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**The EU-China Agreement
on Geographical Indications:
main features and implications**

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TABLE OF CONTENTS

Introduction	1
语言	4
Chapter 1. Protection of Industrial Property Rights: regulatory and technical aspects about the system of the protection of Geographical Indications	6
1.1 The growing importance of geographical indications and indications of source	6
1.1.1 What is meant by geographical indications?.....	6
1.1.2 Why is it important to protect them?.....	9
1.2 The relationship between Trademarks and GIs	10
1.3 AO and GIs	12
1.4 The legal protection of GIs: from the first multilateral agreement on quality signs to the present day	13
1.4.1 The first treaty: the Paris Convention	15
1.4.2 The Madrid Agreement	16
1.4.3 A turning point: the Lisbon Agreement	17
1.4.4 The TRIPS Agreement.....	18
1.4.5 The Geneva Act of the Lisbon Agreement.....	21
1.5 Modalities of protection at national and international level	22
1.6 The current <i>sui generis</i> regulation of GIs and DO in the European Union	26
1.6.1 Protection of GIs and DO for agricultural products and foodstuff	27
1.6.2 Protection of GIs and DO for wines.....	29
1.6.3 Protection of GIs for spirits and aromatized wines	30
1.6.4 Registration procedures.....	31
1.6.5 Level of protection and controls.....	33
1.7 Protection of GIs under Trademark Regulation.....	35
Chapter 2. The protection of GIs under the EU-China Agreement	38
2.1 The Chinese current legislation on PGIs and PDOs	38
2.1.1 The trademark protection system	39
2.1.2 The Sui Generis Regime	43
2.1.2.1 The AQSIQ system.....	43
2.1.2.2 The MOA system	45
2.1.3 Additional laws to protect GIs in China.....	48
2.1.4 The protection of foreign GIs in China	49
2.2 Comparison of the EU and Chinese <i>sui generis</i> systems.....	52

2.3 EU-China relations and their strategic cooperation	54
2.3.1 The basis for cooperation on GIs	55
2.3.2 The motivations behind the Agreement	59
2.4 The Agreement on Cooperation on, and Protection of, Geographical Indications	64
2.4.1 Challenges to overcome	66
2.4.2 The contents of the Agreement	67
2.4.3 Products covered	71
2.4.4 Benefits and implications of the Agreement	72
Chapter 3. Assessing the impact of the EU-China Agreement in Italy: the case of	
<i>Mozzarella di Bufala Campana PDO</i>	76
3.1 A leading role.....	76
3.2 The national discipline.....	79
3.2.1 The Italian regime	80
3.2.2 The DCO system and the “Made in Italy”	82
3.2.3 Control bodies	83
3.2.4 The role of Protection Consortia	85
3.3 Case study: How the EU-China agreement impacts the PDO dairy chain in the specific	
case of <i>Mozzarella di Bufala Campana PDO</i>	90
3.3.1 PDO cheeses.....	90
3.3.2 <i>Mozzarella di Bufala Campana PDO</i>	92
3.3.2.1 The product.....	92
3.3.2.2 The PDO numbers	93
3.3.2.3 The Protection Consortium.....	97
3.3.2.4 The challenges of the PDO: how to stem the counterfeiting phenomenon	100
3.3.2.5 The great potential of the Chinese market.....	105
Conclusions	110
Appendix	113
Bibliography.....	114
Website citations	121
Acknowledgements	126

LIST OF ABBREVIATIONS

AICs: Administrative Authorities for Industry and Commerce

AO: Appellation of Origin

AQSIQ: General Administration of Quality Supervision, Inspection, and Quarantine

BRI: Belt and Road Initiative

CAP: Common Agricultural Policy

CNIPA: China National Intellectual Property Administration

DCGO: Designation of Controlled and Guaranteed Origin

DCO: Denomination of Controlled Origin

DO: Designations of Origin

EC: European Commission

EU: European Union

EUIPO: European Union Intellectual Property Office

FTAs: Free Trade Agreements

GI: Geographical Indication

I.P.C.: Industrial Property Code

IACGI: Italian Association of Consortia for Geographical Indications

ICQRF: Central Inspectorate for Quality and Fraud Repression

IP: Intellectual Property

IPRs: Intellectual Property Rights

MIIPAF: Ministry of Agriculture, Food and Forestry

MOA: Ministry of Agriculture

OQI: Optional Quality Indication

PDO: Protected Denomination of Origin

PGI: Protected Geographical Indication

PPGIP: Provisions on the Protection of Geographical Indication Products

SAIC: State Administration for Industry and Commerce

SAMR: State Administration of Market Regulation

SMEs: Small and Medium Enterprises

TGI: Typical Geographical Indication

TML: Trademark Law

TO: Trademark Office

TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights

TSG: Traditional Specialty Guaranteed

WIPO: World Intellectual Property Organization

WTO: World Trade Organization

Introduction

Quality and attractiveness of food products, greatly influenced by human and environmental factors, has always played a key role in the global production and marketing processes. This has been reflected in the growing diffusion of a food culture increasingly attentive to the quality and authenticity of products, which eventually influences consumer choices. In this context, geographical indications, i.e., typical products linked to the culture and traditions of a particular place which determine their characteristics and quality, have become more and more important on the global market as a guarantee of authenticity and quality. Since geographical indications are considered as distinctive signs belonging to the objects of intellectual property, over the years they have been subject to a process aimed at their valorisation and protection, which has seen the intensification of legislation on geographical indications at Community level and the creation of multilateral and bilateral agreements at international level. In this regard, cooperation between Europe and China on geographical indications, in recent years has led to the signing and implementation of the Agreement on Cooperation and Protection of Geographical Indications. Entering into force in March 2021, the latter initially provides for the protection and mutual recognition of 100 geographical indications, and subsequently for the extension to a further 175 indications for each party within four years of its entry into force. Given the importance of this agreement as the first major bilateral trade agreement between the two powers, the purpose of this paper is to investigate its actual impact on the territory of each party and its main implications and benefits. In this perspective, the present work includes the presentation of a short case study that exemplifies the possible long-term impact of this agreement on the Italian *Mozzarella di Bufala Campana* PDO supply chain and its development prospects within the Chinese market. In order to carry out this analysis, the paper has been divided into three different chapters.

The first chapter aims to provide a complete overview of geographical indications and their regulation at EU and international level. Starting from the concept of geographical indications, their importance and distinction from other intellectual property objects, the analysis is developed by providing a brief overview of the main regulatory interventions made at international level to give legal protection to these distinctive signs. Through the study of the evolution of the concept of geographical indications and their protection starting from the Paris Convention up to the WTO TRIPS agreements and the latest ratification of

the Lisbon Agreement, the paper briefly analyses the various steps that have led to the establishment of those international standards that laid the basis for the development of a more rigorous regime at EU level. In this respect, the chapter then moves on to a more in-depth analysis of the current EU regulatory framework for the protection of geographical indications. Focusing on the specific features of the EU scheme and on the main changes that have taken place over the years in order to further enhance the protection system, the paper highlights all those aspects of the scheme that underline the strong will of the EU to enhance and protect geographical indications through a very advanced *sui generis* system. The chapter ends by presenting and analysing a further possibility for geographical indications to be protected at EU level, represented by the law on trademarks.

The second chapter aims to make an in-depth assessment of the EU-China Agreement on Cooperation and Protection of Geographical Indications and the actual benefits it brings to both parties. The chapter opens with a presentation of the Chinese scheme of protection of geographical indications, highlighting the complexities and problems arising from a triple protection system that until a few years ago was subject to the control of three different administrative bodies and was therefore very unclear and confusing. By exemplifying the changes that have occurred within the system over the years, the importance of the influence of the European scheme is highlighted in the process of strengthening and improving the *sui generis* protection regime currently in force in China. The chapter then moves on to a legal and content comparison of the EU and Chinese schemes, seeking to identify their commonalities and differences. Hence, the analysis then proceeds to introduce the basis of cooperation between the EU and China in order to better understand what are actually the motivations that led to the promotion of cooperation in the field of protection of geographical indications, starting from the great importance of the sophisticated food cultures of the two territories up to the mutual interests derived from it. The chapter then is concluded with an analysis of the content of the Agreement, through which an attempt is made to assess the possible socio-economic impact it will have in the short and long term on the territories of the respective powers. In this regard, this paper investigates the main advantages and benefits that an agreement of this magnitude will bring to European and Chinese producers by constantly stimulating the development of the rural areas from which GI products originate and creating a more sustainable and profitable system.

Finally, the third chapter, through the presentation of a case study, attempts to analyse in a more concrete way the implications of the EU-China agreement, by making reference to the

specific case of the Italian *Mozzarella di Bufala Campana* PDO supply chain and the relevance of the agreement for this particular product in its process of affirmation within the Chinese market. The chapter opens by underlining the great potential of Made in Italy products in a context in which Italy emerges within the Agreement as the most represented country in terms of variety and number of geographical indications. In the first part, the analysis aims to give a context to Italian geographical indications and their protection within the national territory, highlighting the peculiarities of a system whose origins precede the Community one. In this regard, it introduces the fundamental role played by the Protection Consortia at national and international level in their activities to protect, enhance and promote geographical indication products. In the last part of the paper, after a general analysis of the Italian dairy sector, it is introduced the more specific case of the *Mozzarella di Bufala Campana* PDO supply chain. The product, considered worldwide as "white gold", represents a valid example of typical production that has great growth and development margin within a market like China's, characterised by a growing taste for Made in Italy and the pursuit of typical, authentic and genuine products. Thus, the analysis moves on to the presentation of the product and its supply chain through an initial analysis carried out with the help of statistical data and aimed at assessing its positioning within the market. Then it dwells on the role that the *Mozzarella di Bufala Campana* PDO Protection Consortium plays in order to give further impetus to the protection and promotion of this product even outside the national borders, where products of excellence like this are often subject to unfair market practices such as counterfeiting or undue evocation. Finally, the chapter is closed with a series of considerations on the impact that the EU-China Agreement could have on the *Mozzarella di Bufala Campana* PDO supply chain, starting with the consolidation of the product's image in the minds of Chinese consumers, thanks to the progressive elimination of all those unfair market practices that damage its reputation, to the consequent further possibilities of growth and affirmation of the product within the Chinese market thanks to its recognition as a protected geographical indication.

语言

食品的质量和吸引力,在很大程度上受到人类和环境因素的影响,在全球生产和销售过程中一直发挥着关键作用。这反映在越来越注重产品质量和真实性的食品文化的传播上,这不可避免地影响了消费者的选择。在这方面,地理标志,即与特定地方的文化和传统相联系的典型产品,决定了其特定的特征和质量,作为对真实性和质量的保证,在全球市场上变得越来越重要。由于这些标志被视为属于知识产权客体的独特标志,多年来,它们一直是长期监管程序的主题。这一进程旨在加强对其作为重要无形资源的保护,其特点是在欧盟一级加强地理标志立法,并在国际一级建立多边协定。在这方面,近年来,欧洲和中国在地理标志方面的合作导致了2021年3月《地理标志合作与保护协定》的签署和实施。后者最初规定对100个地理标志进行保护和相互承认,随后将该协定从生效后四年起,每一缔约方的地理标志再延长到175个。鉴于该协议作为两个大国之间的第一个主要双边贸易协议的重要性,本文的目的是调查其对各方领土的实际影响及其主要影响和利益。从这个角度来看,目前的文章包括介绍一个简短的案例研究,举例说明该协议可能对意大利 **Mozzarella di Bufala Campana PDO** 供应链产生的长期影响及其在中国市场的发展前景。为了进行这一分析,本文分为三个不同的章节。

第一章旨在全面概述地理标志及其在欧盟和国际层面的监管。本章从地理标志的概念、重要性及其与其他知识产权客体的区别出发,简要概述了自首次尝试对这些独特标志提供法律保护以来国际一级的主要监管干预措施。通过分析地理标志概念和保护从《巴黎公约》到世贸组织 **TRIPS** 协定以及最近批准的《里斯本协定》的演变,本章简要分析了导致制定国际标准的各种步骤,这些标准为在欧盟一级制定更严格的制度奠定了基础。本章继续对欧盟现行的地理标志保护监管框架进行了更深入的分析。着眼于欧盟计划的具体特点和多年来为进一步加强保护制度而发生的主要变化,本章分析强调了该计划的所有方面,强调了欧盟通过非常先进的独特系统加强和保护地理标志的强烈意愿。本章最后介绍并分析了地理标志在欧盟一级受到保护的进一步可能性,即商标法。

第二章旨在对《中欧地理标志合作与保护协定》及其给双方带来的实际利益进行深入评估。本章首先深入介绍了中国的地理标志保护计划,强调了三重保护体系复杂

性及其带来的问题，直到几年前，三重保护体系还受三个不同行政机构的控制，因此非常不明晰。通过举例说明多年来在该体系内发生的变化，在加强和改进中国现行的特殊保护制度的过程中，强调了欧洲制度影响的重要性。然后分析欧盟和中国地理标志制度的法律和-content 比较，以确定它们的共性和差异。它也介绍中国和欧洲之间的合作基础，以便更好地了解促使双方地理标志保护领域合作的实际动机，从这两个地区传统饮食文化的重要性开始，以由此产生的共同利益结束。本章最后分析了该协定的内容，试图评估该协定在短期和长期内对各大国领土可能产生的社会经济影响。在这方面，它调查了不断刺激地理标志产品发源地农村地区的发展，并创建一个更可持续和更有利可图的系统，如此规模的协议将为欧洲和中国的生产者带来的主要优势和好处。

最后，第三章通过案例研究，旨在更具体地分析欧盟-中国协议的影响，通过参考意大利 **Mozzarella di Bufala Campana PDO** 供应链的具体案例以及该特定产品的协议在中国市场确认过程中的相关性。本章首先强调了意大利制造产品的巨大潜力，在此背景下，意大利在这些协定中成为地理标志的种类和数量最具代表性的国家。在第一部分中，分析试图为意大利地理标志及其在国家领土内的保护提供背景，突出其起源先于共同体的制度的特点。在这方面，它介绍了国家和国际一级的保护财团在其保护、加强和促进地理标志产品的活动中发挥的基本作用。

在论文的最后部分，从意大利乳制品行业的一般性分析入手，介绍了 **Mozzarella di Bufala Campana PDO** 供应链的具体案例。该产品在全球被视为“白金”是典型产品的一个有效例子，在中国市场具有巨大的发展空间。事实上，中国市场的特点是对意大利制造的品味不断提高，并追求典型、正宗的产品。本章旨在通过借助统计数据进行的初步分析，展示产品及其供应链。然后详细介绍了 **Mozzarella di Bufala Campana PDO** 的保护财团在进一步推动该产品的保护和推广方面所起的作用，即使在海外，此类优秀产品也经常受到不公平市场行为的影响，如假冒或不当的宣传。本章最后对中欧协议可能对 **Mozzarella di Bufala Campana PDO** 供应链产生的影响进行了一系列考虑。通过逐步消除假冒，可以巩固该产品在中国消费者心目中的形象，并通过承认该产品为受保护的地理标志，确保该产品在中国市场的良好增长前景。

Chapter 1. Protection of Industrial Property Rights: regulatory and technical aspects about the system of the protection of Geographical Indications

1.1 The growing importance of geographical indications and indications of source

Human factors (e.g., processing techniques) and environmental factors (e.g., climatic factors or those linked to the fauna, flora, or soil of certain places) have always had a considerable influence on the quality and attractiveness of food products and thus on their ability to guide consumer demand. Nowadays, the guarantee of product quality and authenticity seems to be what drives consumers the most in their purchasing decisions. The importance attached to these factors has increased over the years in parallel with the spread of a constant and pervasive culture of food and drink that now permeates all strata of the population, as can be seen from the proliferation of numerous cooking-related television programmes or the increasing amount of space devoted to these topics in the press.¹ In this context, products with geographical indications, which guarantee the quality and authenticity of products by identifying certain geographical areas of production that are considered particularly qualified and relevant, have become increasingly important within the market. Thus, their protection and promotion seem to have become indispensable.²

1.1.1 What is meant by geographical indications?

Geographical indications (GIs) are distinctive signs used in association with products with a specific geographical origin, where the latter directly and specifically affects the product and thus determines its quality, together with its reputation or other specific characteristics.³ Historically identified as the first types of trademarks, GIs are intended to highlight the specific qualities and characteristics of a product by indicating its geographical origin.⁴ Rooted in the tradition and culture of their places of origin, GIs ensure the protection of the distinctiveness and quality of products and the traditional knowledge and cultures associated

¹ Giorgio, RUSCONI, *Diritto Alimentare*. Ipsoa., 2017, p.500

² Simone, CEDROLA, “Protection of Trademarks and Geographical Indications”, *Law and Media Working Paper Series*, 2, 2018, p.11

³ Irina, KIREEVA, WANG, Xiaobing, & ZHANG, Yumin, *The Comprehensive Feasibility Study for Possible Negotiations on a Geographical Indications Agreement between China and the EU*. EU-China Project on the Protection of Intellectual Property Rights, 2009, p.7

⁴ Irina, KIREEVA, “How to register geographical indications in the European Community”, *World Patent Information*, 33,1, 2011, p.72

with them.⁵ To a certain extent, they can be considered as a kind of ‘cultural heritage’ that deserves protection to preserve and maintain those traditions, cultures, and knowledge inherent to them and linked to their places of origin. It is exactly the linkage with the area of origin what makes these quality products special and distinguishes them from others on the market.⁶ In fact, thanks to the use of GIs, products are able to gain increasing recognition in the marketplace by consumers who pay greater attention to product quality and safety.⁷

As the definition implies, GIs are identified by consumers as goods originating from a particular place and therefore have certain expectations regarding the quality or characteristics of the marked product.⁸ Products such as *Mozzarella di Bufala Campana* (Italy), *Roquefort* (France), Longjing Tea (*Longjing cha* 龙井茶, China), *Queso Manchego* (Spain), *Chianti* (Italy) , *Bordeaux* (France), Jinhua Ham (*Jinhua huotui* 金华火腿 China), *Parmigiano Reggiano* (Italy), *Solingen Cutlery* (Germany), and many others fall into the above-mentioned category and represent some well-known international excellences.⁹

Traditionally considered to be a distinctive type of Intellectual Property (IP)¹⁰, which should benefit from a high level of protection against imitation or misuse¹¹, GIs started to acquire importance during the last decade of the 20th century, precisely in 1994, after the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)¹² of the World Trade Organization (WTO)¹³ through which the first definition

⁵ “Zhong ou dili biao zhi xie ding zheng shi qian shu” 中欧地理标志协定正式签署 (China-EU Geographical Indications Agreement officially signed), *Nongcun xin jishu*, 10, 2020, p.39

⁶ Priscilla, ALTILI, “I prodotti agroalimentari tradizionali come beni culturali”, *Economia Della Cultura*, 1, 2010, p.35

⁷ KIREEVA, *How to register...*, cit., p.72

⁸ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.13

⁹ GIs taken from the European legal register of names of agricultural products and foodstuffs eAmbrosia and from “Zhongguo nongchanpin dili biao zhi deng jilie biao” 中国农产品地理标志登记列表 (Registered List of Geographical Indications of Agricultural Products in China)

¹⁰ Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

¹¹ Shujie, FENG, “Geographical Indications: Can China Reconcile the Irreconcilable Intellectual Property Issue between EU and US?”, *World Trade Review*, 19(3), 2019, p.425

¹² The TRIPS Agreement, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on intellectual property. It is an annex to the Agreement Establishing the World Trade Organization, which is binding on all states party to the main agreement. It sets forth standards to regulate international intellectual property protection and enforcement and establishes international minimum standards for the protection of geographical indications. To date, 164 states have acceded to the agreement.

For further information see https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

¹³ The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations and its goal is to help producers of good and services, exporters and importers to conduct their business

of GIs in international law was given.¹⁴ The term “geographical indication” was specifically created in order to encompass a plurality of expressions¹⁵ that had been already coined and used in national legislations and international treaties, such as Appellations of Origin (AO) or Designations of Origin (DO), and which were used to designate a product, whether agricultural or artisanal, which due to its place of origin possesses specific qualities and other characteristics.¹⁶ Although semantically the two terms have the same meaning, GIs should not be confused with indications of source (or “made in”) which are signs that merely indicate the country of origin of a product and does not have the purpose of establishing a direct link between a particular quality, reputation or other characteristic of the marked product and its territorial origin.¹⁷ Conversely, the underlying concept of the GIs is the ‘*terroir*’¹⁸, which defines exactly the close link between the quality, the characteristics, the reputation of a product and its place of origin.¹⁹ The concept of *terroir* seems to be particularly applicable to products of agricultural origin and their derivatives, since climatic conditions and soil quality may be the factors that most influence the quality of a product and, therefore, its reputation.²⁰ Albeit true, the linkage between quality and place of origin is not only a characteristic of the agricultural products, but also extends to all those products whose peculiarities derive from an industrial or manufacturing tradition rooted in a specific geographical area.²¹ Indeed, products that fall into the GI category are usually the result of traditional, community-based production processes that are passed down from generation to generation. Therefore the qualities of the product to which the definition of a geographical indication refers may also be the result of human factors that can be found in the place of

¹⁴ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.9

¹⁵ The term “Geographical Indication” is used as an umbrella term to cover the existing terminologies that are applied in the French, EU and Chinese laws, that is, Appellation d’Origine (Contrôlée) (AO/AOC), Indication Géographique protégée les Produits Industriels et Artisanaux (IGPIA), Protected Designation of Origin (PDO), Protected Geographical Origin (PGI) and GI as defined in China’s trademark law and China’s sui generis GI regulation.

¹⁶ Anna, MICARA, *The Geneva act of the Lisbon agreement for the protection of appellations of origin and their international registration: An assessment of a controversial agreement. IIC International Review of Intellectual Property and Competition Law*, 47, 2016, p.673

¹⁷ RUSCONI, *Diritto Alimentare...*, cit., p. 500

¹⁸ French word for “soil”. The definition of the INRA/INAO working group, approved by UNESCO, refers to the concept of ‘terroir’ as “a delimited geographical area defined from a human community which builds along its history a set of distinctive features, knowledge, and practices based on a system of interactions between the natural environment and human factors. Those interactions result in original and specific products and services that can be easily recognized.

¹⁹ MICARA, *The Geneva act...*, cit., p.673

²⁰ Adriano, VANZETTI, & Vincenzo, DI CATALDO, *Manuale di diritto industriale* (8th ed.). Giuffrè, 2018, p.178

²¹ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p. 178

origin of the product.²² One could think for example of handicrafts, mining and quarry products, usually handmade products made by using local natural resources, that are results of traditional processes of production and knowledge belonging to a specific local community, a kind of artistic heritage that is characteristic of a specific locality and needs to be preserved as such.²³ Typical examples of this kind of GIs are the Murano glass, Swiss watches or ceramics from Chulucanas, different types of Thai silk and so on. Furthermore, although GIs most commonly refer to the name of the place of origin of the good, such as *Prosciutto di Parma*, also non-geographical names such as Argan Oil, or symbols commonly associated with a place may constitute geographical indications.²⁴

1.1.2 Why is it important to protect them?

As mentioned above, GIs fall into the category of industrial and commercial property rights and as such, like trademarks and patents, enjoy protection under the various national and international regulations.²⁵ The rules within these regulations, intended to guarantee the authenticity of the product, protect all right holders against the misuse of these names by third parties who seek to profit from and take advantage of the reputation these names have acquired in order to attract new consumers.²⁶ Indeed, once a GI has acquired the right to be recognised as such, it can enjoy a high reputation and bring new customers to all producers who are entitled with the right to use it.²⁷ It is therefore extremely important to ensure a system of protection and control of GIs. In the first place, this is necessary in order to protect the GI as typical of a given territory and therefore also to preserve its own cultural tradition along with its traditional processing techniques and knowledge.²⁸ Secondly, and closely linked to the first reason, it is necessary to protect the rights and interests of the holders of this right and of all those involved in the supply chain, discouraging unfair competition²⁹

²² Dominique BARJOLLE, Stéphane BOISSEAUX, & Martine DUFOUR, *Le lien au terroir, bilan des travaux de recherche* (The link to the terroir, assessment of the research work), Swiss Federal Institute of Technology Zurich, Institute of Rural Economy, Switzerland, 1998, p.9

²³ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications. An Introduction*. WIPO, 2017, p.11-12

²⁴ *Ivi*, p.6

²⁵ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.9

²⁶ Roland, KNAAK, *Geographical Indications and Their Relationship with Trade Marks in EU Law. International Review of Intellectual Property and Competition Law*, 46, 2015, p. 845

²⁷ *Ibidem*

²⁸ ALTILI, *I prodotti agroalimentari...*, cit., p. 35

²⁹ Unfair competition is defined by Paris Convention as “any act of competition contrary to honest practices in industrial or commercial matters”. It is therefore a set of unfair practices in the marketplace that damage a third party. These include, for example, the use of false advertising, misuse of a trademark, use of confidential information, and defamation or misrepresentation of products and services.

and the ever-growing phenomenon of counterfeiting.³⁰ These phenomena, which will be analysed in more detail in chapter three, seriously jeopardise the reputation of products and the entire supply chain operating in PGI and PDO production and, therefore, need to be constantly monitored.³¹

1.2 The relationship between Trademarks and GIs

When we talk about geographical indications and trademarks, we refer to them as distinctive signs³² whose main objective is to inform the consumer about the origin of a product, its characteristics and quality allowing him to distinguish and choose consciously among the different services or products offered.³³ It follows that GI rights can be recognized and protected by trademark law.³⁴ Although this may be true and, as we will see below, in some jurisdictions GIs are protected under the trademark law as particular type of trademarks³⁵, the two IPRs have different functions and are governed by different legislative systems.³⁶ It would therefore be useful here to make a brief comparison between trademarks and GIs in order to fully understand what the latter implies and the conflicts that may arise in the relationship of these two distinctive signs.³⁷

First and foremost, GIs and trademarks can be distinguished from each other on the basis of the type of information they provide to the consumer and, thus, the origin they identify.³⁸ In the case of GIs, the latter corresponds to the geographical origin, a specific place that determines the characteristics and qualities or reputation of a product.³⁹ In the case of trademarks, they identify the commercial origin of a product or service that come from certain private companies, helping consumers associate a good or a service with a specific characteristic, may it be a specific quality or simply its reputation, thanks to the information given by the company that is offering it.⁴⁰ Secondly, when we talk about GIs, we refer to

³⁰ Daniele, CURZI, & Martijn, HUYSMANS, “The Impact of Protecting EU Geographical Indications in Trade Agreements”, *American Journal of Agricultural Economics*, 2021, p.5

³¹ *Ibidem*

³² WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Introduction to Intellectual Property: theory and practice* (1st ed.). Wolters Kluwer, 1997, p.232

³³ KIREEVA, WANG, &, ZHANG, *The Comprehensive Feasibility...*, cit., p.14

³⁴ Irina, KIREEVA, “European case law and the WTO ruling on conflicts between geographical indications and trademarks”, *ERA Forum*, 10(2), 2009, p.199

³⁵ Ivi, p.436

³⁶ FENG, *Geographical Indications...*, cit., p.434

³⁷ Ivi, p. 436

³⁸ CEDROLA, *Protection of Trademarks...*, cit., p.1-2

³⁹ Ivi, p. 3

⁴⁰ WORLD INTELLECTUAL PROPERTY ORGANIZATION., *Geographical Indications...*, cit., p. 13

them as collective rights and not individual exclusive rights as in the case of trademarks; there is no an individual owner of a GI that can exclude others from the use of that indication.⁴¹ Indeed, GIs are indications that belong to all local producers in the geographical region designated by the indication, who are given the right, subject to authorization, to use the indication for commercial purposes.⁴² In contrast, the ownership of a trademark can in no way be collective and shared by several subjects.⁴³ Thirdly, there is a difference between the meaning conveyed by the name of sign of a GI and the one conveyed by the trademark. On the one hand, the choice of a GI name is far from being arbitrary; it is a justified and rational choice. Indeed, the name of a GI corresponds exactly to the name of the place of origin of the product in question or to the name by which that product is known within its geographical area of origin.⁴⁴ Thus, all those who operate within the designated area of origin and produce the product in question in accordance with the rules are entitled to use the GI.⁴⁵ On the other hand, the name of a trademark is often the result of a completely arbitrary choice that has nothing to do with the natural origin of the marked product.⁴⁶ It follows that only the owner of the trademark or anyone authorised by him may use it for commercial purposes. In addition, a license to use a trademark, as a distinctive sign of a private nature linked to a specific company, can be granted or assigned to anyone anywhere in the world.⁴⁷ Finally, as stated above, the difference between trademarks and GIs relies on the type of protection and the system of protection they belong to.⁴⁸ As we will see later in this chapter, there are specific regulations and systems of protecting GIs within different jurisdictions, depending on the purpose, conditions and type of protection to be granted.⁴⁹ Although, the protection of GIs is in some countries regulated by trademark laws⁵⁰, these are specific sections of the trademark law which are addressed to collective and certification marks.⁵¹

The relationship between GIs and trademarks is quite complex and is one of the main issues debated on the table of international negotiations concerning the protection of GIs and only

⁴¹ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Introduction to Intellectual...*, cit., p. 232

⁴² KNAAK, *Geographical Indications and...*, cit., p.843

⁴³ Ivi, p. 862

⁴⁴ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 13

⁴⁵ *Ibidem*

⁴⁶ FENG, *Geographical Indications...*, cit., p.435

⁴⁷ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 13

⁴⁸ KIREEVA, *European case law...*, cit., p.199

⁴⁹ FENG, *Geographical Indications...*, cit., p.425

⁵⁰ KNAAK, *Geographical Indications and...*, cit., p.857

⁵¹ Collective trademarks are owned by associations whose members can use a name which is associated with a certain quality or characteristics; certification trademarks are aimed at guaranteeing to consumers that products meet certain standards and have specific characteristics.

few international treaties have dealt with this issue.⁵² Conflict may arise especially when GIs protected as such in one country are used as generic terms in another and obtain protection under the trademark law.⁵³ This is related to the fact that in general within distinctive signs, whether trademarks, GIs or others, applies the principle of priority for which their relationship is governed by an order in which the first to be registered enjoys the right of priority over the next.⁵⁴ However it is difficult to establish which is the priority since different jurisdictions apply different principles and rules⁵⁵ giving more or less relevance to the trademark rather than to a GI as such and vice versa, providing for the rejection of a later application for registration of a GI or a trademark, their gradual elimination or coexistence in cases where the circumstances allow it.⁵⁶ As this is not the central topic of the thesis here, we will limit ourselves to mentioning the problems linked to the coexistence of these two signs and the fact that attempts are being made at an international level to find the fairest solution to the resolution of the various conflicts linked to this issue.⁵⁷

1.3 AO and GIs

In general, both AO and GIs fall under the same category since, in order to be recognised as such, they require a qualitative link between the characteristics of the product to which they refer and their place of origin. They allow consumers to be informed about what is the geographical origin of a product and how does this place of origin influence the quality and the characteristics of the product giving an added value to it.⁵⁸ However, even though AO are referred to as a specific typology of GIs, they slightly differ from the latter in that AO usually have a stronger link with the *terroir*, as the whole process of production together with the raw materials used in the process originate in a specific geographical area.⁵⁹ Hence, it is required that any characteristic or quality of a product falling within the category of AO must result exclusively from its place of origin and be essentially or exclusively attributable

⁵² KIREEVA, *European case law...*, cit., p.202

⁵³ FENG, *Geographical Indications...*, cit., p.425

⁵⁴ KNAAK, *Geographical Indications and...*, cit., p.862

⁵⁵ The controversies are often the result of the two conflicting positions that exist regarding the type of system to be used for GIs protection. The one of the countries having a so called "old world" approach and protect GIs as trademarks and the one of the countries having a "new world" approach and protect GIs under a *sui generis* system dedicated to them.

⁵⁶ Ivi, p. 863

⁵⁷ For more detailed information about managing the relationship between brands and subsequent or previous GIs see KNAAK, 2015 and KIREEVA, 2009.

⁵⁸ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p.15

⁵⁹ This differentiation is adopted at European level pursuant to EC Regulation 510/2006, Art. 2.

to its geographical origin.⁶⁰ On the other hand, in the case of GIs, it is sufficient that there is even a single criterion attributable to the geographical origin of the product to which they refer,⁶¹ being it a quality, a characteristic or the reputation of the product itself. and it is not necessary that these processes take place entirely within a defined geographical area.⁶² However, once registered, GIs are entitled to enjoy a very similar kind of legal protection of the appellations of origin, even though the type and the scope of the protection, as well as the procedures linked with them, depend on the national law that is to be applied to these kinds of products.⁶³ Thus, for a geographical indication to enjoy legal protection, it must have been registered, whereas the protection of an appellation of origin usually refers to the adoption of a specific law or decree.⁶⁴ Regarding the different procedures and modalities of legal protection of GIs and AO, it is necessary to reconstruct the legal and regulatory path that has led to different systems of protection for these distinctive signs.

In the following paragraphs, through the analysis of what have been the main regulatory interventions on the protection of GIs, the analysis will exemplify the different approaches to the system of protection of GI products existing in different countries, which are the result of different legal traditions and socio-economic and historical circumstances.⁶⁵

1.4 The legal protection of GIs: from the first multilateral agreement on quality signs to the present day

The study and concept of protected AOs and GIs have undergone several changes and additions over the years, and their legal protection has been the subject of various debates at national and international level.⁶⁶ Even today, although GIs have been universally recognised as specific IPRs, the concept behind them has not yet reached universal consensus.⁶⁷ However, given the great importance of these distinctive signs in a context where consumer demand was increasingly oriented towards quality products, it was

⁶⁰ MICARA, *The Geneva act...*, cit., p. 674

⁶¹ Marco, MIGLIETTA, *Le denominazioni di origine e le indicazioni geografiche protette. Studio Cataldi*. Published, 2018, p.3

⁶² Marco, MIGLIETTA, *Le denominazioni di origine...*, cit., p.3

⁶³ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 14

⁶⁴ Ivi, p. 28

⁶⁵ MICARA, *The Geneva act...*, cit., p.674

⁶⁶ Daniela, BENAVENTE, *The Economics of Geographical Indications*. Graduate Institute Publications, 2013, p.7

⁶⁷ Georg, MIRIBUNG, “Changes Happen Slowly – Some Comments on Geographical Indications Between the Geneva Act and Regulation 2019/1753”, *European Food and Feed Law Review*, 15(1), 2020, p. 25

necessary to provide them with adequate legal protection.⁶⁸ This has therefore been strongly reflected in the regulation of GIs and AO, which since 1883, when the term 'designation of origin' was first introduced in Europe, has seen a considerable intensification of legislative activity, especially at EU level,⁶⁹ with regard to the regulation of unfair competition and, therefore, about the protection of distinctive signs belonging to intellectual property rights.⁷⁰

Before analysing the main steps that led to the creation and adoption of legal systems for the protection of GIs, it is worth briefly mentioning the reasons behind this choice and the objective of legal protection. At the top of the reasons behind the protection of GIs there is the main objective of ensuring consumer welfare and supporting local producers by preserving the reputation and unique characteristics of these products.⁷¹ Indeed, the AO and GI protection system was developed primarily out of the perceived need to address fraudulent commercial practices by unauthorised parties⁷² (so-called free-riders)⁷³ in relation to products of agricultural origin that, in addition to their economic importance, are rooted in the culture and tradition of specific geographical areas.⁷⁴ In this regard, their protection is necessary in order not to lose the intrinsic value attached to them and not to undermine the efforts of local producers who have made the indication enjoy a certain reputation. Indeed, the abuse of a GI right can lead to the deterioration of the GI's image and the consequent loss of profit.⁷⁵ Moreover, the above-mentioned practices also undermine the interests of consumers who expect to find a genuine quality product on the market and not a mere imitation marketed at zero cost. Hence the need for a GI protection system in order to meet their expectations and protect their interests.⁷⁶ Finally, it is essential for a geographical indication to be protected in order to avoid a third party registering it as a trademark or turning the indication into a generic name.⁷⁷ In the first case, producers of that

⁶⁸ Giovanni, BELLETTI, Andrea, MARESCOTTI, & Alessandro, BRAZZINI, "Old World Case Study: The Role of Protected Geographical Indications to Foster Rural Development Dynamics: The Case of Sorana Bean PGI", *Ius Gentium: Comparative Perspectives on Law and Justice*, 2017, p.254

⁶⁹ RUSCONI, *Diritto Alimentare...*, cit., p.500

⁷⁰ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p.8

⁷¹ Friederike, FRANTZ, "Twenty Years of TRIPS, Twenty Years of Debate: The Extension of High Level Protection of Geographical Indications – Arguments, State of Negotiations and Prospects", *Annual Survey of International and Comparative Law*, 21(1), 2016, p. 93

⁷² WORLD INTELLECTUAL PROPERTY ORGANISATION, *Introduction to Intellectual...*, cit., p.233

⁷³ The free rider problem is an economic concept of a market failure that occurs when people are benefiting from resources, goods, or services that they do not pay for.

