



Dinner for three: EU, China and the US around the geographical indications table

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Abstract

China is the EU's second biggest agri-food exports market. It is also the second destination for the export of EU products protected by geographical indications (GI), accounting for 9% of its value, including wines, agri-food and spirits. The EU-China Agreement on the Protection of Geographical Indications, concluded in November 2019, is expected to realise higher potential for exporting EU GIs to the country since market access is now guaranteed. But the US-China Economic and Trade Agreement, signed in January 2020, has set down a couple of precautionary measures, including a consultation mechanism with China before new GIs can be recognised for protection in the Chinese market because of international trade agreements. As a result, EU GIs could be brought under tighter US scrutiny before being recognised for protection in China. Analysis reveals, however, that only a handful of EU GIs may be affected by the latter Agreement, if at all.

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1. Introduction

The EU and the US protect geographical indications (GI), a distinctive type of intellectual property right (IPR), under their respective *sui generis* and trademark schemes.¹ The two schemes are at odds with each other from the outset as their legal premises for protection are completely unrelated, though GIs protected under either scheme appear to have a right of exclusivity. This is not a problem as far as IPR protection is concerned. The ramifications are found in market access, especially to third countries. Because of the intrinsic qualities of trademarks, such as distinctiveness, exclusiveness and priority,² some European GIs may be excluded from acquiring protection in a third country because of their generic names or prior trademarks, if that country has already subscribed to using trademarks to protect GIs. In reverse, American producers could be prevented from using generic names for agri-food products on account of the risk of possible confusion to consumers in a certain market if a particular name coincides with an EU GI name already protected in the same market. Therefore, there is considerable competition between the two GI protection schemes for market access in the agri-food trade, which is a race worth winning in a huge imports market like that of China. Ironically, controversial agri-food names which may be caught between the two schemes are fairly limited.

After negotiating for eight years, the EU and China concluded their first-ever bilateral trade Agreement on Cooperation on, and Protection of, Geographical Indications (hereunder EU-China GIs Agreement)³ in November 2019. It provides a higher level of protection and mutual

¹ To some, especially European, scholars/practitioners, it is fundamental that trademarks and GIs are two distinct forms of intellectual property. GI is neither trademark nor a sub-category of trademark. As the EU GI protection regime denotes, based on its original Latin meaning, *sui generis* is “of its/his/her/their own kind, in a class by itself”. However, in countries like the US and Canada it is possible to protect GI as trademarks, either as certification marks or collective marks. This is because, like trademarks, GIs are: 1) source-identifiers, 2) guarantees of quality, and 3) valuable business interests. The US has found that by protecting GIs through the trademark system (Lanham Act), the US can provide TRIPS-plus levels of protection to GIs, of either domestic or foreign origin. But bear in mind that geographic terms or signs are not registerable as trademarks if they are geographically descriptive or geographically mis-descriptive of the origin of the goods (or services). For the latter, it is because consumers would be misled and/or deceived by the use of the sign on goods/services that do not come from the place identified. In general, the TRIPS Agreement (Article 1.1) acknowledges Members’ freedom to determine the appropriate method to protect GI within their own legal system and practice. See O’Connor B., “Geographical indications in the CETA, the Comprehensive Economic and Trade Agreement between Canada and the EU”: https://www.origin-gi.com/images/stories/PDFs/English/14.11.24_GIs_in_the_CETA_English_copy.pdf. Also see USPTO, “Geographical Indication Protection in the United States”: https://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf.

² Trademark law is a system based upon temporal priority, meaning parties must win the race to the marketplace to establish the exclusive right to own a mark. That first-in-time principle applies to the conduct of rival claimants: trademark rights generally go to the first to use a distinctive mark in commerce. This settlement has two elements: use and distinctiveness. For a detailed analysis of the first-in-time principle, see O’Connor B., “Right on Time: First Possession in Property and Intellectual Property”, 2019, College of William & Mary Law School: 428-35.

³ The text of the EU-China GI Agreement was published by the Commission in December 2019, on the basis of “without prejudice”, for information purposes only, and may undergo further modifications including as a result of the process of legal revision. The provisional text is available at: <https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/eu-china-gi-agreement-for-publication.pdf>

market access for 200 GI products (100 from each side, such as *Moutain* Liquor from China and Roquefort from the EU), and will drive agri-food trade between the EU and China to an even greater level. It is expected 175 additional GI names from each side will be protected under the Agreement and their names will be published later.

At the same time, it is to be noted that the agri-food trade between the US and China is equally phenomenal. To make sure market access for US agri-food exports to China using trademarks and generic terms is not undermined by an “international agreement”, Articles 1.15-17 of the US-China Economic and Trade Agreement (hereunder Phase One Agreement), signed on 15 January 2020, has set down a couple of precautionary measures, including a consultation mechanism with China before new GIs may be recognised for protection in the Chinese market because of international trade agreements. As a result, those EU GIs which to the US are generic, including multi-component EU GIs, could be brought under tighter US scrutiny before qualifying for GI *sui generis* protection in China. EU GI names may still register for trademark protection in China, but without *sui generis* protection one of the privileged GI protection instruments⁴ would be lost, which is *ex officio* enforcement⁵ (though a GI right holder should be proactive in enforcing its GI right, too). Under trademark protection, it is a GI producer’s own responsibility for enforcement with civil or criminal procedure. When enforcement is compromised, the economic benefits that should have accrued⁶ to a GI good will not be guaranteed.

⁴ Also, in general, when registering a GI name for trademark protection, trademark registration does not cover translation, nor does it prevent the use of the name with “de-localisers”, such as “New Zealand Champagne”, or expressions such as “like”, “style”, etc.

⁵ Ex officio enforcement means the competent authorities in the territory concerned must take the necessary measures to stop GI infringement. However, protecting GIs by trademarks also has its advantage in order to, for example, evade possible sanitary or phytosanitary (SPS) measures which could be barriers to protecting EU GIs, and market access in the market concerned. Therefore, some EU GIs are registered for trademark protection, too, as a preventive measure. Notably, EU GIs are agriculture and food products meaning they are prone to SPS measures erected in third countries when exporting. In this regard, one policy recommendation that the EU Chamber of Commerce in China has submitted to the Chinese government over the years is to exempt the cultures that have a history of safe use in European cheese production from the current China food culture positive list, or expand the current Chinese list to include certain cultures based on the historical safe use of their application in cheese, and classify them as permitted ingredients in the production of cheese. In 2019, China was the biggest importer of dairy products worldwide and the biggest market for European dairy products exports in the same year, for liquid milk, whey powder and skimmed milk powder and the second biggest outlet for butter. See Agriculture, Food and Beverage Working Group Position Paper 2019/2020, European Chamber of Commerce in China, p.147, and Annual Report of the European Dairy Association, 2020, pp.11,12.

