

The Extension of Additional Protection under the Aspect of Geographical Indications (GI) Law to Cover Coffee: A Case Study of Thailand

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Abstract

Coffee is among the beverage with the highest consumption rate in the world. Despite the complexity of coffee plantations, coffee production has been increasing over the past decades. This phenomenon later led to the geographical indications tags which emphasized the environment where coffee is being grown and coffee bean processing techniques which is unique in each location. With respect to the current geographical indications law under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which is also concerning the protection of the products with the uniqueness in geographical regions, the additional protection only provides to certain product namely wine and spirits. Accordingly, many countries come up with the suggestion to extend such additional protection to cover coffee products. However, it is still debatable among the member states whether it is necessary to implement such extension since some has argued that general protection is adequate enough. This research found that in particular

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countries and areas, namely European Union (EU), Japan and Thailand where coffee plays certain significant role in the economy, the relevant law on additional protection still does not cover coffee products. In order to maximize the economic value of coffee products and to reflect the true intention of the geographical indications law, the additional protections should be extended to cover coffee products as well.

Keywords: geographical indications law, coffee, additional protection

1. Introduction

The geographical indications or the appellations as being called in some jurisdictions are a distinct expression of local cultural and agro ecological characteristics that are valuable and pose a competitive advantage for the business environment at the present day. Geographical indications help identify the origin in a delimited territory or region where there is a unique quality, reputation or other characteristics of the product which are essentially attributable to its geographical origin and/or the natural or human factors of the local area.¹ Geographical indications offers the right to exclusively use any certain name which typically defines a specific geographical area to regional producers and processors of certain products.

When the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was initiated and implemented in the mid-1990s, the term, geographical indications, became more prominent. The article 22 paragraph 1 of the TRIPS agreement stipulated that “*Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographic origin.*” According to the aforementioned article of TRIPS Agreement, every product registered with geographical indications is covered with a standard level of protection which was also known as general protection. The protection in the standard level as aforementioned was intended to protect any misleading use or unfair competition in the products of certain producers or processors. This type of protection is able to cover every product registered under geographical indications including coffee. However, certain products namely wine and spirit would receive a higher or enhanced level of protection for registering geographical indications in

¹Dominique Barjolle and others, “The Role of the State for Geographical indications of Coffee: Case Studies from Columbia and Kenya” **World Development** 98 (2017): 105-119.

accordance with the article 23 of the TRIPS agreement, this type of protection also known as additional protection.²

There is an ongoing debate whether the additional protection in accordance with the article 23 of the TRIPS agreement should cover to other products, particularly coffee. Many countries advocate the extension of article 23 of TRIPS agreement to other products, while some countries still oppose this extension by arguing that the standard level of protection under the article 22 of the TRIPS agreement was already adequate.³

2. Research Methodology

This study mainly based on documentary research including academic researches, articles, theses and governmental statistical publications both in Thai and foreign language. In addition, this study adopted a qualitative study design using a guided in-depth interview to collect insight information from personnel in relevant fields including personnel from Doi Tung Royal Project, personnel from Tum Singh Coffee, personnel from Ahka Ama and the personnel from the Department of Intellectual Property, Ministry of Commerce of Thailand.

This paper aims to demonstrate the study in connection with the remarkable characteristics and the similarities and differences of the additional protection under the realm of geographical indication laws and regulations in each specific countries or areas, the European Union, Japan and Thailand. In addition, this paper will also discuss on certain debatable issues concerning the possibility of extending the additional protection to cover coffee products. The conclusion of this paper supports the implementation of extending the additional protection to other products and suggests the potential recommendation in efficiently implementing such extension

²World Trade Organization, **Background and the current situation** [Online], available URL: https://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm., 2008 (November, 23).

³Ibid.

within Thailand territory in order to achieve ultimate purpose of having geographical indications.

3. The Implication related to the Additional Protection of Geographical Indication under the TRIPS Agreement

The additional protection firstly appears in the article 23 of the TRIPS agreement and this particular protection is granted only to certain products, namely wines and spirits. This additional protection under the TRIPS agreement is expressed in two ways⁴. Firstly, article 23 paragraph 1 provides that Member states shall provide the legal means for interested parties to prevent the use of geographical indications identifying wines and spirits not originating in the place indicated by the geographical indications. This additional protection should be available even where such use would not mislead the public, where the true origin of the goods would be indicated, would not amount to unfair competition, or where the geographical indication would be used in translation or accompanied by expressions such as “style”, “kind”, “imitation”, or the like. Secondly, article 23 paragraph 2 provides a permission to refuse any registration of trademark for wines or spirits that contain or consist of a geographical indication where such wines and spirits do not have that stated origin. The additional protection would also be granted in situations where the public is not misled.

