



Beyond *Terroir*: The Contextual Dimension of Geographical Indications – An Initial Inquiry

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Abstract This article advances the claim that geographical indications may communicate not only information about the provenance and qualities of a good or service but also broader contextual associations linked to the national environment in which a product is made or a service is performed. To capture this dimension, the article proposes a distinction between three types of information conveyed by geographical indications: origin information, relating to the place from which a product or service originates; product information, encompassing the qualities attributable to local environmental and human factors commonly referred to as *terroir*; and context information, reflecting broader attributes of the country of origin, such as its legal and institutional framework, its infrastructure, and its education system. The article argues that context information merits legal protection in its own right. After mapping the principal legal strategies for the protection of geographical indications, it turns to the Swiss legal framework as a case study. On this basis, it identifies a number of structural features that may enable a legal framework governing geographical indications to safeguard the integrity of contextual associations.

Keywords Trademarks · Geographical indications · Designations of origin · Indications of source · Swiss law

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1 Introduction

It is a familiar habit of legal writing – certainly in the legal tradition to which I belong – to open an inquiry with a definition. In the law of geographical indications (GIs), this habit has a natural accomplice in Art. 22(1) TRIPS,¹ which defines GIs as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.” This formulation stands in a longer lineage, drawing inspiration from Art. 2(1) of the Lisbon Agreement,² under which an appellation of origin is the “geographical denomination of a country, region, or locality” serving to designate a product originating there, “the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.” For present purposes, however, I will use the term GI in a deliberately broader sense. Unless otherwise indicated, it shall include all geographical designations of origin, whether registered or unregistered, whether attached to goods or services, and regardless of whether the quality or characteristics of such good or service are regarded as directly attributable to its place of origin. This is not merely a terminological indulgence; it is intended to loosen the frame through which we usually view GIs and to bring into focus the different kinds of information that geographical references may convey.

The conventional account of GIs tends to focus on the link between product and place. A GI is understood to communicate that certain qualities of a product are attributable to its origin, that is, the human and natural factors collected under the familiar concept of *terroir*. Much of GI law is accordingly designed to protect the integrity of this link. This article proceeds from the view that this account, while indispensable, is incomplete. GIs do not speak only in the vocabulary of *terroir*. They may convey several different kinds of information. Some of that information concerns origin in a narrow sense: the product comes from here rather than there. Some of it concerns product qualities: the product tastes, smells, performs, or endures in a particular way because of the environmental and human factors associated with its place of origin. But some of it concerns something else again. In particular, geographical references may also evoke broader attributes of the country in which a product is made or a service is performed: its legal system, institutions, infrastructure, education system, research capacity, culture, and so forth. This, then, is the category with which this article is chiefly concerned, and which I will refer to as *context* information. The central claim of this article is that context information merits protection in its own right, and that certain structural features of legal frameworks governing GIs can be identified as particularly apt to preserve its integrity.

The discussion first revisits some of the conventional rationales for protecting GIs and asks what kinds of information GIs typically convey (Section 2). It then

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994.

² Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958.

maps the principal legal strategies commonly deployed for their protection (Section 3) before turning to Switzerland as a case study (Section 4). With those instruments on the table, the final part circles back to the concept of context information and offers some initial thoughts on which features of a legal framework may help preserve its integrity (Section 5).

2 Location, Location ... Nation?

2.1 Revisiting the Rationales for Protecting GIs

GIs merit legal protection because they perform important market functions. Foremost among these is their capacity to convey information that is relevant to consumers and may significantly influence purchasing decisions.³ We will revisit the nature and scope of this information in greater detail below.⁴ At this stage, it suffices to note that the common denominator of such information is that it cannot be readily ascertained through inspection of the product alone. With regard to provenance, goods therefore display the characteristics of experience or credence goods.⁵ A consumer will, for example, generally not be able to tell from smelling and tasting an apple alone where such apple was picked. In today's globalized and digitalized economy, the same often applies to services: A client obtaining consulting services, for instance, will not be able to verify upon inspection of the advice provided if such advice was given by a firm within their country of residence or from overseas. This gives rise to a structural information asymmetry⁶ between producers or service providers on the one hand, and consumers on the other. By allowing producers and service providers to communicate reliable information about the geographical origin of their goods or services, respectively, GIs help to correct this imbalance. In doing so, they reduce the search costs⁷ that consumers would otherwise incur in attempting to obtain trustworthy information about provenance.

Depending on their regulatory design and the breadth of information they communicate, GIs may also fulfil a range of further functions that are generally considered desirable from a policy perspective. In particular, GIs can contribute to territorial development⁸ by reinforcing the economic value of production rooted to a

³ Raustiala and Munzer (2007), p. 360; Calboli (2015a), pp. 767 *et seq.*; Gangjee (2025), p. 291; Pick (2025), p. 202.

⁴ See below Section 2.2.

⁵ On these categories in general Nelson (1970), p. 311; Darby and Karni (1973), p. 69; *cf.* in the context of food labelling and geographical indications Crespi and Marette (2003), pp. 84 *et seq.*; Schwemer (2012), pp. 134 *et seq.*; Huysmans et al. (2025), pp. 13 *et seq.*

⁶ Rangnekar (2004); Bramley et al. (2009), p. 109; Teuber (2011); Gangjee (2025), p. 291.

⁷ Raustiala and Munzer (2007), p. 361; Gangjee (2017), p. 14; Gangjee (2025), p. 292; critical Aldred (2008), p. 269, noting that there is no guarantee that the product in question has been made in a particular way or at a particular location.

⁸ Calboli (2015a), pp. 766 *et seq.*; Barjolle (2016), p. 440; Hughes (2017), p. 61; Cei et al. (2018), *passim*; Gangjee (2020), p. 259; Ferrero-García and Martín-Cerrato (2025), pp. 241 *et seq.*

specific place. They may likewise promote the preservation of biodiversity⁹ where the indication encourages the continued cultivation of locally adapted plant varieties or the maintenance of regional animal breeds. Moreover, by linking products to established practices and regional identities, GIs can help to sustain local or national cultural heritage,¹⁰ and to recognize and reward traditional know-how.¹¹ This is the familiar harvest of the GI narrative, which need not be rehearsed in detail here.

A further dimension of GIs, which tends to be overlooked, is their potential to confer benefits on broader regions and, in some cases, entire countries, *beyond* the localities of origin. In some cases, the reputation of a particular product or service can flow over to enhance the perceived value of a larger region or the nation as a whole. This process unfolds in stages. First, a particular industry may benefit from the distinctive qualities embodied in region-specific products. A notable example may be found in France, where wines associated with specific regions and production methods collectively support the *nation's*¹² global reputation as a preeminent wine producer. A comparable (if more perforated) example is Switzerland's reputation for cheese. That reputation has arguably been shaped in significant part by a number of prominent regional products, most notably Emmentaler and Gruyère.¹³ This is not to deny the contribution of Switzerland's many other (and mostly delicious) cheeses. The point I am making is simply that certain emblematic products can come to stand for a broader national competence. The effect is cumulative: each distinguished product contributes incrementally to the overall reputation of a region and, in some cases, a nation as a whole. In the next step, consumers may begin to recognize overarching qualities – such as precision, reliability and craftsmanship – that extend beyond the original products or services. Over time, these qualities may be inferred in other products or services originating from the same place, ultimately shaping a broader reputation for certain attributes at the supra-regional or national level.¹⁴ Once a broader national reputation has been established, a country can leverage it strategically through nation branding.¹⁵ Such branding, in turn, amplifies a country's visibility and appeal on multiple fronts: It

⁹ Bérard and Marchenay (2006), p. 109; Ferrero-García and Martín-Cerrato (2025), p. 242.

