



## The Legal Status and Selection of a Model for Geographical Indications for Agricultural Products in China: a Study

Feng Chon<sup>✉</sup>

Beijing University of Agriculture, Beijing, China

### Abstract

As a traditional agricultural country, China produces a wide range of diverse agricultural products. However, China's legislation on geographical indications (GI) for agricultural products is incomplete, existing in three different legal documents. Although China appears to be ready for an independent GI law, it has not yet been enacted, and the method of its administration remains unclear. China is faced with the choice of whether to adopt 'strong protection' or 'weak protection' in its GI legislation. This question is also directly related to the relationship between international GI treaties and domestic legislation. The protection of geographical indications of agricultural products in China lacks strategic design. The main legislative and administrative bodies are confused, and the specific legal documents at the national, provincial and municipal levels are imbalanced. The recommendation of this article is that, China should choose 'strong protection' for primary agricultural products and processed agricultural products with key characteristics, and 'weak protection' for other general agricultural products.

**Keywords:** geographical indications, legislative status, agricultural product, China

**To cite this article:** Feng Chong (2023). The legal status and selection of a model for geographical indications for agricultural products in China: a study. *Lex Genetica*, 2(2), 24–33 (In Russ.).  
<https://doi.org/10.17803/lexgen-2023-2-2-24-33>

Received: 14.06.2023

Review completed: 09.07.2023

Passed for printing: 20.07.2023

---

<sup>✉</sup>Email: [fengchong422@163.com](mailto:fengchong422@163.com)

# Исследование правового статуса и модели выбора географических обозначений для сельскохозяйственной продукции в Китае

Фенг Чонг✉

Китайский сельскохозяйственный университет, Пекин, Китай

## Аннотация

Как традиционная аграрная страна Китай имеет богатую и разнообразную сельскохозяйственную продукцию. Однако законодательство Китая о географических обозначениях (ГО) для сельскохозяйственной продукции является неполным и включает в себя три различных юридических документа. Хотя Китай, похоже, готов к принятию независимого закона о географических обозначениях, но он еще не вступил в силу, а его применение остается не ясным. Китай стоит перед выбором «сильной» или «слабой» защиты в своем законодательстве о географических обозначениях, что также напрямую связано с международными договорами о ГО и внутренним законодательством. Защита географических обозначений сельскохозяйственной продукции в Китае не имеет стратегического плана, основные законодательные и административные органы находятся в замешательстве, а конкретные правовые документы на национальном, провинциальном и муниципальном уровнях разрознены. В этой статье предлагается осуществить выбор в пользу «сильной» защиты ГО для первичной и переработанной сельскохозяйственной продукции, учитывая различные уровни ГО, и «слабую» защиту для других общих сельскохозяйственных продуктов.

**Ключевые слова:** географические обозначения, правовой статус, сельскохозяйственная продукция, Китай

**Для цитирования:** Фенг Чонг (2023). Исследование правового статуса и модели выбора географических обозначений для сельскохозяйственной продукции в Китае. *Lex Genetica*, 2(2), 24–33. <https://doi.org/10.17803/lexgen-2023-2-2-24-33>

Поступила в редакцию: 14.06.2023

Получена после рецензирования и доработки: 09.07.2023

Принята к публикации: 20.07.2023

## Introduction

China has traditionally been a large-scale agricultural country with a wide range of distinctive types of agricultural products. How-

ever, due to the wars and turmoil in modern times, much agricultural produce has been moved to other countries for re-cultivation.

✉Email: fengchong422@163.com

These superior recultivated products re-entered China with advantages such as cost and output, further affecting China's traditional agricultural products market.

In the late 1970s, China began to reform and open up. China has so far enacted a number of national protection laws in the field of geographical indications (GI) of agricultural products. The aim is to encourage the revival and development of Chinese agricultural products through the protection of geographical indications of agricultural products (Xiaobing & Kireeva, 2007). However, China has not chosen a legislative model at the theoretical level while implementing the legislation. This has led to confusion and overlapping at the current level of legislation on geographical indications of agricultural produce in China.

With the signing of bilateral trade agreements or geographical indication agreements between China and the United States and the European Union, the legislation on geographical indications of agricultural products in China's domestic laws requires convergence with international treaties (Qian & Dong, 2023). This article provides support for the choice of future legislative models and legislative integration by examining the current situation of China's legislation on geographical indications of agricultural products, as well as the problems it faces.

