

Legal Protection of Geographical Indications in Myanmar with a Specific Reference to Pyay Township

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Abstract

A Geographical Indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities or reputation on account of that place of origin. This research examines legal protection of GIs to the consumers and real producers under the relevant legal policies in Trademarks Law in Myanmar, Competition Law, Consumers Protection Law and other International Conventions. This research includes review of relevant legal literature and materials. The data were collected from private investment companies, public research institutions and consumers and producers of inhabitants in Pyay Township. This research focuses on interventions in the areas of (i) increasing legal production of the original product for the real producers (ii) promoting the rights of consumers and real producers and (iii) developing the socio-economic life for the inhabitants in Pyay Township in terms of the protection of Geographical Indications.

Key words: Geographical indication, geographical origin, original product, consumers and real producers

Introduction

A geographical indication (GI) is a concept and the Law that emerged in the world for the means of safeguarding the agricultural products especially based on the place of a specific geographical origin because of possessing qualities or a reputation that are due to that origin. While geographical indications (GIs) relate to names and places or production areas with products, they have unique signs that allow the classification of products on the market. GIs represent possible value to the natural wealth of a country with the skill of the population and the consumers could choose the local products depending on a distinguishable identity.

The protection registered GIs may provide consumers with important quality labels and also represent a tool for rural development. It is because GI products can assist to maintain natural resources, preserve traditions, support the organization of local stakeholders and prevent delocalization and rural migration. Protection of GI products can also supply to the maintenance of food diversity, while offering consumers a wider option. Depending on the implemented and managed GIs system, GI contributes to sustainable development of local resources and the market with the value chain. To get comprehensive protection of GIs, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) is the first international treaty to protect GIs through important provisions. Nowadays, many countries are actively extending the existing protection that the Agreement grants to GIs for all products.

The aim of this paper is to promote the role of GIs in Myanmar from the legal point of view to have considerable market value and its protection. Hence, this paper is an attempt to analyze the legal framework of GIs under international conventions and relevant domestic laws with data collection and interview discussion in Pyay Township. The paper finds out the subject matters of GIs, economic benefits of GIs

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and protection of GIs for the products that preserve new opportunities from a competitive local market to a global market.

Materials and Methods

In this research paper, the material uses for all of data from the related Intellectual Property Laws and International Instruments, Books, Articles, Journal and Internet Sources.

The Subject Matters of Geographical Indications

Geographical indications (GIs) have two unusual features. Firstly, they extremely exist for the short history. The term is new that made by the European Community and by Switzerland during the Uruguay Round in proposals. Secondly, not like patent, copyright or trademark, GI is not separate itself and it is accepted as a category of intellectual property right.³

When the origin of the goods is viewed by consumers and traders, the concept of GIs is the products of a certain nature and quality which is known for their geographical origin and for having characteristics linked to that origin. Hence, the definition of a geographical indication is “a sign used on products that have a particular origin of geographical indications and acquire a reputation or qualities because of possessing that origin”.⁴

The related terms such as indications of source and appellations of origin are included in the Madrid Agreement on the Repression of False or Deceptive Indications of Source in Goods (1891), and in the Lisbon Agreement for the Protection of Appellations of Origin and their International Protection (1958).⁵

According to the Lisbon Agreement, it defines appellations of origin that “the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”.⁶

In Pyay Township, the fruit ‘Mya Kyaut’ mango and the products of food such as ‘Taw La Phat’ and ‘Maline Lone’ are traditional manufacturing products of human factors and they are repudiation products as GIs of Pyay Township as well. In the appellation ‘Mya Kyaut’ mango, for 100 years ago, it enjoys a great reputation in the whole Pyay Township and within Myanmar because most people have accepted that the qualities are different from other mangoes in which its taste has good sweetness and its soft orange flesh has very smooth substance. In the label ‘Taw Lat Phat’ (rural tea leaf), it is a famous traditional food or a gift food of Pyay Township. It is also prominent that it does not contain any artificial substances. Most people have also agreed that it can cure some kind of diseases such as hypertension, paralysis and arthritis and therefore its repudiation is thought to be good for health. It is made with some kind of new leaf which is called ‘Na Ywel’ leaf from ‘Na Ywel’ tree in the areas of Pyay Township.

³ Graham Dutfield and Uma Suthersanen, *Global Intellectual Property Law*, 2008, p.191-192.

⁴ World Intellectual Property Organization, *Geographical Indications: An Introduction*, WIPO Publication No. 952E, 2017, p.8.

