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Analyzing the Tools of International Norm Diffusion:

A Case Study of Geographical Indications and the European Union

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Abstract

The European Union (EU) is increasingly explicitly engaged in a global normative agenda, aiming to become the primary rule-setter on the international scene. This strategy is pursued in a broad set of areas, through internal policymaking, diplomatic means, and trade policies. This working paper aims to critically examine the development of this strategy for geographical indications, a contested category of intellectual property rights which the EU has vested interests in promoting internationally.

Using interviews with key stakeholders, analysis of existing literature, of the relevant case law, and a systematic analysis of the content of all currently active EU trade agreements, this research provides an outlook of the variety of instruments through which the EU has pursued an agenda of diffusion of rules on geographical indications. This working paper also critically assesses the efficiency of these tools by conducting a case study of the East-Asian region (People's Republic of China, Republic of Korea, Japan).

One key insight of this research is that the combination of unilateral, bilateral and multilateral actions appears to have been improving the effectiveness of the global diffusion of rules on geographical indication. Thus, this paper aims to contribute to the discussion on the effectiveness of the EU's policy of normative influence, and on the interactions between the different tools used for this purpose. It also provides a comprehensive mapping of EU tools of normative influence on geographical indications.

Keywords

European Union (EU). Geographical indications (GIs), Intellectual property rights (IPR), Trade policy. Normative power, East-Asian Region, Norm diffusion

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Introduction

As both the world's largest trading area and an entity lacking any substantial military competences, the European Union's (EU) international strategy is characterized by a willingness to act as a "civilian and normative power" (Meunier et al, 2017).[1] Its agenda includes the objective to spread EU legal rules and concepts worldwide, thereby advancing EU's soft power as well as its commercial interests. This policy is pursued using different legal and diplomatic tools, in particular through the "Brussels Effect" (Bradford, 2020),[2] the participation in multilateral fora, and the conclusion of bilateral agreements.

The multiplication of tools used by the EU for influencing global rules begs the question of their respective effectiveness, and of their comparative effectiveness in different policy areas. This has led to an important amount of research, examining for instance the effect of trade and sustainable development (TSD) chapters in bilateral agreements on national policymaking trends (Ferrari et al, 2021)[3] or the influence of the "Brussels Effect" on the multiplication of competition law regimes (Bradford et al, 2021).[4]

However, some aspects of this problem have been subject to lesser academic interest. This is particularly the case of the policies aiming at diffusing rules on geographical indications, despite these rules being one of the most widespread and successful forms of normative influence on the part of the EU. The interactions between different channels of influence have also not been, to our knowledge, the object of comprehensive enquiries.

Thus, this paper aims at contributing to the discussion on these topics by presenting a legal analysis of the tools used by the EU for diffusing rules on geographical indication, and by examining the consequence of their combination.

The main insight of this research is that the combination of policy tools by the EU in this area appears to be mutually reinforcing. Indeed, the simultaneous use of the EU of internal regulations opened to third parties of an active participation in multilateral fora, and of the conclusion of bilateral agreements appears to have contributed to the diffusion of rules on geographical indications in a broad array of countries. The hypothesis explored in this paper is that each instrument tends to be best adapted to influence countries with specific characteristics and relationships with the EU.

After briefly describing what geographical indications are (I), this paper describes how unilateral, multilateral and bilateral instruments have been used by the EU to pursue a strategy of normative influence in this area (II). It then argues that the combination of these tools appears complementary, and that this complementarity partly explains the success of the EU's regulatory influence in the field of GIs (III). Finally, the East Asian region (comprised of the People's Republic of China (PRC), the Democratic People's Republic of Korea (DPRK), the Republic of Korean (ROK) and Japan) is used as a case study to exemplify this theory (IV).

I. What are geographical indications?

Geographical indications (GIs), broadly defined, are signs granted to products which are linked, through organoleptic properties, traditional production processes, or reputation, to a given geographical location (Blakeney, 2019).[5] By obtaining a GI, producers are granted a quality label, as well as a right of exclusivity on the use of a given geographical name. For example, as "Champagne" is a registered GI, only producers of sparkling wine located in the region of Champagne and who are part of the related consortium may label their products as "Champagne" wine.[6] Hence, geographical indications are both labels targeted at consumers and quasi intellectual property rights restricting the use of certain geographical names to the group of producers located in a certain region and either following traditional production processes or recognized as the heirs of a longstanding reputation.

1 Meunier, Sophie and Kalypso Nicolaidis, "The European Union as a Trade Power", in Christopher Hill and Michael Smith (eds.), International Relations and the European Union, 2011, pp. 275-279.

2 Bradford, Anu, The Brussels Effect: How the European Union Rules the World, Oxford University Press, 2020.

3 Ferrari, Alessandro et al., "EU trade agreements and non-trade policy objectives", EUI Robert Schuman Center for Advanced Studies, Working Paper n°2021/48, 2021.

4 Bradford, Anu and Adam S. Chilton, "Regulating Antitrust Through Trade Agreements", Antitrust Law Journal, vol. 84, 2021, pp. 103 et ff.