### Current status of legislation on geographical indications for agricultural produce in China

At present, China's legislation on geographical indications of agricultural products consists of a three-tier system. The Trademark Law, the Provisions on the Protection of Products with Geographical Indication and the Measures for the Administration

of Geographical Indications of Agricultural Products each regulate the protection of geographical indications of agricultural produce (Zhu, 2018). However, these three laws belong to different legal departments. The 'Trademark Law' belongs to the traditional intellectual property legislation, which classifies 'geographical indications' as a type of 'trademark'. The 'Provisions on the Protection of Geographical Indication Products' specifically regulates each category of 'geographical indication products' and does not clearly distinguish between different types of geographical indications. The 'Administrative Measures for Geographical Indications of Agricultural Products' focuses on the management of geographical indications of agricultural products (Zhang, Hu, & Li, 2016). By definition, 'geographical indication' in the Trademark Law requires the goods to be related to one of the natural or human factors of the region. On the other hand, 'geographical indications of agricultural products' in the 'Administrative Measures for Geographical Indications of Agricultural Products' is limited to primary agricultural products, excluding industrial products, handicrafts and other categories. In addition, the three systems have different standards for GI identification and registration approval procedures (Huang, 2003).

China's 'Civil Code' also regulates the content of 'geographical indications'. It treats GIs as an independent subject matter distinct from trademark intellectual property rights, indicating the possibility of separate legislation for GIs in the future. In 2020, the State Intellectual Property Office of China issued the 'Regulations on the Protection of Geographical Indications (Draft for Comment)', an important sign of independent legislation on geographical indications in the future

(Muehlfeld, & Wang, 2022). The draft act regulates the use of geographical indication product names and special geographical indication signs. It also clearly sets out the procedures for the application, examination, identification, revocation and amendment of geographical indications. However, as of August 2023, there has been no new progress in the independent legislation of geographical indications in China. The current laws regulating geographical indications of agricultural products are still set out in three legal documents.

### **Legislative issues relating to geographical indications of agricultural products in China**

When compared with independent legislation on geographical indications, the choice of a legislative model is a key issue in the protection of geographical indications of agricultural products in China. At the present time, the legislative model of geographical indications in China is faced mainly with the issue of choosing between ‘strong protection’ and ‘weak protection’, as well as the relationship between international treaties and domestic legislation (Wang, 2018).

On the one hand, as a traditionally large agricultural country, China has relatively broad range of agricultural products. As one of the largest countries in the world, the different provinces in China are distinguished by huge geographical differences (Yu & Wu, 2018). Northeast China lies in the cold temperate zone and is thus similar to the Far East of Russia or Ukraine. North China lies in the temperate zone and has four distinct seasons, which is unique in the world. Northwest China lies in the temperate zone and is distinguished by its low rainfall and cold winters, similar to Central Asia. South China

and Southeast Asia have similar but milder climates. In addition, the climate in China’s Tibetan region is even more unique.

The agricultural products of different regions with huge climatic differences also vary greatly. This forms the unique varieties of agricultural products in each province and county in China, thus shaping the cuisines and eating habits with huge differences in taste. Against this geographical background, and combined with the wanton plundering and destruction of agricultural products in modern China, in the 1980s Chinese lawmakers proposed ‘strong protection’ for the registration requirements of geographical indications. The aim was to protect the origin of many distinctive agricultural products from across China (Wang & Guo, 2020). This ‘strong protection’ model is seen as an imitation of the EU’s GI legal mechanism.

However, as trade relations between China and the United States are growing closer, lawmakers are beginning to realize that ‘strongly protected’ geographical indications are not conducive to increasing production, in the aims of achieving large-scale promotion of high-quality agricultural products. At the same time, in the early 20th century as an emerging superpower, most of the agricultural products of the United States come from Europe. It is thus expedient to promote agricultural products by making full use of the advantages in intensification, mechanization, large-scale planting and rearing of agricultural products. Therefore, China’s original ‘Trademark Law’ considers ‘geographical indications’ as a kind of trademark. The other two aforementioned legal documents were formulated, in order to ensure the protection of geographical indications, especially in relation to agricultural products with geographical indications.

It was mentioned above that China intends to formulate independent legislation on geographical indications. The inference is that China will adopt 'strong protection' legislation which may seem correct but is flawed. Firstly, the potential aim of the draft law is to replace the 'Regulations on the Protection of Geographical Indication Products', mainly in that which concerns management units and identification procedures. Secondly, the draft further clarifies and tightens the conditions for the identification of GIs, which will reduce the number of potential GIs in China at present. Finally, the draft does not specify how to deal with any overlap and conflict with the Trademark Law and the Measures for the Administration of Geographical Indications of Agricultural Products.

