

EU and China around the Same Table: The New Agreement on Geographical Indications

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Introduction

The European Union (EU) and China signed a bilateral agreement for the reciprocal protection of Geographical Indications (GIs) against usurpation and imitation.[fn]On 23 November 2020, the Council adopted a **decision** on the conclusion of the agreement between the EU and the government of the People's Republic of China on GIs, namely the *Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, Geographical Indications*. Following the European Parliament consent on 11 November 2020, the agreement could enter into force at the beginning of 2021.[/fn] The agreement strengthens the EU-China trading relationship and reinforces the EU (*sui generis*) approach on GIs in the global market. It took around eight years of negotiations, but in the end, it can be considered as the first comprehensive agreement signed between the EU and China in this field.

The agreement is of milestone significance for economic and trade cooperation between China and the EU. Indeed, it could help boost EU exports of high-quality agri-foodstuffs, wines and spirits to the third-largest market for such products.[fn]This ranking refers to 2019. European Commission Directorate-General for Agriculture and Rural Development, *Agri-Food Trade statistical factsheet European Union - China, 2020, 2.*[/fn]

Besides the economic benefits, the agreement could also expand the global recognition of the EU's *sui generis* GI protection regime, one of the key EU trade policy objectives. In particular, the EU has pursued a strategy of increasing the recognition of its GI regime through dedicated chapters in preferential trade agreements or standalone agreements, like in this case.[fn]A complete list of the EU agreements in force (ratified or provisionally applied) in relation to GIs is provided by Origin Organization for an International Geographical Indications Network.[/fn]

The EU-China relationship

The EU and China share a sophisticated food culture, featuring several high-quality GI products protected in their respective territories. However, there has been no dialogue between the respective main political institutions except since the early 2000s. The agreement reached is the result of a long-standing EU-China technical cooperation on intellectual property rights issues (IPR), that was

developed with the establishment of the EU-China IPR Dialogue in 2003.

This cooperation led to a “10+10” project, running from 2007 to 2012, that was aimed at ensuring the protection of 10 famous EU food names in China, in parallel with the registration of 10 Chinese food names under the EU framework. When the European Commission estimated the total value of GI exports to China, and recognized that the Chinese market is a high-growth potential market for European food and drinks, due to a growing middle class with a taste for high-quality and genuine European products, the negotiation for an EU-China agreement for 100 GIs from each side started.

This cooperation may lead to something else, in addition to the conclusion of the agreement, in terms of approach to the GIs regime protection. In particular, a transition from the current US-modelled Chinese trademark regime to a more EU-inspired Chinese *sui generis* protection regime, is possible.

Beyond that, the current system of GIs protection in China is quite complex, and agri-food producers can benefit from three different schemes.[fn]W. Hu, *Reciprocity and Mutual Benefits: EU-China Cooperation on and Protection of Geographical Indications*, CEPS Research Report No. 2018/04, 2018, 9.[/fn] First, GIs can be recognized under Chinese Trademark Law as a collective or certificate mark. Alternatively, and in addition, GIs can be registered according to the Provisions for the Protection of Products of Geographical Indication, a *sui generis* type of protection. Finally, as primary agricultural products, the Agricultural Product Quality Centre under the Ministry of Agriculture is in charge of the examination and expert appraisal of GIs.

The Agreement

The agreement ensures that 100 EU GIs, half of which come from just two Member States, France and Italy, are protected in China, and 100 China GIs are protected in the EU. Further, the scope of protection will expand from the existing 100 GIs to 275 GIs for each side, to be registered within four years of the entry into force of the agreement.

First of all, the agreement provides the scope of protection and right of use of GIs, as well as the often-thorny issue of the relationship with trademarks. For GI enforcement, a GI holder has the right to request enforcement action and to seek judicial enforcement independently. There are even some procedural rules included, in reference to transparency and information exchange, and a Joint Committee for the monitoring and implementation of the agreement is established.

What deserves attention is the level of protection conferred to the all the GIs listed in the agreement annexes. A higher-level protection is provided against these practices:

- the use of any means suggesting or indicating a good which originates in a geographical area that is not the true place of origin that mislead the consumer;
- any use of a GI identifying an identical or similar product not originating in the place indicated by the GI in question, even where the true origin of the goods 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 and
- any use of a GI identifying an identical or similar product not compliant with the product specification of the protected name.

