1. **What are Geographic Indications?**

‘Champagne’ sounds better tasting than ‘sparkling wine’, doesn’t it? What about ‘Bordeaux wine’, ‘Parma ham’ and ‘Roquefort cheese’? You can practically taste them, right?

Consumers often seek these special products out. Why? Because they have a certain quality, reputation or other characteristic influenced by the environmental or cultural conditions of the regions where they are produced. Therefore, the origins such as Bordeaux, Parma, or Roquefort are usually stated on the product label. Such specific origins that create an association with a product’s quality, reputation or other characteristics are called Geographical Indications (GIs).

GIs are protected by World Trade Organization members, including all 28 European Union (EU) Member States and China. This protection is designed to avoid misleading consumers and to prevent unfair competition.

Because a GI represents a product’s specific quality, reputation and consistent method of production many consumers prefer and are even willing to pay more for products with GIs.

The market for imported foods in China is large and growing. China is now the world’s fourth largest importer of food and the food and grocery retail market is set to grow by 15% annually. Additionally, Chinese domestic consumers have concerns over food safety and the quality and origin of ingredients. If you intend to export products that come from a specific geographical region to China, obtaining a GI registration can provide the necessary proof of the product’s origin and can increase trust from domestic consumers. To take advantage of this, the following steps have to be taken:

- **Contact your geographical indications organisation (GI organisation);**
- **Urge your GI organisation to register the GI as a certification mark or as a collective mark in China;**
- **Register for GI protection in China at the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ);**
- **Enforce your rights.**
2. How to Register a GI in China

GIs in China can be protected as an intellectual property right (IPR) under Chinese Trade Mark Law as a collective or certificate mark which provides the same level of legal and economic protection as for any other logo, name or mark registered as a trade mark. Alternatively and in addition, the GI can be registered at the AQSIQ which monitors and manages the quality and standard of products offered in the Chinese market. Dual registration can ensure the GI is protected both as an IPR and as a indicating a certain level of quality assurance to the public.

Step 1 - Contact your geographical indication organisation

Your GI organisation is the organisation that regulates your specific geographical indication. For example, if your product is Bordeaux wine, you can contact the Bordeaux Wine Council. Check with your specific GI organisation if the GI that you use for your product is already registered in China. In case your GI is already protected in China, you can apply for a User Permit at the geographic indication organisation for your product. If not, proceed to Step 2.

Step 2 - Urge your geographical indication organisation to register the GI as a certification mark or as a collective mark in China

Under the Chinese Trademark Law, Geographical Indications can be registered as certification marks or collective marks by the GI organisation of that region at the China Trade Mark Office (CTMO). As the Chinese Trademark Law only protects your GI if it is registered as a certification mark or as a collective mark, urge your GI organisation to register this mark as soon as possible. Registration gives you the best protection against copycat products misleading consumers.

Names or marks that can be registered as collective or certification marks include the name of the region of origin, or any other visual sign indicating that the goods originate from the region. However, if the chosen name or sign resembles country names, national or regional flags or national emblems, consent needs to be given by the relevant country’s government.

It is also important to create a Chinese translation of your GI as this will be more acceptable and understandable to the Chinese domestic consumer. You can either choose a Chinese name which sounds like the original mark or which has a similar meaning to the original mark.

Collective Mark

A collective mark is a sign registered in the name of bodies, associations or other organisations, which can be used by the organisation’s members to indicate their membership. A society, an association or any other organisation applying for the registration of a GI as a collective mark must be composed of members from the region indicated by the GI. For example, the Scotch Whisky Association registered ‘Scotch Whisky’ in 2010 as a collective mark which can be used by its members.
Free Business Tools to Manage your IPR in China

Application requirement:

- An application for a collective or certification mark needs to specify that the application is for a collective mark or a certification mark.

- It needs to be submitted in Chinese by a Chinese trade mark agent (representing the geographical indication organisation) to the CTMO.

- Only GIs which have legal protection in the country of origin can be registered in China.

- Only the GI organisation that regulates the GI in that country of origin, can apply for the registration of the GI in China.

Further information and a list of the documents required can be found in Articles 4-7, 10 and 11 of the Measures for Registration and Administration of Collective Marks and Certification Marks (see related links).

