

A Model of Geographical Indications' Product Specification for ASEAN Countries

Worldwide Perspectives on Geographical Indications

Centre de Coopération Internationale en Recherche Agronomique pour le Développement
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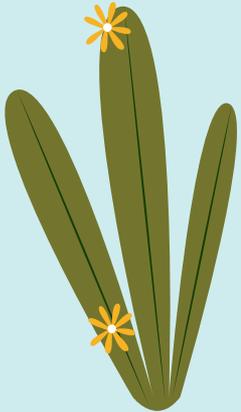
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BACKGROUND

- 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 (GIPS).
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THE IMPORTANCE OF GI PRODUCT SPECIFICATION



1. GIPS in many countries is a substantial requirement to obtain GI registration
2. GIPS forms a legal basis to grant an exclusive right to use a GI
3. GIPS establishes the geographical originality of the product: the causal link between the GI product and its geographical origin
4. GIPS forms a legally binding contract that guides all members of the CMO-GI to conduct the production process and quality control on the products
5. GIPS provides the consumers with a solid guarantee regarding the GI product's reputation, quality and/or characteristic, and if applicable, with the sustainability of the product's geographical environment as well.

(EUIPO et.al., 2020).



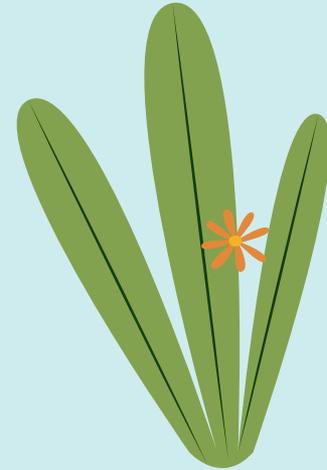
THE IMPORTANCE OF GI PRODUCT SPECIFICATION

- Under the system of the Geneva Act's Appellation of Origins (AO) and Geographical Indication (GI), GIPS is important because it provides a clear guidance to control the quality and characteristics of GI goods/products those are exclusively or essentially connecting the protected goods with their geographical origins.
- GIPS is not literally required by TRIPs Agreement. However, in practice, a product specification is a precondition to ensure that a GI object meets all requirements to obtain legal protection.



THE RIGHT HOLDERS

- GIPS ascertains that a Collective Management Organization on Geographical Indication (CMO-GI) is the legal holder of an exclusive right to use a GI
- CMO-GI in ASEAN can consist of:
 - local producers and/or processors
 - local or traditional farmers or breeders
 - local operators
 - landowners
 - indigenous people
 - a tribe or a clan
 - local artists
 - local traders
- In several countries, the CMO-GI can also consist of a local government (ex-officio) on behalf of the producer association of the GI product



The background is a light blue gradient. In the top left, there is a cluster of green leaves. In the top right, there are more green leaves. In the center, a large orange sun is partially obscured by a white cloud. In the bottom left and bottom right, there are stylized green plants with small orange flowers. A white cloud is also visible on the right side of the page.

GI PRODUCT SPECIFICATIONS IN ASEAN COUNTRIES



- In **Brunei Darussalam**, there is no specific form of GIPS. 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 GIPS in Cambodia include:

name, type, 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 about GI, and the Minister of Justice and Human Rights' Regulations No. 12/2019 and its Amendment No. 10/2020.

Elements of Description Document of GI in Indonesia include:

name of GI, name of the protected good/product, 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 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 GIPS in Thailand include:

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 originates from the specific geographical area.

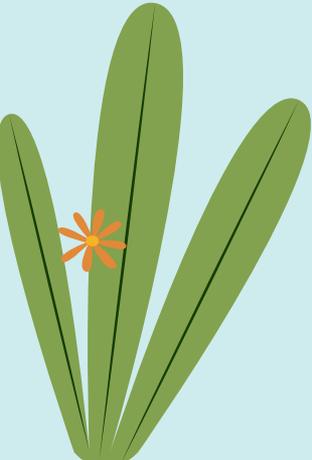




GI in **Lao PDR** is protected by Law on IP No.01/NA (20 December 2011), Decision of the Minister of Science and Technology on the Implementation of GI under the Law on IP No. 1119 (25 October 2016), Paris Convention, TRIPS Agreement, and **Geneva Act of the Lisbon Agreement**.