These rules reflect the enhanced level of protection provided by article 23 of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), which is usually reserved for protecting GI wines and spirits and is higher than those required for all other GIs in TRIPs article 22.[fn]Different provisions were drafted for different types of goods because during the Uruguay Round negotiators

accepted the demands of wine-producing participants, the EU in particular, that wanted a higher level of protection for wines and spirits than the standard applied to GIs in general. Beyond these provisions there is the political reason of persuading the EU to join consensus on the Uruguay Round.[/fn]

Multilateral vs. Bilateral and EU vs. US

GIs are a type of IPR protected at the multilateral level, and the first international treaty that properly mentions and defines the term “geographical indications” is TRIPS. Within the World Trade Organization, a stalemate developed during the negotiations of the Doha Round[fn] A. Daemrlich, *Stalemate at the WTO: TRIPS, Agricultural Subsidies, and the Doha Round*, Harvard Business School Background Note, 2012, 711-043.[/fn] and has led to the proliferation of bilateral agreements, which was due also for economic reasons, as sector-driven and market access issues. The spread of bilateral and regional agreements[fn]M. Solís and S. N. Katada, *Explaining FTA Proliferation: A Policy Diffusion Framework*, in Mireya Solís, Saori N. Katada and Barbara Stallings (eds), *Competitive Regionalism*, International Political Economy Series, 2009.[/fn] during the last 20 years demonstrates the dominant role of the EU and the US, with both showing an aggressive approach in IP rights negotiations. In particular, the European trade policy[fn]For a recent and general overview see: H. V. J. Moir, *Understanding EU Trade Policy on Geographical Indications*, 51 *Journal of World Trade* Issue 6, 2017, 1021-1042.[/fn] is aimed at obtaining an adequate level of protection for EU GIs[fn]T. Engelhardt, *Geographical Indications Under Recent EU Trade Agreements*, IIC 46, 2015, 781-818.[/fn] that the TRIPS does not offer. Thus, the EU, looking for satisfactory protection for its GIs, similar to that provided at the domestic system, has sought to achieve it through a variety of bilateral and multilateral international agreements.[fn]B. O'Connor and L. Richardson, *The Legal Protection of Geographical Indications in the EU's Bilateral Trade Agreements: moving beyond TRIPS*, *Rivista di Diritto Alimentare* Anno VI No. 4, 2012, 2.[/fn] Driven by concerns over EU trade negotiations, the US in the *Economic and Trade Agreement between the Government of the United States of America and the Government of the People's Republic of China* [fn]For a general overview on the IP chapter of this agreement see P. N. Upreti and M. Vásquez Callo-Müller, *A Brief Look at the IP chapter of the First Phase of US-China Trade Deal* in this blog.[/fn], has established precautionary measures. As a consequence of these rules, EU GIs that the US considers generic can be brought under tighter US scrutiny before obtaining a *sui generis* protection in China.[fn]W. Hu, *EU, China and the US around the geographical indications table*, CEPS Research Report No. 2020/07, 202, 4.[/fn] Given that, it would be interesting to observe the effective protection and implementation of EU GIs in China, as well as possible overlaps and contrasts among the EU-China vs. US-China agreements.

Conclusion

Unlike the EU, China has rarely covered GIs in its free trade agreements, but now seems set to change course. Now, China's main objectives in legislation on GI protection are better regulation, efficient administration and food safety, and is less focused on international trade. On the contrary, concluding GI protection agreements with third countries, based on a *sui generis* scheme, manifests the EU's rule-making power in external trade. The EU succeeded in extending its GI “old-world” approach, and the EU-China agreement is a good example in this sense, because it is paving the way for more GIs to be registered in different jurisdictions. Besides the achievements, it is important to understand that if the US, or a different country, has already concluded a GI protection agreement with a trading partner ahead of the EU, the EU's power to achieve GI protection for its products would likely be more limited. Finally, an additional challenge for the EU is represented by the protection for

non-agricultural products, an issue that the EU is still debating internally, but which shows great potential for the export of EU products also in the Chinese market.