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ARTICLE

Chinese GI Schizophrenia: Impacts of EU-US GI Contestations

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Abstract

Geographical Indications (GIs) have been a 'must-have' element for EU FTAs in the last decade. Contemporaneously, the USA has contested these EU GI provisions in its own FTAs often with the same countries. The impacts of the EU-US contestation on GIs on a third country are not sufficiently understood. China has been a long-standing example of the EU-US GI contestation. This article examines how the competing demands of EU-US GI contestation have contributed to the 'Chinese GI Schizophrenia', which features triplicate GI protection mechanisms coexisting simultaneously and independently. It discusses how the symptom has developed when China was navigating GI regulations bilaterally and multilaterally in the last four decades, how China has made efforts to manage this schizophrenia through institutional integration, and how recent agreements with the EU and the USA respectively further worsened the situation. Using the case of Chinese GI Schizophrenia, this article warns of similar consequences for any country signing bilateral GI agreements with both the EU and the USA: a compliance dilemma that can ultimately cast doubts on the legitimacy of GI rules and create rule complexity that can bring enormous uncertainty to agri-food producers and exporters.

Keywords: geographical indications; terroir; compliance dilemma; sui generis; trademarks

Introduction

When the USA and EU disagree on which direction global regulatory change should take, what happens to a third country? This article uses the case of geographical indications (GIs) to illustrate the impact on China when the USA and the EU disagree on the global GI regulation. Braithwaite and Drahos concluded two decades ago that when the USA and the EU can agree on the direction of global regulatory change, that is usually the direction it does take; when they disagree, there can be policy space for middle powers to navigate regulatory mechanisms for their benefit.[1] However, the GI case demonstrates that both the USA and the EU incorporated their own GI rules into bilateral trade agreements with China, and there is not much room left for a third country (even one as big as China) to manoeuvre. When the EU and the USA both pressured China to replicate their preferred GI protection mechanisms, China developed a symptom of GI Schizophrenia. The Chinese GI Schizophrenia is a condition that features a fundamental split into three independent

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[1]John Braithwaite & Peter Drahos, *Global Business Regulation* (Cambridge University Press 2000).

domestic GI regulatory mechanisms. Two Chinese GI regulations modelled the EU *sui generis* system, and one modelled the US trademark system; the three systems have been quietly coexisting and competing with each other. Within these domestic systems, China has struggled to meet the competing mandates in its bilateral agreements with the EU and the USA respectively. The Chinese experience may shed light on how third countries can be impacted by similar imperatives of incorporating GIs in their bilateral agreements with both the EU and the USA in the new era.

GIs are essentially place names that are used for products.[2] The most famous GIs are from Europe, including Champagne, Parma Ham, Scotch Whisky, and the list goes on. The EU successfully promoted GIs as a type of intellectual property so that producers from the designated place can exclude producers outside of the place from using the same name for their similar products. On the other hand, for generations, European immigrants brought these names, as part of their culture, to new places where they live (eg, the USA, Australia, New Zealand, and Canada). In these countries, these names became generic product names – everyone can freely use them. The conflict escalates when products bearing the same name but from different places meet in a globalised market.

Since 2006, GIs have become a 'must-have' in recent EU trade agreements. At least four instrumentalist discourses have been developed to justify the necessity for a rigid EU (*sui generis*) approach to GIs protection internationally. These are (1) the concept of *terroir* as the core to GIs;[3] (2) the welfare argument to protect consumers;[4] (3) the necessity of using GIs to preserve cultural diversity;[5] and (4) the benefits of GIs for developing countries.[6] Despite various justifications, it has been argued that there is a lack of empirical evidence on the economic benefits of GI protection.[7] Nonetheless, many developing countries, convinced by the EU of the positive effect of GIs on agriculture, joined the EU in promoting GI-related negotiations at the WTO and in WIPO.[8] As a response, the USA expanded its competing standards on GIs through its trade agreements based on a trademark system to indicate the origin of goods.

This EU-US GI contestation in international rulemaking has led to increasing divergence in global regulation and inevitable fragmentation in domestic legal systems for countries that accepted GI-related standards from both the EU and the USA. In 2006, Wang analysed the influence of the EU-US GI contestation and argues that the North-North divide between the EU and the USA on the continuing negotiations at the WTO will pressure third countries and regions to take sides. He expects Asian countries and regions are even able to strike a bargain with GI norm exporters.[9] Wang further observed that, at that stage, Japan, Taiwan, and the Philippines have taken the US side, while India, Pakistan, and Sri Lanka have forged an alliance with the EU. China was wavering between the two positions.[10] Fifteen years after Wang's observation, none of these Asian countries

[2]Article 22.1 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS) define GIs 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'.

[3]Tim Josling, 'The War on "Terroir": Geographical Indications as a Transatlantic Trade Conflict' (2006) 57 Journal of Agricultural Economics 337.

[4]Klaus G Grunert, 'Food Quality and Safety: Consumer Perception and Demand' (2005) 32 European Review of Agricultural Economics 369; Pierre Combris, Christine Lange & Sylvie Issanchou, 'Assessing the Effect of Information on the Reservation Price for Champagne: What Are Consumers Actually Paying for?' (2006) 1 Journal of Wine Economics 75.

[5]Tomer Broude, 'Taking Trade and Culture Seriously: Geographical Indications and Cultural Protection in WTO Law' (2005) 26 University of Pennsylvania Journal of International Economic Law 623.

[6]Jorge Larson Guerra, 'Geographical Indications, in Situ Conservation and Traditional Knowledge' (ICTSD Policy Brief, 2010) .

[7]Áron Török et al, 'Understanding the Real-World Impact of Geographical Indications: A Critical Review of the Empirical Economic Literature' (2020) 12 Sustainability 9434.

[8]In WIPO, relevant negotiations were undertaken at the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT).

[9]Min-Chiuan Wang, 'The Asian Consciousness and Interests in Geographical Indications' (2006) 96 The Trademark Reporter 906, 936.

[10]ibid 942.

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has taken sides; nor did they achieve a bargain with the GI norm exporters. Instead, many countries signed trade agreements including GI provisions with both the EU and the US.

Despite the recognition of the complexity of GIs in these trade agreements,[11] there is a significant gap in the existing literature – the lack of systematic investigation of the impacts of the EU-US GI contestation on the domestic legal system of a third country and on the third country's obligation to comply with relevant treaty obligations. The existing literature usually takes an individualised approach to assess the impact of GI regulation on selected products. While these case studies often demonstrate the benefits of introducing a GI system in enhancing regional prosperity[12] and protecting culture, arts, and traditional knowledge,[13] this approach limits the challenges at the implementation level, such as how to further exploit the benefits of GIs.[14] For instance, 'the main challenges shared by Asian countries concern the numerous registered GIs that are not used on the market, that is, they are Sleeping Beauties waiting to be awakened'.[15] Again, the metaphor of sleeping beauty is used to advocate for transplanting the EU's GI system to Asian countries, often based on a couple of successful cases. While the case study approach has been a commonly used method to understand the impact of a GI mechanism in a specific context,[16] such an approach could not enable an understanding of the impact of the regulatory export of GI rules from both the EU and the USA in a competitive manner.

One important issue that has not been sufficiently understood in the literature is the impact of the intensified EU-US GI contestation on a third country that concludes an FTA with the EU and the USA respectively. When the impact of EU-US GI contestation on South Korea was indeed touched upon, the struggle to reconcile the competing demand has largely been ignored in the narration from the perspective of the conqueror:[17]

> Global arm-wrestling between the EU and the US with regard to specific GIs is coming down to a new version of the 'first come first served' rule in relation to FTAs: the first to conclude a trade deal with an Asian country determines the space remaining for concluding a different deal on GIs with the other.

In most cases, these countries are under the pressure to adopt two systems for GI protection. Morin and Cartwright point out that Asian countries risk paying for EU-US competition over GIs because satisfying them both is increasingly difficult, though they did not elaborate on such risks and their impacts.[18] This article contributes to the literature by providing a detailed account of how domestic laws and regulations can be disturbed by the EU-US GI contestation from the Chinese case study. I use the metaphor of 'schizophrenia' to refer to the fragmentation and competition of domestic GI

[11]Martijn Huysmans, 'Exporting protection: EU trade agreements, geographical indications, and gastronationalism' (2020) Review of International Political Economy 1.

[12]Pawarit Lertdhamtewe, 'The Protection of Geographical Indications in Thailand' (2014) 17 The Journal of World Intellectual Property 114.

[13]Ayoyemi Lawal-Arowolo, 'Geographical indications and cultural artworks in Nigeria: A cue from other jurisdictions' (2019) 22 The Journal of World Intellectual Property 364.

[14]Kasturi Das, 'Prospects and Challenges of Geographical Indications in India' (2010) 13 The Journal of World Intellectual Property 148; Mohammad Ataul Karim, 'TRIPS compatibility of Bangladeshi legal regime on geographical indications and its ramifications: A comparative review' (2018) 21 The Journal of World Intellectual Property 421.

[15]Delphine Marie-Vivien, 'Protection of Geographical Indications in ASEAN countries: Convergences and challenges to awakening sleeping Geographical Indications' (2020) 23 The Journal of World Intellectual Property 328.

[16]Török et al (n 7).

[17]Bernard O'Connor & Giulia de Bosio, 'The Global Struggle Between Europe and United States Over Geographical Indications in South Korea and in the TPP Economies', in William van Caenegem & Jen Cleary (eds), *The Importance of Place: Geographical Indications as a Tool for Local and Regional Development* (Springer International Publishing 2017).

[18]Jean-Frédéric Morin & Madison Cartwright, 'The US and EU's intellectual property initiatives in Asia: Competition, coordination or replication?' (Université Laval, 2020) <https://www.chaire-epi.ulaval.ca/sites/chaire-epi.ulaval.ca/files/publications/jfmmc.pdf> accessed 1 Feb 2023.

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regulation caused directly by modelling both the EU *sui generis* and US trademark systems. Such a perspective from within a third country will reveal the cause of GI schizophrenia and may shed light on directions for international law reform to avoid the repetition of schizophrenia in other jurisdictions. The rest of this article proceeds as follows. First, it reviews the EU-US contestation GI rule-making at different international fora, providing an understanding of the scale of the contestation and the key arguments of each side. It then reviews the impact of the EU-US GI contestation in China chronologically, from the mid-1980s till 2005, presenting the symptoms of Chinese GI schizophrenia. Thereafter, the article focuses on the efforts of the Chinese government to cure GI schizophrenia, which was worsened by the 2020 agreements (USCETA and EU-China GI Protection and Cooperation Agreement). It concludes with a warning of a compliance dilemma can ultimately cast doubts on the legitimacy of GI rules and create rule complexity that can bring great uncertainty to agri-food producers and exporters.

