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REAL-TIME DELPHI SURVEY ON COMPETITION AND COMPETITIVENESS OF GEOGRAPHICAL INDICATIONS AS A NEGOTIATIONS' ISSUE OF THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

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Abstract. This paper aimed to present the issues of geographic indications as an element of the intellectual property right negotiations under the Transatlantic Trade and Investment Partnership between the European Union and the United States. It is argued that implementation of different legal regimes related to intellectual property might create significant barriers to the liberalization of international trade of quality food products. Using the results of foresight researches it was shown that the agreement might add small value to the development of markets and their participants in both regions. If is forth seen the possible positive impact with regard to competitive advantages of EU products and negative to EU market competition, and contrariwise, negative influence on competitive advantages of US products and positive on US market competition.

Key words: geographic indications, IPR, TTIP, Real-Time Delphi, competition, competitiveness

INTRODUCTION

Intellectual property rights (IPR) have never been more economically and politically important or controversial than they are over this decade. Trademarks and geographical indications are frequently mentioned in discussions and debates on such emerge topics as trade, industrial policy, industrial organisation, food security, traditional knowledge, biotechnology, marketing. In a knowledge-based economy, there is no doubt that an understanding of IPRs is indispensable.

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Recent studies demonstrate the important contribution of IPR to the United States (US) and European Union (EU) economies. Royalties and license fees based on IPR figure high among the exports of both, and applications, and grants, for IPR protection made by Europeans in the US and vice-versa represent an important share of the totals. The differences between the respective IPR systems are comparatively small, yet seen as hard to overcome. In this respect one need to notice that negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US reached their eleventh round already in October 2015. Discussions have covered a broad range of topics, and substantial work undertaken, in particular on the chapters of the agreement covering customs and trade facilitation, services, SMEs, sector. However several issues remain highly controversial on both sides. One of the most disputable is the issue of geographical indications (GI), which should be considered in brother perspective of the negotiations of IPR. From this perspective the TTIP negotiations may present the opportunity for a step change in EU-US relations in respect of IPR. The EU has put in place a sui generis system on unitary GI protection. The US also protects GIs under trademark law, as trademarks, collective marks or certification marks, but only to the extent required by WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights, and does not recognise a number of EU's GIs.

This paper first objective is to present the issues of GI as an element of the IPR negotiations under the Transatlantic Trade and Investment Partnership between the European Union and the United States. Using the results of foresight researches, the second objective is to assess, whereas TTIP will have an impact on the competition and competitiveness of GI markets. Thus, the conducted research aimed to answer the questions (i) whether, (ii) and if so, how: positively or negatively; and (iii) thus with what force (measured in the Likert scale), TTIP will influence the competition and competitiveness of GI markets in the EU and the US.

SOURCE MATERIAL AND RESEARCH METHODS

The investigations are based on primary and secondary data sources. The later were acquired from in depth literature review on the examined issues. The primary data comes from the Real-Time Delphi survey.

The rationale for the choice of the foresight heuristic Delphi method [Rowe and Wright 2011] was the hypothetical impact of trade agreement on GI as there are unknown results of final TTIP agreement. The impact of policy changes on the agriculture and food systems has been already researched using Delphi method by Menrad et al. [1999], Grisham [2009], Maciejczak [2010, 2015], or Wentholta et al. [2012].

There was used Real-Time Delphi approach. Whereas conventional Delphi studies are characterised by repeating sequential rounds, the Real-Time Delphi approach is characterised by a continuous round-less procedure leading to a reduced time frame needed to conduct such studies [Monguet 2010, Gnatzy et al. 2011]. The core methodological innovation of Real-Time Delphi studies are the absence of iterated rounds and the real-time calculation and provision of group responses [Zipfinger 2007]. Another core methodological innovation is the fact that experts may not only judge once or twice, depending

on the number of rounds, as it has been usual in a Conventional Delphi study. During a Real-Time Delphi, experts can independently reassess their responses as often as they want [Gordon and Pease 2006].

The typical Real-Time Delphi process can be described in the way that participants get access to an online questionnaire portal for a certain time frame, within which they are allowed to login and logout as often as they want. Whenever they login, they see all their quantitative and qualitative answers of previous sessions and can change all answers as desired within the given period of time. Besides own answers they will see the on-going – hence, real-time – responses of other participants, and with regard to metric assessments the group as a whole will be visualised in terms of median or average. The numerical visualisations as well as the qualitative inputs change in the course of other participants changing their responses. Consequently, a participant can find out to what extent his own responses from an earlier point of time are still within the group opinion. As argued by Gnatzy et al. [2011] the core innovation of Real-Time Delphi studies is the real-time calculation and provision of results.

