Semi-Firm, Aged Gold: Rural Economic Effects of AOC Comté and Their Implications for Vermont Agricultural Policy

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Semi-Firm, Aged Gold: Rural Economic Effects of AOC Comté and Their Implications for Vermont Agricultural Policy

by Hailey P. Grohman

Under the Supervision of

Dr. Amy B. Trubek

In Partial Fulfillment of the Requirements of the Honors College of the University of Vermont

3/13/15
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Introduction

Champagne. Parmesan. Bordeaux. All of these words hold dual meanings: an agricultural product and a geographical region. Besides their similar signified meanings, they also share a regime of legislation that interacts with a unique and complex type of intellectual property used around the world. The legal term that encompasses these food products, as well as many others, is the Geographical Indication. This umbrella term denotes many kinds of labeling systems, varying widely among the 196 countries that use Geographical Indications (GIs) in some way, which link the characteristics of a product exclusively or partially to its geographic origin. The most commonly cited contemporary definition of GIs comes from Article 22 of the TRIPS agreement:

“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 definition was established by the World Trade Organization (WTO) as part of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, signed in 1994. TRIPS is an international agreement that aimed to establish a regulatory framework for GIs due to the multiplicity of systems of protection that existed and continue to exist worldwide. It formally defines GIs, attempts to pull these varying systems into alignment, and provides a framework for dispute settlement among worldwide actors. (Giovannucci, Josling, Kerr, O’Connor & Yeung, 2009) The definition of GIs established by TRIPS is used in this project because it is an overarching and
widely accepted formal standard. It encompasses many of the different methods of legislating and protecting Geographical Indications, two of which will be examined in this document.

The ideological foundation of special legislation for food products that are linked to their region of origin is the concept of *terroir*, a French term which loosely translates to “the taste of place.” It stems from the Latin word *terra*, meaning Earth, and refers to a connection between the area where a food product is made and its taste (Jacobsen, 2010). *Terroir* encompasses both geospatial and sociocultural elements, described as “the interplay of human ingenuity and curiosity with the natural givens of place.” (Barham, 2003) These elements are as diverse as climate, geology, social traditions of production, and ever-changing aspects of culture as it interacts with place and time. *Terroir* only becomes more complex through study, revealing “a cultural history involving more than a peasant tending a patch of soil but rather many peasants in many locations, all invested in shared social meanings and practices.” (Trubek, Guy & Bowen, 2010)

Through the use of Geographical Indications, *terroir* is translated to an intellectual property regime that has both cultural and economic value for the regions that choose to employ them. Though no comprehensive registry exists, Giovannucci et al., 2009, cite that over 10,000 GIs worldwide are legally protected in some way, with 6,021 in use by the European Union. European intellectual property surrounding origin products has evolved in a way that supports GIs first and foremost, particularly over other types of marks such as trademarks. (Gangjee, 2012) In Section 1 of this paper, I will describe the ways in which Europe has chosen to protect GIs and recount the history and management of several of the most notable French and European labeling systems - the Appellation
d’Origine Contrôlée (AOC), Protection Designation of Origin (PDO), and Protected Geographical Indication (PGI).

The interplay of intellectual property, collective management and government support through GI legislation has allowed for the enormous economic success of my first case study, Comté cheese from the Franche-Comté of France. Comté is a raw cow’s milk semi-hard Alpine-style cheese that is aged for anywhere from four months to two years, and is the most consumed AOC cheese in France as well as one of the most well-documented. (Comté USA, 2013) In Section 2, I will describe and give an outline of how Comté is managed through France’s organization for management of GIs, L’Institut National de l’Origine et de la Qualité (INAO). I will also provide evidence for the economic rural development impact of AOC Comté on the region of the Franche-Comté, a benefit that Vermont policymakers could take into account when considering an origin-linked labeling system in the state.

Terroir in America, because the concept is relatively new to the agricultural conversation, is understood in a very different way than in France or Europe. French and European producers have had hundreds of years to discover the connections between place and product, rendering individual producers far less important than the characteristics of the landscape itself. In French and European terroir, the rent-producing reputation of the product is linked more strongly to the expression of its characteristics than to the identity of any particular producer. (Barham, 2003) American terroir, described by Jacobson, 2010, and Trubek, 2009, is in the relative beginnings of its exploration and exists within a political and economic framework characterized by American individualism and entrepreneurship. This particular sociopolitical climate
influences American understanding of *terroir*, which emphasizes the importance of the individual producer and their reputation, rather than the characteristics of the product itself as an expression of the landscape - “less a matter of patrimony than intellectual property.” (Paxson, 2010)

GIs as intellectual property vary greatly from the trademark system that is traditionally used in the United States to protect both agricultural products and other commodities. Unlike trademarks, Geographical Indications cannot be bought or owned by a single party and instead are held by the government on behalf of all the producers that reside within the delineated region. Anyone within the region can use the marks, as long as they follow the strict specifications of production that are laid out in the *cahier des charges*, the French term for the list of regulations that each AOC-certified product follows. Collective marks, another form of intellectual property used in the United States as well as abroad, come closer to a GI regime as they are owned by a collective of people. However, they still can be purchased and sold and thus are contrary to the fundamental basis of the GI as a public good that is available for use by anyone in a region. (Josling, 2006)

In Section 3, I will illustrate some of the conflicts that arise from these conflicting intellectual property paradigms within the U.S. and France. When two different interpretations of terroir, approaches to agricultural policy, and dominant types of IPcombine on a trade level, it is nearly impossible to reconcile. I will describe the differences between GIs and trademarks in much greater detail and explain how these differences result in conflicts on the international level within free-trade agreements like TRIPS.
The interaction between American origin-linked production and modern dairy policy is displayed in Section 4 with a case study involving the Cellars at Jasper Hill, located in Greensboro, Vermont. Inspired and influenced by the AOC Comté model, actors along the supply chain of Jasper Hill cheese are highly aware of terroir, utilising The Taste of Place as their tagline. They are active participants in the construction of an economy within a small-town landscape, a “reverse-engineering of terroir” as it is characterized by Paxson, 2012. I conducted this case study via a series of in-depth interviews all along the supply chain of one Jasper Hill cheese in particular, Alpha Tolman, an Alpine-style cheese. Though the legislative and ideological frameworks surrounding Jasper Hill and AOC Comté may seem completely different, in my analysis of both case studies I will illuminate the structural similarities and values, namely an emphasis on the local community, that provides a framework of reconciliation for these two systems.

In undertaking this project of comparing French and American intellectual property and agricultural policies and their effects on origin-linked labeling, with the intention of forming recommendations for Vermont dairy policy, I make the assumption that Vermont has reason to want to adopt origin-linked labeling. This assumption is based on several of the main arguments made by proponents of GIs, namely that GIs hold potential as a rural economic development tool, as an environmental preservation tool, and as a cultural preservation tool. (Allaire, Barjolle, Marescotti, Sylvander, Thevenod-Mottet, & Tregear, 2006) I focus on the first argument as the framework of my analysis of Comté and, to a lesser extent, Jasper Hill.
Producers of *terroir* or origin-linked products that are legally regulated under either AOC or PDO/PGI legislation often enjoy a larger profit on their products over their generic competitors, referred to as economic rent, because of the assumptions of higher quality that are associated with AOC or PDO/PGI labels. (Bramley & Kirsten, 2007) Geographical Indications can be large employers in the areas in which they are delineated, providing employment opportunities all along the supply chain of a given good. The rural economic development benefits of Geographical Indications also reach as far as increased agro-tourism in regions where the goods are produced and an assured sense of income for those involved in the production of a GI. This has both monetary and social value (Gerz & Dupont, 2006)

A second argument for strong GI protection refers to the potential benefits to agrobiodiversity that can result from GI legislation. The creation of markets for origin-linked products can preserve the use of certain species of plants and/or animals that have historically been used in the production of a good and which would otherwise be phased out in favor of more efficient or modern species. (Bérard & Marchenay, 2008) One example of this is the Ardèche chestnut, of which many varietals were threatened by market pressure towards “intensive cultivation,” and thus the recognition of a denomination of origin allowed 19 varieties of local chestnuts to be protected. (Santilli, 2012)

A third argument, less well-documented, regards the protection of traditional methods of production, some of which have a history of hundreds of years. Many of these traditional methods would be lost to modernization and the increasing industrialization of food production without GI legislation, because it would become too costly to use them
and producers would not be able to remain economically viable. (Allaire, Barjolle, Marescotti, Sylvander & Thévenod-Mottet, 2006) One example of this is Picodon, a French cheese which uses a wash of water and vinegar to “restart” the culturing after it has been stored a long time. This process was formalized by the cahier des charges for the PDO designation and thus the process was preserved. (Bérard & Marchenay, 2008)

None of these benefits are ever a guarantee for a GI product, however. The success of any AOC, PDO, PGI or other designation is dependent on the management of the product and its supply chain, and it’s possible that the opposite of any of these positive effects could occur. One unfortunate example lies in tequila - adoption of PDO status for tequila in Mexico did not include certain types of agave, and they were lost to extinction. (Santilli, 2008) Thus, adoption of a GI designation is not a cure-all. Giovannucci et al. (2009) name several conditions that are likely to lead to success for GI products: strong organizational and institutional structures, equitable participation, strong market partners and effective legal protection.

With these conditions in mind, in Section 5 I offer suggestions for Vermont agricultural policies to better protect and manage existing origin-linked products such as the cheese made by the Cellars at Jasper Hill. As U.S. and French intellectual property structures are so different from one another, it may be too difficult to attempt to legislate American GIs through an IP framework. However, an existing agriculture structure may prove amenable to origin-linked characterization: the cooperative system. Vermont dairy farmers and cheesemakers are already involved with a number of different cooperatives, and applying an origin-linked status to a group of common producers could help to manage the supply chain and reproduce some of the positive economic effects displayed
by Comté and other AOC cheeses. This section serves as a synthesis of all my analyses, resulting in the ultimate argument of this paper: Though French and American conceptions of GIs have developed within opposing intellectual property contexts, Vermont agricultural policy could be amended using cooperative structures to better exploit economic rural development potential within its origin-linked products. I aim for this project to ultimately be useful to Vermont policymakers and scholars of origin labeling as a rural economic development tool, and thus my recommendations will err on the side of pragmatism.

This project is only one of many scholarly interpretations of AOC Comté, Vermont origin products and even of the Cellars at Jasper Hill. Nonetheless, I hope to provide a beneficial and workable addition to the existing body of scholarship in order to continue moving towards an understanding of Geographical Indications within an American context and their potential benefits and limitations. I aspire to contribute to the comparison between French and U.S. origin product management in a meaningful way, using a product everyone can get behind: cheese.
Methods

The development of this project arose from time that I spent this summer in Bourg-en-Bresse, France. I spent time working in the research library at a branch of France’s Centre Nationale des Recherches Scientifiques (CNRS) titled “Ressources, cultures, usages, sociétés. This opportunity came from my connection to Dr. Amy Trubek and Dr. Elizabeth Barham, both scholars of origin products, who introduced me to Dr. Laurence Bérard, the head researcher at this CNRS branch. Dr. Bérard and her husband Philippe Marchenay welcomed me into their home in St. Paul de Varax, and allowed me access to their wealth of resources on Geographical Indications, the INAO, and AOC products such as Comté. Spending every day in Dr. Bérard’s research library opened my eyes to the wealth of information and documentation available on Comté, particularly as an example of rural economic development, and my interest was piqued.

After returning to Vermont and talking to Dr. Trubek about my interest in Comté, she directed me to the Cellars at Jasper Hill and their terroir-driven cheese making operation. I got in contact with Zoe Brickley, the sales manager at the Cellars, and organized all my interviews from there. I decided to conduct interviews all along the supply chain of Alpha Tolman (an Alpine-style cheese, the closest to Comté in style though it is more directly based on an Appenzeller) and see how the different actors interacted with terroir as well as how they expressed their expectations of and obligations to one another. I was interested to ascertain how much the business practices of Jasper Hill were based on the Comté model and how that would affect the economic development of the region in which Jasper Hill is based, the Northeast Kingdom of Vermont.
I developed the following research questions for the project, using guidelines developed in Dr. Teresa Mares’ Research Methods class:

1.) How has French government policy regulating Comté cheese as part of the AOC quality label system impacted the economic development of the rural Franche-Comté region?

