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Geographical Indications and Brexit

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This short briefing describes what Geographical Indications are and how the UK participates in the EU's approach to Geographical Indications. It then goes on to outline how the UK's departure from the EU might affect the UK's existing Geographical Indications including Scotland's 14 Geographical Indications recognised as part of the EU Protected Food Name Scheme in the UK.



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Executive Summary

- One of the many issues which needs to be addressed during the Brexit negotiations is how the UK and EU deal with products which have a Geographical Indication (GI).
- GIs are a distinctive sign used to identify a product as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristic is linked to its geographical origin.
- In 1992, the EU introduced an approach to protecting geographical indications based on three categories of protection for agricultural products - Protected Designation of Origin, Protected Geographical Indication and Traditional Speciality Guaranteed.
- As an EU member state, the UK participates in the EU's approach to GIs and operates a protected food names scheme in the UK which has 86 protected food names including 14 Scottish products. Scotch Whisky also has an EU registered GI.
- Securing a GI for a product is likely to give that product a competitive advantage over rivals and add value to the product. This is because a GI designation is seen as a guarantee of authenticity and quality and enhances the reputation of the product. In addition, GI status ensures imitation products cannot easily enter the EU market.
- Whilst the EU operates a system of GIs, other countries such as the United States and Australia operate a system of trademarks.
- As the UK leaves the EU, the Government must decide whether to seek reciprocal recognition with the EU of the GIs currently registered under EU law and how the UK's relationship with the EU in relation to GIs will affect its ability to negotiate future trade deals after Brexit with countries such as the United States and Australia.
- The EU has insisted that its aim is to secure continued recognition of EU GIs on the UK market after Brexit. The UK Government has indicated it wishes to see UK products continue to be recognised in the EU but has thus far been reluctant to commit to mutual recognition of GIs after Brexit.
- If the UK continues to follow the EU model of GIs, there may be difficulty with negotiating new trade agreements. However, given the headway the EU has made in its trade agreements with third countries (such as Singapore and Canada) by using an approach that represents a compromise between the GI and trade mark models, it should make the negotiation stance for the UK that much easier.
- When the UK Government begins to negotiate new trade agreements, another interesting aspect to observe will be whether, or how, it seeks to protect the UK's own GIs internationally. Currently, UK's GIs (except for Scotch Whisky which has wider protections) are only protected by legislation in the EU. The UK has not sought to secure recognition of the GIs in the EU's trade agreements for example with Korea and Canada.

Context

One of the many issues which needs to be addressed during the Brexit negotiations is how the UK and EU deal with products which have a Geographical Indication (GI). The European Commission describes a GI as:

“ a distinctive sign used to identify a product as originating in the territory of a particular country, region or locality where its quality, reputation or other characteristic is linked to its geographical origin.”

European Commission, 2013¹

At present, UK food products are part of the EU Protected Food Name Scheme and covered by the European Regulation for the protection of geographical indications of spirit drinks.

After the UK has left the European Union, and following the expiry of any transitional arrangements, the future relationship between the EU and UK will either need to address how both parties plan to operate with respect to GIs in the future or fall back on the provisions of the World Trade Organisation's TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) agreement.

This briefing sets out the background to the EU's current approach to GIs and the UK's participation in that. It then examines the international approach to GIs as regulated by the World Trade Organisation and finally looks at the challenges and opportunities for the UK in developing its post-Brexit approach to GIs, including examining how different approaches might affect its ability to agree new trade deals.

Geographical Indications – the EU approach

The EU has perhaps the most developed approach to GIs in the world in contrast to countries such as the United States which operates a system based on trademarks rather than GIs.

In 1992, the EU introduced an approach to protecting geographical indications with the enactment of [EU Regulation 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs](#). With this Regulation, the EU began to pursue a sui generis model of legislation throughout the Member States. This represented an amalgamation of the French and German approaches to GI protection at that time.

The EU has three categories of protection for agricultural products. These are shown in Figure 1. Registering a product at European level means it is given legal protection against imitation throughout the EU.

