

Original Research Article

# Research on Legal Protection of Geographical Indications

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**Abstract:** With the development of the times, geographical indications have more and more influence on a country's economy and culture. As a big country of geographical indication resources, China should make use of the benefits of geographical indications to promote economic and cultural development. However, due to the mixed legislative mode of Trademark Act, which includes Trademark Act, Regulations on the protection of geographical indications and Administrative measures for geographical indications of agricultural products, there are conflicts and confusion in the legal provisions, which is not conducive to the development of geographical indications in China. This paper discusses the protection mode of geographical indications in European Union, the United States and other countries, analyzes the advantages and disadvantages of special law protection, Trademark Act protection and anti-unfair competition law protection mode, and puts forward suggestions that China should adopt special law protection to make better use of China's rich geographical indication resources in the way of strong protection.

**Keywords:** Geographical Indication; Protection Mode; Trademark Act Mode; Special Law Mode

## 1. Research background

Under the background of China's increasing economic strength, the attention and protection of intellectual property rights are increasing day by day, especially the awareness of the protection of geographical indication trademark rights has been significantly improved. At present, this kind of legal provisions is not perfect. In the third amendment to the Trademark Act in 2013, there are no detailed provisions on the generation, inheritance and the legal liability of geographical indication trademark rights.

In the economic and trade agreement between the government of the people's Republic of China and the government of the United States of America, signed in Washington on January 15, 2020, the two sides have reached an agreement. Section 6 of Chapter I of the agreement stipulates that "both parties shall ensure that the protection of geographical indications is fully transparent and fair, including the protection of common names (i.e. common names), respect for prior trademark rights, and Clear procedures for objection and revocation, and fair market access for the export products of the other party relying on the trademark or using the common name.

Mr. Zheng Chengsi said that from an international perspective, geographical indications may become one of the strengths of China's intellectual property rights, unlike patents and well-known trademarks, which have been short-term items in China for a long time.<sup>[1]</sup> The signing of this agreement puts forward a new test for the protection of geographical indications in China. In view of the relatively imperfect protection of geographical indications in China, which restricts the protection and development of geographical indications, it is still necessary to study and discuss the protection of geographical indications.

## 2. The concept of geographical indication

As early as 1883, the protection of geographical indications appeared in the Paris Convention, but there was no clear definition. Only in the Convention, "source mark" and "name of origin" were taken as the objects of industrial property protection, and the legal concepts similar to geographical indications were proposed for the first time. In 1985, the legal term of "geographical name" was used in the Madrid Agreement and Lisbon Agreement, in which the Lisbon Agreement defined the concept of geographical indication for the first time. Under the premise of the continuous progress of international legislation and international dispute settlement mechanism, the Bangui agreement, formulated in 1977 in Bangui, the capital of Central Africa, further proposed the "origin mark". The most explicit definition of geographical indication in international law for the first time is in TRIPS Agreement (full name "agreement on trade related intellectual property rights") formulated in 1994. The legal concept of "geographical indication" is adopted in the agreement to further define and protect geographical indications.

According to the provisions of Article 16 of the Trademark Act of China, geographical indication refers to the identification

of the source area of a commodity. The cultural and natural factors of the region determine the commercial reputation and product quality of the commodity. Geographical indication is different from geographical indication. It not only indicates the origin of the commodity, but also closely links the commercial reputation and quality of the commodity with the region. This correlation may be caused by natural conditions such as soil, water flow, air flow and landform, and it may also be determined by human and historical factors. For example, the specific geographical environment of Turpan in Xinjiang enables them to produce high quality grapes, while France's unique romantic atmosphere and traditional crafts make its perfume famous.<sup>[2]</sup>

### **3. The necessity and significance of geographical indication protection**

#### **3.1 Geographical indications have important commercial value**

Geographical indication is an industrial product with important economic and commercial value. It can bring economic wealth to the right holders and gain competitive advantages, such as "Beijing roast duck" and "French wine". These geographical indications can make consumers have a sense of identity, greatly enhance the competitiveness of commodities in the market, and play an important role in promoting the economic development of the origin and country, and have been operated by operators for many years, commodity often means better business reputation, better product quality and perfect after-sales protection, which also plays an important role in protecting the legitimate rights and interests of producers and consumers.

