Geographical Indications:

Agri-food Heritage and Global Trade

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Contents

5 Executive summary

6 1. Geographical Indications: An introduction

10 2. International regulation of GIs for food and agriculture products

13 3. The European Union's GI schemes for food and agriculture products

22 4. Cashing in on cachet: The value of agri-food GIs

28 5. GIs and international trade

32 6. Concerns and opposition to GI policy

35 7. GIs and Brexit

37 8. Conclusions

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Executive summary

There are now more than 3,330 Geographical Indications (GIs) registered in the EU, encompassing all types of agriculture and food products. The sophisticated system which now applies in the EU has emerged from over 100 years of intellectual property agreements. These have progressively refined a legal basis for preventing food and drink manufacturers from 'passing off' their products as having qualities, linked to geographic origin, which in reality they do not possess.

The WTO agreement on intellectual property rights (TRIPS) provides an international baseline for protecting and promoting GIs, but the EU system in many respects goes beyond TRIPS to provide very specific forms of protection for specific product names, including some which critics view as being, in reality, common or generic names.

EU food and drink products may be registered with the status of Protected Designation or Origin (PDO), Protected Geographical Indication (PGI), or Traditional Speciality Guaranteed (TSG) – depending broadly on how close the association is between the product and the locality. Slightly different arrangements apply for wines and spirits.

According to a widely-cited academic study dating from 2010, sales of European food and drink products with GI labels amount to around €54 billion, with premium wines taking a large share of this value. It has also been estimated that fraudulent sales of products carrying GI labels to which they should not be entitled may amount to over €4 billion a year.

A significant and growing proportion of the value of GI product sales is accounted for by exports, and the EU has been very active in seeking international protection for its most important GIs by embedding them in its network of bilateral and regional trade agreements. But these initiatives have provoked controversy among some food and drink producers in third countries, who have taken exception to what they see as the EU's 'predatory' attempts to claim sole use of food terms which they view as being in common use. This controversy shows no sign of abating as the EU expands its portfolio of trade agreements with major players in all parts of the world.

Meanwhile, the departure of the UK from the EU, scheduled for 2019, will represent a test for the international resilience of the EU's GI system, as Britain decides how to deal with current (and future) GI registrations as a newly-created non-EU country.

"Europe has a deep-rooted and well-developed system of recognition and protection for regional food and drink types, and for the geographically-linked names under which they are marketed. These names often reflect centuries of culture and tradition"

1. Geographical Indications: An introduction

Europe is intensely proud of its food traditions and culture. Probably no other part of the world has such a deeply-felt and highly-developed connection between its local communities, the food and drink products which they grow or manufacture, and the land (or seas) from which they were produced. For Europeans, geography matters a great deal

This connection between agriculture, food and territory dates back over millennia – probably right back to the point where human civilisations abandoned the early hunter-gatherer phases of their development and started to settle down and cultivate the land around them. The advent of fixed, sedentary communities was based around the rise of farming, with progressive domestication of food-providing animals, and cultivation of crops.

This in turn meant that human communities no longer had to wander around in search of sustenance; instead it was brought to them, with positive consequences for the development of industry and other economic activity. It was a phase in history when communities were sustained, quite literally, by the land around them. It was the local 'terroir' – and therefore, by definition, not the lands beyond – that played the almost sacred role of feeding the populace, and providing the food and drink products that represented security and stability.

It is not difficult to understand how a strong emotional attachment to local food and agricultural traditions should arise in such circumstances. And in Europe, where communities can trace back traditions over hundreds and sometimes thousands of years, such food traditions remain deeply rooted, in some countries and regions perhaps more than others.

Of course, human communities all over the world developed the same connections with their local food and agricultural traditions. But Europe was the predominant economic and political force in the world for most of the last millennium, and it was in Europe where food traditions, and the principles of locality which were seen to be sustaining them, were reinforced and codified to a greater extent than elsewhere.

However, because of Europe's role in settling / conquering other parts of the world between the 15th and 19th centuries, European food traditions quickly went global. Cheesemakers, brewers, distillers, bakers and winemakers were all among the millions of Europeans who emigrated to the 'New World' territories of North and South America and Oceania, and they took their food culture, tradition and food names with them. Hence, for example, a cheese type which is today produced on at least three different continents, and is among the most widely internationally traded of dairy products – namely Cheddar – still bears the name of a small village in south-west England.

The European diaspora re-created their own food traditions in the countries where they settled – the USA, Argentina, Australia and elsewhere – and many food types which originated in Europe today have a history of production in their own (non-European) countries going back a century or more. This divergence in food tradition lies at the heart of the acrimonious trade disputes which are accompanying the EU's drive to protect geographical indications internationally as well as domestically.

Protecting geographical indications

With the advent of greater mobility in the 19th and 20th centuries, and hence the possibility of much greater inter-regional and international food trade, manufacturers of food and drink products began to realise that the link between specific types of produce and their geographical origins could have an economic as well as a sentimental value.

The drive to create legal protection for specific food names came initially from a desire to prevent unscrupulous producers from selling goods which claimed to have an origin that they did not possess. This desire to prevent 'food fraud' is still the primary justification for the EU's legislation on the protection of geographical indications (GIs). But nowadays there is also a strong positive element to GI labelling, with designated GI status – and

Image © Christian Mueller / Shutterstock.com

the accompanying logos on the product labelling – viewed as being a prized marketing asset which lends a product a certain 'cachet'.

Governments have been recognising and protecting trade names and trademarks on food products which are identified with a particular region for well over 100 years.

One of the first GI systems introduced was the French *appellation d'origine contrôlée* (AOC) scheme, which dates from the early part of the twentieth century, and which is still in force today. Items that meet geographical origin and quality standards may be endorsed with a government-issued stamp which acts as official certification of the origins and standards of the product to the consumer. Examples of products that have such 'appellations of origin' include Gruyère cheese (from Switzerland) and many French wines.

The AOC scheme, and similar schemes which apply in some other European countries, now function in parallel with the three European GI schemes, Protected Designation of Origin (PDO), Protected Geographical Indication (PGI), and Traditional Specialities Guaranteed (TSG) – see page 13.

Meanwhile, separate international conventions have been elaborated for wines and spirits, and these are now enshrined into WTO law (see page 12). As long ago as 1951, an international convention was signed to regulate the use of geographical appellations for cheese types, and many of the principles set out in this convention (as amended) remain in force today.

What's in a name?

The modern notion of a Geographical Indication, as currently operated within the EU, is not a conceptually uniform one. It conflates a number of pre-existing concepts, relating either to the specific character of crop products which are grown in a particular location or soil type (the notion of 'terroir'), or to food manufacturing traditions which have their roots in a specific area or community, or (to some extent) to a simple 'trademarking' of a brand whose commercial value is closely associated with a particular place or region. This mixing of concepts regarding geographical specificity is perhaps one of the reasons why GIs have become a topic of controversy.

For wine-growers especially, it is axiomatic that identical grapes grown and processed in similar ways may produce products of differing qualities depending on the quality, orientation or slope of the soil.

But is (for example) a vegetable grown in one region substantially different to, and worthy of being advertised as a product distinct from, an apparently identical vegetable of the same type grown 50 miles away? For some, there is an element of 'the emperor's new clothes' about some of the claims that are made to defend the uniqueness of the produce from a specific region, while other detect a kind of unscientific mysticism about the special qualities which are claimed on behalf of some products from certain regions. Many others, on the other hand, take the view that strict rules on region-of-origin labelling are vital in protecting Europe's food culture against unsympathetic appropriation by multinational corporations.

The arguments surrounding processed or manufactured food and drink products are no less complicated. What it is about a *Nürnberger Lebkuchen* baked in northern Bavaria that makes it fundamentally different from a cake baked to the exact same recipe somewhere else in the world? Perhaps most controversially of all: would a consumer buying a bottle labelled as 'Californian Champagne' really be deceived as to the true nature and origin of the drink in question?

The fact that the latter question is answered by reference to a completely different set of regulations and standards than the former only goes to show the complexity of the issue.

This report will aim to clarify the different types of regulation which govern geographical indications on agriculture and food products within Europe and internationally. It will aim to show the scope and value of the protection which is afforded by the different forms of recognition, and will also endeavour to shine light on the areas of agreement (and often-vigorous disagreement) between producers, sectors and countries over the details and principles of geographical protection.

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2. International regulation of GIs for food and agriculture products

International legislation to protect products labelled with geographical indications have been in force, in different forms, since the late 19th century.

Food product labelling was covered to some extent in the very first international treaty on the protection of intellectual property, namely the Paris Convention of March 1883. The convention still exists, in updated form, and is now overseen by the World Intellectual Property Organisation (WIPO). Clause 3c of Article 10 *bis* of the convention prohibits: "*...indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process [or] the characteristics [...] of the goods.*" [ii]

At a domestic level, France took the initiative in May 1919 of setting up its own Law for the Protection of the Place of Origin. This Law provided the framework for the creation of the 'Appellation d'Origine Controlée' (AOC) scheme on which subsequent EU law was at least partly modelled. The very first product to be awarded AOC status was Roquefort cheese, in 1925.

Following the end of the Second World War, cheese products were at the heart of fresh initiatives to provide a legislative framework for the protection of geographically-based product names. In 1951, France, Italy, the Netherlands, Switzerland, Austria and the Scandinavian countries signed the Stresa Convention on the use of names for cheese. This Convention laid down that "*only cheeses manufactured or matured in traditional regions, by virtue of local, loyal and uninterrupted usages*" may bear the names of the cheese products specified in the Convention. [iii]

Action was taken in the 1960s to define the characteristics of each cheese type, with the establishment of the Codex Alimentarius. By 1966, internationally binding manufacturing standards had been agreed for Cheddar, Danbo, Edam, Gouda, Havarti and Samsoe cheeses, and Emmental, Tilsiter, Saint Paulin, Provolone, Coulommiers and Camembert had followed suit by 1973.

Crucially, however, the Codex did not extend any globally recognised standard for the geographical locations in which

> "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" [i]

these cheese varieties may be produced. Indeed, US trade lobbies have claimed that very presence of these products on the Codex list means that these cheese names should be accepted as generic, although this is an interpretation which the EU rejects.