2.) How have French and American constructions of agricultural origin-linked intellectual property affected the regulation of their specialty/high end market cheeses, namely Comté and Jasper Hill?

3.) How do actors along the supply chain of Jasper Hill frame their actions based on commitments they perceive to have to their community and how do they interact with what they understand to be their intellectual property?

4.) How could Vermont agricultural policies affecting cheesemakers be changed in order to maximize the economic and cultural development of the rural regions in which those high end market cheeses are made?

I conducted five interviews altogether, ranging from a half hour to two hours in length. The participants included a sales manager for Jasper Hill, an owner of Jasper Hill, a farmer who produces the milk for Alpha Tolman, a cheese buyer for a large urban East Coast cheese shop, and, for a policy perspective, a leading American scholar of origin products and the founder of the American Origin Products Association. These interviews were semi-structured in order to allow for more free-form conversation about terroir and cheese production, and in some cases the participants received the questions in advance while in some cases they did not. This depended on the requests of the participants.

This research was reviewed by the Internal Review Board of the University of Vermont, as is customary for all research involving human subjects. Research methods used to maintain anonymity and maximum safety for all participants were employed in order to gain IRB approval. These methods include the use of a research information sheet and acquisition of verbal consent from all participants, as well as using pseudonyms.
for all interviewees mentioned in this work. Below is a table with these pseudonyms and the role of the participant within the Jasper Hill supply chain.

<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anna</td>
<td>Sales Manager</td>
</tr>
<tr>
<td>Joe</td>
<td>Owner</td>
</tr>
<tr>
<td>Don</td>
<td>Farmer</td>
</tr>
<tr>
<td>Caroline</td>
<td>American scholar of Geographical Indications and policy</td>
</tr>
<tr>
<td>Richard</td>
<td>Cheese buyer at a large urban cheese shop</td>
</tr>
</tbody>
</table>

This project evolved enormously from its original goal, which was to simply look at the rural economic development effects of Comté and compare them to the impact of Jasper Hill on its local community. As I dove deeper into the theories behind Geographical Indications and their management, I discovered that the fundamental difference that seemed to separate American and European GI strategies seemed to be a question of intellectual property. American IP, dominated by the private, market-based trademark system, seemed irreconcilable with European collective IP strategies that created a public good. I wondered how this had happened and whether, if intellectual property proved too impossible a framework for origin product management in the United States, another method might be possible.

Thus I became interested in the concept of cooperatives, first introduced to me as an idea related to Geographical Indications by Dr. Elizabeth Barham. I saw what looked like an opportunity for a unique type of GI management within this existing agricultural structure. Cooperatives as they are legislated by the Capper-Volstead Act of 1922 form a
type of legal monopoly, and thus are similar to a GI in that regard. Linking cooperative structure to a geographical origin seemed like a natural, if *sui generis*, method of achieving some of the rural economic development benefits that I had observed in Comté and (to a smaller extent) Jasper Hill. Thus, I constructed my final recommendations with this idea in mind.

This project has benefitted enormously from and would not have been possible without the guidance of Dr. Amy Trubek, my advisor, as well as Dr. Elizabeth Barham and Dr. Laurence Bérard. I am endlessly grateful that I have had the opportunity to work on this project with these very inspirational women.
Section 1: Geographical Indications in France

Today’s food production and distribution system, more globalized than ever before, makes it difficult to imagine a time in which all food came directly from the area around the consumer. Transportation, industrialization and a capitalist mindset have allowed for an enormous global food network that feeds a population much larger than its pre-industrial size while maintaining a high level of efficiency across the chain.

Consumer trends and movements in the second half of the 20th century in the United States, such as the back-to-the-land movement of the 1960s and 70s or the growth of organic production since the 1990s, resulted partly from disillusionment with this sterile, industrial food system. (Cope, 2014; Kinstedt, 2012) They looked back to an imagined time when connections between humans and the land around them were stronger and deeper, seeing a need for “reconnection” between farmer and consumer, or product and place. (Ilbery, Morris, Buller, Maye & Kneafsey, 2005) Thus emerged a market for products that emphasized this connection, such as organic or local, another market characterized by enormous growth in the 21st century. (Giovannucci, Barham & Pirog, 2009) However, in other parts of the world the labelling of origin-linked products came earlier and as a result of different factors. In France, origin labeling arose from a more practical concern: a protection against fraud.

History

In France, the Appellation d’Origine Contrôlée (AOC, in English translating to Appellation of Controlled Origin) system of GIs emerged from a market emergency resulting from a pest disaster in vineyards all over the country. The Phylloxera epidemic
of the late 19th century, in which an insect native to North American ravaged the grapevines of France, resulted in severely diminished wine production throughout the country and an influx of fraud from producers of inferior wines labeling their bottles as higher quality stock. Without any legal deterrent from doing so, the sale of mislabeled or ‘adulterated’ (wine with sugar, water or coloring added) poor quality wine increased and the disillusionment of both French and global wine consumers with it. (Gangjee, 2012)

Producers of wines around the country banded together in order to lobby for legal protection against the fraud that was destroying their business on top of their phylloxera-ravaged vines. One of the worst hit regions was Champagne, and the resulting struggle by producers to defend their vines involved much larger questions of control and management among actors in the supply chain. The power of intermediate actors such as négotiants in the Champagne supply chain was challenged, establishing a foundation for the empowerment of producers, an “active peasantry willing to assert its collective vision of Champagne and define its place within the community.” (Guy, 1997) Both producers and négotiants continued to put pressure on the government to legally recognize the area, and the first legal decree delimiting an area of production for a wine was for the region of Champagne in 1908. This gave the government power to address and prosecute fraud on the wine market. (Santilli, 2012)

However, the legal legitimization of the region of Champagne did not technically constitute a Geographical Indication, as they did not yet exist as a legal concept. A French law in 1919 established Geographical Indicators as a collective type of intellectual property, but they did not receive an actual legal definition. The law also allowed for the creation of unions for the protection of appellations of origin, called Syndicats de Défense
de l’Appellation. Finally, in 1935 a decree law recognized appellations of controlled origin through the creation of national committee to organize wine-producing AOCs: l’Institut National des Appellations d’Origine, or the INAO. (Bérard, 2008)

AOC status remained limited to wine-producing regions until a law on July 2nd, 1990 extended protection to the entire agricultural sector. Today, AOC protection is issued to over 360 alcohol products, 50 dairy products, and 45 products “agro-alimentaires,” which essentially indicates everything else (fruits, vegetables, meats, honeys, oils, etc). (INAO, n.d.) The AOC system serves as a model of reference for evaluating origin-linked labeling, as it is the oldest of the European GI systems and regarded as “the most strict and thoroughgoing of its kind.” (Barham, 2003) However, it is certainly not the only model: 161 countries employ GI protection systems of some kind, with the majority of protected products residing in OECD countries. (Giovannucci et al., 2009) In the next subsection, I will present the current state of AOCs as well as two other French GI labelling systems.

AOC, PGI and PDO: The Current State of GIs in France

AOC labeling may represent the depth of history within GIs in France, but two other French labels are more prevalent and thus equally useful for a description of current French GI policy. These labels are the Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). To avoid confusion, I will use their English names and abbreviations as they are commonly utilised. These two labels are used throughout the European Union, but are managed in France by the INAO. This

15
governmental organization holds utmost importance in the French management of GIs, so I dedicate a later subsection to discussion of its role in GI management.

The INAO is in charge of seven different labeling systems in France, some of which are origin-linked and some of which are oriented towards quality (the Label Rouge, an indicator of superior quality) or production methods (Agriculture Biologique, France’s version of organic production). (INAQ, n.d.) However, this project focuses on AOC, PDO and PGI because they are examples of GIs as opposed to simply labeling systems.

These three Geographical Indications seem similar at first glance, but contain many nuances that separate them from each other. These nuances have to do with the degree of terroir exhibited by the product, the managing body, and whether the label is France-specific or EU-wide. Provided below is a table outlining the differences between these three GIs. They each differently answer the three essential questions of GI protection outlined by Thévenod-Mottet & Marie-Vivien, 2011:

1. *Who* has the right (with more or less detailed specifications)?
2. *How* can illegitimate, incorrect or deceptive use be prevented or punished?
3. *What* are the characteristics of the product in relation with its heritage?

<table>
<thead>
<tr>
<th></th>
<th>AOC</th>
<th>PDO</th>
<th>PGI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition</strong></td>
<td>“Un signe français qui désigne un produit qui tire son authenticité et sa typicité de son origine géographique. Elle est l’expression d’un lien intime entre le produit et son terroir.” (INAQ)</td>
<td>“A product whose quality or characteristics “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.” (European Council)</td>
<td>“A product which possesses a specific quality, reputation or other characteristics attributable to that geographical origin, and the production and/or preparation of which take place in the defined geographical area.” (European Council)</td>
</tr>
</tbody>
</table>
As illustrated in the table, the main difference between PDOs and PGIs lies in their definition, related to the degree of their link to terroir. Put more simply, a PGI does not have to be exclusively fabricated in the delineated region (like a PDO must), and the link between the product and the area can be a little more abstract. The linkage can be reputation based, rooted in a historical tradition of production.

However, this more abstract linkage between taste and place that is found in PGI registration can lead to disputes related to intellectual property and ownership of traditions. One example, noted by Geographical Indications scholar Dev Gangjee (2006), is the Melton Mowbray pork pie. This product originates in the Melton Mowbray region.

<table>
<thead>
<tr>
<th>Legislative Origin</th>
<th>Link to Terroir</th>
<th>Area of Jurisdiction</th>
<th>Supervising/Protective Body</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decree of July 30th, 1935</td>
<td>Characteristics of product are exclusively due to natural/human factors within area of production. “Le produit qui en est issu ne peut être reproduit hors de son terroir.” (INAO)</td>
<td>France</td>
<td>INAO</td>
</tr>
<tr>
<td>EU 2081/92, amended 5 October 2006</td>
<td>Characteristics of product are exclusively due to natural/human factors within area of production.</td>
<td>European Union</td>
<td>INAO-approved, producer-independent organizations supervise, INAO investigates fraud</td>
</tr>
<tr>
<td>EU 2081/92, amended 5 October 2006</td>
<td>Characteristics of product can be due to natural/human factors, but focus is on reputation/historical links between product and place. “Un produit dont toutes les phases d’élaboration ne sont pas nécessairement issues de la zone géographique éponyme mais qui bénéficie d’un lien à un territoire et d’une notoriété.” (INAO)</td>
<td>European Union</td>
<td>INAO</td>
</tr>
</tbody>
</table>

Source: Author, with information from Bérard & Marchenay, 2008; INAO, n.d.; Sylvander & Barham, 2011
of England and was the subject of a legal controversy when the producers in the region attempted to apply for a PGI that would exclude some industrial producers on the outskirts of the area by means of delimitation. To claim regional ownership of a product in which the factors of production are all rooted in the area, as with a PDO, is hard enough, let alone to legally protect an “origin-linked” pork pie from which all the inputs come from elsewhere. Gangjee (2006) notes, “as the subject-matter of GIs expanded to include traditional products based more on reputational links to their places of origin, constructed around cultural, historical, or socio-economic moorings rather than on scientifically verifiable natural features, establishing clearly defined boundaries has become more problematic.” Nonetheless, someone has to establish the boundaries, and the next subsection is centered around the role of the INAO in delimiting areas of production and enforcing the cahier des charges.

