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# GEOGRAPHICAL INDICATIONS IN CHINA: WHY PROTECT GIS WITH BOTH TRADEMARK LAW AND AOC-TYPE LEGISLATION?

Bradley M. Bashaw<sup>†</sup>

*Abstract:* Geographical indications identify the place of origin of a good and signify a distinctive quality, reputation, or other characteristic of the good that is essentially attributable to that geographic source. Besides serving as source-identifiers and guarantees of quality, they are valuable business interests. Consequently, World Trade Organization members are required to afford them protection under the Agreement on Trade Related Aspects of Intellectual Property Rights. Signatories are free to choose the legal means by which they comply with TRIPS. While a few states rely solely on unfair competition law to meet their obligations, most primarily rely on either trademark law or GI-specific laws often modeled on the appellation of controlled origin (“AOC”) system first developed by France. The People’s Republic of China utilizes both trademark law and GI-specific legislation.

China would benefit from abandoning its AOC-type system of GI protection. Protecting GIs with both of the world’s primary protection systems generates uncertainty and conflict; the hierarchy of rights granted by the two systems is unclear. China’s AOC-type system of GI protection does not confer benefits beyond those provided by its trademark-based system of protection. China’s trademark-based system is not perfect, but it satisfies China’s international GI-protection obligations, better reflects the motivations behind China’s recent amendments to its intellectual property laws, and better serves China’s current economic and legal goals.

## I. INTRODUCTION

Geographical indications (“GI”) are signs “used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin.”<sup>1</sup> Perhaps the most internationally recognized GI is “Champagne,” a wine region in the north of France known for the sparkling wine that bears the region’s name and derives its characteristics from the region’s unique soil and climate.<sup>2</sup> GIs are protected because their false use misleads consumers and damages the business interests of legitimate producers; consumers are misled into purchasing goods that do not possess the qualities the GI represents, and producers lose business and the reputation of their product is damaged.<sup>3</sup> Several international treaties protect

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<sup>1</sup> World Intellectual Property Organization, About Geographical Indications, [http://www.wipo.int/about-ip/en/about\\_geographical\\_ind.html#P16\\_1100](http://www.wipo.int/about-ip/en/about_geographical_ind.html#P16_1100) (last visited Feb. 1, 2007).

<sup>2</sup> See Winebow.com, Champagnes and Sparkling Wines, <http://www.winebow.com/champagnes.html> (last visited May 20, 2007).

<sup>3</sup> World Intellectual Property Organization, *supra* note 1.

GIs, but the 1994 Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS”),<sup>4</sup> which sets forth the minimum standards of protection that World Trade Organization (“WTO”) members must provide, was the first international treaty providing expansive coverage of GIs and has the greatest number of signatories.<sup>5</sup> TRIPS dictates a standard of protection but not a method, allowing WTO members to incorporate its requirements into their national laws.<sup>6</sup> The legal systems used to protect GIs vary widely, but can generally be characterized as falling under one of three approaches: 1) the trademark approach, 2) the GI-specific legislation approach, which includes appellations of controlled origin (“AOC”), 3) or the unfair competition approach.<sup>7</sup> Among these, the trademark and the GI-specific legislation approaches predominate.<sup>8</sup>

Although China has long had many products known by their place of origin, such as Jinhua ham, Fuling pickled mustard tuber, and Huangyan tangerines,<sup>9</sup> it was slow to offer GI protection.<sup>10</sup> Admission to the WTO spurred significant efforts by Chinese legislators to update intellectual property laws.<sup>11</sup> Ultimately, China decided to protect GIs with both trademark law and also under the AOC model.<sup>12</sup>

This Comment suggests that China would benefit from abandoning its AOC model of GI protection (“SAQSIQ System”).<sup>13</sup> Consolidating GI protection under China’s trademark model (“Trademark System”) would

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<sup>4</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 I.L.M. 1125, 1197 [hereinafter TRIPS].

<sup>5</sup> See Sergio Escudero, *International Protection of Geographical Indications and Developing Countries* § IV.11 (S. Ctr., Trade-Related Agenda, Dev. and Equity (T.R.A.D.E.) Working Papers No. 10, 2001), available at <http://www.southcentre.org/publications/workingpapers/wp10.pdf>.

<sup>6</sup> See TRIPS, *supra* note 4, art. 41(1).

<sup>7</sup> See STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS, WORLD INTELLECTUAL PROPERTY ORGANIZATION, SCT/8/4, GEOGRAPHICAL INDICATIONS: HISTORICAL BACKGROUND, NATURE OF RIGHTS, EXISTING SYSTEMS FOR PROTECTION AND OBTAINING PROTECTION IN OTHER COUNTRIES pt. C (2002) [hereinafter SCT/8/4].

<sup>8</sup> Min-Chiuan Wang, *The Asian Consciousness and Interests in Geographical Indications*, 96 TRADEMARK REP. 906, 914 (2006).

<sup>9</sup> PETER GANEA & THOMAS PATTLACH, *INTELLECTUAL PROPERTY LAW IN CHINA* 144 (Christopher Heath ed., Kluwer Law International 2005).

<sup>10</sup> China began protecting GIs in 1985 and began protecting GIs as certification marks or collective marks in 1993. See LIANG SEN, CIVIL SERVANT, TRADEMARK OFFICE OF P.R.C., GIs PLAYING AN IMPORTANT PART IN RURAL DEVELOPMENT pt. 3 (2006), available at <http://www.aseminfoboard.org/Documents/> (follow “ASEM Working Group on Intellectual Property: Meeting on Geographical Indications - Presentation 5” hyperlink).

<sup>11</sup> Yahong Li, *The Wolf Has Come: Are China’s Intellectual Property Industries Prepared for the WTO?*, 20 UCLA PAC. BASIN L.J. 77, 84 (2002).

<sup>12</sup> Wang, *supra* note 8, at 920.

<sup>13</sup> “SAQSIQ” stands for the State Administration for Quality Supervision, Inspection, and Quarantine. The SAQSIQ administers China’s AOC model of GI protection.

clarify the priority of GI rights in China without compromising China's ability to fulfill TRIPS requirements, and the Trademark System better enables the achievement of China's economic and legal goals. Part II of this Comment outlines China's international obligation to protect GIs under TRIPS. Part III analyzes the laws with which China protects GIs, keeping China's international obligations in regard. Part IV focuses on conflict between the Trademark System and the SAQSIQ System and the resulting confused state of law. Part V posits that international considerations that may have once justified the SAQSIQ System are no longer relevant. Part VI considers Chinese interests beyond WTO accession and proposes that the Trademark System better addresses China's domestic concerns. Finally, this Comment closes by suggesting that China should consolidate GI protection under the Trademark System.

## II. CHINA IS OBLIGATED UNDER TRIPS TO PROTECT GIs

The United States initiated development of the TRIPS Agreement to increase international protection of intellectual property.<sup>14</sup> European states generally supported increased protection, but also insisted that TRIPS include increased protection for GIs.<sup>15</sup> The United States, Canada, and Australia opposed inclusion, but ultimately GI protection was incorporated.<sup>16</sup> TRIPS defines GIs as "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."<sup>17</sup> TRIPS requires member states to protect GIs generally,<sup>18</sup> and it affords additional protection for GIs for wines and spirits.<sup>19</sup> China was admitted to the WTO on December 11, 2001,<sup>20</sup> and thereby was bound to incorporate TRIPS protections into its national law.<sup>21</sup>

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<sup>14</sup> Leigh Ann Lindquist, *Champagne or Champagne? An Examination of U.S. Failure to Comply With the Geographical Provisions of the TRIPS Agreement*, 27 GA. J. INT'L & COMP. L. 309, 315 (1999).

<sup>15</sup> *See id.* at 316.

<sup>16</sup> *See id.*

<sup>17</sup> TRIPS, *supra* note 4, art. 22(1).

<sup>18</sup> *See id.* art. 22.

<sup>19</sup> *See id.* art. 23.

<sup>20</sup> World Trade Organization, *Understanding the WTO: The Organization, Members and Observers*, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last visited Mar. 7, 2007).

<sup>21</sup> TRIPS, *supra* note 4, art. 41(1).

A. *TRIPS Mandates That Member States Protect GIs of Other Members*

TRIPS Article 22 sets forth the minimum level of protection that WTO members must provide for GIs of other members. Members must provide a legal means by which parties can prevent the misleading use of indications that suggest a false place of origin.<sup>22</sup> Members must also provide a legal means of preventing any use of a GI which constitutes an act of unfair competition.<sup>23</sup>

TRIPS Article 22 further requires that a trademark application or registration must be refused or invalidated if the trademark includes a GI with respect to goods not originating in the territory indicated and will mislead the public.<sup>24</sup> Refusal or invalidation of registration shall be *ex officio* if domestic legislation so permits; otherwise, such action must be taken at the request of an interested party.<sup>25</sup> The protections provided for GIs under TRIPS Article 22 apply even against GIs “which, although literally true . . . falsely represent to the public that the goods originate in another territory.”<sup>26</sup> Thus, if the products on which a GI is used have a given quality or reputation not possessed by the products on which a homonymous GI is used, misleading use of the homonymous GI is prohibited.

B. *Greater Protection Must Be Provided for GIs for Wines and Spirits*

GIs used for wines and spirits benefit from the greater protection granted by TRIPS Article 23. Article 23 requires members to provide a means by which interested parties can prevent the use of GIs identifying wines or spirits for wines or spirits that do not originate in the place suggested by the GI.<sup>27</sup> Unlike Article 22, which does not prevent the use of a GI unless it is misleading, Article 23 applies where the true origin of the goods is indicated or the GI is used with an expression such as “kind,”

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<sup>22</sup> *Id.* art. 22(2)(a).