Using a Registered Collective or Certificate Mark

If you are not a member of the organisation holding the collective or certificate mark you can join the organisation and, presuming your company and product meets the regulated conditions, you may request a Collective Mark Use Permit or Certification Mark Use Permit.

Please note that for collective marks, under Chinese law you cannot be forbidden by the collective mark holder from using the GI on your products if your products legitimately fall under the scope of the GI, even if you are not a member of the organisation who registered the mark.

When you have successfully obtained a Collective or Certificate Mark User Permit, you are advised to specifically mention the User Permit and the mark’s registration number on your product label. That way, Chinese consumers can verify that it is the authentic mark of the specific GI.

**Step 3 - Register for GI protection in China at the AQSIQ**

In addition to registering as a trade mark (collective or certificate), GIs can be registered at the AQSIQ by your GI organisation to provide an extra layer of protection with regards to the quality and standards of the product. Although it is not necessary to perform both registrations, this double approach will ensure that your GI will have the maximum possible protection in China.

**Geographical Indications according to AQSIQ**

Geographical Indications that can be registered at the AQSIQ cover products that originate from a particular geographical region with the quality, reputation or other characteristics substantially attributable to the natural and human factors of the region, and denominated with the name of the region upon examination and approval. Products include:

1. those grown or cultivated in the region; and
2. those made, wholly or partially, of the raw materials from the region and produced or processed with particular techniques in the region.
Although China does not yet have clear implementing regulations for foreign GIs making the process more challenging, in practice, several EU GIs have been registered at the AQSIQ in China as a result of negotiations between the EU and Chinese governments.

On 25 March 2014, on the recommendation of the French government the Bordeaux Wine Council presented its application to AQSIQ for a GI on products sold in China to the AQSIQ. The expectation is that more GI organisations will follow in the future.

### GIs Registered in China with AQSIQ (2013)

<table>
<thead>
<tr>
<th>GIs Registered in China with AQSIQ (2013)</th>
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<tbody>
<tr>
<td>The following GIs have already been registered in China (up to 2013) but as more applications are pending please check with your GI organisation if yours has been added to the list:</td>
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<tr>
<td>- Cognac (2009)</td>
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<tr>
<td>- Scotch Whisky (2010)</td>
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<tr>
<td>- Pruneaux d’Agen/Pruneaux d’Agen mi-cuits (2011)</td>
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<tr>
<td>- Roquefort (2011)</td>
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<tr>
<td>- Comté (2011)</td>
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<td>- West Country Farmhouse Cheddar (2011)</td>
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<tr>
<td>- Scottish Farmed Salmon (2011)</td>
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<td>- Sierra Magine (2011)</td>
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<tr>
<td>- Priego de Cordoba (2011)</td>
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<tr>
<td>- Grana Padano (2012)</td>
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<tr>
<td>- White Stilton Cheese/Blue Stilton Cheese (2012)</td>
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<tr>
<td>- Prosciutto di Parma (2012)</td>
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</tbody>
</table>

We advise you to urge your GI organisation to try and register the GI with recommendations and supporting documents from your country’s ministry of agriculture and/or local government at AQSIQ.

Further information and a list of the documents required can be found in Article 10 of the Provisions for the Protection of Products of Geographical Indication (see related links).

### 3. Protection offered and enforcement of rights

#### Protection offered

Following registration, you can seek support for protection for your GI-covered products in China against illegitimate use of the mark including: acts of unauthorised use or forgery; use of the GI which violates the regulated standards of the GI-protected products; and, use of words or logos that could lead consumers to mistake other products for those of a registered GI. Once you have identified an infringement of your rights, you can seek administrative enforcement support via the Administration of Industry and Commerce (AIC), Customs and other administrations, or you can enforce your rights through the China courts.

#### Enforcement of rights

##### a. Monitoring the market for infringement

The first step in enforcing your rights is to know when your rights have been infringed. It is important to monitor your own local partners and ensure that all products sold by your salesmen and distributors are authentically produced by you. If a product bearing the GI mark is poor quality, the reputation of the mark and all products from this region will be negatively impacted.

Additionally, keep a close eye on the market. If you discover any illegitimate use of the GI inform your registering organisation as soon as possible. The first step in enforcement is to issue a cease & desist letter, preferably drafted by an attorney and including wording that will support any possible future litigation.