¹⁰ Calboli (2015b), p. 433.

¹¹ Addor and Grazioli (2002), pp. 894 *et seq.*; Dagne (2014), p. 137.

¹² In a similar vein Berríos and Saens (2015), p. 484; *cf.* Schatt and Weisskopf (2025), *passim*. On the role of wine in France in constituting national identity Gangjee (2008), pp. 384 *et seq.*

¹³ *Cf.* Heil (2019), Everything you Need to Know About Swiss Cheese, Plus 6 Types to Try. <https://www.foodandwine.com/how/swiss-cheese-switzerland-guide>. Accessed 4 June 2026; Eidgenössisches Departement für auswärtige Angelegenheiten (2026), Cheese, About Switzerland. <https://www.aboutswitzerland.eda.admin.ch/en/cheese>. Accessed 4 June 2026, highlighting Emmentaler as the most popular Swiss cheese around the world, and Gruyère as the most popular cheese in Switzerland.

¹⁴ The expression “*Präzise wie ein Schweizer Uhrwerk*” (precise as a Swiss clockwork) illustrates the point: precision, originally associated with Swiss watchmaking, is now routinely invoked as a standard of comparison for products and services that have nothing to do with horology.

¹⁵ On this term Gimpl (2013), pp. 109 *et seq.*

¹⁶ Mohib and Carroll (2024), pp. 368 *et seq.*

attracts tourism and investment,¹⁶ enhances the international marketability of exports, strengthens cultural influence and soft power,¹⁷ and draws skilled talent.¹⁸

To be clear – the relationship between products and services, industries, and national reputation is not a linear one; rather, it operates as a dynamic process of mutual reinforcement, or cross-fertilization.¹⁹ The qualities of a particular product or service are typically not solely attributable to regional specificities and local know-how; they also reflect broader attributes that stem from the country as a whole. These may include, for example, a robust legal framework that ensures quality and safety, political stability that encourages investment, reliable infrastructure that supports production and distribution, favorable living conditions that foster creativity and attract skilled labor, a well-developed educational system that cultivates specialized skills, and research institutions that support collaboration and knowledge sharing. In this sense, the national context provides a foundation that may complement local traditions and practices. The reputational dividend that accrues to the country as a whole is therefore typically not an entirely unearned one.

2.2 Expanding the Concept of *terroir*: The Importance of *Context* Information

The preceding discussion has invoked the familiar information-asymmetry rationale for GI protection. GIs, we are told, supply information that consumers could not easily verify for themselves. So far, however, the discussion has not examined in any detail *what* information is actually communicated. It is worth pausing, therefore, to ask what exactly GIs tell consumers when they speak “in the language of place”. GIs typically convey a range of information to consumers, which, I believe, can be meaningfully distinguished into three interrelated types.

The first type, which we shall call *origin* information for present purposes, pertains to the precise geographical location from which a certain product originates. This information may be of value to consumers in its own right. Sometimes, a consumer may expect nothing more from a product than that it comes from the place indicated, without attaching to that origin any further assumptions about methods of manufacture, smell, taste, or other qualities.²⁰ Consumers may, for example, be motivated by a desire to support local communities and to sustain regional economies. Information as to geographical origin may also resonate with broader ethical and environmental concerns, such as minimizing the carbon footprint associated with transport.

¹⁶ Mohib and Carroll (2024), pp. 368 *et seq.*

¹⁷ Vinyals-Mirabent et al. (2024), pp. 478 *et seq.*

¹⁸ Cf. Hurn (2016), pp. 80 *et seq.*

¹⁹ Along similar lines Pellin and Ryter (2005), p. 195.

²⁰ In Switzerland, a distinction is drawn between simple indications of source (*einfache Herkunftsangaben*) and qualified indications of source (*qualifizierte Herkunftsangaben*). A simple indication of source denotes no more than the geographical origin of the relevant goods or services; it neither asserts nor invites the consumer to infer particular qualities, reputation, or standards linked to that place; Pfister (2017a), Art. 47, para. 8; Aschmann and Meisser (2019), para. 132; Holzer (2017a), Art. 47, para. 11. This notion loosely corresponds to the concept of “origin” information as described here.

The second type, which I will refer to as *product* information, relates to the attributes of the product that can be directly inferred from its geographical provenance. These typically include environmental factors such as soil composition, vegetation, or climate that shape the product's characteristics, as well as human factors including artisanal skill, and time-honoured production techniques that have been cultivated and transmitted within the region.²¹ Collectively, these features constitute what is commonly referred to as *terroir*.²² The information communicated is twofold: it concerns, first, the place-derived determinants of production (that is, soil, climate, methods, know how) and, second, the consumer-facing expectations that reasonably flow from those determinants (aroma, taste, texture, durability, performance). Consider, by way of illustration, a product in which both dimensions converge with particular clarity: Cuban cigars have become difficult to source in many markets. When one nevertheless has the privilege of encountering them, the expectation is typically not merely geographical; it is sensory as well. That is, the consumer anticipates an aroma and taste understood to be inseparable from tobacco grown in Cuban soil, under Cuban climatic conditions, and shaped by Cuban cultivation practices.²³

Finally, I believe a third category of information can be distinguished, which I will call *context* information. This encompasses attributes that stem not directly from local specificities but from the national environment in which a product is produced or a service is performed. A case in point is Switzerland. Is it often said that consumers associate Swiss products and services with attributes such as reliability, quality, precision and professionalism.²⁴ Arguably, such expectations²⁵ are often inferred from broader national-level attributes, in particular, Switzerland's regulatory, institutional, and societal environment, rather than attributes associated with *terroir*. Consider, by way of illustration, a moving company marketing itself as Swiss. The qualities that such a reference is designed to evoke – e.g., punctuality and reliability – are not attributes of a particular locality or region, I would argue, nor are they the product of specific natural conditions or artisanal traditions etc.

²¹ In the terminology used here, product information is the informational counterpart to qualified indications of source, *i.e.*, indications which, in relation to specific goods or services, give rise not only to an expectation of origin but also of characteristics or quality; Holzer (2017a), Art. 47, para. 10; Pfister (2017a), Art. 47, para. 9.

²² Cf. Art. 6 para. 2 lit. e of the Swiss Ordinance on the Protection of Designations of Origin and Geographical Indications for Agricultural Products, Processed Agricultural Products, Forestry Products and Processed Forestry Products (PDO/PGI Ordinance for Agricultural Products) of 28 May 1997 (SR 910.12) defining “*terroir*” as the typical features of the product which derive from the geographically determined natural and human factors. On the concept of *terroir* Ibele (2009), p. 39; Parry (2008), pp. 366 *et seq.*; Gangjee (2008), pp. 383 *et seq.*; Jurca (2013), pp. 1457 *et seq.*; Vives-Vallés and Gangjee (2025), p. 1158.

²³ On the influence of microorganisms for the formation of key flavor qualities in Cuban tobacco leaves Wang et al. (2024), *passim*.

²⁴ Cf. Müller et al. (2013), p. 1744; Weil (2017), p. 11; Stärkle (2021), p. 2; on the image of Switzerland as perceived abroad Eidgenössisches Departement für auswärtige Angelegenheiten (2025), Die Schweiz aus Sicht des Auslands, Analyse 2025 (Bern, 2025) *passim*.

²⁵ The expectations arising from the associations linked to a specific place of origin in turn influence purchasing decisions. This phenomenon is commonly referred to as the country-of-origin effect; cf. Bilkey and Nes (1982), p. 89; Verlegh and Steenkamp (1999), p. 521.

