

Guide to Geographical Indication Law in Cambodia

Introduction

A geographical indication (GI) is a name or sign used on certain products corresponding to a specific geographic origin. The GI serves as a certification that the product has certain qualities, is made according to certain methods or enjoys a certain reputation stemming from its geographic origin. Geographical indications are granted legal protection in many countries, with the twin goals of protecting consumers from misleading products as well as producers against unfair competition.

In Cambodia, two geographical indications have been registered to date – Kampot Pepper and Kampong Speu Palm Sugar, both in 2010. They subsequently received protection in Vietnam (December 2016), Thailand (March 2017) and the European Union (February 2016 for Kampot Pepper, the application for Kampong Speu Palm Sugar is still pending.) Further potential geographical indications include Kep flower of salt, Kratie pomelo, Phnom Srok silk, Battambang fragrant rice, Battambang oranges, Siem Reap prahok, and Kampot durian.

Geographical indications in Cambodia are based on three legal instruments. The first Declaration (Prakas) on the Procedures for Registration and Protection of Geographical Indications, dated May 18, 2009, served as the basis for the registration of Kampot Pepper and Kampong Speu Palm Sugar. This declaration was however superseded by the Law on Geographical Indications, dated January 20, 2014. While this first Declaration is no longer in force, the law specifically states that any GI registered prior to the law (i.e. Kampot Pepper and Kampong Speu Palm Sugar) shall remain valid.¹ Following enactment of the law, another Declaration on the Procedures for Registration and Protection of Geographical Indications came into force on December 29, 2016.

On March 9, 2018, Cambodia became the first country to join the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. This provides a faster and cheaper procedure for producers to protect their distinctive designations abroad.² The Geneva Act will enter into force three months after five eligible parties have deposited their instruments of ratification or accession.³

Scope of Application

Any goods, whether agricultural, foodstuffs, handicraft or other, can be the subject of a geographical indication, so long as they are produced or transformed in Cambodia.⁴

¹ Law on Geographical Indications Law, Art. 25

² “Cambodia first to join the Geneva Act of WIPO’s Lisbon Agreement” – WIPO Press Release, March 9, 2018.

³ Id.

⁴ Law on Geographical Indications Law, Art. 3

It is important to note that while a geographical indication will typically take its name from a geographic area, the production area of the GI goods is not necessarily coterminous with administrative borders found on a typical map. Thus, the production area of Kampot Pepper covers most, but not all, of Kampot province as well as all of neighboring Kep province.⁵ Similarly, Kampong Speu palm sugar can be collected, produced and packaged in Kampong Speu province as well as parts of neighboring Kampong Chhnang, Kandal and Phnom Penh provinces.⁶

Application Procedure

The first step in applying for a GI is to form what is known as a Geographical Indication Association with the Ministry of Interior. Producers groups, operators, institutions and other interested parties wishing to obtain a GI must form such a non-profit association and deposit their statute with the Ministry of Commerce. The association itself, rather than its individual members, is the applicant and owner of the GI.⁷ Aside from applying for and owning the GI, the primary role of the association is to ensure that its members comply with the book of specifications and other legal requirements. At present, two associations have been established – the Association for the Promotion of Kampong Speu Palm Sugar and the Kampot Pepper Promotion Association.

Once the association is established, an application for registration can be filed with the Ministry of Commerce. The

⁵ Book of Specifications of Kampot Pepper

⁶ Book of Specifications of Kampong Speu Palm Sugar

⁷ Law on Geographical Indications Law, Art. 7

application shall consist of the relevant government form either in Khmer or English, the book of specifications, a sample of the product and a receipt of the filing fee.⁸ Following the filing of the application, the Ministry of Commerce verifies that it satisfies the necessary requirements and will notify the applicant within forty-five days.⁹ If the application is deemed deficient, the applicant has six months to rectify the issues identified or otherwise respond to the Registrar, otherwise the application will be deemed abandoned.

