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The Game Changers to Geographical Indication Rules in the Global IP System and Its Impact on Canada

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OUTLINE

- I. International Law concerning Geographical Indications**
- II. Emergence of 'GI blocs' and GI Norm Entrepreneurs**
- III. GI Norm Recipients: Who are they and Why it Matters**
- IV. Preferential Trade Agreements and its implications on
Canada**

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The Concept of GIs



Kobe Beef,
Japan



Lagouille Knife,
France

I- International Law concerning Geographical Indications

- ❑ *Trade Related Aspects of Intellectual Property Rights (TRIPS) Article 22.1 definition: Quality, Reputation or other Characteristics of the Product that is essentially attributable to the territory of origin.*
- ❑ Developed into different types and levels of protection internationally for GIs
 - ⇒ Certification Marks
 - ⇒ Collective Marks
 - ⇒ Sui-generis Protection
 - ⇒ Unfair Competition laws
 - ⇒ Incorporated into provisions of Trade-mark Act

II- Regime Shifting: Evolution of GI rules

- Minimum standards for non-wine and spirit GIs established by TRIPS
- EU demands for claw-back of GIs in World Trade Organization (WTO) Doha Development round of Negotiations unsuccessful
- Stark increase in the numbers of preferential free trade agreements that contain provisions for the increased protection of non-wine and spirit GIs since failure of Doha Development round to reach consensus on GIs

III- GI Norm Entrepreneurs

- The Notion of **Norm Entrepreneurs**
 - (i) Actor with proprietary interest worth protecting;
 - (ii) identified threats to market access;
 - (iii) actor influencing global interests via chosen mechanisms;
 - (iv) change in host jurisdiction rules on issue
- GI Norm Entrepreneurs: European Union and Switzerland
- European Union: Changed its rules on GIs 3 times in the past century to incorporate a range of economic, social and cultural objectives in its GI policy.

