



# **Agriculture and Geographical Indications (GIs) in TTIP**

A guide to the EU's proposal

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## 1. RATIONALE

TTIP aims to facilitate the export and import of agricultural goods between the EU and the US, and is due to reduce customs duties and other barriers to trade where possible. In doing so, the EU's objective is that the TTIP outcome respects any divergence between the US and EU agricultural models and standards and does not affect the parties' right to regulate.

Trade between the EU and US represented some €616 billion in 2015, of which agriculture accounted for €31 billion; the EU had a total surplus of €123 billion with the US for trade in goods and a surplus of over €7 billion in agricultural goods, thanks to exports of EU high-value added products, such as wine, spirits and other beverages.

As the US is the EU's number one export partner, an ambitious agreement such as TTIP brings the prospect of increased exports for agricultural products, wine and spirit drinks, and enhanced protection for EU geographical indications.

Trade of agricultural goods will be covered by general TTIP provisions, such as those on dispute settlement, technical barriers trade (TBT) and sanitary and phyto-sanitary (SPS) measures.

The application of these rules to agricultural products, wine and spirit drinks, and geographical indications

will create a better legal framework for bilateral trade between the EU and the US.

At the same time, the specific regulatory framework which characterises the agricultural sector justifies the establishment of separate and appropriate provisions applicable to this sector.

## 2. SCOPE OF THE PROPOSAL

*- Where in TTIP will agriculture be covered?*

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In TTIP, the following chapters or areas are of particular relevance for agriculture:

- 1) the Chapter on Agriculture,
- 2) the Intellectual Property Chapter (Geographical Indications),
- 3) the SPS Agreement,
- 4) the Technical Barriers to Trade Chapter.

EU proposals on the first two are the ones presented herewith.

*- What will the Chapter on Agriculture contain?*

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The EU proposes that the Chapter on Agriculture includes three main elements, which are explained in the sections that follow: provisions on general disciplines related to agriculture; provisions on trade in wine

and spirit drinks; and provisions on non-tariff issues.

Until now, the EU has tabled two separate textual proposals on general disciplines (draft Chapter on Agriculture) and on trade in wine and spirits drinks. In addition, the EU side presented to the US side a list of non-tariff issues that it wishes to see addressed in TTIP.

The EU suggests that the separate EU proposal on trade in wine and spirits and possible provisions on non-tariff issues will be incorporated into the overall Chapter on Agriculture, as specified in the relevant placeholders in the draft.

*- How is the Chapter on Agriculture related to the Chapter on Trade in Goods?*

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It is customary in EU FTAs that disciplines related to agricultural trade form part of the Trade in Goods Chapter. In TTIP, due to the complexity of issues related to agriculture, it is envisaged to develop a stand-alone Chapter on Agriculture, as a complement to the Chapter of Trade in Goods. However, no decision has been taken yet by the Parties on the final structure.

With regard to agricultural tariffs, the tariff elimination schedule will be a separate part of the agreement, and the general provision related to duty elimination or reduction will be included in the Trade in Goods Chapter.

*- Why are proposals on Geographical Indications separate from the Chapter on Agriculture?*

The Chapter on Agriculture does contain references to provisions on Geographical Indications, but they are to be covered more extensively in a separate Chapter on Intellectual Property. The EU has therefore made contributions in that context.

### **3. GENERAL DISCIPLINES UNDER THE CHAPTER ON AGRICULTURE: ELEMENTS AND OBJECTIVES**

*- What does the EU proposal contain?*

The EU proposal outlines the objectives, scope and coverage of the Chapter on Agriculture. It provides for cooperation on agriculture, cooperation in multilateral and other fora, export competition, the establishment of a committee on agriculture and a placeholder on provisions on domestic support.

On the whole, the EU proposal in the Chapter on Agriculture aims to ensure that both parties will respect any divergence in our respective agricultural models and standards; and that TTIP will not affect our right to regulate in the area of agriculture.

