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EUROPEAN LEGAL TRANSPLANTS IN CHINA? LEGAL TRANSPOSITION AND RECEPTION OF RULES ON GEOGRAPHICAL INDICATIONS IN CHINA

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This article traces the legal transplantation of rules on the protection of Geographical Indications (GIs) from the European Union (EU) into China via the text of the World Trade Organization's (WTO) Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS). Recognised as Intellectual Property (IP), GIs represent an increasingly central element of trade negotiations between the EU and partner countries. In 2021, the EU-China GI Agreement entered into force and is now located at the centre of a growing trade in agricultural products between the EU and China, which in turn necessitates the effective protection of GI products. Very few scholarly works have explored how GIs arrived in China, and the two predominant narratives are the pressure from the US or French influence over China's GI rules. The article argues the EU has diffused its rules on GI protection to China, levelling up the latter's domestic standard of GI protection while maintaining its commercial interest at play. Finally, the article assesses the reception of EU norms by China and explores a range of responses, stretching from outright adoption to moderate adaptation.

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I. INTRODUCTION

On March 1, 2021, the agreement between the European Union (EU) and the People's Republic of China (China) on the protection of Geographical Indications (GI) came into force.[1] As a result, well-known European GI products, such as Champagne, Comté, Feta, Münchener Bier, Parmigiano Reggiano, and Prosciutto di Parma, are now protected in China.[2] The Chinese GI products protected in the EU include Cangxi Red Kiwi Fruit, Pizhou Garlic, Wuyuan Green Tea, and Zhaoyuan Rice.[3]

GIs and their protection belong to the field of intellectual property (IP) law. Despite that, GIs journey over several legal disciplines and cover controversies and discussions within IP, international trade, and agriculture. Similar to a trademark, a GI serves to distinguish a product that originates in a specific region and determines

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[1] Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications, Dec. 4, 2020, O.J. (L 408I) [hereinafter EU-China GI Agreement].

[2] *Id.*, Annex IV.

[3] *Id.*, Annex III.

a certain quality of the product that is associated with that region. Even though GIs have a long-standing tradition, they have opened the way for a particular polemic since the incorporation of Intellectual Property Rights (IPRs) in the World Trade Organization (WTO), namely with the adoption of the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS).[4]

There is limited research on the role of IP[5] and GIs[6] in China, with even fewer scholarly works on how GIs arrived in China. The two predominant narratives are the pressure from the US[7] or French influence over China's GI rules.[8] This article examines the legal transplantation of IP rules into China, focusing in particular on legislation on GIs, and argues that the collective European approach to GI protection has impacted China's GI rules. The first European legal framework on the protection of GIs, Council Regulation (EEC) No. 2081/92,[9] is highlighted, as it is the cornerstone not only for the European Community's GI definition but also for the TRIPS definition for all WTO members today.[10] The article applies Alan

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[4] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994 [hereinafter TRIPS Agreement]; Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Apr. 15, 1994, 1869 U.N.T.S. 229 [hereinafter Marrakesh Agreement].

[5] GIOVANNI PISACANE & DANIELE ZIBETTI, INTELLECTUAL PROPERTY IN CHINA: LEGAL AND TAX IMPLICATION, 2 (2020) [hereinafter Pisacane & Zibetti].

[6] Bradley M. Bashaw, *Geographical Indications in China: Why Protect GIS with Both Trademark Law and AOC-Type Legislation*, 17 PAC. RIM L. & POL'Y. J. 73, 73 (2008); Danny Friedmann, *Geographical Indications in the EU, China and Australia WTO Case Bottling Up Over Prosecco*, *in* SIXTY YEARS OF EUROPEAN INTEGRATION AND GLOBAL POWER SHIFTS: PERCEPTIONS, INTERACTIONS AND LESSONS 411, 411 (Julien Chaisse ed., 2019); Wang Xiaobing & Irina Kireeva, *Protection of Geographical Indications in China: Conflicts, Causes and Solutions*, 10 J. OF WORLD INTELL. PROP. 79, 79 (2007).

[7] Liguo Zhang & Niklas Bruun, *Legal Transplantation of Intellectual Property Rights in China: Resistance, Adaptation and Reconciliation*, 48 IIC 4, 9 (2017) [hereinafter Zhang & Bruun].

[8] Xinzhe Song, *The Role Played by the Regime of Collective and Certification Marks in the Protection of Geographical Indications—Comparative Study of Law and Practice in France, the EU and China*, 21 J. OF WORLD INTELL. PROP. 437, (2018) [hereinafter Song]; XINZHE SONG, THE PROTECTION OF GEOGRAPHICAL INDICATIONS IN CHINA: CHALLENGES OF ADOPTING THE EUROPEAN APPROACH (Kluwer Law International, 2021).

[9] Council Regulation (EEC) No. 2081/92 of 14 July 1992, On the Protection of Geographical Indications And Designations of Origin for Agricultural Products and Foodstuffs, July 14, 1992, O.J. (L 208) [hereinafter Council Regulation (EEC) no. 2081/92].

[10] For an account of the recent developments in GI laws, *see* Liam Sunner, *How the European Union Is Expanding the Protection Levels Afforded to Geographical Indications as Part of Its Global Trade Policy*, 16 JIPLP 341 (2021); Andrea Zappalaglio et al., *Study on the Functioning of the EU GI System*, MAX PLANCK INST. OF INOV. & COMPETITION 1, (2022) (While authors discuss the

Watson's concept of a 'legal transplant'[11] to the case of GI legislation in China and provides the first systemic academic analysis of how GI rules were transposed from Europe to China.

Additionally, there has been remarkably little academic attention, or none, to how the EU exports its *sui generis* GI system beyond its borders and what consequences this has for its trading partners, specifically for China. The article closes this gap by analysing the instances when Chinese legal procedures converge, or diverge, from European ones by incorporating and examining in the analysis European and Chinese case-law on GIs. The thematic focus is placed on the reception of EU norms on the protection of GIs by China. As legal change could diverge in the recipient country from the pattern in the "origin" country, the article draws attention to how a transplant country could pursue different paths of legal evolution than the origin country and attempts to provide an understanding of the actual functioning of the norm on protection of GI goods in China.

The article is structured in the following way: After a brief overview of the main characteristics of GIs, the article elaborates on the international frameworks for protection of GIs (Part II) and considers GIs and IP within the wider context of the trade relations between the EU and China (Part III). Next, the national approaches to GI protection are outlined, first under EU law and second under Chinese law (Part IV). The article proceeds by focusing on the legal transplantation of European rules on the protection of GIs into China via the TRIPS text and explaining how China adopted these rules into its domestic legislation (Part V). Next, an account of the legal road China has pursued is given, and an assessment of the country's range of legal responses to GI protection is offered (Part VI). The paper finishes by drawing a conclusion and makes recommendations on dealing with the main challenges in the bilateral economic relations going forward (Part VII). The article ultimately argues that the EU succeeded in legally transplanting its rules on GI protection to China via the TRIPS text. Additionally, the Union elevated the domestic protection of GIs in China whilst keeping its trade interests at play.

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newer developments in European GI laws, there are relatively few works focusing on the road towards the adoption of the first EU legislative framework for the protection of GIs.).

[11] ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW 24 (University of Georgia Press, 2nd ed., 1993) [hereinafter Watson].

II. THE GENESIS AND ESSENCE OF GEOGRAPHICAL INDICATIONS

A. WHAT ARE GIS?

GIs fall within the scope of international IP law. A GI good is a product that is not only from a specific region but whose quality is characteristic of the place of origin.[12] Before proceeding further, a note should be made about the rich terminology with regards to names used to designate a GI. These include, *inter alia,* an indication of a geographical origin, geographical identifiers, indications of origin, indications of source, designations of goods origin, geographical denominations, geographical designations, geographical names, and protected indications.[13] The 'umbrella term' used nowadays is "Geographical Indication".

Additionally, appellations of origin (*Appellation d'origine contrôlée*), or AOC, are a well-known type of GI that requires that the quality or nature of the product must come *entirely* from the place of origin.[14] This implies that AOC goods indicate not only that the product ingredients have been procured in the particular geographical location, but that the manufacturing of the product has also taken place there. In contrast, GIs require that either the quality, reputation, or another characteristic be connected to the product's provenance, therefore placing a lower point of reference than the AOC.

GIs may additionally materialise in different forms; grammatically, for example, GIs could connect a product to a specific adjective, such as a Swiss watch or a French macaron.[15] GIs can also take shape in figures, symbols, or special equipment on products or even locations; GIs could be seen, for instance, on national flags, buildings, packaging, or they could designate a particular area, such as Gouda, Mont Blanc, etc.[16]

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[12] Council Regulation (EEC) no. 2081/92, *supra* note 9.

[13] *See also* Felix Addor & Alexandra Grazioli, *Geographical Indications beyond Wines and Spirits*, 5 J. OF WORLD INTELL. PROP. 865, 867-870 (2005) [hereinafter Addor & Grazioli]; VADIM MANTROV, EU LAW ON INDICATIONS OF GEOGRAPHICAL ORIGIN 16 (Springer Publications, 2014) [hereinafter Mantrov].

[14] *See* Paris Convention for the Protection of Industrial Property, as last revised at the Stockholm Revision Conference, Mar. 20, 1883, 21 U.S.T. 1583; 828 U.N.T.S. 305 [hereinafter Paris Convention].

[15] Karen Arend & Severin Strauch, *Section 3: Geographical Indications*, *in* WTO-TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS 351, 354-355 (Peter-tobias et al. eds., 1st ed. 2009) [hereinafter Arend & Strauch].

[16] *Id.*

The most widely accepted definition for a GI stems from TRIPS and has been recognised and adopted by all WTO members; GIs are thus "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".[17] The distinct geography of an area and the product quality are, therefore, central notions to the concept of a GI. Altogether vested in the French-espoused principle of *terroir*, namely protecting agricultural products and foodstuffs with a unique link between the quality, reputation, or characteristics of a product and its place of origin, i.e., the connection between the nature of the GI product and its specific location, these form the most essential features of the idea of a GI.[18]

The legal protection for GIs is awarded to the technique of production, which is particular to a specific location or region, and the recipient of the protection is every producer within the region who adheres to the same production technique.[19] GIs are for this reason perceived as collectively owned inventions; hence, they receive statutory protection either as collectively owned trademarks or via a *sui generis* IP regime, thereby granting the respective producer the legal right over the brand of the GI good for the products of the specific geographical place.[20]

Subsequently, products such as Feta cheese[21] (Greece), Champagne (France), Darjeeling tea (India), Black Forest ham (Schwarzwälder Schinken, Germany),

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[17] TRIPS Agreement, *supra* note 4, art. 22.

[18] *See also* MICHAEL BLAKENEY, THE PROTECTION OF GEOGRAPHICAL INDICATIONS: LAW AND PRACTICE 14 (2014) [hereinafter Blakeney]; ANDREA ZAPPALAGLIO, THE TRANSFORMATION OF EU GEOGRAPHICAL INDICATIONS LAW: THE PRESENT, PAST AND FUTURE OF THE ORIGIN LINK 3-9, 31-32 [hereinafter Zappalaglio]. For more, see one of the most comprehensive works in the field of GI laws: DEV GANGJEE, RELOCATING THE LAW OF GEOGRAPHICAL INDICATIONS (2012) [hereinafter Gangjee].

[19] Rochelle C. Dreyfuss & Justine Pila, *Intellectual Property Law: An Anatomical Overview*, *in* THE OXFORD HANDBOOK OF INTELLECTUAL PROPERTY LAW 1, 5-6 (Rochelle C. Dreyfuss & Justine Pila eds., 2018) [hereinafter Dreyfuss & Pila]; Arend & Strauch, *supra* note 15, at 357; Gangjee, *supra* note 18, at 4.

[20] Peter Munzinger, *Blue Jeans and Other GIs: An Overview of Protection Systems for Geographical Indications*, 7 J. OF INTELL. PROP. L. & PRACT. 283, 288 (2012); Addor & Grazioli, *supra* note 12, at 873; Dreyfuss & Pila, *supra* note 19, at 5-6.

[21] For more, *see* Joined Cases C-465/02 & 466/02, Fed. Republic of Ger. & Kingdom of Den. v. Comm'n, 2005, E.C.R. I-9115, at ¶42-69 (The ECJ has established that feta cheese is produced exclusively in mainland Greece and the department of Lesbos, excluding other regions such as Macedonia, the island of Crete, or certain Greek archipelagos, such as the Sporades, the Cyclades, the Dodecanese Islands, and the Ionian Islands, from regions that could be considered to have a geographical origin.).

Parma ham (prosciutto di Parma, Italy), Scotch beef (Scotland), Lübeck marzipan (Lübecker Marzipan, Germany), Roquefort cheese (France), Mocha coffee (Yemen), Basmati rice (India & Pakistan), Bordeau wine (France), Kalamata olive (Elia Kalamatas, Greece), Danablu cheese (Denmark), Baena olive oil (Spain), Dutch Goat cheese (Hollandse Geitenkaas, Netherlands), Phu Quoc fish sauce (Vietnam), Chaidamu Goji Berry (Chaidamu Gou Qi, China), Buffalo mozzarella (Mozzarella di Bufala Campana, Italy), and Wuchuan Mooncake (Wuchuan Yue Bing, China) may be classified as GIs only if they originate in the said geographical provenance. The protection of such GI products is consequently subject to national law, EU law, as well as various bilateral and international treaties and other legal frameworks.

B. INTERNATIONAL LEGAL FRAMEWORKS FOR GI PROTECTION

To the extent that protection for GIs is afforded by multinational treaties, the most important ones prior to TRIPS are the Paris Convention,[22] the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (the Madrid Agreement),[23] both of which date back to the 19th century, the International Convention on the Use of Appellations of Origin and Denominations of Cheeses (the Stresa Convention),[24] and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (the Lisbon Agreement).[25] Both the Paris and Madrid treaties did not provide a definition of a GI, and together with Lisbon, these multilateral treaties acted more like a source of confusion, eventually contributing to a "conceptual, institutional and epistemic mess" in the field of GI protection.[26] The diverse ways in which GIs were protected under national laws created international ambiguity and institutional uncertainty in dealing with GIs.