⁵ Graham Dutfield and Uma Suthersanen, *Global Intellectual Property Law*, 2008, p.192.

⁶ Article 2(1) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Relations 1958.



Mya Kyaut Mango



Taw Lat Phat

In addition, the sweet food ‘Maline Lone’ made of milk mostly is another well-known food as well as it is also a kind of gift food of Pyay Township. It is also a traditional food in Pyay Township for 70 years ago as a gift food.



Maline Lone

Protection under International Agreements on Geographical Indications

In the international sphere, the Paris Convention for the Protection of Industrial Property 1883 (the Paris Convention), Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 1958 (the Lisbon Agreement), the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods 1891 (the Madrid Agreement) and the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (the TRIPS Agreement) are formally granted for the protection of GIs.

Depending on the national and regional levels, the protection of geographical indications is distinguished by the existence of several different sorts of legal notion. Such legal notions were advanced in line with different national legal traditions and

within a structure of specific historical and economic situations. These differences support to come out stipulation of protection, the right to use and scope of protection.⁷

The protection of geographical indications develops from the right to forbid unlawful persons who use GIs, either for products or not conform with the specified quality standards, in which the products do not originate from the geographical place. Again, the protection focuses on the generic expressions of GIs and if GIs have lost all their distinctiveness, the protection will not provide accordingly. The aspect of protection is significant by the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration according to the framework of international protection of geographical indications.⁸

The Paris Convention 1883

In order to protect geographical indications, the Paris Convention for the Protection of Industrial Property 1883 mentioned it as one form of industrial property. Although Convention did not provide a definition of geographical indications, it indicated the broad definition of “indications of source or appellations of origin”.⁹ There shall be in any case recognized as an interested member, whether it is a natural or juristic person, any producer, manufacturer or trader of such a product either in the region incorrectly indicated as a place of geographical origin or in the district where such region is situated or in the country incorrectly indicated.”¹⁰

The Lisbon Agreement 1958

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was adopted in 1958. It was revised at Stockholm in 1967 and amended in 1979. According to the Lisbon Agreement, the appellations of origin is provided that, the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or reputations of which are owing wholly or basically to the geographic location, together with natural and human elements.¹¹ Depending on the request of the legally authority of a Contracting State, geographical denominations are registered by the International Bureau of WIPO in Geneva.

According to the provision of the agreement, a Contracting State may announce that it cannot guarantee the protection of a registered appellation within its territory within one year after receiving the notice of registration.¹² The reasons for the refusal of protection must be contained in such an announcement. Afterward, Contracting States may withdraw a refusal in line with a procedure foreseen according to the Lisbon system.¹³ Moreover, protection of a registered geographical appellation of origin shall be certified with regard to any particular condition or recreation, even

⁷ WIPO, Geographical Indications: Historical Background, Nature of Rights, Existing Systems for Protection and Obtaining Protection in Other Countries, Eighth Session, Geneva, May - 2002, p.4.

⁸ WIPO Intellectual Property Handbook: Policy, Law and Use, WIPO Publication No. 489 (E), Second Edition, 2004, p.121-122.

⁹ Article 1 of the Paris Convention for the Protection of Industrial Property 1883.

¹⁰ Article 10 of the Paris Convention for the Protection of Industrial Property 1883.

¹¹ Article 2 of the Lisbon Agreement for the Protection of Appellations of Origin and their International Relations 1958.

¹² Article 5(3) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Relations 1958.

¹³ https://www.wipo.int/treaties/en/registration/lisbon/summary_lisbon.html

though the exact origin of the product is assigned or if the appellation of origin is applied with the words such as 'kind,' 'type,' 'make,' 'imitation', or the like.¹⁴

The Madrid Agreement 1891

In 1891, the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods was adopted and the revised years are provided at Washington in 1911, The Hague in 1925, London in 1934 and Lisbon in 1958. The term 'geographical indications' did not include in the Madrid Agreement though; used the relevant term is 'indication of source'.¹⁵

Nevertheless, the Madrid Agreement does not grant for use of false or deceptive indications applied in translation or appeared by the words such as 'kind', 'type', 'style' etc. For example, use of phrases such as 'champagne style' for a sparkling white wine manufacture outside champagne would not provide under the provisions of this agreement. It is noted that The Madrid agreement is not part of the TRIPS Agreement but it is still in force.¹⁶

The TRIPS Agreement 1994

Concerning the geographical indications, the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) reveals actual responsive cooperation in the Uruguay Round of multilateral trade negotiations. According to the provision of the TRIPS Agreement provides that 'indications which recognize a good as originating in the territory of a member country, or a region or area in that territory, where a specified quality, reputation or another feature of the good is effectively ascription to its geographical origin'.¹⁷

The TRIPS Agreements provide additional protection for the geographical indications of wines and spirits.¹⁸ Under the provision, there is a more specific level of protection extended to wines and spirits alone in which both are not originating in the place indicated by the geographical indication in question. Such additional protection entails that even where there is no possibility of misleading the public, such geographical indications are protected.