Using a web-based tool a predominantly qualitative and quantitative Real-Time Delphi survey was held. The questionnaire was open from 1 October 2015 to 31 December 2015. There were identified 26 experts from the EU and 26 experts from the US food sectors, each from six areas of the GI supply chains: farmers, processors, traders, consumers, policy makers, academics. All experts were chosen deliberately because of their knowledge about food systems, IPR, GI or TTIP. There was a basic assumption that the TTIP will influence the GI markets at both countries with regard to competition and product competitiveness.

RESULTS AND DISCUSSION

The importance of IPR has grown considerably in recent years. As summarized by Moschini et al. [2008], Bramley [2009], Lapan [2009], Belletti et al. [2011], Menapace and Moschini [2012] they generate economic value that in some cases surpasses the value of physical property, as well as have influence, in different extend, on many areas of society: i.e. technological advance, firms, institutions, organisations, re-distribution of wealth and income etc. Intellectual property refers to creations of the mind such as inventions; literary and artistic works; symbols, names and images used in commerce etc. As such, as argued by Raustiala et al. [2007] in practice, it covers various rights based on different rationales (e.g. while patents and copyright are linked to innovation, trademarks are centred on providing an answer to asymmetric information on the market and are not associated directly with innovation). Traditionally, two categories of IPR are identified: industrial property (patents, trademarks, designs and geographical indications) and copyright (literary and artistic works and related rights). The World Intellectual Property Organisation (WIPO), a United Nations specialised agency, founded in 1967 by the WIPO Convention, acts as a global forum for IP services, policy and cooperation. WIPO's main role is to administer the current 26 treaties in the field of IP, for its 187 member states. The first IP treaties concluded were the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886).

Additionally, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was concluded in the framework of the World Trade Organisation.

TRIPS addresses both substantive and procedural issues as regards copyright and related rights, trademarks, patents, geographical indications, industrial designs, topographies of integrated circuits and trade secrets. On trademarks (articles 15–21), TRIPS includes a definition and adds certain rights for the owners of well-known marks. For geographical indications (articles 22–24), TRIPS provides protection against unfair competition and misleading use; clarifies to a certain extent the relation between GIs and trademarks and establishes a higher level of protection for wine and spirits or absolute protection. The holders of GIs can prevent the marketing of wine and spirits even if their labels indicate the true origin of the product or if they contain the GI in translation or if the GI is accompanied by expressions, such as "style", "type", "kind" [Gangjee 2007, Creditt 2009, Mulik and Crespi 2011].

On the above described trade laws both the US and the EU attach great importance to the protection of IPR and each has put in place a high-standard legal system of protection and enforcement [Sylvander et al. 2006, Belletti et al. 2009].

The EU has gone through a sophisticated process of assuming competence from its Member States to regulate in the field of IPR and has managed to Union-wide system for GI. As described by Barjolle et al. [2009] the EU has put in place a sui generis system on unitary GI protection since 1992. The Quality regulation (Regulation (EU) 1151/2012), which entered into force in January 2013, repeals the previous regulations to strengthen the scheme for protected designations of origin (PDOs) and protected GIs. It also provides a legal basis for inserting in the EU register third-country GIs protected through bilateral agreements and another legal basis for measures to defend EU logos. Chever et al. [2012] pointed out that in the EU, GI protection is said to be absolute – it protects registered names against any misuse or misleading practices, including when the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as style, type, method, as produced in, or similar, including when those products are used as an ingredient. Generic names (terms that have become common) cannot be registered as GIs. The EU also provides specific protection to wines and spirit drinks. The EU has an international policy on promoting and extending protection for its GIs, in particular through bilateral trade agreements. However, as mentioned by Babcock and Clemens [2004] as well as Rose [2007] the EU system is contested by certain third countries, including the US, which use different systems of protection and accuse the EU of impeding market access for their products.

Contrary to the EU's GI regime, the US law provides for a type of trademark that can serve a purpose similar to GI protection. The US protects GIs but only to the extent required by TRIPS and does not recognise a number of EU GIs. To operate like a GI, a linkage with origin must be part or all of the stated basis for certification [Akhatar and Jones 2014]. GIs are usually protected in the US under trademark law, as trademarks, collective marks or certification marks, and not under a sui generis system like the EU. Certification marks are used to indicate the regional or other origin; characteristics of the product/service (quality, mode of manufacture etc.); or that the labour on the goods/services has been performed by a member of a union or other association. Usually, the owner of a certification mark is a governmental body which does not use the mark but may

authorise other entities who meet the requirements to use it. Collective marks are marks adopted by a "collective" (association, cooperative etc.) which identify the goods and services as belonging to the collective and distinguish them from those of non-members. The collective itself does not sell the products/services (only its members do), but may advertise them. Finally, GIs can be protected as trademarks, when consumers recognise a certain sign referring to a geographical region as identifying a company or manufacturer [Cirlig 2014, Hajdukiewicz 2014].