Building on these various earlier attempts to provide a system for protecting valuable geographical indications, the European Union adopted its first rules in 1992 to create a GI scheme from which all European producers of food and agriculture producers could benefit. This scheme grew rapidly into a three-tier registration scheme for different types of geographical indication which today boasts a database of almost 1,600 products of all types. The EU system is described in Chapter 3.

The TRIPS agreement

At an international level, the rules on GI product labelling to which the vast majority of countries are now bound are codified in the multilateral TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights), which was agreed as part of the Uruguay Round negotiating process, and has been administered since 1995 by the World Trade Organisation (WTO). Articles 22-24 of TRIPS [iv] deal specifically with the question of GIs, and they establish ground rules which are clear enough to set out an agreed basis for countries to legislate in this area, but have proven to be not comprehensive enough to avoid continuing international disputes.

Article 22 of the TRIPS agreement defines geographical indications as those which indicate a link to a geographic region in cases where *"...a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."* The text of the TRIPS article does not specify agriculture and food products uniquely, although in practice these are the product types that mostly have GIs attached to them.

The same article provides the legal basis for countries to set up a register of approved GIs, and to adjudicate on requests by manufacturers to have their products added to this list.

It also goes on to stipulate that GI regulations may be used to outlaw any indications which, *"although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory."* This makes it illegal to create 'sound-alike' brand or product names intended to deceive the consumer into thinking that the product comes from a specific region (or, to be more accurate, TRIPS creates the multilateral basis for national governments to legislate to this effect).

Article 23 of the TRIPS agreement establishes "additional protection" for geographical indications for wines and spirits. This codifies in international law pre-existing arrangements relating to the names of wines and spirits, and lays down that protected GIs in this domain may not be used by products which are not manufactured in the region 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."*

This means that, for the protected wine and spirit names covered by this provision – such as "Champagne", "Chablis", "Chianti", "Ouzo", etc. – the protection is absolute even if the term were to be accompanied by a clear indication of the actual origin of the product. Hence it would not be legal, under the terms of TRIPS, to label a product as "Californian Champagne" or "South African Chianti", etc.

As with other aspects of GI labelling for food and agriculture, this convention primarily protects European winemakers from "unfair" competition from similar wine types produced elsewhere in the world. By and large, the 'higher-level' protection for wines and spirits is reluctantly accepted by non-EU producers as a *fait accompli*, although questions are sometimes asked as to why certain indications which are not geographically linked – e.g. "vinho verde" [green wine] – are included under this legislation.

Article 23 also creates a platform to launch discussions on the future establishment of *"a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system."* This has been under discussion as part of the Doha Round of WTO negotiations since 2001, but it has generally made even less progress than other aspects of the ill-fated Doha agenda, as the entrenched views of the European Union and its 'New World' trading partners have left this aspect of the talks completely deadlocked.

Article 24 provides for the possibility of negotiating agreements on GIs between member countries, and also sets out a number of exceptions to the general rule on GIs, notably that a GI application may be refused if it conflicts with pre-existing trademark rights.

It also lays down that *"nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member."*

This is intended to offer protection against the creeping expansion of any WTO member's GI system into the legal system of a third country, although the EU (inevitably the principal protagonist in any international debate on GIs) now stands accused to seeking to get around this clause by building in GI recognition as an integral element within the bilateral and multilateral trade agreements which the EU has been negotiating and concluding in recent years. This is discussed in Chapter 3.

[i] Trade-related Aspects of Intellectual Property Rights", Article 22.1. World Trade Organisation.

[ii] "Paris Convention for the Protection of Industrial Property", World Intellectual Property Organisation

[iii] "Geographical Indications for Food Products: International Legal and Regulatory Perspectives". Echols, Marscha A.

[iv] Trade-related Aspects of Intellectual Property Rights". World Trade Organisation.

3. The European Union's GI schemes for food and agriculture products

The EU is the world's most enthusiastic proponent of geographical indication labelling schemes. Its rich agricultural and food and drink heritage has bestowed on Europe a wealth of geographically-linked names which, at least in the more celebrated cases (Gorgonzola, Prosciutto di Parma, Scotch whisky, etc.), have a worldwide 'cachet' and a very significant brand value. Other, more obscure examples may only have very local significance, but these are no less cherished by local producers and consumers.

It was during the 1980s that the EU's agriculture and food policy began to shift its focus from quantity (via support for agricultural commodities in the earliest incarnations of the Common Agricultural Policy) to a more qualitative approach. According to the prevailing orthodoxy in Brussels at that time, food quality was closely associated with all things local and traditional, and finding ways to celebrate and promote local food became one of the key planks of the EU's emerging rural development policy.

The EU's first two regulations establishing schemes to protect geographical indications – Regulations 2081/92 and 2082/92 – were published in July 1992. These regulations established for the first time the three GI schemes that remain in force today: the former created the concept of the Protected Designation of Origin (PDO) and Protected Geographical Indications (PGI), while the latter legislated for the creation of Traditional Specialities Guaranteed (TSG).

These basic regulations have undergone two main overhauls since then, once in 2006 (Regulations 509/2006 and 510/2006) and then again in 2012 – the two former regulations being updated and consolidated into a single regulation governing all three GI schemes (Regulation 1151/2012).

Political justification

The political justification and rationale for the EU's extensive activity in the GI area is set out in the preamble to the current Regulation:

"Citizens and consumers in the Union increasingly demand quality as well as traditional products. They are also concerned to maintain the diversity of the

"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" [i]

agricultural production in the Union. This generates a demand for agricultural products or foodstuffs with identifiable specific characteristics, in particular those linked to their geographical origin.

"Producers can only continue to produce a diverse range of quality products if they are rewarded fairly for their effort. This requires that they are able to communicate to buyers and consumers the characteristics of their product under conditions of fair competition. It also requires them to be able to correctly identify their products on the marketplace."

"Operating quality schemes for producers which reward them for their efforts to produce a diverse range of quality products can benefit the rural economy. This is particularly the case in less favoured areas, in mountain areas and in the most remote regions, where the farming sector accounts for a significant part of the economy and production costs are high. In this way 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 (CAP). In particular, they may contribute to areas in which the farming sector is of greater economic importance and, especially, to disadvantaged areas."

The register of protected food names governed by this Regulation now runs to 1,409 registered food and drink products in all, plus a further 36 for which Commission has published the application, as well as a further 141 applications which, as of end-November 2017, have still to be processed. The flow of new additions to the database shows no sign of slowing down, with 83 new applications having been submitted in the first eleven months of 2017 alone.

In addition, some 1,925 wine names have been registered – bringing the total number of protected EU product names to 3,334.

All products in respect of which PDO, PGI or TSG status has been authorised, or applied for, are listed in the so-called DOOR database (Database Of Origin & Registration). The exceptions are wine and spirits, for which specific rules apply - mirroring the special status of these products in international intellectual property law. Although wines, like other types of food and drink, are eligible for PDO and PGI status, the legal basis for their protection is different, being set out in EU Regulation 1308/2013 – the regulation which governs market support for agricultural products within the CAP. These wine product names are listed separately in the EU's E-Bacchus database.

Product categories

A wide range of agri-food products are

Table 1: Number of registered GIs per category, as of mid-November 2017

Category number	Product type	No of registrations*
Class 1.1	Fresh meat (and offal)	182
Class 1.2	Meat products (cooked, salted, smoked, etc.)	217
Class 1.3	Cheeses	264
Class 1.4	Other products of animal origin (eggs, honey, various dairy products except butter, etc.)	55
Class 1.5	Oils and fats (butter, margarine, oil, etc.)	143
Class 1.6	Fruit, vegetables and cereals, fresh or processed	433
Class 1.7	Fresh fish, molluscs, and crustaceans and products derived therefrom	57
Class 1.8	Other products of Annex I of the Treaty (spices etc.)	81
Class 2.1	Beers	31
Class 2.2	Bottled or spring waters	discontinued
Class 2.3	Confectionery, bread, pastry, cakes, biscuits and other baker's wares (TSG only)	17
Class 2.4	Bread, pastry, cakes, confectionery, biscuits and other baker's wares (PDO and PGI)	82
Class 2.5	Natural gums and resins	3
Class 2.6	Mustard paste	2
Class 2.7	Pasta	11
Class 3.1	Hay	1
Class 3.2	Essential oils	4
Class 3.4	Cochineal (raw product of animal origin)	1
Class 3.5	Flowers and ornamental plants	3
Class 3.6	Wool	1

Note: Figures relate to applications for PDO, PGI and TSG combined. Includes approved, published and published applications.

NB: Regulation 1151/2012 also provides for the possibility of cork, cotton, wicker, scutched flax, leather, fur and feather products to be registered, but no such goods have yet been submitted for the Commission's review.

Source: Agribusiness Intelligence based on EU's DOOR database

eligible for protection under these three schemes. The Commission has established three broad product classifications, each of which is broken down into numerous specific sub-categories.

Class 1 products are essentially 'agricultural' goods as defined in Annex I of the EU Treaties, i.e. products which are unprocessed or only lightly processed. Class 2 goods are processed or manufactured food or drink products - non-Annex I goods in EU parlance - while Class 3 covers a number of non-food products, such as ornamental flowers and essential oils. (Remarkably, a variety of hay produced in La Crau in southern France also has PDO status).

The categories for which products have been registered are set out in Table 1.

Protected Designation of Origin (PDO)

The first of the three GI categories set out in Regulation 1151/2012 is Protected Designation of Origin, or PDO. According to EU law, the PDO label and accompanying logo identifies products *"originating in a specific place, region or, in exceptional cases, a country, whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production steps of which all take place in the defined geographical area."*

This is a definition which places a high premium on locality and makes a strong presumption that the unique qualities of products with PDO status are derived "essentially or exclusively" from the place where they were produced.

The documents which applicants are required to submit to gain PDO status require them to provide evidence of a *"causal link between the geographical area and a specific quality, the reputation or other characteristic of the product."* There is a strong appeal to local knowledge and a connection with local heritage – in many cases, the latter takes the form of a lengthy evocation, duly published in the EU's Official Journal, of the history or folklore surrounding a product and its claimed properties.