⁶ EU GIs achieve an average value premium rate of 2.23. According to the AND International 2012 study “Value of Production of Agricultural Products and Foodstuffs, Wines, Aromatised Wines and Spirits Protected by a Geographical Indication (GI)”, based on the year 2010 with the prices retained at the regional wholesale stage (ex-factory/ex-winery), the value premium rates were higher for wines (2.75) and spirits (2.57) than for agricultural products and foodstuffs (1.55) (a value premium rate of 2 means that GI products were sold for twice as much as non-GI products for the same volume): https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/evaluation-policy-measures/products-and-markets/value-production-agricultural-products-and-foodstuffs-wines-aromatised-wines-and-spirits-protected-geographical-indication_en

Nonetheless, analysis reveals that the likely impact of the Phase One Agreement on the EU-China GIs Agreement will be limited to a handful of EU GIs, if at all. The implementation of the EU-China GIs Agreement should be able to be undertaken as intended.

This Policy Insight identifies the possible controversial EU GI names, on which the Phase One Agreement might have an impact. China's improvement in GI enforcement will also be highlighted. It first sets out the controversies that have arisen between the trademark and *sui generis* GI protection schemes on generic names and prior trademarks, which are relevant to the two aforementioned agreements. It then emphasises the high levels of agri-food exports from the EU and the US to China, respectively, to help appreciate the significance of trade in GIs. Next, it provides an analysis of the EU-China GIs Agreement to illustrate why it is hailed by the European Commission as a "landmark" agreement;⁷ preceded by an overview of GI protection provisions in the trade agreements concluded by the EU, as well as by China. Finally, using the EU-Canada Comprehensive Economic and Trade Agreement (CETA) as a reference, it examines which EU GI names might possibly cause controversies or lead to disagreement from the US, and concludes that the likely impact of the Phase One Agreement on the EU-China GIs Agreement will be limited to a handful of EU GIs, if at all.

2. Trademark vs. *sui generis* GI protection: a story in three questions

2.1 Controversies: an overview

To qualify for trademark protection, a GI name must cross the threshold of distinctiveness so that a specific business source can be identified. As to the EU *sui generis* scheme, an agricultural product or foodstuff can be considered a GI if it can pass the "essentially attributable" or "essentially or exclusively due" test.⁸ This means that a GI's given quality, reputation or other characteristics is essentially attributed to its geographical origin. At first glance, EU GI names are often not qualified for trademark protection, either as a certification or collective mark, because they appear to be generic, usually composed with a geographical meaning as prefix, such as *Münchener* Bier. Additionally, there is a question of right of priority. Though intrinsic to trademark registration, the right of priority of a trademark may prevent an EU GI name from registration if its application arrives late, after the trademark of the same (or similar) name is already registered for protection.

Consequently, three questions are worth asking.

1) Will an EU GI name be disqualified for trademark protection for its (generic) name's sake?

Perhaps. Most trademark laws prohibit the registration of a name with a geographical meaning. Therefore, outside of the EU, if a GI name is generic, or descriptive or simply an indication of the place

⁷ See "Landmark agreement will protect 100 European Geographical Indications in China", Press Release, Brussels, 6 November 2019.

⁸ See O'Connor B., "Geographical indications in the CETA, the Comprehensive Economic and Trade Agreement between Canada and the EU": https://www.origin-gi.com/images/stories/PDFs/English/14.11.24_GIs_in_the_CETA_English_copy.pdf

of origin of the goods, it may be rejected for trademark protection because a specific business source cannot be identified. As a consequence, the GI name will be considered not protectable as a trademark.⁹

Yet, it is possible to protect GI names as a certification or a collective mark. For example, the US Trademark Act provides that geographic names or signs – which otherwise would be considered geographically descriptive and therefore unregistrable as trademarks or collective marks for the lack of distinctiveness in the United States – can be registered as certification marks. For example, the mark *Roquefort* is registered in the US as a certification mark to indicate that the cheese has been manufactured from sheep’s milk and cured in the caves of the Community of Roquefort (France) in accordance with their long-established methods and processes.¹⁰

Additionally, certain EU GI names consist of multi-component terms, such as Italian *Pecorino Romano* (cheese) and *Vino nobile di Montepulciano* (wine), of which individual components may be generic. Some jurisdictions accept the registration of a certification trademark covering a composed GI name, but the registration does not necessarily cover the protection of the individual terms if they are generic. Under the Phase One Agreement, China reaffirmed its position to not provide GI protection to individual components of multi-component terms if the individual component is generic.¹¹ Within the same context, a couple of tailored solutions are adopted in order to differentiate between generic and distinct components of a number of multi-component GI names in the EU-China GIs Agreement. For example, the protection of “*pecorino*” is not sought while *Pecorino Romano* as a whole is protected; similarly, as to *Vino nobile di Montepulciano* GI protection in China won’t cover the generic term of “*vino nobile di*”.

2) Concerning prior trademarks, will an EU GI name be disqualified for protection in a third market because consumers there may be misled as to its origin since, in the same market, there is a good with the same or similar name that is already protected as a trademark?

Perhaps. This is despite the fact that a trademark enjoys the right of exclusivity, as well as of priority. Under normal circumstances, a coexistence position will be sought. Therefore, a *sui generis* GI name will be juxtaposed with a prior registered trademark, though qualifications must apply following the findings of the WTO dispute settlement case, European Communities

⁹ See O’Connor B., “Geographical indications and TRIPs: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members”, p.16.

¹⁰ A certification mark is any word, name, symbol, or device used by a party or parties other than the owner of the mark to certify some aspect of the third party goods/services. Certification marks can be used to indicate regional or other origin.

A collective trademark or collective service mark is a mark adopted by a ‘collective’ for use only by its members, who in turn use the mark to identify their goods or services and distinguish them from those of non-members. The ‘collective’ itself neither sells goods nor perform services under a collective trademark or collective service mark. Another type of collective mark is collective membership marks.

For details of protecting GIs as certification and collective marks, see USPTO, “Geographical Indication Protection in the United States”: https://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf.

¹¹ Between China and the US, as early as 2014 China already agreed that GI protection would not extend to generic component of a compound GI in its territory. See 2018 USTR Report to Congress on China’s WTO Compliance, p.137.

– Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs (DS174, 290) (hereunder EC – Trademarks and GIs).

A few factors can help to determine if consumers in the specific territory would likely be confused as to the origin of the good in question, for example if the good is already in use in the market concerned. The Phase One Agreement has set down a list of factors in this regard by virtue of Article 1.16, including how the good referenced by the term is marketed and used in trade in China; whether a term is used in relevant standards pursuant to a standard promulgated by the *Codex Alimentarius*.¹²

3) Following Question 2, concerning ‘region’, will an EU GI name be disqualified for protection in a third market if another good, with the same or a similar name but from another region, is already protected by trademark?