INAO: The Role of the Government in GI Management

l’INAO, l’Institut National de l’Origine et de la Qualité, supervises all existing GIs in France and is responsible for the registration and delimitation of new GI products. They are a government funded organization with a mission of four extremely complicated tasks: 1) proposing the recognition of eligible products (“eligible” meaning to fit the definition of a geographic indication), 2) recognizing organizations “de défense et de gestion” (of defense and management) for the products, 3) ensuring the respect of the cahier des charges by producers and taking sanctioning measures in case of disrespect, and 4) contributing to the defense and promotion of all their labels of quality and origin, in France and abroad. (INAO, 2011) Their staff is comprised of industry professionals,
qualified experts and members of official departments and agencies. (Marie-Vivien, 2011)

These tasks are enormous, considering the number of products the INAO supervises. Different processes of recognition of products exist depending on the type of product - there is a committee for wines and alcohols, a committee for dairy and other agro-food products, and committees for each separate label administered by the INAO. (INAO, 2007)

The guide to recognition for an AOC/AOP non-alcohol product is 46 pages long and illustrates the many steps that are involved in the process of becoming a recognized geographical indication. The process is necessarily lengthy, because of the difficulty of creating a legal framework for a somewhat abstract product, and involves an amount of bureaucracy that seems particularly French. Producers must describe their cahier des charges (on which every producer in the region must agree), as well as elect an Organisme de Défense et de Gestion (organism of protection and management), who serves as a liaison between the INAO and the producer group. This organization is an “independent, impartial and competent certification body” that removes some of the responsibility for production control from the state. (Marie-Vivien, 2011) The producers must also delimit the area of production, which rightly can lead to conflict owing to the inclusion or exclusion of certain producers and the fluidity of geographical boundaries over time. (INAO, 2007)

Designating the area of production for an AOC, PDO or PGI is naturally complicated, as the borders can arise from either political or geographical boundaries. In the case of a product with multiple stages of production (cheese, for example), particular
“zones” must be designated in which each stage of production exclusively takes place. These delineated borders are chosen for their “lien au terroir”, and theoretically, any product made within that area meeting the criteria for production would fit within the AOC/PDO/PGI definition. (INAO, 2000) Designating this area is the role of the producer group applying for the AOC/PDO/PGI status with the help of the commission d’experts within the INAO.

Following the thorough and complicated application process, the application for registration is passed along to a series of INAO committees, eventually landing in the hands of the national committee. (INAO, 2011) Upon approval, the product is monitored and supervised by an agent from one of the 26 INAO offices throughout France. (Barham, 2003)

One extremely successful example of an AOC product managed by the INAO is Comté. This cheese serves as my first case study illustrating the interactions between government policy and Geographical Indications, resulting in particular rural economic development effects. In Section 2, I will provide an in-depth look at the filière (network) of Comté and the positive impacts it has conferred on the region of the Franche-Comté.
Section 2: A Case Study in Comté

As the most consumed AOC cheese in France, Comté occupies an important cultural and economic position in the country. (Gerz & Dupont, 2006) It is often cited as an example of rural economic development success by proponents of the AOC system and of GIs in general, and thus much research has been done into its management and regulation systems. Comté also serves as an inspiration for the Cellars at Jasper Hill, the second case study described in the paper, and for all these reasons I have chosen it as an example of French GI effects on rural economic development. I briefly spent time in the Franche-Comté in 2014, began to understand its importance to the area, and I present it here in an economic context in order to frame the comparison with the American artisanal cheese made at Jasper Hill.

Comté: The Basics

Comté cheese is a raw cow’s milk semi-hard aged cheese produced in the Franche-Comté region of France. This political boundary consists of the departments of Doubs, Jura, Haute-Saône and Territoire de Belfort on the eastern side of France. Geographically, the Franche-Comté consists of the Jura Mountains as well as many forested areas, thus both plateau dairy grazing and use of wood are major factors in Comté production. (Behr, 2005) The cheesemaking history of the region goes back to the 12th century, when mountain farmers were forced to convert their milk into enormous cheeses in order to preserve them for the winter. (Gerz & Dupont, 2006) The recipe and methods have evolved and been perfected ever since, and today roughly 1,500,000
wheels are produced each year, each weighing an average of 80 pounds. (Comté USA, 2013)

The delineated AOC zone of Comté differs somewhat from the political borders of the Franche-Comté - it is smaller, consisting of the departments of Doubs, Jura and a small part of Ain. The zone was first created by the producer’s association in 1958 for AOC status application. Much like the original wine AOCs, the push for AOC designation for Comté came from a need to fight fraud: producers wanted to distinguish themselves from lower quality gruyère cheeses produced outside of Comté. (Colinet, Desquilbet, Hassan, Monier-Dilhan, Orozco, & Réquillart, 2006) This producer’s association in 1963 would become the Comité Interprofessionnelle de Gruyère de Comté (CIGC). (Bowen, 2010) The CIGC represents all actors along the supply chain, from the producers to the fruitières (cooperatives) that pool the milk to the affineurs (cheese agers).

This level of production requires serious organization and coordination among actors - *la confiance organisationnelle*, or organizational trust, is considered by scholars to be just as important as price or contracts in the coordination of Comté. (Torre, 2001)

Cheesemaking in which actors are so reliant upon each other for creation of the final product differs greatly from other types of standardized, centralized production systems. The variety of actors within the filière goes far beyond just producers, laitières, and affineurs: suppliers of inputs, distributors, those involved in agrotourism and many others are affected by the Comté structure. (Fumey & Bèrion, 2010)

All these different actors rely on each other to produce a high-quality product, meeting the standards elaborated in the *cahier des charges*, in order to generate economic
rent and bring value (both monetary and nonmonetary) to the region. This *confiance organisationnelle* is defined to be “*une extension de la relation de confiance interpersonnelle (relation de face à face) au principe de l’action collective.*” Actors along the chain rely on each other for their livelihoods, but often have also formed close ties that fall on both sides of the personal/professional relationship spectrum. This results in a unique form of collectivism in which both explicit (outlined by production contracts) and implicit (defined by everyday interactions) trust are prevalent and necessary. (Torre, 2001)

This collective structure revolves around the use of *fruitières*, cooperatives of milk producers who supply the base product for Comté. Creating huge wheels of Comté required a lot of milk, so producers organized themselves into this collective structure that continues to be in use today. They have been solidified within the *cahier des charges* for Comté, which specifies that the milk for the *fruitières* must come from a within a 25 kilometer radius of the facility. (Behr, 2005) The milk from the fruitières makes up 86% of the supply for Comté, while the rest is produced by private firms. (Bowen, 2010)

Many other aspects of Comté that have evolved over time have been formalized by the *cahier des charges*. Comté must be made from the milk of Montbéliarde cows or, very occasionally, Simmental. Roughly 130,000 of these cows on 2700 farms provide the milk for Comté, and Comté dairy farms make up 570,000 acres of land, the largest of any AOC cheese. (Gerz & Dupont, 2006) Very specific regulations exist for the production of milk for Comté: no fermented feed (silage) is allowed, the cows are required to be on pasture from May until October, and each cow must have a hectare of grazing area. (Behr, 2005) The 15 aging facilities must age their wheels for at least 4 months, with an
average age of 8 months but some rare varieties getting up to 2 years or more. (Comté USA 2013)

Economic Impacts of Comté

Though 130,000 cows on an area of land smaller than the size of Rhode Island may not seem like a huge economic powerhouse, it certainly has a formidable impact on the area of the Franche-Comté. The Comité Interprofessionnelle de Gruyère de Comté (CIGC) is the representative group for actors all along the supply chain and responsible for marketing of Comté on a national and international scale, as well as serving as a liaison between the INAO and the actors themselves. They have been extremely successful, as sales of Comté have been increasing since the 1990s. (Mérel, 2008) Their operating costs are covered by the sale of Comté labels to the cooperatives - that is considered their contribution to the CIGC - as well as some public grant money. (Gerz & Dupont, 2006) The Comté USA website cites 7,600 jobs in the AOC region as being directly associated with Comté, but indirect jobs such as in agrotourism or in production of inputs or supplies are not included. Further, one study claims that Comté produces 5 times more employment per liter of milk than its generic competitor, Emmental. (Giovannucci et al., 2009)

Economic impacts of AOC Comté production on the Franche-Comté are not purely employment-related. Much of the rationale for AOC legislation and for GI labelling in general is based on the idea of economic rent, or any positive difference between the payment made for a factor of production and its cost. Producers of GIs are likely to command a higher price for their goods, paid by consumers in order to avoid
asymmetric information and the risk of buying non-guaranteed quality products. (Réviron & Chappuis, 2011) Comté is no exception to this. Milk producers for AOC Comté consistently are paid more for their product than the average milk price in France. Statistics vary, but one study claims a 16% price premium for Comté milk producers between 1991 and 2004. (Colinet et al., 2006)

![Graph 1. Comparison of the price of milk in France and the price of milk for Comté (€/1000L).](image)

Source: Colinet et al., 2006

Rents commanded for AOC products over generic competitors can be vastly different depending on the product. For Comté, the best comparison to make is with Emmental, another pressed semi-hard cheese originating from the same mountainous region. These two cheeses began with many similarities, but their *filières* diverged with opposite strategies. Comté relies on the AOC structure to derive value from smaller-scale production, while Emmental followed an industrial method with no name or origin.
protection. Thus, it has largely been moved to cheaper parts of the country in which to produce and is sold in mass quantities, often as shredded cheese. (Dupont, 2003)

Today six different countries produce Emmental, distributing its value among producers rather than concentrating it in one area. The price paid for Emmental is significantly lower than the price paid for Comté, with a 7% difference in price in 1991 increasing to a 24% difference in 2001. Part of that difference is a result of increasing supermarket power over producers of generic, industrialized cheeses - it’s a retailer’s market, as they have many different producers to choose from. (Dupont, 2003) Further, production of Comté has increased every year while production of Emmental has fallen, due to superior supply controls and quality improvement on the part of Comté. (Gerz & Dupont, 2006)

The associated economic benefits of producing Comté allow the dairy industry to continue to flourish in the area. Many farmers are aware of this potential benefit and choose to join the Comté filière - between 60-70% of the milk produced in the eligible zone is designated for Comté production. (Mérel, 2008) Agriculture is not the dominant industry, making up only 3.6% of all jobs in the Doubs and Jura, but 60% of all agricultural land is utilised for Comté milk production. (Bowen, 2010)

Agrotourism is also increased by the installation and legislation of AOC Comté, which brings another kind of economic and cultural value to the area. Five percent of farms engage in some kind of tourist activity in the Comté AOC area, as opposed to three percent in the Franche-Comté as a whole. (Gerz & Dupont, 2006) Tourists who visit because of their attraction to Comté will frequent other businesses and services in the area, particularly producers of other AOC products, expanding economic effect. In 2002,
115,000 people visited cheesemaking facilities and 30,000 visited aging facilities. (Colinet et al., 2006)

Production of Comté has been influenced by changing markets, both domestically and abroad. Trends in packaging resulted in prepackaged cheese surpassing block cheese as the dominant seller, and exports have increased over time to countries such as the U.S., Germany and Belgium. However, the majority of consumption remains in the area, “probably because it is well known and seen as authentic there.” (Gerz & Dupont, 2006) Comté is certainly sold with a certain kind of story, the story of an ages-old cheese originating from a bucolic, rural area and resulting in a “pure, healthy and natural food.” (Comté USA, 2013)

The marketing of Comté by the CIGC emphasizes the typicity and terroir of the cheeses, stating that “each wheel of Comté reveals a distinct aromatic composition that varies according the micro-region where it was produced, the local microflora, the season in which the cheese was made, the distinctive style of the cheesemaker, the cellar where it was matured.” (Comté USA, 2013) This description, on the English language version of the Comté website, emphasizes all the aspects of terroir and typicity without using those actual words, which are less culturally known in the United States.

