



CANADA-EUROPE TRANSATLANTIC DIALOGUE:
SEEKING TRANSNATIONAL SOLUTIONS TO 21ST CENTURY PROBLEMS

canada-europe-dialogue.ca

CETA Policy Briefs Series

October 2013

CETA and Geographical Indicators: Why a Sensitive Issue?

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Since the launch of negotiations for a Canada-European Union (EU) Comprehensive Economic and Trade Agreement (CETA) in 2009, one of the predictably sensitive issues that would challenge the negotiations was agriculture. Agriculture has been an unsuccessful chapter in the World Trade Organization (WTO) negotiations and it has been excluded from most of the free trade agreements (FTAs) concluded.

Canada and the EU are major players in the international trade of agricultural products. In 2011, Canada ranked 11th on the EU's list of trading partners in regard to agricultural trade, including processed agricultural products (2.2% of EU's total agricultural imports and 2.4% of EU's total agricultural exports) (Council of the European Union 2013). The level of governmental support that agriculture benefits from in both countries shows the importance of the sector and also the power of lobby groups. Governmental support goes hand-in-hand with different protection measures that offer an advantage to domestic farmers and restrict trade, such

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as Geographical Indicators (GIs) in the EU and supply management in Canada.

However, according to the latest update of the Council of the European Union from January 2013 regarding the state of CETA negotiations, the two parties have agreed to liberalize most agricultural trade with the exception of products considered sensitive: beef, pork and sweet corn for the EU; and the products under the supply management regime in Canada, namely, dairy, poultry and eggs. The document outlines the major stumbling block in the agricultural negotiations as being the establishment of tariff quota volumes that are acceptable for both sides, with Canada offering modest dairy volumes, while asking for large beef volumes. Another sensitive issue of CETA negotiations is represented by the GIs for agricultural products and foodstuffs. The EU's original Common Agricultural Policy (CAP) measures have been replaced by new policies, with GIs being one of them.² The protection of GIs is a priority for the EU in all the FTAs that are under negotiation and, despite the fact that GIs are negotiated under the intellectual property chapter, their recognition by Canada will have important impacts on its agricultural sector.

Why are Geographical Indicators (GIs) a sensitive issue?

Geographical indicators (GIs) represent a form of intellectual property and government protection is justified on the account that they represent goods where value is derived from certain credence attributes. Unlike search attributes that can be identified by consumers prior to purchase (e.g. the colour of a blouse) and experience attributes that can be identified through consumption (e.g. the tenderness of a lamb chop), credence attributes cannot be directly discerned by the consumer even after consumption (e.g. whether the fortified red wine they just consumed was produced in Porto Portugal) (Hobbs 1996).

Originally, GIs were based on the idea of *terroir*, meaning that the value of the product is derived from the physical attributes of the soil and/or water which are unique to a specific geographic location. Thus, there needs to be a signal for consumers that a product did, indeed, come from a specific region and the main signalling device is the label. As the valuable attributes

² Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

are credence in nature, GIs have been provided with the protection of governments by giving them intellectual property status.

In the EU, the characteristics of products that can be granted GI designation have expanded to include other attributes such as localized human capital-based knowledge (for example, artisan cheese production or meat curing), which are considered credence properties. A consumer cannot tell whether cheese labelled as Feta was produced in Greece (which has been endowed with that particular GI) or, for example, Bulgaria. Thus, the EU has about 5000 products that have a GI designation and new registrations continue at a fast pace (Viju, Yeung, and Kerr 2012).

While the EU has been attempting to strengthen the protection of intellectual property under the World Trade Organization (WTO) Trade Related Aspects of Intellectual Property (TRIPS) agreement negotiations, in its preferential trade agreements, it has placed the recognition of its GIs as an issue of prime importance (Ibid.).

There are certain contentious international issues pertaining to GIs. First, there is a global split in the mechanism used to protect this particular form of intellectual property; and second, certain products that are granted GI status in countries of the EU are treated as generic terms in other countries, and, thus, their production is not related to a particular geographic area (for example, Feta cheese in countries outside of the EU).

This form of intellectual property is protected by two legal instruments: *sui generis* (special, specific legal) systems used by approximately 100 countries, including the 28 EU member states and trademarks used by more than 50 countries, including the US and Canada (Giovannucci et al. 2009, xviii). While both systems are effective, the major issues arise from the fact that they are different and a change from one system to another would potentially result in switching costs for both governments and owners of intellectual property rights (such as re-labelling, advertising etc.). The costs are even higher when a product has been granted a GI status in one country and a trademark in another country, as the companies that trademarked the products have spent considerable amount of time, effort and money to build their markets.

Products that hold GI status in the EU are considered generic in certain countries, and, thus, are produced without being protected by any of the two legal instruments. Examples include Feta, Madeira, Port, Champagne and Bordeaux. Granting GI status to a product that is

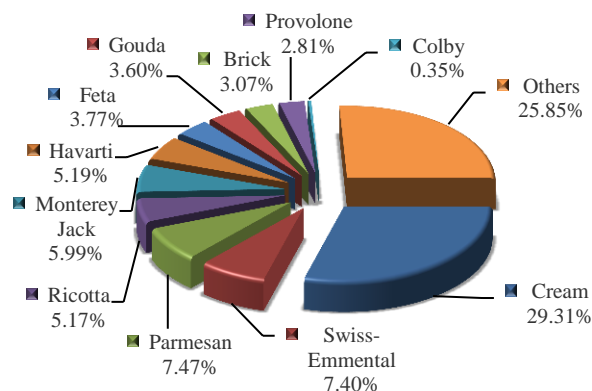
considered generic is known as clawback and the EU has been successful in clawing back known GIs (for example, Champagne) in its preferential trade agreements (Viju, Yeung, and Kerr 2012).