Perhaps. Moreover, trademark registration in general does not cover translation, transcription or transliteration¹³, nor does it prevent the use of the name with ‘de-localisers’, or expressions such as “like”, “style”, “kind”, etc. On the contrary, the EU *sui generis* GI protection scheme does, as witnessed by the EU-China GIs Agreement. For this reason, “New Zealand Champagne” may be eligible for trademark, but definitely not for *sui generis* GI protection.

Indeed, the differences between the two GI protection schemes can be very great and often not bridgeable (Annex 1). For example, the use of a certification trademark can be licensed while de-localisation is prohibited as far as the EU *sui generis* protection scheme is concerned. As to the relationship between them, basically, distinctiveness, exclusivity and priority, the intrinsic qualities of a trademark, may no longer be upheld in absolute terms in relation to the GI *sui generis* scheme. At the same time, the exclusivity – priority trademark protection arrangement may prevent certain EU GIs from being recognised for protection when accessing a third market, especially when they arrive late and if a prior trademark is already protected in that particular market. In cases when the market in question has already subscribed to protecting GIs by using trademarks, where the ‘first in time, first in right’ principle applies in general, this will leave limited regulatory space to accommodate the EU GI protection scheme, although “limited exceptions” could always take place even when an EU GI conflicts with a prior

¹² The *Codex Alimentarius* is a collection of internationally recognised standards, codes of practice, guidelines, and other recommendations relating to foods, food production and food safety. There are currently 188 countries, incl. China and the US and one international organisation, the EU, that are members of the Codex Alimentarius Commission: <http://www.fao.org/fao-who-codexalimentarius/en/>

¹³ Translation is taking the meaning of a word from the source text and providing an equivalent text in the target language. Transcription means the writing of the sounds of one language in the script of another language (and though strictly phonetic transcription employs the use of a technical code such as the International Phonetic Alphabet, simple transcription employs no code other than the basic alphabet of the language in which it is written and is therefore less precise). Transliteration involves changing the script used to write words in one language to the script of another; taking the letters or characters from a word and changing them into the equivalent characters in another language. This process is concerned with the spelling and not the sound. The challenge of transliteration comes when there is not an equivalent character as often happens in Chinese or Japanese. The translator will need to approximate the character, and this can lead to several translators spelling the same word in different ways. Available at: <https://www.ulatus.com/translation-blog/translation-transliteration-transcreation-difference-in-time-money-and-quality/>; <https://www.happinessofbeing.com/Transliteration.pdf>.

trademark.¹⁴ Therefore, a GI protection scheme, whichever it may be, should strive to be the first in concluding an agreement with a third market in order to dominate the GI protection regulatory space under its own terms. This is a race worth winning, especially in a huge agri-food imports market like China.

3. The ever-growing agri-food trade: EU-China & US-China

It may surprise some to learn that China is the most profitable overseas market for *Bordeaux* wines, with approximately 73 million bottles shipped to China each year.¹⁵ In fact, over recent decades, China's high demands have elevated the country to be a top destination for EU agri-food exports; the same has been happening to US agriculture exports to China.

3.1 EU-China agri-food trade

According to the latest statistics, for the 12-month period from December 2018 to November 2019, EU agri-food exports reached a value of €149.6 billion, *i.e.* a new record and a significant increase of +8.7% compared to the same period one year ago. Major gains in annual values (in € billion, % change from 2017-18) have been achieved in agri-food exports to China (+€3.58, +32%). The highest increases in monthly export values (November 2019 compared to November 2018, € million) were recorded for China (+€761, +72%), too. In recent years, China remains the EU's second-largest food export destination after the US, and China has been one of the EU's top food suppliers in recent years¹⁶ (Figure 1).

China is also the second destination of EU GI exports, accounting for 9% of its value, including wines, agri-food products and spirit drinks.¹⁷ With the high premium achieved at an average rate of 2.23, GIs provide jobs, bring growth and increase exports for EU GI producers.¹⁸ The same logic applies to Chinese GI producers, and the Chinese government in recent years has equally started to leverage GI production for rural development and poverty alleviation.¹⁹

¹⁴ See "European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs" (DS174, 290).

¹⁵ See <https://www.thedrinksbusiness.com/2018/11/bordeaux-suffers-sales-dip-at-home-and-in-china/>

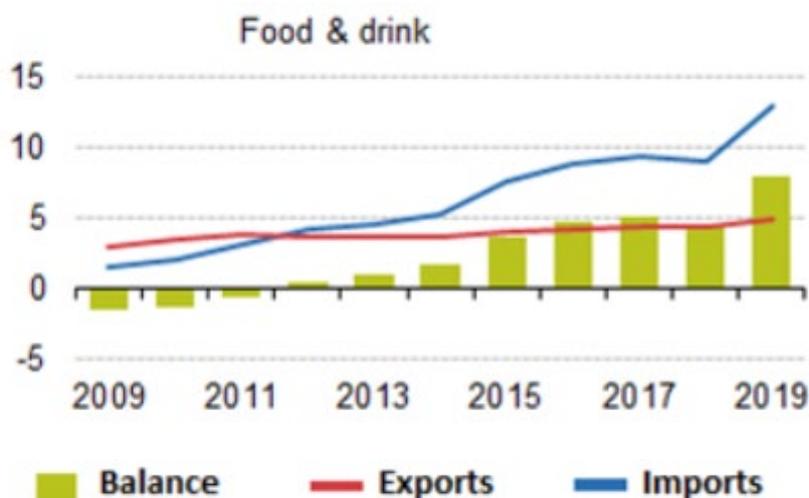
¹⁶ See "Monitoring EU Agri-Food Trade: Development until November 2019", European Commission, 4 February 2020.

¹⁷ See "Landmark agreement will protect 100 European Geographical Indications in China", 6 November 2019: <https://ipkey.eu/en/china/news/landmark-agreement-will-protect-100-european-geographical-indications-china>

¹⁸ Among all EU spirits exports, more than 200 spirits are registered as GI products and protected by the EU; in total they account for two-thirds of EU spirits exports. China was the third largest market in the world for EU spirits in 2018. From 2017 to 2018, though exports of European spirits to China decreased 5%, the overall direct sales amounting to €589 million, and over 10 years (2008-18) European spirits exported to China increased 151%. On the other hand, though China is the largest consumer of spirits worldwide, local producers still lead the market with the Chinese favoured spirit baijiu (98% market share). With the growing sophistication of the Chinese consumers, the largely untapped Chinese market has huge potential. See "Trade Review 2018: Stand Up for Trade, SpiritsEurope", pp. 9, 14, also: <https://spirits.eu/policies/external-trade/key-data>

¹⁹ It was reported that in 2019 a lecture tour on leveraging GI production for rural development was organised in the western provinces, a poorer but GI-rich region, in China. The lecture emphasised that GI production can

Figure 1. EU-28 trade with China in Food & drinks, 2009-2019 (€ billion)



Source: Eurostat (online data code: ext_st_eu27_2019sitc and DS-018995).

