

Q&A Manual China Legislation on Geographical Indications

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Q&A Manual
China Legislation on Geographical Indications

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This publication takes the form of questions and answers to serve as a handbook for right holders of Geographical Indications (GIs) and stakeholders involved in the development of GI products in China. This Q&A Manual addresses key issues often raised and covers the legislative situation in China, the various definitions of GIs, registration procedures, the difference between trademarks and GIs, the use of GIs and GI logos as well as how GIs are protected, supervised and administered.

It is undertaken in the framework of the EU-China IPR2 Project. Since its launch in 2007, IPR2 has developed a series of capacity building activities on Geographical Indications (GIs) in China to support Chinese and European stakeholders with references on GI best practice and experience.

IPR2 is a partnership project between the European Union and the People's Republic of China on the protection of intellectual property rights in China. This is done by providing technical support to, and building the capacity of the Chinese legislative, judicial and administrative authorities in administering and enforcing intellectual property rights; improving access to information for users and officials; as well as reinforcing support to right holders. IPR2 targets the reliability, efficiency and accessibility of the IP protection system, aiming at establishing a sustainable environment for effective IPR enforcement in China.

For further information visit www.ipr2.org or contact info@ipr2.org.

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Legislative Situation on GIs in China

What are the laws on GI protection in China?

1. What laws have special provisions dealing with GIs in China?
2. Are there any other laws providing general protection for GIs in China?

Laws related to GI protection in China

In China there are several laws and regulations providing protection for GIs. Some of them have provisions specially designed to protect GIs and the others provide only general protection for them.

1. What laws have special provisions dealing with GIs in China?

At present there are three parallel legislations providing special provisions for GI protection: Namely the **Trademark Law**, the **Provisions on the Protection of Geographical Indication Products** and the **Measures for Administration of Geographical Indications of Agricultural Products**. These three legislations are also the main measures for GI protection in China.

Reference to the Legal Act of China

The *Trademark Law of the People's Republic of China* was adopted at the 24 Meeting of the Standing Committee of the Fifth National People's Congress on 23 August 1982 and promulgated by *Order No.10 of the Standing Committee of the National People's Congress* on 23 August 1982; the first amendment was adopted at the 30 Meeting of the Standing Committee of the Seventh National People's Congress on 22 February 1993; and the second amendment was adopted at the 24 Meeting of the Standing Committee of the Ninth National People's Congress on 27 October 2001. The English version of the Trademark Law of 2001 is available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384018.htm

Reference to the Legal Act of China

The act with *Provisions on the Protection of Geographical Indication Products* was promulgated by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) on 16 May 2005. The Chinese version is available at: http://kjs.aqsiq.gov.cn/dlbzcpbhwz/zcfg/flfgwx/200610/t20061023_1793.htm

Reference to the Legal Act of China

The *Measures for the Administration of Geographical Indications of Agricultural Products* were adopted at the Fifteenth executive meeting of the Ministry of Agriculture on 6 December 2007 and came into force on 1 February 2008. The Chinese version is available at: http://www.gov.cn/ziliao/flfg/2008-01/10/content_855116.htm

It is to be noted that the *Trademark Law* was adopted by the legislative body, i.e. the Standing Committee of the National People's Congress while the *Provisions on the Protection of Geographical Indication Products* and the *Measures for Administration of Geographical Indications of Agricultural Products* are both ministerial rules established respectively by General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (hereinafter "AQSIQ") and the Ministry of Agriculture of the People's Republic of China. Both, the AQSIQ and the Ministry of Agriculture are the administrative departments under the Central People's Government of China, i.e. the State Council.

Additional information on the national authorities

For further information about AQSIQ, please refer to the official website <http://english.aqsic.gov.cn/AboutAQSIQ/>. For further information about the Ministry of Agriculture, please refer to the official website <http://english.agri.gov.cn/>.

It is important to note that the *Trademark Law* has priority over other legal acts in cases of conflict with ministerial rules. However, the priority of the *Trademark Law* has not been officially admitted when the conflicts between the *Trademark Law* and the two ministerial rules arise in the practice of GI protection. For example, in the case of "Jinhua Ham" (金华火腿) the plaintiff holding the trademark of "Jinhua Ham" registered in 1979 accused the defendants of trademark infringement, who used "Jinhua Ham" registered as designation of origin product under the former *Provisions on Protection of Designations of Origin Products* in 2002.

Reference to the Legal Act of China

The former *Provisions on Protection of Designations of Origin Products* were promulgated in 1999 by the former State Administration of Quality and Technical Supervision. After the former State Administration of Quality and Technical Supervision and the former State Administration for Entry-Exit Inspection and Quarantine merged into the AQSIQ in 2001, the *Provisions on the Protection of Geographical Indication Products* was promulgated in 2005 and replaced the former *Provisions on Protection of Designations of Origin Products*. Since then all designation of origin products registered under the former *Provisions on Protection of Designations of Origin Products* shall be protected as geographical indication products under the *Provisions on the Protection of Geographical Indication Products*.

The court ruling permitted the coexistence of the use of "Jinhua Ham" by the plaintiff and the defendants and confirmed that both sides have legal basis to use their trademark or designation of origin product. Therefore the three legislations can be treated as practically coordinative and actually independent means for GI protection in China.

2. Are there any other laws providing general protection for GIs in China?

Apart from the three parallel legislations which have special provisions for GIs there are still several laws in China that can provide general protection for GIs. For example, the *Law against*

Unfair Competition and the *Law on Product Quality* prohibit forging the origin of a product and the *Law on the Protection of Consumers Rights and Interests* provides that consumers shall enjoy the right to obtain true information about the origins of commodities and business operators must provide authentic information. All these provisions are available for all designations on origins of goods and GIs can also be protected under them.

Reference to the Legal Acts of China

The *Law of the People's Republic of China against Unfair Competition* was adopted at the 3rd Meeting of the Standing Committee of the Eighth National People's Congress and promulgated by *Order No.10 of the President of the People's Republic of China* on 2 September 1993. The English version is available at:

http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383803.htm

The *Law of the People's Republic of China on Product Quality* was adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress and promulgated by the *Order No. 71 of the President of the People's Republic of China* on 22 February 1993, amended in accordance with the *Decision of the Standing Committee of the Ninth National People's Congress on Revision of the Law of the People's Republic of China on Product Quality* adopted at the 16th Meeting on 8 July 2000. The English version is available at:

http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383813.htm

The *Law of the People's Republic of China on the Protection of Consumer Rights and Interests* was adopted at the 4th Meeting of the Standing Committee of the Eighth National People's Congress and promulgated by *Order No.11 of the President of the People's Republic of China* on 31 October 1993. The English version is available at:

http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383812.htm

The legislative situation of GI protection in China can be summarised as follows:

Legislations including provisions specially designed for GI protection	Laws providing common legal protection for GIs
<p>The <i>Trademark Law</i></p> <p>The <i>Provisions on the Protection of Geographical Indication Products</i></p> <p>The <i>Measures for Administration of Geographical Indications of Agricultural Products</i></p>	<p>The <i>Law against Unfair Competition</i></p> <p>The <i>Law on Product Quality</i></p> <p>The <i>Law on the Protection of Consumers Rights and Interests</i></p>

Definitions of GIs in China

What products are eligible for GI protection in China?

1. *What are the products eligible for GI protection under the Trademark Law?*
2. *What are the products eligible for GI protection under the Provisions on the Protection of Geographical Indication Products?*
3. *What are the products eligible for GI protection under the Measures for the Administration of Geographical Indications of Agricultural Products?*
4. *Could a GI be protected under two or more legislations at the same time? Is it necessary to get the protection under different systems?*

Products eligible for GI protection in China

The scope of products eligible for GI protection under the main three legal acts related to GI protection are different. In spite of that, almost all products are actually eligible for GI protection in China.

1. What are the products eligible to GI protection under the Trademark Law?

According to Article 16(2) of the *Trademark Law* GIs shall be signs “that identify a particular **good** as originating in a region, where a given quality, reputation or other characteristic of the goods is essentially attributable to its natural or human factors”. So only goods are eligible to GI protection under the *Trademark Law* and services are unqualified for such protection. The types and different categories of goods are not defined by *Trademark Law* and it can be inferred that all goods including agricultural and industrial goods are eligible for the protection.

2. What are the products eligible to GI protection under the Provisions on the Protection of Geographical Indication Products?

According to Article 2 of the *Provisions on the Protection of Geographical Indication Products* protection for “geographical indication products” (hereinafter “GI products”) are only available

*“...to those **products** which are named after geographical name after being examined and approved, which originate from a specific region, and whose quality, reputation or other characteristics depend on the natural factors and human factors of the area of production”.*

Therefore the protection under the *Provisions on the Protection of Geographical Indication Products* includes:

- The products originating from the plantation and breeding of this region;

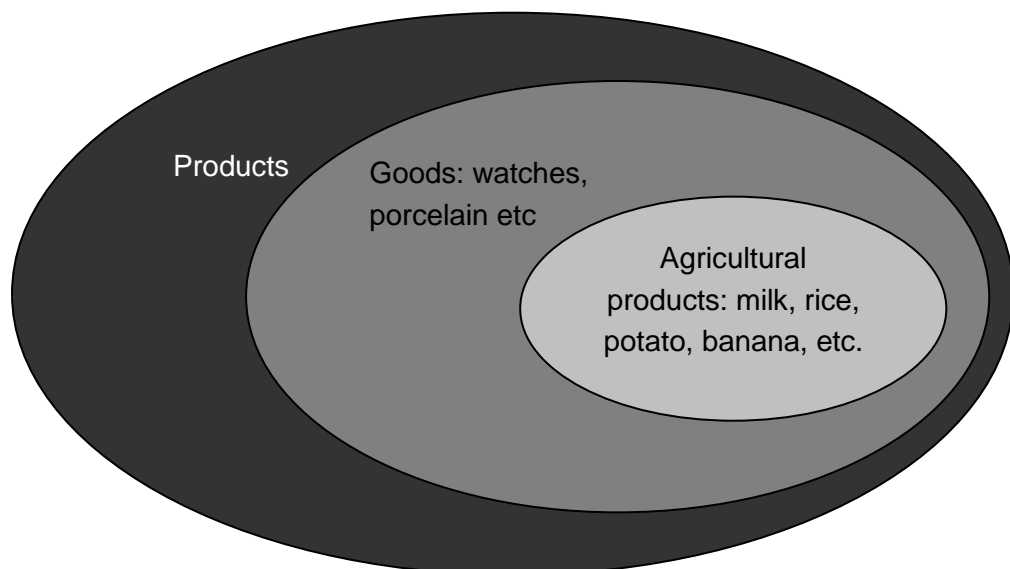
- The products produced and processed from raw materials coming entirely from a region or partly from elsewhere according to the specific techniques of this region.

