

Promoting Geographical Indication Extension as a Tool to Sustain Tradition: Examining the Comté Case



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Submitted to Dr. William F. Arrocha, advisor and head of the International Trade Policy
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Dedications

I dedicate this paper to

My husband, Sergio, who provided constant feedback and support

To my family, with love and affection

To the memory of my grandmother, Rhea Chartier

Abstract

Many small and medium-sized dairy producers, whose products incorporate special processing methods and indigenous knowledge, feel that their goods are receiving inadequate protection in the global marketplace. At present, two levels of hierarchy for geographical indications (GIs) exist in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The first hierarchy is a basic protection of the indication,¹ while the second hierarchy offers additional protection² and currently extends only to wine and spirits. Many producers of unique, quality-based dairy products would like to see this enhanced level of global protection extended to their goods as well. This paper will advocate the benefits of including dairy products in the TRIPS Agreement with an additional level of protection, examine and refute the arguments against such inclusion, and propose subsequent policy options.

¹ As indicated in Article 22 of the TRIPS Agreement, this protection is designed to prevent any use of the name which would mislead the public or would constitute unfair competition.

² As indicated in Article 23 of the TRIPS Agreement, this additional protection includes the attachment of terms such as 'like', 'kind', 'style', 'type' or 'imitation' to qualify a geographical indication. It also offers an enhanced protection against the registration of trademarks including a geographical indication in the name.

List of Abbreviations

AOC	Appellation d’Origine Contrôlée (Appellation of Origin)
CAP	Common Agricultural Policy
CIGC	The Interprofessional Gruyère and Comté Committee
CTC	Comté Technical Committee
DOC	Denominazione d’Origine Controllata (Appellation of Origin)
EEC	European Economic Community
EU	European Union
GATT	General Agreement on Tariffs and Trade
GI	Geographical Indication
INAO	National Institute of Appellations of Origin
TNC	Trade Negotiations Committee
TRIPS	Trade Related Aspects of Intellectual Property Rights
USDA	United States Department of Agriculture
USDEC	United States Dairy Export Council
USPTO	United States Patent and Trademark Office
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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Executive Summary

As long as quality products have existed, protecting their names and reputations from usurpation by other producers has been a critical concern. The relevance of this issue has increased as trade levels have augmented, and goods have traveled around the globe. The focus of this study is on the protection of geographical indication appellations, most notably those in the dairy sector, which comprise the largest group of agricultural artisan products after wines and spirits.

Although international protection of geographical indication products dates from the Paris Convention for the Protection of Industrial Property's inception in 1883, it has not been until recently that the international community has been able to create a practicable, enforceable agreement to deal with the protection of these unique, traditional goods. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was created in 1994 and entered into force on January 1, 1995, was created with provisions that would protect *all* goods which originate in a territory, "...where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."³ Under Article 22.2 of the TRIPS Agreement, producers of GI goods are required to prove that producers of similar goods are trying to "mislead" the public in the use of a given geographical indication and that any such use is constituting unfair competition. The TRIPS Agreement, however, does not provide an equal level of protection for all GI products; wines and spirits receive an additional level of protection. Article 23.1 removes this burden of proof for GI Wine and spirit producers; any use of the GI appellation by other wine and spirit producers is prohibited.⁴

This enhanced level of protection not only maintains the integrity of the original products, (whose name cannot be used on similar products with the addition of terms

indication products must have an infrastructure that incorporates a legal regime, as the global counterfeit turnover of these products is estimated at 6-7% annually and growing.⁵ However, producers of geographical indication dairy goods must provide a greater burden of proof that “free-riding” producers of similar products are intentionally misleading consumers. This is costly, sometimes using as much as 20% of a national GI defense budget,⁶ and it is not always effective.⁷

The continued permissibility of GI dairy appellations amended with terms such as “kind”, “type”, “style” or “imitation” on similar products also gradually erodes the reputations of the original geographical indication goods, some of which have been made using the same quality inputs and traditional processes for over one thousand years. The reputation of the original Cheddar cheese produced in Somerset County, England has already suffered this fate. Without a more adequate system of international geographical indication protection for these goods in the WTO, producers have only national laws and bodies at their disposition to prove deception. This makes producing traditional dairy products sometimes unreasonably (and unjustifiably) expensive, putting the future of these regimes in jeopardy.

The current means by which artisan dairy producers may protect their goods is either by regional or bilateral agreements. The European Union currently enforces the only comprehensive regional agreement by which GI dairy products are protected (under EC Regulations 2081/92 and 2082/92). Bilaterally, these goods are protected using the importing country’s patent and trademark system. These systems, which may be sufficient (although expensive) for protecting the name of a climate-based GI product⁸, are insufficient for protecting **both** the name **and** the reputation of quality for traditional

⁵ World Bank, 2002.

⁶ This was the case with Reblochon cheese sold in Canada in 2002. For more information please see the World Bank Report, “Geographic Indications: A Business Opportunity and Rural Development Tool,” 2002.

⁷ World Bank, 2002.

⁸ For the sake of this study, a “climate-based” geographical indication is one in which the resulting product depends largely on climatic inputs (weather, soil) for its reputation. Such examples may be Vidalia Onions or Florida Oranges.

process and quality input-based GI goods⁹, such as those from the dairy sector. Therefore, additional measures to protect these dairy geographical indication products *must* be used.

Conclusion and Recommendations

The extension of Article 23.1 of the TRIPS Agreement to enhance the level of protection of geographical indications for dairy products must be effected; ultimately, it is to the benefit of the global trading regime and to all of its members.

Although geographical indication products comprise a relatively small percentage of global goods, with dairy GI goods representing an even smaller number, their continued survival is critical. These products represent:

- **The protection of centuries-old tradition and process:** these artisan products are a link to our past, whether we come from “the old world” or “the new world.” This sense of tradition is *not* insignificant. Many countries are closely linked and identified with such tradition, and with their artisan food production. Destroying this tradition destroys the very identity of many countries.
- **Enhanced consumer choice:** Far from confusing consumers, the protection of these niche markets of quality products provides consumers with a greater choice of what to purchase. Those consumers not interested in buying this type of product need not; they may be slightly inconvenienced by the change in name of a facsimile product, but this inconvenience would be minimal.
- **The reinforcement of an important ideology:** Trade is about people, and about making their lives better. This is represented in the Preamble to the WTO which “...allows for the optimal use of the world’s resources in accordance with the

⁹ A traditional process and quality-input based geographical indication is one in which the resulting product depends not only on climatic conditions, but also on traditional technique and on quality inputs. An example of such a geographical indication is for Roquefort cheese, which relies on milk from a very specific breed of ewe (Lacaune), as well as a specific, traditional based process in the making of the product.

objective of *sustainable development*, seeking both to protect and preserve the environment...”¹⁰ Trade cannot be solely driven by economics; it must take into account some social components, including tradition. Protecting the integrity of the geographical indication dairy regime does not give it an unfair advantage; it allows the regime to be on equal footing in a modern, globally integrated regime where economies of scale and mass production reign supreme.

While not immediately obvious, the extension of GI protection *does* benefit those countries which may currently oppose it. Several significant “new world” sectors may actually thrive under GI protection extension. These include:

- **Tourism and fine dining restauration:** especially in cities such as New York, San Francisco, Sydney and Vancouver to name a few. Allowing these quality goods to remain in production means protecting the integrity of many restaurants’ reputations.
- **“High end” bakeries and gourmet food production facilities:** The protection of artisan dairy products provides more choices of quality ingredients for chefs, and ultimately, for consumers of many countries.

Finally, by supporting the extension of geographical indication protection to dairy products, this may allow the extension of GI’s to other products. While this may be what many “new world” producers fear, this action *would be to their advantage*. Although the extension of Article 23.1 would mean that more products like Parma Ham or Mortadella Bologna would benefit from an enhanced level of international protection, so would many other “new world” products, such as Vidalia Onions, Idaho Potatoes and Kona Coffee. Currently the United States is fighting to get these goods recognized in the EU as GI products. A more comprehensive coverage of GI’s under the TRIPS Agreement would assure this protection.

¹⁰ Jackson, 2002, page 3.

An Overview of Geographical Indications

A geographical indication is a type of intellectual property protection which extends to those goods having a specific geographical origin and possessing qualities or reputation associated with their origin. Qualities attributed to geographical indications may be associated with regional climate or soil, unique processes or indigenous knowledge.¹¹ Geographical indications, like trademarks, are a tool used to create value; they permit producers to use their reputations to market their products to those consumers who wish to purchase quality goods.

The false use of geographical indications hurts both consumers and producers; consumers may be deceived into buying inferior goods, while producers may suffer both loss of business and damage to their reputation. This damage may include misappropriation of the geographical indication, as is the case with Chablis wine. This white Burgundy wine, made in Eastern France since 867¹², is considered one of the world's premiere Chardonnay wines. In France, it is protected by an *appellation d'origine contrôlée* (AOC), a type of national geographical indication; however, internationally, this protection has not been sufficiently respected. As a consequence, the name 'Chablis' has been used by several American producers to market their inferior quality white wine, resulting in a corruption of the 'Chablis' name in the American market, which has irrevocably corrupted the Chablis reputation and incurred a loss in sales. Even more damaging to geographical indications than the mere misappropriation of the name is the evolution of the name into a generic term. Cheddar, a cheese made in a city of the same name in Somerset County since the 16th century, is an example of a geographical indication which has been so widely misappropriated that it has actually entered the common English vocabulary to mean "a variety of hard, smooth cheese, mild to very sharp."¹³ In order to counteract the damage to the Cheddar reputation, small scale producers of the original style cheese from Somerset County have been forced to protect

¹¹ WIPO, "Geographical Indications?" 2004.

¹² Lang, 1990.

