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Issues of recent EU Free Trade Agreements

Protection of Geographical Indications

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Introduction

FTAs (Free Trade Agreements) are covering all types of agreements between subsets of countries with an aim to liberalize trade in goods or services. According to the World Trade Organization (WTO), different types of FTAs can be concluded between countries: FTAs with liberalization between partners who save independent trade policy in relation to 3rd countries; FTAs for trade in services; FTAs between developing countries notified under WTOs “enabling clause” for trading in goods (Melchior, 2018, p 41).

There are 304 FTAs among 552 Regional Trade Agreement (RTAs) notified to GATT/WTO and in force (“WTO online database for trade agreements,” 2021).

The EU applied 44 FTAs with 76 partners in 2019. The share and volume of EU external trade under FTAs is of high importance for the EU economy. Trade with 76 partners amounted for 33% of EU external trade or €1345 billion (European Commission, 2020b, p 4). This share can increase in the future because new FTAs are being negotiated with 5 countries and new FTAs are being adopted or ratified with 24 partners (European Commission, 2021b).

The table 1 shows rapid increase in free trade agreements concluded between the EU and other countries from the 1990s. A little more than half of FTAs covered trade in goods and the other half covered trade in goods and services. The number of agreements which cover goods and services increased significantly from 5% before 2001 to 65% in 2021.

Table 1: EU free trade agreements in force February 2021

Year of entry in force	Number of agreements			% of agreements		
	Goods	Goods and services	All	Goods	Goods and services	All
Up to 1990	5	-	5	22%	0%	12%
1991-2000	6	1	7	26%	5%	16%
2001-2010	6	6	12	26%	30%	28%
2011-2021	6	13	19	26%	65%	44%
All years	23	20	43	100%	100%	100%

Source: WTO online database for regional trade agreements

(<https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>)

“Recent EU FTAs”, subject to this research, refer to free trade agreements in goods and services which were concluded from 2011 to 2021 (Appendix 1)¹. According to WTO standards, they are all FTAs, but the names in the Appendix 1 are the names used by the EU. Five bilateral and two multilateral free trade agreements have been chosen from these FTAs.

They are following:

- EU-South Korea Free Trade Agreement (EU-South Korea FTA);
- EU- Colombia-Peru-Ecuador Trade Agreement
- EU-Canada Comprehensive Economic and Trade Agreement (CETA);
- EU-Japan Economic Partnership Agreement (EU-Japan EPA);
- EU-Singapore Trade and Investment Protection Agreements;
- EU-Vietnam Trade and Investment Protection Agreements;
- EU-Mercosur.

Association agreements are not part of the analysis because they are concentrated on bolstering broader political agreements. The EU-United Kingdom Partnership Agreement has not been analyzed because it is more than a trade agreement due to the fact that the UK was part of the EU compared to all other agreements mentioned above. This fact means that certain issues in the EU-United Kingdom Partnership Agreement can be unique for this agreement and can be not used for comparison with other agreements.

This thesis is not focused on analyzing trade flows between the EU and other countries. The main goal is the analysis of specific issues in recent FTAs which were concluded between the EU and other countries. Among found issues has been chosen the most burning issue which analyzed in detail and for which possible solutions offered.

In the first part of the thesis analyzed the structure, background, depth of agreements and presented issues which have been found. In addition, U.S. and Asia free trade agreements are described briefly.

In the second part of the thesis described main aspects related to geographical indicators (GIs) in different markets and explained the problems associated with their protection in EU FTAs. In the end of this part it was found that new EU Member States (EU MSs) received less

¹ https://docs.google.com/document/d/1e1PaispFVTZnIDMayY-qsPckl_DV6lyQ/edit?usp=sharing&oid=110981099624167829484&rtpof=true&sd=true

protection in the agreements and their potential is underestimated during negotiation of EU FTAs.

Different resources have been used for analysis. Texts of analyzed EU FTAs have been used as the main resources in the first part of the thesis. Annexes on GIs from EU FTAs and the EU geographical indications register (eAmbrosia) have been used as the main resources in the second part of the thesis. In addition, articles have been used for giving additional explanations on narrow topics such as differences between EU, US and Asian FTAs; relationship between trade and GIs; negotiation of GIs. Official reports presented by European Commission helped to receive information about export and import of products protected by GIs.

1 Part: Description of EU Free Trade Agreements

1.1 Categories of EU Trade Agreements

According to European Commission, all free trade agreements can be grouped into four categories, according to their content and objectives (European Commission, 2019d, pp. 2–5):

1. 'First generation' trade agreements' are focused on tariff trade liberalization and were mostly concluded before 2006. There are EU-Turkey Customs Union and agreements between EU and Norway, Israel, Jordan, Tunisia, Morocco, Lebanon, Egypt, Algeria.
2. "New generation agreements" or "second generation free trade agreements" include commitments on liberalisation of trade in goods, services and investments, and commitment on public procurement, competition and subsidies and regulatory issues. These agreements aim to develop stronger values-based and rule-based trade regimes with the trading partner countries and they include dedicated provisions on trade and sustainable development. The EU concluded "second generation free trade agreements" with South-Korea, Canada, Singapore, Vietnam, Colombia, Peru and Ecuador. EU-Japan EPA and EU-Mercosur included chapter on small and medium-sized enterprises and provisions on information and telecommunication services, and e-commerce.
3. 'Deep and Comprehensive Free Trade Areas' (DCFTAs) focused on deepening economic relations between EU and neighboring non-EU countries. An additional goal of these agreements is approximating non-EU countries legislation to EU legislation. The EU has DCFTAs with Georgia, Moldova and Ukraine. DCFTAs is on hold with Tunisia (European Commission, 2021g). 'Stabilisation and Association Agreements' aim to support regional integration and stability in the region and its economic integration into the EU market. The EU concluded 'Stabilisation and Association Agreements' with six Western Balkan partners (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia and North Macedonia) between 2001 and 2016.
4. Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) States and regions have clear development objectives. These trade agreements are asymmetric because ACP states and regions are liberalising around 80% of trade over a period of 15 to 20 years, while the EU grants duty-free, quota-free access from the

first day when an agreement comes into force. In addition, the EU provides trade-related assistance to support partner countries in implementing the Agreements, building economic infrastructure and strengthening export competitiveness. Most agreements cover trade in goods and development cooperation. The EPA with the Caribbean also includes provisions on services, investment and other trade-related topics.

1.2 Negotiation of EU Free Trade Agreements

Negotiation of EU FTAs is a complicated procedure which involves 30 stages and takes several years. Main stages are preparing, negotiating, signing, decision-making, full or provisional application, conclusion and entry into force (European Commission, 2018b).

The EU-South Korea agreement had provisionally applied since July 2011 and it was formally ratified in December 2015. It was the first trade deal between the EU and Asian countries (European Commission, 2021c). EU- Colombia-Peru-Ecuador Trade Agreement has been provisionally applied since 1 March 2013 for Peru; 1 August 2013 for Colombia; 1 January 2017 for Ecuador. The table 1.1 shows the stage of the EU FTAs negotiation for every country which is part of the analysis (European Commission, 2021d).

Table 1.1: negotiation of EU Free Trade Agreement

Non-EU partner of agreement	Start of the negotiation	Current stage	Future stage
Argentina, Brazil, Paraguay, Uruguay	1999	Mercosur in principle was reached on the trade part on 28 June 2019	Once finalised, the texts and offers will need to undergo translation into all EU languages, before the Commission can start the necessary internal procedures for the transmission of the agreement to the Council and European Parliament
Canada	April 2009	CETA has entered into force provisionally on 21 September 2017	CETA will enter into force fully and definitively when all EU MSs parliaments have ratified the Agreement
Singapore	April 2007	The FTA with Singapore entered into force on 21 November 2019	The Investment Protection Agreement will need to be ratified by all EU MSs according to their own national procedures before it can enter into force
Vietnam	April 2007	The FTA with Vietnam entered into force on 1 August 2020	The Investment Protection Agreement will further need to be ratified by all EU MSs according to their own national procedures before it can enter into force
Japan	November 2012	The EU-Japan EPA came into force on 1 February 2019. Negotiations continue for an Investment Protection Agreement with Japan	No further discussions are foreseen for a moment

EU FTAs which were chosen, are compared for a general analysis according to the following characteristics:

- 1) Objectives;
- 2) Size of agreement
- 3) % of duties removed;
- 4) Reduction of non-tariff barriers;
- 5) Liberalization of trade in services;
- 6) Protection of intellectual property rights;
- 7) Geographical indications (GI)
- 8) Investment and Investment Dispute system;
- 9) Rules of origin;

1.3 Objectives of EU Free Trade Agreements

The EU-South Korea FTA started a new generation of comprehensive FTAs which has the objective not only to liberalize and facilitate trade and investment, but it also offer a basis for regulatory co-operation in key sectors and it has a substantial chapter on sustainable development with mandatory provisions upholding and promoting social and environmental standards.

Objectives of FTA are located in the beginning of the first chapter in EU-South Korea FTA and EU-Colombia-Peru-Ecuador Trade Agreement (European Union, 2011 and 2012). Most objectives are similar in both agreements. They have:

- (a) to liberalize and facilitate trade in goods between the Parties, in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 ('GATT 1994');
- (b) to liberalize trade in services and investment between the Parties, in conformity with Article V of the General Agreement on Trade in Services ('GATS');
- (c) to promote competition in their economies, particularly as it relates to economic relations between the Parties;
- (d) to further liberalize, on a mutual basis, the government procurement markets of the Parties;
- (e) to adequately and effectively protect intellectual property rights;

- (f) to contribute, by removing barriers to trade and by developing an environment conducive to increased investment flows, to the harmonious development and expansion of world trade;
- (g) to commit, in the recognition that sustainable development is an overarching objective, to the development of international trade in such a way as to contribute to the objective of sustainable development and strive to ensure that this objective is integrated and reflected at every level of the Parties' trade relationship; and
- (h) to promote foreign direct investment without lowering or reducing environmental, labour or occupational health and safety standards in the application and enforcement of environmental and labour laws of the Parties.

EU-Colombia-Peru-Ecuador Trade Agreement has additional objective of establishing an expeditious, effective and predictable dispute settlement mechanism.

CETA is an exception because objectives are presented in different chapters instead of a list of objectives in the beginning of the chapter (European Union, 2017). Main objectives of the agreement are reduction of custom duties and other trade barriers between EU and Canada, protection of labour rights and the environment, and support for smaller EU firms which want to export more in Canada.

In the later FTAs main objectives are mentioned shortly in the first chapter and other objectives are presented in different chapters. It is the case for EU-Japan EPA, EU-Singapore Trade Agreements (EU-Singapore FTA), EU-Vietnam Trade Agreements (EU-Vietnam FTA). Objectives of the EU-Japan Economic Partnership Agreement are to liberalize and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties (European Union, 2018). Objectives of EU-Singapore FTA and EU-Vietnam FTA are similar. Both agreements want to liberalize and facilitate trade and investment between the Parties in accordance with the provisions of this Agreement (European Union 2019 and 2020).