The EU proposes to develop cooperation between the parties both bilaterally and in multilateral fora, focusing on food security, research, innovation, while recognising the importance of sustainability in agriculture.

It is suggested to establish a platform for a bilateral policy dialogue on agriculture to review challenges faced domestically and globally in agriculture, e.g. food security and climate change. Such an institutionalized forum would facilitate information sharing and cooperation, e.g. in the area of research and innovation.

On export competition, the EU calls for the elimination of export subsidies and disciplines on measures of equivalent effect, both in bilateral trade and in trade with certain third parties.

These third parties would be those with whom both Parties have a free trade agreement and which have fully liberalised trade of the relevant agricultural goods for the benefit of both Parties.

Finally, a placeholder is included on trade-distorting domestic support. Although it is not a standard EU practice in FTAs to address domestic support, EU stakeholders have expressed concerns about the impact US trade-distorting schemes could have on EU markets in case of trade liberalisation.

A detailed review of the EU and the US policies has been held in the TTIP framework, where the EU has explained that its support schemes have a very minimal effect on trade, thanks to its WTO-consistent policy reforms. At this stage, the EU reserves the right to come back to this matter.

#### 4. WINE AND SPIRIT DRINKS

The EU tabled provisions related to wine and spirit drinks, that are meant to be integrated into the overall Chapter on Agriculture. Some basic rules (such as protection of names, labelling) should apply to both wine and spirits, while some articles (e.g. on winemaking practices) only apply to wine.

##### *- Importance of trade in wine and spirit drinks*

In 2015, the EU exported €3.3 billion worth of wine to the US and €5.3 billion in spirit drinks (including beer), recording a **positive trade balance** in these products of €7.3 billion.

Due to the importance of these products and to the specific rules applicable to the wine and spirit drinks sectors, it is important to ensure a **stable and predictable** bilateral legal framework facilitating bilateral trade.

The EU and the US have already concluded two bilateral agreements on wine and spirit drinks:

- *Agreement between the European Community and the United States of America on trade in wine of 8 March 2006 (OJEC L87 of 24 March 2006);*
- *Agreement in the form of exchange of letters between the European Community and the United States on the mutual recognition of certain distilled spirits/spirit drinks of 25 March 1994 (OJEC L 157 of 24 June 1994).*

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While the Agreement on wine of 2006 is rather comprehensive and covers various aspects of trade in wine (protection of wine names, recognition of winemaking practices, labelling, certification), the Agreement on spirit drinks only covers the recognition of a limited number of spirit drink names (6 EU names and 2 US names).

- *Why does TTIP need a section on wine and spirit drinks?*

Despite the existence of these two bilateral agreements, several reasons justify the inclusion of a specific section on wine and spirit drinks in TTIP:

- First, TTIP aims to create a **comprehensive legal framework**. Since these rules would be applicable to all TTIP chapters, including on wine and spirit drinks, it is of great importance that these sectors are covered by general TTIP provisions such as those on dispute settlement, technical barriers trade (TBT) and sanitary and phytosanitary (SPS) measures.

The application of these rules to wine and spirit drinks would create a better legal framework for bilateral trade of wine and spirit drinks products.

- Second, there is a need to **update and improve** the current rules of the two existing agreements in a number of areas. Regarding the Agreement on wine of 2006 this was already provided for in the provisions of the agreement in

article 10 ("*Future Negotiations*"), while the rules of the Agreement on Spirit Drinks of 1994 were limited to only a single issue (protection of names).

- Third, the Negotiating Directives for a Transatlantic Trade and Investment Partnership (TTIP) with the United States adopted by the Council on 17 June 2013 specifically requested at Paragraph 35 that "*the Agreement should, where appropriate, review, build on and complement existing sectoral trade agreements, such as the Agreement between the European Community and the United States on trade in wine, in particular with regard to negotiations of terms under Annex II of the 2005 Agreement*".