5 Blakeney, Michael, The Protection of Geographical Indications: Law and Practice, Edward Elgar Publishing, 2019.

6 See Judgment of the Court (Second Chamber) of 20 December 2017, C-393/16, Comité Interprofessionnel du Vin de Champagne (Champagner Sorbet), EU:C:2017 :99

In the EU, geographical indications are designed in a three-step system, from the more protective protected designations of origin (PDO) to the less stringent protected geographical indications (PGI) and traditional specialties guaranteed (TSG). These labels mainly apply to alcoholic and agricultural products, as well as to crafts and industrial products which have recently been added to their scope.[7]

Having originated in the EU, geographical indications are in many ways an EU-specific category of intellectual property, at odds with trademarks-oriented models promoted in particular by the United States.[8] It is viewed by several countries and scholars as an inherently protectionist system created by the EU for the purpose of upholding its own economic interests at the detriment of non-EU producers.[9] Indeed, as quasi intellectual property rights, GIs grant first-in-time producers an advantage over subsequent producers of a similar products. As the EU's traditional agricultural products benefit from a worldwide reputation and have become staples, even quasi generic or fully generic names around the globe ("Champagne", "Parmesan" or "Feta" are all good examples thereof), this makes EU producers the main beneficiaries of GI protection rules. Because of these characteristics, the EU has an interest in promoting GI protection and being the leading driving force in trying to diffuse these rules globally.

II. A description of the legal tools used by the EU for diffusing geographical indication protection beyond its borders

This first part of our analysis describes how legal tools of different natures have been used by the EU to try to influence third countries' rules in geographical indications. These instruments are categorized as unilateral (A), multilateral (B) and bilateral (C) by reference to the ways in which they are implemented by the EU. Unilateral instruments do not require third countries' approval, whereas bilateral instruments require the conclusion of a bilateral agreement, and multilateral instruments require the participation of the EU in an international agreement's negotiation and subsequent fora.

A) The external reach of the internal EU geographical indications protection system

Contrary to previous national labelling schemes,[10] the European Union system of geographical indications created in 1992 and reformed in 2006[11] allows third countries' producers to obtain the same labels as EU producers.[12] In practice, third-country producers can apply directly to the Commission for a GI and must be subject to EU eligibility criteria on a non-discriminatory basis. Also, third-country producers using the sui generis system have standing before EU courts and can protect their denominations according to EU standards, including against evocation. For instance, the Indian association representing Indian producers of Darjeeling tea could contest before EU courts the use by an underwear company of the trademark "Darjeeling"[13].

This system has had a significant effect on diffusing EU-style rules on geographical indication beyond EU borders. Indeed, it has had two main consequences. A first consequence it that it familiarized foreign producers with the EU system of GIs, and thus incentivized them to pursue partial harmonization of their own standards through imitation of EU norms to access the internal market. This is a manifestation of a process known as the 'Brussels Effect' (Bradford, 2012), which can eventually lead to internal lobbying by these producers and then to the autonomous adoption, by third countries of laws that closely resemble EU regulations. An example of this phenomenon is Türkiye, which reformed its trademark law in 2017[14] and made its rules very close

7 Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 October 2023 on the protection of geographical indications for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753.

8 See O'Connor, Bernard, "The European Union and the United States: Conflicting agendas on geographical indications: What's happening in Asia ?", Global Trade and Customs Journal, Volume 9, 2014.

9 For an example of this position, see Bullbrock, Jane, "Geographical Indications within GATT," Journal of World Intellectual Property Volume 7, Issue 4, July 2004.

10 For example, France (AOC), Italy (DOC) or Spain (DOP) all had geographical indications protection system when the EU-wide policy was put in place: appellations d'origine contrôlées, denominazione di origine protetta and denominación de origen protegida. All had similar features but lacked a system for allowing third country producers to register.

11 Regulations No. 510/2006 and No. 1151/2012.

12 Ibid., Art. 16.

13 Judgment of the Court (Second Chamber) of 20 September 2017, C-673/15 P, The Tea Board v EUIPO, EU:C:2017:702.

14 Industrial Property Act No. 6769, entered into force on 10 January 2017.

to those of the EU[15].

A second consequence of this openness of the GI system is that this led EU institutions to pursue an ambitious agenda of promotion of its model of geographical indications internationally. Indeed, as this system implied that producers from third countries could claim the same legal recognition as EU products, it also meant that EU institutions had a stake in ensuring that the local administrative enforcement of this standards were up to EU requirements and that the local use of legal concepts corresponded to the EU's own understandings of them.

An example of this behaviour can be found in one of the so-called "feta" cases[16]. In this case, the Court of justice of the European Union (CJEU) prohibited the sale to third countries of products not abiding by EU GI standards by EU producers, even if the EU has not concluded any agreement on GI protection with that country[17]. This decision demonstrates a will of the CJEU to prioritize the promotion of the GI model abroad over the economic interests of some EU exporters. Indeed, at the time, it was not clear whether Regulation 1151/2012 had an extraterritorial reach. On the contrary, as mentioned by the Advocate General, the usual interpretation of the text was that it rather excluded such extraterritorial reach[18].

