Enough wine, time to dine: agricultural and non-agricultural indications of geographical origin in the context of a European Union and New Zealand free trade agreement

by

Liam Taylor

A thesis submitted in partial fulfilment of the requirements for the Degree of Master of European Union Studies

at the University of Canterbury

2021

© Copyright Liam Taylor

All Rights Reserved
This page intentionally left blank
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TABLE OF CONTENTS</td>
<td>i</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>iii</td>
</tr>
<tr>
<td>ABSTRACT</td>
<td>iv</td>
</tr>
<tr>
<td>LIST OF ACRONYMS AND ABBREVIATIONS</td>
<td>v</td>
</tr>
<tr>
<td>I  Introduction</td>
<td></td>
</tr>
<tr>
<td>A  Disclaimer of the nomenclature</td>
<td>2</td>
</tr>
<tr>
<td>B  Contextual Background</td>
<td>3</td>
</tr>
<tr>
<td>1  A tool of the European Common Agriculture Policy</td>
<td>3</td>
</tr>
<tr>
<td>2  European Agricultural IGOs playing with a Handicap Internationally</td>
<td>3</td>
</tr>
<tr>
<td>3  EU-NZ FTA Negotiations</td>
<td>4</td>
</tr>
<tr>
<td>C  Research Design</td>
<td>5</td>
</tr>
<tr>
<td>1  Research Outline and Questions</td>
<td>5</td>
</tr>
<tr>
<td>2  Methodology</td>
<td>6</td>
</tr>
<tr>
<td>3  Delimitations</td>
<td>8</td>
</tr>
<tr>
<td>4  Definitions</td>
<td>8</td>
</tr>
<tr>
<td>II Literature Review</td>
<td>11</td>
</tr>
<tr>
<td>A  Terroir</td>
<td>11</td>
</tr>
<tr>
<td>B  The Doha Development Agenda</td>
<td>14</td>
</tr>
<tr>
<td>III Theorising IGOs through European Identity and Power Narratives</td>
<td>17</td>
</tr>
<tr>
<td>A  Normative Power Europe</td>
<td>17</td>
</tr>
<tr>
<td>B  Market Power Europe</td>
<td>20</td>
</tr>
<tr>
<td>C  Summary</td>
<td>22</td>
</tr>
<tr>
<td>IV Unfair Competition and Geographical Indications</td>
<td>23</td>
</tr>
<tr>
<td>A  Choose your poison: Trade Marks, IGOs or both:</td>
<td>24</td>
</tr>
<tr>
<td>B  Misappropriation</td>
<td>25</td>
</tr>
<tr>
<td>1  Misappropriation and trade marks in relation to IGOs</td>
<td>26</td>
</tr>
<tr>
<td>2  Misappropriation of potential US and New Zealand IGO Seafood</td>
<td>31</td>
</tr>
<tr>
<td>C  Passing-off</td>
<td>33</td>
</tr>
<tr>
<td>D  Evocation</td>
<td>35</td>
</tr>
<tr>
<td>E  Summary</td>
<td>38</td>
</tr>
<tr>
<td>V  The Position of the European Union and its Members States</td>
<td>40</td>
</tr>
</tbody>
</table>
## A The European Union and International Agreements

1. **TRIPS and Lisbon** ................................................................. 40
2. **European Union and Free Trade Agreements** .......................... 40

## B IGO Protégées in the EU: Traditional Terms, TSGs & Mountain Products

1. **Traditional Terms or Expressions** ........................................ 44
2. **Traditional Speciality Guaranteed** ......................................... 46
3. **Mountain products** ................................................................ 47

## C Case Study - Does Europe prefer Alcohol and Tea & Coffee is preferred elsewhere? .......... 48

## D Summary ................................................................................. 50

## VI Genericity, Customary Names and IGOs

### A Linguistic and Marketing Features affecting Genericization

51

### B International Agreements

53

### C Case Studies - Understanding the Generic Divide

1. **Resuscitating Generic Wine** .................................................. 54
2. **Resuscitating Generic Beer** .................................................. 55
3. **Resuscitating Generic Cheese** .............................................. 56

### D Summary of Chapter ............................................................... 59

## VII the Next Step: IGOs beyond Agriculture

### A Traditional Knowledge and Genetic Resources

60

### B Handicrafts

64

### C Summary of Chapter ............................................................... 68

## VIII Discussion and Conclusion

### A Recapitulation of Findings

69

### B Evaluations and Limitations

74

## IX Bibliography ............................................................................. 76
I would like to thank the National Centre for Research on Europe and all the wonderful people who are a part of this little community. First, I would like to thank my supervisor Prof. Martin Holland, whose relaxed and helpful attitude made the degree the extra bit enjoyable and less stressful. His literal open door policy was a great asset for the thesis and the wider degree. Secondly, I would like to thank Dr. Christian Riffel for his support during the thesis. His course on world trade law originally stimulated my interest in this topic. Also I would like to thank Dr. Serena Kelly and the other staff of the department and college who provided interesting lectures and positive learning attitudes throughout my undergrad and postgrad degrees. I would also like to thank my postgrad colleagues that helped the office not seem like a prison at times.

Lastly, but most importantly, everything was made possible by the support of my caring parents. Always providing motivation when the work load got big, occasional cash injections so I need not live off instant noodles and much, much more. For this I am eternally grateful.
ABSTRACT

New Zealand has continuously rejected upgrading its *sui generis* system of protection for geographical indications, or indications of geographical origin (IGO). This is a type of product that contains unique characteristics and qualities essentially due to its geographical environment. In the context of a free trade deal with the European Union (EU), New Zealand must apply protection to agricultural IGOs beyond the current regime that only protects wine and spirits. This is called TRIPS-plus protection, and is a conditionality in all recently conducted free trade agreements with the EU. The inception of this intellectual property right owes to the concept of *terroir*, whose evolution in meaning has opened up participation to agricultural and non-agricultural products under a *sui generis* system of protection. National and international systems of IGO protection are analysed to provide a reference for New Zealand. The key topics of contention are discussed in relation to the various systems and EU FTAs. The topics focus on; IGOs and trade marks, IGOs and unfair competition, IGOs and genericity; and non-agricultural products as a future IGO right. IGOs are a great tool for assisting rural development, preserving cultural traditions, upholding standards and reputations of quality products etc. In spite of this, it is not advantageous for New Zealand to upgrade its current framework, and by doing so it mostly satisfies EU interests at the expense of New Zealand’s market share in agricultural goods.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>Association Agreement</td>
</tr>
<tr>
<td>AB</td>
<td>Anheuser-Busch</td>
</tr>
<tr>
<td>ACP</td>
<td>Africa, Caribbean and Pacific</td>
</tr>
<tr>
<td>ACTA</td>
<td>Anti-Counterfeiting Trade Agreement</td>
</tr>
<tr>
<td>AO</td>
<td>Appellation of Origin</td>
</tr>
<tr>
<td>AOC</td>
<td>Appellation d’Origine Contrôlée</td>
</tr>
<tr>
<td>BB</td>
<td>Budweiser Budvar or Budějovický Budvar’</td>
</tr>
<tr>
<td>BBA</td>
<td>Bavarian Brewers Association</td>
</tr>
<tr>
<td>BBBB</td>
<td>Budweiser Brauberechtigen Bürgerliches Brauhaus</td>
</tr>
<tr>
<td>CAP</td>
<td>Common Agricultural Policy</td>
</tr>
<tr>
<td>CBD</td>
<td>Convention of Biological Diversity</td>
</tr>
<tr>
<td>CCP</td>
<td>Common Commercial Policy</td>
</tr>
<tr>
<td>CETA</td>
<td>EU-Canada Comprehensive Economic and Trade Agreement</td>
</tr>
<tr>
<td>CJEU</td>
<td>Court of Justice of the European Union</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>CORSIA</td>
<td>Carbon Offsetting and Reduction Scheme for International Aviation</td>
</tr>
<tr>
<td>COSC</td>
<td>Contrôle Officiel Suisse des Chronomètres</td>
</tr>
<tr>
<td>CPTPP</td>
<td>Comprehensive and Progressive Agreement for a Trans-Pacific Partnership</td>
</tr>
<tr>
<td>DDA</td>
<td>Doha Development Agenda or Round</td>
</tr>
<tr>
<td>DOC</td>
<td>Denominazione di origine controllata</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area</td>
</tr>
<tr>
<td>EEC</td>
<td>European Economic Community</td>
</tr>
<tr>
<td>EFTA</td>
<td>European Free Trade Association</td>
</tr>
<tr>
<td>EPA</td>
<td>Economic Partnership Agreement</td>
</tr>
<tr>
<td>ETS</td>
<td>Emissions Trade Scheme</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EUIPO</td>
<td>European Union Intellectual Property Office</td>
</tr>
<tr>
<td>EUR</td>
<td>Euro (Currency)</td>
</tr>
<tr>
<td>EUSFTA</td>
<td>European Union and Singapore Free Trade Agreement</td>
</tr>
<tr>
<td>FTA</td>
<td>Free Trade Agreement</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
</tbody>
</table>
I Introduction

Indications of Geographical Origin (IGOs) have become a key trade issue since the international politicisation of intellectual property rights (IPR) in 1994 under the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property.\(^1\) IGOs are in the shadows when compared to other areas of IPR such as copyright, trade marks and patents but are growing in application.\(^1\) IGOs are a type of product that, due to their geographical location, possess certain environmental and human attributes that give it a unique quality that distinguish it on the market as a premium, pure and authentic product. Other definitions are more extensive and they may also be more contentious, as is the topic of extending protection to products other than wine and spirits. At the international level, TRIPS only covers protection of wine and spirits, which is the protection New Zealand affords to geographical indications in its current legal framework.

Unwillingness by many countries to upgrade TRIPS to cover more products has led the European Union (EU) to take a bilateral approach to ensure its agricultural IGOs receive individual protection through trade agreements. Individual protection is unique from IGO’s counterpart, trade marks, like the *ex officio* enforcement that often accompanies *sui generis* systems. An EU-NZ Free Trade Agreement (FTA) is encouraged by both sides, though compromising on protection of IGOs that expands beyond the provisions of the TRIPS Agreement (TRIPS-plus) is one of the issues stalling the FTA. The EU has been, slowly but surely, concluding FTAs in the Asia-Pacific Region with some of New Zealand’s largest trading partners. This has created a predicament for New Zealand that makes it harder and harder to postpone TRIPS-plus protection that is slowly becoming ubiquitous.

After three years of EU-NZ FTA negotiations, little progress has been made to resolve the differences. The research discusses the major issues stalling a consensus revolving around conceptual differences on genericity and trade mark relations. The EU’s system is analysed to highlight the extensive *sui generis* system and its benefits to protect against unfair competition.

While New Zealand is hesitant to take the step up to protecting agricultural IGOs, the EU is looking at the ‘next step’ that joins other countries around the world in protecting non-agricultural products.

---


\(^2\) Annette Kur, Max Planck and Thomas Dreier *European Intellectual Property Law: Text, Cases and Materials* (Edward Elgar, Cheltenham, United Kingdom, 2013) at 323.
A Disclaimer of the nomenclature

Protection can take many legal forms through national and international systems which creates terminological diversity which has been characterised as a mess due to lack of consistency. TRIPs and New Zealand refer to these products as ‘Geographical Indications’ (GIs). The EU uses GIs as well, in addition to Protected Geographical Indication (PGI) and Protected Designation of Origin (PDO), depending on the type of product and the level of geographical ties. The World Intellectual Property Organization (WIPO) of the United Nation refers to these products as ‘Appellations of Origin’ (AO) under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 1958, as amended on September 28, 1979, and the Paris Convention for the Protection of Industrial Property, as amended by the Stockholm Act of 1967. The Paris Convention and the Madrid Agreement for the Repression of False or Deception also refer to ‘Indications of Source’ for ‘Industrial Property’. Courts or literature refer to them as ‘indication of provenance, geographical denominations or identifiers’ etc. All the above contain notions of origin, appellations, geography and different scopes of products, but together serve to create a conundrum of the general topic. Definitions to denote the substance of IGOs differs too: the Lisbon Agreement uses ‘denomination’, the EU ‘product’, TRIPS ‘good’ and New Zealand ‘wine or spirit’. The thesis focusses on the European and International systems of protection for this IPR as points of analysis and reference for New Zealand. To avoid confusion on names and definitions, the umbrella terms ‘IGO’ and ‘product’ are used as neutral holonyms for the above variations. When the umbrella terms are not used, it is in reference to the specific text used by the relevant legislation, agreement or regulation.

---

4 New Zealand Geographical Indications (Wine and Spirits) Registration Act 2006, as amended by the Geographical Indications (Wines and Spirits) Registration Amendment Act 2016 [hereinafter GI Act 2006].
5 Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration 923 UNTS. 205, (adopted 31 October 1958, as last revised at Geneva on 21 May 2015) [hereinafter Lisbon Agreement].
6 Paris Convention for the Protection of Industrial Property 21 UST 1583, 828 UNTS 305 (adopted 20 March 1883, as last revised at Stockholm on 14 July 1967) [hereinafter the Paris Convention].
7 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods 828 UNTS 168 (adopted 14 April 1891, as last revised at Stockholm on 14 July 1967) [hereinafter the Madrid Agreement].
8 Mantrov, above n 3, 16-25.
B Contextual Background

1 A tool of the European Common Agriculture Policy

European GIs sell 2.3 times more on average, protect cultural heritage and promote rural development and agricultural tourism. The case of olive oil production as a PDO label in the rural communities of Mediterranean EU Member States has changed the production to sustainable and quality focussed where consumer demand is easily met for olive oil. PDOs in these communities have served to protect cultural heritage as global prices decrease. In turn this supports regional identity and therefore supports rural development despite premiums on PDO labelled olive oil being scarce. Quality often means a costlier production process, however, sustainable agricultural practices such as organic farming command premiums and the cost justifies the means, for particular consumers. Additionally, quality products complemented by a GI label add competitiveness which supports rural development and the market and income support goals of the Common Agricultural Policy (CAP). Criticism from the CAP’s early days was of excessive subsidies with overproduction, incentives leading to ‘butter mountains’ and ‘wine lakes’. The sui generis system created by the EU is a success story of CAP focusing on high quality production. Sustainable farming practices (Green Direct Payments) is the largest income/market measure of the EUR 291.1 billion European Agricultural Guarantee Fund Competitiveness (First CAP Pillar) and the largest theme of the EUR 95.5 billion European Agricultural Fund for Rural Development (Second CAP Pillar).

2 European Agricultural IGOs playing with a Handicap Internationally

EU Food and drinks exports outside the single market amounted to EUR 110 billion in 2017, of which 15.5% or EUR 17 billion were EU registered GIs of EU Member States. Of those food and drink GIs exported, agricultural GIs in 2017 accounted for 10%, with wines and spirits at 50% and 39%, respectively. Compared to intra-EU trade, agricultural GIs are 33% of the total IGO sales whilst they further increase on national markets at 41%. Spirits GIs are the opposite, selling 1.7 times more on...
the single market than domestically, and five times more internationally. Wine GIs make slightly more sales internationally compared to intra-EU, but the majority are sold domestically. Discrepancies of sales across IGO types, depending on their market, are a natural market phenomenon. IGO labels command a premium as an authentic quality product, so without international protection of European agricultural GIs, the assumption is this GIs industry has more potential because it is functioning with an ‘export handicap’.

Why are agricultural GIs worth three as much in total sales compared to spirit GIs, but spirit GIs are worth four times more in extra-EU trade? Such hypotheses are: agricultural GIs cater towards domestic and European consumers, foreign markets prefer their versions of the product, agricultural products have a shorter shelf life, EU agricultural GIs use trade mark protection, TRIPS disadvantages EU agricultural producers with GIs, or stronger international protection is afforded to wine and spirits GIs, both bilaterally and multilaterally. The latter three hypotheses drive the research questions given New Zealand only protects agricultural IGOs through its trade mark system.

3 EU-NZ FTA Negotiations

On 20 October 2021, the United Kingdom and New Zealand provisionally reached an agreement on key elements on the text of a comprehensive and progressive free trade agreement. Either through ASEAN-Australia-New Zealand free trade agreement (AANZFTA), the Comprehensive and Progressive Agreement for a Trans-Pacific Partnership (CPTPP), NZ-Gulf Cooperation Council FTA or bilateral agreements, New Zealand has concluded FTAs with all of its top 10 trading partners except the European Union. At negative NZD 5.3 billion, the EU is the only ‘big four partner’ New Zealand has a trade deficit with. To address this trade deficit and the benefits of closer economic that an FTA brings, an EU-NZ FTA is a top priority of New Zealand.

A partnership agreement between the EU and New Zealand in 2017 paved the way to increase the dialogue on GIs in agricultural products. In 2018, the EU and New Zealand launched their first round of negotiations towards a Free Trade Agreement (FTA). At the time of writing, eleven rounds

19 Partnership Agreement on Relations and Cooperation between the European Union New Zealand (adopted 29 November 2016) at Article 49(2).
of negotiations have been concluded. A stalemate on IGO provisions has ensued largely owing to the different approaches, methods and interpretations of IGO protection. The majority of the reports from each of the eleven negotiating rounds (from both sides) mention GIs as an impasse with little progress to accept compromises.20

C Research Design

1 Research Outline and Questions

The primary aim of this research is to use a comparative framework to assess New Zealand’s position on indications of geographical origin against that of the EU and third countries that have signed trade agreements with the EU regarding IGOs. Given New Zealand is currently negotiating a FTA with the EU, analyses of recent EU trade agreements provides a valuable reference point to ascertain where the current benchmark lies and whether that is desirable. Additionally, there is a wealth of literature dealing with IGOs even though it is a newer IPR and not fully accepted internationally. New Zealand as a global player in agriculture trade prioritises access to the EU’s internal market, but, as a ‘new world’ producer, the reception and support of agricultural IGOs differs from the ‘old world’. Further analyses of the EU’s internal practices and regulations provides additional reference to see where the global benchmark of IGO protection lies beyond trade deals and the extent of compromises the EU makes in order to conclude the various agreements. The paradox of New Zealand’s relations with IGO is interest and motivates this research to assess why New Zealand resists agricultural IGO protection yet the data shows premiums for these products and agriculture is New Zealand’s biggest industry. The objective is to determine what New Zealand is missing out on, and the journey of evolution that indications of geographical origin are continuously undergoing that leaves New Zealand potential further behind. To guide this objective, the main research question asks:

What lessons can New Zealand learn from the European Union and the international community in upgrading its current sui generis system of protection for indications of geographical origin?

This chapter has given a general introduction to IGOs, the EU’s preference for them and a basic background of New Zealand’s stance and relations with the EU. The remainder of the chapter states

the methodology, delimitations and definitions guiding this research. Chapter II discusses *terroir* and the Doha Development Agenda, as two prominent themes of the literature and the important role these play in the developing of IGOs and the EU’s bilateral approach. Chapter III assist the research by utilising two theories that characterise the identity and actorness of the EU as an alternative method to explain the EU’s behaviour pertaining to IGOs. Chapters IV-VII answer the respective sub-questions below. Chapter VIII concludes the findings of the research questions and evaluates the information to comprehensively answer the main research question.

Given the broad area of geographical indications and its many themes to research, to fully answer the main question the thesis is refined to five areas, each covered by a sub-questions and each covering their respective chapters.

The first sub-question addressed in Chapter IV asks: *How are registered and unregistered indications of geographical origin protected from unfair competition in sui generis and non-sui generis systems?*

The second sub-question addressed in Chapter V asks: *What is the European Union’s system and approach to agricultural indications of geographical origin in recent trade deals?*

The third sub-question addressed in Chapter VI asks: *How does sui generis protection for agricultural indications of geographical origin affect genericization?*

The fourth sub-question addressed in Chapter VII asks: *How can protecting non-agricultural indications of geographical origin evolve in the future?*

2 Methodology

As this research investigates legal, socio-economic, political and cultural aspects of an intellectual property right the methodology consists of both qualitative and quantitative methods that will be used separately and in mixed method operation. For data collection, qualitative and quantitative methods will prove equally valuable. Quantitative examples include statistics to help explain the economic cost and benefits of IGOs in relation to subsidies and premiums by using databases such as Statistics NZ and Eurostat. Examples of qualitative methods used are media analyses to gauge the perceptions of the public and elites on certain contentious issues. Case studies from legal disputes, trade agreements or well-known debates will be used and can either have a qualitative or quantitative design or a mixture of both. The case studies are the crux of this research and form comprehensive and scrupulous analyses to answer all the minor details to complete the holistic approach.
For research on IGOs that help answer the research questions primary and secondary resources will be used to aid the conclusions.

Primary qualitative resources will consist of:
- press releases
- reports
- regulations and legislation
- treaties and international agreements
- court proceedings
- interviews
- official policy documentation

Secondary sources will consist of:
- journals
- books
- articles and thesis documents

Primary quantitative sources include:
- economic statistics
- consumer surveys
- IGO registration data bases

The EU is a highly transparent entity and publishes the majority of its content online in the Official Journal of the European Union, its official gazette. Consumer surveys on individual IGOs and applications for registering IGOs, including amendments, are often published in its Official Journal. The EU has also created data bases, such as eAmbrosia and GI view, to make public searching more streamlined across the various product types, the type of protection, registering country and product categories. These systems, inter alia, helped create hypotheses on preferences and IGO trends across different regions, intra- and extra-EU.

The reports of the EU-NZ negotiating rounds were brief and vague as well as rather secretive concerning additional information. The reports emphasis the general attitude on IGOs discussions but the information is not substantial enough to be credibly used or benefit this research. The EU’s proposal document for the FTA did prove valuable as it was a template of the general text stating their preferred positions and coverage of IPR. Therefore, the sources listed above are used to objectively investigate the EU and New Zealand positions.
3 Delimitations

Indications of Geographical Origin as an intellectual property right is a broad topic and therefore creates some delimitations in order to narrow down the topic. The first delimitation frames the research around New Zealand, the EU and EU FTAs which excludes other FTAs currently being negotiated at the time of writing. This can include the EU-Australia FTA which could be useful but also ineffective as it is more speculative than signed and enforced FTAs. This also means refraining from the UK-NZ FTA ‘Agreement in Principle’ as the text of the Agreement is not legally binding and creates no obligations of the parties at the time of writing.

The second delimitation was balancing the holistic approach required from the main research with general analyses. Trade mark and unfair competition law runs deep and scratching the surface of these in relation to IGOs may not give the topic the justice and attention they deserve. Analysing the US’s reluctance to adopt a system similar to the EU’s was addressed but more can said for the way the US’s trade mark system caters to the intellectual property rights of IGOs through specific legislation. Focusing on the geographical indication chapters and provisions across many FTAs provided large data pools to compare the niche areas of IGO law. This was partly at the expense of giving trade mark, patent, and other forms of IPR that combat unfair competition due regard, as these areas also affect IGO functionality especially the area of co-existence. Along this line, procedural laws were not addressed with due regard, this area again being useful in the relationship with how IGOs are registered, notified and published which affects rules concerning co-existence with trade marks especially grandfathering of trade marks.

The last delimitation was using resources in English and German when official translations were not provided. Amendments to various geographical indications were applied for in the 24 languages of the European Union and if the publications were translated to English or German, the published amendment did reflect the entirety of the application. Therefore, the EU with its superlative translation services still posed minor issues on document accessibility in other working languages, particularly French.

4 Definitions

Agricultural Product

A general term for foodstuffs and beverages excluding wine, spirits and aromatised wines. The EU’s scope of classification is used and includes all products listed in Annex I of Regulation 1151/2012 and the TFEU. This includes non-consumables such as ornamental plants and flowers, essential oils, hay.
Appellation of Origin (AO)

The term used by the 36 contracting parties (including the European Union) of the Lisbon System for Appellations of Origin and Geographical Indications. It means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.\textsuperscript{21}

European Union (EU)

The official name after the Treaty of Lisbon 2009, but used as a collective term when referring to the EU-27 Member States and a date when the European Union was not officially established, i.e. European Community, European Economic Community. Since 2020, this no longer includes the United Kingdom, but their withdrawal from the Union left IGOs relatively unaffected, the United Kingdom continuing to subscribe to the EU’s protection model.

Geographical Indication of spirits drinks or aromatised wine (GI)

A type of EU quality scheme for spirit and aromatised products only. It identifies a spirit drink or aromatised wine as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of that spirit drink is essentially attributable to its geographical origin.\textsuperscript{22} Indicating a product is registered under this scheme will use the acronym attached at the end of the name, e.g. Scotch Whisky GI. Labelling is optional for all spirits or aromatised wines.

Geographical Indication

A term for the intellectual property with various definitions depending on the jurisdiction or international agreements. TRIPS defines a geographical indication as a good 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.\textsuperscript{23} New Zealand uses the same definition as TRIPS but instead of the term ‘good’, it uses with the term ‘wine or spirit’\textsuperscript{24}.