This additional protection in accordance with the article 23 has various exceptions. In particular, a phrase claiming to be protected under the realm of geographical indications shall fulfill the requirements prescribed in the preceding of the TRIPS agreement. Even if the product fulfills this criterion under the TRIPS agreement, many significant exclusions might make some phrases unprotect able,

⁴World Trade Organization, **Part II — Standards concerning the availability, scope and use of Intellectual Property Rights** [Online], available URL: https://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm, 2020, (November, 15).

at least in certain member states' territory. Set forth below is the exceptions of additional protection under the TRIPS agreement:

- a. pursuant to article 24 paragraph 4 of TRIPS agreement, a portion of the current usage would be retained; and
- b. pursuant to article 24 paragraph 6 of TRIPS agreement, any term or word which is customary in common language or the so-called generic word shall be unprotected. The exception might be applied to certain words having regional origins that have gained worldwide recognition.

On the other hand, the additional protection under article 23 of TRIPS agreement provides a wide range of protection to certain product as particularly prescribed in terms of the economic value and legal implication in comparison to the general protection stipulated in article 22. The limitations of the general protection pursuant to article 22 are as follows.

Firstly, there are concerns with regard to the free-riding issue which significantly affects the producers or processors of certain products in terms of the economic values. In order to be qualified for the general protection, the unauthorized use of a geographical indicator must either mislead the public regarding the product's geographical origin or constitute an action resulted in unfair competition. The intention of article 22 specifying the requirement of misleading test is adjusted in order to comply with the unfair competition or the consumer protection rules.⁵ However, in contrast to the article 23 granted the additional protection to certain product namely wines and spirits, the general protection under article 22 does not provide an adequate protection or sufficiently benefit certain producers who was authorized to use a registered Geographical Indication. It turns out that it implicitly allows other producers to exploit or benefit the reputation of particular geographical designation instead.⁶ For instance, any producer will be able to use a geographical indicator

⁵Ibid.

⁶Friederike Frantz, "Twenty Years of TRIPS, Twenty Years of Debate: The Extension of High Level Protection of Geographical Indications – Arguments, State of Negotiations and Prospects," **Annual Survey of International & Comparative Law** 21, 1 (2016): 93-117.

on the product even if such product does not originate in the claimed location on condition that the genuine origin of the product is clearly mentioned on its label.⁷ A case in point of the aforementioned misdirection is one in which a manufacturer utilizes the geographical indicator “Geneva” on a clock face despite the fact that the clock does not originate in Geneva but it clearly engraves the genuine origin on the clock’s back.⁸

The second concerns with regard to the legal insecurity was raised as the limitation in accordance with this general protection. As the article 22 paragraph 2⁹ of the TRIPS agreement implemented the requirement of misleading test, this particular test might create legal confusion regarding the enforcement of the protection for a Geographical indication in various jurisdiction. This is because the interpretation of such misleading test would depend on the determination of the courts or the administrative authorities. This discretionary interpretation of the misleading test pursuant to the article 22 paragraph 2 of the TRIPS agreement in various jurisdiction would result in conflicting rules and regulations. The legal ambiguity of this concerning issue would inevitably jeopardize and impair the smooth operation of international commerce in items bearing a geographical designation.

⁷Dwijen Rangneker, **Geographical Indications: A review of proposals at the TRIPS Council: extending article 23 to products other than wines and spirits** (Geneva: International Centre for Trade and Sustainable Development, 2003), p. 4.

⁸Felix Addor, Nikolaus Thumm and Alexandra Grazioli, “Geographical Indications: Important Issues for Industrialized and Developing Countries,” **Institute for Prospective Technological Studies (IPTS) Report 74** (2003): 24-31.

⁹Article 22 paragraph 2 of the TRIPS agreement stipulated that “In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) 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;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).”

