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Squaring the Circle? Approaches to Intellectual Property Rights and the TTIP

FIRST DRAFT-NOT FOR CITATION

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Despite strong political will, negotiations for a Transatlantic Trade and Investment Partnership (TTIP) between the EU and USA will be challenging. Teams will be forced to tackle the final regulatory hurdles in the transatlantic economic relationship, which decades of close cooperation and partial agreements, have failed to resolve. Within the Intellectual Property rights chapter, Geographic Indicators (GIs) present a particular challenge. The EU's *sui generis* GI system of protection is based on a specific location, and clashes with the USA's trademark system which allows the trademark of names considered of exclusive use to particular localities in the EU system. By engaging in the negotiations the USA admits that it will have to give ground on the GI matter to the EU, however it is not clear how this will proceed. By tracing the approaches to GIs in recent 'deep' EU and USA FTAs with third parties (South Korea, Singapore) this paper seeks possible areas of agreement on the matter and addresses the question of how the EU and USA could square the circle of their divergent rules on this issue. The recent EU-Singapore FTA will be especially relevant as in it, rather than accepting a reduced list of EU GIs to protect (as had happened in past EU FTAs), Singapore agrees to set up its on GI registration system. Progress towards this system will be analysed to extrapolate possible solutions for GIs in TTIP from how other states have resolved the challenge of accommodation both the EU and USA system.

1. Background to Geographical Indication (GI) Protection

Geographic Indications denote the geographic origin of a product which has historically been associated with a location, for instance champagne which was first created in the French region of Champagne. Products from the locality become associated with certain quality characteristics. In the case of wines this was linked to the characteristics imbued by the specific conditions of a given *terroir*. Legal protection of GIs dates back to the 1883 Paris Convention for the Protection of Industrial Property addressed the issue when its 117 members agreed to border measures for cases of serious fraud. In 1958 Article 10bis was added to prohibit indications liable to mislead the public. The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891 granted greater protection by agreeing to border measures and to prevent the dilution of geographical indications (GIs) into generic terms. Given the stricter measures only 31 states signed the Agreement, with the exclusion of the USA. The Lisbon Agreement for the Protection of Appellations of Origin and Their International Recognition of 1958 attempted to achieve more enforceable measures and was signed by only seventeen states. The Lisbon Agreement suggested the enforcement of a list of protected GIs which would also prohibit the use of terms like ‘style’ or ‘type’ along with an indication. (Goldberg, 2001: 113-115). The USA as a non-party to such

agreements continued using terms such contested terms such as champagne in its domestic production, something that would place the USA on a collision course with the EU (many of whose members had been parties to the aforementioned agreements, and which had incorporated such protections into its on single market regulatory *acquis*) in the TRIPS negotiations in the 1990s, and during the Doha Round negotiations at the WTO.

Since the early 1990s, the European Union has had the most comprehensive protection for geographical indicators through Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs based on the *sui generis* model of automatic protection for all producers of said goods in the protected area who can certify to using the ingredients and methods specified under the protected GI. The Regulation grants protection to all products falling within the following three categories:

Protected Designations of Origin (PDOs)

- Qualities or characteristics of a product must be essentially or exclusively due to the particular geographical environment (including natural and human factors such as climate, soil quality, and local know-how) of the place of origin
- Production and processing of the raw materials, up to the stage of the finished product, must take place in the defined geographical area

Protected Geographical Indications (PGIs)

- At least one stage of the production of the protected product is undertaken within the geographical area (with say, imported materials)
- There must be a link between the product and the area. A specific quality or reputation may be sufficient to link the product with the geographical area.

Traditional Specialities Guaranteed (TSGs)

- The product must have distinguishing features that set it apart from other agricultural product or foodstuff in the same category. This could include taste or specific raw materials. However, the special character cannot be a particular geographical origin.
- The producer's specific character must be 'traditional' in that it uses traditional raw materials, or is produced or processed in a traditional way. (Josling, 2006a: 8-9)

Using these categories the European Union has developed an extensive list of protected geographical indications for foods and beverages (GIs), which encompasses 1433 food products and beers in the DOOR database and 2885 wines and fortified wines in the E-BACCHUS database (European Commission DG Agriculture, 2014), as well as a series of distinctive logos and labels to differentiate these products.