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[22] Paris Convention, *supra* note 14. (The Paris Convention aims to protect the intellectual works of authors and creators in the countries party to the Convention and covers GIs, trademarks, and patents, amongst other industrial property areas.).

[23] Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, as last revised at the Stockholm Revision Conference, Apr.14, 1891, 828 U.N.T.S. 389. (The Madrid Agreement prohibits the use or sale of goods with any indication that may mislead the public as to the origin of the goods.).

[24] International Convention on the Use of Appellations of Origin and Denominations of Cheeses (Stresa Convention), Jun. 01, 1951, 1958 J.O 281.

[25] Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as last revised at Stockholm, Oct. 31, 1958, 923 U.N.T.S. 205.

[26] Blakeney, *supra* note 18, at 6, 9-16; Gangjee, *supra* note 18, at 2 (The Stresa Convention is not mentioned as a contributing factor to the epistemic mess because it had only a limited scope, covering cheeses.).

As a result of the above-mentioned treaties, heterogeneous regimes for the protection of GIs, ample with differing contested terminology, arose and contained, amongst others, serious underlying weakness. Some of the pre-TRIPS vulnerabilities[27] can be grouped, as follows:

(i). very few GATT members participated in all of the above treaties, and the number of participants even soared to 36 in the Lisbon Convention;[28]
(ii). the treaties were based on national treatment, i.e., national interests, and required reciprocity; [29]
(iii). the degree of implementation of the substantive rules within the domestic legal systems of the participating states was inconsistent and irregular;[30]
(iv). the Conventions did not impose any definitive form of protection for GIs, especially the Paris Convention;[31]
(v). there was a general lack of clarification with regards to the possibility of confusion or fraud under the domestic law of the respective country; various marketplace misconducts arose, including but not limited to misleading consumers about goods, bribery, exploitative sales promotions, slander of competitors' products or company activities, etc.[32]

Pursuant to the above weaknesses, it follows that invoking national treatment could, in practice, lead to lower protection for GIs in foreign countries. Specifically, jurisdictions with almost no valuable domestic GIs would adopt a lax standard of

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[27] It is beyond the scope of this article to discuss in detail the Paris Convention and the Madrid Agreement and how these have shaped or failed to shape the protection of GIs. Several excellent contributions have addressed these and other issues. For a short overview of said treaties in relation to consumer protection, *see* WIPO, THE ROLE OF INDUSTRIAL PROPERTY IN THE PROTECTION OF CONSUMERS, 51-52 (WIPO Publication, 1983). For a comprehensive examination of the fundamental influence as well as the limitations of the Paris Convention and Madrid Agreement, *see* Gangjee, *supra* note 18, at 23-64 (Paris); 65-74 (Madrid). On the terminological diversity linked to GIs and created by said treaties, *see* Norma Dawson, *Locating Geographical Indications: Perspectives from English Law*, 90 TRADEMARK REP. 590, 590 (2000). For a general description of the protection of GIs in international law as well as a dedicated analysis of the Paris, Madrid, Stresa, and Lisbon treaties, *see* BERNARD O'CONNOR, THE LAW OF GEOGRAPHICAL INDICATIONS, 27-50 (Cameron May Ltd., 2004). For more on the confusing GI terminology and additional contested areas, *see* Michael Blakeney, *Geographical Indications: What Do They Indicate?*, 6 W.I.P.O.J. 50, 54-56 (2014).
[28] Arend & Strauch, *supra* note 15, at 368; Blakeney, *supra* note 18, at 14.
[29] *Id.* at 363-365.
[30] Gangjee, *supra* note 18, at 24.
[31] Arend & Strauch, *supra* note 15, at 365; Blakeney, *supra* note 18, at 10; Gangjee, *supra* note 18, at 27.
[32] Gangjee, *supra* note 18, at 55.

protection. This implies that before TRIPS, the destination country enjoyed huge discretion in granting GIs protection, or deeming them to be generic items.

Moreover, even in the 1947 General Agreement on Tariffs and Trade (GATT), the precursor treaty to the WTO, it is set out in its Article IX:6 that the contracting parties are to cooperate and prevent the misrepresentation of the true origin of a product to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party.[33]

Therefore, the need arose to conclude a more robust, far-reaching framework for the protection of GIs. TRIPS addressed the gap in the GATT 1947 legal system. Nowadays, TRIPS represents the first comprehensive legal framework for the protection of GIs, establishing a certain minimum level of protection for GIs that has been accepted, adopted, and enforced by all WTO members.[34] Consequently, TRIPS and its definition of a GI empower WTO members to protect GIs of goods in cases where the quality, reputation, or other characteristic of the products is traced back to their geographical origin.

III. GIS AND IP WITHIN THE WIDER CONTEXT OF THE EU-CHINA TRADE RELATIONS

The first diplomatic relations between the EU and China began in 1975; previously, the Member States (MS) of the European Communities had concluded bilateral trade agreements with China, which were due to expire in 1974. Following exploratory talks and trade negotiations in 1977, China and the EU signed a Non-Preferential Trade Agreement in 1978.[35] This agreement granted mutual extension

[33] General Agreement on Tariffs and Trade, Art. IX: 6, Oct. 30, 1947, 55 U.N.T.S. 194; 61 Stat. pt. 5; T.I.A.S. No. 1700.

[34] Arend & Strauch, *supra* note 15, at 386; *see* also P. Baechtold, T. Miyamoto & T. Henninger, *International Patent Law: Principles, Major Instruments and Institutional Aspects*, *in* INTERNATIONAL INTELLECTUAL PROPERTY: A HANDBOOK OF CONTEMPORARY RESEARCH 37, 52 (D.J. Gervais ed., 2015); ANNETTE KUR & THOMAS DREIER, EUROPEAN INTELLECTUAL PROPERTY LAW: TEXT, CASES AND MATERIALS 16 (1st ed., 2013); C. CORREA, TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS: A COMMENTARY ON THE TRIPS AGREEMENT (OXFORD COMMENTARIES ON GATT/WTO AGREEMENTS) ,7-9 (1 ed., 2007).

[35] Council Regulation (EEC) No. 946/78 of 2 May 1978, concerning the conclusion of the Trade Agreement between the European Economic Community and the People' s Republic of China, May 2, 1978, O.J. (L 123). Trade Agreement between the European Economic Community and the People's Republic of China, June 1, 1978 O.J. (L 123/2). [hereinafter EEC-China Trade agreement].

of the Most-Favoured-Nation Treatment[36] and featured a number of rules aimed at promoting the development of trade but did not discuss any measures for the protection of IPRs between the parties. In 1979, the EU and China concluded a Textile Agreement[37] and from 1980 onwards, China was included in the Community's Generalised Scheme of Preferences.

In 1978, Deng Xiaoping launched China's economic reforms, and China embarked on a new course of opening up, creating plans for how to foster its mid-term and long-term economic expansion and taking up new cooperation opportunities with the West and the European Community.[38] In 1985, the Community and China signed an extended Trade and Cooperation Agreement, which included various aspects of economic cooperation.[39] This agreement represents the current legal basis for the bilateral relations between China and the European Union. The sectors covered under it were: industry, mining, agriculture, science and technology, energy, and cooperation in third countries,[40] with no specific mention of the protection of IPRs.

Trade between the EU and China increased more than 40 times between 1978 and 2002,[41] and together with the advancement of technology, it soon became pertinent for Europe to establish rules on the protection of IP in its trade partnerships. In 2003, the EU and China set up a Dialogue on IP.[42] In order to improve cooperation in IPR enforcement, trade facilitation, and the fight against counterfeiting, the two

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[36] *Id.*, art. 2.

[37] Agreement between the European Economic Community and The People's Republic of China on Trade in Textile Products, July 18, 1979, COM.TEX/SB/601. The text is available at: https://docs.wto.org/gattdocs/q/.%5CGG%5CCOMTEXSB%5C601.PDF. *See* also Council Decision 75/210/EEC of 27 March 1979 on unilateral import arrangements in respect of state-trading countries, 1979, O.J. (L99); Communication from the Commission pursuant to Article 5 (5) of Council Decision 75/210/EEC of 27 March 1975, Aug. 22, 1979, O.J. (C 210/2). The Textile agreement was in force from January 1, 1980, until December 31, 1983.

[38] Amongst some of the cooperation efforts taken by China were the establishment of special economic zones, the adoption of joint venture legislation, the adoption of specific legislation on taxation, and other measures aimed at building a solid basis for economic cooperation with its trading partners.

[39] Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China, Sept. 19, 1985, O.J. (L 250/2).

[40] *Id.*, art. 10.

[41] European Commission Press Release IP/03/1231, EU-China: Commission Adopts New Strategy for a Maturing Partnership (Sept. 10, 2003).

[42] Memorandum of Understanding of the EU-China IP Dialogue Mechanism (June 29, 2015), https://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156974.pdf.

parties signed the Customs Cooperation and Mutual Administrative Assistance Agreement the following year.[43] Between 2012 and 2020, the EU and China negotiated a Comprehensive Agreement on Investment.[44] The latter aims to establish rules to regulate the behaviour of state-owned enterprises on forced technology transfer and the transparency of subsidies.[45] These rules are especially important as poor investor protection, uneven and arbitrary market access, as well as forced transfers of IP to Chinese counterparts, is listed amongst the main barriers faced by European enterprises in China.[46]

Even though the two sides started cooperation on GI protection formally in 2006, the EU-China GI agreement was in fact born out of the regular annual EU-China Summits held since 2003, as well as a result of the joint efforts to provide authentic and quality products to consumers in both regions.[47] During the 21st EU-China Summit in 2019, the parties re-asserted their support for the rules-based, open, and inclusive multilateral trading system, the importance of following international standards in IP protection, and concluded a provisional agreement on the text of the

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[43] Agreement between the European Community and the Government of the People's Republic of China on cooperation and mutual administrative assistance in customs matters, Dec. 23, 2004, O.J. (L 375), 20-26.

[44] EUROPEAN COMMISSION, EU-CHINA AGREEMENT IN PRINCIPLE (2021), https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/china/eu-china-agreement/eu-china-agreement-principle_en. [hereinafter EU-China Agreement]

[45] For more, *see* European Parliament Press Release IPR/04/123, MEPs Refuse Any Agreement with China Whilst Sanctions Are in Place (May 20, 2021) (Negotiations for the agreement were concluded on December 30, 2020, when the parties reached a political agreement. After it is finalised, the agreement will need to be approved jointly by the European Parliament and the Council. At present, the ratification of the agreement has been frozen by the European Parliament until China lifts the sanctions it imposed on Members of the European Parliament. As of November 2023, the agreement has neither been adopted nor ratified yet.).

[46] EUROPEAN PARLIAMENT, *EU-China Trade and Investment Relations in Challenging Times*, Dec. 30 (2020), https://www.europarl.europa.eu/portal/en. *See generally*, EU-China Agreement, *supra* note 44.

[47] European Commission Press Release IP/20/1602, EU and China Sign Landmark Agreement Protecting European Geographical Indications (Sept. 14, 2020).

GI treaty.[48] Subsequently, in 2021, the EU-China agreement protecting GIs came into force.[49]

At the inauguration, the European Commissioner for Agriculture and Rural Development, Janusz Wojciechowski, emphasised that the GI agreement has the potential to not only deepen the Union's trading relationship with China but also boost the EU's agricultural sector.[50]

The GI agreement is situated in the midst of expanding trade in agricultural products on both sides.[51] The Chinese market represents a fast-growing export market for European foods and beverages, with a rising consumer base seeking eponymous, high-quality quintessentially European products.[52] In the EU, about 3400 GI names are protected.[53] Between 2010 and 2017, EU sales of GI products increased by 37% to reach €75 billion in 2017.[54] During this period, GI exports to non-EU countries represented 22% of total sales, or €17 billion.[55] In 2020, EU agricultural exports to

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[48] European Commission Press Release IP/19/2055, EU-China Summit: Rebalancing the Strategic Partnership (Apr. 9, 2019) [hereinafter IP/19/1602]; European Council, Joint Statement of the 21st EU-China Summit, 6 (Apr. 9, 2019), https://www.consilium.europa.eu/en/press/press-releases/2019/04/09/joint-statement-of-the-21st-eu-china-summit/ [hereinafter EC Joint Statement].

[49] EU-China GI agreement, *supra* note 1.

[50] IP/19/1602, *supra* note 48; EC Joint Statement, *supra* note 48.

[51] EUROPEAN COMMISSION, EU-CHINA GEOGRAPHICAL INDICATIONS AGREEMENT (2021), https://agriculture.ec.europa.eu/system/files/2021-03/infographic-factsheet-eu-china-agreement_en_0.pdf. [hereinafter European Commission]

[52] For more, *see* COUNCIL OF THE EUROPEAN UNION, GLOBAL EUROPE, https://www.consilium.europa.eu/en/eu-free-trade/; EUROPEAN COMMISSION, INCEPTION IMPACT ASSESSMENT (2020), https://ec.europa.eu/ (Out of the total 41 trade agreements the EU has with 72 countries around the world, there are 34 bilateral agreements, protecting 1593 non-EU GIs, with another 751 non-EU GIs under consideration.).

[53] EUROPEAN COMMISSION, EAMBROSIA – THE EU GEOGRAPHICAL INDICATIONS REGISTER, HTTPS://EC.EUROPA.EU/AGRICULTURE/EAMBROSIA/GEOGRAPHICAL-INDICATIONS-REGISTER/.

[54] European Commission, *supra* note 51. For more, *see* EUROPEAN COMMISSION, DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT, STUDY ON ECONOMIC VALUE OF EU QUALITY SCHEMES, GEOGRAPHICAL INDICATIONS (GIS) AND TRADITIONAL SPECIALITIES GUARANTEED (TSGS): FINAL REPORT (Feb. 12, 2021), https://op.europa.eu/en/publication-detail/-/publication/a7281794-7ebe-11ea-aea8-01aa75ed71a1/language-en. (It is worth noting that since 2021 GI trade is valued at over €77 billion in sales per year and it features prominently both in EU Free Trade Agreements and in standalone GI agreements between the Union and non-EU states.).

