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TTIP: challenges and opportunities, with a focus on GIs

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AREPO



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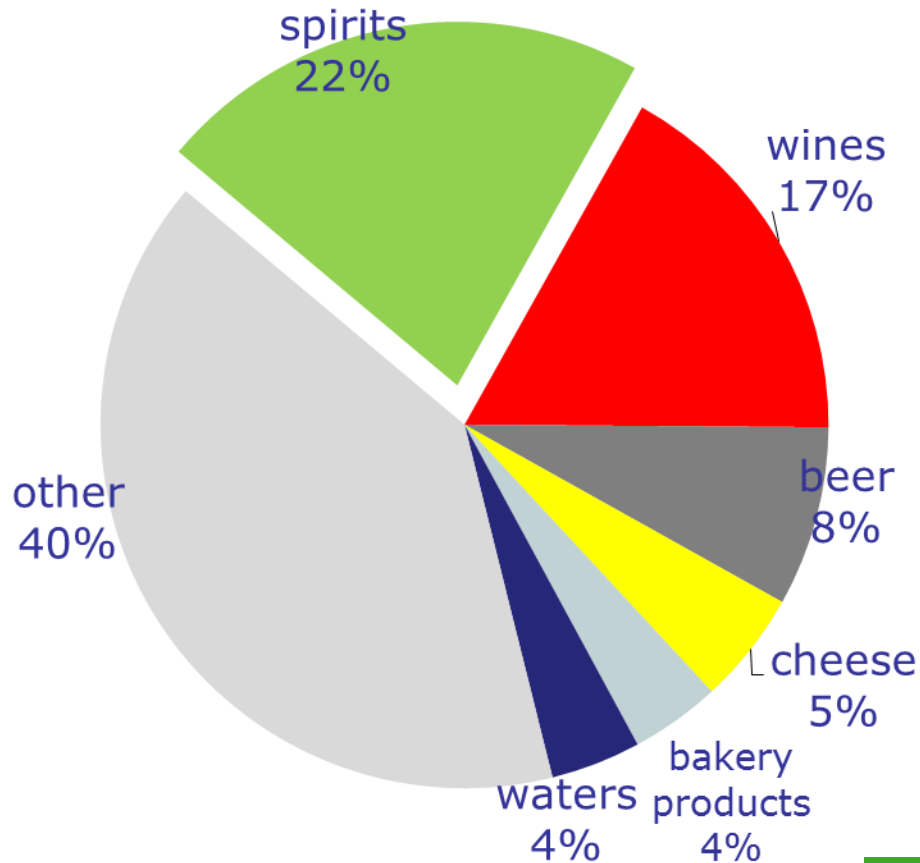
EU & US – top trading partners

- *The Transatlantic market*
 - 50% of world GDP and 1/3 of world trade
 - €2 billion/day and €723 billion/year of goods and services traded
 - EU had trade in goods surplus of €92bn with US in 2013
 - **Agriculture: around 5% of total trade**
- *€2,4 trillion of mutual investment stocks*