The list guarantees traditional and specialist producers a competitive advantage, as well as the possibility of charging higher prices given the quality or exclusivity of their product as recognised by the distinctive logos of the denomination of origin. A review of the EU's GI sector concluded that the value premium for GI products stands at 2.23, making this a tantalising business prospect (Chevers *et al.* 2012, 4). Although GIs only accounted for 5.7 percent of the total EU food and drink sector, in

absolute terms this amounted to 20.96 billion EURO in the case of France, the largest producer of GIs due to the wine sector (Chevers *et al.* 2012, 17). The economic value of GIs is especially significant as reforms of the Common Agricultural Policy (CAP) in the EU have increasingly placed value on small production. Producers of GI can make the same profits selling fewer units given the value premium on these. Moreover, they have a powerful branding and marketing function, as they guarantee consistency and product recognition for the consumer, as it is not sufficient to produce a good in a the locality for it to bear the protected GI designation, it must also comply with certain rules specified by the respective GI committee.

2. Unresolved GI protection and the WTO

Producers within the EU can benefit from the protection afforded by the GI register when trading within the EU. However, third parties are not forced to extend such guarantees within their territories. EU producers argue that this causes confusion for the consumer and that this infringes on their proprietary rights. For this reason European farmers' associations have been adamant in persuading EU trade and agriculture officials of the need to internationalise this list (Copa-Cogeca interview) and encourage the European Commission to ensure 'position of EU products vis-à-vis imports and third country markets [is] strengthened through reinforcement of quality, labelling and promotion' (Copa-Cogeca, 2011a: 10), which can all be facilitated with strong GI protection.

It has, thus, been a key aim of EU trade negotiators to internationalise the EU's GI system. A first attempt was made in the 1990s under the scope of multilateral negotiations for the Agreement on Trade-Related Intellectual Property Rights and Services (TRIPS). In essence, GIs are a form of intellectual property right (IPR) albeit in reverse. Whilst the more usual IP protection refers to trademarks which are granted to individuals to protect innovation, GI protection operates by an opposite principle; granting exclusivity and protection on the basis of tradition and prior consumer recognition and reputation. Indeed, by protecting traditional methods, GI discourages innovation. A further and crucial difference between IP protection via trademarks and GIs is the indefinite nature of the protection granted by the latter in contrast to the time limits on trademarks, as well as the more generic nature of the GI, which is 'owned' by an area, and can be used by any local producer complying to the rules, whilst the trademark is granted to a particular firm.

In the US there is no separate national scheme for protection of GIs, instead GIs are protected under the Federal Trademark Act as trademarks, certification marks, and/or collective marks through trademark law. Where a GI has acquired secondary meaning, it may also be registered as a trade mark by any entity that controls the goods and services provided under the mark. The owner of a registered or common law certification mark, collective mark or trade mark also may prevent misleading or deceptive use of similar geographical terms through actions for false advertising and unfair competition under both federal and state laws in the US. Collective and certification marks protecting GIs are not extremely popular in the US and the number of applications for such registrations is relatively small (Managing IP, 2008).

Divergent domestic approaches in the USA (trademarks) and the EU (GIs) and intransigence on both parts led to the impossibility of agreeing on a multilateral regulatory system for wines and spirits lest it should have led to the complete collapse of TRIPS negotiations. Thus, a mandatory multilateral

system of notification and registration of GIs, was excluded from the TRIPS in 1995 although the agreement did mandate the parties to subsequently negotiate such an agreement (Goldberg, 2001: 140). TRIPS Article 22 demands that members protect GIs, but leaves the methodology and procedures up to the members, entrenching the divergent approaches, and Article 23 provides enhanced protection for GIs in wines and spirits, committing members to having legislation (of any type) to protect these, and to not grant trademarks to names that include known GIs (TRIPS 1995). However, it does not force revocation of prior trademarks, nor does it define which terms count as generic and which do not, reflecting the impossibility of reaching a transatlantic reconciliation on the matter.