European Union's Domestic GI policy

Agricultural Quality Product Scheme

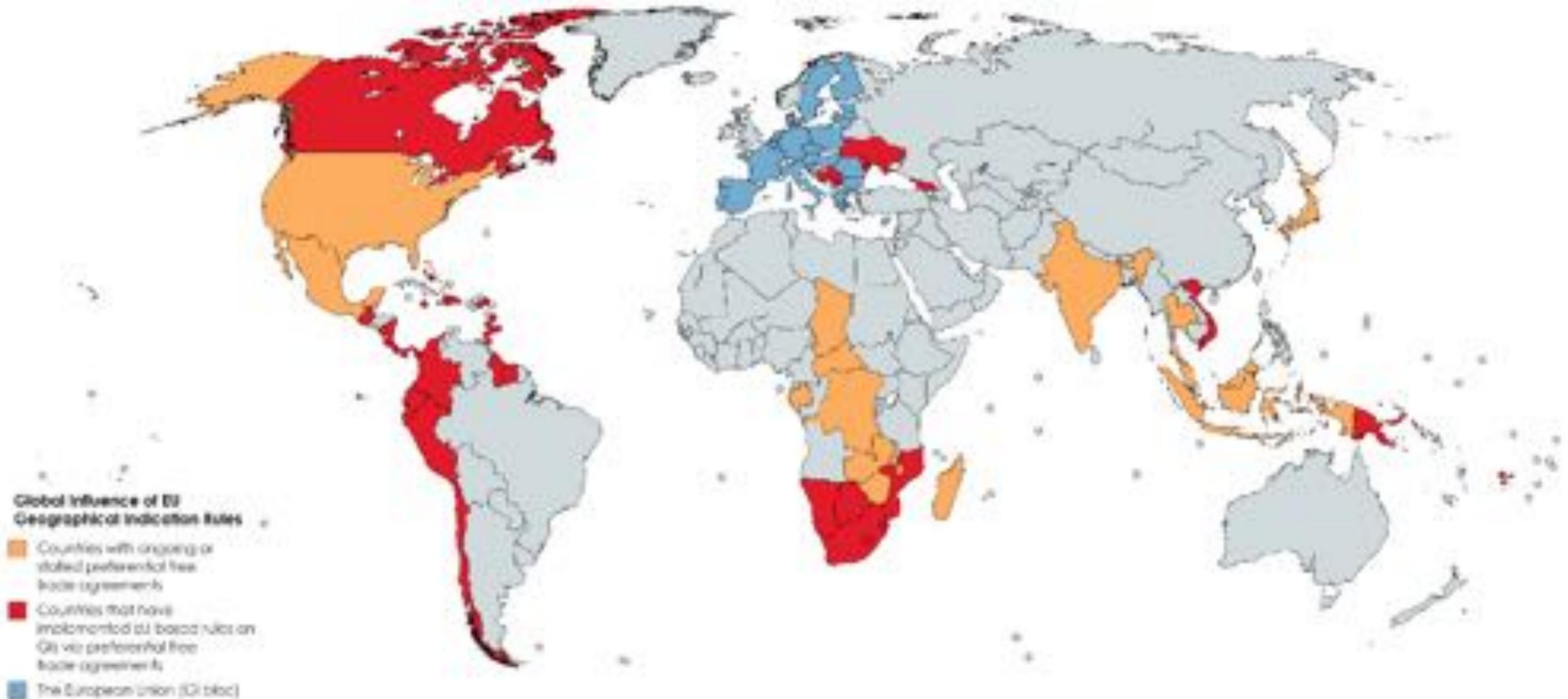
❑ **EU Regulation 1151/2012:**

- ✓ Product Quality
- ✓ Providing clear information on products with specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices
- ✓ Fair Remuneration to Producers,
- ✓ Economic empowerment of communities by acting as aids in rural development initiatives.

❑ **What is protected:** Agricultural Products and Foodstuffs

- ❑ **Summary of EU GI rules:** Protected names cannot become generic, Registration is indefinite, Translations of the protected names prohibited, Trademarks related to a product of the same type that is similar to a GI cannot be registered.

Global Influence of EU Geographical Indication Rules



Influence of EU based Agreements on GI Rules Globally

Greater levels of geographical indications protection are evident in EU preferential trade agreements made with developing countries, resulting in less globally influential countries and regions having greater commitments to safeguard EU-based GIs.

TWO Approaches

(1) One approach is the increase in geographical indication standards to a level that is similar to the EU law on non-wine and spirit geographical indications (*Economic Partnership Agreement with African Caribbean and Pacific*)

(2) Second approach is a recognized legal and market pre-eminence of specific European-based products in a growing number of international jurisdictions, achieved by restricting the use of selected product names to geographical indications from the European Union.

EU led Preferential Trade Agreements with TRIPS-PLUS levels of protection for GIs

- ❑ **EU-Ukraine** Deep and Comprehensive Free Trade Agreement (Extensive Claw-back provisions)
- ❑ **Cariforum-EU Economic Partnership Agreement** (Caribbean countries had up to January 01, 2014 to enact domestic GI legislation that was in line with EU GI rules)
- ❑ **EU-Singapore** Free Trade Agreement
- ❑ **Comprehensive Economic and Trade Agreement** (Canada-EU free trade Agreement)

Product Value Driving GI Rules (Feta Cheese example)

CETA: Feta can be used on Canadian cheese produce in commercial use since Oct 18, 2003 or earlier

Singapore FTA: Complete claw-back of Feta from commercial use, with the exception Greece.

Cariforum-EPA: Feta cannot be use in any product class that would mislead the consumer on the true origin of the product

Switzerland: Quite GI Giant?

- ❑ Use of Bilateral Geographical Indications Agreement: Russia, European Union and Jamaica
- ❑ Strong GI provisions in stand-alone free trade agreements (agreements not negotiated or concluded within the European Free Trade Area): Switzerland-Japan Free Trade Agreement, Switzerland-China Free Trade Agreement: *prevents the use of Swiss GIs in forms such as “type”, “style”, “way” “imitation”, “method” or similar expressions*
- ❑ *Switzerland’s bilateral free trade agreement with Japan includes in Article 119 (c) Each Party shall provide the legal means for interested parties to prevent the use of the geographical indication, the indications of services, the country name of either Party, or the name of a canton of Switzerland, even where the true origin of the products is indicated, or where they are used in translation or accompanied by terms such as “kind”, “type”, “style”, “way”, “imitation”, “method” or other analogous expressions*

United States & other Asia Pacific countries

- ❑ **Trans-Pacific Partnership Agreement:** GI and Trademark provisions sought to restrict EU moves to increase GI protection for agricultural products and foodstuffs.
- ❑ **Trans-Atlantic Trade and Investment Partnership:** One of the roadblocks is the inability to reach a consensus on the extension of EU standard of protection or GI products in the United States
- ❑ **Regional Comprehensive Economic Partnership Agreement** (latest draft of the agreement shows that Japan and India are unwilling to agree to provisions that would revoke/cancel GIs and subject GIs to generic claims).

IV- Canada & Preferential Trade Agreements

Global Developments Impacting Local Engagements

- Will changes to the *Trade-marks Act* provide a strong base for the development of Canadian GIs?
- Are there likely to be challenges under a re-negotiated NAFTA to Canada's recognition of EU-based GI products?
- Is Canada aiming for a level playing field in the number of products protected under CETA?
- Will there be vast differences between UK's GI legislation (if one will be in force that is) and EU's GI regulation that may affect the ability of Canadian producers to access UK markets on similar terms as the EU?

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Thank you.

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