October 25, 2016

Intellectual Property Rights for Geographical Indications: What is at Stake in the TTIP?

Luis González Vaqué
Mario Veneziani
Filippo Arfini
Maria Cecilia Mancini
Michele Donati

Available at: https://works.bepress.com/luis_gonzalez_vaque/217/
Intellectual Property Rights for Geographical Indications

What is at Stake in the TTIP?

Editor(s):
Filippo Arfini, Maria Cecilia Mancini, Mario Veneziani, Michele Donati

Book Description

Regulations on Intellectual Property Rights (IPRs) and Geographical Indications (GIs) have a long history, leading back to two separate organizations devoted to dealing with them: the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). The WTO, through its 1994 TRIPS Agreement, gives wines a high level of protection, but leaves individual countries to draw up national GIs legislation for other agri-food products. On the other hand, the WIPO implemented the Lisbon Agreement of 1958 and gives GIs a high level of protection, but involves a lower number of countries. The US approach follows the WTO and is based on existing trademarks and competition legislation, while the EU legislation is partly based on the Lisbon Agreement and has a sui generis legislation, giving a high level of protection to agri-food GIs. The two different legislative approaches on IPRs on GIs are a source of political and economic debate between the US and the EU that impact massively on agri-food supply chains, consumer relations, and environmental and cultural aspects, as well as trade. This book provides insights into the potential impacts that the future Transatlantic Trade and Investment Partnership (TTIP) agreement could have at national, European and international level, and covers areas such as policy setting, implications for trade and consumer perception, food safety, and rural and local development. As such, it will provide a reference point for researchers and academics in agricultural and rural economics and law, as well as policy makers.

Link: http://www.cambridgescholars.com/intellectual-property-rights-for-geographical-indications
“A synthesis of the evidence and a comprehensive analysis of the road ahead”

Luis González Vaqué
Agri-food Policy Coordinator, Fundación Triptolemos
Vice-president of the Asociación para el Derecho Alimentario(AIBADA)

«The growth of knowledge depends entirely on the existence of disagreement»

Karl Popper

As I write these lines, nothing in this world full of crisis and uncertainty convinces me that the TTIP negotiations will have any success. And so I felt when the 145th EAAE Seminar was held in Parma in April 2015, on the issue of “Intellectual Property Rights (IPRs) for Geographical Indications (GIs) in the context of the ongoing bilateral trade negotiation of the US-EU Transatlantic Trade and Investment Partnership (TTIP)”. I must therefore congratulate the organizers for their astuteness in choosing a topic which both then and now is the subject of arduous negotiations, and which has raised more questions than answers. Likewise I must congratulate the conference speakers, authors of this book, for the rigour and excellence of their contributions.

I myself have little to contribute, because the news about the negotiations that is circulated or filters through changes almost every week. Thus the information that was available to me in April is different from that available to me at the time of writing this synthesis (October 2015). And that is not because of the supposed secrecy in which the negotiations are taking place, but because flexibility, change, and uncertainty about the final outcome are all part of the very process of reaching an agreement, especially over such a thorny issue.

Uncertainty over the future of TTIP has been exacerbated by rising opposition to it. Although somewhat anecdotal, I feel it is still worth drawing attention to the fact that not only have New York’s municipal authorities declared their city “TTIP Free”, but so have the authorities in my own home town of Barcelona on the Mediterranean coast. However there is no need to fear such opposition, often of a demagogical or populist nature, as other initiatives with the same or similar difficulties have still managed to come to fruition, including the European Union itself.

In the light of the above and out of respect for the reader, I will try to avoid subjective analysis, personal opinions or lengthy theorizing. I say try because I will still nevertheless offer some reflections on this thoroughly engaging topic, which has generated the most
passionate arguments both for and against. And in doing so I shall cite the contributors to this book where appropriate.

At first the TTIP initiative seemed to be bathed in an excess of optimism, even triumphalism. It was presented at the start of 2013 with the aim of re-launching the exchange of goods, services and investments between the United States and the European Union. The then EU Commissioner, Karel de Gutch, even ventured forth the opinion that an agreement would be reached by the end of 2014, stressing both the project’s ambition - *we will go beyond what the World Trade Organization has achieved* - and the political gamble it represented.

Predictably, that did not actually happen. Negotiations have actually been slower and more complex than publicly anticipated, as the EU and the United States have strived to achieve much more than a free trade agreement. Their other goals - harmonizing standards, controls and administrative requirements on the one hand, and coordinating the laws which will impact upon trade or enable investment on the other - give a measure of their ambition.

In principle, the main purpose of TTIP is to improve EU-based companies’ access to the transatlantic market, whatever their size and whatever the nature of their products. From the perspective of these companies, their objectives are to export more to the US and win government contracts; import more of the goods or services they need to make their final products; determine more easily when a product counts as being ‘Made in Europe’ (or the USA); and invest in the US more easily.

