

Intellectual Property Protection of Geographical Indications



On January 16, 2020, China and the United States signed the first phase of the economic and trade agreement, the *"Economic and Trade Agreement between the Government of the People's Republic of China and the Government of the United States of America"* (hereinafter referred to as the Agreement). Section F of Chapter I of the Agreement regulates the protection system for geographical indications, including the provisions of Articles 1.15 to 1.17. *Trademark Law of the People's Republic of China* (hereinafter referred to "Trademark Law") has interpreted geographical indications. The geographic indication means a sign that indicates the region where the goods originate and the natural or human dimensions of which primarily decide the specific quality, reputation, or other features of the goods. The definition is consistent with the concept advocated by the International Trade Centre.

First, the Agreement stipulates that in the China-US trade, both parties shall ensure full transparency and procedural fairness with respect to the protection of geographical indications, including safeguards for generic terms, respect for prior trademark rights, and clear procedures to allow for opposition and cancellation, as well as fair market access for exports of a Party relying on trademarks or the



use of generic terms. *Measures for the Protection of Foreign Geographical Indication Products* (hereinafter referred to as the Measures) also mentioned the topics. For example, article 5 stipulates that the protection of foreign geographical indication products include Chinese names and original names. It does not belong to the common name and does not conflict with other prior rights such as the names of geographical indication products in China. It defines the scope of protection of the common name and reflects respect for the prior trademark rights. However, the measures did not mention fair market access. In the future, China and the United States need to strengthen fair market access to export products to create favorable conditions and create a fairer trade environment.

Secondly, any measures taken in connection with pending or future requests from any other trading partner for recognition or protection of a geographical indication pursuant to an international agreement do not undermine market access for U.S. exports to China of goods and services using trademarks and generic terms. China's trading partners, including the United States, are able to raise disagreement about enumerated geographical indications in lists, annexes, appendices, or side letters, in any such agreement with another trading partner. Articles 12-16 of the Measures provide for the right of objection, including the objection period, content of the objection, feedback after the objection, inadmissible circumstances, and dismissal of the objection. It shows that China's domestic laws are basically consistent with the agreement while the details still need to be clarified.

Thirdly, the Agreement makes it clear about whether a term is generic in China. Article 16 of the Trademark Law illustrates the meaning of a trademark contains a geographic indication of the goods. Geographical indications of goods are part of trademarks and essentially meet the attributes of trademarks. In global trade, common names need to be reviewed in market access to avoid confusion or violation of public order and good faith.

Fourthly, the Agreement also regulates Multi-Component Terms. An individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that



individual component is generic. When both parties provide geographical indication protection to a multi-component term, it shall publicly identify which individual components, if any, are not protected.

According to the Guide to Geographical Indications published by International Trade Centre, only 10% of the protected geographical indications in the world come from developing countries. Strengthening the protection of geographical indications is of great significance to increase the value of trademarks. Geographical indications have many advantages which include conveying geographic information and certain quality guarantees. It also enables consumers to easily understand the origin of goods, production processes and their quality, and reduces the asymmetry of information between consumers and producers, thereby enabling producers to reduce advertising costs and focus on improving production processes and product quality. The formation of geographical indications does not happen overnight. This process requires time and joint efforts of producers in the same area to form a word-of-mouth effect and gradually form recognizable geographical indications, which can more effectively protect production in the area. In addition, geographical indications have significant economic value. It is estimated that global products containing geographical indications are valued at more than \$ 50 billion, and majority of the protected geographical indication products are in wines and spirits. Strengthening the protection of geographical indications will help increase the economic value of products.

The protection of geographical indications in China is often closely related to agricultural products. According to the *Outline of the National Intellectual Property Strategy*, it is increasingly important to use the Rich peasant with Trademarks mechanism with geographical indications and agricultural product trademarks as the core. In China and U.S. Trade, the import and export of agricultural products account for a large share. China agreed to purchase an additional agricultural goods for \$12.5 billion in 2020 and \$19.5 billion in 2021.

China is a large agricultural country. Agricultural products with geographical indications reflect the production capacity and quality in the region. Rich peasant



with trademarks is in line with international standards, which helps to optimize the industrial structure and development model of agricultural economy. Also, it helps Chinese agricultural products to be exported, which will improve China's agricultural products' shares in global trade. It is meaningful to note that the protection of geographical indications should not only focus on agricultural products. In the future, it is also necessary to strengthen the protection of geographical indications of value-added products, such as the wine and tobacco industry.

* The picture in this article is from <http://699pic.com/>.