

The legal protection of Geographical Indications in the EU's Bilateral Trade Agreements: moving beyond TRIPS

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1.- Background

A GI is an indication, most commonly the name of a place, which identifies goods as originating from that place and possessing qualities and a reputation essentially attributable to it. At the international level, GIs are legally provided for by the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which defines them 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*"¹ and establishes a two-tier system for their protection. While Article 22 provides a basic level of protection for all GIs, whereby "*evidence must be provided that the consumers are misled*", Article 23 provides an enhanced level of protection specifically for wines and spirits, whereby, regardless of deception, the use of a GI is not permitted when the true origin of the good is indicated or when the GI is used in translation or is accompanied by expressions such as "kind", "style" or "type".

This two level system of protection has been under negotiation within the WTO's Doha Development Round (DDR). A number of WTO members led by the European Union (EU) and including among others Thailand, Kenya, Sri Lanka, Switzerland and Turkey², demand that Article 23 TRIPS protection be extended from wines and spirits to, at a minimum, agricultural and foodstuff products. The EU has also been calling for the inclusion of an annex to the TRIPS Agreement establishing a

⁽¹⁾ Article 22(1) "Protection of Geographical Indications" of the Agreement on Trade-Related Aspects of Intellectual Property Rights, http://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm, viewed on 13 November 2012 (*TRIPS Agreement*).

⁽²⁾ P. Covarrubia, "The EU and Colombia/Peru Free Trade Agreement on GIs: adjusting Colombian and Peruvian national laws?" *Journal of Intellectual Property Law & Practice*, 2011, Vol. 6, No. 5, p. 331.

multilateral system of notification and registration of GIs³. However, such initiatives have not made much progress at the international level due to strong opposition, notably from the USA, Australia and Chile⁴, and the fact that the DDR remains stalled on wider issues. In light of this, the EU has sought to pursue its objective of better protection for GIs through a variety of international agreements. These include: stand-alone agreements on GIs such as the “10 plus 10 project” with China; bilateral “old generation” agreements on wines and spirits; commitments to GI cooperation in Economic Partnership Agreement (EPA) negotiations with African and Caribbean Countries (ACP); GI specific agreements with neighbouring countries; but most notably, through the negotiation of Free Trade Agreements (FTAs) with key trading partners as part of its *Global Europe*⁵ strategy launched in 2006. These trade agreements are “comprehensive and ambitious in coverage”⁶, seeking to establish, in the field of intellectual property, “TRIPS+” provisions including wider GI protection. As stated by DG Agriculture, “As long as TRIPS does not offer a satisfactory level of protection for EU GIs, it is crucial to achieve a good outcome on GIs in bilateral FTAs.”⁷.

2.- From the “Old Generation” Agreements to Bilateral ‘FTAs’

From 1994 onwards, the EU started to conclude specific agreements on the protection of GIs for wines and spirits with other key wine and spirit producing countries, beginning with Australia⁸ (wine, 1994, renewed 2008⁹), Mexico¹⁰ (spirits,

⁽³⁾ World Trade Organisation, Geographical Indications, *Communication from the European Communities*, 14 June 2005, http://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm, viewed 14 November 2012.

⁽⁴⁾ Covarrubia, *op.cit.*, p. 331.

⁽⁵⁾ European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Region, *Global Europe: Competing in the World. A Contribution to the EU’s Growth and Jobs Strategy*, COM(2006) 567, Brussels, 4 October 2006 (*Global Europe*).

⁽⁶⁾ *Ibid.*, p. 9.

⁽⁷⁾ DG AGRI Working Document on international protection of GIs: objectives, outcomes and challenges, 25 June 2012: http://ec.europa.eu/agriculture/consultations/advisory-groups/international/2012-06-25/agri-working-doc_en.pdf, viewed on 20 September 2012.

⁽⁸⁾ European Community, “Agreement between the European Community and Australia on Trade in Wine”, *Official Journal of the European Union*, L86/3, 31 March 1994, http://ec.europa.eu/agriculture/markets/wine/third/austr_en.pdf; viewed on 9 November 2012.

1997), Chile¹¹ (wine and spirits, 2002), South Africa (wine¹² and spirits¹³, 2002), Canada¹⁴ (wine and spirits, 2003) and the USA¹⁵ (wine, 2006, updated 2011). The primary purpose of these “old generation” agreements was to provide for the mutual recognition of specific GIs as well as phase-out the use of specific wine and spirit terms of European origin, which had acquired ‘generic’ status in the partner countries¹⁶, in particular Canada and the USA¹⁷.

⁽⁹⁾ European Community, “Agreement between the European Community and Australia on Trade in Wine”, *Official Journal of the European Union*, L28/3, 30 January 2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:028:0003:0087:EN:PDF>; viewed 9 November 2012.

⁽¹⁰⁾ European Community, “Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designation of spirit drinks”, *Official Journal of the European Communities*, L152/16, 11 June 1997, <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=430>; viewed 9 November 2012.

⁽¹¹⁾ European Community, “Agreement between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part”, *Official Journal of the European Communities*, 30 December 2002, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:352:0003:1439:EN:PDF>; viewed 9 November 2012.

⁽¹²⁾ European Community, “Agreement between the European Community and the Republic of South Africa on Trade in Wine”, *Official Journal of the European Communities*, L28/4, 30 January 2002, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:028:0004:0105:EN:PDF>; viewed 9 November 2012.

⁽¹³⁾ European Community, “Agreement between the European Community and the Republic of South Africa on Trade in Spirits”, *Official Journal of the European Communities*, L28/113, 30 January 2002, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:028:0113:0125:EN:PDF>; viewed on 9 November 2012.

⁽¹⁴⁾ European Community, “Agreement between the European Community and Canada on trade in wines and spirit drinks”, *Official Journal of the European Union*, L35/3, 6 February 2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:035:0003:0093:EN:PDF>; viewed 9 November 2012.

⁽¹⁵⁾ European Community, “Agreement in the Form of an Exchange of Letters between the European Community and the United States of America on matters related to Trade in Wine”, *Official Journal of the European Union*, L301/16, 18 November 2005, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:301:0016:0019:EN:PDF>; viewed 9 November 2012.

⁽¹⁶⁾ M. Santa Cruz S., “Intellectual Property Provisions in European Union Trade Agreements”, *International Centre for Trade and Sustainable Development Studies (ICTSD) Intellectual Property and Sustainable Development Series*, Issue Paper No. 20, June 2007, p. 13.

Within the context of the Cotonou Agreement with the African, Caribbean and Pacific (ACP) group of 63 countries, the EU has also proposed to protect GIs on a regional basis. Since 2002, it is concluded or is negotiating a series of pluri-lateral Economic Partnership Agreements (EPA) within the wider framework of their trade and development partnership. EPAs have been concluded with the Caribbean (CARIFORUM), the Pacific (only Papua New Guinea) and East & South Africa (ESA) regions. Only the Caribbean agreement contains a chapter on GIs. Negotiations with the SADC group are in their final phase and the EU has proposed reciprocal protection of a short list of (most likely agricultural and foodstuffs) GIs focused on South Africa, the results of which are yet to be seen. The EU has proposed to offer assistance to the EAC, West Africa and the Pacific regions in developing GI systems in the future. No specific undertakings have been made in the field of GIs in EPA negotiations with the Central, East & South African regions. In parallel to EPA negotiations, the EU has formed a partnership with the African Union Commission to promote GIs throughout Africa. At the regional level, 16 countries in West and Central Africa are members of the *African Intellectual Property Organisation* (OAPI), which has in place a system of GI protection and hopes to register its first African GIs soon. 18 Sub-Saharan countries are also members of the *African Regional Intellectual Property Office* (ARIPO), which adopted a decision in December 2011 to develop a system of GI protection. On 26 November 2012, DG AGRI signed a non-legally binding Memorandum of Understanding with ARIPO¹⁸ to improve the protection of GIs in Africa, in particular through building an adequate legal framework. Interestingly, the Commission press release on the matter contains a number of agricultural and foodstuff products proposed as “candidates for GI protection”¹⁹ however the agreement does not provide these named products with any form of legal protection.