Effects of AOC Comté on the Franche-Comté are not solely economic. One argument for the protection of geographical indications is in regards to the potential benefits of preserving traditional methods of production, which might ordinarily be lost to the pressures of industrialization and lowering the bottom line. (Bérard & Marchenay, 2008) In the case of Comté, these methods involve all steps of the cheese making process, from the raising of the milk itself to the production and aging of the cheese.
Comté requires the use of grass and hay for feed as opposed to silage, which less expensive as an input but can impart an undesirable sour flavor upon the cheese. (Behr, 2005) Milk must be processed within 24 hours to preserve its characteristics, and copper tanks are used in place of more modern stainless steel in order to improve natural taste. The cheese must mature on a spruce board, which improves the absorption of humidity. The 4 month aging period is necessary for the development of the very specific flavor profile that Comté affineurs search for. (Gerz & Dupont, 2006) All these specific regulations date back to the original production of Comté and thus could easily have been lost to market pressures without AOC status. Instead, these methods of production become part of the Comté story that is sold to consumers and add high quality to the product to distinguish it on the market.

The preservation of this rural landscape may be attributable to AOC Comté as well. Gerz & Dupont, 2006 state that “migration away from the Comté AOC area is only half of that in the non-AOC area,” which keeps younger people in the area and maintains engagement with the the filière and interest in preserving the agricultural tradition. Comté has also helped to mitigate the loss of dairy farms in general. Between 1988 and 2000, France lost 50% of its dairy farms (note that this is number of farms, not amount of farmland). Non-AOC production zones lost even more, at 57%, while the Franche-Comté fared better at -42% and the zone Comté at -36%. (Dupont, 2003)

Rural environmental preservation is also an effect of Comté production, as the French government tends to be more strict with environmental regulations for its AOC producers than for non-AOC agriculture. (Barham, 2003) Pasture dairy farming typically retains more nutrients in the soil and limits erosion more than grain-fed confinement.
operations. Though grassland is still lost in the AOC Comté area, is it being lost at a slower rate than in the non-AOC area. (Gerz & Dupont, 2006) Fewer herbicides and pesticides are utilized in the Franche-Comté as well, as illustrated below.

\[image\]

The case of AOC Comté illustrates the positive effects of AOC legislation on the local community that produces a good, though this effect is not universal to all AOC products. In this particular case, concentration of economic rent and benefits as well as preservation of methods and environment are demonstrated by the contrast with non-AOC Emmental. Comté is a very particular success of the AOC method, which, as we have seen earlier in the chapter, can be incredibly complicated and a source of much conflict between actors both inside and outside of the chain of production. Preservation of this particular kind of community-based intellectual property has been particularly effective, likely in part because of the centuries of history behind the cheese and the decades of legislative protection it has enjoyed.

In Sections 1 and 2, French utilisation of Geographical Indications was discussed, particularly the AOC, PDO and PGI methods. The case study of Comté was utilized as an example of extreme success of this particular method of legislating intellectual property
as it relates to origin-linked products. However, this method is not the only way or necessarily the best way. It is simply the way that has resulted from a history of interaction between policies and industry. In the United States, a very different way of dealing with intellectual property and with the dairy industry has arisen. In Sections 4 and 5, I will provide a history of U.S. dairy policies and use another case study as an example of a different kind of success. Before that, however, in Section 3 I will illustrate some of the conflicts that have arisen between the U.S. and France as a result of these sometimes opposing strategies of IP and of dairy policy in general.
Section 3: U.S. vs. EU Clash

The purpose of this section is to give a practical context to the comparison between U.S. and EU management of intellectual property and origin products within an agricultural framework. Talking about IP and GIs can be somewhat theoretical, and I had difficulty finding sources that addressed both the ideologies behind GIs and trademarks as well as their real-word effects manifested in free trade and other types of multilateral agreements. This section is an attempt to bring together those two types of literature, in order to better frame the comparison between the two nations analyzed within the document and their associated case studies.

GIs vs. Trademarks: Two Conflicting Regimes?

The process of acquiring GI recognition like AOC, PDO or PDI status differs greatly from the U.S. system of trademark protection used for intellectual property rights. One primary difference lies in the applicant in each process - in the AOC process, a group of producers applies for a label that will be owned by the government on their behalf as long as they follow the cahier des charges and reside within the area, while the trademark process is carried out by a single entity for private ownership. A trademark can be bought and sold, and has an expiration date of protection depending on the country of registration. In the United States, the duration of a trademark is ten years and the owner must re-file the application to continue the rights to the mark. (Josling, 2006) Below is a table which visually represents some of the differences between trademarks, Geographical Indications, and another type of mark, collective marks (described later in the subsection).
<table>
<thead>
<tr>
<th></th>
<th>Trademarks</th>
<th>Geographical Indications</th>
<th>Collective marks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Identifier</strong></td>
<td>Identifies a producer</td>
<td>Identifies a place of origin</td>
<td>Identifies quality, can identify a place of origin</td>
</tr>
<tr>
<td><strong>Owner</strong></td>
<td>One producer/firm</td>
<td>State, on behalf of producers within an area</td>
<td>Certification body owns, but cannot use</td>
</tr>
<tr>
<td><strong>Means of Protection</strong></td>
<td>Role of firm with help of courts, no public intervention</td>
<td>Public agencies (such as the INAO)</td>
<td>Collective responsible for protection of members</td>
</tr>
<tr>
<td><strong>Transferability</strong></td>
<td>Can be bought/sold/licensed</td>
<td>Cannot be bought/sold/licensed</td>
<td>Cannot be transferred</td>
</tr>
<tr>
<td><strong>Cost</strong></td>
<td>Expensive for small firms</td>
<td>Inexpensive for small firms, expensive for groups</td>
<td>Inexpensive</td>
</tr>
<tr>
<td><strong>Conflicts</strong></td>
<td>Cannot contain GIs (unless grandfathered) if they mislead the consumer</td>
<td>Coexists with trademarks and collective marks</td>
<td>Coexists with GIs and trademarks</td>
</tr>
<tr>
<td><strong>Duration</strong></td>
<td>Must be renewed every 10 years</td>
<td>Continuous, unless change in conditions</td>
<td>Subject to renewal</td>
</tr>
</tbody>
</table>

Source: Adapted from Josling, 2006

Trademarks represent a fundamentally different economic strategy than geographical indications, one that reflects a neoliberal free-market ideal of private ownership of intellectual property. They are used to “identify and distinguish the source of the goods from one party from those of others,” they exclude other parties from using a mark and thus decrease fraud, and they encourage brand loyalty among consumers. (USPTO, 2015) Trademarks are largely a private-sector tool, related to competition, with the only role of the public sphere being for enforcement. (Josling, 2006)

Geographic Indications, on the other hand, represent essentially a public good. A public good is, in economic terms, a good which is non-rivalrous (the use of it does not leave less of it for another consumer, like paid television subscriptions) and non-excludable (one party cannot keep another from using it, like timber or coal stocks).
When both these conditions are met, a public good is created - something like a
lighthouse, or, on a large scale, national defense. Geographical indications are a public
good because anyone in the designated area can use them, and their use (the use of the
name of the good on a label) does not leave any less for anyone else. They are often
referred to in INAO documents as “un patrimoine collectif,” meaning a shared heritage,
and thus are treated as the right of everyone to the use of their land and history (albeit for
monetary gain). (INAO, 2011) As Norbert Olszak, scholar of geographical indications,
notes, “les indications géographiques représentent un droit collectif qui s’exerce
individuellement.” (Olszak, 2001)

Use requirements for trademarks and Geographical Indications also vary, another
characteristic which points towards a public/private distinction between the two. The
protection of a trademark under law is dependent on its use: under the US Lanham Trade
Marks Act of 1947, proprietors of a trademark must show evidence of its use upon every
re-registration of the mark. “Use” in this instance refers to private sector utilisation such
as advertising and sales. (Cornish, 2004) GIs are never “re-registered” in any way and
thus their use is less important to their continued existence, though a GI that falls into
disuse is subject to becoming a generic term. This is more of a sociocultural than a legal
distinction, however, and one that is contentiously debated. (Gangjee, 2012) Thus,
availability of GIs for public use is less dependent on market interactions than trademark
status. Generic status for GIs is discussed later in this chapter.

However, GIs differ from typical public goods because they result in personal
and/or collective monetary gain, as opposed to a public good like a national park, which
is enjoyed by all but does not make money for those who visit it. Because money is
involved, and because the public good is also a form of intellectual property, problems of ownership still arise. There is no clear decree or law anywhere in the French system that states the owner or title holder of a Geographical Indication - the state is the assumed owner because the INAO, a government organization, manages the labels and holds governing power. However, the lack of clear delimitation between the public and private sphere can lead to complications, particularly with the trademark system on an international scale. (Olszak, 2001)

One compromise between the two systems is another form of intellectual property referred to as a collective mark. These are marks “adopted by a "collective" (i.e., an association, union, cooperative, fraternal organization, or other organized collective group) for use only by its members, who in turn use the mark to identify their goods or services and distinguish them from those of nonmembers.” (USPTO, n.d.) The collective itself does not sell goods or perform services, but promotes and advertises the goods of the members of the group. The collective owns the rights to the mark together, though it follows many of the same principles as a typical trademark in that it can be sold and requires a 10-year reapplication process. These marks exist in France but are secondary to GIs both in legislative rights and cultural merit. In the United States, “le droit des marques est très important et leur souveraineté sur tout autre signe distinctif semble certain.” (Olszak, 2001) The nature of trademark and GI legislation is also deeply different - trademark policies tend to be concerned with fair or unfair competition, while GI policy framed as an issue of consumer information (Josling, 2006) This fundamental difference between the United States and France in the hierarchy of intellectual property
marks is the root of many conflicts in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and in the trade policies of these countries in general.

The TRIPS Agreement, an international accord that is part of the larger General Agreement on Tariffs and Trade (GATT), is responsible for the universal definition of Geographical Indications used in the introduction to this paper. TRIPS is one of the most important documents and partnerships that governs origin-linked labeling, and an important piece of literature to understand in order to grasp the current state of Geographical Indications across both sides of the Atlantic. In the next subsection, I will outline its origins and the issues at stake, in order to demonstrate the different interests represented by the U.S. and the E.U. in their negotiations of this agreement.

TRIPS: An International Agreement with Rural Implications

Reconciling the many different existing types of GIs on the global market and their associated intellectual property regimes was one aim of this international agreement, negotiated in 1994. (Rao & Guru, 2003) The 116 participating nations signed the document, resulting in the creation of the World Trade Organization (WTO) for enforcement of the rules they had established. (Kinstedt, 2012) TRIPS sets minimum standards for intellectual property protection for WTO members, attempting to balance innovation and free economic competition as well as maintain a “vibrant public domain” from which new ideas can be produced. (Raustiala & Munzer, 2007) Its importance is noted among scholars as “the genesis of contemporary global-scale battles over the appropriate normative pitch of intellectual property law.” (Ruth, 2007) Geographical Indications and trademarks are just one of its aspects, but important ones nonetheless.
TRIPS was preceded by several multilateral conventions in the field of intellectual property: The Paris, Berne and Rome Conventions (the first in 1883 and the last in 1961) were all conducted by developed countries in the interest of strengthening global intellectual property rights. (Rao & Guru, 2003) Several agreements, administered by the World Intellectual Property Organization (WIPO), also set precedent for Articles 22-24 of TRIPS, the portion of the document dealing with GIs. These include: the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891), and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958). (Rao & Guru, 2003) TRIPS established the widely-used global definition for GIs in 1994 and their formalization in that document has resulted in their transfer from the “national, bilateral or plurilateral...to the multilateral stage.” (Josling, 2006)

Though it has been over 20 years since the construction of TRIPS, negotiations are by no means over. The Uruguay Round of the GATT established a framework of negotiation, but the details were left to be ironed out by committees. (Kinstedt, 2012) Thus, the issues that surround TRIPS are still extremely relevant to a discussion of cheese legislation and intellectual property.