As a European Commission publicity campaign for its GI system in October 2017 stated: *"Every dish has a story behind it at personal as much as at national or regional level."*

Applicants must also define the marketing, cultivation or manufacturing specifications to which producers must adhere if they are sell their goods with the PDO label in question - as well as defining the geographical areas within which the goods may be produced. The locality to which a PDO attaches is in some cases very restricted, although in some other cases, the label and designation can be applied to an entire member state.

For fruits and vegetables (of which some 155 types have been registered as PDOs) the soil, climate and other growing conditions are generally cited as being the factors that make the product unique.

One example is "Olive de Nimes", an olive type grown in southern France. The rules of production, as set out in the application published by the European Commission, specify the 223 municipalities in which the product may be grown, and emphasises the olive variety's resistance to weather extremes. It also claims that *"know-how regarding grove management and processing has been passed down during the long history of olive production in the Gard [the département where the crop is produced]."*

The higher the degree of processing involved with a product, however, the more tenuous the intrinsic link between the product and the geography might appear to be.

An example is "Upplandskubb" – a bread made from rye and bread in the Uppland region of Sweden, and one of only four bakery products in the EU to have PDO status (a further 72 are registered as PGI). The application states that the particular qualities of this product *"are closely linked with morphological characteristics and climate and soil conditions in the geographical area"*, but then goes on to discuss primarily the historical and cultural significance of the product for the region in question.

The product type with the largest number of PDO registrations is cheese, with 189, followed by fruits, vegetables and cereals (fresh or processed) with 155, and oils and fats products (e.g. butter, vegetable oils etc.), with 115. These three types of product – all of them 'primary' agricultural products within the meaning of Annex I of the EU Treaty – account for almost three-quarters of all registered PDOs.

Protected Geographical Indication (PGI)

The Protected Geographical Indication (PGI) label is subtly different from PDO, in that it makes slightly less exacting demands of the producer in terms of the sourcing of the raw materials for the product in question.

In the words of Regulation 1151/2012, a 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."*

Despite this more slightly more open stance on product sourcing, the reasons why a product should be granted PDO as opposed to PGI status are not always transparent.

There are 226 fruit, vegetable and cereal products listed as PGI in the EU – more than the number of PDOs for this category – even though it is most unlikely that a fresh fruit or vegetable product would contain 'ingredients' imported into the region from the territories beyond.

One of the 226 products is "Citron de Menton", a lemon produced in the south-east of France. The rules, as set out in the application published by the European Commission, state that the product *"is harvested by hand. It does not receive any chemical treatment after harvesting and it is not coated in any type of wax."* The lemon's specific characteristics are attributed to *"the unusual location of the geographical area of the 'Citron de Menton' between the sea and the mountains."*

There are a significantly higher number of manufactured food and drink products in the PGI category than PDO – for example, 72 PGI bakery products and 20 PGI beers, compared with respectively four and zero registered as PDO. In many cases, the link with the locality described in the product name is a cultural and historic one rather than being based on any real geographical, climatic or morphological factors.

For example, the application for Cornish Pasty – a *"D-shaped pasty which is filled with beef, vegetables and seasonings"* and which may be produced only in Cornwall in south-west England – evokes very strongly the region's tin-mining and agricultural heritage, and notes that *"miners and farm workers took this portable, easy-to-eat convenience food to work with them because it was so well suited to the purpose."* There is no requirement for the raw ingredients for a Cornish Pasty to be sourced from within Cornwall (and hence it would have been ineligible for PDO status), but the application does tentatively suggest that *"the nature of Cornwall's climate – wet and mild – and its physical geography have made it ideally suited for both beef production and the growing of vegetables."*

PGI status has been a popular choice for local types of meat product. In all, 121 fresh meat types have been registered for PGI (compared with 43 for PDO) and 134 for cooked, salted and smoked meat products (versus 35). By contrast, there are only 45 PGI labels for cheese, compared with 189 PDO labels.

Traditional Speciality Guaranteed (TSG)

The third and least-used category in the EU system is Traditional Speciality Guaranteed (TSG). This could be described as "the non-geographical GI", in that it evokes traditional practices of production or manufacture, but not any claimed link between the product and its locality of origin. With TSG, it is the process or tradition that is being protected, without any geographical association.

According to the main EU regulation, *"a name shall be eligible for registration as a traditional speciality guaranteed where it describes a specific product or foodstuff that a) results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or b) is produced from raw materials or ingredients that are those traditionally used."*

"For a name to be registered as a traditional speciality guaranteed, it shall a) have been traditionally used to refer to the specific product; or b) identify the traditional character or specific character of the product."

It is nevertheless the case that most of the 57 products registered are regional, local or national specialities – for example "Kabanosy", which are officially described as *"long, thin sticks of dry sausage twisted off at one end and evenly wrinkled,"* and much prized as a delicacy in Poland.

It is notable that 30 of the 57 TSGs registered in the EU originate from the 10 former Communist countries of central and eastern Europe. These include the system's only multi-country registrations: four processed meat types which have been co-registered by both the Czech Republic and Slovakia.

Applying for GI status

Applications for PDO, PGI or TSG status may come from individual food producers or from groups or associations. They must in the first instance be submitted to the relevant member state authority for verification and consultation, to ensure that no objection to the proposed registration is forthcoming from any other producer in that member state. The dossier is then sent by the member state to the Commission, with details of the product, and of the basis for which GI status is sought.

The Commission aims to examine the document within six months, but the process from application to approval can take much longer – as long as four or five years in some cases.

After the Commission has examined the application document, it is published in the EU's Official Journal. Interested parties, both within and outside Europe, then have three months to lodge any notice of opposition.

If no objections have been received within three months, the EU publishes the submission as a Regulation and add the product's name to the DOOR database. If a notice of opposition is lodged, then a consultation process is opened. All such applications are adjudicated by the Commission's Agricultural Product Quality Policy Committee

For every application, an approved inspection body has to be nominated. This body is required to inspect the production methods of the relevant producer at least once every three years to ensure continued compliance with the production conditions set out in the application. However, there is no 'sunset clause' on GI registrations; once registered, the protection bestowed by GI status continues indefinitely.

Registrations by country

As illustrated in Table 2, enthusiasm for the EU's GI system is markedly more pronounced in the countries of the Mediterranean region than elsewhere. Of the 1,409 GIs currently registered on the EU's DOOR database, some 977 – well over two-thirds of the total number– are shared among just five countries (Italy, France, Spain, Portugal and Greece).

Table 2: Number of registered GIs for agri-food products, per country and per GI type, as of mid-November 2017

Country	GI type PDO	PGI	TSG	Total
Total	**632**	**720**	**57**	**1,409**
Italy	167	125	2	294
France	103	141	1	245
Spain	102	89	4	195
Portugal	64	73	1	138
Greece	76	29	0	105
Germany	12	77	0	89
United Kingdom	25	40	4	69
Poland	8	20	9	37
Czech Republic	6	23	0	29
Slovenia	8	12	3	23
Belgium	3	10	5	18
Austria	10	6	1	17
Croatia	9	7	0	16
Hungary	6	7	1	14
Netherlands	6	5	3	14
Slovakia	2	8	3	13
Finland	5	2	3	10
China	4	6	0	10
Sweden	3	3	2	8
Bulgaria	0	2	5	7
Denmark	0	7	0	7
Ireland	3	4	0	7
Lithuania	1	4	2	7
Cyprus	1	4	0	5
Latvia	1	1	3	5
Luxembourg	2	2	0	4
Romania	1	2	1	4
Multi-country (Cz, Slvk)	0	0	4	4
Thailand	0	4	0	4
Turkey	2	1	0	3
Norway	0	2	0	2
Andorra	0	1	0	1
Columbia	0	1	0	1
Dominica	1	0	0	1
India	0	1	0	1
Indonesia	0	1	0	1
Vietnam	1	0	0	1

Note: Includes only registered PGI, PDO and TSG products. Excludes wines and spirits. Orange text = non-EU country.
Source: Agribusiness Intelligence based on EU DOOR database

Italy alone has registered 110 different types of fruit, vegetable or cereal, which is the largest number for any single product type in a single member state. Spain (62) and France (55) have also been prolific in registering this type of product.

The EU's database also includes 78 separate GI registrations for French fresh meat types, while France and Italy have protected status for respectively 54 and 53 types of cheese.

However, every one of the EU's 28 member states has registered at least some products as local specialities - with the sole exception of Estonia. Applications have also been registered on behalf of nine different non-EU countries, in respect of 25 individual product names.

Wines and spirits

For wines, the EU maintains a register not only of geographical indications per se, but also of protected terms relating to wine quality indications such as “grand cru”, “chateau”, “primeur”, “Qualitätswein”, etc.

Wine names are protected with the same two main names as agri-food products, namely PDO and PGI. The former is generally used in conjunction with national origin label schemes (such as the French *Appellation d'Origine Controlée*, or AOC) and denotes protected names for quality wines, while the PGI status typically indicates regional wine types or varieties.

According to the EU's E-Bacchus database, which contains the full list of registered names, the EU has 1,353 wine names with a PDO (protected designation of origin), of which about two-thirds are accounted for by one of two countries - France or Italy. There are also 459 wines with a PGI, of which Italy, Greece and France between them account for around three-quarters – see Table 3.

It also includes a register of wine-related GIs which have been registered by third countries, and which the EU recognises as protected terms – see Table 4. These are almost as numerous as the EU-registered entries in the relevant database; there are 440 *“wines with a geographical origin”* registered from 11 separate third country producers, plus 696 *“wines with a name of origin”*, all registered by the United States. In addition, the Brazilian “Vale dos Vinhedos” and the US “Napa Valley” are both registered as PDOs.

Table 3: Number of registered GIs for wines, per EU member state and per GI type, as of November 2017

	GI type		
Country	**PDO**	**PGI**	**Total**
Total EU	**1353**	**572**	**1925**
Italy	500	135	635
France	403	158	561
Greece	33	123	156
Spain	100	45	145
Hungary	58	16	74
Portugal	47	18	65
Bulgaria	52	2	54
Romania	39	13	52
Germany	14	26	40
Austria	26	3	29
Slovakia	17	3	20
Slovenia	14	3	17
Croatia	16	0	16
Czech Republic	12	2	14
Netherlands	0	12	12
Cyprus	7	4	11
Belgium	7	2	9
United Kingdom	3	2	5
Denmark	0	4	4
Malta	3	1	4
Luxembourg	2	0	2

Note: Includes registered PGI and PDO products. No products registered for Estonia, Ireland, Latvia, Lithuania, Poland, Finland or Sweden
Source: Agribusiness Intelligence based on E-Bacchus database.