This bold Court ruling had the effect of promoting the EU GI system overseas as it helped customers from countries that had not yet pledged to protect EU GIs to get accustomed to them. It also helped GI producers by banning any competition from EU manufacturers in oversea markets, as these manufacturers were not allowed anymore to export competing products.

B) The exclusive competence of the EU to negotiate multilateral agreements on GIs

The EU's exclusive competence in conducting the negotiation of international trade agreements allowed it to be the sole entity in charge of the negotiation of the main World Trade Organization's (WTO) agreements, as well as of many trade-related multilateral agreements. However, it is only following the Lisbon Treaty that the EU was granted a wider competence on certain regulatory aspects of trade, and in particular on "trade related aspects of intellectual property rights" (TRIPS), a notion that includes geographical indications.[19]

This exclusive EU competence on negotiating and concluding multilateral agreements on GIs was further clarified and confirmed in a legal dispute involving the Commission, the Council, and some member-States regarding the renegotiation of the Lisbon Agreement and the adhesion to the Geneva Act. The 1958 Lisbon Agreement aimed at affording products under GIs an international recognition and protection through a simplified registration procedure. It was concluded before the EU had been granted competence on TRIPS and thus included seven member-States. The 2015 Geneva Act built upon the Lisbon Agreement and aimed at improving its rules. In 2020, the EU filed a request to join the organization.

The purported goal of this adhesion was to improve the international position of the EU in the field of GI protection, by presenting a single voice in related negotiations. Pursuant to this agreement, the Commission would represent member-States during stakeholder meetings, be solely competent to file application of protected products and assess whether a GI registered under this agreement is eligible for protection in the internal market.

The issue at stake was whether the seven member States which adhered to the Lisbon Agreement should be allowed to remain in the Geneva Act, and if yes, of what would be their competences in this organization. The issue was further complicated given that France and Hungary had, between 2015 and 2020, already adhered to the Geneva Act. Also, member-States protected through these agreements both GIs registered at the EU level and GIs registered at the national level. Hence, the answer as to whether the EU should be the only entity allowed to participate in the Geneva Act was far from obvious.

15 Hasan Kadir Yilmaztekin, Banu Eylül Yalçın, "Turkish law on infringement of Geographical Indications and its degree of alignment with the EU law", Journal of Intellectual Property Law & Practice, Volume 16, Issue 4-5, April-May 2021, p. 376–383.

16 Judgment of the Court of 14 July 2022, Commission v Denmark (AOP Feta), C-159/20, EU:C:2022:561. See in particular para. 52.

17 Judgment of the Court of 14 July 2022, Commission v Denmark (AOP Feta), C-159/20, EU:C:2022:561, para. 52.

18 See Opinion of AG Ćapeta, Judgment of the Court of 14 July 2022, Commission v Denmark (AOP Feta), C-159/20, EU:C:2022:198, para. 51. The EU co-legislators initially thought of including provisions on third countries in the Regulation, but then voluntarily refrained from doing so. See also Judgment of the Court of 10 December 2002, British American Tobacco (Investments) and Imperial Tobacco, C-491/01, EU:C:2002:741, para. 203 to 217, that recalls the general rule according to which internal product regulation does not apply to overseas exports.

19 Article 207(1) TFEU.

Still, in two subsequent cases[20], the Cour of justice of the European Union (CJEU) clarified that the EU was solely responsible for the negotiation and conclusion of agreements on the regulatory aspects of GIs, and that member-States party to the Geneva Act could not pursue autonomous actions within it, as the EU was the only entity allowed to collectively represent them.
This ruling, along with the exclusive external competence over GIs granted to the EU, thus led to a strengthening of the EU in this multilateral forum, allowing it to improve its position in global rulemaking in this area by speaking with a single voice on GI matters.

C) The spread of GI protection provisions in EU bilateral agreements

Before the 2009 Lisbon Treaty, agreements including provisions on GIs were scarce, and typically only provided for the mutual recognition of certain products. Some agreements, like the 2008 EU-Cariforum agreement,[21] were merely framework agreements providing for the opening of negotiations on the drafting of a list of GIs to be protected or were restating the rules of the 1995 TRIPS agreement.

But, following the extension of EU competence to trade-related aspects of intellectual property rights by the 2009 Lison Treaty, trade agreements have systematically included chapters on GIs. Thus, the number of EU bilateral agreements including GIs have substantially increased. They either take the form of standalone agreements, like the 2020 EU China agreement on GIs,[22] or, more commonly of ambitious chapters included in trade, development and neighbourhood agreements. These clauses are more ambitious insofar as they include provisions on how geographical indications are to be monitored and protected locally. For instance, an *ex officio*[23] system of adjudication, more protective, is often required.

