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Geographic Indicators: Unexpected Fodder in Brexit Negotiations

By Libby McKown*

Many may not have expected the impact and repercussions that have developed from the Brexit vote. The scope and issues that have arisen because of it are immense. Intellectual property, a topic not on the forefront of the average voter's mind, is causing ripple effects that may not have been previously anticipated.¹ In a recent turn of events, intellectual property has become a bargaining chip that the United Kingdom might use in reaching a more favorable deal with the European Union.² By utilizing geographic indications, the UK has potentially found a spot that could hurt the leaders of the EU and advance its own bargaining position.

Geographic indications (GIs) are words or pictures "used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin."³ GIs have an important meaning for the people of Europe as many producers rely on the prestige of their products to be competitive in the market.⁴ However, once the name becomes generic, the product ceases to be protected.⁵ Products like parmesan, Champagne, Swiss Made watches, and Roquefort cheese are all protected in Europe and others cannot market a product as one of these items if it is not made to specification in the region where the name originated.⁶ The UK itself

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¹ Alexandra George, *Restructuring Intellectual Property Jurisdiction Post Brexit: Strategic Considerations for the European Union and Britain*, 43 *Brook. J. Int'l L.* 131, 176 (2017).

² Hans Von Der Burchard and Jacopo Barigazzi, UK's secret Brexit weapon: French cheese, *POLITICO*, (Aug. 29, 2018 updated Apr. 19, 2019), <https://www.politico.eu/article/uk-secret-brexit-weapon-french-cheese/>.

³ Geographical Indications, WIPO, https://www.wipo.int/geo_indications/en/ (last visited Sep. 18, 2019).

⁴ Lina Monten, *Geographical Indications of Origin: Should They Be Protected and Why? An Analysis of the Issue from the U.S. and EU Perspectives*, 22 *Santa Clara High Tech. L.J.* 315, 317 (2005).

⁵ U.S. Patent and Trademark Office, *Geographical Indication Protection in the United States*, https://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf (last visited Sep. 18, 2019).

⁶ WIPO, *Geographical Indications: an Introduction*, https://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.pdf.

possesses several GIs that it is keen to protect such as Scotch and Irish whiskeys.⁷ The desire to protect these GIs is incredibly important for many Europeans and has led to several trade deals between the EU and Canada, Japan, Australia, and Singapore.⁸

In recent developments in the world of Brexit, the UK seems to have used GIs as a new bargaining chip.⁹ There is a “suspicion in Brussels...that the Brits will seek to trade this in later in the talks for something else they really want.”¹⁰ Since both sides of the negotiations have GIs they wish to protect in any future deal, it stands to reason that the UK is not seriously considering giving up its own GIs in foreign markets,¹¹ especially not a market that accounts for 46% of all its exports.¹²

UK-producers are growing concerned over the implication of a no-deal Brexit and the potential that their products may no longer be protected in the EU.¹³ If a deal is not made on these products, it will “further exacerbate the negative impacts of Brexit” for these producers.¹⁴ However, it seems unlikely that all of the UK GIs will be done away with in the EU and vice versa due to how unfavorable such a course would be for all involved.¹⁵

This all could be a clever bribe by the UK to try and gain a more favorable Brexit. The UK negotiators, knowing the importance many Europeans put on GIs, may use this to aid in the acquisition of a free trade deal or other

⁷ UK Department for Environment, Food, & Rural Affairs, *Protected food name scheme: UK registered products* (Jan. 15, 2014), <https://www.gov.uk/government/collections/protected-food-name-scheme-uk-registered-products>.

⁸ European Commission, Negotiations and Agreements, <https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>.

⁹ *Supra* note 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² UK Parliament, Statistics on UK-EU trade (July 24, 2019), <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7851>.

¹³ Richard Gray, *Will Brexit threaten EU Protected food names?*, IRISH LEGAL NEWS (August 28, 2019), <https://www.irishlegal.com/article/richard-gray-will-brexit-threaten-eu-protected-food-names>.

¹⁴ *Id.*

¹⁵ *Id.*

desired aspects of the EU.¹⁶ Conversely, the EU could understand the ploy. The UK does not truly want to do away with precious GIs leaving a billion-dollar industry¹⁷ to flounder. The EU will want to continue to make an example of the UK by denying the UK the free trade benefits that the UK really wants to keep.¹⁸ The EU does not want other nations to secede from the EU.¹⁹ The strength of the EU relies on the inclusion of many economically strong states coming together to form one market. It gives a bargaining advantage with big markets like China and the United States by compiling each country's economy.²⁰ This advantage was potentially instrumental in getting those major trade deals that protect important GIs.

While intellectual property as a whole could potentially be a sticky issue, if the UK and EU agree to keep major mechanisms in place, there is the potential of a very clean, smooth transition with minimal change.²¹ However, if the EU continues to be steadfast in its desire to make an example of the UK, intellectual property could be caught in the fray. However, that would be shortsighted and could lead to more problems than solutions.²² If geographical indications are caught in this web, the people producing the products will be the ones who suffer the most.²³

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¹⁶ James Randerson and Ginger Harvey, 12 Brexit cherries the UK wants to pick, POLITICO (June 11, 2018), <https://www.politico.eu/article/12-brex-it-cherries-the-uk-wants-to-pick/>.

¹⁷ *Id.*

¹⁸ Reuters and Ben Moshinsky, EU chief Juncker: We'll make an example of Britain that no-one will want to follow, BUSINESS INSIDER (Mar. 20, 2017), <https://www.businessinsider.com/r-no-other-countries-will-quit-eu-after-britain-eu-chief-juncker-2017-3>.

¹⁹ *Id.*

²⁰ European Commission, EU position in world trade (last updated Feb. 18, 2019), <https://ec.europa.eu/trade/policy/eu-position-in-world-trade/>.

²¹ *Supra* note 1 at 167.

²² *Id.* at 176.

²³ *Supra* note 14.