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Geographical Indications (GIs) in U.S. Agricultural Trade

Geographical indications (GIs) are place names used to identify products that come from these places and to protect the quality and reputation of a distinctive product originating in a certain region. The term is most often 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. GIs may be eligible for relief from acts of infringement or unfair competition. GIs may also protect consumers from deceptive or misleading labels. Examples of registered or established GIs include Parmigiano Reggiano cheese from the Parma region of Italy, Roquefort cheese, Champagne from the region of the same name in France, Irish Whiskey, Darjeeling tea, Florida oranges, Idaho potatoes, Vidalia onions, Washington State apples, and Napa Valley Wines.

Why Are GIs a Policy Concern?

The use of GIs has become a contentious international trade issue, particularly for U.S. wine, cheese, and sausage makers involving trade between the United States and the European Union (EU). GIs are among the agricultural issues that have been raised in the ongoing Transatlantic Trade and Investment Partnership (T-TIP) negotiation, a potential free trade agreement that the United States and the EU are negotiating. GIs were also addressed in the Trans-Pacific Partnership, a proposed free trade agreement between the United States and many Asia-Pacific countries.

GIs are an example of intellectual property rights (IPR), along with other types of intellectual property such as patents, copyrights, trademarks, and trade secrets. The U.S. Trade Representative's *2016 Special 301 Report* on the status of global IPR protection and enforcement outlines U.S. concerns related to the treatment of GIs in the U.S.-EU trade negotiations and other initiatives with Canada, China, Costa Rica, El Salvador, Japan, Morocco, and others.

Some U.S. food manufacturers have long expressed their concerns about EU protections for GIs, which they claim are being misused to create market and trade barriers. Some view the use of common or traditional names as generic terms and 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. Specifically, they worry 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. Complicating this issue further are GI protections afforded to registered products in third country markets. This has become a concern for U.S. exporters following a series of recently concluded trade agreements between the EU and countries that are also major U.S. trading partners.

Many U.S. food producers are members of the Consortium for Common Food Names, which aims to protect the right to use common food names and legitimate food-related GIs. Some U.S. agricultural industry groups, however, are trying to create a system similar to the EU GI system for U.S. agricultural producers. Specifically, the American Origin Products Association is seeking to protect American Origin Products (AOPs) in the marketplace from fraud and deceptive labeling, increase the value-added for all AOPs as a distinct food category, and create a national system to recognize AOPs through certification, among other goals.

This divide is particularly evident in the U.S. wine industry, which had largely considered some related bilateral trade concerns to have been addressed following bilateral negotiations in the 2006 U.S.-EU Agreement on Trade in Wine. Among the key provisions in the agreement were measures regarding the U.S. industry's use of 16 "semi-generic" names of wine that originate in the EU (including Sherry, Chablis, and Chianti) as well as the use of certain traditional labeling terms (such as Chateau and Vintage). Some in the U.S. wine sector continue to argue that the EU's GI registration process lacks transparency, often results in substantial bureaucratic delays, and is perceived as discriminating against non-EU products, while others are pushing for a multilateral register for wines and spirits.

Laws and regulations governing GIs differ between the United States and EU, which further complicates this issue. In the United States, GIs are generally treated as brands and trademarks, whereas the EU protects GIs through a series of established quality schemes. These approaches differ with respect to the conditions for protection or the scope of protection, but both establish rights for collective use by those who comply with defined standards.

How Does the U.S. Protect GIs?

In the United States, GIs generally fall under the common law right of possession or "first in time, first in right" as trademarks, collective, or certification marks under the purview of the existing trademark regime administered by the U.S. Patent and Trademark Office (PTO) and protected under the U.S. Trademark Act (15 U.S.C. §1051 et seq.). The act provides for the registration of "certification marks including indications of regional origin." In addition, labeling requirements for wine, malt beverages, beer, and distilled spirits are under the jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau at the U.S. Treasury.

PTO defines GIs, consistent with the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), as "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 product is attributable to its geographic origin.” According to PTO, a GI can take many forms, including a geographic place name (e.g., “Napa Valley”), a symbol, the outline of a geographic area, a color, or “anything else capable of identifying the source of a good or service.” GIs are protected under U.S. trademark laws against unfair competition and trademark infringement regardless of whether they are registered with PTO.

