

LEGAL PROTECTION ON GEOGRAPHICAL INDICATIONS IN ASEAN COUNTRIES

Khine Wai Lin¹

Abstract

Geographical indication is a symbol utilized on commodities that have a distinct topographical source and have characters or prominences that are because of that source. This paper describes why geographical indications are important to ASEAN countries, why we should protect geographical indications, and how we can protect geographical indications. The TRIPS Agreement, Madrid Agreement and Lisbon Agreement provide for the protection of geographical indications. In Myanmar, it should be raised legal awareness about valuable geographical indications more and more; effective implementation of cooperation with important organizations and industries is also needed for the protection of geographical indications. It should be enacted *sui generis* legislation for the protection of geographical indications in Myanmar.

Keywords: geographical indication, protection and source.

Introduction

A geographical indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.²

Geographical indications are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products.³ Feta cheese, Champagne, Pisco, Darjeeling tea, Basmati rice, and Parma ham are all examples of well-known geographical indications.⁴

A geographical indication right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards. For example, in the jurisdictions in which the Darjeeling geographical indication is protected, producers of Darjeeling tea can exclude use of the term “Darjeeling” for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the geographical indication.

Another example of GI is on 26 June 2023, the Registrar of trademarks determined a case that challenged the registration of a trademark and shed light on the registration of Geographical Indications in Kenya. In 2017, George Williamson & Co. limited (the proprietor) filed an application to register their mark “Tinderet Tea Farm” before the Registrar of trademarks at the Kenya Industrial Property Institute (KIPI). The Applicant got challenges that mark failed to meet the requirements for registration which was the term should have distinctive. The Applicants based their claims on three main issues namely: geographical description of the Tinderet area, distinctiveness of the mark, and registration of a geographical indication. The Applicants success those three issues and get GI protection. The Applicant was however partially successful in moving the Registrar to direct the Proprietor to record conditions of use of the ‘Tinderet Tea Farm’ trademark. These conditions were: that the mark will be used only on the tea grown in the Tinderet area; that the mark will be used to identify the origin of the Proprietor’s tea; and that the Proprietor will not use the mark in a manner that would cause negative reputation to the Tinderet tea growing and production area.

¹ Department of Law, Bago University.

² WIPO, (2021) *Geographical Indications, An Introduction*, Switzerland, Geneva.

³ https://www.wipo.int/geo_indications

⁴ Benavente, Daniela, (2013) *The Economics of Geographical Indications*, Geneva, Graduate Institute Publications.

It was, therefore, held that the trademark “Tinderet Tea Farm” is validly entered in the Register of Trademarks. In summation, the case is useful in contributing towards the understanding of the current Registry practice in registering and protecting geographical indications in Kenya, and the challenges faced in this regard. This is because it exposed the intricacies of geographical indications protection in Kenya and analysed collective and certification trademarks that have been incorporated in the law. However, a single comprehensive law tackling the issue of geographical indications protection in the country is still required so as to provide clarity and address emerging geographical indications issues.¹

However, a protected geographical indication does not enable the holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a geographical indication is usually obtained by acquiring a right over the sign that constitutes the indication.²

There are four main ways to protect a geographical indication:

1. so-called *sui generis* systems (i.e., special regimes of protection);
2. using collective or certification marks;
3. methods focusing on business practices, including administrative product approval schemes; and
4. through unfair competition laws.

Regarding crucial issues like the prerequisites for protection or the extent of protection, these approaches involve differences. The *sui generis* systems and collective or certification mark systems, on the other hand, share some characteristics, such as the establishment of rights for collective use by those who adhere to defined standards.

In general, geographical indications are protected in various national and regional systems using a wide range of strategies, frequently combining two or more of the strategies mentioned above. These strategies were created in accordance with various legal traditions and within the constraints of unique historical and economic circumstances.³

Materials and Methods

This research implements a qualitative method. It uses analytical research method. Data are collected from international conventions, all laws relating to trademark system and *sui generis* system in ASEAN countries. And some data are captured through studying on cases, published books, papers and websites.