Table 4: Number of registered GIs for wines, per non-EU country and per GI type, as of November 2017

	GI type			
Country	**Wine with geog. indication**	**Wine with name of origin**	**PDO**	**Total**
Total	**440**	**696**	**2**	**1138**
United States	0	696	1	697
South Africa	153	0	0	153
Australia	78	0	0	78
Chile	61	0	0	61
Switzerland	37	0	0	37
Albania	36	0	0	36
Serbia	29	0	0	29
Georgia	18	0	0	18
Montenegro	9	0	0	9
Bosnia-Hercegovina	7	0	0	7
Canada	7	0	0	7
Moldova	5	0	0	5
Brazil	0	0	1	1

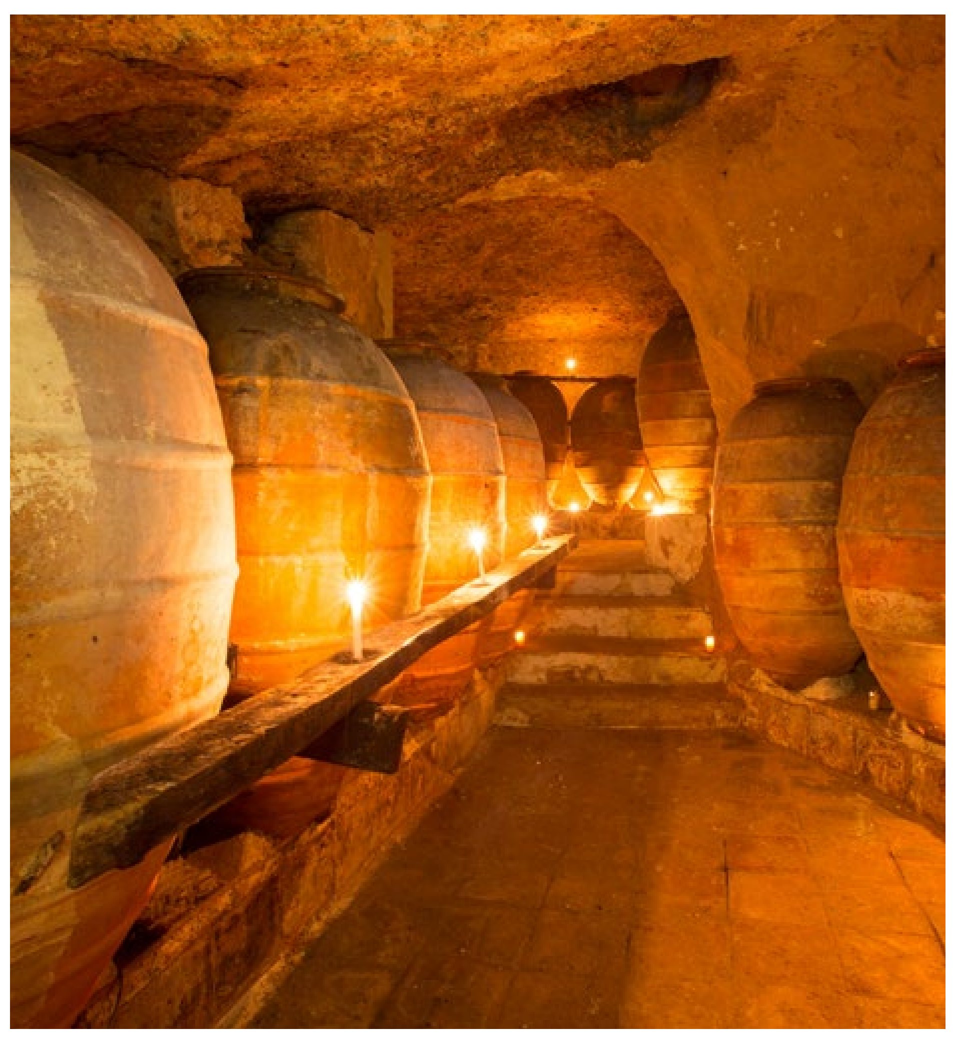
Source: Agribusiness Intelligence based on E-Bacchus database.

Similarly, protected names for spirit drinks are provided for by Regulation 110/2008, and are listed in the perhaps more prosaically-named E-Spirit-Drinks database. This includes spirit drinks registered, or applied for, from every EU member state, plus five third countries - Guatemala, Mexico, Peru, Norway and Russia. For sprits, there is a single designation of 'geographical indication'.

The EU has already approved 245 registered names for as many as 47 different categories of spirit drink, with 15 additional names currently under review. Russian vodka and Mexican tequila are among the non-EU products for which approval is pending.

There is also a relatively small number of protected names for aromatised wines, under Regulation 251/2014. This regulation combines product definitions for drinks such as "Vermouth" and "Glühwein" with a limited number of geographical indications, notably limiting the use of "Sangria" outside of Spain and Portugal.

[i] Opening recital of "Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs"



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4. Cashing in on cachet: The value of agri-food GIs

Geographical indications are valuable and sought-after attributes. Products which are eligible to bear these indications feature them prominently on the product's packaging – and products which are not eligible to bear those indications sometimes attempt to do so anyway.

But what is the intrinsic market value of a GI? Many consumers will pay a premium for a product which can demonstrate that it has its roots in a particular location. But how can that premium be measured?

A study to measure precisely this impact was commissioned by the European Commission in 2012. The study, conducted by an international team of economists led by France's AND-International, has become the standard reference work on the topic of GIs and their value to the agri-food producers who use them.

The central finding of the report – entitled *"Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a geographical indication (GI)"* – is that the worldwide sales value of GI products in the EU-27 in 2010 (the main year of reference for the study) was €54.3 billion.

This data was based on the 2,768 products in the EU-27 which, at that time, had been registered for PDO, PGI or TSG status, or their equivalent for wines or spirits.

Sales of GI products represented some 5.7% of total food and drink sector sales in the EU27 in that year, but sales of GI goods had increased by some 12% between 2005 and 2010. Moreover, GI products were having a disproportionately powerful impact on export markets, according to the study's findings. Around 19% of all sales of GI products were sold for export outside the EU, with extra-EU exports having grown by 29% in the five years since 2005.

Notwithstanding these statistics, the study found that 60% of all GI sales in 2010 were sold in the country where they were produced, with some 20% sold in other EU countries.

From an economic point of view, the GI landscape is dominated by the EU's globally-significant protected names for

"The worldwide sales value of GI products registered in the EU27 was estimated at €54.3 billion in 2010 at wholesale stage in the region of production; it increased by 12% between 2005 and 2010. GIs represented 5.7% of the total food and drink sector in the EU27" [i]

Table 5: Value of GI sales for each member state by scheme, in 2010 (€m)

	Wines	Agri. prod. and food	Spirits	Total	% wine	% agri. prod. and food	% spirits	% total
FR	15 714	3 045	2 094	20 854	75%	15%	10%	100%
IT	5 690	5 982	134	11 806	48%	51%	1%	100%
DE	2 277	3 375	76	5 728	40%	59%	1%	100%
UK	13	1 059	4 434	5 506	0%	19%	81%	100%
ES	3 502	869	207	4 578	77%	19%	5%	100%
PT	1 082	73	4	1 158	93%	6%	0%	100%
GR	203	753	102	1 058	19%	71%	10%	100%
AT	734	139	58	932	79%	15%	6%	100%
IE	0	29	578	607	0%	5%	95%	100%
HU	470	17	9	496	95%	3%	2%	100%
Others (17 MS)	691	448	453	1 592	43%	28%	28%	100%
EU-27	**30 376**	**15 790**	**8 149**	**51 346**	**56%**	**29%**	**15%**	**100%**

Note: Excludes aromatic wines. Source: AND-International survey for DG AGRI

wines and spirits. Wines bearing a GI (of which there were 1,560 in 2010) accounted for 56% of the total sales value of protected agri-food products, or €30.4bn, while spirits (337 GIs) made up a further 15% (€8.1bn).

Agri-food products (which numbered 867 in January 2010) accounted for 29% of the total (€15.8bn), while aromatised wines contributed just a small fraction (0.1%).

The leading member state, in terms of aggregate value of sales of GI products, was France with €20.9 billion, which is well over one-third of the overall total for the whole EU-27. Perhaps unsurprisingly, 75% of that value derives from wine sales – the immense brand value of "Champagne", "Bordeaux", "Beaujolais" and the rest making its impact felt.

The next highest member state is Italy, which registered GI sales in 2010 of €11.8bn. This was split almost evenly between agricultural products and foodstuffs (51%) and wines (48%), with just 1% for spirits.

Germany registered sales totalling €5.7bn (59% for agricultural products and foodstuffs, 40% for wines, 1% for spirits), while the United Kingdom's GI sales amounted to €5.5bn, of which 81% were for spirits and 19% for agricultural products and foodstuffs. In the UK's case, the sales value of "Scotch Whisky" overshadows all other GIs.

Following on from these 'big four', there were significant GI sales values also in Spain, Portugal, Greece, Austria, Ireland, Hungary and Poland. But the total sales value in each of the remaining 16 member states was lower than €300m in 2010 – illustrating the imbalance in the allocation of economic benefit across the member states.

The AND-International survey also demonstrated that 10 specific sectors, across six member states, accounted for 90% of the total value of GI sales in 2010 (Table 6). This points to an imbalance not only in the economic value of the EU's GI programme across the EU's member states, but also in the political economy surrounding the concept and the scheme. While GIs, and their protection, are hugely important for certain member states, in others the scheme is of much lesser importance.

A further interesting fact uncovered by the study was that the economic impact of GIs in terms of the sales value of protected products is not always proportionate to the number of GI products registered (Figure 1).