TRIPS requires all participating countries to implement an intellectual property regime that recognizes geographical indicators, and member states cannot refuse to recognize an origin product from another member state. This “minimum standard” of protection is framed as a consumer protection issue, which has to be proven, and an unfair competition issue, which is judged by a court. (Thévenod-Mottet & Marie-Vivien,
The institution of a Dispute Settlement Panel within the WTO helps to resolve conflicts with product recognition and fraud. (Josling, 2006)

Article 22 of TRIPS requires all member states to “provide the legal means” to prevent use of a geographical name, directly or indirectly, from misleading the public as to the origin of the good. (Gangjee, 2012) However, TRIPS itself does not dictate how member states must provide this protection - autonomy is left to the signed members as to the enforcement of the treaty. In the United States, according to Rao & Guru, 2003, “If the provisions of the agreement are not inconsistent with the country’s constitution, it is considered that no further action of incorporation into the country’s law is necessary.” Thus, the U.S. can decide how to “provide the legal means” to prevent unfair competition.

This is how the trademark system remains the dominant method of protection for geographical indications in the United States. Trademarks are a legal means to prevent the use of a geographical sign on a product that does not hail from the indicated region or area because the U.S. will not register a misleading trademark. (Rao & Guru, 2003) The U.S. does not recognize GIs “as a separate class of intellectual property,” but protects them legally via trademark law. (Josling, 2006)

The most major conflict arises in regards to trademarks that are registered which already exist as geographical indications, or vice versa. This is not uncommon. Trademarks using geographic names are not allowed to be registered, but some are allowed if over time “consumers have come to recognize those terms as identifying the product of a particular company or group of producers.” This is considered a ‘secondary meaning’ or ‘acquired distinctiveness,’ which is eligible for application for trademark
Certainly, proving this secondary meaning or acquired distinctiveness could be extremely difficult and still result in consumer confusion over the true origin of the product.

Article 22 of TRIPS, regarding GI protection, interestingly differs from other articles of the Agreement in that the two sides of debate are overwhelmingly U.S. - E.U., as opposed to North-South or Developed-Developing. (Rao & Guru, 2003) This marks a distinction in philosophies from other types of intellectual property rights, such as patents or copyrights. In those later cases, dominance of globalized markets by developed nations leads to systems of IPR that favor those nations. However, the majority of valuable intellectual property in regards to GIs lies overwhelmingly in the U.S. and EU, thus the debate is primarily waged between those two camps and their allies. (Raustiala & Munzer, 2007) In the case of GIs, two highly developed powers have fundamentally different understandings and paradigms of how to administer ownership of origin labels. Clearly, there still exists an enormous amount of ambiguity amongst member states about how to best integrate these systems, and no party (particularly within the U.S. - E.U. debate) seems willing to move very far towards compromise.

The debate has gone so far as the WTO Dispute Settlement Panel, created for the purpose of resolving disputes between members states arising from TRIPS. The U.S. in 1999 argued to the panel that TRIPS did not afford equal protection to U.S. trademark holders as it did to EU GIs, which violates the WTO principle of ‘national treatment,’ meaning that domestic and foreign products should be subject to the same rules. Australia joined the complaint in 2003, and in 2005 the panel ruled on the U.S./Australia side. The result of this ruling was that the EU had to allow holders of pre-existing trademarks to
prevent use of confusing geographical indications, not just the other way around.

(Josling, 2006)

TRIPS is little known outside of law and intellectual property circles, but it has serious implications for agriculture and for rural development in the United States, Europe and in developing countries. (Barham, 2003). The EU and U.S. are still in the midst of a battle for the rights to use various GI names, ever since 2005 when the EU made a list of 41 Geographical Indications that they wanted to “claw back” from public use and claim as the property of EU members. These names included globally produced products such as feta and Gorgonzola, so the U.S. and other non-EU nations were - and are - opposed to the attempt. (Kerr, 2006) If the EU were to successfully claim its Geographical Indications back, there could be enormous consequences for both large and small producers of those products. Europe would possess the rights to the names of “almost all of the economically important cheeses of the world,” and U.S. producers would have to make drastic changes to the production and marketing of their cheeses. (Kindstedt, 2012)

Thus, the ownership of certain food names the crux of the argument between the European Union and the United States. U.S. negotiators argue that cheese names like feta or Gorgonzola are ‘generic,’ a term indicating that consumers view the product as designating “a class name or category of all of the goods/services of the same type, rather than of a geographic origin.” (Giovannucci et al., 2009) Article 24 of TRIPS allows that it is not obligatory for member states to provide protection for geographical indications that have become “a generic term for describing the product in question.” This idea is very contentious, as it is the domain of the member states to decide which geographical
indications are generic and no longer need protection. (Rao & Guru, 2003) A geographical indication becoming generic is akin to the failure to re-register a trademark; an unregistered trademark and a generic geographical indication lose their status as protected intellectual property and are thus available for use by any producer who cares to make the product or use the name. The U.S. and EU are continuing to fight this battle in a more current and more controversial free-trade agreement titled the Transatlantic Trade and Investment Partnership, also dealing with GIs and generic status, expected to be passed in early 2015. (Traynor & Rice-Oxley, 2015)

Opposition to GIs among U.S. producers takes the form of an organization called the Consortium for Common Food Names (CCFN), a lobbying group led by the U.S. Dairy Export Council. (CCFN, n.d.) They describe themselves as “an independent, international non-profit alliance,” though there may be larger political factors at play within this organization, according to one interviewee. Caroline, who serves as a liaison between American producers of origin products and policymakers, pointed out that the U.S. Dairy Export Council is funded by check-off money (money collected from milk producers by the USDA) that is supposed to go to funding the marketing orders (a government-implemented price control system). Both these terms will be explained in a later section, but one interviewee says it best: “In other words, these people that work for the Dairy Export Council on dairy check-off money which is gathered up by USDA as a taxing mechanism to administer marketing orders, they are lobbying directly U.S. Congress, Senate and House.”

This is one example of the interactions between the dairy industry in America, dairy policies and Geographical Indications as they relate to intellectual property. Many
different interests are represented and many issues are at stake, just as within the French dairy system. The next section is a case study of one American producer making an origin-linked cheese: the Cellars at Jasper Hill, whose tagline is “The Taste of Place.” While focusing on innovation and working within an American culture that values the individual, Jasper Hill utilizes a collective, community-focused approach that in some ways resembles (and was explicitly inspired by) the AOC Comté model. This case study demonstrates their navigation between two different cheesemaking worlds and how it effects the rural economy around them.
Section 4: A Case Study of Jasper Hill

The Cellars at Jasper Hill is a $3 million dollar cheese aging facility carved into the side of grassy knoll in Greensboro, Vermont. Greensboro has a population of 762, though the town website states that in the summer this population grows to “well over 2000.” (Greensboro Town Website, n.d.) The Orleans County Historical Society provides a rich history of the town, dating back to 1781, which features the names of several places and people that might be familiar to a cheese aficionado: Mr. Moses Sleeper, the Bayley-Hazen Military Road, and Mr. Alpha Tolman. (Old Stone House Museum, n.d.) These famous Greensboro names have a life far beyond the boundaries of this remote town as award-winning cheeses on an international market. They have tremendously altered the political and economic landscape of this seemingly bucolic and quiet area of Vermont.

For the past 11 years, Andy and Mateo Kehler have been producing award-winning cheeses at Jasper Hill Farm, gradually expanding and diversifying their business and valorizing their reputation among artisan cheesemakers. Their current operation now includes the Cellar facility, an underground cheese cave that serves to age both the cheeses made at their farm and those made by other cheesemakers in the state. Cheeses marketed under Jasper Hill’s label are sold across the country in upscale coastal urban cheese shops, though they can also be found down the street from Jasper Hill at Wiley’s Corner Store, a local family market. When asked about the reputation of the Cellars, Richard, a cheese buyer for a top New York City cheese store responded, “They’re the top. And they’ll probably be humble about it, but that’s the reality.” The business holds not only symbolic but economic value as well. As far back as 2005, before the addition of
the Cellars, Jasper Hill was already adding $300,000 a year to the local economy. In 2009, the second year of operating the Cellars, they shipped 70,000 pounds of cheese. (Behr, 2010)

One cheese made by Jasper Hill and aged in the Cellars is named Alpha Tolman, after a dairy farmer from the 1900’s whose farm still exists in Greensboro. Alpha Tolman serves as the focus of my case study because of how it is made. Jasper Hill uses a unique management and ownership structure to produce a concentrated economic impact and increase the viability of their business, and this structure was influenced by the highly organized strategy of Comté producers within their AOC framework. This has resulted in a vertical integration of the factors of production of their cheese that allows for further control over its final outcome.

Though owners Andy and Mateo Kehler are clearly in charge, they are supported by 50 employees who all deal in different aspects of the business: salespeople, accountants, farmers, cheesemakers, affineurs, and others all come together under one $2.5 million dollar payroll. (Personal communication, December 11th, 2014) Jasper Hill owns the Cellars as well as their own farm, and the acquisition of Andersonville Farm for the production of Alpha Tolman and Bayley Hazen Blue in 2014 further increased concentration. This transaction will be discussed later in the chapter.

The characteristics and qualities of Comté that have influenced the production strategies of Jasper Hill were the basis of how I began this project. I wanted to look at an American-made new-world cheese inspired by an old-world one, in order to compare their regulatory framework and hypothesize as to whether and how origin-linked labeling would be possible in the United States.
I conducted in-depth interviews along the supply chain of Alpha Tolman, with four actors directly involved in the market for the cheese and one actor experienced in legislation and policy of origin-linked products. The themes conveyed by the interview responses are elaborated within this chapter, providing insight into how Jasper Hill perceives their economic impact on the community around them and how that affects their actions as well as how they interact with what might be considered their intellectual property.
How Jasper Hill Interprets Community

Defining and operationalizing the meaning and delimitation of the “community” surrounding Jasper Hill was one objective of my interview process, particularly in my interviews with Joe, an owner, and with Anna, a sales manager for Jasper Hill. I was welcomed to the facility several times and was generously given the time, energy, and insights of these two actors, as well as others I met at the Cellars. The Cellars are not technically open to the public, but I attended a tour of the facility with several other interested parties, including a group of cheesemongers from a small grocery co-op in New Hampshire and one evidently curious consumer visiting from New York City. Thus, Jasper Hill certainly isn’t a secret by any means. However, the process of learning about the deeper rationale for their actions and methods certainly made me feel as if I had a privileged, insider position.

The community rhetoric employed by Joe and Anna is noticeably oriented around expressions of control, a framework of thought that could be natural to people who harness the natural world around them for economic benefit. This control is expressed through a sense of agency and leadership in making change in the community, using active verbs like create and build. Anna referred to “creating a culture that supports what we’re doing,” and Joe remarked that Jasper Hill “actually [employs] a person whose job it is to build community.” Anna also stated that at Jasper Hill they “have to be very intentional about [the way they create a positive sphere for their operations], you can’t just expect it to spontaneously erupt,” echoing sentiments she expressed about cultivating a particular environment for microflora in order to produce specific results in the cheese itself.
Certainly the immediate spatial community of Greensboro and Orleans County holds a lot of meaning in the decision making of Jasper Hill. Anna in particular elaborated on this awareness of immediate community, saying “we feel that we’re making a big impact on our sparsely populated subarctic northeast kingdom, and the people are really important.” Neither Joe nor Anna expressed any specific opposition they have faced among local residents to their operation or methods, though they seem to be highly aware of the perception of their business by people around them. This is exemplified by Joe’s opinion that, “within our local community...we also experience, I think, what I would consider envy. People can think...that we’re just made of money, but we’re building something.” This attitude came off as somewhat defiant, a confidence and assertiveness backed by a nationally renowned reputation.