\textsuperscript{21} Lisbon Agreement, above n 5, art 2.
\textsuperscript{23} TRIPS, art 22.1.
\textsuperscript{24} New Zealand GI Act 2006, art 6.1.
Geographical Market

‘The territory in which all traders operate in the same or sufficiently homogenous conditions of competition in relation to the relevant products or services, without it being necessary for these conditions to be perfectly homogenous’.  

This is held to be the entire European Union and the absence of EFTA Members, contrasted to the Single Market and EEA.

Indication of Geographical Origin (IGO)

A neutral umbrella term to designate any registered or unregistered product with quality characteristics due to its geographical origins. This may refer to: the EU quality labels PDO, PGI and GI; the Lisbon Systems Appellation of Origins; Geographical Indications with the meaning of the TRIPS Agreement, or the New Zealand GI Act 2006.

Non-Agricultural Product

Anything that is not a wine, spirit, aromatised wine, or agricultural product covered by Annex I of Regulation 1151/2012 and the TFEU. This includes intangibles such as traditional knowledge and cultural heritage; or craftsmanship reflected in handicrafts such as jewellery, art or clocks.

Protected Designation of Origin (PDO)

A type of EU quality scheme for wines and agricultural products that have the strongest links to the place in which they are made. These are products that have qualities or characteristics essentially or exclusively due to a particular geographical environment with its inherent natural and human factors. All the production steps take place in the defined demarcated area. Indicating a product is registered under this scheme will use the acronym attached at the end of the name, e.g. Champagne PDO or Feta PDO. Mandatory labelling is required for registered agricultural PDOs but is optional for wines.

Protected Geographical Indication (PGI)

A type of EU quality scheme for wine and agricultural products that have strong links to their geographical origins but not every step in production or source of raw material comes therefrom. For wines this means no more than 15% of the grapes may come from outside the region and those that do must originate from within the Member State. To indicate that a product is registered under this scheme the acronym will be attached at the end of the name, e.g. Gers PGI or Scotch Lamb PGI. Mandatory labelling is required for registered agricultural PGIIs but is optional for wines.

Sui generis system

A unique system of protection for indications of geographical origin distinct from collective or certification trade marks. This commonly uses the French registration approach as opposed to wider unfair competition application on a case-by-case basis.

---


II  Literature Review

The EU is a leader in both IGO exports and campaigning for increased protection globally. The body of literature specifically dealing with EU-NZ relations on geographical indication is limited. The EU’s current system was built on the natural factors resulting from its terroir, but has since expanded to encompass the human processes and methods that also contribute to the unique geographical factors. The link to environment features remains the strongest component of the IPR, although weaker links also provide opportunities for other products to take part in the sui generis system. The Doha Development Agenda of the World Trade Organization (WTO) on upgrading the TRIPS Agreement, inter alia, was originally the opportunity the EU used to invest its new standards on IGOs that changed since the inception of the Agreement. Understanding the ‘missed opportunity’ explains the bilateral approach the EU now uses to export its IGO philosophy, which New Zealand refuses to subscribe to.

A  Terroir

The simple definition of terroir, meaning soil in French, is the natural environment a particular product is produced in and reflects characteristics due the location, climate, soil and other conditions. Products linked to the land or people as a distinct IPR at the international level is new, although the basic concept of quality and geography dates back millennia. A product anchored to the land goes beyond quality; the tradition it encompasses reflects regional identity and heritage.

The deep terroir roots in Europe are emotionally charged, something not seen in typical trade marks. This cultural connection link to human rights elements affected indigenous people by cutting off access to the land by ‘artificial borders’ or force displacement. Similar circumstances are occurring in relation to climate change, affecting what the land can produce with meteorological changes and rising seas levels. Nevertheless, ownership is of the people that belong to the land or there can be no owners, just ‘holders’, which use the name ‘free of charge’ without need to license the right.

32 At 142.
Adam Smith believed the vine is the most susceptible to soil change, more than any other fruit. The flavour, ‘real or imaginary’, may be unequalled by management or cultural intervention, sometimes ‘peculiar to a few vineyards or sometime to a large province’. Smith overlooked the human factor that is manifested in agricultural and non-agricultural products as the terroir or natural link, although traditionally terroir reflected wine qualities.

It was the need for consumer protection of wine IGOs that created French Appellation d’Origine Contrôlée (AOC) system in 1919, the inspiration for the EU’s current system. The AOC is the incarnation of terroir. The inception of the appellation control system is attributed to the tiny insect, phylloxera, which plagued vineyards across Europe in the late 1800s and cut production around 30% by the start of the twentieth century compared to 1875. In the midst of the phylloxera pandemic, mass counterfeiting and adulteration of wine ensued. Counterfeiting caused unfair competition for French wine producers and affected their reputations and the deceit affected consumer confidence in quality wine. The pandemic spearheaded campaigns against counterfeiting, but also included quality measures. Loi Griffe, the French law of 1889, defined wine as exclusively produced from fresh grapes, as opposed to dried grapes. Developing countries often take IGOs to mean quality without regard to the terroir effect. Terroir’s origins have created a different approach from unfair competition diverging conceptually, methodologically and institutionally as distinct area of intellectually property rights. Sui generis or registration based systems are a result of specific needs to cater for terroir products on the market.

The physical geography and the method of vinification make it ‘impossible to faithfully replicate’ the original product with the exact characteristics. Under this interpretation, using a name associated

---

33 Adam Smith An inquiry into the nature and causes of the wealth of nations (Printed for W. Strahan; and T. Cadell, in the Strand, London, 1776) at Chapter XI.
37 Meloni and Swinnen, above n 36, at 4.
39 Gangjee, above n 28, at 108.
with certain terroir qualities on a product not geographically linked to those qualities should constitute unfair competition by using the ‘reputation of the land’. In theory, the terroir can be replicated but the reality is terroir cannot be generic, meaning wines do not succumb as easily to genericization as agricultural products do. By 1926, the French saw Camembert as a generic cheese from the lack of ‘terroir anchor’. Terroir also affects cheese, especially the method of storage. Many European Cheese PDOs will reference the specific breed of sheep, goat, cow or buffalo to that region and their diet owing to the terroir which affects the milk and creates a unique cheese made thereof.

A broad interpretation is becoming favoured that also includes human factors adding quality to the IGO. This may include methods of product and consistent quality such as unique machinery to cultivate mountainous terrain or restricting harvesting to certain times to coincide with desirable seasonal features. Terroir in isolation can be seen to take the credit where reputational contributions are inherently a ‘team effort’ from the human element and nature. This ‘loosening definition’ has been exacerbated by TRIPs, where reputation does not require human or natural factors. Instead it requires geographical origin to be the absolute contribution. Indirectly, TRIPS requires terroir factors in its definition of GIs being a ‘good essentially attributable to the geographical environment’ and applies additional protection to wines and spirits that traditionally satisfy this link.

The Food and Agriculture Organisation of the UN supports a widened approach in its definition of terroir where the ‘human community has built up a collective intellectual or tacit production know-how in the course of history’ that interacts with the biological environment to create a reputable product. This broad application outside TRIPS is opening the door to products that struggled with their reputation being essentially due the environment, yet had local human factors. This is a necessary interpretation to expand sui generis protection to non-agricultural goods that often

---

42 Photis Papademas and Thomas Bintsis Global Cheesemaking Technology: Cheese Quality and Characteristics (John Wiley and Sons, Hoboken, 2017) at 229.
source raw materials for crafts elsewhere but the traditional knowledge is deeply rooted in the culture of that land.

Naturally, opposition to terroir exist. For example there are many wine enthusiast who are amateurs in accrediting quality features to the terroir. This is commonly known as the placebo effect, or the ‘real or imaginary flavour’ Smith described. From a culture evolving perspective, traditional terroir may need re-evaluating to not suffocate cultures fixed on the identity of terroir products, as it is the locality that constructs identity, not terroir, which may cause exclusionary practices. The common domain opposes terroir products that privatises through sui generis systems that excludes them as being outside the boundary. On the same note extending protection to terroir products may constitute anti-competitive measures, and overstressing may affect access to global supply chains in turn increasing production costs.

Sometimes science fails to provide evidence of uniqueness or the soil science is not advanced enough to definitively ascertain the minute differences. On the other hand, all IGOs can be argued to be organoleptic experiences and, therefore, justifiably subjective and counterfeit wine would adversely affect the subjective experience. The EU assures legitimate controls are on terroir through its sui generis system, its preferred approach as opposed to unfair competition rules or collective trade marks. Thus, terroir is key in order to register an IGO because this creates the unique and attributable links to the demarcated area, while maintaining a fair use policy despite allegations of being a ‘pretentious concept’.

B The Doha Development Agenda

The phylloxera plague acted as a catalyst to develop the early stages of a sui generis system; failure through the WTO to upgrade protection of IGOs multilaterally catalysed the EU to bilaterally campaign for increased protection of IGOs. The EU hopes to create a global ‘geographical market’ of IGOs, reflecting their standards to create a ‘level playing field’. The initial method was coming to a consensus during the Doha Development Agenda (DDA), initiated at the WTO Fourth Ministerial

46 Dev S. Gangjee Research handbook on intellectual property and geographical indications (Edward Elgar, Cheltenham, 2016) at 61.
47 Matthew J. Rippon “What is the geography of Geographical Indications? Place, production methods and Protected Food Names” 2014 46(2) Area at 155.
49 Justin Hughes “Champagne, feta, and bourbon: The spirited debate about geographical indications” 2006 58(2) The Hastings law journal
51 See ‘geographical market’ under glossary of terms.
Conference in 2001. The EU and its supporters put pressure on ministers at the Conference to upgrade multilaterally protection of GIs, with the commitment expressed in the Doha Declaration and a deadline of 2003. This was strongly opposed by New Zealand and its main trading partners, and two decades later there is no meaningful progress towards a resolution. Canada and Ecuador were previously in the same camp as New Zealand in the WTO, but found a compromise in the form of CETA and the EU FTA with the Andean Community.

The DDA attempted to upgrade the protection of GIs to goods beyond wine and spirits and harmonize national frameworks on GIs, which are much more diversified than patents or trade marks. TRIPS currently causes inequality between wine and spirit producers, vis-à-vis agricultural and non-agricultural goods. Another major issue addressed in the Doha Declaration was TRIPS lack of attention to development, particularly public health. TRIPS was called to play a stronger role in the midst of the global HIV/AIDS pandemic where the ‘painful’ patent standards adversely affected the developing world. TRIPS was amended to assist WTO Members with ‘insufficient or no manufacturing capacities in the pharmaceutical sector. The EU also views IGOs as a rural development tool, like access to medicine. Economic Partnership Agreements under the EU’s development policy attempt to promote nascent IGOs in Africa, Caribbean and Pacific (ACP) countries. The DDA was predicted to revise TRIPS, but deadlocks have ensued making the DDA unsuccessful.

56 Lina Monten “Geographical indications of origin: should they be protected and why? An analysis of the issue from the U.S. and EU perspectives” 2006 22(2) Santa Clara computer and high-technology law journal.
58 Amendment of the TRIPS Agreement, WTO Doc WT/L/641(8 December 2005) (Decision of 6 December 2005)
59 Oisin Suttle Distributive justice and world trade law: a political theory of international trade regulation (Cambridge University Press, 2017) at 324.
Article 23.4 of TRIPS stipulates WTO Members must confer on the adoption of a multilateral system for registration and notifications of wine GIs eligible for protection in participatory countries. This multilateral system was proposed by the EU in the Uruguay Round, as the wording suggests, it was a sensitive compromise that only manifested as an aspiration.\(^{60}\) In 2005, the EU proposed an amendment of TRIPS to bring global IGO registration in conformity with the EU.\(^{61}\) New Zealand \textit{et al} had already submitted a proposal that the multilateral system should be voluntary, with no legal obligations of non-participatory states and those that choose to participate should hold the exclusive prerogative to choose whether registered names qualify.\(^{62}\)

The European Commission felt it was in vain to improve market access without increasing protection of IGOs as their exports would be at higher risk of violations.\(^{63}\) From failing to protect GIs on the multilateral level by upgrading TRIPS, the EU has instead re-strategised, entering into bilateral trade deals instead, which it has ramped up over the last decade.\(^{64}\) With reducing export subsidies in the WTO and a shift to quality production under the CAP, the EU looks to enter into agreements on GIs where the opportunity had not previously been provided.\(^{65}\) Now the majority of trade related agreements with the EU contain chapters or provisions on IGOs and, as the literature suggests, this is a result of failure to upgrade TRIPS in the DDA. Failure to compromise on IGOs leads to nullified agreements as it did with the Transatlantic Trade and Investment Partnership (TTIP).

Failure in the DDA consequently means TRIPS standards reflect the ‘bare minimum’ and New Zealand’s legislation reflects these basic obligations. This creates two basic paths for New Zealand in the FTA negotiations: make compromises that the EU reciprocates as seen in CETA, or no compromises from either sides as seen in the TTIP. New Zealand as large agricultural producer will not ‘shoot itself in the foot’ by accepting EU regulations without compromise. This will limit future market access as New Zealand contests rights to use many EU designations of agricultural IGOs.


\(^{61}\) Blakeney, above n 12, at 30.

\(^{62}\) Joint proposal for a multilateral system of notification and registration of geographical indications for wines and spirits: Communication from Argentina, Australia, Canada, Chile, Ecuador, El Salvador, New Zealand and the United States (TN/IP/W/9, 13 April 2004).

\(^{63}\) European Commission Annex to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Global Europe: competing in the world - Contribution to the EU's Growth and Jobs Strategy (Commission Staff Working Document, 2006) COM 567 final.


\(^{65}\) Tim Engelhardt “Geographical Indications Under Recent EU Trade Agreements” 2015 46(7) IIC at 782.
III Theorising IGOs through European Identity and Power Narratives

This chapter creates a theoretical framework to explain the power identities of the EU and how they relate to its actions towards international IGO protection. The conduct of the EU and its emphasis on expanding New Zealand’s current IGO framework in the on-going FTA negotiations has ties to two international identities of the EU. The first is Normative Power Europe (NPE) based on Manners, and the second Market Power Europe (MPE) from Damro. Both provide explanations for the EU’s external identities on the international stage and why it is susceptible to act the way it is. Additionally, these two theories illustrate the environment of the EU-NZ FTA negotiations by showing the type of actor the EU is, as well as complementing the context of answering the research questions.

A Normative Power Europe

Proposed by Ian Manners in 2002, NPE differed from the traditional notion of the EU as a ‘civilian or military power’ to describe the power model the EU uses to influence international relations. Following the end of cold-war power politics and the conclusion of the Treaty on European Union (TEU) in 1991, the ‘taboo’ subject of the EU as a military power was desensitising. Due to military capabilities being solely concentrated in its Member States, the EU was limited to a civilian power for most of the twentieth century. This meant the EU used economic power, diplomacy and supranational institutions as forces to achieve international progress. Normative power has previously been described as ‘power over opinion,’ idée force, or ideological power. NPE is distinct from the above power notions in that it emphasises the EU’s ‘ability to shape conceptions of normal in international relations’, hence it transgresses and complements civilian and military power

---

69 Manners, above n 65, at 236-237.
narratives. Manners believed the ability to establish the status quo or rules of the game in world politics was the greatest power of all.

Owing to its post-World War II roots, the inception of the EU is built on the ‘five core norms’ of peace, liberty, democracy, the rule of law and human rights which are found throughout *acquis communautaire* and within the preamble of the TEU. The pinnacle example of the EU as a normative power is its international pursuit to abolish the death penalty. In short, the EU urged its current Members that had not already done so to substantively, not just symbolically, adopt the abolition of the death penalty by ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms Protocol no. 6, entering into force in 1985. The United Kingdom (UK) was the last EU member to ratify Protocol no. 6 in 1999 and by the following year all new EU Members through the 2004, 2007 and 2013 enlargements had ratified Protocol no. 6. Thus, the EU styled the abolition of the death penalty as a prerequisite for EU Membership by conceptualising the human right as a democratic and liberal characteristic of a European state.

Protocol no. 13, the successor to Protocol no. 6, abolished the death penalty in all circumstances i.e. during war and in the imminent threat of war, and currently all the Council of Europe (CoE) Members have ratified the Protocol, with the exceptions of Russia, Armenia and Azerbaijan. Through the support of the European Court of Human Rights (ECtHR) and the (CoE), the EU changed the norm of capital punishment being a sovereign issue to that of an international human rights issue.

IGOs do not strictly fall into the category of the ‘five core norms’, nor are these norms relevant in the EU-NZ context as New Zealand already holds these to high standards. However, IGOs share a link to one of the four ‘minor norms’ proposed by Manners. Discussed in subsequent chapters, various aspects of IGOs are applicable to the minor norm of *sustainable development*, such as IGO labelling to promote organic wine or supporting rural development through creating jobs. The importance of this minor norm is emphasised in the TFEU as a principle that emphasises ‘integrating environmental protection requirements into the Union’s policies and activities’ as well as the TEU as

---

73 Manners, above n 65, at 239.
74 At 253.
76 Manners, above n 65, at 246.

Russia is the only CoE member yet to ratify Protocol no. 6.
78 Manners, above n 65, at 242-243. The four minor norms are *social solidarity, anti-discrimination, sustainable development and good governance*.
79 David A. Wirth “Geographical indications, food safety, and sustainability: Conflicts and synergies” 2016 5(2) Bio-based and applied economics at 137 and 147.
taking into account sustainable development in socioeconomic progress and growth with regards to ‘high level of protection and improvement of the quality of the environment’. Simply, in an abstract meaning of NPE, this thesis views GIs as an established norm of the EU and addresses the EU’s efforts to normalise GIs internationally i.e. through the DDA and bilateral agreements.

The campaign by the EU to establish GIs as an intellectual property norm share similar norm diffusion mechanism to the EU’s abolitionist policies. Manners et al suggested six factors in EU norm diffusion:

*Contagion:* unintentional diffusion of ideas from the EU to a third party. *Informational:* resulting from strategic communications by the EU. *Procedural:* resulting from the institutional relationship with a third party. *Transference:* through exchanging substantive or financial means with third parties. *Overt:* resulting from the physical presence of the EU in third countries or international organisations. *Cultural Filter:* how the knowledge and learning of norms are diffused in the third party with regards to social and political identities. The latter factor addresses the impact of EU norms and whether they are learned, adapted or rejected in the diffusion recipient.

In case of the abolition of the death penalty, the EU diffused norms with informational and overt means such as raising the issue through initiatives, statements and dialogues in its institutions (parliament and councils) and abroad (CoE meetings), as well as procedurally through eastward enlargement of the EU. Depending on the international context or fora i.e. the WTO, EU-NZ FTA negotiations or implementing CETA, the EU diffuses or attempts to diffuse GIs as a norm using all six mechanisms. For example the EU-Georgia Association Agreement concluded under the European Neighbour Policy led to Georgia mirroring the EU *sui generis* system of protection for GIs and is an example of ‘far reaching rapprochement from both sides’. This example shows the international IGO policy diffused through the *overt* role of the European Eternal Action Service, *procedural* EU integration conditions, *informational* common strategies and *transference* of technical assistance by imitating the EU system of IGO protection (substantive means).

Diffusion of GIs as a norm in the EU-NZ FTA context is weak due to the lack of the ‘carrot’ i.e. incentives and rewards. Soon after Turkey adopted Protocol 6 and 13 it was eligible to be an official candidate for EU accession and, in Georgia’s case, closer EU integration and positive geopolitical outcomes were presented through *procedural* diffusion. EU IGO norms attempting to be exported to New Zealand show a lack of evident *transference* or *procedural* diffusion, such as increased market

---

80 Consolidated version of the Treaty on the Functioning of the European Union OJ C 202 (07 June 2016) [hereinafter, TFEU], art 11 and TEU, above n 66, preamble, art 3.3 and 3.5.
81 Manners, above n 65, 244-245.
82 Manners, above n 65, 252.
access, explaining the resistance by New Zealand towards these norms. In the 1980’s, New Zealand as part of the Cairns Group, was already criticising the EU’s high tariff and heavily subsidised agricultural industry.\textsuperscript{84} IGO provisions in trade agreements with third countries have become a ‘conditionality’ for the EU, something necessary to enable the conclusion of an EU-NZ FTA.\textsuperscript{85} NPE explains how the EU exports its norms and methods to manifest them. However, with the current impasse on IGOs between the EU and New Zealand, NPE is limited in its effectiveness. Later analyses of EU FTAs show the EU is not always limited in applying its IGO policies in a normative way. The struggles in doing so are often meet by ‘new world’ agriculture producers i.e. New Zealand, Australia and the United States.

B Market Power Europe

Similar in respect to NPE, MPE utilises identity to conceptualise the actorness of the EU with characteristics overlooked by NPE. As NPE argues the predisposition of the EU to act in a normative way from its post-war inception, so too is the EU predisposed to act as a market power given the EU fundamentally functions as a giant single market.\textsuperscript{86} Conceptualising the identity of the EU as a market power naturally addresses its lack of hard power and returns its classification to the realm of a soft, civilian, economic or trading power. Rather than manifesting its core norms in third parties, MPE focuses on the EU ‘externalizing its economic and social market-related policies and regulatory measures.’\textsuperscript{87} Simply, the EU expects through its regulatory expertise, bureaucratic efficiency and the size of its economy, it can externalise its policies to increase its GDP and defend its policy positions.\textsuperscript{88} Additionally, the EU’s market power is useful as a reactionary measure to persuade breaches of its regulatory measures or norms. Tools such as boycotts, travel bans, loan rejections, embargos and reduction or suspension of development funds are more effective with the weight of the single market behind them. Examples include: an arms embargo on China following the Tiananmen Square incident, asset freezes and travel bans directed at Belarussian officials for various undemocratic

\begin{footnotesize}
\textsuperscript{84} Michael Blakeney “The Pacific Solution: The European Union’s Intellectual Property Rights Activism in Australia’s and New Zealand’s Sphere of Influence” in Peter Drahos and Susy Frankel (eds) Indigenous Peoples’ Innovation: intellectual Property Pathways to Development (Australia National University Press, Canberra, 2012) 165-188 at 165.
\textsuperscript{86} Damro, above n 65, at 689.
\textsuperscript{87} Damro, above n 65, at 683.
\end{footnotesize}
incursions of the regime, sanctions against Russia following the annexation of Crimea and reduction of development aid to ACP countries for not meeting the agreed terms.  

Damro argues three main characteristics to explain the predisposition of the EU to act as MPE and strengths of the said characteristics: 1) material existence, the market size and its key features such as the Euro and the European Union Customs Union. The power of ‘market size’ in externalizing the EU’s internal regulations is the attractiveness of incentives by coordinating policy with the EU and the domino effect of other actors changing to EU regulatory standards whether unintentionally or through coercion;  

2) institutional features, exemplified by its administrative resources, such as the European Commission, Court of Justice of the European Union and Delegations. The institutional strengths are highlighted by the EU’s regulatory expertise and coherence, that is sufficiently trained staff with authority through regulatory bodies to enforce and monitor policy demands on third countries and impose costs from non-compliance;  

3) Interest contestation, defined as the competition and influence by various groups through the input process to reflect their interests in regulations, or output measures. The strength of regulations reflecting internal interest creates a united group to pressure externalisation of such regulations.

An example is European airlines and environmental groups pressuring for externalisation of reduced carbon emissions from aircraft. The European emission trading system (ETS) set up in 2005 was the world’s first. New Zealand followed shortly after with China and Japan later. Since 2012, CO₂ emissions from aircrafts have been included in the EU ETS and applicable to all European and foreign based aircraft using airports within the 30 countries of the European Economic Area (EU-27 plus Iceland, Liechtenstein and Norway) and Switzerland. A list of over 4000 aviation operators and their emissions are administered by an individual EEA member and additionally the European Commission holds public consultations on market-based measures to reduce the impact of climate change.

89 Connor Pokoati “Examining EU power narratives within an emerging region : examining normative power Europe and market power Europe through images and perceptions of the European Union within external partners in an emerging region” (MEURO Thesis, University of Canterbury, 2018) at 51.  
90 Damro, above n 65, at 686-687.  
91 Damro, above n 65, at 688.  
92 Damro, above n 65, at 686-689.  
93 Chad Damro “Market power Europe: exploring a dynamic conceptual framework” 2015 22(9) Journal of European Public Policy at 1343.  
change by the international aviation industry.\textsuperscript{96} The reduction of Europe’s carbon footprint in the aviation sector by 17 million tonnes per year, the administrative capacity to enforce EU standards on all aircraft operators and the interests of environmental actors manifesting externally through the ETS are three characteristics of MPE in action.

A final note on MPE is an update by Damro to make MPE flexible moving forward by focussing on intentional and unintentional actions by the EU to influence external market regulations through the ‘three characteristics’.\textsuperscript{97} Intentional external actions at market-regulation can be the EU’s attempt to harmonize TRIPS provisions on GIS with the EU’s regulations as seen through the through the DDA. An example of unintentional externalisation is in the light of the 1997 Kyoto Protocol the International Civil Aviation Organisation was slow in adopting aviation emission standards leading the EU to take the initiative despite the Protocol not explicitly stating limitations for air emission reduction.\textsuperscript{98} Motivated by the Paris Agreement on Climate Change and the precedent set by the EU, the ICAO implemented the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) in 2021.