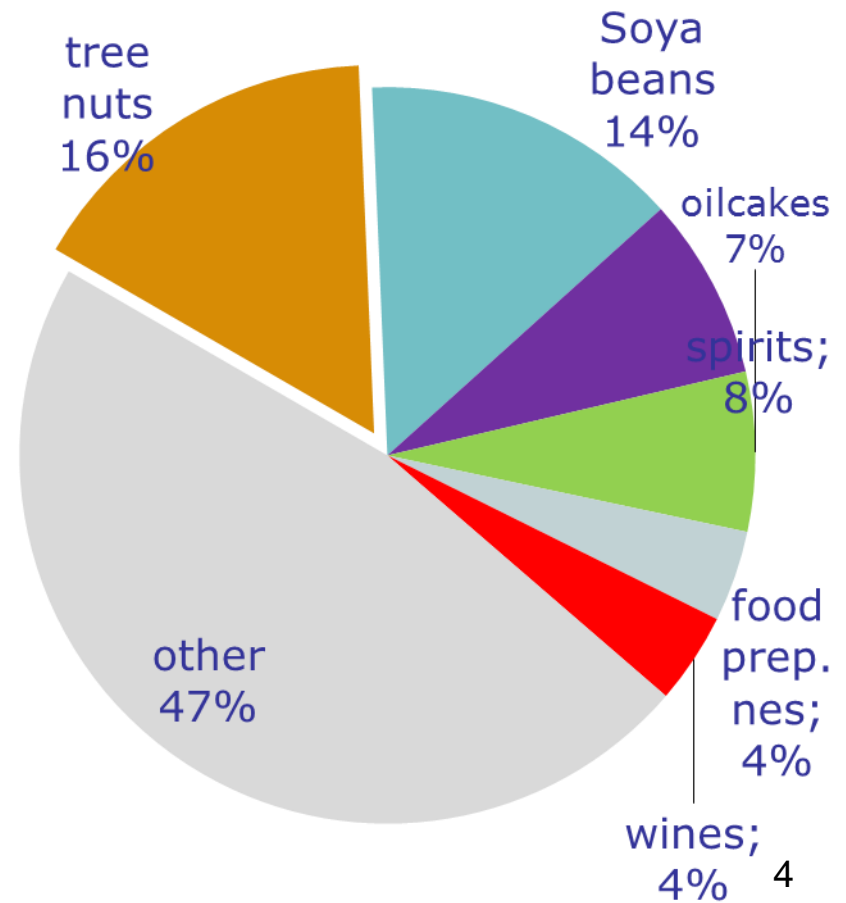
EU-US agricultural trade facts

- The U.S. is **EU's TOP destination** (EU: 5th for U.S.) – *around 13% of all EU agri exports (in 2014)*
- Around **50% of EU exports enter the U.S. duty free** (MFN)
- Around **40% of U.S. exports enter the EU duty free** (MFN)
- **Trade balance:** favourable to the EU (around €6 billion surplus but mainly thanks to beverages, e.g. wines and spirits)
- **Tariffs:** generally lower in the US than in the EU