This request notably concerns the need to improve the status of 17 EU wine names<sup>1</sup> that US wine producers can still use on the US territory under certain conditions and reserve only to the EU legitimate producers the use of these names in the US.

- Fourth, the list of spirit drink names in the spirit drinks Agreement of 1994 only covered 6 EU names and 2 US names. The EU has the ambition to protect **additional** EU spirit drink names through an Annex.

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<sup>1</sup> Burgundy, Chablis, Champagne, Chianti, Claret, Haut Sauterne, Hock, Madeira, Malaga, Marsala, Moselle, Port, Retsina, Rhine, Sauterne, Sherry and Tokay.

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- Fifth, since TTIP will be approved by the US Congress, the inclusion of the rules of the existing agreements on wine and spirits would represent an **upgrade** of the legal status of the Agreements in the US. The existing agreements were not approved by the Congress but only by the US Administration, unlike in the EU, where they were approved by the Council. In this way, the provisions would have an equivalent legal status in the EU and in the US.

#### *- Modifications to the Agreement on Trade in Wine of 2006*

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The provisions of the Section on wine and spirit drinks build upon the provisions of the EU-US agreement on Trade in Wine of 2006, with coverage extended to spirit drinks.

The main modifications of the Section on wine and spirit drinks compared to the existing agreements are:

- Establishment of a **Committee on trade in wines and spirit drinks** which would be in charge of the management of the Section (including modification of annexes), bilateral cooperation and other bilateral issues.
- Elimination of the possibility for US producers to continue using 17 EU wine names on the US territory. The specific provision (Article 6) of the Agreement on wine of 2006 which recognised this possibility for US producers is not included in the Section on wine and spirit drinks

and the 17 wine names will then follow the same rules as apply to other EU wine names. These rules provide for exclusive use for legitimate EU producers on the US territory.

- The provisions of the section apply to the wine and spirit drinks sectors. This is a notable change since the existing agreement on spirit drinks only included provisions for the protection of spirit drink names.
- The list of annexes at the end of the Section is included for reference. In particular:
  - the Section will incorporate in the annex on wine names the latest version of the list of wine names protected by the Agreement on trade in wine of 2006 which will then become an integral part of TTIP.
  - The Section will incorporate in the annex on spirit drink names the 6 EU and 2 US spirit names protected by the Agreement on distilled spirit/spirit drinks of 1994.

The annex will also include additional spirit drink names that the Parties may wish to protect through TTIP. The EU already identified 22 additional spirit drink names in a

specific separate document tabled in TTIP.

#### 5. NON-TARIFF ISSUES

Even where tariffs are removed, trade may be hindered by red tape in the form of bureaucratic or legal measures. TTIP aims to reduce these Non-Tariff Issues and the EU has tabled a document on specific Non-Tariff Issues in agriculture of interest to EU operators.

*- What is presented in the EU document on Non-Tariff Issues?*

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Depending on the nature and level of understanding on each of the issues raised, the document either presents the EU objectives and identifies possible solutions to the specific issue, or requests the US to submit additional information in order to better evaluate the nature of the issue.

The EU document on Non-Tariff Issues identifies a set of **six agricultural specific non-tariff issues** of interest to EU operators. Only agricultural non-tariff issues which do not fall under the field of sanitary and phyto-sanitary measures and which are not relevant to other sectors are listed here.

These issues have been identified by the EU and have taken into account contributions received by stakeholders. The list of issues addressed in this document is not meant to be exhaustive and additional issues could be identified. As such, input from Member States and stakeholders is of continued benefit.

In the document, for some issues the EU is making a specific request while for other issues there is only a request for information or for specific data. These differences reflect the level of understanding on each issue at the moment the document was submitted to the US.

#### 6. GEOGRAPHICAL INDICATIONS: ELEMENTS AND OBJECTIVES

Geographical Indications (GIs) are included in TTIP, as the EU believes that it will be beneficial for both parties to provide adequate protection to this essential intellectual property right which serves small GI holders and SMEs in particular.

