

What will be the Impact of the Transatlantic Trade Agreements (CETA and TTIP) on Protected Geographical Indications (PGIs)?

- **The Comprehensive Economic and Trade Agreement, or CETA, between the EU and Canada** was concluded in September 2014, amended in February 2016 and is currently going through the ratification process. It could come into force in 2017.

- **The Transatlantic Trade and Investment Partnership (known as TTIP or TAFTA) between the EU and the United States** is still being negotiated.

The scope of these transatlantic agreements is unprecedented in the history of European trade. These are the first agreements negotiated by the EU with partners from among the world's leading economic powers; and the range of issues covered by the proposed agreements is unique. In addition to customs duties and the opening up of markets, these trade discussions are now also focusing on non-tariff barriers, i.e. on the protection standards that apply in Europe and the on the other side of the Atlantic.

A Geographical Indication (GI) is “a name describing an agricultural product or foodstuff that owes its characteristics or its reputation to the geographical area from which it originates. (...) [GIs] include both the ‘Protected Designation of Origin’ (PDO) and the ‘Protected Geographical Indication’ (PGI).”¹

This system means a value can be attributed to a territory or to a skill; it means the rights of the consumer can be protected; and it means economic sectors can be further developed by conferring on them added value. The system is well developed in Europe and, according to the European Commission, it plays an important part in preserving jobs in rural areas².

Geographical Indications in 2015

1,308 GIs on EU food products, of which 129 are on French products; and 98 PDOs, most notably for meat, charcuterie and cheeses

2,883 GIs on wines in the EU

= €15 billion worth of exports outside the EU, equivalent to 25-30% of the total export market outside the EU in processed agricultural products (main destination country = USA)

Wines and spirits: account for 90% of the value of these exports

France: 40% of products exported outside the EU have a GI; champagne and cognac are at the top of the list

What is the Current Situation?

At the international level, a key challenge for exporting companies is firstly the fact of the two systems running in parallel - namely the GI system and the trademark system; and then the issue of how to ensure that different countries actually recognise the indications and marks. The countries of North America do not legally recognise the collective protection mechanism based on a product's production location and implemented by a state. Canada and the USA use the trademark system which is characterised by the protection of a product based on its exclusive distinguishing features. This system, under which the owner of the mark has to bear the cost of taking any legal action to defend it, can prove far more expensive for producers – and indeed even beyond the reach of very small producers.

Furthermore, the United States and Canada claim that the proper names used for GI-protected products are of a generic nature. The challenge in the trade negotiations therefore is to obtain recognition of the system and to protect GIs in order to prevent other producers from using the same product names – in third countries - as those used by European producers. The parallel functioning of the GI system and trademark law has already been the subject of a dispute at the WTO: and the ruling did not really solve the problem. In reality, more satisfactory solutions still need to be found.

¹ http://ec.europa.eu/agriculture/quality/policy/consultation/greenpaper_en.pdf : for a name to qualify as a PDO, all the steps of production must in principle take place in the geographical area and the product's characteristics must be exclusively or essentially due to its geographical origin. For a name to qualify as a PGI at least one step of production has to take place in the area, and the link to the area concerned can be justified by reason of a specific quality, reputation or other characteristic linked to the geographical area.

And as defined by TRIPS (Art. 22.1): “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”
https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

² GIs in TTIP: 'Limited' document for the EU Trade Policy Committee, DG Agriculture and Rural Development, 23rd February 2015, <https://fr.scribd.com/document/272180505/EU-Internal-Hymn-Sheet-for-GIs-in-TTIP>

What do the Negotiations Deal with?

- rules to ensure that the different systems in place to protect intellectual property can co-exist
- a list of GIs that could be recognised and protected
- monitoring measures
- possible redress mechanisms for aggrieved producers

What Might Change as a Result of CETA?

Under CETA, apart from strengthening the protection of GIs covering wines and spirits³, the list of recognised indications covering foodstuffs stands at 175 across the EU, of which 42 are French; this translates in reality to 30 PDOs and PGIs⁴.