Findings

In Myanmar, geographical indications are protected by trademark law that is included about geographical indications. Trademark system can only protect geographical indications as collective mark and certification mark. *Sui generis* legislation is needed for the protection of geographical indications in Myanmar. And it is also needed some agreements that our geographical indications will not become generic terms with some countries that will accept registration of our GIs. In ASEAN, it is required for effective single legal framework and Agreement for the protection of GIs. It is necessary to carry out specific minimum standards and functions for the protection of GIs in their ASEAN countries effectively.

¹ [https://cipit.strathmore.edu/a-case-for-geographical-indication-an-overview-of-the-tinderet-case.\(20.9.2023\)](https://cipit.strathmore.edu/a-case-for-geographical-indication-an-overview-of-the-tinderet-case.(20.9.2023))

² https://www.wipo.int/geo_indications.

³ <https://www.indiatimes.com/explainers/news/explained-what-are-gi-tags-which-products-have-been-added-to-the-list-recently-588077.html>

Discussion

International Rules Relating to Protection of Geographical Indications

A number of international treaties deal partly or entirely with the protection of geographical indications. The relevant treaties relating to geographical indications are administered by WIPO, as well as to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO).

National and regional laws governing the protection of geographical indications can vary country by country.

WIPO-administered treaties are provided general standards of protection as follows;

- (a) Paris Convention for the Protection of Industrial Property (1883) is the first major international agreement covering patents, designs and marks. In that Agreement, Article 10 and *10ter* of this Convention address false indications of the source of goods.¹ The Paris Convention, which was concluded in 1883, was the first multilateral agreement which included “indications of source or appellations of origin” as one of its objects of protection. The Paris Convention is of broad coverage as it not only deals with the repression of unfair competition, but also seeks to protect various types of industrial property, including patents, trademarks, industrial designs, utility models, service marks, trade names and geographical indications. As regards geographical indications, Article 1(2) provides that the treaty applies to “indications of source or appellations of origin”, and Article 10*bis*(3)(3) protects against “the use of [indications] which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quality of the goods” and
- (b) Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891) (“Madrid Agreement”): The Madrid Agreement provides for the situations under which the seizure of infringing goods may be requested and carried out – Article 1 provides that “all goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin, shall be seized on importation into any of the said countries”. While the Madrid Agreement did not add much to the protection already afforded by the Paris Convention, it extended protection to cover deceptive indications of source, in addition to false indications. In this regard, Article 3*bis* prohibits the use of all indications in the nature of publicity which is capable of deceiving the public as to the source of the goods, where such use is in connection with the sale, display or offering for sale of any goods.²

WIPO-administered treaties are governed registration systems for obtaining protection are as follows;

- (a) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958) (“Lisbon Agreement”): The primary aim of the Lisbon Agreement is to provide for the protection of appellations of origin⁹ in countries other than their country of origin. It does so by using one single registration procedure for an appellation, such that a single registration in one Member State would mean that a GI is protected in other Member States. Further, there is no requirement for international

¹ https://www.wipo.int/geo_indications/en/treaties.html.

² <https://v1.lawgazette.com.sg/2014-07/1085.htm>.

- renewal, given that the duration of the protection given by international registration is co-terminous with the protection as an appellation of origin in the country of origin,
- (b) Madrid Agreement Concerning the International Registration of Marks and
- (c) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (which also provides for the international registration of certification marks)

In those Agreements, the two important Agreements of geographical indications are TRIPS Agreement and Geneva Act of the Lisbon Agreement.

The TRIPS Agreement (Articles 22 to 24) addresses the international protection of geographical indications within the framework of the World Trade Organization (WTO.)

The term “geographical indications”, in its broad sense, includes a variety of concepts used in international treaties and national/regional jurisdictions, such as: appellation of origin (AO), protected designation of origin (PDO) and protected geographical indication (PGI). In particular, Articles 22, 23 and 24 of the TRIPS Agreement are concerned with the protection of GIs. While TRIPS does not establish a uniform standard of GI protection, it sets out the minimum standards to which each signatory must adhere to as part of its own internal legislation, as set out in Article 22 of the TRIPS Agreement.

Two levels of protection are offered in the TRIPS Agreement for: (i) all products; (ii) wines and spirits; and (iii) wines only.