⁽¹⁷⁾ In the EU-US Wine Agreement, the concerned EU GIs were namely Burgundy, Chablis, Champagne, Chianti, Claret, Haut Sauterne, Hock, Madeira, Malaga, Marsala, Moselle, Port, Retsina, Rhine, Sauterne, Sherry and Today (Annex II); the EU-Canada agreement provided for an end to the generic classification in Canada of 21 European GIs for wines, namely Bordeaux, Chianti, Claret, Madeira, Malaga, Marsala, Medoc, and Mosel upon entry into force of the agreement; Burgundy, Rhine. Sauternes, by 31 December 2008 and Chablis, Champagne, Porto and Sherry by 31 December 2013; and the following European spirits within 2 years of its entry into force: Grappa, Ouzo, Jagertee, Kornbrand & Pacharan.

⁽¹⁸⁾ European Commission, “Commission supports protection of food and agricultural products’ names in Africa”, 26 November 2012, http://ec.europa.eu/agriculture/developing-countries/gi/memorandum-aripo/ ip_en.htm, viewed on 27 November 2012.

⁽¹⁹⁾ The listed products are: Zanzibar cloves (clous de girofles) & Rift Valley Coffee from Tanzania, Sidamo coffee from Ethiopia, Rooibos tea and Karoo lamb from South Africa, Beurre de karité du

The EU has also sought to push its agenda for greater international GI protection for agricultural products and foodstuffs through the agreements it has concluded with its neighbours as part of a wider European “integration” process. These agreements require the partners to align their GI systems/national legislation with the European *acquis*. Agreements include the Stabilisation and Association Agreements with the Western Balkans, namely Serbia²⁰, Montenegro²¹, Bosnia-Herzegovina²² and Albania²³ in the context of the EU’s Enlargement Process. The EU is also pushing its bilateral GI policy through the negotiation of specific agreements for the protection of GIs for agricultural products and foodstuffs signed between the EU and Switzerland²⁴, Moldova²⁵ and Georgia²⁶, the latter two in the context of the EU’s

plateau massif from Burkina Faso, Miel blanc d’Oku and Poivre blanc de Penja from Cameroon, Shama shea butter and Fine Flavour Cocoa from Ghana, Café Diama from Guinea, Rwanda Mountain Coffee, Mount Kenya Roses and Ngoro Ngoro Mountain Coffee from Kenya, Rodrigues Lime from Mauritius, Karakoel pelt from Namibia, Senegal Yett, West Nile District cotton & West Nile Honey from Uganda.

(²⁰) European Communities, “Stabilisation and Association Agreement Between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part”, http://ec.europa.eu/enlargement/pdf/serbia/key_document/saa_en.pdf, viewed on 20 September 2012.

(²¹) European Communities “Council and Commission Decision of 29 March 2010 on the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part”, *Official Journal of the European Union*, L108/1, 29 April 2010, <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=7281>.

(²²) SAA not available online; see: European Communities, “Interim Agreement on trade and trade-related matters between the European Community of the one part, and Bosnia and Herzegovina, of the other part”, *Official Journal of the European Union*, L233/6, 30 August 2008, <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=7061&back=7201>.

(²³) Council of the European Union, “Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Albania, of the other part”, 8164/06, 22 May 2006, http://ec.europa.eu/enlargement/pdf/albania/st08164.06_en.pdf.

(²⁴) European Union, “Agreement between the European Union and the Swiss Confederation on the protection of designations of origin and geographical indications for agricultural products and foodstuffs, amending the Agreement between the European Community and the Swiss Confederation on trade in agricultural products”, *Official Journal of the European Union*, L297/3, 16 November 2011. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:297:0003:0047:EN:PDF>; viewed 9 November 2012.

European Neighbourhood Policy (ENP) and wider Association Agreements with both partners. In early 2012 the EU launched negotiations for Deep and Comprehensive Free Trade Areas as part of these Association Agreements with Georgia, Moldova and Armenia. Thus, following the Georgian and Moldovan precedents, it is likely that negotiations with Armenia will also tackle GIs. Negotiations launched in March 2007 for a Deep and Comprehensive FTA between the EU and the Ukraine were concluded in December 2011 however next steps have been frozen for political reasons. A critical issue within DCFTA negotiations was that the EU demanded the Ukraine to commit to refrain from using approximately 3,000 names of EU products, including 15 currently used by Ukrainian producers (such as Cognac, Champagne, Feta, Roquefort...). The EU has agreed to provide technical and financial support to Ukrainian producers who would suffer from such GI clauses and transition periods in order for the Ukraine to implement its GI commitments²⁷.

In the absence of progress within the DDA, the EU is pursuing the development of FTAs with many of its key trading partners. These FTA include a chapter on the protection of GIs. The first such FTA was signed with South Korea²⁸ in October 2010, followed by the EU Peru-Columbia FTA²⁹ and EU-Central America FTA³⁰

⁽²⁵⁾ Council of the European Union, "Agreement between the European Union and the Republic of Moldova on the Protection of Geographical Indications of Agricultural Products and Foodstuffs", 8742/12, 15 May 2012, <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=9342>; viewed 9 November 2012.

⁽²⁶⁾ European Union, "Agreement between the European Union and Georgia on protection of geographical indications of agricultural products and foodstuffs", *Official Journal of the European Union*, L93/3, 30 March 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:093:0003:0140:EN:PDF>; viewed 9 November 2012.

⁽²⁷⁾ V. Movchan & V. Shportyuk, "EU-Ukraine DCFTA: The Model for Eastern Partnership Regional Trade Cooperation", *Case Network Studies & Analyses*, No. 445/2012, p. 15.

⁽²⁸⁾ European Union, "Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part", *Official Journal of the European Union*, L127/62, 14 May 2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:127:0006:1343:EN:PDF>; viewed 9 November 2012 (*EU-Korea FTA*).

⁽²⁹⁾ "Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part", http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf, viewed 9 November 2012 (*EU-Peru-Colombia FTA*).

(Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama) in June 2012³¹. On 16 December 2012, the EU also concluded its FTA with Singapore and press indicates that GIs proved to be a “key sticking point”³² in the negotiation of the IP chapter. Indeed, the EU succeeded in having Singapore concede to the establishment of a GI *register* in order to guarantee “a *high level of protection* to the EU's most valuable geographical indications on the Singaporean market, such as Bordeaux wine or *Parma ham*”³³, thus including agricultural GIs. The EU-Korea FTA provides protection for a number of EU and Korean GIs, including a list of 226 commercially important agricultural products that qualify for a high level of protection, of which 162 are from the EU and 64 from Korea. The EU-Peru-Colombia FTA establishes a set of disciplines allowing in particular for the protection of over 100 EU GIs on the Colombian and Peruvian markets and the EU-Central America FTA, which has not yet entered into force, may mutually recognise 224 EU and 89 Central American GIs³⁴.

