

Comparison of Global Geographical Indication Protection Rules and China's Response—Based on a Comparative Perspective of RCEP, TRIPS and CPTPP

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Abstract: Geographical Indications (GI) protection provisions are related to a country's customs and traditions, and have always been of great significance to the defense and protection of a region's traditional customs. There are many differences between the major treaties on such rules. RCEP advocates that the protection of GI should precede the trademarks of GI, and affirms more lenient domestic administrative procedures, specific language norms, and softer harmonization of the relevant international agreements. TRIPS extends the protection of GI, and stipulates a system of bona fide acquisition and a relevant time limit for GI. CPTPP expands the protection of GI. It expands the scope of protection for collective marks and certification marks, clarifies the key points of dispute settlement, increases the grounds for objection, raises the requirements for administrative procedures of contracting parties, and strengthens the special protection for alcohol products. In this regard, China can contribute to the 'China Program' by establishing a unified administrative protection system for GI, benchmarking high standard treaties as CPTPP, and contributing to the construction of an open economy and the global governance system for trade in GI products.

1. Introduction

GI is usually composed of a specific place name. Theoretically, any kind of geographical name should first of all be a public resource of human society (i.e., belonging to the public domain), and does not have exclusivity. A properly functioning intellectual property system would normally only allow rights holders to claim a property right in something that has been adapted from the common pool of material available to all mankind. The theoretical contradiction gives the protection of GI a great deal of theoretical space and institutional plasticity. In this way, this article analyzes the rules on GI protection in CPTPP(Comprehensive and Progressive Agreement for Trans-Pacific Partnership), TRIPS(Agreement on Trade-Related Aspects of Intellectual Property Rights) and RCEP (Regional Comprehensive Economic Partnership), and discusses China's response.

2. Comparison of Treaty Rules on GI

2.1. Protection Ways

The meta-rules established in TRIPS constitute global GI governance, and the benchmarks, including the RCEP, set up the basic framework for the implementation of GI protection world wide. [1]Article 11.3.20 of RCEP stipulates that members should implement legal protection for marks that can be used as GI in the trademark law system. While TRIPS allows members to provide protection for GI through trademark law, CPTPP states in the Explanatory Note that it does not limit any combination of legal or other administrative means of protection for GI, and encourage members to demonstrate diversity of protection. CPTPP directly provides that prior trademark rights are opposable to subsequent GIs, with the exception of fair use of descriptive terms. And only TRIPS explicitly extends protection to alcohol products (mainly wines and spirits). [2]

2.2. Relevant Domestic Administrative Procedures

2.2.1. Protect Obligations

According to Article 11.3.30, RCEP set obligations for members of GI cancellation , while TRIPS provides only for the bona fide acquisition of it: the holder of a GI of spirits or wine shall not prevent a the usage of a GI if the indication has been bona fide on the territory of the member for at least ten years. CPTPP enhances the protection obligations by simplifying the administrative procedures for protection, requiring members to refrain from imposing unduly burdensome formalities in this regard and to provide adequate information. Regarding objections, CPTPP further enhances the notification obligations by requiring members to provide interested persons meaningful opportunities to participate in an objection procedure within a reasonable period of time.

2.2.2. Reasons for Objections and Write-offs

The provisions of Article 11.3.31 of the RCEP point to the fundamental question of the conditions to be met as a GI and, by extension, the question of the criteria for the dilution of a GI and for the determination of generic names. According to treaties like TRIPS, GIs not only have the function of recognizing the origin of goods, but also have the function of guaranteeing the quality of goods. The trademarked use of a particular GI by the relevant market players is only the first layer of the source of value. Another crucial layer of value is that the goods it identifies should have an image of distinctive qualities, including specific qualities or other characteristics,[3] that can be attributed to their geographical origins. CPTPP adds two more grounds for refusal, including likelihood of confusion with prior bona fide applications or registrations pending examination, and confusion with prior trademarks already in force.