On the other hand, China's GI legislation also needs to be coordinated with international treaties. China and the European Union have signed the 'EU-China Landmark Geographical Indications Agreement', the 'Sino-US Phase One Economic and Trade Agreement' and the 'Regional Comprehensive Economic Partnership Agreement', among others (Hu, 2018; Volpin, 2021). Among these numerous free trade agreements, only some provide for specific geographical indications or mention the content of the protection of geographical indications. If the 'EU-China Landmark Geographical Indications Agreement' is taken as an example, then according to the principle of reciprocity, China and the counterparty countries will select the same number of geographical indications with their own characteristics and propose a list for protection. This raises some questions. Firstly, since different countries have different protection models for 'geographical indications', is there potential for conflict in the content of geographical indication

protection included in agreements signed between China and different countries? Secondly, if the same geographical indication has different protection standards in different countries, is there potential for the products when exported from one country to another to become contraband due to violation of the geographical indication protection agreement? Thirdly, if the second question is answered in the affirmative, will trade agreements other than GI protection be affected, thereby affecting volumes of trade?

### Requirements for the protection of geographical indications of agricultural products in China

In the case of triple protection and independent legislation on geographical indications in the future, the protection of geographical indications for agricultural products in China still faces many problems.

China currently lacks a clear strategy for the protection of geographical indications of agricultural products. Due to various reasons, China's geographical indications of agricultural products have for a long time been unprotected, while China's agriculture has been stuck in a state of ensuring production. After the reform process and opening up, the Chinese government has gradually attached importance to the role of geographical indications, encouraging all parts of the country to apply for geographical indications. However, when compared with European GIs, most of China's agricultural GIs are either not well known, or produce unstable or extremely low yields. This has led to the abuse of GIs in China, and under the current regulatory model, has not achieved the purpose of encouraging China's rural revitalisation. At present, China lacks a high-level concept for the protection

of geographical indications of agricultural products (Chen & Ma, 2022).

In order to highlight their own local characteristics, various provinces, counties and cities in China are promoting a large number of GI applications for agricultural products, but they are actually not very popular. There is also a lack of management bodies, breeding or planting standards, and unified supervision on the part of local industry associations. This has led to the registration of a large number of GIs in China, despite the small number of domestically famous products. In the international market, these products are not well known when compared to traditional geographical indications of agricultural products in Europe. This situation is neither in line with the Chinese government's initial assumptions about the protection mechanism for GI products, nor with the purpose of the GI system.

There are also problems with China's current legislation and administration of geographical indications of agricultural products. As stated above, the current legislation regarding geographical indications of agricultural products in China is divided into several legal documents. From the legislative point of view, geographical indications belong to the field of intellectual property rights. In actual fact, the authority in charge of geographical indications of agricultural products in China is not the Intellectual Property Office, but the Ministry of Agriculture and Rural Affairs. The Ministry of Agriculture and Rural Affairs and the provincial and municipal agricultural and rural bureaus are responsible for the application and identification of geographical indications of agricultural products. However, when the Trademark Law came into force, in order to regulate the geographical indications of agricultural products, the State In-

tellectual Property Office and the provincial and municipal intellectual property offices also became competent authorities for geographical indications of agricultural products. Judging from current practice, some GI applicants recognize GIs at both the IP Office and the Ministry of Agriculture and Rural Affairs, in order to obtain a higher level of protection for GIs. This not only fails to achieve a higher level of protection for geographical indications, but also creates redundancy in law enforcement. Since the different administrative units, the Intellectual Property Office and the Department of Agriculture and Rural Affairs do not share information and data in a synchronized manner, this can result in a large number of repeated applications for geographical indications. In fact, GIs of agricultural products in China are currently limited to the growth of quantity, but lack comprehensive and efficient management.

Thirdly, the current legislation on geographical indications for agricultural products is in fact far from adequate. Geographical indications of agricultural products have extremely strong regional characteristics. The laws at the central level need to provide uniform regulation of the application and identification standards and procedures for geographical indications of agricultural products. Moreover, specific protection measures and supervision mechanisms need to be regulated by provincial and municipal laws. At the present time, in addition to the legislation at the central level, the legislation on geographical indications of agricultural products at the local level mainly consists of local regulations at the provincial level. Some stipulate the relevant content of geographical indications according to the higher-level laws. In addition, many policy documents also mentioned support

for GI applications. However, these laws and policy documents rarely mention the support and supervision of the development of geographical indications for agricultural products. This has increased the number of GIs in China, but very few of them can be qualified as high quality GIs. Taking China's current geographical indications of agricultural products as an example, some provinces are blindly increasing production, in order to promote the influence of their own geographical indications. This results in a decline in the quality of agricultural products, affecting the financial budget of the regional agricultural and rural bureau. Nevertheless, the output of this kind of agricultural products is very small or has no relevant characteristics. On the other hand, the European Union's strategy for the protection of geographical indications for agricultural products combines the application, promotion, protection and development of geographical indications through legislation at EU, national and provincial levels, in order to ensure the long-term stability of production and quality of geographical indications of agricultural products and product popularity. This results in a steady increase in farmers' incomes in the region. At the same time, EU GIs have been successfully protected by an increasing number of countries through the signing of international treaties.