The study by Chever et al. [2012] estimated that the EU's exports of GI products in 2010 were 11.5 billion GBP, representing 15% of all extra-EU exports of food and beverages. Again, half of this represents wine and another 40% spirits, and exports of agricultural and food GIs accounted for the remaining 9%. The US was the single largest market for the EU's GI products, and GIs accounted for 30% of all US imports of food and beverages from the EU. However, export values are concentrated in a small number of products: champagne and cognac from France; Scotch whisky from the United Kingdom; and Grana Padano and Parmigiano Reggiano from Italy. As Table 1 shows food related GI counts for rather small share of direct contribution of IPR-intense industries to employment and GDP in the EU and the US. Their contribution to EU's GDP in 2010 was on the level of 0.2%, whereas for the US it accounted for 0.9%. Similarly, the employment engagement was on the level of 0.8 and 0.1% respectively. However, as shown by Trachtenberg [2012] the importance of GI issue in trade negotiations between the EU and the US is that the EU recognises it to be competitive in the production of basic agricultural commodities but that its long culinary heritage has created a number of premium products which are valued by consumers in the marketplace.

Table 1. Share of direct contribution of IPR-intense industries to employment and GDP in the EU and the US in 2010 [%]

Types of products of intelectual property rights intensity	USA		EU	
	share of employment in total economy	share in total GDP	share of employment in total economy	share in total GDP
Trade mark intense	15.7	30.8	20.8	33.9
Including food products, wines and spirits (for US)	0.9	0.8	–	–
Design intense	3.4	4.8	12.2	12.8
Patent intense	2.7	5.3	10.3	13.9
Copyright intense	3.5	4.4	3.2	4.2
GI intense	–	–	0.2	0.1
Including food products, wines and spirits (for EU)	–	–	0.2	0.1

Source: Own calculation based on EU Eurostat and US Economics and Statistics Administration.

In order to reduce barriers to trade, such as tariffs and regulatory inconsistencies, between the two largest economies in the world, the EU and the US entered to the negotiations on the Transatlantic Trade and Investment Partnership. Trade barriers between the US and the EU are already remarkably low, with weighted tariffs for U.S. agricultural

exports to the EU averaging 4.8%, and 2.1% for EU exports to the US [Bureau et al. 2014]. The biggest challenge is however the very different approaches to regulation. The trade agreement could affect a broad range of sectors, and would have a significant impact on the evolution of agricultural markets and food systems in the US and the EU, including GI [Kaliszuk et al. 2013, Puccio 2015].

The major difficulty in the negotiations [Cirlig 2014] is around the use of EU GIs that the US considers generic and used so widely that consumers view them as representing a category of all of the goods and services of the same type. This may have arisen because European immigrants brought the names with them to the US and used them to promote their own products in their new home. As suggested by Trachtenberg [2012] the differences between the US and the EU on this issue are not differences in principle, but rather revolve around a number of specific names which are protected in the EU as GIs but which the US sees as generic. Though, two competing systems add costs, of course, for those attempting to have global protection for their GIs.

In order to foresight the possible impact of TTIP negotiations on both GI food markets, which includes also wines and spirits, the Real-Time Delphi survey was conducted. Table 2 describes the average assessments of the EU and the US experts on four investigated issues.

Table 2. Average results of Real-Time Delphi study (1 – the worst possible impact, 5 – the best possible impact)

GI related issues under assessment	Average score for the EU experts ($n = 26$)	Average score for the US experts ($n = 26$)
Competitiveness of products	4.20	2.90
Domestic market competition	1.95	4.13
Market development	3.38	2.13
TTIP value added	1.48	1.80

Source: Own investigations.

The analysis of the results from Table 2 indicate that overally TTIP is a low assessed by experts. Both the EU and the US experts thinks that it will add small value to the development of markets and their participants in both regions. They scored the value added impact for 1.48 points (EU) and 1.80 (US) out of 5 possible. As it is shown in Figure, the more primary element of the GI food chain, the lower assessment, respectively in both cases.

Taking into account the impact on markets development with regard to its institutional and organizational scopes the EU experts thinks that the TTIP will have higher positive impact (3.38) then their US counterparts (2.13). It can be regarded as interesting that the stakeholders such as policymakers and academics assessed this impact totally differently. The US experts saw it more negatively, as the EU more positively. This can be explained by the different levels of GI market developments and strategies assumed by both firms and regulators.