Also, the EU neighbourhood and accession policy has been a tool for the spread of comprehensive chapters on GI protection. These agreements tend to be more comprehensive in that regard than standard agreements and usually include the recognition of most if not all European GIs by the other party. For instance, the 2018 Comprehensive and Enhanced Partnership Agreement with the Republic of Armenia lists not less than 3500 EU agricultural and wine and spirits GIs to be protected locally.[24]

III. An assessment of the complementarity of unilateral, multilateral and bilateral actions for diffusing geographical indication protection

The three channels used by the EU to pursue global regulatory influence in GIs described in the previous sub-section are complementary. The fact that they do not overwhelmingly overlap, but on the contrary help fill the gaps of one another explains why the combination of these instruments has proven successful. We will first present a table of their main characteristics (A) and then explain how the advantage of each system helps to alleviate the inconveniences of the others, so that these instruments are complementary in nature (B). This complementarity is then illustrated by mapping the global influence of the EU on GIs, instrument by instrument (C).

A) Comparing the characteristics of unilateral, multilateral and bilateral means of influence

For consistency reasons, the following table only presents key unilateral, multilateral and bilateral instruments. The unilateral instruments presented are the protected denomination of origin (PDO) and the protection geographical indication (PGO) which

20 Judgment of the Court of 25 October 2017, Commission v Council (Revised Lisbon Agreement), C-389/15, EU:C:2017:798; Judgment of 22 November 2022, Commission v Council (Adhésion à l'acte de Genève), C-24/20, EU:C:2022:911.

21 Economic Partnership Agreement between the Cariforum states, on the one hand, and the European Community and its Member-States, on the other hand, 30 October 2008, OJ L 289.

22 Agreement between the European Union and the government of the People's Republic of China on cooperation on, and protection of, geographical indications, OJ L 408, 4 December 2020.

23 Ex officio refers to the duty of public authorities to enforce these rules autonomously, for example during customs controls. Without such rule, GI rights must be enforced through private litigation, in the same way as trademarks. This substantially reduces the enforceability of GIs, as market actors must first be aware of an ongoing fraud and then bear the costs of the legal proceedings themselves, which they may not do due to the atomized nature of many GI producers and the comparatively high costs of adjudication when compared to the economic value of the products.

24 Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, 26 January 2018, OJ L 23/4, Art. 230 to 240.

are the main types of geographical indications used in the EU. The bilateral instruments presented are the "new generation", post 2009 agreements, which are the most numerous and most currently relevant. For multilateral instruments, both the TRIPS agreement, which is the largest multilateral agreement on intellectual property, and the Lisbon System, are presented.

Instrument of recognition	Geographical Indication (Protected geographical indication (PGI) and Protected designation of origin (PDO)	TRIPS agreement	Bilateral agreements	Lisbon System (Lisbon Agreement + Geneva Act)
Legal base	EU secondary law (Regulation 1151/2012 and consolidated versions)	Marrakech Agreement establishing the World Trade Organization, Annex 1C, Section 4 (Articles 22 – 24)	International law. The actual legal bases vary depending on the nature of the agreement (f. eg. Subsection 2 of Section B of the EU/Singapore trade agreement, compared to the standalone 2020 EU-China agreement on GIs) and the content of the clauses of the agreements.	Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, last amended on 29 September 1979. Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, adopted on 20 May 2015.
Type of control	Ex ante, through a control and opposition mechanism during registration, and ex post, through an obligation of ex officio control by member-states	Ex post. Article 23 TRIPS only sets a negative possibility for States to deny registration to trademarks using geographical indications in a misleading way.	Ex ante and ex post. For instance, article 12.25 of the EU/Singapore FTA provides for an opposition procedure in both parties ex ante; Article 12.24 requires an ex officio, ex post protection by each party.	Ex post. The nature of control, ex officio or through litigation, is dependent on each country's internal rules.
Definition	Article 5(2) Regulation 1151/2012: 'geographical indication' is a name which identifies a product: (a) originating in a specific place, region or country; (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and (c) at least one of the production steps of which take place in the defined geographical area.	« Indications which identify a good as origination in the territory of a Member, of a region of locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin" Article 22, TRIPS	Varying. It usually refers to article 22(1) TRIPs : "where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin » - Article 2.1.b) 2020 EU-China agreement on geographical indications.	"any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin" – Article 2(1)ii Geneva Act.
Scope of protection	Article 30 of Regulation 1151/2012: direct or indirect commercial use of the name, even as an ingredient, even if it is an evocation (champagne style etc...) applies to goods and services. Protection afforded in the internal market and in the trademark register.	For agricultural GIs, protection against practices liable to mislead consumers or create unfair competition (Article 22). For wine and spirits, protection against evocation and use of "style" or "like" type of mentions. (Article 23).	Generally close to that of the EU. For instance, Article 12.27 of the 2019 EU-Singapore FTA prohibits, for all GIs, evocation and products that refer to a GI with terms as "like" or "kind" (12.27.2).	Protection against evocation - (Article 11(1)a)ii) and against "style" or "like" mentions (Article 11(2)).