During the WTO Doha Round attempts have been made to agree on the pending multilateral register, and on the issue of extending a possible register to non-wine products. In 2005, the European Union, supported by all the Central and Eastern European states hoping at the time to join the EU as well as Turkey (which is in a customs union with the EU since 1961 and therefore operates by similar economic regulations), presented a proposal at the World Trade Organisation for the compulsory adoption of the list at the WTO level. The EU's proposal also suggested complementing the wines and spirits list with further agricultural products at a later stage. The EU's proposed that once a GI is notified to the register this would force all WTO members to also protect the GI (unless they explain why they cannot within a set period of time). Unwilling to accept this, Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Republic of Korea, Mexico, New Zealand, Nicaragua, Paraguay, Chinese Taipei, South Africa, the USA made a joint proposal in favour of voluntary and non-binding adoption of the list, but the matter remains unresolved (WTO 2014).[1]

3. The bilateral battle

To enable savings and reforms of the CAP it behoves the European Union to ensure that the GI premiums will apply outside the Union as well. The European Commission has, thus, negotiated a series of bilateral agreements on wine and spirits with key detractors of its GI system since the 1990s, and since 2006 and the 'Global Europe' Strategy which once again enabled the EU to negotiate FTAs, the EU has included the matter of GIs under the Intellectual Property chapters of its FTAs.

Through sectoral agreements on wines and spirits (with Canada, Australia, Chile), which update prior ones and phase out the use of EU protected names like 'sherry', 'champagne' and others within third country markets, in exchange for the EU simplifying certification for new world wine producers and accepting some of their different oenological practices. Since the mid-1990s the EU has negotiated the following wines agreements:

- 1997 agreement on mutual recognition of spirits with Mexico (at the time it also began to negotiate a Global Agreement FTA with Mexico)

[1] Hong Kong, China made a compromise proposal suggesting a softer 'presumption' pf protection than in the EU's proposal which would apply only to states opting into the system.

- 2001 protocol on mutual recognition with FYRM and Croatia & 2002 agriculture agreement with Switzerland, Albania 2006, Montenegro 2007, Bosnia-Herzegovina 2008 (as these states (except Switzerland) hoped to join EU and Switzerland has a close relationship with the EU's market- these will not be considered here as they are more part of adaptation to EU single market)
- 2002 South Africa agreement on trade in wines (negotiated as part of EU-South Africa association)
- 2002 Agreement on Wines and Spirits with Chile (as part of Association Agreement)
- 2003 Agreement on Wines and Spirits with Canada
- 2005 Agreement with USA on wine trade
- 2008 Agreement on wine trade with Australia (DG Agriculture, 2011)

Although the 1997 Global Agreement with Mexico (97/361/EC) included protection on mutual designations for spirit drinks, and an agreement on trade in spirits was also signed with South Africa in early 2002 (2004/91/EC), the Wines and Spirits Agreement in the Association Agreement with Chile marks the beginning of the comprehensive coverage and protection (of both spirits and wines) that the EU had been pursuing at the WTO level. Unsurprisingly, this was one of the trickier issues to negotiate in this Association and the final agreement was only hammered out *in extremis* in the final round of negotiations (Garcia, 2011: 516) when Chile agreed to drop 'reserva' and 'chateau' descriptions from its wines and acceded to them being sold as 'New World Wines' in the EU (Grugel, 2002: 15). The significance of this wines and spirits agreement is that in it Chile agreed to adopt and extend protection to the EU's list of core wine and spirit GIs within its territory, as well as to host of EU winemaking procedures and regulations and labelling requirements. In exchange Chile received tariff free access for its wine products to the EU within a period of four years from the entry into force of the Agreement (February 2003), of clear benefit to Chile's wine industry. Next came the agreement with Canada and further agreements with some of the major New World wine producers- namely Australia (2008/474/EC) and the USA (2005/798/EC), where access to the EU market was a key aim of the Australians and Americans, in exchange for that they accepted some EU wine techniques (in some cases banned in the USA) and greater protection of EU wine GIs. In this way the EU has gradually broken down resistance to the adoption of its list of protected origins and managed to persuade some of the key detractors to accept parts of it. Once producers have been indirectly made to comply with EU regulations, then it becomes beneficial to them for their own state to negotiate an agreement with the EU, accepting EU standards and GI regime, but in exchange for better access to the EU market. In this way, one agreement sets off what Richard Baldwin (1993) has referred to as a 'domino effect' and Jagdish Bhagtwati (1994) as 'FTA envy' in reference to broader FTAs.

