

GIs playing an important role in rural development

1. Legal basis of Geographical Indication Protection in China

(1) Trademark Law

Article 3 Registered trademarks mean trademarks that have been approved and registered by the Trademark Office, including trademarks, service marks, collective marks and certification marks; the trademark registrants shall enjoy the exclusive right to use the trademarks, and be protected by law.

Said collective marks mean signs which are registered in the name of bodies, associations or other organizations to be used by the members thereof in their commercial activities to indicate their membership of the organizations.

Said certification marks mean signs which are controlled by organizations capable of supervising some goods or services and used by entities or individual persons outside the organization for their goods or services to certify the origin, material, mode of manufacture, quality or other characteristics of the goods or services.

Regulations for the particular matters of registration and administration of collective and certification marks shall be established by the administrative authority for industry and commerce under the State Council.

Article 16 Where a trademark contains a geographic indication of the goods in respect of which the trademark is used, the goods is not from the region indicated therein and it misleads the public, it shall be rejected for registration and prohibited from use; however, any trademark that has been registered in good faith shall remain valid.

The geographic indications mentioned in the preceding paragraph refer to the signs that signify the place of origin of the goods in respect of which the signs are used, their specific quality, reputation or other features as mainly decided by the natural or cultural factors of the regions

(2) Regulations for the Implementation of Trademark Law

Promulgated by Decree No.358 of the State Council of the PRC on August 3, 2002, and effective as of Sep 15, 2002

Article 6 For geographical indications referred to in Article 16 of the Trademark Law, applications may be filed to register them as certification marks or collective marks under the provisions of the Trademark Law and these Regulations.

Where a GI is registered as a certification mark, any natural person, legal person or other organization whose goods satisfy the conditions under which the geographical indication is used may request the use of the certification mark, and the organization in control of such certification mark shall permit the use. Where a GI is registered as a collective mark, any natural person, legal person or other organization whose goods satisfy the conditions under which the geographical indication is used may request the membership of the society, association or any other organization that has the geographical indication registered as a collective mark, and the society, association or any other organization shall accept the membership in accordance with its articles of association; those who do not request the membership of the society, association or any other organization that has the geographical indication registered as a collective mark may legitimately use the geographical indication, and the society, association or any other organization is not entitled to prohibit such use.

(3) Measures for the Registration and Administration of Collective Marks and Certification Marks

2. The Registration of Geographical Indications

(1) Qualifications for obtaining the geographical indications

In accordance with laws in China, the appropriate mode of geographical indication protection is to register it as the certification mark or collective mark. For those applied for registration as collective marks and certification ones, the application for geographical indications shall be under the following rules, besides general registration regulations:

(i) A society, an association or any other organization applying for the registration of a geographical indication as a collective mark or a certification mark shall furnish documents certifying the qualification of the subject and submit the detailed information of the professionals and special testing equipments of its own or of any other organization authorized by it to show its capability of supervising the particular quality of the goods to which the said geographic indication applies.

(ii) Any party applying for the registration of a geographical indication as a collective mark or a certification mark shall also furnish the approval documents issued by the people's government which has jurisdiction there over or the competent authority of the industry.

(iii) Any party applying for the registration of a geographical indication as a collective mark or a certification mark shall present the following information in the application documents:

The given quality, reputation or any other characteristic of the goods indicated by the geographical indication;

The correlation between the given quality, reputation or any other characteristic of the goods and the natural and human factors of the region indicated by the geographical indication;

The boundary of the region indicated by the geographical indication.

(iv) Any foreign person or enterprise applying for the registration of a geographical indication as a collective mark or a certification mark, he or it shall furnish documents certifying that the geographic indication in question, in his or its name, is under the legal protection in the country of origin.

(2) Issues paid attention to in the registration of the geographical indication

Whether the products applied for registration as geographical indications satisfy the qualifications of using the geographical indication or not shall be precisely defined.

