

ARGUMENTS OVER GEOGRAPHICAL INDICATIONS: SPREADING THE TRADEMARK SYSTEM THROUGH THE KOREAN-U.S. FREE TRADE AGREEMENT

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I. INTRODUCTION

In recent years, Geographical Indications (GIs) have become an increasingly important aspect of intellectual property in the international arena. GIs are an integral part of agriculture because they protect agricultural products which have a special association with a particular region. They have also been shrouded in controversy. Formally established under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, GIs have been continuously debated by scholars over the past decade.¹ The debate usually centers on how GIs apply to goods

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1. See, e.g., Malobika Banerji, *Geographical Indications: Which Way Should ASEAN*

and services (particularly agricultural products) from particular regions, and the proper means that should be employed to protect GIs. The TRIPS agreement states that member countries “shall provide the legal means” to prevent false GIs from being used in two circumstances: (1) when the false GIs mislead the public as to their actual origin and (2) when a use would constitute an act of unfair competition.² This broad definition allows protection for GIs through different legal means, but also leads to disagreement over the proper way to protect GIs. The U.S. approach is to use established private property interests such as trademarks and certification marks to protect GIs,³ but the European Union (EU) approach was to create a registry of specific protections for GIs interests in their own right.⁴ Due to the EU’s highly developed registry system of GIs,⁵ there have been proposals of establishing an international register for GIs through the World Trade Organization (WTO) TRIPS council.⁶ Countries such as the U.S., however, believe the established intellectual property structures are sufficient.⁷ The differences between the extensive EU system and the U.S. system have consistently been the issue of international controversy. Determining which system is the best to use for GI protections has subsequently been a matter of much scholarly debate.⁸

Recently, the U.S. and Republic of Korea executed a Free Trade Agreement (KORUS-FTA) which established that existing intellectual property rights (i.e. trademarks) would serve as protections for GIs.⁹ By using each country’s existing intellectual property offices (United States Patent and Trademark Office (USPTO), and Korean Intellectual Property Office (KIPO)), the KORUS-FTA fosters substantial international protections for GIs between the two countries. The KORUS-FTA’s use of the existing intellectual property systems for GIs greatly benefits U.S. agricultural exporters (the primary users of GIs). The utilization of the system

Go?, 2012 B.C. INTELL. PROP. & TECH. F. 1, 7-9 (2012).

2. Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 22(2), Apr. 15, 1994, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

3. Lynne Beresford, *Geographical Indications: The Current Landscape*, 17 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 979, 982-85 (2007).

4. See Tim Josling, *The War on Terror: Geographical Indications as a Transatlantic Trade Conflict*, 57 J. OF AGRIC. ECON. 337, 343-346 (Sept. 2006).

5. See *id.*

6. Banerji, *supra* note 2, at 6.

7. Josling, *supra* note 4, at 347.

8. See, e.g., Beresford, *supra* note 3 at 985-86.

9. Free Trade Agreement Between the United States of America and the Republic of Korea, U.S.-S. Kor., art. 18.2, June 30, 2007 (entered into force Mar. 15, 2012), available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text> [hereinafter KORUS-FTA].

limits any extra costs associated with registering with a larger system. Furthermore, by negotiating GI protection on a country-by-country basis, certain names which are “generic” in the U.S., (but otherwise protected by the EU registered GIs) are more likely to be permitted.¹⁰ Hence, the KORUS-FTA serves as an efficient model of GIs with strong international protection and without excess costs. This Note will first look at GIs and their relationship to agricultural products. Second, it will examine GIs and their application to existing intellectual property structures will be examined. Third, the cost and benefits of GIs through the U.S. and EU systems will be analyzed. Lastly, this Note will demonstrate how substantial benefits are created in U.S. and Korean agriculture through the alignment of GIs with existing IP laws by legislation, such as the KORUS-FTA.

II. DESCRIPTION OF GEOGRAPHICAL INDICATIONS & AGRICULTURE

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement by the WTO defines GIs as: “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.”¹¹ A GI is more than stating a good comes from a particular location; it adds unique value to the good based on the geographical location,¹² and this value is attributed to the region’s “quality, reputation or other characteristic.”¹³ For example, in the U.S. a typical GI can include “Florida” for oranges or “Idaho” for potatoes.¹⁴ The primary purpose for protecting these general GIs is to avoid misleading the public, and to prevent unfair competition.¹⁵ Along with this general protection for GIs, the TRIPS agreement also gives heightened protection to GIs for wine and spirits.¹⁶ Essentially, wine and spirit GIs must be protected even if their misuse would not necessarily cause the public to be misled.¹⁷ There are also exceptions to the protections for GIs.¹⁸ One exception occurs when a GI

10. REMY JURENAS, CONG. RESEARCH SERV., R40622, AGRICULTURE IN PENDING U.S. FREE TRADE AGREEMENTS WITH SOUTH KOREA, COLUMBIA, AND PANAMA 11-12 (2011).

11. TRIPS Agreement, *supra* note 2, at 328.

12. Beresford, *supra* note 3, at 980.

13. TRIPS Agreement, *supra* note 2, at 328.

14. Beresford, *supra* note 3, at 980.

15. TRIPS Agreement, *supra* note 2, at 328.

16. *Id.* at 329.

17. *Background and the Current Situation: Geographical Indications in General*, WTO, www.wto.org/english/tratop_e/trips_e/gi_background_e.htm (last updated Nov. 2008) [hereinafter *Geographical Indications in General*].

18. TRIPS Agreement, *supra* note 2, at 329-30.

is used so often in the common language that it is considered a generic term.¹⁹ For example, “cheddar” refers to a type of cheese, and does not necessarily mean the cheese was made in Cheddar of Somerset in the United Kingdom.²⁰

Although GIs under the TRIPS agreement broadly include “goods and services” from a geographical region, GIs have been primarily applied to agricultural products, particularly wine.²¹ In 2013, the EU had over three thousand protected geographical indications for wine alone,²² and wine producers in the U.S. have also advocated and obtained more GI protections than other producers.²³ However, this may be primarily due to the fact that wine exclusively receives higher protection in the TRIPS agreement.²⁴ There are strong national programs which protect GIs for agricultural products, but they do not receive this higher level of protection internationally under the TRIPS agreement. Instead, the EU has carved out an independent protection for GIs in order to protect other agricultural products.²⁵ The U.S., however, has used its existing intellectual property structure to ensure GI protections for agricultural products.²⁶ The U.S. uses general trademark law for GI protections of agricultural products, and therefore does not create GI, but allows protection as private property interests.²⁷ These solutions, however, are only at the national level.

