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Geographical Indications in TTIP: An Impossible Task

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Introuduction

A major objective for the Transatlantic Trade and Investment Partnership will be the elimination of regulatory differences that make cross border trade more difficult. That task may be relatively easy in cases where regulations impose different requirements in pursuit of the same goal. But in situations where the United States and the European Union have very different goals, achieving regulatory reform through trade negotiations may prove to be impossible.

The protection of geographical indications (GIs) is slated to be one of the more contentious parts of the TTIP negotiations. The EU is home to many well-known GIs that are used in the United States as common names for products, such as wines and cheeses. European negotiators see that as a problem to remedy through TTIP.

Both parties are major producers of these products, so the issue has real commercial significance. But it also touches on cultural and ideological differences between Old World and New World economies. It's not simply a matter of deciding what is "feta" or "champagne" and who can use those words. Europe's GI protection scheme is part of a much larger policy that seeks to preserve traditional production methods and ways of life in the face of globalization.

The European model of GI protection is very strict. A protected GI may not be used unless the producer operates within a delimited area and makes the product according to very specific standards. Even using the GI in conjunction with the product's actual place of origin or modified by words, such as "-style" or "-type" is prohibited.

This high level of protection is justified in theory by a belief that the link between place and quality is an objective creation of traditional culture and practices. When others use place names in a generic way, they are unfairly usurping the value created in that name by generations of local producers. Supporters claim that strong GI protection is needed to prevent fraud, ensure fairness, and promote economic development.

The United States takes a very different approach. With some exceptions for wine and spirits, the United States protects GIs through trademark law. Certification marks can be used by trade groups to establish geographic brands that also certify nongeographic qualities. The policy goal is to prevent consumer confusion, so unlike the European model, the United States does not protect marks that are generic terms for the product. As a result, many European GIs receive no protection in the United States.

The issue of GI protection engenders strong feelings and uncompromising rhetoric on both sides of the Atlantic. Wisconsin Republican Paul Ryan, chairman of the House Ways and Means Committee, which has jurisdiction over matter of trade policy, condemns European GIs as trade barriers and vows that “for generations to come, we’re going to keep making gouda in Wisconsin. And feta, and cheddar and everything else.”¹

At the same time, the EU Trade Commissioner Cecilia Malmström laments that Italian cheeses are being “undermined by inferior domestic imitations” in the United States and vowed to solve the problem through TTIP by “getting a strong agreement on geographical indications.”²

Unavoidable Conflict

Securing the protection of commercially valuable place names worldwide has long been a priority for EU trade negotiators. The U.S. consumer market for wine and cheese is very large, so there is particularly strong pressure to secure protection in the United States for European GIs. The United States is also a key driver in establishing international norms; any movement on GIs in the United States is likely to translate into global progress for the European GI agenda.

But the United States has been the chief opponent of Europe’s GI agenda at the multilateral level and has even made countering Europe on GIs a part of its own trade agenda in bilateral negotiations with third countries. The Trans-Pacific Partnership includes obligations not to grant GI protection to common food names and secures priority for existing trademarks. Denying GI protection for common food names is *permitted* under World Trade Organization rules, but it will be *required* under the TPP.

Making common food names ineligible for GI protection directly impedes the EU's ability to pursue its global GI agenda with TPP countries, including the United States. The EU's standard practice is to include in its bilateral trade agreements a "claw back" list of GIs that must be protected even though they are generic terms. Any requirement under TTIP to protect "sherry" or "parmesan" will be inconsistent with U.S. obligations under the TPP.

Reasonably assuming that Europe's TTIP negotiators will ignore this inconvenience, they will still need to devise a clever strategy and flexible approach if they want stronger GI protection to be part of a final TTIP agreement.

Existing Regulatory Regimes

One early EU proposal was to protect GIs through existing U.S. regulatory structures.³ For example, one EU idea is to seek inclusion of geographic criteria within the "standards of identity" enforced by the Food and Drug Administration. Standards of identity are a form of regulation that dictate what qualities a product must have in order to be called something. For example, the FDA recently told a vegan mayonnaise maker that it could not label its product mayonnaise because it lacked eggs, and mayonnaise isn't mayonnaise if it doesn't have eggs.⁴

Standards of identity are not an unreasonable fit for GI protection, which is as much about regulating product characteristics as it is about truth in labeling. But from the Americans' perspective, controlling names through FDA regulation would have the same impact as doing so through a direct GI protection scheme. The proposal isn't really a compromise with the United States as much as a cosmetic mask covering the EU's original ambitions.

Modified List

Another likely proposal is for TTIP to follow the model used in the Canada–EU Comprehensive Economic and Trade Agreement (CETA). In CETA, Canada accepted an obligation to protect a long list of European GIs but with limitations on some of the more onerous ones. In particular, five generic cheese names — asiago, feta, fontina, gorgonzola, and muenster — are still allowed "when the use of such terms is accompanied by expressions such as "kind", "type", "style", "imitation" or the like and is in combination with a legible and visible indication of the geographical origin of the product concerned."⁵ CETA also allows Canadian companies that have used those — and three other generic names for a certain number of years already — to continue that use under a series of complex grandfather clauses.