Germany and the UK between them accounted for some 21% of the value of GI product sales in 2010, even though they had only 6% of the total number of registered products. This suggests that these member states have (consciously or unconsciously) adopted a policy of seeking GI registration for higher-value food products, rather than less economically significant local produce.

By contrast, Portugal and Greece accounted for only 4% of product sales value from 15% of overall product registrations, while the 17 member states with the lowest sales values between them made up just 3% of the EU-27 value, even though they had 12% of the total number of products.

Price premium for GI products

The AND-International study also attempted to calculate the price premium which a GI product can command. Although the methodology for this calculation was fraught with various issues, the basic conclusion was that the value premium for EU GI products overall was 2.23. This means that the prices earned by GI products were, on average, 2.23 times as high as the same quantity of non-GI products. Across the EU-27, the total value premium for GIs in 2010 was estimated at €29.8 billion.

The value premiums for wines and spirits, at 2.75 and 2.57 respectively, was significantly higher than that for agri-products and foodstuffs (1.55). In the case of wines, this price differential is likely to reflect a widely-acknowledged differential

in product quality between the 'premium' wines which typically qualify for PDO status, and the more nondescript product which does not quality for these labels.

Among agri-food products, the premium is distributed according to a distinct hierarchy, with processed meat products at the top (a value premium of 1.80). The data suggests that higher the degree of processing, the higher the premium which a GI label can command, with the value premium highest for processed meats (1.80), olive oil (1.79), beers (1.62) and cheeses (1.59), and substantially lower for fruit and vegetables (1.29), fish and seafood (1.16), and fresh meat (1.16).

The study noted that the 'value premium', based on sales returns, was not necessarily a reliable indicator of value-added or profitability, because it took no account of the possible additional costs of compliance with GI production or manufacturing standards – which in many instances are more demanding than those for standard products of the same type.

However, a separate London Economics study[ii], dating from 2008, did make an assessment of the extent to which the value premium enjoyed by GI products outweighed these higher production and certification costs. Its finding was that for

Table 6: Leading schemes/member states by sales value in 2010 (€000)

Member state	**Scheme**	**Sales value (€000)**	**% of total value**	**Cum. %**
France	Wines	15,714,079	29%	29%
Italy	Agri. prod and food.	5,982,211	11%	40%
Italy	Wines	5,689,524	10%	50%
UK	Spirits	4,433,539	8%	59%
Spain	Wines	3,502,306	6%	65%
Germany	Agri. prod and food.	3,374,893	6%	71%
France	Agri. prod and food.	3,045,363	6%	77%
Germany	Wines	2,277,366	4%	81%
France	Spirits	2,094,387	4%	85%
Portugal	Wines	1,081,943	2%	87%
UK	Agri. prod and food.	1,059,339	2%	89%
Spain	Agri. prod and food.	868,699	2%	90%
Others	-	5,191,037	10%	10%
EU27	**-**	**54,346,032**	**100%**	**-**

Source: AND-International survey for DG AGRI

Figure 1: Share of sales values vs share of total no. of GIs, by member state

	France	Italy	Germany	United Kingdom	Spain	Portugal	Greece	Austria	Ireland	Hungary	Other MS
% sales value	38	22	11	10	8	2	2	2	1	1	3
% no of GIs	24	27	5	1	10	6	9	2	0.3	2	12

Source: AND-International survey for DG AGRI

66% of the PDO and PGI products studied, the profit margin was higher than for comparable non-GI products.

The 2010 study by AND-International does not appear to have been replicated in more recent years, and hence the available data on the economic value of GIs in the EU is necessarily limited to some extent by its age. Nevertheless, it is clear enough that GI products represent a significant and growing segment of the European agri-food market. There is room for debate as to whether, or to what extent, a GI label bestows on a product a saleability and price premium which it would not otherwise have had. It might be argued that, in some cases, the label simply represents codified recognition of higher-quality products which would have sold at a premium price in any case.

The extent to which the GI system impacts on agri-food product sales also varies greatly by segment. This is seen strikingly in export sales data. Some 87% of EU wine exports (by value) are represented by GI products, with 64% for spirits. But export sales of agri-food products bearing a GI label account for a mere 2% of total European agri-food exports.

From a political point of view, therefore, there is at least some evidence to support either of the popular 'narratives' around GIs. The European view is that GIs are a way of consolidating and adding value to traditional local products which are sold primarily in their own neighbourhood, while others (mostly non-Europeans) see it as a quasi-imperialistic attempt to corner the market for globally-traded products which bear a traditional food or drink name.

GI labelling infringements

Of course, one clear indicator of the commercial value of a GI label is the extent to which unscrupulous traders attempt to cash in on that GI value premium by selling products bearing labels which they are not legally entitled to carry.

In 2016, a study[iii] conducted for EUIPO (the European Union Intellectual Property Office) attempted to measure the extent of GI fraud, in what was billed as the first study of its type.

Its conclusion, based on a combination of research on infringement sampling data and extrapolation to fill in gaps in a number of member states, indicated that irregularly-labelled GI product sales in 2014 amounted to a value of around €4.3 billion, corresponding to 9% of the total GI product market. EU consumers were adjudged to be losing €2.3 billion annually *"by paying a premium price for what they believe to be a genuine GI product while in fact they are victims of deception."*

The EUIPO study said that there had been very few instances of "GI-infringing products" recorded by EU customs, which implied that most of the infringements concerned originated within the EU. It added: *"There is, however, no concrete evidence or reliable data allowing one to identify precisely the origin of these infringing products."*

The value of the data, as EUIPO concedes, is heavily dependent on the accuracy of the infringement data reported. No infringements were detected in six of the seventeen member states for which

Table 7: GI infringement by member state (2014)

Member State	Infringement rate	Infringement value (€m)
BE	9.6%	88.0
BG	no infringements found	0
CY	no infringements found	0
CZ	2.1%	3.6
DE	7.5%	598.2
EE	no infringements found	0
EL	21.9%	234.5
ES	5.7%	266.1
FI	no infringements found	0
FR	10.3%	1,572.8
HU	10.8%	50.7
IT	8.8%	682.4
LT	no infringements found	0
LU	25.4%	23.0
PL	9.9%	27.8
SI	6.9%	9.0
SK	no infringements found	0
EU17	9.0%	3,556
Other MS (extrapolation):	-	770
EU28: Estimate	**9.0%**	**4,326**

data was returned, which may not necessarily correlate to zero fraud being committed in these countries. In two member states – Greece and Luxembourg – an infringement rate of over 20% was detected (see Table 7).

Wines accounted for 54.3% of the infringements detected and spirits a further 13.3%, suggesting that GI product fraud is (unsurprisingly) likely to be most prevalent for the highest-value products.

The study said that infringement cases were divided fairly equally between three types: imitation or evocation of GI products (42% of cases); misleading information about the origin of non-GI products (38%); and GI products themselves (i.e. products originating from producers in the relevant GI area) which did not comply with the functional specifications demanded by the GI label in question (21%).

The study concluded with a nod to the area where the EU feels GI fraud is a more serious issue: *"In the future, the study could to be extended to include the international aspect of EU GIs infringements in third countries. As the protection of GIs is expanded through, inter alia, bilateral trade agreements, it should become possible to expand the scope of this research by studying infringements at a more global level."*

[i] "Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a geographical indication (GI)". Final report for European Commission, October 2012.

[ii] "Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)". London Economics, 2008.

[iii] "Infringement of protected geographical indications for wine, spirits, agricultural products and foodstuffs in the European Union". European Union Intellectual Property Office (EUIPO), April 2016.

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5. GIs and international trade

It is perhaps slightly ironic that many of the European food and drink products which have their roots firmly planted in a specific locality should today be so much in demand all around the world. Certain products whose names include indications of their original place of origin are now by-words for quality and hence coveted by discerning middle-class consumers on every continent.

GIs accordingly represent a significant (and growing) part of the EU's agri-food export trade. The AND-International survey of GI sales values, already referred to in Chapter 4, estimated that 15% of EU agri-food exports in 2010 were GI products, with sales worth a total of €11.5bn.

Moreover, GI export sales had grown by a reported 29% in the five years between 2005 and 2010. If one were to assume, hypothetically, that that same rate of growth had continued to accrue in the five years since the study was published – not an unreasonable assumption – then GI export sales by 2015 would be not far short of €15bn.

The situation is significantly differentiated between wines and spirits on the one hand, and other agri-food products on the other. GI exports in the former category include iconic names like "Champagne" and "Scotch Whisky" – respectively the single most valuable agri-food export products of France and the UK – while the latter category includes numerous very small and very local products (alongside, of course, some major export products like "Parmigiano Reggiano" and "Prosciutto di Parma").

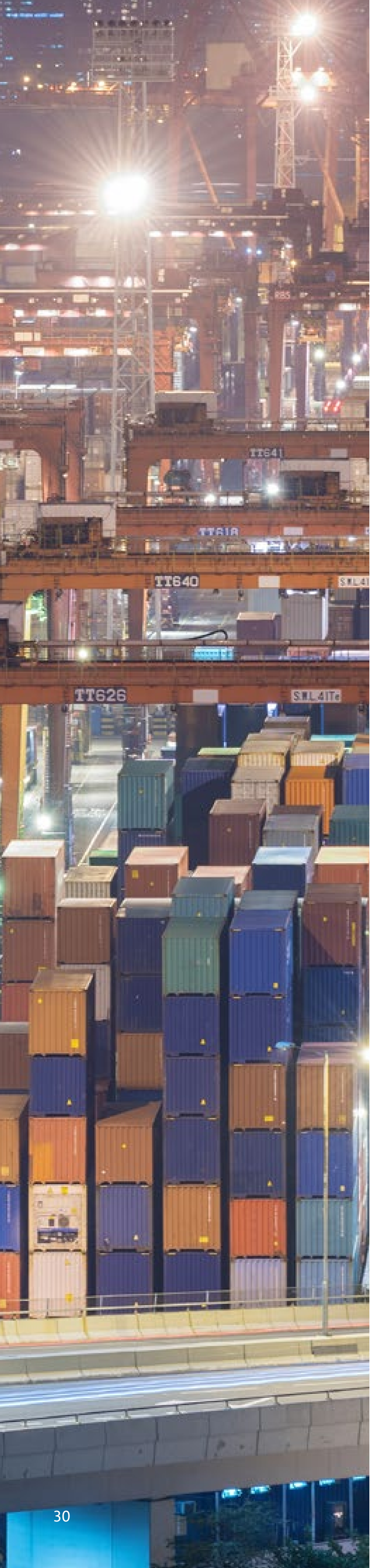
In all, GI products account for 87% of wine exports and 64% of spirit exports, but only 2% of agricultural product and foodstuffs exports – see Table 8.