So, any products meeting the requirements above are all entitled to protection for GI products. “Products” shall include both goods and services. Hence, it is not difficult to conclude that the scope of GI protection under the *Provisions on the Protection of Geographical Indication Products* is broader than that under *Trademark Law*.

3. What are the products eligible to GI protection under the Measures for the Administration of Geographical Indications of Agricultural Products?

Only agricultural products are eligible to the protection under the *Measures for the Administration of Geographical Indications of Agricultural Products*. Article 2(1) of the Measures defines “agricultural products” as primary agricultural products, among them plants, animals, microorganisms and the products thereof obtained in agricultural activities. Industrially processed products are excluded from the protection.

The scopes of the objects eligible for protection under three different legal acts can be shown as the following diagram:



4. Could a GI be protected under two or more legislations at the same time? Is it necessary to get the protection under different systems?

It is not only possible but exists in practice that a GI is protected under two of the three legal acts as mentioned above at the same time.

If a GI meets the requirements of all the three legal acts and is registered respectively under the three legal frameworks it could even be protected under all of them at the same time.

For example, “Zhangqiu Scallion” (章丘大葱), a kind of scallion planted in the city of Zhangqiu, Shandong Province, was registered as certification mark under *Trademark Law* in 1999.

In 2008, it was also registered as geographical indication of agricultural product (hereinafter “GIs of agricultural products”) under the *Measures for the Administration of Geographical Indications of Agricultural Products*.



If appropriate, it is necessary to apply for the GI protection under different systems at the same time when the GI meets the requirements for registration under different legislations, otherwise the GI can't get effective protection for GIs and the GI holder can't prevent a third party from dishonestly registering the GIs under the other systems.

Supposing a famous GI has been registered as a trademark but has not been applied for the registration of a GI product or a GI of agricultural product, some persons or enterprises other than the GI holder would plot to register it as GI product or GI of agricultural product and use the same name or mark to market their products. As a result, the GI holder can't effectively exploit his GI and the consumers would be misled as well.

Are industrial products eligible to GI protection in China?

Industrial products' eligibility to GI protection in China

GIs of Industrial products can be protected under both *Trademark Law* and *Provisions on the Protection of Geographical Indication Products*, but they can't get protection under the *Measures for the Administration of Geographical Indications of Agricultural Products*.

For example, the GI “Solingen” from Germany was registered as certification mark under the *Trademark Law* and “Wudi refined Porcelain” (无棣贝瓷) (“Wudi” is the name of a county in Shandong Province, China) was registered as GI products under the *Provisions on the Protection of Geographical Indication Products*.



What are the definitions of GI in China's Laws?

1. What is the definition of “geographical indications” in Trademark Law?
2. What are “GI products” under the Provisions on the Protection of Geographical Indication Products?
3. What are “GIs of agricultural products” under the Measures for the Administration of Geographical Indications of Agricultural Products?
4. What are the differences between these definitions?

Definitions of GI in China's Laws

Three different definitions of GI are provided in China's legislations: “geographical indications” in the *Trademark Law*, “GI products” in the *Provisions on the Protection of Geographical Indication Products* and “GIs of agricultural products” in the *Measures for the Administration of Geographical Indications of Agricultural Products*.

1. What is the definition of “geographical indications” in Trademark Law?

According to Article 16(2) of the China Trademark Law:

“Geographical indications” are signs “that identify a particular good as originating in a region, where a given quality, reputation or other characteristic of the good is essentially attributable to its natural or human factors”.

This definition is similar to that introduced by Article 22.1 of the *TRIPS Agreement* and the definition of protected geographical indications (PGIs) provided by Article 2.1(b) of the EU Regulation 510/2006.

Reference to the International Treaty

Article 22.1 of the *TRIPS Agreement* defines geographical indications as *“indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”*

Reference to European Legislation

Article 2.1(b) of the *EU Regulation 510/2006* defines a protected geographical indication as: *“the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:*

- *originating in that region, specific place or country, and*
- *which possesses a specific quality, reputation or other characteristics attributable to that geographical origin, and*
- *the production and/or processing and/or preparation of which take place in the defined geographical area”.*

The geographical indication can be the name of the geographical region, or other visible signs that indicate the origin of a commodity, but not the non-visible signs (i.e. sounds, scent, tastes and textures). For instance, the sign of Eiffel Tower representing Paris, the sign of kangaroo representing Australia, and the sign of Tian'anmen representing Beijing, are all qualified to obtain a trademark registration as GIs in China.

Reference to the Legal Act of China

Article 8 of the *Trademark Law* provides that any visible sign that can serve to distinguish the goods of a natural person, legal person, or other organisation from those of another, including any work, design, letter of the alphabet, numeral, three-dimensional symbol and color combination, or any combination of the above, may be made a trademark for application for registration. Therefore, the *Trademark Law* **does not apply to non-visible marks such as sound and smell**, and they cannot obtain registration of certification trademark and collective trademark as GIs.

The region of origin is not required to be fully consistent with the name or boundary of the current administrative division (in accordance with Article 8(2) of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*). For example, a GI designating a trans-border area can also be registered as trademark.

2. What are “GI products” under the Provisions on the Protection of Geographical Indication Products?

In accordance with Article 2 of the *Provisions on the Protection of Geographical Indication Products* GI products are:

“those products which are named after a geographical name after being examined and approved, which originate from a specific region, and whose quality, reputation or other characteristics depend on the natural factors and human factors of the area of production”.

GI products include:

- the products originating from the plantation and breeding of this region;
- the products produced and processed from raw materials coming entirely from a region or partly from elsewhere according to the specific techniques of this region.

This definition is similar to the definition of protected designations of origin (PDOs) provided in Article 2.1(a) of EU Regulation 510/2006.

Reference to European Legislation

Article 2.1(b) of the *EU Regulation 510/2006* defines a protected geographical indication as: *“the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:*

- *originating in that region, specific place or country, and*

- which possesses a specific quality, reputation or other characteristics attributable to that geographical origin, and
- the production and/or processing and/or preparation of which take place in the defined geographical area”.

GI products must be those products which are named after geographical names, which originate from a specific region, and whose quality, reputation or other characteristics depend on the natural factors and human factors of the area of production. It indicates that GI products must be named after geographical name, and non-geographical name cannot be registered. Therefore, the scope of GI products is not as large as GIs in *Trademark law*.



Moreover, the name of a GI product is generally composed of a geographical name and the generic name of the product. The examples are “Longjing Tea” (龙井茶) and “Shaoxing Yellow Wine” (绍兴黄酒).



3. What are “GIs of agricultural products” under the Measures for the Administration of Geographical Indications of Agricultural Products?

According to Article 2(2):

“GIs of agricultural products” are special agricultural product indications, which are named after geographical names and are meant to tell that the indicated agricultural products are from a specific area and that the quality and major characteristics of the products mainly lie in the natural and ecological environment as well as cultural and historical factors of the area.

As indicated by this definition, the GIs of agricultural products must follow a name of a geographical area. Furthermore, it is required that a GI of agricultural product shall also be composed of the name of the geographical area and the generic name of the agricultural product (Article 7 of the *Measures for the Administration of Geographical Indications of Agricultural Products*). It is consistent with the definition of GI products, but differs from the GIs in the *Trademark Law*.

4. What are the differences between these definitions?

The differences between the three definitions, namely the “geographical indications” in the *Trademark Law*, the “GI products” in the *Provisions on the Protection of Geographical Indication Products* and the “GIs of agricultural products” in the *Measures for the Administration of Geographical Indications of Agricultural Products* are the following:

- The different scopes of products to which they apply: the geographical indications in the *Trademark Law* apply to “goods” whose scope does not include services; the GI products apply to “products” including service theoretically; while the GIs of agricultural products apply only to agricultural products and any industrially processed products are excluded from the protection scope. Thus it can be concluded that the scope of GI products is the broadest whereas that of the GIs of agricultural products is the smallest, and that of geographical indications is the medium between them.
- They consist of different constituent factors: the GI products and GIs of agricultural products can only be named after geographical names and shall be composed of geographical names and the generic names of the products. The GI product “Jinhua Ham” and the GI of agricultural product “A-cheng Rice” can serve as the examples. The geographical indications can consist of geographical names or signs other than geographical names. Furthermore, the geographical indications can include the generic names of the products, just as the example of “Zhangqiu Scallion”, or do not include them, as the examples of “Longquanyi”(a geographical indication for a kind of juicy peaches originates from Longquanyi District of Chengdu City, Sichuan Province) and “Solingen”.

Protection Modes for GIs in China

What method does the Trademark Law adopt to protect GIs?

1. What are collective marks?
2. What are certification marks?
3. What are the differences between them?

Protection mode for GIs under the Trademark Law

GIs can be protected as collective marks or certification marks in accordance with the *Trademark Law*, in other words, GIs can be registered as collective marks or certification marks and receive the protection for trademarks under the *Trademark Law*.