⁷⁴ FRANTZ, *Twenty Years of TRIPS...*, cit., p. 93

⁷⁵ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 23

⁷⁶ Stefano, SANDRI, *La nuova disciplina della proprietà industriale dopo i GATT-TRIPs* (2nd ed.). CEDAM, 1999, p.73

⁷⁷ Ivi, p.24

GI are prevented from using it unless they are authorised by the trademark owner. In the second case, when associated with a common name and no longer with a particular product characteristic of a specific area, the GI becomes a generic term and loses its right to be a distinctive sign.⁷⁸

1.4.1 The first treaty: the Paris Convention

As previously stated, the first attempt to create a legal system of protection for AO originated in Europe in the last years of the 19th century.⁷⁹ In fact, in 1883 in France, precisely in Paris, it was established an *ad hoc* legal regime for the protection of intellectual property, the Paris Convention on Intellectual Property (or Paris Union)⁸⁰. Last amended in 1967, it is the first of the three⁸¹ multilateral treaties administered by the World Intellectual Property Organization (WIPO)⁸², which identifies indications of source and appellations of origin as separate IPR⁸³ to be granted targeted protection.⁸⁴ Nevertheless, the Paris Convention does not include a definition of geographical indications⁸⁵ nor the obligation for Member States to provide protection for them⁸⁶, but contains specific legal measures relating to indications of source and appellation of origin and in particular measures to be taken in case of unfair competition in respect of these goods (Arts. 9 and 10).⁸⁷ In this regard, it provides that goods bearing directly or indirectly a false indication of origin⁸⁸, irrespective of any consideration

⁷⁸ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p.24

⁷⁹ KIREEVA, WANG, &, ZHANG, *The Comprehensive Feasibility...*, cit., p.7

⁸⁰ The Paris Convention, which is still in force today with 177 contracting States all over the world, applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. For further information see https://www.wipo.int/treaties/en/ip/paris/summary_paris.html

⁸¹ Paris Convention, Madrid Agreement and Lisbon Agreement

⁸² The World Intellectual Property Organization (WIPO) is one of the 16 specialized agencies of the United Nations (UN) system of organizations dealing with the development of international law on intellectual property. Pursuant to the 1967 Convention of Stockholm Establishing the World Intellectual Property Organization, WIPO was created to promote and protect intellectual property (IP) across the world by cooperating with countries as well as international organizations.

https://web.archive.org/web/20120511143316/http://www.wipo.int/treaties/en/convention/trtdocs_wo029.html

⁸³ AO and IG are included as objects of industrial property protection within Art 1, 2 of the Convention.

⁸⁴ *Summary of the Paris Convention for the Protection of Industrial Property (1883)*, https://www.wipo.int/treaties/en/ip/paris/summary_paris.html

https://www.wipo.int/treaties/en/ip/paris/summary_paris.html

⁸⁵ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Introduction to Intellectual...*, cit., p. 231

⁸⁶ Michael, BLAKENEY, *The Protection of Geographical Indications: Law and Practice* (2nd ed.). Edward Elgar Publishing, 2019, p. 11

⁸⁷ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications and recent developments in the world intellectual property organization*, San Francisco, California, WIPO, 2003, p. 5

⁸⁸ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Introduction to Intellectual...*, cit., p. 237

of their nature⁸⁹, must be seized by the customs authorities of the country into which they have been imported or any legal action provided for by the country of importation must be taken, without however incurring any type of civil or criminal sanction.⁹⁰ Member States are therefore expected to ensure that effective legal measures are in place to eliminate unfair competition practices such as falsification of indications of origin that could mislead consumers about the real origin of the product.⁹¹

1.4.2 The Madrid Agreement

Eight years after the creation of the Paris Convention, in 1891, a new agreement on the protection of indications of source was drafted, the Madrid Agreement for the Suppression of False or Misleading Indications of Source on Goods⁹². As the name suggest, it was the first multilateral agreement containing specific measures concerning the repression of false and deceptive⁹³ indications of source.⁹⁴ With a similar structure to that of Article 10 of the Paris Convention, the agreement introduced new terms, regulations and special arrangements⁹⁵, extending the protection guaranteed against false indications of source to deceptive indications of source. Once again, it provides for the measures to be applied against those practices of unfair competition.⁹⁶ It is foreseen that goods bearing a misleading indication will be seized in the country of importation (Art. 1.1) and in the country where the indication has been applied (Art. 1.2)⁹⁷ or, if the jurisdiction of the latter does not provide for seizure, either a ban on the import of the goods (Art. 1.3) or the same sanctions as those provided for in the provisions on trademarks and trade names shall apply (Art. 1.5).⁹⁸ Protection against the use on goods for sale of indications of an advertising nature which may mislead the public and which are used for commercial purposes is also provided for in

⁸⁹ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p.352

⁹⁰ BLAKENEY, *The Protection of...*, cit., p. 12

⁹¹ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 26

⁹² Last amended in 196 the agreement currently counts 104 members, covering 108 countries in a membership known as Madrid Union.

For further info see https://www.wipo.int/treaties/en/ip/madrid/summary_madrid_source.html

⁹³ By deceptive indications, the agreement refers to those indications whose name, although literally true, could be misleading. A typical example of this is the case of homonymy between two countries, one of which is recognised as the producer of a characteristic product and identifiable on the market precisely because of the name of the place of origin.

⁹⁴ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical indications protection for non-agricultural products in the internal market*. EU Commission, 2013, p. 16

⁹⁵ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 11

⁹⁶ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 26

⁹⁷ BLAKENEY, *The Protection of...*, cit., p. 13

⁹⁸ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p. 353

Art. 3.⁹⁹ With regard to the seizure procedures, it is provided that the customs authorities shall apply the seizure either autonomously or at the request of the injured party (Art. 2), but reserves to the courts of the member states the decision as to the generic character of a designation and the consequent non-application of the agreement as not falling under its provisions (Art. 4).¹⁰⁰

A final interesting aspect of the Madrid Agreement is that it is one of those international treaties that have established an international registration system for trademarks to ensure their more effective protection at international level.¹⁰¹ In this regard, the Madrid Agreement on the International Registration of Marks (1891) and its protocol (1989)¹⁰² extend the possibility for GIs to be registered and protected as collective, certification or guarantee marks¹⁰³, thus guaranteeing their protection also in those countries where their protection is regulated by the trademark system.¹⁰⁴

1.4.3 A turning point: the Lisbon Agreement

Although until then the approach to regulating GIs had been limited to prohibiting the use of false or deceptive indications¹⁰⁵, about fifty years later the discipline reached a turning point with the establishment of the Lisbon system in 1958 during a conference convened by the Paris Union¹⁰⁶. Under this circumstance a new system for the protection of GIs, under the name of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, was created for all products.¹⁰⁷ By establishing an international system of legal protection of AO,¹⁰⁸ the Lisbon system represented a turning point within the discipline that branches out in two different directions. On the one hand this was the first agreement in which, through reference to the French legislation on *Appellations d'Origine Contrôlée*, a specific and more rational definition of AO and country of origin is given.¹⁰⁹

⁹⁹ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 26

¹⁰⁰ BLAKENEY, *The Protection of...*, cit., p. 13

¹⁰¹ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.16

¹⁰² For further information see

https://www.wipo.int/treaties/en/registration/madrid/summary_madrid_marks.html

¹⁰³ BENAVENTE, *The economics of...*, cit., p. 10

¹⁰⁴ *Ibidem*

¹⁰⁵ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p. 356

¹⁰⁶ Indeed, Art. 19 of the Paris Convention prescribed the right for the member States to make separate special agreements for the protection of goods falling into the category of industrial property. For further details see MICARA, 2016

¹⁰⁷ BENAVENTE, *The economics of...*, cit., p. 13

¹⁰⁸ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p.2

¹⁰⁹ FENG, *Geographical Indications...*, cit., p. 425

Thus, for the first time AO are identified as special indications of source, the geographical origin of which, including human and natural factors, determines a special characteristic or quality (Art.2). In particular, according to the agreement, protection is granted exclusively to products characterised by the presence of the so-called *milieu*¹¹⁰, meaning the existing qualitative link between product's origin and its characteristics and quality.¹¹¹ On the other hand, by creating, a system of international registration, it established an international system of protection of AO that guarantees a much higher level of protection than the more generalised one of the previous agreements and greater legal protection for producers¹¹² by allowing AO to obtain protection in all the Member States.¹¹³ Protection, however, to the purpose of the agreement is only granted to AO that are already protected as such in their country of origin under national law¹¹⁴ (Art. 1.2) and are registered internationally¹¹⁵ with the International Bureau of WIPO according to the standards prescribed by the agreement.¹¹⁶ Once registered AO obtain a permanent protection that does not need to be renewed¹¹⁷ and, in case of violation of these rights, member countries are required to apply their national legislation to take legal action (Art.8) against it.¹¹⁸ What is worth pointing out about this agreement, is the further extension of protection that is used for GIs against usurpation, misuse or imitation even when the true origin of the product is indicated, or the name is translated or accompanied by terms such as "type", "kind" or similar (e.g. "Parmigiano type") thus giving an even higher degree of protection to GIs¹¹⁹.

1.4.4 The TRIPS Agreement

In 1994, almost forty years after the last legislative intervention on GIs, an agreement of great international importance that brought the issue of GI protection to universal attention

¹¹⁰ The word is the French correspondent to environment and indicates the natural environment along with all the human factors by which it is characterized

¹¹¹ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p. 355

¹¹² MICARA, *The Geneva act...*, cit., p. 675

¹¹³ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.16

¹¹⁴ This is one of the reasons why the the membership of the agreement remained limited, with 30 members in 2019, since AO had to be protected as such in the country of origin even in countries where no ad hoc regime existed, along with the fact that the agreement did not provide for exceptions for GIs, which were consequently considered generic

¹¹⁵ Provisions regarding the procedure of the international registration are contained in art 5(1). For further information see World Intellectual Property Organization (2017) and

https://www.wipo.int/treaties/en/registration/lisbon/summary_lisbon.html

¹¹⁶ BLAKENEY, *The Protection of...*, cit., p.15-16

¹¹⁷ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 38

¹¹⁸ BLAKENEY, *The Protection of...*, cit., p.16

¹¹⁹ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p.354

was signed.¹²⁰ It was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), approved in 1994¹²¹ within the WTO *Uruguay Round*¹²² which, through the inclusion of international IP rules, marked a turning point in multilateral trade relations and gave further impetus to the regulatory process for the protection of GIs.¹²³

The Agreement, with 164 Member States, represents the first multilateral international treaty containing a specific section¹²⁴ dedicated to GIs and their legal protection as IPR¹²⁵ that includes a specific and globally recognized definition of GIs.¹²⁶ Drafted along the lines of the Lisbon definition, the new definition contained in Art.22 extends the scope of protection also to non-geographical names¹²⁷, stating that geographical indications are “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.” Through a simplification of the definition that moves beyond the concepts identified by the previous conventions¹²⁸ and removes all the interpretation problems regarding the identification of GIs to be protected, the focus is now placed more on the product rather than the geographical area¹²⁹, there is no reference to human or natural factors and the concept of *milieu* is extended to those cases where also reputation determines GI status.¹³⁰ Moreover, also historical and traditional names referring to characteristic places and that are characteristic of the local culture are recognised by the agreement as GIs to be protected, provided they identify a specific territory, region or locality (e.g. the Greek ‘Feta’).¹³¹ However, as it is not based on an international registration

¹²⁰ MICARA, *The Geneva act...*, cit., p.679

¹²¹ BENAVENTE, *The economics of...*, cit., p. 16

¹²² The Uruguay Round was the eighth round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), during which the World Trade Organization (WTO) was established. Here, sensitive issues concerning national transactions were discussed, among which was the issue of GI protection. The discussion on this point saw the positions of Europe, which proposed a special scheme for the protection of GIs, contrasted with that of the United States, which preferred the trademark system as a means of protection. For further details see https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm

¹²³ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.17

¹²⁴ Sect. III, Art 22 and 23; see https://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm

¹²⁵ Ben, O’CONNOR, & Irina, KIREEVA, “Geographical Indications and the TRIPS Agreement: What Protection is Provided to Geographical Indications in WTO Members?”, *The Journal of World Intellectual Property*, 13(2), 2010, p. 275

¹²⁶ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.16

¹²⁷ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 3

¹²⁸ FRANTZ, *Twenty Years of TRIPS...*, cit., p.96

¹²⁹ SANDRI, *La nuova disciplina...*, cit., p.78

¹³⁰ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p.357

¹³¹ BLAKENEY, *The Protection of...*, cit., p.22

system¹³², the agreement does not prescribe a specific system or the specific legal means to be applied for the protection of GIs, but leaves it up to WTO Member States to implement its provisions within their national law.¹³³ It is therefore an agreement that does not fall within the category of binding international law¹³⁴; it only prescribes general standards of protection compatible with all systems¹³⁵ that WTO members must comply with in order to ensure the protection of GIs against misuse and cases falling into the category of unfair competition (Art.22.2).¹³⁶ As a matter of facts, those provisions, based on the “non-misleading requirement”,¹³⁷ provide a minimum level of protection against unfair competition practices and are limited to prevent the misleading use, also in case of deceptive indications,¹³⁸ and include exceptions¹³⁹ concerning GIs considered as generic terms.¹⁴⁰ Furthermore, the agreement stipulates that a GI can only be protected if it already enjoys protection in the country from which it originates¹⁴¹ and has not fallen into disuse (Art. 24.9).¹⁴²

Another important point of the TRIPs Agreement, which is still discussed at international level, is the presence of more specific provisions for the protection of wines and spirits in Art. 23.¹⁴³ The decision to grant additional protection only to this category of products is mainly motivated by the very important role they play in the international market.¹⁴⁴ Therefore, the agreement proposes to extend protection to those cases where a trademark is registered under the name of a GI, even if such use does not fall within the ‘non-misleading

¹³² VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p.357

¹³³ Thus, GIs could be protected under consumer protection laws or as an aspect of trademarks laws, such as by a certification or collective mark, under unfair competition laws or under actions such as passing off

¹³⁴ FRANTZ, *Twenty Years of TRIPS...*, cit., p.98

¹³⁵ MICARA, *The Geneva act...*, cit., p.679

¹³⁶ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 27

¹³⁷ BENAVENTE, *The economics of...*, cit., p. 17-18

¹³⁸ When the name of a GIs corresponds to two different places

¹³⁹ Art. 24 contains some exceptions to the obligations prescribed by the agreement that are of particular relevance in respect of the additional protection for geographical indications for wines and spirits. A first exception, precisely a genericity exception, regards cases in which a GI name is identical for two or more grape variety produced following the GI standards (i.e. Montepulciano wine).A second exception is based on the “grandfather clause”, according to which all the trademarks that are considered similar or identical to a GI that have been registered after the GIs was protected or before the date of application of the TRIPS (1994), are to be maintained as such and any request of invalidation must be rejected. A third exception is applied to GIs of wines and spirits, where the continuous use of a protected GI for WTO members is allowed if they have used it for several years and can prove this prior use.

¹⁴⁰ FRANTZ, *Twenty Years of TRIPS...*, cit., p.97

¹⁴¹ In the III section of the TRIPS Agreement two principal system of protection to be used that are compatible with this system are mentioned: the existing national legislation on trademarks or a *sui generis* system of protection of GIs

¹⁴² BENAVENTE, *The economics of...*, cit., p.21

¹⁴³ FRANTZ, *Twenty Years of TRIPS...*, cit., p.97

¹⁴⁴ MICARA, *The Geneva act...*, cit., p.679

requirements’, and to those cases where the GI is translated or accompanied by expressions such as "type", "kind", "imitation" or similar, something that resembles the Lisbon Agreement.¹⁴⁵

Finally, there is one more point addressed by the agreement that is worth mentioning, namely the definition of the relationship that exists between trademarks and GIs as distinct IPRs. In fact, more than one article of the agreement deals with the conflict that may exist between GIs and trademarks, providing the basic provisions regulating the relationship between them.¹⁴⁶, defining their different nature and exemplifying all the possible solutions to the previously mentioned conflicts arising from the coexistence of GIs and trademarks bearing the same name.¹⁴⁷

1.4.5 The Geneva Act of the Lisbon Agreement

Since the 2000s, with the start of the *Doha Round*¹⁴⁸ of trade negotiations launched by the WTO in 2001, many member countries have expressed the desire to extend the additional protection granted to wines and spirits by the TRIPS Agreement to all GI agricultural products.¹⁴⁹ In this context, a debate on the revision of the Lisbon Agreement opened up in 2008¹⁵⁰ and seven years later led to the adoption of the Geneva Act of the Lisbon Agreement on Designations of Origin and Geographical Indications.¹⁵¹ Among the main objectives of this regulatory intervention was the need to strengthen the system, make it more flexible and encourage more states to join it¹⁵² by building an international system that would be able to integrate those differences due to the different legislative instruments that different countries used to protect GIs and that would guarantee a high degree of protection for AOs and GIs.¹⁵³ The first major change made by the new act was the extension of international registration to GIs (Art. 6), whose definition is included in the agreement (Art. 2.1).¹⁵⁴ The latter, drafted

¹⁴⁵ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p.27

¹⁴⁶ Felix, ADDOR, & Alexandra, GRAZIOLI, “Geographical Indications beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement”, *The Journal of World Intellectual Property*, V, 6, 2002, p. 872

¹⁴⁷ O’CONNOR, & KIREEVA, *Geographical Indications and...*, cit., p.288

¹⁴⁸ The Doha Round, known officially as the Doha Development Agenda is the latest round of trade negotiations among the WTO membership. Its aim is to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules and to improve the trading prospects of developing countries. For further info see https://www.wto.org/english/tratop_e/dda_e/dda_e.htm

¹⁴⁹ BENAVENTE, *The economics of...*, cit., p.19

¹⁵⁰ BLAKENEY, *The Protection of...*, cit., p.61

¹⁵¹ MICARA, *The Geneva act...*, cit., p. 680

¹⁵² FENG, *Geographical Indications...*, cit., p. 425

¹⁵³ MICARA, *The Geneva act...*, cit., p. 678

¹⁵⁴ FRANTZ, *Twenty Years of TRIPS...*, cit., p. 110

along the lines of Art.22 of the TRIPS, brings a further innovation to the agreement with the inclusion of reputation as an additional requirement valid for both GIs and AOs.¹⁵⁵

Among the other changes introduced by the new act of the agreement, which have led more and more countries to join,¹⁵⁶ it is worth mentioning the possibility also for legal entities and holders of GI rights to file applications for international registration¹⁵⁷, the obligation for members to provide a reasonable reason for the refusal of an application and the consequent possibility to defend their rights¹⁵⁸ and finally a higher level of protection which sees new limitations on the use of words that can be used to accompany the names of AOs and GIs already registered (Art. 11.2)¹⁵⁹.

1.5 Modalities of protection at national and international level

As previously seen, the ways in which a GI is protected are numerous and differ according to a country's own legislative framework. Specifically, at national level, the differences in choice of approach are to be found in the variety of different legal concepts on which the legislative framework of that nation has been built.¹⁶⁰ Consider, for example, the Chinese legal structure compared to the European one and the different development process that led to the creation of the two different systems. Due to different national legal traditions and different historical and socio-economic conditions, the concepts of intellectual property and the protection of distinctive signs have been developed from different perspectives.¹⁶¹ This can be seen directly in the existence of a wide variety of approaches that are used in different jurisdictions in order to protect GIs.¹⁶² However, these modalities of protection are not exclusive. Indeed, some countries, decide to use an individual approach or to combine two

¹⁵⁵ MICARA, *The Geneva act...*, cit., p. 687

¹⁵⁶ Since 1958, the Agreement had succeeded in attracting only a few countries to join, while today it has 31 member countries. Several intergovernmental organizations have also joined, including the European Union and the African Intellectual Property Organization (AIPO). Although many countries still have to implement its guidelines into national legislation, the data clearly show that there is a growing interest worldwide in obtaining high-level protection for GIs.

¹⁵⁷ MICARA, *The Geneva act...*, cit., p. 685

¹⁵⁸ BLAKENEY, *The Protection of...*, cit., p. 71-72

¹⁵⁹ FRANTZ, *Twenty Years of TRIPS...*, cit., p.111

¹⁶⁰ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 28

¹⁶¹ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 4

¹⁶² KIREEVA, WANG, &, ZHANG, *The Comprehensive Feasibility...*, cit., p.15

or more¹⁶³, according to what is the degree of protection that it wants to achieve¹⁶⁴ and the scope of protection of the GI.¹⁶⁵ The main modalities through which a GI receives protection at the national level include the *sui generis* system, trademark law, unfair competition law, or consumer protection law, with the first two approaches having some common features.¹⁶⁶

The first one, as the name *sui generis* suggests, is a specific and exclusive system, mostly based on registration¹⁶⁷, dedicated to the protection of GIs. As a system that particularly stresses the importance of the quality of production¹⁶⁸, it has been adopted by several countries, including EU.¹⁶⁹ Even though the scope of application for registration and, therefore, the types of goods and the names which are eligible as GIs vary greatly between different jurisdictions¹⁷⁰, usually, under this system, the application for registration must contain certain specifications about the product identified as a GI, such as the geographical area of origin, a description of the product containing its characteristics, quality and reputation, the relationship between the latter and the area of origin, and the production standards to be met.¹⁷¹ Furthermore, within this system it is generally specified who can apply for registration, whether the producer, a direct user or an authorized body, and who the authorities responsible for registration are.¹⁷² In addition, this type of system also requires regular controls to verify compliance with production standards through the adoption of appropriate control schemes.¹⁷³ The right that is given by this system is the minimum protection against any misleading or improper use of the GI, which falls within the scope of those analysed so far within the international conventions.¹⁷⁴

¹⁶³ SONG, Xinzhe, “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”, *The Journal of World Intellectual Property*, 21(5-6), 2018, p.2

¹⁶⁴ This is the case, for example, of some European countries and China which, although they have both developed a *sui generis* discipline for GIs, therefore independent from other IPR regulations, at the same time they also make use of the trademark law as an additional tool to protect GIs.

¹⁶⁵ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 4

¹⁶⁶ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 28

¹⁶⁷ Some countries do not require registration even though they had introduced special laws on GIs protection.

¹⁶⁸ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.16

¹⁶⁹ O’CONNOR, & KIREEVA, *Geographical Indications and...*, cit., p. 276

¹⁷⁰ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.16

¹⁷¹ CEDROLA, *Protection of Trademarks...*, cit., p. 9

¹⁷² O’CONNOR, & KIREEVA, *Geographical Indications and...*, cit., p. 279

¹⁷³ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 28

¹⁷⁴ CEDROLA, *Protection of Trademarks...*, cit., p. 10

A second approach that can be adopted, also based on registration¹⁷⁵, is one that implies that GI protection falls under the scope of trademark law even though, as seen above, GIs and trademarks are considered separate IPRs.¹⁷⁶ However, a lot of countries in the world use this approach to protect GIs.¹⁷⁷ This is the case, for example, in China and the USA, where GI are protected as trademarks, specifically collective and guarantee or certification marks.¹⁷⁸ Although the concepts of collective or certification marks are not unique and vary from country to country, what they imply seems to be a universally shared characteristic.¹⁷⁹ They identify a type of mark whose ownership is shared between several parties as long as established production standards are respected, such as using the mark only to refer to products from a certain geographical area or with particular characteristics.¹⁸⁰ Certification marks differ from collective marks in that the former can be used by anyone complying with the standards while the latter can only be used by members of a specific association.¹⁸¹ Certification marks are closest in type to the protection afforded by the sui generis regime, as they require that there be controls on use. In fact, even in the case of certification marks it is expected that the owner will make sure that the mark is used correctly in accordance with the rules. The difference, however, lies in the subjects authorized to use the mark chosen on the basis of compliance, while in the case of the sui generis regime, any person who complies with the specification can use the GI right.¹⁸² From the name it is clear that also collective marks have some characteristics common to the GIs identified by the sui generis system. In fact, they are IPRs whose property is shared by a collectivity, and which must meet certain requirements prescribed by the organization that owns them in order to use them. However, they differ from the sui generis system in that they do not foresee that there is an external body authorized to control compliance with the standards and conformity with the products, but rather that it is the organization itself that carries out these controls.¹⁸³ What, causes situations of conflict is the registration of a GI as an ordinary trademark, since the latter precludes the possibility for producers in that area to use the GI right unless authorized by the owner.¹⁸⁴ However, the protection afforded by this approach, regardless of the type

¹⁷⁵ As with the sui generis regime, there are exceptions. In some jurisdictions, it is possible for a trademark to be protected without being registered.

¹⁷⁶ O'CONNOR, & KIREEVA, *Geographical Indications and...*, cit., p.287

¹⁷⁷ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.19

¹⁷⁸ O'CONNOR, & KIREEVA, *Geographical Indications and...*, cit., p. 286

¹⁷⁹ CEDROLA, *Protection of Trademarks...*, cit., p. 10

¹⁸⁰ *Ibidem*

¹⁸¹ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 31

¹⁸² O'CONNOR, & KIREEVA, *Geographical Indications and...*, cit., p. 288

¹⁸³ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 20

¹⁸⁴ *Ivi*, p. 21

of mark used, is against misuse of the mark by third parties, i.e., unauthorized use or use of confusingly similar or identical signs.¹⁸⁵

A third option, as we have seen, is to protect the GIs under laws connected with the repression of unfair competition or consumer protection. Many WTO members use this type of legislation to regulate the use and protection of intellectual property against unfair and deceptive practices.¹⁸⁶ However, in this case no special rights are given to GIs, although they are still granted indirect protection through the use of laws prohibiting their unauthorised use by third parties.¹⁸⁷

Regarding the international level, i.e., how GIs are protected abroad, since intellectual property rights are subject to the “principle of territoriality”¹⁸⁸, the issue is somewhat more complex. In fact, once abroad, GIs do not enjoy the right of protection they are guaranteed with in the country of origin.¹⁸⁹ Thus, there are certain predefined way through which the issue can be addressed. One of the ways of obtaining protection for GIs, as seen above, is through multilateral international agreements (Madrid Agreement, Lisbon Agreement, TRIPS Agreement); other options include the possibility of proceeding directly to the conclusion of bilateral agreements between the interested parties or obtaining protection directly within the jurisdiction of interest.¹⁹⁰

Having already analysed the international and multilateral treaties, the two remaining modalities to protect GIs abroad will be briefly discussed below. In the case of bilateral agreements, as will be seen in the second chapter, they are concluded between two states or two commercial partners, that, on the basis of the principle of reciprocity and mutual recognition,¹⁹¹ decide to grant protection to their respective GIs.¹⁹² These agreements can be made independently or negotiated within larger agreements, such as on the basis of the TRIPS Agreement¹⁹³ or under the Free Trade Agreements (FTAs)¹⁹⁴. They can be made for

¹⁸⁵ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 31

¹⁸⁶ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 17

¹⁸⁷ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 32

¹⁸⁸ The principle of territoriality implies that the effects of a right obtained in a particular jurisdiction are limited to the territory of that jurisdiction.

¹⁸⁹ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 35

¹⁹⁰ *Ibidem*

¹⁹¹ ADDOR, & GRAZIOLI, *Geographical Indications beyond...*, cit., p.876

¹⁹² THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 9

¹⁹³ BENAVENTE, *The economics of...*, cit., p. 29

¹⁹⁴ A free trade agreement is a pact between two or more nations to reduce barriers to imports and exports among them.

two different purposes: on the one hand, the two parties can decide to agree to prohibit the use of the other party's GIs when they do not have that origin.¹⁹⁵ on the other hand, they can decide to apply the other party's national law on GI protection extraterritorially.¹⁹⁶ Moreover, this way of protecting GIs is more common than expected, as evidenced by the fact that in recent years many agreements have been negotiated, especially between the EU and other countries, which managed to secure greater protection for those products previously identified as generic terms, as more and more products are gaining international recognition.¹⁹⁷ As regards the direct protection obtained in other jurisdictions, we have seen that each country can freely decide what approach use to protect GIs (trademark laws, *sui generis* protection or laws addressing unfair competition). Thus, anyone wishing to obtain direct protection for a GI in another country can simply decide to comply with the approach used in that jurisdiction, or if two or more approaches are used, choose the one that best suits their needs.¹⁹⁸

1.6 The current *sui generis* regulation of GIs and DO in the European Union

The desire to create a supranational and exclusive legislative system for the protection of these distinctive signs at Community level to prevent misuse, and therefore to harmonise the rules of GIs among the Member States¹⁹⁹, stemmed on the one hand from the need to ensure fair competition and transparency of the information provided to consumers,²⁰⁰ and on the other hand from the need to regulate market supply in terms of quality and to give greater impetus to rural development through the protection of natural resources.²⁰¹ These considerations, combined with the desire to protect and promote the unique characteristics linked to the geographical origin and traditional skills associated with GI products, led the EU Council to attach greater attention to the issue of GIs.²⁰² In fact, as early as the 1970s, a first attempt to protect nationally recognised GI wines was made with Regulation (EEC) 817/70, drafted within the 1970 Common Market Organisation for wines.²⁰³ Then, a second

¹⁹⁵ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 9

¹⁹⁶ ADDOR, & GRAZIOLI, *Geographical Indications beyond...*, cit., p.876

¹⁹⁷ BENAVENTE, *The economics of...*, cit., p. 31

¹⁹⁸ WORLD INTELLECTUAL PROPERTY ORGANIZATION, *Geographical Indications...*, cit., p. 37

¹⁹⁹ Some Member States such as France, Spain and Italy, already had national systems in place to protect GIs.

²⁰⁰ BELLETTI, MARESCOTTI, & BRAZZINI, *Old World case study...*,cit., p.253

²⁰¹ AND INTERNATIONAL, ECORYS & COGEA, *Evaluation support study on Geographical Indications and Traditional Specialities Guaranteed protected in the EU*. Publications Office of the European Union. 2020, p.34

²⁰² KIREEVA, *European case law...*, cit., p.200

²⁰³ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.17

intervention at Community level, to expand the GI protection policy to other sectors as well, was made first in 1989, with Regulation (EC) 1576/89, aimed at protecting GI spirits and liqueurs, then in 1991 with Regulation (EC) 1601/91 for aromatised wine products and finally in 1992 with Regulation (EEC) 2081/92, aimed at the protection of GI agricultural and food products.²⁰⁴ These regulations have all been subject to numerous revisions and replacements, which have led to the creation of a comprehensive *sui generis* system for GI protection at EU level²⁰⁵ based on the following regulations: Regulation (EU) 1151/2012 “on quality schemes for agri-food products”, Regulation (EU) 1308/2013 on “the common organisation of the markets in agricultural products” (wines)²⁰⁶, Regulation (EU) 2019/787 “on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages”²⁰⁷ and Regulation (EU) No 251/2014 “on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products”.²⁰⁸

1.6.1 Protection of GIs and DO for agricultural products and foodstuff

Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, enacted in 1992, was conceived as a measure to support the EU's agricultural and foodstuffs quality policies and further develop the rural economy.²⁰⁹ The Regulation has been revised several times over the years,²¹⁰ culminating in 2012 in the Regulation (EU) No 1151/2012 that is currently in force within

²⁰⁴ BLAKENEY, *The Protection of...*, cit., p.75

²⁰⁵ AND INTERNATIONAL, ECORYS & COGEA, *Evaluation support study...*, cit., p.35

²⁰⁶ Irina, KIREEVA, WANG, Xiaobing, “The Protection of Geographical Indication in the EU and in China: Tracing Causes of Delays in the Ongoing Negotiation on the Co-operative Agreement on Geographical Indication”. *International Property Quarterly*, 2, 125-142, 2014, p.126

²⁰⁷ EUROPEAN COMMISSION, *Report on the protection...*, cit., p.2

²⁰⁸ Ivi, p.3

²⁰⁹ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.29

²¹⁰ Regulation No 2081/92 was replaced firstly because it was considered not to be in line with the principles of the TRIPS agreement and, since most European countries had joined the WTO, it was deemed necessary to reform it to avoid situations of violation of the agreement. The second reform of Regulation n. 510/2006 took place following the world economic crisis and the subsequent announcement of the Europe 2020 economic recovery policy, the focus of which was on innovation and the promotion of quality rural products and the protection of producers from unfair competition practices. Recitals (1-24) are included in the regulation identifying all the factors that the agreement must take into account, including the promotion of agricultural diversity, consumer demands, fair competition, rural development, legislative coherence, external influences and coordination of name protection.

the EU.²¹¹ Drafted along the lines of the Lisbon Agreement and the TRIPS,²¹² it covers both direct and indirect GIs.²¹³ Among the main objectives of the Regulation, outlined in Art.1 and 4,²¹⁴ there are the need to diversify agricultural product, develop rural regions, preserve local cultures, support and reward local producers, protect consumers and ensure fair competition through the establishment of a system of protection of GIs and DOs as IPRs.²¹⁵ Therefore, all products linked to the tradition of specific territorial areas and complying with the specifications are eligible for GI protection under this Regulation.²¹⁶

As the title suggest, the discipline refers specifically to food and agricultural products, eventually classified inside the regulatory text, precisely in Art. 5, into the two categories of protected DO (PDO) and protected GI (PGI) respectively.²¹⁷ The regulation thus makes a semantic distinction between designations of origin and geographical indications.²¹⁸ The former are identified as products originating in a specific place where all stages of production take place²¹⁹ and whose characteristics are essentially or exclusively attributable to a particular geographical origin, with its natural and human factors (Art. 5.1);²²⁰ the latter are identified as products originating in a specific place where at least one of the production processes takes place and whose reputation, quality or other characteristics are closely linked to its geographical origin (Art. 5.2).²²¹ These definitions show that the *milieu* referred to in PDOs is more intense and restrictive²²², whereas in the case of PGI, where reputation, along with quality or other characteristics, is considered a sufficient requirement,²²³ it is much more attenuated.²²⁴ By virtue of this, it can be stated that the PDO regime, which guarantees a high-quality level of the DO, is essentially inspired by the Lisbon Agreement, while the

²¹¹ BLAKENEY, *The Protection of...*, cit., p.80

²¹² VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p. 358

²¹³ Direct GIs consist of names of a place or geographical region which in combination with a product term identify the specific products as coming from that region; indirect GIs consist of names without any direct geographical meaning, like the Greek “Feta” cheese.

²¹⁴ BLAKENEY, *The Protection of...*, cit., p.84

²¹⁵ Matteo, GRAGNANI, “The law of geographical indications in the EU”, *Journal of Intellectual Property Law & Practice*, 7(4), 2012, p. 273

²¹⁶ *Ibidem*

²¹⁷ KNAAK, *Geographical Indications and...*, cit., p.844

²¹⁸ *Ibidem*

²¹⁹ By exception, Article 5(3) of Regulation (EU) No 1151/2012 provides that products whose raw materials come from a wider geographical area than the defined area are also eligible for the PDO system, provided they are well defined, have the same special conditions and there is a control system in place to ensure that these conditions are met.

²²⁰ RUSCONI, *Diritto Alimentare...*, cit., p. 506

²²¹ BELLETTI, MARESCOTTI, & BRAZZINI, A., *Old World case study...*,cit., p.257

²²² The same applies for Appellations of Origin

²²³ BLAKENEY, *The Protection of...*, cit., p.89

²²⁴ *Ibidem*

less rigid PGI regime is closer to what is provided for in Art. 22 of the TRIPS Agreement.²²⁵ In this respect, it is worth pointing out that this Regulation, like it is done in the TRIPs, allows also non geographical names to obtain protection as GIs.²²⁶ Moreover, in Art. 6.1 it specifies those terms that due to their generic nature²²⁷ cannot obtain protection.²²⁸ Finally, under Regulation 1151/2012, products that fall into the category of Traditional Specialties Guaranteed (TSG), i.e. those products resulting from traditional production methods and recipes that give them added value, are also protected (Art. 17).²²⁹ This system, aimed at promoting the marketing of these products, is still relatively unknown and has not been very successful.²³⁰ The Optional Quality Indications (OQI), i.e. mountain or island products whose raw materials originate in an area where they are processed, have also been included among the distinctive signs to be protected (Art. 27 et seq.), but these are sketchy systems whose definition is left to future action.²³¹

As far as the wine, spirits and aromatized wines regulations schemes are concerned, there are no major differences in terms of content compared to Regulation 1151/2012. All three regulations share the definition and distinction of PGI and PDO, and, as can be seen below, they all regulate the scope of protection, registration, and control procedures in the same way. What differentiates the three schemes are the procedural aspects.²³²

1.6.2 Protection of GIs and DO for wines

As seen above, Regulation (EU) No 1308/2013 aimed at protecting of the legitimate interests of wine producers and consumers, ensuring order within the market and promoting the production and marketing of quality wines,²³³ is the outcome of amendments and revisions of previous regulations²³⁴ established since the 1970s.²³⁵ Here again, a distinction is made

²²⁵ RUSCONI, *Diritto Alimentare...*, cit., p. 507

²²⁶ KNAAK, *Geographical Indications and...*, cit., p.853

²²⁷ The genericity of a term is established on the basis of the features identified by Art. 3.6 of the Regulation which identify them as names of products which, although relating to the place, region or country where the product was originally produced or marketed, have become the common name of a product in the Union

²²⁸ KNAAK, *Geographical Indications and...*, cit., p.853

²²⁹ The difference with the PDO and PGI systems is that while these tend to protect the link between territory and product quality, here the emphasis is on the intrinsic characteristics of the product, as a result of the traditional recipes used and the processing procedures adopted, which are not necessarily linked to a precise geographical area.