##### b. Administrative enforcement

Registrants, certificate holders and any affected parties can ask for help from China’s administrative bodies to stop the infringement via actions such as: raids on production facilities and fines imposed on the infringing producer; and, detention and destruction of infringing goods at China’s borders. For a GI registered as trade mark, illegal usage can be reported to local AIC offices and China customs. For GIs registered at the AQSIQ, local regional AQSIQ offices and China customs can help.
c. Litigation and/or negotiation

Administrative measures can help stop the on-going infringement of a GI but cannot result in any monetary compensation. To recover any financial losses, litigation or negotiations need to be carried out. It is only possible to litigate under the China Trademark Law and therefore only collective or certificate mark holders can use this avenue for enforcement. Additionally the plaintiff of a GI case must be the registrant of the GI mark or the certificate holder of the GI. Therefore the registering organisation must act on your behalf and in the interests of the whole organisation.

The amount of compensation for GI trade mark infringement is determined by the actual loss caused by the infringement or benefits acquired by the infringer. Where the actual loss or benefits is hard to determine, a Chinese court can award damages of up to RMB 3,000,000.

4. Additional points

China has a first-to-file system for trade marks which means that it is possible that your intended GI may have already been registered as a trade mark by another party. In such a situation, do not panic, there are still options available to you for protection under Chinese Trademark Law and through AQSIQ registration.

It may be possible to initiate cancellation procedures if the trade mark is deemed to be misleading the public into believing a product originated in a specific geographical location. Even if an intended GI has already been registered as a trade mark, registration at AQSIQ is still possible. In practice, the systems and legal protection of trade marks and GIs registered at AQSIQ exist in tandem and can offer separate (and complementary) protection.

As mentioned above, if you are a genuine producer from the geographically indicated region, and you can prove the origin of your product and meet other regulations on production etc, you cannot be prohibited by the collective organisation from using the GI associated with that region.

With regard to wines and spirits, it is forbidden to use another party’s registered GI as a collective or certification trade mark to identify wines that are not from the GI region. This is also forbidden if the true origin of the goods is indicated or if the GI is used in translation or accompanied by expressions such as ‘kind’, ‘type’, ‘style’ etc.
SME Case Studies

**Background**

A Chinese company from Shandong province successfully registered the geographical indication of a famous European wine in China. Before registration, Chinese wine consumers already knew the European geographical indication. After registration, the Chinese company started producing, importing and selling wine with the GI as brand. This made the Chinese consumers think this was the wine originating from the authentic European region.

**Action taken**

The Administrative for Industry and Commerce demanded the Chinese company to stop selling products with this GI on the packages and to stop using the GI as trade mark in accordance with article 16 of the Trademark Law. Moreover, all the labelled goods in storage were confiscated. The relevant European wine organisation for that geographical indication filed a registration with the China Trademark Office to protect the GI as collective mark. This collective mark was later granted.

**Lesson learnt**

Protection for GIs is improving in China, especially for GIs of foreign countries. Therefore, if you have plans to enter the Chinese market, or have already entered the Chinese market, urging your GI organisation to register the geographical indication as a collective or as a certification mark should have first priority. It would save the GI producer much more efforts in promotion, advertising, as well as fighting against infringement if the GI can be registered for protection in China as soon as possible.
Take-Away Messages:

1. Urge your GI organisation to register for a certification mark or a collective mark at the CTMO as soon as possible.

2. Urge your GI organisation to try and register a GI at the AQSIQ with the help from your country’s ministry of agriculture and/or other local organisations.

3. Think about the Chinese translation of your GI. The Chinese name is normally more popular and acceptable for Chinese consumers, so think carefully about the Chinese name matching your GI and keep an eye on the similar pronunciation or translation. These similar translations of your geographical indications are most likely going to be the infringements of your products.

4. Monitor your own supply chain.

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Related Links

- Trade Mark Guide
- Enforcement Guide

**EU SME Centre report on the Food and Beverage Market in China**

**EU SME Centre report on the Wine Market in China**
http://www.eusmecentre.org.cn/report/wine-market-china

Documents for collective and certificate marks in China


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For more information please contact the Helpdesk:

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