TRIPS Agreement includes a number of exceptions concerning the protection of geographical indications.¹⁹ The consent of Members is to enter into bilateral and multilateral negotiations endeavored at increasing the protection of geographical indications²⁰ and the Council for TRIPS shall commence a review of the application of the provisions relating to geographical indications.²¹ It means that members are free to carry out in their law more covering wide protection than is required by TRIPS, thereby leaving it open to them to distribute with these exceptions. The only

¹⁴ Article 3 of the Lisbon Agreement for the Protection of Appellations of Origin and their International Relations 1958.

¹⁵ Article 1(2) of the Madrid Agreement Repression of False or Deceptive Indications of Source of Goods 1891.

¹⁶ Dr.Varun Shukla, Historical development of geographical indication law under international arena, International Journal of Law, Volume 2, Issue 4, July 2016, p.2.

¹⁷ Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994.

¹⁸ Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994.

¹⁹ Article 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994.

²⁰ Article 24(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994.

²¹ Article 24(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994.

prevention is that such protection must not break the provisions of the TRIPS Agreement.²²

In the absence of an international agreement, the protection of GIs is to be determined by national law. On the national level, the different forms of protection of GIs can be categorized into three main types. Firstly, although all possibilities of protection do not depend on a decision taken by the competent authority protection with regard to a particular GI, it depends on the direct appliance of legislative provisions or principles provided by jurisprudence. Secondly, the protection of GIs covers registration of collective marks as well as agricultural labels or guarantee marks (certification marks). The protection for all special titles of GIs attains from a decision provided by the competent government authority.

Protection under Legal Policies on Geographical Indications in Myanmar

While different countries may protect GIs under specific geographical indications laws, they may also be protected under other special laws. In Myanmar, at the national level, GI protection can be found through the enforcement of special laws on GIs such as Trademark Law, Competition Law and Consumer Protection Law. Effective protection is expected to have important implications in order to raise the benefits from improved market access and potential price premiums for the production of GI products in Myanmar.

Trademarks Law in Myanmar

Trademarks law of Myanmar was enacted in 2019. The definition of GI is found in section 2 (o) of this law. According to section 2(o), geographical indication means an indication which identifies any goods as originating from a particular country, territory or region, where a given quality, reputation or other distinguishing characteristics of the goods is indicative of its geographical origin. The one of aims of this law is to improve the quality of regional products of Myanmar and to promote the economic development of people in these regions by penetrating the global market

Relating geographical indications, it is provided in Chapter 16 of this law and particularly it is related from Section 53 to Section 62. Besides, Section 55 is also provided the conditions which are ineligible for registration of GI as follows:

The geographical indication is ineligible for registration if it meets any of the following conditions: (a) it does not conform to the definition of a geographical indication stated in subsection (o) of section 2; (b) the goods for which the geographical indication is used has become common usage or customary in the Republic of the Union of Myanmar; (c) it is a geographical indication that is contrary to public order, morale or public policy.

Any stakeholder or relevant department or organization may apply to the Registrar to make an invalidation announcement or cancel the registration for a geographical indication for the following reasons: (a) it does not conform to the definition of a geographical indication stated in subsection (o) of section 2; (b) failure to ensure conformity with the requirements in subsection (b) of section 54 and related requirements; (c) a foreign geographical indication which is not protected or for which protection has been terminated in the foreign country of origin or which is no

²² Dr. Varun Shukla, Historical development of geographical indication law under international arena, International Journal of Law, Volume 2, Issue 4, July 2016, p.3.

longer used in said country; (d) it is a geographical indication which is contrary to public order, morale or public policy.²³

Regarding the violation of the rights of geographical indications, action must be taken according to the provisions on taking action against the violation of rights of a mark if the stipulations in addition to the provisions in this Law are violated.²⁴

The Competition Law in Myanmar

According to the PyidaungsuHluttaw Law No. 9, the Competition Law was adopted in 2015 and it was enforced by the President with notification on 24th February 2017.²⁵

