



International Trademark Association  
*Representing the Trademark Community since 1878*

October 10, 2005

Vice Premier Wu Yi  
The State Council of the People's Republic of China

Dear Vice-Premier Wu Yi:

**Re: AQSIQ Regulation of July 15, 2005 regarding Geographical Indications**

The International Trademark Association (INTA), a 127-year old Association dedicated to the advancement of trademarks as elements of fair and effective national, regional and international commerce, works closely with Chinese authorities in promoting effective protection and enforcement of trademark rights in China. In this context, we have had several occasions to comment on China's current scheme of protection of geographical indications (GIs) and the level of protection afforded to trademarks vis-à-vis GIs.

In particular, we have sent two letters to Mr. An Qinghu, Director General of the China Trademark Office, commenting on China's certification and collective mark protection system. In those letters, which are attached, we have supported China's GI protection under the trademark law as it is built on principles of territoriality, exclusivity and priority. We have expressed our concerns regarding the establishment of a system of GI protection that would afford GIs absolute priority over prior established trademarks, as such a system is fundamentally incompatible with the principle of exclusivity of prior rights as embodied in TRIPS Article 16, is discriminatory against trademarks, and creates confusion among GI and trademark owners as well as among consumers who will be unclear about the source of the products they purchase.

On July 15, 2005, the General Administration of Quality Supervision, Inspection and Quarantine of China (AQSIQ) implemented the Protective Regulation on Geographical Indication Products which is designed to protect Chinese products with GIs, regulate the use of brands and labels of these products and guarantee their quality and uniqueness. This Regulation raises the following key issues for trademark owners which would deserve urgent attention:

- The Regulation seems to establish absolute protection for GIs without any consideration of conflicting prior established trademarks registered with the China Trademark Office; and
- The Regulation does not provide for any mechanisms to resolve conflicts between GIs and trademarks or any opposition mechanisms available to owners of prior established intellectual property rights who wish to oppose the protection of a particular geographical indication.

Furthermore, it is unclear how the AQSIQ Regulation will operate vis-à-vis the Chinese Trademark Law. It is, therefore, difficult to predict the impact that the Regulation will have on established trademark rights. We note, however, that the AQSIQ Regulation is an administrative regulation and the Trademark Law is a national law passed by the National People's Congress. According to Article 79 of the Chinese Legislation Law, "National laws have higher legal effect than administrative regulations, local decrees and administrative or local rules."

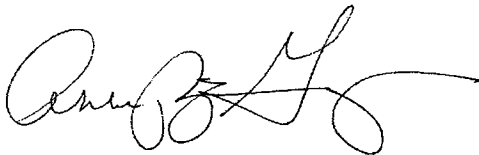
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It is important to recognize that given the broad definitions under the TRIPS Agreement of what constitutes a geographical indication and the use of geographical terms in trademarks, conflicts between GIs and trademarks are common and need to be resolved in an equitable fashion for both the GI and trademark owners. In China, there have already been specific instances of conflict between GIs and trademarks bearing the same geographical terms, such as DONG E E JIAO and JIN HUA ham. Such conflicts arose when the 2001 AQSIQ Regulations for the Administration of Marks of Origin were in place. With the current Regulation referring specifically to geographical indications, we expect that there will be even greater potential for confusion and conflict.

Last March, the World Trade Organization (WTO) Panel considering the dispute between the US, Australia and the EU regarding the EU GI protection system rendered a well-balanced decision which guides countries on how to implement the GI and trademark provisions of the TRIPS Agreement. The decision clearly establishes that validly registered trademarks can challenge the registration or use of a GI and clarifies that coexistence between a prior established trademark and a later protected GI should be a rare occurrence that is only allowed under the TRIPS Agreement as a fair descriptive use exemption. In other words, coexistence should not be allowed when there is relatively high likelihood of confusion between the prior established trademark and the later protected GI.

In light of our concerns, we invite your attention to the recently adopted AQSIQ Regulation and hope that the scheme of GI protection in China can be clarified so that we can be certain that the new AQSIQ Regulation will in no way adversely affect established trademark rights as protected and enforced under Chinese trademark law.

Sincerely,



Anne Gundelfinger  
President

Cc.: Legislative Affairs Office, State Council of the People's Republic of China  
National Intellectual Property Strategies Office  
Trademark Office, State Administration for Industry & Commerce  
China Trademark Association