Negotiations for deep and comprehensive FTAs are also underway between the EU and India since 2007, Mercosur since 1999 but stalled in 2004 and re-launched in 2009, the Gulf Cooperation Council (GCC) since the 1990s but suspended by the latter in 2008, Malaysia since May 2010, Vietnam since June 2012, Japan since November 2012 and Canada since May 2009. The Canada negotiations are in their final (and most difficult) phase due to the different nature of GI protection systems in both blocs (*sui generis* vs. trademark). Negotiations for a EU-USA FTA are expected to begin sometime in 2013. There is already lobbying in Washington against the inclusion of GIs in the negotiations, let alone in a final agreement.

⁽³⁰⁾ “Part VI of the EU-Central America Association Agreement”, http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147664.pdf; viewed 9 November 2012 (*EU-Central America AA*).

⁽³¹⁾ Still awaiting publication in the *Official Journal* (OJ) of the EU.

⁽³²⁾ N. Brereton-Fukui, “EU, Singapore Agree on FTA”, *The Wall Street Journal*, 16 December 2012, <http://online.wsj.com/article/SB10001424127887324407504578184061043113852.html>, viewed on 17 December.

⁽³³⁾ “Facts and Figures: EU trade agreement with Singapore”, *Europa Press Releases*, MEMO/12/993, 16 December 2013, http://europa.eu/rapid/press-release_MEMO-12-993_en.htm?locale=en, viewed on 17 December 2012.

⁽³⁴⁾ Interestingly, the Peru-Colombia FTA will protect one non-agricultural Peruvian GI and one non-agricultural Colombian GI in the EU.

3.- From the GIs in the CARIFORUM EPA to the GI chapters in the EU's recently concluded FTAs

The first bilateral GI protection initiative of the EU was in October 2008, when the EU successfully signed with all Caribbean countries bar Haiti the EC-CARIFORUM Economic Partnership Agreement³⁵, as part of the EU's policy to promote and increase trade with the ACP. The novel IP section of this agreement contains one article providing for GIs.³⁶ The more recent draft FTAs each contain a whole section, with a number of articles, devoted to GIs. Thus, it is clear that the importance of GI protection has been stepped up since the EU's first bilateral GI deliberations in 2008. Yet, at the same time, it seems that in particular areas, such as the ambit of the definition of a GI or the use of GIs on the Internet, the EU may not have been able to secure as robust GI protection in its bilateral FTAs as it has with the Caribbean states. These anomalies may correspond, in large part, to the extent of GI knowledge and legal protection in the EU's negotiating partner and thus the level of inherent opposition during the negotiations.

3.1. Progression

Prior to their conclusion (and even today in many countries) neither the Caribbean or Central American countries parties to the trade agreements with the EU had an effective, established and functioning GI system in place before the negotiation of the agreements. Both agreements require the EU's partners to establish systems of GI protection. Because CARIFORUM countries face even higher challenges in terms of setting up such a system, a deadline of no longer than 1 January 2014 has been set in the EPA, extended to 21 January 2021 for Least Developed Countries³⁷ (LDCs). In the EU-Central America FTA, the requirements are stricter in the sense that the systems of protection must be established by the entry into force of the agreement (which is still pending).

The text of the EPA does not set out how GI must be protected in CARIFORUM states and in particular whether it should be a *sui generis* or trademark system.

⁽³⁵⁾ European Union, "Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part", Official Journal of the European Union, L289/I/4, 30 October 2008, http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf; viewed 9 November 2012.

⁽³⁶⁾ *Ibid.*, Article 145.

⁽³⁷⁾ *Ibid.*, Article 140.

Article 145.A (2) simply stipulates that “*the signatory CARIFORUM states shall establish a system of protection of GIs in their respective territories...*” with no further details. Article 145.B (2) refers to production in accordance with the “product specifications” of the EU or signatory CARIFORUM states, which seems to suggest that a registration system and not a passive common law system, must be established in the laws of the parties.

The EU-Central America FTA on the other hand sets out³⁸ detailed provisions outlining the elements that must be present in the newly established or existing systems of GI protection in the Central American states. These elements are, namely, (a) a register, (b) an administrative process, (d) control provisions and (f) a procedure involving publication.

More generally, and not only in relation to the FTA with Central America, the FTAs with Korea and Peru-Colombia are more flexible and their protection more extensive than the CARIFORUM EPA in the sense that all three agreements³⁹ provide for the addition of further GIs onto the lists of protected GIs set out in annexes to the agreements. The EPA with CARIFORUM does not provide for this possibility. In the case of Korea, the Working Group is responsible for managing additions as well as *removals* of GIs onto its annexes;⁴⁰ in the case of the EU-Central America FTA, competent national or regional authorities examine whether GIs can be added and in the case of the EU-Peru-Colombia FTA, additions are subject to an objection procedure and take place in the framework of the Sub-Committee on Intellectual Property.

The extension of Article 23 TRIPS protection to agriculture and foodstuffs, which the EU succeeded in guaranteeing bilaterally for the first time in the 2008 Cariforum EPA, has also been included in the EU-Korea and EU-Central America FTAs. While the EPA refers to “goods in the same class of product”, article 10.21.1 of the EU-Korea FTA speaks of “like goods” and article 246(1)(b) of the EU-Central America FTA refers to the “same products.” As European GIs in Korea must be transcribed into a new alphabet, the relevant provision covers transcription as well as translation. Disappointingly, the EU did not manage to secure such a provision in the EU-Peru-Colombia FTA, the reasons of which will be analysed in section (2) below. Progression in terms of GI protection from the EPA to the FTAs is also notable with regard the provisions concerning trademarks. In the EPA, “*from the date of entry into*

⁽³⁸⁾ EU-Central America AA, *op.cit.*, Article 244.

⁽³⁹⁾ EU-Peru-Colombia FTA, *op.cit.*, Article 209; EU-Central America AA, *op.cit.*, Article 247; EU-Korea FTA, *op.cit.*, Article 10.24.

⁽⁴⁰⁾ EU-Korea FTA, *ibid.*, Article 10.2;

force of this agreement, the registration of a trademark which is identical with, similar to or containing a geographical indication protected respectively in the EC Party or in the Signatory CARIFORUM States...and relating to the same class of product shall be refused respectively in the EC Party or in the signatory CARIFORUM states...if the application for the registration of the trademark was submitted after the date of application for protection of the GI.” Provisions with the same effect are included in the EU-Korea FTA concerning a “protected GI for like goods”; in the EU-Peru-Colombia FTA for GIs for “identical or like products”; and in the EU-Central America FTA for “like products”, including “goods or services” according to Article 246(4).

3.2. Regression

The EPA provides for the coexistence of GIs and prior trademarks: *“a trade mark ...which has been applied for, registered or established by use ... in good faith ... before the date of application of the WTO obligations in the EC Party or a signatory CARIFORUM state, or before the date of application of protection of a GI in the respective territories, may continue to be used notwithstanding the registration of the GI.”*The provisions in the EU-Korea FTA are the same, except for the “good faith” requirement. Coexistence does not seem to be permitted in the EU-Peru-Colombia and EU-Central America FTAs, which provide that *“no Party shall have the obligation to protect a geographical indication where, in the light of a reputed or well-known trademark, protection is liable to mislead the consumers as to the true identity of the product.”* Thus where a trademark with a sufficiently strong reputation exists (which implies application, registration and establishment by use), a GI should not be granted protection if this may mislead the consumer.