Instrument of recognition	Geographical Indication (Protected geographical indication (PGI) and Protected designation of origin (PDO)	TRIPS agreement	Bilateral agreements	Lisbon System (Lisbon Agreement + Geneva Act)
Method of application	For third country producers, they can either apply before the European Commission or before their own State	Each party pledges to protect the geographical indications of its counterparts. There is no central register, although the creation of a register for wine and spirits is envisioned (Article 23(4))	Automatic registration following the enforcement of the agreement, sometimes following a transition period.	Application by parties to the agreement. The registration must be explicitly refused by other parties ; otherwise, it becomes automatic after one year
Parties entitled to use the GI	any operator complying with the technical specifications, provided this compliance has been verified by a certification body (article 37 Regulation 1151/2012).	No harmonization.	Any operator complying with the technical specifications, provided this compliance has been verified by a certification body.	No harmonization.
Remedies	MS have an obligation to afford ex officio protection to sui generis GI. They can delegate control to certification bodies. Certification bodies must be accredited, even in third countries.	Ex officio protection is not mandated (Article 22.3 "a member may, ex officio if its legislation so permits, or at the request of a party[...]".	An ex-ante, ex officio protection is generally required, as well as ex ante opposition procedure	Parties are free to choose the preferred type of remedies for the enforcement of the agreements. (Article 10).
Relationship with trademarks	A well-known trademark may prohibit the registration of a similar GI (Article 6(4)). It must be commercialized at least five years before the registration of the GI to constitute ground for opposition (Article 10(1)(c)). As, once registered, a GI may never become generic, it can never again be used in trademarks (Article 13(2)). A trademark duly registered before a GI may continue to be used (Article 14(2)).	Trademarks registered in any party may receive protection in other parties, even if a Gi has been registered more recently (Article 24(4). Names which are common in the language of a party may be used in trademarks regardless of the existence of a GI (Article 24(6)).	Some names which have become generic may be excluded of the GI protection. Depending on the agreement, a grandfather clause for trademarks already in use may be included. It allows producers of a trademark similar to a GI to keep using it indefinitely.	The registration of a later trademark may be invalidated ex officio, but that is not mandatory, so litigation might be necessary (Article 11(3)). Trademarks duly registered prior to a GI are prevented from being invalidated (Article 13(1)).

Document 1: Comparative table of legal instruments available for the protection of geographical indication

B) The complementarity of unilateral, multilateral and bilateral instruments of norm diffusion

The unilateral, multilateral and bilateral tools whose characteristics have been described above could be seen as overlapping, as all tend to influence third countries into adopting rules on GI close to those of the EU. However, we aim to demonstrate that these instruments are, on the contrary, complementary insofar as their scope differs, so that they will, put together, affect a broader range of countries.

The unilateral mode of influence, which opens GI protection to third country producers is most efficient at targeting producers from countries which are either reluctant to have legislation on GIs, or do not have the administrative capacity to do so. Indeed, it is a fully completely decentralized system, such that third country producers can apply even though they are not helped or

endorsed by their States. This also helps foreign producers obtain protection even though their States are not on their way of concluding an agreement on GIs with the EU. For instance, Mongolian producers of cashmere wool have registered three GIs in the EU, although no trade agreement with Mongolia is currently being negotiated or in preparation.

However, the sui generis system is not devoid of issues. First, the very strict criteria of the EU system may deter some producers from applying. Indeed, indications must comprise a combination of natural and human elements, so that reputation cannot be the only factor; the products must have been made following a traditional process dating back, in its essential characteristics, to at least 30 years ago; products must be entirely made in a strictly delineated region, and so on. Also, the enforcement practices of the third countries in question are, if the "Brussels Effect" does not lead to internal normative changes, potentially largely below EU standards.

That is why bilateral agreements on GIs are a necessary complement to the unilateral system of recognition. Indeed, bilateral agreements first ensure a proper implementation of EU practices in GIs. It allows the EU to set precise guidelines to be followed, instead of leaving a hypothetical "Brussels Effect" do it organically. Also, for foreign producers, bilateral agreements require much less costs, as they do not have to individually apply to the EU system. The conditions put in place for their protection in the EU is also lower, as bilateral agreements are products of bargain and thus lead the EU to allow for the recognition of more foreign GIs in exchange for a better protection of EU GIs in foreign markets. These mutual advantages combined with a vigorous EU action in this area in the last decade explains why, in practice, most GIs which entered the EU market did so through bilateral agreements.[25]

But bilateral agreements are not by themselves sufficient for consolidating the EU's global regulatory influence on GIs. Indeed, bilateral agreements are time and resource consuming, so that the EU prefers to only negotiate them with larger economies. For instance, bilateral agreements on GIs are scarce on the African continent, with the notable exception of South Africa through the SADC Economic Partnership Agreement.[26] Also, not all countries are willing to enter into bilateral agreements on GIs with the EU, in part because these agreements entail high standards of harmonization with EU standards, which not all countries are willing to undertake, and also because of geopolitical considerations. Finally, the enforcement of bilateral agreements can be problematic, because countries are only bound by a State-to-State obligation, whose repercussion in case of breach would only affect this bilateral relationship.