3.2 US-China food trade is equally remarkable

China ranked as the fourth largest US agricultural export market in 2018, though total exports value went down to \$9.2 billion (€8.46 billion) as a result of the bilateral trade war. In 2017, US exports of agricultural and related products topped \$26 billion (€23.87 billion). In 2018, China was the third largest supplier of agricultural imports, which totalled \$4.9 billion (€4.50 billion).²⁰

Just as the logic behind EU agri-food exports to the country, because of consumers' surging demands and the production challenges in the domestic market, China offers the US the best opportunity for major export growth now, and in the future. For example, in recent years China has become one of the world's largest beef importers. US steak is routinely selling for twice as much there as it does at home since China re-opened its market to US beef in 2017.²¹ Reflecting on the Phase One Agreement, China has pledged to not only purchase and import substantially more agricultural and seafood products, on average at least \$40 billion (€36.71 billion) annually in the next two years,²² but also remove structural

directly help increase farmers' income and agricultural efficiency, and can also promote the adjustment of the agricultural structure, for poverty alleviation and achieving sustainable development. The lecture also shared experience from different GI-production regions: (Chinese) <http://zgdlbz.com/NewsView.asp?ID=2399&SortID=10&PID=1>

²⁰ Available at: <https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china>

²¹ See "Despite Continued Challenges, China Offers Huge Potential for US Farm Exports": <https://www.fas.usda.gov/newsroom/despite-continued-challenges-china-offers-huge-potential-us-farm-exports>

²² Based on the Phase One Agreement, China will purchase and import on average at least \$40 billion (€36.71 billion) of US food, agriculture and seafood products annually for a total of at least \$80 billion (€73.43 billion) over the next two years. On top of that, China will strive to import an additional \$5 billion (€4.59 billion) per year over the next two years.

barriers to agricultural trade, such as lifting the ban on imports of US poultry and poultry products,²³ future US agri-food exports to China are expected to be remarkable.

As a component of the EU Common Agricultural Policy, concluding satisfactory GI protection provisions in a trade agreement is a *sine qua non* for the EU in order to facilitate market access for EU GIs, which are abundant: currently a total of 3,693 GIs.²⁴

4. EU-China Agreement on Cooperation on, and Protection of, Geographical Indications

4.1 GI protection provisions in EU trade agreements

In addition to free trade agreements (FTAs), the EU negotiates standalone GIs agreements with third countries with single or narrower protection scope. For example, the EU-Australia Agreement on Trade in Wine safeguards, among others, the EU's wine labelling regime and gives full protection to EU GI wines.²⁵ The EU-Canada Agreement on Trade in Wines and Spirits provides for the mutual recognition of oenological practices and processes and product specifications. It also establishes the conditions under which GI wines and spirits of each party will be protected in each other's territory, among other objectives achieved.²⁶ Comprehensive GI protection measures between the EU and Canada are provided by the CETA.

Currently, the EU has 26 GIs agreements with third countries which are in force:²⁷

Types of GI agreements	Scope of GI protection	Third countries
Standalone GI protection agreements	Wines	Australia, USA and South Africa
	Spirits	Mexico, South Africa and USA
	Wines and spirits	Bosnia-Herzegovina, Albania, Canada, Chile, EFTA States (Iceland, Liechtenstein, Norway)
	Agricultural and foodstuffs	Iceland

²³ In this regard, other barriers to agricultural trade that China has lifted include allowing the importation of US fresh chipping potatoes; lifting restrictions on imports of US pet food containing ruminant material; updating lists of facilities approved for exporting animal protein, pet food, dairy, infant formula, and tallow for industry use to China; updating the lists of products that can be exported to China as feed additives; and updating an approved list of US seafood species that can be exported to China. See "USDA and USTR Announce Progress on Implementation of US – China Phase One Agreement", 25 February 2020, News Release, USDA 0164.20.

²⁴ Available at: <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>

²⁵ Also, Australia has committed to protecting EU traditional naming. The Agreement at the same time provides for the phasing out of the use of a number of important EU names such as Champagne and Port on Australian wines within a year of the agreement coming into force. See "EU-Australia wine trade agreement enters into force", Press Release, Brussels, 31 August 2010.

²⁶ See "EU-Canada trade in wine and spirit drinks", Press Release, Brussels, 30 July 2003.

²⁷ Original source: oriGIn: <https://www.origin-gi.com/component/flexicontent/117-news/8381-11-01-2016-eu-agreements-impacting-on-gis.html?Itemid=1158>

GI protection chapters in FTAs	Agricultural and foodstuffs, wines and spirits	Singapore, Japan, Armenia, Canada, South Africa, Ukraine, Colombia, Ecuador & Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panamá, Moldova, Georgia, South Korea, Serbia, Montenegro, Switzerland
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4.2 Race to conclude GI protection agreements

Concluding GI protection agreements with third countries in the ‘EU way’ manifests the EU’s rule-making power in external trade. However, if the US has already concluded a GI protection agreement ahead of the EU in the same market, the EU’s power to achieve its GI protection objectives²⁸ would likely be more constrained. This is due to the interplay between trademark and *sui generis* GI registration as a matter of fact, as mentioned above.

For example, with regard to the EU-Singapore FTA, the EU succeeded in establishing the *sui generis* scheme in Singapore before signature of the FTA²⁹ and Singapore duly launched a GI registry in April 2019 following the European Parliament’s consent to the agreement.³⁰ Nonetheless, the EU was not able to assert the coexistence position between *sui generis* protected GIs and their prior registered trademarks in the Singapore market because the US had already cemented GI trademarks’ priority in its US-Singapore FTA since 2003. As a result, as far as the Singapore market is concerned, a trademark owner shall have the exclusive right to prevent all third parties from using the same GI name without consent.³¹ This upholds the right of priority of trademarks and testifies to the ‘first in time, first in right’ principle in its totality.

Nonetheless, this scenario is not always absolute, especially following the findings of the WTO case EC – Trademark and GIs where, despite the ‘first in time, first in right’ principle, “limited exceptions” to EU GI protection could take place even when EU GIs conflict with a prior trademark. Notably, Canada was bound by Article 1708 of NAFTA with regard to GI protection by trademarks, including a trademark owner’s exclusive right of preventing others from using the mark without consent. However, as far as CETA is concerned, Canada granted a higher level

²⁸ Indeed, when negotiating GI protection provisions the EU has a list of objectives to achieve, including the above-mentioned co-existence position. Other objectives are “high level protection for geographical indications, covering misuses and evocations of the name; prevention of registration of future trademarks covering non-authentic products that contain geographical indications; ensuring the right of use of the geographical indication on authentic products, even where a prior trademark has been registered for a different product; direct protection via the agreement of a specific list of EU geographical indications, at least those covering the main quality products exported; prevention of the erosion or loss of protected status by generic usage. See “International aspects of agricultural policy”, Background document for the Advisory Group on International Aspects of Agriculture, 12 March 2012, p.66.

