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A Model of Geographical Indication's Product Specification for ASEAN Countries

Miranda Risang Ayu Palar¹

Abstract

Until present, member countries of the Association of Southeast Asian Nations (ASEAN) have different legal means to protect Geographical Indications (GIs) in their national levels. The difference is derived from the flexible legal means requirement in article 22 of TRIPS Agreement. Interestingly, IP cooperation between ASEAN members has led to a share interest of having similar standards of GI product specification.

Using descriptive juridical method and comparison study to analyze the qualitative data obtained from desk and virtual research, this paper explores a model of single standard GI Product Specification that can be applied in the different legal contexts of ASEAN member countries.

Key words: model, Product Specification, Geographical Indication, ASEAN countries

INTRODUCTION

LEGAL MEANS TO PROTECT GI IN ASEAN COUNTRIES

Until present, ten member countries of the Association of Southeast Asian Nations (ASEAN) have different legal means to protect Geographical Indications (GIs) in their national levels. They have actually been members of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), so they are obligated to fully comply with the content of TRIPS Agreement (TRIPS system) as the minimum standard protection in their domestic legal systems, including the provisions about Geographical Indications (GIs). So far, only two of them have also ratified Geneva Act of the Lisbon Agreement (Lisbon system) and got obligation to harmonize their national GI protections according to TRIPS and Lisbon systems.

THE IMPORTANCE OF GI PRODUCT SPECIFICATION

Under the system of the Geneva Act's Appellation of Origins (AO) and GI, Product Specification is important, because it provides a clear guidance to control the quality and characteristics of the goods those are exclusively or essentially connecting the protected goods with their geographical origins.

Product Specification is not literally required by TRIPS Agreement's GI protection. However, in practice, a Product Specification is a precondition to ensure that an object meets all requirements to obtain the protection. Furthermore, it also provides a clear guidance to implement, maintain and defend the protected right.

GI Product Specification is important because of several reasons (EUIPO et.al., 2020). *First*, in many countries, it is a substantial requirement for GI registration. *Second*, It forms a legal basis to grant an exclusive right to use a GI. *Third*, it also establishes the geographical originality of the product: the causal link between the GI product and its geographical origin. *Fourth*, it forms a legally

binding contract that guides all members of the CMO-GI to conduct the production process and quality control on the products. *Fifth*, it provides the consumers with a solid guarantee regarding the GI product's reputation, quality and/or characteristic, and if applicable, the sustainability of the product's geographical environment.

GI Product Specification also ascertains that a Collective Management Organization on Geographical Indication (CMO-GI) or a producer association is the legal holders of an exclusive right to use a GI. The collective/communal holders can consist of: local producers and/or processors, local or traditional farmers or breeders, local operators, landowners, indigenous community, a tribe or a clan, a group of local artists, or a group of local traders. In several countries, the CMO-GI can also consist of a local government on behalf of the producer associations living in the related area, or even a state on behalf of the producer associations in the territory/ies of the state.

GI PRODUCT SPECIFICATIONS IN ASEAN COUNTRIES

ASEAN member countries have various legal means to protect GI and forms of GI Product Specifications (EUIPO et al., 2019; ASEAN Sec., 2020).

In **Brunei Darussalam**, there is no specific form of GI Product Specification. It is because GI in Brunei Darussalam is protected under the general Trademarks protection system, especially Collective Marks, and the protection against unfair competition in business practices, especially Certification Marks.

In the **Philippines**, similarly with Brunei Darussalam, GI is protected under the general Trademarks protection system. It is based on the Trademarks Law and the Intellectual Property Code of the Philippines (IP Code) [Republic Act No. 8292, as amended].

GI in **Cambodia** is protected by Law on GI, Declaration of Procedures for Registration and Protection of GI (December 23, 2016), and Geneva Act of the Lisbon Agreement. Elements of GI specification in Cambodia includes: name, type, and GI label, main characteristics/features, production process, geographical area, link between a product and its geographical territory including its history, process of quality control, controlling body and competent authority, and the members of GI right holders.

GI in **Indonesia** is protected by Law on Trademarks and GI 20/2016, Government Regulation 51/2007, and the Minister of Justice and Human Rights Regulation 12/2019. Elements of GI specification in Indonesia includes: name of GI, name of the protected good/product, the GI label, characteristic and quality of the good/product, link between the good/product and its geographical environment (natural and/or human factor/s, including history and tradition of the GI

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usage), production process, method of quality control, GI map, and GI right holders.

