



Università
Ca'Foscari
Venezia

Master's
Degree
in Language
and
Management
to China

Final Thesis

China before the trial system and bilateral agreements

An attempt in clarifying China's position in the multilateral debate
over the Protection of Geographical Indication.

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Matriculation number

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Academic Year

2022/2023

前言

目前地理标志产品举世公认高度质量的产品。这个特别高的质量就是从最好原料和小心产制留给的。地理标志是知识产权的一种重要类型，通常指识别某产品来源某一地区的标志，该产品的特定质量由于表明来源与某一地区的产品的特定质量。地理标志产品的高质量不仅跟产品质量有关，而且也是跟人性有关的质量。这里谈的质量就是一个文化的理念，是人们和地区造成的联系。造成个有独创性产品的能力是一个独特人性能力，所以地理标志产品就是非常有人性的产品。这个独特性是文化结果的，是地理和人们的联系。这个造成独特产品总体人性能力是把地理标志反映的。

目前地理标志是受知而且说地理标志就是说高质量。地理标志的人性质量要找到它们在文化的根须的历史。因为地理标志产品跟人性和文化的联系，本来标志产品成为一种文化与历史传承的载体。

在西方，特别是在欧洲地方，地理标志产品一直被认为很重要事物而需要法律保护的产品。法律保护很重要，因为在市场上特别高质量的产品可以高价格出售。如果在同市场上通过一样的品牌出售不同质量的产品，这就可以领导真地理标志产品出售无效，因为客户会识不到任何产品否有高质量。因为地理标志产品好名誉，这些产品可以高价格卖出。地理标志是一个资源，中国和欧洲都资源丰富。保护这么主要的资源就是基本的当务之急。中欧两个双方都认为地理标志在国家内和农村地方挑大梁：通过地理标志产品的高价值可以收入经济资料，所以可与投资来开发那些一般不太发达的国内情况里。在80年代后，在中国开始开放政策的时候：发展农村情况成为中国的一个先后：

地理标志具有能力实现这个心愿所以中国对欧洲促进的地理标志高级保护感兴趣。在多哈回合谈判期间里，欧洲通过使用地理标志产品的发展农村地区而公平市场准入的能力的这些原因，试图找别国家在加强跨国层地理标志产品法律保护的支持。这些原因适合中国需要，所以中国小声地支持欧洲的提议。其实，中国在多哈回合谈判里的态度很特殊：中国参加多哈回合的方式不积极，别成员很少听到中国声音。这个态度收到了很多的批评。最广泛的想法原因就是中国受制于别国家的意志。这个想法发达的原因里还有一个：中国的地理标志法律制度是从外国影响的，所以跟欧洲和美国的相同有很多。直到几年前，中国地理标志法律制度有三个独立机构来管理地理标志保护的方面。三个机构非常收到了外国法律机构的影响。这个影响有不同的因素，专程对地理标志保护方面，从美国和欧洲都收到了的影响。TRIPS 协定规定不是强求地理标志产品保护的法律水平，TRIPS 协定让国家根据每个国家的内情况进行最合适的规定。TRIPS 给的这个自由造成了复杂情况。国际层面，以欧洲为代表的“旧世界”国家与以美国为代表的“新世界”国家在地理标志的法律保护度相对。旧世界国家就是那些国家支持一个跟独特的地理标志保护，特别是欧洲的 *Sui Generis* 制度。这个方式就是进行新的，针对地理标志产品保护的规定。新世界国家的想法不同，据新世界国家不要进行新规定来保护地理标志产品因为已经有了的那些 TRIPS 规定足够。对他们来说，加别的规定一定会领导更复杂法律情况，他们不愿意加重别负担。由于这些区别，在多哈回合谈判里一致共识取不了。既然中国代表跟欧洲想法有同点，看来中国的地理标志保护制度可以找到中国也跟新世界有同点。尽管 TRIPS 协定不强求方法，中国也不选择一个方式。而且中国选择了所有的方式。中国的旧三个机构就好像具有新旧世界方式都的特征。这个论文的主要分析就是解读中国在加入 WTO 贸组

织的以前和以后期间关于地理标志产品的问题，试图了解在中国进行规定的承诺后背是否真兴趣或者中国在多哈回合谈判的第一阶段里的倾向态度的原因是否中国成为新世界和旧世界的相比的受害者。为了适度明白中国关于地理标志保护的观点，本论文分为三章。第一文章的目的就是提供一个总体概述。地理标志产品的历史很长，所以本论文的目的不是小心的重建地理标志的所以历史，而且就是提供最总要点来明白中国怎么来目前情况。到了目前的统一系统以前，中国超过了很多困难。这些困难是把中国旧三方系统代表的。尽管理解这些不清楚的时间不太容易，但是研究这个历史特别有重要性。到几年以前中国有了三个系统来管理地理标志的法律保护。最旧的系统就是一个跟新世界方法相似的，也就是说国家工商行政管理总局 SAIC 的方法。这个政府机构于 90 年代发布了第一个关于知识产权的规定。虽然这个规定还行，但它的形状非常简单，所以还不太符合国际规定。在随后的几年中，别的政府总局承担施行更合适规定。国家质量监督检验检疫总局 AQSIQ 进行了别的规定。总的来说，SAIC 规定代表新世界地理标志法律方法而 AQISIQ 规定代表旧世界地理标志保护法律方法。这种双系统充分体现了中国如何被外边情况影响了。甚至在 2007 年，另一种政府结构，过农村部 MoA，发布了针对农村地理标志部门的保护规定。第一章的目的是提供这些法规的总体情况。最后，本章来介绍国家知识产权局，CNIPA 发布的现行有效法定。该法定取代并取消了以前所有的不同法规成为唯一的制度。这个从“试行”三系统制度向一系统制度体现了中国的与国际规定发展的做，简化注册和管理地理标志制度的愿意。

第二本章重点解释中国在与地理标志保护相关的国际协顶中的立场，特别是在多哈回合谈判中的立场。正如本章将分析的那样，从 TRIPS

生效以来，地理标志保护得不到清楚定义；这种情况领导关于地理标志保护的不断讨论。这些谈判是在多哈回合实现的，而最谈判的那些目的有特别两种。第一个是地理标志扩大化，第二个是进行国际地理标志的注册体系。旧世界的国家觉得同时有一个的地理标志定义和分层特色地理标志的保护不明智，而据新世界国家的思想，在已经复杂情况里加入别的困难不好意思，也是因为 TRIPS 提供的法规已经充足的。

在本章里建施图解释中国对这个情况的立场。同上述写下的那样，中国在国际谈判中的立场不容易解释，因为中国的梯度好像总是中立的。这是因为中国从来没选择只一个想法而且一定不直接地表达立场。对中国在多哈回合中的批评很多。它们大概考虑到中国是否对地理标志保护感兴趣的，所以觉得中国不积极地参加制定国际法规的过程而且被别国家低眉顺眼的。本章的目的就是分析中国在国际谈判机会，特别是在多哈回合的地理标志保护谈判里，想提供别的看法来解决中国的立场。其实中国对保护地理标志产品有真正的兴趣，但是由于中国加入 WTO 比较晚的时候，它的对国际动态不太了解，所以选择先等得 WTO 动态的了解然后开始立场是非常明智的选择。事实上，对哈回合过了一段时间各国开始战略地采取立场：比如中国支持欧洲发达地理标志保护的那个建议，但是加体积把这个题目要与建立地理标志注册制度的题目一起对待。这是因为中国地理标志预料丰富，所以一定从地理标志扩大化收益，但是当时没有所有能力管理保护发达。中国战略就住在这个点里：地理标志的注册体制是一个已经存在 TRIPS 规定的题目，而且地理标志扩大化不是。中国怕了应该进行地理标志注册体制而得不到国际市场上总体对地理标志保护，所以如果把两个题目放在一起，一定可以得到至少部分利益。最后，通过不

同列子，比如目前在保护地理标志保护的小心，中国进行的推动地理标志产品， 这本章 将提供中国的目前对地理标志产品保护的想法。

最后的那本第三章的目的就是解释最近十多年在国际层上的大概新方法。先以，这本章来分析原因以为 WTO 国家大部分从多边转移到双边层面的兴趣转移。在多哈回合的某一时刻，几乎大家国家都清楚了谈判陷入僵局。他们都体现了如果还依靠这种方式来达到自己目标那将什么都得不到。多哈回合谈判继续了很多年，直到新的方式到了：WTO成员开始自由决定如何以及与谁维持双方联系来建立战略性的协定。根据 TRIPS 规定，只要成员国家遵国际规定，那自由地可以签订双方协定就可以。因此，由于国际规定相当灵活，开始建成了自由和特色的双方的协定。第三章的主要点是中国和欧洲签订的关于地理标志保护产品。

2021 年三月 1 号 “中华人民共和国政府与欧洲联盟地理标志保护与合作协定” 正式生效了。到了这个协定不容过程。开始 2011 年中欧双方开始地理标志产品保护谈判。2018 年国务院机构调整后，原国家质检总局和国家工商总局相关职能划入国家知识产权局，谈判也相应地有商务部会同农业农村部和国家知识产权局进行。2019 年底中欧宣布结束了谈判，然后就在 2021 年 3 月 1 号协定起正式生效。根据协定，纳入协定的地理标志产品应该受到高水平保护，而纳入协定写下相当的第一附灵。这个一百产品从协定生效的那天也开始被法律保护。还有第二个附灵包括加各 175 每双将加入协定的产品。最重要的利益两个双方的真承诺。这个协定的意思就是合作和发展双方的贸易联系。其实这些地理标志产品可使用对方的地理标志官方标志，有利于相关产品有效开拓市场。这本三章里还有简单的主要条款的分析，

比如说第四，第十，第十一条。在这个条款里有规定中欧将成立联合委会，以更好的履行协定。随后边写的分析，这种协定非常中要：除了因为提供跨国的地理标志保护以外，还因为它包括的因素还有人。人们的角色必不可缺，因为人们和地理标志的联系秘密而不可以分离的。协定有规定将扩散地理标志的观念，这样客户们就可以知道什么是地理标志产品而且愿意高价格买高质量产品。只要所有的因素都一起做好，就地理标志保护可以发展来改进欧洲和中国在贸易层，经济层和人性层的联系

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INTRODUCTION

Throughout the World Geographical Indications¹ are protected by a variety of legal means, which usually tries to satisfy the necessities of the individual nation or regional area. Broadly speaking, the approaches belong to Sui Generis and Trademark methods. As for multilateral agreement, the earlier and most known efforts can be summarized in the Paris convention², Madrid agreement³, Lisbon Agreement⁴ with its latest Geneva Act⁵. These treaties were born from the will of the states to ward their national specialty abroad and are way to obtaining abroad protection standard. With respect to all the previous acts that had considered the protection of GIs as a legal concept, a successful tentative to harmonize the “fragmentary” afore established framework, is represented by the TRIPS Agreement, which main aim is to standardize the Intellectual Property regime to all World Trade Organization members. In particular, TRIPS provisions represent the first international regulation to specifically address the issue of GI protection: Under section 3 of part II of the TRIPS Agreement are established the provisions for GIs protection, namely articles 22⁶, 23, 24.

¹ Here in after GIs.

² The Paris Convention for the protection of industrial property was agreed in 1883 and complemented by the Madrid Protocol of 1891. It was revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958), and Stockholm (1967), and amended in 1979. See on <http://www.wipo.org>, “Treaties”, “Intellectual Property Protection Treaties”, “Paris Convention”. Paris represent the first legal framework of GI protection, introduced in it fist article the term “appellation of origin” or “indication of source” identifying it as a separate intellectual property right. The Paris Convention provides that each country who is a party to the treaty will grant the same protection to IPs from another country that is also a party to the treaty (Paris Convention, art. 1(2))

³ Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods concluded on 14 April 1891. The Madrid agreement’s innovative element is the extension of the protection of indication of source to deceptive indication of source in addition to false indication. The difference of deceptive from false relies on the fact that a deceptive indication of source can be the true name of the place where the good originates from, but nevertheless confusing the purchaser in respect to the true origin and quality of the good.

⁴ This agreement was the first norm to officially establish an international system of registration and protection of appellation of origin among the agreement contracting parties. This agreement is a trailblazer of a new protection approach, based upon the existence of a national registration (Blakeney 2019).

⁵ Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and Regulations under the Geneva Act of the Lisbon Agreement, 2015. The Geneva act main reason is to extend the protection alongside appellation of origin, to better consider existing national or regional system for the protection of distinctive designations regarding product which quality is origin based. The Lisbon agreement and its Geneva amendment of 2015 are renowned for their flexibility: even if it binds parties to legally protect GIs, it considers the differences around world for the same object: it doesn’t matter if it is a Sui Generis system or it is used a trademark regime, until GIs are protected, parties are satisfying the requirement to the agreement.

⁶ Article 22 of the TRIPS agreement provide a quite commonly approved definition of GI: “... indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”. It also expresses the three component of the protection: a) Protection against uses of indications that mislead the public as to the origin of the goods or are false

The debate over the GI protection which arose in relevance to TRIPS disposition, precisely in the Doha Round⁷, is founded on the apparent inconsistencies between TRIPS unique definition of GI which is subject to different level of protection, based on their nature: Article 23 requires members to make available additional protection, beyond that provided in Article 22, for wines and spirits GIs. For wines only, TRIPS found worthy emphasize the need to accord protection for each geographical indication for wines in the case of homonymous indication, because the similar sound of different GI does not exclude that both need to be protect, in order to ensure equitable treatment of the producers concerned and to not mislead consumers.⁸ Since TRIPS Agreement leaves freedom on the choice of the method to protect GI (Morin 2003), every Member State determined its method of implementing provisions⁹, the differences in national implementation on GI protection represent the biggest in the major field of intellectual property (Addorf et al. 2002).

Broadly speaking, the approaches can be identified as Sui Generis and Trademark approach. The protections via Trademark and Sui Generis regime are not mutually exclusive, but they often do co-exist: China old legal framework is probably the most exemplificative case with regard to the matter. The term Sui Generis derives from the Latin world, which means one that is of its own kind, unique, peculiar. The form of legal protection which adopt this name thus refer to a special series of law which are tailored upon the necessities of the subject, in the case tailored upon the necessities of GIs. The system to which this GI protection give birth to is of some sort of public nature; since the subject of protection is not identified as a trademark, so it not belongs to a single entity, Sui Generis protected GIs does not belong to an owner but usually to a group, an association, a culture. The peculiarity of the Sui Generis protection system is that it does protect GI as a subject matter as long as the GI clearly contain the direct relation of the product to a determinate place from which it originates. The intrinsic nature of the Sui Generis approach makes it not possible to have a uniform definition of it: every institution, in terms of national laws, can choose different option to protect GI under Sui Generis law, they're not obliged to adapt to a standard: in some cases new norms are adopted upon the existing laws, in others law are amended in order to better fit the new necessities and in some cases it is just the content which is ratified.

despite being literally accurate (Article 22.2a to 22.4a); b) Protection against uses of indications where this amounts to an act of unfair competition within the meaning of Article 10bis of the Paris Convention (Article 22.2 b) and c) Refusal or invalidation of trademarks(22.3) that contain or consist of indications, where they may mislead the public as to the origin of the goods(Stolte 2013).

⁷ This debate in the core argument of the paragraph 2.1.2 of Chapter 2 of this thesis - Major dynamics of the Doha Round negotiation over the issue of GI-extension and GI multilateral register-.

⁸ TRIPA Agreement Art 23.3. The other elements reserved to wines and spirits GI are established in Article 23.1 to 23.4, which respectively give disposition for severe link between wine and spirit GI and a particular place of origin, the possibility to refuse the registration of a Trademark which consist or contain a GI, to be applied irrespective of whether or not the use of the indication in the trademark would be of such a nature as to mislead the public as to the true place of origin and the call for future negotiations in order to increase protection for wines and spirits GIs.

⁹ TRIPS Agreement Article 1.1 – Nature and Scope of Obligations- recite “Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.”

The trademark protection is instead a type of protection which consider the GI as sign capable of distinguishing the goods of one undertaking from those of other undertaking, and usually also does have a sub-group diversification: Collective and Certification Marks, which are respectively held by an association in the first case and an independent entity in the second and which controlling and managing activities are enabled by the association in the Certification Marks and by the entity for the Certification marks. The latter can be used by all the subjects complying with the regulations while a Collective mark is exclusive: only Member to the holder association possess the right to use the mark (Song 2018).