This means that of the 227 existing French GIs, almost 197 will not be subject to protection. Examples of the unprotected GIs include: *Ossau Iraty* (cheese), *Mont d'Or* (cheese), *Saint Marcellin* (cheese), *Tomme des Pyrénées* (cheese), *crème d'Isigny* (crème fraîche), *saucisse de Montbéliard* (sausage), *Guérande* salt, *Camargue* rice, and *charolais* beef from Bourbonnais. Some MEPs have described this situation as unacceptable and probably illegal discrimination⁵.

The EU has said it is pleased that in the case of some GIs - "duck foie gras from the South West (Périgord region)", for example - it has persuaded Canada to accept the possible use of Geographical Indications, even in cases where registered trademarks using the same name already exist in Canada. This means that these different but similarly designated products will co-exist on the European and Canadian markets. Moreover, in the case of some GIs considered generic in Canada - such as "Munster" or "Feta" - Canadian producers who used the GIs before 2013 will be able to continue to do so; whereas new producers will have to include the word 'style' or 'type' or 'imitation' on the label. Canadian producers of "*Jambon de Bayonne*" (ham) and "*Beaufort*" cheese who used these geographical names before 2003 will be able to continue to do so, as will producers whose product names make reference to the name of a particular geographical area by use of the term "*du comté*", meaning 'from the county of'. Thus geographical labels such as from "Prince Edward County", from "Prescott-Russel County" or from the "Beaufort Range" will continue to appear both on the domestic market and on products for export to third countries.

Furthermore, the monitoring of adherence to and the enforcement of GI rules will be carried out by the Canadian authorities at border crossings only and not within the Canadian territories themselves⁶.

Thus CETA only recognises a limited number of GIs; and there are a great many exceptions; and this is in exchange for greater access to the European market for other Canadian agricultural products, most notably meat products. CETA does not resolve the fundamental problem of the co-existence of two different systems of intellectual property rights⁷.

What Might Change as a Result of TTIP?

Discussions with the United States are even more tricky, particularly where wine is concerned. Under the 2006 agreement between the USA and the EU on trade in wine, the indications Bourgogne, Chablis, Champagne, Moselle, Claret, Haut-Sauternes and Sauternes can be used by long-time producers to describe American wines provided these indications are followed by an indication of the geographical origin of the product concerned⁸. The agreement provided for this position to be revised, but the Europeans did not follow through on this commitment. Enhancing the protection accorded by these "semi generic" indications is therefore one of the key objectives of the negotiations. The EU is also demanding the recognition of 22 additional indications for spirits, including Martinique Rum, Cognac, Armagnac and Calvados.

In terms of protecting food product names, the European proposal in the TTIP negotiations includes 201, of which 41 are French - a mere 18% of all existing food product GIs. Canada also recognises some GIs, namely the following cheeses: *Mont d'Or*; *Vacherin du Haut Doubs*; *Selles sur Cher*; *Ossau Iraty*; *Picodon*; *Sainte Maure de Touraine*; *Rocamadour*; *Salers*; *Tomme des Pyrénées*; *Valançay*; and then the *Noix de Grenoble* (Grenoble Walnut).

But the recognition of GIs is only a priority for a handful of EU Member States. Others fear that this part of the negotiations could cost the Europeans dear. "If we want to seize the opportunity of free trade with the giant American market, we can no longer protect every sausage and every cheese as being a speciality,"⁹ according to Germany's Agriculture Minister.

