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The Appellations of Origin from an US Perspective

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A SOBER SECOND LOOK AT APPELLATIONS OF ORIGIN: HOW THE UNITED STATES WILL CRASH FRANCE'S WINE AND CHEESE PARTY

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France regulates the production methods of certain fine foods and beverages through controlled appellations of origin, or *appellations d'origine contrôlée* (AOCs).[1] The AOC system restricts the right to produce select wines and cheeses to a designated geographic region associated with those foods. Sparkling wine from Champagne and Roquefort cheese are but two celebrated examples. French law ensures localized control of AOC-regulated products by requiring them to be processed in the same region where the raw agricultural commodities - grapes or milk - are produced. Only those wines and cheeses produced according to these rules may be legally marketed under the geographically significant appellation of origin.

Although France hopes to place the successful marketing of AOCs at the heart of its agricultural policy,[2] the AOC system is not likely to win full legal recognition in the United States. France faces an uphill struggle in reconciling this distinctly French and uniquely agricultural form of intangible property with hostile notions in foreign and international law. Although AOCs are commonplace in the civilian legal systems of Catholic Europe and recognized under the laws of the European Union, their American counterparts are far less protective of the "geographic" and "human" factors embraced by the French AOC system. International recognition of geographical indications suggests that AOCs are *not* fully protected outside the boundaries of France and of the European Union. In short, substantial legal barriers hamper the restructuring of global food and beverage trade according to the French model epitomized by the AOC system.

This pessimistic assessment of French AOCs is not rooted in a cultural or ideological opposition to this form of intangible property. In one sense, of course, the very idea of protecting intellectual and cultural property unique to agriculture is a form of resistance to the reconciliation of agricultural law with modern economic and social conditions.[3] In France, agricultural experts convinced that the AOC system can serve as a springboard for French food and beverage exports are debating the best form of international legal recognition for French AOCs.[4] Outside France, admirers of the AOC system have lauded the French legal approach.[5] What is needed - and what this Article hopes to supply - is not a set of philosophical musings on the juridical nature of AOCs, but rather a dose of cold realism regarding the inhospitable legal climate that AOCs will likely find in the world's richest nation.

Part I of this Article describes AOCs and allied legal concepts in their native legal context. French law and the law of the European Union vigorously protect AOCs and the agribusiness model made possible by the imposition of strict geographic limits on the production of certain fine foods. In surveying the American equivalents of these laws, Part II shows how alien the AOC is to the American legal system. Part III of this Article explores the extent to which legal obligations under bilateral or international treaties require the United States to accommodate the appellation of origin as a legal concept and to shield products bearing a French AOC from "unfair" competition in American consumer markets. Key exceptions to the recent accord on Trade-Related Aspects of Intellectual Property effectively eviscerate any legal protection for many of the most prominent AOC-protected products. Part IV concludes that supporters of the French AOC system would be better advised to engage in more aggressive marketing and consumer education than to prolong a losing battle against American law.

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Whenever available, I have used official translations from French to English. The polyglot editors of the *Minnesota Journal of Global Trade* have generously helped me translate French texts for which no official English translation is available. I alone bear the responsibility for any mistranslations. *Cf.* Jim Chen, *Law as a Species of Language Acquisition*, 73 WASH. U. L.Q. 1263, 1269-72, 1283-90 (1995) (describing foreign language acquisition, including the inevitable perils of mistranslation, as the nonlegal activity most akin to legal learning).

[1] *See* CODE DE LA CONSOMMATION [CODE CONSOM.] art. l. 115-1 to -33.

[2] *See*, *e.g.*, Marie-Hélène Bienaymé, *La protection des mentions géographiques par les appellations d'origine contrôlées*, 237 REVUE DE DROIT RURAL (forthcoming 1996) (manuscript at 11) (describing the AOC as "an agricultural policy of the future").

[3] *Cf.* Louis Lorvellec, *Rapport de synthèse*, 233 REVUE DE DROIT RURAL 251, 252 (May 1995):

> At least since the *Code civil*, and until the little revolution of preferential attribution, agriculture was regulated in French law as the act of appropriating the fruits of the earth, perfectly encompassed by the concepts underlying individual property and contract. Since 1938, we have become increasingly willing to accept the idea that the law should organize agricultural business as a for-profit business - that is, a business generating wealth through independent means of production.

[4] *See*, *e.g.*, Véronique Romain Prot, *Origine Géographique et Signes de Qualité: Protection Internationale*, 237 REVUE DE DROIT RURAL (forthcoming 1996).

[5] *See*, *e.g.*, Kevin H. Josel, Note, *New Wine in Old Bottles: The Protection of France's Wine Classification System Beyond Its Borders*, 12 B.U. INT'L L.J. 471 (1994).

I. APPELLATIONS OF ORIGIN UNDER FRENCH AND COMMUNITY LAW

A France

Throughout Europe, and especially in France, the AOC system structures the division of agricultural labor and shapes food markets. The French *Code de la Consommation*[6] defines an AOC as "the denomination of a country, of a region, or of a locality that serves to designate a product that has originates and whose quality or characteristics are due to the geographic surroundings."[7] Critically, this definition comprises both "natural factors *and* human factors."[8] An AOC thus protects both "nature" and "culture":[9] the geographic component of an AOC identifies the "natural" factors that contribute to a product's distinctiveness, while the express legal protection of "human factors" guarantees that local farmers will continue to control the lucrative value-adding process by which raw materials are transformed into prized foods or beverages.

The AOC is an unusual and an unusually strong species of intangible property. It combines aspects of trademark law and of the law of regulated industries. An AOC conveys a highly complex set of information to the consumer. Unlike most products protected by commercial trademarks, which generally communicate consistency in manufacturing, AOC-protected products typically reflect seasonal and annual variations in the designated locale's climate.[10] Furthermore, unlike traditional forms of intellectual property, an AOC "can *never* be considered as presenting a generic character and thus can never fall into the public domain."[11] The geographic component of an AOC "may not be used for any similar product or for any other product or service as long as such a use is capable of altering or weaking the effect of the appellation of origin."[12] Thus, French law prohibits not only the use of "Roquefort" to designate cheeses produced outside the terms of Roquefort's AOC,[13] but also the use of "Champagne" as the name of a perfume.[14] Although one must take care in analogizing to the American legal system,[15] one can safely say that the French AOC law combines the consumer protection rationale of the federal Lanham Act[16] with the *"droit moral"* rationale underlying the Berne Convention for the Protection of Literary and Artistic Works,[17] the Copyright Act of 1976,[18] and various state laws that prohibit the dilution of trademarks and trade names.[19]

There may be an even more suitable analogy in American and Community law. The AOC is a close cousin of the

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[6]The Code de la Consommation is an autonomous body of legislation addressing food-related aspects of agricultural regulation. It is separately codified so that its multidisciplinary scope will not be diluted by other sources of French law, especially the law of contracts. *See* G. [prénom?] Rouhette, *Droit de la Consommation, et Théorie Générale des Contrats*, in [TITRE DU LIVRE] 247 (René Rodière ed. 1981).

[7]CODE CONSOM. art. L. 115-1 ("*la dénomination d'un pays, d'une région ou d'une localité servant à désigner un produit qui en est originaire et dont la qualité ou les caractères sont dus au milieu géographique*").

[8]*Id.* ("*des facteurs naturels et des factuers humains*") (emphasis added).

[9]*See generally* ALAIN, L'HOMME ET L'ANIMAL (1962).

[10]*See* Romain-Prot, *supra* note **Erreur! Signet non défini.**, at ___.

[11]CODE CONSOM. art. L. 115-5 (emphasis added) ("*ne peut ~~jamais~~ être considérée comme présentant un caractère générique et tomber dans le domaine public*").

[12]*Id.* ("*ne peuvent être employés pour aucun produit similaire . . . ni pour aucun autre produit ou service lorsque cette utilisation est susceptible de détourner ou d'affaiblir la notoriété de l'appellation d'origine*").

[13]*See* Judgment of July 5, 1994 (Confédération générale des producteurs de lait de brebis et des industriels de Roquefort v. Chambre syndicale des industriels de Roquefort), Cass. com., 1994 Bull. Civ. ?, No. ?? (Fr.).

[14]*See* Judgment of Dec. 15, 1993 (SA Yves Saint-Laurent Parfums v. Institut National des Appellations d'Origine), Cour d'appel de Paris, 1994 D.S. Jur. ??? (Fr.); Caroline Lambre, *Le champagne ou le parfum de la renommée*, 27 RECUEIL DALLOZ SIREY 213 (1994); Catherine Grynfogel, *A propos de l'affaire Champagne: Vers une protection absolue des appellations d'origine?*, 3 REVUE DE JURISPRUDENCE DE DROIT DES AFFAIRES 213 (1994).

[15]*Cf.* Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 746 (1993) (noting that analogical reasoning typically leads to "incompletely theorized judgments" based on "principles operating at a low or intermediate level of abstraction" but nevertheless yields a sort of "principled consistency" in legal analysis).

