been grown in the region for centuries mean that the GI contributes to landscape preservation. The explanations are therefore at times incomplete as Riccheri et al. stated in their methodology section, that in order to assess the benefits of GIs, a comparison with a similar product or consideration of what the situation would be like without the GI is necessary.⁸²¹ It may be that such analysis is beyond the scope of the study or the limited space in the report did not allow to lay out the details of such an analysis for all cases. Nevertheless, the study did, at times, make this comparison. For example, it highlighted that Spreewald Gherkin production requires a high demand for water in comparison to similar crops, but that this is balanced by modern irrigation systems.⁸²² This underlines that for this particular GI, the traditional method of production may be more damaging to the environment than comparable crops and that this has to be rectified by modern technology.

Fourth, this same case study also stated that a high level of land for gherkins is leased which often requires tenants to maintain the land.⁸²³ This environmental benefit appears incidental, which is likely to be true for alternative crops and any other leased land, rather than something that is the direct result of GI protection. In the same vein, Barham highlighted in her article that there are certain situations where AOCs’ traditional production methods of production do have positive consequences on the environment, but she showed that it can be complicated.⁸²⁴ In particular, she gave the example of the INAO rebuilding stone terraces to redraw the AOC boundaries, avoiding in turn mudslides which would remove the topsoil and vegetation.⁸²⁵ Although this type of environmental benefits exists, it is highly specific to the production and context.

Nevertheless, it is doubtful that these types of examples can justify broader claims about the environmental benefits of GIs without evidence guaranteeing an overall

⁸²⁰ *ibid.*

⁸²¹ *ibid.* 50.

⁸²² *ibid.* 54.

⁸²³ *ibid.* 53 and 57.

⁸²⁴ Barham (n 573) 135.

⁸²⁵ *ibid.*

higher level of environmental benefits for GI protected products in comparison to non-GI products. Riccheri et al.'s study pointed out that some products such as Spreewald Gherkin, Jersey Royal Potatoes, Sierra Mágina olive oil, and West Country Farmhouse Cheddar, also demonstrated negative environmental consequences through heavy use of pesticides—which is not beneficial for the environment nor the consumers. Others have evidenced soil erosion, which is also a sign of environmental damage.⁸²⁶ The Riccheri study highlighted that “[i]n particular, the production of gherkins and potatoes is not always environmentally favourable, due to high input of fertiliser and plant protection products”.⁸²⁷ There is, therefore, a lack of conclusive evidence for the environmental argument to act as a key justification for the system to exist.

The IPDEV study, despite exploring this question of environmental impact in greater detail than some other studies were able to, still concluded that the impact of GIs on the environment is positive in some instances, but this is not true across all aspects of the environment nor all GIs. Riccheri et al. stated that,

[T]he environmental effects of production are seen to differ substantially, from environmentally beneficial productions which are protected by GIs tightly linked to nature conservation objectives [...] to GIs with a neutral to ambiguous effect on the environment.⁸²⁸

While some productions have some positive impacts on certain aspects of the environment, they are not devoid of negative impacts either. Riccheri et al. noted that subsidies schemes may do more to improve the environmental benefits of GI products, than the GI protection itself.⁸²⁹ There may therefore be better ways to achieve environmental protection than through the GI protection system. They also mentioned that if environmental protection was to become a criterion in the

⁸²⁶ Riccheri and others (n 466) 53–55.

⁸²⁷ *ibid* 57.

⁸²⁸ *ibid* 52.

⁸²⁹ *ibid* 60.

protection of GI products, it is likely that it would then have a positive environmental impact.⁸³⁰

When the EU first used the IPDEV study, it accepted the uncertainty of environmental benefits as it mentioned in a draft of the Impact Assessment that “there is some evidence in this study to suggest that GI policy makes possible the protection of some products that could be produced in environmentally sustainable farming systems” but that,

[T]here are also examples of GIs where production methods are not at all different from standard agricultural practices, with associated environmental impacts. In particular, processes of intensification - with visible environmental impacts - are present and possible under GI specification rules.⁸³¹

In this draft Impact Assessment, the Commission even reached the honest conclusion that “findings suggest that, despite possible idealised assumptions about GIs, these show per se an uneven effect on environmental quality”.⁸³² This statement did not reappear in the final 2010 Impact Assessment nor the Explanatory Memorandum for the 2012 Regulation Proposal, which instead suggested that some studies have highlighted positive impacts of GIs on the environment—as was seen above. In contrast and more recently, it was argued in a 2018 Food and Agriculture Organization report that GIs are not necessarily beneficial to the environment, citing as an example Darjeeling tea produced with particularly intensive farming techniques.⁸³³

Overall, the EU’s claim that GIs have environmental benefits—although at times nuanced—does not have strong evidential foundations. At the EU level, the idea

⁸³⁰ *ibid* 62.

⁸³¹ European Commission, ‘Agricultural Product Quality Policy: Impact Assessment - Annex B: Geographical Indications’ (n 763) 20–21.

⁸³² *ibid* 21.

⁸³³ Emilie Vandecandelaere and others, *Strengthening Sustainable Food Systems through Geographical Indications: An Analysis of Economic Impacts* (FAO 2018) 33.

is hinted at in the regulation and its preparatory work such as in the Opinion of the EESC, though the European Commission in the Impact Assessment is unsure about where it stands on this issue. When it comes to looking for evidence, the Commission pointed to studies whose results are explicitly inconclusive and vary drastically from one GI product to the other. Consequently, the environmental benefits of GIs, overall, may not be different from non-protected products. The acknowledgement from the European Commission that an important proportion of consumers assume GIs to be environmentally friendly, means that the EU has a duty to correct this misconception, if only as a matter of consumer protection. The perpetuation of myths cannot be in the interests of consumers.

5. Conclusion

As seen in previous chapters, there are numerous benefits of GIs claimed by the EU discourse and reproduced in the academic literature. This chapter has outlined these claims, including benefits to farmers such as an increase in employment opportunities and income, as well as more a competitive advantage in the market. Moreover, benefits to consumers such as increased transparency, a guarantee of quality, and an indication of products made through traditional production techniques are also claimed as benefits. These EU claims also refer to bolstering whole GI protected regions themselves which, according to the discourse, benefit from surges in tourism and cultural heritage protection for the areas in question. Finally, although less forcefully, suggestions that GIs benefit the environment have also arisen.

However, this chapter has demonstrated that the majority of these claims are founded on weak and generally inconclusive evidential bases. The EU makes claims which are not always unsupported but certainly supported by very limited and often inconclusive research. In addition, there is little transparency regarding the access to some of this evidence, which required extensive research, due to broken links and incorrect or incomplete citations provided in the EU Impact Assessment. Although there may be further studies substantiating the EU claims, these have not been referenced clearly or are not available. There is therefore a

process issue and the lack of transparency, due to the failure to provide evidence, strongly undermines the EU policy on GIs.

Having now demonstrated the disjuncture between the EU multifunctional discourse and the evidence that this discourse is based on, the next chapter will look to understand why the EU has invested so much in protecting and defending the GI system so strongly.

Chapter 6: The Possible Hidden Motivations for the EU Discourse on Geographical Indications

The thesis so far has demonstrated that there is an important disjuncture between the European Union discourse around the benefits of the Geographical Indication system—which the EU has built through a multifunctional narrative—and the evidence which can be found to support such claimed benefits. In particular, the historical bases for GIs were explored,⁸³⁴ the development in the EU legal and policy discourse was analysed and socio-economic and environmental strands were identified,⁸³⁵ then a study of the EU academic discourse established more specifically a reproduction of the discourse on the cultural, qualitative, socio-economic, and environmental claimed benefits of GIs.⁸³⁶ The thesis then demonstrated that most of these claims did not have enough conclusive evidence to support them.⁸³⁷ This chapter now raises the question of why the EU is furthering the system of protection by promoting GIs in its discourse, without conclusive evidence of the system's positive benefits.

Given that the previous chapter has revealed that the EU's justifications for the GI system are based on assumptions rather than on strong evidence, this chapter will investigate why the EU has been insisting on guarding and developing the GI protection system despite this lack of evidence. Is it perhaps because they contribute to fulfilling some other benefit or principle for the EU? And if so, how cogent is that connection? To answer these questions, this chapter will explore other less explicit reasons why GIs have been protected by the EU. It will specifically consider whether, sitting behind the official multifunctional discourse, there lie other benefits from protecting GIs, which serve to sustain and promote the EU as an institution. A range of plausible possibilities will be tested. These can be separated into two areas. First, Section 1 will assess the external critique,

⁸³⁴ See Chapter 2.

⁸³⁵ See Chapter 3.

⁸³⁶ See Chapter 4.

⁸³⁷ See Chapter 5.

raised by opponents to the EU GI protection system, that it serves as a scheme of unfair market protectionism. Second, Section 2 will consider the internal dimension and how the GI scheme might operate as a means of attaining support for the EU as a legitimate institutional actor operating at a supranational level generally and in this policy field in particular. To do so, the section will explore: (a) to what extent GIs help the EU gather support from farmers—including by softening the blows of the Common Agricultural Policy; (b) to what extent GIs help the EU reassure consumers—through promises of high food transparency, safety, and quality; (c) the contribution of GIs in the EU seeking to retain its reputation as an environmental leader; and finally, (d) the idea that GIs allow the EU to protect and promote its culture, identity, and political model. In the absence of other plausible explanations, all these less acknowledged benefits will be assessed to determine the strength of the argument that the EU seeks to convey socio-economic protectionism as a means to further its legitimacy as a body representing the interests of its constituencies.

1. The External Critique of Market Protectionism

This section considers the strength of the critique, levelled by the United States and other non-EU states, that the EU GI system is a form of trade or market protectionism, seeking purely economic advantage rather than fulfilling other more moral or altruistic aims.

As was shown in Chapters 1 and 3, it has been argued by some that trade protectionism and financial gains are the sole purposes of GIs. This trade interest was indeed recognised as important at the inception of the first EU regulation. In its 1985 Green Paper on new CAP perspectives—previously discussed in Chapter 3—the Commission stated that “[t]he increase of production through technical progress, with a quasi-stagnation of the internal demand for traditional agricultural products, raises the question of the conditions under which the Community could increase its agricultural exports”.⁸³⁸ The Commission at the time was therefore already considering how to elevate the status of traditional

⁸³⁸ European Commission, ‘Perspectives for the Common Agricultural Policy’ (n 286) 38.

products. This was reiterated by the Advocate General in the case of *Feta II*, who stated, that “[t]he need to prevent new obstacles to trade and to regulate instruments in order to protect consumers and producers adequately was part of the reason for the creation of a Community policy on quality”.⁸³⁹

In addition, the EU Commission itself admitted that it uses GIs to seek an advantage in the market as it stated in its 2010 Impact Assessment that “[i]n order to respond effectively to increasing competition on domestic as well as global markets, EU agriculture has to play to its strengths: emphasizing quality of different kinds, including that linked to geographical origin”.⁸⁴⁰ Justin Hughes recognised the importance of GIs in the context of trade and stated that “[t]he debates about geographical indications are more than just intellectual property arcana; they take place in the context of long-standing, high-stakes negotiations over trade in agricultural goods.”⁸⁴¹

Even today, EU Regulation 1144/2014 which focuses on the promotion of agricultural products both internally and externally,⁸⁴² states that,

The information provision and promotion measures shall aim to: [...] (b) raise awareness of the authenticity of European protected designations of origin, protected geographical indication and traditional specialities guaranteed.⁸⁴³

There is therefore little dispute that the EU can benefit economically from GIs and of the trade advantage they carry. Stacy D Goldberg explains in her 2001 journal article that,

⁸³⁹ *Feta II* (n 412) Opinion of AG Ruiz-Jarabo Colomer, para 22.

⁸⁴⁰ European Commission, ‘Impact Assessment on Geographical Indications’ (n 431) 28.

⁸⁴¹ Hughes (n 167) 302.

⁸⁴² European Parliament and Council Regulation (EU) 1144/2014 of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) 3/2008 [2014] OJ L317/56.

⁸⁴³ *ibid* Article 3(b).

The European Union stands to benefit substantially from the economic gains derived from protecting its intellectual property rights in geographical indications. International protection of geographical indications that assures quality and origin will positively affect the European Union's economic competitiveness in international trade, just as international protection of trademarks has helped the U.S. economy. Achieving a protected name status helps products fair better in the market since their origin, quality, and reputation are emphasized. The European Union wants these products that have become very popular abroad protected from imitation and genericism.⁸⁴⁴

GIs, and any trade benefits they may have, are particularly financially advantageous to the EU due to the importance that agriculture represents for the region and its Member States. Hughes points out, referring to studies from the late 1990s and early 2000s, that farming in France represents a significantly larger proportion of the Gross Domestic Product (GDP) than it does in the US—4.6% for France versus 1% for the US—but also that France employs 4% of its working population in the agricultural production while the US only employs 1% of the working population in the farming sector.⁸⁴⁵ Although this gap today seems to have narrowed slightly. Considering more recent statistics by looking at data from the World Bank, ‘agriculture, forestry, and fishing value added’ still represented 1.6% of France’s GDP in 2018 (as well as 1.6% of the EU’s GDP) while this industry value added in the US only represented 0.9% of its GDP.⁸⁴⁶ Statistics on the employment in agriculture as a percentage of the total employment in 2018 was estimated at 4.2% in the EU and only 1.4% in the US.⁸⁴⁷ More generally, the

⁸⁴⁴ Goldberg (n 229) 145.

⁸⁴⁵ Hughes (n 167) 342–343.

⁸⁴⁶ World Bank, ‘Agriculture, Forestry, and Fishing, Value Added (% of GDP) - European Union, United States’ (*The World Bank Data*, 2021)

<<https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?contextual=default&end=2018&locations=EU-US&start=1990&view=chart>> accessed 7 December 2021.

⁸⁴⁷ World Bank, ‘Employment in Agriculture (% of Total Employment) (Modeled ILO Estimate) - European Union, United States’ (*The World Bank Data*, 2019)

importance of agriculture in the EU can be evidenced through the division of its budget, as Laurie Buonanno and Neill Nugent report that—at the time of their writing in 2013—agriculture represented an enormous 40% of the overall EU budget but that had reached up to 80% in the past.⁸⁴⁸

As the economic significance of agriculture has decreased, critiques of the CAP spending have become more prominent, in particular from countries whose economies do not rely on—and thus benefit less from—CAP funding.⁸⁴⁹ As part of the EU ‘quality scheme’, GIs can renew this interest in the agricultural, and perhaps regain support from MS who do not have a significantly developed agricultural sector but who have a few ‘traditional’ products they wish to protect and financially benefit from. In addition, the EU can use GIs—and the promise of price premiums and increased competition—to cushion the reduction in CAP support for farmers. Indeed, since the early 1990s, international pressure meant that the EU was forced to reform the CAP in order to lower protectionism in the context of its agricultural trade policy and financial help to farmers.⁸⁵⁰ This led to a change in farm support in 1992.⁸⁵¹ The GI protection system may be interpreted as having disguised some of this agricultural trade protectionism under alternative regulations and allowed the EU’s agricultural sector to keep hold of some global trade advantages.

Furthermore, the EU can highlight the financial benefits of GIs as being retained in the area where farming takes place—through its claims of higher employment, higher income, even if in reality the profits may be taken away. Creating the perception of an enriching area—especially a rural one—is beneficial for the re-election of national governments, whose presidents and ministers are involved in EU level decisions. This is true whether the areas are actually enriching or not. It also permits the EU to bring GIs in line with its treaty objectives of higher growth

<<https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=EU-US>> accessed 3 October 2019.

⁸⁴⁸ Buonanno and Nugent (n 108) 167 and 173.

⁸⁴⁹ *ibid* 173–174.

⁸⁵⁰ *ibid* 172.

⁸⁵¹ See Chapter 3, Section 4.

and employment,⁸⁵² and gain policy level legitimacy. The EU can make these promises by protecting the products based on the area of production rather than based on individual producers—in essence, restricting freedom of establishment.⁸⁵³ While protection for individual producers would mean that relocation of a production outside the EU would bring about the loss of the income within the EU area, the GI protection based on the place of production can be seen as preventing this from happening.

This is, of course, an illusion as the production being located in a particular region does not prevent the ultimate profits from benefitting an international owner. For example, the multi-national company Lactalis holds a large proportion of the GI cheese production in France.⁸⁵⁴ With such a multinational business structure, any profit is likely to be reinvested somewhere else in the EU—or even elsewhere in the world—rather than in the same national region. It must be noted, however, that in a recent dispute about the large Italian producer of Parmigiano Reggiano, Nuova Castelli, being bought out by Lactalis, the president of the GI’s producer group stated that “potential investments will go to the [Lactalis] branch within the area” [translated by author].⁸⁵⁵ Whether it will happen or not, it is difficult to say.

The EU is financially benefiting from GIs. This is because the system is supporting EU agriculture and because of the economic significance of GIs as seen throughout this thesis.⁸⁵⁶ Some large multinationals benefiting from GI protection also means that there is the potential of profit reinvestments within the EU—although multinational corporations may nevertheless present a risk of some profit leaving the EU. Whether the GI system of protection is ensuring wealth to

⁸⁵² See Chapter 3, Section 1.

⁸⁵³ Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 Article 49.

⁸⁵⁴ ‘Key Figures’ (*Lactalis*, 2016) <<https://www.lactalis.fr/en/the-group/key-figures/>> accessed 13 December 2019.

⁸⁵⁵ Olivier Tossier, ‘Lactalis nouveau géant du Parmesan’ *Les Echos* (Rome, 30 May 2019) <<https://www.lesechos.fr/industrie-services/conso-distribution/lactalis-nouveau-geant-du-parmesan-1025232>> accessed 13 December 2019.

⁸⁵⁶ For data on the economic value of GIs in the EU, see AND-International (n 387).

benefit local rural areas is less obvious. On the face of it, large producers of GIs such as Lactalis will once again create an image of stability and of generating employment, which is itself beneficial for the EU to convey socio-economic protectionism. This depends on areas as the creation of employment in the agricultural sector is not always seen in a positive light. Indeed, the agriculture sector relies heavily on migrant workers, which is an important source of upheaval and anti-EU sentiment in some EU MS.

In the context of this section, it is also important to consider more specifically the substance of the claim regarding the trade advantage of GIs for the EU through the context of the ‘claw back’ dispute between the EU and the US. This involved the EU arguing that terms like Champagne and Parmesan, which the US considered to be generic terms, should not be considered as such, and therefore that these terms can only be used by producers whose production falls within the PSs for these GIs.⁸⁵⁷

As seen in Chapter 1, the US trade or market protectionism critique of GIs, suggests that they are simply a way for the EU to protect its foodstuff and wine products unfairly on the global market, by not only allowing a price premium but by getting exclusivity of certain products.⁸⁵⁸ The debate was exacerbated by the EU proposing TRIPS amendments to extend absolute GI protection to foodstuff,⁸⁵⁹ which still divides World Trade Organization member countries

⁸⁵⁷ Hughes (n 167) 302; Farrand (n 15) 271; Agdomar (n 511) 551.