The lower level of protection, which applies to all products, requires Members to “provide the legal means for interested parties to prevent ... the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good” Thus, in an action for infringement of a GI, the aggrieved party must prove that the GI is misleading to the public, or that the use thereof would constitute unfair competition.

In contrast, a higher level of absolute protection is accorded to wines and spirits, in that it is not necessary to prove misleading use of the GI. Article 23 of the TRIPS Agreement provides that Members are required to “provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or the like”.

The additional layer of protection accorded to wines only would be for signatories to accord protection for each geographical indication for wines in the case of homonymous indications, as well as the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in the jurisdictions of those Members participating in the system.¹ The distinction in the level of protection accorded to wines and spirits and of other products has been criticized to be discriminatory, not least from the perspective of developing countries, a majority of which are not producers of wines or spirits, but of agricultural foodstuffs.²

Article 24 of the TRIPS Agreement provides that members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under

¹ <https://v1.lawgazette.com.sg/2014-07/1085.htm>.

² <https://v1.lawgazette.com.sg/2014-07/1085.htm>.

Article 23 under the TRIPS Agreement.¹ For instance, “Geographical indication” is defined in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and also expressed in the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. “Appellation of origin” is defined in the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and in the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. “Protected Designation of Origin (PDO)” and “Protected Geographical Indication (PGI)” are terms used within the European Union.

The Geneva Act of the Lisbon Agreement allows all contracting parties to benefit from rapid, high-level and indefinite protection for geographical indications through a single registration. The Lisbon Agreement of 1958 is a treaty administered by the World Intellectual Property Organization (WIPO). It provides for the protection of appellations of origin (AO) e.g. Bordeaux wine, and their international registration. AOs are a special kind of GI for products that have a particularly strong link with their place of origin.²

The Lisbon System sets a legal framework to facilitate the international protection of AOs and GIs in 43 Contracting Parties, covering 72 countries in Africa, Asia, Europe, Latin America and the Caribbean, without the difficulties and costs of filing and managing multiple registrations before different authorities. Through a single registration procedure with the World Intellectual Property Organization (WIPO), in one language and with only one set of fees in one currency, the Lisbon System grants registered AOs and GIs protection in several countries, based on the only legally binding international register. The Lisbon System can be used to protect AOs and GIs for any type of product, such as agricultural and foodstuffs, natural, artisanal and even industrial goods.³

Practices for the Legal Protection of Geographical indications

Geographical indications (GIs) that identify products of origin were born in each respective country and all are extensively internationalized thanks to the World Trade Organization 1994 Trade Related Aspects of Intellectual Property Rights Agreement. It investigates how GIs have developed in ASEAN and Asia, the most active new area for GIs worldwide. There are different legislations in different countries and their practical implementation in eight out of 10 ASEAN countries with a *sui generis* system (Vietnam, Cambodia, Thailand, Indonesia, Malaysia, Laos, Singapore, and Myanmar); and in India and Japan, two Asian countries with active GI policies. Building on a comparative analysis of these countries and their regulations on GIs, it is gradually becoming known that they have the following aspects of the GI system: the *sui generis* institutional system; in some countries, GI is protected under the Geographical Indication Act; and in a few countries, it is protected under the trademark system.⁴

GIs protection has a long tradition in many of the ASEAN countries through unfair competition, consumer protection, and food standards or even appellation of origin. However once they become WTO member, the adhesion to the WTO become the moment of adopting new legal scheme for GIs protection based on TRIPs standards. Since every member of ASEAN Community has already joined WTO, it is guaranteed that ASEAN countries must have the protection on IP at minimum standards of the TRIPs Agreement, including GIs.

¹ https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art24_oth.pdf.

² <https://eur-lex.europa.eu>legal-content>summary>pr>.

³ <https://www.wipo.int>lisbon>.

⁴ <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jwip.12155> (1.5.2020).

However, there are only seven out of ten ASEAN countries have national law regulating GIs protection. In the past three countries; Philippine, Brunei and Myanmar protected GIs through certifications or collective trademarks under national trademark laws. Nowadays, they try to implement *sui generis* system.