Lastly, the general protection under the article 22 stipulates the limitation related to the burden of proof to the producers.¹⁰ In order to comply with the misleading test, it is mandatory for the producers to defend a geographical designation of their registered products by demonstrating any potential evidences to the court or administrative authority that there is an occurrence of misleading or an action of unfair competition. This procedure might be costly and time-consuming. While the additional protection under the article 23 which protects only for wines and spirits does not impose such burden of proof on the producers.¹¹ By contrast, the article 23 expressly bans any use of geographical indications for wines and spirits that do not originate in the geographical area designated by the indication.¹²

The TRIPS agreement's preamble prescribed that members, desiring to reduce trade distortions and impediments, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures for enforcing intellectual property rights do not become impediments to legitimate trade.¹³ While article 23 of the TRIP agreement is allowed for preferential and discriminatory treatment of geographical indications for wines and spirits, which is not included in the preamble of the TRIP Agreement. The community of the intellectual property practitioners have split into two camps. The first camp argues that the article 23 should be extended to include geographical indication for products other than wines and spirits while the other camp argues that the extension is unnecessary and the *status quo* should be maintained. This issue would later be elaborated in part 5.

¹⁰Niranjan Rao, "Geographical Indications in Indian Context: A Case Study of Darjeeling Tea," **Economic and Political Weekly** 40, 42 (2005): 4545-4547.

¹¹Dwijen Rangneker, op. cit.

¹²Niranjan Rao, op. cit.

¹³World Trade Organization, **Agreement on trade-related aspects of intellectual property rights** [Online], available URL: https://www.wto.org/english/docs_e/legal_e/27-trips.pdf, 2021 (February, 18).

4. The Current Protection under the Aspect of Geographical Indications in the European Union, Japan and Thailand

The four major types of coffee beans that are sold commercially across the world are *Coffea arabica* (Arabica), *Coffea caniphora* (Robusta), *Coffea excelsa*, or *Coffea liberica* var *dewevrei* (Excelsa), and *Coffea liberica* (Liberica). Out of the four species of coffee beans, the two most popular coffee beans are Arabica and Robusta.¹⁴ Cultivation of Arabica and Robusta are relatively different concerning their botanical requirement, which governs the productivity and longevity of coffee plantations. Arabica coffees are grown in higher altitudes, usually 800 to 2,000 meters above sea level, whereas, Robusta coffees are often grown at low altitudes (optimal altitudinal range of 300 m to 760 m) and usually in humid conditions. Compared with Arabica coffee, Robusta is more resistant to disease. Thus, its yield per tree is higher than Arabica. Statistics show that Robusta yields approximately one-third more beans per hectare than Arabica beans.¹⁵ Arabica coffee preferred cooler temperatures, usually around 18 Celsius to 24 Celsius offered by higher altitude. Apart from those special requirements of the species, there are a lot of factors resulting in the quality and quantity of coffee's yield such as nutrient, soil property, environment or even the geographical characteristics.

Although, coffee also has complex and unique production methods like wines and spirits which are received the additional protection under article 23 of the TRIPS agreement and relevant regulation in particular TRIPS's member states, coffee is received only the general protection under article 22 of the TRIPS agreement. Set forth below is the current protection under the realm of geographical indications in different jurisdictions, the European Union, Japan and Thailand.

¹⁴Elisa Reis Guimarães, Paulo Henrique Leme and Daniel Rezende "The brand new Brazilian specialty coffee market," **Journal of Food Products Marketing** 25, 1 (2018): 49-71.

¹⁵Christian Bunn, Peter Laderach, Oriana Ovalle Rivera and Dieter Kirschke, "A bitter cup: climate change profile of global production of Arabica and Robusta coffee," **Climatic Change** 129 (2015): 129-189.

4.1 The European Union

The European Union (EU) is considered as a group of countries that play a significant role in the coffee trade market, as it is a group of countries that import a tremendous amount of coffee each year. Statistics show that more than 40% of the world coffee export is to EU. In addition, the EU also has the highest coffee consumption in the world.¹⁶ Thus, the EU is one of the major target markets for coffee distributors and coffee-producing countries across the world. Registration of geographical indications for coffee products according to the regulations of the European Community (EC) will help increase the value of coffee products while increasing the economic value. Geographical indications granted from the EU would help guarantee that coffee products have high quality and pose unique characteristics due to specific geographical areas. With the registration of geographical indications, coffee products will become more reputable. At present, there are multiple coffees across the world recognized with the EU geographical indications, including Doi Chang Coffee and Doi Tung Coffee from Thailand.