EU-US Contestation on GIs

Terroir and Its Criticism

Terroir is an essential concept to the EU's efforts in GI rule-making multilaterally and bilaterally. *Terroir* refers to 'an area or terrain, usually rather small, whose soil and micro-climate impart distinctive qualities to food products'. In the EU, the concept of *terroir* is considered important in France, Italy, and Spain.[19] The word is particularly closely associated with the production of wine.[20] For instance, in the French *Appellation d'Origine Contrôlée* (AOC) system, the judgement of *terroir* is made on the basis of three factors: natural factors (tie to the local environment or ecological niche), human factors (*savoir-faire*, or particular techniques and know-how confined to that area), and history (public knowledge of product as originating in that area, recognition of the association between product and place that is consistent and widespread).[21] The entire AOC system is so inextricably linked with the concept of *terroir* that it makes no sense without it. However, as two GI systems co-exist in the EU,[22] only PDO is underpinned by the concept of *terroir*. PGIs are based on a different concept of reputation, deriving from German law based on unfair competition prevention. As pointed out by Gangjee:[23]

> The PGI is cast as the culprit for the lowering of standards, with its permissive approach to a reputational link and its relatively undemanding requirement that only one stage of the product's life cycle (its production, or processing, or preparation) take place within the defined region of origin.

Despite the internal inconstancy between PDOs and PGIs, the EU uses the concept of *terroir* as the major justification for GI when promoting international GI-rulemaking. From the EU perspective, a functional GI system aims to preserve the reputation of regional products built upon *terroir*, a reputation that only producers from the place can use. The concept of *terroir* justifies the prevention of generic use of geographical names *per se*. As only products coming from a specific territory can be named after that place; and generic use of a geographical name constitutes an unfair usurpation of the value attached to the reputation of this name, the mere use of the name by outsiders suffice

[19]Dev S Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link', in Irene Calboli & Wee Loon Ng-Loy (eds), *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* (Cambridge University Press 2017).

[20]Elizabeth Barham, 'Translating terroir: the global challenge of French AOC labeling' (2003) 19 Journal of Rural Studies 127.

[21]ibid.

[22]These are Protected Designation of Origins (PDOs) and Protected Geographical Indications (PGIs).

[23]Gangjee (n 19).

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infringement. As such the *sui generis* protection is different from the trademark system in which protection is justified by preventing consumer confusion.[24]

The EU has relied on the *terroir* argument to increase levels of GI protection in TRIPS and subsequent FTAs.[25] However, *terroir* has been criticised by US scholars, for instance, as a 'protectionist attempt to control the use of generic terms that correspond to European cities or regions where those products were first made'.[26] In the context of legal transplantation, the emphasis on the unique concept of *terroir* and its European centric interpretation may also lead to difficulties in the process of replicating the EU GI norms in other parts of the world. In particular, if *terroir* underpins the EU PDO system and non-EU jurisdictions do not have this *terroir* concept, countries involved in the GI legal transplantation may only transplant EU GI law as law in text instead of law in reality.[27]

Sui generis Protection vs Trademark Protection

The EU-US GI contestation is manifested as a competition of rules between the EU's *sui generis* GI mechanism and the US trademark mechanism. The existing literature has discussed the differences.[28] For instance, GIs are collectively owned[29] while trademarks protect individual proprietary names. All producers from the demarcated geographical location have the right to use the GI label while the (individual) trademark holder has the sole exclusive right over a trademark. But this collective versus proprietary ownership has been reconciled by the introduction of certification or collective marks within the trademark mechanism. For the present purpose, the real conflicts are under what criteria can a product be registered as a GI or trademark and what sort of exclusivity the right entails. In this sense, the EU's *sui generis* GI mechanism is proactive to entail protection for a more extensive range of names while the trademark system is reactive under which fewer names can be protected. Under the *sui generis* mechanism, a registered GI can be descriptive as long as the products are coming from the particular place they are named after. A trademark must be distinctive, which means the bar for trademark registration is higher, and descriptive ordinary words, such as place names, should be left free for other producers to use. In addition, given that a GI under the *sui generis* system is not a transferable right as it associates with the *terroir*, it effectively excludes emigrants to use the same name when they are located outside of the original place.

The TRIPS Compromise

The EU and the USA first contested GIs rule-making in TRIPS negotiations in which the EU proposed *sui generis* protection of GIs for all agri-food goods,[30] while the USA countered by arguing its

[24]Andrea Zappalaglio, 'The Debate Between the European Parliament and the Commission on the Definition of Protected Designation of Origin: Why the Parliament Is Right' (2019) 50 IIC – International Review of Intellectual Property and Competition Law 595.

[25]Tim Engelhardt, 'Geographical Indications under Recent EU Trade Agreements' (2015) 46 IIC – International Review of Intellectual Property and Competition Law 781.

[26]K William Watson, 'Reign of Terroir: How to Resist Europe's Efforts to Control Common Food Names as Geographical Indications' (Cato Institute Policy Analysis No 787, 2016).

[27]Julio Carvalho, 'Law, language, and knowledge: Legal transplants from a cultural perspective' (2019) 20 German Law Journal 21.

[28]Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Edward Elgar Publishing 2014).

[29]Nonetheless, there has been debate within the EU whether GIs are German type of common property or the Roman type of co-ownership. See Alberto Ribeiro de Almeida, 'Geographical Indications Versus Trade Marks and Generic Terms: The US–China Agreement' (2020) 51 IIC – International Review of Intellectual Property and Competition Law 277.

[30]WTO document, MTN.GNG/NG11/W/68, art 20.

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trademark approach was sufficient to protect GIs.[31] Eventually, GI-related rules are provided in TRIPS Agreement Articles 22 to 24. Article 22.1 of TRIPS defines GIs without specifying any specific mechanisms for WTO Members to implement such protection domestically. Article 22.2 requires WTO members to provide basic protection for products other than wines and spirits, to prevent the use of GIs from misleading the public. But this entails no more protection than already provided under the Paris Convention (Article 10*bis*) to prevent unfair competition. Article 23 of TRIPS requires a higher level of protection for wines and spirits – using the geographical name *per se* is a violation and there is no need to prove misleading the public to establish infringement.[32] However, Article 24 limits the effect of Article 23 to newly named products commencing after TRIPS came into effect.

This differentiated GI protection for wines and spirits, and the option not to apply Article 23 standards to existing wines and spirits, demonstrates an EU-US compromise in TRIPS negotiations. The EU initially proposed Article 23 level of protection for all agri-food products but only won it for wines and spirits; the USA did not want a *sui generis* system at all but eventually made an exception for wines and spirits. The final text of TRIPS does not specify domestic mechanisms for GI protection, so it permits diversified legal institutions for GI protection as long as they satisfy Articles 22 and 23. Article 24 of TRIPS makes clear two circumstances as exceptions for GI protection: (1) when a GI becomes a generic name or (2) that a GI shall not prejudice a name that has been (or is in the process of being) registered as a trademark. Again, ambiguities are left in the text, for instance, what constitutes a generic term. The first issue about generic terms was later subject to a WTO dispute settlement, [33] and the recent bilateral GI agreements.[34]

In summary, GI provisions in TRIPS present a constructive inconsistency. The EU has promoted *terroir*-based PDOs as the standard set out in Article 23 of TRIPS (the higher protection for wines and spirits). The USA rejected the EU's proposal over geographical names because either these names have already been registered as trademarks, or because they have become generic names and thus lost distinctiveness.[35]

EU-US GI Contestation in Bilateral Trade Agreements

In the post-TRIPS era, there was little progress in the WTO Doha Round of agricultural negotiations. The EU and the USA directly confronted each other on GIs in other forums negotiations. The EU aimed to incorporate GIs into the Anti-Counterfeiting Trade Agreement (ACTA),[36] which focused on enhancing enforcement of intellectual property. However, the inclusion of GIs in ACTA was objected by the USA. ACTA later became a controversial topic subject to public debate and was resoundingly rejected by the European Parliament. In the negotiation of the Transatlantic Trade and Investment Partnership (TTIP) with the USA, the EU agreed on a trade-off between

[31]WTO document, MTN.GNG/NG11/W/70, art 19.

[32]Nonetheless, Articles 24.4, 24.5, and 24.6 of TRIPS are grandfather provisions that allow continuous practice of a WTO Member concerning certain aspects of GIs before TRIPS. See Paul J Heald, 'Trademarks and Geographical Indications: Exploring the Contours of the TRIPS Agreement' (1996) 29 Vanderbilt Journal of Transnational Law 635.

[33]WTO Panel Report WT/DS290/R, European Communities – Protection of trademarks and geographical indications for agricultural products and foodstuffs (Complaint by Australia), fn 333 (the issue of GI becomes generic) and paras 7.607–7.615 (without prejudice of trademark registration).

[34]See the example of China in the third Part of this article.

[35]Burkhart Goebel & Manuela Groeschl, 'The Long Road to Resolving Conflicts Between Trademarks and Geographical Indications' (2014) 104 The Trademark Reporter 829.

[36]For technical discussion about GIs in ACTA, see Duncan Matthews & Petra Žikovská, 'The rise and fall of the anti-counterfeiting trade agreement (ACTA): Lessons for the European Union' (2013) 44 IIC – International Review of Intellectual Property and Competition Law 626.

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agriculture and GIs – 'the EU will accept increased EU market access for some US agri-food products on the basis that the USA will accept to protect certain EU GIs in the United States'.[37] However, since 2016 TTIP negotiations have been on hold. So far, it is still hard to tell how the two powers could compromise on GIs in each other's market.

The lack of consensus between the EU and the USA on GIs in their direct negotiations has been accompanied by incorporating their respective GI agendas into bilateral trade agreements with third countries.[38] The EU has clearly stated its objective in a report by the EU Commission's Directorate-General for Agriculture that 'in the new generation of FTAs a satisfactory GI Chapter is a 'must-have' for the EU'.[39] The proliferation of FTAs demonstrates the EU's intention to promote GIs to 'shore up their position vis-à-vis the United States by drawing new countries into its general orbit of intellectual property rights for agri-food'.[40] So far, concerning GIs for agri-food names, the EU listed 60 names in the EU-Korea FTA, 143 names in the EU-Canada *Comprehensive Economic and Trade Agreement* (CETA), 78 names in the EU-Japan EPA, and 83 names EU-Singapore FTA, 59 names in the EU-Vietnam FTA and 275 in the EU-China GI agreement. Competing demands are also listed in agreements with the USA formally or informally. In addition to the lists for recognition of EU GIs in a third country, the EU has also a series of requirements (Table 1).