In 2022, the Philippines issued Rules and Regulation on GIs, whilst Myanmar allows protection through the Trademark Law of Myanmar 2019 which was enacted in 3.1.2019 and it was entered into force in 1.4.2023.

Myanmar tried to implement a *sui generis* protection system. Sections 18,34 and 42 of the Myanmar Competition Law, 2015; Sections 23,25 and 41 of the Consumer Protection Law, 2019; and Sections 3(b)(d), 2(o),(s),(u), 53,54(a),(b),(c), 55,56,57(a),(b),(c), (d), 58(a),(b),(c), 61(a),(b),(c) of the Trademark Law of Myanmar, 2019 are provided for protection of geographical indications.

Brunei Darussalam plans to develop a specific law on GIs. The legislations of all ASEAN countries allow producers, traders to register or claim on the GIs. The claim on GIs in ASEAN mostly base on registration.

At present, there are existing registration systems for GIs in Indonesia, Malaysia, Thailand and Vietnam.

In Singapore, GIs are protected as a new class of IP, but without a registration system, while the protection of GIs is also ensured under the trademark system in the Philippines.

Thailand, Vietnam, Malaysia, Cambodia, Lao, Myanmar and Indonesia allow and accept the registration and recognition for both national and foreign GIs. ASEAN countries start to establish cross registration of GIs within ASEAN countries.

To sum up, in **Brunei**, GIs are protected under the **Trade Marks Act (Cap 98) revised edition 2000** as collective or certification marks.¹ In **Cambodia**, GI is protected by **Law on Geographical Indications, 2014**, Declaration of Procedures for Registration and Protection of GI (December 23, 2016), and Geneva Act of the Lisbon Agreement. In **Indonesia**, GI is protected by **Law on Trademarks and GI Number 20 of 2016**, Government Regulation 51/2007, and the Minister of Justice and Human Rights Regulation 12/2019. In **Laos**, GI is protected by **Lao Intellectual Property Law, 2011** (revised in 2017), Decision of the Minister of Science and Technology on the Implementation of GI under the Law on IP No. 1119 (25 October 2016), Paris Convention, TRIPS Agreement, Geneva Act of the Lisbon Agreement. In **Malaysia**, GI is protected by the **Geographical Indications Act 2000**. In **Myanmar**, GI is protected by **Trademarks Law in Myanmar (2019)**.² In **Philippines**, Geographical Indication is protected under the **law on the Intellectual Property Code of the Philippines (Republic Act No.8293), 1997**. In **Singapore**, GI is protected by **Geographical Indications Act 2014**, GI Rules 2019 and Trademarks Act (Cap. 332). In **Thailand**, GI is protected by **Geographical Indications Act B.E. 2546, 2003**. In **Vietnam**, GI is protected by Civil Code 2005, Criminal Code 2015, **Intellectual Property Law 2005**, Decrees, Circular, Joint Circulars, and IP international legal instruments, notably: Paris Convention, TRIPS Agreement, international regional and bilateral agreements, and memorandums of cooperation related to GI.³

¹ European Union Intellectual Property Office, (2019) "Geographical Indications in the ASEAN Region" Booklet on ASEAN Geographical Indications Procedure and Products, Bangkok, p.13.

² Miranda Risang Ayu Palar, (2022) "A Model of Geographical Indication's Product Specification for ASEAN Member Countries" Centre de Coopération Internationale en Recherche Agronomique pour le Développement [Cirad], Montpellier, France, pp.1-2.

³ European Union Intellectual Property Office, (2019) "Geographical Indications in the ASEAN Region" Booklet on ASEAN Geographical Indications Procedure and Products, Bangkok, p.13.

In past, there is no common legal framework for the protection of GI at the level of ASEAN because is no standard of regional legal framework and no agreement as to the best methods to GIs protection.