[16]15 U.S.C. §§ 1051-1127. Consumer confusion is the central concern of the Lanham Act, the primary piece of federal trademark legislation in the United States. *See generally* Two Pesos, Inc. v. Taco Cabana, Inc., 112 S. Ct. 2753 (1992); Anheuser-Busch, Inc. v. L & L Wings, Inc., 962 F.2d 316, 318 (4th Cir.), *cert. denied*, 113 S. Ct. 206 (1992).

[17]Berne Convention for the Protection of Literary and Artistic Works, art. 6*bis* (signed at Berne, Sept. 9, 1986) (guaranteeing, "[i]ndependently of the author's economic rights," the "right to claim authorship of [a] work and to object to any distortion, mutilation, or other modification . . . which would be prejudicial to [the author's] honor or reputation"); Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (1988) (codified in scattered sections of 17 U.S.C).

[18]*See* 17 U.S.C. § 106A (awardding an author the right "to claim authorship," "to prevent the use of his or her name as the author of any work of visual art which he or she did not create," and "to prevent the use of his or her name as the author of [a] work of visual art in the event of a distortion, mutilation, or other modification which would be prejudicial to his or her honor or reputation").

[19]*See*, *e.g.*, N.Y. GEN. BUS. LAW § 368; L.L. Bean, Inc. v. Drake Publishers, Inc., 811 F.2d 26, 30 (1st Cir. 1987) (noting that state antidilution statutes "fill a void left by the failure of [federal] trademark law" to prohibit uses of marks that do not exhibit a "likelihood of consusion between the original use and the infringing use); Allied Maintenance Corp. v. Allied Mechanical Trades, Inc., 42 N.Y.2d 538, 369 N.E.2d 1162, 1165, 399 N.Y.S.2d 628 (1977); *cf.* **[CITE BERNE CONVENTION AND COPYRIGHT CODE PROVISIONS ON "DROIT MORAL"].**

ecolabel, a consumer-oriented mark that seeks to communicate a category of products produced according to a publicly ascertainable list of specific ecological criteria. In 1992, the Council of Ministers of the European Union promulgated a regulation authorizing the establishment of an ecolabel under the supervision of the European Commission and in consultation with various industrial, commercial, labor, consumer, and environmental interest groups.[20] The closest equivalent of ecolabel in American law is the certification of organic production and processing made possible by the federal Organic Foods Production Act of 1990[21] and its state-law counterparts.[22] (State laws may impose more stringent production and labeling standards for organic foods, subject to approval by the United States Secretary of Agriculture.)[23]

American law provides one final analogy - unsuccessful efforts to force the disclosure of intense production methods in animal agriculture.[24] Indeed, AOCs may share more in common with organic food and "humane treatment" labels than with ecolabels. Whereas an ecolabel suggests that the certified food production method is more beneficial for the environment than are noncertified alternatives,[25] neither an organic food certificate nor an AOC guarantees any specific beneficial impact on food quality, the environment, or the structure of the food production and processing industries. Rather, the geographically based production standards underlying an AOC and the anti-chemical promises underlying an organic food certificate rest on a general belief that reducing the number of substitutes for agricultural land - as all biological inputs such as pesticides, fertilizers, and transported ingredients ultimately are - has a net positive impact on agriculture's natural and human constituents.

The economic and sociological effects of the AOC system are both *célèbre* and *célébré* in France - that is, "celebrated" in the sense of "famous" and in the sense of "revered." The legal union of "natural factors" and "human factors" enables French farmers - freeholders and tenants alike[26] - to capture and control the value-adding process that transforms their raw products into gourmet consumption goods. The AOC system segments the production market and shields it from outside competitors, thus helping to prop up farming and related industries as a significant sources of jobs. On the consumer side, tight geographic and processed-based restrictions guarantee certain consumer expectations.[27] The AOC as quality control thus fulfills the "Catholic" *satisfaction* and *service* objectives of the *droit agro-alimentaire* in France.[28]

The impact of the AOC laws on the political economy of French and European agriculture cannot be understated. Farmers armed with AOC rights are not merely producers of raw materials; thanks to the exclusive nature of their right to process those materials into the finished food products bearing the prized AOC, these farmers become agribusinesses in their own right.[29] Farmers such as the vintners in Champagne who produce that region's prized sparkling wine control the viticultural process from the vineyard to the dinner table, directing all value-added processes along the way and capitalizing these profits into their land. French law thus dictates what American law is merely content to facilitate through the Capper-Volstead Act[30] and the Agricultural Marketing Agreement Act:[31] farmstead-to-doorstep domination of discrete product markets. Such a transformation of the farmer as

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[20] *See* Council Regulation 880/92, art. 6, 1992 O.J. (L99) 1; Dinah L. Shelton, *Environmental Rights in the European Community*, 16 HASTINGS INT'L & COMP. L. REV. 557, ___ (1993).

[21] 7 U.S.C. §§ 6502-6522.

[22] *See*, *e.g.*, California Organic Foods Act of 1990, CAL. HEALTH & SAFETY CODE § 26569.24; FLA. STAT. ANN. § 504.21-.33; *cf.*, *e.g.*, MINN. STAT. ANN. §§ 31.92, .94 (authorizing the administrative promulgation of rules defining standards for the production and labeling of organic foods); VT. STAT. ANN., tit. 6, § 181 (same); WIS. STAT. ANN. § 97.09 (same); Minn. Laws 1985, ch. 237, § 2 (Apr. 1, 1986) (declaring "a public benefit in establishing standards for food products marketed and labeled using the term `organic' or a derivative of [that] term").

[23] *See* 7 U.S.C. §§ 6503(b), 6506(c), 6507. *See generally* Mitchell, *State Regulation and Federal Pre-emption of Food Labeling*, 45 FOOD DRUG COSM. L.J. 123 (1990) (discussing the reconcilation of potential conflicts between federal and state organic food labeling laws); Kyle W. Lathrop, Note, *Pre-empting Appels with Oranges: Federal Regulation of Organic Food Labeling*, 16 J. CORP. L. 885 (1991) (same).

[24] *See*, *e.g.*, Animal Legal Defense Fund, Inc. v. Provimi Veal Corp., 626 F. Supp. 278 (D. Mass. 1986) (rejecting an effort to require veal producers to disclose on-farm practices that allegedly violated state laws against cruelty to animals).

[25] *But cf.* Karen West, *Ecolabels: The Industrialization of Environmental Standards*, 25:1 ECOLOGIST (Jan./Feb. 1995) (arguing that international criteria for ecolabeling could result in a "race to the bottom" rather than in a multilateral strengthening of production and labeling standards).

[26] Thanks to a tenant farmer's virtually inviolate right of renewal under the *statut du fermage et du métayage* ("Law of Tenants and Sharecroppers"), CODE RURAL, art. L. 411-417 (Fr.)., tenants and freehold farmers alike can capitalize any economic advantage from the AOC system directly into their rights to cultivate a specific tract of land.

[27] *See generally* Jean-Pierre Lestoille, *Les outils juridiques de protection de denomination au service d'une dynamique de qualité*, 237 REVUE DE DROIT RURAL (forthcoming 1996) [manuscript at 4-6].

[28] *See* Jean-Paul Branlard, *La reconnaissance et la protection par le Droit des mentions d'origine géographique comme élément de qualité des produits alimentaires*, 237 REVUE DE DROIT RURAL (forthcoming 1996) [manuscript at 2] ("L'attente `qualité' se fait sur la Sécurité, la Santé, le Service et bien évidemment la Satisfaction des sens, c'est la *qualité gustative*.").

[29] The term "agribusiness" is attributed to John H. Davis of the Harvard Business School and has come to denote "the sum total of all operations involved in the manufacture and distribution of farm supplies; production operations on the farm; and the storage, processing, and distribution of farm commodities and items made from them." JOHN H. DAVIS & RAY A. GOLDBERG, A CONCEPT OF AGRIBUSINESS 2 (1957); *see also id.* at 2 n.1 (attributing the term "agribusiness" to an October 1955 speech by Davis). The term has become something of a lightning rod, attracting the condemnation of those who believe that industrialization and mass production are the root of all the evils that have befallen American agriculture. *See*, *e.g.*, A.V. KREBS, THE CORPORATE REAPERS: THE BOOK OF AGRIBUSINESS (1992); INGOLF VOGELER, THE MYTH OF THE FAMILY FARM: AGRIBUSINESS DOMINANCE OF U.S. AGRICULTURE (1981).

[30] 7 U.S.C. §§ 291-292 (exempting cooperative associations owned by "[p]ersons engaged in the production of agricultural products as farmers" from certain types of antitrust liability so that they may freely engage "in collectively processing, preparing for market, handling, and marketing" their products). The Capper-Volstead Act is regarded as the "Magna Carta of Cooperative Marketing." THEODORE SALOUTOS, THE AMERICAN FARMER AND THE NEW DEAL 27 (1982).

[31] 7 U.S.C. §§ 601-624, 671-674.

an economically weak supplier of natural resources into a captain of agribusiness requires government to suspend the ordinary rules of free enterprise.[32] On occasion American courts have balked at granting farmers and their cooperatives the degree of monopoly power needed to integrate an entire line of food processing into their business portfolios.[33] By contrast, monopoly power over clearly segmented markets for certain fine foods is precisely what the AOC system hopes to deliver to French farmers.