Many food and drink products from the EU are produced, processed or prepared in specific regions. They have 'names of origin', linked to where they are from. At the moment, the EU and the US protect names of origin differently: the EU as 'geographical indications', or GIs, the US as trademarks.

EU GI products exported outside the EU represent some €15 billion. GIs account for 25-30% of EU trade in processed agricultural products; 80 % of total wine exports are GIs and almost all spirits exports are GIs. The United States is by far the leading destination country for EU GIs, accounting for 30% of total food and beverage imports from the EU.

The current US system, and the way it is enforced, means products may be sold in the US using names of origin from a particular region in the EU even

if they were not actually produced there. This misleads consumers in the US. And it means EU producers lose out.

#### *- EU Objectives for GIs*

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The EU has submitted to the US a **Concept Paper** where EU objectives concerning GIs are set out as follows:

- The provision of protection through the agreement for a **short list** of EU GIs covering 201 food GIs and 22 spirit names additional to those (6) covered by the 1994 EU-US agreement. The EU also requested the provision of exclusive protection on the US territory for the 17 names (so-called semi-generics) covered by the provision of Article 6 of the Wine Agreement.
- The provision of a level of **protection** that prohibits the use of a **GI** name **even when the consumer is not misled**, i.e. when the true origin of the product is indicated or in translation or accompanied with expressions such as "*kind*", "*type*", "*style*", "*imitation*" or the like.
- Administrative **enforcement** of that level of protection, in addition to judicial means;
- The indication that **ad hoc solutions** have to be found on GIs conflicting with prior uses, or prior trademarks, or when these terms have allegedly acquired a generic meaning.

The EU also submitted a paper outlining the **structure of a possible GI text**. All substantive areas of negotiation are covered in this quasi-legal draft text e.g. provisions on due process, the type and level of protection, the relation between GIs and Trademarks, criteria for establishing genericness, rules for solving conflicting names, including compounds and translations, and procedures for updating the initial GI list.

#### *- How was the shortlist established?*

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The European Commission established GI short lists in coordination with Member States taking into account **objective criteria** e.g. economic relevance and the IP situation in the US market. In any event, the EU seeks through these negotiations to establish the principle of an open list i.e. the initial list of names could be expanded in future so as to insert new GIs that might have acquired economic relevance over time.

#### *- Is the approach followed in TTIP consistent with other FTA negotiations?*

Yes. Some of the systemic issues that the EU is facing in TTIP have been addressed with Canada (in CETA), a country which shares many characteristics with the US (similar markets, common law jurisdictions).

In short, the EU has achieved in CETA for the large majority of the EU short list of agricultural products and foodstuffs the higher protection reserved to wine & spirits, administrative enforcement via existing "*consumer protection*" law(s)

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and the possibility to expand the initial list of 145 names so as to insert new GIs.

*- Why is it so important for the EU to have an outcome on GIs in TTIP?*

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There are several shortcomings in the US system relating to GIs, which justify the inclusion of specific GI provisions in TTIP:

- **The level of protection**, notably for agricultural products and foodstuffs, is lower than for wines and spirits.
- **Costs of registration** under the Trademark regime: many EU GIs holders do not have the financial resources to cover the costs associated with registration under the US Trademark system. For those who do cover the registration costs, the latter are seen as being disproportionate in light of the insufficient protection provided by the system.
- **Absence of enforcement by administrative action**: the Trademark holder must control its Trademark on the market and prevent/challenge abuses and oppose registrations. This entails high costs for the GIs owners, which may become prohibitive notably for small GI associations.
- Some EU GIs face the issue of **prior Trademarks**, when the same or similar names have been already registered as trademarks by a third party with no genuine link to the GI.

- Several EU GIs cannot be protected because their respective names (or part of them) are considered in the US to have acquired **generic** nature.