²⁹ See Lim, H.K., “EU-Singapore Free Trade Agreement – Geographical Indications”, Letter from Singapore Minister for Trade and Industry to European Commission Member Karel De Gucht, 21 January 2013. Available at: http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151779.pdf

³⁰ Available at: <https://iphub.asia/registration-of-geographical-indications-in-singapore/>

³¹ See Article 16.2.2 of Chapter 16: Intellectual Property Rights, United States – Singapore Free Trade Agreement.

of GI protection to the great majority of 145 EU names listed in the agreement in accordance with Article 23 of the TRIPS Agreement. Regarding the 21 GI names that conflicted with the names already in use in Canada, tailored solutions are identified by, for example, establishing a coexistence position with existing marks, or ‘grandfathering’³² for certain producers but phasing-out for others.³³ Consequently, though the GI name *Prosciutto Toscano* (Italian ham) conflicts with prior Canadian trademarks a coexistence position is settled with these existing trademarks. Within this context, it is the first time that the EU succeeded in obtaining a deviation from the ‘first in time, first in right’ principle in a common law country.³⁴

4.3 GI protection in China’s trade agreements

Leveraging GIs to advance international trade does not appear a priority so far for China. Among the 16 free trade agreements concluded,³⁵ substantive GI protection measures are found solely in the FTAs that China concluded with Chile and Peru for only a handful of GIs – a tiny fraction of the more than 4,000 GIs registered in China – with two Chinese GIs for the former and 22 the latter. In the rest of the trade agreements, GI protection is simply acknowledged for IPR protection in light of the TRIPS Agreement (e.g. China-Australia FTA); or it is not mentioned at all, which is the case of the China-Singapore FTA, for example.

Having said that, it is worth highlighting that, among the 22 Chinese GIs protected in Peru, four of them are non-agricultural GIs, including Nanjing Cloud-pattern Brocade.³⁶ At EU level, non-agricultural GIs are not eligible for protection for the time being, though it is said that an impact assessment study is being undertaken in order to evaluate several policy options covering legislative and non-legislative alternatives to protect non-agricultural GIs.³⁷ In other words, non-agricultural GIs are not among the 100 Chinese GIs to be protected in the EU, though Article 1.2 of the EU-China GIs Agreement has pledged to consider extending the scope of GIs protection to other classes of GIs, in particular handicrafts, if non-agricultural GIs will later be protected at EU level.

³² According to the Oxford Dictionary, to grandfather something means to create new ideas or a new way of doing something. In a legal context, grandfathering is a provision in which an old rule continues to apply to some existing situations while a new rule will apply to all future cases. Usually, the exemption is limited; it may extend for a set time, or it may be lost under certain circumstances. The description here on the CETA provision also explains it.

³³ See CETA – Summary of the final negotiating results, European Commission.

³⁴ For other aspects of GI protection in the CETA, see CETA – Summary of the final negotiating results, EC DG Trade, February 2016.

³⁵ Available at: <http://fta.mofcom.gov.cn/english/index.shtml>

³⁶ Other non-agricultural GIs are Jingdezhen Porcelain, Longquan Celadon and Yixing Dark-red Enamelled Pottery. See Annex 10 of the China-Peru Free Trade Agreement.

³⁷ Previously, an independent study was published in February 2013. In October 2015, the European Parliament adopted a resolution on the possible extension of protection of GIs to non-agricultural products. For the next step, the Commission will undertake an inception impact assessment to evaluate several policy options covering legislative and non-legislative alternatives to protect non-agricultural GIs.

4.4 The EU-China GIs Agreement

The EU-China GIs Agreement has achieved a number of high notes and is hailed by the European Commission as a “landmark” agreement for a number of reasons, as will be illustrated below.

4.5 Higher-level GI protection on a par with Article 23 of the TRIPS Agreement

Prescribed by Article 4.1 of the EU-China GIs Agreement, all the GIs listed in the annexes from both sides will be provided with higher-level protection, in accordance with Article 23 of the TRIPS Agreement, which is usually reserved for protecting GI wines and spirits.³⁸ This higher-level protection is against the use of any means indicating or suggesting a good which originates in a geographical area that is not the true place of origin; a GI identifying a good for a like-good though not meeting the requirement of specification of the GI, and this will apply even if the true origin of the good is indicated, or the GI is used in translation, transcription or transliteration or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like. The higher protection level is, at the same time, beneficial when fighting against malicious trademark registration of some EU GI names by using translation, transcription or transliteration in the Chinese language, thereby misleading consumers in China as to the true origin of the GI names,³⁹ and amounting to passing-off.

4.6 Coexistence: wholly or partially homonymous GIs & trademark protection – with qualifications

Under the EU-China GIs Agreement, the coexistence position has two dimensions with regard to 1) wholly or partially homonymous GIs, and 2) prior registered GI trademarks. In general, a coexistence position is granted under both circumstances, though qualifications apply.

4.6.1 Wholly or partially homonymous GIs

Homonymous GIs are those that are spelled or pronounced alike, but identify goods originating in different places, usually in different countries.

Based on Article 4.2 of the EU-China GIs Agreement, wholly or partially homonymous GIs may be protected and coexist with EU GIs provided that they don’t falsely represent to the public that the goods originate in another country. And, China and the EU shall consult the other party before determining the conditions under which such coexistence is possible.

³⁸ Usually, for a minimum level of protecting GI foodstuff and beers, Article 22 of the TRIPS Agreement will suffice. The difference between Articles 22 and 23 of the TRIPS Agreement is that under Article 23, GI wines and spirits must be protected without the requirement to prove misleading of the consumer, even where the true origin of the product is indicated and where the GI is presented in combination with expressions such as “like”, “type”, “imitation” and “kind”, or in translation.

³⁹ See “EU member states to take China to court over fake geographical indications”, 11 August 2017. Available at: <https://www.euractiv.com/section/agriculture-food/news/eu-member-states-to-take-china-to-the-court-over-fake-geographical-indications/>

4.6.2 Relationship with trademarks – before and after the applicable GI protection date⁴⁰

Article 6 of the EU-China GIs Agreement provides two scenarios with regard to the relationship between *sui generis* GIs and trademarks.

In the first scenario, when a GI name is already registered for trademark protection, and if the GI good of the same name wishes to apply for *sui generis* protection, according to Article 6.3 of the Agreement, parallel use/coexistence is foreseen between *sui generis* GI protection and prior registered trademark protection of the same GI good if the trademark protection has, in good faith, already been applied for, registered, or established through use.

