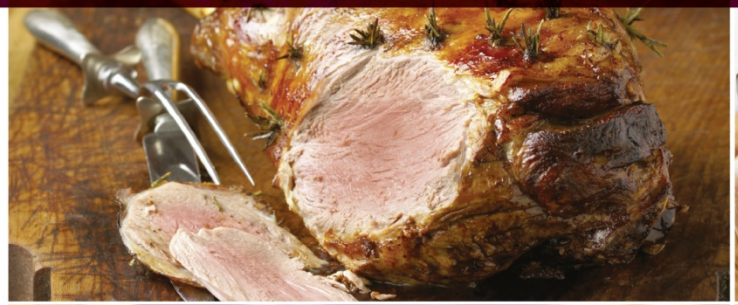



The protection of Geographical Indications in TTIP: a mission possible!





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Outline

- EU approach to GIs
- Bilateral agreements: objectives, strategies and options
- The CETA outcome
- GIs in TTIP: the occasion to make the impossible possible.
- Conclusions

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How are GIs regulated in the EU?

- WTO TRIPS agreement as framework
- Four sets of EU rules for food, wine, spirit drinks & aromatised wines
- Exclusive EU system
- Member States deal with other products. An EU system for handicraft GIs e.g. knives or rocks?

GI Legislation

Agricultural products and foodstuffs	Regulation (EU) 1151/2012 on quality schemes for agricultural products and foodstuffs
Wine	Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products
Spirit drinks	Regulation (EC) No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks
Aromatised wine products	Regulation (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatized wine products

GIs -2 types: PDO and PGI

1. geographical area + 2. specific product + 3. causal link = 4. PGI or PDO

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In the EU: PGI and PDO

REGULATION (EU) No 1151/2012

"Designation of origin" is a name which identifies a product:

(a) originating in a specific place, region or, in exceptional cases, a country;

(b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and

(c) the production steps of which all take place in the defined geographical area.

"Geographical Indication" is a name which identifies a product:

(a) originating in a specific place, region or country;

(b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and

(c) at least one of the production steps of which take place in the defined geographical area.

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GIs : a very high level of protection in the EU

Registered names are protected against:

- **Any direct or indirect commercial use (**for comparable products or when using the name exploits the reputation of the protected name)
- **Any misuse, imitation or evocation (including against translation** (« Burgundy » for « Bourgogne »), **if the true origin of the product is indicated** (« Burgundy from Australia ») **or with an expression such as « style », « type », « method »** (« Burgundy style »)
- **Any other false or misleading indications and any other practice** « liable to convey a false impression as to the origin of the product »

Protecting EU GIs worldwide. More frequent issues:

a) Prior trademarks

b) Prior use

c) Alleged genericness

d) Others

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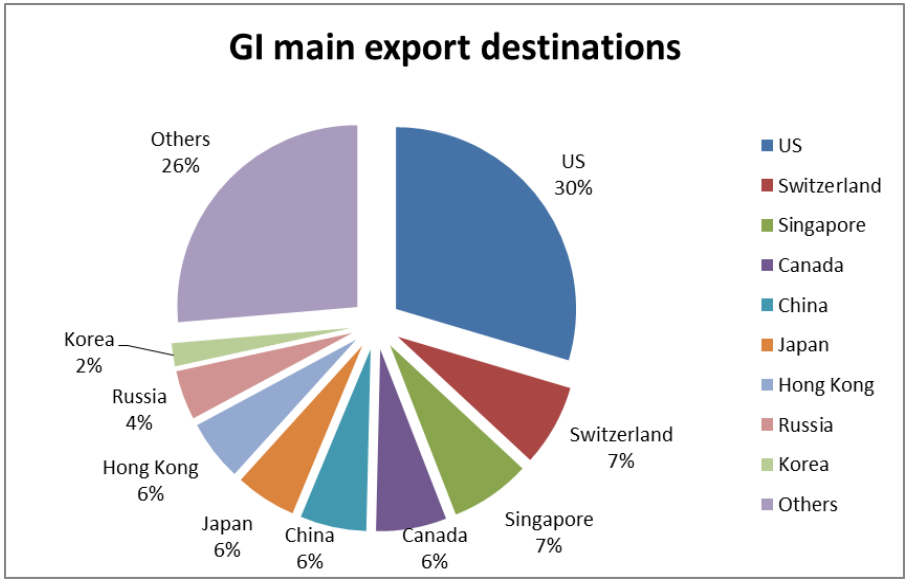
Sales destination (2010 survey)