Despite nowadays Protected Geographical Indications are associated with well-known and established concept, what is behind the growth of its legal concept in terms of protection of GI is instead a very complex matter. Is in Europe that GI products found their roots as concept, and is in France¹⁰ that their birth as legal concept had taken place. In China, a huge country with an incomparable vastity of natural resources, it is easy to image how GI products flourish and circulates. This thesis tries to reconstruct the history of the development of legal protection of GIs in China, by looking at the parallel growth of the country interest in the field and the real efforts made for pursuing the objective of reach other countries standards. Special attention will be given in the progression of China as an active player in the international most important multilateral agreement, the TRIPS agreement and its subsequent negotiations, in terms of GIs. China started implementing warranty measures for GIs and IP since the 80s, at a time in which it was in the opening up policies phase, and thus the influx of foreign investment and investors was heavy. The country was in need for growth, opportunities and innovation, and the gentleman agreement, the non-written one was that of giving to having. The exchange requested China to involve its resources, in terms of access to market, but this was not be enacted alone. The Chinese market, if not followed by some guarantees, do not possess the capacity of attract foreign investors. In order to trust China, foreign investors were in need to have some protection of their products and patents, and this could be reached only if China implemented some western-inspired measures in the field of IP protection. The focus of this thesis are the GIs, for this reason, all the major events reported, texts analyzed and meetings comments are relative to the IP sub-field of Geographical Indications. In order to stimulates this foreign influx and start the route to reach international standard, China had to implement pleasant-to-foreign policies, which make foreign investors feel more secure in China. The other side of the medal was instead not that positive: the domestic firms and economies was complaining that all the measure implemented for attract foreign investor in bringing innovation and knowledge in China was letting them in a difficult position, since this measure of course does request sacrifices from domestic players, in term of modification, adaptation and slowdown of their usual balance. The encountered difficulties become a challenge for

¹⁰ While the legal protection if GIs has developed since 1883, the real and first time GI's intuition appeared can be traced back to mediaeval Bordeaux statutes to protect the competitive advantage of wine producers. The privileges Bordeaux producers enjoyed were mainly two: the privilege of the descendance and the privilege of the barrel, which respectively prohibited the sale of others province's wine until November of each year, and the obligation for Bordeaux wines to be contained in specific bottles as to remain distinctive. This settled standard make it also easier for malicious to counterfeit. The debate over which this dynamic had given life to probably foreshadowed the modern debate over GIs (Van Caenegem 2003).

China, and before reaching a new balance, the range of attempts that China enacts to perfectionate the structure regarding protection of GI were multiple. The subsequent years had been characterized by continuous amendment, new policies, all voted to grant positive factors and proofs in order to be admitted by WTO. All the various disposition that followed over the years does, in a sort of way, reflect China temperament and speak out all the subtle position never expressed. This ambiguous approach at the multilateral lever became the subject of many critiques in the later period of post-accession to WTO. Instead of being a period of stability and balance, the years following China accession in WTO have been characterized by tensions between the members. The air everyone was breathing was heavy of dissatisfaction and willing to reestablish terms of the newly born TRIPS agreement. This common feeling then revealed itself in the negotiations of the Doha Round. China attitude during the first period after accession to WTO's TRIPS had been characterized by a peculiar distant approach, and as for its power in term of dimension and influence in the East Asian area, it had been difficult for critiques to properly understand what was going on in China strategy. By reporting China movements in the period preceding, during and following in accession to WTO and thus its compliance with TRIPS disposition, its position regarding multilateral protection for GIs will become clearer. China approach can be identified as that of a student, which was observing the external dynamics and letting inspire itself until it reached real understanding of the consequences in terms of benefits and cons of a determinate choice. The choice here discussed is one of the themes analyzed in this thesis, and that exists despite the existence of a multilateral successful signed agreement on protection of GIs; the fact that TRIPS agreement does not dictate a standard or a uniform way to protect GIs in multilateral relations let every country establish its own method to accomplish these dispositions. The two main approach in protecting GI in the world, the aforementioned Sui Generis Approach and the Trademark approach never became closer; instead the differences and the distance between the two method, and thus the distance between the countries enacting different method become widely and widely over the years. China until few years ago had a very complex system of protecting GI, since it does not take a choice, but applies both Sui Generis and Trademark protection. Therefore, it will be given a description of the system which characterized China protection. The freedom in making choice that TRIPS agreement gives to WTO member represent the reason why a consensus over the theme never been reached. The debate born from this split-visions of the notion has been the core of the negotiations known as the Doha Round. The issue of protecting GI adequately is the core motive of the conflict between the Old World, championed by EU, and the new World, championed by US. The two factions have exposed in debate occasions and particularly in the Doha Round Negotiation, opposite position; for the New World, implementing extension would increment cost and could led to imbalance in the number of GIs for certain Members and also does perceive the protection as a barrier to trade since the augmented burden for producers; while the Old World argues that having hierarchical level will augment the simplicity in stealing and usurping a GI without give any possibilities to the producers to stop such action. (Addor 2003).

By acting firstly as an observer of the debate which were going on between the two faction of the Old Word and New World over GI protection, China has slowly taken pieces of each side and then create its own plate. The debate had been under discussion

for many years, and GI Extension and GI register had been the main theme over which The Doha Round negotiation came about. The Old World was claiming for better and deeply protection of GI, by reporting the discriminatory nature of have a different type of protection based on a hierarchical structure of product, while the New World was feeling satisfied with the protection given to GIs, further stating that the EU was having a return by stressing about the massive protection of the product. China faction is not easy in understanding, since its temperament had always been ambiguous, and its declarations had never been direct in form and content. Beside this, for sure China have interest in the matter of protecting GI. Even if strategic, and frequently not direct, China position can be deducted in the debate of the Doha round, and is that of being in favor of GI extension more than of a GI register. Retracing China movements in terms of policies, amendment of existing and striking deals in the field of international protection of GI is used as an instrument in gaining understanding in China thought over the debate, will show China has been a strategic player, which does take a position but without siding. Finally, the theme of bilateral and multilateral protection will be exposed and the transition process from The Doha Negotiation to a common acknowledge of the Debate going on going nowhere is presented in terms of the motives that leads to a shared preference in striking deal with chosen partners, instead of trying reach amendment in TRIPS agreement. The recently and currently on-going agreement signed between China and EU on GIs protection known as “China-EU Landmark Agreement” will be presented and commented, and then some articles most expressive of the relation between China and Europe in the field will be analyzed. In 2021, the two partners sign this unique agreement, which is considered to be a concrete example of mutually beneficial trade cooperation between the European Union and the People’s Republic of China, reflecting the openness and adherence of both sides to international rules as a basis for trade relations. The two powerful partners with this agreement undertake the responsibility of implementing in the first 5 years 100 geographical indications of origin of each party to be protected, and the agreement further request the two parties to undertake also an additional protection of 175 products in the list by 2025. China has always been a special and unique country and with this thesis what is want to be demonstrated is how these characteristics are also attributes reflected in the field of GIs protection and the relationship born with the westerns communities to jointly cooperating on the field.

CHAPTER 1: GEOGRAPHICAL INDICATION IN CHINA

1.1 The three parallel GI protection schemes in China

As for its vastity, China enjoys a very huge amount of resources and in-country culture: approximately 9.6 million square kilometers of land hosting more than 56 different ethnic group given rise to millions of traditional techniques, agricultural methods, production standards and specific due-to-origin special product. Hence the necessity to establish an effective mechanism or system to protect geographical indications.

China recognizes geographical indicators as 地理标志产品 and Article 16 of China Trademark Law defines them as “signs that signify the place of origin of the goods in respect of which the signs are used, their specific quality, reputation or other features as mainly decided by the natural or cultural factors of the regions”.

Despite the definition of GIs given by China’s TM law, which is heavily influenced by the definition by the Trade Related Aspects of Intellectual Property Rights Agreement¹¹, the legal system of protection (Zheng, Calboli 2017) of GIs in China is not unambiguous, at least this was true until few years ago.

Before the unification of the system in 2018 by the China National Intellectual Property Administration¹², the legal protection of China has been chaotic and complex in a sense. In this chapter it is offered a general review of the not-so-distant three parallel GI scheme of China, in order to understand the roots of China history starting by its first approach in the field. As for China and its peculiar GI protection system, it has been felted as a trial system¹³. It was for China a time in which the experiments regarding which approach does better apply to its necessities was

¹¹ Hereinafter TRIPS.

¹² Hereinafter CNIPA.

¹³ In this thesis the term “*trial*” follows in the meaning offered by the Cambridge Online dictionary of “*a test, usually over a limited period of time, to discover how effective or suitable something or someone*”. Referred to the period of time which occurred since the first attempt of China in adopting GIs protection related measures until the formal unification of 2018 from the CNIPA. As it will be presented in the subsequent chapters, China during this period has enabled a *three-way system*, i.e. it had three different and independent institution which launched, enabled, managed and supervise the measured of GI protection. The phonetic closeness between “three” and “trail” has a double meaning precisely for this reason: the three institutions had risen in different times and all of them were trying to fit new standard, both requested by national and international necessities. Until the real understanding of the dynamic related to the GI protection field, these multiple efforts have taken the shape of attempts instead of a properly tailored-upon China necessities legal form of protection. These attempts are the reflection of China’s journey in implementing the actual modern and unified system of GIs protection, and thus the term *trial* is used as a parallelism to the term *three*.

to be adopted; the reason to this choice-not-choice are the subject of the second chapter of this thesis. In fact, China approach to GIs protection has been quite unique, since it involved three different mechanism for almost 20 years. Before going in the nowadays administrative and legal protection in China, it is important to understand the journey China has going throughout before reaching a unified and comprehensible system.

Firstly, China as well as EU possesses a wide range of special products, which are recognizable by virtue of their uniqueness. This uniqueness is not different for both cases is not distant from the TRIPS description¹⁴ of GIs. In fact, a lot of the product from China are typical because they do belong to a specific territory. This vast territory has a lot to offer, and the agri-food sector is rich in diversities and peculiarities.

Despite the uniqueness of China's product is analogous to the GIs in the world, the development of recognizing GIs, legally protecting them and the concept itself has going throughout a different way.

1.2 The involvement of China in international arena

As discussed before¹⁵, two are the approach that are being used around the world to protect GIs: Sui Generis regime and trademark regime. China does not take a choice, it takes every approach¹⁶.

The first approach of China to GIs protection can be traced back to the mid-80, time when China adhered to the Paris Convention (Zheng, Calboli 2017). China acceded to the Paris Convention in March 1985.¹⁷This event signed the recognition by China of GIs as a legal concept and since then China was required to protect GIs by preventing acts of unfair competition, including the misleading use of indications of origin, this provision is also recalled in the subsequent TRIPS agreement¹⁸.

¹⁴ Geographical Indications are defined at Article 22(1) of TRIPS Agreement as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin"

¹⁵ In the introduction of this thesis is offered a briefly explanation of the dynamics and main features of both Sui Generis and Trademark regime of GIs protection.

¹⁶ China legal system of GIs protection has been for a long time characterized by three main institution, which, as it will be presented, manage the protection process by both TM law and Sui Generis laws.

¹⁷ It is worthy to be said that China made a reservation to the Paris Agreement, to Paragraph 1 of Article 28 of the Convention regarding dispute settlement;

¹⁸ under Articles 10bis and 10ter of the Paris Convention, contracting parties are obligated to provide protection against unfair competition, and to ensure appropriate legal remedies. These obligations are

Between the years to 1989 to 1995, China fulfilled its obligation as a member part to the Madrid Agreement and the related Protocol. Speaking properly, China joined respectively the Madrid Agreement in October 1989 and the protocol in December 1995 (Yuanhua, Wei, Nabi 2016).

The Madrid Agreement is known for having two main objectives (Hu, Robert 2009): the first to facilitate the acquisition of protection for marks among the member states and the second to make it easier for the owner of a mark to manage the registration related matters among the members states.

However, China when joined the Madrid Agreement made a declaration that the Madrid Agreement would not be applicable to special administrative regions of Hong Kong and Macau (Norton 2020).

China joined the Madrid protocol with two further declaration than the one related to the Agreement, which respectively regards the refusal timing and methods and the fees relative to the registration and renewal of marks.

As for the Paris convention, China put strong efforts to fulfill the gaps between its national provision on the matter and the requirement of the Madrid Agreement.

To reflect the commitment and the willingness of China to effectively protect GIs, since 1989 the State Administration for Industry and Commerce (SAIC) issued an administrative decree to protect the French GI 'Champagne' from being misused as a generic term for a type of sparkling wine in Chinese markets (Zhen Haiyang 2016). This was probably the first significant event in China regarding GI-related administrative protection. ¹⁹

After these infant systems of protection, GI protection system finally started to grow, and faced the development of the two approach of Trademark and Sui Generis protection.

reinforced by Article 2 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) that obligates parties to comply with the Paris Convention

¹⁹ In 1989, the State Administration for Industry and Commerce (SAIC)² issued an administrative decree to protect the French GI 'Champagne' from being misused as a generic term for a type of sparkling wine in Chinese markets, ³ See State Administration for Industry & Commerce of the People's Republic of China, Notice of Stopping the Use of the Word 'Champagne' on Goods Classified as Alcoholic Drinks, TRADE MARK OFFICE (25 October 1989)

1.3 China Trademark Approach in GIs Protection

Governing of GIs protection under the trademark regime, Trademark Law²⁰ was first launched in 1982 by SAIC.²¹

Actually, the SAIC was born in 1978 when the Central Bureau of Private Enterprises and the Central Administration of Industry and Commerce merged together (Zheng, Calboli 2017), entrusted to supervise and manage the national registration system and brand management.

Its missions were, inter alia, facilitate the international exchange of trademarks, including application of the GI protection system through the Trademark Law.

In 1982 the first TM law was published, but it not covers GIs as a concept (Wang, Kireeva 2010) of course thus making conflict not unfrequently²².

This idea begins in 1994, when SAIC ruled out "*Measures for the Registration and Administration of Collective Marks and Certification Marks*"²³, based on the Trade Mark law (1993 revision).

This was the first administrative rule concerning the GIs protection at a national level in China, and finally covers GIs as a subject matter.

²⁰ Trademark Law of the People's Republic of China (as amended by Decision of 22 February 1993, of the Standing Committee of the National People's Congress, on Revising the Trademark Law of the People's Republic of China), available at www.wipo.int/wipolex/en/text.jsp?file_id=181327

²¹ As for informative scope, On 13 January 2023, the China National Intellectual Property Administration (CNIPA) published the draft amendment to the Trademark Law of the People's Republic of China. This is the fifth revision of the Chinese Trademark Law since 1983. The draft expands the Trademark Law to 10 chapters and 101 articles. Of these, 23 new articles have been added, 6 new articles have been carved out of existing articles, 45 articles have been substantially revised and 27 existing articles have been retained. Many of the amendments aim to reduce the malicious registration of trademarks and introduce a system to enforce the transfer of maliciously occupied trademarks. In addition, the requirement of good faith in the field of trademarks is to be strengthened. Furthermore, trademark registrants are now required to file statements of use every five years and are subject to random checks. However, since the amendment does not cover field of GI, the latest amendment will not be considered in this thesis. The official CNIPA note and draft are available at https://www.cnipa.gov.cn/art/2023/1/13/art_75_181410.html

²² I suggest as an exemplificative case, looking at the Jinhua Ham case. Clearly presented and explained in Zheng, H. A Unique Type of Cocktail: Protection of Geographical Indications in China. In *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific*; Calboli, I., Ng-Loy, W. L., Eds.; Cambridge University Press: Cambridge, 2017; pp 397–400.

²³ Procedures for the Registration and Administration of Collective Marks and Certification Marks (issued by State Administration for Industry and Commerce, 30 December 1994, effective 1 March 1995, repealed 1 June 2003) (China), available at <http://vip.Chinalawinfo.com/newlaw2002/SLC/slc.asp?db=chl&gid=18688>

On the second revision of the Trademark Law in 2001, new disposition on the existing requirement were added, and in 2003 SAIC issued the new "*Measures for the Registration and Administration of Collective Marks and Certification Marks*"²⁴, which basically serve to reinforce the protection of GIs in China. The law stipulates that the product must be registered not as a trademark, but as a collective or certified mark (Lecoent, Vandecandelaere, Cadilhon 2010).