The EU-Mercosur Trade Agreement is in the stage of negotiation. The European Commission (2019c) published texts of the Trade Part of the Agreement following the agreement in principle. These texts have informational purposes and they will not contradict the final text of the agreement. The main objectives of agreement are:

- (a) to increase bilateral trade and investment,

- (b) lower tariff and non-tariff trade barriers, especially for small and medium sized enterprises;
- (c) create more stable and predictable rules for trade and investment through better and stronger rules, e.g. in the area of intellectual property rights (including geographical indications), food safety standards, competition and good regulatory practices
- (d) promote joint values such as sustainable development, by strengthening worker's rights, fight climate change, increase environmental protection.

1.4 Market access for goods and non-tariff barriers

Liberalization of trade in goods is one of the objectives of each EU FTAs. Each Party of a FTA has to eliminate its custom duties on ongoing goods from other Party. This process takes place in accordance with a tariff elimination schedule which is different for each agreement. It is important that tariff elimination schedules have to be concluded between the EU and each other country in a multilateral trade agreement. Most duties are usually removed from the first day entry agreement in force. There are examples of custom duties elimination:

1. CETA will cancel 99% of all tariff lines (European Commission, n.d.-a);
2. EU-Japan EPA has eliminated 99% of EU tariff lines and 97% of Japan's tariff lines (European Commission, n.d.-b);
3. EU-Singapore FTA has eliminated 84% of imports from Singapore to the EU and all remaining customs duties will be phased out before November 2024 (European Commission, n.d.-c).
4. EU-South Korea FTA has eliminated customs duties on 98.7% of products (European Commission, n.d.-d);
5. EU-Vietnam FTA has removed 65% of its duties on EU goods from the first day of the agreement and will eliminate 99% of all tariffs by 2030 (European Commission, n.d.-e);

Table 1.2: Product categories in which custom duties were reduced or removed

Agreement	Product categories exported from EU
EU-South Korea FTA	<ul style="list-style-type: none"> - Agricultural products - Electronics (machinery, electronic equipment) - Motor vehicles and parts - Pharmaceutical products and medical devices - Chemicals - Textile - Leather and fur - Footwear - Iron and steel - Optical instruments
EU- Colombia-Peru-Ecuador Trade Agreement	<ul style="list-style-type: none"> - Agricultural products - All industrial and fishery products
CETA	<ul style="list-style-type: none"> - Raw and refined sugar - Certain grains - Some fish and seafood products - Wines and spirits - Motor vehicles - Textiles and clothing - Electronics - Medical devices, optical instruments - Chemicals
EU-Mercosur	<ul style="list-style-type: none"> - Agricultural products - Cars and parts - Machinery - Chemicals - Pharmaceuticals - Clothing - Footwear
EU-Japan EPA	<ul style="list-style-type: none"> - Agricultural products - Wine - Electronics - Pharmaceuticals and medical devices - Motor vehicles and parts - Transport equipment - Textiles and clothing - Footwear - Leather - Forestry
EU-Singapore FTA	<ul style="list-style-type: none"> - Processed agricultural products (with the exception of chemically pure fructose and sweet corn) - Motor vehicles - Pharmaceuticals - Electronics
EU-Vietnam FTA	<ul style="list-style-type: none"> - Agricultural products - Machinery and appliances - Pharmaceuticals - Motor vehicles

Table 1.2 is based on the text of the agreements. The table shows product categories in which custom duties were reduced in each FTA. Customs duties removed or reduced on:

- agricultural products (all agreements);
- pharmaceuticals (6 from 7 agreements);
- motor vehicles and parts (5 from 7 agreements);
- clothing and/or textile (4 from 7 agreements);
- electronics, chemicals (3 from 7 agreements);
- footwear and leather (2 from 7 agreements);
- transport equipment and forestry (1 from 7 agreements).

Also it is important that application of duty rate has to be not in contradiction with WTO principles. If at any moment a Party reduces its applied most-favoured-nation (MFN) customs duty rate after the entry into force of an Agreement, that duty rate will apply to trade covered by this Agreement until it is lower than the customs duty rate calculated in accordance with an agreement.

1.5 Non-tariff measures and barriers

“Non-tariff measures (NTMs) are policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both.” (UNCTAD, 2021) According to EU-South Korea FTA, each Party of agreement have to make sure that fees and charges (other than custom-duties) which have to be limited in amount close to cost of services connected with imports and exports or sale for export of any good destined for the territory of the other Party, in accordance with Article XI of GATT 1994 and its interpretative notes. In addition, these fees and charges should not present indirect protection of domestic goods for fiscal purposes.²

NTMs cannot be removed for all sectors because they are part of public policy objectives. The EU-South Korea FTA includes annexes on NTMs which address regulatory and other barriers that EU exporters met in the Korean market. Other EU FTAs have annexes about NTMs too. Table 1.3 is based on the text of the agreements. The table presents sectors and other goods or services which are affected by non-tariff measures in every agreement.

² Art 2.9, 2.10 of the EU-South Korea FTA

Table 1.3: Non-tariff measures in FTAs

Agreement	Sectors	Other goods or services
EU-South Korea FTA	motor vehicles and motor vehicles parts, pharmaceutical products and medical devices, electronics, chemicals	
EU- Colombia-Peru-Ecuador Trade Agreement	Colombia (alcoholic beverages, motor vehicles)	Colombia (the contribution required on exports of emeralds)
	Peru (import of used clothing and footwear, used vehicles and used automotive engines, parts and spare parts for automotive use)	Peru (used tyres, used goods, machinery and equipment using radioactive sources)
CETA	motor vehicles, equipment, and parts thereof	environmental goods and services; raw materials (minerals, metals and agricultural products with industrial use)
EU-Japan EPA	motor vehicles and motor vehicles parts	
EU-Singapore Trade Agreement	motor vehicles and motor vehicles parts, pharmaceutical products and medical devices, electronics	renewable energy generation
EU-Vietnam Trade Agreement	motor vehicles, equipment, and parts thereof, pharmaceutical/medicinal products and medical devices	renewable energy generation
EU-Mercosur	motor vehicles, equipment, and parts thereof	

According to table 3, NTMs on motor vehicles, equipment, and parts thereof are presented in each agreement.

Non-tariff measures (NTMs) comprise all non-tariff barriers (NTBs). NTMs refer to a larger set of measures and contain both policies and regulations that restrict and facilitate trade. NTBs refer only to policies or regulations that contain a discriminatory element against foreign produced products (UNCTAD, 2013, p. 2). Reduction of non-tariff barriers related to trade and investment in renewable energy generation mentioned only in CETA, EU-Singapore FTA and EU-Vietnam FTA.

1.5 Cross-border trade in services

Liberalization of trade in services is an important part of every EU FTAs. Chapter or part of chapter dedicated to description to this topic. The goal of it is to simplify the process of trading services by EU companies and individuals to other countries which have concluded a

FTA. Certain service industries, for example, audio-visual services and certain aviation services cannot be part of an agreement because they are very sensitive.

Every EU FTAs liberalizes trade in the same sectors such as computer services (except computer reservation system), financial services, postal and courier services, telecommunication services, international maritime transport system, electronic commerce, professional services (accountants, architects, engineers, lawyers etc.).

Lists of professional services and limitations for every professional service are given the agreements. All EU FTAs, excluding Korea, specify conditions for temporary entry and stay of natural persons for business purposes.

Natural persons for business purposes mean key personnel, contractual services suppliers, independent professionals and short-term business visitors who have citizenship of the Party³. Most of the agreements have the same definition except EU-Singapore FTA. In the agreement, natural persons for business purposes mean key personnel, graduate trainees and business service sellers.

This chapter or section of agreements provides legal certainty for trained workers, who temporarily enter the EU or other Party of an agreement to do business. Also chapter or section cover types of professional covered, sectors in which they can operate and the maximum length of their stay and condition that EU professionals will enjoy equal treatment in other Party of agreement and vice versa.

1.6 Protection of intellectual property rights

Protection of intellectual property rights (IPR) is an important part of EU FTA because it stimulates firms to innovate and facilitate production between Parties of an agreement. Every EU FTA has a chapter about IPR which complements and specifies the right and obligation between parties under Agreement on Trade-Related Aspects to Intellectual Property Rights (TRIPS Agreement) which is standard of WTO.⁴ The TRIPS Agreement is the most comprehensive multilateral agreement on intellectual property for members of the WTO

³ Art. 10.1 of the CETA

⁴ Art. 10.2 of the EU-South Korea FTA

which came into force on 1 January 1995. The agreement is a minimum standards agreement which provides an opportunity for WTOs’ members to give more extensive protection of intellectual property if they wish so (WTO, n.d.).

EU FTAs include IPR for following categories:

1. Copyright and related rights
2. Trademarks
3. Geographical Indications
4. Designs
5. Patents
6. Trade secrets and undisclosed test or other data
7. Plant variation

In addition, protection of IPR for layout-designs (topographies) of integrated circuits is part of EU-South Korea FTA, EU-Singapore FTA, EU-Vietnam FTA, and EU-Peru-Colombia Ecuador Trade Agreement.

Every EU FTA includes a list of Geographical indications (GIs) provided by each Party of the agreement to be automatically protected. Protection of GI is a priority in many countries because it is used as a tool for economic, territorial, social and ecological development. “Geographical indications serve to designate goods with a quality, characteristics, or reputation attributed to its geographical origin” (Marie-Vivien & Biénabe, 2017). Overview of EU FTAs and number of EU GIs protected presented in Table 1.4. The table is based on the text of agreements.

Table 1.4: Overview of EU FTAs and number of EU GIs protected

Agreement	Number of EU GIs	Categories of goods
EU-South Korea FTA	160	agricultural products and foodstuffs, wines and spirits
EU- Colombia-Peru-Ecuador Trade Agreement	116	agricultural and foodstuff products, wines, spirit drinks
CETA	148	distinctive food and drink products
Mercosur	347	foodstuffs products, wines, spirit drinks
EU-Japan EPA	238	agricultural products
EU-Singapore FTA	199	agricultural products , wines and spirits
EU-Vietnam FTA	168	agricultural products , wines and spirits

Each EU FTA has unique list of EU CIs which are protected by the agreement. Mercosur provides the highest protection of EU GIs. CETA provides the lowest number of GIs in the agreement and it is connected with the fact that the EU and Canada started GIs protection before CETA. They concluded the Wines and Spirits agreement which is integrated into CETA (European Commission, n.d.-c).

Protection of the food industry using GIs is a red line in recent FTAs. Countries are interested in protection outside of the EU single market.

One of the problems with EU GIs protection arises in CETA. The list of wines and spirits GIs eligible for protection in Canada was included in the agreement between the European Community and Canada on trade in wines and spirit drinks (EU-Canada Wines and Spirits Agreement) and this list was incorporated in CETA. List of wines and spirits is outdated and it does not include any GIs of Member States that joined the EU after 2003. The EU has provided a list of 489 new wine GIs from 1602 wine GIs and 115 new spirits GIs from 237 spirits GIs, but Canada does not want to change the Annexes (European Commission, 2021e).