From a wider perspective, the current international scheme for agricultural producers requires that GIs receive proper protection and regulation. It boils down to the economic interest of producers from different countries. The EU has much at stake because foreign producers, like Kraft, are arguably able to reap the benefits from GIs protected in the EU, including “mozzarella” and “parmesan,” because they are used as common language terms.²⁸ This has arguably amounted to losses

19. *Id.* at 330.

20. Geographical Indications in General, *supra* note 17.

21. TRIPS Agreement, *supra* note 2, at 328-29.

22. *Agriculture and Rural Development, E-Bacchus Statistics*, EUROPEAN COMMISSION, <http://www.ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=statistics&language=EN> (last updated Nov. 15, 2013).

23. Frances G. Zacher, *Pass the Parmesan: Geographic Indications in the United States and the European Union – Can There Be Compromise?*, 19 EMORY INT’L L. REV. 427, 432-33 (2005).

24. *See* TRIPS Agreement, *supra* note 2, at 329.

25. Josling, *supra* note 4, at 343-46.

26. *See, e.g.*, Zacher, *supra* note 23, at 338-41.

27. Beresford, *supra* note 3, at 982-985.

28. Zacher, *supra* note 23, at 434-45.

estimated in the billions per year for EU producers.²⁹ The U.S. and similarly situated countries argue the inclusion of these particular EU protections could amount to billions worth of losses for U.S. companies, as well as unfair gains for EU producers, due to the marketing efforts of U.S. companies.³⁰ Based upon these conflicting interests, it is important that GIs used internationally receive protection while not stifling national markets.

III. GEOGRAPHICAL INDICATIONS AND INTELLECTUAL PROPERTY

The TRIPS agreement is still the most recent text which countries can point to in order to enforce comprehensive protection of GIs internationally.³¹ The agreement offers a broad standard because it only states that member countries “shall provide the legal means” to accomplish its dual goals of: 1) preventing the public from being misled as to the origin of a product; 2) and preventing uses that are acts of unfair competition. This expansive language of an unspecified “legal means” allows countries to protect GIs in a manner which could go beyond a traditional intellectual property right, although GIs are still generally considered an intellectual property right under TRIPS.³² Prior to the formation of the TRIPS agreement, the differing GI protection systems of individual countries and the continued disagreements over GIs for the past two decades, have perpetuated the hazy legal construction given to GIs.³³ In particular, the EU and the U.S. have had continuing conflicts based upon their two distinct approaches to GI protection. Although there are significant differences between the EU *sui generis* system of using a central registry and the U.S. method based upon a trademark system,³⁴ there is little dispute that GIs are specific protections of property interests which fall under

29. James Cox, *What's in a Name?*, USA TODAY, Sept. 9, 2003, http://www.usatoday30.usatoday.com/money/economy/trade/2003-09-09-names_x.htm.

30. Zacher, *supra* note 23, at 433-34 (The *Budweiser* name, which is worth over \$12 billion, could lose all of its value if another brewer claims the name Budweiser. Budvar, from the Czech town of Budweis, could assert its GI against Budweiser. Also, Kraft could lose the millions it spent promoting “parmesan” cheese to the public if the EU is able to assert its GI protections against a generic term abroad).

31. Banerji, *supra* note 1, at 1.

32. See generally TRIPS Agreement, *supra* note 2, at 328.

33. See WORLD INTELLECTUAL PROP. ORGAN., WORLDWIDE SYMPOSIUM ON GEOGRAPHIC INDICATIONS 25 (2011), available at http://www.wipo.int/edocs/pubdocs/en/geographical/798/wip_pub_798.pdf [hereinafter Worldwide Symposium on GIs] (referencing presentation by Edith Flores entitled “Geographical Indications News from Latin America”).

34. *Id.*

intellectual property law.³⁵

There are certain aspects of GIs, however, which do not fall nicely into traditional intellectual property rights. On their face, GIs are not entirely private, and belong to a “unique public sphere” of intellectual property rights.³⁶ Therefore, it is usually an association or group of producers or manufacturers which receive the benefits of GIs instead of individual producers.³⁷ Essentially, any organization or group of producers within the region fits within the standards applicable to the GI can assert GI protections.³⁸ These standards are set by similar types of organizations within the region in order to control “product quality and integrity” which ensure the GI promotes their product.³⁹ In addition, some of the limitations which apply to other intellectual property rights, such as “spatial and temporal factors,” are not always present in GIs, and can appear as “uninhibited rights” which are able to perpetually exclude others.⁴⁰ For example, registered trademark rights typically belong to one individual owner with a transferrable right, but GIs are “inherently collective” and a right cannot be transferred in the same manner as a traditional trademark.⁴¹

A. The U.S. System

Although GIs are not equivalent to the previously existing canon of intellectual property rights (patents, copyright, trademarks, etc.), Article 22 of the TRIPS agreement still allows all GIs protection under trademark law principles.⁴² By protecting GIs through the use of trademarks, collective marks or certification marks, parties interested in protecting GIs are able to do so more easily because existing trademark principles are familiar to international businesses. The established

35. Symposium, *Panel II: That's a Fine Chablis You're Not Drinking: The Proper Place for Geographical Indications in Trademark Law*, 17 *FORDHAM INTELL. PROP. MEDIA & ENT. L. J.* 933, 940 (2007) [hereinafter Panel II].

36. Alberto F. Ribeiro de Almeida & Alberto Francisco, *The TRIPS Agreement, the Bilateral Agreements Concerning Geographical Indications and the Philosophy of the WTO*, *EUR. INTELL. PROP. REV.* 150 (2005).

37. Banerji, *supra* note 1, at 3.

38. BRUCE A. BABCOCK & ROXANNE CLEMENS, *MIDWEST AGRIBUSINESS TRADE RESEARCH & INFO. CTR., GEOGRAPHICAL INDICATIONS AND PROPERTY RIGHTS: PROTECTING VALUE-ADDED AGRICULTURAL PRODUCTS* 4 (2004).

39. *Id.* (For example, the Consorzio Tutela Formaggio Asiago is an organization that was created to control the quality of Asiago cheese).