EU exports to U.S. (€15.4 bn) 2014

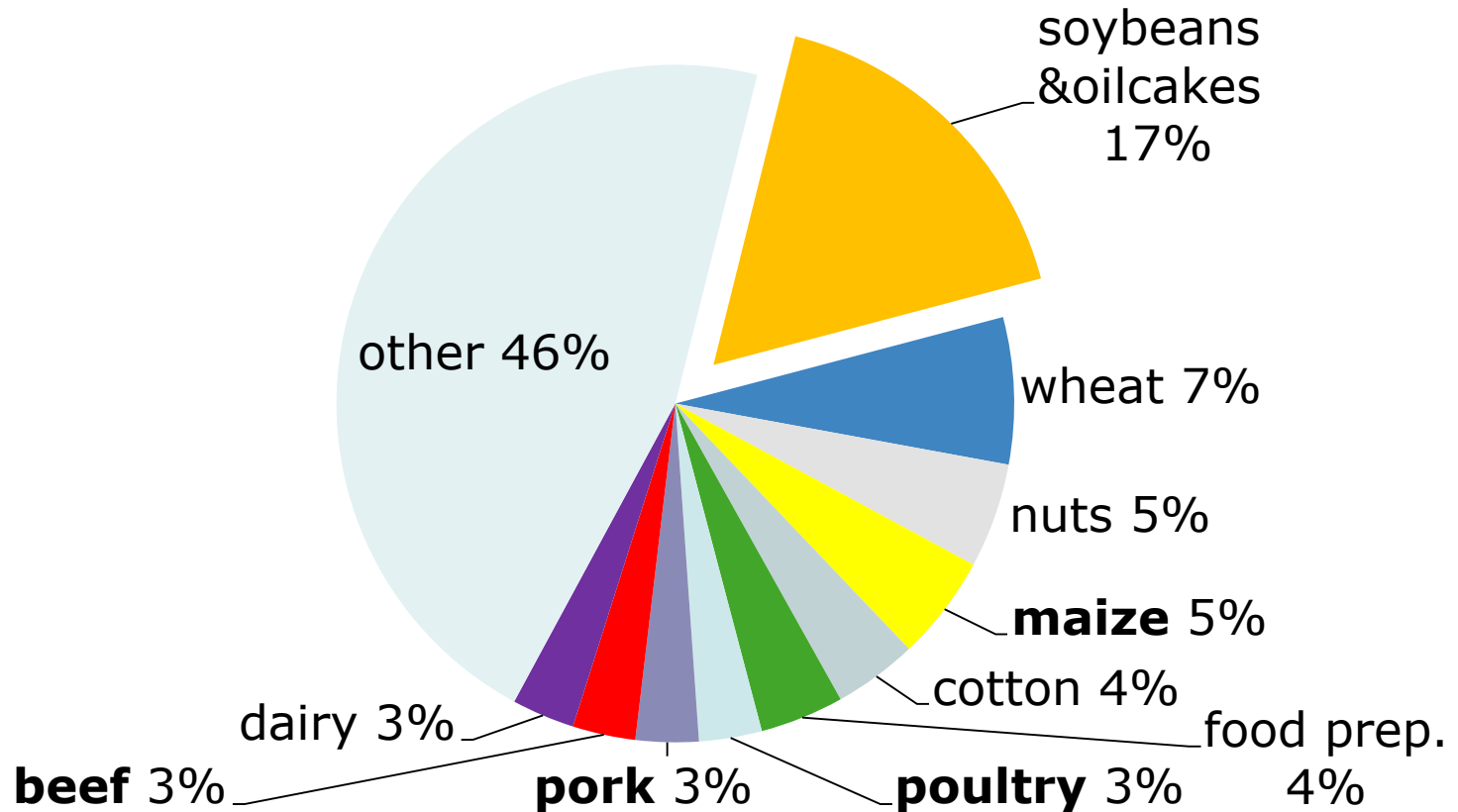


EU imports from U.S. (€9.8 bn) 2014



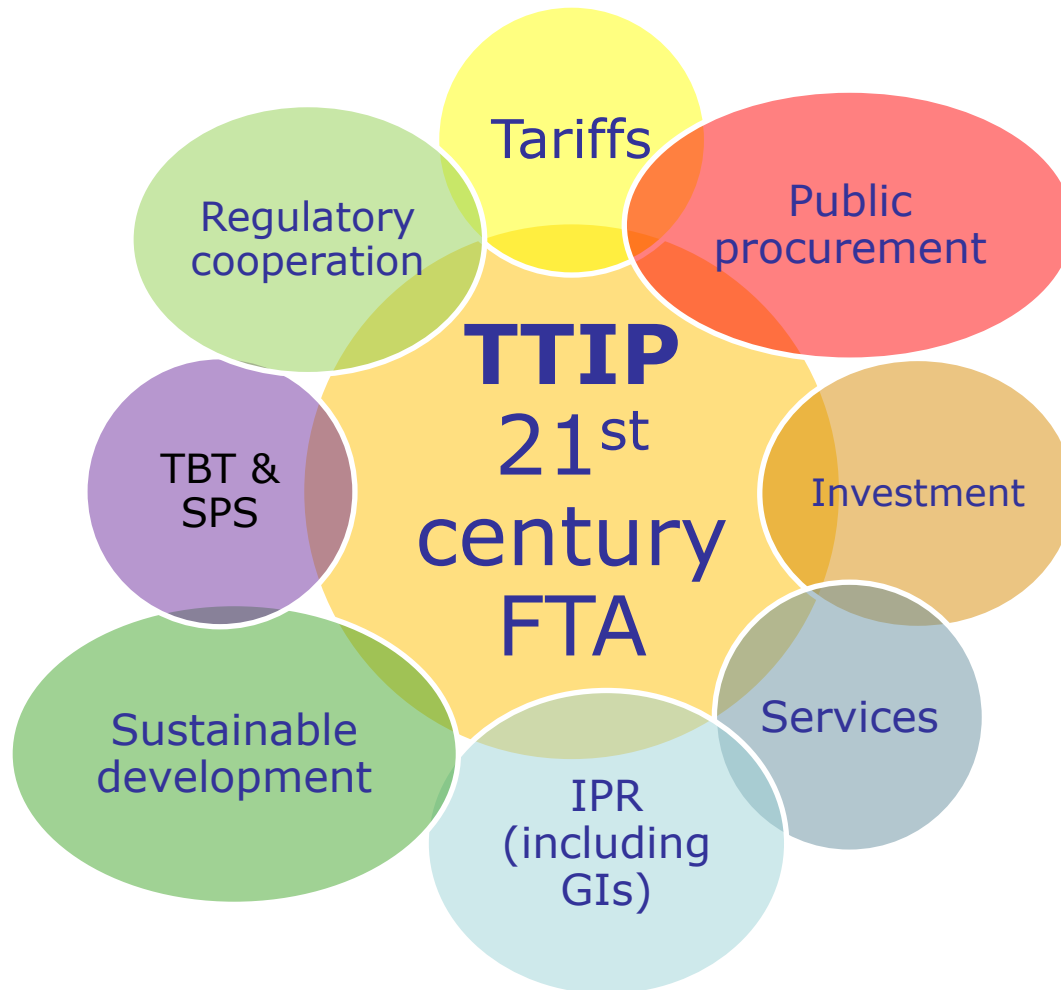
Where do U.S. interests lie?