⁸⁵⁸ Farrand (n 15) 271; Scott Miller, ‘Europe Says, “That Cheese Is No Cheddar!”’ *Wall Street Journal* (New York, 13 February 2003) B.1; see also Jim Eagles, ‘It’s Time to Fight Fire with Fire’ *NZ Herald* (19 August 2003) <https://www.nzherald.co.nz/business/ijim-eaglesi-its-time-to-fight-fire-with-fire/CK5DZLZK7EZBX7I5Q5NU642WRM/?c_id=3&objectid=3518791> accessed 20 January 2020; discussed in Ivy Doster, ‘A Cheese by Any Other Name: A Palatable Compromise to the Conflict over Geographical Indications Note’ (2006) 59 *Vanderbilt Law Review* 873, 895.

⁸⁵⁹ World Trade Organization, ‘Geographical Indications - Communication from the European Communities’ (WTO 2005) WT/GC/W/547; Agdomar (n 511) 543–544.

today,⁸⁶⁰ as this absolute protection is currently only applicable to wines and spirits at the WTO level in contrast with the EU *sui generis* system.⁸⁶¹

Part of this US market protectionism argument assumes that the EU is trying to claw back some product terms which, as stated previously, in the eyes of countries like the US, have become generic, i.e. common names. Under Article 6(1) of the 2012 Regulation “[g]eneric terms shall not be registered as protected designations of origin or protected geographical indications”.⁸⁶² This is also the case under TRIPS.⁸⁶³ Dev S Gangjee explains that this claw back started after the European Court of Justice ruled in *Feta II* that ‘Feta’ could not be a generic term.⁸⁶⁴ In this case, previously mentioned in Chapter 3, MS other than Greece were using the term ‘Feta’ as a generic.⁸⁶⁵

Sarah Thorn, former Director for International Trade at the Grocery Manufacturing Association (GMA) in the US, before the House of Representatives in a discussion about GIs in WTO negotiations, criticised the EU’s attempt to expand the GI absolute protection to all agricultural products⁸⁶⁶ as simply a means to ‘claw back’ the names.⁸⁶⁷ She added that,

⁸⁶⁰ World Trade Organization, ‘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 - Report by the Director-General’ (WTO 2011) WT/GC/W/633; Friederike Frantz, ‘Twenty Years of TRIPS, Twenty Years of Debate: The Extension of High Level Protection of Geographical Indications – Arguments, State of Negotiations and Prospects’ (2016) 21 Annual Survey of International & Comparative Law 93, 94.

⁸⁶¹ See Chapter 1, Section 2 (c) for a discussion of the GI trade dispute between the US and the EU.

⁸⁶² Regulation 1151/2012.

⁸⁶³ TRIPS Agreement Article 24.6.

⁸⁶⁴ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 245.

⁸⁶⁵ *Feta II* (n 412).

⁸⁶⁶ See Chapter 1, Section 2 (c).

⁸⁶⁷ United States Committee on Agriculture, ‘The Status of the World Trade Organization Negotiations on Agriculture: Hearing before the Committee on Agriculture, House of Representatives’ (US Government Printing Office 2003) 108–5 276.

The EU proposal to “claw back” protections for generic products in the WTO agriculture negotiations represent a particularly egregious over-reach and a galling example of protectionist behavior that is wholly inappropriate in a trade liberalizing round. Although the EU alleges that they only wish to protect a small list of products, even the loss of one name (e.g., parmesan) could represent hundreds of millions of dollars to GMA member companies. Companies would be forced to repackage products and, more importantly, re-educate consumers through re-branding campaigns.⁸⁶⁸

Indeed, claw back can present a key advantage for the EU and disadvantages for the US. Clawing back these terms means that common product names which are currently treated by some countries as free to be used, would become strictly protected again and only sold by the relevant protected EU regions. This includes popular products with large markets such as Parmesan—as a generic of Parmigiano Reggiano—and Champagne. The EU would therefore benefit from these clawed back GIs—as they do from other GIs—by getting a monopoly in the market as similar products from other regions are not allowed to hold the protected GI names and logos. This allows the EU to get priority for these products in the market. In other words, under the EU system, anyone in the world wanting Parmigiano Reggiano has to buy the one produced by producers in the specific regions of Italy, thereby also allowing them to set their prices with a premium without fears of external competition.

A common issue raised in this debate is the cost of relabelling products in order to remove the protected name previously considered generic.⁸⁶⁹ One might argue that there may also be a potential loss of sales from consumers having to refamiliarize themselves and recognise the new label. This perspective can also be

⁸⁶⁸ *ibid.*

⁸⁶⁹ Ramona Teuber, Sven Anders and Corinne Langinier, ‘The Economics of Geographical Indications: Welfare Implications’ (Structure and Performance of Agriculture and Agri-products Industry Network 2011) Working Paper 15; Hughes (n 167) 351.

found in US-centric academic literature. Justin Hughes states that if the term Parmesan was clawed back, re-labelling would have to occur and consumer confusion would ensue.⁸⁷⁰ He also describes this EU claw back attempt as arising from “[t]he desire to generate GI monopoly rents for the agricultural sector”.⁸⁷¹ Hughes further argues that French courts declared camembert and Dijon mustard generic years ago and that it is difficult to deny that the word champagne is used to refer to a broader category of sparkling wines.⁸⁷² On the other hand, in 2003, the EU Commissioner for Agriculture, Rural Development and Fisheries Franz Fischler, argued that the claw back initiative is the right thing to do when he said,

This is not about protectionism. It is about fairness. It is simply not acceptable that the EU cannot sell its genuine Italian Parma Ham in Canada because the trade mark “Parma Ham” is reserved for a ham produced in Canada.⁸⁷³

In some cases, the use of a generic thus restricts the export of the original GI product. Countries that use the generics therefore also have something to gain from these generics.

Arguably, the debate can be understood both from the perspective of the producers who have been making use of these generic names and risk no longer being allowed to do so, as well as from the regional GI producers’ perspective—some of whom may have ancestors that created the products and assigned those now protected names.

Another important case, in the context of this dispute, relates to the use of the designation ‘Bud’ by Anheuser-Busch Inc. producer of the US beer

⁸⁷⁰ Hughes (n 167) 351.

⁸⁷¹ *ibid* 350.

⁸⁷² *ibid* 374.

⁸⁷³ European Commission, ‘WTO Talks: EU Steps up Bid for Better Protection of Regional Quality Products’ (n 729).

‘Budweiser’—the largest brand value beer worldwide.⁸⁷⁴ Anheuser-Busch Inc.’s beer ‘American Bud’ name was challenged by Czech company Budějovický Budvar and the question of genericity arose in the ECJ ruling.⁸⁷⁵ The details of this long-running dispute are not relevant here, but the case illustrates the financial gains at stake in the genericity dispute, as the brand value for Anheuser-Busch Inc.’s Budweiser is \$15.4 billion.⁸⁷⁶ Losing its name in a claw back battle would evidently be an immense financial loss for Anheuser-Busch Inc. but also for the US more generally.

The above discussion indicates that, although it may be expensive for many producers—who will have to relabel—and risk introducing more confusion for consumers, it is still valuable enough for the EU to engage in complex trade disputes around GIs. Although these disputes are sometimes internal between EU countries—such as in the *Feta II* case—the debate around this issue often also opposes the EU to the US. The EU is likely to reject genericity in both cases because if a term is accepted as a generic within the EU, its genericity can no longer be challenged at the international level.⁸⁷⁷

It would seem that the EU and the US each want their piece of the cake, but there is only one slice left; whoever gets it will undeniably benefit from it on the global market. Furthermore, if the EU had its way and generic terms reverted to being used in the protected regions only, this would be a significant trade advantage as the local regions would have a full monopoly over these products.

⁸⁷⁴ Barham (n 573) 128; Ken Schept, ‘Brandz Top 100 Most Valuable Global Brands 2019’ (Kantar Millward Brown 2019) 239 <<https://www.kantar.com/campaigns/brandz/global>> accessed 20 January 2020.

⁸⁷⁵ Case C-478/07 *Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH* [2009] ECR I-7721.

⁸⁷⁶ Schept (n 874) 239.

⁸⁷⁷ For more on the complexity of the genericity debate, see Gangjee, *Relocating the Law of Geographical Indications* (n 3) 244–255; and Dev S Gangjee, ‘Genericide: The Death of a Geographical Indication?’ in Dev S Gangjee (ed), *Research Handbook on Intellectual Property and Geographical Indications* (Edward Elgar Publishing 2016).

Overall, protecting GIs is believed to benefit the EU in trade by ensuring that wealth is coming into its borders rather than the global market producing local alternatives. For example, a parmesan producer may see an increase in demand from exports of Parmigiano Reggiano to the US—and to countries where the US exports its parmesan—if the word parmesan was clawed back. This would be especially true if the WTO protection was also extended to foodstuff, therefore forbidding US producers from naming products ‘parmesan-style’ or ‘parmesan-like’ cheeses. More generally, retaining a strict *sui generis* system of protection also allows the EU to stand strong in its tug of war with the US regarding the trade of agricultural goods.

Although this section has shown that the EU does benefit from GIs both financially and trade-wise, the US-led discourse that the GI system is only a trade protectionism tool to boost the EU economy is too simplistic. This section suggests that the EU’s important economic stakes in the agricultural sector help explain the preference and support for GI protection. It also reveals the importance that agricultural employment represents in the EU but also at the MS level, and why there might be an incentive to protect multinational producers by giving them an IP right to use the GI labels.

As the US market protectionism argument is too simplistic on its own as an explanation for the EU maintaining GIs, the next section will consider other possible hidden motivations.

2. The EU’s Search for Legitimacy Reinforcement

The previous section established that although the EU does benefit from trade and financial advantage, the US argument of market protectionism as the sole purpose of GIs is too simplistic. This section will explore the possibility that GIs help the EU sustain itself as an institution by strengthening its legitimacy vis-à-vis its constituencies. Subsection (a) will consider whether and to what extent the EU is gaining support from farmers and their Unions. Subsection (b) will assess how the EU uses GI as a tool to reassure consumers regarding food safety and quality.

Subsection (c) will then consider to what extent the EU ensures GIs contribute to the retention of its title as an environmental leader. Finally, Subsection (d) will consider whether the EU utilises GI to promote its culture, identity, and political model.

a) *Gaining Support from Farmers and their Unions*

This section will consider whether GIs have been used to help the EU gather support from farmers—or producer groups—and their unions in the context of the MacSharry CAP reforms in 1992.

The creation of the CAP in the 1960s was gained support from MS due to the post-second world war food shortage, but also due to the importance of agriculture as a source of employment.⁸⁷⁸ The percentage of the total population active in agriculture in the European Coal and Steel Community countries in 1950 was 44.4% in Italy, 30.9% in France, 24.7% in Luxembourg, 23.0% in West Germany and 17.7% in the Netherlands, and 11.9% in Belgium.⁸⁷⁹ Fifty years later, in 2000, these numbers had dropped significantly (5.3%, 3.4%, 2.3%, 2.5%, 3.4%, and 1.8% respectively).⁸⁸⁰ However, by that point, other countries with a significant percentage of their working population involved in agriculture, such as Ireland (10.2%), Greece (13.4%) and Portugal (14.3%),⁸⁸¹ had joined the EU. There was therefore a common incentive to regulate this industry at the time.

At its inception, the CAP was based on price support and high tariffs.⁸⁸² This changed just before the introduction of the GI system. In 1992, in addition to transitioning from price support to income support based on historical production levels,⁸⁸³ the CAP transitioned from having a focus on subsidies to having a

⁸⁷⁸ Buonanno and Nugent (n 108) 171.

⁸⁷⁹ Rieger (n 319) 163.

⁸⁸⁰ *ibid.*

⁸⁸¹ *ibid.*

⁸⁸² Buonanno and Nugent (n 108) 171.

⁸⁸³ See Chapter 3, Section 4.

broader focus on rural development.⁸⁸⁴ With this came a shift from food quantity to food quality in the EU.⁸⁸⁵ These transitions contribute to explaining the introduction of the EU GI system. Rural development—which can encompass increased farmer income, employment, tourism, etc.—and food quality are two of the central discourse strands and rationales to the GI system, so the introduction of the GI system in 1992 is in line with this shift.

The change in the CAP arose due to trade pressures. More specifically, measures of ‘economic protectionism’—a term used by Evelyn Bush and Pete Simi when referring to agricultural subsidies—were first introduced in 1958 but later started to impede the Uruguay Round of the General Agreement on Tariffs and Trade negotiations.⁸⁸⁶ Countries negotiating with the EU were opposed to the high agricultural subsidies of the CAP, making it difficult for the EU to have bargaining powers concerning other important trade issues such as IP and the elimination of non-tariff barriers.⁸⁸⁷ The call for a CAP reform of subsidies resulted in important protests which reached a peak in France in 1992 when farmers blocked the entrance to Euro-Disney to get noticed by the media and rebel against the US pressures in trade talks.⁸⁸⁸ As Bush and Simi state, “[f]armers [...] feared that the potential loss of subsidies and protective tariffs would mean a significant reduction in their standard of living”.⁸⁸⁹

French farmers were the most outspoken, with cuts in subsidies of the reform being unanimously rejected by French agricultural unions.⁸⁹⁰ Bush and Simi

⁸⁸⁴ Tilman Becker and Alexander Staus, ‘European Food Quality Policy: The Importance of Geographical Indications, Organic Certification and Food Quality Insurance Schemes in European Countries’ (12th Congress of the European Association of Agricultural Economists, Ghent, August 2008) 1.

⁸⁸⁵ *ibid.*

⁸⁸⁶ Evelyn Bush and Pete Simi, ‘European Farmers and Their Protests’ in Douglas R Imig and Sidney Tarrow (eds), *Contentious Europeans: Protest and Politics in an Emerging Polity* (Rowman & Littlefield 2001) 97.

⁸⁸⁷ Buonanno and Nugent (n 108) 174.

⁸⁸⁸ Bush and Simi (n 886) 98.

⁸⁸⁹ *ibid.*

⁸⁹⁰ *ibid* 113–114.

found that in this instance French farmers were appeased by French government aid packages,⁸⁹¹ but at the EU level, the introduction of the GI system was also part of this shift in the CAP and used as a tool to reassure farmers. The 1992 CAP reform meant that farmers were no longer guaranteed a minimum price for their goods,⁸⁹² but GIs would allow some of them to register their products for protection and thus increase the price of their products in this manner.

As briefly mentioned above, Tilman Becker and Alexander Staus highlight two major shifts which occurred as a result of the 1992 agricultural policy reform in the EU: (1) a movement “from price support to rural development”, and (2) a transfer “from increasing food quantity towards increasing food quality”.⁸⁹³ Because of these changes in the CAP in 1992, the EU could benefit from GIs by using them as a tool to reassure farmers and their unions, as well as to reassure consumers on the quality and safety of the EU’s agricultural products—as will be discussed in the next section. Hughes argues that,

The European Union's strong position on GIs is an understandable strategy to use monopoly rents from GIs to subsidize European agricultural production at a time when direct subsidies are becoming less tenable and direct competition with New World agriculture is becoming more likely, even with the 2006 collapse of the Doha round. With that logic in mind, it becomes clear why the European Union seeks strong GIs laws far beyond protection against consumer confusion.⁸⁹⁴

GIs might therefore be seen as a way to ensure that people working in the agricultural sector are still getting strong protection, as a substitute for the generous CAP subsidies their predecessors benefited from.

⁸⁹¹ *ibid* 116.

⁸⁹² See Chapter 3, Section 4.

⁸⁹³ Becker and Staus (n 884) 1.

⁸⁹⁴ Hughes (n 167) 339.

Luigi Giorgio Barzini in his 1983 book *The Europeans*, also illustrated the long-standing need to keep farmers on side, through opportunities to create value-added on their products, when he stated that “[t]he French [...] wanted to cut down the dream to a mere customs union of separate *patries* to serve above all some of their separate national interests, and more precisely, sell their agricultural products at a high price to keep the *paysans* happy”.⁸⁹⁵ This, of course, refers to a time where agricultural employment represented a larger portion of the population than it does today. Nevertheless, keeping farmers happy is still relevant in the EU today.

An example of producer groups being kept on side, in the context of GIs, is the modification in the protected area for Champagne. In 1908, there were protests in northern France due to a controversial decree defining the region for the production of Champagne; these protests were simply resolved by expanding the original Champagne region to include further zones.⁸⁹⁶ This example illustrates the political aspect of GIs and the use of the system as a means to demonstrate the protection of constituencies, as opposed to it being strictly rooted in heritage and quality. If the protection of the GI area was solely based on soil characteristics bringing an additional quality to the product, the change of the protected area could not be justified. Daniel Gade, in his discussion of the French appellation Cassis also states that “where the AOC follows political boundaries, the terroir notion is especially questionable”.⁸⁹⁷ This once again suggests that politics plays an important role in the definition of what GIs protect and how the area is defined, even if consumers are conveyed the idea of a mythical link between the earth and the GI products. These examples demonstrate the political influence of French producer groups in the context of GIs and the importance of gaining their support. Indeed, the fact that GI encourages some producers to organise into groups—to make decisions about GI aspects such as PS—means that there is an increased political influence, especially regarding large groups such as the Comité

⁸⁹⁵ Luigi Giorgio Barzini, *The Europeans* (Simon and Schuster 1983) 58.

⁸⁹⁶ Gangjee, *Relocating the Law of Geographical Indications* (n 3) 101–102.

⁸⁹⁷ Daniel W Gade, ‘Tradition, Territory, and Terroir in French Viniculture: Cassis, France, and Appellation Contrôlée’ (2004) 94 *Annals of the Association of American Geographers* 848, 864.

Champagne which represents 16,000 winemakers from 320 Champagne houses.⁸⁹⁸

Any political entity such as the EU, but also national governments, are likely to ensure that they portray concern for the needs of their constituencies, in order to retain and further their legitimacy. Conveying to these constituencies that their socio-economic protection is at the core of the EU decision-making is an important way to further this legitimacy. It is therefore in the EU's interest to enact legislation and reforms which are preferred by the majority of the large relevant interest groups, such as farmers, producer groups, and their unions in this case. This follows the logic that political leaders or institutions will make political and policy decisions that benefit the majority of their constituencies.⁸⁹⁹ Indeed, in studying the lobbying influence for CAP reforms, Franz U Pappi and Christian H C A Henning show that the national agricultural ministers depend on farmers and their union for information,⁹⁰⁰ but also that these unions represent—or at least represented at the time in the late 1990s—a high level of public support.⁹⁰¹ The views of these national agricultural ministers are then represented at the EU level as they sit on the Council. More generally, there is also a need—at the national and EU level—to maintain the support of strong interest groups.

The increase in lobbying in the EU makes it an important consideration when discussing EU policymaking.⁹⁰² Since the 1990s, the EU has attempted to respond to criticism about deficits in the representation of its policies by encouraging the

⁸⁹⁸ Comité Champagne, 'Vignerons et Maisons de Champagne des métiers différents au service de l'AOC Champagne' (n 581).