<sup>23</sup> *Id.* art. 22(2)(b). “Unfair competition” is defined by reference to Article 10*bis* of the Paris Convention, which requires states party to the Convention to protect nationals of other states party to the Convention from acts of unfair competition. Acts of unfair competition include all acts “contrary to honest practices.” Specifically prohibited are those acts that create confusion with the goods of a competitor and the use of indications in the course of trade “liable to mislead the public as to the nature, the manufacturing process, [or] the characteristics . . . of the goods.” Paris Convention for the Protection of Industrial Property, art. 10*bis*, Mar. 20, 1883, 828 U.N.T.S. 305.

<sup>24</sup> TRIPS, *supra* note 4, art. 22(3).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* art. 22(4). A homonymous GI is one that is literally true for more than one place of origin. For example, Rioja is the name of wine producing regions in both Spain and Argentina. See Irene Calboli, *Expanding the Protection of Geographical Indications of Origin Under TRIPS: “Old” Debate or “New” Opportunity?*, 10 MARQ. INTELL. PROP. L. REV. 181, 192 (2006).

<sup>27</sup> TRIPS, *supra* note 4, art. 23(1).

“type,” “style,” or “imitation.”<sup>28</sup> Labeling wine from the United States “Rioja-style” is therefore prohibited.<sup>29</sup> Similar to Article 22, Article 23 requires that registrations of trademarks for wines or spirits that include a GI be refused or invalidated if the wines or spirits do not have the indicated origin.<sup>30</sup> However, it is not necessary that the trademark be misleading.<sup>31</sup>

Unlike homonymous GIs generally, homonymous GIs for wines are protected. So long as the homonymous GI is not being used to misrepresent to the public that the wine originates in another territory, both GIs will be protected and the practical conditions under which the homonymous indications in question will be differentiated from each other are left to the members.<sup>32</sup> Wine from Spain’s Rioja region and wine from Argentina’s Rioja region can therefore both bear Rioja GIs.<sup>33</sup>

Finally, TRIPS Article 23 mandates future negotiations on the establishment of a multilateral registry of GIs for wines.<sup>34</sup> This provision and a provision of Article 24<sup>35</sup> have subsequently proven to be sources of great contention,<sup>36</sup> and are discussed further in Part V of this Comment.

### C. *TRIPS Provides Certain Exceptions to the Mandated Protections*

TRIPS Article 24 establishes significant exceptions to the protections provided by Articles 22 and 23. Members are generally not required to prevent use of another member’s particular GI identifying wines or spirits if such use has been continuous and with regard to the same or related goods or services for at least ten years prior to April 15, 1994 or in good faith before that date.<sup>37</sup> Trademark rights acquired in good faith before TRIPS applied to a member or before a GI is protected in its country of origin need not be refused or invalidated.<sup>38</sup> It is not necessary to protect GIs with

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<sup>28</sup> *Id.*

<sup>29</sup> With respect to Spain, Rioja has been deemed a nongeneric name of geographic significance and is recognized as a distinctive designation of a specific grape wine in the United States. 27 C.F.R. § 12.31(e) (2007). This is important for the protection of the Rioja GI in the United States because TRIPS Article 24 does not mandate the protection of generic GIs. TRIPS, *supra* note 4, art. 24(6). See *infra* Part II.C.

<sup>30</sup> TRIPS, *supra* note 4, art. 23(2).

<sup>31</sup> See *id.*

<sup>32</sup> *Id.* art. 23(3).

<sup>33</sup> Calboli, *supra* note 26, at 192-93.

<sup>34</sup> TRIPS, *supra* note 4, art. 23(4).

<sup>35</sup> “Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23.” TRIPS, *supra* note 4, art. 24(1).

<sup>36</sup> World Trade Organization, TRIPS: Geographical Indications, Background and the Current Situation, [http://www.wto.org/english/tratop\\_e/trips\\_e/gi\\_background\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm) (last visited Mar. 9, 2007) [hereinafter WTO, GIs Currently].

<sup>37</sup> TRIPS, *supra* note 4, art. 24(4).

<sup>38</sup> *Id.* art. 24(5).

respect to goods or services for which the relevant GI is also the common name for such goods or services.<sup>39</sup> This exception for generic terms may also apply to wines for which the relevant GI is identical with the customary name of a grape varietal.<sup>40</sup> There is no obligation to protect GIs that are not protected or have fallen into disuse in their country of origin.<sup>41</sup>

### III. CHINA PROTECTS GIS WITH TRADEMARK LAW, GI-SPECIFIC LEGISLATION, AND SECONDARY LAWS

The legal concepts states use to protect GIs can be categorized,<sup>42</sup> but they do not necessarily operate exclusively. In fact, cumulative protections are quite common.<sup>43</sup> For example, all states party to TRIPS and all states party to the Paris Convention for the Protection of Industrial Property (“Paris Convention”) are required to protect GIs by preventing acts of unfair competition, including the misleading use of indications of origin.<sup>44</sup> Some states also have separate administrative procedures restricting the marketing of certain products, such as wine and spirits, and these procedures may serve to prevent false or misleading use of GIs.<sup>45</sup> However, China is unique in that, by protecting GIs under the Trademark System and the SAQSIQ System, it employs both of the primary protection schemes.<sup>46</sup>

#### A. *The Trademark Law Protects GIs as Certification Marks or Collective Marks*

China made and amended rules and guidelines to deal with the new protection obligations imposed by TRIPS.<sup>47</sup> Among those rules and guidelines, the Trademark Law,<sup>48</sup> the Regulations for the Implementation of the Trademark Law (“Implementing Regulations”),<sup>49</sup> and the Measures for

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<sup>39</sup> *Id.* art. 24(6).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* art. 24(9).

<sup>42</sup> See SCT/8/4, *supra* note 7, pt. C.

<sup>43</sup> *Id.* para. 10.

<sup>44</sup> TRIPS, *supra* note 4, art. 22(2)(b). See *supra* note 23 (discussion of Article 10bis of the Paris Convention).

<sup>45</sup> SCT/8/4, *supra* note 7, paras. 34, 35; see, e.g. 27 C.F.R. § 4 (2007) (U.S. regulations on the labeling and advertising of wine).

<sup>46</sup> See Wang, *supra* note 8, at 914, 920.

<sup>47</sup> James C. Chao, *Recent Trends in Asian Trademark Law—Changes and Challenges*, 95 TRADEMARK REP. 883, 893-94 (2005).

<sup>48</sup> Trademark Law (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 23, 1982, effective Mar. 1, 1983), translated in PRCLEG 2107 (LEXIS) [hereinafter Trademark Law].

<sup>49</sup> Regulation for the Implementation of the Trademark Law (promulgated by the St. Council, Aug. 3, 2002, effective Sep. 15, 2002), translated in PRCLEG 2444 (LEXIS) [hereinafter Implementing Regulations].

the Registration and Administration of Collective Marks and Certification Marks (“Administration Measures”)<sup>50</sup> pertain directly to the protection of GIs.

The Trademark Law defines a GI as an indication “identifying a good as originating in a specific area, where a given quality, reputation or other characteristic of the good is essentially attributable to the natural or human factors of the area.”<sup>51</sup> Place names “at the level of county or above [and] foreign place names known by the public” may not be registered unless they have acquired secondary meaning, are used as part of a collective mark or certification mark, or were registered prior to the amendment of the Trademark Law in 2001.<sup>52</sup> Even misleading trademarks indicating a false place of origin continue to be valid if they were previously registered in good faith;<sup>53</sup> the trademark “TV sets Beijing” remains valid even though the televisions are made in Tianjin.<sup>54</sup> Unlike TRIPS Article 24(4), the Trademark Law does not limit the good faith exception for marks used on wines or spirits to marks used prior to April 15, 1994.<sup>55</sup>

The Implementing Regulations affirm Article 10 of the Trademark Law by providing that GIs may be registered as certification marks or collective marks.<sup>56</sup> The Implementing Regulations provide that any party who meets the conditions for using a GI registered as a certification mark is entitled to use the certification mark.<sup>57</sup> If a GI is registered as a collective mark, any party meeting the conditions for membership in the collective is entitled to membership.<sup>58</sup> A party may be entitled to use a collective mark even if it is not a member of the registrant collective.<sup>59</sup> An application to register a certification mark or collective mark must include the standards and regulations relevant to the use of the mark.<sup>60</sup>

Registering a GI as a certification or collective mark is essentially the same process and is primarily governed by the Administration Measures. The name of the region indicated by the GI or any sign capable of indicating

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<sup>50</sup> Measures for the Registration and Administration of Collective Marks and Certification Marks (promulgated by the St. Admin. for Indus. and Commerce, Apr. 17, 2003, effective June 1, 2003), translated in <http://sbj.saic.gov.cn/english/show.asp?id=60&bm=flfg> (last visited Nov. 25, 2007) (P.R.C.) [hereinafter Administration Measures].

<sup>51</sup> Trademark Law, *supra* note 48, art. 16; Wang, *supra* note 8, at 921 (source of quoted translation).

<sup>52</sup> Trademark Law, *supra* note 48, art. 10.

<sup>53</sup> *Id.* art. 16.

<sup>54</sup> GANEA & PATTLACH, *supra* note 9, at 88.

<sup>55</sup> Trademark Law, *supra* note 48, art. 16.