[55] *Id.*

China were worth over €16 million, making China the EU's third-largest destination for such products.[56]

Thanks to the GI agreement, EU consumers can now benefit from China's own GI system and explore its specialties. In 2020, China's GI-related economic output constituted more than €92 billion, or 639 billion yuan,[57] and by the end of May 2019, the number grew exponentially to reach 5041 GIs of registered trademarks.[58] As of December 31, 2020, China has over 2400 GI-protected products.[59] Therefore, Chinese GI products not only gain access to the EU market as qualified indications but also win the attention and recognition of European consumers.

Under the GI treaty, approximately 100 traditional and representative European agricultural food names are protected from counterfeiting and reproduction in China, 100 representative Chinese food names are protected in the EU, and over 350 GI products from both sides are to gain protection by 2025.[60] The treaty aims to ensure the authenticity of the products and the preservation of their reputation, as well as guarantee consumers the product's quality and safety within the respective market. The agreement contains 14 articles in its main part, which sets out the rules for GI protection, and 7 annexes, listing over 275 products from each side. As per Article 3 of the agreement, the EU and China commit to provide the highest protection to each other's GIs and to stop counterfeit GI goods. This opens the door for both Chinese and European customers to access authentic, quality products. Further, a joint committee, composed of members of China's Ministry of Commerce and the European Commission's DG Agriculture, is to oversee the

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[56] EUROPEAN COMMISSION NEWS ITEM, EU-CHINA AGREEMENT PROTECTING GEOGRAPHICAL INDICATIONS ENTERS INTO FORCE (Mar. 01, 2021), https://agriculture.ec.europa.eu/news/eu-china-agreement-protecting-geographical-indications-enters-force-2021-03-01_en.

[57] L. YUE, *EU-China GI Agreement & Online GI Protection*, 5 (2021), https://ipkey.eu/sites/default/files/ipkey-docs/2021/IPKeyChina_GIs%20workshop_26May2021_Li-Yue_CNIPA.pdf.

[58] Jian Liu, *Protection and Development of Geographical Indication in China*, CHINA NATIONAL INTELLECTUAL PROPERTY ADMINISTRATION (CNIPA) 20 (July 09, 2019), https://www.wipo.int/edocs/mdocs/sct/en/wipo_geo_lis_19/wipo_geo_lis_19_4.pdf [hereinafter Liu].

[59] USDA, GEOGRAPHIC INDICATIONS FIVE-YEAR PLAN ISSUED (Mar. 14, 2022), https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Geographic%20Indications%20Five-Year%20Plan%20Issued_Beijing_China%20-%20People%27s%20Republic%20of_CH2022-0032.pdf.

[60] EU-China GI Agreement, *supra* note 1, art. 100.

implementation of the agreement and boost cooperation and dialogue on GI protection.[61]

Additionally, some Chinese GI products have their provenance in less developed regions, therefore the GI agreement also aims to bolster China's regional and national efforts towards poverty eradication and economic resilience. Studies suggest that the protection of GI goods leads to bigger economic gains, the promotion of quality production, and a better distribution of revenue for both producers and farmers.[62] Moreover, GIs foster the development of local communities, improve living conditions, promote cultural heritage and social cohesion, contribute to biodiversity, and promote the sustainable use of raw materials.[63]

In light of this, since 2020, China has invested over 10 million yuan, or about €1.4 million, throughout 43 famine-struck counties in 17 provinces in the central and western regions in order to encourage 21 GI projects, and Chinese farmers have derived benefits as a result.[64] With the entry into force of the EU-China GI agreement, Chinese teas, for example, the Anxi Tie Guan Yin found in China's Fujian Province, benefit from legal protection in the EU.[65] Specifically, the Anxi Tie Guan Yin industry serves as income for 80% of the county's 1.2 million inhabitants and represents 56% of the yearly earnings of local farmers.[66] Thus, some GI products constitute "the pillar industries for local development" [67] in China.

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[61] *Id.*, arts. 9-10.

[62] Irene Calboli, *Geographical Indications between Trade, Development, Culture, and Marketing: Framing a Fair(Er) System of Protection in the Global Economy?*, *in* GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE: FOCUS ON ASIA-PACIFIC 3, 18 (Irene Calboli & Wee Loon Ng-Loy eds., 2017) [hereinafter Calboli]; Weinian Hu, *Dinner for Three: EU, China and the US around the Geographical Indications Table*, CEPS POLICY INSIGHTS NO. 2020-07, 8-9 (Apr. 7, 2020), https://www.ceps.eu/wp-content/uploads/2020/04/PI2020-07_EU-China-and-the-US-around-the-geographical-indications-table.pdf.

[63] Mohsin Shafi, *Geographical Indications and Sustainable Development of Handicraft Communities in Developing Countries*, 25 J. WORLD INTELL. PROP. 122, 123-124, 129 (2022) [hereinafter Shafi]; Calboli, *supra* note 62, at 20.

[64] Xinhua, *China Focuses on Geographical Indication Protection*, STATE COUNCIL CHINA (Jan. 23, 2021) http://english.www.gov.cn/statecouncil/ministries/202101/23/content_WS600b601bc6d0f725769445bb.html.

[65] Xinhua, *China-EU Landmark Geographical Indications Agreement to Propel Trade of High-Quality Products to New Highs*, XINHUA NEWS AGENCY (Aug. 1, 2021), http://www.xinhuanet.com/english/2021-01/08/c_139652790.html.

[66] *Id.*

[67] Liu, *supra* note 58, at 24.

Consumers both in China and in the EU therefore gain from GIs through the improved quality[68] and reputation of products,[69] as well as by being safeguarded from counterfeited products.[70]

The EU-China GI agreement is furthermore situated in the middle of rising European efforts to enhance protection in a growing field of GI promotion. One of the EU's main objectives is to "promote fair-play at a global level" by virtue of developing global IP standards.[71] IP protection policies now have growing geopolitical importance, and thanks to its large single market, the Union is in a unique position to influence how IP standards are set internationally. Given China's growing importance as a trading partner, the EU has emphasised the need to strengthen cooperation in the field of IP protection and enforcement, even before China acceded to the WTO.

In general, the protection and enforcement of IP are fundamental to EU trade policy and trade negotiations because the former impacts the EU's capability to take part in the world economy. In a 2019 communication, the European Commission and the High Representative underlined that:

> China preserves its domestic markets for its champions, shielding them from competition through selective market opening, licensing and other investment restrictions; . . . the favouring of domestic operators in the protection and enforcement of intellectual property rights and other domestic laws . . .

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[68] Shafi, *supra* note 63, at 128.

[69] Leonardo Cei et al., *From Geographical Indications to Rural Development: A Review of the Economic Effects of European Union Policy*, 10 SUSTAINABILITY 3745, 15 (2018) [hereinafter Cei].

[70] In China, the law against Unfair Competition prohibits misleading the consumer as to the true origin of a product. In the EU safeguarding against consumer misleading and fraud is a principle of utmost importance and is contained under Recitals 29 and 40 of the current legal framework for protection of geographical indications, Council Regulation (EU) No. 1151/2012, of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs, Nov. 21, 2012, O.J. (L 343), 1-29.

[71] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Making the most of the EU's innovative potential, COM (2020) 760 final, at 4 (Nov. 25, 2020).

> Given the magnitude of our trade and investment links, it is important to develop a more balanced and reciprocal economic relationship.[72]

Strong and predictable legal frameworks on IPRs are necessary for EU businesses to invest and trade globally. In order to facilitate these higher standards of protection and IPR enforcement, apart from incorporating IPR chapters in its bilateral or regional trade agreements, the EU often employs specialised technical IP-focused cooperation in order to strengthen the domestic situation for EU companies.[73]

There have been five EU technical assistance programmes for China since 1997, aiming to improve, *inter alia,* IPR protection and enforcement in the country: the EU-China Intellectual Property Rights Project IPR1 (1994-2004), IPR2 (2007-2011), IP Key (2013-2017), IP Key China (2017-2021) and IP Key (2022-2024).[74] The EU funded up to 95% of the five projects, or approximately €484 million.[75] The main goal of the technical assistance programmes for China was to encourage a more level playing field for EU companies and rights holders, who operate in China.

The activities undertaken under the EU technical assistance programmes are not merely connected to the EU's trade policy objectives but also have de facto facilitated the access of European firms to the Chinese markets and promoted trade,

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[72] European Commission, Joint Communication to the European Parliament, the European Council and the Council EU-China; A Strategic Outlook, 5-6 (Mar. 12, 2019), https://op.europa.eu/en/publication-detail/-/publication/3a5bf913-45af-11e9-a8ed-01aa75ed71a1/language-en. (Emphasis added.).

[73] European Commission, *Intellectual Property Rights and Geographical Indications,* ACCESS2MARKETS, https://trade.ec.europa.eu/access-to-markets/en/content/intellectual-property-rights-and-geographical-indications.

[74] For IPR1 *see* EVALUATION OF THE EUROPEAN COMMISSION'S CO-OPERATION AND PARTNERSHIP WITH THE PEOPLE'S REPUBLIC OF CHINA, OECD (2007), https://www.oecd.org/derec/ec/37274405.pdf. For IPR2 *see* Li Mingde, *Overall Evaluation Report Project Result 1*, 34, 20-21 (2011), https://ipkey.eu/en/china; Zhang Guangliang, *Evaluation Report Project Result 1 – Trademark Law*, 8 (2011), https://ipkey.eu/en/china. For IP Key (2013-2017) *see* European Union, *Action Fiche for IP Key China*, (May 29, 2019), https://ipkey.eu/sites/default/files/ipkey-docs/2019/ANNEX-9_IPKey-China.pdf. For IP Key China (2017-2021) *see Id.* at 4; WTO, TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM MEMBERS (Oct. 12, 2020), https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=267251&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True#.

[75] *Id.*

investment, and business opportunities through commercial partnerships, and business, and regulatory cooperation.[76] Bearing in mind that the Chinese administrative division is quite complex and that the PRC is the number one country in terms of IP violations according to the EU,[77] the technical assistance projects represent crucial and effective European programmes.[78] The latter have accommodated both local stakeholders and EU enterprises by intensifying the IP dialogue mechanism so as to enhance cooperation on IPR protection.

While China is still one of the most difficult states with regards to IPR protection and a test in respect of market access for European businesses, the latest positive developments ought not to be overlooked considering the difficult context. For example, IP Key China[79] has been instrumental in the upgrading of local IP regimes by working with the relevant national authorities in the judiciary and in the legislative sector to adapt the national legal framework to European standards.[80] As a result, EU companies striving to enter the local market have faced lower degrees of risk and business uncertainty. Notwithstanding that, as reported by the last EU-IPR programme, in a number of instances, relations with specific institutions could be improved, in particular, to increase efficiency, cooperation with China's National Intellectual Property Administration (CNIPA), with or without the Chinese Ministry of Commerce's coordination, needs to be enhanced.[81]

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[76] Irina Kireeva et al.*, Evaluation of the IP Keys in China, Latin America and South East Asia*, 13 EUROPEAN UNION (2020), https://ec.europa.eu/fpi/system/files/2021-05/final_report_-_ip_keys_public.pdf. [hereinafter Kireeva et al.]

[77] Commission Staff Working Document, Report on the Protection and Enforcement of Intellectual Property Rights in Third Countries SWD (2023) 153 final, 17-24 (May 17, 2023).

[78] According to the European Commission, in 2020 more than 80% of imported counterfeit and illicit goods came from China and another 8% from Hong Kong. For more, *see Id.*; *see also* the US SPECIAL 301 REPORT ON INTELLECTUAL PROPERTY PROTECTION AND REVIEW OF NOTORIOUS MARKETS FOR COUNTERFEITING AND PIRACY (Feb. 26, 2020), https://ustr.gov/sites/default/files/2020_Special_301_Review_Hearing_Transcript.pdf; which states that "China is the primary source for counterfeiter supply chains, from manufacturing to distribution. China has also not shown significant progress in addressing the registration of trademarks in bad faith."

[79] IP Key China refers to EU's technical assistance projects for China, administered by the European Commission and implemented by the European Union Intellectual Property Office (EUIPO). IP Key China aims to strengthen EU-China cooperation in intellectual property rights protection. The technical assistance is allocated in phases; thus, IP Key China (2017-2021) represents the first phase, IP Key (2022-2024) respectively the second. For more, *see* Cei, *supra* note 69.

[80] Kireeva et al., *supra* note 76, at 14.

[81] *Id.* at 15.

Additionally, the penultimate EU technical assistance programme IP Key China (2017-2021), contributed to the EU-China IP dialogue process in the area of GIs, more precisely to the EU-China GI Negotiations, which ultimately added value to the conclusion of the EU-China GI agreement in 2020.[82]

Taking this into account, it can be reasonably argued that the Union reinforced its efforts to collaborate with the relevant national legislative and judicial authorities in China to, at least in part, preserve its vital economic interests and continue the trade relationship. There has been limited academic research with regards to how (trading) partner countries respond once EU rules on protection of IPRs, in particular on GIs, are transferred. Parts V and VI serve to mend this gap and discuss the diffusion and consequences of the EU export of its legal rules. The next part, however, first lays the groundwork for understanding the national legislative systems for the protection of GIs of the two parties.

IV. NATIONAL LEGAL FRAMEWORKS FOR PROTECTING GIS

Apart from the international frameworks outlined in Part II above, there are a number of national legislative tools and frameworks that afford protection to GI goods. Part IV recounts the legislation on GIs in Europe and China and unveils some interesting aspects of the GI systems in both regions. First, it emphasises the evolution of GI protection from a bilateral to a European level and considers the rise of case law, leading to the first EU GI law. Further, this part of the paper analyses the emergence of IPRs in China and examines the legal system of GIs.

A. GIS UNDER EU LAW

The protection of GIs on national and regional levels is marked by a range of statutory concepts and approaches, most of which evolved out of the diverse domestic legal traditions and are a result of distinct historical, economic, and political circumstances.

Due to the lack of a global agreement on the protection of GIs, specific bilateral agreements devoted to the protection of GIs were concluded between European and non-European states starting in the 1930s, such as between France and El

[82] In particular, IP Key Activity N°1-R3A0102 (AWP 1, 2018) entitled "Allocate adequate and mainly targeted resources to support the IP Dialogue Process", was completely consistent with the objective of concluding the negotiations of the EU-China GI agreement. For more, *see Id.* at 23.