Therefore, GIs protection seems uncoordinated and occurs in the most diverse approaches. The legal framework for GIs protection in each ASEAN country as the compliance to TRIPS Agreement has been established in a wide variety of different approaches mostly on three different major points of substance: definition and eligible indications; mean of protection; and scope of protection including ownership. In the past, the diverse of approaches did not only occur on the substance of regulation, but also the type of regulation that could be grouped into three groups: (a) *sui generis* protection system (in Thailand, Singapore, Malaysia, Laos, Indonesia and Cambodia); (b) protection under trademark system (the Philippines, Myanmar and Brunei)¹; (c) protection under different legal means (in Vietnam, GIs are protected under the IP Law, while Indonesia combines the GIs protection under trademark law and *sui generis*). Nowadays, all ASEAN countries try to implement *sui generis* system for the protection of GIs. All ASEAN countries have unfair competition protection.²

Each countries have their roles and standards for their goals that to increase the legal protection of their geographical indications, to promote their economics and their sustainable development in their countries. This research have to be highlighted the Singapore which has *sui generis* law and Trademark Law,³ in the past, the Philippines; it had only trademark system under Trademark Section of the Intellectual Property Code of 1997⁴, it has been issued Rules and Regulations on Geographical Indications, 2022, nowadays, Philippines attempt to put in place a *sui generis* system⁵ and Myanmar also try to implement *sui generis* system.

In Singapore, the *sui generis* system is as provided under the Geographical Indications Act, 2014 (“GI Act, 2014”) and the Geographical Indications Rules, 2019 (“GI Rules”) is practiced. GIs are registered as certification and collective marks under the Trade Marks Act 1998 (Cap. 332) and (“TMA”) the TMA is practiced.⁶

In that, a collective mark is a sign used to distinguish the goods or services offered by members of an association from those goods or services of those who are non-members. Collective marks are often registered under the name of an association or a company, and they represent membership of the provider of the goods or services to a particular association. A certification mark is a sign used to distinguish goods or services certified by the proprietor from other non-certified goods or services. A GI may be used as a certification mark to indicate the geographical origin or quality of the goods. However, unlike an ordinary trade mark which is used by the proprietor of the trade mark, a certification mark cannot be used by its proprietor as the proprietor is the certifying body. Only parties authorized by the proprietor may use the certification mark.

The Geographical Indications Act 2014 (“GI Act”) and its subsidiary legislation, the Geographical Indications Rules 2019, form the legislation governing geographical indications in

¹ Ass., Prof Dr Le Thi Thu Ha, Dr Delphine Marine-Vivien, (2017) “Facilitating the Protection of Geographical Indications in ASEAN” Working paper No. 01/2017, Switzerland, p.16.

² Dr. Mas Rahmah, S.H.,M.H.,LL.M., (2018) “The Protection of Geographical Indications for Agricultural Development: Challenges for ASEAN” Faculty of Law, Airlangga University, Indonesia, p.6.

³ The ASEAN Secretariat, (2020) “Guidelines on Protection of Geographical Indication in ASEAN Member States, Jakarta, p.47.

⁴ <https://www.origin-gi.com/25-05-2022-a-new-draft-law-on-gis-prepared-by-the-intellectual-property-office-of-the-philippines-ipophl>.

⁵ <http://www.federislaw.com.ph/geographical-indication-system-in-the-philippines>.

⁶ ASEAN, (December 30, 2020) *Guidelines on Protection of Geographical Indication in ASEAN Member States*, Jakarta, Indonesia.

Singapore. Although it is not compulsory to register a GI in Singapore in order for it to be protected under TRIPS, a registered GI is better protected against infringement action. As such, it also safeguards the interests of consumers by providing greater assurance that the products in the marketplace which are identified by a GI truly carry the characteristics that the GI is known for and which are attributable to its geographical origin. The protection conferred by a GI registration is for an initial period of 10 years from the date of registration, and the registration can last indefinitely if it is renewed every 10 years. An application for registration of a GI may only be sought in respect of goods falling within one or more of the categories of goods set out in the Schedule of the GI Act, 2014. The categories of goods are as; wines, spirits, beers and etc. It is a criminal offence to falsely represent a GI as registered when it is not registered, or to make a false representation as to the goods for which a GI is registered. So, geographical indications are needed to get protection.¹

Firstly, Geographical Indications Act 2014, which came into effect on April 1, 2019, envisioned a registry and registers for GIs and provided for the registration, publication, opposition, cancellation, and renewal of GIs specified as registrable, such as beers, cheese, spirits, wines, and agricultural products.

