How the European Union is expanding the protection levels afforded to Geographical Indications as part of its global trade policy

Liam Sunner

Introduction

It can be said that the conceptual scope of intellectual property (IP) is a dynamic one, exponentially moving beyond the more limited original application. In addressing this evolution, the EU has taken numerous steps to account and facilitate the expansion to the conceptual scope. One key area has been the expansions to which well exemplify the EU expansive IP legal framework is that Geographical Indications (GI) for food and agricultural products, which has occurred in the decade following the introduction of the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS).1,2 By framing this research from the introduction of the Treaty of Lisbon, this approach highlights two keys developments within the discussion. First and foremost, the competence to act exclusively under the Common Commercial Policy (CCP) was greatly expanded and refined under the Treaty of Lisbon. However, while this expansion was significant, it still did not impose a defined limitation on this exclusive competence. Secondly, as the Treaty of Lisbon came into effect, one can see the shift in the terminology and scope of IP protection within the various agreements. In particular, from this period, a greater emphasis and explicit inclusion of GIs within the respective IP chapters have occurred.

Following this brief introduction, this article is divided into three sections, first, it examines the internal perspective and development of GIs within the EU. In doing so, this section charts the development within the Court of Justice of the European Union (CJEU) in delimiting the scope of protection afforded to GIs. This section then further examines this avenue of development within the context of a potential conflict with the principles relating to the free movement of goods. Secondly, and in a mirror of the first section, the article examines the external engagement by the EU towards GIs, in particular, the ever more prominent inclusion as part of its external trade. To this end, section two

The author

- Dr Liam Sunner is an Assistant Lecturer in Law at Maynooth University. He currently teaches European Union Law & Policy, European Union External Relations, and the Law of Equity & Trusts. His research has focused on the challenges arising from the intersection of human rights, protections of intellectual property, and international trade through the perspective of the European Union’s external action policy.

This article

- This article focuses on the development and expanded importance placed by the European Union and its trading partners on Geographical Indications. As a result of this importance, and the related inclusion as a competent of international trade, this article seeks to assesses how the European Union has included ever-higher levels of protection to Geographical Indications within its trade agenda.

- The article further addresses how the European Union wields the competence to act in this field but also how this is balanced against the related human rights concerns which may at risk as a result of this increased level of protection.

- This article offers some guidance for future development in the area, as the European Union is currently engaged in a number of similar agreements at the global stage, in which is it ever more becoming the dominant player.
address the competence of the EU to actually include GIs within its external trade, how this has developed with the Treaty of Lisbon and subsequently expanded. Finally, and building on the two previous sections, the third section charts the inclusion and proliferation of GI protection provisions within the various EU FTAs and similar economic agreements from 2008.

### 1. Within the European Union

The CJEU case law in this area seems to exemplify a trend of expansion of the protection of GIs, mirroring (at least partially) the international development spearheaded by the EU. This expansion internally followed the EU’s position as was one of, if not the, most significant actor seeking higher levels of protection for GIs during the Doha Round of negotiations of TRIPS.

With regards to GIs, case law also shows the intention of the CJEU to protect consumers, preventing the use of the GIs to potentially mislead as regards the source of the good. This potential of misleading the consumer is determined at the EU level, rather than consumers of the specific region. However, to satisfy this condition, the good in question must fall within the product specification for the origin of the good, or requiring the packaging of the product as well as its production to occur within the specific region. Further, once granted, this protection may not be altered by domestic legislation.

Thus, while GIs, often perceived as a novel and minor IP right, have been recognized by the EU the prohibition of market restrictions and the protection of consumers, the CJEU adopts in most cases a very ‘market oriented’ view. For example, in Prantl, the Court held that Member States’ provisions restricting certain design elements of a wine bottle (such as shape or size) to a limited number of domestic producers, while simultaneously prohibiting such design to imported products, have an equivalent effect to a quantitative restriction. The CJEU held that the legislation of a Member State may, in order to protect a designation of geographical origin in the interests of consumers, prohibit the marketing of wines imported in a certain type of bottle. However, when the use of that shape or similar shape of bottle accords with fair and traditional practice in the State of origin, and any such legislation that prohibits the use of bottles for the imported wine constitutes a measure having an effect equivalent to a quantitative restriction. The CJEU continued with a rejection of the justification of such restriction of design elements on the grounds of public policy, also dismissing the justification of protecting a design element, which was traditionally associated with domestic producers on the grounds of fair and traditional practices.