²³⁰ RUSCONI, *Diritto Alimentare...*, cit., p.111

²³¹ *Ibidem*

²³² GRAGNANI, *The law of...*, cit., p. 272

²³³ AND INTERNATIONAL, ECORYS & COGEA, *Evaluation support study...*, cit., p.36

²³⁴ For further details on the wine protection regulatory process see https://ec.europa.eu/info/food-farming-fisheries/plants-and-plant-products/plant-products/wine_en

²³⁵ KIREEVA, WANG, *The Protection of ...*, cit., p. 126

between PDO and PGI on the basis of the intensity of the link between the wine and the geographical area of origin.²³⁶ The former identify a wine whose grapes must come exclusively from a given geographical area, while the latter stipulate that 15% of the grapes used to produce the wine may come from an area outside the defined area, provided that it is within the territory of the Member State to which it refers.²³⁷ Moreover, articles 100 and 101 provide that generic names or names that could mislead consumers because they are homonyms of already well-known brands are also not protected by the regulation.²³⁸ As regards the rules on the protection of these GIs, they are contained in Articles 92 to 111 and are structured in line with those of Regulation 1151/2012.²³⁹

1.6.3 Protection of GIs for spirits and aromatized wines

Regulation (EU) 2019/787²⁴⁰ on spirits, entered into force on May 2021²⁴¹, is also the result of a process of amendment and reform of pre-existing regulations²⁴² As in the case of wines, the provisions on the protection of these GIs Art. (15-23) are the same as in Regulation 1151/2012. In this case, however, no distinction is made between PDOs and PGIs and spirits can only be protected as PGIs whose characteristics correspond to those provided for in the Regulation on agricultural products and foodstuffs.²⁴³ However, in line with the other regulations, generic names cannot be eligible for protection under this regulation.²⁴⁴

Finally, also in the case of Regulation (EU) 251/2014²⁴⁵ of March 2014, there is a clear similarity with the other regulations in terms of objectives and aims of protection (Art. 10-23). In this case too, however, no distinction is made between PDOs and PGIs, and precise and precise specifications are laid down on production methods and labelling.²⁴⁶ However, both for spirits and aromatised wines, there is a further element of commonality with the other regulations, represented by the presence of two articles regulating those cases in which

²³⁶ BLAKENEY, *The Protection of...*, cit., p.186

²³⁷ *Ibidem*

²³⁸ KNAAK, *Geographical Indications and...*, cit., p.849

²³⁹ *Ibidem*

²⁴⁰ Repealing Regulation (EC) 1576/89

²⁴¹ AND INTERNATIONAL, ECORYS & COGEA, *Evaluation support study...*, cit., p.37

²⁴² KIREEVA, WANG, *The protection of...*, cit., p. 126

²⁴³ KNAAK, *Geographical Indications and...*, cit., p.850

²⁴⁴ BLAKENEY, *The Protection of...*, cit., p.324

²⁴⁵ Repealing Regulation (EC) 1601/91, it is supplemented by Regulation (EU) 2017/670 “on the authorised production processes for obtaining aromatised wine products”

²⁴⁶ Arts. 3-9 of the Regulation (EU) 251/2014

the protection of a GI for spirits is not granted because it conflicts with a previously registered well-known trademark or when there are cases of homonymy.²⁴⁷

1.6.4 Registration procedures

The system set up by the EU *sui generis* scheme, as in the case of Lisbon Agreement, is a registration-based system to which every producer that respects the condition contained in the product specification, whether European or from a third country, may accede.²⁴⁸ The registration procedure is regulated in a strict and uniform way for both PDO and PGI products of all three categories²⁴⁹ mentioned above.²⁵⁰ Applications for registration must be made by any association of producers, being it an individual or a group, identified as a natural or legal person, and they must be submitted to the relevant national authority²⁵¹ of the Member State of the GI or DO concerned, specifying for which type of GI the application is made, whether for a PDO or a PGI.²⁵² If the request for registration comes from a non-member country, it must be directly sent to the European Commission in Brussels or to the competent authority of that country, and the application, drafted either in one of the EU official languages or supported by a certified translated version, must contain proof that the product is already protected in that country.²⁵³ Art. 7 states that, in order for an application to be considered valid, it has to contain data of the applicant and the product specification.²⁵⁴ The latter must include certain information²⁵⁵ which naturally includes the identification of the product and its geographical area of origin, the link that exist between them and a set of conditions to be met;²⁵⁶ among these, the delimitation of the geographical area in which production takes place, the specific packaging requirements, the standard production processes to obtain the product in question and the authorities responsible for verifying

²⁴⁷ KNAAK, *Geographical Indications and...*, cit., p.850

²⁴⁸ LONDON ECONOMICS, ADAS, & ECOLOGIC, *Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)*, European Commission, 2008, p.4

²⁴⁹ RUSCONI, *Diritto Alimentare...*, cit., p. 507

²⁵⁰ Reference will be made in this paragraph to the articles of Regulation (EU) No 1151/2012

²⁵¹ The list of the responsible national authorities in charge of the registration procedure for an application can be found in the updated public database of the EU Commission (EC) disposable at http://ec.europa.eu/agriculture/quality/schemes/index_en.htm. 8 The EC Commission's website (http://ec.europa.eu/agriculture/quality/schemes/index_en.htm)

²⁵² KIREEVA, WANG, &, ZHANG, *The Comprehensive Feasibility...*, cit., p. 34

²⁵³ KIREEVA, *How to register...*, cit., p. 74

²⁵⁴ RUSCONI, *Diritto Alimentare...*, cit., p. 507

²⁵⁵ The basic requirements of the SP are common to all sectors to which it refers, be it agriculture, wine, or spirits. However, there are elements which are not shared by all sectors, and which vary according to the sector concerned

²⁵⁶ London Economics, ADAS, & Ecologic, *Evaluation of the CAP...*, cit., p.7

compliance.²⁵⁷ Specifications are submitted to controls in order to verify that they are not that they are not drawn up in such a way that a single individual can have a monopoly on that GI or DO.²⁵⁸ According to art. 36, controls on the compliance with the specification shall be carried out by authorities appointed by Member States or by certification bodies established for this purpose.²⁵⁹ Therefore, application is sent to the competent authorities, who, after verifying that the application meets the conditions set out above, publish it and initiate the national opposition procedure(Art. 49.3)²⁶⁰ for which any third party is allowed to lodge an opposition on the basis that the application does not meet the conditions set out in the Regulation.²⁶¹ Secondly, if no objections are received and verification at national level has a positive outcome, a national protection is granted and the application is then submitted to the European Commission (EC) together with a declaration that the application complies with the requirements.²⁶² Here a second check is done on compliance with the registration conditions and if the requirements are not met the application is rejected.²⁶³ Upon confirmation of a favourable outcome of the verification procedure, that should not exceed a period of 12 months, the Single Registration Document and the attached specification are published in the *Official Journal* of the EU and are available online in all the official languages of the EU.²⁶⁴ Within the period of three months after the publication, it is provided by Art. 51(1) the possibility for the authority of any Member State or any natural or legal person of a third country having a legitimate interest to lodge an objection.²⁶⁵ This opposition is subject to the Commission's check to determine whether it is admissible and, if accepted, the person lodging the opposition and the authority that requested the registration are invited to hold a consultation of up to six months to reach an agreement.²⁶⁶ If such agreement is not reached, it is upon the Commission to decide on the registration.²⁶⁷ If there is no opposition, the Commission shall adopt an act implementing the registration, and the name of the IG or DO automatically enter in the PGI and PDO Register²⁶⁸ of Protected Geographical

²⁵⁷ BELLETTI, MARESCOTTI, & BRAZZINI, A., *Old World case study...*, cit., p.257

²⁵⁸ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 34

²⁵⁹ RUSCONI, *Diritto Alimentare...*, cit., p. 507

²⁶⁰ AND INTERNATIONAL, ECORYS & COGEA, *Evaluation support study...*, cit., p.44

²⁶¹ BLAKENEY, *The Protection of...*, cit., p.164

²⁶² AND INTERNATIONAL, ECORYS & COGEA, *Evaluation support study...*, cit., p.44

²⁶³ RUSCONI, *Diritto Alimentare...*, cit., p. 508

²⁶⁴ KNAAK, *Geographical Indications and...*, cit., p.852

²⁶⁵ BLAKENEY, *The Protection of...*, cit., p. 167

²⁶⁶ Art. 51(3) of the Regulation 1151/2012

²⁶⁷ Art. 52.3 (b) of the Regulation 1151/2012

²⁶⁸ The register, regulated by ART. 11, is disposable in the DOOR database operated by the Commission at its website <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>

Indications and Designations of Origin.²⁶⁹ After registering a GI, its protection is guaranteed indefinitely as long as the GI exist and is not cancelled.²⁷⁰ Having reached this point, in order to identify PDO and PGI products in the market, the regulation requires that the labelling of products with a registered name contain the Community symbols²⁷¹ and the abbreviations PDO or PGI. Through the application of these distinctive logos, qualified GI products can be identified and distinguished within the international market and their protection against any improper commercial use is further strengthened.²⁷²

1.6.5 Level of protection and controls

Once registration of a GI or a DO becomes effective, it does not have, like trademarks, exclusive effect on account of a particular person or business but provides a general right to use it.²⁷³ In fact, according to Art. 12.1 of the Regulation 1151/2012 any local producer who meets the requirements of the product specification, granting that the product displays certain characteristics and qualities, is granted with the right to use the PGI or PDO throughout the Union.²⁷⁴ Therefore, any producer outside the area concerned or not complying with the specification cannot enjoy this right and thus benefit from the competitive advantage that distinguishing these products on the market brings.²⁷⁵

To ensure that the product in question possesses all the characteristics defined in the specification and that the applicant is eligible to apply, those wishing to be entitled to use the PGI or PDO must join the control system managed by the competent national authorities.²⁷⁶ Regarding the type of protection resulting from the use of these signs, the use of a registered PGI or PDO ensures protection against its illegal commercial use, being it direct or indirect.²⁷⁷ Protection, enshrined by Art. 13 and seq. of the Regulation, is extended not only to cases of misleading the public and risk of confusion,²⁷⁸ but it is also ensured against all those cases where a name identical or similar to a registered PGI or PDO

²⁶⁹ KNAAK, *Geographical Indications and...*, cit., p. 852

²⁷⁰ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.46

²⁷¹ For the official symbols see Appendix

²⁷² KIREEVA, *How to register...*, cit., p. 76

²⁷³ London Economics, ADAS, & Ecologic., *Evaluation of the CAP...*, cit., p. 10-11

²⁷⁴ KNAAK, *Geographical Indications and...*, cit., p.853

²⁷⁵ GRAGNANI, *The law of...*, cit., p. 274

²⁷⁶ KNAAK, *Geographical Indications and...*, cit., p.853

²⁷⁷ EU Reg. 1151/2012 extends protection against any other false or misleading indication as to the provenance, origin or nature or essential qualities of the products used on the wrapping or packaging, in advertising material or on documents relating to the product, as well as the use for the packaging of containers or any other practice liable to mislead as to its origin.

²⁷⁸ RUSCONI, *Diritto Alimentare...*, cit., p. 509

is used to profit from its reputation, where the information relating to the product is false and is likely to mislead the consumer as to the origin and the characteristics or qualities of the product, when names identical or similar to a registered PGI or PDO are used, even in cases where there is no risk of confusion.²⁷⁹ Protection, indeed, is guaranteed against misuse and imitation (e.g., usurpation or evocation), and also extends to all those cases where a GI is translated or accompanied by “delocalizing” expressions such as "type", "method", or alike which lead the consumer to associate the product in question with the original one.²⁸⁰ Therefore, once a GI has been registered, together with the *milieu* by which it is characterised, it cannot become a generic name under any circumstances.²⁸¹ Its protection is therefore definitive and limited only to cases where the EC considers that the requirements set out in the specification are not met and therefore proceeds to its cancellation (Art. 12).²⁸²

Finally, to further ensure protection to PDO and PGI, there are foreseen specific measures²⁸³ to be taken by member states in order to be able to guarantee this protection, including the designation of competent authorities responsible for verifying compliance with the rules and monitoring the lawful use of PDOs and PGIs on marketed products.²⁸⁴ Thus, a system *ex officio* control and enforcement²⁸⁵ has been introduced by the Regulation 1151/2012; all Member States are required to take the necessary measures against infringements of GIs or to prohibit the use of a registered GI where there is no compliance with its specification. This therefore implies that there are reciprocal and equivalent conditions of protection within the whole European territory.²⁸⁶ However, EU Regulation 1151/2012 does not contain provisions regarding sanctions to be applied. It is generally considered that in domestic law, the rules on unfair competition, those of the Industrial Property Code, those of the Consumer Code, those on the repression of misleading or comparative advertising, as well as the sanctions provided for in the Criminal Code are applicable against violations of PDOs and PGIs.²⁸⁷

²⁷⁹ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 39

²⁸⁰ KNAAK, *Geographical Indications and...*, cit., p. 855

²⁸¹ *Ibidem*

²⁸² GRAGNANI, *The law of...*, cit., p. 274

²⁸³ The legal basis for these measures is provided by Regulation 882/2004 on official controls performed to ensure the verification of compliance with feed and food law.

²⁸⁴ AND INTERNATIONAL, ECORYS & COGEA, *Evaluation support study...*, cit., p. 49

²⁸⁵ *Ex officio* enforcement offers the possibility that GIs are protected at Community level, within the territory of any Member State, from infringement actions without the need for an explicit request from the producers of the specific GI. This type of protection implies that the competent authorities operating on the territory of the Member State where the violation of the GI occurs take the necessary measures to stop it.

²⁸⁶ KNAAK, *Geographical Indications and...*, cit., p. 855

²⁸⁷ RUSCONI, *Diritto Alimentare...*, cit., p. 509

From the analysis carried out, it can be seen that no sui generis protection scheme for non-agricultural products exists within the European system.²⁸⁸ Albeit true, it seems that the question of whether the scheme should be extended to these products is being debated²⁸⁹ within the EU.²⁹⁰ However, these products can receive protection nationally under a variety of legislative regimes such as trade mark laws, special laws or case law.²⁹¹

1.7 Protection of GIs under Trademark Regulation

Although the Art. 7.1 of EU Trademark Regulation 2017/1001²⁹² provides that GIs cannot be protected by trademark law and that refusal of registration is foreseen for them, exceptions are provided²⁹³ as the Trademarks Directive Art.15.2 sanctions the possibility for Member States to register a GI that constitutes collective, guarantee or certification mark.²⁹⁴ However, this type of protection is independent from the sui generis system and is usually chosen by those who want to protect a non-agricultural product²⁹⁵ for which a sui generis system has not yet been foreseen at European level and in cases where additional protection is needed for graphics used in combination with the GI.²⁹⁶

Since this is a different system, naturally both the conditions of registration and the resulting protection differ from those of the sui generis system. Art. 75 of the Regulation requires that any person wishing to apply for the registration of a geographical collective or certification mark to the Trademark Office must provide the statutes that regulates its use.²⁹⁷ The applicant must specify in the statute who is entitled to use the mark, how to become a member of the organization, how to use the mark²⁹⁸ and what sanctions are applied in case

²⁸⁸ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.18

²⁸⁹ The European Commission in 2011 started to explore the possibility of extending GI protection to non-agricultural products at EU-level to harmonise the fragmented system of laws that exist at national level. For further information on the basis and development of this process see https://ec.europa.eu/growth/industry/policy/intellectual-property/geographical-indications/non-agricultural-products_en

²⁹⁰ KNAAK, *Geographical Indications and...*, cit., p. 849

²⁹¹ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.18

²⁹² This Regulation is supplemented by Delegated Regulation on the European Union trademark 2018/625, repealing Delegated Regulation (EU) 2017/1430, and Implementing Regulation on the European Union trademark 2018/626 repealing Regulation (EU) 2017/1431).

For further details see <https://euipo.europa.eu/ohimportal/it/eu-trade-mark-legal-texts>

²⁹³ Art. 74.2 of the Regulation derogates what is foreseen by Art 7.1(c) granting the possibility for collective trademarks to constitute a GI

²⁹⁴ BLAKENEY, *The Protection of...*, cit., p.358

²⁹⁵ INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.41

²⁹⁶ KNAAK, *Geographical Indications and...*, cit., p.857

²⁹⁷ *Ibidem*

²⁹⁸ The trademark registrant is generally free to choose the conditions of use if they do not conflict with other provisions of the Regulation.

of improper use. In the case of certification marks, details regarding certification and control must be included as well as the proof that the applicant does not supply goods or services of the certified type.²⁹⁹ Refusal of registration is foreseen when, in addition to the cases provided in Arts. 41 and 41 of the Regulation, the statute does not comply with the provisions of Arts. 74 and 75 in the case of collective marks and with Arts. 83 and 84 in the case of certification marks. It is foreseen that the application for registration shall be rejected if the mark is likely to mislead consumers.³⁰⁰ Furthermore, conditions of use laid down in the statute must be formulated in such a way as to be compatible with the specification of the GI product, the latter being a prerequisite for registration of the GI.³⁰¹ Once registered, the trade mark is valid for 10 years, and then it can be renewed according to its use.³⁰² At this point, any producer operating within the geographical area identified by the geographical mark and who meets its requirements for honest commercial and industrial use may be entitled with the use of the mark.³⁰³ In fact, as mentioned above, when a GI is registered as a collective mark it does not establish an exclusive right of the owner but of all the members belonging to the association owning the mark.³⁰⁴ For GIs certification or guarantee marks there is no need to be part of an association to be authorized to use the mark.³⁰⁵ Indeed, any manufacturer who meets the production standards set by the owner of the certification mark may be entitled with the right to use that mark.³⁰⁶

The protection afforded by this type of system is the same as that afforded to individual trademarks against unauthorized use, imitation or any other improper use likely to cause confusion or to profit from the reputation of the trademark.³⁰⁷ However, as far as trademark infringements are concerned, two different situations can be identified: if they are carried out by members within the association, the association itself will provide for the consequent sanctions; if the violation is carried out by a third party, the sanctions are mostly provided

²⁹⁹ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 7

³⁰⁰ Arts. 76 and 85 of the Regulation (EU) 2017/1001

³⁰¹ *Ibidem*

³⁰² INSIGHT CONSULTING, REDD, & ORIGIN, *Study on geographical...*, cit., p.43

³⁰³ Art. 75.2 of Regulation (EU) 2017/1001

³⁰⁴ BLAKENEY, *The Protection of...*, cit., p.358

³⁰⁵ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 7

³⁰⁶ Art. 83.2 of Regulation (EU) 2017/1001

³⁰⁷ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 7

for in the statute.³⁰⁸ As regards the measures provided for against unauthorised use of the trade mark, it is the owner of the trade mark itself, or also the persons authorised to use it in the case of certification marks, who shall proceed with the claim for compensation.³⁰⁹ Finally, if the trade mark owner's behaviour falls into the following cases, i.e. provides goods or services of the certified type in the case of certification marks, fails to take measures to prevent the misuse of the trade mark, uses the trade mark in such a way as to deceive the public, or changes the status of the trade mark contrary to the provisions of the regulation, it is provided in Art. 81 and Art. 91 that the right to the trade mark shall be revoked by application to the Trade Mark Office or on the basis of a counterclaim in an infringement action.³¹⁰ It can be concluded that, given the milder nature of the protection this system confers, and, given the exceptions it must take into account due to the presence of an alternative system of protection, the system of protection of GIs as collective marks is more of a supplementary system of protection rather than a stand-alone one.³¹¹

The above analysis reveals a strong commitment from the EU in creating a comprehensive system that guarantees fair competition, promotes the production and protection of local and traditional agri-food products, gives a further boost to rural development and ensures transparent information for consumers.³¹² In pursuing these objectives, due to the lack of a single registration system at international level and the existence of multiple and often conflicting approaches to GI protection, the EU's GI policy has further expanded in two directions. On the one hand, over the years the EU has engaged in a number of bilateral trade agreements concerning the protection and promotion of GIs, in order to promote its *sui generis* scheme and obtain protection also in those countries where GIs are protected as trademarks. The most recent and perhaps most relevant in terms of impact is EU-China agreement which will be dealt with in detail in chapter two. On the other hand, Europe is trying to pull the strings within the international negotiations of the WTO Doha Round to promote the creation of an international system based on registration that guarantees a higher degree of protection for all GIs than that currently guaranteed by the TRIPs.³¹³

³⁰⁸ THE WORLD INTELLECTUAL PROPERTY ORGANIZATION, UNITED STATES PATENT AND TRADEMARK OFFICE, *Introduction to geographical indications...*, cit., p. 7

³⁰⁹ Arts. 80 and 90 of Regulation (EU) 2017/1001

³¹⁰ BLAKENEY, *The Protection of...*, cit., p.399-403

³¹¹ KNAAK, *Geographical Indications and...*, cit., p. 859-861

³¹² GRAGNANI, *The law of...*, cit., p.272-273

³¹³ Tim, ENGELHARDT, "Geographical Indications Under Recent EU Trade Agreements", *International Review of Intellectual Property and Competition Law*, 46(7), 2015, p.781

Chapter 2. The protection of GIs under the EU-China Agreement

2.1 The Chinese current legislation on PGIs and PDOs

In China, the process of economic liberalisation and reform launched in the 1980s by the leadership headed by Deng Xiaoping, triggered the transition from a highly centralised and protectionist economic system to a socialist market system.³¹⁴ In this context of opening up to foreign markets and gradual privatisation of the law, the protection of IPR has become a central element of the reforms and has been subject to constant revision and improvement. Consequently, the issue of GI protection, which was hitherto completely unknown to Chinese society, has gradually become more and more of a focus of interest, especially following the accession of China to various IPR international organisations and treaties.³¹⁵ Indeed, China became a member of WIPO in 1980, of the Paris Convention and the Madrid Agreement in 1985 and 1989 respectively, and joined the WTO in 2001, subsequently ratifying the TRIPS Agreement. As a consequence, GIs were firstly introduced in China as a legal concept.³¹⁶ Hence, China initially employed several means to ensure that GIs could receive legal protection, such as bilateral agreements or administrative orders.³¹⁷ Over the years, a comprehensive legal framework on GIs protection has been progressively drafted and aligned with that of the international legal regimes and standards.³¹⁸ As a result, the protection given to GIs³¹⁹ in China, strongly influenced by the French system of protection of AOs, is very similar to the one given by Regulation No. 1151/2012 of the EU.³²⁰

As in the case of other countries, besides those laws dedicated to unfair competition, product quality and consumer protection, there are other system to protect GI in China. However, the the situation is quite complex since more than one system of GIs protection coexist: those exclusively dedicated (*sui generis*), providing a closer link with the geographical area of

³¹⁴ UNIONCAMERE LOMBARDIA, PROMOS, & STUDIO LEGALE CHIOMENTI, *La tutela della proprietà intellettuale CINA*. Unioncamere Lombardia, 2011, p.3

³¹⁵ HU, Weinian, *Reciprocity and Mutual Benefits: EU-China cooperation on and protection of geographical indications*. CEPS Research Reports No. 2018/04, 2018, p.8

³¹⁶ FENG, *Geographical Indications...*, cit., p. 426

³¹⁷ Ibidem

³¹⁸ Marina, TIMOTEO, *La difesa di marchi e brevetti in Cina. Percorsi normativi in un sistema in transizione* (2nd ed.), Giappichelli, 2014, p. 8

³¹⁹ In Chinese, GIs are known under the term 地理标志 *dìlǐ biāozhì*

³²⁰ Irina, KIREEVA, & WANG, Xiaobing, "Protection of Geographical Indications in China: Conflicts, Causes and Solutions". *The Journal of World Intellectual Property*, 10(2), 2007, p.85

origin, and the trademark system, providing the same protection that is granted to all types of trademarks.³²¹ In general, these protection systems are characterised by the so-called dual-track system, i.e. a system of both administrative and judicial protection³²², that shall monitor all cases of counterfeiting or general infringement of the rules and proceed with the appropriate measures to seize and fine the counterfeiters and to stop the act of infringement.³²³ Since under these regimes GIs are identified as collective rights which do not belong to the individual but to the geographical area of origin, public authorities actively participate in their protection together with the government, which is responsible for exercising strict controls on the observance of the quality and characteristics of the products in their production processes.³²⁴ Although it was very articulate and somehow difficult to manage, the Chinese GI's protection system has undergone changes that have meant that the complexity from an administrative and governmental point of view has been considerably reduced partly thanks to the influence exerted by the European protection system,³²⁵ and that the comprehensive legal framework of GIs has been constantly improved and systematized.³²⁶

2.1.1 The trademark protection system

With the accession to the Paris Convention in 1985 and the progressive alignment with international IPR standards, the Chinese legislator felt the need to expand the existing Trademark Law (*Zhonghua renmin gongheguo shangbiao fa* 中华人民共和国商标法 or TML) to give legal protection to GIs.³²⁷ In fact, in 1994 they were included among the signs admissible as trademarks, precisely as collective or certification marks, as is also the case within European legislation.³²⁸ However, the process of inclusion of GIs under trademark protection was only formalized after 2001, when TML was amended for the second time.³²⁹ The current TML, last amended in 2019³³⁰, covers the protection of GIs

³²¹ ZHENG, Haiyan, A Unique Type of Cocktail: Protection of Geographical Indications in China. In I. Calboli (Ed.), *Geographical Indications at the Crossroads of Trade, Development, and Culture* (pp. 380–408). Cambridge University Press, 2017, p. 387-388

³²² UNIONCAMERE LOMBARDIA, PROMOS, & STUDIO LEGALE CHIOMENTI, *La tutela della proprietà...*, cit., p.13

³²³ CHENG, Yiqun, *Registration and Protection of Geographical Indications in China*, WIPO, 2012, p.14-15

³²⁴ ZHENG, *A Unique Type of...*, cit., p. 388

³²⁵ ITALIAN TRADE COMMISSION, *La Protezione delle Indicazioni Geografiche nella Repubblica Popolare Cinese*. IPR Desk Pechino, 2020, p.3

³²⁶ HU, *Reciprocity and Mutual...*, cit., p.2

³²⁷ Ivi, p.11

³²⁸ TIMOTEO, *La difesa di marchi...*, cit., p. 14

³²⁹ HU, *Reciprocity and Mutual...*, cit., p.11

³³⁰ ZHANG, Zoey, *China's New Trademark Law in Effect from November 1, 2019*. China Briefing News, 2021, May 28, <https://www.china-briefing.com/news/chinas-new-trademark-law-effect-november-1->

recognizing them in Art. 16(2) as signs that “*identify a particular good as originating in a region, where a given quality, reputation or other characteristic of the goods is essentially attributable to its natural or human factors*”.³³¹ The definition here employed highlights the progressive alignment of the Chinese legislation on this matter with that of the international agreements and treaties.³³²

Falling under the category of collective or certification trademarks³³³, GIs are therefore intended as collective rights, shared by members of an association or by authorized producers, that could be registered and protected as such under the regime of trademarks (Art. 6)³³⁴ and could enjoy the same protection³³⁵ that is granted to any other kind of trademark.³³⁶ With respect to this regime, it is not necessary for the name of the GI to correspond to that of the geographical area concerned, a GI may also consist of any other sign that can identify that area, therefore the scope of protection granted by this system is wider than the one under the *sui generis* ones since, as we will see later, the latter only cover those GIs constituted by geographical names.³³⁷ However, it is stipulated in Art. 16 that the name of a registered collective or certification mark must not contain the name of a GI to which it does not correspond, as this would be misleading for consumers and would therefore be refused.³³⁸

The registration procedure of a GI is disciplined by Art. 16 of the TML, which states that applications must be filled in and submitted to the local competent Trademark Office (*Shangbiao ju* 商标局 or TO) previously coordinated by the State Administration for Industry and Commerce of the People's Republic of China (*Guojia gongshang hang zheng guanli ju* 国家工商行政管理局 or SAIC) and now, since 2018, under the control of the

2019/#:%7E:text=China's%20new%20Trademark%20Law%20(the,into%20effect%20November%201%2C%202019.&text=The%20law%20has%20strengthened%20provisions,the%20punishment%20for%20trademark%20infringement.

³³¹ The definition of GIs is similar to that of Art. 22.1 of TRIPS, but here the attribution of quality, reputation or other characteristics to natural or human factors is specified, therefore is made also along the line of that of Appellations of Origin of the Lisbon Agreement.

³³² KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 94

³³³ Certification and collective trademarks are defined in Art. 3 of the Trademark Law

³³⁴ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 95

³³⁵ Art. 57 of the Trademark Law provides that trademarks shall be protected in case they are used without authorisation on identical or similar products causing a likelihood of confusion

³³⁶ FENG, *Geographical Indications...*, cit., p. 433

³³⁷ ZHENG, *A Unique Type of...*, cit., p.382-384

³³⁸ *Ibidem*

State Administration of Market Regulation³³⁹ (*Guojia shichang jiandu guanli zongju* 国家市场监督管理总局 or SAMR)³⁴⁰; if the application for registration is for a GI that identify a product not originating in the place indicated, it will be refused and, consequently, the use of that trademark will be prohibited.³⁴¹ Otherwise, it is submitted under the examination and approval procedures of the competent TO.³⁴² As it happens under the collective and trademark system in EU, whoever wants to register a GI under the TM system, whether it is a company, an association or any other organisation made up of members belonging to the region indicated by a GI³⁴³, has to present specific documents to certify its suitability as an applicant, including an official document provided by the competent authority that certifies the approval of the request³⁴⁴, a disciplinary of the product specifications, detailed information about the testing procedures and tools used to verify the product quality and also the statutes which regulates the use of that IG.³⁴⁵ In the specific case of the collective trademark registration procedure a complete list of the members of the organization or the association that is applying for the registration must be included.³⁴⁶ Once the request is submitted to the TO, the latter carries out the due process of approval and examination of the trade mark application.³⁴⁷ If the request satisfies all the requirements and if the TO cannot find any legally justified reason to refuse the request for registration, the latter is published in the “Trademarks Gazzette” and within three months, if no opposition from third parties is lodged, the TO issues the certificate of registration of the GI.³⁴⁸

³³⁹ BUTCHER PIAT, Hugo, *China's State Administration for Market Regulation: What Does it Do?* China Briefing News, 2019, November 7, <https://www.china-briefing.com/news/chinas-state-administration-for-market-regulator-samr/>

³⁴⁰ After the reorganization of the State Council in 2018, SAMR has taken over all the responsibilities previously assigned to other administrative bodies such as the State Administration for Industry and Commerce (SAIC), the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), the China Food and Drug Administration (CFDA), the Anti-Monopoly and Anti-Unfair Competition Bureau, the Price Supervision and Anti-Monopoly Bureau (under the NDRC and MOFCOM), the Anti-Monopoly Commission (under the State Council), the Certification and Accreditation Administration of China (CNCA), the Standardized Administration of China (SAC) and the State Intellectual Property Office (SIPO). It aims to supervise what happens in the market by carrying out practices and functions related to quality inspection, ensuring fair competition, fighting corruption, controlling and supervising business registration practices and issuing business licences, and everything related to IPR management. For further details and info on SAMR see <http://www.samr.gov.cn/>

³⁴¹ KIREEVA, WANG, *Protection of Geographical...*, cit., p. 81

³⁴² *Ibidem*

³⁴³ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 96

³⁴⁴ The local authorized TO conducts a preliminary check to exclude the presence of previous registrations of identical or similar marks and compliance with applicable law.

³⁴⁵ ZHENG, *A Unique Type of...*, cit., p. 385

³⁴⁶ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 97

³⁴⁷ As provided for in Chapter 3, Art. 28 and seq

³⁴⁸ UNIONCAMERE LOMBARDIA, PROMOS, & STUDIO LEGALE CHIOMENTI, *La tutela della proprietà...*, cit., p. 9

As far as the controls on the correct use of a protected GI are concerned, these must be carried out by the owner of the collective or certification trademark itself³⁴⁹, in accordance with the regulation submitted at the time of application for registration. If those controls are not carried out effectively, causing the production of goods that do not meet the quality requirements and standards contained in the specification and, consequently, causing a damage to consumers, the Administrative Authorities for Industry and Commerce (AICs) shall provide for a period of time to rectify the correct standards. In case of failure to do so, a fine is imposed on the trademark's owner.³⁵⁰

Regarding the right to use the registered GIs, it is granted to any person or organisation operating within the designated geographical area that satisfies all the production standards set out in the specification set out by the collective or certification trademark owner.³⁵¹ A protected GI establishes an exclusive right to use the trademark and protects against any act³⁵² that infringes this right, i.e., the unauthorised or improper use of a registered GI. In addition, along the lines of the TRIPS provisions, the Chinese TML provides a wider specific protection for wines and spirits, by establishing that any imitation, misleading or unauthorized use of a GI, even if translated and accompanied by expression such "kind" or the like, is strictly forbidden.³⁵³ In order to guarantee this exclusive right, controls are carried out according to the abovementioned twin-track system, therefore trademark owners can file a lawsuit for infringement with the people's court or apply to the AICs which proceeds with an investigation of the infringement of the right and, if positive, can impose a sanction on the infringers and proceed with the seizure and destruction of the infringing goods or, in the most serious cases, bring the case to the juridical court.³⁵⁴ The main scopes of the protection of GIs under the trademark system include the desire to improve the administration of the trademark system, to protect the exclusive right given by the trademark itself, and to encourage all producers and all those who use the trademark to guarantee the quality of the trademark concerned to ensure that its characteristics and credibility are preserved so that end consumers are protected in turn.³⁵⁵

³⁴⁹ ZHENG, *A Unique Type of...*, cit., p. 385-386

³⁵⁰ *Ibidem*

³⁵¹ The authorisation to use these marks follows the same rules as for collective and certification marks in EU.

³⁵² The list of these acts must be specified inside the statute

³⁵³ KIREEVA, & WANG, *Protection of Geographical...*, cit., p. 83

³⁵⁴ ZHENG, *A Unique Type of...*, cit., p. 387

³⁵⁵ HU, *Reciprocity and Mutual...*, cit., p.10

2.1.2 The Sui Generis Regime

Beyond the TML protection, under the influence of the EU, China has developed also two parallel *sui generis* systems for the protection and development of GIs, respectively under the rules of the previously existing³⁵⁶ General Administration of Quality Supervision, Inspection, and Quarantine (*Guojia zhiliang jiandu jingyan jianyi zongju* 国家质量监督检验检疫总局 or AQSIQ³⁵⁷), and under the Ministry of Agriculture (*Zhonghua renmin gongheguo nongye nongcun bu* 中华人民共和国农业农村部 or MOA).³⁵⁸ Unlike TML, which is primarily concerned with the protection of private interests, in this type of scheme the focus is primarily on the administration of the GIs themselves and the duties that producers must fulfil.³⁵⁹

2.1.2.1 The AQSIQ system

The first current *sui generis* system developed in China is that enforced by AQSIQ (now SAMR), which replaced the one promulgated by the former State Office for Quality and Technical Supervision (*Guojia zhiliang jishu jiandu ju* 国家质量技术监督局) in 1999 and the one of the State Administration for Entry-Exit Inspection and Quarantine (*Guojia churujing yanjian jianyi zongju* 国家出入境检验检疫总局) of 2001. Provisions on the Protection of Geographical Indication Products³⁶⁰ (*Dili biao zhi chanpin baohu guiding* 地理标志产品保护规定 or PPGIP), strongly influenced by the French system of protection of AOs, were promulgated by AQSIQ in 2005 in order to control and govern GIs and their use and in order to guarantee that their characteristics and qualities are protected and maintained (Art.1).³⁶¹ Under this system, a wider definition³⁶² of GIs which focus is also on the characteristics of the product designated was given in Art.1; the latter substantially mirrors that of the TRIPS Agreement and makes reference to the one of the Lisbon Agreement, since it includes the human and natural factors of the region of origin³⁶³. Hence,

³⁵⁶ Now it has merged into the SAMR

³⁵⁷ This state administration is the result of the merger in 2001 of the State Office for Quality and Technical Supervision and the State Administration for Entry-Exit Inspection and Quarantine.