B. The European Union

Community law undoubtedly protects AOCs in their full sense under French law. The relevant regulations of the Council of Ministers of the European Union create two regimes governing appellations of origin. Wines and other alcoholic beverages may be protected as "*vins de qualité provenant de régions déterminées*," or VQPRDs.[34] All other products may bear an "*appellation d'origine protégée*," or a "designation of origin."[35] France reconciles the Community's VQPRD and designation of origin systems by restricting VQPRDs to wines that qualify for an AOC under French law.[36] From the French consumer's point of view, the three competing regimes are merged in a single label: the same emblem on cheese is recognized as an AOC in Paris and a designation of origin in Brussels, and only those vintners who have secured AOC protection under French law may seek shelter under the European VQPRD system.

The European definition of an designation of origin therefore controls the legal status of a French AOC in the other member-states of the European Union. Community law defines a designation of origin in terms indistinguishable from those used in French law to define an AOC:

> the name of a region, a specific place, or in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing, and preparation of which take place in the defined geographical area.[37]

Like French law, the Community definition of a designation of origin makes the crucial connection between "natural" and "human" factors. By contrast, Community law defines an "geographical indication" as a designation for ""an agricultural product or a foodstuff . . . which possesses a specific quality, reputation or other characteristics attributable to that geographical origin."[38] Moreover, under Community law, an agricultural product or foodstuff bearing a geographical indication may have any one of three connections with "the defined geographical area."[39] Unlike a product bearing a designation of origin, whose "production, processing, *and* preparation" must all "take place in the defined geographical area," *either* "production," "processing," *or* "preparation" standing alone supplies a sufficient territorial link between a product and its geographical indication.[40] These definitions under Community law are significant because they show that a multinational agreement can easily distinguish between ordinary geographical indications and appellations or designations of origin, which combine "geographic" and "human" factors.

Although Community law does not permit a generic designation to be registered either as a designation of origin or as a geographical indication, the determination of generic status depends, *inter alia*, upon "the existing situation within the Member-State" and upon "pertinent national legislation."[41] For purposes of Community law, a designation is generic if it has become so "*au moment de l'entrée en vigueur de cette convention* [concerning AOCs and geographical indications] *ou postérieurement de ce*

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[32] For paradigmatic expressions of American law's willingness to excuse farmers from state and federal antitrust laws, see National Broiler Marketing Ass'n v. United States, 436 U.S. 816, ___ (1978); Tigner v. Texas, 310 U.S. 141, ___ (1940).

[33] *See*, *e.g.*, Maryland & Virginia Milk Producers Ass'n v. United States, 362 U.S. 458, ___ (1960) (exposing an agricultural cooperative to federal antitrust liability for monopolization, anticompetitive mergers, and conspiracies extending outside the cooperative's membership); United States v. Borden Co., 308 U.S. 188, ___ (1939) (refusing to immunize conspiracies between a cooperative and outside coconspirators). *But cf.* Fairdale Farms, Inc. v. Yankee Milk, Inc., 635 F.2d 1037, ____ (2d Cir. 1980) (limiting agricultural cooperatives' liability under §2 of the Sherman Act, 15 U.S.C. § 2, to "the acquisition of [monopoly] power by . . . predatory means" rather than "such acts as the formation, growth and combination of agricultural cooperatives"), *cert. denied*, 454 U.S. 818 (1981).

[34] Council Regulation ____/24 of April 4, 1962.

[35] Council Regulation 2081/92 of July 14, 1992, 1992 J.O. (208) 1.

[36] *See* CODE CONSOM. art. 115-26-1 alinéa 3.

[37] Council Regulation 2081/92 of July 14, 1992, 1992 J.O. (208) 1, 2 (art. 2.2(a)) ("*le nom d'une région, d'un lieu déterminé ou, dans des cas exceptionnels, d'un pays qui sert à désigner un produit agricole ou une denrée alimentaire originaire de cette région, de ce lieu déterminé ou de ce pays et dont la qualité ou les caractères sont dus essentiellement ou exclusivement au milieu géographique comprenant les facteurs naturels et humains, et don't la production, la transformation et l'élaboration ont lieu dans l'aire géographique délimitée*"). There is no small irony in the fact that this regulation was promulgated on the French national holiday. For more extensive discussion of these aspects of Community law, see Bienaymé, *supra* note **Erreur! Signet non défini.**, at ___ (manuscript at 14-16); Grégoire Salignon, *La Jurisprudence et la Réglementation Communautaires Relatives à la Protection des Appellations D'Origine, des Dénominations Géographiques et des Indications de Provenance*, 4 REVUE DU MARCHE UNIQUE 107 (1994).

[38] Council Regulation 2081/92 of July 14, 1992, 1992 J.O. (208) 1, 2 (art. 2.2(b)).

[39] *Id.*

[40] *Compare id.* art. 2.2(a) (designation of origin) with *id.* art. 2.2(b) (geographical indication).

[41] *Id.* at 3 (art. 3.1). [EDITORS: NOT CHECKED; YOUR COPY OF THE J.O. LACKS PAGE 3.]

moment . . . dans l'État d'origine."[42] Like French law, Community law prohibits all "*utilisation commerciale directe ou indirecte d'une dénomination enregistrée pour des produits non couverts par l'enregistrement*" and all "*autre[s] pratique[s] susceptible[s] d'induire le public en erreur quant à la véritable origine du produit*."[43] No attempt at "*usurpation, imitation ou évocation*" will be tolerated even if tempered by words such as "'*genre,' `type,' `méthode,' `façon,' [ou] `imitation.*'"[44]

From the French perspective, it is vital that the European Union's definition of designations of origin rests explicitly on *national* legal standards. The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods highlights the importance of this factor.[45] The Madrid Agreement requires that "[a]ll goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly or indicated as being the country or place of origin shall be seized on importation into any of the said countries."[46] Like its predecessor, the Paris Convention for the Protection of Industrial Property,[47] the Madrid Agreement does not prevent uses that disclose their true origin.[48] The Agreement's sole promise for greater protection of AOCs lies in its fourth article: despite giving national courts the power to "decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement," the treaty explicitly provides that "regional appellations concerning the source of the vine being [are] excluded from [this] reservation."[49] The Madrid Agreement thus implies, but does not explicitly state, that courts should determine the generic status of geographical indications for wine by reference to the laws of the state from which the wine originates. Perhaps because of this exception's odd phrasing, national courts in countries bound by the Arrangement of Madrid have accorded virtually no protection for foreign viticultural products. The Supreme Court of Brazil, for example, has explicitly held that the AOCs Champagne and Cognac are generic and part of the Brazilian public domain.[50] Japan consistently admits American and Australian wines that incorporate French AOCs into their labels.[51]

This brief survey of French and Community law should highlight the stark contrast between, on one hand, the vigorous protection of French AOCs and European designations of origin and, on the other hand, the virtual absence of such protection in the United States. If the AOC is a characteristically French or even European legal concept, it makes a very poor export. As a jurisprudential concept, the AOC does not weather the high seas and stormy conditions of global trade. In the Catholic countries of southern Europe, especially France and Italy, the notion of "quality" embodied by the AOC comprises "the flavor, the excellence, and the authenticity of the land."[52] By contrast, in an American legal system strongly influenced by its Protestant, Anglo-Saxon origins, quality is "above all synonymous with security, with a regularity that follows a trademark more closely than it does a geographical indication."[53] How little respect the geographical indication has in the United States will be evident from even the most cursory of surveys of American law.

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[42]Case 3/91, Exportur SA v. LOR SA Confiserie du Tech, ___ E.C.R. ___ (Nov. 10, 1992) (emphasis added). [EDITORS: AWAITING OFFICIAL ENGLISH TRANSLATION.]

[43]Council Regulation 2081/92, 1992 J.O. (208) 1, 6 (art. 13.1(a), (d)). [EDITORS: AWAITING OFFICIAL ENGLISH TRANSLATION; ONCE AGAIN, YOUR COPY OF THE J.O. IS INCOMPLETE.]

[44]*Id.* (art. 13.1(b)) [NEED OFFICIAL TRANSLATION]; *see also* Case 306/93, SMW Winzersekt GmbH v. Land Rheinland-Pfalz, ___ E.C.R. ___ (Dec. 13, 1994) (prohibiting the marketing of sparkling wine marked "Flaschengärung im Champagnerverfahren" or "klassische Flaschengärung - méthode champenoise" - *i.e.*, "in-the-bottle fermentation according to the Champagne method" or "classic in-the-bottle fermentation classique - Champagne method"); *cf.* Arrêt du 30 mars 1990, 1990 REVUE SUISSE DE LA PROPRIÉTÉ INTELLECTUELLE 371 (prohibiting, under the authority of the Franco-Swiss treaty of March 14, 1974, D 75 1041 du 23 octobre 1975 J.O. 11, the sale of bottles marked "Champagne" even though the manufacturer also disclosed "the indication of the actual geographic origin on the label" ("*l'indication de la provenance réelle sur l'étiquette*")). The free trade provisions of European law may pose an independent restraint on the AOC and AOP laws of individual member-states. *Cf.* Case 47/90, Établissements Delhaize frères et Compagnie Le Lion SA v. Promalvin SA, ___ E.C.R. ___ (June 9, 1992) (holding that a Spanish AOC regulation that limited the exportable quantities of a protected wine constituted a quantitative export restriction in violation of the TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY art. 34).