⁸⁹⁹ Susanne Lohmann, 'A Signaling Model of Informative and Manipulative Political Action' (1993) 87 *The American Political Science Review* 319, 320; Heike Klüver, *Lobbying in the European Union: Interest Groups, Lobbying Coalitions, and Policy Change* (Oxford University Press 2013) 44.

⁹⁰⁰ Franz U Pappi and Christian HCA Henning, 'The Organization of Influence on the EC's Common Agricultural Policy: A Network Approach' (1999) 36 *European Journal of Political Research* 257, 257 and 279.

⁹⁰¹ *ibid* 271.

⁹⁰² Klüver (n 899) 3.

participation of more varied interest groups in its policymaking.⁹⁰³ The 2008 Green Paper on agricultural product quality calling on all actors to comment on quality schemes such as GIs, prior to the 2012 reform, provides one example.

Keeping farmers supportive of the EU may also be seen as beneficial when one considers the role they play as voters at the MS level. In a 2018 European Commission working paper, Lewis Dijkstra, Hugo Poelman, and Andrés Rodríguez-Pose reported that across MS, people in rural areas and areas with lower population density are more likely to be Eurosceptic in comparison with people living in cities and urban areas.⁹⁰⁴ Reassuring and benefiting farmers and producers, who are likely to be located in more rural areas, would therefore have the potential to encourage the election of pro-EU national parties in those areas, benefiting pro-EU national government as well as the EU as a whole. Dijkstra, Poelman, and Rodríguez-Pose also highlighted that globalisation and competition in the context of trade are also two important anti-EU discourses.⁹⁰⁵ Gaining support from farmers and producers on issues of trade competition, by promoting GIs as a system which will advantage them on this ground, could therefore also benefit the EU.

The importance of farmers as an important electoral constituency is confirmed by Buonanno and Nugent who point out that farmers are “inveterate swing voters and have wielded this power masterfully in closely-contested elections”.⁹⁰⁶ This further highlights the importance of developing protection which will advantage them as a voter group.

Overall, this subsection has demonstrated that through its socio-economic protectionist approach to GIs, the EU is able to gain support as a legitimate source of power across Europe from farmers and agricultural interests. Reaching out to

⁹⁰³ *ibid* 1.

⁹⁰⁴ Lewis Dijkstra, Hugo Poelman and Andrés Rodríguez-Pose, ‘The Geography of the EU Discontent’ (Directorate-General for Regional and Urban Policy 2018) Working Paper WP 12/2018 7 and 15.

⁹⁰⁵ *ibid* 12.

⁹⁰⁶ Buonanno and Nugent (n 108) 172.

all farmers as a continental appeal, at the EU level through GIs, has a political resonance which the EU discourse on GIs fails to recognise.

b) Reassuring Consumers

As was seen in previous chapters, the EU discourse has been insistent on the GI benefits for consumers.⁹⁰⁷ This section considers to what extent the EU, through the GI system, aims to reassure consumers, through promises of high food transparency, safety, and quality. Through such promises, the EU projects to constituencies by addressing EU citizens generally and seeking legitimacy from them.⁹⁰⁸

As was already discussed above, the 1992 agricultural reform transitioned from focusing on quantity to concentrating on the idea of quality. Although it is expected that most people would generally be cautious about product safety, personal health, food quality, even if to different extents, the transition was particularly important in Europe at that time. It also came shortly after several food safety scares in Europe. This included the Austrian antifreeze wine fraud in 1985 followed by the Italian methanol in wine in 1986,⁹⁰⁹ as well as mad cow disease which was suspected, in 1990, to be capable of affecting humans.⁹¹⁰ The CAP reform and transition towards the idea of quality products which are ‘safe’ and ‘traceable’ would have therefore been an opportune step to reassure consumers at the time.

Furthermore, Buonanno and Nugent argue that consumer protection policy is necessary in order to retain the internal market because MS and their citizens need to trust that other MS will be as attentive to consumer protection and product

⁹⁰⁷ See Chapters 3, 4, and 5.

⁹⁰⁸ See Chapter 1, Section 4 (d) (i) on EU constituency.

⁹⁰⁹ Albert Stöckl, ‘Austrian Wine: Developments After the Wine Scandal of 1985 and Its Current Situation’ (International Wine Business Research Conference, Montpellier, July 2006) 4–5.

⁹¹⁰ Damian Carrington and Claire Ainsworth, ‘BSE Disaster: The History’ *New Scientist* (25 October 2000) <<https://www.newscientist.com/article/dn91-bse-disaster-the-history/>> accessed 1 April 2021.

safety as they are.⁹¹¹ This makes the EU and its policies highly valuable to EU constituencies who cannot simply rely on their national government to protect them when free movement of goods is in place. This explains the need for the EU to insist on the ideas of quality, food safety, transparency, and health, as well as providing consumer clarity through GIs. This is particularly true when a lot of GIs attach to products which consumers may be naturally anxious about, such as meats and unpasteurised cheeses, because of the increased risk of contamination in comparison with fruit and vegetables or dried grains, for example. This is not to say these products are without risk, in fact, Buonanno and Nugent use the example of the E. coli outbreak in 2011 which was traced back to Egyptian imported fenugreek seeds and not the originally blamed Spanish cucumbers.⁹¹²

By communicating the quality of GIs to consumers around the world, the EU may benefit in terms of economics and trade. However, by convincing EU consumers that GIs ensure food safety, quality, and transparency, the EU also ensures that its constituencies remain trusting of the free movement of edible goods within its internal market. This is a necessity for the EU as the free movement of goods is one of the key pillars of the EU model.

This also suggests an attempt by the EU to reach out beyond the MS governments for support and see consumers as a Europe-wide group who might appreciate the EU's efforts in keeping their interests protected. Consumer protection is then not only about looking after the interests of consumers but also about reinforcing the EU as a political institution of value. It is a politically astute means of gaining public support for the EU as a project—especially when targeting such a big population group as ‘consumers’—though what impact it has had on support is difficult to substantiate.

⁹¹¹ Buonanno and Nugent (n 108) 169.

⁹¹² *ibid.*

c) Retaining a Reputation as an Environmental Leader

Another identified EU benefit concerning GIs is the idea that incorporating the environmental discourse within the concept of GIs is in line with the EU's reputation as an environmental leader. The environment is one of the policy areas where the EU finds its value since environmentalists cannot be nationally focused when climate issues spread beyond national boundaries.

Buonanno and Nugent, in their discussion of CAP principles, include 'producer co-responsibility' referring to the fact that EU farmers who abide by specific biodiversity, animal welfare requirements, and land husbandry get access to further funding.⁹¹³ They also point out that the implementation of such requirements is difficult in practice.⁹¹⁴ However, as the EU presents GI protection as fulfilling biodiversity goals,⁹¹⁵ this may justify the EU increasing agricultural funding which—as was seen above in Section 1—is limited by international pressures on the EU to not over-subsidise agriculture.

Secondly, the environmental policy more generally is particularly important in the internal market because, “[s]tates that ‘free ride’ on the environment by, for example, having low air and water quality standards, are deemed to be passing on costs unreasonably to other states and/or having unfair trading advantages”.⁹¹⁶ This means that an MS which would disregard environmental issues is likely to get external pressure from other MS to stop such behaviour. Linking GIs with environmental protection can therefore contribute to the EU demonstrating its commitment to its environmental policy.

There are various pressures for environmental sustainability to be incorporated in numerous aspects of the EU policies. This is prominent in the treaty developments themselves which have, through reforms, insisted on matters of environmental

⁹¹³ *ibid* 173.

⁹¹⁴ *ibid*.

⁹¹⁵ See Chapter 5, Section 4 (a).

⁹¹⁶ Buonanno and Nugent (n 108) 181.

protection to be applied throughout various areas of the EU policies.⁹¹⁷

Additionally, with developments of the CAP, environmentalists have insisted on closer ties between agricultural and environmental policies.⁹¹⁸ Indeed, Buonanno and Nugent argue that in the mid- to late-1900s the EU faced pressure from both MS and other interest groups, as well as international pressures to strengthen its environmental commitments.⁹¹⁹ Incorporating environmental discourse within its other policy fields—such as that of quality schemes and GIs—can also contribute to a tactical move to ease these pressures. This is particularly relevant at the MS level as they will be the ones making the most use of the GI regulation.

Reassuring the most pressuring MS and interest groups that the practice of protecting GIs will be accompanied by environmental benefits can also be a way to ensure support for the scheme.

Third, from 2002 to 2012, the sixth EU Environmental Action Programmes (EAPs) developed a focus on “natural resources and waste, environment and health, nature and biodiversity, and climate change” in conjunction with economic growth, as conservative governments were in power in most MS.⁹²⁰ These priorities align with the discourse around GIs observed in Chapter 5, where biodiversity and human health were a focus, in the context of a system which promises growth to the protected region. In the same vein, the Commission in its Europe 2020 policy puts an important emphasis on sustainability, but in the context of growth, as it is clear from the title of the policy itself: ‘Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth’. The Commission says that it will work,

To establish a vision of structural and technological changes required to move to a *low carbon, resource efficient and climate resilient economy* by 2050 which will allow the EU to achieve its emissions reduction and *biodiversity targets*; this includes disaster prevention and response,

⁹¹⁷ *ibid* 183.

⁹¹⁸ *ibid* 174.

⁹¹⁹ *ibid* 181.

⁹²⁰ *ibid* 184.

harnessing *the contribution of cohesion, agricultural, rural development, and maritime policies to address climate change*, in particular through adaptation measures based on more efficient use of resources, which will also contribute to improving global food security.⁹²¹ [*emphasis added*]

It is clear that incorporating environmental sustainability within aspects of the agricultural policy—as well as other policies—was an important step. It is once again in line with the EU discourse around GIs and its introduction of the idea that GIs may benefit the environment.

As a leading actor globally in terms of environmental initiatives in the 2000s,⁹²² it is not surprising that the EU would want its concern for the environment to transpire across its policies, including GIs. Charlotte Burns and Paul Tobin state that “[t]he EU’s reputation as a key actor in global environmental governance has been underpinned by its development of a wide-ranging and extensive portfolio of environmental policies, especially since the 1980s”.⁹²³

There is a stark lack of evidence that GIs bring forth environmental benefits.⁹²⁴ Nevertheless, the discourse of the positive impact of GIs on the environment allows the EU to communicate its environmental concern and keep hold of its title as an “environmental champion”,⁹²⁵ without putting in place strict environmental guidelines for the production of GI products which may place producers at a disadvantage. Indeed, Buonanno and Nugent highlight the fact that some of the EU environmental restrictions can at times make it more difficult for

⁹²¹ European Commission, ‘Communication from the Commission - Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth’ COM (2010) 2020 14.

⁹²² Buonanno and Nugent (n 108) 184.

⁹²³ Charlotte Burns and Paul Tobin, ‘The Limits of Ambitious Environmental Policy in Times of Crisis’ in Camilla Adelle, Katja Biedenkopf and Diarmuid Torney (eds), *European Union External Environmental Policy: Rules, Regulation and Governance Beyond Borders* (Springer Nature 2018) 321.

⁹²⁴ See Chapter 5, Section 4.

⁹²⁵ Buonanno and Nugent (n 108) 184.

manufacturers to compete with countries less concerned about these issues.⁹²⁶ In addition, the environment is one of the key areas where the EU finds its legitimacy and value, due to the nature of climate change extending beyond national boundaries.

d) *The Promotion of the EU Culture, Identity, and Political Model*

As Jean Monnet said, “[i]f we were beginning the European Community all over again, we should begin with culture”.⁹²⁷ Culture is an undeniably key aspect and concern of the EU generally, and this also appears in the GI discourse. One of the aims of the EU with GIs in relation to culture is the protection of ‘European culture’ from the pressures of uniformity due to globalisation.⁹²⁸ Moreover, as will be seen in this section, the EU seeks to promote itself as an ideal cultural and political model externally, while retaining a cohering sense of ‘European identity’ for its constituents internally.

Through GIs, the EU is able to promote its culture and way of life—which it seeks to protect—as something to be desired and worthy of protection. In the context of the CAP, Buonanno and Nugent argue that its development was also influenced by cultural concerns.⁹²⁹ For them, this includes an idealisation of family farming and rural living, but also attention to food security and preparation, which means that the “CAP is expected to protect uniquely European practices and the accessibility of bucolic life mores in the cultivation and preparation of food”.⁹³⁰ In this context, one can see the link with the creation of the GI protection system as a tool for the EU to communicate this safeguarding of

⁹²⁶ *ibid.*

⁹²⁷ As seen in Enrique Banús, ‘Cultural Policy in the EU and the European Identity’ in Mary Farrell, Stefano Fella and Michael Newman (eds), *European Integration in the 21st Century: Unity in Diversity?* (SAGE Publications 2002) 158.

⁹²⁸ See Chapters 4, Section 1 and Chapter 5, Section 3 (b) for more on the Cultural Heritage argument.

⁹²⁹ Buonanno and Nugent (n 108) 172.

⁹³⁰ *ibid.*

culture and traditional farming. Through this aspect of its discourse, the EU conveys the protection of a certain way of life.

The promotion of culture as a said benefit of GIs can be seen as a form of legitimation of the EU as an entity with its own culture, but also as a conveyed benefit for the individual MS who are told that they gain from promoting their food culture to attract tourism. The promotion of the EU culture is also in line with the treaty objectives, seen in Chapter 3, and reflects the general EU pride in its structure.

This early rise of the idea of cultural heritage in the context of GIs is in line with the cultural policy of the 1990s. Although the cultural connection has been part of the EU discourse from early on in its inception, the notion of protecting cultural heritage became more relevant in the 1990s. In addition to the first law protecting GIs in the EU, an EU cultural heritage protection programme named Raphaël was introduced.⁹³¹ The Raphaël Programme took its root in Article 128 of the 1992 Maastricht Treaty on cultural heritage, which it used as a legal basis.⁹³² The emergence of 1992 legislation on GIs as a ‘tool’ to protect cultural heritage is therefore in keeping with the policy developments of the time. Furthermore, the Raphaël Programme also put forward the idea of identity declaring that “cultural action is intended to highlight the common heritage of the peoples of Europe and illustrate our dual cultural identity as being both national and European”, with its primary area of focus being the “[d]evelopment and promotion of cultural heritage in Europe”.⁹³³ It later also stated that “[t]he programme will improve public familiarity with and awareness of the scope, quality and wealth of Europe's shared cultural heritage”.⁹³⁴ The Raphaël Programme, therefore, portrays a sense of the policy space in which GIs emerged and helps understand the incorporation of the idea of cultural heritage in the EU discourse around GIs.

⁹³¹ European Commission, ‘Proposal for a European Parliament and Council Decision Establishing a Community Action Programme in the Field of Cultural Heritage: The Raphaël Programme’ COM (95) 110 final.

⁹³² *ibid.*

⁹³³ *ibid* Financial Statement.

⁹³⁴ *ibid.*

In addition, the first key aspect of GIs as a tool to promote the EU relates to their contribution to marketing the EU as a brand internationally. Rachael Craufurd Smith sees the EU as trying to advertise itself through its culture and, especially in the context of GIs, states,

In the case of the EU food quality policy, the development of distinct European symbols for the various categories of product, stamped on the product itself, connects the ‘*EU brand*’ with some of Europe’s most famous quality products, such as Parmesan cheese and ‘Arbroath Smokies’.⁹³⁵ [*emphasis added*]

In the same vein, Michelle Agdomar says that “WTO members and their nationals are increasingly recognizing that geographical indications are valuable marketing tools and thus have commercial importance in the global economy”.⁹³⁶ The EU uses cultural tools such as GIs as a means to promote itself in the same way a brand might promote itself. The recognition of the EU as a brand illustrating values such as welfare, culture, and economic growth, is a means for the EU to be regarded as a model and to gather external legitimacy.

Another aspect of the EU culture is the importance of the European identity, already discussed in Chapter 1. Evidence of the importance of this European identity is the EU Tindemans Report. The report emerged as the European Council, during the December 1974 Paris Conference of Heads of Government of Member States, requested Leo Tindemans—Prime Minister of Belgium to the European Council at the time—to draft a report on what was meant by the term ‘European Union’.⁹³⁷ In the report, Tindemans highlighted the political importance of ‘European identity’, stating that “[w]e must assert the European

⁹³⁵ Rachael Craufurd Smith, ‘The Evolution of Cultural Policy in the European Union’ in Paul Craig and G De Búrca (eds), *The Evolution of EU Law* (Oxford University Press 2011) 887–888.

⁹³⁶ Agdomar (n 511) 574.

⁹³⁷ Leo Tindemans, ‘European Union Report by Mr Leo Tindemans Prime Minister of Belgium to the European Council’ (European Commission 1975) Supplement 1/76.

Identity in all international political discussions”.⁹³⁸ It is clear that this identity is something that must be strongly established and communicated. Enrique Banús also highlights the significance of culture and identity to the EU by pointing to examples of documents from numerous EU institutions insisting on the need to reinforce an EU cultural identity in particular with regards to political integration.⁹³⁹ The protection of EU culture and identity is a way for the EU to keep unity. After all, “united in diversity” was the official motto of the EU in 2000.⁹⁴⁰ GIs embody this motto as a unified system protecting local differences in identities. The EU’s portrayal of socio-economic protectionism to MS and EU constituencies, through the use of GIs and the discourse associated with it, contributes to this sense of uniqueness of the EU and furthers this unity in this single identity.

Although they discuss this in the context of a rise of nationalism, both Anthony Giddens and Cory Blad also discuss this renewal of culture and identity. Giddens theorises that “[g]lobalisation is the reason for the revival of local cultural identities in different parts of the world”.⁹⁴¹ He explains that “[l]ocal nationalisms spring up as a response to globalising tendencies”.⁹⁴² Similarly, Blad argues that “popular definitions of national culture are increasingly integrated into state institutional agendas for the purpose of sustained or increased legitimation”.⁹⁴³ Blad evidences this by observing that the introduction of local culture into the “legitimation strategy” of the US, Turkey, Quebec, and Belgium has been effective.⁹⁴⁴ Similarly, there is reason to suppose that the EU’s approach to GIs

⁹³⁸ *ibid* 18.

⁹³⁹ Banús (n 927) 159.

⁹⁴⁰ European Union, ‘The EU Motto’ (*European Union*, 16 June 2016)

<https://europa.eu/european-union/about-eu/symbols/motto_en> accessed 6 April 2021.

⁹⁴¹ Anthony Giddens, *Runaway World: How Globalization Is Reshaping Our Lives* (Taylor & Francis 2003) 31.

⁹⁴² *ibid*.

⁹⁴³ Cory Blad, ‘Globalization and the Efficacy of National Culture: A Methodological Framework for Analyzing the Neoliberal State’ (2008) 1 *International Journal of Social Inquiry* 37, 38.

⁹⁴⁴ *ibid*.

also draws on this method of legitimation for both itself (as a general protector of its MS's local cultures) and MS as distinct national entities.

