Geographical indications in EU Bilateral Trade Agreements

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Outline

- Part I: Geographical indications in EU Colombia-Peru Trade Agreement
  - Recognition
  - Scope of protection
  - Exceptions
  - Relationship with trade marks
- Part II: GI protection in CETA
- Part III: GI protection in TTIP
Background

• Significant shifts in EU’s policy since launch of Strategy “Global Europe” in 2006
  – From multilateral to bilateral instruments
  – From modest level of IP protection to TRIPS-plus standards
  – From differentiated levels of IP protection to almost “one-size-fits-all” approach

• Area of geographical indications a priority
  – From agreements on trade in wine and spirits to GIs for all products (except non-agricultural) as part of IP chapters in recent EU BTAs
Part I
Geographical indications in EU Colombia-Peru Trade Agreement
Example: EU Colombia-Peru Trade Agreement

1. Recognition of GIs
2. Four levels of protection for all GIs
3. Exceptions
4. Relationship with trade marks
1) Recognition of GIs

- GIs listed in **Annex XIII**: automatic protection
- **Prior examination** of GIs by parties
- Completed internal objection procedure
  - Colombia/Peru, India (as suggested by EU), SK, CARIFORUM

- No equal protection of GIs on wines/spirits and foodstuffs
  - Colombia/Peru, CARIFORUM, SK, India (as suggested by EU)
2) Four levels of protection for all GIs

- Protection against commercial use
- Protection against expressive use
- Protection against false or misleading indications
- Protection against misleading practice

Beyond the TRIPS standard

Identical to *EC Regulation 1511/2012* on GI protection for agricultural products and foodstuffs

Colombia/Peru, India (as suggested by EU), CARIFORUM, SK, Central America
## Protection against commercial use

<table>
<thead>
<tr>
<th><strong>Article 210 (1)(a) EU-Colombia-Peru TA:</strong></th>
<th><strong>Article 22.2 (a) TRIPS:</strong></th>
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<tbody>
<tr>
<td>“any commercial use of a protected name:”</td>
<td>“the use 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”</td>
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<td>• for identical or like products not compliant with the product specification of the GI, or</td>
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<td>• in so far as such use exploits the <strong>reputation</strong> of a geographical indication;”</td>
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Protection against expressive use

- Article 210(1)(b): GIs listed other than wines and spirits are protected against any other non-authorised use (misuse, imitation or evocation) that creates confusion, even if accompanied by 'style', 'type', 'method', 'imitation', 'flavour', 'like' or similar.

- Article 210(1)(c): GIs for wines and spirits are protected against misuse, imitation or evocation, even if the true origin of the product is indicated, translated or accompanied by 'style', 'type', 'method', 'imitation', 'flavour', 'like' or similar.
# Protection against misleading practice

**Article 210 (1)(d) and (e) of EU-Colombia-Peru TA:**

“Any other *false or misleading indication* as to the provenance, origin, nature or essential qualities of the product, [...] packaging, advertising material [...] liable to convey a false impression as to its origin”

“any other *practice liable to mislead* the consumer”

**Article 22.2 (b) TRIPS:**

“any use which constitutes an act of *unfair competition* within the meaning of Article 10bis of the *Paris Convention*”

**Article 10bis.3 PC:**

Confusing acts, false allegations or indications liable to *mislead the public* as to the nature, characteristics, etc. of the goods
3) Exceptions

- No generic terms exception
  - Colombia/Peru, SK, India (as proposed by EU), CARIFORUM, Central America
  - Art. 207(h): the limitation that registered GIs cannot become generic anymore

- No plant variety or animal breed exception
  - Colombia/Peru, Central America, CARIFORUM, SK, India (as proposed by EU)

- No homonymous geographical indications
  - Colombia/Peru, Central America, CARIFORUM, SK, India (as proposed by EU)
  - Art. 210.2: Provision of information required when negotiating with third parties and possibility for comment
4) Relationship with trademarks

- **Posterior trademarks**: refused
  - Similar or like products
  - falls under protected use
  - CARIFORUM, Central America, India (as proposed by EU), Colombia/Peru, SK