The more GI products are exported, the greater is the EU's desire to see regulatory protection for these products on third country markets.

At present, the rules preventing local producers in non-EU countries from using terms which – in the EU's view way of creating 'lookalike' or 'soundalike' products, which may deceive consumers into believing they are buying a product which has an origin and an imputed quality that it does not possess, are somewhat patchy.

As discussed in Chapter 2, the TRIPS agreement, overseen by the WTO, sets out

"Registered products should indeed be protected from unfair competition both within the EU and in other countries worldwide" [i]



basic rules on GIs which are intended to minimise the risk of consumer deception as to the true origin of the product. For wines and spirits, the protection given to geographically-based product names under TRIPS Article 23 is absolute. Hence it would not be permissible to market a product under the name of (for example) "Chilean Chablis", even though such a name would leave consumers in no doubt that its origin was Chile, and not France.

For other agri-food products, however, there is no blanket restriction on using terms which are viewed as GIs in other territories, as long as there is no intent to deceive as to the product's region of origin. There is therefore nothing to prevent (for example) a product called "Australian Feta" being marketed in that territory, even though the name "Feta" is registered as a PDO in the EU, and hence only Greek cheesemakers may use that that name within the European market.

Internationalising the EU's GI rules

Given the significant and expanding value of EU GI products on the world market, the EU has a clear commercial interest in 'internationalising' its GI protection for agri-food products to the extent possible.

For many years, Brussels drove negotiations towards a possible extension of the 'higher-level' protection for GIs on wines and spirits to other agriculture and food products, via the creation of internationally-binding register of protected food names as part of the WTO Doha Round negotiations. However, this was firmly resisted by the EU's 'New World' trading partners, and the talks had ground to a halt even before the wider negotiations on a multilateral trade liberation agreement within the Doha Round process entered into a political 'deep-freeze' (from which they have yet to emerge).

So the EU's approach in recent years has shifted to a bilateral approach, in which it is seeking to embed protection for its most cherished GIs into the framework of the multiple trade deals which it is in process of negotiating, ratifying or concluding with key trade partners around the world.

Once GI protection has been established in most of the leading global markets for EU agri-food exports – which is the EU's current aspiration – then it will have effectively applied a matrix of legislative provisions which will have an effect not dissimilar to that which a multilateral agreement would have had.

This approach has already delivered significant results. GI protection forms an integral part of the EU trade agreements already in place with Korea, Singapore, Columbia & Peru and Central America, as well as featuring in the so-called Deep and Comprehensive Free Trade Agreements with Ukraine, Moldova and Georgia.

More recently, the EU has gained a significant degree of GI protection in its new bilateral trade agreement with Canada – much to the displeasure of the US, a major supplier to the Canadian market – and is now aiming to incorporate GI provisions into the emerging trade deals with Japan, Mexico, the Mercosur bloc of South American countries, Australia and New Zealand.

To take one example – the provisionally-agreed deal with Japan will, when ratified, apply the 'higher level' of protection (in the sense of TRIPS Article 23) for some 205 foodstuffs, wines and spirits on the Japanese market.

In cases where these protected terms are currently being used by domestic suppliers on the Japanese market, this will not be the case for much longer. The deal calls for the *"phasing out of prior uses [of GIs] identified on the Japanese market within five years after entry into force of the Agreement for alcoholic beverages, and within seven years for foodstuff GIs."* There will also be a mechanism for adding new GIs to the list protected under the agreement.

There are similarly 171 GIs listed as part of the EU-Vietnam agreement, which is expected to enter into force in early 2018, while 143 terms are registered under the EU-Canada deal that came into force in September 2017, and a similar number of protected terms are sought under the EU-Mercosur deal.

The problem with these initiatives, as seen from outside Europe, is that they are not purely bilateral in nature. Where the relevant partner country agrees to protect the GIs proposed by the EU, this protection is written into the national law of the country in question. It then applies for all goods sold on that country's market,

including imports into that country from territories other than the EU.

This has clear, and concerning, implications for major exporter countries of the higher-value products typically covered by these agreements – such as the US, Australia, New Zealand, Brazil and Argentina.

Economic impact of GI registration in non-EU countries

These concerns are being focused primarily via the Consortium for Common Food Names (CCFN), launched in 2012 by a coalition of food industry groups based in the US. The group accuses the EU of seeking to place undue restrictions on the use of food names which it sees as common or generic – its mission statement being *"to protect worldwide the right to use common food names"* and to *"challenge attempts by any group to monopolize generic names"* (see also Chapter 6).

In September 2016, at a time when negotiations for a Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US were still "live", CCFN commissioned Informa Economics IEG - part of Informa Agribusiness Consulting – to examine the impact of the extension of EU GI restrictions on product names for cheeses on the US dairy market.

The study [ii] postulated a number of assumptions about the extent to which EU cheese names might be protected in the wake of an EU-US trade deal. These included, at the most extreme, the (rather unlikely) scenario of the EU seeking the deny US cheesemakers the right to sell under acknowledged generic names like "Cheddar", "Edam" or "Emmentaler".

The study concluded that under a worst-case scenario, full extension of EU protection for cheese names into the US market would end up reducing US cheese consumption up to 21% - the equivalent of up to $5.2 billion in lost cheese sales – as consumers were forced to switch to new EU suppliers for the cheese types they were used to buying.

Image © Shutterstock.com

Dairy farmers could lose up to $59 billion in revenue as access to domestic markets was lost, farm margins could be driven below the break-even point for up to six out of 10 years, with dairy farmers losing up to 15% of their revenue, and the US dairy herd could be reduced by up to 9%, the study found.

While the political likelihood of some of the scenarios underlying these impact assessments can be challenged, the study is nevertheless a very clear indicator of the economic value of the GI assets which Europe claims as its own, and the potential disruption which wholesale extension of the EU's GI policies to third countries might cause.

It is challenges of this type which have given rise to political opposition to aspects of the EU's GI scheme in many non-European countries. This opposition is examined in more depth in the next chapter.

[i] "Future of CAP: Protecting our traditions". European Commission information note, October 30 2017.

[ii] "Assessing the Potential Impact of Geographical Indications for Common Cheeses on the U.S. Dairy Sector". Report by Informa Economics IEG on behalf of the Consortium for Common Food Names.

Table 8: Share of exports on extra-EU markets of GIs in the total exports of the EU 27 (2010, €m)

Product type	Total exports (GI and non-GI)	GI exports	% GI/total
Wines	6 732	5 886	87%
Spirits	7 167	4 614	64%
Agri. Prod. and foodstuffs	61 713	1 007	2%
Total food and beverages	**175 612**	**11 507**	**15%**

Source: AND-International survey for DG AGRI

6. Concerns and opposition to GI policy

"Food terms that have entered into wide-spread usage around the world should continue to be permitted to be used by a variety of companies, including those that built and served those markets, rather than being allowed to be stolen by a narrow set of suppliers from one region (i.e., the EU). It is particularly egregious when these former colonialists attempt to now impose colonial-like dominance by undermining the rule of law and ignoring the rights of others in gaining restrictions for their claimed GIs through leverage and aggressive tactics at the negotiating table" i

GI labelling has attracted controversy, concern and criticism ever since the concept of protecting geographical product names first began to be codified many years ago. The EU – as the most enthusiastic global supporter of the concept and principal protagonist in the attempts to globalise GI recognition in international trade – has attracted the lion's share of the concerns which have been voiced in recent years.

The opposition is not exclusively external, moreover. The EU's GI scheme has its critics within Europe as well, especially from those member states which have seen their agri-food industries' activities restricted as a result of new labelling rules. A classic example was the decision in 2002 to reserve the term "Feta" exclusively for Greece – a move which resulted in the Danish dairy industry (among others) being forced to find new labels for its own substantial production of this type of cheese, at least for sales on the EU market.

Few would deny that offering protection to genuine regional produce, to prevent its unfair misappropriation by non-local producers, is a legitimate policy objective. Indeed, many countries have their own GI schemes for food and drink products. Even the US, an arch-critic of the EU's initiatives in this area, makes it illegal for 'out-of-state' producers to sell "Tennessee Whiskey" or "Idaho Potatoes".

But the particular zeal with which the EU is expanding its GI scheme both internally and externally is causing concern.

Criticism tends to be focused in one of two areas; either a) the criteria for establishing and sustaining GIs, or b) or the restrictions on trade which are implied for those producers rendered ineligible to sell (or to continue selling) under the protected name.

Internal criticism

The sometimes arbitrary and less-than-entirely-scientific nature of the grounds under which certain product names are protected occasionally raises eyebrows, as do the sheer number of GIs which the EU has authorised since the 1990s – many of them very small-scale local products. It is easy to understand why a competitor might want to pass off a sparkling wine product as "Champagne" – and indeed, protection of such valuable intellectual property assets is the primary reason why GI labelling exists. But it is less clear why (for example) a multinational food corporation might want to pass off its fresh produce as "Ptujski lük" – a type of Slovenian onion – for unjustified economic gain.

It is also the case that the connection between agri-food products and their locality of origin is not always as absolute and immutable as is often implied by GI law. A celebrated case is that of “Newcastle Brown Ale”, a beer for which its manufacturer (Scottish and Newcastle Breweries) sought and obtained PGI status, on the grounds that the product was inextricably associated with the northern English city of Newcastle.

The company therefore found itself rather embarrassed when it relocated its production plant to new premises outside Newcastle, and consequently found itself at risk of being unable, under law, to sell its own product under its own brand name. Its response was to request the withdrawal of PGI status for which it had itself campaigned.