Salvador (1932)[83] and between France and Costa Rica (1933).[84] This practice of signing bilateral GI agreements intensified amongst the European countries during the 1950s and particularly during the 1960s and 1970s. Notable examples include, *inter alia,* the agreements on GIs between: Austria and Italy (1952),[85] Germany and France (1960),[86] Italy and Germany (1963),[87] France and Italy (1964),[88] Spain and Portugal (1970),[89] Greece and Austria (1972),[90] Spain and France (1973),[91] Austria and France (1974),[92] Spain and Italy (1975),[93] Portugal and Switzerland (1977).[94]

Such bilateral agreements created varying levels of legal protection for GIs. Specifically, the differences in definitions, registration procedures, scope of protection, nature of the rights involved, and enforcement created a fragmented system of rules on GIs among different European states. To a large extent, the

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[83] Convention on the protection of appellations of origin, El Sal.-Fr., Sept. 20, 1932, O.J. 20/07/33.

[84] Agreement for the reciprocal protection of industrial property and appellations of origin, Costa Rica-Fr., July 10, 1933.

[85] Agreement on Geographical Indications and Designations of Certain Products, Austrian.-It., Jan. 2, 1952, BGBl. Nr. 235/1954.

[86] Agreement between the on the protection of indications of source, designations of origin and other geographical indications, Fr.-Ger., Mar. 8,1960, BGBl 1961 II S23.

[87] Agreement between the on the protection of indications of source, appellations of origin and other geographical indications*, Ger.-It., BGBI 1965 II S. 157

[88] Agreement for the protection of appellations of origin and denominations of certain products, Fr-It., Apr. 28,1964, O.J. 27/04/69.

[89] Agreement for the Protection of Indications of Source, Appellations of Origin and the Denominations of Certain Products, Port.-Spain, Dec. 16, 1970, (BOE of 21 June 1972). http://www.boe.es/boe/dias/1972/06/21/pdfs/A11077-11079.pdf.

[90] Agreement between on the protection of indications of source, designations of origin and names of agricultural and industrial products, including protocol, Austria – Greece, BGBl. Nr. 378/1972.

[91] Agreement for the Protection of Indications of Source, Appellations of Origin and Other Geographical Denominations, and Annexed Protocol, Fed. Rep. of Ger.-Spain, Sept. 11, 1970 (BOE of 1 October 1973).

[92] Agreement on the protection of indications of source, designations of origin and names of agricultural and industrial products, together with a protocol. Austria, May 10, 1974, WIPO Series Text 5-002 https://juridoc.gouv.nc/JuriDoc/JdJoTa.nsf/5102c2706c8816544b25756e001023dc/9063ae6789b2f6024b2576660002dd56?OpenDocument.

[93] Agreement for the Protection of Indications of Source, Appellations of Origin and Denominations of Certain Products, It.-Spain, Apr. 9,1975, BOE n. 108 of 6 May 1975 http://www.boe.es/boe/dias/1975/05/06/pdfs/A09495-09509.pdf.

[94] Treaty on the protection of indications of source, appellations of origin and similar designations, Port. -Swiz., Sept. 16, 1977 AS 1980 478.

Community had ceded the protection of IP to the MS. Soon, the interaction between IP, the internal market, and competition law was proving particularly confrontational.[95]

Even though the EU adopted its first legal act for regulating GIs in the early 1990s, the necessity and impetus for such a body of law arose with *Cassis de Dijon*[96] and *Sekt*[97] in the late 1970s and early 1980s. In *Cassis de Dijon,* the Court of Justice established the concept of 'mutual recognition' of the adequacy of other MS laws, namely that goods produced and marketed in one MS, and which comply with the laws of that MS, could be sold in all other MS.[98] The Court set out that the prohibition of importing a French liqueur by German authorities, due to it containing a lower percentage of alcohol content, was in effect an obstacle to the free movement of goods and incompatible with the EU Law. Essentially, any "measures having an effect equivalent to quantitative restrictions on imports"[99] were seen as product standards applied to imported goods. At the time, the European Court of Justice (ECJ) put forward that the application of product standards to products imported from other MS, not the standards themselves, was legally problematic.[100] This effectively created a 'meta-norm' that both Germany and France,[101] invested in the goal of free trade, consented to, and recognised that limits on free trade have to be subjected to reasonable regulatory interests.[102]

After *Cassis*, the European Commission, European Parliament, and Dooge Committee further underlined the priority of the principle of mutual recognition[103] and that in order to strengthen the internal market and respond to the rapid

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[95] Jörg Reinbothe, *Negotiating for the European Communities and Their Member States*, *in* MAKING OF THE TRIPS AGREEMENT: PERSONAL INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS 187, 189 (Jayashree Watal & Antony Taubman eds., 2015) [hereinafter Reinbothe].

[96] Case 120/78, Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein (Cassis de Dijon), 1979 E.C.R. 649 [hereinafter Case 120/78].

[97] Case 12/74, Comm'n. of the Eur. Cmty. v. the Fed. Rep. of Ger. (Sekt), 1975 E.C.R. 181. [hereinafter Case 12/74]

[98] Case 120/78, *supra* note 96, at ¶14.

[99] *Id.* at ¶15.

[100] *Id.*

[101] Christian Joerges & Jurgen Neyer, *"Deliberative Supranationalism" Revisited*, (EUI-RSCAS Working Paper No. 25, 2006).

[102] An exception was granted by the Court when EU MS invoked "mandatory requirements", such as protection of public health, effectiveness of fiscal supervision, etc., and these would then justify and prompt respective trade restrictions.

[103] *Commission of the European Communities, Completing the Internal Market*. ¶77, COM (85) 310. (June 14, 1985).

technological changes underway, the Union needed to step up its efforts on IP rules.[104]

In *Sekt,* the ECJ for the first time gave a ruling on GIs: "As regards indications of origin in particular, the geographical area of origin of a product must confer on it a specific quality and specific characteristics of such a nature as to distinguish it from all other products.".[105] In addition, the Court recognised that protecting GIs ought to entail as objectives not solely the interests of producers but also the interests of consumers as well.[106] Later, Directive 79/112/EEC confirmed the ECJ's decision in *Sekt*, stating that "special provisions should be adopted for agricultural products and foodstuffs from a specified geographical area" for the benefit of the consumer.[107]

Therefore, after *Cassis* and *Sekt,* the necessity to protect GIs through a shared European approach became more pronounced. Since some EU MS were exporters and others were importers of IP-based products, such as cars, pharmaceuticals, and GI goods - "MS views on the protection of IP were not always identical".[108]Additionally, the European Commission and European Parliament actively endorsed the objective "to protect agricultural and food products of identifiable geographical origin, their mode of production, and their special qualities"[109] and "to find common ground on the parameters of protection".[110]

Negotiations for the EU's first legislation on GIs between the MS and the Commission took place in the Council between 1990 and 1992. While in the early days, it was the ECJ that primarily adjudicated on GIs, after the 1990s, GIs were subjected to secondary legislation.[111] In 1992, the first EU legislative instrument on the protection of GIs for agricultural products and foodstuffs was adopted, Council

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[104] *Id.* at ¶145-149.
[105] Case 12/74, *supra* note 97, at ¶7.
[106] *Id.*
[107] Council Directive 79/112/EEC, on the approximation of the laws of the Member States relating to the labelling, presentation, and advertising of foodstuffs for sale to the ultimate consumer, 1979, O.J. (L 33), 1-14.
[108] Reinbothe, *supra* note 95, at 190.
[109] European Commission Press Release P/88/100, The future of rural society, Commission communication transmitted to the Council and to the European Parliament, 43-44 (July 29, 1988).
[110] Reinbothe, *supra* note 95, at 190.
[111] The exceptions are rules regulating some elements of wines and spirits as GIs under: Regulation (EEC) No. 817/70, of the Council laying down special provisions relating to quality wines produced in specified regions, 1970 O.J. (L 99), 20-25; Council Regulation (EEC) No. 822/87, on the common organization of the market in wine, 1987 O.J. (L 84/1), 1-58.

Regulation (EEC) 2081/92, which represents the EU's *sui generis* system for GI protection.[112]

According to the Regulation, GIs designate,

> the name of a region, a specific place, or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: - originating in that region, specific place or country, and – which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.[113]

Under the Regulation, MS had three possibilities to identify a product as a GI, these being namely: (i) a specific quality; (ii) its reputation; or (iii) "other characteristics attributable to that geographical origin […] in the defined geographical area".[114] Moreover, the Regulation safeguarded against: (i) any direct or indirect commercial use of the name of products comparable to registered GIs in the Union; (ii) any misuse, imitation, or evocation of a product; (iii) any other false or misleading information about a good, especially relating to its origin, nature, or essential qualities; and (iv) any other use or action that aims to mislead or confuse consumers.[115]

In a nutshell, in the early days, there were numerous different bilateral agreements protecting GIs. However, the protection of GIs and their impact on free movement led to a series of cases and ultimately to the adoption of the first European-wide GI legislative framework, Regulation 2081/92. The EU's *sui generis* GI system evolved as a consequence of the developments in the Community in the 1970s and 1980s, as well as of the negotiations leading to the first EU GI law. Today, EU law specifies that a GI good either has a reputation traceable to the geographical area or, more frequently, a quality associated with the *terroir*.

Part V will show that Regulation 2081/92 is the bedrock for the European GI definition as well as for the TRIPS definition for all WTO members today. At present, Regulation 1151/2012 covers the protection of agricultural products and

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[112] Council Regulation (EEC) No. 2081/92, *supra* note 9.
[113] *Id.* art. 2(2)(b) (Emphasis added).
[114] *Id.*
[115] *Id.*, art. 13.

foodstuffs in the EU.[116] Regulation 1151/2012 is a result of the consultations between the Commission, European farmers, non-governmental organisations, and other stakeholders, that took place in late 2008 and early 2009.[117] The Regulation has the objective to strengthen EU's quality policy for agricultural products by increasing the consistency of various quality schemes.[118] The legislative instrument comprises, *inter alia,* rules on registering GIs, simplifying GI procedures, it establishes rules on the role of producers, and lays down labelling requirements.[119]

B. GIs UNDER CHINESE LAW

After having examined the legislation on GIs under EU law, this part tackles the complex evolution that led to the birth of China's IPR system and its GI system.

1. The long road to IPR in China

The Western world is believed to have a long history of IP protection dating back to the European Enlightenment.[120] China, on the other hand, neglected advancing IPRs for a long time and pursued efforts to establish legal rules on IP only 400 years later than its European counterparts.[121] Following the end of the Opium Wars, China began trading overseas, especially with opium and raw silk, which did not present any difficulties in terms of IP.[122] However, in the late 19th century, as trade

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[116] Regulation (EU) No. 1151/2012, of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs, 2012 O.J. (L 343), 1-29 [hereinafter Regulation 1151/2012]. Regulation 2081/92 was replaced by Council Regulation (EC) No. 510/2006, on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, 2006 O.J. (L 93) ,12-25. Regulation (EU) No. 1151/2012 replaced Council Regulation (EC) No. 510/2006, and is the current legal basis for the protection of GIs. For an overview of the GI legislation between 1992 and 2018, *see* ZAPPALAGLIO, *supra* note 18, at 136. For an overview of GI legislation for spirits and wines, *see* Mantrov, *supra* note 13, at 193, 237.

[117] Green Paper on agricultural product quality: product standards, farming requirements and quality schemes, Commission of the European Communities, COM/2008/0641 (Oct. 15, 2008).

[118] *Id.*; Regulation 1151/2012, *supra* note 116, art. 1.

[119] *Id.* at arts. 4, 6, 11, 12, 17, and 19.

[120] PETER DRAHOS, A PHILOSOPHY OF INTELLECTUAL PROPERTY 14 (Dartmouth Publishing Company,1996); Joanna Kostylo, *From Gunpowder to Print: The Common Origins of Copyright and Patent*, *in* PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT 21, 23-25 (2013); STANIFORTH RICKETSON, THE LAW OF INTELLECTUAL PROPERTY 860 (Ronan Deazely et al. eds.,1984).

[121] John Allison & Lianlian Lin, *The Evolution of Chinese Attitudes Toward Property Rights in Invention and Discovery*, 20 UNIV. PA. J. INT'L. ECON. L., 735 (1999).

[122] Pisacane & Zibetti, *supra* note 5, at 2.

increased, the first IP issues related to imitation occurred. Foreign trade names were exploited and counterfeited without permission to avoid paying taxes to Chinese organisations.[123] Thus, imitation becomes "the new underlying logic".[124] Many Western countries insisted that the trade agreements with China needed to include provisions on IPR, and China signed several treaties with Western countries, such as the Mackay Treaty with Great Britain in 1902, a commercial treaty with the US in 1902, and with Japan in 1903.[125] In the late 1920s and early 1930s, in an endeavour to reform China's IP system, the Chinese Republic established a Copyright Act (1928), a Trademark Act (1930), and a Patent Act (1949). When Mao Zedong and the Chinese Communist Party (CCP) came to power, the IP reforms in place were all repealed,[126] and IPRs remained largely forgotten until the last quarter of the twentieth century.[127]

As part of Deng Xiaoping's Economic Revolution, China started rebuilding its IP laws.[128] Initially, the Trademark Law (1982)[129] was instituted, followed by the Patent

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[123] *Id.*

[124] *Id.*

[125] JOHN KING, FAIRBANK & MERLE GOLDMAN, CHINA: A NEW HISTORY, 235-242 (2nd Revised & enlarged ed. 2006); XIAOQUN XU, TRIAL OF MODERNITY: JUDICIAL REFORM IN EARLY TWENTIETH-CENTURY CHINA, 1901-1937, 26 (2008).

[126] Mark Sidel, *The Legal Protection of Copyright and the Rights of Authors in the People's Republic of China, 1949-1984: Prelude to the Chinese Copyright Law*, 9 COLUM. J. ART & L. 477, 478 (1985); Anne Wall, *Intellectual Property Protection in China: Enforcing Trademark Rights*, 17 MARQ. SPORTS L. REV. 341, 349 (2006) [hereinafter Wall]; Yiping Yang, *The 1990 Copyright Law of the People's Republic of China*, 11 UCLA PAC. BASIN L. J., 263 (1993); Zhang & Bruun, *supra* note 7, at 8.