60% of sales take place on the domestic market, 20% on the EU market and 20% in third countries

- 663 GIs sold only in their MS of production
- 1525 GIs exported (1224 wines, 231 agri products, 70 spirits)
- Wines + spirits = 90% of total GI exports (in value)



Source: AND study for the European Commission

Issues with trademarks: examples

- In Canada, the company Maple Leaf Foods registered as trademark the name "Parma" in 1971.
- Canadian courts rejected the request made by the Parma Consortium to cancel the trademark on the basis that it was deceptively misdescriptive and to register "Prosciutto di Parma" as CTM in Canada.
- As a result, the real product can not be sold under its name in Canada (at least until CETA does not enter into force…).

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- The Consortium of Prosciutto San Daniele registered in the US before the USPTO the certification mark (serial number 74336070) on 22 August 1995 (here at left).
- This was insufficient to prevent the use by Daniele Prosciutto, Inc. (a Rhode Island corporation) of the word-mark “Daniele” for meat products and the use of the following logo in the US as ham “made in the US”.
- It cost almost 10 years and 1 million euros to the Consortium to reach an agreement with the company so that their name can not be used in conjunction with ham.

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Issues with genericness

- *Some of the most famous EU GIs are often misused and are sometimes considered as generic names in certain markets, preventing their protection as GIs or as trademarks.*
- *Worlwide, there are different views on genericness, notably on how to assess it and its territorial dimension.*

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Use of "style", "kind" etc

"Parma style"

"Prosciutto"

Italian flag

Trademark sounds Italian

… but the ham is made in Australia!

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EU bilateral agreements on GIs

Three approaches:

- Wine (and/or spirits) agreement
- Stand-alone GI agreement
- A GI section within a Free Trade Agreement