³⁵⁸ HU, *Reciprocity and Mutual...*, cit., p.8

³⁵⁹ FENG, *Geographical Indications...*, cit., p. 428

³⁶⁰ The Chinese version of the Provisions on the Protection of Geographical Indication Products is disposable at http://www.gov.cn/gongbao/content/2006/content_292138.htm; the English version is disposable at <http://ipr.mofcom.gov.cn/zhuanti/jkblh/iplaws/gi/gibhgd.pdf>

³⁶¹ KIREEVA, WANG, &, ZHANG, *The Comprehensive Feasibility...*, cit., p. 99

³⁶² The new definition comprises those products that grow and are cultivated inside a specific region and those which raw materials and techniques of production are specific to that area.

³⁶³ KIREEVA, WANG, &, ZHANG, *The Comprehensive Feasibility...*, cit., p.100

the main scope of this *sui generis* protection of GIs is to give a proper regulation for the use of this particular signs and to maintain and preserve those qualities and characteristic specific to those products.³⁶⁴ As noted above, the product categories protected as GIs by this regime includes agricultural products originating in the area concerned by the indication and all those products processed with raw materials and techniques specific to the geographical area in question.

Controls and supervision are carried out by public authorities, respectively the Administration for Entry-Exit Inspection and Quarantine and the General Administration of Quality Supervision³⁶⁵, which carry out rigorous checks during registration and approval of the GI application to ensure there are no discrepancies with the provisions.³⁶⁶ Anyone wishing to register a GI or obtain the right to use it, whether an organisation or an individual, in line with the procedures set out in the provision, must submit an application for registration for which there is dual supervision and examination.³⁶⁷ In the case of an application for registration, it must contain documents relating to the scope of the GI, the product specifications, the materials certified for production and the relevant production standards.³⁶⁸ Once registration has been submitted to the local quality supervision department for preliminary inspection, it is forwarded to SAMR that, once verified the conformity to the provisions, publish the request on the Gazette (*Gongbao* 公报) or reject it in case of irregularity.³⁶⁹ Once the request is published any objection by third parties must be lodged within two months and, in case of opposition, the latter must be deeply examined by an expert committee of the SAMR. In the event of a positive outcome and rejection of the objection, the application for registration is approved and the GI is officially protected.³⁷⁰ As regards the application to obtain the right to use a GI on a product, it must be submitted to the local competent department³⁷¹, it must contain an official certificate that the product belongs to the specified geographic area and a report on the inspection on quality issued by a dedicated agency. After verification of conformity of the request, the latter is approved and published by SAMR and the use and protection of the IG on the product for which the request

³⁶⁴ HU, *Reciprocity and Mutual...*, cit., p. 10

³⁶⁵ At local level these tasks are carried out by the Bureau of Quality Technical Supervision and Entry-Exit Inspection and Quarantine for GIs protection respectively

³⁶⁶ HU, *Reciprocity and Mutual...*, cit., p.9

³⁶⁷ KIREEVA, & WANG, *Protection of Geographical...*, cit., p. 83

³⁶⁸ Ivi, p. 83-84

³⁶⁹ KIREEVA, & WANG, *Protection of Geographical...*, cit., p. 84

³⁷⁰ ZHENG, *A Unique Type of...*, cit., p. 389

³⁷¹ The local administrative departments authorized by the SAMR

has been made is granted.³⁷² PPGIP provide that protection is given to any registered GIs against any unauthorized, not conforming or misleading use of the IG and that it is granted by the investigations carried out by the quality supervision and Entry–Exit Inspection and Quarantine departments. In addition, as it happens under the trademark regime, any damaged party can make an appeal to the local authorities through recourse to the people's court or through direct lodging of a complaint.³⁷³ Finally, controls on quality and compliance with production standards and product specifications are carried out by Quality Supervision Departments. If they discover cases of non-compliance, they give the GI producer two years to rectify the standards. If the standards are not met or the GI is not used for two years, the SAMR will remove the registration and then revokes the right to use it.³⁷⁴

2.1.2.2 The MOA system

The second sui generis regime, or better the “primary agricultural product protection” system³⁷⁵, is that of the MOA, which came into force in 2008 with the Measures for the Administration of Geographical Indications of Agricultural Products³⁷⁶ (*Nongchanpin dili biao zhi ban fa* 农产品地理标志管理办法 or MOA Measures), and was drafted on the basis of already existing norms regulating agricultural products.³⁷⁷ These measures were adopted with the primary intention of further promoting not only agricultural products and their competitiveness inside the market but also related quality schemes(Art. 1)³⁷⁸; in addition, the regime was aimed at protecting and giving greater importance to particular areas of origin of these products.³⁷⁹ Therefore, the main scope of the protection is to give a specific regulation over the use of GIs on agricultural products and guarantee the maintenance of a certain degree of quality and the characteristics of those products.³⁸⁰

³⁷² ZHENG, H., *A Unique Type of...*, cit., p.390

³⁷³ Ivi, p. 391

³⁷⁴ KIREEVA, & WANG, *Protection of Geographical...*, cit., p. 85

³⁷⁵ Irina, KIREEVA, WANG, Xiaobing, “GI protection in China: new measures for administration of geographical indications of agricultural products”, *Journal of Intellectual Property Law & Practice*, 5(11), 2010, p. 780

³⁷⁶ The Chinese version of the Measures for the Administration of Geographical Indications of Agricultural Products is disposable at http://www.gov.cn/gongbao/content/2008/content_1071853.htm; the English version is disposable at <http://ipr.mofcom.gov.cn/zhuanti/jkblh/iplaws/gi/ncpgigl.pdf>

³⁷⁷ The Agriculture Law of the People’s Republic of China and the Law of the People’s Republic of China on the Quality Safety of Agricultural Products

³⁷⁸ HU, *Reciprocity and Mutual...*, cit., p.13

³⁷⁹ KIREEVA, & WANG, *GI protection in China...*, cit., p. 779

³⁸⁰ HU, *Reciprocity and Mutual...*, cit., p. 10

As the title suggest, where only agricultural products are mentioned, the scope of protection under this regime is narrower³⁸¹ than that of the AQSIQ (see Art.2). Furthermore, the system provides that, to be recognised as such, a GI must consist of both the name of the geographical area of origin and the name of the agricultural product, and that it is up to the Agricultural Product Quality Safety Centre (*Nongchanpin zhiliang anquan zhongxin* 农产品质量安全中心 or Centre) to approve any application for agricultural products to become a protected GI (Art. 4).³⁸² As far as the specific requirements³⁸³ are concerned, they mostly coincide with the European ones, with the exception that the name of the GI must categorically be in Chinese³⁸⁴, and that the production processes must be environmentally sustainable³⁸⁵(Art. 7).

The application must contain the authorization of the government, the product specification³⁸⁶, the geographical area concerned, a picture or a sample of the product and a document certifying the respect of the environment in the production process.³⁸⁷ Again, there is a dual approval system³⁸⁸, both at national and provincial level, and since GIs are considered as collective rights, only farmer cooperative organisations or industrial associations with government authorization and which can guarantee the supervision and the administration of the products for which they apply, can proceed with the request of registration of a product as a GI.³⁸⁹ Applications are firstly submitted to the local administrative department of the MOA, then a local expert committee set by the MOA undertakes a preliminary examination which may last up to 45 days from the date of the registration request³⁹⁰ after which provides its opinion on the basis of the respect of the

³⁸¹ The MOA GIs protection system comprises only those primary agricultural products that have been sourced from agricultural practice, including plants, animals, microorganisms and all the products obtained with agricultural activities

³⁸² KIREEVA, & WANG, *GI protection in China...*, cit., p. 781

³⁸³ The requirements to be met are respectively: the name of the GIs must be composed of the name of the geographical area concerned and the generic name of the product for which the request is made, along with the qualities and the characteristic of the products and its method of production that must be sustainable, the respect of the environmental and technical norms

³⁸⁴ The name must be composed by a generic part and a specification about the place of origin of the product concerned

³⁸⁵ For further info on MOA's sustainable measures see http://english.moa.gov.cn/overview/201910/t20191009_296605.html

³⁸⁶ The product specification must contain a description of the characteristics and the qualities of the product concerned

³⁸⁷ KIREEVA, & WANG, *GI protection in China...*, cit., p. 782

³⁸⁸ The Agricultural Product Quality Centre under the MOA is the body in charge for the final approval of the applications

³⁸⁹ ZHENG, *A Unique Type of...*, cit., p. 392

³⁹⁰ KIREEVA, & WANG, *GI protection in China...*, cit., p. 782

necessary requirements; in case of a negative opinion the applicant receives a notification of refusal within ten days after the submission of the request.³⁹¹ Otherwise, if there is a positive outcome of the primary examination phase, the request is transferred to the Centre which form another expert committee that will examine it and, again, if successful, an announcement will be published on behalf of the MOA.³⁹² After that, within 20 days anyone who has grounds to do so may lodge an objection and, if there are none, the MOA issues a permanent certificate called Certificate of People's Republic of China on the Registration of Geographical Indications of Agricultural Products (*Zhonghua renmin gongheguo nongchanpin dili biao zhi dengji zhengshu* 中华人民共和国农产品地理标志登记证书) along with the product specifications, standard and techniques of production .³⁹³ Any producer of a product in the geographical area concerned by the protected GI that wants to be entitled with the right to use it has to possess the specific qualifications and to comply with specific requirements described in the product specification of the GI.³⁹⁴ Moreover, an agreement with the holder of the GI's certificate must be concluded and the details regarding the production basis and the responsibilities and obligations that must fulfilled must be specified. Once these conditions are satisfied, the user is authorized to use the GI for production and marketing without being charged with any fee.³⁹⁵

Regarding the administration of the supervision over the use of a PGI, beyond the controls undertaken by the same holders and the users of the products carrying the GI that are responsible to maintain the characteristics, the quality and the reputation of the product, the local competent authorities, specifically the administrative department of agriculture authorized by the MOA, conduct inspections and controls regularly (Art. 18).³⁹⁶ In case of violation, being it usurpation, misappropriation, or misuse of a PGI there are no specific administrative penalties provided by MOA Measures; however, in these cases recourse is made to the Law on Agricultural Product Quality Safety which impose an administrative sanction.³⁹⁷

³⁹¹ KIREEVA, & WANG, *GI protection in China...*, cit., p. 781

³⁹² ZHENG, *A Unique Type of...*, cit., p. 391-392

³⁹³ *Ibidem*

³⁹⁴ KIREEVA, & WANG., *GI protection in China...*, cit., p. 782

³⁹⁵ Ivi, p. 783

³⁹⁶ *Ibidem*

³⁹⁷ ZHENG, *A Unique Type of...*, cit., p. 394

2.1.3 Additional laws to protect GIs in China

Beyond the TML and the two *sui generis* systems, there are other more general laws in China under which a GI can obtain protection respectively the Anti-Unfair Competition Law (*Fan bu zhengdang jingzheng fa* 反不正当竞争法), the Product Quality Law (*Chanpin zhiliang fa* 产品质量法) and the Law on Protection of Consumer Rights and Interests (*Xiaofeizhe quanyi baohu fa* 消费者权益保护法).³⁹⁸ These are laws of a more generic nature and not specifically drafted for the purpose of protecting geographical indications; therefore, GIs receive a less targeted and more partial protection under these systems which are only used in very specific cases.³⁹⁹ In any case, as these specific cases do not fall within the central theme of the thesis, they will not be further discussed.

From the analysis carried out on the multiple co-existing systems for GIs protection in China, it can be clearly stated that it is very difficult to interface with such a complicated system. Albeit true, the Chinese system has undergone several changes in recent years that have led to the creation of a system that is easier to understand and manage. In fact, until recently, GIs protection in China was not only regulated by three different systems but was also simultaneously under the triple authority of the SAIC, AQSIQ and MOA.⁴⁰⁰ Nowadays, as will be seen later in the chapter, thanks also to the latest developments in bilateral GI agreements with EU, the Chinese GI protection system has improved a lot from an institutional point of view, becoming more efficient and less confusing. With the merger of the different administrative authorities into the SAMR at the beginning of 2018, the confusion and the opacity of the different procedures created by the multiple bodies in charge has been greatly reduced⁴⁰¹ thus strengthening and improving the protection given to GIs, and Chinese authorities, together with Chinese consumers, have become more aware of the importance of the GI protection system.⁴⁰² In addition, the recognition of the importance and value of GIs and the need for protection against all those practices that infringe this IPR has also been further strengthened by the inauguration by the China National Intellectual Property Administration (*Zhongguo guojia zhishi chanquan ju* 中国国家知识产权局 or

³⁹⁸ For further information see Anti-Unfair Competition Law (PRC) (1993), Product Quality Law (PRC) (1993, last amended in 2009) and Law on Protection of Consumer Rights and Interests (PRC) (1994, revised on 2013), available at www.lawinfochina.com and www.lawtime.cn.

³⁹⁹ ZHENG, A *Unique Type of...*, cit., p.394-395

⁴⁰⁰ *Ibidem*

⁴⁰¹ HU, *Reciprocity and Mutual...*, cit., p.2

⁴⁰² HU, Weinian, *Dinner for three: EU, China and the US around the geographical indications table*. CEPS Policy Insights No. 2020-07,2020, p.19

CNIPA)⁴⁰³ of a new GI symbol⁴⁰⁴ in October 2019, which has replaced the three symbols previously used in reference to the three co-existing protection systems.⁴⁰⁵

2.1.4 The protection of foreign GIs in China

While at the beginning GIs systems of protection were only developed for and open to national registration application, nowadays also foreign products bearing foreign GIs can be registered, protected and being recognized as such in China, something that has been possible to a large extent thanks to the Sino-European collaboration in the framework of the cooperation and dialogue on intellectual property⁴⁰⁶ that began in the early 2000s, with the signing of the Memorandum of Understanding by the two parties in 2003.⁴⁰⁷ Currently, GIs of foreign products can be registered and protected in China under three different systems: they can be certified under the MOA Measures, they can be recognised under the TML and its relative regulations or, as a third and final option, they can be protected under the special legislative system of the Measures for the Protection of Foreign Geographical Indications Products⁴⁰⁸ (*Waiguo dili biao zhi chan pin baohu banfa* 外国地理标志产品保护办法), issued in 2016 by AQSIQ⁴⁰⁹ and revised in 2019 by the CNIPA.⁴¹⁰ Having already extensively examined the first two systems, the analysis will be more focused on the latter.

Specifically dedicated to the protection of foreign GIs, this system includes all those procedures concerning the administration of applications for recognition and protection of

⁴⁰³ The China National Intellectual Property Administration (CNIPA) is a vice-ministerial-level state agency under the SAMR. In accordance with the restructuring plan approved by the 13th National People's Congress, the State Intellectual Property Office of China (SIPO) was renamed China National Intellectual Property Administration (CNIPA) in 2018. For further details on CNIPA see <https://english.cnipa.gov.cn/>

⁴⁰⁴ For the official symbol see Appendix

⁴⁰⁵ “Guojia zhishi chanquan ju: xin de dili biao zhi zhuan yong biao zhi guan fang biao zhi fa bu” 国家知识产权局: 新的地理标志专用标志官方标志发布. (State Intellectual Property Office: New Official Symbols for Geographical Indications Released), *Zhongguo Nongmin Hezuoshe*. 11, 5–6., 2019, p.5

⁴⁰⁶ HU, *Reciprocity and Mutual...*, cit., p.12

⁴⁰⁷ On 30 October 2003, Europe and China agreed at their Sixth Summit in Beijing to create a structured dialogue between the two sides on IP that led to the improvement of the GIs protection system of both parties and to the creation of cooperation projects ..For further detail see [https://eur-lex.europa.eu/legal-content/IT/ALL/?uri=CELEX:52003PC0790\(01\)](https://eur-lex.europa.eu/legal-content/IT/ALL/?uri=CELEX:52003PC0790(01))

⁴⁰⁸ For the bilingual version of the Measures for the Protection of Foreign Geographical Indications Products visit <http://www.lawinfochina.com/display.aspx?id=31871&lib=law>

⁴⁰⁹ With the administrative restructuring in 2018, all of AQSIQ's affairs related to the administration of GIs were transferred to CNIPA, which thus became the main body that regulates and manages the protection of foreign GI products within China with a centralized type of organization.

⁴¹⁰ ZHANG, Tom & ZHAO, Linda, “China trademark: China improves rules on protection of foreign GI products”, *Managing Intellectual Property*, 2020, <https://www.managingip.com/article/b1kblk5ntg8c99/china-trademark-china-improves-rules-on-protection-of-foreign-gi-products>

GIs from abroad.⁴¹¹ These measures, based on the principle of reciprocity between countries that enter into cooperative relations with China,⁴¹² stipulate that all applications for GI protection of foreign products in China must also be assessed in accordance with the international agreements and treaties to which the respective countries adhere. Therefore, in the case of international agreements and treaties, direct protection is guaranteed, whereas in the case of purely bilateral agreements, it is necessary to go through the CNIPA examination and approval procedure.⁴¹³

Under this system the definition and the scope of a GI, given in Art. 2, is the same as in the other systems; moreover, the same article provides that for a foreign GI to be protected, it must already be registered, protected, and recognised as such in its country of origin and it must meet the requirements of Chinese GI legislation.⁴¹⁴ An application could be made also by a Chinese representative chosen by the applicant which will enable Chinese law firms or IP agencies to be involved and act as a contact point in the whole process.⁴¹⁵ In order to proceed with the application for registration of a foreign GI, which is naturally submitted for the approval of the competent authorities (Art. 2), it is essential that the name of the foreign product for which protection as a GI is being requested is also given in Chinese, in accordance with the regulations, and that it neither constitutes a generic name nor conflicts with a Chinese GI name, under penalty of revocation or refusal of the GI registration.⁴¹⁶ The application for registration, also to be submitted to CNIPA in double copy, one in the original language and one in Chinese, must contain the product specification and include the quality characteristics and reputation of the product.⁴¹⁷ After receiving the request, CNIPA proceed with the due examination that must be undertaken within thirty days after the submission. In case of rejection CNIPA will notify the applicant in writing, otherwise, if an application for

⁴¹¹ ZHANG, Tom & ZHAO, Linda, “China trademark: China improves rules on protection of foreign GI products”, *Managing Intellectual Property*, 2020, <https://www.managingip.com/article/b1kblk5ntg8c99/china-trademark-china-improves-rules-on-protection-of-foreign-gi-products>

⁴¹² FENG, *Geographical Indications...*, cit., p. 428

⁴¹³ ZHANG, Tom & ZHAO, Linda, “China trademark: China improves rules on protection of foreign GI products”, *Managing Intellectual Property*, 2020, <https://www.managingip.com/article/b1kblk5ntg8c99/china-trademark-china-improves-rules-on-protection-of-foreign-gi-products>

⁴¹⁴ ITALIAN TRADE COMMISSION., *La protezione delle...*, cit., p.1-2

⁴¹⁵ ZHANG, Tom & ZHAO, Linda, “China trademark: China improves rules on protection of foreign GI products”, *Managing Intellectual Property*, 2020, <https://www.managingip.com/article/b1kblk5ntg8c99/china-trademark-china-improves-rules-on-protection-of-foreign-gi-products>

⁴¹⁶ Art. 5 of the Measures for the Protection of Foreign Geographical Indications Products

⁴¹⁷ ITALIAN TRADE COMMISSION., *La protezione delle...*, cit., p. 3

registration proves to be correct and complies with the requirements, it is published by CNIPA on its website and, thereafter, requests for objections may be lodged, even from abroad, within two months of the date of publication.⁴¹⁸ In case of no objections, after other technical reviews and approval procedures undertaken by the CNIPA, the GIs is officially registered and protected inside the Chinese territory in accordance with the Chinese law.⁴¹⁹

As far as the scope of protection is concerned, this measure stipulates that foreign GIs enjoy the same protection as Chinese GI products and provides that in the event of infringement and violations recourse can be made to the competent authorities at any territorial level to proceed with an administrative procedure. These authorities are responsible for carrying out the necessary checks to ensure that an infringement has taken place and therefore, if needed, apply the appropriate administrative procedures. A further possibility in case of infringement is to appeal directly to the People's Court and take legal action.⁴²⁰

Finally, according to art. 33 CNIPA may revoke protection from a recognized foreign GI product if the protection has been revoked in the country of origin, when the GI it is considered as a generic name in China or if it evolves into a generic name and when the violation of the provisions of the law is severe.⁴²¹ To these measures, Art. 34 and 35 add more precise prescriptions concerning the modalities of revocation and more specific procedures concerning the refusal of a revocation request. In any case, it is envisaged that CNIPA itself will form a special committee to verify the request and examine the reasons attached to the revocation request. If the request is accepted, revocation is made public, whereas if not, the interested parties and revocation applicants are informed privately.⁴²²

Regarding the Trademark and the MOA systems, both of which are open to the registration of foreign GIs, in order to proceed with the application for protection within China, it is necessary, as in the case of the regulation just mentioned, that the GI in question has a certification proving that it is already registered and protected in the country of origin.⁴²³

⁴¹⁸ FENG, *Geographical Indications...*, cit., p.428

⁴¹⁹ UNITED STATES DEPARTMENT OF AGRICULTURE, *New Measures on the Protection of Foreign Geographical Indications* (No. CH2019-0184). GAIN, 2019, p. 4-5

⁴²⁰ ITALIAN TRADE COMMISSION, *La protezione delle...*, cit., p 5

⁴²¹ United States Department of Agriculture., *New Measures on...*, cit., p.2

⁴²² ZHANG, Tom & ZHAO, Linda, "China trademark: China improves rules on protection of foreign GI products", *Managing Intellectual Property*, 2020, <https://www.managingip.com/article/b1kblk5ntg8c99/china-trademark-china-improves-rules-on-protection-of-foreign-gi-products>

⁴²³ FENG, (2020). 249

In addition, in the case of the TML, it is necessary to appoint a local trademark agent who can act on behalf of the applicant and personally provide the certification documents.⁴²⁴ At the procedural and administrative level, the functioning of these two systems with respect to foreign GIs, and thus the process of their registration in China, is identical to that applied to domestic GIs. As a matter of fact, once registered, a foreign GI is protected in China and enjoys the same protection and treatment as the domestic GIs.⁴²⁵ However, it is necessary to underline that generally, in order for a foreign product to be protected as a GI in the national territory, it is necessary to take into account also all those international agreements and treaties for which the principle of reciprocity is used. In this regard, as will be illustrated in the next chapter, the EU and China have started a series of bilateral negotiations since 2006 with a view to mutual recognition of their respective GIs in order to ensure greater visibility and protection for these products.⁴²⁶

2.2 Comparison of the EU and Chinese *sui generis* systems

From the analysis carried out it is possible to see how the creation of a system specifically dedicated to the registration of foreign GIs and the gradual opening up of the other GI protection systems to the registration of foreign products coincides with China's attempt to rigorously strengthen its legal framework in compliance with the obligations of the international framework as witnessed by an increasingly evident convergence with the European model.⁴²⁷ Indeed, the EU and Chinese GI *sui generis* systems share some common features, such as the definition of GIs⁴²⁸ and the scope of application⁴²⁹ of the schemes; similarities can also be found in terms of certain stages of the process of registering products⁴³⁰ as GIs and in the supervision and controls carried out by the authorized bodies. At the same time differences also exist concerning the procedural details⁴³¹ that the systems

⁴²⁴ KIREEVA, & WANG, *Protection of Geographical...*, cit., p. 82

⁴²⁵ KIREEVA, & WANG, *GI protection in China...*, cit., p. 783

⁴²⁶ ITALIAN TRADE COMMISSION, *La protezione delle...*, cit., p. 3

⁴²⁷ ZHANG, Tom & ZHAO, Linda, "China trademark: China improves rules on protection of foreign GI products", *Managing Intellectual Property*, 2020, <https://www.managingip.com/article/b1kblk5ntg8c99/china-trademark-china-improves-rules-on-protection-of-foreign-gi-products>

⁴²⁸ Both schemes stipulate that a GI must meet three specific requirements to be considered as such: it must come from a specific geographical area, and it must possess a certain quality or reputation that is closely linked to the natural and human factors that characterise that geographical area.

⁴²⁹ That in both schemes includes agricultural products and foodstuff

⁴³⁰ Such as examination, approval and registration phases

⁴³¹ For example, the period of time given to third parties to lodge an opposition after the registration and who is authorized to lodge an opposition, the way examinations are carried out, who is authorized to make an application

prescribe⁴³² and in the scope of protection. As a matter of fact, if a comparison is made between the Chinese TML, along with the AQSIQ and the MOA systems, and the EU Regulation No. 1151/12, it can be seen how the scope of the first ones is wider than the second one; moreover, in China three parallel systems are available for GIs protection, with the possibility that the same GI is simultaneously under the protection of more than one system⁴³³, whereas in EU it is impossible to have such a situation. Although there is only one GI protection system in Europe, the level of protection provided by it is much higher than the more confusing and overlapping three Chinese systems.⁴³⁴

Beyond the small differences, it is possible to see a great similarity between the two regimes, confirmed by the fact that the Chinese *sui generis* regime is shaped on the European experience. Indeed, it is precisely on this similarity that the space for dialogue and cooperation on IPR opens up.⁴³⁵ Added to this, there is the growing awareness of the importance of GIs within China and its consumers and producers, which lead to the diminishing of the existing difference between the two regimes in terms of GI protection practices⁴³⁶, and consequently to an increasingly conscious promotion of these traditional goods.⁴³⁷ All these are the premises on which the close cooperation between EU and China has been built and pursued in recent years and which led the two parties to sign the bilateral agreement on the protection of geographical indications.

In order to better understand the implications of such an important agreement, it is worth to briefly examine the background of bilateral relations between EU and China, analysing the various steps and the main reasons that led to the decision by the two economic powers to sign the agreement.

⁴³² KIREEVA, & WANG, *GI protection in China...*, cit., p. 782

⁴³³ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 141

⁴³⁴ KIREEVA, & WANG, *The protection of...*, cit., p.129

⁴³⁵ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 145

⁴³⁶ The difference in practices is closely linked to the fact that GI protection is a more historically, culturally and traditionally rooted concept in Europe. On the other hand, since the Chinese GI protection system was coined on the basis of the European and Western systems, the very idea of protecting GIs and all the cultural and historical traditions linked to them is much less rooted and so is the perception that the Chinese themselves have of GIs and their importance. These differences are slowly diminishing thanks to the agreements that the two countries have signed with the objective of spreading the perception and the awareness of the importance of these tangible assets.

⁴³⁷ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 148

2.3 EU-China relations and their strategic cooperation

Together with the United States, EU and China represent the largest and most developed economies in the world and have been engaging in financial and commercial cooperation in many areas from the early 1980s onwards through various agreements.⁴³⁸ In particular, Europe and China diplomatic relations have been formally established in 1975. Ten years later the two sides started to sign the first trade agreements⁴³⁹ and in 1998 instituted a yearly summit to discuss their bilateral relations and set and control their agenda for cooperation.⁴⁴⁰ Over the years, their relationship, that at the beginning was only aimed at the economic cooperation, has become deeper and more comprehensive, since it is now focused on political, financial, scientific, technological, cultural and economic issues.⁴⁴¹ The widening of their relationship can be attributed to a number of factors, including China's accession to the WTO in 2001 and the gradual creation of new areas of cooperation and opportunities for both sides that have gradually been shaped over the years with projects that have seen the two sides cooperate on a global scale.⁴⁴² As a matter of fact, since the early 2000s, precisely with the establishment of a 'Comprehensive Strategic Partnership' and the EU-China IPR Dialogue⁴⁴³ in 2003, the two economic powers have become increasingly interdependent through the exploration of new areas of common interest also on the international arena. Their interdependence then further increased following the 2008 financial crisis, with the creation of the new spaces for dialogue⁴⁴⁴, a new global cooperation agenda⁴⁴⁵ and the

⁴³⁸ Natalia, WYZYCKA, & Reza, HASMATH, "The impact of the European Union's policy towards China's intellectual property regime". *International Political Science Review*, 38(5), 2017, p. 549

⁴³⁹ In 1985 the two sides signed the EC-China Trade and Economic Cooperation Agreement which covered economic and trade relations and the EU-China cooperation program.

⁴⁴⁰ Nicola, CASARINI, *Defend, Engage, Maximise: A progressive agenda for EU-China relations*. FEPS Policy Papers, 2019, p. 8

⁴⁴¹ Vincent L., MORELLI, *The European Union and China* (No. 7-5700). Congressional Research Service, 2019, p.1

⁴⁴² TU, Xinquan, & LI, Siqi, *China's Trade Policy Towards the EU: Characteristics and Prospects*, European Union's Horizon 2020 research, RESPECT, 2020, p.1

⁴⁴³ These IP dialogue projects are actual political exchanges that take place through meetings held in Beijing or Brussels on a regular basis between predefined working groups of EU and China that bring together officials from IP agencies and ministries, EU IP experts and various industry representatives. Through these meetings it is possible to structure a dialogue to discuss and analyse all IP-related issues, to bring together Chinese policymakers and industry experts and facilitate their communication and the sharing of information and new proposals. For further information on EU-China IP dialogue see <https://ipkey.eu/en/china> and WYZYCKA, & HASMATH, 2016.

⁴⁴⁴ The establishment of the EU-China High Level Trade and Economic Dialogue in 2008, the EU-China High Level Strategic Dialogue in 2010. For further information on the state of EU-China areas of cooperation see the latest EU report available at https://www.europarl.europa.eu/doceo/document/A-8-2018-0252_EN.html

⁴⁴⁵ The EU-China 2020 Strategic Agenda for Cooperation of 2013 was established with the aim of forging a strategic partnership to engage in "peace, growth, reform and civilisation" at the global level, taking comprehensive action to ensure global security and common prosperity

collaboration in the Belt and Road Initiative (*Yi dai yi lu* 一帶一路 or BRI)⁴⁴⁶, a project launched and strongly promoted by China since 2013.⁴⁴⁷

The combination of all these factors, together with tangible data demonstrates once again how both powers want to explore even more strategic synergies and further enrich their bilateral economic relationship.⁴⁴⁸ According to recent statistics, Europe is China's first and largest trading partner and vice versa, China is Europe's second largest trading partner. This is evidenced by the fact that the trade values of exports and imports between the two world powers have increased dramatically recently.⁴⁴⁹ Indeed, in 2020 EU imported goods from China at a value of 383.4 billion euro and exported goods to China at a value of 202.6 billion euro,⁴⁵⁰ data suggesting that the two powers are closely intertwined. Agri-food trade between the EU and China has also been increasing rapidly in recent years⁴⁵¹, reaching a value of 149.6 billion euro, with China as the second largest food and first dairy products imported⁴⁵² from Europe and at the same time one of the most important food supplier for EU and with GI exports⁴⁵³ from Europe to China accounting for 9% of the total export value.⁴⁵⁴

2.3.1 The basis for cooperation on GIs

In the panorama of strategic cooperation between EU and China, IPR and, in this specific case, GIs and their respective protection have gradually attracted the attention of the two sides which, as mentioned above, with a view to complementary and mutual interest, have established through a Memorandum of Understanding⁴⁵⁵ a specifically dedicated dialogue on IPRs since 2003.⁴⁵⁶ With the creation of this dialogue, the interests of both sides in IPR

⁴⁴⁶ The BRI is a transcontinental investment programme, launched in 2013 by Chinese President Xi Jinping, which includes infrastructure development and is aimed at improving the economic condition of all countries along the Silk Road, strengthening all partnerships with them, and networking for the creation of balanced and sustainable development. For further information on the specific projects of the BRI visit <https://www.yidaiyilu.gov.cn/> and <https://www.beltroad-initiative.com/belt-and-road/>

⁴⁴⁷ TU, & LI, *China's Trade Policy...*, cit., p.2

⁴⁴⁸ Ivi, p. 4

⁴⁴⁹ HU, *Reciprocity and Mutual...*, cit., p. 5

⁴⁵⁰ For further details data are available at

<https://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>

⁴⁵¹ For the latest statistics see “Monitoring EU agri-food trade: developments until April 2021” at ccpit-patent.com.cn/node/4132 and visit https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/agrifood-china_en.pdf

⁴⁵² HU, *Reciprocity and Mutual...*, cit., p.5

⁴⁵³ Among EU GIs export there are wines, spirits and PGI and PDO agri-food products.

⁴⁵⁴ HU, *Dinner for three...*, cit., p. 8

⁴⁵⁵ For further details on the Memorandum of Understanding see http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151584.pdf

⁴⁵⁶ Gisela, GRIEGER, *EU-China Geographical Indications Agreement*. European Parliamentary Research Service, 2020, p. 1

protection and enforcement, although partly complementary and partly conflicting, converged in a fruitful cooperation that has seen the emergence of two further projects since 2003. In 2007, the IPR2 project on the protection of IPR was relaunched and in 2013 a new cooperation under the name of IP Key was launched.⁴⁵⁷ All these projects have been carried out with the aim of creating a convergence between Chinese and European interests through the progressive alignment of the standards of Chinese legislation and practices with those of Europe, something that could lead to an increasing awareness of the importance of the protection of IPR also within the Chinese society. The mutual interest relies also in the need also to protect all those who hold IPR and operate within the territories of the two parties through the creation of a system that can be as transparent as possible and can be characterized by a correct application of IPR in the fight against all the misuses and violations of these rights.⁴⁵⁸ In this regard, the 2020 EU-China Strategic Agenda for Cooperation reiterates the need to strengthen the protection and supervision of IPR, and again specifically of GIs, in order to defend these rights against counterfeiting and piracy and at the same time promote the development of trade and the economy linked to GI products.⁴⁵⁹ Undoubtedly, the latter of these projects constitutes the springboard for the creation of other projects specifically dedicated to the reciprocal protection of GIs between the two sides.⁴⁶⁰ Indeed, since 2003 the IPR dialogue has led the two sides to achieve more than concrete results as we will see below, with the implementation this year of the EU-China GI Agreement.⁴⁶¹ As a matter of facts, this dialogue was the outcome of this technical cooperation between the two parties ì including seminars by industry experts, training and dedicated visits to GI production areas⁴⁶², which saw the emergence of a joint pilot project for the mutual protection of GIs as early as 2007.⁴⁶³ The latter, called the “10+10 GIs” project, was launched with the main objective to register and, therefore, ensure protection to ten famous EU GIs under the recently developed Chinese *sui generis* protection system of AQSIQ and at the same time grant protection and, according to the principle of reciprocity,

⁴⁵⁷ WYZYCKA, & HASMATH, *The impact of ...*, cit., p.550

⁴⁵⁸ *IP Key China supports EU-China Intellectual Property Working Group*, IPKEY, <https://ipkey.eu/en/china/news/ip-key-china-supports-eu-china-intellectual-property-working-group>

⁴⁵⁹ *EU-China 2020 Strategic Agenda for Cooperation*, EEAS - European Commission, 2013

https://eeas.europa.eu/delegations/china_bs/15398/EU-China%202020%20Strategic%20Agenda%20for%20Cooperation

⁴⁶⁰ GRIEGER, *EU-China Geographical...*, cit., p. 1

⁴⁶¹ *IP Key China supports EU-China Intellectual Property Working Group*, IPKEY, 2021, <https://ipkey.eu/en/china/news/ip-key-china-supports-eu-china-intellectual-property-working-group>

⁴⁶² HU, *Reciprocity and Mutual...*, cit., p. 13

⁴⁶³ *Ibidem*

recognition to ten Chinese GIs under the EU regime⁴⁶⁴ that were added to those more than 1000 GIs already protected in EU.⁴⁶⁵ Therefore, in 2007 ACSIQ and EU started to lodge applications for the registration and protection of those GIs. It was the first time that some foreign GIs were registered and protected in China under a *sui generis* regime instead of being registered as a collective or certification trademark under the Chinese TML system.⁴⁶⁶ Behind the decision to engage in this project was the desire on both sides to understand how each other's protection regimes worked and what their respective regulatory mechanisms were.⁴⁶⁷ This is because the Chinese *sui generis* regime had been created relatively recently and therefore there was a need to understand what problems might occur during the process and find solutions accordingly. Not by chance, at the start of the pilot project, the various processes of application, examination and registration of GI products in the respective countries revealed those differences mentioned above, but through the joint efforts of the two parties, they were able to gradually overcome those problems due firstly to language problems and secondly to the substantial different procedures of the two systems.⁴⁶⁸ Completed in 2012, the project also played an important role in defining the measures for the protection of foreign GIs in China, which in 2005 with the launch of the ACSIQ Measures for the Protection of Foreign GIs were still not properly defined and therefore needed further analysis of the most widespread international practices in order to be refined. In fact, up to the time of the project's launch no foreign GIs had yet been registered under the *sui generis* regime.⁴⁶⁹ Hence, thanks to this project, products such as Grana Padano, Prosciutto di Parma, Roquefort, Zhenjiang rice vinegar (*Zhenjiang xiang cu* 镇江香醋⁴⁷⁰), Longjing tea (*Longjing cha* 龙井茶), Shaanxi apple (*Shanxi pingguo* 陕西苹果) and others⁴⁷¹ became part of the products protected as GIs within both schemes.⁴⁷² The results of the project were immediately visible, with China already becoming one of the main markets for the export of EU's GI products in 2010, which value was worth more than USD

⁴⁶⁴ Francesco, CAZZINI, *EU and China around the Same Table: The New Agreement on Geographical Indications*. Regulating for Globalization, 2020, p.2

⁴⁶⁵ *EU-China Geographical Indications – “10 plus 10” project is now complete*, European Commission, 2012 https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1297

⁴⁶⁶ GRIEGER, *EU-China Geographical...*, cit., p. 1

⁴⁶⁷ HU, *Reciprocity and Mutual...*, cit., p. 13

⁴⁶⁸ *EU-China Geographical Indications – “10 plus 10” project is now complete*, European Commission, 2012 https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1297

⁴⁶⁹ HU, *Reciprocity and Mutual...*, cit., p. 13

⁴⁷⁰ *Zhènjiāng xiāng cù*

⁴⁷¹ For the complete list of the renowned products included in the project for the registration see https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1297

⁴⁷² *EU-China Geographical Indications – “10 plus 10” project is now complete*, European Commission, 2012 https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1297

840 million.⁴⁷³ Given the success of this cooperation between the two parties, the AQSIQ with a view to promoting international registration and, specifically, Chinese GIs internationally, published in May 2015 the Guiding Opinions on Promoting the International Application of the China-EU "10 plus 10" Internationally Mutually Protected Chinese Geographical Indications.⁴⁷⁴

Having considered the huge economic value of the total GI exports in China⁴⁷⁵ and the high potential for the Chinese market to grow thanks to the growing interest of the Chinese middle class in genuine European products, in 2011 the EC started to think that a further cooperation with China in the field of GIs protection was needed and to consider the idea of reenter into negotiation for a new agreement for the mutual recognition and protection of another 200 GIs, 100 from each side,⁴⁷⁶ with an high potential to be exported, a low risk to be counterfeited and a high economic value.⁴⁷⁷ In order to inaugurate the "2x100" GIs Agreement, as it is often called, in 2017 both sides published a list containing those 100 EU and 100 Chinese product that would subsequently be protected under the respective jurisdictions once the agreement was reached and signed.⁴⁷⁸ However, due to various factors, including procedural details and the need for more than one round of negotiations, it took until the end of 2019 for an agreement to be reached on the main provisions⁴⁷⁹, until the last part of 2020 for the two sides to endorse the signature and until the first part of 2021 for the Agreement to enter into force.⁴⁸⁰

Before going into the details of the negotiations and of the Agreement, it is worth analysing the main reasons and implications, other than those briefly mentioned above, that led China and Europe to engage in this landmark project.