The EU’s crusade for increasing IGO protection beyond TRIPS can be understood through MPE. The first stage of externalising sees the EU attempting to get other actors to adopt its regulations and the second stage sees the adherence to such regulations.\textsuperscript{99} Stagnation at the DDA has led the EU to seek externalisation of its IGO regulations bilaterally and in the case of the EU-NZ FTA, adoption of EU regulations has also stagnated, i.e. IGO externalisation is stuck in the first stage. Market-based measures as seen in the EU-ETS as an incentive to reduce the carbon footprint of the aviation industry can be useful as a tool to upgrade protection of EU-GIs but has been applied weakly so far in the EU-NZ FTA. Nevertheless, the ‘interest contestation’ of MPE is evident in GI regulatory externalisation, spurred from EU GI holders, producers, traders, and locals.

C Summary

These two theories provide a model to explain the identity and actorness of the EU in global politics. The NPE narrative perceives IGO protection as a minor or ‘new norm’ and therefore uses its structural power to inflict institutional change internationally through multilateral fora, but this has failed in the DDA. MPE follows in a similar fashion, though specifically focuses on externalisation of

\textsuperscript{97} Damro, above n 92.
\textsuperscript{98} Sven Maertens and others “Options to continue the EU ETS for aviation in a CORSIA-World” 2019 11(20) Sustainability at 2.
\textsuperscript{99} Damro, above n 65, at 690-691.
its regulations with economic incentives or intimidation with its market size. Unlike the abolition of the death penalty, this IPR norm concerns agriculture policy that is opposed by New Zealand, Australia and the US, who are also agricultural powers. This suggest NPE is a weak theory when dealing with issues outside human rights or democratic issues. Nevertheless, as other FTAs are analysed, it is evident the EU is more successful in exporting its norms in the bilateral sphere by acting as NPE and MPE. Notably NPE is used as a development tool in regard to IGOs in ACP countries, and MPE uses economic integration in its neighbourhood to conduce other countries to adopt its IGO policies.

IV Unfair Competition and Geographical Indications

GIIs not registered as trade marks are protected in New Zealand from unfair competition via the Paris 10bis, TRIPS and the New Zealand Fair Trading Act 1986. The original Paris Convention was adopted in 1883, and the last revision was in 1979, although 10bis was unaffected, making this the international standard of unfair competition. A handful of countries on the Horn of Africa, the Pacific, East Timor and Myanmar are not contracting parties of the Paris Convention 1967, as revised by the Stockholm Act. The Anti-Counterfeiting Trade Agreement (ACTA) is proposed by EU with its major trading partners; signed in 2011 but not in force as only Japan has ratified the Agreement. Its motivation was shown by figures that estimated in 2006 that 130 million ‘fake objects’ were intercepted at the EU’s external borders. In 2019, counterfeits were estimated at EUR 119 billion or 5.8% of total EU imports. GIIs are subject to ACTA as a general IPR; however, the focus is towards trade mark counterfeiting and pirated copyright goods. Counterfeiting championed the French Appellation d’Origine Contrôlée (AOC) system to combat this unfair competition in the market place. Thus, the inception of sui generis IGOs protection systems is built upon this concept and benefits extend from wine to handicrafts.

The chapter is split into four parts that explain the importance and function of agricultural GIIs in Europe. Consequently, this emphasises why the EU insists New Zealand joins its upgraded club, and what Zealand is missing out on by not doing so. Each part overlaps with others and cannot be examined in isolation. The first part looks at New Zealand’s preferential use of the trade mark

100 Christian Riffel The Protection Against Unfair Competition in the WTO TRIPS Agreement : The Scope and Prospects of Article 10bis of the Paris Convention for the Protection of Industrial Property (BRILL, Leiden, the Netherlands, 2016) at 43.
102 Seville, above n 52, at 416.
104 Anti-Counterfeiting Trade Agreement (signed 01 October 2011, not yet in force), art 5(h) and 33.2 ACTA.
system to combat unfair competition. The second part addresses the EU’s view on misappropriation of geographical names in relation to trade marks. Cases are then applied from the US and New Zealand to suggest a *sui generis* system may help misappropriation of their products. The third part address the tort of passing-off as a complicated alternative for IGO protection in the absence of *sui generis* protection. The last part analyses the coverage of the EU’s ‘four tier *sui generis* system’ and the extent of ‘evocation’ to prevent misuse. Each part addresses protection for registered or unregistered IGOs from various forms of unfair competition by various intellectual property systems, legislation, regulations and international agreements.

A Choose your poison: Trade Marks, IGOs or both:

‘The chicken or the egg’ debate for trade marks and GIs only serves to explain the reluctance of adopting one system of the other, i.e. New Zealand using trade marks for similar functions of a *sui generis* system. In other words, New Zealand’s first statutory essay was the Trade Marks Act 1866, repealed by the Patents, Designs, and Trade Marks Act 1889 which contained the provisions of the United Kingdom Patents, Designs, and Trade Marks Act 1883 the same year the Paris Convention was signed. Thus, New Zealand has followed UK legislation and adopts the by-products of this heritage such as the law of proprietorship whereby the first use of a trade mark on the market place gives a trump card to the unregistered trade mark user over the holder of a similarly registered trade mark even when filed in good faith. This contrasts with civil law based systems such as France and Japan where proprietorship of a trade mark is not governed by first use but instead by the first to file an application regardless of first use on the market place.

With regard to trade marks conflicting with GIs, there lie discrepancies in legal interpretations surrounding who is ‘first in time’. Soon after New Zealand’s first trade mark act, the phylloxera pandemic in France set the foundations for the European *sui generis* system of IGOs, a century before New Zealand and Australia and the US by the TRIPS Agreement. This suggests New Zealand as a common law or English speaking country has difficulty adopting an IGO system. The late development of a legal framework on GIs and trade mark preference makes New Zealand conservative in adapting to the European norm. Irrespective of the system to protect IGOs, rules and

---

105 See handicrafts section for a brief discussion on IGOs creating a reputation for a quality product, then trade marks are used to distinguish the product later on.

106 Rob Batty “The challenges of prior use to New Zealand registered trade mark law” 2014 45(2) Law review (Wellington) at 258.

107 Ibid. New Zealand Trade Marks Act 2002, art 34 contains a similar provision.

laws dealing with unfair competition addresses both systems. All-in-all, trade marks and GIs are both regimes that have emerged from the necessity to prevent unfair competition between competitors on the market place from infringements on their signs. At least this is the European view that conduces co-existence.

Art 9 of the Fair Trading Act 1986 simplifies misleading or deceptive conduct where ‘no person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive’. This general provision is basic and does not offer broader protection on unfair competition in regard to GIs as it does under art 16 for trade marks. The incentive for EU GIs holders is to register their product as a trade mark in New Zealand if it is not eligible to be registered as a New Zealand GI i.e. the product is not a wine or spirit.

B Misappropriation

The comprehensive food labelling Regulation, EU Regulation No 1169/2011 on food information to consumers, shares a similar purpose to Article 10bis paragraph 3 of the Paris Convention against misleading consumers as to the true origin of the food or goods. Recently Czech yoghurt described as ‘Greek’ brought attention to the Czech Republic’s incompatible legislation. ‘Greek yoghurt’ is not a registered AO or GI, but misrepresentation falls under competition policy and the EU through TFEU Article 3(1b) has ‘exclusive competence’ over this matter. The British courts previously discussed the issue on the US largest yoghurt, Chobani, selling US made ‘Greek yoghurt’. On similar grounds as to the ‘Spanish Champagne’ and ‘Swiss Chalet’ cases, it was described as immaterial if identical production methods were used and the result was an indistinguishable product. The goodwill or reputation of Greek yoghurt was established by having a pulling power over its other name, strained yoghurt, ‘rather than merely denoting geographical origin’, and for the public where the origin mattered and reflected by a premium price, constituted misrepresentation. In contrast to English muffins or Swiss cheese, Greek yoghurt was in the midst of crossing over to the generic side. The Czech Republic resolved the yoghurt situation by amending the legislation.

109 Gangjee, above n 40, at 384.  
111 FAGE UK Ltd v Chobani UK Ltd [2013] EWHC 630 (Ch).  
112 At [137].  
113 [133]–[136].
Production methods may be immaterial for passing-off but for IGOs it is necessary to distinguish. Greek yoghurt and Greek-style yoghurt use two different production methods where the latter can be considered inferior by using artificial thickeners to make the viscosity replicate Greek yoghurt whereas the watery-whey is instead strained-out. Both types of Greek yoghurt are not protected in New Zealand as they describe a yoghurt type and not origins or quality and reputation thereof. This theme crosses over to genericity discussed in Chapter VI.

1 Misappropriation and trade marks in relation to IGOs

Trade mark laws often provide for individual, collective or certification marks. Products that are trade marked but also have terroir qualities may seek IGO registration. CHAMPAGNE PDO’s biggest customers are the United States and United Kingdom that buy twice as much as third place Germany.\(^\text{114}\) The biggest producer by volume is the Champagne house, Moët & Chandon, which has its brand names, Moët and Dom Pérignon, trade marked in New Zealand and its GI status as wine protected under sui generis systems in the EU since 1973 and New Zealand since 2020. Similarly, the name ‘Johnnie Walker’ and its various blends is trade marked by Diageo Brands B.V. for ‘Scotch Whisky GI’, and likewise for the Hennessy name and logo for ‘Cognac GI’, which along with ‘Pisco’ (Peru), ‘Napa Valley’ (US) and Champagne comprise the only foreign registered GIs in New Zealand at the time of writing. A New Zealand example is the trade mark name ‘Cloudy Bay’ that produces wine in the regions of ‘Marlborough and Central Otago’ that are protected GI designations describing New Zealand wines produced within those regions.\(^\text{115}\) Similar to EU wine PGIs, New Zealand wine GIs must use 85% of the grapes originating from the distinct demarcation, with the remainder wholly sourced within New Zealand.\(^\text{116}\)

These examples show symbiotic relations between trade mark and IGO, where the IGO is collectively owned by local producers and trade marks are used to distinguish the IGO. However, an IGO registered after a trade mark does not allow the IGO holder to freely choose the distinctive sign if there is conflict. TRIPS provides some direction in this matter; nevertheless it is a source of contention between countries that prefer trade marks for IGO products, such as the US, Australia and New Zealand. EC- Trade Marks [see below] highlights interstate quarrels over trade marks in relation to IGOs and the national treatment of such systems through WTO dispute resolution. The

---


\(^{115}\) The brands Moët, Dom Pérignon, Hennessey and Cloudy Bay that produce wine and spirit IGOs in NZ and the EU, are all subsidiaries owned by LVMH Moët Hennessy Louis Vuitton.

\(^{116}\) New Zealand GI Act, art 21.
subsequent ‘beer cases’ provide examples of agricultural GIs struggling to maintain exclusive use of their IGOs, despite arguments of misappropriation of their geographical designations or reputations.

\[(a)\] **EU-WTO: EC-Trademark**

The ‘founding father’ of agricultural GIs in Europe, Regulation 2081/92, was originally incompatible with WTO law and was replaced by Regulation 510/2006, the predecessor of the Agriculture Regulation.\(^{117}\) The case **EC- Trade Marks and Geographical Indications** concerned two Panel cases on similar matters brought against the European Community by the US and Australia.\(^{118}\) The Complainants suggested numerous breaches of the provisions of the TRIPS Agreement and the Paris Agreement via TRIPS art 2.1 and articles of the General Agreement on Tariffs and Trade (GATT).

The first major concern was national treatment and the discrimination that existed under Regulation 2081/92 that created an ‘extra hurdle’ for third parties registering GIs.\(^{119}\) Third parties were required to have commercial establishments in the EU for enterprises seeking GI registration in addition to a **sui generis** system equivalent to the EU’s both of which constituted ‘less favourable treatment’ within the meaning of TRIPS art 2(1) and 3(1) and GATT III:4.\(^{120}\) The second major concern was a slight win for the EU model internationally which concerned GIs and prior registered trade marks and the extent of coexistence.\(^{121}\) Members must provide trade mark owners protection against certain uses in TRIPS art 16.1, including confusion caused by GI use, but the Panel concluded an exception was justified under TRIPS art 17. Coexistence between GIs and prior trade marks was permissible as Regulation 2081/92 art 14(2) ‘took into account legitimate interests of the owner of the trade mark and of third parties’ satisfying the exception under art 17 and informing subsequent discussions of the WTO on trade mark and GI relations.\(^{122}\) The less favourable national treatment under GATT III:4 mentioned above was not available as an exception under GATT XX(d), although the measures taken were necessary for compliance with Regulation 2081/92, the examination and


\(^{119}\) WorldTradeLaw.net. Dispute Settlement Commentary (DSC) European Communities - Protection of Trademarks and Geographical Indications at 9.

\(^{120}\) Blakeney, above n 12, at 37. (2019)

\(^{121}\) Charlier and Ngo, above n 50, at 181-182.

transmission of applications by third parties being inconsistent with GATT. The EU repealed the Regulation to make registration and protection less discriminatory to third parties, but its partial victory affirmed by the Panel is the mentality the EU uses in bilateral trade deals to push for coexistence of its GIs with national trade marks.

The EU repealed the Regulation to make registration and protection less discriminatory to third parties, but its partial victory affirmed by the Panel is the mentality the EU uses in bilateral trade deals to push for coexistence of its GIs with national trade marks.

The New Zealand GI Act supports trade mark superiority if registering a GI after a trade mark (Art 14-17) but there is ground for co-existence (Art 18.1(b)). The history of New Zealand GI legislation speaks to its preference for trade marks. The Geographical Indications Act 1994 was repealed in 2008 and never entered in to force. The current 2006 GI Act was stalled until 2016 for an amendment and defers non-wine and spirit products to protection as certification marks under the trade mark laws.

(b) Private Trade Mark Quarrels- Budweiser and Bavaria

The ‘king of trade mark disputes’ is ‘Budweiser’ and the rights to the name and its variations by Anheuser Busch (AB) and Budějovický or Budweiser Budvar (BB). For reference, the Southern Bohemian town of České Budějovice is known as the proper noun in German as Budweis, and Budwiser is the adjectival form, i.e. ‘of or from Budweis’. The current BB origins trace back to the German founded Budweiser Brauberechtigen Bürgerliches Brauhaus (BBBB) in 1795, and has since nationalised the assets of BBBB in 1946 after independence as Czechoslovakia. AB is the biggest brewer in the world, and sold its beer branded as Budweiser in America since 1895, purposefully styled after beer from Budweis.

This dispute takes many forms in many jurisdictions and highlights the time consuming and costly nature of inconsistencies due to the ‘principle of territoriality’. Simply, this principle means the registered IGO or trade mark is protected in that jurisdiction according to the laws thereof, independent from other jurisdictions. This has led to a ‘global crusade’ in the name of Budweiser, seeing as each jurisdiction needs conquering. Decades of litigations and dozens of law suits spanning five continents have followed. The multilateral WTO system would be convenient though this is

123 WorldTradeLaw.net, above n 118, at 15-16.
124 Engelhardt, above n 64, at 785.
125 Fe Emmanuelle Panlilio and William Van Caenegem “An Australian anomaly? Sui generis GIs in Australia and the Asia Pacific region” 2019 41(10) E.I.P.R. 628 at 634.
128 At 397. AB is a subsidiary of Anheuser-Busch Inbev SA/NV.
129 Mantrov, above n 3, at 59.
often beyond the scope of TRIPS.\textsuperscript{130} Conflicts between trade marks and IGOs are often governed by the ‘principle of priority’ that establishes prior registration having priority over the latter (‘first in-time, first in-right’).\textsuperscript{131} As previously mentioned, the EU seeks to change these principles through bilateral agreements and coexistence.

‘Budweiser disputes’ are almost always trade mark based and are, therefore, irrelevant in the context of IGOs.\textsuperscript{132} The European case saw conflicts of national and supranational jurisdiction and PGIs vis-à-vis trade mark. In New Zealand and Australia, it was a case of trade mark vs trade mark where Anheuser-Busch maintains the trade mark ‘Budweiser’, ‘Budweiser king of beers’, ‘Bud’ and associated logos and Budweiser Budvar is restricted to ‘Budejovicky Budvar’.\textsuperscript{133} Budějovický Budvar is not considered passing-off on the American brand reputation or get-up or misleading consumers to thinking the beer is of American origin.\textsuperscript{134} The various designations of Czech Budweiser, such as Budějovický pivo and Českobudějovické pivo (pivo meaning beer), are sought by Czechia in the EU-NZ FTA.\textsuperscript{135} It is too late for Plzeň (Pilsen) beer, but the IGO camp will not forget that Budweiser is denoting attempts to not be ‘geographically generic’.\textsuperscript{136}

This again raises the lingering effects of colonialism, whether Ceylon evokes Sri Lanka, Swaziland evokes Eswatini or Saigon evokes Ho Chi Minh City and that products named after their predecessors would mislead consumers. European countries are largely to blame for genericity as a result of emigrants taking nascent GIs with them, or the human factor and traditional knowledge. Rights over names from European translations (parmesan from Parmigiano Reggiano), transliterations (Ceylon from Ceilão), transcriptions (φέτα to feta), and homonyms (London on the Thames River in Ontario, Canada and London on the River Thames in England) are difficult to fit into a ‘one size fits all’ approach.\textsuperscript{137}

\textsuperscript{130} Heath, above n 127, at 400.
\textsuperscript{131} Mantrov, above n 3, at 179.
\textsuperscript{132} See Heath, above n 127, at 401-404 for Lisbon and Bilateral agreements involving GIs and the Budweiser disputes.
\textsuperscript{133} Intellectual Property Office of New Zealand, Trade Mark Register, IP Number 150926 (Budweiser), 139286 (Budweiser king of beers), 75141(bud) and 714458 (Budejovicky Budvar).
\textsuperscript{134} Australia- Anheuser-Busch Inc v Budejovicky Budvar [2002] FCA 390.
\textsuperscript{135} New Zealand- Anheuser Busch Inc v Budweiser Budvar National Corporation High Court [2001] 3 NZLR 666.
\textsuperscript{137} Alberto Ribeiro de Almeida and Suelen Carls “The Criteria to Qualify a Geographical Term as Generic: Are We Moving from a European to a US Perspective?” 2021 52(4) IIC at 463.
As seen in *Budweiser*, the coexistence the EU pushes for does not always reflect IGO superiority. ‘Grandfathering’ is used as a defence to IGOs that cater to existing trade mark rights which are used and registered in good faith, predating TRIPs implementation (Art 24.4-5).\(^\text{138}\) In CETA the EU allowed for grandfathering existing cheesemongers’ rights. There are only twenty-seven instances in eleven recent EU FTAs that grandfathering exists.\(^\text{139}\) Feta, Munster, Fontina, Gorgonzola, Asiago are all EU PDOs that are allowed to be used as indications ‘by any persons, including their successors and assignees, who made commercial use of those indications preceding the date of 18 October 2013’.\(^\text{140}\) Protection for these products is still limited after this date, as Article 20.21(1) allows for delocalisation expressions such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or the like, the opposite of Art 23.1 TRIPS. CETA is the new benchmark for GIs as well as in terms of overall trade liberalisation - the level New Zealand and Australia seek.\(^\text{141}\) In an EU-NZ FTA, many cheeses in New Zealand will no longer be prospectively generic. The use of ‘grandfathering’ can satisfy some generic terms for older producers in New Zealand, otherwise ‘delocalisation and phase-out periods’ are the lesser victories by way of mutual compromise.\(^\text{142}\)

Internally, *Bavaria* tested grandfathering or the principle of priority for a Dutch company’s trade mark of a beer, named after the Anglicised region of Germany, *Bayern*.\(^\text{143}\) The Bavarian Brewers Association (BBA) sought protection of their BAYERISCHES BIER PGI that uses the ‘Bavarian bottom-fermented brewing method’ that spread throughout Europe in the 19th century and though a

---

\(^{138}\) Irene Calboli “Geographical Indications between Trade, Development, Culture, and Marketing: Framing a Fair (er) System of Protection in the Global Economy?” in Irene Calboli and Ng-Loon Wee Loon (eds) *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* (Cambridge University Press, Cambridge, 2017) 235-256 at 244. Homonyms are also covered under art 22.4 and 23.2 TRIPS and relevant EU GI Regulations as well as the exceptions afforded to homonyms e.g. is sufficiently distinctive and no misappropriation of origin. See ‘Passing-off and Commune de Champagne’ above and Case T-212/02 Commune de Champagne and Others v Council of the European Union and Commission of the European Communities [2007] EU:T:2007:194. Held ‘Champagne’ is an exclusive naming right in the Community for producers of that region in France.

\(^{139}\) Daniele Curzi and Martijn Huysmans “The Impact of Protecting EU Geographical Indications in Trade Agreements” 2021 American journal of agricultural economics at 6. CETA, above n 54, art 20.21(5) specifically caters to previous trade marks registered in good faith being grandfathered before the signing of the Agreement. Articles 20.21(1)-(4) cover ‘commercial use’ of products indicated with one, two or three asterisks in annex 20-A depending on the length of the ‘phase-out’. Majority of the GIs do not contain an asterisk.

\(^{140}\) CETA, article 20.21(2).


\(^{142}\) Gangjee, above n 41, at 545.

\(^{143}\) Case C-120/08 *Bavaria NV v Bayerischer Brauerbund eV*. European Court Reports 2010 I-13393.
common name, is not generic in the EU. The grandfathering clause, currently Article 14.4 of the Agriculture Regulation, allowed for the continued use of the Bavaria trade mark name for its prior registration and mark which does not mislead the public. The case was interpreted in Australia similarly. The BBA argued the name ‘Bavaria’ could not distinguish goods from other persons and also evoked its PGI. However, the case was ultimately decided on the grounds that because ‘Bavaria’ was not a Gi it could not be disqualified from registration as a trade mark as well as consumers not linking ‘Bavaria’ to a source of the beer.

The England and Wales Court of Appeal saw the Budweiser dispute of the ‘warring parties’ and hoped they could find a ‘lasting truce to hostilities’. The infighting caused by trade marks using geographical names from collective marks, certification marks or registered IGOs, is humorously summed up by former Lord Justice, Robin Jacob:

‘As world trade expanded it was inevitable that the markets of the two companies would also expand, so that sooner or later they would find places where they overlapped. This has led to a quite astonishing series of legal battles around the world. Apparently the first of these was as long ago as 1911. So we are nearing a 100 year war. It would be an interesting but very substantial exercise to collect all the decisions of all the courts and all the trade mark registries of all the countries where the battles have taken place. Many lawyers and their families in many places must be grateful that these two parties apparently cannot produce a once and for all world-wide settlement’.

2 Misappropriation of potential US and New Zealand IGO Seafood

The Common Fisheries Policy of the EU plays a weak role in supporting IGOs owing to the features of the industry. It is hard to attribute essential terroir factors when fish circumnavigate the globe seasonally. Additionally, the industry requires little processing of the raw materials for downstream markets which makes it difficult to attribute the essential human factors. Nevertheless, some products encompass the qualities and characteristics of PGIs and PDOs, especially mollusc and crustaceans.

(a) The United States

Surprisingly, the US has applied for protection of ‘Alaska Pollock’ as a PGI in 2021 as its first foodstuff IGO, but the case is futile. Firstly, Russia catches the most Alaska Pollock globally (Russia 48.7%, US

---


145 Note that ‘registration’ is the key point and not ‘applied for registration.


147 Blakeney, above n 12, at 139.


149 At [6].
44%), but the industry acts as a transition market where China imports the Russian catches, processes, and then exports to the EU being comfortably their largest Alaska Pollock supplier. Secondly, Alaska Pollock should be considered generic if not semi-generic if this attempt is to save its name from becoming a ‘frankfurter, or Frankfurt sausage’. Registration as a PGI does have its merit through a ‘Paris view’. Consumer surveys in the US demonstrated that a majority of American consumers thought Alaska Pollock was from Alaska and more than 80 percent said that ‘if they saw that name, and the fish wasn’t from Alaska, they would feel the name was untruthful and they were being misled’. Scottish Wild and Farmed Salmon are registered PGIs in the EU, therefore they are not generic, although they are registered GIs in the UK. The US now protects the label denomination, ‘Alaskan’, as a collective trade mark to describe Pollock harvested within Alaska’s exclusive economic zone.  

(b) New Zealand

Cozza di Scardovari (mussels of Scarovari in Italy) and Fal Oysters are successful PDOs. Cozza di Scardovari uniqueness comes from its ‘ocean terroir’ of low salinity waters but is ultimately due to the producers’ savoir faire of nursery development in the 1960’s. From the ‘salty sea yet sweet rivers’ of the Cornwall area, the Fal Fishery styles themselves as the most sustainable fishery in the world and as the last fishery in Europe to use only sail and row boats for harvesting (the traditional method of those parts dating back to 1750). New Zealand can contribute to the quality global mollusc industry with sustainable harvesting with its quality ‘Foveaux Strait dredge oyster’, or Bluff oyster in the vernacular.