Whether the applied geographical indication could be registered or not mainly relies on the qualifications the product owned, namely the characteristics of the product, originated from the geographical and determined by it. Its standard, or the exclusive standard, is based on the public admiration of the exclusive place of origin marked. For example, Ku'erle Fragrant Pear is exclusively from Ku'erle, Xinjiang. In case of the same quality and characteristics of fragrant pear from other places, Ku'erle Fragrant Pear could not be registered as a geographical indication. If a mark is only used for products qualified for the geographical indication, and consumers understand the mark for the products from the area other than from other places, it would be used as a geographical indication.

The geographical indication produces, historically existed as a natural and cultural resource,

is rare and non-recyclable. The geographical indications, which have not been registered, will be lesser and lesser. The opinion that registrations will be more and more is wrong. Thus, it should be honest to promote the registration of the geographical indications, other than to create manmade geographical indication products. It is incorrect that the more registration, the better for promoting the registration of the geographical indication.

(3) How to do when the geographical indication infringed?

Since the geographical indication was registered, the registrant would have enjoyed the exclusive right to use, and others should not use without the permission, otherwise they would be punished by the law as infringement. In accordance with the provisions of Trademark Law in China, the owner shall, when being infringed, prosecute to the People's Court, or make a complaint to the Administration for industry and commerce authorities in the area or the place of infringement. The Administration for Industry and Commerce shall confirm the infringement, and impose a fine to the infringer. The owner may require the infringer for the economic remedy.

3. The History and the Status of Geographical Indication Protection in China

In 1985, The geographical indication protection in China was commenced, after China entering into 《Paris convention for protection of industrial property》. In 1987, the Trademark Office of State Administration instructed the issue of the protection of appellation of origin of Denmark Butter Cookies for Industry and Commerce. On October 26, 1989, *Notification on the Termination of xiangbin or Champagnes Printed on Alcohols* was announced by the State Administration for Industry and Commerce, making a great impact home and abroad. In 1993 for the first amendment to *Trademark Law* and in 2001 for the second time, definite rules and regulations were made in *Trademark Law* and *regulations for the implementation of the Trademark Law*.

Products related to geographical indication

In China, the products related to geographical indication are as follows: agricultural products, food, traditional Chinese medicine, handicrafts, etc., while registered geographical indication products are fruits, tea, rice, vegetable, poultry, flowers, yellow wine, beans, etc.

At present, there are over 600 applications for geographical indications, including 32 by foreign applicants; registered 171 and preliminarily approved 25, including 17 registered and preliminarily approved applied by foreign applicants.

4. The active Role of Protection Geographical Indication in improving Chinese agricultural economy

(1) The urgency of promoting the registration and protection of geographical indication

For a long run, there have been plenty of geographical indication products with their own characteristics in China, an agricultural giant with a long history, such as Ku'erle Fragrant Pear in Xinjiang Autonomous Region, Jingdezhen china in Jiangxi Province, Shaoxing yellow wine in Zhejiang Province, Zhangzhou Orange in Fujian Province, Zhangqiu green Chinese onion in Shandong Province, etc. The registration and use of the above-mentioned geographical indications have been taken active parts in the local economy development, while compared with the quantity of geographical indications in China, those registered only take a small share, for quite a few users

haven't got the idea of protecting their own rights and interests, which is good neither for protection, nor for taking the advantage of the geographical indication. Without converting the situation, farmers would not benefit from the geographical indication, and it would be difficult for our agricultural products to be competent in the international market. So, there are a plenty of work to do for the protection of the geographical indications.

(2) An active Role the Protection of Geographical Indication Plays in Promoting the Agricultural Development with Chinese Characteristics

(i)Be beneficial to increase the Chinese farmers' income and enlarge the agricultural production scale. The registrant of geographical indication shall, by permitting qualified farmers using the geographical indication, improve the farmers' production activities marketable and increase the farmers' income. For example, after the registration of Zhangqiu green Chinese onion as the geographical indication, the registrant, with the assistance of the local government , actively inspire farmers to breed Zhangqiu green Chinese onion, increasing farmers' income a great deal. At the same time, the registrant shall, through the regulation governing the use of the trademark, supervise the geographical resource and quality of the agricultural products and have products in stable quality, which is beneficial to improve the operation of the characteristic agricultural products in to a scale.