The current EC system is based on two main categories of protection for geographical indications, namely the Protected Designations of Origin (PDO) and the Protected Geographical indications (PGI).¹⁷ In addition, other terms are being used for geographical indication in the EU, especially for several wines registered under geographical indication, which can sometimes cause confusion. The registration of PDO mandates that the product must be entirely produced and processed in certain geographical area at every stage. This implies that the product exhibits qualities or characteristics that essentially and strongly link to the geographical location. For PGI, on the other hand, the product must be produced or processed in the geographical

¹⁶United States Department of Agriculture, F. A. S., **Coffee: World Markets and Trade** [Online], available URL: <https://apps.fas.usda.gov/psdonline/circulars/coffee.pdf>, 2021 (March, 3).

¹⁷Laurence Bérard and Philippe Marchenay, “Localized products in France: definition, protection and value-adding,” **From local food to localized food, Anthropology of food** 2 (2007): 19-21.

area at least one stage, meaning that the product exhibits specific quality, reputation, or other characteristics attributable to the site. For a PGI, the registration allowed greater flexibility based more on reputation and linked less concretely to the qualities of a geographic region. Even though the criteria or product specifications between PGI and PDO are different, they are similar in nearly every other respects. This includes the application and recognition process, control systems, and consumer guarantees.¹⁸

The scope of protection of geographical indications as defined in EU law includes the false or misleading use of a protected geographical indications and the marketing of geographical indications products that do not originate in place indicated by the geographical indications. In legal terms, infringement is considered as any unauthorized use under Article 13 Protection of Regulation (EU) No 1151/2012. Specifically, the infringements defined in article 13(1) of the aforementioned regulation would include the following action:¹⁹

1) Any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;

2) Any misuse, imitation, or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’ or similar, including when those products are used as an ingredient;

3) Any other false or misleading indication as to the provenance, origin, nature, or essential qualities of the product that is used on the inner or outer packaging advertising material of documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin; and

¹⁸Filippo Arfini and Valentin Bellassen, **Sustainability of European Food Quality Schemes** (New York: Springer, 2019), p. 42.

¹⁹Ibid, p. 48.

4) Any other practice liable to mislead the consumer as to the true origin of the product.

These infringements are also relevant when the products are used as ingredients. Violations committed either by non-certified or certified producers or retailers falls under the scope of this protection. The applicable EU geographical indications legislation depends on the product categories as follows:²⁰

- 1) Regulation (EU) No 1151/2012 for agricultural products and foodstuffs;
- 2) Regulation (EU) No 1308/2013 for Wines;
- 3) Regulation (EC) No 110/2008 for Spirits; and
- 4) Regulation (EU) No 251/2014 for aromatized wines.

With respect to the geographical indications law in EU, coffee products would be able to be protected under PDO or PGI depending on the requirements and criteria they meet in each case.

4.2 Japan

The Diet, the Japanese parliament, has adopted in 2014 the “*Tokutei Norin Suisan Butsu to no Meisho no Hogo ni Kansuru Horitsu*” (the Act for the Protection of the Names of Designated Agricultural, Forestry and Fishery Products and Foodstuffs (Act No 84)).²¹ Although the title of the act does not distinctly carry the word ‘*chiriteki hyouji*’ or geographical indications in English, it is typically considered as the Geographical Indications Act in Japan.²² Japanese government acknowledges the importance of the protection of particular geographical indications since there are

²⁰Ibid., p. 49.

²¹Ministry of Agriculture, F. a. F., **Tokutei Norin Suisan Butsu to no Meisho no Hogo ni Kansuru Horitsu [Act for the Protection of the Names of Designated Agricultural, Forestry and Fishery Products and Foodstuffs.]** [Online], available URL: http://www.maff.go.jp/j/shokusan/gi_act/outline/pdf/doc4.pdf, 2020 (February, 22).

²²Ministry of Agriculture, F. a. F. **Geographical Indication (GI) Protection System in Japan** [Online], available URL: https://www.maff.go.jp/e/japan_food/gi_act/pdf/gi_pamph.pdf, 2020 (February, 22).

numerous regional brand products obtained high quality and reputation as a result of unique production methods and natural characteristics such as regional climate and soil conditions of a certain location in Japan.

