

# A Mark for All Seasons

Protected geographical indications on products have numerous advantages, say *Giovanni Scognamiglio* and *Francesco Giraldi*.

**T**HIS YEAR IN CHINA THE number of products with protected geographical indications will reach 1,500, and the number of enterprises which use the protected indications will total about 8,000. The actual value of the GI market is estimated to be USD70m. By the end of June, China approved 665,000 agricultural product brand registrations and registered 622 geographical indications.

A GI identifies the origin, quality, reputation or other characteristics of a product. It also signals to consumers that the goods have special characteristics due to their geographical place of origin. GIs cover agricultural, natural or manufactured goods and agricultural products that are most easily linked to a specific location.

The prices of the products that use geographical indications usually increase significantly. According to a survey by the Chinese industrial and commercial departments in 2008, on 22 agricultural product geographical indications, the average price of the agricultural products tripled once registered with a geographical indication. In some cases, the price can rise as high as 28 times.

## National Registration System

Article 16 of the Chinese Trademark Law stipulates the definition of GIs. Article 6 of the Implementing Regulations of the Trademark Law stipulates that GIs be registered as certification marks or collective marks and the Measures for the Registration and Administration of Collective Marks and Certification Marks stipulate the proceedings for its registration and administration.

The criteria of registration for GIs is that the goods designated by the trademark contain-

ing a geographic indication must come from the region indicated and must not mislead the public. The geographic indication signifies the place of origin of the goods; specific quality, reputation or other features of the goods are mainly decided by the natural or cultural factors of the regions. The application is filed with the Trademark Office of the State Administration for Industry and Commerce.

The applicant can appeal against the refusal of the Trademark Office with the Trademark Review and Adjudication Board (TRAB). He or she may institute legal proceedings before the people's court. As a trademark, the preliminary approval of the application and the registration of GI is published in the Trademark Gazette.

## Protected GIs tell consumers that the products have particular characteristics due to their geographical place of origin

A GI can't be registered as an individual trademark. It may be registered as a certification mark or collective mark, and the right holder of a GI must be an association or an organisation. To be registered as a collective mark or a certification mark, the GI should

be a name of the region indicated by the GI. A society, an association or any other organisation applying for the registration of a GI as a collective mark shall be composed of members from within the region indicated by the geographic indication.

Any party applying for the registration of a certification mark shall furnish documents certifying the qualification of the subject and submit detailed information of the professionals and special testing equipment to show its capability of supervising the particular quality of the goods. Any party applying for the registration of a GI as a collective mark or a certification mark must furnish the approval documents issued by the government. Any application by a foreign person or enterprise must furnish documents certifying that the geographic indication in question is under the legal protection in the country of origin.

## International Recognition of GIs

Under the existing regulatory framework, protection of a geographical indication in international trade requires its establishment in the domestic market and subsequently its registration in foreign markets. The term geographic indication acquired international recognition due to its introduction in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), under which GIs are afforded protection against unfair practices.

Recognition of the value of GIs is most widespread in the European Union (EU). The enlargement of the EU and the process of creating a barrier-free internal market underscored the need to establish common rules to protect producers of foodstuffs against misrepresentation and to capitalise on the specific and traditional characteristics

of products linked to a territory. The exclusive right of producers to use a registered geographical name can bring significant advantages.

The protection of GIs has become an integral part of EU farm policy as increased protection of quality linked to geographical origin and other standards is considered a means to achieve higher market prices in compensation for lower commodity market support.

Revisions introduced in the EU legislation in 2006 opened up the EU system to free and direct application to the Commission from producer groups in non-EU countries for registration of protected GIs and denominations of origin.

## Positive Effects

GI protection may be shared by all producers in the defined area that comply with recognised standards. As a form of recognition of the traditional know-how of local communities, GI protection can also be a vehicle for rural development. Contrary to the situation with trademarks, which are privately owned, GIs cannot be sold or delocalised and are accessible to all producers within the specified region which is a key factor in ensuring that the economic benefits of GI protection are spread along the supply chain, including to the producers who supply the raw materials. The differentiation of a product through the designation of its area of production has often become an assurance of its quality or special characteristics.

Protected GIs tell consumers that the products have particular characteristics due to their geographical place of origin. Although GIs have been a valuable marketing tool for certain products for many decades, it is only relatively recently that their commercial value has gathered wide recognition.

With export volumes slumping due to the global financial crisis, developing geographical indication agricultural product brands based on China's rich agricultural resources and unique geographical environment will not only expand agricultural products exports and enhance their international competitiveness, but will also lead to the development of related industries, advance employment and increase farmers' incomes. Demand for quality products has demonstrated strong growth while bulk, undifferentiated products have either grown slowly or stagnated.

Producers able to differentiate their products tend to be rewarded by a price premium over competing products. GIs represent one means for differentiation. Such indications may be one of the most significant vehicles available to developing countries for differentiating and adding value to their products, as long as the GIs are properly managed and lead to consumer awareness and loyalty.

Although the concept of GIs may appear attractive, there are situations in which they can be unnecessary or ineffective. GIs established by small groups of producers, with limited international trade links, are likely to influence only local markets. The protection of such indications should not give rise to

false hopes in terms of raising market shares and prices, except in niche markets where they may have a role.

In addition the proliferation of GIs, including from little-known areas, are often held responsible for consumer confusion and an inability to associate preferences with the products concerned.

In order for a product of a specified geographical indication to obtain favour in the market, there is a need to ensure that it meets consumer expectations with regard to quality, consistency and price. There are thus costs of the geographical indication that go beyond its establishment and registration. The indication must be properly managed, with appropriate controls and certification. Part of these may be offset by license fees from producers. In addition, there are costs for monitoring the correct use of the geographical indication and for legal challenges.

As for all marketing efforts, promotion of the geographical indication is needed to enhance consumer awareness. For example, in order to enhance public awareness of geographical indications and promote circulation of commodities, the "Guangxi Intellectual Property Office" held recently the "Guangxi Geographical Indications Show". The show exhibited 42 high quality products in Guangxi, 30 of which have gained the recognition of GI and 11 are applying for or have the potential for geographical indications. Governments at all levels in Guangxi have attached great importance to the work of geographical indications, and vigorously promoted the application of geographical indications.

GIs can also be a useful tool for fostering rural socio-economic development. However, realising the potential of GIs in China demands stronger protection, a complete registration system, and the improvement of quality and standard control - plus cooperation between all parties throughout a product's supply chain. **SBR**

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GIs cover natural or manufactured goods and agricultural products.