For these reasons, multilateral action on part of the EU is necessary to complement the limitation of bilateral, and by extension, of unilateral action. Indeed, first, multilateral agreements tend to be ratified by many countries. For instance, the most important multilateral agreement on GI, the 1994 Annex 1C to the Marrakech Agreement, also known as the TRIPS Agreement, must be respected by all members of the WTO, or 164 countries as of 2024.

Also, multilateral agreements tend to require less commitment than bilateral agreements, which explains why lesser developed countries are more likely to join them. Countries are also less likely to refuse to adhere to a multilateral convention for geopolitical reasons than in the case of bilateral agreements. For example, the Lisbon system, composed of the 1958 Lisbon Agreement[27] and the 2015 Geneva Act,[28] provides a simplified system of registration, as its members directly file applications of their products to a central register, which then sends them back to all parties. If no objections are raised, the products are then automatically registered in the territory of each party after one year. The Lisbon System also includes countries with whom bilateral agreements with the EU would be too politically sensitive, such as the Russian Federation or the Democratic People's Republic of Korea.[29]

25 According to eAmbrosia (https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/), as of May 2023, there were 228 third-country GIs recognized through the sui generis system versus 1752 through bilateral agreements. It is not possible, however, to rate them in terms of economic importance, because there is no specific export code for geographical indications, and thus no data on what number of GIs are being imported and exported in the EU. Thus, it is possible that the products registered under the sui generis mechanism concern more valuable and more traded products, which would make its practical importance bigger.

26 EU - Southern African Development Community (SADC) Economic Partnership Agreement (EPA) states, OJ L 250/2076, 16 November 2016. None of the parties, except South Africa, has an agreement on geographical indications.

27 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as amended on [28] September 1979, WIPO Lex No.TRT/LISBON/001.

28 Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, ST/11510/2018/ADD/1, OJ L 271, 24 October 2019.

29 https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=A&act_id=50.

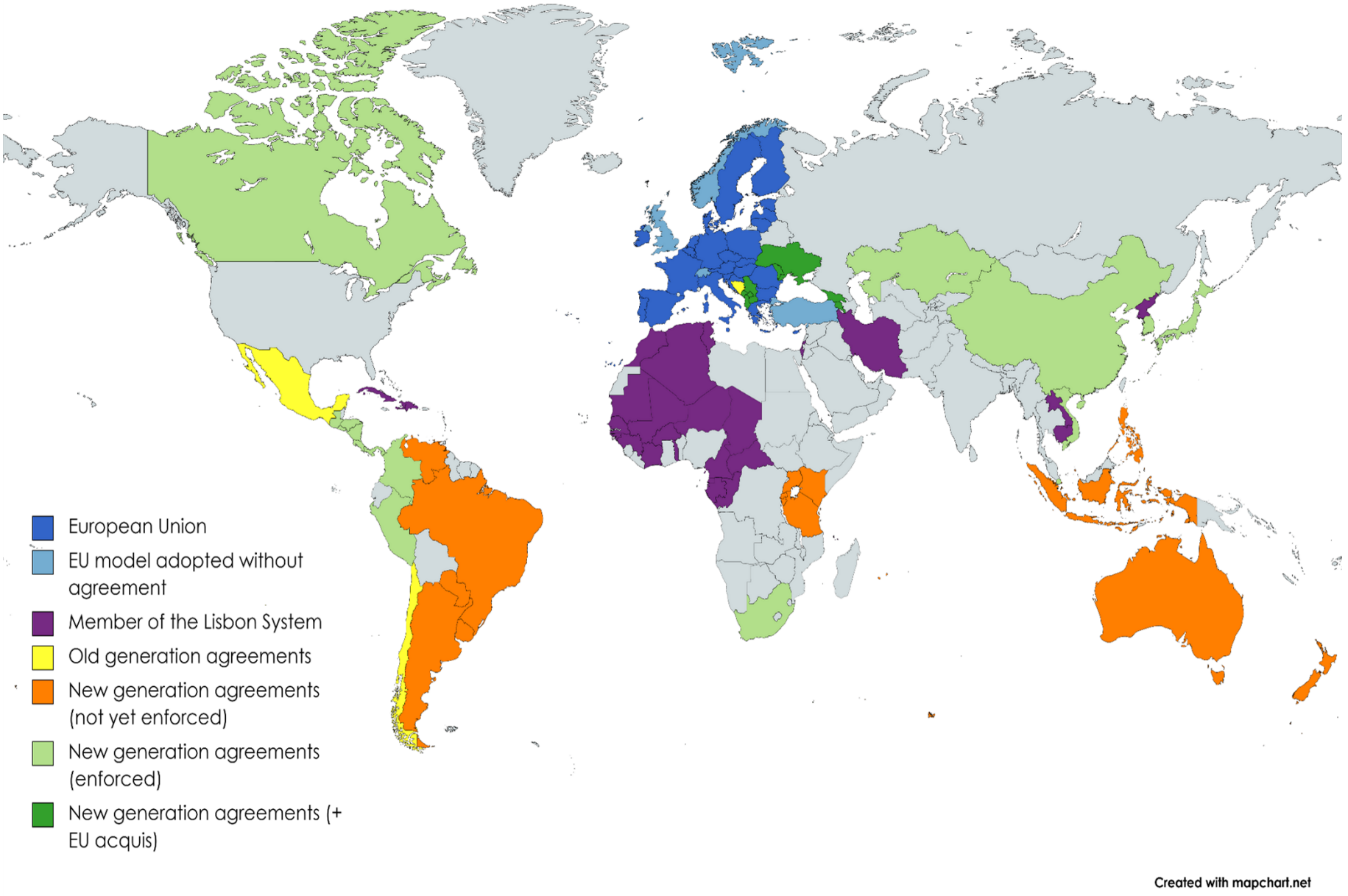
C) Mapping the complementarity of unilateral, multilateral and bilateral tools