U.S. has disagreement about CIs protection. The U.S. is against EU GIs protection because it has a negative influence on exporters from third countries. For example, the EU and Canada concluded CETA. Canada is one of the closest economic partners for the U.S. (number). After CETA started to be in force, U.S. exporters have to stop using the name of products which are protected by EU GIs. This situation creates a conflict of interests between the EU and US (Huysmans, 2020).

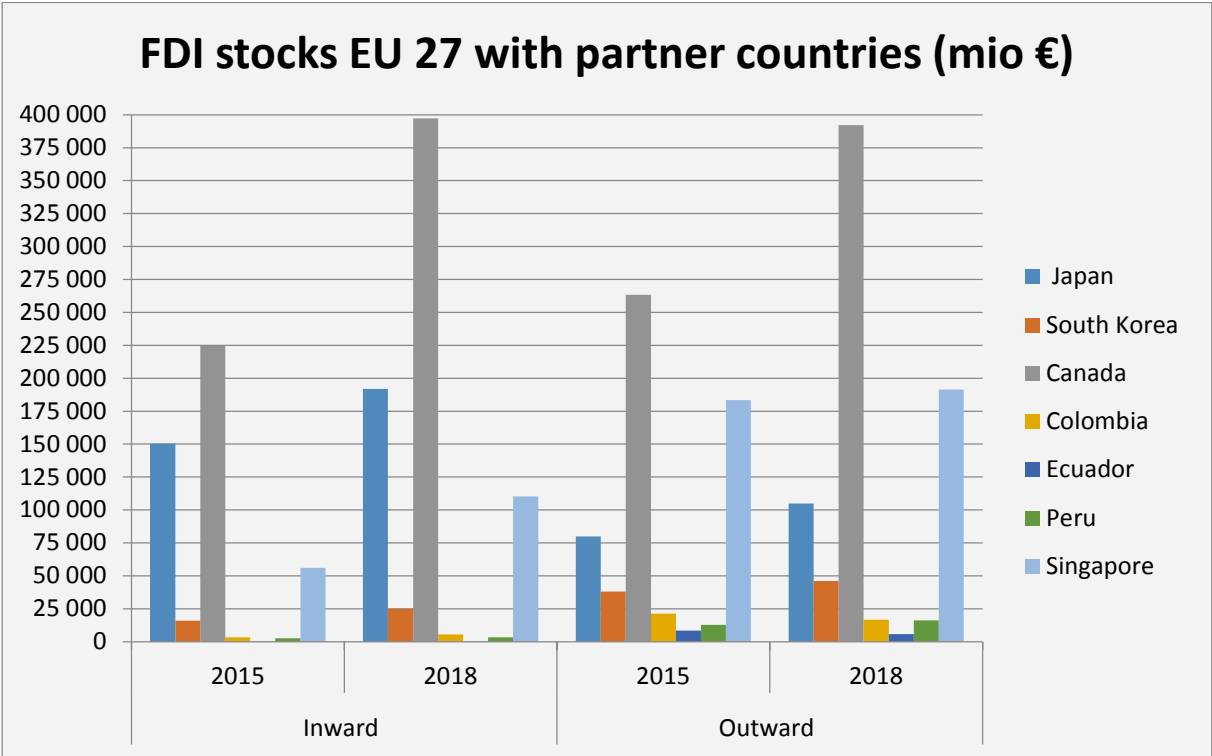
1.7 Investment and Investment Dispute System

EU FTAs are focused on liberalization of trade in investment, reduction or elimination of barriers for investment and increasing investment flows. In addition investments have to be promoted without lowering environmental, labour protection and relevant internationally-recognised standards and agreements to which they are party.

The total level of direct investment is measured by Foreign Direct Investment (FDI) stocks. The outward FDI stock is the value of the resident investors' equity in and net loans to enterprises in foreign economies. The inward FDI stock is the value of foreign investors'

equity in and net loans to enterprises resident in the reporting economy (OECD, 2021). FDI stocks are usually measured in USD or as a share of GDP, but it is also possible to measure in euro. Graph 1 is based on FDI Stocks which EU 27 has with partner countries (European Commission, 2020a).

Graph 1



According to Graph 1, the EU has big FDI stocks with Japan, Canada and Singapore. The most significant increase had FDI stock between the EU and Canada for three years. Although FDI stocks decreased with Ecuador which is part of EU-Colombia-Peru-Ecuador Trade Agreement, the EU remained the largest foreign investor in Ecuador (335 million EUR) representing 35% of the total FDI inflows to Ecuador in 2018 (European Commission, 2020a, p. 97).

Only part of FTAs concentrated on high protection of foreign investments. First step in this direction started with the EU and Canada which decided to create an Investment Court System (ICS) in the agreement between Parties (CETA). It is a new institutional structure which will have to do investment dispute resolution connected with the agreement. ICS will replace the 8 existing bilateral investment agreements between EU Member States and Canada which use an approach common to most bilateral investment treaties in the world.

New system of dispute settlement has to guarantee better investment protection (European Commission, 2017).

Nowadays ICS is not used because the process of foundation of the new system is ongoing. The European Commission (2020a, p. 52) adopted four proposals for specific rules putting in place ICS provisions in the following strands of actions:

- the rules regarding the functioning of the Appellate Tribunal;
- the code of conduct for the Members of the Tribunals;
- the rules for mediation;
- the procedure to adopt binding interpretations.

These rules will help to put a reformed approach to investment dispute settlement in CETA and follow new investment dispute policy implemented by the EU. Rules will ensure an effective appeal function, the implementation of the highest ethics standards included in the agreement. Also they will put in place rules on mediation for investment disputes, and they specify a framework for the adoption of binding interpretations which will help to interpret agreement correctly.

The EU and Singapore have separate Trade and Investment Protection Agreements. This separation connected with the new architecture of trade agreements which was adopted by European Council (2018). The investment protection agreement will enter into force after it has been ratified by all EU Member States according to their own national procedures (European Commission, 2019a).

According to the EU-Singapore Investment Agreement, a single set of rules about investment protection will apply to all EU member states. The Investment Court System (ICS) will replace Investor-State Dispute Settlement (ISDS) which is a part of many existing bilateral investment agreements between Singapore and individual EU countries (European Commission. 2020a, p.23).

The EU and Vietnam have the same situations as the EU and Singapore. EU and Vietnam have separate Trade and Investment Agreements. The investment protection agreement will enter into force after it has been ratified by all EU Member States (European Commission, 2021a). According to the agreement, the Investment Court System will replace the 21 bilateral

investment treaties (BITs) in force between Vietnam and EU Member States (European Commission, 2019b).

Investment protection is lower in other FTAs. Dispute settlement mechanism is a part of EU-South Korea FTA, EU-Japan EPA, EU-Colombia-Ecuador-Peru and EU-Mercosur, but the mechanism is concentrated on disputes in general. Investment protection standards and investment protection dispute resolution were planned to be part of the EU-Japan EPA, but they are outside of the framework of the agreement in the end (European Parliament, 2019).

1.8 Rules of origin

According to European Commission (n.d.-g), rules of origin play in every trade agreement because they determine the “economic” nationality of the products in the international trade. There are two kinds of products’ origin. Non-preferential origin is used for determining the origin of products subject to all kinds of commercial policy measures or tariff quotas. Preferential origin provides certain benefits such as entry at a reduced or zero custom duties for goods which are traded between two countries.

EU FTAs set the EU protocol of origin or chapter about rules of origins and origin procedures. The protocol or chapter includes provisions on:

- definitions of 'originating products';
- rules of origin
- origin procedures
- territorial requirements;
- Ceuta and Melilla;
- arrangements for administrative cooperation.

The main issue connected with rules of origin is direct transport rule which means that “originating goods” have to be sent from one Party of agreement to another Party of agreement without being manipulated in another country which is not importer or exporter. The purpose of direct transport is to ensure that the goods arriving in the country of import are the same as those which left the country of export (European Commission, 2021d). If for any reason the goods pass through or stop-over in the territory of a third country provided that

they stay under customs supervision, the conditions of direct transport are considered to have been fulfilled.

1.9 U.S. and Asian FTAs

The United States currently has 14 Free Trade Agreements (FTAs) with 20 countries in force. There are FTAs with Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Singapore (U.S. Department of Commerce, n.d.)

These FTAs build on the foundation of the WTO Agreement (United States Trade Representative, n.d.). Many of US' FTAs are bilateral agreements between two governments, but some agreements are multilateral agreements among several parties, for example, the North American Free Trade Agreement and the Dominican Republic-Central America-United States Free Trade Agreement.

EU FTAs and US FTAs have different approaches in their FTAs. The U.S. started to negotiate agreements later than the EU. Most of US FTAs were negotiated in the 2000s (Aggarwal, 2013, p. 90).

The EU and U.S. have separate FTAs which were fully and provisionally applied by the same countries mostly. There are Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Morocco, Nicaragua and Singapore. The comparison of EU FTAs and US FTAs is not the purpose of this thesis. Let's take the example of one country, for example South Korea, which has FTAs with the EU and U.S.

U.S. - Korea Free Trade Agreement (KORUS FTA) and EU-South Korea FTA are mostly similar to each other, but there are a few differences in their structure. First of all, KORUS FTA has a separate chapter about agriculture which includes measures adopted or maintained by a Party relating to trade in agricultural goods (United States Trade Representative, 2019).⁵ The EU-South Korea FTA does not have such a chapter, but both agreements have Annex which describes agricultural safeguard measures. Secondly, KORUS FTA has a separate

⁵ Art 3.1 of the agreement

chapter on textiles and apparel. Their production may be damaged in the domestic market due to the reduction and elimination of duties on certain textiles or apparel goods, which are similar and competitive with imported goods. Third, the EU-South Korea FTA includes separate chapters about trade in services, establishment and e-commerce. According to the chapter, the agreement liberalizes investments in the most of service and non-service sectors. However KORUS FTA has separate chapters about investment and cross-border trade in services. Differences in the structure of agreements revealed their strengths which will be shown in the following paragraphs.

According to Song (2011), the U.S. was able to negotiate more advantageous terms in animal (pork, milk and cream powder products, butter, cheese products) and vegetable (fresh potatoes, barely, maize, starch, soybean, ginseng and fodder) products. U. S. received more favorable conditions in treatment of tariff rate quotes and agricultural safeguard measures in FTA thanks to trade asymmetry of exports from EU and U.S. to South-Korea in certain categories at the time of negotiation agreements. The big role was playing the fact that the U.S. exported 10 times more vegetable products when the EU. The value of EU vegetable products exported to South-Korea was \$272 million and the value of similar products exported from the EU was more than \$2,524 trillion. Also the U. S. had success negotiating better conditions in terms of transportation.

Song (2011) discovered that the EU received more favorable treatment in the areas of processed foodstuffs, fishery products, chemicals, machinery, and electronics. Tariffs exceeding 20 percent on foodstuff products were not removed in the KORUS FTA and EU-South Korea FTA. Tariff reduction schedules are different for 25 % of foodstuff items in both agreements and the U.S. has slower tariff reduction compared to the EU. Fishery sector is one of the most sensitive sectors in South-Korean economy. This factor led to very limited immediate duty-free market access which was more advantageous for the EU. According to the tariff reduction schedule, the immediate tariff reduction rate by value was higher for the EU (6, 8 %) than for the U.S. (1, 5 %). This difference is connected with the fact that South-Korean fishery market is less sensitive to EU exports because the EU exports five times less fishery goods than the U.S. The value of EU fishery products exported to South-Korea was \$112 million while the value of fishery products exported from the U.S was \$21 million. South-Korean tariff reduction is more beneficial for the EU in the chemical industry due to stronger EU interest in this industry compared to the U.S.