As Jasper Hill’s enterprise grows, particularly with the purchase of Andersonville Farm, the source milk for Alpha Tolman and Bayley Hazen Blue, their relationship to the local area that they consider their community changes as well. Though Andy and Mateo Kehler are not from Vermont, only summering near Greensboro on Caspian Lake until they eventually returned to start their business, Andersonville Farm and its former owner Mark Rogers are a cornerstone of the area. This could change the reputation of Jasper Hill among local residents, due to the long-standing roots of Andersonville and Rogers, a 5th generation Vermonter. As Don, one employee of Andersonville says, “[Andersonville has] been here 200 years, it’s kind of the backbone of this part of the community, everyone knows it here.” Thus, though the business model is relatively new, many of the factors of production are deeply entrenched in local life and that changes the obligations that Jasper Hill may feel in their everyday operations.
Obligations to the “village life in Greenboro,” as Joe calls the local community, must also be reconciled with obligations to actors along the supply chain of Alpha Tolman and other Jasper Hill cheeses. Anna emphasizes the importance of responsibility to the base product, milk, by saying that “we can’t make milk any better than it is, but we can mess up perfectly good milk in turning it into cheese.” In Jasper Hill’s responsibility to “realize the fullest potential of the milk” that they use to make their cheeses, they also encounter a responsibility to the milk producer. All parties feel ownership over the final product, evidenced by the sense of pride expressed by not only Joe and Anna, but also Don of their Bayley Hazen Blue cheese, recently crowned the World’s Best Unpasteurized Cheese at the World Cheese Awards in London.

Relationships between actors on the supply chain are characterized by compromise, though the award-winning results serve as a positive result for all parties. Don expresses pride that he was able to “relent [his] vision of the way a dairy should be operated” in order to create the microbial environment that would please the Kehlers and create the best milk for the cheeses. Changing his feed structure from silage to dry hay as well as hiring more employees are examples of how Don’s policies have changed under Jasper Hill ownership. This situation is unlike a typical cooperative situation in which a milk producer would send milk to be pooled and sold to a cheesemaker or processor. In that situation, the producer’s obligations toward the milk end at the vat - there is generally not a reflexive process of change or improvement in the milk quality. With Jasper Hill, actors forge strong relationships based on communication and mutually held goals: economic success and an end product of world-renowned quality.
Anna admits that “the most skeptical are probably the people that are the closest around us, whose daily lives could be impacted by our approach to what we’re doing.” That impact is not insignificant, with Jasper Hill employing over 50 people and producing $10 million dollars a year in business. (Pollack, 2014) Joe also cited the fact that 8 different employees purchased homes in the area of Greensboro in the past summer. This could represent a significant influx of capital for a town of less than 1,000.

However, all community is subject to conflict, particularly when that much money is involved in such a small space. Conflict is not the focus of this case study, but rather the economic impact itself of a cheesemaking business on the rural community surrounding it. The business model adopted by Jasper Hill and its potential rural economic development impacts were inspired by the AOC Comté model, a connection Jasper Hill has acknowledged since the beginning of their operations. In the next subsection I will demonstrate how Jasper Hill has taken many kinds of inspiration from and maintains a relationship with Comté cheese actors.

Comté’s Influence on Jasper Hill

Jasper Hill doesn’t just focus their business on their own operations. Part of the motivation for building the Cellars was to facilitate somewhere for small cheesemakers to age and market their cheeses, an opportunity that they hoped would “bring into being” more local artisanal cheesemakers. (Behr, 2010) The addition of the Food Venture Center, a food product incubator, in nearby Hardwick also incentivizes further cheese production and development. Joe states that the Cellars and the Food Venture Center will “de-risk the startup of a new farm by building the market before you have to go borrow
all that money.” This regional grouping of farmers, cheesemaking plants, and a large aging facility distinctly resembles the production model of Comté.

The linkage between Jasper Hill and Comté is not accidental: Joe goes to France “at least once a year...to Comté every time.” He states that the “depth of technical knowledge is inspiring,” and both Joe and Anna display extensive knowledge about the structure and management of Comté, in particular their aging strategy.

Philippe Goux, the affineur for Fort Saint Antoine, the most prestigious aging cave for Comté, is a personal friend of the Kehlers who visits Jasper Hill every year and provides advice. Anna describes with reverence the process at Fort Saint Antoine, the “17 different labels...based on the personality of the cheese or...based from the age profile.” She states that Goux is “operating at the very highest levels of cheese intellectual capacity.” Joe, speaking from a more business-oriented mindset, admires Comté for “the power of cheese over generations, the power of a product to sustain a landscape.” It would seem that Jasper Hill also wants to sustain a landscape with their cheese and their dairying enterprise.

An evident difference between Comté and Jasper Hill is that Comté is bound by their AOC status to operate within a specific geographic framework, while Jasper Hill would be free to choose to source their inputs from anywhere they pleased. However, in order to fully express what they understand to be the terroir of their cheese and consequently concentrate their economic impact, Jasper Hill is a highly localized production system. The distance between Andersonville Farm, which produces the milk used in Alpha Tolman, and the Cellars is a bit more than 10 miles. The farthest farm producing milk used in Jasper Hill cheese is 86 miles away in Weybridge, Vermont,
roughly a 2 hour drive. This is much larger than the 25 kilometer (16 mile) circumference requirement for milk suppliers to Comté laitières. However, the overall zone of production for Comté is 570,000 acres, or “two thirds the size of Rhode Island,” a somewhat comparable size. (Comté USA, 2013)

The overall organizational structure of Jasper Hill is simplistically described by Anna as “6 cheesemakers, 6 herds of cows, and 11 cheeses thereabouts.” Anna and Jasper Hill often represent this structure both visually and orally as many straight lines radiating from a (presumably production) center, much like the logo of the Cellars depicted on their packaging and promotional materials. In describing all the supply chains of the different cheeses produced by Jasper Hill, Anna used the phrase “that’s another straight line radiating from the center.” This center/line rhetoric seems to be a method of expressing transparency and accountability, as each batch of cheese is made with only one batch of milk from one herd of cows, with no mixing. With no milk mixing, flaws in milk or cheese quality are easily traceable and responsibility is shared among distinct actors along the supply chain. This transparency may be part of the story sold to consumers as part of a marketing strategy, but it is also a safeguard for milk producers and cheesemakers to avoid creating a poor quality product that will reflect negatively on
More theoretically, the center/line metaphor is not only representative of the actual Cellars but of the economic effects of the operation as well. Thinking of the “center” as Jasper Hill, the lines might represent the income brought in by “harvesting from cities” by selling cheese there. Only 10% of Jasper Hill cheese is sold in Vermont, according to Anna, because they have chosen to compete on a national level by making a higher quality, higher priced cheese than might be appropriate for many Vermont consumers.

This strategy is a sort of inverse method of regarding “local food” as it is commonly known, according to Anna. Rather than a transaction between a producer and a consumer living in one region, the ideology behind which is commonly characterized...
by a desire to support a local economy or farming industry, Jasper Hill “harvests” money from coastal urban markets and brings it back to Greensboro to spend on payroll and inputs and investments. However, the rationale behind buying the product may still be the same - as Anna states it, “[their cheese has] what people are looking for in the local food movement which is connection to a people and a place, even if it’s not next door to where they are.” Thus, motivations for buying local are exploited even without support from traditional definitions of “local” that reside on proximity, and a “local” economy is supported in the sense that Greensboro ostensibly will benefit from the purchase of a Jasper Hill cheese. Anna refers to this process as an opportunity to “pull resources from cities all over the country and world and deposit them in this area.” All of the lines, coming from different urban areas across the U.S., bring money to the center where it is concentrated. This model could also be used to represent the economic concentration of Comté, in which all factors of production are rooted in the AOC zone and all the money comes back to actors within the zone, though a large percentage (45%) of the cheese is sold elsewhere. (Gerz & Dupont, 2006)

Jasper Hill’s Taste of Place

Though the economic situations may look similar from a macro standpoint, Jasper Hill differs fundamentally from Comté in the ideologies that guide their “Taste of Place.” This term, used on Jasper Hill’s signature blue label, also serves as a loose translation for the word *terroir*, a term discussed earlier in this paper. Whereas *terroir* as it is used in France might signify the expression of an innate geophysical characteristic of a landscape by a producer, as expressed by Jacobson, 2010, the Kehlers derive their value from the reputation of the cheesemaker itself. The product “is an extension of the ego of the
producer,” according to Joe, and thus the reputation and the value lie in the cheesemaker’s ability to produce the qualities of the product. Thus, Jasper Hill doesn’t see itself as having “expressed” the terroir of their region, because according to Joe, “terroir is revealed when there are two or more producers of the same product.” Unlike an AOC cheese, in which many producers are all working on the same end goal using proven and stringent methods, Jasper Hill has to rely on their own ability to innovate and manipulate the microflora and conditions around them.

This tendency towards innovation isn’t seen as a burden, however: both Anna and Joe expressed appreciation for their ability to express terroir creatively and not being bound by traditions like an AOC or PDO cheese in Europe. As Joe puts it, “culturally, every time I come back to Vermont I am so glad I am American.” This attitude seems to represent a fundamental cultural dichotomy between the values surrounding American and European quality cheese making practices - tradition versus innovation. Particularly at Jasper Hill, interviewees expressed gratitude for not having to follow a set of rules like a cahier des charges or the “baggage and constraints,” as Joe put it, associated with operating within an AOC/PDO framework.

Jasper Hill seems to use a modern, Americanized definition of terroir that is certainly aware of and attentive to the community, while retaining a pragmatism about how to increase their profits. Paxson (2012) notably calls this viewpoint a “post-pastoral” ethos, characterized by the use of technology within a working landscape to “work in collaboration with organic agencies in a productive fashion.” When I asked how Don interacted with terroir and how it influenced his operation, he replied, “I’ve taken from more of a logical and pragmatic approach than an airy, lofty one because we have to deal
in reality here...I’ve been concerned about quality milk, animal well-being and quality of life for myself and those who work here.” However, both Anna and Joe provided more elaborate, “lofty” definitions of terroir when I inquired, indicating that not all actors along the chain are in agreement about what exactly “The Taste of Place” indicates. For Don, who is providing the base product for Alpha Tolman, the important thing is quality and economics: “‘The Taste of Place’ is their slogan and there are things on the bottom side of that need to be done to make it all fit.”

However, the linkages between Greensboro’s particular microclimate and Alpha Tolman’s characteristics are intentional and clear. The changes in feed structure and inputs that Jasper Hill has required of Don and Andersonville through the process of their relationship and acquisition has proved costly, a process Don sees as “going backwards with technology.” However, all of these decisions have been made with the intention of bringing out the microflora of the milking environment of Andersonville and increasing the bacterial diversity and originality of the milk in order to express them as flavors in the final cheese.

The concept of “going backwards” with technology in the interest of economic profit runs contrary to the theory of the technology treadmill, a concept put forth by Cochrane in 1958. Cochrane stated that farmers are on a constant treadmill requiring the adoption of new technology that erodes any economic profit they gain. Jasper Hill, in going backwards with technology (according to Don), would come out on the losing end of the treadmill if they were participating in the traditional commodity milk market. However, they create a different kind of profit through quality inputs and methods that increase the value of the cheese rather than lowering the bottom line of production. This
strategy is akin to the economic motivation for establishing a Geographical Indication, and one more aspect of European influence demonstrated by Jasper Hill.

European motivations for Jasper Hill tend to be economically related, rather than methods related. Anna pointed out that the years of toil on Alpine-style recipes by European cheesemakers has allowed for Jasper Hill’s ability to perfect and improve on the existing style. She finds that Jasper Hill can “mimic traditions” like the Appenzeller recipe that inspired Alpha Tolman, but modify and personalize the product using modern science to “achieve certain results.” Cheesemakers in mountainous French and Swiss regions struggled for hundreds of years to create a cheese that would allow for the survival of their families, and to Anna, Jasper Hill can “appreciate that while doing it in Hardwick.”

“Doing it in Hardwick” may refer to the individualism and focus on innovation in Jasper Hill’s cheese making. This is supported by relatively lax regulatory structures in place in Vermont that permit the enterprise to operate according to their business needs. Though Joe may be overly simplistic in asserting that in the United States, “you can buy a piece of land a get some cows and start making cheese,” he has benefitted from relationships that he sustains with Vermont policymakers and from a lack of regulation on the part of the state. He states that “it would be impossible to build and operate a business like this in New York,” based on the “very light regulation” that he experiences as a cheesemaker in Vermont (Anna also independently cited New York State as being a framework within which it would be impossible to operate). He cites bureaucracy as a factor that would prevent his business from growing somewhere else, and it’s true that he encounters fewer restrictions to accessing policymakers than another cheesemaker might.
Anna tells the story of the FDA’s potential introduction of regulations preventing the use of wood boards in cheese aging, a law which would prove disastrous for many cheesemakers. She notes that “when the...issue came up, Joe went to Congressman Peter Welch and like, by 4 PM they had a petition drafted.” This example of extremely efficient and responsive government is part of the regulatory culture surrounding the creation of Jasper Hill’s cheese that allows them to experiment and succeed within their artisan sphere.