[45]Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891, revised at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958, 828 U.N.T.S. 163 (1977).

[46]*Id.* art. 1(1), 828 U.N.T.S. at 165, 167 "*[t]out produit portant une indication fausse ou fallacieuse par laquelle un des pays auxquels s'applique [l']arrangement, ou un lieu situé dans l'un d'entre eux, serait directement ou directement indiqué comme pays ou comme lieu d'origine, sera saisi à l'importation*").

[47]Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and amended on October 2, 1979.

[48]*See* Romain Prot, *supra* note, at ___ [manuscript at footnotes 13-15].

[49]Madrid Agreement, art. 4, 828 U.N.T.S. at 169, 171 ("*Les tribunaux de chaque pays auront à décider quelles sont les appellations qui, à raison de leur caractère générique, échappent aux dispositions du présent arrangement, les appellations régionales de provenance des produits vinicoles n'étant cependant pas comprises dans la réserve spécifiée par cet article*").

[50]*See* [decision of Nov. 26, 1974, Ronéo INAO no. 95-105].

[51]*See* Romain Prot, *supra* note, at ___ [manuscript at footnotes 13-15].

[52]Romain Prot, *supra* note, at ___ [manuscript at 2] ("*la saveur, l'excellence et l'authenticité des terroirs*").

[53]*Id.* ("*avant tout synonyme de sécurité, de régularité correspond plus à une démarche de marque que d'indication géographique*").

II. APPELLATIONS OF ORIGIN UNDER AMERICAN LAW

Whereas France gives its *Institut National des Appellations d'Origine* (INAO) regulatory authority over a wide range of food and beverage products,[54] the United States confines appellations of origin to wine. Viticultural regulation is almost exclusively a matter of federal law. The United States' 14-year experiment with Prohibition[55] inflicted serious damage on wine- and beer-making traditions that were already much younger and weaker than their European counterparts.[56] Individual states remain free to regulate commerce in alcoholic beverages;[57] some localities ban their manufacture, sale, or both.

In 1935, Congress passed the Federal Alcohol Administration Act (FAAA)[58] in order to fill the legal vacuum created by Prohibition and its repeal.[59] The FAAA bans wine labels and advertisements not

> in conformity with such regulations, to be prescribed by the Secretary of the Treasury . . . as will prohibit deception of the consumer . . . and as will prohibit, irrespective of falsity, such statements . . . as the Secretary of the Treasury finds likely to mislead the consumer; .. . as will provide the consumer with adequate information as to the identity and quality of the products . . . [and] as will prohibit statements on the label that are . . . false [or] misleading.[60]

Within the Department of the Treasury, the Bureau of Alcohol, Tobacco, and Firearms (BATF) regulates viticultural labeling and advertising,[61] activities historically thought to be fraught with deceptive and misleading practices.[62] The BATF's oenocological standards govern, among other things, standards of identity,[63] the effects of blending and cellar treatment,[64] designations of grape types,[65] standards for the "estate bottled" designation,[66] and vintage.[67]

The BATF also regulates what it calls "appellations of origin."[68] Although the American analogue of the French AOC does not specifically protect both geographic and human factors, it does take both elements into account. The BATF rules distinguish between designations that refer to political subdivisions (such as a country, a state, a county, or the political equivalent in non-American legal systems) and designations that refer to "viticultural area[s]."[69] "Political" appellations of origin impose a relatively weak limit on the content; at least 75 percent of the wine must be "derived from fruit or agricultural products grown" in the indicated area.[70] There is no legal obligation to provide any evidence regarding the viticultural characteristics of the chosen political entity. A bottle containing 75 percent wine derived from fruit grown in Georgia may call itself "Georgia wine," even though "[t]he climate is wrong, there's no history" of winemaking, and the state consumes a miniscule 4.73 liters of wine per capita each year.[71] An appellation of origin referring to two or three counties in one state means that "all of the fruit or other agricultural products were grown in the counties indicated" and that "the percentage of the wine derived from fruit or other agricultural products grown in each county is shown on the label with a tolerance of plus or minus two percent."[72] Multistate appellations of origin are likewise available for wine derived from products grown in two or three contiguous states.[73]

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[54] *See* CODE CONSOM. art. L. 115-19 (dividing the INAO into three committees: one for "*les vins, eaux-de-vie, cidres, poirés, apéritifs à base de cidres, de poirés ou de vins*"; another for "*des produits laitiers*"; and a third for other products).

[55] *See* U.S. CONST. amends. XVIII, XIX (imposing a nationwide prohibition of all "intoxicating liquors" in 1919 and then repealing it in 1933).

[56] *But see* ALEXIS LICHINE, NEW ENCYCLOPEDIA OF WINES AND SPIRITS 482-84 (1981) (tracing the history of American viticulture to roots predating the California gold rush of 1849); Josel, *supra* note, at 474-75.

[57] *See* U.S. CONST. amend. XXI, § 2. This power does not, however, authorize states to impose discriminatory taxes on out-of-state beverages. Bacchus Imports, Ltd. v. Dias, 468 U.S. 263 (1984); *accord* James B. Beam Distilling Co. v. Georgia, 501 U.S. 529 (1991); McKesson Corp. v. Division of Alcoholic Bev erages & Tobacco, 496 U.S. 18 (1990).

[58] 27 U.S.C. §§ 201 *et seq.*

[59] *See generally* National Distrib. Co. v. United States Treasury Dep't, 626 F.2d 997, 1004-06 (D.C. Cir. 1980).

[60] 27 U.S.C. § 205(e) (labeling), 205(f) (advertising).

[61] *See id.* § 201.

[62] *See* Taylor Wine Co. v. Department of Treasury, 509 F. Supp. 792, 794 (D.D.C. 1981).

[63] *See* 27 C.F.R. § 4.21.

[64] *See id.* § 4.22.

[65] *See id.* § 4.23.

[66] *See id.* § 4.26.

[67] *See id.* § 4.27.

[68] *See id.* § 4.25a.

[69] *See* Wawszkiewicz v. Department of the Treasury, 480 F. Supp. 739, 742 n.7 (D.D.C. 1979), *aff'd in part and rev'd in part*, 670 F.2d 296 (D.C. Cir. 1981).

[70] *See* 27 C.F.R. § 4.25a(b)(1)(i) (American wine); *id.* § 4.25a(b)(2)(i) (imported wine).

[71] Anita Sharpe, *Georgia Wine? Why the Very Thought Comes as a Surprise*, WALL ST. J. EUROPE, July 4, 1995, at 1, 5.

[72] *Id.* § 4.25a(c).

[73] *See id.* § 4.25a(d).

The BATF sets more stringent requirements for appellations of origin referring to a specific "viticultural area" rather than a more general political designation. Any wine so designated must derive at least 85 percent of its volume from grapes grown within the viticultural area.[74] For imported wine, the BATF accepts the definition of the viticultural area under foreign law.[75] American wine with an appellation of origin based on a viticultural area must come from a "delimited grape growing region distinguishible by geographical features."[76] The BATF process for identifying an "Approved American Viticultural Area" requires, *inter alia*, (1) evidence that the chosen name is locally or nationally known as the name of the specificed area, (2) historical or current evidence of the area's boundaries, and (3) evidence of geographic features (such as climate, soil, elevation, and topography) that distinguish the area's viticultural characteristics from those of surrounding areas, boundaries and demonstrating a local reputation for winemaking.[77]

According to BATF rules, all wines using an appellation of origin must follow any applicable local, state, or foreign laws governing the composition, manufacture, and designation of such wines.[78] Except for wines using a multicounty appellation of origin, American wines must be fully finished within the geographic area designated.[79] Whether imported wines are similarly restricted depends on foreign law. Though much weaker than their French counterparts, the BATF rules do address soil type, mineral content, and quality control.[80] Under American law, as much as a quarter of the wine in a geographically designated bottle may be derived from grapes grown in an altogether different area.[81] The 75 percent rule has been justified as a "reasoned and amply elucidated" application of a statutory standard that requires the BATF to regulate "`statements . . . *likely* to mislead the consumer.'"[82] Furthermore, the only real link between "geographic" and "human" factors is the very weak requirement that wine be finished in the same area identified by its appellation of origin.[83] Federal law relegates the regulation of "human" factors such as quality control and supply management to state, local, or foreign law. If there is no such law, all that federal law requires is (1) that a wine derive either 75 percent or 85 percent of its volume from grapes grown in the designated area and (2) that the wine be finished in the designated area.[84]

Weak as these rules may appear to French eyes, they were even more lenient at one time. BATF rules in effect before December 31, 1982, accorded an appellation of origin to any wine (1) deriving as little as 75 percent of its volume from the geographic region indicated by its name, (2) fully manufactured and finished "within the State in which such . . . region is located," and (3) conforming to any state or local rules governing the composition, manufacture, and designation of such wine.[85] Wine did not necessarily have to be finished within the wine-growing region itself, as long as this process took place within the same state. Cellar treatment or blending outside the region of origin did not deprive such wines of their entitlement to an appellation of origin.[86] The 75 percent rule represented a substantial increase from the 51 percent limitation under the original rules that the BATF adopted soon after the passage of the FAAA in 1935.[87] Those rules were not formally approved (much less challenged or changed) until the late 1970s.[88]

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[74] *See id.* § 4.25a(e)(3)(ii).