There are a number of other issues under negotiation which space prevents me from discussing here. They include “Regulatory cooperation” (aimed at reducing administration and costs without affecting quality), and the new rules to facilitate exports, imports and investment. There is also the question of the uncertainty surrounding the future of the agreement. Barack Obama may have promoted the initiative, but we do not know what policy will be pursued by his successor as president of the United States. And apart from the specific difficulties associated with negotiating TTIP, serious differences between its supporters and opponents mean that even if an agreement acceptable to both parties is finally reached, nothing guarantees that it will then be ratified.

In any case I would stress the need to follow the Parma seminar in thinking seriously about those EU products which are protected by a designation of origin or by a Geographical Indication, as well as traditionally protected specialities. Such products should be considered part of Europe’s heritage and should be defended. One prime example is Parmigiano-Reggiano Cheese (discussed by Mario Zannoni in “Changes in Production Practices, Trade, and Quality Assessment of Protected Designation of Origin Parmigiano-Reggiano Cheese from XIX to XXI Century”). And Parmigiano-Reggiano Cheese is not the only such case: I don’t think I need to convince the reader of the value of products protected by law on the basis of their geographical indications [not only from a socio-economic perspective (see Francesco Mantino, “Localised Agri-Food Chains and Geographical Indications in Italy: An Analysis of Factors Explaining Export Performances”, but also from a cultural or identitarian one [T. Perrea, S. Mamalis, K. Melfou, P. Papanagiotou and A. Krystalis, “Role of Consumer Ethnocentrism on Consumer Value Perceptions towards Own-Country Geographic Indication (GI) Foods”]. We are quick to recognise that the protection of such products is weakest when they are sold outside the EU, yet ironically there are many food products from third countries on the European Commission’s Register of protected designations of origin and protected geographical indications [like, for example, 东山白笋 (Dongshan Bai Lu Sun) from China; “Café de Colombia”; “Kafae Doi Tung” from Thailand; and even “Carn d’Andorra”]
which enjoy the same protection as those produced within the EU. It would appear that the EU legislator has taken a multi-level regulatory approach (as proposed by Delphine Marie-Vivien and Erik Thévenod-Mottet in “Think Globally, Act Bilaterally: The International Stakes of the Protection of Geographical Indications”), at least since the adoption of 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.

It is said that every problem is an opportunity in disguise (David Wirth, “GIs, Food Safety, and Sustainability Challenges and Opportunities”), but that is not always applicable to Intellectual Property Rights (IPRs) for Geographical Indications. The difficulties encountered in this field are largely a result of some third countries abusing European designations, and the weakness of the WTO’s instruments of mutual recognition when it comes to IPRs. Futhermore, TTIP negotiations are also affected by the internal problem of the over-proliferation of Geographical Indications protected in the EU. But it is not easy, and would probably be neither fair nor justifiable, to somehow limit the number of new applications (often originating in member states which have only recently joined the EU). It is by no means clear that the accepted solution in other international agreements (Bernard O’Connor, “The Legal Protection of GIs in TTIP: Is There an Alternative to the CETA Outcome”) can be applied to TTIP, (although neither am I convinced that the opposite is true!). Nevertheless it is highly likely that should the TTIP negotiations continue, the way forward will involve making a painful choice about which Indications to protect, with such protection reliant on the EU and the United States sharing a common understanding of IPRs (ibidem).

It should also be noted that the issue of Geographical Indications is complicated further when horizontal references to a particular site of cultivation or protection are included (see Fabien Santini et al. “Geographical Indications and Territories with Specific Geographical Features in the EU: the Cases of Mountain and Island Areas”) or designations are accepted locally (as with Italy’s controversial municipal indications).

As previously noted, this paper seeks to provide a synthesis of the issues examined at the Parma Seminar. I will not therefore end with the usual “conclusions”, but will rather draw attention (along with Emilie Vandecandelaere in “Geographical Indications as a Tool for Supporting Sustainable Food Systems”) to one particular aspect to bear in mind in the future and within the framework of the TTIP negotiations - sustainability. Sustainability should really take priority over other objectives in relation to IPRs, and should also be prioritised in relations between the EU and new and prospective member states (Aleksandra Vasić, “The Increase of Competitiveness of Serbian Products in International Trade Through a System of Protecting Geographical Indications”), as well as Least Developed Countries (Stefano Inama, “Lessons Learned in Promoting GIs in LDCs”).

I would also add that I fully agree with Alan Matthews (“What Outcome to Expect On Geographical Indications in the TTIP Free Trade Agreement Negotiations with the United States?”) when he notes that the concept of GIs was originally related to the idea of terroir, but gradually extended to other attributes such as localised human capital-based knowledge, and goes on to affirm that a “maximalist position is that agreements should provide that all GIs properly protected in one country be protected in the other.”

Unfortunately, the future is too uncertain for me to be able to offer readers any predictions … ¡Tiempo al tiempo!
And time may well transpire a lot faster after the adoption of the Trans Pacific Partnership (TPP), with a view to containing globalization, which, whether we like it or not, increases with each passing day. 

Although corrected proofs do not have all bibliographic details available yet, they can already be cited using the year of online publication and the DOI, as follows: author(s), article title, Publication (year), DOI. Please consult the journal’s reference style for the exact appearance of these elements, abbreviation of journal names and use of punctuation.