In the late 1990s and early 2000s, the concept of GIs became increasingly visible in EU free trade agreements (FTAs) of the era. The CJEU adopted a more nuanced view in relation to ‘luxurious’ food and beverages, which enjoyed significant economic benefits from exportation to other Member State and foreign markets, often on the strength of the name and the perceived quality attached to it. For example, in Gorgonzola, the CJEU held that the Member States are not precluded from introducing measures, including but not limited to the prohibition of importation of goods, with the intention of protecting GIs recognized under Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of Geographical Indications and designations of origin for agricultural products and foodstuffs. The protection of GIs and their ability to restrict or prohibit its free movement is further seen in Prosciutto di Parma. The CJEU held that a requirement for certain elements of preparation to occur within the Member State it was marketed in, while normally would amount to having an equivalent effect to a quantitative restriction, was justifiable and thereby compatible with Article 30 of the Treaty on the Functioning of the European Union (TFEU).
The development of case law highlighted the balance between ensuring adequate protection for the GIs and protecting the free movement of the internal market. In doing so, the CJEU also examined the terms which can be protected, their requirements, and their limitations. This provided a strong foundation for the expansion of both the general protection afforded to GIs at the international level and what would fall within the classification, as many of the EU’s trade agreements have annexes relating to the mutual recognition of geographical indication.

2. Competence to act regarding Geographical Indications

The evolution of trade-related external competences, as already mentioned, centres on the common commercial policy (CCP) as a core legal basis for undertaking trade commitments externally. This section focuses on the CCP and relevant CJEU jurisprudence, with a particular view of highlighting its scope and limits. In line with Article 3(1) TFEU, the EU is granted the exclusive competence over the CCP under Articles 206 and 207 TFEU. Article 206 TFEU briefly sets the objectives for competence over the CCP under Articles 206 and 207 TFEU. Article 206 TFEU briefly sets the objectives for the CCP:

By establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

This is the given explicit effect and scope of operation under Article 207 TFEU. The importance of the CCP as a ‘prime specimen of an exclusive external competence’ cannot be overstated. Some describe the CCP as ‘the most supranational, and the most successful of the EU’s external policies, through which it demonstrates real weight and influence in the world’. Despite its prominence, the CCP and, more precisely, the scope of the CCP have not been unquestioned. By contrast, the extent to which the EU could act under the CCP has been subject to a high level of debate over the course of its evolution within the broader discussion on the scope of EU’s powers, and on the application of the principle of conferral in the EU external action. However, the debate of the existence and extent of an external competence has also direct consequences for the decision-making process of the EU. As mentioned, IP matters have come to fall within the CCP. Originally, IP was considered as part of the general competence for property and international trade. Under the Treaty of Nice, the ‘commercial aspects of IP’ were specifically mentioned to fall within the scope of the CCP. This explicit competence over the ‘commercial aspects of IP’ was then retained under...
Article 207(1) TFEU. While the competence over IP is an expressed competence, there remain questions over the precise scope of the commercial aspect. This uncertainty concerned the extent to which the EU can act alone on IP matters, in particular, the extent (and the exclusivity) of EU competences in the field of IP. Cremona succinctly summarizes this uncertainty as:

the procedural clash between 'EU-only' and 'mixity': the question whether an international agreement is to be concluded by the EU alone, or alternatively, may or must include the Member States as contracting parties in their individual capacity.24

This was particularly evident in the interpretation of IP within the context of Article 207(1) TFEU and Article 3(2) TFEU. The CJEU has discussed the matter in a series of cases. The picture that emerges is that IP matters fall within the exclusive competence of the EU, either by being part of the CCP, or in light of the ERTA doctrine and by virtue of Article 3(2) TFEU. This avenue was followed and confirmed by the CJEU in Commission v Council (Lisbon Agreement).25 The CJEU was again requested to examine whether an exclusive competence on IP was based on either Article 207 TFEU or under the ERTA doctrine. This followed a request by the Commission to annul the decision of the Council,26 which had authorized the negotiations for a revision to the Lisbon Agreement for the Protection of Appellations of Origin and Geographical Indications.27 The Council, in turn, sought for the matter to be dismissed, with the claim it had correctly departed from the Commission’s original recommendation that it held the competence. The Council based this departure from the Commission’s proposal on Articles 114 and 218(3) and (4).28 In the request to annul the decision, the Commission was, in fact, asking the CJEU to once again clarify the scope of the CCP.29 More specifically, the CJEU would have to examine the scope of the ‘commercial aspects of IP’ in relation to Article 207(1) TFEU.