<sup>56</sup> Implementing Regulations, *supra* note 49, art. 6.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* art. 13.



place of origin may be registered.<sup>61</sup> The Administration Measures require an applicant to submit documents establishing its qualification to register the GI and demonstrating its capability, by use of its own professionals and testing equipment or those of others, to supervise the particular quality of the goods identified by the GI.<sup>62</sup> GI registrants are associations or other types of organizations.<sup>63</sup> Agricultural industry associations and farmers' professional co-operation organizations are typical registrants<sup>64</sup> because most Trademark System GIs are for foodstuffs or agricultural products.<sup>65</sup> All members of an organization registering a GI as a collective mark must be from within the area encompassed by the GI.<sup>66</sup>

The application documents must state the particular characteristics of the goods the GI will identify, the relationship between those characteristics and the natural or human factors of the area encompassed by the GI, and the boundary of that area.<sup>67</sup> The local government in control of the area to be encompassed by the GI or a competent industry authority must have previously approved the applicant's proposal.<sup>68</sup> An applicant must also provide the regulations that will govern use of its mark, including the mark's purpose, the quality to which it pertains, conditions and procedures for use, rights and obligations entailed by use, the liability a user will face for misuse, and the planned system for inspection and supervision of the goods to which the mark will apply.<sup>69</sup> An applicant seeking to register a foreign GI must prove that the GI is protected in its country of origin.<sup>70</sup>

The Trademark Office does not search for conflicting rights during the registration process.<sup>71</sup> Applications that comply with all formal

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<sup>61</sup> Administration Measures, *supra* note 50, art. 8.

<sup>62</sup> *Id.* arts. 4, 5.

<sup>63</sup> Trademark Law, *supra* note 48, art. 3. Similarly, in the United States, GI registrants are usually governmental bodies of the region indicated or bodies operating with governmental authorization, such as agricultural cooperatives. The U.S. Patent and Trademark Office believes such registrants are more capable of preserving the right of all persons to use the registered GI and to prevent abuse or illegal use of the GI. U.S. PATENT & TRADEMARK OFFICE, GEOGRAPHICAL INDICATION PROTECTION IN THE UNITED STATES 3, 5, [http://www.uspto.gov/web/offices/dcom/olia/globalip/pdf/gi\\_system.pdf](http://www.uspto.gov/web/offices/dcom/olia/globalip/pdf/gi_system.pdf) (last visited May 15, 2007).

<sup>64</sup> SEN, *supra* note 10, pt. 5(3).

<sup>65</sup> WANG TIANXIANG, in the name of the CHINESE GROUP, INT'L ASS'N FOR THE PROTECTION OF INTELLECTUAL PROP., REPORT Q191: RELATIONSHIP BETWEEN TRADEMARKS AND GEOGRAPHICAL INDICATIONS para. 2 (2006), available at [http://www.aippi.org/reports/q191/q191\\_china.pdf](http://www.aippi.org/reports/q191/q191_china.pdf).

<sup>66</sup> Administration Measures, *supra* note 50, art. 4.

<sup>67</sup> *Id.* art. 7.

<sup>68</sup> *Id.* art. 6.

<sup>69</sup> *Id.* arts. 10, 11.

<sup>70</sup> *Id.* art. 6.

<sup>71</sup> GANEA & PATTLOCH, *supra* note 9, at 103. The State Administration of Industry and Commerce ("SAIC") is responsible for the administration of trademark-related affairs. The Trademark Office forms a

requirements are preliminarily approved by the Trademark Office and published in the *Trademark Gazette*.<sup>72</sup> If no opposition is raised within three months, registration of the GI is granted.<sup>73</sup> All authorized users of the GI are then also entitled to use a special representation made available by the State Administration of Industry and Commerce (“SAIC”).<sup>74</sup> The special representation is intended to help consumers identify products of geographical indication and must be used in tandem with the registered GI.<sup>75</sup> An interested party generally has five years from the date of registration to request the cancellation of marks containing misleading GIs, so long as it did not oppose registration on the same grounds.<sup>76</sup>

The Administration Measures specify rights and duties of certification mark and collective mark registrants not explicitly identified in the Trademark Law or the Implementing Regulations. Certification mark registrants may not use their marks on their own goods.<sup>77</sup> Unlike the Implementing Regulations, the Administration Measures make no allowance for the use of a collective mark by a nonmember of the collective, stating only that “[t]he collective members of the registrant of a collective mark may use the collective mark.”<sup>78</sup> Certification marks and collective marks may be assigned or transferred.<sup>79</sup> A certification mark registrant must inform the Trademark Office if it allows another party to use its mark,<sup>80</sup> and collective mark registrants must inform the Trademark Office of all changes in membership.<sup>81</sup>

Registration of a collective or certification mark is valid for ten years, but may be renewed for additional ten-year periods.<sup>82</sup> Any party may request the cancellation of a mark which has not been used for three consecutive years.<sup>83</sup> A registrant may be fined for failing to enforce the regulations governing use of its mark.<sup>84</sup> A registrant that wrongly refuses a

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part of the SAIC, as does the Trademark Review and Adjudication Board (“TRAB”). TRAB is responsible for resolving trademark-related disputes. *Id.* at 84.

<sup>72</sup> See Trademark Law, *supra* note 48, art. 27.

<sup>73</sup> *Id.* art. 30.

<sup>74</sup> Intellectual Property Protection in China, SAIC Publishes Special Representation for Products of Geographical Indication (Feb. 14, 2007), [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=55131&col\\_no=934&dir=200702](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=55131&col_no=934&dir=200702).

<sup>75</sup> *Id.*

<sup>76</sup> Trademark Law, *supra* note 48, arts. 41, 42.

<sup>77</sup> Administration Measures, *supra* note 50, art. 20.

<sup>78</sup> *Id.* art. 17. This contradiction is addressed *infra* Part IV.C.

<sup>79</sup> *Id.* art. 16.

<sup>80</sup> *Id.* art. 15.

<sup>81</sup> *Id.* art. 14.

<sup>82</sup> Trademark Law, *supra* note 48, arts. 37, 38.

<sup>83</sup> *Id.* art. 44(4); Implementing Regulations, *supra* note 49, art. 39.

<sup>84</sup> Administration Measures, *supra* note 50, art. 21.

third party's request to use a certification mark or for membership in a collective, or that fails to inform the Trademark Office after granting or revoking rights in its mark, is also subject to fines.<sup>85</sup>

The Administration Measures clearly reflect China's integration of TRIPS provisions. For example, homonymous GIs for wines may be registered so long as they can be distinguished and do not mislead the public.<sup>86</sup> Administration Measures Article 12 borrows language directly from TRIPS Article 23(1), prohibiting the use of GIs that indicate a false place of origin on wines and spirits "even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like."<sup>87</sup>

As of June 2007, 251 GIs were registered under the Trademark System.<sup>88</sup>

*B. The SAQSIQ System Provides Government-Administered Protection and Special Labels for GI Products*

China introduced GI-specific legislation in 1999 under the Regulations on the Protection of Products with An Appellation of Origin and the Regulations on the Administration of Appellations of Origin. Those regulations were combined into the Provisions for the Protection of Products of Geographical Indication<sup>89</sup> ("SAQSIQ Provisions") in 2005.<sup>90</sup> Not surprisingly, the SAQSIQ System was developed with assistance from France.<sup>91</sup> France was the first country to protect GIs by legislation, and the French AOC system is one of the most rigorous systems of GI protection.<sup>92</sup>

The SAQSIQ Provisions define GIs in essentially the same terms as the Trademark Law,<sup>93</sup> but GI registration under the SAQSIQ System entails comprehensive government involvement. An application for the protection

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<sup>85</sup> *Id.* art. 22.

<sup>86</sup> *Id.* art. 9.

<sup>87</sup> Compare Administration Measures, *supra* note 50, art. 12, with TRIPS, *supra* note 4, art. 23(1).

<sup>88</sup> Intellectual Property Protection in China, SAIC: GI Protection System Established in China (June 27, 2007), [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=89588&col\\_no=925&dir=200706](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=89588&col_no=925&dir=200706).

<sup>89</sup> Provisions for the Protection of Products of Geographical Indication (promulgated by the Gen. Admin. of Quality Supervision, Inspection and Quarantine, June 7, 2005, effective July 15, 2005), translated in [http://www.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=2158&col\\_no=119&dir=200603](http://www.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=2158&col_no=119&dir=200603) (last visited Nov. 25, 2007) (P.R.C.) [hereinafter SAQSIQ Provisions].

<sup>90</sup> Wang, *supra* note 8, at 920.

<sup>91</sup> *Id.* at 922.

<sup>92</sup> Tunisia L. Staten, *Geographical Indications Protection Under the TRIPS Agreement: Uniformity Not Extension*, 87 J. PAT. & TRADEMARK OFF. SOC'Y 221, 231-32 (2005).

<sup>93</sup> Compare SAQSIQ Provisions, *supra* note 89, art. 2, with Trademark Law, *supra* note 48, art. 16.

of products of geographical indication must be filed with the SAQSIQ by an organization either designated or appointed by the government at the county level or above.<sup>94</sup> The limits of the place of origin to be protected are proposed, rather than approved, by the local government at either the county level, the prefecture or city level, or the provincial level, depending on the proposed region's conformation with established boundaries.<sup>95</sup> Applicants must submit a description of the product to be protected, including the product's "physical, chemical or sensory characteristics . . . and their relationship with the natural and human factors of the place of origin."<sup>96</sup> They must also provide technical specifications relevant to production and the technical standards the product will meet if it is protected.<sup>97</sup> Those standards are devised by state or local standardization administrative authorities.<sup>98</sup> The product's history, including its commercial history, must also be provided.<sup>99</sup>

Review of SAQSIQ System applications requires extensive government involvement. Applications are filed with, and given a preliminary examination by, "local quality and inspection departments," which offer their opinions on the application and then submit all relevant materials to the SAQSIQ.<sup>100</sup> The SAQSIQ reviews the application for compliance with all formalities and then publishes it for opposition.<sup>101</sup> If successful opposition is not raised within two months, the SAQSIQ appoints an examination panel composed of product-specific experts to review the application's technical aspects.<sup>102</sup> If the panel approves the application, the SAQSIQ publishes a notice of approval and the GI is protected.<sup>103</sup> A special label is then created for use on all products protected by the GI.<sup>104</sup> Separate

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<sup>94</sup> SAQSIQ Provisions, *supra* note 89, art. 8.