Both agreements improved conditions for service sectors. There are legal services, financial service, accounting service, taxation services, telecommunications and e-commerce. Audiovisual services are not included in EU-South Korea FTA, but they are included in KORUS FTA.

To sum up, export and import of goods at the time of negotiation of the agreement, as well as other interests of the parties have a significant impact on the final text of the agreements. Safeguards for sensitive industries that could be severely affected by trade liberalization are also taken into account.

Also other countries are interested in concluding trade agreements. Regional Comprehensive Economic Partnership (RCEP) was agreed by the ten countries of ASEAN and five Asia-Pacific countries (China, Japan, Korea, Australia and New Zealand) in November 2020 (European Union External Action, 2020). The RCEP has bundled together the various Free Trade Agreements that ASEAN has with the five other Asia Pacific countries into a single framework. The EU has FTAs with Singapore, Vietnam, Japan and South Korea in ASEAN region. EU is negotiating FTAs Indonesia, Australia and New Zealand.

RCEP covers trade in goods and reduces a little bit non-tariff barriers. It excludes most services and the agricultural sector. RCEP is less ambitious and deep than most other modern agreements. According to Flach, Hildenbrand, and Teti (2021, pp. 97–98), while the CETA eliminated 99% of all tariffs, RCEP is only expected to reduce up to 90% of tariffs. However, RCEP shows that China and Asian countries can negotiate through the largest trade zone of the world, while further trade agreements, such as CETA or Mercosur, are not yet ratified.

1.10 Uncovered issues in EU FTAs

“New generation EU FTAs” include chapters which focus on the solution of issues connected with investment protection, service trade, government procurement, intellectual property, competition, trade and sustainable development. Investment protection is regulated by separate Investment Protection Agreement in case of Vietnam and Singapore. Most scientific articles and official reports are oriented on analysis of issues of certain EU FTA between EU and other non-EU countries or blocs of countries. Even though it is possible to identify additional issues that apply to all or almost all analyzed EU FTAs. Issues related to:

1. The direct transport rule (non-alternation rule). If companies want to benefit from the preferential tariffs of the FTA, they have to ship goods directly from the EU to other countries (Party) of agreement according to rule of origin. It makes delivery longer compared to the use of logistic hubs in other than the origin and destination countries. It means that companies have limited opportunity to react fast on demand fluctuations, if they use preferential tariffs of the FTA. This issue is more burning in the case of the delivery of goods from the EU to a country, for example South-Korea. In this particular case, transshipment via the close logistic hub Singapore could have been faster and more efficient. (Ecorys, 2018).
2. Rules of origin. Example of this issue presented in CETA agreement. If the rules of origin are highly restrictive, products using imported inputs may not meet the minimum conditions, and consequently, the manufactured product will not be able to use preferential tariff. In this case, a tariff reduction or elimination will not lead to the creation or growth of trade (Méan, 2018).
3. Investment protection which is not guaranteed by any agreement. Creation of the Investment Court System between Canada and the EU is ongoing. Investment protection would be regulated by Investment Agreements between EU and Singapore, and EU and Vietnam.
4. Protection of geographical indications (GIs). Number of EUs’ GI is different in every agreement. One of the problems with EU GIs protection arises in CETA. The list of wines and spirits GIs eligible for protection in Canada included in EU-Canada Wines

and Spirits Agreement and this list was incorporated in CETA. List of wines and spirits is outdated and it does not include any GIs of Member States that joined the EU after 2003. The EU has provided a list of 489 new wine GIs from 1602 wine GIs and 115 new spirits GIs from 237 spirits GIs, but Canada does not want to change the annexes (European Commission, 2021e). After the entry into force of the agreement, one of the parties may disagree with the extension of the initial list of GIs list identifying a product originating in the EU.

EU GIs protection is analyzed in the second part of the thesis. It is the problem which is common for all recent EU FTA.

2 Part: Protection of Geographical Indications

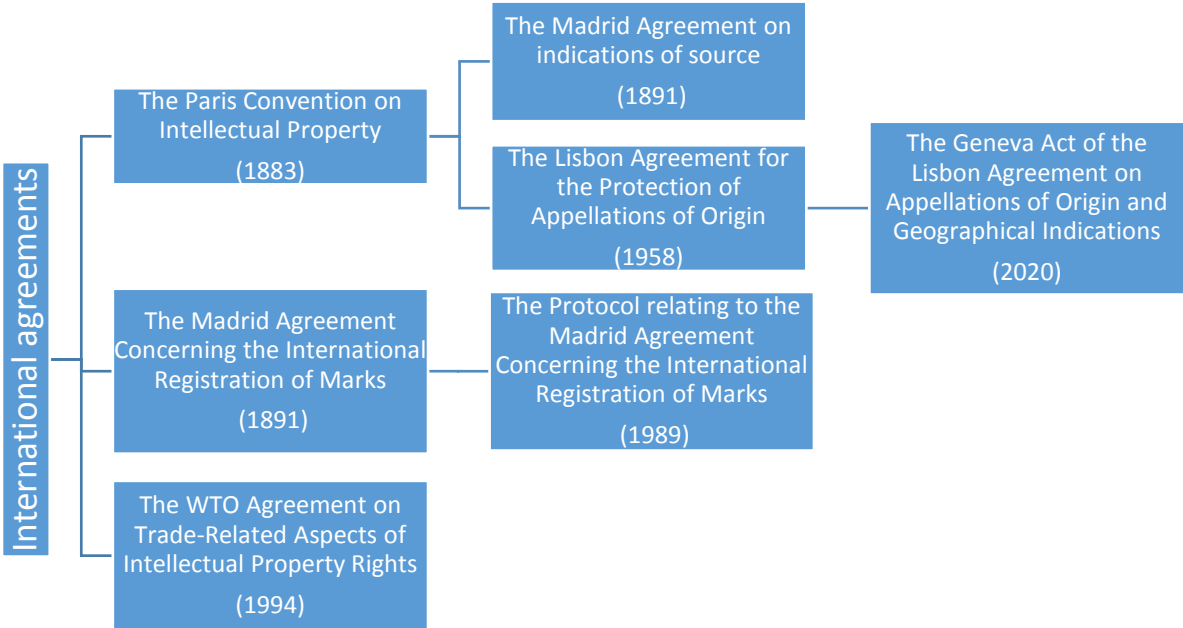
Before analyzing GIs which are presented in EU FTAs, it is necessary to understand different kinds of GIs and frameworks under which GIs protection is possible according to international law, EU framework and EU FTAs.

2.1 The protection of GIs in international law

“Geographical indications (GIs) are signs (most usually proper names) which identify a good as originating from the territory of a particular country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin” (O’Connor & Company, 2006, p.1). If a product has a non-geographical name which is historically linked to a particular place, it can be protected as GI too.

According to O’Connor & Company (2006, p 2), in the beginning GIs were protected by national laws, but national protection was no longer enough due to the expansion of international commerce in the 19th century and, connected with this, increasing risk of imitation of the product outside the country of origin. Only international cooperation and mutual reciprocity could guarantee international protection for GIs. There are a number of acts (conventions, agreements and related protocols) which guarantee GIs’ protection in international law. They are presented in Figure 2.1 which is done based on O’Connor & Company (2006, p 2-7).

Figure 2.1: The protection of GIs in international agreements



As it can be seen from the above figure, several of these acts are linked with each other. In the following, the scope of each of these acts shall be briefly described, and the interconnections be outlined.

The Paris Convention on Intellectual Property (1883) includes “indications of source or appellations of origin” as objects of protection. It is the first document where GIs are mentioned as separate intellectual property rights and the document gives the basis for protection against misleading indications of source. However, it does not clearly define the concept of GIs. The agreement gave parties the opportunity to create new agreements for the protection of industrial property. It led to the conclusion of The Madrid Agreement on indications of source (1891) and The Lisbon Agreement (1958), providing for the additional protection of GIs and reflecting evolving needs over time.

The Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods (The Madrid Agreement on indications of source) entered into force in 1891. It extended protection to deceptive indications of source in addition to false indications. For example, the packaging may indicate the place where the product was supposedly produced, but this indication may be false (not the true place of origin of the product) or misleading (not associated with the quality of the product concerned).

The Lisbon Agreement for the Protection of Appellations of Origin (The Lisbon Agreement) entered into force in 1958. It provides additional protection of the appellation of origin. First, the agreement gave a definition of the appellation of origin which has to be protected. Second, the agreement extended protection to the true place of origin or appellation which are translated into other languages and complemented by terms such as “kind”, “type”, “make”, “imitation” or the like”. Third, two basic requirements for an appellation of origin which is intended to be protected must be met. They are following:

- i. Product is protected in the country of origin;
- ii. Product is registered in the International Register of World Intellectual Property Organization (WIPO).

To date, the Lisbon Agreement has been signed by 30 States. Among them are 8 EU Member States (Czech Republic, France, Hungary, Italy, Portugal, Romania, Slovakia and Spain) (WIPO, n.d.-a).

The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (The Geneva Act) entered into force on February 26th 2020 (WIPO, n.d.-c). The agreement is an updated and extended version of The Lisbon Agreement for the Protection of Appellations of Origin. The Lisbon Agreement applies only to appellations of origin while The Geneva Act foresees that both appellations of origin and geographical indications can be registered internationally. In addition, the Geneva Act covers trans-border appellations of origin and geographical indications. This covers, for example, the case when a good was produced in a geographical area which extends over the territory of two adjacent Contracting Parties. On February 26th 2020 “the European Union has been duly authorized, in accordance with its internal procedures, to become party to the Geneva Act of the Lisbon Agreement. As a consequence, under the relevant EU legislation, regional titles of protection can be obtained in respect of geographical indications”. It means that the Lisbon Agreement is valid in all EU member states.

Both agreements (the Lisbon Agreement and the Geneva Act) form the Lisbon System which is offering more comprehensive international protection for the names of origin-based quality products. This “System” responds to more recent developments marked by steadily increasing international trade.

GIs can be protected as trademarks in some countries only. In this case The Madrid Agreement Concerning the International Registration of Marks (1891) and The Protocol relating to the Madrid Agreement Concerning the International Registration of Marks (1989) can be used for GIs protection at the international level. Both agreements form the Madrid system which can only be used by those countries that protect GIs via a certification trademark regime and do not have specific (*sui generis*) rules on the protection of GIs. The advantage of this system is the opportunity to fill in one application for receiving mark protection in several countries, pay one set of fees and apply this application in a single Trademark Office. It is important that the application has to be filled in one language (English, French or Spanish) (O’Connor & Company, 2006, p.5). 124 countries are members of the Madrid system. Among them there are 26 EU Member States.⁶ Malta is not part of the system (WIPO, n.d.-b).