### Choosing a legislative model for geographical indications for agricultural products in China

Based on the above analysis, China's first challenge is the choice of protection mode for geographical indications of agricultural products. Faced with the choice between the 'strong protection' of the EU and the 'weak protection' of the United States,

based on the different levels of geographical indications of agricultural products, China needs to choose 'strong protection' for primary agricultural products and processed agricultural products with key characteristics, while 'weak protection' for other general agricultural products.

On the one hand, geographical indications of agricultural products based on China's unique germplasm resources need to be protected in order to prevent their loss. At the same time, processed agricultural products have higher added value and can be described as supporting the industries of certain counties and cities in China. They also need to be 'strongly protected', in order to prevent them from being gradually replaced.

From the perspective of China's long-term agricultural development, although germplasm resources do not mean high yield and high output value, they represent local characteristics and are representative and symbolic of local cultural values. At the same time, these resources have the potential of being transformed into high-quality goods and encouraging biodiversity. Certain geographical indications of primary agricultural products in China are based on germplasm resources. After long-term development, they still have a certain market share in the region, or represent local natural and cultural characteristics. However, these geographical indications of agricultural products are often concentrated in small areas. They are unable to be developed into large-scale production, and at any time can be completely replaced by superior agricultural products. Moreover, they are at a high risk of extinction. Therefore, a 'strong protection' model is required for their protection. Certain processed agricultural products with Chinese characteristics have already captured a large market share.



At the beginning of their development, local enterprises and governments took steps to protect them through trademark registration and other methods. As a result, interests in the development of related industries have not benefited farmers in the region. These processed agricultural products should be examined on this basis, and then guided, in order to achieve the orderly preservation and withdrawal of trademarks. Alternatively, this can be achieved through the operation of the common business association, in order to realize the collection of geographical indication interests as a whole.

One such example is China's Moutai liquor, which originated in the town of Moutai in Kweichow. Through the development of the wine industry through registered trademarks and other methods, the Kweichow Moutai has formed a mature industrial structure and become a local pillar industry. The wine industry in Maotai Town is currently led by the Kweichow Moutai, but many sorghum farmers have complained that the price of wine has been rising year by year, while the purchase price of sorghum has not increased. The Moutai Group has established goodwill through trademark registration and other means, so it is more difficult for Maotai Town to apply for the geographical indication of Maotai Town Liquor under the current legal system for the protection of geographical indications of agricultural products.

On the other hand, with regard to the majority of common agricultural products, China needs to adopt a weak protection method and promote agricultural development through trademark registration and other means. The application and supervision of geographical indications requires the cooperation of Chinese local governments, industry associations and enterprises,

in order to establish a long-term mechanism. At the present time, China's agricultural development is still quite fragmented. The output and quality of agricultural products with potential for geographical indication or trademark application can vary significantly (Zhao, Luo, Deng, & Yan, 2008). Trademark application has formed a relatively mature management system. As the subject of trademark applications, enterprises are able with the support of the government to obtain better economic value than when applying for geographical indications in the whole region through the development of upstream and downstream industries, as in the case of small-scale agricultural products.

In addition, in terms of legislation, the Chinese government needs to integrate the functions of the Ministry of Agriculture and Rural Affairs, the Intellectual Property Office and other departments, and to enact general legislation on the supervision and evaluation of geographical indications of agricultural products. At the same time, from a strategic point of view, China needs to define the quantity and distribution of primary agricultural products and processed agricultural products throughout the country through official censuses, in order to set out the foundation for the subsequent development of geographical indications of agricultural products.