It is important to note that in Japan, only the products and foodstuffs both edible and non-edible related to agriculture, forestry and fishery are fell under the protection of the Geographical Indications Act. This protective scope is rather narrower than the minimum standard of geographical indications as prescribed in the article 22 paragraph 1 of the TRIPS agreement, which intentionally protects all kind of products having quality, reputation or other characteristics linked to these products which can be attributed to a specific geographic region. Specifically, set forth below is the protective categories under article 2 of the Geographical Indications Act:²³

- 1) Edible agricultural, forestry, and fishery products;
- 2) Non-edible agricultural, forestry, and fishery products;
- 3) Food and beverages; and
- 4) Product manufactured or processed using agricultural, forestry, and fishery product.

Article 2 of the Geographical Indications Act aforementioned is clearly demonstrated that alcohol, quasi-pharmaceutical products, regenerative medicine, pharmaceutical products, cosmetics are explicitly excluded from the protective scope. However, alcoholic drinks, such as wine, sake, spirits, or shochu can be obtained a geographical indication in accordance with the law concerning Liquor Business Associations and Measures for Securing Revenue from Liquor Tax (Act No. 7, 1953) instead. Pursuant to article 2 of the Geographical Indications Act of Japan, coffee as a product related to agriculture would, therefore, be protected only in a general standard comparing to those prescribed in TRIPS agreement.

²³Intellectual Property Division Food Industry Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries, “Geographical Indication Protection System Guidelines for the Use of Geographical Indications,” 2015.

4.3 Thailand

In the past three decades, the role of intellectual property rights in agribusiness around the world, including Thailand, where agriculture is one of the main business sectors, has been increasing enormously. This so-called Green Revolution in the 1960s was the most significant reason for the introduction of proprietary aspects in industrial agriculture. Seeds became the private property of multinational corporations and international research centers such as the International Maize and Wheat Improvement Center and the International Rice Research Institute (IRRI).²⁴ Even though the protection of intellectual property rights is assured by various international conventions, certain conflict is still raised between developing and developed countries regarding those intellectual property rights. Developed countries, which produce most of the world's intellectual property and pose biotechnological knowledge, accuse many developing countries with regard to piracy of the intellectual property. While developing countries which own the large reserves of the world's pool of genetic resources, accuse developed countries of biopiracy.²⁵ As a result, some developing countries like Kenya, India, as well as Thailand intend to implement the TRIPS agreement of the World Trade Organization to protect their national intellectual and cultural heritage together with their rich biodiversity resources.²⁶

As a member of the World Trade Organization and as a contracting party of the TRIPS agreement, Thailand is required to implement the relevant provisions and appropriate measures in accordance with such agreement under the domestic legal framework. At the national level, Thailand ensures the protection of the geographical

²⁴Chuthaporn Ngokkuen and Ulrike Grote, "Challenges and opportunities for protecting geographical indications in Thailand" *Asia-Pacific Development Journal* 19, 2 (2012): 93-123.

²⁵Bongo Adi, "Intellectual property rights in biotechnology and the fate of poor farmers' agriculture," *Journal of World Intellectual Property* 19, 2 (2006): 91-112.

²⁶Jinghua Zou, *Rice and cheese, anyone? The fight over TRIPS geographical indications continues* [Online], available URL: https://www.brooklaw.edu/students/journals/bjil/bjil30iii_zou.pdf, 2020 (January, 9).

indications through the enforcement of a particular law, the Geographical Indication Protection Act B.E. 2546 (2003) (“GIPA”), which became effective in the same year.

Pursuant to article 3 of GIPA, it stipulated that the Geographical Indication means “*a name, symbol or any other thing used for calling or representing a geographical origin and capable of identifying that the goods originating in that geographical origin are the goods, the particular quality, reputation or characteristic of which is attributable to such geographical origin*” Moreover, Geographical Indication under Thai law can be classified into two types which are direct Geographical Indication and indirect Geographical Indication. Direct Geographical Indication refers to a geographical name that relates directly to Geographical Indication products, such as Chaiya Salted Egg or Thung Kula Rong-Hai Thai Hom Mali Rice, while indirect Geographical Indication refers to a sign or anything that does not contain a geographical name to identify the geographical origin or production origin, such as a picture of Yamo, the colloquial name of Thao Suranaree, the nineteenth-century heroine from Nakhon Ratchasima province of northeastern Thailand.