‘New Zealand is unique in that it has one of the most substantial and productive wild capture fisheries for flat oysters’, despite recent mass mortality from the Bonamia ostreae parasite. Described as a national treasure and New Zealand’s best delicacy, Foveaux Strait is the only place in the country they can be sustainably exploited on a commercial scale. Sustainability measures and quota allowance is regulated by New Zealand Fisheries Act 1996 and in terms of indigenous interest,

152 H.R.2029 - Consolidated Appropriations Act, 2016 at 129 STAT. 2286.
155 Samuel D. Heenan and others “Reproductive changes in Foveaux Strait Ostrea chilensis, Southern New Zealand, after Bonamia exitiosa epidemics” 2021 New Zealand journal of marine and freshwater research.
the Treaty of Waitangi Fisheries Commission has the largest quota share of ‘Foveaux Strait dredge oysters’, at 20% of total numbers.\textsuperscript{157} ‘Bluff Oysters certified by Foveaux Strait’ was trade marked by the Invercargill City Council but expired in 2020 as renewal fees were not paid, a commonly cited step in becoming generic.\textsuperscript{158} Although the product is likely to lose quality via frozen exports, potential certification as an IGO could see a higher premium as a fresh product. As a fresh product ‘aqua-tourism’ in the region can be stimulated as well as the ease of protection from other producers ‘passing-off’ products not from the area. Use of the US and New Zealand products will not constitute unfair competition within the meaning of 10bis or under TRIPS if the products become generic or customary names.

C Passing-off

Actions against deceit date from the Elizabethan era and the development of such laws in the UK is where New Zealand’s law on passing-off originates.\textsuperscript{159} Passing-off as a common law tort is distinguished from the tort of ‘unfair competition’ in contrast to civil law countries that have broad ‘unfair competition’ laws.\textsuperscript{160} GIs are applied through this product protection system that originally catered for trade-marks. Passing-off is where sufficiently established ‘goodwill’ (reputation) is infringed by a competitor on either the name or ‘get-up’ (external features and other indicia) that will confuse consumers and incur damages to the holder of the ‘goodwill’.\textsuperscript{161} Although wines and spirits can be protected under the New Zealand \textit{sui generis} system by way of the GI Act 2006, the precedent of passing-off set in the UK was applicable to a wine. Nevertheless, this action is an option for EU agricultural IGOS that cannot find protection under a \textit{sui generis} system in New Zealand. Champagne as part of the plaintiffs ‘good-will’ is a property right and therefore protected by a passing-off action.\textsuperscript{162} ‘Spanish Champagne’ was judged not as innocently passing-off on the good-will of Champagne, but deliberate as to attract the ‘good-will’ associated with its reputation and connect it with the Spanish product.\textsuperscript{163} New Zealand saw its own version of ‘Spanish champagne’ in the form of ‘Australian Champagne’. The New Zealand case was decided on similar grounds as the ‘facts were not materially distinguishable’.\textsuperscript{164} Keep in mind the abstract concept of ‘goodwill or reputation’ as

\textsuperscript{157} New Zealand Fisheries Act 1996, schedule 9, part 5.
\textsuperscript{158} Intellectual Property Office of New Zealand, Trade Mark Register, IP Number 659808.
\textsuperscript{160} At 225.
\textsuperscript{161} Catherine Ng \textit{Goodwill in Passing Off: A Common Law Perspective} (Edward Elgar, 2021).
\textsuperscript{162} \textit{J Bollinger and Others v Costa Brava Wine Co Ltd} (No 2) [1961] 1 All ER, at [561] – [563].
\textsuperscript{163} At [568].
\textsuperscript{164} \textit{Wineworths Group Ltd v Comité Interprofessionel du Vin de Champagne} [1992] 2 NZLR 327 at [333].
this subjective quality is not the essence of geographical indications; instead quality and characteristics linked to geographical origin create the reputation that underpins GIs.\textsuperscript{165}

The Swiss commune of Champagne deserves an honourable mention as being in the ‘wrong place with the wrong name’.\textsuperscript{166} Nevertheless, they attempted to register ‘Commune de Champagne’ decades later and became the first application to be rejected on grounds the proposed designation of origin was not registered in Switzerland.\textsuperscript{167} Were Switzerland to register ‘Commune de Champagne’ they would breach their obligation to protect wines originating from the EU under an agreement on trade in agricultural products.\textsuperscript{168} In the rudimentary form unfair competition and rules of origin, under Paris 10bis and by virtue of TRIPS 2.1, Champagne as an Indication of Source, ‘Made in Champagne’, is itself not deceptive, though is misleading had regulations allowed it to be labelled so.\textsuperscript{169}

Identical place names are common, especially through colonial links. The question raised in the EU-NZ FTA negotiations are, \textit{do New Zealand’s place names identical to those in Europe with registered GIs have superiority over similar products coming from New Zealand?} The triple paradox is seen in a product labelled ‘French Farm Pinot Gris Wine 2021’ from Black Estate that uses the ‘North Canterbury GI’ and the ‘New Zealand enduring GI’ on its label.\textsuperscript{170} It is unlikely a consumer would confuse New Zealand from the province of Zeeland in the Netherlands after which it is named after. However, an argument exists that non-local consumers may be misled to the origin of the product, whether by French Farm (the vineyard) or North Canterbury, potentially evoking French and/or British origin. Dunedin is not located in an area protected as a GI, but its etymology from the Scottish Gaelic word, \textit{Dùn Èideann} for Edinburgh, questions the EU’s view of ‘evocation’ on this matter just as it did in relations to \textit{Scotch whisky} below.

\textsuperscript{165} Gervais, above n 30, at 126.
\textsuperscript{166} Kolleen M. Guy \textit{When champagne became French: wine and the making of a national identity} (Johns Hopkins University Press, Baltimore, 2003) at 193.
\textsuperscript{169} Matthijs Geuze “Geographical Indications under WIPO-administered treaties” in Dev S. Gangjee (ed) \textit{Research Handbook on Intellectual Property and Geographical Indications} (Edward Elgar, Cheltenham, 2016) 95-122 at 99-100.
\textsuperscript{170} The Canterbury GI has two GIs contained wholly or partly within its area; North Canterbury and Waipara Valley/Waipara. New Zealand along with North Island and South Islands are three enduring GIs, or permanent GIs, that are treated as normal GIs but cannot be removed from the register and are therefore not subject to any restriction on registration. See Art 6(a) NZ GI Act.
D Evocation

‘Passing-off’ remains in the EU by way of Ireland as the only common law based system, but the form of ‘evocation’ is used at the Union level. Article 13(1) of the Agriculture Regulation GIs prohibits any: a) direct or indirect commercial use of a protected name; b) misuse, imitation or evocation of protected name; c) other false or misleading indication; d) other practices liable to mislead consumers as to the true origin of the product. The equivalent Wine and Spirit Regulations on EU GIs all contain these ‘four norms’ to prevent unfair competition of protected IGOs as inspired by the Paris Convention, with the exception of ‘evocation’.¹⁷¹

The trade mark ‘Cambozola’, itself a portmanteau of Camembert and Gorgonzola, established the definition of evocation, where the similar appearance or name triggers the image of Gorgonzola in the mind of the consumer.¹⁷² The scope of protection for GIs under EU FTAs do not reference ‘evocation’; instead they follow TRIPS’ wording, prohibiting use that ‘indicates or suggest goods originates elsewhere… even when true origin is indicated’.¹⁷³

The notion of ‘evocation’ is relatively broad and includes translations and alliterations.¹⁷⁴ The name ‘Konjakki’, the Finnish translation of Cognac, was ‘direct commercial use’ by a translation and constitution evocation under the same definition as Cambozola, specifically the phonetic similarities.¹⁷⁵ This case dealt with the Spirit Regulation,¹⁷⁶ but established the principle of applying these ‘four norms’ individually to ascertain whether there is unfair competition of a registered IGO.¹⁷⁷ ‘Verlados’, a spirit distilled from apples, involved evocation of ‘Calvados GI’ by use the syllables.¹⁷⁸ The Finnish village of Verla, added the suffix ‘dos’ to its product which has no meaning in Finnish. Given Verlados and Calvados both ‘contain eight letters and two syllables with the latter four

---

¹⁷¹ Paris Convention, above n 6, at arts 6bis(1), 10(1), 10bis(2) and 10bis(3)1. Article 10bis(2) refers to ‘honest practices’ in commercial and industrial matters, the contrary constitutes unfair competition.

¹⁷² Case C-87/97 Consorzio per la tutela del formaggio Gorgonzola v Käserei Champignon Hofmeister GmbH & Co. KG and Eduard Bracharz GmbH ECR 1999 I-01301, at [25].


¹⁷⁴ Heath, above n 126, at 191-192.


¹⁷⁷ Bureau national interprofessionnel du Cognac v Gust, above n 175, at [46].

¹⁷⁸ The Calvados PGI also exists but as a wine. A spirit has a minimum alcohol content of 15% unless is an egg liqueur or advocaat where it shall be at 14%. See Regulation (EU) 2019/787, above n 22, art 2. Interesting, ‘ advocaat’ established the basic approach to passing-off and the ‘extended form’, where the common ingredients in the Advocaat drink were used by another trader in a cheaper version using the same name. The cheaper product passed-off on Advocaat by inter alia, misrepresenting their product and causing damage to Advocaat’s reputation at Erven Warnink BV v. J Townend & Sons (Hull) Ltd [1979] 2 All ER 927 (HL).
letter and last syllable identical’, there is enough visual and phonetic similarity to constitute evocation of the Calvados GI. 179 In addition, the ‘conceptual proximity’ between the terms by consumers was needed, or else the Verlados would not ‘bring to mind’ Calvados, or Calvados would be considered generic. 180 Naturally, generic products are not subject to these unfair competition norms, especially generic agricultural products concerning commercial use and evocation. 181

‘Champagner Sorbet’ (Champagne sorbet) was originally considered not misleading as the product was the customary name of the dessert known by the public. 182 Had it not been appealed, it may have been a product that evoked Champagne and ‘lived to tell the tale’. Champagne used to describe the production method was phased out by 1994 with German sparkling wine producers no longer eligible to use ‘Flaschengärung im Champagnerverfahren’ (bottle-fermented by the champagne method). 183 Champagner Sorbet sold in Germany was in direct commercial use through the German translation as established by Konjakki. 184 However, is it still evocation if the product that is being evoked is the legitimate product conforming to the IGO specifications? The bigger question was the use of the Champagne PDO as an ingredient (the Sorbet constituting 12% Champagne with the rest sugar and water) and whether this constituted an ‘essential characteristic’ of the product. 185

The European Commission suggests the product benefiting from a PGI/PDO ingredient be used in ‘sufficient quantities’ but does specify a minimum amount. 186 The Commission and the Court of Justice of the European Union (CJEU) also noted that no ‘comparable ingredient’ may be used as an alternative or substitute i.e. must be Champagne PDO and not German sparkling wine. The French Supreme Court already decided ‘foie gras with Champagne’ was illegal as the product only contained 2% Champagne PDO which was not enough to distinguish Champagne as an essential flavour, therefore exploiting Champagne’s reputation. 187 Therefore, the CJEU allows ‘Champagner Sorbet’ to use the denomination ‘Champagne’ if the 12% constitutes an ‘essential characteristic’, which it likely

179 Case C-75/15 Viiniverla Oy v Sosiaali- ja terveysalan lupa- ja valvontavirasto ECLI:EU:C:2016:35, at [38].
180 At [33] – [35].
181 Regulation 1151/2012, above n 26, art 13.1.
182 Case C-393/16 Comité Interprofessionnel du Vin de Champagne v Aldi Süd Dienstleistungs-GmbH & Co.OHG ECLI:EU:C:2017:991, at [24].
184 Champagne v Aldi, above n 182, at [34]. The consistency in interpretation is maintained despite involving different Regulations dealing with two different GI types i.e. a wine and a spirit.
185 Aude Mahy and Florence d’Ath “The Case of the "Champagner Sorbet" – Unlawful Exploitation or Legitimate Use of the Protected Name "Champagne"?” 2017 12(1) European Food and Feed Law Review at 43.
186 Commission Communication- Guidelines on the labelling of foodstuffs using protected designations of origin (PDOs) or protected geographical indications (PGIs) as ingredients [2010] OJ C 341/3, at [2.1(2)]. Compare this to Darjeeling PGI that has its name protected but the use of its tea in blended varieties not protected.
187 Mahy, above n 185, at 45-46.
does not.\textsuperscript{188} The manufacturers could increase the composition of Champagne to guarantee the essential characteristics attributable to Champagne PDO are present, but this may result in another ‘legal headache with the GI giant’. Cured meat producers of in New Zealand can take note of this case for their product ‘Champagne ham’, which traditionally uses no Champagne or other ‘comparable ingredient’. ‘Champagne cigarettes’ were not so fortunate. The French court found them to use misuse the reputation of the protected PDO’s name that is ‘wreathed in universal prestige’.\textsuperscript{189}

‘Scotch Whisky’ shows the broad notion of evocation beyond translations, ingredients and ‘wordplay’. Comparable to Champagne, which is an ‘upper echelon IGO’ worth billions in exports annually, Scotch whisky was ‘taken hostage’ during ‘Spanish Champagne’. ‘Scotch was on the rocks’ while Spanish Champagne passed-off on the original Champagne, fearing the repercussions by France if Champagne succumbed to British ‘genericide’.\textsuperscript{190} Brexit negotiations highlighted the importance of this prized spirit, being predominantly mentioned more so than other GIs.\textsuperscript{191} The ‘Scotch Whisky’ case demonstrated the extent of indirect commercial use of the ‘Scotch Whisky GI’. In the midst of Brexit, ‘Scotch Whisky’ satisfied the Scottish producers by protecting use of Scottish Gaelic words to describe whisky products outside Scotland. The German manufactured product, ‘Glen Buchenbach’, was in ‘conceptual proximity’ to Scotch Whisky GI, even in the ‘absence of phonetic and/or visual similarities’, because it is likely to mislead the basic whisky connoisseur.\textsuperscript{192} Glen, meaning ‘a narrow valley’ in Gaelic, is commonly used as an alternative for ‘valley’ to describe their products, similar to a ‘traditional term’ for EU wines.\textsuperscript{193} Buchenbach is a valley in Swabia, but it found out ‘all glens are valleys, but not all valleys are glens’. New Zealand’s ‘fledgling sui generis system’ is yet to be tested to this extent, but the ‘Gaelicisation’ of ‘Dunedin whisky’ may be prohibited in absence of evocation by art 25 of the New Zealand GI Act by use of a ‘kind, type, style, imitation, or any similar word or expression’.

Famous shapes or appearances are easily attributed to trade marks such as ‘Tolberone’ for its triangular chocolate resembling the Matterhorn, or the triangular flask of ‘Liquore Gilliano’. Article

22.1 TRIPS does not specify the type of sign used to indicate a GI and therefore leaves interpretation open to signs beyond names, hence why the Matterhorn Mountain is considered an ‘indirect GI’ of Switzerland.\textsuperscript{194} Shapes or appearances too can be an ‘ingredient for evocation’ as the sight aspect of the organoleptic experience. ‘\textit{Elderflower champagne}’ was a non-alcoholic product, not made from grapes nor from the Champagne region.\textsuperscript{195} The product ultimately passed-off on the shape of its vessel, resembling a Champagne that is likely to deceive the public along with the name. This interpretation is also applied to agricultural IGOS, recently demonstrated by Morbier cheese. Morbier PDO has a distinguishing black line running through the centre ‘like a weld’, nowadays made with vegetable carbon opposed to the traditional ash from the cauldron for food safety reasons.\textsuperscript{196} Previous judgements already interpreted ‘figurative signs’ as possible evocation when proven to be in ‘conceptual proximity’.\textsuperscript{197} Thus, protection is extended beyond the literary evocation to evocation by use of shapes and appearances, in addition to legal coverage in last norm, ‘other practices liable to mislead the public’.\textsuperscript{198}

EU FTAs follow the TRIPS wording while extending to agricultural IGOS, as well as including other acts of unfair competition within the meaning of Article 10bis of the Paris Convention. The ‘four norms’ create a multi-tier system of IGO protection in the EU based broadly on the Articles contained within the Paris Convention. Broad interpretations by individual countries is required to protect GIs ‘on par’ with the EU under the FTA/Article 10bis provisions of ‘dishonest practices or indications liable to mislead the public’. Just like generic names, each country has their own interpretation of how informed the general public is and the level of an infringement requirement to misled them. This raises the question of how European GIs would have their external characteristics protected in a \textit{sui generis} system in New Zealand. Appearances or shapes of IGOS may rely on passing-off actions.

\section*{Summary}

None of the aforementioned cases in this chapter involved intentional deceit in regards to labelling the origin of the goods, therefore involved various acts and interpretations of unfair competition as opposed to ‘raw counterfeiting’. TRIPS and other FTAs extend to translations of GIs and other practices liable to create unfair competition, but realistically this is weaker protection the EU affords.

\textsuperscript{194} Taubman, Wager and Watal, above n 55, at 78.  
\textsuperscript{195} Taittinger SA v Allbev Ltd [1994] 4 All ER 75.  
\textsuperscript{196} Commission Implementing Regulation (EU) No 1128/2013 approving minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Morbier (PDO)) [2013] OJ L 302/7 at [5.2].  
\textsuperscript{197} Case C-490/19 Syndicat Interprofessionnel de défense du fromage Morbier v Société Fromagère du Livradois SAS ECLI:EU:C:2020:1043, at [27].  
\textsuperscript{198} At [42].
internally. In this sense, the EU as a Market Power is successfully exporting its regulations to cover agricultural IGOs but is failing to export its comprehensive scope of protection in FTAs.

*Sui generis* protection systems that go beyond TRIPS have created a sizeable club that New Zealand is not yet a part of. The location and history of IGOs emphasise the cultural link to products through generations of tradition, distinguishing the protection needs from conventional trade mark laws as a non-exclusive rights based on *'jus soli'*, through terroir links. Protecting IGOs through trade mark systems can act as a barrier for MPE. *EC-Trademarks* highlighted the EU’s approach to externalise its IGO regulations when there is conflicts with prior trade marks by way of co-existence. Other barriers that exclude the EU’s market power manifesting fully are grandfather clauses, linguistic loop-holes and first in time, first in right approaches when the trade mark does not misled the public to the true origin of their product, even when the designation of the trade mark uses translations of registered IGOs.

Unregistered IGOs face lengthy and costly protection procedures through passing-off actions and law suits; a contrast to art 23 TRIPS which protects wines and spirits without deceit or confusion required.199 A *sui generis* system is preferred by producers as it creates fewer difficulties in fending off foreign mark abuses. The *ex officio* protection of a *sui generis* system means public officials can police registered IGOs i.e. take actions on their own initiative against infringements where the holder of the IGO would not know otherwise.200 This perk of the system is sought after by small-medium size enterprises (SME) that cannot fight infringements of their IGO across multiple jurisdictions.

The case study showed how the US and New Zealand seafood products with geographical links and qualities are undergoing misappropriation, and a *sui generis* system that protects agricultural IGO can be the solution to this. It is too late for kiwifruit, where French and Italian producers have registered PGIs of regional ‘kiwi’.201 As discussed in Chapter VI, steps to prevent genericization are key in the country of origin to remain protected against passing-off, misappropriation, evocation or trade mark infringements.

---


200 European Commission Study on geographical indications protection for non-agricultural products in the internal market (2013) at 72.

201 See ‘traditional knowledge’, below chapter VII.
V  The Position of the European Union and its Members States

Protection for wine GIs at community level began in 1970,\textsuperscript{202} 1989 for spirits,\textsuperscript{203} and aromatized wines in 1991.\textsuperscript{204} In 1992, the EU followed suit towards IGO protection of agricultural products and foodstuffs to promote regional food products inspired by the existing French AOC and Italian \textit{Denominazione di origine controllata} (DOC) systems.\textsuperscript{205} Regulation 1151/2012 (the Agriculture Regulation) is the current regulation underpinning agriculture and foodstuffs. EU IGO policies promote exports of agricultural products and increase their price although their quality policy may contain some weak elements for reducing trade in terms of imports and this is applicable to both intra and extra-EU trade.\textsuperscript{206}

Article 6 of the Agriculture Regulation specifies IGO registration is not available for a product generic in nature, conflicts with the name of a plant variety or animal breed, is homonymous with a name already registered, or misleads consumers to the true identity of the product in light of an established trade mark. All provisions of Article 6 are reflected almost identically in the EU proposed text on GIs in the EU-NZ FTA.\textsuperscript{207} The difference between the parties is extending the scope of protection to agricultural products. What qualifies as a generic term and specificities of IGO-TM relationships are all covered by the relevant EU Regulations above and through international agreements.

A  The European Union and International Agreements

1  TRIPS and Lisbon

In \textit{Daiichi Sanko}, the CJEU Grand Chamber held the TRIPS Agreement is an exclusive competence of the EU under TFEU Article 207(1), as it falls within the common commercial policy (CCP), and EU regulations on intellectual property also fall within the policy if they have a direct link to trade.\textsuperscript{208} IGOs were further brought under EU control by rectifying discrepancies between the two systems, Lisbon (designations of origin) and the EU (geographical indications). The CJEU that ruled that IGO of agricultural products and foodstuffs is exhaustive and cannot co-exist separately in Member States

\textsuperscript{206} Valentina Raimondi and others “Trade effects of geographical indication policy: The EU case” 2020 71(2) Journal of Agricultural Economics at 352-253.
\textsuperscript{207} European Union “Proposal for the EU-New Zealand FTA: Chapter [XX], Intellectual Property” (21 June 2018).
\textsuperscript{208} C-414/11 \textit{Daiichi Sankyo Co. Ltd and Sanofi-Aventis Deutschland GmbH v DEMO Anonimos Viamikhaniki kai Emporiki Etaireia Farmakon} ECLI:EU:C:2013:520. Craig and De Búrca, above n 25, at 383-388.
(Czech ‘Budweiser’ in Austria) and the EU (American ‘Budweiser’ at Community level). ‘Budweiser’ as a designation from Czechia is registered under the Lisbon System, which Austria is not part of, but by way of a bilateral agreement they upheld Czechia’s rights to the designation ‘bud’ over trade marks used by Anheuser-Busch. As a result of the discrepancies, the Czech beer markets its beer as ‘Budweiser Budvar’ or ‘Budějovický Budvar’ in the EU, whereas Anheuser Busch markets its beer as ‘Bud’ because of prior registration as a trade mark.

Subsequently, Regulation (EU) 2019/1753 and the Geneva Act of the Lisbon Agreement 2015 provided the solution by way of the EU becoming party to the Lisbon System. This allowed intergovernmental organisations to become ‘contracting parties’, equal to Lisbon Members States. Interestingly, the uncommon occurrence of a ‘boundary dispute’ arose between the European Commission and the Council of the EU over procedural competence in the Lisbon System, later settled by the CJEU. The Court held the Council to be in breach of the ‘ordinary legislative procedure’ by inviting international discussions on the Geneva Act, ignoring the Commission’s exclusive competence in this area as part of the CCP. The amalgamation of systems made those countries not part of the Lisbon Agreement, such as Germany and Spain, de facto members. This has synchronised Member States’ obligations under Lisbon to supervision by the Union without impeding on their rights to enter into international agreements, i.e. appellations of origin may not be registered outside the scope of EU Regulations. Although the TRIPS and Lisbon Agreements differ on nomenclature and definitions of IGOS inter alia, these agreements are an exclusive competence of the EU and not shared with Member States. Hence, EU Regulations are the superior law on the geographical market and the Union is the superior actor concerning IGO internationally, particularly the European Commission.

2 European Union and Free Trade Agreements

The strong position of New Zealand’s non-conformity to TRIPS-plus protection of GIs can be attributed to the ally of the US. Unlike China, which was forced to adopt a sui generis IGO regime

210 Radim Charvát “Protection of appellations of origin registered under the Lisbon Agreement in the context of the exhaustive nature of the EU protection of geographical indications and designations of origin” 2021 43(10) E.I.P.R. at 654-664.
213 Craig and De Búrca, above n 25, at 672.
214 See the Lisbon Agreement art 2 v TRIPS art 22.1 for definitions, particularly Lisbon’s emphasis of exclusive or essential characteristics of the geographical environment attributing to the product which include both human and natural factors vis-à-vis TRIPS that does not specify the human contribution.
because the EU trade mark system could not cater to China’s needs, the US is the ‘ringleader’ in the opposition camp of the DDA that represents ‘new world’ producers.215 The US has traditionally been a staunch supporter of collective trade marks for agricultural products, such as Idaho Potatoes, Florida Oranges or Washington Apples.216 Progression of transatlantic GIs (the US strengthening their system) is stagnant since 2019 after the TTIP was dubbed as ‘obsolete, and no longer relevant’ by the Council of the European Union.217 Champagne, Sherry, Burgundy, Port and thirteen other famous European wine GIs sought protection from their current ‘semi-generic’ status under the current ‘Wine Pact’.218 A short list of 201 EU agricultural GIs was proposed in the TTIP, again with many products argued as generic by the US side.219 The updated North America FTA, the United States-Canada-Mexico Agreement, reaffirmed the US position to have collective and certification marks for protecting GIs alongside a sui generis system.220 Article 20.19 also promotes trade mark superiority opposed to coexistence, by preventing GI registration if it causes confusion with a previously registered trade mark.