(ii)Be beneficial to widen the agricultural products market. After the registration as collective mark or certification mark, Trademark Law shall protect the geographical indication. In marketing competition, geographical indication, as well as the trademark, takes important market effects, for promoting the products to the market, with specific geographic situation, climate condition, unique cultivation and breeding methods and special quality. The registrant shall, by popularizing geographical indication, actively develop market, enlarging market shares.

(iii)Be beneficial to enlarge the export of agricultural products. The registration of the geographical indication, which is protected as an intellectual property all over the world , shall provide its legal basis of registration and protection abroad for enlarging the export of the geographical indication products. After the registration, Ku'erle Fragrant Pear has made a well basis for entering into the international market. At present, Ku'erle Fragrant Pear has been sold to such countries and regions as Hongkong, Singapore, Thailand, France and Canada, etc.

5. Detailed Measures Taken in Protection of GIs Agricultural Products

(1) To clarify the duty and responsibility

It is a policy-cum-technology-oriented task for agricultural products to be registered as geographical indications. The communication between Administrations for Industry and Commerce at all levels and agricultural administrative departments responsible for the work should be strengthened to push forward the healthy development of protection for the geographical indication agricultural products. Agricultural administrations should be responsible for such technical identifications and quality supervisions as the confirmation of the protected area of the geographical indication agricultural products, the formulation and evaluation of the standard and technical regulations on geographical indicated agricultural products, the examinations and tests on geographical indication agricultural products in producing base and marketing. Administrations for Industry and Commerce at all levels should strengthen the ability of investigation, detecting all sorts of illegal activities

Provincial agricultural administrations responsible for the work should give assistance and

guidance to the applicant for the production area of GIs agricultural products, the specific quality of products, and issue related certificates. For the application for registration of a geographical indicated agricultural product as a collective mark or a certification mark, the Trademark office of the State Administration for Industry and Commerce, approval the GIs with the suggestion from the agricultural administration.

(2) Develop the general investigation on geographical indication resources of agricultural products

Administrations of agriculture at all levels and administrations for industry and commerce at all levels, especially those at primary level, should develop the general investigation on geographical indication resources of agricultural products, such as the agricultural products resources situation, the quality, the type, the distribution, quality characteristics, the production, the processing, and the marketing, etc. Administrations of Industry and Commerce at all levels and agricultural departments responsible for the work should jointly carry out the investigations on the market development of the registered geographical indicated agricultural products, and formulate, according to the reality, the development planning and promotion measures of the geographical indicated agricultural products and trade marks in the local area ,and take measures suited to local conditions.

(3) Take the service functions of professional associations and intermediary organizations.

Agricultural products industry associations, agricultural technology promotion organizations, farmers' professional co-operation organizations may be the principal part of application for registration of a geographical indication agricultural products. The registrant of the geographical indication agricultural products, in accordance with the law, should enjoy the management rights to using the geographical indication and be reliable for the production guidance and quality management of the geographical indicated agricultural products.

(4) Enhance the market supervision

Administrations for industry and commerce should enhance the ability to protect the geographical indication agricultural products, and supervise the market, practically safeguarding the benefits of the registrant and the producer of agricultural products. For registered geographical indication of agricultural products, local Administrations for Industry and Commerce should direct the registrant for standard using geographical indication. For illegal activities of infringement of the rights and interests of registered geographical indication of agricultural products, Administration for Industry and Commerce at all levels should take their functions a full play, strengthen the ability to investigate, carry out special improvement at the right time, and protect the geographical indication of agricultural products and the legal rights and interests of the registrant.

(5) Strengthen the use and management of geographical indication marks

For protecting the quality and reputation of agricultural products registered as the geographical indication, administrations for Industry and Commerce at all levels and agricultural departments responsible for the work at all levels should positively lead the registrant correctly use the GIs and the trademark.

