

Subject : advisory Group, 13 March 2014 – Presentation EU-China GI Agreement

1. State of play

The 9th round of negotiations on the EU-China GI Agreement took place on 3 and 4 March in Brussels. Both Parties confirmed their willingness to close in the next few months the negotiations on the text of the future Agreement. With the examination of individual GIs to start in the first half of 2014, this could see the overall conclusion of the negotiations in the course of 2014.

2. Description of the agreed provisions

- Protection of lists of names annexed to the Agreement

The agreement will grant direct protection to the GIs of both Parties. The names protected are listed in the Annexes to the Agreement and protection is ensured as of the entry into force of the Agreement. (See Annex for list of EU GI's). CHN confirmed the direct protection by the agreement regardless of the possible inclusion in any of the three domestic CHN registers. The examination and opposition procedure will be finalised by both Parties and the final list of GIs agreed prior to the entry into force of the Agreement.

With regard to the level of protection the wording rendering the level of protection subject to national legislation was deleted. Effectively the parties have agreed with a wording giving a level of protection that goes beyond TRIPS Article 23 and in practice is comparable or close to the EU level of protection, even though wording not exactly the same.

- Scope

The names to be protected as of the entry into force of the agreement cover agricultural products. Following strong demands from the Chinese side, a *rendez-vous* clause was inserted in the Agreement which depending on the legislative changes, allows the Parties to consider extending the scope of the Agreement to non-agricultural GIs (e.g. silks, handicrafts...)

- Level of protection

The provisions of the Agreement go beyond Article 23 TRIPS. There is no distinction between the different categories of products. Evocation is covered through a footnote which encompasses the understanding of the Parties of the relevant provisions. Even if the explicit word is not in the text of the Agreement, the text is broad enough to cover any situation where the protected name is not used for the genuine product.

- Right of use

The protected names may only be used on a legitimate product conforming to the specification of that geographical indication. Furthermore, as a further demonstration of 'direct protection', it accepted to waive registration fees reciprocating the absence of fees in the EU.

- Relation with TM

As in our internal legislation, a protected GI blocks a new TM. The situation where a TM already exists and the possibility to protect a later GI is one of the outstanding points of the negotiation (see below).

- Enforcement

The protection provided for in the Agreement will be enforced ex-officio by appropriate action of their authorities. The protection will also be enforced at the request of an interested party.

- Other provisions

The agreement contains also the usual provisions on cooperation, transparency and exchange of information, general rules for trade and it establishes a Joint Committee.

- Names to be protected

The agreement contains for each Party a list of 100 names to be protected at its entry into force (see Annex). A second list of another 160 names is also attached to this Agreement. These names will be protected within four years after the entry into force of the Agreement. For these 160 names, the advantage is that the cut-off date for blocking TM applications is the entry into force of the Agreement. Once these 160 extra names will be protected, the agreement foresees for the possibility to add new GIs to the list of protected names. During the last round it was agreed that the Parties will exchange the lists and summary specifications at the latest end of May 2014.

3. Outstanding issues

The last round confirmed differences as regards some key concepts:

- Coexistence with prior TM

For the moment the draft Agreement does not clearly provide for the principle of coexistence of GIs with prior TM. The discussions showed that China is not in a position to accept the inclusion of an open-ended principle of coexistence in the text. China explained its practice in relation to registration of TM that shows that some degree of coexistence is possible, e.g. where a TM owner accepts a later GI, where a GI name is not exactly the same as the TM and where a GI falls under fair use provisions. EU and China are working on a new text capturing these elements. Concerning the first 100 EU names, the screening process of our GIs is in process, we still need to assess the degree of conflict with prior TM.

- Use of logo

China asks for the right to use the EU logo for their names on our market, as well as on their market. The discussions showed that this is a sensitive political point for China in the negotiations. The decision on this issue will also depend on China's position as regards coexistence with TM and in particular the result of the screening of the EU names and the decision on the EU names which will be protected in China.

- National treatment clause

An important point for China in these negotiations is the EU commitment to provide the same treatment (and protection) to Chinese GIs protected under this Agreement as to the EU own GIs. This is different from our previous position in the bilateral agreements on protection of GI. After the last round it was agreed to revisit the issue once there is clarity on the use of logo and coexistence with TM.

4. Next steps/Calendar

- a last discussion is needed in order to agree on the provisions of the Agreement;

- the final lists with the specifications for the names in the Annex to be sent by the Parties;
- both Parties to finalise the screening process;
- publication for opposition and examination of possible oppositions.

Annex: list of EU GIs