Figure 1 – The EU's quality schemes for agricultural products

Protected Designation Of Origin (PDO)	Protected Geographical Indication (PGI)	Traditional Speciality Guaranteed (TSG)
		
<p>Products that are produced, processed and prepared in a specific geographical area, using the recognised know-how of local producers and ingredients from the region concerned.</p>	<p>Products whose quality or reputation is linked to the place or region where it is produced, processed or prepared, although the ingredients used need not necessarily come from that geographical area.</p>	<p>Products of a traditional character, either in the composition or means of production, without a specific link to a particular geographical area.</p>
<p>Examples: Bordeaux PDO (France, wine), Cava PDO (Spain, wine), Manouri PDO (Greece, cheese), Tiroler Bergkäse PDO (Austria, cheese), Prés-salés du Mont-Saint-Michel PDO (France, fresh meat product) or Pistacchio verde di Bronte PDO (Italy, fruit).</p>	<p>Examples : Liliputas PGI (Lithuania, cheese), Gofio canario PGI (Spain, cereals product), Walbecker Spargel PGI (Germany, vegetable), České pivo PGI (Czech Republic, beer), Lammefjordskartofler PGI (Denmark, vegetable) or Primorska PGI (Slovenia, wine).</p>	<p>Examples: Kriek TSG (Belgium, beer), Hollandse maatjesharing TSG (Netherlands, fish product), File Elena TSG (Bulgaria, meat product) or Prekmurska gibanica TSG (Slovenia, cake).</p>

European Commission, n.d.²

The three categories of protection are applied to three different categories of production as set out in Box 1.

Box 1: The EU's scheme of GIs

Agricultural and foodstuff GIs – the EU Protected Food Name Scheme

Under “ [Regulation \(EU\) No 1151/2012](#) on quality schemes for agricultural products and foodstuffs”, foodstuff products which have specific characteristics such as traditional production methods or characteristics attributable to a specific region may be granted the European Union (EU) quality logo. In the United Kingdom products listed under this regulation are considered to be part of the EU Protected Food Name scheme. The scheme highlights regional and traditional foods whose authenticity and origin can be guaranteed.

Wine PDO/PGI - the EU protected wine register

Under “ [Regulation \(EU\) No 1308/2013](#) establishing a common organisation of the markets in agricultural products”, wines with specific characteristics attributable to a specific region can be registered under the European Union's quality logos "Protected Designation of Origin (PDO)" and "Protected Geographical Indication (PGI)".

Spirit GIs

Under “ [Regulation \(EC\) No 110/2008](#) on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks”, spirit drinks such as Cognac, Scotch Whisky, Polish vodka or Brandy de Jerez can hold the logo "Protected Geographical Indication".

In the EU, over 1,400 food products enjoy protection under the Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Specialities Guaranteed (TSG) labels, which also cover hundreds of wines, spirits and other agricultural products ³.

The Terroir Factor

Giving [evidence to the House of Commons Scottish Affairs Committee](#) on 3 July 2018, Dr Gail Evans from Queen Mary University of London outlined that the key value of the GI system adopted by the EU is the “terroir factor”:

“ Everyone understands wine and terroir; it is this rather mysterious connection between the climactic and the human skills that go into making a particular wine. Transpose that to not only wine and spirits, but also food. The idea with Scottish lamb or Scottish beef is that there are environmental factors and/or there may be human skills and factors that go into making up what I, in shorthand, call the terroir factor.”

UK Parliament, 2018⁴

GIs also provide protection from evocation in the EU market, for instance, the Court of Justice of the European Union has ruled that whisky producers in other countries cannot use the word “glen” in naming their whisky as this evokes Scotland ⁵ ⁱ. The right to prohibit an evocation of the GI includes images, for example, images associated with Scotch

ⁱ See The Scotch Whisky Association, *The Registered Office v Michael Klotz* (Case C-44/17 at the Court of Justice of the European Union)

Whisky and Scotland. This prohibition includes using a picture of a Scottish bagpiper in Highland dress on the label of a bottle of whisky which has not been produced in Scotland.

EU Protected Food Name scheme in the UK

As a Member State of the EU, GIs are registered and protected under EU legislation. However, once the UK withdraws from the EU, it will be necessary to legislate domestically for the registration and protection of GIs in the UK. The UK government is to 'domesticate' the EU GI Regulations (through the European Union (Withdrawal) Act 2018), so that the character and scope of protection should not change substantially following Brexit. In addition, in order to maintain the protection of GIs, such as Scotch Whisky, throughout the EU, an agreement with the EU will be needed similar to the existing agreements Norway and Switzerland have with the EU.

