

EU and China sign geographical indications agreement

A new bilateral agreement promises mutual recognition of certain geographical indications from Europe and China. **Katharina König** and **Matthew Murphy** explain

On June 2 2017, after several years of negotiations, the European Commission and the Ministry of Commerce of the People's Republic of China published a press release with a list of Geographical Indications (GI), that are to be protected in a bilateral agreement by the end of 2017. With around 100 GIs involved from each side, the project can be regarded as a landmark in the economic relationship between the EU and China. This article explores how this agreement has come about and its ramifications for GIs, intellectual property owners and consumers.

Geographical indications

Following the definition of the World Intellectual Property Organization (WIPO) a GI is generally considered to be "a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin". To be protected as such, a product must therefore be labelled as being produced in a given region and must exhibit certain qualities and characteristics, which are dependent on the environmental or cultural conditions of the relevant place. Usually a GI consists of a geographical name, although a sign or symbol associated with a certain region can meet the abovementioned criteria as well.

With GIs being an IP right, the TRIPs Agreement dedicates one of its eight sections to them. With the TRIPs Agreement asking its member states to provide legal means to protect GIs in Article 23, their importance for producers, economists and consumers has increased continuously over the last 20 years.

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Earlier this year, the European Commission published details of a bilateral agreement with China's Ministry of Commerce. Under the agreement, each side will protect around 100 geographical indications from the other. While there is a long history of recognising GIs in the EU, the law in China is more recent, and provides GI owners with various means of securing protection – via certification/collective marks and a sui generis system. The approval stage in the agreement has now passed, and it is expected to be applied in full by the end of this year. After that, the big test will be how effectively GIs can be enforced in China, and what impact the new protection will have on GI holders, consumers and other parties.

EU legal framework for GI protection

The laws of the member states of the EU have always shared the goal to protect consumers from misleading labelling and to preserve producers from unfair competition. The key issue for GIs has therefore always been represented in the individual laws of countries. However, as early as 1979 the *Cassis de Dijon* judgment made it necessary to seek a common, European approach. Therefore Council Regulation 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs entered into force, covering all agricultural products. In this sense, the European protection of GIs has become a sui generis system. And ever since, the EU has entered into many bilateral and multilateral agreements on GI protection with trade partners such as Australia, Canada and Mexico. According to the European Commission for Agriculture and Rural Development, the initiatives have encouraged non-EU countries to develop a protection system on their own, eventually building a global consensus for the protection of GIs.

Besides the bilateral agreements, aspirants may also register GIs directly by passing the following stages:

- **Application:** While EU applications are to be processed through the respective national legislation, parties from non-member states may apply directly through the Commission. However, protection will be granted only if the product is already protected in its country of origin.
- **Examination:** The Commission will then examine whether the application meets the demands of the Regulation and will make a decision within no more than 12 months.
- **Publication:** In the next stage, the Commission will publish the list of names, which have been registered.
- **Objection:** Within six months of the publication, any member state, third country or person having a legitimate interest to object has the opportunity to challenge the names listed. The procedure intends to give parties with admissible concerns the opportunity to come to an agreement on the names listed. At this point we can see a parallel with the present agreement with China. Though not being a direct registration, the recent publication of names aims to give interested parties the opportunity to raise concerns or to comment.
- **Registration:** With completion of the above stages, the name will be registered in the European Register of Protected Geographical Indications and Designations of Origin.

Though this procedure applies only to agricultural products, its steps are identical to the process of the regulatory framework for the protection of wines and spirits.

Though varying from country to country, the different compliance and monitoring measures are to prevent the use of an indication by someone whose product does not accord to the standards set out by a certain GI. However, a GI is not a defensive right against anyone making a product by using the required technique. Typical products that show characteristics of their place of origin would be agricultural products, foodstuffs as well as wines and spirit drinks (such as Roquefort cheese or Grana Padano). But this listing is not exhaustive, and handicrafts and other industrial products (such as Swiss watches) can also be suitable for a GI.

China's legal framework for GI protection

With China being one of the largest importers and consumers of food in the world and the Chinese Ministry of Commerce predicting that the import rate will grow by 15 % annually, the protection of GIs is of increasing importance for foreign companies. However, the high export rate of Chinese agricultural products suggests an impact also on local producers.

Though GIs were the earliest names protected in the Chinese legal system, it did not distinguish them from other trade marks. Only with a revision in 2001, following WTO membership, was the Trade Mark Law amended to define GIs with the protection of certification and collective marks. Nowadays they are protected in a dual system – first through the mentioned Trade Mark Law, and second by a sui generis system.

Recognition of a GI via the Trade Mark Law is done by its registration as a certification or collective mark. For foreign producers it should be remarked that consumers prefer to accept a Chinese translation of the respective name. Article 6 of the Regulation for the Implementation of the Trade Mark Law, the TML requires the application to be submitted by a Chinese trade mark agent to the Chinese Trade Mark Office (CTMO). Like the European regulatory framework, an application is only accepted if the name to be registered already enjoys protection in its country of origin. In addition to that, China only accepts the GI organisation of the country of origin as an admissible applicant.