**U.S. ag exports to the world (2013):
€115 bn**





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EU-US TTIP: key take-aways (1)

- TTIP negotiations were launched in July 2013. Since then, 11 Rounds took place, latest in October 2015 in Miami.
- The Commission promotes and defends the EU interests in these negotiations, which are crucial for European agriculture.
- The European agricultural model is not negotiable under TTIP and our domestic policy preferences (GMOs, hormones) are not on the table for negotiation. TTIP will not lead to the complete liberalization of trade in agriculture. This is not possible for the most sensitive agricultural sectors.



EU-US TTIP: key take-aways (2)

- The final outcome of TTIP must be reasonable, balanced and respectful of the sovereign rights of both parties.
- Parallelism between the various aspects of the negotiation is key: market access (tariff aspects, non-tariff issues, procurement and services), regulatory issues and rules, including geographical indications.
- Transparency and dialogue with civil society are essential in this negotiation



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- **The protection of Geographical Indications in TTIP:
a mission possible?**

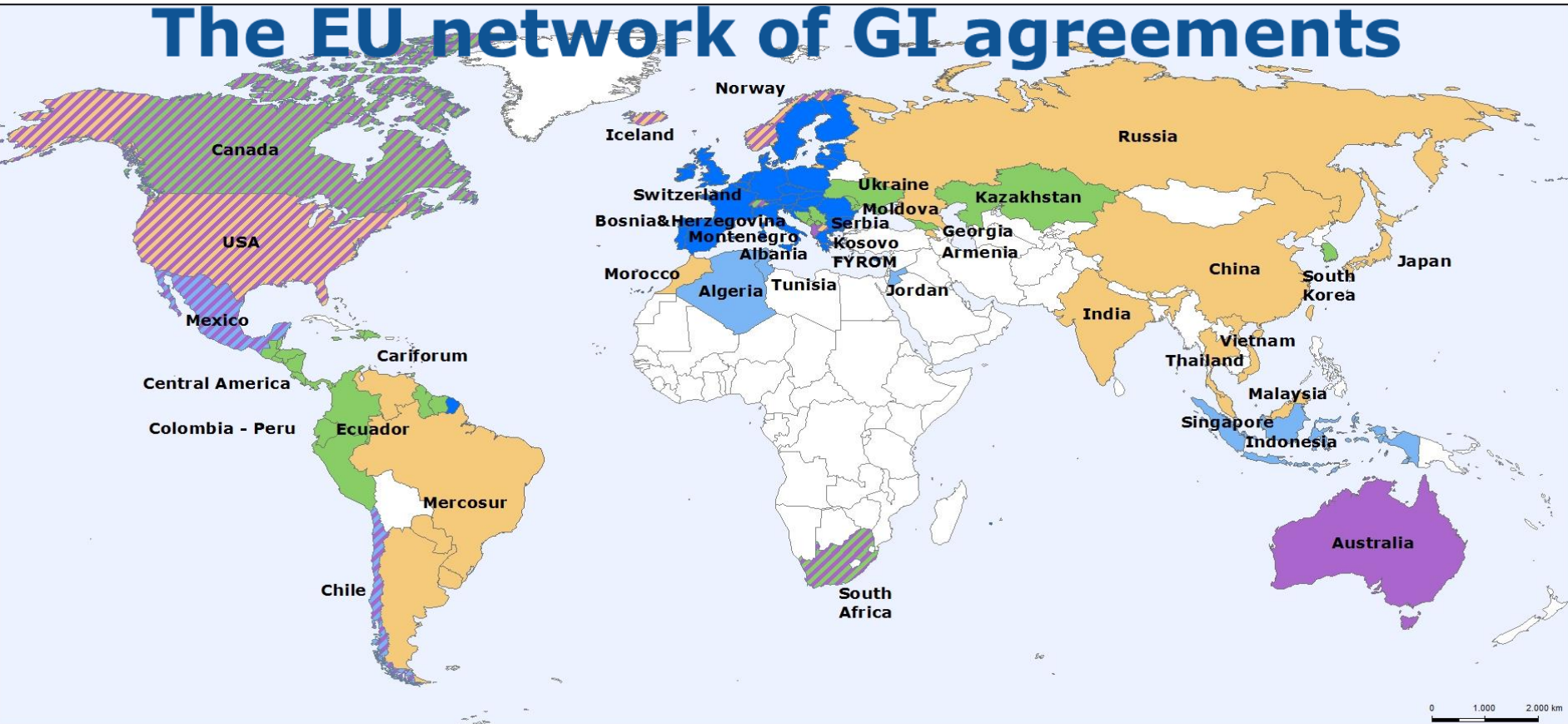


EU bilateral agreements on GIs

Three possible approaches:

- Wine (and/or spirits) agreements
- Stand-alone GI agreement
- A GI section within a Free Trade Agreement

The EU network of GI agreements



- GI Agreements**
- Wine and /or Spirit GIs Agreement concluded
 - GIs Agreement concluded
 - Ongoing GIs Negotiations
 - Future GIs Negotiations

Source: EU Commission

Map Projection World: Eckert III - Map Scale 1:110.000.000



© EuroGeographics Association for the Administrative Boundaries
 Note : The borders of the map does not necessarily represent the official position of the EU. The map has only a statistical value.