There are [86 protected food names in the UK](#), including food products, wine, beers, ciders, spirit drinks and wool. Examples of Scottish protected food names include Scotch Lamb, Scottish Farmed Salmon, Scottish Wild Salmon and Stornoway Black Pudding. A full list of Scottish protected products is provided in Figure 2.

Figure 2. Scottish Products in EU Protected Food Name Schemes

Protected Designation Of Origin (PDO)	Protected Geographical Indication (PGI)	Traditional Speciality Guaranteed (TSG)
		
<p>Products that are produced, processed and prepared in a specific geographical area, using the recognised know-how of local producers and ingredients from the region concerned.</p>	<p>Products whose quality or reputation is linked to the place or region where it is produced, processed or prepared, although the ingredients used need not necessarily come from that geographical area.</p>	<p>Products of a traditional character, either in the composition or means of production, without a specific link to a particular geographical area.</p>
<p>Scottish products</p>		
<ul style="list-style-type: none"> • Native Shetland Wool • Shetland Lamb • Orkney beef • Orkney lamb • Bonchester Cheese 	<ul style="list-style-type: none"> • Traditional Ayrshire Dunlop • Orkney Scottish Island Cheddar • Stornoway Black Pudding • Scottish Wild Salmon • Scottish Farmed Salmon • Scotch Lamb • Scotch Beef • Arbroath Smokies • Teviotdale Cheese 	

UK Government, 2014⁶

Applications have also been made for Forfar Bridies and Ayrshire new potatoes to be given PGI status.

Spirit Drinks

Scotch whisky is not included on the protected food names list. This is because Scotch whisky is instead registered as a Geographical Indication (GI) under [European Regulation \(EC\) No 110/2008](#) on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks ⁷.

The economic value of GIs

Securing a GI for a product is likely to give that product a competitive advantage over rivals and add value to the product. This is because a GI designation is seen as a guarantee of authenticity and quality and enhances the reputation of the product. In addition, GI status ensures imitation products cannot easily enter the EU market.

In [evidence to the House of Commons Scottish Affairs Committee](#) on 3 July 2018, Lindsay Low from the Law Society of Scotland outlined the three benefits for goods with a GI:

“ There are probably three main benefits bestowed by GIs. The first of these benefits is to the producers, because of course they are able to protect their reputation and their quality, and they are not going to be undercut by foreign competitors cutting corners. The second one, which is perhaps sometimes overlooked, is that it protects consumers. A consumer buying Stornaway black pudding or an Arbroath smokie will know that it is that particular type of sausage or fish made in a traditional way in a traditional place. That is extremely important. The last thing is that it is good for the Administration of the country because geographical indications are products that are sold at a premium and typically they are made in rural areas, which means that people can invest, get jobs and promote tourism in particular parts of the country. Geographical indications have a broader national importance beyond the individual traders' benefits. ⁴ ”

Research by the [Agricultural and Horticultural Development Board](#), published in December 2016, suggested that consumers would be more inclined to pay a higher price for a product with a GI than one without:

“ The real value of the PDO and PGI schemes is derived from convincing consumers to pay a premium price for specific products. A number of studies have been conducted to seek to put a value on this. Most recently, a European Commission-funded study by AND-International in 2012 calculated an average value premium rate for GI agricultural products and foodstuffs in the EU at 1.55. This means that GI products were sold for 1.55 times as much as non-GI products for the same volume. The value premium for agricultural products and foodstuffs in the UK is lower than the EU average at 1.07.”

Agriculture and Horticulture Development Board, 2016⁸

According to the European Commission's 2012 study, GIs for the EU agricultural sector (excluding wine and spirits) represent sales of €16 billion or 1.5 per cent of total EU food and drink sales.

The Scottish Government has estimated that EU Protected Food Name status, on average, increases a product's value by 2.23 times ⁹ .

However, the AHDB also found that securing GI status on its own may not be enough to boost a product's sales and factors such as market development are also important.

The value of GIs in Scotland

According to [Scottish Government statistics](#) , the food and drink sector in Scotland had total sales of £13.9 billion in 2016. Total exports from the Food & Drink sector stood at £10.1 billion in 2016, accounting for 13.4% of Scotland's total exports.