⁶ Excluding the United Kingdom

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has a specific section about GIs. According to the agreement, GIs are allowed to protect products which have a reputation connected with the place of origin, quality and other characteristics (WTO, n.d.-b).

It is not the case in the Lisbon Agreement where GIs allow the protection of products which have a reputation connected with appellations of origin and geographical indications. Hence, a product needs “an indication” which allows it to be protected as GI, but it can be not only the name of a geographical place. The TRIPS has three different level of protection for GIs related to:

- 1) Food products
- 2) Wines and spirits
- 3) Wines.

2.2 The protection of GIs inside the EU single market

According to the European Commission (n.d.-f), ‘Geographical indication’ (GI) is part of EU quality schemes which aim at protecting the names of specific products to promote their unique characteristics. Product names can be granted with a 'geographical indication' in certain cases which are presented in Table 2.1, with the exception of other EU quality schemes which have a main attention on the traditional production process or products made in difficult natural areas such as mountains or islands. The GI is a way to show the quality of products and make a link to the place where they are made.

Table 2.1: Type of Geographical Indications in the EU single market

Type of Geographical Indications	Products	Specifications
Protected designation of origin (PDO)	Food, agricultural products	Every part of the production, processing and preparation process must take place in the specific region
	Wines	The grapes have to come exclusively from the geographical area where the wine is made
Protected geographical indication (PGI)	Food, agricultural products	For most products, at least one of the stages of production, processing or preparation takes place in the region
	Wines	At least 85% of the grapes used have to come exclusively from the geographical area where the wine is actually made
Geographical indication (GI) of spirit drinks and aromatised wines	Spirit drinks and aromatised wines	For most products, at least one of the stages of distillation or preparation takes place in the region. Raw products do not need to come from the region

Source: https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en#geographicalindications

All products which are under consideration or have been granted GI recognition are listed in quality product registers which include information on the geographical and production specifications for each product (European Commission, n.d.-f).

According to the EU geographical indications register (eAmbrosia) from the Directorate-General of Agriculture and Rural Development (European Commission) (2021c), 3080 EU GIs have been registered until 01.01.2017 in the 28 MSs of EU. At present, the number of EU GIs is continuing to increase despite Brexit. 3219 EU GIs have been registered until 01.06.2021 in the 27 MSs of the EU. The following regulations govern this process in the EU framework of EU law (AND international, et al., 2021b, pp. 36–37):

- Regulation (EU) No 1151/2012 and Regulation (EU) No 664/2014: Agricultural products and foodstuffs – 1367 products (42, 5 % of all GIs);
- Regulation (EU) No 1308/2013: Wines – 1610 products (50, 0 % of all GIs);
- Regulation (EC) 2019/787: Spirit drinks – 237 products (7, 4 % of all GIs);
- Regulation (EU) No 251/2014: Aromatised wine products – 5 products (0, 2 % of all GIs).

As summarized in table 2.2, the majority of EU food GIs is concentrated in Italy, France, Spain and Greece on the EU single market.

Table 2.2: EU GIs protected by Member State

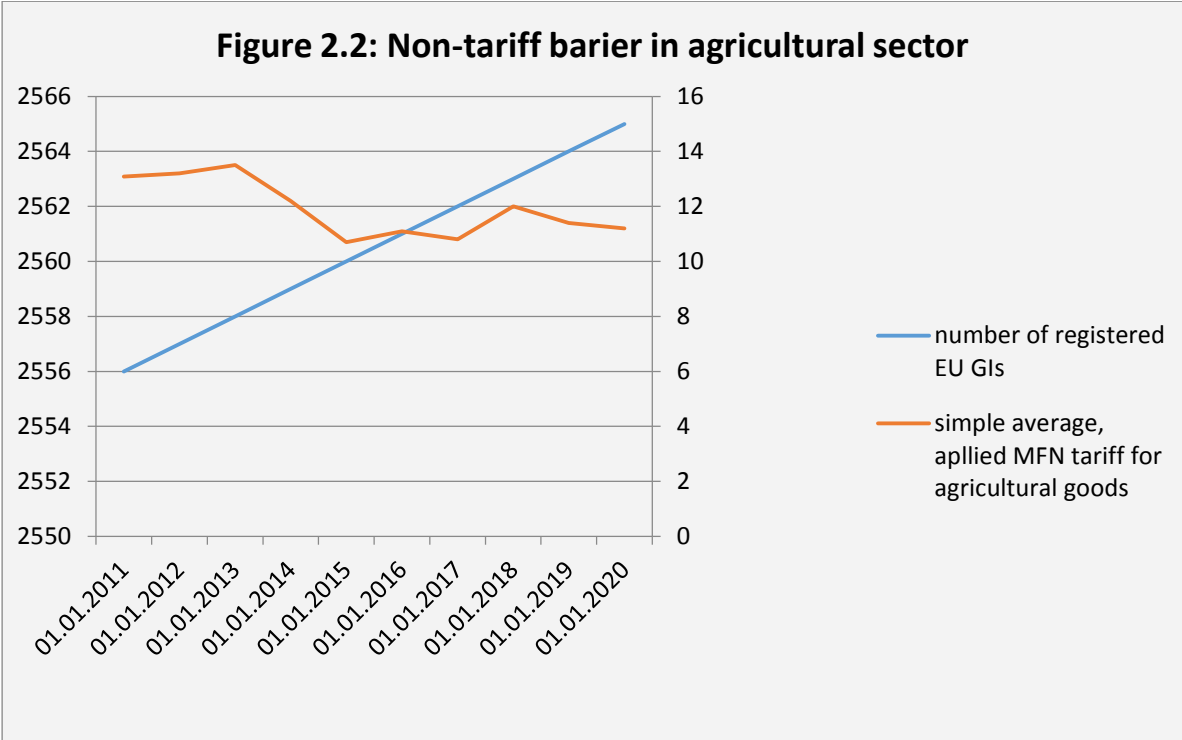
Product type	Top 5 countries by number of registered EU GIs	% from EU GIs by product type
Agricultural products and foodstuffs	Italy, France, Spain, Portugal, Greece	74, 25 %
Wines	Italy, France, Greece, Spain, Bulgaria	80, 87 %
Spirit drinks	France, Italy, Germany, Spain, Greece	61, 60%

Source: Appendix 2 based on eAmbrosia⁷

⁷

<https://docs.google.com/spreadsheets/d/1KENrgw9iKRCIEZszcTJzPlejFEgkGB5/edit?usp=sharing&oid=110981099624167829484&rtpof=true&sd=true>

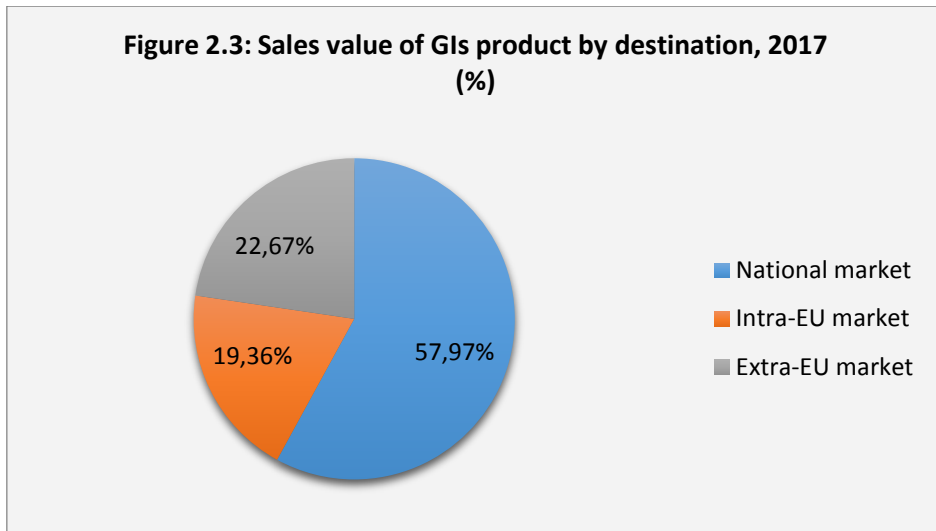
GIs can be seen as a non-tariff barrier to import because it is a standard of product quality. In figure 2.2 it is possible to see that the number of registered EU GIs continues to increase while simple average applied MFN tariff for agricultural goods in EU gradually decreases in the period 2011-2020.



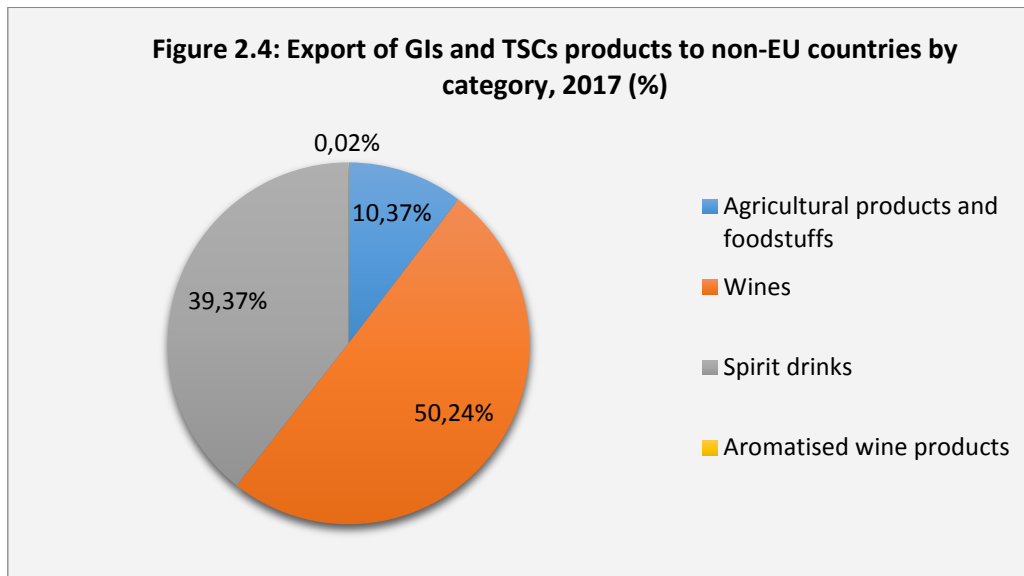
Source: based on eAmbrosia

Products protected by EU GIs are traded in national, intra-EU and extra-EU markets. The total sales value of the European food and drink sector was estimated at EUR 1 101 billion in EU28 in 2017, while the share of GIs products represented EUR 74, 8 billion (corresponding to 6.8%) (AND international, et al., 2021a, p. 16).

Figures 2.3 and 2.4 provide a break-down of the sales value of EU food and drink products protected by EU GIs according to the trading market (figure 2.3) and – specifically for the extra EU market – by product category (figure 2.4). Figure 2.3 shows, for example, that the share of GIs products exported to non-EU countries accounted for 23% (EUR 16, 95 billion) of the total sales value of GIs. According to Figure 2.4, wines present slightly more than half of GIs products exported to non-European countries.