Bilateral agreements

EU objectives :

- To establish a (full/short) list of EU GIs to be protected directly and indefinitely in a 3rd country from the entry into force of the agreement
- To obtain the extension of the level of protection provided by Article 23 TRIPS to agricultural products and foodstuffs, including protection against evocation,
- To obtain administrative enforcement of protection, on top of judicial remedies,
- To allow co-existence with prior trademarks,
- To find solutions (phase out, grandfathering, other..) for all conflicts on EU names,
- To create a co-operation mechanism / dialogue, notably with like-minded partners.

The CETA end-result (a possible benchmark):

- 145 EU GIs directly protected via the agreement
- Level of protection: TRIPS art. 23
- Type of protection: combination of judicial remedies and administrative enforcement against uses of any kind misleading the consumer (including evocation of a false origin)
- Coexistence with prior TMs (5 names)
- Ad-hoc solutions for conflicts with prior uses, prior uses in translation, plant varieties for a limited (16) number of terms
- Open list



Why GIs in TTIP are an issue

- A key offensive interest : the U.S. is by far the leading destination country for EU GIs, with **€3.4 billion of imports of EU GI products** (out of €11.3 billion of all agricultural export), accounting for **30%** of total food and beverages imports from the EU.
- Protection of foodstuffs GIs in the U.S. can currently only be assured under the U.S. Trademark regime as "Certification marks. This system does not ensure an adequate protection for EU GIs:
 - High costs of registration under the TM regime
 - Prohibitive costs of enforcement: The TM holder must control the TM on the market and prevent abuses and oppose registrations with costs.
- A TM or a name not adequately protected may become generic. Several EU PDO/PGI cannot be effectively protected because they acquired an alleged generic nature (ex. "Feta", "Asiago", "Fontina")
- Existence of earlier TMs for few PDO/PGI;



GIS in TTIP (1)

What the EU **does want** out of TTIP:

- to guarantee a **fair treatment** for unique products and **increase transparency** for consumers
- A **direct protection** for a **selection** of **EU food GIS** through the agreement + the possibility to expand the list in future.
- A **TRIPS-plus type of enforcement**, opening the possibilities for right holders to lodge a request vis-à-vis competent U.S. authorities to act administratively against misuses of GIS, i.e. not only (highly expensive) judicial remedies.
- The so-called "**extension**" for agricultural products and foodstuffs, i.e. a level of protection in line with **Article 23 TRIPS**.
- Specific **solutions** for specific **conflicts** e.g. with prior uses, with alleged generics, including in translation, or with prior TMs (via coexistence).



GIS in TTIP (2)

What the EU **does not** want in TTIP:

- The EU is **not asking the U.S. to create an ad-hoc sui generis system** of GI protection. Our ask is compatible with the U.S. legal system
- To **claw back and "monopolize" common food names** for the benefit of some EU producers. EU accepts that generic names cannot be protected...but the generic test should be done on the basis of serious evidence, not mere assumptions.
- The **EU is not asking the U.S. to protect geographical names of EU origin which are not protected as GIS in the EU** e.g. camembert, brie, cheddar, edam, emmental, gouda and bologna.
- The **EU is not asking the U.S. to protect non-geographical names of EU origin** such as mascarpone, mozzarella, provolone, blue, chorizo, ricotta, salami, kielbasa, chèvre and prosciutto.



A possible way forward:

- **De-dramatize the GI debate. Look at the entire agricultural balance**
- **GI is not an EU-only file in TTIP: some stakeholders in the U.S. strongly support the GI approach and advocate a better protection for this particular "rural" IP**
- **95% of the EU GI names are not problematic in the U.S. territory**
- **Negotiations should focus on the few names really problematic, to be solved pragmatically. In looking for such common grounds, negotiators will be guided by TRIPS rules.**

Some conclusions for TTIP

- One-fits-all approach does not work
- The more the environment is "differently-minded", the more direct protection is key
- Manageable areas: conflicts with varieties/breeds, compound names, translations
- More problematic areas: prior use, alleged genericness, prior TMs
- There is no mission impossible: when there is a will, there is a way! But..this is not going to be easy with US...

Questions?