EU's GI negotiating objectives,[41] however, have been encountered by the US strategies. The USA considers the EU GI agenda 'highly concerning' and 'harmful' in the USTR 2018 Special 301 Report. This is because of the 'significant extent to which it undermines the scope of trademarks and other IP rights held by U.S. producers, and imposes barriers on market access for American-made goods and services that rely on the use of common names, such as parmesan or feta'.[42] The US, therefore, takes a responsive strategy to intensively engage with countries that have already agreed with the EU's GI demands in trade agreements, trade negotiations and other initiatives.

These EU demands range from TRIPS-plus protection and lists of names for mutual recognition as GIs, while the US demands include trademark priorities, particularly rules for opposition and cancellation,[43] listing common names or generic names, and disqualifying individual components of multi-component terms (Table 1). Given that the EU and the USA are often at strong bargaining positions in their trade negotiations, their contestations through FTAs would ultimately introduce a rule complexity to a country that directly negotiated FTAs with both the EU and the USA.

In the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, GI provisions demonstrate an interesting compromise between the EU and New World positions. achieved some compromises. While Canada agreed to provide TRIPS Article 23 level protection for specified EU GIs, CETA allows the coexistence of existing trademarks with

[37]Bernard O'Connor, 'The Legal Protection of GIs in TTIP: Is There an Alternative to the CETA Outcome' (Research in Agricultural and Applied Economics, Apr 2015) <https://ageconsearch.umn.edu/record/204144/> accessed 1 Feb 2023.

[38]Hazel VJ Moir, 'Understanding EU trade policy on geographical indications' (2017) 51 Journal of World Trade 1021.

[39]Advisory Group on International Aspects of Agriculture (EC), 'Working document on international protection of EU Geographical Indications: objectives, outcome and challenges' (DG AGRI, 2012).

[40]Hart N Feuer, 'Geographical indications out of context and in vogue: The awkward embrace of European heritage agricultural protections in Asia', in Alessandro Bonanno, Kae Sekine & Hart N Feuer (eds), *Geographical Indication and Global Agri-Food* (Routledge 2019) 39.

[41]Engelhardt (n 25).

[42]'2018 Special 301 Report' (Office of the US Trade Representative, 2018) 19–20 <https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf> accessed 1 Feb 2023.

[43]See, for instance, Trans-Pacific Partnership Agreement, arts 18.31(e) and 18.31(f) (chapter on IP).

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Table 1. EU and US GI strategies and positions in bilateral trade agreements

EU strategies[44]	US counter strategies[45]
• Promoting strong-form (TRIPS Article 23 level) *sui generis* protection for all agricultural products • No time limit to GI protection as long as still registered in the country of origin • GI protection should not require individual applications, but based on mutual recognition • Right to use name defined in GI registration (ie, name cannot be licensed)	• Trademark protection based on consumer confusion (TRIPS Article 22 level protection) is sufficient for TRIPs compliance • Opposition and cancellation procedures
• Newly listed GIs able to co-exist with prior trademarks • absolute ground for refusal of the registration of a sign as a trademark: once GI is registered, there cannot be a new trademark using the same name • phase out the use of a certain name if it is included in the mutual recognition list	• Insist on the priority of registered trademarks, based on the first-in-time principle
• List of GIs for mutual recognition	• Safeguard generic names (names that have lost distinctiveness under trademark law) [46] • Futurist provision to guarantee US market access (see Section III.B.2.) no matter what is provided in other bilateral agreements • An individual component of a multi-component term is not protected as GI
• Administrative enforcement of GIs	-

GI names.[47] Further, Canadian producers retain perpetual rights to use certain EU-registered GI names such as feta and Asiago. However, this compromise at the EU level has led to internal controversy with some member states – Greece and Italy have threatened not to ratify the treaty because they were not satisfied with the EU's GI-related compromise.[48]

The EU-Us contestation has significant ramifications for South Korea and Vietnam. The EU has achieved almost everything it wanted in its FTA with South Korea. However, in the Side Letter on Korea-US FTA (2011), South Korea agreed that 'any restrictions or requirements it may impose on the use of these compound terms would pertain only to the protection of the compound terms in their entirety. In other words, the individual components of the compound terms, for example, 'Grana', 'Parmigiana', 'Provolone', or 'Romano', themselves, including their translation or transliteration, are not the objects of GI protection under the Korea-EU FTA.'[49] In the EU-Vietnam FTA, the EU has not achieved too much because Vietnam was also negotiating TPP in parallel. These previous negotiations have illustrated competing demands from the EU and the USA in domestic rulemaking.

[44]Advisory Group on International Aspects of Agriculture (EC) (n 39).

[45]'2018 Special 301 Report' (n 42).

[46]For instance, see US-China Economic and Trade Agreement, § F, ch 1.

[47]Barham (n 20). O'Connor B, 'The European Union and the United States: Conflicting Agendas on Geographical Indications–What's Happening in Asia?' (2014) 9 Global Trade and Customs Journal 66.

[48]Huysmans (n 11).

[49]Jong-Hoon Kim, 'Side Letter from Kim to Kirk on the KORUS' (10 Feb 2011) <https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/2011_Side_Letter.pdf> accessed 1 Feb 2023.

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In the recent trade negotiations between the EU and Australia,[50] GIs has been a controversial issue because the EU demands have cut across some important principles in Australian society and our economy – multi-culturalism, a preference for minimal regulation and a strong user-pays philosophy. It also causes concerns that what suits Canada may not suits Australia, in particular, the administrative enforcement and allowing later GIs to co-exist with earlier trademarks.[51] By contrast, in the *United States-Mexico-Canada Agreement* (USMCA), the USA has emphasised the clarification of preventing the protection of GIs that can improperly constrain US agricultural market access in other countries. One important way of safeguarding the US market access is through the guidelines for determining when a name is common. USMCA also follows the TPP by providing due process for recognising and opposing GIs and enhancing transparency requirements for GI protection in international agreements.[52]

Chinese GI Schizophrenia: Development and Symptoms

China has long been influenced by GI-related regulatory exports from the EU and the USA. In the early 1980s, China encountered the concept of EU-style GIs for the first time. China soon introduced both *sui generis* and trademark mechanisms for GIs under EU and US influences, respectively. China eventually developed triplicate GI protection mechanisms: trademark mechanism by the State Administration for Industry and Commerce (SAIC); *sui generis* mechanism by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ); and a *sui generis* mechanism for agricultural products by the Ministry of Agriculture (MOA). A historical account of how China encountered the EU and US demands concerning GIs respectively over time and how China has managed competing demands is important to understand the origin of the Chinese GI Schizophrenia. One of the most struggling issues for China is the redundant regulatory mechanisms and regulatory competition caused by accepting both EU and the US-style of GI regulations.

From No Protection To Case-By-Case Protection

Before the 1980s, geographical names and related labels were not recognised as a type of intellectual property right in China. Like other intellectual property regulations, the concept of GIs and legal mechanisms to protect GIs were introduced to China through regulatory importation. Under the *Trademark Law* in 1982, geographical names were naturally excluded from trademark registration. In 1986, the Chinese national trademark regulator SAIC issued a reply to the local trademark regulators.[53] This document prohibited the use of geographical names of administrative divisions at or above the county level[54] as trademarks on four grounds.[55] These grounds essentially revealed the

[50]Australian Government – Department of Foreign Affairs and Trade, 'Australia-European Union Free Trade Agreement' <https://www.dfat.gov.au/trade/agreements/negotiations/aeufta/default> accessed 1 Feb 2023.

[51]Hazel VJ Moir, 'Responding to the European Union's demands on Geographical Indications (GIs) for foods' (Department of Foreign Affairs and Trade, 19 Jul 2019) <https://www.dfat.gov.au/sites/default/files/dr-hazel-v-j-moir-aeufta-submission_0.pdf> accessed 1 Feb 2023.

[52]US Congress Research Service, 'USMCA: Intellectual Property Rights (IPR)' (6 Jan 2020) <https://crsreports.congress.gov/product/pdf/IF/IF11314> accessed 1 Feb 2023.

[53]State Administration of Industry and Commerce (SAIC), *Reply Concerning Issues of Using Names of Administrative Divisions above the County Level* [国家工商行政管理局商标局就县级以上行政区划名称做商标等问题的复函] (1986).

[54]There are four levels of administrative divisions in China, specifically the provincial level, the prefectural level, the county level, and the township level. There are 2862 counties in China as of 2004, which means the reply has enacted a considerable prohibition of using these place names as GIs.

[55]According to paragraph 1 of the *Reply Concerning Issues of Using Names of Administrative Divisions above the County Level*, the four grounds include: '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

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rationale that place names could not meet the criteria of distinctiveness as trademarks and should not be appropriated as private property. The rationale in the SAIC document was later challenged when the SAIC was confronted by foreign complaints. While protection for geographical names was not justified because of the anti-competition effect of a GI (Ground 2) and the lack of distinctiveness in trademark registration (Ground 4), the foreign companies conducting business in China required protection of their names.

China became a contracting member of the *Paris Convention for the Protection of Industrial Property* (Paris Convention) in 1984. While the 1982 *Trademark Law* was clear that geographical names of administrative divisions at or above the county level are not protected, some foreign entities argued that based on Article 10*bis*, contracting members are mandated to provide geographical names for anti-competition purposes. Therefore, even if domestic place names were not protected, foreign place names should be protected to fulfil China's international obligation under the Paris Convention. This happened both individually (in the case of Danisa 丹麦牛油曲奇) and collectively (in the case of the consortium of Champagne 香槟). As a response to the complaint, SAIC issued an opinion to the Beijing Provincial Administration of Industry and Commerce (PAIC) to investigate the false use of the translated Chinese characters of Danisa by a food company located in Beijing in 1987. PAIC ordered the Beijing food company to stop using the Danisa name immediately because Danisa is an appellation of origin and China should comply with the Paris Agreement.[56] In a recent anti-competition dispute in China, it was revealed that Danisa's place of production has been in Indonesia. Danisa eventually paid for its misrepresentation by using the term 'endorsed by the Denmark Royal family' and implying the place of production as in Denmark.[57] In the context of Chinese GI regulation in the 1980s, however, the outcry of Danisa as an appellation of origin worked as the Chinese trademark office at that time presumed good faith of the complaint and could not verify information outside of China. In 1989, upon repeated complaints from French Champagne producers, SAIC issued an *Opinion* to its branches to protect the French geographical name Champagne.[58] According to the *Opinion*, Chinese enterprises cannot use 'Champagne' or its Chinese translation '香槟' in any wines and spirits. Although these two cases illustrated China's efforts to comply with the Paris Convention, this case-based protection was only an interim response before an institution was built for all products.

EU and US Influences on Building Chinese GI Institutions

The case-by-case solution to protect foreign GIs led to 'super-national treatment'[59] because, in effect, only foreign place names were protected. Domestic place names were not protected. For

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.'