40. Banerji, *supra* note 1, at 3.

41. Panel II, *supra* note 35, at 940-41.

42. *Id.*; TRIPS Agreement, *supra* note 2, at 328.

trademark system provides a strong defense against unauthorized use; the holder of the GI has an exclusive right to stop unauthorized parties from using their GI.⁴³ Furthermore, the trademark system is highly adaptable, and can register more than regional names to be included under its protection for GIs (even though GIs are different from many traditional trademarks).⁴⁴

Under the U.S. Patent and Trademark Office (USPTO) “[t]here are three types of registrations that can be used to protect GIs: certification marks, collective marks,” and sometimes registered trademarks.⁴⁵ Registration with the USPTO also provides additional benefits to the GI owner and producers including: an evidentiary presumption of ownership, validity and right to use,⁴⁶ and domestic protection of infringing foreign goods.⁴⁷

A certification mark can easily be used to register GIs. A certification mark is defined as “any word, name, symbol, device, or any combination, used [by a party to certify] material, mode of manufacture, quality, accuracy, or other characteristics of [another party’s] goods or services.”⁴⁸ Certification marks can be used to show the following: “Regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristic of [the] goods or services, or that the work or labor on goods or services was performed by members of a union or other organization.”⁴⁹ The purpose of the certification mark is to inform purchasers that the goods or services have certain characteristics or meet certain quality standards.⁵⁰ This purpose falls directly in line with the first purpose of Article 22(2)(a) of the TRIPS agreement (the prevention of misleading the public), because it ensures that GIs using a certification mark will meet certain expectations.⁵¹ Furthermore, certification marks allow for enforcement of maintaining particular standards. If a party which is affected by a GI certification mark believes proper standards are not followed, the party can seek a remedy by opposing registration, or cancellation of a registration, through existing trademark laws.⁵²

Collective marks also provide substantial GI protection through the trademark system. A collective mark is a trademark or service mark which indicates

43. Beresford, *supra* note 3, at 981.

44. *See* Beresford, *supra* note 3.

45. *Id.* at 982-83; *see* 15 U.S.C. §§ 1052-54 (2012).

46. 15 U.S.C. § 1115 (2012); Beresford, *supra* note 3, at 982.

47. 15 U.S.C. § 1124 (2012); *see* Beresford, *supra* note 3, at 982.

48. *Glossary*, U.S. PATENT & TRADEMARK OFFICE, <http://www.uspto.gov/main/glossary/index.html> (last visited Jan. 23, 2015) [hereinafter *Glossary*]; *see also* KORUS-FTA, *supra* note 9.

49. *Glossary*, *supra* note 48; *accord* Beresford, *supra* note 3, at 983.

50. Beresford, *supra* note 3, at 983.

51. *See* TRIPS Agreement, *supra* note 2, at 328.

52. Beresford, *supra* note 3, at 983-84.

the commercial origin of a good through membership in a cooperative, association, union, or other collective group or organization.⁵³ All of the members of the group are able to use the mark, and the collective organization holds title to the mark for the benefit of all the members.⁵⁴ When a collective mark is used as a GI, a standard setting organization for GI products, such as Consorzio Tutela Formaggio Asiago in Italy, can use a GI collective mark to benefit the producers within an area, while ensuring high standards.⁵⁵ Furthermore, the existing structure of collective marks can be used to help solve problems created by GIs' "inherently collective" nature.⁵⁶

The U.S. trademark system may provide for GIs to act expressly as a registered trademark. Although a GI is generally not able to be registered as a trademark because it geographically describes the origin of a good,⁵⁷ a geographic sign can acquire a "secondary meaning" over time about a product's source.⁵⁸

B. The EU System

The EU uses a *sui generis* system which incorporates a central registry system.⁵⁹ In this system, GIs for agricultural products are primarily protected by PAOs and PGIs.⁶⁰ The European Commission (EC) has established two types of GI designations.⁶¹ The first is the Protection of Designations of Origin (PDO), which indicates the product is produced, processed, and prepared within a certain geographical area, and its quality is "essentially due to that area."⁶² The second is the Protection of Geographical Indications (PGI) which indicates "the product is produced, processed, and prepared in [a] geographical area, and the quality, reputation, or other characteristics are attributable to that area."⁶³ These two systems allow for extended GI protection in order to give other agricultural products the

53. Glossary, *supra* note 48.

54. Beresford, *supra* note 3, at 984 (an example of a collective mark organization is an agricultural cooperative of produce sellers, because it does not sell its own goods, but promotes the goods of its members).

55. Babcock & Clemens, *supra* note 38, at 4-5.

56. Panel II, *supra* note 35, at 940-41.

57. 15 U.S.C. § 1052(e) (2012).

58. Beresford, *supra* note 3, at 984-85.

59. Worldwide Symposium on GIs, *supra* note 33, at 25.

60. *Id.* at 167 (referencing presentation by Fabrizio Mazza entitled Geographical Indications in the Implementation of Public Policies).

61. *E.g.*, Babcock & Clemens, *supra* note 38, at 3-4.

62. *E.g.*, *id.* at 4.

63. *E.g.*, *id.*

same protections which goods—such as wine—receive under the TRIPS agreement.⁶⁴ By using this method, GIs have stronger protections similar to trademarks. Due to the increasing amount of legal issues stemming from the relationship between GIs and trademarks, the European Communities Trademark Association (ECTA) has established special committee to handle GIs.⁶⁵ The ECTA's stance on the use of trademarks for GIs is one of coexistence between a system of trademarks (promoted by countries like the U.S.), and a *sui generis* system (promoted by the EU).

Although the trademark discussion has been focused upon the US system, the protections which trademarks create are also internationally protected through the TRIPS agreement.⁶⁶ However, the TRIPS agreement separates GIs from the trademark section, and does not expressly include GIs within the protections of trademarks.⁶⁷ This means the protections trademarks can offer to GIs are not necessarily included under TRIPS.⁶⁸ Therefore, GIs protected under the trademark system must also be internationally protected through bilateral agreements.⁶⁹ As long as a bilateral agreement affords a GI a level of intellectual property protection higher than the TRIPS agreement, they can be strong tools to enforce GI protections.⁷⁰

IV. BENEFITS OF GEOGRAPHICAL INDICATIONS IN THE REGISTRY AND TRADEMARK SYSTEM

A. Producer Protection

Many scholarly articles have discussed the differences of the registry and trademark system at length.⁷¹ These arguments, however, can be best summarized into the following benefits and costs when applied to agricultural products. The primary benefit forwarded by the (*sui generis*) registry system amounts to “producer protection.”⁷² First, producer protection is seen as a means to prevent “free

64. See TRIPS Agreement, *supra* note 2, at 329.

65. Worldwide Symposium on GIs, *supra* note 33, at 169 (referencing presentation by Benjamin Fontaine entitled Opinion of the ECTA on the Development of the International Framework for Protection of Geographical Indications).