The difference of the two can be found in China TM law the article no.3, paragraph 2 and 3²⁵, and collective and certification marks can be explained as below.

A collective mark is a mark registered in the name of a group, association, or any other organization and used by its members to indicate membership.

A certification mark is a mark which is owned by an organization that exercises supervision over a particular product or service and which is used to indicate that third-party goods or services meet certain standards pertaining to place of origin, raw materials, mode of manufacture, quality, or other characteristics. (Calboli, Wee 2017).

Since TM law offer protection to goods and services as trademarks, it is to be underlined that not every product can enjoy GIs trademark protection: in fact, services are not included and under this law, registration of GI as certification or collective marks is subject to the requirement of meeting the definition given by article 16.2²⁶. SAIC procedures for registering GIs as either certification or collective mark stated that the applicant has to be a group, organization or association applying registration to TM protection for a GI, because the applicant must be originating from the relevant GI region.²⁷

The application documentation also require proof that the applicants are capable of controlling the mark and manage the supervision²⁸of the rules and standard procedures concerning the GI product and production (Rahman 2016). In respect of foreign GIs, further documents must be provided to demonstrate the applicant's authority to enforce the submitted regulations.

Effectively, GIs protected under trademark law are private rights, managed by the collective or certification mark owners (Legal Systems to Protect GIs – oriGIn). Enforcement of GIs protected

²⁴ Measures for the Registration and Administration of Collective Marks and Certification Marks (issued by State Administration for Industry and Commerce, 17 April 2003), available at www.wipo.int/wipolex/en/text.jsp?file_id=181612 (English), http://sbj.saic.gov.cn/flfg1/sbxzgz/200906/t20090603_60312.htm

²⁵ China TM law, Art 3; Paragraph 2 & 3

²⁶China TM law, Art 16.2 "Identify a particular good as originating in a region, where a given quality, reputation or other characteristic of the goods is essentially attributable to its natural or human factors."

²⁷ Measures for the Registration and Administration of Collective Marks and Certification Marks (promulgated by the St. Admin. for Indus. and Commerce, April 17, 2003, effective 1 st June, 2003-ARTICLE 4

²⁸ Id., ARTICLE 5

as collective or certification marks is managed by the owners, and administrative enforcement is coordinated through the local administrations of industry and commerce upon the rights holder filing a complaint in relation to the unauthorized use of its GI collective or certification mark.

For certification marks, any natural person, legal person or other organization whose goods have met the requirements of the certification GI mark must obtain permission to use the certification mark from the organization that is the rights holder (Kur, Senftleben, 2017). The rights holder may not deny permission to a qualifying party.²⁹

All types of goods can be protected under the SAIC-administered GI protection system, which had been the main system most commonly used by foreign GI owners, possibly because of the detailed registration procedures that existed at the time (Chan, 2011).

1.4 China Sui Generis Approach in GIs Protection

In 1999, the State Administration of Entry-Exit Inspection and Quarantine (SAEIQ) issued *Provisions on the Administration of Marks of Origin and the Provisions' Implementing Measures*, marking the beginning of China's dual mechanism system for GI protection (Song, Wang 2022).

Assisted by France, China developed its AQSIQ-administered GI protection system as early as 1999. The State Bureau of Quality and Technical Supervision, in close cooperation with the French Ministry of Agriculture, the Ministry of Finance, and the Bureau National Interprofessionnel Du Cognac (Haizheng, Hu, Li 2016), promulgated *China's Provisions on Protection of Designations of Origin Products* in 1999, introducing GI-specific legislation, the first milestone for Sui Generis GIs protection in China. Two years later the Provisions on the

²⁹ Since the provisions of Certified marks admit the usage of the sign allowed for the producers which respect the standard imposed by the definition of the Certified Marks Product, usually the Certification Marks Product are considerate closer to PGI than the Collective Marks.

Administration of Marks of Origin were promulgated and AQSIQ was officially established, emerged to replace SAEIQ (Haizheng, Hu, Li 2016).

The Special Label system issued is conceptually similar to the EU's Sui Generis PGI/PDO³⁰ system in the fact that it specifically deals with GIs and distinguishes them with a special label indicating a registered 'geographic indication product'.

In 2005, *Provision on Protection of Geographical Indication Products*³¹, takes the place of the two aforementioned measures.

The definition of GIs in this administrative rule can be founded in Article 2. Since the GI product indicated by this regulation comprehend all those cultivated or grown in the region of origin, or product which contain, wholly or partially, element originated from the region and produced and/or processed within the standards in terms of technique given by origin territory tradition, the subjects to which this regulation is voted to are quite wide, including agricultural as well as handicraft spirits and so on. The only one which is excluded is service sector.

For the registration, under the *Provision on Protection of Geographical Indication Products* applicant should pass a two-tier system (EU Products Seeking GI Protection in China, USDA 2021): the first examination is on the local competent authority and only after the AQSIQ will consider the second examination, the formal one and approval. Following the decree no. 78/05(June 2005)³² Article 8, the applicants can be organization designated by the Government (at or above the county level) or by an association or an enterprise appointed by the Government upon consultation with the departments concerned. In article 10 of The *Provision on Protection of Geographical Indication Products* are defined the formal application procedures, specifying what document are requested and the article 13 to 16 are devoted to the formal process of approval, which also is issued for the consideration of third parties' opposition. If an application is approved by both the local quality and inspection department and the AQSIQ, the applicant than was permitted to use the GI and apply the special label to its product.³³

³⁰ Since 1992 Europe regulate the normative approach to GI, and the European Quality schemes of geographical indications, known as Protected Designation of Origin -PDO-, Protected Geographical Indications- PGI- and TSG Traditional Specialty Guaranteed serves to promote and protect names of agricultural product and foodstuffs. Even if it appears three years before the TRIPS, EU Regulation 2081/1992 does conform to the WTO regulation.

³¹ See Provisions on the Protection of Geographical Indication Products (promulgated by General Administration of Quality Supervision, Inspection and Quarantine, 16 May 2005, effective 15 July 2005), hereinafter, The Provision

³² Provisions of May 16, 2005, for the Protection of Products of Geographical Indication (promulgated by Order No. 78 of June 7, 2005 of the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China)

³³ The process of registration is fully described on the AQSIQ Official webpage at <https://www.aqsiq.net/about-aqsiq.htm> which I suggest too look at.

A GI logo was provided under *Provision on Protection of Geographical Indication Products*, as in most Sui Generis system, which consists of the sentence, “*geographical indication protection product of the People’s Republic of China*”, in Chinese, the words “People’s Republic of China” in English, the GI name, the map of China and the abbreviation “PGI” on it:



What is of our interest is the part which issue the application of Foreign GIs, core in article 26 of the decree 78/05. This was also under the responsibility of AQSIQ which actually only began to accept foreign GI product applications in 2016, although its GI products system was created in 1999 (Feng Shuijie 2020). China's main reason for excluding foreign GIs from registering under its Sui Generis system is that China is not a contracting party to the Lisbon Agreement (Feng Shuijie 2020).

However, before the Act of 2016, AQSIQ had already registered certain foreign GIs on the basis of a bilateral treaty with (Feng Shuijie 2020) the EU ³⁴ According to the ‘Memorandum of Understanding’, the EU and China agreed to register 10 GIs of the other party on a reciprocal basis from 2007, which is the milestone basis for the actual agreement between EU and China of 2019.

Following the success of the international cooperation to protect GIs, on 28 March 2016, AQSIQ promulgated *Measures for the Protection of Foreign Geographical Indications*, in order to strengthen the protection and management of foreign geographical indication, thus granting them same protection in China (Ranjard, Yongjian, Nan 2016).

³⁴ Memorandum of Understanding on the Protection of GIs between PRC AQSIQ and European Commission Directorate Trade (5 September 2005),

The Measures regulate, inter alia, the application, examination and revocation of foreign GIs seeking protection in China (WTO 2018). The principle to which the new regulation grant protection to foreign GIs is that of reciprocity, i.e. to products that originate from a country that has established the corresponding communicative and cooperative relationship with China. In China GIs are protected in both the original and foreign language, and for that reason the major part of consulting agencies strongly suggests, when apply for registration of GIs in China to employ an interpreter: the document to be filled with the AQSIQ must be in Chinese, and be followed by a recommendation letter by the foreign country competent authorities (Feng Shuijie 2020). The limitation in this is that these product name may not be generic in China³⁵ or in conflict with Chinese GIs and also evidence should proof that the legal protection to the product is established in the country of origin^{36 37}.

Since 2016 the dialogues and meeting, convey and research between SAIC, MoA and AQSIQ had taken place in order to establish a joint GI certification mechanism (Hu W. 2018).

³⁵ Methods on the Protection of Foreign GI Products of 2016 (released by AQSIQ on 28 March 2016), art. 4, ‘The protected names of foreign geographical indication products in China include Chinese names and original names.; 1. (1) The Chinese name consists of a name with a geographical indication function and common name that reflects the true attributes of the product; it may also be the name of the ‘conventional convention’; 1. (2) The original name refers to the name of the geographical indication registration protection in the country of origin or region; 1. (3) The above name is not a generic name in China and does not conflict with the name of the Chinese geographical indication product.’

³⁷ Rule on the Registration and Administration of Collective Trademarks and Certification Trademarks (released by the State Administration for Industry and Commerce on 17 April 2003.), paragraph 2 of art.6 ‘Where a foreigner or a foreign enterprise applies for the registration of a geographical indication as a collective mark or certification mark, the applicant shall provide proof that the geographical indication is legally protected in its original country.’

1.5 The protection of GIs through the MoA.

As already discussed, all WTO members are free to establish what they consider appropriate measures for protection of GIs under TRIPS provisions. If some countries satisfy this requirement—by protecting GIs through existing legislation- some take care of GIs protection through the introduction of specific legislation. China does not take an option. Beside of protecting GIs both with trademark system, SAIC, and Sui Generis specific legislation, AQSIQ, in 2007 China also introduced a new legislation with the Ministry of Agriculture (MoA) 38(Li Y. 2017).

Entered into force on February 2008, the Measures for Administration of geographical indication of Agricultural Products³⁹ represent the third mean issued to protect GIs in the country with special regard to Agricultural Products. Even if there were no apparent need for introduce new regulation since China already satisfied TRIPS obligation by implementing TM law and introducing *Provision on Protection of Geographical Indication Products*, what was considered this time was the importance of this legislative mean in relation to the enhancing of the quality of the agricultural producers' production.

In fact, these measures help booster the development of both the rural areas and niche production. Of course, there are some similarities in scope with the existing legislation, but as a difference it has to be said that the MoA regulation does have some limitation:

The first of course, are the subject to protection. GI protection for agricultural products only applies to primary agricultural products, excluding non-agricultural products, therefor any of the product which are industrially processed, produced and so major part of foodstuff are excluded and as a consequence, it goes without saying that the Measures for Administration of geographical indication of Agricultural Products excluded any type of services, even if related to agriculture.

The second really relevant are the limitations on the constitutive factors of GIs: in accordance to TM Law, ⁴⁰geographic marks can be both the name of the geographical region or other visible marks that indicate the origin of a good. For MoA measures, the protected GI must be only and exclusively the name of the geographical area (Managing IP 2020).

³⁸ Currently, the MoA is recognized as Ministry of Agriculture and Rural Affairs.

³⁹ Measures for the Administration of Geographical Indications of Agricultural Product (issued by Ministry of Agriculture, 25 December 2007, effective 1 February, 2008) (China), available at www.wipo.int/wipolex/en/text.jsp?file_id=182476

⁴⁰ China Trademark Law Art.16

For trademark protection applicant have to act accordingly to TM Law and to Measures for the Registration and Administration of Collective Marks and Certification Marks concerning the Registration of Collective marks and Certification Marks. The application should be filled directly with the TMO under SAIC. Also, if foreign, applicant should offer a certification proving that the subject of the application is under the protection of law of the original country.

Under Sui Generis protection offered by AQSIQ, two are the level of the examination (Wang, Kireeva 2014): the first with the local quality and supervision administration, which will submit the materials to AQSIQ once confirmed the acceptance, the latter subject if in accordance, will register and publish the approval. This double-tier registration process represents another similarity with the EU legislation.⁴¹ Since this, in 2007, China was officially begun to be a triple system, for GIs protection (Haizheng, Hu, Li 2016).

So, as to be clear as possible, here below the schematization of the system of GI's protection in China before the CNIPA unification.

| | |
|------------------|--------------------|
| TRADEMARK SYSTEM | SUI GENERIS SYSTEM |
|------------------|--------------------|

| SAIC ADMINISTRATION | AQSIQ ADMINISTRATION | MoA ADMINISTRATION |
|---|--|---|
| 1982 | 1999 | 2007 |
| Trademark Law of the People's Republic of China | Provisions on the Protection of Geographical Indication Products | Measures for the Administration of Geographical Indications of Agricultural Product |
| Scope of protection art 52 | Scope of protection in article 21 | Scope of protection in art 20 |
| Definition in article 16 | Definition in article 2 | Definition in art 7 |

⁴¹ In order to be registered, both EU and non-EU GIs must pass a two-level exam, which consist of the territorial level, in the case of EU product is to be analyzed by national authorities, while for non-EU product the application is considered when the product objective of request is already protected in the country of origin.

| | | |
|--|-----------------------|---|
| US akin- in 2001 adopt TRIPS definition | TRIPS similarity | very similar to EU regulations 510/2006 |
| Collective and certification TM description in art 2 paragraph 2&3 | | Subject explained in art 8 |
| Article 17 foreign GI | Article 26 foreign GI | Article 24 foreign GI |

1.6 CNIPA final assessment

The three-way systems had certainly created a value and had tried to establish a legal framework which could independently manage all the different items and comply with modernize, international disposition, cooperation and national interest.

The multiple system which had been for long managed by AQSIQ, SAIC and MoA had been the result of certain influence from both the Old World and New World countries, which had surely influence China shaping its norms regarding GI protection,

The three-way system which had administrated the laws concerning Geographical Indication registration and management in China had been finally replaced in 2019 by the CNIPA⁴². In an attempt in satisfying the necessities of the country in order to reach other countries' states GIS protection level and reach the status of a trustable partner for cooperation, China since the second decade of 2000 started considering the implementation of the system.

⁴² In august 2018, China's State Intellectual Property Office, SIPO was renamed and changed with the CNIPA. This restructuring main change is the integration of registration and administrative activities od IP related subjects under one roof.

The 3-ways system previously analyzed in this chapter, comprehend implemented and managed by three different and independent institution, is not to be addressed as distant and China-incompatible system, instead it represents the commitment of China in deal with a legal concept not belonging in principle to Chinese culture, thus a strong willing in complying and satisfying international standards as well as a heavy effort in studying and adapting to the external existing regulations. The old trial system after all the years and despite the efforts, has led to overlaps and conflicts that have increased cost of registering and enforcing.

The difficulties encountered by China in adapting and fitting international legal framework are very complex, and does in a sort of way reflect the complex journey of China when it started the communication with the rest of the world in GIs regard- which analysis is addressed in the subsequent chapter.

The system for which both the AQSIQ, the SAIC and the MoA were responsible for GI protection were however the result of the many influences received from the outside,⁴³ and purely represent the proactiveness in China in adapt into its national border concept originating from elsewhere.

As for the multiple chaotic point to which the three-way system had led to, the system has been under debate and critiques: a system like that one, not unified (Wang, Guo 2020) and not coherent in its development possess the capabilities to create negative consequences (Fang 2018) and damages. The multiple overlaps which had characterized the three-way system had increased costs and management complexity, therefore there was a consensus that protection of GIs in China needs to improve, in terms of clarity, for the registration procedure and in terms of efficiency ((He & Ranjard 2020) the decision of unify all the procedures and dispositions within the Chinese State Intellectual Property Office -SIPO- under the new name of Chinese National Intellectual Property Administration-CNIPA. The office has gradually dismantled the old system and carry out all the procedures of registration, administration and management of Geographical Indication in the country. China had taken this further step in increase quality and effectiveness of GI and the major field of intellectual property in order to reduce the procedural burden related in order to align to the worldwide standards.