Rather, they are arguably inferred from broader perceptions of the Swiss institutional environment: a well-functioning transport infrastructure, a culture of precision and dependability, and so forth.²⁶ The geographical reference thus operates as a proxy for institutional context rather than for *terroir*. A comparable dynamic can be observed in the field of cosmetics. A product marketed as Swiss cosmetics may trade not primarily on local ingredients or traditional formulations but on the expectation that it was developed within an environment characterized by research capacity, rigorous quality control, and stringent safety regulation.²⁷ Here, too, the geographical reference conveys information about the conditions under which the product was conceived and manufactured – conditions that are shaped by the national institutional framework rather than by the specificities of a particular place.

Admittedly, these distinctions should not be pressed too far. Origin, product, and context information are analytical categories, not watertight compartments. Their relative importance may vary depending on the subject matter of protection. A product may plausibly communicate all three types of information: where it comes from, which qualities are attributable to that place, and what broader associations attach to the region or country of origin. In the case of services, by contrast, the product-information dimension will often be less pronounced. A GI accompanying a legal, financial, or consulting service will typically tell the consumer less (or nothing) about soil and climate, and more about context. Even in relation to goods, the boundary between product and context information may not always be clear. Human factors, in particular, sit uneasily on the line between the two. A time-honoured production technique, for instance, may be part of the product itself, shaping its taste, texture, durability, or appearance; but it may also express a broader regional culture of craftsmanship, discipline, or expertise. The same practice may therefore operate both as a source of product qualities and as a carrier of contextual meaning. Nor should contextual information be assumed always to be objectively justified in every case. Some associations may rest on exaggeration, nostalgia, or reputational inertia; others may lose force as countries, industries, and institutions evolve. These caveats, however, do not mean that contextual information should be ignored in the GI discussion. The central point is that GIs do not speak only in the narrow vocabulary of provenance and *terroir*.

²⁶ See, as illustration, Commercial Court of Bern, judgment HG202533 of 26 August 2025, concerning the use of the Swiss indication by a financial services provider with its statutory seat in Switzerland but controlled by a foreign parent; the court observed that, in this market, such indications lead the relevant public to expect that the provider holds the necessary authorizations and complies with statutory requirements (consid. 10.3.9), illustrating how a “Swiss” claim seeks to borrow country-level institutional attributes.

²⁷ Cf. Swiss Cosmetic and Detergent Association, *Innovation for well-being and beauty*. <https://www.skw-cds.ch/en/cosmetics/innovation>. Accessed 4 June 2026.

Table: Categories of information communicated through GIs.

<i>Type of information</i>	<i>Examples</i>
Origin information	“Apples picked in the region”
Product information	“Sparkling wine made from Pinot Noir grapes grown in chalk-rich soils, with second fermentation in the bottle”
Context information	“Banking services, emphasizing reliability, discretion, and stability, backed by robust legal frameworks and rigorous regulatory oversight”

3 Mapping Legal Strategies for the Protection of GI

3.1 Managing Expectations: The Role of the Law

Having identified the different types of information that GIs may convey, the question arises how legal frameworks can support their reliable transmission. While legal regimes may, in certain cases, mandate disclosure of geographical origin – through labeling requirements for food products, for instance²⁸ – this discussion focuses on a more fundamental function: ensuring that the information conveyed is as “accurate”²⁹ as possible. The law, in this respect, serves a dual purpose: It protects consumers by preventing misrepresentation, thereby enabling informed choices.³⁰ Moreover, it safeguards the interests of producers and service providers by preventing free-riding, ensuring that those who adhere to the requirements for the use of a GI are not undermined by competitors who exploit its reputation without meeting the required criteria.³¹ This rationale also extends to context information. Where a GI evokes broader associations with a region’s or country’s infrastructure and institutions, misuse of the indication does more than misstate provenance or product quality; it appropriates reputational capital generated at a broader territorial level. In such cases, the interest in reliable transmission is not confined to consumers and qualifying producers or service providers. The state itself may thus have a legitimate interest in safeguarding the country’s GI(s) as part of its national reputation, that is, its “brand”.

The notion of accuracy is, admittedly, complex and becomes increasingly challenging as we move through the three types of information. For origin information, accuracy may appear straightforward in the case of raw materials: a plant product can be said to originate from a particular location, that is, the place where it is harvested.³² Similarly, a mineral can be said to originate from the place

²⁸ On the law and economics of food labelling Gruère et al. (2008), pp. 1476 *et seq.*; Schwemer (2012), p. 134.

²⁹ Cf. Calboli (2015a), p. 767.

³⁰ Cf. Gangjee (2012), p. 274.

³¹ Feng (2020), pp. 434 *et seq.*; Van Caenegem and Nakano (2020), p. 647.

³² See for example Art. 48a lit. b of the Swiss Federal Act on the Protection of Trade Marks and Indications of Source of 28 August 1992 (TmPA; SR 232.11).

where it is extracted.³³ The issue becomes more nuanced for processed products, such as foodstuffs, handicrafts, or industrial goods. If only part of the production occurs in the designated region, does the product still “originate” there?³⁴ The difficulties are perhaps most pronounced for services. When does a service originate in a particular location? Does the service provider need to be physically present at such location whilst performing their services? What if the service is provided by a legal entity? Does having a statutory seat suffice?³⁵

The second type of information – product information – raises its own challenges. Here, “accuracy” may be better conceptualized as “authenticity”, yet this does little to simplify the issue. When can a product be considered authentic? Which environmental conditions, production methods, or traditional practices are truly responsible for a product’s defining qualities? Who determines the relevant criteria? Yet another challenge lies in agreeing on causal connections between product and place that remain faithful to historical realities.³⁶

With respect to context information ensuring accuracy in the strict sense becomes effectively impossible. The law cannot *guarantee* that the overarching qualities associated with a country have fully “translated” into every product or service.

These challenges, however, do not render legal protection of GIs futile; rather, they suggest a subtle adjustment in perspective. The law need not secure absolute accuracy; its role may be better understood as protecting consumer *expectations*. With respect to origin information, this means mirroring what consumers reasonably expect regarding the place of production: they may not assume that every single manufacturing step occurred in the designated region. For product information, the focus is on aligning with consumers’ perceptions of how the product was made and the methods employed, rather than on establishing authenticity by strict fidelity to historical origins. Context information is arguably supported indirectly: by promoting the reliability of origin and product information, the law helps to maintain a connection between products and services, on the one hand, and the national legal, institutional, and societal environment, on the other, thereby allowing broader country-level qualities to be reflected. This is by no means a straightforward undertaking: the law must find ways to anchor contextually significant activities within the country, so as to ensure that the geographical reference carries a genuine connection to the institutional environment rather than a merely nominal one. For present purposes, I will leave it at that. The challenge of protecting context information through law, and the structural features that enable a legal framework to do so effectively, will be revisited in Section 5 – following an examination, in Sections 3 and 4, of the principal legal strategies for the protection of

³³ See for example Art. 48a lit. a TmPA.

³⁴ See for example Art. 48c para. 4 TmPA, pursuant to which an indication of source must correspond to the place where the activity, which gave the product its essential characteristics, took place. In all cases, an essential manufacturing step must have been carried out at this place.

³⁵ See for example Art. 49 para. 1 TmPA, pursuant to which having a registered office at the designated place of origin alone will not satisfy the requirements for the use of the respective indication of source if no place of effective administration is located in the same country.

