

PORK PIES AND PARMA HAM: BREXIT AND THE PROTECTION OF GEOGRAPHICAL INDICATIONS FOR FOOD AND DRINK

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We recently discussed [the potential effects of Brexit on the food and drink sector in relation to food labelling requirements](#).

In this article we review the potentially complex and disruptive implications of both a 'deal' and 'no deal' Brexit for UK and EU producers of GI-protected products given the current huge economic benefit (and cultural value) for the UK with over £5 billion gained in annual exports of GI-protected products.

Introduction to geographical indications

Geographical indications (GIs) are a form of intellectual property which are used to identify food and drink products as originating in a given geographical area - whether that be a country, a region or a locality within it. Only those products originating from the geographical area are permitted to use the [GI](#). Well known examples of protected UK products include Melton Mowbray pork pies and Scotch whisky. Some relatively familiar continental examples include Parma ham and Champagne.

Signatories to the World Trade Organisation's (**WTO**) Trade-Related Aspects of Intellectual Property Rights agreement (**TRIPS**) are required to establish legal frameworks within their own jurisdictions to provide for the protection of [GI-protected products](#) and a regime of enforcement against infringement of these rights.

The UK currently fulfils this obligation through its membership of the EU, which has introduced a set of regulations which give effect to the obligation under [TRIPS](#). These create a [GI](#) scheme which allows member states and third countries to apply for

protection across the single internal EU market.

A new UK GI scheme

At the time of writing there are only two options available to the UK on leaving the EU.

The first is to ratify the deal negotiated and agreed with the remaining members of the EU in the form of the Withdrawal Agreement (perhaps with minor modifications, if it is possible for any to be agreed). In this article we refer to this as the 'deal scenario'.

The second is to leave the EU without any kind of agreement. This is the 'no-deal scenario'.

In due course Parliament may reject both of these options and seek time to pursue a different one, but for present purposes, we will not speculate about those hypotheticals.

Irrespective of whether the UK were to leave the EU under a deal or no-deal scenario, it will ultimately need to have in place a new GI scheme to meet its obligations under TRIPS.

The current proposals, recently consulted upon by the Department for Environment, Food and Rural Affairs (**Defra**), are that the UK will have its own GI scheme which will broadly follow and be based on the current EU scheme. The substantive changes are likely to consist of a new UK logo and revised application and appeal procedures to reflect the fact that decisions on which products will be protected within the UK are to be made exclusively by domestic authorities.

With regard to the new UK logo, Defra's proposals are that GI products protected under both the UK and the EU schemes may bear both logos, but where the producer wishes only to use only one logo then any product placed on the UK market would need to bear the UK one. However, it is also proposed that there will be a three-year adoption period to transition to the new logo rules, which Defra predicts would reduce the cost burden of making the changes by 95%, compared to an immediate requirement to do so.

The key question that remains to be answered with regard to the UK GI scheme is the date from which it will take effect. In a no-deal scenario, it will take effect from 29 March 2019. If there is a deal in the form of the Withdrawal Agreement or something essentially equivalent to it, it will take effect from the end of the transition period (unless future trade agreements provide otherwise).

Brexit with a deal

In a Brexit deal scenario, the current EU scheme will continue to apply during the transition period by virtue of the provisions of the Withdrawal Agreement (Article 127(1) of the Agreement). On that basis there will be no effective change for UK food businesses with GI protection during this period.

In addition, any UK GI which forms part of the EU scheme at the end of the transition period will automatically be covered by the UK scheme from that date.

However, it is unclear whether those UK GIs will also continue to be recognised by the EU scheme and/or the schemes of third countries which currently recognise them because of trade agreements with the EU.

This can be contrasted with the protection afforded to the interests of the 27 remaining member states of the EU, under the Withdrawal Agreement, with regard to the recognition and protection of their GIs under the new UK GI scheme. The Agreement achieves this by stating that all GIs covered by the EU scheme on the end date of the transition period (including therefore any which gain protection during the transition period) must automatically be recognised by the UK under its new scheme (Article 54(2) of the Agreement). In other words, there will be no opportunity for the UK to undertake a re-examination of the GI for that purpose or any need for an EU food business operator to apply to the UK for the protection or recognition of its GI within the UK.

At first glance it is surprising that the UK government did not insist on a reciprocal provision within the Withdrawal Agreement with regard to the protection of UK GIs within the EU following the end of the transition period. However, this is perhaps a good example of the respective negotiating strengths of the parties, as observed by many commentators.

In its consultation on the new UK GI scheme, Defra asserts that UK GIs will automatically be protected within the EU, and in third countries already party to trading agreements with the EU, after the end of the transition period. It is unclear on what legal basis the government makes this statement with such confidence. Perhaps it believes it will be able to negotiate this reciprocal protection during the discussions on the future trade agreement. It remains to be seen whether this can be delivered in practice.

Brexit without a deal

Should the UK leave the EU without a deal, the new UK GI scheme will, as noted above, take effect from 29 March 2019. For those UK producers with GIs protected under the current EU scheme, the introduction of the new scheme will have little initial impact on operations within the UK - the stated labelling changes will be held back, and all existing UK GIs will automatically be covered by the UK scheme.

However, in this scenario, protection in the EU may immediately fall away. New UK-based applicants will need to apply separately to the UK scheme and the EU scheme, should they wish to be protected in both - this will likely be procedurally similar, albeit with different decision-making bodies.

In contrast to the deal scenario, non-UK GI products protected under the current EU scheme, which would otherwise be protected by the provisions in the Withdrawal Agreement, will not be automatically recognised by the UK. Therefore, unless an alternative arrangement were to be separately agreed between the UK and EU, EU food businesses would need to apply under the UK GI scheme for their GI products to be protected within the UK.

Summary

It is clear that there is a legal lacuna with regard to the continued protection of existing UK GI-protected products, both within the EU and internationally, in both the deal and no-deal scenarios.

To that end - given the transition period inherent within the deal scenario and the time that would be available during the transition period for the UK government to negotiate more favourable enduring arrangements to apply once that period comes to an end - a no-deal Brexit looks clearly to be the most damaging outcome when it comes to GI protection for UK food businesses.

Furthermore, in a no-deal scenario, this uncertainty exists not only for UK food businesses but also for EU food businesses because, as things currently stand, their products would not automatically be recognised within the UK.

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