Concerning the geographical indications, two basic principles of competition are concerned that “ensuring to emerge economic community where it can carry out freely for international, regional and bilateral goods, services, investment, skilled employee and free set up of invested money and to assist in competition network”.²⁶ Second, the principle is provided that “promoting the inventive ability by protecting intellectual property rights of producers, investors and inventors”.²⁷

In the principle, the businessman such as producers, investors and inventors shall not carry out which misinform the consumers. It is provided that “operating with purpose to compete with the use of misleading information which deceives the lawfully registered name of goods, business slogan, logo, packaging, geographical indication and other factors”.²⁸ The Law prohibits that “operating the business such as manufacturing of goods and services by using the information included in sub-section (a)”.²⁹

If any person violates the prohibitions contained in section 18, he/she shall, on conviction, be punished with imprisonment for a term which may not exceed one year or with fine and not exceeding Kyat fifty lakhs or with both.³⁰

Consumers Protection Law in Myanmar

Myanmar Consumers Protection Law was enacted in 2019. In this law, the definitions are provided in Section 2. Under section 2(g) and (h), fraud means an act with the intention of misleading the consumer related to goods or services through the wrong statement, false advertisement or dishonestly and deception means an act that misleads a consumer about the natural quality, production or quantity related to goods or services;

The aims of this law are provided in Section 3 and some of its aims are to ensure the fulfillment of consumer’s rights and to fulfill the high quality of goods or services that guarantee on safety, health and satisfaction of the consumers;

The consumer has also the right to claim the right for compensation in case of damage arising from the failure to provide product information if the entrepreneur does not produce high quality of goods or does not provide complete information of

²³ Section 56 of Trademark Law, Myanmar 2019.

²⁴ Section 59 of Trademark Law, Myanmar 2019.

²⁵ Section 1(b) of the Competition Law, 2015.

²⁶ Section 4(e) of the Competition Law, 2015.

²⁷ Section 4(g) of the Competition Law, 2015.

²⁸ Section 18(a) of the Competition Law, 2015.

²⁹ Section 18(b) of the Competition Law, 2015.

³⁰ Section 42 of the Competition Law, 2015.

goods within the guaranteed period to the consumer or the usable period under section 23.³¹

Conclusion

Nowadays, the protection of Geographical Indications (GIs) is an important part of the country because it could diminish vulnerability to poverty among the rural poor as well as it decreases their migration to urban areas by maintaining labor and other production factors in the geographical area concerned. If the products have significant features, quality or reputation, they will use as the relevant GIs in a country.

The protection of GIs gives the right to prevent use of the relevant GI which deceives the public as to the products' origin as well as it is aimed to indicate manufacture style or method of a non-compliant product. It is noted that registration of the GI is one of the beneficiary standards for the producers who can refuse if the goods do not comply with the registered GI standards. It can examine whether the products in the market will have compliance with any relevant GI or not. On the other hand, the benefit of registered GI has the right to take legal action if there are infringements of its GI right.

While GIs have distinctive intellectual property right by linking to a specific production area or producer's know-how, it represents a good opportunity for the countries including Myanmar to promote their products. Concerning Myanmar's economy, it is largely based on agriculture as well as it is wealthy with biodiversity and handicrafts. In this situation, GIs stand for an excellent opportunity for Myanmar because they could promote the products in some regions such as famous Thanakha form Pakokku Township, rice from Pathein Township (Pathein Paw San Mhwe), types of tea from Shan State and so on. In Pyay Township, GI products such as Myakyaut Mango, Taw La Phat and MalineLone are famous as regional products for gifts.

It is noted that the control of GIs is important for Government because it guarantees to the consumers for the quality of the product. GIs can support economic success, create a strong incentive to develop the products, promote economic stakeholders and help the country's development. In order to improve product competitiveness on the basis of quality and legal protection, the government should interest in supporting GI development because it involves a wide range of stakeholders, local producers and farmers who wanted to obtain legal protection for the name of their product by using the GI system.

Moreover, the Government should provide protection and encouragement in order for GIs to promote rural development at a regional level with the establishment of effective public-private collaborations that can capable of setting up and managing the GI products in a country. Hence, the development of GIs and the protection of GIs are important opportunities for the whole country to promote its wealth and stimulate an economic activity. It will need to establish Intellectual Property Office to handle and settle all of the intellectual property issues including GIs Problems.

³¹ Section 24 (d) of Consumers Protection Law, 2019.

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