[75] *See id.* § 4.25a(e)(1)(ii), 4.25a(e)(3)(i).

[76] *Id.* § 4.25a(e)(1)(i).

[77] *See id.* § 4.25a(e)(2); *see also id.* §§ 9.23, 71.41(c).

[78] *See id.* § 4.25a(b)(1)(iii) (American wine); *id.* § 4.25a(b)(2)(ii).

[79] *See id.* § 4.25a(b)(1)(ii) (nationwide, statewide, or countywide appellations); *id.* § 4.25a(d)(2) (multistate appellations); *id.* § 4.25a(e)(3)(iv) (multistate appellations). A similar requirement is inexplicably missing from the provision describing the requirements for a multicounty appellation of origin. *See id.* § 4.25a(c).

[80] *Contra* Josel, *supra* note, at 474 (asserting that the BATF rules do not address these matters).

[81] *See* 27 C.F.R. § 4.25a(b) (requiring "[a]t least 75 percent" of an imported wine or an American wine claiming "an appellation of origin other than a multicounty or multistate appellation, or a vitucultural area" to be "derived from fruit or agricultural products grown in the appellation area indicated"); *cf. id.* § 4.25a(e)(3)(ii) (requiring a wine "labeled with a viticultural area appellation" to derive "[n]ot less than 85 percent of" its wine content "from grapes grown within the boundaries of the viticultural area"). For a list of American viticultural areas approved by the BATF, see *id.* part 9.

[82] *See* Wawszkiewicz v. Department of the Treasury, 670 F.2d 296, 302-03 (D.C. Cir. 1981) (quoting 27 U.S.C. § 205(e)(1)) (emphasis added).

[83] *See id.* § 4.25a(b)(1)(ii) (nationwide, statewide, or countywide appellations); *id.* § 4.25a(d)(2) (multistate appellations); *id.* § 4.25a(e)(3)(iv) (multistate appellations).

[84] As to wine content, see *id.* § 4.25a(b), (e)(3)(ii). As to the finishing requirement, see *id.* § 4.25a(b)(1)(ii), (d)(2), (e)(3)(iv).

[85] 27 C.F.R. § 4.25(a); *see also id.* § 4.25(c) (depriving this rule of legal effect after December 31, 1982).

[86] *See id.* § 4.25(b).

[87] *See* Wawszkiewicz v. Department of the Treasury, 480 F. Supp. 739, 741-42 (D.D.C. 1979), *aff'd in part and rev'd in part*, 670 F.2d 296 (D.C. Cir. 1981).

[88] *See id.* at 742 & n.6; Notice of Informal Rulemaking, 42 Fed. Reg. 30,517, 30,518 (June 15, 1977) (proposing to raise the old 51 percent limit to 75 percent).

The strongest form of legal protection for geographical indications in the United States may be found in state law. A few state statutes restrict the use of specific geographical indications associated with local specialty products. The state of Georgia bans the use of the word "Vidalia" to describe onions other than those grown in a specified area near the town of Vidalia,[89] and the state of Hawaii imposes labeling and minimum content requirements on Kona coffee - that is, coffee grown in the North and South Kona districts on the island of Hawaii.[90] The Kona coffee statute, however, permits a beverage labeled "Kona coffee blend" to contain as little as 10 percent Kona coffee.[91] The Minnesota wild rice statute is unusual in that it regulates not only geographical indications but also production methods and the nature of the human labor used.[92] Under this statute, wild rice that is produced out of state or cultivated (rather than harvested from a natural lake or river) must be labeled accordingly.[93] The statute also prohibits any label suggesting Indian participation in the harvest or processing of this traditional Indian food unless "the package contains only 100 percent natural lake or river wild rice harvested by Indians."[94] These state statutes have limited territorial effect, however, and do nothing to protect importers of foreign food or beverage products.

Finally, Minnesota's effort to regulate "human factors" by restricting the commercial use of Indian likenesses in wild rice marketing may unconstitutionally restrict the right to engage in commercial speech. As "part of a firm's marketing plan to provide certain information to the consumer,"[95] a product label is constitutionally protected commercial speech.[96] In 1992, the BATF approved a malt liquor label using the name and likeness of Oglala Sioux chief Crazy Horse. The label was widely considered to be offensive because alcohol consumption is a serious health problem among American Indians and because Crazy Horse himself had urged his tribe, the Oglala Sioux, not to drink alcohol.[97] Congress responded by ordering the BATF to disapprove any label "which authorizes the use of the name Crazy Horse on any distilled spirit, wine, or malt beverage product."[98] A federal court invalidated this statute, holding that the government had not adequately proved "that the use of a revered Native American name may cause any discernible increase in alcohol consumption among Native Americans."[99] This holding strongly implies that the use of an American Indian name or likeness is not inherently misleading.[100] Accordingly, it appears that product marketers in the United States are presumptively free to exploit names or images associated with a geographic or ethnically distinct group, and the government must prove that any restriction on such commercial speech directly advances some substantial interest.[101]

III. THE ENFOREABILITY OF FOREIGN APPELLATIONS OF ORIGIN IN THE UNITED STATES

A. Geographic Significance and Generic Status

All wines qualifying for an AOC under French law may legally use this appellation of origin in the United States. Whether the right to use the AOC will be *exclusive* within the United States is another matter altogether. The ability to exclude others from using a French AOC in the United States is a question of federal trademark law and state unfair competition law. Although an American commentator has recently argued that these laws should protect French AOCs within the United States,[102] these legal strategies hinge on a crucial factual issue: the extent to which each AOC conveys significant information on a product's geographic origins or processing. The decisive question is whether the typical American consumer associates a French AOC with a specific French locale and whether that association materially affects the consumer's purchasing decision.

1. BATF rules concerning names of geographic significance.

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[89] *See* GA. CODE ANN. §§ 2-14-130 to -135.

[90] *See* HAW. STAT. § 486-120.6. The state of Hawaii comprises several islands, including Oahu, Maui, and the "big island" named Hawaii. *See generally* Elizabeth Royte, *On the Brink: Hawaii's Vanishing Species*, 188:3 NAT'L GEOG. 2, 14-15 (Sept. 1995) (accompanied by a double map supplement describing the geography and natural history of the Hawaiian islands).

[91] *See id.* § 486-120.6(a)(1)(B).

[92] *See* MINN. STAT. ANN. § 30.49.

[93] *See id.* § 30.49 subds. 1-2a, 5a.

[94] *See id.* § 30.49 subd. 5.

[95] Adolph Coors Co. v. Brady, 944 F.2d 1543, 1546 (10th Cir. 1991).

[96] *See generally* City of Cincinnati v. Discovery Network, Inc., 113 S. Ct. 1505 (1993); Central Hudson Gas & Elec. Co. v. Public Serv. Comm'n, 447 U.S. 557 (1980); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976).

[97] *See* Hornell Brewing Co. Inc. v. Brady, 819 F. Supp. 1227, 1229-31 (E.D.N.Y. 1993); *see also Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture: Hearing Before the House Select Committee on Children, Youth, and Families*, 102d Cong., 2d Sess. 7-8 (1992) (reporting high rates of alcohol consumption and alcohol-related health problems among native Americans, including an alcoholism rate six times that of the general population and an incidence of fetal alcohol syndrome twenty times that of the general population).

[98] Treasury, Postal Service, and General Government Appropriations Act of 1992, Pub. L. No. 102-393, § 633, 106 Stat. 1729; *cf.* 15 U.S.C. § 1052(a) (prohibiting the registration of a trademark that "[c]onsists of or comprises . . . matter which may disparage or falsely suggest a connection with persons, living, or dead, . . . or bring them into contempt, or disrepute").

[99] *See Hornell Brewing Co.*, 819 F. Supp. at 1237.

[100] *See id.* at 1233-34. Commercial speech that is misleading or that concerns unlawful activity may be freely regulated by the states and the federal government. *See Central Hudson*, 447 U.S. at 563-64; *cf.* Posadas de Puetro Rico Assocs. v. Tourism Co. of Puerto Rico, 478 U.S. 328, 341 (1986) (recognizing a substantial governmental interest in reducing demand for casino gambling).

[101] *Cf.* 15 U.S.C. § 1052(a) (prohibiting the registration of a trademark that "[c]onsists of or comprises . . . matter which may disparage or falsely suggest a connection with persons, living, or dead, . . . or bring them into contempt, or disrepute").

[102] *See* Josel, *supra* note.