The Trans-Pacific Strategic Economic Partnership Agreement 2005 (TSEP) comprising Brunei, Chile, Singapore and New Zealand showed the reluctance of the parties to even protect wine GIs with only Chile nominating its GIs in annex 10 under the meaning of TRIPS article 22.1.221 The expansion of TPSEP led to the Trans Pacific Partnership (TPP), but the agreement fell short of becoming effective, but was later revived through the CPTPP containing all TPP signatories minus the United States.222

215 Xinzhe Song “The role played by the regime of collective and certification marks in the protection of geographical indications—Comparative study of law and practice in France, the EU and China” 2018 21(5-6) Journal of World Intellectual Property. See ‘Mountain Products’ below for a description on the recent EU-China GI Agreement.
216 Kireeva and O’Connor, above n 199, at 292.
218 See the EU-US ‘Wine Pact’. Agreement between the European Community and the United States of America on trade in wine OJ L 87/2 (adopted 10 March 2006), annex II for semi-generic names. Article 6.2 allows use of these names in the US for producers using the designation before 13 December 2005 as long as a ‘Certificate of Label Approval’ has been approved. Contrast this to ‘Cognac’ in the US, where the courts recognized the ‘goodwill or reputation’ in Cognac as a certification marks (not subject to exclusive ownership), meaning Cognac was identified as a ‘superior brandy’ with terroir qualities from a distinct region in France, whose label was not entitled to use outside the ‘Cognac District’. See Gervais, above n 31, at 132-139.
219 European Commission Agriculture and Geographical Indications (GIs) in TTIP: A guide to the EU’s proposal at 9.
220 Agreement between the United States of America, the United Mexican States, and Canada, as revised 10 December 2019 (signed 30 November 2018, entered into force 01 July 2021), arts 20.18 and 20.29. This is the successor of NAFTA.
221 Blakeney, above n 84, at 183.
222 Trans-Pacific Partnership Agreement, Australia-Brunei Darussalam-Canada-Chile-Japan-Malaysia-Mexico-New Zealand-Peru-Singapore-United States-Viet Nam (signed 04 February 2016, not in force). CPTPP, above n 17. The TPP was signed by all 12 of the negotiating countries in 2016 and of those ratified by Japan and New Zealand. The withdrawal of the United States signature in 2017 killed the agreement, but was later revived through the CPTPP containing all TPP signatories minus the United States.
More than ten years after TPSEP, the TPP/CPTPP signatories were unwilling to adopt TRIPS-plus protection of GIs and were uncomfortable reconciling EU-FTAS with the CPTPP, especially that of EUSFTA.\textsuperscript{223}

Singapore has traditionally been anti-GI and had the difficulty of balancing EUSFTA negotiations simultaneously with CPTPP. Japan too, but to a lesser degree.\textsuperscript{224} The EU-Japan EPA was spurred on by the Olympic games and entered into force in 2019, the same year as EUSFTA, but was less contented by civil society as it focussed on old issues such as tariff reduction of automobiles, electronics and agriculture.\textsuperscript{225} With little fuss, Japan accepted the ‘tit-for-tat’ GI exchange, with Japanese agricultural GIs (such as ‘Kobe Beef’) heavily outweighing wines (Yamanashi), spirits (‘Ryukyu’) and others or seishu (sake), such as Nihonshu or Japanese sake.\textsuperscript{226} The partnership on GIs was successful along with the vehicle trade. In 2021, twenty-eight additional GIs were added from each side and vehicle trade is simplified by accepting safety standard certification of the parties without further inspections or approvals.\textsuperscript{227}

However, the EU would not budge on GIs in the EUSFTA. The nature of IGOs gives it a unique role in FTAs. Unlike trade marks, each IGO is ‘singled-out’ for protection, although Singapore had no GIs to single-out.\textsuperscript{228} After many spirited discussions, Singapore eventually developed a list to accept 196 products from the EU to be granted protection in the marketplace.\textsuperscript{229} The list contains the typical products found in the majority the new FTAs that include agricultural products such as cheese (feta/gorgonzola), beer (Budějovické pivo/Bayerisches Bier), meat (Nürnberger Bratwürste/Prosciutto di Parma), fruits (Elia Kalamatas/Kiwi Latina) and always Champagne.\textsuperscript{230} CETA contains these as well, except for the beers for reasons discussed in the trade marks chapter. Also like Canada in CETA, there was no reciprocity, as Singapore too did provide any GIs for protection.


\textsuperscript{224} Agreement between the European Union and Japan for an Economic Partnership OJ L 330/1 (signed 17 July 2018, entered into force 01 February 2019) [hereinafter EU-Japan EPA].

\textsuperscript{225} Suzuki, above n 64, at 885.

\textsuperscript{226} EU-Japan EPA, above n 224, annex 14-B.


\textsuperscript{228} Engelhardt, above n 64, at 794.

\textsuperscript{229} Elms, above n 223, at 50.

\textsuperscript{230} EUSFTA, above n 223, annex 10-A
The conflicts with the CPTPP were compromised by allowing for ‘compound names or multicomponent terms’. This provided ‘an individual component of a multicomponent component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.’\(^{231}\) Thus, a loophole could be created for generic terms by using two names, such as the unprotected term, ‘Cheddar’, combined to make ‘Wisconsin Cheddar’ which may qualify.\(^{232}\) The Japan and Singapore trade deals with the EU were negotiated concurrently with TPP/CPTPP and by doing so the EU indirectly affected that regional trade.

Additionally, the larger Regional and Compressive Economic Partnership (RCEP), signed 15 November 2020 but yet to enter into force, contains a similar provision on multicomponent terms.\(^{233}\)

Although India withdrew in 2019 with the possibility to fast track their application if they wish to rejoin, South Korea, China, Indonesia, Cambodia and Laos are party to RCEP and not CPTPP, and are all ‘GI friendly’.\(^{234}\) Both South Korea and China have trade deals with the EU involving agricultural geographical indications, meaning more friends of the EU’s GI policy with New Zealand’s major trade partners. Other bilateral deals are discussed in subsequent chapters for comparison with the EU-NZ FTA to ascertain the benchmark with the EU.

B IGO Protégées in the EU: Traditional Terms, TSGs & Mountain Products

The models below explain IGO protection under a ‘less intrusive’ framework. These models are noteworthy as alternative systems. Additionally, non-agricultural could be served using various aspects of the models below.

1 Traditional Terms or Expressions

Customary names are not to be confused with ‘traditional terms’ or a ‘description’, although traditional terms are often sought for protection through bilateral agreements such as the EU-Australia Wine agreement where ‘traditional expressions’ is used thereof. The European Commission has proposed protection of traditional terms in the EU-NZ FTA under trade in wine, aromatised wine products and spirit drinks.\(^{235}\) Through transference of their market power or ‘regulatory transplants’ in trade agreements, the proposed text for New Zealand is ‘copy and pasted’ from Regulation 1308/2013 (hereinafter ‘the Wine Regulation’).

---

\(^{231}\) CPTPP, above n 17, art 18:34

\(^{232}\) Elms, above n 233, at 49.

\(^{233}\) Regional Comprehensive Economic Partnership (signed 15 November 2020, not yet in force), art 11.32.

\(^{234}\) Cambodia and Laos are also party to the Lisbon Agreement.

\(^{235}\) European Union “Proposal for the EU-New Zealand FTA: Chapter [XY], Intellectual Property” (6 May 2019).
Traditional terms in the EU-NZ FTA have a proposed definition of ‘a traditional name referring in particular to the method of production or to the quality, colour or type of place or particular event linked to the history of a wine with a protected geographical indication for the purpose of the description and presentation of a wine originating in the territory of the Union,’ and protected from ‘being used to describe wine not entitled to those traditional terms, even where the traditional terms used are accompanied by terms such as ‘kind’, ‘type’, ‘style’, ‘imitation’, ‘method’ or the like.’

This follows the same path of EU-Australia Wine Agreements, albeit decades later.237

Article 113 2(a) explicitly expresses ‘as produced in’ and ‘flavour’ as accompanying terms that can be misused to describe a protected traditional term. However, they are included as accompanying terms in the proposed GI section of the EU-NZ FTA.238 The latter provision suggests extending TRIPS art 23(1) from wine and spirits to traditional terms in an EU-NZ FTA, although with the exception of ‘translation’ purposefully omitted because language plays a different role with traditional terms vis-à-vis GIs. Contrast to the Wine Regulations provisions on GIs where protection is afforded to protected names that are translated, transcribed and transliterated, an extension of GI protection sought in the EU-NZ FTA that goes beyond only ‘translations’ that TRIPS covers in art 23(1).239

Traditional terms can be used in place of a PGI/PDO such as the German word ‘Landwein’ for German, Austrian and Italian wines, whereas the Dutch word Landwijn can only be used by Dutch or Belgian wines. The French word Château as a traditional term is used for a product characteristic for French, Luxembourgian and Italian wines. Literally translating to castle, Château is used in a manner New Zealand wines would describe as ‘estate’, meaning the grapes, bottling and fermentation process all occur within the premises owned by the estate. The above mentioned traditional terms, or traditional expressions in this case, are protected from being used to describe or present wine that originates from Australia.240 At the EU level, the Wine Regulation expressly avoided overprotection of traditional terms through misuse by translations. They are only protected in the language of origin, meaning the German traditional term ‘Landwein’ can be translated to ‘Vin de pays’ in French, and has no spelling variations, e.g. Landwein spelt as ‘landwine’ (country wine/table wine in English) is not protected.241

236 At X.3(j) and X.7(2) in proposed text. This mimics 1308/2013 112(b) and 113(2)a respectively.
237 Agreement between the European Community and Australia on trade in wine [2010] OJ L 28/3 (signed 01 December 2008, entered into force 27 July 2010), arts 3(c) & 16(2). This Agreement replaced the original 1994 version.
238 Proposed intellectual property chapter, above n 207, art X 34(1)a.
239 Wine Regulation, above n 27, art 103(2)b.
240 EU-Australia Wine Agreement, above n 237, art 16.1(b) and Annex III.
241 Wine Regulation, above n 27, arts 113(2) and 114(1).
Traditional Speciality Guaranteed

The European agricultural industry has its own version of traditional terms to protect production and quality in the form of Traditional Speciality Guaranteed (TSG) and Mountain Products. Unlike its quality scheme counterparts, PDOs and PGIs, TSGs does not concern itself with geographical origin but instead focuses purely on production authenticity and not the human and natural factors that are unique to specific products of geographical origin. For a name to be eligible it must be produced from traditional practices, raw materials or ingredients, and 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.

The case is best explained through ‘Mozzarella Tradizionale TSG’ (traditional mozzarella) which was changed from simply ‘mozzarella’ due to new regulations repealing naming rights ‘without reservation of name’ to ‘with reservation of name’ in accordance to the Agriculture Regulation art 25(2). In other words this TSG ‘does not discriminate against animals or place’, meaning a cow’s or goat’s milk produced in Stockholm or Italy can be shipped to Estonia to make MOZZARELLA TRADIZIONALE TSG so long as the organoleptic, chemical and microbiological characteristics are met. Contrast this with ‘Mozzarella Di Bufala Campana PDO’ and ‘Mozzarella Di Gioai Del Colle PDO’ where the former is made from the milk of the Italian Mediterranean buffalo and the latter from cow’s milk only spun into three shapes (round, twisted into knots, or braided). Both PDOs have historical links between product and geographical origin - the raw materials (milk) are fully sourced from within the demarcated area with all steps of production taking place therein. That is not to say a TSG cannot consist of another TSG, PGI or PDO as is the case with ‘Pizza Napoletana TSG’ that may contain Mozzarella Tradizionale TSG or Mozzarella Di Bufala Campana PDO. Pizza Napoletana’s traditional character has its roots in Naples gastronomy dating back to the period between 1715 and 1725 and expressed in many treatises over time such as ‘the greatest inventions of Neapolitan cooking’, ‘the first disc pizza seasoned with tomatoes’ or a ‘creation from the city that invented pizzeria.”

---

242 Agriculture Regulation, above n 26, art 17.
243 Art 18(1).
244 Art 18(2).
249 Above, at [3.8]
Unlike the higher ranking schemes of GIs, the TSGs described above are not intended to be protected outside the Union. With the exception of the United Kingdom, no third parties have TSGs registered in the Union, but in order to avoid unfair competition the EU applies the same doctrine externally that all should be able to use the registered TSG provided the specifications and procedure is followed correctly.\(^{250}\) Nevertheless, TSGs hold little relevance in international trade for the EU as they rarely affect competition policy given that production is not limited to a demarcated area.\(^{251}\)

3 Mountain products

Mountain products are ‘optional quality terms’ for raw materials or processed products intended for human consumption originating from mountain areas.\(^{252}\) The scheme is intended to assist rural development in less favourable and remote areas for potential premiums and awareness of their products as a policy of the aforementioned CAP.\(^{253}\) Regulation 1257/1999 defines mountain areas as those characterised by a considerable limitation of the possibilities for using the land and an appreciable increase in the cost of working it.\(^{254}\) Examples included the altitude shortening the growing season, steep slopes restricting use of machinery or forced use of expensive specialised machinery or a combination of both that results in a handicap. The Regulation lists other ‘less favoured areas’ such as locations north of the 62nd Parallel and population depleted areas reliant on agriculture, both applicable to the nomadic Sámi people of Northern Europe, though these are not contained in the scope of mountain product labelling.\(^{255}\)

Mountain products are distinct from ‘outermost region products’ from areas listed in art 299(2) TEC, i.e. French overseas departments, the Azores, Madeira and the Canary Islands.\(^{256}\) The outermost regions have a separate agricultural quality scheme to recognise products originating from within these areas with an ‘insularity handicap’ such as transport cost or intense meteorological conditions.\(^{257}\)

\(^{250}\) Agriculture Regulation, above n 26, at [39].

\(^{251}\) Moir, above n 44, at 124.

\(^{252}\) Agriculture Regulation, above n 26, art 31.1.

\(^{253}\) Recital [4].

\(^{254}\) Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations OJ L 160/80 (no longer in force), art 18(1). The regulation is since repealed, now it replaces ‘less favour area’ with versions of ‘rural development’.


\(^{256}\) Not to be confused with Overseas Countries and Territories listed in TFEU, above n 80, annex II.

These terms described as *protégées*, although not as geographically specific, only amount to a subset of quality schemes. TSGs serve as protectors of the production method where geography is irrelevant and without infringing on the exclusive rights of PDOs or PGIs. Traditional terms are country and language specific that may be used instead of designation of origin, whereas Mountain Products are not country specific but represent an area with difficulties in production compared to the standard commercial exploitable methods. The EU system of Mountain Products as a quality scheme seems to provide a ‘consolation prize’ for handicapped agricultural products that do not have PDO/PGI status, whereas internationally these conditions produces products strongly linked to *terroir* and human factor products.

**C Case Study- Does Europe prefer Alcohol and Tea & Coffee is preferred elsewhere?**

Traditionally, tea and coffee were out-of-bounds for IGOs, but the Agriculture Regulation provided an opportunity outside of Europe with many developing countries utilising this. Jamaican Blue Mountain coffee is an example of successful product encompassing both these elements. The coffee has been registered as a certification mark in the US since 1986, produced in a defined area of the Blue Mountains in Jamaica and with its appellation earns one of the highest premiums comparable to single-origin coffees from Colombia.\(^{258}\) Kenya has successfully utilised Mt Kenya Coffee as a local IGO and Tanzania would be wise to adopt a *sui generis* system for its premium products of origin such as Kilimanjaro coffee and sugar grown on the slopes of Kilimanjaro. Kilimanjaro coffee has a unique aroma and taste due to the acidity of the volcanic soil and the sugar produced high levels of potassium from the volcanic soil that make for *de facto* organic farming and a unique colour appearance all strong characteristics of *terroir*.\(^{259}\) The argument that EU organic farming favours wine exists as there is no maximum residue limit for pesticides in wine as opposed to foodstuffs.\(^{260}\) ‘Darjeeling PGI’ is cultivated in mountainous gardens between 600 and 2250 metres above sea level where it is also processed, linked to origin by both human and natural factors.\(^{261}\) This tea was India’s

---


\(^{259}\) Innocensia John, Henrik Egelyng and A. Lokina “Tanzanian food origins and protected geographical indications” 2016 4(2) Journal on Food, Agriculture and Society at 9.

\(^{260}\) Wirth, above n 79, at 146.

first GI and Europe’s first tea GI in 2011, in addition to the first EU GI directly applied for by a government of a third party under the EU register.262 Darjeeling PGI was objected by France Germany, the UK et al, who wished to prohibit the use of the PGI for blended teas that could use the product but not the name.263 The so called GIs of ‘Class 1.8’ (spice, tea or coffee) and other products of Annex I of the Treaty was made possible by expanding GI protection to agricultural goods now governed by the Agriculture Regulation. Since the registration of CAFÉ DE COLOMBIA PGI and DARJEELING PGI, the flood gates for beverage protection via GIs have opened. The EU began a project with China to exchange 10 GIs each between them in 2007, successfully concluding in 2012 with registration on both sides.264 This has since grown to an Agreement that registered a hundred GIs from both sides in 2021, of which 81 products were either tea, coffee, spices, fruit, vegetables or cereals, fresh or processed, whereas the European side focussed mostly on wines and spirits (70 of the 100 products).265 Art 3(1) of the Agreement provides for an additional 175 GIs from both sides to be processed within the next four years, in addition to potential handicrafts pending possible legislative developments.266 This is similar to the EU-Japan EPA above where they expanded their list after two years and the Japanese agriculture products outnumber wine, spirit and sake seven to one.

‘Rooibos/Red Bush PDO’ from South Africa, ‘Ceylon Cinnamon PGI’ from Sri Lanka and ‘Café de Valdesia PDO’ from Dominican Republic (tea, spice and coffee respectively) have been registered ex officio by national NGOs in the EU.267 Rooibos had originally been dismissed as a potential on similar grounds to feta as they have ‘no direct geographical meaning’.268 FETA PDO narrowed down its scope of sourcing raw materials to areas of the mainland and the island of Lesvos where the necessary natural and human factors apply, as did Rooibos.269 After decades of the growing international popularity of Rooibos, the initiative to protect the tea with a PDO was facilitated by EU development policy in their EPA with the Southern African Development Community (SADC)

---

262 Kireeva and O’Connor, above n 199, at 291 and 300.
264 European Commission “EU-China Geographical Indications – “10 plus 10” project is now complete” (press release, 30 November 2012).
266 At annex V (China), VI (EU) and arts 1(2) and VII (handicrafts).
268 Blakeney, above n 84, at 186.
comprising Botswana, Lesotho, Mozambique, Namibia, South Africa and Eswatini. There is an exception of South Africa as a ‘developing country’ and ‘new world’ wine producer that produces similar quantities to Australia and Germany. In the EPA above, four agricultural GIs were listed, 102 wine GIs and no beer or spirit GIs. Of particular interest is the numerous Dutch names for South African wine GIs as well as ‘Napier’ and ‘Wellington’ both of which are wine producing regions in New Zealand.

D Summary

*Daichi Sanko* affirmed the competence of the EU in international trade with direct links to intellectual property. *Budweiser* helped harmonise regulations in the EU by becoming party to the Lisbon System through the Geneva Act. Previously this area was treated as a shared competence, now as a solidified exclusive competence of the European Commission it has more autonomy and legitimacy for applying their IGOs norms in bilateral trade deals.

Analysing the EU’s extensive internal measures for protecting agricultural IGOs explains the rationale behind the EU acting as MPE. Its largest policy in terms of budget, the CAP, supports quality production by way of IGOs because of decreasing subsidies in the WTO framework. To maintain a market share of European IGOs that increases its GDP, the EU defends its policy positions with its market size, either with the ‘carrot or stick’, and externalises its regulations to protect its agricultural industries. In the context of the EU-NZ FTA and the TTIP, the EU as NPE is weak because its norms diffused under the ‘cultural filter’ conflict with the social and political identities of New Zealand and the US. Colonialism and emigration are argued as the main barriers affecting successful norm diffusion, because the knowledge is shared along with traditional names creating ownership contestation.

The above case study highlight the priorities of GIs outside of Europe between wine and spirits and agricultural products, in particular non-alcoholic beverages in the spice category (tea and coffee etc.). At the time of writing, the EU’s internal registrar of IGOs from the ‘spice category (Class 1.8)’ is majority foreign registered, while agriculture IGOs for all categories is 12% foreign. Compare that

---


272 EUSADCFTA, above n 270, section A.3.

273 European Commission, eAmbrosia the EU geographical indications register accessed 09 July 2020.
to wines, spirit drinks and aromatised wines, where foreign registered products make only 1% of the total. For reference food products make up 46% of total registered types of GIs and the rest are wines and spirit drinks, and aromatised wines (only five products in total, all from the EU). This suggest agricultural IGOs are more important outside the EU, despite the EU being the main actor to drive TRIPS-plus protected internationally. If New Zealand is willing to expand GI protection to agricultural products, on this basis the spice trade from the old world is expected to be more attractive and relevant than registering wine or spirits.

VI Genericity, Customary Names and IGOs

Genericity is arguably the most problematic hurdle to protect GIs given its inconsistent nature between countries, societies and international agreements. For practical purposes a customary name is the universal name or an IGO that has fallen to ‘genericide’, where genericization is a process and genericide is the death of an IGO.274 Genericide is often committed by the ‘sins of the past’ or European colonialism and emigration.275 Through bilateral trade deals on GIs with the new world, a degree of forgiveness in required, otherwise genericide is justifiable retribution as a consequence of Europe’s history. The notion of *jus sanguinis*, or ‘link to blood’, supports the new world’s claims to European designations, especially in the absence of *terroir* factors. In theory, the *terroir* can be replicated but the reality is *terroir* cannot be generic, meaning wines do not succumb as easily to genericization as agricultural products do. For Europe’s defence globalisation is a ‘double-edged sword’ increasing the trade of IGOs but sometimes too much exposure with not enough protection. Manufacturers abroad often ‘tweak the family recipe’ and mess with the original IGOs reputation and quality. The intangible cultural heritage aspects encompassed in many IGOs are threatened by globalisation ‘deteriorating, disappearing and destroying’ their traditional products.276

A Linguistic and Marketing Features affecting Genericization

The use of linguistic restrictions will be carefully applied in the EU-NZ FTA given New Zealand has ‘te reo’, Māori as an official language. The ‘loop-hole’ of only covering translation could be Latin script names being transliterations to Chinese characters for Chinese consumers of European GIs made in

274 Gangjee, above n 41.
275 Engelhardt, above n 64, at 785-786.
New Zealand, as long as the origin is not misleading. TRIPS only covers misuse of wines and spirit GIs used translations, therefore the New Zealand GI Act is the ‘lowest possible denominator’ of international standards.\(^{277}\) CETA, the Agriculture Regulation and the Andean and Singapore FTAs with the EU also cover translations only.\(^{278}\) The official languages of these countries all use Latin script, although Malay can be written in Arabic, the ‘Jawi alphabet’.\(^{279}\) The EPA with the SADC countries covers translations, transcriptions and transliterations as does the EU-China GI Agreement.\(^{280}\) As expected, the EU’s trade deals with Japan and Korea contains misuse against translation, but in the Japan text refers to transliterations, whereas the Korean text uses transcriptions.\(^{281}\) Armenia and Georgia also use different scripts, but only the Armenian Agreement references all three misuse types and the Georgian Agreement references transcription, although the article is more thorough than any other FTA that with a country that does not use a Latin-based alphabet.\(^{282}\)

‘Phonetic transliterations are not literal translations of words from western languages, but are instead combinations of characters composed to create approximate phonetic equivalents’.\(^{283}\)

‘Feta’ transcribed from the Greek alphabet (φέτα) always accompanies the Europe’s FTAs with its ‘Latin equivalent’.\(^{284}\) US trade mark law uses the doctrine of ‘foreign equivalent’ to create a *lingua franca*, or single tongue, to prevent consumer confusion or monopolisation of certain words in other languages.\(^{285}\) Greece, Cyprus and Bulgaria (Cyrillic Script) are the only non-Latin based writing systems in the EU for official languages. All the deals contain provisions on misuse via translations, but the EU is inconsistent in applying transcriptions and transliteration as well as seemingly alternating the terms freely. This is should be considered as ‘Linguistics Plus’ feature, or as a sub-category of TRIPS-plus, that the EU is seeking regardless of product type. Arguably, transcriptions

---

\(^{277}\) NZ GI Act art 25(b).