On November 28, 2019 the final version of *Revised measures for the protection of foreign geographical indication products* were ready and entered into force and this event mark the practical final shifting from the AQSIQ administration to the CNIPA one, which became the main

43 Influenced by the EU GI system, China regulated GI-related issues in the AQSIQ's *Provisions on the Protection of Geographical Indication Products*, and MOA's *Measures for the Administration of Geographical Indications of Agricultural Products*. The influence of the New World instead, is the Trademark Law of China regarding GI protection which inspiration has to be traced in the US GIs protection system.

coordinator of all the GI-related affairs. Many have been the issues solved by the implementation of the new measures; First of all, the abolishment of the prerequisite for foreign GI applicant to submit the recommendation document by the country of origin.

Another relevant change is represented by the establishment by CNIPA of the necessity for the applicant to not only to belong to the principle of reciprocity, i.e. being of a country which has established a cooperative relationship with China, but also it should be in accordance with the agreements signed between China and the foreign country of provenience of the applicant and also in accordance with the related international treaties. The newest measures thus are strongly committed to the strengthen of the international compliance and tries to simplify and reduce the burden of a section that in China had always belong to a chaotic and not clear order. Following the instruction in the official website of CNIPA, the applicant for GIs in China should fill a form which is also on a digital format and submitting to the CNIPA. The choice to digitalize all the procedure helps in save time and costs both for the applicants and for the public administration. Akin to the requirements of the previous institutions, also in the application document it has to be present a file with suggestion from the local government in affirming the territorial area of production; a document speaking for the standard of production of the GI candidates which is to be parallel to a recommendation from the local IP administration. The latter has to clarify that the first examination has already taken place, and thus the product can move toward the national examination⁴⁴.

Another disposition issued for Geographical Indication in China is represented by the *Measures for the administration of the use of special marks for geographical indications (trial)*.⁴⁵

This document had been issued by the CNIPA in April 2020 and its role concerns the usage of the special signs of geographical indication product, imposing obligations and sanctions. In the regulation is addressed, inter alia, the usage of a special GI mark, which is an official mark voted in helping consumers recognizing a real Geographical Indication Product (He, 2020).

⁴⁴ The requirements necessary to effectively apply for a GI are quite complex and thus the best advice is to read carefully the requirements available at the CNIPA official website at <https://english.cnipa.gov.cn/col/col2997/index.html>.

⁴⁵ Measures for the Administration of the Use of Special Marks for Geographical Indications (for Trial Implementation, Announcement No. 354 of the China National Intellectual Property Administration)2020/04/02



Finally, in May 21, 2021 the CNIPA together with the State Administration for Market Regulation had released *Guiding opinions on further strengthening the protection of geographical indications* (Compendium of selected intellectual property and related measures of the People's Republic of China, 2022) which serves as a guide for applicants and a document which insist upon the necessary strengthen on examination and enforcement of the measures and upon the compliance of GI-related measures of China with the international cooperation.

On January 21, 2022, CNIPA issued the 14th Five-Year Plan for the Protection and Utilization of Geographical Indications⁴⁷. This event signed the first ever five-year plan on GIs. The document addresses important objectives to be reached in the period 2021-2025, and it establishes some goal to be pursued in the period. These comprehend the improvement of GIs protection; improving the usage and management in terms of branding and marketing of GIs and expanding the mutual recognition and bilateral protection of GIs.

In particular, point number 5 explicitly refers to the Bilateral agreement signed in March 2020 with the European Union⁴⁸ “五) 扩大地理标志对外交流 - 加强地理标志国际交流合作。积极落实中欧地理标志保护与合作协定”⁴⁹, which has been also a trailblazer: the EU-China trademark agreement is the first comprehensive agreement signed between the EU and China in this field. (Cazzini, 2020). The history of China protection of Geographical Indication and all the ambiguous point involved take part in the process of China in understand the concept of GIs and develop a legal system of protection which now represent the first unified and clear disposition for geographical indication product in China. The three-way trial system has been complex and it had mirrored the foreign influx to which China had been subject since its involvement in the field

⁴⁶ China new official logo for GIs, released in 20/11/19. This logo had replaced and nullify all the previous one. Available at https://www.origin-gi.com/web_articles/25-11-2019-China-new-official-national-gi-logo/

⁴⁷ Geographic Indications Five-Year Plan Issued, RPC 2021

⁴⁸ The agreement between China and EU on mutual protection and recognition of Geographical Indication is presented at Chapter 3 of this thesis, paragraph 3.3

⁴⁹ The official Chinese text is available at http://www.gov.cn/zhengce/zhengceku/2022-01/21/content_5669776.htm

of GIs protection, and represent a reality which is still vivid in the role of foundation of the current system.

The next chapter is voted at interpreting the position of China during the years of its accession and participation to the WTO, only in the sections regarding Geographical Indication. The three-way system had been very close to the event and the involvement of China in the international dynamics, and to retrace the journey of China in these periods help in have a deeper understanding of China current consideration of GIs.

CHAPTER 2: THE DEVELOPMENT OF CHINA'S POSITIONS IN THE INTERNATIONAL GI DEBATE

1.1 GI existence in China before TRIPS

Though the GIs concept and history are generally considered to be a form of intellectual property issued in principle by the European framework, it is erroneous to attribute it just to the western territories.

In fact, it can be found a similar concept- or at least a concept which enjoy the same acknowledgement of GI in the ancient China tributary system (Caenegem, Cleary, Drahos 2014).

The Chinese tributary system consisted in offers to be given to the central empire, which include food and a range of item commonly recognized as traditional Chinese delicacies⁵⁰. Many of these items nowadays are considered specialty precisely by virtue of their history of being submitted as a tribute.

This tributary system is really important to Chinese society in terms of proudness of the glorious past, at the point those items that nowadays are candidates to become protected as GI, following the procedures explained above⁵¹, frequently refer to this tribute history in their application documents as evidence of premium quality or other characteristic which make the GI candidates unique. To Chinese consumers, which are proud patriotists and have a bound with their tradition and history, dairy product related in some sort of way with the past are certainly good quality products. Of course, not all the ancient tributes are GI and vice versa, but the tributary system and

⁵⁰ During the Tang Dynasty, the plum fruit was considered as a very prestigious delicacy to be offered as tribute to the empire, and it is actually a certified Chinese GI (Fan et al. 2022)

⁵¹ For more information look at the paragraph related to the China's GI protection system in the first chapter of this thesis.

history became means of comparison to the Western “concept” of *terroir*⁵², in terms of an item which is recognized to be special and unique due to the characteristic of its area of origin. This is just one of the theories which tries to find a correspondence between the western concept of GIs and the Chinese relative. Other theories have tried to justify the reasons why in China doesn’t appear any form of legal protection of this intellectual property area before the communicating with external parties. The argument here referred is the one issued by Alford (Alford 1995), which argues that even if not visible, it may be superficial to state that in ancient China there were no restriction on unauthorized reproduction of marks – here intended as symbols-. He argues that it is a simple difference of purpose: rather than for the protection of civil property right, China does implement measures for the purpose of ideological control.

The academic debate to which the Chinese translation of Alford book gave birth to involved many arguing that China has a long history of trademarks related to agricultural traditional system, handicrafts which possesses symbols really akin in function to trademarks and geographical indications.

The protection given to these forms of distinctiveness was given by virtue of a different logic from the one we are used to. Misappropriation was intended as a violation of a traditional modern standard rather than a merely law (Wang Liming 2018). This logic is bonded with Chinese traditional moral heritage, which has a strong link with morality and respect of other individual, and a Confucian proposition provides an interest parallel point to this mindset for which the effects of imposing a law are not comparable to the ones of regulation by morality, at least for a society so embedded with social life and high moral principles:

“道之以政，齐之以刑，民免而无耻；道之以德，齐之以礼，有耻且格。”

⁵² The concept of *terroir* was firstly issued in France viticulture, in a time not so distant from the one of the Bordeaux protection measures (Supra note 10), in will of establishing a relation between the sensory attributes of a wine and the area of origin of the grapes. The area is intended in term of greenfield in which a specific ecosystem and a specific human technique give life to a product, unique precisely by virtue of its growth (Clingeleffer, 2014). The concept of *terroir* nowadays is subject to multiple literature; Regarding GIs, broadly speaking the definition offered by UNESCO in 2005 is in the scope of this thesis, appropriate and well expressed:” Terroirs constitute a responsible alliance of man and his territory encompassed by know-how: production, culture, landscape and heritage. By this token, they are the fount of great human biological and cultural diversity. Terroirs are expressed by products, typicality, originality and the recognition associated with them. They create value and richness. A *terroir* is a living and innovative space, where groups of people draw on their heritage to construct viable and sustainable development. Terroirs contribute to the response to consumer expectations in terms of diversity, authenticity, nutritional culture and balance and health.”.

*Lead people by law and policies and make them comply by imposing a penalty, and the people will try to escape without a sense of shame. Lead people by moral and make them comply through li 礼, and they will have a sense of shame and try to comply with the highest standard.*⁵³

In any case, most of these theories belong to a sector of scholars and academicians which has insisted on finding the justification and a correlation between Western and Chinese realities, but all these efforts are mere and trapped by Western-centric assumption that every culture has coming to the universal protection of proprietary (Wenting 2018).

However, even if it can be found some sort of correspondence between the two concepts, in Europe, since the infancy, PGI were considered as an intellectual property and thus to be protected. This characteristic legal feature of the Europe mindset (Berti 2017) belong to a category extrinsic to the Chinese society⁵⁴, and thus it is erroneous to artificially construct correspondence between two reality which became familiar in the field of intellectual property protection only when the need for economic growth make it necessarily to take part in the globalization and thus accept it by being involved in some dynamics, at that time, unknown.

1.2 The beginning of GIs protection in China through International participation

As already showed, China historically have been really innovative and rich in resources and traditional delicacies which can be linked to Geographical Indication. The concept of GI is part of the major section of intellectual property, not issued in China or in Asian territories, thus the

⁵³ 礼 is a classic Confucian concept, and as many of the Chinese ancient principles it does not have a universal meaning, but more a open-ended definition. For our purpose, here it has to be intended as the standard of conduct, the principle governing the relations between the social position in social contexts. The Confucian philosophy refers to a social morality which defines the natural order of thing: under this Confucian order personal relationship and moral duties took precedence over individual right, so conciliation and compromise were the ideal goals of justice in resolving disputes, there was no need for law. For more deeply analyzed concept I suggest to take a look at Luney, Percy R. "Traditions and foreign influences: systems of law in China and Japan." *Law and Contemporary Problems* 52.2 (1989): 129-150.

⁵⁴ The "extrinsic nature" of Chinese GI concept relies on the comparative parallelism enacted with EU. The European historical GI policies assume that intrinsic qualities of food products should be recognized all over the world, and so the competitive advantage promoted by EU is real by virtue of product differentiation (Bonanno et al. 2020).

construction of this form of legal notion in China began when it felt necessary to comply with international standard.

The first effort China enacted in adapting to the Western protection of intellectual property came when in 1979 China and US ratified their agreement on trade relations (Mercurio 2015)⁵⁵; this agreement in some sort of way was a trailblazer in China recognizing Intellectual Property and signed the start of the bilateral relationship in the field.

After signing this agreement, in 1980 China became a contracting party to the WIPO⁵⁶ and this finally guarantees the access of the country to international measures and conventions.

The legal framework of GI protection in China can be traced back to the mid-80's, when more and more foreign investors were entering China, and so China in its effort to accelerate economic development through trade with the Western World had to improve its rhythm and implement regulation which were not only easily understandable but which could also facilitate the commercial activities (Luney 1989) and thus improved communication between the occidental and the oriental world development (Gangjee 2017).

Especially were the EU investors, which came from a community very concerned with the recognizing of local specialty and preservation of intellectual property: China thus has its first approach with EU and particularly with France. So, the demand for further protection was a phenomenon which starts to explode globally, in China it became wider since there was no correspondence and it was to be created. The earliest formal agreement started with the Paris convention, but until WTO accession and therefore TRIPS obligation to be satisfied, China's approach was a merely observer and taker of what already existed.

The following paragraphs aim to analyze China position and voice during the WTO accession, and trying extrapolate the reasons why China decide to adhere to such agreement by reporting its road during the transition phase, and for the objective of this thesis the discussion is focused on the TRIPS GIs section.

⁵⁵ People's Republic of China. Trade relations, Agreement signed at Beijing July 7, 1979; entered into force February 1, 1980- text available at https://tcc.export.gov/trade_agreements/all_trade_agreements/people_China.asp
According to this agreement the parties "shall ensure to legal or natural person protection of patents and trademark correspondingly accorded by the other party...take appropriate measures, under its law and regulations and with due regard to international practice"
⁵⁶ WIPO Notification No. 110, Convention establishing the World Intellectual Property Organization - Accession by the People's Republic of China. Available at https://www.wipo.int/treaties/en/notifications/convention/treaty_convention_110.html

1.3 The entering and accession to WTO: efforts in complying with the imposed standards

China acceded to the WTO in 2001, and therefore it put strong efforts in order to fulfill the TRIPS requirements regarding GI protection. As explained above, GI are defined under TRIPS agreement in article 22, and the same article sets the minimum standards of protection that the WTO member has to provide. Also, further protection is required for GIs for wines and spirits under article 23.

Accession to the WTO at that time was a priority for China, at least this is quite logic since the country insisted in fifteen year of negotiations (Gao 2012) before became a contracting party, and during these negotiations it enact strenuous efforts: China applied for admission in 1986 to GATT and reached member status only in 2001.

The efforts⁵⁷ were not groundless since membership to the WTO gave China the opportunities to take part in the development of the international disposition on trade launched at the WTO, and giving its huge dimensions in terms of area and market potential, what was expected from China was a significant participation (Chin Leng 2010).

China as a member to the WTO is obligated to protect GI, in terms of ‘indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin’.

This is the definition offered by the TRIPS, the Trade Related Aspects of International Property Rights Agreement, and as a WTO member, China was bond to incorporate TRIPS protection in its national law. TRIPS provide so-called minimum standards for the protection of intellectual property rights and procedures for enforcement of these rules, and it subjects disputes between members to the WTO’s dispute settlement procedures.

The TRIPS agreement is the international benchmark (Gopalakrishnan, Aravind 2017) for the recognition on intellectual property, and surely the first international multilateral framework addressing the Geographical Indications legal concept in a section (O’Connor, Richardson 2012).

⁵⁷ By the time of officially joined the WTO, China already had taken strong ratifications and implementation of internal measures which, inter alia, include developed laws to protect geographical indicators, removed barriers for registering trademarks in China, and adopted language similar to TRIPS regarding the refusal of trademarks that could create confusion with well-known, unregistered trademarks (Joseph 2019)

TRIPS agreement of 1994 is child of the Uruguay Round Trade negotiation, and at the time the most influent parties on negotiations were EU and US, thus the decision-making structure found its major influencing actors in this two parties.

But the WIPO voting system (one state one vote) ⁵⁸(Abdelgawad 2015) made it possible in the Doha Round for the ‘weaker’ countries to raise their voice (Steger 2009). The main raised proposals coming from these actors where international protection for knowledge and resources.

This is the time when China started to be an active promotor of rules and do express its interest in it. US was becoming distant from multilateral approach, opting for a vertical structure of agreement, but this way it loosen grips to multilateral and thus creating greater complexity create the greenfield for China engagement in the post-TRIPS era. Since the WTO does not dictate a standard way to protect GIs and since cumulative protection are not prohibited, multiple schemes are quite common (Haizheng, Hu, Li 2016).

The existing legal systems to protect GI vary widely, but generally these are falling under three main categories: Trademark system, Sui Generis System or the unfair competition approach.

As already discussed, China choose to not take an option, instead decide to comply with the TRIPS obligation in all the way possible.

The following chapters are intended to present the attitude of China in regard to the different phases of relationship with the WTO, in an effort to understand the reasons why China has been multiple time criticized for being a low-profile player in the international negotiations on Geographical Indication Protection, and if this apparent attitude is the reflection of the low interest of China in the field, or it just participate in the growth of China as an active player in this arena.

Conclude if China has been a rule taker or a rule maker is not an easy matter, since before WTO accession China has fragmentary and small regulation to this sector. The jump China had taken is wide and does not just simply provide a way to protect GI, instead it proved to be in fist line in the sector, actively promoting regulation and agreements.