1. What are collective marks?

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

Article 3 of Trademark Law

Collective marks can only be used by the members of the registrants and indicate that the users are the members of the registrants. Since a GI is usually used by the producers within a special geographical area, it can be registered as collective mark by a group consisting of all the producers concerned.

2. What are certification marks?

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

Article 3 of Trademark Law

Since a GI can identify good as originating in a region, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin, it is qualified to be registered as certification mark and to certify the origin and a given quality or other characteristic of the goods.

3. What are the differences between them?

The differences between collective marks and certification marks are:

- Different functions: collective marks are used to indicate that the operators of the products are the members of the mark registrants whereas the function of certification marks is to guarantee the special characteristics of the products.
- Different users: only the members of the registrants can use collective marks and any nonmember party is forbidden to do so. Therefore the collective marks can be looked as “closed marks”. Certification marks can be used by any parties outside the registrants as long as their products meet the requirements stipulated by the regulations governing the marks and the registrants can’t refuse such use. Thus the certification marks are recognised as “open marks”.
- Collective marks can be used by the registrants whereas certification marks are forbidden to be done so (Article 20 of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

However, as far as the GI trademarks concerned, the differences between the collective marks and certification marks are actually not as obvious as above. According to the relevant provisions, if a GI is registered as a collective mark, any producer whose goods satisfy the conditions under which the GI is used may request the membership of the registrant who has the GI registered as a collective mark, and the registrant **shall accept the membership** in accordance with its articles of association; those who do not request the membership of the registrant may legitimately use the GI, and the registrant **is not allowed to prohibit such use**. If a GI is registered as a certification mark, any producer whose goods satisfy the conditions under which the GI is used may request the use of the certification mark, and the organisation in control of such certification mark **shall permit the use** (Article 6(2) of *Regulation for the Implementation of the Trademark Law*).

The GIs registered as certification and collective trademarks are both granted protection with the exclusive right to the use of the registered trademarks.

What methods do the Provisions on the Protection of Geographical Indication Products and the Measures for the Administration of Geographical Indications of Agricultural Products adopt to protect GIs?

1. *What are the differences between the protection for GIs registered as trademarks and the sui generis protection for GI Products and the GIs of Agricultural Products?*
2. *What are the differences between the sui generis protection for GI products and that for the GIs of agricultural products?*

Protection mode for GI products and the GIs of agricultural products

The *Provisions on the Protection of Geographical Indication Products* and the *Measures for the Administration of Geographical Indications of Agricultural Products* provide special protection for GIs. In other words, both of them are *sui generis* legislations for GI protection and are similar to EU Regulation 510/2006 and Regulation 1234/2007.

1. What are the differences between the protection for GIs registered as trademarks and the *sui generis* protection for GI Products and the GIs of Agricultural Products?

The main differences can be listed as following:

- In the system of the *Trademark Law* GIs registered as collective marks or certification marks are protected in the same ways as other trademarks and shall not be granted special separate status. But the *Provisions on the Protection of Geographical Indication Products* and the *Measures for the Administration of Geographical Indications of Agricultural Products* provide special protection, i.e. *sui generis* protection for GIs and grant them separate legal status other than trademarks.
- The competent administrative authority for trademarks is the State Administration for Industry and Commerce of the People's Republic of China, (hereinafter "SAIC") whereas those for GI products and GIs of agricultural products are respectively the AQSIQ and the Ministry of Agriculture.
- To get the protection for collective marks and certification marks GIs shall be applied for the registration according to the procedure of trademark registration. The protection for GI products and GIs of agricultural products shall be granted through the registration procedures stipulated by the *Provisions on the Protection of Geographical Indication Products* and the *Measures for the Administration of Geographical Indications of Agricultural Products*.

In the circumstances of the *Trademark Law* the conflict between GIs and trademarks appears as the conflict between two trademarks and can be settled according the relevant rule, i.e. the first-to-file principle of the *Trademark Law* whereas the conflict between GI products, GIs of agricultural products and trademarks can't be settled according to the principle.

Additional information on the national authorities

For more detailed information about SAIC, please refer to its official website (in English): <http://www.saic.gov.cn/english/index.html>

2. What are the differences between the sui generis protection for GI products and that for the GIs of agricultural products?

Although both the *Provisions on the Protection of Geographical Indication Products* and the *Measures for the Administration of Geographical Indications of Agricultural Products* provide *sui generis* protection for GIs, some differences exist between them:

- The different scopes of products to which they apply: GIs of agricultural products apply only to agricultural products and industrially processed products are excluded from the protection, whereas the GI products apply not only to agricultural products but also to any other products including industrial products.
- The different competent administrative authorities: the AQSIQ is in charge of the registration and protection of GI products while the Ministry of Agriculture takes charge of the GIs of agricultural products.
- The different registration procedures: the application for the registration of GI products shall be examined and processed according to the procedure stipulated by the *Provisions on the Protection of Geographical Indication Products* while the registration of GIs of agricultural products shall be conducted in accordance with the *Measures for the Administration of Geographical Indications of Agricultural Products*.

Registration of GIs in China

How to register a GI as collective mark or certification mark in China?

1. Who can apply for the registration of GI trademarks?
2. Can foreign person apply for the registration of GI trademarks?
3. What information shall the application documents include?
4. What content shall be included in the regulation governing the use of a collective mark?
5. What content shall be included in the regulation governing the use of a certification mark?
6. How to submit an application to the Trademark Office?
7. Shall the application be addressed in Chinese?
8. What is the procedure for the Trademark Office to register a trademark?

Registration of a GI as collective mark or certification mark

The common trademark registration procedure applies directly to the registration of GI trademarks, but some special rules and requirements must be fulfilled.

1. Who can apply for the registration of GI trademarks?

Applicant for the registration of a GI as collective mark or certification mark shall be a society, an association or any other organisation.

Applicant for the registration of a GI as collective mark shall be composed of members from within the region indicated by the GI. The applicant shall have documents certifying its qualification as applicant, indicate in detail the names and addresses of the members of the applicant and submit the detailed information about its professionals and special testing equipments or about other organisation authorised by it to show its capability of supervising the particular quality of the goods to which the GI applies (Article 4 of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

Applicant for the registration of a GI as certification mark shall furnish documents certifying its qualification as applicant and submit detailed information about its professionals and special testing equipments or of other organisation authorised by it to show its capability of supervising the particular quality of the goods to which the certification mark applies (Article 5 of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

2. Can foreign person apply for the registration of GI trademarks?

Yes. According to Article 17 of *Trademark Law* any foreign person or foreign enterprise intending to apply for the registration of a trademark in China shall file an application in accordance with any

agreement concluded between the People's Republic of China and the country to which the applicant belongs, or according to the international treaty to which both countries are parties, or on the basis of the principles of reciprocity. Furthermore, foreign person or foreign enterprise intending to apply for the registration of a trademark or for any other matters concerning a trademark in China shall appoint an organisation officially designated by China government to act as his/its agent (Article 18 of the *Trademark Law*).

Foreign person or enterprise applying for the registration of a GI as a collective mark or a certification mark shall furnish documents certifying that the GI, in his/its name, is under the legal protection in the country of origin (Article 6(2) of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

The foreign person or enterprise mentioned above only refers to the foreigner having no habitual residence or place of business in China (Article 7(3) of the *Regulation for the Implementation of Trademark Law*). In other words, if a foreigner has habitual residence or place of business in China the restriction mentioned above on foreign applicant does not apply to him/her.

Up to 27 July 2010, 33 foreign GIs had been registered as certification marks or collective marks in China.

Statistics and additional information

See "The List of registered GIs in China (as of 27 July 2010)". This list is only in Chinese and is available on the website of the China's Trademark Office, last updated on 17 January 2011: <http://sbj.saic.gov.cn>

Reference to the Legal Act of China

The *Measures for the Registration and Administration of Collective Marks and Certification Marks* were promulgated by the State Administration for Industry and Commerce of the People's Republic of China on 17 April 2003. The English version is available at: <http://202.108.90.115/english/show.asp?id=60&bm=fffg>

3. What information shall the application documents include?

Applicant for the registration of a GI as collective mark or certification mark shall present the following information in the application documents:

- the given quality, reputation or any other characteristics of the goods indicated by the GI;
- the correlation between the given quality, reputation or any other characteristics of the goods and the natural and human factors of the region indicated by the GI;
- the boundary of the region indicated by the GI (Article 7 of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

4. What content shall be included in the regulation governing the use of a collective mark?

An applicant for registration of a GI as collective mark or certification mark must submit a regulation governing the use of the relevant mark (Article 13(5) of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

The regulation governing the use of a collective mark shall include:

- the purpose of using the collective mark;
- the quality of the goods to which the collective mark applies;
- the procedures to use the collective mark;
- the rights and obligations entailed in the use of the collective mark;
- the members' liability for their breach of the regulation;
- the system of registrant's inspection and supervision over the goods to which the collective mark applies (Article 10 of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

5. What content shall be included in the regulation governing the use of a certification mark?

The regulation governing the use of a certification mark shall include:

- the purpose of using the certification mark;
- the particular quality of the goods certified by the certification mark;
- the requirements to use the certification mark;
- the procedure to use the certification mark;
- the rights and obligation entailed in the use of the certification mark;
- the user's liability for breach of the regulation;
- the system of the registrant's inspection and supervision over the goods to which the certification mark applies (Article 11 of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

6. How to submit an application to the Trademark Office?

The application can be delivered to the Trademark Office by applicant or his/her agent directly or be sent by mail. If the application is submitted by a foreigner it shall be delivered directly or mailed to the Trademark Office by his/her agent.