Following from Opinion 2/15 and Opinion 3/15,30 Advocate General Bot suggested that the Commission’s claim that the matter fell within the scope of the Article 207(1) TFEU as it related to the commercial aspect of IP. All this meaning that it would within the CCP.31 Further, Advocate General Bot noted that ‘under Article 3(1) TFEU, the Union has exclusive competence in the area of the common commercial policy’.32 As such, this would be a sufficient basis for the CJEU to grant the annulment sought by the Commission.33 The CJEU matched the opinion of Advocate General Bot. First, by confirming the position and applicability of Articles 3(1) TFEU and 207(1) TFEU.34 Secondly, the Court confirmed the CCP as being the correct avenue to address the matter.35 Finally, the CJEU reaffirmed, in line with its previous case law:

that international commitments concerning intellectual property entered into by the European Union fall within the common commercial policy if they display a specific link with international trade in that they are essentially intended to promote, facilitate or govern such trade and have direct and immediate effects on it.36

It was then necessary to determine whether the draft agreement would have a direct and immediate effect on trade in the area. The CJEU held ‘the aim of the draft revised agreement must be examined in light of the international agreements forming its context’.37 The CJEU followed the opinion of Advocate General Bot and considered the purpose of the draft agreement.38 The agreement was not a stand-alone one. Rather, it would only serve as a further means for the parties to develop and enhance trade.39 The CJEU held that the purpose of the draft agreement was to facilitate and govern trade, but in doing so, this would have a direct and immediate effect on trade.40 The draft agreement:

24 Judgment of the Court of 25 October 2017, Commission v Council, Case C-389/15, EU:C:2017:798, para 1.
25 ibid para 1.
26 The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon 3 October 1958, 828 UNTS 205).
27 Opinion of Advocate General Bot of 26 July 2017, Commission v Council, Case C-389/15, EU:C:2017:604, para 19.
28 Judgment of the Court of 25 October 2017 (n 24) para 45.
29 Opinion of the Court of 16 May 2017, Opinion pursuant to Article 218(11) TFEU, Opinion 2/15, EU:C:2017:376: Opinion of the Court of 14 February 2017, Opinion pursuant to Article 218(11) TFEU, Opinion 3/15, EU:C:2017:114.
30 ibid para 45.
31 ibid para 93.
32 Judgment of the Court of 25 October 2017 (n 24) paras 46–47.
33 ibid para 48.
34 ibid para 49.
35 ibid para 52.
36 Opinion of Advocate General Bot of 26 July 2017 (n 27) para 79.
37 Judgment of the Court of 25 October 2017 (n 24) para 61–63.
38 ibid para 74.
39 ibid para 74.
40 The Cariforum nations are a collection of Caribbean nations engaged in economic dialogue with the EU. It includes Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Suriname, and Trinidad and Tobago. Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, signed 10 October 2009, OJ L 289, 30 October 2008. Hereafter the EU-Cariforum agreement.
falls within the exclusive competence which Article 3(1) TFEU confers on the European Union in the field of the common commercial policy envisaged in Article 207(1) TFEU.\textsuperscript{41}

While it is a relatively shorter judgment, in part as a result of the prior case law having charted a path on the scope of the CCP, the re-affirmation of these principles is still highly significant and welcomed. Although this case does not serve to show a hard or upper limit on the operational scope of the CCP, it does serve as a guiding point in the overall interpretation. As such, this will facilitate future questions on the matter, as a result of the expansion of GIs within the newer generations of trade agreements.

