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## China, Peoples Republic of

### FAIRS Subject Report

### New MOA GI Law

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**Report Highlights:** The Ministry of Agriculture (MOA) recently published "Measures for Administration of Geographical Indications (GI) of Agricultural Products." This measure will go into effect on February 1, 2008. The Trademark Law of China and "Rules of Protection of Products of Geographical Indication" issued by General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) both also provide protection for GIs. These three competing registration systems have created an unclear legal environment and potentially weaken protections for companies registering geographical indications in China. This report contains an UNOFFICIAL TRANSLATION and should be used for informational purposes only.

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**Executive Summary:** The Ministry of Agriculture recently published “Measures for Administration of Geographical Indications (GI) of Agricultural Products.” This measure will go into effect on February 1, 2008. The issuance of GI registration system by the Ministry of Agriculture brings the total number of competing systems to three. Currently, the Trademark Law of China protects GIs in the form of certification marks or collective marks. Additionally, the “Rules of Protection of Products of Geographical Indication” issued by General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) also provides protection for GIs.

The three systems do not clearly indicate the level of interoperability or if approval in one GI registration system applies to all three. In fact, it appears that each is independent and registration in one system does not provide protection under the other two. Moreover, the lack of transparency is confusing to registrants because it creates an unclear legal environment by failing to clarify which system takes precedence. However, the trademark registration system under the Trademark Law is generally considered superior because of its higher legal power relative to the rules and measures used to administer the AQSIQ and MOA GI administration regimes.

BEGIN TRANSLATION

### **Measures for Administration of Geographical Indications of Agricultural Products**

Measures for Administration of Geographical Indications of Agricultural Products was reviewed and approved at the 15<sup>th</sup> Standing Committee Meeting of the Ministry of Agriculture on December 6, 2007 and now it is to be promulgated and will go into effect February 1, 2008.

Sun Zhengcai, Minister of the Ministry of Agriculture  
December 25, 2007

Measures for Administration of Geographical Indications of Agricultural Products

### **Chapter One - General Provisions**

**Article 1** In order to regulate the use of geographical indications of agricultural products, secure the quality and special characteristics of agricultural products of geographical indications and strengthen the market competitive capability of agricultural products, the Measures are established pursuant to relevant provisions of the Agriculture Law of the People's Republic of China and the Law of Quality and Safety of Agricultural Products of the People's Republic of China.

**Article 2** Agricultural products in the Measures refer to primary products from agriculture (i.e. plants, animals, microbiological organisms) and the products thereof.

The geographical indications of agricultural products refer to special indications of agricultural products named after a geographical area (name) indicating the products produced within the special area and their quality and characteristics depend on natural, historical and cultural factors.

**Article 3** The state shall implement a registration system for geographical indications of agricultural products. Registered geographical indications of agricultural products are protected by law.

**Article 4** Ministry of Agriculture is in charge of the registration of geographical indications of agricultural products. The Center of Agricultural Product Quality and Safety of MOA is responsible for professional examination and appraisal of geographical indication registration of agricultural products.

The agricultural department at the provincial level is in charge of application acceptance and preliminary examination of geographical indications for agricultural products in its administrative area.

MOA will establish an expert committee for the examination and appraisal of geographical indications of agricultural products. The committee consists of experts of plant, livestock husbandry, fishery and agricultural product safety.

**Article 5** The registration of geographical indication of agricultural products is free of charge. Agricultural departments at and above the county level shall put the expenses of the registration for geographical indication of agricultural products of the local area in its annual budget of the department.

**Article 6** Agricultural departments at and above county level shall put the protection and use of the geographical indications of agricultural products in their agriculture and countryside economy development plan and support it through policy and funding.

The state encourages all walks of life to participate and push the development of geographical indications of agricultural products.

## Chapter Two - Registration

**Article 7** An agricultural product registration a geographical indication must satisfy the following requirements:

- 1) the name consists of a geographical name and a generic name of the agricultural product;
- 2) the product has special characteristics or is produced with special methods;
- 3) the product quality and special characteristics mainly depend on the unique natural, historical and cultural factors;
- 4) the product is produced within the specified of area;
- 5) the production area and the product quality meet the compulsory technology standards.

**Article 8** The applicant for geographical indication of agricultural product must be farming professional cooperation organizations, industry associations, etc. appointed by the government at and above the county level based on following conditions:

- 1) with the corresponding capacity for supervision and administration of the geographical indication of the agricultural product and the product itself;
- 2) with the capacity for guiding the production, processing and marketing of the product;
- 3) with the capacity for civil obligation.

**Article 9** Those who satisfy the requirements for registration of geographical indications of agricultural products may apply to the agricultural department at the provincial level for registration with following documents:

- 1) Registration Application;
- 2) Qualification Certification of Applicant;
- 3) Description of the typical characteristics of the product and appraisal report of the product quality;

- 4) Environmental conditions of production area, production technology standards and standards of the product quality and safety;
- 5) Document confirming the production area range and map of production area;
- 6) Sample of the product or picture;
- 7) Other necessary description or demonstration documents.