7. Shall the application be addressed in Chinese?

Yes. The application for trademark registration and other matters related to trademark shall be provided in Chinese language. If any certificate, certifying document or evidence submitted to the authorities is written in a foreign language, a Chinese translation shall be attached thereto, or it shall be deemed that the certificate, certifying document or evidence has never been submitted

(Article 8 of the *Regulation for the Implementation of Trademark Law*). What's more, if a trademark is, or consists of, foreign words, their meanings shall be clarified in Chinese (Article 13(6) of the *Regulation for the Implementation of Trademark Law*).

8. What is the procedure for the Trademark Office to register a trademark?

If the application formalities are complete and the application documents are in compliance with the requirements, the Trademark Office shall accept the application and notify the applicant in writing; otherwise, the Trademark Office shall not accept the application and notify the applicant in writing, explaining why it cannot be accepted. However, if the formalities of the application for registration are basically complete or the application documents are basically in compliance with the provisions, but some supplements or corrections need to be made, the Trademark Office shall notify the applicant to make supplements or corrections to the specified parts of the application and deliver the supplements and corrections to the Trademark Office within 30 days from the date of receipt of the notification. If the supplements or corrections are not been made, the application shall be considered abandoned (Article 18 of the *Regulation for the Implementation of Trademark Law*).

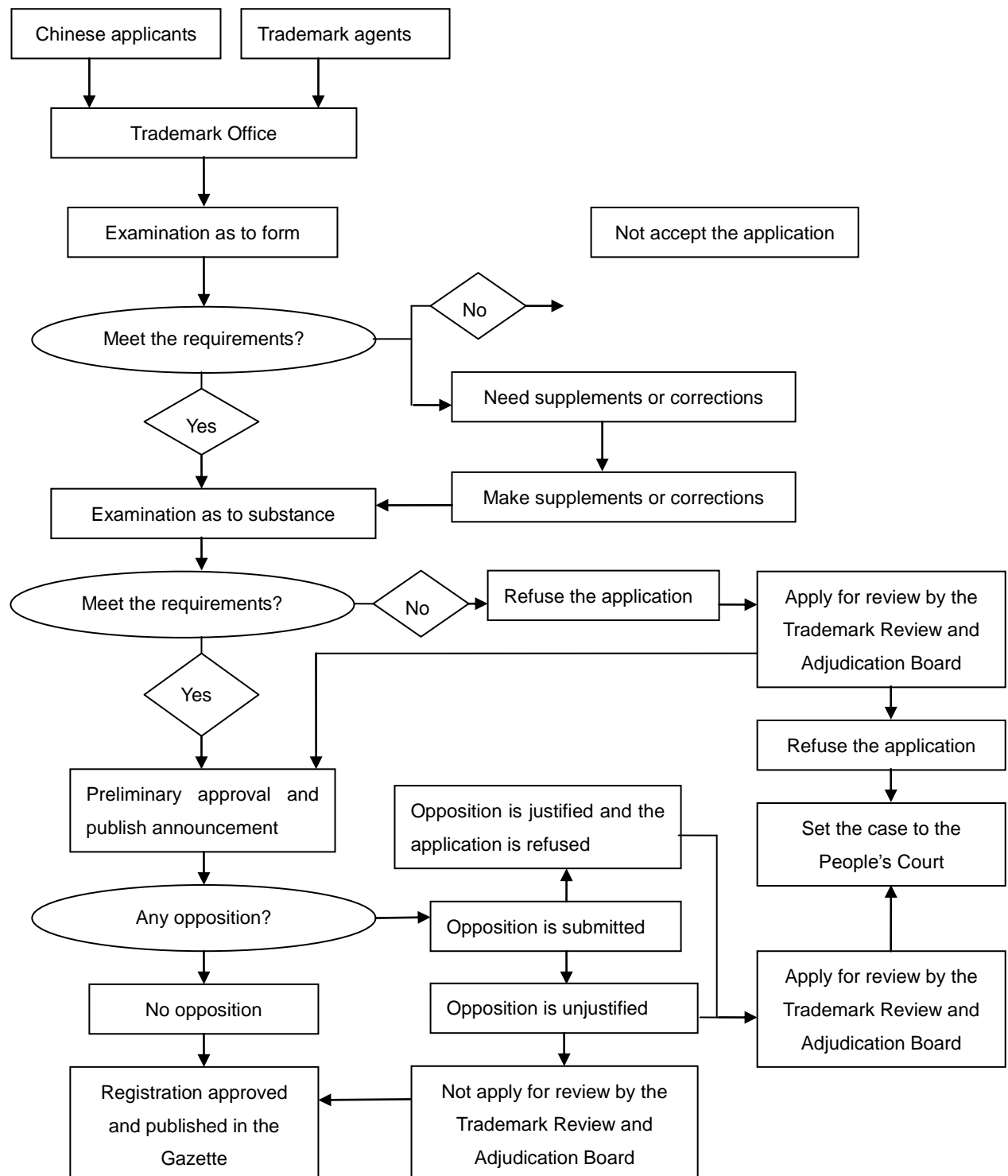
If the trademark to be applied for registration is in conformity with the relevant provisions of the *Trademark Law*, the Trademark Office shall, after examination, preliminarily approve the trademark and publish it (Article 27 of the *Trademark Law*). If the trademark to be applied for registration is not in conformity with the relevant provisions of the *Trademark Law*, or it is identical with or similar to the trademark of another person that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall refuse the application and shall not publish the said trademark (Article 28 of the *Trademark Law*). In this case the applicant shall be notified by the Trademark Office in writing. If the applicant refuses to accept the decision, he/she may, within 15 days from receipt of the notice, file an application with the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision and notify the applicant in writing. If he/she is not satisfied with the decision made by the Trademark Review and Adjudication Board, he/she may, within 30 days from receipt of the notice, submit the case to the People's Court, i.e. firstly to the Beijing No.1 Intermediate People's Court and then may also appeal to Beijing High People's Court if he/she is not satisfied with the first-instance judgment (Article 32 of the *Trademark Law*).

Any person may, within three months from the date of the publication, file an opposition to the preliminarily approved trademark. If an opposition is filed to the trademark that has, after examination, been preliminarily approved and published, the Trademark Office shall hear both the opponent and applicant state facts and grounds, and shall, after investigation and verification, make a decision (Article 33 of the *Trademark Law*). If it is decided that the opposition is justified, the registration shall not be approved, otherwise the registration shall be approved and a certificate of trademark registration shall be issued and the trademark shall be published in the Trademark Gazette (Article 34 of the *Trademark Law*). If any party is dissatisfied with the decision of the Trademark Office, an application for a reexamination shall be submitted to the Trademark Review and Adjudication Board within 15 days from receipt of the notification, the Board shall

make a decision and notify both the opponent and applicant in writing. If any interested party is still not satisfied with the decision made by the Board, it/he may, within 30 days from the date of receipt of the notice, submit the case to the People's Court in the same way as mentioned above.

If no opposition has been filed within these three months the registration of the trademark shall be approved and published in the Trademark Gazette (Article 30 of the *Trademark Law*).

The registration procedure is shown in the following diagram:



How to register a GI product under the Provisions on the Protection of Geographical Indication Products?

1. *Who can apply for the registration of a GI product?*
2. *What documents shall the applicant submit for the registration?*
3. *To whom shall the application be lodged?*
4. *What is the procedure for the registration of a GI product?*
5. *Can foreigner apply for the registration of a GI product?*

Registration of GI products

The registration of a GI product is subject to two levels of examination: firstly the application for registration shall be examined by the local competent authorities and then be forwarded to the competent authority at national level which shall reexamine it and grant approval for registration.

1. Who can apply for the registration of a GI product?

According to Article 8 of the *Provisions on the Protection of Geographical Indication Products* an application for the protection of a GI product shall be filed by the applicant institution for the protection of GI products as designated by the government at or above the county level, or shall be made by the association or enterprise accredited by the government, and the opinions of the relevant departments on the application shall be solicited. In other words, only institution, association or enterprise designated by government can apply for the registration of a GI product.

2. What documents shall the applicant submit for the registration?

An applicant shall submit the following documents:

- The proposal of the local government about the boundary of production area for the GI product;
- The documents of the local government about establishing an applicant institution or designating an association or an enterprise as the applicant;
- The certification materials of the GI product, which includes:
 - a. An application form for the protection of the GI product;
 - b. The descriptions of the name, type, boundary of production area, and geographical features;
 - c. The descriptions of the physical, chemical, sensory and other quality features of the product, as well as the relationship between them and the natural and human factors of the production place;
 - d. The technical norms for the production of the product (including the product processing techniques, safety and sanitation requirements and technical requirements for the processing equipment);
 - e. The descriptions of the popularity, production, sales and history of the product;
- The technical standards on the GI product.

All these requirements are provided by Article 10 of the *Provisions on the Protection of Geographical Indication Products*.

3. To whom shall the application be lodged?

An application for the protection of a GI product of an export enterprise shall be submitted to the local competent entry-exit inspection and quarantine bureau while an application filed on the basis of geographical origin for the protection of a GI product or any other application for the protection of a GI product shall be submitted to the local quality and technical supervision bureau (at or above the county level) (Article 11 of the *Provisions on the Protection of Geographical Indication Products*). That means the application must be addressed to local competent authorities at first and can't be submitted to the AQSIQ directly.