<sup>95</sup> *Id.* art. 9.

<sup>96</sup> *Id.* art. 10.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* art. 18.

<sup>99</sup> *Id.* art. 10.

<sup>100</sup> *Id.* art. 12. The term "local quality and inspection departments" is defined as the "entry and exit inspection and quarantine bureaus and the quality and technical supervision bureaus of the various localities." *Id.* art. 4.

<sup>101</sup> *Id.* art. 13.

<sup>102</sup> *See id.* arts. 14, 15.

<sup>103</sup> *Id.* art. 16.

<sup>104</sup> The special label may be viewed online. *See* National Protected Geographic Indication Network, <http://www.npgi.com.cn/Engnpgi/default.asp> (last visited Jan. 29, 2007). Above the map of China is written "Product protected by a People's Republic of China geographical indication" and below the map is the name of the protected product. Lanye Zhu, Comment, *An Analysis of China's System of Protecting Geographical Indications*, ASIAN J. COMP. L., May 2006, at 21.

provisions are to be formulated for the registration of foreign GIs.<sup>105</sup> At time of writing, no such provisions have been formulated.

The process by which manufacturers gain the right to use a SAQSIQ System GI is very similar to the SAQSIQ System GI registration process. A manufacturer must file an application with the local quality and inspection department.<sup>106</sup> The application must include a certificate from the local government verifying that the manufacturer's product does come from the protected area.<sup>107</sup> It must also include an inspection report issued by the relevant product quality inspection department certifying that the manufacturer's product meets the standards required for use of the GI.<sup>108</sup> If the application is approved by the local quality and inspection department and the SAQSIQ, the manufacturer is entitled to use the GI.<sup>109</sup> A manufacturer that fails to use a SAQSIQ System GI for two consecutive years, or fails to observe the regulations governing its use, loses the right to use it and may face fines.<sup>110</sup>

The local quality inspection departments are charged with ensuring that protected SAQSIQ System GIs are not used without authorization or forged, as well as preventing the use of similar indications that are likely to mislead consumers.<sup>111</sup> They are also responsible for monitoring most aspects of production, including the limits of the place of origin, raw materials, production techniques, quality, packaging and labels, distribution, and the manufacturing environment and production equipment, among other areas.<sup>112</sup>

As of September 2007, nearly 700 GIs were protected under the SAQSIQ System and more than 6000 enterprises were approved to use those GIs.<sup>113</sup>

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<sup>105</sup> SAQSIQ Provisions, *supra* note 89, art. 26.

<sup>106</sup> *Id.* art. 20.

<sup>107</sup> *Id.* art. 20(2).

<sup>108</sup> *See id.* art. 20(3).

<sup>109</sup> *Id.* art. 20.

<sup>110</sup> *Id.* arts. 23, 24.

<sup>111</sup> *Id.* art. 21.

<sup>112</sup> *Id.* art. 22.

<sup>113</sup> Intellectual Property Protection in China, 1,200 GI Products to be Protected in 11th Five-year Plan Period (Sept. 18, 2007), [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=119634&col\\_no=925&dir=200709](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=119634&col_no=925&dir=200709).

C. *China's Unfair Competition Law, Product Quality Law, and Consumer Rights Law Also Protect GIs*

Although not primary sources of GI protection in China, several other laws prevent the misuse of GIs. Unfair competition and “passing off”<sup>114</sup> are actionable under the Law Against Unfair Competition (“Unfair Competition Law”).<sup>115</sup> Any conduct “infringing upon the lawful rights and interests of another business operator” constitutes an act of unfair competition.<sup>116</sup> Therefore, the wrongful use of a GI protected by the Trademark Law or the SAQSIQ Provisions is also prohibited by the Unfair Competition Law.<sup>117</sup> The Unfair Competition Law specifically forbids the use of false indications of origin and making false and misleading suggestions of quality.<sup>118</sup> Passing off by unauthorized, misleading use of a name, package, or decoration of a well-known good, and forging or counterfeiting marks are prohibited.<sup>119</sup> It is further forbidden to make any misleading statements regarding a product’s quality, producers, or place of origin by advertisement or any other publicity-generating means.<sup>120</sup> Any advertising agent who aids in making such a statement will be held liable along with the business operator.<sup>121</sup>

Business operators who forge a mark or misrepresent place of origin or product quality are punishable in accordance with the provisions of the Trademark Law and the Product Quality Law.<sup>122</sup> The penalty for misleading use of a name, package, or decoration identical or similar to that used by a competitor on such competitor’s well-known goods is, at a minimum, confiscation of illegal earnings.<sup>123</sup> In addition, a fine of up to three times the amount of illegal earnings may be imposed, and the business operator may lose his business license and face criminal charges.<sup>124</sup>

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<sup>114</sup> “Passing off” is “falsely representing one’s own product as that of another in an attempt to deceive potential buyers.” BLACK’S LAW DICTIONARY 1155 (8th ed. 2004).

<sup>115</sup> Law Against Unfair Competition (promulgated by the Standing Comm. Nat’l People’s Cong., Sep. 2, 1993, effective Dec. 1, 1993), translated in <http://www.npc.gov.cn/zgrdw/english/news/newsDetail.jsp?id=2204&articleId=345047> (last visited Nov. 25, 2007) (P.R.C.) [hereinafter Unfair Competition Law].

<sup>116</sup> *Id.* art. 2.

<sup>117</sup> See EMBASSY OF THE U.S., BEIJING, CHINA, IPR TOOLKIT, TRADE SECRET AND UNFAIR COMPETITION, [http://beijing.usembassy-china.org.cn/ipr\\_tsuc.html](http://beijing.usembassy-china.org.cn/ipr_tsuc.html) (last visited Jan. 23, 2007) (noting that forging or falsely using symbols of quality such as symbols of certification are prohibited by the Unfair Competition Law).

<sup>118</sup> Unfair Competition Law, *supra* note 115, art. 5(4).

<sup>119</sup> See *id.* art. 5(2), (4).

<sup>120</sup> *Id.* art. 9.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* art. 21.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

The Product Quality Law applies to anyone who manufactures or sells any product within China.<sup>125</sup> Producers and sellers may not falsely represent place of origin<sup>126</sup> or “forge or fraudulently use” marks denoting quality or authenticity.<sup>127</sup> Passing off is also prohibited.<sup>128</sup> While the Product Quality Law governs product inspection generally, it concedes regulation of the establishment of inspection institutions to other laws or regulations having specific provisions on the matter.<sup>129</sup> Thus, the Administration Measures and the SAQSIQ Provisions govern product quality inspection institutions pertaining specifically to GIs. The Product Quality Law still obligates those institutions to be objective and impartial, and to disqualify producers from using GIs if their products are not up to standard.<sup>130</sup>

The Consumer Rights Law<sup>131</sup> is closely related to the Product Quality Law<sup>132</sup> and reinforces the Trademark Law, the Unfair Competition Law, and the Product Quality Law by prohibiting passing off, the use of false indications of origin, and the illegitimate use of marks.<sup>133</sup> Business operators who violate the Consumer Rights Law, like those who violate the Unfair Competition Law, are to be punished in accordance with the Product Quality Law and the Trademark Law,<sup>134</sup> evidencing at least some legislative intent to develop a cohesive framework of statutory protections.

The Unfair Competition Law, the Product Quality Law, and the Consumer Rights Law were not drafted with the specific intent of protecting GIs. Nonetheless, they do erect substantial legal barriers to GI misuse.

#### IV. CHINA’S SYSTEM OF GI PROTECTION CAUSES CONFUSION AND CONFLICT

Priority of rights granted under the Trademark System and the SAQSIQ System has been a subject of heated debate among Chinese scholars.<sup>135</sup> The SAQSIQ Provisions were promulgated over the objection

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<sup>125</sup> Law on Product Quality (promulgated by the Standing Comm. Nat’l People’s Cong., Feb. 22, 1993, effective Sep. 1, 1993), art. 2, *translated in* <http://www.npc.gov.cn/zgrdw/english/news/newsDetail.jsp?id=2204&articleId=345048> (last visited Nov. 25, 2007) (P.R.C.).

<sup>126</sup> *See id.* arts. 5, 30, 37.

<sup>127</sup> *See id.* arts. 5, 31, 38.

<sup>128</sup> *See id.* arts. 5, 32, 39.

<sup>129</sup> *Id.* art. 19.

<sup>130</sup> *Id.* art. 21.

<sup>131</sup> Law on the Protection of the Rights and Interests of Consumers (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 31, 1993, effective Jan. 1, 1994), *translated in* PRCLEG 445 (LEXIS) [hereinafter Consumer Rights Law].

<sup>132</sup> *See id.* art. 16.

<sup>133</sup> *Id.* art. 50(2), (4).

<sup>134</sup> *Id.* art. 50.

<sup>135</sup> Wang, *supra* note 8, at 932.

of the SAIC, leading Wu Xiaofong, an Intellectual Property specialist at Beijing Technology and Business University, to comment:

The fact that the same geographical indication is to be reviewed and approved by two agencies, following two different administrative procedures, not only creates a state of chaos, but also imposes a heavy burden of operation costs on market actors. It also results in conflict among right holders: the difficulty in reconciling their interests leaves some right owners without the protection they deserve.<sup>136</sup>

Wu was correct: the extent of overlap between the Trademark System and the SAQSIQ System has created confusion and conflict.