[56]SAIC, *Letter Concerning the Protection of appellation of origin* [国家工商行政管理局商标局关于保护原产地名称的函] (1987).

[57]Beijing Intellectual Property Court (2018) Jing 73 Min Zhong No 538 Civil Judgment [北京知识产权法院（2018）京73民终 538 号民事判决书].

[58]SAIC, Notice on Prohibiting Using '香槟' or Champagne for Wines [国家工商行政管理局关于停止再酒类商品上使用香槟或 champagne 字样的通知] (1989).

[59]This term 'super-national treatment' (超国民待遇) was used by Chinese IP scholars to describe the phenomenon in the late 1980s and early 1990s that IP protection for foreign parties was higher than protection available for Chinese entities. This discrimination happened because China adopted international treaties (such as Parris Convention) directly to protect IP owned by foreign entities while domestic law has not yet provided equal protection to domestic entities. See Ying Zhang (章英), 'The gap between China's copyright protection and TRIPS [我国著作权保护与 TRIPS 的差距]' (2000) *World Trade Organization Focus* [世界贸易组织动态与研究] 11. While this practice did not contravene with China's TRIPS commitment, they did hurt the feelings of domestic entities. This further became one of the motivations for China to promulgate relevant national laws to provide equal protection.

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instance, the SAIC instructed the Shandong PAIC, in 1988, that 'Longkou 龙口' could not be registered as a trademark for vermicelli, because it has long been used as a name for the vermicelli produced in the area and should not be exclusively owned by one company.[60] The differentiated treatment of domestic and foreign place names stimulated extensive research on legal mechanisms for protecting GIs.

China began to follow the international debates on GIs and explore different propositions for *sui generis* and trademark protection of GIs simultaneously. Some European countries also took the initiative to disseminate their regulatory practices to their Chinese counterparts. In 1995, the former State Bureau of Quality and Technological Supervision (SBQTS) [61]started cooperation on GIs with the French Ministry of Agriculture, the Cognac Association, and the Ministry of Finance through personnel exchange and training. In 1997 and 1998, China and France signed the *Sino-French Joint Statement* and *Sino-French Statement on the Establishment of the Cooperative Committee on Agriculture and Foodstuffs*.[62] 'These two statements dramatically pushed the progress for China to establish *sui generis* protection for GIs under the leadership of AQSIQ'.[63] After the EU started its bilateral cooperation with China, GI cooperation was moved to the EU level through the EU-China bilateral IP cooperation projects.[64] This happened in parallel with China's large-scale rule-amendment and rule-making to comply with the WTO requirements.

During the early EU push for GI recognition, the US influence on China's GI rule-making was less visible, as the USA was in a position of responding defensively, advocating for lower-level protection for GIs. In the US-China bilateral negotiations before TRIPS,[65] GIs was not mentioned. Still, China was aware of the US way of regulating geographical names through the trademark system.

The *Madrid Agreement Concerning the International Registration of Marks* provides parties with an opportunity to use collective or certification marks to protect geographical names. China signed this Agreement in 1989 and established a system to protect geographical names as collective marks and certification marks in 1994.[66] While TRIPS came into effect in 1995, China did not join the WTO until 2001. For China, it was convenient to adopt the collective and certification trademark mechanism for GI protection, as this was sufficient for TRIPS compliance. One important feature of the Chinese collective and certification mark system before China's WTO accession in 2001 was that the 1994 regulation did not provide higher-level protection to wines and spirits. National trademark protection also ends the period of super-national treatment. It filled the gap in domestic law as domestic disputes about geographical names also increased in this period due to the lack of protection for domestic geographical names. The famous Jinhua Ham case highlights such domestic conflict.[67]

[60]SAIC, *Opinions Concerning the name of 'Longkou'* [国家工商行政管理局商标局关于'龙口'名称的意见] (1988). Longkou Vermicelli has later become a registered GI and listed in the China-EU GI mutual recognition program to be recognised as an EU GI. See n 97 below.

[61]SBQTS is the predecessor AQSIQ, which issued the *sui generis* protection for GI products in China.

[62]Zhaobin Liu (刘兆彬), 'The Insight of the GIs Protection System in France: Memorizing the China-France GIs Cooperation in 20 Years [法国地理标志产品保护制度的启示 —纪念中法地理标志制度交流 20 周年]' (Guangming Daily (光明日报), 25 Jan 2015) 5.

[63]The Central People's Government of the People's Republic of China, 'Ten GIs from China are expected to obtain sui generis protection in the EU [我国 10 个地理标志保护产品可望在欧盟获专门保护]' <http://www.gov.cn/gzdt/2007-07/12/content_681836.htm> accessed 28 May 2021.

[64]Natalia Wyzycka & Reza Hasmath, 'The Impact of the European Union's Policy Towards China's Intellectual Property Regime' (2016) 38 International Political Science Review 549.

[65]These negotiations led to three bilateral agreements between the US and China from 1992 to 1996, including US-China Memorandum of Understanding on the Protection of Intellectual Property (17 Jan 1992); China-United States Agreement Regarding Intellectual Property Rights Memorandum of Understanding (26 Feb 1995); and China Implementation of the 1995 Intellectual Property Rights Agreement (17 Jun 1996).

[66]SAIC, *Administrative Regulations Concerning the Registration of Collective Marks and Certification Marks* [集体商标、证明商标注册和管理办法], by Order No 22 (1994) (hereinafter 'Collective and Certification Marks Regulation 1994').

[67]Guoqiang Lü (吕国强) & Denglou Wu (吴登楼), 'Improvement of Legal System of Geographical Indications in China [我国地理标志法律制度的完善]'(2006) Legal Science (法学) 1, 154.

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TRIPS Compliance and Post-TRIPS GI Divergence

China amended its IP laws comprehensively after its WTO accession. Article 16 was added to *Trademark Law* in its 2001 amendment. Paragraph 2 of Article 16 adopted the exact definition of GIs as Article 22 of TRIPS. Adopting the language as TRIPS was to guarantee full compliance with Chinese law. It also provides that if a trademark contains a geographic name, but the product does not originate in that area (and thus misleads the public), the geographic name should not be registered or used. However, a grandfathering exception is provided that if a trademark has already been registered in good faith in such circumstances, it shall still be valid. This exception is particularly relevant for foreign GIs because GI protection in a third country is underpinned by reputation accumulated in that specific market, not *terroir* in the origin country. This was later clarified by the *Administrative Regulations Concerning the Registration of Collective Marks and Certification Mark 2003* (henceforth '2003 Regulation') which repealed the prior collective and certification mark regulation in 1994. The 2003 Regulation provides TRIPS Article 22 level of protection for all products (including handcrafts). In particular, Article 12 of this 2003 Regulation provides TRIPS' Article 23 level of protection for wines and spirits.

The EU influences further led to two *sui generis* systems in China in the post-TRIPS era. First, AQSIQ established a *sui generis* system to protect 'GI products' under the *Provisions on the Protection of GI products (2005)*,[68] which protects both (1) planted and bred products originating from the place; and (2) products either all raw materials come from the place where the product is named after or part of the raw materials come from other places, and that are produced and processed within the place by using special techniques. The second category extends protection beyond agriculture and foodstuff to handcrafts. This is an institutional creation to accommodate the *sui generis* system to Chinese competitive advantage of handicrafts such as embroideries and ceramics. With the regulatory strength of the AQSIQ on quality control of the GI products (Article 22), the GI products need to conform to stringent quality standards and production techniques. Granted use can be relinquished if a producer fails to conform to these requirements (Article 23).

Secondly, the Ministry of Agriculture (MOA) issued a regulation to protect 'Agricultural GI Products" in 2007 in which agricultural products refers to primary agricultural products, including plants, animals, microorganisms, and the products obtained from agricultural activities[69] A *sui generis* protection under the MOA was mainly justified by the fact that, in the EU, GIs was regulated under DG Agriculture. In addition, since Chinese GIs protection is broader than agricultural products, it seems necessary for China to have a dedicated system just for agricultural products. However, this arrangement led to further complications as in the Chinese system, the MOA and the State Forestry Administration (SFA) divide their regulatory boundary only based on the subject matter. Institutionally, they are on an equal footing. Therefore, a separate GI system for forestry products could be established if there is one for agricultural products. in 2013, the SFA proposed to establish a system similar to that of MOA to protect 'GIs for forestry products'.[70] This proposal, however, was not approved by the State Council.

Previous studies, in both Chinese and English, have already discussed the details of these three parallel systems (Figure 1).[71] For the present purpose, it is only necessary to understand the architecture of the three systems and their relationship to one another.

[68]AQSIQ, *Provisions on the Protection of GI* products [地理标志产品保护规定], Order No 78 (2005).

[69]MOA, *Measures for the Administration of Geographical Indications for Agricultural Products* [农产品地理标志管理办法], Order No 11 (2007). 'GIs for Agricultural products' are the subjects protected by these measures, which refer to special agricultural product indications which are named after geographical names and whose purpose is to note that the indicated agricultural products are from a specific area and that the quality and major characteristics of the products mainly lie in the natural and ecological environment as well as the cultural and historical factors of the area (Article 2).

[70]SFA, *Measures for the Administration of GIs for Forestry Products (Draft for Comments)* [林产品地理标志管理办法 (征求意见稿)] (2013).

[71]Xiaobing Wang & Irina Kireeva, 'Protection of Geographical Indications in China: Conflicts, Causes and Solutions' (2007) 10 The Journal of World Intellectual Property 79; Lianfeng Wang (王莲峰) & Zeyan Huang (黄泽雁), 'Debate on

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Figure 1. Special Signs for GIs regulated by SAIC, AQSIQ, and MOA

First, the three systems under three ministries in China are completely independent of each other, leading to duplicate or even triplicate applications by certain users. It is not only a waste of public resources but also contributes to consumer confusion. Secondly, China modelled the US and the EU systems respectively through technocratic networks,[72] namely certification and collective trademark under the SAIC[73] and the *sui generis* protection under AQSIQ and the MOA. The three domestic systems indicate how the EU-US power contestation at the international level eventually contributes to Chinese GI schizophrenia. Thirdly, there are deviations from the transplanted Chinese law and the spirit of trademark law or the *sui generis* protection. In terms of trademark law, the amended Article 12 of *Collective and Certification Marks Regulation 2003* provides TRIPS Article 23 level protection to wines and spirits. While this means that Chinese trademark law complies with TRIPS standards, this differentiated protection could not be justified by trademark law theories. In terms of *sui generis* protection, the problem lies in the prohibited activities. Article 21 of the *Provisions on the Protection of GI products 2005* prohibits the following behaviour: (1) using without authorisation or forgery of the place name and the special sign of the GI protected products; (2) using a place name for products without conforming to the GI protected product standards or management specifications; or (3) using the signs similar to the special signs of GI protected products and misleading names to the place names, or using letters or signs that can mislead consumers to believe the similar products with the signs are GI protected products. The third category is particularly confusing because the relations of different elements listed in this item are not clear. Furthermore, consumer confusion or using similar signs follows the trademark rationale, not *sui generis* protection where an association with the place of production is the only justification, and only the names are protected. It is also not clear how the behaviour described in the above item (3) relates to TRIPS Article 23 prohibiting using the place name for 'products not originating in the place indicated by the geographical indication in question … even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.'

the Protection Model of Geographical Indications and the Choice for China in Law-making [地理标志保护模式之争与我国的立法选择]' (2006) 6 Journal of the East China University of Political Science and Law (华东政法学院学报) 44; Yumin Zhang (张玉敏), 'The Nature of Geographical Indications and the Choice of Protection Model [地理标志的性质和保护模式选择]' (2007) 6 Law Science Magazine (法学杂志) 6.