Based on AND international, et al., 2021b, p. 18



Based on AND international, et al., 2021b, p. 18

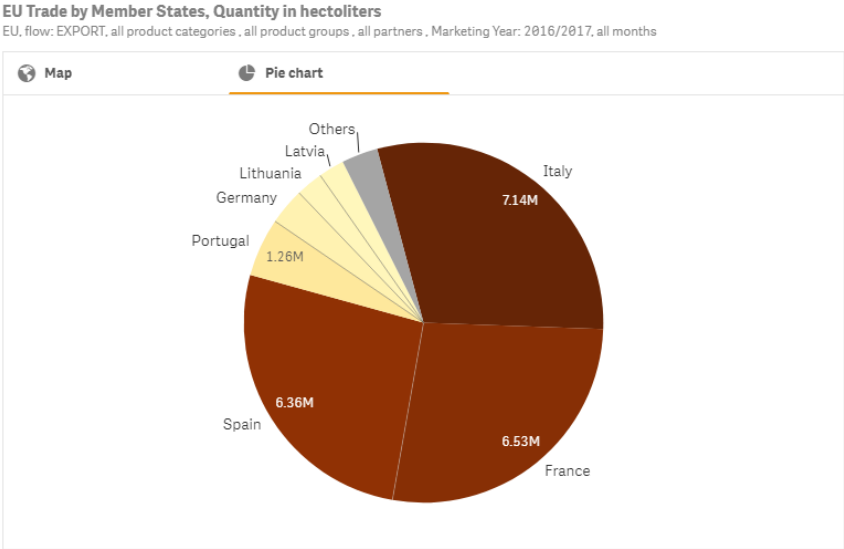
Two types of GIs are used for wine protection. There are PDO and PGI. According to AND international, et al. (2021a, p. 49-50), wine under GIs/TSG accounted for 76% (EUR 8,6 billion) EU trade exports of wines to non-EU countries in 2017. PDOs accounted for largest share in the volume (71 %) and value (84 %) in 2017. Exports to non-EU countries largely increased (+29% in volume and +70% in value between 2010 and 2017) while national consumption and intra-EU trade remained stable in volume and grew in value (+27% in value for national consumption and +21% in value for intra-EU trade). The growth is connected with the emergence of new markets at international level in non-EU countries and, the increase in the unit price of wine.

Figures 2.5 and 2.6 provide a break-down of wine exports to non-EU countries under GIs (PDO+PGI) amongst the 28 Member States in 2016/2017⁸ (i.e. including the United Kingdom) in terms of volume (figure 2.5) and value (figure 2.6). This shows that leading exporters of wine in volume have been Italy, France, Spain, Portugal and Germany in (Figure 2.5) and leading exporters of wine under GIs in value have been France, Italy, Spain, United Kingdom and Germany in 2016/2017 (Figure 2.6).

The composition of the EU exporting countries has not changed significantly in 2019/2020 compared to 2016/2017. Leading exporters of wine under GIs by EU MSs in volume are Italy, France, Spain, Portugal and Latvia in 2019/2020 (Figure 2.7).

Leading exporters of wine under GIs by 28EU Member State in value are France, Italy, Spain, Portugal and Germany in 2019/2020 (Figure 2.8). It is necessary to take into account that GIs products exported from an EU Member State can be produced in another EU-member State. It is, for example, the case for wine “Asti spumante” which is exported by Latvia, but the wine has PDO registered in Italy (Directorate-General of Agriculture and Rural Development (European Commission, 2021a).

Figure 2.5: exporters of wine under GIs by 28 EU MSs in volume, 2016/2017



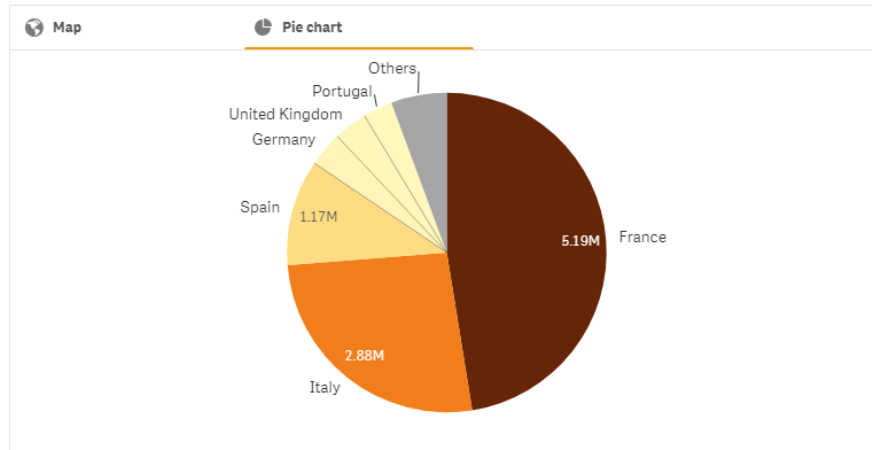
Source: <https://agridata.ec.europa.eu/extensions/DashboardWine/WineTrade.html>

⁸ Marketing year is used for measuring wine trade data. Marketing year marketing year lasts from August to July.

Figure 2.6: exporters of wine under GIs by 28 EU MSs in value, 2016/2017

EU Trade by Member States, Value in thousand euro

EU, flow: EXPORT, all product categories, all product groups, all partners, Marketing Year: 2016/2017, all months

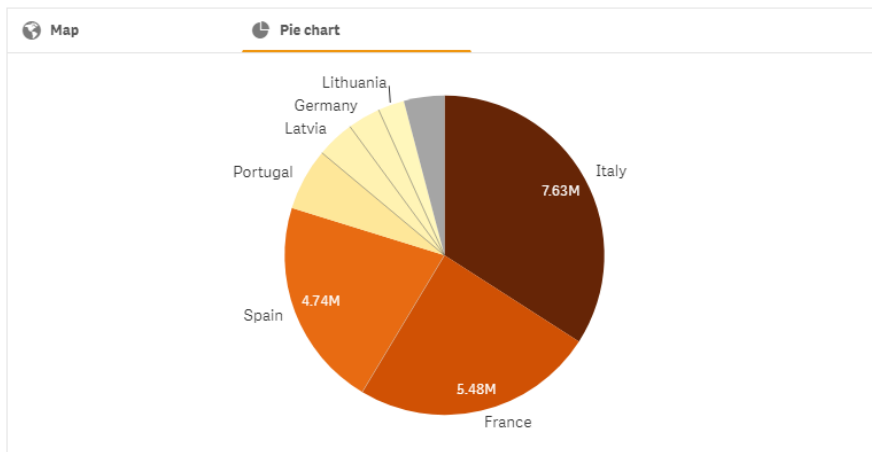


Source: <https://agridata.ec.europa.eu/extensions/DashboardWine/WineTrade.html>

Figure 2.7: exporters of wine under GIs by 28 EU MSs in volume, 2019/2020

EU Trade by Member States, Quantity in hectoliters

EU, flow: EXPORT, all product categories, all product groups, all partners, Marketing Year: 2019/2020, all months

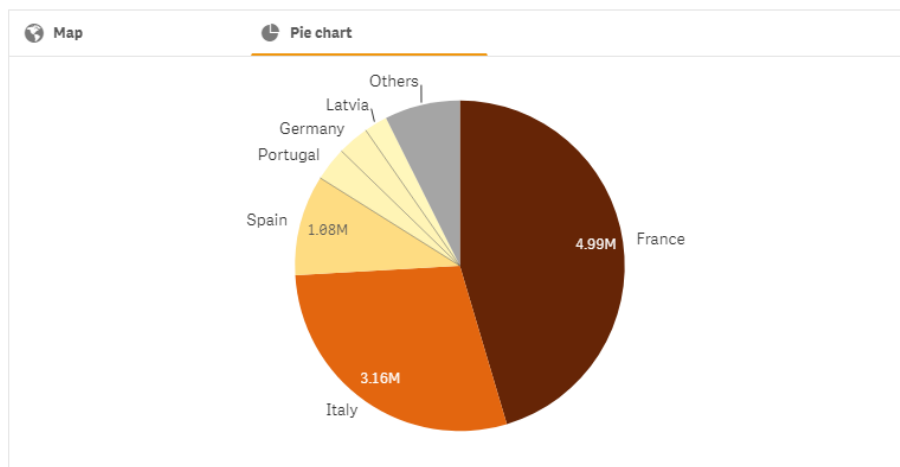


Source: <https://agridata.ec.europa.eu/extensions/DashboardWine/WineTrade.html>

Figure 2.8: exporters of wine under GIs by 28 EU MSs in value, 2019/2020

EU Trade by Member States, Value in thousand euro

EU, flow: EXPORT, all product categories, all product groups, all partners, Marketing Year: 2019/2020, all months

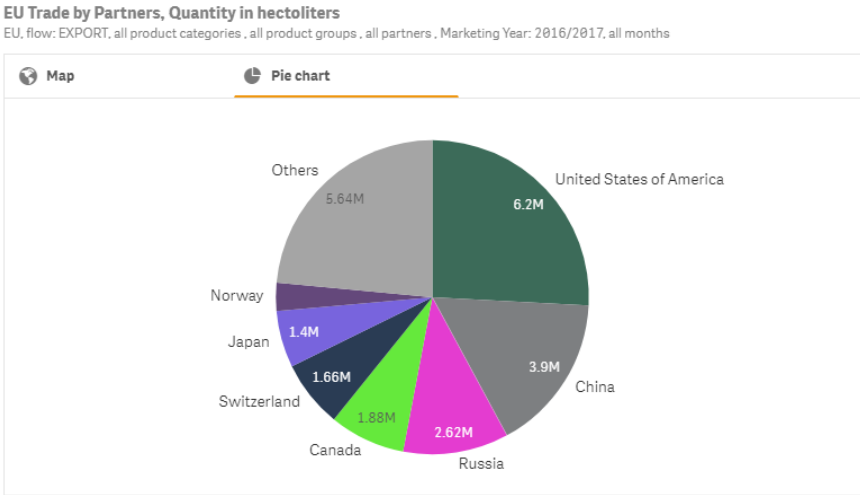


Source: <https://agridata.ec.europa.eu/extensions/DashboardWine/WineTrade.html>

The main countries which imported wine under GIs from the 28EU MSs in volume are the U.S., China, Russia, Canada and Switzerland in 2016/2017 (Figure 2.9). The main countries which imported wine under GIs from the 28EU Member State in value are U.S., China, Switzerland, Canada and Japan in 2019/2020 (Figure 2.10).