Elements of a Book of GI Specifications in Lao PDR include:

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.

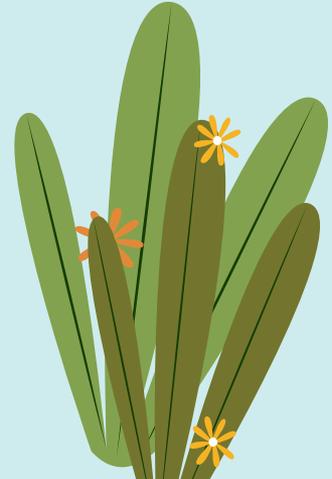




GI in **Myanmar** is protected by Trademarks Law (2019) and Pyidaungsu Hlattaw Law No. 3 (30 January 2019) on Trademarks and GI Law.

Elements of GI Specification in Myanmar include:

GI name, nationality and address of the applicant organization, 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 GI Act 2000.

Elements of GI Specification in Malaysia include:

geographical area consisting demarcation map, proof of origin, class of good, description of good, quality, reputation or other characteristic of the good, 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 facultative elements which include: description of labelling and award/recognition from authorized body or from an inspection body authorized in verifying compliance.



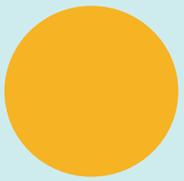


GI in **Singapore** is protected by GI Act 2014, GI Rules 2019 and Trademarks Act (Cap. 332).

Elements of GI Specification in Singapore include:

category of good, geographical area, description of good to which the GI applies, particular characteristic differs from other goods of the same category, and the good's 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.





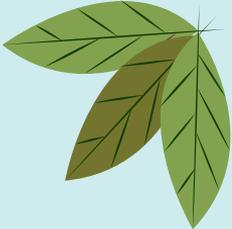
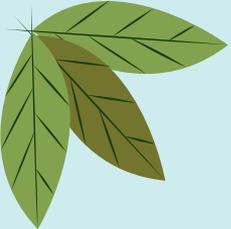
GI in **Vietnam** is protected by Civil Code 2005, Criminal Code 2015, IP Law 2005, Decrees, Circular, Joint Circulars, and IP international legal instruments, notably: Paris Convention, TRIPS Agreement, international regional and bilateral agreements, and memorandums of cooperation related to GI.

Elements of GI Specification in Vietnam include:



GI name, description of GI product, natural and human factors decisive to the reputation, quality and characteristics of the product, link between the characteristics, quality or reputation of the product with its geographical condition, depiction of GI area in words and map those are 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 OF GI PRODUCT SPECIFICATIONS IN ASEAN COUNTRIES



Identity

GI name, GI logo, type of GI product, collective management organization, country of origin.



Territory

GI map depicting the geographical area where the GI product is produced



Reputation, Quality, Characteristic

Reputation, quality and/or characteristic/s caused by the GI's geographical environment



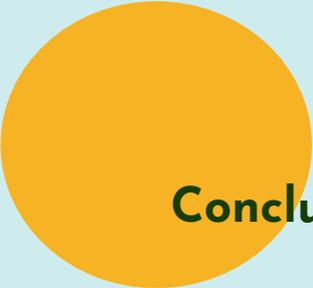
Link

Causal link between a GI product with its geographical environment, including natural and/or human factor/s.



Control of Compliance

Method, subject, object, frequency, intensity, and sanction in the controlling system framework



Conclusion

A model of GIPS would be best formed according to the shared main elements of GIPS in ASEAN countries as the minimum standards.

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



thank you

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