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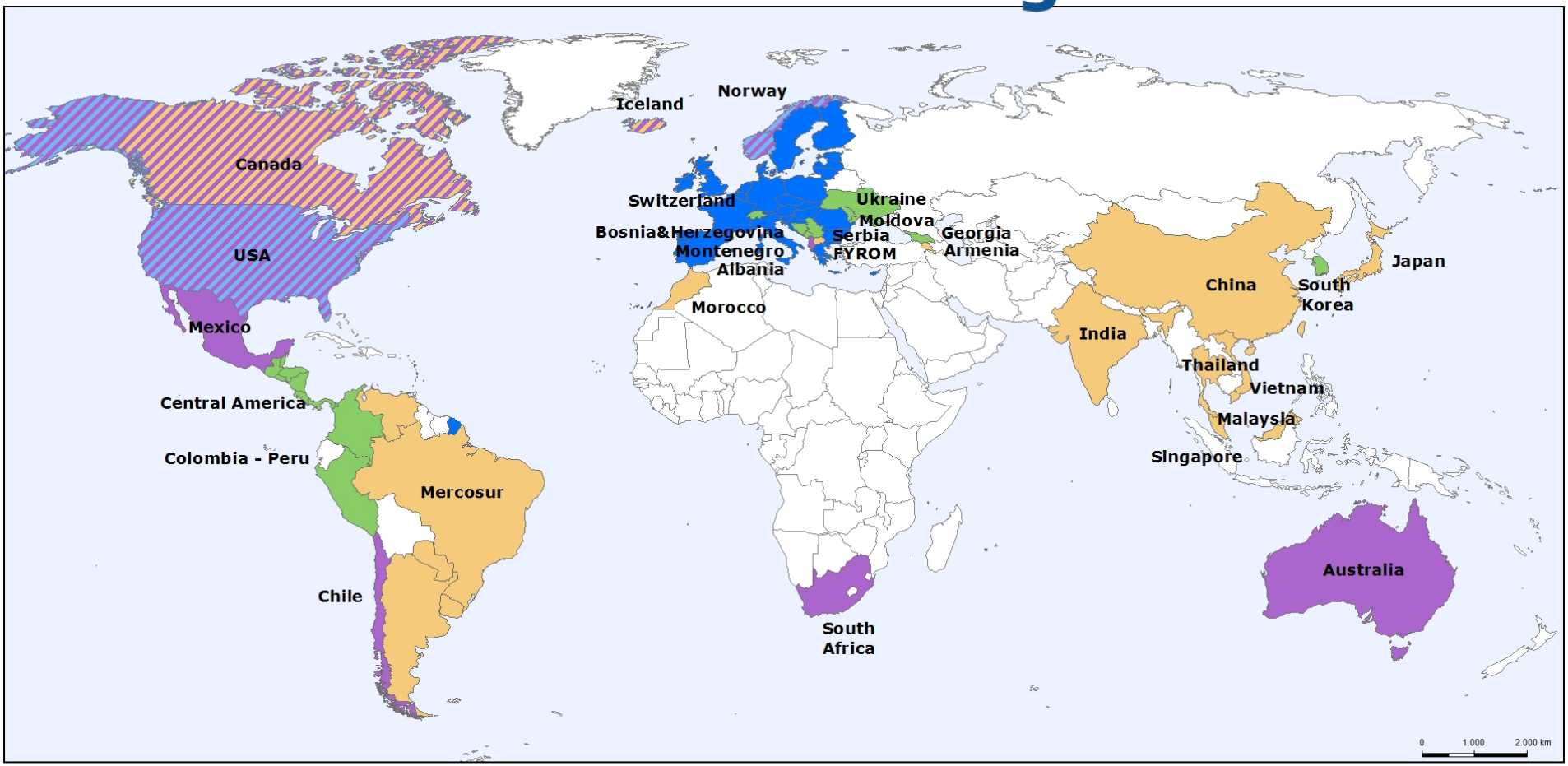
The EU network of GI agreements



GIs Agreements

- Future GIs Negotiations
- Ongoing GIs Negotiations
- GIs Agreement concluded
- Wine and /or Spirit GIs Agreement concluded

Source: EU Commission

European Commission Agriculture and Rural Development

Map Projection World: Eckert III - Map Scale 1:110.000.000

Note : The borders of the map does not necessarily represent the official position of the EU. The map has only a statistical value.

Bilateral agreements

EU objectives (1):

- To establish a (full/short) list of EU GIs to be protected directly and indefinitely in a 3rd country from the entry into force of the agreement
- To obtain the extension of the level of protection provided by Article 23 TRIPS to agricultural products and foodstuffs, including protection against evocation (so-called art. 23 TRIPS +),

Bilateral agreements

EU objectives (2):

- To obtain administrative enforcement of protection, on top of judicial remedies,
- To allow co-existence with prior trade marks,
- To find solutions (phase out, grandfathering, other..) for all conflicts on EU names,
- To ensure a right of use (opposed to trade mark license system),
- To create a co-operation mechanism / dialogue, notably with like-minded partners.

Negotiation process - preparation

- Confidence building and better understanding of each other systems
- Relationship between domestic legislation and the international agreement
- Contact with stakeholders (MS but also companies, lobbies such as oriGIn, and producer's groups or federations of GIs)
- Identification of specific issues with a given trading partner

Negotiation process – list of GIs

- Long list vs short list
- How to build a short list
- Non-Agricultural GIs
- Examination and opposition procedure
- Treatment of conflicts (genericness, conflicts with prior trademarks, prior uses, homonyms, plant varieties, names used in translation) – has an impact on the text.