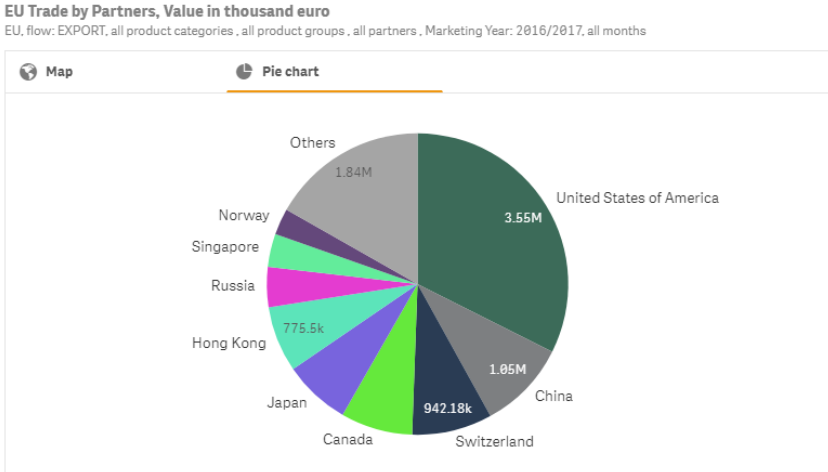
The consumption of wine by China decreased in 2019/2020 compared to 2016/2017. It appears that this change is not connected the change in economic activity due to the spread of COVID-19 because China had the same position in the list of countries in 2018/2019. The main countries which imported wine under GIs from the 28EU MSs in volume are U.S., Russia, Canada, China and Switzerland in 2019/2020 (Figure 2.11). The main countries which imported wine under GIs from the 28EU MSs in value are U.S., Switzerland, Canada, Japan and China in 2019/2020 (Figure 2.12).

Figure 2.9: EU Trade by Partners in volume, 2016/2017



Source: <https://agridata.ec.europa.eu/extensions/DashboardWine/WineTrade.html>

Figure 2.10: EU Trade by Partners in value, 2016/2017

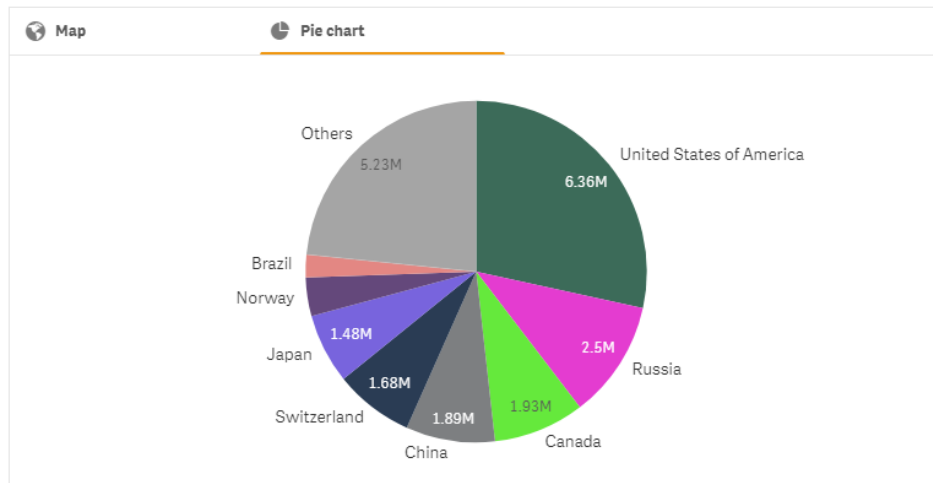


Source: <https://agridata.ec.europa.eu/extensions/DashboardWine/WineTrade.html>

Figure 2.11: EU Trade by Partners in volume, 2019/2020

EU Trade by Partners, Quantity in hectoliters

EU, flow: EXPORT, all product categories, all product groups, all partners, Marketing Year: 2019/2020, all months

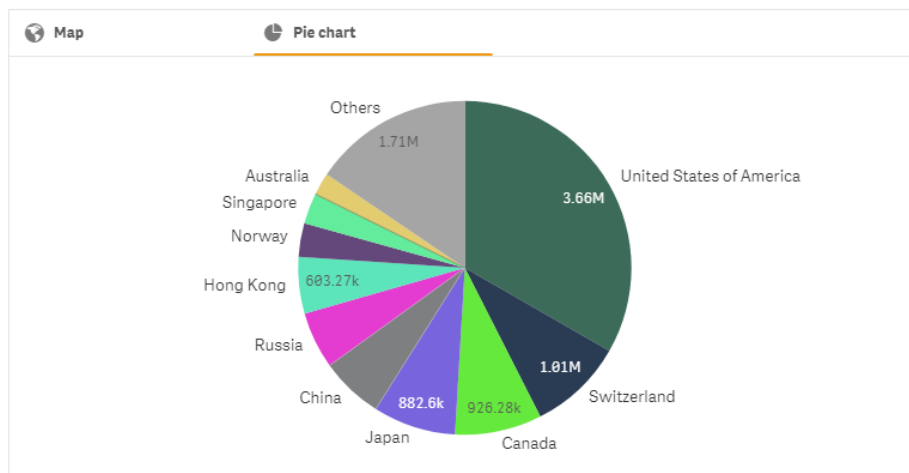


Source: <https://agridata.ec.europa.eu/extensions/DashboardWine/WineTrade.html>

Figure 2.12: EU Trade by Partners in value, 2019/2020

EU Trade by Partners, Value in thousand euro

EU, flow: EXPORT, all product categories, all product groups, all partners, Marketing Year: 2019/2020, all months



Source: <https://agridata.ec.europa.eu/extensions/DashboardWine/WineTrade.html>

2.3 Difficulties associated with the protection of GIs outside the EU single market

One of the main goals of each EU FTA is the EU GIs protection which can be guaranteed outside the EU. The protection is of significantly importance for food GIs which are not sufficiently protected outside of the EU single market, because food GIs do not fall under Article 23 of TRIPS (Curzi & Huysmans, 2021, p. 2). Particular difficulties may arise, in this respect, with food labeled in a way that falsifies the region of origin. This underlines the need for better protection of EU food products in extra-EU markets through EU FTA. In addition,

EU FTAs improve GIs protection for wine and spirits which is protected under Article 23 TRIPS.

GIs protection in EU FTA can bring significant benefits to producers. They include in particular:

1. Protection from imitation;
2. Receiving price premium in export market;
3. Potential increase in export;
4. Cost of protection will be paid by other companies. Products protected by GIs should potentially benefit from increased export opportunities after the application of the agreement because GIs protected products are displacing products which cannot use GIs names in partner country (or countries) and other countries which want to export non-GIs products to partner country (or countries). External protection of GIs can be seen as a non-tariff export promotion measure (Huysmans, 2020, p. 4).

As GIs can be subject to considerable benefits, there could be strong interest in “lobbying” for them. Research from Huysmans (2020, pp. 10–13) looks into the lobbying process for GIs. Each GIs has its own producer group which at national and/or European level have appropriate possibilities to express their experiences, needs and interests (e.g. via national or European Associations, Interest Groups etc.). When preparing EU FTA, the European Commission takes into account GIs potential export, building on information such as current sales. Also, each EU MS provides a list of GIs that it wants to include in an EU FTA. It is important to take into account that the national parliament of any EU Member State can use ex-post veto in mixed agreements such as CETA, EU-Singapore FTA and EU-Vietnam FTA. It may prevent the agreement from entering into force. For example, Greece has not ratified CETA because “Feta” is not enough protected in the agreement. The agreement allows existing Canadian producers of ‘Feta’ to continue using the name and potential producers can use expressions such as Feta-style, Feta-like etc.

To sum up: in seeking GI protection in EU FTAs, the European Commission is focusing mostly on high-demand countries which have high current sales, and might be more likely to complain if GIs are not enough protected. It limits focus on GIs which have export potential such as entry in the new market and increase of export when GIs do have low sales or do not have current sales.

According to table 2.3, a different number of EU GIs is protected by every EU FTA. GIs which have been registered by United Kingdom are not taken into account except GIs which have been shared by United Kingdom and Ireland. The biggest number of EU GIs is protected in the Mercosur agreement and the smallest number of EU GIs protected in the EU-Colombia-Peru-Ecuador Trade Agreement. The CETA agreement includes only EU GIs which protects agricultural products and foodstuffs because wines and spirits are protected under separate agreements. All EU FTAs, except CETA and Mercosur agreements, protect mostly wines which present around half of EU GIs in every agreement. It can explain why wine presents the biggest share of export of GIs and TSCs products to non-EU countries by category (Figure 2.3).

Table 2.3: EU GIs protected in EU FTAs

Name of the agreement	Categories of goods protected by GIs					Number of GIs
	Agricultural products and foodstuffs, %	Wines, %	Spirit drinks, %	Aromatized wine products, %	Total, %	
EU-South Korea FTA	36,25	51,25	12,05	-	100 %	160
EU- Colombia-Peru-Ecuador Trade Agreement	30,71	53,45	16,38	-	100 %	116
CETA	100	-	-	-	100 %	148
Mercosur	45,82	44,09	10,09	-	100 %	347
EU-Japan EPA	39,92	47,48	12,61	-	100 %	238
EU-Singapore FTA	42,21	47,74	10,05	-	100 %	199
EU-Vietnam FTA	33,93	53,57	12,5	-	100 %	168
EU- Colombia-Peru-Ecuador Trade Agreement	30,71	53,45	16,38	-	100 %	115

Source: Appendix 3⁹

It is necessary to take into account that some bilateral agreements were concluded by the EU for the protection of GIs before starting to negotiate some EU FTAs. This situation applies to the following agreements:

1. The EU-Canada Wines and Spirits Agreement was concluded in 2004¹⁰ and the list of its GIs was incorporated in CETA. It created a problem which was mentioned in the

⁹https://docs.google.com/spreadsheets/d/1Yzq9GMul7T9deTbtm_UxLz9J1_fuBx0Q/edit?usp=sharing&oid=110981099624167829484&rtpof=true&sd=true

¹⁰ Reference (European Union, 2004)

end of the first part of the thesis. The problem is the refusal of Canada to include new GIs which come from EU Member states which joined the EU after 2003.

2. Agreement between the European Community and Australia on trade in wines was concluded in 2009¹¹. Nowadays there is ongoing negotiation of a trade agreement between the EU and Australia (EU-Australia Trade Agreement). Relationship between two agreements has not been specified yet according to the basis of a draft text of EU-Australia Trade Agreement (European Commission, 2018a).

According to O'Connor & Company (2006, p 12-16), there are other difficulties that EU producers have to face at international level because legal instruments and the level of GIs' protection are depending on the country concerned. This means that EU producers, exporting GI protected products, should have a suitable level of GIs' protection relevant knowledge on aspects such as unfair competition and consumer protection acts, passing off actions, trademark laws or a *sui generis* protection of GIs with or without registration. In addition, EU producers should know if an *ex officio* procedure (the government monitors the market for enforcement of the GI law) is available in a country where EU products would be imported. Countries with a *sui generis system* of protection of GIs and countries with trademark protection of GIs are described in detail in the next paragraphs.

Sui generis system of protection sets a specific right, a *sui generis* right, over GIs, separate from a trademark right or any other IP right. This system is used in the EU, India, Switzerland, the Andean Community countries and the African Intellectual Property Organization (OAPI) (WIPO, 2018, p. 28). The key difficulties related to the scope of protection offered by the country because EU producers have to understand if the protection of GIs includes names used in translation and/or names used with expressions such as "like", "style", etc. (O'Connor & Company (2006, p 13). *Sui generis system* for GIs has important meaning for small EU producers because it allows to protect intellectual rights on their products cheaper than if they would use private branding (Curzi & Huysmans, 2021, p. 5).