¹³ Guralnik, 1970.

their product as ‘West Country Farmhouse Cheddar,’¹⁴ a term which many consumers may still equate with the generic term. Clearly, the present system of international geographical indication protection is insufficient and must be reevaluated to address the needs of today’s global marketplace.

Background on Geographical Indication Protection

The protection of geographical indications on an international level dates back to the creation of the Paris Convention for the Protection of Industrial Property in 1883. This was the first major international treaty to deal with safeguarding patents, trademarks and industrial designs.¹⁵ This treaty, as well the Madrid Agreement on Indications of Source (1891) and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (1958) are the principle treaties administered by WIPO to deal with the international protection of geographical indications.¹⁶

In 1974, WIPO began work to revise those agreements associated with indications of source and appellations of origin and to prepare a draft treaty on geographical indications, which was submitted to the Committee of Experts in 1975. This treaty, although never fulfilled, did establish a broader definition for appellations of origin than did the Lisbon Treaty, and replaced the terms “appellations of origin” and “indications of source” with the term “geographical indications”; it was felt that this term would encompass all existing concepts of protection. Work on the geographical indications treaty ceased in the late 1970’s, when it became apparent that the revision of the Paris

¹⁴ Rangnekar, “Protecting Geographical Indications: What developing countries need to do – lessons from the EU experience,” 2003.

¹⁵ Entering into force in 1884, The Paris Convention counted merely fourteen nations as member states. Ten years after the creation of the Paris Convention, it joined with the Berne Convention for the Protection of Literary and Artistic Work (1886), (which was the basis for modern international copyright law) to establish the United International Bureaux for the Protection of Intellectual Property (BIRPI). BIRPI, which was based in Berne, Switzerland, was the predecessor to the World Intellectual Property Organization (WIPO), established in 1970, and now based in Geneva. WIPO, as a specialized agency of the United Nations system of organizations, currently counts 182 nations among its members; it holds a mandate to administer intellectual property matters to member states of the UN.

¹⁶ WIPO, “Standing Committee on the law of Trademarks, Industrial Designs, and Geographical Indications,” 2002.

Convention, which was being effected at the time, would include provisions dealing with geographical indications. In 1990, however, the WIPO Committee of Experts on the International Protection of Geographical Indications again considered the establishment of a new treaty dealing with the international protection of geographical indications, which would eliminate ambiguities existing between the application and enforcement of trademarks versus geographical indications.¹⁷ A new multilateral treaty was also seen as a solution to the limited scope of the Paris Convention and to the limited acceptance of both the Madrid Treaty and the Lisbon Treaty. The Committee of Experts discussed crucial questions regarding the framework of a treaty on geographical indications in an attempt to find a common position. These areas to be more well-defined included:

- The subject matter of protection;
- The general principles of protection, including conditions of protection, contents, and mechanisms of enforcement;
- And, the existence and contents of an international system of registration.

No common ground was reached regarding any of these areas, and the Committee of Experts on the International Protection of Geographical Indications did not meet for any further sessions. Although a new treaty on geographical indications was not agreed to by the Contracting Parties of WIPO, a need for such an agreement had clearly been expressed by the international community.¹⁸

¹⁷ Some undefined regions between these two areas had been acknowledged by WIPO Contracting Parties and attempts were made to more clearly define the two areas. For example, in 1982, during the Main Committee of the Diplomatic Conference on the Revision of the Paris Convention, an amendment was proposed and adopted which would prohibit the use of official names of states as trademarks. *For more information, read WIPO, Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Eighth Session, Geneva, May 27-31, 2002.*

¹⁸ WIPO, “Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications,” 2002.

Background of Negotiations on the Agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS)

The issue of a multilateral treaty dealing with intellectual property rights was brought to the forefront of the international agenda during the Uruguay Round of Negotiations of the GATT. This action was initiated by the United States, which was dissatisfied with the international protection of intellectual property rights within WIPO, citing concerns about inadequate enforcement mechanisms and the failure to revise the Paris Convention. The GATT was seen as a more effective regime to negotiate an international agreement on intellectual property rights.¹⁹ The United States lobbied effectively to include intellectual property among the issues for negotiation during the Uruguay Round of negotiations in 1986. After three years, the issue was officially put on the agenda for discussion, with negotiations occurring over a period of four years, from 1990-1994.²⁰

The reason behind the decision to include geographical indications in the discussion of intellectual property remains somewhat unclear and was at best, controversial. What is known is that the framework of the Articles dealing with geographical indications (TRIPS Articles 22-24) was largely the work of the United States, the EEC countries and Switzerland. Such key elements as the concept of “additional protection” for wines and spirits, and provisions for a multilateral register for indications of wine and spirits were present in the EEC proposal²¹ and are nearly identical to the wording of the EU legislation 2081/92, (which deals with the protection of agricultural goods in the European Union.)²²

¹⁹ The subject of intellectual property had been on the GATT agenda since the Tokyo Round, when the United States and the European Economic Community (EEC) countries proposed an Anti-Counterfeiting Code, in response to the increase in global counterfeiting and copyright piracy in the 1980's. Although this code was not adopted, it helped to shape future negotiations dealing with intellectual property.

²⁰ Adede, 2003, pp 22-35.

²¹ Rangnekar, “Protecting Geographical Indications: What developing countries need to do – lessons from the EU experience,” 2003.

²² Office for Official Publications of the European Communities, 2004.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)²³

The TRIPS Articles on geographical indications present a very broad definition of what is considered to be a geographical indication. Article 22.1 states that

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

This definition, although broad, establishes three distinct elements. First, that an indication must identify a *good*. Second, that this good must possess ‘a given quality’, ‘reputation’ or ‘other characteristic.’²⁴ Third, Article 22.1 supports regulation and monitoring of goods produced in a given geographical area to maintain a level of homogeneity and quality.

Article 22.2a provides protection not of the indication itself, but against

...the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical indication of the good.

However, for those goods which are categorized as wines or spirits, the TRIPS Agreement provides an enhanced level of protection. Article 23.1 states that

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

²³ For the complete text of those articles in the TRIPS Agreement pertaining to Geographical Indications, please consult Appendix 1.

²⁴ - By including ‘reputation’ in the definition of a geographical indication, TRIPS surpasses the definition for appellations of origin as stated in the Lisbon Agreement.

Furthermore, those who possess a geographical indication for a wine or spirit have additional recourse against those companies or individuals who have registered or attempt to register a trademark for wines or for spirits, using the name of a geographical indication. This is indicated as follows in Article 23.2

The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits **shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party**, with respect to such wines or spirits not having this origin.

According to Jon Dudas, deputy director of the U.S. Patent and Trademark Office in the Commerce Department, in testimony before the House of Representatives Agricultural Committee on July 22, 2003, the United States only agreed to the European demands for enhanced protection of wine and spirits because the TRIPS also provides for exceptions.²⁵ The exceptions are provided for in Articles 24.3 – 24.6, and are as follows:

3. In implementing this Section, a Member **shall not diminish protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.**

4. **Nothing** in this Section **shall** require a Member to **prevent continued and similar use of a particular geographical indication of another Member** identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either

(a) before the date of application of these provisions in that Member as defined in Part VI; *or*

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section **shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark**, on the basis that such a trademark is identical with , or similar to, a geographical indication.

²⁵ United States Mission to the European Union, 2003.

6. **Nothing** in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. **Nothing** in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

These provisions create a system by which similar geographical indications or trademarks may be “grandfathered” into the WTO (Articles 24.3-24.5), and also introduce the idea of generic terms (Article 24.6), which may not be considered for protection as geographical indications under the TRIPS Agreement. This last provision has caused a great deal of controversy and debate because of the difficulty and subjectivity in determining whether a product indication should be considered “generic”, and thus a public good, or whether it should be protected internationally.

Although some geographical indication dairy appellations are almost universally considered “generic” – such as Cheddar cheese – others, for example Mozzarella or Parmesan, represent a “grey area” in the interpretation of Article 24.6 and add fuel to the current debate regarding possible extension of protection to include dairy and other GI products.

The Current Debate

With consideration being given to extend the protection of Article 23 to include other agricultural products, such as dairy products, the issue of “generics” is being taken very seriously. Already, within the realm of the EU, there has been a disagreement over the use of the indication “feta”, which the Greeks consider to be their geographical indication, as opposed to the Danish and the French, who consider this a generic term for a type of cheese. Internationally, this issue is even more controversial and is part of the current debate in the WTO concerning the extension of geographical indications.

A number of WTO member states object to the exclusive and hierarchal nature of geographical indication protection and would like to see the definition of Article 23 expanded to include other agricultural products.²⁶ Other member states²⁷ object to any extension of geographical indication protection and find, moreover, that Article 22 should have been considered adequate protection for these products.²⁸ This contentious issue, among others²⁹, was included in a list of proposals compiled by various developed countries in preparation for the Seattle Ministerial Conference in 1999. Although the Seattle Conference did not take place, this list was incorporated into the agenda of the WTO's Ministerial Conference in Doha, Qatar in November 2001; the issue of geographical indications was subsequently included into the Doha Declaration, which launched the current round of WTO negotiations, the Doha Round.

The member states of the WTO launched the Doha Round of Negotiations with the idea, continuing from the Uruguay Round of Negotiations,³⁰ that these talks be part of a “development round,” taking into special consideration the needs of developing countries. The goal of the Doha Round was to conclude with an agreement in January 2005, with negotiations on implementation issues, such as geographical indications, concluding even earlier, in Fall 2003. Many trade policy experts were skeptical that the conclusion of the Round could occur by this deadline, as the agenda of issues listed in the Doha Declaration was “much heavier”³¹ than that of the Uruguay Round, which took a full eight years to complete.