**Article 10** Within 45 days from the day of acceptance of the application of geographical indication, the agricultural department of the provincial government shall complete a preliminary examination of application documents and scene examination and make a preliminary decision. For those satisfying the requirements, the preliminary decision with application documents shall be handed to the Center of Quality and Safety of Agricultural Products of MOA; for those not satisfying the requirements, the relevant decision and suggestions shall be delivered to the applicant within 10 days from the day on which the preliminary decision is made.

**Article 11** The Center of Quality and Safety of Agricultural Products of MOA shall examine the application documents, provide an examination report and organize experts to appraise the application within 20 days of the day of receipt of the application documents.

The examination is fulfilled by the Expert Appraisal Committee of Registration and Geographical Indication of Agricultural Products and the Committee shall reach an independent conclusion on the application and be responsible for it.

**Article 12** If an application passes the examination of the Expert Appraisal Committee, the decision shall be announced to the public by the Center of Quality and Safety of Agricultural Products on behalf of MOA.

Any objection to the decision by any organization or individual shall be submitted to the Center of Quality and Safety of Agricultural Products of MOA within 20 days from the last day of the announcement. If there is no objection, MOA will make a decision regarding the registration, publicize it, and issue the Certificate of Geographical Indication of Agricultural Products of the People's Republic of China as well as the product technology norms and standards.

If the application fails the examination of the Expert Appraisal Committee, MOA shall make a decision not to register it and inform the applicant of the decision and reasons.

**Article 13** Certificates of Geographical Indications of Agricultural Products have no validity limitation.

The holder of the Certificate can apply for changes under any of the following circumstances:

- 1) The holder of the Certificate or the legal representative changes;
- 2) The range of the area or the corresponding ecological environment changes.

**Article 14** Geographical Indications of Agricultural Products consist of the public common signs and the product name. The public common signs are attached below. The Rules of the Use of Geographical Indications of Agricultural Products shall be promulgated by the MOA separately.

### Chapter Three - Use of the Signs

**Article 15** Any organization and individual may apply to the holder of the Certificate of the Geographical Indication of Agricultural Product for use of the signs as far as it meets the following requirements:

- 1) The product comes from the registered range of the Geographical Indication of the Agricultural Product;
- 2) Having obtained the qualifications to produce and market the product;
- 3) Being capable of complying with the quality and technology norms in operation;
- 4) Being capable of marketing the product of the geographical indication.

The user of the geographical indication of the agricultural product shall enter into agreement on use of the signs of the geographical indication of the agricultural product with the holder of the Certificate, stipulating the amount, range of use and relevant obligations.

The holder of the certificate may not charge the user for use of the sign of geographical indication of agricultural product.

**Article 16** The holder of the Certificate of the Geographical Indication of the Agricultural Product owns following rights:

- 1) Use the sign on the product and its package;
- 2) Use the sign in marketing, show and exhibition.

**Article 17** The user of the sign of the Geographical Indication of the Agricultural Product shall bear the following obligations:

- 1) Accept the supervision of the holder of the Certificate of Geographical Indication of the Agricultural Product;
- 2) Maintain the quality and credit of the product;
- 3) Use the sign of the geographical indication of agricultural product properly.

#### **Chapter Four - Supervision and Administration**

**Article 18** The agricultural department at and above the county level shall strengthen the administration of geographical indications of agricultural products and examine the range of area of the product and the use of the sign at regular intervals.

Where the product of the geographical indication or the holder of the certificate does not comply with the provisions of article 7 and 8 of this Measure, MOA shall cancel the Certificate of the Geographical Indication of the Agricultural Product and announce it to the public.

**Article 19** The producer of the product of the geographical indication shall establish a quality control and evaluation system. The holder of the certificate of the geographical indication of the agricultural product and the users of the sign are responsible for maintaining the quality of the product.

**Article 20** Any organization or individual must not fake or counterfeit the signs and the certification of the geographical indication.

**Article 21** The state encourages units and individuals to supervise the use of geographical indications of agricultural products.

**Article 22** If the registration and supervision officials of the geographical indications of agricultural products misuses powers, neglect their duty or acts for their personal benefit, they will be punished legally; if it commits a crime, it will be transferred to judicial authorities.

**Article 23** Any violation of this Measure shall be handled by the agricultural department at or above the county level in accordance with the Agricultural Product Quality Law of the People's Republic of China.

## Chapter Five - Supplementary Articles

**Article 24** MOA shall accept applications for registration of foreign geographical indications of agricultural products in the People's Republic of China. The detailed procedures will be promulgated separately.

**Article 25** This Measure shall come into force as of February 1, 2008.

### Appendix:

Figure: Basic public logo design