⁴⁷³ LIU, Fengyi, "Oumeng nongchanpin dili biao zhi baohu dui zhongguo de qishi" 欧盟农产品地理标志保护对中国的启示 (Enlightenment of the protection of geographical indications of Eu agricultural products to China.) *Guanxi Zhiliang Jiandu Daobao*, (03), 2020, p.146-147

⁴⁷⁴ WORLD TRADE ORGANIZATION SECRETARIAT, *Trade Policy Review of China*. WTO, 2016
https://www.wto.org/english/tratop_e/tpr_e/s342_e.pdf

⁴⁷⁵ In 2010 the total value of GIs export from EU to China was estimated at €650 million as reported by https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1297

⁴⁷⁶ CAZZINI, *EU and China...*, cit., p. 2

⁴⁷⁷ GRIEGER, *EU-China Geographical...*, cit., p.1

⁴⁷⁸ HU, *Reciprocity and Mutual...*, cit., p. 1

⁴⁷⁹ *Ibidem*

⁴⁸⁰ CAZZINI, *EU and China...*, cit., p. 1

2.3.2 The motivations behind the Agreement

Besides the fact that the two powers are important trade partners and are increasingly economically interdependent, there are several other factors that led to the conception and implementation of the agreement between EU and China. First of all, the protection and enforcement of IP, also in third countries, and the development and strengthening of all the structures and bodies responsible for ensuring its proper functioning are of fundamental importance both for Europe and China.⁴⁸¹ Indeed, their objective is to maintain a stable economic growth, to boost innovation and encouraging global competitiveness⁴⁸², as evidenced by all the projects funded by the EU, including IPKey, and also by the guidelines to be followed dictated by the Chinese Communist Party in recent years on the issue of IPR protection.⁴⁸³ As China's IPR protection system is more recent than that of the EU, Chinese President Xi Jinping stressed in the 25th collective study session of the Political Bureau of the Chinese Communist Party Central Committee (*Zhongyang zhengzhi ju di ershiwu ci jiti xuexi* 中央政治局第二十五次集体学习), the vital importance of strengthening IPR protection across the board, in order to guarantee a new model of development and innovation, ensure quality and protect public interests through Party action, guarantee the improvement of relevant legislation and the promotion of international coordination and cooperation.⁴⁸⁴ Obviously, within the IPRs to be protected, in both cases of the EU and China, GIs play a vital role in the process of strengthening protection. Therefore, in order to improve the GI legal framework in China, it is necessary that China learns from the long

⁴⁸¹ *EU-China 2020 Strategic Agenda for Cooperation*. EEAS - European Commission, 2013, https://eeas.europa.eu/delegations/china_bs/15398/EU-China%202020%20Strategic%20Agenda%20for%20Cooperation

⁴⁸² EUROPEAN COMMISSION, *Report on the protection and enforcement of intellectual property rights in third countries*, No. 97, EUIPO, 2021, p. 3

⁴⁸³ QIU, Lifang, 邱丽芳, "Xij Jinping zai zhongyang zhengzhi ju di ershiwu ci jiti xuexi shi qiangdiao quanmian jiaqiang zhishi chanquan baohu gongzuo jifa chuangxin huoli tuidong goujian xin fazhan geju" 习近平在中央政治局第二十五次集体学习时强调全面加强知识产权保护工作 激发创新活力推动构建新发展格局 (During the 25th collective study session of the Political Bureau of the Central Committee, Xi Jinping emphasized comprehensively strengthening the protection of intellectual property rights, stimulating the vitality of innovation, and promoting the construction of a new development pattern). *Xinhua Wang*, Published, 2020, p.1

⁴⁸⁴ QIU, *During the 25th ...*, cit., p.2

European experience⁴⁸⁵ through close cooperation between the two sides.⁴⁸⁶ Indeed, promoting GI understanding and development is at the heart of the two powers' IPR dialogue and collaboration under the Agreement.⁴⁸⁷ Secondly, both Europe and China enjoy an age-old rich agricultural tradition and an equally sophisticated food culture due to the multitude of high-quality agricultural products⁴⁸⁸ that characterise their areas of origin and bring with them unique traditional knowledge and cultures specific to their place of origin. Both are characterised by a vast territory with different climatic conditions in different latitudes, and their agricultural civilisations, which have developed over centuries, have given rise to a wide range of agricultural products.⁴⁸⁹ With their long history and the variety and mix of cultures in their respective territories, both EU and China can offer a huge variety of local specialties that fall under the category of GIs and which are known worldily for their reputation.⁴⁹⁰ Therefore, the protection of these traditional assets, symbols of their centuries-old traditions, and the preservation of their respective traditional knowledge are at the core of the interest of the two powers, who look forward to this opportunity for cooperation with each other.⁴⁹¹ Thirdly, there is the great economic value and development of GIs at national and international level and the huge economic return granted by their international trade.⁴⁹² Indeed, GIs in both territories are estimated to create new jobs, stimulate growth and increase exports of GI products. Particularly, in China, GI protection, production and export plays a very important role as it has been aligned with the objective of reducing poverty, increasing food quality and boosting environmental and rural development and innovation.⁴⁹³ Something that resembles EU's Common Agricultural Policy (CAP)⁴⁹⁴ that includes the

⁴⁸⁵ Compared to China, whose GI protection system is quite young and created on the basis of the European one, the EU has a longer legal tradition of GIs, the foundations of which can be traced back to Roman times. Therefore, the system is more deeply rooted in history, culture and social norms. Consequently, the concept of GIs is also more rooted in Europe, where GIs are not only signs to be protected, but also a cultural heritage to be protected at all costs. This idea, until a few years ago, was completely absent in the Chinese imaginary where GIs simply represented a local specialty. Over the years, and thanks to European influence, the recognition and awareness of GIs is gradually increasing in China too, and consequently the need to create a legal and protective framework that can enhance and protect these important traditional assets has become increasingly concrete. For further details see KIREEVA, & WANG, 2014.

⁴⁸⁶ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.180

⁴⁸⁷ Ivi, p. 149

⁴⁸⁸ CAZZINI, *EU and China...*, cit., p.2

⁴⁸⁹ LIU, *Enlightenment of the protection...*, cit., p. 146

⁴⁹⁰ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p.90-91

⁴⁹¹ HU, *Dinner for three...*, cit., p.19

⁴⁹² LIU, *Enlightenment of the protection...*, cit., p.2

⁴⁹³ HU, *Dinner for three...*, cit., p.8

⁴⁹⁴ The Common Agricultural Policy was created with the aim of establishing a common organisation of the market in agricultural products, in order to improve and diversify the quality of all European food production, starting with agri-food products, through fishing and aquaculture, in order to offer the market products with specific characteristics that are specific to their place of origin. In addition, the policy has focused on promoting

protection and the development of GIs as one of the main objectives.⁴⁹⁵ Besides, there is the fact that the Chinese market, and specifically the food market, has experienced unprecedented growth in recent years and is one of the largest markets in the world. Alongside this is the presence of an increasingly 'sophisticated', in terms of food taste and quality, and ever wealthier middle class that pays particular attention to factors such as food safety, quality, origin and ingredients of products.⁴⁹⁶ In particular, they express a preference for high quality foods with specific nutritional values and products as they are becoming more and more aware about the importance of traditional and original food products. In this respect, GIs constitute an important marketing tool that China and Europe can exploit by increasing both product quality and diversification.⁴⁹⁷ Thus, as previously mentioned, both countries decided to invest and focus on quality systems to help producers, promote rural development and be able to offer their consumers high quality products, meeting their expectations.⁴⁹⁸ As a consequence, the demand for high quality Chinese and European products has been growing steadily, as evidenced by the previously analysed data on the growth of EU-China trade in food-stuff.⁴⁹⁹ Therefore, the penetration of high-quality GI products within the Chinese and EU markets highlights the great potential for economic gains that they can bring. Moreover, given the differences in the types of products offered by the two parties, there would be no competition, but rather complementarity and a huge variety of products from which consumers could benefit through the enforcement of the Agreement.⁵⁰⁰ Indeed, the recognition that Chinese consumers have of European GI products and, vice versa, that European consumers have of Chinese GI products, could be significantly increased and, consequently, the reputation of the respective national products⁵⁰¹ within the international market would be greatly enhanced.⁵⁰²

the rural economy, especially in remote areas, by creating a quality system for producers that rewards them for their efforts to produce a wide range of quality products. The policy is therefore aimed at creating ever greater economic competitiveness by increasing the employment rate and promoting territorial and social cohesion. In this sense, the GI protection system is seen as a powerful tool for implementing the ideas set out in the CAP. For further information and details on CAP see https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en#title

⁴⁹⁵ HU, *Reciprocity and Mutual...*, cit., p. 6

⁴⁹⁶ Sarantis, MICHALOPOULOS, *Quality schemes help EU producers break new markets*. Euractiv Report, 2017, p.10

⁴⁹⁷ KIREEVA, WANG, &, ZHANG, *The Comprehensive Feasibility...*, cit., p.180

⁴⁹⁸ Ivi, p.4-5

⁴⁹⁹ GRIEGER, *EU-China Geographical...*, cit., p.1

⁵⁰⁰ HU, *Reciprocity and Mutual...*, cit., p. 6

⁵⁰¹ That is of particular importance since a few Chinese consumers are aware about EU GI products which are often considered as generic names and vice versa, not so many European consumers are aware about Chinese GIs also often considered generic names

⁵⁰² KIREEVA, WANG, &, ZHANG, *The Comprehensive Feasibility...*, cit., p.180

Another important motivation to implement the Agreement is to boost the fight against counterfeiting, which has become a phenomenon that affect both territories damaging both Chinese and European producers. It is no coincidence that this institutional issue is at the heart of the EU-China 2020 Strategic Agenda for Cooperation⁵⁰³ and the fight against it is of extremely importance within the matter of GI protection.⁵⁰⁴ In fact, according to the European Union Intellectual Property Office (EUIPO), the phenomenon of European product counterfeiting and the misuse of certification labels on the market is far from under control and continues to grow, creating a major problem for European producers. Among the major hubs for counterfeiting European products, China, followed by Turkey, is the biggest producer.⁵⁰⁵ At the same time, China is affected by the same phenomenon and the damage is reflected negatively on Chinese industries related to the production of GI products. Counterfeiting of Chinese trademarks and certification labels, as in the European case, has a strong impact on the global reputation of its products, creating real damage to exports.⁵⁰⁶ Through this cooperation and the implementation of stricter control schemes, both sides will be able to control and combat the phenomenon in a more efficient and targeted way while increasing their bilateral trade.⁵⁰⁷ Finally, there is the need for both regimes to create a system of mutual recognition of GIs, which would counteract all those difficulties in protecting GIs abroad created by the fact that there are different protection systems and laws in different countries⁵⁰⁸, which require high financial costs and very long lead time. In this regard, there are also disputes and controversies that arise from the co-existence of GIs and trademarks under the same name, which inevitably hinder the registration of a GI.⁵⁰⁹ Furthermore, in countries where these types of IPRs are protected by the trademark system, it is also more difficult for them to penetrate the market because of the features they must possess to be considered as such. It is precisely because of these characteristics based on

⁵⁰³ *EU-China 2020 Strategic Agenda for Cooperation*. EEAS - European Commission, 2013

https://eeas.europa.eu/delegations/china_bs/15398/EU-China%202020%20Strategic%20Agenda%20for%20Cooperation

⁵⁰⁴ *Ibidem*

⁵⁰⁵ MICHALOPOULOS, *Quality schemes help...*, cit., p. 4-5

⁵⁰⁶ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 161

⁵⁰⁷ HU, *Reciprocity and Mutual...*, cit., p.3

⁵⁰⁸ In the case of China different bodies are in charge of GIs protection enforcement and this could be a weakness as it generates confusion. Often there are contradictions between the various laws, such as the lack of an explanation of the relationship between trademarks and geographical indications, which inevitably leads to disputes.

⁵⁰⁹ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 157-158

the principles of distinctiveness, priority and exclusivity that a GI is often excluded because it is considered generic or homonymous with a previously protected trademark.⁵¹⁰

To overcome all these obstacles, the GI protection policy pursued by the EU in recent years has been characterised by the desire to boost its *sui generis* system extend the protection that the TRIPS agreements do not provide except for wines and spirits.⁵¹¹ Therefore, the EU has moved to find its own independent way by seeking bilateral agreements with other powers. Primarily Europe since the 1990s but also China since 2003 have become familiar with these types of agreements as they have engaged in bilateral negotiations for GI protection with other countries.⁵¹² Hence China, despite initial resistance, has fully supported the EU in creating a multilateral system of broader GI protection.⁵¹³ In conclusion, it is possible to say that there are many and various reasons why the two powers have decided to engage in the cooperation on GIs protection, starting with the Chinese desire to learn from the European experience, moving through the fight against counterfeiting, to the desire to promote and preserve their traditions, to the creation of a multilateral system of GIs protection and ending with motivations of a strictly economic nature. In any case, both sides consider this cooperation of great importance since they would benefit greatly from this agreement.⁵¹⁴ On the one hand, through cooperation with the EU, China can learn from the long-standing European experience⁵¹⁵ and pursue its goal of strengthening the GI protection system as part of a larger project to restructure the rural system and industrialise and standardise Chinese agricultural production⁵¹⁶ to ensure high quality production that can compete internationally. In this respect China is driven by the desire to improve its GI protection system by adapting it to the international context, to further strengthen its supervision and management and to establish production standards for agricultural products that can be in line with international standards.⁵¹⁷ Collaboration with the EU has already proved to be successful in improving the Chinese system of protection, expanding the scope of recognition and protection of GI products, and promoting Chinese GI products on both European and international markets.⁵¹⁸

⁵¹⁰ HU, *Dinner for three...*, cit., p.3

⁵¹¹ GRIEGER, *EU-China Geographical...*, cit., p. 2

⁵¹² KIREEVA, & WANG, *The protection of...*, cit., p. 138

⁵¹³ GRIEGER, *EU-China Geographical...*, cit., p. 2

⁵¹⁴ KIREEVA, & WANG, *The protection of...*, cit., p. 139

⁵¹⁵ FU, Xiao, "Oumeng zhongguo juxing shipin jiaoliu hui tantao dili biao zhi chanpin tuiguang" 欧盟中欧举行视频交流会探讨地理标志产品推广 (EU and China hold a video exchange meeting to discuss the promotion of geographical indication products). *Zhongguo Huizhan*(*Zhongguo Huiyi*), (06), 2021, p.24

⁵¹⁶ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 176

⁵¹⁷ LIU, *Enlightenment of the protection...*, cit., p. 148- 149

⁵¹⁸ Ivi, p. 146

Through this agreement, China's willingness to strengthen this exchange and cooperation with the EU in the protection of GIs is therefore confirmed, in order to realise the project of continuous development of the protection of GIs in China.⁵¹⁹ On the other hand, the EU, which naturally recognises the economic benefits that the agreement brings, sees the latter as an extremely important tool in achieving one of the core objectives of EU trade policy, the global recognition and expansion of the EU's *sui generis* protection regime.⁵²⁰ Indeed, in recent years, European trade policy on GIs has been characterised by a series of autonomous bilateral trade agreements⁵²¹ with third countries aimed at recognising its GI's protection system and also at increasing trade volumes.⁵²² Within these agreements, the EU has always excelled in its ability to convince its trading partners to adopt its GI's protection system, as in this case, facilitating future collaborations and increasing its influence at the international level. As a matter of fact, through this kind of agreements, such as the one in question, Europe can get more support in the international issues concerning GIs, in particular in the request to the WTO⁵²³ to guarantee an additional protection to all the products besides wines and spirits⁵²⁴ and to guarantee a coexistence relationship between GIs and pre-existing trademarks.⁵²⁵ This is therefore what is known as a 'win-win' cooperation, which will bring mutual benefits to both sides, promoting trade and economic exchanges and ensuring the supply of authentic quality products to consumers in both markets, and therefore there is a need for both sides to strive to constantly strengthen it.⁵²⁶

2.4 The Agreement on Cooperation on, and Protection of, Geographical Indications

As seen in the previous paragraphs, the signing of the 'Agreement on Cooperation on, and Protection of, Geographical Indications'⁵²⁷ (*Zhongguo dilibiaozhi baohu yu hezuo xieding* 中欧地理标志保护与合作协定) against usurpation and imitation between Europe and China

⁵¹⁹ LIU, *Enlightenment of the protection...*, cit., p. 146

⁵²⁰ CAZZINI, *EU and China...*, cit., p. 1

⁵²¹ There are 28 bilateral agreements on GIs between the EU and third countries currently in force.

For further information see <https://www.origin-gi.com/component/flexicontent/117-news/8381-11-01-2016-eu%02agreements-impacting-on-gis.html?Itemid=1158>

⁵²² For the complete list of, and further information on, EU GIs agreement in force see <https://www.origin-gi.com/activities/policy-and-advocacy/item/5552-bilateral-plurilateral-agreements.html>

⁵²³ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 177

⁵²⁴ According to TRIPS, Art. 23, additional protection is given only to wines and spirits.

⁵²⁵ HU, *Reciprocity and Mutual...*, cit., p. 17

⁵²⁶ FU, *EU and China...*, cit., p.24

⁵²⁷ The official and integral version of the Agreement is disposable in Chinese at <http://tfs.mofcom.gov.cn/article/zscq/202009/20200903002354.shtml> and in English at [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22020A1204\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22020A1204(01)&from=EN)

is the outcome of a negotiation that began in 2011 and ended in 2019.⁵²⁸ The Agreement, negotiated for about eight years through over twenty-two rounds of negotiations and hundreds of informal consultations⁵²⁹, can be considered as the second step of the “10+10 GI” pilot project launched in 2007 and concluded in 2012.⁵³⁰ A turning point in the negotiations was marked in 2017 with the publication by both sides of a list of 100 GI products each to be protected under their respective jurisdictions, but it took another two years for concrete results to be achieved.⁵³¹ On 6 November 2019, the negotiations and informal consultations between the two sides ended⁵³² and exactly one year later, on 23 November 2020, they jointly adopted the decision⁵³³ on the conclusion of the Agreement between the EU and the Government of the People's Republic of China⁵³⁴ to protect 200 GIs against usurpation and imitation⁵³⁵, after the formal signing that took place on 14 September of the same year.⁵³⁶ Due to internal issues linked to legal procedures and mutual notification to be completed, the Agreement did not formally enter into force until the beginning of 2021, precisely on 1st March.⁵³⁷ Signed in the year of the 45th anniversary of the establishment of diplomatic relations between the two powers⁵³⁸, this agreement, based on the principles of reciprocity and mutual benefit⁵³⁹ and protecting 200 iconic GI agricultural product from Europe and China⁵⁴⁰, is to be considered one of the most important trade agreements signed between Europe and China in recent years and the first comprehensive high-level treaty on the protection of GIs.⁵⁴¹ It is therefore expected that the

⁵²⁸ LI, Xiaoyu, “Zhong ou dili biao zhi baohu yu hezuo xieding shengxiao” 中欧地理标志保护与合作协定生效, (China-EU Geographical Indication Protection and Cooperation Agreement comes into force), *Nongcun Xinjishu*, 04, 2021, p. 39.

⁵²⁹ QIANG, Kaisheng, “Quanguo: 49 Ge you zhi guopin lie ru “Zhongou dili biao zhi xieding” qingdan” 全国: 49 个优质果品列入《中欧地理标志协定》清单 (Nationwide: 49 high-quality fruits are included in the "China-EU Geographical Indication Agreement" list.), *Zhongguo Guoye Xinxu*, 38(03), 46, 2021, p.46

⁵³⁰ CAZZINI, *EU and China...*, cit., p. 2

⁵³¹ HU, *Reciprocity and Mutual...*, cit., p. 1

⁵³² GRIEGER, *EU-China Geographical...*, cit., p. 1

⁵³³ *EU-China: Council gives final green light to the agreement on geographical indications*. European Council, 2020, November 23, <https://www.consilium.europa.eu/en/press/press-releases/2020/11/23/eu-china-council-gives-final-green-light-to-the-agreement-on-geographical-indications/>

⁵³⁴ CAZZINI, *EU and China...*, cit., p.1

⁵³⁵ GRIEGER., *EU-China Geographical...*, cit., p. 1

⁵³⁶ QIANG, *Nationwide: 49 high-quality...*, cit., p.46

⁵³⁷ LI, *China-Eu Geographical...*, cit., p.39

⁵³⁸ WANG, Xinlei, 王欣蕾, “Cong «Zhongou dili biao zhi xieding» kan pinpai baohu dui shuangbian maoyi de yingxiang” 从《中欧地理标志协定》看品牌保护对双边贸易的影响 (Viewing the impact of brand protection on bilateral trade from the "China-Europe Agreement on Geographical Indications"), *Zhongguo dui Maoyi*, 10, 2020, p.11

⁵³⁹ MICHALOPOULOS, *Quality schemes help...*, cit., p. 10

⁵⁴⁰ WANG, Cuizhu, “The EU Symposium on geographical indications was held in Beijing, and the China EU bilateral agreement on geographical indications came into effect”, *China Food Safety Magazine*, 13, 2021, p.38

⁵⁴¹ LI, *China EU Geographical...*, cit., p.39

EU and China will work together and seek to further extend this cooperation to other trade areas to promote this successful approach in bilateral trade relations.⁵⁴²

2.4.1 Challenges to overcome

Regarded as a milestone, the Agreement was reached between the parties not without difficulties. In fact, the various negotiations that have taken place over the years have been necessary to overcome all those obstacles dictated mainly by those differences between the two regimes in China and Europe in terms of practices and the legislative system of reference.⁵⁴³ First of all the lack of awareness of GIs in China on the part of consumers and producers was reflected in the fact that they could not be used as effective marketing tools in the same way as in Europe.⁵⁴⁴ This was closely linked to the fact that in China, unlike Europe, there was no centuries-old tradition of GI protection and consequently the protection system had not developed until around the 1990s.⁵⁴⁵ As a result, the number of GIs registered in China was significantly lower than those registered in Europe. This is to say that at the beginning of the negotiation there was not that equality of interest in developing cooperation for the mutual protection of these distinctive signs.⁵⁴⁶ It is no coincidence that the '10 +10' project for the mutual recognition of an equal number of GIs was launched to seek a balance between the two sides.⁵⁴⁷ Another problem was constituted by the presence of three different systems of protection (AQSIQ, MOA and TML) of GIs in China, that often result in problems in terms of conflict between different rights when a GIs was protected under more than one regime and even in disputes linked to counterfeiting.⁵⁴⁸ And again, till few years ago among the three different systems available, only the TML was open to the registration of foreign GIs, limiting market access to foreign GIs.⁵⁴⁹ Linked to this there was the fact that the scope of protection of the Chinese system was way more extensive than the one of the EU Regulation No. 1151/12 which was applied only to agricultural, food and wine products, while the former included also industrial products.⁵⁵⁰ Furthermore, the *ex-officio* enforcement proper to the *sui generis* regime is not provided for in the trademark system, where it is the responsibility of the trademark owner to enforce the GI law. This often caused

⁵⁴² MICHALOPOULOS, *Quality schemes help...*, cit., p. 10

⁵⁴³ KIREEVA, & WANG, *The protection of...*, cit., p. 140

⁵⁴⁴ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 180

⁵⁴⁵ LIU, *Enlightenment of the protection...*, cit., p.148

⁵⁴⁶ KIREEVA, & WANG, *The protection of...*, cit., p. 140

⁵⁴⁷ *Ibidem*

⁵⁴⁸ FENG, *Geographical Indications...*, cit., p. 427

⁵⁴⁹ Ivi, p. 428

⁵⁵⁰ KIREEVA, & WANG, *The protection of...*, cit., p. 140

problems with the correct application of the law and consequently the loss of the economic benefits associated with the GI.⁵⁵¹ All these issues, added together, certainly constituted obstacles to the initial success of the negotiation, or rather, a compromise had to be found between the two parties in order to balance the interests of both sides. Therefore, on the basis of all these considerations and because of the benefits that the agreement was expected to bring, Europe and China worked over the years towards the realisation of this landmark project.

2.4.2 The contents of the Agreement

As seen above, the EU-China GIs Agreement protects 200 GI products, 100 on each side, guaranteeing the production of, and bilateral trade in, high quality products and blocking counterfeiting of these products through effective measures.⁵⁵² The corpus of the Agreement consists of 14 articles which not only dictate the terms of protection of the GIs under consideration, but also contain provisions governing the administration and protection of future additional GIs.⁵⁵³ In fact, the two parties agreed that the scope of protection of the GI would be extended to a further 350 GIs, 175 on each side, to be registered and protected within four years⁵⁵⁴ of the official entry into force of the agreement.⁵⁵⁵ Thus, it is estimated that by the end of this period, at the beginning of 2025, as many as 550 GI products from both parties could be protected under their respective jurisdictions.⁵⁵⁶

The scope of the Agreement, contained in Art.1, currently extends to agri-food products, wines and spirits; however, Europe and China, in light of the numerous issues that have arisen due to the broader scope of protection in China's Trademark system, are discussing

⁵⁵¹ Hu, W., *Dinner for three...*, cit., p.3

⁵⁵² 中欧地理标志协定正式签署. *China-EU Geographical...*, cit., p.39

⁵⁵³ GRIEGER, *EU-China Geographical...*, cit., p. 1

⁵⁵⁴ Art. 3 of the *Agreement on Cooperation on, and Protection of, Geographical Indications*

⁵⁵⁵ BEN, Kanxun, 本刊讯, “Guojia zhishi chanquan ju fabu oumeng dili biao zhi rending gonggao zhongou dili biao zhi xieding di yi pi qingdan chanpin baohu shengxiao” 国家知识产权局发布欧盟地理标志认定公告 中欧地理标志协定第一批清单产品保护生效 (The State Intellectual Property Office publishes the EU Geographical Indication Recognition Announcement, the protection of the first batch of products listed in the China-EU Geographical Indication Agreement takes effect), *Zhonghua Shangbiao*, 03, 2021, p.25

⁵⁵⁶ LI, Lei, “Luoshi dili biao zhi xieding shenhua zhongou chanye hezuo” 落实地理标志协定深化中欧产业合作 (Implement Geographical Indications Agreement and Deepen China-EU Industrial Cooperation). *Zhongguo Guoqing Guoli*, 04, 2021, p. 56

the possibility of extending the scope of protection⁵⁵⁷ of the agreement to non-agricultural products as well.⁵⁵⁸

The provisions contained in the agreement cover several issues. First and foremost, of course, is the management of the 200 already published GIs whose due registration procedures have been duly completed and which therefore do not need to be further subjected to the procedures of examination, publication, open period for third party opposition and so on.⁵⁵⁹ As previously mentioned, those 200 European and Chinese GIs are recognized and protected as such from the entry into force of the EU-China GIs Agreement. However, with the extension of the scope to other 175 GIs for each party, the Agreement also contains all the provisions relating to the new GIs to be protected, starting with the registration procedures,⁵⁶⁰ including all the examination stages to which the GIs must be submitted, the scope of protection and the management of the use of the GI right.⁵⁶¹ Moreover, provisions concerning the administration of the relationship between GIs and trademarks are also included.⁵⁶² In addition to the 14 articles seven other annexes are attached to the agreement containing the parties' respective legislations, all relevant technical specifications regarding the registration of GIs, and the list of the future 350 GIs that will be registered and protected within the next four years.⁵⁶³

From a purely technical point of view, the agreement is primarily aimed at ensuring a higher level of protection for the GIs of both parties which implies the need for a higher level of attention and accuracy, especially with regard to the new GIs that will be registered in future.⁵⁶⁴ In fact, a high level of protection implies protection from all practices that could lead to consumers confusion or mislead them. In this regard, the scope of protection of the agreement is given in Art. 4 prohibiting the use of elements on products suggesting a false geographical origin, the improper use of a GI on a product similar or identical to the one identified by the GI but not originating in the place, even in the presence of the indication of

⁵⁵⁷ Hu, W., *Reciprocity and Mutual...*, cit., p. 3

⁵⁵⁸ Considerations on the possible extension of the scope of the agreement to other product categories beyond those already established are contained within Art. 1.2 of the agreement itself. Annex VII contain the list of products to which the protection is granted within two years of the entry into force of the agreement due to the enlargement of the scope of protection.

⁵⁵⁹ Hu, W., *Dinner for three...*, cit., p. 16

⁵⁶⁰ Art. 2 of the Agreement on Cooperation on, and Protection of, Geographical Indications

⁵⁶¹ GRIEGER, *EU-China Geographical...*, cit., p. 1

⁵⁶² CAZZINI, F., *EU and China...*, cit., p.2

⁵⁶³ *Ibidem*

⁵⁶⁴ Hu, W., *Reciprocity and Mutual...*, cit., p.3

the real origin or of transliterations or transliterations of the same accompanied by the terms "type", "like" or similar, and finally the use of a GI identifying a product that does not comply with the specification.⁵⁶⁵ Here, clear reference is made to Art. 23 TRIPs which, as we know, only grants this additional protection to wines and spirits.⁵⁶⁶

Secondly, it is clearly specified the right to use GIs only according to the specifications laid down by the agreement itself and in accordance with the relevant legislation of the respective parties contained in the first annex⁵⁶⁷; it is also provided for the possibility of using the respective official quality signs without the need to obtain further administrative authorisations.⁵⁶⁸ This measure further underlines the landmark importance of this agreement. In fact, not only the GIs included in the agreement will receive a wider protection, but they will be given the possibility to use the official GI signs of the other party, ensuring their effective promotion in the respective markets and their conscious recognition by Chinese and European consumers and thus widening the consumer base of both parties and the access to their respective markets.⁵⁶⁹

Thirdly, and of extreme importance, is the specification contained in Art. 6, concerning the relationship between GIs and pre-registered trademarks.⁵⁷⁰ Indeed, as seen above, European GIs protected under the sui generis regulation often did not qualify for protection in third markets where the trademark system and its inherent right of priority prevent the registration of a GI whose name is identical or similar to a previously registered and protected trademark.⁵⁷¹ As previously seen, this is largely due to the fact that the different GI protection systems are often incompatible and give rise to disputes in terms of the right of priority.⁵⁷² It is precisely in this regard that the content of Article 6 of the Agreement plays a very important role. It specifies the conditions for coexistence between similar or identical trademarks and GIs. This coexistence condition was already present within the Chinese jurisdiction which, by subjecting GI protection to three different schemes, had expressed itself positively on the possibility of allowing a GI and an equal or similar trademark to coexist in the case as long as the prerequisites of quality, fair use and good faith are met.⁵⁷³

⁵⁶⁵ Art. 4 of the Agreement on Cooperation on, and Protection of, Geographical Indications

⁵⁶⁶ CAZZINI, *EU and China...*, cit., p.3

⁵⁶⁷ Art. 5 of the Agreement on Cooperation on, and Protection of, Geographical Indications

⁵⁶⁸ Art. 5.2 of the Agreement on Cooperation on, and Protection of, Geographical Indications

⁵⁶⁹ LI, *China EU Geographical...*, cit., p.39

⁵⁷⁰ Hu, W., *Reciprocity and Mutual...*, cit., p.3

⁵⁷¹ Hu, W., *Dinner for three...*, cit., p. 5

⁵⁷² FENG, *Geographical Indications...*, cit., p. 436-437

⁵⁷³ HU, *Reciprocity and Mutual...*, cit., p. 14

This possibility is also provided for by the EU-China agreement on GIs, which specifies the two ways in which the two IPRs can coexist. Art. 4 already prescribes the possibility for GIs totally or partially homonymous with a previously registered trademark to coexist when they do not confuse the consumer about the real origin of the product and that the conditions for coexistence are determined through consultation between the two parties.⁵⁷⁴ Furthermore art. 6.1 and 6.2 exemplifies two general cases to regulate the relationship between GIs and trademarks. In the first one, a GI previously registered as a trademark which wants to access the sui generis protection is granted this possibility if it has been registered in good faith or established through its use as a trademark.⁵⁷⁵ The article then provides that following the registration of the additional 350 GIs foreseen within four years of this agreement, the parties will refuse the registration of a trademark or invalidate it in the event that it consists of a GI or its transcription or may create confusion as to the geographical origin of the product.⁵⁷⁶ Another important issue related to the resolution of disputes between pre-existing trademarks and homonymous GIs are the "exceptions to full protection" in the case of few generic GIs⁵⁷⁷ and pre-existing trademarks. The agreement proposes two different solutions in this regard: the first one is the so-called "phasing out" which consists in the future possibility to protect as GI those names such as *Feta* or *Asiago* which have been considered generic until then and have often been subject to counterfeiting in the Chinese market.⁵⁷⁸ The second one is the joint decision not to grant protection to the single components of a GI⁵⁷⁹ containing a compound name, but to the whole name. This is the case, for example, of *Mozzarella di Bufala Campana* PDO for which protection is granted in presence of the whole name and not, for example, only for the word *mozzarella*.⁵⁸⁰

Since the first 200 GIs are already registered and protected under the agreement, the set of measures described above will apply only and exclusively to future GIs that will become part of the Agreement in the future.⁵⁸¹

Finally, the agreement prescribes general rules of procedure (Art. 8), the establishment of a joint monitoring and implementation Committee (Art. 10), which, through cooperation

⁵⁷⁴ Art. 4 of the *Agreement on Cooperation on, and Protection of, Geographical Indications*

⁵⁷⁵ Art. 6.1 of the *Agreement on Cooperation on, and Protection of, Geographical Indications*

⁵⁷⁶ Hu, W., *Dinner for three...*, cit., p. 14

⁵⁷⁷ The generic nature of a GI name is determined according to the criteria listed in Art. 1.16

⁵⁷⁸ GRIEGER, *EU-China Geographical...*, cit., p. 1

⁵⁷⁹ The impossibility to protect individual generic components of a compound GI name is prescribed in Art.1.17

⁵⁸⁰ Hu, W., *Dinner for three...*, cit., p.14-15

⁵⁸¹ GRIEGER, *EU-China Geographical...*, cit., p. 1

(Art.11), will ensure transparency in the exchange of information between the two parties regarding legislative provisions and GIs and their amendments (Art. 9).⁵⁸² In conclusion, from an institutional point of view, the agreement represents the willingness of the two parties to cooperate in the fight against counterfeiting (as already established in the EU-China 2020 Strategic Cooperation Agenda) to ensure a comprehensive supervision of GIs and promote bilateral trade. The macro-objective of the agreement is therefore to establish benefits and equal protection through the joint effort of the two parties in a collaboration that can ensure the proper implementation of the measures.⁵⁸³

2.4.3 Products covered

As mentioned above, each of the two contracting parties has signed up to 275 GIs⁵⁸⁴ each, including agricultural products, foodstuffs, wine, tea, etc., some of which will already have guaranteed protection in the first instance, while the second batch of products will have to wait until all the necessary verification and registration procedures have been completed.⁵⁸⁵ The products included in the agreement cover a very wide geographical area, benefiting most of the regions on both sides. The GI products covered by the agreement come from 28 provinces and municipalities in China and 26 EU countries.⁵⁸⁶ In terms of product categories, a wide range of products, with wine at the top of the list, are included in the agreement. On the Chinese side, food products such as rice, fruit, vegetables, oils, tea and spices stand out.⁵⁸⁷ As the scope of the agreement was enlarged, products originating in traditional Chinese culture were also included. On the European side, products such as wines, spirits, cheese, meat and fish products are predominant on the list.⁵⁸⁸ Analysing the product categories from the point of view of the industries involved in the respective territories, it is possible to state that for the Chinese side, the most involved industries are agriculture in first place(70.18%), followed by manufacturing (28%) and finally livestock farming(1.82%);

⁵⁸² CAZZINI, *EU and China...*, cit., p.2

⁵⁸³ HU, *Reciprocity and Mutual...*, cit., p. 3-4

⁵⁸⁴ For the full list of all products included in the Agreement, see Annexes III-IV for the 200 products already under protection since the Agreement's entry into force on 1 March 2021 and Annexes V-VI for the following 350 products that will receive protection four years after the Agreement's entry into force.