According to PTO, GIs “serve the same functions as trademarks, because like trademarks they are: source-identifiers, guarantees of quality, and valuable business interests.” Establishing a product based on its geography can be complicated, involving establishing a trademark or a brand name through an extensive advertising campaign. Limited information specific to food and agricultural products regarding the application process on certification or collective marks is available from PTO. PTO does not protect geographic terms that are considered “generic” or “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.” PTO does not provide oversight of any applicable standards or standards and does not maintain a special register for GIs in the United States, aside from the PTO’s trademark register—the Trademark Electronic Search System.

How Are GIs Protected in the EU?

In the EU, a series of regulations governing GIs was initiated in the early 1990s covering agricultural and food products, 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.

The EU laws and regulations cover three EU-wide quality labeling schemes: Protected Designation of Origin (PDO), Protected Geographical Indication (PGI), and Traditional Specialties Guaranteed (TSG). PDOs cover “agricultural products and foodstuffs which are produced, processed and prepared in a given geographical area using recognized know-how.” PGIs are similar except that “at least one of the stages of production, processing or preparation takes place in the area.” TSGs highlight “traditional character, either in the composition or means of production.” Registration markers (below) help protect product names from imitation.

Figure 1. EU Quality Registration Markers



More than 4,560 product names are registered and protected in the EU for foods, wine, and spirits originating in EU member states (about 3,400 registrations) and also in other countries (another 1,160 registrations). See **Table 1**. Most product registrations under the EU’s system originate in the EU—mostly Italy, France, and Spain—however, countries outside the EU have also registered product names under the EU’s quality scheme, including products from Eastern

Europe, Asia, and Latin America. The United States holds nearly 700 “Names of Origin” registrations for wine.

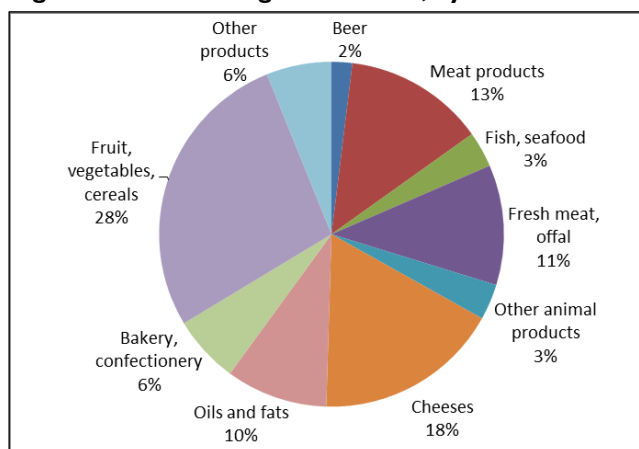
Table 1. Name Registrations Under EU’s GI Programs

Product Category	Total GIs	EU GIs	Non-EU GIs
Food/Agriculture	1,341	1,320	21
Wine	2,885	1,750	1,135
Spirits	336	334	2
Total	4,562	3,404	1,158

Source: CRS data compilation from Database of Origin and Registration (agricultural products and foodstuffs), “E-Bacchus” database (wine), and “E-Spirit-Drinks” database (spirits), available at <http://ec.europa.eu/agriculture/>. Data are as of May 2016.

Among the total EU registrations for food and agricultural products, more than one-fourth are fresh and processed meat and fisheries products, and 18% are for cheeses (**Figure 2**). 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.

Figure 2. Food and Agriculture GIs, by Sector



Source: CRS data compilation from Database of Origin and Registration (agricultural products and foodstuffs), as of May 2016.

How Are GIs Protected in the WTO?

GIs are protected by TRIPS, which sets binding minimum standards for IP protection that are enforceable by the WTO’s dispute settlement procedure. Under TRIPS, WTO members must recognize and protect GIs as intellectual property. The United States and EU countries are signatories of TRIPS and are committed to providing a minimum standard of protection for GIs (i.e., protecting GI products to avoid misleading the public and prevent unfair competition) and an “enhanced level of protection” to wines and spirits that carry a geographical indication, subject to certain exceptions.

More detailed information is available in CRS Report R44556, *Geographical Indications in the Transatlantic Trade and Investment Partnership (T-TIP) Negotiations*.

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