66. See generally TRIPS Agreement, *supra* note 2, at 326-28.

67. See *id.* at 326-30.

68. See Ribeiro de Almeida & Francisco, *supra* note 36, at 152.

69. *Id.* at 153-54.

70. *Id.*

71. See, e.g., Banerji, *supra* note 1, at 1.

72. Michelle Agdomar, *Removing the Greek from Feta and Adding Korbek to Champagne: The Paradox of Geographical Indications in International Law*, 18 FORDHAM INTELL.

riding” by generically using a well-known product name.⁷³ The basic theory of Geographical Indication (GI) “free riding” involves society’s recognition that a particular area has established a reputation and a quality product, and use of that region’s name gives enhanced benefits to another product which generically uses the name value of the product that gains its value from a particular area.⁷⁴ The registry system in the EU prevents foreign companies, such as Kraft, from using the generic term Parmesan in the EU, from “free riding” in the E.U. by requiring Kraft to sell its Parmesan cheese as “Pamessello.”⁷⁵ The benefit of preventing free riding can also be gained through trademark law, because one of its cornerstones is “to prevent free riding on the goodwill of the reputation of the trademark owner.”⁷⁶ The only difference is that trademarks are private rights. Therefore, both systems of GI protection can yield this producer protection benefit.

Second, dilution prevention is maintained by the registry system, and benefits producer protection. For example, the generic use of “basmati” rice in the U.S. without the same inherent qualities and production process as the original product can dilute the reputation of the original good.⁷⁷ Expansion of the registry system would prevent dilution by forcing participating WTO members to refrain from using any part of the GI name in their products, and would be enforced by the TRIPS agreement.⁷⁸ Protection against dilution, however, is already a well-recognized part of trademark law, and the same benefit of preventing dilution for GIs could be attained using trademarks.⁷⁹ The major difference is that the registry system would have an almost automatic impact, while individual trademark agreements would take longer to negotiate.⁸⁰

Third, producers benefit from preventing unfair competition and deceptive trade practices from the provision for GIs in the TRIPS agreement.⁸¹ Therefore, a

PROP. MEDIA & ENT. L.J. 541, 581 (2008).

73. *Id.* at 581-84 (discussing the conflicts of generic uses of ‘Basmati’ rice in the U.S., therefore receiving “free” benefits built from the reputation of rice from Basmati, India).

74. *Id.* at 581-82.

75. Cox, *supra* note 29; Babcock & Clemens, *supra* note 38, at 10.

76. Agdomar, *supra* note 72, at 581.

77. *Id.* at 584.

78. See TRIPS Agreement, *supra* note 2, at 337-38.

79. 15 U.S.C. §1125(c)(2)(B)-(C) (2012) (defining dissolution by ‘blurring’ and ‘tarnishment’ in trademark law); see generally, *Trademark Dilution*, INT’L. TRADEMARK ASS’N, <http://www.inta.org/TrademarkBasics/FactSheets/Pages/TrademarkDilution.aspx> (last visited Jan. 23, 2015).

80. See generally TRIPS Agreement, *supra* note 2 (stating that geographical indications form a multilateral agreement are binding absent an additional agreement).

81. See *id.* at 328.

GI is protected from other producers of similar goods which could confuse or mislead the public.⁸² The registry system would aid in this prevention by notifying participating WTO members of protected GIs, and any actions infringing upon a GI would essentially violate Article 22 of the TRIPS agreement.⁸³ Under the current Article 22 GI protection, the GI holder has the burden to prove that the public was misled which resulted in unfair competition.⁸⁴

A multilateral registry system enhancing protection would remove this burden.⁸⁵ The use of the trademark system also provides protections against unfair competition and deceptive practices. In the U.S., trademarks protect against goods with false or misleading facts, which can cause confusion or deceive someone as to their association.⁸⁶ There is a substantial benefit to the registry in this regard because of its applicability to all WTO members, while trademarks are negotiated on a more individual basis.⁸⁷

This raises the question of whether one system offers better producer protection benefits than the other. Under the registry system, ownership is collective in character, and its focus is upon a particular region and not individual property rights.⁸⁸ A multilateral registry can arguably better serve these collective groups of producers, because it would allow recognition in all WTO countries.⁸⁹ A trademark system could also greatly benefit producers because it can apply to specific individual rights, but it can also serve a collective group.⁹⁰ Hence, there is the additional benefit of flexibility given to producers with the trademark system versus the registry system, but the trademark system lacks the wide-reaching scope of the registry system. Therefore, the benefits of producer protection tend to balance out since both systems offer unique advantages to producers.

82. Paris Convention for the Protection of Industrial Property, art. 10*bis*, Sept. 28, 1979, 21 U.S.T. 1583, 828 U.N.T.S. 305 art. 10*bis* [hereinafter Paris Convention] (defining unfair competition used in the TRIPS agreement art. 22(2)(b)).

83. See TRIPS Agreement, *supra* note 2, at 328.

84. *Id.*; Babcock & Clemens, *supra* note 38, at 329.

85. See TRIPS Agreement, *supra* note 2, at 329 (stating that each Member shall establish legal means for others to prevent the use of GIs for certain wines).

86. 15 U.S.C. § 1125(a)(1) (2012).

87. TRIPS Agreement, *supra* note 2, at 320; Beresford, *supra* note 3, at 986; see also WTO, *European Communities – Protections of Trademarks and Geographical indications for Agricultural Products and Foodstuffs*, Mar. 15, 2005, available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds174_e.htm [hereinafter European Communities].