In the viticultural context, the BATF's classification of geographical indications will probably prove crucial. Under BATF rules, a name of geographic significance may be generic, semi-generic, or nongeneric.[103] The BATF describes vermouth and sake as examples of generic "designations for a class or type of wine" that have lost their "original[] . . . geographic significance."[104]

Semi-generic names retain their "geographic significance" but also serve as "the designation of a class or type of wine."[105] They "may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine."[106] Such wine must also "conform[] to the standard of identity, if any, for such wine" under BATF regulations.[107] Alternatively, "if there be no such standard," the wine must conform "to the trade understanding of such class or type."[108] The BATF lists the following names as examples of semi-generic designations: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine wine, Sauterne, Haut Sauterne, Sherry, and Tokay.[109]

Finally, the BATF recognizes nongeneric names of geographic significance. Such a name, however, "shall not be deemed to be the distinctive designation of a wine unless the Director [of the BATF] finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines."[110] Nondistinctive, nongeneric names are the equivalent under American law of a geographical indication; they "may be used only to designate wines of the origin indicated by such name[s]."[111] This category includes "American, California, Lake Erie, Napa Valey, New York State, French, Spanish."[112] By contrast, names such as "Bordeaux Blanc" and "Château Yquem" are "distinctive designations of specific grape wines."[113]

French AOC wines thus fall into one of two categories under BATF rules. Many French AOCs are regarded as distinctive, nongeneric geographic designations. It is hard to imagine how the BATF rules on appellations of origin and geographic designations can permit any winemaker who has not complied with French law to use the French AOC within the American market. On the other hand, some of the most celebrated French AOCs - among them burgundy, chablis, and champagne - fall into the BATF's semi-generic category. Nothing in the BATF rules stops an American winemaker from selling "California champagne" that uses a mixture of grapes - 75 percent from California, 15 percent from New York, and 10 percent from Virginia - and follows the *méthode champenoise* for producing a sparkling wine. Adherence to the *méthode champenoise* is guaranteed; the geographic origin of the grapes and the idea that champagne should be bottled in Champagne are not.

2. Generic trademarks and trade names.

The ultimate question of exclusive rights to the trade name "chablis" or "champagne" depends on federal and state trademark law. In turn, both bodies of law depend on a critical fact: whether a trade name has become generic in the United States. If a French AOC has become generic, neither a French vintner nor the INAO[114] can block an American competitor from registering a trademark that incorporates that appellation of origin.

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[103] *See* 27 C.F.R. § 4.24.

[104] *Id.* § 4.24(a)(2).

[105] *Id.* § 4.24(b)(1).

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] *Id.* § 4.24(b)(2).

[110] *Id.* § 4.24(c)(1).

[111] *Id.* § 4.24(c)(1).

[112] *Id.* § 4.24(c)(2).

[113] *Id.* § 4.24(c)(3).

[114] There is no real question that the INAO may represent the interests of French vintners and cheesemakers in the United States. *See* Institut National des Appellations d'Origine v. Vintners Int'l Co., 958 F.2d 1574, 1579-80 (Fed. Cir. 1992); *cf.* Institut National des Appellations d'Origine v. Andres Wines, [1987] 60 O.R. (2d) 316; [1990] 30 C.P.R.3d 29 (granting the INAO standing to sue in English courts).

In *Institut National des Appellations d'Origine v. Vintners International Co.*,[115] the U.S. Patent and Trademark Office allowed an American company to register a trademark for "Chablis with a Twist," further labeled as "California White Wine with Natural Citrus."[116] Vintners' label fully complied with the relevant BATF regulations.[117] INAO opposed the registration, arguing that it violated two provisions of the federal Lanham Act of 1946.[118] First, section 2(e)(2) of the Lanham Act prohibits the registration of a mark "which, . . . when used on or in connection with the goods of the applicant is primarily geographically . . . deceptively misdescriptive of them."[119] A mark is primarily geographically deceptively misdescriptive under section 2(e)(2) if two conditions are fulfilled: (1) the primary significance of the mark as used is a generally known geographic place, and (2) the public makes a critical "goods/place association" in that it "believe[s] that the goods . . . originate in that place."[120] Federal courts stress the word "primarily" to ensure that the statute does not obstruct registration of marks whose geographic meaning is "minor, obscure, remote, or not likely to be connected with the goods."[121] The INAO also argued that registration of Vintners' "deceptive" mark would violate section 2(a) of the Lanham Act. A violation of section 2(a) may be established by showing (1) that a mark is primarily geographically deceptively misdescriptive under section 2(e)(2) and (2) that the geographic misrepresentation is material to the decision to purchase the goods so marked.[122]

The Federal Circuit held that neither of these provisions barred the registration of the "Chablis with a Twist" mark. The Patent and Trademark Office and the court alike ruled that the word "chablis" in the United States is the common, descriptive name for a type of wine.[123] The court held that INAO had "failed to establish whether [American] consumers of wine and wine products[] would perceive . . . the term `Chablis' to indicate that the product came from the Chablis region of France."[124] Nor did INAO present any evidence that the geographic association, even if present, would be a factor in consumer decisions to buy Vintner's "Chablis with a Twist" product. Drawing support from the BATF's classification of "Chablis" as a semi-generic geographic designation for wine, the Federal Circuit concluded that the word "Chablis" was "generic and, therefore, in the public domain."[125]

According to the *Vintners* court, "the term `Chablis' [is not] used in the United States as anything other than than a generic name for a type of wine with certain general characteristics."[126] In the absence of consumer surveys or other evidence to the contrary, the same is almost surely true of other French AOCs that the BATF has classified as semi-generic. For instance, *burgundy*, the English translation of the French AOC "Bourgogne," is so far removed from its original geographic meaning that it denotes a deep shade of red.[127] Similar fates have befallen *champagne* and *claret* (a Spanish wine).[128] *Chablis* and *sauterne* have joined *burgundy* and *champagne* as words designating not only a specific wine from France, but also any other wine sharing the general characteristics of French wines produced under a specific AOC.[129] In their generic or semigeneric senses, these words are frequently coupled with a term designating their actual origin; thus, "California claret" or "New Zealand claret" are common and perfectly acceptable locutions in the American language.[130] If a competing mark "as a whole" is not "perceived by consumers in [the United States] to be the name of a place where the . . . product originates or is produced," there can be no protection of a foreign appellation of origin under American law.[131]

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[115] 958 F.2d 1574 (Fed. Cir. 1992).

[116] *Id.* at 1574.

[117] *Id.* at 1574 & n.3.

[118] 15 U.S.C. § 1051-1127.

[119] *Id.* § 1152(e)(2).

[120] *In re* Societé Générale des Eaux Minerales de Vittel, S.A., 824 F.2d 957, 959 (Fed. Cir. 1987); *see also In re* Loew's Theatres, Inc., 769 F.2d 764, 767 (Fed. Cir. 1985); *In re* Nantucket, Inc., 677 F.2d 95, 98-99 (C.C.P.A. 1982).

[121] *Nantucket*, 677 F.2d at 99.

[122] *See In re* Budge Mfg. Co., 857 F.2d 773, 775 (Fed. Cir. 1988); *In re* House of Windsor, Inc., 221 U.S.P.Q. 53, 56-57 (Trademark Trial & Appeal Bd. 1983).

[123] *See* 958 F.2d at 1578, 1581.

[124] *Id.* at 1581.

[125] *Id.*

[126] *Id.* at 1582.

[127] *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 299 (4th ed. 1976) (defining *burgundy* as "a variable color averaging a dark grayish reddish brown that is redder and slightly stronger than carbuncle and redder and duller than average brown mahogany" or "a blackish purple that is redder and less strong than average eggplant").

[128] *See id.* at 372 (defining *champagne* as "a pale orange yellow to light grayish yellowish brown"); *id.* at 415 (defining *claret* as "a moderate red that is slightler lighter than cerise, lighter than Harvard crimson . . . , very slightly bluer and paler than average strawberry . . . , bluer and lighter than Turkey red, and bluer and stronger than pepper red").

[129] *See id.* at 368 (*chablis*), 2019 (*sauterne*).

[130] *Id.* at 415.

[131] *Vintners*, 958 F.2d at 1581.

Ironically, some of the most celebrated AOCs are the likeliest designations to be found generic. This should not be especially surprising; the more successful a trade name, the likelier it is to attract imitators and to overwhelm the original producer's ability to fend off infringers. By virtue of their own success, the French wines and cheeses most familiar to the American public - Burgundy, Chablis, Champagne, Sauterne, Brie, Camembert, Roquefort - are the likeliest to be declared generic designations by the courts of the United States. These products may already have gone the way of the hamburger, frankfurter, and wiener - foods of German or Austrian origin so thoroughly imitated in the United States that their names have been incorporated into the American language and the foods themselves are now considered stereotypically "American" cuisine.[132]

The surest way to lose the battle over AOCs in the United States is to rely on lawyers rather than marketing experts. In the skirmish over "Chablis with a Twist," the INAO gravely erred by "rel[ying] heavily, if not exclusively," on an argument that French law and BATF regulations establish the crucial goods-place relationship "as a matter of law."[133] Even a sympathetic American commentator conceded that INAO "should not simply assume that which needs to be proven"[134] - the link in the consumer's mind between a geographically descriptive name and the full panoply of natural and human factors associated with that name. In France, AOCs do so by force of law and longstanding social custom. In the United States, neither culture nor positive law gives any meaning to many AOCs, and France should not expect to win legal protection for geographical indications that mean nothing to the American consumer. The fight for AOCs is an exclusively legal struggle: in this fight over the way in which Americans eat, drink, and talk, the decisive factors will be commercial, cultural, and linguistic - and not legal. Though perhaps harsh, this conclusion is consistent not only with the international legal principle of territoriality[135] but also the commercial realities of the American food and beverage market.