[127] Natalie Stoianoff, *The Development of Intellectual Property Law in China*, *in* CHINA AT 60: GLOBAL-LOCAL INTERACTIONS 183, 184 (Lai-Ha Chan et al. eds., 2011).

[128] Robert Bejesky, *Investing in the Dragon: Managing the Patent versus Trade Secret Protection Decision for the Multinational Corporation in China*, 11 TULSA J. COMPAR. & INT'L. L. 437, 451 (2004); Wall, *supra* note 126, at 350.

[129] Zhōnghuá rénmín gònghéguó shāngbiāo fǎ (中华人民共和国商标法) [Trademark Law of the People's Republic of China] (promulgated by 5th Standing Comm. Nat'l. People's Cong., Aug 23, 1982, effective Mar. 1, 1983; rev'd. Feb. 22, 1993, effective July 1, 1993; rev'd. Oct. 27, 2001, effective Dec. 1, 2001; rev'd. Aug 30, 2013, effective May 1, 2014; rev'd. Apr 23, 2019, effective Nov. 1, 2019), 2019, NPC Standing Committee, P.R.C. Laws (China) [hereinafter China Trademark law].

Law (1984),[130] the Copyright Law (1990),[131] and the Unfair Competition Law (1993).[132] China's Trademark Law, however, did not contain any reference to GIs before 2001.[133]

2. China's GI system

GIs are legally protected in China by virtue of two systems: the Trademark Law system and a *Sui Generis* GI protection system.

Whereas, the first Trademark Law in China was established in 1982,[134] it was only shortly before China acceded to the WTO that the government amended its Trademark Law and included the protection of GIs under Art. 16 of the Law. Before the Doha Ministerial Conference and China's accession to the WTO in 2001, it became clear that China had serious discrepancies, particularly in its Trademark Law, which should cover GIs.[135] China did not afford an adequate level of protection for IP; moreover, there was not even basic protection for GIs in Chinese law pre-WTO accession.[136] TRIPS, being a global agreement providing substantive and

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[130] Zhōnghuá rénmín gònghéguó zhuānlì fǎ (中华人民共和国专利法) [Patent Law of the People's Republic of China] (promulgated by 4th Standing Comm. Nat'l. People's Cong. Mar 12, 1984; rev'd. Sep 4,1992; rev'd. Aug 25, 2000; rev'd. Dec. 27, 2008, effective Oct 1, 2009), 2009, NPC Standing Committee, P.R.C. Laws (China) [hereinafter China Patent law].

[131] Zhōnghuá rénmín gònghéguó zhùzuòquán fǎ (中华人民共和国著作权法) [Copyright Law of the People's Republic of China] (promulgated by 7th Standing Comm. Nat'l. People's Cong., Sep 7, 1990; rev'd. Oct. 27, 2001; rev'd. Feb 26, 2010; rev'd. Nov 11, 2020, effective June 1, 2021), 2021, NPC Standing Committee, P.R.C. Laws (China) [hereinafter China Copyright law].

[132] Zhōnghuá rénmín gònghéguó fǎn bú zhèngdàng jìngzhēng fǎ (中华人民共和国反不正当竞争法) [Law of the People's Republic of China Against Unfair Competition] (promulgated by Standing Comm. Nat'l. People's Cong., Sep 2, 1993; rev'd. Nov 4, 2017; rev'd. Apr 23, 2019), 2019, NPC Standing Committee, P.R.C. Laws (China) [hereinafter China law against Unfair Competition].

[133] Shujie Feng, *Geographical Indications: Can China Reconcile the Irreconcilable Intellectual Property Issue between EU and US?*, 19 WORLD TRADE REV. 424, 3 (2019); G. Shoukang & Z. Xiaodong, *Are Chinese Intellectual Property Laws Consistent with the TRIPs Agreement?*, *in* INTELLECTUAL PROPERTY AND TRIPS COMPLIANCE IN CHINA 11, 19 (P. Torremans et al. eds., 2007).

[134] China Trademark law, *supra* note 129.

[135] Keith Maskus, *Intellectual Property Rights in the WTO Accession Package: Assessing China's Reforms*, *in* CHINA AND THE WTO: ACCESSION, POLICY REFORM, AND POVERTY REDUCTION STRATEGIES 49, 50 (Deepak Bhattasali et al. Martin eds., 2004).

[136] *Id.* at 51.

enforcement aspects for the protection of IPR, is the leading criterion for taking measure of the competency of China's IP laws. Hence, between August 2000 and October 2001, China amended its IP laws, *inter alia,* its Trademark Law. The 2001 amendment of the Trademark Law thus established, in line with the TRIPS obligations, a definition for a GI in China.

The Implementing Regulations of the Trademark Law[137] specify that GIs can be registered as certification or collective marks.[138] The law stipulates that international applicants who wish to register a GI as a collective or certification trademark are required to authenticate that the GI is legally protected in its country of origin.[139] Additionally, under the law, GI trademarks enjoy ten-year protection; the holder of the trademark has exclusive rights over the mark and is permitted to demand that the violator stop using the mark and can also claim damages.

Since 1999, a separate *sui generis* GI protection system has run parallel to the Trademark Law. The start of the *sui generis* system was set in 2005 with the Provisions for the Protection of Products of Geographical Indication,[140] and in 2009, the Implementing Rules of the Measures on the Protection of Geographical Indication Products[141] came out. In 2007, China's Ministry of Agriculture published Measures for the Administration of GIs of Agricultural Products, limiting the scope of the instrument to basic agricultural products such as plants, animals, microorganisms, and the products thereof obtained in agricultural activities.[142] Subsequently, in 2016, the authorities promulgated Measures on the Protection of Foreign GI Products as

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[137] W.I.P.O., REGULATIONS FOR THE IMPLEMENTATION OF THE TRADEMARK LAW OF THE PEOPLE'S REPUBLIC OF CHINA (Aug. 3, 2020) https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/cn/cn342en.pdf.

[138] *Id.*, art. 4. It is beyond the scope of this article to discuss the differences between certification and collective marks. For such a comparison see Song, *supra* note 8, at 3-5.

[139] W.I.P.O., *supra* note 137, arts. 34-40.

[140] Provisions for the Protection of Products of Geographical Indication Promulgated by the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (**地理**标志产品保护规定) (May 16, 2005), http://ipr.mofcom.gov.cn/zhuanti/jkbllh/iplaws/gi/gibhgd.pdf [hereinafter Provisions for the Protection of Products of Geographical Indication].

[141] Detailed Rules for the Implementation of the Provisions on the Protection of Products with Geographical Indications (**地理**标志产品保护规定实施细则(暂行)) (June 07, 2005), https://www.fao.org/faolex/results/details/en/c/LEX-FAOC213107.

[142] Measures for the Administration of Geographical Indications of Agricultural Products, Art. 2 (Dec. 25, 2007), https://faolex.fao.org/docs/pdf/chn77447.pdf.

part of their efforts to afford equivalent protection for foreign GIs and domestic GIs in China.[143]

The *sui generis* GI system does not circumscribe any protection period but does specify that the local government determines the applicants for domestic GIs[144] and the competent authority in the respective foreign region or country makes a recommendation for the international applicant.[145] In addition, the *sui generis* legal regime forbids individuals or organisations to use or falsify GIs or to use GIs or signs that are identical or similar to the GIs.[146]

The table below summarises the main pieces of IP/GI legislation in China.

Table 1: Overview of IP Legislation in China

IP Legislation in China	
Trademark Law (1982)	Amendment (2001): GI included and defined
Patent Law (1984)	
Copyright Law (1990)	
Unfair Competition Law (1993)	
Measures on the Protection of GI Products (2005)	Measures on Protection of Foreign GI (2016)

All in all, the pivotal stage in the establishment of a *sui generis* GI system in China came with the country's accession to the WTO and TRIPS. GI rules were facilitated by China's growing role in the world economy and the importance of IPRs, which are indispensable to economic and social development.

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[143] The texts of the measures are available on the website of the MINISTRY OF COMMERCE OF PRC, HTTP://CHINAIPR.MOFCOM.GOV.CN/. Official translation of the measures is available at: USDA FOREIGN AGRICULTURAL SERVICES, NEW MEASURES ON THE PROTECTION OF FOREIGN GEOGRAPHICAL INDICATIONS, CH2019-0184 (DEC. 17, 2019), HTTPS://APPS.FAS.USDA.GOV/NEWGAINAPI/API/REPORT/DOWNLOADREPORTBYFILENAME?FILENAME=NEW%20MEASURES%20ON%20THE%20PROTECTION%20OF%20FOREIGN%20GEOGRAPHICAL%20INDICATIONS_BEIJING_CHINA%20-%20PEOPLES%20REPUBLIC%20OF_12-15-2019.

[144] Provisions for the Protection of Products of Geographical Indication, *supra* note 140.

[145] Measures on the Protection of Foreign Geographical Indications Products (**国外地理**标志产品保护办法) (Mar. 28, 2016), https://faolex.fao.org/docs/pdf/chn197611.pdf.

[146] Provisions for the Protection of Products of Geographical Indication, *supra* note 140.

V. LEGAL TRANSPLANTS: FROM EUROPE TO CHINA

Part V traces the diffusion of European norms to China. The EU diffusion of law norms is put to the test by examining the legal transplantation of IP rules into China, focusing in particular on legislation on GIs. Equally, this part applies Alan Watson's concept of a "legal transplant" to the case of GI legislation in China.[147] The part starts off by briefly explaining what legal transplants are and then applies the analytical concept to the case study of GI rules within the context of TRIPS. The overall purpose is to investigate how GI legislation has "migrated" from Europe to China.[148]

A. WHAT ARE LEGAL TRANSPLANTS?

Legal transplants represent "the moving of a rule or a system of law from one country to another, or from one people to another".[149] For this reason, according to Alan Watson, legal transplants are well suited for investigating the relationship between different legal systems.[150] Thus, the phenomenon of a legal transplant is typically used to indicate the spreading of a legal rule or law from an exporting legal regime in the origin country to an importing one in the receiving state. The transplantation of laws, rules, and institutions, including "local models of law being transposed into universal ones"[151], is a hugely popular practice.[152] Recent studies have positioned the concept of legal transplants in the field of legal pluralism, more

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[147] Watson, *supra* note 11, at 10. Alan Watson first developed his theory of legal transplants in the early 1970s as a result of his lecturing time at the University of Virginia, which ultimately led to publishing Legal Transplants: An Approach to Comparative Law. For an overview of the history of legal transplants, *see* John W. Cairns, *Watson, Walton, and the History of Legal Transplants*, 41 GA. J. INT'L. & COMPAR. L. 637 (2014) [hereinafter Cairns].

[148] Judith Resnik, *Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Pre-Emption in Light of Translocal Internationalism*, 57 EMORY L. J. 30, 64 (2007). (Resnik describes the process of diffusion of laws as: "Laws, like people, migrate. Legal borders, like physical ones, are permeable, and seepage is everywhere.").

[149] Watson, *supra* note 11, at 21.

[150] *Id.* at 7.

[151] Alan Watson, *Legal Culture v. Legal Tradition*, *in* EPISTEMOLOGY & METHODOLOGY OF COMPARATIVE LAW 1, 1 (2004) [hereinafter Watson Epistemology].

[152] *Cf.* Legrand on the impossibility of legal transplants; Teubner who suggests the concept of "legal irritants" to replace legal transplants; Shah, on the limits of legal transplants. Pierre Legrand, *The Impossibility of 'Legal Transplants,'* 4 MAASTRICHT J. & EUR. COMPAR. L. 111 (1997); Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences*, 61 MOD. L. REV. 11 (1998); Prakash Shah, *Globalisation and The Challenge of Asian Legal Transplants in Europe*, SING. J. LEGAL STUD., 348 (2005).

specifically as belonging to the legal entanglements between different legal orders.[153] Nevertheless, legal transplants are more generally connected to the field of comparative law[154] and the study of the diffusion of laws.[155] Although the latter gained speed in the early 1960s, legal transplants were already widespread in antiquity.[156] A typical example for a diffusion of a legal order is the "effect" of the United Kingdom Human Rights Act 1998 on the European Convention on Human Rights.[157] It follows that such legal transfers can occur both vertically and horizontally. The UK Human Rights Act in turn borrowed from various human rights theories, from public international law, national laws, and the specific ideas of its drafters.[158] This example indicates that legal transplantation can include diverse legal sources of import. Another illustrative example is the Indian Evidence Act 1872, which largely mirrored English law, and which indirectly influenced the legal tradition of the entire British Empire.[159]

In general, moving a legal system, or a large portion of it, to a new territory[160] can take various forms, for example, through transposition,[161] diffusion,[162] reception,[163]

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[153] NICO KRISCH, ENTANGLED LEGALITIES BEYOND THE STATE 2, 4 (CUP, 2021) (The author identifies a legal entanglement as "complex intertwined networks, with no beginning and no end, and a difficulty to fix the own point of departure".).

[154] For instance, legal transplants are described by Cairns as a "classic" of comparative law, and as having "an indelible imprint on comparative law scholarship" by Foster. For more, see Cairns, *supra* note 123, at 639; Frances Foster, *American Trust Law in a Chinese Mirror*, 94 MINN. L. REV. 602, 610 (2010).

[155] WILLIAM TWINING, GENERAL JURISPRUDENCE: UNDERSTANDING LAW FROM A GLOBAL PERSPECTIVE 271 (CUP, 2009) [hereinafter Twining].

[156] *Id.*; Watson, *supra* note 11, at 24.

[157] William Twining, *Diffusion of Law: A Global Perspective*, 36 J. LEGAL PLURALISM UNOFFICIAL L. 1, 19 (2004).

[158] *Id.* at 13.

[159] *Id.*

[160] Watson, *supra* note 11, at 30. (Referred to also as "voluntary major transplants".).

[161] Esin Örücü, *Law as Transposition*, 51 INT'L. & COMPAR. L. Q. 205 (2002).

[162] Ugo Mattei, *A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance*, 10 IND. J. GLOB. LEGAL STUD. 383, (2003).