A. *The Effect of SAQSIQ System Rights on Subsequent Trademark System Registrations Is Unclear*

There are currently no explicit rules for resolving the conflict between rights granted under the Trademark System and those granted under the SAQSIQ System.<sup>137</sup> Under the Trademark Law, a mark may not conflict with the legal rights of others acquired in priority.<sup>138</sup> It is not clear what types of preexisting rights will preclude registration of a mark.<sup>139</sup> To varying degrees, all legitimate previously acquired rights, including GIs, may hinder later registration by another person.<sup>140</sup>

Before 2001, conflicts between marks and prior GIs were typically resolved by applying Article 10*bis* of the Paris Convention, Article 5 of the Unfair Competition Law, and the Product Quality Law.<sup>141</sup> This practice reflects China's primary intention that the Trademark Law ensure product quality and consumer protection,<sup>142</sup> an objective shared with other nations that utilize trademark law as their principal means of protecting GIs.<sup>143</sup> It also acknowledges the capabilities of the Unfair Competition Law and the Product Quality Law to protect GIs. It suggests that a mark that is significantly similar to a SAQSIQ System GI might be refused registration

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<sup>136</sup> *Id.*

<sup>137</sup> GANEA & PATTLOCH, *supra* note 9, at 147.

<sup>138</sup> Trademark Law, *supra* note 48, arts. 9, 31.

<sup>139</sup> GANEA & PATTLOCH, *supra* note 9, at 105.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 110. See *supra* note 23 (discussion of Article 10*bis* of the Paris Convention); *supra* Part III.C (discussion of the Unfair Competition Law and the Product Quality Law).

<sup>142</sup> GANEA & PATTLOCH, *supra* note 9, at 81.

<sup>143</sup> See Lee Bendekgey & Caroline H. Mead, *International Protection of Appellations of Origin and Other Geographic Indications*, 82 TRADEMARK REP. 765, 766 (1992).



or cancelled for infringing upon a prior right. But the practice is otherwise of little help in explaining the nature of the relationship between GIs registered as marks on one hand and SAQSIQ System GIs on the other.

The amended Trademark Law continues to apply principles against unfair competition by forbidding the registration and use of marks containing false, misleading geographical indications.<sup>144</sup> It could also be interpreted as resolving the conflict between GIs registered as marks and prior SAQSIQ System GIs.<sup>145</sup> Article 16 of the Trademark Law provides for the continued validity of marks containing false, misleading geographical indications if they were registered in good faith.<sup>146</sup> Presumably Article 16 is applicable against prior registered SAQSIQ System GIs as well as other marks. If a SAQSIQ System GI is not a sufficient prior right to support the cancellation of a mark that contains a false, misleading GI, perhaps it is not a sufficient prior right to preclude registration of a GI as a legitimate certification or collective mark. This interpretation is supported by the view that GIs are not true private rights.<sup>147</sup> However, it is only one possible interpretation and not clearly supported by the text of the Trademark Law.

*B. It Is Also Unclear Whether a Previously Registered Trademark System GI Prevents a Subsequent SAQSIQ System Registration*

Like the Trademark Office, the SAQSIQ does not conduct a search for preexisting and conflicting rights, choosing instead to provide an opposition period following publication of proposed GIs.<sup>148</sup> In contrast to the Trademark Law, the SAQSIQ Provisions do not specifically make preexisting legal rights of priority a barrier to registration. Because the SAQSIQ Provisions offer little guidance on the matter, the effect a previously registered Trademark System GI might have on the subsequent registration of a SAQSIQ System GI is perhaps best illustrated by the *Jinhua Ham* case.<sup>149</sup>

Jinhua is a city in Zhejiang Province and well known for the ham produced from the Jinhua pig.<sup>150</sup> The term JINHUA HAM<sup>151</sup> was registered

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<sup>144</sup> Trademark Law, *supra* note 48, art. 16.

<sup>145</sup> See GANEA & PATTLOCH, *supra* note 9, at 110.

<sup>146</sup> Trademark Law, *supra* note 48, art. 16.

<sup>147</sup> See GANEA & PATTLOCH, *supra* note 9, at 88.

<sup>148</sup> SAQSIQ Provisions, *supra* note 89, art. 14; Trademark Law, *supra* note 48, art. 30.

<sup>149</sup> Zhejiang Province Food Co. v. Shanghai Tai Kang Food Co., (Shanghai Interm. People's Ct., Oct. 31, 2005).

<sup>150</sup> Wang, *supra* note 8, at 931.

<sup>151</sup> "JINHUA HAM" in capital letters indicates the registered trademark and "Jinhua ham" in regular type indicates the product.

as a trademark in 1981 by Pujiang County Food Product Company.<sup>152</sup> One year later, the Zhejiang Province Food Product Company (“ZPFC”), “by using its administrative power under the planned economy system, transferred the trademark to itself for free.”<sup>153</sup> The original producers of Jinhua ham refused to pay ZPFC the license fees it demanded.<sup>154</sup> ZPFC was not established in Jinhua.<sup>155</sup> The City of Jinhua applied to register Jinhua ham as a protected product of geographical indication under the Regulations on the Protection of Products with An Appellation of Origin after a request by local producers of Jinhua ham to cancel the trademark was rejected.<sup>156</sup>

In July of 2003, ZPFC brought suit against a producer of Jinhua ham and a seller of that producer’s product, claiming the producer’s use of the term “Jinhua ham” on its product infringed upon ZPFC’s trademark rights.<sup>157</sup> ZPFC demanded a public apology, an injunction, and damages.<sup>158</sup> The defendants argued that, although the product bore the term “Jinhua ham,” it was being used as an indication of origin, and that ZPFC should not be able to rely solely on registration to prevent the term’s legitimate use by others.<sup>159</sup> The case concluded in October of 2005 with the court finding for the defendants.<sup>160</sup> The court acknowledged that ZPFC’s exclusive rights in JINHUA HAM should be protected.<sup>161</sup> But it held that registration of JINHUA HAM did not prevent the legitimate use of the mark or elements of it by others, and that the defendant producer’s use of the term “Jinhua ham” as a GI was legitimate because such use was pursuant to the Regulations on the Protection of Products with An Appellation of Origin.<sup>162</sup>

Interpreting this case as a declaration that the SAQSIQ is not required to consider GIs registered as certification or collective marks when it registers a GI is probably reading too much into the court’s decision. It appears that the court sought to enter an equitable judgment. Several facts

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<sup>152</sup> Wang, *supra* note 8, at 931.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Zhu, *supra* note 104, at 11.

<sup>156</sup> Wang, *supra* note 8, at 931-32. The Regulations were succeeded by the SAQSIQ Provisions.

<sup>157</sup> *Trade Mark Dispute Over the Character “Jin Hua Ham” Comes to a Conclusion*, CHINA IP EXPRESS ISSUE 263 (Rouse & Co. Int’l), Sept. 22, 2005, <http://www.iprights.com/publications/chinaipxpress.aspx>.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* The exclusive rights holder of a registered trademark is not allowed to prohibit others from using in normal ways the common name which is implied in the registered trademark or the quality, the primary raw materials, or the geographic name which is directly expressed by the registered trademark. Implementing Regulations, *supra* note 49, art. 49.

were likely significant in its ruling. First, JINHUA HAM was essentially misappropriated by ZPFC, a company based outside of Jinhua. ZPFC then attempted to prevent the original owner of the mark and other historical producers of Jinhua ham from using the term “Jinhua ham” unless they paid licensing fees. Those actions probably dissuaded the court from interpreting the Trademark Law as granting ZPFC exclusive rights to the term, particularly with the Trademark Law’s emphasis on good faith behavior.<sup>163</sup> Nor do such actions “promote the development of the socialist market economy,” one of the aims of the Trademark Law.<sup>164</sup>

Second, because JINHUA HAM was registered as a trademark and not a collective or certification mark, finding for ZPFC would have prevented legitimate producers of Jinhua ham from using the term “Jinhua ham” entirely. However, reading Article 49 of the Implementing Regulations to allow the “legitimate use” of a GI registered as a collective or certification mark by any other parties would defeat the purpose of registering GIs as marks.<sup>165</sup> Interpreting the *Jinhua Ham* case to hold that use of a SAQSIQ System GI is always legitimate ignores the specific facts of the case. The point most clearly made by the *Jinhua Ham* case is that no rules exist for resolving conflicts between Trademark System rights and SAQSIQ System rights.<sup>166</sup>

C. *The Trademark System Is Imperfect, but Its Flaws Do Not Justify the SAQSIQ System*

Prior to 1993, GIs could be registered as normal trademarks.<sup>167</sup> These marks now cannot be cancelled.<sup>168</sup> This has led to conflicts between registered trademarks and GIs.<sup>169</sup> The Trademark Law could be amended to allow for the cancellation of trademarks containing GIs, or to disallow renewal of such trademarks.<sup>170</sup> However, amendment seems unnecessary.

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<sup>163</sup> Trademarks bearing a misleading geographical indication continue to be valid if registered in good faith. Trademark Law, *supra* note 48, art. 16. The owner of a well-known mark challenging the bad faith registration of such mark by another is not subject to the five-year limitation period for bringing a revocation request. *Id.* art. 41.

<sup>164</sup> *Id.* art. 1.

<sup>165</sup> See Zhu, *supra* note 104, at 16. See generally *supra* note 162 (outline of Article 49).

<sup>166</sup> GANEA & PATTLACH, *supra* note 9, at 147.

<sup>167</sup> *Id.* at 88.

<sup>168</sup> Trademark Law, *supra* note 48, art. 41. Requests to cancel a registered trademark must be made within five years of registration, unless the trademark was registered in bad faith. Trademarks containing geographical indications that were registered in good faith continue to be valid. *Id.* art. 16.