3. Geographical Indications within the various trade agreements

As highlighted above, from the early 2000s, IP has been a more visible and contested area of negotiation. The EU agreements mirror the global rise of bilateral and multilateral agreements, including many new or expanded IP protection provisions, in particular those afforded to GIs. The introduction of TRIPS-Plus provisions was, however, considered still insufficient. This led to further expansion in agreements concluded in a post-Lisbon environment. Such expansion was to the point of envisaging a maximum level of protection.

The first of such was the Economic Partnership Agreement with the Cariforum nations.\textsuperscript{42} The EU–Cariforum agreement marked a significant development in the area of IP protection and enforcement. This was reflective of the developments of the previous decade. The concept of IP as a part of overall trade was firmly established in the global economy, with the view of IP as another commodity of trade. However, while recognizing the significance of IP to engage and foster economic development,\textsuperscript{43} the agreement shows awareness by the Parties of the possibilities for abuse and unjust burden on the Cariforum nations for unilateral adoption of the ‘highest international standards’.\textsuperscript{44} From this basis, the EU–Cariforum agreement then classified GIs within its broad definition of IP terms. While this was primarily focussed on copyright, trade mark and patent protection, this expansion served as a key part of setting the stage for further expansions in later agreements. This was soon followed with the EU–South Korea Agreement,\textsuperscript{45} it being ‘one of the first bilateral trade agreement in which the explicit TRIPS-plus mandate of the “Global Europe” strategy has been incorporated’.\textsuperscript{46} The EU–Colombia and Peru agreement,\textsuperscript{47} in placing the discussion of protection and limitation provisions related to GIs under Articles 207–214, illustrates the increased visibility and importance the parties placed on GIs. Furthermore, the terms themselves entail a significant expansion compared to previous agreements are reflective of the importance associated with GIs by the EU.

In 2014, the EU continued its trade and development agenda as part of its European Neighbourhood Policy (ENP). Under the ENP, the EU completed Association Agreements with the Ukraine,\textsuperscript{48} Moldova,\textsuperscript{49} and Georgia.\textsuperscript{50} These agreements differed from previous agreements from within the ENP stemming from the expansion to the competence of the EU following the Treaty of Lisbon. As such, the global and internal EU developments concerning IP protection and enforcement have a significant impact. While those agreements may differ in a few parts, they are largely identical from an IP perspective. Hence, they will be discussed together. This focus on trade and other commercial aspects within the agreements’ IP provisions is further illustrated in relation to the scope and nature of the agreements.\textsuperscript{51} Additionally, the respective provisions for

\textsuperscript{41} art 131(2) of the EU–Cariforum agreement.
\textsuperscript{42} art 139(2) of the EU–Cariforum agreement.
\textsuperscript{43} Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part signed 12 October 2010, OJ L 127, 14 April 2011. Hereafter the EU–Korea agreement.
\textsuperscript{44} European Parliament, An Assessment of the EU–Korea FTA, Directorate-General for External Policies Policy Department, <http://http://www.europol.europa.eu/RegData/etudes/etudes/join/2010/133875/EXPO-INTA_ET(2010)133875_EN.pdf>, 83. Last accessed 26 January 2021.
\textsuperscript{45} Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part OJ L 354, 21 December 2012.
\textsuperscript{46} Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, signed 21 March 2014, OJ L 161, 29 March 2014. Hereafter the EU–Ukraine agreement.
\textsuperscript{47} Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part signed 27 July 2014, OJ L 260, 30 August 2014. Hereafter the EU–Moldova agreement.
\textsuperscript{48} Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, signed 27 July 2014, OJ L 261, 30 August 2014. Hereafter the EU–Georgia agreement Article Agreement.
\textsuperscript{49} art 158(1) of the EU–Ukraine agreement, art 228(1) of the EU–Moldova agreement, and art 151(1) of the EU–Georgia agreement.
\textsuperscript{50} European Commission, ‘Geographical Indications and TRIPs: 10 Years Later… A roadmap for EU GI holders to get protection in other WTO Members’ <https://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_150988.pdf> Last accessed 26 January 2021.
\textsuperscript{51} Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, signed 10 June 2016, OJ L 250, 16 September 2016. The SADC is made up of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Mozambique, the Republic of Namibia, the Republic of South Africa, and the Kingdom of Swaziland. Hereafter the EU–SADC agreement.
the commercially based IP elements are greatly expanded (far beyond what was provided in previous agreements). The expansion serves to show the importance the EU attributes to each. This is particularly evident in relation to GIs, in no small part due to its increased importance within EU trade.\(^{52}\)