In terms of external promotion of the EU culture, the trading of GIs globally is itself acting as a cultural promotion for the country in which it is produced. People around the world may have been seduced by French Champagne as a product that they like to consume, and this could subconsciously create an interest in the place where this drink is made. However, and as mentioned in previous chapters, this would likely only hold true for particularly popular GIs.

Furthermore, the EU as an entity is also proud of its model as a union and this can be illustrated in its discourse on its policies when the Commission states,

EU regulations lay down some of the most stringent baseline production requirements in the world covering safety and hygiene, product identity and composition, environmental care, and plant and animal health and animal welfare, thus reflecting the clearly stated democratic wish of EU consumers and citizens.⁹⁴⁵

This promotion of its functioning political and legal model may also be beneficial for its influence at the international level. Promoting itself as a working and striving union that impacts the world through its desirable products and culture could generate interest in terms of trade agreements and perhaps enhance the EU's influence on WTO matters. If the EU can show that its GI system works and is praised internally due to increased legitimacy, welfare, and re-election, it can try and convince others of its benefits externally. For example, the EU has been struggling for years to convince the WTO to extend the absolute GI protection to all products under TRIPS.

Overall, GIs therefore allow the EU to try and protect and market its culture and model worldwide. This may allow the EU to have a greater influence in trade

⁹⁴⁵ European Commission, 'Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes' (n 425) 4.

negotiation at the international level. In turn, this means that the EU can demonstrate to its constituencies its role in extending socio-economic protection to its citizens.

3. Conclusion

Chapter 5 highlighted that the EU is very vocal about the benefits that GIs have brought to various parties such as producers, consumers, and EU regions. In contrast, this chapter has suggested a number of ways in which the EU itself is benefiting from GIs directly, but also that the EU is using GIs as a means to convey socio-economic protectionism to its constituencies and in turn further its legitimacy. To do this, the chapter assessed the US claim of GIs being simply a market protectionist tool. It then identified some of the other specific benefits that the GI system has for the EU, as an institution, as well as for its MS. It suggested that whilst the US market protectionism argument is too simplistic, the EU protects GIs for purposes that do not attach to the product itself. These purposes link to a need to reinforce its legitimacy and sustain itself as an institution.

More specifically, it has been shown in Section 1 that the EU benefits from global trade competition and financially from GIs. GIs are also financially advantageous to the EU, as agriculture is a very important asset to the EU economy. In addition, the EU creates the idea that GIs are enriching rural areas, when in fact, profits from GI products produced by multinationals are unlikely to stay within the protected region. Nevertheless, the idea of retaining wealth within rural regions itself conveys socio-economic welfare and protection of the constituencies, as well as fulfilment—or impression of fulfilment—of economic growth and employment as EU objectives, through a socio-economic protectionist approach. In addition, there is a fight between the US and the EU for further protection of GI foodstuff at the WTO level as well as an attempt from the EU to claw back some GI terms which some countries argue are generics. The extension of absolute protection in TRIPS and the claw back of terms would provide the EU with extensive trade advantage as terms such as ‘Parmesan’ would only appear on Parmigiano Reggiano imported from the protected region in Italy. This means that

the regions which hold protected names would hold a monopoly. The EU also conveys socio-economic protectionism by promising a trade advantage to producers.

In Section 2, the chapter highlighted that other internal benefits of GIs exist for the EU. GIs are a way for the EU to gather support from farmers and producers. GIs may have been a tool to ensure that farmers felt that they would retain protection after the 1992 CAP reform. In addition, rural areas are more Eurosceptic than urban areas. Benefiting people in rural areas could therefore be an attempt from MS to gain re-election from these communities and for the EU more generally to convey it is protecting their interests. Furthermore, for consumers to support the free movement of agricultural goods, there needs to be trust in the quality and safety of products. GIs can contribute to reassuring consumers by promising such transparency. This consumer reassurance can thus help the EU convey socio-economic protectionism to its constituencies. In addition, the EU benefits from a discourse around GIs incorporating the environmental benefits of the system of protection, as it allows it to respond to pressures on incorporating environmental protection in numerous aspects of its policies—especially agricultural policies—allowing the EU to retain its reputation as an environmental leader. This is again a way in which the EU can communicate to its constituencies that it is implementing socio-economic protectionism of their interests. Finally, the EU may benefit from GI as a tool to get internal and international recognition by using GIs to promote its culture, identity, as well as the union as a political model. This could in turn help the EU's influence in international disputes and help build an image around the protection of a utopian European rural way of life.

As was seen in Chapter 5, the evidence for the benefits of GIs for farmers, consumers, and regions may not be as solid as portrayed by the EU policy and legal discourse. This might be explained by the idea that convincing farmers, consumers, and citizens of the regions that the EU is implementing a socio-economic protectionist approach to shield and benefit them, ensures the furthering of the EU legitimacy—even if this means that those constituents are not truly getting the protection that they have been promised in practice. It is argued that

the EU will gain from GIs as long as this façade of benefit for all can be upheld. In other words, the mythmaking of GIs, established through an EU multifunctional discourse based on limited evidence, conveys socio-economic protectionism to constituents. This is not to say that GIs cannot bring any of the benefits that the EU claims it does, but if the GIs are to be upheld, the rationale for this protection needs to be evidence-based, transparent, and honest. As it stands, the policy process that the EU has adopted lacks these elements.

The next and final chapter of this thesis will briefly consider a new evaluation study on GIs published by the EU in 2021 and show that, even in this latest publication, the disjuncture between evidence and policy which exists around GIs is not resolved. The chapter will then bring the various elements observed and analysed in this thesis together into a concluding argument about GIs, highlighting an issue of process and transparency in EU policymaking.

Chapter 7: Conclusion

This final chapter will bring together the primary findings which have been established in this thesis. Together they support the contention that the European Union has legitimised the protection of Geographical Indications within the EU by deploying an institutional multifunctional legal and policy discourse that treats as self-evidently true claims regarding a range of socio-economic benefits of GIs. It has been demonstrated, however, that the EU has presumed rather than evidenced these claims in an attempt to establish an authoritative and unquestioned narrative, thus avoiding accusations that the protection of GIs is a way of satisfying the purely economic and trade interests of the Union. In the absence of another plausible explanation, the thesis has claimed that the EU does this to entrench a form of socio-economic protectionism and further its *own* legitimacy as a body representing the best interests of its various constituencies, from Member States to individual businesses and consumers.

But has the EU tried to remedy its lack of evidence and transparency issues since the 2012 Regulation on foodstuffs? Before reviewing the thesis findings, this chapter will briefly consider a recently published EU study: ‘Evaluation support study on Geographical Indications and Traditional Specialities Guaranteed protected in the EU: Final report’.⁹⁴⁶ Through this study, it will examine how the most recent EU discourse compares with the EU discourse examined in this thesis—i.e., the one prior to the 2012 Regulation coming into force. This will help develop a better understanding of whether the EU has now made available more compelling evidence for the multifunctional characteristics of its discourse on GIs and determine whether the arguments advanced in this thesis remain valid.

⁹⁴⁶ AND-international, ECORYS, and COGEA (n 721).

1. 2021 EU Evaluation Report on GIs

According to the European Commission, the 2021 Evaluation Report, together with a November 2019 to February 2020 public consultation,⁹⁴⁷ contributed to “the overall evaluation of geographical indications and traditional specialities guaranteed protected in the EU”.⁹⁴⁸ The Commission sees this study leading to a new impact assessment presenting policy options for the review of the GI and TSG system.⁹⁴⁹ In 2021, the Commission also opened a consultation for the review of the system.⁹⁵⁰ This resembles the approach taken by the EU in 2010, during which it provided an impact assessment and new regulation which introduced little significant changes other than a reframing and expansion of the EU multifunctional discourse.⁹⁵¹ It raises the question of whether history is repeating itself and the EU is making the same errors of process analysed in this thesis for its policymaking around GIs.

The 2021 Evaluation Report states that it,

aims to provide an evaluation on the EU quality policy on geographical indications (GIs) and traditional specialities guaranteed (TSGs) protected

⁹⁴⁷ European Commission, ‘EU Food Quality Schemes: Evaluation’ (*Europa*, 2020)

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2029-Evaluation-of-Geographical-Indications-and-Traditional-Specialities-Guaranteed-protected-in-the-EU/public-consultation_en> accessed 17 November 2021.

⁹⁴⁸ European Commission, ‘Commission Publishes Study on Geographical Indications (GI) and Traditional Specialities Guaranteed (TSG) Protected in the EU’ (*Europa*, 2 March 2021)

<https://ec.europa.eu/info/news/commission-publishes-study-geographical-indications-gi-and-traditional-specialities-guaranteed-tsg-protected-eu-2021-mar-02_en> accessed 17 November 2021.

⁹⁴⁹ *ibid.*

⁹⁵⁰ European Commission, ‘Food & Drink: EU Geographical Indications Scheme (Revision)’ (*Europa*, 2021) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12664-Revision-of-the-EU-geographical-indications-GI-systems-in-agricultural-products-and-foodstuffs-wines-and-spirit-drinks/public-consultation_en> accessed 17 November 2021.

⁹⁵¹ See Chapter 3, Section 6.

in the EU, originating from EU Member States (MS) and registered in the EU and GIs from third countries registered by direct application.⁹⁵²

It also includes “recommendations to improve effectiveness, efficiency, relevance, coherence and EU added value of GI/TSG schemes”.⁹⁵³ This suggests an aim to evaluate how GIs can be further justified and made more prominent. The study evaluates GIs from 2008—after the entry into force of the 2008 Regulation on spirit drinks—until 2020.⁹⁵⁴ Five points relevant to the discussions in this thesis were identified in the report: (i) consumer awareness of GIs; (ii) consumer access to information about GIs; (iii) GIs benefiting farmer incomes; (iv) incentives of GIs for producers; and (v) the idea of quality and cultural heritage.

First, the Evaluation Report states that based on an electronic consumer survey,

[S]ome protected names under GIs benefit from a strong awareness at EU level, outside their MS of production, for instance Champagne, Gouda Holland, Parmigiano Reggiano, Prosecco and Scotch Whisky reach awareness over 50% in several MS.⁹⁵⁵

But also, that “[t]hese positive aspects are balanced by the low awareness and understanding of GIs/TSGs schemes in many MS”.⁹⁵⁶ A recognition of 50% of some of the most renowned GIs paired with low awareness of other GIs remains very limited. Furthermore, the survey indicated medium to high awareness of the GI scheme in Italy, France, and Spain—with 50% to 78% recognition of Protected Designation of Origin—but a low awareness in Czech Republic, Germany, Hungary, and the Netherlands—with between 8% and 28% recognition of the GI and Traditional Speciality Guaranteed schemes.⁹⁵⁷ This very localised understanding of GIs in three countries—paired with a very low recognition of the

⁹⁵² AND-international, ECORYS, and COGEA (n 721) 2.

⁹⁵³ *ibid* 1.

⁹⁵⁴ *ibid* 3.

⁹⁵⁵ *ibid* 5.

⁹⁵⁶ *ibid*.

⁹⁵⁷ *ibid*.

logos throughout the EU with 20% of consumers recognising the PDO logo and only 14% recognising the PGI one⁹⁵⁸—does not support the consumer recognition argument put forward by the EU. The analysis of the 2012 discourse also identified a disjuncture between the EU discourse on the consumer recognition of GIs and surveys evidencing an overall low recognition of the GI scheme.⁹⁵⁹ Even if these figures were to be considered to represent a reasonable recognition of GI names and logos, this simply illustrates that the consumers who know of GIs might only know the myth of GI as an indicator of a multitude of claimed benefits. The details of the survey themselves specify that it assessed “the understanding of the guarantees provided by each scheme”.⁹⁶⁰ This suggests an assessment of consumers’ understanding of what the EU communicates about GIs, rather than a real understanding of what that means for the products. This is supported by the report stating, at the end of its summary of findings regarding the consumer survey, that “[a]cademic research indicates that product perception is significantly influenced by the perceived product-specific regional image”.⁹⁶¹

Second, the report assesses that there is a wide range of publicly available information for consumers on GIs, but it refers to the eAmbrosia database—introduced in 2019 and made more user friendly than its predecessors—and to GI View—another information platform, only released at the end of 2020.⁹⁶² This is therefore only a recent improvement, yet the claim that GIs further consumer information has been part of the discourse since the inception of the EU GI regulations—gaining particular prominence in the discourse prior to the 2012 Regulation.⁹⁶³

⁹⁵⁸ *ibid* 71.

⁹⁵⁹ See in particular Chapter 5, Section 2(b).

⁹⁶⁰ AND-international, ECORYS, and COGEA (n 721) 30.

⁹⁶¹ *ibid* 70.

⁹⁶² European Union Intellectual Property Office, ‘Launch of GIview’ (*EUIPO*, 25 November 2020) <<https://euipo.europa.eu/ohimportal/en/news/-/action/view/8389687>> accessed 30 August 2021.

⁹⁶³ See Chapter 3.

Third, the report highlights the idea of ‘fairness’ of income for farmers, as it assesses that GIs provide “fair return for farmers and producers”.⁹⁶⁴ The language of ‘fairness’—implying both enough but also not too much—was already present in the 2012 Regulation,⁹⁶⁵ although it was less prominent in EU policy discourses—which focused on ‘improving incomes of farmers’. The justification for this claim however is similar: “[f]armers and producers can get a price premium and better income for the value-adding characteristics of their products”, providing the caveat that “[t]his fair return highly depends on the economic environment of the product, the governance and the strategy implemented by operators”.⁹⁶⁶ Although the report bases this fair return argument on the 2019 study on the economic value of EU GIs estimating the average price premium of GIs, it nevertheless admits that price premium does not always mean higher income due to GIs often having higher production costs.⁹⁶⁷ It also supports its argument with evidence from a producer group survey—having yielded 474 responses⁹⁶⁸—showing that over half of producer groups have declared a positive impact on farmers and producers income.⁹⁶⁹ The report also briefly refers to a Farm Accountancy Data Network analysis of the wine sector which pointed to higher incomes for GI farmers as opposed to non-GI ones.⁹⁷⁰ Although the scope of the studies remain limited, the EU certainly provided more and clearer evidence than pre-2012 as to the impact of GIs on farmers and producers income.

Fourth, the report highlights the incentives and disincentives of GIs which emerged from the producer group survey and records more disincentives than incentives for stakeholders involved in GIs.⁹⁷¹ More specifically, incentives of GIs recorded in responses included “increase of the awareness of the product name”, “access to new market”, “involvement in a collective project”, “increase

⁹⁶⁴ AND-international, ECORYS, and COGEA (n 721) 6.

⁹⁶⁵ Regulation 1151/2012 Article 4(a).

⁹⁶⁶ AND-international, ECORYS, and COGEA (n 721) 6.

⁹⁶⁷ *ibid.*

⁹⁶⁸ *ibid* 4.

⁹⁶⁹ *ibid* 6.

⁹⁷⁰ *ibid* 142.

⁹⁷¹ *ibid* 63–64.

of price”, and “stability of market”.⁹⁷² The disincentives recorded included “control costs”, “additional costs related to the respect of the rules of production”, “administrative burden”, “additional work”, “difficulties to comply with production rules”, “low awareness of the GI scheme”, “no impact on price and sales volume”, “low awareness of the protected name despite the registration”, and “other quality schemes more attractive for producers”.⁹⁷³ It is particularly telling that some of the incentives and disincentives listed contradict each other, although it must be noted that the percentages of respondents agreeing with some of the disincentives is overall lower than the percentages of respondents agreeing with the incentives. This section of the study illustrates a real division of opinion as to the value of GIs from producer groups’ perspectives.

Fifth, and finally, the ideas of quality and cultural (and gastronomic)⁹⁷⁴ heritage remain prevalent in the discourse of the EU in this report. In its analysis of the perceived outputs of GI registration from the producer groups survey, “promoting gastronomic heritage” and “quality management” came first, meaning that they were the most agreed upon outputs.⁹⁷⁵ In other words, these ideas—which have been qualified as mythical in this thesis—are the ones that are perceived as valid outputs of GI registration by most respondents, with more concrete perceptions such as “improvement in farmers net income” and “stability of price and market” ranking lower down the list.⁹⁷⁶ It is unclear *how* producers are able to perceive quality and heritage as outputs. Such intangible concepts as quality and heritage being so prevalently stated as a ‘perceived’ output of GIs, further indicates the power of myth and reiterated narratives in policymaking. However, it is important to note that the 2021 Evaluation Report does discuss the term ‘quality’, which is unusual, as the EU has provided very little in lieu of a definition of the word. The report states,

⁹⁷² *ibid* 63.

⁹⁷³ *ibid* 64.

⁹⁷⁴ This report refers to cultural heritage as well as ‘gastronomic heritage’, a term which was already used in the first recital of Regulation 1151/2012.

⁹⁷⁵ AND-international, ECORYS, and COGEA (n 721) 65.

⁹⁷⁶ *ibid*.

The notion of food quality is a complex and multi-dimensional concept which is influenced by a wide range of situational and contextual factors. The quality message conveyed by the GI/TSG schemes mainly addresses two of these dimensions, i.e. origin and authenticity. Whereas aspects related to food safety are *de officio* covered by GI products [...], the notion of nutrition (e.g. nutritional profiles) is not covered by the latter. Although the PS of GI/TSG products often imply a rigorous selection of raw material and other stringent requirements, this is not necessarily reflected in better health properties of such products, as compared to other products of the same category without GI/TSG.⁹⁷⁷

Here, the definition of quality is narrowed—compared to the pre-2012 discourse where quality was vague and all-encompassing, as has been shown in this thesis—claiming that it only relates to origin and authenticity. This is also in line with the results of the 2019-2020 consultation, as respondents stated that “[t]he quality of the product is related to the area in which it is produced” and that “quality of the product is related to its traditional methods of production of and/or its recipes”.⁹⁷⁸ The exact meaning of the terms ‘origin’ and ‘authenticity’ is not further explained in the 2021 Evaluation Report. In addition, and contrary to previous discourse, the EU seems to reject the idea that GIs are associated with the idea of healthy food. This U-turn suggests a realisation of the disparity between such claims and the evidence supporting them. Indeed, the consumer survey conducted for the 2021 Evaluation Report identified that consumers associated the idea of quality GIs with that of ‘health’, leading the EU to state in the report that “[g]iven the broad scope of the term “quality”, clarifying the message that the quality schemes convey could be beneficial, and would align with the objective of providing reliable information to consumers”.⁹⁷⁹ The EU thus suggests that the confusion is linked to the broadness of the term ‘quality’ rather than its past discourse and

⁹⁷⁷ *ibid* 322.

⁹⁷⁸ Directorate-General for Agriculture and Rural Development, ‘Factual Summary of the Public Consultation on the Evaluation of the Geographical Indications (GIs) and Traditional Speciality Guaranteed (TSGS)’ Ares (2020) 2270903 17.

⁹⁷⁹ AND-international, ECORYS, and COGEA (n 721) 322–323.

failure to clarify this sooner. Although health claims were observed in policy and academic discourses, they were never a part of the language of the 2012 Regulation, and thus are easier to deny.