To better summarize and visually illustrate the theory according to which unilateral, multilateral and bilateral tools of influence are complementary, the following map presents the influence of each instrument worldwide, on a country-by-country basis. All bilateral trade agreements and standalone agreements of the EU have been examined for this purpose.[30] States belonging to the multilateral Lisbon System[31] and States who have adopted the EU model of GI protection unilaterally have been added, as well as States having adopted the EU model unilaterally. This unilateral adoption has been defined narrowly, as not any type of GI protection but the EU style of GI protection, which includes an ex officio protection, protection against evocation, precedence over anterior trademarks and the inclusion of agricultural products as well as wine and spirits. This map shows how the influence of bilateral, unilateral and multilateral actions is operating throughout the world with little overlap with one another.

Document 2 (next page): Map of the global influence of the European Union in GIS

30 A classification of all these agreements, based on their level of comprehensiveness in the field of GIs, can be found in the bibliography. We also added to the map the members of the Lisbon System.

31 The Lisbon system are the multilateral rules comprised of the 1958 Lisbon Agreement and the 2015 Geneva Act.


European Union
EU model adopted without agreement
Member of the Lisbon System
Old generation agreements
New generation agreements (not yet enforced)
New generation agreements (enforced)
New generation agreements (+ EU acquis)
Created with mapchart.net

IV. Combining unilateral, multilateral and bilateral tools in practice: a study of the East Asian region (China, Republic of Korea, Democratic People's Republic of Korea, Japan)

This section aims at providing an empirical example to the claim according to which the combination of different tools of influence has proven effective for expanding EU norms on GIs. For this purpose, the East Asian region (comprising the People's Republic China (PRC), the Democratic People's Republic of Korea (DPRK), the Republic of Korea (ROK) and Japan) is used as a case study. This region has been chosen in particular because of its lack of a well-grounded legal tradition regarding geographical indications. This characteristic allows an analysis of the effectiveness of the EU's actions to exclude certain variables, in the sense that the adoption of national rules on GIs should normally not be the result of former local practices, but instead mainly of the EU's influence.

We will first describe how, in the PRC and the DPRK, the unilateral and multilateral means of influence but not the bilateral ones have proven successful (1), whereas, on the opposite, in Japan and the ROK bilateral agreements have been the most effective way of influencing national rules on GI protection (2).

A) China and the DPRK: Geopolitically correct ways of influencing non-EU countries norms

Early on, China has adopted rules on GIs close to those of the EU. A soon as 2005, rules for the protection of GIs were passed, including a sui generis standard of protection, which is one of the core characteristics of the EU system. This legislation was not mandated by a bilateral agreement, as China had not concluded any trade agreement with the EU.

China's example helps unravel how the mechanisms of the seemingly unilateral "Brussels Effect" may unravel in practice. Indeed, the amount of trade between China and the EU may have helped in the organic adoption by Chinese producers and public administration of EU norms on GIs. Behind the scenes, also lies a longstanding dialogue and strategy of influence on part of the EU. It is noteworthy that a China-EU dialogue on the recognition of geographical indications was ongoing since the beginnings of the EU policy in the 1990s. An annual EU-China dialogue on intellectual property was established in 2004, and since 2005, an EU-China IP working group was established. In 2012, a "10+10" project was pursued with the aim of registering 10 products under each other's sui generis system[32]. A standalone agreement with the EU on the protection of a list of geographical indications was also concluded in 2020, demonstrating the vigorousness of this dialogue, and how intertwined the categories of "unilateral" and "bilateral" influence may be in practice.

The DPRK, on the other hand, is a good example of the success of multilateral tools of influence with a country economically and politically isolated from the EU. Indeed, as a socialist economy, the DPRK's external trade is concentrated on certain like-minded countries, most notably China as well as certain African states. In 2022, the EU only accounted for about 10% of the DPRK's exports.[33] Furthermore, the state-controlled nature of the economy does not encourage individual initiatives of producers, who may also not have access to means of external communication with the EU. These factors make the unilateral adoption of EU practices on GIs unlikely. The conclusion of bilateral trade agreements between the EU and the DPRK is also, for obvious geopolitical and ideological reasons, quite unlikely.