The trademark regime is used for protection of GIs in some countries. GIs protected through the trade mark, collective marks and certification marks. This regime is used in Australia,

¹¹ Reference (European Union, 2009)

Canada, China and the U.S.A. (WIPO, 2018, p. 31). EU producers faced a lot of issues under this regime. They are (O'Connor & Company, 2006, p 13-18):

1. Prior only trademark registrations. It means that whoever registered first, he is the owner of the trademark. This rule creates a problem for EU producers which want to register EU GIs because some registered marks have the name of EU GIs.
2. The ability to register geographic names. Most trademark laws ban the registration of a name with a geographical meaning. It is the reason why GI names are often protected via a collective or a certification mark if such opportunity exists. GI registration can be refused if GI names are a simple indication of the place of origin of the goods, a description of the product, and/or a generic name.
3. The registration of composed GI names. It is the case for EU GI names which consist of more than one term. Some intellectual property offices register a certification mark covering the composed GI names, but there is no protection against using one of the words from a composed GI name.
4. The scope of the protection given by a trademark registration. The trademark regime provides worse protection of GI names than the EU GI system. Trademark registration does not cover translation and does not forbid the use of the name with expressions such as "like", "style", etc. Such limitations are part of few EU FTAs. CETA does not provide legal protection for part of GI if use of the GI's term "is accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like and is in combination with a legible and visible indication of the geographical origin of the product concerned." (Art. 20.21 of the agreement). It is also the case for a part of GI in Mercosur (Annex I of the trade part of the agreement).

Difficulties faced by EU producers lead to negative economic impact such as limited access to certain markets and high cost of GI's protection. The Sui generis system of protection is better than trademark systems because it allows to protect GI easier and safer.

Table 2.4: main directions of researches about relationships between trade and GIs

	1 st direction	2 nd direction	3 rd direction
Research question	GIs' effect on quality in agricultural markets and on their domestic welfare implications in a context of asymmetric information	Export effects of GI labels	Additional actual effect of legal protection through FTAs
Authors	Marette and Crespi 2003; Zago and Pick 2004; Lence et al. 2007; Marette, Clemens, and Babcock 2008; Moschini, Menapace, and Pick 2008; Menapace and Moschini 2012; Mérel and Sexton 2012; Deconinck, Huysmans, and Swinnen 2015; Desquilbet and Monier-Dilhan 2015; Landi and Stefani 2015	Curzi and Olper 2012; Sorgho and Larue 2014; Duvaleix-Treguer et al. 2018; Sorgho and Larue 2018; Raimondi et al. 2020	Curzi and Huysmans 2020
Main conclusion	GI labelling may act as a quality signal and hence a way to increase producer profits and consumer information.	GIs protection increase export of products	GI products listed in bilateral FTA provisions do not show any significant additional exports purely from the legal protection of being listed

Relationships between trade and GIs have been analyzed by different authors. According to (Curzi & Huysmans, 2021, pp. 2–3), there are three main directions of research which are presented in table 2.4. The third direction of research is presented by the one article where was used a pseudo-Poisson maximum likelihood (PPML) estimator on detailed CN8-level cheese trade data to identify the effect on exports of the protection of GIs in FTAs (recourse). It is important to mention that the article analyzes the different list of trade agreements compared to the list of EU FTAs analyzed in the thesis. The results of the article cannot be taken as unambiguous, since only GIs which are protecting cheeses were analyzed, but GIs of wines and spirits were not analyzed while they are part of EU GIs which are protected by most of trade agreements. It is impossible to draw conclusions about all the products protected by GIs on the basis of the analysis of one category of products protected by GIs.

In addition, three countries (Romania, Bulgaria and Croatia) are not part of the analysis in the article because they became EU members after 2004 while the analysis covers the period 2004-2019 (Curzi & Huysmans, 2021, p. 6). According to the EU geographical indications

register (eAmbrosia) from Directorate-General of Agriculture and Rural Development (European Commission) (2021b), Romania, Bulgaria and Croatia registered five GIs for cheese products (Paški sir, Bjelovarski kvargl, Cașcaval de Săveni, Telemea de Sibiu, Telemea de Ibănești) on December 31, 2019. “Telemea de Ibănești ” is included in an additional list of EU GIs protected under EU-Japan EPA on January 25, 2021 (European Union, 2021a). Data limitation does not allow to check that this product started to be exported more or less thanks to the agreement. Information about export which took place under an agreement is available only after 2 year since the agreement started to be in force. For example, the EU-Japan EPA came into force in 2019. One full calendar year (2020) must pass before data about export under agreement will be available in 2021. It is possible that the agreement helps more significantly small producers to enter in the new market or increase export than big exporters which have already exported before entering in force of an EU FTA.

2.4 The difference in the protection of GIs registered in EU Member States which joined the EU before and from 2004

EU Member States which joined the EU from 2004 (newer EU Members States) are the following (European Union, 2021b):

- Czechia, Cyprus, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia joined EU on May 1, 2004;
- Bulgaria and Romania joined EU on January 1, 2007;
- Croatia joined EU on July 1, 2013.

According to table 2.5, the number of goods protected by GIs registered in newer EU MSs reaches 13,98 % of all EU GIs while the number of goods protected by GIs registered in EU MSs which joined the EU from 2004 reaches 86,02 % of all registered EU GIs. The big difference in numbers can be explained by the fact that the first GIs were registered long before 2004. 358 GIs were registered on September 18, 1973 in Western Europe (France, Germany, Italy and Luxembourg) (Appendix 2)¹². Thereafter, new GIs were registered by these countries and by new countries that entered the EU later.

¹²<https://docs.google.com/spreadsheets/d/1KENrgw9iKRCIEZszcTJzPlejFEgkGB5/edit?usp=sharing&oid=110981099624167829484&rtpof=true&sd=true>

Table 2.5: EU GIs registered in EU Member States joined before and from 2004

Level of protection	EU GIs by Member State (MS)					
	MSs joined EU before 2004		Newer EU MSs		Total	
	Number of EU GIs	%	Number of EU GIs	%	Number of EU GIs	%
EU	2769	86,02	450	13,98	3219	100
EU-South Korea FTA	141	88,13	19	11,88	160	100
EU-Colombia-Peru-Ecuador Trade Agreement	108	93,10	8	6,9	116	100
CETA	143	96,62	5	3,38	148	100
Mercosur	294	84,73	53	15,27	347	100
EU-Japan EPA	188	78,99	50	21,01	238	100
EU-Singapore FTA	171	85,93	28	14,07	199	100
EU-Vietnam FTA	149	88,69	19	11,31	168	100

Source: Appendix 3¹³

The share of EU GIs protected by newer EU MSs is significantly smaller than the share of EU GIs protected by EU MSs which joined EU before 2004 in every FTA presented in table 2.5. Shares are different in sizes because every EU FTA includes a different number of EU GIs. 79 EU GIs are presented in all analyzed EU FTAs (except CETA) (Appendix 3). Only 5 EU GIs are presented in all analyzed EU FTAs. The EU-Japan EPA includes the biggest share of EU GIs protected by new EU MSs.

2.5 Addition of new EU GIs to EU FTAs

EU FTAs provide the possibility of amending EU and other Party lists of GIs for wines, spirits, agricultural products and foodstuffs listed in Annexes of agreements. List of EU GIs is not updated regularly in most of EU FTAs.

New GIs have been added in only a few EU FTAs. According to table 2.6, EU-Japan EPA included additional 28 EU GIs of which one half was registered in newer MSs and the other half was registered in MSs joined before 2004. Also an additional 28 GIs that are registered in Japan have been added to the agreement. The decision to increase the list of geographic

¹³https://docs.google.com/spreadsheets/d/1Yzq9GMul7T9deTbtm_UxLz9J1_fuBx0Q/edit?usp=sharing&oid=110981099624167829484&rtpof=true&sd=true

indicators is due to the desire to increase bilateral trade between countries, to help producers export products cheaper and easier, and to increase economic growth that has been affected by Covid-19 (European Commission, 2021f). CETA included additional 5 EU GIs which were registered in MSs joined EU before 2004. Therefore, the problem of the lack of GIs from the new EU member states remained in the agreement.

Table 2.6: Addition of new EU GIs to EU FTAs

EU GIs my Member State (MS)	Number of EU GIs by EU FTA	
	CETA	EU-Japan EPA
MSs joined EU before 2004	5	14
Austria		1
France		3
Germany		3
Greece		3
Ireland,United Kingdom		1
Italy	4	2
Spain	1	2
Newer EU MSs	-	14
Bulgaria		2
Croatia		5
Estonia		1
Romania		3
Slovenia		3

Source: Appendix 3¹⁴

Adding GIs to other EU FTA may have a beneficial effect on economic recovery or growth for the Parties for both parties of the agreements. For example, it is possible to add new GIs in EU-South Korea FTA, EU-Colombia-Peru-Ecuador Trade Agreement, EU-Singapore FTA and EU-Vietnam FTA .

To avoid similar problem in the future EU FTAs, it is necessary that amending the list of GIs would take place regularly. Frequency of adding GIs to other EU FTA should be put in the article about amending list of GIs in new EU FTAs. Another important aspect is related to the share of EU GIs from newer EU MSs in EU FTAs. They should be added during the process of negotiation of agreement. This step will help to avoid future situation in which it is difficult to add new EU GIs in agreement.

¹⁴https://docs.google.com/spreadsheets/d/1Yzq9GMul7T9deTbtm_UxLz9J1_fuBx0Q/edit?usp=sharing&oid=110981099624167829484&rtpof=true&sd=true

Conclusion

The analysis made it possible to identify the problems associated with the protection of geographical indicators, their sources, consequences and possible solutions.

The main problems are following:

1. EU GIs that are registered in newer EU MSs are not protected enough in EU FTAs;
2. List of EU GIs is not updated regularly in most of EU FTAs.

There are two sources of problems which are related to the process of negotiating EU GIs to be included in an EU FTA. Firstly, GIs from high-demand countries and GIs that have high current sales have priority due to the negotiation process. Such approaches decrease opportunity for GIs with lower current sales, but high export potential due to special product characteristics. Secondly, GIs registered in newer EU MSs may not be included into an EU FTA. It is the case in CETA. To sum up, GIs registered in newer EU MSs have weaker protection or do not have it at all in countries which concluded FTAs with EU.

Consequences created by unresolved problems are lower economic growth in the agricultural sector for products which are protected and produced by GIs in newer EU MSs and limited opportunity for them to enter new markets or increase sales in the current export market.

Possible solutions of the problems are the following:

1. Amending the list of GIs has to take place regularly. It is possible to choose frequency of this action and add it in the article about amending list of GIs in new EU FTAs.
2. The share of EU GIs from newer EU MSs should not be 0 % in every new EU FTAs. It should be taken into account during negotiation of new EU FTAs with Australia, China, Indonesia, New Zealand and Philippines.

Change in the export of EU GIs from newer EU Member States has to be analyzed empirically when information about export will be available. It can be interesting to compare how changed export for EU GIs registered in EU Member States that joined EU before 2003 and new EU Member States that have been in the final text of EU-Japan EPA and that have been added later in it.

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