88. Beresford, *supra* note 3, at 986.

89. Babcock & Clemens, *supra* note 38, at 17.

90. Beresford, *supra* note 3, at 984.

B. Potential Registry Benefits for Developing Countries

Proponents of the EU registry system for GIs argue the registry system would benefit developing countries more than the U.S. trademark system.⁹¹ Many developing countries do not have strongly established “regulatory machinery” to protect their GIs like the EU and U.S.⁹² Additionally, these developing countries are not likely to gain the enhanced benefits for which come with wine GIs, because most developing countries do not export wine.⁹³ Under an expanded multilateral registry system, many developing countries could easily enforce their GI protection rights against other countries. This would create a level playing field with more developed countries by utilizing an expanded registry for their unique products.⁹⁴ Furthermore, this type of registry would ensure “automatic and near universal protection.”⁹⁵ This GI protection, however, is contingent upon the lesser-developed countries’ membership in the WTO, because a non-member would not have any rights to challenge a GI.⁹⁶ Also, a multilateral registry expansion for GIs would allow developing countries to add value to local production of common agricultural products such as tea, rice, and chocolate, while growing their economies.⁹⁷ Protecting GIs in this manner can help developing economies cope with competition and overproduction of commodities from foreign markets, which have driven down world prices.⁹⁸

C. Economic Benefits

All countries can gain substantial economic benefits from GIs through both the registry and trademark systems. These benefits are shown through product enhancement and expanded consumer knowledge.⁹⁹

91. Babcock & Clemens, *supra* note 38, at 11; *see* Agdomar, *supra* note 71, at 605 (“[GIs] are an opportunity for emerging economies to use intellectual property rules to . . . preserv[e] their cultural heritage and landscape”).

92. Josling, *supra* note 4, at 343.

93. *Id.* at 353, n. 28.

94. Babcock & Clemens, *supra* note 38, at 12-13.

95. Agdomar, *supra* note 72, at 585.

96. *See* BURKHART GOEBEL, WORLD INTELL. PROP. ORG, WIPO/GEO/SFO/03/11, GEOGRAPHICAL INDICATIONS AND TRADEMARKS: THE ROAD FROM DOHA 13 (2003).

97. Banerji, *supra* note 1, at 10.

98. *See* Dwijen Rangnekar, *Pros and Cons of Stronger Geographical Indications Protections*, BRIDGES, at 6, <http://www.iprsonline.org/ictsd/docs/Rangnekar-BridgesYear6N3MarchApril2002.pdf> (last visited Oct. 8, 2014).

99. *See* Daphne Zografos, *Geographical Indications & Socio-Economic Development*, 1-

One of the primary ways to enhance a product is to add value by promoting its place of origin through GIs.¹⁰⁰ For example, the Chinese Pinggu peach was the first agricultural product to have GI protection in 2002, and due to this distinction, the price increased thirty percent relative to regular peaches, while “premium” Pinggu peaches sold for double the price.¹⁰¹ Also, the famous Oolong tea, Tieguanyin, from Anxi, Fujian Province (sold in more than 100 countries) commands a price 80% higher than other teas.¹⁰² These types of statistics have probably played a role in the USDA encouraging producers to “move away from production of homogeneous commodities”, as well as create more “value-added” products to increase their returns.¹⁰³

Product enhancement, however, does not only involve receiving a better profit margin. Enhancement can originate from factors such as quality, reputation, and safety associated with a particular GI.¹⁰⁴ The difficult issue is protecting these factors in a global market, and allowing product visibility in smaller markets.¹⁰⁵ Some argue that utilizing a multilateral registry for agricultural products would more effectively protect these smaller markets than trademark regulations.¹⁰⁶ In contrast, others argue the benefit of using trademark law to protect factors such as quality, reputation, and safety is that it provides a well-known existing structure to GIs, and accountability is better maintained because these factors are linked to a particular entity or group.¹⁰⁷

Expanded consumer knowledge is a benefit under both the registry and trademark system. The importance of customer perception stems from the specific link a customer forms to a product’s origin.¹⁰⁸ This link is not always equated to quality, but for some consumers it can be the most important attribute of the product.¹⁰⁹ Therefore, expanded customer knowledge through stronger protections in either

3 (IQsensato, Working Paper No. 3, 2008), available at <http://www.iqsensato.org/pdf/iqsensato-wp-3-zografos-dec-2008.pdf>.

100. Babcock & Clemens, *supra* note 38, at 2.

101. Xin Xin & Ai Jie, *Chinese Farmers Cash In on Intellectual Property Rights*, <http://www.chinatoday.com.cn/17ct/17e/1013/el01.htm> (last visited Jan. 23, 2015).

102. *Id.*

103. Babcock & Clemens, *supra* note 38, at 2.

104. *Id.* at 12-13.

105. *Id.* at 13.

106. *Id.* (stating that trademark regulations typically exist only within a single country and registering the same trademark in several countries no longer makes sense).

107. Beresford, *supra* note 3, at 994-95.

108. SABRINA LUCATELLI, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEV., COM/AGR/APM/TD/WP(2000)15/FINAL, APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS IN OECD MEMBER COUNTRIES: ECONOMIC AND LEGAL IMPLICATIONS 13-14 (2000).

109. *Id.*

system can reduce consumers misidentification of products.¹¹⁰ For example, a customer would not have to sift through multiple products claiming to be ‘basmati rice’ to find one that actually comes from India.¹¹¹ A consumer’s knowledge of a GI is highly valued.

V. THE COSTS OF GEOGRAPHICAL INDICATIONS IN THE REGISTRY AND TRADEMARK SYSTEM

Many benefits are shared between the registry and the trademark system. The issue which really differentiates the registry and the trademark system is cost.¹¹² The primary risks/costs associated with an expanded multilateral registry system are: competition, leading to more disputes and litigation between WTO members, high financial costs in implementation and administration of the system, and a diminished impact of trademark laws. On the other hand, the trademark system has its own risks/costs including the cost of implementing and enforcing trademark protection with numerous countries, legal uncertainty and costs due to inconsistent litigation rulings, and exclusive ownership and use of Geographical Indications (GIs) by a particular small group.

A. Registry System Costs

The primary argument against expansion of a multilateral registry beyond “wine” is that it stifles competition.¹¹³ This can be especially true for U.S. companies attempting to compete in European markets because many terms (such as “Parmesan,” etc.) which are used generically in U.S. must be changed.¹¹⁴ This could result in regional manufacturers—in Parma for example—gaining monopolies over names which are generically used, simply due to its historical origin.¹¹⁵

110. Agdomar, *supra* note 72, at 589.

111. *Id.*

112. See generally, Wang Guihong, *Geographical Indications and Institutional Organization of Food Market in China: A Case Study of Jinhua Ham*, in GEOGRAPHICAL INDICATIONS AND INTERNATIONAL AGRICULTURAL TRADE: THE CHALLENGE FOR ASIA 212-16 (Louis Augustin-Jean et. al. eds., 2012) (discussing the overlapping systems of GI protection in China).