Thus it seems like the regulatory cultures surrounding Comté and Jasper Hill are so opposite as to be polarized: the former is characterized by bureaucracy, order, organization and government regulation while the latter is made possible by a national political culture of minimal government interference in business and prides itself on innovation and creativity. It would seem as if these two systems could not be reconciled in any way, so deeply are their roots divided.

However, Jasper Hill does maintain an important connection to community, if not via the traditional characteristics of terroir, and this connection could be amenable to an origin-linked labeling structure if it were executed with the current individualistic system in mind. One quote from Phillippe Goux, told to me by Anna, sums up the relationship between U.S. and French cheesemakers: “We are not competitors. We are all in the same boat, and the enemy is standardization.” In Section 5, I will explore what such a system might resemble and how it could lead to the positive economic effects we have seen in the Franche-Comté as a result of AOC status for Comté cheese.
Section 5: Implications for Vermont Dairy Policy

The U.S. isn’t France, and certainly Jasper Hill isn’t Comté. Nor do they want to be. The management of origin-linked cheeses in these countries have arisen from two very particular regimes of intellectual property and agricultural policy, and they are heavily dependent on larger cultural contexts that render them difficult to implement elsewhere. Thus, it would seem that Geographical Indications may not translate to a U.S. framework based on highly individualized and privatized intellectual property structures. However, the U.S. does utilize a form of collective management that could hold potential for origin labeling: the cooperative.

Cooperatives: Collective Management of Dairy

Dairy cooperatives have a long history in the United States, first recorded in the 1890’s but popularized in the 1920’s as a way to organize and empower farmers during the price drops of the postwar agricultural depression. Bailey, 1997, recounts how farmers felt disadvantaged “relative to the railroads, grain mills, and dairy processors, who were few in number but large in size.” Cooperatives allowed farmers to balance the forces and represent their needs against these large firms who controlled the dairy market.

Cooperative isn’t an easily defined word, but the American Cooperative Service definition uses the phrase “a user-owned and controlled business from which benefits are derived and distributed equitably on the basis of use.” (Rasmussen, 1991) The definition for a dairy cooperative is legally important because of their exemption from certain antitrust laws due to the Capper-Volstead Act of 1922, which has provided agricultural cooperatives the opportunity to legally collectively market their products under certain
conditions. (Bailey, 1997) These conditions, described in Section 1 of Capper-Volstead, are:

1. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein.

2. That the association does not pay dividends on stock or membership capital in excess of 8 percent per year.

3. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by its own members.

The Capper-Volstead Act, referred to as the Magna Carta of cooperatives, arose as a compromise between those who argued for more government intervention in the agricultural economy in order to stem the farm depression and those who valued free-market principles and fewer industry regulations. Support for cooperatives was seen as “a more feasible alternative” to more government-intensive plans that involved parity pricing (Bailey, 1997) In passing Capper-Volstead, Congress intended to correct imbalances of power experienced by farmers in dealing with suppliers or dairies and “give farmers the same advantages of collective action and benefits of size enjoyed by investors in corporations.” (McMenamin & McNamara, 1980)

Cooperatives in the U.S. have also experienced many challenges, and a collective structure can certainly result in unintended consequences such as negative economic effects. One such example was the Dairymen’s League established in the 1930s. State officials encouraged all farmers to join, and soon the system became too large, increasing the need for manufacturing plants and driving down prices. This forced farmers to leave
the cooperative in order to maintain their economic sustainability. (DuPuis, 2002)

Certainly, an optimal size exists for dairy cooperatives, like any other collective marketing agreement.

Today, the USDA holds oversight power over all cooperatives in the United States and is responsible for making sure that they do not “unduly enhance prices” using monopolistic actions. (USDA, 2002) However, they are not restrained to a certain size or a certain amount of market share, thus they enjoy benefits of collective marketing and antitrust exemption. These benefits have an enormous economic value as well as market power, particularly in regards to federal milk marketing orders (FMMO) mentioned earlier in this section. A study by Cakir & Balagtas, 2012, found that cooperatives use this market power to collectively bargain for milk prices almost 9% above marginal cost, resulting in an income transfer of more than $600 million per year in markets regulated by marketing orders.

Cooperatives also have enormous power to amend or create new marketing orders, as they can bloc vote for all of their members. Because of all these benefits accrued to cooperative members, the amount of milk supplied by cooperatives in the United States has grown significantly: in 2002, 83% of all milk was supplied by cooperatives. (Cakir & Balagtas, 2012)

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of dairy cooperatives</th>
<th>Farm level share of cooperative marketings (percent)</th>
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<tbody>
<tr>
<td>1969-70</td>
<td>971</td>
<td>73</td>
</tr>
<tr>
<td>1974-75</td>
<td>631</td>
<td>75</td>
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<td>1985-86</td>
<td>394</td>
<td>78</td>
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<tr>
<td>1990-91</td>
<td>264</td>
<td>82</td>
</tr>
<tr>
<td>1997</td>
<td>226</td>
<td>83</td>
</tr>
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Source: RBS-Cooperative Service, USDA

Taken from: Cropp & Graf, 2001
Updated statistics on cooperative participation in the Northeast and Vermont are difficult to find. Most recent statistics, from 1992, show that the Northeast region holds the fewest percentage of cooperative members of any other region in the nation: 60% in 1992. (Bailey, 1997) Of the 991 Vermont dairy farms cited in the 2013 Farm to Plate Strategic Plan, approximate ⅓ are members of the Agri-Mark cooperative (operating under the name of Cabot) and approximately 430 are members of Vermont’s largest cooperative, the St. Alban’s Cooperative Creamery. (Vermont Sustainable Jobs Fund, 2013)

These statistics mark an untapped potential for further cooperative participation and collective marketing in the Northeast. Cooperatives hold potential economic benefit for their members and a greater power in market negotiations, as well as an industry support network that could be useful for participating members. (Bravo-Utera & Lee, 1988) They provide both empowerment and institutional confidence to producers within a free-market commodity framework that normally reduces farmers to price takers due to the fungibility of the product.

A dairy cooperative in the United States differs in several crucial ways from a network of producers within a French AOC/PDO framework, though they both consist of a group of actors along a supply chain with similar goals and interests dedicated to the production of a good. AOC/PDO networks are obviously linked to a common delimited area, with strict rules about where they must operate. This is not the case with American dairy cooperatives, though they would clearly want to organize along regional lines for ease of transportation and transactions. However, they are in no way limited in their spatial existence.
AOC/PDO networks are also restricted by assurances of quality that rest on the strength of their product’s cahier des charges. This notion of quality is paramount for the economic rent achieved by the product, and is one reason actors have strong incentives to follow the specifications of the AOC/PDO designation. Cooperative members do not have these same specifications of quality that they must meet in order to continue their association with other members or participation in the cooperative. However, they do have to meet certain standards in order to guarantee that their milk receives Grade A certification. For cooperative members, just like AOC/PDO producers, economic and non-economic incentives exist for the creation of a quality product. (Bailey, 1997)

The services provided by cooperatives for their members, outlined by Bailey, 1997, can provide a framework of comparison for their similarities with AOC/PDO producer networks:

1. Guarantee for their member producers a market.
2. Bargain for the best price terms possible.
3. Assemble and market milk as efficiently as possible.
4. Help achieve higher quality levels in milk coming to market.

Though AOC/PDO status does not technically “provide services” for those members who are included in its designation, these 4 services are all functions of receiving that status. AOC/PDO status allows producers access to a differentiated market from similar products of lower quality, while still often benefiting from economies of scale and opportunities for growth. (Réviron & Chappuis, 2011) AOC/PDO producers enjoy a price premium over their generic competitors, though this premium can be sometimes captured by intermediary markets instead of reaching the producer. (Réviron
& Chappuis, 2011) They also certainly benefit from increasing efficiency in marketing, particularly when a producer joins an existing AOC/PDO structure, as information networks have already been established. Quality assurance in AOC/PDO systems has been previously mentioned, but is definitely among the characteristics of the designation as well as being a founding principle of the establishment of the system.

State of the State: Dairy Farming in Vermont

Agricultural industries in the U.S. benefit from government assistance in any number of ways, from subsidies to legislation to insurance, all to varying degrees of intensity depending on the industry and the role of the producers within it. Milk, however, has had a continuous support from the government for a century, both in management and in economic viability of the industry. Because of this, milk prices are much more a product of federal policies and programs than they are a function of normal market supply and demand. (Bailey, 1997)

Guaranteed prices for farmers may sound like a good deal for everyone involved, but their effects on Vermont farmers in particular are extremely complicated and sometimes run contrary to the actual goal of increasing farm income. This is for many reasons. Dairy farms in Vermont run much smaller than dairy farms in large dairy-producing states like Wisconsin or California, producing only 1.3% of the nation’s milk though it is the state’s primary industry. (Parsons, 2010) Average herd size in Vermont is only 138 cows, compared with Midwestern or California dairying states that can milk tens of thousands of cows at a time. (American Farmland Trust, 2012)

Only 5% of the milk produced in the state is consumed in Vermont, and thus the rest is sent out to urban markets to compete with milk from all over the nation, which was
often produced at lower marginal costs owing to economies of scale captured by the larger farms in New York State or the Midwest. (Maroney, 2008) In order to keep up with national trends towards agricultural concentration and efficiency, Vermont farmers are pushed towards one of two paths: increased production in order to capture those same economies in scale, though surplus of milk only puts negative pressure on prices which then must be mitigated by marketing orders, or choose to add value and/or diversify. Added value cheese production is a viable choice and one that we saw in Section 4 with the Cellars at Jasper Hill.

Vermont has come to be known, at least within New England and the Eastern Seaboard, as a hub of value-added agricultural products that fit within niche markets such as “farmstead” or “artisanal.” These markets are characterized mainly by their status as not industrial, rather than by any type of firm scale or production strategy. (Cope, 2014) Artisanal is defined by the American Cheese Society as implying that “a cheese is produced primarily by hand, in small batches, with particular attention paid to the tradition of the cheesemaker’s art, and thus using as little mechanization as possible in the production of the cheese. Artisan, or artisanal, cheeses may be made from all types of milk and may include various flavorings.” (ACS, 2011)

Artisanal is not a legal definition by any means, however, and so remains open to use by any number of producers of differing sizes and production strategies. Another commonly used term in regards to smaller-batch cheese making is farmstead production, defined as “cheese...made with milk from the farmer’s own herd, or flock, on the farm where the animals are raised. Milk used in the production of farmstead cheeses may not be obtained from any outside source.” (ACS, 2011) Farmstead cheese has potentially
more definite economic implications than artisanal, as the milk and cheese both come from the same producer and thus fewer supply chain actors and channels are utilized. In this respect, farmstead cheese is the opposite of the commodity cheese produced in larger dairy states - only one actor is involved, with no contracts and no price supports.