In terms of the scope of protection, there are two types of protection under Geographical Indication GIPA. Firstly, it is a general protection as prescribed in section 27. It is a protection against any use of geographical indication in a way of misleading or constituting an unfair competition. Secondly, it is a higher level of protection for particular products, namely rice, silk, wine and spirits.²⁷ Pursuant to section 28, this higher protection prohibited any use of Geographical Indication in translation or accompanied by the expression of “kind” or “type” or the like. Since coffee does not be prescribed as a particular product which will be receiving a higher protection pursuant to section 28 of GIPA, coffee, therefore, received only a general protection pursuant to section 27.

²⁷The Royal Gazette, “The Ministerial Regulations re: Establishment of a List of Specific Categories of Goods, and Established Rules and Procedures for the Use of Identical or Synonymous Geographical Indications B.E. 2554 (2011)”.

²⁸Geographical Indications Protection Act B.E. 2546 (2003), section 28.

In these 3 particular countries, there are some of the differences and similarities in connection with the law regulating the geographical indications among them. GIPA of Thailand is rather relative to the EU law on geographical indications since there also are two levels of protection, namely the general protection, which is the protection against any use of geographical indications that are misleading or constituting an unfair competition, and a higher level of protection protecting particular products even when the use of such geographical indications does not mislead the public regarding the true origin of the product. The higher level of protection also prohibits the use of geographical indications in translation or accompanied by the expressions of “kind”, “type” or like. However, GIPA of Thailand only granted a single symbol while EU divided its geographical indications symbols into 2 types, PDO and PGI. In particular, the PDO is rather difficult to achieve comparing to the PGI. This is because the registration of PDO also required that all of the raw material must be derived solely from the geographical area. In addition, there must be an exclusive link between the geographical location and the quality or characteristics of the products.

In terms of the similarity, GIPA of Thailand is rather similar to the PGI of EU law on geographical indication since all the products can be registered with the administrative authority depending on the reputation and other characteristics of the products which have particular linkage in relation to certain geographical area.

In Japan, there is a protection similar to GIPA of Thailand and the PGI of EU law on geographical indication. In particular, there are two levels of standard in order to protect the products under the realm of geographical indication, the general protection pursuant to the Geographical Indication Act and the additional protection to certain products including alcoholic drinks, such as wine, sake, spirits, or shochu pursuant to the law concerning Liquor Business Associations and Measures for Securing Revenue from Liquor Tax. The general protection under the Geographical Indication Act in Japan, however, provided the protection to only certain products as strictly prescribed in such law which included edible agricultural, forestry, and fishery products, non-edible agricultural, forestry, and fishery products, food and beverages and product manufactured or processed using agricultural, forestry, and

fishery product. In conclusion, this kind of protection under the relevant laws and regulations in Japan provided a lower standard comparing to the minimum standard of TRIPS agreement.

To conclude, there is certain protection of coffee products provided under the realm of geographical indication law in these 3 particular countries but only in a similar level of general standard of the TRIPS agreement. Coffee products still does not receive a protection in a higher level as wine and spirits does.

5. The Potential Implementation of Extending the Additional Protection under Geographical Indications to Cover Coffee Products in Thailand

As earlier discussed in the previous part, the general protection under article 22 of the TRIPS agreement still provides wide range of loopholes particularly affected the economic values. While the additional protection under article 23 of the TRIPS agreement providing a sufficient and absolute protection is still applicable only to certain products, namely wines and spirits. This kind of protection implicitly allows the producers other than wines and spirits producers to exploit or benefit the reputation of particular geographical designation. These concerns are being raised by many countries around the world.

Many countries criticize several limitations of article 22, and suggest that the extension of article 23 to cover all of the products, not only wines and spirits, is essential. However, some countries still believe that additional protection should be limited to wines and spirits. The difference in a point of view regarding the extension of the additional protection led to the division of countries into the Demanders and The Joint Proposal Group. The countries supporting the extension of the additional protection are called the Demanders while the countries opposing such extension are called the Joint Proposal Group.²⁹

²⁹Jain Surbhi, "Effects of the extension of geographical indications: a South Asian perspective," *Asia-Pacific Development Journal* 16, 2 (2009): 65-86.