[72]At least with the EU, the GI cooperation works in the same pattern as in patents. See Peter Drahos, '"Trust Me": Patent Offices in Developing countries' (2008) 34 American Journal of Law & Medicine 151.

[73]SAIC, 'Achievement of the Chinese Legal System for Geographical Indications [中国地理标志法律制度及其成就]' (2012).

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A further question concerning legal transplantation is the comparison between Chinese law and EU law. The EU has two systems for GIs: the PDOs and the PGIs. They differ in (1) to what extent raw materials come from the designated place and to what extent processing stages take place in the designated place and (2) PDOs are underpinned by the concept of *terroir* while PGIs are based on their reputation over time. Concerning the first issue, the Chinese regulation requires all or most of the raw material coming from the designated place, and all production processes taking place in the designated place. These are stringent requirements. Such requirements resemble the PDO system, as PGI only requires at least one phase of the production process. However, concerning *terroir*, it is hard to tell how the place-product link in the Chinese context is related to *terroir*, even though the supporting documents[74] need to include an explanation of the relationship between the perceived characteristics of the products and the natural and human factors of the place of production.

Chinese GI Schizophrenia as a result of Regulatory Competition

Against the backdrop of EU-US power contestation, China started protecting foreign place names through a case-by-case approach. After its WTO accession, China adopted three independent mechanisms for GI protection under the regulation of SAIC, AQSIQ and MOA respectively. China witnessed surging total GI numbers across three systems. Twelve years after establishing the first GI system, 3,210 GIs have been registered across the three parallel systems, with an economic value of CNY 1.3 trillion (USD 213 billion). Figure 2 shows the number and value of GIs in China in the years 2005, 2010, 2013 and 2020 respectively.[75] The number of regis-

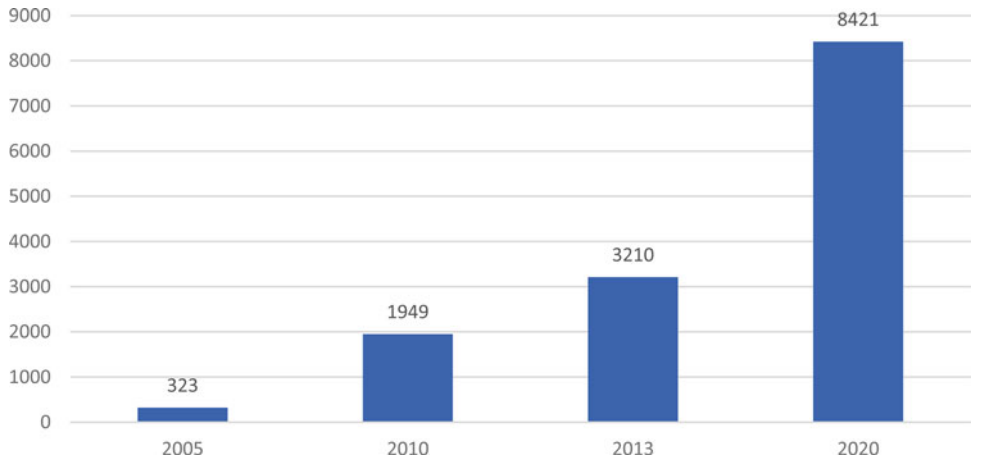

Figure 2. Registered GIs in China (2005–2020)[76]

[74]According to Article 10 of the Provisions on the Protection of GI products (2005), the application should be supported by: (1) Application form for GI protected products; (2) Description of product name, category, production area and geographical features; (3) Description of the physical, chemical, sensory and other quality characteristics of the product and its relationship with the natural and human factors of the place it is produced; (4) Technical specifications of the product (including product processing technology, safety and health requirements, technical requirements for processing, etc); (5) Reputation of the product, including product production and sales data, and historical reputation of the place of production; (6) Technical standards of the GI protected products.

[75]Central County Research Institute (中郡研究所), The Fourth National Survey on the Number of Geographical Indications [第四次全国地理标志数量调研报告] (2020).

[76]ibid.

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tered GIs in 2013 reached 3,210 which is ten times that of 2005, and the GI registration in 2020 more than doubled that of 2013. Such an increase reflected the reframing of the traditional regional specialties of China in its ancient tributary system to the new transplanted GI mechanism.

The three GI protection mechanisms were established based on the networks of the Chinese regulators and their international counterparts and modelled the EU and US systems respectively. They further apply the different models to the Chinese context by setting the legislative or regulatory foundation, accepting GI applications in their systems, and accumulating their data without communication with each other. While the GI mechanisms have all been promoted as a way to enhance regional prosperity, they intentionally ignore each other. such a fundamental split of triplicate national GI regulatory systems is the major symptom of Chinese GI schizophrenia.

Data on the internal distribution of the applications submitted to the three systems show that Chinese GI schizophrenia exists in reality. By 2020, almost 40 per cent of the registered GIs are under trademark protection as certification or collective marks whereas the agricultural GIs accounted for over a quarter and the GI protected products are only about 15 per cent (Figure 3). One prominent phenomenon is double registration. Nearly 1,400 products are registered

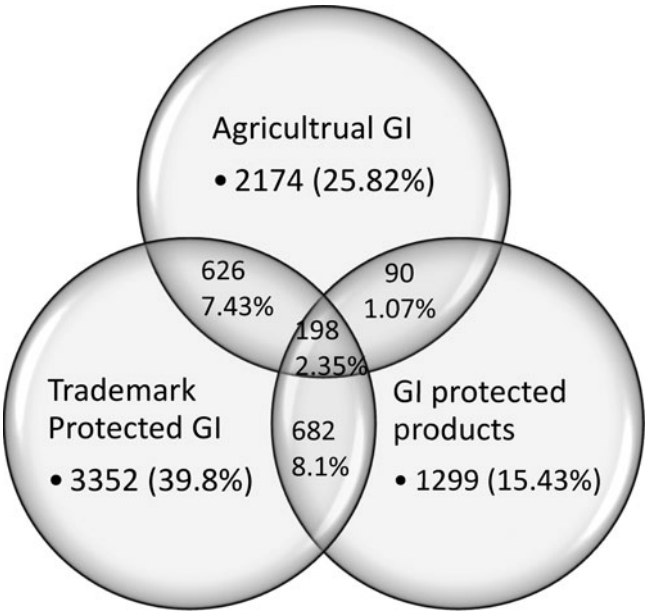

Figure 3. Distribution of Registration among Three Regimes of GIs in China[77]

in two of the three systems and nearly 200 projects are registered in all three systems. Double or triple registration is a waste of resources, which perhaps explains why a fourth system for the protection of GIs for forestry products has not been approved.

Chinese GI schizophrenia can be considered a case of regulatory competition. Regulatory competition can happen if the different regulators are competent to regulate the same subject matter.[78] In China, regulatory power on a specific issue is allocated among ministries of the State Council

[77]See Central County Research Institute (n 75).

[78]It is worth noticing this is only one type of regulatory competition, there are also inter-regional competition (or jurisdictional competition). See Xingxing Li, 'Economic Analysis of Regulatory Overlap and Regulatory Competition: The

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based on mandates stipulated in *Provisions on the Definitions of Main Functions, Setup of Internal Bodies and Staffing* (PDMFSIBS). Regulatory competition arises when there is an overlap or ambiguity in the PDMFSIBS mandate statement or new regulatory subject matter that was not anticipated by the PDMFSIBS and can be tangentially regulated by more than one regulator. The emergence of GI as a new regulatory subject and no prescription in any PDMFSIBS is the domestic cause for GI regulatory competition.

The Chinese GI schizophrenia, as regulatory competition, has its own features. First, the regulatory competition literature often examines the outcome of competing standards and warns of an unintended consequence of 'race to the bottom',[79] or 'competition in laxity'.[80] In the Chinese GI case, racing to the bottom may not be a major concern. On the one hand, the three systems have different regulatory emphases: the MOA system emphasises the local farming culture and is only applicable for agricultural products; the AQISIQ regulation focuses on the quality of the products and the production standards; the SAIC regulation focuses on the use of labels. On the other hand, there is not much room for laxer standards as TRIPS has set international obligations to fulfil. Secondly, the evolution of the regulatory competition is often due to *competition* of the elemental institutions, not exogenously determined. In the Chinese GI case, the regulatory authority is distributed to three ministries (SAIC, AQSIQ, and MOA), all of which are affiliated with the State Council. The State Council has considerable power to coordinate the GI regulation, just as it has the power to veto the fourth GI system for forestry products. In addition, the EU and the US, have influenced the establishment of the three GI mechanisms and will continue to influence their evolution.

The Cure and Recurrence: Institutional Integration and New Bilateral Agreements

CNIPA's Holistic Approach to GI Regulation

The major problem with Chinese GI schizophrenia is a waste of public resources for setting up triplicate systems, extra cost for some users to pursue more than one application and labelling (Figure 3), and consumer confusion. The institutional integration of central regulators brought an opportunity to take a holistic approach to addressing some of the problems of the Chinese GI schizophrenia. Two measures were taken, the first is consolidating GI regulators, and the second was uniform coordination of procedures. After an institutional reshuffle in 2018, both SAIC and AQSIQ were dissolved, and their mandates on GI-related issues were integrated into the China National IP Administration (CNIPA). There was no change of mandate concerning the regulation of GIs for MOA. This semi-integration is interesting. Logically, one would expect that the two *sui generis* systems (under AQSIQ and MOA) merge, and this merged institution can further co-exist with the trademark system; an alternative option would be eliminating either the trademark system or *sui generis* system in its entirety. The first did not happen because while the establishment of the *sui generis* and trademark systems was under the EU and US influences respectively, each regulator also follows the hierarchy under the State Council – by no means could an IP regulator at the sub-ministerial level integrate the GI mandate of the MOA.[81] Secondly, the EU and US influences have already been deep-rooted and institutionalised, which makes the elimination of either system impossible.