\(^{278}\) At TRIPS art 23(1), CETA art 20.19(3), Andean Community FTA art 210.1(c) and EUSFTA art 10.19(2 and 3).

\(^{279}\) Omniglot “Malay (Bahasa Melayu / إبراهيم ملايو)” <https://omniglot.com/writing/malay.htm>.

\(^{280}\) EUSADCEPA, above n 270, Protocol 3 art 5(b) and EU-China GI Agreement, above n 265, art 4.1(b).

\(^{281}\) EU-Japan EPA, above n 224, art 14.25.1(a)ii and EU-Korea FTA, above n , art 10.21(b).


\(^{283}\) For the ‘transliteration loophole in sports’ see Xindan Liu, Thomas A. Baker and Rebecca Leopkey “Examining the extent of trademark squatting of NBA athlete names in China” 2021 European sport management quarterly.

\(^{284}\) Outside of bilateral trade deals the EU’s internal register registers both Latin and local script with the exception of Indian and Sri Lanka (only use Latin). Products such as the Thai PGI, กาแฟดอยตุง / Kafae Doi Tun, or the Cambodian PGI, ម្រេចកំពត / Mrech Kampot, are both written in their respective Thai and Khmer scripts in addition to the Latin equivalent.

can encompass transliterations as the phonemes can take many orthographical forms, such as ‘pheta or fetar’ for feta cheese, and ‘check or cheque’ for ‘Czech beer’. In terms of addressing genericization, restricting the use of some linguistic features for interpreting and marketing outside Europe is key to avoid IGOs being ‘lost in translation’.

B    International Agreements

TRIPS follows the devolution approach similar to the Paris Convention and Madrid agreement, whereas the Lisbon Agreement is more multilateral in stopping genericide. The Paris Agreement specifically addresses trade marks; art 6bis allows for refusals of ‘well-known marks’ including translations; art 6quinquies allows exceptions for registration for ‘becoming customary in current language or in bona fide’ where the country’s system protection is sought. However, art 4 of the Madrid Agreement does attempt to contain the generic use of ‘indications of source’. Ultimately, the principle of territoriality is applied, creating national jurisdiction over genericity by leaving the courts and tribunals of each country to decide. Without a multilateral framework it ‘creates insecurity and contradiction’ making genericity a subjective matter.286 Freedom of sign, mark or indication usage can predict market access, but genericity acts to revoke proprietorship, hence TRIPS-plus protection of IGOs safeguards future use.287

The Lisbon Agreement deals with genericity through Article 6, where as long as it is protected as an appellation of origin in the country of origin it is shielded from becoming generic.288 Becoming generic is simply an evolution in time where the process of genericization is frozen by this Article. That is not to say appellations of origin have ‘generic immunity’ as exceptions do exist. The case of ‘acquiescence’ provides an exception if the right holder does not enforce breaches against persons that use the appellation of origin without meeting the geographical requirements.289 Camembert’s generic nature was decided as early as 1926 by the French Courts that rely on passivity or inaction to utilise the exception of acquiescence.290 Penal sanctions and civil remedies for Camembert were overlooked for producers outside Normandy, despite being available for that name from 1856-1909.291 The trade secrets were out and Camembert became a customary name for cheese using similar production methods. Normandy did claw back a PDO status for its cheese through

286 Heath, above n 126, at 195.
287 At 188-189.
288 As does art 12 of the Geneva Act of the Lisbon Agreement.
289 Gervais, above n 30, at 130.
290 Gangjee, above n 41, at 539.
291 Ibid.
‘compound naming’ and linking the terroir to its product, such as using 50% of the milk from the Normande cow breed and sourcing the majority of the feed locally.  

Contrast the acquiescence doctrine to trade mark protection in New Zealand where trade marks that are hibernating or disused for a long period still have potential to ‘prevent registration of, or invalidate a registration for, a trade mark adopted and used in good faith’. Like a trade mark in New Zealand, AOs through the Lisbon Agreement have protection from withering over time so that the goodwill or reputation that builds-up does not become meaningless. The opposite end of the spectrum is ‘sui-genericide’, where producers intentionally relinquish rights as ‘gift to the public domain’, Creative Commons license, pending trade mark/patent expiration and purposefully not paying renewal fees. An ‘open source movement’ is growing to progress the sustainable and renewable technologies, notably adhered to by Tesla.

TRIPS follows a devolved, suggestive and less direct approach. The EU consumer information and labelling Regulation specifies a ‘customary name’ in similar fashion to TRIPS, where the name is the accepted term used by the public in the Member State the food is sold without further explanation. Art 24.6 TRIPS does not require the WTO member to protect a common name of a GI customary in their language. The TRIPS provision further specifies customary names for products of the vine, meaning New Zealand would not be obliged to protect pinot noir or sauvignon blanc if these common varieties were protected elsewhere. All ASEAN countries have domestic frameworks reflecting this TRIP provision, including Japan and India. This is the method New Zealand and Australia take with ASEAN through the CPTPP and RCEP, in addition to ‘multicomponent terms’ that allow single generic names but protection compound names.

Case Studies - Understanding the Generic Divide

1 Resuscitating Generic Wine

The Spanish Champagne case saved Sherry producers from generic purgatory via the passing-off tort. This meant Sherry was semi-generic by allowing British-Sherry to circulate for decades before

---

292 OJ C 140, 18.5.2013, p. 20–26

293 Batty, above n 106, at 283.

294 See Jorge L. Contreras “Sui-genericide” 2021 106(3) Iowa law review at 1043 and 1050.


296 Regulation 1169/2011, above n 110, arts 2.2(o) and 2.2(p).

297 Delphine Marie-Vivien “Protection of Geographical Indications in ASEAN countries: Convergences and challenges to awakening sleeping Geographical Indications” 2020 23(3-4) The Journal of world intellectual property at 334.

298 RCEP, above n 223, arts 11.31(1 and 3) and CPTPP, above n 17, art 18.33.
using this remedy.” Jerez-Xérès-Sherry PDO now enjoys protection the same as ‘Champagne PDO’ and ‘Camembert de Normandie PDO;’ however, Jerez, Xérès and Sherry are each protected as individual terms of the multicomponent Jerez-Xérès-Sherry PDO and are therefore not generic in the EU. This is contrasted to ‘camembert’ as generic and the multicomponent PDO Camembert de Normandie as protected, an issue addressed in the CPTPP and RCEP. The acceptance of the non-generic name ‘sherry’ belonging to Spain has lagged behind Champagne’s recovery after attempted genericide in the 1900’s. Protection of Sherry has resonated outside of Europe as a geographical indication in Canada and Australia, with producers now using ‘Apera’.

Jerez-Xérès-Sherry and Sherry have been proposed in the EU-NZ FTA. The same cannot be said for PROSECCO PDO whose generic name is insisted by New Zealand, Australia, Canada and the United States and has no mention in the relevant wine and spirit agreements discussed above.

2 Resuscitating Generic Beer

Similarly, ‘Bayerisches Bier’ is sought for protection under an EU-NZ FTA, but has faced ‘accusations of being generic’ in the EU despite protection as a registered PGI since 2001. The PGI faced use from prior registered trade marks and use as synonym beer, or translations thereof, in Nordic countries. Nevertheless, in the CJEU’s preliminary ruling it determined the reputation and geographical origin still existed as a ‘direct link’ for Bayerisches Bier as it was not ‘passive’ in enforcing its IGO historically. Additionally, the PGI was registered after the trade mark ‘Bavaria’. Nevertheless it was allowed to coexist within the meaning of art 14(3) of Regulation 2081/92 as it did not misled the consumer as to true origin or infringe on the trade mark reputation. Like the cheese examples below, Bayerisches Bier has local tradition and cultural heritage symbolised in its protected status dating back to the Reinheitsgebot in 1516, now the basic German standard since 1906. Known incorrectly as the German Purity Law, the Bayerisches Reinheitsgebot is the ‘oldest extant consumer protection law’, which later created ‘lager’ beer, from the German word meaning ‘a store’, derived after the method of storing where maturation and clarification occurs.

The attempted genericide of Bayerisches Bier’s reputation was rightfully upheld in the EU to protect the cultural heritage of brewing in the region. However, the traditional knowledge of the brewing

---

299 Gangjee, above n 41, at 539.
300 See EU-Australia Wine agreement 2009, above n 237.
301 Ministry of Foreign Affairs and Trade, above n 135.
303 Blakeney, above n 12, at 107.
304 Case C-343/07 Bavaria NV and Bavaria Italia Srl v Bayerischer Brauerbund eV. ECLI:EU:C:2009:415, at [108] - [109].
305 At [123].
306 At [96] - [98].
method became a part of the ‘public domain’ (lager as a generic term and method), an issue discussed further in the next chapter.

3 Resuscitating Generic Cheese

(a) Background
Cheese, like wine, produces contestation from the new world producers and is the ‘poster boy’ of agricultural products due its abundant production. In the words of former French President Charles De Gaulle, ‘how can you govern a country which has 246 varieties of cheese’? Varieties of cheese range from extra-hard (Parmesan), white brined (Feta), blue veined (Roquefort), mould-surfaced ripened (Camembert), pasta-filata (Mozzarella) and so on. The genericity of these are accepted by New Zealand as its international legal right, but continued use will not be sufficient to conclude a FTA with the EU. The cases of Feta and Parmesan will be used to explain the EU’s approach to the cheeses that New Zealand considers as generic names in addition to ‘Champagne Sorbet’ to illustrate IGOs as ingredients being generic descriptors.

(b) The precedent set by CETA
CETA has some exceptions that created a new bench mark for New Zealand and Australia such as ‘phasing-out and grandfathering’. CETA has a paradox in GI protection in relation to feta cheese which created a precedent and bench-mark for New Zealand to approach generically perceived products with GI status in the EU. The EU-Canada feta trade can take three forms due to the exceptions in Article 20.21: ‘Feta PDO’ from the EU only produced in Greece, Canadian produced ‘feta’, and Canadian produced feta-‘style’, ‘kind’, ‘like’ etc. Feta-style does not distinguish production methods like ‘Greek-style’ yoghurt above. Parmesan was simpler, the term is not protected as a synonym or translation of the protected indication ‘Parmesan-Reggiano’, just like ‘black forest ham’ (Schwarzwälder Schinken) or ‘Valencia Orange’ (Cítricos Valencianos). The latter two are multicomponent terms with geographical denominations. The result is a win for Canadian feta producers, whereas the European PDO producers of these ‘exceptions’ felt victimised by CETA, though the European Commission accepted the sacrifice for high-level protection of 145 EU GIs and future expansion. The double standards of feta and parmesan are paradoxical. They are non-

309 See Papademas and Bintsis, above n 42.
310 See chapter IV, part B above.
311 CETA, above n 54, art 20.21(11).
generic in the EU and semi-generic in CETA, nevertheless this is seemingly the new compromise or cost for doing business with the ‘new world’.

(c) Feta

The history of these cheeses speaks to the culture and tradition of the past and thus the desire from Greek and Italian Producers to protect them. Feta’s first link to its origin are found in Homer’s Odyssey around 800 BCE, where the myth speaks of Cyclops Polyphemus collecting milk from ‘ewes and she-goats’ that curdled in his pouch made from animal stomachs and later found to be a tasty and crumble delicacy.\(^313\) European consumer acceptance of this ‘mildly rancid’ cheese continues as a product from Greece, produced therein. In 1935, Greek efforts to codify consistent production specifications began; by 1988 the production area was defined to encompass the traditional, equitable and consistent human factors.\(^314\) The redefined production area was Epiros, Macedonia, Peloponnissos, Sterea Ellada, Thessalia, Thraki and Lesvos island with pasteurised ewe’s milk or mix of goat’s milk (up to 30%).\(^315\) The natural factors of the area, \textit{inter alia}, were the local sheep and goats breeds, climate (plenty of sunshine) geomorphology (mountainous terrain) and the botanical characteristics thereof.\(^316\) Protection in each of the fifteen European Community countries at that time was sporadic; the registration of Feta PDO in 2005 was welcomed after an eleven year application process. The \textit{Parmesan} cases brought by Germany and Denmark insisted on the generic nature of feta on the one hand and on the other accepted Greek origins but not the inability to market ‘Danish-feta’.\(^317\) For reference, the application process can be generalised as two to six years on average.\(^318\) The ‘traditional non-geographical’ name encompassing mainland Greece was judged as not generic in the EU, with descriptive feta (‘Yorkshire/Danish’ Feta) subsequently phased-out.\(^319\)

\(^{313}\) Nathon, above n 9, at 349. Homer \textit{the Odyssey, Book IX, Ulysses declares himself and begins his story- the Cicons, Lotophagi, and Cyclopes}. Translation at https://www.gutenberg.org/files/1727/1727-h/1727-h.htm\#linknote-173.
\(^{314}\) Above, n 269, at [11].
\(^{315}\) At [35]. Papademas and Bintsis, above n 42, at 353-354.
\(^{316}\) Blakeney, above n 12, at 105.
\(^{317}\) Joined cases C-465/02 and C-466/02 \textit{Federal Republic of Germany and Kingdom of Denmark v Commission of the European Communities} ECLI:EU:C:2005:636.
\(^{318}\) Mantrov, above n 3, at 293.
\(^{319}\) Seville, above n 52, at 297-298.
(d) **Parmigiano Reggiano and/or Parmesan**

‘Parmigiano Reggiano cheese has been a great cheese for at least nine centuries, which not only testifies to its ancient origin but also underscores the fact that this cheese today is still identical to how it was eight centuries ago, having the same appearance and the same extraordinary fragrance, is made in the same way, in the same places and with the same expert ritual gestures. Historical evidence shows that already in 1200–1300 AD, Parmigiano Reggiano cheese had reached its perfect typical form that has remained unchanged up to the present day’.  

Unlike feta, ‘Parmigiano Reggiano PDO’ denotes the traditional name derived from its geographical origins, i.e. the provinces of Parma and Reggio Emilia both in the Emilia-Romagna region. Seen in CETA, Parmigiano Reggiano is afforded more rights than Feta by completely restricting use of the term, but the common name of the hard cheese, ‘Parmesan’, is not protected at all despite being a transcription of the first component term. *Grana Padano* set the precedent of genericity in multicomponent terms where constituent parts thereof may not be considered generic.  

The trade mark, ‘Grana Biraghi’, was refused for use of the term ‘Grana’ is its product.

The case against parmesan’s genericity was weak. Germany relied on dictionary interpretations and did not provide consumer surveys or information on the quantity of imports of the ‘real’ Parmigiano Reggiano to link consumption of ‘German and Italian made’ products to genericity or consumer preference. The CJEU decided the term parmesan evoked the Parmigiano Reggiano PDO, even if the true origin is indicated, and therefore is not generic. The court also noted over time designations have potential to become ‘types of products’ and not ‘geographically link products’, while referencing to ‘Camembert’ and ‘Brie’. The registration of the compound term, or the lack of a declaration of each component therein, cannot be considered to limit the scope of the IGO’s protection. Protection of IGOs in the US and New Zealand trade mark systems refer to this as a ‘disclaimer of generic terms’. Contrast this with ‘Camembert de Normandie PDO’ and ‘Brie de Meaux PDO’ in the EU where the first component of the compound terms is declared ‘not sought’

---

320 Papademas and Bintsis, above n 42, at 194-95.
321 Case T-291/03 Consorzio per la tutela del formaggio Grana Padano v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) [2007] ECR II-03081 – Grana Pandano II. The OHIM changed to the EUIPO on 23 March 2016, the body responsible for EU trade mark and registered community design.
322 Blakeney, above n 12, at 109.
323 Case C-132/05 Commission of the European Communities v Federal Republic of Germany ECLI:EU:C:2008:117, at [29].
324 At [35] – [36].
325 [29] – [31].

58
upon registration.\footnote{OJ L 148, 21.6.1996, p. 1–10.} Furthermore, none of the individual components were sought in ‘Noord Hollandse Edammer PDO’ or ‘Noord-Hollandse Gouda PDO’, but the combination of the ‘not sought’ components constituted a PDO.

In the cases of the French cheeses, they were accepted by the country of origin as generic, whereas Greece and Italy did not consider theirs as such. Naturally, the ‘final frontier’ for genericity must be endogenous in the country of origin as protection abroad is dependent on proof of domestic protection.\footnote{Agriculture Regulation, above n 26, at recital 24 and art 8.} The predecessors of the Agriculture Regulation only allowed the controlling bodies/authorities (Parmigiano Reggiano Cheese Consortium, the owner of the PDO) where the IGO originates to take \textit{ex officio} actions. Now civil actions on infringements can be used by all legitimate users from individual producers, competitors and producer or consumer organisations.\footnote{Roland Knaak “Geographical Indications and Their Relationship with Trade Marks in EU Law” 2015 46(7) IIC at 885.}

\section*{D Summary of Chapter}

Genericity is analysed in a context similar to the citizenship rights, \textit{jus sanguinis} and \textit{jus soli}, where the EU pushes for the latter whereas the former is a consequence of colonialism and emigration. Due to its ‘past sins’ the EU’s FTA provisions on GIs with new world countries more contentious than that with the Andean Community, Armenia, Georgia, South Korea or Japan. Australia follows suit with New Zealand in the stalemate on GIs in the concurrent FTA negotiations. The US reached an impasse in the nullified TTIP and the French are yet to get back their pinnacle GI which is Champagne.

All bilateral deals with the EU contain provisions on misuse via translations, but the EU is inconsistent in applying transcriptions and transliteration as well as seemingly alternating the terms freely. This should be considered a ‘Linguistics Plus’ feature, or as a sub-category of TRIPS-plus, that the EU is seeking regardless of product type. Arguably, transcriptions can encompass transliterations as the phonemes can take many orthographical forms, such as ‘pheta or fetar’ for feta cheese, and ‘check or cheque’ for ‘Czech beer’. In terms of addressing genericization, restricting the use of some linguistic features for interpreting and marketing outside Europe is key to avoid IGOs being ‘lost in translation’.

The mission to repossess generic European IGOS had initially success through compromising in CETA, but that should also mean compromises in the above cheeses will be reciprocated to New Zealand. Other successes include the Singapore, China, Japan and South Korea Agreements as these indirectly
affected New Zealand through the CPTPP and protecting multicomponent terms when the singular is
generic. From the New Zealand perspective, the EU is considered to be engaging in ‘attrition
warfare’ on agricultural IGOs, slowly withering down their opposition to TRIPS-plus protection by
recruiting support of New Zealand’s largest trading partners. As long as the US stands against TRIPS-
plus protection, New Zealand’s trade mark preference for agricultural IGOs remains legitimate.
Perhaps the successful application of ‘Alaska Pollock’ will change the US’ mind?

VII the Next Step: IGOs beyond Agriculture

The definition of terroir is expanding to encompass the human factors that contribute to the quality
characteristics of IGOs. Under this broader scope that has included agricultural products, non-
aricultural products are already protected in sui generis IGO systems around the world. The EU is
considering this as its next ‘IGO enlargement’. Senso stricto interpretations of terroir created unfair
advantages for wine and spirit producers compared to agricultural products internationally. In the
EU the same logic applies, where discrimination between agricultural and non-agricultural producers
exist, with the latter relying on trade marks in the absence of a sui generis system. Handicrafts,
genetic resources and traditional knowledge are examined as resources and skills that are shaped by
their geographical origins and culture. These resources and skills, although unique in many respects,
share many similarities to products registered as IGOs and will find benefits under a sui generis
regime.

A Traditional Knowledge and Genetic Resources

TSGs can be seen to protect generic products from being produced disingenuously by encompassing
traditional knowledge while open sourcing the use of the name. In this respect, the EU’s potential
expansion of GIs to non-agricultural goods such as traditional knowledge and handicrafts could be
served by elements of TSG given the human factor is more prevalent. Traditional knowledge sensu
lato includes areas of intangible cultural heritage, traditional cultural expressions and can be defined
as ‘practices and knowledge systems of indigenous and local communities.330 Traditional knowledge
takes many forms and given its ubiquitous nature is susceptible to misappropriation commercially,
i.e. use without authorization of the holder.331 Globalisation acerbates this issue as communication
technologies increase information and interacting between cultures.332

330 Patricia Covarrubia “Geographical Indications of Traditional Handicrafts: A Cultural Element in a
Predominantly Economic Activity” 2019 50(4) IIC at 442.
331 Riffel, above n 100, at 137.
332 Benedetta Ubertazzi “EU Geographical Indications and Intangible Cultural Heritage” 2017 48(5) IIC at 563.
Protection of traditional knowledge has conflicting views where it is conceptualised as part of the common heritage of mankind (or ‘global commons’) and, therefore, contains open source proclamations, like the high seas or moon, otherwise it can be attributable to a form of ownership.\(^{333}\) This international debate is often viewed in relation to the Convention on Biological Diversity (CBD) that recognises Members have rights over genetic resources and through TRIPS art 27(3) protects biological resources via patents; however, TRIPS does not prevent acts of ‘biopiracy’.\(^{334}\) The WIPO promotes IGOs as a tool for protecting traditional knowledge and the UN Environmental Programme (UNEP) recognises protection under system that could forestall biopiracy.\(^{335}\)

The case of ‘basmati rice’ highlights this view where the controversy surrounds generations of plant breeding and innovation which are then pirated. Rice cultivation in India has its roots dating back to around 1000 BC with the first mention of basmati in a Punjabi epic (Northern India and Eastern Pakistan) in 1766.\(^{336}\) The name derives from two Sanskrit word roots, ‘Vas’ meaning ‘aroma’ and ‘Mati’ meaning ‘ingrained from the origin’.\(^{337}\) The word is thus transliterated via Hindi in the form Basmati, whose semantics envisaged the concept of characteristics derived from geographical origins, resembling wine’s use of terroir. The outrage of ‘biopiracy’ came in the 1990s from US patents held by a Texas based company on ‘basmati rice lines and grains’ the company claimed to have created, in turn outraging Indian farmers.\(^{338}\) The germplasms of the lines were tested and confirmed to be of Pakistani origin which fuels the question of whether there is misappropriation from the US company breeding seeds from farmers in South Asia.\(^{339}\) India has since registered basmati as a local GI and in 2020 BASMATI PGI was added to the EU register for rice exclusively coming from specified North India areas.\(^{340}\) Bangladesh and Pakistan also have historical relations to


\(^{335}\) Dwijen Rangnekar and Pranab Mukhopadhyay “Social gains from the GI for Feni: will market size or concentration” in Dev S. Gangjee (ed) Research Handbook on Intellectual Property and Geographical Indications (Edward Elgar Chaltenham 2016) 463-483 at 466.

\(^{336}\) Daniel F. Robinson “Biopiracy and the innovations of indigenous Peoples and Local Communities “ in Peter Drahos and Susy Frankel (ed) Indigenous peoples’ innovation: intellectual property pathways to development (Australia National University Press, Canberra, 2012) 77-94 at 82.


\(^{338}\) Robinson, above n 336, at 83.

\(^{339}\) At 84.

rice cultivation in South Asia and hence may be best served in a scheme similar to traditional terms where descriptions of rice varieties overlap between countries.

The relative success of the Indian basmati growers securing protection domestically and in Europe via *sui generis* protection of agriculture GIs is relevant for New Zealand’s quality food products that face degrees of misappropriation and biopiracy. Honey from the plant *Leptospermum Scoparium*, more commonly known as ‘Manuka honey’, has a reputation internationally as a high quality honey but faces competition from counterfeits and as a customary or descriptive name by Australian producers.\(^{341}\) Quality control has been regulated in recent years through the trade marked ‘Unique Mānuka Factor (UMF)’ by the UMF Honey Association as a lab tested grading system to give a purity rating and authentic genuine Mānuka honey.\(^{342}\) The Recent objections from the indigenous tribe South Island, *Te Rūnanga o Ngāi Tahu*, have been dropped against the pending trade mark ‘MANUKA HONEY’ currently opposed by the Australian Manuka Honey Association.\(^{343}\) The plant variety is indigenous to both countries though the name ‘manuka’ is contended by both. Traditional Māori spelling is *mānuka*, with a macron and pronounced with a long vowel which is a different interpretation of ‘generic’ not sought by the Australian side.\(^{344}\) UMF Honey Association notes the honey’s name as an undeniably Māori but difficult to market with the macron.\(^{345}\) Foreign markets blending the honey and marketing in the Māori name can ruin the stringent controls to maintain the reputation and whether Australian producers mislead consumers to the origin of their honey is another issue. A step towards higher protection of New Zealand Manuka honey internationally can be served through *sui generis* that caters to various forms agriculture including apiculture.