⁵⁸⁵ LI, *Implement Geographical Indications...*, cit., p. 56

⁵⁸⁶ 中欧地理标志协定正式签署. *China-EU Geographical...*, cit., p.39

⁵⁸⁷ FANG, Yingxin, LIU, Lingling, GONG, Ming, & CHEN, Shangwen, "Dili chanpin you le xin baohu" 地标产品有了新保护 (Landmark products have new protection.) *Henan Keji*, 39(24), 2020, p.12

⁵⁸⁸ LI, *Implement Geographical Indications...*, cit., p. 57

while for the European side, manufacturing is predominant(94.18%), followed by agriculture (5.82%).⁵⁸⁹

2.4.4 Benefits and implications of the Agreement

In view of the above, several conclusions on the importance of the EU-China Agreement on GIs can be drawn. From the deepening EU-China economic trade and investment relations, to the safeguarding these important IPRs that protect the identity and characteristics of traditional and typical products of their places of origin, and to their internationalization and influence at global level, the huge impact of the agreement is reflected in several aspects.⁵⁹⁰

First of all, it is worth highlighting how the EU and China, through joint effort and cooperation, managed to find a compromise that balanced the interests of both sides in a fair manner by counteracting all those obstacles that hindered the achievement of a successful agreement.⁵⁹¹ It will provide previously unprecedented legal protection to GI products of both sides massively increasing the number and variety of protected products.⁵⁹² Moreover, through the fight against counterfeiting and falsification, the Agreement will contribute to the strengthening of IPR protection, playing a major role in the creation of increasingly transparent trade rules and a bilateral trade environment with extensive legal support.⁵⁹³

Secondly, it is worth highlighting how the protection and safeguarding of GIs is an important measure in market adjustment, rural development,⁵⁹⁴ in the spreading of distinctive cultures internationally and in building an ever-increasing awareness on the part of consumers who grasp GIs added value as guarantors of quality and distinctiveness and in safeguarding their right to information.⁵⁹⁵ As we have seen with the expansion of the trade scale between the two parties, China, with its huge market potential, has become one of the most important if not the most important export market for agricultural products from Europe, and vice versa Europe is becoming increasingly open and willing to welcome Chinese agricultural products into its market.⁵⁹⁶ Through this agreement, in contrast to the epidemic crisis that broke out at the end of 2019⁵⁹⁷, bilateral trade in agricultural products between the two parties has

⁵⁸⁹ LI, *Implement Geographical Indications...*, cit., p. 57

⁵⁹⁰ WANG, *Viewing the impact...*, cit., p.12

⁵⁹¹ KIREEVA, WANG, & ZHANG, *The Comprehensive Feasibility...*, cit., p. 178

⁵⁹² WANG, *Viewing the impact...*, cit., p.12

⁵⁹³ FANG, GONG, & CHEN, *Landmark products...*, cit., p. 12

⁵⁹⁴ WANG., *The EU Symposium...*, cit., p.38

⁵⁹⁵ WANG, *Viewing the impact...*, cit., p.11

⁵⁹⁶ FU, *EU and China...*, cit., p.24

⁵⁹⁷ Reference here is made to the COVID-19 epidemic crisis that burst out in early 2020

regained a balance that was not expected to be achieved before the resolution of the aforementioned crisis. According to customs data for 2020, the bilateral trade in agricultural products between the two powers would have reached \$14.39 billion, with a huge increase in bilateral flows of investments.⁵⁹⁸ Indeed, the wide variety of products included in the agreement has further boosted GI recognition at international level, bringing more and more Chinese products into the European market, helping the expansion of Chinese regional GIs. Among these, pork, dairy, wine, wheat and hemp products are the most important.⁵⁹⁹

The agreement is therefore situated in a more than favourable situation than expected that will allow a further boost to bilateral trade, bringing benefits to producers, operators and consumers on both sides.⁶⁰⁰ In fact, it safeguards the fundamental interests of the farmers, agricultural cooperatives and processing companies, distributors, supermarkets and consumers⁶⁰¹, by guaranteeing the protection of their business rights, and by safeguarding all the specific characteristics of individual agricultural products, their traditional production techniques, and, thus, guaranteeing an high level of food quality and safety and protecting the respective food heritages.⁶⁰² As distinctive products, GIs somehow represent, as we have seen, the customs and history of a particular place. The emphasis on the importance of these goods gives an additional boost to regional development not only in economic terms, but also in terms of spreading the respective cultures.⁶⁰³ In addition to this, the movement of products between the two powers will be further regulated by the agreement and as a result, with the inclusion of institutional protection, the reputation of agricultural producers on both sides will be further protected, technological investment in the respective rural sectors will increase and added value for producers will be guaranteed.⁶⁰⁴ Moreover, the ability to use the official certification marks of the counterpart has played a very important role in the first place for Chinese products by effectively promoting their recognition by European consumers and consequently increased demand, which has prompted a huge increase in exports from China to Europe.⁶⁰⁵

⁵⁹⁸ LI, *Implement Geographical Indications...*, cit., p. 57

⁵⁹⁹ WANG, *Viewing the impact...*, cit., p.12-13

⁶⁰⁰ FANG, GONG, & CHEN, *Landmark products...*, cit., p. 13

⁶⁰¹ WANG, *Viewing the impact...*, cit., p.13

⁶⁰² WANG, *The EU Symposium...*, cit., p.38

⁶⁰³ LI, *Implement Geographical Indications...*, cit., p. 57

⁶⁰⁴ WANG, *Viewing the impact...*, cit., p.12

⁶⁰⁵ LI, *China EU Geographical...*, cit., p.39

Furthermore, the agreement promotes a joint protection of Chinese and European GIs, combating more effectively the so-called 'black economy' linked to the circulation of counterfeit goods and regulating the market in order to re-establish order within the supply chain by providing a high degree of livelihood to companies in both territories and ensuring legal protection to all those involved in the supply chain.⁶⁰⁶ The fight against counterfeiting, for which the agreement stands, not only ensures the fair movement of goods to the benefit of all participants in the industrial chain, from manufacturers to consumers, but also encourages industries on both sides to promote a standardisation process aimed at increasing the competitiveness and influence of high quality products on a global scale⁶⁰⁷. In this way the GIs' added value is completely safeguarded.⁶⁰⁸

Last but not least, there is a close correlation between the protection of GIs and the realisation of ecological value, an issue that has been at the center of policies pursued by both powers in recent years⁶⁰⁹. In fact, in some ways the protection and enhancement of GIs and the process of realizing the added value of ecological production are interconnected and support each other in the desire to guarantee consumers ecological and high-quality products.⁶¹⁰

In conclusion, the EU-China agreement represents a big step in expanding the trade relationship between the two powers and a great contribution to the economic development of both⁶¹¹ that would maintain the image and safeguard the position of both powers in international trade.⁶¹² The increasing value of exports of GI products, the growing number of GIs registered and protected in both territories and the growing importance that both parties attach to the protection of these IPRs, only further confirms the consolidation of the legal framework for bilateral trade between Europe and China and their determination to keep cooperating.⁶¹³ The scope of the agreement is so great that on March 25, 2021, following the entry into force of the agreement in the same month, a seminar was held to celebrate its importance as a milestone in EU-China bilateral relations. An event that was attended by representatives of the EU member states, the Chinese Ministry of Commerce

⁶⁰⁶ WANG, *Viewing the impact...*, cit., p.13

⁶⁰⁷ LI, *Implement Geographical Indications...*, cit., p. 57-58

⁶⁰⁸ HU, *Reciprocity and Mutual...*, cit., p.4

⁶⁰⁹ In Europe, efforts are being made to implement the 'European Green Deal', a strategy of ecological recovery that characterises industrial change and is increasingly focused on setting global standards for sustainable products. In China, as of 2018, the realisation of an 'ecological civilisation' is one of the core elements of the CCP's agenda in promoting sustainable economic development

⁶¹⁰ LI, *Implement Geographical Indications...*, cit., p. 59

⁶¹¹ LIU, *Enlightenment of the protection...*, cit., p. 148

⁶¹² WANG, *Viewing the impact...*, cit., p.13

⁶¹³ FANG, GONG, & CHEN, *Landmark products...*, cit., p. 13

and representatives of the respective national companies and, during which, in addition to highlighting the benefits and advantages of the agreement, more than 35 GI products of which relative production processes proper to the tradition were explained were presented and offered for tasting.⁶¹⁴

The EU-China Agreement on Cooperation on, and Protection of, GIs certainly sets a precedent on the basis of which to build further bilateral agreements with other countries and to promote the much-desired establishment of a multilateral GI registration and protection system.⁶¹⁵ It is further confirmation of the relationship of mutual trust that exists between the two powers, which are vigorously exploiting the high potential of their synergy.

⁶¹⁴ WANG, *The EU Symposium...*, cit., p.39

⁶¹⁵ FENG, *Geographical Indications...*, cit., p.430

Chapter 3. Assessing the impact of the EU-China Agreement in Italy: the case of *Mozzarella di Bufala Campana* PDO

3.1 A leading role

As highlighted in the previous chapter, 2021 is a crucial year for the GI protection system. The entry into force of the EU-China Agreement is a determining factor in the policy of enhancing the value and protection of GI products, which has been pursued with tenacity, particularly by the EU.⁶¹⁶ Indeed, through its constant revision and a series of measures and initiatives specifically aimed at the development of the rural sector,⁶¹⁷ Europe is advocating the increased need to give these intangible resources a central role. And in this context, the Agreement will give further impetus to the rural revitalisation process at the heart of the two powers' interests, benefiting producers in both territories.⁶¹⁸ This will make a significant contribution to the development of the individual rural sectors of the various states and regions.

Within the panorama of the EU-China Agreement, of particular interest is the situation of Italy which, with 26 PDO and PGI products included in the list agreed by the two countries, is the most represented European country followed by France.⁶¹⁹ With its long history of protection of GIs, Italy represents the country which benefits the most from these intangible assets and not only at European level.⁶²⁰ In fact, among all the PDO, PGI and TSG products, Italy, with 876 products⁶²¹ out of the 3,358 recognized at EU level⁶²², stands out as the

⁶¹⁶ Mauro, ROSATI, 2021 anno di cambiamento per il sistema delle IG. *Editoriale Consortium*, 2021, p.1

⁶¹⁷ Among the initiatives and strategies which contribute to the achievement of the objectives set by the *Green Deal* package, Europe has launched a project for the overall revision of the GI system and envisages the launch of a new CAP for the five-year period 2023-2027, within which the very important role of GIs at national and international level is emphasized once again.

⁶¹⁸ Giovanna, DEL BENE, *HISTORICAL AGREEMENT BETWEEN EU AND CHINA FOR THE PROTECTION OF GEOGRAPHICAL INDICATIONS*. THINX Intellectual Property Protection, 2020, <https://thinx.expert/en/2020/10/01/historical-agreement-between-eu-and-china-for-the-protection-of-geographical-indications/>

⁶¹⁹ Luisanna, BENFATTO, “Dal 2021 più tutele in Cina per le Igp europee. Nell’accordo anche 26 eccellenze italiane dal Parmigiano ai vini”, *Il Sole 24 ORE*, 2020, September 15, <https://www.ilsole24ore.com/art/dal-2021-piu-tutele-cina-le-igp-europee-nell-accordo-anche-26-eccellenze-italiane-parmigiano-vini-toscan-AD4ltFp>

⁶²⁰ ZHANG, Yafeng, “Yidali dili biao zhi cu jin xiang cun zheng xin de jing yan yu qi shi” 意大利地理标志促进乡村振兴的经验与启示 (Experiences and Implications of Using Geographical Indications To Promote Rural Revitalization from Italy). *Zhongguo Kexue*, 12, 2019, p.53

⁶²¹ Of these 876 products, 38 were registered in 2021.

⁶²² The list of Italian PDOs and PGIs registered at European level is available on the GI view database of the EUIPO at the site <https://www.tmdn.org/giview/gi/search>

country with the highest number of GI chains also at global level.⁶²³ It follows that GIs play a central and strategic role also at national level. With a constant growth of registrations that is unparalleled in Europe and a production value that has reached 17 billion⁶²⁴ in 2020,⁶²⁵ GIs support the agri-food sector with a contribution of 19% of total turnover and give further impetus to international trade covering 21% of total exports accounting for 9.5 billion.⁶²⁶ The PDO and PGI sector in Italy is therefore affirmed as a successful sector that involves more than 180,000 operators and 258 Consortia.

The effectiveness of the Italian GI protection system can also be seen in the resilience that has been demonstrated by the sector over the last two years, when the Covid-19 pandemic inevitably affected the agricultural sector as well.⁶²⁷ The impact of the crisis, which has been felt more strongly within the smaller realities, has been significantly mitigated thanks to the effectiveness of a system that is constantly being strengthened and to the work carried out by the Protection Consortia, which has seen it engaged in actions of support and solidarity aimed at protecting these realities. Once again, therefore, the strategic value of a solid system that plays a dual key role at territorial level in both the economic and social fields has been demonstrated.⁶²⁸

As GIs have a high economic and cultural value linked to the environment, society and traditions of the places from which they originate, the contribution that Italian GIs make in terms of economic support and revitalisation is tangible in the promotion of cultural revitalisation processes and the construction of sustainable agri-food models.⁶²⁹ Moreover, Italy is keen to further enhance the value of the PDO and PGI sectors at a time when the guarantee of product origin is a crucial element in guiding consumer demand. At the same time this willingness is fueled by the need to protect the immense traditional heritage linked to Italian agri-food production from those violations that occur within the market both

⁶²³ ISMEA - FONDAZIONE QUALIVITA, *Rapporto Ismea-Qualivita 2020 sulle produzioni agroalimentari e vitivinicole italiane DOP, IGP e STG*, Edizioni Qualivita, 2020, p.14

⁶²⁴ Out of the total European turnover worth 75 billion per year

⁶²⁵ *Agroalimentare: Italia Paese leader delle Igp in Europa*, Agenzia ANSA, 2021, September 1, https://www.ansa.it/emiliaromagna/notizie/2021/09/01/agroalimentare-italia-paese-leader-delle-igp-in-europa_b8d220bd-2443-4f04-9bff-2586b45dfabe.html

⁶²⁶ Data collected from the annual report conducted by Fondazione Qualivita and Ismea

⁶²⁷ ISMEA - FONDAZIONE QUALIVITA, *Rapporto Ismea-Qualivita...*, cit. p.6

⁶²⁸ *Ibidem*

⁶²⁹ ZHANG, *Experiences and Implications...*, cit., p.54

internally and externally.⁶³⁰ This requires cohesion and cooperation between all bodies and actors involved in the supply chain.⁶³¹

Through the valorisation and the protection of these intangible assets, the Italian government aims to start a process of support and growth at international level of Italian Small and Medium Enterprises (SMEs) operating in the agri-food sector. All this is possible thanks to the great appeal that the Italian agricultural sector, and Made in Italy products in particular, have in foreign markets.⁶³² In the era of globalisation, in fact, the know-how and traditional products linked to the Italian agri-food sector represent intangible resources with enormous potential that can increase the competitiveness of the Italian economy at international level by becoming part of the common imaginary of all consumers.⁶³³ The success of the Italian GI system is certainly attributable to the immense food heritage that characterizes its territories but it is also due to the commitment of all parties involved. It is in fact the result of cooperation between government, industry associations and market supervisory bodies, which is systematized by the same legislative system that governs the PDO and PGI signs.⁶³⁴ The proper functioning is guaranteed upstream by the government and the administrative control bodies that are committed to enforce the rules within the market, but largely also by the activities carried out by the Protection Consortia that, as will be seen later, help to play that role of representation that ensures that GIs and their intrinsic value is increasingly recognized and therefore protected.⁶³⁵ In addition to the activities carried out by these bodies, another series of initiatives launched by the Italian government contribute to the program to promote the protection and use of GIs. Among these, there are food tourism projects that see our excellences as protagonists in events throughout Italy, a system of tracking and

⁶³⁰ Nicoletta, COLOMBO, & Donatella, PRANDIN, *Italy: Italian protection for geographical indications / World Trademark Review*. World Trademark Review, 2016, January, <https://www.worldtrademarkreview.com/enforcement-and-litigation/italy-italian-protection-geographical-indications>

⁶³¹ *Agroalimentare: Italia Paese leader delle Igp in Europa*, Agenzia ANSA, 2021, September 1, https://www.ansa.it/emiliaromagna/notizie/2021/09/01/agroalimentare-italia-paese-leader-delle-igp-in-europa_b8d220bd-2443-4f04-9bff-2586b45dfabe.html

⁶³² *CSQA Certificazioni - Prodotti Dop e Igp: risorse intangibili per valorizzare le Pmi*, CSQA, 2021, September 7, <https://www.csqa.it/AgriFood-e-Packaging/News/Prodotti-Dop-e-Igp-risorse-intangibili-per-valoriz>

⁶³³ *Ibidem*

⁶³⁴ ZHANG, *Experiences and Implications...*, cit., p.55

⁶³⁵ *Prodotti e consorzi - Ruolo dei Consorzi*. *Www.Dop-Igp.Eu*, <http://www.dop-igp.eu/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/10#:~:text=I%20Consorzi%20di%20tutela%20nasc>ono,produzioni%20agroalimentari%20Dop%20e%20Igp.

monitoring of information relating to specific products and the cooperation with third parties within online e-commerce platforms.⁶³⁶

In order to better understand the success and the effectiveness of the Italian system of protection of PDO and PGI it is appropriate to analyze what are the main legislative interventions and the measures in place for the protection of GIs within the Italian jurisdiction.

3.2 The national discipline

As we have seen in the first chapter, the system of protection of GIs at Community level is a supranational one and therefore compatible only within certain limits with the national disciplines of individual Member States. This means that it does not allow national legal systems providing for a separate protection which is independent from the Community one and which makes use of the symbols PDO, PGI and TSG⁶³⁷ as national titles.⁶³⁸ In addition, it is also impossible to set up a national registration system for GIs of agri-food products, wine and spirits, since this competence is strictly limited to the system set up by the EU regulation.⁶³⁹ However, this does not limit the possibility for GIs to be protected at national level through systems which do not conflict with the provisions of EU law. Indeed, it is possible for a GI to enjoy simultaneously community, international and national protection.⁶⁴⁰ In this regard it must be underlined that the existence of a national discipline which does not cover the above-mentioned functions, overriding Community law, is more than indispensable. Indeed, it is necessary for national law to supplement those aspects for which there are not directly applicable or explicit Community rules. Therefore, there is a need to create procedural rules at national level regarding the modalities of control and the identification of the bodies in charge of this function and the remedies that could be applied in case of violations of the GI right.⁶⁴¹ The national discipline therefore plays an integral and not ancillary function with respect to that of EU law.

⁶³⁶ ZHANG, *Experiences and Implications...*, cit., p.58-59

⁶³⁷ Giovanni, ANGELICCHIO, Le indicazioni geografiche. In M. Scuffi & M. Franziosi (Eds.), *Diritto industriale italiano* (pp. 345–385), Cedam, 2014, p.373

⁶³⁸ Otherwise, it would create the condition that PDOs, PGIs and TSGs which do not meet all the requirements of Community law would be protected as such under national law.

⁶³⁹ ANGELICCHIO, *Diritto industriale...*, cit., p.373

⁶⁴⁰ Ivi, p.374-376

⁶⁴¹ Mauro, RICOLFI, *Trattato dei marchi. Diritto europeo e internazionale*, Giappichelli, 2015, p. 1821-1822

3.2.1 The Italian regime

In the Italian jurisdiction, being Italy a EU Member State, the national discipline on PDO, PGI and TSG certified quality schemes refers primarily to the Regulation 1151/2012, but it is also based on the existing international agreements on GIs.⁶⁴² In our domestic law, the protection of geographical indications is mainly regulated by the Industrial Property Code⁶⁴³ (I.P.C.) (D.L. 30/2005)⁶⁴⁴. Within the I.P.C., Articles 29 and 30 represent the basic rules on the protection of GIs and are intended to implement the provisions of TRIPs. Therefore, the Italian legislator has felt the need to define the object, the content of the protection of GIs and its implementation along the lines of Art. 22 of the above agreement.⁶⁴⁵

Article 29 of the I.P.C., which identifies the object of protection, covers the definition of GI and DO, identifying in a unitary way both types of GIs. As a matter of facts, Art. 29 states that both GI and DO identify “a product whose quality, reputation or characteristics are due exclusively or essentially to the geographical environment of origin, including natural, human and traditional factors”.⁶⁴⁶ From the definition, therefore, on the one hand, reference is made to the access requirements of the TRIPS Agreement and Regulation (EU) 1151/2012, while on the other hand, the link between quality and the environment and the reference to the natural and human factors seems to be more consistent with the Lisbon Agreement.⁶⁴⁷ Thus, unlike EU and international law where two different categories of GI are identified, according to this definition, both GIs and DOs are characterised by a strict *milieu* and for both, reputation may constitute a sufficient requirement to be recognised as a PGI or PDO.⁶⁴⁸ Moreover, the protection is aimed at covering all types of geographical indications, whether registered or not. In fact, Art. 29 and 30 refer both to qualified GIs, and therefore registered as PGIs and PDOs according to the European regulation, and to simple GIs⁶⁴⁹ that are not registered at EU level, such as the "Made in Italy" label examined later in this chapter.⁶⁵⁰

⁶⁴² Within the framework of multilateral treaties, Italy adheres to the Paris Convention (1883), the Madrid Agreement (1891), the Lisbon Agreement (1953) and TRIPS agreements (1995) as a member of WTO.

⁶⁴³ ZHANG, *Experiences and Implications...*, cit., p.55

⁶⁴⁴ For further details on the I.P.C. see <https://uibm.mise.gov.it/index.php/it/normativa/codice-della-proprietà-industriale>

⁶⁴⁵ RUSCONI, *Diritto Alimentare...*, cit., p. 512

⁶⁴⁶ Art. 29 of the Italian I.P.C.

disposable at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-02-10;30>

⁶⁴⁷ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p. 362-363

⁶⁴⁸ RICOLFI, *Trattato dei marchi...*, cit., p. 1823

⁶⁴⁹ Simple geographical indications are those which do not imply a relationship between the characteristics of the product and its geographical origin.

⁶⁵⁰ ANGELICCHIO, *Diritto industriale...*, cit., p. 376

Despite the difference in the identification of the object of protection, the discipline cannot deviate from the provisions laid down at Community level. In this regard, art. 30 of the I.C.P. provides that even in the case in which there are internal and valid norms at a national level which can partially "contrast" with the European ones, Community law applies directly and a priori.⁶⁵¹ In fact, in line with the community law, under the national discipline the protection guaranteed to GIs and enshrined in Art. 30, extends to all those cases provided for by the EU regulation 1151/2012.⁶⁵² It therefore prohibits

“where it is likely to mislead the public or where it implies an undue exploitation of the reputation of the protected name, the use of geographical indications and designations of origin, as well as the use of any means in the description and presentation of a product which indicate or suggest that the product comes from a place other than its true place of origin, or that the product has the qualities which are proper to products coming from a place designated by a geographical indication” (Art. 30 of the I.P.C.)

It is therefore a broad protection⁶⁵³ which concerns both deceptive practices and those which unduly exploit the reputation of a PDO, PGI or TSG.⁶⁵⁴ Considered as IPRs within Art. 24 I.P.C., GIs therefore enjoy the same protection enjoyed by other IPRs⁶⁵⁵ which is provided for in articles 124-126 of the I.P.C..⁶⁵⁶

Within the I.P.C. in art. 11 it is also foreseen the possibility for GIs to be registered and protected as collective marks⁶⁵⁷ in accordance with the provisions of the EU Regulation 2017/1001 on trademarks. However, as mentioned earlier in chapter one when discussing

⁶⁵¹ ANGELICCHIO, *Diritto industriale...*, cit., p. 376

⁶⁵² RUSCONI, *Diritto Alimentare...*, cit., p. 512

⁶⁵³ In the field of unfair competition, through the reference to the protection against the so-called parasitic hooking and exploitation of reputation, it is clear the choice of wanting to ensure a high degree of protection to GIs in line with EU Regulation 1151/2012 and the Lisbon Agreement, which goes beyond the general protection against misleading use provided by TRIPs.

⁶⁵⁴ VANZETTI, & DI CATALDO, *Manuale di diritto...*, cit., p. 363

⁶⁵⁵ The protective mechanisms envisaged by the regulations on Unfair Competition (articles 2599 and 2600), by the Consumer Code, by Legislative Decree 02/08/2007, no. 145 on misleading advertising, by Legislative Decree 19/11/2004, no. 297 on the denominations and indications of agricultural and food products, by Legislative Decree 08/04/2010, no. 61 on the denominations and indications of wines, and finally the sanctions envisaged by article 517-quater of the Italian Criminal Code concerning the sanctions applicable in case of counterfeiting, or exploitation of reputation, of GIs, remain applicable.

⁶⁵⁶ RUSCONI, *Diritto Alimentare...*, cit., p. 512

⁶⁵⁷ Nicoletta, COLOMBO, & Donatella, PRANDIN, *Italy: Italian protection for geographical indications | World Trademark Review*. World Trademark Review, 2016, January, <https://www.worldtrademarkreview.com/enforcement-and-litigation/italy-italian-protection-geographical-indications>

the relationship between GIs and trademarks, this is a less frequent and more targeted choice that is only made in more specific cases.⁶⁵⁸

3.2.2 The DCO system and the “Made in Italy”

In Italy GIs have always played a very important role in the revitalisation of rural areas and for this reason protection schemes play an extremely important role that has its roots back in the 1950s. In fact, even before the system was harmonized at European level, special laws⁶⁵⁹ for the protection of GIs related to specific product categories have been issued in Italy.⁶⁶⁰ The most important regulatory intervention in this regard is the one that for the first time has disciplined the protection for the products whose link with the territory of origin affects their quality and special characteristics. Reference is made here to the system established in 1963 through law 930/1963⁶⁶¹, which introduced the concept of Denomination of Controlled Origin⁶⁶² (DCO).⁶⁶³ The latter initially comprised two different categories, respectively Designation of Controlled Origin(DCO) and Designation of Controlled and Guaranteed Origin (DCGO)⁶⁶⁴ and later, with the enactment of Law 164/1992⁶⁶⁵, a third category was added under the name of Typical Geographical Indication (TGI).⁶⁶⁶ This system, specifically dedicated to the protection of wines, provided for a series of rules, including compliance with the specifications, to regulate their production and marketing.⁶⁶⁷ With the reform of the wine sector that followed the enactment of EU Regulation 479/2008, which laid down specific requirements concerning all stages of production and marketing of wines applicable at international level, the system was inevitably harmonised with the European framework

⁶⁵⁸ ZHANG, *Experiences and Implications...*, cit., p.55

⁶⁵⁹ Among the most important ones, the laws about cheese and wine, issued respectively in 1954 and 1963, have set the precedent for the issuing of other laws about other agricultural products. Indeed, after 1970, Italy started protecting geographical indications for agricultural products other than wine and cheese, with laws 506/1970, 507/1970 and 628/1981 which regulate the protection of appellations of origin respectively for Parma ham, San Daniele ham and Berico-Euganeo ham. Law 169/1992 was issued to protect the geographical indication of olive oil, the last Italian product to receive specific legislative protection.

⁶⁶⁰ AND INTERNATIONAL, ECORYS & COGEA, *Evaluation support study...*, cit., p. 35

⁶⁶¹ Presidential Decree No 930 of 12 July 1963, “Norms for the protection of designations of origin for musts and wines”.

⁶⁶² The DCO is an instrument of protection and control as it delimits the production area in which producers can operate and obliges them to use certain raw materials exclusively derived from that area, thus guaranteeing the authenticity of the product and protecting it against imitations.

⁶⁶³ *Normativa prodotti DOP IGP*, Fondazione Qualivita, 2020, November 27, <https://www.qualivita.it/la-normativa-sui-prodotti-dop-igp/>

⁶⁶⁴ *Ibidem*

⁶⁶⁵ Law 164/1992, “New rules for wine designations of origin for wines”

⁶⁶⁶ The law makes a distinction between DO and IG along the lines of EU regulation 1308/2013 and identifies DCO and DCGO in reference to the first category and TGI in respect to the second.

⁶⁶⁷ Luca, MERCATANTI, *Differenza DOC, DOCG, IGT, DOP*. WineSommelier, 2020, February 16 <https://winesommelier.it/differenza-doc-docg-igt-dop-con-un-po-di-storia/>

by merging DCO and DCGO into PDO and TGI into PGI.⁶⁶⁸ However, the DCO, DCGO and TGI classification has been retained in Italy to indicate PDO or PGI products. In fact, to the individual producer is given the possibility to choose whether to use these distinctive signs rather than the EU ones.⁶⁶⁹

A final interesting aspect is the “Made in Italy” label. As it falls within the category of simple GIs, 'Made in Italy' has been included by the Italian legislator among the distinctive signs to be protected by regulating their use.⁶⁷⁰ It represents a simple GI as it refers to a wide variety of products without referring to a specific geographical area that influences, together with natural and human factors that characterize it, the characteristics or qualities of a product.⁶⁷¹ In particular, "Made in Italy" refers to products entirely obtained in Italy and therefore whose design, planning, processing and packaging processes have taken place within the national territory. However, the concept can also be extended to identify products which have undergone the last substantial transformation in Italy. In this case, reference is made to products that have specific composition and properties that they did not have before undergoing such transformation or processing in Italy.⁶⁷² All these products are protected under art.15 of law 166/2009⁶⁷³ which establishes that sanctions shall be applied when the label “Made in Italy” or words, signs or figures recalling Italy are used in a deceptive way to make consumers believe that the product on sale is 100% made in Italy.⁶⁷⁴

3.2.3 Control bodies

As examined in the first chapter, EU Regulation 1151/2012 establishes the system of *ex officio* control and enforcement, which provides for the autonomy of Member States in choosing the bodies and organisations responsible for verifying compliance with the specification of a GI product and supervising its use once it has been registered and

⁶⁶⁸ Luca, MERCATANTI, *Differenza DOC, DOCG, IGT, DOP*. WineSommelier, 2020, February 16 <https://winesommelier.it/differenza-doc-docg-igt-dop-con-un-po-di-storia/>

⁶⁶⁹ ZHANG, *Experiences and Implications...*, cit., p.55

⁶⁷⁰ ANGELICCHIO, *Diritto industriale...*, cit., p.379

⁶⁷¹ RUSCONI, *Diritto Alimentare...*, cit., p. 513

⁶⁷² *Ibidem*

⁶⁷³ Law 166/2009 “Urgent provisions for the implementation of Community obligations and for the execution of judgments of the Court of Justice of the European Communities”. For further information see <https://www.itpi.it/doc/legge%20166%202009%20art.%2016.pdf>

⁶⁷⁴ ANGELICCHIO, *Diritto industriale...*, cit.,p.382

recognised as such at EU level. Member States are therefore free to choose⁶⁷⁵ which body carries out these tasks, whether it is a public or private body.⁶⁷⁶

In Italy compliance with the specifications⁶⁷⁷ of PDO and PGI products and their supervision is guaranteed by the Ministry of Agriculture, Food and Forestry (MIPAAF), and in particular by the Central Inspectorate for Quality and Fraud Repression⁶⁷⁸ (ICQRF).⁶⁷⁹ The latter, founded in 1995, is the central authority for the maintenance and control of the quality of products with geographical indications and the repression of geographical indications.⁶⁸⁰ Controls are aimed both at verifying the conformity of the product to the relative disciplinary of production and the compliance with the provisions of national and community regulations that govern the specific product characteristics. They therefore seek to ensure the quality of products circulating on the market and to protect them from unfair competition practices such as counterfeiting.⁶⁸¹ These activities⁶⁸² include checks on traceability, labelling or presentation, checks on the regular keeping of the documentation required by law and on the conformity of production processes and, sometimes, the taking of samples for subsequent analytical control.⁶⁸³

A major innovation introduced in recent years is web-based control. In fact, the ICQRF controls have been extended within internet platforms through an extensive network of contacts that the organisation has created, especially within e-commerce platforms. For several years now, the body has been checking that Italian GIs are protected through the establishment of a dialogue with partners such as E-bay, Amazon and Alibaba thanks to which specific protocols are set up to block all false and misleading online advertising of

⁶⁷⁵ The freedom of choice is limited to certified and authorised external bodies that can guarantee security and objectivity.

⁶⁷⁶ Roberto, GIACINTI, & Roberta, MORUZZO, "I consorzi di tutela e il sistema di controllo nell'ambito delle produzioni tipiche". *UnipiEprints*, 2002, p.331

⁶⁷⁷ Product specifications are available on MiPAAF public database at <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/3340>

⁶⁷⁸ The ICQRF is the Italian ex-officio authority for PDOs and PGIs in Europe and the Italian contact body for controls in the wine and food sector. The department's task is to prevent and repress fraud relating to agri-food products and technical means used in agriculture (feed, seeds, fertilisers and plant protection products) with the aim of protecting consumers, producers and quality PDO, PGI production.

⁶⁷⁹ GIACINTI, & MORUZZO, *I consorzi di tutela...*, cit., p.332

⁶⁸⁰ ZHANG, *Experiences and Implications...*, cit., p.56

⁶⁸¹ *Ibidem*

⁶⁸² The ICQRF activities annual report is available in Italian, English and Chinese at <https://www.politicheagricole.it>.