The reason the United States might be willing to accept this approach in TTIP is that it enables the U.S. dairy industry to secure carve-outs that will reduce its self-interested opposition to the entire GI agenda. That is, if the main commercial opponents of GI protection are bought off with complex exceptions, the rest of the agenda can squeak through. This is a common tactic in trade negotiations.

The Europeans might also find this approach palatable because although it leaves some prominent GIs unprotected, it still moves the needle in their preferred direction. A similar outcome was reached in the 2006 U.S.–EU Agreement on Trade in Wine, which regulates “semi-generic” wine names under rules similar to CETA’s cheese exceptions.⁶

The biggest difference between TTIP and CETA, of course, is that the United States is a very large economy, and U.S. negotiators and policymakers are not used to accepting demands from other parties. If TTIP includes a list of protected European GIs, it will surely be less restrictive and have more exceptions than CETA. A final deal may be so watered down as to be economically meaningless for the traditional European producers whose interests motivate Europe’s GI agenda.

Grand Bargain

The United States has demands of its own in the TTIP negotiations that are at least as unpopular in Europe as is GI protection in the United States. American negotiators have been tasked with the near impossible mission of opening up Europe’s market to genetically modified crops and meat from hormone-treated cattle, ractopamine-fed swine, and chlorine-washed chicken.

It may be possible that TTIP could include a grand bargain in which some combination of these agricultural demands are met along with a commitment for stronger GI protection in the United States. For traditional trade barriers like tariffs and quotas, that kind of bargain would be a welcome outcome and, indeed, is the basic way that reciprocal agreements work to liberalize trade.

In the regulatory sphere, however, this sort of political horse-trading raises questions of democratic legitimacy and is, in any event, not a way to arrive at well-reasoned policies. Many regulatory policies that impede market access are motivated by non-economic interests. And the benefits for foreign producers that stem from changing those policies aren’t going to mollify irate domestic constituencies.

The tradeoff strikes at the heart of the difference in American and European cultural approaches to agriculture. It's difficult to imagine that TTIP negotiators could strike a deal that overcomes the European desire to protect traditional foods and ways of life or America's ingrained preference for high-tech production and innovation.

A better sort of grand bargain would be for each party to recognize and respect each other's limits on food regulation. There are lots of gains to be made from a successful TTIP, and letting GIs and GMOs slip off the agenda might be the best path toward a deal that both parties can live with and sell to their publics in good faith.

Conclusion

It is unlikely that TTIP negotiations over GI protection will result in an outcome that either side finds satisfactory. While European negotiators may be obligated to pursue some sort of deal on the issue, their efforts would be better directed elsewhere. It is worth remembering that the United States is not demanding that the European Union allow the sale of products labeled Kraft Parmesan Cheese or California Champagne in Europe. With other achievable trade goals on the line, a live and let live attitude toward GI protection would benefit both parties.

Notes:

¹ Adam Behsudi, "U.S. to Europe: Don't Move My Cheese," *Politico*, June 20, 2015, <http://www.politico.com/story/2015/07/us-to-europe-dont-move-my-cheese-120387>.² "EU Trade Commissioner Expects Italian Cheese Exporters to Benefit from Lower Tariffs, Strong GI Protections in TTIP" *Cheese Reporter*, June 26, 2015, <http://npaper-wehaa.com/cheese-reporter/2015/06/s3/#?article=2545800>.

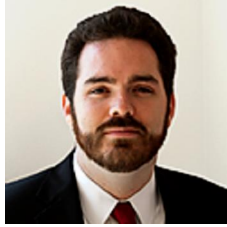
³ "EU TTIP Proposal on GIs Pushes Other Routes over Trademark Protection" *Inside U.S. Trade*, February 6, 2015, <http://insidetrade.com/inside-us-trade/eu-ttip-proposal-gis-pushes-other-routes-over-trademark-protection>.

⁴ Marina Koren, "The True Meaning of Mayonnaise" *The Atlantic*, August 25, 2015, <http://www.theatlantic.com/national/archive/2015/08/the-true-meaning-of-mayonnaise/402286/>.

⁵ Comprehensive Economic and Trade Agreement, Chapter 22, Article 7.6.1 www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/22.aspx

⁶ See Renée Johnson, "The U.S. Wine Industry and Selected Trade Issues with the European Union" Congressional Research Service, July 24, 2014.

The opinions expressed here are solely those of the author and do not necessarily reflect the views of the Cato Institute. This essay was prepared as part of a special Cato online forum on [The Economics, Geopolitics, and Architecture of the Transatlantic Trade and Investment Partnership](#).



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