Secondly, the higher level of protection previously afforded to only wines and spirits under GI 1999 and TRIPS was extended to all registrable GIs, including cheese and agricultural products.

Such GIs are vulnerable to “biopiracy,” the unauthorized extraction of biological resources, for commercialization. For example, in 1997, shortly before the enactment of Thailand’s GI legislation, the producers of Thailand’s unique Jasmine (Hom Mali) rice were confronted with “Jasmati” rice, a portmanteau of “Jasmine,” the English name for a Thai rice strain and “Basmati,” a famous Indian rice strain, but with no genetic connection to either strain. In another instance, Indonesia’s tempeh, originally made from fermented soya beans in its Java region, was granted patent protection in Japan. The importance of effective GI protection for ASEAN countries cannot be understated. Currently, there are no GIs from ASEAN countries registered in Singapore.

Singapore’s membership in ASEAN, as well as its status as a significant trading hub for goods in the ASEAN region, the EU, and beyond—makes the city-state well-suited to become a leader in GI protection. The *sui generis* GI regime in Singapore may have started a little late, but it is still a great start.²

Although Singapore uses *sui generis* system to protect their GI, the Philippines practice Rules and Regulations on Geographical Indications, 2022 and the Law on Intellectual Property Code of Philippines, 1997.

Registration of Geographical Indications is now available in the Philippines. The Rules and Regulations on Geographical Indications (GI-RR), which issued on 5 October 2022, establish a GI registration system. Any interested party may now apply to register a GI with the IP Office of the Philippines (IPOPHL).

Under this system GI is defined as any indication which identifies a good as originating in a territory, region or locality, where a given quality, reputation, or other characteristics of the good is essentially attributable to its geographical origin, and/or human factors.

GI receives protection in the Philippines only if registered under the GI-RR. A registered GI is protected against: (1) third party uses of geographical names other than the true place of

¹Intellectual Property Office of Singapore, (2022) “Geographical IndicationsINFOPACK”, Singapore, pp.4-6.

²<https://www.inta.org/perspectives/features/the-geographical-indications-regime-in-singapore>.

origin in a manner that can mislead the public, (2) use of GI which falsely represents that the goods originate in another territory, (3) and use of a GI on a good that does not originate from the place indicated in the GI even if accompanied by the name of the place where the goods originates from, or even if accompanied by expressions such as “kind”, “type”, “style”, “imitation”, “method”, “as produced in” or other similar qualifying terms, (4) use of a GI which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

The Bureau of Trademarks will maintain a Register of Protected Geographical Indications. The registration includes publication and allows for the filing of third-party observations or objections.¹

Foreign applicants must be a national of, or a juridical entity organized in or has an effective commercial or industrial establishment in a country which is a party to the World Trade Organization or other international conventions concerning the protection of GI to which the Philippines is also a party.

Along with other standard application requirements, an applicant must submit a government certification validating the causal link between the specific quality, reputation or other characteristics of the goods and the geographic area which it originated and technical information pertaining to the product specifications.

A foreign applicant will be required to submit a certification from the competent government agency in the country of origin that the GI is a registered or protected GI in that country.

In Rule and Regulation on Geographical Indications in the Philippines, 2022, the system will protect homonymous GI's but may require owners to comply with certain conditions to differentiate one GI from another to avoid misleading the public.²

Myanmar made an attempt to put in place a *sui generis* protection system. The protection of geographical indications is provided by Sections 18, 34, and 42 of the Myanmar Competition Law, 2015; Sections 23, 25, and 41 of the Consumer Protection Law, 2019; and Sections 3(b)(d), 2(o),(s),(u), 53,54(a),(b),(c), 55,56,57(a),(b),(c),(d), 58(a),(b),(c), and 61(a)(b)(c) of the Trademark Law of Myanmar, 2019. The objectives of the Trademark Law in Myanmar, 2019 is to improve the qualities of the products of Myanmar by the protection of geographical indications, and to develop the economy of the public in locality by exporting to the international market.³

In Myanmar, geographical indication means any indication which identifies goods as originating in the territory of a country or a region or a locality in that territory, where a given quality, reputation or other characteristics of the goods is essentially attributable to its geographical origin.⁴

In our country, the persons or associations who can register GIs are any legal entity representing the following persons of the locality in which the relevant goods are produced, desirous of registration of a geographical indication, shall apply to the Registrar for registration in conformity with the stipulations:

(a) persons who produce goods by exploiting natural products or natural resources;

¹<http://www.federislaw.com.ph/geographical-indication-system-in-the-philippines>.