113. Agdomar, *supra* note 72, at 590-91 (discussing whether extended GI protection for agricultural products is actually anti-competitive).

114. Cox, *supra* note 29; Peter Gumble, *Food Fight!*, TIME, Aug. 31, 2003, <http://content.time.com/time/magazine/article/0,9171,480249,00.html> (quoting Kraft vice president Michael Pellegrino, who stated changing the name would result in a cost of millions for repackaging and marketing campaigns in order to simply preserve existing sales).

115. See, e.g., Banerji, *supra* note 1, at 8.

Proponents of the registry system argue that manufacturers—such as Kraft making “Parmesan” cheese—would not be prevented from making the product, but would simply be prohibited from using the “same nomenclature and depriving the source community of deserved income,” (i.e. Parma, Italy).¹¹⁶

The second argument against expansive registry for agricultural products is a possible increase in costs caused by more disputes and litigation over GIs between WTO member countries.¹¹⁷ There have been major disputes over the rights between nations concerning GI protections for agricultural products which span many years before resolutions have been reached.¹¹⁸ Therefore, it is reasonable to conclude that an expansive registry with an “automatic and near universal protection” would lead to more protracted disputes over a region’s rights and generic use.¹¹⁹

A third argument against expansive registry is the probability of high financial costs in implementation and administration of the system.¹²⁰ Many governments would have to implement new systems to protect a wide variety of GIs, and could lead to “chang[ing] fundamental concepts in their laws.”¹²¹ Also, if a country does not have a system in place to enforce GIs under an expanded multilateral registry, then the government must assume those responsibilities.¹²² Furthermore, there have been revisions to the current EU registry system which suggest it is overly burdensome.¹²³ Critics also say developing countries have the additional burden of establishing enforcement mechanisms which the U.S. and countries within the EU already have in place.¹²⁴

116. Agdomar, *supra* note 72, at 590-91 (discussing whether extended GI protection for agricultural products is actually anti-competitive).

117. Banerji, *supra* note 1, at 9; Dariel De Sousa, WIPO, WIPO/GEO/MVD/01/2, SYMPOSIUM ON THE INTERNATIONAL PROTECTION OF GEOGRAPHICAL INDICATIONS 8-9 (2001).

118. *See, e.g.*, European Communities, *supra* note 86 (discussing the applicability of national treatment of other WTO right holders); *see generally* WTO, *Dispute Settlement Cases in the Area of TRIPS (as of August 2012 Table of Cases)*, http://www.wto.org/english/tratop_e/trips_e/ta_docs_e/6_tablediscases_e.pdf (last visited Jan. 23, 2015).

119. Agdomar, *supra* note 72, at 585.

120. Rangnekar, *supra* note 98, at 4; *see, e.g.*, Agdomar, *supra* note 72, at 592.

121. WTO, COUNCIL FOR TRADE-RELATED ASPECTS OF INTELL. PROP. RIGHTS, *Implications of Article 23 Extension*, IP/C/W/386, 5 (Nov. 8, 2002) [hereinafter TRIPS Council Article 23 Extension].

122. *Id.*

123. *Id.* at 6 (arguing the EC amended its regulations to delete mineral waters because it could not handle the administrative burdens).

124. Agdomar, *supra* note 72, at 592; *see generally*, WTO, COUNCIL FOR TRADE-RELATED ASPECTS OF INTELL. PROP. RIGHTS, COMM’N. FROM ZAMBIA, IP/C/W/298 (Nov. 8, 2001) [hereinafter TRIPS Council Commc’n. from Zambia] (mentioning cost concerns for developing countries).

Administrative costs of an extended registry are difficult to quantify, because there is a lack of strong empirical data on the issue.¹²⁵ The difficulty is expressed by Sergio Marchi, Canada's 2003 ambassador to the WTO, "It's hard to even calculate the cost and confusion of administrating such a thing."¹²⁶ Although few proposals for registry extension offer actual cost estimates, Hong Kong gives some idea in a WTO submission.¹²⁷ These costs essentially amount to reoccurring costs of about \$253,900 annually, which are in line with similar fees charged for registered trademarks.¹²⁸ This number, however, is not guaranteed, and could be misleading since the Hong Kong numbers are for an alternative registry model, and not the expansive EU registry system.¹²⁹

A fourth argument against the expanded registry system is it would increase costs for consumers. First, there would be heightened consumer costs based upon the aforementioned heightened administrative and dispute resolution costs.¹³⁰ Any increase in cost due to additional administrative costs would naturally be passed to the consumer, and it is likely to have a deleterious economic effect. Also, the costs to the industry to rename, relabel, and repackage goods would be passed to the consumer, resulting in higher priced goods.¹³¹ Extension of the registry might actually *cause* confusion for consumers where none presently exists.¹³² The proponents of an extended registry system suggest that long-term benefits would result from this type of system, and would facilitate consumers' choices.¹³³ These arguments, however, glaze over tangible present costs and suggest that the end result would outweigh any costs incurred.

Finally, there is an argument that extension of a multilateral GI system would

125. Agdomar, *supra* note 72, at 592.

126. Scott Miller, *EU Digs In for Food Fight with WTO Over Names*, WALL. ST. J., Feb 13, 2003, <http://online.wsj.com/article/SB1045078138808394143.html> (discussing EU arguments for a large multilateral GI registry).

127. See WTO, COUNCIL FOR TRADE-RELATED ASPECTS OF INTELL. PROP. RIGHTS, MULTILATERAL SYS. OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS UNDER ART. 23.4 OF THE TRIPS AGREEMENT – COMM'N. FROM HONG KONG 9 (2003) [hereinafter TRIPS Council Comm'n. from Hong Kong]; see also Babcock & Clemens, *supra* note 38, at 11.

128. TRIPS Council Comm'n. from Hong Kong, *supra* note 127, at 9; Babcock & Clemens, *supra* note 38, at 11.

129. See TRIPS Council Comm'n. from Hong Kong; see also Banerji, *supra* note 1, at 7.

130. Felix Addor et. al., *Geographical Indications: Important Issues for Industrialized and Developing Countries*, 74 THE IPTS REP. 24, 28 (ed. Inst. for Prospective Tech. Studies 2003).