In terms of kiwifruit, this product has suffered the consequences of genericity but now faces biopiracy of its genetics from New Zealand varieties. The background of the fruit is paradoxical in respect that the seed was brought over from China where it originated, and is colloquially known as ‘macaque peach’ and New Zealand historically referred to it as the Chinese gooseberry. However, it was New Zealand that successfully domesticated and marketed the previous unknown fruit to a global audience, where the name, ‘kiwifruit or kiwi’, superseded the others.\(^{346}\) This is different to basmati above; the issue of where and when value was added to the biological resource can create ownership issues. France and Italy use ‘kiwi’ to describe their Corsican, Adour and Latina PGIs of

---

341 Naomi Arnold “Gold rush” 2018(150) New Zealand Geographic.
343 Intellectual Property Office of New Zealand, Trade Mark Register, IP Number 1025914.
345 Ibid.
346 Seville, above n 52, at 83.
kiwifruit and New Zealand’s largest exporter and marketer, Zespri, uses its trade marks to describe kiwifruit.\footnote{Examples include RED, SUNGOLD, GREEN and SWEETGREEN as well as ZESPRI. Zespri can be viewed as a conglomerate similar to Fonterra, but instead of dairy, it specialises in New Zealand’s biggest crop, kiwifruit.} In other words, although the kiwi is a national and native bird and references the nationality of New Zealanders, kiwifruit is unchallenged as deceiving consumers to the true origin of the fruit unlike Greek yoghurt; therefore it has the same customary nature as English muffins or Swiss cheese.\footnote{Using ‘kiwi kiwis’ or ‘kiwi kiwifruit’ or other similar spellings would require a different approach as these name suggests New Zealand origin of the customary name ‘kiwifruit’. Note the lack of a space between ‘kiwi’ and ‘fruit’ which takes away the adjectival function of ‘kiwi’ that is more likely to denote origin or others fruits from New Zealand.}

Export values of New Zealand kiwifruit were NZD 2.53 billion in 2020, the year which also saw Zespri as one of the few companies globally to register key trade marks in China and a High Court case against smuggling of its trade marked SUNGOLD variety to China.\footnote{Zespri Group Ltd v Gao [2020] NZHC 109. NZ Horticulture Export Authority “Kiwifruit industry profile” <https://www.hea.co.nz/2012-05-11-03-05-28/kiwifruit-trade>. Zespri “Zespri granted key trademark protection status in China” (2020) <https://www.zespri.com/en-NZ/newsroomdetail/key-trademark-protection>.} The success of Zespri’s golden variety, \textit{actinidia chinensis}, was owed to the disease resistance G3 and G9 varieties it engineered through rigorous research and development to address the disease ridden industry by the Psa3 bacteria.\footnote{At [19] - [25].} It came to Zespri’s attention that its G3 and G9 varieties were being grown in the Hubei and Sichuan provinces in China instigated by Gao and sought to address the issue that infringed on its rights under the Plant Varieties Act 1987.\footnote{Gao v Zespri Group Ltd [2021] NZCA 442, at [13] - [16].} Art 17 provides for exclusive rights for new plant varieties to be propagated for commercial production and the appeal upheld the plant variety rights (PVR) of Zespri under the PVA. PVRs act like a patent to protect inventions and can be branded via trade marks and encompass necessary human factors as seen in \textit{sui generis} systems. PVRs and patent rights can be lengthy to enforce both domestically and internationally. China has listed five kiwifruit to be protected as GIs under their recent Agreement with the EU and New Zealand could benefit by doing the same though the EU-NZ FTA.\footnote{EU-China GI Agreement, above n 265.} In 2020, the EU was the largest export market for New Zealand kiwifruit by volume (35.5% total export volume) and second largest, slightly behind Japan, in terms of value at 25%.\footnote{NZ Horticulture Export Authority, above.}

Unlike IGOs, Member States are allowed to grant national protection to plant varieties but this excludes simultaneous protection of a patent held at the Community level, i.e. registered at the European Patent Office.\footnote{Council Regulation (EC) No 2100/94 on Community plant variety rights [1994] OJ L 227/1, arts 3 and 92(1).} The EU has been incorporating provisions of traditional knowledge and
biological resources and in bilateral and plurilateral agreements. The EU FTAs with the Andean Community and South Korea both contain provisions on traditional knowledge, genetic resources and protection of plant varieties and the SADC EPA mentions the importance of traditional knowledge and possible discussion in the future.\(^3\)\(^{55}\) New Zealand has similar obligations with the Members of the Comprehensive and Progressive Agreement for a Trans-Pacific Partnership.\(^3\)\(^{56}\)

*Mātauranga Māori* (traditional knowledge) and *taonga* species (important objects or natural resources) are key intellectual property concerns for Māori that New Zealand identifies in the EU FTA negotiations.\(^3\)\(^{57}\) Concurrent FTA negotiations with Australia adds to the assumption of traditional knowledge provisions, given their sizeable Aboriginal population, although Canada too has a large Aboriginal population with no specific mention of traditional knowledge in CETA. Geographical indications and other commercial intellectual property systems have been identified as potential models for traditional knowledge. The problems of such systems can fail to encompass unique features of traditional knowledge and the expiration of protected terms later fall to the public domain.\(^3\)\(^{58}\)

**B Handicrafts**

Handicrafts have historically rooted connections between geography, people and reputation, spurred by their less perishable nature. The ancient world saw the quality and reputation of Phoenician sailors’ purple hued cloth spread throughout the Mediterranean. Similarly, violin making in Cremona during the sixteenth century was due to the best craftsmanship and warm sound that struggles to be improved upon today so now the town is designated as an intangible cultural heritage for the traditional violin craftsmanship.\(^3\)\(^{59}\) Stradivarius, Amati, and Guarneri were among the most well-known craftsmen in Cremona who distinguished their violins using their names as marks suggesting trade names often superimpose IGOs to distinguish their products, as seen with Champagne above.\(^3\)\(^{60}\) Appellations attributable to artisans with specific skills and technology that formed reputations created associations or guilds to monopolise the manufacturing process.\(^3\)\(^{61}\)

\(^3\)\(^{55}\) Andean Community FTA, above n 54, title VII chpt 2, art 10.39, EU-Korea FTA, above n 173, art 10.40 and EUSADCEPA, above n 270, art 16(5).

\(^3\)\(^{56}\) CPTPP, above n 17, arts 18:9 and 18:16.

\(^3\)\(^{57}\) Hillmaré Schulze and Amanda Reid *EU-NZ FTA Māori economy* (BERL, 2019).

\(^3\)\(^{58}\) Peter Drahos and Susy Frankel *Indigenous peoples’ innovation: intellectual property pathways to development* (Australia National University Press, Canberra, 2012), at 17.


\(^3\)\(^{60}\) Hughes, at 300.

\(^3\)\(^{61}\) Blakeney, above n 12, at 5.
The Lisbon System protects dozens of handicrafts based on human and natural factors, where the natural factor is the raw materials, though not necessarily locally sources. Examples include ‘Cuba’ for rum or ‘Habana’ for tobacco from Cuba and ‘Trojanska Keramika’ as a processed product from Bulgaria, where the city Troyan has a rich history of pottery due to local clay soil qualities. The EU is not a leader in this field nor have they established a sui generis system for the protection of handicrafts. However, under recently commissioned reports, Parliamentary resolutions and international agreements, the next phase of EU IGO coverage has set its sights on expanding to this area.

Thirteen Member States have sui generis systems for non-agricultural products, mostly Western and Lisbon System Members, each differing on specifications and scope of protection, i.e. ceramics or in Germany’s case the ‘Solingen Decree’ for legislations on cutting equipment. For Solingen equipment its natural features such little streams conducd blacksmithing and its cultural roots as IGO date to 1571, when the Duke of the region ordered labels bearing ‘ME FECIT SOLINGEN’ (‘Me made Solingen’) for the blades to carry the reputation. Like the majority of non-agricultural products in Europe, they are protected via national unfair competition or EU trade mark laws and internationally via the Paris Convention and Madrid Agreements. For Germany, its quality craftsmanship of Solingen Knives or Cuckoo Clocks from the Black Forest receive additional international protection though bilateral agreements with France (1960), Italy (1963), Greece (1964), Switzerland (1967) and Spain (1970). The case of ‘Swiss watches’ holds the handicraft reputation to potentially become the epitome of non-agricultural products, as Champagne did for wine, Scotch Whisky or Cognac for Spirits, and Roquefort did for agricultural GIs. In 2008, SMEs comprised

---

362 Marie-Vivien, above n 263, at 306 and 314.
363 AO numbers 1010 (Habana Rum), 0479 (Habana Tobacco) and 0651 (Trojanska Keramika).
368 If Blue Stilton is the ‘King of English cheeses’ then Roquefort is the King of French, if not the ‘King of European Cheeses’. First mentioned in 1070, Roquefort PDO uses raw milk exclusively from the local Lacaune sheep breed (the dairy breed opposed to the breed for meat) and gets its unique but pungent odour from the fungus, penicillium roqueforti, found in the limestone cliffs where it left to age. Despite being a ‘low risk
98.3% of the Swiss watch and clock industry, with the remainder larger enterprises such as Swatch group and Rolex. Despite millions employed in the industry and service sector, counterfeits outweighed authentic production. Traditional knowledge and craftsmanship of mechanical watches faced a pivot towards quartz watches in the late twentieth century as a cheaper solution. Now Smartwatches dominate the industry with Apple controlling 55% of the market in terms of volume, followed by Samsung and Garmin, as the Swiss watch sales decrease annually (23% from Q1 2019 to Q1 2020). Fortunately, in the same year of this market slump, the positive was ‘Craftsmanship of mechanical watchmaking and art mechanics’ in Switzerland and France being inscribed on the Representative List of the Intangible Cultural Heritage of Humanity.

The reputation, ‘know-how’ and geographical link and scope (Jura Arc or Swiss Watch Valley) are already established for a future sui generis system. Quality production is enforced by the Contrôle Officiel Suisse des Chronomètres (COSC) to use the quality label ‘chronometer’ on traditional Swiss watches (mechanical and quartz devices). The International Standards Organisation is maintaining minimum standards for the ‘chronometer term’, therefore should not be considered internally generic. Germany is Switzerland’s largest export market, but a Union-wide upgrade on sui generis protection for non-agricultural goods would be welcomed as Switzerland participates through bilateral GI Agreements currently with 186 wine, spirit and agricultural products protected. Chronometry, or time-keeping, has strong links to Switzerland as does New Zealand to ‘green’ for agri-tech or organic lamb or ‘adventure’ for tourism and related equipment. Future benefits for New Zealand under widened sui generis protection can include modern innovations such as microorganism’, the fungus is poisonous and its terroir environment is regulated by food safety standards such as no oak or stainless steel racks. This was the favourite cheese of Charlemagne and protected by King Charles VI in 1411, and protected as an AOC and PDO in 1925 and 1996 respectively. See Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 OJ L 148/1. Anselm Kamperman Sanders “Geographical Indications as Property: European Union Association Agreements and Investor–State Provisions” in Irene Calboli and Wee Loon Ng-Loy (eds) Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific (Cambridge University Press, Cambridge, 2017) 168-185 at 183, Papademas and Bintsis, above n 42, at 193, 426-27. Seville, above n 52, at 290 and Hughes, above n 49, at 358.

European Commission, above n 200, at 552-557.


Iceland has recently applied for the PGI ‘Icelandic lamb’ (PDO-IS-2636), like Feta, GIs almost encompassing whole countries are rare and objectionable for maintaining consistent natural and human factors across the geographical area.
as zorbing, bungee jumping, jet packing and boating if not better suited under industrial designs or patent protection.

Nevertheless, it is again France pioneering the way as a role model for non-agricultural products, as it did for the EU GIs derived from its AOC system.\textsuperscript{378} France did not envisage restrictions on the types of products under its AOC system but the reality saw AOs difficult for non-agricultural producers and reliance on the courts to uphold their reputation from misleading products.\textsuperscript{379} The French Law No. 2014-344 of March 17, 2014, on Consumer Protection (called ‘\textit{Loi Hamon}’) established the current \textit{sui generis} protection as is enforced in its 2016 form under the amended French Intellectual Property and Consumer Codes.\textsuperscript{380} ‘Section 2’ was added to the GI chapter of the Intellectual Property Code to protect industrial and craft products.\textsuperscript{381} This new definition for non-agricultural products is a designation ‘other than agriculture, forestry, food or the sea’ and differs from Article 2(1) Lisbon and Article 5.1(b) of the Agriculture Regulation by omitting quality or characteristics of the product ‘essentially or exclusively due to a particular geographical environment with its inherent natural and human factors’.\textsuperscript{382} This omission of human and natural factors shows clear intention to deviate to a PGI system, where the sourcing of raw materials is not entirely restricted to the geographical location. This is in contrast to ‘Westfälischer Knochenschinken PGI’ where the source of pig’s whole hind leg with bone (raw material) is irrelevant, and the demarcated area assumes full control (geographical link of product) of processing and maturation (production method) after the delivery.\textsuperscript{383}

French efforts were to model their \textit{sui generis} legislation on the Agriculture Regulation’s definition of PGI, similar to TRIPS 22.1, with emphasis on ‘at least one of the production steps taking place in the demarcated area’.\textsuperscript{384} \textit{Loi Hamon} is the only legislative act in the EU dedicated specifically to non-agricultural products under \textit{sui generis} GI protection, incorporating the ‘unique factor’ of ‘\textit{savoir-faire traditionnel}’ (traditional know-how); therefore, France is currently the ‘best practice’ at the national level.\textsuperscript{385}

\begin{footnotesize}
\begin{enumerate}
\item[378] Moir, above n 34, at 1026.
\item[379] Andrea Zappalaglio, Flavia Guerrieri and Suelen Carls “Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task?” 2019 51(1) IIC at 40.
\item[381] Code de la propriété intellectuelle (version consolidée au 1er janvier 2021).
\item[382] At L 721-2.
\item[384] Agriculture Regulation, above n 26, art 5.2(c).
\item[385] Zappalaglio, Guerrieri and Carls, above n 379, at 43, 49 and 65.
\end{enumerate}
\end{footnotesize}
Internationally, Brazil, India, Vietnam and Malaysia led the field in campaigning for the area of protection extension, especially India whose GIs are majority handicrafts.\textsuperscript{386} The EU’s FTA with the Andean Community reflects a compromise as they had an existing \textit{sui generis} system of protection for non-agricultural products which included ‘Guacamayas’ (handicraft) from Colombia, ‘Montecristi’ from Ecuador and ‘Chulucanas’ (pottery) from Peru, also protected as an appellation of origin under the Lisbon System.\textsuperscript{387} The Colombian handicraft highlights natural and human factors from the fibre-extracted from the fique plant, cultivated by the indigenous community of \textit{Laches} in a specific area and then woven into spirals.\textsuperscript{388} The EU-China Agreement mentions possibilities to extend the scope to non-agriculture in future, dependent on EU legislative changes.\textsuperscript{389} China’s already on-board, listing seventeen diverse handicrafts including fireworks, inkstone, cloth shoes, lacquerware, and crystals.\textsuperscript{390} Non-European support for non-agricultural GIs supports the maxim that the ‘Europeans protect their booze’ and the rest of the old world prefers GI protection for crafts or agricultural protects - as suggested in the case study.\textsuperscript{391}

C Summary of Chapter

Like basmati rice above, these are products that result from traditional knowledge and express cultural heritage, intangible or otherwise. International protection of handicrafts is through the Paris Convention and the Madrid Agreement though countries are responsible to act \textit{ex officio} to enforce these obligations. The ‘\textit{ex officio} dilemma’ is not ideal for SME producers with registered trade marks or unregistered IGOs because a \textit{sui generis} system provides more vigilant and cost effective solutions.\textsuperscript{392} International trade in GIs is typically wine, spirits and cheese, but handicrafts as a less perishable items are more susceptible to counterfeiting. ACTA attempts to decrease international trade in counterfeits but is currently in limbo. Handicrafts can benefit from \textit{sui generis} protection against fraudulent imitations as its counterparts have, but the difference is they emphasise the human factor or the production method since they are ‘almost always non-terroir related’.\textsuperscript{393} The means alternative schemes may provide more relevant accommodation similar to PGI, TSG or traditional terms.

\begin{itemize}
\item \textsuperscript{386} Marie-Vivien, above n 263, at 293-294.
\item \textsuperscript{387} Engelhardt, above n 64, at 803. AO number 0869 (Chulucanas).
\item \textsuperscript{388} Marie in Gangjee at 315.
\item \textsuperscript{389} EU-China GI Agreement, above n 265, art 1.2.
\item \textsuperscript{390} At annex VII.
\item \textsuperscript{391} Chapter V case study, above.
\item \textsuperscript{392} See passing-off, above chapter IV.
\item \textsuperscript{393} Zappalaglio, Guerrieri and Carls, above n 379, at 38.
\end{itemize}
This potential expansion further illustrates New Zealand being ‘left behind’, despite this system holding potential benefits for New Zealand with its multitude of traditional knowledge-infused crafts such as kōwhaiwhai (painted patterns), jewellery (pounamu and bone carvings), or harakeke (New Zealand flax) weaving. Protecting these products is unlikely to be considered under a sui generis system as this is the ‘next level’, and New Zealand is yet to protect cheese, the primary agricultural product the EU seeks as GIs. In terms of TRIPs, the definition under 22(1) is unlikely to favour non-agricultural GIs as the traditional know-how or skill set (human factor) is difficult to be ‘essentially attributable to its geographical origin’.

Internationally, NPE and MPE will naturally drive expansion of this area if the interest contestation in the EU is strong enough, i.e. the regulations reflect the input process with little contentio. Traditional knowledge applied like terroir can create the pinnacle factor of an IGO. Given its interrelatedness with human rights, NPE is expected to play a prominent role in normalising IGOs with traditional knowledge characteristics. As it stands, IGOs are largely economic rights, and, therefore, a MPE feature.

VIII Discussion and Conclusion

This chapter discusses the outcome of the research questions posed at the start. The main research question guiding this research asked: What lessons can New Zealand learn from the European Union and the international community in upgrading its current sui generis system of protection for indications of geographical origin? Each of four sub-questions assisted the guiding question to draw conclusions across certain themes. They were:

- How are registered and unregistered indications of geographical origin protected from unfair competition in sui generis and non-sui generis systems?
- What is the European Union’s system and approach to agricultural indications of geographical origin in recent trade deals?
- How does sui generis protection for agricultural indications of geographical origin affect genericization?
- How can protecting non-agricultural indications of geographical origin evolve in the future?

The first part of the concluding chapter summarises the research, recapitulates the findings of the chapters and answers the respective sub-questions. The second part evaluates the answer to the main research questions in the context of these questions using the evidence acquired. Then the
thesis confronts the limitations of the main findings, and finishes by recommending opportunities for future research in this area.

A Recapitulation of Findings

As mentioned in chapter II, the lack of a consensus between WTO Member States on upgrading the TRIPS Agreement to cover GIs from agricultural products and foodstuffs has been in limbo during the DDA. The area of interest in the EU-NZ FTA is the expansion of IGOs to products beyond wine and spirits, thus beyond the current regime that reflects Article 23 TRIPS. This requires New Zealand to accept the broader concept of terroir. This means the human factor is recognised as an essential characteristic linked to geography that often takes the form of a PGI, where the raw materials are sourced outside the demarcated area but the processing or method takes place therein.

Terroir and IGOs as a European invention cause the EU to act in normative way though NPE and MPE to export these concepts. The DDA emphasised the EU acting as NPE and MPE, even though it tried and failed to export its regulatory norms. The WTO Panel (EC-Trademarks) and world trade law (TRIPS) do not currently reflect or interpret the current provisions to the EU’s desired level. The methods used at WTO were similar to that of the CoE, to abolish the death penalty, but IGOs involve more resistance as in this area intellectual property creates a bigger divide than capital punishment. The EU had substantial support, especially from the developing world, to extend IGO protection to agricultural products. Nevertheless, MPE has shown its weakness with new world countries concerning agricultural issues, and without their support TRIPS cannot be upgraded. However, MPE is seen to affect New Zealand through the CPTPP by indirectly externalising diluted regulations on multicomponent terms or compound names.

The ‘interest contestation’ aspect of MPE produces a legitimate regulatory outcome through the strong internal support of the EU IGO holders, producers, traders, and rural communities. This creates a demand for the EU to externalise its IGO regulations and seek TRIPS-plus protection bilaterally through FTAs. The other characteristics of MPE, its institutional features and material existence (market incentives), have been effective in concluding FTAs but the latter characteristic is conservatively applied to strong agricultural nations. In 2020, a leaked document showed offers by the EU on agriculture tariffs for New Zealand. With reference to this, MPE is failing because its intentional efforts to offer material existence (market access) is inadequate. The EU considers protection of agriculture IGOs as a norm for development and a norm to increase market competition and profitability. Colonialism and emigrations are cited as establishing features in the new world that naturally contest ownership of agricultural IGOs and thus a barrier to the EUs normative and market power. In the near-future non-agricultural products may become the ‘new
norm’, but as it stands the EU is only partially ‘shaping conceptions of normal’ in regards to TRIPS-plus protection of agricultural IGOs.

Chapter IV looked at unfair competition and the systems and methods of protection for IGOs. Trade marks were created to protect producers from unfair competition in the market place as was *sui generis* protection of IGOs. Both use signs and names to distinguish their products on the market and reflect the reputation. The differences, *inter alia*, are the collective ownership of IGOs, *ex officio* protection and natural and human factors essentially due to a demarcated area that links a product to its geographical origins. This attributes to the product certain qualities and characteristics often reflecting cultural heritage and traditional knowledge.

The Paris Convention and the Madrid Agreement initially protected indications of source and appellations of origin from unfair competition to protect both consumers and producers. The standards varied as each country was responsible for implementing their own framework on unfair competition. The desire to prevent confusion, deception, misappropriation and other harmful acts in trade has since developed extensively. The EU’s *sui generis* system is adopted from the French system that began developing IGO protection a century before the international adoption of wine and spirits IGOs. TRIPS created the new international standards of IGO protection as an upgrade from the Paris Convention and Madrid Agreement. Nevertheless, the international bench mark was difficult to conclude and has since failed to upgrade to the higher standards the EU expects for IGOs.

Passing-off showed that IGOs can be protected without registration as a trade mark or *sui generis* protection. The cost and lengthy proceedings are not desirable as a protection model for SME producers of IGOs. At the opposite end of the spectrum, the conception of evocation showed the extent of *sui generis* protection of registered IGOs in the EU. This broad concept is far reaching and can be used for translations, homonyms, products containing IGO ingredients, using conceptual proximity of IGOs, shapes and appearances that evoke the reputation of an IGO. The main highlight is the inclusive participation of the various bodies of the Members States and EU institutions to take *ex officio* actions.

The EU tries to exports its IGO that conflict with prior trade marks under the coexistence approach. The New Zealand GI Act supports trade mark superiority, but its nascent system is yet to be challenged extensively to enforce coexistence with a prior registered trade mark. Carrying over prior producers’ rights for certain agricultural products in CETA, or grandfathering, was a necessary compromise for contested generic products. The EU created a new precedent by compromising on this issue, also using other tools such as phasing-out and delocalising expressions for contested IGOs.
CETA established the new benchmark as a reference for New Zealand, but whether similar compromises by the EU are enough is the pressing issue in the negotiations.

Oxymoronically, IGOs in a *sui generis* system may be registered to protect their trade names against trade marks. The trade mark verses IGO conundrum will continue to persist beyond TRIPS-plus protection, and if non-agricultural products are added to the mix, more lawsuits can be expected like the *Budweiser* cases. Unlike trade marks, the EU’s FTAs single-out individual IGOs for *ex officio* protection. This strategy only ‘weathers the storm’ and ironically spans dozens of deals across five continents like trade mark disputes with IGOs. To summarise, *sui generis* systems are the superior approach to protect IGOs from unfair competition from both a consumer’s perspective, and a producers’.

Chapter V explained how the EU became invested with the exclusive competence to conduct trade negotiations on IPR and how the various systems of Member States that protected IGOs became harmonised under a common EU framework. The European Commission has more autonomy and legitimacy to conduct trade concerning IGOs and this explains the influx of trade deals in the last decade that contain IGO provisions. The EU’s successful conclusion of trade deals in China, Japan and Singapore has indirectly put pressure on New Zealand, seen in the CPTPP that accommodated conflicts of IGO protection by allowing multicomponent terms, especially as a measure against generic use.

Other schemes for products with geographical or traditional links provided an alternative framework for agriculture and non-agricultural goods. The EU’s models for traditional terms, traditional specialty guaranteed and mountain products provide less protection for *terroir* products but more accessibility for similar products. It is not likely the EU would accept protection of its PDOs, PGIs, and GIs in New Zealand under these schemes because it takes away the market shares by allowing producers to translate and use the products outside the relevant European demarcations. For New Zealand’s IGOs that can include non-agricultural products, these systems can certify the origin of goods produced in difficult environment or encapsulate traditional methods and knowledge so they do not get misused. Nevertheless, if the impasse ends in the EU-NZ FTA, provisions containing misuse against translations of IGOs, including agricultural ones, is a conditionality of ‘doing business’ with the EU. As the case study suggested, if New Zealand upgraded its *sui generis* system to welcome agricultural IGOs, its internal registrar is expected to receive more attention from non-EU IGOs because this type is more popular than wine and spirits.