The beginning of China interest⁵⁹in Geographical Indication protection at the international level has been traced to the mid-80’: in these years preceding the WTO accession, China has gone through the Opening Up Policy. By this period China was finally able to accept foreign influx and thus creating new opportunities for foreign investors to interact with China market. These mostly

⁵⁸ The option of the WIPO is intended in facilitating the signature to the organization by developing countries, and also to facilitate their adherence to the proposal of other countries by the principle of process by consensus.

⁵⁹ As evinced by Hai Heidi, this period of the mid-80’s was a vibrant time for foreign influx, IP law and the field in general, and its improvement inside the border of China was incentivized by foreign pressure, and as China opened up to the world, the world embraced China (Hai et al 2022).

European entrepreneurs was complaining the lack of warranty policies, and so China encountered the EU concept of GI for the first time.

1.4 The external influence: China learning from the division of the Old and New World

As showed, when struggling to become a member of the WTO, China was in a weak position: China was a country which was in strong need for access to science, technology (Wengting 2018) and development opportunities.

The relationship between China and Europe regarding the wider sector of GI started early, and Crookes argues that these programs of assistance have been among the most effective soft power instruments in shaping EU's influence on China (Crookes 2014).⁶⁰

China has been long and heavily influenced by other cultures in shaping norms, from America in the pre-WTO accession period, but it was the effect of some sort of coercive power of the others which let China be submitted, in a sense.

The influence of Europe in China legislation norms has to be found particularly in the afore discussed Sui Generis system in protecting geographical indications; the acceptance of China of the EU Sui Generis system influence is certainly to be reconducted to the motives with which EU was justified these peculiar and unique need for protection, i.e. an effective rural policy instrument (Wang, Kireeva 2014).

⁶⁰ The assistance here is referred to the EU-China IP cooperation in the years preceding the accession to WTO, and is an assistance which focus on training, development suggestion and share of experience in terms of practice and policies. Many other technical assistance projects have been issued between EU and China, three shall be mentioned: IPR (1999-2004), IPR2 (2007-2011), and IP Key (2013-2017), more at <https://ipkey.eu/en/south-east-asia/about-ip-key>

In a moment like that one, when China was reforming the rural policy and was starting open up to the World, find such an interesting form of developing its own rural production and a form of protecting its production outside the country was something which could well fit China needs.

This may be the core motive for China to enjoy EU and other developing countries in promoting higher standards for GI beyond wines and spirits at the WTO. Finally, US -EU contestation⁶¹ over the theme of GI has not to be intended as letting China be a passive rule taker (Backseat 2017) from the two: China has developed a system which is influenced and inspired by the external procedures, but it has taken because of its national interest.

In fact, now in China GI are incorporated in both agriculture and economic policies to promote their higher quality and are frequently mentioned as priorities in the document that CCP issue every year to address policies in pursuing national interest of the year.

GI protection and legal recognition is however an imported policy, since the first Trademark Law of RPC in 1982 did not cover GI as a subject matter. An interesting document is the 1986 Reply Concerning Issues of Using Names of Administrative Divisions above the County Level, which expressed the recognizing of the higher demand for GI protection since China became a party to the Paris Convention: this SAIC Reply prohibited using geographical name of administrative divisions as trademark on a four-ground basis⁶², but even if they cannot be registered as GI, Chinese geographical names were not granted to any protection.

The complaints by foreign businesses were not lacking and therefore China started granting protection in a case-by-case approach. ⁶³This structure of protection was not even a domestic form of protection, it was considered not to be belonging to the national interest since domestic geographical names were not protected. ⁶⁴

⁶¹ The contestation here intended is the diversity of the positions regarding strengthen the protection of Geographical Indication in the TRIPS agreement. As it will be briefly showed during this thesis, the debate has been championed by two factions, which positions had contributed in the coning of the word of New World and Old-World countries, respectively mainly associated with US and EU.

⁶² First, it is the international custom not to use geographical names of administrative divisions as trademarks. Secondly, geographical names of an administrative division should not be used by a specific enterprise or individual which excludes usage by other enterprises or individuals from the same region of the same name in the same or similar products. Thirdly, using geographical names of administrative divisions at or above the county level as trademarks in a manner that is contradictory with the protection of source of origin. Fourthly, geographical names of administrative divisions at or above the county level can only indicate the source of origin of a product, which is lack of distinctiveness when using as a trademark.

⁶³ In 1989, the State Administration for Industry and Commerce (SAIC) issued an administrative decree to protect the French GI 'Champagne' from being misused as a generic term for a type of sparkling wine in Chinese markets.

⁶⁴ Chinese government had to strike multiple times with the forces in conflict both external and internal: already in the 90s when the external pressures, especially from the US, were forcing China in implementing IP measures to be in line with the international standard. This was a mandatory imposition,

China thus started to study and explore international debates on GI and learned simultaneously both EU Sui Generis and US trademark protection.⁶⁵ The EU later became the first teacher of China and many cooperation and bilateral projects (Wang, Kireeva 2014) of cooperation.⁶⁶

When signed The Madrid Agreement in 1989, China began to have many submitting foreign applicators of marks, but as a few years before, complaints were not missing. This time were the domestic entrepreneurs arose some disputes because of the protection for them was lacking of the same complexity of the foreign.

SAIC in 1994 issued Administrative Measures Concerning the Registration of Collective Marks and Certification Marks which was very analogue to the US Collective-Certification mark system. The two major power which influenced and inspired China during the years preceding its accession to WTO in 2001 were not that sure that China would afford the standard, therefore issued some proposal for amend China accession to WTO protocol in order to ensure China would level up its standards.⁶⁷

After fifteen years of negotiation, with a protocol that reflect the fears of other members, China then became member to WTO.⁶⁸

The efforts made by China in complying with TRIPS obligation emerged clearly since the beginning. GIs in China were specifically protected firstly in 1995 with SAIC system of certification and collective marks, then abolished and changed with the 2003 Measures on Collective Marks and Certification Marks which also contain higher provision for GIs for wines and spirits. The Sui Generis system made it first appearance in 2005 by AQSIQ with Provisions on the Protection of GI products with Decree 2005 no. 78 (Gangjee 2020). Later the Ministry of Agriculture established in 2007 the third independent Sui Generis system of protecting GIs,

since it was just a decade before China accession to the WTO, thus China cannot permit any point of disapproval from other powers. For these reasons many Chinese people saw the IP measures as selling out national interest (Longo 2019).

⁶⁵ In 1995 the predecessor of AQSIQ, SBQTS -State Bureau of Quality and Technological Supervision – was starting cooperation with the French Ministry of Agriculture, and this is considered by both parts to be one of the matrixes that pushed the progress of the establishment in China of a Sui Generis System of protection.

⁶⁶ The cooperation here is represented by the cooperation projects issued between China and EU, also known as IPKey. For more information, the official site of the IPKey project is available at <https://ipkey.eu/en/China>

⁶⁷ Also, the protocol for the China accession to the WTO comprehend multiple condition which will keep safe other member countries included lowering tariffs on goods, opening trade in services, allowing markets to set prices, removing export subsidies and taxes, ending state influence over the commercial operations of state-owned enterprises, and implementing reforms to boost accountability.

⁶⁸ WTO, Accession of the People's Republic of China, 10 November 2001, WT/L/432. The China Protocol is available at “WTO”, https://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm, along with the “Report of the Working Party on the Accession of China” (WT/ACC/CHN/49)

specially devoted to Agricultural products, the Measures for the Administration of Geographical Indications for Agricultural Products by Decree 2007 no.11.

It is clear the link with both the New World, because the SAIC measures are heavily influenced by the American Trademark system, while the imprint of the Old World, i.e. the European counterpart is evident in the subsequent 2 regulations by AQSIQ and MoA with the Sui Generis approach (Wang, Kireeva 2010).

1.5 Critiques over the silent approach of China in the first period after WTO

With accession to the WTO China began having its own voice and thus what it was expected was an active player devoted at enjoys the same benefits of the other members from implementing rights. Instead, lot of critiques argues that China in its first years of accession to WTO, and in particular to the section of the Doha Round negotiation, was a silent observer (Backseat 2017), and this was in contrast with the possibility that China has at the time as a huge country, with a huge population, with a fast-growing economy and as representing mainly all the developing countries (Hongsong 2014).

However, these negotiations which were subsequent China accession to WTO made it clearer the position of the mainland on GI at the multilateral level, even if China has never directly expressed an opinion and never ally with partners inside the agreement. It appear that China's approach in the early days of WTO negotiation was a stem of the Confucius-inspired non-legal tradition ⁶⁹of Chinese culture (China's WTO accession: 15 years on Taking, shaking or shaping WTO rules?, 2016). In the negotiations subsequent to China accession to WTO, i.e. the Doha negotiations⁷⁰, the two afore mentioned Old and New World faction, led by Europe from one side and US

⁶⁹ 关于这个题目应该重点中国文化和孔夫子哲学的联系亲密无间。两百多年，中国政府使用孔夫子道理来治理。这个道理的基础是仁原则是中庸，最高的标准是无为而治，目的是创造和谐的社会。在这个理念看来，可以理解中国在多哈回合谈判的态度这么不太积极。

⁷⁰ The Doha Round was officially launched at the WTO's Fourth Ministerial Conference in Doha, Qatar, in November 2001

from the other were pursuing respectively a compulsory multilateral register with *prima facie* legal effect ⁷¹and a voluntary register which accept protection by virtue of domestic law without adding other burden to TRIPS provisions.

The justification given from EU and its followers were that there were no motives for having a hierarchical protection based only on different types of goods, while opponents argued that GI extension was not explicitly mandated as a built-in agenda, and new proposes may lead to additional rights and obligations for WTO members.

The negotiation at the Doha Round continue for years, and none of the effort made in these negotiations does change a dot in the agreement.⁷²

Since TRIPS agreement is the result of a more complex background of the Uruguay round, and since China was not part in these negotiations, it can be said that China, at least at the beginning of the participation was lacking of a full and comprehensive understanding of TRIPS⁷³.

Under this point of view, China assertiveness is comprehensible: probably it had been a wise move the one not to express or taking position, the cautiousness of China fully reflect its involvement in the negotiations as a country which will side once it will have enough acquaintance of the rules of the game. The position of China in this period had however been considered as passive and, sometimes, disinterested (Hu, 2021).

“In a way, China behaved liked the proverbial elephant in the room. Notwithstanding its enormous size, it chose to sit quietly in a dark corner, while the other members also largely pretended not to notice its presence” (Gao 2022).

The difficulties encountered by China in these years have also another valence: the passive temperament of China in the first period of accessing to WTO was also a priority question (Thomas 2011), it had to fully comply with these international dispositions given by the institutions for which it struggles so much to take part in and for this reason, China had gone through a period of intense movement in terms of policies amendments, launching of new regulation, which have small to do with China own production.

⁷¹ The European proposed *prima facie* legal effect is that if one country registers a term, this would be “*prima facie* evidence” that in other countries the term meets the definition of a geographical indication under the WTO’s TRIPS Agreement— “in the absence of proof to the contrary”. Definition from WTO, 2011, News items - Emerging text on geographical indications register: four down, two to go.

⁷² Here the Doha Round is discussed in the section of the negotiations concerning the TRIPS agreement and particularly to negotiations concerning the disposition given by article 22 to 24, which are the ones in our interest since covering GIs.

⁷³ In fact, China became part to Paris Convention and Madrid agreement, and as so a Member to the WIPO, only in the 80s, and at that time the text of TRIPS was already under strong negotiations. Therefore, the first period after WTO’ accession, in relation to the TRIPS agreement negotiations, did not see China in the front line of taking part and siding in the further negotiations.

In a moment of uncertainty and as aforementioned, in a moment in which the comprehension of the international and legal dynamics was unripe, to take part in negotiations by openly declare the national interest could probably not lead to success.

China had started understanding the importance of these legal protection instrument to develop and growth, and this had been possible by putting effort in complying with dispositions of this multilateral treaty, as well as silently observing how experienced players would move their steps.

2.1 The Doha Round Negotiations: interpreting China's position

The negotiation of the Doha Round has started in 2001, the same year China officially acceded to WTO. The focus here discussed, is that of the part of the debate that involves two main proposals related to the TRIPS agreement, i.e. argument the GI protection extension and the establishment of a GI register.⁷⁴

The two different major position were represented in first place by the EU and the US, which contrast motive are here below briefly presented in order to detract China siding by its interactions.

2.1.2 Major dynamics of the Doha Round negotiation over the issue of GI-extension and GI multilateral register

As for TRIPS agreement provisions, Section 3 obliges Members only to provide the 'legal means for interested parties' to secure their rights⁷⁵. As the legal means are not specified, Members are

⁷⁴ Doha Declaration Paragraph 18 states: "With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this declaration".

⁷⁵ TRIPS Agreement, Art2.1 (a) 2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

free to determine the most appropriate legal means (Rangnekar 2002). Therefore, the provisions countries had implemented has not been standardize, and usually falls under two main categories, i.e. the New World countries, championed by US with the trademark law approach and the Old World, championed by EU which have choose to protect GI as a subject matter and thus create tailored policies specifically addressing Geographical Indications.

On the other hand, TRIPS agreement in article 23 binds members to enact higher protection for Geographical Indications related to wines and spirits.

Is quite illogical to research for a valid justification to this hierarchical division of GI's type and cannot be explained by material differences, logical or legal reasons that would call for differential treatment (Frantz 2016). It was a compromise of the Uruguay round which negotiations was headed for decades, and were not reaching a satisfactory solution for everyone. The Old-World faction were very concerned to the question of a single subject definition with provisions for a hierarchy in the scope of protection (Rangnekar 2002). The open door which was leaved was that one that TRIPS expressly indicates, in article 24.1, that member should continue negotiation on the argument, and thus in 2001 the Doha negotiations started.

GI-Extension

The first core theme of the negotiation of the Doha round regarding GI was the Extension of GI protection, the high level reserved to just wines and spirits, to all GIs.

The interest in developing this enhancing protection was in first line proposed by EU, but it was also in the interest of developing countries,⁷⁶ which found a mean of enter into foreign country with power and advantages: product linked to their regions. When they enter global trade under the current system, their products are not well-known by the public yet and, therefore, the public does not associate the name or other kind of GI with the characteristics of the product yet. By the simple protection of article 22 of TRIPS this would not be protected, at least not before damages came: only if having reputation and well-known product can lead competitors to enact counterfeit act and thus establish the practice violation case. Extension advocates argue that this allows competitors to usurp the GI and “free-ride⁷⁷” on the reputation and quality of the products as long

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

⁷⁶ Developing countries are for definition in need for gain market power, and by increasing GI protection they can do this, attracting foreign investment in regional product which are usually abundant in developing countries. Overlapping the disparities between articles 22 and 23 of the TRIPS will eliminate the disparity in benefit for those country which special product are not relate to wine and spirit.

⁷⁷ The concept of Geographical Indication “free-ride” id connected with society. Society recognize that a specific area has developed reputation and is connected with a high-quality product, and therefore the

as the product's true origin is mentioned to (Kasturi 2010). As many of the proponent to GI extensions, China sees in it an opportunity for rural development, encouragement for quality agricultural and industrial policy. To developing countries in general, GI are a mean to enhance access to third country markets and therefore, are benefit to producers worldwide⁷⁸.

Opponent to GIs Extension mainly are guided by the New World and generally are not interested in first place on the extension in order to not create new burdens to tolerate.⁷⁹

Broadly speaking they rely on the fact that the protection provided under article 23 was already enough in order to satisfy the protection of GIs, and to implement further protection will instead break the balance reached in the article 22; also, raise the level of protection may let some countries stay behind, because not everyone has the means or the possibility necessary to further invest in this type of protection.

Another point in which they argue GIs extension may be discriminatory and may not treats equally all member relies in the statistics of GI around the world- in terms of WTO Members-: in fact, not every country to the WTO enjoy same amount of resources, let's just think about Italy, Spain or Europe in general, and also China richness in GI resources confronted to countries as the one's in South America.

However, the debate first issue was if this argument was a TRIPS built-in agenda issue, because at article 24 (1) of the TRIPS it seems to hold the mandate for necessary negotiation, but the opponent stress the little clause of the same article which seems to identify in the subject of higher protection negotiation just the wines and spirits product.