This association of Vermont with artisanal or farmstead production could be a result of choices made by Vermont farmers to follow the path of specialization as opposed to the path of commodification, though both kinds of production exist in the state. Artisan, small batch, or farmstead cheeses are all products that result from this kind of strategy, and they cater to a very different market than the commodity products that are more easily produced in larger dairy states. Because of this, Vermont occupies a very unique position within the dairy industry, with a comparatively small number of producers contributing to a well-known reputation for quality (as opposed to quantity) dairy products. Vermont has more cheesemakers per capita than any other state in the nation, with room for further growth. (Sakovitz-Dale, 2006)

Though smaller-scale dairy production might be less affected by government intervention, artisanal or farmstead dairy production chains are not immune to legal regulation or interference. In particular, food safety remains a main concern of the U.S. government, and recent legislation such as the Food Safety Modernization Act has reinforced a safe food system as a priority for government agencies like the Food and Drug Administration and the United States Department of Agriculture. Because of this, certain precautions have been taken to ensure the safety of particularly raw-milk cheeses on the market, both imported and domestic. The best-known regulation affecting cheesemakers is the 60 day aging rule for all raw milk cheeses sold in the United States,
due to concerns about potentially dangerous pathogens in unpasteurized milk. This law, dating back to 1950, has been reevaluated several times by the FDA after disease outbreaks linked to raw milk cheese aged for the requisite 60 days, but has not changed. (Marler, 2013)

Federal regulations affecting cheesemaking tend to be focused on safety, a universally politically supported topic, while state legislation has more bearing on pricing and management of milk and dairy products. The Vermont legislature issued a one-time payment to farmers in 2007 who were suffering from low prices and poor weather in the previous growing season, stating that the government should support legislation that “offers a reasonable rate of return for [farmers’] labor and capital investments. (VT H.213, 2007) The Vermont Housing and Conservation Board (VHCB) is also involved in farm prices, as they purchase development rights for agricultural land in order to help both new and established farmers. VHCB also administers the Farm Viability Program, which provides grants and technical assistance to farmers. This program focuses on helping farmers diversify and/or value-add with products like cheese. (American Farmstead Institute, 2012)

State legislature has also been very involved in dairy and cheese regulation through the creation of the Northeast Interstate Dairy Compact, an agreement among Northeastern states to support dairy prices, and the Vermont Milk Commission. The Commission was a board elected by the then-governor Jim Douglas in 2007 to assess the current state of milk pricing in Vermont and create a report with suggestions for policies to help support farmers without raising prices for consumers. (Maroney, 2008)
The different kinds of supports coming from the state of Vermont to the dairy industry form a sort of mixed bag of legislation without clear goals or objectives. Raising prices for farmers while keeping prices low for consumers would seem to be an impossible task and an empty promise on the part of the VMC. However, the institution of the Farm Viability Program indicates a willingness to adopt new methods and adapt to the specialized nature of Vermont dairy instead of continuing to pursue a productivist model that might be more successful in other states. One potential method of supporting Vermont dairy and cheesemaking is an origin-linked label like a Geographical Indication, shown earlier to have enormous rural economic development potential. However, implementing such a system isn’t easy.

Geographical Indications in Vermont

As shown in Section 3, the dominant status of trademarks in the United States has caused conflict for international trade negotiations as well as for the status of American cheese producers making ‘generic’ cheeses. Implementing a GI system in American agricultural and intellectual property policy would involve enormous changes in the dairy sector that just don’t seem feasible under the current political climate. Even Joe, maker of an origin-linked cheese, admits that he’s “not sure a PDO system would really stick here.”

If GI legislated cannot be created under current intellectual property laws, how could state agricultural policy be improved to better confer those economic benefits to Vermont origin-linked cheese and dairy producers? One part of the equation may be the collective management structure allowed by cooperatives. Cooperatives have a long history in the United States and are frequently used by dairy producers to collectively
bargain for higher prices, manage their supply, and achieve higher quality levels. (Bailey, 1997) As these are all goals of adopting GI status for an origin-linked product, it stands that there is reason behind implementing a GI-inspired, place-linked system that works within existing Vermont cooperative structures.

Vermont policymakers and farmers alike have acknowledged the need for change to the existing dairy management structure. In a state Attorney General’s Report from 2010, the authors admit that “the declining price of milk paid to Vermont farmers suggests that the industry’s structure as a whole does not benefit farmers.” (London & Zamos, 2010) One farmer, cited by the Farm to Plate Strategic Plan, states that “it has gotten to the point where nobody...can pay their bills with the money they’re being paid for their milk.” (Vermont Sustainable Jobs Fund, 2013)

Value-added production and improved branding and marketing are often cited as suggestions for dairy farmers to gain a higher price for their milk, but both of those solutions require capital inputs that many farmers may not have. Initiatives like the Farm Viability Program, which offers business planning and technical assistance to farmers and food system business owners, helps but may not be sustainable over the long term. A successful method of addressing dairy policy could utilise the factors outline by Giovannucci et al. (2006) at the beginning of Section 1: strong organizational and institutional structures, equitable participation, strong market partners and effective legal protection.

A GI system linked to Vermont dairy cooperatives could embody all of these characteristics, leading to a higher price commanded for Vermont farmers’ milk and dairy products. This system could take many of the successful features of Comté -
confiance organisationnelle, collective ownership, effective marketing - and use them to confer economic benefits like the ones seen in the Franche-Comté and in the region around Jasper Hill.

A typical cooperative structure pools the milk of all its members and sells it collectively to an intermediate actor, who can then sell it as fluid milk or add value in the form of any number of products. In this case, the intermediary is often capturing most of the rent, and thus farmers do not really benefit from their milk being used in this way. (Réviron & Chappuis, 2011) Therefore, a more successful method might look more like the Kehlers’: a production line in which ownership of farm, production facility, and aging facility (or other type of value-added production) are all concentrated among a set of actors who reside within close proximity. All actors are involved throughout the steps of the process, increasing confiance organisationnelle and incentivizing high quality products.

Sales of Comté cheese labels to producers fund the majority of the Comité Interprofessionnel de Gruyère de Comté, and a similar system could be effective for Vermont origin-linked cooperatives as well. Farmers already pay a certain number of cents per pound of milk, called check-off money, to fund the administration of the federal milk marketing orders. (Bailey, 1997) If farmers were to participate in an origin-linked cooperative that was not subject to the FMMO, they could use those cents to fund the marketing and organizing efforts of the cooperative.

Vermont consumers are certainly not strangers to origin-linked products, leading the nation in direct-to-consumer farm sales, farmers’ markets and CSA programs per capita. (Agency of Agriculture, Food & Markets, n.d.) Creating an origin-linked labeling
system similar to a GI seems more feasible here, in a state with such an evident commitment to local food, than in another state with fewer direct sales and larger industries. Wider markets could be receptive to such a system as well, as Anna pointed out with her comment about consumers seeking food with “a connection to a people and a place, even if it isn’t next door.” Success of programs like the Keep Local Farms logo showed that consumers are willing to pay a premium for milk that supports farmers in their area, but failed to actually utilise the logo on a product (it simply encouraged consumers to pledge money online). (Vermont Sustainable Jobs Fund, 2013)

The implementation of an origin-linked cooperative system would require extensive research and development through both governmental and institutional actors, such as UVM Extension or the Vermont Institute for Artisan Cheese. Further research into the current state of participation in Vermont or regional cooperatives would be helpful, as well as current farmer satisfaction with cooperative structure. U.S. government funding might be difficult to acquire, as their resistance towards GIs could prevent them from supporting the project. Thus, research might require grants from places like the EU or non-governmental actors.

The scope of this thesis was large, but rooted in a desire to contribute to Vermont agriculture and dairy farming. Vermont dairy farmers and cheesemakers are a crucial part of the state’s culture and economy and deserve to be able to compete on the national milk market while remaining at a variety of scales. It is my hope that this project contributes and perpetuates a conversation about the role of origin-linked products in Vermont and U.S. agriculture, both as a method of rural development and a type of intellectual property.
Conclusion

This project provides a comparison between French and United States constructions of Geographical Indications and origin-linked products. These constructions are deeply rooted in the specific understanding of intellectual property that these countries possess, particularly as they relate to agriculture. This has affected the development of GIs in both France and the United States.

French usage of Geographical Indications was conceived originally as method of protecting producers from fraud, resulting in the formation of the Appellation d’Origine Contrôlée (AOC) system that serves as the foundation for other GI systems in the European Union. (Barham, 2003) Today, the Institut National des Origines et de la Qualité (INAO) manages the AOC label as well as several others used both on a French and EU level. These labels allow increased consumer information regarding the provenance of a good and provide a higher price point for producers based on perceived higher quality of the product. (Bérard & Marchenay, 2008) This has potentially important implications for rural economic development.

The first case study explored in this project is an example of positive rural economic development impacts of an AOC for a group of producers. AOC Comté, made in the Franche-Comté region of France, provides at least 7600 jobs in the area where it is made. (Comté USA, 2013) Further, AOC Comté provides other non-economic benefits such as increased rural retention of young people. (Gerz & DuPont, 2006) Compared with a similar but generic cheese, Emmental, prices for fluid milk intended for Comté production are consistently higher. (Colinet et al., 2006) As such, Comté is an important economic and social driver in its rural region.
Though the economic benefits of a Geographical Indication to a group of producers can be great, conflicts exist on an international level when GIs collide with differing systems of managing origin-linked products. The United States chooses to protect its origin-linked products, as well as those of other countries, using a trademark system. Trademarks and GIs are fundamentally different as intellectual property: trademarks are a private mark issued to a single person, which can be bought or sold or licensed. Geographical Indications follow more of a collective management structure, as they are owned by the government on behalf of the producers and cannot be bought or sold. In some ways, they resemble a public good: anyone who resides within the delimited area and follows the cahier des charges can utilize the mark. (Josling, 2006)

As a result of these fundamental differences, conflicts arise between the U.S. and the EU on a trade level. The Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), signed in 1994 as part of the development of the World Trade Organization (WTO), is an example. TRIPS requires all member countries to provide a method of legislating GIs, but does not specify a method, so trademarks and GIs can interact and cause international conflicts. (Rao & Guru, 2003)

Though these differences affect the overarching methods of legislating origin-linked products in the United States, these products are still made successfully. One example and the subject of the section case study of this work is the Cellars at Jasper Hill in Greensboro, Vermont. Using a series of semi-structured, in-depth interviews, I explored the relationship between Jasper Hill and their community and the economic impact of that relationship. Rather than being bound by AOC status to a particular region, the owners of Jasper Hill willingly choose to operate within a small boundary. They feel
obligations to the Northeast Kingdom community around them, and have an enormous impact both economically and socially on that community. Though Jasper Hill has been heavily inspired by the Comté model, they express appreciation for not being bound by any standards or traditions other than those that they explicitly cultivate. This tendency towards individualism and innovation, operating within a collective supply chain framework (many producers, one Cellar), demonstrates their navigation between American and French cheesemaking.

The implications for Vermont dairy and cheesemaking policy, as it relates to Geographical Indications and origin-linked labeling, rely on existing collective management structures. Creation of a Geographical Indication-style system in the United States seems unlikely, given the deeply individualized and privatized understanding of intellectual property used there. However, dairying and cheesemaking are often managed by cooperatives and other forms of collective marketing. The Capper-Volstead Act of 1922 provided the legal basis for agricultural cooperatives and still today, at least 83% of the fluid milk in the country is produced by cooperatives. (Cakir & Balagtas, 2012)

Thus, there exist collective structures that could be ultimately linked to origin and managed to resemble a Geographical Indication in order to provide value to producers and knowledge to consumers. The market exists for Vermont-made dairy products, or potentially even dairy products made in specific regions of Vermont. The Milk Matters Report survey showed that 85% of consumers polled were willing to pay a price premium (no specified amount) for milk made in Vermont. (Vermont Dairy Promotion Council, 2014)
Further research is necessary in order to determine the nature and amount of participation in existing cooperatives and other collectives in Vermont dairying and cheesemaking. Certainly the exact specifications for an origin-linked cooperative resembling a Geographical Indication are unclear – what would the quality standards look like? Who delimits the area and who determines the production methods, if they are standardized? How much more, exactly, are consumers willing to pay for Vermont origin-linked and terroir-driven cheese? Where are those consumers? Help will be needed from both governmental and institutional research bodies in order to work towards these answers.

This research project aims to participate in a current conversation about the future of Geographical Indications, their relationship to intellectual property structures, and how to best help Vermont cheesemakers and rural communities. Hopefully, it will provide some insight to anyone interested in these subjects and further the cause of origin-linked labeling in the United States and in Vermont. Many thanks go out to all who have helped with this project.
Works Cited