The 2021 Evaluation Report is reasonably extensive in length—it constitutes 350 pages—but not in value. The available evidence in this report, although a bit more detailed and in-depth than pre-2012 evidence, remains inconclusive. Limited information is offered. Electronic surveys of consumers, for instance, only involved 400 people in each of the seven MS surveyed.⁹⁸⁰ These total to 2800 people, which is not a large survey for a diverse population of almost 448 million across 27 EU MS.⁹⁸¹ Such a small sample size cannot be argued to be a fair and representative sample of the wider EU population. Therefore, conclusions drawn from data taken from the sample are unreliable and inconclusive. Furthermore, the report did not make it clear when the consumer survey answers were collected, thus how recent the data is. Finally, surveying EU GI consumers and producers, in order to evidence a discourse that has already been deeply embedded, is a form of circular justification which contributes to the mythmaking around GI benefits.

The study itself expresses its limits in a footnote stating that the producer group surveys are based on opinions and that the case studies are “limited and not representative of the 3286 GIs/TSGs registered at EU level”.⁹⁸² A lot of evidence also weighed on opinions of producer groups—which yielded only 474 responses⁹⁸³—but is there an incentive for them to highlight the positives for fear of a system change, potentially leading to further administrative or production costs to comply with a reformed system?

This report, along with the two consultations undertaken by the EU, suggests that history is repeating itself. The message identified in the EU discourse is the same:

⁹⁸⁰ *ibid* 4.

⁹⁸¹ Eurostat, ‘EU Population in 2020: Almost 448 Million’ (Eurostat 2020) Press Release 111/2020 <<https://ec.europa.eu/eurostat/web/products-euro-indicators/-/3-10072020-ap>> accessed 14 December 2021.

⁹⁸² AND-international, ECORYS, and COGEA (n 721) 4.

⁹⁸³ *ibid*.

GIs have numerous benefits. However, indisputable evidence to justify this is still lacking. In its 2021 consultation, the EU stated the purpose of the consultation as follows,

This public consultation invites citizens and organisations, and national and regional public authorities to contribute to the assessment of *how to strengthen geographical indications' system*. The aim is to gather views on the major challenges identified that would need to be addressed in the planned revision as well as their underlying causes, the set of policy options that can be envisaged to address these challenges and the impacts stemming from these different options.⁹⁸⁴ [*emphasis added*]

The 2021 EU consultation thus is explicit about the need to reinforce the system, not to question its legitimacy of existence or the validity of multifunctional claims made with respect to GIs. In the results of the consultation, the challenges of the system identified by respondents are in line with this and include the reinforcing of the protection to prevent fraud, enforcement of GI standards, simplifying the registration process, and increasing sustainability, GI producer powers, and consumer awareness.⁹⁸⁵ Many of the solutions to these challenges named by respondents related to better communication as to the benefits of GIs,⁹⁸⁶ rather than any questioning as to whether GIs do produce the benefits the EU claims them to produce. The overall sense of the 2021 consultation was that respondents are asking for stricter protection and better promotion of GI products.⁹⁸⁷

⁹⁸⁴ European Commission, 'Food & Drink: EU Geographical Indications Scheme (Revision)' (n 950).

⁹⁸⁵ Directorate-General for Agriculture and Rural Development, 'Factual Summary of the Public Consultation on the Revision of the EU Geographical Indications (GIs) Systems in Agricultural Products and Foodstuffs, Wines and Spirit Drinks' Ares (2021) 3900103 3–4.

⁹⁸⁶ *ibid* 4–5.

⁹⁸⁷ Directorate-General for Agriculture and Rural Development, 'Factual Summary of the Public Consultation on the Revision of the EU Geographical Indications (GIs) Systems in Agricultural Products and Foodstuffs, Wines and Spirit Drinks' (n 985).

The 2021 Evaluation Report, coupled with the EU's approach to this consultation allows the prediction of a similar result as the 2012 reform: a new regulation with much of the same content, but reframed within an adjusted multifunctional discourse, in lieu of answers to the fears that the constituents have brought to light. The report, therefore, does little if anything to disrupt the findings of this thesis.

2. Concluding Thoughts

This thesis has identified an important dispute in the context of GIs, which is relevant in many policy areas such as trade, intellectual property law, agriculture, and the idea of the free market. Despite the international recognition of GIs under the World Trade Organization, the different implementations of the system have created significant conflicts on the issue, which have an impact on the policy areas previously listed. In particular, the EU *sui generis* system of protection has been heavily criticised by certain countries, especially the United States and Australia, as being a form of market protectionism. In trying to understand this critique, this thesis has sought to understand the EU's attachment to this *sui generis* system of protection. To do so, it raised the question: how and why does the EU justify the existence of Geographical Indications?

To answer this question, the thesis divided this enquiry into smaller sub-questions,⁹⁸⁸ with an overall aim to examine and gain an understanding of the EU legal and policy discourse around GIs. The thesis found that the EU legitimises the upholding of its GI system using a multifunctional legal and policy discourse. Through the repetition of statements regarding a range of socio-economic benefits of GIs, the EU treats these as self-evidently true and presumes rather than evidences these claims. In doing so, the EU attempts to establish an authoritative and unquestioned narrative around GIs and build a myth around them. The EU seeks to avoid the accusations from jurisdictions such as the US, that the protection of GIs is a purely market protectionist system, and to convey (without

⁹⁸⁸ See Chapter 1.

necessarily practising) socio-economic protectionism to its constituencies and furthers its legitimacy as a body representing their best interests.

In other words, this thesis concludes that the EU's GI protection contributes to its quest for legitimacy, which it achieves by conveying socio-economic protectionism to its constituencies. The thesis more generally argues that the creation, implementation, and reforms of the GI system, highlight a deficit of process and transparency in EU policymaking. A closer look at the latest evaluation and developments on GIs suggested that these issues of process and transparency have not been resolved, and are likely to perpetuate in future reforms. To arrive at these conclusions, the thesis and arguments were structured as set out below.

Chapter 2 answered the question of 'how has GI legislation emerged?' It first demonstrated that different types of protection of indication of origin products have existed throughout the years, but that one of the more concrete pieces of evidence of such marks arose with the emergence of the craft guilds. However, in contrast with GIs, such protection was linked to producers and not to location. It was also shown that the early roots of GIs were economic as they related to commerce and trade. Nevertheless, social justification quickly emerged, in particular concerning the rationale of quality, which the chapter suggested arose from a lack of consistency of language. Additionally, at a time where labelling rules were not as strict, using GIs on food products may have been a form of protectionism towards consumer safety and to ensure they are informed of the geographical origin of their product—something now regulated by other labelling laws. GI legislation started with a focus on wine protection, but the reasons for the extension of the wine special protection to all agricultural products in the EU seemed to be more a matter of balancing interests than a rationale about links of quality to regions of productions. As the industrialisation in the 20th century post-war years led to poverty, unemployment, and depopulation, GIs gained relevance as a socio-economic protectionist tool for the EU. From its analysis, the chapter concluded that the concept of mythmaking plays a key role in the development of GIs. It demonstrated that the fundamental value of the GI products, which are protected by law, stems from the very laws that protect them.

Chapter 3 then considered the central question of ‘what is the EU legal and policy discourse around GIs and how has it developed?’. It then considered the secondary question of ‘what form has this discourse taken and how has it addressed the concerns about the protectionist aspect of the GI system?’ It followed the EU treaty development and then the legislative developments of GIs for foodstuff in the EU. Through an in-depth analysis of the regulatory developments of GIs at the EU level, the chapter identified evidence suggesting that GI legislation was introduced due to pressures from a number of EU countries led by an initiative from France. In addition, it suggests that GIs provided a cushion for controversial changes in agricultural subsidies in 1992. However, the first 1992 GI Regulation was quickly challenged at the WTO level by the US and Australia who argued that the legislation was disproportionately advantageous to EU MS in comparison with non-EU countries, therefore breaching Article III:4 of the General Agreement on Tariffs and Trade on national treatment. This dispute led to the very rushed enactment of the 2006 GI Regulation. As a result, this regulation did not bring forth any other significant changes, which led to frustration from certain EU players, such as the MEPs, who believed that their views on the matter were largely discounted. Despite this, a rise in the importance of the idea of ‘quality’ emerges in the preparatory work of the 2006 Regulation, and in particular in the European Parliament debate around this new regulation. The Commission also seemed dissatisfied with the shape of the GI regulation despite the 2006 reform as it launched into a significant reform of the system shortly after. This leads to the advent of the 2012 GI Regulation.

At this stage, the EU decided to gather the public opinion on GIs by opening a call for contributions on the system in 2008. In 2010, it explored some of the highlighted issues raised by this call for contributions in an Impact Assessment of the system. This is highly significant as it is the stage where the EU discourse gains multifunctional characteristics as the traditional and cultural aspect, quality aspect, socio-economic aspect, and environmental aspect of GIs seems to come together in one EU document. The discourse analysis of the Impact Assessment also highlighted a disjuncture between, on one hand, the Commission stating that the aim of the GI policy is about consumer information on product quality, with

an emphasis on producer benefits, and on the other an EU approach to assessing the success of the system that is mostly based on economic factors. The Impact Assessment publication was accompanied by a proposed regulatory reform for GIs on the same day, demonstrating that part of the role of the Impact Assessment was to justify the changes in the proposed regulation, rather than to open up a discussion around a possible reform. From the proposed regulation and its preparatory works, emerged a new 2012 GI Regulation which fully embraced and reproduced the Commission's discourses about GIs as indicators of quality as well as culturally and socio-economically beneficial to both consumers and producers. Overall, the chapter demonstrated a disjuncture between the objectives of GIs stated by the EU, and what the regulatory development achieves in practice, despite a rise in four strands of multifunctional discourse around the socio-economic and environmental benefits of GIs.

The question of 'how has academia contributed to or challenged this multifunctional discourse and what it has had to say about the EU justifications for GIs?' was raised in Chapter 4. The chapter illustrated that the four strands of EU multifunctional discourse—the cultural, quality, environmental and socio-economic arguments—have been reproduced by some of the academic commentaries. It has also challenged these academic discourses, offering some reasons to question the EU justifications for GIs. Firstly, regarding the cultural argument, the chapter highlighted that some academic commentaries have accepted the EU perspective that GIs preserve cultural heritage, despite the lack of empirical work evidencing this and the lack of definition for 'cultural heritage'. It also challenged the GI protection being principally defined by locality rather than individual know-how.

Secondly, the EU strand of discourse that associates GIs with indications of quality and health is constructed without reference to empirical evidence to support this. The health argument is particularly difficult to support since many protected GIs refer to processed meats, cheeses, and alcohols, and since some non-protected products could be produced with less fat or salt than the amounts required in some GI PSs. The quality aspect of this argument is problematic because it is a vague concept, which remains undefined.

Thirdly, the environmental argument was also shown to be dominant in EU academic discourses. Despite this, reference to empirical evidence was once again lacking in the academic claims analysed. Some of the claims on the environmental argument are based on logical reasoning: for example, if GIs are linked to the place, then this means that producers will feel responsible for the upkeep of their land. However, a counterargument to this can be formulated: competitive pressures may overtake the importance of the land, and lead producers to engage in non-environmentally friendly practices. If GI PSs do not require a pesticide-free production, for example, it is unlikely that the producers will put this additional burden and cost on themselves. Furthermore, some GIs have built a global reputation and are mass-exported products, which is not an environmentally beneficial practice.

Finally, the socio-economic argument for GIs is also prominent in EU academic literature and includes discussions around GIs helping rural development, wealth, and consumer understanding. These claims again lack reference to empirical support. Although it is clear that the value of GIs in the EU is significant, this does not mean that they benefit producers and consumers directly. Furthermore, if GIs did put producers of these products at a significant advantage, this could be discussed in the context of loss of opportunity to producers outside the protected region. The academic discussion around GIs lowering consumer confusion is not any more evidenced. The complexity of PSs behind the GI logo means that consumers are unlikely to understand what GI protection signifies for different products. This chapter overall identified the dominant strands of EU academic discourses around the benefits of GIs and highlighted their lack of challenge and reference to empirical evidence. The chapter also recognises the existence of counterclaims in academic commentaries for each of these strands. Overall, the chapter points to the similarities between the academic discourse in support of the four arguments for GIs—the cultural, quality, environmental and socio-economic arguments—and the EU legal and policy multifunctional discourse, which implies a substantial reproduction of these ideas around GIs.

Chapter 5 assessed what evidence has been presented by the EU to support its multifunctional discourse on GIs, raising the question: how and to what extent the multifunctionality of the EU discourse on GIs is justified? It examined the various claims put forward in EU policymaking in support of GIs' socio-economic and environmental benefits in the protected regions—focusing primarily on claims and evidence provided by the EU Commission in its 2010 Impact Assessment which served to justify the 2012 GI Regulation—and it assessed the strength of the evidential bases for each claim. The chapter first looked at the claimed advantages for farmers and producers. These included the idea that GIs lead to increased employment in the protected region, that producers get increased incomes through GIs, as well as the fact that GI producers can gain fair competitiveness in the market. The chapter showed that these claims have little or inconclusive evidential substantiations. The chapter then considered the claimed benefits of GIs for consumers, including transparency, guarantee in quality, and GI as an indication of tradition. Once again, the lack of evidential bases for these claims was assessed to be problematic. The chapter then moved on to consider the claimed benefits of GIs in relation to the regions of production. This included the idea that GIs would lead to a surge in tourism in the protected region and that they would protect the cultural heritage of the said region. Evidence of a real impact of GIs on tourism and cultural heritage protection was not found. Finally, the chapter considered the claim that GIs can be associated with environmental benefits and found that the EU discourse on environmental benefits was at times contradictory. It also found that the main study referenced by the EU on the matter was inconclusive, with results varying greatly from one product to another. Overall, this chapter explored the different EU claims of GI benefits and concluded that the evidence to substantiate these claims is weak and that the EU overstated its significance, in order to justify its GI legislation.

Finally, Chapter 6 considered why the EU has been insisting on guarding and developing the GI protection system despite this lack of evidence. Is it perhaps because they contribute to fulfilling some other benefit or principle for the EU? And if so, how cogent is that connection? The chapter investigated some of the potential benefits for the EU in maintaining the GI system of protection, in conjunction with the premise that the EU aims to convey socio-economic

protectionism. It started by assessing the external critique raised by opponents to the EU GI protection system, that it serves as a scheme of unfair market protectionism. It, therefore, identified global trade competition benefits of GIs for the EU, highlighting the importance of agriculture for the EU and its MS. It specifically discussed this within the context of the US-EU dispute about the genericity of GIs. It also explored the potential interest of the EU in keeping the GI implementation for the economic advantage of a system whose attachment to location creates a perception of rural development. Once again this is particularly important to the EU due to the significance of agriculture in numerous MS.

The second section of the chapter considered the internal dimension and to what extent GI schemes can operate as a means of attaining support for the EU as a legitimate institutional actor. The chapter identified that GIs may allow the EU to gain support from farmers and their unions, especially with the 1992 CAP reform and changes in agricultural subsidies, as well as due to the important influence of agricultural lobbyists and rural constituencies in elections. Another suggestion was that the EU wants to reassure consumers regarding the transparency, quality, and safety of the food produced within the EU, conveying socio-economic protectionism to them in this manner. This is particularly important due to 1980s and 1990s European Food scares regarding meats and wines. Another identified benefit of GIs is its contribution to the EU retaining its reputation as an environmental leader, as GIs add to the response towards pressures to strengthen environmental commitments, across its various policy sectors. A final suggested advantage for the EU's support of the GI system was that GIs may encourage the protection and promotion of the EU culture, identity, and political model. Indeed, the EU has demonstrated its early interest in displaying a unified identity for internal integration and external political discussions.

Overall, this chapter highlighted that the EU socio-economic protectionist approach to GIs benefits the EU itself in the various strands of discourse it promotes and contributes to its legitimacy vis-à-vis its constituencies and MS. This is particularly enhanced by the EU and MS's high interest in the agricultural sector.

The body of the thesis has therefore demonstrated that there is a disjuncture between the EU multifunctional discourse around GIs and the evidence that the EU draws on to justify this discourse. It concluded that the GI system enables the EU to convey socio-economic protectionism to its constituencies, which—as discussed in Chapter 1—can help in legitimising it as a ruling institution. The EU then published an evaluation of the GI scheme in 2021, along with some intention to review the GI system. It was important for the thesis at that stage to explore the possibility that the EU may have sought to demonstrate and publish stronger evidence to justify its discourse, as a response to other’s countries critiques of the EU approach or in preparation for its review of the GI system. However, despite the EU attempting to provide the type of evidence that this thesis has argued is lacking—i.e., evidence which would justify the EU multifunctional discourse and thus the existence of the EU GI protection system—this thesis has found in its analysis of this new 2021 EU Evaluation of GIs that the evidence provided does not substantiate the EU discourse around GIs. The evidence the EU Evaluation of GIs provide is inconclusive and fails to admit that the GI protection has over-promised in terms of the benefits that GIs can provide for the different stakeholders involved. This substantiates the failure of the EU regulation drafting and policy construction process.

This study has contributed to the existing literature, not by taking a side in the GI dispute between the EU and countries such as the US and Australia, but instead by trying to understand the reasons behind the EU’s strong attachment to this system of protection. Chapter 4 suggested a tendency of the EU literature around GIs to be in line with and reproduce the EU legal and policy discourse, focusing on social aspects of the system of protection. In contrast, the US literature is more focused on the economic aspect of GIs, often portraying them as a market protectionist tool used by the EU for the purpose of trade advantage. This thesis sits somewhat in the middle of these two perspectives, by questioning the EU legal and policy discourse and assessing the evidential bases available and relied on by the EU supports these claims. It also provides nuance to the market protectionist claim by introducing the ideas of conveyed socio-economic protectionism and legitimacy. The US in its critique seems to believe that the EU takes a strong stance on GI protection as a means to monopolise trade benefits on

these products and block out external competition from the US and other countries. This thesis suggests that the EU reasoning is more internal and less aggressive than this, as it argues that the EU principally seeks to please its own constituents.

As discussed in Chapter 1, a more general significance of this study lies in the importance of legislation and policy taking some of their source in evidential bases. Beyond the subject matter of GIs, this thesis is critical of the process which the EU undertook to achieve its policy objectives, and more broadly to further its legitimacy. The GI policy was enacted based on a number of reasons which the available evidence does not justify. If the Commission does have conclusive evidence available to justify its multifunctional claims, then this evidence needs to be available to enhance the transparency of this process. Policymaking whereby the constituencies understand the logic of each decision should be the genuine way to strengthen legitimacy. The EU needs to be more transparent in protecting the interests of its constituents and it must protect the right interests. This thesis has highlighted that the actors more likely to benefit from GIs are large multinationals rather than the small independent farmers which are quickly disappearing. As a result, consumers are indirectly duped into buying from these large multinationals while believing their money is going towards protecting tradition. If the myth-based system lacks credibility, the whole system is at risk of collapse.