[163] Albert Kocourek, *Factors in the Reception of Law*, 10 TULANE L. REV. 209, (1936).

intended borrowing,[164] exports and imports,[165] transfer,[166] transmigration,[167] and trans-frontier mobility of law.[168] Successful legal transplants, are for Watson, "like that of a human organ - will grow its new body, and become part of that body just as the rule or institution would have continued to develop in its parent system".[169] Moreover, legal transplants and legal borrowing are closely linked.[170] The borrowing of a legal system is considered as "the most fruitful source of legal change".[171] The analogy of legal transplantation indicates the potential of borrowed rules.[172] Legal transplants emphasise the nature of the development of law as a continuous borrowing and shifting of rules or legal systems.

Therefore, any legal idea can be transplanted, and the diffusion of rules, laws, and institutions could occur between various types of legal orders, across different geographical levels and boundaries, and to different extents.[173] Yet it could be reasonably argued that once a law is transplanted, this legal transposition does not necessarily lead to the enactment of the same or identical norm in the recipient country as in the EU, i.e., "receptions come in all shapes and sizes: from taking over single rules to (theoretically) almost a whole system".[174] In practice, however, there could be deviations in the way a law should operate in the host country and its actual functioning.[175] Whereas the legal transfer of rules and institutions is a widespread

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[164] *Id*; Watson Epistemology, *supra* note 127, at 3; Alan Watson, *Legal Transplants and European Private Law*, UNIV. BELGRADE SCH. OF L. 2 (2006). (The author stated "legal borrowing is of enormous importance in legal development". He also noted that "it is easier to borrow than to create rules and institutions from new". Another factor for borrowing that he provides is the need for authority, as "it is essential for and functions to create the [legal] tradition.").

[165] Y. Dezalay & B. Garth, *The Import and Export of Law and Legal Institutions*, *in* ADAPTING LEGAL CULTURES 241 (D. Nelken et al. eds., 2001).

[166] David Nelken, *Towards a Sociology of Legal Adaptation*, 5 *in* ADAPTING LEGAL CULTURES 7, 24-25 (Johannes Feest et al. eds., 2001).

[167] SUJIT CHOUDHRY, THE MIGRATION OF CONSTITUTIONAL IDEAS (CUP, 2006).

[168] R. JAGTENBERG ET AL., TRANSFRONTIER MOBILITY OF LAW (Springer, 1995).

[169] Watson, *supra* note 11, at 27.

[170] *Id.* at 111. (In fact, Watson emphasises that "an understanding of legal borrowings in the *only* key that will unlock many specific issues in legal change".).

[171] William Ewald, *Comparative Jurisprudence (II): The Logic of Legal Transplants*, 43 AM. J. COMPAR. L. 489, 500 (1995) [hereinafter Ewald]; Alan Watson, *Aspects of Reception of Law*, 44 AM. J. COMPAR. L. 335, 335 (1996).

[172] Toby S. Goldbach, *Why Legal Transplants?*, 15 ANN. REV. L.SOC. SCI. 583, 585 (2019).

[173] Michele Graziadei, *Comparative Law, Transplants, and Receptions*, *in* THE OXFORD HANDBOOK OF COMPARATIVE LAW 443, 472 (M. Reimann & R. Zimmermann eds., 2nd ed. 2019); Twining, *supra* note 132, at 282, 291.

[174] Watson, *supra* note 164, at 335.

[175] Gerhard Dannemann, *Comparative Law: Study of Similarities or Differences?*, *in* THE OXFORD HANDBOOK OF COMPARATIVE LAW 391, 405 (Mathias Reimann & Reimann Zimmermann

practice, recipients may follow different legal roads and may not establish the same or identical norm as in their country of origin. Ultimately, transplant countries experience legal change and adaptation unevenly, as Part VI will later demonstrate. The following part closely examines the legal transplantation of GI legislation from Europe to China.

B. FROM THE EU TO CHINA: GIS AS LEGAL TRANSPLANTS

In 1995, IPR entered the international trading system for the first time with the advent of the WTO TRIPS agreement.[176] TRIPS became an indispensable part of the newly instituted legal framework of the WTO.[177] The treaty was negotiated during the Uruguay Round, and it puts forward principles and standards which guarantee a minimum level of IPR protection.[178]

This part of the article investigates the process of transplanting EU norms on the protection of GIs into China, namely by virtue of the TRIPS discussions on the text of GIs. The legal frameworks of the EU, WTO, and China are used as sources for analysing the timing and location of change and the diffusion of GI law in China. In the jurisdictions studied, the governing laws offer crucial evidence for shaping the changes in the scope of GI protection.

The TRIPS negotiations gave rise to a series of draft texts consisting of various versions of a definition of a GI. During the TRIPS negotiations, the EU had not yet adopted its legal framework for protecting GIs, namely Regulation 2081/92,[179] which entered into force only in July 1992. Undoubtedly, both Regulation 2081/92 and the TRIPS definition of GIs were shaped by the submissions of the European Community Delegation team to TRIPS.

Watson's legal transplant theory states, "the moving of a rule or a system of law from one country to another, or from one people to another".[180] Since legal transplants

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eds., 2nd ed. 2019); Mathias Siems, *Shareholder Protection Around the World ('Leximetric II')*, 33 DEL. J. CORP. L. 111, 139 (2008).

176 TRIPS Agreement, *supra* note 4.

177 Antony Taubman & Jayashree Watal, *Revisiting the TRIPS Negotiations: Genesis and Structure of This Book*, *in* THE MAKING OF THE TRIPS AGREEMENT 3, 1-3 (Jayashree Watal & Antony Taubman eds., 2015).

178 Arend & Strauch, *supra* note 29; Baechtold, T. Miyamoto & T. Henninger, *supra* note 29; Annette Kur & Thomas Dreier, *supra* note 29.

179 Council Regulation (EEC) No. 2081/92, *supra* note 9.

180 Watson, *supra* note 11, at 21; Ewald, *supra* note 144, at 490 (While Watson did not venture to put forward a wider theory of legal transplants, Ewald and many scholars after him, have indeed regarded legal transplants as a full-fledged theory, stating: "This theory (…) is of great

were extensively spread throughout history, "borrowing (with adaptation) has been the usual way of legal development."[181] For Watson, transplanting represents the most fruitful source for development.[182] Much would be revealed about China's legal development by an investigation of the diffusion of European rules on GIs, how these rules were received in China, and to what extent they have been adopted, adapted, resisted, or rejected. The occurrence of the borrowing of legal rules or institutions would inherently point in the direction of patterns and change. As a result, legal systems, which are linked to each other through a string of borrowings, could, in their similarities or distinctions, denote a drive for growth.[183] In other words, if a European law on GI rules can be transplanted to China, then legal reforms in the area of GI protection can be achieved with the help of legal transplants.

Thus, the legal transplantation of the EU norms to China is best illustrated by investigating the texts containing the definition of a GI in the EU, in the WTO, and in China, respectively, and analysing the existence of any parallels, or the lack thereof. Table 2 below summarises these texts which provide a definition of GIs. The table is the result of tracing the legislative proposals/texts with a definition of a GI and comparing them with the same or identical words or phrases highlighted in italics. Table 2 indicates a parallel of key words from EU's initial proposal in 1988, the first EU GI law, WTO's GI definition and China's own GI definition.

Table 2: Definitions of agricultural goods[184] as GIs

Proposed Definitions for GI of AGRICULTURAL GOODS	
EC Delegation to TRIPS, 7 July 1988 draft Guidelines proposal for GI definition, Part III, Section 3 (f)(i)	as a product *originating from a country, region, or locality where a given quality, reputation, or other characteristic* of the product is *attributable to its geographical origin, including natural and human factors*.
EC Delegation to TRIPS, 29 March 1990 proposal, Part C, Art. 19	a product *as originating from a country, region,* or *locality where a given quality, reputation, or other characteristic* of the product is *attributable to its*

importance, not only for legal history, but also for comparative law (…) and for legal philosophy".).

[181] Watson, *supra* note 11, at 7, 95.

[182] *Id.* at 95.

[183] *Id.* at 107.

[184] The category of 'agricultural goods' was selected for two reasons. First, the EU-China GI 2021 GI agreement covers only agricultural foods. Second, the first EU GI law, Regulation 2081/92 tackled the same scope.

	geographical origin, including natural and human factors.
Anell draft proposal, 23 July 1990, Section 3, Art. 1.2	a product as *originating from the territory* of a party, *a region or locality* in that territory *where a given quality, reputation, or other characteristic* of the product *is attributable* [exclusively or essentially] *to its geographical origin, including natural* [and] [or] *human factors*.
Brussels Draft, 3 December 1990 proposal, Section 3, Art. 24	Same as in the Anell draft except 'product' is replaced by 'good' and 'natural and/or human factors' is no longer part of the text
Dunkel Draft, 20 December 1991 proposal, Section 3, Art. 22 (1)	Same as in the Anell draft except 'product' is replaced by 'good' and 'natural and/or human factors' is no longer part of the text
EC Regulation No. 2081/92, 14 July 1992, Art.2(2)(b)	the name of *a region*, a specific place, or, in exceptional cases, a *country*, used to describe an agricultural product or a foodstuff: - *originating in that region*, specific place or *country*, and - which possesses a specific *quality, reputation, or other characteristics attributable to that geographical origin,* and the production and/or processing and/or preparation of which take place in the defined geographical area.
TRIPS text: definition of GI, Section 3, Article 22(1)	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*.
China text: definition of GI, Art. 16(2), 2001 Amendment of the Trademark Law of China	the signs that signify *the place of origin* of the goods in respect of which the signs are used, their *specific quality*, *reputation* or other features as mainly decided by the *natural* or cultural *factors of the regions*.

In November 1987, the Community stressed that "the problems created by inadequate or sometimes excessive substantive standards are very serious and require urgent multilateral solutions" and that "a transposition within the GATT legal system of the rules that enjoy wide international recognition would strengthen the

effective protection of the trade interests stemming from intellectual property rights".[185]

The first draft proposal on GIs submitted by the EU was presented for discussion to the negotiating teams only in July 1988,[186] because, between 1986 and 1989, developing countries were largely averse to including rules on the protection of IPRs in the GATT.[187] The draft defined a GI as "a product as originating from a country, region or locality where a given quality, reputation, or other characteristic of the product is attributable to its geographical origin, including natural and human factors".[188]

Switzerland followed up with its own proposal in July 1989, which envisaged rules on GIs extending to services too. The Swiss proposal defined a GI as "any designation, expression, or sign which aims at indicating that a product is originating from a country, a region, or a locality. The norms on geographical indications also relate to services", and contained no mention of a quality or reputation linked to the territory in which the GI product originates.[189] Switzerland's objective was to ensure a wider scope of GI protection, *inter alia*, the protection of specialty products, and thus "the protection of GIs eventually emerged as an important prerequisite for liberalising trade in agriculture".[190]

The US proposal on GIs, submitted on May 11, 1990, included the following: "Contracting parties shall protect geographic indications that certify regional origin

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[185] TRIPS Negotiating Group, *Guidelines Proposed by the European Community for the Negotiations on Trade-Related Aspects of Substantive Standards of Intellectual Property Rights*, Nov. 19, 1987, MTN.GNG/NG11/W/16.

[186] TRIPS Negotiating Group, *Guidelines and Objectives Proposed by the European Community for the Negotiations on Trade-Related Aspects of Substantive Standards of Intellectual Property Rights*, July 7, 1988, MTN.GNG/NG11/W/26 [hereinafter MTN.GNG/NG11/W/26].

[187] *See,* for instance, Frederick Abbott, *Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework*, 22 VAND. J. TRANSNAT'L. L. (1989); Jerome Reichman, *From Free Riders to Fair Followers: Global Competition Under the TRIPS Agreement*, 29 N.Y.U INT'L. L. & POL. 11 (1996).

[188] MTN.GNG/NG11/W/26, *supra* note 186.

[189] TRIPS Negotiating Group, *Standards and Principles Concerning the Availability, Scope and Use of Trade-Related Intellectual Property Rights, Communication from Switzerland*, July 11, 1989, MTN.GNG/NG11/W/38.

[190] Thomas Cottier, *Working Together towards TRIPS*, *in* THE MAKING OF THE TRIPS AGREEMENT: PERSONAL INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS 79, 82 (Jayashree Watal & Antony Taubman eds., 2015); Thu-Lang Tran Wasescha, *Negotiating for Switzerland*, *in* THE MAKING OF THE TRIPS AGREEMENT 159, 166 (Jayashree Watal & Antony Taubman eds., 2015).

by providing for their registration as certification or collective marks". [191] This draft clearly reflected the reluctance of the US to broaden the scope of protection for GIs. A joint proposal by the delegations of Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Peru, Tanzania, and Uruguay followed on May 14, 1990, giving a sparse description of a GI as "any designation, expression or sign which aims at indicating that a product originates from a country, region or locality", [192] and which was presented as a footnote to the general aim of the parties to protect GIs.

Australia submitted its proposal for a GI text on June 13, 1990, defining GI as "an indication which designates goods as originating from the territory of a contracting party, or a region or a locality in that territory, where a given quality, reputation or other characteristic of the goods is attributable exclusively or essentially to the geographical environment, including natural and human factors."[193] The proposal, essentially *identical* to the EU's submission from 1988, arose out of Australia's main concern that some "names had truly become generic and thus no significant consumer deception was involved in their use",[194] Under these circumstances, Australia did not want to enter into excessive protection of GIs, although it recognised the "reputation in relation to certain goods".[195]

In Chairman Anell's report from July 23, 1990, the definition of a GI featured a sequence of brackets as "indications which designate a product as originating from the territory of a party, a region or locality in that territory where a given quality, reputation or other characteristic of the products is attributable [exclusively or essentially] to its geographical origin, including natural [and] [or] human factors".[196] This meant that the EU's proposal for a GI text, while still debated amongst negotiating teams, was largely the basis for the July 1990 version.

As a result, the version of the GI definition by December 1990, during the Brussels Ministerial Conference, also known as the Brussels draft, designated a GI as "a good

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[191] TRIPS Negotiating Group, *Draft Agreement on the Trade-Related Aspects of Intellectual Property Rights, Communication from the United States*, May 11, 1990, MTN.GNG/NG11/W/70.

[192] TRIPS Negotiating Group, *Communication from Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Peru, Tanzania and Uruguay*, May 14,1990, MTN.GNG/NG11/W/71.

[193] TRIPS Negotiating Group, *Communication from Australia*, June 13, 1990, MTN.GNG/NG11/W/75.