There have been other cases of GI labels being revoked or revised. In late 2017, the Commission agreed to withdraw PGI protection for the name “Carne de Morucha de Salamanca”, a Spanish fresh meat variety. This was because the producers had been unable to sustain production of meat derived solely from the Morucha cattle breed, and had been forced to cross-breed with other cattle types. Hence, to avoid charges of misleading labelling, a new GI, simply described as “Carne de Salamanca”, has been created.

External criticism

However, more serious is the criticism which the EU has attracted at international level, as it has sought to globalise its GI protection rules to benefit exporters of key European food and drink products beyond the EU.

As described in Chapter 5, the EU is attempting to include a register of protected GI names in each of the bilateral agreements which it is currently negotiating with key trading partners. Some of the product names for which the EU is seeking protection under the law of the relevant partner country are already in common use by local producers in that country, or by producers with ambitions to export these products to that territory – leading to charges that the EU is attempting to grab for its own industry intellectual property rights to which it should not legitimately have a right.

The Consortium for Common Food Names (CCFN) – a coalition of food industry groups based in the US – sees its mission statement as being *“to protect worldwide the right to use common food names” and to “challenge attempts by any group to monopolize generic names.”*

In an interview with IEG Policy for this report, Shawna Morris, Senior Director for CCFN, acknowledged that the absence of a globally-recognised list of ‘generic’ food names was one of the core problems that her organisation faced. [ii]

“We have touted the creation of a list of generic names as a helpful tool in achieving our aim, if it could be put in place. We have seen Codex Alimentarius [the UN-backed list of global food production standards) as an international standard for commonly produced products. But the latest viewpoint from Europe throws this assessment out of place.”

Morris was referring to the recent registration by the EU of “Danbo”, a traditional Danish cheese, which is also produced in a number of third countries, including Uruguay. The application was approved by the European Commission in October 2017, some five years after the Danish dairy originally registered the application, and in spite of formally registered opposition from third countries including Argentina, Australia, New Zealand, Uruguay and the US.

The registration of “Danbo” was greeted with particular outrage by CCFN and the industries it represents, because this is one of a number of cheese types for which a product standard is registered with Codex Alimentarius – and CCFN believes this ought to mean that the name is generic. But this interpretation was expressly rejected by the Commission.

In the preamble to its implementing Regulation 2017/1901, which approved Danbo’s registration as a PGI, the Commission stated: *“Having a specific Codex Alimentarius Standard as well as an inclusion of ‘Danbo’ in Annex B to the Stresa Convention does not imply that the said name has become ipso facto generic […] The perception of this term outside the European Union and the possible existence of related regulatory production standards in third countries are not deemed relevant to the present decision.”*

Image © RICIfoto / Shutterstock.com

Morris was scathing about the EU's ongoing attempts to embed GI protection in its growing network of bilateral trade agreements, condemning what she called the EU's "predatory" and anti-competitive approach.

"In Europe we are often mis-characterised – we are not anti-GIs. There is nothing wrong with proper protection of local food names. But we have significant objections to the specific extreme version of GI policy that the Commission has been pursuing in recent years. In particular, the EU has a GI policy that is not content to stop with just protecting regional names – instead it has pursued a predatory approach that restricts competition."

She critically contrasted the EU's approach with those of its trade partners. *"Most countries are keen to do the right thing [with GI registrations], not create significant harm to trade relationships. The Commission has an extreme viewpoint on this issue."*

Morris had little sympathy with the Commission's frequently-stated view that the EU is only seeking to protect its unique food heritage against misappropriation by others.

"That misses the point that there has been mass emigration to the New World over many decades. It should not be a surprise that a lot of the European food traditions have become popular in these countries too. The terms to which the EU wants to limit access are terms which have been broadly in the public domain, and in common use by non-European countries, for decades."

CCFN and its member businesses are especially worried about what they see as the EU's failure to be fully transparent about the precise terms that they seek to protect, and the alleged "creep" of GI terminology, to the detriment of local producers. Morris cited the case of the EU's objection to Costa Rica's use of the term "parmesano" – the local term for "Parmesan" cheese – even though this Spanish-language variant of the protected term had not formed part of the list of GIs covered in the EU-Central America agreement.

Non-tariff barriers to trade?

EU bilateral trade negotiations are continuing to proliferate, and GI recognition is forming an integral part of most of these negotiations. But is it not the sovereign right of the partner country concerned to decide whether or not it accepts the deal that is being proposed?

"I would not agree that two countries setting up trade barriers is WTO-compatible," Morris countered. *"In essence, the EU and the partner country are erecting non-tariff barriers for other suppliers wishing to trade products under the names in question. That's not in keeping with WTO principles."*

The US has always been an opponent of EU policy on GIs, and Morris did not take the view that the arrival of the Trump administration in Washington, with its strong 'America First' trade policy, had in reality made any substantial difference in terms of the US defence of common food names.

"We are seeing continued strong support for defending US market access rights. This was a priority under the previous [Obama] administration, and it still is under the current administration as well."

And Morris claimed that her organisation's campaign was starting to see some positive results. The EU-Canada trade agreement, which finally came into force from September 2017, had provoked controversy because of what CCFN claimed was the non-transparent way in which the 143 EU GIs covered by the accord had been registered under the agreement. These had been negotiated behind closed doors, she said, and then simply presented as a ***fait accompli*** once the terms of the deal had been concluded.

With subsequent agreements, such as those currently under discussion with Japan, Mexico and Mercosur, the parties had taken a different tack, whereby names provisionally agreed by the two sides were put forward for consultation by interested parties prior to confirmation, with the opportunity to lodge objections.

"EU-Canada was clearly recognised as the wrong way to go," Morris said. *"With the subsequent negotiations there is more transparency. It's a turn in the right direction – there are a lot of open processes right now."*

For the EU, of course, GIs clearly represent an "offensive interest" (in the parlance favoured by trade negotiators), in the sense that it is an area which it has everything to gain and very little to lose. It is therefore continuing to promote its GI agenda very vigorously as an integral element in the multi-faceted negotiations which are ongoing on multiple fronts.

But there have indeed been indications of compromise on the EU's side. For example, under the EU-Canada deal it has been agreed that the Italian term "Prosciutto di Parma", recognised as a GI under the new agreement, will have to co-exist with "Parma Ham" – long since trademarked under Canadian law by the Maple Leaf meat company. It has also been indicated that, in light of Uruguay's history of "Danbo" cheese production, the EU will not be seeking to include that term in the list of GIs covered by the EU-Mercosur agreement, even though it is a newly-recognised GI term within Europe.

"I am optimistic overall, but not without concern," summarised Morris. *"There is at least a trend towards greater transparency. But the EU needs to continue to improve its track record."*

The European Commission did not respond to a request to be interviewed for this report.

[i] Extract from a letter submitted by the Consortium for Common Food Names (CCFN) to the Mercosur group of countries on November 29 2017."

[ii] The closest that the EU has to an agreed list of generic food names is the Annex to Regulation 1107/96, setting an early list of protected food names in Europe, which states that "protection is not sought" for a group of 28 specific names. These are: "Graviera", "Chabichou", "Crottin", "Brebis Pyrénées", "Picodon", "Sainte Maure", "Tomme", "Camembert", "Emmental", "Brie", "Canestrato", "Pecorino", "Provolone", "Caciotta", "Formai de Mut", "Mozzarella", "Noord-hollandse", "Edammer", "Gouda", "Cheddar", "West country", "Lancashire", "Iraklion", "Crete", "Rethymno", "Lakonias", "Argolidas" and "Pilios". (NB - For Greek names, the officially approved Latin transliteration is used.)

Several of these terms have however been registered as protected GIs in conjunction with specific geographical names – e.g. "Gouda Holland", "Camembert de Normandie", "Pecorino Romano", "West Country Farmhouse Cheddar".

7. GIs and Brexit

The forthcoming departure of the UK from the European Union represents (among many other things) an interesting test of the international resilience of the EU's GI legislation.

The UK, as a non-member state, will have no a priori obligation to retain recognition of the EU's plethora of GIs within its own agri-food market. After Brexit, it could potentially disassociate itself with the EU's legislative framework for GIs, other than to the extent required to remain in compliance with the WTO TRIPS agreement. Alternatively, it may opt to maintain full recognition of the EU scheme, in return for continuing full recognition by the EU of the UK's own GIs. The place at which the UK ends up on the spectrum between these two extremes will say much about the intrinsic value to be placed on the whole notion of agri-food geographical indications.

The British government has never identified itself explicitly as an enthusiast for the GI model, perhaps in deference to its strong cultural links with 'New World' opponents to the scheme such as the US and Australia.

But it does nevertheless currently have 69 agri-food products (not including wines and spirits) registered with the EU as protected GIs (25 PDOs, 40 PGIs, and four TSGs). This is a higher number than any other non-Mediterranean member state other than Germany, and illustrates the extent to which regional authorities and food businesses have been active in the last 25 years in seeking recognition for their own food and drink specialities. Moreover, as of Autumn 2017 at least 12 additional food names from the UK were at various stages in the process to gain GI recognition at EU level.

Mutual recognition of GIs?

It therefore seems most likely that the UK will seek to negotiate a deal with the EU which allows mutual recognition of GIs on either side, as this will represent continuation of the status quo. But this remains one of many aspects of Brexit that has yet to be clarified.

"The UK's imminent exit from the EU may have an impact on the ability to utilise the existing EU geographical indication schemes," commented the UK's Food and Drink Federation, when contacted by Informa Agribusiness Intelligence for its views on the subject.

"Defra [the UK's Department for the Environment, Food and Rural Affairs] recognises the benefits of protecting traditional and geographical food products and also has a strong desire to promote UK food and drink as part of its export ambitions. As always FDF will work with stakeholders on behalf of the sector and consumers to protect our fine food and drink heritage and future," it continued.

"When the UK leaves the EU, registered protected food names should be able to benefit from EU protection against imitation, provided there is a reciprocal agreement between the UK and the EU" [i]

If there is no specific agreement on mutual GI recognition, it should remain possible, and relatively straightforward, for the UK to re-register its GIs as a third country using the EU GI system. As already noted, no fewer than nine non-EU countries already have their agri-food product names protected on the EU register, while 13 third countries have wines and /or spirits registered.