The fact that the EU and USA signed a Wine Agreement in 2006 has not marked an end to their GI disputes. In exchange for the EU to permit a wider range of American oenological practices and labelling practices in American wines for export to the EU,[2] the USA agreed to some limits on the use

[2] Differences in climatic conditions, and regulatory environment, have led to the appearance of particular wine-making techniques in the New World, especially in the USA, where reverse osmosis, concentration process to remove water from wine the use of malic acid to boost acidity in grapes that have had large quantities of sun exposure; the use of DMDC, a chemical that is used as a yeast inhibitor, silver nitrate used to suppress sulphurous wine odours, or adding oak wood chippings to speed the maturation of the taste of wine, all of which are banned in the EU in favour of more traditional methods, are common practices. Labelling of

of EU GIs in American produced wines. USA wine producers who had been using names associated with EU GIs in their brands and trademarks prior to the entry into force of the agreement or the USA wine labelling law of 14 September 2015 would be able to continue using these terms in their products within the USA, however new wine producers would be banned from using these (European Community 2006, Art. 6.1-6.2).[3] Article 10 of the agreement also committed the parties to negotiate a more comprehensive wine agreement in the future. This is now one of the many areas being negotiated since 2013 under the TTIP. Despite disagreements the USA is the top market for European wines accounting for 28 percent of the value of total EU wine exports in 2013. Over the 2005-2012 period the EU's wine trade surplus with the USA increased by 87 percent in terms of volume and 30 percent in terms of value (CEEV, 2014). Although lagging behind Chile, Australia and South Africa, the USA represents the fourth largest importer of wines into the EU, with sales worth USD 450 million in 2012 (USDA 2014), and the value of exports increased by 10 percent in the early years of the agreement, and has continued to increase despite the financial and economic crisis, rising by 18 percent in 2011 and 5 percent in 2012 (although volumes decreased in 2012) (Virginia Tech 2014). Improvements notwithstanding, European wine producers demand more EU action on gaining better GI protection in the USA, and support and lobby for an ambitious undertaking on this matter within the remit of the TTIP negotiations (CEEV 2014). GIs, alongside matters such as genetically-modified organisms in food, financial service regulation were identified from the start as issues that would be particularly challenging in the TTIP negotiations given the divergent regulatory approaches of the parties.[4] In the end advances on the EU's preferred system for GIs, if they succeed, will come at the expense of other areas of European interest (perhaps relaxing EU GMO rules), however, given the parties' past history (at the WTO and the 2006 Wines Agreement), it appears that a direct application of the EU GI regime may be entirely out of reach. It is therefore worth investigating GI provisions in recent EU and USA FTAs to gain insights into the perspectives they aim to export, and also how these different perspectives have been reconciled in third parties with FTAs with both the EU and USA, and discern possible avenues for the GI issue in TTIP.

3.1 Continued battle lines in USA and EU FTAs with South Korea

USA and EU post-Global Europe FTAs share the objective of extending through the bilateral route a model of liberalisation that has been rejected at the WTO Doha Round, as well as their respective preferred regulatory models with the ensuing economic benefits this may entail (Garcia 2012). Their battle to extend their regulations in the case of GI, and gain allies for their respective systems is

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wines also differs substantially from EU standards, in general using simpler labels, with more prominence to the grape variety, and often using terms that are linked to EU localities and therefore limited and protected in usage within the EU, but which others regard as generic or semi-generic terms. The matter has, thus, remained unresolved at the WTO level.