GI in **Thailand** is protected by GI Protection Act B.E. 2546. Elements of GI specification in Thailand includes: photograph of GI product, description of the production process, GI label, GI map indicating the scope of the geographical area, description about linkage between the product and the geographical origin by explaining the geographical environment of the origin, description about quality, reputation, properties or other characteristic of the product, and document indicating that the product does originate from the specific geographical area.

GI in **Lao PDR** is protected by Law on IP No.01/NA (20 December 2011), 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. Elements of a Book of GI Specifications in Lao PDR are: a specific geographical area of production, the conditions of the product, the process of quality control, especially internal controls, the list of the GI producers and operators, and the rules pertaining the controlling targets as well as the internal regulation of the right-holders association.

GI in **Myanmar** is protected by Trademarks Law (2019) and Pyidaungsu Hlattaw Law No. 3 (30 January 2019) on Trademarks and GI Law. Elements of GI Specification in Myanmar: name, nationality and address of the applicant organization, GI name, the region of GI production, description of the products to which the GI applies, significant features, quality, or reputation of the GI product under the relevant GI, and the link between the features, quality or reputation of the product and its place of origin.

GI in **Malaysia** is protected by the GI Act 2000. Elements of GI specification in Malaysia includes: geographical area consisting the demarcation map, including the proof of origin, the class of the goods, description of the product, quality, reputation or other characteristic of the goods, causal link between the geographical area and the quality, reputation or other characteristic of the good, specific steps in production that must take place in the identified geographical area, and the facultative elements which include: description of labelling, award/recognition from authorized body, or an inspection body/authority authorized in verifying compliance.

GI in **Singapore** is protected by GI Act 2014, GI Rules 2019 and Trademarks Act (Cap. 332). Elements of GI Specification in Singapore are: category of the goods, geographical area, description of goods to which the GI applies, particular characteristics differs from other goods of the same category, and quality, reputation, or other characteristics essentially attributable to the geographical origin. These could relate to natural and/or human factors, or the reputation of the good that is essentially attributable to the place of origin.

GI in **Vietnam** is protected by Civil Code 2005, Criminal Code 2015, IP 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. Elements of GI Specification in Vietnam are: GI name, description of GI product, natural and human factors decisive to the reputation, quality and characteristics of the product,

link between the characteristics and quality, or reputation of the product, and the geographical condition, depiction of the GI area in words and map, determined by a justified method, proof that the product originates from such geographical area, proof that a GI has been protected in the country of origin (foreign GI), description of a local and stable method of production and the mechanism of self-control on the characteristics and/or quality of the product.

SHARED MAIN ELEMENTS AS THE BASES OF GIs PRODUCT SPECIFICATION FOR ASEAN COUNTRIES

Based on similarities and differences of GI Product Specifications in ASEAN countries, the share main elements can be used as the basis of a model of GI Product Specification for ASEAN member countries.

Shared aspects on the GI Product Specification in ASEAN member countries include:

- Identity that includes a GI Name and GI logo, a type of GI product, the GI collective management organization (CMO) or producer association, and the country of origin.
- Territory includes GI map depicting the geographical area where the GI product is produced
- Reputation, quality, characteristic includes reputation, quality and/or characteristic/s caused by the GI geographical environment.
- Link includes Causal link between the GI product with its geographical environment, including natural and/or human factor/s.
- Control of compliance includes the method, subject, and object of the control. It also includes the frequency, intensity, and the sanction.

A model of GI Product Specification would be best formed according to the shared aspects of GIs Product Specifications in ASEAN countries as minimum standards.

Regarding ASEAN countries whose GIs' objects are protected by Collective Marks or Certification Marks, GI Product specification can be used as an additional compulsory/facultative document in the application of the related marks. It should mainly substantiate the reputation of the product as a secondary significance, so the GI logo that is regarded as a descriptive mark can get a strong capability to distinguish through use.

CONCLUDING REMARKS

A model of GIs Product Specification for ASEAN Member Countries would make GI registrations between ASEAN members easier, because even though the national legal means of GI protection may vary, the substantive protected elements in the GI product specifications would be similar or even the same. It will also smoothen the cooperation to protect GI within the countries.

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