The aim of the Doha Declaration was to deal with, and resolve a large number of critical trade issues – ranging from agriculture, to competition policy and finance. The

²⁶ Those advocating the extension include Bulgaria, China, the EU, Liechtenstein, Kenya, Mauritius, Nigeria, Pakistan, Sri Lanka, Switzerland, Thailand and Turkey

²⁷ These countries include the United States, Argentina, Australia, Canada, Chile, Dominican Republic, El Salvador, Guatemala, New Zealand, Paraguay, Philippines and Taiwan.

²⁸ Geographic Indications, 2005.

²⁹ Agriculture, services, subsidies, anti-dumping, regional trading arrangements, dispute settlement, industrial tariffs, and some aspects of the TRIPS Agreement. Note that although the issue of geographical indications is dealt with in TRIPS Articles 22-24, the issue of geographical indications is to be dealt with under the Doha mandate in Paragraph 12, “Implementation Issues.” See Das, page 5 for more information.

³⁰ These negotiations took place among Contracting Parties of the General Agreement on Tariffs and Trade (GATT) from 1986-1994 and ended with the creation of the WTO.

³¹ Das, 2003, page 5.

Doha Declaration notes that the TRIPS Council will deal with the issue of geographical indications under the Declaration's paragraph twelve, which states that, "negotiations on outstanding implementation issues shall be an integral part" of the Doha Work Programme, indicating that this issue, and those included in this program,³² must not be marginalized. There is some dispute among member states as to the exact interpretation of paragraph twelve; many developing and European countries feel that the outstanding implementation issues are already part of the negotiation and the "single undertaking", whereas others argue that these issues can only become negotiating subjects if the Trade Negotiations Committee (TNC) decides to include them in talks.³³

The issue of geographical indications extensions remains unresolved. It was hoped that negotiations would resume during the Cancún Summit in Fall 2003, but this did not come to pass, and no further deadline has been established in the WTO to conclude negotiations of those trade topics associated with the Work Programme. This issue is one that is critical to many countries, with developed and developing countries on both sides of the debate, although the United States and the European Union are the two most vociferous advocates of the respective positions.

The remainder of this paper will take the position of the European Union advocating an extension of geographical indications. While opening up all agricultural sectors to an increased level of geographical indication protection is a laudable goal, this analytical study will focus on the more viable objective of extending a higher level of protection to those dairy products in which a given quality, reputation or other characteristic are attributable to geographic origin.

³² Such as Agreements on Technical Barriers to Trade, Sanitary and Phytosanitary Measures, and Subsidies and Countervailing Measures.

³³ For those articles in the Doha Declaration pertaining to Geographical Indications, please consult Appendix 2.

Extending Geographical Indication Protection in the Dairy Sector

Geographical indication extension is currently among the most controversial, emotional, highly-charged issues in the global trade regime. Although many people, including trade specialists associate this issue with affluent European countries trying to protect their industries, or see it merely as “the US versus the EU”, this avenue of thinking is oversimplified and somewhat erroneous. First, many countries are interested in geographical indications, either to limit their use, or to extend their protection. As the world’s two largest trading entities, the United States and the European Union are merely in a more advantageous position to express their respective opinions. Second, although the theme of this paper, extending geographical indication protection in the dairy sector *does* primarily advance the agenda of countries in Western Europe, the issue of geographical indications on a larger scale represents much more than the interests of a few rich countries. Protection of these markets represents protection of diversity of products, the freedom of consumer choice, a higher level of industry standards and traditional process. Although extension of geographical indications for many different products is a desirable goal, the dairy sector, well monitored and the third largest area (after wines and spirits) producing geographical indication products, is the logical place to begin.³⁴

Economics behind the issue

Standard economic theory states that the best model for competitiveness in the marketplace is the use of economies of scale, with increasing proportions of capital to labor. The majority of the dairy industry in Northern Europe is characterized by the use of economies of scale and the exploitation of climatic conditions, producing mass quantities of milk, butter, cheese and yogurt. Large-scale processing units, heavy inputs of capital and universal technology are employed to create increasing quantities of product, using the most efficient combination of resources in order to maintain a viable

³⁴ World Bank, 2002.

position in the marketplace. This theory, although well-proven to increase competitiveness, is inadequate when applied to the geographical indication dairy sector. This particular sector is not driven by quantity, but rather by *quality*. In large scale dairy production the milk is transformed into a variety of value added products, employing labor saving technologies, with the final quality of the product being determined by local and international public safety and hygiene standards. This is contrasted with the production of artisan products, which are generally labor intensive and define themselves by a wider concept of *quality*; this definition may include the superior level of inputs, associated with local resources and processes. These products promote themselves based on these unique, desirable characteristics, which add to their market value; consumers are willing to pay a higher retail price for these products, therefore, which offsets higher costs associated with more labor intensive production and increased process monitoring. Here, a standardized model based on large-scale dairy farming is inadequate. This model shows an indifference to the source of its inputs, and shows little flexibility in dealing with social, cultural and historical variables associated with geographical indication products.³⁵

The standard economic theory runs counter to artisan dairy products in the following ways. First, these products not only have their own added value, but also add value to their inputs, in this case, milk. The production chain also maintains a more equitable distribution of added value among the various actors in the system, favoring the economic activity of rural areas by acting as a barrier to marginalization of agriculture. This helps to curb regional unemployment and depopulation. The box below shows a brief examination of the rural economy of Parmigiano-Reggiano, outlining its history, regulation and production system. Parmigiano-Reggiano, although not the oldest geographical indication dairy product, has the oldest system of regional protection, which was granted by decree in 1613.

³⁵ Bertozzi, 2004.

The Rural Economy of Parmigiano Reggiano

History

Parmigiano Reggiano cheese has been produced in the area of Parma, Italy since the Middle Ages. In the 13th century, the cheese was exported to Mediterranean ports, and was used in renaissance banquets. In the 16th century, the cheese became widely known in Europe, and by the 1613, a notary in Parma wrote the first official document to safeguard the origin of the cheese, indicating that only the cheese manufactured and aged in the territory of Parma had the right to use the name *Parma*. In 1751, the Duke of Parma, Don Filippo of Bourbon, order a decree to protect the name of Parma cheese and to combat against fraudulent facsimiles.

Modern Regulation of the Market

Parmigiano-Reggiano cheese was officially indicated in 1928 by the Italian government. In 1954, the Italian law on the Designation of Origin of cheeses was created, following negotiations at the International Convention of Stresa on the designation of cheeses in 1951.

In 1952, a decree was approved by the Italian government to establish specifications for the production of Parmigiano Reggiano. It is considered an essential tool in guiding the protection of the Designation of Origin; the following three areas comprise the decree which characterizes the geographical indication:

- The production standard,
- The marking standard,
- And the regulation for animal feeding.

Parmigiano-Reggiano Today

The Consorzio del Parmigiano-Reggiano is the organization which oversees legal protection, quality control, production advertising and promotion. The dairies that produce Parmigiano-Reggiano are members of the Consorzio and reinforce the organization. Its legal status is that of a voluntary consortium and works under the directive of the Italian Ministry of Agriculture. Only the Consorzio has the power to stamp the Parmigiano-Reggiano cheese according to EU and Italian procedures.

The chain of Parmigiano-Reggiano production includes 547 dairies, which process 15 million tons of milk annually, obtained from 5900 farms. The minimum age required to obtain Parmigiano-Reggiano is 12 months, although ageing of 18-24 is more typical. A common feature of the firms of the supply chain is the limited size compared to firms producing other dairy products. (Source: Leo Bertozzi, *The Geographical Indications and their impact on the rural economy: the case of the Parmigiano-Reggiano*)

The idea of a geographical indication encompasses what in France is referred to as *terroir*. *Terroir* is the idea that a combination of soil, climate, vegetation, animal

husbandry, tradition, history and local knowledge make certain given products unique and unable to be produced in an identical fashion elsewhere. It is this element, or set of elements that make artisan products unique, more valuable and worthy of a higher level of protection.

The number of geographical indication products is finite, with at present 766 products worldwide.³⁶ Of these, roughly 75% are in the wine or spirit category, with about 6.5% in the dairy sector.³⁷ The very nature of these products means that without adequate global protection, they may become endangered species, taking with them a tradition and way of life. Below are the thirteen cheeses for which the EU is seeking higher international geographical indication protection.³⁸

Cheeses for which the EU is seeking higher protection

Asiago – Italy	Mozzarella di Bufala Campana - Italy
Comté - France	Parmigiano-Reggiano - Italy
Feta – Greece	Pecorino-Romano - Italy
Fontina – Italy	Queijo São Jorge - Portugal
Gorgonzola – Italy	Reblochon - France
Grana Padano – Italy	Roquefort - France
Manchego – Spain	

Source: Babcock, Bruce, *Geographical Indications, Property Rights and Value Added Agriculture*, 2003.

In order to sustain these industries, it is necessary to have this increased level of protection. First, these dairy products are expensive and time-consuming to produce. On average, these artisan goods cost an addition 20-30% to manufacture. The goodwill that comes from enhanced geographical indication protection means that the finished product

³⁶ Although as of December 1999 835 products were registered with WIPO, only 766 currently remain in force according to data from South Centre.

³⁷ South Centre, 2005.