<sup>169</sup> GANEA & PATTLACH, *supra* note 9, at 88.

<sup>170</sup> Zhu, *supra* note 104, at 12.

Chinese courts demonstrated their ability to resolve justly conflicts involving prior registered trademarks and GIs in the *Jinhua Ham* case.

The Implementing Regulations state that a collective mark registrant may not refuse a person's request to join the collective and thereby gain rights in the collective mark if such person meets the membership requirements.<sup>171</sup> Curiously, the Implementing Regulations also state that one need not be a member of the collective to use the mark.<sup>172</sup> This contradicts the Trademark Law, which states that collective marks are provided to members of the registrant organization to indicate membership in the organization.<sup>173</sup> It also contradicts the Administration Measures, which state that "[t]he collective members of the registrant of a collective mark may use the collective mark after going through the procedure under the regulation governing the use of the mark."<sup>174</sup>

This conflict is almost certainly the result of a drafting error in Article 6 of the Implementing Regulations, and can be easily addressed by the State Council at its convenience. By definition, a collective mark is "used by an association, union, or other group either to identify the group's products or services or to signify membership in the group."<sup>175</sup> Collective marks were not previously protected in China.<sup>176</sup> China would have sensibly looked to the established GI protection systems of other nations when reforming its laws to implement its obligations under TRIPS.<sup>177</sup> Under U.S. law, a collective mark is used by members of the collective,<sup>178</sup> and it has been noted that the Trademark Law adopted the American model of GI protection.<sup>179</sup> The Administration Measures specifically address collective marks, and they came into force nearly nine months after the Implementing Regulations.<sup>180</sup> Allowing nonmembers to use a collective mark would, at the least, substantially frustrate the regulation and enforcement actions required of the collective. Drafting irregularities should not support the existence of an essentially parallel GI protection system.

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<sup>171</sup> Implementing Regulations, *supra* note 49, art. 6.

<sup>172</sup> *Id.*

<sup>173</sup> Trademark Law, *supra* note 48, art. 3.

<sup>174</sup> Administration Measures, *supra* note 50, art. 17.

<sup>175</sup> BLACK'S LAW DICTIONARY 1531 (8th ed. 2004) (collective trademark).

<sup>176</sup> Chao, *supra* note 47, at 884.

<sup>177</sup> See Wang, *supra* note 8, at 913.

<sup>178</sup> 15 U.S.C. § 1127 (2007).

<sup>179</sup> Peter K. Yu, *A Review of Recent Decisions of the United States Court of Appeals for the Federal Circuit: From Pirates to Partners (Episode II): Protecting Intellectual Property in Post-WTO China*, 55 AM. U. L. REV. 901, 922 (2006).

<sup>180</sup> See Administration Measures, *supra* note 50, art. 23; Implementing Regulations, *supra* note 49, art. 59.

## V. THE SAQSIQ SYSTEM DOES NOT BENEFIT CHINA INTERNATIONALLY

The benefits potentially conferred by utilizing an AOC-type model of GI protection have decreased significantly since the implementation of the SAQSIQ System. A recent WTO panel decision and the current status of negotiations on expanding GI protection under TRIPS indicate that the SAQSIQ System will not increase international recognition of Chinese GIs.

### A. *The SAQSIQ Provisions Are Not Necessary for China to Secure GI Protection Within the European Communities*

China joined the United States and Australia as a third party in the dispute *European Communities—Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*.<sup>181</sup> The United States and Australia claimed that European Community (“EC”) Regulation 2081/92 discriminated against non-EC products and persons and was therefore inconsistent with the EC’s obligations under TRIPS and the General Agreement on Tariffs and Trade 1994.<sup>182</sup> The WTO Panel agreed with the United States and Australia, finding that Regulation 2081/92 did not provide the same or better treatment to foreign nationals regarding GI rights.<sup>183</sup> It held that the EC could not make registration of a foreign GI dependent upon the GI’s country of origin providing a GI protection system equivalent to the EC’s and reciprocal protection for EC GIs.<sup>184</sup> The Panel held that the EC could not require applications and objections from other WTO members to be reviewed and transmitted by the governments of those members.<sup>185</sup> It also held that Regulation 2081/92’s requirement that governments monitor product inspection systems violated TRIPS.<sup>186</sup> A modified SAQSIQ System would have better fulfilled the requirements of Regulation 2081/92 than the Trademark System.<sup>187</sup> But because Regulation 2081/92 is no longer pertinent, the SAQSIQ Provisions will not better enable China to secure protection for its GIs within the EC.

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<sup>181</sup> See Panel Report, *European Communities—Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS174/R (Mar. 15, 2005).

<sup>182</sup> See Legal Affairs Division, *EC—Trademarks and Geographical Indications*, WT/DS174/290, (Sept. 2006), [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/1/pagesum\\_e/ds174sum\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/cases_e/1/pagesum_e/ds174sum_e.pdf) (providing summary of the dispute by the Legal Affairs Division of the World Trade Organization).

<sup>183</sup> *Id.*

<sup>184</sup> *See id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Promulgation of provisions governing the registration of foreign GIs, contemplated by SAQSIQ Provisions Article 26, would have been necessary.

B. *China Will Not Benefit from the SAQSIQ Provisions as a Result of Expanded GI Protection Under TRIPS*

The movement for expanded GI protection under TRIPS is unlikely to succeed. TRIPS mandates negotiations “concerning the establishment of a multilateral system of notification and registration of geographical indications for wines”<sup>188</sup> and negotiations “aimed at increasing the protection of individual geographical indications under Article 23.”<sup>189</sup> Exactly what these provisions contemplate, as well as the proposed amendments to TRIPS that they have generated, are sources of debate and have caused an alignment of WTO members.<sup>190</sup> Extension advocates propose Article 23 protection for all GIs and the creation of a mandatory system of notification and registration of GIs, whereby registered GIs would be presumed valid and entitled to protection in all member states.<sup>191</sup> Extension opponents argue for the status quo. They believe that Article 23 protection should not be extended to products other than wines and spirits and that any registry should be voluntary and not create a presumption of validity.<sup>192</sup> China has not taken a side in the debate.<sup>193</sup>

The establishment of a multilateral registry of GIs for wines and the extension of Article 23 protection beyond wines and spirits are being debated under the Doha mandate.<sup>194</sup> The WTO’s Doha Round of negotiations began in 2001.<sup>195</sup> Negotiations were not completed by the declared 2003 deadline, so talks continue within the timetable for the Doha Round.<sup>196</sup> However, the Doha Round is effectively dead. Parties are deadlocked on greater agricultural issues, and although talks were never legally suspended, successful resumption of the round is speculative at best.<sup>197</sup> Larger issues are likely to dominate negotiations if talks are resumed.<sup>198</sup> Extension opponents will almost certainly refuse to disturb what they perceive to be sufficient GI protection granted as the result of

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<sup>188</sup> TRIPS, *supra* note 4, art. 23(4).

<sup>189</sup> *Id.* art. 24(1). Article 23 provides greater protection for GIs for wines and spirits, and is discussed *supra* Part II.B.

<sup>190</sup> See WTO, GIs Currently, *supra* note 36.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> Wang, *supra* note 8, at 940.

<sup>194</sup> WTO, GIs Currently, *supra* note 36.

<sup>195</sup> World Trade Organization, The Doha Declaration Explained, [http://www.wto.org/english/tratop\\_e/dda\\_e/dohaexplained\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm) (last visited Mar. 3, 2007).

<sup>196</sup> WTO, GIs Currently, *supra* note 36.

<sup>197</sup> *U.S., Europe and Major Powers Fail To Make Breakthrough in Trade Talks*, WALL ST. J. ONLINE, Jan. 28, 2007, [http://online.wsj.com/article\\_print/SB116998075823790371.html](http://online.wsj.com/article_print/SB116998075823790371.html).

<sup>198</sup> See *id.*

delicate bargaining during initial TRIPS negotiations.<sup>199</sup> The difficulty of establishing a compulsory registry is illustrated by the largely ineffective previous attempts to do so.<sup>200</sup>

China is not likely to support Article 23 extension. The administrative costs of building a complete GI-specific protection system have been identified as a reason for China's reluctance to support stronger international GI protection.<sup>201</sup> Legally and administratively, countries that protect GIs as certification or collective marks would find it more difficult to comply with a multilateral registry of the type proposed by extension advocates.<sup>202</sup> China is using the Trademark System to fulfill its international obligation to protect GIs,<sup>203</sup> and it must continue to do so unless provisions for the protection of foreign GIs under the SAQSIQ System are formulated.

China has indicated that it favors development of a multilateral registry of some type, but only after developing countries are assisted in establishing national systems of protection.<sup>204</sup> The type of registry contemplated by China is likely to be significantly different from the type extension advocates propose. Under their proposal, a GI could no longer be claimed to be generic once registered.<sup>205</sup> This would allow states to benefit by recapture; product names taken abroad by emigrants where they have become generic could again become protected.<sup>206</sup> For example, only Feta cheese from Greece could be labeled Feta and all other types would have to be renamed.<sup>207</sup> China has many renowned agricultural products known for their place of origin and many GI products that have been taken abroad.<sup>208</sup> But China also has misappropriated the GIs of other nations, and some of those have been registered as trademarks in China.<sup>209</sup> Regardless, if no

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<sup>199</sup> See Jose Manuel Cortes Martin, *TRIPS Agreement: Towards a Better Protection for Geographical Indications?*, 30 BROOK. J. INT'L L. 117, 171 (2004).