Experience of Interagency Regulatory Competition in China's Regulation of Inbound Foreign Investment' (2015) 67 Administrative Law Review 685.

[79]For the race to the bottom argument, see Luc Fransen, 'Why do private governance organizations not converge? A political–institutional analysis of transnational labor standards regulation' (2011) 24 Governance 359.

[80]Giovanni Dell'Ariccia & Robert Marquez, 'Competition among regulators and credit market integration' (2006) 79 Journal of Financial Economics 401.

[81]This is because the Ministry of Agriculture is at the ministerial level and is directly affiliated with the State Council; CNIPA (at the sub-ministerial level) is part of the State Administration of Market Supervision and Administration (SAMSA). SAMSA is at the same level as the MOA.

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Although the 2018 institutional integration does not resolve the Chinese GI schizophrenia, the semi-integration leads to a more holistic approach to GI regulation. However, CNIPA faces a theoretical problem of one regulator in charge of two GI systems derived from trademark and *sui generis* origins, respectively. To address these challenges, CNIPA has implemented a series of measures to streamline these two GI systems. In 2019, CNIPA issued the *Revised Measures for the Protection of Foreign GI-protected Products*.[82] This was to revise a 2016 Measures issued by AQSIQ.[83] As the 2016 measures designated AQSIQ as the regulator for foreign GIs, the revision repeals the former measure and confirms that the CNIPA is the regulator of foreign GI products in China.

The second measure was to introduce a uniform application platform[84] and a uniform sign (Figure 4) for both trademark and *sui generis* GIs. The new sign replaces previous SAIC and AQSIQ signs (Figure 1). According to *Administrative Measures on Using Special Signs of GIs,* [85] GI products under the *sui generis* system should bear this new sign together with the name of the GI product, as well as associated GI standards or GI products registration number; GIs registered as certification or collective trademarks should use this sign together with these trademarks and indicate the trademark registration number. In addition to the above information, the social credit number of the enterprise should also be included as part of the sign (black characters at the bottom of the sign, Figure 4). In addition to these major changes in rules, signs, and application procedures, CNIPA has also collected statistics on GI registrations in each system and integrated these into its quarterly statistical report.[86] It also promotes the social awareness of GIs by initiating special enforcement campaigns for GI protection during the Chinese New Year[87] and seasonal products[88] such as tea or crabs.

Figure 4. The Special Signs for Geographical Indications

[82]CNIPA, Measures on the Protection of Foreign GI-protected Products [外国地理标志产品保护办法] (2019).

[83]AQSIQ, Measures on the Protection of Foreign GI-protected Products [外国地理标志产品保护办法] (2016).

[84]CNIPA, 'The uniform electronic application platform for the protection of geographical indication products is launched where two types of applications are integrated in one webpage with six functions [一个网页、六大功能、两种申请！地理标志产品保护统一申请电子平台启]' <https://www.cnipa.gov.cn/art/2019/12/5/art_1390_91758.html> accessed 1 Feb 2023.

[85]CNIPA, Administrative Measures on Using Special Signs for GIs (Trial Implementation) [地理标志专用标志使用管理办法(试行)] (2020).

[86]CNIPA, Circular of the CNIPA General Office on Carrying out a Survey of Geographical Indications Resources [国家知识产权局办公室关于开展地理标志保护资源普查的通知] (2019).

[87]Huaping Xiong (熊花平), 'The State Intellectual Property Office (SIPO) has launched a special campaign to regulate the use of geographical indications during the Spring Festival[国家知识产权局部署春节期间开展地理标志使用专项整治工作]' <http://www.gov.cn/xinwen/2019-02/08/content_5363295.htm> accessed 28 Mar 2021.

[88]CNIPA, Notice of the General Office on Strengthening the Protection of Geographical Indications in Autumn 2019 [国家知识产权局办公室关于加强 2019 年秋季地理标志保护工作的通知] (2019).

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A uniform application platform and a uniform sign for both *sui generis* and trademark-protected GIs demonstrate CNIPA's efforts to coordinate the once fragmented and overlapping systems. These measures, however, could not mitigate the theoretical concerns of integrating the two systems. It is still unknown whether this integration will eventually create tiered protection for GIs, just like the relationship between inventions and utility models in the Chinese patent system where requirements for inventive steps are different and examination processes are different (utility models do not require substantive examination). However, one can see there has been a sharp rise in registration of certification and collective marks in the last seven years – in 2013 trademark protected GIs were a bit more than the registered GI products; by the end of 2020, there have been 6085 trademark protected GIs and 2391 registered GI products.[89] The reason might be that less control of the production procedure is implemented in the case of voluntary self-regulation (for collective marks) or third-party regulation by the consortium (for certification marks). By contrast, the quality control of the sui generis system is more stringent.

These efforts have further been consolidated into the 'Outline of Building a Powerful Intellectual Property State (2021–2035)', in which China aims to 'fine-tune a uniform GI protection regime that coordinates *sui generis* and trademark protection'.[90] In addition to the two measures identified, consolidating regulators and using uniform application platforms and signs, there are indeed more issues to coordinate at the national level. For instance, one aspect of coordination will be the threshold of eligibility – if there will be layered protection between trademark and *sui generis* protection, it will discourage producers from seeking duplicate or triplicate protection. For instance, given quality control is a central issue for the proposed rules about the s*ui generis* GI regulation,[91] it is expected that the future Chinese *sui generis* standards will be higher. Therefore, there will be a question of whether a place name is still eligible to apply in the trademark system if it fails in the *sui generis* system. If so, a further question would be to streamline layered eligibility and differentiate scopes of exclusivity. This may eventually develop into substantive coordination of the *sui generis* and trademark protection of place names after regulatory imports of both the EU and the US. However, the uniform sign introduced in 2020 seems to obscure the boundary of the two mechanisms. Further substantive coordination problems include the determinants of generic terms in each system, the coexistence between earlier trademarks and GIs, and the products scopes that each system extends protection to. The above issues are just the tip of an iceberg of the challenges facing CNIPA when it attempts to take a holistic approach to address the long-standing GI schizophrenia. The outcomes of such efforts are to be seen in the years to come. Formal coordination in labelling (introducing a uniform sign) and procedure (using a single application platform) is easier than the reconciliation of substantive issues such as the criteria for eligibility and the scope of exclusivity conferred. When CNIPA is committed to addressing the problems, it is important for CNIPA and any other third country that has transplanted rules both from the EU and the USA to recognise that some of the problems are structural and will be difficult, if not impossible, to be fine-tuned. These problems may not be solved only with commitment or capacity because the controversies are deeply rooted in the competing rationales of the *sui generis* and trademark systems that China both transplanted as well as the competing interests justified by such rationales. Should there be an ideal solution that reconciles the two systems and keep all stakeholders satisfied, such a solution could have already been pursued between the EU and the USA directly before their strategic competition to negotiate and conclude bilateral agreements with GI provisions that

[89]CNIPA, 'IP Statistical Brief 知识产权统计简报 (2021)' <https://www.cnipa.gov.cn/module/download/down.jsp?i_ID=156475&colID=87> accessed 28 Mar 2021.

[90]Central Committee of the CCP & State Council (中共中央 国务院), *Outline of Building a Powerful Intellectual Property State (2021–2035)* [知识产权强国建设纲要（2021－2035年）].

[91]CNIPA, Notice of the State Intellectual Property Office on Soliciting Public Comments on the Draft Provisions on the Protection of Geographical Indications [国家知识产权局关于就《地理标志保护规定（征求意见稿）》公开征求意见的通知] (2020).

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only prioritise one of the two systems over the other. This leads to an important question of who is best positioned to address the Chinese GI schizophrenia.

Mission Impossible?: Reconciliation of EU-US Contestation in new agreements

CNIPA's mission to GI integration was further complicated by China's bilateral negotiations and agreements with the EU and US, both concluded in 2020. This recurrence of GI schizophrenia is only more severe than in previous rounds. Since 2006, the EU started to incorporate GIs as a 'must-have' agenda in its FTA negotiations.[92] The deadlock of trade negotiations at the multilateral level[93] also led to a stagnant GI discussion at the WTO, which made bilateral forums more important than previously. Both the EU and the USA shifted GI negotiations to the bilateral level since the WTO deadlock. The EU persuaded its trade partners to adopt TRIPS-plus GI standards.[94] To defend the spreading of the EU rules, the USA initiated counter-GI standards. This introduced new challenges for third countries including China, in particular when the EU GI products are competing with similar agricultural products with the same name but imported from other New World Countries.

China has emerged as an important market for agricultural products from both EU and the USA. China is the second largest export destination for EU agricultural products and one of the core markets for European GI-labelled products. In 2019, EU exports of agricultural products to China reached € 15.3 billion, a year-on-year increase of 37.9 per cent[95] despite the proportion of these imports which have GI labelled being unknown. China is also a large importer of US agricultural products. In the first-stage outcome of the current US-China Trade War, the US-China Economic and Trade Agreement (henceforth 'USCETA 2020'), China promised to import no less than US$12.5 billion of agricultural products from the United States in 2020 and no less than US$19.5 billion in 2021.[96] This makes GI a salient issue for both the EU and the USA to compete in the Chinese agriculture market in the new era. Both have incorporated GIs in their bilateral negotiations with China.

EU-China GI mutual recognition and the USCETA 2020

Since China's introduction of the two *sui generis* systems in the mid-2000, the focus of the EU was bilateral mutual recognition of GI names. The EU and China started experimenting with GI mutual recognition from the *10+10 Project*, which ended in 2012. The *10+10 Project* was a reciprocal scheme whereby ten Chinese geographical names were registered and protected in the EU and labelled either as a PDO or a PGI. Meanwhile, ten EU geographical names were registered in China as GI protected products and protected by the AQSIQ.[97] Following this pilot project, a similar *100+100 Project* was proposed in March 2011. In July 2017, the 100 GI names from each side

[92]Hazel Moir, 'Geographical Indications: An Assessment of EU Treaty Demands', in Annmarie Elijah et al (eds), Au*stralia, the European Union and the New Trade Agenda* (ANU Press 2017) 121.

[93]Elimma Ezeani, 'WTO post Doha: Trade Deadlocks and Protectionism' (2013) 12 Journal of International Trade Law and Policy 272.

[94]Moir (n 92).