Multilateral Register

To the issue of establishing a multilateral register of GI, this is quite a different matter since it enjoys higher priority ⁸⁰by virtue of paragraph 18 of the Doha declaration and in here it is seen as

use of the name of that area enhances the visibility and profit on the market. (Maus 2014) The first problem related to the free ride issue is that of dilution of the name, since when the name become generic and thus diluted in the arena it lost all of its reputational reason.

⁷⁸TRIPs Council IP/C/W/353 available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=39789,12588&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

⁷⁹ As it can be evinced by the document IP/C/W/189, members opposing argue that GI-extension "like any re-balancing of TRIPS rights and obligations – would involve certain costs and shifts in burdens among Members".

⁸⁰ Multilateral register is a built-in agenda issue, established at TRIPS Art 24.1" 1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations."

a disposition to which WTO members shall be committed. Europe as already presented, made a proposal in which it agreed and incentives GI register. In the issued Multilateral Register section of the negotiation, China opinion was ambiguous, and reflect a certainly strategy.

China position was subtle and not direct its strategy of siding a proposal of discussion through binding the negotiations of the GI Register and GI Extension together is quite clear. In 2007 Chinese representative at the TRIPS Council said “that her delegation was committed to participate in discussions in the TRIPS Special Session both before and after MC11. She wished to echo the position of over 100 other W/52 coalition members in firmly supporting that the two TRIPS issues, namely GI Registry, GI Extension, were closely linked together and should be moved forward in parallel.”⁸¹

Thus subtlety found its reason on two main issues; firstly China will have limited benefits from successful negotiations in GI register establishment and secondly because the same advantage it can found in extending GI protection can became a disadvantage when shifting the logic to register every GI at international level: the production of China has been under critiques of counterfeit⁸², and it is true that in the history some product were in some aspects akin in a contestable way to same products effectively originate in other countries. Implementing a Register would request a great investment in supervision measures, beyond the already huge investment in catalogue all the product of a huge country. In the following table a summary of the position of the 3 payers most significant in our regard, i.e. EU for the Old World in general, US for the New World and China particularly – even if in this paragraph it to be concluded the siding of China- because of the specifically analysis addressed to it.

⁸¹ WTO (2007), Minutes of meeting - Council for Trade-Related Aspects of Intellectual Property Rights Special Session held on 18 October 2017 (TN/IP/M/32), paragraph 1.33

⁸² Even if literature is rich in the sector of China counterfeit scandal, many of the history of the country is unfortunately abundant in the field, this has nothing to do with the scope of this thesis and thus will not be considerate.

| Issues | Position | US Representing the New World | EU Representing the Old World | Developing countries (including China) |
|-----------------|--|--|--|---|
| GI Register | Participation | Voluntary and non-burdensome | Compulsory | Compulsory |
| | The legal basis for deciding whether a foreign GI is protectable | Domestic law | International Law/ Prima Facie based on Article 22.1 of the TRIPS | Prima Facie evidence based on Article 22.1 TRIPS |
| GI Extension | Procedural | GI Extension was not a built-in issue in post-TRIPS negotiations. | Not clear | -GI Extension shall be addressed in the regular meetings of the TRIPS Council on a priority basis. -Text-based negotiations shall be undertaken. |
| | Substance | GI Extension will create difficulties because: - The distribution of GIs is not balanced among WTO Members. - The provision of Article 22 is sufficient; - the extension will impair the use of genetic terms - GI Extension would incur substantial costs to governments, to manufacturers, and to consumers. | - All GIs should be protected equally; - The Protection of Article 23 TRIPS should be extended to all products. | - All GIs should be protected equally; - The Protection of Article 23 TRIPS should be extended to all products. |

Table 2 Major Disagreements in the Post-TRIPS Negotiation of GIs (Cheng 2018)

2.2 Interpreting China position: the proposal and other acts

Finally, the position of different countries in this negotiation arena was then unified and formally expressed in 2008 when a conglomerate of Europe and some developing countries submitted TN/C/W/52, July 19, 2008., Draft Modalities for TRIPS Related Issues (TN/C/W/52 proposal).

The co-sponsor also included China.⁸³ Together with other developing countries, China's procedural proposal on binding the two issues together actually amounted to a request to the EU

⁸³ The co-sponsors for the proposal included: China, the EU, Albania, Brazil, Colombia, Croatia, Ecuador, Georgia, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, Moldova, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group

to support their position on GI Extension substantively. Enhancing the priority of GI Extension worked as a condition to co-sponsor the proposal with the EU— if the EU wanted the coalition on GIs to work, it had to support the developing countries’ position on GI Extension (Cheng 2018).

It is relevant since it is the first act that China had taken concerning GI issues, and the first act of concrete position take of China after TRIPS. Of course, China ‘s position cannot be extrapolated just by a common and formal text, but the choice to take side in this proposal is on its own expressing the strong consideration China was given to GI.

By being a co-sponsor in submitted the TN/C/W/52, China does take side of the European part of the discourse over GI, thus EU does considerate itself sustained. But what China had done is something atypical, i.e. takes side without take position. This mean that China does recognize the utility and efficiency in implementing a GI register and Extending GI protection to non-GI product (Suju 2020), as the European party states, but at the same time it does not goes against the use of EU GIs as generic names by US firms (Cheng 2018) which was one of the arguments used by EU to substantiate its thesis. China had been able doing this by relying of the principle of non-interference and mutual respect of state sovereignty of the US as an independent state, thus choosing to take the advantage of the proposes of the discussion but without determining a real position, avoiding offence to other countries.

Also strategic was the insisting on binding and consider to be solved together the two core reasons to the debate. (Wang Liming 2008). If GI register is a core built-in agenda disposition of the TRIPS (Martin 2004) and the GI extension is not, and China strategy is reflected at this point: China advanced to manage together the two issues, justifying the need for an urgent solutions, while it was just because it was having more interest in extension of GI, given its variety of product in which wines and spirits are an important part but cannot cover all the types of GI; than in implementing a multilateral register, given the economies of China production frequently manage product akin in aspect to the one of the other countries.⁸⁴

By considering the two argument to be parallel in development and implementation, implementing GI extension would take the advantage of achieving a GI register. China, as for its vastity in GIs would surely benefit more from the extension of the protection to all types of GI

⁸⁴ TN/IP/M/28, MINUTES OF THE DEBATE AT 1.33, at the occasion the representative of China expressed China supported negotiations on all three TRIPS issues, namely, the GI register, GI extension and TRIPS-CBD, and that such negotiations should be held in parallel in different fora. With respect to the multilateral system of notification and registration of GIs, China believed it should apply not only to GIs for wines and spirits, but to GIs for all kinds of foods. At the same time developing country Members and LDCs should be granted S&D, including conditional time periods, exemption from registration fees, and technical and financial assistance. China would continue to actively engage in the future consultations on TRIPS issues and was looking forward to a comprehensive and fruitful result in this regard

than just wines and spirits, than just adhere to a register which would restrict the production and marketing of product similar in characteristic and labeling name with other countries product. In fact, regarding the question of the GI register, China proposed a simple system of minimum notification, as to safeguard the ones that use improperly a GI name by virtue of their ignorance. Thus, they will be exempted from punishment.⁸⁵China is not part to the Lisbon agreement and in the occasion of discussing the Geneva Act, China kept its low-profile approach: during the reunion held in Geneva in 2005 for discussing and then implementing The Geneva Act, China just sent a delegation to act as observer, giving no signal about an interest in adhere to the Lisbon agreement.

China is however a member to WIPO since it accessions to the Paris Convention, thus the relation between the two were not, and are not cold and silent. The delegation of China during the STC 29 in 2018⁸⁶ express the view that the STC, WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, is an important platform where multilateral rules on trademarks, industrial design and geographical indications are formulated, and express the recognition of China in the achievement and success of the Committee. However, the position regarding geographical indications, when expressed, is quite almost neutral, it just a fact of make clear the interest of the mainland on such argument and stating the engagement of China in always further research and study the matter.

It had never been involved in debate and the rare times in which China has to express an opinion it made sure to not induce any controversy (Cheng 2008). The choice to be neutral of China has never changed: in fact, by looking at what the delegation said on the sixth session SCT, in 2001 the neutrality is very clear:

” China was in support of examining the protection of geographical indications because its country was currently revising its legislation in marks and the relationship between geographical indications and trademarks appeared to be a problem that needed to be overcome. The Delegation said that it would appreciate a continuing discussion and that awaiting the outcome of the work that was currently undertaking on geographical indications within the Council for TRIPS was not necessarily satisfactory”

China position therefore always remain controversial and opaque, and by the expressions and statement of China’s delegation in this international debate’ opportunities one cannot deduce not just the position of China, but also determine the role of it, in term of active or passive victim of

⁸⁵ The position deducted by China having little interest in implementing a GI register can help in justify the reasons why China is no party to the Lisbon agreement, nether when in its Geneva Act in 2005 could represent a practice part of one of the issued never solved of the Doha Round.

⁸⁶ SCT/39/11 PROV. Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications Thirty-Ninth Session Geneva, April 23 to 26, 2018

the system. As already presented, China role in the post TRIPS era had been quite neutral and it had kept a low profile, which is a not obvious choice, since such a huge country with such a huge demographic power could have the possibility to advance requests.

2.3 Motives for China low profile

According to professor of Law Henry Gao, maybe the first reason for this choice of keeping low profile is to be researched in the desire of the Chinese government to take a spot of serenity breath, because China has been under the spotlight of the WTO accession negotiations for fifteen years and after that it was time to take heavily effort in apply for commitment (Gao 2012) which had been among the most important between the WTO members, as presented already in 2005. In the general idea, as a non- founding WTO Members., China at the time was recognized as *Recently Acceded Members*' (RAMs) and for this reason it should not be required to make the same level of concessions as the older members (Gao 2012).

However, what was expected from China was a strong commitment in terms of concession by trading partner EU and US, on the other side the domestic players were asking for more inroads to foreign markets than this huge accession in the domestic market from the foreign.⁸⁷

China was under pressure by important powers⁸⁸ which were using ambiguous terms (Feng Shuijie 2006) in order to ask concession in sector which will please the interest of their domestic actors in investment. China was immersed in a complex situation: even if it can, at least at the beginning avoid to make such commitments, in the subsequent opinion was agreed by most members that the priority to limit commitment was to be dedicated to late-comers member and to those who were really low-income countries, and China was not in the group.

⁸⁷ As explained by Hui Feng in 2006(The Politics of China's Accession to the World Trade Organization), the foreign actor in terms of companies and business which were playing in China, particularly multinational was in the position of directly influence China's domestic strategic policy making, and they do this by turn to their own government in pushing China in satisfy their desires. This all mean enacts violent pressure in China.

⁸⁸ China during the decades anticipating the WTO accession has been subject to multiple pressure, and the first party it has to satisfy was the US. For the scope of this thesis, the US -CH relationship will not be considered, but it is surely significative in order to understand the condition of China in the pre and post WTO accession: its own policy, both national and foreign has been under constant exogenous constraint and pressure, and the development of this treatment has been parallel to the growth of the process of China opening up phase- mid80's-. That is because the opening up had led to the opening of multiple point of access for foreign pressure.

Professor Gao argues that China approach in the negotiation situation was the one of the proverbial elephants in the room and he gives two-fold justification;

The first is represented by the themes on which the Doha Round initially focus, which were mainly on agricultural field.

To this China was a mainly importer of agricultural product and the home produced were sold in its huge market. China did not have enough interested in raise voice in the agricultural negotiations, and was mainly in the position of student which need to observe to take its consideration (Gao 2012).

The second was that China was more concerned to not excite an already discriminatory treatment by other WTO member – especially the severe requests raised by both EU and US-, and thus the country was concerned on revise the terms of its accession to WTO rather than start new dispute.

However, the many pressure given by other members and the effective commitment given by China in the Doha Round negotiations come to a point in which China, in the person of Mr. Sun Zhenyu, the Chinese ambassador to the WTO argues that the US was accusatory in pointing finger against it and started stating out the commitments and effective acts China enacted for the major interest of successfully develop negotiations⁸⁹, even where it comes to sacrifice its own interest. The question that persist is the one which explains the reasons why China enjoy WTO when all of these factors were in a sort of way pushing it out of its comfort zone (Gao 2012) and were forcing it to make extreme modification in their already stable system⁹⁰. The answer to this question is to be traced back at the beginning of the accession of China in the WTO. Even if GI have a strong impact also in economic term, what China was trying to obtain goes beyond the economic return. China was moving forward a new way in order to transform rural area and jobs by giving these more attentions in the worldwide arena (Cheng 2018). By legally protect products and tradition, China does conquer not only the attention and sustain of foreign players, but also strengthen the trust of the local. The national interest of China in tighten the intellectual property laws and especially the protection of geographical indications became clear less than a decade after its accession in the WTO: enhancing protection of GI could benefit nation in a developing status like China by promoting rural development, and that was precisely the aim of China (Evans, Blakeney 2006). The core reason was well expressed already in 2006, when during the Politburo of the CCP Professor Zheng Chengsi and Wu Handong, two celebrated IP law professors held a

⁸⁹ Sun Zhenyu, H.E. Ambassador, Statement at the Informal Trade Negotiations Committee meeting, August.

⁹⁰ China voluntarily offered to provide duty-free and quota-free market access from Least Developed Countries, even if not requested to.

On December 11, 2001, China became a WTO member with the commitment of, inter alia, implementing the WTO agreement in an effective and uniform manner by revising its existing domestic law and enhancing new legislation fully in compliance with the WTO agreement

lecture, presided by Hu Jintao, the CCP secretariat at the time and then the President of China (Cheng 2018) President Hu then made a speech which recite:

At present, the core competitiveness of a state is more and more manifested by its capacity to cultivate, deploy and control the intellectual resources and outcomes, which is essentially the capacity to possess and use intellectual property... Intellectual property plays a significant role in the construction of an innovative state... China would accelerate its formation and implementation of the National IP Strategy. Politburos and governments at all levels should attach great importance to intellectual property, put intellectual property related work on high agenda and improve accountability concerning its implementation... The whole society should make concerted efforts to promote the priority of intellectual property (Xinhua News Agency 2006)

The National IP strategy was then launched in 2008, and sets the objective to be reached by the time of 2 decades.

2.4The main character China

At this point it is maybe not immediately to better affirm if China had learned from EU-US contestation or it has been largely influenced. Probably, by looking at the current structure of China legislation of GI it can be said that it was inspired from the contestation between the two old rivals (Hu R. 2009). China actually possesses a complex structure, which of course has its negative points, but all the pros and benefits that the country nowadays can enjoy have been results of the conflict to which China wisely assist to. Despite the debate over China position in the previously chapters, currently China well manage the instruments divided over two different mechanism of protecting GI (Feng Shuijie 2020), demonstrating its smartness in not being constricted to a single, uniform view and being open-horizon voted; China practices the evergreen practice of learning by doing and observing, studying the external environment and learning by experience. The approach of China in the multilateral level negotiation make it not easy for it to

comply with new framework and culture and with a little of initial discriminatory clauses⁹¹, but patience and long-term view make it worth the efforts.

The silent actor (Gao 2012), which until few years before in discussions seem to be a victim, a passive player in the international arena of negotiations over GI protection, has smartly take no position (Wang, Min-Chiuan 2006) being able of not making enemies, finding the way through which achieve the objectives necessary to its national interest, gaining the most profitable incentives and stimulus from the outside. The contestation over the two powers representing the Old and New World taught China how to best implement its own system. Of course, mandatorily China adopted the TRIPS standard, but it does in a hybrid way, thus inspiring itself from both the EU Sui Generis protection, the US trademark protection and taking inspiration from the extensions of protection for wines and spirits as states at article 23 of TRIPS. By avoiding relative mindset, and contextualizing China choice by virtue of its principle, its history and its culture and interest, it probably makes more sense the justifications on how China manage its role at the international debate. The situation of complexity to which the disagreement in the different factions gave birth to -and in which China had never sided to- let China pick whatever it reputes to be more profitable and suitable to its national interest.

In conclusion, trying to reconduct China to a line of thought in the international debate over GI extension and GI register, the two main core motive to the Doha round, it can be affirmed that China was siding in order to build a Sino European faction (Suju 2020).