³⁶ See Parry (2008), pp. 367 *et seq.* on the difficulty of maintaining credible links between *terroir* and product quality in light of the historically hybrid origins of regional production methods.

GIs and their practical implementation, which will furnish the necessary groundwork for my concluding inquiry.

3.2 A Typology of Conceptual Approaches

While a wide array of legal approaches to the protection of GIs exists in practice, conventional regimes generally fall into three principal categories – though the boundaries between them are admittedly often fluid, and multiple approaches may operate simultaneously within a single jurisdiction.³⁷

3.2.1 *Open Standards*

A first approach situates the protection of GIs within the framework of competition law. In this model, the misuse of a GI is treated as a form of unfair competition. Legal provisions typically prohibit the use of indications that are false or misleading as to geographical origin.³⁸ Conceptually, this approach relies on *open standards*: rather than prescribing rigid conditions for the use of a GI, it leaves significant discretion to adjudicators to determine, after the fact, whether a particular geographical reference was used lawfully.

3.2.2 *Property Rights*

A second approach, adopted in jurisdictions such as the United States and Australia, places the protection of GIs primarily within trademark law.³⁹ Under this model, GIs are registered and protected as particular types of trademarks, and disputes concerning their use are adjudicated according to trademark standards. The two trademark types commonly employed for this purpose are collective and certification marks. A collective mark identifies goods or services produced or supplied by members of a particular association, thereby signaling compliance with membership criteria defined by that association.⁴⁰ A certification mark, by contrast, indicates that the goods or services in question satisfy certain characteristics established by the certifying body.⁴¹ In both cases, geographical origin may typically⁴² form part of the relevant criteria: membership in an association may be limited to producers located in a specified region, while certification requirements may include compliance with geographical origin specifications.

³⁷ See, for example, Zheng (2017), pp. 381 *et seq.* on the protection regimes operating in China.

³⁸ See in detail Weatherall (2020), pp. 284 *et seq.*; cf. Gangjee (2014), pp. 116 *et seq.*; Zappalaglio and Bosse (2026), pp. 312 *et seq.*

³⁹ See in detail Le Goffic and Zappalaglio (2017), pp. 37 *et seq.*; Weatherall (2020), pp. 279 *et seq.*; Zito (2021), pp. 351 *et seq.*; Van Caenegem and Nakano (2020), pp. 636 *et seq.*

⁴⁰ See, for example, the definition in Art. 22 TmPA.

⁴¹ See, for example, the definition in Art. 21 para. 1 TmPA.

⁴² A notable exception is the European Union regime for certification marks. Under Art. 83(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (EUTMR), an EU certification mark may certify characteristics such as material, mode of manufacture, quality, or accuracy, but not “geographical origin”.

From a conceptual perspective, this model corresponds to what may be termed a *property strategy* – though the fit is admittedly imperfect. Although GIs in general are sometimes broadly classified as a form of intellectual property⁴³ – irrespective of the existence of a specific proprietor or whether the rights conferred resemble conventional property rights – I will use the term intellectual property in a narrower, more doctrinal sense: the respective rights must attach to a clearly defined subject matter,⁴⁴ for instance a combination of words; they must belong to an individual or a group of individuals who enjoy exclusive entitlements; they must confer *erga omnes* protection⁴⁵; and they must, within legal limits, be capable of being transferred, pledged, or licensed.⁴⁶ Collective and certification marks exhibit some of these features: they relate to a clearly defined sign recorded in the trademark register, they are held by a specific person or collective, and they confer exclusive rights enforceable against third parties. Moreover, these rights are, at least in principle, capable of disposition – ownership may be transferred, and rights of use may be granted through licensing arrangements. At the same time, collective and certification marks display certain atypical features. From the perspective of an individual user who meets the conditions for use, the rights are not exclusive. Yet the scope of permissible use is determined by the registrant, so in this sense the proprietor effectively defines the circle of exclusivity, albeit in an abstract, impersonal manner. Without the mark, any user would, in principle, be free to employ the sign. Accordingly, it may be useful to regard the mark holder as the owner of the exclusive rights and the users as mere statutory licensees. A further atypical feature arises, in some jurisdictions, with certification marks, where the registrant is prohibited from using the sign.⁴⁷ Given that the registrant is the only formally recognized holder of the mark and retains exclusive control over its disposition, it nevertheless remains conceptually sound to regard such registrant as the “proprietor” of the trademark. This arrangement can be loosely understood as a form of “naked property” (*nuda proprietas*), in which title subsists without the attendant rights of use (*usus*) and enjoyment (*fructus*).

3.2.3 Rules

The third approach is the establishment of a *sui generis* system specifically designed for the protection of GIs.⁴⁸ Such systems are characterized by a formal registration procedure tailored to GIs. Typically, an application for registration is submitted either by a representative group of producers closely associated with the product in

⁴³ Cf. Cotton (2007), p. 1309.

⁴⁴ See Smith (2012), pp. 1702 *et seq.*, noting that property law operates by defining “chunks” of the world as a prerequisite for assigning exclusion rights; cf. Penner (1997), pp. 105 *et seq.*

⁴⁵ Hohfeld (1917), p. 718; cf. Penner (1997), p. 29.

⁴⁶ See Phillips (2003), p. 604 (observing that GIs, unlike trade marks, cannot be transferred or licensed to producers outside the designated region, and questioning on that basis whether they constitute conventional property rights).

⁴⁷ See, for example, Art. 21 para. 2 TmPA. The position is not uniform across jurisdictions: in Australia, for instance, the owner of a certification trade mark may also be a user; see Trade Marks Act 1995 (Cth) § 169 (Austl.).

⁴⁸ On the structural and normative features of *sui generis* GI protection systems, see Gangjee (2020), pp. 258 *et seq.*

question – such as producers of a certain product operating within a particular region⁴⁹ – or by a competent public authority.⁵⁰ The application defines the GI in relation to a particular product originating from a specified locality and sets out the respective product specifications,⁵¹ including the production process, and the qualities or characteristics that are attributable to that locality. Once the GI is registered, it may be used by any producer, provided such producer complies with the prescribed specifications.⁵² Conceptually, *sui generis* regimes are best understood as implementing a *rule-based strategy*: they define, *ex ante*, the conditions under which a good or service may legitimately bear a GI. Although they are sometimes described as granting intellectual property rights, this characterization is difficult to sustain in the doctrinal sense outlined above. Typically, the rights associated with a GI cannot readily be transferred, pledged, or licensed. Moreover, the entity responsible for applying for registration – whether a producers' association or a public authority – does not occupy the position of a proprietor in the traditional property-law sense. Rather, its role resembles that of a gatekeeper, initiating the registration process and safeguarding the integrity of the specification.

4 Pulling Out All the Stops: The Case of Switzerland

An instructive example of how legal mechanisms operate in practice is provided by the protection of GIs in Switzerland. Swiss law in this area underwent a comprehensive reform roughly a decade ago, commonly referred to as the “Swissness” reform.⁵³ Empirical studies had found that consumers were willing to pay a premium⁵⁴ for products and services associated with Switzerland, seemingly reflecting well-established perceptions of quality, reliability, and professionalism. This reputational value had encouraged producers and service providers to make extensive use of Swiss indications, including the Swiss flag, in marketing their goods and services.⁵⁵ Over time, however, it had become evident that Swiss

⁴⁹ See, for example, Art. 5 para. 1 PDO/PGI Ordinance for Agricultural Products; Art. 4 para. 1 of the Swiss Ordinance on the Register for Appellations of Origin and Geographical Indications for Non-Agricultural Products (PDO/PGI Ordinance for Non-Agricultural Products) of 2 September 2015 (SR 232.112.2).