In the second scenario, based on Articles 6.1 and 6.1a of the EU-China GIs Agreement, for the 100+100 GIs from both sides⁴¹ which are published in Annexes III and IV of the Agreement, or for the additional GIs (175+175) which will be published later, and after their respective date of protection and application comes into force, both parties shall refuse to register, or invalidate the registration of a trademark which 1) consists of a GI or its translation or transcription of such identical or similar products not having this origin, or 2) indicates that the good in question originates from a geographical area other than the true place of origin, with respect to identical or similar products.

Within the same context, though in general the *sui generis* would appear superior to the trademark protection scheme, by virtue of Article 6.2, a reputed or well-known trademark may be protected against a *sui generis* GI registration if such registration would confuse consumers with the true identity of the product in question.

4.7 Exceptions to full protection

No grandfathering treatment is awarded by the EU-China GIs Agreement, since Articles 6.1 and 6.1a of the Agreement have established that previously registered trademarks may be invalidated. However, “exceptions to full protection” are provided in order to settle the controversies of a few generic GI names and prior trademarks, for which two solutions are found. One is phasing-out; another is to not provide protection to an individual component of a multi-component GI name if the individual component is generic. Understandably, the exceptions are applicable to only a handful of GI names.

For phasing-out (with qualifications), it will be eight years for “*Feta*” (Greek cheese) and six years for “*Asiago*” (Italian cheese) after the Agreement comes into force, before each respective term can be used in China. Among the Chinese GI names, for a transitional period of five years after the entry into force of the Agreement, the protection of the geographical

⁴⁰ There are altogether three applicable dates according to Articles 6.4 of the EU-China GIs Agreement. Firstly, for those GIs listed in Annexes III and IV, which are the 100+100 GIs from the EU and China published for protection on 2 July 2017, the date of protection is the date of entry into force of the Agreement. Secondly, for those GIs listed in Annexes V and VI, which will be published at a later stage, the date for application is the date of entry into force of the Agreement. Thirdly, for those GIs listed in Annexes V and VI, the date for protection is the date of entry into force of the respective modification of the Annexes III and IV.

⁴¹ See “100 European geographical indications set to be protected in China”, Press Release, 2 June 2017, Brussels.

indication “*正山小种*” (Chinese tea) shall not prevent the use of the term “*Lapsang Souchong*” in the EU for tea.

As to not protecting generic individual components of a GI name, in addition to the GI name *Vino nobile di Montepulciano* as mentioned above, protection is not provided to “*queso*” for *Queso Manchego* (Spanish cheese), “*mozzarella*” for *Mozzarella di Bufala Campana* (Italian cheese), “*pecorino*” for *Pecorino Romano*, and “*prosciutto*” for *Prosciutto di San Daniele* (Italian ham). The compound GI name is protected in each case.

4.8 Right of using each other’s GI symbols

In accordance with Article 5.2, the EU and Chinese GIs listed in the Agreement are authorised to bear each other’s official GI symbols. This arrangement of authorisation is a ‘first-ever’ for both the EU and China, and it should especially be of benefit to Chinese GIs accessing EU markets.

Once affixed with the EU GI symbols, Chinese GIs would be able to gain European consumers’ instant recognition and therefore confidence in the quality of the products. In parallel, the GI symbol in the Chinese language should facilitate European GI products to reach a much wider consumer base in China, for example in the heartlands, and beyond those who have had ‘Europe experience’, including with European iconic high quality agri-food products. Using spirits as an example, with just 2% of the market share for imports, China was already the third largest market in the world for EU spirits in 2018, where consumption is nonetheless concentrated in the richer cities along the coast of the country. If ever EU spirits could make inroads in the vast untapped regions in China, the possibilities for higher imports are real, and the Chinese GI symbol could help to facilitate this expansion. Among all EU spirits exports, more than 200 spirits are GIs, and 15 of which will be protected in China once the bilateral GIs Agreement comes into force.

5. Phase One Agreement: limited impact on protecting EU GIs in China

As mentioned above, the Phase One Agreement has listed a number of regulatory requirements on GI protection with which China has pledged to comply. The technical focus is on generic GI names and prior trademarks, which may be expected since this is where controversies arise between trademark and *sui generis* GI protection schemes, as explained above. The objective of these requirements is to prevent China from recognising new (EU) GIs that would hinder US producers from using common names for food products, therefore market access of American agri-food exports to China can be guaranteed and, more precisely, not let American agri-food exports to China be impeded by the provisions of the EU-China GIs Agreement.

As far as the Phase One Agreement is concerned, Article 1.16 provides a list of factors upon which the genericness of a GI name shall be determined. Consequently, Article 1.17 prescribes that an individual component of a multi-component GI name should not be protected if the individual component is generic. Additionally, China has agreed to give the US necessary opportunities to disagree about GIs in lists, annexes, etc. in any such agreement. Though it

looks as if future EU-China cooperation on GIs protection would be under tighter US scrutiny, the actual impact of these precautionary requirements would be limited, including on the EU GIs, which will be listed in Annex V of the bilateral Agreement that is not yet published.

5.1 Which GIs are irrelevant to the Phase One Agreement? Which might possibly be affected?

For those 200 GIs already published for protection, as seen in Annexes III and IV of the EU-China GIs Agreement, they are not at all within the remit of the Phase One Agreement. Those are the GIs published on 2 June 2017,⁴² where the due procedure for protection, including examination, publication, opposition, appeals, has already been completed. As a result, protection for the 200 GIs, 100 from each side from the EU and China, will take effect as soon as the GIs Agreement comes into force. Therefore, the GI provisions under the Phase One Agreement are irrelevant to the 200 GIs.

What about the GIs listed in Annexes V, VI, for 175 GIs from each side that are yet to be published, and their respective application for protection will be processed during the first four years after the Agreement comes into force?⁴³ Will the Phase One Agreement pose an imminent impediment to protection of these GIs (175+175)?

In this regard, the EU is confident that the impact will be limited since, in the first place, the number of possibly controversial GI names is only a handful, and they are mostly already settled as seen from Annexes III and IV of the EU-China GIs Agreement. Therefore, the chances of the Phase One Agreement leading to disagreement on the GIs, presently under finalisation, for Annexes V and VI would be slim.

Indeed, as mentioned above, two solutions are identified under the arrangement of “exceptions to full protection” in relation to Annexes III and IV of the EU-China GIs Agreement. Future conflicts, if any, should be tackled with the same approaches.

5.2 What will be the possible controversial EU GI names?

Are there other possible controversial EU GI names which might be brought under tighter US scrutiny within the remit of the Phase One Agreement?

To answer this question, we could compare the EU GI names appear under exceptional protection measures that are listed in CETA and the EU-China GIs Agreement, respectively. It is those GIs listed in CETA but which have escaped Annex IV of the EU-China GIs Agreement that might be subject to tighter scrutiny of the Phase One Agreement. Also, referring to the three questions highlighted before, controversies will likely take place because of 1) the possible genericness of a GI name, or of an individual component of a multi-component, or 2) conflicts between a GI name and a prior trademark. On the other hand, one needs to bear in mind that the controversy is around a notion of relativity which depends on a number of factors, such as

⁴² See 100 European geographical indications set to be protected in China, Press Release, 2 June 2017, Brussels.