<sup>200</sup> See G.E. Evans & Michael Blakeney, *The Protection of Geographical Indications After DOHA: Quo Vadis?*, 9 J. INT'L ECON. L. 575, 607 (2006) (stating that extension advocates propose a registration scheme similar to that established under the Lisbon Agreement); World Intellectual Property Organization, *Lisbon System for the International Registration of Appellations of Origin*, <http://www.wipo.int/lisbon/en/> (last visited Apr. 5, 2007) (noting that the Lisbon Agreement has only twenty-six contracting parties); Escudero, *supra* note 5, § III.2 (showing that six of those parties account for greater than ninety percent of all registrations).

<sup>201</sup> Wang, *supra* note 8, at 940.

<sup>202</sup> Evans & Blakeney, *supra* note 200, at 606.

<sup>203</sup> See TIANXIANG *supra* note 65, para. 1.

<sup>204</sup> *Id.* para. 11. This is a sensible position. Developing countries without adequate protection systems will not be able to benefit from a registry. See Evans & Blakeney, *supra* note 200, at 579.

<sup>205</sup> Evans & Blakeney, *supra* note 200, at 606.

<sup>206</sup> *Id.* at 610-11.

<sup>207</sup> *Id.*

<sup>208</sup> Wang, *supra* note 8, at 931-32.

<sup>209</sup> *Id.* at 932.

agreement is reached on the extension of Article 23 protection to products other than wine and spirits, any progress on negotiations for a multilateral registry is unlikely.<sup>210</sup>

Enhanced GI protection may benefit developing nations by promoting sustainable rural development.<sup>211</sup> China does aim to raise the standard of living in its rural communities,<sup>212</sup> but China is not a typical developing nation. Enhanced GI protection can provide an economic benefit to developing countries, but the benefit will have a relatively insignificant effect on China's total economy.<sup>213</sup> China's economy would not insulate it from the costs of protecting the registered GIs of other nations, which would be presumed valid under the extension advocates' proposal.<sup>214</sup>

Established opposition to Article 23 extension is strong, and extension proponents are unlikely to gain China's support. China may have contemplated the possibility of enhanced international protection of GIs when it implemented the SAQSIQ System, but that possibility does not justify maintaining the SAQSIQ System.

## VI. THE TRADEMARK SYSTEM BETTER SERVES THE GOALS OF CHINA'S RECENT AMENDMENTS TO ITS INTELLECTUAL PROPERTY LAWS

Although China's WTO accession was a primary motivating factor behind the recent reforms to its intellectual property laws, the impact that domestic conditions had on those amendments cannot be overlooked. Among the conditions that have been identified as impacting the reforms are the emergence of private property rights and local stakeholders, and the government's active push for economic modernization.<sup>215</sup> A changing attitude among Chinese leaders towards the rule of law also influenced the reforms, especially the leaders' eagerness to reduce corruption and local protectionism, their resolve to provide policy consistency and clarity, and their determination to generate efficiency within the judicial and administrative processes.<sup>216</sup> These conditions remain significant. China's Eleventh Five-Year Plan sets the goal of raising the per capita net income of

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<sup>210</sup> Evans & Blakeney, *supra* note 200, at 606-07.

<sup>211</sup> *See id.* at 579.

<sup>212</sup> *See infra* Part VI.

<sup>213</sup> Measured on a purchasing power parity basis, China in 2006 stood as the second-largest economy in the world after the United States. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2007, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>.

<sup>214</sup> *See* Evans & Blakeney, *supra* note 200, at 606. Europe alone has more than 700 GIs. *Id.* at 579.

<sup>215</sup> Yu, *supra* note 179, at 922.

<sup>216</sup> *Id.* at 923.



rural residents.<sup>217</sup> It also directly addresses intellectual property. China aims to complete development of its legal system, to strengthen enforcement of intellectual property laws and regulations, and to actively promote independent innovation.<sup>218</sup>

A. *The Trademark System Better Harmonizes with the Emergence of Private Property Rights and Local Stakeholders*

Although GIs are not true private intellectual property rights,<sup>219</sup> Trademark System GIs do confer a property right.<sup>220</sup> Registrants control the use of their marks and may transfer rights in their marks. The only attainable right in a SAQSIQ System GI is the right of use; the government defines the GI, determines who is eligible to use it, and enforces the regulations governing its use. The high degree of government involvement inherent to the SAQSIQ System is more consistent with the general view of GI protection in Europe, where the idea of a GI having property value or being privately owned is foreign.<sup>221</sup>

The property rights intrinsic to Trademark System GIs, but absent from SAQSIQ System GIs, support the achievement of China's economic goals of modernization, independent innovation, and rural wealth creation by creating, encouraging, and empowering stronger local stakeholders. The property rights that Trademark System registrants have in their GIs make them stronger local stakeholders than SAQSIQ System GI users by conferring potentially greater benefits as well as responsibility for the expenses of GI administration.

One way the Trademark System better creates stakeholders is by encouraging the "discovery" of GIs.<sup>222</sup> Collective and certification marks confer property rights, and ownership can be more valuable than the right of use. Certification mark registrants cannot use their marks,<sup>223</sup> but they can assign and license them.<sup>224</sup> This creates an incentive for parties other than producers of goods to "discover" GIs. "Discoverers" of SAQSIQ System

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<sup>217</sup> *Facts and Figures: China's Main Targets for 2006-2010*, GOV.CN, Mar. 6, 2006, [http://english.gov.cn/2006-03/06/content\\_219504.htm](http://english.gov.cn/2006-03/06/content_219504.htm).

<sup>218</sup> Intellectual Property Protection in China, Overall Thoughts, Targets and Guidelines of IP During the 11th Five-Year Plan Period (Aug. 22, 2006), [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=12263&col\\_no=102&dir=200608](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=12263&col_no=102&dir=200608).

<sup>219</sup> GANEA & PATTLOCH, *supra* note 9, at 88.

<sup>220</sup> TIANXIANG, *supra* note 65, para. 2.

<sup>221</sup> Staten, *supra* note 92, at 233.

<sup>222</sup> *See id.* at 243.

<sup>223</sup> Administration Measures, *supra* note 50, art. 20.

<sup>224</sup> *See Trademark Law, supra* note 48, arts. 39, 40.

GIs are no better off than their competitors because the only right the SAQSIQ System affords is the right of use.

The Trademark System also creates stronger stakeholders by requiring registrants to defend the continued existence of their GIs and to bear the costs of doing so. Unlike SAQSIQ System GIs, which do not expire,<sup>225</sup> Trademark System GIs must be renewed and may be cancelled if misused.<sup>226</sup> Under both the Trademark System and the SAQSIQ System, producers that violate regulations governing use of a GI face penalties. However, Trademark System registrants are held liable with offending producers.<sup>227</sup> The threats of cancellation and fines motivate Trademark System registrants to actively police GI use, whereas supervision of use of SAQSIQ System GIs is assigned to quality inspection departments.<sup>228</sup> Trademark System registrants must have an enhanced stake in their GIs to warrant the efforts and expenses associated with administering their marks.

*B. The Trademark System Better Promotes the Achievement of China's Economic Goals by Enabling and Encouraging Stakeholders to Maximize GI Value*

Well-qualified Trademark System registrants have commercial knowledge that can be leveraged to the competitive advantage of themselves and producers. Most farmers know little about the market their goods are sold into, the relationship between price and supply and demand, or product marketing.<sup>229</sup> Trademark System registrants, such as agricultural associations and professional co-operation organizations, employ their commercial knowledge while managing their GIs, promoting product popularity and organizing producers to create economy of scale advantages.<sup>230</sup> The GI links the commercial know-how of registrants with the agricultural know-how of farmers. This “Company + Farmer + Trademark” model of employing GIs to raise the income of farmers has proven quite effective.<sup>231</sup> For example, the per capita income of farmers growing Xinyang Maojian Tea increased seventeen percent as a result of the

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<sup>225</sup> GI expiration is not provided for in the SAQSIQ Provisions. Cf. Staten, *supra* note 92, at 232 (noting that an AOC never falls into the public domain).

<sup>226</sup> Trademark Law, *supra* note 48, arts. 38, 16.

<sup>227</sup> See Administration Measures, *supra* note 50, art. 21.

<sup>228</sup> SAQSIQ Provisions, *supra* note 89, arts. 21, 22.

<sup>229</sup> SEN, *supra* note 10, pt. 5. Two consecutive parts of this report are numbered “5.” This note refers to the second of those two, titled “Company+ Farmer+ Trademark (Geographical indication)”---a new mode of increasing Farmers' Income.”

<sup>230</sup> See *id.* pt. 5(2)(ii).

<sup>231</sup> *Id.* pt. 5(1).

Xinyang Tea Association's successful management of the Xinyang Maojian Tea certification mark.<sup>232</sup>

A shortage of well-qualified Trademark System registrants, such as the Xinyang Tea Association, has been identified as reducing the efficiency of the Trademark System.<sup>233</sup> If there is a shortage of suitable Trademark System registrants, the SAQSIQ System could be providing GI protection that the Trademark System does not readily afford. This would be doubly detrimental to China. First, China would be responsible for the expenses of administering the GIs. Second, producers operating without the organizational and business knowledge provided by a well-qualified Trademark System registrant likely face diminished long-term GI benefits. A shortage of appropriate Trademark System registrants does not justify SAQSIQ System protection.

The suitability of trademark law for economic modernization and rural wealth creation through GI protection is further evidenced by Japan's 2005 amendment of its Trademark Law. Japan created regionally-based collective marks to strengthen industrial competitiveness, revitalize local economies, and preserve the business reputations of local producers and service providers.<sup>234</sup> Previously, a GI could only be registered as a collective trademark<sup>235</sup> and only if the mark had acquired nationwide recognition.<sup>236</sup> By doing away with the requirement that a mark be recognized nationally before it can be registered, regionally-based collective trademarks prevent third parties from freeriding on the marketing efforts of others.<sup>237</sup> The SAQSIQ Provisions do not better enable China to achieve similar goals because China's Trademark Law currently allows for the registration of such GIs. The Trademark Law does not prevent registration of place names below the level of county,<sup>238</sup> and GIs in general may be registered as certification or collective marks without regard to popularity.