[95]Yingxin Fang (方莹馨), 'The EU authorizes signature of the China-EU Geographical Indication Agreement, bringing opportunities to expand China-EU trade bilaterally [欧盟授权正式签署中欧地理标志协定. 为中欧扩大双向开放带来机遇]' (people.cn, 25 Jul 2020) <http://world.people.com.cn/n1/2020/0725/c1002-31797417.html> accessed 25 Mar 2021.

[96]USCETA 2020, art 6.2.1(b).

[97]Ten EU GIs protected in China include: Grana Padano, Prosciutto di Parma, Roquefort, Pruneaux d'Agen/Pruneaux d'Agen mi-cuits, Priego de Cordóba, Sierra Mágina, Comté, White Stilton Cheese/ Blue Stilton Cheese, Scottish Farmed Salmon, West Country Farmhouse Cheddar. The Chinese list of GIs protected in the EU comprises: Dongshan Bai Lu Sun [东山白芦笋](asparagus), Guanxi Mi You [琯溪蜜柚](honey pomelo), Jinxiang Da Suan [金乡大蒜](garlic), Lixian Ma Shan Yao [蠡县麻山药](yam), Longjing cha [龙井茶] (tea), Pinggu Da Tao [平谷大桃](peach), Shaanxi ping guo [陕西苹果](apple), Yancheng Long Xia [盐城龙虾] (crayfish), Zhenjiang Xiang Cu [镇江香醋] (vinegar), Longkou Fen Si [龙口粉丝](vermicelli).

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were published,[98] with the hope that an agreement would be concluded with 'another one or two rounds of negotiations'.[99]

The *EU-China GI Cooperation and Protection Agreement* (henceforth 'EU-China GI Agreement')[100] was eventually signed in September 2020, with the list of GIs for mutual recognition extending to 275 GIs from each side. This EU-China GI Agreement is politically significant for both the EU and China. Another element of the EU-China GI Agreement is to actively promote administrative enforcement of GIs.

The finalisation of the EU-China GI negotiations took longer than expected. Despite starting seven years later than the EU in negotiating a bilateral trade agreement with China, the USA concluded USCETA with China earlier than the EU. The USA concluded the first-stage agreement with China (USCETA 2020) in January 2020 as an interim outcome of the US-China trade war. USCETA 2020 includes GIs in its IP chapter. As the challenger to the EU's bilateral GI rulemaking, the USA injected provisions that directly counteract the EU's GI mutual recognition scheme and incorporated future-proof provisions to guarantee US interests are prioritised even if China reaches a broader GI agreement with the EU.

In the USCETA 2020, two mechanisms were in place to counteract the EU-style mutual recognition agreement. First was the objection and cancellation procedure. It requires that 'China shall give its trading partners, including the United States, necessary opportunities to raise disagreement about enumerated geographical indications in lists, annexes, appendices, or side letters, in any such agreement with another trading partner.'[101] Not surprisingly, a major reason for the continuous delay in finalising the lists of mutual recognition between the EU and China was exactly because of the opposition by the USA and concerned business entities. The second mechanism is how to determine generic terms. The USCETA 2020 defines a generic name as 'a term customary in the common language as the common name for the associated good,' and provides four criteria[102] for China to consider whether a geographic name is a generic term. In addition to the criteria, there are two specific requirements that China has to ensure concerning generic names (1) any geographical indication…, may become generic over time, and may be subject to cancellation on that basis,[103] and (2) an individual component of a multi-component term shall not be protected as a GI if the component is generic.[104] These two mechanisms allow relevant stakeholders, not only from the USA but also from any other third country, to challenge the EU GIs (that are mutually recognised as Chinese GIs) as generic names in Chinese courts. The opposition and cancellation procedures guarantee the right to sue on the above and other grounds.

The future-proof provisions require China to ensure US market access to China relying on trademarks and generic names in the future will not be undermined by 'any measures taken in

[98]DG AGRI EU & MOFCOM China, *Joint Communiqué on the Negotiation of the Agreement on Cooperation on, and Protection of Geographical Indications, 2 June 2017* [欧盟委员会农业和农村发展总局与中华人民共和国商务部关于《地理标志合作与保护协定》谈判的联合声明（2017 年 6 月 2 日）] <https://ec.europa.eu/agriculture/sites/agriculture/files/newsroom/2017-06-02-joint-comm.pdf> accessed 28 May 2021.

[99]Weinian Hu, 'Reciprocity and Mutual Benefits: EU-China cooperation on and protection of geographical indications' (CEPS Research Paper No 2018/04, Jun 2018) <http://aei.pitt.edu/94154/1/RR2018_04_WHu_GIs.pdf> accessed 1 Feb 2023.

[100]Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications, OJ L 408I (4 Dec 2020) 3–43.

[101]USCETA 2020, art 1.15.2.

[102]These include: '(1) competent sources such as dictionaries, newspapers, and relevant websites;(2) how the good referenced by the term is marketed and used in trade in China; (3) whether the term is used, as appropriate, in relevant standards to refer to a type or class of goods in China, such as pursuant to a standard promulgated by the Codex Alimentarius; and (4) whether the good in question is imported into China, in significant quantities, from a place other than the territory identified in the application or petition, and in a way that will not mislead the public about its place of origin, and whether those imported goods are named by the term.'

[103]UECETA 2020, art 1.16.1(b).

[104]USCETA 2020, art 1.17.1.

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connection with pending or future requests from any other trading partner for recognition or protection of a geographical indication according to an international agreement'.[105] There can be different interpretations of this provision, for instance, what constitutes 'undermine', and what is the time to decide whether the US interest is undermined. Is that at the time of the signature of the agreement, or is it a dynamic concept? Also, what is the basis of undermining? And what is the relationship between this provision and Article 24.5 of TRIPS which provides non-prejudice against trademarks registered or used in good faith? Such vague language is to the US advantage as it gives the USA tremendous leverage to resort to this article as long as it feels its interest is 'undermined' by the EU-China GI Agreement. Nonetheless, such a provision puts China into a dilemma in implementing both agreements with the EU and the USA. There has been no official reply from the EU regarding the GI rules in the USCETA 2020 and their impact. However, some EU commentator argues that 'EU GIs are under US fire, and the US-China Agreement is just one example'.[106]

It is worth noticing that although the US-China trade war starting in 2018 fast-tracked the US-China GI negotiations, the implicit US pressure on China to have domestic rules in place to counteract the EU standards has long existed. As early as 2014, the 25th Joint Commission on Commerce and Trade (JCCT)[107] has included GI elements. China has already agreed with the USA about generic terms, channels for opposition and cancellation of GIs, and not to protect individual components of a multi-component term if the individual component is generic in its territory.[108]

From the Chinese perspective, these two Chinese agreements with the USA and EU contemporaneously crystalised competing GI mandates which lead to a compliance dilemma for China – complying with GI provisions in one agreement may mean breaching treaty obligations in the other agreement. Specifically, China is committed to, according to the EU-China GI Agreement, recognising and protecting 275 listed EU names as Chinese GIs, and providing more restrictive administrative protections to GIs. Meanwhile, USCETA 2020 also requires China to guarantee that the EU-China GI Agreement does not undermine the US interest through opposition and cancellation procedures.

China's response to the recent EU-US contestation and consequences

The contestation between the EU and USA in Chinese GI-related issues has lasted for nearly a decade before the agreements were eventually concluded in 2020. The EU-China GI negotiation started in 2011, and the USA also imposed pressure on China through JCCT before the trade war started. The Chinese reconciliation of the EU-US GI contestation, therefore, predates the agreements. The first strategy that China took was to formulate dedicated regulations for foreign GIs predating the bilateral agreements in 2020. *Measures on the Protection of Foreign GI-protected Products*[109] were first issued by AQSIQ in 2016 and amended in 2019. Like in the 1980s, foreign GIs are the real battlefield for the EU and the USA. The real challenge is how China deals with foreign place names in competition in the Chinese market – while the EU protected these names as GIs and sought mutual recognition as Chinese GIs, the USA considers the same place names as generic names that do not have distinctiveness and should not be protected as trademarks. Chinese GIs do not directly compete with either generic names for imported products from the USA or

[105]USCETA 2020, art 1.15.1.

[106]de Almeida (n 29)

[107]The JCCT is a joint commission co-organised by the USTR (representing the US) and the Ministry of Commerce (MOFCOM) (representing China) since 1983. It is one of the earliest US-China bilateral fora for commerce and trade-related issues and the major forum for intellectual property since 1996.

[108]Office of the United States Trade Representative, 'US-China Joint Fact Sheet on the 25th US-China Joint Commission on Commerce and Trade [中美商贸联委会第 25 次会议中美联合概况]' (2014) <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2014/december/us-china-joint-fact-sheet-25th-us> accessed 28 Mar 2021.

[109]See CNIPA (n 82) and AQSIQ (n 83).

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GI-labelled products from the EU simply because the Chinese language does not share the same place name with European languages such as Italian, French, Spanish, Portuguese or Greek. Chinese GIs also protect different types of products as compared with the EU.[110] Foreign GIs registered in China, in most cases European names for products such as cheeses and foodstuffs,[111] may exclude similar products imported from the USA (and other New World countries) that use these names as generic names. In these regulations, including the 2016 *Foreign GI Measures*, China has tried to maintain a delicate balance between USA and EU interests. On the one hand, the opposition and cancellation procedures were introduced under US influence.[112] Articles 12 to16 stipulated detailed procedures for oppositions. Opposition can be submitted by any domestic or foreign individuals or entities in 60 days from the announcement of the GI application. Article 3 provided three grounds for cancellation of a foreign GI: (1) a GI is revoked by its country of origin; (2) a GI is revoked by a judicial decision in China; or (3) a severe violation of relevant Chinese laws and regulations. On the other hand, the EU interests were also manifested in the provisions. Article 4.3 prescribes conditions for foreign GI registration in China – the proposed name 'may not be a generic name in China, nor may it conflict with a Chinese GI name'. Considering (1) 'generic name' has not been defined in Chinese law or regulations, and (2) it is almost impossible for an EU GI to conflict with a Chinese GI (as they use different languages for different products), this article provides flexibility for foreign GI registration. Importantly, it avoided the controversy that the EU GIs may become a generic name in a third country like the USA. Further, since the provisions do not specify grounds for opposition, it is not clear whether the fact that the names become generic in a third country could be the ground to oppose an EU GI to be registered in China. When the US-China trade war escalates, the amended *Foreign GI Measures* in 2019 provide more strict standards for foreign GI registration. Article 4.3 was amended as the proposed name may not be a generic name in China and may not 'conflict with *a prior right including a Chinese GI name*'. This extended ground for refusals has included a prior right, which favours a third party that has registered the same name as a trademark in good faith in China. Again, on balance, the EU interests were also taken care of as the amendment relaxes documentation requirements for foreign GI registration in China[113] and provides enhanced administrative protection for GIs.