GIs and CETA negotiations

Since the start of CETA negotiations, EU has placed the recognition of its GIs as one of its priorities. As Canada has already recognized the EU GIs for alcoholic beverages (EU-Canada Wine and Spirits Agreement, 2004), the EU proposal asks for the inclusion of agricultural products and foodstuffs. While the list was not publicly disclosed, it is fairly simple to anticipate what products would be included on this list based on EU requests pertaining to GIs at the WTO Cancun Summit held in 2003 and in its free trade agreement with South Korea which entered into force in July 2011. However, a list of 36 alleged conflicts listed by Canada was disclosed by La Presse in November 2012. From the 36 items, 15 represent conflicts between EU GIs and Canadian generic products (e.g. Roquefort, Feta, Asiago, Fontina) and 8 are conflicts between EU GIs and registered trademarks by Canadian or third party producers (e.g. Prosciutto di Parma, Prosciutto di S. Daniele, Prosciutto Toscano, Gorgonzola). The vast majority of conflicted items on this list are represented by cheese and meat products.

The dairy industry is the third most valuable agricultural sector representing 16.4% of the Canadian food and beverages industry (2011) with processed dairy products such as cheese, butter, yogurt and ice cream accounting for 62% of total milk production (Canadian Dairy Commission 2012). The varieties of cheeses that would be protected by GIs are classified under the specialty cheese category depicted in Figure 1.

Figure 1: Specialty Cheese Production (2012)



Source: Canadian Dairy Information Centre (2012a)

If Canada accepts the obligation to protect the EU's GIs, Canadian producers will still be able to continue the production of protected goods, but they will have to cease labelling and marketing the products under their original names, such as Feta, Mozzarella or Asiago. Thus, up to 13.02% (Canadian Dairy Information Centre 2012b) of the total value of dairy exports would be affected in addition to domestic marketing of specialty cheeses. Despite the extra costs that cheese producers will incur, the wine and spirits industry for which Canada has already accepted the EU GIs represents a clear example that through clever marketing products can be successfully marketed under a different name (e.g. Port is marketed as Pipe) (Yeung and Kerr 2008).

In addition, protecting the EU's GIs will alter the composition of Canadian imports as Canada will have to cease importing the respective products under their original names from third parties despite that the third party producers (mainly from the US) hold the trademarks. The largest dairy product category—accounting for 34% of all dairy imports and 86% of all cheese imports³—is represented by specialty cheeses (Canadian Dairy Information Centre 2012b). The largest supplier of specialty cheeses for Canada in 2012 was Italy which provided specialty cheeses valued at CAD \$53.7 million, followed by the US with CAD \$47.2 million and France with CAD \$46.8 million (Ibid.).

Canada is the fourth largest export destination for US cheese (5.4% of total US cheese exports in 2012⁴) (US Dairy Export Council 2013) with specialty cheeses comprising 70% of total US cheese exports⁵ to Canada (Canadian Dairy Information Centre 2012b). As the US has a trademark system in place and does not accept the EU's GIs as yet, the probability that US producers will incur the costs to market the cheese products destined for Canada under different names is very low and, thus, the US will lose its share in the specialty cheese market in Canada.

The conflicting situations between Canadian and US trademark holders and EU GIs will occur particularly in the meat sector such as the Canadian trademarked product *Parma Ham*. The EU holds the GI *Prosciutto di Parma*, while the Canadian company Maple Leaf trademarked the term *Parma* since 1971. It is still not clear how under Canadian intellectual property law a trademark can be repealed, however, if that happens, then, first, Maple Leaf will incur important

³ Expressed in value.

⁴ Ibid.

⁵ Ibid.

costs as it invested a considerable amount into building its market and, second, US exports of Parma ham to Canada will be denied unless it markets the product destined for Canada under a different name.

Denying access to the Canadian market for certain products of US origin would represent a *nullification or impairment of a benefit* for the US and, thus, according to TRIPS and, especially, NAFTA obligations, the US will be able to ask for compensation for denial of market access (Viju, Yeung, and Kerr 2012). The possibility of this happening is high as since September 2010, when the EU-South Korea FTA was under negotiation, letters of complaint from US dairy farmers regarding the EU push on third parties to recognize its GIs have been sent to US Trade Representatives. Thus, vested interests in the US are aware of the threat of being denied market access in countries that are in the closing stages of completing preferential trade agreements with the EU. However, the reaction of US producers will also depend on the state of negotiations between the EU and US for the Transatlantic Trade and Investment Partnership, launched in June 2013. While the EU has been a strong advocate of GIs in multilateral negotiations, the US has always been in favour of trademarks. Both sides are trying to impose their views in bilateral trade agreements, including with each other, thus the results of negotiations are not necessarily predictable. Unless the US recognizes the EU's GIs, Canada will be in the middle and will most probably suffer the consequences of recognizing different intellectual property obligations in two different major bilateral trade agreements, NAFTA and CETA.

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