This system is a first-to-file system, meaning that a GI may have already been registered as a trade mark by another producer. However, any person or organisation whose product meets the quality standards of the GI can request the use of the already registered certification or collective mark.

As mentioned above, an additional registration at the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) is possible. This sui generis system will offer protection by recognising products which meet certain standards and are of high quality.

Though China does not seem to have clear implementing rules for any bilateral agreements and the multiple registration system is quite unclear, the now published lengthy list is expected to strengthen and extend the protection. And nevertheless, apart from the 10plus10 project (see below), quite a few businesses have already registered GIs in China. The names Bordeaux, Champagne, Scotch Whisky, White Stilton Cheese and Pomerol, to name just a few, have already made their way through the Chinese registration system.

Bilateral agreement between EU and China

The present list of 200 names is not a random compilation and they certainly came not by surprise. The names are the result of long cooperation between the EU and China and several years of negotiation were put into their publication.

The first discussions began 10 years ago with the protection of only 10 GIs from each side, called the 10plus10 project. As stated above, the GI systems are quite similar, but according to the European Commission's statement, "significant differences in procedures and linguistic problems had to be overcome." However, it seems that the knowledge acquired in the process will now pave the way for the ratification of the upcoming agreement. The negotiations on this, much wider and therefore more influential, treaty started in 2010. With the publication of the names, it is now up to any interested party to comment or raise concerns within a timeframe of two months. As a matter of fact, 21 of the European GIs have been already registered in China directly sui generis but they are planned to be attached to the agreement anyway. Concerning these names, no objections are expected to be raised. Nevertheless, the next few weeks will indicate whether any comments have been given on the remaining GIs, both from the European and the Chinese side. This is the stage in which outside parties may take the biggest influence on the agreement and undertake consultations with the European Commission and the Chinese authorities. Therefore we expect the publication to already have quite an effect on the marketing strategies of the relevant companies and regional producers. The next weeks will show a result but it seems that the long-developed, well-balanced list will not fall victim to any significant modification.

The cited products were selected based on their predicted demand in the countries and include names such as Bayerisches Bier, Feta, Gorgonzola and Pecorino Romano from the European side. The Chinese products listed include Yantai Apple, Hengxian Jasmine Tea, Panjin Rice and Baise Mango.

Future steps and implications

There being strong economic ties between the EU and China, the success of the 10plus10 project is to be extended. And as there is a growing taste for European food and drink products in China, the Chinese agricultural sector wants to make its products more widely available in Europe too. As mentioned above, the country is rather late in protecting GIs. However, there is a wide range of local products corresponding to the concept of GIs, which shall now be protected globally. The same applies for producers in Europe. With their GIs being protected in China, they hope to reduce the risk of counterfeiting in the country. Moreover, China ranks among the five most important export markets for European GI products. This fact is of quite some significance for the European agricultural sector, as its GI market makes up 15% of all food and drink exports. Securing IP rights in an attractive and ever-growing market such as China is the biggest interest the EU pursues.

Yet the names are nowhere near being enforceable. In this sense, the agreement is still in the stage of negotiation and, as mentioned above, some modification and further negotiation is possible if not even indispensable. However, with the deadline of two months being over, the agreement has now entered a new stage. The further negotiations with concerned parties are intended to be concluded by the end of 2017 and the agreement will then be ready for ratification. It will have to be implemented into the respective legal framework. As members of the

TRIPs Agreement, both parties are obliged to take measures for compliance and monitoring and to provide legal means to ensure the protection of GIs.

What impact will the agreement have when entering into force and what will the companies have to prepare for? First of all, the publication of the names should have been followed closely by producers of the relevant products. This was the time for them to get involved in the negotiation and to secure their sales on the market. But the phase of objections has now come to an end so what are the implications of a ratified and implemented agreement?

Like any other registered GI, the recognition of 100 names functions as a system of protection for both the consumer (from misleading labelling) and the producer (from unfair competition). Moreover, the GIs will be used as a marketing tool by guaranteeing a certain quality and character. And, maybe not of great importance for companies but doubtlessly for the respective regions, the agreement will boost rural development.

The impact of the EU-China agreement depends on the definition of standards, which need to be maintained. With the present list, the biggest if not only impact can obviously be seen in the agricultural and the wines and spirits sectors. Here the companies will need to check the labelling of their products and examine whether their products meet the required standards.

For effective enforcement of their GIs, the relevant companies will have to invest in marketing and promotion of the product. In the long term, for companies both in the EU and China there will for sure be an even higher export chance for GI holders.

A success story

The agreement seems to be the result and the extension of a long success story for GIs. It is not only a system of protection for consumers and local farmers, but also enables the relevant companies to export their products in a promising market such as China. Conversely, the agreement offers the same chance for the Chinese agricultural sector, as around 100 of its own GIs will be registered under EU law. Moreover, the list manages to protect GI holders without hampering the ethos of free trade. If the published list gets through, this treaty can be seen as a landmark in economic relations between China and the EU and even in the global field of IP rights.



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