B. American Obligations Under International Trade Agreements

In lamenting the United States' failure to protect French AOCs, an American commentator has concluded: "What is needed is not a uniform wine labeling law that imposes one set of rules on all countries, but rather an agreement not to allow one nation's system to dilute or undercut the integrity of another's."[136] Two such agreements already exist. The coming years will test whether international law can require American courts to modify their treatment of foreign AOCs.

By a bilateral exchange of letters, the United States has agreed to honor the French AOCs Cognac and Armagnac in exchange for equivalent French treatment of Bourbon and Bourbon Whisky.[137] By the terms of these letters, an American company may not call its product "California cognac" or "cognac-style liqueur, made in the USA." Disclosure of the product's actual origin does not cure the infringement of the French AOC. Besides their obviously limited scope, these letters might be construed as evidence that other AOCs should *not* receive similar legal protection in the United States. "*Expressio unius est exclusio alterius*":[138] If France needs a special accord to secure this sort of protection for some of its AOCs in the United States, other French AOCs by implication are not protected against competing products that exploit the terms "type" or "style" or whose labels disclose their true origin.

A more recent and vastly more important source of international legal obligations emerged from the recently concluded Uruguay Round of world trade talks. The Uruguay Round yielded not only a new General Agreement on Tariffs and Trade (GATT), but also a specific Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS).[139] TRIPS now requires its member states to offer special protection to geographical indications recognized under other members' laws.[140] The wide-ranging TRIPS accord represents the only realistic means by which to enforce foreign geographical indications in the United States, a country that has virtually no commercially valuable appellations of origin and therefore nothing to gain from joining specific international agreements such as the Strésa Convention[141] or the Arrangement of Lisbon.[142] As a political matter, it will be easier to convince the United States that affording greater protection to foreign geographical indications under TRIPS will be offset by other terms more favorable to American commercial interests, such as the requirement that all members "provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof."[143] To the extent that France hopes to win fuller recognition of its AOC system in "powerful countries such as the United States,"[144] those hopes rest on TRIPS.

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[132] In fact, the words *hamburger* and *frankfurter* are frequently shortened to *burger* and *frank* and thereby even further removed from their original geographic significance. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, *supra* note **Erreur! Signet non défini.**, at 298 (*burger*), 903 (*frank*, in its eleventh sense).

[133] *Vintners*, 958 F.2d at 1580.

[134] Josel, *supra* note **Erreur! Signet non défini.**, at 486.

[135] *See generally*, *e.g.*, Friedrich-Karl Beier, *La territorialité du droit des marques et les échanges internationaux*, 98 JOURNAL DU DROIT INTERNATIONAL 5, 16-17 (1971); A. David Demiray, *Intellectual Property and the External Power of the European Community: The New Extension*, 16 MICH. J. INT'L L. 187, 209-11 (1994).

[136] Josel, *supra* note **Erreur! Signet non défini.**, at 495.

[137] *See* 12 décembre 1970, 18 janvier 1971, D 71-448 du 11 juin 1971 (J.O. 16 juin).

[138] *E.g.*, Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 113 S. Ct. 1160, 1163 (1993).

[139] *See* Annex 1C to the General Agreement on Tariffs and Trade, Uruguay Round, World Trade Organization, done at Marrakesh, April 15, 1994 [hereinafter TRIPS]; [GATT Implementing Act], Pub. L. No. 103-465, **[AMERICAN CITATION]**.

[140] *See* TRIPS, *supra* note **Erreur! Signet non défini.**, arts. 22-24.

[141] Convention de Strésa, D n° 52-663 du 6 juin 1952 (J.O. 11 et 20 juin) (Aus.-Belg.-Den.-Fr.-It.-Nor.-Neth.-Swed.-Switz.) (protecting appellations of origin and other geographical indications for cheese).

[142] Arrangement de Lisbonne concernant la protection des appellations d'origine et leur enregistrement international, ratifié par la loi n° 60-1352 du

TRIPS provides generally that its "Members shall provide the legal means for interested parties" to protect geographical indications.[145] It defines a geographical indication as those "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 a good is essentially attributable to its geographical origin."[146] Notably, TRIPS' definition of a geographical indication omits the "human factors" so vital to the French and European definition of an AOC; the connection between natural and human factors has disappeared."[147] By simplifying and enlarging the concept of an AOC into a catch-all "geographical indication," TRIPS considerably weakens the jurisprudential underpinnings of the AOC system.[148] TRIPS protects the use of a commercially meaningful geographical indication, but not the quality-control factors and exclusive production rights that have enabled the holders of French AOCs to segment and thereby to dominate that nation's wine and cheese markets.[149]

Nevertheless, TRIPS does seem to provide relatively far-reaching remedies against infringement of geographical indications. The accord bans "the use of any means in the desingation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good" [150] It also requires a Member to "refuse or invalidate the registration of a trademark" that violates this legal standard.[151] TRIPS extends "additional protection for geogrpahical indications for wines and spirits."[152] These indications are to be protected "even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as `kind,' `type,' `style,' `imitation' or the like."[153] Already, American commentators are reading this provision as the end for products marked "`Champagne-style' sparkling wine or `California Port.'"[154]

This conclusion may be somewhat premature. The GATT giveth, and the GATT taketh away. Three key exceptions weaken TRIPS' protection of geographical indications.[155] First, competing uses of geographical indications that have lasted at least ten years before 15 April 1994 are exempted from the accord.[156] Second, trademarks secured in good faith before the accord takes effect in a member state or "before the geographical indication is protected in its country of origin" need not be invalidated.[157] Presumably the "Chablis with a Twist" trademark at issue in the *Vintners* litigation would be permitted to stand. Finally and most significantly, TRIPS provides that "[n]othing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member."[158] Likewise, there is no protection for any geographical indication that is "identical with the customary name of a grape variety existing in the territory of [a] Member."[159] Unlike the Madrid Agreement, nothing in TRIPS indicates that this determination, effectively a legal ruling that a geographical indication has become generic in a particular jurisdiction, should be performed outside a member state's courts or by reference to any law other than that of the member state.

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17 décembre 1960 (J.O. 18 décembre), entré en vigueur le 25 septembre 1966, publié D. n? 68-309 du 26 mars 1968 (J.O. 6 avril).

[143] TRIPS, *supra* note **Erreur! Signet non défini.**, art. 27.3(a).

[144] Romain Prot, *supra* note **Erreur! Signet non défini.**, at ___ [manuscript at 2] ("*les pays puissants comme les USA*").

[145] TRIPS, *supra* note **Erreur! Signet non défini.**, art. 22.2 ("*Membres prévoiront les moyens juridiques qui permettent aux parties intéressées*").

[146] *Id.* art. 22.1 ("*qui sert à indentifier un produit comme étant originaire du territoire d'un Membre, ou d'une région ou localité de ce territoire, dans les cas ou une qualité, réputation ou autre caractéristique déterminée du produit peut être attribuée essentiellement à cette origine géographique*").

[147] Romain Prot, *supra* note **Erreur! Signet non défini.**, at ___ [last page of manuscript] ("*la conjontion facteurs naturels-facteurs humains a disparu*").

[148] *See id.*

[149] *See* Louis Lorvellec, *GATT, agriculture et environnement*, 234 REVUE DE DROIT RURAL 284, 291-92 (June/July 1995).

[150] TRIPS, *supra* note **Erreur! Signet non défini.**, art 22.2(a) ("*l'utilisation, dans la désignation ou la présentation d'un produit, de tout moyen qui indique ou suggère que le produit enquestion est originaire d'une région géographique autre que le véritable lieu d'origine d'une manière qui induit le public en erreur quant à l'origine géographique du produit*").

[151] *Id.* art. 22.3 ("*refuser[] ou invalider[] . . . l'enregistrement d'une marque de fabrique ou de commerce*").

[152] *Id.* art. 23 ("*protection additionalle des indications géographiques pour les vins et les spiritueux*").

[153] *Id.* art. 23.1 ("*même dans les cas où la véritable origine du produit est indiquée ou dans ceux où l'indication géographique est employée en traduction ou accompagnée d'expressions telles que `genre,' `type,' `style,' `imitation' ou autres*").

[154] Ralph Oman, *Intellectual Property After the Uruguay Round*, 42 J. COPYRIGHT SOC'Y 18, 30 (1994).

[155] TRIPS' other exceptions are fairly insignificant for the purposes of this discussion. There is little likelihood that INAO would wait five years before attacking an alleged infringement of an AOC in the United States. *See* TRIPS, supra note **Erreur! Signet non défini.**, art. 24.7. Moreover, since French law prevents an AOC from falling into the public domain, the TRIPS exception for "geographical indications which are not or cease to be protected in their country of origin" is inapplicable. *Id.* ("*des indications géographiques qui ne sont pas protégées dans leur pays d'origine ou qui cessent de l'être*").