The second strategy was to request exceptions in treaty negotiations with the EU in the first place for names that have the potential to cause controversy. Cheeses are one of the GI intensive and the most contentious products between the GI and generic term claims – some terms are considered GI in the EU while generic terms are in other jurisdictions. For instance, in CETA, for names such as 'asiago', 'feta', 'fontina', 'gorgonzola', and 'munster' that are protected in the EU as GIs, new Canadian producers cannot use them as the product name but can use these names on their product labels if they are modified by terms such as 'imitation', 'style', or 'type' while existing Canadian producers can continue using the terms without any modification.[114] In the EU-China GI Agreement, some exceptions to absolute GI protection were also provided in the first place. First, for Feta, Asiago, and Romano transition periods of eight, six and three years of non-exclusivity are provided should the requirements of pre-existing market access, as well as without misleading

[110]This can be seen from the list of the mutual recognised GIs: see text accompanying (n 97).

[111]This can be seen from the list of the 275 EU names to be mutually recognised and protected as GIs in China.

[112]In the 26th JCCT in 2015, China agreed to have procedure in place to provide the opportunity for a third party to cancel already-granted GIs by the end of 2016. See Office of the United States Trade Representative, 'U.S.-China Joint Fact Sheet on the 26th U.S.-China Joint Commission on Commerce and Trade [第26届美中商贸联合委员会的美中联合情况]' (2015) <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2015/December/US-China-Joint-Fact-Sheet-26th-JCCT> accessed 28 Mar 2021.

[113]CNIPA, Measures on the Protection of Foreign Geographical Indications Products 2019, arts 9 and 31.

[114]Peter Slade, Jeffrey D Michler & Anna Josephson, 'Foreign Geographical Indications, Consumer Preferences, and the Domestic Market for Cheese' (2019) 41 Applied Economic Perspectives and Policy 370.

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consumers, are met.[115] Secondly, in terms of compound terms of 'Queso Manchego', 'Mozzarella di Bufala Campana', 'Parmigiano Reggiano', 'Pecorino Romano', only the entire name are protected as GIs while the protection of queso, mozzarella, parmesan are not sought.[116] However, as a comparison with CETA, it is clear that the scope of exceptions in the EU-China GI Agreement is much narrower than CETA – for one thing, there are fewer names listed for exceptions, for another the exceptions are only for transition, not allowing co-existence.

Notwithstanding the two strategies that China has taken, it is clear that with explicit and competing demands from both the EU and the USA, it is increasingly difficult for China to keep in compliance with its treaty obligations with both the USA and the EU. One issue crystallising the tension is the rules about the determinants of generic terms. As discussed, USCETA 2020 mandates parties to safeguard generic terms,[117] and set specific standards for deciding whether a term is generic.[118] To implement this treaty obligation, CNIPA issued *Guidelines for Determining Generic Names in the Protection of Geographical Indications (Draft for Comments)*[119] in March 2020, two months after USCETA 2020's conclusion. These *Guidelines* restate all relevant provisions in USCETA 2020 as domestic law: (1) the principle that a name that becomes a generic name in China shall not be registered as a GI; (2) the four grounds[120] for determining generic names, and (3) GI should not protect individual component of a multi-component term if the individual component is generic in its territory. Nonetheless, two years after the initial call for comments, the relevant regulation for determining generic names is still not in place. The delay was likely due to the objection by the EU and its business.

The requirements of determinants of generic names put China into a dilemma because, as a regulation implementing China's treaty obligation under USCETA 2020, any substantive change that deviates from the treaty language may indicate that China does not fulfil its treaty obligation. Promulgating the rules as they are, while fully complying with USCETA 2020, will require relinquishing many of the GI names listed in the EU-China GI Agreement because they should be considered generic names according to these rules and should not be registered as GIs in China. De-listing the names, however, may break China's obligation under the EU-China GI Agreement.

The most challenging implementation of USCETA 2020 will be the future-proof provision to confront the 275 EU GIs protected in China. Clearly, protecting an EU GI in the Chinese market gives the EU rightsholder exclusivity to use the name and sign, thus will undermine market access for US goods and services bearing the same name; allowing market access for US goods and services violates the GI protection rules. It is difficult to comply with the future-proof provision also because the 'America first' stance demonstrated in this provision could not be justified in Chinese law. Unlike the provisions concerning cancellation or determinants of generic names, this provision is not rule-oriented, but outcome-oriented – no matter what rules are in place, using GIs should not undermine market access for US goods and services using trademarks or generic names. No one could guarantee one foreign party's interest is 'not undermined', in particular when the application of Chinese law may lead to the opposite outcome. Further, 'not undermine' is ambiguous and subjective as it does not prescribe objective standards to determine the relationship between the trademark/generic name user and the GI right holder – does that mean the prior right of a good well trademark will prevent GI registration? Does that mean it allows the coexistence of prior rights and GIs? Given these difficulties, China has not implemented this article in any form of domestic law. This effectively leaves this problem to be resolved through judicial procedures case by case.

[115]EU-China GI Agreement, Annex IV, fnn 1 and 3.

[116]EU-China GI Agreement, Annex IV, fnn 2, 4, 5 and 6.

[117]USCETA 2020, § F (Geographical indications).

[118]ibid art 1.16.1.

[119]CNIPA, 'Guidelines on the Determination of Common Names in Geographical Indications Protection (Draft) [地理标志保护中的通用名称判定指南（征求意见稿）]' (2020).

[120]See text accompanying n 102 above.

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In summary, China has cautiously balanced the interests of the EU and the USA by implementing dedicated regulations for foreign GIs and seeking exceptions in the negotiations for GI mutual recognition. The contesting rules of mutual recognition with the EU and determinants of generic names and the future-proof provisions in the USCETA 2020 have put China in a place of compliance dilemma.

Conclusion

This article critically reviewed the Chinese GI Schizophrenia, and how China copes with it over time. It discusses how the symptom has developed when China was navigating GI regulations bilaterally and multilaterally in the last four decades, how China has made efforts to manage this schizophrenia through institutional integration, and how recent agreements with the EU and the USA respectively further worsened the situation. Chinese 'GI Schizophrenia' features a fundamental split of three independent domestic GI regulatory mechanisms, coexisting and competing with each other. The Chinese GI schizophrenia was caused by competing GI norm diffusion from the EU and the USA respectively. As China's WTO accession requires China to abide by the TRIPS standards, China initially managed to model both the EU and the US approaches to geographical indications. Nonetheless, the three independent GI mechanisms, based on modelling the EU and USA respectively were a waste of social resources. China addressed this problem in its 2018 institutional reshuffle, where the previous two regulators (SAIC and AQSIQ) and their GI mandates were integrated into CNIPA. After the integration, CNIPA has taken a holistic approach to GI regulation, introducing a uniform application platform, and proposing a revision of Provisions on GI Protection. Despite such efforts, the Chinese GI Schizophrenia is not cured as the institutional integration only reduced three GI mechanisms into two, while the Chinese GI regulation is still split between CNIPA and MOA. CNIPA faces challenges in integrating the trademark and *sui generis* mechanisms for protecting GIs.

The last decade also manifested the post-TRIPs contestation of GI rules at the bilateral level. China, again, becomes a battlefield for EU-US GI contestations. The recent US-China and EU-China bilateral agreements introduced into China competing GI mandates. While China and the EU agreed to mutually recognise 275 GIs from each side and reinforce administrative enforcement, China agreed with the USA to have opposition and cancellation procedures for GIs and rules to determine generic terms. However, China faces a compliance dilemma that prevents it from satisfying both treaty requirements with the EU and the US. Regarding determinants for generic terms, implementing them means making many EU GIs not eligible for GI protection anymore while denying or deviating from the USCETA 2020 means China does not comply with the agreement with the US. The same is with the 'future-proof provision' – implementing the rule means allowing the violation of EU stakeholders' exclusivity to use the name while safeguarding the exclusivity of the EU GI means breaking the obligation to the USCETA 2020.

The Chinese GI schizophrenia may continue, after the stage of standard-setting, as an implementation problem. In the future, Chinese courts might become the battlefield for European and US stakeholders for their GI-related disputes. An EU GI recognised through the EU-China GI Agreement as a Chinese GI may face opposition or cancellation in Chinese courts and become a generic name. This is by no means the 'best' solution for Chinese GI schizophrenia, but the only viable way to address the aftermath of the two 2020 agreements. One relevant question is whether China can afford such contestation in its domestic judicial and administrative systems. The answer would probably be 'yes'. In 2019, Chinese courts at all levels (first instance, second instance, and application for retrial) received a total of 481,793 IP cases and concluded 475,853 cases.[121]

[121]Supreme People's Court of China (SPC), 'Intellectual Property Protection by Chinese Courts [中国法院知识产权司法保护状况]' (2019) <http://www.court.gov.cn/zixun-xiangqing-226501.html> accessed 28 May 2021.

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Hundreds or even thousands of GI cases will only add a small proportion. These expected court procedures, however, do not reconcile the identified compliance dilemma. Broadly speaking, the EU-US GI contestation in the post-TRIPS era illustrates the impact of EU-US disagreement in global GI governance on a third country – increasingly shrinking policy space and creating a compliance dilemma. China is not the only country signing GI agreements with both the EU and the USA. South Korea, Japan, Singapore, Canada, Australia and New Zealand have entered similar tracks at different paces. These countries may also develop GI schizophrenia, facing similar compliance dilemmas and the aftermath of individual cases concerning opposition and cancellation of foreign GIs. Many of these countries may not have as rich judicial recourses as China have to adjudicate cases that originated from the strategic competition in bilateral rule-making by the EU and the US. Such negotiation and implementation processes may undermine countries' confidence in the legitimacy of a rule-based international order. As pointed out by Franck, 'in a community organized around rules, compliance is secured by the perception of a rule as legitimate by those to whom it is addressed'.[122] When the EU and the USA do not recognise the legitimacy of each other's rationales and rules concerning privilege over place names and advance their GI rules through bilateral agreements in parallel, it is hard for a third country to see the legitimacy of these rules other than being left at its wit's end to satisfy competing treaty demands. All the strategies that China have taken end up with more complex rules – rules on GI protection and exceptions, transition periods and their conditions, co-existence of GIs and trademarks, procedures of opposition and cancellation, and determinants of generic terms. The list may continue to expand with the supplement of future case law. Ultimately, the rule complexity will create uncertainty for all agri-food producers of products named after places in foreign markets, some of whom lobbied the great powers to initiate bilateral rule-making in the first place. Recognising such prospects may become the starting point for resolution of the GI schizophrenia, not only for China but also for other third countries and agri-food producers.

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[122]Thomas M Franck, 'Legitimacy in the international system' (1988) 82 The American Journal of International Law 705.

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