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TRIPs 和 TPP 背景下我国地理标志保护问题  
研究

**Study on the Geographical Indications Protection of China  
in the background of TRIPs and TPP**

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## 摘要

地理标志作为一种知识财产，逐步成为各国法律和国际条约所保护的對象，TRIPs 作为世界上保护地理标志适用性最广的多边协定，是所有成员都必须遵守的保护地理标志的最低标准。2015 年完成谈判的环太平洋国家主导的 TPP 代表了地理标志国际保护的新标准。研究 TRIPs 和 TPP 有助于把握国际知识产权的最新立法动态和趋势，具有理论和现实意义。本文通过文献分析、比较分析、案例分析、等研究方法，探索地理标志保护的基本理论、保护现状、与协定的差距及对策。全文共分为三章，主要内容如下：

第一章是关于 TRIPs 中对地理标志保护的相关规定和该协定实施以来对地理标志保护所作出的贡献以及在实施过程中出现的不足与缺陷，提出该如何去完善地理标志国际保护的具体建议。如明确公众对翻译标识的判断标准、对地理标志规定的一些概念应该予以统一的解释，明确规定通过何种方式保护同名地理标志以及地理标志权利人之间的权利义务，不应将“误导公众”作为侵权诉讼的必要条件，并且积极推进葡萄酒地理标志通知和注册的谈判。

第二章是选择了对区域产品的保护历史悠久的法国和地理标志资源稀少的美国，以及发展中国家的印度来分析各个国家的地理标志保护法律制度的演变。接着阐述我国地理标志保护的相关规定与 TRIPs 的差距，对葡萄酒烈酒的保护以及对善意使用规定的不同，同时应该将地理标志保护范围扩大到服务，对我国目前地理标志保护政出多门的状况，可以让三个部门各司其职。对地理标志司法保护问题，应明确规定当商标和已经注册的地理标志产生矛盾时的救济措施。

第三章是关于分析 TPP 中地理标志保护的最新发展，进而探讨了我国地理标志保护与国际接轨的问题，提出了我国地理标志保护的应对策略，例如，不应将地理标志进行区别性保护、扩大化保护，提高地理标志权利人的注册意识，规范注册和使用，对地理标志产品的质量监管以及标准化也具有必要性，地理标志产品的注册也不应区分行政区域，完善《商标法》并加强专门立法，加快建立双边地理标志通知与注册制度，加强地理标志信息公开的透明度。

**关键词：**地理标志；TRIPs；TPP

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## ABSTRACT

Geographical Indications, as an intellectual property, which gradually become the object under the protection of national laws and international treaties, all members must comply with the minimum standards for the protection of geographical indications. The regional trade agreement, which is most valued by all countries, is the Trans-Pacific Partnership Agreement (TPP), which is dominated by the Pacific Rim countries, which was negotiated by 2015. TPP represents the new trend of international protection of geographical indications. The study of TRIPs and TPP helps to grasp the latest legislative trends and trends of international intellectual property rights. In this paper, through literature analysis, comparative analysis, case analysis, and other research methods, explore the basic theory of the protection of geographical indications, the status quo protection and the gap between the agreement and countermeasures.

The full text is divided into three chapters, the main contents are as follows:

The first chapter is about the relevant provisions on the protection of geographical indications in TRIPs and the contribution of the TRIPs to the protection of geographical indications since the implementation of the TRIPs and the problems and disputes arising in the course of implementation. In view of the problems, how to improve the international protection of geographical indications specific recommendations. Such as clarifying the public's standard of judgment on the translation of the logo, some of the concepts specified in the geographical indication should be interpreted in a unified manner, clearly defined by the way to protect the same name between the geographical indications and the rights and interests of geographical indications, should not "mislead the public" As a necessary condition for infringement litigation, and actively promote the notification of wine geographical indications and registration.

The second chapter choose France which has a long history of protection for regional products and the United States whose Geographical Indications are scarce, and India, which is the developing countries like our country, to analyze the

legal systems for the protection of geographical indications in various countries. Then the paper expounds the gap between the relevant provisions of the protection of geographical indications and the TRIPs, the protection of wine spirits and the use of goodwill provisions of the different, while the scope of geographical indications should be extended to the service of China's current geographical indications to protect the status of government, you can let the three departments perform their duties. The judicial protection of geographical indications should specify the remedies when the trademark and the registered geographical indications are in conflict.

The third chapter is about the analysis of TPP in the latest development of geographical indications protection, and analyze how China should respond to opportunities and challenges that TPP bring to us. And then discusses the issue of the protection of geographical indications and international standards, and puts forward the countermeasures and suggestions for the protection of geographical indications in China. For example, it is not necessary to distinguish and protect geographical indications, to expand the protection, to improve the registration of geographical indications. It is also necessary to regulate the quality of geographical indication products and standardization. The registration of geographical indications products should not distinguish between the administrative regions, improve the Trademark Law and strengthen the special legislation, speed up the establishment of bilateral geographical indications notice and registration system, and strengthen the transparency of the disclosure of geographical indications.

**Key Words:** Geographical Indications; TRIPs ; TPP



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