131. TRIPS Council Article 23 Extension, *supra* note 121, at 7.

132. *Id.* (discussing that Article 22 of the TRIPS agreement already addresses the use of misleading terms).

133. Addor, *supra* note 130, at 28.

result in diminished impact of well-established trademark laws.¹³⁴ In particular, the exclusivity of a trademark could be affected.¹³⁵ The EU system assumes an element of superiority of GIs over trademarks.¹³⁶ This diminishment of trademarks has been seen in the expanded coverage given to wine.¹³⁷ This superiority over trademarks deprives them of its exclusivity, which could also result in domestic constitutional conflicts.¹³⁸ Therefore, an expanded multilateral registry system has significant costs when the entire program is analyzed.

B. Trademark System Cost

The trademark system has its own set of risks and costs. The most substantial is the cost of implementation and enforcement of trademark protection in numerous countries. The current cost of enforcing the TRIPS agreement through a patchwork of national systems could arguably be reduced, and the process streamlined with an extended registry.¹³⁹ Also, each country currently has wide latitude on how they enforce the TRIPS agreement,¹⁴⁰ and without international consensus, each country must utilize its own enforcement system—which could increase costs. Unlike a large multilateral registry, however, these systems are currently in existence and are effective in protecting GIs. Their current costs are not likely to be more than the registry costs based upon the Hong Kong Economic and Trade Office estimates that do not account for the massive scale of the extended registry.¹⁴¹ Also, the difficulty of the EU utilizing the U.S. system is overstated. Roquefort, France, for example, was able to trademark its use of Roquefort for cheese and other products from the region.¹⁴²

134. TRIPS Council Article 23 Extension, *supra* note 121, at 5-6.

135. Goebel, *supra* note 96, at 8.

136. *Id.*

137. *Id.* (discussing how a trademark registered prior to a GI in the registry for wine would be disposed from ownership).

138. *Id.* at 10.

139. Agdomar, *supra* note 72, at 593-94 (discussing current TRIPS enforcement methods).

140. TRIPS Agreement, *supra* note 2, at 328 (stating each WTO member country must provide “legal means” to prevent the improper use of a GI).

141. Babcock & Clemens, *supra* note 38, at 11 (analyzing trademark fees with the Hong Kong model).

142. Amity Shlaes, *Europe’s Unpalatable Attitude*, FIN. TIMES, Oct. 21, 2002, available at <http://www.amityshlaes.com/articles/2002/2002-10-21.php>; *Trademark Electronic Search System- Roquefort*, UNITED STATES PATENT AND TRADEMARK OFFICE, <http://tess2.uspto.gov/bin/showfield?f=doc&state=4802:606nri.2.6> [hereinafter Roquefort].

Second, a risk of the trademark system is that it may lead to legal uncertainty.¹⁴³ Under Article 22 of the TRIPS agreement, there is a heavy burden to prove that the public was misled, but the Article 23 enhanced protection does not have that same burden.¹⁴⁴ Therefore, if all agricultural products received Article 23 protection under an extended registry system, there would be less discretion left to judges to determine whether the public was misled, resulting in more consistent verdicts.¹⁴⁵ There is nothing, however, to suggest there are any severe ambiguities using the current trademark system.

Third, there is a risk of overly exclusive ownership and use of GI protection through trademark law by a small group or entity, since trademarks are an individual right.¹⁴⁶ Agricultural products can potentially be owned by a single entity under trademark law. This entity would have the individual right to enforce its mark, and could potentially exclude others from the same region. In the U.S., this is avoided through the use of government entities, such as state departments of agriculture, or commodity organizations owning particular certification marks.¹⁴⁷ This allows more private individuals in the region to receive benefits from using a GI, but often these entities promote several unrelated agricultural products, which make economic benefits difficult to identify.¹⁴⁸

Although there are some significant costs and risks using the trademark system, they are seemingly outweighed by the risks of an extended registry system.

VI. ANALYSIS OF BENEFITS FOR U.S./KOREA AGRICULTURE BY ALIGNING GEOGRAPHICAL INDICATIONS WITH TRADEMARK LAW

The Korea-U.S. Free Trade Agreement (KORUS-FTA) was a significant bilateral agreement, and is an example of how Geographical Indications (GIs) can be adequately protected utilizing existing trademark law through effective negotiation. The KORUS-FTA has substantially enhanced the marketability of agricultural products through the use of expanded trademark protections. This Agreement effectively highlights how the current intellectual property systems support each other to minimize costs, and to strengthen GI protection and enforcement for agricultural products. Second, the KORUS-FTA can effectively resolve and reduce major GI conflicts through continued use, and extend protection beyond the

143. Addor, *supra* note 130, at 328.

144. TRIPS Agreement, *supra* note 2, at 328.

145. Addor, *supra* note 130, at 28-29; De Sousa, *supra* note 116, at 8 n.20.

146. *See generally* Beresford, *supra* note 3, at 983-84.

147. Babcock & Clemens, *supra* note 38, at 3.

148. *Id.*

TRIPS Agreement. Lastly, there have been definite economic benefits for agricultural products through the enhanced protection of the KORUS-FTA.

Both the U.S. and South Korea have well established governmental entities to protect intellectual property within their own country.¹⁴⁹ The question which arises, however, is whether these systems can provide sufficient protection for GIs between the two countries under KORUS-FTA, and whether it can do so without substantial cost. Simply stated, the answer is yes. The USPTO and KIPO both use various types of trademarks to protect GIs,¹⁵⁰ and have implemented programs to better integrate intellectual property protections between the two systems.¹⁵¹ Also, the KORUS-FTA gives more intellectual property protection than Article 22 of the TRIPS agreement in terms of duration, extent, and enforcement through utilizing the trademark system.¹⁵² For example, the KORUS-FTA extends trademark protections to a sign (or mark) which is “composed [of] a sound or scent” as well as greater protection of certification marks.¹⁵³ Furthermore, these KORUS-FTA protections apply specifically to GIs (versus other intellectual property rights), because the agreement expressly states how GIs are to be protected.¹⁵⁴

Agreements like the KORUS-FTA not only exceed the TRIPS provisions,¹⁵⁵ also give flexibility to each country negotiating an agreement to specify how best to protect and enforce GIs. The negotiation process can resolve conflicts over GIs

149. See *The USPTO: Who We Are*, UNITED STATES PATENT AND TRADEMARK OFFICE, <http://www.uspto.gov/about/index.jsp#heading-1> (last modified Nov. 3, 2014); see also *KIP's History*, KOREAN INTELLECTUAL PROPERTY OFFICE, http://www.kipo.go.kr/kpo/user.tdf?a=user.english.html.HtmlApp&c=93001&cat-menu=ek01_02_01 (last updated May 10, 2014) [hereinafter United States Patent and Trademark Office].

