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Geographical Indications in U.S.-EU Trade Negotiations

What are GIs? Geographical indications (GIs) are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region. The term is most often, although not exclusively, applied to wines, spirits, and agricultural products. Some food producers benefit from the use of GIs by giving certain foods recognition for their distinctiveness, differentiating them from other foods in the marketplace. In this manner, GIs can be commercially valuable. As intellectual property, GIs may also be eligible for relief from acts of infringement or unfair competition. The use of GIs might also protect consumers from deceptive or misleading labels.

Examples of GIs include Parmesan cheese and Parma ham from the Parma region of Italy, Tuscan olive oil, Roquefort cheese, Champagne from the region of the same name in France, and Irish whiskey. Other examples are Darjeeling tea, Ceylon tea, Florida oranges, Idaho potatoes, Vidalia onions, Washington State apples, and Napa Valley wines.

Why are GIs a U.S. Policy Concern? Ongoing trade negotiations between the United States and the European Union (EU) seek to establish a free trade area as part of the Transatlantic Trade and Investment Partnership (TTIP). Resolving concerns about GIs are among the primary negotiating priorities for many in the U.S. food and agricultural industries. Several industry groups and some Members of Congress have expressed concern that the EU is using GIs to impose restrictions on the use of common names for some foods—such as parmesan, feta, and provolone cheeses, and certain wines—and limit U.S. food companies from marketing these foods using these common names. These same concerns have implications for EU trade agreements with other countries, such as Canada, on U.S. market access in other countries. GIs may be included in a discussion of intellectual property rights (IPR) in the TTIP negotiations. GIs are also being discussed as part of the Trans-Pacific Partnership (TPP) trade negotiations between the United States and several of its trading partners.

In the United States, many food manufacturers view the use of such common or traditional names as generic terms, and view the EU's protection of its registered GIs as a way to monopolize the use of certain wine and food terms, and as a form of trade protectionism. The use of GIs, particularly for wines and dairy products, has become a contentious international trade issue. Some consider GIs to be protected intellectual property, while others consider them to be generic or semi-generic terms. Laws and regulations governing GIs differ between the United States and EU, which further complicates this issue. GIs are protected by agreements of the World Trade Organization (WTO).

How are GIs Protected in the WTO? The protection of GIs is provided for in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was signed in April 1994. TRIPS is among the multilateral rules dating back to the development and signing of the General Agreement on Tariffs and Trade (GATT) in 1947, followed by subsequent negotiating rounds leading to the establishment of the WTO in 1995. The United States is a signatory of the TRIPS Agreement and is subject to its rights and obligations. Discussions are also ongoing to potentially create a multilateral register for notifying and registering GIs for wines and spirits.

TRIPS defines GIs as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin" (Article 22(1)). Accordingly, a product's quality, reputation, or other characteristics can be determined by where it comes from, and GIs are place names (or in some countries words associated with a place) used to identify products that come from these places and have these characteristics. Under TRIPS, member countries have committed to providing a minimum standard of protection for GIs to "avoid misleading the public and to prevent unfair competition," along with "enhanced" protection for wines and spirits that carry a geographical indication, subject to certain exceptions. (See box.)

Geographical Indications and the TRIPS Agreement

The WTO TRIPS Agreement provides general standards of protection for all GIs, and can be found in two articles of the agreement:

- **Article 22:** Defines a standard level of protection that covers all products. GIs are to be protected in order to avoid misleading the public and to prevent unfair competition.
- **Article 23:** Provides a higher or enhanced level of protection for geographical indications for wines and spirits: subject to a number of exceptions, they have to be protected even if misuse would not cause the public to be misled.

Exceptions are provided for in Article 24. In some cases, GIs do not have to be protected or the protection can be limited. Examples include: when a name has become the common (or "generic") term (for example, "cheddar" now refers to a particular type of cheese not necessarily made in Cheddar in the United Kingdom), and when a term has already been registered as a trademark. Other exceptions include: where a term has been used for at least 10 years prior to April 15, 1994, or in good faith if prior to that date; where a term is also subject to good faith trademark rights; where a term has significance as a personal name; and where a term has become identified with the common name for a good or service.

No exception is granted for wines and spirits, even if the true origin of the goods is indicated, the GI is used in translation, or is accompanied by expressions such as "kind," "type," "style," "imitation." Registration of a misleading trademark for wines/spirits must be refused or invalidated.

How are GIs Protected in the United States? In the United States, GIs are protected under the U.S. Trademark Act (15 U.S.C. §1051 et seq.). Section 4 of the act provides for the registration of “certification marks including indications of regional origin.” According to the U.S. Patent and Trademark Office (USPTO), GIs are “indications that 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 geographic origin” and are protected through the trademark system.

The United States does not protect a geographic term that is considered “generic,” being “so widely used that consumers view it as designating a category of all of the goods/services of the same type, rather than as a geographic origin.” Many U.S. food producers are also members of the Consortium for Common Food Names, along with producers in other countries including Canada, Mexico, Argentina, Chile, and Costa Rica. This group aims to protect the right to use common food names as well as protect legitimate food-related GIs.