[156] *See id.* art. 24.4.

[157] *Id.* art. 24.5 ("*avant que l'indication géographique ne soit protégée dans son pays d'origine*").

[158] *Id.* art. 24.6 ("*[a]ucune disposition de la présente section n'exigera d'un Membre qu'il applique les dispositions de la présente section en ce qui concerne une indication géographique de tout autre Membre pour les produits ou services dont l'indication pertinente est identique au terme usuel employé dans le language courant comme nom commun de ces produits ou services sur le territoire de ce Membre*").

[159] *See id.* ("*identique au nom usuel d'une varieté de raisin existant sur le territoire d[un] Membre*").

This final exception is so expansive that it virtually eliminates any practical effect on American commercial practice or the operation of American law. "Champagne" and "port" are precisely the types of geographical indications that are "identical with the term customary in common language" of the United States "as the common name" of wines, cheeses, and other foods. Within the United States, the BATF, the Patent and Trademark Office, and Federal Circuit have all concluded that "Chablis" is a more or less generic name for a white wine with certain characteristics. Nothing in TRIPS requires the legal institutions of the United States to revisit or rethink this conclusion. If anything, TRIPS reinforces American law's reliance on the expectations of the ordinary consumer. In the United States as in the rest of the world, wine connoisseurs will know that Chablis comes from grapes grown in a delimited region roughly 260 kilometers southeast of Paris and that Chablis farmers oversee the fermentation of Chablis grapes into Chablis wine according to Chablis-specific oenocological guidelines. The ordinary wine-chugging philistine knows nothing of the sort. In this respect, TRIPS accomplishes nothing. The connoisseur hardly needs an international treaty to tell her what she already knows: the AOC indication on the label of a French wine guarantees a certain savor and satisfaction. The ordinary consumer, on the other hand, has no such knowledge, and American law as reinforced by TRIPS will take no steps to educate her.

C. Legal and Cultural Hostility to Appellations of Origin

The very idea of an AOC is alien to American law and American culture. The French should bear in mind that the American law of intellectual property has only recently and begrudgingly begun to accept the French notion of "*droit moral*," or moral rights. In a legal system whose constitution forbids the granting of perpetual patents and copyrights,[160] the indestructible French AOC has little chance for finding a warm reception. American intellectual property law is designed to maximize dissemination of knowledge through expansion of the public domain and minimized grants of proprietary protection. The United States has long favored a positive law theory of intellectual property over a natural law theory,[161] emphasizing the "limited" nature of "monopoly privileges" as a necessary evil[162] over the natural birthright of the inventor to prevent others from reaping where he has sown.[163]

The symbolically powerful battery of agricultural legislation enacted in 1862 shows the stark contrast between the legal approaches to agricultural knowledge in France and in the United States. These statutes, passed during the height of the country's Civil War, represent the intellectual core of American agricultural law.[164] The Homestead Act of 1862[165] typified the United States' historical willingness to use its abundance of land to attract fresh labor, without regard to the link between the land and its "human factors." How could there be any expectation that the land served as a repository of agricultural and culinary culture when the federal government had spent much of its first 75 years conquering new territories and purging them of indigenous inhabitants and rival colonizers?[166]

American law envisions a different means for propagating agricultural knowledge: the network of agricultural universities endowed by the Morrill Land-Grant College Act of 1862.[167] The expectation that these universities would pump their discoveries directly into the public domain remains so strong that American policymakers continually debate whether these universities should be able to patent their discoveries.[168] Finally, the 1862 statute establishing the United States Department of Agriculture ordered that body "to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants."[169]

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[160] *See* U.S. CONST. art. I, § 8, cl. 8 (confining congressional power over patents and copyrights to grants "for limited Times").

[161] *See*, *e.g.*, Graham v. John Deere Co., 383 U.S. 1, 5-10 (1965).

[162] *See*, *e.g.*, Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 429 (1984).

[163] *See*, *e.g.*, International News Serv. v. Associated Press, 248 U.S. 215, 239-40 (1918); Wendy J. Gordon, *On Owning Information: Intellectual Property and the Restitutionary Impulse*, 78 VA. L. REV. 149, 166-96 (1992).

[164] *See generally* Jim Chen, *The American Ideology*, 48 VAND. L. REV. 809, 831-33 (1995) (discussing the jurisprudential significance of the 1862 statutes); Jim Chen, *Of Agriculture's First Disobedience and Its Fruit*, 48 VAND. L. REV. 1261, ____ (1995) (same).

[165] Act of May 20, 1862, ch. 75, 12 Stat. 392.

[166] *See*, *e.g.*, Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 590-91 (1823) (Marshall, C.J.) (describing how cultivation rendered "the country in the immediate neighborhood of [European] agriculturists . . . unfit for" the Indians, who followed as "game fled into thicker and more unbroken forests"); LAURA INGALLS WILDER, LITTLE HOUSE ON THE PRAIRIE 237 (1953) ("When white settlers come into a country, the Indians have to move on. The government is going to move these Indians farther west . . . . White people are going to settle all this country, and we get the best land because we get there first and take our pick."); Douglas W. Allen, *Homesteading and Property Rights; Or, "How the West Was Really Won,"* 34 J.L. & ECON. 1, 9-12 (1991) (describing homesteading as a means for attracting white settlers who would then help defend the United States' property interests against hostile Indians).

[167] Act of July 2, 1862, ch. 130, 12 Stat. 503 (codified as amended at 7 U.S.C. §§ 301-308).

[168] *Compare* Chris Minion, *Publicly Funded Scientific Entrepreneurs Are Entitled to Profit from Their Discoveries*, 1991 J. AGRIC. & ENVTL. ETHICS 186 *with* Ammon Goldworth, *Publicly Funded Scientific Entrepreneurs Are Not Entitled to Profit from Their Discoveries*, 1991 J. AGRIC. & ENVTL. ETHICS 192.

[169] Act of May 15, 1862, ch. 72, § 1, 12 Stat. 387 (codified as amended at 7 U.S.C. § 2201).

These statutes express a shared attitude about the nature of agricultural knowledge. By the terms of the French philosopher Alain's famous dichotomy, the American legal vision of agriculture assumes that the "nature" inherent in the land and the "culture" embodied in the human contribution to agriculture are separate and can be freely severed. If an agricultural or culinary practice can be reduced to paper, deposited at the Patent and Trademark Office, taught in a land-grant college classroom, or spread through the Agricultural Extension Service, American law is prepared to facilitate the idea's widest dissemination, without regard to its geographical or cultural provenance. This separation of land-based and knowledge-based factors in food production undoubtedly arose during "the evolution of an agriculture based on an abundance of land and a relative scarcity of labor."[170] Certain natural factors may be bound to the land, but human factors such as labor and know-how as transportable as the seeds that have made the Americas the world's biological clearinghouse since 1492.[171] Thus in France the earth-bound AOC is given permanent legal life, whereas American courts routinely conclude that defining agriculture by reference to "land has no economic or legal validity."[172]

IV. AMERICA IS ONE TOUGH CUSTOMER

In a predominantly Protestant country whose notions of food quality embrace neither "service" nor "satisfaction, whose only native cheese is a bland corruption of English cheddar and Colby, the AOC is a hard sell, both legally and commercially. Most American consumers are blissfully ignorant of the way in which AOCs and other geographical indications express complex linkages between the territorial origins of food products and the human contribution to their refinement. Neither American law nor the United States' international legal obligations will compel any changes in this longstanding consumer attitude.

What, then, are French parties interested in protecting their AOC system to do? For the moment, perhaps INAO should spend less time litigating losing causes in American courts and more time on marketing. That, at any rate, is the clear message of the *Vintners* litigation and the TRIPS accord. The American consumer is not entirely insensitive to the foreign origins of foods; even the hint of an exotic provenance appeals to the American palette. One of the greatest American culinary creations is "soup Vichyssoise," the invention of a New York City restaurant that arbitrarily chose a French name to enhance the product's marketability. For the town of Vichy, granting one's name to a dish with utterly no connection to France may be the ultimate form of flattery. For the stakeholders of French AOCs, however, commercial imitation is a particularly costly form of flattery. The remedy lies not in legal reform, but rather in superior marketing and consumer education. As "le bon La Fontaine" has instructed generations of French children, "*Apprenez que tout flatteur / Vit aux dépens de celui qui l'écoute*."[173] For the defenders of French AOCs, *cette leçon vaut bien un fromage, sans doute*.[174]

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[170] Vernon W. Ruttan, *Agricultural Policy in an Affluent Society*, 48 J. FARM ECON. 1100, 1100 (1966).

[171] *See generally* ALFRED W. CROSBY, THE COLUMBIAN EXCHANGE: BIOLOGICAL AND CULTURAL CONSEQUENCES OF 1492 (1972).

[172] National Broiler Marketing Ass'n v. United States, 436 U.S. 816, 847 (1978) (White, J., dissenting).

[173] Jean de la Fontaine, *Le Corbeau et le renard*, FABLES.

[174] *Id.* Roughly translated, Jean de la Fontaine's maxim states:
Learn how all good flatterers
Exploit the very people they please.
WIthout doubt this lesson is worth a cheese.