³⁸ Please note that all current GI dairy products registered with WIPO are European, with the vast majority being French. No dairy GI's exclusive of the WIPO registration list have been submitted for consideration by WTO member states.

may sell for 20-30% more than a similar product³⁹, thus allowing the various members in the production chain to recoup the additional costs of manufacture and to break even. Second, by recognizing and protecting these goods, the loss of sales and of reputation due to counterfeiting and usurpation of a protected name are curbed. Counterfeiting, according to World Bank data for the year 2002, constituted 6-7% of global turnover of exporting companies. Data for the same year from the Institut National des Appellations d'Origine⁴⁰ indicate that their international protection budget was € 750,000, or 5% of their global budget, with an increase of at least 17% in the protection budget for every year from 1998 to 2002.⁴¹ This data suggests that our increasingly integrated global marketplace is accompanied by increased level of counterfeiting and product name usurpation. In order to counteract the malevolent effects of these crimes, the modern global trading regime *must* reflect a greater level of protection for these traditional goods. This would mean, for those GI product dairy producers, that they could virtually eliminate legal fees related to “customer deception complaints,” as producers of quality dairy products would no longer have to prove that the consumer has been deceived by this name usurpation.⁴² These fees are not insignificant and may account for as much as 20% of a national GI defense budget, as was the case for French made Reblochon cheese sold in Canada in 2002: of an estimated € 40,000 total defense budget, € 8,000 was devoted to such deception complaints.⁴³ Without a more adequate system of geographical indication protection in the WTO, protecting GI products internationally, using only national laws and bodies to prove deception, producing traditional artisan dairy products an expensive measure.

So why produce artisan dairy products?

³⁹ A “similar product”, for the purposes of this study will refer to those products which are *similar* in characteristics to its artisan counterpart, and which have a similar end use. These are GI dairy imperfect substitutes.

⁴⁰ The French national body which deals with the protection of geographical indication products.

⁴¹ World Bank, 2002.

⁴² An example of such a usurpation of name might be “Parmesan cheese, made in USA.” By increasing the level of protection in TRIPS Article 23.1 to encompass geographical indication dairy products, this sort of labeling would no longer be permitted.

⁴³ World Bank, 2002.

Imagine a trip to the local supermarket five years from now, or ten years from now, in a world oblivious to protecting artisan dairy products. A yogurt shelf may contain dozens of different yogurts, but on closer inspection, they are not different at all; only packaging, marketing, the addition of fruits or a brand label may distinguish them. However, none of these factors indicates or enhances quality, only choice. Choosing a yogurt based on production method, as well as quality and source of milk will no longer be an option. A walk down the cheese aisle may be even more drastic. One does not even have to wait five or ten years to see that as the cheese aisles in the average market have grown, it has been by quantity, not quality. Different varieties of cheese replaced by increasing presentation of cheese: slices, grated morsels, cheese “dust”⁴⁴ that is packaged in shaker cans. These cheeses, with the addition of annatto or other food coloring often gleam bright orange; they are marketed based on convenience and appearance, not on taste. If present trends continue, those cheeses that are unique and traditionally made by centuries old processes will certainly not survive long in this globally integrated world in which quantity and efficiency reign supreme over quality and tradition. But should economic efficiency be the only factor by which we judge the market? Of course not. In this instance, we need to take into account the very nature of geographical indications as products whose future may be in jeopardy, and to examine the role of the producers and consumers of GI dairy products.

Many goods associated with geographical indications, such as Florida Oranges or Idaho potatoes, do not necessarily associate themselves with special processes or a long tradition, but rather with the climate of the region. Dairy artisan products distinguish themselves not only by climatic considerations, but also by the use of special processes, some of which have been used for one thousand years or longer. These products also incorporate special inputs, such as milk from specific creatures, which have been raised in a very selective and controlled environment.⁴⁵ GI dairy products are subject not only to monitoring of their processes, but also quality control taste evaluations, which determine

⁴⁴ Cheese “dust”, for the purpose of this study refers to that cheese, of the size and shape of sand grains, which are packaged in tins for convenient use. Notorious in this category of cheese is Kraft’s “Parmesan Cheese.”

⁴⁵ Such examples of creatures are the Lacaune goats, the milk of which is used to make Roquefort, and the Montbéliard cows, the milk of which produce such cheeses as Comté and Morbier.

whether the product in question may be sold with the indication name. All of this monitoring is expensive and somewhat inconvenient in a quantity driven marketplace; however, it should be nurtured and supported for the following reasons: first, although the future of these products may be uncertain, and they cannot compete on the same level, using the same mechanisms as large-scale dairy product, this does not mean that these goods should cease to exist; rather, it is important to take into account the special nature of these goods and to acknowledge that they have, in the twentieth century, come into contact with forces that challenge their survival. In this case, one critical force that is counter to the survival of GI dairy products is the increased global integration of the planet. Artisan dairy products represent a link with our past – of traditions that have survived, oftentimes, since the Middle Ages – and a link to the present and future. Second, these products represent a way of life, not just a job, for actors at all levels of the production chain who manufacture these unique goods; those who produce these artisan goods do so out of a sense of tradition, of national identity and of a duty to the standard of quality; this is a labor of love. Manufacture of these goods brings employment to mostly rural regions and may additionally benefit the area by bringing agri-tourism, as is the case in Auvergne, where Roquefort is produced, or in Franche-Comté, where Comté is produced. Without geographical indication dairy sectors, these areas would most assuredly have higher unemployment rates and would see much lower tourism revenues. Finally, by extending greater protection to GI dairy products, the consumer is ultimately given a greater choice in what he or she purchases. Currently, GI products constitute approximately 15% of the European market, and probably less in much of the rest of the world.⁴⁶ This means that more than 85% of the world food market consists of ordinary, non GI goods. Geographical indication goods, therefore, do not create a threat to the market place, but rather enhance choice. This niche market allows those consumers who wish to purchase goods based on quality, reputation or place of origin to do so. However, without increased protection of GI dairy products, consumers may purchase inferior products which claim to be the original, or similar to the original, thus tarnishing the reputation of the geographical indications in question. Continuing to ignore this problem hurts both producers and consumers.

⁴⁶ World Bank, 2002.

The next section will present a case study of a cheese, Comté, which currently is protected by French and EU laws, but which does not receive enhanced protection from the WTO. Comté is the geographical indication cheese in France which has the highest level of production.⁴⁷

A Case study of Comté Cheese⁴⁸

Comté Background and History

Comté cheese, produced in the Franche-Comté region of France, has an ancient history, dating back from 800 to 1000 years. Records indicate the production of Comté since at least the 13th century, although many believe that production of the cheese began as early as the 11th century, when farmers from the region communally gathered their collective milk productions for the day at the *fruitière*, or local cheese dairy. The milk used in the production of Comté comes from the Montbéliard cow, a local breed.⁴⁹ The Montbéliard cow is described as a cow with a “gentle gaze and a steady gait”, a strong animal of good size, with a large muzzle, red and white in color forming distinct patches. The Montbéliard possesses delicate legs, but has a strong bone structure; it is an exceptionally good milk producer and its milk has been used exclusively in the production of Comté cheese dating back at least 500 years.⁵⁰

⁴⁷ In 2003, 44,717 tons of Comté were produced, more than twice that of Roquefort, of which 18,510 tons were produced. See the Fiche Synoptique des AOC Laitières en 2003 for more information.

⁴⁸ For more information please consult Appendix 3.

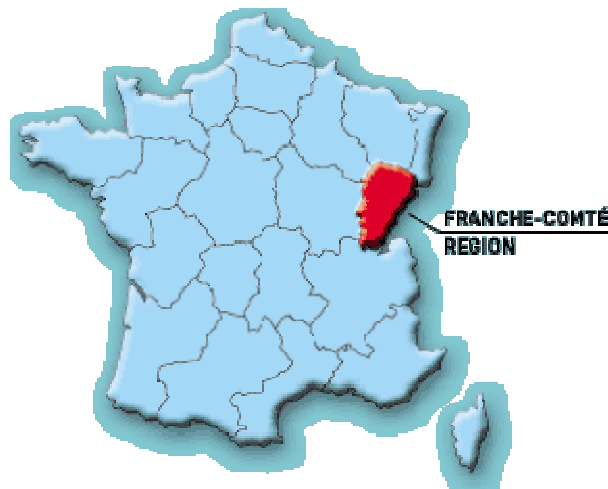
⁴⁹ INAO, 1998.

⁵⁰ Lang, 1990.



A Montbéliard cow from the Jura

The milk from the Montbéliard cows is especially high in fat and is considered of superior quality, because of the forage feeding the cows receive. This feeding technique improves quality of the milk, but at the expense of quantity; with ensilage, the milk yield would improve between 800-1000 kilograms a year per animal. Two-thirds of all milk produced by the Montbéliard breed is used in the production of Comté (with the remainder being used in the production of Morbier cheese or being sold as drinking milk.) The minimum fat content of Comté is 45%. It is produced in the following regions and *départements*: Doubs, Jura, Haute-Saône, the area around Belfort, and the districts of Belley, Bourg-en-Bresse, Gex, Nantua, Beaune, Dijon, Langres, Chalons-sur-Saône, Louhans, Épinal, and Neufchâteau.⁵¹



⁵¹ Ibid.

The origin of each piece of Comté cheese, as well as its month of production may be traced by a marking in the green casein coating attached to the cheese.⁵² The next section will detail more fully the Comté production process.

Comté Production Process

In order for a cheese from the Franche-Comté region of France to be considered “Comté”, it must follow a strict set of national (and now EU) rules governing appellation contrôlée; Comté has been protected as a superior product of quality by the French government since 1958, and by the European Union since 1992.⁵³ It is one of 36 French cheeses that are protected by a geographical indication. Comté cheese cannot be produced outside of the Jura Massif, a mountain range that covers the regions of Jura, part of Doubs, and part of Ain, a *département* in the Rhône-Alpes region. Only cows of the Montbéliard breed are authorized to produce the milk used for making Comté. Each animal must have at least one hectare of natural pasture to graze on. Any fertilization of the soil is strictly limited so as to preserve the richness of the natural flora. The cows must be fed a diet which includes no ensilage, is natural and totally free from fermented products. Milk from the cow must be collected daily and transformed within 24 hours, without the use of additives, preservatives or coloring agents. For transforming the milk into curds, the cheese maker must use only natural fermenting agents. In order for the cheese to bear the name of “Comté”, the cheese must be matured in a special cellar for at least four months.