Possessing a vast range of resources and having GI showed a relevant economic value since it infancy, China certainly sees benefit in implementing a GI Register, but for the abundance of its production and a huge market which does not excludes product inspired from outside, implementing a GI register would mean to augment resources (Gao 2012)- in the field of supervision and limit the operate of a lot of firms which act in good faith but does act against the agreement. China have a lot of types of GI, and the wines and spirits one, even if it exists and even if has an economic value another time relevant, are just a part of the vastity; for these reasons, extension of protection to all GIs types surely motives China in promoting negotiation for GI extension at TRIPS.

⁹¹ Here is referred not only to the accession proposal to WTO by US, but also the multiple act taken toward the power of China during the years preceding its accession in 2001.

CHAPTER 3: ROOTS OF THE AGREEMENT

1.1 The transition from multilateral-based approach to a bilateral approach

Statements straight-forward acknowledgement that negotiations were stuck with irreconcilable contrary positions were expressed in February 2015 by the secretariat to the WTO as follows: “the traditional differences on the substance and scope of the negotiations persist, and delegations remain hesitant to fully engage in the TRIPS Special Session for lack of clarity on the overall negotiations picture after Bali”⁹².

When almost everyone was understanding that no change would happen in regard of the position expressed (Lester, 2006), the efforts that were primarily made at the WTO negotiations later become subjects of another approach, which is represented by the many plurilateral and bilateral agreement enacted by the factions (Hoekman, Bernard, Xinquan 2021).

This has not come with no problem, since frequently the partner chosen to form an agreement with was engaged in other agreements, and the dispositions of the two came to conflicts which let the chosen partner in a complex situation of having to satisfy both dispositions by sacrifice its own benefits.⁹³The international proposes and effort made in establish a more complex protection for GI s after Paris have been a lot, mainly guided by the Old-World faction, but until the WTO GI negotiation came to a common recognized stalled point, none of the effort have been particularly remarkable.⁹⁴ The stagnancy of the GI negotiations leads to both the New and Old

⁹² World Trade Organization [WTO], Secretariat Gives Delegates Refresher on GI Register Talks as Differences Persist, (Feb. 23, 2015), https://www.wto.org/english/news_e/news15_e/trip_23feb15_e.htm

⁹³ Just to make an example KOREU FTA and KORUS FTA are two agreements between respectively EU and Korea and US and Korea. The two are incompatible, since if Korea accepts to protect EU GIs in its countries, it thus prevents US form export its product with similar name in Korea. It became complicated for Korea to simultaneously provide higher level of protections as to provide to article 223 TRIPS to some European agricultural product and guaranteeing generic use of geographical names as required by KORUS FTA.

⁹⁴ After the conclusion of the Doha Round, the later Geneva act of the Lisbon agreement was a revival of negotiations around the issued theme arose in the Doha round, but its influence stays small because of its small participants number.

world to shift their engagement in the bilateral and plurilateral agreements (‘O Connor 2012), thus stipulating in a case by case structure the more convenient agreement with accurately chosen partner in order to reach in a more practice and realistic way to protect GI. This new interest is not to be considerate as a completely distant matter from TRIPS, because in the latter, article 24(1) direct disposition are given (Martin 2004) concerning bilateral or multilateral agreement on GI, and this can be read as a mean to encourage members in engage in further discussions.

The term TRIPS-plus was coined precisely for identify this new trend: it comprehends all the actions adopted by members to WTO to implement even more tougher condition in the existing⁹⁵ provisions of TRIPS. (Mercurio 2006).

China’s position in regard to GI protection during the last decades had become very clear, and the efforts made in order to show this are unequivocal. As already discussed, GI protection given by TRIPS agreement have been, since its birth, subject to many debates (Frantz 2016) and misunderstanding, which lead to never-ended negotiations. Therefore, the common feature that countries adopted is a transition of interest and approach, from a vertical to a horizontal structure which was born as a necessity in light of the stalling of the issues. In this new era China also take a place and start signing bilateral agreements and documents which main aim was to satisfy the necessities and willing of each partner (Whalley, Li 2014), and when the player are less, it is easier to achieve common agreed practices⁹⁶ to materialize the interest of everyone: both China and EU started pursuing their objective of TRIPS plus ‘Old World’ style through a variety of international agreements (O’Connor, Richardson 2012).

Bilateral agreements are a form accordance between two actors, two state, which works jointly in grant each other access to their market with the aim at trade and economic growth (Maluk, Glanemann, Donner 2018). Beside this, another aim covered by a bilateral agreement can be the promotion of fairness and respect to what it is offered by the counterpart. For this latter reason, the area of sharing and exporting innovation and patents, as well as GI is a subject which can surely gain benefit in term of equal treatment and transparency from being covered by a bilateral agreement in the cross-border relations (Zhu 2016).

⁹⁵ Also, another term has been coined to represent all the disposition implemented by WTO Members in area not covered at all in TRIPS, i.e. internet, e-commerce with the term of TRIPS-extra.

⁹⁶ As Frantz exposed, facing this new shifting trend, i.e. the interest once devoted to the multilateral ground to the smaller table of the bilateral and regional trade agreement, is understandable for many reasons, first of all the faster success. Since the fairness of agreement is achieved when all the diverging interest are balanced, thus found a compromise between selected and individual partner is easier and even if not perfect, they can grow in a chosen ground which is cultivated in equal way by both partners (Frantz 2016).

One of the main comments when analyzing the bilateral agreements regarding GI, is the one related to the logic of these operations when the theme is already covered by a multilateral comprehensive agreement, governed at a supranational level.

The objectives of TRIPS agreement related to GI protection negotiations, had never been properly reached, but this stagnating situation was not created by the evolution of things; it was in some sort of way already present at the birth of the GI section of the TRIPS. The section 3 was effectively a section born from another negotiation which hardly comes to an end⁹⁷, and here the reason why the provisions itself contained closures regarding further discussion.

It therefore became quite logical the process leading to the shifting of interest of the main players in the TRIPS agreement.

Especially, China and EU are two WTO members which have found complicity and affinity in ideas and position regarding the Doha negotiation on GI (Suju 2020).

Europe started early in deal with individual partner by mean of bilateral agreement, since its interest was not properly covered by the TRIPS disposition of GI (O'Connor, Richardson 2012).

The motives for which the cooperation between China and EU is a profitable one was already evident before it started, because of some condition present at the time; At the beginning of the 21th century, countries like China and European ones would surely benefit for development of their industries in foreign markets, and by assess a GI protection system they would assess also the protection of the industries behind the GI.

Both have a rich ground of GI resources, widely diversified agri-food and winery culture with a long history which enjoy a worldwide reputation.

Protection of the GI related industries would also favorite the sector and by this augment job opportunities: GI protection have the direct capacity of create significant output value. (Cardoso 2022)⁹⁸

The social sustainability is also involved, since the subject of protection comprehend tradition and culture issues, which are respected and taken care of. The improvement of production quality, sustainability, economic, human quality are factors which are automatically involved in the

⁹⁷ The Uruguay round are the negotiation which gives birth to the TRIPS Agreement and its related section of GI protection; Despite the goal achieved, its journey had been difficult and by some, defined as the toughest area to negotiate and roots of the conflict between the Old World and New World can be traced in these negotiations.

⁹⁸ Here as data for EU the research of the scholar of Department of Environmental Science and Policy, University of Milan in suggested, cit. Curzi, Daniele, and Martijn Huysmans. "The impact of protecting EU geographical indications in trade agreements." *American Journal of Agricultural Economics* 104.1 (2022): 364-384.

process of GI protection⁹⁹, and EU and China both sees important growth opportunities in implement a bilateral agreement specifically voted to the interest of the two. The logic for implement such a bilateral agreement relies in the fact that deal with one partner is easier than trying to get compromise with all the WTO partners (Menon 2006).

Therefore, both the EU and China can realize their respective interests and achieve win-win benefit thanks to cooperation in what was left behind in the Doha negotiations. When considering the cooperation on the same field of the two partners, many would argue that is easily to rise up competition: the accession of the foreign partner inside the internal market commercializing same product can lead to competition. Here the problem does not appear: in fact, the product comprehended in the category of GI in Europe and the GI product in China differ a lot: in China, there are a number of local specialties, such as tea, Chinese traditional medicines, which are not among the EU protected GIs (Wang, Yumin, Kireeva 2009).

Therefore, the potential GIs benefiting from the bilateral agreement of the two sides complement each other excellently, and have limited chance of competing on the same markets. This is of particular importance to consumers, who would enjoy the variety and differentiation of products on the respective markets.

1.2 Pilot project in 2006

As showed, the amount of reasons for which EU and China are very good trade partners is great and the motives are not just traced in the economic situation – which of course does play a great role- but also in the complementarity the two have in the field of GI- just think of the great market EU’s wine found in China while Chinese teas and ceramics have deep popularity in Europe. The cooperation in the field with a bilateral approach was born to be successful and since the first

⁹⁹ As GI are intrinsically linked to their place of origin, including natural and cultural dimension and for this reason implement GI favorable policies means highlight a new priority which is certainly evaluated and managed at the local level. Social sustainability of GI is linked another time to their nature; in this case the collective nature of GI which production involves different level of participant and multiple participant of same level: in the same area many would be the producers which participate in the business. The knowledge that is therefore shared is a mean to improvement, since the business is all managed at the local level, diffusion of the notions of organizations strategy and undertaking common responsibilities would significantly augment the maturity of organization and cooperation (Vandecandelaere et al. 2021).

years after China accession to the WTO the communication concerning GI between EU and China have been multiple (Suju 2020).

For European Commission Geographical Indication have always been of strong importance and for this reason the efforts made in promoting the concept and the practice of protecting Geographical Indications in foreign countries, mainly with free trade agreement and standalone agreements (O'Connor, Richardson 2012) have been massive. This priority seems not be that strong also in China, since the effort made in contracting agreement with other parties never concerned GIs ¹⁰⁰. The difference between the two surely has not influenced the availability of China in engage in cooperation with EU. The efforts taken at the WTO level from EU have been remarkable, and the sustaining actions of China, even if not explicit, were very significant.¹⁰¹

However, the position of China is that of sustain Europe proposal: as already discussed in previous chapter¹⁰² it insisting on the need for a multilateral register able to involve other product than to wine and spirits, "It believed that GIs of all products should be protected on an equal footing so that all Members could benefit from the GI register and a proper balance be achieved among products and among Members."¹⁰³. Despite the failure in the attempt of China and EU in defending their quality product against the New World minimalistic (Suju 2020)protection of

¹⁰⁰ The period here referred is the one before the contraction of the EU China Landmark agreement, at that time in fact Europe had signed 26 GI agreements while China does mention GI protection just in the FTA concluded with Chile and Peru for only a handful GIs.

¹⁰¹ Before China accession to WTO, EU had submitted two communications in order to advance discussion at the regular meetings of the TRIPS Council, respectively in 1998- WTO (1998), Communication from the European Communities and their Member States: Proposal for a multilateral register of geographical indications for wines and spirits based on article 23.4 of the TRIPS agreement (IP/C/W/107)- and 2000- WTO (2000), Communication from the European Communities and their Member States: Implementation of article 23.4 of the trips agreement relating to the establishment of a multilateral system of notification and registration of geographical indications (IP/C/W/107/Rev. 1)-. The contents of these proposal were reflecting the vision of EU related to the extensions of protection to GI in all WTO members, for both improve the equality of treatment between national and foreign players and for simplify the burden importers, exporters and authorities involved had to bear. After the multiple resistance EU faced from the 'New World' countries, the EU proposal became more flexible- WTO (2005), Communication from the European Communities - Geographical indications (TN/IP/W/11)- by proposing a voluntarily participation in the multilateral notification and registration system, but another time, the reaction was not enthusiastic- WTO (2007), Minutes of meeting - Council for Trade-Related Aspects of Intellectual Property Rights Special Session held on 18 October 2017 (TN/IP/M/32).

¹⁰² The analyses of the reason of proposal and position at the international Doha negotiation can be found in this Thesis at paragraph 2.1.2- Major dynamics of the Doha Round negotiation over the issue of GI-extension and GI multilateral register.

¹⁰³ Extrapolation of paragraph 27, WTO (2008), Minutes of meeting: Council for Trade-Related Aspects of Intellectual Property Rights Special Session held in the Centre William Rappard on 29 April 2008 (TN/IP/M/19).

geographical names in the TRIPS fora, the attempts outside it had marked the beginning of the translation to a “TRIPS-plus” approach at the bilateral level (Suju 2020).

On September 5, 2005 a Memorandum of understanding on Geographical Indication was signed between the General Administration of Quality Supervision, Inspection and Quarantine of the PRC and the Department of Trade of the EU (Zhu 2016). In this Memo the two partners engage in listing 10 geographical indications both sides to which give mutual recognition of the other to the other. Practices were ready in 2012 and the success relies on the list of 20 Italian and Chinese geographical indication to be protected. This project is of a milestone significance in the international cooperation on geographical indications.

| China’s GIs protected in the EU | | the EU’s GIs protected |
|---------------------------------|---------------------|--|
| Chinese name | Transcription | in China |
| 龙口粉丝 | Longkou Fen Si | Pruneaux d’Agen/Pruneaux d’Agen mi-cuits |
| 龙井茶 | Longjing Cha | Roquefort |
| 溪蜜柚 | Guanxi Mi You | Comté |
| 蠡县麻山药 | Lixian Ma Shan Yao | West Country Farmhouse Cheddar |
| 陕西苹果 | Shaanxi ping guo | Scottish Farmed Salmon |
| 金乡大蒜 | Jinxiang Da Suan | Sierra Mágina |
| 镇江香醋 | Zhenjiang Xiang Cu | Priego de Córdoba |
| 盐城龙虾 | Yancheng Long Xia | Grana Padano |
| 平谷大桃 | Pinggu Da Tao | White Stilton Cheese/Blue Stilton Cheese |
| 东山白芦笋 | Dongshan Bai Lu Sun | Prosciutto di Parma |

List of 10 European and 10 Chinese Geographical indication to be protected since 2006¹⁰⁴

¹⁰⁴ Official annex at the EU Commission official website at https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1297

This event signed more than the achievement of an objective, but the starting point of a new round of negotiations, voted at establishing a new project which will consider ten times more items. Officially, in 2010 the negotiation on the establishment of a bilateral agreement of GI were launched, but only in 2019 the negotiation finally found conclusion (Grieger 2020).

The eight years of negotiations have been rich in dialogues and debates, since the objective this time was going to carry the responsibility of being the first agreement between the governments of China and the EU on the protection of geographical indications (Zhu 2016). This operation was of a strategic significance, since it became a way to circumvent the obstacles encountered at the WTO fora, facilitating the rise of a common approach favorable to interest of the two in providing better GI protection. Reaching the Landmark agreement with Europe made it possible to finally enhance their joint commitment in better GIs protection, enhance the quality of exchanges and, at the same time, strengthen the mutual trust (Studio Zunarelli 2022).

1.3 The agreement¹⁰⁵

On 14 September 2020 China and EU finally signed the bilateral agreement to geographical indication protection¹⁰⁶, and by this satisfied the commitment made at the previous EU-China Summit in April 2019.¹⁰⁷ The first step of this process was the publication in June 2017 of two lists of 100 products from each side that the other is to protect in their territory once the agreement

¹⁰⁵ Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications. 9 July 2020. Herein after, The Agreement.

¹⁰⁶ EC press release available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1602

¹⁰⁷ In 2019 the text of the agreement was confirmed, but the occasion made leader clearly express their commitment in work together and solve in the same year the officially news. Press release of the summit available at https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2055

entered into force. Since the negotiation times, the agreement was intended to include a further second batch to follow that has to add other 175 GIs from each part within four years since its entry into force, in 2025. When finally signing, the two parties concretize all the theories-based effort and shown their real openness and adherence to both international rules and bilateral cooperation.

The agreement intent was to fully explore and exploit the resources available at the plate for the two partners: at the time of the agreement the European export in China have touched 12.8 billion euros and as for geographical indication the Chinese market accounted for 9% of the value (European Press Corner 2019). Not only were the economical achieved result in the field of exchange, but the characteristic of the market was suitable for the immersion of GI in it;

China has a high-growth potential in terms of agri-food market, and the middle class of consumers have experienced in the last decades an on-going growth. This type of consumers is willing to pay a premium price¹⁰⁸ in order to buy good quality, certificated exotic products. The agreement therefore has a double meaning: of course, the economic development is of great importance, but the capacity of sharing information it intrinsically possesses is astonishing. What is likely to be achieved is acknowledgement of culture, since the new meal to be presented on the table of the consumers, both European and Chinese will improve their consciousness of the other culture, also, but not only, in terms of taste.