4. What is the procedure for the examination and registration of a GI product?

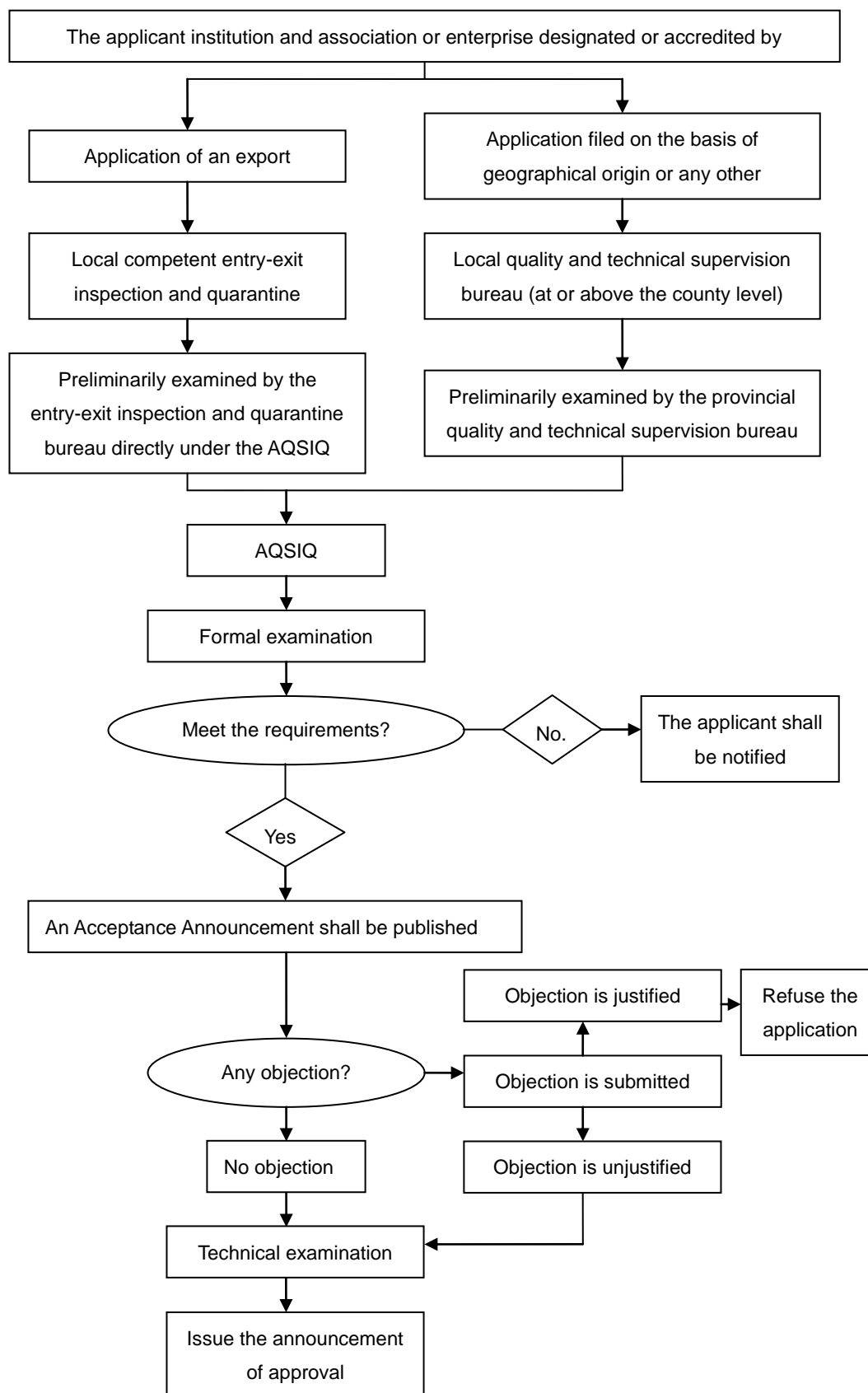
The provincial quality and technical supervision bureaus and the entry-exit inspection and quarantine bureaus directly under the AQSIQ shall, according to their respective functions, bring forward preliminary examination opinions on the applications for the protection of GI products and shall forward the relevant documents and materials to the AQSIQ (Article 12 of the *Provisions on the Protection of Geographical Indication Products*).

The AQSIQ, in its turn, conducts a formal examination of each application it receives. In case of positive outcome, the AQSIQ publishes an Acceptance Announcement in the Gazette and on the website of the AQSIQ (as well as through other mass media) to inform the public about the receipt of application. If an application fails to pass the formal examination, the AQSIQ shall give the applicant a written notification (Article 13 of the *Provisions on the Protection of Geographical Indication Products*).

If any relevant person or entity has any objection to an application, it may be raised to the AQSIQ within two months after the announcement is made (Article 14 of the *Provisions on the Protection of Geographical Indication Products*).

The AQSIQ shall organise an expert review committee to conduct a technical examination to those applications for which no objection has been raised or for which an objection has been raised but is was further rejected. If the expert review committee approved the application, the AQSIQ issues an announcement about the approval of the product as one under the protection of GI product (Articles 15 and 16 of the *Provisions on the Protection of Geographical Indication Products*).

The registration procedure is shown in the following diagram:



5. Can foreigner apply for the registration of a GI product?

Article 26 of the *Provisions on the Protection of Geographical Indication Products* provides that the AQSIQ accept the application for registration of foreign GI products and provide protection for them, but the specific measures for the registration and protection of foreign GIs shall be established separately. These specific measures are still not promulgated to this day. Although AQSIQ has so far registered 2 foreign GIs on the base of bilateral administrative cooperation with other countries, there is still no practical approach for a foreigner to apply directly to the competent authorities for the protection under the *Provisions on the Protection of Geographical Indication Products*.

How to register a GI of agricultural product under the Measures for the Administration of Geographical Indications of Agricultural Products?

1. Who can apply for the registration of a GI of agricultural product?
2. What documents shall the applicant submit for the registration?
3. To whom shall the application be lodged?
4. What is the procedure for the examination and registration of a GI of agricultural product?
5. Can foreigner apply for the registration of a GI of agricultural product?

Registration of GIs of agricultural products

The procedure for registration of GIs of agricultural products is similar to that of GI products. It is also subject to two levels of examination: firstly the application shall be submitted to provincial administrative departments of agriculture and shall be preliminarily examined by them. Then the application shall be forwarded to the Agricultural Product Quality Safety Centre under the Ministry of Agriculture together with the preliminary examination opinion. The Agricultural Product Quality Safety Centre shall reexamine the application and register the GI of agriculture if it meets the requirements of the *Measures for the Administration of Geographical Indications of Agricultural Products*.

1. Who can apply for the registration of a GI of agricultural product?

Applicants for the registration of GIs of agricultural products shall be professional cooperative economic organisations of farmers and industrial associations determined by the local government at or above the county level in accordance with the following conditions:

- They must have the capability for supervising and administering the GIs of agricultural products and the products thereof;
- They must be capable of providing guidance for the production, processing and marketing of agricultural products with GIs; and
- They must have the capability for bearing civil liabilities independently (Article 8 of the *Measures for the Administration of Geographical Indications of Agricultural Products*).

2. What documents shall the applicant submit for the registration?

The application for registration shall include the following documents:

- A registration application form;
- A certificate on the qualification of the applicant;
- A description on the typical characteristics of the product and a relevant inspection report on the quality of the product;
- The environment conditions of the production place of the product, the technical norms for production and the technical norms for product quality safety;
- A document determining the territorial scope, and a map of geographical distribution of the products;
- Sample of the product or pictures thereof; and
- Other necessary descriptive or evidentiary material (Article 9 of the *Measures for the Administration of Geographical Indications of Agricultural Products*).

3. To whom shall the application be lodged?

An application for the registration of a GI of agricultural product can't be submitted directly to the Ministry of Agriculture. It must be submitted to the local authority, namely the administrative department of agriculture under the government at the provincial level. This submission manner is similar to that of the application for the registration of a GI product under the *Provisions on the Protection of Geographical Indication Products*.

4. What is the procedure for the examination and registration of a GI of agricultural product?

The administrative department of agriculture under the provincial government must conduct the preliminary examination of the application documents and the on-site verification within 45 workdays from the date when the application has been accepted. Then it shall put forward the preliminary examination opinion.

If the application satisfies the relevant requirements, the application documents and the preliminary examination opinion shall be further filed to the Agricultural Product Quality Safety Centre under the Ministry of Agriculture. Otherwise, if not, the applicant would be notified of the opinions and suggestions from the administrative department of agriculture under the provincial government within 10 workdays from the date when the preliminary examination opinion comes out (Article 10 of the *Measures for the Administration of Geographical Indications of Agricultural Products*).

In its turn, the Agricultural Product Quality Safety Centre has to, within 20 workdays from the date when it receives the application documents and the preliminary examination opinion, examine the application documents, propose its examination opinion and organise experts to appraise (Article 11 of the *Measures for the Administration of Geographical Indications of Agricultural Products*).

If the expert committee is in favor of the application after appraisal, the Agricultural Product Quality Safety Centre would publish an announcement on approving the application on behalf of the Ministry of Agriculture.

If any entity or individual has any objection to the approval, it must be filed within 20 days from the date of the latest announcement with the Agricultural Product Quality Safety Centre (Article 12 of the *Measures for the Administration of Geographical Indications of Agricultural Products*). The Agricultural Product Quality Safety Centre shall convey the information about the objection to the administrative department of agriculture under the provincial government who shall put forward its disposal opinions on it. Then the Centre shall organise an expert committee to review the objection (Article 11 of the *Registration Procedure of the Geographical Indications of Agricultural Products*). If no objection has been received, the Ministry of Agriculture registers a GI and publishes an announcement about the registration. The *Certificate of the People's Republic of China on the Registration of Geographical Indications of Agricultural Products* would be consequently issued by the Ministry of Agriculture and the relevant technical norms and standards for the products concerned are made public (Article 12 of the *Registration Procedure of the Geographical Indications of Agricultural Products*).