Comté cheese also must undergo a rigorous inspection process that is carried out at every stage of the transformation process – from the pasture to the finished product. Regular visits are carried out by the Representatives of the Fraud Squad and by representatives from the INAO (Institut National des Appellations d’Origine – the National Institute of Designations of Origins), the body which regulates all products with

⁵² Consortium of Comté Producers, “The Montbéliard Cow,” 2004.

⁵³ Ibid.

a geographical indication in France. During manufacture of the cheese, it is subject to analytical tests by scientists and researchers from the Comté Technical Committee. Once the cheese is matured, the Comté is assessed according to taste and appearance by juries of experts. Only cheeses that receive a mark of at least 12 out of 20 points are allowed to bear the name “Comté”, assuring a traditional, organic product of quality.⁵⁴

Comté Production Volume, Sales and Major Markets

In 2000, Comté production was approximately 48,000 tons, a 20% increase since 1985, when the production was 38,000 tons.⁵⁵ Of this amount, 1500 tons of cheese (or approximately 3-4% of production) are destined for export. The main markets are: The United States, Germany and Belgium. Traditionally, Comté has been sold in blocks, freshly cut, and mainly in the Center East of France, in the area in which it is produced. Figures comparing 1990 to 1999 indicate that there has been a decline of 6.8% in the sale of blocks and a 130% increase in the sale of prepackaged cuts of cheese. There has also been a subtle shift in sales of Comté in France from the traditional area of Center East, where local demand in 1990 represented 55.2% of French aggregate demand, compared with 1999, in which demand in the region was 39.4% of aggregate demand. Sales in all other regions of France have increased, with the South East seeing the largest increase, from 6.7% in 1990 to 12.6% in 1999. The three major export markets (U.S., Belgium and Germany) have seen modest increases in demand since 1990.⁵⁶

Stakeholders (supporting industries) in Franche-Comté

The following are stakeholders in the Comté cheese industry:

⁵⁴ Consortium of Comté Producers, “Label of Origin Guaranteeing Quality (AOC),” 2004. For more information regarding the production process of Comté cheese, please consult the Appendix.

⁵⁵ World Bank, 2002.

⁵⁶

- **Milk producers** – There are approximately 3200 milk producers in the region, with 330,000 cows under milk control. (Source) Milk from Jura commands a higher price, on average 25% more than other milk produced in France,⁵⁷ but is produced in much smaller quantities. The interest of milk producers, and those in

- **The Comté Technical Committee** – This committee is funded by users, the CIGC, and the French government and is responsible for technical monitoring and quality control.
- **Sellers** – Domestically, over 85% of Comté is sold in supermarkets and hypermarkets. Internationally, this figure is over 95%.⁶⁰
- **The Boards of Tourism for Jura and Franche-Comté** – This area of Central Eastern France benefits largely from the promotion of its natural, unexploited landscapes, as well as the “Comté Trail” and the Comté Museum, both of which promote the area’s traditional way of life.⁶¹
- **Domestic consumers** – Including individuals, restaurants and gourmet businesses such as bakeries and boutique businesses.

As the largest non-European export market for Comté is the United States, the next set of stakeholders will reflect those American individuals and organizations affected by the production and importation of Comté.⁶²



A Wisconsin Dairy Cow

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² It must be noted that the nature of cheese production differs greatly between the United States and Europe, particularly France. Whereas artisan cheeses are produced regionally, with producers generally producing only one type of cheese, with very few exceptions, American cheese makers produce multiple varieties at one facility. Wisconsin, for example, prides itself in the production of over 300 types of cheese, with production of several varieties in one location being typical. For more information regarding Wisconsin’s cheese making please consult www.wisdairy.com.

- **American consumers** – The U.S. consumer base includes individuals, restaurants and gourmet businesses such as bakeries and boutique businesses.
- **The National Milk Producers Foundation**
- **The United States Department of Agriculture (USDA)**
- **The United States Dairy Export Council (USDEC):** This non profit organization has an annual budget of \$13.4 million and is funded by dairy farmers (\$7.5 million), funds from the USDA Foreign Agricultural Service (\$4.8 million); and from dues and memberships (\$800,000)⁶³. The USDEC works with dairy farmers to develop export markets, the strongest being to Mexico, Canada and Japan.⁶⁴
- **State Milk Boards:** The largest milk producing region is the Midwest, although the largest milk producing state is California.
- **State Dairy Boards:** The largest cheese producing state is California, closely followed by Wisconsin. The Midwest is the largest cheese producing region in the country.
- **Milk producers:** California is the largest national milk producing state; annual production in 2003 was 35 billion pounds, 45% of which was used in cheese production.⁶⁵
- **Cheese makers:** Wisconsin, the largest cheese producing state, counts more than 1.7 million dairy cows, more than 1200 cheese producers and numerous other individuals.
- **Large domestic food corporations:** These include companies such as Kraft, which depend largely on cheese production and sales.
- **Small domestic boutique cheese makers:** Although their numbers are small, these cheese producers may compete more directly with Comté cheese makers in terms of quality.
- **Tourism boards for California and Wisconsin** – Both states currently promote agri-tourism associated with their respective dairy productions.

⁶³ US Dairy Export Council, 2005.

⁶⁴ Ibid.

⁶⁵ Real California Cheese, 2005.

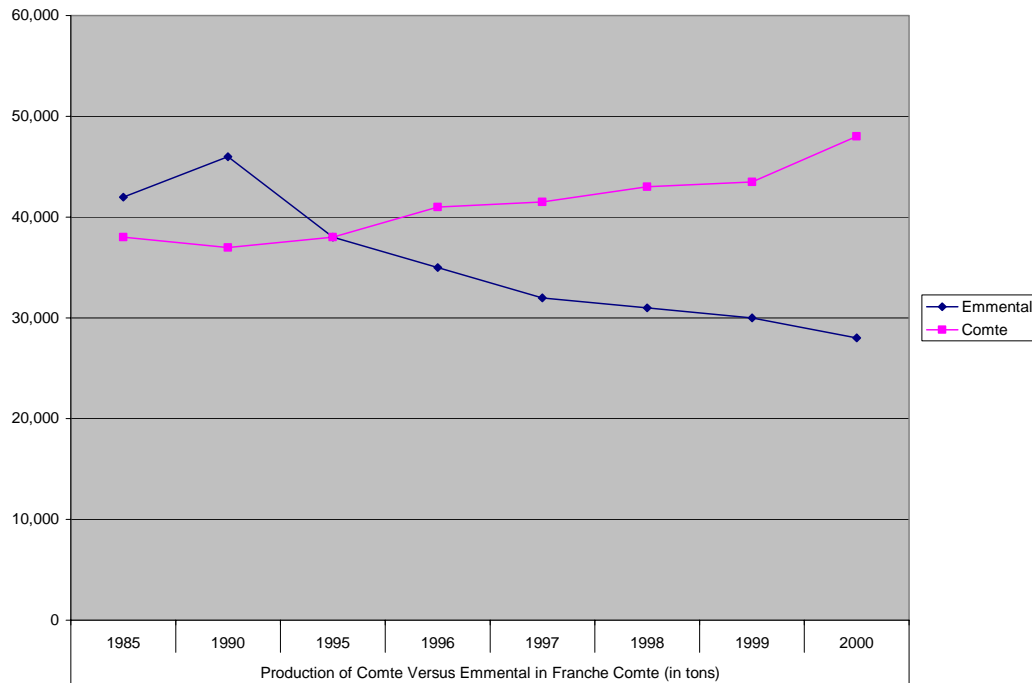
Additionally, there are stakeholders in the production and distribution processes for the closest imperfect substitute to Comté, Emmental de Franche-Comté (a generic), also produced in the region. This cheese has been affected by the French government and EU support of Comté.

- **Milk producers for Emmental de Franche-Comté:** These individuals are affected by decrease in demand over the last decade for the closest regional substitute to Comté cheese.
- **Cheese makers of Emmental de Franche-Comté:** These individuals have seen a decrease in both price and demand for their product, as EU protection of the Comté geographical indication has been effected.

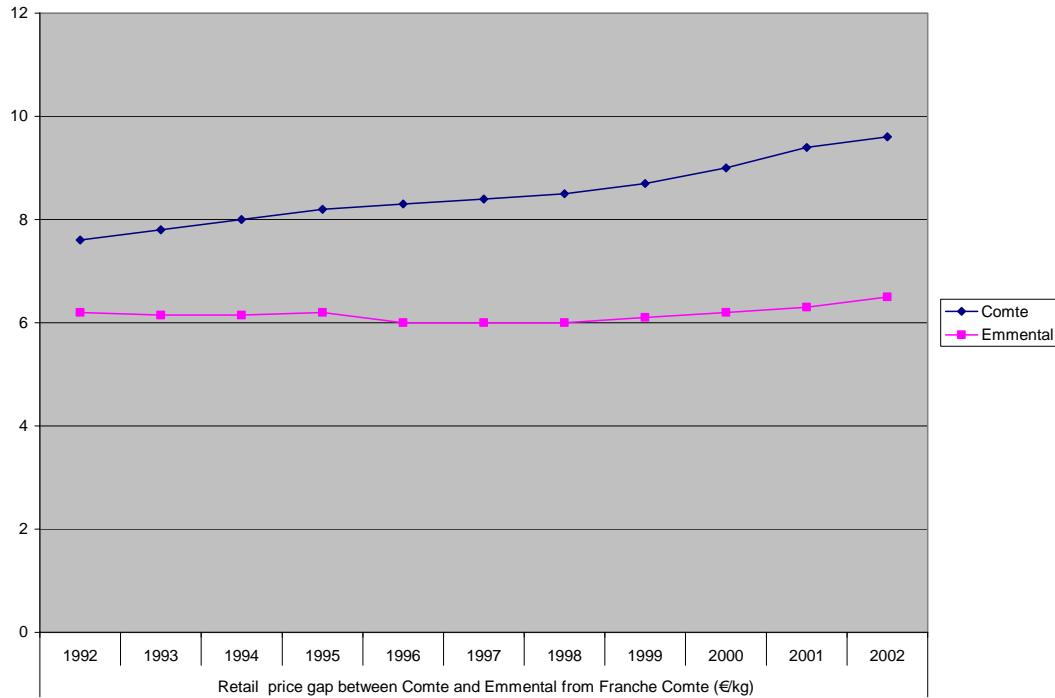
The next section will further examine the changes in price and demand of both Comté cheese and Emmental de Franche-Comté since EU protection was effected in 1992.