#### **3.2 The phenomenon of counterfeiting geographical indications is very serious**

First of all, the phenomenon of fake use and abuse of geographical indications is very common. Some enterprises whose products can not meet the quality requirements and products of non origin mislead consumers by using geographical indications. This behavior not only infringes the reputation of geographical indication products, but also seriously infringes the legitimate rights and interests of consumers. Secondly, some producers who have the right to use geographical indications only pursue immediate interests and do not pay attention to the quality control of products. They even allow enterprises without the right to use geographical indications to use their geographical indications by issuing licenses, which aggravates the abuse of geographical indications. Therefore, strengthening the protection of geographical indications can not only protect the interests of producers of geographical indications, but also protect the legitimate rights and interests of consumers, and promote economic development.

### **4. The mode of geographical indication protection**

Nowadays, there are three modes of legal protection of geographical indications in the world, including special law protection mode, Trademark Act protection mode and anti-unfair competition law mode. Most countries do not adopt the mode of special law or Trademark Act, but use a variety of ways, but one of them is the main one.

#### **4.1 Special law mode**

The European Union is the main representative of the special law mode of geographical indication protection. Europe has a long history and a large number of geographical indication products. Among them, the geographical indications of France, Italy and other countries are well-known all over the world. The protection system of EU geographical indications can be divided into two areas: one is the legislation on the protection of geographical indications for wine and spirits; the other is the legislation for the protection of agricultural products and food geographical indications other than wine.<sup>[3]</sup>

As early as 1824, France promulgated the first special law to protect geographical indications in the world. So far, France has formed a complete set of AOC (controlled origin) strong protection system with French characteristics from registration application to cancellation.<sup>[4]</sup> In France, the National Office of names of origin administers the registration of names of origin, protects the rights of producers in specific regions, and has the right to stop any use that may damage the reputation of names of origin, and names of origin cannot be used as general names. It can be seen that in France, once a product is registered with the name of origin, it will be strictly protected by law. The geographical indications of France not only protect the local traditional culture, but also bring great economic benefits to the country.

The protection of geographical indications of agricultural products in Italy is basically based on special laws. Italy requires government agencies to take the initiative to inspect and enforce the law of geographical indication products through special laws, and relevant agencies actively promote the public's awareness of geographical indications, protect the legitimate rights and interests of geographical indication products, enhance public awareness, promote geographical indication products through food tourism projects, and establish product information traceability system to facilitate product supervision Cooperative protection and promotion of geographical indication products.<sup>[5]</sup> Protecting the interests of geographical indications of agricultural products and food has expanded economic benefits.

#### **4.2 Model of Trademark Act**

The Trademark Act, represented by the United States, protects geographical indications subjectively and relatively. Under the protection mode of Trademark Act, collective trademark and certification trademark play an important role in the legal protection of geographical indications. This method can save the cost of legislation.

The adoption of such a protection model in the United States is related to its social environment. The United States does not have much interest in geographical indications, and there are not many world-famous geographical indication products with a long history. Therefore, the weak protection mode of Trademark Act is adopted, which is conducive to the United States to focus on other areas that should be protected, so as to save the cost of legislation. Since most countries in the world operate the trademark system, the United States can more easily connect with other countries and strengthen economic and cultural exchanges.

Of course, compared with the special law protection mode, the effectiveness of the protection mode of geographical indication Trademark Act is obviously weaker, and there may be conflicts between trademark right and geographical indication right, which

still needs to be solved.

### **4.3 Protection mode of Anti Unfair Competition Law**

Japan is a typical country adopting the protection mode of anti unfair competition law. It has made provisions on the legal protection of geographical indications in the law on the prevention of unfair competition, that is, unfair competition behaviors that should be stopped include export, promotion or sale that may cause the public to have wrong understanding of the origin of products.<sup>[6]</sup>

Anti unfair competition law unfair competition law focuses on the intervention of state power, and the purpose of this intervention is not only to protect the interests of obligees, consumers and competitors, but also to protect the interests of other social public.<sup>[7]</sup> Of course, the disadvantages of the protection mode of anti unfair competition law are also obvious. Adopting this mode, the geographical indication itself is not clearly defined and protected, but requires the obligee to indirectly protect by proving that the other party constitutes unfair competition. This is prone to problems in the process of proof, so it can not be widely applied to all countries.

## **5. Problems in the protection of geographical indications in China**

Although China is rich in geographical indications resources, the legal provisions on geographical indications have been passively promoted by international negotiations. In China's first special regulation on intellectual property rights, namely the Trademark Act of 1982, there are no relevant provisions on geographical indications. The time when China really began to stipulate the legal protection of "similar geographical indications" was after China's accession to the Paris Convention, and according to TRIPS Agreement, the specific provisions of geographical indications were added in China's "Trademark Act", and gradually formed a mixture protection mode of Trademark Act, Regulations on the protection of geographical indications and Administrative measures for geographical indications of agricultural products.