[194] TRIPS Negotiating Group, *Meeting of the Negotiating Group, Note by Secretariat*, Aug. 22, 1990, MTN.GNG/NG11/22.

[195] *Id.*

[196] TRIPS Negotiating Group, *Status of Work in the Negotiating Group Chairman's Report to the GNG,* July 23, 1990, MTN.GNG/NG11/W/76.

as originating in the territory of a party, or a region or locality in that territory, where a given quality or other characteristic on which its reputation is based is essentially attributable to its geographical origin"[197] bearing many similarities with the EU's 1988 proposal. The Brussels draft used the term 'good' rather than 'product', signalling the larger objective of potentially introducing services under the scope of IPR protection.

The Brussels draft was renegotiated, but it contained negligible modifications, and by December 1991, the Dunkel draft proposal for GI text largely mirrored its predecessor, defining a GI as "a good as originating in the territory of a Party, 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".[198]
In parallel to the discussions about GIs in the WTO, the EU's own rules for protecting GIs came about when the Council of the Community adopted Regulation 2081/92 on July 14, 1992.[199] Under the Regulation, Art. 2(2)(b) defined GIs as:

> [T]he name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: - originating in that region, specific place or country, and - which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.

This definition had naturally many aspects in common with the proposal by the EU's delegation to TRIPS from July 1988; *inter alia*, both definitions attached the notion of a region, specific place, or country as an important element to the qualification of an agricultural product as a GI. Moreover, both definitions emphasised the reputational link of the product as well as its quality or other characteristics, which arise from the specific geographical area in which the product originated, and thus characterised the product as a GI.

The negotiating parties of TRIPS reached a consensus by 1993 and signed the agreement in 1994, thus agreeing on the following definition for a GI: "a good as originating in the territory of a Member, or a region or locality in that territory, where

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[197] Trade Negotiation Group, *Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Revision, Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods*, Dec. 20, 1991, MTN.TNC/W/35/Rev. 1.
[198] Trade Negotiation Committee, *Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, Dec. 20,1991, MTN.TNC/W/FA, 1991.
[199] The exceptions are wines and spirits.

a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".[200] This definition very closely resembles the text submitted by the EC delegation in 1988 as well as the EU's own Regulation on the protection of GIs.[201] The existence of a substantial correlation between these texts therefore implies that the EU successfully transplanted its own legal rules on GIs to the WTO and to the contracting countries by virtue of their membership.
Following its accession to the WTO in 2001,[202] China was required to comply with a number of obligations regarding its IP system[203] and, *inter alia,* rules on the protection of GIs. Due to the insufficient level of protection of IPRs, China's accession to the WTO was blocked several times.[204] The EU, however, endorsed China's entry into the WTO as a fundamental element for China's integration into the global economy.[205]

As a result, in order to conform to the TRIPS requirements between August 2000 and October 2001, China amended its IP laws, *inter alia* its Trademark Law.[206] The latter defined a GI as "signs that signify the place of origin of the goods in respect of which the signs are used, their specific quality, reputation or other features as mainly decided by the natural or cultural factors of the regions".[207] This terminology for GIs resembles that of the TRIPS text, but even more so reminds of the EC's proposal from July 1988, emphasising the 'natural factors' of the territory where the GI originated, a theme that can be traced back to the EU's original submission.

Since China lacked an adequate system on IP protection and, *inter alia*, on GI protection, it needed to transplant international rules,[208] among them the EU ones, to reform its IP system. As a consequence, this article argues that European rules on

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[200] TRIPS agreement, *supra* note 4, art. 22 (1), Sect. 3.
[201] The latter with the exception of the "essentiality" contained under TRIPS but not under Art.2(2)(b) of Regulation 2081/92.
[202] Ministerial Conference, Accession of The People's Republic of China: Decision of 10 November 2001, WTO Doc. WT/L/432 (Nov. 10, 2001).
[203] *Id.*, Part I, art. 2(A)(2) for general measures affecting trade-related aspects of IPRs and Part VI (a)(b) for specific IP amendments.
[204] Zhang & Bruun, *supra* note 7, at 10.
[205] Commission of the European Communities, Proposal for a Council Decision establishing the Community position within the Ministerial Conference set up by the Agreement establishing the World Trade Organization on the accession of the People's Republic of China to the World Trade Organization, 2001 O.J. (51 E/314).
[206] Trademark Law of China, *supra* note 129.
[207] *Id.*, at Art. 16(2), *supra* note 129.
[208] Mingde Li, *Intellectual Property Law Revision in China: Transplantation and Transformation*, *in* GOVERNANCE OF INTELLECTUAL PROPERTY RIGHTS IN CHINA AND EUROPE 65, 65 (Nari Lee & Niklas Bruun eds., 2016).

the protection of GIs reached China through the TRIPS text and shaped Chinese laws. China did not only agree to and accept global GI norms but also adopted, even indirectly, the European norms on GI protection. In particular, China chose to adopt a definition of GI goods that is almost identical to the EU's TRIPS proposal from July 1988, which underlines the EU's *sui generis* GI law and places an emphasis on the quality, reputational link of the product, or any other characteristic that is connected to the specific geographical provenance. No other TRIPS delegation gave as high a priority to these three features as the European delegation did.

The importance of the notion of *terroir* and the natural and human aspects that characterise the place of production of a good, as well as different factors such as the product's history and the specific, almost 'physical', bond between the reputation of a product and a specific place,[209] are all instrumental elements of how the EU regards GI products.

By implementing the TRIPS obligations into its domestic legal system, China adopted EU legal norms. The EU managed to effectively transplant its own legal rules on GIs to the WTO and to the contracting countries through their membership. Due to China's ambition to join the WTO, the country directed its efforts towards conforming with international IP and GI standards. China's rules, not only on GIs but also on IP, were substantially revised and enhanced in order to strengthen the protection of IPRs in the Chinese domestic system. Considering that China lacked an adequate level of GI protection, legal transposition was the logical answer in establishing a GI regime. The incorporation of rules on GIs into China's legislation reflects the EU's legal tradition and endeavours to improve the global scope of protection of GIs and IPRs. Henceforth, it can be concluded that a legal transplantation of EU legal norms into China took place.

Article 16(2) of China's Trademark Law is closely modelled on EU's 1988 GI definition. Many aspects of EU's 1988 GI proposal and of Regulation 2081/92 were embedded in TRIPS, and thus they represented an obligation for China. Thus, it is argued that current GI laws in China are anchored in EU law.

While the WTO served as a medium for coordinating legal change on a global scale, the dominance of the EU's legal tradition and thinking abroad is undeniable. Even though the transplanted law may not be entirely identical to the law of the "origin" country, and granted that the law has evolved since then, the article has demonstrated that the academic concept of EU legal transplant is applicable to China.

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[209] Zappalaglio, *supra* note 16, at 79.

VI. RECEPTION OF EU LEGAL NORMS BY CHINA

The previous part demonstrated that by adopting the TRIPS rules on GIs, China has transplanted European rules into its domestic system. Specifically, Chinese law adopted a very similar definition of a GI to the European proposal of 1988. The Article proceeds by examining how EU norms were consequently received by China. Part VI discusses the instances when EU and Chinese approaches towards GI regulation converged by applying a conceptual framework for importing norms;[210] and assessing the reception of the EU's norms by China along the four main conceptual lines: adoption,[211] adaptation,[212] resistance,[213] and rejection.[214] According to Watson, "a voluntary reception or transplant almost always – always in the case of major transplants – involves a change in the law".[215] Thus, the article attempts to further shed light on what the consequences of the legal transplantation of the EU's norms in China are.

Legal transplantation through the GI legislation was the starting point in the process of establishing IP norms, particularly norms on the protection of GIs in China. "Receptions and transplants come in all shapes and sizes"[216] and this could entail everything, from adopting specific rules to virtually adopting a whole system. Moreover, the transplantation of a GI law does not necessarily lead to the enactment of the same or identical GI norm in the recipient country, as in the EU. In practice, there could be a deviation in the way a law is to operate in the host country and the actual functioning of the norm.

Part VI takes on collective marks, consisting of a GI, as a case study and investigates how the EU GI norms, after having reached China, operate in practice in China. It, furthermore, discusses the instances when Chinese legal procedures converge, or

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[210] ANNIKA BJÖRKDAHL ET AL., IMPORTING EU NORMS (Springer, 2015) [hereinafter Björkdahl].
[211] *Id.* at 4-5 (Where adoption is defined as the "conscious and unambiguous translation of exported European norms into local policies, institutions and practices".).
[212] *Id.* (Where adaption involves the adjustment of exported EU norms in order to "meet local demands" while still keeping the "original normative content of the export" well defined.).
[213] *Id.* (Resistance is shaped by the dominance of local practices, and despite engagement with EU norms, the host country either retains "previous practice or they might choose an alternative to both European norms and the status quo".).
[214] *Id.* (Rejection is defined where "local norms, institutions, policies and practices diverge unambiguously and conscientiously from European norms".).
[215] Watson, *supra* note 11, at 97.
[216] *Id.* at 30.

diverge, from European ones by incorporating and examining in the analysis European and Chinese case-law on GIs.

A. CASE-LAW: FROM OUTRIGHT ADOPTION TO MODERATE ADAPTATION OF COLLECTIVE MARKS CONSISTING OF A DESIGNATION OF GEOGRAPHICAL ORIGIN AND A CONVERGENCE OF APPROACHES

Collective marks, consisting of a GI, function similarly to an ordinary GI: they indicate the quality, geographical origin, or another product-specific characteristic, but instead of a single proprietor, they are determined and owned by an organisation. In both, the EU[217] and China,[218] a group, an association, or other organisation can apply to register a collective mark, which incorporates a GI.[219] EU Law sets a clear objective for EU MS to avoid situations where GIs: "give rise to confusion" among consumers;[220] result in any direct or indirect commercial use of a registered name; its misuse or imitation; or situations where "any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product" aim to deceive a consumer.[221] Comparably, China's Trademark Law prohibits the use of marks that constitute "a reproduction, an imitation, or a translation" of existing and identical GI goods, which are "likely to create confusion" among the public.[222]

In the EU, the Court of Justice has provided a criterion regarding the objective of preventing the consumer from being misled as to the true origin of a product. In the *Morbier* case, the Court had to consider whether the reproduction of the physical characteristics of a product that enjoyed a protected designation of origin is a

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[217] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, art. 74, June 14, 2017 O.J. (L 154) 1-99.
[218] China's Trademark Law, *supra* note 129, Art.3.
[219] On Community collective marks, *see also* Mantrov, *supra* note 12, at 71, 248, 252.
[220] Regulation (EU) No. 1151/2012, of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, art. 24(2), Nov. 21, 2012 O.J. (L 343) 1-29.
[221] Council Regulation (EC) No. 510/2006 of 20 March 2006, on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, art. 13, Mar. 20, 2006 O.J. (L 93) 12-25. *See also* Recital 4 of Regulation No. 510/2006, which was repealed by Regulation No. 1151/2012, which states: "In view of the wide variety of products marketed and the abundance of product information provided, the consumer should, in order to be able to make the best choices, be given clear and succinct information regarding the product origin." *See also* Recital 29 of Regulation No. 1151/2012, which states: "Protection should be granted to names included in the register with the aim of ensuring that they are used fairly and in order to prevent practices liable to mislead consumers."
[222] China's Trademark Law, *supra* note 129, Art. 13.

practice that might mislead the consumer as to the true origin of the product.[223] Subsequently, the Court held that EU law prohibits the reproduction of the shape or appearance of a good, indicating a geographical origin and covered by a registered name, under specific conditions.[224] The Court established the element-of-the-appearance criterion, whereby the assessment takes into account whether there is an element, especially distinctive of the product, whose "reproduction may lead the consumer to believe that the product containing that reproduction is a product covered by that registered name".[225]

The same legal principle of likelihood of confusion was tried before the Beijing Intellectual Property Court in a case of unauthorised use of a registered GI collective trademark, namely *Margaux*[226], a type of Bordeaux wine. The Court struck down the copycat mark because it was likely to mislead the public that the wine comes from *Margaux* and thus would have an unhealthy influence.[227] In invalidating the counterfeit mark, the Beijing Court invoked articles 10.2 and 10.1.8 of China's Trademark Law (2001), but, in contrast to the EU Court, was reluctant to specify criteria to prevent further misleading commercial practices.

Another parallel can be drawn between EU and Chinese law on the necessity to protect GIs even if they have not been registered as such. In *Assica and Kraft Foods Italia SpA v. Associazione fra produttori per la tutela del 'Salame Felino'*[228] the Court of Justice of the EU (CJEU) determined that Regulation 2081/92 on the protection of GIs for agricultural products "must be interpreted as meaning that it does not afford protection to a geographical designation which has not obtained a Community registration".[229] Nonetheless, the Court established that even if GIs have 'not' been

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[223] Case C-490/19, Syndicat interprofessionnel de défense du fromage Morbier v. Société Fromagère du Livradois *SAS,* 2020, ECLI:EU:C:2020:1043.

[224] *Id.* at ¶41.

[225] *Id.* at ¶40. For a discussion on misleading conduct and confusion practices as to the origin and identity of products in the context of GIs, *see also* Vito Rubino, *From "Cambozola" to "Toscoro": The Difficult Distinction between "Evocation" of a Protected Geographical Indication, "Product Affinity" and Misleading Commercial Practices*, 12 EUR. FOOD & FEED L. REV. 326 (2017).

[226] Guójiā yuán chǎndì zhìliàng yánjiū suǒ xiāngduì Yāntái méi duō kè jiǔ zhuāng pútáojiǔ yǒuxiàn gōngsī (**國家原**產地質量研究所相對烟台梅多克庄园葡萄酒有限公司) [Institut national de l'origine et de la qualité (INAO) v. Yantai Médoc Châteaux Wine Ltd], (Beijing IP Ct., June 23, 2016) (PRC).

[227] *Id.*; *see also* China's Trademark Law, *supra* note 129, art. 10.1.8.

[228] Case C-35/13, Assica — Associazione Industriali delle Carni e dei Salumi and Kraft Foods Italia SpA v. Associazioni fra produttori per la tutela del 'Salame Felino' and Others, 2014, ECLI:EU:C:2014:306.