中华人民共和国政府与欧洲联盟地理标志保护与合作协定的结构实现了中国欧洲的真承诺。

关于这个协定的结构，它包含十四条款。十四条款是针对保护地理标志实行的。特别有重要性的条款就是关于两个伙伴合作的那些条款，也就是说第四条款，第十条款和第十一条款。

108 While still acting as Agriculture and Rural Development Commissioner, Phil Hogan explained that “European [GI] products are renowned across the world for their quality.” Hogan, foreseen as the EU’s next Trade Commissioner, stated that “consumers are willing to pay a higher price, trusting the origin and authenticity of these products, while further rewarding farmers. This Agreement shows our commitment to working closely with our global trading partners such as China. It is a win for both parties, strengthening our trading relationship, benefitting our agricultural and food sectors, and consumers on both sides.”

为了明白中欧两个双方在这个地理标志协定中的承诺，下边有解释这三个条款重要性的主要因素。

协定第四条款¹⁰⁹的标题是“地理标志的保护范围”。尽管这项条款好像简单的事儿，它的针对性真的复杂。设立地理标志的保护范围就是在两个双方分别的协定内最重要的事情。这是因为依两个双方之见实现地理标志的高级保护长期以来首要任务¹¹⁰。根据上边已经写过了的同样问题，其实这个协定回想中国欧洲两个双方的过去联系，特别是在 TRIPS 后的多哈回合的合作联系。当多哈回合谈判的那个时候中国和欧洲的感想有一些异同。

例如关于发达地理标志保护的这个主题，中国好像支持欧洲的提案。写下了这个协定，两个伙伴实现他们主要的目标。

然后我选择分析第十项条款¹¹¹。跟第四条款一样，这个是条款的重要性就寓于两个伙伴合作这个方面。在这个条款上有规定成立两个伙伴组成联合委员会，这样双方会对协定的发展讨论和监督最少一次一年。

¹⁰⁹ The agreement, Art 4.1, Scope of protection of geographical indications

1. In respect of the geographical indications listed [...] each Party shall protect them against:
(a) the use of any means in the designation or presentation of a good that [...] in a manner which misleads the public as to the geographical origin of the good; b) any use of a geographical indication identifying an identical or similar product not originating in the place indicated by the geographical indication in question [...]; c) any use of a geographical indication identifying an identical or similar product not compliant with the product specification of the protected name.

¹¹⁰ Here the theme referred is the position and opinion of China at the Doha Round, in which both China and EU expressed similar position in regard to the proposal of GI-Extension. The proposal contains the will of the parties to extend to high protection reserved to Wine and Spirit GI to all GI product, by reporting the injustice off having a hierarchical order to protect the same object. For more information, Chapter 2 of this thesis address precisely this theme

¹¹¹ The agreement, Art 10.1, Joint Committee

1. The Parties hereby establish a Joint Committee consisting of representatives of both Parties with the purpose of monitoring the implementation of this Agreement and of intensifying their cooperation and dialogue on geographical indications.; 10.2[...] It shall meet at least once a year or at any time agreed by the Parties [...]. 10.3 [...] it shall be responsible for:

(a) amending Annex I as regards the references to the law applicable in the Parties and amending the other Annexes to this Agreement;
(b) exchanging information on legislative and policy developments as regards geographical indications and on any other matter of mutual interest in the area of geographical indications;
(c) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Agreement.

这个条款代表两个双方的真意义来承诺，中国欧洲一起真的愿意达到目标，而且像把这个目标发成了起点来发展而满意需要。

第十一个条款¹¹²的重点就是合作这个方面。再一次，它的重要性是给规定来明确地理标志协定的适用性。协定的适用性不仅是让双方进行跟地理标志保护有关的运动，而且也注明在联合委员会内要讨论什么题目，要调整什么规定，指标如何检查双方承诺的发展。

同上述已经说过了，地理标志保护发展的一个障碍就是顾客对这些产品的假情报这个情况；他们常常会不知道什么产品是否真地理标志的，所以他们不会归功于产品。如果他们不明白这些产品的价值和质量他们就会不愿意重金购买。

最后抓人民共和国政府与欧洲联盟地理标志保护的这个协定一定明白地说出两个双方的对跨国层地理标志保护的意思。

所有的条款都不仅当心进行协定规定的那个方面，而且也当心两个伙伴合作的背景。

未来要开发的那些地理标志保护方面，什么方面需要发展，成立联合安委会，促进针对跟协定有关的方面，还有使协定的范围扩成为一个不断发展发展的部门。

扩大协定范围的意思是在协定的发展里包括跟协定不直接联系的那些事由，也就是说人们：人们就是第一个协定的受益人。他们还可以对对象的成功性挑大梁。

112 The agreement, Art 11. Cooperation

The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken in this Agreement. Areas of cooperation include, but are not limited to, the following activities: [...] exchanging information [...] promoting and disseminating information on geographical indications among [...].

为了这些原因都，可以说地理标志保护协定具有能力出现人们和产品的密切关系。为了造成一个地理标志需要人们所以在地理标志产品里有文化，文化里有人，所以地理标志理具有人性。冬于，地理标志协定不仅是地理标志的法定担保而且也是人们的法定担保。

In November 2019 China also launched its own logo a symbol Chinese¹¹³, consist on the great wall of China, even if in article 5, the usage of the other partner symbol when selling the product in their markets is not mandatory. The agreement on mutual recognition and protection of geographical indication have valence in another important aspect.

The first reason to which Europe refers when justifying its intent in implement GI protection on a global scale, at least the one if speaks of the most, is the one of rural developing. China has always been fascinating by the possibility of improve its rural condition, since starting from the 80s with the urbanization process consequential to the opening up policies, the already fragile situation of the rural zone became even more severe, thus it was a strong need for importing policies and instrument which exhibits significant potential to improve rural livelihoods and realize regional common development (Wang, Jingyu 2021). In summary, here below are presented the main benefit of GI to the consumers, and how this benefits touch upon the entire chain of production of the product, thus reflecting how the implementation Geographical Indication protection, if properly established and managed, can be of strong impact on entire areas.

Producers benefit

GI can increase, both at national and international level, the visibility of products and promote higher return on investment, giving the possibilities and the effective higher price usually applied to these product -the premium price (Rangnekar, Dwijen 2004).

The higher price is given to sustain the reputation of product and to incentive the quality of the entire production process, therefore GI born in high quality nature, continue in possessing this attribute precisely by virtue of the special sign: confronting to the ‘normal’ product, GI products tend to have higher quality. Thus, the competitive advantage created is real and tangible and it is offered precisely by virtue of its area of origin and unique characteristic (Cardoso, Lourenzani 2022). Another benefit to be noted is the increasement on production, which main subject is not just the producer itself, but it involves all the chain of product supply: all the (private and public) organization intended as producers’ organizations -which serve to this chain are organization

¹¹³ Supra note 46.

voted to the management of the production and sale, to the price control and all the pre and post-sale activities. GIs encourage the collaboration among local actors, which all share benefits (López, Barcala, Díaz 2020). Being supportive to this these organizations have significance in reducing the distance between the producers and distributors: since all the GIs chain is of local nature, the revenues are all straight to the local businesses, and the reduction of the traditional cost of transaction is given by the use of intermediaries means more return for the local actors (Ghosh 2016). This aspect means that the benefits and revenues created by the sales of GI are all coming back to the local reality, thus contributing to rural development (Mc Morran 2015). Since GI products offers such a great benefit for producers, is not illogical to considerate the fact that also actors not linked to that area will enact counterfeit actions in order to receive same benefit. Here relies the big problem of imitation and copy.

Therefore, to protect GI by specific measures and to preserve their real identity in national and international market is essential in order to secure this product.

In fact, not only the action of imitate and lie upon the real origin of product is illegal, but also it will attach the reputation of the real GI product and producers (Cardoso 2022). Since the product quality is expressed precisely by virtue of the sign of GI, the presence in the same market of lower quality products which take the same high reputational name of the real ones will lead consumers in not trusting anymore the product and thus lead to sales reduction.

As previously discussed, the reputation of the product is ensured by the GI sign, and therefore have the sign in the packages is the first and for some products, the only way for consumers in order to distinguish a good quality product. When choosing a GI product, consumers have guarantees of the high quality of the product and that it was produced in a traditional way (Mattas, Konstadinos 2020). But selling products to markets, especially product which are unknown or new, can lead to some issues related to the level of knowledge of some consumers impacting the success of GI markets. Of course, having markets hidden from GI because of the lack of knowledge of consumers mean hinder the GI establishing process. That is one of the main reasons why, the EU China Agreement on GI in China has been established through many operations of marketing and promotion which are necessary to a growing middle class which is to be educated in quality dairy products.

Events, article and continuous public meeting has played a significant role in the development of public consciousness of information of GI within the consumers section which consequentially impacted the success of GI in the Chinese market. Another factor which has the capacity to hinder the process of GI is represented by bureaucracy (Bustamante 2019), since the lack of standard measures and the freedom given to the WTO contracting states in issued the

regulation is the way they prefer has created the problem of a wide variety of means which became enemies of the development of GI process. In China the three institutions responsible for the registration and managing of GI until a few years ago represented a burden that not all of the GI producers could bear since the successful registration in one of the institutions may not grant the same protection in the other two which can guarantee registration with the same name of a different product which may not respect the indication to GI (Calboli, Wee 2017). The Agreement, since its entry into force have been collaborating with the new system established, the CNIPA and been able to simplify the process of registration and find GI protection in both market by external actors.

1.4 China current consideration of GIs

Since the beginning of the Agreement, the belief in the potential of GI has not changed, as for China the release in March 2022 of the Five-Year Plan of Geographical Indication¹¹⁴ have been really significant in this. The plan highlights the efforts to advance the PRC GI system to expand the usage and recognition of GIs to promote internal benefit, such as rural development and revitalization and protect its traditional culture and external benefit by strengthen the foreign trade diplomacy and exchange. The period to which the plan refers it the five years one from 2021 to 2025. Firstly, the statement summarizes the concept of GI and their importance for China as a country bounded with tradition and rich in resources, enlighten the importance that both the Central Committee and the State Council give to the GI implementation policies (Chen S. 2021). What is to be expected is the stable growth of GI number and for doing this, multiple are the areas to be covered touched in the plan. China admit the incompleteness of its GI protection system, in term of lack of a unified coordinated system. The weakness was caused by the confusion (Fang 2019) over which enforcement body should be in charge and which law should apply: the institutions than which were involved in GI protection and registration, represents the main reason of a not easy period of transition from a multiple to a unified system even the unification of the institutions, according to some is still quite difficult to register a GI in China for both Chinese and foreign applicant (Zhu 2016).

¹¹⁴ 国家知识产权局关于印发《地理标志保护和运用“十四五”规划》的通知-国知发保字〔2021〕37号 release from the IPR office 知识产权局 available on http://www.gov.cn/zhengce/zhengceku/2022-01/21/content_5669776.htm

But China is proactive in this regard and also refers to the Agreement signed with EU¹¹⁵ express its willing in strengthen the cooperation between the two by augment sharing and exchange. Another event has been remarkable in the regard od GI cooperation between EU and China: on July 2022, the first edition on the Global Geographical Indication Product Expo had taken place in Sichuan, in the city of Luzhou (China Daily 2021). Zhang Zhicheng, Director General of the Intellectual Property Protection Department has presided the event and make it evident the massive effort and importance attributed in the very last years to Geographical Indication protection. (China IP News, 2022)

The cooperation with EU under this Agreement is on the good road and shows brilliant results, but what is even more significant is the disposition China has showed in multiple occasion regarding the cooperation too be enacted with all the foreign world, improving system for GI protection for attract businesses from all around the world in trusting its structure of protection.

Despite the difficulties of both partner in the years during the pursuing of their objectives regarding the protection of GI, the goal achieved between China and EU has been successful and it represent a starting point for more trade opportunities for enterprises from both sides and provide more high-quality GI-bearing products for people on both sides to meet their growing needs for a better life (MOFCOM 2022).

First result had been clearly since the beginning: in 2020, so just a few months after the official enter into force of the agreement, have been expressed by the head of the Department of European Affairs of China's Ministry of Commerce which said that the jump of the EU China agri-food product trade has been wide, reporting a climb to 30 billion dollars in 2020, a 16.2 % up to the previous year. Since the agreement entered into force, the Chinese GI registered in Europe have been 110 as to the data available on the EU E-Ambrosia database¹¹⁶, and on December 2022 the China National Intellectual Property Administration (CNIPA) received applications of another 175 EU products (EU Products Seeking GI Protection in China, 2022)¹¹⁷. Data shows the practical commitment by both party in satisfy the Agreement requirement, but also the great benefit that producers found in having such a mean to improve their product quality' reputation in other markets. EU China Landmark agreement represent the contact point between preservation

¹¹⁵ Some example could be find in the press conference of 27 September 2022 by Wang Wenbin, or also in the speech from Jianhua, China International Trade Representative and Vice Minister of Commerce at the first virtual official meeting of the China-EU Joint Committee on Geographical Indications ('the Joint Committee') and exchanged views on implementing the China-EU agreement on geographical indications (GIs) and strengthening bilateral practical cooperation, available at <http://yujianhua2.mofcom.gov.cn/article/activity/202201/20220103247013.shtml>

¹¹⁶Data available at the official site of the European commission filtered by country, at \ <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>, last access January 21,2022.

¹¹⁷ The official release from CNIPA is available at https://www.cnipa.gov.cn/art/2022/12/2/art_74_180616.html

of local tradition and globalization, making the culture which lays behind geographical indication of global relevance.

This use of globalization is a very sustainable and environmental-caring: stimulate producers to make use of globalization in order to conserve their culture and environmental resources (Bowen 2012) thus implementing the development of the region in territory environment terms and in economic terms for the inhabitants of the regions, which can therefore monetize at higher level their traditional specialty. In an era in which all good are easily and immediately available no matter the distance, and in which people seems to have forgotten the importance of quality of social and human sustainability, geographical indication protection and knowledge diffusion represent a strong tool in restore the human side of production.

LIST OF ABBREVIATIONS

| | |
|-------------------------|---|
| AQSIQ | <i>Administration of Quality Supervision, Inspection and Quarantine</i> |
| CCP | <i>China Communist Party</i> |
| CNIPA | <i>China National Intellectual Property Administration</i> |
| DOHA | <i>The Doha Development Agenda</i> |
| GATT | <i>General Agreement on Tariffs and Trade</i> |
| Geneva Act | <i>Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications</i> |
| GI | <i>Geographical indications</i> |
| IP | <i>Intellectual Property</i> |
| Lisbon Agreement | <i>Lisbon Agreement on Appellations of Origin and Geographical Indications and Regulations</i> |
| Madrid agreement | <i>Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods</i> |
| MoA | <i>Ministry of Agriculture</i> |
| Paris Convention | <i>The Paris Convention for the protection of industrial property</i> |
| PRC | <i>People's Republic of China</i> |
| RAMs | <i>Recently Acceded Members</i> |
| SAEIQ | <i>State Administration of Entry-Exit Inspection and Quarantine</i> |
| SAIC | <i>State Administration for Industry and Commerce</i> |
| SIPO | <i>State Intellectual Property Office</i> |
| STC | <i>Standing Committee on the Law of Trademarks, Industrial Designs Geographical Indications</i> |
| TM | <i>Trademark</i> |
| TMO | <i>Trademark Office</i> |
| TN/C/W/52 | <i>WTO Trade Negotiation Committee -DRAFT MODALITIES FOR TRIPS RELATED ISSUES Communication from Albania, Brazil, China, Colombia, Ecuador, the European Communities, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Pakistan, Peru,</i> |

| | |
|------------------------------|--|
| TRIPS/TRIPS Agreement | <i>Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group Trade Related Aspects of Intellectual Property Rights</i> |
| WIPO | <i>World Intellectual Property Organization</i> |
| WTO | <i>World Trade Organization</i> |

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