Exports to the Rest of the UK (RUK) stood at £4.4 billion in 2016 and accounted for 42.9% of total Food & Drink exports. International exports to the EU stood at £2.2 billion (21.5%) and international exports to the Rest of the World stood at £3.6 billion (35.6%) ¹⁰ .

Whilst not all Scotland's food and drink exports are made up of GI branded products, products such as salmon, beef, lamb and Scotch whisky form an important part of Scotland's exports. Figures from the Scottish Government show that in 2017, Scotch whisky exports from the UK were valued at £4.36 billion, and salmon exports from the UK were worth £600 million ¹¹ .

EU international policy on GIs

The EU's approach to registering GIs is different to the approach in other countries. Dr Gail Evans set out the difference between GIs and trademarks in [evidence to the House of Commons Scottish Affairs Committee](#) on 3 July 2018:

“ The trademark is quite different in its base or foundation, because whereas the European GI is based on the terroir factor, the trademark simply identifies a business—it distinguishes an Apple computer from a Dell computer. The trademark identifies for the consumer one enterprise from another. The GI is so much more. ⁴ ”

In other words, the essential element of the GI is the link between the environmental factors and traditional human skills found in a particular place and the product's quality and reputation.

On the other hand, countries such as Canada, the United States and Australia protect GIs as a sub-set of the trade mark system. In [Australia](#) certification trade marks are the main ways that GIs are protected. There is also a system for registering GIs for wine in Australia. The Australian system of GIs works in the following ways:

“ To register a geographical indication under the certification trade mark system, you will need to lodge an application with IP Australia noting that a geographical indication relates to a particular good. Once terms are registered as geographical indications in Australia, they can only be used on goods that have been produced in accordance with the rules governing their use. Examples of geographical indications protected in Australia include:

- Darjeeling for tea”
- Parmigiano Reggiano for cheese”
- Scotch Whisky for spirits and spirit based beverages”

Because each of the above terms are registered as geographical indications, these terms cannot be used on the indicated products unless those products originate from the specified region and are produced in accordance with the rules governing the associated geographical indications. For example, in countries where the term 'Scotch Whisky' is protected as a geographical indication, that term can only be used if the whisky is distilled in Scotland and using the specified recipe and process set out in the rules governing the geographical indication.”

Australian Government: IP Australia, 2018¹²

The United States also operates with a system of trademarks as set out in Box 2.

Box 2: US System of Trademarks

Geographical indications (GIs) identify a good as originating from a particular place. By contrast, a trademark identifies a good or service as originating from a particular company.

A trademark often consists of a fanciful or arbitrary sign. In contrast, the name used as a geographical indication is usually predetermined by the name of a geographical area.

Finally, a trademark can be assigned or licensed to anyone, anywhere in the world, because it is linked to a specific company and not to a particular place. In contrast, a GI may be used by any persons in the area of origin, who produces the good according to specified standards, but because of its link with the place of origin, a GI cannot be assigned or licensed to someone outside that place or not belonging to the group of authorized producers.

Whilst the United States has a system of trademarks for food and drink, it operates a system of GIs for wines and spirits.¹³

The main objection of countries like Australia and the United States to the EU's system of GIs is that they consider the EU system as generic and used so widely that consumers view them as representing a category of all of the goods and services of the same type (see Alan Matthews writing on [Geographical indications \(GIs\) in the US-EU TTIP negotiations](#).)¹⁴

This difference of views has resulted in difficulties when the EU has tried to agree new trade deals, for example the Transatlantic Trade and Investment Partnership (TTIP), with the United States. During the TTIP negotiations, the EU sought to secure American agreement to recognise and protect the EU's list of GIs on the American market. The TTIP negotiations broke down following the election of Donald Trump as US President because of his belief that the terms of international trade were loaded against the United States¹⁵.

GIs in the EU's current trade deals

The EU has sought to protect its system of GIs during recent trade negotiations. A full list of the EU Trade Agreements which include a level of protection for selected GIs is provided on the [Commission website](#).