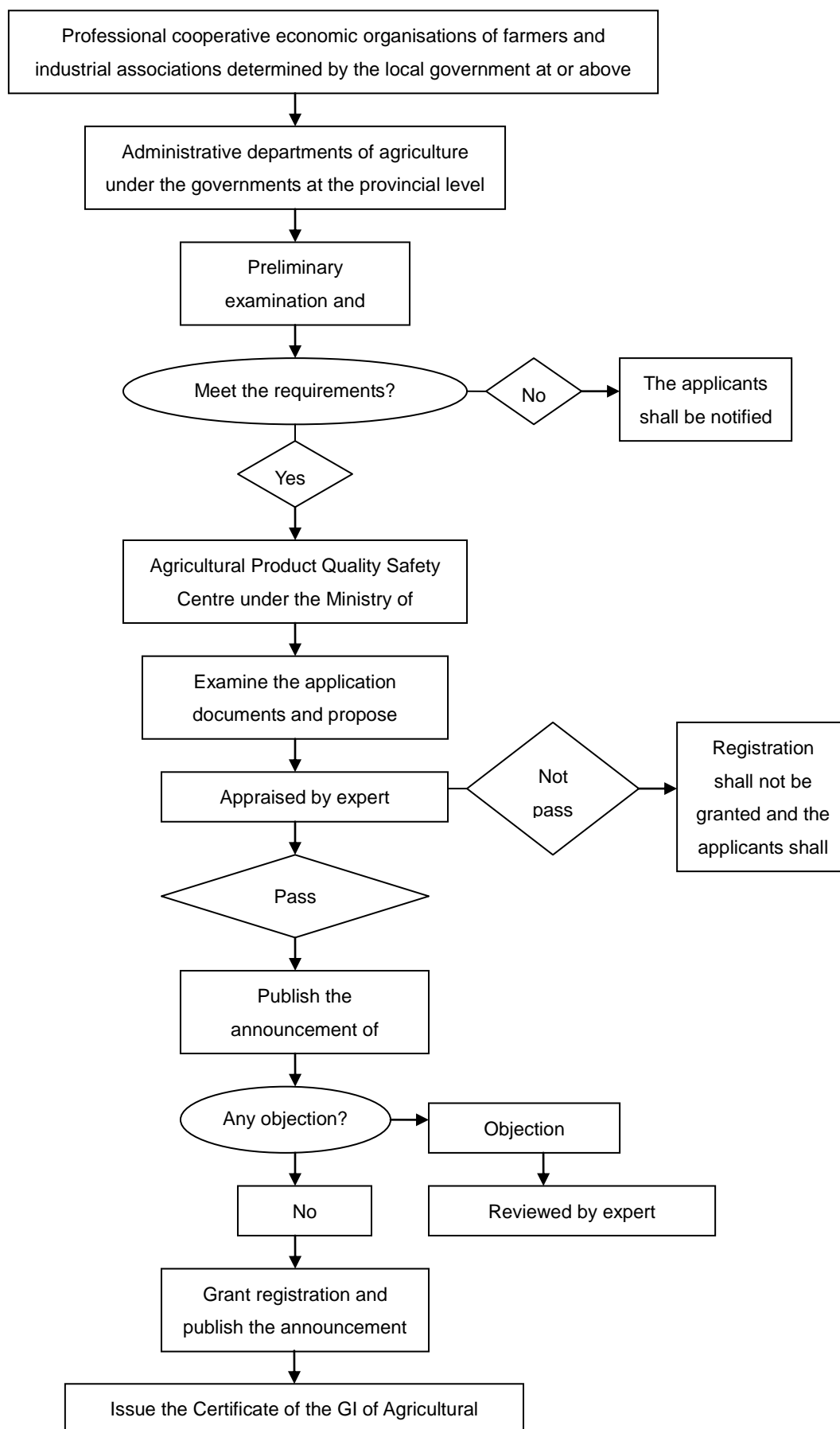
Reference to the Legal Act of China

The *Registration Procedure of the Geographical Indications of Agricultural Products* was promulgated by the *Bulletin No. 1071 of the Ministry of Agriculture* on 8 August 2008. The Procedure is available (only in Chinese) at:

http://www.moa.gov.cn/zwl/m/nybz/200808/t20080825_1168527.htm

The registration certificate of a GI of agricultural products issued by the Ministry of Agriculture is valid permanently.

The procedure is shown in the following diagram:



5. Can foreigner apply for the registration of a GI of agricultural product?

According to Article 24 of the *Measures for the Administration of Geographical Indications of Agricultural Products*, the Ministry of Agriculture accepts applications for the registration of GIs of agricultural products from foreign countries, and protects them once they have been registered in China. But the specific measures for foreign GIs shall be worked out in another initiative. This provision is similar to Article 26 of the *Provisions on the Protection of Geographical Indication Products*.¹ And similarly, these specific measures for the registration of GIs of agricultural products from foreign countries are also not promulgated to this day. Therefore foreign GIs can't be applied for the protection under the *Measures for the Administration of Geographical Indications of Agricultural Products* and no foreign GIs have been registered as GIs of agricultural products in China.

Are there special rules on homonymous GIs?

Rules on homonymous GIs

Only the *Measures for the Registration and Administration of Collective Marks and Certification Marks* provide special rules on this issue. Article 9 of the Measures provides that if several GIs for wines contain homophonous or homographic names and these GIs can be differentiated from each other and do not mislead the public, each GI may be applied for the registration as a collective mark or certification mark. This rule applies exclusively to the GIs for wines and is basically in conformity with Article 23.3 of the *TRIPS Agreement*.

Reference to the International Treaty

Article 23.3 of the *TRIPS Agreement* provides:

"In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled."

It is to be noted that small discrepancy exists between "homophonous or homographic names" and "homonymous names". "Homonyms" refer to the words that share the same spelling and the same pronunciation but have different meanings, while "homophones" share only the same pronunciation and "homographs" share only the same spelling. Therefore the scopes of homophones and homographs referred to in the *Measures for the Registration and Administration of Collective Marks and Certification Marks* are broader than that of homonyms referred to in Article 23.3 of the *TRIPS Agreement*.

Except for the above mentioned provision, neither the *Provisions on the Protection of Geographical Indication Products* nor the *Measures for the Administration of Geographical*

¹ Please refer to the answer to sub question 5 of Q8.

Indications of Agricultural Products provide rules on the issue of homonymous GIs.

Is it compulsory to pay fees for the registration? How much shall be charged?

1. *How much shall be charged for the registration of a GI as collective mark or certification mark?*
2. *Is it compulsory to pay fees for the registration of GI products and GIs of agricultural products?*

Fees for the registration of GIs

1. How much shall be charged for the registration of a GI as collective mark or certification mark?

Application for the registration of a GI as collective mark or certification mark for goods in one class shall be treated as a single application. The fee for each single application for registration is 3,000 RMB Yuan. If an applicant for the registration of a GI as collective mark or certification mark intends to use the mark for goods in different classes, he/she shall respectively submit application for each class according to the prescribed classification of goods and pay fees for each application.

Statistics and additional information

See “*How to apply for the Registration of GIs, Certification Marks and Collective Marks*”, 10 January 2009, available in Chinese on the website of the Trademark Office, last updated on 22 January 2011: http://sbj.saic.gov.cn/sbsq/sqzn/200901/t20090110_68047.html

It is to be noted that the period of validity of a registered trademark is 10 years. If the registrant intends to continue to use the registered trademark beyond the expiration of the period of validity, he/she shall pay a fee for the application for renewal of the registration. The fee for each such application is 2,000 RMB Yuan.

Statistics and additional information

See “*How to apply for the Renewal of the registered Trademark*”, 10 January 2009, available in Chinese on the website of the Trademark Office, last updated on 23 January 2011: http://sbj.saic.gov.cn/sbsq/sqzn/200901/t20090110_68046.html

2. Is it compulsory to pay fees for the registration of GI products and GIs of agricultural products?

No fee shall be charged for the registration of GI products and GIs of agricultural products.

Can foreign GIs be registered in China? How can they be registered?

1. Can foreign GIs be registered as collective marks or certification marks? How can that be done?
2. Can foreign GIs be registered as GI products and GIs of agricultural products?

Registration of foreign GIs in China

At present foreign GIs can be registered as collective marks and certification marks under *Trademark Law*. But no practical approaches are available for them to be registered as GI products under the *Provisions on the Protection of Geographical Indication Products* or as GIs of agricultural products under the *Measures for the Administration of Geographical Indications of Agricultural Products*.

1. Can foreign GIs be registered as collective marks or certification marks? How can they be done?

Yes, *Trademark Law* provides an approach for foreign GIs to get registration. In general, the application for the registration of foreign GIs shall be processed in accordance with the same procedure as that for domestic GIs. But some special requirements are provided in *Trademark Law* and other relevant regulations. For detailed information about these special requirements please refer to the answer to sub question 2 in Q7.

2. Can foreign GIs be registered as GI products and GIs of agricultural products?

Both the *Provisions on the Protection of Geographical Indication Products* and the *Measures for the Administration of Geographical Indications of Agricultural Products* provide positive clauses on this issue and promise to establish specific measures for the registration and protection of foreign GIs. However, the said specific measures have not been established so far and there is no practical approach for foreigners to apply for GI protection under both legislations.²

² For more detailed information on this issue, please refer to the answer to sub question 5 in Q8 and the answer to sub question 5 in Q9.

GI Logos in China

What are the logos of the registered GIs?

1. Are there special logos for GIs registered as collective marks or certification marks? What are the rules on the use of it?
2. What is the logo of a GI product?
3. What is the logo of a GI of agricultural product?

Logos of GIs in China

GIs registered as collective marks and certification marks, GI products and GIs of agricultural products are all accompanied with special logos.

1. Are there special logos for GIs registered as collective marks or certification marks? What are the rules on the use of it?

In 2007, the SAIC promulgated the *Measures for the Administration of the special logo for Geographical Indications*. According to Article 3 of the Measures the special logo shall consist of the name of “Trademark Office under the State Administration for Industry and Commerce of the People’s Republic of China” both in Chinese and English, the words “China geographical indication” in Chinese, the deformed characters “GI” and the figures of wheat and the Temple of Heaven. The basic colors of the logo are green and yellow. The special logo can be shown as following:



The legal users of the registered GIs can use this special logo on their goods, the packaging or containers of the goods, or use the logo in advertisement, exhibition and other commercial activities (Article 5 of the *Measures for the Administration of the special mark for Geographical Indications*). The special logo must be used together with the GIs and can’t be used separately (Article 7 of the *Measures*).