2.3. Harmonization with International Agreements

Although RCEP does not have a general conflict norm, it does provide for treaty conflicts in Article 20.2.2, which provides that if a member considers that the provisions of this agreement are inconsistent with the provisions of other agreements, it shall consult with the other members with a view to reaching a mutually satisfactory solution. Chapter 11 provides that in case of inconsistency with TRIPS, the latter shall prevail. Although members of RCEP are free to formulate ‘conflicting norms’, this provision is not in line with the principle of subsequent law prevails and is contrary to TBT (Technical Barriers to Trade Agreement). [4]Article 11.3.29 of RCEP states that members may protect geographical indications on the basis of the TRIPS standard, while Article 18.30 of CPTPP

does not refer to TRIPS, indicating that it is not based on the minimum standards of TRIPS. On the issue of retroactivity, CPTPP mentions that if a new GI is protected, the protection standards of the Convention shall prevail.

3. Analysis of Treaty Variances

3.1. Differences in the Conceptualization of GI and Trademarks

The differences between TRIPS, RCEP and CPTPP in terms of the way of protection and domestic administrative procedures reflect the differences in the perception of the two concepts behind the treaties. Although both GI and trademarks are related to the identification of products, they are not equivalent. The differences include at least three aspects: (1) Directionality - a GI identifies a product originating from a specific geographical location; a trademark identifies the products or services of a single, specific enterprise. (2) Distinctiveness - trademarks have innate distinctiveness as a basis for identification; while GI is often pre-determined by the name of the location of a particular product. (3) License - as trademark right is granted to a specific individual, the right holder can license the content of the right on a global scale, while the right holder of a GI can only license the use of the right within a specific geographic area. [5]TRIPS and CPTPP are obviously affirming the differences between the two, and enhancing the acquired distinctiveness and licensability of GIs through their provisions, while RCEP is trying to blur these three major differences.

3.2. Different Understandings of GI

Many international trade treaties emphasize the objective relevance of GI. The legislation of countries adopting the specialized law model reflects the concept that GIs and generic names belong to subjective and objective categories and do not affect each other. [6]CPTPP clearly opposed to such a differentiation, creating a number of considerations for the genericization of GI. For the ASEAN countries, the United States and Australia, which do not have a long tradition of GI protection like the European Union, the recognition of GI is a simple subjective determination by taking into account the consumer's understanding. However, though TRIPS makes the objective absolute protection get unprecedented international promotion, its structural contradiction and jurisprudential defects based on the strength of the political compromise has become the internal disease of the system of each country, which is based on the objective attribution of the product jurisprudence has been continuously diluted and weakened results. [7]It not only makes objective absolute protection lose its legal support and become a means of protectionism for national interests, but also makes its product function of promoting local development unprotected.

4. China's Response

4.1. Establishment of a Unified Administrative Management System

Given that the TRIPS classifies GI as intellectual property rights, China's SIPO (State Intellectual Property Office) took over the function of protecting GI products from the former AQSIQ(Administration of Quality Supervision, Inspection and Quarantine) in 2018. There are two problems with that. The first is the unclear demarcation of competencies between the municipal supervision sector and the agricultural and rural sector. But SIPO lacks the capacity to conduct product reviews, set product standards and implement them. Therefore, the ideal solution for the transfer of competence is to integrate the supervision of agricultural and food products into a single department and have it take on the function of GI. China's specialized law should adopt the concept

of overall regulation of product categories, with the category to which the registered geographical indication refers as the object of regulation.[8] Anyone who refers to a product as a geographical indication must mark it with a special symbol and disclose and implement the technical requirements of the product standard for GI; otherwise, it will be investigated and dealt with by the standardization department or the product supervision department, and if it causes damage to others, it will be subject to civil liability.[9]

4.2. Benchmarking High-standard Treaties as CPTPP

As CPTPP standard is much higher than RCEP ,TRIPS that China has signed, China urgently needs to take positive action on its own system construction and global rules convergence, and select FTZs with pressure test conditions and capabilities to carry out pressure tests, so as to possibly form an early harvest, thus providing China with the relevant experience of deeply participating in international negotiations and implementing the strategy of free trade zones, and providing the cornerstone of openness and cooperation for the promotion of the construction of an open world economy and a community of human destiny. Open world economy and the community of human destiny by providing the cornerstone of open cooperation. In particular, CPTPP has set up a system for the maintenance of GI in relation to the judicial system. At present, there are only few cases in China, and the case-handling experience and capacity as well as the relevant system are not compatible with the litigation disputes that are expected to arise after the opening up in the future, so the design of the system should be strengthened and the training of judges should be enhanced, so that the practice can be connected with the treaty as soon as possible as far as the standard for the dilution of GI is concerned.^[10]

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