In the case of its [trade agreement with South Korea](#), the EU has ensured that South Korea will recognise and protect the GIs of the European Union listed in Annexes 10-A and 10-B of the Agreement. The EU has reciprocated in recognising GIs in South Korea which are also listed in the same Annexes. There is also agreement on a procedure to add further GIs, along with the establishment of a joint working group on Geographical Indications¹⁶

Annexes 10-A and 10-B lists the GIs that each EU member state wishes to see protected in the EU-South Korea trade agreement. The UK has no GI's listed in Annex 10-A relating to agricultural products and foodstuffs and one item (Scotch Whisky) in Annex 10-B relating to wines and spirits originating in the EU.

Similarly, in the Comprehensive and Economic Trade Agreement (CETA), the EU and Canada have agreed to recognise selected GIs set out in [Annex 20-A of the Agreement](#). As with the EU-South Korea Agreement, the UK has no GIs listed in relation to agricultural products and foodstuffs ¹⁷ .

The EU's wines and spirit drink GIs were already protected by the [2003 Wines and Spirit Drinks Agreement](#) between the EU and Canada. Scotch Whisky is a recognised GI in this agreement.

GIs at the World Trade Organisation

The EU is also a signatory to the World Trade Organisation's Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement contains a specific section on GIs.

The World Trade Organisation (WTO) [sets out](#) the basics of the TRIPS agreement as follows:

“ A product’s quality, reputation or other characteristics can be determined by where it comes from. Geographical indications are place names (in some countries also words associated with a place) used to identify products that come from these places and have these characteristics (for example, “Champagne”, “Tequila” or “Roquefort”). Protection required under the TRIPS Agreement is defined in two articles. All products are covered by Article 22, which defines a standard level of protection. This says geographical indications have to be protected in order to avoid misleading the public and to prevent unfair competitionⁱⁱ. Article 23 provides a higher or enhanced level of protection for geographical indications for wines and spirits: subject to a number of exceptions, they have to be protected even if misuse would not cause the public to be misled. Exceptions (Article 24). In some cases, geographical indications do not have to be protected or the protection can be limited. Among the exceptions that the agreement allows are: when a name has become the common (or “generic”) term (for example, “cheddar” now refers to a particular type of cheese not necessarily made in Cheddar, in the UK), and when a term has already been registered as a trademark.”

World Trade Organisation, 2008¹⁸

However, the WTO’s rules – set out in the TRIPS Agreement only sets minimum standards. It does not deal with individual names and leaves countries to decide how they wish to meet the standards and which names they wish to protect. This means that countries can choose to adopt the GI approach, such as that adopted by the EU, or a trademark approach as adopted by the United States for food and drink.

ii Unfair competition law is required under International law to meet the standard of [Article. 10bis of the Paris Convention on the Protection of Industrial Property](#) (as incorporated in the TRIPS Agreement), but in fact protection varies considerably between WTO Member States

GIs after Brexit

As the UK negotiates its departure from the EU and the nature of the future UK-EU trading relationship, the UK Government will need to consider two aspects in relation to GIs.

These are:

- Whether to seek reciprocal recognition with the EU of the GIs currently registered under EU law.
- How its relationship with the EU in relation to GIs will affect its ability to negotiate future trade deals after Brexit with countries such as the United States and Australia.

Firstly, because the UK has no legislative framework of its own for GIs, if it wishes to continue with such a scheme in the UK it is likely to have to create an appropriate legislative framework. It is possible this will be achieved through the European Union (Withdrawal) Act upon Brexit. A [statement from the Department from Exiting the EU](#) committed to continued protection for UK GIs in the UK after Brexit ¹⁹.

GIs and the UK-EU relationship

In the case of the future EU-UK trading relationship, the EU has already been clear that its aim is to secure continued recognition of EU GIs on the UK market after Brexit – sometimes known as the Montenegro optionⁱⁱⁱ. A European Commission [position paper on Intellectual property rights \(including geographical indications\)](#) published in September 2017 set out the Commissions expectation in relation to GIs when negotiating the Withdrawal Agreement:

“ In the specific case of protected geographical indications, protected designations of origin and other protected terms in relation to agricultural products (traditional specialities guaranteed and traditional terms for wine) protected under Union law before the withdrawal date, this principle should also imply that the United Kingdom puts in place, as of the withdrawal date, the necessary domestic legislation providing for their continued protection. Such protection should be comparable to that provided by Union law.”