²<http://www.federislaw.com.ph/geographical-indication-system-in-the-philippines>.

³Section 3(d) of the Trademark Law in Myanmar, 2019.

⁴Section 2(o) of the Trademark Law in Myanmar, 2019.

- (b) producers of agricultural products;
- (c) manufacturers of products of handicraft or industry;
- (d) competent authorities from government departments and organizations on behalf of the persons indicated under subsections (a) to (c).¹

The following points are needed to file to get registration of GIs;

(a) An application for the registration of a geographical indication shall specify the following points in accordance with the stipulations:

- (i) name, nationality and address of the entity or representative;
- (ii) the geographical indication for which registration is sought;
- (iii) the geographical area to which the geographical indication applies;
- (iv) the goods to which the geographical indication applies.²

The rights of the GIs producers who got registrations are; (a) only producers carrying on their activities in the geographical area specified in the register shall have the right to use a registered geographical indication, in the course of trade, with respect to the products specified in the register. As long as these goods meet the standards for reputation, quality, and other attributes listed in the registry.

(b) In the case of homonymous geographical indications, protection shall be accorded to each indication, provided that the practical conditions under which the homonymous indications 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.

(c) The right holder of the registered geographical indication shall have the rights to prevent the following matters:

- (i) the use of any means in the presentation of the goods to be originated in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical indication of the goods;
- (ii) any use of a registered geographical indication which constitutes an act of unfair competition;
- (iii) any use of a geographical indication identifying goods not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the same.

(d) The rights under subsections (a) and (c) do not apply to another geographical indication which, although literally true as to the territory, region or locality in which the goods originate falsely represents to the public that the goods originate in another territory.³

The punishment for infringement of GIs producers' rights is provided in Section 62 of the Trademark Law in Myanmar, 2019 as the enforcement provisions in case of the infringement of mark in this Law shall apply mutatis mutandis to the implementation of the rights to the geographical indication. And GIs producers should refrain the following points for consumers. They are; no businessman shall carry out any of the following acts which mislead the

¹Section 53 of the Trademark Law in Myanmar, 2019.

²Section 54 of the Trademark Law in Myanmar, 2019.

³Section 57 of the Trademark Law in Myanmar, 2019.

consumers: (a) carrying out with intention to compete with the use of deceptive information which mislead the legally registered name of goods, business slogan, logo, packaging, geographical indication and other elements, and (b) carrying out business such as production of goods and services by using the information contained in sub-section (a).¹ Any person who violates the prohibitions contained in Section 18, Section 20, Section 21, Section 25 or Section 28 shall, on conviction, be punished with imprisonment for a term not exceeding one year or with fine not exceeding Kyat fifty lakhs or with both.² The consumers of GIs has the right to claim the following rights in respect of the goods guaranteed and sold to the consumer by the entrepreneur under Section 23; (a) to receive the goods that is in compliance with the guarantee; (b) to claim for refund, repair or replacement from the seller; and (c) to obtain compensation if the guarantee is not met.³

In Cambodia, One of the challenges met by GI producers is to keep constant compliance with the GI specifications. Another is the lack of competence and capacity for associations and producers to develop packaging and labeling. Another challenge is the enforcement of GI products to avoid copycats seeking to piggyback on the GI products' reputation, leading to unfair competition both on the national and international markets. WIPO is working with the Department of IP Cambodia to address key issues faced by the fledgling GI system and complement it with other branding strategies. There is a rising interest and awareness about GI products in the country and their potential for trade. The country expects more GIs will be registered in Cambodia soon. Cambodia has been a member of the Geneva Act since 2018.

In Laos, one of the challenges met by GI producers is the creation of an association, which is monitored by the government, and the marketing of the products. The six registered GIs have yet to benefit from their registration in the middle of the Covid-19 crisis, in 2020. WIPO is assisting the Department of IP in a brand development initiative for GIs. The potential benefits of GIs in terms of reputation and economic output are nonetheless starting to raise interest from producers and provincial mayors.