- **Reputed and well-known trademarks**: GI can be refused
  - Liable to mislead consumer
  - SK, CARIFORUM, Central America, India, Colombia/Peru

- **NO rule on prior trade marks** (registered in good faith): coexistence with PDO/PGI
  - Exists in TRIPS Agreement and EC Regulation
  - Colombia/Peru, Central America, SK, India, Cariforum
Part II

Geographical indications in CETA
Background

- Text of CETA public in September 2014
- Canada already recognized EU GIs for alcoholic beverages (EU-Canada Wine and Spirits Ag, 2004)
  NOW: include also agricultural products and foodstuffs
- EU’s main concern was the protection of names considered to be generic in Canada
  - Nürnberger Bratwürste, Jambon de Bayonne, Beaufort
  - Cheeses like Asagio, Feta, Fontina, etc.
- Criticism as to solutions on the basis of individual GIs rather than rules applicable to all GIs
Recognition of GIs

- 173 EU GIs are recognized by Canada
- Empty list of Canadian GIs recognized by EU
- Some EU GIs are protected with a caveat
  - Valencia orange, Black Forest ham, Tiroler bacon, Parmesan, Bavarian beer, Munich beer
    - Canadian producers are able to use specified English and French language terms for trade mark use
  - Asiago, feta, fontina, Gorgonzola and Munster
    - Current users can continue to use terms, new entrants must add qualifiers “kind” or the like + clear indication of true origin
  - Noix de Grenoble and Budejovicke NOT protected
  - Brie, Gouda, Edam and Mortadella as components of multi-part terms can be used by Canada
Level of protection

• Protection **against use** of the GI for any product that falls within the same product class as GI
  – Not produced in specified area
  – Not produced according to laws and regulations other party

• Protection against **expressive use**, de-localizers

• Protection **against misleading use**
  – Presentation of good suggests that it originates in area other than true place in a manner which misleads public

• Protection **against** an act of **unfair competition** (Art. 10bis Paris Convention)

  *similar to general approach in other EU BTAs*
Exceptions

• generic terms exception (Art. 7.6.7)
  – No limitation that registered GIs cannot become generic
  – Colombia/Peru, SK, India (as proposed by EU), CARIFORUM, Central America

• plant variety or animal breed exception (Art. 7.6.8)
  – Colombia/Peru, Central America, CARIFORUM, SK, India (as proposed by EU)

• homonymous geographical indications (Art. 7.5)
  – Provision of information required when negotiating with third parties and possibility for comment
  – Colombia/Peru, Central America, CARIFORUM, SK, India (as proposed by EU)
Relationship with trade marks

• **Posterior** trademarks: refused (Art. 7.4.6)
  - Identical product class
  - Does not originate in place of origin
  - CARIFORUM, Central America, India (as proposed by EU), Colombia/Peru, SK

• **Prior** trade marks registered in good faith: coexistence with PDO/PGI
  - Colombia/Peru, Central America, SK, India, Cariforum

• **NO** reputed and **well-known** trademarks
  - SK, CARIFORUM, Central America, India, Colombia/Peru
Part III

Geographical indications in TTIP
Possible scenarios

- **NO CETA approach**
  - Indicated by USTR that CETA approach will not work

- **Similar to CETA approach**
  - Buy off main commercial opponents of GI protection with complex exception like in CETA for particular terms
  - Similar to Agreement on Trade in Wine with US (2006)

- **Coexistence approach**
  - Separate system for GI protection in US
  - Protection of GIs which have been proven under EU law to meet criteria
  - Only GI can use specific label, others not
  - Labelling of non-GI so as to avoid evocation of the GI
Possible scenarios (2)

• EU: Protection through existing regulatory structures
  – Include geographic criteria in standards of identity enforced by Food and Drug Administration
  – Unlikely to work for US as almost sui generis system

• US obligations under TPP
  – US may not protect GIs for common food names
    • Sherry
    • Parmesan
Thank you for your attention

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