⁵⁰ See, for example, Law No. 20 of 2016 on Marks and Geographical Indications (Indonesia), Art. 53(3)(b) listing a provincial or regency/municipal government as an eligible applicant for GI registration; cf. Marie-Vivien (2020), pp. 335 *et seq.*

⁵¹ Gangjee (2017), p. 16.

⁵² See, for example, Art. 16 para. 6 of the Swiss Federal Act on Agriculture of 29 April 1998 (AgricA; SR 910.1); Art. 1 para. 2 PDO/PGI Ordinance for Agricultural Products; Art. 50b para. 5 TmPA.

⁵³ On the Swissness reform in general, see Schuler (2013), p. 594, *passim*; Kaiser and Noth (2017), p. 63, *passim*; Holzer (2017b), Vorbemerkungen Art. 47–51, para. 13 *et seq.*; Abegg (2018a), p. 567.

⁵⁴ Studies have found that consumers are prepared to pay a reputational premium of up to 20 percent for Swiss products and services, and for luxury goods and agricultural products, that figure may rise to as much as 50 percent; Feige et al. (2008), p. 57; cf. Swiss Federal Council Dispatch on the Amendment of the Trade Mark Protection Act and on a Federal Act on the Protection of the Swiss Coat of Arms and Other Public Signs (“Swissness” Dispatch) of 18 November 2009, BBl 2009, 8533, 8665; Weil (2017), p. 13; Abegg (2018a), p. 567.

references were being applied to products and services that, by any reasonable standard, did not originate in Switzerland.⁵⁶ The reform was therefore introduced to strengthen protection of the Swiss brand and to prevent the misuse of Swiss indications. The legislation entered into force in 2017.

Today, the protection of GIs in Switzerland is based on four pillars: open standards in competition law, *sui generis* protection frameworks, trademarks, and the statutory Swissness rules. Like the pipe organ from which this section title's idiom derives,⁵⁷ Swiss GI law achieves its full effect when these four stops sound in concert. The four principal families of organ stops – reeds, flutes, principals, and strings – lend their names to the sections that follow.

4.1 The Reeds:⁵⁸ Open Standards in Competition Law

Swiss competition law prohibits the use of incorrect or misleading information about goods and services in a general manner (Art. 3 para. 1 lit. b UCA⁵⁹). GIs constitute product-related information and may therefore themselves be capable of misleading consumers.⁶⁰ An infringement arises where the relevant indication is capable – when assessed from the perspective of the average addressee and in light of all the circumstances of the individual case – of creating an impression as to the geographical origin that does not correspond to the actual facts. The rules of unfair competition apply alongside the specific regimes governing the protection of GIs. In practice, however, reliance on the open-ended standard of competition law has diminished in significance following the introduction of the so-called “Swissness” rules,⁶¹ which provide a more detailed regulatory framework in this area and which we shall revisit below.⁶²

4.2 The Flutes:⁶³ The *Sui Generis* Protection Frameworks

For agricultural products and processed agricultural products, Switzerland has long maintained a dedicated *sui generis* register through which names may be recorded as protected designations of origin (PDOs) or protected geographical indications (PGIs).⁶⁴ This register is administered by the Federal Office for Agriculture.⁶⁵ As part of the Swissness reform, a second register was introduced for non-agricultural

⁵⁵ Swissness Dispatch (*supra* note 54), 8549; on the phenomenon of “co-branding” Weil (2017), p. 13.

⁵⁶ Abegg (2018a), p. 567.

⁵⁷ The author's erstwhile ambitions as an organist regrettably outpaced his talent. The analogy is all that remains.

⁵⁸ Reed stops produce sound by means of a vibrating metal tongue; their tone is characteristically penetrating, incisive, and – depending on the voicing – at times somewhat rough.

⁵⁹ Federal Act on Unfair Competition (UCA) of 19 December 1986 (SR 241).

⁶⁰ Müller et al. (2013), p. 1744; in detail Jung (2023), Art. 3 Abs. 1 lit. b, paras. 34 *et seq.*

⁶¹ Jung (2023), Art. 3 Abs. 1 lit. b, para. 35.

⁶² See below Section 4.3.

⁶³ Flute stops are wide-scaled pipes producing a soft, round, and comparatively pure tone – rich in fundamental, low in overtones.

products,⁶⁶ which falls under the responsibility of the Swiss Federal Institute of Intellectual Property.⁶⁷ Upon registration, the protected designations may be used exclusively for products that comply with the origin, production process, and quality requirements laid down in the relevant specifications (*cahiers des charges*).⁶⁸ Compliance with these requirements is ensured through independent certification bodies mandated by the registrants to verify adherence.⁶⁹

In addition, the Federal Office for Agriculture maintains a separate register for Swiss wine denominations, which are protected as appellations of origin under cantonal law.⁷⁰ The conditions governing the use of these designations are determined under cantonal law, subject to minimum requirements established at federal level.⁷¹

4.3 The Principals:⁷² The Statutory Swissness Rules

The Swissness reform introduced detailed *statutory* rules specifying when suppliers of goods and services may legitimately use a Swiss indication of source. These provisions apply *ex lege* across all categories of goods and – importantly, extend to services as well.

The statutory criteria distinguish between several categories of goods and services – natural products, foodstuffs, industrial products, and services – each subject to distinct requirements.⁷³ A comprehensive survey of the applicable thresholds and criteria for each category would exceed the scope of this article (and, in all likelihood, the patience of its readers); a few illustrative examples must therefore suffice. For foodstuffs, origin is generally determined by the place from which at least 80% of the raw material weight is sourced, as well as the location where the processing conferring the product's essential characteristics occurs.⁷⁴ For industrial products, origin corresponds to the place where at least 60% of the

⁶⁴ For an account of the legislative history, see Simon (2005), pp. 141, 142 *et seq.*; Keller (2019), Art. 16, paras. 1 *et seq.*

⁶⁵ See Art. 13 para. 1 PDO/PGI Ordinance for Agricultural Products.

⁶⁶ See Holzer (2017c), Art. 50a, paras. 1 *et seq.*; Abegg (2018a), p. 568.

⁶⁷ See Art. 11 para. 1 PDO/PGI Ordinance for Non-Agricultural Products.

⁶⁸ See Art. 16 para. 6 AgricA; Art. 1 para. 2 PDO/PGI Ordinance for Agricultural Products; Art. 50b para. 5 TmPA. As to the legal nature of the specification, see Bürgler (2021), pp. 138 *et seq.*

⁶⁹ On the function and mandate of the certification bodies see Keller (2019), Art. 16, paras. 50 *et seq.*; Holzer (2017c), Art. 50a, para. 31. Moreover, for PDOs and PGIs covering agricultural products, *ex officio* enforcement against improper use lies with the Federal Office for Agriculture and the cantonal food inspection agencies; cf. Art. 21 para. 1 and Art. 21c para. 1 PDO/PGI Ordinance for Agricultural Products.

⁷⁰ See Art. 25 of the Swiss Ordinance on viticulture and the importation of wine (OVIW) of 14 November 2007 (SR 916.140); cf. Simon (2019d), para. 557 *et seq.*

⁷¹ See Art. 21 para. 2 OVIW.

⁷² The principal stops form the backbone of the organ; their clear, bright, and assertive tone defines the instrument's core sound and carries the ensemble.