It is important to note that this thesis is speaking to possible benefits or drawbacks that the EU approach to GI offers within the EU and that it does not make a judgement on the potential benefit of GIs in developing countries. Although there is a lack of evidence as to the effectiveness of the GI protection within the EU, GIs may be an important asset in protecting tradition in the developing world.⁹⁸⁹

⁹⁸⁹ For further reading on GIs outside of the western context, see Dwijen Rangnekar, 'Remaking Place: The Social Construction of a Geographical Indication for *Feni*' (2011) 43 *Environment and Planning A: Economy and Space* 2043; Dwijen Rangnekar and Sanjay Kumar, 'Another Look at Basmati: Genericity and the Problems of a Transborder Geographical Indication' (2010) 13 *The Journal of World Intellectual Property* 202; Jeffrey Neilson, Josephine Wright and Lya Aklimawati, 'Geographical Indications and Value Capture in the Indonesia Coffee Sector' (2018)

It is a question for further exploration as to whether the EU multifunctional discourse has been exported into other national or regional GI systems.

In the EU, it is difficult to say exactly what should happen with GIs. Perhaps the system needs to become stricter in terms of which producers receive the GI protection or, alternatively, the system needs a complete refocus on consumers. After all, consumers are the ones financing the system and they deserve to understand what they are being sold and what they consume. The system could, for example, put more emphasis on PSs, closely regulating the production method, rather than focusing on where the product is produced. It is also important for consumers to know what GIs are and have easily accessible information and transparency as to who is really producing them—GI products do not necessarily mean small productions—and clarity regarding what really is in each product, at the time of purchase. Additionally, to do real justice to the question of what should happen with GIs, the research would need to go further and examine the wider EU debate around evidence-based policy making.

This thesis does not go so far as to make recommendations on exactly what should happen with GIs, but it does demonstrate the following: An institution's multifunctional discourse cannot replace transparency of evidence and policies upon which a regulatory system is based.⁹⁹⁰ Beyond this being an important

59 Journal of Rural Studies 35; Sarah Bowen and Ana Valenzuela Zapata, 'Geographical Indications, Terroir, and Socioeconomic and Ecological Sustainability: The Case of Tequila' (2009) 25 Journal of Rural Studies 108; Claire Durand and Stéphane Fournier, 'Can Geographical Indications Modernize Indonesian and Vietnamese Agriculture? Analyzing the Role of National and Local Governments and Producers' Strategies' (2017) 98 World Development 93; Pradyot R Jena and Ulrike Grote, 'Impact Evaluation of Traditional Basmati Rice Cultivation in Uttarakhand State of Northern India: What Implications Does It Hold for Geographical Indications?' (2012) 40 World Development 1895; Cerkia Bramley, Estelle Biénabe and Johann Kirsten, 'The Economics of Geographical Indications: Towards a Conceptual Framework for Geographical Indication Research in Developing Countries' in WIPO (ed), *The Economics of Intellectual Property: Suggestions for Further Research in Developing Countries and Countries with Economies in Transition* (WIPO 2009).

⁹⁹⁰ Gangjee suggested that the GI system be more explicit about its core purpose to protect rural development and local communities, as he stated that "[w]e do not protect such products because

aspect of the law-making process,⁹⁹¹ a system based on myth will be sustained as long as the myth is upheld but is also at risk of collapsing completely if that myth is broken. In other words, if the EU wants to continue to protect GIs, it must either provide evidence or a drastic reform, otherwise, it will be continuously challenged and the whole system will remain under threat. However, judging by the discourse and evidence presented in the 2021 Report on GIs—as well as accompanying consultations—the EU has set itself out to make the same mistakes again in any upcoming reviews of the system. This is further evidence of the dangers of reproducing discourse and mythmaking.

they are unique and cannot be replicated elsewhere. Instead we protect such products to sustain and develop places, the manner in which products are made in those places and the communities of producers who reside in them. We may therefore need to flip the arrow of causation.” See Dev S Gangjee, ‘GIs Beyond Wine: Time to Rethink the Link?’ (2017) 48 *International Review of Intellectual Property and Competition Law* 129, 132.

⁹⁹¹ See Chapter 1, Section 4(e).

Bibliography

Secondary Sources

Addor F and Grazioli A, 'Geographical Indications Beyond Wines and Spirits' (2002) 5 *The Journal of World Intellectual Property* 865

Agdomar M, 'Removing the Greek from Feta and Adding Korbel to Champagne: The Paradox of Geographical Indications in International Law' (2007) 18 *Fordham Intellectual Property, Media and Entertainment Law Journal* 541

Agostini C and Natali D, 'Structural Reforms in Europe: A Comparative Overview' in Theodoropoulou Sotiria (ed), *Labour Market Policies in the Era of Pervasive Austerity: A European Perspective* (Policy Press 2018)

Allaire G and others, 'Les dispositifs français et européens de protection de la qualité et de l'origine dans le contexte de l'OMC: justifications générales et contextes nationaux' (Symposium International de l'INRA, Lyon, March 2005)

AND-International, *Study on Economic Value of EU Quality Schemes, Geographical Indications (GIs) and Traditional Specialities Guaranteed (TSGs): Final Report* (European Commission 2019)

AND-international, ECORYS, and COGEA, *Evaluation Support Study on Geographical Indications and Traditional Specialities Guaranteed Protected in the EU: Final Report*. (European Commission 2021)

Angermuller J, Maingueneau D and Wodak R, 'The Discourse Studies Reader: An Introduction' in Johannes Angermuller, Dominique Maingueneau and Ruth Wodak (eds), *The Discourse Studies Reader: Main Currents in Theory and Analysis* (John Benjamins Publishing Company 2014)

Aubard A, 'Setting Up a GI: Requirements and Difficulties at the Producer Level' in Michael Blakeney and others (eds), *Extending the Protection of Geographical Indications: Case Studies of Agricultural Products in Africa* (Earthscan 2012)

Audier J, *TRIPs Agreement: Geographical Indications* (Office for Official Publications of the European Communities 2000)

Ayoob K-T, Duyff RL and Quagliani D, 'Position of the American Dietetic Association: Food and Nutrition Misinformation' (2002) 102 *Journal of the American Dietetic Association* 260

Banús E, 'Cultural Policy in the EU and the European Identity' in Mary Farrell, Stefano Fella and Michael Newman (eds), *European Integration in the 21st Century: Unity in Diversity?* (SAGE Publications 2002)

Barbier B, 'Rapport fait au nom de la Commission des affaires économiques et du plan (1) sur le projet de loi relatif aux appellations d'origine contrôlée des produits agricoles et alimentaires bruts ou transformés' (Sénat, 2 May 1990) n°270

——, 'Rapport fait au nom de la Commission des affaires économiques et du plan (1) sur le projet de loi, modifié par l'assemblée nationale, relatif aux appellations d'origine contrôlée des produits agricoles et alimentaires bruts ou transformés' (Sénat, 13 June 1990) n°376

Barham E, 'Translating Terroir: The Global Challenge of French AOC Labeling' (2003) 19 *Journal of Rural Studies* 127

Barjolle D, Sylvander B and Thévenod-Mottet E, 'Public Policies and Geographical Indications' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011)

Barthes R, *Mythologies* (Annette Lavers tr, Noonday Press 1991)

Barzini LG, *The Europeans* (Simon and Schuster 1983)

Becker T and Staus A, 'European Food Quality Policy: The Importance of Geographical Indications, Organic Certification and Food Quality Insurance Schemes in European Countries' (12th Congress of the European Association of Agricultural Economists, Ghent, August 2008)

Beetham D and Lord C, 'Legitimacy and the European Union' in Michael Nentwich and Albert Weale (eds), *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship* (Routledge 2003)

Belletti G and others, 'Linking Protection of Geographical Indications to the Environment: Evidence from the European Union Olive-Oil Sector' (2015) 48 *Land Use Policy* 94

Belletti G, Marescotti A and Touzard J-M, 'Geographical Indications, Public Goods, and Sustainable Development: The Roles of Actors' Strategies and Public Policies' (2017) 98 *World Development* 45

Blad C, 'Globalization and the Efficacy of National Culture: A Methodological Framework for Analyzing the Neoliberal State' (2008) 1 *International Journal of Social Inquiry* 37

——, 'Faustian States: Nationalist Politics and the Problem of Legitimacy in the Neoliberal Era' in Vincenzo Mele and Marina Vujnovic (eds), *Globalizing Cultures: Theories, Paradigms, Actions* (Brill 2016)

Blakeney M, 'Proposals for the International Regulation of Geographical Indications' (2001) 4 *The Journal of World Intellectual Property* 629

——, *The Protection of Geographical Indications* (Edward Elgar Publishing 2019)

Blakeney M and Mengistie G, 'Geographical Indications and Economic Development' in Michael Blakeney and others (eds), *Extending the Protection of Geographical Indications: Case Studies of Agricultural Products in Africa* (Earthscan 2012)

Bogdanor V, 'Legitimacy, Accountability and Democracy in the European Union' (The Federal Trust for Education & Research 2007)

Boisseaux S and Barjolle D, *La bataille des A.O.C. en Suisse: les appellations d'origine contrôlées et les nouveaux terroirs* (Presses polytechniques et universitaires romandes 2004)

Bouchouchi C, 'Touche Pas à Mon Camembert! Peut-on se Fier aux AOP?' *L'Obs* (25 February 2017)
<<https://www.nouvelobs.com/economie/20170224.OBS5738/touche-pas-a-mon-camembert-peut-on-se-fier-aux-aop.html>> accessed 30 September 2019

Bouvard V and others, 'Carcinogenicity of Consumption of Red and Processed Meat' (2015) 16 *The Lancet Oncology* 1599

Bowen S, 'Embedding Local Places in Global Spaces: Geographical Indications as a Territorial Development Strategy' (2010) 75 *Rural Sociology* 209

Bowen S and De Master K, 'New Rural Livelihoods or Museums of Production? Quality Food Initiatives in Practice' (2011) 27 *Journal of Rural Studies* 73

Bowen S and Zapata AV, 'Geographical Indications, Terroir, and Socioeconomic and Ecological Sustainability: The Case of Tequila' (2009) 25 *Journal of Rural Studies* 108

Boye JI and Arcand Y, 'Current Trends in Green Technologies in Food Production and Processing' (2013) 5 *Food Engineering Reviews* 1

Bramley C, Biénabe E and Kirsten J, 'The Economics of Geographical Indications: Towards a Conceptual Framework for Geographical Indication Research in Developing Countries' in WIPO (ed), *The Economics of Intellectual Property: Suggestions for Further Research in Developing Countries and Countries with Economies in Transition* (WIPO 2009)

Broude T, 'Taking "Trade and Culture" Seriously: Geographical Indications and Cultural Protection in WTO Law' (2005) 26 *University of Pennsylvania Journal of International Economic Law* 623

Brouwer O, 'Community Protection of Geographical Indications and Specific Character as a Means of Enhancing Foodstuff Quality' (1991) 28 *Common Market Law Review*

BTM, 'Cheese' (*Cargo Handbook*)
<https://cargohandbook.com/Cheese#Storage_and_Transport> accessed 10 March 2021

Bullock DG, 'Crop Rotation' (1992) 11 *Critical Reviews in Plant Sciences* 309

Buonanno L and Nugent N, *Policies and Policy Processes of the European Union* (Palgrave Macmillan 2013)

Burns C and Tobin P, 'The Limits of Ambitious Environmental Policy in Times of Crisis' in Camilla Adelle, Katja Biedenkopf and Diarmuid Torney (eds), *European Union External Environmental Policy: Rules, Regulation and Governance Beyond Borders* (Springer Nature 2018)

Bush E and Simi P, 'European Farmers and Their Protests' in Douglas R Imig and Sidney Tarrow (eds), *Contentious Europeans: Protest and Politics in an Emerging Polity* (Rowman & Littlefield 2001)

Cairney P, *The Politics of Evidence-Based Policy Making* (Springer 2016)

Calboli I, 'In Territorio Veritas: Bringing Geographical Coherence in the Definition of Geographical Indications of Origin under TRIPS' (2014) 6 *The WIPO Journal* 57

——, 'Geographical Indications of Origin at the Crossroads of Local Development, Consumer Protection and Marketing Strategies' (2015) 46 *International Review of Intellectual Property and Competition Law* 760

——, 'Of Markets, Culture, and Terroir: The Unique Economic and Culture-Related Benefits of Geographical Indications of Origin' in Daniel Gervais (ed), *International Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar 2015)

Carrington D and Ainsworth C, 'BSE Disaster: The History' *New Scientist* (25 October 2000) <<https://www.newscientist.com/article/dn91-bse-disaster-the-history/>> accessed 1 April 2021

Charters S and others, 'Value in the Territorial Brand: The Case of Champagne' (2013) 115 *British Food Journal* 1505

Chesmond R, 'Protection or Privatisation of Culture? The Cultural Dimension of the International Intellectual Property Debate on Geographical Indications of Origin' (2007) 29 *European Intellectual Property Review* 379

Chever T and others, 'Value of Production of Agricultural Products and Foodstuffs, Wines, Aromatised Wines and Spirits Protected by a Geographical Indication (GI): Final Report' (ANT-International and European Commission 2012) TENDER N° AGRI-2011-EVAL-04

Combris P, Lecocq S and Visser M, 'Estimation of a Hedonic Price Equation for Bordeaux Wine: Does Quality Matter?' (1997) 107 *The Economic Journal* 390

Comité Champagne, 'The Economy of Champagne: Champagne Key Market Statistics' (2020) <<https://www.champagne.fr/en/champagne-economy/key-market-statistics>> accessed 14 September 2021

——, ‘Comité Champagne CIVC défense et protection de l’appellation Champagne’ <<https://www.champagne.fr/fr/comite-champagne/qui/le-comite-champagne>> accessed 27 February 2018

——, ‘Lutter contre les contrefaçons et usurpations AOC Champagne, protection de l’appellation’ <<https://www.champagne.fr/fr/terroir-appellation/defense-appellation/contrefacon-usurpations>> accessed 8 November 2018

——, ‘Missions du Comité Champagne protection de l’AOC Champagne protéger l’AOC Champagne’ <<https://www.champagne.fr/fr/comite-champagne/qui/les-missions-du-comite-champagne>> accessed 8 November 2018

——, ‘Vignerons et Maisons de Champagne des métiers différents au service de l’AOC Champagne’ <<https://www.champagne.fr/fr/comite-champagne/vignerons-maisons/vignerons-et-maisons-de-champagne>> accessed 27 February 2018

Conférence internationale pour la protection de la propriété industrielle 1890, *Procès-verbaux de la Conférence de Madrid de 1890 de l’Union pour la protection de la propriété industrielle, suivis des actes signés en 1891 et ratifiés en 1892* (Jent et Reinert 1892)

Conrad A, ‘The Protection of Geographical Indications in the TRIPs Agreement’ (1996) 86 *The Trademark Reporter* 11

Council of the European Union, ‘2720th Council Meeting Agriculture and Fisheries’ (2006) Press Release C/06/70 <http://europa.eu/rapid/press-release_PRES-06-70_en.htm?locale=en> accessed 21 May 2019

——, ‘Addendum to Draft Minutes on 2720th Meeting of the Council of the European Union (Agriculture and Fisheries)’ (2006) 7702/06 ADD 1

——, ‘3084th Council Meeting Agriculture and Fisheries’ (2011) Press Release PR/CO/24 <http://europa.eu/rapid/press-release_PRES-11-103_en.htm?locale=en> accessed 25 January 2019

Craig P, ‘Development of the EU’ in Catherine Barnard and Steve Peers (eds), *European Union Law* (2nd edn, Oxford University Press 2017)

Craufurd Smith R, ‘The Evolution of Cultural Policy in the European Union’ in Paul Craig and G De Búrca (eds), *The Evolution of EU Law* (Oxford University Press 2011)

‘Cuisine of the 20 Regions of Italy’ (*The Italian Tribune*, 1 October 2015) <<http://www.italiantribune.com/cuisine-of-the-20-regions-of-italy/>> accessed 29 May 2018

Dagne TW, *Intellectual Property and Traditional Knowledge in the Global Economy: Translating Geographical Indications for Development* (Routledge 2014)

Della Sala V, ‘Political Myth, Mythology and the European Union’ (2010) 48 *Journal of Common Market Studies* 1

- Denis D, *Appellation d'origine et indication de provenance* (Daloz 1995)
- Deselnicu OC and others, 'A Meta-Analysis of Geographical Indication Food Valuation Studies: What Drives the Premium for Origin-Based Labels?' (2013) 38 *Journal of Agricultural and Resource Economics* 204
- Despin D, 'Salmonelle, des reblochons retirés de la vente à Fillinges en Haute-Savoie' *France 3 Auvergne-Rhône-Alpes* (25 November 2018) <<https://france3-regions.francetvinfo.fr/auvergne-rhone-alpes/haute-savoie/salmonelle-reblochons-retires-vente-fillinges-haute-savoie-1581031.html>> accessed 28 May 2020
- Di Fonzo A and Russo C, 'Designing Geographical Indication Institutions When Stakeholders' Incentives Are Not Perfectly Aligned' (2015) 117 *British Food Journal* 2484
- Dijkstra L, Poelman H and Rodríguez-Pose A, 'The Geography of the EU Discontent' (Directorate-General for Regional and Urban Policy 2018) Working Paper WP 12/2018
- Dimara E and Skuras D, 'Consumer Demand for Informative Labeling of Quality Food and Drink Products: A European Union Case Study' (2005) 22 *Journal of Consumer Marketing* 90
- Directorate-General for Agriculture and Rural Development, 'Workshops on Geographical Indications: Development and Use of Specific Instruments to Market Origin-Based Agricultural Products in African-ACP Countries' (European Commission 2013)
- , 'Advisory Group International Aspect of Agriculture: Meeting of 25 June 2012 - DG AGRI Working Documents on International Protection of EU Geographical Indications: Objectives, Outcome and Challenges' Ares (2012) 669394
- , 'Factual Summary of the Public Consultation on the Evaluation of the Geographical Indications (GIs) and Traditional Speciality Guaranteed (TSGS)' Ares (2020) 2270903
- , 'Factual Summary of the Public Consultation on the Revision of the EU Geographical Indications (GIs) Systems in Agricultural Products and Foodstuffs, Wines and Spirit Drinks' Ares (2021) 3900103
- Directorate-General for Communication, *How the European Union Works: Your Guide to the EU Institutions* (Publications Office of the European Union 2014)
- Dogan B and Gokovali U, 'Geographical Indications: The Aspects of Rural Development and Marketing Through the Traditional Products' (2012) 62 *Procedia Social and Behavioral Sciences* 761
- Doster I, 'A Cheese by Any Other Name: A Palatable Compromise to the Conflict over Geographical Indications Note' (2006) 59 *Vanderbilt Law Review* 873

Durand C and Fournier S, 'Can Geographical Indications Modernize Indonesian and Vietnamese Agriculture? Analyzing the Role of National and Local Governments and Producers' Strategies' (2017) 98 *World Development* 93

Duvergier JBH, *Collection complète des lois, décrets, ordonnances, règlements, et avis du Conseil d'Etat*, vol 50 (A Guyot et Scribe 1857)