The logo must be used as the pattern promulgated by the Trademark Office and can’t be casually altered (Article 8 of the *Measures*).

No fee shall be charged for the use of the logo (Article 6 of the *Measures*).

Reference to the Legal Act of China

The *Measures for the Administration of the special mark for Geographical Indication* are available (only in Chinese) at: http://sbj.saic.gov.cn/flfg1/gfwj/200702/t20070206_54880.html

2. What is the logo of a GI product?

The special sign, i.e. the special logo for a GI product consists of the words “geographical indication protection product of the People’s Republic of China” in Chinese, the words “People’s Republic of China” in English, the name of the GI product and the deformed characters “PGI” in the figure of Chinese territory. The basic colors of the logo are green and yellow. The following logo of the GI product “Longjing Tea” (龙井茶) can serve as an example:



Since the names of GI products are displayed directly in the logos, the logos can be used alone and needn’t be accompanied with other marks or indications.

3. What is the logo of a GI of agricultural product?

A GI of agricultural products shall be a combination of a public mark and the name of the territorial product (Article 14 of the *Measures for the Administration of Geographical Indications of Agricultural Products*). The public mark consists of the name of “Ministry of Agriculture of the P.R.C.” both in Chinese and English, the words “Agro-product Geographical Indications” both in Chinese and English, the figure of the ear of wheat and the figures of the earth, sun and moon. The basic colors of the public mark are green and orange (Article 2 of the *Rules for the use of Geographical Indications of Agricultural Products*). The public mark is shown as the following pattern:



The public mark must be used together with the name of the territorial products and can't be used separately. This rule is similar to that for the use of the special logo for GIs registered as collective marks or certification marks referred to in the answer to sub question 1 of Q13.

Reference to the Legal Act of China

The *Rules for the use of Geographical Indications of Agricultural Products* were promulgated by the *Bulletin No. 1071 of the Ministry of Agriculture* on 8 August 2008. The Rules are available (only in Chinese) at: http://www.moa.gov.cn/zwl/m/nybz/200808/t20080825_1168527.htm

Use and Protection of GIs in China

Who is eligible to use the registered GIs and how to get the right to use them?

1. Who is eligible to use the GIs registered as collective marks or certification marks?
2. Who is qualified to use the special signs of GI products? How to get the right to use them?
3. Who can apply for using the GIs of agricultural products? How to get the license to use them?
4. Must the producers pay fees for the use of the GIs?

Use of registered GIs

1. Who is eligible to use the GIs registered as collective marks or certification marks?

If a GI is registered as a collective mark, any natural person, legal person or other organisation whose goods satisfy the conditions under which the GI is used may request the membership of the society, association or any other organisation that has the GI registered as a collective mark, and the society, association or any other organisation 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 organisation may also legitimately use the GI, and the society, association or any other organisation is not allowed to prohibit such use (Article 6(2) of *Regulation for the Implementation of the Trademark Law*).

If a GI is registered as a certification mark, any natural person, legal person or other organisation whose goods satisfy the conditions under which the GI is used may request the use of the certification mark, and the organisation in control of such certification mark shall permit the use.

If the use of a collective mark is authorised, the registrant shall issue the user a *License for the Use of Collective Mark*. If the use of a certification mark is authorised, the registrant shall issue the user a *License for the Use of Certification Mark* (Article 19 of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

2. Who is qualified to use the special signs of GI products? How to get the right to use them?

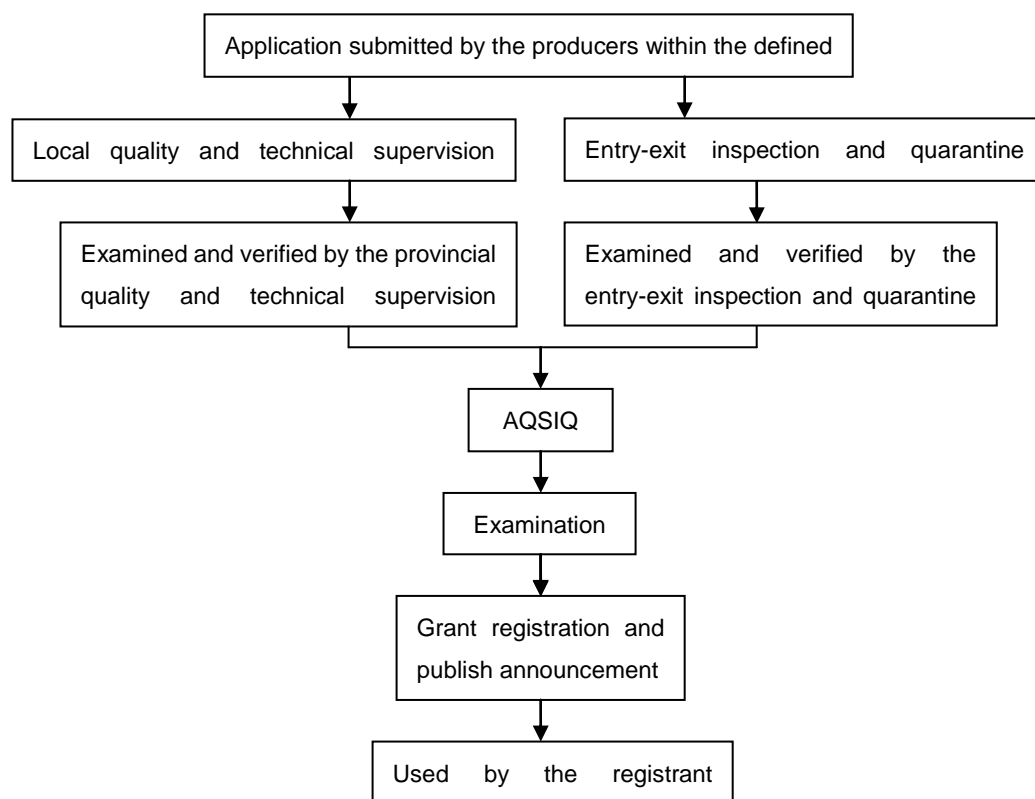
Only producers within the defined production area of a GI product are qualified to use the special sign, i.e. the special logo of the GI product. In order to use the special sign of the GI product, producers have to submit an application to the local quality and technical supervision bureau or entry-exit inspection and quarantine bureau. The following materials must be addressed:

- An application form for the use of the special sign for a GI product;

- A certification issued by the local competent department of the local government for the product originating from the specific geographical area; and
- An inspection report issued by the relevant product quality inspection institution (Article 20 of the *Provisions on the Protection of Geographical Indication Products*).

The application shall be examined and verified by the provincial quality and technical supervision bureau or the entry-exit inspection and quarantine bureau. Then if the application is examined and accepted as qualified by the AQSIQ, it shall be registered and an announcement of the registration must be published. Thereafter the applicant producers may use the GI sign on their products.

The procedure for the use of the special signs of GI products is shown in the following diagram:



No fees shall be charged for the application for and the registration of the use of the special sign for a GI product.

Thus, it can be seen that not only the protection for GI products must be applied for and registered, but the use of GI products is also to be applied for and registered. The AQSIQ is in charge of the registration of the protection for GI products as well as the approval and registration of the use of GI products.

3. Who can apply for using the GIs of agricultural products? How to get the license to use them?

Any producer may apply to the holder of the registration certificate of a GI of agricultural products for using the registered GI as long as he satisfies the following conditions:

- The agricultural product produced or traded by him originates from the geographical scope indicated in the registration certificate;
- The corresponding qualification for producing or trading the agricultural product concerned is obtained;
- Production and trading activities are conducted in strict accordance with the prescribed quality and technical norms; and
- The applicant must have the ability to develop and operate the market for the agricultural product (Article 15 of the *Measures for the Administration of Geographical Indications of Agricultural Products*).

An agreement on the use of a GI must be concluded between the users of the GI and the registration certificate holder on the basis of production and operation year, and the agreement shall bear the quantity and scope of the use as well as the relevant responsibilities and obligations.

The registration certificate holder may not charge fees for the use of GI from the users (Article 15 of the *Measures for the Administration of Geographical Indications of Agricultural Products*).

A user of a GI of agricultural products is entitled:

- To use the GI on the products produced and the packages thereof; or
- To use the registered GI for advertisement or participating in exhibitions or sales fairs (Article 16 of the *Measures for the Administration of Geographical Indications of Agricultural Products*).

4. Must the producers pay fees for the use of the GIs?

If a producer intends to use a GI registered as collective marks or certification marks, he/she is supposed to pay fees in accordance with the regulation governing the use of the relevant mark in the case that the regulation includes the provision on fees. It is also permitted that the owner of a GI trademark issue free use license to producers.

However, in the cases of GI products and the GIs of Agricultural products, as mentioned above, it is forbidden to charge any fees for the use of them.³

³ See the answers to sub questions 2 and 3 of Q14.

How are registered GIs protected in China?

1. How are GIs registered as collective marks and certification marks protected?
2. How are GI products protected?
3. How are GIs of agricultural products protected?

Protection for GIs in China

In China, GIs are under the protection of three different authorities, namely the SAIC, the AQSIQ, and the Ministry of Agriculture, and three different systems, namely the protection of collective and certification marks under the SAIC, the protection of GI products under the AQSIQ and the protection of GIs of the agriculture products under the Ministry of Agriculture.⁴ The GIs registered as collective marks and certification marks can get protection for trademarks under the *Trademark Law*, whereas the GI products and GIs of agricultural products are both under the special protection, i.e. *sui generis* protection under the *Provisions on the Protection of Geographical Indication Products* and the *Measures for the Administration of Geographical Indications of Agricultural Products*.