⁶⁸³ *Mipaaf - Controlli*. <https://www.politicheagricole.it>. <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/7683>

Italian GI products.⁶⁸⁴ With the latter in particular, through an agreement signed in 2016, the Italian government set up a special committee to intercept counterfeit products on both B2B and B2C online platforms and inform its Chinese counterpart so that it could immediately provide for their removal from its shelves.⁶⁸⁵ Furthermore, the collaboration between the Chinese 'Giant' and Italy was not limited to the fight against counterfeiting, but extended to the promotion of traditional Italian products, especially wines, within the Chinese platform. In this way, Chinese consumers' awareness of traditional Italian GIs has been raised, and further impetus has been given to the collaboration between Italy and China on the protection and valorisation of GIs.⁶⁸⁶

As a further instrument of protection, in addition to the ICQRF, MIPAAF also makes use of Cufaa (Carabinieri Forestry, Environmental and Agri-Food Units Command), Rac (Carabinieri Agri-Food Protection Command)⁶⁸⁷ and other public bodies (e.g. Chambers of Commerce) or accredited private control bodies to which it confers responsibility by issuing a public act called Ministerial Decree for authorisation, which has a maximum duration of three years.⁶⁸⁸

3.2.4 The role of Protection Consortia

Thanks to the creation of protection instruments both at national and EU level, over the years Italy has acquired a certain experience in the protection and enhancement of the quality of its products. Italy's commitment has not been limited to the creation of a dedicated legislation but it has also been extended to the creation of specific activities and bodies with the task of further promoting and protecting typical products.⁶⁸⁹ Within this context, Italian institutions, such as the Qualivita Foundation⁶⁹⁰, and in particular those associations known as Protection Consortia (i.e. Consortia for the protection of GIs), play an fundamental role

⁶⁸⁴ *Qualità merceologica degli alimenti a Indicazione Geografica - Controlli svolti dall'ICQRF*. MIIPAF <https://www.salute.gov.it/relazioneAnnuale2018/dettaglioRA2018.jsp?cap=capitolo5&sez=ra18-5-5b-alimenti&id=2129>

⁶⁸⁵ ZHANG, *Experiences and Implications...*, cit., p.58

⁶⁸⁶ *Ibidem*

⁶⁸⁷ Luisanna, BENFATTO, "Dop, Igp, Stg: cosa sono e qual è l'iter per ottenere il riconoscimento", *Il Sole 24 Ore*, 2019, 6 Dicembre, <https://www.ilsole24ore.com/art/dop-igp-stg-cosa-sono-e-qual-e-l-iter-ottenere-riconoscimento-ACTw0I3>

⁶⁸⁸ The list of public and private bodies authorised to carry out controls on PGI, PDO and TSG is available at <http://www.dop-igp.eu/flex/cm/pages/ServeBLOB.php/L/EN/IDPagina/39>

⁶⁸⁹ GIACINTI, & MORUZZO, *I consorzi di tutela...*, cit., p.327

⁶⁹⁰ The Qualivita Foundation is an influential institution for the promotion of geographical indications. Founded in 2002 in Siena, Tuscany, as a non-profit scientific and cultural institution, with the main task of main task is to raise awareness about geographical indications. For further details see <https://www.qualivita.it/>

in promoting the recognition of GIs.⁶⁹¹ The latter have been operating for many years as guarantors of the protection of PDO and PGI, not only in Italy but also in European and international markets, and therefore, their functions and activities have become the subject of national and Community legislation.⁶⁹²

When speaking about protection Consortia, reference is made to real associations of producers and users of GIs, whose main objective is to protect PDO and PGI within the market.⁶⁹³ Defined by art. 2602 of the Civil Code⁶⁹⁴ and recognised by the MIIPAF under art. 14 of Law 526/99⁶⁹⁵, they were set up as voluntary non-profit associations by the economic operators involved in the PDO and PGI chains, with the aim of guaranteeing the authenticity and quality of PGI and PDO products and their production processes, promoting their enhancement and providing consumers with authentic information on protected products.⁶⁹⁶ Although the Consortia were initially conceived as control bodies, this conception contrasted with the European model in that there would be an overlap between those controlled and the controllers.⁶⁹⁷ The control function, in fact, as seen in the previous paragraph, according to the EU Regulation is entrusted to public or private bodies external to the organisation.⁶⁹⁸ Therefore, the 1999 enactment of law 526/99, which represents a turning point in the history of these organisations, established the possibility for the Consortia to operate as supervisory and protection bodies for the production and marketing of GI products rather than as control bodies.⁶⁹⁹ Moreover, while initially, under Article 14.15(d), Protection Consortia could carry out these activities at any stage of production and marketing of the product,⁷⁰⁰ under National Ministerial Decree No 272 of 12 October 2000 their ability to operate was restricted to the marketing stage only, once all the certifications

⁶⁹¹ ZHANG, *Experiences and Implications...*, cit., p.57

⁶⁹² Lorenza, PAOLONI, "I Consorzi di tutela ed i contratti per le politiche dell'offerta dopo il d. lgs. 61/2010", *Rivista Di Diritto Alimentare*, 6(3), 2012, p.2

⁶⁹³ PAOLONI, *I Consorzi di tutela...*, cit., p.2

⁶⁹⁴ For further details see the text of the art. 2602 disponibile at

<https://www.altalex.com/documents/news/2013/04/17/della-disciplina-della-concorrenza-e-dei-consorzi>

⁶⁹⁵ Law no. 526 of 21 December 1999 "Provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities - Community Law 1999".

⁶⁹⁶ Matthias, MESSNER, *The Protection of Geographical Indications in Italy* [Slides], 2017, Ambankara.Esteri.It, https://ambankara.esteri.it/ambasciata_ankara/resource/doc/2017/11/20171116_presentazione_gi_ankara.pdf, p.11

⁶⁹⁷ BORSA MERCI TELEMATICA ITALIANA S.C.P.A., *Mozzarella di Bufala Campana DOP. Studio di mercato*. Camera di Commercio di Salerno, 2010, p.56

⁶⁹⁸ GIACINTI, & MORUZZO, *I consorzi di tutela...*, cit., p.332

⁶⁹⁹ PAOLONI, *I Consorzi di tutela...*, cit., p.2

⁷⁰⁰ GIACINTI, & MORUZZO, *I consorzi di tutela...*, cit., p.333

and checks on compliance with the specifications carried out by the inspection bodies had been completed.⁷⁰¹

According to the national discipline, access to the Protection Consortium and the use of the respective Consortium logo⁷⁰² is guaranteed to all producers and users that operate in compliance with the requirements set forth in the production specifications approved at Community level. This does not imply, however, that there is any obligation for all the subjects involved in the production and marketing of a PGI or PDO to join the Protection Consortium.⁷⁰³

The activities carried out by the Protection Consortia, as will be seen below, are aimed at safeguarding PGI, PDO and TSG from all those cases that fall into the category of unfair competition, abuse, counterfeiting and deceptive use.⁷⁰⁴ In general, they concern the supervision of agri-food GI products through the employment of public agents in charge of inspecting goods, whether they are registered as trademarks or as GIs. However, supervision activities, in line with national and EU regulations, must be carried out in coordination with the ICQFR.⁷⁰⁵ By controlling the marketing of GIs, the Protection Consortia act as guarantors of the quality, reputation and authenticity of the products they represent and ensure that the intellectual property linked to the GI enjoys the necessary legal protection.⁷⁰⁶ For this purpose, it carries out promotional activities that not only guarantee that consumers are properly informed, but also enhance the value of the product in their eyes, guarantee that its characteristics conform to the specifications and contrast all those phenomena that could mislead the consumers and damage the PGI and PDO productions and image.⁷⁰⁷ These are institutional activities through which any Protection Consortium plays a representative role for all producers and users of the GI they protect, regardless of whether or not they are members of it.⁷⁰⁸ Moreover, Protection Consortia can also carry out further tasks in

⁷⁰¹ PAOLONI, *I Consorzi di tutela...*, cit., p.3

⁷⁰² The Consortium, subject to ministerial authorization, can adopt a consortium brand mark which is used on PGI and PDO products as a certification of the activities carried out by the Consortium. It can be used by all producers of the chain involved, regardless of whether they are members of the consortium or not, guaranteeing additional protection for the product compared to that guaranteed by the PDO mark.

⁷⁰³ PAOLONI, *I Consorzi di tutela...*, cit., p.6

⁷⁰⁴ GIACINTI, & MORUZZO, *I consorzi di tutela...*, cit., p.3337

⁷⁰⁵ EUIPO, *Protection and control of geographical indications for agricultural products in the EU Member States*. EUIPO Report, 2017, p.234

⁷⁰⁶ *Ibidem*

⁷⁰⁷ Fausto, CAPELLI, "Prodotti agroalimentari di qualità: controlli e responsabilità". *Rivista Di Diritto Alimentare*, 5(4), 2011, p.6

⁷⁰⁸ *Prodotti e consorzi - Ruolo dei Consorzi*. *Www.Dop-Igp.Eu*, <http://www.dop-igp.eu/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/10#:~:text=I%20Consorzi%20di%20tutela%20nasc,ono,produzioni%20agroalimentari%20Dop%20e%20Igp>.

consultation and coordination with the MIIPAF and the control bodies.⁷⁰⁹ They can propose innovations within the discipline of a given product, introduce new programs and technical-structural measures aimed at improving product quality and encourage agreements between operators of the same GI to promote the correct production that is adapted to market trends.⁷¹⁰

Concerning the requisites of existence and internal representation of a Protection Consortia, through several Ministerial Decrees⁷¹¹, it has been provided that for each PDO or PGI must be established only one Consortium⁷¹² governed by a statute and provided with adequate structures and resources, and the latter, in order to be recognized as such by MIIPAF, must have within it a participation of producers and users equal to at least two thirds of the total number of subjects authorized to the production of that PGI.⁷¹³ In addition, the Ministerial Decree of 2000 art.2, in accordance with art. 14 of the Community Law 526/1999, provides that not only the members, but also other producers and external users, must contribute to support the costs arising from the activities of protection, marketing and enhancement carried out by the Protection Consortium.⁷¹⁴

Under the EU Regulation 1151/2012, Protection Consortia have been recognized and consolidated their role as promoters and protectors of PDOs and PGIs and of the whole sector related to them.⁷¹⁵ In fact, Art. 45 of the regulation provides that Member States officially recognize and encourage the role of producer groups within the system of protection of traditional food products.⁷¹⁶ With 285 Protection Consortia, Italy maintains its leadership in the protection of PGI and PDO products.⁷¹⁷ To date, there are several associations of Protection Consortia that bring together these organizations in order to compare and support

⁷⁰⁹ *Prodotti e consorzi - Ruolo dei Consorzi*. Www.Dop-Igp.Eu, <http://www.dop-igp.eu/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/10#:~:text=I%20Consorzi%20di%20tutela%20nasc>ono,produzioni%20agroalimentari%20Dop%20e%20Igp.

⁷¹⁰ EUIPO, *Protection and control...*, cit., p.234

⁷¹¹ The list of all normative interventions at national and community level concerning Protection Consortium is available at

<http://www.dopigp.eu/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/10#:~:text=I%20Consorzi%20di%20tutela%20nasc>ono,produzioni%20agroalimentari%20Dop%20e%20Igp.

⁷¹² GIACINTI, & MORUZZO, *I consorzi di tutela...*, cit., p.329

⁷¹³ art. 4 of Ministerial Decree April 12, 2000

⁷¹⁴ PAOLONI, *I Consorzi di tutela...*, cit., p.6

⁷¹⁵ *Normativa prodotti DOP IGP*, Fondazione Qualivita, 2020, November 27, <https://www.qualivita.it/la-normativa-sui-prodotti-dop-igp/>

⁷¹⁶ *Prodotti e consorzi - Ruolo dei Consorzi*. Www.Dop-Igp.Eu. <http://www.dop-igp.eu/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/10#:~:text=I%20Consorzi%20di%20tutela%20nasc>ono,produzioni%20agroalimentari%20Dop%20e%20Igp.

⁷¹⁷ Saverio, DE BONIS, *Legislatura 18 Atto di Sindacato Ispettivo n° 4-05144.*, <http://www.senato.it/>, 2021, <http://www.senato.it/japp/bgt/showdoc/showText?tipodoc=Sindisp&leg=18&id=1209987>

the activities they carry out. The most consistent in Italy is represented by Origin, formerly IACGI (Italian Association of Consortium for Geographical Indications) founded in 2006 as a non-profit association, which today counts 68 Consortium representing 95% of Italian PDO and PGI production.⁷¹⁸ It works to support the protection, monitoring and promotion of the GI sector, at national, EU and international level⁷¹⁹, and in collaboration with MIIPAF supports the experience of the Protection Consortium.⁷²⁰

The significant actions carried out by the Protection Consortia are dealt with again the second part of this chapter through an assessment of the impact of the above-mentioned agreement on the Italian GI sector. Through an analysis of the economic success of *Mozzarella di Bufala Campana* PDO, the central role played by the Protection Consortium in achieving this goal is further highlighted.

From the framework outlined above it is possible to state that the Italian discipline of the protection of GIs is an effective tool in the panorama of the valorization of these intangible resources at international level. Thanks to the interventions occurred in the EU and the consequent establishment of a system able to protect in a complete way PDO and PGI products, the Italian system has been further strengthened. This was also possible thanks to the use of additional organizations and initiatives that have contributed to the primary objective of rural revitalization and therefore to the provision of advantages and benefits for the economic system in its entirety including all those involved in the PDO and PGI chains. In this context, the EU-China agreement fits perfectly. Thanks to the mutual commitment of the two parties in collaborating on this great protection project, typical Italian products and those linked to the agri-food tradition are promoted and inserted in a market with huge potential such as the Chinese one. Moreover, all those phenomena of counterfeiting and violation of GI rights that occur within the Chinese and international market will be fought in an even more effective way, helping small Italian companies engaged in the production of these goods not to suffer a negative impact and indeed to emerge within the market of the Dragon.⁷²¹ The economic and social benefits brought about by the use of mutually recognized quality schemes within the Chinese and Italian jurisdictions are witnessed by the

⁷¹⁸ *Presentazione OriGIIn Italia* [Slides]. <https://Www.Origin-Italia.It/>. <https://www.origin-italia.it/wp/wp-content/uploads/2020/09/2020-PRESENTAZIONE-ORIGIN-ITALIA-.pdf>

⁷¹⁹ Origin Italia is associated with other Origin organizations in the international and European territory. For more information see <https://www.origin-gi.com/>

⁷²⁰ *Presentazione OriGIIn Italia* [Slides]. <https://Www.Origin-Italia.It/>. <https://www.origin-italia.it/wp/wp-content/uploads/2020/09/2020-PRESENTAZIONE-ORIGIN-ITALIA-.pdf>

⁷²¹ As the Chinese market is often referred to

export data which, which, as will be seen in the following paragraphs, confirm that the GI sector is one of the most dynamic sectors in China and that Made in Italy products are very successful within the Chinese territory.

3.3 Case study: How the EU-China agreement impacts the PDO dairy chain in the specific case of *Mozzarella di Bufala Campana* PDO

As seen above, the PDO and PGI sector in Italy plays a central and strategic economic role. With a production value of 17 billion euro, it is able to demonstrate its resilience with a stable growth of 4.2% even in times of global pandemic. Excellent results are also visible in trade, with a sales growth of 12% outpacing that of the entire agri-food sector. Certified GI products are therefore characterised as a consolidated and constantly growing sector, which is also recording excellent results abroad with an export value of approximately 9.5 billion Euro (+ 5.1% compared to the previous year).⁷²² These data therefore confirm once again the real value of GIs and the increasing awareness of consumers of their importance.

The following analysis⁷²³ concerns the dairy cheese sector, in particular that of the *Mozzarella di Bufala Campana* PDO, which represents an exemplary case among the products that most contribute to the growth of the Italian GI supply chain, and which are very successful also abroad. This case study is conducted in several stages; starting from the introduction of the entire cheese sector and its relevance, the analysis then tries to identify and evaluate the possible impact that the EU-China agreement could have on the *Mozzarella di Bufala Campana* PDO supply chain.

3.3.1 PDO cheeses

Through some analysis conducted on the economic performance of the individual GI production chains it was found that the PDO, PGI and TSG foodstuffs sector is the second most significant after wine, with a production and consumption value of approximately 7.7 billion Euro and 15.3 billion Euro respectively.⁷²⁴ Within the food sector, cheese seems to play a central role and to be the one that brings the greatest economic benefit to the whole

⁷²² Data taken from the Ismea-Fondazione Qualivita 2020 report available at https://www.qualivita.it/wp-content/uploads/2020/12/20201211-Rapporto2020-Digital_.pdf

⁷²³ The analysis is conducted based on the most recent available data referring to the year 2019/2020. Data used for analytical purposes are provided by the Consortium of *Mozzarella di Bufala Campana* PDO and taken from the official reports of the Istituto di Servizi per il Mercato Agricolo Alimentare (ISMEA) in collaboration with Fondazione Qualivita

⁷²⁴ ISMEA - FONDAZIONE QUALIVITA, *Rapporto Ismea-Qualivita...*, cit., p.22

chain, contributing 59% of the total economic value⁷²⁵ with a production value of about 4.5 billion Euro (Table 3.3.1).

Table 3.3.1 - Ranking of production and consumption values in the GI food sector

Category of PDO/PGI/TSG	Certified Production (tons)	Value of Production (million euro)	Value of Consumption (million euro)	Export Value (million euro)
Cheeses	549	4.515	7.552	2.013
Meat products	210	1.927	4.980	601
Fruit, vegetables and cereals	513	318	894	134
Balsamic vinegars	96	389	982	891
Olive oil	11	82	134	56
Fresh meat	14	92	196	10
Others	/	336	567	120

(Source: ISMEA-Fondazione Qualivita)

With a production volume significantly higher than the other sectors, cheese is also the one that contributes most to the value of consumption with 7.5 billion Euro and also to the value of exports with 2 billion Euro out of the total 3.82 billion Euro.⁷²⁶ The supremacy of cheeses within the certified quality food production is essentially due to their long tradition rooted in the territory and to the benefits it brings, contributing significantly to the economy also in terms of employment and entrepreneurship.⁷²⁷

Even within the cheese category itself, distinctions can be made in terms of the value generated by the different individual productions. In particular, it is possible to note that within this category there are those cheeses which, either because of tradition or because of quality, enjoy a reputation more than others, and this is inevitably reflected in the economic contribution derived from their production and marketing.

Table 3.2.2 - Ranking of the top 5 Italian PDO cheeses by production value

PDO Cheeses	Certified Production (tons)	Value of Production (million euro)	Value of Consumption (million euro)	Export Value (million euro)
Grana Padano PDO	199.292	1562	7.552	2.013
Parmigiano Reggiano PDO	144.738	1.556	4.980	601
Mozzarella di Bufala Campana PDO	50.176	426	894	134
Gorgonzola PDO	60.309	368	982	891
Pecorino Romano PDO	26.943	173	134	56

(Source: ISMEA-Fondazione Qualivita)

⁷²⁵ ISMEA - FONDAZIONE QUALIVITA, *Rapporto Ismea-Qualivita...*, cit., p.20

⁷²⁶ Ivi, p.24

⁷²⁷ BORSA MERCI TELEMATICA ITALIANA S.C.P.A, *Mozzarella di Bufala...*, cit., p.10

What is interesting to note here, as it is functional for the purposes of the analysis, is that *Mozzarella di Bufala Campana* DOP, despite the criticalities that have occurred over the years, as will be seen below, confirms its third position in the ranking by value of certified cheese production, characterised by a constantly growing trend in terms of production volumes and production and consumption values (Table 3.2.2).

3.3.2 *Mozzarella di Bufala Campana* PDO

As anticipated, *Mozzarella di Bufala Campana* PDO is an exemplary case of an Italian GI product; this is not only because of the great contribution that its supply chain makes on a socio-economic level, but also because it is the only product from Southern Italy to have been included in the list of those 26 Italian PDO and PGI products that, as of this year, are officially recognised and protected in China thanks to the EU-China agreement on GIs. Through the analysis of the production chain of *Mozzarella di Bufala Campana* PDO, an attempt will be made to provide an overall assessment of the product and its positioning at national and international level with particular reference to the Chinese market.

3.3.2.1 The product

Mozzarella di Bufala Campana PDO is an iconic Italian product, appreciated worldwide for its unique characteristics and qualities. The product, which owes its uniqueness to the buffalo milk that is produced within the territory of origin, is the result of a traditional production process that has its roots in the XI century and is closely linked to the history, culture, and craft techniques of the areas in which it originated.⁷²⁸ It is precisely because of the special production processes that underpin this product that it differs from the common non-certified *mozzarella* diffused on the national and international market which does not possess any kind of connection with the cultural and artisan traditions of the place of origin.⁷²⁹ Its production is concentrated in specific areas of southern Italy, in particular in the regions of Campania, Latium, Apulia and Molise where buffaloes are bred from whose milk this particular variety of mozzarella is produced.⁷³⁰

⁷²⁸ *Storia della Mozzarella di Bufala*, 2019, March 29, <https://www.mozzarelladop.it/storia/>

⁷²⁹ Michele, GRAZIADEI, "The Making of an Iconic Cheese: Mozzarella Di Bufala Campana D.O.P", *Florida International University Law Review*, 14, 2021, p.616

⁷³⁰ *Territorio e Zona di Origine: Mozzarella di Bufala DOP*, 2021, September 1, <https://www.mozzarelladop.it/territorio/>

The product, identified as 'white gold' for the uniqueness of its taste, enjoys such a national and worldwide reputation that it must be protected from all attempts at emulation and counterfeiting that characterise the increasingly globalised market.⁷³¹ It is no coincidence that, given the special nature of the traditional processing methods and the strong link between the quality, characteristics, reputation of the product and its environment of origin, buffalo mozzarella has been recognised at both national and Community level as a GI to be protected in accordance with the schemes set out above. The name *Mozzarella di Bufala Campana* is thus accompanied by the PDO certification mark so that it can be distinguished from common mozzarellas and protected as a typical product on the international market.⁷³²

Moreover, *Mozzarella di Bufala Campana* PDO is highly appreciated in the world not only from a qualitative point of view but also from a nutritional one. Thanks to its particular dietary characteristics and the strong link that binds it to its territory of origin, it has been included in the 'Mediterranean Diet', which a few years ago became part of UNESCO's world heritage.⁷³³

3.3.2.2 The PDO numbers

Third in terms of highest production volume among Italian PDO cheeses, and fourth among all national designations of origin, *Mozzarella di Bufala Campana* PDO is the largest and most structured PDO in Southern Italy. In 10 years, it has increased its turnover by 70%, reaching a value of 430 million Euro by 2021.⁷³⁴ The sector, which has more than 100 certified dairies, 400,000 buffaloes and about 1400 buffalo farms included in the PDO system, distributed in the areas of Campania, Lazio, Puglia, and Molise, provides jobs for more than 11,200 people.

With a business value of over 1.2 billion Euro, *Mozzarella di Bufala Campana* PDO is therefore characterised by the great economic and employment impact it has on the territory in which it operates and the contribution it makes to the growth of the areas of origin.⁷³⁵ The

⁷³¹ GRAZIADEI, *The Making of...*, cit., p.616-617

⁷³² *Ibidem*

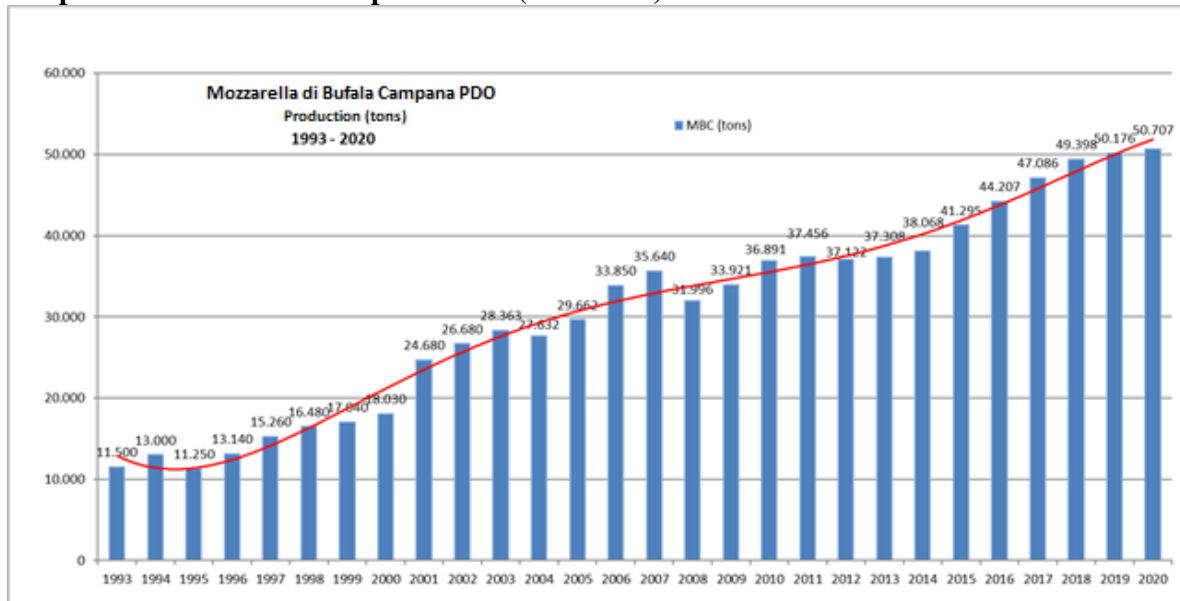
⁷³³ *Mozzarella di Bufala Campana DOP*, 2019, April 4, <https://www.mozzarelladop.it/mozzarella/>

⁷³⁴ Giorgio, DELL'OREFICE "La Mozzarella di Bufala traina la crescita dei prodotti Dop e Igp del Sud", *Il Sole 24 ORE*. 2021, June 18, https://www.ilsole24ore.com/art/la-mozzarella-bufala-traina-crescita-prodotti-dop-e-igp-sud-AE31nbO?refresh_ce=1

⁷³⁵ GRAZIADEI, *The Making of...*, cit., p.617

success of the chain is accompanied by steady growth which bears witness to the constant commitment of all those actively involved in the production and marketing of the product.

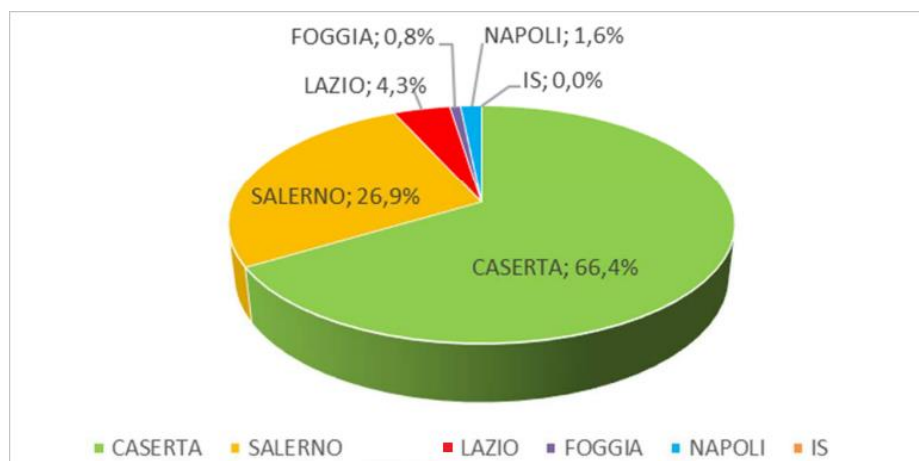
Graph 3.3.1 - Certified PDO production (1993-2020)



(Source: Consorzio di Tutela Mozzarella di Bufala Campana DOP)

Bar Graph 3.3.1 illustrates the production levels of Mozzarella di Bufala over the years since 1993. It shows a generally steady growth trend⁷³⁶ that reached a peak of 50,707 tonnes in 2020, demonstrating once again the resilience of the PDO sector even in the context of the global pandemic crisis with a growth of 1 % compared to the previous year.

Graph 3.3.2 - Distribution of the production by PDO area/province

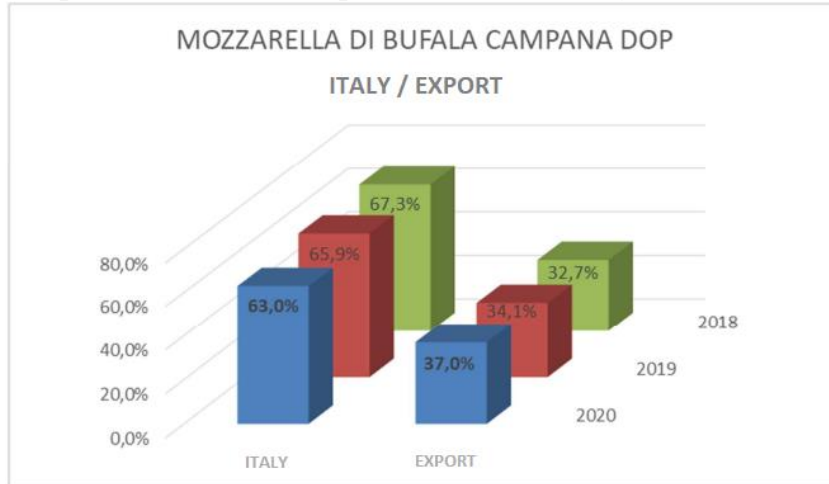


(Source: Consorzio di Tutela Mozzarella di Bufala Campana DOP)

⁷³⁶ There are some periods which are exceptions to this trend, and which show a decrease in production, especially the early 2000s in conjunction with the outbreak of the dioxin crisis scandal which saw a great reduction in production

The distribution of the total production by PDO areas and provinces (Graph 3.3.1), shows that almost 95% of the production takes place in Campania (66.4% in the Caserta area, 26.9% in Salerno and 1.6% in Naples), while Lazio (4.3%) and Puglia (0.8 in Foggia%) have a rather small share.

Graph 3.3.3 –Share of the production sold in Italy and abroad (2018-2020)

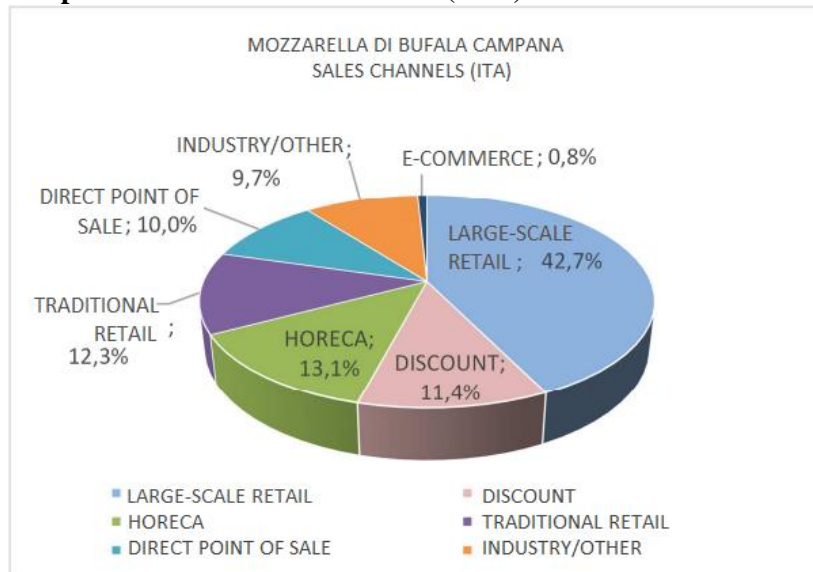


(Source: Consorzio di Tutela Mozzarella di Bufala Campana DOP)

As mentioned above, the value of production is estimated at around 430 million euro. 63% of this comes from Italy and the remaining 37% from abroad. (Graph 3.3.3).

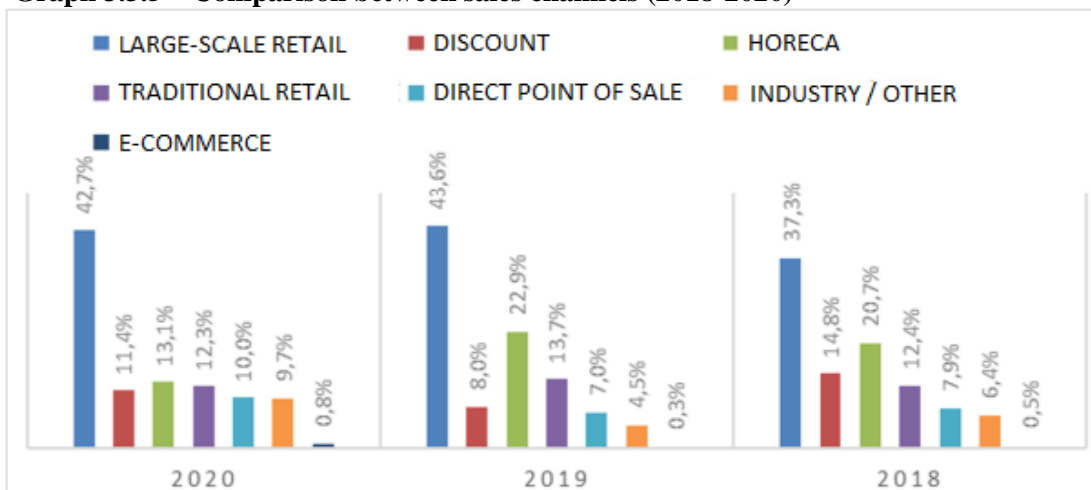
As far as the value of consumption is concerned, it is estimated to be around 480 million euros in Italy, while for foreign countries it is not possible to indicate a precise estimate because of the continuous fluctuation of selling prices depending on the destination market concerned.

Graph 3.3.4 – Main sales channels (2020)



(Source: Consorzio di Tutela Mozzarella di Bufala Campana DOP)

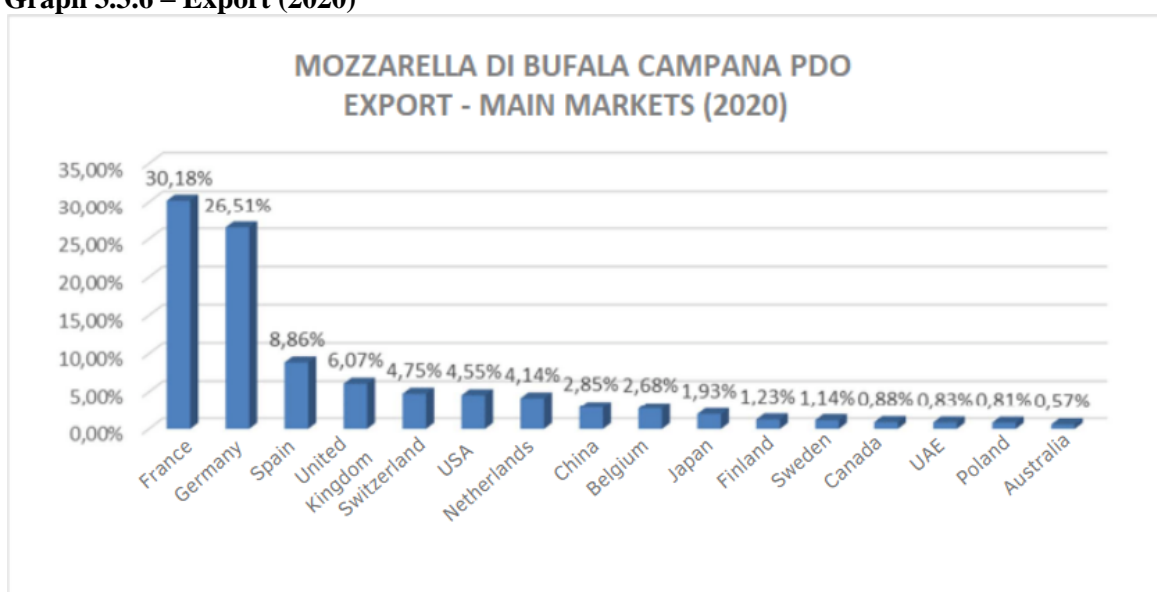
Graph 3.3.5 – Comparison between sales channels (2018-2020)



(Source: Consorzio di Tutela Mozzarella di Bufala Campana DOP)

The two graphs (3.3.5 and 3.3.6) show that among the sales channels in Italy, large-scale retail and discount stores account for more than half of the shares (54.1%), with the former declining slightly compared to the previous year and the latter increasing. As for the traditional retail channels, the direct point of sale and the industry, these generally show a fairly constant trend. An interesting and eye-catching figure is that for Ho.Re.Ca. (13.1%) and e-commerce (0.8%), which show opposite growth trends. This factor is essentially due to the health crisis linked to the pandemic, which has led to the closure of many activities related to the Ho.Re.Ca. sector and has instead given a great boost to e-commerce. In fact, on the one hand, Ho.Re.Ca. shows a decrease of about 45%, while e-commerce shows a remarkable growth, with a 158% compared to the previous year.

Graph 3.3.6 – Export (2020)



(Source: Consorzio di Tutela Mozzarella di Bufala Campana DOP)

As seen above when talking about the value of production, 37% of the total production of *Mozzarella di Bufala Campana* PDO in 2020 was sold on the foreign market. With a total of 18,765,732 kg, export experienced a growth of 9.7% compared to the values estimated in 2019. Graph 3.3.6 shows that 75% of the total export of the product is related to exports from the EU, with France and Germany leading the way with more than half of the total export volume (56%); the remaining 25% is related to non-EU exports with the UK (6%) and the US (4.55) topping the list as the main importers of the product, followed by Netherlands (4.14%) and China (2.85%).