Once the application is deemed to be complete, it will enter the substantive examination phase. This involves the Ministry of Commerce verifying the accuracy of the information in the application, and ensuring that the indication is not contrary to laws, morality, religion, good custom or public order, is not misleading or confusing, is not the name of a plant variety or animal breed, and not a generic term.¹⁰ The Ministry of Commerce will also visit the site of production of the goods, and may invite the applicant or interested persons to provide further explanation or evidence. The Ministry is also free to invite experts to provide advice and take that into consideration in deciding on the application.

Assuming the application passes substantive examination, the Ministry will register the GI and issue a certificate to the applicant. The GI will be published in the Official Gazette of the Ministry of Commerce no later than 30 days from the registration date¹¹, providing any interested party the opportunity to oppose the registration.¹² Oppositions must be filed within 90 days of

⁸ Law on Geographical Indications Law, Art. 8

⁹ Law on Geographical Indications Law, Art. 9

¹⁰ Law on Geographical Indications Law, Art. 11

¹¹ Prakas No. 422 (Declaration) on Geographical Indications, Art. 15

¹² Law on Geographical Indications Law, Art. 12

publication on the grounds provided in the Articles 4 (definition of GI) and 10 of the Law on Geographical Indications¹³, otherwise the registration shall be final.

Foreign Geographical Indications

Geographical Indications registered in any foreign country may be re-registered in Cambodia, thus giving the holder the same rights as a domestic GI.¹⁴ The foreign GI must be registered in accordance with the laws of its country of origin and must not have fallen into disuse there.¹⁵

The application for registration of a foreign GI must be made by a legal trademark agent, administrative representative or foreign representative to the Ministry of Commerce.¹⁶ The application and opposition procedures are the same as for domestic applicants, as described above.¹⁷

As of the date of publication, two foreign geographical indications have been applied for in Cambodia.

Book of Specifications and Control Compliance

The book of specifications is promulgated by the GI Association, setting forth the geographic production area, production conditions and quality control process.

¹³ Law on Geographical Indications Law, Art. 16

¹⁴ Law on Geographical Indications Law, Art. 19

¹⁵ Id.

¹⁶ Law on Geographical Indications Law, Art. 20

¹⁷ Id.

Compliance with the book of specifications is to be carried out by a certification or control body on an annual basis. The body must be legally registered in Cambodia, approved by the Ministry of Commerce, and accredited according to the International Standard Organization or otherwise has a reliable control system, but otherwise can be freely chosen by the GI Association.¹⁸ In the case of Kampot Pepper, the French group ECOCERT has served as certifying body. The body is to deliver an annual report to the Ministry of Commerce's Department of Intellectual Property Rights.¹⁹ The report in a foreign language must be translated into Khmer with a certified translation, and include the list of certified producers, operators, products, quantities, and any measures taken.²⁰

The body is responsible for reporting any cases of non-compliance to the Ministry of Commerce, and the countermeasures and sanctions taken.²¹ These can range from remarks and advice to the permanent revocation of the operator or producer's right to use the GI.

The Ministry of Commerce has broad powers to monitor the certification body, including revoking their authority to certify compliance with the book of specifications and ordering the GI Association to seek a new body.²²

¹⁸ Law on Geographical Indications Law, Art. 26

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Law on Geographical Indications, Art. 27

Rights

A registered GI may only be used by members of the association, producers, and/or operators on products made in compliance with the book of specifications.²³ This right may not be transferred to a third party.²⁴ The owner of a GI, meaning the association, can complain to the competent court against any person who has engaged in unauthorized use of the GI. This is defined as any:²⁵

- Direct or indirect commercial misuse of a registered geographical indication in respect of identical or comparable goods to those of the registered geographical indication where the misuse benefited or would benefit from the reputation of the geographical indication;
- Unauthorized use, imitation, evocation or translation of the geographical indication even if the true origin of the goods is accompanied by the expression such as “style”, “type”, “method”, “manner”, “imitation”, or translations of such expressions, or of similar expressions likely to mislead the public;
- False or misleading indication as to origin, nature, or specific quality of the goods appearing on packaging, or in advertising materials or on other documents concerning the goods that are likely to mislead its origin;
- Other practices likely to mislead the public as to the true

²³ Law on Geographical Indications Law, Art. 22

²⁴ Id.