The scope of the protection in the EPA is wide. Article 145.B (3)(a) of the Cariforum Agreement provides that protection of GIs will be granted *“regardless of the class of product on which it is used, the use in the territory of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the true geographical origin of the good.”* However, the FTAs between the EU and Central America as well as Korea contain a more limited provision, providing that GIs shall be protected against *“the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good.”* The wider ambit of the CARIFORUM EPA provision, particularly the phrase which is underlined, implies for example, that the use of the word *Parma* in relation to some sort of consultancy services could be considered to be misleading the public as to

the true origin of these services. The GI definitions in the FTAs do not provide for such a sweeping GI protection. The GI definition provided for in the EU-Peru-Colombia FTA is not mentioned here because it is completely different due to the specificities of the particular negotiations and GI protection system in place in these Andean community members, which again shall be subject to examination in section (2).

Finally, a provision, which arises only in the EPA and not the FTAs concerns the use of GIs on the Internet. The EPA provision reads: *“The EC Party and the Signatory CARIFORUM States accept the need for a clear legal framework for geographical indications owners who wish to use their geographical indications on the Internet and to participate in the development of electronic commerce which includes provisions addressing whether the use of a sign on the Internet has contributed to the usurpation, evocation, acquisition in bad faith or infringement of a geographical indication...”*. While this provision does not establish any sort of legal obligation but rather simply a willingness to cooperate on the issue of GIs on the Internet, it is not provided for in the text of the FTAs. The only negotiations in which it seems this clause has reappeared (however this is difficult to know as negotiations are kept confidential) is in the case of the EU-India FTA, whereby a leaked draft of the consolidated IPR Text⁴¹ prepared for discussions in 2010 contained an identical, yet crossed out, provision.

4.- From Korea to the Americas: discrepancies in FTA GI protection

The EU-Korea FTA was the first in a series “deep integration, i.e. WTO-plus in terms of width and depth”⁴² FTAs to be signed between the EU and strategic partners. It is the benchmark for future FTAs. For this reason, it was extremely important for the EU to ensure that a maximum of its negotiating objectives appeared in the final text of the agreement. Negotiations on GI protection were facilitated by the fact that Korea, like the EU, protects GIs via a registration system. In terms of GI protection, the EU managed to guarantee mutual recognition of over 226 GIs from both the EU and Korea; extension of Article 23 TRIPS protection to agricultural products and foodstuffs; the possibility of future addition or removal of GIs from the lists provided

⁽⁴¹⁾ Doc Restricted: EU-India FTA Negotiations: Consolidated IPR Text, “Draft consolidated version of the IPR text in preparation for IPR discussions during the week of 12th July 2010 in Delhi”, available on www.bilaterals.org, <http://www.bilaterals.org/spip.php?article18843&lang=en>, viewed on 13 November 2012.

⁽⁴²⁾ *Global Europe*, *op.cit.*, p. 19.

for in the agreement's annexes and the creation of a specialised Working Group on Geographical Indications to manage, in particular, this latter task. Furthermore, Article 10.23 outlining the relationship between GIs and trademarks requires Korea to slightly amend its national GI legislation. The Korean Trademark Act of 1949, which also governs GIs, has a provision for refusing or invalidating a trademark identical or similar to another party's GI, which was filed earlier, provided that the trademark is filed for identical goods. According to the FTA, this Korean provision must be slightly expanded in order to also cover trademarks filed for "like goods". This amendment of Korean legislation is certainly a win for EU negotiators seeking to extend GI protection abroad.

Many of the EU-Korea FTA provisions have been replicated in the EU-Central America FTA. As the Central American community has a weak and underdeveloped GI protection system, the EU was essentially able to propose its own model. In Central America, GIs are governed by Articles 70 to 80 of Title VII of the 1994 Protocol for the Amendment of the Central American Convention for the Protection of Industrial Property of 1968, which predates TRIPS⁴³. The EU was able to secure the inclusion of a GI definition corresponding to Article 22 TRIPS and of a provision extending Article 23 TRIPS protection to agricultural products and foodstuffs in the text of the FTA (articles 242 and 246(1) respectively). However, while in the EU-Korea and Peru-Colombia FTA, this higher level of protection was extended to the use of "like products" as well as identical products, the scope of this provision in the FTA with Central America is narrower, covering only the "use of a protected GI for the same products".

Interestingly, while there is a degree of consistency among the GI specific agreements with Switzerland, Georgia and Moldova and the EU's FTAs with Korea and Central America, some provisions of the EU-Peru-Colombia FTA are radically different. This seems to be the result of the fact that there is a strong and quite different GI system of protection already established in their countries. Thus, the EU had a smaller margin of manoeuvre in the FTA negotiation process, which is reflected in the text of the agreement. The definition provided for a GI in the FTA is more similar to that of an Appellation of Origin (AO) and the agreement contains an awkward provision with regard the extension of Article 23 TRIPS. The source of inspiration of these provisions is Title XII of Decision 486 of the Andean Community. With regard to levels of GI protection, Decision 486 does not go beyond TRIPS and only grants the higher level of protection to wines and spirits. Hence, Article 210 of the FTA establishes that GIs listed in Annex XIII shall be protected at least against:

⁽⁴³⁾ E. Hungary, "Symposium on the international protection of GIs in the worldwide context," *World Intellectual Property Organisation Publications*, October 24 & 25 1997, p. 213.

- Any other non-authorized use of geographical indications other than those identifying wines, aromatized wines or spirits drinks that creates confusion, including even in cases where the name is accompanied by indications such as style, type, imitation and other similar that creates confusion to the consumer;
- Without prejudice to this subparagraph, if a Party amends its legislation in order to protect geographical indications other than those identifying wines, aromatised wines and spirit drinks at a higher level than the protection provided for in this Agreement, that Party shall extend such protection to the geographical indications listed in Appendix 1 of Annex XIII.

The first paragraph of this provision suggests that, “protection is granted to products other than wines and spirits to a certain level, certainly more than a basic level but not as high as the EU wishes for”⁴⁴. The fact that GIs other than those identifying wines, aromatised wines or spirit drinks must create *confusion* implies that the FTA does not grant a higher level of protection to agricultural products and foodstuffs. This limited protection is mitigated by the second paragraph, which states that if Andean Community law is amended in the future in order to extend the higher level of protection beyond wines and spirits, EU agricultural products benefiting from this higher protection in the EU will also benefit from it in Peru and Colombia.

Turning to the definition of a GI in the EU-Peru-Colombia FTA, we note that it is different from any other bilateral agreement definition and resembles the least Article 22 TRIPS. It is closer to the definition of an AO in the Lisbon Agreement of 1958. Accordingly, article 207(a) of the EU-Peru-Colombia FTA provides:

“Indications consisting of the name of a particular country, region or locality or a name which, without being that of a particular country, region or locality, refers to a particular geographical area, and which identify a product as originating therein where a given quality, reputation or other characteristic of the product is exclusively or essentially due to the geographical environment in which it is produced, with its inherent natural and human factors.”

The reason for this is to be found in Andean law. Decision 486 provides for the protection of “Indications of Source” (IS) and “Denominations of Origin” (DO), the definition of the latter corresponding exactly to Article 207(a) of the FTA, and is most similar in EU legal terms to the definition of a Protected Designation of Origin (PDO) in Regulation 510/2006 on the protection of GIs and for agricultural products and foodstuffs. Pursuant to the said Regulation, a PDO refers to the name of a product whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, while a PGI refers to the name of a product possessing a specific quality, *reputation* or other

⁽⁴⁴⁾ Covarrubia, *op.cit.*, p. 336.

characteristic attributable to particular geographical origin⁴⁵. In this sense, it is easier to register a product in the EU as a PGI than a PDO because the criteria for the former are less strict. Hence, in the Andean Community, the definition and scope of a GI is more limited than in the EU.