⁴³ Article 3 of the EU-China GIs Agreement.

territory of the market, consumers' perception in the specific market, how the good in question is being presented and used in the market concerned. Therefore, what is controversial in one market may be acceptable in another. Ultimately, consumers in the market concerned must not be misled by the geographical origin of the GI good concerned.

5.3 Why use CETA as a reference to identify controversies?

CETA is used as a reference for comparison because, at the time of the CETA negotiations, the superiority of trademark protection, including, for example, the 'first in time, first in right' principle, was unavoidable because of NAFTA, leaving the EU supposedly limited negotiating space to protect its GIs in Canada.⁴⁴ Additionally, since French is one of the two official languages spoken in Canada, some Canadian GI trademarks must be in French, implying higher chances for conflicts with those EU GIs originating from France, which is one of the biggest GI-producing EU member states. Moreover, some existing Canadian agri-food producers are descendants of European immigrants who are used to consuming European agri-food products. Once settled in Canada, they started to produce and use the same or similar names, so they can continue enjoy the agri-food products they have been familiar with that are part of their European heritage. All these suggest there could be more controversial EU GI names in CETA than perhaps in other GIs agreements concluded by the EU; and the regulatory hurdle erected by the NAFTA must have been high for the EU to overcome at the time of the CETA negotiations.

5.4 Genericness – what controversial EU GI names might be brought under tighter scrutiny by the Phase One Agreement?

There were five cheeses that had been considered not deserving protection in Canada but are protected with CETA, though with an exception for the existing use by products already present on the Canadian market.⁴⁵ Among the five cheeses, *Asiago*, *Feta*, *Gorgonzola* (Italian cheese) will be protected in China, as seen in Annex IV of the EU-China GIs Agreement, but under different kinds of exceptional protection arrangements, with a phasing-out transitional period. The phasing-out arrangement provided to *Feta* and *Asiago* is already explained above.⁴⁶ *Gorgonzola* will be provided full GI protection in China. As a result, if ever the Phase One

⁴⁴ Trademark protection seems to have retained its superiority vis-à-vis the *sui generis* GI protection scheme in the USMCA (United States–Mexico–Canada Agreement), the renegotiated NAFTA. For the first time, the USMCA includes strong standards to discourage Canada and Mexico from issuing rules on new GIs that would prevent US producers from using common names for food products, and establishes a consultation mechanism for new GIs recognised by free trade agreements. For example, Article 20.31.4 of the USMCA prescribes that if a party has in place a *sui generis* system for protecting unregistered GI by means of judicial procedures, the judicial authorities of that Party shall have the authority to deny the GI protection or recognition if otherwise will cause confusion, in circumstances listed under Article 20.31.1, including likely confusion with a pre-existing good faith pending trademark application. See also "2019 Trade Policy Agenda and 2018 Annual Report of the President of the United States on the Trade Agreements Program", USTR, p.13.

⁴⁵ New entrants to the Canadian market will only be able to sell their product under these five names when they are accompanied by indications such as "style", "type", "kind", or "imitation". See "CETA – Summary of the final negotiating results", EC DG Trade.

⁴⁶ The phasing-out arrangement comes with qualifications: if it can be shown that the cheese products in question have been placed on the Chinese market before 3 June 2017, and they do not mislead the Chinese consumers; moreover, their actual geographical origin must be clearly displaced in a legible and visible way.

Agreement had any impact, *Fontina* (Italian cheese) and *Munster* (French cheese) might be at risk if they are in the Annex VI of the EU-China GI Agreement, which is yet to be published.

Additionally, three EU GIs, namely *Nurnberger Bratwurst* (German sausage), *Jambon de Bayonne* (French ham) and *Beaufort* (French cheese), are granted protection in Canada through ‘grandfathering’ the use of these names by existing producers, but a phasing-out period for others. None of them are in Annex IV of the EU-China GIs Agreement, so they might attract some controversies in future if seeking protection in China.

5.5 Prior trademarks – what controversial EU GI names might be brought under tighter scrutiny by the Phase One Agreement?

There are five controversial EU GI names which now enjoy a coexistence position in CETA. Before CETA the use of the original EU GIs could have been deemed unlawful in Canada because of the conflict with the Canadian trademarks.

Among them, the controversy of protecting *Prosciutto di San Daniele* is settled, and *Prosciutto di Parma* is fully protected, by the EU-China GIs Agreement. Therefore, *Perigord* (French cheese), *Szegedi teliszalami/Szegedi szalami* (Hungarian salami) and *Prosciutto Toscano* could be controversial GI names for tighter scrutiny in light of the Phase One Agreement. As mentioned before, protection of the individual component of “*prosciutto*” in *Prosciutto di San Daniele* is not sought, but the multi-component GI name as a whole is protected by the EU-China GIs Agreement. This arrangement, including publishing specifically what is under protection and what not, already meets the relevant precautionary requirements prescribed by the Phase One Agreement.

In sum, regarding the future EU GIs to be protected in China under the EU-China GIs Agreement, *Perigord*, *Szegedi teliszalami/Szegedi szalami*, *Prosciutto Toscano*, *Fontina*, *Munster*, *Nurnberger Bratwurst*, *Jambon de Bayonne* and *Beaufort* might be brought under tighter scrutiny in light of the Phase One Agreement, if they are after all in the list of 175 EU GIs. But, as explained above, there is no absolute certainty about this, since what is controversial in one market may be acceptable in another.

Conclusion

The above exercise highlights the possible controversial EU GI names, on which the Phase One Agreement might have an impact. However, during the procedure of examining a GI application, including opposition,⁴⁷ even if the US does object on the grounds of possible consumer confusion to protecting these EU GIs in China where the market access of relevant American agri-food goods might be undermined as a consequence, solutions should be able to

⁴⁷ As seen from the 2018 USTR Report on China’s WTO Compliance, over the years the US has been in close engagement with China on the latter’s GIs protection legislation and cooperation with the EU. For example, after the 100+100 GIs were published by the EU and China in June 2017, the US raised a number of procedural questions during the 60-day opposition period. See “2018 USTR Report to Congress on China’s WTO Compliance, United States Trade Representative”, February 2019, p.137.

identify where precedents are set by CETA as well as by the approaches undertaken in Annex IV of the EU-China GIs Agreement.