Negotiating GIs with GI "opponents": CETA and TTIP

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The CETA end-result:

- 145 EU GIs directly protected via the agreement
- Level of protection: TRIPS art. 23
- Type of protection: combination of judicial remedies and administrative enforcement against uses of any kind misleading the consumer (including evocation of a false origin)
- Coexistence with prior TMs (5 names)
- Ad-hoc solutions for conflicts with prior uses, prior uses in translation, plant varieties for a limited (16) number of terms
- Open list

GIs in TTIP: issues

- *A key offensive interest : the U.S. is by far the leading destination country for EU GIs, with €3.4 billion of imports of EU GI products (out of €11.3 billion of all agricultural export), accounting for **30% of total food and beverages imports from the EU.***
- *Protection of foodstuffs GIs in the U.S. can currently only be assured under the **U.S. Trademark regime as "Certification marks**. This system does not ensure an adequate protection for EU GIs.*
- ***Costs of registration** under the TM regime*
- ***Costs of enforcement**: The TM holder must control the TM on the market and prevent abuses and oppose registrations with costs.*
- *A TM or a name not adequately protected may become **generic**. Several EU PDO/PGI cannot be protected because they acquired an alleged generic nature (ex. "Feta", "Asiago", "Fontina")*
- *Existence of **earlier TMs** for some PDO/PGI;*

GIs in TTIP (1)

What the EU does want out of TTIP:

- *to guarantee a fair treatment for unique products and increase transparency for consumers*
- *A direct protection for a selection of EU food GIs through the agreement + the possibility to expand the list in future.*
- *A TRIPS-plus type of enforcement, opening the possibilities for right holders to lodge a request vis-à-vis competent U.S. authorities to act administratively against misuses of GIs, i.e. not only (highly expensive) judicial remedies.*
- *The so-called "extension" for agricultural products and foodstuffs, i.e. a level of protection in line with Article 23 TRIPS.*
- *Specific solutions for specific conflicts e.g. with prior uses, with alleged generics, including in translation, or with prior TMs (via coexistence).*

GIs in TTIP (2)

What the EU does not want in TTIP:

- The EU is not asking the U.S. to create an ad-hoc *sui generis* system of GI protection. Our ask is compatible with the U.S. legal system
- To claw back and "monopolize" common food names for the benefit of some EU producers. EU accepts that generic names cannot be protected. The generic test should be done on the basis of serious evidence, not mere assumptions.
- The EU is not asking the U.S. to protect geographical names of EU origin which are not protected as GIs in the EU e.g. *camembert, brie, cheddar, edam, emmental, gouda and bologna.*
- The EU is not asking the U.S. to protect non-geographical names such as *mascarpone, mozzarella, provolone, blue, chorizo, ricotta, salami, kielbasa, chêvre and prosciutto.*

A way forward:

- De-dramatize the GI debate. Look at the balance
- GI is not an EU-only file in TTIP: some stakeholders in the U.S. strongly support the GI approach and advocate a better protection for this particular "rural" IP
- 95% of the EU GI names are not problematic in the U.S. territory
- Negotiations should focus on the few names really problematic, to be solved pragmatically. In looking for such common grounds, negotiators will be guided by TRIPS rules

Some conclusions

- One-fits-all approach does not work
- The more the environment is "differently-minded", the more direct protection is key
- Be open to innovative solutions…but keep an eye on red lines
- Manageable areas: conflicts with varieties/breeds, compound names, translations
- More problematic areas: prior use, alleged genericness, prior TMs
- **There is no mission impossible**: when there is a will, there is a way!

Thank you for your attention!

More info available @ http://ec.europa.eu/agriculture/quality/

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