From this new approach, the EU has been quite active on the international scene, by undertaking the negotiation of and concluding various agreements. In 2016, the Economic Partnership Agreement between the EU and the Southern African Development Community was concluded.\(^{53}\) From an IP perspective, this was addressed under the heading of 'Cooperation on Protection of Intellectual Property Rights' in Article 16. However, in so doing, the protection and cooperation of GIs is discussed in a significantly more detailed manner. While first acknowledging the duty to cooperate under Articles 22–24 of TRIPS, the Parties must also 'recognise the importance of GIs and origin-linked products for sustainable agriculture and rural development'.\(^{54}\) This recognition is supplemented by a duty to cooperate with 'reasonable requests to provide information and clarification to each other on Geographical Indications and other IPR related matters'.\(^{55}\) The explicit reference to GIs within the provisions illustrates the additional importance placed on them by the Parties (in comparison to the traditional elements of IP).

The Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU was completed in 2017.\(^{56}\) CETA adopts a commercially focussed perspective and strongly emphasizes the protection of IP. This stems from the core objectives of CETA and continues through to shape the specific IP provisions under Article 20(1) CETA. In doing so, address the protection afforded to the commercial aspect in a compressive and robust manner in Section B of Chapter 20.

One of the more recent FTAs, finalized in 2014, but not concluded until 2018, is the EU–Singapore agreement.\(^{57}\) IP is addressed under Chapter 10 of the Agreement. Article 10(1)(a) obligates the Parties to ensure an 'adequate and effective level of protection of intellectual property rights and the provision of measures for the effective enforcement of such rights'.\(^{58}\) The EU–Singapore agreement, mirroring other agreements in this 'third era', requires the Parties to re-affirm their 'commitments under the international treaties dealing with intellectual property, including the TRIPS Agreement'.\(^{59}\) Once more, there is a robust sub-section on the protection and enforcement measure required for GIs, supplemented by a defined but adaptive table for approved GIs.

The EU and Japan completed an FTA in 2018.\(^{60}\) Similarly to CETA, the EU–Japan agreement seeks higher and more expansive IP protection measures.\(^{61}\) However, Article 14(2) includes the obligation to take into account the public policy objectives of the Parties across the goal of promoting innovation and creativity, fostering competition through IP, and facilitating the diffusion of information, knowledge, technology, culture and the arts. Significantly, Article 14(2) ends with the obligation to take 'into account the interests of relevant stakeholders including rightsholders and users'. While this is still strongly operating from the perspective of the commercial aspects, it is an important inclusion as it brings users at the forefront.

The EU and Vietnam have also recently completed an FTA.\(^{62}\) The EU–Vietnam agreement follows services between the Parties and to increase the benefits from trade and investment, the Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and provide for measures for the enforcement of intellectual property rights against infringement thereof, including counterfeiting and piracy, in accordance with the provisions of this Chapter and of the international agreements to which both Parties are party. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter.\(^{63}\)

\(^{52}\) art 16(3) of the EU–SADC agreement.

\(^{53}\) art 16(4) of the EU–SADC agreement.

\(^{54}\) Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part OJ L 11, 14 January 2017.

\(^{55}\) Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part OJ L 284, 14 November 2019. Hereafter the EU–Vietnam agreement. While the text of the agreement has been finalized, due to the original nature of the agreement to include investment and dispute resolution, presented some issue regarding the EU’s competence to act on the matter. This led to the delay of the signature of the EU–Singapore agreement until Opinion 2/15 held the EU held sufficient competence to conclude the agreements. This is discussed supra Chapter Four Section 4. However, elements relating to Foreign Direct Investment and the associated settlement mechanism were moved to a separate agreement due to lingering questions regarding their competence.

\(^{56}\) art 10(1)(b) of the EU–Singapore agreement.

\(^{57}\) art 10(2) of the EU–Singapore agreement.

\(^{58}\) Hereafter the EU–Japan agreement.

\(^{59}\) Hereafter the EU–Japan agreement.

\(^{60}\) Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam OJ L 186, 12 June 2020. Hereafter the EU–Vietnam agreement.