The expenses Trademark System registrants incur in administering their marks may also prevent a proliferation of low-value GIs. One wine writer, commenting on France's AOC system, noted that "controlled

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<sup>232</sup> *Id.*

<sup>233</sup> *See id.* pt. 5(2)(i).

<sup>234</sup> *See* Hiroshi Kawamata, *Japanese Legislative Updates on Intellectual Property in 2005*, CASRIP NEWSLETTER (Ctr. for Advanced Study and Research in Intellectual Prop., Seattle, Wash.), Fall 2005 vol. 12, issue 2, <http://www.law.washington.edu/CASRIP/Newsletter/>.

<sup>235</sup> Wang, *supra* note 8, at 925.

<sup>236</sup> Kawamata, *supra* note 234, pt. I.

<sup>237</sup> *Id.*

<sup>238</sup> *See* Trademark Law, *supra* note 48, art. 10.

appellations have proliferated like aphids on a rose.”<sup>239</sup> As soon as a few great wine regions received protection, “at a price of heavy regulation and bureaucratization,” every other region, regardless of its significance, also sought protection.<sup>240</sup> The greater number of SAQSIQ System GI registrations could be evidence of a similar phenomenon within China. If so, the government is paying to administer GIs that provide little or no benefit. More GI registrations are not necessarily better for promoting GI products.<sup>241</sup> A proliferation of GIs likely would dilute the value of all GIs and reduce the economic benefits that can result from GI protection.

The Trademark System further promotes maximization of GI value by giving GI registrants greater ability to adapt to changing economic and commercial conditions. Under the Trademark System, a GI may be any sign capable of indicating place of origin,<sup>242</sup> giving Trademark System registrants the freedom to register their GIs in the format they deem most valuable. The governmental endorsement and associated legitimacy conveyed by SAQSIQ System labels was a SAQSIQ System advantage until recently, but the SAIC now provides users of Trademark System GIs with similar signs.

Trademark System registrants are also better able to adapt to market conditions because they have greater freedom to set and amend the standards and regulations pertaining to their GIs. The particular qualities of a product represented by a Trademark System GI are specified by the registrant.<sup>243</sup> The same is true of the regulations governing use of the GI, including the rights, obligations, and liabilities of users, and inspection and supervision procedures,<sup>244</sup> all of which the registrant may amend.<sup>245</sup> This flexibility can be invaluable. French law may indeed focus on the interests of manufacturers, but it left many smaller and average-sized winemakers facing bankruptcy by hindering their ability to abandon traditional French labels in response to declining demand for French wine.<sup>246</sup> Those winemakers would have almost certainly responded to decreased demand more rapidly if they were legally able to make and amend applicable standards and rules on their own initiative.

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<sup>239</sup> Matt Kramer, *My Dearest France . . .*, WINE SPECTATOR, Sept. 15, 2004, at 36, quoted in Molly Torsen, *Apples and Oranges (and Wine): Why the International Conversation Regarding Geographic Indications is at a Standstill*, 87 J. PAT. & TRADEMARK OFF. SOC'Y 31, 44 (2005).

<sup>240</sup> *Id.*

<sup>241</sup> Sen, *supra* note 10, pt. 2(2).

<sup>242</sup> Administration Measures, *supra* note 50, art. 8.

<sup>243</sup> *Id.* arts. 10, 11.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* art. 13.

<sup>246</sup> See Torsen, *supra* note 239, at 37, 41-42.

C. *The Trademark System Better Promotes the Legal System China Is Working to Attain*

The Trademark System provides less opportunity for corrupt action by government employees than the SAQSIQ System. Governmental corruption remains an issue in China,<sup>247</sup> despite evidence in numerous laws of China's long-standing desire to reduce it.<sup>248</sup> Those charged with interpreting and implementing the law tend not to be neutral, as they are often subject to political pressure, dependence on local governments for funding, financial interests in decisions at the local level, the pull of personal relationships, and outright corruption.<sup>249</sup> The Trademark System reduces the significance of those factors by limiting governmental involvement in GI administration at all stages, from application to enforcement. As an added measure against corruption, the Trademark System explicitly provides for judicial review of administrative decisions.<sup>250</sup> The SAQSIQ Provisions do not explicitly provide the right of appeal to the judiciary.

Consolidating GI protection under the Trademark System would establish a clear hierarchy of GI rights and thereby generate clarity for holders of those rights. Unanswered questions regarding the priority of Trademark System rights and SAQSIQ System rights were explored in Part IV of this Comment. Registering all GIs under the Trademark System would eliminate those questions by governing all GI registrations under one set of laws administered by one governmental body.

Registering all GIs under the Trademark System would also better facilitate the resolution of disputes between registered GIs and trademarks, such as in the *Jinhua Ham* case. Again, a unitary governmental authority would be charged with processing applications and administering dispute settlement procedures. Similar cases might be finally resolved by the Trademark Review and Adjudication Board,<sup>251</sup> avoiding the court system entirely and freeing up judicial resources.

In addition to providing for the resolution of disputes under one set of laws, consolidation under the Trademark System would also limit the need and temptation to promulgate further regulations. The SAQSIQ Provisions

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<sup>247</sup> In 2006, approximately 97,000 officials were found guilty of bribe-taking or breaching financial rules. Quentin Sommerville, *China Steps Up Corruption Fight*, BBC NEWS, Feb. 14, 2007, <http://news.bbc.co.uk/2/hi/asia-pacific/6361155.stm>.

<sup>248</sup> See Trademark Law, *supra* note 48, art. 62; SAQSIQ Provisions, *supra* note 89, art. 25.

<sup>249</sup> See Karen Halverson, *China's WTO Accession: Economic, Legal, and Political Implications*, 27 B.C. INT'L & COMP. L. REV. 319, 353, 358 (2004).

<sup>250</sup> See Trademark Law, *supra* note 48, art. 43.

<sup>251</sup> See *supra* note 71.

call for the formulation of provisions specifically applicable to foreign registrants,<sup>252</sup> and provincial versions of the SAQSIQ Provisions continue to be enacted.<sup>253</sup> Consolidating GI protection under the Trademark System would promote legal efficiency by limiting the need for additional rulemaking.<sup>254</sup>

The Trademark System's more efficient delegation of administrative responsibilities benefits China, GI users, and registrants without sacrificing important aspects of control. Trademark System registrants rather than taxpayers incur most of the expenses associated with administrative responsibilities such as drafting regulations on use, standards formulation, product inspection, and enforcement. The self-policing structure of the Trademark System not only saves China the costs of enforcement, but is also more equitable to GI registrants. Trademark System registrants need not rely or wait on the government to take legal action defending a GI.<sup>255</sup> While the Trademark System does delegate most administrative responsibilities to registrants, it still ensures that GIs are created in a rational and nondiscriminatory manner by requiring registrants to gain government or industry approval of their proposals during the application process.<sup>256</sup> This ensures that the standards and regions represented by Trademark System GIs are as efficiently defined as those of SAQSIQ System GIs.

## VII. CONCLUSION

China has introduced many intellectual property laws and regulations since the mid-1990s and now has so many laws that it is difficult to properly enforce all of them.<sup>257</sup> Many of these laws and regulations are necessary, as WTO membership and China's rapid development have required significant legislation. However, others are not. The SAQSIQ Provisions are unnecessary, a fact essentially recognized by China's delegation to the International Association for the Protection of Intellectual Property when it

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<sup>252</sup> SAQSIQ Provisions, *supra* note 89, art. 26.

<sup>253</sup> Shaanxi Province enacted a version of the SAQSIQ Provisions in December 2006. Intellectual Property Protection in China, Shaanxi: Provisions for Protection of Products with Geographical Indications Published (Nov. 29, 2006), [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=33451&col\\_no=934&dir=200612](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=33451&col_no=934&dir=200612).

<sup>254</sup> See Staten, *supra* note 92, at 242.

<sup>255</sup> *Id.* at 243.

<sup>256</sup> Administration Measures, *supra* note 50, art. 6.

<sup>257</sup> Yu, *supra* note 179, at 975.

stated that it is not necessary to establish separate registration systems dealing specifically with GIs.<sup>258</sup>

Protection of GIs with both trademark law and GI-specific legislation is not only unnecessary, it is disadvantageous. China's adoption of both methods of protection reveals its "relatively unrefined legislative quality" which has caused conflicts that will ultimately have to be reconciled.<sup>259</sup> China should consider resolving those conflicts now by consolidating GI protection under the Trademark System. The technical aspects of consolidation are beyond the scope of this Comment. However, because SAQSIQ System GIs are fundamentally similar to certification marks and collective marks,<sup>260</sup> they should be easily registered with the Trademark Office. A presumption of eligibility for registration would not be improper because the GIs have been approved by the SAQSIQ. Consolidating GI protection under the Trademark System would prevent future conflict and facilitate conflict resolution. It would also better harmonize with present domestic conditions and enable the achievement of China's economic and legal goals that, along with WTO accession, motivated its recent intellectual property law reforms.

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<sup>258</sup> TIANXIANG, *supra* note 65, para. 11. The president of China's delegation to the Association is from the State Intellectual Property Office. International Association for the Protection of Intellectual Property, Chinese National Group, <http://www.aippi.org/officers/china.pdf> (last visited June 12, 2007). The State Intellectual Property Office is distinct from the SAIC, which handles trademark-related affairs. See *supra* note 71.

<sup>259</sup> Wang, *supra* note 8, at 920.

<sup>260</sup> See Staten, *supra* note 92, at 241.