Eagles J, 'It's Time to Fight Fire with Fire' *NZ Herald* (19 August 2003) <https://www.nzherald.co.nz/business/ijim-eaglesi-its-time-to-fight-fire-with-fire/CK5DZLZK7EZBX7I5Q5NU642WRM/?c_id=3&objectid=3518791> accessed 20 January 2020

Enjalbert H, 'Comment naissent les grands crus: Bordeaux, Porto, Cognac (Première partie)' (1953) 8 *Annales* 315

Epstein SA, *Wage and Labor Guilds in Medieval Europe* (The University of North Carolina Press 1991)

Epstein SR and Prak MR, *Guilds, Innovation, and the European Economy, 1400-1800* (Cambridge University Press 2008)

Erjavec K and Erjavec E, 'Changing EU Agricultural Policy Discourses? The Discourse Analysis of Commissioner's Speeches 2000–2007' (2009) 34 *Food Policy* 218

Études Générales, 'La question des fausses indications de provenance et l'arrangement de Madrid' (1920) 36 *La Propriété Industrielle* 40

European Commission, 'WTO Talks: EU Steps up Bid for Better Protection of Regional Quality Products' (2003) EC Press Release IP/03/1178 <https://ec.europa.eu/commission/presscorner/detail/en/IP_03_1178> accessed 11 December 2019

——, 'European Commission Bulletin' (2005) Bulletin EU 12-2005 1.3.113

——, 'Commission Proposes Improved Rules on Agricultural Quality Products' (2006) EC Press Release IP/06/2 <http://europa.eu/rapid/press-release_IP-06-2_en.htm?locale=en> accessed 20 May 2019

——, 'European Commission Bulletin' (2006) Bulletin EU 3-2006 1.17.4

——, 'Council Adopts Improved Rules on Agricultural Quality Products' (2006) EC Press Release IP/06/339 <http://europa.eu/rapid/press-release_IP-06-339_en.htm?locale=en> accessed 21 May 2019

——, 'Agricultural Product Quality Policy: Impact Assessment - Annex B: Geographical Indications' (Commission Staff Working Paper 2009) Version 08-4-09

——, ‘An Enhanced EU Policy to Help Better Communicate the Quality of Food Products’ (2010) EC Press Release IP/10/1692 <https://ec.europa.eu/commission/presscorner/detail/en/IP_10_1692> accessed 9 December 2020

——, ‘New Database for EU Geographical Indications Aims to Increase Transparency and Simplify Search’ (*Europa*, 1 April 2019) <https://ec.europa.eu/info/news/new-database-eu-geographical-indications-aims-increase-transparency-and-simplify-search-2019-apr-01_en> accessed 30 September 2019

——, ‘EU Food Quality Schemes: Evaluation’ (*Europa*, 2020) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2029-Evaluation-of-Geographical-Indications-and-Traditional-Specialities-Guaranteed-protected-in-the-EU/public-consultation_en> accessed 17 November 2021

——, ‘Food & Drink: EU Geographical Indications Scheme (Revision)’ (*Europa*, 2021) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12664-Revision-of-the-EU-geographical-indications-GI-systems-in-agricultural-products-and-foodstuffs-wines-and-spirit-drinks/public-consultation_en> accessed 17 November 2021

——, ‘Commission Publishes Study on Geographical Indications (GI) and Traditional Specialities Guaranteed (TSG) Protected in the EU’ (*Europa*, 2 March 2021) <https://ec.europa.eu/info/news/commission-publishes-study-geographical-indications-gi-and-traditional-specialities-guaranteed-tsg-protected-eu-2021-mar-02_en> accessed 17 November 2021

——, ‘EAmbrosia – the EU Geographical Indications Register’ (*Europa*, 6 October 2021) <<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>> accessed 29 October 2021

——, ‘Communication from the Commission - Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth’ COM (2010) 2020

——, ‘Completion of the Internal Market: Community Legislation on Foodstuffs’ COM (85) 603 final

——, ‘Conclusion from the Consultation on Agricultural Product Quality’ VC D (2009)

——, ‘Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes’ COM (2008) 641 final

——, ‘Impact Assessment on Geographical Indications’ (Commission Staff Working Paper) SEC (2010) 1525

——, ‘Perspectives for the Common Agricultural Policy’ COM (85) 333 final

——, ‘Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ SEC (90) 2415 final

——, ‘Proposal for a Council Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ COM (2005) 698 final/2

——, ‘Proposal for a European Parliament and Council Decision Establishing a Community Action Programme in the Field of Cultural Heritage: The Raphaël Programme’ COM (95) 110 final

——, ‘Proposal for a Regulation of the European Parliament and of the Council on Agriculture Product Quality Schemes’ COM (2010) 733 final

——, ‘Summary of the Impact Assessment on Geographical Indications’ (Commission Staff Working Paper) SEC (2010) 1524 final

European Court of Auditors, *Do the Design and Management of the Geographical Indications Scheme Allow It to Be Effective? Pursuant to Article 287(4) Second Subparagraph, TFEU*, vol 11 (Publications Office of the European Union 2011)

European Forum on Nature Conservation and Pastoralism, ‘EFNCP Response to the CEC - Green Paper on Agricultural Product Quality: Product Standards, Farming Requirements and Quality Schemes COM(2008) 641 Final’ (EFNCP 2008)

European Parliament, ‘Debate on Agricultural Products and Foodstuffs as Traditional Specialities Guaranteed – Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (2006) CRE 15/03/2006-14

——, ‘Report on Agricultural Product Quality Policy: What Strategy to Follow?’ (2010) 2009-2014 Session Document A7/2010/29

——, ‘Draft Treaty Establishing a Constitution for Europe’ (*Europarl*, 2018) <<https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe>> accessed 29 January 2020

European Techno-Economic Policy Support Network with Administrative Arrangement from the European Commission, ‘Economics of Food Quality Assurance and Certification Schemes Managed within an Integrated Supply Chain: Final Report’ (Directorate-General, Joint Research Centre, Institute for Prospective Technological Studies 2006) Deliverable 5.6

European Union, ‘The EU Motto’ (*European Union*, 16 June 2016) <https://europa.eu/european-union/about-eu/symbols/motto_en> accessed 6 April 2021

—, ‘The European Parliament: Historical Background’ (*Europarl*, February 2020) <<https://www.europarl.europa.eu/factsheets/en/sheet/11/the-european-parliament-historical-background>> accessed 21 May 2020

European Union Intellectual Property Office, ‘Launch of GIview’ (*EUIPO*, 25 November 2020) <<https://euiipo.europa.eu/ohimportal/en/news/-/action/view/8389687>> accessed 30 August 2021

Eurostat, ‘EU Population in 2020: Almost 448 Million’ (Eurostat 2020) Press Release 111/2020 <<https://ec.europa.eu/eurostat/web/products-euro-indicators/-/3-10072020-ap>> accessed 14 December 2021

Farrand B, ‘Two Continents, Divided by Deep Philosophical Waters?: Why Geographical Indications Pose a Challenge to the Completion of the TTIP’ (2016) 7 *European Journal of Risk Regulation* 269

Fitzsimmons MP, *From Artisan to Worker: Guilds, the French State, and the Organization of Labor, 1776-1821* (Cambridge University Press 2010)

Fonte M and Ranaboldo C, ‘Desarrollo rural, territorios e identidades culturales. perspectivas desde américa latina y la unión europea’ (2007) 7 *Revista Opera* 9

Fouilleux E, ‘CAP Reforms and Multilateral Trade Negotiations: Another View on Discourse Efficiency’ (2004) 27 *West European Politics* 235

France 2, ‘AOP: Des Fromages à la Chaîne’, *Envoyé Spécial* (12 October 2017) <<https://www.youtube.com/watch?v=BB5duO5Qoc8>> accessed 23 August 2019

France 5, ‘Fromage AOP: Le Terroir Caisse?’, *Découverte* (14 October 2018) <<https://www.youtube.com/watch?v=N9znPD1wNas>> accessed 23 August 2019

Frantz F, ‘Twenty Years of TRIPS, Twenty Years of Debate: The Extension of High Level Protection of Geographical Indications – Arguments, State of Negotiations and Prospects’ (2016) 21 *Annual Survey of International & Comparative Law* 93

Frayssignes J, ‘System IV: Roquefort Cheese (France)’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011)

Gade DW, ‘Tradition, Territory, and Terroir in French Viniculture: Cassis, France, and Appellation Contrôlée’ (2004) 94 *Annals of the Association of American Geographers* 848

Gallo D, ‘On the Content and Scope of National and European Solidarity Under Free Movement Rules: The Case of Golden Shares and Sovereign Investments’ (2016) 1 *European Papers* 823

Gangjee DS, ‘Geographical Indications and Cultural Heritage’ (2012) 4 *The WIPO Journal* 92

——, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012)

——, ‘Genericide: The Death of a Geographical Indication?’ in Dev S Gangjee (ed), *Research Handbook on Intellectual Property and Geographical Indications* (Edward Elgar Publishing 2016)

——, ‘GIs Beyond Wine: Time to Rethink the Link?’ (2017) 48 *International Review of Intellectual Property and Competition Law* 129

——, ‘Proving Provenance? Geographical Indications Certification and Its Ambiguities’ (2017) 98 *World Development* 12

Garzon I, *Reforming the Common Agricultural Policy: History of a Paradigm Change* (Springer 2006)

Gautier J-F, *Le vin et ses fraudes* (Presses universitaires de France 1995)

Gay SH and others, ‘Recent Evolution of the EU Common Agricultural Policy (CAP): State of Play and Environmental Potential’ (Institute for European Environmental Policy 2005) MEACAP WP6 D4b

General Secretariat of the Council of the European Union, *40th Review of the Council's Work: (The Secretary General's Report): 1 January to 31 December 1992* (Office for Official Publications of the European Communities 1994)

Giddens A, *Runaway World: How Globalization Is Reshaping Our Lives* (Taylor & Francis 2003)

Giovanucci D and others, *Guide to Geographical Indications: Linking Products and Their Origins* (International Trade Centre 2009)

Giovanucci D, Barham E and Pirog R, ‘Defining and Marketing “Local” Foods: Geographical Indications for US Products’ (2010) 13 *The Journal of World Intellectual Property* 94

Goldberg SD, ‘Who Will Raise the White Flag? The Battle between the United States and the European Union over the Protection of Geographical Indications’ (2001) 22 *University of Pennsylvania Journal of International Economic Law* 107

Gould GW, *New Methods of Food Preservation* (Springer Science & Business Media 2012)

Gracia A and Albisu LM, ‘Food Consumption in the European Union: Main Determinants and Country Differences’ (2001) 17 *Agribusiness* 469

Griffiths A, ‘Quality in European Trade Mark Law’ (2013) 11 *Northwestern Journal of Technology and Intellectual Property* 621

Gugerell K and others, ‘Do Historical Production Practices and Culinary Heritages Really Matter? Food with Protected Geographical Indications in Japan and Austria’ (2017) 4 *Journal of Ethnic Foods* 118

Herrmann R and Teuber R, 'Geographically Differentiated Products' in Jayson L Lusk, Jutta Roosen and Jason F Shogren (eds), *The Oxford Handbook of the Economics of Food Consumption and Policy* (Oxford University Press 2011)

Higgins DM, *Brands, Geographical Origin, and the Global Economy: A History from the Nineteenth Century to the Present* (Cambridge University Press 2018)

Hodez R, 'La protection des vins de champagne par l'appellation: chapitre premier' (*Grandes Marques & Maisons de Champagne*, 2020) <<https://maisons-champagne.com/fr/encyclopedies/bibliotheque-umc/ouvrages-historiques/la-protection-des-vins-de-champagne-par-l/premiere-partie-l-appellation-champagne-en-france/article/chapitre-premier>> accessed 6 October 2020

Hollander GM, 'Agricultural Trade Liberalization, Multifunctionality, and Sugar in the South Florida Landscape' (2004) 35 *Geoforum* 299

Hughes J, 'Champagne, Feta, and Bourbon: The Spirited Debate about Geographical Indications' (2006) 58 *Hastings Law Journal* 299

Ilbery B and Kneafsey M, 'Registering Regional Speciality Food and Drink Products in the United Kingdom: The Case of PDOs and PGIs' (2000) 32 *Area* 317

Jarnoux A, 'Contamination aux salmonelles: des lots de roquefort de la marque Société retirés de la vente' *France Bleu* (3 August 2019) <<https://www.francebleu.fr/infos/societe/contamination-aux-salmonelles-des-lots-de-roquefort-de-la-marque-societe-retires-de-la-vente-1564833599>> accessed 28 May 2020

Jena PR and Grote U, 'Impact Evaluation of Traditional Basmati Rice Cultivation in Uttarakhand State of Northern India: What Implications Does It Hold for Geographical Indications?' (2012) 40 *World Development* 1895

'Key Figures' (*Lactalis*, 2016) <<https://www.lactalis.fr/en/the-group/key-figures/>> accessed 13 December 2019

Kireeva I and O'Connor B, 'Geographical Indications and the TRIPS Agreement: What Protection Is Provided to Geographical Indications in WTO Members?' (2010) 13 *The Journal of World Intellectual Property* 275

Klüver H, *Lobbying in the European Union: Interest Groups, Lobbying Coalitions, and Policy Change* (Oxford University Press 2013)

Landon S and Smith CE, 'The Use of Quality and Reputation Indicators by Consumers: The Case of Bordeaux Wine' (1997) 20 *Journal of Consumer Policy* 289

Larson J, 'Relevance of Geographical Indications and Designations of Origin for the Sustainable Use of Genetic Resources' (Global Facilitation Unit for Underutilized Species 2007)

Le Du G, 'Guerre du camembert : le camembert AOP reste 100 % au lait cru' *Ouest-France* (3 March 2020) <<https://www.ouest-france.fr/economie/agriculture/guerre-du-camembert-le-camembert-aop-reste100-au-lait-cru-6762917>> accessed 6 December 2021

Lewanski R, 'Italy: Environmental Policy in a Fragmented State' in Kenneth Hanf and Alf-Inge Jansen (eds), *Governance and Environment in Western Europe: Politics, Policy and Administration* (Revised, Routledge 2014)

Likoudis Z and others, 'Consumers' Intention to Buy Protected Designation of Origin and Protected Geographical Indication Foodstuffs: The Case of Greece' (2016) 40 *International Journal of Consumer Studies* 283

Livingstone E, 'New EU Rules Put Insects on the Menu' *POLITICO* (14 January 2018) <<https://www.politico.eu/article/eat-insects-new-eu-rules-menu/>> accessed 22 May 2018

Lohmann S, 'A Signaling Model of Informative and Manipulative Political Action' (1993) 87 *The American Political Science Review* 319

London Economics, 'Evaluation of the CAP Policy on Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI): Final Report' (London Economics, ADAS, and Ecologic 2008)

Loureiro ML and Umberger WJ, 'Estimating Consumer Willingness to Pay for Country-of-Origin Labeling' (2003) 28 *Journal of Agricultural and Resource Economics* 287

Lovec M, *The European Union's Common Agricultural Policy Reforms: Towards a Critical Realist Approach* (Springer Berlin Heidelberg 2016)

Maher M, 'On Vino Veritas? Clarifying the Use of Geographic References on American Wine Labels' (2001) 89 *California Law Review* 1881

Marie-Vivien D, 'The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India' (2010) 13 *The Journal of World Intellectual Property* 121

Marie-Vivien D and others, 'Are French Geographical Indications Losing Their Soul? Analyzing Recent Developments in the Governance of the Link to the Origin in France' (2017) 98 *World Development* 25

Marie-Vivien D and Biénabe E, 'The Multifaceted Role of the State in the Protection of Geographical Indications: A Worldwide Review' (2017) 98 *World Development* 1

Marks S and Paravicini G, 'Parma Ham Probe Shakes Confidence in EU Gourmet Labels' *POLITICO* (8 June 2017) <<https://www.politico.eu/article/parma-ham-probe-shakes-confidence-in-eu-gourmet-labels/>> accessed 22 May 2018

Mediterra, *Identity and Quality of Mediterranean Foodstuffs* (Bertrand Hervieu ed, International Centre for Advanced Mediterranean Agronomic Studies, Presse de Sciences Po 2007)

Mengistie G and Blakeney M, 'Geographical Indications in Africa - Opportunities, Experiences and Challenges' (2016) 38 *European Intellectual Property Review* 290

Miller S, 'Europe Says, "That Cheese Is No Cheddar!"' *Wall Street Journal* (New York, 13 February 2003) B.1

Milne R, 'Arbiters of Waste: Date Labels, the Consumer and Knowing Good, Safe Food' (2012) 60 *The Sociological Review* 84

Moore K and Reid S, 'The Birth of Brand: 4000 Years of Branding' (2008) 50 *Business History* 419

Moravcsik A, 'Reassessing Legitimacy in the European Union' (2002) 40 *Journal of Common Market Studies* 603

Moschini G, Menapace L and Pick D, 'Geographical Indications and the Competitive Provision of Quality in Agricultural Markets' (2008) 90 *American Journal of Agricultural Economics* 794

Neilson J, Wright J and Aklimawati L, 'Geographical Indications and Value Capture in the Indonesia Coffee Sector' (2018) 59 *Journal of Rural Studies* 35

O'Connor and Company, 'Geographical Indications and the Challenges for ACP Countries: A Discussion Paper' (Agritrade and CTA 2005)

OECD, *Multifunctionality Towards an Analytical Framework: Towards an Analytical Framework* (OECD Publishing 2001)

Ogilvie S, *Institutions and European Trade: Merchant Guilds, 1000-1800* (Cambridge University Press 2011)

Olszak N, *Droit des appellations d'origine et indications de provenance* (Technique & Doc 2001)

Pappi FU and Henning CHCA, 'The Organization of Influence on the EC's Common Agricultural Policy: A Network Approach' (1999) 36 *European Journal of Political Research* 257

Payn H, *The Merchandise Marks Act 1887 with Special Reference to the Importation Sections and the Customs Regulations & Orders Made Thereunder* (Stevens 1888)

Peers S, 'The EU's Political Institutions' in Catherine Barnard and Steve Peers (eds), *European Union Law* (2nd edn, Oxford University Press 2017)

Pollack LW, "'Roquefort' - An Example of Multiple Protection for a Designation of Regional Origin under the Lanham Act' (1962) 52 *The Trademark Reporter* 755

Pollack MA, 'Theorizing EU Policy-Making' in Helen Wallace, William Wallace and Mark A Pollack (eds), *Policy-making in the European Union* (5th ed, Oxford University Press 2005)

Potter C and Burney J, 'Agricultural Multifunctionality in the WTO—Legitimate Non-Trade Concern or Disguised Protectionism?' (2002) 18 *Journal of Rural Studies* 35

Potter C and Tilzey M, 'Agricultural Policy Discourses in the European Post-Fordist Transition: Neoliberalism, Neomercantilism and Multifunctionality' (2005) 29 *Progress in Human Geography* 581

Pouillet E, *Traité des marques de fabrique et de la concurrence déloyale en tous genres* (6th edn, Marchal et Godde 1912)