Under the EU-Peru-Colombia FTA, the parties acknowledge that the GIs listed in the annexes are protected as such in their country of origin and thus the FTA provides for their mutual recognition. However, the protected EU GIs for agricultural products and foodstuffs listed in Annex XIII, Appendix 1, include PDOs as well as *PGIs*, such as *Ceskobudejovické pivo* from the Czech Republic, *Canard à Foie Gras du Sud-Ouest*, *Huitres Marennes Oléron*, *Jambon de Bayonne* and *Pruneaux d'Agen* from France, *Bayerisches Bier* and *Munchener Bier* from Germany, *Zampone Modena* from Italy and *Danablu* from Denmark. However, according to the GI definition provided for in the agreement, these products do not fall within the scope of the FTA, which only provides for Andean DOs and European PDOs. Thus, it seems that the EU is introducing PGIs into the text of the FTA through the back door. When Peru and Colombia come to realize that their national GI regimes are more prohibitive than that of the EU PGIs they are protecting, if they have not already, "they will certainly see this as a restriction on their products"⁴⁶.

This raises some questions. Article 3(1) TRIPS requires that each WTO "Member shall accord to nationals from other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property."⁴⁷. However, it appears that as a result of the EU-Peru-Colombia FTA, Peru and Colombia are actually according to their nationals less favourable treatment than that granted by the FTA to EU members whose products (which may only be PGIs) benefit from mutual recognition. It is difficult to understand why the Andean Community members allowed for the existence of this legal loophole. It could be either the result of lack of GI expertise and insufficient knowledge of the EU GI protection system, or the result of a carefully crafted compromise in negotiations, whereby the Commission agreed in return to grant GI protection in the EU to Colombian "handicrafts" and Peruvian "pottery" (listed in Appendix 2, Annex XIII of the FTA). Indeed, these GIs were only added onto the text of the agreement at the end of the negotiations and there is no legal GI protection mechanism bar the

⁽⁴⁵⁾ European Union, Regulation (EC) of the European Parliament and of the Council No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, *Official Journal of the European Union*, L93/12, 31.3.2006, Article 2 "Definitions" (*Regulation 510/2006*).

⁽⁴⁶⁾ Covarrubia, *op.cit.*, p. 336.

⁽⁴⁷⁾ Article 3 "National Treatment", *TRIPS Agreement*, *op.cit.*

registration of Community Trademarks available in the EU for the protection of these non-agricultural GIs.

5.- GI Discrimination? The GIs listed in the Annexes to the EU's Bilateral Agreements

Not only do there seem to be discrepancies in terms of the level or type of protection provided to GIs under the various FTAs recently concluded by the EU, it appears that there is also little uniformity and consistency with regard the specific GIs being granted protection under the agreements.

Starting with the specific GI agreements concluded between the EU and Switzerland, Georgia and Moldova, a detailed analysis of the content of their annexes reveals a number of interesting discrepancies with regard the protection of specific GIs [see table in Annex 1 to this paper]. The agricultural and foodstuff GIs originating from Austria, Cyprus, Greece, Finland, Ireland, Luxemburg, the Netherlands, Sweden, Slovenia and Slovakia are the same in all three agreements. However, the protection of GIs originating from Germany, Belgium, the Czech Republic, Denmark, Spain, France, Italy, Poland, Portugal and the UK is not uniform across all three agreements. In particular, the GI list in Annex III of the EU-Moldova Agreement contains a much longer list of GIs originating from these member states than the EU-Georgia and EU-Switzerland Agreements. This, however, may be due to the fact that the Moldova Agreement is still awaiting publication in the Official Journal (OJ) of the EU. The objection procedure to the GIs listed in the provisional agreement, lasting two months, was opened by the European Commission through an "Information Notice – Public Consultation" published in the OJ on 7 April 2011⁴⁸ and thus closed on 7 June 2011. It is possible that the results of this objection procedure will be reflected in the publication of a shorter version Annex III and it will be interesting to see which, if any, GIs come off the list.

Looking at the specific content of the agricultural products and foodstuffs GI lists in the agreements, it is noted for example that German GI *Allgauer Emmentaler* cheese or Czech *Vsestarska cibule* onion are only protected in Georgia and (provisionally) in Moldova and are absent from Appendix 1 of the EU-Switzerland Agreement. *Goegginger bier* and *Rieser Weizenbier* GIs from Germany are only protected in Switzerland. Furthermore, Denmark, Spain, Italy and Portugal have a number of GIs which are granted protection in Switzerland and (provisionally) in

⁽⁴⁸⁾ European Commission, Other Acts, "Information Notice – Public Consultation – Geographical Indications from Moldova", *Official Journal of the European Union*, C108/11, 7 April 2011.

Moldova but do not appear in Annex III of the EU-Georgia Agreement. These include, for example, GIs for *Danablu* cheese from Denmark, *Pan de Cruz de Ciudad Real* bread from Spain, *Ciauscolo* meat from Italy and *Batata Doce de Aljezur* potatoes from Portugal.

Discrepancies also appear with regard the specific GIs protected in the FTAs with Korea, Peru, Colombia, and Central America [see both tables in Annex 2 of this paper]. However, it should first be noted that the lists of GIs protected under these agreements are much shorter than those in the GI specific agreements. As the GI agreement with Moldova, the EU-Central America Association Agreement is still awaiting publication in the OJ, therefore the GIs listed in its Annex XVII remain provisional, until successful examination by the parties' competent national or regional authorities is completed. The procedures in the EU was opened on 20 July 2012 and closed on 20 September 2012, which may affect the content of the final version of the agreement.

Many inconsistencies with regard the protection of specific GIs appear in the finer print of the FTAs. France is the only member state, whose protected GIs are the same in all agreements. Danish *Danablu* cheese is, again, only protected in the EU-Peru-Colombia FTA and provisionally in the EU-Central America FTA, and does not appear in Annex 10-A of the EU-Korea FTA. This is also the case with regard Greek *Sitia Lasithiou*, Portuguese *Queijo Serra da Estrela* and Spanish *Idiazabal*. The famous Italian *Aceto Balsamico tradizionale di Modena*, *Mozarella di Bufala Campana* and *Parmigiano Reggiano* (non-exhaustive list) are protected in Korea and provisionally in Central America but not Peru and Colombia. The same applies, as a means of example and not an exhaustive list, to Austrian *Tiroler Speck*, Czech *Ceskobudejovické Pivo*, Hungarian *Szegedi Szalami*, Portuguese *Queijo de Sao Jorge*, and Spanish *Jamon de Huelva*.

Furthermore, a number of additional GIs are currently listed in Annex XVII of the EU-Central America FTA and it is still to be seen whether some of them, such as, for example, Austrian *Steirisches Kurbiskernol*, Italian *Grappa*, Spanish *Dehesa de Extremadura* or Danish *Esrom*, will continue to benefit from this unique protection when the final version of the FTA is published in the OJ. Some specific GIs have, however, succeeded in guaranteeing themselves stand-alone protection in the EU-Korea FTA, without reappearing in the annexes of the agreements with South and Central American countries. These are, notably, *Cotechino Modena* from Italy and *Oli del Baix Ebre-Montsia*, *Citrics Valencians* and *Llonganissa de Vic* from Spain. Very similar uneven protection patterns also arise with regard the GIs for wines and spirits covered in the FTAs.

It is not clear why particular EU bilateral trade agreements should protect specific GIs and not others. This product-by-product approach, while comprehensible on the basis of the commercial interest particular GIs have in different export markets, is

not good theory. In theory and in law all GIs should receive the same protection. The EU does not discriminate among trademarks or other forms of intellectual property. Why discriminate for GIs?