Despite the critical situation caused by the pandemic in the dairy export sector, which saw a drop in exports of -4.3%, once again *Mozzarella di Bufala Campana* is a sub-sector bucking the trend, with more than positive results and an increase of 19.4% compared to the previous year.⁷³⁷

3.3.2.3 The Protection Consortium

In addition to the protection provided at European and national level by the respective regulations, like other GIs, *Mozzarella di Bufala Campana* PDO enjoys the additional protection guaranteed by the associated Protection Consortium. The latter has been involved in the promotion, enhancement, and protection of the product since before the regulation was issued at Community level.⁷³⁸

The Consortium of *Mozzarella di Bufala Campana* PDO was founded in 1981 by a small association of producers out of the need to create an organisation that would enhance the value of the product and protect its traditional processing techniques. Four years after its foundation, upon request by the Consortium, the product was granted the DCO designation by the government.⁷³⁹ As a result, a strict product specification⁷⁴⁰ has been established and the Protection Consortium has been officially recognised as the only body authorised to enforce it and to monitor its correct application.⁷⁴¹ In 1996, the product also received the Community PDO certification mark, thanks to which its characteristics, which are closely linked to the environmental conditions and processing techniques of the area of origin, have

⁷³⁷ EXPORT, LA RESILIENZA DELLA BUFALA CAMPANA DOP, 2021, February 18, <https://www.mozzarelladop.it/distretti-industriali-la-resilienza-della-bufala-campana/>

⁷³⁸ *Mozzarella di Bufala Campana DOP: Consorzio di Tutela*, 2021, September 15, <https://www.mozzarelladop.it/consorzio/>

⁷³⁹ BORSA MERCI TELEMATICA ITALIANA S.C.P.A, *Mozzarella di Bufala...*, cit., p.52

⁷⁴⁰ The product specification of *Mozzarella di Bufala Campana* PDO is available at https://www.mozzarelladop.it/wp-content/uploads/2019/03/disciplinare_mozzarella_2008-2.pdf

⁷⁴¹ GRAZIADEI, *The Making of...*, cit., p.625

been recognised and protected at institutional level.⁷⁴² Moreover, its production and commercialization were limited to specific regions where the buffaloes from whose milk the product is made are bred. Therefore, only inside these areas it was authorized the production of Mozzarella di Bufala in accordance with the specifications.⁷⁴³ A year later, with the Ministerial Decree of 10 February 1997, it was established that all mozzarella productions not included in the PDO category could not be awarded the DOC or PDO title under any circumstances, as this was considered an infringement liable to sanction.⁷⁴⁴ Over the years, all these measures have helped to affirm the uniqueness of the PDO and its differentiation within the market.

At present, the Consortium, which counts 62 breeder members and 79 associated farms, enjoys the same recognition that MIIPAF grants to all the Protection Consortia of other GI productions, and it is authorized to carry out those functions of protection, surveillance and valorization that have been analysed above.⁷⁴⁵ The growing number of its members testifies to the success of the activities that the Consortium has been carrying out for over forty years.⁷⁴⁶ In fact, in performing its functions of promotion and valorization of the uniqueness of the product, the Protection Consortium is committed to provide a constant support to all the subjects involved in the production of buffalo mozzarella,⁷⁴⁷ favoring the improvement of the whole chain, from the production processes to the quality of the finished product.⁷⁴⁸ In supporting producers and breeders, it is also committed to ensuring that supervisory activities are carried out with rigor; through meticulous checks of samples conducted by supervisory agents, the consortium ensures that only quality mozzarella is placed on the market.⁷⁴⁹ All these activities are specifically aimed at protecting and promoting the quality of the product and at the same time at effectively fighting those phenomena of counterfeiting and ‘Italian sounding’ which will be further analyzed below.

⁷⁴² *Mozzarella di Bufala Campana DOP: Consorzio di Tutela*, 2021, September 15, <https://www.mozzarelladop.it/consorzio/>

⁷⁴³ *Ibidem*

⁷⁴⁴ BORSA MERCI TELEMATICA ITALIANA S.C.P.A, *Mozzarella di Bufala...*, cit., p.52

⁷⁴⁵ *Mozzarella di Bufala Campana DOP: Consorzio di Tutela*, 2021, September 15, <https://www.mozzarelladop.it/consorzio/>

⁷⁴⁶ In June 2021 the Consortium celebrated its 40th anniversary

⁷⁴⁷ Consorzio di Tutela Mozzarella di Bufala Campana DOP, *Mozzarella di Bufala Campana DOP: Consorzio di Tutela*, 2021, September 15, <https://www.mozzarelladop.it/consorzio/>

⁷⁴⁸ BORSA MERCI TELEMATICA ITALIANA S.C.P.A, *Mozzarella di Bufala...*, cit., p.52

⁷⁴⁹ *Mozzarella di Bufala Campana DOP: Consorzio di Tutela*, 2021, September 15, <https://www.mozzarelladop.it/consorzio/>

The Consortium offers also technical support to its members and to all those who wish to join it; it commits itself to provide all the documents⁷⁵⁰ and procedures needed to obtain the certification mark and to update its members about laws and news concerning the dairy sector (i.e., the regulations concerning the correct feeding of buffaloes in order to obtain a certain quality of milk), making the production chain increasingly efficient and sustainable.⁷⁵¹

In carrying out their function of enhancing the value of the product, every year the Protection Consortia also launch a series of initiatives both in Italy and abroad. It is involved in promotion campaigns, participation in international fairs of the food sector and organization of tastings in national and international shopping malls. These are initiatives aimed at spreading awareness of the product on an international scale and increasing its commercial potential.⁷⁵² Moreover, to further enhance the prestigious role of *Mozzarella di Bufala Campana* PDO, the Protection Consortium has been running professional training courses for five years now, aimed at gradually building a supply chain that is increasingly prepared to operate effectively within the ever-globalised market.⁷⁵³

Although the Protection Consortium has demonstrated for many years that it is more than capable of effectively carrying out its mission, on the other hand it must also tackle the daily challenges that the market poses and the critical issues that arise from them.⁷⁵⁴ In this context, reference is not exclusively made to all those violations which undermine the status of the product such as undue evocations, imitations or improper exploitation of the reputation by third parties; over the years the Consortium has had to deal with ups and downs which in some cases have been due to misconduct of members belonging to the Consortium itself.⁷⁵⁵ In other cases, it has been due to purely external factors linked to environmental issues or zoonoses, like the dioxin scandal⁷⁵⁶ that led to a sharp drop in buffalo mozzarella production

⁷⁵⁰ The documentation to apply for membership is available at <https://www.mozzarelladop.it/en/consortium/>

⁷⁵¹ BORSA MERCI TELEMATICA ITALIANA S.C.P.A., *Mozzarella di Bufala...*, cit., p.54

⁷⁵² Ivi, p.52

⁷⁵³ *Scuola di Formazione Consorzio Tutela Mozzarella di Bufala*, 2021, September 15, <https://www.mozzarelladop.it/scuola-formazione/>

⁷⁵⁴ GRAZIADEI, *The Making of...*, cit., p.626

⁷⁵⁵ The consortium was suspended in 2010 by MIIPAF because of an inspection which revealed that the president of the consortium was involved in a scandal concerning the use of non-buffalo milk and the consequent alteration of the quality of the product.

⁷⁵⁶ Reference is made to a scandal that broke out in the early 2000s involving the *Mozzarella di Bufala Campana* supply chain as traces of this toxic substance were found in samples of the product in quantities exceeding the limits allowed by EU regulations. It caused a temporary halt to the production and export of the product, causing a strong damage to the whole supply chain.

in the early 2000s.⁷⁵⁷ In the light of this, in order to ensure the protection of the product and the highest transparency of information to its consumers, the Protection Consortium, in collaboration with authorities, adopted new and even more restrictive measures in the production of buffalo mozzarella.⁷⁵⁸ In this regard, a regulatory decree has been issued in recent years to ensure that the quality of the product is not lowered by the use of alternative milk⁷⁵⁹ and, as early as 2014, a buffalo milk traceability system had been established. The latter, under the joint management of the Ministry of Health and the Zooprohylactic Institute of Portici, represents a major breakthrough in the quality control system as it is able to identify production origins, arrival destination and production quantities of milk.⁷⁶⁰ In this way, the ever-increasing number of controls are carried out with even more rigorous techniques that can identify fraud more immediately.⁷⁶¹

3.3.2.4 The challenges of the PDO: how to stem the counterfeiting phenomenon

As mentioned in the first chapter, the phenomena of counterfeiting and unfair competition concerning the improper use of PDOs, PGIs and TSGs are one of the main reasons for the need to comprehensively protect this type of product. Through controls carried out jointly by certified and authorised control bodies and Protection Consortia, all the activities inside and outside the supply chain of PGI and PDO products worldwide are monitored in order to stem and stop all activities related to those unfair practices. As a matter of facts, by virtue of their emergence as a successful economic model, GIs are increasingly subject to food fraud on the international scene. The phenomena of counterfeiting and ‘Italian sounding’ are one of the first obstacles that the Consortia and their associated companies have to deal with.⁷⁶² The market is in fact characterised by the spread of mere imitations of the original product which, through the use of words, images, logos or colour combinations, evoke products of Italian origin even though they have little or nothing to do with the authenticity and quality of Made in Italy⁷⁶³

⁷⁵⁷ BORSA MERCI TELEMATICA ITALIANA S.C.P.A., *Mozzarella di Bufala...*, cit., p. 28

⁷⁵⁸ GRAZIADEI, *The Making of...*, cit., p.627

⁷⁵⁹ *Ibidem*

⁷⁶⁰ Giorgio, DELL’OREFICE, Per i caseifici il fatturato tocca quota 430 milioni. *Il Sole 24 ORE*, 24, 2021, June 12, <https://www.assocaseari.it/files/assocaseari.it/2021/06/12.06.21-IL-SOLE-24-ORE-Lattiero-caseari-Per-i-caseifici-il-fatturato-tocca-quota-430-milioni-1.pdf>

⁷⁶¹ GRAZIADEI, *The Making of...*, cit., p.627

⁷⁶² Mauro, ROSATI, *La sfida delle Indicazioni geografiche italiane: un modello di successo*. Fondazione Qualivita, 2020, July 24, <https://www.qualivita.it/news/la-sfida-delle-indicazioni-geografiche-italiane-un-modello-di-successo/>

⁷⁶³ GRAZIADEI, *The Making of...*, cit., p.620

Looking at the more specific case of *Mozzarella di Bufala Campana*, it is possible to analyze some of these phenomena which seem to have further intensified with the advancement of the pandemic crisis.⁷⁶⁴ The boom of e-commerce in the era of Covid-19 that on the one hand has increased the online sales of the product, fostering the quality food culture of GIs, on the other hand has also marked a great increase of violations of the trademark Mozzarella PDO. This has led the Consortium to concentrate its efforts especially in the activities concerning the "online brand protection" for which an Office has been specifically established.⁷⁶⁵ Through these activities, carried out by the Supervision within the various national and international markets, hundreds of cases of online counterfeiting of fake mozzarella have been detected; the online infringements of the GI right represent about 83% of all the violations found since the beginning of the 2020.⁷⁶⁶ There were about 3500 links in which a clear reference to the PDO trademark has been found and that are mostly published within e-commerce sites or marketplaces. Often the perpetrators of these frauds also make use of additional online tools such as social networks to promote and market their counterfeit products (13%).⁷⁶⁷

In general, it seems that during 2020 were carried out by the inspectors in charge of the Protection Consortium as many as 2361 actions to protect the PDO brand. These were mainly Italian sounding phenomena for which brands and logos were improperly used, but there were also several cases of real counterfeiting and unfair competition.⁷⁶⁸ Some interesting examples of specific cases of counterfeiting and Italian sounding have been found over the last year in Spain, Switzerland, Belgium, Japan, Australia and China. The counterfeit products were immediately reported by the competent authorities and subsequently removed from the market. From the misappropriation of the PDO label to the inclusion of a buffalo image on the packaging, all constitute serious violations of GI IP right and are therefore

⁷⁶⁴ *Mozzarella Dop, aumentano le frodi sul web ai tempi del Covid Il Consorzio: un caso su tre sui social, oltre 3mila link analizzati* [Press release], 2021, February 11, https://www.qualivita.it/wp-content/uploads/2021/02/20210211_CS_MOZZARELLA-DI-BUFALA-CAMPANA-DOP.pdf

⁷⁶⁵ Giorgio, DELL'OREFICE, "Mozzarella di Bufala campana Dop: aumentano online i casi di contraffazione", *Il Sole 24 ORE*, 2021, February 11, <https://www.ilsole24ore.com/art/mozzarella-bufala-campana-dop-aumentano-online-casi-contraffazione-ADJBxIJB>

⁷⁶⁶ *Ibidem*

⁷⁶⁷ *Mozzarella Dop, aumentano le frodi sul web ai tempi del Covid Il Consorzio: un caso su tre sui social, oltre 3mila link analizzati* [Press release], 2021, February 11, https://www.qualivita.it/wp-content/uploads/2021/02/20210211_CS_MOZZARELLA-DI-BUFALA-CAMPANA-DOP.pdf

⁷⁶⁸ *Ibidem*

liable to sanction Below are some examples of the samples seized by the surveillance agents in China, Australia, and Japan.



Pictures 1, 2, 3 and 4: Fake *Mozzarella di Bufala Campana* PDO counterfeited in China, Australia, and Japan (Source: Consorzio di Tutela Mozzarella di Bufala Campana DOP)

Although most of the irregularities occurred in the EU, many other cases of PDO label infringement were also found in non-European markets such as China and the United States. Within these markets, there is not the same close synergy between the various control bodies granted within the EU market by the *ex officio* enforcement. Therefore, inside these markets the possibility of intervening quickly and effectively to stem the phenomenon is greatly reduced.⁷⁶⁹ In this regard, efforts have been made to provide adequate protection to defend the PDO cheese from imitations even in territories not covered by European legislation and within which the Community PDO mark loses its distinctive and protective jurisdictional function. Therefore, more specific measures and strategies, which often see the direct involvement of the Protection Consortium, have been implemented effectively.⁷⁷⁰

A first good strategy adopted by the Consortium consists in registering the name *Mozzarella di Bufala Campana* together with the Consortium logo⁷⁷¹ with the trademark and patent offices of the non-European countries where the PDO cheese is exported. In this way, the product obtains protection as a trademark and its unauthorised evocation is subject to sanctions under the trademark law of the country in which it is located.⁷⁷²

⁷⁶⁹ Giorgio, DELL'OREFICE, "Mozzarella di Bufala campana Dop: aumentano online i casi di contraffazione", *Il Sole 24 ORE*, 2021, February 11, <https://www.ilsole24ore.com/art/mozzarella-bufala-campana-dop-aumentano-online-casi-contraffazione-ADJBxIJB>

⁷⁷⁰ ROSATI, *La sfida delle Indicazioni geografiche italiane: un modello di successo*. Fondazione Qualivita, 2020, July 4, <https://www.qualivita.it/news/la-sfida-delle-indicazioni-geografiche-italiane-un-modello-di-successo/>

⁷⁷¹ For the official Consortium logo see Appendix

⁷⁷² CONSORZIO DI TUTELA MOZZARELLA DI BUFALA CAMPANA DOP, *Italian sounding. Il caso della Mozzarella di Bufala Campana DOP*. Report, 2020

A second strategy is for the Protection Consortium to directly reach an agreement with the relevant organisations as it has recently done in the US market. In fact, in 2019, the Consortium managed to reach an agreement with the U.S. Dairy Export Council (USDEC) and the Consortium for Common Food Names (CCFN) through which *Mozzarella di Bufala Campana* PDO was recognised as a protected label in exchange for the disclaimer regarding the authorisation to use the generic term *mozzarella*.⁷⁷³

A third and very important strategy implemented is the one involving bilateral agreements between the European community and third countries. The inclusion of *Mozzarella di Bufala Campana* PDO in the list of products covered by these agreements ensures its recognition as a GI and the consequent elimination of import duties.⁷⁷⁴ Reference can be made in this context to the CETA⁷⁷⁵ (Comprehensive Economic and Trade Agreement), the free trade agreement that includes the protection of GIs signed between the EU and Canada in 2017, the EPA⁷⁷⁶ (Economic Partnership Agreement), an agreement of 2019 between the EU and Japan that provides for the protection of more than 200 European GIs on Japanese territory, and finally to the EU-China Agreement on cooperation and protection of GIs of 2021.⁷⁷⁷ The latter, in particular, seems to be the most striking example in terms of scope. The agreement, discussed in detail in the previous chapter, has in fact marked a turning point for the Made in Italy agri-food sector and specifically for *Mozzarella di Bufala Campana* PDO. The protection and enforcement of the IP rights of the PDO cheese have been extended to the huge Chinese market.

Besides those mentioned so far, there are other strategies implemented by the Protection Consortium in order to effectively defend the PDO against misuse and misappropriation. One that has proved to be very useful in recent years is the Web-monitoring that, as seen above, is implemented on foreign markets through the collaboration between the various consortia, the MIIPAF and the big-players of online platforms.⁷⁷⁸ All information that misleads the consumer and constitutes infringements as acts of unfair competition are removed from the web. In this way, the phenomena of counterfeiting and cyber-squatting

⁷⁷³ GRAZIADEI, *The Making of...*, cit., p.621

⁷⁷⁴ CONSORZIO DI TUTELA MOZZARELLA DI BUFALA CAMPANA DOP, *Italian sounding...*, cit., p. 5

⁷⁷⁵ For further information on CETA see <https://www.coldiretti.it/Documents/impaginato%20brochure.pdf>

⁷⁷⁶ For further information on EPA see <https://www.mglobale.it/dogane/tutte-le-news/accordo-di-libero-scambio-ue-giappone.kl>

⁷⁷⁷ CONSORZIO DI TUTELA MOZZARELLA DI BUFALA CAMPANA DOP, *Italian sounding...*, cit., p. 5

⁷⁷⁸ *Ibidem*

are actively combated.⁷⁷⁹ The capillarity and effectiveness of controls is also favoured by the synergy between the various Protection Consortia which operate in collaboration with the commercial surveillance carried out by the ICQRF and the police forces.⁷⁸⁰

Last but not least, a very important tool of the Protection Consortium of *Mozzarella di Bufala Campana* consists of all the actions and initiatives aimed at enhancing the product. These include promotional and information activities,⁷⁸¹ aimed at all the specialised operators such as restaurateurs, distributors, the trade press, etc., collaborations with institutions (e.g. with ICE regarding the "Italian Made" campaign in the USA and Canada),⁷⁸² co-marketing activities in collaboration with companies working in the food design sector (e.g. Alessi)⁷⁸³ and, lastly, strategic partnership with other Consortia⁷⁸⁴ that further strengthens promotional activities.⁷⁸⁵ The effectiveness of all these actions is strictly dependent on the time and budget that is invested from time to time. The chances of achieving concrete results increase in direct proportion to the money and time invested in these activities.⁷⁸⁶ However, what is certain is that the greater the synergy between the various strategies, the greater the effectiveness of control and promotion actions. To further increase the likelihood of success of these activities, they must be accompanied by the dissemination of a food culture that 'educates' consumers and guides them in their purchasing choices. In this way they will be led to make more informed choices, guided by their own knowledge and experience rather than by impulsiveness, and they will buy authentic products, indirectly contributing to stem the problem of counterfeiting.⁷⁸⁷

According to what has been observed so far, it is possible to say that although the counterfeiting of this PDO product is a phenomenon in constant growth, the actions taken by the Protection Consortium and all the control bodies authorized by MIIPAF are a very

⁷⁷⁹ ROSATI, *La sfida delle Indicazioni geografiche italiane: un modello di successo*. Fondazione Qualivita, 2020, July 24, <https://www.qualivita.it/news/la-sfida-delle-indicazioni-geografiche-italiane-un-modello-di-successo/>

⁷⁸⁰ CONSORZIO DI TUTELA MOZZARELLA DI BUFALA CAMPANA DOP, *Mozzarella di Bufala Campana DOP, Report*, 2018

⁷⁸¹ The report of all the promotional activities carried out by the Consortium is available at www.mozzarelladop.it

⁷⁸² For further information see www.italianmade.com/usa/product/mozzarella-di-bufala-campana-pdo/

⁷⁸³ For further information see www.mozzarelladop.it/stocolma-alessi-nunziatella-mozzarella/

⁷⁸⁴ Reference is made here to an agreement between the Consortium of Mozzarella di Bufala Campana and the Consortium of Gragnano Pasta. For more details see <https://www.mozzarelladop.it/pasta-e-mozzarella-nasce-il-super-consorzio-del-sud/>

⁷⁸⁵ CONSORZIO DI TUTELA MOZZARELLA DI BUFALA CAMPANA DOP, *Mozzarella di Bufala...*, cit., p.16

⁷⁸⁶ *Ibidem*

⁷⁸⁷ CONSORZIO DI TUTELA MOZZARELLA DI BUFALA CAMPANA DOP, *Italian sounding...*, cit., p.10

effective response to the violation. The director of the Consortium, Pier Maria Saccani, congratulates on the positive results obtained on an international scale by all the actions taken in defense of an excellence of Made in Italy such as *Mozzarella di Bufala Campana* PDO.⁷⁸⁸ What is certain is that as long as the product maintains its quality, originality and reputation, these violations will continue to occur, but even more certain is that the control system in Italy has proven to be one of the best in the world in fighting them. Thanks to all the measures taken at national and Community level and the further activities carried out by the Consortium, the product now enjoys effective protection that guarantees and enhances its PDO status beyond national borders.

3.3.2.5 The great potential of the Chinese market

In the last two years, in contrast to the negative effects and limits imposed on exports by the pandemic, the Made in Italy agri-food industry has shown remarkable resilience, emerging as the only growing sector in this recessionary scenario.⁷⁸⁹ Moreover, thanks to the success that the Mediterranean diet has unleashed all over the world, it even seems to have reached a value of €46.1 billion in 2020, marking a growth of 1.8% compared to the previous year.⁷⁹⁰ In particular, it has been seen that among the sectors that have contributed most to achieving this goal, the cheese sector stands out, with a very strong growth in exports even in non-European markets.⁷⁹¹ The *Mozzarella di Bufala Campana* PDO supply chain fits perfectly into this context. In fact, as noted above, the PDO has recorded excellent results in terms of production volumes and exports, confirming the success of the chain at global level. Because of its characteristics and uniqueness, the product has received more and more attention in a global market in which it has spread a food culture that is particularly attentive to authentic, typical and genuine products.⁷⁹² It is no coincidence that more and more multinationals are seeking collaboration agreements for the supply of *Mozzarella di Bufala Campana* with the numerous companies operating within the PDO cheese chain.⁷⁹³ The latter, which has now effectively consolidated its position in the national and EU markets,

⁷⁸⁸ *Falsa mozzarella di bufala catalana, denunciato caseificio spagnolo Successo per l'azione di tutela internazionale di Consorzio e Ministero* [Press release], 2021, January 20, https://www.qualivita.it/wp-content/uploads/2021/01/20210120_CS_MOZZARELLA-DI-BUFALA-CAMPANA-DOP.pdf

⁷⁸⁹ *In vigore l'accordo Ue-Cina sulla protezione di Dop e Igp*, *Ilpuntocoldiretti*.It, 2021, March 6, <https://www.ilpuntocoldiretti.it/attualita/economia/in-vigore-laccordo-ue-cina-sulla-protezione-di-dop-e-igp/>

⁷⁹⁰ *EXPORT, LA RESILIENZA DELLA BUFALA CAMPANA DOP*, 2021, February 18, <https://www.mozzarelladop.it/distretti-industriali-la-resilienza-della-bufala-campana/>

⁷⁹¹ ISMEA, *Lattiero caseari: tendenze e dinamiche recenti*. Ismea Report, 2020, p. 2

⁷⁹² BORSA MERCI TELEMATICA ITALIANA S.C.P.A, *Mozzarella di Bufala...*, cit., p.43

⁷⁹³ *Ibidem*

has in recent years shifted its attention to non-European markets and the additional growth opportunities they offer.⁷⁹⁴ In particular, its aim in recent years has been to penetrate the Chinese market, exploiting its enormous potential to establish itself with the same determination with which it has been able to achieve the prominent position it has in the global market.⁷⁹⁵

The decision to enter the Chinese market is by no means an arbitrary choice linked only to the fame the product enjoys on an international scale, but rather a reasonable choice based on more concrete facts and figures. First of all, the Chinese market represents more than just a great opportunity, as it is characterised by a large middle class of consumers who are increasingly attentive to their purchasing choices, including food products, and increasingly fascinated by the taste of typical Made in Italy products.⁷⁹⁶ Secondly, according to Coldiretti's market analysis based on ISTAT data, Made in Italy agri-food exports to China increased dramatically in 2020, registering a growth of over 20% compared to the previous year. With a value of more than half a billion euros, the sector has therefore set a historical and unprecedented record, demonstrating that it has great potential on the Asian market where Italian products are highly appreciated.⁷⁹⁷ Thirdly, and closely linked to the previous reason, Chinese demand for cheeses produced in Europe, and therefore also in Italy, doubled in 2020, and exports saw an increase of 137% compared to 2019.⁷⁹⁸ Finally, and certainly of great importance, is the cooperation initiated between Europe and China on the protection of GIs. Although the EU-China Agreement came into force at the beginning of 2021, it has already started to bring excellent results for the *Mozzarella di Bufala Campana* chain, giving further impetus to the process of spreading the PDO within the Chinese market.⁷⁹⁹ As seen in the second chapter, this landmark agreement marks a very important step in the development of bilateral relations between European countries and China. Especially for

⁷⁹⁴ *Mozzarella di Bufala Campana DOP: "Cina mercato enorme, ora risolviamo la logistica."*, Fondazione Qualivita, 2020, May 5, <https://www.qualivita.it/news/mozzarella-di-bufala-campana-dop-unico-prodotto-del-sud-tutelato-in-cina-il-consorzio-mercato-enorme-ora-risolviamo-la-logistica/>

⁷⁹⁵ Giorgio, DELL'OREFICE, Per i caseifici il fatturato tocca quota 430 milioni. *Il Sole 24 ORE*, 24, 2021, June 12, <https://www.assocaseari.it/files/assocaseari.it/2021/06/12.06.21-IL-SOLE-24-ORE-Lattiero-caseari-Per-i-caseifici-il-fatturato-tocca-quota-430-milioni-1.pdf>

⁷⁹⁶ *Mozzarella di Bufala Campana DOP: "Cina mercato enorme, ora risolviamo la logistica."*, Fondazione Qualivita, 2020, May 5, <https://www.qualivita.it/news/mozzarella-di-bufala-campana-dop-unico-prodotto-del-sud-tutelato-in-cina-il-consorzio-mercato-enorme-ora-risolviamo-la-logistica/>

⁷⁹⁷ *In vigore l'accordo Ue-Cina sulla protezione di Dop e Igp*, Ilpuncocoldiretti.It, 2021, March 6, <https://www.ilpuncocoldiretti.it/attualita/economia/in-vigore-laccordo-ue-cina-sulla-protezione-di-dop-e-igp/>

⁷⁹⁸ ISMEA, *Lattiero caseari...*, cit., p.2

⁷⁹⁹ Giorgio, DELL'OREFICE, Per i caseifici il fatturato tocca quota 430 milioni. *Il Sole 24 ORE*, 24, 2021, June 12, <https://www.assocaseari.it/files/assocaseari.it/2021/06/12.06.21-IL-SOLE-24-ORE-Lattiero-caseari-Per-i-caseifici-il-fatturato-tocca-quota-430-milioni-1.pdf>

Italy, given its centrality in the field of PDOs and PGIs and the growing influence of Made in Italy products on a global scale, the Agreement represents a real springboard, creating an excellent basis for economic development for Italian GIs and therefore for *Mozzarella di Bufala Campana* PDO.

However, given the topicality of the agreement, it is still difficult to estimate the precise impact it may have had on the PDO supply chain. What is certain is that it has undoubtedly contributed effectively to making it much easier for the product to enter Chinese territory by considerably reducing all those difficulties linked to the existence of tariff barriers and rather restrictive quality and health standards.⁸⁰⁰ For years, these restrictions have led to a number of problems for the *Mozzarella di Bufala Campana* PDO, limiting its ability to establish itself on the market. The very specific and complex quality controls carried out at customs by the former AQSIQ, the different rules on product labelling and the lack of recognition of the GI as such have always led to a lengthening of all the bureaucratic delays, considerably slowing down the entry of *Mozzarella* PDO into the Chinese market.⁸⁰¹ This has therefore been a problem that the Protection Consortium has always tried to tackle⁸⁰² and to which it seems to have finally found a solution. Although it is not possible to make a precise estimate of the economic impact of the agreement on the supply chain, on the basis of the export data previously analysed, it can be stated with some certainty that there are good prospects for the development of the PDO cheese within the Chinese market. In fact, as reported by the data, foreign demand for *Mozzarella di Bufala Campana* PDO in 2020 increased sharply compared to previous years, reaching 37% of total production. Of this percentage, 2.85% ends up in the Chinese market, for a total value of 375231.80 kilos of product. All these figures bode well for the further growth of *Mozzarella di Bufala Campana*.⁸⁰³

Besides the economic impact, there are other aspects that will undoubtedly be improved by the implementation of the Agreement. Since the purpose of the agreement is to protect GIs and safeguard them from any use that could mislead the public about the origin of the product or constitute an act of unfair competition, *Mozzarella di Bufala Campana* PDO for the first

⁸⁰⁰ *Mozzarella di bufala campana dop sarà tutelata in Cina*. ANSA.it., 2017, June 5
https://www.ansa.it/canale_terraegusto/notizie/prodotti_tipici/2017/06/05/marchio-mozzarella-dop-tutelato-in-cina_e80f0f42-a821-4cbe-924f-ce1de0d53200.html

⁸⁰¹ *Ibidem*

⁸⁰² *Mozzarella di Bufala Campana DOP: "Cina mercato enorme, ora risolviamo la logistica."*, Fondazione Qualivita, 2020, May 5, <https://www.qualivita.it/news/mozzarella-di-bufala-campana-dop-unico-prodotto-del-sud-tutelato-in-cina-il-consorzio-mercato-enorme-ora-risolviamo-la-logistica/>

⁸⁰³ Data provided by Consorzio di Tutela *Mozzarella di Bufala Campana* DOP

time really enjoys effective protection in China under a *sui generis* system increasingly similar to the European one. In this way, for the first time, all IP rights linked to the PDO will be recognised as such and the fight against counterfeiting will be implemented and further strengthened through the intervention of the Chinese police and authorities. This will limit the great negative economic impact and the criticalities brought about by the phenomenon that particularly afflicts the Chinese market.

Finally, the agreement also represents a turning point in terms of spreading product awareness and promoting an Italian excellence such as *Mozzarella di Bufala Campana* PDO within the Chinese market. To some extent, the recognition by the Chinese authorities of the IP rights attached to the product and the consequent need to protect it has further encouraged the promotion process aimed in particular at all operators in the sector and Chinese consumers. This is a task that has already been vigorously pursued for years by the Protection Consortium, and now it is being further strengthened. The initiatives continuously promoted by the organisation therefore find a close synergy with the control activities carried out by the Chinese authorities, confirming the great potential for success of PDO products within the Asian market. Thus, the Consortium is very satisfied with the excellent results achieved by the entire chain and continues to pursue this project of relaunching in non-European markets with great enthusiasm. In this regard, to further promote *Mozzarella di Bufala Campana* DOP in the Chinese market, an interesting initiative has been planned for the coming period, involving the participation of the Consortium at the International Protected Geographical Indications event to be held in Shanghai at the National Exhibition and Convention Center-Hongqiao-Shanghai from 14 to 17 October 2021. This is an initiative promoted in collaboration with MIIPAF and the other protection consortia whose names have been recognised by the EU-China agreement.⁸⁰⁴ The main objective of the event is to strengthen international cooperation on GIs as a powerful tool for rural revitalisation and promoting the development of related industries. The aim is to create in China a kind of international platform within which GIs from all over the world can realise their value and expand their global reach.⁸⁰⁵ Given the participation at the event of companies, associations and market representatives from over 143 markets,⁸⁰⁶ the Expo therefore represents a great

⁸⁰⁴ Data provided by Consozio di Tutela Mozzarella di Bufala Campana DOP

⁸⁰⁵ *China (Shanghai) International Protected Geographical Indication Products Expo 2020.*

[Http://www.Cgiaexpo.Com/](http://www.cgiaexpo.com/), <http://www.cgiaexpo.com/en/>

⁸⁰⁶ For further details on the event see <http://www.cgiaexpo.com/en/>

opportunity for the Consorzio di Tutela to further promote and consolidate the position of *Mozzarella di Bufala Campana* not only within China.

In light of the above, it is possible to conclude that a quality and genuine product such as *Mozzarella di Bufala Campana* PDO has excellent growth margins within the Chinese market. In a perspective in which authenticity, quality, sustainability and tradition of international products drive the diversification of consumption, the good development prospects of the Made in Italy product within this market are confirmed. In this context, the increase in consumer awareness of such a unique product will inevitably lead to an increase in consumption. This confirms the possibility that the promotional campaigns will see their objectives fully achieved, favouring the conquest of the Chinese colossus by *Mozzarella di Bufala Campana* PDO.

Conclusions

The aim of this thesis was to analyse the agreement between Europe and the government of the People's Republic of China on cooperation and protection of geographical indications. In particular, the work set out to investigate the impact it has and will have within the territories of the respective powers through an analysis that moved on different levels to provide the legislative and socio-economic context underpinning the agreement. For this purpose, a comparative analysis was carried out to outline the framework of the regulation of GIs and their protection at international level, but more importantly to highlight the commonalities and differences between the European and Chinese systems of protection, in order to better understand the basis of cooperation and examine the implications accordingly.

The analysis of the international discipline of GIs highlighted not only the great importance that these intangible resources have at global level as typical products guaranteeing authenticity and quality, but also the great efficiency of a protection system such as the *sui generis* one adopted by Europe, which reflects the centrality of these distinctive signs within its rural development policies. In fact, there has been a constant commitment from the European Community in developing increasingly sophisticated tools for the protection and enhancement of GIs in order to fully exploit the great economic potential that results from the production and marketing of these products, and also in order to safeguard all those "know how" and traditional production methods linked to the products and to the local communities of their geographical areas of origin. Through the study of the Chinese discipline, on the other hand, the analysis showed the complexity and relative inexperience of a triple protection system that could not be said to be efficient until a few years ago. However, the strong influence of the European model and the consequent development of a new awareness of the importance of GIs within rural development policies has led to the redefinition of a more functional system focused on the valorisation of these intangible resources. Indeed, the framework analysed reveals a clear willingness on the Chinese side to invest in the further development of GI supply chains, which are considered important drivers of economic growth. Thus, the long-standing collaboration between Europe and China opens in a context of convergence of interests between the two powers, which, as evidenced by the large volume of trade and the resulting strong economic independence, are already engaged in other areas of cooperation. Therefore, the Agreement represents an important step in further developing the EU-China bilateral trade relationship.

The analysis that has been conducted within this paper highlighted and argued all the potential offered by this far-reaching Agreement. It was seen how the construction of a well-structured framework for the protection of GIs can bring advantages to the entire supply chain linked to these distinctive signs. In fact, the agreement stands as an unprecedented legal protection instrument that guarantees Chinese and European producers a high level of protection and enforcement of their rights and interests. This is ensured by the joint control activity carried out by the Chinese and European authorities, who cooperate to monitor its correct application. The analysis shows how the specific features and characteristics of GIs, as well as their traditional production techniques, are extensively protected within the agreement. Moreover, thanks to the possibility of using the respective official logos, a further boost is given to a process of spreading the distinctive cultures of the two territories within their respective markets. This represents an effective contribution to the primary objective of the Agreement, as the differentiation of GI products within the market makes it possible to hinder all those unfair market practices that damage the image of GIs. Furthermore, the creation of more transparent market rules gives a further boost to bilateral trade in these products and thus to the underlying rural and environmental development processes. This will fully encourage the penetration of Chinese and European GIs in their respective markets, safeguarding consumers' right to information and increasing their awareness of these products as guarantors of authenticity and quality. Consequently, the immense food heritage enjoyed by the territories of Europe and China will be exploited in a comprehensive manner, bringing benefits to the consumers themselves, whose expectations on quality products can be fulfilled. The analysis thus reveals the great potential of the agreement, which lays the foundations for building an innovative system of economic development. It is a system that not only guarantees quality and protects public interests, but also creates an ecological model that favours biodiversity, diversification of production and sustainable agriculture.

With the purpose of providing a more concrete example, the paper proposes a Case Study on *Mozzarella di Bufala Campana* PDO to investigate the possible impact of the Agreement on the Italian supply chain. Through an overall analysis of the Italian GI protection system that highlighted its many strengths, it was seen how Made in Italy, and in particular the GI sector, is confirmed abroad as a constantly growing area, thanks to the effective implementation of protection and enhancement of these resources. In this regard, it emerged the essential role played by the Protection Consortia in strongly supporting the GI supply chains so that their rights are recognised and protected at an international scale. In particular,

the final analysis carried out on the *Mozzarella di Bufala Campana* PDO supply chain, emphasized the efficiency of the Italian protection system and the potential of a sector that has strongly resisted the criticalities of the pandemic, recording a constant growth in production and exports. Due to the great topicality of the agreement, it was not possible to obtain data for the last period that could statistically verify its impact on the supply chain. On the other hand, it was possible to carry out an analysis of the available data to verify the positioning of the product within the Chinese market. Through this study, it was possible to ascertain that the PDO, by virtue of its uniqueness, has a high capacity for penetration even in the Chinese market. In fact, the data relating to exports to China show the growing interest of Chinese consumers in PDO excellence and therefore bode well for the future excellent positioning of the product within the market. If these trends continue, the PDO cheese will soon be able to conquer the Asian Giant. A goal that is considered achievable following the completion of the affirmation process initiated by the entry into force of the Agreement.

Appendix

Official symbols of geographical indications

Official European GI Symbols



Official Chinese GI symbol



Official logo of the Protection Consortium of Mozzarella Bufala Campana PDO



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