⁷³ See Art. 48a *et seqq.* TmPA.

manufacturing costs are incurred; in addition, the indication of source must coincide with the place where the activity giving the product its essential characteristics occurred and an essential manufacturing step is carried out.⁷⁵ Services are tied to the registered office and place of effective administration of the provider.⁷⁶

Beyond these general rules, sector-specific ordinances introduce further specifications for particular industries, specifically for Swiss watches⁷⁷ and cosmetics.⁷⁸

4.4 The Strings:⁷⁹ The Geographical Trademark

Swiss trademark law provides for both collective marks and certification marks, which in many jurisdictions⁸⁰ may serve as instruments for the protection of GIs. In Switzerland, however, their suitability for this purpose is subject to inherent limitations. In particular, the requirement of distinctiveness applies to such marks as a matter of statutory law⁸¹ and has been affirmed in Swiss case law.⁸² While the courts have recognized a certain degree of flexibility in relation to certification marks – allowing for a somewhat reduced threshold of distinctiveness⁸³ – the distinctiveness requirement as such remains applicable in principle.

As part of the Swissness reform, Switzerland introduced a novel category of trademark: the geographical mark. This distinctly Swiss construct generated considerable attention and debate upon its introduction,⁸⁴ reflecting both its conceptual novelty and its status as a national solution in the field of GIs. Its practical uptake, however, has so far remained modest.⁸⁵ The features of the geographical trademark have been examined in detail elsewhere⁸⁶ and may be

⁷⁴ Art. 48b paras. 2 and 5 TmPA.

⁷⁵ Art. 48c paras. 1 and 4 TmPA.

⁷⁶ Art. 49 para. 1 TmPA. On the requirements for services, *see in detail* Antreasyan (2020), pp. 199 *et seq.*

⁷⁷ *See* Art. 1a *et seq.* of the Swiss Ordinance on the Use of “Switzerland” or “Swiss” for Watches of 23 December 1971 (SR 232.119); on the requirements for the use of Swiss indications of source in the watch sector Simon (2019b), paras. 580 *et seq.*

⁷⁸ *See* Art. 3 *et seq.* of the Swiss Ordinance on the Use of Swiss Indications of Source for Cosmetic Products of 23 November 2016 (SR 232.112.3); on the requirements for the use of Swiss indications of source in the cosmetics sector Abegg (2018b), pp. 115, 116 *et seq.*

⁷⁹ String stops are narrow-scaled pipes that produce a thin, keen tone imitating bowed string instruments; distinctive in colour, but rarely deployed alone.

⁸⁰ *See* above Section 3.2.2.

⁸¹ *See* Art. 2 lit. a TmPA. A strand of legal scholarship admits departures from the general trademark rules for certification marks where justified by their specific purpose; *cf.* Willi (2002), preliminary remarks to Art. 21, para. 4; Hirt (2003), p. 85; Hirt (2005), pp. 497 *et seq.*; Schluep (1990), pp. 63, 74; for a stricter view, *see* Maradan (2005), pp. 4, 10; Piaget (2007), pp. 256 *et seq.*, 260 *et seq.*

⁸² Swiss Federal Supreme Court Decision (FSCD) 131 III 495, consid. 4; *cf.* Holzer (2005), pp. 811 and 814. Some authors, however, continue to hold that indications of source are eligible for registration as certification marks, in principle, without the need to establish acquired distinctiveness; *cf.* Hirt (2012), p. 229; Meisser and Schmidt (2005), p. 139; Simon (2005), pp. 143 *et seq.*

⁸³ *See* FSCD 137 III 77, consid. 2.3.

⁸⁴ *See, for example,* David (2012), pp. 115 *et seq.*; Hirt (2012), pp. 236 *et seq.*; Kaiser and Noth (2017), pp. 66 *et seq.*

introduced only in summary form in the present context. In essence, the instrument reflects a system structured around a series of deliberate constraints: as to the signs eligible for registration, the entities entitled to apply, and the content of the specifications governing use. It is further characterized by a dependency on the existence and continued validity of an underlying formally recognized GI. Against this backdrop, the following section briefly outlines the principal contours of this distinctive Swiss construct.

A geographical trademark may be registered only for signs in respect of which the requisite link between product and place has already been formally established.⁸⁷ This is the case, in particular, for geographical indications entered in the Swiss *sui generis* registers, cantonal wine appellations, indications protected under sector-specific ordinances (that is, those governing Swiss watches and cosmetics), as well as certain foreign geographical indications recognized as equivalent under their respective protection regimes.⁸⁸

Registration of a geographical trademark is limited to specific entities, typically those serving as institutional custodians of the underlying GI, such as the associations responsible for maintaining a protected designation of origin or geographical indication recorded in a *sui generis* register.⁸⁹ Applicants must submit rules governing the use of the mark, which must reflect the requirements applicable to the underlying GI under its regulatory framework.⁹⁰ In other words, the conditions for using a geographical trademark are directly aligned with the substantive rules that govern the underlying protected designation itself. Consequently, a geographical trademark can exist only where the corresponding GI is already legally recognized, and its continued validity is contingent upon the ongoing protection of that underlying indication.⁹¹

Notwithstanding this dependency, the geographical mark constitutes a distinct legal institution in its own right whose precise legal nature, however, remains subject to debate.⁹² In scholarly discourse, it has rightly been observed that the regulatory regimes governing the underlying GI and those applicable to the geographical mark are not fully congruent and, in part, impose divergent requirements. By way of example, the use of a designation as a protected designation of origin or protected geographical indication entails an obligation to

⁸⁵ As of the time of writing, seven active geographical trademarks are recorded in the Swiss trademark register. Examples include “SWISS” for watches (Nr 78156) and “EMMENTALER” for Emmentaler cheese (Nr 703183).

⁸⁶ In detail Abegg (2018a), pp. 572 *et seq.*

⁸⁷ Abegg (2018a), p. 572.

⁸⁸ Art. 27a TmPA.

⁸⁹ Art. 27b TmPA.

⁹⁰ Art. 27c TmPA.

⁹¹ See Art. 35 lit. d TmPA, provided that a trade mark registration shall be cancelled if the PDO or PGI on which the geographical mark is based is cancelled. This provision applies by analogy to all cases in which the formal protection of the geographical indication underlying the geographical mark is withdrawn or otherwise ceases to exist; see Abegg (2018a), p. 575.

⁹² See, for example, Hirt (2012), p. 237 (“kollektives Immaterialgüterrecht”); Simon (2019a), para. 564 (“kollektive Nutzungsrechte im Markenkleid”).

display the indication “PDO” or “PGI” on the product’s labelling, whereas no such mandatory labelling requirement attaches to the use of the sign in its capacity as a trademark.⁹³ In my view, a further argument supporting the conceptual distinction between the underlying GI and the geographical mark lies in the fact that the former may consist of an indication of provenance protected under foreign law, the enforcement⁹⁴ of which may remain exclusively within the competence of foreign governmental authorities. By contrast, the rights to the Swiss geographical mark registered on the basis of such foreign GI in this case would vest in a collective or umbrella organization representing the relevant sector⁹⁵ rather than a foreign authority.