\(^{61}\) Dev Gangjee, Reallocating the Law of Geographical Indications (CUP 2015).

\(^{62}\) Tanguy Chever et al, ‘Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a Geographical Indications (GI)’, European Commission, 2012, available at <https://ec.europa.eu/agriculture/external-studies/valuegi_en> last accessed 26 January 2021. The authors note the value of GIs at €1.5 billion and 15% of the total value of food and drinks exported by the EU.
a similar route, seeking to protect the human rights obligations of the parties first. It then discusses IP under Chapter 12 and includes a robust development of the various IP elements, in particular GIs, as well as enforcement provisions. In doing so, Article 12(27) requires the Parties to agree to protect the mutual recognition of agreed GIs, as well as the mechanism to revise this list following domestic regulations and recognition. However, the language within Chapter 12 does not seem to overtly reflect this obligation.

Concluding remarks

As one can see from this succinct discussion, the increased importance placed on the protection of GIs is evident. In these agreements, the evermore robust protections afforded to GIs is not only meant to allow trade restrictions in case of infringement, but it is also seeks to foster the commercialization of protected goods in third countries in line with the general objectives of the agreements. This increased emphasis has stemmed from the value of GIs exported by the EU and the proportion of food and drinks. While the protection and expansion of recognized GIs are long-standing goals of the EU trade policy, this increased level of protection and recognition is something which often places them at odds with other developed nations, the USA in particular. Previous efforts to harmonize and create a standardized body of mutual recognition for GIs have been a noted point of contention in relation to TRIPS and its subsequent revisions.

There is also the ongoing question whether stronger IP protection measures and, in this context, strong enforcement of GI protection serve to restrict or enhance trade. As such, it seems worthwhile to highlight that the primary use of GIs by the EU relates to food and drink classifications. However, while this might arguably provide for a better protection of certain agri-food goods allowing for trade restriction, it raises the question of the commodification thereof. This is problematic as the goods classified covered by GIs must show a tangible geological and cultural association with a specific region. As such, the expansion of GIs protection in EU agreements runs the risk of a further commodification of a good which has a cultural value, at the expense of cultural rights associated with GIs.

As a result of the expanded competence to address IP under the CCP and the implicitly derived competence under the ERTA doctrine, the EU has sought to bring about significant IP provisions in its own agreements. As a result of this increased competence, also mirroring the EU objective to protect trade (including IP), the agreements negotiated during the third era were considerably more comprehensive in their scope and how they addressed the various elements of IP. The expanded scope has been further guided by the internal developments of the past two decades within the EU and what is considered to be IP and how each individual element should be protected. As such, the agreements in this era address various IP elements individually and give considerable attention to their implementation. This has marked a significant departure from the vague and sweeping ‘highest international standards’ previously seen.

On the whole, the expansion of the EU external competences not only have determined increased levels of IP protection within the EU agreements. The above agreements pay great attention to GIs. Unlike trade marks, patents, and copyright, GIs were not traditionally recognized as an element of IP, nor were they present in the earlier agreements discussed above. Even though the EU protection of GIs has met with push-back from the USA, the EU has succeeded in including GIs recognition within all the most recent agreement. Furthermore, the agreements address the technical and administrative aspects of GIs in a manner which mirrors the development within the EU. Ultimately, IP provisions in EU agreements, as a result of their expansion entail a broader material scope of IP, which—in turn—mirrors the expansion of EU law internally. In all this, the protection and importance attributed to GIs is a key concern and goal. However, it must also be examined in praxis: while the expansions to IP protection has been mostly related to commercial aspects, the EU has still a quite ambivalent attitude as regards the non-commercial aspects of IP and the balance between IP and competing culturally focussed human rights obligations, in which once again the importance of GIs is key.

63 Steven A Bowers, ‘Location, Location, Location: The Case against Extending Geographical Indications Protection under the TRIPS Agreement’ (2003) 31 (2) American Intellectual Property Law Association Quarterly Journal 129, 134.

64 Steven A Bowers, ‘Location, Location, Location: The Case against Extending Geographical Indications Protection under the TRIPS Agreement’ (2003) 31 (2) American Intellectual Property Law Association Quarterly Journal 129, 134.