An explanation can be found in the EU's complex decision-making processes. The inclusion of GIs in FTAs is based on a dialogue between the negotiating authority, the European Commission, and Member States as well as GI producers. It appears that the DG TRADE and DG AGRI criteria for selection are tactical, economic and geographical. In terms of tactics, it is possible that the Commission selects certain GIs on the basis that it does not want to arrive at the negotiating table with a large amount of GIs in hand as this may scare off the opposite party. Economic concerns are also at issue: the Commission could consider that business-wise, it makes sense to only protect those GIs which have a market in the country at issue. Finally, the Commission could take the view that the value of granting cross-border protection to GIs, which only have a market in the area in which they are produced, is excessive. The EC did state in its *Green Paper on Agricultural Product Quality*, "with many of the 3,000 geographical indications now protected in the EU being for products sold mainly at local or regional level, the question arises on the pursuit of international protection of all these names."⁴⁹

6.- *Some concluding remarks*

The EU undermines the concept of GIs as a form of Intellectual Property by its willingness to negotiate bilateral agreements on the basis of individual GIs rather than all GIs. Whatever reservations some WTO Members may have, GIs have been recognised as a form of Intellectual Property in the TRIPS Agreement. The only issue remaining to be addressed is not whether they are Intellectual Property Rights, but rather how they should be protected. These are two clear and distinct issues. By appearing to confuse them, the EU continues to muddy the waters. GIs are a form of intellectual property and as such, like all IPs must be protected. Would the EU accept that only some trade marks be protected or that normal rules of conflict where there are overlapping rights not apply? Would any country accept this? The EU must face up to the incoherence of its approach. It must impose the WTO endorsed system for dealing with conflicts. This might result in hard cases where one or another party might feel aggrieved. But it would see the protection of the vast majority of GIs and the long term working out of the problem. The justification

⁽⁴⁹⁾ European Commission, *Green Paper on Agricultural Product Quality: product standards, farming requirements and quality schemes*, COM (2008) 641, Brussels, 15 October 2008, p.14.

for the Commission's approach, cited in its public materials, that many GIs only have a local market is irrelevant. The vast majority of registered trademarks are unknown outside a very limited geographical area.

Third country GIs protected in the EU within the terms of bilateral agreements are not yet included in the EU's databases of protected GIs. Council Regulation (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs⁵⁰ (hereafter Regulation 1151/2012), which entered into force on the 3rd January 2013, addresses this deficiency. Article 11(2) provides that "*Geographical indications pertaining to products of third countries that are protected in the Union under an international agreement to which the Union is a contracting party may be entered onto the register.*" No further details are provided on the procedure to be followed in order to register such third country GIs, however it is assumed that it will reflect the informal procedures currently in place.

The current informal system for objections to the protection in the EU of third country GIs is legally incoherent. The Commission, on the basis of informal practice, publishes an act in the Official Journal containing a list of the GIs, which have been included in the annexes of a concluded international agreement, and gives objectors two months to make the case as to why they should not be protected in the EU. Up to now there has been no legal basis for this objection procedure. And, under the new formal procedures there are no criteria limiting the grounds for objection, as there are for objections to GIs under the EU's domestic law. The new framework for quality schemes in agriculture established by Regulation 1151/2012 streamlines the objection procedure to the registration of GIs (also originating from third countries) in the EU, Article 51 reducing the previous 6-month objection period established by Regulation 510/2006 to one of 3 months. However, this new objection procedure only applies to the registration of GIs, and thus only provides clearer criteria and guidelines in the case whereby GIs listed in an EU FTA with a third country are entered into the EU Register. The risk is that this new development further increases incoherence of third country GI objection procedures, if some GIs listed in international agreements are registered in the EU but not all. Thus, further clarification is needed from the Commission on this issue.

More importantly, however, it remains unclear what happens where an objection is upheld but the relevant international agreement has been concluded prior to the successful objection. This is particularly problematic when the agreement does not

⁽⁵⁰⁾ European Union, Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, *Official Journal of the European Union*, L343/1, 14.12.2012.

contain provisions allowing for the exclusion (or inclusion) of GIs on the lists of those protected third country GIs.

The EU registration system for the protection of GIs only applies to agricultural products and foodstuffs, wines and spirits. It does not extend to non-agricultural GIs. The EU's obligations under TRIPS Article 22 extend to these products. Presumably this protection in the EU is provided by virtue of EU trademark law. If this is the case how is the EU to protect the non-agricultural GIs, namely Peruvian *Chulucanas* ceramics and Colombia *Guacamayas* baskets that have been included in the EU Colombia/Peru FTA? Does the international agreement itself provide the protection in EU law or is a secondary act to register the GI under some domestic law required?

Why has the EU played around with the definition of GIs and the level of protection in third countries? The TRIPS Agreement had finally introduced some stability and coherence in relation to definitions. The EU approach undermines this. The scope of GI protection in its international agreements goes from wide in the CARIFORUM EPA, to much narrower in the EU-Peru-Colombia FTA to expansive again for registered third country GIs in the EU as provided for in Article 13 of Regulation 1151/2012, which extends to products when used as ingredients as well as services. In relation to the level of protection the EU is creating a distinctly un-level playing field rather than the opposite.

The export value of EU GIs is significant (€0,7 billion for foodstuffs, €5,9 billion for wine and €5,7 billion for spirits in 2012)⁵¹. And it is growing. Almost all exported EU spirits are GIs and around 80% of total EU wines exports are GIs. Total exports of all EU agricultural products amount to €105 billion, of which €67 billion are final products. Quality products are at the core of the reform of the Common Agricultural Policy and the main focus of the new EU Quality scheme. And yet, on the international plane the EU has not developed or, being generous, has not implemented a coherent strategy. The developments introduced by the new framework for Quality schemes in agriculture are welcomed as highly necessary first steps. However much is still unclear and too many discrepancies remain in the EU's policy for GI protection. The issue of international protection of GI must be at the heart of the internal EU agricultural policy and in consequence at the heart of EU trade policy.

⁽⁵¹⁾ J. A. Clarke, "International protection of EU Geographical Indications", *Advisory Group International Aspects of Agriculture*, 25 June 2012, p. 5, http://ec.europa.eu/agriculture/consultations/advisory-groups/international/2012-06-25/slides-int-protect-eu-geo-indications_en.pdf, viewed on 21 December 2012.

Annex 1

Specific GIs protected in the EU Agricultural GI Agreements with Switzerland, Moldova and Georgia

All agreements have a common base of protected GIs for agricultural products and foodstuffs. The following table serves to demonstrate the *additional* GIs protected in these agreements beyond their common base. Only agricultural products and foodstuffs GIs are analysed and not wine & spirit GIs as the number of the latter protected is simply too extensive for an interesting comparison.

The GIs originating from the following countries are the same in the three agreements: Austria; Cyprus; Greece; Finland; Ireland; Luxemburg; Netherlands; Sweden; Slovenia; Slovakia.

The countries that have insisted on protecting certain GIs in one or more of the three agreements are listed in the table.

All the GIs in *italics* are the extra ones included in only one agreement.