[229] *Id.* at ¶39.

registered, it is up to the national courts of the EU to protect the GIs in question, including in cases where "there is no specific link between their characteristics and their geographical origin".[230]

In a similar vein, in *INAO (Romanée Conti) v. Wu Liping*[231], the Beijing IP Court confirmed that a registration of a collective mark containing a GI is not a pre-condition for the protection of a GI. The case arose after Wu Liping filed a request for the registration of a trademark containing a GI (罗曼尼康帝), translated as "*Romanée Conti*", which indicates products such as wine and aperitif. China's National Intellectual Property Administration approved the registration, and subsequently, the French National Institute of Origin and Quality (INAO) sent a request for annulment of the mark, registered by Liping. Finally, the Beijing IP Court ruled in favour of INAO, affirming that *Romanée Conti* was well known by the public and that although it was not registered as a collective mark, it enjoyed protection as a GI.[232] The *Romanée Conti* ruling was also confirmed in the case *CIVC v. Seven Star Champaign*[233] in which the Court held that a mark that contains a geographical name cannot be registered if the goods do not stem from the place in question.[234]

As demonstrated by the *Assica*, *Romanée Conti*, and *Seven Star Champaign* cases, there is a certain resemblance in approaches between the EU and Chinese courts in dealing with collective marks containing a GI. China has unquestionably adopted EU law norms on the protection of unregistered collective marks, consisting of a GI. The *Morbier* and *Margaux* cases show an adaptation of law norms by China, where the "original normative component of the norm"[235] is maintained, and in order to meet local demands, Chinese judicial authorities have adjusted the GI norms under

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[230] *Id.* at ¶30-35.

[231] Guānyú dì 21306756 hào "luómàn ní kāngdì" shāngbiāo wúxiào xuāngào qǐngqiú cáidìng shū (**关于第**21306756**号**"罗曼尼康帝"**商**标无效宣告请求裁定书) [Decision on Invalidation against No. 21306756 "**罗曼尼康帝**" (Romanee-Conti in Chinese) Trademark], https://www.iphouse.cn/ (CNIPA, July 18, 2019) (PRC).

[232] Guójiā yuán chǎndì hé zhìliàng yánjiū suǒ xiāngduì Wúlìpíng (**國家原**產地和質量研究所相對吴丽萍) [Institut national de l'origine et de la qualité (INAO) v. Wu Liping], (Beijing IP Court, July 18, 2019) (PRC).

[233] Xiāngbīnjiǔ kuà zhuānyè wěiyuánhuì xiāngduì Běijīng shèng yányìměi shāngmào yǒuxiàn gōngsī (**法国香**槟酒行业协会诉北京圣焱意美商贸有限公司不正当竞争案)[Comité Interprofessionnel du vin de Champagne v Beijing Sheng Yan Yi Mei Trade], https://www.iphouse.cn/ (Beijing First Intermediate People's Ct., Feb. 10, 2015) (PRC).

[234] *Id.*

[235] Björkdahl, *supra* note 179, at 4-5.

China's Trademark Law requirements. Other lawsuits indicate a further convergence of approaches.

The CJEU has, for example, provided specific criteria for assessing disputes between similar collective marks, consisting of GIs. In *Halloumi,* the Court affirmed that when registering collective marks, incorporating a GI, the association seeking the registration as a collective Community trademark of a sign, designating a geographical origin, must prove that the marks must be distinctive, either per se or acquired through use.[236] The Court established that the association needs to make sure that "the sign contains elements that will enable the consumer to distinguish the goods and services of its members from those of other undertakings."[237] The CJEU furthermore provided that the assessment needs to take into account "whether the low degree of similarity of the conflicting marks could be offset by the clearly higher degree of similarity of the goods covered by the conflicting marks."[238] Therefore, the CJEU has provided specific criteria for assessing resembling collective marks consisting of GIs.

In a similar fashion, China's National Intellectual Property Administration (CNIPA) confirmed in *BNIC v. Zhou Liangbo and Guangzhou Liu Fa Wine Co. Ltd.* [239] that generic products cannot be registered under a name designating a GI. The French National Interprofessional Cognac Bureau (BNIC) had registered two collective marks, COGNAC and 干邑, 'Cognac' in Chinese, but found its marks were disputed by Zhou Liangbo and Guangzhou Liu Fa Wine Company. The latter claimed that BNIC's marks had developed into generic names and were thus not entitled to registration. CNIPA dismissed the claims by stating that two disputed Cognac marks were not only very distinctive brand names, rather than common ones, but also had a high reputation in China, which reinforced their "distinctiveness", and therefore constituted collective marks, designating a geographical origin.[240]

The reasoning for distinctiveness in *BNIC v. Zhou Liangbo and Guangzhou Liu Fa Wine Co. Ltd.* has an arguably strong European flavour, and it could be argued that a clear

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[236] Case C-766/18 P, Found. for the Prot. the Traditional Cheese Cyprus named Halloumi v. Eur. Intell. prop. Off., 2020, ECLI:EU:C:2020:170.
[237] *Id.* at ¶64.
[238] *Id.* at ¶69.
[239] Dì 22195379 hào "COGNAC" shāngbiāo yìyì (第22195379号"COGNAC"商标异议) [Opposition against the trademark "COGNAC" No. 22195379] (CNIPA, Mar. 26, 2020) (PRC); Dì 22195380 hào "gàn yì" shāngbiāo yìyì (第22195380号"干邑"商标异议) [Opposition against the trademark "干邑" No. 22195380] (CNIPA, Mar. 26, 2020) (PRC).
[240] *Id.*

correlation between EU and Chinese legal approaches towards criteria for distinctiveness of GI marks exists. As adaptation unfolds in a variety of ways, so does legal change. China had hence successfully adapted European practices of assessing similar marks into its national legislation.

B. FINDINGS

Table 3: Reception of European norms on GI protection by China

Norm	EU	China's response
Principle of likelihood of confusion	Specific criteria for assessment established by ECJ.	China has adapted this legal norm, and thus this reception can be considered an adaptive response to EU norms.
Unregistered collective marks, consisting of GIs	Protection granted by national courts in EU MS.	Protection is awarded in China irrespective of registration status; thus, China has adopted this EU law norm.
Disputes between similar collective marks, consisting of GIs	Specific criteria for assessment of resembling collective marks, consisting of GIs, established by ECJ.	China's response can be considered an adaptation of European practices for assessing similar collective marks.

The existence of convergence between the EU and Chinese approaches signifies the adaptation of China to EU norms. Specifically, authorities in China, similar to their European counterparts, have relied on the overall reputation and distinctiveness of a GI product as main characteristics in lawsuits but have passed up the opportunity to go into detail on the rules and principles guiding the assessment. Furthermore, as shown above, the distinctiveness/similarity assessment serves as a precedent for the reception and adaptation of the EU legal norms by China. Additionally, just like under EU law, Chinese law has recognised the importance of protecting even unregistered GIs.

These examples illustrate that China's reaction to the EU's transfer of norms stretches from outright '*adoption*' of rules on unregistered collective marks to moderate '*adaptation*' of rules regarding disputes between similar collective marks as well as moderate '*adaptation*' of the legal principle of likelihood of confusion. The area of collective marks, consisting of GIs, revealed that China's approach

oftentimes coincides with the EU's. Similar to the long-standing influence of Roman law on Scotland,[241] Part VI showed that certain European norms on GI legislation have been successfully borrowed and adapted by China.

VII. CONCLUSION, RECOMMENDATIONS AND FUTURE PROSPECTS

This article showed that EU legal transplantation of rules on the protection of GIs into China was a success. The EU-China GI Agreement was the starting point of the paper, and a variety of national and international approaches for the protection of GIs were discussed. Recognised as IP, GIs represent an increasingly central element of trade negotiations between the EU and other countries. The 2021 GI agreement is located at the centre of a growing trade in agricultural products between the EU and China, which in turn necessitates the effective protection of GI products.

The Paris, Madrid, Stresa, and Lisbon Conventions, though in different degrees, attempted to establish and secure rules governing the protection of GIs. While these treaties initially played a role in the protection of GIs, their limited scope did not ensure the effective international protection of GIs. With the advent of TRIPS, the protection of GIs became a global concern.

The paper considered European and Chinese approaches to establishing GI legislation. Specifically, it elaborated in more detail on the first GI legislative framework, Regulation 2081/92, and the definition contained therein. The deficiencies of the Chinese system with regards to the protection of GIs were further enumerated.

The thematic focus of the paper was placed on the legal transplantation of European rules on GIs into China and the reception thereof. While it took until 1992 for the EU to establish a Union-wide legal system on the protection of GIs, the EU's rules on GIs are not only consistent with TRIPS but have to a great extent also inspired the drafting of the TRIPS texts and the negotiations of a definition for a GI. The study demonstrated that, by virtue of China's accession to the WTO and via the TRIPS text, EU norms on the protection of GIs were legally transposed into China and became part of China's legal architecture.

An adoption of EU norms by China was observed in the way it deals with non-registered collective marks, consisting of GIs, where China fully embraced the EU's approach in such lawsuits. A clear convergence between the European and Chinese

[241] Watson, *supra* note 11, at 55.

approaches was demonstrated in resolving issues relating to unregistered GIs, which nonetheless, according to EU and Chinese courts, merit protection. China adapted some EU norms, such as the principle of likelihood of confusion, and it designed its response to disputes between similar collective marks after the EU legal model. While Chinese authorities kept the original normative content of EU rules on preventing the consumer from being misled as to the true provenance of a product, China has adapted the EU norm to its local context without defining specific assessment criteria, as the EU did. Thus, the article has shown that China has largely mirrored the EU's legal model in dealing with collective marks, consisting of a GI. The EU has not only legally transplanted its rules on the protection of GIs into China, but it has also concluded a trade agreement on GIs with the country. The Union has therefore diffused its rules on GI protection to China, levelling up the latter's domestic standard of GI protection while maintaining its commercial interest at play. Thus, the EU has succeeded in exporting its legal model of GI protection to its trading partner, China.

Trade is, and will always remain, at the heart of the EU-China bilateral relations. The EU-China diplomatic and trade have relations changed profoundly throughout the past five decades. At present, the EU is China's largest trading partner, and China is EU's second biggest trading partner. With China's entry into its 22nd year of WTO membership, it became crystal clear in Europe and around the world, that China will not transition to a market economy or become a political system based on democratic elections and the rule of law, in which human rights and civil liberties are fully protected.[242]

China has thus earned the combined status of a partner, a competitor, and a systemic rival.[243] Even so, trade between the parties is unlikely to slow down, or cease at all. Amidst burgeoning global uncertainty, armed conflicts, deceleration, and widening geopolitical rifts, it has become extremely urgent for the EU and China to find new means to step up their bilateral (economic) cooperation. The GI agreement is a step in the right direction. However, as the agreement stands today, it covers only agricultural products, wines, and spirit drinks under its scope.

This article puts forward several recommendations. First, the parties ought to consider a broader approach for future cooperation on GIs, for instance, including

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[242] *See*, for instance, Staff, *How the West got China wrong*, THE ECONOMIST (Mar. 1, 2018), https://www.economist.com/leaders/2018/03/01/how-the-west-got-china-wrong.

[243] Joint Communication to the European Parliament, the European Council and the Council - EU-China – A strategic outlook. JOIN(2019) 5 final, https://ec.europa.eu/info/sites/default/files/communication-eu-china-a-strategic-outlook.pdf.

the protection of non-agricultural GI products such as handicrafts and industrial goods. Beyond mere trade incentives, the partnership ought to provide specific protection of indications of geographical origin, such as ceramics, glassware, clothing, lace, jewellery, furniture, and knives. An extension of the 2021 EU-China GI agreement to non-agricultural GIs would enable the two parties to guarantee the authenticity of the products, prevent unfair competition, and ensure that small and big producers alike get to keep their unique local traditions, skills, and local production methods that would otherwise disappear.

Second, in light of this, it is equally important that the EU and China do not stifle innovation with over-regulation. Over-emphasising the link between provenance and quality may lead to poor innovation and lower competition, minimising consumer choice as a result. In addition, the relationship between quality and geographical origin could be seen as overstated for non-agricultural goods in particular, as the local character of non-agricultural products is more difficult to substantiate (largely related to human know-how rather than natural factors). Therefore, going forward, the EU and China should aim to establish a balanced regulatory approach to protect non-agricultural GIs.

Third, any extension of the GI agreement should not be at the expense of the enforcement of IPR and GI rights. IPR infringement and counterfeiting pose serious challenges not only to foreign businesses or to the enforcement of domestic rules and regulations on IP/GI protection, but more broadly to science and innovation too. Forced technology transfers are still happening on a large scale in China, resulting in many negative consequences for entities around the world. Bad-faith GI and trademark registrations, forged products, long, and costly enforcement proceedings as well as local protectionism, are among the major impediments to an effective protection of IPR and to a transparent and barrier-free market environment in China. Rules should be established with respect to proportionate compensation in IPR infringement lawsuits, and the measures regarding statutory damages for serious and recurring violations should be strengthened.

Fourth, at present illicit, and counterfeit GI products are detained by customs authorities at the Chinese border. These authorities possess a wide margin of discretion when it comes to disposing of forged goods. Simply ceasing these goods at the border does not offer a future-proof approach to solve the issue of cross-border trade in IPR infringing goods. Within the wider framework of the Customs cooperation agreement with China,[244] the EU should encourage the institution of

[244] Council Eur., Enhancing EU-China Trade Security and Facilitation: Strategic Framework for Customs Cooperation 2018-2020 between the European Union and the Government of

measures to avoid situations where Chinese customs authorities take too long to respond or decide subjectively. Additionally, the cooperation of enforcement authorities on both sides is required. Stopping the distribution of IPR infringing goods necessitates the coordination between customs authorities, police and judiciary.

In short, there are many challenges and opportunities that have arisen in the context of the bilateral relations. Together, China and the EU represent one-third of the world's economy. As decoupling is an unlikely scenario for either side, the EU and China need to work on effective cooperation and ways to enhance the trade relationship in a rules-based and transparent manner. Ultimately, strengthened cooperation would benefit not only the two parties but the whole world as well.

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the People's Republic of China (May 22, 2017), https://data.consilium.europa.eu/doc/document/ST-9548-2017-INIT/en/pdf.