[3] The EU submitted its full list of wine GIs in the Annexes to the Agreement, even though most of the names are not used outside of the EU. The EU's core concerns regard the use of names listed in Annex II (Burgundy, Chablis, Champagne, Chianti, Claret, Haut Sauterne, Hock, Madeira, Moselle, Port, Rotsina, Rhine, Suaterne, Sherry, Tokay).

[4] Investor-state dispute settlement (ISDS) mechanism discussions have been put on hold whilst the EU conducts a public consultation on the matter after public opposition to this. However the EU has negotiated this with Canada, and is negotiating ISDS with China in an investment agreement, so it does not represent a fundamental difference unless public opinion and mobilisation can sway the EU's policy on the matter. Issues relating to trade facilitation, chemicals, sanitary and phytosanitary standards are also proving contentious.

evident in some of their recent FTAs. As will be demonstrated below, timing and who succeeds in closing a deal with a third party first will have an impact on the possibilities for manoeuvre of the other party.

The USA's FTAs cover GIs under the Intellectual Property Chapter and deals with these alongside trademarks. Its main concerns are procedural regarding how a claim for protection can be made, and prohibiting the use and grant of trademark or GI protection to products that may cause confusion with already existing trademarks. In particular it proposes refusing protection or cancelling a GI when:

> (i) the geographical indication is likely to cause confusion with a trademark that is the subject of a good faith pending application or registration in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory;
>
> (ii) the geographical indication is likely to cause confusion with a trademark, the rights to which have been acquired in the Party's territory through use in good faith, that has a priority date that predates the protection or recognition of the geographical indication in that territory; and
>
> (iii) the geographical indication is likely to cause confusion with a trademark that has become well known in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory. (USA-Korea FTA 2010: 18-7)

The EU's FTA, with South Korea, negotiated after the conclusion of USA-Korea negotiations, but before the ratification, includes a separate chapter under Intellectual Property devoted exclusively to GIs and is more extensive in GI coverage. In it, the EU gains protection from Korea for 164 EU wines, spirits, foodstuffs and agricultural products from its GI lists. Korea gains inclusion of 64 of its GIs into the EU's lists. The IP chapter deals with procedures for applying for GI recognition, protection for the GIs, and the establishment of a joint working group on GIs tasked with sharing information on them, GI legislation and policy-making, and with modifying and adding them to the list of those protected under the Agreement in Annexes 10-A and 10-B. This section also prohibits the use of GI-associated terms even when accompanied by 'style', 'method' to any goods not originating in the GI, and bans the granting and use of trademarks to products using names under GIs (European Union 2011, Chapter 10).

The latter is the element that could conflict with the USA's approach. South Korea has in fact signed up to both the EU's sui generis and the USA's trademark law approach to GI protection, which may lead to complicated legal challenges should a company in future find that another is infringing its GI. The conflicting nature of USA and EU demands led to the creation in the US of a Consortium of Common Food Names campaigning against the EU's inclusion of its GIs in bilateral FTAs. The Consortium claims it is not against GIs per se but rather their use even in cases where the name has become generic for a type of product (e.g. feta cheese) (*Europolitics* 2012), which lies at the crux of the EU and US divergent approach. Indeed, as negotiations between Korea and the EU and US coincided in time, American dairy producers, concerned with the GIs in reference to cheese, demanded the USA government receive assurances from Korea that the EU FTA would not restrict

their ability to sell their product in Korea. As it is the EU FTA only covers a few French and Italian cheeses. The EU's inability to export its entire GI list to FTA partners reflects the complex battle lines previously drawn at the WTO with regards to this issue.

3.2 Kinks in the EU's armour? GIs in FTAs with Singapore and Canada

The case of Singapore is more telling, and the innovations introduced in the EU's FTA with Singapore show a more flexible approach that could be potentially extended to other FTAs including TTIP, although Commission officials insist that the approach to Singapore was a one-off. By the time EU commenced FTA negotiations with Singapore in earnest in 2010,[5] Singapore had already implemented a new generation FTA with the USA since 2004. In order to implement the provisions in the USA-Singapore FTA, Singapore had to overhaul its IP legislation, particularly with regards to trademarks, copyrights and enforcement, essentially adapting its IP regime to USA preferences and requirements.[6] In terms of GI legislation, in 1999 the Singaporean Parliament adopted a GI Act based on the WTO requirements for the protection of wine GIs. Like the USA regime, trademarks applied for in good faith prior to the legislation remain valid. As a city-state with no GIs of its own to protect, there was little incentive for Singapore to acquiesce to the EU's list of core GIs for protection in the FTA negotiations, least of all when this contrasted with the trademark system for GI protection in place in Singapore based on the 'first-in-first-in-right' principle, which would make the automatic protection of a GI list, where revocation of any prior trademarks with that name incompatible with its own laws.

