

Guide on how to determine generic names in the context of GIs protection procedures

(non-official English translation)

Article 1. [Basis] This Guide is formulated in accordance with the *Trademark Law of the People's Republic of China, Product Quality Law of the People's Republic of China, Regulations on the Implementation of the Trademark Law of the People's Republic of China, and Regulations on the Protection of Geographical Indication Product.*

Article 2. [Scope of Application] This Guide applies to the determination of generic names in the process of protecting geographical indications (GIs) and in administrative rulings.

Article 3. [Definition of Generic Names] A generic name in the context of the protection of GIs refers to a name which, though related to the place, region, or country where the products were originally produced or sold, has become the common name for products in China. Such name is used to refer to the products with specific production method, specific specifications, specific quality, specific type or specific category in China.

Article 4. [Principle] The GI to be applied for protection shall not be a generic name in China.

Article 5. [The Generic Name in a Compound Name shall not be protected] Where a GI is applied in the form of a compound name, if certain part of such compound name is or has become a generic name, such part shall not be granted GI protection.

Article 6. [Invalidation of Generic Name] If a GI protected in China has become a generic name, it can be invalidated in accordance with the relevant procedure.

Article 7. [Factors for the Determination] When examining whether a GI becomes a generic name, the following factors shall be comprehensively considered:

- (1) The use of the name as a specific type and category of products in the laws, the national standards, industry standards, and etc.;
- (2) The use of the name in the dictionaries, reference books, newspapers and internet in China;
- (3) The use of the products referred by the name during the production,

distribution and circulation of products in Chinese Market;

- (4) Whether the products referred by the name are produced outside the place of origin in a way that does not mislead the public on the origin of the products, and the trade situation of such products in China;
- (5) Other factors that may cause the name to become a generic name.

Article 8. [Information Disclosure] When making a GI protection declaration or an administrative ruling, the unprotected part in the compound name shall be published in accordance with the provisions of Article 5.

Article 9. [Follow-up Procedure] Any objection to the decision concerning a generic name or the announcement on unprotected part of the compound name shall be dealt with in accordance with relevant laws and regulations.

Article 10. [Implementation and Interpretation] This Guide shall enter into force from the date of promulgation. The National Intellectual Property Administration is responsible for the interpretation of this guide.