The leading proponent of the proposal for mandatory extension of article 23 to other products includes the European Union (EU) and some Eastern European countries (non-EU members) such as China, Iceland, India, Kenya, Mauritius, Nigeria, Pakistan, Sri Lanka, Switzerland, Thailand, Tunisia, Turkey, Jamaica, and several other Caribbean and Asian countries, and African countries.³⁰ On the other hand, the main leaders of the Joint Proposal Group are Argentina, Australia, Brazil, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Djibouti, Dominican Republic, El Salvador, Guatemala, Hong Kong, Japan, Malaysia, Mexico, New Zealand, Paraguay, the Philippines, the United States, South Africa, and Uruguay.³¹

The Demanders provided several arguments in support of the extension of additional protection. Firstly, this extension would be a satisfactory for all producers and balance the international minimum level of protection under the geographical indication for all products. Secondly, the extension would increase the value of products with geographical indication and encourage more quality as well as niche products to be exported into the global market. Since the protection which prohibit the indication of the true origin or use in translation or with an expression of “kind”, “type”, “style” or “imitation”, as being protected under the additional protection, would be prevented for all kind of products with geographical indications and help prevent more geographical indication from becoming a generic word which eventually leads to the loss of all economic value. Thirdly, there are no reasonable grounds in connection with the economy or system to support the existence of additional protection in only certain types of products. Fourthly, producers of a product registered under the geographical indication would be increasingly protected from the illegal use of other producers. As such, the producers would not unnecessary carry a costly and time-consuming burden from the misleading test of the general protection as

³⁰Williams D, **Extension of Stronger Geographical Indications Protection: Against the Interests of Developing Countries?** [Online], available URL: <https://www.iprsonline.org/ictsd/docs/WilliamsBridgesYear6N4May2002.pdf>, 2020 (November, 26).

³¹Jain Surbhi, op. cit.

prescribed in article 22 of the TRIPS agreement. Lastly, the extension would prevent trade distortions which eventually lead to an opportunity in the new market.

On the other hand, the Joint Proposal Group also provided several arguments against extending the additional protection to other products. They usually claimed that the immigrants brought their traditional methods of producing food and beverages with them to their new founding countries or the so-called new home countries. Therefore, it is argued to be unfair that a region should have a monopoly on producing a particular product when the similar production methods are practiced elsewhere. Moreover, extending the protection would not be fair since all the World Trade Organization's member does not have a geographical indication to protect as European countries do. As such, additional protection would therefore generate unequal gains. Furthermore, extending additional protection to certain product other than wines and spirits involves enormous costs on bureaucratic implementation. Lastly, re-labeling products that consumers are accustomed to would cause great confusion.

In Thailand, coffee contributes greatly to the economy. As of 31st of October 2021, revenue generated from the Thai coffee industry amounted to 2,811,000 USD.³² The market is also growing rapidly each year, with forecasted annual growth of 12.35% (CAGR 2021-2015).³³ In 2020, the total export value of Thai coffee, whether decaffeinated, roasted, coffee substitutes composing of coffee, or coffee husks and skins totaled at 3,020,000 USD.³⁴ The top three export destinations of Thai coffee in the same year include Japan, Cambodia, and the United States. The export value of Thai coffee in Japan was 680,000 USD, which is equivalent to 22% of the entire export value.³⁵ In terms of coffee product type, the product with the highest export value is the unroasted and non-decaffeinated coffee bean. The export value of the product

³²Statista, **Coffee Thailand** [Online], available URL: <https://www.statista.com/outlook/30010000/126/coffee/thailand#market-revenue>, 2020 (July, 7).

³³Ibid.

³⁴Trade Economy, **Thailand: Imports and Exports of Coffee** [Online], Available URL: <https://trendeconomy.com/data/h2/Thailand/0901>, 2020 (November, 15).

³⁵Ibid.

was equivalent to 1,900,000 USD in 2020, which is approximately 63% share of the entire Thai coffee export market.³⁶ These finding demonstrates the significant role and increasingly demand of coffee for Thai economy.