Président, 'Président Plain Foil Brie Wedge' (*President Cheese*, 2021) <<https://presidentcheese.com/products/brie-cheese/president-plain-foil-brie-wedge/>> accessed 14 July 2021

'Président Brie' (*Waitrose*, 2017) <<https://www.waitrose.com/ecom/products/president-brie/484216-68373-68374>> accessed 14 July 2021

'Qualité substantielle : Lexique juridique et fiscal' (*Choné & Associés Notaires*) <<https://www.bruno-bedaride-notaire.fr/lexique-juridique-et-fiscal-de-bedaride-notaire-d-affaires/mot/qualite-substantielle.html>> accessed 24 November 2021

Rangnekar D, 'Remaking Place: The Social Construction of a Geographical Indication for *Feni*' (2011) 43 *Environment and Planning A: Economy and Space* 2043

Rangnekar D and Kumar S, 'Another Look at Basmati: Genericity and the Problems of a Transborder Geographical Indication' (2010) 13 *The Journal of World Intellectual Property* 202

Raustiala K and Munzer SR, 'The Global Struggle over Geographic Indications' (2007) 18 *European Journal of International Law* 337

'Regional Italian Cuisine' (*Academia Barilla*) <<http://www.academiabarilla.com/the-italian-food-academy/regional-italian-cuisine/default.aspx>> accessed 29 May 2018

Révillon S and Chappuis J-M, 'Geographical Indications: Collective Organization and Management' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of Origin for Food: Local Development, Global Recognition* (CABI 2011)

Riccheri M and others, 'Workpackage 3: Assessing the Applicability of Geographical Indications as a Means to Improve Environmental Quality in Affected Ecosystems and the Competitiveness of Agricultural Products' (IPDEV Project 2007)

- Richardson G, 'Brand Names Before the Industrial Revolution' (National Bureau of Economic Research 2008) Working Paper 13930
- Richardson J, 'The EU as a Policy-Making State: A Policy System Like Any Other?' in Jeremy Richardson and Sonia Mazey (eds), *European Union: Power and Policy-making* (4th edn, Routledge, Taylor & Francis Group 2015)
- Rieger E, 'Agricultural Policy' in Helen Wallace, William Wallace and Mark A Pollack (eds), *Policy-making in the European Union* (5th ed, Oxford University Press 2005)
- Rippon MJ, 'What Is the Geography of Geographical Indications? Place, Production Methods and Protected Food Names' (2014) 46 *Area* 154
- Ritzert M, 'Champagne Is from Champagne: An Economic Justification for Extending Trademark-Level Protection to Wine-Related Geographical Indicators' (2009) 37 *AIPLA Quarterly Journal* 191
- Roseboom J and Magdelaine P, 'Case Study: Label Rouge' (Directorate-General, Joint Research Centre, Institute for Prospective Technological Studies 2008) Deliverable 5.3
- Schept K, 'Brandz Top 100 Most Valuable Global Brands 2019' (Kantar Millward Brown 2019) <<https://www.kantar.com/campaigns/brandz/global>> accessed 20 January 2020
- Schmidt VA, 'Democracy and Discourse in an Integrating Europe and a Globalising World' (2000) 6 *European Law Journal* 277
- , 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"' (2013) 61 *Political Studies* 2
- Schrieberg D, 'Why Your Genuine French Camembert Cheese Is In Danger' *Forbes* (25 February 2018) <<https://www.forbes.com/sites/davidschrieberg1/2018/02/25/why-your-genuine-french-camembert-cheese-is-in-danger/>> accessed 4 October 2019
- Senate, *Report of the Commissioners Appointed to Revise the Statutes Relating to Patents, Trade and Other Marks, and Trade and Commercial Names, under Act of Congress Approved June 4, 1898*, vol 20 (Government Printing Office 1900)
- Simon LE, 'Appellations of Origin: The Continuing Controversy' (1983) 5 *Northwestern Journal of International Law & Business* 132
- Stöckl A, 'Austrian Wine: Developments After the Wine Scandal of 1985 and Its Current Situation' (International Wine Business Research Conference, Montpellier, July 2006)

Sylvander B, Isla A and Wallet F, 'Under What Conditions Geographical Indications Protection Schemes Can Be Considered as Public Goods for Sustainable Development?' in André Torre and Jean-Baptiste Traversac (eds), *Territorial Governance: Local Development, Rural Areas and Agrofood Systems* (Physica-Verlag HD 2011)

Teuber R, 'Consumers' and Producers' Expectations towards Geographical Indications: Empirical Evidence for a German Case Study' (2011) 113 *British Food Journal* 900

Teuber R, Anders S and Langinier C, 'The Economics of Geographical Indications: Welfare Implications' (Structure and Performance of Agriculture and Agri-products Industry Network 2011) Working Paper

'The Biodiversity Behind Italian Food' (*Eataly*, 14 April 2018) <https://www.eataly.com/us_en/magazine/culture/italian-biodiversity/> accessed 29 May 2018

Thévenod-Mottet E, 'Geographical Indications and Biodiversity' in Stewart Lockie and David Carpenter (eds), *Agriculture, Biodiversity and Markets: Livelihoods and Agroecology in Comparative Perspective* (Earthscan 2010)

Thual D and Lossy F, 'Q&A Manual: European Legislation on Geographical Indications' (IP2R 2011)

Tindemans L, 'European Union Report by Mr Leo Tindemans Prime Minister of Belgium to the European Council' (European Commission 1975) Supplement 1/76

Tosseri O, 'Lactalis nouveau géant du Parmesan' *Les Echos* (Rome, 30 May 2019) <<https://www.lesechos.fr/industrie-services/conso-distribution/lactalis-nouveau-geant-du-parmesan-1025232>> accessed 13 December 2019

Transport Information Service, 'Cheese' (*The German Insurance Association*, 2021) <https://www.tis-gdv.de/tis_e/ware/milchpro/kaese/kaese-htm/> accessed 10 March 2021

Turner A, 'Prepacked Food Labelling: Past, Present and Future' (1995) 97 *British Food Journal* 23

Ulin RC, 'Invention and Representation as Cultural Capital: Southwest French Winegrowing History' (1995) 97 *American Anthropologist* 519

Union internationale pour la protection de la propriété industrielle, *Actes de la conférence réunie à la Haye du 8 octobre au 6 novembre 1925* (Bureau de l'Union internationale pour la protection de la propriété industrielle 1926)

——, *Actes de la conférence réunie à Londres du 4er mai au 2 juin 1934* (Bureau de l'Union internationale pour la protection de la propriété industrielle 1934)

——, *Actes de la conférence réunie à Lisbonne du 6 au 31 octobre 1958* (Bureau de l'Union internationale pour la protection de la propriété industrielle 1963)

United States Committee on Agriculture, 'The Status of the World Trade Organization Negotiations on Agriculture: Hearing before the Committee on Agriculture, House of Representatives' (US Government Printing Office 2003) 108–5

United States Patent and Trademark Office, 'Certification Mark Applications' (USPTO, 2020) <<https://www.uspto.gov/trademarks-getting-started/trademark-basics/certification-mark-applications>> accessed 23 June 2020

van Caenegem W, 'Registered Geographical Indications: Between Intellectual Property and Rural Policy-Part II' (2003) 6 *The Journal of World Intellectual Property* 861

van der Ploeg JD, 'High Quality Products and Regional Specialities: A Promising Trajectory for Endogenous and Sustainable Development' (OECD International Conference, Siena, July 2002)

van Huylenbroeck G and Vanslembrouck I, *Landscape Amenities* (Springer 2005)

Vandecandelaere E and others, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* (2nd edn, FAO and Siner-GI 2010)

——, *Strengthening Sustainable Food Systems through Geographical Indications: An Analysis of Economic Impacts* (FAO 2018)

Verbeke W and others, 'Consumers' Awareness and Attitudinal Determinants of European Union Quality Label Use on Traditional Foods' (2012) 1 *Bio-based and Applied Economics* 213

Verdú Jover AJ, Lloréns Montes FJ and Fuentes Fuentes M del M, 'Measuring Perceptions of Quality in Food Products: The Case of Red Wine' (2004) 15 *Food Quality and Preference* 453

Weber CL and Matthews HS, 'Food-Miles and the Relative Climate Impacts of Food Choices in the United States' (2008) 42 *Environmental Science & Technology* 3508

Westhoek H and others, 'Food Choices, Health and Environment: Effects of Cutting Europe's Meat and Dairy Intake' (2014) 26 *Global Environmental Change* 196

Williams EM and Carter SJ, *The A-Z Encyclopedia of Food Controversies and the Law* (ABC-CLIO 2011)

Wirth DA, 'Geographical Indications, Food Safety, and Sustainability: Conflicts and Synergies' (2016) 5 *Bio-based and Applied Economics* 135

Wodak R and Meyer M, 'Critical Discourse Studies: History, Agenda, Theory and Methodology' in Ruth Wodak and Michael Meyer (eds), *Methods of Critical Discourse Studies* (3rd edition, SAGE Publications 2016)

World Bank, 'Employment in Agriculture (% of Total Employment) (Modeled ILO Estimate) - European Union, United States' (*The World Bank Data*, 2019) <<https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=EU-US>> accessed 3 October 2019

—, 'Agriculture, Forestry, and Fishing, Value Added (% of GDP) - European Union, Poland, France, Italy' (*The World Bank Data*, 2020) <<https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?end=2018&locations=EU-PL-FR-IT&start=1984>> accessed 20 May 2020

—, 'Agriculture, Forestry, and Fishing, Value Added (% of GDP) - European Union, United States' (*The World Bank Data*, 2021) <<https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?contextual=default&end=2018&locations=EU-US&start=1990&view=chart>> accessed 7 December 2021

World Intellectual Property Organization, 'Contracting Parties: Madrid Agreement (Indications of Source)' (*WIPO*, 2020) <https://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=3> accessed 8 October 2020

—, 'Geneva Act of WIPO's Lisbon Agreement Enters into Force' (*WIPO*, 26 February 2020) <https://www.wipo.int/lisbon/en/news/2020/news_0001.html> accessed 15 May 2020

World Trade Organization, 'European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs: Complaint by the United States - Report of the Panel' (WTO 2005) WT/DS174/R

—, 'Geographical Indications - Communication from the European Communities' (WTO 2005) WT/GC/W/547

—, '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 - Report by the Director-General' (WTO 2011) WT/GC/W/633

Zapata Valenzuela AG and others, 'Conservación de la diversidad de cultivos en las regiones con indicaciones geográficas. Comparación del tequila y calvados' (2004) 5 Sociedades Rurales, Producción y Medio Ambiente 7

Cases

Case C-446/07 *Alberto Severi v Regione Emilia Romagna* [2009] ECR I-8041

Case C-478/07 *Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH* [2009] ECR I-7721

Chapin et Cie v Le Syndicat du Commerce des Vins de Champagne (Cour d'Appel de Paris, 1ere Chambre, 18 Novembre 1892, reported in *Propriété Industrielle* [1893] 111)

Case 249/81 *Commission v Ireland* (Buy Irish) [1982] ECR 4005

Consorzio del Prosciutto di Parma v Asda Stores Limited and Others [2001] UKHL 7

Case C-108/01 *Consorzio del Prosciutto di Parma and Salumificio S Rita SpA v Asda Stores Ltd and Hygrade Foods Ltd* (Consorzio) [2003] ECR I-5121

Case 16/83 *Criminal Proceedings against Karl Prantl* [1984] ECR 1299

Case C-3/91 *Exportur SA v LOR SA and Confiserie du Tech SA* (Exportur) [1992] ECR I-5529

Joined Cases C-465/02 and C-466/02 *Federal Republic of Germany and Kingdom of Denmark v Commission of the European Communities* (Feta II) [2005] ECR I-9115

Joined Cases C-289/96, C-293/96 and C-299/96 *Kingdom of Denmark, Federal Republic of Germany and French Republic v Commission of the European Communities* (Feta I) [1999] ECR I-1541

Case 286/86 *Ministère public v Gérard Deserbais* (Deserbais) [1988] ECR 4907

Case C-469/00 *Ravil SARL v Bellon import SARL and Biraghi SpA* (Ravil) [2003] ECR I-5053

Case 120/78 *Rewe-Zentrale AG v Bundesmonopolverwaltung für Branntwein* (Cassis de Dijon) [1979] ECR 649

Case C-10/89 *SA CNL-SUCAL NV v HAG GF AG* [1990] ECR I-3711

Legislation

Loi du 28 juillet 1824 relative aux alterations ou suppositions de noms sur les produits fabriqués

Loi du 23 juin 1857 sur les marques de fabrique et de commerce

Paris Convention for the Protection of Industrial Property 20 mars 1883 (original translation)

Loi du 1er août 1905 sur la répression des fraudes dans la vente des marchandises et des falsifications des denrées alimentaires et des produits agricoles (5 August 1905) *Journal Officiel de la République Française* 4813

Loi du 6 mai 1919 relative à la protection des appellations d'origine (8 May 1919) Journal Officiel de la République Française 4726

Loi du 26 juillet 1925 ayant pour but de garantir l'appellation d'origine du fromage de Roquefort (30 juillet 1925) Journal Officiel de la République Française 7190

Loi du 22 juillet 1927 tendant à compléter la loi du 6 mai 1919 relative à la protection des appellations d'origine (27 July 1927) Journal Officiel de la République Française 7762

Loi du 6 avril 1935 tendant à protéger les appellations d'origine des vins récoltés en Bourgogne délimitée (8 April 1935) Journal Officiel de la République Française 3981

Loi du 30 avril 1935 tendant à protéger les appellations d'origine des vins récoltés dans les départements du Haut-Rhin, du Bas-Rhin et de la Moselle (2 May 1935) Journal Officiel de la République Française 4754

Décret-loi du 30 juillet 1935 relatif à la défense du marché des vins et régime économique de l'alcool (31 July 1935) Journal Officiel de la République Française 8314

Décret n° 47-1331 du 16 juillet 1947 fixant la composition du comité national des appellations d'origine (19 July 1947) Journal Officiel de la République Française 6948

Treaty establishing the European Coal and Steel Community [1952]

Treaty establishing the European Economic Community [1958]

Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 31 October 1958

Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Nice on June 15, 1957, and at Stockholm on July 14, 1967, and as amended on September 28, 1979

Paris Convention for the Protection of Industrial Property of March 20, 1883 as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979

Décret du 29 décembre 1986 relatif à l'appellation d'origine 'Brie de Meaux' (1 January 1987) Journal Officiel de la République Française 37

Single European Act [1987] OJ L169/1

Council Regulation (EEC) 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks [1989] OJ L160/1

Communication on the Free Movement of Foodstuffs within the Community [1989] OJ C271/3

Loi n° 90-558 du 2 juillet 1990 relative aux appellations d'origine contrôlées des produits agricoles ou alimentaires, brut ou transformés (6 July 1990) Journal Officiel de la République Française 7912

Council Regulation (EEC) 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails [1991] OJ L149/1

Opinion on the proposal for a Council Regulation (EEC) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1991] OJ C269/62

Minutes of Proceedings of the Sitting of Monday 18 November 1991 [1991] OJ C326/01

Council Regulation (EEC) 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1992] OJ L208/1

Treaty on European Union [1992] OJ C191/1

Demande d'enregistrement du 25 janvier 1994 de l'IGP "Jambon d'ardenne" (93/1)

General Agreement on Tariffs and Trade 1994

Agreement on Trade-Related Aspects of Intellectual Property Rights 15 April 1994, in the Marrakesh Agreement Establishing the World Trade Organization, Annex 1C (1994)

Décret du 7 août 1996 relatif à l'appellation d'origine contrôlée 'Lentille verte du Puy' (9 Août 1996) Journal Officiel de la République Française 12113

Council Regulation (EC) 535/97 of 17 March 1997 amending Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1997] OJ L83/3

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C340/1

Décret du 30 décembre 1998 relatif à l'appellation d'origine contrôlée 'Comté' (5 January 1999) Journal Officiel de la République Française 201 1999

Council Regulation (EC) 1493/1999 of 17 May 1999 on the common organisation of the market in wine [1999] OJ L179/1

Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [2001] OJ C80/1

Commission Regulation (EC) 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products [2002] OJ L118/1

Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community [2002] OJ C325/01

Council Regulation (EC) 692/2003 of 8 April 2003 amending Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2003] OJ L99/1

Treaty establishing a Constitution for Europe [2004] OJ C310/1

Council Decision 2006/144/EC of 20 February 2006 on Community strategic guidelines for rural development (programming period 2007 to 2013) [2006] OJ L55/20

European Parliament legislative resolution on the proposal for a Council regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (COM(2005)0698 – C6-0027/2006 – 2005/0275(CNS)) [2006] OJ C291/E/393

Council Regulation (EC) 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2006] OJ L93/12

Council Regulation (EC) 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [2007] OJ L299/1

Treaty of Lisbon Amending the Treaty of European Union and the Treaty Establishing the European Community [2007] OJ C306/01

European Parliament and Council Regulation (EC) 110/2008 of 15 January 2008 on the definition, description, presentation, labelling and the protection geographical indications of spirit drinks and repealing Council Regulation (EEC) 1576/89 [2008] OJ L39/16

Council Regulation (EC) 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) 1493/1999, (EC) 1782/2003, (EC) 1290/2005, (EC) 3/2008 and repealing Regulations (EEC) 2392/86 and (EC) 1493/1999 [2008] OJ L148/1

Opinion of the European Economic and Social Committee on Geographical indications and designations [2008] OJ C204/57

European Parliament resolution of 12 March 2008 on the CAP ‘Health Check’ (2007/2195(INI)) [2009] OJ C66/E/9

Council Regulation (EC) 491/2009 of 25 May 2009 amending Regulation (EC) 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [2009] OJ L154/1

Commission Regulation (EC) 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products [2009] OJ L193/60

Opinion of the Committee of the Regions on ‘Towards an ambitious European policy for agricultural quality schemes’ [2011] OJ C192/28

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes’ [2011] OJ C218/114

Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47

European Parliament and Council Regulation (EU) 1151/2012 of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1

European Parliament and Council Regulation (EU) 1308/2013 of 17 December 2013 establishing a common agricultural organisation of the markets in agricultural products and repealing Council Regulations (EEC) 922/72, (EEC) 1037/2001 and (EC) 1234/2007 [2013] OJ L347/671

European Parliament and Council Regulation (EU) 251/2014 of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) 1601/91 [2014] OJ L84/14

European Parliament and Council Regulation (EU) 1144/2014 of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) 3/2008 [2014] OJ L317/56

Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and Regulations Under the Geneva Act of the Lisbon Agreement of May 20, 2015 2015

Cornish Pasty: EU No: UK-PGI-0105-01256 – 12.8.2014 [2015] OJ C199/13

Publication of an amendment application pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs [2015] OJ C330/3

Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part [2017] OJ L11/23

Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation [2019] OJ L9/2

European Parliament and Council Regulation (EU) 2019/787 of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) 110/2008 [2019] OJ L130/1

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2019] OJ C1384/01