1. How are GIs registered as collective marks and certification marks protected?

The GIs registered as collective marks and certification marks are granted protection with the exclusive right to the use of the registered trademark. The trademark registrants can prevent the following infringements:

- using a trademark that is identical with or similar to the registered trademark on the same or similar goods without permission of the registrant of the trademark;
- selling goods that infringe on the exclusive right to the use of a registered trademark;
- counterfeiting, or making the sign of other person's registered trademark, or selling such sign without authorisation;
- altering a registered trademark without permission of the trademark registrant and selling goods bearing such an altered trademark on the market; and
- impairing in other manners the exclusive right of other person to use his/her registered trademark (Article 52 of the *Trademark Law*).

Furthermore, if a registered GI trademark is recognised as a well-known trademark it can receive special protection for well-known trademark. According to Article 13 of the *Trademark Law*, if a trademark of an identical or similar kind of goods is a reproduction, imitation or translation of another person's well-known trademark not registered in China and is liable to cause public confusion, no application for its registration may be granted and its use shall be prohibited. And if a trademark of a different or dissimilar kind of goods is a reproduction, imitation, or translation of

⁴ As mentioned above, apart from these, GIs are also protected under general rules laid down by the *Law against Unfair Competition*, the *Law on Product Quality* and the *Law on the Protection of Consumers Rights and Interests*. Please refer to the answer to sub question 2 of Q1.

another person's well-known trademark registered in China and it misleads the public so that the interests of the registrant of the well-known trademark are likely to be impaired, no application for its registration may be granted and its use shall be prohibited. What's more, if a trademark owner believes that the registration of his well-known trademark as an enterprise name by another person is likely to deceive or mislead the public he may apply to the competent registration authorities of enterprise names for the cancellation of the registration of the enterprise name. The competent registration authorities of enterprise names shall handle the case in accordance with the *Provisions on Administration of Enterprise Name Registration* (Article 53 of the *Regulation for the Implementation of Trademark Law*).

Reference to the Legal Acts of China

The *Regulation for the Implementation of Trademark Law*. The *Provisions on Administration of Enterprise Name Registration* referred to in this article was promulgated by Decree No. 7 of the State Administration for Industry and Commerce on 22 July 1991. The English translation of the Provisions can be accessed t:

http://www.foreignercn.com/index.php?option=com_content&view=article&id=1209

To implement the provisions on the GIs for wines and spirits under the *TRIPS Agreement*, China has provided special protection for the GIs of wines or spirits in the *Measures for the Registration and Administration of Collective Marks and Certification Marks*. Article 12 of the Measures stipulates that it is forbidden to use another party's registered GI for wines or spirits as a collective or certification trademark to identify wines or spirits not originating in the place indicated by the GI in question, even if the true origin of the goods is indicated or the GI is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.⁵

However, it is to be noted that the exclusive use of trademarks does not preclude "a fair use" as a particular notion.⁶ In the case of GIs registered as collective and certification marks, the registrants can't prohibit other persons' fair use of the GIs to designate the production places of their goods.

2. How are GI products protected?

The local quality and technical supervision departments and entry-exit inspection and quarantine departments are responsible for the protection of GI products. They shall investigate and deal with GI products infringement cases such as illegally:

- using or forging any name of GI or its special sign,
- using the name of a GI product on a product that doesn't meet the relevant standards and management norms,

⁵ The wording of the provisions of Article 12 is exactly the same as in Article 23.1 of the *TRIPS Agreement*.

⁶ Article 49 of the *Regulation for the Implementation of Trademark Law* provides as following: "Where a registered trademark consists of the generic name, design or model of the goods in question, or directly shows the quality, main raw materials, functions, intended purposes, weight, quantity or other characteristics of the goods in question, or consists of geographical names, the proprietor of the exclusive right to use the registered trademark shall have no right to prohibit the fair use thereof by another person."

- using any name or sign likely to result in confusion because of its similarity to a special sign or using any wording or logo likely to mislead the consumers (Article 21 of the *Provisions on the Protection of Geographical Indication Products*).

3. How are GIs of agricultural products protected?

According to Article 20 of the *Measures for the Administration of Geographical Indications of Agricultural Products* no entity or individual may forge or falsely use any GIs of agricultural products or any registration certificates.

Supervision and Administration of GIs in China

How are GIs supervised and administrated in China?

1. *How are GIs registered as certification and collective marks administrated and controlled?*
2. *Who undertake the supervision and administration of GI products? How do they control and supervise GI products?*
3. *Who undertake the supervision and administration of GIs of agriculture product? How is the supervision and administration conducted?*

The supervision and administration of GIs

1. How are GIs registered as certification and collective marks administrated and controlled?

The registrants of collective marks and certification marks shall administrate and control the use of their marks in accordance with the regulations governing the use of the marks concerned. If they fail to exercise effective administration of, or control on the use of the marks and, as a result, the goods to which the said marks apply fail to meet the requirements of the regulation governing the use of the mark and cause damages to consumers, the administrative authorities for industry and commerce shall order them to rectify the situation within a time limit. If the registrants refuse to do so, they shall be imposed a fine of three times of the illicit income, but not exceeding 30,000 RMB Yuan; in the absence of any illicit income, a fine of 10,000 RMB Yuan shall be imposed (Article 21 of the *Measures for the Registration and Administration of Collective Marks and Certification Marks*).

2. Who undertake the supervision and administration of GI products? How do they control and supervise GI products?

The local quality inspection departments shall conduct routine supervision and control which applies to:

- the range of production place of a GI product,
- the names of products,
- raw materials,
- production techniques,
- quality features,
- quality grade,
- quantity,
- packaging,
- marking,
- the print, issuance, quantity and information about the use of the special sign of the products,

- environment and equipment of production,
- as well as the standards compliance of the products (Article 22 of the *Provisions on the Protection of Geographical Indication Products*).

If a producer obtaining the permit to use a special sign of a GI product does not organise production according to the corresponding standards and management norms, or has not used the special sign on the protected GI product within 2 years, the AQSIQ shall withdraw the registration and prohibit the use of the special sign of GI product. The announcement of such actions of the AQSIQ shall be published subsequently (Article 23 of the *Provisions on the Protection of Geographical Indication Products*).

Any violation of the *Provisions on the Protection of Geographical Indication Products* shall be punished according to the *Law of the People's Republic of China on Product Quality*, the *Standardisation Law of the People's Republic of China* and the *Law of the People's Republic of China on Import and Export Commodity Inspection* by the quality and technical supervision departments and entry-exit inspection and quarantine departments.

Reference to the Legal Acts of China

The *Standardisation Law of the People's Republic of China* was adopted at the Seventh National People's Congress on 29 December 1988 and promulgated by Order No. 11 of the President of the People's Republic of China on 29 December 1988. The English version is available at:

http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383927.htm

The *Law of the People's Republic of China on Import and Export Commodity Inspection* was adopted at the 6th Meeting of the Standing Committee of the Seventh National People's Congress and promulgated by Order No. 14 of the President of the People's Republic of China on 21 February 1989, amended in accordance with the *Decision on Amending the Law of the People's Republic of China on Import and Export Commodity Inspection* adopted at the 27th Meeting of the Standing Committee of the Ninth National People's Congress on 28 April 2002. The English version is available at:

http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383913.htm

3. Who undertake the supervision and administration of GIs of agriculture product? How is the supervision and administration conducted?

The administrative departments of agriculture under government at or above the county level administer and supervise the GIs of agricultural products, as well as regularly supervise and examine the territorial scope of the agricultural products whose GIs have been registered and the use of such GIs (Article 18 of the *Measures for the Administration of Geographical Indications of Agricultural Products*).

The producers and operators of agricultural products with GIs shall establish a quality control tracing system. Holders of registration certificates and users of GIs shall be responsible for the quality and credibility of the agricultural products concerned (Article 18 of the *Measures for the*

Administration of Geographical Indications of Agricultural Products).

Any violation of the *Measures for the Administration of Geographical Indications of Agricultural Products* shall be punished according to the *Law of the People's Republic of China on Quality and Safety of Agricultural Products* by the administrative departments of agriculture under government at or above the county level.

Reference to the Legal Act of China

The *Law of the People's Republic of China on Quality and Safety of Agricultural Products* was adopted at the 21st Meeting of the Standing Committee of the Tenth National People's Congress on April 29, 2006. The English version is available at:

http://www.npc.gov.cn/englishnpc/Law/2008-01/02/content_1387986.htm

Annex

Information about the competent authorities for GI protection:

1. Trademark Office under the State Administration of Industry and Commerce (SAIC)

Address: Sanlihedonglu No 8, Xicheng District, Beijing

Postcode: 100820

Tel: 86-10-8865 1802, 86-10-68027820

Website: <http://sbj.saic.gov.cn/>

2. Department of Science and Technology under (AQSIQ)

Address: Madiandonglu No 9, Haidian District, Beijing

Postcode: 100088

Tel: 86-10-82262293

Website: <http://kjs.aqsiq.gov.cn/dlbzcpbhwz/>

3. Agricultural Product Quality Safety Centre under the Ministry of Agriculture (AQSC)

Address: Xueyuannanlu No 59, Haidian District, Beijing

Postcode: 100081

Tel: 86-10-62191443

Website: <http://www.aqsc.gov.cn/>



The European Patent Office (EPO) is the European implementing organisation for IPR2, and draws on expertise from its Member States in specific fields and the Office for the Harmonisation in the Internal Market (OHIM) on trademark and design.

www.epo.org
www.oami.europa.eu



中华人民共和国商务部
MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

The Ministry of Commerce (MOFCOM) is the IPR2 Chinese implementing organisation.

www.mofcom.gov.cn
www.ipr.gov.cn



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