During the negotiations the EU made it clear to Singaporean officials that they would not sign a FTA without including GIs, therefore Singapore agreed, but given its own legal system, a different solution was found. In the EU-Singapore FTA (pending ratification), Singapore will not grant automatic protection to core EU GIs, instead it will set up its own GI register that will evaluate applications for GI protection. The Singaporean Parliament passed the Act for the creation of the system in April 2014, although the implementation has been delayed until after the EU-Singapore FTA has been duly ratified and implemented. European officials dealing with GIs have been active in sharing the EU's GI model with their Singaporean counterparts and have invited them to Europe on numerous occasions to show them GI certification systems and procedures (Interviews Singapore April 2014, Brussels October 2013). The European Union has presented its list of core 196 GIs to Singapore and has asked that these be fast-tracked through the GI register process and that the same documentation as requested for the EU GI system be sufficient for registration under the

[5] In 2007 the EU launched negotiations with ASEAN and abandoned them in favour of bilateral negotiations in 2010 given the impossibility of negotiating a bi-regional agreement.

[6] Specifically, the new Acts had to give effect to Arts 1 through 6 of the Paris Union and WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999). Remove the requirement, as a condition for registration, that signs be 'visually perceptible' (and further make better efforts to register scent marks). Ensure public access to a reliable and accurate database of domain name registrant contact information. Extend the term of copyright protection for works to life of the author plus 70 years and for performances and phonograms to 70 years from the date of first publication. Enact legislation prohibiting the use of anti-circumvention devices. Protect rights management information. Protect encrypted program-carrying satellite signals. Patents (mainly in relation to pharmaceutical products). Permit the use of an existing pharmaceutical patent by a third party where that use is specifically intended for attaining marketing approval. Extend the term of a patent to compensate for unreasonable delays that occur during the patent application process. Withhold approvals for generic drugs during the term of the patented pharmaceutical in question (Law Gazette 2004).

Singaporean system. Once the register is implemented and EU GI holders apply for inclusion in the register, other parties and companies will have an opportunity to object to the granting of GI protection, so we will have to wait until the process is underway to assess its effectiveness and its effect in the protection of EU GIs in Singapore. Some of the potential difficulties are presented in an exchange of letters the EU has reiterated the significance it attaches to 'feta' cheese being granted GI protection (thus only Greek sheep milk feta cheese can use the name feta) and Singapore has expressed its understanding but it is unclear what the final outcome of this will be (DG Trade 2013a). Given that Singapore is not a cheese-producing state it is likely that the 'feta' issue arises at the behest of non-EU dairy exporters to Singapore. The resulting system may be a dual system, given the fact that Article 11.21.2 of the FTA provides that 'the existence of a prior conflicting trademark in a Party would not completely preclude the registration of a subsequent geographical indication for like goods in that Party' and Article 11.21.3 reiterates the Singaporean law whereby trademarks in use prior to the sui generis GI protection can remain operational (DG Trade 2013b).