Several practitioners in the area of coffee and intellectual property regulation of Thailand including academic professionals and administrative authority personnel suggested that the extension of the additional protection to other product, particularly coffee, is necessary supporting by the following reasons. Firstly, if there are certain types of products that are protected, the concerning issue with regard to the discrimination would be raised³⁷ and it would not be fair for most of the producers in the market.³⁸ Secondly, the extension of the additional protection would mean that the reputation of the protected product would be enhanced, it, therefore, results in a higher competitiveness to penetrate the global market.³⁹ Thirdly, coffee is a product with high market value, export value and strong demand from the global market. Finally, receiving an additional protection would be an incentive for the local producer to continue improving their product quality in the long run. However, some practitioners argue that there is still doubt in extending the additional protection in terms of the lower market value of coffee in comparison to wines and spirits, the uniqueness of the geographical region for coffee plantation and the competitiveness to other reputable regions currently existing in the global market.⁴⁰

While the extension of the additional protection on the global scale could be difficult to achieve in a short term due to the differences of the legal framework in various jurisdictions, several specialists in administrative authority of Thailand

³⁶Ibid.

³⁷Thanakrit Ake-Yokaya, Expert on Geographical Indication, interview, 25 March 2021.

³⁸Weeranuch Pattanabunpibool, Director of Sales, Doi Tung Coffee, interview, 1 April 2021.

³⁹Thanit Changthaworn, Deputy Director of Biodiversity-Based Economy Development Office (Public Organization: BEDO), interview, 11 June 2021.

⁴⁰Pajchima Thanasanti, former Director General of Department of Intellectual Property, Ministry of Commerce, Thailand, interview, 18 June 2021.

suggest that such challenge might be overcome by either promoting the exchange list or participating in the Geneva Act of Lisbon agreement which offers a similar level to additional protection under TRIPS agreement and TRIPS-plus. Essentially, the protection under the geographical indication realm as prescribed in the Geneva Act of Lisbon agreement would cover to all products. Since Thailand does not have particular laws and regulations in supporting an exchange list, participating in the Geneva Act of Lisbon agreement might be the only possible way to achieve this implication at the moment.⁴¹

The researcher agreed with several practitioners who support that the additional protection under the realm of geographical indication law should also be extended to cover coffee products. This is not only to maximize the economic value of such products but also to improve the current laws and regulations to be more efficient in terms of the economic protection which is one of the primary intentions of legislating the geographical indication law.

6. Conclusion and Suggestions

According to the significance of coffee in terms of the economic value not only for Thailand but for the global market as well, the general protection as prescribed in the article 22 of the TRIPS agreement or domestic law in specific jurisdiction might not be sufficient for protecting the products from the illegal use of other producers. Extending the additional protection which protected the registered products not only from the misleading but also from the indication of the true origin or use in translation or with an expression of “kind”, “type”, “style” or “imitation” to coffee would provide more benefits to particular geographical indication owned producers. In particular, the coffee producers can receive a higher level of protection and it results in a higher

⁴¹Jutatip Vuthiparum, Professional Trade Officer at Department of Intellectual Property, Ministry of Commerce, Thailand, interview, 16 June 2021.

competitiveness to penetrate the global market. This implementation could enhance the enforcement of laws and regulations related to the geographical indication to the utmost purpose, protecting the uniqueness of the products having linkage to specific geographical region.

However, there is still several challenges on implementing this extension. The researcher found certain limitation and possibility for extending the additional protection in order to cover coffee products. Firstly, the limitation in relation to the differences of domestic legal frameworks from various jurisdiction would be one of the most challenging concerns. This is because certain countries would essentially concern their sovereignty as the utmost security of the country. The protection of particular products under the geographical indication law is inevitably being considered as the matter regarding the legal amendment which is part of sovereignty. As such, the implementation of extending this additional protection to cover other products other than those currently prescribed in particular domestic law would be a serious matter and depend on each countries' domestic policy and preference. Secondly, the researcher agreed with several professionals that participation in the Geneva Act of Lisbon Agreement which offers a similar level of protection as TRIPS-plus to all products might be one of the possible ways for Thailand to achieve the extension of the additional protection to cover coffee products and, at the end, all kind of products.

To conclude, coffee products is one of the most valuable products to various countries, including Thailand. However, the extension of additional protection to cover coffee products by amending the law relating to the geographical indication would significantly be a challenging task resulting from the debates regarding the economic value of the coffee products from various practitioners, the uniqueness of the geographical region for coffee plantations and the possible competitiveness to other reputable regions currently existing in the global market. Accordingly, entering into the existing multilateral agreement like Geneva Act of Lisbon Agreement would be more reachable for Thailand to achieve this kind of protection for coffee products at the very first stage.

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