European Commission, 2017²⁰

Non-EU member states can have goods registered under the protected food name scheme. For instance, Colombian coffee has a PGI and China has a total of 10 designations (6 PGIs and 4 PDOs) ²¹.

Agreement has been reached to continue the mutual recognition of GIs during any transition period following Brexit. However, the EU has identified continued recognition of GIs after Brexit as an issue to be addressed in the Withdrawal Agreement. At this stage, agreement is yet to be reached on whether mutual recognition of GIs will continue after Brexit and any transition period. In an [article on the European Commission website](#), the Commission's Chief Brexit negotiator, Michel Barnier, identified GIs as one of the key withdrawal issues still to be agreed:

iii Montenegro has an agreement with the EU that involves it incorporating in full the EU's GI Regulation.

“ We still need to agree on important points, such as the protection of "geographical indications". This refers to the protection of local farm and food products like Scottish Whisky or Parmesan cheese, where EU protection has generated significant value for European farmers and producers.”

European Commission, 2018²²

On 18 April 2018, the Independent reported that Britain wants the EU to protect its products from imitation post-Brexit, but is reluctant to return the favour. The report stated that:

“ The government wants the EU’s “geographical indications” system to keep protecting British foods such as Stilton and Cornish pasties from imitation after Brexit – but has been unable to secure an agreement with Brussels on the issue because it is not committing to protecting EU products in return. A government spokesperson said the UK would like to have its existing products protected by the “EU GI schemes after we leave” – but officials say whether Britain would protect EU products in Britain in return is still “subject to negotiation.”

The Independent, 2018²³

In evidence to the [Scottish Parliament’s Rural Economy and Connectivity Committee](#) on 27 June 2018, the Rt Hon Michael Gove MP (Secretary of State for Environment, Food and Rural Affairs told the Committee:

“ We want to make sure that geographical indications are recognised as we leave the European Union, and so does the EU. We have a number of geographical indications, which really matter to us, and from Orkney to Arbroath it is important that the reputation of Scottish—and, indeed, UK—produce is protected and enhanced as we leave the EU. The EU, too, has many protected geographical indications that it would like to see protected and preserved as we leave. That is part of the on-going negotiations between ourselves and the EU, to make sure that our respective interests are protected.”

Rural Economy and Connectivity Committee 27 June 2018, Michael Gove, contrib. 43²⁴

He added:

“ At the moment, there is a debate about whether geographical indications should be part of the withdrawal agreement—which, as you know, is the formal, technical, legal text that is required under article 50 to give effect to the UK leaving the EU—or whether they should be part of the future economic partnership. The UK Government is anxious to be as clear as possible as early as possible, but in any negotiation with the EU we have to respect the EU’s autonomy and its desire to make sure that its interests are protected and preserved. As I said, my judgment is that, because EU nations have many more geographical indications than the UK, the EU will want to have those guarantees and safeguards. That is in the EU’s interests, much as it is in its interests to guarantee tariff-free access for agri-food products across the UK-EU border. Scotch whisky and Scottish salmon have been huge success stories. The reason why they have been success stories is not just the important geographical indication and the protected status that it brings; the hugely successful marketing of individual brands and companies, which have acquired a worldwide reputation for amazing high-quality produce, has also been instrumental in generating success.”

Rural Economy and Connectivity Committee 27 June 2018, Michael Gove, contrib. 43²⁴

The UK's future trade deals

The UK Government's reluctance to accept the EU's proposal of mutual recognition of GIs may be linked to its aspirations for agreeing new trade deals with countries such as the United States and Australia, after Brexit.

As discussed earlier in the briefing, the United States and Australia have different approaches to GIs which involves using trademarks rather than GIs. In his blog "[What are geographical indications? What do they mean for post-Brexit UK?](#)", Peter Ungphakorn set out the difference in approach to GIs between the EU and other countries:

“ Beyond the EU, the world of geographical indications has sometimes been described as a divide between old world countries, with traditional methods and products they want to protect, and the new world whose immigrant populations brought those techniques with them. It's a bit more complicated than that. For example, Taiwan is in the so-called new world group and some US producers now want protection for their own products, from wines to Idaho potatoes. But there is some truth in it.”