Europe and China share a farming tradition and are both endowed with a sophisticated food culture with abundant GI products that sometimes even characterise the region where they grow. As under the bilateral GIs Agreement, China's GI products are different from those of the EU; while the Chinese GIs are teas, fruits, liquors and raw agricultural goods (e.g. black fungus and goji berry) and the EU GIs are wines, cheeses, spirits⁴⁸ and hams, consumers from both markets can now simply indulge in new tastes for quality GIs and eat to their heart's content. Bilateral agri-food trade will be driven higher at the same time, while GI producers will be rewarded with handsome economic returns. The bilateral GIs Agreement looks set to offer benefits for many of those concerned, and a win for EU-China bilateral agri-food trade.

After concluding the EU-China GIs Agreement, strengthening enforcement is essential to making the Agreement a success. For China, one weakness in GI protection in the past was, in fact, confusion over which enforcement body should be in charge and which law should apply. Nonetheless, in the past two years, the institutional improvement that has occurred should enable more efficient enforcement in the country. For example, regarding the GIs enforcement body, three administrative bodies were responsible in the past for GI protection, though with different scopes of responsibility, namely AQSIQ for GI *sui generis* protection, SAIC for GI trademark protection⁴⁹ and China Food and Drug Administration for food quality protection. Since March 2018, the three administrative bodies, together with their GI protection functions, merged to become the State Administration for Market Regulation. Also, another deficiency in enforcement in the past was low awareness about protecting the GI symbols, either trademark, *sui generis* or primary agricultural product GI protection symbols, which made infringement more common. In October 2019, a new GI symbol was inaugurated and superseded the previous three GI symbols. The new GI symbol should help to strengthen the recognition of the good quality of a GI good, enhancing awareness of GI protection, as well as combat infringement.⁵⁰ Some EU GI producers, such as *Cognac*, are now also more satisfied with GI protection in China.

It is to be hoped that China will further strengthen GI enforcement so that the potential of the EU-China GIs Agreement will be achieved sooner and more fully.

⁴⁸ Spirits are the highest ABV (alcohol by volume) products of the yeast-based fermentation of a liquid brewed to have fermentable sugars. Unlike beer or wine, spirits are the product of a second step called "distillation" that further fortifies them: <https://vinepair.com/spirits-101/what-are-spirits/>. Liquor is defined as any non-brewed alcohol – distilled spirits. It is produced by fermenting grain, fruit, or vegetables. As compared to spirits, liquor is a lot sweeter mainly because of the added flavouring and sweetness it has. Often, to complement their bases, additional juices and flavours are added to give liquor a twist – such flavours could be from fruits, sugar canes, or potatoes: <http://www.differencebetween.net/object/comparisons-of-food-items/differences-between-liquor-and-spirits/>.

⁴⁹ AQSIQ stands for General Administration of Quality Supervision, Inspection and Quarantine. Among other functions, AQSIQ was responsible for import-export food safety, certification and accreditation, standardisation, as well as administrative law enforcement. SAIC stands for State Administration for Industry and Commerce. It was responsible for consumer protection, trademark protection and combating "economic illegalities".

⁵⁰ For details of the deficiencies in GIs protection in China, see Hu W., "Reciprocity and Mutual Benefits: EU-China Cooperation on and Protection of Geographical Indications", CEPS Research Report, No. 2018/04, June 2018.

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Annex 1. Differences between the trademark and *sui generis* GI protection schemes

The TRIPS Agreement does not prescribe any particular legal means with which GIs should be protected by a WTO member. Generally, there are two parallel worlds which are divided by the GI *sui generis* and the trademark protection schemes. The former, also known as the ‘old world’ approach, is led by the EU; the latter, the ‘new world’, by the US. The differences between the two schemes are highlighted in Table A1.

Table A1. Differences between the trademark and the *sui generis* GI protections schemes.

	Trademark protection	<i>Sui generis</i> GI protection
Representative countries/markets	United States, Australia	European Union
Legal premise	<p>GI, just like any other trademarks, is a private right.</p> <p>GI is protected as a certification or a collective mark. This is because a name with a geographical meaning is not admissible for registration. A GI identifies the commercial origin of a product.</p> <p>GIs are source-identifiers, guarantees of quality and valuable business interests.</p> <p>Generic geographical terms or signs for goods/services are not protected, because they are not capable of identifying a specific business source or a collective producing source.</p>	<p>GI is a collective right.</p> <p>A GI product typically includes the name of the place of origin. This name can be used by all organisations from the area that manufacture a given product in a prescribed way.</p> <p>Therefore, GI is a sign used to indicate that a product has a specific geographical origin and possesses a certain reputation, qualities or characteristics due to that place of origin, incl. tradition, landscape, regional identity value.</p>
Product specifications	<p>Product specifications are not required when applying for GI trademark registration.</p> <p>No quality control.</p>	<p>All GIs have product specifications and must submit when applying for protection.</p> <p>Quality control exercised by competent authorities.</p>
Exclusive use and Priority rights	As a private right, the trademark/GI owner has the exclusive right to prevent the use of the mark/GI by unauthorised parties.	A GI cannot be de-localised, sold or licensed.

	<p>A GI certification mark may be transferred; and licensing is possible.</p> <p>A GI trademark owner is a right owner.</p> <p>A prior right holder has priority and exclusivity over any later users of the same or similar sign on the same, similar, related or in some cases unrelated goods/services where consumers would likely be confused by the two uses.</p>	<p>A GI producer is a right holder. As a collective right, in the geographical area all producers can use the GI symbol free of charge, if GI product specifications are met.</p> <p>Coexistence between <i>sui generis</i> protection and prior registered trademark of a GI product is possible, as long as the prerequisites of fair use and the quality of “honesty and good faith” are met.</p>
Enforcement	GI trademark owner to enforce trademark rights through criminal/civil law procedure.	<i>Ex officio</i> administrative protection
Term of protection	10 years as other trademarks protected in China, renewable, with costs. (Under TRIPS, no less than seven years as term of trademark protection)	Indefinite once registered, though producers are liable for fixed costs (e.g. setting up a body for quality control and marketing the GI) and variable costs (e.g. certification costs).



ABOUT CEPS

Founded in Brussels in 1983, CEPS is widely recognised as the most experienced and authoritative think tank operating in the European Union today. CEPS acts as a leading forum for debate on EU affairs, distinguished by its strong in-house research capacity and complemented by an extensive network of partner institutes throughout the world.

Goals

- Carry out state-of-the-art policy research leading to innovative solutions to the challenges facing Europe today
- Maintain the highest standards of academic excellence and unqualified independence
- Act as a forum for discussion among all stakeholders in the European policy process
- Provide a regular flow of authoritative publications offering policy analysis and recommendations

Assets

- Multidisciplinary, multinational & multicultural research team of knowledgeable analysts
- Participation in several research networks, comprising other highly reputable research institutes from throughout Europe, to complement and consolidate CEPS' research expertise and to extend its outreach
- An extensive membership base of some 132 Corporate Members and 118 Institutional Members, which provide expertise and practical experience and act as a sounding board for the feasibility of CEPS policy proposals

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Energy, Resources and Climate Change
Institutions

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