3 Reworking into CETA of the 2003 EU-Canada agreement on wines and spirits

4 See: "[Le TAFTA avant l'heure: tout comprendre au traité UE-Canada](#)", AITEC, April 2016

5 See: "[CETA et TAFTA: le grand bluff français?](#)" Yannick Jadot, Alterecoplus, May 2016

6 http://fr.ambafrance-us.org/IMG/pdf/Fiche_accord_CETA.pdf

7 Geographical indications in TTIP, the transatlantic trade and investment partnership, Bernard O'Connor, NCTM, April 2015

8 2006 Agreement between the USA and the EU: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2006.087.01.0001.01.ENG&toc=OJ:L:2006:087:FULL#L_2006087EN.01000201

9 Statement, Jan 2015: <http://www.euractiv.com/sections/trade-society/germans-fret-about-kentucky-fried-bratwurst-under-ttip-311067>

For their part, the United States is ferociously opposed to these demands. In May 2014, 177 members the House of Representatives demanded that all forms of GI protection be rejected, saying that the EU was trying “to carve out exclusive market access for its own producers”¹⁰. This point of view is shared by the US Secretary of Agriculture, Tom Vilsack. “[The EU],” he said, “want to protect that high value added offer. Our concern is that in doing so it will make it difficult, if not impossible, for products that have been marketed under the same name for decades now – and these are names that we believe are relatively generic terms – to enter the market.”¹¹.

But there is nothing to prevent producers from registering American products as GIs in Europe or elsewhere. This is precisely what happened with the “Napa Valley” indication, which was recognised in the EU in 2007 – and in Brazil and China in 2012¹².

Without knowing the precise details of the latest American proposals, the Trans-Pacific Partnership Agreement (TPP) concluded recently between the United States and 11 other Pacific Rim countries is a good pointer to the US’s objectives. It contains provisions that could lead to the curbing of the use of geographic indications for product names considered to be generic and would give priority to registered trademarks. This means that it is not only the United States that is threatening GIs by trying to use TTIP to force this approach on the Europeans; but also that if other countries sign up to the Trans-Pacific Partnership Agreement, GI protection could be further weakened throughout the world.

“We believe that the recently negotiated TPP agreement with our Trans-Pacific friends creates a dual process system which didn’t exist before and which allows people to challenge Protected Geographical Indications.”¹³ (Tom Vilsack, United States Secretary of Agriculture).

In France some non-food products also benefit from GI protection. Examples of this are Le Puy lace; Vallauris pottery; Limoges enamel; and Monoï oil from Tahiti. Some manufacturers are lobbying hard for an extension of this type of protection regime to cover other industrial and artisanal products; indeed, they are counting on such a mechanism to preserve artisanal and industrial heritage; to preserve and create local jobs; and to revitalise certain regions. At the European level, the Parliament has called on the European Commission to put forward proposals of this nature. But what chance is there that such demands will be met given the major obstacles GIs are already facing in the international trade system?

Potential Impacts of the Agreements on European Manufacturers of GI Products

- **Greater access to Canadian markets for products recognised as GI, in exchange for improved access to the European market for additional agricultural products. The negotiations with the US on this point are currently completely at a stalemate.**
- **Competition in partner and third country markets from products bearing the same name as certain European GIs.**
- **No long-term solution to deal with the question of the co-existence of the GI and Trademark systems.**
- **A general weakening of the GI system as a result of other trade agreements concluded by the USA (particularly the Trans-Pacific Partnership Agreement)**
- **In the negotiations not all GIs are being treated equally. According to some French MEPs, even the legality of such a measure could be challenged.**

The Veblen Institute strives for a sustainable society in which respect for our planet’s physical limits goes hand in hand with well-being, social solidarity and an economy built upon more democratic rules than at present. In France the Institute is leading the campaign for responsibility in trade agreements. The campaign aims to analyse the effects that these agreements - currently being negotiated – could have on SMEs and local economies.

www.veblen-institute.org

Contact: dupre@veblen-institute.org

Translation (from French): Sean Klein

10 [Making Sense of CETA](#), Canadian Centre for Policy Alternatives, September 2014, page 63

11 [“Agriculture européenne: la grande braderie”](#) Friends of the Earth Europe, April 2016

12 [Geographical indications in TTIP, the Transatlantic Trade and Investment Partnership](#), Bernard O’Connor, NCTM, April 2015

13 [Geographical Protection ‘not an easy issue’ in TTIP](#), Euractiv.com., 2 Dec. 2015