This kind of legislation mode is in line with the social situation at that time, but this structure is easy to cause conflicts between relevant departments and regulations. Several laws and regulations lack cooperation and support with each other, and the scope of application is overlapped, but they adopt different concepts, which results in the conflicts among the three parts of the legislation. The theoretical basis of geographical indication protection and trademark protection is different. They are different intellectual property rights. However, the Trademark Act mode still does not recognize the status of geographical indication as an independent intellectual property right in ideology, and regards it as a subset of certification trademark and collective trademark.<sup>[8]</sup>

Conflicts and confusion increase the burden of enterprises, but also seriously waste the administrative and judicial resources of the state. At the same time, if the rights of the right holders of geographical indications can not be fully protected, consumers are sometimes difficult to distinguish, which is not conducive to the promotion and development of geographical indication products in China.

From the perspective of the regulatory authorities of geographical indications, the market supervision and Administration Bureau, agricultural departments and so on are all involved. It is difficult to coordinate the division of labor among multiple departments. As for quality supervision, each department has its own unique standards, which are not recognized by each other, and there is no unified regulatory process, standard and system. In reality, the attention and attention of regulatory authorities are often exposed after some problems of geographical indication products are exposed by the media. There is no doubt that the way of post supervision will seriously reduce the management quality of regulatory authorities, and it is also extremely unfavorable to the protection of geographical indications in China.

## **6. Suggestions on the protection of geographical indications in China**

At the same time, considering the international protection mode and conforming to the new situation of geographical indication legal protection in the post trips era, this paper puts forward some suggestions.

### **6.1 Adopt special law protection mode**

China is a country with rich geographical resources. Making good use of so many excellent geographical indications can enhance the economic interests of the country. Adopting the legislative mode of mixed protection is not conducive to strengthening the protection of geographical indications. Geographical indications should be listed separately as a new type of intellectual property rights. The special law should be revised and the mode of strong protection should be adopted to give full play to the important role of geographical indications in economic society.

Of course, the formation of special law protection mode is not achieved overnight, but needs to be promoted step by step according to the actual situation. Gradually separate the protection of geographical indications from the protection mode of Trademark Act, and strengthen the improvement of Regulations on the protection of geographical indications, so that the law can better serve the protection of geographical indications.

### **6.2 Increase government support**

At this stage, the mode of geographical indication protection is easy to appear, and it is difficult to coordinate the division of labor among various departments. Adopting the special law protection mode can make the action of geographical indication protection more rapid. All departments follow a complete set of laws and regulations to carry out activities, which is conducive to improving the efficiency of protection.

At the same time, the development of geographical indications can not only rely on producers, but also need the help of society. The government should increase its support, mobilize the enthusiasm and initiative of relevant enterprises to apply for the registration of geographical indications, allocate special funds to reward outstanding enterprises, and regard the protection of

geographical indications as not only intellectual property protection, but also economic and cultural work. In addition, we can learn from the successful experience of EU, use geographical indications to develop tourism, enhance the visibility of geographical indications, encourage and support the publicity activities of geographical indications, so that the characteristics of geographical indications can be deeply rooted in the hearts of the people. At the same time, the scope of publicity should not be limited to domestic, we should strengthen international publicity, promote the development of China's foreign trade, and enhance China's international influence.

### **6.3 Establish and improve the geographical indication industry association**

At present, there are still cases of infringement of geographical indications in China. This needs not only the protection of law and government, but also the effects of geographical indication industry association. The government should guide the industry associations to control and develop geographical indications, endow them with certain autonomy, and help them play more important role in the production, sales, publicity and promotion of geographical indications. At the same time, the trade association should play its role in supervising production enterprises and cracking down on counterfeit and shoddy goods, so as to pave the way for the development of geographical indication commodities. The geographical indication industry association should also actively participate in the international market competition and enhance the international competitiveness of China's geographical indication products.

### **6.4 Integrating with the protection of International Geographical Indications**

At the beginning of 2020, the Sino US trade agreement signed by China and the United States clearly proposed the protection of geographical indication commodities. However, the current legal system of geographical indications in China is different from the major international conventions in terms of concept and logic, and it is not perfect. Under the background of Sino US trade agreement, China should not only tap the potential of China's geographical indication products, base on China's national conditions, find ways to develop geographical indication products with Chinese characteristics, but also learn from foreign advanced experience, pay attention to the trend of international system theory, strengthen international exchange and cooperation, and safeguard the legitimate interests of China's geographical indication products To participate in international negotiations and international competition.

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