## Conclusion

China's current legislation on geographical indications for agricultural products is fragmented into three legal documents with different levels of legal documents in local provinces, and includes many policy guidance documents. China's Ministry of Agriculture and Rural Affairs is directly responsible for the management of geographical indica-



tions of agricultural products, while the State Intellectual Property Office is also involved in the management of geographical indications from the perspective of intellectual property rights, especially trademark management. Based on the protection of China's high-quality germplasm resources and cultural heritage and the promotion of rural revitalization, the number of geographical indications of agricultural products in China is increasing day by day. However, there are not many well-known and high-quality geographical indications of agricultural products. China's current protection mech-

anism for agricultural geographical indications does not form a clear protection model. Based on the current situation of China's agricultural development, germplasm resources and current legislation, China needs to develop agricultural products at different levels, to encourage high-quality agricultural products, to apply for geographical indications, to encourage small-scale agricultural product producers to protect through trademarks, and thus integrate management units to promote high-quality agricultural products. As a result, geographical indications will receive more international protection.

## REFERENCES

- Chen, D., Ma, Y. (2022). Effect of industrial structure on urban–rural income inequality in China. *China Agricultural Economic Review*, 14(3), 547–566. <https://doi.org/10.1108/CAER-05-2021-0096>
- Hu, W. (2018). Reciprocity and Mutual Benefits: EU-China cooperation on and protection of geographical indications. CEPS Research Reports No. 2018/04, June 2018. Available at: [http://aei.pitt.edu/94154/1/RR2018\\_04\\_WHu\\_Gls.pdf](http://aei.pitt.edu/94154/1/RR2018_04_WHu_Gls.pdf)
- Huang, G. (2003). *Reconciling conflicts between trademark and geographical indications: how to protect geographical indications in China*. (Master thesis, University of Toronto). Canada. Available at: [https://tspace.library.utoronto.ca/bitstream/1807/120681/3/MQ84348\\_OCR.pdf](https://tspace.library.utoronto.ca/bitstream/1807/120681/3/MQ84348_OCR.pdf)
- Muehlfeld, K., Wang, M. (2022). Intellectual Property Rights in China – A Literature Review on the Public's Perspective. *Frontiers in Sociology*, 7, 793165. <https://doi.org/10.3389/fsoc.2022.793165>
- Qian, W., Dong, Y. (2023). Comparative study on the geographical indication protection between China and the European Union—From the perspective of the China-EU Geographical Indications Agreement. *Agricultural Economics*, 69(5), 185–201. <https://doi.org/10.17221/98/2023-AGRICECON>
- Volpin, G. (2021). *The Noodle Bowl Effect on the table of Geographical Indications—A case study on the GI-specific provisions of the Sino-EU and Sino-US Agreements*. (Master thesis, Ca' Foscari University of Venice). Available at: <http://dspace.unive.it/bitstream/handle/10579/20007/863619-1266410.pdf?sequence=2>
- Wang, X. (2018). Absolute protection for geographical indications: protectionism or justified rights?. *Queen Mary Journal of Intellectual Property*, 8(2), 73–88. <https://doi.org/10.4337/qmjip.2018.02.01>
- Wang, Z., Guo, J. (2020). Research on Legal Protection of Geographical Indications. *Learning and Education*, 9(3), 40–43. <https://doi.org/10.18282/l-e.v9i3.1569>
- Xiaobing, W., Kireeva, I. (2007). Protection of geographical indications in China: conflicts, causes and solutions. *The Journal of World Intellectual Property*, 10(2), 79–96. <https://doi.org/10.1111/j.1747-1796.2007.00315.x>
- Xu, Z., Feng, Y., Wei, H. (2022). Does geographical indication certification increase the technical complexity of export agricultural products?. *Frontiers in Environmental Science*, 10, 892632. <https://doi.org/10.3389/fenvs.2022.892632>
- Yu, J., Wu, J. (2018). The sustainability of agricultural development in China: The agriculture–environment nexus. *Sustainability*, 10(6), 1776. <https://doi.org/10.3390/su10061776>

- Zhang, H., Hu, D., Li, Y. (2016). Protection of geographical indications under China's intellectual property legal framework. *Australian Journal of Asian Law*, 17(2), 391–415. Available at: <https://ssrn.com/abstract=2938181>
- Zhao, J., Luo, Q., Deng, H., Yan, Y. (2008). Opportunities and challenges of sustainable agricultural development in China. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1492), 893–904. <https://doi.org/10.1098/rstb.2007.2190>
- Zhu, Y. (2018). Solutions to Overseas Protection of China's Geographical Indications. *Open Journal of Social Sciences*, 6(10), 146–160. <https://doi.org/10.4236/jss.2018.610012>

#### INFORMATION ABOUT THE AUTHOR:

**Feng Chong**, Assistant Professor of Law, Beijing University of Agriculture, Beijing, China

#### ИНФОРМАЦИЯ ОБ АВТОРЕ:

**Фенг Чонг**, доцент, юридический факультет, Китайский сельскохозяйственный университет, Пекин, Китай.