In examining the respective regimes of Comté cheese and Emmental de Franche-Comté, they both meet *relatively close* production and process requirements, but Comté has benefited from the qualification as a geographical indication product, and has received increasing support since the EU formally added it to the list of protected European products in 1992. Furthermore, it is also one of the AOC cheeses for which the EU budgets multinational promotion campaign funds. In 2003, the combined funds for Comté, Parmegiano-Reggiano and Parma Ham were €1.2 million, of which the EU paid half, with respective governments paying the rest of the financing costs.⁶⁶ Below are the results that protection and marketing have had on Comté and Emmental de Franche-Comté.

⁶⁶ Frye, 2003.



The resulting change in consumer tastes both domestically and abroad, with an outward shift of the demand curve of Comté, compared to an inward shift of the demand curve of Emmental de Franche-Comté has also caused the price gap to increase, as demonstrated in the next graph.

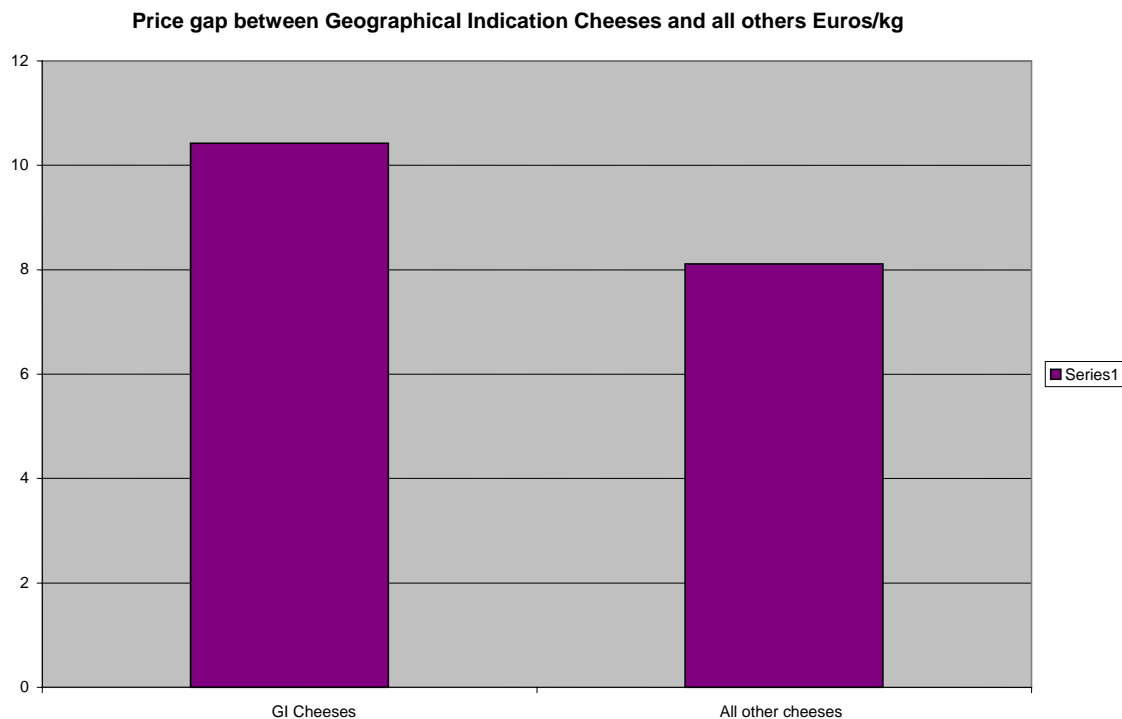


Source for both graphs: World Bank

The above graph demonstrates that in 1992, the price gap between Comté and Emmental de Franche-Comté was 20%; however, by 2002, the gap had substantially increased to 46%. This shows the relative importance of the geographical indication and its marketing on the consumers' perception of the product; a product that is perceived to be superior to a substitute (imperfect) will reap the same benefits that a product will through the use of a trademark and strategic marketing, *as long as there is an adequate network and infrastructure to ensure that quality and reputation are maintained*. The next sections will examine the effect of a geographical indication on an artisan good, and will show the current level of protection that exists in the Comté network.

The Effects of a Geographical Indication

A geographical indication is a tool which is used to create value, similar to that of a trademark. It is used to distinguish those products that are created using superior inputs (in this case, milk) and/or traditional methods of production. The use of a geographical indication preserves a rural lifestyle, a cultural tradition and maintains jobs in areas that might otherwise suffer from mass unemployment. The retail prices of GI products are higher than those of similar products. This gap pays for the process, production and inspection commitments, and works similarly as a trademark would – in this case, signaling quality to the consumer. On average, this gap is 30% in cheeses.⁶⁷



Source: World Bank

⁶⁷ World Bank, 2002.

Comté Certification and Legal Protection

As with all quality products, Comté is vulnerable to imitations and usurpations of its name. In order to protect the industry and to keep fraud to a minimum, the protection of its status is protected in the following manner:

- In France, Comté has been protected as a part of national heritage. French law punishes counterfeits and misuse of the “Comté” name. The public prosecutor works in conjunction with the CIGC (Le Comité Professionnel de Gruyère et Comté – The Interprofessional Gruyère and Comté Committee).⁶⁸ If the state does not act, the CIGC takes its own legal action.
- In Europe, community regulation 2081/92 has ensured the protection of Comté’s AOC status in the European Union territory since 1992.⁶⁹
- Internationally dairy sector geographical indications are protected in the World Intellectual Property Organization (WIPO). There are three international treaties which govern protection of geographical indication products: The Paris Convention for the Protection of Industrial Property (1883); the Madrid Agreement on Indications of Source (1891) and the Lisbon Agreement for the Protection of Appellations of Origin and their Registration (1958). This protection has been considered inadequate as many issues regarding these products are ill-defined and have not been agreed to by all Contracting Parties *and* WIPO has no means to reinforce this obligation.
- In most countries in order to complement a public system of name protection, the CIGC has registered the Comté bell logo as a private trademark, enabling it to act more expeditiously in the case of attempted fraud. Below is a copy of the logo

⁶⁸ Consortium of Comté Producers, “ Legal Protection of the AOC,” 2004.

⁶⁹ Ibid.

(appears dark green on the casein rind) that is registered with the United States Patent and Trademark Office.⁷⁰



- Finally, on an international level, the public authorities are attempting to amend the TRIPS agreement to extend to other quality and tradition-based products, including cheese.

Comté cheese benefits from a sophisticated level of protection; not all GI cheeses have such a comprehensive network of support. That stated, although the CIGC has taken the available steps to protect its name, this protection does little to reflect the actual *quality* of the product outside of France and the European Union. Additionally, bilateral trademark or certification agreements are time-consuming and costly, in an industry which already has a low profit margin level.

The next section of this study will examine common arguments against extension of Article 23 of the TRIPS Agreement.

Common Arguments against Geographical Indication Extension

While the current debate of geographical indications has largely been seen by the media as a “United States vs. EU” affair, there are several countries in addition to the

⁷⁰ United States Patent and Trademark Office, “Trademark Electronic Search System: Comté,” 2004.

United States that are against the extension of Article 23 of the TRIPS Agreement. Among these countries are Canada, Australia, New Zealand and Argentina, countries which may be described as “new world countries.” Many of these countries are characterized by large economies of scale and have few internationally marketable traditional foods. It is therefore logical for these countries to oppose a law that they perceive to be injurious to their own industries; however, this section will prove that the extension of Article 23 not only does not cause excessive injury to opposing countries’ industries, but may even strengthen other agricultural sector exports. The remainder of this section will examine below the specific arguments and reactions of the opposing countries.

Trademarks

The US says there is already a system: the Trademark System⁷¹

Many parties who advocate limiting the extension of geographical indications in the WTO purport that the United States, which is a major world importer, already has a system by which these goods may be protected: the U.S. trademark system – and more specifically, the use of the certification mark. The certification mark is, according to the U.S. Patent and Trademark Office (USPTO),

“...any word, name symbol, device or any combination, used or intended to be used in commerce by someone other than its owner, to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such person’s goods or services, or that the work or labor on the goods or services was performed by members of a union or other organization.”⁷²

There exist three specific types of certification mark. The first type certifies that “goods or services originate in a specific geographic region.”⁷³ Roquefort cheese from France, for example, holds such a certification mark. This mark *only* assures that the cheese was

⁷¹ Miller, 2003.

⁷² United States Patent and Trademark Office, “Certification Marks,” 2004

⁷³ Ibid.

made in a specific region and does not guarantee or promote quality; according to the United States Patent and Trade Office, “a geographical name does not require a secondary meaning in order to qualify for registration as a certification mark.”⁷⁴ The second type of certification mark ascertains that “goods or services meet certain standards in relation to quality, materials, or mode of manufacture.”⁷⁵ While this type of certification mark does address quality, it is mostly used in conjunction with goods produced in industries in which industrial standards are present; an example of such a good with this type of standard would be electrical equipment, which must meet certain safety standards.⁷⁶

A global, or even industrial, standard for geographical indications does not exist, and this makes the use of the quality certification mark highly unlikely for those goods wishing to register in the United States.⁷⁷ The third type of certification mark is one which “may certify that the work or labor on the products or services was performed by a member of a union or other organization, or that the performer meets certain standards.”⁷⁸ In this case, the certifier “does not certify the quality of the work being performed, but only that the work was performed by a member of the union or group, or by someone meeting certain standards.”⁷⁹ According to the definition, this certification mark would do little to advance the *reputation* of a GI product.