(6) Enhance the capital input and strengthen the ability to support

The registration and protection of geographical indication of agricultural products started relatively late with a weak basis. Agricultural administrations and administrations of Industry and

Commerce at all levels passively strive for capital input to support the development of the production of geographical indicated agricultural products, encouraging and supporting capital input to develop the geographical indicated agricultural products, forming a multi-channeled and diversified capital input system to promote the development of the registration and protection of geographical indication of agricultural products

(7) Strengthen the coordination and cooperation

Administration for Industry and Commerce at all levels and agricultural administrative departments responsible for the work should strengthen communication and coordination, establishing effective coordination system, promoting jointly the protection of geographical indication. Regions, having conditions, may form the experts committee, communicating, studying regularly the registration and protection of the geographical indication. The State Administration for Industry and Commerce and Ministry of Agriculture should, in accordance with the local situation, organize supervision and examination at the right time.

Through the insistent efforts of Administration for Industry and Commerce at all levels and related agricultural administrations, the protection of geographical indication has been taken a primary effect on increasing farmers' income, for there are examples of successfully using the geographical indication to develop characteristic economy in rural areas and growing farmers' income.

In Tulufan, Xinjiang Autonomous Region, the grapes industry has been the No. 1 industry in local agriculture, for its production scale has been the largest one in Xinjiang, or even in the country. However, for the lack of protection, infringements and imitations were so common that the images and fames of the grapes and raisin in Tulufan were damaged greatly. After the registration of Tulufan Grape and Raisin as a geographical indication, there have been legal weapons to protect Tulufan Grap and Raisin, and Tulufan Grape has been on a healthy development road of facing the market, laying stress to the quality, and industrializing production. In 2003, the grape plantation coverage was 41.3 mus, taking 40% of the total area, with the total grape output 520 thousand tons, the total raisin output 80 thousand tons, as 85.7% of total output in Xinjiang and 7% in the world; the value of the grape taking 50% of the total agricultural value in Xinjiang, or over 60% of the farmer income per capita.

5. “Company+ Farmer+ Trademark (Geographical indication)”---a new mode of increasing Farmers' Income

The characteristics of the farmer's mode of production result in a little knowledge of market information, the lack of understanding the demand and supply relationships, hindered selling channels, the weak publicity, which have made a great impact on the selling of agricultural products and the farmer's income. In the above-mentioned aspects, the enterprise occupies a dominant position, while the trademark (geographical indication), as a bridge and a tie, combines the company with the farmer, the mode of “Company+ Farmer+ Trademark” would end as a win-win game. When both the company and the farmer get the benefits, the intellectual property value of the trademark (geographical indication) would be at a higher stage.

(1) Administrations for Industry and Commerce at all levels actively push forward the protection of geographical indication agricultural products and have got obvious effects. “Company+ Farmer+ Trademark” has been a new mode of using intellectual property increasing

farmers' income. Enriching farmers by brands and flourishing the agriculture by brands have gradually become the development strategy for local governments to raise farmers' income. For example:

Administration for Industry and Commerce in Qianxi County, Hebei Province, coordinating with the county government, strengthen the standardized administration of Qianxi Chinese Nuts, the certification mark, by establishing professional websites, setting up exclusive stores of Qianxi Chinese Nuts, training nuts marketing brokers, and form a healthy development of nuts production and sales. In 2004, influenced by the aridness, the output was only 13 thousand tons, yet farmers sold all out at the price of 12.20 Yuan RMB per kg in a month, getting an immediate interest of 1.59 billion Yuan RMB with no income damage and raising 2.5 million Yuan RMB, compared to 2002.

After the registration of Xinyang Maojian Tea as the certification mark, Administration for Industry and Commerce in Xinyang, Henan Province, instructed Xinyang Tea Association to administrate the quality and the production technology of Xinyang Maojian Tea, and carried out the production mode of "Top enterprises+ Tea farmers+ Trademark", enhancing the popularity day by day. The tea industry has been a pillar industry in Xinyang, with over 10 top enterprises of more than 10 million Yuan RMB value over 200 thousand tea farmers. Compared to 2001, the output of Xinyang Maojian Tea in 2004 reached to 1.45 million kgs, value 7 billion RMB, respectively increased by 21% and 28%, and the income per farmer 3700 Yuan RMB, raised by 17%.