Although still unfinished and unsigned at the time of writing, the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada is likely to lead, as is hinted in the Singaporean case, to a system of pragmatic coexistence of sui generis and trademark GIs, similar to how the matter was dealt with in the EU-USA Wine Agreement. CETA recognises the special status and offers protection on the Canadian market to a list of numerous European agricultural products from a specific geographical origin, so-called Geographical Indications (GIs). Examples are Grana Padano, Roquefort, Elia Kalamatas Olives or Aceto balsamico di Modena. The Agreement also provides for the possibility to add other products' names to the list in the future (European Commission 2013). Current users of certain names which Canada will recognise as EU GIs in CETA will not be affected, but future Canadian producers (mainly of cheeses and wines, as wines were already covered in the Wine and Spirits Agreement) will have to accompany the names with expressions such as 'like', 'type', 'style'. The restrictions may not apply to products originating in third countries (i.e. USA) (Viju 2014, 23). The co-existence of the systems will enable some prominent EU GIs such as Prosciutto di Parma and Prosciutto di San Daniele to use their name when sold in Canada, which was not the case for more than 20 years (European Commission 2013) as Parma and San Daniele had been incorporated into particular brands' trademarks, and therefore they contested the use of the names by EU producers.

4. Implications for TTIP

GI incorporation into the CETA and the FTA with Singapore, essentially prolong the co-existence of the *sui generis* and trademark system, although they grant precedence to the *sui generis* system of protection in the future, provided the EU increases the list of GIs that parties accept. In the case of the USA and EU, difficulties remain even in the wine sector despite the 2006 agreement. A change in wine labelling regulations in the EU in 2009 also caused USA uproar as it would affect the use of words like 'chateau' or 'clos' which had been incorporated into the trademarked names of some American wines (e.g. Clos du Val) (Decanter 2009). Beyond wines, the USA has rejected the extension of GIs to other agricultural and traditional products. In the cases of recent FTAs, the EU has been able to challenge this successfully, although at the expense of adopting a more lenient position towards existing trademarks. Given the difficulties the EU is already experiencing exporting

the entirety of its GI regime to other less controversial partners, it is impossible that it will be able to achieve this in the TTIP negotiations. A mixed system may be the only feasible solution given the positions of the parties. Thus far little progress appears to have been achieved in this part of the negotiations.

The High Level Working Group (HLWG) recommendations for TTIP included tackling regulatory divergence via mutual recognition, equivalences and harmonisation in the future. Its paragraph on intellectual property is one of the vaguest in the report, and does not mention GIs, it merely encourages both parties to enhance work on IP issues and 'recommends that both sides explore opportunities to address a limited number of significant IPR issues of interest to either side, without prejudice to the outcome' (HLWG 2013: 5). The meaning of limited issues is unclear, but the implication is that the parties were aware of the difficulties in making some of their approaches compatible from the outset, and were thus leaving a door open to retaining the status quo on some issues or only making marginal changes. The USA's reluctance to discuss GIs has been a concern to EU agricultural groups. In the context of ongoing TTIP negotiations, minutes from the European Commission's civil society dialogue with stakeholders on TTIP negotiation rounds, reveal in responses to questions by the European Federation of Origin Wines and European Farmers that the European negotiators have reiterated that the GI issue is an imperative for the EU, and that the matter has been raised in all rounds, with the EU having made some proposals and submitted a short-list of EU GIs, in spite of USA reluctance (CSD Minutes, 2013, 2014), but it is unclear how the USA has responded. Given the co-existence approach in recent EU FTAs, and the possibly for the USA to use some broader acceptance of GIs, and agree to reduce use of generic terms, to extract concessions in other areas (GMOs, sps measures or better access to the EU market for agricultural goods as in CETA, Viju 2014), there may avenues for the sides to 'bury the hatchet' over the GI issue, particularly as GIs (even if through trademark protection) are becoming increasingly common in the USA. GIs increasingly linked to particular locations (e.g. Napa Valley wine, Kona coffee, Idaho potatoes) restricting the use of the name to growers from the location. Increasingly more are producers turning to the EU's way of thinking of granting protection to the locality name rather than a 'first in first protected' trademark system, given the higher prices they can command for reputational products (OriGIn 2010). The literature on trade policy is replete with explanations of trade policy resulting from the interactions and contestation of domestic interest groups (*inter alia* Mansfield and Milner 2012, De Bieve and Eckhart 2011, Dur 2008, 2007, De Bieve and Dur 2005, Eichengreen 1986), and although the outcomes are yet uncertain, we can be sure that the case of GIs in TTIP, and TTIP more broadly, will present a mighty contest between different groups on each side and across the Atlantic.

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