While the United Patent and Trademark Office may legally protect the name of a geographical region that is associated with an artisan product, it does not have the authority to reverse the use of trademarks that have already been established using a “common law” dairy sector geographical indication. The United States system also does not currently incorporate a system by which a good may be protected both by quality *and*

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ In this case, certification may be effected by a third body certifying party, such as Underwriters Laboratories, Inc.

⁷⁷ Although a definition of a geographical indication does exist in the WTO and related WIPO Convention documents, the definition is ambiguous and vague. In order for geographical indications to be advanced on the international trade agenda, a more specific definition must be agreed upon.

⁷⁸ United States Patent and Trademark Office, “Certification Marks,” 2004.

⁷⁹ Ibid.

geographical region, as do the current European regulations 2081/92 and 2082/92, dealing with agricultural products, their qualities and designations of origin.⁸⁰ For example, in examining the U.S. certification mark owned by the Comité Interprofessionnel du Gruyère de Comté Public Utility Institute in France, certifies only that “...the certification mark...certifies that the goods come from the Comté division; that the goods are only made from cows’ milk; and that the cheese meets the hygiene, production methods or standards and appearance methods or standards of the certifier.”⁸¹ This definition assures only a limited control of types of inputs (in this case, cows’ milk), not their quality. Furthermore, the onus of standards creation with this certification mark, as with all others in the USPTO system, lies with the (third party) owner of the certification mark, and not with an internationally established and accredited certifying body or agency.⁸²

This system of protecting geographical indications is both time consuming and expensive. In the United States, for a trademark registration⁸³ to remain valid, an Affidavit of Use must be filed “between the fifth and sixth year following registration and within the year before the end of every ten year date of registration...”⁸⁴. Registration and renewal fees must be filed and the level of bureaucracy makes trade lawyers a necessity in order to complete the process. This expense must be reflected in the cost of the final product, and yet a certification mark does not guarantee quality of process or inputs, which is what artisan dairy producers seek to protect; these producers are paying for the privilege of not having their name usurped for a like product, and not for a reinforcement of their reputations. Therefore, in analyzing this argument against the extension of geographical indications, it must be stated that the status of the USPTO regime is currently inadequate to deal with the issues of geographical indications and their

⁸⁰ EC 2081/92 addresses specifically geographical indication issues, while EC 2082/92 addresses larger issues regarding agriculture, such as organic production and sustainable development. The USPTO system lacks this component to its certification mark regulations.

⁸¹ United States Patent and Trademark Office, “Trademark Electronic Search System – Comté,” 2004.

⁸² United States Patent and Trademark Office, “Certification Marks,” 2004.

⁸³ This includes certification marks, service marks and collective marks, which are under considered under the general heading of “trademarks.”

⁸⁴ United States Patent and Trademark Office, “Certification Marks,” 2004.

protection in an efficient and effective manner, in a manner that would account for both quality ⁸⁵and geography.

Consumer Confusion

The extension of geographical indications to dairy products will cause “consumer confusion” and a “renaming nightmare.”⁸⁶

In examining this argument, it is necessary to ascertain whether this is, in fact, a legitimate concern regarding possible repercussions related to the extension of GI’s or whether this statement is based on emotionally-charged rhetoric. Many anti-GI extension articles claim that the U.S. and other producers would be forced to rename many products which are associated with common usage terms, such as “cheddar”. This information is inaccurate, but continues to be used by many “reputable sources.”⁸⁷ According to Article 24.6 of the TRIPS Agreement, those dairy sector geographical indications that are truly considered “generic” outside their respective countries or regions would not be eligible for protection; for these products, it is too late – free-riding producers have already succeeded in eroding their reputations. When discussing “renaming nightmares” it is crucial to consider whose nightmare it *really* is – the original creator of a unique quality product whose name, because of usurpation, is no longer considered part of the product’s identity; or the producers of inferior quality mass-produced goods who have chosen to trademark the name of an already established regional product? Would consumers really be confused by the name change of mass produced products, such as Feta cheese? Or is it more confusing for consumers to walk down an aisle and see identically named products, and to wonder whether the name is supposed to represent the quality product or cheap mass produced item?

⁸⁵ This includes both quality of process and quality of inputs.

⁸⁶ Miller, 2003.

⁸⁷ Including the United States Mission to the EU. In a speech on July 22, 2003, to the House of Representatives Agricultural Committee, Jon Dudas, deputy director of the USPTO said that the “EU...would deprive the US and other producers ...of existing TRIPS benefits by extending protection to “generic” names.

The extension of geographical indications is, in fact, a step in clarifying and more effectively identifying goods. The assertion that “too many names” would be confusing or too difficult is preposterous. First, the French, for example, have over four hundred varieties of cheese and manage to have different names for all of them, without using the names of other countries’ dairy products. Second, the average consumer is exposed to hundreds of products on a regular basis and manages not only to remember which is which, but to buy according to the qualities associated with one over another. This is not to suggest that any “renaming” will not affect any dairy sector, only that it should be associated with a minor inconvenience of a short-term nature, rather than a long-term “mass confusion.”

Europeans, Inefficient Production and the CAP

Europeans are trying to cover up their inefficient production methods⁸⁸ and European farmers are already over privileged with funds from the CAP⁸⁹

These two reasons are often cited to support arguments against the extension of geographical indications in the TRIPS Agreement, and yet they are baseless and inaccurate. The first argument, that the Europeans are trying to cover up their inefficient production methods, is misapplied, being more suited to a discussion of the Common Agricultural Policy (CAP) than to a discussion of geographical indications. Even in this context, this statement is not entirely accurate.⁹⁰ Europeans are very efficient over-producers of normal agricultural products, not inefficient producers. The GI dairy sector is characterized by hand-made, labor intensive quality products. Unlike ordinary products, GI dairy producers are not trying to compete based on an economies of scale

⁸⁸ Miller, 2003.

⁸⁹ United States Mission to the European Union, 2003.

⁹⁰ As of 2003 data, the CAP comprised nearly one half of the European budget. However, the regime of the CAP is not characterized by inefficiency, but rather by too much efficiency, too many subsidies and other supports to farmers who overproduce and over-saturate the world markets with certain commodities, thus making countries that have a natural advantage in these products to be unable to compete.

model, but rather on a unique set of criteria, including quality based on process and inputs.

The second statement presented suggests that European farmers are already over privileged with funds from the CAP; yet this is deceptive. The CAP funds currently represent nearly one half of the total EU budget. The CAP was created in a post-World War II era, characterized by food shortages; it was a way for the founding members of the European Coal and Steel Community⁹¹ to sustain the way of life of farmers in order to better provide food for their populations. Since the 1970's, reform of the CAP has been on the agenda, most recently with the EU's project for reform "Agenda 2000." Member states of the EU realize that at its current levels, the CAP is both unnecessary and unsustainable, especially with the addition of ten new, mostly agricultural member states.⁹² Measures have been taken to cut back on funds; those farmers and members of the GI dairy production chain who may currently receive funds, should no longer count on these for survival. The basis for this argument is simply not valid.

Mutual Protection

The Protectionism Question

Allegations have been made on both sides of the GI extension debate regarding protectionism. U.S. producers of dairy products argue that the extension of Article 23.1 to include dairy products could ruin economies such as Wisconsin's⁹³. Those advocating an enhanced level of protection for GI dairy products feel that American producers are being "too protectionist." Conversely, the American government position is that the Europeans are too protectionist.⁹⁴ Clearly, both governments adopt a somewhat protectionist stance regarding their respective industries. However, the questions that one must ask are the

⁹¹ Great Britain, Italy, France, Germany, Luxembourg, Netherlands and Belgium.

⁹² Malta, Cyprus, Hungary, Czech Republic, Slovenia, Slovakia, Estonia, Latvia, Lithuania and of course, Poland.

⁹³ Wisconsin State Journal, 2003.

⁹⁴ United States Mission to the European Union, 2003.

following: at what point is protectionism excessive and at what point is it justified; is the danger to the industry or industries real or perceived; and to what extent does the problem affect the industry. Of course the European pro-GI position is protectionist, but not unjustifiably so. The producers of artisan dairy products are maintaining centuries-old traditions; a lax geographical indication presents a clear and present danger to the future of artisan dairy farmers. How does a proposed extension affect the livelihood of other dairy industries, such as those of the United States? While no job loss on either side of the debate should be considered trivial, it is the assertion of the author of this paper that since the artisan dairy sector comprises a relatively small percentage of the overall global dairy market (less than 15%); that any legislation regarding this niche market should not have a *significant* impact on sales or jobs in competing markets. Simply stated, artisan products are not mass produced; even if demand increases substantially, there is a point at which supply reaches its maximum, whether it meets demand or not. It is crucial to remember that these are *small producers*.

While it is conceivable that some industries in countries such as the United States could be affected negatively by an extension of Article 23.1 of the TRIPS Agreement, it is also necessary to point out that many industries in countries that oppose the extension *could actually benefit from it*. If one examines for example, tourism in the United States, two of the most popular cities to visit are San Francisco and New York; both of these cities are renowned for their restaurants. These establishments thrive based on the reputation of their chefs, and on the quality of the ingredients they use. These ingredients include many GI dairy products, such as Beurre d'Isigny, Bulgarian yogurt, Parmegiano-Reggiano and others. Creating legislation that would protect these products helps to assure that GI dairy industries survive, but it also assures the survival of the many industries that use these products, including fine dining restaurants in countries that oppose the GI extension. This suggests that far from losing ground, these countries would be gaining considerably in many sectors. The extension of Article 23.1 of the TRIPS Agreement to include dairy products is an action which would optimally benefit all parties involved.