Administration for Industry and Commerce at all levels in Fujian Province instructed related departments to unite the standard of geographical indication products such as Pingheguanxi honey Shaddock, Anxi Tieganyin Tea, Fuding Areca Taro, etc, guaranteeing the quality of geographical indication products, making geographical indicated agricultural products as the breach for the local government of the resolution to the issue of rural area, farmers and agriculture. After the registration of Pingheguan honey Shaddock as a geographical indication, the number of the production and operation households has been grown from 19 before 1999 to 102 at present, with the value increased to 6.3 billion Yuan RMB and the sales coverage of over 30 countries and regions. The income per capita of farmers produced Pingxiguanxi honey Shaddock is to 1600 Yuan RMB, taking a half of the household income, and 30% farmers in the county have been shaken off poverty by planting shaddocks, around 40% household have an annual income over 10 thousand Yuan RMB. After the registration of Anxi Tieganyin Tea as a geographical indication, its export price was 80% higher than that all over the country. The Tea was sold to more than 100 countries and regions, as over 7000 tons exported in 2004. Meanwhile, the production of Anxi Tieganyin Wooloon Tea has driven the development of the third industries such as communications and transportation, business and trade, tourism and catering, post and telecommunication. There are over 700 thousand population involved in the tea industry among the total 1.07 million, increased by 180 thousand for the net, compared to that before the registration and the net income for farmers raised more than 8%.

After the registration of Nanfeng honey Orange as geographical indicated certification mark, 80% farmers in the coverage of qualified regions planted Nanfeng honey oranges in Nanfeng County, Jiangxi Province, Nanfeng honey Oranges Gardens were created by villages with a total output 1.5 billion kgs. The output of Nanfeng honey Oranges and related industries reached to 6 billion Yuan RMB, as annual income per capita for farmers raised from 2300 Yuan RMB in 1998

to 2841 Yuan RMB in 2003, of which the tangerine oranges grew from 300 Yuan RMB in the past to 1001 Yuan RMB in 2003, while the business and trade marketing was driven as well as the employment issue of numbers of surplus labor was settled down.

(2) Two aspects paid attention to in the mode of “Company+ Farmer+ Trademark”

As the operation mode of Company +Farmer+ Trademark emerging its advantages, some problems show up. To develop healthily through this mode, the following two problems shall be noticed:

(i) Strengthening the enterprise is the basis

Company takes a leading part in the operation mode, its ability and energy impacting directly on the latter two factors. In fact, there are not many top agricultural enterprises with competitive strength. For that reason, the government must enhance the ability to support the enterprises, and nurture top agricultural enterprises. Only on the basis of enlarging and strengthening the enterprises, the mode could cohere more farmer households, making them a fortune.

(ii) Coordinate the relationships between the company and farmers

As we all know, the reason why the farmer chooses to link with the company is that the issues of how to plant and sell could be settled by the leading and instruction from the company to the farmer, thousands of small farmers being led into the big market and farmers being effectively organized to make a scale advantage for a bigger benefit. Owing to the cooperation between the company and the farmer by voluntary negotiation, many of which lack the legal protection, there are conflicts in the process of cooperation for either party's interests. On one hand, due to strict requirement for the quality of products, only those qualified ones could be sold at the purchase price fixed by the company; otherwise the company would refuse to buy, which often causes undeserved payment after hard work. On the other hand, some farmers, when the market price higher than the contract one, would not keep their word, scrap the contract with an idea of *the higher the price, the more I sell to*.

To coordinate the relationships between the company and the farmer, establishing related systems is the first step, making clear the responsibility, the right and the interests between the company and the farmer, as making to *enjoy the rights and interests together, and take the risks together* into a real sense. The related departments should strengthen the supervision on the cooperation of the two parties for an equal interest of either one.

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