Unlike conventional intellectual property rights, the entitlements associated with a geographical mark are neither transferable nor capable of being pledged or licensed.⁹⁶ These limitations reflect the inherently collective nature of the protected GI on which the mark is based. At the same time, the geographical mark exhibits functional affinities with certification marks in that it performs a guarantee function, signaling compliance with defined qualitative and geographical standards. For this reason, geographical marks have at times been characterized as *sui generis* guarantee marks.⁹⁷

The geographical trademark offers some practical advantages compared to the traditional trademark and *sui generis* GI regimes. First, it is not subject to the usual distinctiveness requirement in trademark law.⁹⁸ Second, incorporation into the trademark system generally improves access to civil enforcement mechanisms. As registered PDOs and PGIs generally qualify as indications of source within the meaning of Arts. 47 et seq. STMA, civil remedies are, in principle, available under prevailing doctrine.⁹⁹ A difficulty arises, however, in situations where the use of a PDO or PGI does not frustrate the geographical origin expectation of consumers but merely contravenes qualitative or manufacturing requirements set out in the relevant product specification. In such cases, it is debatable whether the use of the indication of source is truly impermissible under the general rules on indications of source. Article 48 para. 2 STMA appears to address this concern by providing that any additional requirements – including compliance with customary or locally prescribed manufacturing, processing, and quality standards – must also be satisfied. It is generally accepted in legal doctrine that the rules contained in a product specification constitute such “additional requirements” within the meaning of this provision.¹⁰⁰ A further difficulty concerns GIs that are not entered into a register but are instead protected by means of a Federal Council ordinance pursuant

⁹³ Abegg (2018a), pp. 574 et seq.

⁹⁴ On the policing of GIs by public authorities in *sui generis* systems Gangjee (2017), pp. 13 et seq.

⁹⁵ Art. 27b lit. c TmPA. A foreign authority enjoys standing to register a geographical trademark in its own right only where wine designations are concerned; see Art. 27b lit. b TmPA.

⁹⁶ Art. 27e para. 1 TmPA. For a critical assessment of the prohibition on transferring geographical trademarks, see David (2017), Art. 27e, paras. 3 et seq.; Schröter (2017), Art. 27e, paras. 2 et seq.

⁹⁷ Abegg (2018a), p. 580.

⁹⁸ Art. 27a TmPA.

⁹⁹ Simon (2019c), para. 693; Holzer and Schröter (2017), Art. 50a, para. 35.

to Art. 50 para. 2 STMA. In such cases, it may be unclear who possesses standing to enforce the indication against an infringer in civil proceedings. This problem is accentuated where infringements occur abroad, as foreign courts may be reluctant to recognize standing in the absence of a clearly identifiable right holder. Registration as a geographical trademark remedies these deficiencies: it identifies a clearly defined proprietor who, like any other trademark holder, has at its disposal the full range of civil enforcement instruments available under the third title of the STMA.

Third, and closely related, the geographical trademark serves as an instrument to facilitate the protection and enforcement of Swiss GIs abroad – indeed, this was the primary motivation¹⁰¹ behind its introduction by the Swiss legislature. The registration provides formal evidence of legal recognition and protection within Switzerland, thereby supporting efforts to secure corresponding protection in foreign jurisdictions. Crucially, it serves as a gateway to international registration under the Madrid System:¹⁰² the Swiss registration can be used as the basis for international trademark applications designating other jurisdictions, enabling the holder to obtain an equivalent mark that can be enforced under the domestic trade mark law of the designated state. The practical effectiveness of this mechanism is, however, subject to debate. Abegg has pointed out that the geographical trademark's key domestic advantage – its exemption from the distinctiveness requirement – does not travel with the international registration; the receiving jurisdiction must classify the incoming mark according to its own domestic categories (whether collective mark, certification mark, or otherwise) and apply its own substantive requirements, including distinctiveness assessed under its general trademark rules.¹⁰³ Because geographical indications by their nature convey a descriptive message linking product, place, and quality, they will almost invariably be perceived in the designated jurisdiction as descriptive of geographical provenance rather than as indicators of trade origin, and will accordingly carry only weak distinctive character.¹⁰⁴ The Madrid System thus transmits the registration but not the regulatory privilege that makes it effective domestically, with the result that the scope of protection obtainable abroad may be considerably narrower than that enjoyed under Swiss law.

5 Prolegomena to a Legal Framework for the Protection of Context Information

Some distance now separates us from the initial inquiry into the rationale for GI protection and the nature of the information conveyed. The intervening discussion of legal strategies and their Swiss implementation was necessary to map the

¹⁰⁰ Pfister (2017b), Art. 48, para. 11; Holzer (2017d), Art. 48, paras. 11, 37.

¹⁰¹ Swissness Dispatch (*supra* note 54), 8561 *et seq.*

¹⁰² Madrid Agreement Concerning the International Registration of Marks of 14 April 1891 (as amended 28 September 1979).

¹⁰³ Abegg (2018a), pp. 586 *et seq.*

¹⁰⁴ Abegg (2018a), p. 586.

regulatory terrain on which any protection of context information must ultimately be built. We are now in a position to circle back to the central claim of this article: that GIs communicate not only provenance and product qualities but also broader contextual associations, and that these associations merit legal protection. What follows identifies a number of structural features – drawn in particular from the Swiss legal framework – that enable a GI regime to safeguard the integrity of context information.

5.1 Extending Protection to Services

In many of today's economies, a significant share of national reputation is generated through services rather than through tangible goods. Financial services, consulting, engineering, or hospitality services, for example, often rely heavily on perceptions associated with a country's broader institutional environment, such as the reliability of its legal framework, its enforcement mechanisms, political stability, and or its education system.¹⁰⁵ Where such perceptions influence consumer choice, misleading geographical references in the provision of services may undermine the credibility of a nation's reputation in global markets.

Traditional *sui generis* GI systems, however, have largely developed in relation to agricultural and artisanal products. Their regulatory logic is oriented toward the protection of goods whose qualities are linked to specific natural conditions and traditional production techniques – in other words, toward, what I referred to earlier as product information.¹⁰⁶ As a result, services typically¹⁰⁷ fall outside the scope of protection. Trademark-based mechanisms, such as collective and certification marks, may, in principle, offer some protection for services, but their primary aim is to signal membership in a defined group and compliance with specified standards, the substance of which is generally determined by private individuals or associations, offering little assurance that the services in question meaningfully reflect, preserve, or advance the reputation of the country or region to which they are linked.

A legal framework designed to protect the integrity of context information should therefore explicitly encompass services. The Swiss legal framework adopts such an approach. As explained,¹⁰⁸ the statutory Swissness rules apply to both goods and services, thereby allowing the designation “Swiss” to function as a legally regulated signal across the entire economy.

¹⁰⁵ See generally Lin et al. (2020), *passim*, explaining that consumers' perceptions of a country's products and services are influenced by institutional factors such as the rule of law, judicial effectiveness, and governance quality; cf. Buhmann and Ingenhoff (2015), *passim*; Guilhoto (2018), *passim*.

¹⁰⁶ See above Section 2.2.

¹⁰⁷ A limited number of jurisdictions have adopted broader *sui generis* regimes that include services as the subject matter; see Gangjee (2020), p. 262; Kireeva and O'Connor (2010), p. 282.

5.2 Anchoring Origin Claims in the National Institutional Framework

If context information is to be reliably conveyed, the legal framework must do more than merely prohibit false origin claims. It must establish conditions under which products and services are sufficiently embedded in the national institutional environment to justify the contextual expectations that consumers attach to the geographical reference.

Legal regimes relying primarily on open standards in competition law are of limited utility in this respect. While such rules prohibit misleading claims of origin, they do not establish concrete criteria capable of ensuring that the institutional and societal conditions of a country have meaningfully influenced the product or service. The assessment remains ad hoc and retrospective, leaving producers and consumers alike without clear guidance as to when a geographical reference adequately reflects a genuine connection to the national institutional environment.

More structured regulatory frameworks therefore play an important role. *Sui generis* GI systems establish detailed product specifications that link a product to a particular territory. While these mechanisms effectively safeguard product information, they may be less suited to capturing the broader context-level attributes associated with a country's institutional environment.