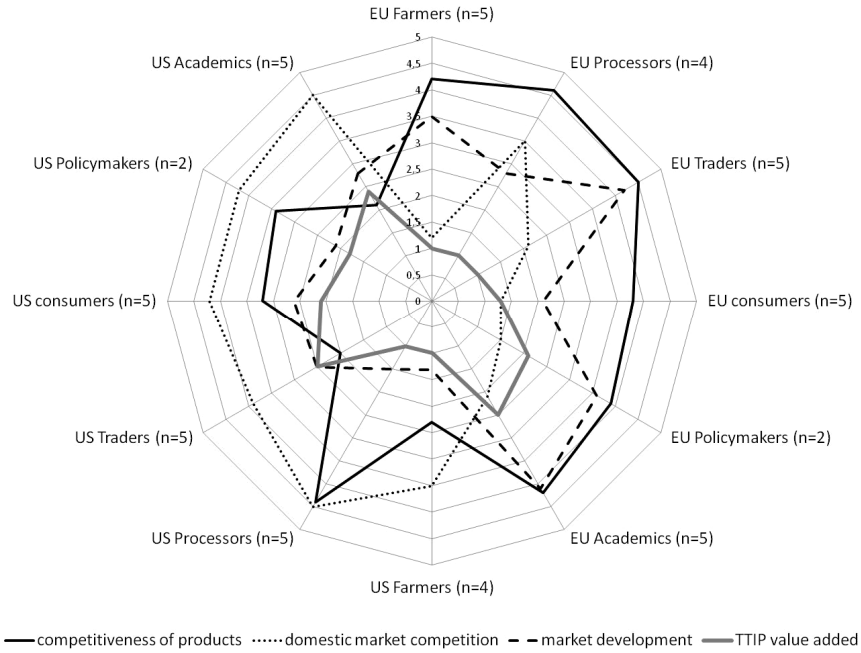

Fig. Results of Real-Time Delphi study (1 – the worst possible impact, 5 – the best possible impact)

Source: Own investigation.

Quite different views can also be seen in relation to competitiveness of the GI products and domestic market competition. The EU experts forth see that TTIP would negatively impact domestic market competition, while positively competitiveness of the EU GI products. Contrary, the US experts assumed that TTIP might impact domestic competition positively and the products competitive advantages negatively. It can be translated by the tradition, heritage and higher values associated to the GI products by Europeans [Guerrero et al. 2006].

CONCLUSIONS

Intellectual property rights are important issues in the development of markets, their industrial and institutional organization as well as trade. Implementation and mature diffusion of different legal regimes related to intellectual property, as it was shown on the example of geographic indications, might create significant barrier to the liberalization of international trade of quality food products. Therefore the on-going negotiations on the Transatlantic Trade and Investment Partnership would require significant adjustments and compromises from both negotiating parties, especially with regard to legal provisions. The possible impact on the GI food markets, especially with regard to competition and products competitive advantages highly depends on the development level of the markets

with regard to specific issues, such as heritage or tradition. The Real-Time Delphi survey shoved, that contrary to decision makers, the parties engaged in the market forth seen TTIP impact on GIS market overally as low. That could mean that TTIP might re-define the rules of the market game by changing the centre of the gravity from legal arrangements and control into to governance arrangements. In such a case the leading role might start to play market institutions such as locally and regionally oriented private quality standards, as well as consumer driven marketing strategies or two-side market platforms. These might be interesting issues for further researches.

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BADANIE METODĄ DELFICKĄ W CZASIE RZECZYWISTYM KONKURENCJI I KONKURENCYJNOŚCI OZNACZEŃ GEOGRAFICZNYCH JAKO PRZEDMIOTU NEGOCJACJI TRANSATLANTYCKIEGO PARTNERSTWA O WZAJEMNYM HANDLU I INWESTYCJACH

Streszczenie. Celem artykułu było przedstawienie kwestii oznaczeń geograficznych jako elementu negocjacji w zakresie praw własności intelektualnej negocjowanego między Unią Europejską a Stanami Zjednoczonymi Transatlantyckiego Partnerstwa o Wzajemnym Handlu i Inwestycjach. Stwierdzono, iż wdrożenie różnych reżimów prawnych związanych z własnością intelektualną może stwarzać znaczące bariery w liberalizacji handlu międzynarodowego produktami żywnościowymi wysokiej jakości. Korzystając z wyników badania foresight, wykazano, że umowa ta może wnieść małą wartość dodaną dla rozwoju rynków i ich uczestników w obu regionach. Może jednak pozytywnie wpłynąć na przewagi konkurencyjne produktów UE, jednocześnie negatywnie wpływając na konkurencję na rynku UE. Przeciwny wpływ przewidywany jest w przypadku USA, TTIP może pozytywnie wpłynąć na konkurencję na rynku, negatywnie zaś na konkurencyjność amerykańskich produktów.

Słowa kluczowe: oznaczenia geograficzne, IPR, TTIP, Real-Time Delphi, konkurencja, konkurencyjność

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