Country of Origin	EU-Swiss Agreement	EU-Moldova Agreement	EU-Georgia Agreement
Germany	<i>Goegginger bier;</i> <i>Rieser Weizenbier.</i>	Allgauer Emmentaler; <i>Schwabische Maultaschen</i> <i>Schwabische Suppenmaultaschen;</i> <i>Hopfen aus der Hallertau.</i>	Allgauer Emmentaler.
Belgium		<i>Gentse azalea.</i>	
Czech Republic	Brnenske pivo/ Starobrnenske pivo.	Vsestarska cibule; <i>Breznicky lezak;</i> <i>Cerna Hora;</i> <i>Jihoceska Niva;</i> <i>Johiceska Zlata Niva;</i> Brnenske pivo/ starobrnenske pivo.	Vsestarska cibule.
Denmark	Danablu; Esrom; Lammefjordsgulerod.	Danablu; Esrom; Lammefjordsgulerod.	
Spain	Pan de Cruz de Ciudad Real.	Pan de Cruz de Ciudad Real. <i>Arzua-Ulloa;</i> <i>Chorizo Riojano;</i>	

		<p><i>Alubia de La Baneza-Leon;</i> <i>Chirimoya de la Costa tropical de Granada-Malaga;</i> <i>Faba de Lourenza;</i> <i>Pemento do Couto;</i> <i>Tarta de Santiago.</i></p>	
France		<p><i>Farine de Petit Epeautre de Haute Provence;</i> <i>Pommes des Alpes de Haute Durance;</i> <i>Ravioli du Dauphiné.</i></p>	
Hungary		<p><i>Hajdusagi torma.</i></p>	
Italy	<p>Ciauscolo; Laghi Lombardi; Lametia; Lucca; Molise; Monte Etna; Monti Iblei; Penisola Sorrentina; Nocciola Romana.</p>	<p>Ciauscolo; Laghi Lombardi; Lametia; Lucca; Molise; Monte Etna; Monti Iblei; Penisola Sorrentina; Nocciola Romana; <i>Prosciutto di Sauris;</i> <i>Provolone del Monaco;</i> <i>Colline Pontine;</i> <i>Irpina – Colline dell’Ufita;</i> <i>Crudo di Cuneo;</i> <i>Marrone di Caprese Michelangelo;</i> <i>Mela di Valtellina;</i> <i>Patata di Bologna;</i> <i>Pesca di Verona;</i> <i>Pistacchio Verde di Bronte;</i> <i>Pomodorino del Piennolo del Vesuvio;</i> <i>Sedano Bianco di</i></p>	

		<i>Sperlonga;</i> <i>Ricciarelli di Siena.</i>	
Poland		<i>Wisnia nadwislanka.</i>	
Portugal	Batata Doce de Aljezur.	Batata Doce de Aljezur.	
UK		<i>Yorkshire Forced Rhubarb.</i>	

Annex 2

GI Analysis of EU Free Trade Agreements with Korea, Colombia & Peru and Central America

In both tables, all the GIs in *italics* are the GIs only covered in one agreement:

A. Agricultural Products and Foodstuffs GIs

Country of Origin	EU-Korea FTA	EU-Peru-Colombia FTA	EU-Central America FTA
Austria	Tiroler Speck; Steirischer Kren.		Tiroler Speck; Steirischer Kren; <i>Steirisches Kurbiskernol.</i>
Czech Republic	Ceské pivo; Budejovické pivo; Budejovický mestansky var; Ceskobudejovické pivo zatecky chmel.	Ceskobudejovické pivo.	Ceské pivo; budejovické pivo; Budejovický mestansky var; Ceskobudejovické pivo zatecky chmel.
Germany	Bayerisches Bier; Muenchener Bier.	Bayerisches Bier; Muenchener Bier.	Bayerisches Bier; Muenchener Bier; <i>Nurnberger Bratwuerste/</i> <i>Nurnberger</i> <i>Rostbratwuerste;</i> <i>Nurnberger Lebkuchen;</i> <i>Allgauer Emmentaler;</i> <i>Allgauer Bergkase.</i>

Greece	Elia Kalamatas; Masticha Chiou; Feta.	Elia Kalamatas; Masticha Chiou; Feta; Sitia Lasithiou.	Elia Kalamatas; Masticha Chiou; Feta; Sitia Lasithiou Kritis; <i>Kolymvari Chanion Kritis;</i> <i>Kalamata;</i> <i>Konservolia Amfissis;</i> <i>Krokos Kozanis;</i> <i>Kefalograviera;</i> <i>Manouri.</i>
Hungary	Szegedi téliszalami/ Szegedi szalami.		Szegedi téliszalami/ Szegedi szalami.
Italy	Prosciutto di Parma; Prosciutto di S. Daniele; Prosciutto Toscano; Provolone Valpadana; Taleggio; Zampone Modena; Aceto balsamico tradizionale di Modena; Mortadella Bologna; Asiago; Fontina; Gorgonzola; Grana Padano; Mozarella di Bufala Campana; Parmigiano Reggiano; Pecorino Romano; <i>Cotechino Modena.</i>	Prosciutto di Parma; Prosciutto di S. Daniele; Prosciutto Toscano; Provolone Valpadana; Taleggio; Zampone Modena.	Prosciutto di Parma; Prosciutto di S. Daniele; Prosciutto Toscano; Provolone Valpadana; Taleggio; Aceto balsamico tradizionale di Modena; Asiago; Fontina; Gorgonzola; Grana Padano; Mozarella di Bufala Campana; Parmigiano Reggiano; Pecorino Romano; Mortadella bologna; <i>Grappa;</i> <i>Pancetta Piacentina</i> <i>Toscano.</i>
Portugal	Queijo de Sao Jorge.	Queijo Serra da Estrela.	Queijo Sao Jorge; Queijo Serra da Estrela; <i>Pera Rocha do Oeste;</i> <i>Azeites de Tras-os-Montes;</i> <i>Azeite de Moura.</i>
Spain	Priego de Cordoba; Baena;	Priego de Cordoba; Idiazabal.	Priego de Cordoba; Baena;

	Sierra Magina; Aceite del Baix-Ebre-Montsia; Aceite del Bajo Aragon; Antequera; Sierra de Cadiz; Sierra de Segura; Guijuelo; Jamon de Huelva; Jamon de Teruel; Salchichon de Vic; Mahon-Menorca; Queso Manchego; Citricos Valencianos; Jijina; Turrón de Alicante; Azafran de la Mancha; <i>Oli del Baix Ebre-Montsia,</i> <i>Citrics Valencians;</i> <i>Llonganissa de Vic.</i>		Sierra Magina; Aceite del Baix-Ebre-Montsia; Aceite del Bajo Aragon; Antequera; Sierra de Cadiz; Sierra de Segura; Guijuelo; Jamon de Huelva; Jamon de Teruel; Salchichon de Vic; Mahon-Menorca; Queso Manchego; Citricos Valencianos; Jijina; Turrón de Alicante; Azafran de la Mancha; <i>Los Pedroches;</i> <i>Dehesa de Extremadura;</i> <i>Cecina de Leon;</i> <i>Sobrasada de Mallorca;</i> <i>Les Garrigues;</i> <i>Estepa;</i> <i>Sierra de Carzorra;</i> <i>Siurana.</i>
Denmark		Danablu.	Danablu; <i>Esrom.</i>

B. Wine & Spirits GIs

<u>Country of Origin</u>	<u>EU-Korea FTA</u>	<u>EU-Peru-Colombia FTA</u>	<u>EU-Central America FTA</u>
Austria	Jaegertee/ Jaegertee/ Jagetee; Inlaenderrum; <i>Korn/ Kornbrand.</i>	Jaegertee/ Jaegertee/ Jagetee; Inlaenderrum.	Jaegertee/ Jaegertee/ Jagetee; Inlaenderrum.
Belgium	<i>Korn/ Kornbrand.</i>		