²⁵ Law on Geographical Indications Law, Art. 23

origin of the goods.

A GI registration is valid indefinitely from the date of filing of the application, unless cancelled or invalidated.²⁶

Geographical Indications and Trademarks

Geographical Indication registrations, and applications therefore, can prevent the registration of trademarks in certain circumstances. Thus, a trademark application will be rejected if there is an earlier-filed GI application that is identical or confusingly similar.²⁷ Further, once the GI is registered, it will prevent any trademarks for the same type of goods from being registered that are misleading, a broader standard than identical or confusingly similar.²⁸ However, trademarks registered in good faith prior to the GI are grandfathered-in, meaning they may continue to be used provided there are no other grounds for invalidation.²⁹

Enforcement and Penalties

As an interim measure, upon court order, goods that are suspected to be infringing a GI may be detained, as can any materials and core equipment used in their production.³⁰ Any infringing goods that are imported, exported, sold or offered for

²⁶ Law on Geographical Indications Law, Art. 24

²⁷ Law on Geographical Indications Law, Art. 31

²⁸ Id.

²⁹ Id.

³⁰ Law on Geographical Indications Law, Art. 37

sale can be confiscated by the competent authorities upon a court decision, irrespective of anyone being convicted of an offence.³¹

Criminal punishment of imprisonment from one to five years, plus a fine of two million to twenty million Riels (approximately USD 500 to USD 5,000), shall apply to the following offences:³²

- Misuse of a registered geographical indication for direct or indirect commercial purposes in respect of identical or comparable goods to those of the registered geographical indication where that misuse benefits or could benefit from the reputation of the geographical indication;
- Unauthorized use, imitation, or evocation or translation of the geographical indication even if the true origin of the goods is accompanied by the expression such as “style”, “type”, “method”, “manner”, “imitation”, or translations of such expressions, or of similar expressions likely to mislead the public;
- False or misleading indication as to the origin, nature, or specific quality of the goods appearing on packaging, or in advertising materials or on other documents concerning the goods that are likely to mislead as to its origin;
- Other acts likely to mislead the public as to the true origin of the goods.

³¹ Id.

³² Law on Geographical Indications Law, Art. 39

Additional criminal penalties apply to legal entities found to be responsible for infringement of the geographical indication.³³ The criminal punishment for legal entities for the above acts shall be a fine from twenty million to fifty million Riels (approximately USD 5,000 to USD 12,500) with additional punishments stipulated in the Criminal Code, such as dissolution and liquidation of legal entities, placement under judicial supervision, prohibition from carrying on activities, disqualification from public tenders, ownership sale and destruction of items confiscated, confiscation of rights of third parties, publication of decisions, and broadcasting of decision by audiovisual communication.³⁴

³³ Geographical Indications Law, Art. 39

³⁴ Id.

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Prior to founding Abacus IP, Mr. Pheng lead the IP prosecution practice at a leading Cambodian law firm. His practice involved the registration and maintenance of hundreds of trademarks, patents, industrial designs and other forms of IP on behalf of innovators and businesses from around the globe.

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Prior to founding Abacus IP, David served as managing partner of a leading Cambodia law firm in Phnom Penh, representing clients in a wide range of commercial and IP matters. He has further legal experience with law firms in Silicon Valley, San Francisco and Berlin. Before entering the legal profession, David worked as a research associate with a non-partisan think tank in San Francisco.

David holds a Juris Doctor from the University of California, Berkeley, with a specialization in law and technology, as well as a Bachelor of Arts in political economy from the same institution. Having also studied at Sciences Po in Paris and Tsinghua University in Beijing, he speaks English, French, German and Mandarin.