In 1999, the United States challenged the EU’s GI laws under WTO Dispute Settlement, alleging discrimination against U.S. GIs and failure to protect U.S. trademarks. A WTO panel ruled some aspects of the EU’s GI laws inconsistent with TRIPS, resulting in certain changes to the EU program.

USPTO does not have a special register for GIs in the United States. Its trademark register, the Trademark Electronic Search System (TESS), contains GIs registered as trademarks, certification marks, and collective marks. These register entries are not designated with any special field (such as “geographical indications”) and cannot be readily compiled into a complete list of registered GIs.

How are GIs Protected in the European Union? In the EU, a series of regulations governing GIs was initiated in the early 1990s covering agricultural and food products, as well as wine and spirits. The regulations protect product names from misuse and imitation of agricultural products for which an intrinsic link exists between the product or foodstuff’s characteristics and geographical origin. Under EU regulations, producers qualify for either a “protected geographical indication” (PGI); a “protected designation of origin” (PDO); or “Traditional Specialties Guaranteed” (TSG). Product registration markers for these three quality schemes are shown below and are intended to help protect product names from misuse and imitation.



PDOs cover “agricultural products and foodstuffs which are produced, processed and prepared in a given geographical area using recognized know-how.” PGIs are similar with the exception that “at least one of the stages of production, processing or preparation takes place in the area.” TSGs differ in that they highlight “traditional character, either in the composition or means of production.” EU regulations

include Regulation 1151/2012 and Regulation 510/2006 (agricultural products and foodstuffs); Regulation 479/2008 (wine); and Regulation 110/2008 (spirits).

As of March 2014, there were 1,216 product names registered as PDO, PGI, or TSG, according to the EU’s Database of Origin and Registration (DOOR). **Figure 1** illustrates that among the total EU registrations, about 30% are fresh and processed meat and fisheries products, and 18% are for cheeses. Another 28% of registrations are for fresh and processed fruit and vegetable products, including grapes and other crops that may be used in certain wines and spirits, as well as olives and nuts. Another 10% are for oils and fats, including butter, margarine, olive oil, and others. Bakery goods and other miscellaneous products account for another 12%. **Figure 2** highlights that countries outside the EU also register product names under the EU’s quality scheme, including Asian and Eastern European countries, among others.

Figure 1. PDO/PGI/TSG Registrations, by Sector

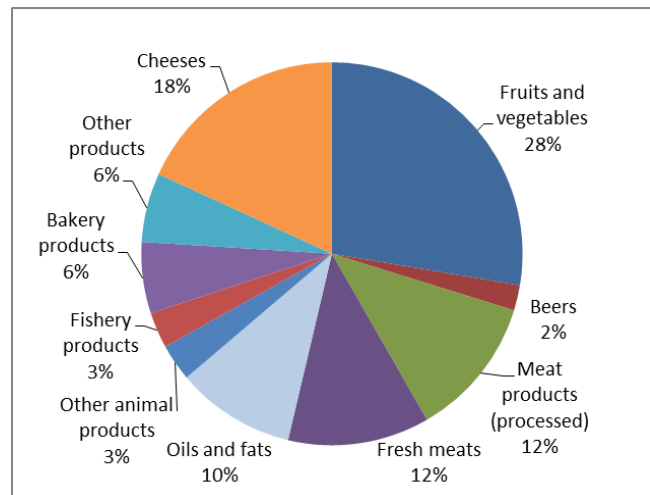
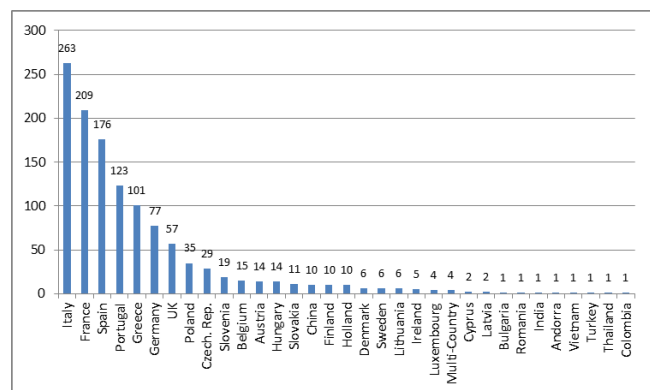


Figure 2. PDO/PGI/TSG Registrations, by Country



Source: CRS data compilation from EU’s Database of Origin and Registration (DOOR), accessed March 21, 2014 (1,216 registrations).

For more information, see the USPTO’s and EU’s websites: <http://www.uspto.gov/ip/global/geographical/>; and http://ec.europa.eu/agriculture/quality/schemes/index_en.htm.

Renée Johnson, rjohnson@crs.loc.gov, 7-9588.