Cyprus	Ouzo.	Commandaria; Zivania; Ouzo.	Commandaria; Zivania; Ouzo; <i>Lemesos;</i> <i>Pafos.</i>
France	Alsace; Beaujolais; Bordeaux; Bourgogne; Chablis; Champagne; Graves; Medoc; Moselle; Saint-Emilion; Sauternes; Haut-Médoc; Cotes de Rhone; Languedoc; Cotes du Roussillon; Chateauneuf du Pape; Cotes de Provence; Margaux; Touraine; Anjou; Val de Loire; Cognac; Armagnac; Calvados.	Alsace; Anjou; Beaujolais; Bordeaux; Bourgogne; Chablis; Champagne; Chateauneuf-du-Pape; Cotes de Provence; Cotes du Rhone; Cotes du Roussillon; Graves; Haut-Médoc; Languedoc; Margaux; Médoc, Moselle; Saint-Emilion; Sauternes; Touraine; Val de Loire; Cadillac; Fronton; Maury; Pommard; Romanée Saint-Vivant; Saint-Julien; Armagnac; Calvados; Cognac; Rhum de Martinique.	Alsace; Beaujolais; Bordeaux; Bourgogne; Chablis; Champagne; Graves; Medoc; Moselle; Saint-Emilion; Sauternes; Haut-Médoc; Cotes de Rhone; Languedoc; Cotes du Roussillon; Chateauneuf du Pape; Cotes de Provence; Margaux; Touraine; Anjou; Val de Loire; Cadillac; Fronton; Maury; Pommard; Romanée Saint-Vivant; Saint-Julien; Cognac; Armagnac; Calvados; Rhum de la Martinique.
Germany	Korn/Kornbrand; Mittelrhein; Rheinhessen;	Korn/Kornbrand.	Korn/Kornbrand; Mittelrhein; Rheinhessen;

	Rheingau; Mosel.		Rheingau; Mosel; <i>Franken.</i>
Greece	Retsina; Samos; Ouzo.	Ouzo.	Retsina; Samos; <i>Nemea;</i> Ouzo.
Hungary	Tokaj; Torkolypalinka; Palinka.	Tokaj;	Tokaj; Torkolypalinka; Palinka.
Italy	Chianti; Asti; Bardolino; Brunello di Montalcino; Vino Nobile di Montepulciano; Franciacorta; Lambrusco Grasparossa di Castelvetro; Montepulciano d'Abruzzo; Soave; Toscana; Conegliano Valdobbiadene; Lambrusco di Sorbara; Barolo; Brachetto d'Acqui; Campania; Sicilia; Veneto; Dolcetto d'Alba; Barbaresco; Marsala; <i>Bolgheri Sassicaia;</i> Grappa.	Asti; Bardolino; Brunello di Montalcino; Chianti; Conegliano – Valdobbiadene – Prosecco; Franciacorta; Lambrusco Grasparossa di Castelvetro; Montepulciano d'Abruzzo; Soave; Toscana/a; Vino nobile di Montepulciano; Vernaccia di San Gimignano; Lambrusco di Sorbara; Grappa.	Chianti; Asti; Bardolino; Brunello di Montalcino; Vino Nobile di Montepulciano; Franciacorta; Lambrusco Grasparossa di Castelvetro; Montepulciano d'Abruzzo; Soave; Toscana/a; Conegliano – Valdobbiadene – Prosecco; Vernaccia di San Gimignano; Campania; Marsala; Sicilia; Veneto; Dolcetto d'Alba; Barbaresco; Barolo; Brachetto d'Acqui; <i>Barbera d'Alba;</i> <i>Barbera d'Asti;</i> <i>Fiano di Avellino;</i> <i>Greco di Tufo;</i> <i>Valpolicella;</i> Grappa.

Ireland	Irish Whiskey/Irish Whisky.	Irish Whiskey/ Irish Whisky; Irish Cream.	Irish Whiskey/ Irish Whisky; Irish Cream.
Lithuania		Original Lithuanian Vodka.	Original Lithuanian Vodka.
Portugal	Madeira/Madère/ Madera; Porto, Port, Oporto; Douro; Dao; Bairrada; Vinho Verde; Alentejo.	Porto/Port/Oporto; Douro; Vinho Verde.	Madeira/Madère/Madera; Porto, Port, Oporto; Douro; Dao; Bairrada; Vinho Verde; Alentejo; <i>Tejo;</i> <i>Lisboa.</i>
Poland	Polska Wodka/Polish Vodka; Herbal vodka from the North Podlasie Lowland aromatised with an extract of bison grass; Polish Cherry.	Polska Wodka/Polish Vodka.	Polska Wodka/Polish Vodka; Herbal vodka from the North Podlasie Lowland aromatised with an extract of bison grass; Polish Cherry.
Spain	Malaga; Rioja; Jerez-Xeres-Sherry; La Mancha; Cava; Navarra; Valencia; Somontano; Ribera del Duero; Priorato or Priorat; Rueda; Rias Baixas; Valdepenas; Cataluna; Alicante; Penedes; Bierzo;	Alicante; Cataluna; Cava; Jerez-Xeres-Sherry; La Mancha; Malaga; Navarra; Priorat; Rias Baixas; Ribera del Duero; Rioja; Rueda; Somontano; Valdepenas; Valencia Utiel-Requenal; Emporda;	Alicante; Malaga; Rioja; Jerez-Xeres-Sherry; La Mancha; Cava; Navarra; Valencia; Somontano; Ribera del Duero; Priorat; Rueda; Rias Baixas; Valdepenas; Cataluna; Penedes; Bierzo;

	Manzanilla – Sanlucar de Barrameda; Jumilla; Toro; <i>Ampurdan – Costa Brava;</i> Brandy de Jerez; Pacharan.	Brandy de Jerez.	Manzanilla – Sanlucar de Barrameda; Jumilla; Toro; Emporda; Utiel-Requena; <i>Campo de Borja;</i> <i>Carinena;</i> <i>Ribeira Sacra;</i> <i>Castilla;</i> <i>Castilla y Leon;</i> Brandy de Jerez; Pacharan Navarro.
Denmark			<i>Dansk Aquavit/Dans Akvavit</i>
Romania	Dealul Mare; Murfatlar.		Dealul Mare; Murfatlar; <i>Tarnave;</i> <i>Cotnari;Panciu;</i> <i>Odobesti;</i> <i>Cotesti;</i> <i>Recas .</i>
Slovakia	<i>Tokajska/ Tokajsky/ Tokajske.</i>	Vinohradnicka oblast' Tokaj.	Vinohradnicka oblast' Tokaj.
Finland	Vodka of Finland; Finnish berry liqueur/ Finnish fruit liqueur.	Vodka of Finland; Finnish berry liqueur/ Finnish fruit liqueur.	Vodka of Finland; Finnish berry liqueur/ Finnish fruit liqueur.
Sweden	Svensk Vodka/Swedish Vodka; <i>Svensk Aquavit/ Svensk Akvavit/ Swedish Aquavit;</i> <i>Svensk Punch/ Swedish Punch.</i>	Svensk Vodka/Swedish Vodka.	Svensk Vodka/Swedish Vodka.

UK	Scotch Whisky.	Scotch Whisky.	Scotch Whisky.
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ABSTRACT

The article examines the efforts of the European Union (EU) to improve the protection of EU Geographical Indications (GI) in third country markets outside the context of the Doha round of negotiations within the World Trade Organisation (WTO). It looks at the various means used and in particular looks at the GI provisions in the bilateral free trade agreements that the EU is currently concluding with a wide range of countries. The article concludes that the EU negotiating policy has evolved over time but has much further to go to be considered coherent and fair.