150. See *Overview of Trademark System in Korea*, KOREAN INTELLECTUAL PROPERTY OFFICE, http://www.kipo.go.kr/kipo/user.tdf?a=user.english.html.HtmlApp&c=930001&cat-menu=ek04_01#a2_1 (last update Fed. 26, 2013) [hereinafter Korean Intellectual Property Office]; see generally *Geographical Indication Protection in the United States*, UNITED STATES PATENT AND TRADEMARK OFFICE, http://www.uspto.gov/web/offices/dcom/olia/glob-alip/pdf/gi_system.pdf (last visited Jan. 23, 2015).

151. Press release, 11-38, United States Patent and Trademark Office, USPTO and the Korean Intellectual Property Office Announce Patent Prosecution Highway Pilot Based on Patent Cooperation Treaty Work Products (June 20, 2011), <http://www.uspto.gov/news/pr/2011/11-38.jsp> (announcing an expansion of the USPTO's and KIPO's ability to exchange work product).

152. Yong-Shik Lee, *The Beginning of Economic Integration Between East Asia and North America? The US-Korea FTA*, CHALLENGES TO MULTILATERAL TRADE 125, 141-42 (Ross Buckley et. al., eds., 2008).

153. KORUS-FTA, *supra* note 9, at 18-3, 18-4.

154. *Id.*

155. Yong-Shik Lee, *supra* note 152, at 142; see Ribeiro de Almeida & Francisco, *supra* note 36, at 150-53.

between countries, and eventually reduce conflicts through continued use, as well as build upon previous bilateral FTAs. For example, while negotiation for the KORUS-FTA was ongoing, there were concerns from U.S. dairy producers over certain protections for European cheeses, which were part of the FTA between Korea and the EU.¹⁵⁶ The concern was regarding some protections afforded to EU cheeses, which are generic terms used by U.S. cheese producers.¹⁵⁷ Those concerns were addressed by Korea's trade ministry,¹⁵⁸ and the language in the KORUS-FTA suggests a balancing of generic terms and other protected GIs.¹⁵⁹ Furthermore, there is potential that continued use of bilateral agreements such as FTAs can be building blocks to multilateral agreements like the TRIPS agreement.¹⁶⁰ This potentially means continued use of bilateral agreements, such as the KORUS-FTA, would eventually become so widespread that they are as influential as a large multilateral agreement. When this is applied to GI protections, the end result could be a multilateral system which has expanded GI protection for agricultural products. Therefore, the same result of the EU registry system could still potentially be reached by utilizing the trademark system.

There is, however, substantial doubt that bilateral agreements could build up to multilateral agreements (particularly in smaller countries), and it would take a substantial amount of time for bilateral agreements to become as influential as multilateral agreements.¹⁶¹ Although the result is potentially a long way off, there is a trend toward using bilateral agreements to strengthen standards from the TRIPS agreement.¹⁶²

Finally, the KORUS-FTA and the GI protection associated with it are already having economic benefits for U.S. and Korean agricultural products, and more are projected. As stated earlier, the primary economic benefit GIs give to agricultural products is they add value based on the location's reputation.¹⁶³ The exact amount of the benefit can be difficult to determine, but it can be deduced through generalizations on sales of particular products. For example, due to the FTA, high-quality wine sales from the U.S. and other countries in Korea outsold Soju, a popular local

156. Jurenas, *supra* note 10, at 11-12.

157. *Id.*

158. *Id.* at 12.

159. KORUS-FTA, *supra* note 9, at 18-4.

160. Ryoichi Nomura et al., *Does a Bilateral FTA Pave the Way for Multilateral Free Trade?*, 21 REV. INT'L ECON. 164, 174-75 (2013).

161. *Id.*

162. Mohamed R. Hassanien, *Bilateral WTO-Plus Free Trade Agreements in the Middle East: A Case Study of OFTA in the Post-TRIPS Era*, 8 WAKE FOREST INTELL. PROP. L.J. 161, 162 (2008).

163. Babcock & Clemens, *supra* note 38, at 2.

liquor, for the first time in December 2012.¹⁶⁴ The sale of other U.S. agricultural products have also risen in part due to their enhanced marketability.¹⁶⁵ According to the Congressional Research Service, U.S. sales of agricultural products would increase from \$1.9 billion to \$3.8 billion once the provisions are fully implemented.¹⁶⁶ These figures will probably not be present for several years because duties on some products are being reduced incrementally.¹⁶⁷ Again, the benefits from the FTA are difficult to discern from the value-added by GIs, but both aspects have economic benefits.

VII. CONCLUSION

While the debate over Geographical Indications (GIs) will continue, there are special benefits to the trademark system versus the registry system. Primarily, trademarks are a readily existing tool within most nations, and are readily available to protect GIs, while most countries do not have an effective registry system for GIs. Trademark protections can also be adapted through bilateral agreements to suit the needs of the region it protects; its terms are negotiated up-front to eliminate the fear of generic terms being “clawed-back” without discussion on the matter.¹⁶⁸ Finally, the enhanced protections of a multilateral registry could still occur over time through the build-up of bilateral agreements, which would eventually result in strengthened protections for all GIs. Overall, using the current trademark system would allow for strong customized protections, and because both countries would bargain for the protections which are of value to them, the system would not favor one country over another.

164. *Boosted by FTA, Wine Sales Beat Soju at Lotte Mart*, THE CHOSUN ILBO (Dec. 17, 2012, 10:54 KST), http://www.english.chosun.com/site/data/html_dir/2012/12/17/2012121701061.html.

165. *U.S. Fruit Shipments to Korea Soar After FTA*, THE CHOSUN ILBO, (Mar. 8, 2013, 11:05 KST), http://www.english.chosun.com/site/data/html_dir/2013/03/08/2013030800806.html.

166. Jurenas, *supra* note 10, at 12.

167. KORUS-FTA, *supra* note 9, at 3-1 (referring to tables showing incremental decrease).

168. Beresford, *supra* note 3, at 989-90.