Thus, the adoption of multilateral rules on GIs remained, in the case of the DPRK, the only channel through which the EU could exert influence, as multilateral agreements are less geopolitically tainted than bilateral ones and are kept under the initiative and control of the State. Influence through multilateral agreements worked in this case, as the DPRK joined the Lisbon agreement in 2005, introducing the protection of GI in its internal legislation and ensuring the international protection of 6 of its products. This example demonstrates how, by influencing rulemaking in international organizations, the EU can influence countries largely removed from its traditional sphere of influence.

B) Japan and the Republic of Korea: internal idleness addressed through bilateral action

The situation of Japan and the ROK are comparable. Both countries do not have a strong history of IP protection in the field of

32 https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1297

33 North Korea (PRK) Exports, Imports, and Trade Partners | The Observatory of Economic Complexity (oec.world)

agriculture. Traditional products are valued, but in a sense that does not fit the same criteria as in Europe, in particular insofar as production processes tend to be valued more than geographical origins. For these reasons, neither Japan nor the ROK had IP protection systems comparable to those of EU GIs.

The unilateral and multilateral tools of influence have not proven effective to change this situation. Indeed, contrary to China, the "Brussels Effect" has not materialized with regards to the ROK or Japan. This may be because their bilateral trade with the EU is less important than for China and is almost exclusively concentrated on industrial products.[34] Whatever the cause, neither the ROK nor Japan had passed laws on GIs nor had their producers applied to the EU's sui generi system before entering into trade agreements with the EU.

This situation changed significantly following the conclusion of two new generations FTAs with the EU, in 2018 for Japan and in 2011 for the ROK. Both have significantly altered their systems of GI protection due to the influence of the EU.

Japan, a longstanding ally, and trade partner of the US has traditionally followed the latter's positions on geographical indications. For instance, following the TRIPS agreement, it supported the minimal position upheld by the US and its allies in the constitution of a non-binding international register for wine and spirits. Also, in 2006, it created a collective trademark system strongly inspired by the US. However, in preparation for the Japan EU free trade agreement (JEFTA), Japan adopted, in June 2015, an act on the protection of geographical indications. It has, as of 1 January 2022, 111 nationally registered GIs, closely resembling the EU's system.[35] The JEFTA contains, in line with the practice observed for new generation trade agreements, extensive provisions on GI protection, including requirements on the adoption of national rules on this issue.

Like Japan, ROK's GI policy was not well developed until the passing of the 2011 ROK-EU free trade agreement (ROK-EU FTA), whose provisions mandated the constitution of a system that would clearly differentiate it from trademarks or collective certification marks. The ROK amended its trademark law in 2009 in preparation for the agreement and changed its administrative practices.

Still, in Korea, the effectiveness of the ROK-EU FTA has also been limited by the competition with the ROK-US FTA concluded in 2012[36], that mandates opposite practices, as the United States is firmly opposed to GIs, which it believes to be a form of protectionism on the part of the EU. The fact that Korea is currently subject to a "normative hesitation" between the EU and the US model of GI protection tends to show that, although the EU's policy of exporting regulation through trade has been affected, bilateral trade agreements do make a difference on regulations, as both the EU and the US are making an impact in the ROK's rule on GIs through their respective trade agreements.

Conclusion

The rapid spread of geographical indication protection rules throughout the world can be partly traced back to the influence of the European Union in making these rules an accepted global intellectual property standard. By untangling the different channels through which the EU has conducted this strategy of influence, this working paper aims to have improved the understanding of its functioning from a legal standpoint.

This research has also highlighted how the combination of different legal and diplomatic tools available may have helped the EU to promote more efficiently the adoption of rules on GIs worldwide. This combination of different policy instruments is not restricted to the area of GIs but is also at play with regard to environmental and labour regulation, competition law, and many more regulatory fields. Thus, this approach to the analysis of EU normative influence strategies may be used in these other policy areas, possibly to stress how they may differ, and why this may be so.

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34 See EU trade relations with South Korea (europa.eu) and details_japan_en.pdf (europa.eu). According to the European Commission, in 2021 and 2023, industrial goods represented respectively around 96% of the ROK and 99% of Japan's exports to the EU.

35 Geographical Indication(GI) protection system : MAFF.

36 U.S. – Korea Free Trade Agreement, entered into force on 15 March 2012, Chapter XX "Intellectual property rights", available online : https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file273_12717.pdf.

One area of research which this working paper also addressed relates to the question of the effectiveness of the diffusion of EU norms in changing local legal practices. This step, which would involve a more fine-tuned analysis of countries' reactions to EU's policies, may be crucial for validating or invalidating the hypothesis of this working paper. Thus, although such research was outside the scope of this paper, a systematic study of local enforcement practices of EU rules in foreign jurisdictions would thus help to contribute to the understanding of the diffusion of these rules, eventually helping to add a caveat to the one-sided vision often presented by EU institutions themselves of an efficient and overall successful process of diffusion.

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