Thailand registers GIs for agricultural and industrial products, as well as handicrafts, and offers support to producers with the registration, control system, marketing, and promotion. Once the GI is registered, producers who agree to follow the producers' manual and control plan for GI members, will be able to use the Thai logo label. Although the GI protection is not limited in time, the use of the GI logo has to be renewed every two years, she said. Qualified GI traders can also use the GI logo. In Thailand, contrary to other countries, like in the European Union, producers do not need to set up an association through which the GI will be registered. Instead, producers usually group themselves into informal associations, or community associations, which register for the same product. Over 9,000 GI producers use the Thai GI logo.⁴ In a nutshell, each country tries their best to protect their GIs. Even though they had only a trademark system to protect their GIs in the past, nowadays they are trying to implement a *sui generis* system in their countries.

Conclusion

To sum up, in the past, in Myanmar, Brunei and the Philippines, geographical indications were protected by trademark system. Generic terms cannot be recognized as trademark. GIs can be protected as certification mark. For example, Darjeeling tea and Basmati mark. Some country cannot recognize GIs that they have not heard some names, so they think that generic terms. So,

¹Section 18 of the Competition Law in Myanmar, 2015.

²Section 42 of the Competition Law in Myanmar, 2015.

³Section 25 of the Consumer Protection Law in Myanmar, 2019.

⁴<https://www.wipo.int/web/ip-advantage/w/stories/thailand-leads-the-way-to-gi-registration-in-asean-countries>. (21.2.2023)

an agreement should be concluded between GIs register country and the country which accept that registration. And each country should have *sui generis* system to protect their GIs. *Sui generis* system is more suitable and secure for GIs. In Thailand, they grant informal association to submit GIs to registry. And it is meant that to get GIs, it does not need to set up association. Myanmar is trying to submit international registration for some GIs such as Shwe Bo Paw San, Pa Thein Paw San, A Yar Taw Thanakha, Shin Ma Taung Thanakha, Sein Ta Lone Mango. It should be considered that if Shwe Bo Paw San and Pa Thein Paw San have the same quality, which can get registration. So, each GIs should have their distinctive quality. In ASEAN region, it is needed to implement effective single legal framework and agreement for the protection of GIs. It should be appeared that minimum standards and specifications for the protection of GIs for all of ASEAN countries effectively.

Acknowledgements

I wish to express my first and foremost gratitude to Dr Aye Aye Khine, Rector and Dr San Yu Maw, Pro-Rector and Dr Aye Aye Khine Myint, Pro-Rector of Bago University for their encouragement to undertake the present research. I would like to express appreciation to Dr Myint Swe, Professor and Head, Department of Law, Bago University for his permission to do this research and for his suggestion and guidance.

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Annex (1)**Different specific and important laws for the protection of GIs in ASEAN**

Country	Specific and important law
Burundi	Trade Marks Act (Cap 98) revised edition 2000
Cambodia	Law on Geographical Indications, 2014
Indonesia	Law on Trademarks and GI Number 20 of 2016
Laos	Lao Intellectual Property Law, 2011
Malaysia	Geographical Indications Act 2000.
Myanmar	Trademarks Law in Myanmar (2019)
The Philippines	Law on the Intellectual Property Code of the Philippines (Republic Act No.8293), 1997
Singapore	Geographical Indications Act 2014
Thailand	Geographical Indications Act B.E. 2546, 2003
Vietnam	Intellectual Property Law 2005

Source: Facilitating the Protection of Geographical Indications in ASEAN by Le Thi Thu Ha.

Annex (2)**Different legal systems for the protection of GIs in ASEAN**

Country	<i>Sui generis</i> system	Trademark system	Unfair Competition protection
Burundi		★	★
Cambodia	★		★
Indonesia	★		★
Laos	★		★
Malaysia	★		★
Myanmar	★ (try to implement)		★
The Philippines		★	★
Singapore	★		★
Thailand	★		★
Vietnam	★		★

Source: Facilitating the Protection of Geographical Indications in ASEAN by Le Thi Thu Ha.