Conclusion and Recommendations

The extension of Article 23.1 of the TRIPS Agreement to enhance the level of protection of geographical indications for dairy products must be effected; ultimately, it is to the benefit of the global trading regime and to all of its members.

Geographical indications are a tool to create value for a product; they are similar, but not identical to trademarks. Although they comprise part of the current global intellectual property debate, they have been employed for centuries and have been surrounded by controversy since their inception. What makes the issue of geographical indication protection so critical at this point in time is the ever increasing level of economic integration in the international marketplace. Products, ideas and names travel around the globe at a rate that has grown exponentially in the decades since the GATT was created; our world is not the same world that it was in the post World War II era, and it has continued to change even since the inception of the WTO in 1994. We need an international trading regime that reflects the nature of the modern world in which we live; this means more control and regulation, not less, so that nothing is taken for granted and each member state works optimally with the others. By refining and enhancing the TRIPS Agreement in such a way as to increase the level of protection of GI dairy products, the members of the WTO may not be affecting overall trade by a significant amount, nevertheless, the benefits of this action would be extremely positive. These benefits include:

- **The protection of centuries-old tradition and process;** these artisan products are a link to our past, whether we come from “the new world” or “the old world.” This sense of tradition is *not* insignificant. Many countries are closely linked and identified with such tradition, and with their artisan food production. Destroying this tradition destroys the very identity of many countries.
- **Enhanced consumer choice:** Far from confusing consumers, the protection of these niche markets of quality products provides consumers with a greater choice of what to purchase. Those consumers not interested in buying this type of

product need not; they may be slightly inconvenienced by the change in name of a facsimile product, but this inconvenience would be minimal.⁹⁵

- **The reinforcement of an important ideology:** Trade is about people, and about making their lives better. This is represented in the Preamble to the WTO which “...allows for the optimal use of the world’s resources in accordance with the objective of *sustainable development*, seeking both to protect and preserve the environment...”⁹⁶ Trade cannot be solely driven by economics; it must take into account some social components, including tradition. Protecting the integrity of the geographical indication dairy regime does not give it an unfair advantage; it allows the regime to be on equal footing in a modern, globally integrated regime where economies of scale and mass production reign supreme.

While not immediately obvious, the extension of GI protection *does* benefit those countries which may currently oppose it. Several significant “new world” sectors may actually thrive under GI protection extension. These include:

- **Tourism and fine dining restauration:** especially in cities such New York, San Francisco and Washington, DC, to name a few. Allowing these quality products to remain in production means protecting the integrity of many restaurants’ reputations.
- **“High end” bakeries and gourmet food production facilities:** The protection of artisan dairy products provides more choice of quality ingredients for chefs, and ultimately, for consumers of many countries.

Finally, by supporting the extension of geographical indication protection to dairy products, this may allow the extension of GI’s to other products. While this may be what

⁹⁵ An example of such a name change is that of Kraft Parmesan Cheese, which according to EU regulation, must not be labeled “Parmesan.” Kraft arrived at a compromise, calling this product “Pamesello” in Europe. This allows the product to be associated with its packaging and the company which produces it, while not free-riding on the reputation of the producers of Parmigiano-Reggiano.

⁹⁶ Jackson, 2002, page 3.

many “new world” producers fear, this action *would be to their advantage*. Although extension of Article 23.1 would mean that more products like Parma Ham or Mortadella Bologna would benefit from an enhanced level of international protection, so would many other “new world” products, such as Vidalia Onions, Idaho Potatoes and Kona Coffee. Currently the United States is fighting to get these products recognized in the EU as GI products. A more comprehensive coverage of GI’s under the TRIPS Agreement would assure this protection. As these quality products are not associated with process and labor, but by climate, these products are not limited in production in the same way as are artisan dairy products. “New world” GI’s could actually even stand to benefit more, in certain ways, from the extension of protection than those from the dairy sector.

Trade must not always be about quantity; there are times when it is equally important to support the regimes of quality products. This protection is what helps us to maintain local tradition and culture, as well as a certain degree of sovereignty in an increasingly homogenized and streamlined world of commerce. The extended protection of artisan dairy products, while not significantly impacting overall global trade *quantities*, would serve to significantly impact the *quality* of goods traded. The extension of the TRIPS Agreement Article 23.1 to include dairy products (and eventually, perhaps others) would set a benchmark for quality, would preserve a regime of sustainable agriculture, would maintain a diverse and rich variety of goods for consumers, and would assure that those producers who have established a reputation associated with geographical indications would have the rightful protection of their names to which they are entitled.

Appendix 1

Uruguay Round Agreement: TRIPS

Part II – Standards concerning the availability, scope and use of Intellectual Property Rights

Section 3: Geographical Indications

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
 - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
 - (b) any use which constitutes an act of unfair competition within the meaning of Article 10 *bis* of the Paris Convention (1967).
3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.
4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications for Wines and Spirits

Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true

origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member’s legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system for notification and registration of geographical indication for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in

connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication on a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement in this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require Member to apply its provisions in respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

Appendix 2

Doha Ministerial Declaration

Adopted on 14 November 2001

**Paragraphs 12, 46 and 47
(Concerning geographical indication negotiations)**

WORK PROGRAMME

Implementation-related issues and concerns

12. We attach the utmost importance to the implementation-related issues and concerns raised by Members and are determined to find appropriate solutions to them. In this connection, and having regard to the General Council Decisions of 3 May and 15 December 2000, we further adopt the Decision on Implementation-Related Issues and Concerns in document WT/MIN (01)/17 to address a number of implementation problems faced by Members. We agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that the agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below. In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee, established under paragraph 46 below, by end of 2002 for appropriate action.

ORGANIZATION AND MANAGEMENT OF THE WORK PROGRAMME

46. The overall conduct of the negotiations shall be supervised by a Trade Negotiations Committee under the authority of the General Council. The Trade Negotiations Committee shall hold its first meeting not later than 31 January 2002. It shall establish appropriate negotiating mechanisms as required and supervise the progress of the negotiations.

47. With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations.

Appendix 3

INAO

Comté Cheese Making Process



The following information is derived from the INAO decree from the 30 December, 1998, outlining process by which Comté is made. It is translated by the author of this study from the original French text.

Under Article 1 of the decree, it is established that the name Comté is reserved for those cheeses, undergoing the Comté production process that are produced in specific cantons of the regions of Ain, Doubs, Jura and Haute-Savoie.

Article 2 establishes that Comté is made exclusively with raw milk. With the exception of a partial skimming, pressing and the addition of lactic ferment, all other additions to the milk are strictly prohibited. The cheese has a cooked rind, is salted, either on the surface, or with the use of brine, and is of a color ranging from ivory to yellow. It must contain a minimum of 45 grams of fat per 100 grams of content after complete desiccation, and should contain at this time, not less than 62 grams of dry matter. Sodium content must not be less than .6 grams of sodium chloride per 100 grams of cheese. Humidity content of the cheese should not exceed 54%. The final product must be a round shaped wheel, weighing from 30 to 48 kilograms, with a diameter ranging from 50 to 75 centimeters. The top of the cheese may be straight, or slightly convex within the range of 8 to 13 centimeters; the washed rind is solid with a grainy texture, ranging from golden yellow to brown in color. The thickness of the center of the cheese must not be greater than the height with a coefficient of 1.4.

Article 3 establishes that the milk used in production of the cheese come only from Montbéliard cows, derived from the French Simmental breed, which have been officially eradicated of tuberculosis. Each animal must be allowed a minimum of one hectare of land. Herb feed for the animals must not contain any ensilage or any fermented products. The animals must feed from and live in the areas outlined in Article 1. All Montbéliard cows used in the production of milk must be separated from cattle used for the purpose of meat production, in order to prevent the spread of harmful bacteria to the milk.

Article 4 establishes that the milk from the cows be brought to the dairies with a delay of no more than 90 minutes of the earliest milking. The milk must be between 10 and 18 degrees Celsius during transport. Cheese pressuring must then occur within 24 hours. This process must occur no more than 25 kilometers from where the animal was milked.

Article 5 establishes that only milks conforming to the rules of Articles 1-4 may be used in the production of Comté. All milk must be collected separately. All dairies, cellars and maturing houses must equipment which conforms to industry standards and must not contain any system of installation vulnerable to heating the milk to above 40 degrees Celsius before rennet is added. Only rennet from veal may be used. The milk may only be heated once, to a minimum temperature of 53 degrees Celsius for a period of at least thirty minutes, when the rennet is added. Cheese pressing must occur at a minimum pressure of 150 grams per centimeter squared, for at least six hours. Temperature of the environment must not be lower than 12 degrees Celsius. The green casein cheese plaque, which identifies each cheese must be placed on top of the round of cheese and must not be altered in any way. Day and month of production are indicated. Regarding milking equipment, transport equipment and cheese making equipment, the use of disinfecting products is only authorized when strictly needed for cleaning.

Article 6 establishes that each cheese must mature for a period of at least 120 days, at a temperature of between 10 and 15 degrees Celsius. Articles 7, 8 and 9 establish protocol for prepackaging cut portions of Comté for sale and for cheese storage. The

remaining Articles 10-16 state that those producers of Comté, in any stage of production, report their activities and be subject to regular quality control inspections, in order that they may receive the AOC indication, and state that each cheese must have a label by which production location and date may be identified. The Ministry of Economy, of Finance and of Industry, as well as the Ministry of Agriculture and of Fishing and the Secretary of State are charged with the execution of this decree.

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