Trade β Blog, 2018²⁵

The different approaches to GIs present the UK with a number of conflicting challenges as it looks to negotiate post-Brexit trade agreements:

- Continued recognition of the EU's GIs
- Securing recognition of the UK's GIs across the EU
- Satisfying the desire of third countries who will look to gain better access to the UK market for produce which is similar in nature to the EU's GIs after Brexit
- Seek recognition of UK GIs in third countries after Brexit.

if the UK continues to follow the EU model of GIs, there may be difficulty with negotiating a UK-US Trade Agreement. However, given the headway the EU has made in its trade agreements with third countries (such as Singapore and Canada) by using an approach that represents a compromise between the sui generis and trade mark models, it should make the negotiation stance for the UK that much easier. It's possible that the UK Department of International Trade may simply adopt the GI provisions of existing EU Trade Agreements (this was discussed in the [House of Commons International Trade Committee report on the Continuing application of EU trade agreements after Brexit](#)).

In evidence to the Scottish Affairs Committee on 3 July 2018, Dr Gail Evans told the Committee that the example of the Trans Pacific Partnership trade agreement suggests that a compromise which recognises both GIs and trademarks is possible:

“ I had a look at chapter 18 of the Trans-Pacific Partnership because I know—I have been there—that a lot of the Asian countries who are members of the current Trans-Pacific Partnership support GIs, the system that is similar to the EU model. It is possible to embrace both the GI and the trademark. There is some realpolitik trade-off, but personally I think that is worth it. They have not been publicising it, but Brussels has been doing that in their free trade agreements with the Pacific region. As long as we can maintain the strength of our European model GI protection within the United Kingdom and Scotland.”

UK Parliament, 2018⁴

The status of GIs in the UK’s future trade deals was raised by the Scottish Government’s Cabinet Secretary for the Rural Economy in a [letter to the UK Government](#) on 7 July 2018. Fergus Ewing referred to the evidence given by Michael Gove MP to the Scottish Parliament and expressed concern that the UK Government had yet to confirm whether GI status will form a part of future trade negotiations with the EU:

“ Indeed, the recent evidence provided by Mr Gove at the Rural Economy Committee of the Scottish Parliament and reference to “forms of protection” rather than confirming a GI system has only added to this lack of clarity on the issue. The comment during the evidence session that the rest of the EU hold many, many more GIs than the UK, while factually true, masks the value of our products holding GI status such as Scottish Farmed Salmon, Scotch Beef and Scotch Whisky. We write to the three of you because it is not clear where, within or between your departments, the problem truly lies. We look to you to put your differences aside and act for the benefit of Scotland’s businesses. “The time is right for us to see some concrete assurances from the UK Government that not only do you consider GIs and protection of our world-renowned produce of great importance and will seek to continue the protection offered by holding the status, but that the UK Government will give them their rightful place at the forefront of future trade negotiations.”

Scottish Government, 2018²⁶

On the status of GIs in future trade negotiations with non-EU countries, the Cabinet Secretary wrote:

“ As you are more than aware, we have been critical of the failure by the UK Government to put forward any UK GIs for inclusion in the CETA deal with Canada and a lack of consultation around other deals such as Mercosur and Mexico. We are sure you will easily understand the Scottish Government’s, and many of our stakeholders’, concern in the current climate that the UK Government simply does not recognise the importance of GI status for business. Coupled with the absence of any reference whatsoever to food and drink from your recent statement on trade collaboration with Hong Kong, it gives the impression that your Government cares little for this sector.”

Scottish Government, 2018²⁶

International recognition and protection

When the UK Government begins to negotiate new trade agreements, another interesting aspect to observe will be whether, or how, it seeks to protect the UK’s own GIs internationally. At present the UK’s GIs (except for Scotch Whisky which has wider

protections) are only protected by legislation in the EU. The UK has not sought to secure recognition of the GIs in the EU's trade agreements for example with Korea and Canada. It is not yet clear whether the UK will seek to protect its own system of GIs (beyond the EU) when it attempts to roll over current EU trade agreements, such as with Canada, or when it begins negotiating new trade agreements, for example with the United States and Australia.

Conclusion

EU membership has provided protection for the UK's premium produce through the GI system. As the UK leaves the EU, the UK Government faces a decision on whether to continue with mutual recognition of GIs with the European Union and how to balance this against the demand of trade partners such as the United States who are seeking to agree new trade agreements with the UK.

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