Re-registration or re-classification of the existing UK GIs on the EU database will of course be simplified if the UK commits to register all existing EU GIs on an equivalent UK database. There appears to be little reason why the UK would be unprepared to take such a step, unless there were to be a move by any part of the UK agri-food industry to 'de-recognise' any existing EU GI terms. For example, the UK dairy sector could conceivably seek to re-appropriate the term "Feta" for its own cheesemakers – having lost the ability to use this term when Greece registered it as a PDO in 2002.

But the UK government will be wary of taking any such step, as it will be aware that any move to de-register an EU GI will inevitably be met by a retaliatory de-listing on the EU side. It will therefore almost certainly prefer to keep Pandora's box firmly closed and accept like-for-like recognition of existing GI terms.

The UK has already indicated that, as a default, it will incorporate into UK law all legal provisions with an EU origin at the point of Brexit (as part of the so-called Great Repeal Bill'). This is likely to cover acceptance of existing GIs registered in the EU-27.

However, mutual acceptance of the status quo at the UK's point of departure will only be the starting point for resolution to the Brexit issue. Questions which will then need to be resolved include the following:

1.What happens when the EU approves new GIs after Brexit?

Will the UK automatically accept new GIs as valid in the UK once they are registered in the EU? Given that the UK will no longer have a voice in approving such applications, this seems unlikely. In all probability, a new UK approvals body will need to be created to authorise new GIs in the UK (possibly UKAS, the UK's National Accreditation Body) – and European food businesses may have to go through an entirely separate and duplicate registration process to get their GIs approved in the UK. Those producing smaller local products, with no real aspiration to export to the UK market, may decide not to bother, thus creating the first divergences in the GI databases controlled by the EU-27 on the one hand and the UK on the other.

2. What happens when the UK approves new GIs?

EU law currently states that non-EU products applying for EU GI status must already be protected in their country of origin. British producers seeking GI protection for agri-food products will thus need to apply to the new UK approvals body in the first instance, but would then, in all probability, have to make a parallel application to the European Commission in order to extend their protection to the market of the EU-27. Again, this will make GI registration more expensive and time-consuming than at present, and some producers may choose not to bother.

3. What happens when either the EU, or the UK, strikes trade deals with third countries which include protection of GIs?

As we have already seen in Chapter 5, the EU has a very active agenda of seeking to embed mutual recognition of GIs as an integral part of new trade deals with third countries. After Brexit, it can be assumed that UK products will no longer feature on the list of names for which the EU seeks protection for new trade deals, and the EU is also likely formally to revoke its request for protection for such names in the case of existing trade deals. Britain will therefore have to make its own provisions to safeguard against 'piracy' of its most cherished food names on third country markets.

The UK also has clear ambitions to negotiate trade deals with third countries once it leaves the EU, and has targeted in particular those countries in the so-called 'Anglosphere' – the US, Canada, Australia and New Zealand – where the protection of food names originating in Europe is a particularly sore point. It is quite possible that one or more of these trade partners might seek to make it an explicit point of any trade deal with the UK that Britain should accept the import of products which are produced in the 'New World' country in question under a name for which the EU claims unique marketing rights.

The UK would then need to decide whether the commercial and political benefit of acceding to such a request would outweigh the diplomatic fallout of over-riding any post-Brexit agreement to keep the EU's GIs protected on the UK market.

[i] "The impact of Brexit on protected food names". Horizon Market Intelligence Study, UK Agriculture and Horticulture Development Board (AHDB), December 2016.

8. Conclusions

But they are also a source of very considerable controversy, especially when one region in the world claims sole 'ownership' of a term that others feel should belong either to them alone, or else to everyone equally as a 'common' food name. This is, at present, a controversy that is still very far from being resolved.

The vast bulk of the 3,000-plus product names listed by the EU represent an entirely valid, if sometimes rather quaint, celebration of local food traditions across a diverse continent. They protect the economic interests of a group of often small-scale farmers, growers or food manufacturers, they encourage a sense of regional pride and identity, and they cause minimal offence. However, there are a small number of GIs which have become the source of more negative responses.

There are probably only a handful of EU member states which have a really strong ideological commitment to the principle of GIs. Five EU countries (France, Italy, Spain, Portugal and Greece) account for 69% of the total number of registered agri-food GIs, while a long tail of 15 mostly northern and eastern European countries between them account for just 12% of the total number.

These statistics might be expected to have an effect on the political economy of GI policies within Europe. It is undoubtedly the Mediterranean countries, led especially by Italy and France, who are spearheading the EU's drive to gain recognition and protection for EU GIs in as many different parts of the world as possible. But because there is rarely any political downside to the Europe- and world-wide promotion of GIs, even for those countries whose enthusiasm for the scheme is less marked – and because it is tactically useful to have at least one issue which is unquestionably an offensive interest for the EU – other member states are generally content to let the GI supporters drive the agenda.

Indeed, with the exception of the Greek push on "Feta" cheese, which ultimately provoked (unsuccessful) legal action on the part of the Danish and German governments, it is rare indeed for EU GI applications to excite any significant opposition from within the Union.

GIs are thus a significant success story within Europe, and as trade in food and drink products becomes ever more internationalised, the EU is hoping to extend their power to promote and protect such products worldwide.

The extent to which this process can legitimately be stretched, in the face of mounting concerns from 'New World' producers about the encroachment of GI legislation into what they see as common or generic food names, will be put to the

"The issue of Geographical Indications has a political and emotional resonance that goes beyond even the substantial sales value of such products (of around €54 billion EU-wide in 2010). Names and identities matter, and for many regions in Europe in particular, regional food and drink specialities are a source of immense pride"

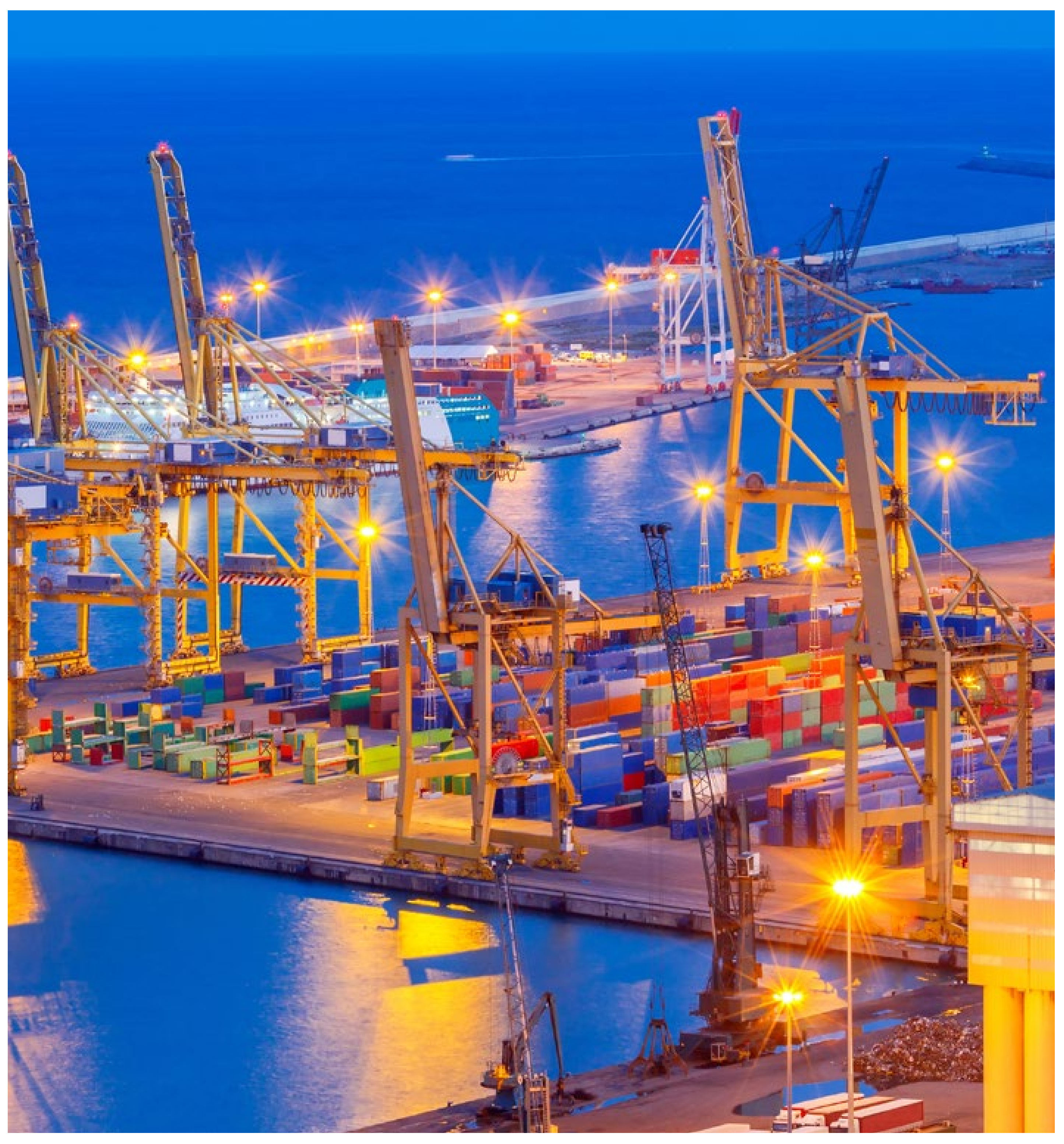
test in coming years as the EU expands its matrix of bilateral and regional trade agreements ever further.

It may be that this process of growing international recognition of product names ultimately creates de facto clarification of which names are truly generic – by virtue of their failure to appear on lists of product names accepted by the EU's trading partners. It is certainly clear that the growing concern among non-European food industry associations about 'predatory' grabbing of 'common' names by the EU will need to find a resolution one way or another.

In the meantime, the EU's internal celebration of sometimes obscure local food traditions continues, and interest in the PDO, PGI and TSG schemes shows no sign of abating.

The last word should perhaps go to the European Commission – quoting its information note on GIs issued in October 2017:

"Safeguarding traditions and know-how is a key aspect of geographical indications, but there is more to them than just nostalgia and tradition: the label is also highly advantageous for the farmers producing them ... European geographical indication labels are a strong asset for producers, consumers but also for the promotion of European culture and history."



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