The Swissness legislation addresses this gap through statutory criteria that move beyond purely formal indicia of origin by functionally anchoring contextually significant activities within Switzerland. By requiring that essential manufacturing steps for industrial products be carried out domestically,¹⁰⁹ the framework increases the likelihood that production is embedded in the Swiss economic and regulatory environment – encompassing not only compliance with Swiss legal standards (such as labour, safety, and environmental regulation), but also the use of locally situated infrastructure, know-how, and workforce. In this way, the legal criteria operate as proxies that indirectly import the broader institutional context into the production process, thereby supporting the reliability of the context information conveyed by the geographical reference. A comparable logic underlies the requirement of effective administration¹¹⁰ for services. By insisting that the activities essential to the pursuit of the commercial purpose, as well as the decision-making processes shaping the provision of the service, be located in Switzerland,¹¹¹ the law seeks to ensure that the service is substantively connected to the country's institutional and regulatory environment. This goes beyond the merely formal requirement of a statutory seat and instead ties the designation to the place where the service is actually organized, managed, and controlled.

¹⁰⁸ See above Section 4.3.

¹⁰⁹ Art. 48c para. 4 TmPA.

¹¹⁰ Art. 49 para. 1 lit. b TmPA.

¹¹¹ Art. 52o of the Swiss Ordinance on the Protection of Trade Marks and Indications of Source (TmPO) of 23 December 1992 (SR 232.111).

5.3 Protection of Contextual Associations and Reputational Signals

Context information derives much of its value from associative meanings that extend beyond measurable product characteristics. Even where consumers are not misled about the literal origin of a product, references that evoke a country's institutional and societal attributes may nonetheless appropriate the contextual associations that consumers attach to it. A legal framework concerned with the integrity of context information must therefore address not only direct misrepresentation of origin but also the use of qualifying expressions – such as “style”, “type” or “imitation” – that seek to exploit contextual associations while circumventing origin requirements. Swiss law, reflecting a broader trend among *sui generis* GI regimes,¹¹² prohibits such practices in relation to all Swiss GIs.¹¹³

At the same time, a balanced framework must allow countries to make effective use of the stages of production in which they hold a comparative advantage. In the case of Switzerland, this is often manifested in activities such as research, development, and design – activities that are particularly apt to convey context information, as they tend to reflect the country's educational infrastructure, innovation capacity, and institutional environment. Swiss law accommodates this reality by permitting more specific origin-related indications in relation to goods¹¹⁴ – such as references to design or research – provided that the relevant activity is carried out entirely within Switzerland.¹¹⁵ In doing so, the legal framework seeks both to guard against the dilution of contextual associations through merely evocative use and to enable a more differentiated deployment of origin-based designations.

5.4 Symbolic Communication Through National Emblems

Context information may be communicated not only through verbal geographical references but also through visual symbols. National flags and similar emblems function as powerful communicative devices that condense, in a single image, the full range of contextual associations linked to a country.¹¹⁶ The legal treatment of such symbols therefore has important implications for the integrity of contextual information.

A well-designed legal framework must strike a balance between allowing economic actors to benefit from national symbolism and preventing opportunistic appropriation that could weaken its communicative value. Excessively restrictive rules may deprive genuine producers and service providers of an effective means of

¹¹² See Gangjee (2025), pp. 292 *et seq.* Under Art. 23 para. 1 TRIPS this level of protection is only granted in relation to GIs for wines and spirits; *cf.* Raustiala and Munzer (2007), pp. 343 and 362; Meisser *et al.* (2019), para. 318.

¹¹³ Art. 47 para. 3^{bis} TmPA.

¹¹⁴ Pfister (2017a), Art. 47, para. 43; Holzer (2017a), Art. 47, para. 124.

¹¹⁵ Art. 47 para. 3^{ter} TmPA providing that indications regarding research or design or other specific activities associated with the product may only be used if this activity takes place entirely at the specified location.

¹¹⁶ On the symbols commonly deployed to signal “Swissness” Weil (2017), p. 15.

signaling origin, whereas permissive rules without clear safeguards may lead to widespread dilution of the symbol's meaning or create the misleading impression that products or services are issued or endorsed by public authorities.

The Swiss regime today¹¹⁷ adopts a comparatively permissive approach. The use of the Swiss flag and other national symbols in commercial contexts is generally allowed provided that the statutory origin requirements are met.¹¹⁸ At the same time, Swiss law prevents misleading attribution to public authorities by differentiating between the Swiss cross or flag and the Swiss coat of arms – the Swiss cross represented in a triangular shield – which may only be used by public bodies.¹¹⁹

5.5 Securing Protection Abroad

The contextual associations that consumers attach to a country's products and services operate across borders, and misuse of a GI abroad may compromise the reliability of context information even if it occurs outside the jurisdiction in which the governing rules operate.

International mechanisms have facilitated the international protection of GIs for specific products, particularly under the framework of *sui generis* regimes. The Lisbon Agreement and the Geneva Act,¹²⁰ for example, allow member states to extend protection to registered GIs in participating jurisdictions, and bilateral agreements¹²¹ may provide mutual recognition of certain GIs between states. Trademark-based systems likewise offer international protection through instruments such as the Madrid System. Building on the Madrid System, in particular, Switzerland introduced the geographical trademark.¹²² The statutory Swissness rules, however, operate only within the national legal order and do not confer protection abroad. To address this limitation, Switzerland established the so-called Swissness Enforcement initiative,¹²³ a dedicated public–private partnership formed under Swiss law. The initiative brings together government authorities, such as the Swiss Federal Institute of Intellectual Property, industry associations, and individual producers and service providers. Its mandate is to monitor the use of Swiss

¹¹⁷ Prior to the Swissness reform, it was prohibited to affix the Swiss cross on goods or their packaging for commercial purposes, in particular as an indication of origin. Only decorative use was permitted (e.g., the depiction of the Swiss cross on souvenirs). However, even before the Swissness reform, it was permissible to use the Swiss cross in connection with services of Swiss origin; cf. Schuler (2013), p. 595; Kaiser and Noth (2017), p. 65.

¹¹⁸ Art. 10 and 13 of the Swiss Federal Act on the Protection of the Swiss Coat of Arms and Other Public Signs (CAPA) of 21 June 2013 (SR 232.21).

¹¹⁹ Art. 8 para. 1 CAPA.

¹²⁰ Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications of 20 May 2015. On Switzerland's accession to the Geneva Act, see Stanisavljevic and Keehnen (2022), pp. 9 *et seq.*

¹²¹ For an overview of Switzerland's bilateral agreements on geographical indications, see Meisser et al. (2019), paras. 348 *et seq.*

¹²² See above Section 4.4.

¹²³ Cf. <https://enforcement.swiss>. Accessed 4 June 2026.

indications in foreign markets, liaise with foreign authorities, and coordinate enforcement efforts against misuse.

6 Concluding Remarks

The central claim of this article is that GIs convey not only information about provenance and product qualities but also broader contextual associations, and that these associations merit legal protection. The structural features identified in the preceding discussion – drawn primarily from the Swiss example – represent an initial attempt to map the terrain; a more comprehensive analysis remains a task for future work. The perspective proposed here may, however, already serve a practical purpose. The interpretation of existing GI frameworks – and of the Swissness rules in particular – has thus far largely neglected the contextual dimension. The criteria that govern the use of Swiss indications of source, especially those apt to anchor contextually significant activities within the country, should be construed with an eye to their function in safeguarding the integrity of context information.

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