In chapter VI, genericity was discussed as the biggest hurdle for negotiating TRIP-plus protection of IGOs with new world countries, especially for an agriculture power like New Zealand. The fear of
The comparative analysis of recent EU trade deals has shown the inconstant application of linguistic features. EU countries that do not use the Latin script have their ‘Latin equivalent’ to accompany the traditional writing. All trade agreements contain provisions against misuse of IGOs in translations, but only a few have provisions against transliterations, transcription or both.

The Lisbon System protects registered AOs from becoming generic as long as they remain registered in the country of origin and do not provide grounds for acquiescence. The current international framework is a ‘free-for-all’ that allows each country to decide whether an IGO is generic. This approach is problematic as it creates inconsistencies in market access and national treatment as well as predictability for producers. A *sui generis* system that caters for agricultural IGOs is the ideal method for protection against genericization. Otherwise, the alternative method is using FTAs which contain provisions against genericity of listed IGOs, as long as they remain protected in the country origin. The latter solution will be an easier compromise with New Zealand given its current legislative framework. The former is more rigorous and establishes better foundations for future development.

The last chapter looked at theme of the EU extending its protection to non-agricultural products, particularly handicrafts and genetic resources that enshrine traditional knowledge and cultural heritage. This also raised the question whether New Zealand can have *sui generis* handicraft system without *sui generis* agriculture. To do so, New Zealand needs to accept the broad interpretation of *terroir* that recognises human factors but by doing so it indirectly acknowledges agricultural IGOs. This implies that the next step towards IGO protection for non-agricultural products needs protection of agricultural IGOs as a prerequisite. This creates a bridge between wines and spirits with non-agricultural products as the connection with traditional *terroir* slowly dissipates, given non-agricultural products are almost always non-*terroir* related, sensu stricto.

Protection of non-agricultural products has already evolved under IGO protection outside the EU and in various EU Member States, just not at the Union level. It is again France showing promise in providing a prototype for the EU of *sui generis* protection of handicrafts, based on similar requirement of PGIs., the PGI model being best suited to not limit use of resources or raw materials that are not attainable in the geographical area that possess the know-how. Traditional knowledge products are also suggested to obtain *sui generis* protection to avoid biopiracy. Technology will inevitably advance while traditional methods and handicrafts become endangered. For these reasons, similar to the motivations for protecting intangible cultural heritage, extending *sui generis* protection...
protection is desirable and also bridges the gap of inequality between IGO producers depending on their product type.

B Evaluations and Limitations

The thesis answers the main research question proposed in chapter I. The condensed answer is that upgrading New Zealand’s *sui generis* system to protect agricultural IGOs is not desirable despite the scenarios. Numerous examples are provided from the EU and international community that help determine possible approaches in upgrading New Zealand’s *sui generis* system to reflect certain TRIP-plus measures requested by the EU. Upgrading the scope of its *sui generis* system to agricultural IGOs will not be mutual. It will require more concessions from New Zealand, particularly ceding its prerogative to use generic terms that adversely affect the market share of its most important industry. New Zealand’s *sui generis* system is at a rudimentary form that reflects the necessary standards required by TRIPS. The research explains the ‘Catch-22’, or dilemma, New Zealand must undergo in order to upgrade to TRIPS-plus protection. Accepting a deal with the EU inherently means more market access but New Zealand is obligated to accept the extended meaning of *terroir*. To upgrade its current system this is a necessary sacrifice, although it can come in many forms. CETA provides that New Zealand can negotiate the grandfathering of pre-existing rights on certain products but compared to CETA and other FTAs the amount of exceptions is minuscule. The expected increase of coexistence between EU IGOs and New Zealand trade marks will be unreciprocated given the disparities in market size and quantity of EU IGOs. Lastly, a considerable gap in cost and resources for New Zealand to administrate the *ex officio* component of *sui generis* protection is inequitable.

As can be expected, this thesis contained limitations. First, the research’s initial conceptualisation took place with a predetermined word limit. The restricted length of the thesis made it impossible to adequately cover the multitude of topics that are relevant in answering the research question. This extends to the topics that were covered. Larger sample sizes of trade agreements were possible but were deemed to overwhelm the research scope. An aspect of comparing non-EU countries that have strong support for agricultural and non-agricultural IGOs will have proved valuable for reference of their internal system and conduct in trade deals with third parties. Secondly, given the unpredictability of the global health situation it was not possible to conduct surveys of the public and key industry players, either in Europe or New Zealand. The results of polling could have aided the thesis in drawing more conclusions given the current EU-NZ negotiations on IGOs have generally been unproductive and have recently taken a hiatus. Lastly, the thesis viewed IGOs through an intellectual property lens. The topic is broad and can be covered under the lenses of social, economic development and cohesion policies or philosophical and jurisprudential lenses to name a
few. Alternative approaches and the conclusion therefrom will be interesting to see as another point of reference and comparison.

This research provides a broad introduction into the epistemology of EU IGO policy. Future research will be interesting in this area after the next phase of FTAs (with New Zealand relevance) are signed, ratified or potentially nullified as seen with TTIP. Specifically, these include the EU-NZ FTA, EU-Australia FTA and the UK FTAs with New Zealand, Australia and the recently enforced EU-UK Trade and Cooperation Agreement. Additionally, this thesis provides reference for the next phase of the EU’s IGO expansion towards non-agricultural goods. It will be interesting to see the future partnerships and positive reception facilitated in this new area, especially with regard to China and India as well as the contestation surrounding genericity, trade marks, evocation and other forms of unfair competition.
IX Bibliography

A Cases

1 New Zealand

Anheuser Busch Inc v Budweiser Budvar National Corporation [2001] 3 NZLR 666
Villa Maria Wines Ltd v Montana Wines Ltd [1984] 2 NZLR 422.
Wineworths Group Ltd v Comité Interprofessionel du Vin de Champagne [1992] 2 NZLR 327
Zespri Group Ltd v Gao [2020] NZHC 109

2 Australia

Anheuser-Busch Inc v Budejovicky Budvar [2002] FCA 390
Bavaria NV v Bayerischer Brauerbund eV [2009] FCA 428

3 European Union

C-389/15 European Commission v Council of the European Union EU:C:2017:798
C-414/11 Daiichi Sankyo Co. Ltd and Sanofi-Aventis Deutschland GmbH v DEMO Anonimos Viomikhaniki kai Emporiki Etaireia Farmakon ECLI:EU:C:2013:520
C-478/07 Budejovicky Budvar Národní Podnik v Rudolf Ammersin GmbH EU:C:2009:521
Case C-120/08 Bavaria NV v Bayerischer Brauerbund eV. ECR 2010 I-13393
Case C-132/05 Commission of the European Communities v Federal Republic of Germany ECLI:EU:C:2008:117
Case C-393/16 Comité Interprofessionnel du Vin de Champagne v Aldi Süd Dienstleistungs-GmbH & Co.OHG [2017] ECLI:EU:C:2017:991
Case C-44/17 Scotch Whisky Association v Michael Klotz ECLI:EU:C:2018:415
Case C-75/15 Viiniverla Oy v Sosiaali- ja terveysalan lupa- ja valvontavirasto [2016] ECLI:EU:C:2016:35
Case C-87/97 Consorzio per la tutela del formaggio Gorgonzola v Köserei Champignon Hofmeister GmbH & Co. KG and Eduard Bracharz GmbH. ECR 1999 I-01301
Case T-212/02 Commune de Champagne and Others v Council of the European Union and Commission of the European Communities EU:T:2007:194
Case T-291/03 Consorzio per la tutela del formaggio Grana Padano v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) [2007] ECR II-03081

Joined cases C-4/10 and C-27/10 Bureau national interprofessionnel du Cognac v Gust [2011] ECLI:EU:C:2011:484

Joined cases C-465/02 and C-466/02 Federal Republic of Germany and Kingdom of Denmark v Commission of the European Communities ECLI:EU:C:2005:636

4 United Kingdom

Budejovicky Budvar Narodni Podnik v Anheuser-Busch Inc [2009] EWCA Civ 1022

FAGE UK Ltd v Chobani UK Ltd [2013] EWHC 630

J Bollinger and Others v Costa Brava Wine Co Ltd (No 2) [1961] 1 All ER 561

Taittinger SA v Allbev Ltd [1994] 4 All ER 75

5 World Intellectual Property Organization

Comité Interprofessionnel du Vin de Champagne v. Richard Doyle Case No. DIE2007-0005

6 World Trade Organization


Legislation

1 New Zealand

Fisheries Act 1996
Geographical Indications (Wines and Spirits) Registration Act 2006
Geographical Indications (Wines and Spirits) Registration Amendment Act 2016
Trade Marks Act 2002

2 European Union


Commission Implementing Regulation (EU) No 1128/2013 approving minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Morbier (PDO)) [2013] OJ L 302/7

Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 OJ L 148/1


Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations OJ L 160/80 (no longer in force)


Regulation (EU) 2019/787 of the European Parliament and of the Council on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 [2019] OJ L 130/1


3  France

Code de la propriété intellectuelle (version consolidée au 1er janvier 2021)

4  Germany

Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, UWG)

Verordnung zum Schutz des Namens Solingen vom 16 Dezember 1994 (BGBl. I S. 3833)
United States

H.R.2029 - Consolidated Appropriations Act, 2016

C  Treaties, Conventions and Agreements


Agreement between the European Community and the United States of America on trade in wine OJ L 87/2 (adopted 10 March 2006)


Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems OJ L 322/3 (adopted 07 December 2017)

Agreement between the United States of America, the United Mexican States, and Canada, as revised 10 December 2019 (signed 30 November 2018, entered into force 01 July 2021)

Agreement governing the Activities of States on the Moon and Other Celestial Bodies 1363 UNTS 3 (opened for signature 18 December 1979, entered into force 11 July 1984)


Anti-Counterfeiting Trade Agreement (signed 01 October 2011, not yet in force)

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part OJ L 261/4 (adopted 30 August 2014)


Comprehensive and Progressive Agreement for Trans-Pacific Partnership, Australia-Brunei Darussalam-Canada-Chile-Japan-Malaysia-Mexico-New Zealand-Peru-Singapore-Viet Nam (signed 08 March 2018, entered into force 30 December 2018)

Comprehensive and Progressive Agreement for Trans-Pacific Partnership, Australia-Brunei Darussalam-Canada-Chile-Japan-Malaysia-Mexico-New Zealand-Peru-Singapore-Viet Nam (signed 08 March 2018, entered into force 30 December 2018)
Comprehensive Economic and Trade Agreement, European Union-Canada (opened for signature 26 September 2014, provisionally entered into force 21 September 2017)


Consolidated version of the Treaty on the Functioning of the European Union OJ C 202 (07 June 2016)

Council of Europe, Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty ETS 114 (signed 28 April 1983)


Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration 923 UNTS 205, (adopted 31 October 1958, as last revised at Geneva on 21 May 2015)

Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods 828 UNTS 168 (adopted 14 April 1891, as last revised at Stockholm on 14 July 1967)

Paris Convention for the Protection of Industrial Property 21 UST 1583, 828 UNTS 305 (adopted 20 March 1883, as last revised at Stockholm on 14 July 1967)

Partnership Agreement on Relations and Cooperation between the European Union New Zealand (adopted 29 November 2016)

Regional Comprehensive Economic Partnership (signed 15 November 2020, not yet in force)


Trade Agreement between the European Union and Colombia and Peru (signed 21 December 2012, provisionally entered into force 01 August 2013)

Trans-Pacific Partnership Agreement, Australia-Brunei Darussalam-Canada-Chile-Japan-Malaysia-Mexico-New Zealand-Peru-Singapore-United States-Viet Nam (signed 04 February 2016, not in force)
Trans-Pacific Partnership Agreement, Australia-Brunei Darussalam-Canada-Chile-Japan-Malaysia-Mexico-New Zealand-Peru-Singapore-United States-Viet Nam (signed 04 February 2016, not in force)

Treaty establishing the European Community [2002] OJ C 325/1

Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies 610 UNTS 205 (opened for signature 27 January 1967, entered in force 10 October 1967)


D Books and chapters in books


Audrey Aubard “Setting up a GI: Requirements and Difficulties at the Producer Level” in Michael Blakeney et al (ed) Extending the protection of geographical indications: Case Studies of Agricultural Products in Africa (Earthscan, New York, 2012) 35-50

Michael Blakeney “The Pacific Solution: The European Union’s Intellectual Property Rights Activism in Australia’s and New Zealand’s Sphere of Influence” in Peter Drahos and Susy Frankel (eds) Indigenous Peoples’ Innovation: intellectual Property Pathways to Development (Australia National University Press, Canberra, 2012) 165-188

Michael Blakeney The Protection of Geographical Indications: Law and Practice (Edward Elgar, 2019)

Chris Boulton Encyclopaedia of Brewing (Wiley-Blackwell, Hoboken, 2013)


Edward Hallett Carr, Michael Cox and Michael Cox The twenty years’ crisis, 1919-1939: an introduction to the study of international relations (Macmillan London, 1946)

Peter Drahos and Susy Frankel *Indigenous peoples’ innovation: intellectual property pathways to development* (Australia National University Press, Canberra, 2012)

Françoise Duchêne “The European Community and the Uncertainties of Interdependence” in Max Kohnstamm and Wolfgang Hager (ed) *A Nation Writ Large?: Foreign Policy Problems before the European Community* (Macmillan, Basingstoke, 1973)

Deborah Elms “Understanding the EU-Singapore Free Trade Agreement” in Annemarie Elijah et al (ed) *Australia, the European Union and the new Trade Agenda* (Australian National University Press, Acton, A.C.T, 2017) 35-54


Dev S. Gangjee *Research handbook on intellectual property and geographical indications* (Edward Elgar, Cheltenham, 2016)


83

Christopher Heath “How Would Geographical Indications from Asia Fare in Europe?” in Irene Calboli and Wee Loon Ng-Loy (eds) Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific (Cambridge University Press, Cambridge, 2017) 186-211

Homer "The Odyssey" (Gutenberg Project)


Annette Kur, Max Planck and Thomas Dreier European Intellectual Property Law: Text, Cases and Materials (Edward Elgar, Cheltenham, United Kingdom, 2013)


Delphine Marie-Vivien “A comparative analysis of GIs for handicrafts: the link to origin in culture as well as nature?” in Dev S. Gangjee (ed) Research Handbook on Intellectual Property and Geographical Indications (Edward Elgar, Cheltenham 2016) 292-326


Dwijen Rangnekar and Pranab Mukhopadhyay “Social gains from the GI for Feni: will market size or concentration” in Dev S. Gangjee (ed) Research Handbook on Intellectual Property and Geographical Indications (Edward Elgar Cheltenham 2016) 463-483


Catherine Ng Goodwill in Passing Off: A Common Law Perspective (Edward Elgar, 2021)

Food and Agricultural Organisation Identification of origin-linked products and their potential for development (FAO, 2012)
Photis Papademas and Thomas Bintsis *Global Cheesemaking Technology: Cheese Quality and Characteristics* (John Wiley and Sons, Hoboken, 2017)


Christian Riffel *The Protection Against Unfair Competition in the WTO TRIPS Agreement: The Scope and Prospects of Article 10bis of the Paris Convention for the Protection of Industrial Property* (BRILL, Leiden, the Netherlands, 2016)


Catherine Seville *EU Intellectual Property Law and Policy* (Edward Elgar, Cheltenham, 2009)

Adam Smith *An inquiry into the nature and causes of the wealth of nations* (Printed for W. Strahan; and T. Cadell, in the Strand, London, 1776)


Oisin Suttle *Distributive justice and world trade law: a political theory of international trade regulation* (Cambridge University Press, 2017)


Journal articles

Naomi Arnold “Gold rush” 2018(150) New Zealand Geographic

Rob Batty “The challenges of prior use to New Zealand registered trade mark law” 2014 45(2) Law review (Wellington)


Radim Charvát “Protection of appellations of origin registered under the Lisbon Agreement in the context of the exhaustive nature of the EU protection of geographical indications and designations of origin” 2021 43(10) E.I.P.R

Jorge L. Contreras “Sui-genericide” 2021 106(3) Iowa law review.

Patricia Covarrubia “Geographical Indications of Traditional Handicrafts: A Cultural Element in a Predominantly Economic Activity” 2019 50(4) IIC

Daniele Curzi and Martijn Huysmans “The Impact of Protecting EU Geographical Indications in Trade Agreements” 2021 American journal of agricultural economics

Chad Damro “Market power Europe” 2012 19(5) J.E.P.P

Chad Damro “Market power Europe: exploring a dynamic conceptual framework” 2015 22(9) Journal of European Public Policy

Alberto Ribeiro de Almeida and Suelen Carls “The Criteria to Qualify a Geographical Term as Generic: Are We Moving from a European to a US Perspective?” 2021 52(4) IIC

Tim Engelhardt “Geographical Indications Under Recent EU Trade Agreements” 2015 46(7) IIC

Samuel D. Heenan and others “Reproductive changes in Foveaux Strait Ostrea chilensis, Southern New Zealand, after Bonamia exitiosa epidemics” 2021 New Zealand journal of marine and freshwater research

Justin Hughes “Champagne, feta, and bourbon: The spirited debate about geographical indications” 2006 58(2) The Hastings law journal

Atsuko Ichijo “What has the Brexit Process done to Scotch Whisky?” 2019 90(4) The Political Quarterly

Innocensia John, Henrik Egelyng and A. Lokina “Tanzanian food origins and protected geographical indications” 2016 4(2) Journal on Food, Agriculture and Society


Irina Kireeva and Bernard O’Connor “Geographical Indications and the TRIPS Agreement: What Protection is Provided to Geographical Indications in WTO Members?” 2010 13(2) The Journal of World Intellectual Property

Roland Knaak “Geographical Indications and Their Relationship with Trade Marks in EU Law” 2015 46(7) IIC
Xindan Liu, Thomas A. Baker and Rebecca Leopkey “Examining the extent of trademark squatting of NBA athlete names in China” 2021 European sport management quarterly

Sven Maertens and others “Options to continue the EU ETS for aviation in a CORSIA-World” 2019 11(20) Sustainability

Aude Mahy and Florence d’Ath “The Case of the "Champagner Sorbet" – Unlawful Exploitation or Legitimate Use of the Protected Name "Champagne"?” 2017 12(1) European Food and Feed Law Review


Vadim Mantrov “Do you Prefer Scotch or German Whisky? CJEU Judgment in the Scotch Whisky and Glen Buchenbach Dispute” 2019 9(4) European Journal of Risk Regulation

Delphine Marie-Vivien “Protection of Geographical Indications in ASEAN countries: Convergences and challenges to awakening sleeping Geographical Indications” 2020 23(3-4) The Journal of world intellectual property


Giulia Meloni and Johan Swinnen “Trade and terroir. The political economy of the world’s first geographical indications” 2018 81 Food policy

Hazel VJ Moir “Understanding EU Trade Policy on Geographical Indications” 2017 51(6) Journal of World Trade

Lina Monten “Geographical indications of origin: should they be protected and why? An analysis of the issue from the U.S. and EU perspectives” 2006 22(2) Santa Clara computer and high-technology law journal

Fe Emmanuelle Panlilio and William Van Caenegem “An Australian anomaly? Sui generis GIs in Australia and the Asia Pacific region” 2019 41(10) E.I.P.R. 628

Valentina Raimondi and others “Trade effects of geographical indication policy: The EU case” 2020 71(2) Journal of Agricultural Economics

Matthew J. Rippon “What is the geography of Geographical Indications? Place, production methods and Protected Food Names” 2014 46(2) Area


Xinzhe Song “The role played by the regime of collective and certification marks in the protection of geographical indications—Comparative study of law and practice in France, the EU and China” 2018 21(5-6) Journal of World Intellectual Property


Benedetta Ubertazzi “EU Geographical Indications and Intangible Cultural Heritage” 2017 48(5) IIC
David A. Wirth “Geographical indications, food safety, and sustainability: Conflicts and synergies” 2016 5(2) Bio-based and applied economics

Andrea Zappalaglio, Flavia Guerrieri and Suelen Carls “Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task?” 2019 51(1) IIC

F Parliamentary and government materials

Amendment of the TRIPS Agreement, WTO Doc WT/L/641(8 December 2005) (Decision of 6 December 2005)

Commission Communication- "Guidelines on the labelling of foodstuffs using protected designations of origin (PDOs) or protected geographical indications (PGIs) as ingredients" [2010] OJ C 341/3

Council Decision authorising the opening of negotiations with the United States of America for an agreement on the elimination of tariffs for industrial goods [2019] 6052/19

Decision No 1/2014 of the Joint Committee on Agriculture on amending Annex 12 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products [2014] OJ L 180/21

Decision No 1/2014 of the Joint Committee on Agriculture on amending Annex 12 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products [2014] OJ L 180/21


European Commission "Agriculture and Geographical Indications (GIs) in TTIP: A guide to the EU's proposal"

European Commission "List of EU Geographical Indications (GIs) submitted within the framework of the negotiations of Free Trade Agreements with New Zealand - foodstuffs" (01 October 2018)

European Parliament Official Questions with Answers OJ C 206 (02 July 2014)


European Union “Proposal for the EU-New Zealand FTA: Chapter [XX], Intellectual Property” (13 June 2018)

European Union “Proposal for the EU-New Zealand FTA: Chapter [XY], Intellectual Property” (6 May 2019)

Ministry of Foreign Affairs and Trade “Māori interests in the EU-NZ FTA”

World Trade Organization “Joint proposal for a multilateral system of notification and registration of geographical indications for wines and spirits: Communication from Argentina, Australia, Canada, Chile, Ecuador, El Salvador, New Zealand and the United States” (TN/IP/W/9, 13 April 2004)

G Papers and reports

AND-International Study on economic value of EU quality schemes, geographical indications (GIs) and traditional speciality guaranteed (TSGs) (European Commission 2019)

Deloitte The Deloitte Swiss Watch industry study 2020: an accelerated transformation (2020)

European Commission Annex to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Global Europe: competing in the world - Contribution to the EU’s Growth and Jobs Strategy (Commission Staff Working Document, 2006) COM 567 final

European Commission Inception Impact Assessment: EU protection of geographical indications for non-agricultural products (2020)

European Commission Study on geographical indications protection for non-agricultural products in the internal market (2013)

European Market Observatory for Fisheries and Aquaculture Products Species Analyses 2020 Edition (European Commission 2021)

FoodDrinkEurope Data and Trends: EU Food and Drink Industry 2018 (2018)

International Organisation of Vine and Wine 2020 Wine Production: OIV First Estimates (27 October 2020)


Hillmarè Schulze and Amanda Reid EU-NZ FTA Māori economy (BERL, 2019)

WorldTradeLaw.net. Dispute Settlement Commentary (DSC) European Communities - Protection of Trademarks and Geographical Indications

H Internet resources

NZ Horticulture Export Authority “Kiwifruit industry profile” <https://www.hea.co.nz/2012-05-11-03-05-28/kiwifruit-trade>


Contrôle Officiel Suisse des Chronomètres “A Traditional Label” <https://www.cosc.swiss/en>


Council of Europe “The ECHR and the death penalty” <https://www.coe.int/en/web/portal/death-penalty>


Faloyer.co.uk “Cornish Native 'Fal Oyster' (Ostrea edulis)” <https://www.faloyster.co.uk/pages/ostrea-edulis-cornish-native-fal-oysters>


Lexico “terroir” (2020) <https://www.lexico.com/definition/terroir>


Elon Musk “All our Patent are belong to you” (2014) <https://www.tesla.com/en_NZ/blog/all-our-patent-are-belong-you>

OEC “Switzerland” <https://oec.world/en/profile/country/che>

Omniglot “Malay (Bahasa Melayu / ملايو / بيهاس ملايو)" <https://omniglot.com/writing/malay.htm>


I  Press Releases

European Commission "The EU and Japan trade deal celebrates second anniversary by further strengthening ties" (press release, 01 February 2021)

European Commission “EU-Australia wine trade agreement enters into force” (press release, 31 August 2010)

European Commission “EU-China Geographical Indications – "10 plus 10" project is now complete” (press release, 30 November 2012)
**J Other**

European Commission, eAmbrosia the EU geographical indications register

European Union Intellectual Property Office, Glview

Food and Agriculture Organization of the United Nations “Codex Alimentarius: International Food Standards”

Intellectual Property Office of New Zealand, Geographical Indications Register

Intellectual Property Office of New Zealand, Trade Mark Register


Connor Pokoati “Examining EU power narratives within an emerging region: examining normative power Europe and market power Europe through images and perceptions of the European Union within external partners in an emerging region” (MEURO Thesis, University of Canterbury, 2018)